U.S. High Court Shuts Down Expanded State Jurisdiction

In a decision released this week, the U.S. Supreme Court has limited one potential source of unexpected litigation for companies that do business in California. The California Chamber of Commerce joined the U.S. Chamber of Commerce, American Tort Reform Association and Civil Justice Association of California earlier this year in asking the U.S. high court to make such a ruling.

The U.S. Supreme Court’s June 19 decision in *Bristol-Myers Squibb Company v. Superior Court of California* (Case No. 16-466) reverses a California Supreme Court decision that would have expanded the situations in which non-California residents may file lawsuits here, rejecting the “sliding scale approach” to specific jurisdiction.

In its 8-1 opinion, the U.S. Supreme Court cited past decisions in stating that the due process clause of the 14th Amendment limits the power of a state court to decide a case that pulls together claims of plaintiffs from other state jurisdictions.

**Background**

*Bristol-Myers Squibb* (BMS) manufactures Plavix, a prescription drug used

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July 1 Brings Changes to Local Ordinances

Throughout California, local cities and counties are passing ordinances relating to minimum wage, paid sick leave, criminal background checks, employee scheduling and more.

**Minimum Wage Increases**

Although the state minimum wage doesn’t increase until 2018, a number of local minimum wage hikes will take effect on July 1, 2017. The following cities and county will increase their minimum wage on July 1:

- **Emeryville**: $15.20/hour for businesses with 56 or more employees; $14/hour for businesses with 55 or fewer employees.
- **City of Los Angeles**: $12/hour for employers with 26 or more employees; $10.50 an hour for employers with 25 or fewer employees.
- **Los Angeles County** (unincorporated areas only): $12/hour for employers with 26 or more employees; $10.50 an hour for employers with 25 or fewer employees.
- **Malibu**: $12/hour for employers with 26 or more employees; $10.50 an hour for employers with 25 or fewer employees.
- **Pasadena**: $12/hour for employers with 26 or more employees; $10.50 an hour for employers with 25 or fewer employees.

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CalChamber Welcomes Litigation Attorney to Policy Team

Litigation attorney Kevin McKinley has joined the California Chamber of Commerce as a policy advocate. He specializes in privacy/technology, telecommunications, economic development, and workers’ compensation issues, as well as the credits, exclusions, deductions and sales tax aspects of taxation.

Before joining the CalChamber policy team in May, McKinley was a litigation attorney at the Virga Law Firm, representing business and consumer clients in areas such as privacy (medical and financial), cyber crimes and workers’ compensation.

He previously was a litigation associate for Downey Brand LLP, representing business clients in civil litigation matters in state and federal court.

“Kevin’s experience in the courtroom will serve the business community well as he works to make sure that legislative and regulatory proposals don’t add to employers’ lawsuit burden,” said CalChamber President and CEO Allan Zaremberg. “He is a strong addition to the CalChamber advocacy team.”

Since 2008, McKinley has been a member of the Sacramento City Housing Code Advisory and Appeals Board; he is the current chair.
**Labor Law Corner**

**Premium Pay on Holidays a Choice for Employers, Not a Requirement**

Although state and federal laws recognize certain days as “holidays,” there is no law that requires private employers to provide a premium rate of pay for work on those days. These “holidays” are days that government offices are closed and do not provide services as they normally would.

As a result, the government makes the holiday designation to give people notice that services will not be available, and also allows employers an extra day to respond to official inquiries and/or to pay employees if a pay day falls on the holiday.

Many employers choose to offer premium pay for work on designated holidays as a benefit to their employees, but that would be a matter of contract between the employer and the employee.

**No Legal Obligation**

You have no legal obligation to pay your employees any differently for work on a “holiday” than you do for any other day of the year.

You can choose to pay your employees even though they don’t work on the “holiday,” but you are not required by law to do so.

Moreover, if you operate a business that is open on a “holiday,” you might choose to pay your employees more for working on that particular day, but any extra money you choose to pay your employees would be within your complete discretion since it is not required by either state or federal law.

You also must remember that as a general rule, if your exempt employee works any part of a workweek, you must pay that individual his/her full salary for the entire workweek.

**Exempt Employees**

In the case of a “holiday,” where the employer chooses to close the business for a day during the workweek, the employer still must pay exempt employees their full salary for the workweek without deduction for the “holiday.”

Thus, in the vast majority of situations, a “holiday” will have no impact on the wages paid to your exempt employees.

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**CalChamber-Sponsored Seminars/Trade Shows**


**Labor Law**

Leaves of Absence: Making Sense of It All. CalChamber. August 18, Sacramento. (800) 331-8877.


International Trade


August 29, Taipei, Keelung City, Taiwan. (213) 380-3644 ext. 103.

New Leave Mandate Moves Forward from Assembly Policy Committee

A job killer bill that mandates a new protected leave of absence passed the Assembly Labor and Employment Committee this week.

**SB 63 (Jackson; D-Santa Barbara)** prohibits an employer from refusing to allow an employee with more than 12 months of service with the employer, who has at least 1,250 hours of service with the employer during the previous 12-month period, and who works at a worksite in which the employer employs at least 20 employees within 75 miles, to take up to 12 weeks of parental leave to bond with a new child within one year of the child’s birth, adoption, or foster care placement.

The bill also prohibits an employer from refusing to maintain and pay for coverage under a group health plan for an employee who takes this leave.

The California Chamber of Commerce has identified SB 63 as a job killer because the legislation targets and could significantly harm small employers in California with as few as 20 employees by adding to the existing burden under which they already struggle. Governor Edmund G. Brown Jr. vetoed a similar, but narrower, proposal just last year.

**Overwhelms Small Employers**

SB 63 targets small employers with as few as 20 employees within a 75-mile radius and requires those employers to provide 12 weeks of leave, in addition to the other leaves of absence California already imposes. This mandate will overwhelm small employers as follows:

- **SB 63 Creates a Combined 7-Month Protected Leave of Absence on Small Employers.** California already requires employers with 5 or more employees to provide up to 4 months of protected leave for an employee who suffers a medical disability because of pregnancy. SB 63 will add another 12 weeks of leave for the same employee, totaling 7 months of potential protected leave. Such an extensive period of time is unreasonable to accommodate for a small employer with a limited workforce.

- **SB 63 Could Affect Worksites that Have Substantially Fewer than 20 Employees.** SB 63 is applicable to any employer that has 20 or more employees within a 75-mile radius. Employees at multiple worksites are aggregated together to reach the employee threshold under this proposal. Accordingly, a worksite that has only 5 employees will be required to accommodate this mandatory leave if there are other worksites in a 75-mile radius that have enough employees to reach the 20 employee threshold. The worksite of the employee who takes the leave is the location that will feel the impact of the protected leave. Exposing employers with a limited number of employees at a worksite to this extensive mandatory leave will create a hardship.

- **SB 63 Imposes a Mandatory Leave, with No Discretion to the Employer.** As a “protected leave,” with a threat of litigation to enforce it, SB 63 mandates the small employer to provide 12 weeks of leave. The leave under SB 63 must be given at the employee’s request, regardless of whether the employer has other employees out on other California required leaves. This mandate on such a small employer with a limited workforce creates a significant challenge for the employer’s ability to maintain operations.

- **SB 63 Imposes Additional Costs on Small Employers that Are Struggling with the Increased Minimum Wage.** Even though the leave under SB 63 is not “paid” by the employer, that does not mean the small employer will not suffer added costs. While the employee is on leave, the employer will have to: 1) maintain medical benefits; 2) pay for a temporary employee to cover for the employee on leave, usually at a higher premium; or 3) pay overtime to other employees to cover the work of the employee on leave. The cost of overtime is higher given the increase of the minimum wage, which will add to the overall cost on small employers.

- **SB 63 Exposes Small Employers to Costly Litigation.** SB 63 labels an employer’s failure to provide the 12-week leave of absence as an “unlawful employment practice.” This label is significant as it exposes an employer to costly litigation under the Fair Employment and Housing Act (FEHA).

An employee who believes the employer did not provide the 12 weeks of protected leave, failed to return the employee to the same or comparable position, failed to maintain benefits while the employee was out on the 12 weeks of leave, or took any adverse employment action against the employee for taking the leave, could pursue a claim against the employer seeking: compensatory damages, injunctive relief, declaratory relief, punitive damages, and attorney’s fees.

A 2015 study by insurance provider Hiscox regarding the cost of employee lawsuits under FEHA estimated that the cost for a small- to mid-size employer to defend and settle a single plaintiff discrimination claim was approximately $125,000.

**Veto of Similar Bill**

Last year, SB 654 (Jackson; DSanta Barbara), a similar yet narrower proposal, was vetoed by Governor Brown. SB 654 mandated small employers to provide 6 weeks of leave, instead of 12 weeks, as proposed in SB 63.

In his veto message, Governor Brown stated:

“It goes without saying that allowing new parents to bond with a child is very important and the state has a number of paid and unpaid benefit programs to provide for that leave. I am concerned, however, about the impact of this leave particularly on small businesses and the potential liability that could result. As I understand, an amendment was offered that would allow an employee and employer to pursue mediation prior to a lawsuit being brought. I believe this is a viable option that should be explored by the author.”

Despite Governor Brown’s request to consider options/amendments to limit litigation, SB 63 continues to expose small employers to costly litigation that will simply overwhelm them.

**Family-Friendly State**

California is already recognized by the National Conference of State Legislatures as a family-friendly state.
U.S. High Court Shuts Down Expanded State Jurisdiction

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to inhibit blood clotting. In the case, 86 California residents and 592 residents from 33 other states sued BMS and McKesson Corporation, a pharmaceutical distributor headquartered in California, for injuries allegedly arising from the plaintiffs’ use of Plavix, including products liability, negligent misrepresentation and misleading advertising claims.

The California Supreme Court concluded the state did not have general jurisdiction over the case. A court with general jurisdiction may hear any claim against a defendant, even if all incidents underlying the claim occurred in a different state.

But the state high court said California courts may exercise “specific jurisdiction” over the non-California resident plaintiffs’ claims in the case because those claims arose from conduct similar to that giving rise to the California plaintiffs’ claims—the nationwide marketing and distribution of Plavix.

Applying the “sliding scale” approach to specific jurisdiction, the California Supreme Court majority noted that the more wide-ranging a defendant’s contacts with a state, the more readily a court presumes a connection between the claims and the state contacts. BMS’ extensive contacts with California included more than $900 million from Plavix sales in California, the relationship with a California distributor, maintenance of research and development facilities, and hundreds of California employees.

Friend-of-the-Court Brief

The friend-of-the-court brief filed by the CalChamber and others detailed the harm resulting from the sliding scale approach, pointing out that it is unfair to litigants because a potential defendant would be unable to predict where litigation might be filed.

The brief also noted that the claims by the non-California plaintiffs did not arise from BMS contacts with California, as the drug was neither manufactured nor purchased here. Moreover, the research facilities in California had nothing to do with the development of Plavix.

U.S. Supreme Court Ruling

The U.S. Supreme Court commented that the BMS case “illustrates the danger of the California approach. The State Supreme Court found that specific jurisdiction was present without identifying any adequate link between the State and the nonresidents’ claims. As noted, the nonresidents were not prescribed Plavix in California, did not purchase Plavix in California, did not ingest Plavix in California, and were not injured by Plavix in California.”

The U.S. high court declared: “The mere fact that other plaintiffs were prescribed, obtained, and ingested Plavix in California—and allegedly sustained the same injuries as did the nonresidents—does not allow the State to assert specific jurisdiction over the nonresidents’ claims...What is needed—and what is missing here—is a connection between the forum and the specific claims at issue.”

Staff Contact: Heather Wallace

July 1 Brings Changes to Local Ordinances

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- **San Francisco**: $14 an hour.
- **San Jose**: $12 an hour.
- **Santa Monica**: $12/hour for employers with 26 or more employees; $10.50 an hour for employers with 25 or fewer employees.

In addition, both San Leandro and Milpitas enacted new minimum wage ordinances that go into effect on July 1, 2017.

Eligibility rules may vary between these different locations.

Local Leave Laws

The City of Los Angeles paid sick leave ordinance applies to employers with 25 or fewer employees beginning July 1, 2017 (smaller employers were given a phased-in implementation. Employers with 35 or more employees must begin complying as of July 1, 2017.

Emeryville’s Fair Workweek Ordinance is effective July 1, 2017, and sets scheduling requirements for certain retail and fast-food employers.

Many of these local ordinances contain notice requirements. California Chamber of Commerce members can use the Local Ordinance Wizard on HRCalifornia to determine which requirements apply. Nonmembers can sign up for a free 15-day trial of HRCalifornia.

Staff Contact: Gail Cecchettini Whaley

New Leave Mandate Moves Forward from Assembly Policy Committee

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tures as one of the most family-friendly states given its list of programs and protected leaves of absence, including: paid sick days, school activities leave, kin care, paid family leave program, pregnancy disability leave, and the California Family Rights Act. This list is in addition to the leaves of absence required at the federal level.

In a recent study, “The Status of Women in the States: 2015 Work & Family,” California was ranked No. 2 for work and family policies that support workers keeping their jobs and also caring for their family members.

Imposing an additional 12-week, mandatory leave of absence targeted specially at small employers is unduly burdensome.

Key Vote

SB 63 passed the Assembly Labor and Employment Committee, 5-1, on June 21:

Ayes: Chau (D-Monterey Park), Gonzalez Fletcher (D-San Diego), Kalra (D-San Jose), McCarty (D-Sacramento), Thurmond (D-Richmond).

No: Harper (R-Huntington Beach).

Not voting: Flora (R-Ripon).

Staff Contact: Jennifer Barrera
Japan-California Annual Luncheon Gathering Underscores Longstanding Trade/Investment Partnership

An annual meeting between the California Chamber of Commerce and Japan business leaders highlighted California’s continuing interdependence with one of its largest trade and investment partners.

Leading the Japanese business delegation were Tomita Hiroshi, president of the Japanese Chamber of Commerce of Northern California (JCCNC), and Hitoshi Ishikawa, president of the Japan Business Association of Southern California (JBA).

Representing the CalChamber at the June 21 luncheon were Allan Zaremberg, president and CEO, and Susanne T. Stirling, vice president, international affairs.

Discussion Themes

Three themes for discussion emerged from a survey the JBA and JCCNC conducted of their member companies in preparation for the groups’ two-day visit to Sacramento:

• Impact by Federal Government Change: The federal government is releasing new policies that may affect California’s major policies, thereby having an impact on Japanese businesses’ operation in California. Japanese representatives discussed how California views the changes made at the federal level, their possible impact on major policies, and if actions are considered for alleviating these changes.

• Business Environment: Rising operational costs are a major challenge for both existing and newly launching Japanese companies in California. The Japanese companies were interested to discuss if measures have been considered to achieve balanced growth in the long run.

• Assistance for New Companies: While the number of Japanese businesses in California is increasing every year, there are an increased number of inquiries from businesses that experience difficulty in following necessary governmental procedures. The Japanese companies focused on how this situation may be improved.

Strong Partnership

The United States is a large supplier of chemicals, transportation equipment, and computer and electronic products to Japan, the world’s third largest economy. Japan is also one of the largest U.S.

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Seated from left: Masahiro Nakada, director, Japanese Chamber of Commerce of Northern California (JCCNC)/president, Salad Cosmo USA Corporation; Yuko Kaifu, executive vice president, Japan Business Association of Southern California (JBA)/president, Japan House; Hiroshi Tomita, president, JCCNC/president and CEO, Tomita International; Allan Zaremberg, president and CEO, CalChamber; Hitoshi Ishikawa, president, JBA/senior vice president, Mitsubishi Corporation Los Angeles Branch; Shinya Imai, vice chair, government relations, JCCNC/president and CEO, Mitsui & Co. Global Investment, Inc.; Naoshi Matsuhashita, chair, JBA Business and Commerce Committee/director, chief operating officer, NRI Secure Technologies, Ltd.; Eiji Namba, first vice president, JCCNC/general manager, San Francisco Office of The Bank of Tokyo-Mitsubishi UFJ, Ltd.

Standing from left: Yuji Takahashi, executive director, JBA; Yasuhiro Zaima, JCCNC/senior director, TOTO Americas Holdings, Inc.; Susanne T. Stirling, vice president, international affairs, CalChamber; Tadao Ogaki, chair, government relations, JCCNC/president and CEO, Zenrin USA, Inc.; Jun Suto, JBA Business and Commerce Committee/CEO and managing director, S-Cubed Consulting; Kenji Sakai, deputy chair, JBA Business and Commerce Committee/senior vice president, The Japan Desk CBRE, Inc.; Tomomichi Saito, director, JCCNC/vice president and general manager San Francisco, All Nippon Airways Co., Ltd.; June-ko Nakagawa, secretary and acting executive director, JCCNC; Tak Nishida, chair, JCCNC Corporate Operations Café Committee/president and CEO, FX Global, Inc.
Bill to Promote Housing Construction Clears First Senate Hurdle

AB 678 (Bocanegra; D-Pacoima) promotes local agencies’ compliance with the Housing Accountability Act (HAA), passed in 1982 to ensure that municipalities do not unfairly hinder the development of new housing projects.

Under the HAA, a local government must follow certain legal mandates before denying a housing development application that complies with its general plan and zoning rules. Unfortunately, the current enforcement mechanisms of the HAA are inadequate to achieve compliance in many cases.

AB 678 seeks to ensure that local agencies comply with HAA provisions by requiring a local agency to make relevant findings if it denies a housing development application, clarifying provisions of the HAA and imposing added penalties on agencies that violate the HAA by failing to make appropriate findings.

Housing Crisis

California’s unprecedented housing crisis is caused by a severe lack of new housing construction at all levels of affordability.

One of the most significant barriers to the construction of new housing is unjustified local resistance from NIMBY (not in my backyard) groups.

Using unreasonable arguments, “no growth advocates” and NIMBYs have significantly curtailed housing construction, which has worsened the jobs-housing imbalance in our communities. This imbalance causes hardship for many people, especially low-income families in need of housing close to their jobs.

AB 678 will help make the HAA a more effective tool to ensure construction of new housing during crises like the one California faces today.

Key Vote

AB 678 passed the Senate Transportation and Housing Committee on June 20, 8-2:

- Ayes: Allen (D-Santa Monica), Atkins (D-San Diego), Beall (D-San Jose), Mendoza (D-Artesia), Roth (D-Riverside), Skinner (D-Berkeley), Wieckowski (D-Fremont), Wiener (D-San Francisco).
- Noes: Bates (R-Laguna Niguel), Morrell (R-Rancho Cucamonga).
- No Votes Recorded: Cannella (R-Ceres), Gaines (R-El Dorado Hills), McGuire (D-Healdsburg).

The bill will be considered next by the Senate Judiciary Committee.

Summit Video

AB 678 is just one of many housing bills, good and bad, being considered this year. Get an overview of housing legislation by watching the housing bills update at www.calchamber.com/videos.

Staff Contact: Louinda V. Lacey

Annual Gathering Underscores Longstanding Japan-California Partnership

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foreign markets for agricultural products.

California continues to be the top exporting state to Japan, accounting for 18.6% of total U.S. exports. Japan has remained California’s fourth largest export market since 2010, after Mexico, Canada and China.

California is currently the top importing state in the U.S. for products from Japan. In addition, California buys more products from Japan than any other country besides China and Mexico.

History of Interdependence

According to the JCCNC/JBA annual report, it is said that the first arrival of a Japanese person to California was in 1850. Following this, the first official Japanese delegation to the U.S. arrived in San Francisco on March 17, 1860.

Since then, California and Japan have built a strong relationship through various historical, cultural, and economic events. California and Japan have established 98 sister cities, amounting to 25% of all sister cities in the United States.

In 2015, 537,000 Japanese travelers visited California to enjoy the state’s beautiful nature, sightseeing spots and wines. Japan had the fourth largest number of visitors to California, after China, England and Australia (excluding Mexico and Canada).

Nearly 40% of visitors from Japan came to California for business purposes and to attend conventions and conferences, while the average of all overseas visitors to California for the same category was 22%. Japanese visitors have spent $1.18 billion while in California.

Japan is also one of the top five countries to import California wine.

Contribution to California

The Japan External Trade Organization (JETRO) conducts surveys of Japanese companies in California every two years. According to the 2016 survey, Japanese companies’ largest industry in California is the service industry. In recent years, many Japanese retail stores and restaurants started their business in California.

Japanese companies are creating approximately 217,000 jobs in California. As of March 2016, 1,470 Japanese-affiliated companies operating business were identified in California. Japanese companies hire 96.2% of employees locally.

Staff Contact: Susanne T. Stirling
Profiles in Trade

Gliding Eagle Helps Producers Keep Track of Products Until Delivery to Consumer

In the fragmented and murky world of global trade today, premium brands in particular face two challenges: assuring the authenticity of valuable products and establishing a transparent connection with consumers.

California Chamber of Commerce member Gliding Eagle Inc., founded in 2010, has found its niche in providing a solution to transparency in international commerce.

As a systems and data technology company specializing in global trade, Gliding Eagle tracks each product from the producer to the consumer to ensure authenticity and channel accountability. The company shares the data with partners in the channel to build mutual trust.

Technology

Company founder and CEO Jack Duan, a former senior technologist at Sun Microsystems, pulled together a team with industry experience in technology and distribution. Team members are located in both the San Francisco Bay Area and Beijing.

Duan reports the company deploys its cloud and mobile-based technology, built in partnership with IBM using Blockchain, to help clients track each product unit. The tracking follows the product for every step from the producer to the final branded premium wines and natural consumer products. Company co-founder Adam Ivor, also vice president of operations, had built a winery in Sonoma and is a winemaker.

Plans are to expand service to include health care and luxury goods—any products where authenticity is paramount.

Napa Wines to China

Since September 2015, the Gliding Eagle system has been used to track more than $2 million worth of premium Napa wines shipped to China.

So far, Gliding Eagle orders have been driven by word of mouth. It now counts 70 premier California wineries as clients, including Robert Mondavi, Silver Oak, Beringer, Yao Family Wines.

FedEx, IBM and the U.S. Department of Commerce are the company’s strategic partners.

The U.S. Department of Commerce recently recognized the company’s contributions to global trade with the Export Achievement Award. The award was presented to Duan and other Gliding Eagle representatives at the CalChamber International Forum on May 31 (see photo).

Staff Contact: Susanne T. Stirling

CalChamber Welcomes Litigation Attorney to Policy Team

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He previously served as a judicial extern to the Honorable Kimberly J. Mueller, U.S. District Court judge for the Eastern District of California. He also has been a licensed real estate and insurance agent.

McKinley holds a B.B.A. from National University and J.D. with great distinction from the McGeorge School of Law, University of the Pacific, and was admitted to the Order of the Coif. At McGeorge he served as a primary comment editor and writer for the McGeorge Law Review.
Save 20% or More on Mandatory Midyear Poster Updates

On July 1, 2017, minimum wage increases take effect in many California cities, as well as in other states. These locations require updated postings on that date. (Plus, Arizona, Nevada and Oregon have added other midyear notices.)

Where your employees work affects which updated posters apply to you. (Review covered employers and employees at calchamber.com/july1.)

For a limited time save 20% on local ordinance and out-of-state posters with required midyear updates. Preferred/Executive members receive their 20% member discount in addition to this offer.

ORDER NOW online at calchamber.com/july1 or call (800) 331-8877. Use priority code PLJ3.