



March 19, 2021

The Honorable Kelly Seyarto
 California State Assembly
 State Capitol, Room 5164
 Sacramento, CA 95814

SUBJECT: AB 1028 (SEYARTO) TELECOMMUTING: TELEWORK FLEXIBILITY ACT SUPPORT

Dear Assembly Member Seyarto:

The California Chamber of Commerce and the organizations listed below are pleased to **SUPPORT** your **AB 1028 (Seyarto)**. **AB 1028** will provide telecommuting non-exempt employees more flexibility in their daily and weekly schedules.

During the current COVID-19 crisis, many employers have considered offering employees the opportunity to work from home in the midst of shelter-in-place and stay-at-home orders. Where such telecommuting is possible, it allows employees to remain working and earning income, even during a pandemic or other disruption. Unfortunately, current law has not kept pace with the flexibility and technology that allows remote work, and fails to distinguish an employee working remotely from an employee working at the employer's place of business.

Strict daily overtime requirements, meal and rest break requirements, and the threat of lawsuits under the Private Attorneys General Act (PAGA) make employers hesitant to continue to offer telecommuting options

for non-exempt employees and it discourages employers from providing non-exempt employees flexibility as to when they work during the day. California is one of the only states that requires employers to pay daily overtime after eight hours of work in addition to weekly overtime after 40 hours of work. Even other states that impose daily overtime requirements allow the employer and employee to essentially waive the daily eight-hour overtime requirement through a written agreement. California, however, provides no such common-sense alternative. Rather, California requires employers to navigate through a multi-step process to have employees elect an alternative workweek schedule that, once adopted, must be “regularly” scheduled. This process is filled with potential traps that could lead to costly litigation, as one misstep may render the entire alternative workweek schedule invalid and leave the employer on the hook for claims of unpaid overtime wages.

Currently, there are 40,560 reported alternative workweek schedules with the Division of Labor Standards Enforcement. Although the Employment Development Department has not yet released data about the number of employers presently remaining in California in 2021 after COVID-19, that number has historically been around 1.4 to 1.5 million. Therefore, about less than 3% of California employers utilize the alternative workweek schedule option. Further, more realistically, given that the information in the database is according to work unit instead of employer, it is likely that less than 1% of employers in California are utilizing this process.

Employees want flexibility in their work schedules. In a recent survey conducted by the California Chamber of Commerce, 86% of polled voters agree (42% strongly) that the state’s labor laws should be changed so employees working at home have more flexibility and 92% agree (55% strongly) with policies that would make it easier for businesses to allow employees to telecommute. A recent survey by the Society for Human Resource Management revealed that 91% of Human Resources professionals agree that flexible work arrangements positively influence employee engagement, job satisfaction, and retention. According to Corporate Voices for Working Families and WFD Consulting, an in-depth study of five organizations that allow their non-exempt employees to have flexibility in their schedules found that employee commitment was 55% higher and burnout and stress decreased by 57%. Women and low-income workers have suffered the most from the inability to have flexible schedules, feeling pressured to abandon career goals to care for children and fulfill household obligations. That pressure has been exacerbated by the COVID-19 pandemic. A recent article by NPR estimated that close to 900,000 women left the workforce in 2020 to keep up with the demands of childcare and household obligations. That rate is four times higher than men. The California Center for Job & The Economy estimates that California’s strict wage and hour laws limit the expansion of telecommuting for up to 35% of the telework-eligible workers in the state.

With near-record unemployment, we should be doing everything possible to maximize opportunities for employers to allow telecommuting and the ability to set hours that work for an employees’ personal and family obligations. This way workers can continue to be employed and support themselves and their families. Environmental groups have also recognized benefits of telecommuting with some pushing for mandatory telecommuting even after the COVID-19 pandemic has subsided to reduce emissions.

AB 1028 seeks to benefit both employees and employers by providing more flexibility to employees and reducing the threat of litigation to an employer. **AB 1028** would:

- Allow telecommuting employees to enter into an agreement with their employer to waive daily overtime up to 10 hours as well as split shift premiums so they can have more flexible work schedules
- Allow telecommuting employees to take meal and rest breaks at any time of the day where an employer has not otherwise set a meal or rest break schedule for the employee
- Encourage employers to offer employees the choice to take breaks at any time by temporarily prohibiting telecommuting employees from seeking PAGA penalties in a lawsuit about meal or rest breaks

Promoting flexible policies that allow employees to continue to be employed and earning income while working from home is needed now more than ever and is strongly supported by California voters.

For these and other reasons, we are pleased to **SUPPORT** your **AB 1028**.

Sincerely,



Ashley Hoffman
Policy Advocate
California Chamber of Commerce

Acclamation Insurance Management Services
Allied Managed Care
California Association for Health Services at Home
California Food Producers
California Hotel & Lodging Association
Carlsbad Chamber of Commerce
Chino Valley Chamber of Commerce
Civil Justice Association of California
Coalition of Small and Disabled Veteran Businesses
Family Business Association of California
Flasher Barricade Association
Fremont Chamber of Commerce
Greater Coachella Valley Chamber of Commerce
Greater High Desert Chamber of Commerce
Greater Riverside Chambers of Commerce
Housing Contractors of California
Lodi Chamber of Commerce
Long Beach Area Chamber of Commerce
Murrieta/Wildomar Chamber of Commerce
National Federation of Independent Business
North Orange County Chamber
Oceanside Chamber of Commerce
Pleasanton Chamber of Commerce
Rancho Cordova Area Chamber of Commerce
Roseville Area Chamber of Commerce
San Gabriel Valley Economic Partnership
Santa Maria Valley Chamber of Commerce
Simi Valley Chamber of Commerce
Southwest California Legislative Council
Torrance Area Chamber of Commerce
Western Electrical Contractors Association

cc: Stuart Thompson, Office of the Governor

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