

# 'High Road Employer'

## Proponents Use Term to Push One-Size-Fits-All California Labor Law Policies

A new phrase has started to emerge in labor law: "high road employer." On its face, the term appears to denote what everyone would agree is a good employer — one who pays good wages, follows lawful labor standards, has sustainable environmental practices, and so on. Indeed, the CalChamber's very mission is to help our businesses comply with the law and improve California. But a review of the term's use in recent publications and proposed legislation makes clear that its proponents define "high road employers" far more narrowly and are using this elevated rhetoric as a new means of pushing a specific policy agenda.

### ORIGINS OF 'HIGH ROAD EMPLOYER'

The term "high road employer" has been attributed to Joel Rogers, a professor at the University of Wisconsin. In a paper dating back to 1990, he vaguely describes the "high road" as "a family of strategies for human development under competitive market conditions that treat shared prosperity, environmental sustainability, and efficient democracy as necessary complements, not tragic tradeoffs." His organization at the University of Wisconsin, COWS (Center on Wisconsin Strategy), states that a "low road" is a path of "convenience, greed and contempt for others," leading to low wages and weak labor standards, lack of environmental protections, and the domination of "money and corporate priorities."

Those amorphous definitions provide little clarity as to how these so-called principles would realistically be applied when forming public policy. Until a few years ago, the only use of the term in California was the California Workforce Development Board's (CWDB) "High Road Training Partnerships." The stated goal of these partnerships is to serve as intermediaries to convene

employers, workers, unions, and other stakeholders within an industry to train workers for specific career paths.

Currently, the CWDB runs the following High Road Training Partnership programs:

- Building Skills Partnerships (BSP): Green Jobs, Good Jobs Project.
- Shirley Ware Education Center (SWEC): Multi-Occupation Pre-Apprenticeship.
- Worker Education and Resource Center (WERC): Los Angeles County Frontline Healthcare Worker Training Institute.
- California Labor Federation and Balancepoint Strategies: California Transit Works!
- Hospitality Training Academy: The High Road to Hospitality.
- Port of Los Angeles: Workforce Training Center.
- West Oakland Job Resource Center: Transportation, Distribution and Logistics Apprenticeship.
- Jewish Vocational and Career Counseling Service (JCS): Water Utilities Career Pathway Project.

### 2020 UC BERKELEY LABOR CENTER STUDY CONNECTS 'HIGH ROAD' TO A POLICY AGENDA

In June 2020, the University of California, Berkeley Labor Center issued a report titled "Putting California on the High Road: A Jobs and Climate Action Plan for 2030," which includes a number of citations to Rogers' work. The report was issued in response to AB 398 (E. Garcia; D-Coachella) (2017), which required the CWDB to present a report to the Legislature on strategies "to help industry, workers, and communities transition to economic and labor-market changes related to statewide greenhouse gas emissions reduction goals."

The report explains that for California employers to be on the "high road," they must offer quality jobs. "Quality jobs" are assessed in the report as those that pay a living wage, offer a "stable schedule," provide paid sick leave, paid family leave, health care, and comply with existing labor laws. Some of the strategies proposed in the report to achieve quality jobs are to withhold incentives or funding from employers that do not satisfy certain standards, implement wage floors for government



# Agenda for California Recovery

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## LABOR AND EMPLOYMENT

projects, increase the use of union-negotiated project labor agreements and community workforce agreements, and prohibit the use of contractors.

The Rogers definition and UC Berkeley Report imply that a “high road” employer is a business that meets a narrow set of criteria: one that does not use any contracting, pays more than the minimum wage, and provides benefits above and beyond what is required by law. The term does not account for an employer’s financial abilities, the industry’s competitive environment, or overlapping state and local regulations and mandates. As evidenced by the proposed legislation discussed below, a “high road” employer is simply a euphemism for the policy agenda of the labor movement, and would inevitably come at the expense of small businesses, new businesses, worker flexibility, and nontraditional business models.

### LEGISLATURE USES ‘HIGH ROAD’ TO PROMOTE SPECIFIC PRIORITIES

In late 2020 and 2021, the term “high road” began to appear more and more in California politics. Governor Gavin Newsom cited the UC Berkeley study in his September 23, 2020 [Executive Order N-79-20](#) directing the state to require that by 2035 all new cars and passenger trucks sold in California be zero-emission vehicles. He ordered the Labor and Workforce Development Agency, Office of Planning and Research, and the Department of Finance to develop a roadmap consistent with the recommendations in that study and referenced the need to create and retain “high-road” jobs.

The 2021 legislative session brought about the first statutory definition of “high road” — AB 138, the budget trailer bill passed by the Legislature related to labor and employment, added a definition to provisions of California’s Unemployment Insurance Code relating to the California Workforce Development Board. Unemployment Insurance Code Section 14005(r) defines “high road” as:

[A] set of economic and workforce development strategies to achieve economic growth, economic equity, shared prosperity and a clean environment. The strategies include, but are not limited to, interventions that:

- (1) Improve job quality and job access, including for women and people from underserved and underrepresented populations.
- (2) Meet the skill and profitability needs of employers.
- (3) Meet the economic, social, and environmental needs of the community.

The bill also added references within the statute to “high road employers,” “high road jobs,” a “high road workforce,” and “high road partnerships.” Further, the bill tasked the California Workforce Development Board with “developing standards, procedures,

and criteria for defining high road employers, high road jobs, high road workforce development, and high road training partnerships in California, in accordance with lessons learned from the board’s ongoing high road workforce development initiatives.”

### More Legislation Uses ‘High Road’

The amorphous definition in AB 138 merely introduced the term in economic development law. Two other bills, however, may provide some insight as to the priorities that proponents of the “high road” rhetoric intend to promote.

The first is **AB 794 (Carrillo; D-Los Angeles; Chapter 748, Statutes of 2021)**, which expressed its intent to carry out the goals of the UC Berkeley report. The original language of AB 794 sought to implement some of the report’s strategies, such as imposing certain labor standards above what is required by law on fleet purchasers, short haul truckers, and vehicle manufacturers that receive grants or incentives from the state.

The standards it would have imposed on vehicle manufacturers, for example, were quite significant and applied to workers both inside and outside of California:

- Have a three-year history of compliance with all labor laws.
- Assemble the entire vehicle in the United States.
- Implement a wage floor of at least 120% of the California minimum wage, *regardless of where the worker is located*.
- Provide data of hiring disadvantaged workers.
- Disclose data such as the average wages for all occupations and the use of part-time employees or contractors versus full-time employees.

Those provisions ultimately were stricken from the bill, but provide insight as to how the “high road” phrase would be leveraged into specific policy goals. A manufacturer with workers in other states would be required to pay them at least 120% of California’s minimum wage, which would be about two-and-a-half times the federal minimum wage, and the use of independent contractors or part-time workers would jeopardize the ability to obtain California incentives or grants.

The final version of the bill signed by the Governor was limited to purchasers of new drayage and short-term haul trucks. While it does not impose the above requirements, the bill requires new drayage and short-term haul truck purchasers to disclose the following before utilizing any of the state’s incentive programs: (1) that it does not have any applicable labor law violations at the time of its application; (2) that it is not on a list maintained by the Division of Labor Standards Enforcement of port drayage motor carriers that have unsatisfied court judgments; and (3) that it will retain direct control over the manner and means for performance of any individual using or driving

the vehicle, for example, that the vehicles will be used or driven by employees rather than independent contractors.

The second bill that also revealed the motive behind use of the term “high road” is **AB 1192 (Kalra; D-San Jose)**. AB 1192 would have required employers with 1,000 or more employees to disclose certain metrics about their entire U.S. workforce. The metrics were to be publicly displayed on the Labor and Workforce Development Agency’s (LWDA) website with the intent of establishing a certification program to provide incentives such as procurement contracts, tax benefits, and funding to those that qualify as “high road” employers. The vague statutory definition of “high road” means that whether a business qualifies will be a subjective determination.

The data proposed to be collected under AB 1192 give insight as to what types of factors the Legislature cares about. Several of the metrics are similar to what was included in AB 794:

- Median pay for workers.
- Number of full-time, part-time, hourly, and salaried workers.
- Scheduling practices.
- Benefits offered to employees.
- Use of independent contractors and temporary workers.
- Rates of pay broken down by race and gender.
- Percentage of managerial positions broken down by race and gender.

Metrics would have been compared between employers across broad industry groups, including materials, capital goods, media and entertainment, and consumer services. Each group encompasses a wide variety of businesses.

Although the bill intended to reward “high road” employers with policies promoting equity and quality jobs, simply looking at data across an employer’s entire U.S. workforce does not tell the whole story. For example, an employer with a majority of its employees in states with lower minimum wage laws or areas with lower costs of living, will naturally have lower pay. And, if operations in those states have a higher number of women or racial minorities in the workforce than another area of the country, the difference will affect the data reported. Businesses that do not offer certain benefits which go beyond government mandates may have a legitimate reason for doing so, such as their competitive market environment.

It is evident from the metrics to be collected how the Legislature would likely view “high road” employers. For example, employers that use independent contractors or temporary workers would be viewed negatively by the Legislature, even if

the reason for using the independent contractors or temporary workers is legal and legitimately serves that employer’s business interests. Businesses with lower average wages would likely not be deemed “high road” employers, no matter the reason, even if the employer’s choice was between lower wages or layoffs. Small businesses might struggle because they may not be able to afford the wages and benefits that larger businesses could afford. AB 1192 was not brought up for a vote in the Assembly.

Several other bills during the 2021 legislative session tried to establish parameters about what is a “high road” employer and/or make certain benefits contingent on meeting that standard. For example:

• **SB 46 (Stern; D-Canoga Park)** would have required the LWDA to develop the standard for what is a “high road” employer for purposes of allocating certain funds from the America Rescue Plan Act of 2021. The bill was not set for a committee hearing.

• **AB 572 (Kalra; D-San Jose)** would have established a program within the California Workforce Development Board that trains restaurants to implement “high road” policies, defined as *“policies that promote equity of income and career pathways for people of color, immigrants, women, and people who are transgender, nonbinary, or intersex.”* The board therefore would have had the discretion to determine exactly what is a “high road” employer. The bill was held in the Assembly Appropriations Committee as a two-year bill.

#### CALCHAMBER POSITION

The California Chamber of Commerce supports public policies that create incentives for businesses to create quality jobs, but a one-size-fits-all approach disguised by this new rhetoric will punish employers who do business in traditionally lower-wage or intensely competitive markets.

Further, any data collected to determine whether an employer is qualified for an incentive program should be kept confidential. The publication of this type of data, inevitably free of context or explanation, is intended to smear a company’s reputation and subject employers to frivolous litigation.



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