

# ALERT

## Chamber Coalition Fights Forced Unionization Bill



The California Chamber of Commerce and a coalition of local chambers of commerce are fighting enactment of a job killer bill that seeks to force agricultural employees into unionizing.

CalChamber-opposed **AB 616 (Stone; D-Scotts Valley)** is headed to the Governor after passing the Senate on August 26, 24-11, and the Assembly concurring in Senate amendments, 52-19, on September 1.

The bill seeks to eliminate agricultural employees' democratic right to cast an independent vote in a secret ballot election on whether to unionize, making them susceptible to coercion and misinformation.

AB 616 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), the entity the bill puts in charge of the election.

### Current Law

The state Agricultural Labor Relations Act (ALRA) protects 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.

*See Chamber Coalition: Page 4*

## CalChamber General Counsel Erika Frank to Depart



Erika Frank, longtime general counsel and executive vice president of legal affairs for the California Chamber of Commerce, has accepted a position at the Shaw Law Group, a leading employment law firm in Sacramento.

Frank has been integral to the CalChamber mission of helping California employers understand and comply with the interconnected puzzle of labor laws, court decisions and regulations.

“Although I’m sorry to see Erika leave the CalChamber, we all want to wish her the best and congratulate her on her new position,” said CalChamber President and CEO Allan Zarembeg. “Erika’s passion for the success of the CalChamber is unparalleled. Her dedication to ensuring that California businesses stay out of trouble and in compliance with California’s complex labor laws

*See CalChamber General Counsel: Page 8*

## CalChamber, Coalitions Stop Privacy Proposals Having Unintended Consequences



Privacy legislation with broad consequences for the business community at large was stopped

for the year in the Senate thanks to the opposition of the California Chamber of Commerce and coalitions of industry and employer groups.

**AB 13 (Chau; D-Monterey Park)**, dealing with automated decisions systems for procurement, will be a two year bill. Held on the Senate Appropriations Committee Suspend File last week without comment were **AB 814 (Levine; D-San Rafael)**, posing limits on contact tracing; and **AB 1436 (Chau;**

**D-Monterey Park)**, placing restrictions on personal health devices.

All three bills ultimately would have harmed the consumers the proposals aimed to protect and the businesses seeking to comply with the law. The bills are eligible to be considered again at the beginning of 2022.

### AB 13 Flaws

In opposing AB 13, the CalChamber and coalition pointed out that the July 15 version not only discouraged participation in the state procurement process but also was based on a fundamentally broken definition of automated decision system (ADS).

*See CalChamber, Coalitions: Page 6*

### Inside

Road to Carbon Neutrality:  
Page 7

## Labor Law Corner

# Who Pays Cost of Employee COVID Testing or Vaccination?



**Ellen S. Savage**  
HR Adviser

*If I require an employee to go get a COVID test, or to be vaccinated, who pays the costs of testing or vaccination? Do I have to pay the employee for the time it takes?*

California's Labor Commissioner has weighed in with a series of Frequently Asked Questions about who pays for the cost of COVID testing and vaccination, and whether wages and expenses are owed to the employee.

### California Chamber Officers

**Donna L. Lucas**  
Chair

**Kailesh Karavadra**  
First Vice Chair

**Gregory S. Bielli**  
Second Vice Chair

**Janet A. Liang**  
Third Vice Chair

**Mark Jansen**  
Immediate Past Chair

**Allan Zarembeg**  
President and Chief Executive Officer

*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](mailto:alert@calchamber.com). Publisher: Allan Zarembeg. Executive Editor: Ann Amioka. Art Director: Neil Ishikawa. Capitol Correspondent: Sara Proffitt.*

*Permission granted to reprint articles if credit is given to the California Chamber of Commerce Alert, citing original publication date of article, and reprint is emailed to Alert at address above.*

*Email: [alert@calchamber.com](mailto:alert@calchamber.com).  
Home page: [www.calchamber.com](http://www.calchamber.com).*

## Cost of Testing or Vaccination

According to the Labor Commissioner, if an employer requires an employee to obtain a COVID test or a vaccination, then the employer must pay for any costs incurred by the employee for the test or vaccination. This is because California law requires employers to reimburse employees for all necessary business expenses (Labor Code Section 2802).

If the employer has not designated a specific testing or vaccination site, the Labor Commissioner advises that "workers should ask which location(s) or vendor(s) are acceptable to the employer to avoid disputes over cost."

## Wages

If the employer requires an employee to obtain a COVID test or vaccination, then the Labor Commissioner requires the employer to pay for the time it takes for the testing or vaccination, including travel time and time spent waiting for the test or vaccination to be performed.

Wages are due because the time spent, including traveling and waiting, is time during which the worker is subject to the control of the employer and is thus considered "hours worked." Keep in mind that an employee who goes for a test or vaccination outside of their regular working hours could also be entitled to overtime pay if the time spent puts the worker over 8 hours in a day or 40 in a week.

An employer may not require an employee to use paid leave time (such as COVID-19 Supplemental Paid Sick Leave or California Paid Sick Leave) for an employer-mandated COVID test or vaccination.

The Labor Commissioner notes that time spent after COVID testing while

waiting for test results does not need to be paid as hours worked. However, the worker may be able to utilize paid leave while waiting for the results.

## Travel Expenses

If the testing or vaccination is performed at a location other than the employee's ordinary worksite, the Labor Commissioner notes that the employee also may be entitled to reimbursement for necessary expenses incurred to travel to and from the testing or vaccination location. This could include mileage reimbursement or the cost of public transportation.

## Health Care/School Worker Public Health Orders

The California Department of Public Health (CDPH) recently issued vaccine mandates for certain workers in health care settings and schools, with limited exceptions that require regular COVID testing for employees who cannot be vaccinated for disability-related reasons or due to their religious beliefs.

Currently the FAQs issued by the CDPH do not address whether the Labor Commissioner's guidance applies to these two orders.

The Labor Commissioner's [COVID-19 Testing and Vaccine FAQs](https://www.dir.ca.gov/dlse/COVID19resources/FAQs-Testing-Vaccine.html) can be found at <https://www.dir.ca.gov/dlse/COVID19resources/FAQs-Testing-Vaccine.html>.

*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](http://www.hrcalifornia.com).*

## CalChamber-Sponsored Seminars/Trade Shows

More at [www.calchamber.com/events](http://www.calchamber.com/events).

### Labor and Employment

HR Symposium. CalChamber. October 7 and October 8, Online. (800) 331-8877.

### Business Resources

Proposition 65 Annual Conference. Prop. 65 Clearinghouse. September 27, Online. (415) 391-9808.

### International Trade

U.S.-Ecuador Bilateral Relations Post-COVID: Build Back Better Together. Institute of the Americas. September 9-10, Online. (858) 453-5560.

2021 InvestTaiwan Roadshow. Taiwan Ministry of Economic Affairs. September 15 (U.S. East Coast) and

*See CalChamber-Sponsored: Page 9*

*The Workplace*

# COVID-19: Revisiting Mask Mandates



In Episode 132 of The Workplace podcast, CalChamber Executive Vice President and General Counsel Erika Frank and employ-

ment law expert Jennifer Shaw discuss COVID-19 workplace mask mandates.

There's been much talk lately about COVID-19 vaccine mandates and whether to continue wearing masks at home and in the workplace, Frank says. To help clear up any confusion, Frank asks Shaw whether employers can still require that employees wear face coverings at work.

## Can Employees Be Required to Wear Masks?

Shaw says that employers can indeed still require that masks be worn at work. Similar to requiring that employees wash their hands after going to the restroom and returning to the restaurant, employers can set reasonable rules such as wearing a mask at work, provided that accommodations be offered to those who cannot wear a mask due to a disability or religious belief.

In the last two months or so, as Delta variant cases have been rising, local health departments throughout California have been passing new mask mandates that

require employees to wear a face covering at work regardless of vaccination status, Frank says. This is a detour from the California Division of Occupational Safety and Health (Cal/OSHA) mask guidelines, which allow vaccinated workers to be at a worksite without a mask.

Local health departments are doing this because the COVID-19 vaccine is not 100% effective and breakthrough cases can still occur where vaccinated individuals can still get sick and spread the virus, Shaw explains. This phenomenon is similar to what is seen with a flu vaccine.

The downside to establishing or keeping a mask mandate in place is that you will have to deal with grumpy employees, but the upside is that you will help control the spread of COVID-19 and keep your workplace safe, allowing production to continue, Frank points out.

## Accommodation Requests

If a worker states that they cannot wear a mask and presents a doctor's note, Shaw recommends that the employer look over the note carefully. Does the doctor's note establish that the person cannot wear a mask?

Such a note would be very rare, but there are valid medical conditions that could make it hard to wear a mask, such as emphysema or chronic obstructive pulmonary disease (COPD), she says.

If someone cannot get vaccinated, the best accommodation an employer can offer is masking and testing. Although some employers may continue to offer telework arrangements, not all jobs can be done remotely.

Many people cannot perform all of their essential job functions from home, Shaw says. Some employers are saying that they need to get back to business and need employees at the worksite or office. So if an accommodation cannot be made, the employer may tell that worker that they can no longer work for the company.

## Paying for Testing, Face Masks

If an employer requires that an employee be tested for COVID-19, the employer will need to pay for the testing and for the time the employee spent on taking the test, Shaw says.

If face coverings are required, the employer will also need to provide face masks, she adds. Employees may bring their own face masks if the masks meet health requirements. Gaiters and shields, for example, would not meet requirements.

Making the decision to provide face masks, however, is a best practice, Shaw says. This makes it easy for an employer to provide face masks to guests or to employees who forgot to bring their masks from home.

*The Workplace*

# Employer-Mandated COVID-19 Vaccinations



In Episode 131 of The Workplace podcast, CalChamber Executive Vice President and General Counsel Erika Frank and employ-

ment law expert Jennifer Shaw discuss employer-mandated COVID-19 vaccines and religious accommodation requests.

As the COVID-19 Delta variant began to take hold across the country, the issue of employer-mandated COVID-19 vacci-

nations has become top of mind for many employers, Frank tells podcast listeners.

There is naturally a lot of confusion and concern surrounding this topic, particularly what it means to mandate vaccination, what employers are permitted to do, and what to do if an employee says, "No, I'm not going to get vaccinated."

So, to start off, Frank says, can employers mandate that employees be vaccinated against COVID-19?

## Can Vaccines Be Required?

Shaw says that employers can indeed require vaccinations.

"Yes—and it's very rare when I can give you a black-and-white answer to anything that is employment law-related," she says.

There has been a big push by Governor Gavin Newsom to encourage employers to require vaccinations. His recent executive order requires vaccinations for health care workers and those who work in education.

Shaw explains that two orders were issued. An earlier order indicated that employees could opt for vaccination or undergo regular testing. On August 5,

*See Employer-Mandated Page 10*

## Registration Now Open for Virtual CalChamber HR Symposium

**2021 HR SYMPOSIUM**  
Presented by CalChamber



October 7 & 8

THANK YOU TO OUR MAJOR SPONSOR  
**BARNARD-BAHN**  
COACHING & CONSULTING

Registration is now open for CalChamber's annual HR Symposium. Like last year, this year's event will be held virtually, providing two half-days of live presentations:

- Thursday, October 7 (8:30 a.m. to 12:30 p.m.);

- Friday, October 8 (8:30 a.m. to 12:30 p.m.).

Top HR subject matter experts will discuss relevant workplace issues, such as new challenges for HR created by COVID-19 and the unexpected shift in work culture, and provide key compliance takeaways and best practices to support your organization.

Barnard-Bahn Coaching & Consulting is the major sponsor of the HR Symposium.

### Featured Sessions

Some of the featured sessions this year include:

- Post-Pandemic Workplace Challenges for the HR Professional;
- 5 Key Elements and Insights for Identifying and Overcoming Career Obstacles;

- Organizational Re-set: Five Steps to Take Now; and

- Inclusive Organizations Win with Diversity, Equity & Inclusion.

To see the full agenda, click [here](#).

If you miss one of the sessions, don't worry — recordings will be made available shortly after the event.

### Register Today

To register, call (800) 331-8877 or visit the event website at <https://event.me/PWAV3e>.

The price to attend the HR Symposium is \$299 (\$239.20 for CalChamber Preferred and Executive Members). Earn 8 HRCI California recertification credits, SHRM PDCs and MCLE credits.

The deadline to register is **September 30, 2021**, unless the event sells out first.

## Chamber Coalition Fights Forced Unionization Bill

*From Page 1*

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, 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 Assembly members, 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**

## *The Workplace* Partnership Key to Reliable Power Grid



In **Episode 130** of The Workplace podcast, California Chamber of Commerce President and CEO Allan Zaremberg, and

California Independent System Operator President and CEO Elliot Mainzer discuss the challenges facing California's power grid, and how business and regional partnerships are helping the state keep the lights on during extreme weather events.

### Challenges to State Power Grid

The state's power grid sees the most stress in the summertime. August and September are the most vulnerable months for the power grid as the sun doesn't shine as long in the months of September and October as it does in June, Zaremberg tells podcast listeners.

In addition, California has made a decision to rely more on solar power than in certain fossil fuels. While this gives California an opportunity to be a leader in green technology, it is also creating a situation where we need to ensure that we have sufficient generation of power.

The California Independent System Operator (CAISO) is the entity that operates about 80% of the transmission grid and energy market in the state, and it is the entity that at the end of the day is responsible for supplying enough energy to meet demand, Mainzer explains.

In California, he says, we have the confluence of three major challenges. One of those challenges is the policy decision the state has made to move from

fossil fuels toward cleaner energy generation technology. In response, CAISO has removed a lot of fossil fire generation and some types of gas plants from the system. More solar and wind resources have also been brought in, but these sources behave differently than the traditional resources.

Another major challenge, Mainzer says, is the acceleration of "climate change signals." For example, on July 9, we saw very high temperatures in areas of California, and in Oregon, a wildfire took out the major power transmission lines coming into California. Lastly, the grid is being stressed in new ways, particularly after sunset, in what is referred to as the "net peak period."

CAISO is in the process of having to accelerate the deployment of new clean energy generation technology and transmission to catch up with this change in climate signals and changing pattern of load and demand, which takes a lot of focus and energy, he tells Zaremberg.

There's an incredible sense of urgency and accountability at CAISO, with the Governor and agencies throughout the state to make energy affordable and reliable so that Californians don't live on the edge for the foreseeable future.

### How Businesses Can Help

What, Zaremberg asks Mainzer, can the business community do to help?

Many members of the business community have provided valuable demand response solutions to the state for years, Mainzer says. Just this summer, CAISO was able to avert rotating outages by tapping into several hundred megawatts thanks to large industrial customers reducing their electrical consumption.

These companies were operating under programs administered with their local utilities. The programs are valuable and while these programs are not administered by CAISO, they are a tool the entity has been using during emergency conditions and will continue to rely on for the next couple of years at least, Mainzer says.

Over time, the model for "load optimization" is to work with business and residential consumers who have flexibility to move their demand from peak periods to off peak periods—that is, from sunset to earlier in the day. Mainzer says CAISO is in the process updating the model so that it can be done with advanced technology and automation so as to avoid grid emergencies.

Businesses that want to help and sign up for these programs should contact their host utilities, the [California Energy Commission](#) or the [California Public Utilities Commission](#). These agencies are responsible for administering and designing the bulk of these programs.

California also recently [released information on the programs](#), with a customer template and claim forms for commercial customers that reduce load or utilize backup generation during emergency events. A program overview is available at [https://dof.ca.gov/Programs/California\\_State\\_Emergency\\_Program/](https://dof.ca.gov/Programs/California_State_Emergency_Program/).

### Peak Demand

The time period that is most problematic for the power grid is between 4 p.m. and 9 p.m. — particularly in the summer as we simultaneously have very hot weather in California and hot weather in the Northwest, Intermountain West and

*See Partnership: Page 9*



## CalChamber Member Feedback

*"The CalChamber is a team builder with global impact. As a leader in international trade, the CalChamber is essential to our company."*

Margaret Wong  
President and Chief Executive Officer  
McWong International, Inc.

## Fall Public Affairs Conference Opens Registration



Registration is open now for the CalChamber Fall Public Affairs Conference on October 26–27 at Disney’s Grand Californian Hotel & Spa.

Senate President Pro Tem Toni Atkins (D-San Diego) will address a general session on October 27. Other legislators who have already committed to attend include Senators Steve Glazer (D-Contra Costa); Rosilicie Ochoa Bogh (R-Yucaipa), Tom Umberg (D-Santa Ana), Anna Caballero (D-Salinas) and

Susan Rubio (D-Baldwin Park), as well as Assembly Members Rebecca Bauer-Kahan (D-Orinda), Dr. Akilah Weber (D-San Diego), Tom Daly (D-Anaheim), Jacqui Irwin (D-Thousand Oaks) and Evan Low (D-Campbell).

The early registration deadline is September 14. Room blocks are filling up and speakers are signing up.

Registration has opened to give attendees the opportunity to buy discounted theme tickets and reserve park dates around attendance at the conference.

Disney has extended its park reservation window from 60 to 120 days, and as of August 31, attendees can reserve their hotel room and park dates over the weekend of the Public Affairs Conference.

CalChamber gives special thanks to the conference major sponsors: Amazon, Southern California Edison and The Walt Disney Company.

To learn more and register, [visit this link](#).

**Staff Contact: Martin R. Wilson**



## CalChamber, Coalitions Stop Privacy Proposals

*From Page 1*

The definition would have made it difficult for any state agency or contactor to predict with certainty whether a software fell inside or outside the scope of AB 13.

The newly established California Privacy Protection Agency (CPPA) is required by the California Privacy Rights Act of 2020 to issue regulations about businesses’ use of automated decision making technology.

The law mandates that regulations include profiling and “businesses’ response to access requests to include meaningful information about the logic involved in those decision making processes, as well as a description of the likely outcome of the process with respect to the consumer.”

The Legislature should not disrupt the new CPPA’s ability to develop regulations by enacting a potentially harmful definition of ADS into law, the CalChamber and coalition stated.

### AB 814 Slows Contact Tracing

AB 814 would have created overbroad restrictions slowing the use of contact tracing and preventing customary uses of noncontact tracing information. It also included a private right of action with attorney fees, thereby creating a strong deterrent to use information to help with contact tracing efforts.

Problems with AB 814 identified by the CalChamber-led coalition included:

- Its sweeping definition of “data” overregulated and needlessly prevented businesses from keeping any record that they even conducted contact training.
- The bill would have restricted use and retention of all data collected, received or prepared for contact tracing, but failed to recognize that the restriction included data that was not collected solely or even primarily for contact tracing.
- Unnecessary use of the private right of action to enforce compliance would have discouraged any use of contact tracing, one of the state’s most effective tools to stop the spread of COVID-19.

### AB 1436 Conflicts with Current Protections

AB 1436 would have subjected businesses to liability under a law enacted when most medical records were paper-based; required a signed authorization form as a prerequisite to allowing commonplace fitness and health devices and applications to function normally; and competed with the new California Privacy Rights Act of 2020, which has not yet taken effect.

The California Consumer Protection Act of 2018 and the California Privacy Rights Act of 2020 already govern health information. Yet AB 1436 removed health information from current protections

under California privacy law and relegated it to the California Confidentiality of Medical Information Act (CMIA), an outdated statute.

The signed authorization form that AB 1436 would have required affects products and services ranging from fitness wearables and glucose monitors for people with diabetes, and even websites and products designed to collect and transmit information that helps individuals manage their own physical and mental health information.

AB 1436’s attempts to segregate the code sections under which consumer privacy is governed would have been costly for the state, leading to increased staff needed at the state Department of Justice for anticipated increases in enforcement actions against alleged violators.

In the end, consumers would have been hurt by AB 1436 as its requirements forced businesses offering the covered products and services to spend additional resources on protecting themselves from penalties under the CMIA. Many businesses would have been unable to afford the increased compliance costs.

As businesses stopped offering the covered products and services, there would have been a negative impact on the availability of these health information tools and an increase in prices.

**Staff Contact: Shoeb Mohammed**

# Carbon Neutrality Workshops Continue

*CalChamber Offers Suggestions to Balance Economic, Environmental Goals*



The California Air Resources Board (CARB) kicked off its every-five-years Scoping Plan process

this summer with a series of [virtual workshops](#).

CARB spent several days presenting these workshops on several topics, including separate workshops on natural and working lands, environmental justice and equity, and the transportation and electricity sectors.

The CARB Scoping Plan process will provide us with an environmental and economic analysis of progress toward the statewide goal of reducing emissions by 40% below 1990 levels by 2030, as well as determining a path toward Governor Edmund G. Brown Jr.'s Executive Order B-55-18, which requires the state to achieve carbon neutrality by 2045.

Pursuant to [Governor Gavin Newsom's direction](#), CARB also will evaluate a 2035 carbon neutrality goal. Initial results are expected in spring 2022.

The next Scoping Plan Workshop, scheduled for [September 8](#), will focus on short-lived climate pollutants. Recordings and presentations of previous workshops, as well as upcoming workshops, are posted on [ARB's Scoping Plan website](#). Previous workshops included engineered carbon removal, natural and working lands and scenario concepts.

## Strive for Balance

As the state evaluates how to meet its post-2030 goals, it is important that we continue to strive for an appropriate economic and environmental balance.

The California Chamber of Commerce supported the bipartisan effort to reauthorize cap-and-trade to meet our 2030 goals for this reason. As set forth in AB 32, which guides the Scoping Plan process, the state must evaluate technological feasibility and cost-effective sources to reach our goals.

A few overarching suggestions are outlined below.

## Remove Barriers to Innovation

The Scoping Plan process should include a robust discussion around the barriers companies currently face in investing in innovative emission reduction techniques in California.

Other than in cap-and-trade, California has tended to "choose" a technology that it deems worthy of support. For example, many zero-emission resources, such as nuclear and large hydro, are left out of the state's limited statutory definition of "renewable." So, of course, companies have been reluctant to invest in other technology that also reduces emissions but will not be acceptable to California.

CARB should be encouraging all cost-effective and technologically feasible ways to reduce carbon emissions. This includes collaborating with other

state and local agencies to identify other barriers to entry, such as where land use and entitlements can be streamlined or tax credits can be altered to uncap research and development limits.

If California is going to take a statewide approach to climate change, it must also evaluate statewide barriers to technological development and ensure appropriate counting of emission-reducing activities.

## Avoid Sector-by-Sector Limits

The Scoping Plan process should address pathways for meeting our statewide emission reduction goals and avoid imposing restrictions on any one sector of the economy, as this could have significant ripple effects.

Focusing on a statewide approach to carbon neutrality is important for several reasons:

- First, California's economy is largely intertwined, and impacts to one sector carry through to others. For example, imposing significant burdens on the agricultural sector may risk a substantial increase in the price of food, which would in turn affect in-state grocery retailers, farmers' markets, as well as revenue from state exports from one of the largest American markets for food.

- Likewise, impacts to the transportation sector have ripple effects throughout the entire economy. Actions that don't aim to solve these externalities also

*See Carbon Neutrality: Page 8*

**CalChamber Members:**  
Are you using your discounts from  
FedEx<sup>®</sup>, UPS<sup>®</sup>, Lenovo<sup>®</sup> and others?

Members who enroll save an average of \$900 a year.  
See what's available at [calchamber.com/discounts](http://calchamber.com/discounts) or call (800) 649-4921.

Visit Perks & Discounts on HRCalifornia for details, and click your way to savings today.

FedEx<sup>®</sup>



Lenovo<sup>™</sup>

## Carbon Neutrality Workshops Continue

*From Page 7*

risk increasing costs for all goods and services that are transported around and out of our state.

• A sector-by-sector approach may run the risk of increasing “leakage” — that is, sending carbon emissions (and revenue-generating new low- and zero-emission technology) out of state when increased compliance costs deter multiple sectors of the economy from expanding or investing in California.

In identifying scenarios to meet our 2045 goals, CARB must continue to focus on statewide emissions and the interaction between emission reductions and the entire statewide economy in evaluating cost effectiveness.

### Encourage All Carbon Reducing and Removal Technology

CARB should avoid an all-or-nothing approach, as balance between source reduction and technology will be necessary to meet our climate goals. California has a substantial opportunity to be a leader not only in reducing emissions at

the source, but in innovations to capture, store, or otherwise address existing greenhouse gas (GHG) emissions.

Companies are investing in achieving voluntary carbon reduction goals, investing in zero- and low-emission transportation options or helping them come to market, and are supporting businesses that can provide those benefits as quickly and cost-effectively as possible to address the climate crisis.

Companies are looking toward technology like carbon capture and sequestration to address hard-to-decarbonize sectors of the economy and a burgeoning carbotech market is emerging, wherein companies are researching innovative ways to utilize and sequester carbon-rich materials, or carbon dioxide (CO<sub>2</sub>) itself, in new or replacement products. According to a [recent report](#) by President Joe Biden’s Council on Environmental Quality:

*To reach the President’s ambitious domestic climate goal of net-zero emissions economy-wide by 2050, the United States will likely have to*

*capture, transport, and permanently sequester significant quantities of carbon dioxide (CO<sub>2</sub>). In addition, there is growing scientific consensus that carbon capture, utilization, and sequestration (CCUS) and carbon dioxide removal (CDR) will likely play an important role in decarbonization efforts globally; action in the United States can drive down technology costs, accelerating CCUS deployment around the world.*

Companies are scrambling to address the climate crisis in any way possible, but barriers to entry for some sectors — like a lack of a reliable market in some sectors or carbon credits or regulatory certainty in others for this technology — remain.

California should be seeking opportunities to create a robust market in our state, where our technology and historic industrial sectors, our world class universities and research and development capacity can create a market for innovative emission reductions technology to complement direct emissions reductions.

**Staff Contact: Leah Silverthorn**

## CalChamber General Counsel Erika Frank to Depart

*From Page 1*

has been a tremendous benefit for California’s employers.”

Frank leveraged more than two decades of legal, governmental and legislative experience in overseeing and contributing to CalChamber labor law and human resource compliance products, including the *HRCalifornia* website, webinars and seminars. As head of the Labor Law Helpline, she often picked up the phone to field questions from callers seeking compliance guidance.

She has been the most frequent host of The Workplace podcast since its launch in March 2019.

In addition to co-producing and presenting at CalChamber webinars and seminars, Frank organized the first HR Symposium in 2017. The now-annual event brings together top experts and key insiders for a California-focused discussion of human resources, workplace and compliance issues.

Frank will continue to appear as a webinar/seminar presenter through the end of this year.

As general counsel, Frank led CalChamber’s Legal Affairs Department, which participates in court cases having a broad impact on California’s economy and jobs climate—including workers’

compensation reform, labor and employment, taxation, litigation reform and commercial free speech.

Frank joined the CalChamber in April 2004 as a policy advocate and began serving as general counsel shortly thereafter. Before assuming full-time general counsel responsibilities in late 2005, she lobbied the legislative and executive branches on taxation, civil litigation and lawsuit abuse issues.

Frank holds a B.A. in political science from the University of California, Santa Barbara, and earned her J.D. from the McGeorge School of Law, University of the Pacific.



## Capitol Insider

presented by **CalChamber**

The Capitol Insider blog presented by the California Chamber of Commerce offers readers a different perspective on issues under consideration in Sacramento.

Sign up to receive notifications every time a new blog item is posted at [capitolinsider.calchamber.com](http://capitolinsider.calchamber.com).



## Partnership Key to Reliable Power Grid

From Page 5

Desert Southwest, which are places we import energy from, Mainzer explains.

Currently, CAISO issues Flex Alerts and heat bulletins to give advanced notice, but over time the goal is to get away from having to issue these communications, he says.

Any additional voluntary participation or enrollment from businesses or residents in emergency load reduction programs would be very helpful as we navigate through these challenges in the summers ahead, Mainzer urges.

### Hydropower, Battery Storage

The drought in the West is impacting hydropower and is adding another dimension to the state's power challenges, Zaremborg says.

After the rotational outages California experienced in August 2020, Mainzer said, CAISO took a number of actions, such as procuring additional capacity and new battery storage, becoming well-equipped to store energy during the day and then reinject it into the grid after sunset.

While a number of positive steps were taken, the unprecedented drought across all the Western states this year is really taking a toll on hydropower production in California.

Due to critical low water levels, the Lake Oroville hydropower plant recently stopped producing electric power and other adjacent areas in the West where California imports energy from are also experiencing below average water conditions, Mainzer says. This year, we have 50% as much hydro production as we did in 2015, which was California's last decent water year.

Better battery storage technology is going to play a big role in sustaining power supply during the peak usage hours, but it's going to be only a part of the solution, Mainzer says.

In the coming years we're going to see the retirement of the Diablo Canyon nuclear power plant and the retirement of gas units. So, it's going to take a portfolio of resources, such as battery storage; renewable energy production; around-the-clock, dispatchable capacity; technology such as geothermal; and other resources to provide reliability to the grid.

Another challenge is getting the transmission grid reinforced to get new electricity supplies to where the demand is, and that has not been an easy equation inside of California, he says. So, what is absolutely essential is that agencies throughout the state embrace transmission construction and development. We need to make sure that our permitting and siting

processes don't slow down construction to such an extent that we're unable to get resources onto the power grid.

### Importance of Regional Partnerships

Zaremborg asks Mainzer whether CAISO is cooperating with Western states as well, given that California's power generation is tied to theirs.

Mainzer says that cooperation, collaboration and partnership is critical, whether it pertains to the importation of resources from other states, enhanced transmission, or looking for additional ways to extend power into longer time horizons.

Many of the issues of water scarcity and shortage that California is grappling with are shared across the Western United States, he says.

"Which means that we all need to be coordinating and sharing resources and being aware of each other's situation and supporting each other to the maximum extent possible," Mainzer says. "We are all part of an interconnected grid in the West and if one of us has major reliability problems, it affects the rest of us."

## CalChamber-Sponsored Seminars/Trade Shows

From Page 2

September 22 (U.S. West Coast), Online. (886) 2 8797 7333.  
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.  
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 Federa-

tion and Dubai Chamber of Commerce & Industry. November 23–25, Dubai, United Arab Emirates. [worldchambercongress@iccwbo.org](mailto:worldchambercongress@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.

Next Alert: September 17

## Employer-Mandated COVID-19 Vaccinations

From Page 3

however, a new order was issued stating that testing is no longer an option and workers in designated job industries must take the vaccine unless they have a religious or disability exemption.

It's well accepted in the medical community that the best way to prevent COVID-19 is to get vaccinated, Shaw points out. Other protection methods, such as social distancing, masks/respirators and testing are helpful, but the problem with testing is that someone can still spread the virus while they are waiting for their test results.

So, Shaw says, testing is helpful, especially when combined with using an N95 respirator, but it is nowhere near the protection you get with being vaccinated.

### Religious Accommodation Requests

Vaccinations may be required unless an employee has a medical disability or a sincerely held religious belief that precludes them from vaccination.

The religious accommodation requests that employers were accustomed to seeing prior to COVID-19 usually pertained to scheduling or grooming practices, Frank says. But now employers

are left to apply this accommodation in a very difficult situation.

A church near Sacramento, for example, is publicly giving out religious accommodation documentation. What is an employer to do if an employee brings in an exemption from their church, Frank asks?

It's very hard to prove that a medical disability precludes someone from taking the vaccine, so many employers are seeing a rise in religious accommodation requests because the standard is pretty low, Shaw says.

The accommodation can be granted if there is a connection between the religious belief or practice and the inability to get the vaccination. It's not a "preference" — it's "inability," she stresses.

Workers seeking this accommodation usually get a notice from their church asking for an exemption based on their "conscience." Well, Shaw says, that's not necessarily enough to prove a sincerely held belief.

If handed such an accommodation request, Shaw suggests that the employer ask the worker, "What is it about your religious beliefs that precludes you from being vaccinated?"

Should the employee insist on a reli-

gious accommodation, the employer shouldn't question the employee's sincerity. Instead, Shaw suggests that employers ask the employee what type of accommodation they want. Would they prefer to be tested on a regular basis and wear a respirator?

Employers shouldn't immediately jump to termination, because in the middle of all of this there is a labor shortage. Employers should look over other factors and consider what makes sense for their business practice, Shaw says.

Frank agrees, pointing out that fighting an employee on this may not be worth the trouble. This doesn't mean, however, that employers can disregard the Governor's orders. Employers must abide by the order if it applies to them.

Lastly, Frank urges employers to stay up-to-date with their local ordinances as those often are more stringent than state and federal laws, and the stricter law takes precedence.

Frank recommends that employers bookmark their local health department's website on their computer and check weekly for updates.

## The Value of a CalChamber Preferred Membership

In these still uncertain times, CalChamber Preferred Members enjoy **exclusive benefits** that go beyond the reassuring compliance resources on HRCalifornia.com.

Consider the unlimited number of times you can speak with an expert from the Labor Line Helpline on questions specific to your employment and human resource issues. Or your unlimited Job Board postings or 20% discount on compliance products and training.



**"The Labor Law Helpline advisers always come through when I need them. Don't ever stop offering this service to Preferred Members."**

**Kat Lotz**  
CFO, Jewel Box Platinum, Inc.  
Preferred Member Since 2001

**LEARN MORE** at [calchamber.com/preferred](http://calchamber.com/preferred) or call (800) 331-8877.