

VOLUME 42, NUMBER 15 • MAY 13, 2016

# Governor Signs Job Creator **Promoting Disability Access**



A California Chamber of Commercesupported job creator bill that incentivizes

disability access and education was signed by Governor Edmund G. Brown Jr. this week.

SB 269 (Roth; D-Riverside), which won unanimous bipartisan approval as it moved through the legislative process, will limit frivolous litigation and claims regarding construction-related accessibility violations by providing businesses that have proactively sought to become compliant with the Americans with Disabilities Act with an opportunity to resolve any identified violations.

As an urgency measure, SB 269 took effect immediately upon being signed on May 10.

#### **Balanced Approach**

SB 269 is a balanced approach between preserving the civil rights of

www.calchamber.com/mobile

those who are disabled to ensure their access to all public accommodations, while limiting the number of frivolous lawsuits threatened or filed against businesses that do not improve accessibility.

The bill seeks to incentivize businesses to proactively take steps to become accessible by providing them with 120 days from receipt of a Certified Access Specialist (CASp) report to resolve any violations identified without being subject to statutory penalties or litigation costs. This proposal will assist businesses who are trying to ensure they are compliant from being subject to frivolous claims or litigation.

SB 269 also provides a limited time for businesses to resolve violations of minor, technical construction-related standards that do not actually impede access to the public accommodation.

For updates on the remaining job creator bills, visit www.calchamber.com/ jobcreators.

Staff Contact: Jennifer Barrera



### Job Creator Bill Offers **Innovative Housing** Solution



The newest addition to the California Chamber of Commerce job creator list

provides an innovative solution to California's housing crisis.

Bringing the job creator list to 14 bills is SB 1069 (Wieckowski; D-Fremont), which creates and expedites additional housing supply by streamlining the permitting process for Accessory Dwelling Units (ADU).

The bill awaits action by the Senate.

#### **Lower-Cost Homes**

ADUs provide lower-cost and low carbon footprint homes in existing neighborhoods consistent with architectural traditions. Studies show that ADUs cost less to build, and rent for less than new market rate housing, making ADUs affordable by design.

SB 1069 amends existing State Second Unit Enabling law to further simplify the process of ADU adoption for residents by reducing parking requirements, streamlining the permitting process, and allowing ADUs by building permits within existing structures.

The average California home currently costs about 2.5 times the national average home price. The average monthly rent in California is 50% higher than the rest of the nation and even higher in cities See Job Creator: Page 4

#### Inside\_

**Moving California Goods: CalChamber Works** to Protect Jobs: Page 6



### <u>Cal/OSHA Corner</u> Safety/Health Recordkeeping Mandates May Change for Some Industries



Mel Davis Cal/OSHA Adviser

The federal Occupational Safety and Health Administration (OSHA) has revised the industrial classification index relating to partially exempt and nonexempt industries for recordkeeping purposes. I am a small business owner with fewer than 10 employees. Will I now have to maintain the Log 300?

Cal/OSHA has not yet determined whether it will adopt these changes for California employers. California main-

#### **California Chamber Officers**

Michael W. Murphy Chair

Susan Corrales-Diaz First Vice Chair

Terry MacRae Second Vice Chair

Grace Evans Cherashore Third Vice Chair

Joseph M. Otting Immediate Past Chair

Allan Zaremberg 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 Zaremberg. 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. tains its own occupational safety and health program as permitted by the federal Occupational Safety and Health Act. This requires California to enact safety and health regulations that are "at least as effective" as the federal counterpart standard. Because Cal/OSHA is still analyzing OSHA's revisions at this time, we don't know what if any changes will be made to California's reporting procedures and requirements.

OSHA's revision to the recordkeeping requirements did not alter the "10 or fewer employee" partial exemption, which California will also maintain. OSHA's changes would also require current partially exempt industries to maintain the Log 300 and post a 300A summary annually.

Also not affected are businesses in certain low-hazard industries that have been exempted from routinely keeping the 300 log and associated documents.

Since 1982, this list has been made up of businesses in the retail trade; finance, insurance and real estate; and the services industry if the three-year average lost workday case rate for their major industry group was 75% or less of the overall three-year average of the lost workday case rate for private industry.

#### **Low-Hazard Industries**

The revised recordkeeping regulation provides an updated list of low-hazard industries that are exempt from routinely keeping injury and illness records. The new list of exempt industries is now classified by the North American Industry Classification System (NAICS), which is the standard used by federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy. The list previously used the Standard Industrial Classification (SIC) codes.

#### **Revised Lists**

Lists of both the partially exempt businesses and the establishments that are required to keep records have been revised and should be reviewed to determine if your status has changed.

For example, automobile dealers, NAICS Code 4411 (old SIC Code 551) are now required to keep records; and pipeline transportation of crude oil is now partially exempt.

Also, museums (SIC 841), NAICS Code 7121, was a partially exempt category before and now museums are required to keep records.

The list for partially exempt NAICS codes can be found at *www.dir.ca.gov/ T8/14300\_2.html*.

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.calchambercom/events*. *Labor Law*

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

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

**Business Resources** 

- Disaster Readiness Workshop. California Office of Emergency Services. May 18, Oakland. (916) 845-8371.
- Overview of California's Small Business Loan Guarantee Program. GO-Biz. May 19, Webinar. (916) 322-0694.

Risks of Criminal Prosecution of Executives in the Fresh Produce Industry. Western Growers Association. May 24, Salinas. (949) 885-4789.

#### International Trade

- Sacramento Regional Global Trade Summit. Northern California-Sacramento Regional Center for International Trade Development. May 18, Sacramento. (916) 563-3219.
- World Trade Center International Business Luncheon. Northern California World Trade Center. May 18, Sacramento. (916) 321-9146.
- Pakistan: A Political and Economic See CalChamber-Sponsored: Page 6



# CalChamber Promotes Science Component in Education Accountability Standards



Science should be included as a key indicator in measuring student performance when the state creates its new school accountability system, the California Chamber of Commerce

and other groups are emphasizing to the California State Board of Education.

The education board met this week to review staff recommendations for measurements to use to identify when schools and districts need help.

The CalChamber and coalition asked the board to commit to creating a science placeholder in the evaluation rubric for the Local Control Funding Formula (LCFF) while the new science assessment is being designed and tested.

That commitment and ensuring the assessments are built to be useful tools to local educators would emphasize the importance of providing access to high quality education for students in the state, particularly students underserved by the current education system, the CalChamber and coalition stated in a letter to the education board.

The science assessment results are expected to be available in 2020.

The CalChamber joined organizations representing school boards, science teachers, education advocates and Silicon Valley companies in making the case for science education.

#### **New Jobs**

Jobs requiring science, technology, engineering and mathematics (STEM) make up more than a quarter of all new job openings, including many of the highest paid occupations, the letter points out. Moreover, a report by a state task force estimates that by 2018, 92% of STEM jobs will require at least some postsecondary education and training.

"We must prepare our students for these career and economic opportunities, and fully implementing the Next Generation Science Standards will help us strengthen student preparation to promote their success in college study and careers in the science and engineering fields," the coalition letter states.

#### **Science Education Inequity**

The higher emphasis on mathematics and English language assessments and instruction over the last 15 years have relegated science education to the sidelines, resulting in significant inequity in science education opportunities and quality in California public schools.

Teachers in the kindergarten through

minutes a day on science, while those in

Another report found that affluent

schools were more than twice as likely to

state's poorest schools (High Hopes - Few

That report called for including sci-

ence education in all elementary schools,

spend on science learning and increasing

National assessment data show con-

tinuing achievement gaps in California,

with 39% of white eighth grade students

increasing the amount of time students

the emphasis on student academic

achievement in science.

Opportunities, The Center for the Future

of Teaching and Learning at WestEd).

have science initiatives compared to the

grades 4 through 6 report spending 24

minutes, according to the Knowledge

Matters campaign.

third grade report spending only 19

scoring proficient in science compared with just 8% of African American students and 11% of Hispanic students in 2011.

#### **Opportunity**

As California redesigns its accountability system, there is an opportunity to do so in a way that broadens the curriculum, the coalition letter points out.

Including the science placeholder in the evaluation rubric "will effectively signal to the field that science assessment results will be included once they are available in 2020 and will thereby support efforts to promote" local implementation of the Next Generation Science Standards, the letter states.

Identifying science as a key indicator will ensure that schools or Local Educa-

tion Agencies that are struggling to meet performance and expectations for improvement in science will receive additional support and assistance in that area.

#### Board Staff Recommendation

The five metrics the education board staff is recommending be used to identify schools and districts in need of assistance and intervention are:

• Student test scores on the Common Core tests in math and English language arts:

• Progress of English learners toward proficiency in English;

• High school graduation rates;

• An added weight for two markers of a student's progress through schools: test scores in Grade 3 reading and Grade 8 math; and

• Student suspension rates at various grade levels.

#### Next Steps

The education board is expected to adopt the initial phase of the LCFF evaluation rubrics at its September meeting. The board states that it expects this year's version of the rubrics will evolve through the first couple of years of implementation.

Staff Contact: Marti Fisher



# Court Affirms Rest Break Timing Requirement



A California court recently affirmed in *Rodriguez v. E.M.E., Inc.* that, in general, rest breaks cannot be combined.

Relying on the California Supreme Court's guidance in

Brinker Restaurant Corp. v. Superior Court, the appellate court held that "rest breaks in an eight-hour shift should fall on either side of the meal break, absent factors rendering such scheduling impracticable." There may be unusual or exceptional circumstances that will permit variation from the norm.

In this case, whether the company can show that unusual circumstances exist to justify its practice of combining rest breaks into a single 20-minute break before the meal period cannot be decided on a motion to eliminate the case before trial (known as a motion for summary judgment).

The *Rodriguez* court remanded the case to a lower court so the issue can go before a jury.

#### Background

Under California law, employers must provide rest breaks to all nonexempt employees whose total daily work time is at least 3.5 hours.

These mandatory rest breaks must be offered at the rate of 10 "net" minutes for

every four hours worked or "major fraction thereof." The issue in this case revolved around the timing of these 10-minute breaks and whether the breaks could be combined.

The case involved employees at a metal finishing company who worked eight-hour shifts:

• Employees on the first shift (7:30 a.m. to 4 p.m.) received one combined 20-minute rest break at around 9:30 a.m. and a 30-minute meal break at 12:30 p.m.

• Employees who worked the second shift (3:30 p.m. to 11:30 p.m.) received a 30-minute meal break at 5:30 p.m. and one combined 20-minute rest break at 8 p.m.

The employees challenged the combined rest break, but the employer argued it was lawful. The lower court agreed with the employer and granted its motion for summary judgment.

The appellate court found that summary judgment for the employer was not proper and allowed the employees' case to proceed. In doing so, the court also provided some helpful guidance on the timing of rest breaks.

#### **General Guidance**

The court relied on the Wage Orders, Division of Labor Standards Enforcement opinions and the *Brinker* decision to reaffirm the general rule that rest periods should fall in the middle of work periods and separated by the meal break "insofar as practicable" — which the court interpreted to mean "to the extent feasible." Following the *Brinker* guidance, the timing of such breaks in an eight-hour shift is that one rest break should fall on either side of the meal break.

#### **Combined Breaks**

The court also rejected the notion that employers are allowed to combine rest breaks, as the company in this case did. Again, the court reiterated the preferred schedule of one rest break on each side of a meal break.

A company has no right to combine rest breaks as a matter of law. However, unusual or exceptional circumstances may permit a combined rest break. The court noted that there was only one circumstance that the former Industrial Welfare Commission had discussed allowing a combined rest break: where the business requires shifts in which the meal period occurs soon after the employee reports to work. The *Rodriguez* court noted that those facts were not before it.

#### **Employer Resources**

Employers are advised to consult legal counsel if they think they have a situation that allows them to depart from the general rule of a rest break on each side of a meal break.

To read more about meal and rest breaks, visit the California Chamber of Commerce HR Library at *hrcalifornia. com/hr-library/pay-scheduling/*. Staff Contact: Gail Cecchettini Whaley

### Job Creator Bill Offers Innovative Housing Solution

#### From Page 1

such as San Francisco, San Jose, Oakland, and Los Angeles. Average rents in all four of these cities are among the top 10 most unaffordable in the nation.

Data in a seminal 2015 publication, *California's High Housing Costs: Causes and Consequences*, authored by the state Legislative Analyst's Office, clearly show that the lack of affordable housing, particularly in coastal California, is one of the biggest drivers of institutional and generational poverty cycles. The publication reports that the bottom 25% of income earners are spending 67% of their income on housing.

#### Call to Support

In a letter, the CalChamber urges senators to support and pass the bill.

"State and local laws should enable residents to quickly and easily provide a home to someone in their community rather than set up barriers that make this impossible," the CalChamber support letter states.

To view the job creator list, visit *www. calchamber.com/jobcreators*.

#### Action Needed

The CalChamber is urging members to contact their senators and ask them to **support SB 1069**.

Staff Contact: Anthony Samson



# Trade Expands Economy, Opportunities California Top Exporter: 229 Foreign Markets, 11% of U.S. Total



As trade is being widely discussed on the national political scene, making sure U.S. businesses from light manufacturers to service providers—

benefit from higher growth, employment and wages due to increased exporting is key to expanding the economy and creating opportunity for all Americans.

Once again this May, designated as World Trade Month, we have the opportunity, as the U.S. Department of Commerce says, "to acknowledge the importance of global trade, and look back at the economic advancements we have made as a result."

#### **Export Strengths**

Continuing in that vein, the Commerce Department recap notes:

"In 2015, our exports totaled \$2.23 trillion, we increased our exports to 58 international markets, and we achieved record exports with 20 global partners.

"Our export success was one aspect of a strong year for the U.S. economy where our auto industry experienced its best year ever and our manufacturing sector reached record highs for output.

"Exports also contributed to our economy, supporting 11.5 million U.S. jobs and accounting for nearly 13% of U.S. GDP. In addition, last year, U.S. services exports tallied another strong year. In fact, business services; telecommunications, computer and information services; and travel all reached export increases of more than \$1 billion.

"With more than 95% of the world's customers living outside of our borders, trade and investment are a platform for our country to deliver our goods and services to global consumers. A robust export environment also attracts and encourages foreign companies to invest in the most

innovative, productive workforce in the world: the United States of America."

#### **California Exports**

In 2015, California exports totaled \$165.4 billion, according to the U.S. Department of Commerce. The 4.8% decrease from 2014 has been attributed in part to the strength of the U.S. dollar.

California maintained its perennial position as a top exporting state, exporting to 229 foreign markets. Exports from California accounted for 11% of total U.S. exports, with Mexico, Canada, China, Japan and Hong Kong being the state's top trading partners.

> World Trade Month Commentary By Susanne T. Stirling

#### Trade Agreements

Agreements like the Trans-Pacific Partnership (TPP) and the Transatlantic Trade and Investment Partnership (TTIP), multilateral agreements currently being negotiated, ensure that the United States may continue to gain access to world markets, which will result in an improved economy and additional employment of Americans.

Secretary of State John Kerry summed up the importance of these trade agreements in an April speech to the Pacific Council in Los Angeles:

"Ultimately, this whole debate—about TPP, TTIP, trade generally—comes down to a fundamental question: Will we bind our nation closer to partners and allies in the Asia Pacific and Europe, and strengthen our existing and emerging relationships in key markets and regions? Or will we pull back from our role as the indispensable global leader and leave others to fill the void, and delude ourselves into somehow believing that will make us safer?"

Through the TPP, the United States is seeking to help establish a trade and investment framework that supports job creation, promoting competitiveness, and expanding trade in the dynamic Asia-Pacific region. The United States also is seeking to advance core U.S. values in the agreement, such as transparency, labor rights, and environmental protection.

Current TPP members represent nearly 40% of global gross domestic product (GDP). If TPP is delayed by just one year, the United States will see an estimated one-time national loss of \$94 billion, according to a report by the Peterson Institute for International Economics. That translates to a loss of \$700 on average for every U.S. household.

The TTIP represents the largest, most integrated and longest-standing regional economic relationship in the world. Together, the European Union and the United States are responsible for more than 11% of the world's population, nearly half of global GDP, a third of global merchandise trade, and 40% of world trade in services. A trade agreement could increase economic output for both the United States and the European Union.

#### **Global Leader**

For more than half a century, the United States has led the world in breaking down barriers to trade and in creating a fairer and freer international trading system based on market economics and the rule of law. Increased market access achieved through trade agreements has played a major role in our nation's success as one of the world's leading exporters.

The California Chamber of Commerce supports expansion of international trade and investment, fair and equitable market access for California products abroad, and elimination of disincentives that impede the international competitiveness of California business.

Our competitive success in the global economy forms the foundation for California and the nation to remain world leaders.

Susanne T. Stirling is vice president of international affairs at the California Chamber of Commerce.



# Moving California Goods: Draft Freight Action Plan Raises Concerns

CalChamber Works to Protect Jobs, Economy During Multi-Agency Process

The California Chamber of Commerce is engaged in a multi-agency process geared toward changing California's freight system. The results will affect any business that needs to move products or goods within the state and beyond, from retailers to manufacturers, as well as companies involved in freight movement.

Governor Edmund G. Brown Jr. opened the process in July 2015 when he issued an executive order on sustainable freight that called for multiple state agencies to develop an integrated action plan by July 2016 with three objectives:

• improve freight efficiency;

• transition to zero-emission technologies; and

• increase the competitiveness of California's freight system.

The action plan is intended to cover each part of the freight supply chain, including shipping, ports, trucking, railways, airports and warehousing.

The draft California Sustainable Freight Action Plan was released the first week of May and presented as an informational item on May 10 at the meeting of the California Freight Advisory Committee, of which the CalChamber is a member.

#### Freight Targets by 2030

The draft plan calls for improving freight system efficiency 25% by increasing the value of goods and services produced from the freight sector relative to the amount of carbon it produces by 2030.

The formula for measuring the system's efficiency will take into account

greenhouse gas emissions from warehousing and storage, plus air, rail, water, truck and pipeline transportation.

In addition, the plan sets a transition to zero-emission technology target: deploy more than 100,000 freight vehicles and



equipment capable of zero-emission operation and maximize near zero-emission freight vehicles and equipment powered by renewable energy by 2030.

#### **Economic Growth**

More general is the draft plan's economic growth target: "Foster future economic growth within the freight and goods movement industry by promoting flexibility, efficiency, investment, and best business practices through state policies and programs that create a positive environment for growing freight volumes, while working with industry to lessen immediate potential negative economic impacts."

## CalChamber-Sponsored Seminars/Trade Shows

#### From Page 2

Update Webinar. U.S. Embassy in Pakistan. May 19.

Mining and Mineral Opportunities in Oman Webinar. U.S. Ambassador to Oman Marc J. Sievers. May 25. Select LA Investment Summit. World Trade Center Los Angeles. June 16–17, Los Angeles. (213) 622-4300.

SelectUSA Investment Summit 2016. SelectUSA. June 19–21, Washington, D.C. (202) 482-6800. No specific economic targets were provided in the draft plan.

#### Industry Concerns

As competition for freight volume increases, both nationally and internation-

ally, the industry is concerned that a hasty push to zero-efficiency technologies will create massive costs to all industries involved in freight movement and render California less competitive.

Decreasing competiveness will not only reduce jobs, wages and the tax base by driving away freight volume and increasing costs for shipments; it also will counteract the state's environmental objectives. California has the greenest ports in the nation and perhaps the world. Pushing cargo to the other states and countries that do not have loweremission infrastructure and equipment may result in an

increase in greenhouse gas emissions.

#### Next Steps

The CalChamber will be submitting comments on the draft action plan. Comments on the draft plan are being accepted through July 6.

Presentations on the draft plan are scheduled at the next meeting of the California Transportation Commission on May 18 and the California Air Resources Board on May 19.

The entire draft action plan can be viewed at *www.casustainablefreight.org*. Staff Contacts: Jeremy Merz, Amy Mmagu

- G-20Y Summit. G-20Y Association. September 21-25, St. Moritz, Switzerland.
- 2016 Public Forum on "Inclusive Trade." World Trade Organization. September 27–29, Geneva, Switzerland.

Special Report: June Ballot Measure



# **Overview of June Ballot Measure**

Following is a brief summary of the measure that will appear on the June ballot. The California Chamber of Commerce has no position on this proposal.

For more information, visit the web-

site of the secretary of state at *www.sos.ca.gov*.

## Proposition 50

#### Suspension of Legislators Constitutional Amendment.

Amends Section 5 of Article IV of the California Constitution to require that to suspend a member of either house of the Legislature, a motion or resolution to that effect shall be adopted by a vote of two-thirds of the membership of the house, as specified. This measure would prohibit a suspended member from exercising any of the rights, privileges, duties, or powers of his or her office, or from utilizing any resources of the Legislature, while the suspension is in effect. Salary and benefits of the member would be forfeited for all or part of the period of the suspension by express provision of the motion or resolution.

Placed on Ballot by: Legislature.

#### **Ballot Arguments For**

Proposition 50 would amend the state Constitution to give the California Legislature clear authority to suspend members of the Senate or the Assembly without pay. The measure is a simple and straightforward way for lawmakers to hold their own colleagues accountable for breaching the public's trust.

More Information: www.yesprop50.com

#### **Ballot Arguments Against**

Proposition 50 gives legislative leaders the option NOT TO EXPEL fellow Assembly members and Senators who have been indicted or convicted of felony charges. The California Constitution already allows Assembly members and Senators who have been indicted or convicted of felony charges to be removed from office by expulsion. Proposition 50 allows lawmakers who have been indicted or convicted to be suspended WITH or without pay and it robs constituents of representation since a suspended legislator would still "occupy" his or her office and no election can take place to replace that bad actor.

More Information: www.stopprop50.com

### Register to vote online by May 23. Primary Election is June 7.

# calchambervotes.com

# CalChamber members: Are you using your discounts from FedEx<sup>®</sup>, UPS<sup>®</sup>, OfficeMax<sup>®</sup> and others?

Participating members save an average of more than \$500 a year. See what's available at calchamber.com/discounts or call Customer Service at (800) 331-8877. Partner discounts available to CalChamber Online. Preferred and Executive members.





тим.саісћатрег.сот (616) 444-6670 FACSIMILE (916) 444-6685 P.O. BOX 1736 SACRAMENTO, CA 95812-1736

HR Expert & Business Advocate

ADDRESS SERVICE REQUESTED

**PURCHASE** at calchamber.com/may26 or call (800) 331-8877.

Cost: \$199.00 | Preferred/Executive Members: \$159.20

Strong legal protections are in place that require employers to reasonably accommodate employees and make PDL available. These regulations apply to any employer with five or more full- or part-time employees and to all California public-sector employers.

she's pregnant? CalChamber's webinar on May 26 delivers specifics for managing pregnancy disability leave (PDL).

Do you know what California expects when an employee tells you

LIVE WEBINAR | THURSDAY, MAY 26, 2016 | 10:00 - 11:30 AM PT

# **PDL Obligations:** What to Expect and How to Deliver

**CalChamber** HR Expert & Business Advocate





Sacramento, CA

GIA9 Postage Periodicals