

ALERT

VOLUME 37, NUMBER 7 • MARCH 4, 2011



Missed Meal/Rest Periods Equals Two Violations



Failing to provide an employee with a meal period and a rest period in the same day amounts to two violations, according to the California Court of Appeal.

In a February 16 decision, the 2nd District Court of Appeal found that the employer owes the employee for two violations because the requirement to pay a “premium wage” is contained in two separate sections of the Wage Orders.

The requirement to pay an additional hour of wages for a violation is found in Labor Code Section 226.7, which

discusses the remedies for a meal period violation and a rest period violation together, rather than in separate sections.

The actual language of the law itself, however, states that if a meal or rest period is not provided, the employer owes the employee one hour of pay “for each work day that the meal or rest period is not provided.”

The court reviewed the legislative history of Labor Code Section 226.7 and concluded that the Legislature intended to match the Wage Order provisions, which clearly provide for two separate remedies—one for a violation of the required meal period and one for a violation of the rest period.

Staff Contact: Susan Kemp

Communications Expert/Pollster to Speak at CalChamber Business Summit



Dr. Frank I. Luntz, an internationally recognized communications expert, political pollster and bestselling author, will be the luncheon speaker at the California Chamber of Commerce

Dr. Frank I. Luntz

Business Summit on June 1 in Sacramento.

This is the 24th anniversary for the day-long event, which offers business owners, CEOs, public affairs staff, local chamber of commerce staff, board members, committee members and many more a glimpse into the state’s business climate.

Frank I. Luntz

Named one of the four “Top Research Minds” by *Business Week*, Luntz has written and conducted more than 2,000 surveys, focus groups, ad tests and dial sessions in over two dozen countries on four continents in the past decade.

His focus groups have become so influential that following the PBS presidential debate, presidential candidate

See Communications: Page 6

Governor Names New State Labor Commissioner



Julie Su

Governor Jerry Brown has appointed Julie Su, litigation director at the Asian Pacific American Legal Center (APALC), as chief of the California Division of Labor Standards and Enforcement.

As labor commissioner, the division chief adjudicates wage claims, investigates discrimination and public works complaints, and enforces labor law and the Industrial Welfare Commission wage orders.

Su has worked at APALC since 1994.

Founded in 1983, APALC describes itself as a nonprofit organization “dedicated to advocating for civil rights, providing legal services and education, and building coalitions to positively influence and impact Asian Pacific Americans and to create a more equitable and harmonious society.”

In a statement released by APALC following her appointment, Su said, “I am truly honored to have been appointed by the Governor to lead California’s labor law enforcement agency. It’s a tremendous opportunity to make an impact and I look forward to the challenge of ensuring a more fair and just workplace for both employees and employers.”

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Labor Law Corner

Holiday Pay within Company's Discretion, But Follow Other Wage Rules



Dana Leisinger
HR Adviser

Do we have to pay holiday pay to our employees, and if so, what is the rate—time-and-a-half, or double time? We are a small employer and don't pay holiday pay until an employee has worked for us for three months. Is that permissible?

Holiday pay is not mandatory in California; therefore it is completely within a company's discretion whether

to pay an incentive (overtime) rate to employees who work on holidays.

Many employers do pay an incentive rate so as to lessen the "sting" of having to work on a holiday, but it is not mandatory per California law. Any amount is equally allowed, given, of course, that minimum wage is satisfied.

Accordingly, putting a "probationary period" on earning holiday pay also is permissible, as long as the probationary period for holiday pay is applied equally to all new hires so as to avoid any claim of discrimination or a discriminatory impact.

Keep in mind that if a non-exempt employee is required to work a holiday after working 40 hours in a week, overtime would indeed apply at the applicable rates.

Overtime also would result if the employee works more than eight hours

on that holiday. In addition, an exempt employee must be paid for holidays if he/she is ready, willing and able to work, regardless of if that exempt employee actually works the holiday.

Also, some employers enter into agreements with their employees to pay holiday pay, agreeing on terms between the employer and employee, sometimes negotiated as part of an employment contract. Employers may adopt policies and practices that work with their individual schedules, as long as employees receive the required minimum wage and overtime, if applicable.

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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Alert (ISSN 0882-0929) is published weekly during legislative session with exceptions by California Chamber of Commerce, 1215 K Street, Suite 1400, Sacramento, CA 95814-3918. Subscription price is \$50 paid through membership dues. Periodicals Postage Paid at Sacramento, CA.

POSTMASTER: Send address changes to Alert, 1215 K Street, Suite 1400, Sacramento, CA 95814-3918. Publisher: Allan Zaremborg. Executive Editor: Ann Amioka. Associate Editor: Sara Espinosa. Art Director: Marcy Wacker. Capitol Correspondent: Christine Haddon. Photographer: Megan Wood.

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CalChamber Calendar

International Luncheon Forum:

March 9, Sacramento

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

2011 Business Summit
June 1–2, 2011 | Sacramento

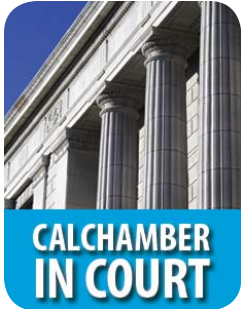
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Dr. Frank I. Luntz
Communications Expert, Political
Pollster and Bestselling Author

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California Supreme Court Denies Review of Working Conditions Case



The California Supreme Court has decided it will not review a 2nd District Court of Appeal decision allowing a lawsuit to proceed against an employer for violating a rule contained in the Wage Orders.

In a January 27 letter, the California Chamber of Commerce and five other employer groups asked the California Supreme Court to review the 2nd District Court of Appeal decision in *Bright v. 99¢ Only Stores*, 189 Cal.App.4th 1472 (2010).

The request for review was made on the grounds that the *Bright* ruling, when coupled with a similar decision in *Harris v. Home Depot U.S.A., Inc.*, exposes all California employers to severe penalties, in addition to costly litigation, based

on obscure provisions contained in California's Wage Orders.

What the Supreme Court's decision not to review *Bright* means for employers is that the *Bright* case remains law, as of now, and employers must abide by the appellate court's ruling.

Background

In *Bright*, a retail cashier claimed to have been denied a chair while working. The plaintiff claimed that the failure to provide suitable seating also violated Labor Code Section 1198, and based upon this claim, sought penalties under the Private Attorney General Act (PAGA).

In its ruling, the appellate court extended PAGA to create fallback penalties for all Wage Order working conditions, even though the Industrial Welfare Commission had limited wage order penalties to the "underpayment of wages" and not to working conditions.

PAGA establishes civil penalties of \$100 per employee, per pay period for the first violation and \$200 for each

subsequent violation. The act also allows "representative actions" on behalf of similarly situated coworkers.

Under *Bright's* extension of PAGA, a retail employer with 40 employees, biweekly pay periods, and five technical violations per pay period, could accrue \$204,000 in penalties per year, in addition to potential liability for attorneys' fees.

Wage Order Wizard

CalChamber offers a free Wage Order Wizard at www.hrcalifornia.com to help employers determine which Wage Order applies to their workplace.

Other products and services for CalChamber members, available at www.calchamberstore.com, provide more detail about compliance.

Readers who are not CalChamber members can test-drive HRCalifornia with a 15-day Free Trial at www.hrcalifornia.com.

Staff Contact: Erika Frank

CalChamber Seeks Members to Comment on Safety Issues

The California Chamber of Commerce is looking for members with an interest in workplace safety to provide occasional comments on policy proposals.

The CalChamber's work with Cal/OSHA on regulations and enforcement policies has been significant. The CalChamber has participated in developing Cal/OSHA safety policies and has had an impact on the final rules.

While the focus on expanding Cal/OSHA enforcement efforts and resources is expected to increase, the CalChamber will be seeking to dial back regulatory burdens on business. In such an environment, it is even more important to be front and center in the debate with the concerns of the business community.

To better serve as a conduit for business concerns, the CalChamber is forming the Occupational Safety Advisory Group as a subcommittee of the CalChamber Labor and Employment Committee.

The CalChamber will be asking for feedback on and review of regulations or policies proposed by Cal/OSHA, or

bills that may have an impact on worker safety. The goal of the subcommittee is to support the advocacy of cost-effective and practical safety and health regulations while protecting the competitive position of California employers.

CalChamber members interested in occasionally weighing in on safety issues, finding out what's new or getting

input from peers are invited to join the new subcommittee or to designate someone from the company to sit on the subcommittee.

To sign up or designate a subcommittee member, e-mail laurie.lively@calchamber.com.

For more information, contact marti.fisher@calchamber.com.



"If you believe in business and commerce in California, there is no better source of information and relationship building than the CalChamber."

JOSEPH OTTING
PRESIDENT AND CEO
ONEWEST BANK, PASADENA

CalChamber Member Feedback

Impacts of Top Two Primary System Focus of CalChamber-Hosted Discussion

With California's new top two primary system now in effect, the California Chamber of Commerce hosted a seminar on February 17 to analyze the impacts of the new primary system for elections in the state.

In June 2010, voters passed CalChamber-supported Proposition 14, the California Top Two Candidates Open Primary Act. Proposition 14 requires that candidates run in a single primary open to all registered voters. The top two vote-getters regardless of party affiliation then meet in a general election runoff.

Washington Experience

Erin McCallum, president of Enterprise Washington, a Washington state-based group dedicated to electing business-minded legislators, was the featured speaker at the seminar.

She shared her organization's experience with that state's version of the top two primary system, which took effect in 2008.

More Moderates

"A lot of our pretty progressive Democrats, that have been driving Washington State's political arena, are becoming more moderate," stated McCallum. The top two primary system



Photo by Megan Wood

Erin McCallum of Enterprise Washington explains at a CalChamber-hosted seminar that progressive Democrats in Washington are becoming more moderate since that state instituted its version of a top two primary system in 2008.

will start to "level the playing field" between Democrats and Republicans.

McCallum also discussed the importance the primary election will play compared to the general election. Many times the fight between Republicans and Democrats will be decided in the primary and in strong-leaning Democrat or Republican districts, the general election could have two candidates in the same

party facing off against each other.

Other issues that came out of the discussion included the idea that there will be an increase in voter participation and engagement, especially in the primaries and with Decline to State voters.

A video clip of McCallum's remarks appears at www.calchamber.com/publicaffairs.

Staff Contact: Rob Lapsley

Governor Names New State Labor Commissioner

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Biography

Su served as lead counsel in a 1995 federal lawsuit involving 80 Thai and Latino garment workers found laboring in a barbed wire-enclosed apartment complex in El Monte, California. She co-founded Sweatshop Watch and was one of six "national leaders" to appear in the Smithsonian National Museum of American History exhibit on sweatshops.

In addition to litigating many cases on behalf of low-wage workers, Su has filed lawsuits to end discrimination

and segregation in education and the workplace.

She received the MacArthur "Genius" fellowship in 2001, has been honored as an international human rights activist and was named one of the "Top 75 Women Litigators" in California in 2005 by the *Daily Journal*, in addition to many other awards.

In January, she was a visiting professor at the UCLA School of Law.

Su also has guest lectured at the law schools of Northeastern University, Michigan, University of Southern California, and served as practitioner-in-

residence at the University of California, Berkeley School of Law.

She is the author of articles in scholarly journals on such subjects as the untold civil rights stories of Thai garment workers, corporations and economic justice, and coalitions.

Su earned a B.A. from Stanford University and a J.D. *cum laude* from Harvard Law School, where she was editor-in-chief of the *Harvard Civil Rights-Civil Liberties Law Review*.

The position requires confirmation by the state Senate.

CalChamber: Need for Business Certainty as State Develops Green Chemistry Program

To be effective, the state's green chemistry regulations should be predictable and provide certainty for businesses that must comply, the California Chamber of Commerce said at a recent legislative hearing.

During the hearing, CalChamber Policy Advocate Robert Callahan stressed the importance of implementing the green chemistry program in a way that will enhance public health, protect the environment and promote innovation, while not adversely affecting jobs and the economy.

Green Chemistry Program

In 2008, AB 1879 (Feuer; D-Los Angeles) and SB 509 (Simitian; D-Palo Alto) authorized the Department of Toxic Substances Control (DTSC) to identify chemicals of concern, study them, prioritize chemicals of concern, and regulate certain products that contain these chemicals.

Last September, the DTSC released its first draft of the proposed "Safer Consumer Product Alternatives" regulation, which established a highly complex approach to identifying and prioritizing chemicals of concern in consumer products, and regulating their future use based on exposure to consumers and the environment.

As a result of input from a broad array of stakeholders, including the CalChamber, DTSC revised the proposed regulation in November 2010. Due to lingering concerns over the November version, however, the department decided to delay adoption of the regulations until stakeholders could reconvene in 2011 and the remaining issues could be resolved.

Assembly Committee Hearing

California has the tremendous opportunity to ensure that green chemistry is done right the first time, Callahan told the Assembly Environmental Safety and Toxic Materials Committee on February 15.

The state must now carefully craft a green chemistry program that will meet the goals of enhanced environmental protection and public health in a way that will not negatively affect business, he said.



Photo by Megan Wood

CalChamber Policy Advocate Robert Callahan testifies at a legislative hearing on the need for the state's green chemistry rules to be predictable and provide certainty for business. Video of testimony at www.calchamber.com.

The CalChamber continues to hope that the process of developing the green chemistry program ultimately will lead to "a chemicals management system that inspires innovation and relies on science, not politics, as the basis for its decisions," Callahan said.

He warned that an overly broad approach will lead to fewer resources being available to address products where real risk reductions may be possible.

"An overly broad focus will lead to time spent regulating products which offer only marginal risk reduction possibilities," Callahan said. "This will result in greatly expanded regulatory burdens on businesses, on cost for the regulated entities, and ultimately less protection for health and the environment."

Regulatory Reform

Regulatory reform is on the forefront of policy makers' agendas throughout the country, he said. Accordingly, the CalChamber urged the state to take the time to implement a better regulation and to strengthen its regulatory

development process by adequately addressing and considering alternative regulatory concepts that are less costly or burdensome.

Regulators also need more information, such as analyses of the economic impact and cost-effectiveness of proposed rules, to guide their decision making, Callahan said.

"We don't want to come back here three years from now and say that green chemistry is in desperate need of reform or streamlining," Callahan said. "It's time to stop calling for regulations that cannot work."

Callahan stressed that economic growth and environmental protection are not mutually exclusive concepts.

"California taxpayers and consumers deserve a real-world approach to green chemistry—one that will actually improve consumer safety and respect the needs of a struggling economy," Callahan said.

See a video of Callahan's testimony at www.calchamber.com.

Staff Contact: Robert Callahan

Communications Expert/Pollster to Speak at CalChamber Business Summit

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Barack Obama said, “When Frank Luntz invites you to talk to his focus group, you talk to his focus group.”

In some capacity, Luntz has helped almost 30 Fortune 100 companies navigate the economic climate and connect more closely with consumers. He has counseled companies and CEOs on communication and language.

Companies and organizations Luntz has worked with include: General Motors, Federal Express, Disney, American Express, AT&T, and Microsoft, as well the U.S. Chamber of Commerce, the National Association of Manufacturers and the Business Roundtable.

Luntz’ focus group technique, “Instant Response,” has been profiled on “60 Minutes,” “Good Morning America” (on election day 2008) and the PBS show “Frontline.”

He has been a guest on virtually every

talk show in the nation, including “Meet the Press,” “Nightline,” “The Today Show,” “Charlie Rose,” “The Jim Lehrer News Hour,” “The O’Reilly Factor,” “Tavis Smiley,” “Montel Williams,” and “Hardball.”

Luntz was also a primary night and election night commentator for “The News with Brian Williams” on MSNBC in 2000 and for “Hardball” in 2004. His reoccurring segments on MSNBC/CNBC, “100 Days, 1000 Voices” won an Emmy Award in 2001.

Author of two *New York Times* best-selling books, *Words that Work: It’s Not What You Say It’s What People Hear* and *What Americans Really Want... Really*, Luntz has written about language for *The Wall Street Journal*, *The New York Times*, the *Los Angeles Times*, the *Financial Times*, *The Times of London*, and *The Washington Post*.

From 1989 until 1996, Luntz was an adjunct professor at the University

of Pennsylvania. He has taught courses at Harvard University and George Washington University.

Luntz holds a B.A. in history and political science from the University of Pennsylvania and a doctorate in politics from Oxford University.

Early Bird Rates

Attendees who register for the Business Summit by April 29 qualify for a savings of at least 20 percent.

The two-day registration package, including Summit with Host Reception and Host Breakfast, is \$220 now, \$275 after April 29. Other registration options will be available.

United Healthcare is again the major sponsor of this year’s Summit.

Staff Contact: Danielle Fournier

California to Match Federal Timeline for ‘Clean Car’ Standards

California will be using the same timeline as federal agencies in developing and proposing fuel economy and greenhouse gas standards for cars and light-duty trucks.

The California Air Resources Board (ARB) said the new standards will be proposed by September 1 of this year for model year 2017–2025 cars and light-duty trucks.

Joining the ARB’s January 24 announcement were the U.S. Department of Transportation (DOT) and the U.S. Environmental Protection Agency (EPA).

Proposing the new standards on the same timeframe “signals continued collaboration that could lead to an extension of the current National Clean Air Program, providing automakers certainty as they work to build the next generation of clean, fuel-efficient cars,” the ARB stated in a news release.

ARB had previously announced it intended to propose greenhouse gas emission standards for model years 2017 to 2025 in March of this year.

Meanwhile, the EPA and National Highway Traffic Safety Administration were working to propose the new

standards by the end of this September.

ARB reports that DOT and EPA set greenhouse gas emission and fuel economy standards for model year 2012–2016 light-duty cars and trucks in April 2010.

Last fall, California accepted compliance with these federal greenhouse gas standards as meeting similar state standards adopted in 2004. The standards require the vehicles to meet an estimated combined average emissions level of 250 grams of carbon dioxide per mile in model year 2016, the equivalent of 35.5 miles per gallon fuel efficiency.

Last May, President Barack Obama announced that EPA, DOT and California would be working together to assess the performance and costs of a variety of technologies that could be available in model years 2017–2025 as the first step in possibly extending current national emission and fuel economy standards.

The three agencies have completed an “interim technology assessment” and have since funded additional research, according to ARB.

Staff Contact: Robert Callahan

CalChamber-Sponsored Seminars/Trade Shows

More information at

www.calchamber.com/events.

Business Resources

6th Annual Responsible Sourcing Summit. Specialized Technologies Resources (STR). March 10–11, Los Angeles. (310) 215-0554.

Solutions for Leaders That Will Drive Performance. Wilcox Miller & Nelson.

March 16, Sacramento. (916) 977-3700. Aging in America Conference. April 26–30, San Francisco. (415) 974-9638.

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

International Trade

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. CORFO. March 23, Davis.

Complying with U.S. Export Controls. U.S. Department of Commerce,

See CalChamber-Sponsored: Next Page

Court Weakens Voter-Approved Protection Against Filing of Frivolous Lawsuits



A California Supreme Court ruling has made it slightly easier to sue under the state's Unfair Competition Law.

The 5-2 ruling in the case of *Kwikset Corp. v. Superior Court*

sided with the plaintiffs who said they were damaged by the company using "Made in U.S.A." labels when some of the lock parts were manufactured abroad.

The decision loosens the criteria set by Proposition 64, the 2004 initiative to stop shakedown lawsuits. The California Chamber of Commerce co-chaired the successful campaign in support of the measure, which requires an individual to have suffered an injury and lost money or property in order to file a lawsuit under the state's Unfair Competition Law.

Background

James Benson sued Kwikset under the unfair competition and false advertising laws to challenge the labeling of the Kwikset locks. The trial court found in favor of Benson.

While the case was pending on appeal, voters approved Proposition 64, which called into question Benson's standing to challenge Kwikset's "Made in U.S.A." label. Benson then filed an amended complaint in which he alleged that he and several others purchased Kwikset's locks

and would not have done so but for the "Made in U.S.A." labeling.

The Court of Appeal concluded this allegation was insufficient to establish Benson's standing to sue because it did not satisfy Proposition 64's requirement that a plaintiff have lost money or property.

The Court of Appeal and Kwikset argued that the plaintiffs failed to allege an overcharge or defects in the locksets, received the benefit of their bargain (a functioning product) and were ineligible for restitution.

Supreme Court Ruling

The Supreme Court majority disagreed with the Court of Appeal, saying "plaintiffs who can truthfully allege they were deceived by a product's label" into spending money to buy the product and would not have purchased it otherwise, have lost money or property within the meaning of Proposition 64 and have standing to sue.

For each consumer who is deceived into making a purchase by misrepresentations on a label, the economic harm, "the loss of real dollars from a consumer's pocket," is the same regardless of whether a court might objectively view the products as "functionally equivalent," the Supreme Court said.

To deny standing to sue to consumers deceived by label misrepresentations, the Supreme Court said. "would impair the ability of consumers to rely on labels,

place those businesses that do not engage in misrepresentations at a competitive disadvantage, and encourage the marketplace to dispense with accuracy in favor of deceit."

The Supreme Court also found fault with the argument that the plaintiffs received the benefit of their bargain because they received locksets. That argument falsely assumes the plaintiffs could easily turn around and sell the locksets to someone else for the same price, the court said.

The Supreme Court also ruled that ineligibility for restitution is not a basis for denying standing to sue. It cited a previous ruling in which it had explained "That a party may ultimately be unable to prove a right to damages (or, here, restitution) does not demonstrate that it lacks standing to argue for its entitlement to them." (*Clayworth v. Pfizer, Inc.*).

Dissent

The two justices dissenting from the majority opinion cited a previous appellate court decision pointing out that the voters' intent in passing Proposition 64 "was unequivocally to narrow the category of persons who could sue businesses" under the Unfair Competition Law.

A mere allegation that the plaintiffs would not have bought the mislabeled product "cannot be what the electorate intended," the dissenting justices wrote.

Staff Contact: Erika Frank

CalChamber-Sponsored Seminars/Trade Shows

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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.
Peru Moda 2011. Trade and Investment Office of Peru, Los Angeles. April 28-30, Lima, Peru. (213) 632-1951.

Peru Gift Show 2011. Trade and Investment Office of Peru, Los Angeles. April 28-30, Lima, Peru. (213) 632-1951
IBAglobal Conference & Expo. Pacific Palms Hotel & Conference Center. May 4-5, City of Industry. (702) 506-0833

Labor Law

Exempt—When You've Properly Classified. CalChamber. April 14,

Webinar; April 25, On Demand. (800) 331-8877.
Pregnancy Disability Leave and Family Medical Leave Act/California Family Rights Act 201. CalChamber. On Demand. (800) 331-8877.
Workplace Safety
Heat Illness Prevention. CalChamber. March 10, Webinar; March 21, On Demand. (800) 331-8877.



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- Mandatory Updates to Workers' Compensation Pamphlets (as of 10/8/10);
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