

ALERT

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 **CalChamber**
CALIFORNIA CHAMBER OF COMMERCE

New Law Helps Prevent Drive-By Prop. 65 Lawsuits



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

drive-by lawsuits has been signed by Governor Edmund G. Brown Jr. and took effect immediately.

AB 227 (Gatto; D-Los Angeles) protects small businesses from shake-down lawsuits related to alleged missing or inadequate signage required by Proposition 65 by providing them with a 14-day window to cure a signage violation in certain situations, thereby avoiding a private lawsuit.

The bill received overwhelming unanimous support from every committee to review it, as well as the Assembly and Senate.

Proposition 65

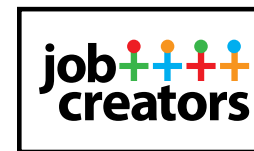
Proposition 65, approved by voters in 1986, enacted “The Safe Drinking Water and Toxic Enforcement Act of 1986,” which is designed to protect California’s drinking water from chemicals known to cause cancer or birth defects, and to warn members of the public about the presence of those chemicals in their environment to help them avoid exposure.

Since its enactment in 1989, Proposition 65 has helped protect the public by encouraging businesses to renovate their facilities, reformulate their products, and update their manufacturing processes to eliminate the use of listed chemicals.

Proposition 65 requires, among other things, that private businesses with more than 10 employees post warnings when they knowingly expose workers or the

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Governor Signs Bill Creating Dependable Tax Environment



A California Chamber of Commerce-supported job creator bill has been signed by

the Governor, sending a strong message to small business investors that California keeps its promises and is worthy of investment.

AB 1412 (Bocanegra; D-Pacoima) repeals the Franchise Tax Board’s (FTB) decision to retroactively tax small business investors who relied in good faith on the law when they made the decision to invest in California and use the Qualified Small Business tax incentive, which was recently found unconstitutional.

A principal coauthor of AB 1412 was Senator Ted Lieu (D-Torrance), one of the first and strongest advocates for relief, along with Assemblyman Jeff Gorell (R-Camarillo) (*see May 3 Alert*). Lieu’s **SB 209** also was signed by the Governor.

Tax Environment

Since the 1990s, the “qualified small business stock” (QSBS) incentive had functioned successfully, spurring investment in California’s small businesses and startup companies. This incentive encouraged investment by allowing small business investors to exclude up to 50% of California’s capital gains tax upon sale of their small business stock.

When the 2nd District Court of

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Poster Update in 2014



Pre-Order at calchamber.com/2014poster

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Labor Law Corner

Travel Time to First Location Usually Not Considered as Hours Worked



Barbara Wilber
HR Adviser

Our employees regularly commute to different work locations each day. Do we have to pay for their commute to the first location?

In the absence of a collective bargaining agreement, which addresses travel pay or when the employment is subject to the public works laws, travel time to a first location usually is not considered to

be hours worked. Some situations, however, affect this general rule and result in compensation being owed.

‘Reasonable Distance’

The Division of Labor Standards Enforcement has traditionally recognized that employees in occupations such as construction expect to report to varied worksites. As long as the worksite is within a reasonable distance, travel to the first location is not considered hours worked.

The term “reasonable distance” has not been definitively established. The division, however, has stated that these factors should be considered: the nature of the employment, the type of industry and the industry standard, and the reasonable agreement between the parties.

For varied travel that extends beyond a reasonable distance, the employee should be compensated for any time that exceeds his/her usual or normal commute.

Other Circumstances

In a circumstance where the employer requires the employee to deliver tools, materials and supplies to the job location, the commute would be compensable.

Another unique situation is where nonexempt employees are specifically assigned to work from home. When these employees travel to varied sites, they are entitled to compensation for the first and subsequent commutes.

In each situation, review the specific facts of the travel requirements, establish a travel policy and provide a written agreement.

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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CalChamber-Sponsored Seminars/Trade Shows

More information: calchamber.com/events.

Labor Law

California Rules for Pay/Scheduling
Nonexempt Webinar. CalChamber.
October 17. (800) 331-8877.

HR Boot Camp. CalChamber. December
4, San Francisco. (800) 331-8877.

International Trade

California Trade and Investment Delegation
to China. Bay Area Council.
October 13–20. (415) 946-8734.

Trade Expo Indonesia 2013. Indonesia
Ministry of Trade. October 16–20.
Jakarta Fairground, Kemayoran,
Indonesia.

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

Multi-Sector Trade Mission to Mexico.
California State Trade and Export
Promotion. November 6–13, Sacra-

mento. (916) 563-3200.

Expanding Horizons 2013. Overseas
Private Investment Corporation.
November 13, San Jose. (800) 814-
6548.

K-Tech Conference and Expo. KOTRA,
Korea Trade-Investment Promotion
Agency NIPA, National IT Industry
Promotion Agency. November 14–15,

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CalChamber Calendar

Fall Public Affairs Conference:
October 17–18, Laguna Niguel

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Next Alert: October 25



Small Business Advocate of the Year Award

Break from Status Quo: Business Leader Focuses on Growth in City Plan



Craig Lewis

There's a principle that Craig Lewis, president of California Prudential Realty, tries to live by: "If you're happy with the results you're getting, then continue to do what you're doing. But, if you

want different results, you've got to do things differently."

So when the Modesto City Council began to consider updates to the 25-year-old city General Plan that continued to reduce the amount of land available for economic development and the creation of jobs, Lewis and the Modesto Chamber decided to take action by creating a new plan to present to the city council.

Proposing a Plan

Under Lewis' direction, the Modesto Chamber Land Use and Transportation Committee rallied business members and held information-gathering discussions with a variety of local government officials, community leaders and stakeholders. Based on the information gathered in the meetings, Lewis and the committee developed well thought-out plans to create job centers, new functional traffic corridors and detailed maps depicting these plans for the greater Modesto area.

The plans were presented to critical and influential decision makers in the Modesto community to solicit support for transportation improvements, employ-

ment opportunities and a stronger local economy.

Pushing for Change

Although the proposed plan has gained much support, the city planning department has proposed its own plan in response, which means there are going to be debates and discussions as to what the city's future should look like, Lewis said.

Essentially, it's now "a political fight," he said, between those who are content with the way Modesto is, and those who would like to see more job creation and long-term planning.

Lewis forms part of the latter group, stressing that the city suffers from a lack of long-term vision, economic diversity and brain drain, because there are no jobs other than those in the agricultural sector.

"We've been doing the same thing for 40-plus years in Modesto, and consequently we're being left behind when you compare us to other communities in California," he said. "The ironic part is that some people like it the way it is. Our biggest challenge is fighting the status quo."

And this is why advocacy is important. "It's the only way you can change things," Lewis said.

Advocating for Small Business

Like Modesto, California also has important issues facing small business and job growth. The most pressing business issue facing the state is "places where people can actually grow their business," Lewis said.

Also of concern is regulation, such as the California Environmental Quality Act (CEQA) process, building permit process

and restraints put into place for emissions, he added.

This is where a chamber of commerce can help tremendously with advocacy efforts as its role is "to be an advocate for business," he said.

In addition to working on the General Plan proposal, Lewis and the Modesto Chamber Land Use and Transportation Committee also lobbied last year for additional business park land, recommending downtown redevelopment projects and tackling tough business issues relating to economic development, including improving air service and ground transportation.

On May 21, the California Chamber of Commerce presented Lewis with a Small Business Advocate of the Year Award in recognition of his hard work and dedication to advocating for small business.

In recommending him for the award, Cecil Russell, president and CEO of the Modesto Chamber, said, "Craig has positively impacted our community by not only discussing, but taking action on land use and transportation and other pressing issues facing the Modesto and San Joaquin Valley communities."

Moreover, even though the issues Lewis worked on are challenging and time consuming, Lewis "remains undaunted and driven," Russell said.

In addition to serving as chairman of the Modesto Chamber Land Use and Transportation Committee, Lewis is the former chairman of the Modesto Chamber Board of Directors. He currently is serving as vice chairman of external operations.

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Undocumented Immigrants May Be Eligible for Driver Licenses

Undocumented persons who meet certain requirements may be eligible to obtain driver licenses under a bill Governor Edmund G. Brown Jr. signed into law on October 3.

AB 60 (Alejo, D-Salinas) requires the California Department of Motor Vehicles (DMV) to issue a driver license to undocumented persons who can prove identity and California residency, and meet all other licensing requirements, such as the written and behind-the-wheel exams.

The card will have a notation on it stating that it is not acceptable for federal purposes, such as verifying eligibility for employment; in other words, it is not acceptable for I-9 verification.

Quick Facts

Some quick facts about AB 60:

- AB 60 is not operative until January 1, 2015, or on the date the director of the

DMV executes a specified declaration, whichever is sooner. The DMV is required to begin the process of adopting regulations to implement the new law, including documents acceptable for the purposes of proving identity and California residency, as well as procedures for verifying authenticity of documents.

- AB 60 requires that the card specifically include the following notation: "This card is not acceptable for official federal purposes. This license is issued only as a license to drive a motor vehicle. It does not establish eligibility for employment, voter registration, or public benefits." The card will also bear a mark stating "DP" instead of "DL."

- AB 60 makes it a violation of law to discriminate against an individual because he/she holds or presents a license issued under AB 60.

- The law specifically prohibits the

use of the license bearing the DP mark and notation as a basis for a criminal investigation, arrest or detention.

- For employers who hire commercial drivers, AB 60 states that its provisions do not authorize an individual to apply for, or be issued, a commercial driver's license without submitting his/her Social Security number with his/ her application.

Unanswered Questions

Until the regulations are released, there are unanswered questions regarding the implementation of this law and any potential conflicts with federal law. There also may be legal challenges to AB 60.

The *HRWatchdog* blog will continue to provide updated information on this legislation and any effect it may have for employers.

Staff Contact: Gail Cecchetti Whaley

New Law Helps Prevent Drive-By Proposition 65 Lawsuits

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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 a listed chemical. There are currently 774 chemicals on the list.

Drive-By Lawsuits

The benefits of Proposition 65 have not come without a cost to the economy, however. AB 227 addresses one very avoidable cost that results from the

practice of a handful of law firms targeting businesses with drive-by lawsuits alleging they do not have adequate signage as 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, or if they posted a sign in the wrong size or with incorrect wording on accident.

Many business owners rightly determine that signage is not required given the exposure levels of a particular

chemical at their business establishment, or that no listed chemicals are present at all, but this does not prevent a law firm from making an allegation in a demand letter in order to pressure businesses into handing over a small settlement.

Hundreds of businesses are targeted in these lawsuits each year, costing the state millions of dollars in lost productivity and jobs. AB 227 will help eliminate the inappropriate use of litigation while ensuring that the public receives Proposition 65 warnings when appropriate.

Staff Contact: Mira Guertin

Governor Signs Bill Creating Dependable Tax Environment

From Page 1

Appeal invalidated certain provisions in the QSBS incentive last year, small business investors were faced with substantial retroactive tax bills.

Reassures Businesses

AB 1412 is a well-crafted solution to resolve this problem. Entrepreneurs and investors chose to invest in California's small businesses based in part on the state's tax structure and incentives. The California business climate needs to be dependable for these investors, whose startup businesses fuel the state's economic growth.

Stability and predictability—essential factors for small business investors choosing California as their headquarters for innovation—are especially important for California to maintain due to other states constantly trying to lure away entrepreneurs.

AB 1412 sends a compelling message of reassurance to businesses, especially those within the high-tech and biotech communities where startup entrepreneurs are most prevalent, that California will honor its promises to those who invest in the state.

Innovation Crucial to Economy

Inviting innovation is crucial to California's economic recovery. AB 1412 will help California promote its business climate by encouraging future investment and growth while ensuring the state remains the best place for ingenuity and development.

By restoring fairness and predictability to California's tax system, this bill lets small business investors know for certain that they can commit to California.

Staff Contact: Jeremy Merz

More Family Members, No New Mandate with Just-Signed Paid Family Leave Bill

A recently signed bill, **SB 770 (Jackson; D-Santa Barbara)**, simply expands the type of family members for whom an employee may seek wage replacement benefits under Paid Family Leave (PFL) and does not place any new mandates on employers.

This legislation will go into effect on July 1, 2014.

Wage Replacement

California's PFL program is a wage replacement program that provides employees with some financial compensation when they are out on either an employer-approved leave of absence or a separate protected leave of absence, such as leave under the California Family Rights Act (CFRA), to care for the health condition of a family member or bond with a child.

PFL is not by itself a protected leave of absence from work and does not

provide employees with an independent right to take a leave of absence from work if an employer does not actually approve the leave. Recently signed SB 770 does not change this.

PFL does not create the right to a leave of absence, but provides partial wage replacement for California workers during a qualifying absence.

Before SB 770, an employee could seek wage replacement benefits under PFL only if:

- the employee was on an approved leave of absence to bond with a child within the first year of the child's birth, placement as a foster child, or after adoption; or
- the employee was on leave to care for the serious health condition of a child, parent, spouse, or domestic partner.

More Family Members

SB 770 expanded the second category

of PFL to include the right to obtain wage replacement benefits while an employee is out on leave to care for the serious health condition of a grandparent, grandchild or sibling, or parent-in-law, as defined.

Accordingly, any leave taken to care for the serious condition of one of these new family members would not be required by law, but rather would have to be approved by the employer.

The California Chamber of Commerce believes this is the right approach for any leaves of absence from work. Instead of mandating new leaves of absence through statute, any leave of absence from work should provide the employer with the discretion to balance the employee's need for a leave of absence with the existing demands of the workplace.

Staff Contact: Jennifer Barrera

Governor Signs CalChamber-Backed Tax Penalty/Credit Correction



SUPPORT

A California Chamber of Commerce-supported bill that reduces a state tax penalty for certain workers and allows full use of the film tax credit has been

signed by the Governor.

AB 1173 (Bocanegra; D-Pacoima) reduces the state tax penalty imposed on employees for nonqualified deferred compensation (NQDC) from 20% to 5%, as well as provides the ability to utilize the film tax credit to offset income.

The tax penalty reduction affects taxable years beginning January 1, 2013. The film tax credit correction applies to taxable years beginning on or after January 1, 2011.

Tax Penalty Reduction

The Internal Revenue Code (Section

409A) broadly defines NQDC and taxes it immediately unless taxpayers comply with extensive, complicated requirements spelled out in that section of federal law.

Section 409A also imposes a 20% additional income tax penalty on the NQDC. The penalty must be paid by the worker, not the employer.

The requirements broadly apply to all classes of service providers, including all levels of employees, directors, teachers, actors, athletes, writers and musicians.

California incorporates the federal rules and therefore, imposes an identical 20% penalty, raising the aggregate penalty for violating Section 409A to 40% (i.e., 20% federal and 20% California) for California employees—on top of the normal federal and state taxes and interest charges.

Section 409A penalizes workers who have little influence over the timing of payments and may have little ability to navigate complex tax rules. If AB 1173

had not reduced the state penalty to 5%, California would be doubling the tax penalty on employees who have the least knowledge and ability to influence compliance, a consequence that is neither logical nor fair.

Film Tax Credit

AB 1173 also corrects a technical error in the California Production Tax Credit, which was enacted in 2009 to attract targeted film and television productions most at risk to film outside of California. Due to a drafting error, many taxpayers awarded the credit may utilize only 25% of the amount awarded.

AB 1173 cures this technical issue, allows for full use of the credit and ensures California remains competitive in a signature industry that creates billions of dollars in economic output.

Staff Contact: Jennifer Barrera

Legislative Outlook

An update on the status of key legislation affecting businesses. Visit www.calchambervotes.com for more information, sample letters and updates on other legislation. Staff contacts listed below can be reached at (916) 444-6670. Address correspondence to legislators at the State Capitol, Sacramento, CA 95814. Be sure to include your company name and location on all correspondence.

Industry-Run Mattress Recycling Program Signed into Law



SUPPORT

A California Chamber of Commerce-supported bill that establishes a private sector-run mattress stewardship program patterned on successful recycling legislation for paint and carpet products has been signed by Governor Edmund G. Brown Jr.

SB 254 (Hancock; D-Oakland)/Correa; D-Santa Ana) establishes a robust recycling program for used mattresses, driven by manufacturers and retailers, which will create an economical and practical system, and will serve to reduce the impact of illegally dumped mattresses, harness existing infrastructure for transporting used mattresses to recyclers, and minimize costs to both government and consumers.

In his signature message, Governor

Brown said, "I applaud the efforts of the authors in creating a program to lessen impacts to California landfills, reduce costs to local governments, and remove blight in rural and inner city neighborhoods."

The program created by SB 254 will be designed and implemented by retailers and manufacturers to make sure compliance is feasible and recycling goals are reasonable.

Although the bill imposes a fee at the retail level to fund the program, this approach ultimately will address the problem of illegal dumping better than earlier proposals. Further, it allows retailers to be compensated for the burden of collecting used mattresses, minimizing any negative impact the fee might have on the industry.

Staff Contact: Mira Guertin

Governor Signs Bill Reducing Delays for California Exporters



SUPPORT

A California Chamber of Commerce-supported bill that will improve the business climate in California by reducing delays in processing necessary documents for California exporters has been signed into law.

AB 1400 (Committee on Jobs, Economic Development and the Economy) was signed by Governor Edmund G. Brown Jr. on October 4.

The California Department of Public Health issues export certificate documents as evidence that the goods to be exported are normally sold on the open market and approved by the regulatory authorities in the country of origin. Businesses are not required to obtain the certificates under California law; however, some countries require the certificate in order to receive imported products.

Under current law, the document expires in 180 days, requiring the exporter to re-apply and the department to re-issue the document.

This bill improves processing time by accepting required documentation electronically from businesses and extending the certificate's validity to one year. These changes will dramatically improve California exporters' certainty in business operations.

Reducing or even eliminating a backlog in the issuance of these documents will send a strong message to California businesses, as well as the state's global export partners, that California is open for business and supports a growing economy.

Staff Contact: Marti Fisher

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Small Business Help for Pursuing Global Markets Gets Attention

An explanation of the programs and resources available to small businesses from the Overseas Private Investment Corporation (OPIC), the U.S. government agency responsible for supporting private-sector investment in developing countries, was outlined during the World Affairs Council luncheon on October 1 at the California Chamber of Commerce.

As more U.S. small businesses participate in the global marketplace, they are facing new challenges, Dr. Lawrence Spinelli, director of public affairs for OPIC, explained.

A lack of knowledge about government programs available to support overseas investment, limited access to private sector capital to pursue opportunities abroad, and concern over political risks in emerging markets all can prevent small businesses from expanding overseas.

“Since its establishment in 1971, OPIC has committed over \$6.4 billion in financing and political risk insurance to projects sponsored by companies in California, supporting more than 42,000 local jobs and \$2.5 billion in exports from the state,” Dr. Spinelli told attendees.

Stability/Economic Opportunity

OPIC works by mobilizing the U.S. private sector to advance U.S. foreign policy and development initiatives, Spinelli explained. Projects supported by OPIC expand economic developments, which encourage political stability and free market reforms.

OPIC is authorized to operate in 150 developing nations around the world, and supports projects in a range of industries from energy to housing, agriculture and financial services. It focuses its work on regions where the need is greatest and in

sectors that can have the greatest developmental impact, Dr. Spinelli told attendees.

Dr. Spinelli asserted that OPIC operates on a self-sustaining basis at no net cost to U.S. taxpayers. To date, OPIC has supported more than \$200 billion of investment in more than 4,000 projects,



generated an estimated \$75 billion in U.S. exports and supported more than 277,000 U.S. jobs.

“If we can mobilize U.S. private sector investment into a place like Afghanistan, we can create jobs there. If we can, through private sector investment, encourage political stability and democracy, that’s a good thing because it supports U.S. foreign policy objectives by encouraging development in regions that have experienced instability or conflict, yet offer promising growth opportunities,” he said.

More than 90% of the world’s consumers live outside the United States, Dr. Spinelli reminded listeners. OPIC’s work contributes to stability and economic opportunity, which helps mitigate

risk to U.S. companies investing abroad, and promotes a positive developmental effect for the host countries, he said.

Supports U.S. Small Businesses

U.S. small businesses are an OPIC priority, comprising on average 80% of projects supported by the agency annually, Dr. Spinelli told luncheon attendees. OPIC’s department of small and medium-sized enterprise finance offers qualified small businesses a streamlined approval process and direct loans from \$350,000 to \$10 million with terms from three to 15 years.

While the eligible U.S. small business must own at least 25% of the overseas project, OPIC may be able to finance up to 65% of the total project cost.

Expanding Horizons Workshop

Dr. Spinelli also invited California businesses to join OPIC on November 13 at the Expanding Horizons workshop in San Jose, California. Businesses interested in participating in the program will learn about:

- How expanding overseas can benefit their business at home.
- U.S. government programs offering assistance to small and medium-sized enterprises planning to go global.
- Political risk insurance and how it can protect their business.
- Accessing capital for overseas projects.
- Current opportunities in the renewable energy and clean technology sector.
- OPIC’s special finance products for small businesses.

Companies interested in attending may register online at www.opicevents.com.

Staff Contact: Susanne Stirling

CalChamber-Sponsored Seminars/Trade Shows

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Santa Clara. (408) 432-5011.
U.S.-Spain Council Annual Forum. U.S. Senator Robert Menendez and U.S.-Spain Council. November 15–17, Santa Barbara. (202) 455-4902.
Latina *Style* Business Series. *Latina Style* Magazine. November 21, Universal City. (703) 531-1424.

INTRADE Malaysia 2013. Malaysia External Trade Development Corporation. November 26–28, Kuala Lumpur, Malaysia.
Interwine China 2013. MEREBO Messe Marketing. November 28–30, Guangzhou, China.
StartmeupHK. InvestHK. December 4–7, Hong Kong.

Cuba Educational and Policy Trip. Institute of the Americas. December 7–14, Havana, Cienfuegos and Trinidad, Cuba. (858) 453-5560.
International Investment Forum Chile 2014. Chile Foreign Investment Committee (CIEChile). January 13–16, 2014.

Employers Take Notice: Poster Update in 2014



Your business could incur significant fines for not posting the most current California and federal posters. The **California Minimum Wage increase** and pending notice changes mean you'll need a new employment notices poster in 2014.

Simplify your compliance with CalChamber's combined *2014 California and Federal Employment Notices* poster—available in either English or Spanish. It contains all 16 required state and federal employment notices.

Remember, even if you employ only one person in California, these required notices apply to you. Multiple locations? Be sure to preorder a 2014 poster for each company worksite.

Note: Effective July 1, 2014, California's minimum wage will increase to \$9.00 an hour. Poster Protect® customers receive a replacement poster if the Minimum Wage notice is released after January.

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