Governor Signs CEQA Reform, Land Use Bills
Legislation Helps Relieve Building Red Tape

Two California Chamber of Commerce-supported bills that will help expedite home building, one dealing with California Environmental Quality Act (CEQA) reform and another with land-use improvements, have been signed by Governor Edmund G. Brown Jr.

**AB 1804: Promotes Housing Development**

AB 1804 (Berman; D-Palo Alto) expedites infill development of affordable housing by expanding the existing California Environmental Quality Act exemption for infill projects to unincorporated areas already surrounded by urbanized land uses and populations.

By expanding this categorical exemption, the bill would incentivize and streamline the development of affordable housing units in unincorporated areas surrounded by urban uses. Although the bill expands the geographic scope of the exemption, AB 1804 limits projects that may qualify to multi-family projects of at least six units at a density at least equivalent to the surrounding area, and no less than six units per acre.

CEQA serves an important goal of preventing public agencies from approving projects with potentially significant impacts if there are feasible mitigation measures that would eliminate or substantially reduce those impacts. Notwithstanding these benefits, CEQA is often used by special interest and community groups to delay, scale back, or halt projects altogether for reasons unrelated to the environment.

By revising the CEQA categorical exemption to narrowly include residential and mixed-use housing in certain unincorporated areas, AB 1804 balances the vital need for new housing with ensuring that any potential project subject to the exemption does not have a significant effect on the environment. Until significant changes are made to the underlying CEQA pro-

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CalChamber Reaffirms Support for U.S.-Korea Pact as President Trump Signs Revised Deal

On Monday, September 24 at the United Nations General Assembly in New York, President Donald J. Trump signed the revised U.S.-Korea deal with South Korean President Moon Jae-in, calling it a “brand new agreement.”

The revised deal includes an extension to the phase-out period for the 25% U.S. tariff on trucks. The tariffs had been scheduled to phase out by 2021, but the amendment will lengthen the phase-out period to 30 years (until 2041).

Additionally, the number of manufactured car exports to Korea under U.S. standards was doubled from 25,000 to 50,000. It is unclear, however, as to whether these changes will exempt Korea from the potential auto tariffs threatened by the administration under Section 232.

Other amendments include harmonized vehicle testing requirements, Korean recognition of U.S. standards on parts, and improvements to fuel economy standards. There also were modifications to Korea’s customs and verification processes, and its pharmaceutical pricing policy.

**CalChamber Support**

The CalChamber reaffirms its support for the U.S.-Korea (KORUS) free trade agreement (FTA).

Defending KORUS is a priority issue for the U.S. Chamber, CalChamber, and businesses across the country. The U.S. See CalChamber Reaffirms: Page 7

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**Labor Law Corner**

**Options to Consider When Employee Rescinds a Resignation**

Our employee gave notice yesterday that he is quitting effective two weeks from now. Today, he indicated he wants to stay with us. Today, he indicated he wants to stay. What are our options? When an employee attempts to “rescind a resignation,” the employer is not required to accept said rescission.

Indeed, if this is a less-than-stellar employee, the employer may be happy to have the individual resign.

**Get It in Writing**

An issue can come up when a resignation is verbal, and then the employee rescinds it. For this reason, it is best to have employees put their resignation in writing. Even an email is sufficient to prove the resignation happened, in the event the employee contends he/she never really resigned.

If the employee does not put the resignation in writing, it’s advisable for the employer to accept the resignation immediately and in writing to acknowledge and confirm that the employer is acting on the wishes of the employee.

Indeed, the employer should start a search for a new employee to show that the employer has acted on the resignation notice. Starting the search usually helps with the employee contending that he/she did not put the resignation in writing and establishes that the employer relied on notice from the employee.

**Other Scenarios**

Another scenario that occurs around resignations is when an employee gives a lengthy resignation notice, and the employer prefers to cut ties immediately. If an employee provides 30 days’ notice and the employer decides today is the last day, the resignation becomes a termination and the individual is eligible for unemployment benefits.

Alternatively, if an employee gives notice and the employer decides today is the last day, but the employer pays the person through the notice period, then the resignation stays a resignation.

When paying an employee his/her final paycheck, be it resignation or termination, do not mail that check unless the employer directs you to do so in writing.

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**CalChamber-Sponsored Seminars/Trade Shows**


**Labor Law**

HR Boot Camp. CalChamber. October 17, San Francisco – SOLD OUT; December 7, Oakland. (800) 331-8877.


**Business Resources**


**International Trade**


One-Size-Fits-All Approach to Independent Contractors Ignores Value to Economy

A wholesale reclassification of workers would have significant consequences for many different sectors in the state’s economy, according to a recent study by Beacon Economics.

“Since the nature of, and reliance on independent contracting varies by industry, a one-size-fits-all policy ignores the complexity and nuance of such work arrangements, and the value they bring to California’s economy,” the study states.

As many employers know, the California Supreme Court outlined a new test in Dynamex Operations West, Inc. v. Superior Court, No. S222732 (April 30, 2018) to determine whether a worker must be classified as an employee, rather than as an independent contractor, and subject to all the laws governing wages, hours and rest breaks, as well as the withholding of taxes.

The Supreme Court replaced a totality of circumstances test that it had created with a decision in 1989 and replaced it with an “ABC” test of three factors, the most significant being that the worker performs work which is not the hiring entity’s usual business.

Beacon Economics Executive Summary

In the executive summary of its report, Beacon notes that the California Supreme Court decision in Dynamex has the potential to be a “watershed moment” for the state’s economy.

The court’s guidelines for determining whether certain categories of workers should be considered as employees or independent contractors have far-reaching consequences in relation to worker regulations and their protection under California law, Beacon points out. While specifically related to the delivery service industry, the Dynamex decision “will potentially make it more difficult for companies to classify workers as independent contractors in other sectors of the economy. The decision is part of a broader legislative and judicial effort to define and understand the changing nature of employer-employee relations.”

Beacon goes on to comment: “While worker classification and ‘alternative’ work arrangements have received widespread media attention with the advent of the gig economy, alternative work arrangements have long been a part of modern economies.”

The Beacon analysis aims to shed light on independent contractors and similar alternative work arrangements by:

• First measuring the scope of the independent contractor and alternative worker labor market in California.
• Second, the study examines trends in the data and evaluates whether there has been an increasing reliance on independent contractors and other alternative work arrangements in the state recently.
• Third, it reviews the available evidence on worker preferences for alternative work arrangements—for example, it will consider whether independent contractors might otherwise prefer standard forms of work.
• Finally, the report considers the potential effect of the Supreme Court decision on work arrangements in California.

Key Findings

The Beacon study finds that:

• Independent contracting and so-called alternative work arrangements existed long before the rise of the modern day economy. Even at the height of industrial production in the United States, many workers worked in informal, temporary, and secondary labor markets.

• Independent contracting and alternative work arrangements are generally defined in relation to standard work arrangements, which typically refer to full-time, permanent employment by a particular business enterprise.

• Independent contracting is used across a variety of industries, which challenges the suggestion that independent contracting is something specific to emergent sectors of the economy, such as the gig economy. In California, the entertainment, professional, scientific and technical services, transportation and real estate industries rely heavily on independent contractors.

• The extent of the use of independent contractors varies by industry; the contracting model works for some industries and not for others. In some industries, employers must upsize and downsize their workforce on a project-by-project basis. In the construction industry, for example, no two projects require the same number of workers.

• A failure to recognize that the effective operation of some industries requires a level of flexibility in recruitment practices could have an unprecedented and unpredictable impact on the state’s economy.

• In California, traditional forms of employment are growing far more quickly than the number of independent contractor positions. For example, in California over the period 2010–2016, five employees have been added for every independent contractor job.

• The U.S. Department of Labor survey of contingent workers is the most comprehensive survey of alternative work arrangements in the U.S. economy. It asks “contingent” workers whether they are satisfied with their work arrangement, or whether they would prefer a traditional form of employment. In 2017, the survey found that 79.1% of independent contractors preferred alternative work arrangements, while only 8.8% of survey respondents expressed displeasure, stating their preference for a traditional work arrangement.

• Another measure of worker satisfaction is found in statistics relating to the number of part-time workers who would otherwise prefer full-time employment, but cannot find it due to unfavorable economic conditions. In California, the number of workers who fall into this category has decreased markedly the further the economy has moved from the Great Recession. Since 2010, the number of workers within this category has fallen by 54%.

• Direct costs to employers of reclassifying workers from independent contractors to employees include the cost of conforming to minimum wage laws, and the payment of payroll taxes and employee benefits.

• The cost of payroll taxes and other benefits represents a direct cost to companies and anywhere up to an additional
CalChamber Seeks Changes to Regulations on New Parent Leave, Ban-the-Box Laws

The coalition is leading a coalition seeking technical changes to state regulations proposed to implement two laws that went into effect on January 1—the statewide ban-the-box law and the New Parent Leave Act (NPLA).

Both laws amend the state Fair Employment and Housing Act (FEHA).

Regulating Criminal History Checks

California’s new ban-the-box law prohibits employers with five or more employees from asking job candidates about any criminal background before making a conditional job offer. It is a broader prohibition on the use of criminal history information than the regulations the Fair Employment and Housing Commission (FEHC) adopted last year that went into effect on July 1, 2017.

The latest FEHC proposal is an attempt to merge the new law with the pre-existing regulations, setting forth rules and procedures for when and how an employer can receive criminal history information about a job applicant.

The coalition argues in its September 7, 2018 letter that the recently enacted legislation emphasizes the FEHC does not have the statutory authority to promulgate the regulations. As previously stated in the coalition’s April 4, 2018 and July 8, 2018 letters, the proposed regulations go beyond the authority of the FEHC.

AB 1008 (McCarthy; D-Sacramento) was introduced on February 16, 2017 and approved by the Governor on October 14, 2017. AB 1008 added Government Code Section 12952, which imposes various mandates regarding conviction history.

One section of the proposed regulations causes more confusion by specifically spelling out additional limitations required by local ordinances in San Francisco and Los Angeles. Providing these specific examples is confusing because these are not the only cities with local laws and ordinances that provide additional limitations.

The coalition recommends that the examples be removed to prevent confusion and potential misstatement of the local ordinances. The coalition suggests that the proposed regulation simply state: “Employers may also be subject to local laws or city ordinances that provide additional limitations.”

Baby Bonding Integration

The draft regulations integrate the NPLA—which requires employers with 20 or more employees to provide eligible employees with up to 12 weeks of unpaid, job-protected leave to bond with a new child—into the existing California Family Rights Act (CFRA). The CFRA also provides for baby-bonding leave, but applies to employers with 50 or more employees.

The proposed NPLA regulations would include:

- A change to the required CFRA poster;
- An explanation on the use of accrued time during NPLA leave;
- An explanation of the relationship between the NPLA, CFRA and other leaves, such as pregnancy disability leave;
- Re-emphasis of the prohibition against retaliation for exercising the right to take a protected leave of absence.

In its letter, the coalition argues that the proposed family and medical leave and pregnancy disability leave notice should be revised.

Specifically, the coalition calls for providing additional clarity by separating each type of leave into its own section.

In addition, the coalition recommends using a check-the-box approach to simplify the notice for employers and employees, making these provisions even clearer.

Next Steps

The council may adopt the draft regulations as proposed or if it makes changes to the proposed text, it must make the modifications available for additional public comment.

For more information on the proposed regulations, visit the FEHC website at www.dfeh.ca.gov/fehcouncil.

Staff Contact: Laura Curtis

One-Size-Fits-All Ignores Independent Contractors’ Value to Economy

From Page 3

44% in the cost of employing a worker.

- Constraints on independent contracting also affect the benefits that many workers enjoy from such arrangements, such as the flexibility of choosing when and how many hours they work, and the opportunity to supplement primary sources of income.
- There would be benefits to some workers from gaining employee status. A small minority of workers engaged in alternative work arrangements would prefer traditional forms of work. Yet the benefits to such workers must be weighed against the broader costs of worker reclassification—including costs to other workers who benefit from alternative work arrangements, the added costs to employers, the reduction in socially valued services, and inefficiencies that are introduced into the economy.
- A key question for policy makers is whether there are more effective and efficient ways to assist the minority of workers who engage in alternative work arrangements, but would prefer traditional forms of work, that do not generate such risk for the economy.

CalChamber Offers Employers Guidelines for Political Communications to Employees

A concise overview for employers about the do’s and don’ts of communicating with employees about ballot measures is available in an online brochure from the California Chamber of Commerce.

Early voting in California begins on October 8. The brochure, “Guidelines for Political Communications to Employees,” points out that informing employees and stockholders about the impact of ballot measures (as well as proposed state legislation and regulations) is within the employer’s rights as a business owner—as long as the communication is done the right way.

Caution

The brochure emphasizes there should be NO PAYCHECK STUFFERS—employers cannot put any political messages in or on employees’ payroll envelopes.

Moreover, there should be no coercion, no rewarding or punishing employees for their political activities or beliefs (or threatening to do so).

Acceptable

Employers can communicate with their employees, stockholders and their families about the company’s support of or opposition to state legislation, regulations or ballot measures.

Also permissible is encouraging employees, stockholders and their families to support or oppose state legislation, regulations or ballot measures.

Political messages can be communicated to the business’s own employees and their families through such means as: internal mail systems (separate from payroll distribution), email systems, regular mail, bulletin boards, phone bank messages or employee meetings.

There is a distinction between the handling of internal communications (to employees, stockholders and their families) and external audiences (such as nonstockholder retirees, outside vendors, customers and passersby).

For more guidelines on political communications to employees, see the brochure at www.calchamber.com/guidelines. Two formats are available for download: an easy-to-print 8.5”x11” layout and one set up for printing on legal-size paper.

Voter Registration Deadline: October 22

October 22 is the deadline to register to vote in the November 6 election. Early voting in California begins on October 8.

Persons who register to vote in California must be:
• A United States citizen;
• A resident of California;
• 18 years of age or older on Election Day;
• Not currently imprisoned or on parole for the conviction of a felony;
• Not currently found to be mentally incompetent by a court of law.

To register to vote, a prospective voter must complete a brief voter registration application on paper or online. An online link is available in the grassroots action center at calchambervotes.com.

Applications also are available through the website of the Secretary of State, county elections offices, Department of Motor Vehicles offices, and many post offices and public libraries. To have a paper application mailed to you, call your county elections office or the Secretary of State toll-free voter hotline at (800) 345-VOTE.

Voter registration cards and voting materials are available in English, Chinese, Hindi, Japanese, Khmer, Korean, Spanish, Tagalog, Thai, and Vietnamese.

What You Will Need

To register online you will need:
• Your California driver license or California identification card number;
• The last four digits of your Social Security number; and
• Your date of birth.

Your information will be provided to the California Department of Motor Vehicles (DMV) to retrieve a copy of your DMV signature.

If you do not have a California driver license or California identification card, you can still use the online form to apply to register to vote by completing the online interview by 11:59:59 p.m. Pacific Time on the 15th calendar day before an election.

Staff Contact: Cathy Mesch

CalChamber Positions

November Ballot Positions

Oppose

Proposition 6 Makes Bridges and Roads Less Safe.
Proposition 8 Jeopardizes Access to Kidney Dialysis.
Proposition 10 Makes California’s Housing Crisis Worse.

Support

Proposition 1 Funds Affordable Housing for Veterans, Families and Seniors.
Proposition 2 Funds Stable Housing for Individuals with Mental Illness.
Proposition 3 Funds Clean, Reliable Water.
Proposition 4 Funds Critical Care at Children’s Hospitals.
Proposition 5 Removes Unfair Moving Penalty for Seniors, the Severely Disabled and Disaster Victims.
Federal Legislation Eases California Water Shortages

California’s water future will get brighter with the passage of the bipartisan, comprehensive federal legislation, America’s Water Infrastructure Act 2018 (AWIA).

The bill passed the U.S. House of Representatives and will very likely pass the U.S. Senate soon. Given President Donald J. Trump’s outspoken support for improved infrastructure and statements about more water for the Central Valley being important, his willingness to sign the bill is not in question.

Another big boost for Western water projects is the passage of the 2019 Energy and Water appropriations bill that addresses water storage, drought preparedness, and water infrastructure needs for the U.S. Bureau of Reclamation and U.S. Army Corps of Engineers.

Taken together, these water bills could jump-start water projects all over the state, including the Delta, that have been languishing for years for lack of funding. This bill is awaiting the President’s signature as well.

Water Infrastructure Act

AWIA authorizes financing for new water-storage projects as part of the Water Resources Development Act, the primary federal vehicle for water resources funding that is reauthorized every two years. Federally backed financing reduces the costs to project proponents and means much better rates for debt service that will benefit water storage projects like Sites and Temperance Flat reservoirs.

AWIA contains provisions that will support local irrigation districts and water agencies to raise spillway gates, repair and expand dams, reservoirs and other water projects. It also includes flood protections for the San Joaquin Valley, funding for a program to restore seismic stability and expansion of the San Luis Reservoir, and funding for a pilot project in the Russian River Basin to develop a system for incorporating weather forecasts into reservoir operations.

Energy and Water Bill

The 2019 Energy and Water bill provides:
• An additional $196 million to fund California and Western drought programs, including $134 million for water storage, $20 million for water recycling, $12 million for desalination and $30 million for environment and science projects. 
• $540 million for Army Corps of Engineers and Bureau of Reclamation water infrastructure programs specifically in California.
• $34 million for WaterSMART grants and almost $59 million for the Title XVI Water Reclamation and Reuse program.
• $35 million for the San Joaquin River Restoration project.
• $8 million for improved research, monitoring and forecasting of atmospheric river storms, which contributes an increasingly large share of California’s annual rainfall.
• A requirement that an independent risk analysis of Oroville Dam be conducted and an extensive review of all federal dam safety practices.
• Increased funding for desalination research and development by almost 35%.

Ongoing Battle

In a state that is chronically short of water, even in normal water years, the fight for federal funding is a serious and ongoing battle. The cost to develop or even repair infrastructure in California is much greater than other states.

Environmental regulations slow projects and add costs that strain the state and local agencies tasked with keeping water infrastructure in good repair and developing new infrastructure.

Those same regulations impede private venture capital investments into innovative technologies that save water or improve system operations.

Staff Contact: Valerie Nera

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Governor Signs CEQA Reform, Land Use Bills

cess, CalChamber supports efforts to streamline the CEQA review process for the types of projects identified in this bill.

Adequate and affordable housing is fundamental for the well-being of communities, businesses and the economy of the state as a whole. While California continues to reel from one of the most severe housing crises the state has ever experienced, it is imperative for the Legislature to do everything within its power to help expedite the construction of new residential and mixed-use housing.

AB 2913: Promotes Fairness in Housing Construction

AB 2913 (Wood; D-Healdsburg) provides that a permit would remain valid if the work on the site authorized by that permit is begun within 3 years after its issuance, or if the work authorized on the site by the permit is suspended or abandoned for a period of up to 3 years after the time the work has begun.

The bill extends the duration of a building permit from 6 months to 12 months. Given the statewide (and national) workforce shortage, it is not uncommon for builders to have to suspend operations for a short period to find the full slate of workers needed for a specific job. This change in law would be particularly helpful in fire-ravaged areas where the workforce shortage has been further exacerbated and the need to rebuild quickly is great. With the extent of the devastation and the number of homes that need to be rebuilt, one can expect delays. AB 2913 will help make sure that delay does not result in the need for duplicative building permit applications and fees.

AB 2913 will also make the permitting process less cumbersome. State and local economic conditions may change, causing some projects to slow down. Additionally, California’s state and local building codes change every 18 months; these small changes in the building code should not force a previously approved project to have to go back to the end of the permit line and resubmit (expensive) compliance documentation and pay a new set of fees for homes that were previously approved for construction.

Staff Contact: Adam Regele
CalChamber Urges U.S. Senators to Unleash Full Potential of Export-Import Bank

The California Chamber of Commerce is urging members to support restoring a quorum to the Export-Import Bank.

Since July 2015, the Ex-Im Bank has not had a quorum and so is limited to approving transactions of $10 million or less, meaning numerous lost opportunities for U.S. businesses and their workers.

The CalChamber is asking members to follow its lead in sending letters to U.S. Senators Dianne Feinstein and Kamala Harris supporting the nomination of Kimberly Reed to serve as President/Chair of the Ex-Im Bank and to continue the process to bring the Ex-Im Bank Board to a full quorum as promptly as possible.

An overwhelming majority in Congress voted to fully reauthorize the Ex-Im Bank in December 2015. Nevertheless, the chairman of the U.S. Senate Banking Committee stymied the bank’s full restoration by blocking action on nominees required to achieve a quorum for the Ex-Im Bank Board in 2016.

The bank’s inability to approve transactions exceeding $10 million extends the profound impact of the quorum lapse to larger exporters, the thousands of smaller companies that supply them, and the hundreds of thousands of workers whose jobs depend on exports.

Broad Impact

The hundreds of workers at large businesses are not the only ones affected by lost U.S. export transactions; there are strong ripple effects on the many small and medium-sized enterprises throughout the larger companies’ supply chains. The United States is home to some of the largest supply chains in the world. Sales and employees in these supply chains depend on exports of larger clients, financed by Ex-Im. Uncertainty for large clients means diminished purchasing, which means fewer sales and has a direct impact on jobs in cities and towns across the country.

Effects on U.S. businesses and workers from a lack of domestic political support for Ex-Im are exacerbated by the extraordinary steps other countries are taking to support their own exporters and national interests. Export credit agencies (ECAs) abroad are expanding product offerings allowing exporters to compete more aggressively, and more countries are opening new ECAs of their own.

With economic growth and job creation the top priorities for the United States, Ex-Im has an important role to play.

Trade offers the opportunity to expand the role of California’s exports. As one of the top economies in the world with a gross state product of more than $2.7 trillion, California exported $171.9 billion to nearly 200 foreign markets in 2017. In its September 25 letter to California’s two U.S. senators, the CalChamber explains the importance of confirming nominees to the Ex-Im Board to return it to a quorum. Failure to restore the full authority of the bank will seriously disadvantage U.S. companies—small and large—in foreign markets, potentially resulting in the loss of thousands of U.S. jobs.

On August 20, the U.S. Senate Banking Committee voted to advance the nomination of Reed to head the ExIm Bank for a term ending on January 20, 2021. The committee vote was a unanimous 25-0. The full U.S. Senate is expected to act on confirming the nomination this fall.

Record of Success

Ex-Im has a proven record of success, and turns a profit for the U.S. taxpayer. Since 2009, Ex-Im has refunded $4.8 billion to the U.S. Treasury above all costs and loss reserves. In 2017 alone, Ex-Im Bank assisted nearly 200 California exporters, helping to support almost $900 million in exports. Over the last five years, the bank authorized $6 billion in financing to support $1.3 billion of California exports. Over this period, Ex-Im supported nearly 670 California exporters, 500 of which were small businesses, including approximately 200 minority-owned and women-owned enterprises.

Action Needed

The U.S. Senate should confirm Ex-Im Bank President/Chair nominee Kimberly Reed and continue the process to restore the quorum and full authority to the Ex-Im Bank before any more harm is done to U.S. exporters and the workers they employ.

Please visit www.calchambervotes.com for a sample message and write or call your senators. Tell them to vote in support of the Ex-Im Bank.

Staff Contact: Susanne T. Stirling

CalChamber Reaffirms Support as President Signs Revised U.S.-Korea Deal

From Page 1

business community views the KORUS FTA as a strong agreement. The KORUS provisions are beneficial for U.S. industries, agricultural enterprises, farmers, ranchers, energy companies and automakers.

The CalChamber, in keeping with long-standing policy, enthusiastically supports free trade worldwide, expansion of international trade and investment, fair and equitable market access for California products abroad and elimination of disincentives that impede the international competitiveness of California business. New multilateral, sectoral and regional trade agreements ensure that the United States may continue to gain access to world markets, resulting in an improved economy and additional employment of Americans.

The KORUS FTA sends a strong signal that the United States intends to remain heavily engaged in the region for a long time to come in business, economics, security and international politics.

The FTA strengthens the 70-year-old alliance between the United States and South Korea, while reinforcing the economic and political reforms South Korea continues to make.

Staff Contact: Susanne T. Stirling
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