VOLUME 38, NUMBER 25 • AUGUST 17, 2012



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.

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 probusiness, pro-jobs candidates in California.

CAJobKillers.com

Updates, news links, videos, contributions link

'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.

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. 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

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Job Creators Pending: Page 6



Cal/OSHA Corner

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



Mel Davis Cal/OSHA Adviser

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 California employers.

As of August 1, nine new regulations have been approved, affecting at least 30 sections and subsections of Title 8 of

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E-mail: alert@calchamber.com. Home page: www.calchamber.com. 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 January18, 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
- Ventilation Inside Shafts, Culverts and Pipelines (effective May 31, 2012): Sections 1533, 1541 and 8403.

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;

See Numerous: Page 4

CalChamber-Sponsored Seminars/Trade Shows

More information at www.calchamber.com/events.

Labor Law

Professionals In Human Resources
Association (PIHRA) Annual Conference & Exposition. August 27–29,
Anaheim. (310) 416-1210, ext. 810.
Special pricing for CalChamber members.

Employee Discipline Webinar. CalChamber. September 20. (800) 331-8877.

FMLA/CFRA Webinar. CalChamber. October 18. (800) 331-8877.

Conducting Workplace Investigations Webinar. CalChamber. November 15. (800) 331-8877.

International Trade

Access China. World Trade Center San

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

Pan African Global Trade Conference. Africa-U.S. Chamber of Commerce. September 6–7, Carson. (626) 321-7041.

Global Trade Expo 2012. U.S. Global Business Forum. September 6–9, Anaheim. (714) 493-1948.

Green Construction Trade Mission to Brazil. Bay Area Center for International Trade Development (CITD). September 9–15, São Paulo and Rio de Janeiro, Brazil.

New Markets: Exporting to Colombia/ Panama. Institute of the

See CalChamber-Sponsored: Page 5





CalChamber-Opposed Legislation Creates List of Shame; Information Misleading



A California Chamber of Commerceopposed 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 in corporate income tax apportionment methods to elective single-sales factor.

The single-sales factor formula looks solely at the proportion of a business' sales made in California when calculating tax liability. Adoption of the elective single-sales factor in 2011 preserved existing tax rates for many California businesses, while spurring job growth for those who had been penalized under the old formula, which in some cases punished employers with higher taxes when they invested more in the state because it required a four-factor apportionment formula based on in-state sales (double weighted), in-state property, and in-state payroll.

Misleading Information

AB 2439 requires the FTB to disclose the tax liability of a specific taxpayer.

As a single data point, this information is meaningless to any objective evaluation of single-sales factor. Many factors weigh into a taxpayer's final tax liability, including current or accumulated losses, credits, acquisitions, disputes, subsequent court decisions, audits, amended returns, etc. For many large multi-state taxpayers, final liability for a specific year may not be resolved for

years after the return is filed. As a result, no meaningful evaluation of single-sales factor is possible based on the disclosure of individual corporate tax liabilities.

Facilitates Harassment

The efficacy of the single-sales factor or any other state tax policy has nothing to do with the tax return information of any individual taxpayer.

Disclosing individual taxpayer information serves only as a tool to facilitate misleading and uninformed public harassment of individual taxpayers. If the Legislature desires an objective analysis on the benefits or costs of single-sales factor apportionment, or any other state tax policy, experts in the FTB and the Legislative Analyst's Office have access to a broad array of data, and can evaluate the entire spectrum of taxpayers to determine whether a tax policy is good or bad for the state as a whole. There is no need to disclose individual taxpayer information to facilitate such a fair and objective analysis of any state tax policy.

Other States

Proponents of AB 2439 have inaccurately claimed that other states already provide similar disclosure of confidential taxpayer information.

Arkansas and West Virginia permit disclosure only of the names of taxpayers who receive certain credits, rebates or discounts and the amount of those claimed credits. There is no disclosure of overall tax liability.

Massachusetts, while disclosing taxable income, tax paid and other information regarding tax liability, expunges all identifying taxpayer information.

Wisconsin, while allowing individual residents to obtain information regarding the amount of tax paid or payable by any other taxpayer, requires the requester to agree not to divulge, publish or disseminate any information obtained. In 2000, the U.S. Congress Joint Committee on Taxation completed an exhaustive review of taxpayer

confidentiality. The committee concluded:

"Taxpayers have a justifiable expectation of privacy in the extensive information they furnish under penalty of fine or imprisonment...Our tax system is based on voluntary compliance. Many observers believe that the degree of voluntary compliance is directly affected by the degree of confidentiality given the information that is provided to the IRS.

"If returns and return information were publicly available, it would invite a variety of intrusions into a taxpayer's privacy. Business competitors could use the information to gain economic advantage...A lack of confidentiality could also facilitate the use of return information for political gain."

The CalChamber encourages lawmakers to pursue a fair and objective evaluation of California's state tax policies. The information necessary to conduct such analysis already exists within state agencies and such analysis does not require the breach of taxpayer confidentiality. Should an actual need arise for the Legislature to examine individual returns, a committee of either house of the Legislature already has the authority do so.

In doing so, however, the Legislature itself saw fit to protect the confidentiality of this information by making any public dissemination of taxpayer-specific data a misdemeanor.

AB 2439 serves no real purpose in furthering an objective analysis of single-sales factor. It does, however, raise the concern addressed by the Joint Committee on Taxation that this information will not be used for a fair and objective analysis of single-sales factor but rather misleading the public for political gain.

Action Needed

AB 2439 awaits action by the entire Senate. Please urge your senator to **oppose AB 2439**. An easy-to-edit sample letter is available at *www.calchambervotes.com*. **Staff Contact: Jeremy Merz**



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 37: Genetically Engineered Foods. Mandatory Labeling. Initiative Statute. CalChamber opposes.
- **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

From Page 2

- 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/, 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

From Page 1 environmental benefits associated with polystyrene products. Assembly Floor.

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

From Page 2

Americas. September 10, La Jolla. (858) 453-5560.

The Americas Business Forum. Los Angeles Area Chamber of Commerce. September 12–13, Los Angeles. (213) 580-7570.

Expoalimentaria 2012. Exporters
Association, Ministry of Agriculture,
Ministry of External Relations, Prom
Peru. September 19–21, Lima, Peru.

Trade Mission to the UK. U.S. Commercial Service. October 15–17, London.

Eco Expo Asia 2012. El Camino College CITD. October 26–30, Hong Kong, China. (310) 973-3132. CA Cleantech Company Trade Mission to China. El Camino College CITD. October 30–November 11, China. (310) 973-3161.

Nagoya Export Trade Mission 2012. Aichi Prefectural Government, City of Nagoya, and Nagoya Chamber of Commerce and Industry. November 7–10, Nagoya, Japan. (310) 732-3838.

Trade Mission to South Africa and Zambia. U.S. Commercial Service. November 26–30, Lusaka/Ndola, Zambia and Johannesburg/Cape Town, South Africa. (202) 482-2054.



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.

CalChamber Opposition Stops 'Job Killer'



A California Chamber of Commerceopposed "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 real-locate 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



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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