

# ALERT

## Coalition Seeking Changes to Plastic Recycling Bill



Legislation raising serious questions about California mandates on recycling numerous products

containing plastics is advancing in both the California Senate and Assembly.

The California Chamber of Commerce has joined a broad coalition that is **opposing unless amended both SB 54 (Allen; D-Santa Monica) and AB 1080 (Gonzalez; D-San Diego)**, titled the “California Circular Economy and Plastic Pollution Reduction Act.”

In their current form, both bills jeopardize in-state businesses with additional costs and provide the California Department of Resources Recycling and Recovery

(CalRecycle) with open-ended authority to develop and impose costly new mandates with an unrealistic timeframe on California businesses manufacturing an incredibly broad swath of consumer products.

Coalition members represent manufacturers, small businesses, consumer product companies, food producers, agriculture, retailers and others.

The CalChamber and coalition members agree that more can and should be done to reduce the amount of plastic material that is disposed of in landfills or that makes its way into our creeks, rivers and oceans.

Both the CalChamber and coalition look forward to working with the authors to address these issues with the hope that the final work product will result in a pack-

*See Coalition Seeking Changes: Page 7*

## Fight for Flexibility Continues



As the constant buzz about *Dynamex* continues around the State Capitol, we repeatedly hear about how

employees can have the same flexible work schedules enjoyed by independent contractors—it is simply up to the employer. That last part is the key.

As an independent contractor, the individual makes the decision of when to work, where to work, which projects on which to work, and for whom to work. In an employer and employee relationship, it’s the employer who makes those decisions.

**AB 5 (Gonzalez; D-San Diego)** is the pending legislation on *Dynamex* that was amended this week, and will determine whether independent contractors are able to maintain this flexible work opportunity or have it taken away.

To stay up to date on this issue, check out <https://imindependent.co>.

### Limited Options

Under California law, the employer’s options to provide employee flexibility are significantly limited by the threat of increased costs, penalties and, ultimately, litigation if the employer even tries to accommodate flexibility. Here are a few key examples highlighting this lack of flexibility:

- Recently, there has been debate about **predictive scheduling**. If you want

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## New Required Poster Starting April 1



Look out, California employers! Another required posting is coming your way on April 1.

Several weeks ago, the Office of Administrative Law (OAL) **approved** the Fair Employment and Housing Council’s (FEHC)

changes to the *Family Care and Medical Leave* (CFRA Leave) and *Pregnancy Disability* notice (now called *Family Care and Medical Leave and Pregnancy Disability Leave*), adding information about the New Parent Leave Act (NPLA).

California employers covered by the California Family Rights Act (CFRA)

and the NPLA are required to post this new notice starting April 1, 2019.

Customers who purchased the California Chamber of Commerce Poster Protect option will automatically receive a replacement poster at no additional cost.

### New Parent Leave Act

The NPLA is a narrowly tailored California leave law that took effect last year. Both the CFRA and NPLA provide 12 weeks of unpaid, job-protected leave to bond with a newborn or a child placed with the employee for adoption or foster care.

The CFRA applies to employers who have 50 or more employees and the NPLA applies to employers who have less than 50 employees but have at least 20 employees.

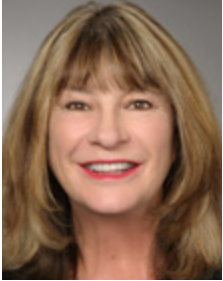
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## Labor Law Corner

# Caring for Adult Child with Drug Addiction May Qualify for FMLA



**Dana Leisinger**  
HR Adviser

*My employee asked to take time off under the Family Medical Leave Act (FMLA) to care for her drug addicted son, who is well over 18 but refuses to go through a rehabilitation program. Do I have to honor that request?*

In general, FMLA is available to parents to care for their children who are under 18 or an adult dependent child, such as a son or daughter undergoing cancer treatment and needing help.

Essentially, the parent qualifies to take FMLA if the adult child is unable to care for his own basic medical, hygienic, or nutritional needs or safety, or is unable to transport himself to the doctor. These are considered major daily activities and instrumental activities.

### FMLA

Under FMLA, if the adult son is incapable of self-care, needing active assistance of supervision, the parent may be entitled to take the leave. Major daily activities include grooming and hygiene, bathing, dressing, and eating.

“Instrumental activities,” however, include, but are not limited to: cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, etc.

Typically, protection is not available when the individual who is the addict is actively using the drugs; however, in this situation the addict wishes to stop using drugs outside of a rehabilitation program.

The rigors of trying to stop using drugs can cause a serious health condition. So on that note, an employer may still require an employee to submit

written certification from a health care provider to substantiate that his/her leave is due to a serious health condition of the employee or the employee’s immediate family member.

If an employer is inclined to deny the use of FMLA in a situation like this, it is recommended to seek the advice of counsel to guide the employer through the process.

### Drug Addiction

The National Institute on Drug Abuse has indicated that opioid use has become a public health crisis with devastating consequences, including increases in opioid misuse and related overdoses.

Indeed, more than 130 people die every day from overdosing on opioids. Questions like the one above are asked at the Labor Law Helpline periodically, and probably will be asked more.

*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](http://www.hrcalifornia.com).*

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## CalChamber-Sponsored Seminars/Trade Shows

More at [www.calchamber.com/events](http://www.calchamber.com/events).

### Labor Law

HR Boot Camp. CalChamber. April 12, Oakland – SOLD OUT; April 26, Costa Mesa – SOLD OUT; May 9, Sacramento; June 14, Walnut Creek; August 22, Pasadena; September 12, Sacramento. (800) 331-8877.

Scheduling Employees and Everything in Between Webinar. CalChamber. April 18. (800) 331-8877.

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

### International Trade

Forging Stronger Economic Relationship Between Malaysia and the USA. Malaysia Investment Development Authority San Jose. April 5, Santa Clara.

Doing Business in Nordics Webinar. U.S. Commercial Service. April 16, Webinar. (800) 872-8723.

Doing Business in Austria and Hungary Webinar. U.S. Commercial Service.

April 24, Webinar. (800) 872-8723. Understanding Brexit. CalChamber and World Affairs, Sacramento. April 24, Sacramento. (916) 444-6670 ext. 232. Aerospace Fair Mexico 2019. Mexican Government. April 24–27, Zumpango, Mexico. +52 (55) 7098-5299. 93rd Annual World Trade Week: SoCal—  
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## CalChamber Calendar

### Capitol Summit:

May 22, Sacramento

### International Forum:

May 22, Sacramento

### Water Committee:

May 22, Sacramento

### Host Breakfast:

May 22–23, Sacramento

### Board of Directors:

May 22–23, Sacramento



## *The Workplace*

# Say Cheese: Cameras in Workplace, Internet, Etc. Test Bounds of Privacy



This week's episode of *The Workplace* explores new areas of concern and issues generated for employers by the prevalence of technology on the job site or in the office.

**Erika Frank**, California Chamber of Commerce executive vice president, legal affairs and general counsel, and **Ellen Savage**, HR adviser with CalChamber's Labor Law Helpline, talk about what is private—and what is not—at work.

The conversation provides both entertaining and helpful insight into the issue, particularly given the multitude of federal and state constitutional guarantees, limitations imposed by federal and state statutes, and case law.

### Privacy Issues

"There are a lot of privacy issues that happen in the workplace," says Frank. "There are laws that employers need to be aware of, or parameters that employers need to be aware of when we start dealing with the privacy of employees."

"California employers have to pay attention to privacy in the workplace," Savage says. "Everything from drug testing privacy to electronic privacy impacts them. There are certain labor codes that apply and there's also a common law right that we always want to be aware of as well."

Given the timespan between tape recorders and social media, issues around privacy in the workplace have evolved significantly. In the podcast, Frank and Savage warn employers to be aware

of how social media can intersect with day-to-day management and discipline of employees.

"Employers probably shouldn't even be looking at these [social media] accounts because they may learn things that could lead to claims of discrimination," Savage points out.

Frank reminds employers that there is a right to privacy that employees have in the workplace and it is critical to get consent to do certain searches like taking employee photos or conducting certain types of monitoring. As such, employers need to be mindful about what the reasonable expectation of privacy means and know there are laws that are very specific about when employers can and can't monitor.

"Employees don't give up their right to privacy when they walk into the workplace," says Savage.

### Subscribe to The Workplace

Subscribe to *The Workplace* on [iTunes](#), [Google Play](#), [Stitcher](#), [PodBean](#) and [Tune In](#). New episodes will be released each Wednesday.

## New Required Poster for California Employers Starting April 1

*From Page 1*

While the CFRA provides additional medical leave, the NPLA does not and is limited to baby bonding leave.

Over the past year, the FEHC has been working on regulations to mirror CFRA's baby bonding leave requirements with the newly enacted NPLA. Unfortunately, these efforts came to a standstill when most of the proposed regulatory changes were withdrawn from the regulatory process.

What remains, however, is defining the NPLA in the CFRA definition

section; amending the CFRA required notice (as mentioned above); and removing gender pronouns in the CFRA medical certification form.

No additional changes were approved; the FEHC will have to go back to the drawing board before employers see more guidance on the NPLA.

### Posting Requirements

For now, effective April 1, 2019, employers with 20 to 49 employees will need to post the *Family Care and Medical Leave and Pregnancy Disability Leave*

notice in their workplace, and employers with 50 or more employees will need to replace their existing notice with the new version.

The CalChamber all-in-one California and Federal Labor Law poster (available at [calchamberstore.com](http://calchamberstore.com)) includes the 18 state and federal employment notices every California employer must post, including the *Family Care and Medical Leave and Pregnancy Disability Leave* notice.

**Staff Contact: Erika Frank**

## CalChamber-Sponsored Seminars/Trade Shows

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The Engine of Global Trade and Economic Growth. Los Angeles Area Chamber. May 2, Los Angeles. (213) 580-7500.

Trade Winds Indo-Pacific Forum and Mission 2019. U.S. Commercial Service. May 6–13, India, Bangladesh, and Sri Lanka. (304) 347-5123.

Doing Business in Czech Republic and Slovakia Webinar. U.S. Commercial Service. May 15, Webinar. (800) 872-8723.

Annual Export Conference. National Association of District Export Councils. May 21–22, Arlington, Virginia. (407) 255-9824.

SelectUSA Investment Summit.

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

Doing Business in Baltics Webinar. U.S. Commercial Service. June 12, Webinar. (800) 872-8723.

Think Asia, Think Hong Kong. Hong Kong Trade Development Council. September 20, Los Angeles. (213) 622-3194.

## California Chief Justice Recaps Progress on Civil Justice Reform, Ongoing Challenges



Photo Courtesy: Judicial Council of California

California Chief Justice Tani Cantil-Sakauye

In an address to the California Legislature last week, California Chief Justice Tani Cantil-Sakauye reported on the progress the court system has made in its three-tiered civil justice reform initiative, and outlined the challenges the judiciary will focus on in the coming year.

### ‘Access 3D’

The civil justice reform initiative, referred to as “Access 3D,” is a mission to make access to justice “three-dimensional,” the Chief Justice said in her State of the Judiciary address on March 19. The initiative seeks to:

- Fund physical courts and restore courthouses to their full operating hours and staff, with fair compensation;
- Establish remote (online) access so

that court users can conduct their business online; and

- Offer equal access to the court system, so that courts serve people of all languages, abilities and needs.

The Chief Justice told lawmakers that Governor Edmund G. Brown Jr. “breathed new life into the judiciary” with more than 600 judicial appointments. Of the 200 new justices appointed last year, she commented, 41% self-reported as non-white and more than half are female.

“The judiciary now is more representative of the communities we serve in every way,” she said.

### New Programs

With funding support approved by the

Legislature, the Chief Justice pointed out, the judiciary is able to:

- Maintain more than 500 courthouses and is building 10 new “safe and secure courthouses.”
- Establish more than 50 new projects that include technology, such as a mobile app, a multilingual self-help website, video hearings, and video remote interpreters.
- Provide court navigators, also called “wayfinders,” and improve access to the court system with interpreters in critical civil cases like domestic violence, child custody, elder abuse, and evictions.

### Challenges to Tackle

Despite the progress made, the Chief Justice said there is still more work to be done, and listed the following four challenges the judiciary will work on:

- Ensuring “that income inequality doesn’t translate into a two-tiered justice system”;
- Ensuring “that fines and fees no longer fall on those least able to afford them”;
- Ensuring “that minor traffic offenses don’t turn poor drivers into poor criminals”;
- Ensuring “that we keep our workplaces safe and free from discrimination and harassment and that we treat each other and the public we serve with respect.”

To tackle these issues, the judiciary will convene workgroups, deliberate the facts and the law, and pursue recommendations through all three branches of government, Cantil-Sakauye said.

A task force already has been launched to study the practices and reform of existing pretrial detention and suggest steps to make the process fairer and safer.

In addition, Governor Gavin Newsom has proposed \$75 million in court funding for the development, implementation, and evaluation of pretrial detention decision-making pilots in 8 to 10 courts.

The Judicial Council also is convening a workgroup on preventing workplace discrimination, harassment and abuse. Recommendations from the workgroup are expected to be delivered this summer.

# California Electricity Prices: No. 7 in U.S.

The annual U.S. electricity price map released by the U.S. Chamber of Commerce Global Energy Institute shows California average electricity retail prices are among the highest in the nation.

The map uses the most recent full year of data available from the U.S. Energy Information Administration, *Electric Power Monthly* (February 2019).

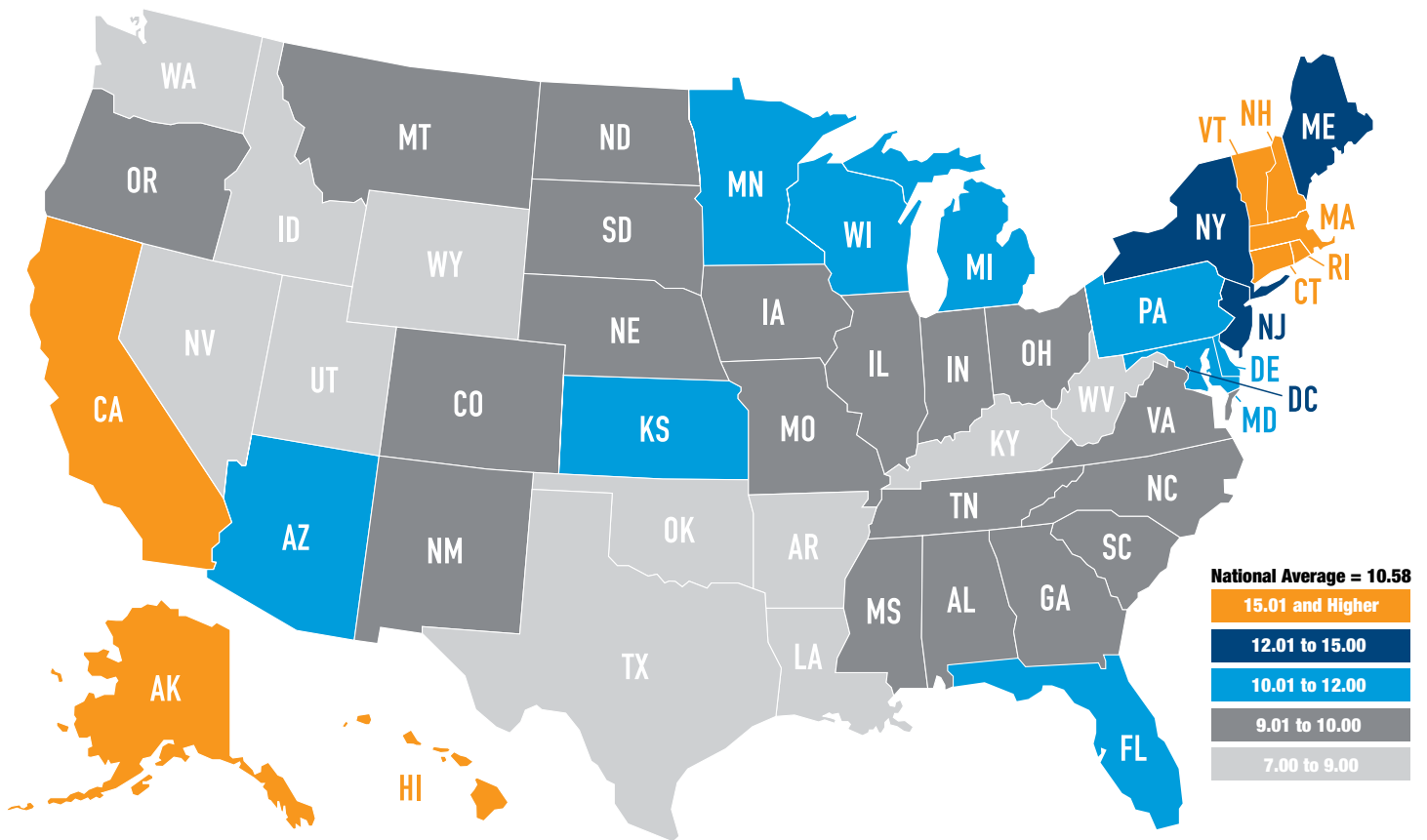
The Global Energy Institute notes that while the energy mix available within a state will play a large role in state electricity prices, energy-limiting policies in some states act to artificially elevate prices, making the price of electricity much more burdensome for consumers and businesses.

The national average price is 10.58

cents per kilowatt-hour (kWh). The average price in California is 16.7 cents per kWh, seventh highest in the nation, according to the U.S. Energy Information Administration data.

More information is available at <https://www.globalenergyinstitute.org/average-electricity-retail-prices-map>.

## 2018 U.S. Average Electricity Retail Prices (cents per kilowatt hour)



Source: Global Energy Institute, U.S. Chamber of Commerce with data from U.S. Energy Information Administration; *Electric Power Monthly* (February 2019)

MAY 22-23, 2019

# CAPITOL SUMMIT & SACRAMENTO HOST BREAKFAST



**CalChamber**  
CALIFORNIA CHAMBER OF COMMERCE

# One-Year Countdown to Census



In just one year, the U.S. government will fulfill its once-a-decade duty to count every American. April 1, 2020 is

## Census Day.

Armed with a \$15 billion budget, the Census Bureau will aim to gather a few key facts about all residents: location, age, race/ethnicity, home ownership, and household members.

For the first time, the agency will try to collect most responses online, with the remainder by mail or, as needed, in person. The Census Bureau is legally prohibited from sharing any personal data collected through the census with anyone, including other federal agencies and law enforcement.

### Why is the census important?

First, the census is the sole means to determine how many of the 435 seats in the U.S. House of Representatives

are allocated to each state. California currently has 53 seats, and would expect to retain that number after the census.

However, if the census is poorly conducted in California and misses many hard-to-reach inhabitants, then the state could wind up losing a seat—and some of our influence—in Congress.

The population counts developed in the census also determine how federal agencies will allocate huge amounts of federal appropriations. In 2016, California received \$115 billion in federal funds that were dependent on the state's population count.

What is the risk of undercounting our residents?

California is uniquely vulnerable to a poorly executed census. The vast majority of Californians belong to groups that historically have been undercounted, such as renters, young men, African Americans, Latinos, immigrants, occupants of nonstandard housing, and the homeless.

In addition, many advocates and public officials are concerned that the proposed addition of a question on citizenship status may discourage immigrants from participating in the census.

## Employer Role

Employers will play an **important role** to encourage their employees to participate in the census.

As trusted leaders, employers have credibility to urge their employees to complete the official census questionnaire by highlighting the importance of an accurate census count to their communities, as well as emphasizing the security of the information they share with the Census Bureau.

The census is conducted only once every 10 years, but it is critical for our democratic representation, fair allocation of federal funds, and to gain insight as to who we are as a state and nation.

**Contact: Loren Kaye**

# Fight for Flexibility Continues

*From Page 1*

to see an anti-flexibility law, this is the one. Predictive scheduling laws generally require employers to provide employees a minimum amount of notice for their work schedule and any changes to an employee's scheduled shift. And, if the employer changes an employee's schedule within a certain time frame (commonly 7 days prior) the employer must pay that employee a penalty (commonly 1–4 hours of pay).

While this is great in theory for those who need to know their schedules ahead of time and never stray from that schedule, it is horrible for those that have last-minute obligations and need to request scheduling changes that will impact other employees and cannot find someone with whom to swap a shift.

Even if the employer is willing to accommodate a schedule change request and pay the extra hours of work, the employer is opening themselves up to massive liability by trying to do a simple favor for the employee.

• Another example... and my personal favorite... the **alternative workweek**.

Sounds great in theory—the employer can provide employees more flexibility by allowing them to choose an alternative schedule (e.g., work 4 days for 10 hours rather than 5 days for 8 hours).

However, in addition to the multi-step process full of notices, voting and filings with the state, the *entire* work unit must agree to adopt an alternative workweek schedule.

Thus, alternative workweek schedules do not provide flexibility on an individualized basis and are not even meant for a handful of employees within a department who want flexibility; instead, these schedules are based on the wants and needs of the entire work unit. How's that for flexibility?

• Under California law, employees are NOT allowed to skip their **meal breaks** in order to leave work early. Only employees who work between 5 and 6 hours a day can choose to waive their meal periods by mutual consent of the employer and employee.

However, there is not a similar alternative for employees who work a traditional 8-hour day, even if the employee

and the employer mutually agree that the employee can take an on-duty meal break.

So, what if an hourly employee wants to leave 30 minutes early in order to pick their kid up from school and requests to skip their meal period to do so? Nope, not allowed to by law... plain and simple.

• Now let's look at **makeup time**... makeup time allows employees to request time off for personal obligations and make up the missed time without triggering overtime.

So, if an employee needs to take off 3 hours for a personal obligation, can they? Well, kind of... the employee can take the time off, but allowing an employee to make that time up without significant costs is a little trickier.

I won't bore you with the details here. However, the most difficult requirement for employees to meet is that the missed time must be made up in the same workweek.

That requirement creates additional problems, such as, what if a last-minute personal obligation arises on a Friday and the employee's normal workweek is Monday through Friday, or what if the

*See Fight for Flexibility: Page 7*

## Coalition Seeking Changes to Plastic Recycling Bill

From Page 1

aging policy that is both environmentally responsible and economically sustainable.

### Policy Challenges

Recent policy actions imposed by China and other Asian countries are creating new challenges—but also opportunities—in how plastics and other commodities are recycled and managed domestically.

Collectively, companies have set ambitious sustainability targets and are taking steps to utilize recyclable packaging, increase recycling rates, and incorporate recycled material in the production of new packaging.

In addition, many in the plastics and consumer products industry have announced commitments of \$1.5 billion to end plastic waste in the environment through new packaging formats, more efficient recycling technologies, and new business models to create value in used plastic.

### Issues with Bills

Both bills raise serious questions, use terms that are unclear and vague, establish implementation timelines that are not practical, and provide CalRecycle with open-ended authority to impose new mandates on businesses operating in the state.

As pointed out in letters to the legislative policy committees:

- The scope of products affected is unclear due to undefined terms in the bills.
- Unfettered authority is granted to CalRecycle when clear guidelines and oversight by the Legislature is needed.
- Practical timelines are necessary.

Both bills require CalRecycle to develop an initial scoping plan by January 1, 2021 and manufacturers to meet a 20% recycling rate by January 1, 2022. Data collec-

tion, recycling rate calculation, expanding existing collection infrastructure and developing new markets for collected material will take significant time.

- The requirement to “source reduce” single-use packaging and products is unclear and leaves open the question of how responsible entities may comply. The bills should recognize companies’ source reduction efforts over the years and acknowledge that simply using “less” packaging may not be technically feasible and may conflict with state and federal law.

### Key Questions

To ensure the policy achieves the desired objective, key questions the Legislature should assess before finalizing any policy around packaging include:

- Will this legislation actually reduce waste or rather simply result in replacing one type of trash with another?
- What are the environmental impacts associated with the manufacture, distribution, use and disposal of likely alternative replacement products?
- Are likely replacement products recycled or composted within the state’s existing infrastructure and do viable, end use markets exist for these products?

### Important Considerations

- **Existing law.** The new law also should take into account the existing Rigid Plastic Packaging Container law, recognize companies that have met their compliance obligation and ensure that new requirements are not duplicative and/or overly burdensome on consumer product companies that are in compliance.
- **Uniform statewide solution.** Some industry sectors are attempting to navigate a patchwork of local ordinances pertaining to food service packaging.

Any comprehensive packaging policy adopted by the Legislature should include preemption of local ordinances.

- **Stakeholder involvement.** What is being proposed under SB 54 and AB 1080 is a major undertaking and will likely have profound impacts on packaging design and use, and on the consumer product companies that rely on packaging to deliver products to markets.

CalRecycle does not have the expertise in packaging design or in the manufacture or distribution of any consumer products. If this legislation is to be successful, it will require the implementing regulations to be, at a minimum, both practical and technologically feasible. Engagement by industry experts will be essential to achieve this goal.

### Key Votes

- **SB 54** passed the Senate Environmental Quality Committee on March 20, 5-0:

Ayes: Allen (D-Santa Monica), Hill (D-San Mateo), Skinner (D-Berkeley), Stern (D-Canoga Park), Wieckowski (D-Fremont).

No votes recorded: Bates (R-Laguna Niguel), J. Stone (R-Riverside County).

- **AB 1080** passed the Assembly Natural Resources Committee on March 25, 8-3:

Ayes: Chau (D-Monterey Park), Eggman (D-Stockton), Friedman (D-Glendale), C. Garcia (D-Bell Gardens), Limón (D-Santa Barbara), McCarty (D-Sacramento), Muratsuchi (D-Torrance), M. Stone (D-Scotts Valley).

**Noes: Flora (R-Ripon), Mathis (R-Visalia), Melendez (R-Lake Elsinore).**

Both bills will be considered next by the fiscal committee in their respective houses.

**Staff Contact: Adam Regele**

## Fight for Flexibility Continues

From Page 6

employee simply cannot work longer hours that week, but can the next week?

Again, the employee simply cannot utilize the makeup time provision even if the employer would happily allow it.

### Independent Flexibility

Conversely, independent contractors set their own hours, their own pay, and

decide when and where they want to work. This is where true flexibility and opportunity meet.

In fact, overwhelmingly between 80%–90% of independent contractors from across every industry prefer it over traditional employment.

One of the top reasons continually cited is the need for flexibility. This has been verified by studies conducted by the

U.S. Bureau of Labor Statistics, Beacon Economics, and a survey of California independent contractors.

However, there are still those that want to force independent contractors into a traditional employment model, driving millions of Californians away from the model of flexibility they need for their lifestyles.

**Staff Contact: Laura Curtis**

LIVE WEBINAR | THURSDAY, APRIL 18, 2019 | 10:00 - 11:30 AM PT

## Scheduling Employees and Everything in Between

Under California’s watchful eye, specific laws regulate the hours and days that nonexempt employees work.

Optimal schedules are always the goal to retain good employees. But staffing a workforce can be unpredictable, and employers need some flexibility in scheduling. Things just don’t always go as planned. How do you ensure your current practices are in compliance?

Join our employment law experts online on April 18 to learn more.

Cost: \$199.00 | Preferred/Executive Members: \$159.20



This webinar is mobile-optimized for viewing on tablets and smartphones.

**REGISTER NOW** at [calchamber.com/apr18](http://calchamber.com/apr18) or call (800) 331-8877.

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