



Duarte Overview

DUARTE
CHAMBER OF COMMERCE

August/October 2008

Serving our community since 1921

Volume 14 Issue 1

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MEMBERS



WePackItAll

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Duarte Chamber Announces Positions on November Ballot Measures

The Duarte Chamber has adopted the same positions as the California Chamber of Commerce on nine propositions appearing on the November 4, 2008 General Election ballot. Below is some commentary provided by the California Chamber of Commerce.

"There are many competing demands for resources in our state and we must carefully set our funding priorities," said California Chamber President and CEO Allan Zaremborg. "Although a comprehensive water bond will not appear on the November 2008 ballot, we must reserve future debt capacity to address one of the state's most critical needs. The positions taken by our Board on November ballot measures reflect that priority."

Proposition 1A: High Speed Passenger Train Bond Act — Oppose

"California will need to invest at least \$50 billion to complete a statewide high speed rail system. There are other projects that mitigate congestion that should be a higher priority," said Zaremborg.

Proposition 2: The Standards for Confining Farm Animals Act — Oppose

"California imposes more restrictions on agriculture and agricultural practices than any other state. These restrictions increase costs to consumers and reduce competitiveness of California's farmers and ranchers. This measure would severely damage commercial egg production in California, result in the loss of thousands of jobs, hurt school lunch programs and businesses like grocery stores and restaurants, and compromise food safety," said Zaremborg.

Proposition 3: Children's Hospital Bond Act — Support

"Expanding and improving children's hospitals are an im-

portant health care priority. Without continued investments in medical equipment and facilities, California's health care system will not be prepared to meet the needs of our expanding population. The children served by these hospitals are in need of specialized services and the hospitals that treat them do so without regard to a family's ability to pay. This measure will expand capacity and bring hope to critically ill children and their families," said Zaremborg.

Proposition 5: Nonviolent Offender Rehabilitation Act — Oppose

"This measure would reduce penalties for crimes against business and would limit the ability of judges to hold parole violators accountable. Property and white collar crimes are costly for businesses and consumers," said Zaremborg.

Proposition 6: Safe Neighborhoods Act — No Position

Proposition 7: Solar and Clean Energy Act of 2008 — Oppose

"The CalChamber Board of Directors voted to oppose this measure due to its potential to substantially drive up energy prices in the state," said Zaremborg.

Proposition 10: Renewable Energy & Clean Alternative Fuel Act — Oppose

"The reduction of greenhouse gases is a priority for our state, however this measure is not the most cost effective way to achieve reductions. Proposition 10 does not allow all technologies to compete for taxpayer dollars. CalChamber has long advocated for sound, cost effective energy policies that are market driven and technology or fuel neutral. Unfortunately, this measure does not meet that test," said Zaremborg.

Proposition 11: The California Voters First Initiative — Support

"CalChamber has long believed that fair redistricting is key to meaningful political reform," said Zaremborg. "The California Voters First Initiative will allow the citizens of California - rather than the Legislature - to create legislative districts that will require elected officials be accountable to the voters."

Proposition 12: Veteran's Bond Act — Support

"California's business community supports our brave men and women in uniform. This initiative would make today's wartime veterans eligible for the Cal-Vet loan program, enabling more of them to purchase homes at low interest rates," said Zaremborg. "The program is self-liquidating and does not impact overall bond indebtedness for the state."

The Duarte Chamber also took a position on Proposition R, a proposed one-half cent tax increase in Los Angeles County.

Proposition R — Oppose

Measure R is a proposed 30-year, half-cent sales tax increase that is expected to finance new transportation projects including the first phase of the Metro Gold Line Foothill Extension. It is projected to generate \$40 billion for Los Angeles County congestion relief projects. The \$735 million allocated for the Foothill Extension is 1.84% of total forecasted revenues. Measure R alone does not fully fund all projects. The expenditure plan identifies additional funding sources and timetables.

There is no guarantee that any of the tax revenue generated will benefit the San Gabriel Valley transportation problems.

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Mission Statement

*The Duarte Chamber of Commerce
exists to create an environment that
will promote and encourage
business to succeed
while enhancing its relationship
with the surrounding community.*

Welcome to Our New Members

Aflac

Linda Rivas
(909) 599-4483 ext. 236
linda_rivas@us.aflac.com

Days Inn

Victor Patel
1533 Huntington Drive, Duarte
(626) 303-4544
www.the.daysinn.com/duarte10295

Duarte Cleaners

Cynthia Pangilinan
2183 Huntington Dr., Duarte
(626) 359-2833
tpangilinan@sbcglobal.net

Foothill Family Service

Terri Burns
1801 Huntington Dr., Suite 200,
Duarte
(626) 301-9700
tburns@foothillfamily.org
www.foothillfamily.org

H&R Block

Carlos Martinez
1243 Huntington Dr., Duarte
(626) 792-1724
carlos.martinez@hrblock.com
www.hrblock.com

I'll Make It Write

Beverly Bourne
1191 Huntington Dr. #326, Duarte
beverlypomona@aol.com

JFL Enterprise

Jason Leonida Jr.
(626) 359-0134
jsnleonida@yahoo.com

Maki Yaki 8

Joon Choi
1366 Huntington Dr., Duarte
(626) 932-0114

Thank you to Our Renewing Members

20 Years or More

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Foothill Unity Center
Kind Care Medical Center
Mel Cohen Insurance
Services
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Friends of the Duarte Library
IndyMac Federal Bank
Judy Ann Blake

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Rae Gordon – 1994
Jess Duff – 1999
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Jan Wight – 2008

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Burbank
(818) 845-0754
claire@schgardens.com
www.schgardens.com

The Green Banana Leaf Restaurant

Julius Jacela
1740 Huntington Dr., Duarte
(626) 301-9541
info@greenbananaleaf.com
www.greenbananaleaf.com

The Way Nature Planned It

Joelle DeBrest
(626) 633-6261
joelle@thewaynatureplannedit.com

Visionary Members

(Those who have contributed \$25 or more to the Duarte Chamber office equipment fund in the last 12 months.)

- Meridian Financial & Insurance Services
- Judy Blake (Resident)
- Rancho Mexican Restaurant
- SCE Federal Credit Union
- Barrow/Hoffman Public Relations
- Monrovia Floral
- Bill & Nita Norgard (Resident)
- Metro Gold Line Foothill
- Specialty Promotions
- Little Scholars Montessori Preschool
- Line-X of Pasadena
- Cabrera's Mexican Restaurant

With the Visionary funds collected in the last 12 months, the Duarte Chamber purchased a computer software product that enables staff members to produce documents in a commonly-readable format that makes printing and distribution much easier, faster and cheaper than ever before. The earmarked donations are truly appreciated and are used to improve our service to our members. Thank you, Visionary Members, for your valued support!

**Advertise your business on the
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Email Jim@DuarteChamber.com or call (626) 357-3333**

LABOR LAW CORNER

Paid Time Off to Vote Depends on Employee's Circumstances

*By Barbara Wilber
Labor Law Consultant*

Our employee is asking for time off to vote. The polls are open before and after work, so do we have to give the time off and if so, is it paid time?

The November 4 Election Day is almost here and employers are required to comply with Elections Code Sections 14000 and 14001. Pursuant to Section 14000, you may be required to give an employee time off to vote, including up to two hours of that time without loss of pay. Whether the employee is entitled to the time off depends on the employee's specific circumstances.

Time Considerations

The statute states that the time off to vote is available if the voter does not have sufficient time to vote outside of working hours. The intent is to enable employees to have enough time to vote by combining work time with

voting time available outside of work hours.

This is accomplished by allowing an employee to take time off at the beginning or end of the regular work shift to allow the most time to vote and the least time off from the regular work schedule.

Although the polls in California are open from 7 a.m. to 8 p.m., some employees still may need extra time before or after their shift because of the location of their polling station in relation to their usual work commute, as well as other problems that may limit their ability to vote.

2 Days' Notice

In order to be granted voting leave, the employee must notify the employer at least two working days in advance that time will be needed. By mutual agreement, employees may be given more than two hours off to vote, but only two hours must be provided without loss of pay.

Elections Code Section 14001 requires that an employer post voting leave requirements in a conspicuous place at least 10 days before every statewide election. Only statewide elections are subject to the voting leave requirements.

A statewide election is defined as one where all voters in the state have an opportunity to vote on at least one common race or issue. See the HR California website for a copy of the required poster.

Election Officer

The Elections Code also protects an employee's right to serve as an election officer on Election Day without being discharged or suspended. You must provide the time off, but it is not necessary to pay for this absence. It is probably a best practice to allow the employee to use any available vacation or paid time off (PTO).

*California Chamber of Commerce
ALERT, October 3, 2008.*

Sick Leave Mandate Bill Dies in Senate Committee

Strong opposition from the California Chamber of Commerce and businesses up and down the state has stopped legislation that un-reasonably expands an employer's costs and liability by mandating a specific paid sick leave policy.

Held in the Senate Appropriations Committee Suspense File on August 7 was **AB 2716 (Ma; D-San Francisco)**.

CalChamber Policy Advocate Marti Fisher pointed out, "California's employers are already struggling with rising energy, health care and regulatory costs in the midst of a challenging economy. This bill would cause employers to make tough decisions that would hurt California workers and cost jobs."

The proposed sick leave mandate would have covered all employees, so that part-time, seasonal and temporary workers would earn paid sick days.

Thomas Sheehy, deputy director of legislation for the California Department of Finance, also opposed the bill, telling Senate Appropriations on August 4 that AB 2716 would cumulatively result in lowering wages, reduce

available health insurance, limit job training programs and create job loss and a reduction in work hours for many employees.

"Because this bill would impose a significant burden on California employers at a time when efforts are being made to stimulate job growth and to improve California's business climate, we can't support this measure," Sheehy said.

The bill mandated, without exception, that all employers provide paid sick leave to an employee after seven days of work in a calendar year to care for their own illness, or to provide to a sick child, spouse, domestic partner or other relative.

Sheehy labeled the costs of the bill as a strong reason why the Finance Department opposed AB 2716. The General Fund costs would approach \$600,000 in the 2008-09 fiscal year and \$1 million in 2009-10, and it would be ongoing for the Division of Labor Standards and Enforcement at the Department of Industrial Relations, he said.

Not included in the Finance Department's cost estimate was the sig-

nificant unreimbursed costs the bill would cause for cities, counties and school districts to pay sick leave for part-time workers, student assistants, seasonal and temporary employees.

*California Chamber of Commerce,
August 8, 2008.*

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Court Finds Anti-Harassment Policy 'More Than Reasonable'

The 8th Circuit Court of Appeals recently held that the employer's anti-harassment policy was more than reasonable for purposes of a U.S. Supreme Court-established defense to sexual harassment under Title VII of the federal Civil Rights Act.

In the case of *Adams v. O'Reilly Auto., Inc.*, 2008 U.S. App. LEXIS 17313 (8th Cir., 2008), The court reasoned that the employer had a stated policy of "zero tolerance," requiring investigation and documentation of every report of sexual harassment. The policy was widely disseminated through training videos and handbooks for all new employees as well as posters displayed in all stores. The court also found that there was nothing objectionable in the employer requiring some kind of confirmation of sexual harassment before taking action against alleged harassers. Finally, the employer demonstrated the unreasonableness of the employee's failure to report the supervisor's harassment sooner.

An employee claimed she suffered sexual harassment at the hands of her supervisor for more than two and a half years. She admitted that she never reported his actions to company officials during that time, and that the employer fired the supervisor two days after she eventually made a complaint through the employer's sexual harassment hotline.

The company said it should not be liable for the supervisor's actions because it exercised reasonable care to avoid harassment and to eliminate it when it might occur, and that the employee did not act with reasonable care to take advantage of the company's safeguards and otherwise prevent harm that could have been avoided. Under the Ellerth-Faragher defense established by the U.S. Supreme Court, the company must demonstrate that it exercised reasonable care to prevent and correct, promptly, any sexually harassing behavior. It must not only have an anti-harassment policy but show it had distributed it to all employees. This is "compelling proof that an employer exercised reasonable care in preventing and promptly correcting sexual harassment."

The court found the company's "zero tolerance" policy regarding har-

assment required investigation and documentation of every sexual harassment report. The policy contained a complaint procedure with multiple channels for reporting sexual harassment:

"Employees may complain, at their election, to their supervisor, a special anonymous sexual harassment hotline, or the corporate human resources department. Complaints are treated as strictly confidential and employees are reassured that no actions will be taken against them."

As discovered through testimony, company policy also requires a witness to corroborate the alleged sexual harassment before it takes action against an alleged harasser. The employee claimed this witness corroboration requirement means the policy was not reasonably enforced as required by law because sexual harassment usually occurs surreptitiously. The court disagreed because this "rightly honors the vaunted principle that the burden of proof is on the accuser and it prevents discrimination against those accused of sexual harassment." The court also found no evidence supporting a claim that the company repeatedly ignored its anti-harassment policy, refuted in part by the company's swift action in discharging Adams' harasser which demonstrated the effective implementation of its policy.

The employee also claimed the harassment she suffered was so severe and pervasive that the company must have known about it, but the employee was unable to provide any evidence that the company knew or should have known of the supervisor's activities. Because the company had a reasonable anti-harassment policy that it properly communicated to its employees and enforced, it exercised reasonable care to prevent and correct sexual harassment. Further, the employee did not utilize the anti-harassment policy for more than two and a half years. As soon as she did the company took immediate corrective action by terminating the supervisor. This created a strong inference that the employee unreasonably delayed her use of the policy.

The California Chamber of Commerce has recommended that employers:

Have a clear anti-harassment pol-

Guidelines for Political Communications to Employees

As fall approaches, the California Chamber of Commerce is reminding employers to brush up on the dos and don'ts of political communications with employees.

Business owners are within their rights to inform employees and stockholders about the potential impacts of proposed ballot measures.

To convey the message, employers may use e-mail, regular mail, bulletin boards, phone banks or employee meetings.

Employers should remember that they cannot put any political messages in or on employees' payroll envelopes and so should avoid paycheck stuffers.

In addition, employers cannot control or direct the political activities of employees by threatening discharge or loss of employment. Employers cannot coerce employees to take a position nor reward or punish them for their political activities or beliefs (or threaten to do so).

The CalChamber has prepared a brochure giving a quick overview of what employers can and cannot do, as well as when they need to report what they spend on political communications.

A pdf file of the Guidelines to Political Communications to Employees brochure is available on the CalChamber website at www.calchamber.com/guidelines.

California Chamber of Commerce, September 15, 2008.

icy, communicate it to all employees, provide all employees with the sexual harassment information sheet, and train all employees — especially supervisors and managers — to recognize and avoid sexual harassment in the workplace.

Promptly and thoroughly investigate all claims of workplace harassment and take immediate and appropriate corrective action.

Update employees, post posters and train employees on a regular basis on the company's anti-harassment policy.

California Chamber of Commerce, September 11, 2008.

Business Tax Higher in State Budget Plan

California businesses and investors will be paying \$5.8 billion more in taxes in 2008-09 and \$1.6 billion more in 2009-10, due to the newly adopted state budget.

Following is a brief analysis of key tax provisions in the budget agreement. The Legislature finessed a "tax increase" by accelerating and borrowing substantial revenues (interest-free) from California businesses for a minimum of the next two tax years. Some offsetting reforms were adopted, but many companies investing in jobs and operations in California - or attempting to emerge from losses in the economic downturn - will suffer higher tax bills.

The California Chamber of Commerce recommends that businesses consult with your tax professionals on how the new tax requirements affect your own business.

Penalty for Reasonable Disputes

An 11th-hour addition to the budget package (added after the Governor threatened to veto an acceleration of personal income tax withholding), is a new, permanent and unprecedented 20 percent penalty on what is being characterized as "underpayments" of taxes of \$1 million or more that exist after May 2009. Estimated to raise \$1.5 billion in 2009, the penalty would be applied to tax years beginning January 1, 2003. The penalty is in addition to existing penalties.

Analysis: The penalty will apply when the taxpayer reports less than the Franchise Tax Board (FTB) thinks the taxpayer owes. FTB will have wide latitude and discretion to impose the penalty because, unlike most existing state and federal penalties, the new penalty has no "reasonable cause" exception, making it applicable to even reasonable tax payer behavior. Due to the complexity of the tax laws, companies may have a series of reasonable disputes with the state over tax issues totaling \$1 million or more, which normally get resolved over time. Similar to a problematic penalty scheme in a tax "amnesty" program the state conducted in 2005, this new penalty provision will force companies to overpay their taxes by May 2009 to include amounts reasonably in dispute, in order to ensure they incur no 20 percent penalty if the dispute is decided against them. If the dispute is decided in the company's favor, it will eventually receive a refund, but in the

meantime, the state has received an interest-free loan.

The only instances in which the penalty does not apply is if the underpayment is due to a change in law or reliance on advice by the FTB.

Tax Credits Limit

The budget agreement placed a two-year limit on the ability of businesses to use most business tax credits, capping those credits at one-half of the taxpayer's tax liability (an estimated \$900 million increase). Effective January 2010, tax credits may be shared among a related group of affiliate or subsidiary companies, unitary utilization.

Analysis: This tax credit limitation affects California's only remaining statewide investment incentive tax credits, for tax years January 1, 2008 to January 1, 2010, including the research and development, enterprise zone and manufacturing equipment credits. The limitation in effect increases taxes for companies currently relying upon these credits. The research and development credit has played a major role in keeping California on the leading edge of innovation, and the enterprise zone program has served as an important tool for economically distressed localities to retain and attract jobs and manufacturing operations. Credits that could have been used during the two-year limitation period are permitted to be carried over, but the lost time-value to companies is permanent.

Small businesses with net incomes of less than \$500,000 are exempt from the tax credit limitation.

The clarification in the law permitting companies to elect unitary utilization will help those needing the flexibility to allocate earned tax credits within their family of companies. FTB must report to the Legislature before June 30, 2013, the usage and effects of unitary utilization.

Net Operating Loss

The budget agreement suspended for two years a business' ability to deduct net operating losses (NOL). After the two-year suspension period, treatment of losses would fully conform to federal law as to how such losses may be carried back and carried over. (Suspension estimated to raise \$1.1 billion in first year; \$600 million in second.)

Analysis: The suspension for the 2008 and 2009 tax years affects both

personal and corporate income taxes. The NOL deduction gives businesses more flexibility to manage losses by allowing them to offset or deduct one tax year's losses from another tax year's profits. The purpose is to resolve an inequity in our tax structure - which comes from businesses experiencing losses or profits according to timeframes or cycles over time that differ from the arbitrary and rigid government tax filing deadlines. The two-year suspension may cause marginally profitable businesses greater difficulty in emerging from losses, due to greater tax liability and reduced cash flow. Small businesses with net income of less than \$500,000 are exempted from the NOL suspension.

The conformity with federal law to allow two-year carryback is phased in beginning January 1, 2011 and the 20-year carryover applies to losses incurred after January 1, 2008. Current California law provides for no carryback and only a 10-year carryover. Carryback and expanded carryover will provide added flexibility for companies that use the NOL deduction.

Accelerated Tax Payments

Beginning January 1, 2009, personal income tax and corporate tax filers must pay more of their estimated taxes earlier in the year (an estimated \$2.3 billion increase).

Analysis: Tax payments increase for all individual and corporate filers in the fourth and sixth months of the tax year from 25 percent to 30 percent. In the ninth and 12th months of the tax year, the tax rate decreases from 25 percent to 20 percent.

Individual filers of quarterly estimates with gross income the previous year of more than \$1 million will see their safe harbor eliminated. This will affect small businesses, many of which file under personal income tax laws.

Limited Liability Companies

Limited liability companies (LLC) must pay their annual fees during the first six months of the current tax year (an estimated \$360 million increase).

A 10% penalty will be assessed for underpaying the accelerated fee.

Previously, a current year's LLC fee was due in the following tax year. The new fee deadline will result in a double payment in the early part of 2009 - both the prior year's LLC fee and the current year's. This may be especially hard on small companies that have limited cash flow.

California Chamber of Commerce, October 7, 2008.

Some Duarte Event Snapshots



Debbie Gewertz is presenting a New Member plaque to Terri Burns of Foothill Family Services.



Duarte Cleaners is open for business with a ribbon cutting by Cynthia Pangilinan and family, Duarte Councilwoman Lois Gaston, Julianne Hines and other staff members from Assemblyman Anthony Portantino's office, Duarte Chamber Board Members Debbie Gewertz and Henry Custodia, and Duarte Chamber staff members Beth Petermann and Diana Burckhard.



Having fun as the evening gets started.



Blackjack dealer calling for bets.



Lots of raffle prizes.



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The bottom line.



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