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from: Susan

October 6, 2010

To: Member Local Chambers

Subject: Marijuana Initiative - URGENT!

I have experienced a great deal of difficulty in getting members of the business community to understand that the marijuana initiative on the November ballot (Proposition 19) is more about making it illegal for employers to have a marijuana free workplace, than it is about removing criminal penalties for possession.

The Chamber has just completed an extensive survey to determine the likelihood of prop 19 being passed by the voters and what arguments are most persuasive. First of all, without an opposition media campaign there is a very strong likelihood that it will pass. Most voters have made up their mind on whether marijuana possession should be illegal and there seems to be a majority of likely voters who no longer think it should carry criminal penalties. On the other hand, though, when voters are told that employers would not be able to control marijuana use at work, proposition 19 is opposed by a majority of voters.

There is a NO on proposition 19 campaign, but they have few resources to mount a paid media campaign. Even with Diane Feinstein as honorary co-chair and much of professional law enforcement as opponents, they have been unable to raise money. That is why we went ahead and conducted our own survey research with CalBusPac resources. A few members who have realized the consequences of Prop 19, such as the inability to keep marijuana use out of the workplace and increased potential for litigation, have asked whether to

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through CalBusPac and the answer is yes.

What is in the language of Prop 19 that should cause concern for you and your company? Prop 19 creates a new protected class of workers and prohibits discrimination against marijuana users, just like age, gender and ethnicity. Thus, even though pre employment drug testing is not per se prohibited, an employer cannot use the results of a positive marijuana test as the reason not to hire an applicant. Moreover, unless a local ordinance is subsequently passed in a community, it will be legal to smoke in the workplace. Employers will be prohibited from disciplining or terminating an employee who is "high" at work unless the employer can show that the use "actually impaired" the employee's job performance.

Under current law, an employer does not need to prove actual impairment to discipline for alcohol or drug use in the workplace. If Prop 19 passes, an employee could still be disciplined for alcohol use but could not be disciplined for marijuana use unless the employer could prove "actual impairment." This term is undefined and untested and an accident may have to happen first before an employer can prove actual impairment. Other than public safety employees, Prop 19 would apply to everyone, private or public sector jobs, such as fork lift drivers, nurses and school bus drivers.

Moreover, any employer who relies on Federal funds, such as transportation contractors, that require a drug free work place, could have the receipt of those funds jeopardized by the passage of Proposition 19.

Most news stories only discuss whether or not marijuana should be decriminalized. In order to get these workplace issues in front of the voters a paid media campaign will have to be produced. I believe that with a radio buy of \$1.5 million Prop 19 could be defeated. In the world of initiative campaigns, this is a relatively small amount but it is very late to begin a fund raising campaign.

If you are concerned about how Prop 19 would jeopardize the safety of your workforce and lead to new employment law litigation and are willing to help provide resources to run an opposition media campaign, please contact me immediately!

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