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CalChamber

ALERT

Indoor Heat Illness Rules: Keeping Up the Pressure

Latest Draft Still Too Complex, Burdensome

While the latest version of the Cal/OSHA proposed draft indoor heat illness rule is improved over prior versions, a coalition of employer groups led by the California Chamber of Commerce continues to assert that the rule remains complex and overly burdensome, without increasing employee protections.

The coalition members take the safety and health of their employees very seriously. Many coalition members were involved with the development and implementation of the outdoor heat illness regulation and have significant experience with how to effectively prevent heat illness.

CalChamber Coalition Letter

In a March 1 letter, the coalition reiterated that confusing and burdensome regulations won't increase employee protections and will lead to a lack of compliance and inability of the state to enforce the rule.

The coalition offered numerous sets of

Indoor Heat Illness: Page 4

CalChamber Announces Support for Props. 71, 72

The California Chamber of Commerce Board of Directors recently voted to **support** Propositions 71 and 72 on the June ballot.

Proposition 71 —Support

Proposition 71

SUPPORT

★★★★★

ACA 17 (Mullin; D-South San Francisco; Resolution Chapter 190, Statutes of 2017) provides that an initiative statute, referendum, or constitutional amendment or revision shall take effect on the fifth day after the Secretary of State files the statement of vote, unless the measure provides a later operative date that is after this effective date.

Under current law, if there are two or more measures approved in the same election that are in conflict, the measure with the highest number of affirmative votes prevails. The Secretary of State has until the 38th day after the election to tally, prepare, certify, and file a statement of vote regarding a statewide measure.

This gap in time between the current effective date of an initiative statute, referendum, or constitutional amendment or revision and when the Secretary of State certifies/files the statement of vote, can create confusion and the potential for an erroneous change of law or new law.

The measure is needed because the potential for error with regard to whether an initiative or referendum has been

See CalChamber Announces Support: Page 6

Senate Pro Tem-Elect Atkins Shares Reasons for Philosophy with CalChamber Board

Senator Toni Atkins (D-San Diego) joins CalChamber President and CEO Allan Zaremberg at the CalChamber Board of Directors dinner on March 1 to chat about how her upbringing influences her approach to affordable housing and other tough policy issues facing the California Legislature. Atkins will step up to lead Senate Democrats later this month.

Inside

Labor Law Corner

Law Requires Advance Warning of Mass Layoffs for Some Employers

Sunny Lee
HR Adviser

We are a small employer. Do we have to provide any advance notice to employees if we are going to lay them off?

The answer to your question depends on whether your company is signatory to a collective bargaining agreement that would require advance notice to a union and/or whether your company is covered under the federal or state Worker Adjustment and Retraining Notification (WARN) acts.

WARN Covers Mass Layoff

Federal law defines a mass layoff as a layoff within a 30-day period involving 50 to 499 full-time employees constituting at least 33% of the full-time employees at a single site of employment, or a layoff of 500 or more full-time employees regardless of the percentage of the workforce.

California law defines a mass layoff as a layoff of 50 or more full- or part-time employees within a 30-day period, regardless of the percentage of the workforce, and also includes a relocation of at least 100 miles affecting any amount of employees.

Covered Employers

Not all employers are required to provide notice.

• In general, employers are covered under the **federal** law if they have **100 or more full-time employees.**

• The **state** WARN Act is broader in that it applies to employers with **75 or more full- or part-time employees**.

To be counted, however, both laws require that an employee be employed 6 of the 12 months preceding the date that notice is required.

Some exceptions and exemptions may apply as noted on the California Employment Development Department (EDD) website, ***www.edd.ca.gov/jobs_and_training/Layoff_Services_WARN.htm***.

EDD's website provides a good overview and comparison of federal and state WARN Act provisions, the form and content of the WARN notice, how to file by mail or email, as well as contact phone and email information for EDD's WARN Act coordinator. WARN Act coordinators at EDD are a good resource for employers who are required to provide notice.

Optional Advance Notice

Even if your company is not required to provide a WARN notice, you may choose to provide advance notice to employees to allow them time to prepare a resume, search for new employment and/or obtain new skills or certifications. By doing so, employees are better prepared to transition back into the workforce.

Additional Information

For more general information on WARN Act requirements, refer to the **Mass Layoffs and Plant Closings** section on ***HRCalifornia.com*** or the California Chamber of Commerce ***Labor Law Digest***.

Consult with legal counsel for more specific interpretation of these laws as it relates to your situation.

Column based on questions asked by callers on the Labor Law Helpline, a service to California Chamber of Commerce preferred and executive members. For expert explanations of labor laws and Cal/OSHA regulations, not legal counsel for specific situations, call (800) 348-2262 or submit your question at www.hrcalifornia.com.

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Email: alert@calchamber.com.
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CalChamber-Sponsored Seminars/Trade Shows

More at *www.calchamber.com/events*.

Labor Law

Leaves of Absence: Making Sense of It All. CalChamber. March 15, Sacramento; March 22, Pasadena; June 21, San Diego; August 10, Oakland. (800) 331-8877.

HR Boot Camp. CalChamber. April 11, Oakland; April 26, Costa Mesa; June 5, Santa Clara; August 21, Sacramento; September 5, Long Beach. (800) 331-8877.

Business Resources

Listening Forum: California Disabled Parking Programs: Part 2. California Commission on Disability Access. March 13, Sacramento, Webinar, Live Captioning. (916) 319-9974.

TECHSPO LA 2018. TECHSPO. June 13–14, Santa Monica. (800) 805-5385.

International Trade

EU General Data Protection Regulations Seminar. U.S. Commercial Service, and San Diego and Imperial District Export Council. March 21, La Jolla.

Info Session on US Pavilion at Expo 2020 Dubai. U.S.-U.A.E. Business Council. March 26, San Francisco; March 27, Stanford.

See Seminars/Trade Shows: Page 4

California Supreme Court Issues Worker-Friendly Overtime Ruling

Overtime pay in California is based on the employee's "regular rate of pay," which is not always an employee's normal hourly wage and must include almost all forms of pay that the employee receives. But how do you calculate the regular rate of pay when an employee receives both an hourly wage and a flat sum bonus—such as an extra $15 for working a weekend shift?

On March 5, the California Supreme Court ruled that an employer must calculate the regular rate of pay by dividing the employee's total compensation by the number of nonovertime hours an employee worked during the pay period, rather than the total number of hours the employee worked, including overtime hours (*Alvarado v. Dart Container Corporation of California*).

In the case, Dart Container Corporation of California, which manufactures food service products such as cups and plates, allegedly maintained a policy of paying a flat "attendance bonus" of $15 per day to employees who worked Saturday and Sunday shifts, regardless of the number of hours worked on the weekend shift. An employee sued, claiming he was improperly paid overtime during the weeks that he earned the weekend attendance bonus.

The employee argued that overtime pay on any flat sum bonus should be divided only by the "regular" hours he worked that week (the method in the Division of Labor Standards Enforcement [DLSE] manual), not by the "total" hours worked during the week (regular hours plus overtime hours worked, the federal formula). For example, to determine the employee's regular rate of pay, you would divide only by 40 regular hours instead of 48 total hours (regular hours plus overtime hours). This would result in a higher regular rate of pay and, thus, a higher overtime rate.

The lower court followed the federal formula for calculating overtime on flat sum bonuses and rejected the DLSE's method found in its Enforcement Manual—finding that the manual is only guidance and not legally binding, and that California had no controlling law.

High Court Agrees with Employee

The California Supreme Court unanimously reversed the lower court and approved the DLSE method of calculating the regular rate of pay when a flat sum bonus is involved: Employers must divide the employee's total compensation by the employee's nonovertime hours worked (not by the total hours worked).

The Supreme Court reasoned that a flat sum bonus is not tied to the number of hours worked—the $15 will be paid when an employee picks up a weekend shift, regardless of how many hours the employee worked that week. Because the flat sum bonus was payable even if the employee didn't work overtime, only the nonovertime hours should be considered when calculating the regular rate of pay.

The Supreme Court also based its ruling on two other policy factors:

- California law requires premium overtime pay which is meant to discourage employers from imposing overtime work.
- California labor laws are interpreted liberally in favor of worker protection.

Interestingly, the Supreme Court held that the DLSE manual is a void underground regulation and not entitled to any deference. But, despite this holding, the court held that it could consider the DLSE's interpretation of the law if the court was independently persuaded it was correct—which in this case it was.

This leaves employers in a truly unfortunate predicament. The DLSE will continue to interpret and enforce the state labor laws, but an employer will not know in advance whether the DLSE's interpretation will be upheld by the courts. Instead, an employer may be subject to a retroactive interpretation and still be forced to pay penalties and/or damages.

Businesses need more certainty that they are correctly applying the law and shouldn't be left to guess. Chief Justice Tani Cantil-Sakauye recognized this predicament in a concurring opinion: "Prior to today's decision, the spare language of the pertinent state authorities could have left employers that fully intend to comply with state overtime laws somewhat uncertain about how to proceed"—with the result that employers may be subject to penalties because the formal rulemaking process was not followed. "Regrettably, more was not done to help employers meet their statutory responsibilities, or to ensure that employees receive the overtime pay they are due."

Tough Decision

The California Supreme Court was presented with an employer who was seemingly trying to do the right thing—giving its employees a bonus and taking that bonus into account when calculating overtime pay. The employer relied on a commonly used federal formula to calculate the regular rate of pay where there was no specific controlling state law on the issue.

Despite these efforts, the court found against the employer. The employer asked the court to apply the decision only going forward —as it would be unfair to hold the employer liable when no statute specifically addressed the flat-sum bonus calculation.

Unfortunately, the court determined that the employer should not be given a "free pass" and that its holding would apply retroactively, not just going forward.

This decision is limited to flat-sum bonuses, but we may see employees argue that it should apply to other types of extra compensation.

Employers who want to give "extra pay" to hourly workers should consult legal counsel.

Staff Contact: Gail Cecchettini Whaley

Indoor Heat Illness Rules: Keeping Up the Pressure

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technical amendments including revisions to the definition of "indoor" as it related to vehicles, ensuring the rule applies only when employees are present in the area, and the nature of control measures when the temperature reaches 90 degrees indoors (administrative, engineering, and personal protective equipment).

In 2017, Cal/OSHA convened two stakeholder advisory committees to tackle the challenge of reaching consensus among interested parties from industry, labor, management and academia on how to regulate the prevention of heat illness for indoor workers.

To date, Cal/OSHA has provided draft rules for discussion only—no formal rulemaking has begun. These draft rules propose to regulate all indoor workplaces—a place of employment would be either indoors or outdoors; not neither and not both.

Defining an indoor workplace, as opposed to an outdoor workplace, has proven to be challenging, including determining when vehicles and equipment are indoor or outdoor. Many employers have both outdoor and indoor workplaces, with some or all employees transitioning between both.

These questions of scope require industry input to provide Cal/OSHA the most rational and complete understanding of operations and risks, as well as rational, feasible policies to address those identified risks.

Although incrementally better than prior drafts, the latest discussion draft still creates a program for indoor employees that is unnecessarily burdensome, expensive, overly complex and confusing.

Next Steps

Although there is no timeframe, it is anticipated that the next step is for Cal/OSHA to begin the formal rulemaking process.

All industries with any indoor workplace that reaches or exceeds 80 degress—from warehouses to restaurants to laundry operations, delivery drivers and many others—are encouraged to participate in the stakeholder discussions. SB 1167, the 2016 legislation requiring Cal/OSHA to adopt indoor heat illness rules, does not specify any exceptions.

To participate in CalChamber's stakeholder working group, please send an email of interest with your contact information to *heatillness@calchamber.com*.

Staff Contact: Marti Fisher

Join CalChamber Safety Advisory Group

Indoor heat illness is just one of many workplace safety issues on which the California Chamber of Commerce provides input, helping shape legislation and regulations.

To become part of this effort, sign up to join the CalChamber Occupational Safety Advisory Group (a subcommittee of the CalChamber Labor and Employment Committee).

The goal of the advisory group is to advocate cost-effective and practical safety and health regulations while protecting the competitive position of California employers.

To join or for more information, contact CalChamber Policy Advocate Marti Fisher, *marti.fisher@calchamber.com*.

Mid-Term Congressional Election Overview

Sara Armstrong, vice president at the U.S. Chamber of Commerce, gives a rundown on the mid-term Congressional elections and the prospects for Democrats and Republicans to maintain, gain or lose seats at the CalChamber Board of Directors meeting on March 2.

Seminars/Trade Shows

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Comprehensive Export Training. Orange County Center for International Trade Development. April 13–14, Santa Ana. (714) 564-5413.

Asia Pacific Business Outlook Conference. University of Southern California Marshall School of Business. April 16–17, Los Angeles. (213) 740-7130.

Chile California Clean Energy Conference. Chile California Council. April 18, Sacramento. (916) 444-6670.

Business Forum: Innovations in Safety and Security. U.S. Consulate in Hong Kong and the U.S. Commercial Service. April 18–20, Hong Kong. (703) 235-0103.

Expo Seguridad. California Centers for International Trade Development. April 24–26, Mexico City. (951) 571-6458.

Expo Seguridad Mexico Trade Show. Governor's Office of Business and Economic Development. April 26–28, Mexico City. (916) 322-0694.

Urge President Trump Not to Finalize Stand-Alone Steel/Aluminum Tariff


Susanne T. Stirling

The California Chamber of Commerce has deep concerns over the impact that a stand-alone tariff on steel and aluminum could have on international trade and the state's economy.

Far from being part of a comprehensive or strategic plan to improve trade for the United States, the possible tariff is a "one off" that will have adverse consequences and fails to consider the impact on our allies and trading partners.

With the Presidential Proclamation signed on Thursday, March 8 to adjust the steel and aluminum tariffs beginning March 23, Mexico and Canada—our NAFTA partners—were excluded. In addition, the Proclamation leaves the door slightly open for countries with a security relationship to discuss with the United States alternative ways to import. While this is helpful, our reasons for opposing the increase in tariffs remain.

Although trade is a nationally determined policy issue, its impact on California is immense. California exports to more than 225 foreign markets.

Tariff Negatives

Raising tariffs can result in higher prices to the consumer for the specific product protected and in limited choices of products for consumers. Further, it can cause a net loss of jobs in related industries, retaliation by U.S. and California trading partners, and violates the spirit of our trade agreements.

Enforcing the tariff is likely to cause a trade war.

Numerous business and trade groups have voiced their opposition to the potential tariff as well.

The U.S. Council for International Business (USCIB) wrote: "…these protectionist tariffs are likely to cause a chain reaction of retaliatory measures by our trading partners, as many of them have already indicated. Other nations are likely to target our most competitive exports and otherwise disadvantage American companies."

Commentary
By Susanne T. Stirling

The National Association of District Export Councils agrees that exports of U.S. goods and services constitute a critical foundation of the U.S. economy. The association points out that while President Donald R. Trump has lamented that the trade and business conduct of certain countries has not always been "fair" to the United States, "the imposition of tariffs, especially in areas like steel and aluminum, critical resources found in the supply chains of many, many businesses, could negatively impact U.S. businesses. The imposition of a tariff does not actually punish the wrongdoer, but operates as a tax, increasing the cost of the imported goods to the user and ultimately to the consumer."

Support for Free Trade

The CalChamber continues to pursue a free trade-based agenda in 2018. CalChamber has long supported free trade worldwide, expansion of international trade and investment, fair and equitable market access for California products abroad, and elimination of disincentives that impede the international competitiveness of California business.

According to a California state government international trade and investment study, "International trade and investment is a major economic engine for the state of California that broadly benefits businesses, communities, consumers and state government… California's economy is more diversified than ever before, and the state's prosperity is tied to exports and imports of both goods and services by California-based companies, to exports and imports through California's transportation gateways, and to inflows and outflows of human and capital resources."

Trade offers the opportunity to expand the role of California's exports. In its broadest terms, trade can literally feed the world and raise the living standards of those around us.

Any rethinking of U.S. trade policies must recognize the gains achieved and ensure that trade remains strong and without interruption. A tariff on steel and aluminum, even with exemptions for Canada and Mexico, has the potential to do significant harm to the ability of California companies to compete effectively in foreign markets. It is a misguided and dangerous policy.

The CalChamber urges members to **contact the Trump administration** quickly to strongly oppose the raised tariffs before they are finalized.

Susanne T. Stirling is vice president of international affairs for the California Chamber of Commerce.

CalChamber Announces Support for Propositions 71, 72

From Page 1

approved is higher due to the increase in vote-by-mail ballots, that are not even received until days after the election.

The CalChamber Board voted to support Proposition 71 because allowing initiatives and referenda to go into effect before the vote has been certified by the Secretary of State can create confusion and even the erroneous implementation of new law.

Proposition 72—Support

SCA 9 (Glazer; D-Contra Costa; Resolution Chapter 1, Statutes of 2018) will exclude rain water capture systems from the definition of "newly constructed" for property tax reassessment purposes.

Current law, after Proposition 13, generally limits ad valorem property taxes to 1% of the full cash value of the property plus a maximum increase of 2% per year. The full cash value is the value of the property in 1975–1976 or "the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred after the 1975 assessment."

The "new construction" reassessment also can be used when there are renovations to the property. To incentivize certain property expenditures, current law specifies that additions of active solar energy systems, fire sprinkler systems, and additions to make a building more accessible to disabled persons do not trigger the "new construction" reassessment.

Proposition 72 would add rain water capture systems to the list of property expenditures that would not trigger the new construction reassessment.

California is in a state of flux between heavy precipitation and drought. The CalChamber Board voted to support Proposition 72 because rain water recapture systems are an effective means of conserving water that should be encouraged.

Previously Announced Positions

The CalChamber previously announced support positions on the three other June ballot measures:

• **Proposition 68—Support.** The California Drought, Water, Parks, Climate Coastal Protection, and Outdoor Access for All Act of 2018 (SB 5; de León; Chapter 852, Statutes of 2017), a $4 billion bond measure.

• **Proposition 69—Support.** ACA 5 (Frazier; D-Discovery Bay; Resolution Chapter 30, Statutes of 2017), a constitutional amendment to restrict use of diesel sales tax revenues and the new transportation improvement fee to transportation purposes. The CalChamber Board voted to endorse this measure to add protections for the new transportation revenues approved under CalChamber-supported SB 1 (Beall; D-San Jose; Chapter 5, Statutes of 2017), which enacted the Road Repair and Accountability Act of 2017.

• **Proposition 70—Support.** ACA 1 (Mayes; R-Yucca Valley; Resolution Chapter 105, Statutes of 2017), a constitutional amendment requiring revenues from the cap-and-trade auctions to be deposited into the Greenhouse Gas Reduction Reserve Fund. It also requires one-time legislative supermajority approval of the cap-and-trade expenditure plan before the funds can be returned to the Greenhouse Gas Reduction Reserve Fund to be appropriated. The CalChamber Board voted to support this measure because it will encourage bipartisan support for a cap-and-trade expenditure plan and allow for a process to negotiate expenditures that furthers the goals of the Legislature as a whole.

Pollsters Present Key Insights on California Voter Sentiments

Adam Rosenblatt (left) and Robert Green of the PSB public opinion research firm summarize for the CalChamber Board of Directors on March 2 the results of various surveys on California voter and national attitudes toward a wide range of issues, including the economy, crime, jobs, home ownership, the gubernatorial candidates and the President. As of February, surveys show California likely voters are tightly split on whether the state is headed in the right direction (48%) or on the wrong track (44%). Most Americans say the United States is on the wrong track (56%) versus headed in the right direction (37%).

Former Mexico President Policy Adviser Foresees Close Race in This Year's Election

The campaign to be the next President of Mexico could be a close one, the director of the Center for U.S.-Mexican Studies at the University of California, San Diego told a California Chamber of Commerce breakfast audience last week.

"So far, it seems that this is going to be a very competitive election," Professor Rafael Fernández de Castro said at the March 2 international breakfast meeting sponsored by Blue Diamond Growers.

Leading Candidates

Current polling, Fernández de Castro explained, shows the candidate from the leftist National Regeneration Movement (MORENA Party), Andres Manual Lopez Obrador, with support in the 35% range.

That is 7 points above the leading candidate from the conservative National Action Party (PAN), Ricardo Anaya, with 28%.

Next is Jose Antonio Meade of the Institutional Revolutionary Party (PRI) with about 20% support.

Any of the three leading candidates could win, Fernández de Castro said, pointing out that in Mexico it is possible for a candidate to win the presidency with just a little more than 30% of the vote.

Fernández de Castro served as foreign policy adviser to former Mexico President Felipe Calderón of the PAN party, which led the Mexican government from 2006 to 2012. Current President Enrique Peña Nieto of the PRI won in 2012 with 38.2% of the vote, versus Lopez Obrador, who finished with 31.6% of the vote. This is Lopez Obrador's third try for the presidency.

Calderón's predecessor, Vicente Fox, also was from the PAN party. From 1929 to 2000, the PRI was in power.

Lopez Obrador lost in his first try at the presidency in 2006 due to a single large mistake, according to Fernández de Castro: Lopez Obrador failed to show up for the first presidential debate that year.

In the current election cycle, however, Lopez Obrador is standing out as someone who could stand up to President Donald R. Trump, Fernández de Castro commented.

(From left) Professor Rafael Fernández de Castro, Center for U.S. Mexican Studies; CalChamber Second Vice Chair Mark Jansen, Blue Diamond Growers; and CalChamber First Vice Chair Grace Evans Cherashore, Evans Hotels; chat before Fernández de Castro gives an overview on the Mexico presidential election at the CalChamber Council for International Trade breakfast meeting on March 2.

The official campaign season will start at the end of March, Fernández de Castro said, and will include three presidential debates. The election will take place on July 1, with the inauguration being held on December 1. Mexico presidents serve for single, six-year terms.

A fact sheet on the 2018 Mexico presidential election is available at ***calchamber.com/mexico***.

NAFTA

Turning his attention to the North American Free Trade Agreement (NAFTA), Fernández de Castro said Mexico and Canada negotiators were very well-prepared for discussions, having just negotiated the Trans-Pacific Partnership (TPP). President Trump formally withdrew the United States from the TPP on his fourth day in office. The remaining 11 countries reached agreement on "core elements" of a partnership built on the bases of the TPP at the end of 2017 and signed the agreement on March 8.

Fernández de Castro pointed out Mexican and Canadian negotiators are taking their time with the NAFTA talks, hoping that as time passes, protectionist voices in the United States will become less powerful than the agreement's supporters. He noted that NAFTA is backed by nearly every business organization in the United States and represents a rules-based trilateral relationship, providing order in trade dealings between the United States, Canada and Mexico.

In response to a question, Fernández de Castro predicted that if the Trump administration rejects NAFTA, the loss will create uncertainty for the Mexican economy, at least in the short term. Obtaining some forms of energy will become very complicated without NAFTA, said Fernández de Castro, as nearly all of Mexico's natural gas supply comes from the United States, mostly Texas.

Immigration

The tenor of public discussion in the United States about immigration has had an impact, Fernández de Castro said. He called the United States a very tolerant society that has been the "world example" of the "best country" to go to for assimilating immigrants.

Over the last eight years, there has been zero or negative migration to the United States from Mexico. From a peak in 2005, when about 600,000 people came from Mexico, last year just 240,000 people came to the United States on visas, including himself, Fernández de Castro said.

Staff Contact: Susanne T. Stirling

7th Round of NAFTA Negotiations Closes

The seventh round of negotiations have concluded in Mexico City, Mexico, and the negotiators report closing three additional chapters of the North America Free Trade Agreement (NAFTA).

Closed Chapters

Although the trilateral meeting didn't close as many chapters as negotiators had hoped, they closed chapters on: Good Regulatory Practices, Administration and Publication, and Sanitary and Phytosanitary Measures. Negotiators also completed work on sectoral annexes related to chemicals and proprietary food formulas and said they are making substantial progress on Telecommunications and Technical Barriers to Trade.

U.S. Trade Representative Robert Lighthizer reports that the three nations agreed to include a chapter on energy.

"These chapters are important and provide further evidence that all three countries want to upgrade and modernize NAFTA," Lighthizer said. "But to complete NAFTA 2.0, we will need agreement on roughly 30 chapters. So far, after seven months we have completed just six. Now granted, these things tend to converge more towards the end of a negotiation."

Lighthizer reiterated that the two main goals for the negotiations are to update NAFTA to address modern trade issues and to rebalance the agreement. He also stressed the need for negotiations to move swiftly because of upcoming elections. Mexico will elect a new president on July 1. Both Ontario and Quebec, Canada have elections scheduled later this year. The United States has mid-term elections coming up in November.

The Next Phase

Once all three countries reach an agreement at the negotiating table, the next phase of the process begins. In the United States, after an agreement is concluded in principle, U.S. laws require public disclosure of text, further consultations, and numerous reports before Congress can consider the agreement. "Thus, in the U.S, we must resolve our outstanding issues soon to maintain the possibility of having this measure be considered by the current Congress," Lighthizer said.

Quoting President Donald R. Trump, Lighthizer said the preference is for a three-way, tripartite agreement. "If that proves impossible," Lighthizer said, the U.S. is "prepared to move on a bilateral basis, if agreement can be made."

Ending his comments on a positive note, Lighthizer said, "…we are at the point where we have very important decisions to be made. If the political will is there, I am certain that we have a path to a rapid and successful conclusion."

CalChamber Position

The California Chamber of Commerce understands that the NAFTA was negotiated more than 25 years ago, and, while our economy and businesses have changed considerably over that period, NAFTA has not. We agree with the premise that the United States should seek to support higher-paying jobs in the United States and to grow the U.S. economy by improving U.S. opportunities under NAFTA.

The provisions of the NAFTA with Canada and Mexico have been beneficial for U.S. industries, agricultural enterprises, farmers, ranchers, energy companies and automakers. Any renegotiation of NAFTA must recognize the gains achieved and ensure that U.S. trade with Canada and Mexico remains strong and without interruption.

The CalChamber actively supported the creation of the NAFTA among the United States, Canada and Mexico, comprising 484.3 million people with combined annual trade with the United States being around $1.069 trillion in 2016. Since 1993, trade among the three NAFTA countries has nearly quadrupled.

Staff Contact: Susanne T. Stirling

CalChamber, Ontario (Canada) Chamber Join to Support NAFTA

The California Chamber of Commerce and the Ontario (Canada) Chamber of Commerce (OCC) released a joint statement this week encouraging California state leaders—in particular the California Congressional Delegation—and Ontario Premier Kathleen Wynne to actively support the renewal of the North American Free Trade Agreement (NAFTA) during the current renegotiation process.

Trade between California and Ontario is extremely strong with an upward trajectory over the last five years. California and Ontario are key trade partners with billions of dollars at stake in sectors such as autos, medications, coins, fruits, motor vehicle parts and computers and computer peripherals.

"The CalChamber is working with the Ontario Chamber of Commerce in support of NAFTA, which has been mutually beneficial for our industries and agricultural enterprises," said CalChamber President and CEO Allan Zaremberg. "The CalChamber's long-standing support for NAFTA is based upon an assessment that it serves the interests of California, Ontario and beyond—and is beneficial to the business community and society as a whole. Our chambers stand together in urging a quick and efficient negotiation process, ensuring that trade remains strong and without interruption."

With California and Ontario being long-standing trade partners, the CalChamber and the OCC also are encouraging their governments to continue the work being done to explore options for cooperation independent of NAFTA. Positive bilateral diplomatic relations at the subnational level are an integral part of the success of trade relationships.

"The OCC is working collaboratively with the California Chamber of Commerce in support of renewing NAFTA and the expansion of trade to ensure continued prosperity and competitiveness for both our economies," said Rocco Rossi, president and CEO at the Ontario Chamber of Commerce. "We know that trade is a way of improving results for everyone and we are committed to working with our Chamber Network, U.S. Chambers and the Government of Ontario in support of free trade."

U.S., State Economic Stability Contrasts with Turmoil on Social, Political Fronts

U.S. Outlook: A Turning Point

From a political standpoint, 2017 will go down as one of the most chaotic periods in recent U.S. history, although it may well end up being overshadowed by 2018.

Economically, on the other hand, 2017 was fairly ho-hum. Overall U.S. gross domestic product (GDP) output will have expanded by 2.3% in real terms once the fourth quarter is added. This is a better showing than in 2016, but a weaker one than the previous two years with exports and business investment looking stronger, while consumer spending has softened.

And while output is up, job growth is weaker. U.S. employment growth will end up at slightly less than 1.5% December 2016 to December 2017—the weakest showing since the start of the recovery. Still, that annual growth represents more than 2 million new jobs created.

While ho-hum may not excite, the sure and steady growth carries with it another advantage. The U.S. economy is now in the ninth year of its current expansion, and at this point there is little reason to believe that will end in 2018.

In fact, this expansion likely will end up being the longest in U.S. history. Still, 2018 will be far from ordinary. The coming year will bring a number of important turning points, which will have far-reaching implications for the economy in the years ahead.

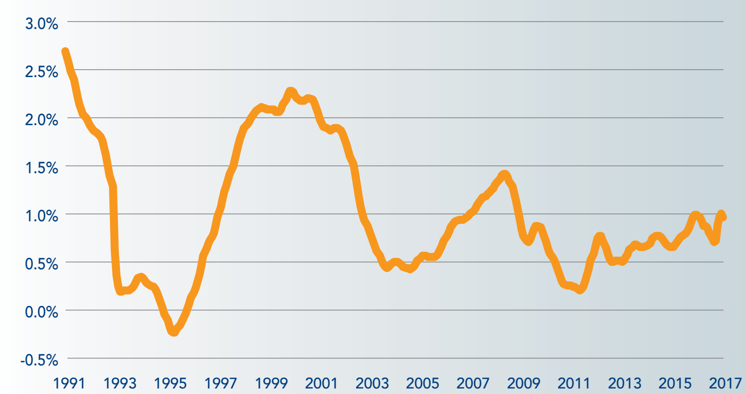
Labor Shortages Mounting

The nation's slowing job growth is not due to a lack of labor demand—the job openings rate has been at or near an all-time high for the last few months. Instead, the slowdown in employment growth stems from a lack of available workers.

The U.S. unemployment rate is now 4.1%, the lowest in 45 years with the exception of a few months during the massive tech bubble of the late 1990s—and today, the nation is not experiencing a major bubble of any kind.

The labor shortage is hardly a surprise. Since the baby boomer generation, there has been a sharp slowing in the growth of the working age population—from 1.5% in 1995 to half a percent over the last few years. The nation's workforce today is also, on average, considerably older, which partly accounts for the decline in the participation rate.

California Labor Supply Growth



Source: Beacon Economics

The labor shortage is being worsened by the clear antipathy that the current administration in Washington has toward immigrants coming to the United States. While we don't have reliable statistics at this point, anecdotal evidence suggests a sharp slowing in the inward flow of immigrants, legal or otherwise.

Despite all this, politicians continue to tout job creation in connection with almost any policy put forward, despite the lack of workers to fill these positions (creating jobs is not the problem today). This labor shortage will benefit workers in terms of wage growth—but also will slow economic growth in the years to come.

A Deficit Low Water Mark

The changing demographics of the U.S. workforce are heralding another major change in the economy: growth in the federal budget deficit. The national debt as a share of GDP has been steady over the last few years after a big jump in the midst of the "Great Recession."

This is about to change. Over the next decade, more than 40 million people will be added to the retirement rolls, and will begin receiving Social Security and publicly funded health care. This surge will cause a sharp increase in federal entitlement spending without a corresponding increase in the revenues to pay for them.

This disparity is why the Congressional Budget Office was forecasting a sharp increase in debt levels even before the Republican tax plan emerged, a proposal that will take this bad situation and make it worse. The GOP's tax overhaul, which was just passed by Congress as of this writing, is mainly a massive cut in corporate taxes and an attempt to offset the loss in revenue by removing certain tax benefits, such as the mortgage interest deduction.

Putting aside the clearly regressive nature of this plan, no credible economist on record believes the proposal will have anywhere near the growth impact needed to pay for itself. When will the federal debt become untenable? That is almost impossible to guess at, but what is clear is that we will look back at 2018 as the year the tide turned.

Tightening the Fed Noose

The GOP's tax plan will have another unintended consequence for the U.S. economy—higher rates and tighter lending markets. As noted, one of the primary features of the tax proposal is that it will lead to more government borrowing,

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which is broadly stimulative to the economy.

But such stimulus is only desirable when there is slack in the system. At this point, no such slack exists. This suggests instead that the stimulus will be reflected in the economy either though higher goods prices or higher asset prices.

There is little sign of the former. Indeed, money supply growth has been decelerating lately. But there are plenty of signs of the latter, with markets up 20%-plus over the last year, and price-earnings (P/E) ratios at their second highest level in the last 80 years.

The U.S. economy suffered significantly from the last two asset bubbles and it is likely that the Fed will try to head off a third by being extremely aggressive in 2018—and this will be on top of the three rate hikes that occurred in 2017. Such efforts will flatten the yield curve and slow lending. This will more than offset the modest stimulative effect of the tax cuts.

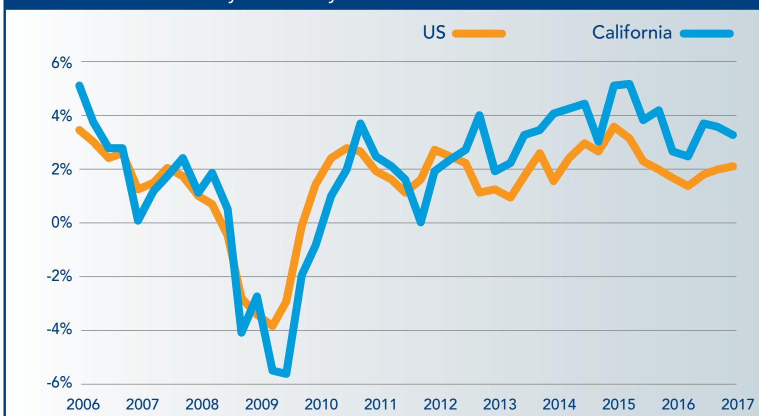
On the surface, 2018 looks to be a lot like 2017 in terms of economic growth. But dig a little deeper and growing frictions become apparent. These will begin to create problems in the economy in 2019 or beyond. So enjoy the current economic calm—before long, the ride is going to grow bumpy.

California Forecast: Economic Stability in Midst of Social, Political Turmoil

Late-night talk show hosts and others who find humor in political and social upheaval have had no shortage of material over the last year. The press and public alike have become accustomed to policy announcements via tweet from the White House, shocking revelations about public figures, and seemingly endless news about the chaotic state of affairs in our era. And, it's a safe prediction that there will be more of the same in 2018.

But in case you missed it, something's going right: the economy. An array of evidence points to the fact that the California economy has been humming along nicely, and that is expected to continue in the coming year, although the state must face long-term challenges, and the sooner the better.

Real GDP Growth year-over-year



Source: Beacon Economics

Like a Car in Overdrive

The state's unemployment rate is on track to finish 2017 below 5% for the first time in 11 years. California's unemployment rate is higher than the U.S. rate, but the differential between the two is now at its lowest in more than 10 years.

Looking across the state, a number of California counties have unemployment rates under 3%, but a few face rates above 7%, in many instances due to the composition of industries and substantial seasonal employment in those counties.

The state's industries have continued to add workers to their ranks, and this has pushed the unemployment rate down. Overall, nonfarm jobs grew 1.7% in year-to-date percentage terms through October 2017. Construction has led the way with a 5.0% increase, and nearly every other industry added jobs over the past year.

The only exceptions were Manufacturing, which was down marginally, and Mining and Logging, which has been reeling from weakness in the energy sector for some time.

However, job gains overall and by industry have generally slowed significantly compared to recent years. For example, the state's 1.7% gain for total nonfarm jobs is more than a percentage point slower than the previous year and slightly more than half the gain seen in 2015.

With few exceptions, job gains by industry in 2017 have been less than in the previous three years. In particular, there has been a dramatic slowdown in job growth in the Information and Professional Scientific, and Technical Services industries that led the state in the early stages of its economic recovery.

In recent quarters, the consumer-facing segments of the economy have experienced the most notable employment gains: Health Care, Leisure and Hospitality, and Other Services.

To be sure, this slowdown is not symptomatic of a looming recession, but a shortage of workers. Following a 1.1% surge in 2016, the statewide labor force slowed to a growth pace of 0.6% in 2017, just two-thirds of the average rate since 1990. This has occurred as job openings across skilled and unskilled occupations alike have reached record high rates, based on data from the U.S. Bureau of Labor Statistics.

Given slow growth in the labor force, California's labor market is like a car in overdrive, moving forward at a steady pace of about 1.5% job growth per year, incapable of moving any faster.

Other measures point to continued progress in the state economy. In the

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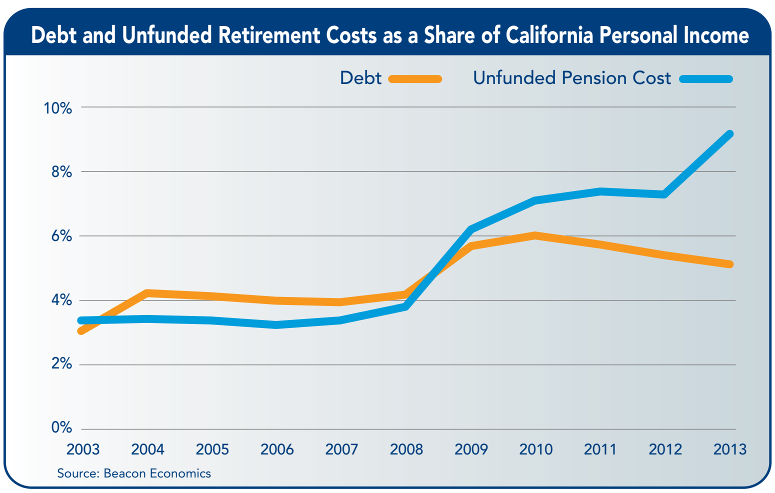
second quarter of 2017, California's Gross State Product (GSP) increased by 2.6%, adjusted for inflation, the eighth fastest among the states and nicely ahead of the overall U.S. growth rate of 2.0%. California continues to be among the ranks of the faster-growing states, a constant source of surprise to its naysayers.

Over the same period, nominal personal income grew by 3.4% in California compared to a 2.9% increase nationally, and spending in the form of taxable sales has been on the rise, up 4.1% in the second quarter of 2017.



So Why Worry?

The near-term picture looks good, but long-term problems require attention now. Home sales have edged up, but the statewide homeownership rate remains stubbornly low because of unaffordable high prices. At the same time, rents have increased steadily in many parts of the state in the face of low apartment vacancy rates.

It should be no surprise that net domestic outmigration, already negative for several years, surpassed 100,000 persons annually over the last two years. The high cost of housing in California is driving workers out, especially low-wage earners.

Based on estimates by Beacon Economics and others, the state should be adding approximately 200,000 new housing units annually, but is building about half that amount. Connecting the dots, if the state does not build enough homes, outmigration will continue, stunting both increases in the labor force and the growth potential of the California economy.

As if the housing situation in California isn't already challenging enough, the federal tax plan that passed in mid-December contains measures that will change the playing field for state residents. The homeownership rate in California already is considerably lower compared to the United States as a whole, mainly because the median home price is more than twice that of the nation.

Historically, middle-income households in California have been able to count on the deductibility of mortgage interest and property taxes to soften the blow. The new tax plan will cut the limit on mortgage interest deductions from $1 million to $750,000 and also impose a $10,000 limit on state and local tax deductions. This will put the American Dream of homeownership further out of reach for more California residents.

Yet another long-term concern is the gulf between pension obligations and pension funding for state and local governments, which has widened in recent years and will continue to do so over the foreseeable future.

Jurisdictions face a difficult choice: They can divert current revenues to pay down pension obligations, but this may diminish services to residents and much-needed expenditures on infrastructure. A few communities have won tax hikes that will help support services and infrastructure investment, but they have been the exception rather than the rule.

Finally, while the state budget appears to be in good shape for now, and while California lawmakers have made contributions to the state's Rainy Day Fund for several years in a row, the situation could turn on a dime. It is well-known that state revenues fluctuate widely with movements in the stock market.

Having hit record-high territory in recent months, and knowing that there is a market correction somewhere in the future, it's just a matter of time before the state faces another challenging budget situation.

Each of these long-term problems can be addressed so as to stave off the worst consequences. But in each case elected officials and other stakeholders need to act now, while the economy is doing well, to tackle these challenges and ensure the long-run growth of California.

Staff Contact: Dave Kilby

The California Chamber of Commerce Economic Advisory Council, made up of leading economists from the private and public sectors, presents a report each quarter to the CalChamber Board of Directors. This report was prepared by council chair Christopher Thornberg, Ph.D., founding partner of Beacon Economics, LLC, and Robert Kleinhenz, Ph.D., economist and executive director of research at Beacon Economics.

ALERT
CALIFORNIA CHAMBER OF COMMERCE

P.O. BOX 1736 SACRAMENTO, CA 95812-1736
(916) 444-6670 FACSIMILE (916) 444-6685
www.calchamber.com

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