VOLUME 44, NUMBER 34 • DECEMBER 14, 2018

CalChamber

ALERT

Evans Hotels Exec to Chair CalChamber Board in 2019

Grace Evans Cherashore

Grace Evans Cherashore, executive chairwoman of Evans Hotels, provider of San Diego waterfront resorts, has been elected the 2019 chair of the California Chamber of Commerce Board of Directors.

Serving with Cherashore as 2019 officers of the CalChamber Board are:

• **First Vice Chair Mark Jansen**, president and chief executive officer of Blue Diamond Growers;

• **Second Vice Chair Donna L. Lucas**, chief executive officer and president, Lucas Public Affairs; and

• **Third Vice Chair Kailesh Karavadra**, West Growth Markets Leader, Ernst & Young LLP.

"The change that goes along with the seating of a new governor and a new group of legislators presents opportunities where progress can best be achieved by working together," Cherashore said.

"Our state has some challenges that will lend themselves to bipartisan approaches," she added. "Front of mind is the housing crisis and the restoration of

See San Diego Hotelier to Chair: Page 4

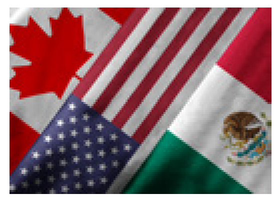
CalChamber Public Affairs Conference

Experts Comment on Midterm Elections

Photo by Matt Lara

Former California Assembly Speaker Willie Brown (left) assesses the future of California and national political parties in response to questions from CalChamber President and CEO Allan Zaremberg at the CalChamber Public Affairs Conference on November 28. More photos inside.

Trade Pact Signing Opens New Chapter in U.S.-Mexico-Canada Relations



On November 30, President Donald J. Trump, Mexican President Enrique Peña Nieto, and Canadian Prime Minister Justin Trudeau signed the new United States-Mexico-Canada Agreement (USMCA). President Trump called the new USMCA the "most modern, up-to-date, and balanced trade agreement in the history of our country."

At the signing, at the G20 meeting in Buenos Aires, Argentina, President Trump personally thanked outgoing Mexican President Peña Nieto, who then concluded the ceremony celebrating the close relationship between Mexico, Canada, and the United States, saying, "We're ready to begin a new chapter in our shared history."

Next Steps

Now that the agreement has been signed, the next steps per the procedures outlined in the Trade Promotion Authority (TPA) may begin:

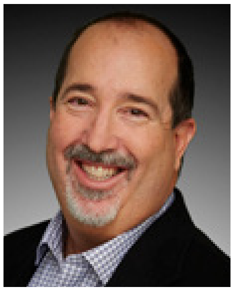
• The U.S. International Trade Commission (ITC) has 105 days from the signing of the agreement—until February 15, 2019—to report on how it will affect jobs and the economy. Congress typically

See Trade Pact Signing: Page 12

Inside

Labor Law Corner

How to Allow Employees to Take Vacation Before Accruing the Time



David Leporiere
HR Adviser

I want my employees to have 10 days of vacation each year, but I don't want them to have to wait to use it while it accrues. Can I just give them a lump sum of 10 days of vacation at the beginning of each year?

In 1982, the California Supreme Court issued its decision in the case of *Suastez v. Plastic Dress-up Co*. (31 Cal 3d 774).

In that case, the court held that vacation entitlements constitute deferred wages which vest as they are earned, and any entitlement to vacation is a proportionate right and vests as labor is rendered (*Division of Labor Standards Enforcement Policies and Interpretations Manua*l, Section 15.1.1).

Since that time, the State of California has taken the position that vacation benefits may be provided only on an accrual basis, and not in a lump sum format.

If you don't want to make your employees wait to use their vacation until it has fully accrued, you can allow them to take the time off before the entire yearly amount has accrued. You can allow the employees to take more paid vacation time off than they have accrued, which would result in a negative balance in their vacation account. You can set a limit on how far into the negative you will allow an employee to go before he/she can no longer take paid time off.

If the employee has a negative balance, that amount will shrink as the employee works throughout the year, and it will eventually return to a positive balance, provided the employee does not leave his/her employment while having a negative balance in his/her account.

If the employee's employment ends while he/she has a negative vacation balance, you are entitled to recover the value of that vacation that was advanced; however, it cannot be done through a payroll deduction.

You should consult with your legal counsel to determine the best course of action if an employee separates from employment with a negative vacation balance.

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

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CalChamber-Sponsored Seminars/Trade Shows

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

Labor Law

2019 Employment Law Updates. CalChamber. January 8, 2019, San Diego; January 9, 2019, Costa Mesa, January 10, 2019, Glendale; January 11, 2019, Sacramento—Sold Out; January 16, 2019, San Jose; January 17, 2019, Oakland; January 24, 2019, Los Angeles; January 29, 2019, San Francisco; January 30, 2019, Sacramento; January 31, 2019, Webinar. (800) 331-8877.

HR Boot Camp. CalChamber. February 22, 2019, Modesto; March 29, 2019, San Diego; April 12, 2019, Oakland; April 26, 2019, Costa Mesa; May 9, 2019, Sacramento; June 14, 2019, Walnut Creek; August 22, 2019, Pasadena; September 12, 2019, Sacramento. (800) 331-8877.

Leaves of Absence: Making Sense of It All. CalChamber. March 8, 2019, Sacramento; June 21, 2019, San Diego; August 16, 2019, Oakland. (800) 331-8877.

International Trade

Annual Export Conference. National Association of District Export Councils. May 21–22, 2019.

SelectUSA Investment Summit. SelectUSA. June 10–12, 2019, Washington, D.C. (800) 424-5249

Next Alert:
January 11, 2019

State Agency Clarifies Sexual Harassment Training Deadline

The California Department of Fair Employment and Housing (DFEH) has issued some Frequently Asked Questions (FAQs) discussing the new sexual harassment prevention training requirements that will have an impact on virtually every business in the state and all those businesses' employees and supervisors.

In the FAQs, the DFEH has clarified that the law requires that all employees be trained during calendar year 2019. This means that employees, including supervisors, who were trained in 2018 or before will need to be retrained again in 2019.

Current law requires employers with 50 or more employees to provide supervisors with 2 hours of sexual harassment prevention training.

SB 1343 (Chapter 956, Statutes of 2018) requires that all employers of five or more employees provide 1 hour of sexual harassment and abusive conduct prevention training to non-managerial employees and 2 hours of sexual harassment and abusive conduct prevention training to managerial employees once every two years. Existing law requires the training to include harassment based on gender identity, gender expression, and sexual orientation and to include practical examples of such harassment and to be provided by trainers or educators with knowledge and expertise in those areas.

Under SB 1343, there is no requirement that the five employees or contractors work at the same location or that all work or reside in California.

Under the DFEH's regulations, the definition of "employee" includes full-time, part-time and temporary employees.

CalChamber Training

The California Chamber of Commerce offers training courses for both supervisor and non-supervisor employees. Businesses can purchase training now to comply with the deadline, but not assign the training to those employees until after January 1, 2019.

CalChamber's course is improved for 2019 and provides an excellent platform for people to take the training on their smart phone, as well as a tablet, laptop or desktop.

For more information on the course, visit CalChamber's harassment training store page at ***www.calchamberstore.com***.

More Information

For more information on sexual harassment in California, CalChamber members can visit the Harassment page in the HR Library on ***HRCalifornia.com***.

IRS Extends Deadline for Certain ACA Reporting Forms

The Internal Revenue Service (IRS) recently announced that it is extending the due date for certain 2018 Affordable Care Act (ACA) reporting forms to be provided to employees.

The deadline for providing to employees Form 1095-B, Health Coverage, and Form 1095-C, Employer-Provided Health Insurance Offer and Coverage, is now **March 4, 2019** (extended from January 31, 2019).

The deadline for employers to file 2018 forms with the IRS is unchanged. Employers must file the 2018 Form 1094-B, Form 1095-B, Form 1094-C and/or Form 1095-C by February 28, 2019, if filing by mail, or by April 1, 2019, if filing electronically.

In addition, the IRS notice extends "good faith transition relief" for one more year. The IRS will not penalize employers for incorrect or incomplete forms if they can show that they have made "good-faith efforts" to comply with the information-reporting requirements.

According to the IRS, the relief applies to missing and inaccurate taxpayer identification numbers and dates of birth, as well as other information required on the return or statement. No relief is provided if the employer did not timely file or furnish the reports by the applicable deadlines or did not make a good-faith effort to comply.

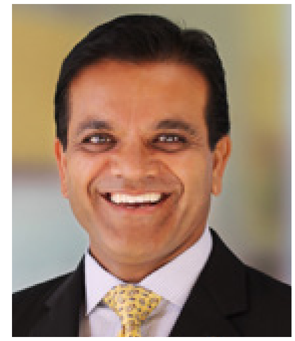
For more information, visit the IRS website at ***https://www.irs.gov***.

San Diego Hotelier to Chair CalChamber Board in 2019

2019 Officers of CalChamber Board of Directors


Mark Jansen


Donna L. Lucas


Kailesh Karavadra

2019 At-Large Members of CalChamber Executive Committee


Gregory S. Bielli


Janet A. Liang


John A. Stowell

From Page 1

certain areas of the state after the fires. The business community can weigh in and have a positive impact on the solutions we hope our great state will find."

Grace Evans Cherashore

Evans Hotels was founded in 1953 by Cherashore's late father, William D. Evans, and her mother, Anne L. Evans, a former member of the CalChamber Board.

Cherashore began her tenure with Evans Hotels as chief financial officer in 1984 and later served as president and chief executive officer for 21 years. Before Evans Hotels, Cherashore worked for Wells Fargo Bank in San Francisco in the Real Estate Industries Group.

Outside of Evans Hotels, Cherashore currently serves as a member of the Dean's Advisory Council for the University of California, San Diego Rady School of Management. Previously, she served as a director of the Federal Reserve Bank of San Francisco, Los Angeles Branch, from 2008 through 2013 with one term as chair.

Prior to her Federal Reserve position, she served as a director of Peninsula Bank of San Diego and was a founding director of San Diego Trust Bank.

Cherashore also was a director of San Diego Economic Development Corporation, the San Diego State University School of Business, the San Diego Consortium and Private Industry Council (now the San Diego Workforce Partnership), the San Diego Chapter of the American Cancer Society, and the Bishop's School.

Cherashore has a B.A., magna cum laude, from the University of Colorado, and an M.B.A. from the Amos Tuck School of Business at Dartmouth College. She was honored by the *San Diego Business Journal* as the 2013 "Most Admired CEO" for large family-owned businesses. In 2005, she was honored at the publication's 12th Annual "Women Who Mean Business" awards.

In 2017, Cherashore and Anne Evans received the Distinguished Service Award from the Federal Reserve Bank of San Francisco.

Executive Committee

The CalChamber Board also approved three directors as at-large members of the CalChamber Executive Committee.

Returning for another year as an at-large Executive Committee member:

• **Gregory S. Bielli**, president and chief executive officer, Tejon Ranch Company.

New to the rotating position for 2019 are:

• **Janet A. Liang**, president, Northern California Region, Kaiser Foundation Hospitals and Health Plan, Inc.; and

• **John A. Stowell**, senior vice president, The Walt Disney Company.

In addition to the at-large members and current officers, the Executive Committee typically includes the last three chairs of the CalChamber Board. The Executive Committee works with top CalChamber management to determine policy, financial and program direction, including, when necessary, providing policy guidance between the regular quarterly meetings of the CalChamber Board.

Staff Contact: Dave Kilby

Netherlands Looks Ahead to Post-Brexit World

Gerbert Kunst, Consul General of the Netherlands

The Netherlands looks ahead to changing trade relations in Europe as the United Kingdom is leaving the European Union, the Dutch Consul General explained to a California Chamber of Commerce gathering last week.

Gerbert Kunst, Consul General at the Consulate General of the Netherlands in San Francisco, summarized for attendees at the CalChamber Council for International Trade breakfast on December 7 some of the consequences of the UK exit from the EU, including:

• Brexit is anticipated to have a negative effect on the economy, as the Netherlands and the UK have historically strong trade relations. However, it also presents opportunities to Dutch businesses as they will have certain advantages over their UK competitors that will no longer be part of the EU.

• The European Medicines Agency, comparable to the U.S. Food and Drug Administration, will be relocating from London to Amsterdam in 2019, along with nearly 20,000 jobs.

• Certain international companies in the UK are considering moving to mainland Europe, and the European Banking Authority will be relocating from London to Paris.

California-Netherlands Ties

Kunst reviewed aspects of the strong economic ties between California and the Netherlands:

• California exports to the Netherlands about $5.79 billion worth of goods, supporting 78,200 jobs in California.

• The Netherlands ranks as California's ninth largest trading partner.

• The Netherlands exports to California about $1.5 billion worth of goods, mainly related to agriculture and machinery.

U.S.-Netherlands Connections

The trading connection between the United States and the Netherlands dates back to the earliest days of the European discovery of North American with Dutch ships arriving in New York, Kunst commented.

(From left) Mark Jansen, Blue Diamond Growers, chair, CalChamber Council for International Trade (CCIT); CCIT member Susan Corrales-Diaz, Systems Integrated; Walter van der Weiden, Consulate General of the Netherlands; and Gerbert Kunst, Consul General of the Netherlands.

Today, the U.S.-Netherlands partnership means:

• $59.3 billion in goods and services are exported from the United States to the Netherlands. Texas, California, Louisiana, Illinois and Washington are the top exporting states.

• That economic activity supports 825,000 U.S. jobs.

• The United States imports $29.3 billion in merchandise and services from the Netherlands.

Investment ties also are strong, Kunst said, citing $300 billion invested in the United States by Dutch companies, making them among the top five foreign investors in the United States.

Moreover, $750 billion is invested in the Netherlands by U.S. companies, he said.

Innovation

Kunst stressed that opportunities are available for partnerships with Dutch firms on energy projects, pointing to the nation's pursuit of alternative sources, such as wind-powered turbines.

He also cited the Ocean Cleanup program founded by a Dutch inventor at age 17 to remove plastics from the world's oceans.

World Class Center

Traits that make the Netherlands a valuable U.S. partner in economic and trade endeavors, Kunst said, include:

• Its access to 95% of the EU's lucrative markets;

• The nation's ranking as No. 1 on the Global Connectedness Index;

• 50% of Dutch gross domestic product (GDP) comes from international sources;

• The Netherlands ranks fourth in overall logistics performance and fourth in having the highest quality broadband network;

• 90% of the Dutch speak English; and

• The nation ranks No. 2 on the Global Innovation Index.

More information about the Netherlands is available at *www.NLintheUSA.com* and the CalChamber trading partner portal at *www.calchamber.com/netherlands*.

Staff Contact: Susanne T. Stirling

CalChamber Public Affairs Conference Examines Implications of Election Politics

Robert Green (left) and Adam Rosenblatt of PSB Research share results of the CalChamber's Annual Survey of California Voter Attitudes on November 27, the first day of the 2018 CalChamber Public Affairs Conference in Huntington Beach.

Photos by Matt Lara

Presenting a legislative perspective on climate resiliency and critical infrastructure issues are (from left) Assemblymembers Tom Daly (D-Anaheim); Cecilia Aguiar-Curry (D-Winters); Sharon Quirk-Silva (D-Fullerton); Rudy Salas (D-Bakersfield); and now-Senator Brian Jones (R-Santee). CalChamber Policy Advocate Leah Silverthorn (right), moderates the discussion on the second day of the conference.

Public Affairs Conference

Speakers Review 2018 Elections, Upcoming Legislative Priorities

(From left) Martin Wilson, CalChamber executive vice president, public affairs, moderates a review of the 2018 California election with Andrew Acosta, Acosta Consulting; Christy Wilson, Wilson Public Relations; and Jessica Millan Patterson, California Trailblazers, on the first day of the conference.

Photos by Matt Lara

(From left) Senator Scott Wilk (R-Santa Clarita), Assemblymembers Vince Fong (R-Bakersfield) and Kevin Kiley (R-Granite Bay), Senator Steve Glazer (D-Contra Costa), and Assemblymember Jacqui Irwin (D-Thousand Oaks) share some legislative priorities for 2019–2020 with conference attendees during the closing session as Jennifer Barrera, CalChamber executive vice president, policy, moderates.

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Public Affairs Conference

Sessions Spotlight Presidential Politics, Privacy Law, Climate Change

Rob Stutzman (right), Stutzman Public Affairs, moderates as Paul Begala (center), CNN, and Mike Murphy, Revolution Agency, speculate during the November 28 conference luncheon about what could happen in the 2020 Presidential election.

CalChamber Policy Advocate Sarah Boot (left), moderates a review of the California Consumer Privacy Act with panelists Eric Goldman, Santa Clara University School of Law; and Tanya Forsheit, Frankfurt Kurnit Klein & Selz PC in the opening session of the second day of the CalChamber Public Affairs Conference on November 28.

Discussing climate resiliency and critical infrastructure on the second day of the conference are (from left) moderator Adam Regele, CalChamber policy advocate; Jim Branham, Sierra Nevada Conservancy; Brandon Goshi, The Metropolitan Water District of Southern California; and Adrian Covert, Bay Area Council.

Photos by Matt Lara

CalChamber: Reject Prop. 65 Proposals Placing Added Burdens Only on Business

The state Office of Environmental Health Hazard Assessment (OEHHA) should reject two Proposition 65 proposals that place additional and unjustified burdens solely on businesses, a California Chamber of Commerce-led coalition of more than 200 entities wrote in a recent comment letter.

The coalition explains that businesses already face a significant disparity in the burden of proof in Proposition 65 cases. A plaintiff does not need to prove the level of exposure to a Proposition 65-listed chemical or show that anyone has been harmed. The regulations proposed by OEHHA exacerbate that problem.

Longstanding Approach

OEHHA's proposals threaten the law's longstanding average exposure-based approach to warnings—without justification and with significant cost and risk to California businesses.

For more than 25 years, the regulations have required compliance with Proposition 65 to be measured based on "the reasonably anticipated rate of intake or exposure for average users of the consumer product" at issue.

Proposition 65's unique approach to regulation, based on exposure thresholds for warnings and not concentration thresholds, recognizes that different consumers may use the same product in a way that results in different exposure levels.

Far from being a mere "clarification" to existing regulations, OEHHA's proposals present entirely new regulatory requirements that will directly affect businesses' Proposition 65 compliance efforts, as well as place additional obstacles to a defendant meeting its burden of proof in litigation.

Disputed Changes

OEHHA is proposing two changes to requirements for when businesses must warn people of potential exposure to Proposition 65-listed chemicals:

• Businesses are prohibited from averaging concentration levels for a company's food product across different facilities or different manufacturers or producers.

• When calculating an average user's exposure to a Proposition 65 chemical, the regulation mandates the arithmetic mean be used.

The prohibition on using average concentration levels solves no actual problem that OEHHA can identify, yet it will have an impact on manufacturers and have ripple effects upstream, forcing agricultural growers to incur increased production costs, testing costs, and litigation risk.

The coalition points out that to evaluate exposure levels under Proposition 65, concentration data—just like consumption data—must reflect what is typical. It is not scientifically appropriate for OEHHA to exclude this important variable (across manufacturing facilities) from a case-specific consideration of the data. The proposal will distort the determination of the reasonably anticipated rate of exposure and render it unreliable.

Increased Risk of Lawsuits

The arithmetic mean proposal also is a "solution" in search of a problem, the coalition asserts. There is no need for OEHHA to put its thumb on the scale and favor one measure of average over all others in all instances.

This proposal is inconsistent with sound principles of statistics and data evaluation. The appropriate measure of average depends on the facts and data in specific cases and is not amenable to a one-size-fits-all proposal that will lead to increased litigation risk to companies and to overwarning.

Use Case-by-Case Approach

The questions of how to determine the most appropriate measure of the average exposure and how to average concentration data should continue to be left to a case-by-case determination, the coalition told OEHHA. In any dispute about the data, courts are fully capable of evaluating the relevant evidence.

The coalition also expressed concern about a confusing statement in OEHHA's justification for its proposed regulations. According to that Initial Statement of Reasons, in the context of food, the average consumption amount "would be the amount of a food eaten on the day in question."

The coalition urged OEHHA to clarify that the issue of averaging exposures over a period longer than a single day is not addressed in the OEHHA proposals or the regulatory materials accompanying them.

Flexibility Needed

OEHHA should not adopt these proposals, the coalition stated. What OEHHA characterizes as a lack of clarity on these issues is not a problem that needs a solution. Instead, it represents the appropriate flexibility needed for a reliable determination of average exposure levels.

If OEHHA intends to proceed with its proposals, the coalition said, it must first conduct a cost analysis and provide evidence of the need for the proposals that justifies the exorbitant costs to businesses.

Next Steps

Comments on the proposed regulations were due December 3. OEHHA must now review and respond to comments. It published the proposed regulations on October 5, and has one year from that date to respond.

Staff Contact: Adam Regele

Former CalChamber Board Chair Explains Comptroller of Currency Goals

Joseph M. Otting, sworn in as the 31st Comptroller of the Currency last November, entertains the CalChamber Board of Directors dinner audience on December 6 with anecdotes about his experiences in Washington D.C. as administrator of the federal banking system, as well as information about the agency's plans to modernize and streamline its oversight of the banks and financial institutions under its purview to better serve customers, businesses and their communities. Otting, a banking executive for more than two decades, was a CalChamber Board member from May 2009 until his confirmation as Comptroller of the Currency in November 2017, and served as CalChamber chair in 2015 while president and CEO of OneWest Bank N.A.

CalChamber Board Looks at Artificial Intelligence: Past, Present, Future

CalChamber Board member Kailesh Karavadra (left) of Ernst & Young LLP and Keith Strier, Ernst & Young advisory leader for artificial intelligence (AI), give board members a quick, animated presentation on the history, present applications and future uses of AI by both businesses and government. Pointing out that AI is not just one technology, but many, the two speakers provided examples of the explosive growth of interest in AI in just the last two years, the many innovations in the field, and the policy issues being raised as a consequence. "The world of linear thinking is done," says Karavadra.
"Exponentials and curves, up or down, is the reality of where we are."

California Ranks as No. 1 'Judicial Hellhole'

California has landed atop the "Judicial Hellholes" list again, according to the latest ranking of the "most unfair" civil litigation courts by the American Tort Reform Foundation (ATRF).

Trailing not far behind California are Florida, New York City and St. Louis, Missouri. California was last at No. 1 in 2015–2016, and also held the No. 1 title in 2013–2014 and 2012–2013.

A recent study by the U.S. Chamber Institute for Legal Reform highlights both the overall cost and inefficiencies of the tort system. The report states that the cost and compensation paid in the U.S. tort system totaled $429 billion in 2016, accounting for 2.3% of the U.S. gross domestic product. The data clearly demonstrate the need for a more balanced civil justice system, the report states.

According to the report, California is a perennial Judicial Hellhole because "California judges and legislators alike have a propensity to expand liability at almost every given opportunity."

Innovator Liability

At the end of 2017, the California Supreme Court became just the second state high court to adopt the theory of "innovator liability." This theory exposes a company that invested millions or billions of dollars into developing a medication to liability when a person who took a generic version made by a competitor alleges an injury from the drug.

California's decision to adopt innovator liability makes it an outlier, according to the report. At least 35 state and federal courts have rejected innovator liability, which is a disincentive for companies to develop medications that save and improve lives.

Frivolous Prop. 65 Litigation

Baseless Proposition 65 litigation unjustly burdens companies that do business in California. The originally well-intentioned law, enacted in 1986, is now one of the plaintiffs' bar's favorite tools to exploit.

A troublesome part of the law allows private citizens, advocacy groups and attorneys to sue on behalf of the state and collect a portion of the civil fees, creating an incentive for the plaintiffs' bar to create these types of lawsuits.

Each year, attorneys send thousands of notices to companies threatening Prop. 65 litigation and demanding a settlement. A search of notices on the California Attorney General's website shows that the number of these threatened lawsuits has tripled over the last decade. Food and beverage companies are among the prime targets.

Private Attorneys General Act

Enacted in 2004, California's Private Attorneys General Act (PAGA) has become a means around arbitration clauses in employment contracts that limit costly, plaintiffs' lawyer-enriching class actions. PAGA authorizes "aggrieved" employees to file lawsuits seeking civil penalties on behalf of themselves, other employees and the State of California for Labor Code violations. Many PAGA lawsuits revolve around technical nitpicks, such as an employer's failure to print its address on employees' pay stubs, even though the address was printed on the paychecks themselves.

Seventy-five percent of penalties paid by noncompliant employers go to the state Labor and Workforce Development Agency; only 25% goes to the "aggrieved employees" and their lawyers, who take a third or so of that. In some cases, the plaintiffs' lawyers receive even more. For example, plaintiffs' lawyers walked away with 40% of a recent $9 million PAGA settlement with Target.

Food Court

California courts, both state and federal, continue to be ground-zero for "no-injury" consumer protection lawsuits targeting the food and beverage industry.

The number of lawsuits has risen sharply in recent years. Since 2012, plaintiffs' lawyers have filed more than 500 class actions challenging the marketing or labeling of food nationwide. About one-third of the food class action litigation in federal courts nationwide is in the Northern District of California, also known as the "Food Court," located in San Francisco.

California is a favorite for these lawsuits due to its plaintiff-friendly Unfair Competition Law (UCL) and the potential to bring large class actions. Many of the targeted companies settle the litigation instead of risking the high cost of a trial and the negative publicity that would follow, leading to multimillion-dollar settlements that feed the plaintiffs' bar and provide little to no benefit for consumers.

Targeting Small Businesses

A large number of lawsuits were filed under the Americans with Disabilities Act (ADA) in federal court against California businesses in 2017—2,751 lawsuits—up from 2,468 in 2016. California had the most ADA accessibility lawsuits of any state and almost double the amount of the next closest state, Florida (1,488).

In California, penalties for ADA violations are much higher than other states due to the Unruh Civil Rights Act, which allows plaintiffs to recover compensatory damages of $4,000 per violation (compared to $1,000 under federal law) plus attorneys' fees. Often these "violations" are as minor as a mirror that is an inch too high or a sidewalk or parking lot that is angled one degree too much.

Not only are plaintiffs' attorneys targeting "brick and mortar" stores, they are now targeting companies for website accessibility issues. Through the first six months of 2018, 2,155 lawsuits alleging that online shopping and other websites did not sufficiently accommodate individuals with visual impairments were filed in California. That number is more than double the next highest state, New York (1,026).

The full report is available at ***www.judicialhellholes.org***.

2018–2019 Judicial Hellholes

1. California
2. Florida
3. New York City
4. St. Louis, Missouri
5. Louisiana
6. Philadelphia Court of Common Pleas
7. New Jersey Legislature
8. Madison and St. Clair Counties, Illinois
9. Twin Cities, Minnesota

Source: American Tort Reform Foundation

Trade Pact Signing Opens New Chapter in U.S.-Mexico-Canada Relations

From Page 1

waits for this report before considering a new trade agreement.

• The TPA also requires the President to send Congress a draft statement of administration action and the text of the final agreement at least 30 days before submitting the legislation. Then the U.S. House Ways and Means Committee and U.S. Senate Finance Committee may provide feedback to the administration, which then drafts the bill.

• Finally, the President sends the bill to Congress.

The TPA then lays out timelines for committee action and floor debate.

The day the agreement was signed, U.S. House Ways and Means Committee Chairman Kevin Brady (R-Texas) remarked, "we are carefully analyzing this text in the open and transparent process that Congress created under our new trade rules."

The USMCA, which replaces the North American Free Trade Agreement (NAFTA), is expected to be introduced in the new session of Congress at the end of the first quarter of 2019.

The Agreement

The three countries reached an agreement on the new USMCA trade pact on September 30 of this year. The joint statement touted the new agreement as creating "freer," "fairer" and more "robust economic growth in our region."

President Trump has described the new U.S.-Mexico-Canada Agreement as being the most modern, up-to-date and balanced agreement, with the most advanced protections for workers ever developed.

At the time the agreement was announced, President Trump mentioned that newly inaugurated Mexico President Andrés Manuel López Obrador worked closely on the new USMCA trade deal while president-elect and that they had since established a good working relationship. President Trump also thanked Canadian Prime Minister Trudeau for his work in getting the deal done.

Updates to Agreement

The revised NAFTA deal improves access to Canada's dairy market for U.S. farmers, giving U.S. exporters an estimated additional 3.59% market share. The agreement also provides for stronger intellectual property provisions, and tighter rules of origin for auto production, according to two senior Trump administration officials.

The Chapter 19 dispute-settlement mechanism remains untouched, as Canada had fought for, although the investor-state dispute settlement (ISDS) will be phased out for Canada and restricted to four areas for Mexico.

Canada also agreed to raise the threshold for applying duties to cross-border purchases, which was a key demand from the United States. The new *de minimis* level will be C$150 ($117) for customs duties, up from C$20.

Steel and aluminum tariffs imposed earlier this year will remain in effect and be dealt with separately. However, an agreement in the new pact increases by 800,000 the number of passenger vehicles that come across the border from Canada without being subject to a likely 25% duty.

CalChamber Input

The California Chamber of Commerce will urge Congress to approve the new USMCA, following the objectives and procedures of the TPA.

Since 2017, the CalChamber has been communicating with the Trump administration to support the renegotiation of a modernized NAFTA. Numerous rounds of trilateral negotiations among the United States, Canada and Mexico finally resulted in agreement.

On June 12, 2017, the CalChamber originally submitted comments on "Negotiating Objectives Regarding Modernization of the North American Free Trade Agreement with Canada and Mexico" to the U.S. Trade Representative—with a copy to the California congressional delegation.

The recently agreed-to deal was written to last for 16 years, but would allow the countries involved to revise or modernize aspects of the deal every six years. If so, the pact would then continue for another 16 years after it is revised. Originally, the CalChamber opposed the proposed five-year sunset clause, as a forced re-examination of the pact on such a short time frame would cause uncertainty for all parties.

CalChamber Position

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

The provisions of the NAFTA with Canada and Mexico have been beneficial for U.S. industries, agricultural enterprises, farmers, ranchers, energy companies and automakers.

The CalChamber originally actively supported the creation of the NAFTA among the United States, Canada and Mexico—now comprising 489.5 million people with combined annual trade with the United States being around $1.139 trillion in 2017. In 2017, goods exports exceeded $525.46 billion, while goods imports totaled nearly $614.02 billion.

The CalChamber's longstanding support for NAFTA is based upon an assessment that it serves the employment, trading and environmental interests of California and the United States, as well as Canada and Mexico, and is beneficial to the business community and society as a whole. Since 1993, trade among the three NAFTA countries has nearly quadrupled.

Mexico and Canada are California's largest and second largest export markets. A final approval of the USMCA will benefit the California economy and jobs.

Staff Contact: Susanne T. Stirling

Data Showing Balanced Growth Contrasts with Public Pessimism on State of Economy

U.S. Outlook: Why So Glum?

The 2018 midterm election is finally behind us, and proved to be just as dramatic as would befit today's hyper-charged political environment. Moreover, the final results pretty much assure that the drama coming out of Washington, D.C. will not lessen over the next two years of the Trump administration.

Indeed, without even taking a breath, it feels as if we are already in the run up to 2020. Will the Democratic takeover continue? Will the Republicans be able to hold the Senate and/or the Presidency?

While President Trump's actions in the months ahead will be a major determinant of what happens in 2020, the outcomes will depend even more on where the economy heads over the next two years.

Beacon Economics' outlook for the U.S. economy hasn't changed much over the course of 2018, despite the fact that we are on the edge of the longest economic expansion in the nation's history. Growth has progressed at a steady, sustainable pace since the 2015 commodity bust and mild economic slowdown that occurred that year.

Growth in the last quarter of this year is expected to come in at slightly less than 3%, with growth for the entire year reaching 3.2%. This modest jump is being driven by the fiscal stimulus plan passed by Congress at the end of 2017.

Outside of the rapidly growing federal budget deficit, the U.S. economy looks to be well-balanced in terms of the structure of growth with solid fundamentals including private sector debt levels, consumer savings rates, rising wages, the overall pace of homebuilding, and business investment. Unemployment is low—but job growth remains steady.

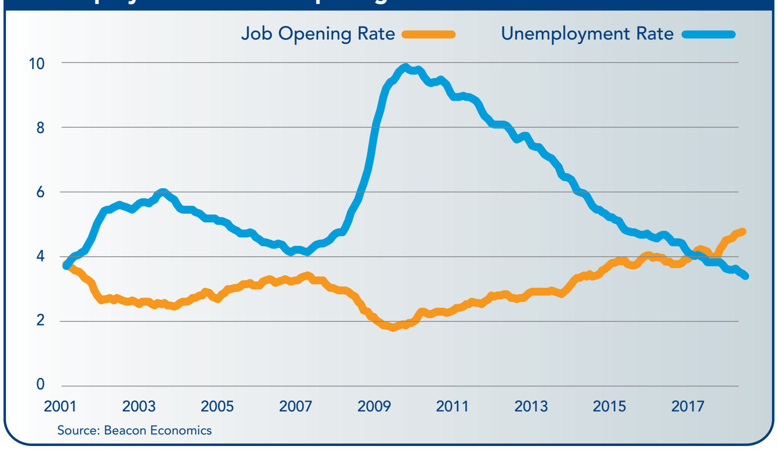
In short, Beacon Economics' forecast remains boringly positive, and yes, that outlook is expected to stay in place though 2020. This isn't optimism. Rather, we don't have any real reason to think otherwise.

U.S. Trade Policy

The only major short-term worry has been wrapped around the direction of U.S. trade policy, but the worst scenarios have not materialized. Rather than unilaterally pull out of the North American Free Trade Agreement (NAFTA) as threatened, the United States instead negotiated a new trade agreement with our two neighbors and largest trading partners that, thankfully, looks almost exactly like the old trade agreement.

A brewing trade fight with the European Union that began with steel tariffs also has settled down, and there are now discussions about renewing talks and working toward a new trade agreement. It sounds a lot like T-TIP (Transatlantic Trade and Investment Partnership)—the EU-U.S. trade negotiations canceled by President Trump in one of his first acts in office—although this one will likely be better.

Unemployment and Job Openings



Source: Beacon Economics

Yes, the China trade dispute is still brewing. But even a major trade war with China would not be sufficient to end the current economic expansion. The United States exports fairly little to China—only 8% of all the nation's exports. And what does get shipped out typically doesn't have a long supply chain.

The greater threat comes from the fact that the United States sources 20% of its manufactured imports from China. But the tariff-increased costs to U.S. importers have been largely offset by a 13% depreciation in the yuan relative to the U.S. dollar. And even as this article is being penned, there are reports, albeit few specifics, of a possible breakthrough in negotiations.

Data vs. Discourse

All said, from a technical or data standpoint there is not much change in Beacon Economics' forecast for the U.S. economy. The framing of the outlook is another story.

While little has changed in the actual economy, much of the public discourse surrounding the economy has taken a sharp turn for the worse. This new wave of pessimism has likely been driven by the sell-off in the stock market, slowing home sales, and rising interest rates. Yet, as we see it, these short-run trends do not amount to anything that could truly threaten the current expansion.

Consider rising interest rates. Mortgages are now hovering just below 5%, up one percentage point from where they were two years ago. But while this is a recent high, it is hardly an historic one. In fact, it is still lower than at any time between 1968 and 2008.

Rates are higher, but they certainly

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aren't high. And it isn't surprising that rates have drifted up given that the economy has been growing well and there has been a sharp increase in federal borrowing.

Inflation Worries

One wrongly assumed reason for rising rates is inflation. After years of inflation tracking below the Fed-targeted pace, price growth finally increased above the 2% mark. This should have made investors more confident as deflation is less of a risk. Instead, it created a panic about the potential for further increases. Investors need not have worried: the most recent numbers now show inflation back below the 2% range.

Beacon Economics expects inflation to remain weak over the next few years. Oil prices are once again down based on high levels of U.S. output. Money supply growth also is very constrained at the moment. And yes, unemployment sits at an extremely low 3.7%—but if this were going to have an effect, we would already feel inflationary pressures on the economy.

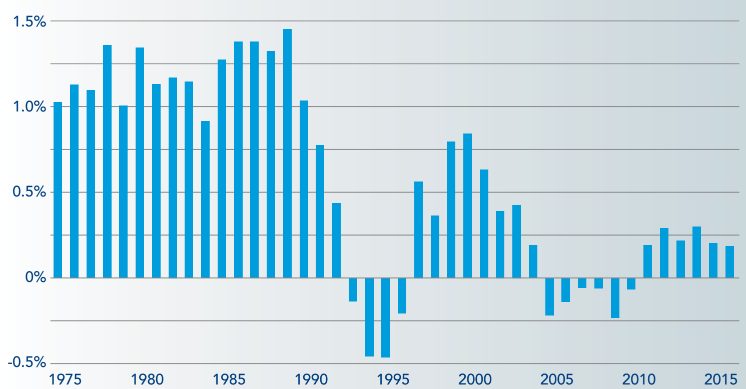
Add it up and we don't see much chance for rates to continue their upward drift. Moreover, the Federal Reserve seems to be taking the hint from the flattening yield curve and has been signaling a gentler future path on short-run rates.

Housing

The U.S. housing market has slowed as a result of the bump in mortgage rates, which has created considerable consternation. However, there is a big difference between a housing pause and a housing bust. The U.S. housing market is not overpriced, nor has there been much risky lending—or lending in general—occurring.

The pace of building has been reasonable, so there is no excess supply to worry about. That the market is responding to changes in interest rates is a good thing. Prices need to adjust to a higher carrying cost; once that happens, the market should get back on track. The slowing pace of sales is part of that process.

California Labor Markets Net Migration as a Percentage of Population



Source: U.S. Census/Beacon Economics

As for the stock market sell-off, it's quite amazing that the recent dip has created such a wave of concern as it is no less than the sixth major sell-off since the Great Recession ended. And this says more about the stock market than the economy.

Excessive growth in equity prices followed by excessive sell-offs is the new normal in today's high-speed electronic trading environment. There has also been a lot of good news for corporate America recently. Corporate taxes were cut sharply a year ago and gross profits are growing again after being flat last year.

So, for now, Beacon Economics is forecasting the expansion to continue and, barring some unexpected external impact, does not anticipate any major change in economic growth leading up to the 2020 election… for better or worse.

California Outlook: Growth Prospects for 2019

As 2018 progressed, it became evident that the California economy would continue to prosper despite the challenge of a tight labor market and concerns about the state's housing situation.

Indeed, California's economic performance was remarkably steady in 2018, fueled by expansion in the state's industries, increases in incomes and wages, and in response to federal tax cuts enacted early in the year. Beacon Economics expects a continuation of these trends in 2019 and possibly into 2020.

As of October, the state is on track to add approximately 337,000 jobs in 2018, slightly less than the 340,000 added in all of 2017. Between February and October 2018, California has consistently added jobs at an average yearly rate of 2.0%, virtually identical to the same period one year ago.

The state's unemployment rate has been in historically low territory for most of the year, dropping to 4.1% in the last two months, marginally higher than the U.S. rate of 3.7%. All in all, the headline numbers look good as we move from 2018 into 2019.

Job Gains

For the month of October, California's 308,700 year-to-year job gain was the second largest among the 50 states. One-fifth of the increase occurred in Health Care (63,100), followed by Professional, Scientific and Technical Services, Leisure and Hospitality, Administrative Services, Government and Construction, and Transportation.

These seven industries accounted for

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96% of the jobs added in October, and have consistently contributed the lion's share of job gains throughout the year. Over the same period, three industries saw losses totaling 8,000 jobs, small relative to the total, but evidence of recent weakness in job growth in these areas.

With California industries expanding in a tightening labor market, workers have experienced wage growth for several quarters running. In the second quarter of 2018, the average weekly wage for private sector workers was $1,265, up 4.6% over the prior year. Over the same period, prices in California increased 2.6%, implying a 2% inflation-adjusted gain in the average wage. This continues a recent trend of wage increases generally outpacing inflation, giving workers more purchasing power to drive spending and economic activity.

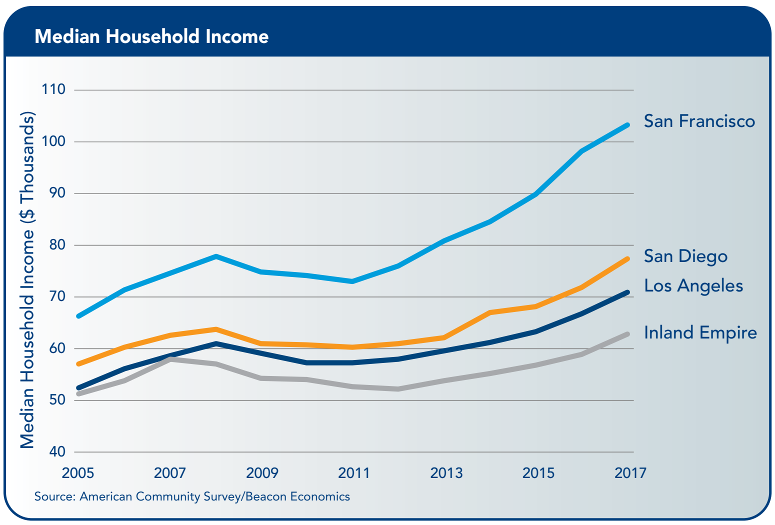
Most headline economic numbers for the state show that California maintained an edge over the nation throughout the year. Its 1.8% yearly growth rate in jobs surpassed the 1.6% gain for the United States in October. California's gross state product growth outpaced U.S. gross domestic product (GDP) in the second quarter, with a 3.3% year-to-year gain compared to 2.9% nationally.

Over the same period, the average weekly wage in California increased more rapidly at 4.6% compared to 3.4% for the nation. However, the U.S. labor force grew by 1.0% over the first 10 months of this year, well ahead of California's 0.4% growth rate.

The scant increase in the state's workforce is cause for concern in 2019, although there is evidence that metro area labor force dynamics are such that rapidly growing regions continue to attract workers, most notably in the San Francisco Bay Area and the Inland Empire.

Growth Industries

Looking ahead to 2019, the question is, where will growth occur in California? The answer depends on the type of growth. Over the last three years, half of the job gains among the state's industries have occurred in its population-serving sectors. This trend was led by Health Care, which accounted for 22% of California's job gains over the three-year period from 2015 through 2018, followed by Leisure and Hospitality, and Government, and will continue through 2019.



Smaller but noteworthy contributions also came from the state's leading external-facing industries, such as Professional Scientific and Technical Services (9%) and Transportation Services (9%).

The picture is considerably different when looking at the composition of growth in terms of output. More than 40% of the output generated during this three-year period emanated from just one industry, Information, with the gains mainly attributed to the tech-related segments of the sector.

Combine this with the 11% contribution from Professional, Scientific and Technical Services, and about half of all output generated in California came from tech-related activities over the last three years. Other external industries that weighed in with sizable contributions included Manufacturing at 7% and Transportation at 5%. Among those industries that contributed the largest job gains, only Health Care made a sizable contribution to output at 9% of the total.

Increasing Economic Pie

These findings provide insight into the future direction of the state economy. California can count on increases in employment among its population-serving industries in the coming quarters, but if the state wants to increase the size of the economic pie, it must look to its external industries to fuel that growth. That is the challenge that lies ahead for California's newly elected governor and the rest of the state.

Staff Contact: Dave Kilby

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

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