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CalChamber Joins Coalition to Oppose Costly Initiatives



OPPOSE

The California Chamber of Commerce has joined a broad coalition of retailers, farmers, parents and small business owners that have organized a campaign

committee—California Consumers Against Higher Prices—to oppose any statewide \$15 minimum wage initiative on the November ballot.

"Under these initiatives, California small businesses will also bear the burden of facing higher costs every year with the inclusion of a CPI escalator," said CalChamber President and CEO Allan Zaremberg.

"Oftentimes, even in recessions, prices go up, and small businesses will be required to pay even more when they are making less. This is an unsustainable model that is bad for business and will hurt the very employees this wage increase seeks to help."

Founding coalition members include the California Restaurant Association and the California Retailers Association.

Minimum Wage Hikes

California's minimum wage went up to \$8 per hour in 2008, rose again to \$9 per hour in July 2014, and increased to

See CalChamber: Page 4

CalChamber Hosts Irish Minister



Irish Minister Alan Kelly T.D. discusses the economic and trade ties between the United States, California and Ireland at the CalChamber's March 16 International Luncheon. See story on Page 5.

More Analysis Needed on State-Run Retirement Savings Program

The California Chamber of Commerce and a coalition of employer groups say more analysis is needed before the state proceeds with developing a retirement savings program for private sector employees whose employers don't currently offer a plan.

Completion of a feasibility study and market analysis was one of the requirements when legislation authorizing the California Secure Choice Retirement Savings Program was enacted in 2012 (SB 1234; Chapter 734).

The completed study/analysis inadequately answers or fails to address basic concerns that the CalChamber and employer groups have expressed, the coalition writes in a **March 10 letter** to the California Secure Choice Investment Board, chaired by California State Treasurer John Chiang.

The coalition finds that the report oversimplifies the processes and procedures that employers will be required to complete, makes assumptions that may or may not materialize regarding the record-keeper function under the direct service model, and fails to adequately and completely identify and address risks and liabilities for employers.

The coalition also notes that "simple, cost effective private market solutions may be available and yet have not been explored."

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Photo by Sara Espinosa



Labor Law Corner

Use of Megan's List Forbidden for Employment Purposes



Sunny Lee HR Adviser

We did a background check on an applicant and it came back that he was a registered sex offender. Now we do not want to hire him. Are there any problems with withdrawing the offer of employment?

Yes, there are problems withdrawing an offer of employment on the basis of information obtained from Megan's List.

Megan's List was designed to be used by parents to alert them to home

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Email: alert@calchamber.com. Home page: www.calchamber.com. addresses in their neighborhood where registered sex offenders resided. It never was intended for, nor should it be used by, employers for employment purposes.

Penalties

In California according to Penal Code Section 290.46 (l)(2)(E), use of this information for employment purposes is prohibited. There are stiff penalties for an employer that uses this information as indicated in Section 290.46 (l)(4)(A):

"(4)(A) Any use of information disclosed pursuant to this section... shall make the user liable for the actual damages, and any amount that may be determined by a jury or a court sitting without a jury, not exceeding three times the amount of actual damage, and not less than two hundred fifty dollars (\$250), and attorney's fees, exemplary damages, or a civil penalty not exceeding twenty-five thousand dollars (\$25,000)."

Civil Action for Misuse

In addition, if it is determined that there is a common practice of using this information, then the Attorney General may bring an action as indicated in Section 290.46 (1)(4)(B)(2):

"(4)(B)(2), the Attorney General, any district attorney, or city attorney, or any person aggrieved by the misuse is authorized to bring a civil action in the appropriate court requesting preventive relief, including an application for a permanent or temporary injunction, restraining

order, or other order against the person or group of persons responsible for the pattern or practice of misuse...."

Authorization versus Use

It is important that an employer understand the distinction that exists between an applicant authorizing a background check and an employer being able to use that information, particularly where the law prohibits the use of that information.

Since it is difficult to ignore information once received, it is a better practice not to obtain the information in the first place. An applicant who is denied a job based on the Fair Credit Reporting Act must be provided with a copy of that information.

At that point the applicant would know the reason he/she was denied employment and could obtain an attorney and file legal action against the employer, which may subject the employer to actual damages and attorney fees, exemplary damages, or a civil penalty.

Employers who feel strongly about this issue should consult with their legal counsel

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.

CalChamber-Sponsored Seminars/Trade Shows

More at www.calchamber.com/events. Labor Law

HR Boot Camp. CalChamber. May 10, Sacramento; June 9, Santa Clara; September 7, San Diego; September 22, Sacramento. (800) 331-8877.

Leaves of Absence. CalChamber. April 14, Sacramento; June 23, Huntington Beach; August 16, Sacramento. (800) 331-8877.

International Trade

12th Annual Global California Conference—The Pacific Rim Countries. Monterey Bay International Trade Association. March 24, Monterey. (831) 335-4780. The Trans-Pacific Partnership: Impact on the U.S. Economy. University of Southern California Sol Price School of Public Policy. March 29, Sacramento.

Danish American Frontier Award Dinner. Danish American Chamber of Commerce of Northern California. April 3, San Francisco. (925) 253-0785. See CalChamber-Sponsored: Page 4

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More Analysis Needed on State-Run Retirement Savings Program

From Page 1

Program Criteria

The Secure Choice program must be easy for employees and employers to understand, easy to implement and easy to comply with, the coalition writes.

According to the legislation, employers must not be exposed to risks for employee assets or investment choices, and must not face traps that could cause inadvertent liability.

Federal Law Impact

A primary concern of employers before SB 1234 was enacted was how the federal Employee Retirement Income Security Act of 1974 (ERISA) applied to the plan and employers.

The bill therefore explicitly acknowledges these risks and was amended to state that the board shall not implement the retirement savings program if:

- the Individual Retirement Account (IRA) arrangements fail to qualify for favorable federal tax treatment accorded to IRAs under the U.S. Internal Revenue Code:
- it is determined that the program is an employee benefit plan under ERISA;
- the program creates liability for the state or for employers.

Coalition Concerns

• ERISA Applicability: The Cal-Chamber and coalition voice concern about the report's inadequate attention to ERISA and the program's compliance with U.S. Department of Labor (DOL) regulations.

The question of whether the program is subject to ERISA is unsettled and the DOL admits the ultimate determination rests with the courts, even though it has proposed a draft regulation "to reduce the risk of state programs being pre-empted."

• Employer Outreach and Education: Key to the success of the program is the full participation by eligible employers, which will require extensive outreach and education in advance of implementation.

This program component is not given adequate attention in the report, while employee outreach and employee protections are given significant weight.

• Employee Outreach: The report recommends a concerted, aggressive public education campaign focused on workers and small businesses. The coali-

tion agrees this outreach and education of employees is very important.

Given the lack of investment sophistication of the program's targeted population as identified by the study, employees must have easily understandable and readily accessible information that covers all aspects of the program, including the fundamentals of process, procedure and investment risk and reward.

Key recommendations of the report omit (or downplay) the key financial education that employees will require, and instead focus on granting employees with enforcement and compliance powers targeted at the employer. The report also severely underrates the understanding of eligibility and the selection of the appropriate investment vehicle by participants.

- Rules and Procedures: The rules and procedures recommendations fail to acknowledge and address the complexities of the employer duties, responsibilities, and risks. Furthermore, the report fails to specify what the employer's "ministerial duties" are limited to, leaving employers at risk of ERISA pre-emption.
- Enforcement Against Employers: The coalition has serious concerns regarding the enforcement component. This provision has not been made clear enough.

A primary concern for California employers is that additional enforcement functions for the state Department of Industrial Relations will require an increase in assessments on employers since the department is supported by a fee on employers.

• Recordkeeper Concerns: The coalition prefers an operational model that provides as much separation as possible between the employer and the participation and investment decisions of the employee, and that limits the employer's role to distributing program marketing materials to employees and processing their payroll contributions. Aspects of the recordkeeper role also have potentially significant implications related to privacy and the Patriot Act.

Throughout the report, the record-keeper is assumed or hoped to be capable of a variety of operations: managing day-to-day operations of the plan (including maintaining individual accounts); keeping track of transactions and assets at the individual participant account level; enrolling participants; tracking participant contribution rates and investment

selections; providing account statements; maintaining the plan website; and providing general support to participants and plan sponsors/employers.

The report further recommends the direct service model with a recordkeeper and that the program hire a consultant to draft the request for proposal (RFP), run the RFP process and oversee implementation of the operational model. The coalition asks how these expenses been accounted for in the start-up costs.

• Risk and Liability: Not part of the report is an analysis of any risks to the program and their potential consequences, and how to minimize or prevent them. Many questions remain unanswered regarding potential risks and threats, and how potential problems could be addressed.

Examples of unanswered questions listed by the coalition letter range from who is responsible for lost income by the participant if a contribution is lost or late, to who is responsible for any shortfall if the program is not self sustaining as anticipated.

• Cost to Employers: In contrast to the simplistic model in the report, the coalition has identified many decision and tracking points for employers, all of which not only create cost, but also potential liability for mistakes and lawsuits.

The coalition is concerned that the many moving parts of tracking and remitting payroll contributions could result in mistakes, and that those mistakes could wind up being costly for employers in terms of enforcement penalties, and could potentially result in exposure to legal liabilities.

The coalition urges the board not to assume that the employer cost of compliance is absorbable.

Upcoming Meeting

The Secure Choice Investment Board will convene on March 28 in Sacramento to hear staff recommendations based on the report and the public written comments, and then to vote on their adoption. The public will be able to comment during the hearing as well.

The result of the board's recommendations for the program will be forwarded to the Legislature for further action. This year, Senate President Pro Tem Kevin de León (D-Los Angeles) has introduced SB 1234 as placeholder legislation to implement the program.

Staff Contact: Marti Fisher



CalChamber-Sponsored Seminars/Trade Shows

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International Trade Luncheon with Consul General of Mexico. Hayward Chamber of Commerce. April 12, Hayward. (510) 537-2424.

Asia/Pacific Business Outlook Conference. U.S. Commercial Service. April 18–19, Los Angeles. (213) 200-7172.

Exporting Best Practices. California Centers for International Trade Development. April 19, Clovis. (559) 324-6401.

Importing into the U.S. California Centers for International Trade Development. April 19, Clovis. (559) 324-6401.

South Africa Energy Storage Business Briefing. Business Council for International Understanding. April 21, Long Beach. (212) 997-3584.

Hannover Messe 2016. SelectUSA. April 25–29, Hannover, Germany.

Milken Institute Global Conference. Milken Institute. May 1, Beverly Hills.

World Trade Kickoff Breakfast. Los Angeles Area Chamber of Commerce. May 3, Los Angeles. (213) 580-7569.

Sacramento IRS Small Business Week Webinar. Internal Revenue Service. May 6, Webinar.

Sacramento Regional Global Trade Summit. Northern California-Sacramento Regional Center for International Trade Development. May 18, Sacramento. (916) 563-3219.

Call for Interviewees: Research Project on CEQA Litigation and Public Engagement

A team of University of Southern California graduate students is analyzing the California Environmental Quality Act (CEQA) to better understand whether CEQA litigation amounts to a misuse or abuse of the law.

Sponsored by the California Foundation for Commerce and Education, this research will add new insights to the ongoing discussions on CEQA reform by providing new quantitative and qualitative analysis.

Researchers hope to bolster their qualitative research by interviewing stakeholders—whether individual or affiliated with a business or organization—

who are familiar with CEQA and how the litigation affects California businesses or communities.

If you wish to share your perspective or have questions about the research project, we ask that you contact Wyatt Lundy (wlundy@usc.edu) or Jessica Medina (medi120@usc.edu) by March 31.

Interviews will be scheduled through April 8, 2016 and project findings will be submitted to Loren Kaye, president of the California Foundation for Commerce and Education, by May 15.



CalChamber Joins Coalition to Oppose Costly Initiatives

From Page 1

\$10 per hour this past January.

The California State Council of Service Employees (SEIU) and the SEIU-United Healthcare Workers (SEIU-UHW) have filed competing minimum wage increase initiatives to increase the minimum wage to \$15 per hour.

Both initiatives tie future increases to the Consumer Price Index (CPI), with SEIU's measure additionally mandating six paid sick days per year. These initiatives would signify a 180% increase in the minimum wage, and would create far-reaching consequences for communities throughout the state.

Cost to State/Local Government

A \$15 minimum wage would cost California state and local governments approximately \$1.7 billion a year, and would not provide any additional revenues to cover those costs. Paying for these expenses would result in fewer public sector jobs, and cuts in vital services such as education, nonprofits, In-Home Supportive Services, developmental services, child care, and more.

Governor Edmund G. Brown Jr. recently recognized the impacts of a \$15 wage hike during his 2016–17 budget presentation in January, making it clear that increasing the minimum wage too

much would put many low-income Californians out of work.

"Raise the minimum wage too much and you put a lot of poor people out of work," said Governor Brown. "There won't be a lot of jobs. It's a matter of balance."

The initiative sponsored by SEIU-UHW is pending signature verification by the Secretary of State. A random sample on March 15 projected supporters have just 79% of the required number of signatures.

The SEIU-sponsored initiative has until July 5 to submit no fewer than 365,880 signatures to place the measure on the November ballot. The initiative has reached the 25% signature threshold.



CalChamber International Luncheon Highlights U.S./California-Irish Trade



Economic and trade ties are an important facet of overall U.S./ California-Irish relations, explained the Honorable Alan

Kelly T.D., Irish minister for the environment, community and local government, during an international luncheon this week at the California Chamber of Commerce.

In addition to celebrating St. Patrick's Day one day early, the luncheon with more than 100 attendees also honored March as Irish-American Heritage Month, which was recently declared by U.S. President Barack Obama.

Luncheon guests also heard from Assemblymember William P. Brough (R-Dana Point), who chairs the California Legislative Irish Caucus, which now boasts the membership of 25% of the Legislature. The caucus will take a trip to Ireland in July. Brough promised that upon their return, participants will be "fully committed to new, stronger and even more meaningful ties."

Trade Overview

The links between Ireland and California "have never been stronger," Minister Kelly told the luncheon guests. "Ties of blood have been reinforced with ties of commerce."

Ireland is a trade-dependent economy and one of the first 12 European Union nations to begin circulating the euro in 2002. The nation has become an important European hub for key sectors such as biotech, technology, med-tech, and financial services.

Ireland has a gross domestic product (GDP) of \$250.8 billion and a population of 4.6 million.

Irish-California Trade Relations

California companies are major investors in the Irish economy. There are more than 50 California-based companies with Irish founders, and more than 36,000 Irish nationals employed by California-

based corporations.

Minister Kelly shared that in the last 18 months, a number of companies headquartered in California have all announced expansions in Ireland.

Large numbers of Irish companies are in California, creating jobs. Minister Kelly called this situation a "win-win" for everyone.



(From left) Aidan O'Shea, managing director of Voxpro, luncheon sponsor; Alan Kelly, Irish minister for the environment, community and local government; Philip McNamara, director USA of Voxpro; and Philip Grant, Irish consul general in San Francisco.



Assemblymember William P. Brough (R-Dana Point), chair of the California Legislative Irish Caucus

While U.S. companies created 110,000 jobs in the Irish economy, Irish companies support 82,000 jobs in the U.S.

As an example of this cross link, Minister Kelly cited the recent expansion of Voxpro into Folsom, California.

Voxpro is an award-winning provider of multilingual customer experience and technical support solutions for global brands. It is headquartered in Cork, with offices in Dublin and San Francisco. On March 15, Voxpro launched a new operational Centre of Excellence in Folsom where it will deliver customer experience to the U.S. market in partnership with iconic tech companies.

"Voxpro is an incredible Irish company that is going to grow exceptionally,

both in Ireland and in California,' Minister Kelly said.

Pointing to Voxpro's growth, Minister Kelly promised that there are more Irish companies doing business in California and assured the attendees that there will be more involvement in California's economy.

According to the U.S. Department of Commerce, in 2015, California exported more than \$1 billion to Ireland, providing 11% of total U.S. exports to Ireland, and making California the top exporting state to Ireland. Top exported products in 2015 included chemicals, computers, manufactured commodities, and nonelectrical machinery.

More than 400 Irish technology or software companies export to the U.S. or are looking to export, Minister Kelly said.

The Silicon Valley and San Francisco Bay Area offer these companies some of the most attractive bases in which to do business.

"They are home to the largest and most important concentration of innovation centers, incubator and development spaces, corporate development centers, venture capital funding companies, high tech multination firms in the U.S.," Minister Kelly remarked.

Turning to tourism, Minister Kelly declared that California and Ireland have never been closer

thanks to three new direct flights. As recently as March 2013, there were no direct flights.

U.S.-Irish Trade Relations

Two-way trade between the United States and Ireland was approximately \$48.3 billion in 2015.

See CalChamber International: Page 7



CalChamber-Backed Bills to Address Teacher Shortage Move



Two California Chamber of Commerce-supported bills that will help California public schools recruit and retain quality teachers passed out of their

respective policy committees this week.

SB 933 (B. Allen; D-Santa Monica) provides matching grants to help school districts establish and maintain teacher residency programs to recruit, prepare, and retain new teachers.

AB 1756 (Bonilla; D-Concord) provides one-time funding for postsecondary teacher preparation institutions to develop integrated baccalaureate degree and teaching credential programs.

CalChamber Position

Having strong teachers in every classroom is critical to ensuring more students graduate from high school adequately prepared to enter the workforce or further their education without the need for significant remediation. As such, the current teacher shortage presents a significant threat to the state's ongoing efforts to meet future workforce needs.

Both bills are prudent investments in the most important component of Califor-

nia's education system, its teachers, and will contribute to the long-term health of the state's economy.

Teacher Corps

SB 933 helps high-need school districts establish and maintain teacher residency programs in partnership with teacher preparation institutions, community partners, and other nonprofits, to prepare and mentor new teachers.

School districts will be able to apply for state matching grants of up to \$30,000 per teaching candidate, per year for three years, to help pay the student teacher, cover the cost of their credential program, and bring a master teacher to mentor them. The program will help ensure that all students will have highly qualified teachers in their classrooms.

The bill represents a comprehensive approach that maximizes the use of state dollars by requiring participating school districts to match the state's contribution and use proven teacher preparation strategies to train, support, and retain a new generation of teachers.

Integrated Programs

AB 1756 provides one-time funding to postsecondary teacher preparation institutions to help them develop integrated programs so that students can earn their baccalaureate degree and a teaching

credential concurrently, within four years.

These innovative programs will help draw new teachers to the profession, put fully trained teachers into classrooms more quickly, and reduce the amount of debt new teachers have to take on, increasing the value of teacher salaries.

Key Votes

SB 933 passed the Senate Education Committee on March 16 with unanimous bipartisan support, 9-0:

Ayes: Liu (D-La Cañada Flintridge), Block (D-San Diego), Hancock (D-Berkeley), Huff (R-San Dimas), Leyva (D-Chino), Mendoza (D-Artesia), Monning (D-Carmel), Pan (D-Sacramento), Vidak (R-Hanford).

AB 1756 passed the Assembly Education Committee on March 16 with unanimous bipartisan support, 6-0.

Ayes: O'Donnell (D-Long Beach), Olsen (R-Modesto), Kim (R-Fullerton), McCarty (D-Sacramento), Santiago (D-Los Angeles), Thurmond (D-Richmond).

Absent/abstaining/not voting: Weber (D-San Diego).

Both bills go next to the Appropriations Committee of their respective houses.

Staff Contact: Mira Morton

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CalChamber Backs Bills to Speed Water Supply Solutions



The California Chamber of Commerce is supporting a number of bills to expedite and reduce costs for water storage facilities, drought mitigation measures and

recycled water pipelines.

The bills are scheduled to be considered by the Assembly Natural Resources Committee on April 4, after the Legislature's spring recess.

- AB 1647 (Waldron; R-Escondido) streamlines and reduces regulatory burdens for specified water storage facility projects by exempting such projects under the California Environmental Quality Act (CEQA).
- AB 1749 (Mathis; R-Visalia) expedites and reduces costs for recycled water pipelines by extending the current exemption for such projects under CEQA by five years.
- AB 1589 (Mathis; R-Visalia) expedites and reduces costs for drought mitigation projects by exempting them under CEOA.

• AB 1586 (Mathis; R-Visalia) expedites and reduces costs for the Temperance Flat Reservoir Project by exempting it under CEQA. The project is located on the San Joaquin River, upstream from Millerton Lake on the border of Fresno and Madera counties.

More Storage

• AB 1647 seeks to create a CEQA exemption for a project that expands the storage capacity of an existing publicly owned and operated surface water storage facility by up to 25%, or to replace an existing publicly owned and operated surface water storage facility, if certain specified conditions are met.

Although the types of projects envisioned under AB 1647 may fall within certain categorical exemptions under the CEQA Guidelines, AB 1647 ensures that certain water storage projects would benefit from a statutory exemption.

Statutory exemptions provide more protection than categorical exemptions because there are no "exceptions" to statutory exemptions that may defeat their use. Accordingly, if a proposed project fits within the terms of AB 1647's stated exemption, then that is the end of the inquiry and the exemption applies.

Speeding Projects

- AB 1749 extends the current exemption for specified recycled water pipeline projects under CEQA as outlined in the Governor's budget last year.
- AB 1589 exempts projects under CEQA that are carried out to mitigate the effects of conditions caused by drought, flood or fire. The exemption would remain in effect for the duration of a state of emergency proclaimed by the Governor due to drought, flood or fire under the California Emergency Services Act.

In its support letters, CalChamber is emphasizing that CEQA was initially passed to ensure that California's environment is considered before moving forward with a project.

Over time, however, CEQA has become a hook for litigation and a means to delay critical public works projects. Until significant changes are made to the underlying process, the CalChamber supports efforts to expedite the CEQA review process for important public works projects, such as those specified in these bills, which will encourage economic growth and recovery.

Staff Contact: Anthony Samson

CalChamber International Luncheon Highlights U.S./California-Irish Trade

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The Irish economy is growing at a pace that has never, ever been seen before, Minister Kelly said. In fact, it is one of the fastest-growing economies in the world and the fastest-growing economy in Europe.

Exports from Ireland continue to rise. In 2015, the United States exported more than \$8.9 billion in goods to Ireland, a 15% increase since 2014. Top exported products included chemicals, transportation equipment, computers, and manufactured commodities. The United States imported \$39.4 billion from Ireland, with chemicals making up 72.8% of the total.

"All of the key indicators suggest continued and strong economic growth, despite a challenging global environment," Minister Kelly said.

Foreign Direct Investment

Foreign Direct Investment (FDI) globally continues to be a key contributor

to Ireland's economic performance and growth.

"More than 3,000 foreign companies have put down roots in Ireland," Minister Kelly explained. "These include many of the world's most successful businesses, which have chosen Ireland as their strategic base in Europe."

In 2014, U.S. direct investment into Ireland reached \$310.6 billion, while Ireland invested \$16.2 billion into the United States. The United States is the largest export destination for Irish goods, and provides the second largest source of Irish imports, after the United Kingdom.

100 Years of Independence

Minister Kelly explained that 2016 is a very special year for Ireland, probably the most significant year since 1916, when Ireland's independence was proclaimed.

Over the months ahead, the country will look back over the last 100 years and re-imagine the future, he said.

America is the only foreign country expressly referenced in the proclamation of the Irish Republic, which itself has echoes of the U.S. Declaration of Independence, Minister Kelly explained.

Minister Kelly shared a little known fact: that five of the seven signatories of the proclamation spent periods of time prior to that in the United States.

"Five of the seven," Minister Kelly repeated. "Obviously their time in the U.S. had a huge impact on their thinking."

In closing, Minster Kelly said that he is confident, "Thanks to our strong presence and to the way in which we are so united, that we will be united in the future in a shared, peaceful and prosperous future. We all will ensure collectively, given how close our ties are, that this will transpire."

For further information, see the latest CalChamber portal, www.calchamber.com/Ireland.

Staff Contact: Susanne T. Stirling



April 1 Compliance Alert





California Employers: Are you a private-sector employer with five or more full- or part-time employees, or a public-sector employer? If so, you're required to post the updated Pregnancy Disability Leave notice effective April 1, 2016, in each business location.

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