





March 16, 2023

The Honorable Josh Newman  
California State Senate  
1021 O Street, Suite 6520  
Sacramento, CA 95814

**SUBJECT: SB 592 (NEWMAN) LABOR STANDARDS INFORMATION AND ENFORCEMENT  
SUPPORT/SPONSOR/JOB CREATOR – AS INTRODUCED FEBRUARY 15, 2023**

Dear Senator Newman,

The California Chamber of Commerce, California Hispanic Chamber of Commerce, and CalAsian Chamber of Commerce are pleased to **SUPPORT SB 592 (Newman)**, which has been labeled a **JOB CREATOR**. **SB 592** will bolster labor law compliance by requiring the Department of Industrial Relations (DIR) to translate its website, in its entirety, into the languages most spoken by Californians. Further, it will prevent any employer who relies in good faith upon the written advice of the Division of Labor Standards Enforcement (DLSE) regarding how to comply with the law from being punished through the assessment of civil and criminal penalties, fines, and interest.

**DLSE Guidance:**

The DLSE is a state agency that is charged with enforcing the wage, hour and working condition labor laws. As a part of its effort to fulfill this responsibility, the DLSE issues opinion letters on various wage, hour and working condition topics, Frequently Asked Questions (FAQs) regarding new labor laws, as well as an enforcement manual that sets forth the DLSE's interpretation and position on these issues. This guidance was critical, for example, during the COVID-19 pandemic due to the number of new laws and ever-changing regulations. Currently, employers must refer to the DLSE's written materials for "guidance" on these topics when there is no published, on-point case available. The DLSE can levy penalties against an employer for failing to do so if an employee files a wage claim.

The Catch-22 is that employers are provided with no certainty that they will be shielded from penalties if they comply in good faith with the DLSE's written opinions or interpretations. There have been numerous instances where courts have veered in a different direction from established DLSE guidance, resulting in employers owing not only back wages, but also penalties under the Private Attorneys General Act (PAGA), Labor Code Sections 203, 226, and more. Examples include:

- *Troester v. Starbucks*, Cal.5th 829 (2018): The California Supreme Court rejected the *de minimis* doctrine for wage and hour claims, which is used in federal law, contrary to guidance included in the DLSE enforcement manual that employers must follow.
- *Ward v. Tilly's, Inc.*, 31 Cal.App.5th 1167 (2019): A California court of appeals required employer to pay out reporting time pay prior to employee physically reporting to work, contrary to prior guidance issued by the DLSE.
- *Mendiola v. CPS Security Solutions, Inc.*, 60 Cal. 4th 833 (2015): The California Supreme Court holds employer liable for failure to pay "sleep time" during 24-hour shifts contrary to MOU entered into between DLSE and employer providing that employer's policy was valid.

**SB 592** eliminates this problem and provides businesses in California with the security to know that, if they seek out and follow written advice from the DLSE regarding how to comply with the law, they can actually rely upon that information. Specifically, **SB 592** prevents an employer from being financially penalized through the assessment of statutory civil and criminal penalties, fines and interest if the employer relies in good faith on written advice from the DLSE and a court ultimately determines the DLSE's advice was wrong.

Further, while employers are expected to follow this guidance and can be penalized by the DLSE for failing to do so, the guidance is essentially unusable for non-English speaking employers. While some materials are available in Spanish under a separate index page, the guidance materials are not translated into other common languages spoken in California such as Chinese, Tagalog, and Vietnamese.

### **Helps Small Businesses:**

California has complex, burdensome labor and employment laws that are unique to the rest of the country. Small businesses that lack the financial resources to hire a human resources department or outside counsel to advise them on how to comply with these labor and employment laws only have the DLSE for guidance. **SB 592** helps such small businesses by encouraging them to seek out and rely upon the advice they receive from the DLSE regarding how to comply with the law. During these difficult economic times, small businesses need certainty and SB 592 provides that certainty when state government provides advice.

### **Helps Non-English Speaking Employees and Employers:**

While DIR must provide bilingual services, this has not included translation of their website. Because DIR's website is only available in English, non-English speaking employers and workers are unable to utilize these resources at all. It is estimated that as many as 30% of immigrants in California speak little or no English and most speak another language at home. Even for those that do speak some English, it is difficult to utilize these resources due to the legal complexity of California's labor laws. Employers may not know they are misinterpreting a law and employees cannot easily ensure that their rights are not being violated. By requiring DIR to translate its entire website into the four non-English languages most commonly spoken in California and protecting employers who rely on that guidance from penalties, **SB 592** benefits both employers and employees.

### **Ensures Employees Receive Their Full Wages:**

Although **SB 592** prevents the assessment of any penalties, fines or interest against an employer who can prove their actions were based upon written guidance provided by the DLSE, **it still requires the employer to pay all wages owed to an employee as well as any awarded attorneys fees or costs.** In fact, **SB 592** requires an employer who has asserted its good faith reliance on the DLSE as a defense to post a bond for the disputed amount of wages, thereby ensuring the employee is made whole.

### **Does Not Protect Bad Actors:**

**SB 592** requires the employer to prove that they are entitled to the good faith defense just as if it was asserting any other defense. This means that the burden of proof falls on the employer to demonstrate that it: (1) relied upon, and conformed to, the applicable opinion letter or enforcement policy published by the division; and (2) provided true and correct information to the division in seeking an opinion letter or enforcement policy, if applicable. The employer cannot succeed in asserting this defense if the facts and circumstances of the case did not align with the opinion letter or enforcement policy at issue. If the court is not satisfied with the employer's evidence, it will reject the defense and assess penalties. A bad actor will not be able to satisfy these requirements. **SB 592** solely protects the good actor who proactively seeks out guidance and conforms to it.

Notably, since 1947, the federal government has provided employers who rely in good faith upon the advice, opinion letters and guidance of the Department of Labor regarding the Fair Labor Standards Act with a complete defense against liability. See 29 U.S.C. Sections 258-259. This law, referenced as the Portal-to-

Portal Act has been in existence for over 60 years. The California Fair Political Practices Commission as well as the California Rev & Tax Code regarding property taxpayers also contain good faith defenses.

**Creates Certainty for Employers:**

When the Portal-to-Portal Act was enacted, Congress set forth in its findings and declarations that “uncertainty on the part of industry,” as well as “the difficulties in the sound and orderly conduct of business and industry,” could negatively impact commerce. Accordingly, it included an affirmative defense for employers who rely upon the interpretations and opinions of the Wage and Hour Division of the Department of Labor.

Echoing the same concerns here, uncertainty for California employers regarding the correct application of California's numerous labor and employment laws detrimentally impacts the state's economy as well as employees. Providing certainty through **SB 592** will assist all employers in their efforts to comply with the law, thereby producing a better business environment, growth in the economy, and an improved work environment for employees.

For these reasons, we are pleased to **SUPPORT/SPONSOR SB 592 (Newman)** as a **JOB CREATOR**.

Sincerely,



Ashley Hoffman  
Policy Advocate  
California Chamber of Commerce, Cosponsor



Julian Canete  
President and CEO  
California Hispanic Chambers of Commerce, Cosponsor



Pat Fong Kushida  
President and CEO  
Cal Asian Chamber of Commerce, Cosponsor

Acclamation Insurance Management Services (AIMS)  
Allied Managed Care (AMC)  
Anaheim Chamber of Commerce  
Antelope Valley Chambers of Commerce  
California Apartment Association  
California Association for Health Services at Home  
California Association of Health Facilities  
California Association of Joint Powers Authorities  
California Association of Winegrape Growers  
California Building Industry Association  
California Business Roundtable

California Cattlemen's Association  
California Farm Bureau  
California Fuels and Convenience Alliance  
California Hotel and Lodging Association  
California League of Food Producers  
California Restaurant Association  
California Retailers Association  
California Sheet Metal and Air Conditioning Contractors National Association  
California State Council of the Society for Human Resource Management  
California Trucking Association  
Carlsbad Chamber of Commerce  
Chino Valley Chamber of Commerce  
Citrus Heights Chamber of Commerce  
Civil Justice Association of California  
Coalition of California Chambers Orange County  
Coalition of Small and Disabled Veteran Businesses  
Costa Mesa Chamber of Commerce  
Dana Point Chamber of Commerce  
El Dorado County Chamber of Commerce  
El Dorado Hills Chamber of Commerce  
Elk Grove Chamber of Commerce  
Family Business Association of California  
Flasher Barricade Association (FBA)  
Folsom Chamber of Commerce  
Fountain Valley Chamber of Commerce  
Fresno Chamber of Commerce  
Garden Grove Chamber of Commerce  
Gilroy Chamber of Commerce  
Greater High Desert Chamber of Commerce  
Greater Riverside Chambers of Commerce  
Greater San Fernando Valley Chamber of Commerce  
Half Moon Bay Coastside Chamber  
Hollywood Chamber of Commerce  
Housing Contractors of California  
Imperial Valley Regional Chamber of Commerce  
La Cañada Flintridge Chamber of Commerce  
Lake Elsinore Valley Chamber of Commerce  
Lincoln Area Chamber of Commerce  
Long Beach Area Chamber of Commerce  
Menifee Valley Chamber of Commerce  
National Federation of Independent Business  
Oceanside Chamber of Commerce  
Official Police Garages of Los Angeles  
Orange County Business Council  
Rancho Cordova Area Chamber of Commerce  
Redondo Beach Chamber of Commerce  
Rocklin Area Chamber of Commerce  
Roseville Area Chamber of Commerce  
Sacramento Metro Chamber of Commerce  
San Gabriel Valley Economic Partnership  
San Juan Capistrano Chamber of Commerce  
San Marcos Chamber of Commerce  
Santa Ana Chamber of Commerce  
Santa Barbara South Coast Chamber of Commerce  
Santa Clarita Valley Chamber of Commerce

Santa Maria Valley Chamber of Commerce  
Shingle Springs/Cameron Park Chamber of Commerce  
Southern California Leadership Council  
South Bay Association of Chambers of Commerce  
Tulare Chamber of Commerce  
United Chamber Advocacy Network  
Valley Industry and Commerce Association  
Western Growers Association  
West Ventura County Business Alliance  
Western United Dairies  
Wine Institute  
Yorba Linda Chamber of Commerce  
Yuba Sutter Chamber of Commerce

cc: Legislative Affairs, Office of the Governor

AH:am