Major Issues Still in Flux with Just Two Weeks to Go

With just two weeks remaining in the legislative session, the fate of much legislation that could have a major impact on employers and jobs in California is still undecided.

As Alert went to press, the Senate and Assembly Appropriations committees were considering hundreds of bills, including seven “job killer” bills, deemed to have a direct fiscal impact on the state treasury.

The “job killer” bills being considered by the appropriations committees include costly workplace mandates that: expose employers to costly discrimination litigation; expand discrimination litigation and protected leave requirements; could increase the price of food; and a trio of illegal tax increases that hike energy costs by allocating funds to programs not needed to implement the market-based trading mechanism under AB 32, California’s landmark climate change law.

A handful of job creator proposals also remained alive for consideration.

In addition, behind-the-scene discussions continued on possible modifications to the cost-saving workers’ compensation reforms enacted in 2004 and developing a pension reform package.

The next edition of Alert will recap action completed late this week and early next week. In the meantime, readers can look to the CalChamber Top Stories for action highlights. Updates on specific bills are always available via the bill search tool at www.calchamber.com.

‘Job Killers’ Awaiting Action by Legislature

Following are the “job killer” bills that are awaiting action by the full Senate or Assembly.

**Barriers to Economic Recovery**

- **AB 2408 (Skinner; D-Berkeley)**
  Creates Inequity in the Tax Structure—Harms struggling small businesses and start-ups by repealing the Net Operating Loss (NOL) carryback deduction, a lifeline that helps employers stay afloat, retain employees, and continue investing in their businesses in an economic downturn. Senate Floor.

- **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. Senate Floor.

**Expensive, Unnecessary Regulatory Burdens**

- **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

  See: ‘Job Killers’: Page 4

CAJobKillers.com Offers Easy Way to Help Support Pro-Jobs Candidates

Visitors to CAJobKillers.com can contribute to ChamberPAC, the political action arm of CalChamber. Contributions will help the effort to elect representatives to the Legislature who understand the need to support job growth and economic recovery, and defeat those who do not.

By working together, the business community will have the resources needed to elect pro-business, pro-jobs candidates in California.

Updates, news links, videos, contributions link

Inside

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Cal/Osha Corner
Numerous New Cal/OSHA Regulations in Queue; 9 Adopted So Far

Has the Occupational Safety and Health Standards Board adopted new regulations that will affect my company’s operations?

If all proposed rulemakings are approved, there is a possibility of 19 new regulations that will affect my company’s operations? As of August 1, nine new regulations have been approved, affecting at least 30 sections and subsections of Title 8 of the California Code of Regulations. All California employers are to be familiar with these regulations and comply with them where necessary.

The Occupational Safety and Health (Cal/OSHA) Standards Board meets monthly to present for public hearing at least two rulemaking packages for public comment.

If these proposals are deemed necessary as the result of public comment, or required by federal or legislative mandate, they are adopted by the board and submitted to the Office of Administrative Law, where they are reviewed to ensure the regulations meet specified criterion before being approved and published.

New Regulations

Following are the regulations approved as of August 1 and their effective dates:

- Airborne Contaminants (effective March 17, 2012): Section 5155;
- Definition of a General Purpose Die (effective February 4, 2012): Section 4188;
- Federal Final Rule Standards Completion Project-Phase II (Horcher) (effective January 18, 2012): Sections 1532.1, 1615.7, 3361, 5042, 5044, 5047, 5049, 5144, 5191, 5198, 5209 and 8355;
- General Conditions in Shipyard Employment. Federal Final Rule (Horcher) (effective December 13, 2011): Shipyard Safety Orders Articles 1, 2, 3, 4, 6 and 8;
- Guarding of Microtomes (effective September 6, 2012): Sections 3207, 3558 and 4184;
- Helicopter Fueling (effective March 24, 2012): Section 1905;
- Use of Portable Step Ladders (effective January 28, 2012): Sections 3276 and 3287;
- Vehicle Exhaust Retrofits (effective March 2, 2012): Sections 1504, 1591, New Appendix A, 1597, 3363, 7016 and New Section 4925.1; and

Proposed Rulemakings

Each year, the board prints a proposed rulemaking schedule listing regulations it has determined should be addressed and placed on the board’s agenda for future public hearings.

Following is a list of proposed rulemakings that remain from the initial 2012 proposed rulemaking plan:

- Cranes and Derricks in Construction (Clean-up): Various Sections;
- Definitions for Woodworking Machines and Equipment: Section 4297;
- Diesel Engine Runaway Protection: Sections 6505, 6651 and New Section 6625.1;

More information at www.calchamber.com/events.

Labor Law


International Trade

Access China. World Trade Center San Diego. September 5–13, Xiamen, Nanjing, Changzhou and Shanghai, China. (619) 615-0868, ext.118.


New Markets: Exporting to Colombia/Panama. Institute of the Americas. September 24–30, Medellín, Colombia. (619) 615-0868, ext. 118.

See CalChamber-Sponsored: Page 5
CalChamber-Opposed Legislation Creates List of Shame; Information Misleading

A California Chamber of Commerce-opposed bill that stigmatizes employers by requiring the Franchise Tax Board (FTB) to disclose the taxes paid to the state by publicly traded corporations when requested by members of the public is awaiting action by the full Senate.

**AB 2439 (Eng; D-Monterey Park)** requires the FTB to identify and disclose on its website confidential taxpayer information of the 1,500 largest publicly traded corporate taxpayers subject to tax in California. The stated purpose of this disclosure is to assist in the “analysis and scrutiny” of California’s recent switch to the single-sales factor in corporate income tax apportionment.
Measures Scheduled to Appear on November Ballot

California voters will be asked to vote on 11 ballot measures in November. The measures and titles are listed below along with any California Chamber of Commerce position taken to date.

The CalChamber Board of Directors will consider other ballot measures when it meets in September.

- **Proposition 30:** Temporary Taxes to Fund Education. Guaranteed Local Public Safety Funding. Initiative Constitutional Amendment.
- **Proposition 31:** State Budget. State and Local Government. Initiative Constitutional Amendment and Statute.
- **Proposition 32:** Prohibits Political Contributions by Payroll Deduction. Prohibitions on Contributions to Candidates. Initiative Statute.
- **Proposition 33:** Changes Law to Allow Auto Insurance Companies to Set Prices Based on a Driver’s History of Insurance Coverage. Initiative Statute.
- **Proposition 34:** Death Penalty Repeal. Initiative Statute.
- **Proposition 35:** Human Trafficking. Penalties. Sex Offender Registration. Initiative Statute.
- **Proposition 36:** Three Strikes Law. Sentencing for Repeat Felony Offenders. Initiative Statute.
- **Proposition 38:** Tax for Education and Early Childhood Programs. Initiative Statute. CalChamber opposes and signed ballot arguments against. (See July 27 Alert.)
- **Proposition 39:** Tax Treatment for Multistate Businesses. Clean Energy and Energy Efficiency Funding. Initiative Statute.
- **Proposition 40:** Redistricting. State Senate Districts. Referendum. CalChamber signed ballot arguments in support. (See August 10 Alert.)

Numerous New Cal/OSHA Rules in Queue

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- Federal OSHA Amendments and Technical Corrections: Sections 5189, 5192(a)(3) and others;
- First Aid for Electrical Workers-Application and Scope: Sections 1512, 2320.10 and 2940.10;
- Fueling of Helicopters Used in Logging Operations: Section 6325;
- Machinery and Equipment Used and Operated: Section 3328(b);
- Tree Work Maintenance or Removal: Sections 2950 and 3420–3428;
- Use of Forklift Trucks and Excavators for Hoisting Loads: Sections 1593 and 3650; and
- Work Area Control (Crane Swing Radius Hazards): Sections 1610.3, 1616.3, 4885, 4993.1, 4999 and 5001.

**Machinery/Equipment**

It should be noted that a regulation dealing with operating machinery and equipment, Section 3328(b), will be presented for public comment at the August public hearing. Following is a brief summary of the revisions to Section 3328.

Section 3328, Machinery and Equipment, is a regulation that broadly addresses many hazards related to operation of machinery and equipment. For example, it states that machinery and equipment shall not be used or operated at speeds, stresses or loads which endanger employees. The machinery and equipment should be: inspected and maintained as recommended by the manufacturer; not used if they have defective parts; and restrained if designed for a fixed location. The regulation includes other requirements considered necessary to provide a safe and hazard-free working environment for employees.

The proposed revision adds to subsection (b): “…shall be inspected, maintained, used and operated as recommended by the manufacturer….” and then includes the permissive language negating the manufacturer’s recommendations where permitted by other Title 8 standards.

**More Information**

For a complete summary of these regulations, visit the Cal/OSHA Standards Board web page at [www.dir.ca.gov/oshsb/](http://www.dir.ca.gov/oshsb/). and then click on either “approved standards” or “proposed standards.”

*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.*

‘Job Killers’ Awaiting Action by Legislature

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Inflated Liability Costs

- **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, which will ultimately increase legal costs as well as insurance rates. Assembly Floor.

CalChamber Calendar

Environmental Regulation Committee:
September 6, Santa Monica
Water Resources Committee:
September 6, Santa Monica
Fundraising Committee:
September 6, Santa Monica
Board of Directors:
September 6–7, Santa Monica
Public Affairs Council Retreat:
November 13–15, Laguna Beach
Heat Wave Prompts Cal/OSHA Alert

In response to the prolonged heat wave, the Division of Occupational Safety and Health (Cal/OSHA) in the California Department of Industrial Relations (DIR) this week urged employers to protect outdoor workers from heat illness and allow for new workers to adjust to changes in weather.

“This is the longest period of sustained high temperatures in California since 2006 and employers at outdoor worksites should stay on the alert,” said DIR Director Christine Baker. “Ensuring that new employees are closely supervised while they are acclimatizing to working in high heat—on top of providing water, rest, shade and training—is an essential step in making sure a jobsite is a safe place to work.”

Acclimatization Important

A 2005 Cal/OSHA study showed that employees who are not used to working in extreme heat are at the highest risk of developing heat illness. That same study showed that 46% of reported cases of heat illness occurred on the employee’s first day on the job.

Cal/OSHA reports it can take anywhere from four to 14 days for the human body to become properly acclimated to working outdoors in an extremely hot environment.

Some best practices for employers who may have new employees working in high heat, according to Cal/OSHA, include assigning employees to less physically demanding tasks in their first 14 days on a new job or working a new employee onto a shift slowly.

Cal/OSHA cautions that all workers can be adversely affected by heat waves where temperatures are still high even at night.

Heat illness occurs when the body’s temperature control system is unable to maintain an acceptable temperature. Under normal circumstances, the body cools itself by sweating.

When high temperatures and humidity prevent the body from releasing heat efficiently, however, a person’s body temperature can rise quickly, causing numerous symptoms. If left untreated, high body temperatures can damage the brain and other vital organs and, ultimately, lead to death.

Heat Illness Regulations

In July 2006, Cal/OSHA implemented new regulations to protect outdoor employees from the effects of heat exposure and mandated training requirements for employees and supervisors on the prevention, symptoms and treatment of heat illness.

The regulations apply to all companies with employees working in outdoor places of employment. In addition to the training requirements, employers must provide potable drinking water, access to shade, and compile heat illness prevention procedures, including employee training, in writing.

Two years ago, the heat illness prevention standard was strengthened to include a high heat provision that must be implemented by five industries when temperatures reach 95 degrees. These procedures include observing employees, closely supervising new employees, and reminding all employees throughout the shift to drink water.

The specified industries include agriculture, construction, landscaping, oil and gas extraction, and transportation or delivery of agricultural products, construction material or other heavy material. All employers, however, are advised to take additional precautions during periods of high heat.

The California Chamber of Commerce is a founding member of the state’s Heat Illness Prevention Network (HIP), which is administered by Cal/OSHA.

CalChamber Training Tools

An on-demand version of the CalChamber Heat Illness Prevention webinar is available through the CalChamber Store. Also available is a Heat Illness Safety Poster that reinforces safe work habits in hot environments and serves as a reference for recognizing symptoms of heat illness.

For more information or to order, visit www.calchamber.com/heatillness or call (800) 331-8877.

CalChamber-Sponsored Seminars/Trade Shows

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Americas. September 10, La Jolla. (858) 453-5560.
Eco Expo Asia 2012. El Camino College CITD. October 26–30, Hong Kong, China. (310) 973-3132.
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.

‘Job Creators’
Awaiting Action by Legislature

Following are the “job creator” bills that are awaiting action by the full Senate or Assembly.

**Economic Development**
- **SB 1161 (Padilla; D-Pacoima)**
  Internet-Based Services — Provides certainty and creates a level playing field for California business by assuring that Voice over Internet Protocol- and Internet Protocol-enabled services will not be regulated at the state level but rather at the federal level. Assembly Floor.

**Environmental Regulation**
- **AB 890 (Olsen; R-Modesto)**
  Reduces Regulatory Burdens — Improves safety and roadway conditions that expedite goods and people movement by exempting roadway projects from the California Environmental Quality Act process. Senate Floor.

**Regulatory Reform**
- **AB 1612 (Lara; D-Los Angeles)**

**Administrative Practices** — Promotes government accountability and a transparent process by requiring proposed new residential building standards to include the cost of compliance, potential benefits of the proposed standard and the underlying model used to achieve those estimates. Senate Floor.

**Taxation**
- **AB 2026 (Fuentes; D-Sylmar)**
  Film Credit Extension — Protects jobs in the film industry by extending the film tax credit for five years, until July 1, 2020. Assembly Floor.

**Tourism**
- **AB 2245 (Smyth; R-Santa Clarita)**
  Reduces Regulatory Burdens — Maximizes state funding and promotes tourism by exempting bikeways from the California Environmental Quality Act process. Senate Floor.

A California Chamber of Commerce-opposed “job killer” bill is dead for the year, having missed the legislative deadline to pass its policy committee in the second house. **AB 1208 (C. Calderon; D-Montebello)** would have created uncertainty, inefficiency and unpredictability for litigants by decentralizing control of trial court funds, thereby further aggravating California’s reputation as a bad place to do business.

Although AB 1208 sought to provide legislative oversight to ensure state funds were being put to their best use, it would have allowed the Legislature to influence important decisions about the management of the judicial branch.

For example, AB 1208 deleted the Judicial Council’s mandate to allocate state funds to courts. Instead, it would have allowed the Legislature to prioritize funding and make substantive decisions about how to promote efficiencies and cost-saving measures for the judicial branch.

AB 1208 also would have eliminated the ability of the Judicial Council to reallocate trial court funds during the year. Instead, any mid-year change to the allocation would have required an emergency act of the Legislature, or the written approval of 66 2/3% of the local trial court representatives.

For more information on the remaining “job killer” bills, visit www.CAJobKillers.com.

Staff Contact: Jennifer Barrera

They won’t know unless you tell them. Write your legislator. calchambervotes.com
CalChamber Backs Allowing Canada, Mexico to Participate in Trans-Pacific Trade Talks

The California Chamber of Commerce is supporting participation by Canada and Mexico in a proposed trade agreement whose current members account for more than $14 billion in California exports.

Companies and organizations are encouraged to submit letters by September 4 for a September 21 hearing on Mexico and a September 24 meeting on Canada.

The CalChamber submitted comments on the proposed Trans-Pacific Partnership (TPP) Agreement in response to a request by the U.S. Trade Representative for comments on negotiating objectives regarding Canada’s and Mexico’s participation in the proposed agreement.

High-Standard Agreement

Leaders of the nine current Trans-Pacific Partnership countries—Australia, Brunei Darussalam, Chile, Malaysia, New Zealand, Peru, Singapore, Vietnam and the United States—have announced the broad outlines of an ambitious, high-standard, regional, 21st-century agreement.

The CalChamber supports new countries joining the Trans-Pacific agreement as long as participants comply with current international norms and obligations, and commit to the high standards currently being negotiated for trade and investment, as well as intellectual property protection and enforcement.

Agreements like this ensure that the United States may continue to gain access to world markets, which will result in an improved economy and additional employment of Americans.

The CalChamber Coalition for Free Trade, a broad-based group of companies and business organizations working to secure a national free trade agenda, also submitted comments.

Large Markets/Close Partners

Besides being large export markets for the United States, Canada and Mexico are allies and close partners on major global issues. The CalChamber believes participation by Canada and Mexico in the proposed Trans-Pacific agreement would only further enhance this strong relationship.

Canada and Mexico are prepared to stand alongside the United States as some of the most ambitious countries in the TPP negotiations and are committed to discussing all topics at the table.

The Asia-Pacific region is a key driver of global economic growth, representing nearly 60% of global gross domestic product and roughly 50% of international trade.

Since 1990, Asia-Pacific goods trade has increased by 300%, while global investment in the region has increased by more than 400%. U.S. trade with Asian countries totals nearly $1 trillion annually.

Keeping U.S. Competitive

Even though U.S. exports to Asia continue to rise, the United States is gradually losing market share. Asian countries have negotiated more than 160 trade agreements among themselves, while the United States has signed only three (with Korea, Singapore and Australia). The agreement will help maintain America’s leadership position in an increasingly competitive global environment.

As the state covering the majority of the West Coast (for the lower 48 states), California has much to gain with the Trans-Pacific agreement.

Adding Canada and Mexico to the Trans-Pacific agreement will benefit California and the United States as a whole.

CalChamber Position

The CalChamber, in keeping with long-standing policy, enthusiastically supports free trade worldwide, expansion of international trade and investment, fair and equitable market access for California products abroad and elimination of disincentives that impede the international competitiveness of California business.

New multilateral, sectoral and regional trade agreements ensure that the United States may continue to gain access to world markets, resulting in an improved economy and additional employment of Americans.

Links to information about submitting comments, the CalChamber letters and more are available at www.CalChamber.com/TPP.

The trading partner portals are at www.calchamber.com/Canada and www.calchamber.com/Mexico.

Staff Contact: Susanne Stirling
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