

ALERT

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CalChamber President Urges Focus on Economy, Jobs

California Chamber of Commerce President Allan Zaremberg and business leaders from throughout California urged the Legislature to focus on reviving the state's economy and putting Californians back to work during a news conference at the state Capitol on August 19.

"The only sustainable way to generate the revenues needed to fund state services such as education and public safety is to create a growing economy," said Zaremberg. "Rather than adding new burdens to Californians already paying high taxes, the state should be facilitating business expansion and job creation and eliminating barriers that keep new businesses from coming to California."

"Economic growth will address our



fiscal challenges and historic levels of unemployment while providing the revenue to build the infrastructure necessary for the state's future."

Zaremberg presented a draft roadmap for change called the "Agenda for Economic Recovery" that focuses on reforms the Legislature can do now

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CalChamber, Business Groups Question Harmful Tax Proposals

Major business organizations, including the California Chamber of Commerce, have expressed strong concern and opposition to several items included as part of the latest "tax package" being considered by a special state tax commission.

Governor Arnold Schwarzenegger created the Commission on the 21st Century Economy last fall and asked it to examine how the volatility of state revenues related to California's tax structure.

Business and other observers have raised concern that the commission is straying from that assignment. The menu of proposed tax changes the commission will consider at a meeting in September includes proposals geared toward increasing revenues rather than addressing volatility and a new approach to taxation that lacks details which can be analyzed:

- A "split roll" property tax for non-residential property. This proposal by Commissioner Fred Keeley, current Santa Cruz County treasurer and former Assembly member (D-Boulder Creek), increases property taxes by removing Proposition 13 protections from non-residential properties, which would amount to a tax increase of up to \$7.5 billion on employers, based on figures from the state Board of Equalization.

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Photo by Aaron Lambert

CalChamber President Allan Zaremberg urges the Legislature to focus on reviving the state's economy and putting Californians back to work, at an August 19 news conference on the steps of the state Capitol.

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How Timing Works in Determining Family Leave Eligibility



Jessica Hawthorne
Employment Law
Counsel

Employers are covered by the Family and Medical Leave Act/California Family Rights Act (FMLA/CFRA) if they have 50 or more employees on the payroll for each day of the workweek for 20 or more weeks in the current or preceding year. Employees are eligible for FMLA/CFRA if they have worked for the employer for 1,250 hours in the 12 months prior to the need for leave, have worked for the

employer for 12 months and work at a worksite where there are 50 or more employees in a 75-mile radius. Is the employee's eligibility also based on the current or preceding year?

No, California law for purposes of this question follows federal laws as applied to FMLA/CFRA. Pursuant to 29 CFR 825.104, a covered employer is any person engaged in commerce or in any industry or activity affecting commerce, who employs 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year.

Employee eligibility does not have this limitation, as defined in the regulations at 29 CFR 825.110, so only the covered employer is based on the current or preceding year.

Counting Employees

To count your employees for determining coverage, use 29 CFR

825.105 controls. Any employee whose name appears on the employer's payroll is considered employed each working day of the calendar week, and must be counted regardless of whether any compensation is received for the week.

The FMLA, however, applies only to employees who are employed within any state of the United States, the District of Columbia or any territory or possession of the United States. Employees who are employed outside of these areas are not counted for purposes of determining employer coverage or employee eligibility.

Private employers are covered if they maintained 50 or more employees on the payroll during 20 or more calendar workweeks (not necessarily consecutive workweeks) in either the current or the preceding calendar year. Once a private employer meets the 50 employees/20 workweeks threshold, the employer remains covered until it reaches a future

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Business Resources

Northern California Water Tour. Water Education Foundation. October 7-9, Sacramento. (916) 444-6240.

Government Relations

An Evening with the Mayor. Beverly Hills Chamber. September 2, Beverly Hills. (310) 248-1000.

Western Conservative Political Action Conference. Western Conservative Political Action Conference (CPAC), Inc. October 16-17, Newport Beach. (916) 448-4234.

GovLink Conference 2009. The Federal Technology Center. October 20-21, Sacramento. (916) 334-9388.

International Trade

2009 L.A. Export Series. Center for International Trade Development. September 8, September 22, October 6, October 20, November 3, November 17, December 1, Los Angeles. (213) 580-7569.

China International Enterprises Fair. American Carson International Inc. September 22-25, China.

Harry@americancarson.com.

Sustainable Cities of the 21st Century.

Monterey Bay International Trade Association. September 25, Santa Cruz. (831) 335-4780.

China Import/Export Fair. China Foreign Trade Centre. Phase 1: October 15-19. Phase 2: October 23-27. Phase 3: October 31-November 4. Guangzhou, China.

Localization World Conference Silicon Valley. Localization World Ltd. October 20-22, Santa Clara. (208) 263-8178.

The 24th Trade Expo Indonesia. Indonesian Trade Promotion Center. October 28-November 1, Jakarta, Indonesia. (213) 387-7041.

CalChamber Calendar

Board of Directors:

September 10-11, Santa Monica

Council for International Trade:

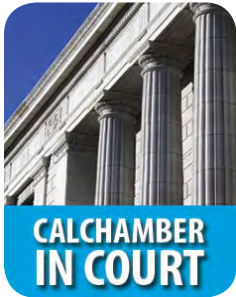
September 11, Santa Monica

Public Affairs Council Retreat:

October 28-30, Napa



CalChamber Appeals to State High Court to Help Resolve Meal Period Rules



The California Chamber of Commerce has filed a “friend of the court” brief urging the California Supreme Court to affirm an appellate court ruling holding

that employers need only *provide* and not ensure meal or rest periods are taken under California law.

CalChamber argues that meal or rest period plaintiffs are precluded from being certified as a class because determining whether such period was “made available” requires numerous individualized analyses; such analyses are inappropriate for being judged on a class-wide basis.

CalChamber believes that this interpretation of the Labor Code follows the plain language of the law, other authorities, and sound policy considerations for California businesses

that plaintiffs’ meal or rest period claims are not amenable to class treatment.

Also joining in filing the “friend of the court” brief is the U.S. Chamber of Commerce.

Providing Meal Periods

The CalChamber believes that in the case of *Brinker Restaurant Corporation et al., v. The Superior Court of San Diego County*, the appellate court correctly construed “provide” to mean “make available” in keeping with its plain meaning, commonsense principles of interpreting the law, and the weight of existing authority and public policy considerations.

In its brief, CalChamber pointed out that the appeals court’s construction of “provide” draws support from nearly every case to have squarely addressed the issue.

Virtually all federal cases that have done so, for example, hold that under the Labor Code and wage orders, employers need only provide meal periods—make them available—rather

than ensure that they are taken.

The brief also points out that cases outside the meal-period context have overwhelmingly construed “provide” consistent with its plain meaning to mean “make available.”

Certifying a Class

The appeals court’s correct interpretation of “provide” leads to the inescapable conclusion that certifying the proposed class of the plaintiffs in the *Brinker* case would run afoul of California law, not to mention the due process clauses of the California and federal constitutions.

The essential question of why a given employee may not have taken a meal period on a particular day cannot be answered on a class-wide basis, CalChamber points out, because resolving each claim would require individualized proof from the employees and individualized rebuttal and defenses from the employers.

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Business Questions Harmful Tax Proposals

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● An **energy tax that raises the price of gasoline and California-produced crude oil**. This Keeley proposal seeks to change individuals’ behavior to promote environmental goals by levying a “pollution tax.” If the proposal had been in effect over the last year, it would have cost California motorists billions of dollars more in additional gasoline taxes and millions more in new taxes on domestically produced crude oil.

● A new **“business net receipts” tax and related changes to the existing tax structure**, proposed by commission Chairman Gerald Parsky, a Los Angeles businessman appointed by the Governor.

Typically, a business net receipts tax is a type of value-added tax in which companies are taxed on total receipts minus all purchases from other firms. The intent behind this new tax is to bring a large category of services businesses into the tax base. No specific proposal has

been released for comments, however.

The CalChamber and others are pointing out that it is impossible to evaluate the impact of a business net receipts tax on the California economy and jobs until the commission has provided a clear, specific written proposal; provided an analysis of the policy, operational and transitional implications of the new tax; and given an opportunity for California businesses and economic experts to respond to the proposal and analysis.

Last month, the Governor extended to September 20 the deadline for the commission to present its findings and said he intends to call a special session of the Legislature afterwards to consider the commission’s recommendations.

Economic Recovery Key

The CalChamber and business community have consistently stated that the solution to California’s revenue

problems will come only from robust economic growth and job creation.

The proposed “split roll” property tax and energy tax would be extremely detrimental to the state’s economy. Proceeding with dramatic changes to the tax structure associated with adding a business net receipts tax to the mix is risky and inappropriate without first fully determining their impact on California jobs and the economy.

Action Needed

The CalChamber is urging members to join the effort to urge the commission to reject the “split roll” and energy taxes and to further study the business net receipts tax before making recommendations to the Governor and Legislature.

To join the effort or for more information, contact kyla.christoffersen@calchamber.com.

Staff Contact: Kyla Christoffersen

Water, Ag, Business, Governor Outline Elements of Comprehensive Water Package

An alliance of water, agriculture and business representatives, including the California Chamber of Commerce, this week identified for legislative leaders five main elements of a comprehensive water package it could support.

Governor Arnold Schwarzenegger also sent a letter to Democratic leaders urging passage of comprehensive water reform legislation.

Need for Framework

In a letter to members of the Senate-Assembly conference committee examining proposals to resolve the state's water crisis, the CalChamber and other groups said many specifics in the Democratic water proposal would "impede California's ability to meet the water supply reliability component of the co-equal goals, which in turn, makes progress on ecosystem restoration an empty promise."

The letter called for first identifying a framework that has broad support, then resolving important details.

Governor

In his letter, the Governor listed four critical elements of a water package he would sign:

- **Water infrastructure** that expands water storage capacity—both surface stor-

age and groundwater—funds habitat restoration, water quality and conservation.

- **Delta governance** "and addressing our antiquated conveyance system."

- **Delta plan** that is legally enforceable founded on co-equal goals of habitat restoration and water supply reliability.

- **A strong water conservation** component.

5-Part Test

The key elements for the Governor were similar to a five-part test released separately by the Alliance for a 21st Century Water System listing issues every Californian needs to consider to determine if the Legislature is serious about providing a comprehensive solution to the water crisis:

- **Repair the Delta:** Restoring the environmental health of the Sacramento-San Joaquin Delta must be the starting point.

- **Peripheral Canal:** Moving the intake points for the state and federal water systems from their present location in the southern Delta to a location on the Sacramento River will benefit Delta fisheries, improve drinking water quality and safeguard the water supply for 25 million people.

- **New Storage:** Without adequate storage facilities, California loses billions of gallons of fresh water every year that could

be used to supply cities and farms. New infrastructure will be needed to manage water resources for both fish and people.

- **Integration of the Two Water Systems:** California's State Water Project and the federal Central Valley Project are the backbone of the state's water delivery system, driving \$30 billion of the California economy. Integrating operation of the two systems under state authority would increase the efficiency of water deliveries, reduce costs for water users and improve maintenance.

- **Affordable Water Supply:** Water users, not the taxpayers, are willing to pay the costs of new conveyance and storage facilities and for necessary environmental mitigation in the Delta because water ratepayers will get a direct benefit. Forcing water users to pay a water tax for programs that do not directly benefit them will drive up the costs of water for everyone, impede economic growth, have a disproportionate impact on vulnerable communities and reduce the flexibility needed to meet multiple needs for water for both economic and environmental purposes.

More information about water issues is available at www.calchamber.com.

Staff Contact: Valerie Nera

CalChamber Appeals to State High Court to Help Resolve Meal Period Rules

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CalChamber illustrates that each individual employee would have to prove that he/she was prevented from taking his/her meal period, and the employer would then be entitled to respond with evidence that it made the meal period available to be taken, but for whatever reason, the employee declined to take that meal period. Such evidence would be specific to each individual employee, and to each individual meal period, and could not be determined on a class-wide basis without abridging an employee's due-process rights.

Individualized Defenses

Even if the California Supreme Court

were inclined to reverse the appeals court's decision on the meaning of an employer's obligation to "provide" a meal period, a proposed class still should not be certified, the CalChamber argued. If employers must "ensure" that employees take their meal periods, employers, such as in this case, would still have a right to assert certain defenses that can be resolved only on an individualized basis, CalChamber explained in its brief.

Such defenses include an employee's statutory waiver of his/her meal period, the employee's failure to exercise ordinary care in taking the meal period, and the argument that any missed portion of a meal period was "de-

minimis" and not deserving of an entire meal-period premium.

CalChamber's brief explained that allowing classes to be certified would prevent defendants, such as the one in this case, from asserting such defenses effectively when a defendant's due-process rights have been violated. Such a dramatic change in the law also would run afoul of well-established principles of California class-action procedure.

Once all interested parties have submitted written briefs, the California Supreme Court may set the case for oral arguments at any time.

Staff Contact: Erika Frank

Small Business Advocate of Year Award

Riverside Public Affairs Consultant 'Modernizes' Political Activity of Chamber

While in college, Lou Monville had every intention of becoming a sports agent.

"If you had asked me when I was in school what I was going to be when I grew up, I would have said I was going to be Jerry McGuire before Jerry McGuire existed," he said.

After graduating from California State University (CSU), San Bernardino with a degree in communication studies, however, he went in another direction.

Monville mulled about going to law school and did some public relations work with a collegiate athletics department and minor league baseball team. He then landed a job as director of the Inland Empire office of former Governor Pete Wilson after working for two members of the California Assembly.

At that point, controlling contracts for athletes came in second to building a strong community business climate and delivering public education and outreach services.

By 1999, a year after Monville began work at a public relations firm with colleague Patrick O'Reilly, the *Inland Empire Business Journal* recognized Monville as one of the region's top 40 business leaders under the age of 40.

Monville, a recipient of the California Chamber of Commerce 2009 Small Business Advocate of the Year Award, now serves as vice president of O'Reilly Public Relations, a 20-employee, Riverside-based firm founded by O'Reilly in 2001. Monville focuses on public education and community outreach work, water and energy projects, land use and development projects.

Cynthia Roth, president and chief executive officer of the Greater Riverside Chambers of Commerce, recognizes Monville's role in enhancing the chamber's political involvement.

"Individuals such as Lou Monville do not simply serve on committees or task forces when an issue arises, nor is his commitment to serving businesses and community simply an admirable demonstration of volunteerism. It is truly passion," Roth said.



Lou Monville

Chamber Involvement

Monville's first experience with the Greater Riverside Chambers was in the mid 1990s while representing Assemblyman Ted Weggeland at chamber meetings. It was at these meetings that Monville began to grasp the importance of the chamber.

"It has always been the leading force for business growth, business attraction and retention, and just general economic development," Monville said. "I think I was just kind of naturally attracted to it because it was so important to the economic well-being of a region."

When Monville joined the private sector, the firm he worked for was already a member of the Greater Riverside Chambers and he began to get involved. He served on the chamber's governmental affairs committee first, then on the economic development committee, of which he remains a member today.

In 2002, Monville helped establish the Greater Riverside Chambers Political Action Committee (PAC). The PAC has since helped create a culture of political

activity at the chamber, said Monville, a current member and 2005 chair of the PAC Board.

"As a team, I think we have become far more proactive. We no longer just go and send a letter for or against a bill; we have created an advocacy system where we reach out to our members online and get them to also send a letter," he said.

Backing Pro-Jobs Candidates

As part of creating that advocacy system, the PAC Board interviews candidates within a month of their filing to be on the local ticket. The candidate fills out a four-page questionnaire from the chamber and then is subject to a 30-minute interview by the PAC Board.

The goal is to support "pro-jobs" candidates, defined by Monville as "someone who understands the value of what the local business community brings to the city, not just in terms of revenue, but also the jobs and the quality of life."

In 2008, the PAC supported "both with our name and with our dollars" all four successful candidates for city council, including two open seats, Monville said.

Promoting Community

Besides helping "modernize" the political process at the Greater Riverside Chambers, Monville has maintained a voice in the state's education community, serving as a CSU trustee for the last three years and on the California Community College Board of Governors before that.

He also serves on the boards of several business and community associations, including the President's Advancement Council at CSU San Bernardino and the California Inland Empire Council Boy Scouts of America.

Motivating Monville's activities has been his recognition of the need for a thriving community.

"The healthier the economy is, generally the better quality of life in that community is and everybody benefits," he said. "I live in Riverside; I benefit from the efforts the chamber makes. My family and friends and local businesses also benefit."

Governor Signs 'Job Creator' Bill

Governor Arnold Schwarzenegger has acted to facilitate the smooth recovery of the housing market by signing a California Chamber of Commerce-supported bill.

AB 333 (Fuentes; D-Sylmar), a CalChamber "job creator" bill, extends the life of active tentative subdivision maps and parcel maps for a period of two years. It is a sensible measure aimed at assisting new residential construction by ensuring that the necessary land entitlements are in place when California's economy and housing market begins to rebound.

Amidst the recent economic turmoil, most previously approved and conditionally approved housing projects currently in process have come to a halt. AB 333 statutorily extends the expiration date of underlying tentative maps,



thereby allowing such projects to be kept alive during the economic downturn.

With the nation facing its worst economic crisis since the Great Depression and with California's unemployment rate reaching historic highs, it is vital that California enable the economic engine of new housing to thrive.

Legislation adopted last year extended the life of active tentative subdivision

maps and parcel maps for 12 months—to July 15.

Although the Governor had publicly stated he would not sign any legislation until the budget deficit had been fixed in its entirety, he explained that there are a handful of bills that are urgent or necessary, including those that extend an imminent sunset date or have an impact on the state's ability to secure federal funding.

In his July 15 signature message, the Governor explained that because AB 333 is an important bill dealing with a pressing issue and an imminent sunset date of July 15, he signed the bill. The bill contains an urgency clause that allowed the new law to take effect immediately.

Staff Contact: Robert Callahan

CalChamber President Urges Focus on Economy, Jobs

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to help Californians get back to work. "Restoring California's economic health and creating high-wage jobs should be priorities 1, 2 and 3 of this Legislature," Zaremberg said.

Agenda for Economic Recovery

The main elements of the agenda are the following:

- **Establish a process that analyzes and reports on the economic impact of legislation, regulation and administrative decision-making.** Part of the state's financial problem is the fact that the state analyzes only the fiscal impact of state actions rather than determining the full impact of a policy proposal on our economy.

An essential piece of the agenda is the establishment of Economic Impact Committees in the Legislature to evaluate the impact proposed legislation will have on the state's economy. Currently, legislative committees limit testimony to less than 10 minutes and often "waive testimony" altogether when a bill goes before the committee responsible for assessing the economic and fiscal impact.

A new process will ensure that potential legislation does not cost jobs

and stifle business development and would model the independent analysis that the Congressional Budget Office (CBO) provides at the federal level. This process will help policymakers avoid unintended consequences of proposals and ensure that legislative goals are met in a cost-effective manner.

- **Create a state economic development plan that addresses the needs of the state and local communities.** A critical part of the success will depend on enhanced partnerships between state and local leaders to develop a strategy to facilitate economic growth and job creation throughout the state and across industries.

The agenda calls for developing and implementing a comprehensive economic strategy. Similar efforts are underway at the local level to develop concrete action items for spurring investment, job creation and workforce training. There are lessons to be learned from these endeavors, best practices to be identified and partnerships to be enhanced in order to get California's communities back on track toward fiscal health.

- **Resurrect legislation designed to improve the state's economic environment, restore its competitive**

position and facilitate the creation of high-wage jobs in all sectors of the economy. Every year bills that would improve California's economic health are killed with little discussion about the merits of the proposals. Meanwhile, business investment has declined, bankruptcies and foreclosures are on the rise, and unemployment has reached record levels.

To jumpstart California's recovery, these proposals must be seriously considered and enacted.

- **Defeat or postpone consideration of legislation that will further harm our economy and create new burdens on families and businesses.** Since the state cannot pay for existing programs and state revenue continues to decline, creating new programs or requirements will add to the current crisis.

Californians desperately want their elected officials to provide solutions to our economic decline, yet there are several bills that have been introduced that would inhibit job growth, deter investments in California, and put unnecessary obstacles in front of entrepreneurs.

For more information, visit www.economicrecoveryca.org.

CalChamber Urges Businesses to Join Coalition to Protect Enterprise Zones

The California Chamber of Commerce is urging businesses to join a coalition to protect the California enterprise zone (EZ) program, which is one of the few remaining statewide economic development incentives and has been instrumental in revitalizing distressed communities all around the state.

The CalChamber and the growing coalition of business groups—California Business for Enterprise Zones—are working to promote the strength and effectiveness of the state's enterprise zone program as a tool for economic development and investment, particularly now when economic recovery is a top priority.

The business community has consistently stated that the solution to California's revenue problems will come only from robust economic growth and job creation.

The importance of the enterprise zone program to California's economic recovery was highlighted in testimony at an informational hearing of the Assembly Jobs, Economic Development and the Economy Committee this week.

Recent Reductions

Notwithstanding its importance to the state's economy, the EZ program continues to be a target for elimination or reduction by some. Legislation introduced earlier this year which business commu-



nity opposition helped to halt, proposed to gut the EZ hiring credit.

In addition, last fall, the budget package that was enacted included a provision imposing a two-year limit on the ability of businesses to use all business tax credits, including EZ credits, capping those credits at one-half of the taxpayer's tax liability.

Helps Distressed Areas

The California EZ program was established by legislation enacted with bipartisan support in 1984 and offers a variety of tax credits and incentives to

encourage businesses to locate, invest and create jobs in economically distressed communities.

The program is one of the only remaining statewide tax incentives that local areas can use to encourage businesses to stay, locate or expand within California. California's EZ program is vital to California's economy and economic recovery.

Effective Program

Several studies have established the EZ program's effectiveness. Most recently, a March 2009 revision of a national study by University of Southern California researchers concluded that state and federal EZ programs "have positive, statistically significant, impacts on local labor markets in terms of the unemployment rate, the poverty rate, the fraction with wage and salary income and employment."

Action Needed

Contact Kyla Christoffersen at kyla.christoffersen@calchamber.com if you would like your company to join the California Businesses for Enterprise Zones coalition.

More information is available at www.calchamber.com/EZ.
Staff Contact: Kyla Christoffersen

How Timing Works in Determining Family Leave Eligibility

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point where it no longer has employed 50 employees for 20 (non-consecutive) workweeks in the current and preceding calendar year.

For example, if an employer who met the 50 employees/20 workweeks test in the calendar year as of September 1, 2008, subsequently dropped below 50 employees before the end of 2008 and continued to employ fewer than 50 employees in all workweeks throughout calendar year 2009, the employer would continue to be covered throughout calendar year 2009 because it met the coverage criteria for 20 workweeks of the preceding (that is., 2008) calendar year.

Eligible Employee

Eligible employee is defined at 29 CFR 825.110 as an employee of a covered employer who:

- Has been employed by the employer for at least 12 months;
- Has been employed for at least 1,250 hours of service during the 12-month period immediately preceding the commencement of the leave; and
- Is employed at a worksite where 50 or more employees are employed by the employer within 75 miles of that worksite.

The determination of whether an employee has worked for the employer for at

least 1,250 hours in the last 12 months and has been employed by the employer for a total of at least 12 months must be made as of the date the FMLA leave is to start. Whether 50 employees are employed within 75 miles to ascertain an employee's eligibility for FMLA benefits is determined when the employee gives notice of the need for leave.

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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