Job Killer Update: Pay Data Disclosure Bill Amended to Remove Job Killer Status

By: CalChamber Advocacy

As a result of recent amendments, a California Chamber of Commerce-opposed bill dealing with pay data disclosure has been removed from the job killer list.

SB 1284 (Jackson; D-Santa Barbara) was amended on August 8 to help rectify the public shaming aspect of the bill and therefore remove the job killer tag. CalChamber remains opposed to SB 1284 because of the administrative burden it still places on employers by requiring them to turn over pay data information that could give the false impression of pay disparity where none may exist.

Creates False Impression of Wage Discrimination

SB 1284 requires employers to collect pay data in the aggregate. Doing so will likely demonstrate wage disparity amongst employees in the different job classifications or titles according to gender.

A disparity in wages, however, does not automatically translate into wage discrimination or a violation of the Labor Code. Specifically, SB 1284 seeks to collect pay data according to job title, not according to whether the jobs are “substantially similar” for purposes of comparison.

New Rule Bans Retaliatory Drug Testing of Employees Who Report Injury

By: Jennifer Barrera, CalChamber Alert

Our company has a mandatory drug testing policy in the event of an accident/injury. Does the new federal regulation incorporated into the record-keeping requirements now prohibit blanket drug testing policies?

According to the U.S. Department of Labor (DOL), the new rule does not prohibit drug testing of employees, including drug testing pursuant to the U.S. Department of Transportation rules or any other federal or state law.

The new rule only prohibits employers from using drug testing, or the threat of drug testing, to retaliate against an employee for reporting an injury or illness.

DOL states that the regulation was developed to improve tracking of workplace injuries and illnesses and to protect employee’s right to report injuries and illnesses without retaliation.

Examples - Examples of permitted post-incident drug testing include:

• Post-incident drug testing pursuant to a state or federal law, including Workers’ Compensation Drug Free Workplace policies. Random drug testing and pre-employment drug testing also are permitted, although in California the use of random drug testing is extremely limited.

• If there is a reasonable possibility that employee drug use could have contributed to the reported injury or illness, such as injuries resulting from crane or forklift operations.

Not Triggers for Drug Test - However, injuries relating to carpal tunnel syndrome or insect bites, or even the case of an innocent bystander who was in the wrong place at the wrong time would not necessarily trigger a drug test.

(Drug Testing - continued on page 5)
Calendar of Events

August
15 Young Citizen of the Year  6:30 p.m.  Irwindale Senior Center
24 Energy Efficiency Workshop  9:00 a.m.-10:30 a.m.  Edison EEC
29 Board of Directors  3:00 p.m.  SGV Corporate Campus
29 Why Not Wine Wednesday  5:00 p.m.-7:00 p.m.  SGV Corporate Campus

September
3  Labor Day  CHAMBER CLOSED
6  Business Ambassadors  8:00 a.m.  Chamber Office
7  Legislative Leadership Lunch  11:30 a.m.-1:30 p.m.  Edison EEC
12  Where’s Lunch  11:30 a.m.-1:30 p.m.  Spaghetti Eddie’s
27  Honoring First Responders Breakfast  7:30 a.m.  MillerCoors

October
4  Business Ambassadors  8:00 a.m.  Chamber Office
10  Where’s Lunch  11:30 a.m.-1:30 p.m.  Embassy Suites
19  Food & Brews  5:30 p.m.  MillerCoors
23  Board Planning Session  11:30 a.m.-2:00 p.m.  TBA
25  Good Morning Irwindale  7:30 a.m.-9:00 a.m.  DoubleTree

Now Taking Sponsorships
Honoring First Responders
Good Morning Irwindale Networking Breakfast
Thursday, Sept. 27, 2018
MillerCoors Brewery Pub-Irwindale
7:30 a.m. - 9 a.m.

Presenting Sponsor
$500
Corporate Sponsor
$350
Executive Sponsor
$150
Host a First Responder Sponsor
$20 per guest

For more details go to
www.register.irwindalechamber.org
or call us at 626-960-6606
Legislative Leadership Luncheon

Assemblywoman Blanca E. Rubio

Friday-September 7, 2018
11:30 am-1:30 pm
Edison Energy Education Center
6090 N Irwindale Ave.—Irwindale

Presenting Sponsors

Corporate Sponsors

Partner Organizations

Blanca E. Rubio was elected in November 2016 to represent California’s 48th Assembly District, which includes the cities of Azusa, Baldwin Park, Bradbury, City of Industry, Covina, Duarte, El Monte, Glendora, Irwindale, Monrovia, West Covina, and the San Gabriel Valley unincorporated areas of Los Angeles County, including Bassett, Charter Oak, Citrus, East Arcadia, Ramona, Valinda and West La Puente.

Register at
www.register.irwindalechamber.org

Or Contact the Chamber office at
(626) 960-6606

Members/Partners: $25
(before August 31)
(after August 31) $35

Corporate Sponsorship: $500
6 Registrations and recognition in the Insights Newsletter, promotional materials and website
New Member Spotlight

The First Tee of Greater Pasadena is a chapter of The First Tee and operates from the Brookside Golf Club, a 36-hole municipal golf facility located adjacent to the world-famous Rose Bowl in Pasadena, California. Brookside Golf Club occupies approximately 200 acres of land. Included are the C.W. Koiner Course, E.O. Nay Course, practice facility with 40 hitting stations, short game area, two practice putting greens, 18,000 square foot clubhouse, 8,000 square foot maintenance building, three on-course restrooms, and two on-course concession stands.

Aside from Brookside (home facility), The First Tee of Greater Pasadena operates programming at these golf facility program locations: Alhambra Golf Course, Altadena Golf Course, Arroyo Seco Golf Course, Eaton Canyon Golf Course and Glen Oaks Golf and Learning Center, Glendora Country Club, Marshall Canyon Golf Course and San Dimas Golf Course. The First Tee of Greater Pasadena holds programs directed towards youth ages 5 to 17, with a specific target for 5th through 8th graders. The cost to each youth is $75/participant in our Introductory and Intermediate classes per 8-week session and $85/participant in our Advance level classes. This activity fee allows members to utilize the golf courses and enters them into The First Tee Life Skills Education™ program, partially paying for their Life Skills materials. We encourage youth organizations to contact us for group participation. Golf equipment provided free of charge if needed. The overall expense for each youth that participates in our 8-week session is approximately $150.00. Participation fees assist The First Tee of Greater Pasadena to offset coaching fees and provide the opportunity to hire additional coaches. The First Tee of Greater Pasadena Board of Directors in cooperation with community supporters including parents of our participants are committed to raise the additional funds needed to maintain the quality of our program.

The First Tee Greater Pasadena
626-543-4708
www.TheFirstTeeGreaterPasadena.org

10 Year Member

FIESTA PARADE FLOATS
Established in 1988
Southern California-based Fiesta Parade

Floats (FPF) is the premier builder of parade floats for the Tournament of Roses Parade. The longest tenured builder in the Rose Parade, the 2018 Parade marks FPF’s 30th year building floats for the Rose Parade. Located just outside of Pasadena, in Irwindale, California, FPF boasts an impressive track record with the highest award win rate in the Rose Parade float building industry.

Fiesta Parade Floats has assembled a team of world-renowned design and floral technology experts with a proven track record of delivering award-winning floats for their clients. Recognized for their experience in designing and building stunning parade floats that effectively communicate a client’s brand message to millions of Rose Parade viewers, Fiesta offers complete on-site parade planning, from initial consulting and planning to the finished product.

With over 40 years of experience building floats, Fiesta Parade Floats president, Tim Estes, has personally overseen the construction of over 500 Rose Parade floats. Working hand-in-hand with vice president and floral director, Jim Hynd, project manager, Beverly Stansbury, art director, Claudia Dial, a team of world-renowned designers, and year-round support staff, Fiesta Parade Floats surpasses all other builders in floral technology, application, and animation.

Long acknowledged for its outstanding design and creative floral displays, the American Institute of Floral Designers (AIFD) recognized Fiesta Parade Floats in 2016 for its support of the floral industry with the prestigious Award of Merit Industry.

In addition to parade floats, FPF also builds custom props for television commercials, feature films, exhibits and theme parks. Major exhibits include: Spring Garden Show, Crystal Court South Coast Plaza, American Institute of Floral Design National Symposium, Feature Exhibits and the Flower / Garden Pavilion at the Los Angeles County Fair, Bellagio, Palazzo and Mandalay Bay in Las Vegas, Innoventions, Disneyland’s popular attraction in Tomorrowland and Venus Fort Shopping Mall in Tokyo, Japan.

Fiesta Parade Floats
626-610-0974
www.FiestaParadeFloats.com
August Business of the Month
MillerCoors Brewing Company

Business Accomplishments

The MillerCoors Irwindale Brewery has been an icon in the San Gabriel Valley for over 45 years and in Irwindale, they began production in 1980. They have been a leader in the community as one of the founding members of the Irwindale Chamber of Commerce. MillerCoors continues to demonstrate their commitment to the environment by focusing on more efficient energy use and using renewables such as solar power. They are known for their commitment to managing and reducing greenhouse gas emissions and limiting climate-related risks. They are certified as a landfill-free brewery. They have received numerous awards for their environmental initiatives from both State and local officials and agencies.

Their commitment to their employees and the community is just as strong. This year, they were recognized this year with a Blue Ribbon Award by Labor 411 for being a socially responsible business and a great union facility. Their employees are committed to brewing, packaging and distributing the best beer in the business!

Community Service

MillerCoors and their employees actively support several organizations with their time and donations. A few of these organizations include United Way LA, The Heroes Project, Adopt a Soldier, Guide Dogs of America, City of Hope, Pacific Clinics, Irwindale Educational Foundation, Tour de Pier, Baker to Vegas, Pasadena Black History Parade, American Cancer Society, Shoes That Fit, CHP 11-99 Foundation Not on Our Watch, and many more. The company also supports over 200 non-profit organizations each year by providing products for a variety of fundraising events.

Chamber of Commerce Activity

MillerCoors has participated on the Board of Directors since the Chamber was formed in 1980. They are actively involved and support several events throughout the year. They have been Cornerstone members and continuously give above and beyond for Chamber events.

MillerCoors
www.MillerCoors.com

Similarly, the time-honored collective bargaining agreement can be a slippery slope.

For example: a company’s collective bargaining agreement requires all employees who report lost-time injuries to take a drug test regardless of whether drug use could have contributed to the injury. An employee then reports a lost-time injury that could not reasonably have been caused by drug use (again we will use the example of an insect bite or carpal tunnel syndrome). A drug test would not be necessary.

The rule does not prohibit drug testing of employees, including drug testing pursuant to the Department of Transportation rules or any other federal or state law. It only prohibits employers from using drug testing, or the threat of drug testing, to retaliate against an employee for reporting an injury or illness.

Employers may conduct post-incident drug testing pursuant to a state or federal law, including Workers’ Compensation Drug Free Workplace policies, because section 1904.35(b)(1)(iv) does not apply to drug testing under state workers’ compensation law or other state or federal law. Random drug testing and pre-employment drug testing are also not subject to section 1904.35(b)(1)(iv).

Employers may conduct post-incident drug testing if there is a reasonable possibility that employee drug use could have contributed to the reported injury or illness. However, if employee drug use could not have contributed to the injury or illness, post-incident drug testing would likely only discourage reporting without contributing to the employer’s understanding of why the injury occurred. Drug testing under these conditions could constitute prohibited retaliation.

For example, if an employee reports a repetitive strain injury or is injured as an innocent bystander and the employer requires post-incident drug testing, then that testing could violate section 1904.35(b)(1)(iv) because it is unlikely that such injuries would be related to drug use by the reporting employee. In contrast, it would be reasonable for an employer to require post-incident drug testing for a worker who reported an injury experienced while operating a crane or a forklift if the employee’s conduct contributed to the injury. Employers need not specifically suspect drug use before post-incident testing, but there should be a reasonable possibility that drug use by the reporting employee could have contributed to the reported injury or illness.
Independent Contractor Test: Legislature Should Act
Delaying Court Ruling Will Allow Time for Update

During an interview with KPCC radio this week, Jennifer Barrera, senior vice president of policy for the California Chamber of Commerce, highlighted the urgent need for the Legislature to pause the application of a recent court ruling to allow time to decide the best test for determining whether a worker is an independent contractor.

The California State Legislature returned from summer break this week and will adjourn for the year in just four weeks.

Dynamex Decision - In late April, the California Supreme Court issued a decision in Dynamex Operations West, Inc. v. Superior Court of Los Angeles, No. S222732 (April 30, 2018), in which it set forth a new standard for distinguishing between an employee versus an independent contractor.

To distinguish between an employee and an independent contractor, the Court concluded that individuals are presumed to be employees, and a company classifying an individual as an independent contractor bears the burden of justifying that individual’s independent contractor classification under an “ABC test.”

“For the past 30 years we’ve been using a multi-factor test that really focused on control, and now this new test issued by the Supreme Court only focuses on three factors. That ‘B’ factor… whether that service is outside the usual course of business, is really a challenging factor and will completely narrow the ability for individuals to potentially continue their work as freelancers, self-employed, independent contractors,” Barrera said to KPCC.

‘ABC’ Test - The ABC test replaces the previously utilized “right to control” or “common law” test, which focused on the hiring entity’s ability to control how the work was performed. Under the more restrictive ABC test, an individual is presumed to be an employee, unless the company can prove all of the following:

A. That the worker is free from control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact; and

B. That the worker performs work that is outside the usual course of the hiring entity’s business; and

C. That the worker is customarily engaged in an independently established trade, occupation or business of the same nature as the work performed.

If the hiring entity fails to show that the individual worker satisfies each of the three criteria, the worker is treated as an employee, not an independent contractor.

Employer Concerns - Barrera explained that for California employers, the court ruling has produced a lot of concern and confusion on how this new standard will be applied, how broadly it will apply, and the different industries that will be affected.

“A decision like this, that is going to have such a significant impact on so many industries in California, we really feel like it’s the Legislature’s role to intervene, pause the application of this decision so that they can take into consideration all of the different professions and industries that are impacted…and really look at whether or not this ‘ABC Factor’ is appropriate and should be applied across the board to all these different professions that could be impacted and jeopardized as a result of this decision.”

The show, AirTalk, took live calls from employees, employers and independent contractors from an expansive list of industries explaining how the new test could affect them.

Toward the end of the show, Barrera said that all the calls from various affected industries are the prime example why this ruling is not just a one-size-fits-all situation.

“The Legislature really needs to step in and identify what is the appropriate standard for California,” she said.

CalChamber Coalition - A CalChamber-led coalition is working to build support for workers’ ability to work independently.

At imindependent.co, the coalition explains why lawmakers need to suspend putting a recent decision into effect so that there can be a robust legislative discussion about how best to balance worker protections with a flexible work model.
The term “substantially similar” was adopted in Labor Code Section 1197.5 to capture the intent of equal pay—meaning that employees who, with minor deviations, perform the same work according to a composite of skill, responsibility and effort, should be paid the same wage rate, unless a bona fide factor for the disparity exists. The example used in the legislative debate on SB 1284 compared a housekeeper at a hotel who cleaned hotel rooms versus a janitor who cleaned the lobby. Although a housekeeper and janitor may be “substantially similar” based upon the skill, responsibility and effort required, it is unlikely that employees will have the same job title.

Aggregate data as proposed in SB 1284 fails to take these valid, non-discriminatory reasons into consideration and will create a false impression of wage discrimination where none exists. For example, there could be a disparity in the mean of salaries between two exempt employees because one employee has worked for the employer for only 6 months, whereas the other employee has been with the employer for 10 years.

In addition, a wage disparity could exist because one employee may be hired directly out of college while another employee has five years of prior experience in the same position. Moreover, a pay disparity could exist because one employee negotiated a higher salary while the other negotiated more flexible hours. These factors will not be effectively captured in the aggregate data under SB 1284, creating the impression of an equal pay violation where none may actually exist.

SB 1284 Requires California Employers to Comply with a New, Separate Mandate

As drafted, SB 1284 presumes that the federal EEO-1 pay data reporting requirement already went into effect; however, the federal government has suspended the pay data provision of the EEO-1 reporting requirement. Thus, SB 1284 creates a new reporting requirement for employers that do business in California. Also, SB 1284’s mandate is not identical to the proposed EEO-1 pay data reporting requirements that were supposed to go into effect.

For example, the lookback period for SB 1284 is one year from any pay period between July 1 and September 30 of each reporting year. In contrast, the EEO-1 proposed regulations were going to use a lookback period from October 1 to December 31. Thus, by using the proposed EEO-1 Report, employers will actually be in direct violation of SB 1284. This is just one example of the inconsistencies that will overburden employers by requiring them to comply with a new and separate mandate.

SB 1284 Utilizes Data That May Be Affected by Employee Choices

SB 1284 requires employers to provide pay data regarding an employee’s total earnings as shown on the Internal Revenue Service’s Form W-2. However, a W-2 form does not take into account an employee’s own decisions and actions that also can create wage disparity which has nothing to do with discriminatory intent by the employer.

For example, an employee’s request to work part-time, reduced hours, or only on specific shifts that pay a lesser rate than others, will have an impact on the wages he or she earns. *Per diem* employees may work only one shift per month, at the employee’s own request. Moreover, if the employee is a “sales worker” or performing another job where the employee receives commissions or bonuses based upon his or her performance, this will create a wage disparity. Even though all employees in the substantially similar position are working under the same commission or bonus plan, the employee’s own actions and performance will dictate what the employee actually earns.

Finally, a wage disparity also can be created by an employee’s personal choices as to pre-tax payroll deductions. One employee may max-out all pre-tax deductions for a 401(k), dependent child reimbursement, medical expense reimbursement, college savings, etc., while another employee may not request any such deductions be made to his or her paycheck. None of these employee choices and actions will be captured or reflected in the data collected pursuant to SB 1284 to justify a potential wage disparity. Again, this omission on the report will create the false impression of wage discrimination where none exists.

SB 1284 Is Premature

SB 1284 is premature because there is a Pay Equity Task Force assigned to analyzing the Equal Pay Act, as well as workplace and compensation policies that can lead to successful compliance with the act. The task force is supposed to release a report this year about the act. Thus, SB 1284 is premature and the Legislature should wait for the task force report before imposing a new mandate on employers.

Action Needed

SB 1284 is set for hearing in the Assembly Appropriations Committee on August 15. The CalChamber is encouraging members to contact their Assembly representatives and Assembly Appropriations members to urge them to oppose SB 1284.
Irwindale Employee Holiday Luncheon Committee

BINGO Fundraiser

Friday, August 24, 2018
at the Irwindale Senior Center
6 pm – 9 pm

Join us for a night of fun, food and Bingo at the Irwindale Senior Center!
Help us raise funds for the Irwindale Employee Holiday Committee

Bingo Cards are 25¢ each or 5 for $1.00

Everyone over the age of 18 is welcome to come and enjoy this event!

Food and soft drinks will be sold from 6 pm – 8 pm

MENU:
Hot Dogs, Chili Dogs, Cheese
Nachos and Chili Cheese Nachos
$3.00 - 4.00
Soft Drinks and Water
$1.00

Irwindale Senior Center 16116 Arrow Highway, Irwindale, CA 91706 626-430-2283
For more information, contact Elizabeth Rodriguez at 626-430-2211
ANOTHER GREAT SUMMER READING PROGRAM AT THE IRWINDALE LIBRARY

The Irwindale Library would like to express our sincere thanks and gratitude to all staff, patrons, performers, and community supporters who made our “Reading Takes you Everywhere” Summer Reading Program a success. This year we had a combined 241 children, teen and adult participants take part in our reading program. Our program ran for a total of 8 weeks. During those 8 weeks we held storytimes, science workshops, family friendly variety shows, teen nights, movie matinees, craft events, book club and served as an Accelerated Reader quiz site for all CVUSD elementary students. None of this would have been possible without the dedication of our staff and patrons who registered for the program and came in each week to share about their summer reading favorites. We are already looking forward to next summer and hope to increase our participation as we seek to encourage a love of reading and community involvement at the Library.
In observance of

LABOR DAY

all city offices, with the exception of
the Police Department, will be
CLOSED
Monday, September 3, 2018
IRWINDALE CHAMBER OF COMMERCE
Street Address: 16102 E. Arrow Highway, Irwindale, CA 91706
Mailing Address: P.O. Box 2307, Irwindale, CA 91706-1168
Phone: (626) 960-6606 • Fax: (626) 960-3868
E-Mail: info@irwindalechamber.org
Website: www.irwindalechamber.org

2018 BOARD OF DIRECTORS
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- Amanda Arellan Administrative Assistant

CHAMBER MEETINGS
Board of Directors Last Tuesday
3:30 p.m. Location Varies
Business Ambassadors 1st Thursday at the Chamber
8:00 a.m.
Breakfast/Luncheon 4th Thursday-Location Varies
Breakfast 7:30 a.m. - Lunch 11:30 a.m.
Toastmasters 1st & 3rd Wednesday
8:00 a.m.

IRWINDALE SERVICE ORGANIZATIONS
Irwindale Educational Foundation
P.O. Box 2307, Irwindale, CA 91706-1168
Board Meets 2nd Thursday, 7:30 a.m. at the Chamber

Irwindale Sister City
PO Box 2333, Irwindale, CA. 91706
Meeting information call Marguerite Lopez @ 626-329-6405

Irwindale Lions Club
PO Box 2093, Irwindale CA 91706
Board Meets 2nd & 4th Tuesday at Irwindale Community Center-11:45 a.m.
Contact Dolores Amador (626) 340-5734

City of Irwindale
City Hall
5050 Irwindale Avenue
Irwindale, CA 91706-1168
Phone: (626) 430-2200
Fax: (626) 962-4209 (City Hall)
Fax: (626) 430-2295 (Building Dept.)
Website: www.ci.irwindale.ca.us
e-mail: postoffice@ci.irwindale.ca.us

City Council
Mayor: Mark A. Breceda
Mayor Pro Tem: Albert F. Ambriz
Council Members: Larry G. Burrola, Manuel R. Garcia and H. Manuel Ortiz

City Council Meetings
2nd and 4th Wednesday, 6:30 p.m. at City Hall

City Staff
City Manager William Tam
Assistant City Manager Theresa Olivaes
Finance Director & City Treasurer: Eva Carreon
Chief Deputy City Clerk: Laura Nieto

Planning Commission
Chair: Arthur R Tapia Vice Chair: Loretta Corpis
Commissioners: Enoch Burrola, Richard Chico, and Robert E. Hartman

Parks & Recreation Commission
Chair: Dan Diaz Vice Chair: Paula Fraijo
Commissioners: Jason Hickman, Marguerite S. Lopez, and Belen Zepeda

Senior Citizen Commission
Chair: Virginia Diaz Vice Chair: Maggie Guzman
Commissioners: Arline Miranda, Natalie Orosco, and Iris Rodriguez

Library.................................(626) 430-2266
City Librarian: Shayna Balli
5050 Irwindale Avenue Fax: (626) 430-2229

Recreation............................(626) 430-2224
16053 Calle de Paseo Fax: (626) 962-3022
Recreation Manager: Priscilla Zepeda

Senior Center...........................(626) 430-2283
16116 Arrow Highway Fax: (626) 430-2275
Senior Center Manager: Eloise Beltran

Service Yard............................(626) 430-2280
16034 Calle del Norte

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Police Department
Police Chief Ty Henshaw
Emergency......................... 9-1-1
Phone (non emergency)....(626) 430-2244
5050 Irwindale Avenue Fax: (626) 962-8212
Los Angeles County Fire- Irwindale Station
Emergency......................... 9-1-1
Phone (non emergency)....(626) 337-8919
15546 Arrow Hwy, Irwindale
Is this newsletter properly addressed? Please verify the information on the mailing label. If any changes are needed please call (626) 960-6606 or fax them to (626) 960-3868.