ALERT

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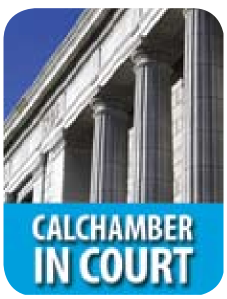
CalChamber
CALIFORNIA CHAMBER OF COMMERCE

Proposition 65

CalChamber Continues Fight for Science-Based Listings



The California Chamber of Commerce has returned to court to fight a state agency's decision to bypass the longstanding, science-based process for adding chemicals to the Proposition 65 list.

For 20 years, the Office of Environmental Health Hazard Assessment (OEHHA), the agency charged with implementing California's Proposition 65, interpreted one of its provisions to mean one thing and implemented the statute accordingly—before changing its mind to conclude the very same words actually mean just the opposite.

CalChamber Goes to Court

In an effort to stop OEHHA from listing chemicals pursuant to its flawed interpretation of Labor Code Section 6382(d), CalChamber filed a lawsuit in December 2008, asking the court to rule that OEHHA was exceeding its authority under Proposition 65. Despite CalChamber's efforts, the trial court ruled in favor of OEHHA.

CalChamber immediately filed its Notice of Appeal, and last week filed its opening brief.

The purpose of this CalChamber lawsuit is *not* to stop the listing of new

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CalChamber Explains New Laws for 2010

Photo by Aaron Lambert

Susan Kemp, CalChamber senior employment law counsel and Helpline manager, reviews employment law changes that businesses should be aware of for 2010 at the first *HR 201: Labor Law Update Seminar* in Sacramento. Other sessions throughout the state and a live webinar are scheduled for January 2010. Registration and other information is available at *www.calbizcentral.com*.

Sexual Harassment Prevention Training Deadline Nears

The California Chamber of Commerce is reminding employers with 50 or more employees that the mandatory supervisor sexual harassment training that must occur every two years may be due before the end of 2009.

The deadline for many companies probably falls at the end of this calendar year, given that the original requirement went into effect in 2005.

AB 1825, signed in 2004, requires California employers with 50 or more total employees (including temporary service employees, independent contractors and employees outside the state) to provide newly hired or promoted supervisors working in California with two hours of classroom or other interactive sexual harassment training within six months of assuming a supervisor position.

Employers must provide training to all employees who have "supervisory authority," which generally includes anyone who has independent authority to:

- hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees;
- direct the work of other employees; and/or
- resolve employee conflicts.

Employees who make recommendations to managers about such matters also must receive training if their recommendations are likely to be acted upon.

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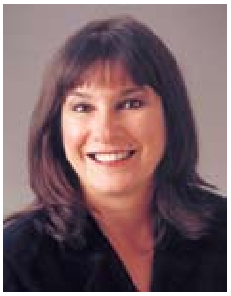
Inside

Labor Law Corner

Leave Act Allows Employees Bonding Time with Adopted Children



Dana Leisinger
Senior Helpline Consultant

I have an employee in the process of adopting a child. Would she be eligible for paid family leave (PFL)?

Yes, six weeks of PFL benefits are available to individuals for time spent off work to bond with a new minor child in the event of a birth, foster care placement or adoption. The bonding must be completed within the 12-month period beginning on the date of the birth or placement.

An individual qualifies for PFL if he/she pays into the state disability program and does not have to work a minimum number of hours or days before becoming eligible. Like unemployment benefits, however, PFL benefits are based on the employee's earnings shown in a base period approximately five to 18 months before the beginning of the PFL claim.

Waiting Period

The employee also must satisfy the seven calendar day unpaid waiting period before receiving PFL benefits. If the PFL is taken intermittently, the waiting period also may be taken intermittently.

For example, if the employee is taking one day off per week, the waiting period would be satisfied over the course of seven weeks, then benefits would be payable.

If the employee received state disability insurance benefits during a pregnancy disability leave, she will not have a seven calendar day waiting period before she is eligible to receive PFL benefits.

Employers may have a policy requiring the use of up to two weeks of vacation before an employee is eligible for PFL benefits. The first week would serve as the seven-day waiting period.

Wage Replacement Only

It is important to remember that PFL is a wage replacement benefit only, however, not a protected leave on its own—it does not protect an employee's job.

To qualify for job protection under the federal Family Medical Leave Act (FMLA)/California Family Rights Act (CFRA), an employee must work for a company that has at least 50 employees, and that employee must have worked for the company for at least a year, and worked at least 1,250 hours in the last year.

Alternatively, an employer may be more generous than the law requires and agree to grant time off for employees if the business is not hampered by the employee taking the time off.

Although PFL benefits are not considered taxable under state law, claimants should consult with their tax advisers or the IRS for federal interpretation.

The Labor Law Helpline is 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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CalChamber-Sponsored Seminars/Trade Shows

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

International Trade

Silicon Valley Open Doors Investment Conference. American Business Association of Russian Professionals. December 9–10, Mountain View. (408) 480-3190.

Malaysia-U.S. Business Seminar. Malaysian Industrial Development Authority (MIDA). December 10, San Francisco. (408) 392-0617.

Tex-Styles India. India Trade Promotion Organisation. February 24–27, 2010, Pragati Maidan, New Delhi, India. *info@texstylesindia.com.*

Cairo International Fair. General Organization for International Exhibitions and Fairs. March 11–22, 2010, Cairo, Egypt. *info@cairofair.com.*

Stonetech 2010. CCPIT Building Materials Sub-council. April 6–9, 2010. Shanghai, China. *kontakt@merebo.de.*

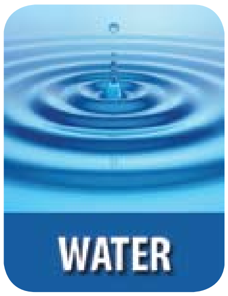
Asiawater 2010. AMB Exhibitions Sdn Bhd. April 6–8, 2010. Kuala Lumpur, Malaysia. *kontakt@merebo.de.*

Labor Law

HR 201: California Labor Law Update. CalBizCentral. January 13, 2010, Glendale; January 14, Costa Mesa; January 15, San Diego; January 20, San Jose; January 21, Emeryville; January 28, Live Webinar. (800) 331-8877.

Next Alert: December 18

Record Low Water Allocations Forecast for State Project as Drought Continues



The California Department of Water Resources (DWR) announced December 1 that it will initially allocate just 5 percent of the water requested by State Water Project (SWP) contractors for 2010, the lowest since the project began delivering water in 1967.

The SWP serves 2.5 million Californians statewide.

Conservative Estimate

DWR Director Lester A. Snow said the 5 percent allocation number is initial and a very conservative estimate of what the department expects it can deliver. The previous low was in 1993 when the initial allocation was 10 percent, he said.

DWR updates the allocation number monthly. Snow said there is a 90 percent chance the number will improve. For example, last year, DWR started with a 15 percent allocation projection and ended with 40 percent. Over the last 10 years, final allocations have averaged 68 percent of requests, according to DWR.

Statewide, overall carryover reservoir storage is about 80 percent of normal, according to DWR, but 60 percent for reservoirs north of Sacramento. Lake Oroville is at 52 percent and the San Luis Reservoir is at 48 percent.

Adding to the water shortage, DWR reports there were restrictions on water releases in order to protect the Delta smelt last year and that there will be water delivery restrictions to protect salmon next year.

Water Package

In early November, concluding months of discussions, the California Legislature adopted legislation to address the state's water crisis.

Funding for the package depends on voter approval of an $11.14 billion bond measure on the November 2010 ballot.

Governor Arnold Schwarzenegger said the package will provide for water storage, both above-ground and below, a canal to protect the Sacramento-San Joaquin Delta, fixing the Delta ecosystem, groundwater monitoring and water rights.

The bond authorization appears in SBX7 2 (Cogdill; D-Modesto). Bond funding includes $3 billion for new water storage (including reservoirs), $2.25 billion for Delta restoration, $1.785 billion for conservation and watershed protection projects throughout the state, $1.4 billion for water supply reliability, $1.25 billion for water recycling and conservation, $1 billion for groundwater protection and water quality projects, and $455 milllion for drought relief.

Accompanying legislation, SBX7 1 (Simitian; D-Palo Alto), creates a seven-member council to develop a comprehensive management plan for the Delta by 2012.

SBX7 6 (Steinberg; D-Sacramento) requires water agencies to report water levels in underground basins or risk losing grants for non-compliance.

SBX7 7 (Steinberg; D-Sacramento) contains conservation provisions, including a 20 percent reduction in per capita water use for urban water agencies statewide by 2020, with water agencies not meeting the targets being ineligible for state grants and loans. Not all water districts would have to meet the requirement. Farm water suppliers would have to submit efficiency plans.

SBX7 8 (Steinberg; D-Sacramento) gives state water regulators more power to police illegal water diversions. Specific penalties are to be added later by the Legislature.

Staff Contact: Valerie Nera

California Launches First-Ever Site Certification Program

The California Chamber of Commerce wants businesses to be aware of the creation of a new statewide program aimed at allowing commercial and industrial building projects to begin more quickly than ever before.

Business, Transportation and Housing (BTH) Agency Secretary Dale E. Bonner recently announced the newly created Site Certification Program, which allows local governments to register commercial or industrial sites that are "project ready," and market them as locations for new business investment and expansion.

The Site Certification Program was developed to assist with the commercial and industrial business site selection, planning and development process in the state.

The certification of a site is performed by the California Department of Real Estate (DRE), which will review required materials to ensure a site meets specific criteria, including, but not limited to, verification and availability of utilities, site access, environmental concerns, land use conformance and potential site development costs.

The DRE will provide a current inventory of commercial and industrial sites that are available for purchase or lease, have the support of local permitting authorities, meet current evaluation criteria for various commercial and industrial uses and are readily available for project development or initiation of use in the shortest time possible.

The DRE will be working in partnership with local and regional economic development agencies, utility companies, commercial realtors and other economic development professionals.

Already, the department has approved three sites, a number that is expected to increase as the program gains exposure. The current certified sites are located in Redding, Apple Valley and Riverside County.

Questionnaire and evaluation criteria for the State of California Site Certification Program, as well as a listing of certified sites, can be found via a link on the BTH website at ***www.bth.ca.gov*** or on the DRE website at ***www.dre.ca.gov/ind_certified_sites.html***.

CalChamber Continues Fight for Science-Based Prop. 65 Listings

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chemicals, but simply to compel OEHHA to abandon its erroneous reinterpretation of Proposition 65 and return to its original, and obviously correct, procedures for adding new chemicals to the Proposition 65 list.

Background

In May 2008, OEHHA publicly announced its authority to automatically add certain chemicals to the Proposition 65 list under Labor Code Section 6382(d) (Labor Code Mechanism).

After years of following required statutory procedures specified under Proposition 65 for adding chemicals to the list of "substances known to the state to cause cancer or reproductive toxicity," OEHHA suddenly changed course. Under its newly adopted erroneous interpretation of Proposition 65, OEHHA will list chemicals without review from the state's qualified experts, and without any process to take into account scientific information about the chemical.

Despite comments submitted by numerous entities, including CalChamber, objecting to OEHHA's interpretation of Labor Code Section 6382(d), on June 12, 2009, OEHHA published a list of 30 chemicals it proposes to list under the Labor Code Mechanism.

Many of these chemicals are elements in everyday products ranging from carpet to cosmetic and personal care products to critical pharmaceutical products.

Links to Part 1 and Part 2 of OEHHA's chemical list appear on the CalChamber home page, ***www.calchamber.com***.

Effects of Listing a Chemical

The Proposition 65 list is of critical importance to California's businesses. Once a chemical is listed, it is subject to Proposition 65's warning requirement and discharge prohibition. Thus, a business using a product containing even trace amounts of a listed chemical must warn consumers that the product contains a chemical "known to the state" to cause cancer or birth defects.

A failure to warn subjects the business to expensive and burdensome lawsuits by public or private enforcers. Consumers receiving these unnecessary warnings will be misinformed, undermining one of the primary purposes of Proposition 65 and diminishing the demand and competitiveness of products that may be perfectly safe.

It follows that, once a chemical is listed, the only practical alternative to the risk of litigation is to provide a cancer or birth defect warning—a reality underscoring the importance to public health policy of an opportunity for current scientific input before a new chemical is listed, and a sound scientific basis for the direction to list any new chemical.

The CalChamber is asking the 1st District Court of Appeal to reverse the trial court's order and direct the lower court to enter a new order in favor of CalChamber.

Staff Contact: Erika Frank

Deadline Nears for Sexual Harassment Prevention Training

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Training Must Be Interactive

California law also requires that the training be "interactive." This means that video training alone is likely insufficient without discussion, role playing, a question-and-answer session, or other similar techniques led by a qualified trainer.

Businesses that do not complete the training are subject to a corrective order from the state Department of Fair Employment and Housing, as well as increased exposure to harassment claims, lawsuits and liability.

Tracking Compliance

Specifically, if a company started training supervisors and managers in 2005, they must have updated that training in 2007. This also means that 2009 is time for another update. Employers can choose either of the following methods or a combination of the two methods to track compliance:

● **Individual Tracking:** An employer may track the training requirement for each supervisory employee, measured two years from the date of completion of the last training of the individual supervisor. For example, a supervisor trained February 15, 2007 must be trained by February 14, 2009.

● **Training Year Tracking:** An employer may designate a "training year" in which it trains some or all of its supervisory employees and thereafter must again retrain these supervisors by the end of the next "training year," two years later. For example, a supervisor trained February 15, 2007 must be trained by the end of 2009.

If newly hired or promoted supervisors receive training within six months of assuming their supervisory positions and that training falls in a different training year, the employer may include them in the next group training year, even if that occurs sooner than two years. An employer shall not extend the training year for the new supervisors beyond the initial two-year training year.

For example, with the training year method, assume that an employer trained all of its supervisors in 2007 and sets 2009 as the next training year. If a new supervisor is trained in 2008 and the employer wants to include the new supervisor in its training year, the new supervisor would need to be trained in 2009 with the employer's other supervisors.

CalChamber Recommendation

The CalChamber recommends that employers:

● Ensure all training, including name of provider and dates of training, are maintained for all supervisors.

● Provide mandatory sexual harassment training, such as CalBizCentral's online, interactive ***California Harassment Prevention Training – 2-Hour Supervisor Version***, every two years based on the tracking method(s) the company chooses.

● Give all employees a copy of the employer's anti-harassment policy and a sexual harassment information sheet at least once a year but always upon hire.

More information on the course is available at ***www.calbizcentral.com***.

Downward Trend Slows in California While U.S. Economy Begins to Improve

U.S. Economy Turns Up

Many economic statistics for the nation turned sideways or up during the past summer months, a definite improvement over the dismal reports of last winter and spring. Reflecting the underlying trends, the government's initial estimate of gross domestic product (GDP) in the third quarter came in at a +3.5 percent annual rate, a welcome change following four quarters of decline.

Progress was widespread in the third quarter, though not yet universal. Consumer spending, exports, residential investment and government spending all increased. Collectively they contributed +4.9 percentage points to third quarter GDP growth. Private-sector inventories were reduced by an estimated $131 billion last quarter, a somewhat slower pace than in the spring quarter. This change had the effect of adding +0.9 percentage points to the economy's growth rate.

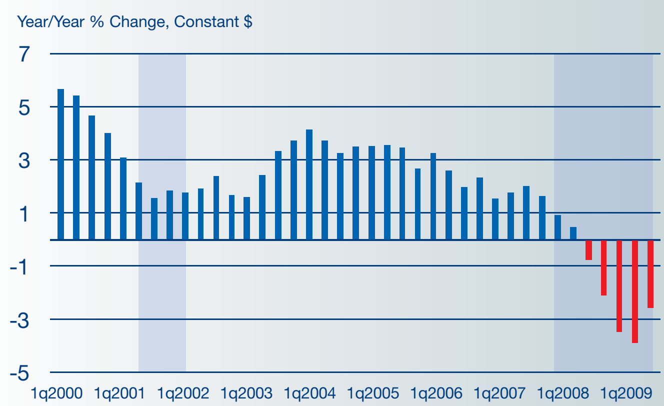
However, on the downside, reduced business spending for new plant, equipment and software and higher imports sliced -2.2 percentage points from GDP growth last quarter.

Domestic Demand Down

As shown in the chart, final domestic demand (which includes spending by U.S. consumers, business firms and all levels of government, but excludes changes in inventories and net exports) was down by -2.4 percent last quarter compared with third quarter 2008. This performance continued the downward trend in place since summer 2007 and marked by far the worst five-quarter performance since quarterly GDP data became available in 1947.

Last quarter's decline was smaller than the previous three quarters, reflecting the economy's improving momentum. However, the 2008-2009 downturn was deep. Many months will elapse before the economic activity returns to its former level.

U.S. Final Domestic Demand



Source: U.S. Bureau of Economic Analysis

Other economic news has been mixed. Non-farm payroll employment across the nation has declined every month since December 2007, and the cumulative loss through October 2009 exceeded -7.3 million jobs.

Job counts have fallen most rapidly in construction, manufacturing and professional and business services, especially temporary help services. Indeed, these three sectors together accounted for 70 percent of the drop-off in total employment. There also have been significant declines in transportation, wholesale and retail trade, information (especially publishing), and in the financial and real estate sectors.

Meanwhile, the nation's unemployment rate moved up from 5 percent in December 2007 to 7.2 percent in December 2008 and then to 10.2 percent in October 2009, the highest level since April 1983 following the last deep recession.

Not surprisingly, consumer sentiment is at very low levels. Weak consumer confidence reflects the current poor labor market conditions and continued anxiety about the personal impact of the recession.

Inflation Trends Favorable

In a bit of positive news, recent trends on the inflation front have continued generally favorable. Excluding food and energy, consumer inflation rates are running at about 1.5 percent. However, energy prices, which had declined markedly from the highs set a year ago, increased over the summer. Recent crude oil prices have reached the $75/barrel to $80/barrel range, compared with under $50/barrel in March.

In California, regular gasoline is priced around $3/gallon, well below the mid-2008 peak of almost $4.60/gallon, but above the $2.20/gallon common this past spring.

Caution

Concerns about this recession have lessened markedly in recent months, as incoming monthly information turned from negative to mixed and sometimes positive. Indeed, the recession appears to have ended already in many industrial nations and developing countries. Accordingly, most economic forecasters have marked up their projections for 2009 and 2010.

The Economic Advisory Council applauds the improvement in the economic activity, but remains wary about the strength of the upcoming recovery. Many nations have experienced very steep declines in employment, domestic and export sales. In the past, such synchronous downturns have been followed by slow recoveries, especially when financial crises have occurred. Some caution about the recovery seems appropriate.

Interest Rates and Financial Markets

The Federal Open Market Committee (FOMC) has held the fed funds target within a range of 0 percent to 0.25 percent since mid-December 2008, about as low as interest rate policy can go. The Fed's main concern continues to be the weak economy, and the FOMC shows no inclination to raise rates soon despite the

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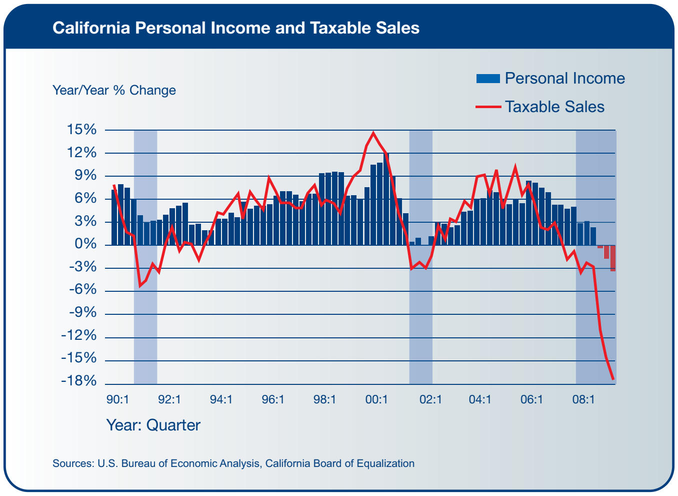
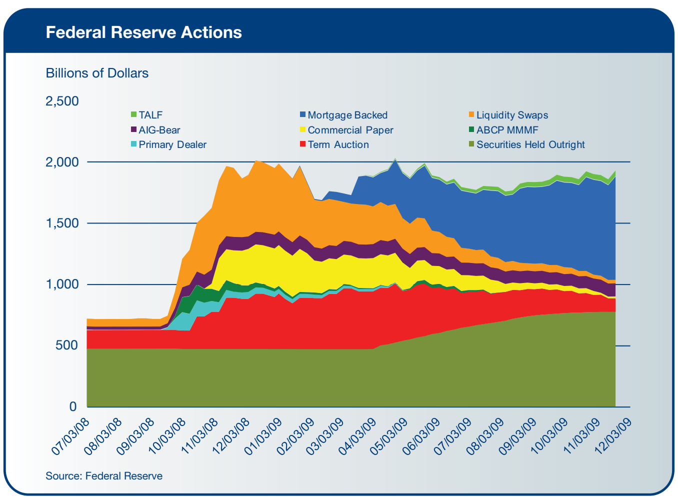
recent upturn. Conditions in some parts of the credit markets have improved, and demand for several of the Fed's specialized facilities is shrinking, as shown in the chart. Investors have been seeking higher returns in this low-rate environment, causing corporate and emerging market bond spreads to narrow. Bond issuance has increased markedly in recent months.

However, credit conditions for households and small to mid-size business firms remain tight. Most households and firms without access to capital markets still face credit quality constraints when they try to obtain new mortgages and business loans. The Fed continues to use its balance sheet to support the functioning of those credit markets that are not yet functioning properly.

In particular, the Fed's holdings of mortgage-backed securities have increased substantially, along with purchases of other asset-backed securities through the Term Asset-Backed Securities Loan Facility (TALF). The advisory council's prognosis: the financial situation has improved significantly, but the central bank has not yet exited the field of battle.





California Economy Still Weak

California's economy continued to weaken during the past quarter, though the downturn has slowed. The state lost at least -940,300 non-farm jobs between December 2007 and September 2009, a distressing figure. About 85,000 jobs disappeared in the July-September quarter, but this was smaller than the first quarter plunge of -252,300 jobs.

California's unemployment rate rose to 12.2 percent in September 2009 from 7.8 percent in September 2008 and 5.9 percent in December 2007. The latest jobless reading was the highest since World War II.

Other broad-based indicators also paint a gloomy picture. Personal income earned in California decreased by -3.3 percent during second quarter 2009 compared to second quarter 2008 (latest data available). A year earlier that figure was +3.2 percent. This has been the first three-quarter decline in personal income since quarterly data were recorded.

Problems in the state's construction, manufacturing and finance sectors accounted for much of the drag on the state's earnings growth. Taxable sales have weakened substantially since early 2007.

By second quarter 2009, the estimated year-to-year decline had fallen well into double digits. Sales declines have been most severe for California's motor vehicle dealers, followed by building materials dealers, household furniture and appliance stores. Sales of gasoline stations also have declined due to lower fuel prices.

Though the rate of deterioration may be slowing, the ongoing weakness in personal incomes, corporate profits and taxable sales threatens the state's operations, as tax revenues continue to come in below expectations. The budget package passed in July included several one-time "fixes," and there are concerns about looming deficits in the coming fiscal year. In any event, the decisions taken to date constrain the state's ability to support the economy as well as state-funded activities of local governments and school districts.

Employment Decline

Employment performance among the state's industries was mostly negative over the 12 months to September. On the plus side, the only major sectors with higher job counts were health care and social assistance, the state government and the federal government. Job counts fell in all other major sectors.

Employment declined the most in California's construction, manufacturing, retail trade, administrative and support services, and leisure and hospitality sectors. Together, firms in these five industries reduced payrolls by -495,000 workers, while other sectors reported smaller declines.

Exports Decline

Exports of goods made in California have declined sharply—by –22.3 percent during the first nine months of 2009. The largest category of exports—high tech manufactures (computers, peripherals and so forth)—dropped by -20.9 percent in dollar terms, while California agricultural products (farm produce, livestock and beverages) fell by -12.4 percent. Transportation equipment exports decreased by -27.4 percent, while non-electrical machinery exports sagged by

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-25.3 percent. Exports of other important California-made products also declined, including chemicals (down by -17.2 percent) and miscellaneous manufactures (-16.2 percent).

Regional Performance

Comparing the state's major metro areas, regional employment performance continued weak in the third quarter of 2009, though most areas showed little change from the previous quarter. All of the state's major metro areas continued to report large year-to-year losses in non-farm employment.

Job losses were relatively moderate in three areas of the Central Valley—Bakersfield (-2.8 percent), followed by Modesto and Fresno (at -3 percent and -3.7 percent respectively). Orange County, San Diego, Los Angeles, Stockton and the Oakland Metropolitan Statistical Area reported "middling" losses in the -3.8 percent to -4.1 percent range.

At the other end of the scale, employment declines were most severe (-5.2 percent to -6 percent) in Ventura County and the Riverside-San Bernardino metro area.

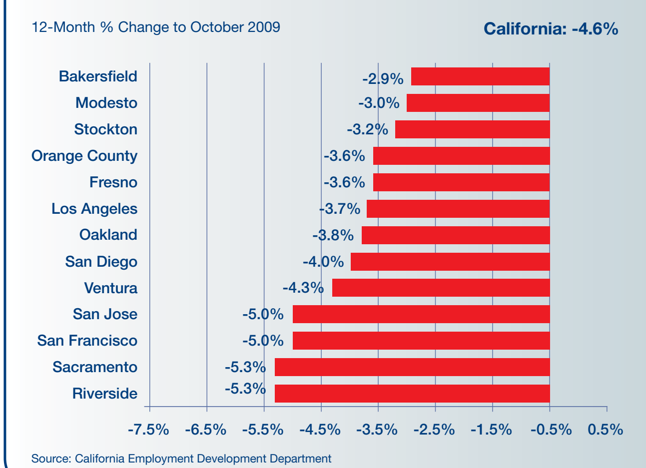
The employment downturn continued unabated in the San Francisco Bay area during the third quarter, and worsened in the San Jose metro area. Construction activity has fallen around the Bay. Retail trade job counts are decreasing, especially in San Francisco. Manufacturing job losses have swelled, particularly among San Jose's high tech manufacturers, which have cut back output and employment this year in response to reduced demands for computers and electronic products.

In the San Francisco area, the sharp downdraft in tourism this year has resulted in job losses in the area's hospitality industries and caused financial pain for local governments.

Southern California

In Southern California, the downturns in manufacturing and construction combined with retail industry distress have caused large employment losses across the region. A severe cutback in

Job Trends by Metro Area (October 2008–October 2009)



Source: California Employment Development Department

freight traffic through the area's ports has caused problems for the ports themselves and in transportation, wholesale trade and the distribution centers of Los Angeles, Orange County and the Inland Empire. The slowdown in tourism is a growing concern in San Diego and Los Angeles.

The region's entertainment sector presents a mixed picture. On the one hand, domestic and international box office demand for films has been good this year. Also, entertainment companies are taking advantage of the state's new filming incentives to schedule productions in California.

However, recent sharp declines in advertising revenues have impacted broadcast TV and newspapers, with consequent reductions in employment. Another note of caution: new Department of Defense proposals imply modest declines in procurement budgets and will have a mixed-to-negative impact on the region's key aerospace industry.

Agriculture and Resources

This year is proving to be a difficult one for California's agriculture sector. Prices of several important products have weakened considerably, including dairy, some nuts and grapes. Demand for premium California-grown products has softened, as recession-weary consumers at home and abroad economize on luxuries. California-grown exports decreased by -10.9 percent over the year through September. Feed costs have declined as well, but concerns about farms' profitability persist.

Drought restrictions have become a reality (see below), forcing many California farms to tap limited groundwater supplies. Hard decisions are being made about which products to produce and which to reduce or eliminate. With water short and prices uncertain, many fields are being fallowed, with trees as well as crops at risk.

Water Concerns

Water is a serious concern across the state. The recent string of dry years—including 2008-2009—has left storage at very low levels in California's water systems and the Colorado River area. The State Water Project and the Central Valley Project both restricted deliveries in 2008 and 2009. Water that must transit the Delta faces further severe cutbacks.

The near-term outcome depends on a new Delta fish plan still being developed by the U.S. Department of Fish and Wildlife, but water allocations to parts of the Bay Area, Southern California and the San Joaquin Valley are likely to be reduced significantly. Already, mandatory reductions in urban water use have been implemented.

The Legislature has passed and the Governor has signed a package of water bills to help resolve the state's water problems. Full implementation will require voter approval of $11 billion in new bonds to pay for the necessary improvements.

The supply of electricity in California should be adequate in the near term, as industrial demand has weakened in the recession. However, electricity prices are moving sharply higher, reflecting the utilities' costs associated with mandated investments to reduce their environmental footprints and to improve their distribution networks.

Real Estate/Construction

The California housing market has been operating on two different tracks for months now. Here are some interesting statistics for the state's re-sale home market:

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● Existing single-family homes sales in California increased by +2.1 percent over the year to September 2009, while condo sales were up by +10.8 percent.

● Prices continued to fall, with the median price of single-family homes sold in September 2009 (at $296,090) down by -7 percent compared to September 2008.

● The number of homes available for sale represented 4.2 months supply (at September's sales rate) compared to 6.5 months a year earlier.

Existing Home Sales Healthy

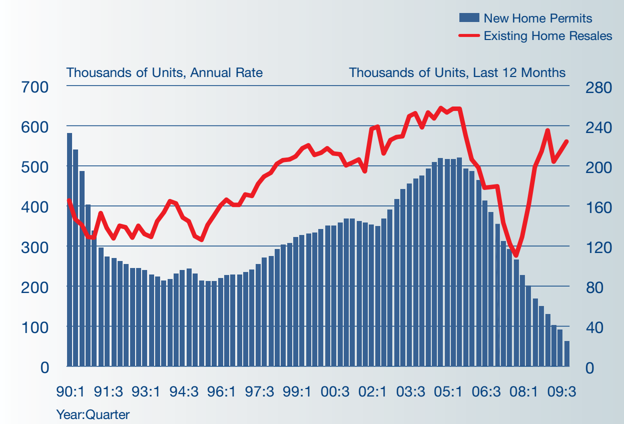
Existing home sales have been quite healthy (greater than 500,000 annual rate) since September 2008. Compared with a year ago, sales have increased markedly in the inland areas of California that experienced high foreclosure rates and where large numbers of lender-owned REO (real estate-owned) homes are on the market.

"Distressed" sales, i.e., at low, "distressed" prices, have accounted for well over half of home sales, which initially pushed down the state's median price. However, the supply of these lower-priced homes is running below demand, as bank foreclosures slowed in the second and third quarters. A change in the availability and geographical mix of sales—which includes somewhat higher sales in the higher-priced coastal counties—has boosted the state's median home price in recent months.

In addition to relatively low fixed mortgage rates, the federal government is offering temporary tax credits to encourage would-be homebuyers to act. Further, the plunge in transaction prices means many home sales in California will fall inside this year's conforming loan limits (up to $729,750 in 2009).

However, the outlook for home sales is uncertain. Government incentives likely are pulling forward some home purchases from later in 2010 and 2011. On the supply side, mortgage defaults have grown as labor market conditions deteriorated. Thus, the availability of foreclosed homes is unlikely to shrink, though when lenders will bring these homes onto the market is uncertain. While the housing market environment looks favorable at present, significant further improvements in the pace of sales seem unlikely until the economy—and buyers' confidence—begins to improve.

California Housing Market



Source: U.S. Census Bureau, California Association of Realtors

Residential Construction Activity Low

Residential construction activity continued at very low levels across the state during the third quarter, though activity was higher than in the first-quarter, the low point for this down cycle. Total housing permits were issued at an annual rate of 34,900 units during third quarter 2009, up by 4.4 percent from first quarter 2009. That moderate overall increase hid what really has happened since the first quarter: single-family home construction activity increased by 34 percent, while multi-family permits dropped off by -32 percent. While any improvement is welcome, the current construction pace represents a drastic decline of -85 percent from the peak construction level of 2004.

New home builders still have sizable inventories of unsold homes and lots, though construction of new homes has dropped significantly and effective selling prices are falling. The unsold inventories are shrinking, especially detached single-family units. However, inventories of attached housing units (condominiums and apartments) continue at uncomfortably high levels. Finding buyers for all of the unsold condominium units likely will take a while.

Despite the favorable buying incentives, industry observers do not expect any significant improvement in new home construction before late 2010, with some areas not reaching bottom until a year later.

Commercial Sector Troubles

California's commercial real estate markets also have developed deep fissures. Specifically, availability rates have risen markedly over the past year, and external development funding has virtually disappeared. The situation is most problematic for retail, office and industrial space. Retail sales have declined, and retailers' access to financing has been limited by the credit crunch. Several chains have declared bankruptcy or closed down altogether, and this trend is expected to continue in the near term.

With most lenders unwilling to commit new funds for commercial real estate development, construction of new retail space is plunging. Even so, vacancies are surging and rents are dropping because so many stores are closing down. Most areas in California are experiencing higher retail vacancies. The biggest problems appear to be in Riverside-San Bernardino and areas where large amounts of retail construction took place in recent years.

Office Space Demand Falls

Demand for office space also has fallen, reflecting weaker employment trends in most office-based industries. Many firms are reducing headcount and vacating or subleasing space. Vacancies are highest and rising in Ventura County (25.4 percent), the Inland Empire (23.6 percent), San Diego (21.6 percent), the San Francisco Peninsula (19.9 percent), Sacramento (19.7 percent), Orange County (19.4 percent) and San Jose (19.1 percent).

Farther behind but still high, are Oakland (16.9 percent), Los Angeles (15.6 percent) and San Francisco (15.4 percent). Rents are weakening in most locations. Statewide, the value of new office construction permits plunged by

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Downward Trend Slows in California; U.S. Economy Begins to Improve

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-82.8 percent in the first nine months of 2009 compared with the same period in 2008. Though the office construction pipeline is shrinking, vacancies are likely to continue rising until employment begins to turn around.

Industrial vacancy rates are also on the rise, though new construction is slowing sharply here as well. Demand for warehouse and distribution space has slackened, reflecting the dim outlook for retail sales across the United States, as well as the plunge in international trade. Demand for high tech and biotech space also appears weaker since the financial crisis last fall and the downturn in the high tech industry.

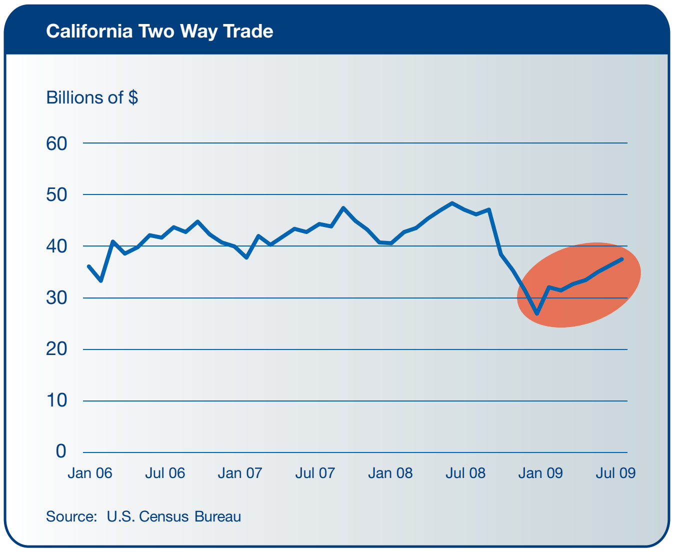
The lowest vacancy rate is in Los Angeles County, at 3.2 percent, followed by the East Bay at 3.6 percent and Orange County at 6.5 percent. Vacancy rates are highest in San Jose (13.2 percent), the Inland Empire (12.8 percent), San Diego (12 percent) and Sacramento (11.8 percent). These are areas where substantial new construction took place even as demand for distribution space dwindled.

Non-Residential Building Permits

The total value of non-residential building permits in California declined by -48 percent during the first nine months of 2009 compared with the same period in 2008. Permits for new buildings dropped by -64 percent, while the value of alterations and additions (which are more often owner-financed) fell by -26 percent.

During the first nine months, total non-residential permit activity increased only in San Luis Obispo/Paso Robles (+10.8). The biggest percentage declines in permit activity occurred in some Central Valley areas: Stockton (-74.6 percent), Visalia (-69.3 percent), El Centro (-68.2 percent) and Madera (-66.1 percent).

However, the largest dollar declines have occurred in Los Angeles (down by -$1.7 billion), San Francisco and San Jose (-$1.4 billion combined) and Riverside-San Bernardino (down by -$989 million). Together, these four areas accounted for 46 percent of the total statewide decline in non-residential permit activity through September 2009.



Financing has become extremely difficult to obtain for most types of commercial real estate projects, so permit values are expected to continue at low levels through much of 2010. As projects currently under construction are completed, the construction pipeline will empty out, a good thing as market fundamentals continue to deteriorate.

Risks

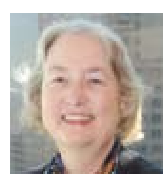
Risks are mostly to the downside. The economy is nearing the bottom of a serious, lengthy recession. Uncertainty is high. While rates of descent are slowing in California—suggesting the cyclical trough is close—we do not know yet what the recovery will look like.

One key risk would be renewed volatility in global capital markets. Central banks and governments around the world have poured trillions of dollars into their financial sectors, and the results are beginning to show. However, the financial industry's problems are complex and won't be "cured" as long as the general economy lingers at current low levels. At present, most financial institutions appear reluctant to engage in many forms of ordinary business and consumer lending, which exacerbates the current credit crunch and will retard the economic recovery.

A second set of risks concerns the state's still-troubled housing industry. Rising joblessness and mortgage delinquencies could cause mortgage lenders to continue tightening credit requirements, taking sales volumes back down again. California's new home markets can't begin to approach normal until unsold inventories are reduced significantly. That process is currently under way. However, there continues to be concern about "shadow inventories."

Industry observers believe that mortgage lenders own a significant number of foreclosed homes but haven't put them up for sale yet. A flood of homes repossessed by lenders into the marketplace would slow sales of builders' standing inventories, drive home prices down and retard recovery in this important sector.

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. The council is chaired by Nancy D. Sidhu, vice president and chief economist for the Los Angeles Economic Development Corporation.

Publication of this report is a project of the California Foundation for Commerce and Education.

CFCE California Foundation for Commerce & Education

CalChamber Urges Additional Flexibility in Shade Requirements for Outdoor Workers

Some flexibility is needed in shade requirements proposed to be added to the state's heat illness prevention standard, the California Chamber of Commerce recently told a state agency.

Erecting shade once temperatures reach 85 degrees is acceptable with the inclusion of an exception for unsafe or infeasible situations, the CalChamber stated at a public meeting about pending amendments to the standard.

CalChamber policy advocate Marti Fisher and a diverse coalition of trade associations and companies presented an employer perspective on November 16 when the California Occupational Safety and Health Standards Board convened an advisory committee in Oakland to review several amendments to the state's heat illness standard.

This was the board's fourth meeting this year on the heat illness issue. The board twice failed to adopt changes to the rule during emergency rulemaking hearings and has since proceeded to a regular rulemaking process to address the board's concerns with proposed amendments.

The board will respond to public comments received, and testimony taken in a "Statement of Reasons" accompanied by a revised proposal with a 15-day notice for written comments. The CalChamber anticipates the proposal will go before the board for adoption in either February or March 2010. That means if the proposal is adopted, it most likely would be in effect by the end of April 2010.

California Standard First

California became the first state in the nation to adopt a comprehensive heat illness prevention standard for outdoor workers in July 2006. The regulations, implemented by the California Division of Occupational Safety and Health (Cal/OSHA), include requirements for water, shade and training for employees and supervisors on heat illness prevention, symptoms and treatment.

The regulations apply to all companies with employees working in outdoor places of employment. In addition to the training requirements, employers

must provide potable drinking water, access to shade, and compile heat illness prevention procedures, including employee training, in writing.

CalChamber Comments

Representing the CalChamber and a broad-based coalition of employer organizations at June, July and October board hearings, Fisher explained to the board that the business community is committed to ensuring the safety and health of outdoor workers. Creating new and more prescriptive regulations, however, will not result in increased compliance by those employers that currently choose not to comply.

Fisher urged caution and the continued consideration that an employer's strict compliance with a regulation is no guarantee that an employee will never suffer from heat illness.

Fisher and the coalition commended the board for its continued diligence to develop the most appropriate solution.

Reasonable Revisions

The CalChamber believes that reasonable revisions to the current regulation can be developed with consensus by further clarifying and revising the current proposal. Specifically, the CalChamber supports the proposed establishment of a trigger for shade to be up at 85 degrees because for most workplaces this can be accomplished and is reasonable.

Fisher explained, however, that in some cases a work situation may make it unsafe or infeasible to have shade actually erect while employees are working due to unusual aspects of the nature of the work or work location. The coalition asked that the regulation be revised to create an exception for instances in which it is not safe or feasible to have shade up, but explained that shade can be provided as needed to workers upon request.

When Shade Not Needed

Following are some examples of work situations where it is not safe or feasible to have shade up while employees are working:

- Mobile crew working at various locations within large worksites or remote locations, such as service or maintenance calls to multiple locations, large construction projects, or relocation throughout the work shift.
- Highway, road or bridge construction that requires continuous motion by the crew, often within the confines of highway traffic lanes.
- Construction worksites where the area is very confined. An example would be a large multi-use building with underground parking, being constructed in an urban area. The underground excavation and work frequently takes up the entire jobsite, with mobile equipment in constant operation around the site. The border of the worksite usually is a sidewalk next to city streets.
- Construction worksites where free area is limited, such as commercial or residential lots where concrete or landscape construction is taking place, or the initial stages of framing a structure. Often, the limited free area is being utilized for egress and ingress.

Heat Illness

Heat illness occurs when the body's temperature control system is unable to maintain an acceptable temperature. Under normal circumstances, the body cools itself by sweating. However, when high temperatures and humidity prevent the body from releasing heat efficiently, a person's body temperature can rise quickly, causing numerous symptoms. If left untreated, high body temperatures can damage the brain and other vital organs and, ultimately, lead to death.

Staff Contact: Marti Fisher

State High Court: Restricted Stock Options Not Considered ‘Earned But Unpaid Wages’

In a recent decision, the California Supreme Court held that an incentive compensation plan requiring employees to forfeit shares of stock upon termination may not violate California laws.

In the case of *Schachter v. Citigroup, Inc*., 2009 Cal. LEXIS 11056 (Cal. Nov. 2, 2009), the court held that shares of restricted stock granted to an employee—but not yet vested at the time of termination—do not constitute “earned but unpaid” wages, and the employer may require the employee to forfeit them.

Background

David Schachter was a stock broker employed by Citigroup from 1992 to 1996. As part of its incentive compensation plan, Citigroup allowed its employees to receive grants of Citigroup stock in lieu of cash compensation. Participating employees could elect to receive up to 25 percent of their total compensation in the form of restricted stock shares, which granted the employee the right to vote in shareholder elections and receive dividends. The employees could not sell their shares for a two-year period following their grant, however.

If an employee voluntarily resigned or was terminated for cause during the two-year vesting period, he/she forfeited his/her shares. If Citigroup terminated an employee without cause prior to vesting, the employee would, at termination, receive a cash payout equal to the amount he/she would have received had he/she not participated in the stock plan.

Schachter elected to receive 5 percent of his total compensation in stock during 1995 and the first part of 1996. In March 1996, he resigned from Citigroup. Because his resignation occurred within the two-year vesting period, he forfeited all shares of stock. In May 1998, Schachter filed suit against Citigroup, claiming that the incentive stock forfeiture violated California laws requiring the payment of all earned and unpaid wages at the time of termination.

After more than 11 years of litigation, the California Supreme Court rejected Schachter’s claim. California’s Labor Code requires employers to pay terminated employees all “wages earned and unpaid at time of discharge.” Schachter argued that when he resigned, he lost the shares of stock and also the “earned but unpaid” wages that had been used to purchase those shares.

Employment as Incentive

The court held that employers may base incentive compensation on the occurrence of a future event, such as remaining employed for a certain period of time. Citigroup and Schachter agreed on such a compensation plan and Schachter understood that he could sell the stock only if he remained an employee for two years.

Pointing out the adage that “he who shakes the tree is the one to gather the fruit,” the court held that Schachter’s decision to quit his job meant that he had not performed the one condition necessary to receive the stock: remain employed with Citigroup for two years. He therefore was not entitled to “gather the fruit.”

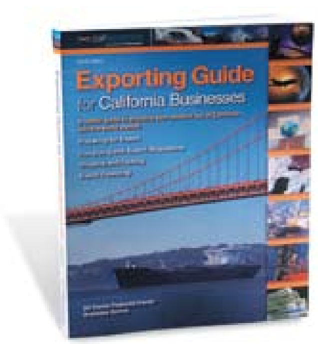
CalChamber Recommendation

The California Chamber of Commerce recommends the following steps to employers:

- Ensure that employees receive all earned and unpaid wages at the time of termination, or within 72 hours of voluntary resignation.
- Consult legal counsel when structuring incentive compensation plans. Employers may be liable for a prorated portion of a bonus if an employee is terminated without good cause.

Staff Contact: Erika Frank

CalChamber Guide Explains How Businesses Can Become Exporters



Businesses wondering how to be part of the rise in exports that is moving the California economy toward recovery can find guidance in a handbook available from CalBizCentral, presented by the California Chamber of Commerce.

The ***Exporting Guide for California Businesses*** helps companies navigate through complex export regulations:

- Preparing for export;
- Export marketing and distribution;
- Export logistics and financing;
- Complying with export regulations.

This easy-to-use essential reference is:

- Written in plain language;
- California-specific;
- Reviewed for accuracy by the CalChamber Council on International Trade.

The ***Guide*** includes more than a dozen online forms and checklists.

Author J.H. Dethero is an international business consultant, writer and instructor with a 50-year background in international banking, trade and state government.

Copies are available for $39.99 ($31.99 for CalChamber preferred and executive members), plus tax and shipping/handling.

Discounts are available for multiple copies.

For more information or to order, visit ***www.calbizcentral.com*** or call (800) 331-8877.

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