

ALERT

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Paid Sick Leave Mandate Passes Senate Committee



Legislation requiring all employers, large and small, to provide all employees in California with paid sick leave passed the Senate Labor and Industrial Relations

Committee this week.

AB 1522 (Gonzalez; D-San Diego), a California Chamber of Commerce-opposed “job killer” bill, will increase the already-high costs of doing business in the state. The bill threatens employers with statutory penalties as well as litigation for alleged violations.

Increased Costs

AB 1522 requires that all employers provide any employee who has worked in

California for seven days with paid sick leave, at an accrual rate of one hour for every 30 hours worked. Any unused sick leave accrued in the preceding year could be carried over to the next year, which is a significant change in existing law.

While many employers voluntarily offer sick leave for full-time employees, expanding this to a mandate on all employees to temporary, seasonal, and part-time employees will create a huge burden on employers.

On July 1, employers in California already will be facing a significant cost increase due to the \$1 increase in minimum wage that will take effect. This \$1 increase is in addition to the other cumulative costs employers are already facing, including increased taxes under Proposition 30, increased workers’ compensation

See Paid Sick Leave: Page 4

New Liabilities for Innocent Businesses Gets Committee OK



A California Chamber of Commerce-opposed “job killer” bill that will impose new liabilities on innocent businesses passed the Senate Labor and

Industrial Relations Committee this week.

AB 1897 (Hernández; D-West Covina) unfairly imposes liability on any contracting entity for the contractor’s wage-and-hour violations, lack of workers’ compensation coverage, and/or failure to remit employee contributions, despite the lack of any evidence that the contracting entity controlled the working conditions or wages of the contractor’s employees.

Holds Innocent Businesses Liable

Recent amendments to AB 1897 exempted small businesses, motion picture payroll services, hiring halls, and nonprofit community organizations from its onerous provisions.

The overwhelming majority of employers in California, however, still will be unfairly held liable for the wage-and-hour violations of another that they could neither control nor prevent. This innocent third party did not contribute to the violations, control the working conditions, control the manner of payment, dictate the employees’ schedules, or even control the work environment, and yet under AB 1897 they will be held liable.

See New Liabilities: Page 7

CalChamber Backs Easing Employer Transition to Implementing Federal Health Care Law



SUPPORT

Health Committee this week with unanimous support.

• **SB 1034 (Monning; D-Carmel)** eliminates confusion for employers by deleting certain provisions of California law related to waiting period limitations

Two California Chamber of Commerce-supported bills that ease employers’ transition to complying with the federal health care law passed the Assembly

for health care benefits and clarifying that employees must be covered no later than their 91st day of employment.

• **SB 1446 (DeSaulnier; D-Concord)** helps small employers control their health care costs by allowing them to extend their pre-Affordable Care Act (ACA) health care policies through December 31, 2015.

Clarification

SB 1034 eliminates confusion between the state and federal rules governing health care enrollment waiting periods. Inconsistencies between state

See Employer Transition: Page 7

Inside

Dramatic Expansion of Environmental Law: Page 5

Labor Law Corner

Don't Mail Final Paycheck Unless Employee Requests Payment that Way



Jessica Hawthorne
Helpline Manager

We terminated an employee but she refused to accept her final paycheck when we provided it to her at the time of termination. I have called and emailed her to come get the check, but have received no response. Should I just mail it to her last known address?

Unless an employee specifically requests payment by mail, do not do so. Mailing the final paycheck without a request to do so could subject you to waiting time penalties.

For example, if the employee shows up to pick up the check after it has been mailed but before it is delivered, you would have to write a duplicate check and stop payment on the original, mailed check. In that case, the employee would be forced to wait for his/her wages beyond the legal deadline, which could subject you to waiting time penalties of one day of wages per day up to a maximum of 30 days.

Non-Negotiated Checks

However, if you have non-negotiated checks on your books that are made payable to employees whose employment has been terminated (i.e., because you are unable to locate the employee), and you have made all reasonable efforts to pay the wages, you may send the non-negotiated checks with an explanation of your efforts to contact the employee to the nearest office of the Labor Commissioner.

Document Efforts

Be sure to document each attempt to contact the employee—the number you called, whether you left a voice mail or spoke to someone, to whom you spoke, time and date, etc. If you send emails or letters, maintain copies of all communication to demonstrate the attempts you made to contact the former employee.

Once you contact the Labor Commissioner's office, it will make further efforts to locate the employee to make payment of the wages. If those efforts are unsuccessful, the checks will be deposited into the State of California Unclaimed Wages Fund.

Maintain a copy of the check and the correspondence to the Labor Commissioner's office in the employee's payroll file for at least four years.

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

HR Boot Camp. CalChamber. August 19, Santa Rosa; September 3, Anaheim. (800) 331-8877.

Business Resources

Workers' Compensation Conference. California Coalition on Workers' Compensation. July 16–18, Anaheim. (916) 441-4111.

Olix Awards. Olix Global. September 1–2, Hollywood. (949) 679-6066.

International Trade

Lunch with GO-Biz. World Trade Center Northern California and World Affairs Council. June 17, Sacramento. (415) 293-4600.

The 15th Malaysia International Food and Beverage Trade Fair. Sphere Exhibits Malaysia Sdn Berhad and Mutiara Sigma (M) Sdn Bhd. June 19–21, Kuala Lumpur, Malaysia.

Mongolian Business Summit. U.S. Chamber of Commerce. June 19–21, Ulaanbaatar, Mongolia. (202) 659-6000.

Trade and Investment Opportunities in East Africa. GO-Biz and the Aga Khan Development Network. June 26, Los Angeles. (213) 580-7500.

Hong Kong Export Networking Luncheon. Los Angeles Hong Kong Trade and Development Council. July 9, Napa. (213) 622-3194.

Japan-US Innovation Symposium. Japan Society of Northern California. July 25, Stanford. (415) 986-4383.

Governor's Mexico Mission. CalChamber. July 27–30, Mexico City, Mexico. (916) 444-6670.

Ethiopia Business and Investment Forum. Consulate General of Ethiopia in Los Angeles. August 1, Los Angeles. (310) 616-6910.

K-TECH Silicon Valley 2014 Conference/Expo. Korea Trade-Investment Promotion Agency (KOTRA) and National IT Industry Promotion Agency (NIPA). September 4–25, Santa Clara. (408) 432-5044.



Legislation Presuming Employer Guilt for Workplace Safety Violations Passes



OPPOSE

A California Chamber of Commerce-opposed proposal that increases state and administrative costs for handling workplace safety

citation appeals passed the Senate Labor and Industrial Relations Committee this week.

AB 1634 (Skinner; D-Berkeley) proposes a costly double-appeal process that presumes guilt for employers and undermines due process with regards to citations for workplace safety violations, and is unnecessary in light of recently adopted regulations for an expedited appeals process for these situations.

Coalition Opposition

Joining the CalChamber in opposing AB 1634 are 57 other associations and local chambers of commerce.

AB 1634 requires employers to abate safety hazards for which they have been cited before the appeal is resolved. In other words, while the employer exercises its right to contest the existence of a violation, the California Division of

Occupational Safety and Health (Cal/OSHA) could order the employer to fix the alleged violative condition before the OSHA Appeals Board has determined whether that alleged violative condition even exists.

Duplicative Process

The requirements for abatement already are grounds for appealing a citation issued by Cal/OSHA. Moreover, Cal/OSHA has authority to issue an Order Prohibiting Use where it concludes a condition, process or piece of machinery poses an imminent hazard to employee safety.

Requiring employers to specifically contest abatement where it would otherwise be stayed creates two separate appeals where currently there is one. Creating a new ground for appeal concerning abatement is not needed and will place an unnecessary burden on Cal/OSHA, employers and other parties.

The bill also brings with it a new, unnecessary cost as a new process requires staffing, setting up processes and procedures, and regulations must be developed and adopted.

Ongoing costs are estimated at more than \$1 million per year. Furthermore, additional costs could be incurred by the

Department of Industrial Relations if stay decisions by Cal/OSHA are challenged or appealed.

Legislation similar to AB 1634 was vetoed by the Governor last year.

Key Vote

AB 1634 passed Senate Labor and Industrial Relations on June 11, 3-1:

Ayes: Hueso (D-Logan Heights), Leno (D-San Francisco), Padilla (D-Pacoima).

Noes: Wyland (R-Escondido).

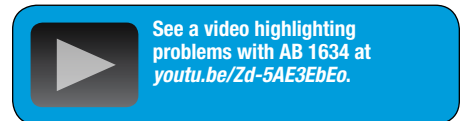
No vote recorded: Mitchell (D-Los Angeles).

Action Needed

AB 1634 will be considered next by the Senate Appropriations Committee. The CalChamber is urging members to contact their senators and committee members to ask them to **oppose AB 1634**.

An easy-to-edit sample letter is available at www.calchambervotes.com.

Staff Contact: Marti Fisher



Senate Committee Moves Premature Unemployment Insurance Proposal



OPPOSE

Legislation putting California employers at risk of paying even higher unemployment insurance (UI) taxes passed a Senate committee this week despite objec-

tions from the California Chamber of Commerce and others that the bill is premature.

AB 1556 (Perea; D-Fresno) is premature because of pending rules from the

U.S. Department of Labor (DOL) regarding state requirements for waivers of looming UI tax hikes.

California is nearly \$10 billion in debt to the federal UI trust fund and is one of 16 states at risk for a tax increase on employers due to the state having an outstanding UI loan balance for five or more years.

Although two states were approved for a waiver of the UI tax hike in 2013, the DOL has yet to publish guidelines for states currently at risk for increased taxes to request and be granted the waiver.

Given the lack of guidance from

DOL, it is premature for California to adopt new laws that could run afoul of the federal requirements.

Key Vote

AB 1556 passed the Senate Labor and Industrial Relations Committee on June 11, 4-1:

Ayes: Hueso (D-Logan Heights), Leno (D-San Francisco), Mitchell (D-Los Angeles), Padilla (D-Pacoima).

Noes: Wyland (R-Escondido).

Staff Contact: Marti Fisher

Paid Sick Leave Mandate Passes Senate Committee

From Page 1

rates, loss of federal unemployment insurance credit, increased energy costs, and increased costs associated with the implementation of the Affordable Care Act.

California employers cannot absorb all of these costs and be forced to provide paid sick leave as well, without cutting other costs, such as labor. Accordingly, AB 1522 will have an impact on jobs as well as future growth.

Jobs Impact

Two studies of similar paid sick leave laws enacted in other areas have shown that businesses hire fewer people, lay off employees and provide fewer raises in order to comply with these financially burdensome laws.

A published Employment Policies Institute study on the effects of Connecticut's paid sick leave law that went into effect in 2012, showed that of the 156 businesses responding to the survey, 31 had reduced other employee benefits to balance the cost of the paid sick leave; 12 had reduced employee hours; six had reduced employee wages; 19 companies had raised their prices; six companies had laid off employees; and 16 companies stated that they would limit their expansion in the state. Thirty-eight of the businesses surveyed also indicated that they would hire fewer employees as a direct result of the new law, while others stated they planned to offer fewer raises.

Similar results were reported in the February 2011 Institute for Women's Policy Research on the effect of the paid sick leave program in San Francisco. Specifically, 15.2% of the employees surveyed were laid off or had their hours reduced after the program was implemented; 14.1% of the employees surveyed received fewer bonuses or had their benefits reduced; and 21.7% of the employees had increased work demands.

Of the industries surveyed, businesses with 24 employees or fewer were the most negatively affected by the paid sick leave program.

Moreover, the report notes that "low-wage workers were more likely than higher-wage workers to report that their employers took action to reduce costs in implementing" paid sick leave in San Francisco.

Incentivize, Not Mandate

Rather than implement new mandates such as AB 1522, California should incentivize employers to offer these additional benefits by reducing costs in other areas.

One area in which California can reduce costs on employers so that they have the capacity to offer paid sick leave is daily overtime. California is only one of three states that mandate both daily and weekly overtime, creating a huge cost to employers. If this cost were reduced by conforming to federal law and only mandating weekly overtime, employers would more likely have the ability to offer paid sick leave as well as provide a more flexible schedule for working families.

Another option to partially offset the burden on employers to provide paid sick leave is to provide small employers with 50 or fewer employees with a tax credit for the amount expended each year on paid sick leave up to a maximum of 125% of minimum wage, thereby targeting lower-wage employees.



CalChamber Policy Advocate Jennifer Barrera gives reasons to oppose the paid sick leave mandate in AB 1522. Watch the video at youtu.be/cZ6zPROIQckE.

Just recently, the State Controller released a statement indicating that California's revenue for February 2014 was approximately \$1 billion higher than the Governor projected. A portion of this unexpected revenue could be utilized for a tax credit for those small employers who provide and pay an employee for sick leave, as proposed under AB 1522.

Key Vote

Senate Industrial Relations voted 3-1 on June 11 to send AB 1522 on to the Senate Judiciary Committee:

Ayes: Hueso (D-Logan Heights), Leno (D-San Francisco), Padilla (D-Pacoima).

Noes: Wyland (R-Escondido).

No vote recorded: Mitchell (D-Los Angeles).

Action Needed

The CalChamber is urging members to ask their Senate representatives to **oppose AB 1522**. An easy-to-edit sample letter is available at www.calchambervotes.com.

Staff Contact: Jennifer Barrera

Workers' Comp Session to Feature CalChamber Policy Advocate



California Chamber of Commerce Policy Advocate **Jeremy Merz** will be a featured speaker in a session at the

upcoming legislative and educational forum of the California Coalition on Workers' Compensation (CCWC).

The CCWC's 12th Annual Conference, set for July 16-18, at Disney's Grand Californian Hotel & Spa in Anaheim, will unite employers with experts and industry service providers—chosen

for their ability to inform, teach, enlighten, and inspire.

Merz will be featured in one of the most popular sessions, the July 17 "Workers' Compensation Political Cross-fire."

For more information and to register, visit www.cccworkcomp.org.

Dramatic Expansion of Environmental Law to Be Considered by Senate Committee



A California Chamber of Commerce-opposed “job killer” bill that increases the potential for litigation related to the California

Environmental Quality Act (CEQA) will be considered June 18 by a Senate committee.

AB 52 (Gatto; D-Los Angeles) creates more opportunities for litigation and substantially increases project cost and delay by creating mandatory consultation requirements with Native American Tribes and by requiring lead agencies to analyze a project’s impacts to an entirely new resource area called Tribal Cultural Resources.

The CalChamber and a coalition of business groups are urging the Senate Environmental Quality Committee to oppose AB 52 because it will create a disincentive to invest in land, whether to build affordable housing, schools and universities, or construct needed infrastructure such as renewal energy projects, or roads and highways.

Dramatic CEQA Expansion

As amended on June 2, AB 52 is a dramatic expansion of CEQA that inserts spiritual beliefs into an environmental statute and, as a practical matter, grants Native American tribes irrefutable authority to determine anything is a Tribal Cultural Resource entitled to CEQA protection.

The current language presents significant obstacles for new public and private development across the state and opens up new avenues for CEQA litigation.

Current Process

The CalChamber and the coalition of organizations that have been opposing AB 52 are not opposed to the goal of protecting tribal cultural sacred places.

To that end, many coalition members worked closely with the Legislature and California tribes during the 2003–2004 legislative session to pass SB 18 (Burton; D-San Francisco; Chapter 905), which established meaningful ongoing government-to-government consultation regarding the protection of cultural sacred places.

SB 18 requires 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.

Open to Dialogue

The CalChamber and coalition remain open to a dialogue about the ways in which the SB 18 process has been implemented and to improving communication between tribes, local governments and project proponents.

Both CalChamber and the coalition, however, remain very concerned with AB 52’s dramatic granting of land-use power to tribal governments, the new complications the bill creates for environmental impact reviews under CEQA, and the costs the measure would impose on future projects throughout the state.

Concerns with AB 52

Some of the most troubling aspects of AB 52 identified by the coalition include the following:

- Contains no definition of what is or

is not a “Tribal Cultural Resource.”

- Allows tribes to wait until the final project approval hearing to trigger consultation, thereby setting up a “document dumping” type dynamic.

- Prohibits the lead agency from sharing Tribal Cultural Resource information with the project proponent in anything other than general terms. Excluding the project proponent from discussions about feasible mitigation ignores the knowledge of the proponent and sets up a perverse incentive to file litigation in order to gain access to the information.

The bill also puts new standards of review in law that are not applied in any other resource area; requires that the Native American Heritage Commission consult on every project application submitted in the state; and expands protections beyond sacred sites to “cultural landscapes” and “associated environments.”

In addition, the bill is ambiguous about whether a lead agency can decide to override considerations for impacts on tribal cultural resources as it can for all other resource areas.

Action Needed

The CalChamber is urging members to contact legislators on the Senate Environmental Quality Committee and ask them to **oppose AB 52**.

As the last policy committee to review AB 52 before it is considered by the entire Senate, the committee should not let the bill pass unless or until the substantial problems with AB 52’s language are resolved.

An easy-to-edit sample letter is available at www.calchambervotes.com.
Staff Contact: Anthony Samson

They won’t know unless you tell them. Write your legislator.

calchambervotes.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.

Senate Committee Rejects Effort to Fight Unemployment Insurance Fraud



SUPPORT

A California Chamber of Commerce-**supported** bill to fight unemployment insurance (UI) fraud failed to move out of a Senate committee this week.

Falling short of votes needed to pass the Senate Labor and Industrial Relations Committee was **AB 2362 (Grove; R-Bakersfield)**, which sought to close a loophole so that the same penalty applies to individuals convicted of the same crime—UI benefit fraud. The bill would have ensured that the penalty is applied consistently regardless of whether the conviction is under the UI Code or the Penal Code.

This is a small easily fixable item that would have demonstrated the Legislature's commitment not only to timely delivery of benefits to claimants, but also to addressing fraud in the system.

Current law requires an individual convicted of benefit fraud under the UI Code of California to forfeit benefits. But individuals convicted of benefit fraud under the Penal Code, or other state and federal codes, still can collect benefits.

AB 2362 would have applied consistent penalties for benefit fraud, regardless of the specific statute under which the benefit fraud is prosecuted.

California's UI trust fund remains billions of dollars in debt to the federal government. In order to ensure the integrity of the fund, it is important that California address fraud as effectively as possible. AB 2362 is a critical measure that brings better focus to deterring and penalizing UI benefit fraud.

Staff Contact: Marti Fisher

Computer Science Incentive Bill Moving



SUPPORT

A California Chamber of Commerce-**supported** bill that will generate interest and enrollment in computer science education, an important growing sector of today's economy, passed an Assembly committee this week with unanimous support.

SB 1200 (Padilla; D-Pacoima) creates an incentive for more students to take a computer science course in high school by requesting that the University of California and California State Universities establish guidelines for high school computer science courses that would satisfy the "a-g" subject requirements for the area of mathematics for the purposes of undergraduate admissions at both institutions.

The bill further states the Legislature's intent that academic standards for high school computer science courses be aligned with the guidelines established by the two postsecondary institutions.

Studying computer science prepares students for careers in a large variety of sectors, not just information technology (IT), teaching them valuable computational and critical thinking skills, and how to create, not just use, new technologies.

The subject is applicable to careers in manufacturing, health care, retail, the arts, and financial services. In fact, more than 70% of careers involving computing skills fall outside the IT industry, according to Code.org, and the U.S. Bureau of

Labor Statistics estimates one of every two science, technology, engineering and mathematics (STEM) jobs in the country in the coming decades will be in computing occupations, representing more than 150,000 new job openings each year. Jobs related to computing pay significantly more than the national average salary.

Although computer science education promises many benefits for students regardless of the field in which they ultimately plan to work, and while there is a huge need for graduates who possess computer science skills, California has largely ignored this subject as a part of K-12 education until now.

Computer science is treated like an elective, which means few students take it in high schools that offer it either directly or through a local community college. There are no state standards on computer science to ensure the curriculum is rigorous and comparable throughout the state, and no clear pathway for teachers to earn a credential in computer science.

SB 1200 demonstrates the state's commitment to an important growing sector of the economy, and will help provide employers with a larger pool of qualified workers having skills relevant to today's economy.

Staff Contact: Mira Guertin

Employer Transition to Implementing Federal Health Care Law

From Page 1

and federal laws have created confusion about whether health care can be treated like other benefits, which often are instated after 90 days of employment.

SB 1034 will allow employers to continue treating all employee benefits as a group, easing administration and compliance with the law, while ensuring that employees receive coverage no later than the 91st day of employment.

Clarifying the law also will help multi-state employers by ensuring they have just one date to keep in mind when determining when a new hire or otherwise qualified employee must be enrolled in a health care plan.

Renewals

SB 1446 allows small employers who renewed their health coverage in 2013 to continue to renew their pre-ACA plans until January 1, 2015, and allows those plans to remain in effect until December 31, 2015.

In March 2014, President Barack



Obama announced that, with state authorization, small businesses would be allowed to continue renewing pre-ACA health coverage through 2016, and for those plans to remain in force until fall 2017.

The change to California law allows small employers in California to take advantage of the first year of the exten-

sion announced by the President.

The extended transitional period will give small employers more time to prepare to bear the increased costs associated with plans that fully comply with the ACA, minimizing the potentially negative impacts of this new employer mandate on the continuing economic recovery.

Staff Contact: Mira Guertin

New Liabilities for Innocent Businesses Gets Committee OK

From Page 1

Creates Significant Litigation

As a part of the Labor Code, any violation of AB 1897 will trigger a potential representative action under the Labor Code Private Attorney General Act (PAGA), Labor Code Section 2699, et seq., thereby expanding the threat of onerous litigation against any third party that utilizes contractors as a part of its usual course of business.

To the extent a third party is held liable under PAGA for the employment obligations of another, there will unquestionably be a second lawsuit for indemnity between the third party and actual employer.

The judicial branch has suffered severe budget cuts over the last three years, with multiple courthouses shut down and drastic staff reductions, thereby significantly delaying the time it takes for civil disputes to be resolved. Forcing an innocent third party to pursue litigation that may take years in order to recover monies paid out for the violations of another is simply unfair.

Adequate Protections Exist

For industries in which there has been documented evidence of unlawful contracting practices, the Legislature has already enacted laws to address and prevent such abuses.

Specifically, for several industries, including farm labor, garment, construction, security guards, janitorial, and most recently warehouse workers, state law holds liable the entity that contracts for workers if the contract for such labor does not include the following:

- a description of the total hours to be worked, the total wages to be paid, and the dates of payment;
- the workers' compensation policy and insurance carrier information;
- the employer tax identification number;
- the address of where the work will be performed; and
- the name, address, and telephone number of the person or entity through whom the labor or services are to be provided.

AB 1897 expands liability to all

industries and all individuals who contract for labor or services, despite the lack of any evidence that there is a need beyond the industries already regulated.

Key Vote

AB 1897 passed Senate Labor and Industrial Relations on June 11, 4-1:

Ayes: Hueso (D-Logan Heights), Leno (D-San Francisco), Mitchell (D-Los Angeles), Padilla (D-Pacoima).

Noes: Wyland (R-Escondido).

Action Needed

AB 1897 will be considered next by the Senate Judiciary Committee. The CalChamber is urging members to ask their Senate representatives and committee members to **oppose AB 1897**. An easy-to-edit sample letter is available at www.calchambervotes.com.

Staff Contact: Jennifer Barrera



July 1 Compliance Alert



If you aren't displaying a required employment notices poster that includes the \$9.00 state minimum wage for July 1, 2014, act now. Mandatory changes to required Workers' Compensation and Paid Family Leave pamphlets also take effect on that date.

By law, employers must post and hand out the most current employment notices, even if you only have one employee in California. Not informing employees of their rights in the workplace can result in costly lawsuits and fines.

Why wait for "or else"? Order your July 1 compliance products today. CalChamber offers **20% off—while Preferred and Executive members save an extra 20%** after their member discount—through June 30.

PURCHASE at calchamber.com/july1c or call (800) 331-8877 with priority code JULC13.

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