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CALIFORNIA CHAMBER OF COMMERCE

January __, 2021

The Honorable Gavin Newsom
Governor, State of California
State Capitol
Sacramento, CA 95814

The Honorable Anthony Rendon
Speaker, California State Assembly
State Capitol, Room 219
Sacramento, CA 95814

The Honorable Toni Atkins
President Pro Tem, California State Senate
State Capitol, Room 205
Sacramento, CA 95814

Members
California State Legislature
State Capitol
Sacramento, CA 95814

SUBJECT: ECONOMIC RECOVERY

Dear Governor, Mr. Speaker, Madam President Pro Tem, Members of the State Legislature:

With the record number of infections and overwhelmed hospitals throughout the State, it is doubtful that California will reopen its economy anytime soon. The shutdowns thus far have already devastated many small and large employers. As the shutdown continues indefinitely, a growing number of these businesses will close permanently, unable to withstand the financial losses they are suffering. These closures take with them jobs, local tax revenues and social glue from both local communities and the State.

At the same time, California continues to suffer a significant exodus of employers to other states, who are seeking lower taxes, fewer regulatory burdens, more affordable housing for employees, and reduced employment litigation. While we have seen these occurrences gradually grow over the past several years, the pandemic, and current economic crisis in California has exacerbated this situation. Some of these employers will maintain existing facilities in California, while others are shutting down their offices/locations here completely, transferring jobs out of state. And, all employers leaving are eliminating the option for any future growth in California.

California needs to address both crises immediately.

We appreciate the announcement of the Governor's Equitable Recovery for California Businesses and Jobs plan that includes much needed financial relief for businesses suffering as a result of the pandemic, especially the proposed grant program, which could provide a financial bridge for many employers until they are able to reopen. And, we encourage urgent action on these proposals as employers are in desperate need now.

But, we need to do more.

The Governor and Legislature must also alleviate regulatory burdens, litigation threats, tax threats, and fix housing. Small employers need to be protected from the harm of the pandemic and larger employers and their employees need a reason to stay.

Accordingly, we request the Governor take executive action to immediately and temporarily suspend for at least six months, the following laws and regulations, which will reduce burdens on employers without affecting the health and safety of Californians:

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1. **CFRA for Small Employers**: Temporarily suspend compliance with the California Family Rights Act for employers with fewer than 50 employees. These employers do not have the resources to administer a new and unfamiliar leave mandate while struggling to keep their businesses open. Employees of small businesses already have protected, paid leave if they have been exposed to, have symptoms of, have been diagnosed with, or have tested positive for COVID, through California paid sick leave and the new (SB 1159) worker's compensation presumption,. The new leave mandate under CFRA is not COVID-specific. Small employers should be temporarily spared the cost and burden of new compliance with the extensive leave under CFRA while they are coping with the challenges of the pandemic.

2. **CalOSHA Mandatory Testing**: Eliminate the enforcement of the mandatory testing requirement under the California Occupational Health and Safety (CalOSHA) COVID-19 Emergency Regulations (the "Emergency Regulations") for employers who are in no position to meet these onerous requirements, such as weekly or biweekly testing of entire workplaces. As an initial matter, such testing is not commercially available in the volume needed to comply with this requirement, which will force struggling businesses to compete to purchase this scant supply. As recently as last month, both public and private employers reported shortages and inability to purchase or schedule tests in sufficient volume to comply with the regulation at CalOSHA's December stakeholder meeting. Putting aside the issue of shortages and cost, this onerous requirement will force employers to procure testing in bulk for large swathes of their workforce and compete with those who should be given priority such as healthcare workers, the elderly and those showing symptoms. This mandate is even more onerous on small businesses who do not have the resources or scale as a larger employer to purchase these tests.

3. **CalOSHA Paid Leave**: Eliminate the mandatory payment of wages under the Emergency Regulations for employees who are excluded from the workplace due to COVID. For employees who are exposed at work and ultimately test positive, California last year adopted SB 1159 (Hill) that provides employees with paid time off and medical care under the worker's compensation system. Requiring employers to provide additional paid time off under the Emergency Regulations for a potential exposure, even if the employee ultimately does not test positive, forces employers to subsidize this public health crisis, which is an unfair burden to place on employers who are already suffering.

4. **Property Taxes**: Unlike other taxes, property tax payments are not based on a percentage of income or sales. These tax payments are due regardless of the owner's ability to pay, many of whom cannot due to the shutdowns. Accordingly, we request for you to temporarily delay the next installment of property taxes that are due in April 2021 to allow employers time to reopen and earn income/revenue.

We request the Governor and/or Legislature to do the following:

Expedite Additional Financial Resources to Small Businesses: While both large and small employers have been impacted by this pandemic, small businesses have been exceptionally vulnerable. The most recent shutdowns have exacerbated sales and operating pressures that many small businesses have been struggling with for nine months. These small businesses do not have the financial reserves to satisfy all of the new obligations imposed by new regulations and laws, while trying to maintain their businesses at a reduced capacity – if operating at all. While the recent federal relief package will provide some employers with financial support through extension of the Paycheck Protection Program, as we know from the first relief package, not all employers will receive a loan and the costs upon which the loan money can be spent to ensure forgiveness is limited.

The California Rebuild Fund and the Governor's proposed grant program are great tools to provide relief and should be broadbased, allowing small employers in all sectors that have been impacted by COVID to apply. We also request the Governor or the Legislature to develop an immediate financial reimbursement or quarterly tax offset for employers who are investing in state-mandated upgrades for their workspaces to protect employees from COVID, compliance with the Emergency Regulations, or any other business expense the employer has incurred as a direct result of the pandemic. A tax credit at the end of the year will work for some employers, but many cannot wait that long for financial relief or will not have enough taxable income for a credit to have an impact.

We further request the Legislature to enact the following policies in 2021:

1. **Eliminate disincentives for telecommuting**. Work-from-home options have kept thousands of employers in business and saved the jobs of thousands of employees. Due to public school closures, many parents are having to support their children who are distance learning, while also maintaining a job. Telecommuting gives working parents an opportunity to do both. However, existing state laws do not provide the necessary flexibility for employers to accommodate the scheduling challenges parents are facing with working and supporting kids at home. Employers who allow employees to work separate shifts in a day, work more hours one day to take time off on another day, or even skip a break to finish working early, may be penalized and fined. The laws should be updated to address this disincentive so that employees can enjoy the flexibility they need to meet these work and home demands.

2. **Relieve Employers of Abusive Lawsuits Under the Labor Code Private Attorney General Act**. During the pandemic, businesses have had to quickly react to the emergency shutdown orders and health guidance, by reducing employee hours, layoffs, final pay, transitioning employees to work from home, implementing supplemental COVID sick pay, new CalOSHA regulations, etc. Employers have had to adjust with limited time and notice to these changing arrangements, while trying to keep their businesses afloat. While employees should always be entitled to wages they earn, employers should not be subject to frivolous litigation under PAGA in which they are extorted by attorneys for layers of penalties for minor violations. At a minimum, the Legislature should temporarily suspend PAGA or eliminate the opportunity for lawyers to file these abusive lawsuits against employers who are already struggling from this pandemic. Employees should still be able to pursue claims before the Labor Commissioner and other agencies. But attorneys should not be able to victimize businesses who are already suffering.

   Additionally, the constant threat and barrage of employment litigation is one of the top concerns of large employers in California. It should be noted that California is ***the only*** state in the country that has a PAGA statute, allowing private attorneys to stand in the shoes of the state and seek penalties against employers for a number of different labor violations, including purely technical deficiencies. The Legislature must reform PAGA to eliminate the opportunity for lawyers to file these abusive lawsuits against employers, which have proven be a huge windfall for attorneys, and negligible relief for employees. Employers have paid millions in attorney's fees over the last decade due to PAGA, and the negative impact is finally taking its toll as large companies are now fleeing the State.

3. **Delay Enforcement of Updated Guidance and Regulations**. Dozens of state agencies have conducted business as usual during the pandemic, issuing new rules and guidance for employers to follow, with little to no notice, and pushing costly emergency regulations with less than one week of notice to the business community. CalOSHA did not provide the text of the Emergency Regulations until November 12th, and yet businesses were expected to be in compliance with the finalized regulations by November 30th. At the same time as these guidance documents and new regulations were released, businesses were scrambling to adjust to statewide orders to shut down or reduce their capacity. We have heard complaints from employers that by the first week of December, CalOSHA was already investigating and citing employers for failure to comply with these expedited regulations. Notably, the Governor issued an Executive Order that allows the Office of Administrative Law additional time to review and consider proposed regulations given the strain of the pandemic, but provided no such courtesy for the regulated community. The Legislature should provide employers with some grace period to receive notice of any new guidance and regulations, and time to gather the resources to comply, before any effort of enforcement.

4. **Pay Down the Unemployment Insurance (UI) Fund:** This pandemic has created unprecedented unemployment numbers, which are tragic for unemployed Californians, but are also draining the State's UI fund, and forcing the State to borrow billions of dollars from the federal government. This insolvency

and job loss is due, in large part, to the ongoing state-mandated shutdown of much of California's economy. The Employment Development Department recently indicated that the State would reach $21.5 billion in loans from the federal government by the end of 2020 and that the loan will grow to $48 billion by the end of 2021. This federal loan is paid off by increasing payroll taxes on employers through a reduced federal tax credit, which forces employers to further shoulder the cost of this shutdown. Given the size of the expected UI Fund deficit, we expect California's employers to be facing increased taxes for *twenty years or more* without state action. To address this insolvency and help businesses rebuild, the one-time windfall noted in General Fund revenues should be applied to the outstanding UI loan to reduce this future tax increase on employers.

5. **Reject Any New Tax Measures:** California already has the highest personal income tax, the highest sales tax, and one of the highest corporate tax rates in the country. Although Proposition 13 keeps property taxes at a reasonable rate, the cost of housing in California eclipses the financial relief Proposition 13 provides. For years, the assumption has been that employers and employees would pay these high rates to enjoy the benefits California offers. But, the costs are now outweighing the benefits. Both employers and employees are leaving the State to find a lower cost of living and lower cost of doing business. Employers cannot withstand more taxes at either the state or local level. Any new proposals should be immediately rejected, not only because its bad policy, but allowing these proposals to even move through the process further encourages more employers to leave the State.

6. **Eliminate Barriers to Housing:** Employers and employees are leaving the State because of the severe affordable housing crisis. It is a problem that existed before the pandemic, and a problem that has been exacerbated by the pandemic. The Legislature must reform the California Environmental Quality Act (CEQA) to eliminate litigation cost premiums and unnecessary delays for the development of not only affordable housing but also market priced homes to provide housing for lower income and middle class Californians. Additionally, the Legislature must approve real and meaningful solutions, including but not limited to capping local housing fees, reinstating tax increment financing for targeted economic development to help pay for local infrastructure and housing, holding cities more accountable for not approving adequate housing, reshaping state-local tax sharing to reduce disincentives to approve new housing, quashing any further attempts at rent control, avoiding overly broad one-size-fits all development bans in high fire severity zones, and further incentivizing up zoning and "missing middle" housing.

The State will need a strong business recovery to bring back jobs and stability to our communities. We cannot recover when businesses are shutting down and employers are leaving the State. We look forward to working with all of you this year to stop the spread of the virus and help California rebuild.

Sincerely,

Allan Zaramberg
President & CEO
California Chamber of Commerce

Jennifer Barrera
Executive Vice President
California Chamber of Commerce

Other organizations listed here: