

ALERT

Flexible Work Schedule Bill Gets Support from Chambers



SUPPORT

The California Chamber of Commerce and a coalition including numerous local chambers of commerce are **supporting** legislation that allows for an

employee-selected flexible work schedule.

AB 1761 (Voepel; R-Santee)

relieves employers of the administrative cost and burden of adopting an alternative workweek schedule per division, which accommodates employees, helps retain employees, and allows the employer to invest these savings into growing its workforce.

Traps in California Process

California is one of the only states that requires employers to pay daily overtime after eight hours of work in addition to weekly overtime after 40 hours of work.

Even other states that impose daily overtime requirements allow the employer and employee to essentially waive the daily eight-hour overtime requirement through a written agreement.

California, however, provides no such common-sense alternative. Rather, California requires employers to navigate through a multi-step process to have employees elect an alternative workweek schedule that, once adopted, must be “regularly” scheduled and must apply to the entire work unit.

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New Federal Law Prohibits Mandatory Arbitration of Sexual Harassment, Assault Claims



Last week, President Joe Biden signed legislation making pre-dispute arbitration agreements and class action waivers invalid and unenforceable for claims of sexual harassment or

sexual assault.

Stated simply, as of March 3, 2022, employees subject to an arbitration agreement who bring claims involving sexual harassment or sexual assault cannot be compelled to arbitration on those claims — even if the agreement says otherwise. Instead, employees may choose to either pursue these claims in court or proceed in arbitration.

The new law, the [Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021](#) (the Act), amends the Federal Arbitration Act (FAA).

Background

The FAA established the federal framework for enforcing arbitration agreements, providing that arbitration agreements are “valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.”

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New Bill Will Help Stop Delays in Hiring



A recent court decision out of Riverside County has stalled hiring by making routine

background checks nearly impossible to complete. **SB 1262 (Bradford; D-Gardena)** will return people to work by remedying the issue.

Before they can hire, many companies — such as certain health facilities, child care providers, and financial institutions — are required to perform background checks.

Even if not required, some nonprofits or companies will conduct a back-

ground check because of the nature of the services provided. A company that sends repair workers into people’s homes or requires employees to interact with children has a duty to ensure they are not risking others’ safety.

When conducting background checks, it often is necessary to filter records by information other than a name. It is not uncommon for workers to have the same name in a country of more than 330 million people.

According to Ancestry.com, “Smith” is the most common last name in California and 40 other states. Those other filters can include a birth date or driver license number.

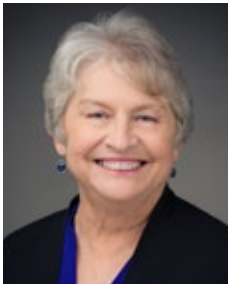
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Labor Law Corner

What to Do When Employee Video Records Workplace Accident



Sharon Novak
HR Adviser

An employee used his mobile phone to film a co-worker lying in a pool of blood shortly after a workplace accident. This employee then posted the video on his personal social media account with no comments other than an exclamation point. What are my options?

Posted videos are a “thing” in our current society and have achieved their own adjective — “viral.” This is not

surprising, given that most people have hand-held portable computer devices with an amazing capability to film events that can be shared with the world.

Videos are posted on social media for many purposes, some laudable, others offensive. The viral nature of the George Floyd video shows the power of the phone and media.

The rules surrounding when an employer can video-record employees — notice, privacy zones — are somewhat clear.

What if an employee is filming other employees? The details surrounding the filming, such as the purpose, can turn an offensive, intrusive action into a legal and worthy deed.

Key Considerations

Before an employer acts, it must investigate the circumstances surrounding the video recording. These are the key considerations:

- **Have there been worker complaints about workplace safety or unlawful activity?** For example, if there have been such complaints, the filming may have been done to document an unsafe work-

ing condition or other illegal workplace conduct, such as sexual harassment.

What if the employee in the question had filed a complaint with Cal/OSHA? The filming and the resulting evidence may be legal and protected. Also, if you fire someone for filming illegal working conditions, you may be subject to a retaliation claim.

Employers should always discuss the legality of workplace restrictions on workplace recordings with legal counsel before taking any action against an employee who has filmed something at work.

- **Do you have a handbook policy regarding employees filming other employees, with or without their permission?** Because video recording has become so common, employers should assume that it is happening in the workplace, possibly without the consent or knowledge of those being filmed.

Employee handbooks are the best method to communicate workplace policies, and they should cover the use of video and audio recording devices at work. To the extent that employers can legally restrict workplace activities and

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CalChamber-Sponsored Seminars/Trade Shows

More at www.calchamber.com/events.

Business Resources

Managing Leave Requests from Pregnant Employees and New Parents. CalChamber. March 17, Online. (800) 331.8877.

Leaves of Absence: Making Sense of It All Virtual Seminar. CalChamber. April 14–15, June 9–10, Online. (800) 331-8877.

HR Boot Camp Virtual Seminar. CalChamber. May 5–6, May 26–27, June 23–24, Online. (800) 331-8877.

International Trade

Maritime Transportation Data Initiative Hearings. Federal Maritime Commission. March 15, Available Technology Platforms; March 22 International Standards/FMC Agreements; March 29, Marine Terminal Operators; April 5, Marine Terminal Operators; April 12, Carriers (1); April 19, Carriers (2); Online. (202) 523-5725.

Complying with U.S. Export Controls.

Southern California District Export Council. March 15–18, Online (949) 660-0144.

How to Effectively Manage International Employees. National Association of District Export Councils. March 24, Online.

Trade Mission to Central America 2022. U.S. Commercial Service. March 27–28, Guatemala. (800) 872-8723.

Expo Dubai 2021. Expo 2020 Dubai UAE. Through March 31, 2022, Dubai, United Arab Emirates. (+971) 800 EXPO (3976).

2022 Taiwan Trade Shows. Taiwan External Trade Development Council. Through October 30, Online and In-Person. +886-2-2725-5200.

Cybersecurity Business Development Mission to South America. U.S. Department of Commerce, International Trade Administration. April 5–8, Uruguay, Chile, Peru. (800) 872-8723.

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Environmental Law Abuse Hurts Students

Court Ruling Will Block UC Student Housing, Prevent In-Person Attendance



Adam Regele

If an investment in knowledge pays the best interest, California is failing to maximize its returns.

On March 3, the California Supreme

Court [rejected](#) the University of California, Berkeley, appeal of a lower court ruling that capped enrollment at 2020–21 levels, effectively blocking over 3,000 students from being able to attend in person in the fall.

The lawsuit stems from a Berkeley neighborhood group with a pattern of weaponizing the California Environmental Quality Act (CEQA) to block projects they disagree with under the guise of environmental protection.

As a Cal alumnus, it pains me to see a fellow Berkeley alumnus highlighting as [accomplishments](#) the blocking of thousands of students from attending college, blocking the construction of student dormitories and blocking the construction of on-campus student facilities.

Precedent for Other Universities

Although the weaponization of California's most powerful environmental law has been going on for decades, for example being used by a neighbor to stop an [affordable housing project](#) in Redwood

City or [block a homeless shelter](#) proposed on a parking lot in San Francisco, CEQA abuse to permanently alter the future of thousands of high school students felt particularly abhorrent.

And the precedent from this case may reverberate beyond UC Berkeley to other universities as they consider how CEQA may be used against them to block future student housing and the enrollment of more students in a state with growing demand for higher education and critically low affordable housing.

Commentary By Adam Regele

Preventing Repeat

The California Legislature may be able to prevent a repeat of this saga should it pass [SB 886 \(Wiener; D-San Francisco\)](#), a bill that would exempt public university housing from being subject to CEQA.

Unfortunately for the 3,000+ students hoping to start their higher education at California's flagship public university, only to be turned away, that relief would be too little too late.

The case also highlights a frustrating Catch-22 of CEQA: the very group that invoked CEQA to block UC Berkeley from enrolling more students on the basis that it crowded their neighborhoods was the very same group that used CEQA to block the construction of more housing by the University.

System Problem

Further infuriating is the fact that known abuses of CEQA remain unaddressed by the California Legislature despite year after year attempts to try and fix it. Although CEQA streamlining and CEQA exemptions may help one-off projects avoid the CEQA gauntlet, they are mere Band-Aids to a more systemic problem with the statute.

As a citizen-enforced statute with the tremendous power to throw projects into courts for years and cloak the identity and purpose behind a group's lawsuit, CEQA has become the perfect tool for the Not-In-My-Backyard (NIMBY) project opponent that does not want to see more housing, more students being educated, or homeless shelters constructed near them.

Even more alarming is that instead of fixing CEQA to promote environmental protection while eliminating the exploitation of the statute for non-environmental reasons, the California Assembly recently voted to greatly expand the statute under [AB 1001 \(C. Garcia; D-Bell Gardens\)](#) to provide NIMBYs even more litigation avenues to block housing and other projects.

If the UC Berkeley admissions debacle taught us anything, it is that the abuse of CEQA is getting worse and more perverse than many even imagined.

Adam Regele is a senior policy advocate on environmental policy, housing and land use, and product regulation for the California Chamber of Commerce.



CalChamber Member Feedback

"No one tells the story of California's diverse business community better than the CalChamber. The CalChamber's creativity, dedication and solid working relationships in Sacramento are the cornerstones of its success at advocating for all sectors of the economy and regions of the state."

Donna L. Lucas
Chief Executive Officer and President
Lucas Public Affairs

CalChamber, Local Chambers Support Flexible Work Schedule Bill

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This process is filled with potential traps that could lead to costly litigation, as one misstep may render the entire alternative workweek schedule invalid and leave the employer on the hook for claims of unpaid overtime wages.

Little Used Option

Currently, there are 42,494 reported alternative workweek schedules with the Division of Labor Standards Enforcement. According to the Employment Development Department, California has about 1.2 million employers. Therefore, about less than 4% of California employers utilize the alternative workweek schedule option.

Further, more realistically, given that the information in the database is according to work unit instead of employer, it is likely that less than 1% of employers in California are utilizing this process.

Employees Want Flexibility

Employees want flexibility in their work schedules. In a recent CalChamber poll, 88% of voters agreed (49% of them strongly) that the state's overtime laws should be changed to make it easier for employees to work alternative schedules, such as four 10-hour days.

A survey by the Society for Human

Resource Management revealed that 91% of human resources professionals agree that flexible work arrangements positively influence employee engagement, job satisfaction, and retention.

According to Corporate Voices for Working Families and WFD Consulting, an in-depth study of five organizations that allow their nonexempt employees to have flexibility in their schedules found that employee commitment was 55% higher and burnout and stress decreased by 57%.

Pandemic Impact

Women and low-income workers have suffered the most from the inability to have flexible schedules, feeling pressured to abandon career goals to care for children and fulfill household obligations.

That pressure has been exacerbated by the COVID-19 pandemic. An article by NPR estimated that close to 900,000 women left the workforce in 2020 to keep up with the demands of child care and household obligations. That rate is four times higher than men.

With near-record unemployment, California should be doing everything possible to maximize opportunities for employers to allow employees to set hours that work for an employee's personal and family obligations.

This way, workers can continue to be employed and support themselves and their families.

Individual Flexibility

AB 1761 would provide employees more flexibility because the employee could request an alternative workweek schedule on an individualized basis. It would also relieve employers of the administrative cost and burden of adopting an alternative workweek schedule per division.

Pursuant to AB 1761, *at the request of the employee*, an employer would be able to implement a flexible work schedule that allows the employee to work up to 10 hours in a day or 40 hours in a week, before overtime is owed.

Employers should be able to provide their employees more flexibility and negotiate through a written agreement, revocable by either party, the daily/weekly schedule that satisfies the needs of both the employee(s) and the employer.

Promoting flexible policies that allow employees to continue to be employed and earning income while working from home is needed now more than ever.

AB 1761 has been assigned to the Assembly Labor and Employment Committee. No hearing date has been set.

Staff Contact: Ashley Hoffman

New Bill Will Help Stop Delays in Hiring

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Background Check Delays

A 2021 case out of Riverside County, California called *All of Us or None of Us v. Hamrick* halted thousands of background checks last summer when it interpreted California Rule of Court 2.507 regarding court electronic indexes as prohibiting searches by date of birth or driver license numbers.

The result was workers having their job applications delayed or denied because of the inability to accurately perform background checks.

CalChamber members reported delays of multiple weeks in hiring and sometimes were unable to accurately complete a background check. At a time when 98% of small businesses report [struggling to hire](#) and the unemployment rate remains high, it is essential that applicants are

able to be hired and onboarded as quickly and efficiently as possible.

SB 1262 resolves this issue by explicitly allowing electronic indexes to be searched and filtered by a person's driver license number or date of birth, or both. The bill is essential to timely placing applicants in open job positions and ensuring Californians have access to work.

Staff Contact: Ashley Hoffman

New Law Nixes Mandatory Arbitration of Sexual Harassment Claims

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The U.S. Supreme Court has noted that the FAA requires courts to “rigorously” enforce arbitration agreements according to their terms and has upheld individual arbitration agreements. And, in a 2018 decision, it also upheld class action waivers contained in employment arbitration agreements.

In response to the court’s rulings, and in the wake of the MeToo movement, states proposed legislation to limit the use of arbitration agreements in sexual harassment and other employment claims; however, many of the state laws run into legal problems because they conflict with the FAA.

California’s latest attempt — 2019’s AB 51, which prohibits employers from requiring employees to, as a condition of employment, sign arbitration agreements about employment-related disputes under the Labor Code or the Fair Employment and Housing Act — was immediately challenged and put on hold before it took effect in 2020. The legal challenge is ongoing, currently in the Ninth Circuit Court of Appeals.

Congress has also proposed bills limiting mandatory arbitration, but none of them have passed — until now.

The Act

The Act does exactly what the title says. Specifically, it provides that the individual alleging misconduct may elect for pre-dispute arbitration agreements and pre-dispute joint-action waivers (e.g., class/collective action waivers) to be

unenforceable and invalid to the extent the claims relate to sexual harassment or sexual assault disputes, terms that are defined broadly in the law.

As previously stated, this means that, in the employment context, employees bringing claims involving sexual harassment or sexual assault who are subject to an arbitration agreement cannot be compelled to arbitration on those claims — despite an agreement stating otherwise.

Instead, employees can elect whether to pursue these claims in court or proceed in arbitration. In addition to individual claims, the bill prohibits employers from enforcing class action/collective action waivers for claims related to sexual harassment or sexual assault.

In addition, if there is a dispute about the application of the law to a particular case, i.e., a dispute about whether an employee’s allegations qualify as sexual harassment or sexual assault, the law specifies that a judge, not an arbitrator, will make that determination — even if the arbitration agreement states otherwise.

The law doesn’t appear to apply retroactively to existing disputes. The Act states that it applies “with respect to any dispute or claim *that arises or accrues on or after the date of enactment of this Act.*”

This means that the new law applies to sexual harassment or sexual assault allegations that occur after enactment. If employers have existing arbitration agreements in place that require employees to arbitrate those claims, they won’t be able to enforce them unless the employee agrees to arbitration after the dispute arises.

Next Steps

Employers should consult with their legal counsel about the impact this new law will have on their existing agreements and how to proceed with new agreements moving forward.

Ultimately, employers should try to prevent these disputes from happening by maintaining a harassment-free workplace — which is beneficial legally and otherwise. Harassment-free workplaces typically experience higher morale and productivity, and low employee turnover, and avoid both reputational damage and costly litigation.

One of the best ways to maintain such a work environment is through harassment prevention training, which employers with five or more employees are required by law to provide to their employees and supervisors every two years. In addition to being required by law, harassment prevention training is a vital step to maintaining a safe and respectful work environment.

The CalChamber provides training for both [supervisors](#) and [nonsupervisors](#) that exceeds the state’s minimum requirements. Not only does the training educate individuals on how to recognize and address harassment and discrimination, but it also includes best practices for the workplace and raises awareness about workplace culture, respect and productivity. CalChamber Preferred and Executive Members receive 20% off training.

Staff Contact: James Ward

What to Do When Employee Video Records Workplace Accident

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behavior, the rules should be communicated in the employee handbook.

• **Does filming an injured co-worker violate the code of conduct?** A company’s code of conduct may include rules about assisting an injured employee, calling for help, or otherwise acting to mitigate the harm. Standing and recording the incident may violate one or more of these rules.

• **Does failure of the employer to discipline/terminate the employee create a risk for the employer?** Filming an employee under the circumstances in

the question and posting a video on social media may invade protected privacy interests. Co-workers who observed the filming may be offended and feel strongly that the employer should dismiss the employee.

Make sure that your anti-harassment and anti-discrimination policies clearly state that harassment or disrespectful or unprofessional conduct of any type will not be tolerated.

More Information

For a more detailed discussion of these issues, see [Social Media and](#)

[Employee Discipline](#) in the HR Library on [HRCalifornia.com](#). Because of the risk posed by video recordings in the workplace, it is best to consult legal counsel before taking any action.

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](#).

Revenue Windfall Provides Opportunity

More UI Funding, Tax Credits for COVID Sick Leave Mandate



Loren Kaye

California's mighty work-from-home economic engine continues to create massive value for workers, employers and entrepreneurs — and not incidentally for the state

treasury.

The nonpartisan Legislative Analyst recently released an update to its budget forecast, estimating a revenue windfall for the upcoming budget of between \$6 billion and \$23 billion. This is on top of Governor Gavin Newsom's forecast of a \$46 billion surplus for the next budget year, which in turn was on top of a \$75 billion surplus for the current budget.

Benefits of Diverse Economy

Thanks is due to the high-performing technology, financial and logistics sectors, which have delivered at a high level despite the overall economic drag from COVID-19. The California public sector is the fortunate beneficiary of a diverse economy that can sustain growth while thousands of other businesses and millions of workers suffer devastating effects from the pandemic and face a prolonged and painful recovery.

Governor Newsom has made the wise decision to utilize most of the expected windfall in state revenues for one-time or short-term purposes, recognizing that California's worst budget crises were exacerbated by earlier decisions to spend one-time revenues for ongoing programs.

Restoring Tax Incentives

Along those lines, the Governor proposed, and the Legislature approved just last month, restoration of tax incentives (including the research and development tax credit and net operating loss carry forwards) that were suspended in 2020 in the early days of the pandemic recession, as well as adding new tax benefits to aid small businesses harmed by the pandemic, in particular restaurants and entertainment venues.

These one-time tax changes will help small businesses get back on their feet, and ensure California remains hospitable to innovation, which is a necessary attribute for a strong economy.

Guest Commentary

By Loren Kaye

Unemployment Insurance

The Governor also proposed to utilize the one-time windfall of revenues to pay down a small portion of the debt accumulated in the Unemployment Insurance (UI) Fund, the employer-financed safety net for laid-off workers.

Unprecedented layoffs forced by the pandemic and related government shutdown orders resulted in the fund running up a \$20 billion debt. The debt's principal must be repaid from employer taxes, while the state treasury is liable for interest payments.

More than 20 other states have already used federal emergency relief funds to pay down the debt.

The Governor proposed paying down the debt this year by \$1 billion, and by an additional \$2 billion next year. This

initiative is welcome and timely, but the latest news of a revenue windfall gives the Governor and the Legislature the means to do even better.

For example, a cadre of Assembly Democrats has proposed to use \$7.25 billion from the state's surplus to provide one-time support for the UI Fund, which would bring the fund back to solvency faster and at a reduced impact on job-creating employers.

COVID Sick Leave

Likewise, the Governor and Legislature can pay for another of their early actions of 2022 when they approved an extension of the supplemental paid sick leave mandate for COVID-related leaves.

The Governor and many members of the Legislature have recognized the higher costs on employers associated with this mandate and have indicated a willingness to consider tax credits for employers to offset this burden. They should not hesitate to relieve employers of this financial burden, which in turn could encourage more business and job recovery.

Labor shortages, supply chain disruption and inflation create ongoing threats to a sustained economic recovery and the hope to regain normal social and economic relationships. Policy makers must be mindful of these pressures and uncertainties on business owners and operators as the state crafts its final budget and makes policy decisions this year.

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

CalChamber-Sponsored Seminars/Trade Shows

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30th Annual Africa and Diaspora International Conference. Center for African Peace and Conflict Resolution, California State University, Sacramento. April 28–30, Sacramento. (916) 278-6282.

Trade Mission to South America. U.S. Department of Commerce, International Trade Administration. May 15–20. (800) 872-8723.

Annual Export Conference. National Association of District Export Councils. May 19–20, Washington D.C.

Maritime Transportation Data Summit.

Federal Maritime Commission. June 1, Washington D.C. (202) 523-5725.

Concrete Show South East Asia 2022.

MEREBO GmbH Messe International. September 14–17, Jakarta, Indonesia. 49-40-399 99 05-15.

Biden Worker-Centered Trade Policy Aims to Strengthen Labor Rights Worldwide



Workers and labor standards around the world are a central element of the Biden administration's trade policy.

The [2022 Trade Policy Agenda and 2021 Annual Report](#) of the President of the United States on the Trade Agreements Program was submitted to the U.S. Congress on March 1

The Biden administration recognizes that trade can — and should — be a force for good. Done right, and in coordination with other policy disciplines, it can grow the middle class, redress inequality, and level the playing field by promoting fair competition.

The administration remains committed to upholding a fair and open global trading system — one that follows through on U.S. trading partners' longstanding commitment to conduct economic relations with a view to raising standards of living, ensuring full employment, and promoting sustainable development.

The Biden administration's worker-centered trade policy reflects a commitment to use trade agreements, tools, and relationships to empower workers. The administration is working with trading partners to support workers' rights and stop what it describes as "the global race to the bottom," as well as seeking to establish new, high-standard commitments on labor rights under current and new frameworks for trade; and strengthening labor rights benefiting American workers, as well as workers all over the world.

The 312-page report further outlines the administration's goals, summarized below.

Re-Aligning U.S.-China Relations

The Biden administration is taking a new, holistic, and pragmatic approach to the U.S.-China relationship, grounded in the principles of the administration's worker-centered trade policy. This includes the domestic investments enacted through the President's Build Back Better agenda, building supply chain resilience and using all tools, new and old, to combat the harms of China's state-led non-market practices.

There will be a renewed focus on engaging with partners and allies who also suffer from China's unfair trade and economic practices. The Biden administration also will continue to hold China accountable for its use of state-sponsored forced labor, which was recently updated in the Xinjiang Supply Chain business advisory.

Engaging with Key Partners

It is the goal of the Biden administration to use the shared goals of growing the middle class, redressing inequality, and incentivizing climate and environmental action, to increase engagement with partners, allies, and multilateral institutions and organizations to achieve a more resilient and just global economy.

The key areas the Biden administration identifies are listed in order below:

- **The Indo-Pacific Economic Framework** is a central piece of the goal to deepen economic relationships with allies and partners, while also comple-

menting the administration's national security goals in the region. The U.S. Trade Representative (USTR) will lead efforts to craft a trade arrangement with parties that includes provisions on: high-standard labor commitments; environmental sustainability; cooperation in the digital economy; sustainable food systems and science-based agricultural regulation; transparency and good regulatory practices; competition policy; and trade facilitation.

- The Biden Administration supports a reform agenda for the **World Trade Organization** that protects the planet, improves labor standards, and contributes to shared prosperity. The administration supports restoring efficacy to the negotiating arm and promoting transparency, improving compliance with and enforcement of members' WTO commitments, and equipping the organization to effectively address the unfair practices of non-market economics and global market distortions.

- **The Organisation for Economic Cooperation and Development** was the subject of the Biden administration's concern in 2021 as an agreement on digital services taxes and global income tax was reached. The United States and trading partners around the globe have since agreed to roll back existing digital services taxes (DSTs) and other similar measures, as the global tax reform is implemented, and not to adopt any new DSTs. The USTR will continue to monitor and explore all options if other countries move forward with new DSTs during the implementation period.

- **Bilateral Initiatives** is the administration's last tool to use to rebuild relationships with trading partners and

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Report Notes Harm to U.S. Business, Workers from Counterfeiting, Piracy



Commercial-scale copyright piracy and trademark counterfeiting are harming businesses and workers, according to

a report released recently by the Office of the U.S. Trade Representative.

The [2021 Review of Notorious Markets](#)

[for Counterfeiting and Piracy](#) notes that piracy and counterfeiting cause significant financial losses for U.S. rights holders and legitimate businesses. The illicit activities on the notorious markets list (NML) also undermine critical U.S. comparative advantages in innovation and creativity to the detriment of American workers, and pose significant risks to consumer health and safety, the report concludes.

The 2021 NML highlights prominent examples of online and physical markets that reportedly engage in, facilitate, turn a blind eye to, or benefit from substantial piracy or counterfeiting. A goal of the NML is to motivate appropriate action by the private sector and governments to reduce piracy and counterfeiting.

For 2021, the report examines the

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Biden Worker-Centered Trade Policy Aims to Strengthen Labor Rights

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advance a worker-centered trade policy.

- In the **European Union** the administration is focused on reducing trade irritants and continuing the cooperative work of the Trade and Technology Council which began in 2021.

- In **India** in 2022, USTR will look to the Trade Policy Forum to tackle issues including the relationship between trade, labor and the environment.

- The first series of meetings for the **U.S.-Japan Partnership on Trade** are scheduled for early 2022, after a new Section 232 tariff agreement was announced. The initial areas of focus for cooperation include issues such as third country concerns, cooperation in regional and multilateral trade-related fora, addressing labor and environment-related priorities, a supportive digital ecosystem for all, and trade facilitation, among others.

- The Biden administration will hold further conversations with the **Kenya government** to establish a shared vision and partnership for economic resilience and to promote investment, equitable and inclusive development, sustainable trade, and African Continental Free Trade Area (AfCFTA) implementation.

- The U.S. will continue to engage with the **AfCFTA**.

- In 2022, USTR will hold several events in the **United Kingdom** to hear directly from stakeholders on the way forward for U.S.-UK trade ties.

- The U.S. and **Korea** agreed to hold meetings of the KORUS Labor Affairs Council and Environmental Affairs Council in 2022, after the KORUS Joint Committee met last year. The U.S. is committed to working with Korea to address our shared concerns, such as supply chain challenges, sustainable trade, emerging technologies, the digital economy, and trade facilitation.

- The U.S. and **Taiwan** have agreed to form a Labor Working Group under the Trade and Investment Framework Agreement (TIFA). The U.S. will also work with Taiwan to address outstanding trade concerns, including market access barriers facing U.S. beef and pork producers, and concerns involving copyright legislation, digital piracy, financial services, investment, and regulatory transparency.

- In 2022, the U.S. will continue working with **Singapore** to address issues on the environment, labor, digital trade, supply chains, and intellectual property, among others.

Promoting Confidence in Trade Policy Through Enforcement

The Biden administration is using all the tools at its disposal to combat unfair economic practices and shape a global trading system that enforces labor and environmental standards, protects intellectual property rights, and ensures that regulations are science-based and predictable.

Originally crafted decades ago, current trade tools are inadequate to address challenges from the modern economy. In 2022, the administration will work with Congress to fully evaluate existing trade tools, identifying ways to strengthen them, and creating new tools as necessary.

The administration has already taken action to utilize trade policy as a tool to defend U.S. economic interests in the U.S.-Mexico-Canada Agreement (USMCA). The Notorious Markets List ([see related story](#)) examined widespread labor abuses and the adverse impact of counterfeiting on workers involved with the manufacture of counterfeit goods.

In addition, the administration will continue to administer its preference programs in line with its worker-centered agenda and in accordance to the statutory, eligibility criteria; which resulted in the termination of several countries from the African Growth and Opportunity Act (AGOA) trade preference program.

The administration also has identified currency manipulators, which included the continued monitoring of Vietnam's currency policies and practices.

Promoting Equitable, Inclusive, Durable Trade Policy and Expanding Stakeholder Engagement

In strengthening the nation's competitiveness and expanding the benefits of trade, racial and gender equity must be core elements of U.S. trade and investment policy, according to the Biden administration. The administration states that an intersectional, interconnected framework is particularly important in emerging sectors where the United States has the potential to be competitive and create well-paying U.S.-based jobs through trade.

In addition, all U.S. trade policy tools, engagements, and initiatives will consider and reflect the core principles outlined in the executive orders on racial

and gender equity, worker empowerment, and advancing LGBTQI+ rights, among others.

The Biden administration also outlines its commitment to engaging with a wide variety of diverse and underserved communities as trade policy is developed and implemented. The administration will continue to consult the 28 advisory committees that USTR manages to hear input from a variety of groups and organizations, state and local governments, industries, and academia.

In 2022, the Biden administration will continue to actively engage with Congress and work with members to address their and their constituents' trade policy priorities.

Report on Trade Agreements

The report then goes on to give details on the annual report of the President on U.S. trade agreements with: [Australia](#), [Bahrain](#), [Central America and the Dominican Republic](#), [Chile](#), [Colombia](#), [Israel](#), [Jordan](#), [Korea](#), [Mexico](#) and [Canada](#), [Morocco](#), [Oman](#), [Panama](#), [Singapore](#), and concludes with details on trade enforcement actions.

CalChamber Position

The California Chamber of Commerce, in keeping with longstanding policy, supports 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.

Specifically, the CalChamber asks that:

- Trade be a priority.
- The revamp of the WTO address the functioning of the Appellate Body, and support efforts to ensure our trading partners adhere to fair and transparent trade practices while being held accountable when they violate international rules.
- The focus continue on lowering tariffs and nontariff barriers to support the expansion of American exports.
- Trade Promotion Authority is renewed to enable the United States to easily pursue new trade deals.
- Bilateral, regional, and multilateral trade agreements — which are critical to consumers, workers, businesses, farmers and ranchers — continue to be advanced.

Staff Contact: [Susanne T. Stirling](#)

Blue Diamond Almond Growers Sustain Family Farms, Feed Consumers Worldwide



This article is part of a series of profiles of CalChamber member companies that are contributing to the state's economic strength and ability to stay competitive in a global economy. Company leaders look both to their history and what's ahead. Visit www.calchamber.com/californiaworks to learn more about this series and read future profiles.

Blue Diamond Growers is a grower-owned cooperative that provides financial returns and stability to almond grower members while expanding markets and opening opportunities for future generations. The cooperative ships products and ingredients to all 50 states and more than 100 countries around the world.

Sustaining Family Farms for More Than 100 Years

California pioneers found an ideal Mediterranean climate in the soils of the Central Valley and planted their first almonds in the 1850s, giving birth to an industry.

Nearly half a century later, in 1910, 230 California almond growers formed the California Almond Growers Exchange, leading development of California's almond industry from a minor domestic specialty crop to the world leader in almond production and marketing.

The Exchange would go on to adopt the blue diamond as the symbol on its label, representing high quality and distinguishing it from Spanish and Italian imports. In 1980, the Exchange officially became known as Blue Diamond Growers.

Blue Diamond Growers is based in Sacramento, but its grower farms span from Redding down to Bakersfield. Today, the average Blue Diamond Grower family farm is less than 100 acres, demonstrating the benefits for member farms of all sizes.

With approximately 3,000 grower owners, Blue Diamond Growers represents more than half of all California almond growers.

Rising to the Challenge

While California businesses, large and small, experienced critical disruptions in labor supply and operations due to

COVID-19 shutdowns and restrictions, Blue Diamond's focus on the health and safety of its almost 2,000 team members allowed its facilities to stay open and production lines to keep running through multiple COVID-19 case surges around the country.



This proved critical to the cooperative's ability to handle the unprecedented wave of almonds that arrived last year. The fall 2020 California almond harvest yielded a record-sized 3.1-billion-pound crop. Blue Diamond's strategic forecasting over the last decade positioned the cooperative to establish the infrastructure, state-of-the-art equipment, and talent needed to receive, process, market and ship a crop 20% larger than any it had seen before.

Both growers and employees rose to the challenge of getting quality almonds from California's Central Valley trees into the hands of consumers around the world.

The Blue Diamond team found innovative ways to engage with customers, new outlets for increasing supply, and opportunities for developing unique customer-focused solutions to drive sales and increase returns.

Overcoming supply chain disruptions,

port congestion, and cost inflation in nearly every area of the business, Blue Diamond broke commodity shipment records with an astounding 53% jump in volume compared to the previous year, delivering products to customers in 90 countries through 104 ports worldwide.

With a goal of minimizing the potential gap between harvest and fulfillment, Blue Diamond developed a booking roadmap to match supply scenarios and navigate global logistics concerns to handle the additional volume.

In Asia, Blue Diamond saw 81% sales growth and Latin America markets posted strong growth of 38%, thanks in large part to the introduction of customized consumer-focused Almond Breeze® products such as Almond Cooking Cream.

Sustainability Efforts

Water, Irrigation

Beginning with the 2020 crop, Blue Diamond's Sustainability Incentive Program has provided financial incentives to member-growers who participate in the California Almond Sustainability Program (CASP) set up by the Almond Board of California. The program educates and assesses growers on a wide array of best practices and additional water conservation opportunities.

Since the introduction of this incentive program, tens of thousands of acres have been added to the CASP program.

The 2021 drought drew attention to the ongoing impacts of weather, infrastructure challenges, and regulations on California agriculture water resources. Almonds grow on 20% of California's irrigated farmland but use only 13% of the water California devotes to growing food — less than a proportionate share.

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Blue Diamond Growers Sustain Family Farms, Feed Global Market

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Over the last 20 years, California almond growers have reduced the water it takes to grow a pound of almonds by 33%. Thanks to the sustainability program, Blue Diamond members use efficient, low-volume drip or micro-sprinkler irrigation systems on more than 85% of their orchards. This means that Blue Diamond growers are nearly twice as likely to have high-efficiency irrigation systems than California farms overall.

Bees

The cooperative also encourages growers to take part in the Seeds for Bees® program, which urges the use of cover crops to increase the density, diversity, and duration of bee forage in California orchards, farms, and vineyards, while improving soil health. The seed mixes available through Seeds for Bees® are designed to bloom at critical times of the year when natural forage is scarce and native bees are active. Since 2018, over 6,100 acres on more than 110 Blue Diamond member farms have participated in the program.

Commitment to Community

The Blue Diamond Growers Foundation, a 501(c)(3) nonprofit organization created in 2011 and funded by donations from community and other sources, uses its Scholarship Program to invest in



Blue Diamond Growers

President and CEO: **Mark Jansen**

Net Fiscal Sales: **\$1.6 Billion**

Employee count: **1,900**

Grower-owners: **Approximately 3,000**

Company headquarters: **1802 C Street, Sacramento, CA 95811**

Company business segments:

- **Agriculture**
- **Consumer Staples**
- **Marketing**

future agriculture leaders in California's Central Valley and the dependents of Blue Diamond employees who have demonstrated excellent academic performance and are pursuing a four-year college degree.

This year, the foundation awarded 24 high school graduates with a Blue Diamond Growers Foundation Scholarship. Over the last 10 years, the foundation has supported more than 150 students.

In 2021, Blue Diamond invested nearly \$250,000 in its mission to make a difference through its corporate giving strategy. This included \$115,000 awarded in community grants to 11 worthy organizations with goals centered around the Sacramento, Salida, and Turlock communities. The

grants funded activities related to either community health and wellness or agricultural education for children and adults.

And to help nurture the next generation of farmers and agricultural leaders, Blue Diamond promoted fundraising efforts for, and gave \$25,000 in matching funds to, the California Future Farmers of America as part of the co-op's long-term partnership with the organization.

Additionally, to support American Red Cross disaster relief efforts, Blue Diamond employees and grower-owners, along with a \$10,000 match from Blue Diamond, donated \$26,500 to provide relief for wildfires that burned several million acres in California.

California Almonds: One Example of International Trade's Important Role in California's Economy



As a major component of California's fifth largest export category, agricultural

products, California almonds have been a mainstay of the state's economic vitality for decades.

The \$175.12 billion worth of goods California exported to the world in 2021 accounted for almost 10% of total U.S. exports, making it a top exporting state in the nation. California's top five exports, in order, were made up of computer and electronic products, non-electrical machinery, chemicals, transportation, and agricultural products.

Leading Export

Agricultural product exports totaled \$14.17 billion in 2021, making up 8% of total exports. Of that, \$10.56 billion was attributed to fruits and tree nuts. California almonds fall into this category, and in 2019 were the single largest agricultural export from California totaling \$4.9 billion. California is the sole producer of almonds in the nation, but, more impressively, California almonds make up 77% of total global production of the crop. ([California Department of Food and Agriculture](#))

California is the nation's largest agricultural producer and exporter. In 2019, California exported approximately 28% of its agricultural production by volume, which amounted to \$21.71 billion that year. Of the top 10 foreign destinations for

California agricultural products, almonds were in the top three products for each. The largest export markets for California almonds are the European Union, India, China, Canada, Japan, and the United Arab Emirates (UAE).

Top Trading Partners

It is no coincidence that these top markets for California's almonds also make up California's top trading partners. California's top export partners are Mexico, Canada, China, Japan, and South Korea. India comes in as California's ninth largest export destination, and, if the European Union is considered as a whole in this ranking, the European Union would top Mexico as California's No. 1 export destination. The UAE is also an important

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Report Notes Harm to U.S. Business, Workers from Counterfeiting, Piracy

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adverse impact of counterfeiting on workers involved with the manufacture of counterfeit goods. The illicit nature of counterfeiting requires coordination between relevant actors, including intellectual property (IP) rights holders, labor organizations, workers' rights associations, and government enforcement agencies in order to effectively

uncover and combat labor violations in counterfeiting operations around the globe.

The NML also includes sections on positive developments, online markets, and physical markets. The positive developments section identifies actions that governments and private entities have taken this past year to reduce piracy and counterfeiting. The online markets

and physical markets sections highlight markets that require further actions.

According to the NML list, 42 online markets and 35 physical markets are reported to engage in or facilitate substantial trademark or copyright piracy.

Full report and listing of the notorious markets is available on the [USTR website](#).

Staff Contact: Susanne T. Stirling

California Almonds: One Example of International Trade's Important Role in California's Economy

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destination for California exports, purchasing \$1.56 billion in goods from California, with agricultural products making up 27% of the total.

According to a 2020 [U.S. Business Roundtable](#) report, California has nearly 5 million jobs that relied on international trade in 2018 (latest data available). That translates to almost 1 in 4 jobs in the state being supported by exports and imports. California exports are tied directly to more than 1 million high-paying jobs for Californians. Trade with California's top trading partners each contribute thousands of jobs in the state.

Foreign-Owned Firms

Foreign-owned enterprises also play an important role in the state's economy. In 2020, the 18,451 foreign-owned firms operating in California employed more than 700,000 residents, contributing an estimated \$64 billion in wages to the state's economy that year.

Japan is the leading source nation of foreign direct investment (FDI) into California, employing more than 115,000 residents, contributing \$10.6 billion in wages. The United Kingdom is the second largest source of FDI, employing more than 100,000 residents and contributing \$8.8 billion in wages. France, Germany and Switzerland round out the top five sources of FDI into California,

each contributing more than \$5 billion in wages. ([World Trade Center Los Angeles](#))

As California is the fifth largest economy in the world, with a gross state product of more than \$3.1 trillion in 2020, trading \$645.87 billion worth of goods with 226 foreign economies, international trade and investment are an important part of the state's economic engine that broadly benefits businesses, communities, consumers, and state and local governments.

California's economy is diverse, and the state's prosperity is tied to exports and imports of goods and services by California-based companies, to exports and imports through California's transportation gateways, and to movement of human and capital resources.



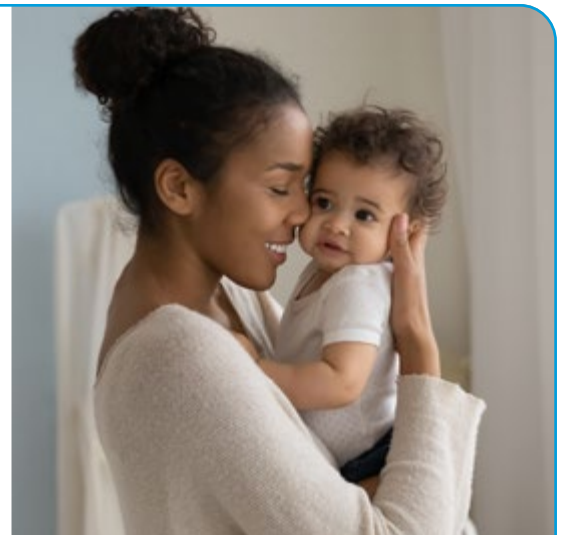
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Managing Leave Requests from Pregnant Employees and New Parents

Do you have five or more employees? California employees who are either pregnant or new parents are entitled to protected leaves of absence or accommodation under several laws, including pregnancy disability leave and baby bonding leave.

CalChamber's employment law experts will explain the various leaves, how they interact and when each law applies.

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