

ALERT

Vaccine Mandates May Clash with Civil Rights Laws



This week, Los Angeles began enforcing its ordinance requiring certain busi-

nesses to request proof of vaccination from customers. San Francisco implemented a similar ordinance in August.

Other cities and counties, and even state legislators have shown interest in instituting more consumer-facing vaccine mandates across the state. Some businesses have also voluntarily chosen to require proof of vaccination even without an ordinance.

While a lot of media attention on vaccine mandates has been about how to address religious or medical exemption requests from *employees*, it is important to note that those same requests also may be raised by *customers*.

The Department of Fair Employment and Housing (DFEH) reminded businesses of this obligation recently when it issued a [series of FAQs](#) regarding consumer-facing vaccine mandates.

California's Unruh Civil Rights Act prohibits businesses from discriminating against customers based on a long list of characteristics, including the person's sex, pregnancy, race, color, religion,

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New 2022 California Employment Laws White Paper Available to Download



New Laws

Despite the COVID-19 pandemic continuing to be a primary focus in 2021, the

California Legislature crafted and sent several hundred bills to Governor Gavin Newsom's desk. As 2021 winds to a close, what better way to prepare for 2022 than by familiarizing yourself with [employment law changes](#) happening when January hits?

For instance, a new law builds on 2020's changes to the California Family Rights Act (CFRA), clarifying that employees can take CFRA leave to care for parents-in-law with serious health conditions and expanding the provisions of the CFRA small employer mediation program.

Then there's the expansion of the enforcement authority of the California Division of Occupational Safety and Health (Cal/OSHA) through two new violation categories for which Cal/OSHA can issue citations.

Another one to keep in mind is SB 331, which further restricts the use of nondisclosure provisions in settlement agreements.

Prompted by the "Me Too" movement, in 2019, California passed laws that restricted the use of such provisions

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The People's Voice

Poll: Housing Affordability Frustrates Voters



Californians are deeply anxious about the cost of living and working in the Golden

State. The seventh CalChamber poll, *The People's Voice, 2021*, found that voters remain frustrated with housing affordability, which remains the most oppressive and intractable cost of living in California.

A majority of Californians believe the housing shortage in California is very significant, up from 35% five years ago. Not surprisingly, younger voters are most emphatic in this belief.

Owning Home a Priority

Among voters who are not homeowners, 36% say owning a home is a very

high priority, an increase of 10 percentage points since 2016. Another 16% say it is a somewhat high priority, meaning a majority of renters make homeownership a personal priority. Again, younger voters most strongly express this aspiration, as do voters in the Los Angeles region and Central Valley.

We reported earlier that 48% of voters responded that "my family would have a better future if we left California," and that 62% of voters with children living at home agree that "my children would have a better future if they left California."

When asked if another state offered a greater opportunity for homeownership than California, would you move to improve your ability to purchase a home, a majority of non-homeowners answered "yes." More than two-thirds of renters for whom home ownership is a high priority

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Cal/OSHA Corner

State Prepares to Make It Easier to Find All Crane Safety Requirements



Mel Davis
Cal/OSHA Adviser

What is happening with the safety orders for cranes, derricks and hoisting equipment?

The Cal/OSHA Standards Board is proposing to consolidate in one location the safety order for cranes and derricks in construction and the order for cranes and other hoisting equipment.

The state Occupational Safety and Health Standards Board's (OSHSB)

proposed omnibus rule will combine Article 15 of the Construction Safety Orders (CSO), where the cranes and derricks order had been located, and Group 13 of the General Industry Safety Orders (GISO), crane safety orders.

When the omnibus rule is adopted, the crane orders will be in one location, the General Industry Safety Orders.

History

Before July 7, 2011, all crane regulations were located in the General Industry Safety Orders. After a negotiated rulemaking for cranes and derricks — known in the industry as CDAC — the federal Occupational Safety and Health Administration promulgated standards specific for cranes and derricks in construction (29 CFR 1926 Subpart CC).

The Cal/OSHA Standards Board initially intended to consolidate the federal standards into the GISO using the Horcher rulemaking process, under which the state is able to adopt the federal rule virtually verbatim within six months without holding hearings, given the extensive public hearings that went into adoption of the federal standards.

But affected parties within the general industry community expressed two concerns with the Horcher process: that the Cal/OSHA Standards Board was “overreaching” its authority; and federal OSHA had time constraints when adopting the standard.

As a result, the CDAC regulations were adopted into the state's Construction Safety Orders in 2011.

Call for Consolidation

With the adoption of the federal construction crane regulations into the CSO, the board received numerous comments from various concerned parties that consolidating the two sets of crane safety orders at a single location would simplify searching for the rules, enforcing them and complying with the requirements.

For example, a mobile crane can transition from an industrial environment to a construction site on the same day. It should be noted that both the CSO and GISO crane regulations are based on American Society of Mechanical Engineers (ASME) standards. Therefore,

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Labor and Employment

HR Boot Camp Virtual Seminar. CalChamber. December 9 and December 10, 2022, Online. (800) 331-8877.

2022 Employment Law Updates Virtual Seminar. CalChamber, January 7 (SOLD OUT), 11, 14, 21, 2022, Online. (800) 331-8877.

Leaves of Absence: Making Sense of It All Virtual Seminar. CalChamber. February 17 and February 18, 2022; April 14 and April 15, 2022, 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).

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(21) 829-2661.

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

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CalChamber Calendar

ChamberPAC Advisory Committee:

December 9, San Francisco

Board of Directors:

December 9–10, San Francisco

International Trade Breakfast:

December 10, San Francisco

Annual Meeting:

December 10, San Francisco

Next Alert: December 17

The Workplace

Memorable Calls from the CalChamber Labor Law Helpline



In **Episode 138** of The Workplace podcast, CalChamber employment law expert Matthew Roberts and CalChamber HR Adviser Ellen Savage

discuss unique workplace issues that employers have asked about on the Labor Law Helpline.

Topics include logging bathroom breaks by using locked doors; deducting mailing stamp costs from a final paycheck; ensuring that company property is returned by confiscating employees' car keys; hotel room sharing; office romances; alleged sexual harassment of customers; and pregnancy disability leave.

Bathroom Breaks

At the Labor Law Helpline, CalChamber advisers hear from employers who want to ensure they don't run afoul of employment law rules. And because employers have a lot of overhead costs associated with their businesses, they will often find creative ways to ensure that employees are working and not sitting idle, Roberts says in kicking off the podcast.

Savage recounts the story of one employer who was so concerned with productivity at his company that he installed an electronic code padlock in the employee bathroom and gave individual codes to each employee. This system allowed the employer to keep track of the time each employee spent on their bathroom break.

When the employer asked Savage if this system was permissible under law, she answered that while the Labor Code does not specifically address timing people in the bathroom, the practice is still concerning for a few reasons.

- First, employees may have a reasonable expectation of privacy regarding how long it takes to go to the bathroom.
- Second, workers have a right to use the restroom and by timing how long someone is using the bathroom, the employer is discouraging workers from using it.

- Third, if an employee has a disability that requires that they spend more time in the bathroom, the tracking practice may raise questions of disability discrimination or a failure to accommodate claim.

"And...last, it's just a really terrible morale issue," Savage points out.

Roberts agrees, adding that when employers try to hammer down on nonproductive times, they can lose sight of the overall picture of their operations. Asking employees to punch in an individual code to use the restroom is bad for morale and can affect worker retention.

If an employee really is taking overly long rest breaks, the employer may bring up the issue with the employee. If the employee has a disability that's responsible for their using the bathroom so often, the employer may then look into accommodation options, but other than that, "people need to use the restroom. It's just a fact of life," Savage says.

'Cost of Doing Business'

Another cost-saving HR question posed on the Helpline was whether an

employer can deduct the cost of the postage used mailing an employee their final paycheck if an employee asks for the check to be mailed.

Savage explains that the Labor Code states that an "employee who quits with less than 72 hours' notice has the legal right to have their check mailed if they so request."

Deducting the cost of a postage stamp could end up costing the employer 30 days waiting time penalties, she warns.

"So...pennywise, pound foolish there," she said.

Roberts agrees, pointing out that it's just the "cost of doing business."

Another cost of doing business is loaning company equipment to employees so that they can perform their job duties. These items — such as tools, uniforms and name badges, among other items — sometimes get lost or simply are not returned to the employer, Roberts says.

A small restaurant owner tried mitigating this property loss by asking his workers to turn in their car keys at the beginning of their shift. At the end of their shift, the keys would be returned to the employees once they returned their company-provided aprons and badges.

Savage says that there is no law that permits an employer to confiscate an employee's car keys. This type of practice can bring about other legal problems that will ultimately cost an employer more than the cost of an apron or a badge.

Roberts explains that seizing and searching employee property requires a very high, legitimate business reason, and retrieving something like an apron or a badge is simply not going to meet that high standard.

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CalChamber Member Feedback

"Our company sees the CalChamber as a leading advocate for our interests and an energetic promotor of jobs and the economy of California."

William R. Sawyers
Senior Vice President, General Counsel and Chief Compliance Officer
Del Monte Foods

Memorable Calls from the CalChamber Labor Law Helpline

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Sharing Hotel Rooms

In order to cut down on travel expenses, some employers ask employees to share hotel rooms when they travel, Roberts says.

There is no law barring this practice, Savage says, but employers should keep in mind that some employees may have a disability accommodation need or a religious belief that would prohibit them from sharing a hotel room with an employee of the opposite gender.

Moreover, shared hotel rooms should be treated like a worksite, and harassment or hostile work environment issues will need to be addressed if they come up, Roberts adds.

Office Romances

An employer once asked Savage if he could terminate an employee for refusing to speak to him. Savage replied that refusing to speak to the employer could be deemed insubordination and the employee could indeed be fired for it.

Upon pressing the employer further, however, Savage learned that the employee didn't speak to the employer because the two recently had an affair and the employer's spouse — who also worked in the office with them — found out about it.

These new details changed Savage's earlier advice and she urged the employer to consult with legal counsel.

Another employer called into the Helpline because it was discovered that a pregnant employee was having an affair with another employee in the office. The employer asked for advice out of concern for potential safety issues that could arise should the pregnant employee's husband find out about the affair.

Affairs in the workplace can cause HR problems and it is why a lot of companies prohibit romantic relationships among employees when there is a conflict of interest, such as among supervisors and subordinates, Savage explains. If there was no conflict of interest among these two employees, then an employer should not treat a pregnant employee any differently as this can lead to claims of pregnancy discrimination.

Savage recommends that if an office romance is among married employees, or employees in committed relationships, the employer should consult with legal counsel before moving forward.

Alleged Sexual Harassment of Customer

One of Roberts' most memorable calls came from a pizza restaurant owner who reported that a pizza delivery employee

made a delivery to a customer and wrote down a message on the pizza box asking for the customer to call him and left his name and number.

The customer's husband called the pizza owner to say that this was sexual harassment and demanded \$3 million in return.

Labor laws protect employees from sexual harassment, but they don't hold employers liable for the sexual harassment of a customer, Savage says. Some professionals, such as lawyers, realtors and doctors, must abide by sexual harassment laws in the Labor Code (known as professional relationship sexual harassment), but pizza delivery workers do not.

The employer may, however, discipline the employee, she adds.

Pregnancy Leave Questions

Savage's most memorable Helpline call came from an HR director who called asking about pregnancy disability laws. After being put on hold every couple of minutes, Savage learned that the HR director was in active labor and called into the Helpline to ask about her pregnancy disability rights.

New 2022 California Employment Laws White Paper Available to Download

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for claims involving allegations of sexual harassment, sexual assault or discrimination based on sex — but SB 331 significantly expands those restrictions. Beginning January 1, 2022, nondisclosure provisions are prohibited in cases of alleged workplace harassment or discrimination based on **any characteristic** protected under the California Fair Employment and Housing Act, not just those based on sex.

This white paper also discusses how SB 331 limits the use of nondisclosure provisions in employment severance agreements, as well as:

- Small adjustments to the state's worker classification laws;
- COVID-19-related legislation that went into effect immediately upon being signed; and
- Much more.

The *New 2022 California Employment Laws* white paper is now available for nonmembers to download. CalChamber members can access the white paper by logging onto [HRCalifornia](#).

Virtual Seminar

Need more preparation for these new laws? Register now for CalChamber's

virtual seminar [2022 Employment Law Updates](#). From your desktop or favorite device, engage with our California employment law experts as they present live from our studio and answer your questions submitted via Zoom.

At CalChamber, we're all about helping California businesses do business. We provide expert guidance and advocacy for California employers so businesses like yours can comply with frequently changing labor laws and thrive in a heavily regulated environment. Not a member yet? See how CalChamber [can help you](#).

The People's Voice: Voters Prefer Better Rules for Telecommuting



The pandemic has changed how we live and work, certainly in the short term and probably

longer. The seventh CalChamber poll, *The People's Voice, 2021*, found that voters prefer policy changes to ease their ability to work from home, and are comfortable with strict COVID measures in the workplace.

The California economy — and the livelihoods of millions of Californians — survived the worst of the pandemic because thousands of employers implemented work-from-home arrangements, also known as telecommuting.

But devising a telecommuting policy can be complicated and risky because of California's treacherous employment laws. In overwhelming numbers, voters want to change that.

Telecommuting

For starters, telecommuting got a big vote of confidence from the electorate. By a 9 to 1 margin, voters support changing labor laws or policies to make it easier for employees to work from home.

They also supported the details.

Nearly 9 of 10 voters support changing overtime requirements to allow an alternative schedule (for example, four 10-hour days or three 12-hour days, instead of a typical five 8-hour days).

More than 8 out of 10 voters supported allowing employees to take the required 10-minute rest breaks any time of their choosing, rather than one break every four hours.

Eighty percent of voters supported allowing employees, at their own choos-

ing, to forgo the required half-hour meal break in exchange for ending their workday a half-hour earlier.

By the same margin, voters supported allowing an employee, at their own choosing, to split their shifts to accommodate personal needs.

On all these questions, the strongest support came from women, younger voters, and voters living in the Inland Empire or Central Valley.

Potential Ballot Measure

Litigation over employment practices, such as telecommuting, vexes employers in California like in no other state. A potential ballot measure would change how labor laws are enforced in California to require Labor Code violations to be handled by independent state regulators. This measure would require 100% of penalties for violations be paid to employees — instead of the state — and it would double penalties for employers who willfully violate labor laws.

The CalChamber poll asked voters to choose between the two major arguments over this proposal.

Supporters say that using independent regulators to quickly resolve wage claims is better and faster than hiring a lawyer and going to court, which can take years and cost thousands of dollars. Supporters say this measure offers a better way to quickly get problems fixed, and still protect workers' rights.

Opponents say that the threat of immediately getting a lawyer and filing a lawsuit is the only way to get a company's attention and fair compensation. Opponents say this measure would reduce workers' rights, and still tie up most cases in court.

By a margin of 79% to 21%, voters

agreed with proponents to the labor law enforcements proposed in this measure.

Vaccination/Testing

Should they return to work, voters are comfortable with mandatory vaccination and testing policies.

Three-quarters of voters support mandatory vaccinations for all employees returning to offices and workplaces, with a slightly higher margin supporting rigorous mandatory testing for employees or school children who are unvaccinated. Seventy-two percent of voters support mandatory vaccinations for school children once Food and Drug Administration-approved vaccines are available for their age group.

Unsurprisingly, the greatest difference among voters is by political party. More than 90% of Democrats support mandatory vaccinations, compared with only 40% of Republicans. About three-quarters of independent voters support mandatory vaccines.

Previous articles have reported about California voters' [economic concerns](#), [anxiety about public safety](#) and [voters' issue priorities](#). Subsequent articles will take a deep dive on additional public policy issues of interest to voters and employers.

Methodology

The CalChamber poll was conducted by Core Decision Analytics and Pierrepont Consulting and Analytics with online interviews from October 9–12, 2021 with 1,003 online interviews of California 2022 general election voters. The margin of error for this study is +/- 3.09% at the 95% confidence level and larger for subgroups. This is the seventh year CalChamber has published a voter survey.

Contact: [Loren Kaye](#)



Capitol Insider

presented by **CalChamber**

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The People's Voice: Drought and Wildfires Dominate Climate Issues



Californians strongly agree about the importance of addressing climate change, but

are not convinced that costly, disruptive policies are the right approach. The seventh CalChamber poll, The People's Voice, 2021, also found that voters expect substantive actions to address drought and wildfires.

Asked whether they agree that "climate change is happening and the state of California must act now," 62% of voters strongly agreed, with another 20% agreeing somewhat. The strong agreement has increased by six percentage points over the last two years. Notably, a majority of California Republicans agree with this sentiment.

When it comes to the two weather phenomena most implicated by climate change, California voters are highly motivated. Addressing the drought and wildfires were top of mind for voters, both for legislative attention and budget priority. It's fair to conclude California voters view these issues as existential to their quality of life.

Drought

Asked about the drought in California, three-quarters rated it "very significant," with another 21% saying "somewhat significant." Four policies garnered between 85% and 90% of voter support: expedited permitting of desalination plants (90%, 51% strongly), expedited permitting of off-stream water storage reservoirs (89%, 42% strongly), voluntary water reductions by residential users and mandatory reductions by other users (86%, 42% strongly) and expedited permitting of recycling plants that treat wastewater into drinking water (85%, 50% strongly). Even mandatory water rationing for all users was supported by two-thirds of voters, a quarter of them strongly.

Wildfires

When it comes to policy proposals to

address climate change effects, the most popular were either directly or indirectly related to wildfire mitigation.

The four policies garnering the highest "strongly support" responses were:

- Require homeowners living in fire-prone areas to keep their land clear of flammable brush, upgrade to safe building materials, and create personal evacuation plans (64% strong support).
- Modernize the electrical grid and spend more on electrical equipment maintenance (56%).
- Allow controlled burning to eliminate the dry underbrush on federal, state, or privately owned land (52%).
- Limit future housing development in areas prone to wildfires (40%).

Lifestyle Sacrifices

On the other hand, the least popular strategies to address climate change involved personal lifestyle sacrifices. A majority of voters opposed policies that:

- Require that any new highway expansion include only carpool or toll lanes (54% opposed).
- Ban the sales of automobile engines that run on gasoline or diesel by 2030 (57% opposed).
- Increase taxes on gasoline or diesel to discourage use of internal combustion engines (61% opposed).
- Discourage people from driving cars by intentionally designing roads to be more congested and not expanding existing highway capacity (78% opposed, 56% strongly).

That each of these very unpopular policies (except the tax increase) is already being implemented in some way speaks to the disconnect between climate change rhetoric and policy implementation by state and local officials.

Vehicle Mandates

Aggressive adoption of electric vehicle mandates and inhibition of gasoline- and diesel-fueled cars and trucks will inevitably starve the transportation system off its primary source of revenues, the gasoline and diesel tax.

Voters clearly do not like paying

higher gas taxes. But when asked whether California should change the way the state pays for road repair and operation, by replacing the current gasoline tax with a fee based on miles driven, voters supported this approach by a 58% to 42% margin.

Recycling

Voters were also asked about a potential ballot measure sponsored by a San Francisco waste recycling company that would tax each individual item of single-use plastic packaging and foodware. This tax would generate \$4 billion a year to fund recycling programs overseen by the state and would reduce the use of some plastic packaging.

Voters were asked which argument was more persuasive:

- That California leads the nation in improving recycling and cutting down waste, and while there are more steps we need to take to phase out plastic use, now is not the time to raise new taxes when consumers and small businesses are still struggling.

- Or, that California has a plastics crisis. We need to immediately address this crisis, even if that means raising taxes and the price of consumer goods.

By a 78% to 22% margin, voters opposed applying new taxes to single-use plastic products.

Previous articles in this series have reported about California voters' [economic concerns](#), [anxiety about public safety](#), [voters' issue priorities](#), [employment issues](#) and [housing](#).

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Contact: Loren Kaye

World Trade Organization Postpones Ministerial Conference



New travel restrictions due to the omicron

virus variant have forced yet another shift in the timetable for the World Trade Organization (WTO) ministerial conference.

The ministerial, whenever it may take place, is expected to be a turning point for discussions on the future of the organization.

Topics are expected to include fishery subsidies; a framework to expand global trade in vaccines; and agricultural trade policies.

Postponements

The WTO's 12th Ministerial Conference (MC-12) originally was scheduled for 2020. Due to the pandemic, the conference was postponed to start this week in Geneva for four days with Kazakhstan (the original host) co-hosting and chairing the gathering.

The WTO General Council agreed on November 26, 2021 to postpone the conference again. The new travel restrictions and quarantine requirements in Switzerland and other countries made it evident that it would be impossible for many ministers and senior delegates to participate in face-to-face conference negotiations.

Press reports say that the latest

rescheduling of the conference is proposed to take place in early March 2022 if epidemiological conditions allow.

WTO Reform

On February 15, 2021, Ngozi Okonjo-Iweala of Nigeria became the first woman and first African to be chosen as Director General of the WTO. Her term, which is renewable, will expire on August 31, 2025. Director General Okonjo-Iweala is tasked with the job of reforming the WTO.

The position came open a year earlier than expected when previous Director General Roberto Azevêdo of Brazil announced in May 2020 that he would step down at the end of August 2020.

The California Chamber of Commerce is hopeful the major trading economies can come to a consensus on a reform of the WTO. The revamp should address the functioning of the Appellate Body, encourage greater transparency and enhance discipline for members who fall behind on their reporting obligations.

Overseas Markets

The WTO has a positive impact on how California producers of goods and services compete in overseas markets, as well as domestically.

By giving businesses improved access to foreign markets and better rules to

ensure that competition with foreign businesses is conducted fairly, the WTO enhances producers' ability to compete, thereby creating jobs and economic growth through expanded international trade and investment.

The WTO, which has 164 member governments, is the only global international organization dealing with the rules of trade between nations. At its heart are the WTO agreements, negotiated and signed by the bulk of the world's trading nations and ratified or approved by their parliaments or legislatures. The goal of the agreements is to help producers of goods and services, exporters and importers conduct their business.

CalChamber Position

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

Trade liberalization can create new jobs, higher incomes, and economic growth for countries around the world.

Staff Contact: Susanne T. Stirling

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State Leaders Should Use Budget Surplus to Restore Tax Incentives, Repay UI Debt



Loren Kaye

Only 18 months ago, expecting a massive pandemic-induced collapse of economic activity, California finance officials predicted a staggering

\$54 billion state budget deficit. The prediction was prudent since nobody in the modern era had ever experienced the economic fallout from a global pandemic.

It was also completely wrong. A combination of creative and agile workplace responses by employers and employees, along with a massive influx of federal income support, business relief, and loose monetary policy limited the worst of the economic impacts. California's steeply progressive tax system ensured that the state treasury would benefit from any economic upside.

Instead of suffering a \$54 billion deficit last year, state coffers brimmed with a \$75 billion surplus. Policy makers expanded the social safety net, boosted school spending, and even returned some money to low- and middle-income taxpayers.

2022 Budget Surplus

The prospect for 2022 appears to be more of the same. California will have a "historic budget surplus," according to Governor Gavin Newsom. The nonpartisan Legislative Analyst recently pegged the surplus at \$31 billion, and noted that during the 12-month period ending last September, tax collections grew at an annual rate of 30%, the fastest rate in at least four decades.

The debate over how to spend the latest windfall will begin in January with the release of the Governor's proposed budget. The usual suspects will form a line for one-time or permanent budget boosts. But this time around, tax-paying

employers should have a place near the front of that line.

For a relatively small share of the windfall, the Governor and Legislature can relieve California businesses from long-term liabilities that were a direct consequence of pandemic-related public policies.

Guest Commentary By Loren Kaye

Restore Tax Incentives

First, the Governor and Legislature should restore tax incentives and net operating loss tools they suspended in 2020. The earlier action may have been prudent, given the then-expected economic outlook. But the subsequent revenue bonanzas obviate this cash-saving tactic, which has hamstringed productive employers from reinvesting in California operations and growing their businesses.

A recently released report by the Milken Institute found that suspending the research and development (R&D) tax credit "increased cost uncertainty for businesses at a time when economic volatility was already high. For three decades, this incentive had helped businesses lower the risks inherent to investing in product and process improvements, but the policy change signaled a diminished commitment to innovation-led growth."

Restoring the R&D tax credit, along with other business incentives, plus the ability to utilize net operating loss carry-forwards, would cost the state budget only a few million dollars and only one time. More important, restoration would signal to businesses the state's commitment to a stable investment climate for companies that in turn want to make a commitment to California.

Return UI Fund to Solvency

Second, elected leaders should use a portion of the budget windfall to return

the Unemployment Insurance (UI) Fund to solvency, thereby minimizing looming tax increases on California employers.

The pandemic recession was unique. Unlike a typical business cycle, entire sectors of the economy, especially the public-facing hospitality and tourism sectors, shut down or operated at severely reduced capacity, often at the direction of public agencies. This compelled many employers to terminate their entire workforce and pay unemployment compensation.

This massive bulge in the unemployment rolls forced California to borrow an eye-popping \$20.2 billion from the federal government, which must be repaid by employers from steadily increasing payroll taxes, beginning in 2023 and well into the 2030s. To add insult to injury, at least \$1.3 billion in fraudulent claims were paid from the UI fund, which nevertheless must be repaid from employer tax increases.

Many other states, both Democratic- and Republican-controlled, acknowledged their liability in ordering economic shutdowns and higher fraud rates, and have allocated portions of their federal funds to help repay their UI debt. California is not among them.

California's elected leaders should recognize their shared responsibility for the burden of repaying the UI debt by making a firm funding commitment of \$3 billion in the upcoming budget, preferably scheduled over the next couple of years.

Restoring the tax incentives and paying off the UI loan are prudent uses of the surplus. These are one-time expenses that will not add to permanent state fiscal obligations. They will also ensure productive businesses are not paying higher taxes when the need for those taxes has either vanished or was created by global catastrophe or the actions of public officials.

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

Poll Shows Housing Affordability Frustrates Voters

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reported that they would move if another state offered a greater opportunity for homeownership than California.

Integral to the cost of homeownership is the expense of property taxes. Proposition 13 has been a buttress against higher taxes, although special interests, as recently as last year, have attempted to partially remove Proposition 13 protections — so far unsuccessfully.

When voters were asked about their view of the 43-year-old property tax cap, half answered “very favorable,” with

another third saying “somewhat favorable.” The favorability of Proposition 13 has been remarkably consistent over the years, ranging between 80% and 84%, but the 2021 response was the highest ever for the “very favorable” choice.

Previous articles have reported about California voters’ [economic concerns](#), [anxiety about public safety](#), [voters’ issue priorities](#), and [employment issues](#). A subsequent article will take a deep dive on additional public policy issues of interest to voters and employers.

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Contact: Loren Kaye

State Prepares to Make It Easier to Find All Crane Safety Requirements

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the consolidation will have little regulatory effect on general industry. The board has proposed exceptions where the CDAC regulations would impose new requirements on cranes used solely in general industry.

Current Proposal

Through the efforts of several advisory committees and one subcommittee, a proposal was developed to consolidate applicable crane safety regulations in

Article 15 of the CSO into Group 13 of the GISO. The proposal was presented for a public hearing on May 20, 2021. The board received and responded to comments.

A second 15-day comment period opened on November 19, 2021 and will end on December 8, 2021.

To review the proposed rulemaking package, visit www.dir.ca.gov. Click on Boards, then OSHSB and scroll down to the notice of proposed modifications. In addition to the consolidation

of the crane rules from the CSO and the GISO, changes are being proposed to the High-Voltage Electrical Safety Orders (HVESO).

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.

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Vaccine Mandates May Conflict with Civil Rights Laws

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national origin, disability, medical condition, marital status, sexual orientation, age, and immigration status. Any business that violates the Unruh Civil Rights Act is liable for damages of at least \$4,000 per violation and can be sued in court.

Accommodating Customers

Therefore, just as a business is required to accommodate employees under the Fair Employment and Housing Act (FEHA), it also must accommodate customers.

If a customer enters a restaurant with a vaccine mandate and says they have a medical condition that prohibits them from being vaccinated, the restaurant is obligated to engage in the “interactive process” to determine whether the customer can be reasonably accommodated.

This could include instead requiring a negative COVID-19 test result or seating the customer outside instead of indoors. Whether an accommodation is “reasonable” is difficult to ascertain and will generally require a quick response from the business. Unlike with an employee, the customer is likely looking for a

service right then and there, so the business cannot take more than a few minutes to evaluate whether an accommodation would be burdensome.

Even the DFEH acknowledges that accommodation is a case-by-case determination. A business is not required to accommodate customers if the accommodation would pose a threat to the safety of others, unduly burden the business, or cause it to fundamentally change its operations.

For example, a barbershop may not be able to serve an unvaccinated customer because they must come into close contact with the customer and would likely not have an outdoor service option available.

Religious Beliefs

In addition to the uncertainty surrounding whether an accommodation is reasonable, it is unsettled whether a business must accommodate a customer’s religious beliefs.

The DFEH explains that medical conditions must be accommodated for customers, but that there is no court case on the subject of religious belief accommodations for customers. The DFEH has declined to state its view about whether

the Unruh Civil Rights Act requires accommodation for a customer’s religious beliefs.

Rather, the DFEH “recommends” that businesses follow the same process as for medical accommodations by engaging in the interactive process.

The lack of guidance on this issue puts businesses in a bind because they could face costly litigation if they refuse to serve a customer claiming a religious exemption. Whether the Unruh Civil Rights Act requires religious accommodations is surely to be tested through a private lawsuit.

Any local or state entity considering enacting consumer-facing vaccine mandates should take the issue of accommodations into account and what that could mean for its business community, especially the risk of exposing its small businesses to lawsuits.

At the very least, clarity must be given to businesses about steps for how to address accommodation requests and whether religious accommodations must be given to limit any resulting liability for employers trying in good faith to comply with the law.

Staff Contact: Ashley Hoffman



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