

# ALERT

## CalChamber Efforts Result in Success on Regulations



Strong advocacy by the California Chamber of Commerce in conjunction with other business groups has led

to positive outcomes in several complex regulatory matters.

Changes that will help employers are evident in:

- The emergency wildfire smoke protection regulation adopted by the California Division of Occupational Safety and Health (Cal/OSHA);
- The latest draft of the California Air Resources Board (CARB) reporting regulation for air emissions; and
- Proposition 65 warning requirements set forth by the Office of Environmental Health Hazard Assessment (OEHHA).

The emergency wildfire smoke protection regulation that went into effect

this week is improved from the original draft. Worth noting is the increase in the threshold at which the emergency rule requires respirator use. The change will minimize the days businesses will need to provide medical evaluations and fit testing to all outdoor employees or close in order to comply with the emergency rule.

CARB has dropped—for now—its proposal to require many small businesses to report air emissions. The original proposal would have expanded the costly data collection requirement to thousands of small operations.

OEHHA has dropped a couple of proposals that would have led to unnecessary warnings about ingredients in food products.

For details on these regulatory successes, see the articles in this edition of *Alert* on the emergency wildfire smoke regulation, air emissions reporting and Proposition 65.

## Employment Law Experts Bring Wide Range of Experience to CalChamber

In the past year, the California Chamber of Commerce has added three new employment law experts to its legal affairs team to help explain for nonlawyers how statutes, regulations and court cases affect California businesses and employers.

The experts bring to the CalChamber more than 20 years of combined experience in a wide range of state and federal employment law issues and litigation.



**Bianca N. Saad**

Bianca Saad oversees CalChamber coverage of the ever-expanding area of labor-related local ordinances and serves as a co-presenter for CalChamber

compliance seminars and webinars.

She became a CalChamber employment law subject matter expert in April 2018, bringing to the CalChamber the perspective of an employee representative, coming from nearly eight years in private practice as an employment law and litigation attorney.

She has represented plaintiff workers in wage and hour disputes, employment whistleblower claims, personal injury matters, and employment discrimination, harassment and retaliation cases. On behalf

*See Employment Law: Page 4*

## Grassroots Revamp Next Step Sign Up for the IMPACT CALIFORNIA Program



Thanks to the readers who voted in the online poll, the California Chamber of Commerce Grassroots program has

a new name: **Impact California.**

Over the next few months, CalChamber will be revamping the Grassroots program to offer new resources, platforms and advocacy tools to help Californians use their voice to make an impact on legislation.

The program will continue to serve

as a nonpartisan outlet dedicated to helping Californians become involved in the legislative process. Although the idea of involvement is relevant today, the name of the Grassroots program seemed outdated. This is why CalChamber is rebranding the program and asked for readers' help in the first step of the process—choosing a new name.

### Join Impact California

The vision of Impact California is to provide every Californian with the knowledge to engage in the legislative

*See Sign Up: Page 6*

### Inside

Wildfire Smoke Emergency Rule: Pages 3 and 5

## Labor Law Corner

# Options to Consider When ‘Temp’ Employee Becomes Longer-Term



**Michelle Galbraith**  
HR Adviser

*I hired a number of employees to work on a short-term project for me. I classified them as “temporary” and therefore not eligible for benefits (other than paid sick leave). The project keeps getting extended though, and many of those employees have now been working for me for several months. At what point do I have to fire them or make them regular full-time employees?*

There is no specific time limit on how long a worker may be classified as “temporary.” However, if temporary employees have been performing the same job duties as regular full-time employees for an extended period, but are ineligible for the benefits those other employees receive, their employer could face liability.

### ‘Permatemps’ Likely Entitled to Benefits

In 1992, a group of temporary workers sued Microsoft for improperly maintaining them as “temporary” for years at a time.

Referring to themselves as “permatemps,” these workers were hired on a short-term basis during a period of rapid growth for Microsoft, but many remained on staff as “temporary” for two or more years. They were not permitted to participate in Microsoft’s employee benefits (such as health care, pensions, and stock purchase

plans), even though they performed the same jobs as regular full time employees, and often for a longer tenure.

Following an appellate court ruling that the permatemps should have been permitted to participate in Microsoft’s stock purchase plan, Microsoft negotiated a \$97 million settlement with them.

It also changed its policies to favor staffing agencies that offered more generous benefits, and required temporary workers who stay at Microsoft for one year to leave the company for at least 100 days.

### Employer Treatment Matters

While the Microsoft case was under way, a group of PG&E employees sued their employer, claiming that they were misclassified as temporary workers and improperly denied benefits.

Like the Microsoft permatemps, the PG&E employee had worked for PG&E

*See Options to Consider: Page 4*

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## CalChamber-Sponsored Seminars/Trade Shows

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

### Labor Law

Leaves of Absence: Making Sense of It  
All. CalChamber. August 16, Oakland;  
September 26, Costa Mesa. (800) 331-8877.

HR Boot Camp. CalChamber. August 22, Pasadena - Sold Out; September 12, Sacramento; October 10, Costa Mesa. (800) 331-8877.

Add Local Ordinances to Your Compliance Radar. CalChamber. September 19, Webinar. (800) 331-8877.

HR Symposium. CalChamber. November 8, Huntington Beach. (800) 331-8877.

### Business Resources

Business H2O Water Innovation Summit. U.S. Chamber of Commerce and Salt Lake Chamber of Commerce. September 12, Snowbird, Utah. (801) 364-3631.

14th Annual Prop. 65 Conference. Prop. 65 Clearinghouse. September 23, San Francisco. (415) 391-9808.

### International Trade

Exporting Mechanics Webinar Series II: Best Practices for Export Compliance. National Customs Brokers & Forwarders Association of America, Inc. and U.S. Department of Commerce. August 13, Webinar. (202) 466-0222.

California as a Nation State: Innovative or Inevitable? Center for California Studies, California State University, Sacramento. August 14, Sacramento. (916) 278-6906.

Exporting Mechanics Webinar Series II: Dealing with Suppliers, Partners and Buyers. National Customs Brokers & Forwarders Association of America, Inc. and U.S. Department of Commerce. September 17, Webinar. (202) 466-0222.

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

Discover Global Markets: Powering and Building The Middle East and Africa. U.S. Department of Commerce and the Houston District Export Council. September 30–October 2, Houston, Texas. (281) 228-5652.

Exporting Mechanics Webinar Series II: Advanced Letters of Credit. National

*See CalChamber-Sponsored: Page 6*

**Next Alert: August 16**



## The Workplace

# What Employers Need to Know: Emergency Wildfire Smoke Regulation



Employers in California are now required to protect their employees from potential harm created by wildfire smoke, following

approval of an emergency regulation by the Office of Administrative Law on July 29. The rule is effective through January 28, 2020, with two possible 90-day extensions.

In Episode 22 of *The Workplace*, CalChamber Policy Advocate Robert Moutrie and CalChamber Executive Vice President and General Counsel Erika Frank review the steps employers should take to comply with Cal/OSHA's wildfire smoke protection emergency rule.

### Emergency Rule

Adopted by the Cal/OSHA Standards Board on July 18, the emergency rule requires employers to monitor the Air Quality Index (AQI) in the workplace and take steps to protect workers when the AQI reaches certain levels.

"Broadly speaking what employers need to begin doing is, let's say you hear about a fire, you smell smoke, you need to be monitoring the AQI in your area, which you can do via government websites or an email alert," Moutrie tells Frank. "If [the AQI] reaches certain

levels, you're going to need to take certain steps with your employees."

### To Do List

• **First**, Moutrie says, employers should decide whether the smoke protection requirements apply to them. Is the job site in an office building or an outdoor location or agricultural site?

"Rule of thumb: if you have an employee who is outdoors for more than an hour...in their shift, then that employee is going to fall under this [requirement]," he says.

• **Second**, employers should monitor if the airborne particulate matter (PM) 2.5 in the AQI is 151 or greater by visiting government websites, such as the California Air Resources Board (CARB).

Be cautious, however, of using third-party sources, such as *The Weather Channel*, Moutrie warns. Generally, these sources will give a general AQI reading, but not detail the PM 2.5—which is what employers need, and is what government websites provide.

• **Third** and last, employers should take compliance steps when PM 2.5 levels go over 150. There are two thresholds employers need to know: PM 2.5 levels over 150, and PM 2.5 levels over 500. Each threshold triggers its own set of requirements.

If the PM 2.5 level rises above 150, employers should provide N95 masks to all employees for voluntary use.

If the PM 2.5 level reaches 500, employees need to be fit tested and medically evaluated, and are required to wear the N95 mask.

"Thankfully, 500 is very uncommon unless you are just next to a wildfire," Moutrie tells Frank.

### Recommendations

• **Set up an email alert** via a state or local air quality monitoring site, such as: the U.S. Environmental Protection Agency's Air Now or the South Coast Air Quality Management District's Current Air Quality Data.

• **Stock up now:** Moutrie recommends that employers should stock enough N95 respirators to cover more than one shift. Also, employers should start stocking up now. Should a wildfire arise, supply could become an issue, Moutrie says.

• **Set up an internal policy and train supervisors** on how to monitor the AQI, and what to do if the PM 2.5 levels trigger compliance requirements.

### More Information

More information and links are available in the [online version](#) of this story.

### Subscribe to The Workplace

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## The Workplace

# Vaccination Controversy Highlights Wellness Issues in the Workplace

While employers cannot require their employees to get vaccinated, there are many proactive steps they can take to ensure wellness and safety in the workplace.

In Episode 20 of *The Workplace* podcast, CalChamber Executive Vice President and General Counsel Erika Frank and employment law expert Jennifer Shaw discuss the current vaccination controversy and other issues that come into play as employers attempt to keep workers healthy and productive.

### Help Employees Stay Healthy

For employers, employee health and

safety should always be a top priority, but employers cannot require employees to get vaccinated.

Recently, there was an outbreak of measles in the United States, as individuals who were not vaccinated traveled internationally and came into contact with the highly contagious disease. Unknowingly, they brought measles back to the U.S., where the virus is spread.

In the workplace, employers have very limited power when it comes to vaccination requirements.

"You cannot require as a term and condition of employment for someone to be vaccinated except in certain work-

places where they may be working with the elderly, people in the hospital," Shaw tells Frank.

There are a few crucial things, however, that employers can do to help their workforce stay healthy. Many employers offer vaccinations in the workplace, Shaw says, "making it easy for the employees to get vaccinated and also having public health nurses and doctors explain what the risks of the vaccination actually are."

### What to Do During an Outbreak

When an employee has been diagnosed with a highly contagious disease,

*See Vaccination: Page 6*



## Employment Law Experts Bring Wide Range of Experience to CalChamber

*From Page 1*

of her clients, she participated in settlement negotiations, mediation and trials, facing both private and public employers. Her experience includes five years as a senior associate/litigation attorney with Bohm Law Group in Sacramento.

Saad also has volunteered as an assistant district attorney for the District Attorney's Office in San Francisco.

She graduated with honors from the University of Miami with a B.B.A. in business management. She earned her J.D. from California Western School of Law.



### **Matthew J. Roberts**

Matthew Roberts joined the CalChamber in July 2019 as an employment law counsel/subject matter expert.

He explains California and federal labor and employment laws to CalChamber members and customers, including serving as an HR adviser on the Labor Law Helpline.

Roberts brings to the CalChamber a decade of experience representing business owners on California wage and hour and anti-discrimination employment laws for law firms in Sacramento and Davis.

He previously worked at Shaw Law Group, P.C. of Sacramento, where he was a senior attorney and authored articles on emerging issues in employment law. In addition to representing employers

before state and federal employment law enforcement agencies, he provided training and developed training materials on topics such as sexual harassment prevention training, wage and hour and leaves of absence issues, and conducting sensitive workplace investigations for public and private employers.

During the preceding eight years as an attorney in private practice with Davis and Sacramento firms, Roberts represented clients in all phases of litigation involving claims for violations of state and federal anti-discrimination laws, whistleblower protection acts, and wage and hour laws, as well as representing clients in internal grievances and alternative dispute resolution, including arbitration. He also has experience on personal injury litigation claims.

He received a B.A. in government from California State University, Sacramento and holds a J.D. from McGeorge School of Law, University of the Pacific, where he also served on the *McGeorge Law Review* as both a writer and primary managing editor.



### **James W. Ward**

James Ward joined the CalChamber in June 2019 as an employment law subject matter expert/legal writer and editor.

Ward came to the CalChamber following his time as an

associate attorney at Kronick Moskowitz Tiedemann & Girard of Sacramento. At Kronick, he provided advice and counsel to public and private employers on labor and employment matters, including discrimination, harassment, retaliation, wage-and-hour issues, employee leave, reasonable accommodations, employee discipline, and employer policies and handbooks. Ward also represented public and private employers in litigation at the trial and appellate court levels.

During law school, Ward served as a judicial extern to Associate Justice Ronald B. Robie of the California 3rd District Court of Appeal. During his time at the court, Ward analyzed trial court records, appellate briefs, recommended dispositions and drafted judicial opinions for Justice Robie.

Preceding his focus on the law, Ward was a professional musician and recording engineer, serving as music director at Warehouse Ministries, and a general partner at Spynhunter Records, both in Sacramento.

Ward holds a B.A. in humanities, *magna cum laude*, and an M.A. in history from California State University, Sacramento. He earned his J.D. with great distinction from the McGeorge School of Law, University of the Pacific, where he was staff editor of the *Pacific McGeorge Global Business and Development Law Journal*, and served on the Moot Court Honors Board.

## Options to Consider When 'Temp' Employee Becomes Longer-Term

*From Page 2*

for years—often more than a decade. They used PG&E equipment, supplies, and trucks, and attended PG&E training classes alongside regular employees, but remained employed by third party staffing agencies and ineligible for PG&E benefits.

The Ninth Circuit Court of Appeal held that although they were leased by PG&E from staffing agencies, the workers could be considered regular employees based on PG&E's treatment of them. The circuit court sent the case back to the trial court to determine if PG&E treated the leased workers as employees. If it did,

the workers could be retroactively eligible for benefits.

### **Lessons for Employers**

Although neither the Microsoft case nor the PG&E case offered a clear time limit for employing temporary workers, the cases still offer some guidance for California businesses:

- First, temporary workers should not perform the same duties as regular full-time employees on an indefinite basis. Employers should establish policies limiting the duration of employment of temporary workers and specifically defin-

ing the scope of their job duties.

- Additionally, if business necessity requires an employer to retain temporary workers for an extended period, it should consider changing their status to "regular, full-time" and making them eligible for benefits.

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*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).*

# Wildfire Smoke Protection Emergency Rule Now in Effect for California Employers



An emergency regulation requiring California employers to protect employees from potential harm due to wildfire smoke went into effect on July 29.

Adopted by the Cal/OSHA Standards Board on July 18, the emergency rule requires employers to monitor the Air Quality Index (AQI) in the workplace and take steps to protect workers when the AQI reaches certain levels.

The California Chamber of Commerce and a coalition of employer groups have been commenting on the emergency rule at every stage of the process and will continue to advocate adjustments to clarify employer responsibilities.

## Requirements for Employers

The emergency rule will be in effect until the permanent rule is passed (likely one year) and applies to workplaces where the AQI for airborne particulate matter (PM) 2.5 is 151 or greater. Employers must:

- Check the AQI for PM 2.5 before each shift to determine if it is at or above 150 AQI for PM 2.5.
- Reduce harmful exposure to wildfire smoke if feasible—for example, by relocating work to an enclosed building with filtered air or an outdoor location where the AQI for PM 2.5 is 150 or lower.
- Provide respirators such as N95 masks to all employees for voluntary use.
- Provide training on the new regulation, including the health effects of wildfire smoke and the proper use and maintenance of respirators.

## Advocacy Impact

In response to comments from the CalChamber coalition and others, the Standards Board dramatically increased

the threshold at which respirator use would be required in the adopted emergency rule, which will minimize the days that businesses will need to provide medical evaluations and fit testing to all outdoor employees or close in order to comply with the regulation.

In addition, the CalChamber pointed out numerous inconsistencies and vagueness concerns with the emergency rule.

At the July 18 meeting, David Harrison, one of two labor representatives on the seven-member Standards Board, acknowledged these concerns and urged the Cal/OSHA staff to be careful to avoid inflicting unnecessary harm when enforcing the emergency rule.

## Ongoing Concerns

The CalChamber and employer community will continue to seek changes to provide employers with greater certainty when implementing the wildfire regulation.

The petition worker groups filed that led to the adoption of the emergency rule focused explicitly on “outdoor occupations such as agriculture, landscaping, maintenance, commercial delivery, and other activities not considered to be ‘first response.’”

The emergency rule goes beyond outdoor occupations and may affect even indoor workers or workers who go from inside to outside, thereby having a cumulative exposure to the wildfire smoke of only one hour during a shift.

Examples of such exposure include a waiter who walks in and out of a restaurant to serve food, an employee staffing a drive-up window, a car salesperson who is both indoors and on the lot, and a driver who moves in and out of a delivery vehicle throughout the day.

The CalChamber-led coalition emphasized that Cal/OSHA should not use the emergency rule as a means to adopt standards that are broader than the original intent.

Ambiguous or confusing language in the emergency rule that needs to be clarified includes:

- When the ventilation or other features of an indoor environment are enough to allow the area to be exempt

from the wildfire smoke regulation.

- How employers should fulfill their obligation to train employees.
- Procedures for testing the fit and evaluating the effectiveness of powered air respirators.
- Whether facial hair should be shaved or allowed with use of a respirator.

## What’s Next

Cal/OSHA has launched the process of adopting a permanent regulation to protect employees from being exposed to unhealthy levels of wildfire smoke.

A meeting has been set for August 27 in Oakland to allow stakeholders and the public to provide information and scientific data on employee exposure to wildfire smoke, control measures, feasibility, or costs.

More information on the [advisory committee meeting](https://www.dir.ca.gov/dosh/doshreg/Protection-from-Wildfire-Smoke/) (see <https://www.dir.ca.gov/dosh/doshreg/Protection-from-Wildfire-Smoke/>) will be available on Cal/OSHA’s website at [www.dir.ca.gov](http://www.dir.ca.gov).

## Resources for Compliance

The emergency rule took effect immediately upon its approval by the Office of Administrative Law (OAL). In preparing to comply, employers should:

- Review the emergency regulation and supporting documents—available at: <https://www.dir.ca.gov/oshsb/documents/Protection-from-Wildfire-Smoke-Emergency-txbrdconsider.pdf>. A Spanish version also will be available.
- Prepare to monitor the AQI at worksites, using either onsite monitoring or a state or local air quality monitoring site, such as the U.S. Environmental Protection Agency’s Air Now <https://airnow.gov/> or the South Coast Air Quality Management District’s Current Air Quality Data page <http://www.aqmd.gov/home/air-quality/current-air-quality-data>.

• Prepare training, advise supervisors, and also acquire N95 respirators so that multiple shifts of employees are prepared for compliance should a wildfire occur.

[Episode 22 of The Workplace podcast](#) presented by CalChamber provides additional tips.

**Staff Contact: Robert Moutrie**

# State Air Resources Board Drops Expansion of Emissions Reporting to Small Businesses



In response to objections raised by the California Chamber of Commerce and other

business groups, the California Air Resources Board (CARB) has dropped—for now—its proposal to require many small businesses to report air emissions.

The [newest draft](#) of the air emissions reporting regulation does not require the duplicative data collection and reporting by a catch-all category of facilities based on their emission levels.

That category includes 48,700 businesses, among them about 17,200 small businesses, not specified in the 2017 legislation establishing the emissions monitoring program (AB 617; C. Garcia; D-Bell Gardens; Chapter 136).

By CARB's own estimates, expanding the data collection program to the businesses in the catch-all category would have more than quadrupled the cost of the program to exceed \$80 million, compared to an original cost estimate of \$20 million.

CARB is attempting to create a [state-wide approach](#) to collecting and monitoring data to avoid piecemeal collection and

ensure the use of best available technology to measure air emissions across the state.

CARB estimated that 1,300 facilities are covered by the three categories of stationary emission sources AB 617 placed in law:

- Sources covered by the cap-and-trade regulations;
- Facilities in districts that are out of compliance with the Federal Clean Air Act and have permits authorizing emissions greater than 250 tons per year;
- Elevated priority for air toxics.

CARB suggested it would consider adding emissions reporting requirements for the fourth catch-all category of businesses in a future rulemaking or update.

## Draft Improvements

Other changes in the latest draft regulation show a substantial improvement over the previous draft. Those changes include:

- Clarifying that emissions collection and reporting are on a phase-in schedule;
- Adding explicit language to clarify that entities will not be liable for the failure of air districts to provide data to CARB.
- Expanding the agricultural irrigation pump exclusion;

- Clarifying emissions data collection methods;

- Clarifying the overlapping enforcement authority of CARB and local air districts;

- Making the requirements for portable equipment more consistent with the existing portable equipment registration program;

- Changing definitions for certain emissions to be monitored so that they are more consistent with federal definitions.

## Continuing Concerns

Still in need of work are sections of the regulation dealing with:

- **Confidentiality** of data submissions;
- **Approval of emissions reporting methods;**

- **30-day time** for responding to CARB requests.

## What's Next

The CalChamber will continue to work with CARB to clear up remaining business concerns. CARB has yet to announce whether a future public hearing will be held on these changes, but public comments were due by midnight on August 1.

**Staff Contact:** Leah Silverthorn

## Sign Up for the IMPACT CALIFORNIA Program

*From Page 1*

process, because statewide change begins with California residents.

Every voice deserves to be heard and Impact California will provide the tools to help you use your voice to make a change.

To become a part of the Impact California program and receive information about current legislative issues, as well as tips on how to make a difference in state legislation, [sign up](#) at [www.calchamber.com/impact](http://www.calchamber.com/impact).

Watch for the full-scale Impact California launch in January 2020.

**Staff Contact:** Natalie Leighton

## CalChamber-Sponsored Seminars/Trade Shows

*From Page 2*

Customs Brokers & Forwarders Association of America, Inc. and U.S. Department of Commerce. October 8, Webinar. (202) 466-0222.

Annual Pan African Global Trade and Investment Conference. Africa-USA Chamber of Commerce. October 15–17, Sacramento. (626) 243-3614.  
Trade Expo Indonesia. Indonesian Ministry of Trade. October 16–20, Banten, Indonesia.

U.S.-U.A.E. Business Council Trade Mission to the U.A.E. U.S.-U.A.E. Business Council. October 21–23, United Arab Emirates.

## CalChamber Calendar

*Environmental Policy Committee:*

September 5, La Jolla

*Water Committee:*

September 5, La Jolla

*Board of Directors:*

September 5–6, La Jolla

*International Trade Breakfast:*

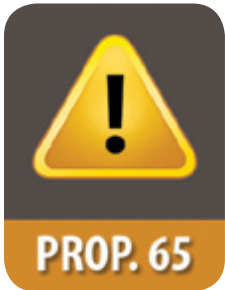
September 6, La Jolla

*Public Affairs Conference:*

October 15–16, Newport Beach



# Proposition 65: The Good, the Bad, the Ugly



One cannot travel very far in the Golden State without being bombarded with cancer warnings.

Thanks to Proposition 65, a 1986 voter-approved ballot initiative titled

California's *Safe Drinking Water and Toxic Enforcement Act of 1986*, it would seem that just about everything in California causes cancer, birth defects or other reproductive harm.

Well, get ready for even more warnings on even more food products.

On July 5, 2019, the Office of Environmental Health Hazard Assessment (OEHHA) proposed [modified amendments](#) to Proposition 65 that could dramatically increase the amount of warnings on food products.

## The 'Good'

The good news is that this is not the first time the agency has tried this. In 2015, OEHHA proposed four pre-regulatory proposals that would have substantially increased the amount of Proposition 65 warnings, increased frivolous "shake-down" lawsuits, and unjustifiably weakened the scientific basis for warning levels.

These pre-regulatory proposals were in direct response to the now-seminal Proposition 65 case, *Environmental Law Foundation v. Beech-Nut Nutrition Corporation* (2015).

In *Beechnut*, the plaintiff alleged that defendants failed to provide a Proposition 65 warning regarding exposure to lead in certain baby foods, fruit juices and packaged fruit. Lead is not intentionally added

by companies, but instead is found in trace levels in food products because of its [presence in the environment](#).

Defendants prevailed at trial by showing that the average consumer's reasonably anticipated rate of exposure to lead in the products, when properly evaluated to account for nondaily consumption, did not exceed the "safe harbor" of 0.50 micrograms.

- The first proposal would have significantly lowered the exposure level at which a warning is required for lead.
- The second proposal would have made exposure levels for certain toxicants a single-day limit.
- The third proposal would have mandated a specific type of statistical calculation, known as the "arithmetic mean."
- The final proposal would have required all food products to have chemical concentrations be evaluated for each and every lot of finished product that leaves the processing facility.

The California Chamber of Commerce and a vast coalition of organizations and businesses successfully pushed back against the agency. In a favorable ruling for the CalChamber and the broader business community, an Alameda Superior Court judge denied an environmental group's effort to rescind the longstanding Proposition 65 standard for lead, and that decision was later [affirmed](#) by the First District Court of Appeal.

OEHHA ultimately abandoned all four pre-regulatory proposals.

## The 'Bad'

Three years later, in the waning days of the Brown administration, OEHHA reintroduced two of the four pre-regulatory proposals—the "arithmetic mean" proposal and the prohibition against aver-

aging chemical concentrations across facilities—as formal rules subject to the Administrative Procedures Act.

Once again, CalChamber and its vast coalition of organizations and businesses engaged the agency and pushed back on the need for such changes to Proposition 65.

Ultimately, the agency abandoned the "arithmetic mean" proposal, likely because it would have been a disaster for businesses by allowing outliers to skew the mean, which in many cases, would result in the need to provide a warning when 85% of the population would not need one. Thus, this proposal substantially exacerbated the over-warning problem under Proposition 65.

## The 'Ugly'

Unfortunately, although OEHHA announced on July 5, 2019 that the agency had abandoned the "arithmetic mean" proposal—a significant victory for the business community—the agency essentially is doubling down on its proposal prohibiting manufacturers from averaging concentration results across different facilities.

What this means for businesses and consumers is that the over-warning problem under Proposition 65 for food products is likely to get a lot worse. The heavy burden businesses already face when defending against Proposition 65 bounty hunters will be substantially more difficult under a facility-by-facility approach.

The CalChamber coalition is preparing comments pushing back against the modified proposal.

[Comments are due August 5, 2019.](#)

*This article first appeared as a Capitol Insider blog post.*

**Staff Contact: Adam Regele**

## Vaccination Controversy Highlights Wellness Issues in the Workplace

*From Page 3*

it is important that the employer conveys this information carefully and directly to staff members. Shaw explains that many employers wanting to do the right thing may send out a memo warning their staff about the specific employee who has the contagious disease. Doing this, however, is a violation of privacy.

"The key is to not reveal the identity

of the person who has the condition," Shaw says. "You have to think strategically: who needs to know and what do they need to know?"

Additionally, how the information is unveiled to employees is equally important. With highly contagious diseases, like measles or the flu, people may panic and stop working if the information is relayed in the wrong manner.

Employers should also work to make the information on what the disease is and how it is spread accessible to their employees. Employers can find more information on what to do in case of an outbreak on the [Centers for Disease Control and Prevention website](#) at [www.cdc.gov/vaccines/index.html](http://www.cdc.gov/vaccines/index.html).

## California-Specific Compliance Expertise Is Within Reach in Huntington Beach

Join top experts as they hone in on relevant workplace challenges for California employers, including hiring in a competitive market and emerging issues/investigations related to the #MeToo movement—plus keynote **Julie A. Su**, Secretary of the California Labor and Workforce Development Agency.

**2019 CalChamber HR Symposium**  
**Hyatt Regency Huntington Beach**  
**Friday, November 8, 2019, 7:30 a.m. – 5:00 p.m.**

The cost of admission is \$499 (\$399.20 for Preferred/Executive members), and the event is approved for HRCI California recertification credits, SHRM PDCs, and MCLE credits.



**HR 2019**  
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**NOVEMBER 8, 2019**

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