

ALERT

Legislative Action Can Avert Tax Hike on State Employers



Like the rest of California society, employers are cautiously hopeful the worst of the pandemic has passed. The wreckage of human life, family health, lost learning, small business

failure, and faded economic opportunity has affected every resident of the state.

But even as the wreckage clears and the economy stabilizes, California employers face a long-term tax increase through no fault of their own. What's more, the Legislature can reduce this tax hike, but so far has refused to take any action.

Thousands of businesses, mostly small and public-facing, closed or severely reduced their presence during the pandemic. Millions of Californians lost their jobs — not because of the business cycle or a financial panic, but due to an “Act of God” and the response by state and local officials to close the economy. Unemployment soared, as did benefit payments.

Basic unemployment benefits are paid from the state's trust fund (UI fund) that is financed exclusively by employer payroll taxes. High unemployment during recessions often exhausts the fund, which is then backfilled by loans from the U.S. Treasury. Those loans must be repaid by higher taxes on employers.

Less than two months into the pandemic-induced recession, California's UI fund was depleted. As of this June, the loan balance from the federal government stands at \$21 billion and is expected to grow to \$24 billion by the end of this year. By operation of law, in 2022, payroll taxes on employers will begin to increase by \$21 per employee, rising by another \$21 every year the fund is insolvent, to a maximum of \$420 per employee per year.

Tax on Employment

While this tax increase is paid by employers, it is essentially a tax on employment. The tax will apply to every retained, rehired or newly employed worker. It is a tax increase on labor — the more workers, the higher an employer's tax liability. The tax increase will impede our economic recovery and choke off growth of small businesses — especially the hospitality industry, which is heavily reliant on labor and trying to regain what was lost due to the pandemic.

The mandatory economic shutdown was not the only cause of massive benefit payments. Between \$1 billion and \$2 billion of the UI fund's debt is attributable to payments made by the Employment Development Department (EDD) for fraudulent unemployment claims. Raising taxes on employers to cover EDD's mistakes is unconscionable.

While Congress has been generous in
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Law Giving Unions Access to Private Property Ruled Unconstitutional



A Supreme Court victory was handed down to employers on June 23 in a case filed by two California agriculture businesses who challenged a state law that allowed unions to access

private property three hours per day, 120 days per year to recruit new members.

Pacific Legal Foundation (PLF) represented the businesses at the Supreme Court in the case. PLF argued that the state law amounted to a violation of property rights and constituted a taking without compensation.

The case is *Cedar Point Nursery v. Hassid*, and the U.S. Supreme Court held that the California regulation being challenged was an unconstitutional *per se* taking under the Fifth and Fourteenth Amendments. It was a 6-3 decision authored by Chief Justice Roberts with a concurring opinion by Justice Kavanaugh. Justice Breyer filed a dissenting opinion joined by Justices Sotomayor and Kagan.

State Law

The law at issue in this case is the Agricultural Labor Relations Act (ALRA) and its accompanying regulations. The
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Labor Law Corner

Employers Not Required to Provide Holiday Pay for Federal Holidays



Matthew J. Roberts
Employment Law
Counsel/Subject
Matter Expert

Now that Juneteenth (June 19) has become a federal holiday, are we required to provide holiday pay to our employees for that day?

When President Joe Biden signed the Juneteenth National Independence Day Act on June 17, 2021, creating the Juneteenth National Independence Day to be celebrated on June 19 every year, it created the 11th federal holiday and the first since the creation of the Martin Luther King, Jr. federal holiday in 1983.

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Juneteenth marks the day when federal troops entered the state of Texas in 1865 and read the Emancipation Proclamation, effectively marking the end of slavery in the United States.

Because it has been decades since the creation of a new federal holiday, many employers in California are confused about their obligations to their employees regarding Juneteenth.

For employers, the most important thing to know about Juneteenth and any other federal holiday is that the laws creating the holidays provide holiday pay only to federal government employees.

Employer Discretion

Whether a California employer chooses to provide its employees with a paid or unpaid holiday for Juneteenth or any other holiday is entirely at the employer's discretion.

When creating a holiday policy, employers have discretion as to which holidays to celebrate, whether the holiday will be paid or unpaid, and which class of employees are entitled to the holiday.

But once employers establish the holiday policy, the policy has been interpreted as a contract to do so, so employers should consistently apply the policy as designed.

The first step for employers is to determine before the start of the new year which holidays will be observed and whether the holidays will be paid or unpaid. Employers may decide when to observe holidays depending on the operational needs of the business and whether

the holiday falls on a nonbusiness day.

For example, Independence Day — a commonly observed holiday — falls on a Sunday in 2021. Businesses that are not open on Sundays may instead choose to observe another day, such as the following Monday.

Conditions for Holiday Pay

Next, an employer should designate which employees are eligible to receive holiday pay and whether there are any conditions the employee must meet before earning the holiday pay.

For example, an employer could create a policy that only full-time designated employees earn holiday pay, or only employees who work the days before and after the holiday or are otherwise on paid leave such as paid sick leave or vacation, or employees must have been employed for at least 90 days. Whatever eligibility requirements the employer establishes, the employer should make sure they are well defined in the policy.

Nonexempt Employees

The next step for employers is to determine how to handle situations where a nonexempt employee works on one of the observed paid holidays. Because the holiday pay is interpreted as a contract to provide the day, employers must decide how to provide holiday pay to that employee. Some examples include:

- Pay the employee for all hours worked, plus eight hours of holiday pay.

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(800) 565-EXIM (3946).

Expo Dubai 2021. Expo 2020 Dubai UAE. October 1, 2021–March 31,

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The Workplace

Telework, Independent Contractors and Workers' Compensation



In Episode 123 of The Workplace podcast, CalChamber Executive Vice President and General Counsel Erika Frank and attorney John

Parente discuss the impacts of workers' compensation law and legal requirements on worker classification and remote work agreements.

Independent Contractors

California has not been in favor of the independent contractor status and has tried to remove it for some time, says Parente, who has more than 43 years of experience in workers' compensation law and is Of Counsel at Laughlin, Falbo, Levy & Moresi LLP.

Then along came AB 5 and while it meant to target the gig industry, it led to many unintended consequences and had a dramatic effect on many industries, such as the trucking, film and music industries. The Legislature then had to scramble to make exceptions to the law because of all these unintended consequences, Parente explains.

Employers hire independent contractors for several reasons, but one of the top reasons is that the cost of workers' compensation insurance is dramatic — and it's especially burdensome on small employers, he says.

Hiring independent contractors is especially appealing right now, as employers are finding it very challenging to find workers, Frank points out. While employees enjoy the independence of

working from home, current law makes it difficult for employers to offer this option due to the number of requirements that have to be met.

So, Frank asks, what is the risk if an independent contractor gets injured?

Parente answers that employers should carry workers' compensation insurance. There is tremendous liability if an employer doesn't carry the insurance and the contractor is deemed not to be an independent contractor.

Moreover, Parente recommends that when an employer is hiring an independent contractor, they should consider whether that individual has an independent business license; whether they promote being a business entity on their social media or website; and whether they have other clients. These factors would support the fact that the individual is in fact an independent contractor and not an employee.

Cost of Claims

Parente stresses that it's a crime to employ workers and not carry workers' compensation insurance. Moreover, if an employer does not carry insurance and an injury occurs, the employee may not only file a workers' compensation action, but may file a civil action as well.

Fighting both actions at once can get very expensive, he cautions. A typical workers' compensation defense costs from \$5,000–\$20,000, depending on how complicated the case is. Civil defense starts at a minimum \$25,000 and can reach as high as \$100,000, depending on how complicated the case is.

So, again, there is tremendous risk associated with being uninsured, he says.

And in some professions, such as roofing, the rates can be very, very high.

"So, it makes sense to get a basic policy, and even if you only have one or two employees it saves you so much more in the long run," Parente says.

Remote Work

What happens if a remote worker gets injured at home?

An employee working from home is going to present problems for employers in regard to industrial injuries at home, Parente says. He explains that if someone trips over their own feet at the workplace and is injured, the injury would be considered an industrial injury even though the injury was a result of self negligence.

If an employee works from home and sprains their ankle and it was not related to any form of work activity, then it would be hard for the employee to prove that it is a workers' compensation claim. However, this is a bit tricky because the employee can lie about when the sprain happened.

Another claim that can be hard for the employer to defend is if the injury is related to an employee's job duties. If an employee develops carpal tunnel and their job duties include keyboarding, then it will be hard for the employer to defend the claim.

Other problems may arise if an employee needs a physical accommodation or has an ergonomic problem. While it's incumbent on the employee to tell the employer of accommodation needs, the employer should still talk to their workers and determine what needs they may have.

Employers Not Required to Provide Holiday Pay for Federal Holidays

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- Pay the employee for all hours worked, plus provide a paid day off another time instead of holiday pay.

- Pay for all hours worked at a premium rate (for example, time-and-a-half), plus eight hours of holiday pay. Also note that premium pay for working a holiday is not required, but an employer may choose to do so to incentivize employees to work the day.

Exempt Employees

Lastly, employers need to be aware of how holiday closures affect exempt employees. In general, if an exempt employee performs any work in a workweek, they are paid their full salary for the workweek.

If the employer closes the business on a holiday, but does not provide holiday pay, employers will still need to pay the

exempt employees' salary if they were otherwise ready, willing and able to work.

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.

It's Time to Rebalance the Power Dynamic in California's Schools Toward Families



The best guess by state leaders — and fondest hope for parents — is that California public schools will fully reopen their campuses this fall to all students. After more than a year

of remote, hybrid, or blended learning — or no learning at all — everyone should welcome a return to normalcy.

Or should we?

For millions of California students, a return to normalcy will be going from worse to bad. Before the pandemic, the quality of much of California's public school education fell far short of the minimum required to guarantee students a fair shot at economic opportunity and social equity.

According to the [National Center for Education Statistics](#), proficiency rates for Black and Hispanic students (who together account for more than 60% of public school enrollments) are far less than half that of White and Asian American students. The gaps have grown wider over time.

The view is no better through the lens of income level. [Nearly 60% of California public school students qualify for free or reduced-price meals](#), which is a proxy for family income. Of those students, only about one-fifth meet or exceed proficiency for fourth or eighth grade math or reading. The effects of the pandemic are certain to widen this gap.

Improvement Attempts

California's attempts to improve educational outcomes have been episodic and, in some cases, transitory. Beginning in the 1990s, the state led the nation in providing a fertile environment for charter schools, which provide a competitive alternative to low-performing public schools, especially for low-income students and students of color.

More recently, though, [charter schools have faced an organized effort](#) in the State Capitol to limit their spread and

make their working environment more costly and more difficult.

The movement for educational accountability, where districts, schools and school leaders were made to answer for student performance, peaked about a decade ago. High expectations, standards, and mandates for improvement have since eroded. During the pandemic [the Governor suspended statewide student assessments entirely](#), so we have no official documentation of student progress (or decline) over the past year.

Shift Balance of Power

Decades of institutional reform efforts — not to mention increased education outlays — have failed to make consistently high-quality schools available to all students.

To remedy this injustice, we need to shift the balance of power away from the education establishment and toward families. These students and their parents need a mechanism to force state leaders to focus on improving student outcomes rather than placating special interests.

This is not a new idea.

In the face of legislative indifference to educational performance improvement, a group of students, parents, and their advocates initiated a lawsuit in 2015 to require that all students receive a quality education. The idea was to extend the jurisprudence, begun under [Serrano v. Priest](#) in 1971, that education is “a fundamental interest” and the state must ensure “basic educational equality” under the California Constitution.

In [Vergara v. State of California](#), the students and parents alleged that several California statutes related to teacher tenure, layoffs, and dismissal violated the constitution and denied equal protection to students because the statutes required the state to retain “grossly ineffective” teachers. The plaintiffs argued that these statutes had a disparate impact on poor and minority students who were more likely to be assigned to these grossly ineffective teachers.

A Los Angeles County Superior Court judge [ruled for the students](#), finding that evidence of “the effect of grossly inef-

fective teachers on students is compelling. Indeed, it shocks the conscience.”

[But a California appeals court \(eventually backed by the state Supreme Court\) rejected these allegations](#) and found that the statutes were constitutional.

In effect, the higher courts ruled that while students have a constitutional right to equal *inputs* to their education, they had no right to any particular *outcome*. Their fundamental right extended no further than adequate and roughly equal amounts of money and distribution of resources, but not what the schools did with those resources.

[In a separate case](#), the appeals court stated that while it “agreed wholeheartedly with appellants that the provision of a quality education for all public school students is an important goal for society as it ensures full participation in our constitutional democracy . . . (there is) no constitutional mandate to an education of a particular standard of achievement.”

Right to a Quality Education

The solution to this constitutional mismatch is to explicitly provide a fundamental right to a quality education. Just this [approach is being pioneered in Minnesota](#), under the leadership of Federal Reserve Board of Minneapolis President Neel Kashkari (in 2014, a California gubernatorial candidate) and retired Minnesota Supreme Court justice Alan Page (and, in a past life, an NFL Hall of Fame defensive lineman). Their proposal is now being debated in the Minnesota State Legislature.

Such an amendment can rebalance the power dynamic between adults who run the education system and the students they are supposed to serve. It can provide parents with a seat at the table, enforceable as a constitutional right.

This new tool can be [both powerful and appropriately limited](#). It should not confer a right to sue for individual services, but only on behalf of a class or group of students. The remedy sought would be a change in policy, not monetary damages. Judges would not become educational policy makers; they would

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Patchwork of State Privacy Legislation Continues as Colorado Adopts New Law



Colorado passed its Colorado Privacy Act (CPA) in June, bringing a familiar but distinct

new privacy regime to the growing patchwork of privacy legislation across the United States.

The CPA will take effect on July 1, 2023, and prudent businesses are already expending resources on compliance to ensure that they are not in violation of the law when that effective date arrives.

Although hopeful that much of the compliance undertaken for the sake of the California Consumer Privacy Act (CCPA) and the California Privacy Rights Act of 2020 (CPRA) will be helpful, the legal distinctions between the two statutes nevertheless pose a compliance hurdle for even the most sophisticated companies.

Similar Language

At the outset, it should be noted that much of the CPA's language and structure is similar to that in the CCPA and in the CPRA, which voters passed in the last election. The CPA also borrows portions from Virginia's Consumer Data Protection Act (CDPA), which makes compliance with all three of the statutes a juggle between numerous moving parts.

The CPA creates similar rights to those found in the CCPA and CPRA, including the right to access, delete and correct personal data. In addition, citizens can opt out of the processing of personal

information for specific purposes and have been granted a right to data portability. The CPA does benefit from the fact that it does not include a private right of action and can be enforced only by the attorney general. This foresight is important to prevent privacy law from eroding into a contest between predatory personal injury lawyers.

Additionally, the CPA has the foresight to define "consumer" so that it explicitly excludes individuals acting as a job applicant, as a beneficiary of someone acting in the employment context, or in the employment context itself. This comes from the wise recognition that these privacy statutes are designed for consumers and therefore are ill-equipped to deal with the nuances of privacy in the employment context.

Employee data under the CPRA is exempt only until 2023 and will be a significant issue for the California Legislature to resolve regarding how employee data should be handled

Differences

But notable distinctions do exist, and these distinctions will create operational, compliance, and judicial differences that will make it challenging for businesses to do business across state lines.

For example, one of the most important definitions in the Colorado statute is the definition of "personal data," which differs from the definition of "personal information" in California. This distinction is important because unlike the CCPA and CPRA, the CPA definition does not include specific categories

of information regulated as personal information.

Colorado legislators instead opted to align themselves with Virginia's statute to make the term as broad as possible, applying to information that is linked or reasonably linkable to an identified or identifiable individual.

Thus, a business complying with California's privacy laws cannot rely on basic principles of privacy to ensure compliance across states, but must take a surgical approach to ensuring its compliance processes do not conflict on a state-by-state basis.

Federal Fix Elusive

As far as a federal fix to this growing patchwork of differing privacy laws, there does not seem to be one in sight. Certainly, a federal law that occupies this space would preempt state legislatures from making these decisions on a state-by-state basis, and businesses and consumers alike would benefit from consistency across the board.

However, aside from the Uniform Law Commission's purely academic foray into drafting model legislation, which is notably not inclusive of all viewpoints, there really does not appear to be a federal effort to harmonize privacy law in the United States or update the privacy legislation that has existed since before the dawn of the internet.

Until that happens, businesses will be left playing catch-up with the whims of state legislators, which vary from region to region.

Staff Contact: Shoeb Mohammed

It's Time to Rebalance the Power Dynamic in California's Schools

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only make up-or-down rulings on the constitutionality of a law or policy. It would still be up to the legislature, governor, or school board to adopt the right law or policy. Nor should a constitutional right to a quality outcome imply more spending or higher taxes. Adequate funding is important, but not sufficient. A constitutional right to quality should instead broaden policy makers' focus on

the actual factors that affect outcomes, whether personnel, resource distribution, enrollment policies, or accountability measures.

Reset Moment

As we reopen our schools in California, we have a once-in-a-generation reset moment in public education. We have the chance to do something new, bold and effective. The most transforma-

tive change we can make for California's six million students—and especially disadvantaged or marginalized students—would be to ensure all students have a quality education, enforceable as a fundamental constitutional right.

This article was written by Loren Kaye for Eureka, a publication of the Hoover Institution at Stanford University.

Key Tool to Speed Approval of Trade Pacts Expired July 1



Congressional authorization for the President and/or U.S. Trade Representative to enter into trade negotiations to lower U.S. export barriers expired on July 1.

The trade promotion authority (TPA) process (formerly called fast track trade negotiating authority pursuant to the Trade Act of 1974) must be renewed by Congress to enable the United States to continue aggressively pursuing new trade deals.

TPA legislation establishing strong rules for trade negotiations and congressional approval of trade pacts, and delivering trade agreements that boost U.S. exports and create U.S. jobs, needs to be considered by Congress. To date, the Biden administration has shown no interest in requesting trade promotion authority.

Traditionally, trade promotion authority follows the conclusion of negotiations for a trade agreement; enabling legislation is submitted to Congress for approval. Every president since Franklin D. Roosevelt has been granted the authority to negotiate market-opening trade agreements in consultation with Congress.

Once legislation is submitted, under trade promotion authority, both houses of Congress will vote “yes” or “no” on the agreement with no amendments, and do so within 90 session days (not to be confused with a treaty, which is “ratified” by the U.S. Senate). During negotiations, however, there is a process for sufficient consultation with Congress.

The landmark Trade Act, H.R. 3009, signed by President George W. Bush on August 6, 2002, included the renaming of fast track trade negotiating authority to trade promotion authority. The act helped put U.S. businesses, workers and consumers back in the game of international trade by granting the President trade promotion authority.

At the request of President Donald

J. Trump, 2015 trade promotion authority was renewed in July 2018 for three years.

Impact: U.S. Completed Agreements

Since the Trade Act of 2002 granted the President trade promotion authority, the United States has completed free trade agreements with Australia, Bahrain, Chile, Colombia, the Dominican Republic/Central America, Israel, Jordan, Mexico/Canada, Morocco, Oman, Panama, Peru, Singapore, and South Korea.

Financially, these free trade agreements translate into the removal of billions of dollars in tariffs and nontariff barriers for U.S. exports.

Future Free Trade Agreements

Major U.S. trading partners are participating in numerous agreements, and trade promotion authority is a prerequisite to meaningful U.S. participation.

Without trade promotion authority, the United States will be compelled to sit on the sidelines while other countries negotiate numerous preferential trade agreements that put U.S. companies at a competitive disadvantage. Trade promotion authority not only opens markets and broadens opportunities for U.S. goods and firms; it will make the United States the leader in global trade.

By approving trade promotion authority, Congress can help strategically address the range of U.S. trade negotiations being pursued: conclusion to a U.S.-United Kingdom free trade agreement; a possible U.S.-European Union free trade agreement; conclusion to a U.S.-Kenya free trade agreement; and even a possible re-admission to the Trans Pacific Partnership (TPP)—now Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)—as well as other future trade negotiations.

The United States is among the world’s leading exporters due to increased market access achieved

through trade agreements. Trade promotion authority is vital for the President of the United States to negotiate new multilateral, bilateral and sectoral agreements that will continue to tear down barriers to trade and investment, expand markets for U.S. farmers and businesses, and create higher-skilled, higher-paying jobs for U.S. workers.

When trade promotion authority expired in 2007, Congress waited eight years to renew it. According to Politico, any effort to craft a new bill before the 2022 elections, as unlikely as that currently seems, would have to be led by U.S. Senate Finance Chair Ron Wyden (D-Ore.) and U.S. House Ways and Means Chair Richard Neal (D-Mass.). Wyden voted for the 2015 trade promotion authority bill, while Neal opposed it.

A Wyden spokesperson told Politico: “Senator Wyden is looking forward to working with the new administration and our colleagues on developing an effective TPA package that reflects 21st century trade.”

CalChamber Position

The California Chamber of Commerce, in keeping with long-standing policy, enthusiastically supports free trade worldwide, expansion of international trade and investment, fair and equitable market access for California products abroad and elimination of disincentives that impede the international competitiveness of California business.

The CalChamber, therefore, supports the extension of trade promotion authority so that the President of the United States may negotiate new multilateral, sectoral and regional trade agreements, ensuring that the United States may continue to gain access to world markets, resulting in an improved economy and additional employment of Americans.

See the timeline for the TPA process in the CalChamber [2021 issues article](#).
Staff Contact: Susanne T. Stirling

AmCham Mexico

Priorities Include Economic Recovery Plus Bilateral Cooperation, Sustainable Growth



The following answers to questions posed by the California Chamber of Commerce are from Ana López Mestre, Vice President and General Director of the American Chamber of Commerce (AmCham) in Mexico.

AmCham Mexico

Please tell us a bit about the American Chamber of Commerce in Mexico, services you provide and activities.

American Chamber Mexico was founded in 1917 in Mexico City, the same year the Mexican Constitution was promulgated, to represent American companies which were opening new markets. During the next 104 years, AmCham played a key role strengthening the integration between Mexico and the United States, to foster greater commercial exchange and collaboration, resulting in a sounder business environment. Since its founding, the Chamber has collaborated with 22 Mexican and 18 American administrations.

AmCham is a business community committed to building a solid, resilient and competitive economy; we promote best practices among companies of all sizes and sectors, seeking business opportunities in the U.S.-Mexico binomial.

Today, AmCham groups more than a thousand companies that contribute significantly to the social and economic development of Mexico, representing 21% of its national gross domestic product (GDP), 20% of private investment and generating more than 8 million direct and indirect formal jobs.

Beyond the numbers, the impact of our companies translates into talent

development, diversity and labor inclusion, driving innovation and technology, compliance and business ethics.

As representatives of the U.S.-Mexico binational business community, our priority is to continue to be a trusted and proactive link between companies and authorities to strengthen binational cooperation. Given the international juncture and COVID-19 impact, AmCham's five strategic priorities for 2021 are:



Ana López Mestre, Vice President and General Director, AmCham Mexico

- Economic recovery and North America's integration;
- Bilateral trade and U.S.-Mexico-Canada Agreement (USMCA) implementation;
- Regulatory cooperation;
- Security and Rule of Law: trust and certainty for investments; and
- Sustainable growth with social responsibility, care for the environment, compliance, and diversity and inclusion.

Mexico-California Relations

How do you support the unique relationship between Mexico and California?

Like our chamber, Mexico and California come a long way back together: its border represents 7% of the total U.S.-Mexico border, they shared a total trade of \$72 billion in 2020 and trade with Mexico supports more than 584,000 jobs in California.

At AmCham, we work to boost U.S.-Mexico potential by strengthening strategic relations as the one with California. We do this through our Trade & Investment Center, which connects our member companies with the right partners, trends and market intelligence.

It is important to note that today, Mexican direct investment in California totals over \$1 billion, and more than 900 California companies operate in Mexico.

Last year, as part of our "Doing Business in Mexico" series, we discussed with Carlos J. Valderrama, California Trade and Investment Representative Americas of the Office of Business and Economic Development of California, the [main business opportunities of investment in the state](#). [The discussion can be viewed on YouTube.]

The deep commitment to build together, which we had the opportunity to express to Lieutenant Governor Eleni Koulanakis during a board meeting in San Francisco and when we hosted an event for her in Mexico City, has been key to keep growing as allies for the agriculture sector, the production of computer and electronic products, talent development, as well as taking California's example in boosting a more sustainable economy.

COVID-19 Impact

As countries start to recover from the pandemic, what is the economic impact of COVID-19 on businesses in Mexico?

The impact on supply chains due to the differences defining essential activities in Mexico and the United States, affected the supply chains of both countries, coupled with work and closure restrictions.

Economic recovery in Mexico has been gradual and has taken a different rhythm depending on the sector (some sectors, such as air transport, tourism and services activities, still do not reach their pre-pandemic levels).

During the first quarter of 2021, Mexico registered a GDP increase of 0.8% compared to the previous quarter;

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Relations with Sister State New South Wales Remain Strong



Nearly 25 years ago, California and New South Wales, Australia declared

themselves as sister states in light of their many social, economic and cultural ties.

Today, the similarities between California and New South Wales continue to form a strong bond, even as in-person gatherings gave way to virtual ones during the pandemic.

Commercial Centers

New South Wales and California remain the commercial, industrial and financial centers of Australia and the United States. Moreover, both states are leading centers for the production of wine, films, gold, and sports and leisure activities.

The early history of both states was dominated by mining and agriculture, as well as diverse and multicultural populations, and a Pacific Rim orientation. That history forms a solid foundation for activities today.

Further strengthening the California-New South Wales sister state relation-

ship is the enduring [mateship](#) between Australia and the United States. Not only do the two nations share democratic values, but the ties linking them cover the entire spectrum of international relations — from commercial, cultural, and environmental contacts to political and defense cooperation.

Talented People

Talent mobility has been another hallmark of U.S.-Australia relations. Since the U.S.-Australia Free Trade Agreement came into effect in 2005, thousands of talented Australians — many still based in California — have come to the United States to work under a special visa.

The recently established Australian [global talent visa](#) streamlines mobility for Californians and Americans, as well.

Trade Overview

Australia, the 16th largest export destination for the United States, has a market economy with a gross domestic product (GDP) of \$1.39 trillion and a population of 25.36 million, according to the World Bank.

Top U.S. imports from Australia are primary metals and food manufactures, chemicals and reimports. Top categories

for U.S. exports to Australia are nonelectrical machinery, chemicals, transportation equipment, and computer and electronic products.

In 2020, Australia was the 14th largest importer of California goods and services. Of the \$3.2 billion of California exports to Australia, transportation equipment (17.7%) and computers and electronic products (16.3%) were the two largest categories. Other top export categories included chemicals and food manufactures.

Of the \$2.2 billion in California imports from Australia, the top categories were food manufactures and primary metal manufactures.

CalChamber Position

In keeping with longstanding policy, the California Chamber of Commerce enthusiastically supports free trade worldwide, expansion of international trade and investment, fair and equitable market access for California products abroad and elimination of disincentives that impede the international competitiveness of California business.

Staff Contact: Susanne T. Stirling

AmCham Mexico Priorities: Economic Recovery, Sustainable Growth

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however, compared to the same period last year, a decrease of 2.8% is still evident. According to our chief economist, Luis Focerrada, Mexico can expect growth of 5.4% by 2021.

It is important to highlight that, along with an increase in consumption as the vaccination plan advances, the U.S. economic support plan represents a great opportunity for Mexico's own recovery, considering that the U.S. market represents more than 80% of our exports. Mexico must take advantage, responding in a timely manner to the potential demand and facilitating the creation of jobs and investment, through the enforce-

ment of the Rule of Law and respect for international agreements, including USMCA.

USMCA

What does the USMCA mean for Mexico?

The USMCA has redefined and boosted the U.S.-Mexico commercial relationship, which is one of the most dynamic relationships in the world. Today, [Mexico stands as the United States' largest trading partner](#), with a trade equivalent to \$208.6 billion between January and April.

With its geographic advantage, the development of its industry and talent, and its export capacity, the USMCA

strengthens Mexico's path to consolidating as a key partner and the best supplier to the United States and Canada, with access to a market of 490 million people.

In the context of recovery and the critical need of strengthening regional supply chains, the agreement is a positive asset for investment flow and certainty, trust and collaboration. Also, the USMCA is important because it goes well beyond a free trade agreement, establishing a common ground of understanding for critical issues, such as regulatory homologation in labor matters, intellectual property rights, Rule of Law and trade facilitation for small and medium enterprises (SMEs).

Livestream Commemorates Year One of U.S.-Mexico-Canada Agreement



To celebrate the first anniversary of the U.S.-Mexico-Canada Agreement (USMCA), the

Woodrow Wilson Center livestreamed a conversation with the trade ministers of the three nations on June 30. A recording of the livestream is available at <https://www.wilsoncenter.org/event/usmca-one>.

The keynote speakers were U.S. Trade Representative Katherine Tai; Mexico Secretary of Economy Tatiana Clouthier Carrillo; and Mary Ng, Canada Minister of Small Business, Export Promotion and International Trade.

The California Chamber of Commerce actively supported the creation of the USMCA, successor to the North American Free Trade Agreement (NAFTA), as a necessary modernization that recognizes the impacts of technology on the economies of the United States, Mexico and Canada.

The three nations comprise more than 490 million people (6.5% of the world's population), a \$26 trillion gross domestic product (GDP) (18.3% of world GDP), and \$6 trillion in trade (nearly 16% of global trade).

Due to California's position as a global leader in international trade, the priorities of the USMCA are important to the CalChamber's members and the overall economic health of the state.

'USMCA at One'

During the discussion on June 30, participants pointed to the USMCA as a model for future trade agreements and highlighted its strong labor and environmental provisions.

Examples cited of innovations made possible through the trilateral connections fostered by the USMCA included work on ventilation systems and zero-emission vehicles.

Speakers also highlighted the importance of the revised dispute settlement features in the USMCA because of the ongoing discussion on issues among the three nations.

Ambassador Tai commented that work on the agreement will never be finished because "the agreement is about relationships and relationships are dynamic."

Others commented that the success of the trade partnership will depend in part on how the three nations work through their differences.

Speakers were optimistic that the USMCA will enable the three nations to bounce back from the pandemic in an even stronger economic position.

USMCA Benefits

The USMCA has leveled the playing field for U.S. workers and helped the United States become more independent while expanding access for U.S. dairy, chicken, egg, and turkey products to Canadian markets.

The agreement brought good jobs back to the United States and increased paychecks for U.S. workers which is vital for the nation's economic recovery coming out of the pandemic. Besides proving to be a win for U.S. workers and small businesses, the USMCA shows that bipartisanship is critical in renewing trade programs and establishing new trade agreements.

Mexico has remained the United States' second largest export market since 1995, with a total value of \$212.67 billion in 2020. Today, [Mexico stands as the United States' largest trading partner](#), with a trade equivalent to \$208.6 billion between January and April. Mexico is the first or second largest trading partner for 27 American states. Mexico continues to be California's No. 1 export market, purchasing 15.4% of all California exports.

The United States and Canada enjoy the largest bilateral trade and investment relationship in the world. In 2020, two-way trade in goods between Canada and the United States topped \$525.53 billion. Exports to Canada were \$255 billion, making it the largest export destination for the United States. Canada is California's second largest export market, purchasing 10.19% of all California exports.

For more information, visit the CalChamber trading partner portals for [Mexico](#) and [Canada](#) or the web page on the [USMCA](#).

Staff Contact: Susanne T. Stirling

Law Giving Unions Access to Private Property Ruled Unconstitutional

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California ALRA governs agricultural employees' rights to organize given that they are exempted from the National Labor Relations Act.

Under those regulations, employers must allow labor organization representatives to access their property for purposes of meeting and talking with employees and soliciting support. The labor organizations may "take access" to the employers' property for up to three hours per day, 120 days per year.

The two employers sued, arguing that the access requirement was an unconstitutional *per se* taking. Under the Fifth and Fourteenth Amendments, the government cannot take private property for public use without compensation. A taking may

include regulations or laws that amount to a restriction on a property owner's ability to use their own property.

Supreme Court Ruling

The Supreme Court agreed with the employers, reversing a divided panel in the Ninth Circuit. It reasoned that the regulation amounted to a *per se* taking because it eliminated the employers' right to exclude people from their private property by mandating that they give access to the labor organizers.

Contrary to the position of the Ninth Circuit and the dissent, the Supreme Court held that the fact that the right to access the employers' property was not for continuous access "24 hours a day, 365 days a year" did not end the inquiry.

An abrogation of the right to exclude for 364 days can be a taking just as one that extends to 365 days, the Supreme Court explained.

To support its position, it cited other cases in which the Supreme Court had found that a taking existed where the physical invasion of the property was intermittent as opposed to continuous. The Supreme Court also dismissed concerns that this holding would invalidate the right of the government to engage in health and safety inspections or law enforcement searches.

The scope of the *Cedar Point* decision is likely to be tested in future litigation.

Staff Contact: Ashley Hoffman

Legislative Action Can Avert Tax Hike on State Employers

From Page 1

providing relief to all manner of individuals, small firms, and government agencies, they likely will not come to the rescue of California's UI fund. Only 19 states currently have insolvent funds, and most of those have loan balances of less than \$1 billion. Many states have used federal rescue dollars to wipe out their UI fund loans.

Which returns us to the Legislature's inaction.

Governor Gavin Newsom proposed moving \$1.1 billion from the General Fund to the UI fund to reduce tax liabilities on employers. This amount is but a fraction of what the state's contribution should be, given the sheer size of the debt, the relatively low share of responsi-

bility that employers bear in causing this problem, and the enormous budget windfall overflowing the state treasury.

But the Governor's proposal was positively lavish compared to the budget eventually delivered by legislative leadership to the floor for a final vote, which was ... nothing. The Democratic leadership and budget writers earlier considered a small tax credit for a small number of small businesses — but even that inadequate response was relegated to the memory hole. Democratic and Republican legislators who called for helping resolve the UI fund debt were ignored.

Recognize Inequity

The Legislature must do much better. Just in time for the new fiscal year,

they sent to the Governor a state budget topping a quarter trillion dollars, larger than the entire economies of Vietnam or the Czech Republic. Little noted: the revenue windfalls driving the record spending were a consequence of highly productive entrepreneurs and employers, who sustained and grew their enterprises during one of the most challenging and traumatizing biomedical, commercial and social catastrophes of the last 75 years.

The Legislature should return to their budget calculators. They should recognize the inequity facing employers and set aside a portion of this windfall to ensure businesses are not saddled with an unfair, escalating tax increase on their workers.

CalChamber-Sponsored Seminars/Trade Shows

From Page 2

2022, Dubai, United Arab Emirates. (+971) 800 EXPO (3976).

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

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.

Israel Defense Expo. Israel Defense & HLS Expo and Israeli Chamber of Commerce. November 9–11, Tel Aviv, Israel. +972-3-691-4564 x 300.

Smart City Expo World Congress 2021. U.S. Commercial Service. November 16–18,

Barcelona, Spain. (704) 248-6976.

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. worldchamber-scongress@iccwbo.org.

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