

ALERT

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CalChamber in Court

U.S. High Court Nullifies Anti-Employer State Law

Federal Law Protects Employer Speech on Unionizing



On June 19, the U.S. Supreme Court ruled that states may no longer restrict employers' right to communicate with their employees about unionization.

The case of *Chamber of Commerce of the United States of America v. Brown* challenged the mandates of AB 1899 (Cedillo; D-Los

Angeles). Signed into law in 2000 by former Governor Gray Davis, AB 1899 forbid private employers that receive state funds in excess of \$10,000 from engaging in any activity or communications to assist, promote or deter union organization, unless the employer could prove that the money used for such an activity did not come from the state.

The California Chamber of Commerce joined the U.S. Chamber of Commerce

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Study: Sick Leave Mandate Will Cost Jobs



Photo by Aaron Lambert

Marc Burgat, CalChamber vice president of government relations, speaks at a news conference announcing the results of a study projecting job losses if the sick leave mandate bill, AB 2716 (Ma; D-San Francisco), becomes law. The bill continues to move. See story on Page 3.

'Job Killer' Bills Fall from List Following Amendments



Three more "job killer" bills have been amended sufficiently to be removed from the California Chamber of Commerce "job killer" list.

● Amended to deal with a different subject was **SB 899 (Simitian; D-Palo Alto)**. Before amendments, the bill would have pushed jobs out of California and increased costs for industries that use plastic packaging by banning the manufacturing and distribution of specified plastic packaging in California.

The bill now requires the establishment of a program to reduce and recover derelict fishing gear.

● No longer a barrier to economic development is **AB 2678 (Núñez; D-Los Angeles)**. Before amendments, the bill would have threatened already-beleaguered existing housing and commercial real estate markets by establishing a process to adopt mandatory time-of-sale energy efficiency audits without specificity on what the audits would ultimately require.

The bill now requires the California Energy Commission to develop a regulatory strategy to help address energy

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Labor Law Corner

Employers Must Treat Same-Sex Couples Equally in Workplace



Jessica Hawthorne
Employment Law
Counsel

I heard the California Supreme Court says it is OK for people of the same sex to get married. I have an employee who has just informed me that she intends to marry her female partner. Is there anything I should do that would be different from how I would handle heterosexual couples getting married?

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The California Supreme Court recently ruled that same-sex partnerships should be afforded the same rights and benefits as opposite-sex couples who marry.

The court found that California laws which restrict the right to marry are unconstitutional and that offering a "domestic partnership" option for same-sex couples will, as a realistic matter, impose appreciable harm on same-sex couples and their children, because denying such couples access to the familiar and highly favored designation of marriage is likely to cast doubt on whether the official family relationship of same-sex couples enjoys dignity equal to that of opposite-sex couples.

Equal Treatment

That being said, what impact will this have on you as an employer? You must treat employees who marry equally regardless of whether they choose to marry a heterosexual or homosexual partner.

The California Fair Employment and Housing Act specifies that it is an unlawful employment practice to refuse to hire, employ, limit an employee's access to training or to discriminate against an employee relating to compensation or other terms, conditions or privileges of employment because of his or her sexual orientation.

Therefore, you must follow the same process, provide the same paperwork, notices, etc. to a homosexual employee who plans to, or gets married as you would to a heterosexual employee.

If you have not yet been presented with this issue, you can begin by reviewing your employee handbook, in particular your discrimination and harassment policies, to ensure that all employees are equally protected.

Meet with supervisors and managers to remind them of the company policy against harassment and remind them that "water cooler talk" in response to this decision may rise to the level of discrimination or harassment.

Verify that all employees are up to date on their sexual harassment training and if you have more than 50 employees, be sure your supervisors have taken their AB 1825 training.

Benefits Eligibility

You may also wish to talk to your accountant or financial advisor to determine the potential impact on expenses, particularly relating to medical benefits, so you can adjust your budgets if necessary. Although individuals in registered domestic partnerships have the same rights as married people relating to health benefits, the opportunity to marry may increase the number of people in your company whose spouses are legally eligible for health benefits.

If you pay for employees and their spouses, you might have an increase in cost. Again, you must offer the same benefits to all employees and their spouses equally, regardless of their sexual orientation.

Be sure your hiring paperwork includes a DE 4—the state tax withholding form. Same-sex partners may marry, but only state law will recognize the couple as married; federal law will not. All new hires should be given a DE 4 as well as a W-4.

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.

Seminars/Trade Shows

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

International Trade

BIS Export Management Seminar. U.S. Bureau of Industry and Security.

July 9-10, San Jose. (408) 998-8806.

Intersolar North America. Solar Promotion International. July 14-17, San Francisco. (415) 248-1257.

BIS Export Regulation Course. U.S. Bureau of Industry and Security.

August 20-21, Universal City. (949) 660-1688.

COPENMIND Exhibition 2008. Copenmind. September 1-3, Copenhagen, Denmark. Info@copenmind.com.

Labor Law

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

Sick Leave Mandate Passes Committee; Study Says Bill May Cost 370,000 Jobs



California Chamber of Commerce-opposed legislation that could result in the loss of 370,000 jobs within five years passed the Senate

Labor and Industrial Relations Committee on June 25.

The bill, **AB 2716 (Ma; D-San Francisco)**, unreasonably expands employers' costs and liability by mandating a specific paid sick leave policy. It passed on a party-line vote of 3-2.

The day before the committee hearing, the National Federation of Independent Business (NFIB) Foundation held a news conference to release a study that concluded California will lose approximately 370,000 jobs within five years if AB 2716 becomes law.

"The ever-increasing burden of costly mandates on employers can cumulatively result in lower wages, reducing available health insurance, limiting training programs and — in the worst case scenario — job loss or reduced work hours," said Marc Burgat, CalChamber vice president of government relations, during the news conference.

"Job loss translates to lower tax revenues from employers and employees,

as well as increased utilization of unemployment insurance. In an already-troubled economy, California should be seeking ways to stimulate job growth and avoid forcing costly mandates on employers," Burgat said.

Costly Mandate

AB 2716 mandates that all employers provide paid sick leave to an employee after seven days of work in a calendar year to care for the employee's own illness, or to provide care to a sick child, spouse, domestic partner or other relative.

The mandate would extend to all employers and all employees, as specified. There are no exceptions.

The provisions of AB 2716 will have an impact on all employers, large and small, regardless of the level of sick leave currently provided.

Fiscal Impact

According to the NFIB Foundation study:

- California employers will be taxed with a \$4.6 billion mandate.

- The new regulations will cost California companies an estimated \$59.3 billion in sales in the first five years of enactment.

- More than half of that, 36.2 percent of total sales loss, will be losses to small businesses.

- Major job losses will occur in retail

trade, construction and professional services.

The study analyzes the results of an input-output system that produces short- and long-term forecasts for detailed industry sectors when external shocks are applied. It estimates future changes in jobs, output (sales), income and productivity for California by business size and industry. Estimates are made by comparing forecasts without change to forecasts with change — in this case, proposed legislation.

The full study can be viewed at www.NFIB.com/CA.

Key Vote

The 3-2 Senate Labor and Industrial Relations vote on AB 2716 was:

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

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

Action Needed

AB 2716 will be considered next by the Senate Appropriations Committee. The CalChamber is encouraging the business community to contact senators to urge them to **oppose AB 2716**.

A sample letter is available at www.calchambervotes.com.

Staff Contact: Marti Fisher

Bills Increasing Fuel Prices Pass Policy Committees



Two California Chamber of Commerce-opposed bills that will lead to fuel price increases won approval from Senate and Assembly policy

committees this week.

- **AB 2558 (Feuer; D-Los Angeles)**, a climate change tax, passed the Senate Transportation and Housing Committee.

- **SB 1240 Kehoe (D-San Diego)**, a restrictive fuel standard, passed the Assembly Natural Resources Committee.

In 2006, Governor Arnold Schwarzenegger signed sweeping legislation to control greenhouse gas emissions, AB 32 (Núñez; D-Los Angeles; Chapter 488). AB 32 establishes a process for reducing greenhouse gas emissions and requires the development of a comprehensive plan in a balanced and expeditious manner.

The state Air Resources Board (ARB) has been assigned the task of exploring and developing regulations to achieve the reductions required by AB 32.

Climate Change Tax

AB 2558 assesses an unconstitutional tax on businesses and consumers in Los Angeles County and the Bay Area by imposing a tax by a majority vote on either motor vehicles or vehicle fuel. It proposes a gas tax of up to 3 percent of

See Bills: Page 5

Long Beach Port to Begin Clean Truck Concession Signups

The Long Beach Board of Harbor Commissioners recently voted to approve the terms for truckers to join the unprecedented Clean Trucks Program, which is aimed at reducing trucking emissions by 80 percent by 2012 at the Port of Long Beach.

The port is aiming to begin signups for trucking companies in July. Under the Clean Trucks air quality improvement program, older big rigs will be phased out of drayage service at the Port of Long Beach beginning with a ban on 1988 and older trucks starting on October 1, 2008. By January 1, 2012, all pre-2006 drayage trucks will be banned from the port.

The newly adopted concession agreement is the core of the Clean Trucks system, designed to ensure that trucking firms adhere to pollution-reducing requirements or risk losing their right to

operate in the port. The concession agreement requires drayage trucking firms (licensed motor carriers) to:

- Register their trucks and drivers with the port;
- Ensure that drivers have federal Transportation Worker Identification Credentials (TWIC);
- Ensure that drivers adhere to local parking and travel restrictions; and
- Certify that the trucks they dispatch to terminals comply with Clean Trucks emissions guidelines.

Under the Port of Long Beach Clean Trucks Program, trucking companies are permitted to hire employees or contract with independent owner-operators. Licensed motor carriers are required to pay an application fee of \$250 plus an annual fee of \$100 per truck.

"With the concession terms in place,

our goal is to start the signups for our concessions at the beginning of July and to begin signups for our grant program in mid-July," said port Executive Director Richard Steinke. "Truckers should get their TWIC cards now to be eligible. We need to move quickly to improve air quality while assuring that the transition to this landmark Clean Trucks Program allows trade to continue to move smoothly."

To speed the transition to new, clean trucks, a \$35 per 20-foot container fee will be collected on all trucked cargo beginning October 1, 2008, to help pay for the \$2 billion replacement of nearly 16,800 trucks that serve the ports. The port will be offering truckers grants and a leasing program to acquire new trucks.

For more information, visit the Port of Long Beach home page at www.polb.com.

U.S. High Court Nullifies Anti-Employer State Law

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and other business groups in urging the U.S. high court to review the case in 2007, arguing that federal law pre-empted AB 1899.

Purpose-Driven Funds

The court recognized that a state has a legitimate interest in ensuring that its funds are spent in accordance with the purposes for which they were appropriated.

Justice Stevens delivered the opinion of the court: "although a state has a legitimate proprietary interest in ensuring that state funds are spent in accordance with the purposes for which they are appropriated, this is not the object of AB 1899.

"In contrast to a neutral affirmative requirement that funds be spent solely for

the purpose of the relevant grant or program, AB 1899 imposes a targeted negative restriction on employer speech about unionization."

Justice Stevens wrote that one of the law's fatal flaws was that the statute does not apply the constraint uniformly.

"Instead of forbidding the use of state funds for all employer advocacy regarding unionization, AB 1899 permits use of state funds for select employer advocacy activities that promote unions," he wrote.

Prior court action in the challenge to AB 1899's legality resulted in a three-judge panel of the 9th U.S. Circuit Court of Appeals agreeing with the CalChamber position.

Subsequently, a review by the full 9th

U.S. Circuit Court of Appeals overturned the earlier decision of the three-judge panel and led to the petition for hearing before the U.S. Supreme Court.

Ripple Effect

At least 20 states either have similar laws or have proposed to enact laws that also restrict federally protected employer speech about unionization, according to the U.S. Chamber of Commerce National Chamber Litigation Center.

The Supreme Court's decision will ripple through the legal system and likely result in the invalidation of similar legislation in other states.

Staff Contact: Janet Richmond

'Job Killer' Bills Fall from List Following Amendments

From Page 1

efficiency of existing residential and commercial buildings.

● **AB 2046 (Jones; D-Sacramento)**, originally would have halted construction of housing, cost construction jobs and provided a disincentive to clean up groundwater by inappropriately denying

use of some groundwater resources as a stable water supply.

The bill now allows water districts to count contaminated groundwater as part of the planned water supply for development if a plan to remediate is offered.

The CalChamber no longer considers AB 2046 a "job killer," but still opposes

the bill because it exposes residential and commercial development projects to more litigation by requiring a level of specificity and certainty in urban water management plans that may not be possible.

Updates on "job killer" bills are available at www.calchamber.com/jobkillers.

Staff Contact: Marc Burgat

Assembly Insurance Committee Passes Bills Rolling Back Workers' Comp Reforms



Two California Chamber of Commerce-opposed bills that seek to roll back cost-saving workers' compensation reforms passed the Assembly Insurance Committee on June 25.

- **SB 1717 (Perata; D-Oakland)** rolls back the workers' compensation reforms from 2004 by arbitrarily doubling permanent disability benefits and altering the 15 percent bump up/down provision in current law.

- **SB 1115 (Migden; D-San Francisco)** rolls back the workers' compensation reforms from 2004 by making apportionment very difficult to prove.

The CalChamber and other business and industry groups are opposing both bills.

Permanent Disability

In opposing **SB 1717**, the CalChamber and other opponents are pointing out that there is no statistically valid and objective evidence that the decline in the amount being spent on permanent disability benefits warrants an increase in benefits.

The clear decline is due to the application of objective medical evaluations using American Medical Association

guidelines, the appropriate use of apportionment, the reduction of weeks for low ratings and return-to-work adjustments.

Before the reforms of 2004, permanent disability claims in California were filed at a rate of three times the national average and California was 20 percent higher than the next highest state.

The CalChamber believes measuring the adequacy of permanent disability ratings under the current system by comparing them against the old system is irrational. The Division of Workers' Compensation is in the process of reviewing relevant data and working through the policy issues on this subject. The process should be allowed to proceed down the path of data-driven revisions to the permanent disability rating system.

Apportionment

The CalChamber and opponents of **SB 1115** note that it weakens the apportionment statute and allows judges to overrule apportionment even when based on findings of actual previous disability.

By opening up the apportionment statute to attack by attorneys seeking to increase the permanent disability award of their clients, **SB 1115** would lead to increased litigation and indemnity costs for employers.

The CalChamber argues that apportionment to pre-existing disability is fundamentally an issue of fairness. Just as an injured worker deserves to be compensated for disability arising from an industrial injury, an employer deserves to be protected from paying increased compensation for disability that does not arise from an industrial injury.

The CalChamber and coalition had been working with the author of **SB 1115** in hopes of crafting language that would achieve the author's goals while protecting the long-standing concept of apportionment. Agreement could not be reached, however, because of consistent concern from coalition attorneys that any change to the apportionment statute could have unintended consequences.

Key Votes

The 7-3 vote by Assembly Insurance on **SB 1717** and **SB 1115** was:

Ayes: Coto (D-San Jose), Berg (D-Eureka), Charles Calderon (D-Montebello), Carter (D-Rialto), De León (D-Los Angeles), Lieber (D-San Jose), Parra (D-Hanford).

Noes: Benoit (R-Bermuda Dunes), Duvall (R-Yorba Linda), Garrick (R-Solana Beach).

Staff Contact: Jason Schmelzer

Bills Increasing Fuel Prices Pass Policy Committees

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the retail sales price, or up to \$90 per vehicle based on its emissions.

Such taxes, combined with rising energy prices due to existing environmental initiatives, are making it difficult for California's small businesses to remain in the state.

AB 2558 disregards the multiple levels of work being done at the ARB to reduce the state's greenhouse gas emissions. ARB already is working on the scoping plan that will be the guidebook for putting **AB 32** into motion and developing the regulations.

As a special tax for a specific purpose,

AB 2558 should be subject to a two-thirds vote for approval.

Restrictive Fuel Standard

SB 1240 interferes with the development of a competitive alternative fuels market and threatens job creation in California by creating a costly Low Carbon Fuel Standard that conflicts with the existing standard created by Governor's Executive Order S-7-04.

To meet increasing consumer demand, the fuels market needs to be full of options and represent a mix of alternatives. Unlike the Governor's executive order, however, **SB 1240** limits the fuel

that technology providers could use to meet the 10 percent reduction standard.

SB 1240 ignores the planning under way at the ARB and pre-judges the outcome of **AB 32** and the Governor's Low Carbon Fuel Standard. Establishing another standard will only stall the reductions and create more uncertainty in the regulatory process.

Staff Contact: Amisha Patel

Next Alert: July 11

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.

Disability Access Reform Bill Moves



A California Chamber of Commerce-supported bill to enact comprehensive reform that increases public access for individuals with disabilities while reducing unwarranted litigation has won approval from two Assembly policy committees.

SB 1608 (Corbett; D-San Leandro) passed on unanimous votes of the Assembly Business and Professions Committee on June 17 and the Assembly Judiciary Committee on June 24.

The bill encourages the use of state-certified disability access specialists and establishes a court procedure for early judicial review of lawsuit claims.

SB 1608 responds to a significant ongoing state problem — the small, but widely destructive, atypical group of plaintiffs and lawyers using the disability laws and court system to systematically extract monetary settlements from businesses rather than to improve disability access. Too often these lawsuits result in businesses closing their doors.

SB 1608 sets up a process to encourage business owners to be proactive in complying and to obtain the assistance of state-certified access specialists to determine whether buildings comply.

This bipartisan comprehensive reform measure is designed to address two important goals:

- Promoting and increasing compliance with state and federal civil rights laws providing for equal access for individuals with disabilities in public accommodations; and
- Reducing unwarranted, unnecessary litigation that does not advance the goals of disability access.

Action Needed

SB 1608 will be considered next by the Assembly Appropriations Committee. Contact committee members and your Assembly representative; urge them to **support SB 1608**.

Staff Contact: Kyla Christoffersen

Committees Reject Resolutions Backing U.S.-Colombia Trade Agreement



SUPPORT

Two legislative policy committees this week declined to pass resolutions expressing support for the proposed U.S.-Colombia Free Trade Agreement (FTA).

The California Chamber of Commerce supports the FTA and **supported** both **AJR 55 (Villines; R-Clovis)** and **SJR 29 (Ackerman; R-Tustin)**, joint resolutions meant to give recognition and support to the pending FTA with Colombia.

“America’s standing as a world leader depends directly upon our competitive success in the global economy,” said CalChamber Policy Advocate Kyla Christoffersen in urging the committees to approve the resolutions. “For the past half century, the United States has led the world in breaking down barriers to trade and creating a fairer and freer international trading system based on market economics and the rule of law.”

In 2007, the United States exported more than \$8.6 billion worth of goods to Colombia; total trade topped \$18 billion. Colombia exported more than \$320

million in goods to California in 2007.

The CalChamber is urging Congress to approve the U.S.-Colombia FTA because of, among other things, Colombia’s existing strong trade relationship with California, and the numerous positive implications the FTA would have on the state by lifting tariffs on exports.

The CalChamber also is urging Congress to consider the U.S.-Colombia agreement to make time for additional FTAs.

The agreement is a critical element of the U.S. strategy to liberalize trade through multilateral, regional and bilateral initiatives. The Colombian FTA also advances the Bush administration’s goal of eventually creating a Free Trade Area of the Americas.

Still awaiting consideration by Congress are the U.S.-Panama and U.S.-Korea FTAs. Neither is likely to be considered until Congress approves or rejects the U.S.-Colombia FTA.

Staff Contact: Susanne Stirling

Food Packaging Mandate Bill Passes Committee



OPPOSE

A California Chamber of Commerce-**opposed** bill that increases costs on all restaurants by requiring them to provide only recyclable and compostable food service packaging passed the Senate Environmental Quality Committee on June 23.

The bill, **AB 904 (Feuer; D-Los Angeles)**, places new and costly mandates on California's food service industry by imposing an unworkable framework aimed at reducing marine debris.

In opposing the bill, the CalChamber is pointing out that restaurants and other food providers make choices about food service packaging based on several criteria, including performance, cost and customer preference.

The CalChamber considers the performance issue particularly troubling in that food service packaging must be able to withstand certain heat and moisture thresholds.

Many packages contain various forms of plastics to meet these specific performance expectations. AB 904 does not address the impact of prohibiting the sale of products created specifically for this purpose.

While it is clear that there is a problem with marine debris in the state's waterways, the CalChamber believes AB 904 fails to address the core problem. The bill would only change the content of the litter stream in California, not the behaviors that lead to the state's litter problem.

Key Vote

The 5-2 vote in Senate Environmental Quality was:

Ayes: Simitian (D-Palo Alto), Corbett (D-San Leandro), Florez (D-Shafter), Kuehl (D-Santa Monica), Lowenthal (D-Long Beach).

Noes: **Runner (R-Lancaster), Aanstad (R-Grass Valley).**
Staff Contact: Jason Schmelzer

New Mini-Book Helps Businesses Better Serve Persons with Disabilities

A new mini-book designed to help improve service to clients with disabilities and eliminate costly Americans with Disabilities Act (ADA) liabilities and risks is now being offered by CalBizCentral, the source for California business and human resource compliance products, presented by the California Chamber of Commerce.

The ADA, enacted in 1990, makes it mandatory for employers and every employee to accommodate certain requirements that customers may have.

What Everyone Needs to Know About: Accommodating Customers with Disabilities is the latest in a series of mini-books for businesses with high employee and customer interaction, and provides employees with their own easy-to-read reference for avoiding costly scenarios while improving customer service.

"Thousands of businesses — and even some employees — have been sued for not providing appropriate access to people with disabilities and that's why



we're offering this easy-to-read booklet," said Jessica Hawthorne, CalChamber employment law counsel. "It's intended to spur conversation about what needs to be avoided, supplement training and provide guidance on how best to handle problems when they do arise. It could make the difference between a plaintiff and a satisfied customer."

The mini-book will help business owners:

- Increase awareness about the range of customer disabilities;
- Increase awareness of common and special situations that have an impact on disabled customers;
- Learn new skills and best practices to serve customers with disabilities; and
- Provide employee training in best practices concerning individuals with special needs.

"It may not always be easy to recognize the sort of special assistance some customers require, but it's important that businesses provide equal access to all people, including those with disabilities," Hawthorne said.

What Everyone Needs to Know About: Accommodating Customers with Disabilities is available at www.calbizcentral.com.

Products are available for purchase by any business. CalChamber preferred and executive members receive a 20 percent discount.

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