

ALERT

Forced Unionization Bill Awaits Action by Senate



A California Chamber of Commerce-opposed job killer bill seeking to force agricultural employees into unionizing awaits action by the full Senate when legislators return from summer recess in August.

AB 616 (Stone; D-Scotts Valley) seeks to eliminate agricultural employees' democratic right to cast an independent vote in a secret ballot election regarding whether to unionize, making them susceptible to coercion and misinformation.

The bill also creates an unfair retaliation presumption against employers and imposes an unrealistic bond requirement on employers pursuing their legal right to appeal an order by the Agricultural Labor Relations Board (ALRB).

Current Law

Current provisions of the state Agricultural Labor Relations Act (ALRA) protect the rights and interests of employees and employers, as well as unions.

Modeled on the National Labor Relations Act, the ALRA affords agricultural employees the opportunity to select — or to refrain from selecting — a particular union as their collective bargaining representative through a formal and secure secret ballot election.

Each employee votes in a private booth, without any pressure or coercion from the employer, union or other employees.

Favors Unions

AB 616, however, seeks to strip employees of this fundamentally democratic right.
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Travel Industry Poised to Boost State's Recovery



Summer is traditionally the most popular time for travel in California and with

vaccination counts climbing and restrictions being lifted, 2021's summer travel season is well underway.

The state's official re-opening June 15 kicked California's economic recovery into high gear with restaurants, hotels and attractions able to operate without imposed limits.

From restaurants to resorts and theme parks to wineries, California's tourism industry is beginning to witness a much-

needed increase in activity and some pent-up demand for travel across the state.

Statewide, hotels saw occupancy exceed 70% in June for the first time since March 2020. With virtually no restrictions remaining, California's most iconic destinations and attractions are coming back to life and the hope of recovery is on the horizon.

Ready to Travel

Recent [Visit California](#) research shows over 80% of Americans are ready to travel again — a nearly 30% increase since January 1 — and California destinations are ready to welcome them. This is promising news for an industry that was devastated by the pandemic.

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The Workplace

California Supreme Court Rules on Meal Period Premium Pay



In [Episode 125](#) of The Workplace podcast, CalChamber Executive Vice President and General Counsel Erika Frank, employment

law expert Matthew Roberts, and legislative advocates Chris Micheli and Ashley Hoffman discuss the latest California Supreme Court ruling on premium pay calculations in *Ferra v. Loews Hollywood Hotel, LLC*.

Ferra v. Loews Hollywood Hotel, LLC

On July 15, the California Supreme Court issued a decision in a pivotal case that addresses meal and rest break premium payments, Frank tells podcast listeners.

In California, nonexempt employees are entitled to meal and rest breaks throughout the day, and if a break is not provided or is late, then the employer owes the worker "premium pay," she explains. Under the California Labor Code, "premium pay" is the equivalent of one hour of the employee's "regular rate of compensation." The issue at the center of *Ferra* is what does the "regular rate of compensation" mean? Does it mean the

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Labor Law Corner

What to Do When Employee's I-9 Work Authorization Document Expired



Sunny Lee
HR Adviser

Can an employee work beyond the expiration date of a work authorization document?

The answer to the question depends on whether the right to work in the United States is provided on a permanent or temporary basis.

Permanent Work Authorization

Permanent work authorization is conveyed to persons born in the United States, a U.S. citizen born abroad and to

those who have become a U.S. naturalized citizen or a permanent resident.

Typical examples of permanent work authorization documents include a U.S. passport, an unrestricted Social Security card and a permanent resident card

If at the time of hire, an employee has provided a current work authorization document, they may continue to work for that employer after the expiration of that document.

Temporary Work Authorization

Except for employees who may have Temporary Protected Status (see below), employees may not work beyond the expiration date in the employment authorization document they provided at time of hire unless they have obtained a new document extending the date.

Applying for an extension or having an attorney represent the employee is not sufficient for the employee to be able to continue to work. The employee must have been issued a new document.

Examples of temporary work authorization documents include the following:
• Form I-776, Employment Authorization card.

• A foreign passport with Form I-94 or Form I-94A with Arrival Departure Record, and containing an endorsement to work.

Temporary Protected Status

In 1990 the U.S. Congress enacted **Temporary Protected Status (TPS)**, which provides legal status to migrant nationals who file for this protection and are from countries that have armed civil unrest, natural disasters or other extraordinary and temporary conditions.

The U.S. Department of Homeland Security states that TPS is a temporary benefit which does not lead to lawful permanent resident status or give any other immigration status. TPS does, however, allow a migrant national from one of those countries to stay in the United States for up to 18 months, and this time can be extended even indefinitely by the U.S. government.

In the past, this protected status has been granted to migrant nationals from 12 countries, according to the **U.S. Citizenship and Immigration Services (USCIS) website**: Nicaragua, Honduras, El Salvador, Haiti, Nepal, Syria, Yemen, Sudan, Somalia, South Sudan, Venezuela and Burma (Myanmar).

TPS can be granted to an individual who is a national of a designated country, has filed for this status during a specified registration period, and who has been continuously physically present in the United States since a designated date.

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International Trade

Export Compliance 101: I Have an Export License; Now What? National Association of District Export Councils. July 27, Online.

International Trade Update and Business Opportunities for the U.S. with Southeast Asia. Women in International Trade, Los Angeles. July 29, Online. (213) 545-6479.

Freight Disruption in the Global Supply

Chain. National Association of District Export Councils. August 11, Online.
EXIM 2021 Virtual Annual Conference. Export-Import Bank of the United States. September 21–23, Online. (800) 565-EXIM (3946).

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.

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The Workplace

Adopting Alternative Workweek Schedules



In Episode 124 of The Workplace podcast, CalChamber Executive Vice President and General Counsel Erika Frank and employ-

ment law expert Matthew Roberts discuss alternative workweek schedules.

Over the last month [article originally published on July 13], there has been an uptick in questions regarding alternative workweek schedules on the [CalChamber Labor Law Helpline](#), Frank tells podcast listeners.

Roberts hears from many employers who are thinking about their return-to-work plan and what it will look like — whether it will be a hybrid work model or if employees will continue to work remotely.

News reports indicate that many employees want to continue having some kind of remote life, and employers are exploring the different ways they can bring folks back to the office while maintaining that remote life, Frank adds.

What Is an Alternative Workweek Schedule?

In California, an alternative workweek schedule is a very specific arrangement with many hoops and hurdles, Frank says.

The arrangement gives employers a way to create certain shift lengths for nonexempt employees that don't require the payment of overtime. Under state law, hours worked in excess of 8 hours in a day or 40 hours in a week would typically incur overtime pay, Roberts explains.

While employers can set any schedule that fits their work needs, some common alternative schedules include “4/10s” (10-hour shifts, four days a week) and “9/8/80s” (eight 9-hour days and one eight-hour day in a two-week period with one scheduled day off every other week).

Because alternative workweek schedules are a way to work around overtime pay while giving workers flexibility, the arrangement applies to nonexempt employees specifically because exempt employees are paid a set salary and don't typically incur overtime pay, Roberts clarifies.

Adopting an Alternative Workweek Schedule

The first step employers must take in adopting an alternative workweek schedule is to check the California Wage Order that is specific to their industry. Wage Orders contain industry-specific rules and procedures, and indicate what shift lengths are permitted for each industry, Roberts explains.

If an employer is permitted by the Wage Order to adopt an alternative workweek schedule, the employer should then begin strategic planning and decide which employees will be bundled into the new schedule, Frank says.

First the employer must determine what group of employees will be subject to the alternative workweek schedule, Roberts explains. This “work unit” may consist of one or more nonexempt employees in a specific division, department, job classification, or specific physical location.

After this work unit has been decided, the employer must then present a written

proposal to those selected employees. Roberts says the proposal should include a disclosure of how the schedule works and how the payment of overtime would not come into play in that schedule.

Next, the employer should hold a meeting with the employees to inform them of the schedule being proposed and notify them that there will be an upcoming election. This notification is a technical requirement. Employers must hold a meeting 14 days prior to any election in order to give workers enough time to consider whether they want to participate in the election.

Election, Adoption Process

The election is conducted via a secret ballot and all affected employees have a right to vote, Roberts explains. In order for the alternative workweek schedule to be adopted, two-thirds of all affected employees must vote “yes.” Affected workers who decide not to vote are still counted toward the employee total.

If two-thirds of employees vote for the alternative schedule, the employer must then mail the election results to the Department of Industrial Relations (DIR) within 30 days of the election. (See instructions at <https://www.dir.ca.gov/databases/oprl/DLSR-AWE.html>.) This certifies the election and becomes a public document as the Labor Commissioner keeps a list of organizations that have a valid alternative workweek schedule in place, Roberts says.

Keep Documentation

Employers must also keep all documentation related to the creation of the alternative schedule, Roberts explains, including the proposal submitted to

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If an employee has this status, even though their Employment Authorization card has expired, they may remain working as long as their TPS has been extended. If one of your employees is in this situation, you may want to go to the USCIS website at [https://www.uscis.gov/humanitarian/temporary-protected-](https://www.uscis.gov/humanitarian/temporary-protected-status)

[status](#) to see if the TPS has been extended and also check with your attorney about what obligations apply.

A helpful fact sheet from the National Immigration Forum is available at https://immigrationforum.org/wp-content/uploads/2020/09/TPS-Fact-Sheet_Updated-9_18_2020.pdf.

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.

Prop. 65 Virtual Conference to Explore Warning Rules, Acrylamide



Proposition 65 warning rules, acrylamide in food, and small business compliance challenges are among the topics to be discussed at the virtual Prop. 65 Clearinghouse Conference on

September 27.

Panel discussions for all attendees will cover subjects such as:

- Prop. 65 online warning regulations:

updates and issues the rules pose for businesses.

- Acrylamide in food products: regulatory and legal updates.
- How to ensure products comply with Prop. 65 throughout the supply chain.
- Challenges small businesses face in complying with Prop. 65.

Breakout panel topics include:

- Implications of proposed Prop. 65 regulations about cannabis and THC in products.
- Prop. 65 regulations: legal and ethical responsibilities for regulators.
- What Prop. 65 has accomplished:

the divide between businesses and environmentalists.

Pre-conference classes will examine how the state Office of Environmental Health Hazard Assessment (OEHHA) regulates Prop. 65 and key litigation that has shaped Prop. 65.

Registration

To register or for more information, visit prop65conference.vfairs.com. An early bird discount is available through August 13.

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cratic right, instead allowing unions to bypass secret ballot elections under an alternative “ballot card” procedure.

Under AB 616, a union would be installed as a bargaining unit’s representative merely by submitting a petition to the ALRB along with representation cards signed by a majority of affected employees and designating that union for that purpose.

Unlike the current process, which guarantees that employees ultimately express their true sentiments about unionization in the tightly controlled setting of a supervised secret ballot election, the AB 616 procedure provides no safeguards to ensure the representation cards really indicate the employees’ free, uncoerced and current choice.

For example, all ballots issued for an election are required to include a space for the employee to check “No Labor Organizations.” No such space or designation is required for a representation card.

Moreover, AB 616 expressly allows the union to complete the card for the employee. All the union or another employee has to do then is pressure the employee to sign the card. The union representative can then take the signed card and mail it in for the employee or

hold onto it while trying to collect additional signatures. Signed cards are valid for an entire year.

Similar Bill Vetoed

Nearly identical legislation (SB 104; Steinberg; D-Sacramento) was vetoed in 2011 by Governor Edmund G. Brown Jr., who signed the ALRA into law in 1975.

In his veto message, Governor Brown noted that the ALRA was “not the product of one side but a hard-fought compromise” reached after months of meetings and participation by thousands of people, including representatives of all sides.

Before making such a drastic change to the ALRA, Governor Brown wrote in his veto message, the Legislature should consider legal provisions that “more faithfully track its original framework” in a process that includes “all those who are affected by the ALRA.”

Presumption of Retaliation

In a letter to senators, the CalChamber and coalition of local chambers of commerce point out that the Labor Code already protects employees from retaliation for participating in union activity.

AB 616 includes a presumption of retaliation where an employer takes adverse action against a worker during a labor organization’s representation ballot

card campaign. Because a campaign could go on for weeks or months and the employee’s signature on a representation card is valid for a year, the employer would be unable to discipline an employee for an entire year without being subject to the presumption, the coalition asserts.

Unreasonable Bond Requirement

Employers may seek judiciary review of any ALRB order. AB 616 impedes an employer’s ability to exercise that legal right by requiring the employer to post a bond in the amount of the entire economic value of the order before the employer can request the review.

The coalition states that the Legislature should not put such a steep price tag on an entity’s right to appeal an order, especially during a global pandemic where many depend on agricultural companies to keep food on the table and those businesses have suffered from devastating capital shortages to keep operations running.

Notably, the bond burden applies only to an employer and not to any union that seeks review of an ALRB order.

Staff Contact: Ashley Hoffman

Regional Collaboration Key to Keeping Power Flowing Amid Drought, Heat Waves



Elliot Mainzer

In May, when the California Independent System Operator (CAISO) issued its annual Summer Assessment of the state's electrical grid, I used the term “guarded opti-

mism” about our hopes for a reliable flow of power during the hot and challenging months of July, August and September.

Working closely with our colleagues at the California Public Utilities Commission (CPUC) and the California Energy Commission, we took important steps over the past year to enhance grid reliability. We all felt we were better prepared for hot weather and high energy demand than a year earlier. But we also did not shy away from the fact that the grid could be vulnerable if we experience more extreme heat events across the Western United States that strain the system and limit our ability to import electricity from neighboring states, something California has been doing for years.

California added resources, primarily battery storage, improved forecasting and communications protocols, took care of important maintenance so transmission lines could import energy more easily, and made market enhancements enabling grid operators to respond more efficiently to emergency conditions.

‘Guarded Optimism’

Now, with the impacts of climate change and drought becoming more acute in California and much of the West, I continue to be optimistic about keeping the lights on this summer with few, if any, disruptions. I am, however, adding just a little more “guarded” to that guarded optimism because of what we have seen and experienced in recent weeks.

The CAISO issued its first two Flex Alerts, for instance, on June 17 and 18, before summer officially began. Extreme weather events strain any electric grid,

and when the balance between supply and demand gets close to the edge, we need to act quickly to avoid more serious problems. When temperatures top 110 in places like Portland and Seattle, it's clear we are experiencing a new normal and more challenges.

With our Flex Alerts, we strongly encouraged consumers to voluntarily conserve during the evening hours, when demand for power remains high but resources are reduced because abundant solar energy is no longer available. As they have in the past, California consumers and industry responded and the electricity kept flowing.

Guest Commentary By Elliot Mainzer

Rapid Change on Electric Grid

However, conditions can change quickly on the grid these days. Updated information confirmed concerns about the drought's impact on hydroelectric power, a key piece of California's energy puzzle now seriously diminished. In addition, some new resources have been delayed coming online by a month or two due to supply chain problems related to the pandemic. For these and other reasons, our assessment for the summer is now more nuanced.

That's why the CAISO, after close consultation with the CPUC and the California Energy Commission, announced on July 1 that we were soliciting bids to procure additional generating capacity under our federal tariff. The CAISO has that authority when a “substantial event or a combination of events” results in a “material difference” in assumptions that had been made about our energy supply under the state's Resource Adequacy program.

We also face unforeseen challenges beyond our control. On Friday, July 9, for example, a few hours before another Flex Alert calling for voluntary consumer conservation took effect, the rapidly growing Bootleg Fire in Southern Oregon

became an imminent threat to power lines, removing about 3,500 megawatts of power from our grid.

Balancing Supply/Demand

As a result, the CAISO issued an operational warning, which gives it authority to initiate emergency demand response programs that allow utilities to pay customers to conserve electricity. We used every tool available to us to keep the grid stable and again appealed to consumers, as well as business and industry, to conserve. California families and companies again answered the call, and we were able to balance supply and demand without resorting to rotating outages.

California, of course, is not the only state facing this challenge. Across the West, states are dealing with drought and stress on the grid from climate change and other factors. None of us can take electricity for granted anymore. Just as we must conserve water during the drought, everyone has a stake in shepherding our energy resources to make sure California, with one of the strongest economies in the world, has the power it needs to thrive.

Transition

But the fact remains that our state is still in the early stages of a profound period of transition. California has adopted ambitious goals to limit greenhouse gas emissions and combat climate change. At the CAISO and state energy agencies, we recognize an urgent need to accelerate the pace in providing sufficient resources to maintain grid reliability while moving to a decarbonized system.

There will be bumps in the road. We will face more challenges like those we have already encountered this summer. But I am optimistic about the future. I am encouraged, for instance, by the sense of urgency and focus of the CPUC with its recent 11,500-megawatt procurement order, arguably the largest single order ever to procure clean energy.

I recently took a trip to San Diego to tour one of the many battery installations coming online this summer. By storing clean wind and solar energy when they

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are plentiful, we can dispatch that electricity to the grid when it is most needed.

Success as a Region

I am also optimistic about the growing realization that we are not in this alone. A number of states in the West have adopted ambitious clean energy goals as California has done. And we are all becoming increasingly aware that we will

succeed as a region if other parts of the West like Arizona, New Mexico, Nevada and neighboring states succeed as well.

With heightened focus, a strong sense of urgency and effective regional collaboration, I am confident California's transition to a clean electric grid will succeed. My CAISO colleagues and I will continue to work as hard as we can to help achieve that transition in a reliable and efficient manner.

Elliot Mainzer is the president and CEO of the California Independent System Operator (CAISO), which is responsible for managing the flow of electricity that serves 80% of California and a small portion of Nevada. Mainzer started at the CAISO on September 30, 2020 following 18 years at the Bonneville Power Administration.

Travel Industry Poised to Boost State's Recovery

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The travel and hospitality sector was the hardest hit, with 55% of travel-related spending evaporating overnight. More than one-third of jobs lost (518,000) in California were in the travel and hospitality sector.

California lost 25% of market share in 2020, and there is much work to do to recapture that share. Persuading travelers to visit will not be easy in a climate where Americans don't consider California as "open for business" as competing destinations. While 74% of consumers see Florida as being ready to welcome tourists, only 65% feel the same about California, as of the end of June.

A healthy travel economy is crucial to bringing hospitality jobs back, getting the unemployed back to work and supporting businesses as they work toward full operation — and all of that will take time. Domestic travel is projected to take four years to return to 2019 levels, and the full recovery in international and business travel is projected to lag even longer.

Stimulus Investment

State leadership recognized the impor-

tance of Visit California's destination marketing work and the positive economic impact it can generate by allocating a one-time \$95 million stimulus investment in the recently adopted budget to jumpstart travel business during this crucial time and effectively shorten the state's forecasted recovery timeline. The funding represents the largest stimulus of its kind in the country as California looks to compete with destinations across the nation.

Visit California will use funds to extend in-state marketing efforts, including the "Calling All Californians" initiative, and expand reach nationwide with four new campaigns aimed at inspiring visitors to return to the Golden State.

Californians keeping their travel close to home will be key to the state's recovery, as it was equally critical following the September 11 terrorist attacks. In terms of economic havoc, this pandemic is 10 times worse than 9/11 — but similar to then, Californians can support our own economic recovery.

Resilient Spirit

While tourism continues to weather this crisis, and "normal" remains elusive for

the foreseeable future, the creativity and resilient spirit of the hospitality industry has resulted in new experiences and fresh ways to experience the state, especially in California's iconic world-class cities.

More than 23 new hotels opened in 2020 and another 22 are in the pipeline this year, all of California's major theme parks opened new attractions during the pandemic — and there are countless more examples of new experiences waiting to be explored.

Smart, safe and responsible travel is the new normal, and destination stewards are working to educate travelers how to keep their communities in mind when visiting, remain vigilant about healthy practices and understand [how to travel with respect](#) for others and the environment.

The pandemic has changed the world and the tourism industry has been drastically altered, but the joy of travel has reemerged stronger than ever and California is ready to roll out the red carpet for visitors.

Article by Caroline Beteta, president and CEO of Visit California.



CalChamber Member Feedback

"The CalChamber is our go-to advocate at the State Capitol, effectively representing both our industry and our region."

Sima Patel
Chief Executive Officer
Ridgemont Hospitality

Luncheon for UK Trade Secretary Provides Opportunity to Reiterate Shared Goals



Technology, agriculture and the California and British economies were among the topics

discussed when the California Chamber of Commerce hosted a small luncheon for Britain's trade secretary on July 14.

The Sacramento stop by the Right Honorable Elizabeth Truss, member of Parliament, was part of a five-day visit to the United States.

The CalChamber luncheon included Secretary Truss; the Honorable Joe White, British Tech Envoy and Consul General in San Francisco; and James Crean, Head of Trade Policy at the British Consulate General San Francisco.

Susanne Stirling, CalChamber vice president for international affairs, welcomed the British guests together with CalChamber Board member Rick Fowler, chief operating officer at Kronick Moskovitz Tiedemann & Girard.

Topics of conversation at lunch focused on technology, agriculture, the California and United Kingdom economies, and the possibility of a U.S.-U.K. Free Trade Agreement (FTA). The CalChamber was pleased to indicate support for a potential U.S.-U.K. FTA, and how much the California trade and investment relationship with the UK is valued.

While in Sacramento, the Secretary also met with representatives of California Governor Gavin Newsom.

Secretary's Visit

Secretary Truss' first stop in the United States was in Washington, D.C., where she met with U.S. Trade Representative Ambassador Katherine Tai for talks on bilateral trade issues, including the United States' ongoing Section 232 tariffs on British steel and aluminum.

During a stop in the San Francisco Bay Area, the Secretary met with Silicon Valley companies to forge new ties with the tech community and interest in them in Britain's planned Global Investment Summit, set to take place at Windsor Castle in October.

"With U.K.-U.S. trade supporting

over a million jobs in both countries, there is clear reason to work together to deepen our trade and investment ties and build back better," said Truss in a statement released by her department.



Secretary of State for International Trade and President of the Board of Trade, Minister for Women and Equalities Elizabeth Truss

Secretary's Background

The Right Honorable Elizabeth Truss was appointed U.K. Secretary of State for International Trade and President of the Board of Trade on July 24, 2019. She was appointed Minister for Women and Equalities on September 10, 2019.

A member of the U.K. Conservative Party, she has served as Member of Parliament for South West Norfolk since her election in 2010. She was appointed Parliamentary Under Secretary of State for Education and Childcare in September 2012 and served as the Secretary of State for Environment, Food and Rural Affairs from July 2014 until July 2016.

Secretary Truss was Lord Chancellor and Secretary of State for Justice from July 2016 until June 2017, and Chief Secretary to the Treasury from June 2017 until July 2019.

Before being elected to Parliament, Secretary Truss was deputy director at Reform, a private think tank. She also worked in the energy and telecommunications industry for 10 years as a commercial manager and economics director, and is a qualified management accountant.

U.S.-U.K. Trade Statistics

Two-way trade between the United States and the United Kingdom was \$109.2 billion in 2020. The United Kingdom was the fifth largest importer of U.S. goods with a total value of \$59 billion.

Top U.S. exports to the United Kingdom were primary metal manufacturing (27.1%), followed by transportation equipment, chemicals, and oil and gas. The United States imported \$50.2 billion from the United Kingdom in 2020. Transportation equipment accounted for 22.5% of the total, followed by chemicals, non-electrical machinery, and reimports. (U.S. Department of Commerce)

The United Kingdom is California's 11th largest export destination, with more than \$4.9 billion in exports. Transportation equipment accounted for 22.9% of exports — more than \$1.13 billion. Computer and electronic products brought in \$1.12 billion (22.8%), while both chemicals and second-hand merchandise accounted for 12.1% and 7.9%, respectively.

In 2020, imports into California from the United Kingdom were \$3.7 billion, a decrease from \$6.25 billion in 2019. Top import categories were transportation equipment, which made up 36.8% of the total, followed by computer/electronic products, non-electrical machinery, and chemicals.

U.S.-U.K. Investment Statistics

According to the U.S. Department of Commerce, the U.S.-U.K. investment relationship is the largest in the world, valued at nearly \$1.3 trillion and creating more than 2 million jobs, about 1 million in each country.

U.K. foreign direct investment (FDI) into the United States in 2019 totaled \$446.17 billion, while FDI from the United States into the United Kingdom totaled \$851.4 billion. (U.S. Department of Commerce, Bureau of Economic Analysis)

The United Kingdom was the fourth largest source of FDI in the United States in 2019. U.K. FDI in the United States contributed \$6.7 billion to research and development and an additional \$47.7 billion to expanding U.S. exports. In 2018, there were 1,271,100 U.S. workers

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California Supreme Court Rules on Meal Period Premium Pay

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regular rate of pay that is used to calculate overtime or is it the employee's base salary rate?

In *Ferra*, the California Supreme Court ruled in favor of the employee, establishing that the regular rate of compensation is the same as the regular rate of pay, Roberts says. The regular rate of pay may be higher than an employee's base hourly rate because the regular rate of pay includes nondiscretionary incentive payments such as bonuses and commissions.

In coming to its decision, Roberts explains, the California Supreme Court speculated on what the Legislature meant by "regular rate of compensation" and what it intended when it passed the state's overtime law, AB 60.

Importantly, the court's decision may be applied retroactively.

Legislative Intent

Micheli, of Aprea & Micheli, remarks that in *Ferra* we essentially are seeing one branch of government trying to guess the intent of another branch of government without really understanding the legislative process. When a bill comes to the floor to be voted on, it's almost impossible for the entire Legislature to review every single word in a bill and point out incongruencies. Rather, it's important to consider the bill's author or sponsors to determine what the intent of the bill was.

CalChamber's Hoffman points out that what many people don't realize is that the *Ferra* decision doesn't just mean that an employee is owed a bit more compensation—it means that good faith employers are now susceptible to millions in penalties, fees, lawsuits and attorney fees. Due to the retroactive application component of the deci-

sion, employers—who thought they were following the law—may now be liable for Private Attorneys General Act (PAGA) lawsuits, waiting time penalties, derivative penalties, exorbitant legal costs, and more.

What Should Employers Do Now?

Roberts recommends that the first step employers should take in light of this court decision is to look at their payroll practices immediately and correct any mistakes.

Step two, Frank says, is that moving forward, employers should ensure their payroll practices are correct and that premium pay calculations are using the worker's regular rate of pay.

Lastly, Frank and Roberts urge employers to consult with legal counsel to determine what their particular organization's next steps should be and to develop a plan of action that addresses past issues.

Adopting Alternative Workweek Schedules

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employees, minutes from the employee meeting to demonstrate that the meeting took place, records of the election procedure, documentation indicating how the secret ballot was done, the election results, a copy of the filing with the Labor Commissioner's office, and any other relevant documents.

Other Things to Keep in Mind

The alternative workweek schedule adoption process is detailed, and every step must be taken correctly to have a valid schedule, Frank cautions. If the schedule is invalid — say, if the election results were not submitted — then the employer would not have the legal protection to allow employees to work 10 hours

in a day without incurring overtime pay.

Another thing to keep in mind is that just because an alternative workweek schedule is in place, it doesn't mean that the employer will never have to pay overtime. If an employee works in excess of the proposed schedule, then overtime rules would still apply, Roberts says.

Flexible Schedules

If an employer cannot adopt an alternative workweek schedule, they may still be able to implement a flexible schedule, Roberts adds. For example, a make-up time exception to overtime would allow an employee to work late one day in order to make up time that fell short on a previous workday, so long as the

time was requested in advance and the employee doesn't work over a certain number of hours.

The employer may also break up working hours (such as making shifts earlier or later in the day) or redefine what the workweek is by setting the start and end days differently. So, there are still other options, but it's important that employers remember to keep track of the hours their nonexempt employees work and maintain accurate records, Roberts stresses.

Importantly, employers should remember that whether employers adopt a flexible schedule, hybrid work arrangement, or bring employees 100% back in the office, meal and rest period rules are still in play, Frank says.

CalChamber-Sponsored Seminars/Trade Shows

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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-congress@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.

Luncheon for UK Trade Secretary: Opportunity to Reiterate Shared Goals

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who were employed by the U.S. affiliates of majority U.K.-owned firms. The top industry sectors for British FDI in the United States are: business services, software and information technology services, financial services, communications, industrial equipment, and transportation. (Select USA)

In California, the second largest source of FDI through foreign-owned enterprises (FOEs) is the United Kingdom. In 2020, British FOEs in California provided more than 100,231 jobs through 2,380 firms amounting to \$8.88 billion in wages, a decrease from 2019 when British FOEs provided more than 111,430 jobs through 2,433 firms amounting to \$9.44 billion in wages. The top jobs by sector are: professional/business services, manufacturing, retail trade, transportation/warehousing/utilities, and leisure and hospitality. (World Trade Center Los Angeles FDI Report, June 2021)

Staff Contact: **Susanne T. Stirling**



(From left) CalChamber Board member Rick Fowler, U.K. Secretary Elizabeth Truss, Consul General Joe White, CalChamber Vice President for International Affairs Susanne Stirling.

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