

ALERT

VOLUME 37, NUMBER 11 • APRIL 1, 2011



Bill Helps Provide Certainty for California Employers



SUPPORT

A California Chamber of Commerce-supported bill that will help provide certainty for California employers regarding the

correct application of the state's stringent wage and hour laws is scheduled to be considered by a Senate policy committee on April 13.

The CalChamber-sponsored bill, **SB 883 (Correa; D-Santa Ana)**, provides employers who rely in good faith upon

and in conformity with the opinions, interpretations, guidance, advice, or orders of the Division of Labor Standards Enforcement (DLSE) with an affirmative defense against claims challenging the validity of the employer's wage and hour practices on such issues.

Division Role

The DLSE is a state agency that is charged with the responsibility and authority to enforce the wage, hour, and working condition labor laws. As a part of its effort to fulfill this responsibility, the DLSE issues opinion letters on

See Bill: Page 7

CalChamber: Marijuana Bill Hinders Ability to Provide Safe/Drug-Free Workplace



Photo by Megan Wood

CalChamber Policy Advocate Jennifer Barrera explains to the Senate Judiciary Committee why SB 129, the marijuana bill by Senator Mark Leno (right), will undermine employers' ability to provide a safe and drug-free workplace. Story on Page 5.

Governor Jerry Brown, CalChamber Chair to Speak at Host Breakfast



Governor Jerry Brown

Governor Jerry Brown and California Chamber of Commerce Chair S. Shariq Yosufzai will be the featured speakers at this year's Sacramento Host Breakfast on June 2.



S. Shariq Yosufzai

The breakfast is set for the morning after the CalChamber Business Summit on June 1.

Featured speakers at the Summit include Dr. Frank I. Luntz, communications expert, political pollster and

bestselling author; and John S. Watson, chairman and CEO of Chevron Corporation.

Host Breakfast

Summit attendees have the opportunity to attend the 86th annual, invitation-only breakfast gathering. Invitees include leaders from business, agriculture,

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Labor Law Corner

No Premium Pay for Missed Meal Period/Break for Exempt Employee



Barbara Wilber
HR Adviser

I would like to know if our exempt employees are required to take a meal break in the same manner as hourly/non-exempt employees.

When the Legislature codified the meal break requirements from the Industrial Welfare Commission (IWC) orders in Labor Code Section 512(a), it did not limit the kinds of employees to

whom those requirements applied.

According to the enforcement agency, the Division of Labor Standards Enforcement, it appears that exempt employees are entitled to a meal period pursuant to Labor Code Section 512(a), but the one-hour premium pay requirement for a missed meal period does not apply.

Historically, the mandate for a meal period was found only in the IWC wage orders. If an employee was properly classified as exempt in Section 1 of the appropriate order, the meal period was not required.

Meal Period Coverage

However, Labor Code Section 512(a), enacted in 1999, now includes a meal period provision that does not limit coverage to any class of employee.

Note that other subdivisions of the section do contain meal period coverage limits associated with collective bargaining agreements.

The premium pay provision for failure to provide the meal period was added to the meal break section of the IWC orders and to the Labor Code in Section 226.7.

Both the provision in the IWC order and the Labor Code apply only if the meal period is required by an applicable IWC order. Since the orders exclude exempt employees from coverage, no liability for premium pay is required.

Rest Break Exclusion

The wage orders also exclude exempt employees from the rest break requirement, but there is no language in the Labor Code entitling employees to a rest break (except the lactation accommodation) that is separate from the IWC order regulations. Consequently, a conflict does not exist between the two regulations and the premium for a missed rest break also does not apply.

Again, Labor Code Section 226.7 applies only when a rest break or meal period is required by an applicable wage order.

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-Sponsored Seminars/Trade Shows

More information at
www.calchamber.com/events.

Business Resources

Workers' Compensation Legislative Day. Workers' Compensation Action Network, California Coalition on Workers' Compensation, CalChamber, California Manufacturers & Technology Association. April 4-5, Sacramento. (916) 554-3467.

BlackBerry Business Seminar Series. Maritz/RIM-BlackBerry. April 5, Los Angeles. (909) 696-5355.

Aging in America Conference. April 26-30, San Francisco. (415) 974-9638.

Small Business Resource Summit. Small Business Administration Sacramento District Office. May 26, Citrus Heights. (916) 735-1700.

International Trade

Import/Export Orientation Seminar. Sacramento Regional Center for International Trade Development.

April 5, Sacramento; April 19, Roseville. (916) 563-3200.
Peru Moda 2011 and 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
World Trade Week Kickoff Breakfast. Los Angeles Area Chamber of Commerce. May 6, Los Angeles. (213) 580-7569.

See CalChamber-Sponsored: Next Page

CalChamber Calendar

International Luncheon Forum:

April 14, Sacramento

California Business Summit/Host

Breakfast: June 1-2, Sacramento



Automatic Minimum Wage Hike Passes Assembly Policy Committee



OPPOSE

California Chamber of Commerce-**opposed** legislation to increase the minimum wage in 2012 and automatically increase it thereafter passed an Assembly committee this week.

AB 10 (Alejo; D-Watsonville) increases the cost of doing business for employers in California by raising the state minimum wage to \$8.50 per hour starting in January 2012.

The bill also provides for further automatic increases through annual indexing of the minimum wage according

to the percentage of inflation.

The CalChamber and a coalition of employer groups are opposing AB 10.

At the Assembly Labor and Employment Committee hearing on March 30, the CalChamber and coalition members pointed out that California employers are already under tremendous financial strain and cannot take the hit of this increase to the minimum wage.

Moreover, California is already lagging the rest of the nation in recovering from the recession and the minimum wage hike would set the state back even further.

California already has one of the highest corporate, personal income and sales tax rates. Increasing the minimum wage to

\$8.50 would make California's minimum wage the second highest in the nation.

The higher cost would be an economic disincentive to locating or expanding operations in California, while encouraging businesses to invest in other states.

Key Vote

AB 10 passed Assembly Labor and Employment on a vote of 5-1.

Ayes: Swanson (D-Alameda), Alejo (D-Watsonville), Allen (D-Santa Rosa), Furutani (D-South Los Angeles County), Yamada (D-Davis).

No: Morrell (R-Rancho Cucamonga).

Absent: Gorell (R-Camarillo).

Staff Contact: Jennifer Barrera

CalChamber-Sponsored Seminars/Trade Shows

From Previous Page

Export 101. Northern California District Export Council. May 18, San Jose; June 15, Oakland.

Futurallia Kansas City 2011. El Camino College Center for International Trade Development. May 18-20, Kansas City, Missouri. (310) 973-3173.

Clean-Tech Trade Mission to China. Monterey Bay International Trade Association (MBITA). June 4-11, Jiaxing and Wuxi, China. (831) 335-4780.

Chile: Investment Opportunities in the Food Industry. Chilean Economic Development Agency (CORFO). June 6-9, Santiago, Chile.

7th World Chambers Congress. International Chamber of Commerce World Chambers Federation. June 8-10, Mexico City. (212) 703-5065.

India Trade Conference. Port of Los Angeles, Network of Indian Professionals, U.S. Commercial Service, Quanta Consulting, Inc. June 23, Los Angeles. (949) 480-9466.

Labor Law

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

How to Hire Employees and Reduce Liability. CalChamber. May 12, Webinar; May 25, On Demand. (800) 331-8877.

How to Conduct Effective Performance Evaluations. CalChamber. June 9, Webinar; June 20, On Demand. (800) 331-8877.

How to Conduct Workplace Investigations. CalChamber. July 14, Webinar; July 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—How to Comply with New Rules. CalChamber. May 12, Webinar; May 21, On Demand. (800) 331-8877.



"When CalChamber engages in a state or federal issue, they, like no other group, can take an industry-specific concern and immediately turn it into a business climate issue."

LARREE M. RENDA
EXECUTIVE VICE PRESIDENT, CHIEF STRATEGIST AND
ADMINISTRATIVE OFFICER
SAFEWAY, INC., PLEASANTON
2010 CALCHAMBER CHAIR

Governor Jerry Brown, CalChamber Chair to Speak at Host Breakfast

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education and the military, plus international guests from the consular corps.

Out-of-town breakfast guests are invited to the Sacramento Host Reception on June 1.

A committee of Sacramento business leaders hosts the annual reception and breakfast to spotlight California's role in national and international commerce. The goal of both events is to provide decision-making leaders in California finance, government, education, agriculture and industry an opportunity to exchange views, establish and renew friendships, and create statewide atmospheres of good will and understanding at the informal setting of a common table.

Business Summit

CalChamber President and CEO Allan Zaremberg will open the Summit with an overview of CalChamber priorities.

Watson will be the featured morning speaker; Luntz will present the luncheon address.

Also scheduled during the luncheon are recognitions for local chambers receiving President's Circle awards, the Political Partner of the Year and Small Business Advocate of the Year awards.

Optional afternoon breakout sessions will cover:

- Advocacy Boot Camp 101;
- Political Reforms: Redistricting and Top Two Open Primary;
- Human Resources Issues and

Compliance Update;

- International Trade Forum.

Early Bird Deadline: April 29

Summit attendees who register by April 29 qualify for savings of at least 20 percent.

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

UnitedHealthcare is again the major sponsor of this year's Summit.

Online registration and more information are available at www.calchamber.com/summit.

Staff Contact: Danielle Fournier

Nomination Deadline Nears for Small Business Advocate Award

Nominations are due by April 15 for the California Chamber of Commerce Small Business Advocate of the Year Award.

Each year, the CalChamber recognizes several small business owners who have done an exceptional job with their local, state and national advocacy efforts on behalf of small businesses.

The CalChamber will recognize the award winners at its Business Summit on June 1 in Sacramento.

Application

The application should include information regarding how the nominee has significantly contributed as an

outstanding advocate for small business in any of the following ways:

- Held leadership role or worked on statewide ballot measures;
- Testified before state Legislature;
- Held leadership role or worked on local ballot measures;
- Represented chamber before local government;
- Actively involved in federal legislation.

The application also should identify specific issues the nominee has worked on or advocated during the year.

Additional required materials:

- Describe in approximately 300

words why nominee should be selected.

- News articles or other exhibitions as supporting materials.
- Letter of recommendation from local chamber of commerce president or chairman of the board.

Deadline: April 15

Award nominations are due to the CalChamber Local Chamber Department by April 15. The nomination form is available on the CalChamber website at www.calchamber.com/smallbusiness or may be requested from the Local Chamber Department at (916) 444-6670.



CalChamber.

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CalChamber Highlights Safety Issues Marijuana Bill Creates for Employers



OPPOSE

Legislation establishing a protected classification for employees who use medical marijuana will undermine employers' ability to provide a safe and drug-free workplace, the

California Chamber of Commerce told a Senate committee this week.

CalChamber-opposed **SB 129 (Leno; D-San Francisco)** is similar to Proposition 19, the CalChamber-opposed initiative that California voters rejected in November 2010. Specifically, SB 129 seeks to prohibit employers from terminating, disciplining, or refusing to hire persons who, as qualified patients, can legally possess and use marijuana for medical purposes.

The Senate Judiciary Committee lacked a quorum on March 29, so it delayed a vote on SB 129 until next week.

Marijuana in the Workplace

Although SB 129 precludes an employee from "using" marijuana at the workplace, it does not preclude an employee from either possessing marijuana in the workplace, or "using" marijuana minutes before coming onto the worksite and beginning the employee's shift. An employer could smell the odor of marijuana and observe the employee's red eyes (which under current law would likely be enough to send the employee home or conduct a drug test), however, the employer would have to wait to do anything until the employee showed clear signs that the marijuana was affecting or "impairing" the employee's performance.

The subjective nature of the term "impairment," coupled with the private right of action provided under SB 129 for any alleged violation, would make employers hesitant to take any action until there was objective evidence of actual impairment, such as an industrial accident or injury. This would increase the likelihood of industrial accidents and injuries, which would have a

direct impact on employers' workers' compensation premiums and increase employers' litigation expenses as a result of the likelihood of negligent hiring claims to follow.

'Safety-Sensitive'

Notably, SB 129 does provide an exemption to exclude medical marijuana users from "safety-sensitive" positions. The narrow and subjective manner in which this term is defined, however, renders it useless to employers.

Specifically, a position is considered "safety-sensitive" and exempt from the protections of SB 129, only if:

- it requires a "level of trust and responsibility" higher than normal;
- a "clear" risk of health and safety to others is created if there are errors in judgment, inattentiveness, diminished coordination, or composure; and
- the employee works independently or performs work where mistakes cannot likely be prevented by a supervisor or other employee.

The ambiguous terms used in this definition would inevitably lead to differing opinions among employees and employers as to which positions have a "higher level of trust" or present a "clear" risk of health and safety to others so as to qualify as "safety-sensitive."

Given the threat of litigation that SB 129 creates, along with a statutory right to attorney's fees, the financial risk to employers of mistakenly misclassifying a position as "safety-sensitive" is simply too high to even consider this as a realistic option.

Accordingly, through SB 129, employees under the medical use of marijuana could very well end up working in positions that pose a significant risk to the health and safety of other employees, as well as members of the public.

Putting Employees' Safety at Risk

Moreover, SB 129 creates a significant disadvantage for California employers with 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 possession of marijuana.

The restrictions under SB 129 directly conflict with this federal mandate, and forcing a California employer to make the impossible decision of:

- complying with SB 129 and allowing employees who are qualified patients to work while under the influence of marijuana and possess marijuana in the workplace, thereby risking the loss of all federal contracts or grants; or

- complying with federal law and enforcing a drug-free workplace, thereby risking civil litigation for any affected employees who are qualified patients.

California has a \$25 billion budget deficit and is already lagging the rest of the country in recovering from the recession. It simply cannot afford to lose federal money or encourage businesses to relocate to other states where they do not have to worry about complying with a state law that jeopardizes their receipt of federal contracts or grants.

Supreme Court Ruling

Finally, this bill 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.

Additionally, 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.

The California Supreme Court confirmed that regardless of the criminal exemption for such individuals, employers are still allowed to manage their own workplaces, including deciding whether to hire medical marijuana users.

The decisions of the voters and the state Supreme Court should be respected.
Staff Contact: Jennifer Barrera

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.

Expansion of Family/ Medical Leave Passes Policy Committee

**OPPOSE**

State legislation that significantly expands the circumstances under which employees can take protected family and medical leaves won approval from the Assembly Labor and Employment Committee this week.

The California Chamber of Commerce **opposes AB 59 (Swanson; D-Alameda)**. The bill creates an increased burden on employers by significantly expanding the category of individuals with serious health conditions for whom an employee can take a leave of absence to assist under the California Family Rights Act (CFRA).

The expansion will create a further disconnect between state law and the federal Family and Medical Leave Act (FMLA).

Currently, CFRA requires an employer with 50 or more employees to allow an employee who has worked at least 1,250 hours to take up to 12 weeks of leave in a 12-month period for their own serious medical condition, for the birth or placement of a child, or to care for the serious medical condition of a

child (under 18 years of age or adult dependent), spouse, or parent.

The current definition of “parent” includes step-parents as well as individuals who stand in locos parentis to the child. AB 59 seeks to expand CFRA by allowing an employee a protected leave to care for adult children, parents-in-law, grandparents and siblings.

The initial intent of CFRA was to provide a balance between an individual’s work life and personal life. This proposed change, however, disrupts that balance and could have a negative impact on California employers.

Key Vote

AB 59 passed Assembly Labor and Employment on March 30, 5-1.

Ayes: Swanson (D-Alameda), Alejo (D-Watsonville), Allen (D-Santa Rosa), Furutani (D-South Los Angeles County), Yamada (D-Davis).

No: Morrell (R-Rancho Cucamonga).

Absent: Gorell (R-Camarillo).

Staff Contact: Jennifer Barrera

Bills Streamlining Workers’ Comp Claims System Pass Assembly Insurance Committee

**SUPPORT**

Two California Chamber of Commerce-**supported** bills that streamline and expedite the workers’ compensation claims process passed the Assembly Insurance Committee on March 30.

● **AB 228 (Fuentes; D-Sylmar)** stops delays in the claims process by exempting State Compensation Insurance Fund (SCIF) staff from state furloughs since the positions are supported by premiums paid by SCIF members.

Under current law, SCIF employees are exempt from hiring freezes and staff cutbacks because SCIF is entirely self-sustaining. SCIF is supported by premiums paid by policy holders, not through the state’s general fund or other parts of the budget.

Accordingly, state-mandated furloughs only delay claims and other services for SCIF members.

● **AB 335 (Solorio; D-Anaheim)** allows the Commission on Health and Safety and Workers’ Compensation

(CHSWC) to participate with the workers’ compensation administrative director (AD) in developing regulations regarding notices to injured workers.

The bill requires the AD and CHSWC to develop and make accessible a booklet written in plain language about the workers’ compensation claims process, and to streamline and simplify other notices to employees.

A CHSWC report released in July 2010 noted that stakeholders in the system agree benefit notices are too voluminous, complex, confusing, misleading, and overwhelming.

CHSWC estimates that the bill will provide a net savings of more than \$42 million a year.

AB 228 moves on for a vote on the Assembly floor; AB 335 will be considered next by the Assembly Appropriations Committee.

Staff Contact: Thomas Vu

OSHA Seeks Employer Input on Adding 'Ergonomics' Column to Injury/Illness Logs



The Occupational Safety and Health Administration (OSHA) is seeking business input on its proposal to add a column for work-related musculoskeletal disorders (MSD) on employer

injury and illness logs, the form 300 log.

OSHA is holding three teleconferences in partnership with the U.S. Small Business Administration's Office of Advocacy to gather small business input on the proposal.

The proposal would require employers already mandated to keep injury and illness records to add the step of checking a column when recording work-related musculoskeletal disorders, also commonly known as ergonomic injuries.

Interested businesses that wish to participate in one of the teleconferences should contact Regina Powers at powers.regina@dol.gov by April 4 and indicate the teleconference in which they wish to participate.

CalChamber Resource

CalChamber would very much like to have its members participate in this process. Anyone wishing to participate should also contact Marti Fisher at the CalChamber marti.fisher@calchamber.com for more information.

Conference Call Details

The teleconferences are scheduled for:

- Monday, April 11 at 1:30 p.m. EDT;
- Tuesday, April 12 at 9 a.m. EDT;
- Tuesday, April 12 at 1:30 p.m. EDT.

Participants may provide input about their experience in recording work-related MSDs and the impact of the proposed rule.

Proposed Rule

The proposed rule covers only MSDs that employers already are required to record under the longstanding OSHA rule on recordkeeping.

Before 2001, OSHA's injury and illness logs contained a column for repetitive trauma disorders that included hearing loss and many kinds of MSDs. In 2001, OSHA proposed separating hearing loss and MSDs into two columns, but the

MSD column was deleted in 2003 before the provision went into effect. OSHA's proposal would restore the MSD column to the Form 300.

Business Groups Raise Concerns

The U.S. Chamber of Commerce and other business groups recently raised a wide array of concerns with the proposed regulation. Chief among these concerns is that there is no workable definition for MSDs that will allow an employer to identify and record them, as the employer would with other injuries.

The groups also believe that OSHA's proposal is problematic because it would remove a current exemption that allows employers to not record "minor musculoskeletal discomforts" even if the employee is placed on some form of restricted duty to keep the condition from worsening, or for the employee's comfort (such moves ordinarily would trigger a recording requirement).

Finally, the groups voiced concern that OSHA has grossly underestimated the costs of this proposal, particularly for small businesses.

Staff Contact: Marti Fisher

Bill Helps Provide Certainty for California Employers

From Page 1

various wage, hour and working condition topics, as well as an enforcement manual that sets forth the DLSE's interpretation and position on these issues.

Currently, employers are encouraged to refer to the DLSE's written materials for "guidance" on these topics when there is no published, on-point case available. Employers are provided with no certainty, however, that they will be shielded from liability if they comply in good faith with the DLSE's opinions/interpretations and such opinions or interpretations are later directly or indirectly reversed or rejected by a court. SB 883 provides employers with that needed certainty.

Affirmative Defense

Specifically, SB 883 allows employers

to assert as an affirmative defense in any litigation where a wage and hour practice, policy, action or omission is challenged, that such practice, policy, action or omission was based upon their good faith reliance and conformity with an opinion letter, interpretation, advice or order issued by the DLSE.

This policy provides credibility to the DLSE, which is charged with the responsibility to enforce such laws. In addition, it encourages employers to comply with the DLSE's guidance, which in return will provide a positive and consistent environment for employees.

Federal Law

Notably, the federal government allows the same defense for employers who rely in good faith upon the advice, opinion letters and guidance of the U.S.

Department of Labor regarding the Fair Labor Standards Act.

CalChamber Support

CalChamber believes that providing employers with certainty through SB 883 by allowing them to rely upon the interpretations of the DLSE, will assist in relieving this burden on employers, produce a better environment for employees, and contribute to the growth of the economy.

Action Needed

SB 883 will be considered in the Senate Labor and Industrial Relations Committee on April 13. Contact your senator and urge **support** for **SB 883**.

Staff Contact: Jennifer Barrera



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