CalChamber Releases 2012 ‘Job Killer’ Bill List
Unveils New CAJobKillers.com Website

The California Chamber of Commerce this week released its annual list of “job killer” bills, calling attention to the negative impact that 23 proposed measures would have on California’s competitiveness and job climate if they were to become law.

The CalChamber also unveiled a new, one-of-a-kind website—CAJobKillers.com—which will highlight California’s job killing proposals, policies, regulations, and legislators.

“This year’s ‘job killer’ list includes 23 bills that threaten to create further hardships and costs for private sector job creators in a time of unprecedented unemployment,” said Allan Zaremberg, CalChamber president and CEO.

“Businesses are clamoring for commonsense proposals and a return to reason in California. In a state where we need to do everything possible to improve the economy, it is imperative that legislators stop introducing and passing bills that cost jobs and erode the quality of life for all Californians,” Zaremberg said.

CalChamber’s new website, www.CAJobKillers.com, will serve as a clearinghouse for all information related to those bills, regulations and policy makers deemed to be a threat to California’s ability to retain and create jobs.

The 2012 “job killer” list appears on Page 3.

Staff Contact: Marc Burgat

CalChamber Supports Workplace Flexibility

CalChamber Policy Advocate Jennifer Barrera testifies in support of job creator bills by Senator Bob Dutton (left) at a Senate Labor and Industrial Relations Committee hearing on April 11. More on Page 4.

Supreme Court Issues Decision on Meal/Rest Periods

The California Supreme Court released on April 12 its long-awaited decision in a case involving employers’ obligations relating to meal and rest breaks.

The most critical part of the unanimous ruling in Brinker Restaurant Corp. v. Superior Court is that employers do not have to ensure that employees take their meal breaks, but must merely make them available. The court also provided flexibility to employers with regard to the timing of meal and rest breaks.

Erika Frank, California Chamber of Commerce general counsel and vice president of legal affairs, commented on the ruling: “Employers have finally received some much-needed clarity in a common-sense decision from the California Supreme Court that will provide certainty and flexibility to employers and employees, allowing them to effectively manage their workload and serve their customers and clients.

“One of the most significant benefits of this ruling is that it will reduce employers’ exposure to costly and frivolous litigation.”

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Cal/OSHA Corner

Outdoor Workplaces Must Provide Heat Illness Prevention Training

What are my responsibilities for preventing heat illness in the workplace?

Since November 2, 2010, all outdoor places of employment have been subject to the heat illness prevention regulation, Title 8 of the California Code of Regulations, Section 3395 Heat Illness Prevention in Outdoor Places of Employment.

The industries subject to all provisions of the regulation, including the “High Heat Procedures,” include:
- Agriculture;
- Construction;
- Landscaping;
- Oil and gas extraction; and
- Transportation and delivery of agricultural products, construction materials or other heavy materials. There is an exemption for employees who are not performing loading or unloading duties, but who are operating an air-conditioned vehicle.

Definitions

Definitions in the regulations include:
- “shade”—which can be artificial or natural if it meets the other requirements; and
- “temperature”—with instructions on how and where to take the temperature reading.

Shade Requirements

If the temperature is 85 degrees, the shade must accommodate at least 25% of the employees. Additionally, if the temperature is less than 85 degrees, shade must be provided initially, or upon request from an employee.

The employees must be allowed and encouraged to take a break in the shade for at least five minutes, when they feel the need to do so to protect themselves from overheating.

High Heat Procedures

When the temperature reaches 95 degrees, additional requirements must be met by the industries listed above as subject to all provisions of the regulation. The additional requirements include:
- Providing and maintaining an effective communication system so that
‘Job Killers’ Threaten Competitiveness

Following is the “job killer” list released on April 10. Legislation included on the list will change throughout the year as bills are amended or new language is introduced.

Barriers to Economic Recovery

- **AB 1543 (Alejo; D-Salinas)**
  Unconstitutional Limit on International Trade. Increases the cost of state contracts and reinstates a requirement already struck down by California courts by prohibiting state and local governments from contracting with many businesses that use component parts and materials from other countries in construction projects and to manufacture goods.

- **AB 1897 (Campus; D-San Jose)**
  Impedes Development. Increases the cost of development and creates project delays by requiring that general plans incorporate concepts related to healthy food access and urban agriculture.

- **AB 1963 (Huber; D-El Dorado Hills)**
  Targeted Tax on Services. Imposes a new sales-and-use-tax base on numerous services, disadvantaging California businesses that will not benefit by the proposed reduction in other tax rates.

- **AB 2517 (Eng; D-Monterey Park)**
  Inappropriate Wage Liens. Will basically destroy the real estate market in California by allowing employees to file liens on an employer’s real property or any other person’s real property where work was performed for unproven wage claims, that take precedent over almost any other lien on the property, including mortgages.

- **AB 2540 (Gatto; D-Los Angeles)**
  Targeted Tax on Services. Imposes a new sales-and-use-tax base on numerous services, disadvantaging small businesses that may not necessarily benefit from the proposed tax exemption for the first $10,000 in business income.

- **SB 950 (Alquist; D-Santa Clara)**
  Unreasonable and Duplicative Tax Penalties for Employers. Forces taxpayers to overpay their taxes in order to avoid severe penalties.

- **SB 1470 (Leno; D-San Francisco)**
  Impedes Economic Recovery. Delays the recovery of California’s housing market by allowing all borrowers, including strategic defaulters and investors, to abuse the loan modification process to forestall legitimate foreclosures.

Costly Workplace Mandates

- **AB 1313 (Allen; D-Santa Rosa)**
  Increased Cost on Agricultural Employers. Drives up the cost of commodities to consumers by removing the existing overtime exemption allowed for agricultural employers.

- **AB 1439 (Alejo; D-Salinas)**
  Automatic Minimum Wage Increase. Increases the cost of doing business on California employers by annually indexing the minimum wage rate upwards according to the percentage of inflation even during an economic downturn.

- **AB 1450 (Allen; D-Santa Rosa)**
  Expansion of Discrimination Litigation. Subjects employers to charges of discrimination for legitimately inquiring into an applicant’s employment history.

- **AB 1808 (Williams; D-Santa Barbara)**
  Improper Characterization of Private Employees to Allow Potential Card Check Unionization. Significantly expands the definition of “public employee” to include employees of any private employer where a public agency “shares” in the employment decisions of those private employees, thereby subjecting private employers to petitions of recognition from public employee unions.

- **AB 1999 (Brownley; D-Santa Monica)**
  Expansion of Protected Leave Requirements for California Employers. Makes it virtually impossible for employers to manage their employees and exposes them to a higher risk of litigation by expanding the Fair Employment and Housing Act to include a protected classification for any person who is, who will be, or who is perceived as a family caregiver.

- **AB 2039 (Swanson; D-Alameda)**
  Expansion of Protected Leave Requirements for California Employers. Creates a burdensome, California-only mandated benefit that significantly expands the category of individuals with serious health conditions for whom an employee can take a leave of absence beyond what is currently included under the federal Family Medical Leave Act.

Expensive, Unnecessary Regulatory Burdens

- **AB 2424 (Portantino; D-Pasadena)**
  New State Goals for Forestry. Increases costs of timber production by changing the state’s forestry goals to give equal consideration to each public need when reviewing forestry operations, including Timber Harvest Plans.

- **SB 568 (A. Lowenthal; D-Long Beach)**
  Polystyrene Food Container Ban. Threatens thousands of manufacturing jobs within the state by inappropriately banning all food vendors from using polystyrene foam food service containers, ignoring the numerous environmental benefits associated with polystyrene products.

Fuel Price Increases

- **AB 1532 (John A. Pérez; D-Los Angeles)**
  AB 2404 (Fuentes; D-Los Angeles)/ SB 535 (De León; D-Los Angeles)/ SB 1572 (Pavley; D-Agoura)
Seminars/Trade Shows

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Exports-Carnets and Other Tools. (800) 872-8723.

Green Trade Mission to Brazil Webinar. Bay Area Center for International Trade Development. April 18, Los Angeles.

Hong Kong Food Expo Briefings. Hong Kong Trade Development Council. April 20-Ontario; April 23-San Francisco; April 24-Fresno; April 26-San Gabriel; May 1-Pasadena. (213) 223-1608.

Ag Trade Mission to Asia. California State Trade and Export Promotion (STEP) and Fresno Center for International Trade Development. April 21–28, China and South Korea. (559) 324-6401.


Hannover Messe—Technology Meets Progress. Deutsche Messe. April 23–27, Hannover, Germany.


Aquatech India. California STEP and World Trade Center San Diego. April 25–29, Delhi, India. (619) 615-0868.


Annual Investment Meeting. United Arab Emirates Ministry of Foreign Trade. May 1–3, Dubai, United Arab Emirates. (714) 214-9749.


History of ‘Job Killer’ Bill Vetoes

**Governor Edmund G. Brown Jr.**
- 2011: 30 “job killer” bills identified; 5 sent to Governor, 4 vetoed.

**Governor Arnold Schwarzenegger**
- 2010: 43 “job killer” bills identified; 12 sent to Governor, 10 vetoed.
- 2009: 33 “job killer” bills identified; 6 sent to Governor, 6 vetoed.
- 2008: 39 “job killer” bills identified; 10 sent to Governor, 9 vetoed.
- 2007: 30 “job killer” bills identified; 12 sent to Governor, 12 vetoed.
- 2006: 40 “job killer” bills identified; 11 sent to Governor, 9 vetoed.
- 2005: 45 “job killer” bills identified; 8 sent to Governor, 7 vetoed.
- 2004: 23 “job killer” bills identified; 10 sent to Governor, 10 vetoed.

**Governor Gray Davis**
- 2003: 53 “job killer” bills identified; 13 sent to Governor, 2 vetoed.
- 2002: 35 “job killer” bills identified; 17 sent to Governor, 5 vetoed.
- 2001: 12 “job killer” bills identified; 5 sent to Governor, 2 vetoed.
- 2000: No job killers identified. Of 4 bad bills identified at end of session, Governor Davis signs 2 and vetoes 2.
- 1999: 30 “job killer” bills identified; 9 sent to Governor, 3 vetoed.

**Governor Pete Wilson**
- 1998: 64 “job killer” bills identified; 11 sent to Governor, 11 vetoed.
- 1997: 57 “job killer” bills identified; 9 sent to Governor, 9 vetoed.

‘Job Killers’ Threaten Competitiveness

**Hills) Illegal Tax Increase.** Increases energy costs, including fuel prices, on consumers and businesses by allocating funds from an illegal tax to various programs that are not necessary to cost-effectively implement the market-based trading mechanism under AB 32.

**Inflated Liability Costs**
- **AB 1208 (C. Calderon; D-Montebello) Court Inefficiency.** Creates uncertainty, inefficiency and unpredictability for litigants, further aggravating California’s reputation as a bad place to do business, by decentralizing control of trial court funds.

- **AB 2149 (Butler; D-Los Angeles) Discourages Settlement Agreements.** Inappropriately interferes in the contractual relationship between two parties by allowing the sharing of certain information contained in settlement agreements.

- **SB 1528 (Steinberg; D-Sacramento) Inflates Litigation and Insurance Costs.** Artificially inflates medical damage awards in personal injury cases by allowing an injured party to recover expenses never actually incurred, ultimately increasing not only legal costs, but also rates for auto, health, workers’ compensation and general liability insurance.

CalChamber Supports Workplace Flexibility

Two California Chamber of Commerce-supported job creator bills, SB 1114 (Dutton; R-Rancho Cucamonga) and SB 1115 (Dutton; R-Rancho) Cucamonga), failed to move out of the Senate Labor and Industrial Relations Committee on April 11.

SB 1114 reduces wage-and-hour competitive disadvantage for California employers. Specifically, it lowers costly daily overtime requirement for California employers by requiring payment of overtime only after 10 hours in a workday.

SB 1115 provides workplace flexibility for small employers. The bill alleviates the burden of unnecessary regulations by allowing an employer with 10 or fewer employees to implement an alternative workweek schedule at the request of the employees.

Staff Contact: Jennifer Barrera
New Job Creator Bill Will Help Limit Frivolous Employment Litigation

The California Chamber of Commerce has identified a new job creator bill that will help to limit frivolous employment litigation.

AB 1844 (Campos; D-San Jose) encourages job growth through clarifying employers’ duties, or lack thereof, with regard to social media and social networking sites as applied to applicants and existing employees.

The bill affirms an employer has no duty to investigate social media websites regarding applicants or employees and prohibits an employer from requiring an employee to disclose any personal password for social media Internet sites.

AB 1844 is a part of CalChamber’s 2012 Renew Agenda and will help position California for economic recovery.

News of job interviewers demanding Facebook passwords from applicants caused a media storm. This issue has been the subject of numerous news articles, as well as an HRWatchdog blog post on HRCalifornia.

Lack of Clarity

With the explosion of social media and social networking Internet sites, there is ambiguity as to whether an employer has an affirmative duty to investigate and explore all available sites when conducting a background check on an applicant or even an existing employee.

If an employer engages in such an investigation, it is also unclear as to how many sites the employer must review before the employer’s actions will be considered “reasonable” or sufficient to preclude any claim of negligence for hiring the applicant or promoting the employee.

No Affirmative Duty

AB 1844 clarifies this issue for employers by specifying that an employer has no affirmative duty to search social media or social networking sites before hiring an applicant or even to look for existing employees on these sites.

This clarification will limit frivolous and costly litigation in the event an employer hires an applicant who subsequently engages in inappropriate behavior at the workplace. Similarly, AB 1844 affirms that an employer cannot require an applicant to disclose his/her password for personal social media or social networking sites, so as to protect an individual’s privacy.

CalChamber Recommendation

CalChamber recommends that businesses:

● Make hiring decisions based on a neutral and objective evaluation of the candidate.

● Implement policies forbidding the consideration of protected classes in recruiting and train managers to follow these policies.

● Make sure any records relating to hiring decisions state only objective facts, not subjective impressions.

● If you include online searches in the hiring process, consider delegating that responsibility to a manager who is uninvolved in the hiring decision. Ask the manager to filter the information down to that which is relevant to the hiring decision before passing the information to the hiring manager.

Staff Contacts: Jennifer Barrera, Gail Cecchettini Whaley

California Supreme Court Issues Decision on Meal/Rest Periods

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Court Decision

According to the court: “To summarize: An employer’s duty with respect to meal breaks under both section 512, subdivision (a) and Wage Order No. 5 is an obligation to provide a meal period to its employees.

“The employer satisfies this obligation if it relieves its employees of all duty, relinquishes control over their activities and permits them a reasonable opportunity to take an uninterrupted 30-minute break, and does not impede or discourage them from doing so.

“What will suffice may vary from industry to industry, and we cannot in the context of this class certification proceeding delineate the full range of approaches that in each instance might be sufficient to satisfy the law.”

The CalChamber submitted a friend-of-the-court brief in the case.

More Analysis

A more detailed analysis of the opinion will be released soon via the HRCalifornia Extra e-newsletter. To sign up, visit www.calchamber.com.

Webinar

CalChamber employment law experts will interpret the ruling during a 90-minute live webinar on April 17. Meal & Rest Breaks: What Does the Brinker Decision Mean for Your Workplace? will include a discussion of the decision’s impact on the workplace and meal and rest break requirements for nonexempt employees, as well as best practices and tips on complying.

Registration information is available at www.calchamber.com.

Staff Contact: Gail Cecchettini Whaley
‘Work for Warriors’ Program Links National Guard Members with Jobs

The California Chamber of Commerce is supporting a pilot employment program of the California National Guard called “Work for Warriors.”

The program matches up the skills of unemployed and underemployed members of the California National Guard with the hiring needs of employers.

The goal of the program is to reduce unemployment and underemployment among California National Guard members by 25% within a year, with a longer-term goal of lowering unemployment under 5%.

California is home to the largest and most frequently deployed National Guard force in the country, deploying more than 37,000 times to countries worldwide since September 11, 2001.

Contact Information

Employers wishing to partner with the California National Guard can email ngcajobpartners@ng.army.mil or call (916) 854-4426.

Employers also may register at www.calguard.ca.gov/EIP. The program Facebook page is www.facebook.com/CalGuardWorkForWarriors.

Outdoor Workplaces Must Provide Heat Illness Prevention Training

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employees at the site can contact a supervisor when necessary. The system/communication may be direct voice contact, observation or electronic, such as a cell phone or text messaging device, but only if reception in the area is reliable.

● Observing employees for symptoms of heat illness.

● Reminding employees periodically throughout the shift to drink plenty of water.

● Closely supervising a new employee for the first 14 days of employment, unless the employee has been doing similar outdoor work for at least 10 of the past 30 days for four or more hours per day.

Training

Training must be provided for employees who are reasonably expected to be exposed to the risk of heat illness, and to their supervisors as well. All such employees and supervisors must be trained in:

● Environmental and personal risk factors for heat illness, as well as the added burden of heat load on the body caused by exertion, clothing, and personal protective equipment.

● Employer’s procedures for complying with the requirements of this standard.

● Importance of frequent consumption of small quantities of water, up to four cups per hour, when the work environment is hot and employees are likely to be sweating more than usual in performing their duties.

● Importance of acclimatization.

● Different types of heat illness, and the common signs and symptoms of heat illness.

● Importance to employees of immediately reporting to the employer, directly or through the employee’s supervisor, symptoms or signs of heat illness in themselves, or in co-workers.

● Employer’s procedures for responding to symptoms of possible heat illness, including how emergency medical services will be provided should they become necessary.

● Employer’s procedures for contacting emergency medical services, and if necessary, for transporting employees to a point where they can be reached by an emergency medical service provider.

● Employer’s procedures for ensuring that, in the event of an emergency, clear and precise directions to the work site can and will be provided as needed to emergency responders.

The employer must designate someone to be available to invoke the emergency procedures when necessary.

Before assigning supervisors for the outdoor workers, the supervisors must also receive training about:

● Procedures the supervisor is to follow to implement the applicable provisions in this section.

● Procedures the supervisor is to follow when an employee exhibits symptoms consistent with possible heat illness, including emergency response procedures.

● How to monitor weather reports and how to respond to hot weather advisories.

More Information

Additional information on heat illness, including forms for developing a heat illness prevention plan for outdoor workers in English and Spanish, is available in the HR Library under “Workplace Safety” at HRCalifornia.com.

Compliance posters and an on-demand Heat Illness Prevention webinar are available through CalChamberStore.com.

The Division of Occupational Safety and Health (Cal/OSHA) also has information available by clicking on “Heat Illness Prevention” at www.dir.ca.gov/DOSH.

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.
Ambassador Highlights Importance of Strong Trade with Mexico

U.S. Ambassador to Mexico E. Anthony Wayne discussed the importance of a strong trade relationship with Mexico at the California Chamber of Commerce International Breakfast forum on March 30.

Wayne and the Consul General of Mexico Carlos Gutierrez, who also attended the forum, joined legislators from all U.S. border states for the Border Legislative Council Conference at the State Capitol earlier in the week.

Goal to Increase Exports

During his talk, Wayne highlighted President Barack Obama’s 2010 National Export Initiative, which aims to help businesses double exports over five years.

This is a goal that the federal government cannot do, unless it works with “state governments, municipal governments, and, very importantly, with the private sector and with organizations like the California Chamber of Commerce,” Wayne emphasized.

The Ambassador also praised the work that chambers of commerce do as being vital for the future of the United States.

“We see all that you all do as essential, especially from our international perspective as we’re looking to both generate more exports, also attract investment from overseas, and building this economy that is so important for us, for our children, for our partners around the world,” Wayne said.

U.S.-Mexico Relationship

The ambassador commented that after the North American Free Trade Agreement (NAFTA), trade with Mexico has tripled, making Mexico the United States’ third largest exporter and the United States Mexico’s No. 1 trading partner. Moreover, the two countries’ relationship is tightly intertwined.

“It’s a different type of relationship that’s based on a lot more than dollars and pesos,” Wayne said. “It’s in the concept of partnership. It’s not that we just trade with each other, we actually build things together.”

The ambassador pointed out that 75% of Mexican manufacturing factories (maquiladoras) are located along the border and import more than 80% of their imports from the United States. Forty cents of every dollar of Mexican exports is imported from the United States, Wayne said.

“Trilateral regulatory cooperation was one of the issues to be addressed when President Obama hosted the prime minister of Canada and the president of Mexico on April 2, Wayne said.

Also, the United States is working closely with Mexico to tackle some of the major issues Mexico is facing, such as intellectual property rights protection, food safety, e-health, oil and gas, conformity and assessment, and nanotechnology, among other issues.

The country is especially lending aid to Mexico in the area of security, such as combating organized crime, reforming aspects of the legal system, creating a more efficient and secure border system, and promoting a culture of lawfulness, Wayne added.

California-Mexico Trade

Mexico continues to be California’s No. 1 export market. California exports to Mexico totaled $26 billion in 2011. Mexico purchases 16% of all California exports. California’s exports to Mexico are driven by computers and transportation equipment, which account for 43% of all California exports to Mexico.

More Information

For more information about California-Mexico trade, check out the Trading Partner Portal in the international section of the CalChamber website at www.calchamber.com/Mexico.

Staff Contact: Susanne Stirling

CalChamber Health Policy Committee Seeks Input from HR/Employee Benefits Managers

The California Chamber of Commerce has been a leading voice regarding the impact of health care policy on employers. The CalChamber Health Care Policy Committee reviews and evaluates health care public policy proposals for their financial and administrative impact on employers.

CalChamber members interested in joining the committee’s efforts to protect California businesses against expensive and burdensome health care coverage costs, and to identify and support innovative and cost-effective strategies to deliver health care in California, are invited to join the CalChamber Health Care Policy Committee.

Members’ expertise in dealing with the delivery of employee health care benefits can enhance CalChamber efforts to understand the impact of proposed legislation.

The next committee meeting is April 26. To express interest in joining the committee or for further information, contact jedd.hampton@calchamber.com or call (916) 444-6670.
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- Pregnancy Disability Leave and Baby Bonding (5/17/12)
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