

ALERT

The Workplace

Podcast Recaps Top Issues for Final Weeks of Session



The California Legislature has one final month to pass bills to the Governor before going on recess for the rest of the year.

In this week's episode of *The Workplace*, CalChamber President Allan Zarembeg, and CalChamber Executive Vice President Jennifer Barrera update listeners on the status of important pending legislation that will have a huge impact on employers and California's economy—legislation on the *Dynamex* decision, privacy, pay for striking workers, and arbitration agreements.

Employees vs. Independent Contractors

One of the most important bills moving through the Legislature is **AB 5 (Gonzalez; D-San Diego)**, Barrera, who heads the CalChamber policy team, tells Zarembeg.

AB 5 codifies into the Labor Code the court decision in *Dynamex Operations West, Inc. v. Superior Court of Los Angeles*, which rejected the long-standing *Borello* test (where employer control over the worker was a key) and adopted the "ABC" test for determining whether workers should be classified as either employees or independent contractors.

The bill also carves out exemptions
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CalChamber-Opposed Bill Will Increase Frivolous Litigation Against Businesses



OPPOSE

A California Chamber of Commerce-**opposed** bill allowing the Attorney General and private attorneys to sue taxpayers for perceived tax errors will be

considered by the Senate Appropriations Committee next week.

AB 1270 (M. Stone; D-Scotts Valley) expands the False Claims Act (FCA) to allow the Attorney General and private attorneys to sue taxpayers for perceived tax errors, thereby creating inconsistent tax enforcement, litigation, and nuisance lawsuits for taxpayers.

AB 1270 is being presented as a means to combat tax fraud, but it is a solution in search of a problem. The CalChamber is unaware of any reporting of rampant tax fraud in California that would justify new tools such as the FCA being utilized and which would potentially provide additional income if FCA lawsuits could be brought.

Unsurprisingly, present fiscal analysis of AB 1270 has not identified any estimated increase in revenue to California from expanding the FCA to allow tax-related lawsuits. Moreover, California already applies civil and criminal liability for fraud under the California Revenue and

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Reasonable Privacy Act Cleanup Bills Thwarted; Future of Act Uncertain



Sure, California was the first state in the nation to pass a massive privacy bill, the California Consumer Privacy Act (CCPA). But how can California be a national leader if it is not

willing to do the hard work to make sure that this law is realistic to implement?

How can California claim to be protecting its residents if its flagship privacy law has provisions that run afoul of basic notions of privacy?

The CCPA literally requires a business to provide all the specific pieces of information it has on any member of a household to any other member of the household that asks for it!

Not Like European Union

Moreover, unlike the GDPR [the European Union's General Data Protection Regulation], the CCPA fails to ensure that businesses can adequately protect consumers against fraud and identity theft.

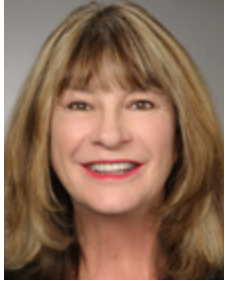
These are just some of the problems that the business community has raised ad nauseum since the law passed. And due
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Labor Law Corner

In-Person Review of I-9 Documents Necessary for Remote Employee



Dana Leisinger
HR Adviser

We are hiring an employee out of state who will be living and working more than a thousand miles away. How do we handle getting his I-9 processed?

This can be a very difficult situation, since the law makes no exception for a remote employee—the employer must have the I-9 completed within the first three days of the employee beginning employment.

Difficulties

In prior years, employers routinely used the services of a notary public to complete the I-9, but that option has eroded. Notaries frequently don't know what their responsibilities are, may not be familiar with the requirements of the form, or even are refusing to perform this task.

Indeed, California even has a law that requires an individual doing this task be bonded as an immigration consultant.

The employer is ultimately responsible for getting the I-9 completed and doing it correctly. The original documents must be examined; therefore "Facetime" and "Skype" are not acceptable methods of validating the qualifying documents. Nor can the new hire's family member handle this matter.

Options

- One option is to send the company's HR director to handle the matter. The cost of a round trip flight could be significantly less than the possible penalties that might result from knowingly conducting the matter incorrectly.

- Another option is to obtain the services of an immigration consultant as noted above. Again, this is required in California when outsourcing this task.

- Yet another option is to obtain the services of an employment law attorney/firm near the new hire, as such law firm/attorney should be experienced with the nuances of the I-9 form.

Bottom line, employers in California should make sure to have in place an internal I-9 compliance policy and that employees who are responsible for administering the program be familiar with the requirements of this form.

A good source for information on I-9s is the U.S. Citizenship and Immigration Services website at www.uscis.gov/i-9.

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

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Labor Law

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

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

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

California Law for Employers Located Out of State. CalChamber. October 3, Los Angeles. (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

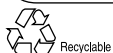
Exporting Mechanics Webinar Series II: Dealing with Suppliers, Partners and Buyers. National Customs Brokers & Forwarders Association of America, Inc. and U.S. Department of Commerce. September 17, Webinar. (202) 466-0222.

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

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The Workplace

Revenue Boost Calls Into Question Motivation for New Taxes



In Episode 23 of The Workplace, CalChamber President and CEO Allan Zaremberg discusses California's revenue surge and

continued calls for new taxes with longtime California political expert Dan Walters. They also delve into some of the most pressing issues at the state Capitol this year, including *Dynamex* and privacy legislation.

Tax Seekers Ignore Surplus

In the last year, California brought in \$1 billion more than expected from income taxes. Despite this surplus, some groups are pushing for increased taxes to pay for additional or pad existing programs.

The state tax system, however, is volatile and state revenues heavily rely on income taxes from top state earners, Walters says. "When the recession hits and the nation gets a cold, we get pneumonia in California," explains Walters.

In 2019, 70% of California's General Fund revenues come from personal income taxes.

"The top 1% of taxpayers, about 15,000 in a state of 40 million, pay half of those income taxes, so we are totally dependent on how well a handful of high-income people are doing," says Walters.

Continuing the fiscal prudence of his predecessor, Governor Gavin Newsom is putting money in the rainy day reserve and using extra funds for one-time spending, such as giving pension funds an extra boost.

Walters notes that Newsom also put a sunset date on new services, such as early childhood education, so if there is a recession, the program "cuts itself, automatically."

"If we have a 21 billion-dollar rainy-day reserve and on top of that some one-time expenditures that could cover a recession, why in the world would anybody want to raise taxes?" asks Zaremberg.

There's no shortage of people who say they could do more with more funding, Walters replies—public employee unions, and advocates for social services, health programs, early childhood education, and schools.

As for property taxes: "We are going to see another five or six billion dollars more in property tax revenue for the state as a whole that goes to schools and local governments," explains Walters. "The school situation is a little funny because the more property taxes the schools get, that means they get less state aid... Schools don't fully benefit from that, but local governments are seeing a very, very nice boost in property tax payments this year, thanks to new assessed valuation."

Outside Forces

One of the most pressing issues at the Capitol that has the potential to impact a broad range of California businesses is pending legislation on classifying independent contractors in response to the *Dynamex* decision last year.

Usually, Walters says, someone is trying to legislate one way and then the opposition surfaces. The politics in this instance are reversed, with the Supreme Court—an outside force—first laying down a narrow ruling (*Dynamex Operations West, Inc. v. Superior Court of Los Angeles*) and the legislation coming after.

"The real question is not whether it's going to happen, but who it's going to happen to, and that's where the Legislature gets involved, and the question is how many professions... will be exempted from the *Dynamex* ruling that the Supreme

Court laid down," says Walters.

Zaremberg asks: Shouldn't the Legislature have addressed this issue a long time ago?

"Yes, somebody should have been thinking about this a long time ago and somebody should have been doing it judiciously," Walters says. "Well, this is not judicious; this is hurry up legislation."

Another issue being driven by forces outside the Legislature is privacy, with the privacy legislation being passed in an effort to head off a ballot initiative.

"This is not something that should be done state by state by state," Walters comments.

"The internet doesn't stop at the state line," remarks Zaremberg. "People want to protect their privacy and their data, but they also want to be able to find Mexican restaurants near me, they want their loyalty programs, and they want to take advantage of the data that somebody puts together and helps them with."

It's a tradeoff, Walters responds. "How much privacy are you willing to give up for convenience, and how much convenience are you willing to give up for privacy? That's almost as individual as fingerprints, so it makes it very difficult to have a one-size-fits law," he says.

Employers in California will have to wait to see how the Legislature adapts new laws to fit changing technology in the workplace.

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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

CalChamber

**PUBLIC AFFAIRS
CONFERENCE**

October 15-16, 2019

Fashion Island Hotel, Newport Beach



Governor Names CalChamber President to Post-Secondary Council



Allan Zarembeg

Last week, Governor Gavin Newsom announced the formation of an 11-member Council for Post-Secondary Education that will serve as an “independent

consultative resource to the Governor around the economic and social impact of higher education in the state.”

CalChamber President and CEO Allan Zarembeg was selected by the Governor to serve on the Council.

“It is no coincidence that we have the best higher education system in the world, and that we have the most sought after workforce and the best economy,” said Zarembeg. “For those Californians who haven’t shared in our economic prosperity, higher education can provide

the rungs on the economic ladder if the curriculum matches the skills needed in today’s job market.”

The council will examine issues relating to future capacity, enrollment planning, community college transfers, general education and coordination at the state and regional levels, and make recommendations to the Governor for action.

In addition to this council, the Governor has convened—and will continue to engage—higher education advocates and stakeholders to advise him on issues relating to student access, affordability and success.

“The university and community college systems in the state operate in silos,” Governor Newsom said. “To develop best practices and help our students reach their full potential, we need to work together across institutions. I look forward to working with our state’s higher education leaders to set bold statewide goals and partnering together to achieve them.”

Council Members

Serving with Zarembeg on the Council are:

- Janet Napolitano, President, University of California;
- Timothy White, Chancellor, California State University;
- Eloy Ortiz Oakley, Chancellor, California Community Colleges;
- Kristen Soares, President, Association of Independent California Colleges and Universities;
- Tony Thurmond, California State Superintendent of Public Instruction;
- Linda Darling-Hammond, President, California State Board of Education;
- Art Pulaski, Executive Secretary-Treasurer, California Labor Federation;
- Lenny Mendonca, Governor’s Chief Economic and Business Adviser;
- Keely Bosler, Director, California Department of Finance; and
- Lande Ajoose, Senior Policy Adviser, Office of the Governor.

August 27 Hearing Will Allow Taxpayers to Voice Concerns



An annual hearing to allow taxpayers to present their ideas and

concerns on property taxes or the alcoholic beverage tax is set for August 27.

The annual Taxpayers’ Bill of Rights hearing before the state Board of Equalization (BOE) will begin at about 10 a.m. in the Board Room at 450 N Street, 1st Floor, Sacramento.

The hearing will provide taxpayers, assessors and other local agencies the opportunity to comment on items in the BOE’s most recent [annual report](#), available

on the BOE website, www.boe.ca.gov.

The annual report notes, among other things, that this year the Taxpayers’ Rights Advocate Office began providing local taxpayers with educational materials written in simple, nontechnical terms about property tax savings that may be available from exemptions and exclusions. The first two information sheets deal with exclusions from reassessment for transfers of property between parents and children, and from grandparents to grandchildren.

In addition, individuals may comment on:

- items being worked on by the Taxpayers’ Rights Advocate Office;

- present ideas and recommendations about legislation related to the alcoholic beverage tax that may improve voluntary compliance and the relationship between taxpayers and government;

- concerns about the quality of agency services; and

- other issues related to the BOE administration of its tax programs, including state and county property taxes, the alcoholic beverage tax, and tax on insurers.

For more information on the hearing or a copy of the annual report, visit www.boe.ca.gov/tra or contact the Taxpayers’ Rights Advocate Office at (916) 327-2217.

CalChamber-Opposed Bill Will Increase Frivolous Litigation

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Tax Code Section 19706 (tax fraud) and Penal Code Section 72 (false statement to public entities may constitute a felony).

CalChamber Concerns

Many changes in AB 1270 would expand the FCA to cover tax-related claims, but some changes would affect the standards governing *all* FCA lawsuits. Particularly problematic is that the bill: **Allows Private Attorneys to Bring Nuisance Suits Based on Tax Disputes**

The business community has grave concerns about allowing for-profit attorneys into tax enforcement. This is particularly true when discussing a tool like the FCA, which provides massive penalties for the taxpayer and massive rewards for the private litigant. California's FCA provides the following penalties:

- \$5,000–\$11,000 per violation, adjusted for inflation.
- Two-to-three times the amount of actual damage to the public entity, as an added penalty.
- Attorney's fees if the plaintiff is successful, adding potentially hundreds of thousands of dollars to the cost of the lawsuit for a business.

Based on these strong penalties, a \$200,000 tax dispute under the FCA could quickly balloon into a potential million-dollar dispute. Plaintiff's attorneys will be incentivized to bring lawsuits without any merit to scare businesses into paying settlements, and, facing such steep penalties, businesses will be compelled to pay to settle meritless claims.

A similar law in Illinois provides an example of the potential abuse: one attorney there filed hundreds of False Claims Act lawsuits by simply ordering products online and alleging that the out-of-state

company had improperly complied with Illinois state tax law. Although the products purchased were not expensive, the per-incident penalties and attorney's fees allowed the attorney to pressure businesses to pay large settlements—even where no wrongdoing had occurred.

Creates Uncertainty Due to Conflicts with Existing Tax Law

AB 1270 also would create conflicting standards in tax law by ignoring differences between the standards in the California Revenue and Tax Code and the standards applied under the FCA. This will make it even easier for plaintiff's attorneys to bring nuisance lawsuits against taxpayers because the ambiguity of conflicting law will make it difficult for businesses to determine whether they are in compliance.

As a result, businesses will be uncertain as to whether they will win or lose if the case proceeds and will pay to avoid the FCA's cataclysmic consequences.

Creates Double Jeopardy

AB 1270 fails to include any protection for a taxpayer who has already handled a transaction with the taxing agencies. For example, if a taxpayer is audited and no issues are found, the taxpayer still could face an FCA lawsuit years later if AB 1270 becomes law.

Moreover, even if the taxpayer had *affirmatively flagged* an issue for review by the taxing agency (bringing that issue forward specifically for review), and was found to have filed correctly, that taxpayer still could face the treble damages and attorney's fees of an FCA lawsuit.

This double jeopardy issue makes concerns about profit-driven plaintiff's attorneys all the more apparent—regardless of whether the taxing agencies have signed off on a taxpayer's documents, that taxpayer is still at risk of a lawsuit.

Incorrectly Codifies Existing Case Law

Outside of the new tax-related provisions of the FCA, AB 1270 also attempts to codify case law on another part of the FCA: materiality. The FCA requires that an alleged misstatement be "material" for a lawsuit to be brought.

Generally speaking, this "materiality" test asks whether the alleged misstatement mattered to the public entity. If it was a small typo or unimportant point, the courts have concluded that it doesn't make sense to impose the FCA's strict penalties because the misstatement did not matter (or was not "material") to the payment.

Problematically, AB 1270 attempts to codify a present California case—but incorrectly summarizes the case's holding and goes far beyond its actual rule. The CalChamber is gravely concerned that mischaracterizing present case law will lead to uncertainty and litigation for anyone facing an FCA lawsuit in the future.

Current System Best Left Unchanged

AB 1270 is a solution without a problem. It would introduce private attorneys into tax enforcement, create ambiguity with existing tax law, and leave taxpayers in uncertainty as they face conflicting standards and potential double jeopardy, even after a clean audit.

AB 1270 creates a host of concerns because the FCA was not designed to enforce tax law. The complexity and ambiguity of tax law is better suited to enforcement by the current system, where cases can be handled by agencies with expertise in taxes, well-developed procedures, and no profit motive.

The CalChamber **opposes** AB 1270.

Staff Contact: Robert Moutrie



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Governor Names Alzheimer's Prevention/Preparedness Task Force



Last week, Governor Gavin Newsom and Maria Shriver, former first lady, announced [via Twitter](#) the 28 members of the Governor's Task Force on Alzheimer's Prevention and Preparedness.

Shriver chairs the task force, which will present recommendations to the Governor on how local communities, private organizations, businesses, government and families can prevent

and prepare for the rise in the number of cases of Alzheimer's disease.

The U.S. Census Bureau has estimated that by 2030 about 1 in 5 Californians will be age 65 or older, a reminder of the importance of tackling the policy, economic and health challenges for those with age-related brain diseases such as Alzheimer's and the families who care for those individuals.

Shriver is a leading advocate for families dealing with Alzheimer's. Former Secretary of State George Shultz will serve as strategic adviser to the task

force, which includes scientists, physicians, a blogger diagnosed with younger onset Alzheimer's and her husband, representatives of health care workers, and a University of California, Merced student who has developed a computer vision algorithm that can help detect the presence of Alzheimer's.

To see the full list of task force members and their biographies, visit the [task force](#) section of the California Health and Human Services Agency website at www.chhs.ca.gov.

Reasonable Privacy Act Cleanup Bills Thwarted; Future of Act Uncertain

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to problems like these, not one state has adopted the CCPA. Instead, other states have considered and rejected it.

Last year, when the CCPA passed in just one week, legislators assured the business community that there would be cleanup legislation; that there would be time to comb through the 10,000+ words of this complex law and make sure that it works. The business community was told to narrow our requests and to focus on our main priorities. We were told to work with privacy advocates and build consensus.

Well, we did our homework. All of it. Coming out of the Assembly, we had six bills—all of which had been narrowed significantly over the course of negotiations in the Assembly—and all but one of them passed the Assembly with near-unanimous votes.

Negotiated Bills Stalled

Despite this, a number of these bills were stalled in the Senate due to the

influence of one senator acting in lock-step with certain privacy groups that opposed the business community fixes—claiming they would “water down” the CCPA.

But there seems to be something else at play here. These groups did not want an opt-out law. They wanted an opt-in law. They did not want enforcement by the Attorney General. They wanted enforcement by trial lawyers. (Side note, in privacy class actions, plaintiffs' attorneys often name these same privacy advocacy groups as the recipients of *cy pres* awards—in fact, such awards are often a main source of funding for these organizations.)

No Stake in Making Law Work

Since these groups do not have to comply with the CCPA and since they weren't thrilled with the compromise that resulted in it, it seems they may not really have a stake in whether the law works. It also seems that their opposition to

our reasonable fixes may be more about holding out for the business community to agree to make the CCPA even more stringent.

This is a tough pill to swallow as California is already requiring businesses of all sizes, across every industry to comply with the most robust privacy law in the country in a matter of months—and the regulations to offer guidance on crucial aspects of this law, like what constitutes a verifiable request, are not even complete. If these are the politics controlling the outcome here, it doesn't reflect well on California's ability to make this complex law work.

As we approach this last month of session, there are still serious flaws with the CCPA that must be fixed. There has been much talk about a possible end-of-session play. Against this backdrop, is that in the cards? It's hard to say.

This article first appeared as a Capitol Insider post.

Staff Contact: Sarah Boot

CalChamber-Sponsored Seminars/Trade Shows

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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.

GetGlobal 2019: Thrive in Foreign Markets. GetGlobal. November 5–7, Long Beach.

China International Import Expo. China International Import Expo Bureau. November 5–10, Shanghai. +86-21-968888.

Hong Kong International Wine and Spirits Fair 2019. Hong Kong Trade Development Council. November 7–9, Hong Kong. (852) 1830-668.

Exporting Mechanics Webinar Series II:

Duty Drawback and Refunds. National Customs Brokers & Forwarders Association of America, Inc. and U.S. Department of Commerce. November 12, Webinar. (202) 466-0222.

Exporting Mechanics Webinar Series II: ECCN Classification Numbers. National Customs Brokers & Forwarders Association of America, Inc. and U.S. Department of Commerce. December 10, Webinar. (202) 466-0222.

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from the “ABC” test for certain professions, reverting those industries back to the *Borello* standard, which is much more flexible, Barrera explains.

“For example, insurance agents are carved out, hair stylists, doctors, lawyers, accountants, direct sellers—there’s a list of different professions and industries that are currently carved out under AB 5,” she says.

What is particularly problematic in the “ABC” test is the “B” factor, which requires that an independent contractor perform work which is outside the usual course of the hiring party’s business.

“That makes it difficult for doctors in rural hospitals, and real estate agents who are in the real estate profession, and you can go on and on and on, and that doesn’t work for everybody” Zaremborg says.

Barrera agrees.

“Exactly. Which is why you see so many exemptions being added to AB 5 right now—it’s because it doesn’t work for everyone,” Barrera replies.

More exemptions are expected to be added to AB 5, Barrera says, including an exemption for business-to-business contracts, which were never contemplated to fall under the ABC test.

Zaremborg points out that the *Dynamex* case was brought before the courts before the iPhone was ever introduced, and thus before the gig industry played such a big part in the state’s economy. The facts of the case were such that the workers would have been employees under the *Borello* test, Barrera comments.

Although AB 5 does not address the gig economy, Barrera says, “It is not out of the realm of possibility that there may be additional legislation introduced to specifically address the gig economy in relation to the *Dynamex* decision.”

Bills to Fix Privacy Law Stalled

Taking effect on January 1 is a new privacy law that limits the use of consumer data by all businesses. The law, which passed after only a week of consideration in the Legislature, contains several challenges that could harm consumers and has far-reaching impacts.

For example, Zaremborg says, consumers cannot obtain a FICO score without data, and loyalty programs depend on shopping habits and history to issue discounts.

Moreover, Zaremborg points out, although Europe recently passed privacy laws as well, the European Union took 4 years to craft its laws, while California’s lawmakers drafted the California Consumer Privacy Act in only 5 days.

“After the law was passed, the business community really came together and tried to narrow down the changes and the fixes that were necessary to protect consumers as intended by the bill and also to allow the businesses to implement the law,” Barrera explains. “There was a list of bills that were doing just that...and they all passed out of the Assembly, but were unfortunately stalled in the Senate.”

Pay for Striking Workers

Still moving through the Legislature is **AB 1066 (Gonzalez; D-San Diego)**, which would allow employees on strike to receive unemployment benefits if the strike lasts more than four weeks. The bill would not only burden the Unemployment Insurance (UI) Fund, but also would burden employers, who pay into that fund, Barrera says.

“So the employer pays into it to pay workers who are voluntarily striking and leaving their company and leaving them at risk for losing business,” Zaremborg says.

And that was never the intention of

the UI Fund, Barrera stresses.

“The Unemployment Insurance Fund was for individuals who, through no fault of their own, don’t have a job anymore,” she says. “And that is not the case when you have employees who are out on strike, voluntarily...because they just are asking for more benefits, or higher pay, etcetera, and they’ve decided to walk away from their job in an effort to leverage that.”

Also concerning is the fact that the UI Fund went bankrupt during the recession due to a shortage of funds. The state was forced to borrow \$10 billion from the federal government, and employers were then taxed to pay back that loan, Barrera says.

As it stands, the fund is barely solvent, and overburdening the fund runs the risk of bankrupting it again, Zaremborg warns.

Ban on Arbitration Agreements

The last bill discussed on the podcast is **AB 51 (Gonzalez; D-San Diego)**, which would ban arbitration agreements made as a condition of employment.

Under the bill, “every dispute would have to go to court,” Barrera says.

“Employers don’t utilize arbitration because they want to get out of any liability or they want to not resolve a dispute with an employee,” she explains. “They utilize arbitration because they want to get away from the court costs and attorneys’ fees associated with protracted litigation that can take five to seven years to resolve, whereas arbitration can be resolved in a year or less.”

AB 51 is similar to past legislation vetoed by Governor Edmund G. Brown Jr. for plainly violating federal law. If passed, the bill would create more cost, litigation and uncertainty for employers, who would have to wait until a court definitively resolves the conflict with federal statute, Barrera says.



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