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San Mateo County Chamber of Commerce Alliance

April 2015 Legislative Report

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Legislative Report

- **AB 12 (Cooley – D) State Government: Administrative Regulations: Review**
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Legislative Report

AB 12 (Cooley – D) State Government: Administrative Regulations: Review

Summary

1. AB 12 would, until January 1, 2019, require each state agency to, on or before January 1, 2018, and after a noticed public hearing, review and revise that agency's regulations to eliminate any inconsistencies, overlaps, or outdated provisions in the regulations, adopt the revisions as emergency regulations, and report to the Legislature and Governor.

Background

2. AB 12 would further require each agency to, on or before January 1, 2017, compile an overview of the statutory law that agency administers.
3. Current law authorizes various state entities to adopt, amend, or repeal regulations for various specified purposes.
4. The Administrative Procedure Act requires the Office of Administrative Law and a state agency proposing to adopt, amend, or repeal a regulation to review the proposed changes for, among other things, consistency with existing state regulations.
5. Current law requires a state agency proposing to adopt, amend, or repeal a major regulation, as defined, to prepare a standardized regulatory impact analysis of the proposed change. The act requires the office and the Department of Finance to, from time to time, review the analyses for compliance with specific department regulations.
6. Current law further requires the office to, on or before November 1, 2015, submit a report on the analyses to the Senate and Assembly Committees on Governmental Organization.
7. AB 12 would instead require the office and department to annually review the analyses and would also require the office to annually submit a report on the analyses to the Senate Committee on Governmental Organization and the Assembly Committee on Accountability and Administrative Review.
8. AB 12 is pending a hearing in the Assembly Accountability and Administrative Review Committee.

Arguments in Support

9. Proponents of AB 12 argue that this bill would strengthen the accountability and transparency of the state's regulatory process, which paves the way to effective and least burdensome regulations.

Arguments in Opposition

10. None at this time.

Supporting

California Asian Pacific Chamber of Commerce
California Association of Bed and Breakfast Inns
California Building Industry Association
California Business Roundtable
California Chamber of Commerce
California Construction and Industrial Materials Association
California Hotel & Lodging Association
California League of Food Processors
Western States Petroleum Association

California Manufacturers & Technology Association
California Retailers Association
Consumer Specialty Products Association
Industrial Environmental Association
National Federation of Independent Business/California
Small Business California
USANA Health Sciences, Inc.

Opposing

None at this time.

AB 52 (Gray – D) Public Accommodations: Accessibility Claims

Summary

1. AB 52 would provide that a defendant's maximum liability for statutory damages in a construction related accessibility claim against a place of public accommodation is \$1,000 for each offense if the defendant has corrected all construction-related violations that are the basis of the claim within 180 days of being served with the complaint and the defendant demonstrates that the structure or area of the alleged violation was determined to meet standards or was subjected to an inspection.

Background

2. Current law allows a plaintiff to collect statutory damages in a construction-related accessibility claim against a place of public accommodation only if the plaintiff was denied full and equal access to the place of public accommodation on a particular occasion.
3. Current law imposes a minimum liability of \$1,000 on these statutory damages for each offense when a defendant demonstrates that the defendant has corrected the construction-related accessibility violation within 60 days of being served with a complaint and the defendant demonstrates that the structure or area of the alleged violation was determined to meet standards or was subjected to an inspection.
4. Current law also imposes a minimum liability of \$2,000 for each offense if the defendant has corrected all construction-related violations that are the basis of the claim within 30 days of being served with the complaint and the defendant is a small business.
5. AB 52 would reduce that maximum liability to \$1,000 for each offense if the defendant has corrected all construction-related violations that are the basis of the claim within 180 days of being served with the complaint and the defendant is a small business.
6. AB 52 would also provide that specified statutory damages in a construction-related accessibility claim against a place of public accommodation that is a small business, as defined, may only be recovered if the place of public accommodation is granted a 180-day stay of court proceedings to meet specified requirements.
7. AB 52 is in the Assembly Judiciary Committee and will be heard 04/21/2015 9:00 am, State Capitol, Room 4202.
8. AB 52 and AB 54 are two similar assembly legislative proposals introduced at the same time in order to assist businesses in curtailing "drive-by" ADA lawsuits and reduce the number of frivolous lawsuits.

Arguments in Support

9. Proponents argue that AB 52 falls into the category of disability access litigation reform and would seek to improve access for disabled customers and limit frivolous litigation against businesses for construction-related accessibility claims by providing an opportunity for the businesses to timely resolve any potential violations.

Arguments in Opposition

10. None on file at this time.

Supporting

California Business Properties Association
California Chamber of Commerce
California Restaurant Association
Camarillo Chamber of Commerce
Goleta Valley Chamber of Commerce

Mountain View Chamber of Commerce
Oxnard Chamber of Commerce
Simi Valley Chamber of Commerce
South Bay Association of Chambers of Commerce
Southwest California Legislative Council

Opposing

None on file at this time.

AB 54 (Olsen – R) Public Accommodations: Construction Related Accessibility Standards: Tax Credits

Summary

1. AB 54 would, when a plaintiff brings a claim alleging a violation of a construction-related accessibility standard within 3 years of a change in that standard, allow a plaintiff to collect statutory damages only if the plaintiff also provides the owner, agent, or other party responsible for the place in violation with a written notice or demand letter at least 60 days prior to filing any action and the violation is not cured.

Background

2. Current law allows a plaintiff to collect statutory damages in a construction-related accessibility claim against a place of public accommodation only if the plaintiff was denied full and equal access to the place of public accommodation on a particular occasion, as specified.
3. Current law imposes a \$1,000 limit on statutory damages when a defendant demonstrates that the defendant has, among other things, cured the construction-related accessibility violation within 60 days of being served with a complaint.
4. Current law requires a demand letter alleging a construction-related accessibility claim to, among other things, state facts sufficient to allow a reasonable person to identify the basis of the claim.
5. Current law grants an owner or tenant of a site, defined as a place of public accommodation that has been inspected by a certified access specialist (CASp) and determined to meet all applicable construction-related accessibility standards specified rights in an action that includes a construction-related accessibility claim.
6. The Personal Income Tax Law and the Corporation Tax Law, in specified conformity to federal law, allow a credit against the taxes imposed by those laws, to eligible small businesses for 50% of eligible access expenditures, which are defined as those amounts paid or incurred by the taxpayer to comply with the Americans With Disabilities Act of 1990, as provided, not to exceed \$250.
7. AB 54, for taxable years beginning on or after January 1, 2016, would include as an eligible access expenditure any amount paid or incurred by a taxpayer to receive an inspection by a CASp.
8. AB 54 would require the written notice or demand letter to contain specified information as current law allows no grace period, and businesses can be hit with litigation for minor ADA violations without any notice.
9. AB 54 is in the Assembly Judiciary Committee and will be heard 04/21/2015 9:00 am, State Capitol, Room 4202.
10. AB 54 and AB 52 are two similar assembly legislative proposals introduced at the same time in order to assist businesses in curtailing “drive-by” ADA lawsuits and reduce the number of frivolous lawsuits.

Arguments in Support

11. Proponents argue that AB 54 is also a legislative proposal aimed at disability access litigation reform and seeks to improve access for disabled patrons without harming small businesses through frivolous lawsuits by providing businesses with a 60-day right to cure for a claim based upon a constructed related accessibility standard that was changed or modified in the prior three years.
12. Due to California’s current statutory framework for construction-related accessibility claims, small businesses have, unfortunately, been targeted by a limited group of attorneys to leverage extortion-type settlements for technical construction-related standards, which do not actually impede physical access to the facility for disabled patrons. AB 54 aims to remedy this problem.

Arguments in Opposition

13. None on file at this time.

Supporting

Boma California
California Business Properties Association
California Chamber of Commerce
California Restaurant Association
Camarillo Chamber of Commerce
Fullerton Chamber of Commerce
Goleta Valley Chamber of Commerce
Lodi Chamber of Commerce
Mountain View Chamber of Commerce
North Lake Tahoe Chamber/CVB/Resort Association
Oxnard Chamber of Commerce
Simi Valley Chamber of Commerce
South Bay Association of Chambers of Commerce
Southwest California Legislative Council

Opposing

None on file at this time.

AB 357 (Chiu – D) Employment: Work Hours: Fair Scheduling Act of 2015

Summary

1. AB 357 would make legislative findings and declarations relating to work hour scheduling for employees of food and general retail establishments such as providing its employees with at least two weeks' notice of their schedules.

Background

2. Furthermore, AB 357 would require the establishments to pay those employees additional pay for each previously scheduled shift that the food and general retail establishment moves to another date or time or cancels and each previously unscheduled shift that the food and general retail establishment requires an employee to work.
3. Also, the legislative proposal would require a food and general retail establishment to pay those employees a specified amount for each on-call shift for which the employee is required to be available but is not called in to work.
4. AB 357 would specify that these provisions do not apply in certain circumstances, including, but not limited to, when operations cannot begin or continue due to causes not within the food and general retail establishment's control.
5. AB 357 would prohibit a food and general retail establishment from discharging or discriminating against an employee because he or she is a person who receives, or is a parent, guardian, or grandparent who has custody of one or more children who receive, benefits under the CalWORKs program or a person who receives benefits under CalFresh.
6. AB 357 would also require an employer to allow such an employee to, upon request, be absent from work without pay for up to 8 hours twice a year to attend any required appointments at the county human services agency, provided that the employee gives reasonable notice to the employer of the planned absence from work prior to taking time off of work.
7. AB 357 would require the Labor Commissioner to promulgate all regulations and rules of practice and procedure necessary to carry out these provisions.
8. AB 357 would also prohibit sanctions from being applied upon a recipient of CalWORKs for failure or refusal to comply with CalWORKs program requirements if the employment or offer of employment fails to comply with these provisions.
9. Current law, with certain exceptions, establishes 8 hours as a day's work and a 40-hour workweek, and requires payment of prescribed overtime compensation for additional hours worked.
10. Current law establishes the Division of Labor Standards Enforcement in the Department of Industrial Relations for the enforcement of labor laws, including wage claims and current federal law provides for the allocation of federal funds through the federal Temporary Assistance for Needy Families (TANF) block grant program to eligible states, with California's version of this program known as the California Work Opportunity and Responsibility to Kids (CalWORKs) program.
11. Under the CalWORKs program, each county provides cash assistance and other benefits to qualified low-income families and individuals, and is prohibited from applying sanctions upon a recipient of CalWORKs for a failure or refusal to comply with program requirements for reasons related to employment, an offer of employment, an activity, or other training for employment for specified reasons, including, but not limited to, that the employment, offer of employment, or work activity does not provide workers' compensation insurance.
12. Current law establishes a statewide program to enable eligible low-income persons to receive food stamps under the federal Supplemental Nutrition Assistance Program (SNAP), known in California as CalFresh, and requires counties to implement the program.
13. AB 357 is in the Assembly Labor and Employment Committee and will be heard 04/22/2015 1:30 pm, State Capitol, Room 447.
14. AB 357 is cited as a California Chamber of Commerce "2015 Job Killer" piece of legislation.

Arguments in Support

15. According to the author's office, Since the Great Recession, new employer practices and the rise of hourly work have changed California's workforce. The United States Bureau of Labor Statistics found that the State now has the largest

percentage of hourly workers in the nation, and since 2006, the number of involuntary part-time workers in California has tripled to 1.1 million workers. Fifty-nine percent of the national workforce is now paid hourly and over half are women.

16. To minimize labor costs, employers are increasingly implementing ‘just in time’ and ‘on-call’ scheduling practices that often results in unpredictable schedules and last-minute changes; despite the existence of sophisticated scheduling software that could project schedules in advance. According to a recent survey of employees at large retail and grocery stores, more than half of food and general retail store employees nationally receive their work schedules one week or less in advance.
17. A great majority, 83 percent, of California’s hourly part-time workers report having unstable work schedules. Unpredictable scheduling practices and last-minute work schedule changes cause workers who are already struggling with low wages to live in a constant state of insecurity about when they will work or how much they will be paid on any given day. If enacted, AB 357 would make California the first state to support fair scheduling to allow students, families and low wage, hourly workers to have more control of their lives and monthly income.

Arguments in Opposition

18. According to the Calchamber, one of many organizations opposing AB 357, this legislative proposal imposes an unfair, one-size fits all, two-week notice scheduling mandate on any entity that performs retail sales activity, and penalizes the employer with “additional pay” for making changes to the schedule with less than two weeks’ notice, and additionally imposes an unlimited, protected leave of absence from work as well as a broad new protected class of employees who are receiving public assistance or have a identified family member receiving such assistance.

Supporting

California Work & Family Coalition
United Food and Commercial Workers – Western States Council (Sponsor)
Western Center on Law and Poverty (Sponsor)

Opposing

Agricultural Council of California	International Franchise Association
Alhambra Chamber of Commerce	Irvine Chamber of Commerce
Brawley Chamber of Commerce	Lodi Chamber of Commerce
Building Owners and Managers Association California	Monrovia Chamber of Commerce
California Association of Bed and Breakfast Inns	Monterey Peninsula Chamber of Commerce
California Association of Nurseries & Garden Centers	NAIOP – Commercial Real Estate Development Association
California Attractions and Parks Association	National Federation of Independent Business
California Bankers Association	North Lake Tahoe Chamber of Commerce
California Business Properties Association	Orange County Business Council
California Chamber of Commerce	Oxnard Chamber of Commerce
California Employment Law Council	Palm Desert Area Chamber of Commerce
California Grocers Association	Rancho Cordova Chamber of Commerce
California Hotel and Lodging Association	Redondo Beach Chamber of Commerce and Visitors Bureau
California League of Food Processors	Retail Industry Leaders Association
California Manufacturers and Technology Association	Ripon Chamber of Commerce
California Mortgage Bankers Association	San Francisco Chamber of Commerce
California Restaurant Association	San Gabriel Valley Legislative Coalition of Chambers
California Retailers Association	Santa Clara Chamber of Commerce & Convention-Visitors Bureau
California Travel Association	Santa Maria Valley Chamber of Commerce Visitor and Convention Bureau
Camarillo Chamber of Commerce	Simi Valley Chamber of Commerce
Civil Justice Association of California	South Bay Association of Chamber of Commerce
El Centro Chamber of Commerce and Visitors Bureau	Southwest California Legislative Council
Fairfield-Suisun City Chamber of Commerce	TechAmerica
Fullerton Chamber of Commerce	The Chamber of the Santa Barbara Region
Goleta Valley Chamber of Commerce	Valley Industry and Commerce Association
Greater Fresno Area Chamber of Commerce	
International Council of Shopping Centers	