

ALERT

VOLUME 41, NUMBER 32 • NOVEMBER 20, 2015



CalChamber-Endorsed Plan

Plan to Close Workforce Gap Gets Unanimous Approval



The Board of Governors of the California Community Colleges this week unanimously approved recommendations of a special task force on how to strengthen workforce education throughout the 113-college system. California Chamber of Commerce President and CEO Allan Zaremberg serves as a member of the task force.

"There are a lot of jobs out there that need to be filled that don't necessarily require a four-year degree," said Zaremberg. "The community colleges are at the forefront to educate and prepare a workforce for those jobs. That's a need that hasn't been met and I think this task force

has taken an important step to ensure that we fill that void."

The 25 recommendations will help ensure the state has a workforce with relevant skills and quality credentials that meet employer needs. A key recommendation is to put industry at the forefront of developing career pathways and clearly defining the sequence for learning the skills industry values.

Commissioned by the Board of Governors, the Task Force on Workforce, Job Creation and a Strong Economy includes representatives from community colleges, the business community, labor groups, public agencies involved in workforce training, K-12 policymakers and community-based organizations.

See Plan: Page 7

CalChamber-Led Coalitions Speak Out

The California Chamber of Commerce is leading coalitions on the following issues. More information is available at www.calchamber.com.

Lead Standard

A preliminary state proposal to drastically reduce a 25-year-old safe harbor standard for lead in consumer products has no scientific basis and is likely to lead to unnecessary warnings, the CalChamber and an 82-member coalition are arguing.

The broad-based coalition has been actively engaged in the pre-regulatory process at the state Office of Environmental Health Hazard Assessment (OEHHA) and includes California-based and national organizations that represent nearly every major business sector that

would be affected directly by the OEHHA proposal.

Proposition 65

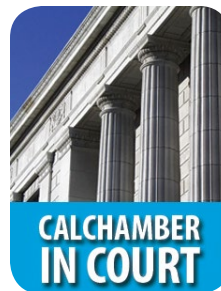
The state Department of Justice (DOJ) has proposed amendments that would affect settlement terms for enforcement actions filed by private parties under Proposition 65.

The amendments are well-intended, but likely will increase the cost of settlements.

The CalChamber is leading a coalition of nearly 200 California-based and national organizations and businesses of varying sizes that, collectively, represent nearly every major business sector on which the DOJ-proposed amendments would have a direct impact.

Staff Contact: Anthony Samson

Court Accepts CalChamber Brief Supporting *Vergara* Education Case



A friend-of-the-court brief filed by the California Chamber of Commerce and other business organizations supporting the landmark decision in *Vergara v. California* has

been accepted by the Second District Court of Appeal.

Students Left Behind

The laws struck down by the trial court decision in *Vergara* contribute to the state's shortfall in highly skilled workers, the CalChamber and other business groups argue, adding that California's public schools currently leave far too many students unprepared to participate in the 21st century workforce.

"California cannot afford to allow the inequitable distribution of teachers to impede the educational advancement of low-income and minority students, upon whose educational success our state's future economic prosperity depends," reads the brief. "Indeed, if the achievement gap between students of different ethnic, racial, and income backgrounds could be closed, it would enrich the American economy—of which California

See Court: Page 7

Inside

CalChamber Advocacy on Privacy, Safety: Pages [3](#), [6](#)

Labor Law Corner

Employers Should Investigate Hostile Work Environment Claims



Dana Leisinger
HR Adviser

My employee came to me complaining of a "hostile work environment," which appears to be a verbal situation, not one of sexual harassment. Am I required to take action?

Claims of a hostile work environment that give rise to liability are those based on a protected category—such as race, gender, gender identity, religion, etc. (see

list of protected categories in your poster "California Law Prohibits Workplace Discrimination and Harassment").

The instant question poses the more difficult issue—that of hostility which is not based on a protected category. Although not technically illegal, when an employee is being abusive, yelling, swearing, etc., that behavior creates a negative office environment that reduces productivity and can lead to a workers' compensation stress claim.

It is important to investigate all claims of hostility and determine the validity of the complaint accordingly so as to avoid these negative results.

Indeed, this scenario underscores the requirement for an employer of 50 or more employees to provide what is called "abusive conduct" training as part of the two hours of sexual harassment prevention training to supervisors every two

years. This type of training gives the employer a chance to be proactive in managing the office environment.

So in answer to the question posed above—yes, it is necessary to investigate a claim of abusive conduct. Even if the claim is not based on a protected category, in addition to the risks noted above, these types of claims frequently ripen to a claim of hostility that is protected.

To avoid a negative office environment, it is advisable to mandate the "abuser" to get additional training.

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.

California Chamber Officers

Joseph M. Otting
Chair

Michael W. Murphy
First Vice Chair

Susan Corrales-Diaz
Second Vice Chair

Terry MacRae
Third Vice Chair

Anne Buettner
Immediate Past Chair

Allan Zaremborg
President and Chief Executive Officer

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.

Email: alert@calchamber.com.
Home page: www.calchamber.com.

CalChamber-Sponsored Seminars/Trade Shows

More at www.calchamber.com/events.

Labor Law

Employment Law Updates Webinar.
CalChamber. January 29, 2016. (800) 331-8877.

International Trade

How to Do Business in the Pacific Rim.
CalAsian Pacific Chamber. December 3, Fresno. (916) 446-7883.

World Affairs Council-Cuba Policy Trip 2015. World Affairs Council of Atlanta. December 6–13, Havana and Varadero, Cuba. (404) 413-7647.

Inbound Trade Mission from Europe.
Western United States Agricultural Trade Association. December 7–9, New Mexico; December 9–11, California. (575) 646-4959.

U.S.-ASEAN Energy Trade Mission.
U.S. Trade and Development Agency. December 7–11, San Francisco.

Saudi Business Opportunities Breakfast Briefing. U.S.-Saudi Arabian Business Council. December 10, Los Angeles.

Exporter Roundtable Series: Trade Compliance. Northern California World Trade Center. December 11, Sacramento. (916) 321-9146.

World Affairs Council-Cuba Policy Trip 2016. World Affairs Council of

Atlanta. January 21–27, 2016, Havana and Varadero, Cuba. (404) 413-7647.
GLOBE 2016 Conference & Innovation Expo. GLOBE Series. March 2–4, 2016, Vancouver, Canada.

CalChamber Calendar

Water Committee:

December 3, San Francisco

Education Committee:

December 3, San Francisco

Fundraising Committee:

December 3, San Francisco

Board of Directors:

December 3–4, San Francisco

International Breakfast:

December 4, San Francisco

Annual Meeting:

December 4, San Francisco

Next Alert: December 4



CalChamber Action on Legislation Keeps Balance Between Privacy, Innovation



Earlier this month, the California Chamber of Commerce hosted a timely panel discussion on data security policy at both the federal and state levels.

The panel was moderated by

Jeanne Cain, CalChamber executive vice president of public policy. Also featured were CalChamber Policy Advocate Jeremy Merz, Bradley Hayes from the U.S. Chamber of Commerce and Lorinda Harris, a privacy attorney with DLA Piper.

The panel ([see photo on Page 4](#)) focused on a number of privacy legislative trends, including data breach notification, cyber threat information sharing amongst businesses and the government, data security and drones.

This panel discussion came on the heels of an active year for the California Legislature in the privacy arena. At the beginning of the year, Assembly Speaker Toni Atkins (D-San Diego) created the Committee on Privacy and Consumer Protection to focus on the high volume of privacy bills that were introduced.

The CalChamber successfully opposed a number of bills that would have upset the balance between consumer privacy and consumer demand for innovation and services. CalChamber also supported two bills, including one that was signed by the Governor.

Data Breaches

As large data breaches continued to occupy headlines, the Legislature introduced a number of bills on this topic and CalChamber positioned on three of these bills.

- CalChamber initially opposed [SB 570 \(Jackson; D-Santa Barbara\)](#), which would have unnecessarily created new litigation exposure on employers for insufficient breach notices. Specifically, this bill would have mandated a specific form for breach notifications.

With 47 states each having different breach notification laws, using this Cali-

fornia-only form would have created significant compliance issues and expenses. CalChamber worked with the author's office to remove the mandate on use of the form. CalChamber also agreed to minor changes to current law that will make the notices more consumer-friendly. With these **amendments**, CalChamber removed its opposition and the bill was signed by the Governor.

- CalChamber also initially opposed [AB 964 \(Chau; D-Monterey Park\)](#), which would have created an arbitrary 30-day deadline for businesses to notify consumers of personal information breaches.

Current law already mandates that consumers are notified "in the most expedient time possible, and without unreasonable delay." This allows for businesses and law enforcement to conduct complete investigations of suspected breaches in order to fully inform consumers while still providing timely notifications.

The 30-day deadline would have resulted in premature, incomplete or unnecessary notifications being sent out before an investigation was completed. The bill was **amended** to remove the deadline and, as a result, CalChamber removed opposition. This bill was signed by the Governor.

- Finally, CalChamber **supported** [AB 259 \(Dababneh; D-Encino\)](#), which requires government entities that maintain personal information to provide identification theft prevention and mitigation services to consumers when breaches occur.

Businesses already have these requirements under current law. The government suffers security breaches just as the private sector does and CalChamber has maintained that laws governing data breach requirements should be the same for both the public and private sectors. Unfortunately, this bill was held in the Senate Appropriations Committee.

Data Security

CalChamber took an **oppose unless amended** position on [AB 83 \(Gatto; D-Glendale\)](#), which expands liability for protecting information that does not present a threat of fraud or identity theft to consumers.

AB 83 is a significant data security bill that further defines businesses' data security requirements; and expands the definition of personally identifiable information (PII).

Conceptually, CalChamber did not oppose the new definition for data security requirements. It did, however, oppose expanding the PII definition, currently limited to information that could allow identity theft and financial fraud or reveal health information.

Each expansion of this definition requires significant costs and resources, and brings litigation risk associated with protecting the new information and providing notices if it is breached. Accordingly, expansion of the PII definition should be limited to information whose misuse would be harmful to consumers and each additional personal information element should be defined precisely.

CalChamber worked with the author's office throughout the year to find a viable solution to the expansion of the PII definition. AB 83 was turned into a two-year bill and CalChamber continues to work with the author's office over the interim.

User Consent/Information Disclosure

CalChamber **opposed** [SB 576 \(Leno; D-San Francisco\)](#), which would have stifled innovation and growth in the mobile application economy by mandating unnecessary, redundant and impractical notice and consent requirements that would have left many current and future mobile applications unusable. CalChamber labeled this bill a **job killer** and it was not heard in the legislative policy committee.

CalChamber **supported** [SB 178 \(Leno; D-San Francisco\)](#), which modernizes digital surveillance laws and, in doing so, provides clarity to businesses regarding when and how the government can access electronically stored consumer information.

Current laws govern when businesses must turn over consumer information to the government—this generally requires a warrant. These laws, however, did not apply to electronically stored information,

See CalChamber: Page 7

CalChamber 2015 Fall Public Affairs Conference

Attendees Gain Info on Polls, 2016 Elections,



Political insights galore were one takeaway from the California Chamber of Commerce Fall Public Affairs Conference on November 3–4.

Insiders from both major parties, journalists, legislators and reform activists traded opinions, facts and predictions about the upcoming election year.

More photos appeared in the November 6 *Alert*. Detailed coverage on the sessions is available at www.calchamber.com/publicaffairs.



Giving a forecast of the 2016 California elections with the top two primary system in place are (from left) Ace Smith, SCN Strategies; Cynthia Bryant, California Republican Party; Rich Schlackman, RMS Associates; and Kevin Spillane, The Stonecreek Group.



Presenting the results of a CalChamber poll on voter attitudes is Robert Green, Penn Schoen and Berland.



(From left) Jeanne Cain, CalChamber executive vice president for policy, moderates an examination of data security policy challenges with panelists Bradley Hayes of the U.S. Chamber; Lorinda Harris, DLA Piper; and Jeremy Merz, CalChamber policy advocate.



Presenting a preview of the 2016 legislative session are (from left) Senator Cathleen Galgiani (D-Stockton), and Assemblymembers Cheryl Brown (D-San Bernardino), Ling Ling Chang (R-Diamond Bar), Jimmy Gomez (D-Los Angeles), Chad Mayes (R-Yucca Valley), Rudy Salas (D-Bakersfield).

Legislative Battles, Data Security, Reforms



Outlining reform priorities for 2016 (from left): moderator Marshall Tuck, New Teacher Center; David Crane, Govern for California; reform activist Bill Bloomfield; and Charles Munger Jr., Spirit of Democracy.



Luncheon speaker Dr. Frank Luntz, pollster, media pundit and author of *Words that Work*.



Covering the race for the White House are (from left) Todd Purdum of POLITICO; Cathleen Decker of the *Los Angeles Times*; and Jon Ralston of The Ralston Report of Nevada.



Discussing the presidential campaign are moderator Rob Stutzman (left), Stutzman Public Affairs, and Todd Purdum of POLITICO.



Looking back at the big battles and major victories of the 2016 legislative year are Senator Steve Glazer (D-Contra Costa), and Assemblymembers Catharine Baker (R-San Ramon), Jim Cooper (D-Elk Grove), Jacqui Irwin (D-Thousand Oaks), David Hadley (R-Torrance), Bill Brough (R-Dana Point), Miguel Santiago (D-Los Angeles).

Workplace Safety

CalChamber Wins Veto of Overly Broad Bill, Leads Opposition to Misguided Regulations



A quiet legislative year on workplace safety issues still ended in a victory for the California Chamber of Commerce, which also kept busy leading employer opposition to misguided regulatory proposals.

The CalChamber **opposed** legislation regarding Cal/OSHA safety variances, **AB 578 (Low; D-Campbell)**. The bill would have created uncertainty and potential delays for all employers seeking variances from safety standards by creating expansive new notification requirements from employers to individuals who are not employees of the employer and who may not be known to the employer, in order to solve a narrow concern with variance applications for elevators.

Although the CalChamber offered amendments, they were rejected by the author and sponsors of the bill, which was vetoed by the Governor.

Throughout the year, Cal/OSHA was very busy on the regulatory front. The CalChamber provided comments and participated in rulemaking processes on various proposals to create new or revise existing regulations. Below are two of the most significant rulemaking efforts on which the CalChamber led an opposition coalition.

Hotel Housekeeping

The latest round of action on **Hotel Housekeeping Musculoskeletal Injury Prevention** was a discussion draft provided to the public for comment, before formal rulemaking. This draft follows four advisory committee meetings on the subject since 2012.

The CalChamber prepared coalition comments outlining general and specific **concerns** with this latest proposal.

Generally, the coalition asserts that a separate stand-alone program specifically

for the prevention of musculoskeletal disorders (MSDs) exclusively for housekeepers is unwarranted. Specific concerns with the discussion draft include:

- It is overly prescriptive, departs from the plain language and intent of the existing Injury and Illness Prevention Program (IIPP) regulations model and assumes that housekeeping is hazardous and must be corrected.

- It discusses correcting, rather than controlling or reducing/minimizing chance of injury. As a job that is physical in nature, and at times strenuous, there is no way to eliminate the physical nature of the work. It can only be minimized.

- If the draft rule is intended to be a mirror of an IIPP, but more specific to housekeeping, it should track more closely with the IIPP provisions and not be more prescriptive.

- The proposal is redundant to and subordinates the existing ergonomics standard 5110, which already addresses the potential exposures addressed in the draft.

An advisory committee is scheduled for December 3 in Oakland to discuss this latest draft.

More information is available at the Cal/OSHA website: www.dir.ca.gov/dosh/DoshReg/Hotel_Housekeeping.html.

Repeat Violations

Another significant regulatory proposal would change the manner and significantly expand the criteria under which Cal/OSHA may issue a repeat violation citation for violations of the safety regulations.

The changes have been proposed in response to Federal OSHA directing Cal/OSHA to conform its repeat violation citation criteria to the federal program criteria in order to be “at least as effective as” the federal program.

The CalChamber led a coalition of more than 40 organizations in **opposition** to the proposed changes.

The coalition opposed the changes as unnecessary because:

- Under the agreement between the state and Federal OSHA that authorizes California to operate its own state OSHA program, California must demonstrate that it is “at least as effective as” its federal counterpart. The state/federal agreement does not stipulate that state programs must be the same as the federal program.

- California imposes higher penalties, has stronger regulations, and covers more hazards than does Federal OSHA.

- The proposed criteria will undermine larger California employers’ good-faith efforts to comply with the regulations.

- The redirection of limited resources away from pursuing the underground economy, which Cal/OSHA has identified as a high priority, will be a likely consequence.

Cal/OSHA’s proposed amendments incorporate aspects of the Federal OSHA regulations in a piecemeal fashion that will lead to more punitive enforcement actions against responsible employers. This outcome would be counterproductive as it would divert agency focus and resources from employers that do not maintain safe workplaces.

A public hearing was held in October. It is anticipated that a subsequent revision (15-day notice) based on public comments will be issued before the end of the year. More information on this rulemaking can be found at www.dir.ca.gov/dosh/doshreg/Definition-of-Repeat-Violation/.

Other Proposals

CalChamber responded to various other Cal/OSHA safety and health regulatory proposals through written comments and public testimony.

For more information on CalChamber’s efforts on workplace safety and health rulemaking, contact CalChamber Policy Advocate Marti Fisher.

Staff Contact: Marti Fisher

Plan to Close Workforce Gap Gets Unanimous Approval

From Page 1

It was entrusted to address California's anticipated shortage of 1 million skilled workers with industry-valued middle-skill degrees, certificates and credentials. Task force meetings were hosted by the CalChamber.

Task Force Recommendations

Through a series of college and faculty meetings, a number of town hall meetings and extensive research, the task force developed a comprehensive plan consisting of the 25 recommendations focused on seven broad areas:

- Removing barriers to education completion with improved career exploration and planning, work-based learning and other support.
- Putting industry at the forefront of career pathway development with clear,

defined sequences for learning industry-valued skills.

- Continuous program improvement based on robust metrics and outcome data.
- Streamlining the curriculum approval process, which currently takes too long, leaving students without timely skills employers require.
- Increasing the pool of qualified Career Technical Education (CTE) faculty. Currently, it's difficult to attract quality faculty because of education requirements and salary differentials.
- Regional coordination to pool resources and efforts for CTE and responding to industry needs.
- Establishing a dedicated and sustainable funding source for CTE programs. Currently, CTE courses are funded at the same level as general education courses, yet have higher startup and operating

costs. Funding gaps are closed with grants, but those are not long-term solutions.

To read the full set of recommendations, please go to <http://bit.ly/1IpCGOM>.

Job Shortage Ahead

The California Community Colleges Chancellor's Office *Doing What Matters for Jobs and the Economy* framework and the *Student Success Initiative* provided the foundation to launch this task force and also aim to increase workforce and economic competitiveness.

These measures are necessary in light of statistics indicating that there will be 6.3 million job openings in California through 2020, of which 2 million jobs will require a post-secondary certificate or associate degree.

Court Accepts CalChamber Brief Supporting *Vergara* Education Case

From Page 1

is the largest part—by hundreds of billions of dollars.”

Joining in the brief filed September 14 are the California Business Roundtable, the Silicon Valley Leadership Group, the Valley Industry & Commerce Association, the Orange County Business Council and the Foundation for Excellence in Education.

The brief contends that providing equal access to effective teachers in California's public schools is critical to a thriving California economy.

Also filing a brief in support of the *Vergara* decision were major social justice groups. The filings demonstrate the broad interest across the state in ensuring California's public schools deliver a quality education to all—not just some—of the state's students.

Vergara Case

After two months of trial, the Los Angeles Superior Court last year found unconstitutional California's quality-blind teacher tenure, dismissal and layoff laws. The court agreed with the nine

student plaintiffs that the laws needlessly handcuff schools, preventing them from making decisions in the best interest of kids, and disproportionately harm low-income students and students of color.

In his decision, Los Angeles Superior Court Judge Rolf M. Treu wrote, “The evidence is compelling. Indeed, it shocks the conscience.”

The State of California and the state's two largest teachers unions have appealed the trial court's landmark ruling in *Vergara*.

To read the amicus curiae briefs, visit studentsmatter.org/legal-filings.

CalChamber Action on Legislation Keeps Balance Between Privacy, Innovation

From Page 3

leaving businesses unclear about how to respond to government information requests. SB 178 provided this clarity and was signed into law by the Governor.

Drones

The proliferation of drones for commercial use and by hobbyists prompted

the Legislature to introduce a number of bills on the topic. The CalChamber **opposed** one of these bills that affected commercial drone operation.

SB 142 (Jackson; D-Santa Barbara) would have expanded liability for the wrongful occupation of real property to include operating a drone below 350 feet without the property owner's permission.

This would have stymied commercial drone innovation in California before the Federal Aviation Administration finished its rulemaking process and developed national regulations on drone operation.

Ultimately, the Governor vetoed this bill.

Staff Contact: Jeremy Merz

Simplify your training requirement and reward supervisors with free coffee.

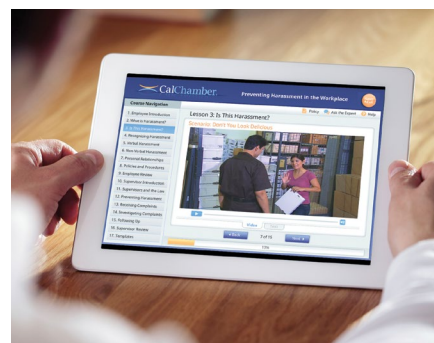
Regardless of company size, CalChamber recommends harassment prevention training for all supervisors and employees. Just ask any employer blindsided by a workplace harassment lawsuit—the costs are enormous. California requires companies with 50 or more employees to provide two hours of sexual harassment prevention training to all supervisors **within six months of hire or promotion**, and every two years thereafter. CalChamber's online training makes it easy to educate employees and meet your compliance requirements.



Get a **\$5 Starbucks eGift Card** for every California Harassment Prevention training seat you purchase by 12/31/15.

Use priority code CHTA. Preferred and Executive members receive their 20% discount in addition to this offer.

Starbucks, the Starbucks logo and the Starbucks Card design are either trademarks or registered trademarks of Starbucks U.S. Brands, LLC. Starbucks is not a participating partner or sponsor in this offer.



CalChamber's two-hour California harassment prevention training course for supervisors meets state requirements. **Tablet Ready**

ORDER online at calchamber.com/freecoffee3 or call (800) 331-8877. Use priority code CHTA.

ADDRESS SERVICE REQUESTED

HR Expert & Business Advocate™

P.O. BOX 1736 SACRAMENTO, CA 95812-1736
(916) 444-6670 FACSIMILE (916) 444-6685
www.calchamber.com

CALIFORNIA CHAMBER OF COMMERCE

ALERT

Periodicals
Postage
PAID
Sacramento, CA