



JOB KILLER

July 3, 2023

TO: Members, Assembly Judiciary Committee

SUBJECT: **SB 627 (SMALLWOOD-CUEVAS) DISPLACED WORKERS: NOTICE: RETENTION AND TRANSFER**
OPPOSE/JOB KILLER – AS AMENDED APRIL 27, 2023

The California Chamber of Commerce and the organizations listed below are **OPPOSED** to **SB 627 (Smallwood-Cuevas)** as a **JOB KILLER**. **SB 627** completely removes business's flexibility and autonomy

over hiring without justification. It also likely violates the Contracts Clauses of both the federal and California constitutions.

SB 627 Will Bog Down Hiring and Undermine Basic Management for Businesses

SB 627 seeks to micromanage the rehire process for the affected businesses. Several of the provisions, or lack thereof, will only delay rehiring and increase costs on employers. Specifically:

- **SB 627** forces an employer to repeatedly offer newly available positions to qualified employees, no matter how many times the employees have turned offers down, failed to respond to previous job offers, or explicitly declined previous offers to return to work.¹ Further, there is no opt-out option. Under SB 93 (2021) and similar local ordinances, this slowed down the hiring process significantly and upset former employees who obtained other employment, moved out of state, or changed career paths entirely.
- **SB 627** would essentially eliminate the use of severance agreements, which benefit employees. No employer subject to such a retention right would have any reason to offer a severance agreement.
- **SB 627** forces an employer to send notices to all eligible, qualified employees for an available position and then wait five business days before analyzing acceptance offers based upon seniority. Under SB 93 (2021) and similar local ordinances, this waiting period has slowed down hiring and will have the same impact here.
- **SB 627** forces employers to hire based on seniority, not skill. The bill ties the employer's hands as far as hiring because they are only allowed to consider seniority, not who is most qualified for the job. It further prohibits them from considering other applicants that may be best suited for the position.
- **SB 627's** 25-mile radius requirement is arbitrary. A 25-mile distance across Los Angeles is significantly different than a 25-mile distance across the Central Valley.

There is No Justification for SB 627 and It Likely Violates the Contracts Clauses

As defined in the bill, "chain" would include a multitude of businesses and industries, such as retail, restaurants, grocery stores, hotels, hospitals/health care facilities, movie theaters, and more. For all of these industries, **SB 627** creates a problematic, permanent statutory scheme that eliminates at-will employment and mandates hiring based on seniority alone.

Unlike prior right-to-recall laws, there is no common tie between these industries or their circumstances. Further, there is no justification for the bill. For example, in 2021, the Legislature passed SB 93 as a result of the unique obstacles presented by the COVID-19 pandemic and limited to hospitality. In fact, its first iteration, AB 3216 (2020), was vetoed for creating too large a burden on employers and not being sufficiently tied to a narrow justification. SB 93 was a subsequent, more narrow version. SB 93 was limited in both time and scope and specifically tied to the impacts of COVID-19 on jobs with a sunset. No such justification exists for the permanent mandate proposed by **SB 627**, and it is completely unlimited as to time.

For this reason, **SB 627** likely also violates the Contracts Clauses of the United States and California constitution because it modifies existing at-will contracts. Any law that substantially impairs pre-existing contractual obligations violates the contract clauses of both the federal and California constitutions. **SB 627** creates a novel, long-lasting retroactive right. As stated above, only in extreme circumstances has existing law recognized such a retention right. Under California law, and absent an agreement otherwise, all "employment may be terminated at the will of either party on notice to the other" Labor Code Section 2922. Nearly every employment agreement in California either impliedly or expressly recognizes the at-will nature of the relationship. Employers hired workers assuming that, if the viability of their business was threatened, they could layoff these workers without granting them a possible cause of action. Given the fact that there

¹ See FAQ No. 14 interpreting similar language in SB 93 (2021): [Frequently Asked Questions on Recall Rights](#):

is no justification for **SB 627** and its broad applicability to nearly every industry without any limitation in time or scope, it is unlikely that the state would be able to show that **SB 627** is “appropriate and reasonable” in serving a specific interest. *Sveen v. Melin*, 138 S. Ct. 1815, 1821–1822 (2018).

For these and other reasons, we are **OPPOSED** to **SB 627 (Smallwood-Cuevas)** as a **JOB KILLER**.

Sincerely,



Courtney Jensen, Fernandez Cervantes Government Affairs
On behalf of California Chamber of Commerce

Acclamation Insurance Management Services (AIMS), Dominic Russo
Alhambra Chamber of Commerce, Betsy Aguilera
Allied Managed Care (AMC), Dominic Russo
Association of California Healthcare Districts (ACHD), Sarah Bridge
Brea Chamber of Commerce, Adam Pryor
California Association of Sheet Metal and Air Conditioning Contractors National Association, Chris Walker
California Association of Winegrape Growers, Michael Miiller
California Attractions and Parks Association, Sabrina Demayo Lockhart
California Bankers Association, Melanie Cuevas
California Business Properties Association (CBPA), Matthew Hargrove
California Business Roundtable, Natalie Boust
California Chamber of Commerce, Ashley Hoffman
California Employment Law Council, Mike Belote
California Grocers Association, Leticia Garcia
California Hotel & Lodging Association, A.J. Rossitto
California Lodging Industry Association, Bobbie Singh-Allen
California Manufactures & Technology Association (CMTA), Lawrence Gayden
California Restaurant Association, Katie Davey
California Retailers Association, Sarah Pollo Moo
California State Council of the Society for Human Resource Management, Michael S. Kalt
Carlsbad Chamber of Commerce, Bret Schanzenbach
Chino Valley Chamber of Commerce, Zeb Welborn
Coalition of Small and Disabled Veteran Businesses, Jeffrey Langlois
Coalition of California Chambers – Orange County, Benjamin Medina
Corona Chamber of Commerce, Anthony Maldonado
Danville Area Chamber of Commerce, Judy B. Lloyd
Family Business Association of California, Robert Rivinius
Flasher Barricade Association (FBA), Kenneth Johnston
Folsom Chamber of Commerce, Bill Romanelli
Fontana Chamber of Commerce, Phil Cothran
Fresno Chamber of Commerce, Scott Miller
Gilroy Chamber of Commerce, Victoria Valencia
Glendora Chamber of Commerce, Joe Cina
Greater Conejo Valley Chamber of Commerce, Adam Haverstock
Greater High Desert Chamber of Commerce, Mark Creffield
Greater San Fernando Valley Chamber of Commerce, Nancy Hoffman Vanyek
Hollywood Chamber of Commerce, Chris Micheli
Independent Lodging Industry Association, Bobbie Singh-Allen
La Cañada Flintridge Chamber of Commerce, Pat Anderson
National Federation of Independent Business (NFIB), Tim Taylor
Oceanside Chamber of Commerce, Scott Ashton
Official Police Garages Association of Los Angeles, Eric Rose
Orange County Business Council, Connor Medina

Palos Verdes Peninsula Chamber of Commerce, Marilyn Lyon
Paso Robles Chamber of Commerce, Amy Russell
Roseville Area Chamber of Commerce, Rana Ghadban
San Juan Capistrano Chamber of Commerce, Benjamin Medina
Santa Clarita Valley Chamber of Commerce, Ivan Volschenk
Santee Chamber of Commerce, Kristen Dare
Simi Valley Chamber of Commerce, Kathi Van Etten
South County Chambers of Commerce, Kathy McCorry
Templeton Chamber of Commerce, Amy Russell
Torrance Area Chamber of Commerce, Donna Duperron
Tulare Chamber of Commerce, Donnette Silva Carter
Vacaville Chamber of Commerce, Debbie Egidio
Vista Chamber of Commerce, Rachel Beld
Yorba Linda Chamber of Commerce, Alex Hernandez

cc: Legislative Affairs, Office of the Governor
Matthew Canty, Office of Senator Smallwood-Cuevas
Manuela Boucher, Assembly Judiciary Committee
Daryl Thomas, Assembly Republican Caucus

CJ:am