

ALERT

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Senate Panel Recognizes Need to Clarify Meal Period Rules

Legislation declaring the Legislature's intent to clarify the state's meal period law won unanimous approval from the Senate Labor and Industrial Relations Committee this week. The vote reflected bipartisan recognition of the need for change and further discussions to find consensus on a solution.

The committee amended **SB 1539 (Ron Calderon; D-Montebello)**, which was **sponsored and supported** by the California Chamber of Commerce and 40 additional trade and professional organizations to provide a comprehensive solution to compliance with and enforcement of meal period laws.

Committee members of both parties expressed concern that the meal period law in its current form is posing problems

for employers and voiced support for providing an opportunity for all interested parties to work together on a solution that contains adequate protections for employers and employees.

The CalChamber is encouraged by the committee's response to the bill and will continue to work toward the original goal of the legislation—to provide a comprehensive solution to the challenges faced by employers and employees with current meal period rules across all industries, regardless of employer size or union status.

Confusion with Current Law

Employees and employers are struggling to comply with the current confusing law, which mandates an employee

See Senate: Page 4

Assembly Committee Insensitive to Need for Flexible Workweeks

California Chamber of Commerce-**sponsored** legislation to allow individual employees flexibility in work schedules could help them accommodate diverse family obligations, commuting issues and other personal needs, speakers told an Assembly committee yesterday.

Even with the overwhelming support of employers, employees and sponsorship from 43 local chambers of commerce, the Assembly Labor and Employment Committee rejected **AB 2127 (Benoit; R-Bermuda Dunes)** on a vote of 2–6.

AB 2127 would have allowed a small employer (25 or fewer employees) to agree to an employee's request to work an alternative work schedule. The bill applied specifically to small businesses that are not covered by a collective bargaining agreement. According to small businesses, employees and local chambers of commerce, the Small Business Family Scheduling Option would have added a much-needed boost for employers struggling to recruit and maintain qualified employees in a shrinking pool of candidates.

News Conference

Earlier in the day, the CalChamber participated in a news conference where Marc Burgat, CalChamber vice president of government relations, explained that a

See Assembly: Page 4



Marti Fisher, CalChamber policy advocate, answers questions from the Senate Labor and Industrial Relations Committee on the need to clarify California's meal period laws.

Inside

Employers Highlight Workers' Comp Issues: Page 3

Labor Law Corner

Employer Must Justify On-Duty Meal Period Based on Nature of Work



Dale Louton
Senior Helpline
Consultant

Please discuss meal periods and the additional hour that must be paid if a meal period is missed. In the emergency room, our hourly paid nurse practitioners are covered by Wage Order 4 and there is a section that provides for an "on-duty" meal period. Does this section allow that

when an agreement is signed, the employer does not have to pay the one hour extra for a missed meal period?

Section 11, "Meal Periods," states in pertinent part:

"Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an 'on-duty' meal period and counted as time worked.

"An 'on-duty' meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to.

"The written agreement shall state that the employee may, in writing, revoke the agreement at any time."

Agreement in Writing

The "on-duty" agreement must be in writing, signed by both employee and employer and must cover the elements mentioned in Section 11 above. All elements must be complied with. Most important is that the employer must be able to demonstrate that the nature of the work prevents the employee from being relieved of all duty.

The question indicates that there is more than one nurse practitioner, so the obvious question becomes why can't they relieve one another? Or, why can't the

supervisor relieve these employees for a lunch period? How is the employee's work so unique that the employer can justify an "on-duty" meal period?

The employer must analyze the position in question and then determine if the "on-duty" meal period is appropriate. If appropriate, get the agreement signed and no penalty is due. If not appropriate, arrange for meal period coverage.

Also take a look at Section 1(3)(g) of Wage Order 4, as certain advanced nurses are considered professional and therefore exempt from Section 11. These nurses must be certified as spelled out in the wage order and must also receive a monthly salary equivalent to no less than two times the current minimum wage of \$8 per hour — \$2,773.33 per month (\$33,280 per year).

Online Form

The Calchamber has a helpful online form, "Meal Break Waiver On Duty," that covers the required elements. To obtain the form, visit www.hrcalifornia.com.

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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Seminars/Trade Shows

For more information, visit
www.calchamber.com/events.

Business Resources

GTC West 08: Conference on California's Future. Government Technology Conference, a division of e.Republic Inc. May 12-16, Sacramento. (916) 932-1300.

International Trade

U.S. Trade/Investment Mission to Algeria. U.S. Algeria Business Council. April 5-10, Algiers. Algeria. (703) 418-4150.

Global California — Online with the World. Monterey Bay International Trade Association (MBITA). April 25, Sacramento. (831) 335-4780.

World Trade Week Kickoff. Los Angeles Area Chamber. May 7, Los Angeles.

Labor Law

HR 201: Labor Law Update On-Demand Web Seminar. CalChamber. 90 minutes. (800) 331-8877.

Exempt v. Non-Exempt Web Seminar. CalChamber. April 17. (800) 331-8877.

Paying Non-Exempt Employees Web Seminar. CalChamber. May 1. (800) 331-8877.



Employers Meet with Legislators to Discuss Workers' Comp Issues

Businesses, Schools, Local Governments Stress Need to Protect Recent Reforms

Dozens of employers from throughout California came to Sacramento this week to meet with lawmakers on workers' compensation issues and discuss the importance of protecting recent legislative reforms for California.

The 2008 Workers' Compensation Legislative Education Day brought together large companies from the technology, entertainment, energy and transportation sectors, as well as small business owners and representatives from local government and school districts.

The April 8 event was hosted by the California Chamber of Commerce, California Coalition on Workers' Compensation, California Manufacturers & Technology Association and the Workers' Compensation Action Network (WCAN).

Protecting Reforms

"Nearly four years since the sweeping reforms of SB 899, employers must remain diligent to protect these reforms from roll-back legislation in Sacramento," said CalChamber President Allan Zaremberg, co-chair of WCAN.

"Although California has made significant strides in improving the system for employers and injured workers, California is still among the most expensive states in the nation for workers' compensation insurance," he said.

Participants discussed with lawmakers the positive impacts of the 62 percent average reduction in workers' compensation insurance premiums since 2003, such as preventing layoffs or enabling pay raises and benefits for employees, as well as improvements in return-to-work levels for injured workers.

They also educated lawmakers on different aspects of the current system, such as access to medical treatment and the new permanent disability rating schedule.

Moving Back Not Option

Although the workers' compensation system is moving forward in a positive way, legislative education day participants sought to remind policymakers about the crisis that precipitated the

See Employers: Page 4



Mike Proso, chief deputy legislative secretary for Governor Arnold Schwarzenegger, highlights the significant reductions resulting from the worker's compensation reforms and the need to fine-tune the system during the current administration.



Jason Schmelzer, CalChamber policy advocate, briefs attendees at the Workers' Compensation Legislative Education Day on proposals that seek to roll back the cost-saving reforms.

Assembly Committee Insensitive to Need for Flexible Workweeks

From Page 1

flexible work schedule would benefit both employers and employees.

"California needs a law that will permit four-day workweeks for individual workers," said Burgat. "AB 2127 is good for workers, good for the environment and good public policy. Permitting individual scheduling flexibility is one way small businesses owners can help employees strike a balance between work and personal responsibilities. This bill has the added benefit of helping our environment by eliminating one commute trip per week for each employee who is working the compressed schedule."

Time for Continuing Education

Sharon Tyrrell, owner of Capree Escrow Inc. in Riverside, told the media that she would like to offer a more flexible schedule for her employees, but current law

prevents her from offering them an option.

"As a small business owner, I have always encouraged my employees to continue their education," said Tyrrell. "AB 2127 would allow my staff to work a full-time schedule in four days, providing them with an additional day to attend college classes that are often only offered during traditional business hours."

"Current law prevents me from offering my employees a more flexible schedule to accommodate their needs, and as a result, the employees must reduce their work hours, and therefore their pay, in order to attend class. Why should they have to choose between work and school when AB 2127 is a reasonable alternative?"

Quality of Life

Catherine Gaughen, executive director of the Cerritos Regional Chamber of Commerce, added that the legislation would

allow employees and employers flexibility in their work schedules to help accommodate diverse family obligations.

"This important legislation will allow employees and employers much-needed flexibility in determining work schedules to help accommodate the diverse family and personal obligations and commuting issues," said Gaughen.

"Allowing employers and employees to mutually agree to an alternative work schedule is important to improving an employee's overall quality of life, which increases employee productivity and retention. We support AB 2127 because increased professional flexibility in our changing workforce is crucial in meeting the economic demands of the future."

Helps Retain Employees

Brian Holcombe, president of 1st Bank
See Assembly: Page 5

Employers Meet with Legislators to Discuss Workers' Comp Issues

From Page 3

reforms: Costs had tripled and employers were leaving California, laying off employees or going out of business. Legislation moving California back toward the old system should not be an option, particularly given the state of the economy.

Participants discussed numerous

legislative proposals that would have an impact on the system, including proposals affecting the review of medical treatment requests, the use of apportionment for permanent disability claims and regulation of insurance rates. Also stressed was the need for collaboration between all stakeholders on further adjustments to the system.

A collaborative approach between business and labor has been successful in addressing specific issues during the last two years, such as increasing the time-frame for temporary disability benefits and additional treatment for post-surgical patients.

Staff Contact: Jason Schmelzer

Senate Panel Recognizes Need to Clarify Meal Period Rules

From Page 1

take a 30-minute meal period after working more than five hours.

The law states that a non-exempt employee may not work more than five hours in a workday without being provided with a 30-minute meal period.

This provision, enacted in 1999, has been interpreted in various ways by state enforcement officials and the courts. The confusion has led to costly litigation against California businesses that now may face closure due to exorbitant settlements.

Enforcement Interpretations

The current enforcement interpretation requires the following:

- Employer must compel the worker to cease work during the meal period, which

requires the employer to police its workforce, watch the clock to ensure the meal period is taken at the prescribed time, for the entire time, and without interruption.

- Employee may not voluntarily skip the meal period.

- Employee may not take the meal period at another time.

- Employee may not return early, leave late or do any work during the meal period.

- Non-compliant, independent employee action with regards to the meal period creates a liability for the employer.

- The conditions permitting an on-duty meal period are so rigidly interpreted that most workplaces which should appropriately permit on-duty meal periods do not qualify.

- There is confusion over when the meal period should commence.

- As a result of a recent court challenge (*Bearden v. Borax*), a collective bargaining agreement does not supersede the statute.

To avoid liability, some employers have had to discipline or discharge employees for not taking meal periods as directed.

Key Vote

Senate Labor and Industrial Relations unanimously approved SB 1539 as amended during the committee hearing to provide an opportunity for ongoing discussions to craft a solution to current issues with the meal period law:

Ayes: Ackerman (R-Tustin), Kuehl (D-Santa Monica), Migden (D-San Francisco), Padilla (D-Pacoima), Wyland (R-Del Mar).

Staff Contact: Marti Fisher

Assembly Committee Insensitive to Need for Flexible Workweeks



Assemblyman John J. Benoit (R-Bermuda Dunes) kicks off a press conference highlighting the need for his legislation to provide individual flexibility in employee scheduling, AB 2127.



Marc Burgat, CalChamber vice president of government relations, points out how flexible scheduling benefits both employers and employees.

From Page 4

and member of the Palm Desert Chamber of Commerce, noted that being able to offer the benefit would help businesses recruit and retain employees.

"A flexible work schedule is something that could be very beneficial for my employees. It is difficult enough to find a qualified job applicant, but it is even more difficult to keep them. AB 2127 would provide an added incentive that I could offer to my employees as a way of improving productivity and reducing absenteeism."

More Time with Family

In testimony to the committee, Ruth Evans, owner of The Evans HR Group, a human resource management firm in Fresno, said AB 2127 would allow her employees to spend more time with their families and achieve a life-work balance.

"This is an employee-focused bill that provides employees the flexibility they have been seeking," said Evans.

"This bill provides employees an opportunity to reduce their workweek, reduce commuting time, while saving gas and allowing for more time to spend with their children, take care of aging parents and attend school activities.

"AB 2127 does all these things as well as offer employees an opportunity to improve their work-life balance without a reduction in pay."

Helps Environment

Scott Raty, president and chief execu-



Representatives of numerous businesses and chambers of commerce traveled to Sacramento to testify in support of the flexible scheduling bill.

tive officer of the Pleasanton Chamber of Commerce, emphasized the additional traffic and environmental benefits of the proposal.

"It is an absolute fact that flexible work schedules reduce peak hour congestion," said Raty.

"It is an undeniable fact that less time spent in stop-and-go traffic reduces carbon emissions. In fact, the California Air Resources Board recently released a report that counted among its ways of reducing carbon emissions, to move to a four-day workweek as an alternative."

Key Vote

AB 2127 failed to pass Assembly Labor and Employment on a vote of 2–6.

Ayes: Gaines (R-Roseville), Strickland (R-Moorpark).

Noes: Swanson (D-Oakland), DeSaulnier (D-Concord), Fuentes (D-Sylmar), Laird (D-Santa Cruz), Leno (D-San Francisco), Ruskin (D-Redwood City).

Staff Contact: Marti Fisher

Legislative Outlook

An update on the status of key legislation affecting businesses. Visit www.calchambervotes.com for more information, sample letters 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.

CalChamber, Coalition Oppose Proposed Internet Taxes



OPPOSE

The California Chamber of Commerce is **opposing** two proposals creating new Internet taxes that would hurt consumers and the economy.

The bills, **AB 1840/1956 (Charles Calderon; D-Montebello)**, place taxes on items that have never been taxed before, such as downloadable consumer and business software and other digital products. On top of this, the legislation is written in a way designed to avoid the requirement that new taxes be subject to a two-thirds vote of the Legislature.

Because of these business-hindering factors, a growing list of more than 240 organizations, companies and individuals have joined the CalChamber in opposing the proposed "digital" tax bills.

AB 1956 imposes an expansive, unprecedented new Internet tax on Californians who purchase digital media, including software, e-books, music, videos, cell phone ring tones, cable television and movies on-demand.

AB 1840 opens the door to taxation of small online retailers and Internet service companies that sell products to Californians via the Internet.

In addition, AB 1956 avoids the

Proposition 13 requirement for new taxes to be approved by a two-thirds vote by ordering the state Board of Equalization to draft a new regulation to tax digital media without providing the necessary underlying statutory authority. Further, the bill attempts to establish that there is existing authority to tax digital media as "tangible" products by manipulating and stretching terminology in current statutes that provide for sales and use tax.

The CalChamber and other opponents take the position that digital media is nothing like tangible products, which is why it has never before been subject to tax. If statutory authority existed for the new proposed tax regulation, no bill would be necessary.

Action Needed: AB 1840/1956 are scheduled to be considered by the Assembly Revenue and Taxation Committee on April 14. Contact your Assembly representative and committee members and urge them to **oppose** these bills and keep California a global leader of the Internet marketplace, not the global leader of the Internet tax. To join the oppose coalition, email ccc@calchamber.com.

Staff Contact: Kyla Christoffersen

Bill Could Slow Development Projects, Spawn Litigation



OPPOSE

The California Chamber of Commerce is **opposing** legislation that could slow development projects by publicizing preliminary drafts of information collected for environmental impact reports (EIR).

The bill, **SB 1165 (Kuehl; D-Santa Monica)**, establishes a scheme that clogs the public record with information of questionable relevance that opponents of a project could use to cause delays through litigation.

If SB 1165 is enacted, project applicants would not provide information due to the increased risk of litigation, as any disagreement between the parties could be viewed by the courts as an attempt to hide significant impacts.

SB 1165 also limits the EIR's lifetime to five years — less than the permit process for many complex projects.

The bill is opposed by a long list of

organizations as being a solution in search of a problem because the information would be of little value to the public since it will be produced without input regarding the project, and would not reflect the lead agency's project judgment. Further, the bill ignores the growing abuses taking place on the project opponents' side.

An even-handed bill would require disclosure of the persons or entities behind the named petitioner, the financial benefit of those persons should the project be delayed, the non-environmental goals, funding mechanisms of litigation and what settlement terms have been requested.

Action Needed: SB 1165 is scheduled to be considered for a vote only by the Senate Environmental Quality Committee on April 14. Ask your senator to **oppose SB 1165**.

Staff Contact: Valerie Nera

U.S.-Colombia Free Trade Agreement: President Moves, But Congress Stalls



On April 7, U.S. President George W. Bush signed a letter to send Congress legislation that implements the United States' free trade agreement (FTA) with Colombia.

On April 10, however, Congress passed a House resolution on Trade

Promotion Authority removing the requirement that Congress act within 90 days of receiving the agreement.

The California Chamber of Commerce and other supporters of the agreement will continue to fight for its approval and upholding the nation's international obligations.

Key to Strategy

The CalChamber-supported agreement is a critical element of the U.S. strategy to liberalize trade through multilateral, regional and bilateral initiatives. The Colombian FTA is part of the administration's goal of eventually creating a Free Trade Area of the Americas.

"Approving the free trade agreement will also strengthen our economy," Bush said at the signing ceremony. "Almost all of Colombian exports enter the United States duty-free, while American products exported to Colombia face tariffs of up to 35 percent for non-agricultural goods and much higher for many agricultural products. In other words, the current situation is one-sided. Our markets are open to Colombian products, but barriers exist that make it harder to sell American products in Colombia."

Exports to Colombia

Colombia is California's 39th largest trading partner, exporting more than \$320 million in goods in 2007. In 2007, the United States exported more than \$8.6 billion worth of goods to Colombia, with total trade topping \$18 billion.

The United States and Colombia concluded negotiations for a trade agreement in February 2006. On August 24, 2006, President Bush sent a formal letter to the U.S. Congress stating his intent to sign the agreement, which was signed in November 2006.

The U.S. Department of Commerce said the agreement "will generate new export opportunities for U.S. agriculture, industry, service providers and workers. In Colombia, the agreement will attract new investment, create jobs and raise living standards."

The agreement is part of a wider strategy to advance free trade, fight drug trafficking and promote economic development in Colombia, according to the Office of the U.S. Trade Representative.

The U.S.-Colombia FTA was presented to the Colombian National Congress in December 2006.

California Benefits

Because of Colombia's existing strong trade relationship with the state, the agreement would have numerous positive implications on California. Top exports to Colombia last year were computers/electronic products, chemical manufacturers, machinery manufacturers and transportation equipment.

According to the U.S. Department of Commerce, in 2007, California sent \$144 million worth of computers and electronics to Colombia, but faced pricey tariffs

on those products. The International Trade Administration reports the tariffs averaged more than 8 percent, and ranged up to 15 percent.

California could avoid such tariffs, as well as tariffs on the rest of the \$176 million in additional exports sent to Colombia in 2007, through this FTA.

Trade with California has not slowed due the current one-sided agreement, but it would be enhanced to new levels should the agreement be approved by the U.S. and Colombian governments.

For example, despite the tariffs, computer equipment exports in 2007 increased by 86 percent over 2006, indicating that trade between Colombia and California is thriving, and will continue to do so should the agreement pass.

Duty-Free Exports

When the agreement enters into force, 80 percent of U.S. consumer and industrial exports to Colombia will be duty-free immediately, including: nearly all information technology products; mining, agriculture and construction equipment; medical and scientific equipment; auto parts; paper products and chemicals. The remaining tariffs would phase out over 10 years.

U.S. farmers and ranchers also will become much more competitive, benefiting from immediate duty-free treatment of 77 percent of current U.S. agriculture exports. Key U.S. agriculture exports, such as cotton, wheat, soybeans, high-quality beef, apples, pears, peaches, cherries and almonds, will be duty-free upon entry into force of the agreement. Colombia will phase out all other agricultural tariffs within 19 years.

Staff Contact: Susanne Stirling

California Business Legislative Summit
May 20-21, 2008

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P.O. BOX 1736 SACRAMENTO, CA 95812-1736
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