

# ALERT

## CalChamber, Allies File Fair Pay Reform Initiative



Organizations, including the California Chamber of Commerce,

representing a broad portion of the California business community last week filed the “Californians for Fair Pay and Employer Accountability Act” with the Office of the Attorney General.

The leaders of these organizations provided their comments on this important reform to California labor law enforcement:

### CalChamber

“When workers lose wages, it shouldn’t take years for them to get paid. This measure makes sure wage claims are resolved more quickly and result in a better outcome for workers, while reducing shakedown lawsuits,” said Jennifer

Barrera, CalChamber president and CEO. “Currently, using a private attorney means the conflict could take years to resolve, and 30% or more goes to the lawyers. State data shows that, when regulators handle workers’ claims, workers get more money and they get it a year faster than hiring an attorney and going to court.”

As a not-for-profit since 1890, the CalChamber works to transform California’s business landscape. Today, nearly 40,000 businesses in the state rely on the CalChamber for advocacy and labor law compliance.

### California New Car Dealers Association

“We believe there is a better way to resolve wage claims than the current system that takes too long and unfairly delays outcomes for workers. We have crafted a solution that holds employers

*See CalChamber, Allies: Page 5*

## Recap of Governor’s Actions on Priority Bills



Another legislative year came to a close this week as Governor Gavin

Newsom acted on the last remaining bills waiting on his desk.

Of the 25 job killer bills the California Chamber of Commerce identified this year, only one was signed into law. The Governor signed 22 CalChamber-supported bills, and vetoed five CalChamber-opposed bills.

Following is a recap of the Governor’s actions on priority CalChamber bills this year. For full descriptions and to see what happened to legislation where amendments removed CalChamber opposition, see the [Final Status Report](#) listing inside this edition.

### Opposed Bills Vetoed

- **AB 416 (Kalra; D-San Jose):** Overbroad Burden on Procurement.
- **AB 616 (Stone; D-Scotts Valley):** Forced Unionization Process for Agricultural Employees.
- **AB 1074 (Lorena Gonzalez; D-San Diego):** Onerous Return to Work Mandate.
- **SB 524 (Skinner; D-Berkeley):** Increases Health Care Costs.
- **SB 660 (Newman; D-Fullerton):** Restrictions on Citizen Ballot Initiatives and Voter Signature Gathering.

*See Recap: Page 4*

## Commissioner Offers Insights into Factors Affecting Congestion at U.S. Ports



The commissioner of the Federal Maritime Commission, Carl

Bentzel, joined the California Chamber of Commerce on October 5 to discuss the state of U.S. ports and short- and long-term challenges in the shipping industry.

The discussion was part of a virtual international forum moderated by Council on International Trade Chair

Stuart Woolf. Woolf is president and CEO of Woolf Farming & Processing, and serves on the CalChamber Board.

Bentzel serves on the five-member Federal Maritime Commission with a term expiring in 2024. Prior to this position, the Commissioner served as vice president of a full-scale public relations firm, the DCI Group.

### Largest Meltdown Since WWII

Bentzel begins the forum by giving viewers a background overview of the

*See Insights: Page 6*

### Inside

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## Labor Law Corner

# Answers to Common Questions about Completing Form I-9



Sunny Lee  
HR Adviser

As employers are again hiring, a number of questions have arisen concerning the Form I-9 (Employment Eligibility Verification Form). The following questions and answers may help to address questions you may have.

**• Can an employer require that a new hire complete the I-9 Form before their first day of employment?**

Yes. An employer may provide the I-9 Form to an applicant once they have

accepted the offer of employment. The I-9 Form itself gives that permission by stating the employee must complete Section 1 no later than the first day of employment but not before accepting an offer of employment.

**• Do all employees have to complete an I-9 Form? What about owners and part-time or seasonal employees? What about employees who have a work visa? Can I accept a copy of a document if the employee tells me they cannot find the original?**

Yes. All employees must complete an I-9 Form if they were hired on or after November 6, 1986, the date that the I-9 law went into effect.

If a business is a partnership or a sole proprietorship, the owners of those businesses are not employees and no I-9 Form should be completed. If on the other hand, the business is a corporation, then the owners are employees of the corporation and an I-9 Form is required.

There is no exemption, distinction or status that would exempt an employee from completing an I-9 Form. It does not matter that they are hired for temporary, seasonal, part-time or full-time work. Whether an employee is a U.S. citizen or has a temporary work visa, they are treated the same for I-9 purposes.

All documents must be current at the time of hire and be the original document. Copies of documents are not acceptable.

**• I have an employee who started work last Monday and he still has not provided me with I-9 documents. How much more time should I give him to bring in documents?**

The I-9 Form must be completed (by the employee and the employer) within three business days of the employee starting work. If documents have not been provided, you will not be able to certify the I-9 Form and there is no grace period in the law. If documents are not provided,

*See Answers to: Page 16*

### California Chamber Officers

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## CalChamber-Sponsored Seminars/Trade Shows

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

### Labor and Employment

HR Boot Camp Virtual Seminar.

CalChamber. December 9 and December 10, Online. (800) 331-8877.

### International Trade

Expo Dubai 2021. Expo 2020 Dubai

UAE. Through March 31, 2022, Dubai, United Arab Emirates. (+971) 800 EXPO (3976).

Taiwan Trade Shows. Taipei Economic & Cultural Office, San Francisco.

Through December 27, Online. (415) 362-7680.

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.

Innovations in Cross-Border Payments and Foreign Exchange - Webinar.

National Association of District Export Councils. October 21, Online.

36th Trade Expo Indonesia Digital Edition. Indonesia Ministry of Trade.

October 21–December 20, Online. +62 (21) 829-2661.

Israel Defense Expo. Israel Defense & HLS Expo and Israeli Chamber of Commerce. November 9–11, Tel Aviv,

Israel. +972-3-691-4564 x 300.

Future-Proof Taxation. American-Hellenic Chamber of Commerce. November 15–16, Online. +30 210-699-3559. Smart City Expo World Congress 2021.

U.S. Commercial Service. November 16–18, Barcelona, Spain. (704) 248-6976.

## Annual Meeting

In compliance with Article VII of the bylaws, notice is hereby given that the annual meeting of the members of the California Chamber of Commerce, a mutual benefit corporation operating under the laws of the State of California, will be held on Friday, December 10, 2021, at 9 a.m. in Salon I at the Ritz-Carlton, 600 Stockton Street, San Francisco, California, for the transaction of whatever business may be necessary.

**Next Alert: October 29**

*The Workplace*

# Breaking Down COVID-19-Related Lawsuits



In Episode 134 of The Workplace podcast, CalChamber employment law expert Matthew Roberts, CalChamber policy advocate

Ashley Hoffman, and employment law attorney Colby Turner discuss COVID-19-related litigation and identify potential situations that can trigger lawsuits.

We are now 18 months into the COVID-19 pandemic, and we are seeing more and more court claims arise related to COVID-19 workplace practices, Roberts says in kicking off the podcast.

The pandemic forced approximately two-thirds of California workers to work from home, and employers' biggest concerns throughout this time have been related to remote work arrangements, such as how to: prohibit off-the-clock work, ensure employees take meal and rest breaks, properly get notices out, track work being performed, and paying for employee home expenses like internet and utilities, Hoffman explains.

On top of this, employers have had to contend with tracking and figuring out all the different regulations and leave laws that have been passed at the local, state and federal levels, and deciding what laws take precedence over others.

Turner says that it's no surprise that these are the biggest concerns employers are presenting to Hoffman because these same issues are what she is seeing in litigation.

## Common Lawsuits

Turner, who represents employers in labor and employment litigation at Seyfarth Shaw LLP, says she is seeing a disproportionate number of claims related to meal and rest breaks, remote work expenses and off-the-clock type of claims.

While meal and rest break claims have always been an issue in California, the situation has been exacerbated since the pandemic because remote workers often feel the need to work nontraditional hours in order to make up for interruptions during normal work hours.

In California, an employee is paid from the time work starts to the time work finishes and there is no flexibility to account for breaks to help a child with a Zoom class or being interrupted by a toddler who is at home, Turner explains. So what attorneys are seeing is claims related to employees trying to make up for these household interruptions by working an extra hour after they "log out" from work for the day.

Other common litigation includes creative claims for home business expenses, such as mortgage payments, homeowners association (HOA) fees, and air conditioning costs. There also are individual claims alleging workplace safety issues, such as discrimination related to medical/religious accommodation requests, workers not wearing masks at work, and employers failing to conduct COVID-19 symptom screenings.

### **Rest, Meal Breaks**

California wage and hour laws are

not designed for flexible work. If an employee is working remotely, they still need to record all of the time they spend working, Turner stresses. Even if an employee works for 15 minutes at 8 p.m., that time needs to be logged. Wage and hour penalties in California can add up substantially and the penalties easily dwarf the 15 minutes of labor. Employers can be on the hook for penalties under the Private Attorneys General Act (PAGA), wage statements, and liquidated damages, among others. And because remote work is done digitally, there may be a footprint proving that a company could have known that the employee was performing work off-hours.

While an employee can waive their rest breaks of their own accord, employers should not encourage workers to skip their rest breaks, Turner says. Moreover, taking 20-minute breaks here and there is not allowed for nonexempt employees, regardless of agreement.

### **Workplace Safety Claims**

Turner says that workplace safety claims usually don't arise out of nowhere. Usually, a claim happens after someone asked to work remotely first, was denied and forced to come into the office, and then the person filed a safety complaint. So, the first thing an employer should do is decide how they are going to respond to remote work requests, and really think about whether that employee needs to be at the worksite in order to perform their duties.

The complaints being filed allege that workers are not wearing their masks

*See Breaking Down: Page 15*



## CalChamber Member Feedback

*"CalChamber moves at 5G speeds to support job creators like us across the state. CalChamber also shares our vision of a more inclusive and equitable atmosphere in the private sector statewide."*

Rudy Reyes  
West Region Vice President and Associate General Counsel  
Verizon



## Recap of Governor's Actions on Priority Bills

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### Support Bills Signed

#### Banking and Finance

• **AB 511 (Muratsuchi; D-Torrance)**: Crowdfunding.

#### California Environmental Quality Act (CEQA)

• **AB 819 (Levine; D-San Rafael)**: CEQA Transparency.

#### Crime

• **AB 331 (Jones-Sawyer; D-South Los Angeles)**: Retail Theft Enforcement.

#### Education

• **AB 469 (Reyes; D-San Bernardino)**: Facilitate Pupil Financial Aid Applications.

#### Gaming/Alcohol

• **SB 19 (Glazer; D-Contra Costa)**: Wineries.

• **SB 389 (Dodd; D-Napa)**: Alcohol Sales.

#### Hazardous Waste

• **AB 332 (Committee on Environmental Safety and Toxic Materials)**: Treated Wood Waste.

#### Health Care

• **AB 1082 (Waldron; R-Escondido)**: Continues Review of Health Care Mandates.

#### Housing and Land Use

• **SB 8 (Skinner; D-Berkeley)**: Pro-Housing Production.

• **SB 9 (Atkins; D-San Diego)**: Pro-Housing Production.

• **SB 10 (Wiener; D-San Francisco)**: Pro-Housing Production.

• **SB 290 (Skinner; D-Berkeley)**: Pro-Housing Production.

• **AB 215 (Chiu; D-San Francisco)**: Housing Production.

See October 1 *Alert* story for more details on housing bills.

#### Labor and Employment

• **AB 1033 (Bauer-Kahan; D-Orinda)**: Small Employer Mediation Program.

• **SB 657 (Ochoa Bogh; R-Yucaipa)**: Telecommuting.

#### Taxation

• **SB 87 (Caballero; D-Salinas)**: Small Business Grant Program.

• **SB 94 (Skinner; D-Berkeley)**: License Renewal Fee Relief.

#### Transportation and Infrastructure

• **SB 339 (Wiener; D-San Francisco)**: Ensure Transportation Funding.

#### Unemployment Insurance

• **AB 110 (Petrie-Norris; D-Laguna Beach)**: Data Sharing Between Employment Development Department (EDD) and Department of Corrections to Prevent UI Fraud.

• **SB 390 (Laird; D-Santa Cruz)**: Requires EDD to Plan for Next Crisis.

#### Workplace Safety

• **AB 654 (Reyes; D-San Bernardino)**: Clarification and Cleanup re COVID-19 Notice.

• **SB 336 (Ochoa Bogh; R-Yucaipa)**: Fair Notice for Local Public Health Orders.

### Support Bills Vetoed

#### Education

• **AB 1185 (Cervantes; D-Corona)**: Ensure Students Can Complete Cal Grant Applications Despite COVID-19-Related Disruptions.

#### Recycling

• **SB 244 (Archuleta; D-Pico Rivera)**: Battery Recycling Education and Fire Prevention.

### Cumulative Job Killer Vetoes

• 2021: 25 Job Killers identified, 2 sent to Governor Gavin Newsom, 1 signed, 1 vetoed;

• 2020: 19 Job Killers identified, 2 sent to Governor Newsom, 1 signed, 1 vetoed;

• 2019: 31 Job Killers identified, 2 sent to Governor Newsom, 1 signed, 1 vetoed;

• 2018: 29 Job Killers identified, 1 sent to Governor Edmund G. Brown Jr., 1 vetoed;

• 2017: 27 Job Killers identified, 3 sent to Governor Brown, 2 signed, 1 vetoed;

• 2016: 24 Job Killers identified, 5 sent to Governor Brown, 4 signed, and 1 vetoed;

• 2015: 19 Job Killer bills identified, 3 sent to Governor Brown, 1 signed, and 2 vetoed;

• 2014: 27 Job Killer bills identified, 2 sent to Governor Brown, 2 signed;

• 2013: 38 Job Killer bills identified, 1 sent to Governor Brown, 1 signed;

• 2012: 32 Job Killer bills identified, 6 sent to Governor Brown, 4 signed, 2 vetoed;

• 2011: 30 Job Killer bills identified, 5 sent to Governor Brown, 1 signed, 4 vetoed;

• 2010: 43 Job Killer bills identified, 12 sent to Governor Arnold Schwarzenegger, 2 signed, 10 vetoed;

• 2009: 33 Job Killer bills identified, 6 sent to Governor Schwarzenegger, 6 vetoed;

• 2008: 39 Job Killer bills identified, 10 sent to Governor Schwarzenegger, 1 signed, 9 vetoed;

• 2007: 30 Job Killer bills identified, 12 sent to Governor Schwarzenegger, 12 vetoed;

• 2006: 40 Job Killer bills identified, 11 sent to Governor Schwarzenegger, 2 signed, 9 vetoed;

• 2005: 45 Job Killer bills identified, 8 sent to Governor Schwarzenegger, 1 signed, 7 vetoed;

• 2004: 23 Job Killer bills identified, 10 sent to Governor Schwarzenegger, 10 vetoed;

• 2003: 53 Job Killer bills identified, 13 sent to Governor Gray Davis, 11 signed, 2 vetoed;

• 2002: 35 Job Killer bills identified, 17 sent to Governor Davis, 12 signed, 5 vetoed;

• 2001: 12 Job Killer bills identified, 5 sent to Governor Davis, 3 signed, 2 vetoed;

• 2000: No Job Killers identified. Of 4 bad bills identified at end of session, Governor Davis signs 2 and vetoes 2;

• 1999: 30 Job Killer bills identified, 9 sent to Governor Davis, 6 signed, 3 vetoed;

• 1998: 64 Job Killer bills identified, 11 sent to Governor Pete Wilson, 11 vetoed;

• 1997: 57 Job Killer bills identified, 9 sent to Governor Wilson, 9 vetoed.

# Travel Industry Optimistic on Recovery



With the September 20 announcement that international travel will

resume in November, California's travel industry has renewed optimism for an accelerated recovery. The new standards will allow vaccinated travelers from Europe, the United Kingdom and select other countries to enter the United States without quarantine or other restrictions.

The long-awaited update from the Biden administration generated an immediate surge in travel planning, inundating European airlines and travel booking sites. Expedia Group reported a spike in interest in San Francisco trips, more than doubling search traffic. British Airways reported a 700% increase in searches for trips to Los Angeles, and Skyscanner saw a 54% increase in visits from consumers looking to visit the United States.

## International Travel

The return of international travel is one of the most significant factors to help usher in California's travel economy recovery. Before the pandemic, international travel accounted for 6% of visitors to the state, but over 17% of travel spending. Traditionally, international travelers tend to stay longer, spend more and often visit during slower shoulder seasons.

The tourism industry was one of the hardest hit during the pandemic. Full recovery to pre-COVID levels is currently forecast for 2024. In 2019, visi-

tors spent a record-setting \$145 billion in California. That number plummeted to \$65 billion in 2020.

With \$100 billion in forecasted visitor spending this year, the foundation for recovery is in place and the state's destination marketing organization is ready to lead the way.

## Robust Strategy

Visit California has developed a robust strategy to parlay pent-up travel demand and a one-time \$95 million state stimulus boost into an accelerated recovery for the hospitality sector.

A combination of marketing, social and earned media, industry outreach, reactivating offices in key international markets, and unprecedented consumer domestic media buys will all play a role to get the travel industry back up to speed.

This fall, Visit California also will launch a new brand platform focused on promoting the state's abundance of convention centers, outdoor meeting spaces and unique event venues to professional meeting planners around the globe.

Pre-pandemic, meetings were responsible for over \$65 billion in spending, and the sector is vital to sustain economic growth, especially in city centers that have been the hardest hit with the loss of both business and international travel.

## Poised for Recovery

After 18 months of unknowns, numerous indicators are beginning to emerge that show California poised for a full recovery. Throughout the pandemic,

California maintained its position as the No. 1 travel destination in the United States. Hotel occupancy across the state has increased more than 20% over the last year, even missing that critical convention and international business.

California's approach to the pandemic is also paying off as the state boasts the lowest COVID-19 transmission rate in the nation — a fact that resonates with potential visitors who have made safety an increased priority in their travel planning.

While the negative impact the pandemic has had on the hospitality industry is devastating, California has shown its resilience and is rolling out the red carpet in anticipation of the recovery wave.

Make no mistake, the industry still faces challenges. Climate change has created a longer fire season. Homelessness in urban areas continues to resist solutions. And multiple factors have contributed to labor shortages that prevent some businesses from operating at full capacity.

But despite so many challenges, California has added new and reimagined attractions, exciting new outdoor activities and over 7,000 new hotel rooms up-and-down the state that are now — or will soon be — welcoming visitors for the first time.

And with pandemic restrictions being lifted, international travel coming back, and the state's hospitality industry returning to full swing, California is well-positioned to drive a dramatic tourism recovery.

*This article was written by Caroline Beteta, president and CEO of Visit California.*

# CalChamber, Allies File Fair Pay Reform Initiative

*From Page 1*

accountable and makes sure that workers get paid quickly. Too often, workers who were wronged are left with pennies while lawyers walk away with millions. This measure means workers will get 100% of all penalties," said Brian Maas, president of the California New Car Dealers Association (CNCDA).

CNCDA represents nearly 1,200 franchised new car and truck dealers throughout California. CNCDA members are

primarily engaged in the retail sale and lease of new vehicles, and also engage in automotive service, repair and part sales.

## Western Growers

"Labor law enforcement needs to ensure it protects workers while also avoiding shakedown lawsuits. The California labor code is so long and complicated that it leaves small businesses especially vulnerable to honest mistakes that result in shakedowns. This

measure ensures small businesses can get guidance on how to navigate California's complicated laws," said Dave Puglia, president and CEO of Western Growers.

Founded in 1926, Western Growers represents local and regional family farmers growing fresh produce in Arizona, California, Colorado and New Mexico. WGA members and their workers provide over half the nation's fresh fruits, vegetables and tree nuts, including nearly half of America's fresh organic produce.

## Insights into Factors Affecting Congestion at U.S. Ports

From Page 1

Federal Maritime Commission (FMC), which is an independent and non-partisan federal agency responsible for the regulation of ocean-borne international transportation of the United States.

The shipping challenges the nation is currently experiencing are, he says, “the largest meltdown since World War II.” It is the first time since WWII that cargo shipments are not getting into the U.S. at a time when people want shipments.

There are two primary factors behind this meltdown. The first reason is the dislocation of products and closures brought about by the COVID-19 pandemic. In California alone, cargo decreased by 20%–30% for a three-month period. The second factor is the resumption of activity after the COVID-19 closures, which led to an almost 30% surge in cargo. So, the industry quickly saw a swing of 60% in volume, he explains.

U.S. ports, especially in Los Angeles, were ill-suited for this surge and ran out of containers and berth space for unloading cargos, leading to a backup of vessels in harbors. These problems were further exacerbated by issues related to the COVID-19 pandemic in the Suez Canal and then China, and now in Vietnamese ports, Bentzel says.

The congestion is now bleeding into rail terminals in the U.S., as there simply are not enough intermodal rail cars to provide service. There is simply not enough equipment to handle what is being transported, he says.

The backups are also threatening supplies due to the “just in time” delivery mode by which many manufacturers operate. The situation is so dire that Bentzel worries that essential supplies and products, like medical supplies, car parts and water purification equipment, will not get to where they’re needed.

In spite of the congestion and inland backups — for example, currently 60 vessels are waiting offshore, and 30 are waiting onshore for space at Los Angeles ports — companies are still making record profits. In the year before the pandemic, the industry saw \$1 billion in profit, while the first two quarters of this year brought in \$54.9 billion in profit.

The price of containers has increased by 300%, going from \$2,000 at the start of the pandemic to \$6,000 now. Profits are being made throughout the system and it’s contributing to inflation, he says.

### Commission, Government Efforts

The FMC works very hard to detect cases of unfair practices and has implemented audits to look at all the major ocean carriers, Bentzel says. The process has been challenging because while the commission has received a few formal complaints, the commission must conduct independent investigations and gather its own set of facts when no complaints are filed, a process that is very labor-intensive and burdens the agency.



Carl Bentzel



Stuart Woolf

The agency has also announced a Notice of Proposed Rulemaking (NPRM) on detention and demurrage to get further clarification on what requirements are mandated for the fair imposition of penalties for detention and demurrage; formed a shipping advisory committee to receive recommendations from importers and exporters; and is in talks with Congress over potential legislation that will make changes to laws affecting the shipping industry.

In closing his remarks, Bentzel points out that the problems we are seeing in the shipping industry are not just a U.S. problem; they are a global problem as well. He predicts that it will take a year-and-a-half before the ports see congestion alleviated as new vessels being ordered come online.

### Answers to Questions from Viewers

After his remarks, viewers had several questions for Commissioner Bentzel. Woolf asks what he thinks the short-term and long-term issues affecting the industry are, and what he thinks will resolve the long-term issues.

Bentzel answers that trucking is a huge problem at the moment and that we are also seeing challenges in congestion and

the compensation of workers. In the long term, we need to set up a better “mouse-trap,” and be able to communicate better by sharing information more fluidly.

For example, it would help to be able to track where chassis are in order to identify which have not been moved in weeks and are therefore available to be used. Better exchange of information with exporters would help them know when they can go to a port and deliver cargo. Overall, there needs to be a better system of coordinating information and interface between shippers, carriers and warehouses.

Another question presented to Bentzel is whether the U.S. is looking to subsidize containers to get more capacity and containers at shipping facilities.

Bentzel says that the FMC is looking primarily at port infrastructure and opportunities for efficiency. The U.S. doesn’t have a major presence in shipping so it cannot contribute to capacity. In shipping, less than 1% of international service is done by U.S. flag carriers. A substantial portion of the world’s fleet is Chinese-owned and 100% of marine and intermodal rail containers are built by three companies in China.

Asked about technology and innovation at ports, Bentzel replies that the use of advanced technology is ad hoc at the moment. In the U.S., there is semi-automation in East Coast ports and it’s still being evaluated at West Coast ports. In some places, automation is not necessary, so it’s mainly the bigger ports in Los Angeles and New York that are looking into it.

Moreover, the main problems we’re seeing are located outside the ports. It’s not that we’re slow from ship to truck, he points out, the problem is getting cargo through the system and finding enough warehouse space.

“It’s set up so that it’s a delicate ballet. If not everything is moving in the right way, at the right time, to the right people, there can be catastrophic... failures that break up everything,” Bentzel says.

### Presentation Available

The PowerPoint presentation used by the Commissioner during his remarks is available at: [https://advocacy.calchamber.com/wp-content/uploads/2021/10/CalChamber-Port-Congestion\\_InternationalForum-100521.pptx](https://advocacy.calchamber.com/wp-content/uploads/2021/10/CalChamber-Port-Congestion_InternationalForum-100521.pptx).  
Staff Contact: Susanne T. Stirling



# Final Status Report on Major Business Bills

The following list summarizes the final status of California Chamber of Commerce priority bills that were sent to the Governor this year.

The CalChamber will publish a record of legislators' votes on key bills affecting

the California business climate on November 5. Generally, the bills selected for the vote record have appeared in one of the status reports.

Bills signed by the Governor will become law on January 1, 2022. Urgency,

tax and budget-related measures go into effect immediately upon being signed. In those cases, the date the Governor signed the bill is noted.

Subject—CalChamber Position	Status
<b>Banking and Finance</b>	
<b>New Mandate.</b> AB 1177 (Santiago; D-Los Angeles) Burdens businesses with another unnecessary regulation that requires them to provide direct payroll deposit to the BankCal in addition to any other direct payroll program with commercial institutions or even if they do not provide direct deposit at all. Also exposes employers to steep penalties and Private Attorneys General Act litigation for any mistake. Opposition removed after August 26, 2021 amendments turned bill into a feasibility study. Neutral.	Signed—Chapter 451
<b>Crowdfunding.</b> AB 511 (Muratsuchi; D-Torrance) Allows start-up and emerging small businesses to help find investors to help capitalize them while providing greater protections for investors participating in crowdfunding. Support.	Signed—Chapter 617
<b>Budget</b>	
<b>COVID-19 Paid Sick Leave.</b> SB 95 (Skinner; D-Berkeley) Imposes costly new paid sick leave mandate on employers that is retroactive to January 1, 2021, exposing employers to litigation. Oppose.	Signed—Chapter 13 3/19/21
<b>Onerous Return to Work Mandate.</b> SB 93 (Senate Budget and Fiscal Review) Imposes an onerous and stringent process for specific employers to return employees to the workforce for specified industries, including hotels and restaurants that have been disproportionately impacted by this pandemic, which would have delayed rehiring and employers' ability to reopen after being forced to close or reduce operations due to COVID-19. Oppose.	Signed—Chapter 16 4/16/21
<b>California Environmental Quality Act (CEQA)</b>	
<b>CEQA Transparency.</b> AB 819 (Levine; D-San Rafael) Codifies existing best practices by requiring lead agencies to post and submit electronically certain CEQA notice and other environmental review documents. Support.	Signed—Chapter 97
<b>Climate Change</b>	
<b>Cost Shift on Agricultural Products.</b> SB 27 (Skinner; D-Berkeley) Originally sought to impose carbon neutrality metrics on the agricultural sector, resulting in cost shifts to consumers and reduction in crop diversity. Opposition removed after amendments that provide more flexibility for the agricultural sector. Neutral.	Signed—Chapter 237

Subject—CalChamber Position	Status
<b>Crime</b>	
<b>Retail Theft Enforcement.</b> AB 331 (Jones-Sawyer; D-South Los Angeles) Extends the organized retail theft criminal statutes and the California Highway Patrol’s task force to better enforce crimes against retailers. Support.	Signed—Chapter 113 7/21/21
<b>Education</b>	
<b>Facilitate Pupil Financial Aid Applications.</b> AB 469 (Reyes; D-San Bernardino) Requires high schools to assist students in preparing the Free Application for Federal Student Aid (FAFSA), which would ensure that more of California’s students receive already-available federal funds to pursue higher education. Also includes an opt out provision for circumstances where such completion is not necessary or preferred. Support.	Signed—Chapter 560
<b>Federally Preempted Limitation on Arbitration.</b> AB 272 (Kiley; R-Roseville) Creates a federally preempted right for minors to disavow an arbitration clause — but no other provisions — in enrollment agreements signed by their parents. Oppose.	Signed—Chapter 146
<b>Ensure California Students Can Complete Cal Grant Applications Despite COVID-19-Related Disruptions.</b> AB 1185 (Cervantes; D-Corona) Temporarily extends the deadline for Californians to apply for Cal Grant funding to support higher education to allow for COVID-19-related disruptions to the application process. Support.	Vetoed
<b>Elections and Fair Political Practices</b>	
<b>Restrictions on Citizen Ballot Initiatives and Voter Signature Gathering.</b> SB 660 (Newman; D-Fullerton) Drastically increases the cost of voter initiatives by requiring any citizen initiative to pay employees an hourly rate to collect signatures for ballot initiatives, referendums, and recall petitions, as opposed to piece-rate signature gathering, thus excluding low-funded citizen initiatives from the ballot process. Oppose.	Vetoed
<b>Political Contributions Disclosures for LLCs.</b> SB 686 (Glazer; D-Contra Costa) Expands disclosure obligations to LLCs and requires LLCs to file a statement of members for any political contribution of \$1,000 or more. Opposition removed due to June 23, 2021 amendments that increase the financial threshold, reduce the lookback period for inclusion on the statement of members, and strike section 84110 from the bill. Neutral.	Signed—Chapter 321
<b>Gaming/Alcohol</b>	
<b>Alcohol Sales.</b> SB 389 (Dodd; D-Napa) Allows restaurants to sell prepackaged alcohol for off-site consumption. Support.	Signed—Chapter 657
<b>Wineries.</b> SB 19 (Glazer; D-Contra Costa) Opens new opportunities for increased revenues by allowing wineries to have one additional off-site tasting room. Support.	Signed—Chapter 274
<b>Hazardous Waste</b>	
<b>Treated Wood Waste.</b> AB 332 (Assembly Environmental Safety and Toxic Materials Committee) Provides an option to manage and dispose of treated wood waste through alternative standards if certain criteria are met, a process that had been in place for decades before sunseting in 2020, in order to avoid the unnecessary and cost-prohibitive management of these materials as Resource Conservation and Recovery Act (RCRA) hazardous waste materials. Support.	Signed—Chapter 147 8/30/21



Subject—CalChamber Position	Status
<b>Health Care</b>	
<b>Costly Health Care Coverage Mandate.</b> AB 570 (Santiago; D-Los Angeles) Originally sought to mandate employees' dependent parents and stepparents be provided health care coverage on employer-sponsored health plans. Opposition removed after May 24, 2021 amendments required only individual health plans, not employer-sponsored plans, provide coverage to dependent parents and stepparents. Neutral.	Signed—Chapter 468
<b>Increases Health Care Costs.</b> SB 524 (Skinner; D-Berkeley) Increases prescription drug costs for consumers by preventing certain network designs between employers, health plans, insurers, pharmacy benefit managers, and pharmacies. Oppose.	Vetoed
<b>Health Care Cost Increase.</b> SB 306 (Pan; D-Sacramento) Mandates health care service plans to provide coverage for home test kits for sexually transmitted diseases as well as their associated laboratory processing costs which will increase employer health care premiums. Oppose.	Signed—Chapter 486
<b>Encourages Litigation and Disrupts Established Law.</b> AB 849 (Reyes; D-San Bernardino) Originally encouraged litigation and sought to overturn state Supreme Court precedent by amending the Health and Safety Code to allow for \$500 per Patient's Bill of Rights violation for skilled nursing facility residents. Opposition removed due to August 16, 2021 amendments requiring a multi-factor assessment be used when awarding statutory damages as well as ensuring the bill would not be applied retroactively. Neutral.	Signed—Chapter 471
<b>Reduction in Telehealth Options.</b> AB 457 (Santiago; D-Los Angeles) Originally disrupted patient telehealth options by requiring a health plan arrange for an enrollee to treat with a third-party telehealth provider only if the service was not available through a contracting individual health professional. Opposition removed after September 3, 2021 amendments that provide greater protection for patient telehealth options. Neutral.	Signed—Chapter 439
<b>Mandated Health and Dental Plan Payments to Providers for Business Expenses.</b> SB 242 (Newman; D-Fullerton) Onerous mandate that requires health plans, health insurers, and dental plans to permanently fund provider expenses for personal protective equipment (PPE), infection control supplies, information technology systems, and other undefined business expenses. Oppose.	Signed—Chapter 538
<b>Prior Authorization Waiver for Genetic Biomarker Testing.</b> SB 535 (Limón; D-Goleta) Originally sought to prohibit health plans and insurers from requiring prior authorizations for all genetic biomarker testing for a patient with advanced, metastatic, recurrent, or progressive stage 3 or 4 cancer. Opposition removed after amendments clarified plans and insurers may institute a prior authorization requirement on biomarker testing that is not for Food and Drug Administration-approved therapy in addition to the bill's provisions going into effect in 2022. Neutral.	Signed—Chapter 605
<b>Continues Review of Health Care Mandates.</b> AB 1082 (Waldron; R-Escondido) Protects employers from increased health care premiums by extending authorization of the California Health Benefits Review Program to provide the Legislature valuable independent analyses of the medical, financial and public health impacts of proposed health insurance benefit mandates and repeals. Support.	Signed—Chapter 592
<b>Housing and Land Use</b>	
<b>Pro-Housing Production.</b> SB 9 (Atkins; D-San Diego) Streamlines more infill housing while providing substantial local control to land use development by allowing property owners to convert single-family homes into multiple units or divide the properties and build up to two residential units on each lot, all without triggering CEQA, so long as all units are consistent with all local land use laws. Support.	Signed—Chapter 162

Subject—CalChamber Position	Status
<p><b>Pro-Housing Production.</b> SB 290 (Skinner; D-Berkeley) Removes four barriers that limit density bonus applicability in California by allowing low-income student housing projects to receive up to one incentive, aligning the density bonus approval requirements with those in the Housing Accountability Act, expanding the definition of for-sale projects beyond common interest developments, and adding a parking waiver for housing developments within one-half mile of transit that include 40% moderate-income units. Support.</p>	Signed—Chapter 340
<p><b>Pro-Housing Production.</b> SB 8 (Skinner; D-Berkeley) Provides technical cleanup and extends the sunset date to January 1, 2030 for SB 330 (Skinner-2019), a law that promotes more affordable housing development in California by reducing permitting delays and unexpected fees levied during the housing development permitting process. Support.</p>	Signed—Chapter 161
<p><b>Pro-Housing Production.</b> SB 10 (Wiener; D-San Francisco) Provides local cities and counties with full authority to streamline upzoning in their jurisdiction for up to 10 additional middle income density housing units per parcel, without triggering CEQA, if they choose. Support.</p>	Signed—Chapter 163
<p><b>Housing Production.</b> AB 215 (Chiu; D-San Francisco) Helps ensure more housing units are constructed by requiring any localities not meeting their regional average production requirements to consult with the Department of Housing and Community Development; incentivizes local governments to amend local requirements to encourage more housing production; and empowers the Attorney General to enforce the Housing Crisis Act of 2019. Support.</p>	Signed—Chapter 342

## Labor and Employment

<p><b>Increased Costs and Liability on Employers.</b> SB 62 (Durazo; D-Los Angeles) Significantly increases the burden on nonunionized employers in the garment manufacturing industry in California, by eliminating piece rate as a method of payment even though it can benefit the employee, expanding joint and several liability for any wage violations to the entire supply chain, and shifting the evidentiary standards in a Labor Commissioner hearing to limit the ability for an employer to defend against an alleged wage violation. These additional requirements will encourage companies to contract with manufacturers outside of California, thereby limiting the demand and workforce of garment manufacturers in California. Oppose/<b>Job Killer 2021.</b></p>	Signed—Chapter 329
<p><b>Forced Unionization Process for Agricultural Employees.</b> AB 616 (Stone; D-Scotts Valley) Limits an employee’s ability to independently and privately vote for unionization in the workplace, by essentially eliminating a secret ballot election and replacing it with the submission of representation cards signed by over 50% of the employees, which leaves employees susceptible to coercion and manipulation by labor organizations. Also, unfairly limits an employer’s ability to challenge any order by the Agricultural Labor Relations Board (ALRB) by forcing employers to post an unreasonable bond, and then limits an employee’s ability to decertify a union, by forcing them to go through the ballot election process instead of submission of representation cards. Also includes an unnecessary presumption of retaliation that is effectively unlimited in scope because it would apply for the duration of an election campaign, which could last for a year or more. Oppose/<b>Job Killer 2021.</b></p>	Vetoed
<p><b>Onerous Return to Work Mandate.</b> AB 1074 (Lorena Gonzalez; D-San Diego) Prior to amendments, would have imposed an onerous and stringent process that is unlimited in time for specific employers to return employees to the workforce for specified industries, including hotels and restaurants that have been disproportionately impacted by this pandemic, which would have delayed rehiring and employers’ ability to reopen after being forced to close or reduce operations due to COVID-19. Job killer tag removed due to April 19, 2021 amendments eliminating COVID-19 related recall provisions from the bill. The remaining provisions had the potential to cause further harm to the hospitality industry by forcing a new service provider for a hotel to hire the previous contracted provider’s employees and navigate statutory barriers erected around operational positions, staffing redundancies, technical abilities, and staffs’ general ability to meet the hotel’s needs. The mandate would have increased operating costs, threatened small businesses, and represented a significant shift in how the law approaches contracting. Oppose/<b>Former Job Killer 2021.</b></p>	Vetoed

Subject—CalChamber Position	Status
<p><b>Limitation on Severance Agreements.</b> SB 331 (Leyva; D-Chino) Unnecessarily limits the use and scope of severance agreements, and subjects employers to multiple threats of litigation for any alleged violations, which will limit the use or offer of severance packages to employees. Opposition removed due to cumulative amendments through the legislative process including final set made on August 16, 2021 narrowing language in bill and clarifying that the amount of a severance agreement may be kept confidential. Neutral.</p>	Signed—Chapter 638
<p><b>Joint Liability.</b> SB 727 (Leyva; D-Chino) Expands joint liability within construction industry by expanding a direct contractor’s liability to include penalties, liquidated damages, and interest. Oppose Unless Amended.</p>	Signed—Chapter 338
<p><b>Criminal Liability for Good Faith Mistakes.</b> AB 1003 (Lorena Gonzalez; D-San Diego) Prior to amendments, would have proposed to criminalize small employers, managers, and supervisors, who in good faith, make a mistake in the application of the law, that even the Labor Commissioner and the courts disagree with on how to interpret. Job killer tag and opposition removed due to April 22, 2021 amendments narrowing the application of the bill to only criminalize fraudulent and knowingly unlawful conduct by bad actors. Neutral/<b>Former Job Killer 2021.</b></p>	Signed—Chapter 325
<p><b>Small Employer Mediation Program.</b> AB 1033 (Bauer-Kahan; D-Orinda) Establishes a more practical, streamlined procedure for implementing the small employer family leave mediation program established in 2020 by AB 1867 and fixes a drafting error in SB 1383. Sponsor/Co-Sponsor.</p>	Signed—Chapter 327
<p><b>Telecommuting.</b> SB 657 (Ochoa Bogh; R-Yucaipa) Allows employers to satisfy notice requirements under the Labor Code using electronic means for telecommuting employees. Support.</p>	Signed—Chapter 109

## Legal Reform and Protection

<p><b>Pain and Suffering Damages.</b> SB 447 (Laird; D-Santa Cruz) Prior to amendments, undermined existing law and provided individuals with an additional category of noneconomic damages for a tort, that will significantly increase attorney fees and costs of litigation in California. Opposition removed due to August 30, 2021 amendments that limited the scope of the claims that would be entitled to noneconomic damages as well as providing a sunset. Neutral.</p>	Signed—Chapter 448
<p><b>Government Price Fixing.</b> AB 286 (Lorena Gonzalez; D-San Diego) Unnecessary government interference in business to business contracts, by fixing a contract price between two private entities. The bill claims to be addressing harm caused by the pandemic, but is not limited to the pandemic, and lacks any data that price fixing will provide any financial relief as opposed to loss. Opposition removed due to April 27, 2021 amendments that removed price fixing. Neutral.</p>	Signed—Chapter 513
<p><b>Automatic Renewal and Continuous Service Contracts.</b> AB 390 (Berman; D-Palo Alto) Originally would have created prescriptive notice requirements for automatic renewal and continuous service offers, including requirements for free trials and gifts. Opposition removed due to June 14, 2021 amendments that resolve problems with the timing and means of notice and termination. Neutral.</p>	Signed—Chapter 450

## Other

<p><b>Overbroad Burden on Procurement.</b> AB 416 (Kalra; D-San Jose) Requires any companies submitting bids for state procurement contracts involving a range of common goods, including wood, rubber, paper, and others, to adopt new internal policies regarding sourcing of materials for all contracts, not just state-related contracts, and provide potentially proprietary information regarding their supply chain to the state as part of the application process. Oppose.</p>	Vetoed
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Subject—CalChamber Position	Status
<b>Privacy and Cybersecurity</b>	
<b>Expansion to Information Privacy Act of 1977.</b> AB 825 (Levine; D-San Rafael) Expands the Information Privacy Act of 1977 to include genetic data, broadly defined to include information that is not necessarily the direct result of analysis of a biological sample. Oppose Unless Amended.	Signed—Chapter 527
<b>Prohibition on Use of Unlawfully Obtained Data.</b> AB 1391 (Chau; D-Monterey Park) Originally sought to prohibit access and use of information that was obtained pursuant to the commission of a crime, regardless of whether the access or use was for a legitimate purpose. Opposition removed after August 16, 2021 amendments that provide more flexibility for legitimate identity protection and fraud prevention purposes. Neutral.	Signed—Chapter 594
<b>Product Regulation</b>	
<b>Chemical Ban and Warning Labels.</b> AB 1200 (Ting; D-San Francisco) Bans intentionally adding any class of PFAS in foodware products by January 1, 2023, and, prior to amendments, created a new warning label for all cookware products warning customers of the health and environmental risks associated with a product containing any chemical on the Department of Toxic Substances Control list of thousands of chemicals, with no thresholds or other scientific basis for establishing when a warning is appropriate. Opposition removed on August 25, 2021 after a number of Author amendments were taken, including the elimination of the warning label and 1-800-number requirements, as well as technical amendments that narrowed the scope of products covered. Neutral.	Signed—Chapter 503
<b>Chemical Ban.</b> AB 652 (Friedman; D-Glendale) Prior to amendments, the bill circumvented the Safer Consumer Products program by proposing to ban per- and polyfluoroalkyl substances (PFAS) chemicals far beyond the stated intent of banning PFAS in juvenile products, including in electronics and medical devices, that would have substantial unintended consequences. Opposition removed on August 20, 2021 after a number of Author amendments were taken to narrow the scope of the bill and make other technical changes. Neutral.	Signed—Chapter 500
<b>Recycling</b>	
<b>Battery Recycling Education and Fire Prevention.</b> SB 244 (Archuleta; D-Pico Rivera) Reduces fires caused by improper battery disposal by requiring CAL FIRE, the California Highway Patrol, Department of Toxic Substances Control, and CalRecycle to work with waste industry experts and local governments to develop protocols for managing discarded lithium-ion batteries and to develop a guidance document to inform, educate and increase public awareness about fire risk from improper disposal of lithium-ion batteries. It also requires waste industry enterprises to work with county fire marshals annually to develop a protocol for discarded lithium-ion batteries and thus prevent future fires. Support.	Vetoed
<b>Taxation</b>	
<b>Tax Relief for Businesses that Received PPP Funds.</b> AB 80 (Burke; D-Inglewood) Brings California into partial conformity with federal tax law by allowing up to \$150,000 of expenses paid for using Paycheck Protection Program loans to be deductible. Support If Amended.	Signed—Chapter 17 4/29/21
<b>License Renewal Fee Relief.</b> SB 94 (Skinner; D-Berkeley) Relieves bars, restaurants, and those working in barbering and cosmetology from having to pay license renewal fees for two years. Support.	Signed—Chapter 9 2/23/21
<b>License Fee Relief.</b> AB 83 (Assembly Budget Committee) Provides for two years of fee relief for restaurants, bars and those working in barbering and cosmetology. Support.	Signed—Chapter 11 3/17/21



Subject—CalChamber Position	Status
<p><b>Small Business Grant Program.</b> SB 87 (Caballero; D-Salinas) Establishes a \$2.6 billion grant program that offers struggling small businesses a lifeline while they struggle through pandemic-induced shut-downs and regulations. Support.</p>	<p>Signed—Chapter 7 2/23/21</p>

## Telecommunications

<p><b>Duplicative Outage Reporting and Network Resiliency Requirements.</b> SB 341 (McGuire; D-Healdsburg) Imposes significant costs and operational burdens on telecom providers by duplicating existing and ongoing network outage reporting regulations and requiring providers to duplicate emergency reporting to the California Public Utilities Commission, despite existing requirements to report to California Office of Emergency Services. Oppose.</p>	<p>Signed—Chapter 425</p>
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## Transportation and Infrastructure

<p><b>Unnecessarily Targets New Technology.</b> SB 500 (Min; D-Irvine) Originally proposed to require that autonomous vehicles be all electric well in advance of other vehicles, despite great potential to increase safety, efficiency, and other environmental improvements, hindering technological development in the commercial and passenger space. Position changed after amendments removed medium/heavy duty trucking and better aligned implementation date to market conditions. Neutral.</p>	<p>Signed—Chapter 277</p>
<p><b>Ensure Transportation Funding.</b> SB 339 (Wiener; D-San Francisco) Extends the Road User Charge Advisory Committee and allows the Transportation Agency to conduct pilot studies to evaluate potential replacements for gas tax funding for roads and infrastructure. Support.</p>	<p>Signed—Chapter 308</p>

## Unemployment Insurance

<p><b>Data Sharing Between EDD and Department of Corrections to Prevent UI Fraud.</b> AB 110 (Petrie-Norris; D-Laguna Beach) Requires the Department of Corrections and counties to share the names and Social Security information of current inmates with the Employment Development Department (EDD) to prevent payments on fraudulent claims using inmate information, and requires EDD to utilize this information in its screening process. This would bring California up to speed with other states, and also help prevent one of the most widespread types of fraud that was widely reported during the COVID-19 shut-down from occurring in the future. Support.</p>	<p>Signed—Chapter 511</p>
<p><b>Requires EDD to Plan for Next Crisis.</b> SB 390 (Laird; D-Santa Cruz) Requires EDD to develop a comprehensive plan to prepare for future economic recessions and the correlated increased demands on EDD’s system for distributing unemployment insurance benefits, including staffing, logistics, and identity verification tools. Support.</p>	<p>Signed—Chapter 543</p>

## Workers’ Compensation

<p><b>Workers’ Compensation: Apportionment.</b> SB 788 (Bradford; D-Gardena) Undermines the doctrine of apportionment in the workers’ compensation system by prohibiting apportionment where a permanent disability is caused in part by factors such as age or genetic characteristics. Opposition removed due to June 17, 2021 amendments removing age and genetic characteristics from the list of factors identified in the bill. Neutral.</p>	<p>Vetoed</p>
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Subject—CalChamber Position	Status
<b>Workplace Safety</b>	
<p><b>New Private Right of Action, PAGA Litigation, and Regulations for Warehouses.</b> AB 701 (Lorena Gonzalez; D-San Diego) Threatens warehouse employers with duplicative costly litigation by creating a new Private Attorneys General Act (PAGA) claim related to warehouse work speed. Job killer tag removed due to July 15, 2021 amendments narrowing the application of the bill on multiple fronts, including PAGA litigation and injunctive relief. Oppose/<b>Former Job Killer 2021</b>.</p>	Signed—Chapter 197
<p><b>Expansion of Cal/OSHA Authority and Enforcement.</b> SB 606 (Lena Gonzalez; D-Long Beach) Significantly expands Cal/OSHA authority by creating a new “egregious employer” category in Labor Code and creating a new category of “enterprise-wide” citations that face higher citation amounts based on, at times, evidence at only one location. Job killer tag removed due to March 25, 2021 amendments limiting certain overbroad provisions, but CalChamber remained opposed due to structural changes to Cal/OSHA enforcement. Oppose/<b>Former Job Killer 2021</b>.</p>	Signed—Chapter 336
<p><b>Clarification and Cleanup re COVID-19 Notice.</b> AB 654 (Reyes; D-San Bernardino) Clarifies and improves last year’s AB 685, which requires notice of COVID-19 cases in the workplace, by eliminating duplicative obligations for businesses in certain industries, matching them to corresponding federal guidelines, and making other favorable improvements. Support.</p>	Signed—Chapter 522 10/5/21
<p><b>Fair Notice for Local Public Health Orders.</b> SB 336 (Ochoa Bogh; R-Yucaipa) Requires publication of local public health orders and creation of an email list for stakeholders to ensure they are kept apprised of any changes. Sponsor/Co-Sponsor</p>	Signed—Chapter 487 10/4/21
<p><b>Joint Liability Related to OSHA Citations for Drayage Drivers. Additional Joint and Several Liability for Port Drayage Carriers.</b> SB 338 (Lena Gonzalez; D-Long Beach) Adds to existing published list of drayage motor carriers subject to joint and several liability due to unsatisfied judgments by adding certain other misconduct which would also place a drayage carrier on the list and therefore make them qualify for joint and several liability related to certain health- and safety-related offenses. Opposition removed due to June 14, 2021 amendments ensuring that any business placed on the list and subject to joint and several liability was able to efficiently appeal and ensuring that affected companies could be quickly removed once the issues were resolved. Neutral.</p>	Signed—Chapter333

## Unemployment Fund Insolvency Will Lead to Payroll Tax Increases



With the legislative frenzy complete for the year, Sacramento's policymakers are turning their eyes toward next year's budget and their next round of legislative ideas.

For California employers, one of the largest issues that must be addressed is the Unemployment Insurance Trust Fund's (UI Fund) massive debt and the payroll tax increases that are creeping ever closer as a result of that debt.

### How We Got Here

When California was shut down to combat COVID-19, employers were forced to shut their doors. Beginning in March 2020, thousands of employers shuttered their businesses because of this state-imposed stay-at-home.

Many of the businesses that did survive had no choice but to lay off large portions of their workforces. This massive group of laid off workers then sought unemployment, which pulled the UI Fund into massive debt.

As of the date of this piece, California sits at just under \$20 billion in UI Fund debt to the federal government as a result

of this shutdown (see state debt list [here](#)). For comparison, that is slightly less than twice as much debt as after the Great Recession.

In addition, subsequent investigation has revealed that somewhere around \$1 billion of these UI payments were fraudulent (rough calculations are available in the previous story on this subject, available [here](#)).

Unless the state acts, this insolvency will trigger payroll tax increases for California employers starting in 2023. The increases will grow annually and continue until the insolvency is repaid. For the Great Recession, that repayment took just under a decade, and we can expect it to take longer this time around.

In short — California employers were forced to shut down and to lay off employees, and now will be forced to pay increased taxes because they laid off employees during the shutdown. And, as a bonus, the state lost about a billion dollars of UI benefits by failing to identify fraudulent claims, which California employers will also have to repay via increased taxes.

### What Is Legislature Doing About It?

In the 2021 May budget revise, the state had an anticipated \$75 billion budget windfall — and the Governor's

May budget revision included \$1.1 billion in American Rescue Plan funds for the UI Fund (which would have covered the fraudulent payments the state mistakenly distributed).

The Legislature didn't like this provision and pushed back with a proposal for smaller payments over time.

Then, in the murky waters of budget negotiations, all proposals for help with the UI Fund were cut — leaving employers holding the bag for both the fraud and the state-mandated shutdown's consequences.

That is fundamentally unfair. California's businesses shouldn't be paying for the cost of a state-mandated shutdown, and certainly shouldn't be stuck paying increased taxes because a state agency (the much-criticized Employment Development Department) was tricked into sending out \$1 billion in fraudulent payments.

Given that the tax increases on employers will begin in 2023, this isn't something the Legislature can ignore or delay action on in 2022. And, with another expected budget surplus in the coming year, the Legislature will have the means to address this fundamental unfairness to California's business community.

*This article appeared first as a Capitol Insider blog post.*

**Staff Contact: Robert Moutrie**

## Breaking Down COVID-19-Related Lawsuits

*From Page 3*

while at work; symptom screenings are not being performed; people are sitting side by side (not socially distancing); and coughing and sneezing at work, which is in violation of the screening requirements.

Some complaints, Turner says, concern more serious matters such as employees lying about their vaccination status and then walking around the workplace without wearing a mask. The employer is then perceived as not adequately checking the validity of employees' vaccination status.

### Vaccine Mandates

Employers are also concerned about COVID-19 vaccine mandates and having to verify the validity of medical and religious exemption requests. The current labor shortage further complicates the

matter because some employers are struggling to hire staff and worry that mandating vaccination will lead to more turnover. Although offering COVID-19 testing is an alternative, it is very expensive and some employers cannot afford it, Hoffman points out.

COVID-19 employment rules are constantly changing, so it's important to stay up-to-date. The [CalChamber COVID-19 resource page](#) provides key links to local, state and federal resources, and lists important news.

Employers should also continuously check their local county's website and the [California Division of Occupational Safety and Health \(Cal/OSHA\) website](#) for updates, Hoffman says.

### Tips to Minimize Risk

In closing the podcast, Turner shares

ways that employers can minimize their risk of being involved in COVID-19-related litigation:

- Have a COVID-19 safety plan: If employees feel safe at work, there is less likelihood of employee complaints. Make sure that your safety plan addresses symptom screenings and vaccination verifications.
- Pay for reasonable home business expenses: For remote workers, assess if they need a home stipend or have incurred expenses from working from home.
- Conduct a monthly or quarterly audit to determine if remote employees are performing work off the clock, such as by checking the time stamp on emails or checking whether they log into any company software.
- Remind workers to record their work hours and submit expenses.

## Answers to Common Questions about Completing Form I-9

*From Page 2*

then the employer could be cited for not having an I-9 Form for that employee as required by law.

**• Is there anything wrong with asking employees to provide us with their driver license and Social Security card for the I-9 Form review of documents?**

Yes, there is. An employer cannot specify which documents an employee must provide to establish their identity and work authorization status. If you look at the list of acceptable documents, there are a number of documents that could be used.

While asking for a driver license from someone who is going to drive for you may be required to ensure that they have a current valid unrestricted driver license in their possession in order to drive a vehicle, it is not required for I-9 purposes.

In fact, by requiring that document, you may be excluding a person with a disability from employment because they

may not be able to obtain a license. You also may be excluding individuals who do not have a car or haven't gotten a driver license.

Each employee may choose from the list of acceptable documents which documents they wish to provide.

**• To save time, can an employer complete Page 2 of the I-9 Form before the employee's first day of employment?**

No. Section 2 must be completed within three business days of the date that they start work. For example, if an employee begins employment on Monday, you must review the employee's documentation and complete Section 2 on or before Wednesday of that week. If an employee is hired to work for one day, then the I-9 Form must be completed on their first day of employment.

**• Can I store I-9 Forms electronically?**

If you are going to use some form of electronic storage, then you must conform to the U.S. Citizenship and Immigration Services (USCIS) require-

ments for Using an Electronic Storage System for Form I-9. Merely putting the form in the cloud or on a computer is not sufficient.

The USCIS has developed an I-9 [employer guide](#) that is available on their website. Consult the [Table of Contents](#) for the section on Retaining Form I-9.

The guide is a useful employer resource and can be found at: <https://www.uscis.gov/i-9-central/handbook-for-employers-m-274>.

For more information, consult the above I-9 Handbook for Employers or submit a question to the CalChamber Labor Law Helpline.

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*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).*

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