

# ALERT

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## Health Care Tax Law Glitch: CalChamber Backs Fix



### SUPPORT

Earlier this week, a California Chamber of Commerce-supported bill to remove the state tax on health care coverage for certain adult children won

unanimous approval from an Assembly committee.

The bill, **AB 36 (Perea; D-Fresno)**, conforms California with federal law regarding the taxable status of health care coverage for an adult child up to the age of 26, as well as payments or reimbursements made by an employer for an employee's adult child.

The federal Patient Protection and

Affordable Care Act and the Health Care and Education Reconciliation Act, both passed in March 2010, allowed children up to the age of 26 to remain on their parents' health care plans.

The federal government also amended the Internal Revenue Code to reflect that the value of the coverage provided for these adult children as well as any payments/reimbursements made by the employer for the medical expenses of such children is not taxable income to the parent.

Last year, California legislation expanded medical coverage to dependents up to the age of 26 in order to match the federal health care law. The state law, however, did not adopt the federal tax rules for adult child medical coverage or medical payments.

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## CalChamber Opposing Medical Marijuana Bill



### OPPOSE

The California Chamber of Commerce has announced that it will **oppose SB 129 (Leno; D-San Francisco)**, which seeks to establish a protected classification for employees

who use medical marijuana and thereby undermines employers' ability to provide safe and drug-free workplaces.

Similar to Proposition 19, which the California voters rejected in November 2010, SB 129 seeks to prohibit employers from terminating, disciplining or refusing to hire employees who are qualified patients that can legally possess and use marijuana for medical purposes.

### Issues

Although SB 129 precludes an employee from "using" marijuana at the workplace, it does not preclude an employee from possessing marijuana in the workplace, or "using" marijuana minutes before coming onto the worksite and beginning his/her shift.

According to SB 129, an employer could smell the odor of marijuana and observe the employee's red eyes (which under current law would likely be enough for the employer to send the employee home or conduct a drug test), but would have to wait to do anything until the employee showed clear signs that the

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Photo by Megan Wood

CalChamber Policy Advocate Jennifer Barrera testifies in support of conforming state to federal law by removing the state tax on health care coverage for certain adult children.

## Labor Law Corner

# Reporting Time Pay Not Due If Conditions Outside Employer's Control



**Gary Hermann**  
HR Adviser

*Under what circumstances might an employer not owe reporting time pay to an employee?*

The Industrial Welfare Commission orders establish the requirement for reporting time pay for each workday an employee is required to report for work and does report, but is furnished less than half of the usual or scheduled days of work.

The key is whether an employee is required to report for work.

If the employee is called and told not to report, he or she obviously has not reported for work, and therefore no reporting time pay would be due.

### Reporting for Work

Once the employee reports at the employer's direction, however, whether the employee had been scheduled to work or not, the reporting time pay provisions become applicable.

The presumption of the reporting time provision is that the employee reports for work ready, willing and able to work. If the employee fails to report as scheduled, or reports in a condition that makes him/her unfit to work, the employee obviously has failed to meet this presumption and therefore no reporting time pay would be due.

An example of failing to meet the presumption would be an employee reporting for work in an intoxicated condition.

### Beyond Employer's Control

If the employer's operations cannot commence due to circumstances beyond

the employer's control, reporting time pay would not be due.

Examples of such circumstances would be when there are threats to employees or property due to weather, fire, flood, etc., or when civil authorities recommend closing.

Another exception to the obligation to pay reporting time is where public utilities fail to supply electricity, water or gas due to circumstances beyond the employer's control.

Finally, the reporting time pay provisions do not apply to employees on paid standby status called to perform assigned work at a time other than the employee's scheduled reporting time.

The Labor Commissioner's *Policy and Interpretations Manual* defines "paid standby" as the hourly rate agreed to by the parties or, in the absence of such agreement, the employee's regular rate of pay.

*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](http://www.hrcalifornia.com).*

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## CalChamber Calendar

*Environmental Regulation Committee:*

March 10, San Diego

*Water Resources Committee:*

March 10, San Diego

*Board of Directors:*

March 10–11, San Diego

*CalChamber Fundraising Committee:*

March 11, San Diego

*California Business Summit/Host*

*Breakfast: June 1–2, Sacramento*

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**Next Alert:  
March 4**



# Business, CSU System Leading Effort to Close Achievement Gap in Public Schools



**James Lanich**

Everywhere you turn these days is another news story, research study or government initiative highlighting the need to close the achievement gap in our public schools. But where are the key levers

to address this critical issue?

The starting point, and most important lever, is to ensure an effective teacher is in every classroom. This can be done at scale by learning directly from those teachers and schools that are raising student academic achievement and closing achievement gaps.

## Achievement Center

The California State University (CSU) Center to Close the Achievement Gap is tackling this challenge head-on by identifying and investigating these successful schools in order to inform teacher preparation across the state. The CSU system prepares more than half of all teachers in the state. The goal of the center is to transform preparation and performance of new teachers and administrators in CSU Colleges of Education across California.

Participating CSU faculty and deans have begun to study the high-performing, high-poverty, high-minority school districts and schools that are consistently outperforming expectations for student achievement, so that these best practices might be reflected in educator preparation programs.

These schools have been identified by Educational Results Partnership, an organization devoted to data analysis and school improvement and are recognized annually on the California Business for Education Excellence (CBEE) Honor Roll.

## Business-CSU Partnership

Led by CBEE and three founding CSU campuses in San Diego, Long Beach and Fresno, the CSU Center is a partnership

between the California business community and the CSU system.

Numerous businesses and foundations have contributed more than \$1 million to lead this important work, including State Farm Insurance, Macy's, Wells Fargo, Blue Shield of California, Edison International, the William and Flora Hewlett Foundation, the Bechtel Foundation, and United Way of the Bay Area.

"We have an excellent college and university system in California, but not enough of our students, particularly students of color and those from low-

time, but they outperform similar districts and schools for every subgroup of students (categorized by ethnicity, income levels, English learners, etc.).

In other words, the districts are raising student academic achievement and closing achievement gaps in some of the most challenging schools.

The cornerstone of the work is a peer exchange (teacher-to-teacher, principal-to-principal, faculty-to-faculty) of best practice strategies that raise student achievement as documented by comprehensive achievement data and other evidence of success.

This exchange of best practices will serve to inform the curriculum of teacher and administrator preparation programs, so that new educators will learn about the skills and strategies useful in raising student achievement from their first day in the classroom.

*See Business: Page 4*

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## Guest Commentary By James Lanich

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income families, are coming out of high school ready to attend these universities, and earn a bachelor's degree," states Greg Jones, CBEE chairman.

"To address this challenge, the CSU Center ensures that new teachers employ the best practices from successful schools to help all of their students reach their potential," Jones says.

This partnership addresses the business, economic and civil rights imperative of closing the achievement gap. In addition, the partnership addresses the goal of producing nearly 1 million more students with baccalaureate degrees by 2025 to meet the needs of the changing California economy.

Business leaders have an important role in the center and a direct stake in improving the results in our public schools by preparing more students to succeed in college.

## Best Practices Exchange

High-performing districts and schools are identified through a comprehensive data analysis of student academic achievement over time using the free, online *EdResults.org* data system. These districts and schools have not only shown consistent increases in student proficiency on the California Standards Test over

## How to Help Schools Close Achievement Gap

Local chambers of commerce, business groups and companies can support California Business for Education Excellence (CBEE), a not-for-profit organization, in its work to close the achievement gap by contacting CBEE at (916) 498-8980.

Options include:

- engaging with your local California State University campus in improving teacher preparation;
- helping to recognize higher-performing schools and districts in your area;
- supporting or participating in regional forums on the importance of closing the achievement gap; and
- providing a charitable contribution to CBEE in support of its work.

## Business, CSU System Leading Effort to Close Achievement Gap in Schools

*From Page 3*

The exchange also focuses the discussion and research on documented evidence of teaching practices most likely to produce measurable results.

Faculty and deans of the colleges of education at the three founding CSU campuses have begun this investigation and sharing of best practices by visiting two high-performing, high-poverty school districts—Sanger Unified School District in the Central Valley and Chula Vista Elementary School District in the San Diego area.

“Our faculty’s participation in the center’s activities ensures we are providing teacher and administrator candidates with the knowledge, skills and experiences that will equip them to be successful when they enter their schools and classrooms,” says Marquita Grenot-Scheyer, dean of the College of Education at CSU Long Beach.

“Our visits to Chula Vista Elementary School District and Sanger Unified have opened up new doors, and stimulated our professional learning through remarkable dialogue and investigation of the practices of these impressive leaders and teachers,” she says.

### Demonstration by Example

High-performing schools and teachers demonstrate by example that all schools can replicate best practices and help to systematically narrow, and eventually close the achievement gap. They can



From left, Ginny Boris, professor from CSU Fresno, Cristina Alfaro, professor from San Diego State University, and Huong Nguyen, professor from CSU Long Beach, debrief as “faculty captains” at the conclusion of a school site visit in Sanger Unified School District, a high-performing school district in the Central Valley.

learn from each other on how to best close that gap.

New teachers entering our public schools can be equipped with the same expectations and instructional tools found in these high-performing school and district sites. The CSU Center hopes to ensure this will happen on a much broader scale.

The center’s goal is to share these best practices with many more colleges of education, districts and schools, not by telling educators how to do it, but by connecting them in a professional peer exchange of proven strategies and

evidence-based ideas that are actually working in our schools.

Our experience in studying high-performing schools and districts shows that when schools are focused on clear, coherent and specific practices, and measurable results, the achievement gap can be closed much more rapidly.

*James Lanich is the director of the California State University Center to Close the Achievement Gap and is a former Los Angeles Unified schoolteacher. He can be reached at (916) 752-2485 or jlanich@calstate.edu.*

## CalChamber Opposing Medical Marijuana Bill



### OPPOSE

employers who have federal contracts or grants. The federal Drug-Free Workplace Act requires federal contractors and grantees to provide a drug-free workplace, which includes implementing a policy that prohibits the use or

*From Page 1* marijuana was affecting or “impairing” his/her performance.

Moreover, SB 129 creates a significant disadvantage for California

possession of marijuana.

The restrictions under SB 129 directly contrast with this federal mandate, thereby forcing a California employer to choose between complying with SB 129 or complying with federal law. California employers are put into a lose-lose situation: either risk litigation or risk the loss of all federal contracts or grants.

Finally, SB 129 seeks to usurp the voice of the voters as well as the Supreme Court. In November 2010, the voters overwhelmingly rejected Proposition 19, which would have provided marijuana users with similar protections in the workplace.

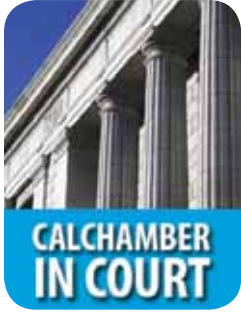
In January 2008, the California Supreme Court held that the Compassionate Use Act of 1996, which allowed Californians to use marijuana for medical purposes, did not create safeguards for such individuals in the workplace. CalChamber believes the decision of the voters and the Supreme Court should be respected.

### Action Needed

The CalChamber is urging employers to contact their state senators and urge them to **oppose SB 129**.

**Staff Contact: Jennifer Barrera**

# California Supreme Court Wants More Evidence in Water ‘Fees’ Case



The California Supreme Court has decided that more evidence is needed in a long-awaited case dealing with state water “fees.”

In the case of the *California Farm Bureau*

*Federation v. California State Water Resources Control Board (CSWRCB)*, the issues before the State Supreme Court were:

- Whether the charge on water rights permit applicants and license holders is indeed a fee;
- If it is a valid fee, can the fee be charged to contractors who receive water deliveries from the federal government; and
- How fees should be calculated in the future if the current system is deemed to be inaccurate.

While the court ruled that the charge was not a tax, the court could not determine, based on the evidence presented, whether the fees were constitutional as applied in the case.

As a result, the Supreme Court sent the case back down to the lower court to determine whether “the fees were reasonably apportioned in terms of the regulatory activity’s cost and the fees assessed.”

## Background

In 2003, the Legislature approved changes to the Water Code aimed at making the state’s Water Rights Division entirely supported by fees rather than an allocation from the state General Fund. The legislation making this change passed with just a majority vote, rather than the two-thirds required for increasing taxes.

The CSWRCB imposes fees on water rights permit applicants and license holders; however, the permits and licenses issued by the department account for only a small portion of the water rights protected by the CSWRCB’s regulatory oversight.

A large percent of water rights in California predate requirements for permits and licensure and therefore the holders of those rights don’t pay the fees.

The federal government also accounts for a large percent of the water diversion in the state, with those rights being used for hydroelectric projects and the Central Valley Project. Because the federal government is sovereign, the state cannot force federal agencies to pay any fees.

The fees imposed by the CSWRCB were set up under the assumption that 40 percent of the regulated community would not pay the charge, either from simple refusal or based on sovereign immunity. As a result, the remainder of the fee payers were assessed an amount in excess of their proportionate share of the regulatory burden in order to make up this deficit.

Individuals and agencies that contracted with the federal government for water deliveries were assessed a fee of more than 10 times higher than the fees charged for those engaged in the direct diversion of water. In the first year of collecting fees, the CSWRCB took in nearly twice the actual cost of running the CSWRCB permits and license program.

The 3rd District Court of Appeal ruled that the fees charged under the regulation were not “proportional” and ordered the CSWRCB to come up with a new basis for calculating the fees.

Current law recognizes that there are limits on regulatory fees and restricts the amount of revenue generated by the fee to the amount “necessary to recover the costs incurred in connection with the issuance, administration, review, monitoring and enforcement of permits.”

There is no simple way for the regulated community to enforce those limits, however.

## Supreme Court Ruling

The Supreme Court rejected the argument that the 2003 law authorizing an annual charge on water permit applicants and license holders is unconstitutional because it imposes a tax, rather than a valid regulatory fee.

The court also pointed out, however,

that “What a fee cannot do is exceed the reasonable cost of regulation...An excessive fee that is used to generate general revenue becomes a tax.”

In the *Farm Bureau* case, the Supreme Court said, “The trial court’s order lacks sufficient factual findings for us to determine whether the fees, as imposed, were reasonably proportional to the costs of the regulatory program.”

## Instructions for Trial Court

In returning the case to the trial court, the Supreme Court directed the lower court to determine “whether the fees are reasonably related to the total budgeted cost” of the Water Rights Division “keeping in mind that a government agency should be accorded some flexibility in calculating the amount and distribution of a regulatory fee.”

The trial court must determine whether the law and the regulations implementing it “provide a fair, reasonable and substantially proportionate assessment of all costs related to the regulation” of the fee payers, the Supreme Court said.

## Refund Remedy

The California Chamber of Commerce, along with five other groups, filed a “friend of the court” brief in support of the California Farm Bureau Federation in its case against the CSWRCB in 2007.

In the brief, the CalChamber urged the court to create and require a refund remedy for individuals and businesses that overpaid.

The CalChamber commented that the case would set a precedent for allocating surplus fees, as the remedy would require an agency that collects too much money to refund the excess to the user, thereby eliminating the fee surplus and the temptation to divert a surplus to other programs in lean budget years.

Such a remedy would afford individual fee payers a forum to challenge the application of the fee without calling into question the funding for an entire statewide program, the CalChamber said.

**Staff Contact: Erika Frank**

## High-Speed Rail Authority Seeks ‘Expressions of Interest’

The California High-Speed Rail Authority is requesting input by March 16 from companies and organizations that are interested in some aspect of the high-speed rail project.

The authority is seeking responses to its “Request for Expressions of Interest” from companies and organizations—small and large, privately and publicly owned, domestic and international—in all relevant fields.

The “expressions of interest” will help the authority shape its approach to the

formal procurement process for the rail project.

Expressions of interest may relate to designing and building the initial high-speed rail section in the Central Valley and/or participating in the future design, construction, funding, operations and maintenance for delivery and service of the first phase of the project (the San Francisco-to-Anaheim segment).

The submissions will not be evaluated and are not a prerequisite for participating in the procurement process.

Those who respond to the “Request for Expressions of Interest” will receive information from the authority on an industry forum to be held in Southern California in the spring to further discuss private sector interest in the high-speed rail.

The release of the official Request for Proposals is expected toward the end of the year.

The “Request for Expressions of Interest” is available at [www.cahighspeedrail.ca.gov/rfei.aspx](http://www.cahighspeedrail.ca.gov/rfei.aspx).  
**Staff Contact: Thomas Vu**

## Health Care Tax Law Glitch: CalChamber Backs Fix

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### Current Exclusions

As a result, the fair market value of medical coverage provided to adult children from 19 to 25 years of age is now taxable income in California, except if other exclusions that existed in the law before the adoption of the state law apply. The exceptions are:

- The child is (a) under the age of 24;
- (b) a full-time student in the calendar year; (c) maintains the same principal residence as the parent for at least half of the year; and (d) receives more than one-half of his/her annual financial support

from the parent; or

- The child is permanently and totally disabled, regardless of age.

Due to this glitch in the law, businesses and employees in California are faced with the administrative and financial burden of determining the fair market value of the insurance coverage or medical payments provided solely for the adult child in order to properly calculate the state taxes owed.

AB 36 seeks to resolve this discrepancy between California and federal tax law, thereby relieving California businesses and employees from this unnecessary cost. Conforming

to federal law and treating the value of the adult health care coverage as non-taxable income would be an income tax reduction for employees, and a payroll tax reduction for employers.

### Action Needed

AB 36 passed the Assembly Revenue and Taxation Committee on February 14 with unanimous support. It will go next to the Assembly Appropriations Committee.

The CalChamber is urging employers to contact their state legislators and ask them to **support AB 36**.

**Staff Contact: Jennifer Barrera**

## CalChamber-Sponsored Seminars/Trade Shows

More information at  
[www.calchamber.com/events](http://www.calchamber.com/events).

### Business Resources

New ADA Rules Panel Discussion.

State Board of Guide Dogs for the Blind. February 23, Sacramento/Live Webcast. (916) 574-8167.

Solutions for Leaders That Will Drive Performance. Wilcox Miller & Nelson. March 16, Sacramento. (916) 977-3700.

Preventing Workplace Fraud Webinar On Demand. CalChamber. (800) 331-8877.

### International Trade

Dynamic U.S.-Asia Economic Relationship. The Asia Foundation. February 22, San Francisco.

(415) 743-3385.

Export Sales Opportunities to Chile. Northern California World Trade Center. February 28, Sacramento. (916) 566-7170.

The Americas Business Forum. March 2–3, Los Angeles. (213) 580-7500.

U.S.-Oman Economic Forum. U.S. Chamber. March 7–8, Muscat, Oman. (202) 463-5628.

Berkeley Asia Business Center Conference 2011. UC Berkeley Haas School of Business. March 22, Shanghai. (510) 643-6883.

Chile Investment Opportunities. Economic Development Agency of the Chilean Government (CORFO). March 23, Davis.

Complying with U.S. Export Controls.

U.S. Department of Commerce, Bureau of Industry Security. March 24–25, San Diego. (858) 467-7040.

Asia Pacific Business Outlook 2011.

University of Southern California/U.S. Department of Commerce, U.S. Commercial Service. March 28–29, Los Angeles. (213) 740-7130.

### Labor Law

Pregnancy Disability Leave and Family Medical Leave Act/California Family Rights Act 201. CalChamber. February 21, On Demand. (800) 331-8877.

Exempt – When You’ve Properly Classified. CalChamber. April 14, Webinar; April 25, On Demand. (800) 331-8877.

## Two Clear Winners in First Election Under Open Primary System

Two former Assembly members, one a Republican and the other a Democrat, easily won election this week in the first vote conducted since the open primary system went into effect on January 1.

Now representing the 17th Senate District is Sharon Runner (R-Antelope Valley), succeeding her husband, George Runner, who won election to the state Board of Equalization in November 2010.

Now representing the 28th Senate District is Ted Lieu (D-Torrance). He succeeds the late Senator Jenny Oropeza (D-Long Beach), who died shortly before the November election.

Because Sharon Runner earned more



Sharon Runner



Ted Lieu

than 65 percent of the vote and Lieu more than 57 percent of the vote in the special primary elections on February 15, there

was no need for a runoff in April.

The California Chamber of Commerce-supported Top Two Candidates Open Primary Act, Proposition 14, was approved in June 2010 by a margin of 54 percent to 46 percent.

Proposition 14 allows all voters to choose any candidate regardless of the candidate's or voter's political party preference.

The proposition ensures that the two candidates receiving the greatest number of votes will appear on the general election ballot regardless of party preference.

## CalChamber Hosts Viewing of IBM Watson's *Jeopardy!* Challenge



Photo by Megan Wood

A Sacramento audience gathers at the California Chamber of Commerce on February 14 to watch the opening day of IBM's Watson computer (named after IBM founder Thomas J. Watson) challenging Jeopardy! champions Ken Jennings and Brad Rutter. Watson tied with Rutter on day 1; outscored both Jennings and Rutter on day 2, but missed the final question, which both Jennings and Rutter answered correctly; and outscored both human competitors on day 3. Watson is powered by 90 clustered IBM Power 750 servers with 32 POWER7 cores running at 3.55 GHz. The system has 16 terabytes of memory.



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This year could be an AB 1825 training year for your company. Last year, new claims were filed at a rate of almost two per hour nationwide. And California companies are held to the strictest laws, including mandatory harassment prevention training and retraining for supervisors. Our online course can help you curb your risk. Features of this course include:

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\*Certificate for 1 lb. box with purchase of \$100 or more in harassment prevention training. CalChamber Preferred and Executive members will receive their additional 20% off with this offer.

Order online at [www.calchamber.com](http://www.calchamber.com) or call 1-800-331-8877

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