

ALERT

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State Supreme Court Settles Workers' Comp Question

Court Sides with CalChamber Position

A unanimous ruling May 3 by the California Supreme Court settles the issue of how to apportion an employer's liability for an employee's permanent disability.

In a long-awaited decision, the court ruled that the appropriate method for calculating a permanent disability award after apportionment is through the percentage method. As a result, employers are responsible only for the percentage of the employee's disability attributable to the current industrial injury for which the permanent disability award applies.

Cases Combined

The Supreme Court decision was the final stop in the case of *Welcher v. Workers' Compensation Appeals Board et al.*, along with the cases of *Strong v. Workers' Compensation Appeals Board et al.*, *Lopez v. Workers' Compensation Appeals Board et al.*, *Williams v. Workers' Compensation Appeals Board et al.* and *Brodie v. Workers' Compensation Appeals Board et al.*

The *Welcher* decision is the leading case on whether workers' compensation cases should apportion an employer's liability for a permanent disability by subtracting percentages of an employee's disability as a result of a work-related injury — the approach supported by the California Chamber of Commerce — or by subtracting the dollar value of the injury.

In the opinion, the court explained that the reforms of SB 899 (Poochigian;

R-Fresno) of 2004 and the "history behind them reflect a clear intent to charge employers only with that percentage of permanent disability directly caused by the current industrial injury."

CalChamber Comment

"It was only a few years ago that California's workers compensation system was a huge drag on our economy, with escalating costs spiraling out of control," said CalChamber President Allan Zarembek. "Governor Schwarzenegger made fixing this problem a priority and reached a

balanced, bipartisan compromise with the Legislature to reform our broken system.

"The workers' compensation reforms of SB 899 have been successful for both employers and employees: costs and premiums to employers have been reduced dramatically, while workers have seen improved medical treatment guidelines and a promising increase in return-to-work rates.

"The billions of dollars saved due to workers' compensation reform have allowed California businesses to expand and create more jobs and tax revenue, while local governments and school districts have had more money to spend on public services, such as schools, roads and public safety. That is why the CalChamber led the effort for reform and why we joined in defending against this lawsuit by filing an amicus brief."

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CalChamber Opposing Rollback of Workers' Compensation Reforms



OPPOSE

A California Chamber of Commerce-**opposed** bill that will roll back significant portions of the workers' compensation reforms from 2003 and 2004 passed the Senate Labor and Industrial Relations Committee this week.

SB 936 (Perata; D-Oakland) increases employer costs by doubling permanent disability benefits in the California workers' compensation system.

The CalChamber is leading a coalition of associations and businesses — nearly 100 to date — opposing SB 936. Coalition members include companies and associations in the insurance, retail, high technology, health care and agricultural industries, local chambers of commerce, and business and industry organizations.

No Concrete Evidence

The CalChamber believes there is no statistically valid and objective evidence that warrants an increase in benefits. The drop in overall amounts spent on permanent disability benefits is due to the application of objective medical evaluations using American Medical Association guidelines, the appropriate use of apportionment, the reduction of benefit weeks

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Labor Law Corner

OK to Vary Benefits Based on Job Duties, Classification



Ellen Savage
Labor Law Consultant

I'd like to give more vacation to employees who work in the sales department than to employees who work in the warehouse. Would that be illegal discrimination?

Although the word "discrimination" is often heard from employees who feel

they are somehow being treated unfairly, discrimination actually has a much narrower definition under the law.

In order to be illegal, discrimination must be based on one of the categories specifically protected by state or federal statutes. Simply because an employee may think something is unfair does not mean the employer has engaged in illegal discrimination.

Defining Discrimination

Treating employees differently is absolutely legal as long as that different treatment:

- is not based on one of the categories specifically protected by law, such as a person's age, race, sex, national origin, religion or sexual orientation; or
- does not disproportionately impact a group of employees protected by the anti-discrimination laws, even if that was not the intent of the employer, unless the employer can show it was justified by a business necessity.

Employers generally may offer more of a particular benefit, such as vacation, to one group of employees compared to another as long as there is a legitimate, business-related reason for doing so.

For example, recruiting and retaining a qualified sales staff may require the employer to offer more benefits to those employees, while fewer incentives may be needed for lower-skilled positions. Exempt employees often may work long hours with no additional compensation, so an employer may choose to provide them with more paid vacation time to prevent employee burnout.

Differing Jobs, Benefits

As long as the line dividing who gets which benefit is based on job classification, department, shift, exempt or non-exempt status or some other legitimate, business-related category, providing different benefits to different employees is not illegal discrimination.

Some common examples where different benefits are legally given include:

- providing more vacation or paid time off to exempt employees than to non-exempt employees;
- giving longer lunch hours to employees who work in the employer's office than to those who drive its delivery trucks;
- giving more vacation to employees with more seniority;
- providing higher pay (shift differentials) to employees who work less desirable shifts; and
- allowing employees in certain departments to choose a flex-time schedule (following the required process), while requiring employees in other departments to work a standard schedule.

The Labor Law Helpline is a service to California Chamber of Commerce preferred and executive members. For expert explanations of labor laws and Cal/OSHA regulations, not legal counsel for specific situations, call (800) 348-2262 or submit your question at www.hrcalifornia.com.

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CalChamber Calendar

California Business Legislative Summit:

May 21-22, Sacramento

Board of Directors:

May 21-22, Sacramento

Fundraising Committee:

May 22, Sacramento

Transportation Committee:

May 22, Sacramento

AB 32 Committee:

May 22, Sacramento

Seminars/Trade Shows

For more information on the seminars listed below, visit www.calchamber.com/events.

Business Resources

Free Tax Seminar for Nonprofit

Organizations. California State Board of Equalization. May 18, Fresno. (916) 341-7389.

International Trade

Consular Corps Luncheon. Northern California World Trade Center. May 22, Sacramento. (916) 319-4277.



May Recognition Underscores Importance of International Commerce to California



It's no accident that what is now a national observance — World Trade Month — began in California 81 years ago as World

Trade Week, celebrated during the third week of May.

International-related commerce accounts for approximately one-quarter of the state's economy, and California ranks among the 10 largest economies in the world with a gross state product of more than \$1.5 trillion. About 1 in 7 jobs in California is related to trade, with every million-dollar increase in trade equaling 11 new jobs, according to the California Business, Transportation and Housing Agency.

In 2006, California exported to 224 foreign markets. California exports totaled \$127 billion, according to the U.S. Department of Commerce. This was an increase from \$116 billion in 2005. California maintained its perennial position as a top exporting state.

Exports from California accounted for more than 12 percent of total U.S. exports, with Mexico, Canada, Japan, China and South Korea being the state's top trading partners.

California is the number one exporter in the nation of computers, electronic products, food and kindred products. Computers and electronic products are California's top export, accounting for 35 percent of all the state's exports.

To maintain the health of international commerce for California and the nation, a number of activities merit business support.

Trade Promotion Authority

The United States' standing as a world leader depends directly upon its com-

petitive success in the global economy. Increased market access achieved through trade agreements has played a major role in the nation's success as the world's leading exporter.

Trade promotion authority (TPA, formerly called fast track trade negotiating authority) is the process by which Congress gives authority to the President and/or U.S. Trade Representative to enter into trade negotiations in order to lower U.S. export barriers.

Commentary By Susan Corrales-Diaz

The Trade Promotion Authority Act of 2002, which was extended in 2005, will expire this June. Renewed TPA is needed for the President to negotiate new multilateral, bilateral and sectoral agreements that will continue to tear down barriers to trade and investment, expand markets for

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U.S. farmers and businesses, and create higher-skilled, higher-paying jobs for U.S. workers.

Free Trade Agreements Critical

In 2006 and early 2007, free trade agreements (FTAs) were enacted with Morocco and Bahrain. The U.S.-Oman FTA passed the U.S. Congress and was signed by President Bush. Currently pending before Congress are the U.S.-Peru FTA, U.S.-Colombia FTA, and U.S.-Panama FTA. Soon to be considered also is a U.S.-Korea FTA (the world's largest bilateral free trade agreement).

All these agreements are critical ele-

ments of the U.S. strategy to liberalize trade through multilateral, regional and bilateral initiatives. The passage of these FTAs will mean the elimination of billions of dollars in tariffs for U.S. exports, as well as increased market visibility and will benefit California and the United States as a whole.

California Programs

Governor's Canada Trade Mission

Governor Arnold Schwarzenegger has scheduled a trade mission to Canada during the last week of May.

California Chamber President Allan Zaremberg is part of the trade delegation accompanying the Governor.

Canada is now the second largest customer for California's exports, with a total dollar value of \$14.2 billion in 2006. Two-way trade with Canada supports an estimated 832,000 jobs in California.

Canada-California trade has grown steadily since the 1970s, accelerating with enactment of the Canada-U.S. Free Trade Agreement in 1989, and the North American Free Trade Agreement (NAFTA) in 1994.

According to a recent Bay Area Economic Forum study, Canada is one of California's largest tourism sources. Canadian tourism generates \$27 million in California state tax revenue and supports more than 7,000 California jobs.

Trade and Investment Offices

Although trade policies are determined at the national level, the state can be a positive force to keep California open for business through continued economic growth and development, and support for trade and investment promotion.

The CalChamber supports establishing a strategic plan for coordinating and conducting international trade and investment programs and activities in the state, including the establishment of California state trade and investment offices under the auspices of the Business, Transportation and Housing Agency.

Such a program can promote exports

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CalChamber-Supported Ruling

The 3rd District Court of Appeal agreed with the CalChamber approach in a September 2006 ruling in the *Lopez* case. In agreement with a friend-of-the-court brief filed by the CalChamber, the 3rd District found that the 2004 workers' compensation reform legislation did not change the formula for calculating apportion-



ment from a percentage-based formula to a dollar-based formula. The court also agreed that the reform legislation did not intend to change the formula.

The apportionment method was adopted by the California Supreme Court 30 years ago in *Fuentes v. Workers' Comp Appeals Bd.* (1976) 16 Cal.3d 1 (Fuentes).

"This important Supreme Court ruling upholds the intent of our policymakers when they sought to reform workers'

compensation and reduce its costs," Zaremberg said. "This decision protects those successful reforms and prevents a return to the days of double-digit premium increases and job loss. The CalChamber will remain vigilant in defending the reforms against attacks in all arenas — the courts, the Legislature, and on the ballot."

The full opinion is available on the CalChamber website at www.calchamber.com.

Staff Contact: Erika Frank

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and foreign investment by matching California products and services with foreign buyers; collecting trade leads; offering counseling on market penetration strategies; advertising and promoting California as a supplier and location for investment; organizing foreign investment and buying missions to California; and supporting businesses in foreign trade shows throughout the world.

At one time, California supported America's premier export finance program — the California Export Finance Office (CEFO) — which boosted the ability of the state's small business exporters to secure financing for international transactions that the federal programs couldn't support. The federal programs for export financing continue to be difficult to access, particularly for small business; therefore, to re-establish

CEFO's successful program would significantly energize California exports.

State trade and investment offices are an important symbolic statement to our major trading partners. An official representative for the state of California can lend credence to a business transaction. Moreover, face-to-face representation still has recognized value. Protocol is a significant part of the business culture of many of our trading partners and enables us to build government-to-government relationships that can lead to trade and investment flows and measurable success of these offices.

As the California Legislature considers (re)establishing trade and investment promotion support on behalf of the state, it is crucial that it do so with an eye toward putting in place a continuing process. Globalization is here to stay and

www.calchamber.com/international

- FAQs
- trade issue updates
- statistics on leading markets
- links to research markets, buyers, suppliers

our Golden State must continue to be engaged.

The CalChamber remains dedicated to continuing our efforts to enhance California's international trade abilities to keep the state competitive in a global economy.

Susan Corrales-Diaz, chair of the California Chamber of Commerce International Trade Committee, is president of Systems Integrated in Orange.

Make a difference on proposed laws

calchambervotes.com

Business Think Tank Launches Website to Fill 'Information Void'

The California Foundation for Commerce and Education (CFCE), a non-profit, non-partisan think tank affiliated with the California Chamber of Commerce, has launched a new website.

The website can be found at:
www.cfcepolicy.org.

Elevating Policy Debate

"California business has suffered from the absence of a credible source of accurate information on the benefits of a strong economic base and the adverse effects of many government policies," said CFCE President Loren Kaye.

"The sad fact is that no entity within the California public policy environment is charged with providing impartial, objective, comprehensive analysis of public policy proposals for their effects on the California business climate and economic base. Now this has changed. The California Foundation for Commerce and Education is filling the information



void — elevating the policy debate and improving policy decisions."

This website serves as an educational tool and will feature reports and publications produced by CFCE, as well as other publications, media and Internet reports relevant to the California economy and public policy. In addition, the site features a blog by Kaye that provides observations and commentary on California issues.

Earlier this year, the CFCE released results of a first-of-its-kind report on state business leaders' attitudes toward K-12 education. Education led the list of executives' concerns, but rated a "D" for quality.

Foundation Goals

The CFCE is dedicated to preserving and strengthening the California business climate and private enterprise through:

- Education of the public and policy makers on the virtues of private enterprise and a strong economic base;
- Accurate, impartial and objective research and analysis of public policy issues of interest to the California business and public policy communities; and
- Education and outreach efforts in support of the research and public policy findings and recommendations.

Contact: Loren Kaye

CalChamber Opposing Rollback of Workers' Comp Reforms



OPPOSE

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for low ratings, and return-to-work adjustments.

Before the recent CalChamber-supported reforms went into effect, California's workers' compensation system was out of control. It harmed employees by creating an adversarial system focused on litigation and disability instead of reasonable and appropriate medical treatment and return-to work, and it did so at incredible cost to employers.

Workers' compensation premiums and system costs tripled from 1999 to 2003. Outside of the high cost of operating in California, skyrocketing workers' compensation premiums had a negative impact on businesses and local governments to the point where expansion of the workforce came at a high price and public services suffered.

According to the Public Policy Institute of California, one of the major reasons for skyrocketing costs was the

increasing number of permanent disability claims. Before implementation of CalChamber-supported SB 899 (Poochigian; R-Fresno) in 2004, permanent disability claims were filed at a rate of three times the national average, and California was 20 percent higher than the next highest state. A subjective system of work preclusions led to injured workers getting higher permanent disability rates, and litigation that preyed on this subjectivity compounded the situation.

Data-Driven Approach

Although there has been evidence of a drop in benefits, the CalChamber believes that California should take a data-driven approach to reviewing the available information before considering a permanent disability benefit increase, let alone doubling benefits. Measuring the adequacy of permanent disability ratings under the current system by comparing them against the old system is irrational.

Premiums have come down, objectivity has been established, and a sense of balance has been returned to the Cali-

fornia workers' compensation system. California's private and public employers stand ready to resolve any inequities that have resulted from recent reforms; however, the CalChamber believes that California cannot proceed on a path that will lead the state back to the days of skyrocketing premiums, adversarial litigation and an unbalanced system.

Key Vote

SB 936 passed Senate Labor and Industrial Relations on a party-line vote of 3-2.

Ayes: Migden (D-San Francisco); Kuehl (D-Santa Monica); Padilla (D-Pacoima).

Noes: Ackerman (R-Tustin); Wyland (R-Del Mar).

Action Needed

SB 936 will be considered next by the full Senate. Ask your senator to **oppose SB 936**.

For an easy-to-use sample letter, visit www.calchambervotes.com.
Staff Contact: Jason Schmelzer

Legislative Outlook

An update on the status of key legislation affecting businesses. Visit www.calchambervotes.com for more information, easy-to-edit sample letters on hot topics and updates on other legislation. Staff contacts listed below can be reached at (916) 444-6670. Address correspondence to legislators at the State Capitol, Sacramento, CA 95814. Be sure to include your company name and location on all correspondence.

Legislators Halt Class Action Reform Bill



SUPPORT

The lack of interest among legislators to reform California's low-ranking legal climate was on display this week in the Assembly Judiciary Committee.

After hearing testimony on California Chamber-supported **AB 1505 (Parra; D-Hanford)**, the committee did not even vote on the bill, which improves California's legal climate by bringing balance to class action lawsuit standards so that class actions are used for meritorious rather than frivolous, profit-motivated claims.

Assemblyman Van Tran (R-Costa Mesa), vice chair of Assembly Judiciary, made the motion for the committee to vote on approving AB 1505. The motion did not proceed for lack of a second.

California's legal climate ranked 45th, one spot lower than a year ago, in

the U.S. Chamber-commissioned annual assessment of state liability systems conducted by Harris Interactive, a leading non-partisan polling firm.

California ranked 46th for its treatment of class action lawsuits and mass consolidation lawsuits.

AB 1505 provides a balanced, fair set of standards and rules for class action lawsuits. Those standards and rules are modeled after federal standards and ones that most other states use.

If AB 1505 is enacted, discrimination victims, consumers, and harmed employees still will be able to bring an action. Those seeking to use the class action system primarily to extort unmerited settlements or generate attorneys' fees, however, will find California less inviting.

Staff Contact: Kyla Christoffersen

CalChamber Supports Small Business Tax Credit for Clean Technology



SUPPORT

The California Chamber of Commerce is **supporting** legislation to stimulate California's economy and encourage businesses to reduce their carbon footprint.

AB 1527 (Arambula; D-Fresno) will provide a tax credit for equipment purchased to manufacture clean technologies and for the costs of research and development of clean technologies.

With the signing of AB 32 (Núñez; D-Los Angeles) in 2006, climate change mitigation has become a priority for California. In order for the state to remain an economic and environmental leader in the world community, businesses must be given the tools they need to reach the ambitious goals set by AB 32.

The CalChamber believes that in order to successfully reduce global greenhouse gas emissions, businesses should be a part of the solution.

Many states across the nation are competing for investments and jobs in clean technology production and research. These states recognize clean technology

as the new frontier for investments and economic development. California needs to take proactive and aggressive steps to position itself as the leader in clean technologies.

Adoption of the investment incentives provided in AB 1527 will help the state achieve the dual goals of encouraging investments and economic development in clean technology as well as facilitating reduction of greenhouse gas emissions.

Action Needed

AB 1527 is scheduled to be considered by the Assembly Revenue and Taxation Committee on May 21.

Contact committee members and your Assembly representative and urge them to **support AB 1527**.

Staff Contact: Kyla Christoffersen

Bipartisan Bill to Reduce Lawsuit Abuse of Disabled Access Laws Moves Forward

**SUPPORT**

Bipartisan legislation **supported** by the California Chamber of Commerce to promote compliance with and reduce litigation abuse of disabled access laws is moving in the state Legislature.

The Senate Judiciary Committee unanimously approved **SB 747 (Corbett; D-San Leandro)** on May 8 as a vehicle for needed reforms.

The CalChamber strongly supports the intent of SB 747 because it acknowledges serious problems that the business community believes urgently need to be addressed to reduce litigation that seeks attorneys' fees and damages without facilitating compliance with disabled access laws, including the Americans with Disabilities Act.

Particularly pressing is the problem of large numbers of small business owners throughout California being hit with settlement demands or lawsuits that have the primary purpose of exacting monetary settlements rather than creating greater access for the disabled community. Such lawsuits have caused many businesses to close their doors, which is not the purpose of the access laws.

Businesses have a responsibility to comply with access laws, but California's laws should facilitate and acknowledge the efforts of businesses that desire to comply and take steps accordingly.

For example, in order for business owners to be able to understand and carry out their compliance obligations, there needs to be clarification of the voluminous, complex and conflicting access regulations at the state and federal levels.

In addition, it is problematic that, under current law, there is no recognition or protection of businesses that try to comply with access laws in good faith. Despite spending thousands or even hundreds of thousands of dollars to comply with access laws, some businesses still find themselves hit with lawsuits, without warning.

Due to the complexity and volume of access laws and regulations, achieving perfect compliance can be difficult. Businesses that have tried in good faith to comply should have a chance to fix any leftover problems before being sued.

Key Vote

Voting aye on SB 747 were: Corbett (D-San Leandro), Harman (R-Huntington Beach), Ackerman (R-Tustin), Kuehl (D-Santa Monica), Steinberg (D-Sacramento).

SB 747 will be considered next by the full Senate.

Staff Contact: Kyla Christoffersen

CalChamber Backs Tax Incentive for Cafeteria Health Care Option

**SUPPORT**

California Chamber of Commerce-**supported** legislation providing employers a tax credit incentive to offer cafeteria health care plans to employees has passed the Senate Health Committee.

SB 820 (Ashburn; R-Bakersfield) won approval May 9 on a bipartisan vote of 7-1. The bill is intended to reduce the tax inequity resulting from individuals buying their own health insurance or coverage.

Currently, individuals are not entitled to a tax deduction for the purchase of health care coverage, but employers may purchase coverage with pre-tax income.

Federal law (Section 125 of the Internal Revenue Code) permits employees to purchase health care coverage with pre-tax income, thus lowering their taxable income and tax liability, if the program is a Section 125 premium plan.

SB 820 provides an incentive for employers to offer these valuable plans as a benefit to employees by offsetting em-

ployers' costs of administration through a small tax credit.

Key Vote

The Senate Health vote on SB 820 was:

Ayes: Aanestad (R-Grass Valley), Alquist (D-Santa Clara), Cedillo (D-Los Angeles), Maldonado (R-Santa Maria), Ridley-Thomas (D-Los Angeles), Wyland (R-Del Mar), Yee (D-San Francisco).

Noes: Kuehl (D-Santa Monica).

Absent/Abstaining/Not Voting: Cox (R-Fair Oaks), Negrete McLeod (D-Chino), Steinberg (D-Sacramento).

Staff Contact: Marti Fisher

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