

ALERT

VOLUME 39, NUMBER 21 • JUNE 28, 2013



Costly Workplace Bills Advance in Legislature



Two California Chamber of Commerce-opposed “job killer” bills that will place costly workplace mandates on employ-

ers passed policy committees in the second house to consider the proposals on June 26.

● **AB 10 (Alejo; D-Salinas)** unfairly imposes an automatic \$2 increase in minimum wage over the next five years, that will continue to increase costs on employers of all sizes, regardless of other economic factors or costs that California employers are struggling with to sustain their business.

● **SB 404 (Jackson; D-Santa Barbara)** 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 (FEHA) to include a protected classification for any person who is, perceived to be, or associated with an

individual who provides medical or supervisory care to a listed family member.

AB 10

AB 10 is unprecedented in that it locks in an automatic 25% increase in the minimum wage over the next five years, which far exceeds any reasonably expected rate of inflation, regardless of any other economic factors or costs employers may face.

Automatically indexing the minimum wage to inflation has always been troubling to the business community because it fails to take into consideration other economic factors or cumulative costs to which employers may be subjected.

Although employers appreciate the removal from AB 10 of the automatic adjustment in the minimum wage according to the Consumer Price Index (CPI), the proposed incremental increases over the next five-year period are essentially the same as tying the minimum wage to

See Costly Workplace: Page 7

Prop. 65 Drive-By Lawsuits: Bill Moving in Senate to Provide Protection for Business



A California Chamber of Commerce-supported job creator bill that aims to stop

Proposition 65 drive-by lawsuits continues to move in the Senate.

● **AB 227 (Gatto; D-Los Angeles)** protects small businesses from drive-by lawsuits by providing a 14-day right to

cure for allegations for a failure to post a Proposition 65 warning.

AB 227 passed the Senate Environmental Quality Committee on June 19, then the Senate Judiciary Committee on June 25, both times with unanimous support.

The bill has been supported by a broad coalition of organizations that include numerous local chambers of commerce.

Proposition 65 requires that a private
See Bill Moving: Page 6

U.S. Supreme Court Decisions Affect Employer Liability, Federal Benefits for Same-Sex Marriages



For California employers, major U.S. Supreme Court rulings this week will limit employer liability in Title VII harassment cases in federal court and have an impact on federal benefits for

spouses in same-sex marriages.

A June 24 decision in *Vance v. Ball State University* determines who is a “supervisor” for purposes of employer liability in Title VII harassment cases.

The *Vance* ruling may have little impact on cases brought under state law because California provides a statutory definition of who is a “supervisor” under the Fair Employment and Housing Act. This definition is broader than the definition under Title VII.

Two June 26 decisions on same-sex marriage rights mean, among other concerns, that employers will need to examine federal benefits for same-sex spouses.

‘Supervisor’ Defined

In the *Vance* case, the court provides a narrow definition of a supervisor as one who has the power to hire and fire or effect other significant change in employment status.

The 5-4 decision narrows the instances
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Cal/OSHA Corner

Even Aspirin in First Aid Kit Requires ‘Consulting Physician’ Approval



Mel Davis
Cal/OSHA Adviser

Does Cal/OSHA permit employers to furnish over-the-counter aspirin and/or allergy medicine to employees?

Even over-the-counter medications—whether aspirin or allergy pills—can be included in a workplace first aid kit only if recommended by the company physician.

Although Cal/OSHA rules governing most workplaces (General Industry Safety Orders, Section 3400, Medical

Services and First Aid) require “adequate first aid materials” be available, the regulations don’t specify the contents of the first aid kit.

First Aid Materials

Section 3400 requires that the first aid materials, “approved by the consulting physician,” be “readily available” for persons on every job. Section 3400 also requires employers to:

- ensure the ready availability of medical personnel for advice and consultation on matters of industrial health or injury;
- have a person or persons trained to render first aid when there is no infirmary, clinic or hospital close to the workplace, for the treatment of all injured employees; and
- keep first aid materials in a sanitary and usable condition, making frequent inspections to ensure adequate supplies are available, and replenishing supplies as necessary.

Workplace Requirements

If the workplace is one where employees may be exposed to injurious corrosive materials, the regulation requires there be suitable facilities for quickly drenching/flushing the eyes or body in an emergency.

If an ambulance service isn’t normally available within 30 minutes, Cal/OSHA may require stretchers and blankets, or other adequate warm covering. When the worksite is at an isolated location, the regulation also requires provisions be made in advance for prompt medical attention to serious injuries.

Construction Regulations

More specific regulations about first aid requirements appear in the Construction Safety Orders, Section 1512. These regulations require minimum first aid supplies to be determined by “an employer-authorized, licensed physician” or according to a table based on the number of employees.

For workplaces of one to 15 employees, the table lists: adhesive dressings, 1-inch wide adhesive tape rolls, eye dressing packet, 2-inch gauze bandage roll or compress, 2-inch and 4-inch sterile gauze pads, triangular bandages, safety pins, tweezers and scissors, “appropriate record forms” and an up-to-date first aid book.

The regulations list additional supplies for workplaces with more employees. The regulations require that there be personnel trained in first aid at the worksite, and prohibit the employer from putting certain materials in the first aid kit unless an employer-authorized, licensed physician specifically approves them in writing.

The materials listed as requiring specific physician approval are: drugs, antiseptics, eye irrigation solutions, inhalants, medicines or proprietary preparations.

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: Neil Ishikawa. Capitol Correspondent: Christine Haddon.

Permission granted to reprint articles if credit is given to the California Chamber of Commerce Alert, and reprint is mailed to Alert at address above.

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CalChamber-Sponsored Seminars/Trade Shows

More information: calchamber.com/events.

Labor Law

California Employers and Workplace Privacy Webinar. CalChamber. July 18. (800) 331-8877.

HR Boot Camp: Toughest Challenges. CalChamber. September 11, San Diego. (800) 331-8877.

Put It in Writing: Employee Handbooks Webinar. CalChamber. September 19. (800) 331-8877.
California Rules for Pay/Scheduling Nonexempt Webinar. CalChamber. October 17. (800) 331-8877.

See CalChamber-Sponsored: Page 3

CalChamber Calendar

2013 PAC Workshop:
September 27, Burbank

Next Alert: July 12



State Agency Pondering New Look at Heat Illness Prevention Requirements

CalChamber Encouraging Employers to Attend July 8 Meeting



Are changes needed in California's heat illness prevention standard? The California Division of Occupational Safety and Health (Cal/

OSHA) has scheduled an "advisory meeting" on July 8 to hear public comments on that question.

The meeting is scheduled for 10 a.m. to 4 p.m. at the Elihu Harris State Building, 2nd Floor, Meeting Room 1, 1515 Clay Street, Oakland.

The California Chamber of Commerce is encouraging members to attend and participate in the meeting to explain how well the current standard is working.

Readers interested in participating and providing remarks can contact Marti Fisher, marti.fisher@calchamber.com or call her at (916) 444-6670 to discuss the meeting logistics.

Employers Complying

Cal/OSHA reports "steady progress" in increasing employer compliance with the heat illness prevention regulation.

Citations are issued most frequently for shortcomings in the written heat illness prevention program or employee training, rather than providing water or access to water, according to information shared with the Cal/OSHA Advisory Committee on June 6.

The agenda for the July 8 meeting includes a discussion of each of the significant provisions of the standard to suggest changes in the heat illness regulation.

Agenda items include:

- providing water (including location and quality);
- access to shade (including trigger temperature, shade requirements and the duration/frequency of cool-down breaks);
- high heat procedures (including trigger temperature and breaks);
- training (including acclimatization, emergency response procedures and other areas of training); and
- applying/amending abatement requirements and issuing repeat citations.

Heat Illness Regulations

Cal/OSHA implemented California's landmark regulations in July 2006 to protect outdoor employees from the

effects of heat exposure. The regulations also mandated training 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 training, employers must provide potable drinking water, offer access to shade, and compile heat illness prevention procedures, including employee training, in writing.

In 2010, 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. The procedures include 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 materials.

All employers, however, are advised to take additional precautions during periods of high heat.

Staff Contact: Marti Fisher

CalChamber-Sponsored Seminars/Trade Shows

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Business Resources

Internship Program Workshop. University of the Pacific and Collegial Services.

July 17, Sacramento. 10% discount for CalChamber members. Use promo code "Chambers" when registering. (925) 818-2280.

California HR Conference. Professionals in Human Resources Association. August 26-28, Anaheim. (310) 416-1210.

International Trade

Trade Mission to Colombia. Los Angeles County Business Federation and Los Angeles Metro Hispanic Chambers. July 14-19, Bogota, Colombia. (818) 984-5080.

Go Global Webinars. U.S. Department of Commerce. July 16: Finding Buyers

and Making Contacts; July 30 and August 13: Trade Financing; August 27: Documentation and Shipping; September 10 and September 24: Understanding Export Regulations; October 8: Avoiding and Resolving Problems.

Brazil: Exploring a Changing Culture. World Affairs Council of Northern California. July 18, San Francisco. (415) 293-4600.

Modern China: Creation of a Global Power. World Affairs Council of Northern California. July 31, San Francisco. (415) 293-4600.

America's Cup: San Francisco 2013. America's Cup. September 7-22, San Francisco.

China International Auto Parts Expo 2013. Consulate General of People's

Republic of China, San Francisco. September 13-15, Beijing, China. (415) 852-5972.

Guy Fox Maritime Industry Salute Dinner. International Seafarers Center of Long Beach-Los Angeles. September 18, Aboard RMS Queen Mary. (310) 816-6510.

The Americas Business Forum. Los Angeles Area Chamber. September 25-26, Los Angeles. (213) 580-7570.

Expo Pakistan. Trade Development Authority of Pakistan. September 26-29, Karachi, Pakistan.

SelectUSA 2013 Investment Summit. U.S. Department of Commerce, International Trade Administration, and SelectUSA. October 31-November 1, Washington, D.C. (202) 482-6800.

U.S. Supreme Court Will Hear NLRB Recess Appointments Case



In addition to issuing significant employment law decisions, the U.S. Supreme Court decided on June 24 to grant review to a case challenging President Barack Obama's "recess"

appointments to the National Labor Relations Board (NLRB).

The case, *National Labor Relations Board v. Noel Canning* (Docket No. 12-1281), is important because it calls into question several key NLRB opinions issued during the period in question.

In January, the U.S. Court of Appeals for the District of Columbia Circuit ruled that the President's "recess" appointments to the NLRB were "constitutionally invalid" because the U.S. Senate was not actually in recess at the time President Obama made three appointments to the NLRB.

The NLRB appealed the decision to the U.S. Supreme Court, and the court granted the NLRB's petition to review the case.

The following questions were presented in the NLRB petition:

- Whether the President's recess-appointment power may be exercised during a recess that occurs within a session of the U.S. Senate or is instead limited to

recesses that occur between enumerated sessions of the U.S. Senate.

- Whether the President's recess-appointment power may be exercised to fill vacancies that exist during a recess, or is instead limited to vacancies that first arose during that recess.

The Supreme Court added another question to be considered:

- Whether the President's recess-appointment power may be exercised when the Senate is convening every three days in pro forma sessions.

The case will be decided in the Supreme Court's next term, which will begin on the first Monday in October.

Staff Contact: Gail Cecchetti Whaley

Supreme Court Decisions Affect Employer Liability and Federal Benefits

From Page 1

where businesses can be held automatically liable for harassment in the workplace for those cases brought under federal law.

In the decision, Chief Justice John Roberts and Justices Kennedy, Alito, Scalia and Thomas voted together for the majority. Justices Ginsburg, Breyer, Sotomayor and Kagan dissented.

Justice Ginsburg was vigorous in her dissent, taking the step of reading aloud her dissent and calling on Congress to overturn the decision.

An employer's liability in a Title VII harassment case depends on the harasser's relationship to the victim:

- If the harasser is a co-worker, the employer is liable only if it was negligent in controlling working conditions—the employer knew or should have known of the harassment and did nothing.

- If, on the other hand, the harasser is a supervisor, the employer can be held automatically liable for supervisory harassment. (There is a defense available in certain circumstances of hostile work environment harassment.)

Maetta Vance, a catering specialist at Ball State University (BSU), argued that she was repeatedly harassed by another employee, Sandra Davis, on the basis of her race. Vance sued the school under federal law, alleging that the university was automatically liable because Davis was Vance's supervisor.

But the lower court held that Davis, who had no hiring and firing authority, was not Vance's supervisor and threw the

case out before trial.

The Supreme Court agreed and found that Davis was not Vance's supervisor. The Court ruled that an employer can be automatically liable for an employee's unlawful harassment only when the employer has given that employee the power to take "tangible employment actions" against the victim, such as hiring, firing, demotion, promotion or transfer.

"Because there is no evidence that BSU empowered Davis to take any tangible employment actions against Vance, the judgment of the Seventh Circuit [holding that BSU is not automatically liable for Davis's actions] is affirmed," said Justice Samuel Alito, writing for the majority.

Although Davis directed Vance's daily activities, the parties agreed that she had no power to hire, fire, demote, promote, transfer or discipline Vance.

Same-Sex Marriage

In *United States v. Windsor*, issued June 26, the U.S. Supreme Court struck down a key provision of the Defense of Marriage Act (DOMA) that defined marriage as only between a man and a woman and a "spouse" as only a person of the opposite sex.

The court found that defining marriage to exclude same-sex unions is unconstitutional and violates the equal protections afforded by the Fifth Amendment of the Constitution.

In a second June 26 ruling, *Hollingsworth v. Perry*, the high court left in place a lower federal court decision that

Proposition 8 is unconstitutional and cannot be enforced. Proposition 8 outlawed same-sex marriage in California by defining marriage as between only a man and a woman.

California employers should know that these cases impact federal benefits for same-sex marriages. It remains to be seen exactly how various federal agencies will act in light of the decisions.

With California becoming one of 13 states that recognize same-sex marriage, employers here will need to examine federal benefits for spouses.

The definition of "spouse," as the U.S. Supreme Court noted, appears in a multitude of federal statutes and regulations that have an impact on employers, including:

- Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage;

- Employee Retirement Income Security Act (ERISA) benefit plans;

- the Family and Medical Leave Act (FMLA)—employees would be able to take leave for same-sex spouses;

- the Health Insurance Portability and Accountability Act (HIPAA);

- Flexible spending accounts;

- the Internal Revenue Code—health benefits for "spouses" not included in an employee's "gross income."

HRCalifornia will continue to keep readers apprised as federal agencies begin to comply with these decisions. California employers with any immediate questions about providing benefits to same-sex couples are advised to consult with legal counsel.

Staff Contact: Gail Cecchetti Whaley

Barriers to Economic Development Pass; Next Stop: Vote on Assembly Floor



Two California Chamber of Commerce-opposed “job killer” bills passed Assembly policy committees this week and will be considered next by the

full Assembly.

- **AB 52 (Gatto; D-Los Angeles)** creates significant obstacles for new development and opens up new avenues for California Environmental Quality Act (CEQA) litigation.

- **SB 365 (Wolk; D-Davis)** creates uncertainty for California employers making long-term investment decisions by requiring tax incentives end 10 years after their effective date.

AB 52: CEQA Consultation

AB 52 requires lead agencies to engage in substantial consultation with Native American tribes early in the CEQA process prior to approval of land use projects that may have an adverse impact on a tribal cultural resource.

The CalChamber and a coalition of employer groups emphasize that they are not opposed to the goal of protecting tribal cultural sacred places.

To that end, the CalChamber and many of the groups in the coalition worked closely with the Legislature and California tribes during the 2003–2004 legislative session to pass SB 18 (Burton; D-San Francisco), which established meaningful ongoing government-to-government consultation regarding the protection of cultural sacred places by requiring local city and county governments to consult with Native American tribes about proposed local land use planning decisions including the adoption or substantial amendment of general plans, specific plans, and the dedication of open space for the purpose of protecting cultural places.

Dramatic Shift in Decision Making

The coalition is open to a dialogue about the ways in which the SB 18 process has been implemented, but remains very concerned with AB 52’s

dramatic shift in land-use decision-making from local government to tribal governments, the new complications the bill would create for environmental impact reviews under CEQA, the reliance on project-by-project reviews rather than earlier broadly based identification and planning, and the costs this measure would impose on future projects throughout the state.

Although May 30 amendments resulted in AB 52 no longer granting Native American tribes veto authority over land use projects, as currently drafted, the bill will curtail the growth of jobs and the economy of California.

Disincentive to Invest

It will create a disincentive to invest in land, whether it is to build affordable housing, build schools and universities, or construct needed infrastructure projects such as roads and highways, or renewable energy projects.

AB 52 has the potential to stop development of state and local public safety projects, such as firehouses, police stations, and jails. Every project in California could be adversely affected by AB 52’s new CEQA process, regardless of whether there are legitimate impacts to cultural sacred sites.

SB 365: Tax Credit Sunset

The CalChamber supports efforts of the state to consider the effectiveness of tax policies and programmatic expenditures.

SB 365, however, attempts to address this periodic review and good government structure related to tax policy by mandating a maximum 10-year sunset on all future tax credits. This would have the adverse effect of creating uncertainty about the future of the state’s tax structure.

Stability Is Key

When businesses choose to locate in a state, factors such as the availability of a skilled workforce, infrastructure, regulatory environment, and tax structure all play a significant role. Businesses evaluate whether they can rely on these factors to remain relatively stable and consistent in the long term.

Furthermore, for capital-intensive

industries like manufacturing and research and development, investment decisions are made many years into the future. The ability for corporate decision makers in these industries to plan anticipated costs over a span of many years is an important factor when determining locations for these investments.

Establishing an arbitrary maximum 10-year sunset puts the long-term viability of any credit in jeopardy and, in many cases, could ultimately render the credit’s value useless in a company’s final decision on a location.

Amendments Needed

The CalChamber believes that the arbitrary maximum 10-year sunset requirement should be amended to allow tax credits introduced in the future to be evaluated on their own merit. A reasonable sunset should be applied only if appropriate.

Key Votes

- **AB 52** passed the Assembly Natural Resources Committee on June 24, 6-0:

Ayes: Chesbro (D-North Coast), Garcia (D-Bell Gardens), Muratsuchi (D-Torrance), Skinner (D-Berkeley), Stone (D-Scotts Valley), Williams (D-Santa Barbara).

Absent/abstaining/not voting: Grove (R-Bakersfield), Bigelow (R-O’Neals), Patterson (R-Fresno).

- **SB 365** passed the Assembly Revenue and Taxation Committee on June 24, 5-2:

Ayes: Bocanegra (D-Pacoima), Gordon (D-Menlo Park), Mullin (D-South San Francisco), Pan (D-Sacramento), Ting (D-San Francisco).

Noes: Dahle (R-Bieber), Nestande (R-Palm Desert).

Absent/abstaining/not voting: Harkey (R-Dana Point), V. M. Pérez (D-Coachella).

Staff Contacts: Mira Guertin, Jeremy Merz

CAJobKillers.com

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.

Expanded Authority for Coastal Commission Passes



OPPOSE

A California Chamber of Commerce-opposed bill that creates an incentive for the California Coastal Commission to impose fines and penalties passed a Senate policy committee this week.

AB 976 (Atkins; D-South Park/Golden Hill) inappropriately expands the Coastal Commission's enforcement by allowing the commission to impose administrative civil penalties and incentivizes the imposition of fines and penalties at the expense of due process that occurs in the judicial system.

In opposing the bill, the CalChamber and a coalition of business groups point out that AB 976 is both unnecessary and bad public policy. It creates an unacceptable dynamic whereby the commissioners and commission staff would be incentivized to impose fines and penalties, at the expense of due process and rights for the accused, rather than pursuing those fines and penalties through the judicial branch where that function properly belongs.

The commission has not demonstrated a need for this expanded authority other than to cite the fact it has 1,800 open violations. In fact, the commission has yet to provide one example of knowing,

intentional, violations causing ongoing resource damage that it has been unable to pursue. The commission should be responsible for providing this information.

The only assertion by the bill's author is that the commission needs more money and that it's costly (not to the commission) to pursue enforcement through the courts.

Giving the commission authority to impose civil penalties is overkill and is unsupported by any demonstrated need other than the need for a bigger budget.

Key Vote

AB 976 passed the Senate Natural Resources and Wildlife Committee on June 25, 6-2:

Ayes: Pavley (D-Agoura Hills), Evans (D-Santa Rosa), Jackson (D-Santa Barbara), Lara (D-Bell Gardens), Monning (D-Carmel), Wolk (D-Davis).

Noes: Cannella (R-Ceres), Fuller (R-Bakersfield).

No vote recorded: Hueso (D-Logan Heights).

The bill will be considered next by the Senate Judiciary Committee.

Staff Contact: Valerie Nera

Bill Moving to Protect Business from Prop. 65 Drive-By Lawsuits

From Page 1

business with more than 10 employees post warnings when it knowingly exposes workers or the public to listed chemicals.

These warnings can take the form of placards in business establishments where listed chemicals exist or are released into the environment, or as part of the labeling of a consumer product that contains any of the 774 chemicals currently on the list.

AB 227 addresses one very avoidable cost that results from a handful of law firms targeting businesses with drive-by lawsuits, alleging the businesses lack the signage required by Proposition 65.

These lawsuits can easily cost thousands of dollars to litigate, causing many small businesses to settle out of court regardless of whether they actually needed to have signage posted at their business establishments, if the failure to post was made in good faith, or if the signage they did have was merely the wrong size.

The 774 chemicals on the Proposition 65 list range from those that pose limited or no risk based solely on their presence at a business establishment—such as alcoholic beverages and aspirin—to others that pose an obvious and widely

known risk, like diesel engine exhaust and tobacco smoke.

Hundreds of businesses are targeted in these lawsuits each year, costing millions of dollars in lost productivity and jobs.

AB 227 will help eliminate the inappropriate use of litigation, while ensuring that the public does receive Proposition 65 warnings when appropriate.

AB 227 will be considered next by the Senate Appropriations Committee.

Staff Contact: Mira Guertin

Webinar Reveals Employer Confusion over Federal Health Care Law

Just six months remain before the federal Patient Protection and Affordable Care Act (ACA) goes into effect, but response to a California Chamber of Commerce webinar last week demonstrated that a lot of confusion and uncertainty still exists about how the law will work and what employers must do to comply.

A sample of some of the questions raised by participants during the June 20 webinar on *Strategies for Employer Compliance Under the Affordable Care Act* included:

- Does the ACA apply to employers with less than 50 employees?
- When is the 50-employee limit calculated? Mid-year? Or at the end of the year? We only have 46 full-time employees now and may or may not hire additional employees this year.
- The affordable care act extends to employee's dependents as well? I thought it just required us to offer it to our employees.
- What if the employer "offers coverage," but the employee declines and then goes to the exchange? Will the employer get fined?
- Are independent contractors considered "employees" under the ACA?
- What is the Exchange and who will be able to use the Exchange?
- By offering insurance to dependents, are we required to pay for dependent coverage?
- Do employers have to pay for the dependents or just for the employee?



Webinar Recording

A recording of the June 20 webinar is available free to CalChamber members at calchamber.com/june20 or by calling (800) 331-8877 and mentioning priority code REG. The recording is \$99 for nonmembers.

Future Webinars

The CalChamber plans two more webinars about the federal health care law in August.

- August 1: Moss Adams on tax implications of the ACA.
 - August 15: Wells Fargo Insurance on employee benefits related to the ACA.
- The CalChamber-moderated live, 90-minute webinars will run from 10 a.m. to 11:30 a.m. PT.

CalChamber Video

A CalChamber-produced video also helps explain what small businesses (2-50 employees) need to know about the state's health exchange.

The video features Peter Lee, executive director of Covered California, the state's first-in-the-nation online insurance marketplace (health exchange). Lee clarifies the responsibilities of small business and responds to questions posed by small business owners.

To view the video, visit www.calchamber.com/videos.

Business-specific provisions of the ACA are explained at *HealthLawGuide forBusiness.org*, a website developed by The California Endowment, with support from business partners, including the CalChamber.

Costly Workplace Bills Advance in Legislature

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inflation, and in fact even worse.

The average rate of inflation over the last 10 years in California is 2.5%. Applying a 2.5% rate of inflation over the next five years to the current minimum wage would increase the minimum wage only to \$9.06, almost a dollar less than the current proposal under AB 10.

Negative Impact

Although California's economy is showing signs of improvement, such improvement is still at the infant stage. California still has one of the highest unemployment rates in the country at 8.6%, with some counties still facing unemployment rates exceeding 22%. An increase in the minimum wage that starts in 2014 and continues through 2018, will have a negative impact on any economic recovery by either limiting available jobs or, worse, creating further job loss.

SB 404

SB 404 proposes to include "familial status" as a protected classification under

the FEHA to prevent discrimination on such basis.

Such a broad application of a protected classification will essentially encompass almost all employees in the workforce and therefore will hamper an employer's ability to manage its business, as any adverse employment action the employer takes against an employee could potentially be challenged as discriminatory on the basis of "familial status."

Employees Already Protected

California already protects employees from discrimination on the basis of sex, pregnancy, medical condition, mental disability or physical disability. Similarly, California provides employees with leave to care for the serious medical condition of family members, which may be compensated through California's Paid Family Leave Act.

In addition, California also requires "kin care," mandating that an employee be allowed to use at least half of any accrued sick leave to care for family members. These various leaves and protections are in

addition to those provided by federal law. Given these existing protections, there is no reason to include under California law the broad protected classification SB 404 proposes, other than to increase litigation opportunities.

Key Votes

• **AB 10** passed the Senate Labor and Industrial Relations Committee on June 26, 3-1:

Ayes: Leno (D-San Francisco), Monning (D-Carmel), Yee (D-San Francisco/San Mateo).

Noes: Wyland (R-Escondido)

No vote recorded: Padilla (D-Pacoima)
• **SB 404** passed the Assembly Labor and Employment Committee on June 26, 5-2.

Ayes: Alejo (D-Salinas), Chau (D-Alhambra), Gomez (D-Los Angeles), R. Hernández (D-West Covina), Holden (D-Pasadena),

Noes: Gorell (R-Camarillo), Morrell (R-Rancho Cucamonga).
Staff Contact: Jennifer Barrera

THURSDAY, JULY 18, 2013 | 10:00 – 11:30 A.M. PT

Live Webinar: What California Employers Should Know About Workplace Privacy

Employers must tread carefully when it comes to privacy rights. For example, it's important to know the limits you can place on mobile device use, emails and other employee communications during and outside of work. But how do you balance lost productivity with being too restrictive? What if you suspect misconduct? Privacy issues are a growing concern for all involved.

Join our employment law experts for clarity on employee privacy rights related to:

- State and federal guarantees and limitations
- Pre-hire background and social media checks
- Use of employer's electronic devices and employees' personal mobile devices
- Social media posts by employees while at work
- Employee monitoring
- Drug and alcohol testing

They'll also address drafting company policies on what employees can and can't expect to remain private in the workplace.



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