

ALERT

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Senate Fiscal Committee Passes Job Killer Mandate



The Senate Appropriations Committee on August 22 passed a California Chamber of Commerce-opposed bill that unfairly

forces employers to hire a predecessor's employees and ensures continued union representation, while undermining the at-will employment presumption in California, despite any change in employers.

AB 350 (Solorio; D-Anaheim), a "job killer" bill, inappropriately alters the employment relationship by requiring any successor contractor for "property services," defined as licensed security,

cleaning-related or light building maintenance, window cleaning or food cafeteria services, to retain employees of the former contractor for a minimum of 60 days and thereafter offer continued employment unless the employees' performance during that period was unsatisfactory.

Forces Unionized Workforce

CalChamber is opposed to this bill because it is designed to ensure that an incumbent union, elected as the bargaining representative for the prior contractor, will remain the bargaining representative for the subsequent employer. Under the "successor employer" doctrine, a subsequent employer that:

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Cost-Saving Workers' Comp Bills Await Senate Action



SUPPORT

Two California Chamber of Commerce-supported bills that will help lower workers' compensation costs await action in the Senate.

- **AB 378 (Solorio; D-Anaheim)** lowers pharmaceutical costs.
- **AB 335 (Solorio; D-Anaheim)** lowers frictional costs in the workers' compensation system.

Pharmaceutical Costs

AB 378 lowers workers' compensation costs by removing incentives for physicians to refer patients to pharmacies in which the physician or physician's family has a financial interest, and establishes a temporary fee schedule to reimburse for compound drugs until the workers' compensation administrative director can establish a formal one.

Compound medication in the workers' compensation system has been used primarily to assist injured workers who could not manage medication in its standard formulation.

In the last several years, however, there has been a sharp increase in usage and costs of compound drugs. Payments for compound drugs, medical foods, and co-packs grew from 2.3% to 12% of total

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Photo by Megan Wood

CalChamber Policy Advocate Jennifer Barrera testifies against 'job killer' AB 350 (Solorio; D-Anaheim) before the Senate Appropriations Committee passed the bill on August 22. At left is Matthew Hargrove of the California Business Properties Association.

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Labor Law Corner

State Law Does Not Require Employers to Give Reason for Termination



Dana Leisinger
HR Adviser

We are terminating a problem employee today. Do we have to give him/her a reason?

The simple answer: No. California law does not require that you give an employee a reason why he/she is being terminated; it is part of the “at-will” policy in California.

Indeed, the “Notice to Employee as to Change in Relationship” that is required by the Employment Development Department does not have a mandatory section for an employer to note why it is terminating an employee.

If you do give a reason, however, it is imperative that it is the truth and the real reason. If your termination is challenged (i.e., a wrongful termination lawsuit), you don’t want to be “back pedaling” and changing your story.

Termination Approaches

There are different schools of thought as to how to handle a termination. Many employers prefer to simply tell the employee, “This isn’t working out,” and not enter into an elaborate discussion with the individual.

Other employers prefer to explain to the person the reason behind the termination. There is no right or wrong way to handle this situation—it may depend on the person being terminated.

Some individuals want to argue the decision, and that is probably when it’s best to stay simple and explain it isn’t a topic for a discussion, but it is a decision that has been made. Other individuals may benefit from a simple discussion of why they are being let go and accept it as closure.

It’s also best not to call a termination a “layoff” when it’s truly a termination.

If the position is filled relatively quickly, the ex-employee might find out and claim the layoff was a subterfuge and the termination was discriminatory in nature.

Disciplinary Warnings

If an employer follows the progressive disciplinary path, most employees will know why they are being let go. If they receive oral warnings, followed by written warnings, and possibly even a suspension, there will be ample evidence supporting the decision to terminate in the event the decision is challenged.

A stated policy of progressive discipline tends to erode into the at-will relationship, since the courts have held that a promise of progressive discipline guarantees the employee ample warnings before termination. However, the practice of progressive discipline supports the employer.

If a termination of employment is a difficult decision to make, it is always wise to consult an employment law attorney to guide you through the process.

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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Seminars/Trade Shows

More information at
www.calchamber.com/events.

Business Resources

San Diego Water Tour. Water Education Foundation. September 8–9, San Diego. (916) 444-6240.

North California Tour. Water Education Foundation. October 12–14, Sacramento. (916) 444-6240.

Licensing Executives Society Annual Meeting. Licensing Executives Society (USA and Canada). October 16–19, San Diego. (703) 836-3106.

San Joaquin River Restoration Tour. Water Education Foundation. November 2–3, Fresno. (916) 444-6240.

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CalChamber Calendar

Water Committee:

September 8, Rancho Palos Verdes

Board of Directors:

September 8–9, Rancho Palos Verdes

International Trade Breakfast:

September 9, Rancho Palos Verdes

CalChamber Fundraising Committee:

September 9, Rancho Palos Verdes

Taking Your Chamber’s PAC to the Next Level: October 14, Orange

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Boeing Vice President Recaps Challenges for Aerospace Industry in California

Nan Bouchard, vice president of program management at The Boeing Company, testified before the Assembly Select Committee on Aerospace on August 16 about issues affecting the industry in California.

Bouchard, also a member of the California Chamber of Commerce Board of Directors, was part of an aerospace industry panel that included representatives from Northrop Grumman, Aerojet and Lockheed Martin.

Below are excerpts from Bouchard's remarks to the committee.

Boeing in California

If we were to make a movie about the history of Boeing in California, the title could be, "Innovation." The portfolio of history-making products designed and built here touches on every aspect of aerospace and aviation, spanning the first commercial telecommunications satellite, the venerable DC-10 commercial airplane and the amazing Space Shuttle orbiter, which recently completed its final mission. Listed among the credits would be the names of our heritage companies, such as Hughes, McDonnell Douglas and Rockwell, built by creative pioneers who thrived and grew in the hospitable climate.

Today, Boeing continues to occupy a diversified footprint spanning commercial aviation, military aircraft, network systems, satellite manufacturing, and new markets such as cybersecurity. The company's direct and indirect economic footprint in California is substantial. Employees work at more than 50 locations throughout the state, with the largest concentration in the Los Angeles area. Three sites—El Segundo, Huntington Beach and Long Beach—have more than 5,000 employees each.

In 2009, the most recent year for which data is available, the annual state payroll was nearly \$2.4 billion. California also is home to more Boeing suppliers than any other state. In 2010, there were 5,755 suppliers here, and the company spent more than \$6 billion on goods and services with them.

The core business areas for Boeing in California are primarily on the defense side. Headquartered in Seal Beach is our



Photo by Megan Wood

Nan Bouchard, vice president, program management and regional executive, Boeing Defense, Space & Security, and a member of the CalChamber Board of Directors, testifies before the Assembly Select Committee on Aerospace on August 16.

Space and Intelligence Systems, the company's center for all intelligence, military and commercial space systems. This business operates the world's largest satellite design and manufacturing factory in El Segundo, as well as Spectrolab, the world's largest manufacturer of solar cells and a San Fernando Valley fixture for more than 50 years.

Our Network and Tactical Systems business unit is headquartered in Huntington Beach and draws on the power of integrated networks and tactical systems to connect and protect U.S. and allied soldiers, sailors and airmen.

One of our most visible California-grown products is the C-17 Globemaster III, the last aircraft still being built in California and about to mark its 20th year of operations. The C-17 is the world's premier heavy airlift transport and has proven itself as a versatile strategic and theater airlifter in every recent worldwide operation, from Operation Iraqi Freedom to humanitarian relief missions. The C-17 production facility is located in Long Beach. More than 200 C-17s have been

delivered to date to our U.S. Air Force customer, and our current focus is on increasing international sales to keep the production line going beyond 2014.

Other significant business areas in the Los Angeles region include our Boeing Commercial Aviation Services team, also located in Long Beach, which provides engineering and related services to heritage commercial aircraft built at the former Douglas plant that are still in service as well as new designs like the 787.

In the high desert of Edwards Air Force Base, we have Boeing employees supporting flight test operations for new designs that are both manned and unmanned.

Near-Term Challenges

So while we feel that the spirit of innovation is alive and flourishing at Boeing, our ability to thrive in California is more challenged ... Since 2000, the Boeing workforce in California has shrunk from 36,700 to around 22,000 today.

Some of this is attributable to the merging and integration of the heritage

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Boeing Vice President Recaps Challenges for Aerospace Industry

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companies. But the headcount decline also is symptomatic of a more serious problem, and that is the cost of doing business in California. A recent example for Boeing was the move of our B-1B program from Long Beach to Oklahoma. The B-1 bomber was designed and built in California, so it was not an easy decision. But as Boeing reviewed its anticipated operating costs for the next several years, it became clear that major actions were needed to remain affordable for our customer. The same cost barriers can come into play when the company looks at new programs and services and where to place them.

The challenges of doing business in California are not unique to Boeing and have been well catalogued. It is for these reasons that we applaud the recent rollout of the economic development plan by the administration of Governor Brown and Lieutenant Governor Newsom. This plan proposes solutions to many of the issues businesses face in California, such as a cumbersome and complex regulatory environment that is greatly in need of streamlining.

For example, the state imposes additional and unique rules regarding the workplace that necessitate specialized training classes for Boeing employees located here. Support for manufacturers—the linchpin of the U.S. economy—is another area that the lieutenant governor's economic development plan addresses. California is one of only a few states that taxes manufacturers on job-creating investments in plants and equipment.

In kicking off the economic development plan, the lieutenant governor, speaking on behalf of the administration, said that this is the beginning of a statewide conversation. I would offer that today we are continuing that conversation and furthering our support for making the plan a reality. The recommendation to create a Cabinet-level position overseeing economic development is a critical first step and should be implemented as quickly as possible—it cannot happen soon enough.

Future Workforce

I've talked about our programs and operations, and how innovation is at the core of what Boeing does and is. The em-

bodiment of that innovation is our workforce. Boeing employs more than 159,000 people across the United States and in 70 countries. More than 123,000 of our employees hold college degrees—including nearly 32,000 advanced degrees—in virtually every business and technical field from approximately 2,700 colleges and universities worldwide. Engineers make up a little more than 30 percent of our workforce....

Boeing continues its strong efforts to prepare the future workforce for tomorrow's jobs and careers by advocating for improvements in education at all levels, particularly in the science, technology, engineering and math (STEM) disciplines. We've forged strategic partnerships with educational and other institutions, and contribute volunteer and financial investment in education initiatives, including internships and private-public partnerships. I'll share some examples of what we're doing in California:

- Boeing has a long-standing partnership with the Long Beach Unified School District, one of the largest urban districts in the country. Together we are working to increase the number of math-certified teachers, enhance algebra readiness at the elementary grade level, identify a STEM curriculum leader who will help link core academics to real-world experiences and future workforce needs, and bring engineers to the classroom to serve as STEM mentors and guides.

- Public-private partnerships are another area in which Boeing is trying to make a difference. Boeing is partnered with the Los Angeles and Orange counties school systems to promote arts education in the classroom. You may express surprise at an engineering company like Boeing being so interested in promoting the arts, but the fact is that the arts are about creativity and imagination, just like engineering. We are teamed with the Los Angeles County Arts Commission on Arts for All, which seeks to implement K-12 arts education for every public school student in the county. We're partnered with the Orange County Department of Education on Arts Advantage, a program to bring together school administrators, teachers, parents and business leaders to establish or expand current arts education programs.

- We also work with college

institutions to enhance undergraduate curricula, support continuing education of Boeing employees, recruit for internships and employment, and collaborate on research that benefits the long-term needs of our businesses. For 2011, the company has invested more than \$1 million in partnership with California higher education institutions. We have an extensive Internship Program enterprise-wide, with over 1,200 interns working at Boeing this summer, of which more than 90 are in SoCal....

Changes Ahead

Looking to the future, everyone is familiar with the painful process this country is undergoing to address its debt issues and regain its economic footing.

At this time, it is too early to determine what the specific implications of the recently passed debt ceiling legislation will be for Boeing and the products and services we provide for our nation's security....

Certainly there is no question that the aerospace industry is undergoing a transformation and the needs of our customers are changing and evolving. Boeing is changing too. There is no such thing as tradition or the status quo in aerospace—we must always be thinking creatively to maintain our competitive edge and design products that will delight and satisfy our customer. Only last week, we announced a strategic alliance with another company, not to team up to build a new airplane or rocket, but to develop "smart grid" technologies to improve energy access and security for the Department of Defense.

For Boeing in California, while it is true that our footprint is smaller, it is still significant, and we are passionate about the products and services that we provide. We remain committed to being a good neighbor and reaching out to the communities where we live and work, to continue to strive to make California as great a state as it can be. And in what could be considered a sequel to Part I of Boeing's innovation story in California, the state still represents a fertile market for new and innovative companies. In 2010 alone, three of the companies that Boeing acquired were either headquartered or had offices in California, and all represented new market areas that the company is pursuing.

U.S. Trade Representative Says Congress May Consider Free Trade Pacts Next Month

Job creation via congressional approval of the pending free trade agreements (FTAs) was the hot topic at an agricultural roundtable led by U.S. Trade Representative (USTR) Ron Kirk recently at Blue Diamond Growers headquarters in Sacramento.

The audience included Susanne Stirling, vice president of international affairs for the California Chamber of Commerce, and Blue Diamond President and CEO Mark Jansen, a member of the CalChamber Board of Directors.

According to Ambassador Kirk, Congress is expected to consider approving the FTAs with South Korea, Colombia and Panama when it reconvenes in September, actions that would greatly increase U.S. exporters' ability to compete in the global marketplace.

Flanked by California Department of Food and Agriculture Secretary Karen Ross, USTR Chief Agricultural Negotiator Issi Siddiqui and Jansen, Ambassador Kirk commended California's agricultural organizations for making the state the largest exporter of agricultural goods in the nation.

"Every billion dollars in agriculture exports supports almost 8,500 jobs, on the farm and on production lines," Ambassador Kirk said.

Disconnect

Although the benefits of free trade are clear to organizations such as Blue Diamond Growers, a longtime CalChamber member, there is a disconnect between the importance of free trade and the general public, according to Ambassador Kirk.

"A conversation with agricultural representatives who strongly support trade agreements in Sacramento is much different than in cities such as Detroit or Pittsburgh, where people have come to believe that the reason that factories are shutting down is due to trade," he explained.

Ambassador Kirk urged participants at the round table to educate their friends and neighbors on the positive impact that trade agreements and exports bring to local communities.



Photo Courtesy Blue Diamond Growers

Ambassador Ron Kirk, U.S. trade representative, discusses pending trade agreements with agricultural roundtable participants. Seated from left: Karen Ross, secretary, California Department of Food and Agriculture; Blue Diamond President and CEO Mark Jansen; and Chief Agricultural Negotiator Issi Siddiqui, Office of the U.S. Trade Representative.

"We need to do everything we can right now and double down to help deliver one message—exports, particularly farm exports, help keep America strong and help us create jobs," said Ambassador Kirk. "We need to get beyond the anxiety and anger Americans have when you mention free trade issues."

"The most compelling argument to make to our friends and neighbors is that 95 percent of our customers are somewhere else now and we don't want to create a world in which American growers, manufacturers, entrepreneurs, farmers and ranchers are cut off from all those consumers ... This is great for California and we have to make sure that America knows that this is also good for America."

Market Access

With almonds being California's largest food export, valued at \$2 billion, and the sixth largest food export in the United States, Blue Diamond almond growers will gain needed market access when the FTAs pass Congress. Blue

Diamond is a cooperative owned by more than half of California's almond growers. Seventy percent of the almond crop is exported to 95 countries.

A record 1.95 billion-pound crop was estimated to be produced in California as growers began delivering the new crop in mid-August. California grows more than 80 percent of the world's almond supply. Worldwide consumption of almonds has grown every year since 2005 at an average annual growth rate of 10%.

Within five years of the removal of the 21% shelled duty, 45% inshell duty and the 5% duty on processed almonds, sales to South Korea could increase 40% to \$100 million.

At the level of 70% duty on almonds in Colombia, within five years of the duty's removal, sales to Colombia could be \$2.5 million.

Although the duty in Panama is 2% on shelled and inshell almonds and 15% on processed almonds, the same level of sales predicted for Colombia could also be achieved.

Legislative Outlook

An update on the status of key legislation affecting businesses. Visit www.calchambervotes.com for more information, sample letters and updates on other legislation. Staff contacts listed below can be reached at (916) 444-6670. Address correspondence to legislators at the State Capitol, Sacramento, CA 95814. Be sure to include your company name and location on all correspondence.

Governor Vetoes Costly Employer Mandate



OPPOSE

Governor Edmund G. Brown Jr. has **vetoed** a California Chamber of Commerce-**opposed** bill that would have increased costs for employers and opened them to potential liability by mandating them to offer commuter benefit programs to employees.

SB 582 (Yee; D-San Francisco) would have authorized metropolitan planning organizations (MPOs) to mandate employers in their jurisdiction to offer one of three options to employees for commuting purposes:

- a pre-tax option where employees can exclude from their taxable wages commuting costs incurred for public transit, as allowed under federal law;
- the employer would directly pay for public transit costs; or
- the employer would offer a vanpool service.

CalChamber voiced concern that SB 582 was a heavy-handed, one-size-fits-all approach that failed to consider the size of the company, its location in regards to public transit accessibility, employer liability issues, and education and awareness on behalf of the employer about what is allowed under federal law.

CalChamber believes there are other ways to reach the same goal without placing burdensome requirements on businesses.

Governor Brown agreed with CalChamber's concerns in his veto message, stating, "While I support the goal of reducing vehicle trips, this bill would impose a new mandate on small businesses at a time of economic uncertainty."

Staff Contact: Thomas Vu

Cost-Saving Workers' Comp Bills Await Senate Action

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medication expenses between 2006 and 2009, according to a 2010 report issued by the California Workers' Compensation Institute (CWCI).

The CWCI report also found that from 2006–2009 these three types of "medications" also accounted for a disproportionate amount of total medication payments. Compound drugs, co-packs and medical foods accounted for 3.9% of total prescriptions, but 10.1% of total payments for medications.

Because compound medications are specialty products designed specifically for individual patients, they are not covered by the Medi-Cal fee schedule, even though most or nearly all of the active components of the compound are on the fee schedule. This creates an opportunity for some pharmacists and physicians to prescribe and charge fees beyond what would be allowed for pharmaceutical treatments within the fee schedule. Cost pressures are added

to the workers' comp system, which in turn leads to higher costs for insurers and higher premiums for employers.

The CalChamber believes AB 378 is a good start at establishing guidelines to the dispensing of compound drugs and under what circumstances they would be covered, and how much.

Specifically, AB 378 removes the financial incentives for physicians to prescribe compound drugs by adding pharmacy goods to a list of medical goods and services for which it is unlawful for a physician to refer patients if the doctor has a financial stake in the pharmacy. This ensures that the physician solely has the patient's well being in mind when prescribing compound drugs.

Benefit Notices

AB 335 brings an estimated savings of \$42 million to the workers' compensation system by requiring the workers' compensation administrative director to work with the Commission on Health and

Safety and Workers' Compensation to develop regulations regarding notices to injured workers.

The bill requires the administrative director and commission to develop and make accessible a booklet written in plain language about the workers' comp claims process.

AB 335 also streamlines and simplifies other notices to employees.

The CalChamber believes AB 335 will create better outcomes for injured workers by providing them with more digestible information at key points in the claims process. This information flow should lead to a reduction in frictional legal expenses that result from confusion and poor communication.

Action Needed

The CalChamber is encouraging members to contact their senators and ask them to **support AB 378** and **AB 335**.

Staff Contact: Thomas Vu

Senate Fiscal Committee Passes Job Killer Mandate

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- hires the majority of its predecessor's employees; and
- is generally in the same business, must recognize the incumbent union and bargain with it in good faith.

Since AB 350 mandates that subsequent employers hire the predecessor's employees, it would allow the incumbent union to demand recognition of its status as the bargaining representative. CalChamber believes the decision of whether to have a union in the workplace should be left to the employers and employees, after following the proper procedures outlined by the National Labor Relations Act. Neither party should be forced into such a relationship.

Unemployment Rate Unaffected

AB 350 also will not reduce the current unemployment rate in California. Because AB 350 mandates that a subsequent contractor of property services must hire all the prior contractor's employees, the subsequent contractor will be forced to either:

- displace its existing workforce to take on the new employees; or
- eliminate positions it would have opened to new applicants in the industry, as those positions will be filled by the prior contractor's employees.

Accordingly, AB 350 does not create any additional jobs.

AB 350 also does not provide general stability for employees in this industry.

Rather, it provides stability only for those limited employees of the prior contractor. Existing employees of the subsequent contractor or other property service employees who would have received a job with the subsequent contractor, will face instability as a result of AB 350. Accordingly, AB 350 creates winners and losers amongst employees in the property services industry, something in which the government should not engage.

Eliminates Background Checks

Given that AB 350 essentially mandates a subsequent contractor to hire the prior contractor's employees, AB 350 also precludes the subsequent contractor/employer from conducting any pre-hiring background checks or interviews to determine if the employees of the prior contractor/employer are individuals who meet the unique and specific criteria of the subsequent employer. As such, AB 350 basically eliminates any distinction from one contractor to the next regarding the type of workforce that contractor can deliver, thereby minimizing competition amongst contractors. In addition, by limiting a subsequent employer's ability to properly conduct background checks of potential employees, AB 350 is setting up these subsequent employers for potential negligent hiring litigation.

Alters At-Will Presumption

Under AB 350, once employees of the

prior contractor are hired, the subsequent employer is restricted from terminating them for 60 days, unless there is "cause." In California, it is presumed that the employment relationship is at-will, unless the employer and employee have agreed otherwise. AB 350 alters that presumption, and provides these employees with a significantly higher protection from termination. After 60 days, an employer must offer continued employment to these individuals, unless the employer can identify objective incidents of unsatisfactory performance. Accordingly, these employees of the prior contractor are basically guaranteed continued employment as well as priority over any other employees in the industry.

Key Vote

AB 350 passed Senate Appropriations on August 22, 5-3.

Ayes: Alquist (D-Santa Clara), Kehoe (D-San Diego), Lieu (D-Torrance), Price (D-Los Angeles), Steinberg (D-Sacramento).

Noes: Emmerson (R-Hemet), Runner (R-Antelope Valley), Walters (R-Laguna Nigel).

No Vote Recorded: Pavley (D-Agoura Hills).

The bill will be considered next by the entire Senate.

Staff Contact: Jennifer Barrera

CalChamber-Sponsored Seminars/Trade Shows

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International Trade

9/11 Commemoration. World Trade Center. September 8, San Diego. (619) 215-9966.

Research and Development Tax Credit Webinar. Center for International Trade Development, El Camino College. September 13, Web. (310) 973-3175.

International Investment Forum. Sevastopol Institute of Banking of the Ukrainian Academy of Banking of the National Bank of Ukraine. September 16-17.

Trade Mission to South Africa. U.S. Chamber of Commerce. September 19-23, South Africa. (202) 482-5496.

Cargo Loss: Natural Disasters and Piracy Theft. Women in International Trade. September 21, Long Beach. (800) 514-6407.

International Trade Finance Workshop. Center for International Trade Development. September 23, Sacramento. (916) 563-3200.

Introduction to Global Exporting. California Manufacturing Technology Consulting. October 5, Torrance. (310) 263-3060.

Labor Law

Determining Independent Contractor Status. CalChamber. September 8, Webinar; September 19, On Demand. (800) 331-8877.

Free Trade Pacts

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Jobs Connection

Up to 30,000 jobs are generated by trade related to almond exports. The estimated \$2 billion in income generated by California almond exports is returned to local almond growers. This income helps to stimulate jobs and the economy in local California communities.

Before the roundtable, Ambassadors Kirk and Siddiqui and Secretary Ross toured Blue Diamond's Sacramento plant, the world's largest almond processing facility.

Staff Contact: Susanne Stirling



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