

ALERT

CalChamber Releases 2019 Job Killer List



The California Chamber of Commerce this week released its annual job killer list, which includes 24 bills that would harm California's economic growth and job creation should they become law.

"These bills represent some of the worst policy proposals affecting California employers and our economy currently being considered by the Legislature," said CalChamber President Allan Zaremberg.

"Some of these bills have been rejected time and again by the Legislature or vetoed by the previous Governor. Legislators should, instead, focus on removing impediments to economic growth and creating upward mobility for all Californians."

In March, CalChamber identified **AB 51 (Gonzalez; D-San Diego)** and **SB 1 (Atkins; D-San Diego)** as job killer bills. They are included in the list below.

CalChamber will periodically release job killer watch updates as legislation changes. Track the current status of the

job killer bills on www.CalChamber.com/jobkillers or by following @CalChamber and @CAJobKillers on Twitter.

2019 Job Killers

The 2019 list of job killer bills follows:

• **AB 36 (Bloom; D-Santa Monica)**

Statewide Rolling Rent Control — Defies the will of the voters and worsens California's housing shortage by modifying the Costa-Hawkins Rental Housing Act to allow cities to enact or expand rent control to residential properties constructed within 10 years of the date upon which the owner seeks to establish the initial or subsequent rental rate, which will discourage housing production, quality of housing, and impact low-income individuals and families.

• **AB 40 (Ting; D-San Francisco)**

Vehicle Ban — Discourages investment and eliminates jobs in California by essentially imposing a ban on all non-zero emission vehicles by requiring the California Air Resources Board to develop a strategy to ensure that all

See CalChamber Releases: Page 6

CalChamber Seeks to Restore Flexibility for More Workers



The California Chamber of Commerce and a broad-based coalition is continuing to

seek amendments to pending legislation that makes a start toward restoring flexibility for numerous individuals in the state following last year's court decision upending the test for determining who is an independent contractor.

The CalChamber and coalition **support if amended AB 5 (Gonzalez; D-San Diego)**, which exempts certain industries/professions (doctors, insurance agents, securities brokers, and direct sellers) from the application of the *Dynamex Operations West v. Superior Court* decision.

The CalChamber and coalition appreciate the recognition in AB 5 that the *Dynamex* decision is not one size fits all and agree the professions identified should be exempted under AB 5.

But the Legislature should not stop with selecting just a few professions and not others similarly situated, so the CalChamber and coalition are seeking additional amendments that provide a more progressive and holistic approach to the application of *Dynamex* that reflects today's modern workforce.

At the April 3 meeting of the Assembly Labor and Employment Committee on AB 5, CalChamber Executive Vice President Jennifer Barrera told committee members

See CalChamber Seeks: Page 4



Inside

Podcast on Fixing Privacy Law: Page 3

Cal/OSHA Corner

Revised Rules Affect Steel/Concrete, Electrical Work and More



Mel Davis
Cal/OSHA Adviser

Can you provide a summary of occupational safety rules that went into effect over the last year that haven't yet been included in a Cal/OSHA Corner article?

The Occupational Safety and Health (Cal/OSHA) Standards Board adopted a number of new regulations in 2018 that will affect a broad spectrum of California employers.

For instance, one regulation is specific to the marine terminal industry, another to construction, a third to users and operators of cranes, and another to those who do electrical maintenance, installation and repair.

New Regulations

Steel/Concrete Construction

- On January 1, 2018 new regulations relating to reinforcing steel and concrete construction went into effect.

Construction safety order 1711, oil forms was repealed and replaced by requirements for reinforcing steel and post-tensioning in concrete construction.

Likewise, Section 1712 was revised to address requirements for impalement protection.

Electrical Safety Orders

- On April 1, 2018, as the result of federal rulemaking and subsequent action by the Standards Board, revisions to the Low and High Voltage Electrical Safety Orders went into effect.

The following articles were revised: Low-Voltage Electrical Safety Orders: Article 1, Definitions; Article 3, Work Procedures; Article 4, Requirements for Electrical Installations. High-Voltage Electrical Safety Orders: Article 1, Definitions; Article 23, Transformers; Article 29, Capacitors; Article 36, Work Procedures and Operating Procedures; New Appendix A, Appendix C, New Appendix D and E; Article 37, Provisions for Preventing Accidents Due to Proximity to Overhead Lines; Article 38, Line Clearance Tree Trimming Operations.

Revisions also were necessary to Sections 3314, 3389, 3422, 3425, 3428 and 5156 of the General Industry Safety Orders and the Telecommunications Safety Orders, Section 8617.

Other Revisions

- The maritime rulemaking, which took effect on April 1, 2019, addressed the requirement to provide life rings or personal flotation devices where work exposes employees to drowning.
- The compliance date for crane operator qualification and certification was extended from 2017 to 2018 to permit the completion of necessary federal rulemaking.

Full Text

The full text of these rulemakings can be found at the Department of Industrial Relations website, dir.ca.gov. Hover over Boards and select the Occupational Safety and Health Standards Board, then click on approved standards.

Upcoming Rulemaking

If you are interested in being active in the rulemaking process, there are two advisory committees scheduled in the near future:

- May 8: protection of workers from wildfire smoke.
- May 9: electronic submission of workplace injury and illness records.

The notices can be found at the Cal/OSHA Standards Board website. Go to <https://www.dir.ca.gov/oshsb/oshsb.html> and click on "Recent Cal/OSHA advisory committees."

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.

California Chamber Officers

Grace Evans Cherashore

Chair

Mark Jansen

First Vice Chair

Donna L. Lucas

Second Vice Chair

Kailesh Karavadra

Third Vice Chair

Terry MacRae

Immediate Past Chair

Allan Zaremborg

President and Chief Executive Officer

Alert (ISSN 0882-0929) is published weekly during legislative session with exceptions by California Chamber of Commerce, 1215 K Street, Suite 1400, Sacramento, CA 95814-3918. Subscription price is \$50 paid through membership dues. Periodicals Postage Paid at Sacramento, CA.

POSTMASTER: Send address changes to Alert, 1215 K Street, Suite 1400, Sacramento, CA 95814-3918. Publisher: Allan Zaremborg. Executive Editor: Ann Amioka. Associate Editor: Sara Proffit. Art Director: Neil Ishikawa. Capitol Correspondent: Christine Haddon.

Permission granted to reprint articles if credit is given to the California Chamber of Commerce Alert, citing original publication date of article, and reprint is mailed to Alert at address above.

Email: alert@calchamber.com. Home page: www.calchamber.com.

CalChamber-Sponsored Seminars/Trade Shows

More at 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.

Employer To-Due List for Pregnancy Disability Leave. CalChamber. May 16, Webinar. (800) 331-8877.

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

International Trade

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

See CalChamber-Sponsored: Page 4



The Workplace

Podcast Examines Legislative Changes Needed to Fix Privacy Law



The **California Consumer Privacy Act (CCPA)** is a sweeping privacy law that applies to businesses of all sizes across almost every industry. Up on *The Workplace* podcast this week, CalChamber President Allan Zaremborg is joined by CalChamber Executive Vice President Jennifer Barrera and Policy Advocate Sarah Boot to talk about the challenges of implementing the CCPA.

In discussing the many unworkable provisions of the law, the trio digs deep into the potential costs the CCPA poses to both business and consumers. The conversation concludes with a discussion of legislative fixes needed before the CCPA goes into effect on January 1, 2020.

Applies Broadly

Of the many privacy laws in the country, the CCPA is the only one that applies across all industries uniformly, Boot explains.

“The law applies very broadly, across every industry and to businesses of all sizes,” Boot states. The reason is the incredibly broad definition of “personal information,” which extends “far more broadly than what people normally think of,” Boot says.

The CCPA deals with “data and privacy, and this isn’t just about tech companies; this is about virtually every business in California and those who do business in California,” Zaremborg says.

Boot summarizes for listeners that many people mistakenly believe the CCPA applies only to “Big Tech.” Although the CCPA does apply to large companies in any industry (those making

more than \$25 million in revenue per year), as well as to data brokers, there is a third, incredibly broad category of businesses—many of them small businesses often left out of the discussions: any business that “collects 50,000 pieces of personal information...in a year.”

Although this number may sound like a high threshold, it’s not, Boot says. The CCPA definition of “personal information” includes, for example, IP addresses, and the burdensome requirements of the CCPA apply to any business that merely “receives” personal information as defined by the CCPA.

Boot continues with an example: an ad-supported blog that gets 137 unique online visitors per day over the course of one year will hit the threshold to comply with CCPA.

Consumer Impact

Turning to the impact on the consumer, Zaremborg and Boot review who the law identifies as a “consumer” and how consumers benefit from data businesses collect.

Zaremborg says that companies keep data and uses the example of a car dealer which keeps information on consumers for recalls.

“All of this data that people have, in some respects influences consumer activity,” Zaremborg says. “So if there’s a car recall, they want to make sure they have that data so they can notify the current owner...”

Boot explains that the CCPA defines “consumer” as any California resident. She elaborates that the CCPA gives “consumers” the right to request that a business delete their data. If this definition is not changed to exclude employees, an employee accused of sexual harassment could request that complaints about him/her be deleted.

The definition could result in multiple flaws that not only undermine consumer privacy, but employee protections as well.

Employee Protections Impact

Barrera says she finds this part of the law fascinating with regards to labor and employment.

Allowing an investigated, documented

and retained personnel file involving sexual harassment to be deleted is “inconsistent with the goals of the #MeToo movement to make sure that, if someone has committed harassment, that even a future employer would be able to find out that information, and now you’ve eliminated that potential by allowing an employee, a harasser, to come in and delete that information from the employer’s records,” Barrera says.

“For an employer, it puts them in a very difficult position,” Barrera continues. “If an individual can call up, say ‘Delete all the information you have on me,’ how does an employer then defend their actions if it’s challenged in court? How is an employer supposed to defend themselves if they had to delete all the information that documented the situation?”

Opportunity to Lead

California has the opportunity to lead the country on this issue and produce model legislation on consumer privacy that works for both consumers and businesses, Zaremborg says in closing:

“Let’s bring some common sense to an issue that we support, we want to protect. It’s the law. We just want to make it work.”

Subscribe to The Workplace

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

To listen or subscribe, visit www.calchamber.com/theworkplace.

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

CalChamber Seeks to Restore Flexibility for More Workers

From Page 1

that the amendments so far “are a great step in the right direction.”

Dynamex Test

Under *Dynamex*, the court presumes that a worker is an employee unless an individual satisfies all three factors of the ABC Test:

A. That the worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact;

B. That the worker performs work that is outside the usual course of the hiring entity’s business; and

C. That the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed.

The “B” prong of the test is the most problematic because many independent contractors work in the same line of business as the hiring entity.

Additional Amendments

In an April 1 letter to the author and committee, the CalChamber and coalition suggested additional amendments to protect the opportunity for millions of Californians to maintain their careers:

• A Broader Exemption for Professionals.

AB 5 currently exempts doctors, insurance agents, and securities brokers/advisers. Other professionals that should be exempted from the application of *Dynamex* include architects, engineers, lawyers, real estate agents, therapists, accountants, speech interpreters and translators, court reporters, barbers, hair stylists, and many other individuals who have advanced degrees or are licensed by the state,

perform work as independent contractors and want to maintain that status.

These individuals choose their own hours, projects, and rate of pay. At the informational hearing in Assembly Labor and Employment, even proponents acknowledged that these individuals had greater bargaining power and were not as vulnerable to misclassification as others.

Without a broader exemption in AB 5, such professionals will lose their opportunity to maintain their status as independent contractors. The “B” factor prohibits any independent contractor performing work within the usual course of business of the hiring entity, which could include the services provided by many of these individuals for multiple companies.

Accordingly, the CalChamber-led coalition requests a broader exemption for professionals than just those currently identified in AB 5.

• A Broader Exemption for Individuals Who, Like Direct Sellers, Prefer to Control Their Own Schedule:

AB 5 exempts direct sellers from the application of *Dynamex*, with which the CalChamber agrees. Direct sellers control their own schedules with regard to the days and hours they work and make their own decisions regarding to whom they sell products.

Numerous other independent contractors enjoy this same control and flexibility and should be able to maintain their status as independent contractors, just like direct sellers.

Such independent contractors include: Newspaper distributors, drivers in the gig economy, taxi cab drivers, truck drivers, consultants, travel agents, repair persons, videographers, caterers, freelance writers, photographers, musicians, graphic designers, and many others who all control

when they work and for whom they work and they should be able to maintain their status as independent contractors.

• Business-to-Business Exemption:

AB 5 also should exempt business-to-business contracts from the application of *Dynamex*. Any sole proprietor, partnership, LLC, LLP, or corporation should be able to contract with another lawful business to provide services, despite whether the services provided are within the “usual course of business.”

For example, a restaurant that contracts with a delivery company to deliver its food each week should be able to maintain that contract. An online retailer that receives all its sales through its website should be able to hire a website design company to update its website, even though this service could arguably be within the usual course of the retailer’s business.

• Ability to Subcontract for Short-Term Projects:

One of the main reasons companies utilize independent contractors is to fulfill a demand for a short-term project. Even though the company may have a full workforce, an unexpected order or contract may require immediate, extra workers to satisfy the deadline for the project. “Hiring up” in such a scenario does not make sense for either the company or the individual, as the demand for the work is only temporary. An example of this unexpected, immediate demand for help, is when the devastating wildfires spread throughout Northern California. There was an immediate need for additional independent owner/operators of trucks that could assist in hauling debris as well as transporting tools and supplies. Companies need the flexibility

See *CalChamber Seeks: Page 7*

CalChamber-Sponsored Seminars/Trade Shows

From Page 2

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—

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. 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.

Sugar-Sweetened Beverages Focus of Pending Legislation



A number of California Chamber of Commerce-**opposed** bills placing various restrictions on sweetened beverages will be considered by legislative committees next week.

Four bills, including a job killer targeted tax, are the subject of a special order of business on April 9 in the Assembly Health Committee:

- **AB 138 (Bloom; D-Santa Monica):** Designated a job killer because it is a targeted tax on sweetened beverages. AB 138 unfairly imposes a targeted excise tax on distributors of sweetened caloric beverages to fund health-related programs for all, which will force distributors to reduce costs through higher prices to

consumers or limit their workforce.

- **AB 764 (Bonta; D-Oakland):** Marketing Restrictions. AB 764 severely restricts marketing opportunities by beverage companies based on unproven facts regarding the health effects of sugar-sweetened beverages.

- **AB 765 (Wicks; D-Oakland):** Limitations in Advertising. AB 765 interferes with business management decisions on product placement in retail food stores.

- **AB 766 (Chiu; D-San Francisco):** Portion Size Limitation. AB 766 unfairly limits the sale of sugar-sweetened beverages to cups of 16 ounces or less. It also imposes penalties by the Attorney General or local government counsel.

Senate Bill

Moving in the Senate is **SB 347 (Monning; D-Carmel):** Warning Labels.

SB 347 increases frivolous liability claims and exposes beverage manufacturers and food retailers to fines and penalties by mandating state-only labeling requirements for sugar-sweetened drinks.

SB 347 is conceptually the same as legislation from 2014, 2015 and 2018 that failed to pass the Assembly. The text and scope of the warning proposed in SB 347 is similar in many respects to San Francisco's warning label law, which was declared unconstitutional on January 31 in a unanimous decision of the 11 judges of the U.S. Court of Appeals for the Ninth Circuit.

SB 347 was approved by the Senate Health Committee on March 27 on a vote of 5-1, and is scheduled to be considered on April 8 by the Senate Appropriations Committee.

Staff Contact: Valerie Nera

CalChamber-Backed Housing Relief Bills Advance



Housing

Two California Chamber of Commerce-**supported** bills aimed at helping ease the state's housing crisis won approval this week from the Senate Housing Committee.

Sent on for consideration by the Senate Governance and Finance Committee were:

- **SB 50 (Wiener; D-San Francisco),** promoting transit-oriented development; and

- **SB 13 (Wieckowski; D-Fremont),** promoting construction of accessory dwelling units (ADUs).

SB 50, approved on a bipartisan vote of 9-1, promotes the construction of much-

needed residential housing by up-zoning areas around public transit facilities in order to address California's housing crisis by increasing housing stock.

Novel solutions to break from the status quo are needed if California is going to make any dent in its housing crisis. SB 50 is one such novel solution because it encourages increased housing production in in-fill areas that already have high-quality transit and high-quality jobs by exempting these areas from certain restrictive zoning standards.

SB 13, approved on a bipartisan vote of 10-0, encourages more affordable housing by limiting what development impact fees typically charged for ADUs can be levied and precludes local jurisdictions from adopting overly restrictive local provisions, such as owner occupancy requirements.

Building ADUs is the only widely

supported approach to expeditiously bring thousands of low-cost housing units on the market. ADUs provide lower-cost and low-carbon footprint homes in existing neighborhoods, consistent with architectural traditions.

Studies demonstrate that ADUs cost less to build and rent for less than new market-rate housing, making ADUs affordable by design.

California's inability to meet housing demands year after year has resulted in increased competition for fewer available homes, rising prices, overcrowding, community dislocation and gentrification, and adverse environmental impacts caused by longer commutes and more traffic congestion.

Both SB 50 and SB 13 will help spur more housing development.

Staff Contact: Adam Regele

Make Sure You Receive Notice of CalChamber Events



If you have been wondering why you didn't receive an email notice of a California Chamber of Commerce event,

be sure to check your junk mail folder and whitelist Cvent.com.

If your tech department allows traf-

fic only from approved sites or wants to connect an application to Cvent, ask the techs to whitelist the following IP addresses:

- 192.190.92.0/23 – for the application
- 198.97.238.0/23 – for the application
- 204.239.0.0/24 – for the application
- 198.207.147.224/27 – for Cvent emails
- 204.239.0.224/27 – for Cvent emails

When emails are delivered, they come from a Cvent domain behind the scenes. When updating your whitelist, you'll also want to include the following domains:

- cvent.com
- cvent-planner.com
- cventmail.com
- cvtvs.com

CalChamber Releases 2019 Job Killer List

From Page 1

passenger and light-duty vehicle sales are zero emission by 2040.

• **AB 51 (Gonzalez; D-San Diego)**

Ban on Arbitration Agreements — Significantly expands employment litigation and increases costs for employers and employees by banning arbitration agreements made as a condition of employment, which is likely preempted under the Federal Arbitration Act and will only delay the resolution of claims. Banning such agreements benefits the trial attorneys, not the employer or employee. Governor Edmund G. Brown Jr. vetoed a similar measure last year and stated it “plainly violates federal law.”

• **AB 138 (Bloom; D-Santa Monica)**

Targeted Tax on Sweetened Beverages — Unfairly imposes a targeted excise tax on distributors of sweetened caloric beverages to fund health-related programs for all which will force distributors to reduce costs through higher prices to consumers or limit their workforce.

• **AB 288 (Cunningham;**

R-Templeton) **Significant Expansion of Liability and Litigation for Consumer Data** — Creates an onerous private right of action with a right to excessive punitive damages for purely economic losses at a low evidentiary standard, along with attorney’s fees, for a new consumer right to delete data that conflicts with the consumer right to delete recently provided by the California Consumer Privacy Act.

• **AB 495 (Muratsuchi; D-Torrance)**

Cosmetic Product Ban — Bypasses a legislatively mandated analytical process to judge the safety of consumer products and seeks to prohibit safe cosmetic products based upon the mere presence of a chemical in the product, no matter the level, that will lead to potential regrettable substitutions and job losses in the cosmetic industry.

• **AB 628 (Bonta; D-Oakland)**

Uncapped New Leave of Absence for Employees and Their Family Members — Significantly expands the definition of sexual harassment under the Labor Code, which is different than the definition in the Government Code, leading to inconsistent implementation of anti-harassment policies, confusion, and litigation. Also, provides an unprecedented, uncapped leave of absence for victims of sexual harassment and their “family members”

which is broadly defined, that will add another layer of burdens on employers and their ability to manage their workforce.

• **AB 673 (Carrillo; D-Los Angeles)**

Unfair Expansion of Penalties Against an Employer for Alleged Wage Violation — Unfairly exposes an employer to being penalized twice for the same violation, by allowing both an employee and the Labor Commissioner to recover the same civil penalties through civil litigation.

• **AB 725 (Wicks; D-Oakland)**

Inclusionary Housing Requirement — Will exacerbate California’s housing crisis by imposing a statewide, indirect inclusionary housing requirement that prohibits local jurisdictions from allocating more than 20% of their share of regional housing need for above moderate-income housing in areas zoned for single-family development.

• **AB 755 (Holden; D-Pasadena)**

Targeted Tax on Purchase of Tires — Imposes a \$1.50 targeted tax on the purchase of new tires, that will unfairly raise prices on California residents, including employers, in order to fund the mitigation of zinc in storm water for all.

• **AB 790 (Levine; D-San Rafael)**

Increased Cost on Employers for Use of Personal Services Contracts — Discourages and reduces the use of “personal services contracts” as defined, by requiring the hiring entity to pay a minimum contractual compensation rate at 85% of the area median income, which will presumably include wages from different industries and occupations that are not comparable to personal services, and reduce jobs for individuals who perform the work under personal services contracts.

• **AB 857 (Chiu; D-San Francisco)**

Significant Risk to Taxpayer Dollars and Community Investment — Jeopardizes taxpayer dollars, community banks, and funding for small businesses that create jobs in local communities, by allowing the creation of local public banks which will impose significant costs and risks to taxpayer revenue for operations and capital, as well as unfairly compete with local community banks.

• **AB 882 (McCarty; D-Sacramento)**

Limitation on Ability to Maintain a Safe Workplace — Significantly undermines an employer’s ability to maintain a safe, drug-free workplace, by prohibiting an employer from discharging an

employee who has tested positive for a drug that is being used for medical purposes, which will expose employers to costly litigation.

• **AB 1035 (Mayes; R-Yucca Valley)**

Expansion of Civil Litigation for Data Breaches — Unfairly requires businesses to notify consumers of a data breach within 72 hours, which will place an unrealistic compliance burden on businesses before they can reasonably assess the extent of the breach, thereby unnecessarily causing harm to consumers and increasing businesses’ class action exposure.

• **AB 1286 (Muratsuchi;**

D-Torrance) **Unfair Contractual Mandates on Use of Motorized Scooters** — Significantly increases costs and litigation on shared mobility providers by prohibiting arbitration agreements as a part of the consumer contract, which is preempted under the Federal Arbitration Act and will create uncertainty and delay for the resolution of disputes.

• **AB 1332 (Bonta; D-Oakland)**

Contract Prohibition for Businesses that Provide Services to Federal Government — Prohibits California public entities from contracting with, or investing in, any business that provides data-related services to an undefined group of federal agencies. Will create litigation and uncertainty for businesses that continue to work with California public entities, as the bill provides no clear guidance on how to comply with terms, and also in limited circumstances, compels public entities to breach signed contracts.

• **AB 1468 (McCarty;**

D-Sacramento/Gallagher; R-Yuba City) **Targeted Tax on Opioids** — Unfairly imposes an excise tax on opioid distributors in California, which will increase their costs and force them to adopt measures that include reducing workforce and increasing drug prices for ill patients who need these medications the most, in order to fund drug prevention and rehabilitation programs that will benefit all of California.

• **SB 1 (Atkins; D-San Diego)**

Unprecedented Delegation of Legislative Authority and Increased Litigation — Creates significant uncertainty and litigation risks to regulated entities by giving certain state agen-

See *CalChamber Releases: Page 7*

CalChamber Seeks to Restore Flexibility for More Workers

From Page 4

to manage these unexpected increases in demand through the use of independent contractors. AB 5 should be amended to include this exemption.

Retroactive Application

The CalChamber and coalition expressed concern that the retroactive application of the *Dynamex* decision is further increasing litigation.

Dynamex has already increased litigation costs for individual claims, class actions, and representative actions against California businesses of all sizes. The threat of litigation is exacerbated because some California courts are applying the *Dynamex* decision retroactively—up to 4 years back.

Retroactive application means that companies which were playing by the rules and classifying workers under the previous *Borello* test are now facing even more litigation due to the potential retroactive application of *Dynamex*.

For those industries/professions not exempted from the decision, the retroactive application is significant.

California is estimated to have nearly 2 million residents who choose to work as independent contractors. That figure is a conservative one as the 2018 U.S. Bureau of Labor Statistics Economic Release did not include the number of individuals who supplement their income with online platforms. 79 percent of independent contractors prefer their status over traditional employment, according to the Bureau of Labor Statistics Economic Release (June 7, 2018).

Furthermore, in a California August 2018 survey, 93% of independent contractors said they would opt to remain independent contractors rather than become employees (EMC Research August 2018).

Failing to further amend AB 5 with the additional exemptions listed above has the potential to eliminate the vast majority of independent contractors in

California. This not only hurts the business model of a broad swath of industries and billions of venture capital dollars that are increasingly invested in businesses, but also it hinders California as a national leader in the innovation economy.

Next Step

AB 5 passed Assembly Labor and Employment on April 3 and will be considered next by the Assembly Appropriations Committee.

The CalChamber looks forward to continued conversations with the author and supporters of AB 5 to further amend the bill to provide a more progressive and holistic approach that fits today's modern workforce.

Updates

To stay up to date on the effort to restore worker flexibility in the wake of the *Dynamex* decision, visit <https://imIndependent.co>.

Staff Contact: Laura Curtis

CalChamber Releases 2019 Job Killer List

From Page 6

cies unfettered authority to adopt rules and regulations without any of the Administrative Procedure Act safeguards when the agency, in its discretion, determines that the federal rules and regulations in effect on January 19, 2017 are more "stringent" than existing federal law. It also increases the potential for costly litigation by creating private rights of action under California law or when a state agency takes the foregoing discretionary action.

• **SB 44 (Skinner; D-Berkeley) Targeted Mandate that Will Increase Transportation Costs** — Severely impacts transportation costs by directing the California Air Resources Board (CARB) to develop a strategy to reduce all motor vehicle emissions by 40% by 2030 and 80% by 2050 by disproportionately targeting diesel medium- and heavy-duty trucks. Threatens jobs by requiring an immediate strategy for reduction of diesel vehicles without sufficient alternate technology.

• **SB 135 (Jackson; D-Santa Barbara) Substantial Expansion of California Family Rights Act** — Significantly harms small employers in California with as few as 5 employees by requiring these employers to provide 12 weeks of a protected leave of absence each year, in addition to existing leaves of absences already required, as well as potentially requiring larger employers to provide 10 months of protected leave, with the exposure to costly litigation for any alleged violation.

• **SB 246 (Wieckowski; D-Fremont) Targeted Tax on Oil and Gas Operators** — Unfairly targets one industry by imposing a 10% oil and gas severance tax onto an oil and gas operator, adding another layer of taxes onto this industry that will significantly increase the costs of doing business, thereby increasing prices paid by consumers for goods and services in this expensive state as well.

• **SB 468 (Jackson; D-Santa Barbara) \$20 Billion Tax Increase** —

Repeals several of California's most popular and most important tax exemptions and expenditures, which would raise taxes by \$20 billion.

• **SB 561 (Jackson; D-Santa Barbara) Significant Expansion of Liability and Litigation Under California Consumer Privacy Act (CCPA) of 2018** — Creates an onerous and costly private right of action that will primarily benefit trial lawyers to sue for any violations of the CCPA and removes businesses' 30-day right to cure an alleged violation of the CCPA as well as businesses' ability to seek guidance from the Attorney General on how to comply with this confusing and complex law.

• **SB 567 (Caballero; D-Salinas) Expands Costly Presumption of Injury** — Significantly increases workers' compensation costs for public and private hospitals by presuming certain diseases and injuries are caused by the workplace and establishes an extremely concerning precedent for expanding presumptions into the private sector.

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 or call (800) 331-8877.

ADDRESS SERVICE REQUESTED

HR Expert & Business Advocate™

www.calchamber.com
(916) 444-6670 FACSIMILE (916) 444-6685
P.O. BOX 1736 SACRAMENTO, CA 95812-1736

CALIFORNIA CHAMBER OF COMMERCE

ALERT

Periodicals
Postage
PAID
Sacramento, CA