



March 9, 2018

Sacramento, California

John A. Norwood
Counselor at Law

Erin Norwood
Publisher

Contributors
Brittany Trudeau
Ted Wait

[Contact Us](#)
info@nalobby.net

Capitol Place
915 L Street, Suite 1110
Sacramento, CA 95814

(916) 447-5053
(916) 447-7516 fax

[California Links](#)

State Senate

State Assembly

**Department of
Insurance**

Highlights of Labor Legislation on Employers' Radar

The California Chamber of Commerce is still formulating its list of bills to oppose, oppose unless amend. The Chamber will also be determining which are worthy of a coalition letter. However, this is a preview of what is to come this legislative session. There are a couple measures the CalChamber is sponsoring or supporting. None of these bills have been acted on by committee. Committee hearings will commence in earnest in the coming two weeks.

[AB 1867](#) (Reyes, Dem-Fontana): Requires an employer with 50 or more employees to maintain records of employee complaints of sexual harassment for 10 years from the date of filing. It authorizes the Department of Fair Employment and Housing to seek an order requiring an employer that violates the recordkeeping requirement to comply. The current law is 3 years. The Chamber will try to shorten to 5 years.

[AB 1870](#) (Reyes): The California Fair Employment and Housing Act makes discrimination against or harassment of employees unlawful. Current law authorizes a person claiming to be aggrieved by an alleged unlawful practice to file a complaint with the Department of Fair Employment and Housing within one year from the date upon which the unlawful practice occurred. This bill extends the period to 3 years. The Chamber is strongly opposed.

[AB 1902](#) (Levine, Dem-Marin County): Requires the Department of Industrial Relations to, by January 1, 2020, and annually thereafter, develop a list of employers it determines are valued at least \$1 million. The bill requires an eligible employer that enters into a personal services contract, on or after January 1, 2020, to include a provision in that contract that requires the employees to be paid a wage that is equal to an unspecified amount. The bill does not have language specifying the wage amount at this time. This could be put on the Chamber's influential "Job Killer" list.

[AB 1938](#) (Burke, Dem-Inglewood): Current law prohibits an employer or employment agency from making a nonjob-related inquiry of an employee or applicant that expresses any limitation based upon a person's race, religion, national origin, or gender. This bill, in addition, prohibits an employer or employment agency from making a nonjob-related inquiry of an employee or applicant, that expresses any limitation based upon a person's familial status. Really, the bill is directed at hiring discrimination based on whether a person has a

Secretary of State

Official Legislative Information

child. A Chamber coalition letter opposing went out this week, and the Chamber labor lobbyist will testify in opposition.

[AB 1976](#) (Limón, Dem-Santa Barbara): Current law requires every employer to provide a reasonable amount of break time to accommodate an employee desiring to express breast milk for the employee's infant child and requires an employer to make reasonable efforts to provide the employee with the use of a room or other location, other than a toilet stall, in close proximity to the employee's work area for the employee to express milk in private. This bill instead requires an employer to make reasonable efforts to provide an employee with use of a room or other location, other than a bathroom, for these purposes. The Chamber oppose letter was sent day before yesterday.

[AB 2482](#) (Voepel, Rep-El Cajon): Permits a nonexempt employee to request an employee-selected flexible work schedule providing for workdays up to 10 hours per day within a 40-hour workweek, and allows an employer to implement this schedule without the obligation to pay overtime compensation for those additional hours in a workday. This is Chamber sponsored.

[AB 2587](#) (Levine, Dem-Marin County): Current law establishes, within the state disability insurance program, a family temporary disability insurance program, also known as the paid family leave program, for the provision of wage replacement benefits to workers who take time off work to care for a seriously ill family member or to bond with a minor child within one year of birth or placement. Current law authorizes an employer to require an employee to take up to 2 weeks of earned but unused vacation before, and as a condition of, the employee's initial receipt of these benefits during any 12-month period in which the employee is eligible for these benefits. This bill eliminates that authorization. Employment Development Department data indicates 4% of employers require the use of the 2 weeks vacation.

[AB 2647](#) (Rubio, Dem-Covina): Under current law, evidence of a person's criminal history may be admissible in a civil action for various purposes. This bill prohibits evidence of the criminal history of an employee or former employee from being admitted in a civil action that is based on the conduct of the employee or former employee against an employer, an employer's agents, or an employer's employees. The Chamber is supportive.

[AB 2841](#) (Gonzalez-Fletcher, Dem-San Diego): Changes the requirements of the employer's alternate sick leave accrual method to require no less than 40 hours of accrued sick leave or paid time off by the 200th calendar day of employment. The bill also provides an employer is under no obligation to allow an employee's total accrual of paid of sick leave to exceed 80 hours or 10 days. The bill raises the limitation on sick leave carried over to the following year of employment to 40 hours or 5 days. Chamber is opposed.

[AB 3057](#) (Quirk-Silva, Dem-Fullerton): Current law prohibits a provision in a settlement agreement that prevents the disclosure of factual information related to the action in a civil action with a factual foundation establishing a cause of action for civil damages for enumerated sexual offenses. Current law also prohibits a court from entering an order in any of these types of civil actions that restricts disclosure of this information and it makes a provision in a settlement agreement that prevents the disclosure of factual information

related to the action, entered into on or after January 1, 2017, void as a matter of law and against public policy. This bill expands this prohibition to cover a settlement agreement in an action with a factual foundation establishing a cause of action for sexual abuse or harassment. The Chamber will oppose.

[AB 3109](#) (Stone, Dem-Carmel): Specifies that a contract or settlement agreement is void and unenforceable if it includes a provision that waives a party's right of petition or free speech under the US Constitution or the California Constitution in connection a settled issue. This bill is derived from sexual harassment and / or abuse settlement agreements that prohibit parties from publicly discussing relevant circumstances. This bill is employer unfriendly.

[SB 937](#) (Wiener, Dem-San Francisco): Requires a lactation room or location to include prescribed features and requires an employer to provide access to a sink and refrigerator in close proximity to the employee's work space. The bill establishes a procedure for an employer with fewer than 5 employees to apply to the Division of Labor Standards Enforcement for an undue hardship exemption from the lactation room or location requirement. Amendments to this measure are not helpful.

[SB 1300](#) (Jackson, Dem-Santa Barbara): Provides that a plaintiff in an action alleging that a defendant failed to take all reasonable steps necessary to prevent discrimination and harassment from occurring is not required to prove that the plaintiff endured sexual harassment or discrimination. The bill literally states that it is not necessary for the employee prove that sexual harassment occurred. This is the worst bill on the list.

[SB 1343](#) (Mitchell, Dem-Los Angeles): Requires an employer who employs 5 or more employees to provide at least 2 hours of sexual harassment training to all employees by January 1, 2020, and once every 2 years after that. The bill requires the Department of Fair Employment and Housing to develop a 2-hour video training course on the prevention of sexual harassment in the workplace and to post it on the Department's website. This bill could prove helpful to employers because if there is evidence a terminated employee was trained what not to do, but does so anyway, courts have disposed of unlawful termination lawsuits in favor of employers. There does need to be language requiring a certificate of training completion, and video should be just an hour.

Cross Section of Legislation Impacting Private Industry, From Taxes to Privacy

Tax & Fee Legislation

[AB 2131](#) (Melendez, Rep-Orange County) Minimum Franchise Tax Reduction

Status: Referred to Assembly Revenue & Taxation Committee

Current law imposes a minimum franchise tax of \$800 on every corporation in California, qualified to transact intrastate business in this state, or doing business in this state. This bill reduces the minimum franchise tax to \$400 for taxable years beginning on or after January 1, 2019.

[AB 2132](#) (Levine, Dem-Marin County) Building Permit Fee Waiver

Status: Referred to Assembly Local Government Committee

The State Housing Law authorizes cities and counties to prescribe fees for permits. This bill authorizes these entities to waive or reduce all building permit fees for improvements to the home of a person at least 60 years of age with a qualifying disability that are made to accommodate that disability.

[AB 2211 \(Limón, Dem-Santa Barbara\) Small Business Capital Access Loan Program](#)

Status: Pending Committee Referral

This bill states the intent of the Legislature to enact legislation that expands the Capital Access Loan Program, including the Capital Access Loan Program for Small Business and the Collateral Support Program, in order to provide additional funding for businesses willing to embrace sustainable business practices and eco-friendly infrastructure changes.

[AB 2410 \(Grayson, Dem-Concord\) Small Business Limited Liability Company Tax Reduction](#)

Status: Referred to Assembly Revenue & Taxation Committee

Current law imposes an annual tax in an amount equal to the minimum franchise tax on limited liability companies. This bill for taxable years beginning on or after January 1, 2020, reduces that annual tax to \$400 for a limited liability company that is a small business, which is defined as a business entity with gross receipts of \$250,000 or less and fewer than 5 employees within its first 2 years of operation.

[AB 2510 \(Muratsuchi, Dem-Torrance\) Former Military-Owned Microbusiness Franchise Tax Deduction](#)

Status: Referred to Assembly Revenue & Taxation Committee

Current law imposes an annual tax in an amount equal to the minimum franchise tax, which is \$800, on every limited liability company. Current law exempts, until taxable years beginning on or after January 1, 2018, a limited liability company that is a small business solely owned by a deployed member of the United States Armed Forces from paying the annual tax for any taxable year the owner is deployed. This bill reduces to \$100 the annual tax for microbusinesses and extends the exemption indefinitely.

[AB 2841 \(Gonzalez-Fletcher, Dem-San Diego\) Sick Leave Accrual](#)

Status: Pending Committee Referral

Under existing law, an employee is entitled to paid sick days, to be accrued at a rate of no less than one hour for every 30 hours worked so that an employee has no less than 24 hours of accrued sick leave or paid time off by the 120th calendar day of employment or each calendar year. This bill changes the requirements of an employer's alternate sick leave accrual method to require no less than 40 hours of accrued sick leave or paid time off by the 200th calendar day of employment. The bill also provides an employer is under no obligation to allow an employee's total accrual of paid or sick leave to exceed 80 hours or 10 days. The bill raises the limitation on sick leave carried over to the following year of employment to 40 hours or 5 days.

[AB 2932 \(Choi, Rep-Irvine\) Employer Hiring Increase Tax Credit](#)

Status: Pending Committee Referral

The Corporation Tax Law allows credits against the taxes imposed by that law. This bill states the intent of the Legislature to enact legislation that allows a credit to those that increase their workforce in an amount equal to a percentage of the wages paid or incurred by the taxpayer's employees, subject to both credit amount per taxpayer limitations, aggregate credit amount per taxable year limitations, and a limitation on the number of taxable years for which the credit may be claimed by a taxpayer.

[AB 2945 \(Gallagher, Rep-Yuba City\) Hearing Disabled Hiring Tax Credit](#)

Status: Pending Committee Referral

The Personal Income Tax Law and the Corporation Tax Law allow credits against the taxes imposed by those laws. This bill, for each taxable year beginning on or after January 1, 2020, allows a credit against the taxes imposed under both laws to a taxpayer who is an employer in an amount equal to the qualified wages paid to a qualified employee, defined to mean an employee who has little to no functional hearing, not to exceed 35% of the first \$6,000 of qualified wages.

[AB 3127 \(Acosta, Rep-Northridge\) Individuals With Disabilities Hiring Tax Credit](#)

Status: Pending Committee Referral

The Personal Income Tax Law and the Corporation Tax Law allow various credits against the taxes imposed by those laws. This bill, for taxable years beginning on and after January 1, 2019 and before January 1, 2024, allows a credit under those laws to an employer that pays a qualified employee a wage equal to or exceeding the minimum wage during the taxable year. The credit is to be in an amount that is equal to the difference between the special minimum wage paid to the qualified employee and the minimum wage, multiplied by the number of hours worked by the employee during the taxable year. The bill defines a qualified employee as an individual with a disability who may be paid a special minimum wage under existing state or federal law.

[SB 993 \(Hertzberg, Dem-Van Nuys\) Sales Tax on Services](#)

Status: Referred to Senate Governance & Finance Committee

This bill expands the Sales and Use Tax Law to impose a tax on the purchase of services by businesses in California to determined percentage of the sales price of the service. The bill requires the tax to be collected and remitted by the seller of the purchased services. The bill exempts from the tax a business with gross receipts of less than \$100,000 in the previous 4 quarters. The bill states that tax revenues are to be appropriated to provide tax relief to middle-income and low-income Californians and to assist in securing greater stability for California's infrastructure, its workforce, and its education services, including higher education.

[Legal Legislation](#)

[AB 2016 \(Fong, Rep-Bakersfield\) Employee Labor Law Violation Notice Requirements](#)

Status: Referred to Assembly Labor & Employment Committee and Assembly Judiciary Committee

The Private Attorneys General Act authorizes an aggrieved employee who complies with notice and filing requirements to bring a civil action to recover civil penalties that would otherwise be assessed and collected by the Labor and Workforce Development Agency. The Act requires that the aggrieved employee or representative give written notice to the agency and the employer of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violation. This bill instead requires the notice to include a statement setting forth the relevant facts, legal contentions, and authorities supporting each alleged violation and an estimate of the number of current and former employees against whom the alleged violation or violations were committed and on whose behalf relief is sought.

Privacy Legislation

[AB 2021 \(Steinorth, Rep-Rancho Cucamonga\) Solicitation Do Not Contact List](#)

Status: Referred to Assembly Privacy & Consumer Protection Committee

This legislation requires the Attorney General to maintain a “do not contact” list, updated no less frequently than quarterly, that sets forth the telephone numbers or physical mail addresses or both of subscribers who do not wish to receive unwanted telephone solicitation calls or physical mail from solicitors. This bill requires the “do not contact” list to include any California phone numbers that are on the “do not call” registry established and maintained by the Federal Trade Commission. The bill prohibits a solicitor from calling a phone number or sending mail to an address on the list, beginning on the 31st day after this list becomes available to solicitors.

[AB 2546 \(Chau, Dem-Arcadia\) Unsolicited Commercial Email Advertisement](#)

Status: Referred to Assembly Privacy & Consumer Protection Committee

Existing law prohibits a person or entity from initiating or advertising in unsolicited commercial email advertisements. This bill expands the definition of “commercial email advertisement” to include an electronic mail message initiated for the purpose of advertising or promoting the lease, sale, rental, gift offer, promotion, or other disposition of stocks, bonds, sweepstakes, insurance, employment opportunities, or any other solicitation.

New Private Flood Insurance Option Available

This week, California Insurance Commissioner Dave Jones approved a new private flood insurance product offered by American National Property and Casualty Company for homeowners. The majority of flood policies in California are provided by the National Flood Insurance Program, but growing interest in widening the market through private insurance offerings is leading many companies to create their own policies.

While the NFIP is the leading provider of flood insurance throughout the country, the program has been widely criticized for not being able to carry all of the risk it is liable for, as well as for the fact that due to coverage limits there is a wide insurance gap for higher-income homeowners. In most instances the NFIP limits coverage to \$250,000 for residential buildings and \$100,000 for the contents, which especially in California prove to be

substantially lower than what most homeowners require. However even with these lower limits the NFIP is mired with \$30 billion in debt and is unable to adequately diversify its risk.

These factors are leading many insurance companies to look seriously into writing their own flood insurance policies, offering more options to homeowners in terms of coverage and limits. The policy authorized this week includes a wide range of features including personal property, residential building damage, additional living expenses, and debris removal. Commissioner Jones stated that "Providing consumers with more choices may lead more residents to consider flood coverage. Many areas of California are subject to flooding from severe storms or heavy rains. I encourage more insurers to consider entering this market."