

**AB 67 (GONZALEZ) DOUBLE PAY ON THE HOLIDAY ACT OF 2016  
OPPOSE**



**UPDATED**  
**\*\* FLOOR ALERT\*\***

January 26, 2016

TO: Members, California State Assembly

FROM: California Chamber of Commerce  
Agricultural Council of California  
Air Conditioning Trade Association  
Alhambra Chamber of Commerce  
Brea Chamber of Commerce  
California Association of Bed and Breakfast Inns  
CAWA – Representing the Automotive Parts Industry  
California Employment Law Council  
California Farm Bureau Association  
California Grocers Association  
California Hotel & Lodging Association  
California League of Food Processors  
California New Car Dealers Association  
California Pool & Spa Association  
California Retailers Association  
California Restaurants Association  
California Travel Association  
Camarillo Chamber of Commerce  
Cerritos Regional Chamber of Commerce  
Chambers of Commerce Alliance of Ventura and Santa Barbara Counties  
Computing Technology Industry Association - CompTIA  
Culver City Chamber of Commerce  
Desert Hot Springs Chamber of Commerce and Visitors Center  
El Dorado County Chamber of Commerce  
El Dorado Hills Chamber of Commerce & California Welcome Center  
Gateway Chambers Alliance  
Goleta Valley Chamber of Commerce  
Greater Conejo Valley Chamber of Commerce  
Greater Riverside Chambers of Commerce  
Greater San Fernando Valley Chamber of Commerce  
Lake Tahoe South Shore Chamber of Commerce  
Long Beach Area Chamber of Commerce  
Maxim Healthcare Services  
North Lake Tahoe Chamber of Commerce  
North Orange County Chamber  
Orange County Business Council  
Oxnard Chamber of Commerce  
Plumbing-Heating-Cooling Contractors Association of California  
Rancho Cordova Chamber of Commerce  
Redondo Beach Chamber of Commerce & Visitors Bureau  
San Diego Regional Chamber of Commerce  
San Jose Silicon Valley Chamber of Commerce  
Santa Clara Chamber of Commerce & Convention-Visitors Bureau  
Santa Maria Valley Chamber of Commerce Visitor & Convention Bureau  
Simi Valley Chamber of Commerce

Southwest California Legislative Council  
Torrance Chamber of Commerce  
Valley Industry and Commerce Association  
Western Electrical Contractors Association  
Western Growers Association

**SUBJECT: AB 67 (GONZALEZ) DOUBLE PAY ON THE HOLIDAY ACT OF 2016  
OPPOSE**

The California Chamber of Commerce and the organizations listed above **OPPOSE AB 67 (Gonzalez)**, as amended on January 25, 2016, as it unfairly targets two classifications of employers, increases their costs, and creates a competitive disadvantage by forcing them to recognize Thanksgiving as a “family holiday” and compensate all employees with double the regular rate of pay for work performed on that day.

**AB 67 Discriminates Against Two Classifications of Employers:**

The author of **AB 67** has argued this bill is necessary to compensate employees who are forced to give up their family time to work on Thanksgiving. The most recent amendments to **AB 67** indicate otherwise. Specifically, **AB 67** now only targets two industries – retail store and grocery store establishments - to force them to pay double the “regular rate” of pay on a “family holiday” defined as Thanksgiving. Any other employer who opens on Thanksgiving can continue to pay their employees minimum wage. This discriminatory treatment of only two classifications of employers demonstrates that **AB 67** is intended to punish retail and grocery stores, rather than compensate employees for time away from their family on Thanksgiving, as the author has argued.

**AB 67 Creates a Competitive Disadvantage for California Employers:**

**AB 67** would unilaterally increase the cost of doing business only for those employers who have a “physical store” in California, thereby automatically placing them at a competitive disadvantage with online retailers and out-of-state businesses that would not be subject to this costly mandate. Out-of-state employers that sell their merchandise online could still do so under **AB 67** without the increased cost, yet a California based employer cannot. Recently, the Legislature tried to even the playing field between online retailers and brick-and-mortar stores in the sales-tax arena. **AB 67** would further distort this playing field by increasing the cost of doing business for local employers, as opposed to online and out-of-state retailers who would not have to comply.

**Employees in These Industries Generally Receive Higher Compensation for Working on Thanksgiving:**

Many of the “retail store establishment” employers surveyed confirmed they voluntarily pay their employees time and a half for work performed on Thanksgiving. Notably, most of these employers only open for a limited time period on Thanksgiving and, therefore, the hours any employee is required to work is minimal. Numerous grocery store establishments covered by **AB 67** also pay increased compensation to their employees on Thanksgiving, as negotiated through the collective bargaining process, yet would still be subject to the provisions of **AB 67** as they do not qualify for the collective bargaining exemption under the bill. Despite this general industry standard of higher compensation, **AB 67** seeks to increase these employers’ costs even further by mandating double the “regular rate” of pay. If these targeted employers change their behavior and open at 12:01 a.m. on the Friday following Thanksgiving, employees will lose out on the extra compensation they are currently receiving for work performed on this day. It should be noted that numerous employees even volunteer for shifts on Thanksgiving to earn additional compensation that is offered.

**Regular Rate of Pay and PAGA Enforcement:**

**AB 67** does not require double payment of the employee's hourly rate, but rather double the employee's "regular rate" of pay. This difference is significant. Determination of the regular rate of pay of many employees requires a detailed calculation that goes beyond just an employee's hourly pay. As defined by the Division of Labor Standards Enforcement, the "regular rate of pay includes a number of different kinds of remuneration, for example hourly earnings, salary, piecework earnings, commissions, certain bonuses, and the value of meals and lodging." (DLSE Enforcement Policies and Interpretations Manual, § 49.1.1.) While this calculation is performed for overtime purposes, it is subject to good faith errors as to what types of "remuneration" should be included in the calculation.

Due to its inclusion in Section 511.5 of the Labor Code, the provisions of **AB 67** are subject to the Private Attorneys General Act, (Labor Code Section 2698 *et seq.*). As set forth in the April 16, 2014 *Los Angeles Daily Journal* article titled "An Alternative to Employee Class Actions," it documents that PAGA lawsuits in California have increased over 400% between 2005 and 2013, given the ease of filing such cases without satisfying class action requirements and the potential financial windfall. The Governor's Proposed Budget for 2016 indicates there were over 6,000 PAGA notices filed with the Labor and Workforce Development Agency in 2014. Good faith errors made in calculating the regular rate of pay or failure to comply with other provisions of **AB 67** would be subject to PAGA and add another threat of litigation against California employers.

**Provides Preferential Treatment for One Day Out of the Year That Not All Recognize as a Family Holiday:**

**AB 67** provides that employers shall compensate an employee at no less than twice the employee's regular rate of pay on a "family holiday," defined as "the fourth Thursday of November of each year," commonly referred to as Thanksgiving. While the recognition of this holiday may seem acceptable to some persons, other individuals may believe that different days of the year deserve the same state recognition as a "family holiday." Providing preferential treatment for one holiday and elevating its significance by labeling it in state statute as a "family holiday" may be offensive to employees or employers that recognize or believe other days within the year deserve that same recognition.

For these reasons, we are **OPPOSED** to **AB 67**.

cc: The Honorable Lorena Gonzalez  
Camille Wagner, Office of the Governor  
Anthony Archie, Assembly Republican Caucus  
Department of Industrial Relations  
Labor and Workforce Development Agency  
District Offices, Members, California State Assembly