VOLUME 47, NUMBER 19 • JUNE 18, 2021

CalChamber

ALERT

California Reopens

Governor Lifts Stay-Home Order, County Tier System

This week, Governor Gavin Newsom staged a series of events to highlight the end of the stay-at-home order he issued last March and the state's move beyond its tiered framework to prevent the spread of COVID-19.

The reopening changes include eliminating physical distancing requirements, capacity restrictions at most places, and masks for vaccinated Californians.

The state's continued push to encourage more Californians to get vaccinated was highlighted with the June 15 drawing of vaccinated winners to receive $1.5 million cash prizes each at Universal Studios Hollywood, as well as the June 16 giveaway of free tickets donated by Six Flags Entertainment Corporation to Californians who receive at least a first dose of the COVID-19 vaccine.

A June 16 event at a Bakersfield fitness center with First Partner Jennifer Siebel Newsom focused on physical and mental wellness as a way for individuals to come out of the trauma caused by COVID-19. The First Partner will lead a new advisory council focused on developing a state strategy to encourage physical and mental fitness.

In response to a question at the fitness center event, the Governor said he would use an executive order to help clear up questions about enforcement timing, vaccine documentation, N95 masks and other concerns with the pending Cal/OSHA emergency temporary COVID-19 standard (see story below). He added that there would be continuing dialogue on topics of concern.

Mask Guidance

Also this week, the California Department of Public Health (CDPH)

See California Reopens: Page 6

New COVID-19 Workplace Rules Align with CDC, State Health Dept. Guidelines

This week, the Standards Board of the California Division of Occupational Safety and Health (Cal/OSHA) adopted revisions to the COVID-19 emergency workplace rules.

The changes approved at the Standards Board's June 17 meeting make Cal/OSHA's COVID-19 Emergency Temporary Standard (ETS) more consistent with face mask guidelines from the Centers for Disease Control and Prevention (CDC) and California Department of Public Health (CDPH).

Both the CDC and CDPH no longer require masks for fully vaccinated individuals except in limited settings where everyone (regardless of vaccination status) is required to wear masks.

Once adopted, the revised ETS typically would not take effect for another 10 days, but Governor Gavin Newsom signed an executive order on June 17 to expedite the timeline.

See New COVID-19 Workplace: Page 4

Legislature Passes Budget, Clearing Way for Real Negotiations

The Legislature fulfilled its constitutional obligation this week by approving a state budget just ahead of the June 15 deadline. But meeting the formal requirement is merely an intermediate step in negotiations to finalize the comprehensive state spending authority.

The biggest obstacle to a final agreement is the haggling required to satisfy political and policy demands in the face of an unprecedented windfall of tax revenues and federal largesse.

The massive wave of expectations upon learning of a $40 billion revenue windfall (compared to the January budget proposal) has created strong differences of opinion between the administration and Legislature — not just which new or expanded programs should receive funding, but even on how much new revenue is available to spend in the first place.

Presumably, the major issues will be hammered out before the new fiscal year commences on July 1, although it's a near certainty that selected budget-related issues will drag on through the end of the legislative session in September, and perhaps beyond that.

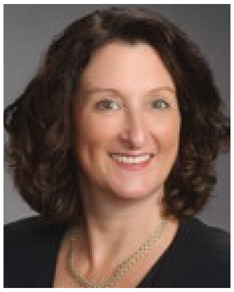
In the meantime, the California Chamber of Commerce has weighed in on four key state spending issues that should be addressed by the Legislature.

See Legislature Passes Budget: Page 5

Inside

Labor Law Corner

Don't Deny Vacation Due to Recent Use of COVID Sick Leave



Ellen S. Savage
HR Adviser

My employee used most of her COVID-19 Supplemental Paid Sick Leave over the last couple of weeks. Now she wants to take a week's vacation. Can I deny the vacation request since several other employees in that department, who have been working lots of extra hours to cover her missed shifts, also want to take that same week off?

Denying your employee's vacation request because she has been absent a lot lately using her California COVID-19 Supplemental Paid Sick Leave (CSPSL) could result in a claim that you are retaliating against her for using that protected leave.

Employees who use CSPSL are protected from retaliation under Labor Code Section 246.5(c), which prohibits an employer from discriminating in any manner against an employee for using those COVID-related sick days.

Look to Employee Handbook

In this instance, the employer should look to whatever regular policy it has in place for determining which vacation requests to approve. It should first consider any employee handbook that is in place to determine how vacation requests are prioritized, if that is covered in the handbook.

Many employers use a seniority system, with more senior employees having priority. Other employers may approve vacation requests based on a "first come, first served" basis, meaning whoever turned in their request first has priority.

There might also be a system in place where a manager must determine which positions have sufficient coverage based on business needs at that time to approve a vacation request.

If the handbook policy provides guidance, then the employer should use that system and not use the employee's recent use of CSPSL as a factor in making a decision.

Past Practice

If the employee handbook does not specify how vacation requests are considered, then the employer should look to its past practice for guidance. Staying consistent with past practice in how vacation requests are given priority (assuming that practice relies on legitimate and nondiscriminatory factors) may negate the employee's claim that there was retaliation for exercising her legal right to use CSPSL.

If there is an established nondiscriminatory practice, then the employer should use that system and not consider the employee's recent use of CSPSL as a factor in making a decision.

Be Fair

Finally, if there is no written policy and no past practice, the employer should find a fair way to decide which vacation requests to approve without taking into account the employee's recent protected COVID-related absences.

Whatever method the employer chooses would then become the company precedent for similar situations in the future.

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.

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

Send email address changes to alert@calchamber.com. Publisher: Allan Zaremberg. Executive Editor: Ann Amioka. Art Director: Neil Ishikawa. Capitol Correspondent: Sara Proffit.

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

CalChamber-Sponsored Seminars/Trade Shows

More at *www.calchamber.com/events*.

Labor and Employment

HR Boot Camp Virtual Seminar. CalChamber. June 24–25 SOLD OUT; August 12–13, Online. (800) 331-8877.

International Trade

International Trade Update and Business Opportunities for U.S. with Europe, Africa and Latin America. Women in International Trade, Los Angeles. June 24, Online. (213) 545-6479.

Build Back Better Together: Canada and the United States. Institute of the Americas. June 29, Online. (844) 880-6519.

Uniting U.S. and U.K. LGBTQ+ Communities: Making Pride Inclusive. British Consulate General San Francisco. June 29, Online. (415) 617-1300.

Sourcing Taiwan Online-Smart Vehicle Supply Chain. Bureau of Foreign Trade and Taiwan External Trade Development Council. July 8, Online. (415) 362-7680.

USA Pavilion. Defense Exhibition Athens 2021. July 13–15, Athens, Greece. +30 210 699-3559.

Exporting: What's in It for You? World Trade Center Northern California. July 13 and July 15, Online. (916) 447-9827.

See CalChamber-Sponsored: Page 5

Everybody Talks About California's Housing Crisis, But Nobody Will Solve It


Loren Kaye

Guest Commentary
By Loren Kaye

There isn't a politician, economist, social justice advocate or journalist who hasn't viewed with alarm the unrelenting climb in housing prices and rents, the dwindling supply of affordable housing, and the promise of homeownership receding out of grasp for young or middle-class residents.

For the past decade, state leaders have rejected any significant actions to increase the affordability or supply of housing yet have allowed new mandates to increase costs.

The consequence has been the construction of a fraction of the new residences California needs to fight poverty and income inequality. And soon it may mean hundreds of thousands of dollars of new fees on new construction throughout the state.

Reforms Not Taken

As sure as sunrise, elected leaders in Sacramento will turn down time- and money-saving reforms to build new housing, whether for sale, rent, or even subsidized shelter:

• A bill to streamline upzoning of underused or obsolete commercial and retail properties for affordable housing could not get a vote in its first committee.

• A proposal to prevent new local regulations or fees on housing projects if they would have discriminatory impacts on protected classes of Californians was quietly stricken.

• Legislators rejected a requirement that a government agency charging an impact fee demonstrate that the amount of the fee is roughly proportional to the impact of the development.

None of these proposals would have prevented legitimate environmental analysis or litigation over development projects, none would have stopped fees from being assessed for legitimate public services, and none would have interfered with legitimate local government land use authority.

'Collateral Damage'

On the other hand, even in the face of the worst housing crisis in a generation, the Legislature and regulators add new restrictions on residential construction, inevitably consigning housing affordability to "collateral damage."

Just this month, legislators are debating whether to add new, onerous restrictions on housing development in areas near fire-prone wildlands.

Insidious New Mandate

But the most insidious and potentially most harmful new mandate is the botched implementation of legislation to improve the California Environmental Quality Act (CEQA) analysis of traffic patterns.

In 2013, the Legislature enacted a law to encourage more infill development by directing the Governor's Office of Planning and Research (OPR) to come up with an alternative method to mitigate the inevitable traffic congestion that comes from densifying cities.

The idea was to recognize the benefits of infill projects that allow residents to walk, bike or take shorter car trips for work and daily activities instead of penalizing them for adding more people to urban areas.

The planners chose instead to analyze vehicle miles traveled (VMT). As the law matured, it became clear that rather than having each individual housing project mitigate their vehicle trips through measures like installing bike racks or establishing ride share programs, Californians would be better served by having new housing projects pay a fee and collectively amass funds to upgrade transit, build community-wide bike trails and safer streets, or expand other non-vehicular transportation options in these urban areas *already served by transit*.

Analysis Misused

Here's the rub: Even though the new law gave OPR the discretion to limit the new VMT analysis to urban areas, state planners instead chose to apply it everywhere, even in sparse rural and exurban areas where traffic levels could be mitigated easily in the traditional manner.

The result: San Diego County planners have proposed that county supervisors levy VMT fees on new developments that range from $50,000 to $900,000 ***per home***. Of course, the upshot of such massive fees is no housing construction at all, which may be the underlying motivation of its proponents in the first place.

To be clear, these new VMT fees are not designed to mitigate air pollution, greenhouse gas emissions, or other typical environmental impacts of automobile travel or new housing. Builders must already address these effects under current CEQA rules.

The focus of the law creating VMT analysis is supposed to be on congestion. But the planners have taken rules designed for urbanized neighborhoods and unnecessarily applied them to outlying development, where congestion is a lower order problem.

The new VMT regulations are a gift to NIMBY activists and no-growth communities. They are a back-door, unlegislated "urban limit line," the Holy Grail for these activists, which will increase the price of homes inside the line, and fence off housing opportunities for even more families seeking a foothold in California.

Loren Kaye is president of the California Foundation for Commerce and Education, a think tank affiliated with the California Chamber of Commerce.

California Tourism Update on June 28 to Detail Stimulus Spending Plan

On the heels of California's June 15 reopening, Visit California will convene an industrywide Zoom call on Monday, June 28 at 2 p.m. (Pacific Time) to celebrate the return of travel and tourism and to discuss next steps toward recovery.

At "Dreaming On: California Tourism Update," President and CEO Caroline Beteta will share an inside look at the recovery marketing campaign approved by the Visit California Board of Directors.

Joining her will be U.S. Travel Association President and CEO Roger Dow, who will give an update on international travel and his organization's strategy to accelerate international recovery.

The Legislature and Governor Gavin Newsom are finalizing details for stimulus funding for Visit California's marketing program in the fiscal year beginning July 1.

Task Force

In keeping with the original bill authored by Senator Mike McGuire (D-Healdsburg), Visit California has formed a "Calling All Californians" Tourism Task Force that will provide feedback to ensure advertising stays on the air throughout the summer and into next year.

The task force's input will help inform the Visit California Marketing Advisory Committee and the Board of Directors as they consider the marketing plan.

When the pandemic emerged last spring, Visit California hosted a call to discuss the crisis and its impact on the tourism industry. More than 1,200 people called in.

The June 28 call comes at a far more hopeful time. The stimulus marketing plans are critically important, and all industry partners and their business associates are encouraged to dial in. The call will provide an opportunity for speakers to respond to questions.

Registration

To register for the free conference call, go to the Visit California industry events page at ***https://industry.visitcalifornia.com/events***.

New COVID-19 Workplace Rules Align with CDC, State Guidelines

From Page 1

CalChamber Statement

When the new proposed ETS language was released on June 11, the California Chamber of Commerce issued the following statement:

"We thank Governor Gavin Newsom for eliminating confusion and working to ensure the state re-opens on June 15th with consistent standards for all based on CDC and CDPH guidelines. We are pleased that Cal/OSHA has aligned their newest proposed regulations to CDC and CDPH by eliminating the requirement for vaccinated employees to wear masks in many workplaces. Further, we applaud Cal/OSHA's common-sense clarification to end social distancing obligations as soon as the regulation goes into effect — instead of the previously proposed July 31st deadline for businesses. Employers are also grateful for clarification on N95s — that they must be provided upon request—and look forward to additional clarification on verifying vaccination status of employees.

"We urge the Cal/OSHA Standards Board to quickly adopt these recommendations and provide further clarification to employers so California can get back to business."

Substance of New Text

Below is a summary of some of the key issues and the proposed changes:

• **Physical Distancing Requirements Deleted**: In light of the fact that this new text will go into effect AFTER June 15, the physical distancing requirements have been removed.

• **Face Masks for Vaccinated/ Unvaccinated Workers**: The proposed new rules include more consistency with the Centers for Disease Control and Prevention (CDC)/ California Department of Public Health (CDPH) updated guidance. Vaccinated workers are not required to wear face masks generally. For unvaccinated workers, masks will be required indoors or when in vehicles, with limited exceptions. However, public-facing businesses should take note that the new text requires employers to "develop policies and procedures to minimize employee exposure to COVID-19 hazards originating from any person not wearing a face covering, including members of the public."

• **N95s for Unvaccinated Employees and Stockpiling**: The new text adds some key language — "upon request" — which suggests employers may be able to wait to acquire N95s until they are requested by employees. While this is certainly an improvement, further clarification in the FAQs to be prepared by Cal/OSHA is necessary to be certain that this interpretation is correct.

• **Documentation of Vaccination**: There is a lot of concern among employers related to how they should ask workers about their vaccination status, as well as document that status. Further clarification is necessary. The new language will require the employer to "document" that the individuals are vaccinated. The implications of this change are debatable, and FAQs will be crucial in determining employer responsibility on this issue.

• **International Vaccines** – 3205(b)(9): Where the prior draft did not recognize foreign vaccines, this new version recognizes vaccines "listed for emergency use by the World Health Organization" which will likely be appreciated by larger/international employers.

Watch for FAQs

Employers can also expect FAQs to be released on some additional points. The CalChamber will provide updates when the FAQs are released.

More details on the changing requirements appeared this week in the CalChamber *HRWatchdog* blog.

Staff Contact: Robert Moutrie

Legislature Passes Budget, Clearing Way for Real Negotiations

From Page 1

Unemployment Insurance Debt

The pandemic created an unprecedented spike in unemployment, which was a human tragedy, but also drained the state's unemployment insurance fund, which is funded entirely by employers.

Earlier this year, California began borrowing money from the federal government to pay benefits to more than a million workers in California. The loan balance from the federal government is $21 billion and is expected to grow to $24 billion by the end of this year.

Unless the state intervenes and pays off this outstanding debt, employers must pay off this loan through ongoing and escalating tax increases for decades to come.

The Governor has proposed a $1.1 billion contribution toward the outstanding debt; much more is needed to avoid long-term payroll tax increases on employers that could increase tenfold over time.

Democrats in the Legislature are considering a different approach that does not address future long-term tax liabilities for employers. Instead, they have floated a 10-year, $2 billion total tax credit aimed at small businesses and nonprofits.

Child Care

Investments in California's child care system not only benefit working parents and children, but also the overall economy, since many businesses have been unable to operate at full strength with one or both parents necessarily involved in child care. CalChamber supports a comprehensive budget augmentation that:

- Increases child care slots by 200,000.
- Provides for ongoing vouchers for essential workers.
- Caps family fees for child care programs at 7% of income and increases family eligibility to the state's median income.
- Increases reimbursement rates for child care and development programs.
- Provides one-time allocation of infrastructure grants.
- Provides one-time allocation of funds to expand facilities in high-need communities.

Consensus on this package appears strong, although it remains one of the elements of final negotiations, along with the Governor's proposal to phase in an expansion of transitional kindergarten through 2025–26.

All told, the package tops $10 billion in mostly one-time money, much of that from federal funds appropriated to address the pandemic.

Tax Credits and Incentives

Just one long year ago, when California's political leadership believed the state was heading into a fiscal freefall, the Legislature and Governor agreed to suspend business use of net operating losses and cap the use of certain tax credits for three years, estimated to save more than $8 billion during that time.

What may have seemed a prudent approach in 2020 is obviously completely unnecessary — and even harmful — given the unprecedented tax windfalls.

Indeed, a CalChamber-sponsored study by the Milken Institute found that research and development policy requires a long-term outlook. Companies favor a more predictable policy environment; limitations on the research and development (R&D) tax credit in 2020 were approved during a period of significant uncertainty, and the changes themselves created even more uncertainty.

The Legislature and Governor should repeal the suspensions and limitations on tax incentives and tools enacted in 2020, to enable a robust economic recovery, especially among the most dynamic sectors of our economy.

Broadband Infrastructure

If it was not obvious before, the pandemic underscored Californians' reliance on the internet for distance education, telemedicine, staying connected with family and friends, and accessing jobs, goods and services.

What also became painfully obvious was how a lack of connectivity can increase existing economic and social disparities. Broadband deployment is essential for all local communities, businesses, and their employees. This is especially true for California's dynamic and diverse small business community.

The CalChamber supports the $7 billion investment proposed by the Governor to expand broadband infrastructure over the next three years, increase affordability, and enhance access for all Californians.

However, this substantial commitment falls short of addressing the digital divide because it focuses resources on "middle mile" projects instead of directing resources precisely where they are needed most — that is, unserved and underserved areas — so-called "last mile" infrastructure.

California should prioritize services to people who have the least connectivity rather than overbuilding digital infrastructure in areas where the market is working.

Contact: Loren Kaye

CalChamber-Sponsored Seminars/Trade Shows

From Page 2

EXIM 2021 Virtual Annual Conference. Export-Import Bank of the United States. September 21–23, Online. (800) 565-EXIM (3946).

2021 Taiwan Trade Shows. Taiwan External Trade Development Council. October 6–9, Taipei. +886-2-2725-5200.

Expo Dubai 2021. Expo 2020 Dubai UAE. October 1, 2021–March 31, 2022, Dubai, United Arab Emirates. (+971) 800 EXPO (3976).

Build Expo Greece 2021. Build Expo. October 15–17, Athens, Greece. +30 211 180 1801.

2021 Select LA Investment Summit. World Trade Center Los Angeles and Los Angeles County Economic Development Corporation. October 20–21, Los Angeles. (213) 236-4853.

12th World Chambers Congress: Dubai 2021. International Chamber of Commerce World Chambers Federation and Dubai Chamber of Commerce & Industry. November 23–25, Dubai, United Arab Emirates. *worldchamberscongress@iccwbo.org*.

Athens International Tourism & Culture Expo 2021. Greek Ministry of Tourism and Greece 2021 Committee. November 25–27, Athens, Greece. +30 210-614 1164.

California Reopens

From Page 1

issued mask guidance that includes the following as of June 15:

• **Fully vaccinated persons** aren't required to wear face coverings except when masks are required for everyone, regardless of vaccination status.

• **Unvaccinated persons** must wear face coverings at indoor public settings and businesses.

• **Regardless of vaccination status**, face coverings must be worn while taking public transportation (including airplanes, ships, ferries, trains, subways, buses, taxis, ride-shares and transportation hubs); at schools, child care and other youth settings; health care/long-term care facilities; correctional/detention facilities; and emergency/homeless shelters and cooling centers.

Choices

In its guidance for businesses, venue operators or event hosts, the CDPH suggests three choices when masks are required only for unvaccinated individuals:

• Provide information to all patrons, guests and attendees about vaccination requirements and allow vaccinated individuals to self-attest that they are in compliance before entry.

• Implement vaccine verification to determine whether individuals are required to wear a mask.

• Require all patrons to wear masks.

The CDPH states that no person can be prevented from wearing a mask as a condition of participating in an activity or entry into a business.

COVID-19 Statistics

As of June 16, the state's COVID-19 dashboard showed more than 40 million vaccines have been administered. California's COVID-19 test positivity rate has remained below 1% for weeks and continues to be among the lowest in the nation. The CDPH showed a positivity rate (seven-day average) of 0.9% on June 16 while the Johns Hopkins Coronavirus Resource Center showed California's positivity rate at 0.6%.