New Privacy Initiative Aimed at November Ballot

A new consumer data privacy initiative backed by the proponent of the measure that led to adoption of the state’s broad privacy law will likely appear on the November 2020 ballot.

The new privacy initiative, currently pending with the Attorney General’s office, is titled “The California Privacy Rights and Enforcement Act of 2020” (CPREA).

This privacy initiative was filed by the same proponent, Alastair Mactaggart, who filed the 2018 ballot initiative that ultimately led to the legislatively enacted California Consumer Privacy Act (CCPA), which goes into effect January 1, 2020.

New Grassroots Program to Launch January 6

Impact California, the new California Chamber of Commerce grassroots program, is set to launch on January 6, 2020.

The new program helps Californians engage in the legislative process. In only a few minutes, Impact California users will be able express their views to legislators and help make a lasting impact on statewide legislation.

Impact California is a nonpartisan outlet that provides users with:

- Legislative insight on key lasting/major issues;
- Resources explaining how to engage in the legislative process;
- Real-time legislative updates; and
- Direct links to take action on bills that would affect your community and businesses.

Make sure you stay informed from the very start of the 2020 legislative year by signing up for Impact California today at https://advocacy.calchamber.com/impact-california/.

Staff Contact: Natalie Leighton

CalChamber White Paper Highlights New 2020 Labor Laws

There are a few new and significant 2020 California employment laws that employers need to be aware of, as they may affect daily business operations, policies and employees.

Of the 2,625 bills introduced in the Legislature this year, 1,042 bills reached Governor Gavin Newsom’s desk. He signed 870 and vetoed 172—and many of those signed will affect California employers.

Some bills made significant changes to California employment law, such as the much-publicized independent contractor bill, AB 5. Others made small but important changes of which employers must be aware, such as those changing the mandatory harassment prevention training deadlines.

The Governor vetoed several California Chamber of Commerce-opposed bills, including AB 589, which would have created overly burdensome requirements for employers to post and provide employees with a “Worker’s Bill of Rights,” among other things.

The Governor also vetoed several California Chamber of Commerce-opposed bills, including AB 589, which would have created overly burdensome requirements for employers to post and provide employees with a “Worker’s Bill of Rights,” among other things.

The Governor also vetoed SB 218, which would have amended the Fair Employment and Housing Act (FEHA) to allow local governments in Los Angeles County to enact their own anti-discrimination ordinances similar to the FEHA.

See CalChamber White Paper: Page 4

Inside

Water Security Update: Page 5
Labor Law Corner

Bereavement Leave Potential Option for Time Off After a Miscarriage

Because bereavement leave is not required by law, there is no requirement to allow an employee to use it after a miscarriage. Employers should consider whether they will allow the use of bereavement leave in this situation.

If the policy allows the use of bereavement leave after a miscarriage, such leave should be offered equally regardless of the gender of the employee.

Other Time Off Options

In addition, an employee could be entitled to time off work as a result of experiencing a miscarriage under a number of other laws, such as California’s mandatory paid sick leave.

An employee who experiences a miscarriage may be entitled to time off under California’s pregnancy disability leave (PDL) laws. PDL provides protected leave when an employee is disabled by pregnancy, which may include recovering from a miscarriage.

If the employee is also eligible for leave under the federal Family and Medical Leave Act (FMLA), FMLA would run concurrently with the PDL because a miscarriage may be considered a serious health condition.

Reasonable Accommodation

Finally, reasonable accommodation may need to be provided to an employee whose miscarriage results in a disability (defined as an impairment that limits a major life function).

For example, an employee who experiences debilitating depression following a miscarriage could be entitled to time off as an accommodation under the Americans with Disabilities Act and California’s Fair Employment and Housing Act.

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.

Do employees have a right to use bereavement leave after a miscarriage?

Employers are not required by law to offer bereavement leave to their employees. If an employer chooses to offer bereavement leave, the policy should communicate how much time is allowed, which family members or close friends are covered by the policy and whether the time off is paid or unpaid.

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International Trade


See CalChamber-Sponsored: Page 7
The Workplace
Lawsuit Challenges Proposition 65 Warnings for Acrylamide in Food

If you want to comply with Proposition 65 on Thanksgiving, you will likely need to add an acrylamide cancer warning to pretty much every dish you serve. Roasted sweet potatoes? Yes, it needs a warning. Bread stuffing? That too. Baked pies? Absolutely. These foods—including many others, such as roasted asparagus, black olives, toasted bread and cereal—contain traces of acrylamide.

Since humans have been eating many of these foods for thousands of years, one has to ask, does roasted asparagus really cause cancer?

In Episode 39 of The Workplace podcast, CalChamber Executive Vice President and General Counsel Erika Frank and consumer product attorney Trenton Norris discuss acrylamide and the CalChamber’s efforts to stop Proposition 65 overwarning about acrylamide in food.

What Is Acrylamide?

Acrylamide is a byproduct chemical that is produced when heating some food during high-temperature cooking processes (it is not an added chemical). In 2002, it was discovered that acrylamide was present in a large percentage of the food supply. Although acrylamide is a known carcinogen in lab animals, dozens of long-term studies do not link the chemical to cancer in humans, Norris explains.

“The epidemiological data is very strong that indeed it does not cause cancer to humans, that, in essence, those people who consume more acrylamide are not at greater risk of cancer than those people who consume lesser amounts of acrylamide,” he tells Frank.

Currently, acrylamide is a Proposition 65 listed chemical. To comply with the law, businesses are required to label any food products with trace amounts of the chemical as causing cancer. The problem, Norris argues, is that the scientific evidence does not prove the ingredient causes cancer in humans.

“We see a real disconnect between Proposition 65 and its listing, which is based on animal data, and Proposition 65 and its warning, which is directed...at humans and human food,” he says.

CalChamber v. Becerra

In October 2019, the CalChamber filed a lawsuit to stop the multitude of Proposition 65 warnings for the presence of acrylamide in food and beverages. The complaint for declaratory and injunctive relief was filed against California Attorney General Xavier Becerra, who is responsible for enforcing Proposition 65, in the U.S. District Court, in the Eastern District of California.

The complaint does not challenge the listing of acrylamide as a Proposition 65 chemical; rather, the suit challenges whether the state can require a warning of acrylamide in human food, since the scientific evidence shows that that assertion is not purely factual and is controversial, Norris explains.

To date, more than 500 notices on acrylamide have been sent to businesses, with many businesses having been sued by private enforcers. To avoid lawsuits, businesses and manufacturers are labeling all food products with trace amounts of acrylamide with the Proposition 65 consumer warning, he tells Frank.

“On behalf of the business community, the Chamber has decided that this issue needs to get resolved efficiently and in one lawsuit, which is the [California Chamber of Commerce] v. Becerra suit,” Norris says.

So, Does Coffee or Roasted Asparagus Cause Cancer?

The federal Food and Drug Administration agrees that people should not alter their eating patterns based on the presence of acrylamide, Norris says.

“In fact, some of the foods that contain acrylamide, such as whole grain foods, have been shown to reduce the incidence of cancer.

The Problem of Overwarning

One of the debates surrounding the Proposition 65 warning requirements is the danger of overwarning.

“It’s difficult, almost impossible, to decipher a warning that truly is a warning versus a warning that doesn’t have the scientific basis to support the concern that the warning might be addressing,” Frank points out.

Norris agrees.

“Public health experts are very concerned that if there are too many warnings, people will ignore them all because they can’t sort through them entirely, and the Food and Drug Administration is very concerned about Prop. 65 warnings on food because they can have unintended consequences. People may make dietary choices that are not well-informed, where one risk is overemphasized as compared to others that may, in fact, have greater risk,” he says.

More Information

For more information on acrylamide and the CalChamber’s complaint, see: “CalChamber Seeks End to Prop. 65 Warnings for Acrylamide: Files Lawsuit Against California Attorney General” and “From Coffee to Roasted Asparagus—How Prop. 65 Is Leading to Excessive Product Warnings” at www.calchamber.com/advocacy.

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New Privacy Initiative Aimed at November Ballot

From Page 1 for nonredacted, nonencrypted personal information. The private right of action takes effect on January 1, 2020.

Except for notice of the data being collected, the CCPA is not applicable to employee data or business-to-business data until January 1, 2021.

New Initiative

Beneficial Changes for Business

The CPREA expands upon the rights of consumers and burdens of business set forth in the CCPA, but also provides some beneficial changes. Some of the beneficial changes include:

• Raises the threshold for businesses that fall under the CCPA. Currently, the CCPA covers any business that: has an annual gross revenue in excess of $25 million—adjusted according to the consumer price index (CPI); derives 50% or more of its annual revenue from selling consumers’ personal information, or alone or in combination annually buys, receives, sells or shares for a commercial purpose the personal information of 50,000 or more consumers, households or devices.

The initiative raises this last threshold to 100,000 in an attempt to exempt small businesses from the CCPA’s onerous application.

• Delays the application of the CCPA to employee data or business-to-business data until January 1, 2023.

• Maintains legislative changes negotiated and signed into law in 2019 regarding definition of personal information, publicly available information, data pertaining to vehicle recalls, and limit on the scope of the privacy right of action.

• Provides a new state agency (discussed below) with authority to provide a business with a right to cure any alleged violation.

Expanded Consumer Rights/Business Burdens

Some of the most notable changes in the CPREA that will expand both consumer rights as well as burdens on business are:

• “Sharing” of data for advertising. Under the CCPA, a consumer has the right to opt out of the “sale” of personal information. The definition of “sale” under the CCPA is very broad and includes any disclosure, dissemination, transferring or otherwise communicating for valuable consideration.

Under the new initiative, a consumer can opt out of the “sharing” of personal information for purposes of targeted advertising by businesses. Sharing is basically defined as the transferring or disclosure of personal information, regardless of whether there is any monetary or other valuable consideration exchanged for the information.

This new term could expand the transactions businesses must consider for determining application of the CCPA/CPREA.

• New right to correct personal information. The pending initiative introduces a new right for consumers with regard to correcting personal information. Upon receipt of a verifiable consumer request, the business would have to use “commercially reasonable efforts” to correct inaccurate personal information.

This new right also increases burdens on businesses to evaluate the request being made, if it is the right consumer making the request, and the validity of the correction requested.

• Sensitive personal information. The pending initiative also includes a new term, “sensitive personal information,” and provides consumers with additional rights with regard to this information. The initiative defines sensitive personal information as personal information that reveals data such as a consumer’s Social Security number, driver license, passport, account log-in, precise geolocation, health data, sexual orientation, and other personal characteristics. A consumer has the right to direct a business that collects sensitive personal information to limit its use of the information to only that which is necessary to perform the services requested/expected by the consumer.

This new category of personal information will potentially increase burdens on business to evaluate the data collected, how it is used, and whether it falls within this new category of sensitive personal information.

• New state agency. The initiative creates the California Privacy Protection Agency, which will have the responsibility to enforce this expanded privacy law, assess penalties, provide guidance and develop regulations.

A new agency will create a new cost on the state General Fund and could prove challenging for the regulated community.

• Limits the ability to amend the law. The initiative includes a provision that restricts the Legislature from amending the law unless such amendments are consistent with and further the purpose and intent of the law. The challenge on this issue will be determining which amendments fulfill the purpose and intent of the law, and which do not.

Initiative Status

Mactaggart has said he filed the CPREA because of concerns about legislative efforts to reduce or limit the protections in the CCPA. Unlike the prior initiative that led to the CCPA, however, Mactaggart and supporter Senator Bob Hertzberg (D-Van Nuys) have said they are not planning to negotiate any legislative compromise on the new initiative to remove it from the ballot, meaning the CPREA initiative will likely be on the November 2020 ballot for voters to consider.

The CPREA has not yet received title and summary from the Attorney General’s office and therefore is not in the signature collection stage. However, there is still plenty of time for Mactaggart to gather the necessary signatures to qualify this measure for the November 2020 ballot.

Staff Contact: Jennifer Barrera

CalChamber White Paper Highlights New 2020 Labor Laws

From Page 1 creating uncertainty, inconsistency and confusion regarding the FEHA’s application and interpretation.

The white paper summarizes new laws in:

• recruiting and hiring;

• discrimination, harassment and retaliation protections;

• leaves of absence and benefits;

• workplace safety;

• arbitration;

• privacy; and

• wage and hour.

Unless otherwise noted within the white paper, the new laws take effect on January 1, 2020.

To learn more, download CalChamber’s free white paper, New 2020 Labor Laws Affecting California Employers, at www.hrcalifornia.com.
CalChamber, Coalition in Support of Plan to Fix Aging Water Delivery Infrastructure

A broad coalition that includes the California Chamber of Commerce and labor, business, environmental, community and water leaders has announced the formation of Californians for Water Security (CWS).

The coalition supports Governor Gavin Newsom’s plan to fix California’s aging primary water distribution infrastructure by building a single tunnel through the Sacramento-San Joaquin Delta.

“The system that delivers water to millions of residents, farms and businesses is at serious risk,” said Allan Zaremberg, CalChamber president and CEO in a November 20 news release. “Investments in our water infrastructure now will pay dividends in the future as we can secure our water supplies and protect hundreds of thousands of regional jobs that depend on the stability of this water source.”

Deteriorating Infrastructure

California’s aging water delivery system is outdated and at risk of collapse in the event of a major earthquake or flood. Moreover, the system needs to be modernized to better prepare for climate change and the resulting extreme droughts, severe floods, and increasing water salinity in the Delta resulting from rising sea levels.

The Newsom administration is expected to initiate the environmental review process on the new project this month. CWS will work over the coming months and years to support the project through the regulatory process, at local water districts, and in the Legislature through public education, grassroots activism, social and earned media.

A key priority for the coalition will be to ensure the project is designed to carry sufficient capacity to protect the state’s water supply reliability and that the project is financially viable.

Reasons for Support

CWS supports the new tunnel project because it would:

• Protect water security for two-thirds of the state. Without action, water supplies through main distribution infrastructure will continue to decrease.

• Improve the reliability and security of California’s water system by fixing aging infrastructure using the most innovative technologies and engineering practices.

• Prepare for the impacts of climate change by improving the state’s ability to move and store water to account for extreme swings in drought and flood and to protect against salinity caused by sea-level rise.

• Restore habitats and more natural water flows above ground in rivers and streams in order to reduce impacts on endangered fish and other wildlife.

• Serve as a critical component of a comprehensive water portfolio.

For more information, visit www.watersecurityca.com.

Staff Contact: Valerie Nera

Water Wars Continue over Managing Water Flows in Delta

Another lawsuit in the water arena is not news. Anything to do with water is complicated, controversial, and likely to take years to resolve if it’s possible to resolve.

Nevertheless, the Newsom administration just announced that it intends to sue the federal government over its plan to ship more water through the Delta, saying the biological opinions supporting the plan are insufficient to protect endangered fish. The back-and-forth sparring between the Newsom administration and the Trump administration continues unabated.

The state laid out its own plan for managing water flows in the Delta in a lengthy environmental report released on November 21. The state plan is more protective of endangered species, according to some environmentalists, but still does not go far enough in their view.

The federal plan is viewed by them as a giveaway to the San Joaquin farm-ers at the expense of endangered fish and exploitation of the fragile Delta ecosystem.

The federal Bureau of Reclamation operates the Central Valley Project (CVP) providing domestic, agricultural, and industrial water supplies to the Central Valley and parts of Sacramento and the San Francisco Bay Area.

The Department of Water Resources operates the State Water Project (SWP), which supplies water for Northern California, the Bay Area, the San Joaquin Valley, the Central Coast and Southern California.

The two projects work cooperatively to deliver water throughout the state under a series of state, federal, and local agreements.

Historically, the state has relied on the federal government to set the rules on how the projects work together to move water throughout the state.

Ideally, the two parties should work together.

See Water Wars: Page 6
Tourism Sector Up: Visitors Spend Record $140 Billion on Travel in State

For the ninth year in a row, California's travel and tourism economy surged, adding $79 billion to the state’s gross domestic product (GDP).

Visit California’s Economic Impact of Travel in California report for 2018 shows that visitors spent more than $140 billion in the state on travel, a 5.4% increase from 2017. The travel and tourism sector also added more than 19,000 new jobs, pushing employment in the industry to 1.2 million jobs statewide.

Travel and tourism plays a major role in California’s economy. The industry is represented by accommodations, transportation and rental cars, restaurants, retail stores, attractions, gasoline service stations, and other businesses that serve travelers.

All of the state’s tourism providers benefited from increased visitation in 2018, with direct traveler spending supporting all industry segments in all regions of the state.

Increased travel spending is leading to more than $4 billion in annual investments in theme park, restaurant and other tourism-related infrastructure. These projects create secondary employment effects, generating jobs in building and construction.

Tips to Make Performance Reviews Beneficial to Employers/Employees

Annual performance reviews can be helpful for both employers and employees if done right, or can be useless if done poorly. In Episode 40 of The Workplace podcast, CalChamber Executive Vice President and General Counsel Erika Frank and employment law expert Jennifer Shaw discuss employee performance reviews and provide tips on how to draft constructive evaluations.

With the help of a clip from the television series “The Office,” Frank and Shaw delve into what works for effective performance evaluations and what does not.

No Halfhearted Reviews

If a company decides to issue performance reviews, Shaw advises that employers take the time to craft a thoughtful review that does not rely on scales or generic words such as “outstanding” or “satisfactory.” A good employee performance review should be a snapshot of the worker’s performance for the entire year, she says.

“If you’re just going to…do it halfway and halfheartedly…[it’s] better to not do it at all,” she tells Frank.

Recommendations

When drafting a performance review, Shaw recommends that employers:

• Review work performance and not the person. Do not make the feedback personal. Think about what information you are attempting to convey to the employee.

• Try not to use generic scales or metrics. There is no one-size-fits-all evaluation, so take the time to tailor the review to the employee’s position. When crafting an evaluation, review the employee’s job description and evaluate the execution of those duties for the entire year.

• Get feedback from employees. If an employee’s productivity is not where it should be, talk to the employee to see where the company can help. Ask your employees what motivates them. Are deadlines too short? Is the employee not good at time management? “Until they’re gone, they’re here,” Shaw tells Frank. If, after receiving help, the employee continues to perform the job poorly, termination should be considered.

• If an employee needs to be disciplined, do so separately from the performance review. Ideally, take any disciplinary action before the performance review is drafted.

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Water Wars Continue over Managing Water Flows in Delta

from Page 5 together melding their plans. Should the federal government go its own way, the state would have to make up any water shortages, seriously jeopardizing water supply reliability.

Also at risk are the Voluntary Settlement Agreements being negotiated as an alternative to strict water flow reductions on the San Joaquin River required under the Bay-Delta Water Quality Control Plan.

The Newsom administration reiterated the Governor’s support for the voluntary settlement agreement process as a more durable and broader suite of tools to meet water quality objectives, protect the environment and native fish while still providing enough water for agriculture and municipal purposes.

Resolution to the problem of differing plans to operate the SWP and CVP will be difficult and time consuming. Just another day in the water wars.

This story appeared first as a Capitol Insider blog post.

Staff Contact: Valerie Nera
7 CalChamber Member Companies Land on Best Places to Work in Sacramento List

Seven California Chamber of Commerce member companies were recently chosen by the Sacramento Business Journal as some of the best places to work in Sacramento. The list recognizes businesses that, according to their employees, achieve high marks in categories like teamwork, trust, compensation and benefits.

The list was broken into five categories: micro companies with 10 to 24 employees, small companies with 25 to 49 employees, medium companies with 50 to 149 employees, large companies with 150 to 499 employees and very large companies with 500 to 999 employees. The top three companies in each category are ranked; the remaining are not.

The CalChamber member companies included on this year’s list are:

**Small Companies (25 – 49 employees)**
- Buchalter APC, a full-service law firm, came in at No. 2. In addition to offering a wide variety of perks, from monthly birthday celebrations to a health care plan in which the firm pays 100% of the premiums, the company works hard to uphold a positive and inclusive workplace for its employees.
- Owen-Dunn Insurance Services, an insurance brokerage focused on group captive insurance programs, is an honoree. A healthy work-life balance is the first priority for the company, which offers flexible work hours, generous paid time off (PTO) and telecommuting options.

**Medium-Sized Companies (50 – 149 employees)**
- Descor Builders, a construction company, took the No. 1 spot. The management at Descor strives to build up the skills and confidence of its employees, granting performance reviews, mentoring and mid-year check-ins—all while ensuring that employees can be home by 5 p.m. to have dinner with their families.
- Five Star Bank, an honoree, is also ranked among the top 5% of similarly sized banks in the nation. More than anything, the bank aims to secure a supportive team of professionals who are equally committed to the well-being of their coworkers and the company.
- Kitchell CEM, a construction and engineering firm, is an honoree. Via its profit-sharing plan and commitment to contributing $25 per hour per employee to nonprofits, the company encourages its employees to have a direct impact on the growth of both their workplace and the world around them.

**Large Companies (150 – 499 employees)**
- Stantec Consulting Services Inc., an engineering, design and architectural firm, is an honoree. One of the biggest pros of working at Stantec Consulting Services, according to its employees, is the opportunity to make a real difference in the world, such as designing hospitals and delivering clean water to their communities.


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