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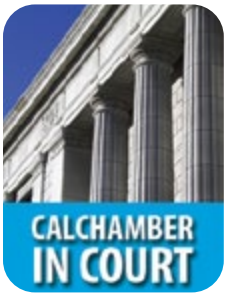
CalChamber

ALERT

U.S. High Court Ruling Supports Arbitration

Allows Arbitration of Individual PAGA Claims



In a win for California employers, the U.S. Supreme Court ruled this week that individual claims under the Private Attorneys General Act (PAGA) can be compelled to arbitration if the employee signed a valid arbitration agreement to that effect.

Specifically, the Supreme Court ruled on June 15 in *Viking River Cruises, Inc. v. Moriana* that the Federal Arbitration Act (FAA) preempts California Supreme Court case law that precluded division of PAGA actions into individual and non-individual claims through an arbitration agreement.

The ruling means that an employee who entered into a valid arbitration agreement, under which the employee agreed to forgo a PAGA action in favor of arbitration, may be compelled to arbitrate their individual PAGA claims instead of taking their PAGA claims straight to court as they have done over the past several years.

The California Chamber of Commerce joined the U.S. Chamber of Commerce in filing a friend-of-the-court brief in the case.

The CalChamber released the following statement the day the court ruled:

"We are pleased but not surprised by the Supreme Court's 8-1 ruling in this case. The Court has consistently recognized that the Federal Arbitration Act (FAA) preempts California legislation or case law for claims that are subject to an arbitration agreement. As the Court pointed out, California's PAGA law unduly circumscribes the freedom of parties to determine the issues subject to arbitration and the rules by which they will arbitrate. Businesses, workers and consumers will benefit from this ruling going forward."

PAGA Claims

The PAGA allows aggrieved employees to bring representative actions on behalf of the state to recover civil penalties specified in the Labor Code. Under the PAGA, individuals can file those claims for themselves and on behalf of other employees, creating a representative action that greatly expands the potential impact and penalties.

PAGA claims have become increasingly popular in California because it's easier to bring PAGA representative actions than traditional class actions; plaintiffs could bring claims for alleged violations they did not personally experience; penalties are harsh; and (until the *Viking* decision) California law didn't allow PAGA waivers via arbitration agreements per a 2014 California Supreme Court decision (*Iskanian v. CLS Transportation Los Angeles LLC*, 59 Cal.4th 348 (2014)).

Background

Angie Moriana filed a PAGA action against her former employer, Viking River Cruises, alleging a California Labor Code violation. She also asserted a wide variety of additional violations on behalf of other Viking employees.

Moriana's employment contract had a mandatory arbitration agreement that included a class action waiver saying that

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The Workplace

Considerations for Returning to In-Person Work Setups

In Episode 152 of The Workplace podcast, CalChamber employment law expert Matthew Roberts and CalChamber HR Adviser Ellen Savage discuss hybrid and in-person work environments, and use real workplace examples to share best practices for employers.

Many surveys show that the hybrid work model is currently the work arrangement that employees most prefer, Roberts says in kicking off the podcast. Employees want to be in the office some days and at home other days. While this gives employees a lot of flexibility, there are always some job responsibilities that just get done better at the worksite.

No matter what work model employers choose, there are certain considerations that employers must bear in mind, he says.

Employees Who Relocate Out-of-State

When considering which work model to adopt, employers should determine if there are any employees who have moved out of the area, Roberts says.

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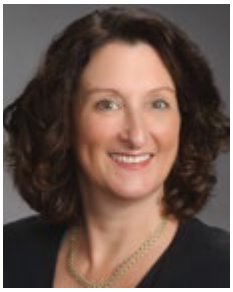
Medical Documentation Requirements for Disability Leaves



Ellen S. Savage
HR Adviser

If an employee requests a leave of absence as an accommodation under the Americans with Disabilities Act, can I require medical documentation from their health care provider? If so, how much time does the employee have to provide me with the documentation?

In most instances you may require medical documentation to substantiate the need for a leave of absence as an accommodation under the Americans with Disabilities Act (ADA), as well as California's related law, the Fair Employment and Housing Act (FEHA). Unfortunately, neither law specifies a time limit for the employee to provide the medical documentation.

Reasonable Documentation

When is an employer permitted to require medical documentation under the ADA and FEHA?

When the disability and/or the need for accommodation is not obvious, the employer may ask the individual for reasonable documentation about their disability and functional limitations. Non-obvious disabilities may include many common conditions such as migraines, fibromyalgia, depression and sleep disorders.

Reasonable documentation means that the employer may require only the documentation necessary to establish that a person has a disability which necessitates a reasonable accommodation.

For example, if an employee asks to change to a shift that starts later in the day due to a sleep disorder, the employer may request documentation from the employee's health care provider verifying that the employee has a disability (but not the diagnosis); a description of how the employee's limitations impair their ability to perform the duties of the job and an indication of whether these limitations are temporary or permanent; and a recommendation of specific reasonable accommodation(s).

An employee whose disability is not obvious, and who fails to provide requested medical documentation, is not entitled to reasonable accommodation.

Time Limit for Providing Medical Documentation

Neither the ADA nor FEHA have a specific time limit for the employee to provide medical documentation to support a request for reasonable accommodation. This often leaves employers wondering how long they must wait, and whether they must begin the requested accommodation before receiving documentation. There are no easy answers to these questions.

Many employers choose to apply the timelines from the family leave laws, which require that an employer allow at least 15 days to return a certification, and then provide extra time if the employee is unable to obtain it for reasons beyond their control.

Some examples might be when an employee needs to see a specialist with whom it is difficult to get an appointment, or when an employee's physician is out of the office on vacation.

The federal Equal Employment Opportunity Commission (EEOC — which enforces the ADA) notes in their

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Labor and Employment

HR Boot Camp Virtual Seminar. CalChamber. June 23–24, August 11–12, September 8–9, Online. (800) 331-8877.

Leaves of Absence: Making Sense of It All Virtual Seminar. CalChamber. August 25–26, September 29–30, Online. (800) 331-8877.

Virtual HR Symposium. CalChamber. November 3–4. (800) 331-8877.

International Trade

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

Creative Expo Taiwan. Taipei Economic and Cultural Office in San Francisco. August 10–14. Kaohsiung, Taiwan. (415) 362-7680.

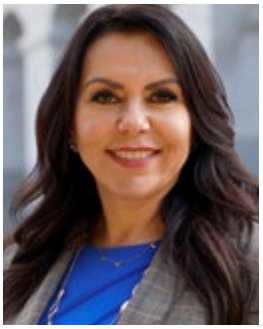
ANDICOM 2022. AmCham Colombia. August 31–September 2, Cartagena, Colombia. (601) 587-7828.

Concrete Show South East Asia 2022. MEREBO GmbH Messe International. September 14–17, Jakarta, Indonesia. 49-40-399 99 05-15.

Arabian Adventures with the Los Altos Chamber of Commerce. October 4–11, Dubai and Abu Dhabi. (866) 978-2997.

U.S. EXIM Bank 2022 Annual Conference. Export-Import Bank of the United States. December 13, Washington D.C. (800) 565-3946.

Record Budget Surplus Calls for Tripling Down on UI Fund Offset


Blanca Rubio


Jennifer Barrera

Guest Commentary By Blanca Rubio and Jennifer Barrera

Californians have traveled a bumpy road to post-pandemic recovery, with healthy employment and wage growth on the one hand, but soaring inflation and cost-of-living increases on the other.

Governor Gavin Newsom recognizes the squeeze of inflation that has been placed on Californians. To address this, he is proposing $18 billion in tax relief and subsidies to offset some of that pain on the working class. The Governor and the Legislature should also extend relief to employers by paying down the state's unemployment insurance debt, which will mitigate future tax increases.

California's unemployment insurance (UI) program is funded exclusively by employers via state and federal payroll taxes on wages. Workers pay no UI payroll taxes. The system is designed to replenish the UI fund during times of economic growth in preparation for high unemployment during recessions. Payroll taxes rise and fall, depending on the condition of the UI safety net.

Unless the Governor and the Legislature act this year, employers will suffer from unemployment insurance payroll taxes. These taxes will increase each year for up to 20 years, more than doubling by 2035.

The reason? The massive unemployment shock suffered in 2020 led to economic shutdowns in the wake of the pandemic. Record unemployment rates drained the fund in place to pay for compensation. This meant the state needed to eventually borrow $20 billion from the U.S. Treasury to ensure a safety net for unemployed Californians.

But not even federal money is free. That $20 billion debt must be repaid by employers through a $21 per worker tax increase each year, up to a maximum of $420 per employee each year. For a small business with 25 employees, that would ultimately amount to a $10,000 annual tax increase!

But wait, there's more. Since this is a loan from the federal treasury, the state General Fund must pay the interest, which is estimated at more than $500 million next year. As long as any debt is outstanding, there will be a continuing state taxpayer expense.

Governor Newsom recognized this risk to employers and taxpayers when he introduced his budget in January. When the budget surplus was projected to be $20 billion, he proposed the state transfer $3 billion to the UI fund to partially offset the deficit. This represented a great first step — but would have rolled back only a single year of the estimated 20 years of tax increases.

Today — four months later — the facts on the ground have changed. Inflation is taking a bite out of everyone's pocketbook. For businesses, inflation affects the bottom line — increasing every operating expense. Conversely, the projected state budget surplus has more than doubled since January, marking the third straight year the state has enjoyed record revenue.

Given the economic threats to small businesses, and more than ample state revenues, we suggest the Governor and Legislature triple-down on the original budget proposal with a billion-dollar payroll tax credit to offset the first two years of the UI tax increase, and a $9 billion transfer to the UI fund to cushion the blow of future tax increases and reduce part of the state's interest payment obligation.

An added benefit: according to the nonpartisan Legislative Analyst, this transfer to the UI fund will not count against the state's spending limit since it can qualify as emergency spending in response to the pandemic.

Under this proposal, employers will still be liable for more than half of the deficit — which was not caused by a business cycle, but by a pandemic-caused economic shutdown. Employers would be left to pay off a debt comparable to the aftermath of the Great Recession.

Speaking of recessions, the risk of an economic downturn grows as the Federal Reserve fights inflation. It is vital that the UI fund reaches solvency before the next recession and the inevitable higher unemployment.

California is enjoying an unprecedented and unexpected streak of budget surpluses — created in large part from the strong economic performance by key California economic sectors and entrepreneurs. The Governor and Legislature should jump at this fiscally responsible use of one-time funds to mitigate a reasonable share of the UI tax increase — especially in the face of high inflation and lingering effects from the pandemic shutdown.

Jennifer Barrera is president and CEO of the California Chamber of Commerce. Blanca Rubio is a member of the California Assembly, serving the 48th District.

Considerations, Best Practices for Returning to In-Person Work Setups

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"We've gotten…shocking calls from members where they all of a sudden learn that their employee that used to report to this worksite 100% of the time before the pandemic, now all of a sudden doesn't live in the area or doesn't live in the state or even has left the country altogether," he tells podcast listeners.

In this situation, employers will often ask about tax laws, but what they often don't realize is that there's more to it than just taxes, Savage points out. There are many labor law issues that arise because the employer is now a multistate or even a multinational employer and they must now pay attention to the laws in the jurisdiction where the employee is working.

Ultimately the situation becomes a practical reality for employers, Roberts says. Employers should think about what they want a work-life balance to look like going forward and how hard they want to bring the hammer down on employees.

Employers don't want to lose valuable talent, but what happens when you need that talent in the office and they're not there? And what can an employer do if workers are asked to come back into the office, but an employee simply doesn't want to?

If the situation is simply that the employee prefers not to come back, then, legally, the employer can require the employee to report to work, Savage says.

Moreover, even if an employer offered a hybrid work arrangement during the COVID-19 pandemic, the employer is not required to offer that option indefinitely. The arrangement was born out of necessity, Roberts says, but that doesn't mean it will work operationally for the employer at this time.

Family Responsibilities

What if an employee tells an employer, "I'm happy to return back to the office, but I have ongoing child care issues, I'm not going to be able to come in." What, Roberts asks Savage, is an employer to do there?

Working parents are in a difficult situation, especially since getting child care is becoming more and more difficult, Savage replies. Still, an employer can legally require the employee to return to the office.

"You want to keep good employees, you want to be as flexible as you can, but allowing people to work from home because they have child care issues opens the door to the next employee who says, 'Oh, I don't want to leave my pandemic puppy at home alone, or my elderly parents need me,'" Savage says. "You have the right to have those people come back to work."

Immunocompromised Employees

If an employee comes forward and says they are immunocompromised or live with someone who is immunocompromised and cannot come back into the office, what do employers need to do?

Savage explains that immunocompromised employees will need to be accommodated because they are protected under disability accommodation laws (Americans with Disabilities Act and California's Fair Employment and Housing Act).

The Equal Employment Opportunity Commission (EEOC) released guidance for employers that stated that if an immunocompromised person was able to do their job, and do it fine, at home during the pandemic when the employer's office was closed, then that can be used as evidence that there's no reason that it is an undue hardship for the employee to still work at home.

Employers are not legally obligated to accommodate an employee who lives with someone who is immunocompromised.

Travel Time, Work Expenses

Many compensation-related issues arise in hybrid work arrangements, such as paying for travel time, paying for home energy bills and even paying for an employee's toilet paper.

Right now the Labor Commissioner has not released any guidance about how remote work or hybrid work affects wage and hour laws, Savage says.

One distinction that employers should think about is the difference between requiring employees to work remotely and an employee who has an office but prefers to work from home. If it's the latter situation, then the employer likely does not have to pay commute time, she says.

Roberts says there's been an explosion of litigation and lawsuits regarding expense reimbursement. Some workers are not just asking for expense reimbursement of ordinary office supplies or cell phone usage — some are asking employers to pay the air conditioning bill and even pay for the toilet paper used at home.

Choosing what expenses to reimburse will likely depend on whether working remotely is optional or required. Savage explains that Labor Code Section 2802 states that the term "necessary expenditures" means all reasonable costs.

If an employee is working remotely because they don't have an office they can work in, then paying for a desk, internet or other supplies is necessary.

If, however, the employee is working from home because it's more convenient for them, then the employer probably doesn't have to pay those expenses.

One takeaway of this issue is that the statute is being interpreted very broadly. So do the claims that toilet paper and air conditioning are business expenses actually have merit? The answer is "possibly," Roberts says.

If an employer is presented with something like this and it's not something they want to reimburse, then they should really pick up the phone and call their friendly neighborhood employment law counsel, Roberts urges.

Dress Code

Many employees have been enjoying not having to abide by a dress code when working remotely. Can employers keep a dress code in place when bringing employees back to the office?

Absolutely, Savage says. "Employers absolutely have the right to continue to have whatever dress code they want. Given the fact that the world has become something of a more casual place due to the time working from home, employers might want to consider whether they do want to relax their dress code to keep workers happy."

California Works

VSP Vision: On a Mission to Empower Human Potential Through Sight

This article is a 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. Visit California Works to learn more about this series and read past and future profiles.

For nearly 70 years, VSP Vision™ has been the largest and only national not-for-profit vision benefits company. Founded by optometrists in California in 1955, the goal was simple yet ambitious: bring access to affordable, high-quality eye care to as many people as possible.

Six-plus decades later, the leading health-focused vision company serves more than 85 million members — nearly 1 in 4 people living in the United States — through a network of 41,000 doctors.

As the health care and optometric industries have changed over the years, VSP Vision has grown purposefully to meet the evolving needs of the clients and members it serves. What started as a vision insurance company has since grown to include multiple lines of business, including eyewear, retail, ophthalmic lens products and optical manufacturing, practice management software and electronic health records.

To better reflect its evolution, this year the company rebranded from VSP Global to VSP Vision, marking a new era and reaffirming its commitment to care, passion to empower, and promise to reinvest in its stakeholders.

Preserving Access to Eye Care Amid COVID-19

As the early days of the COVID-19 pandemic took hold, the company focused on ensuring its members had access to eye care.

"The reality is medical eye care needs don't stop just because the pandemic is going on," said Kate Renwick-Espinosa, president of VSP Vision Care and a member of the California Chamber of Commerce Board of Directors. "We knew we could make a difference by helping our members stay connected to their VSP network doctor and not have to go to emergency rooms, which were under tremendous strain."

In response, the company expanded access to essential medical eye care benefits for its insured members and their covered dependents. They could now visit their VSP network doctor in-person or remotely to get treated for a variety of conditions, including eye trauma, conjunctivitis, and sudden changes to vision.

In addition, VSP Vision harnessed its manufacturing and procurement resources to provide personal protective equipment (PPE) to network doctors and even created face shields that were distributed across the country. It also established a grant program for doctors to provide cash payments up to $10,000 to help offset pandemic-related financial hardships

VSP Eyes of Hope: Bringing Eye Care and Eyewear to Those in Need

One of the clearest examples of the company fulfilling its purpose of "empowering human potential through sight" is VSP Eyes of Hope. Income, distance, and disaster pose serious barriers to eye care and eyewear for many, but VSP Eyes of Hope removes those barriers by providing the care at no-cost.

More than 3.6 million people in need have gained access to vision care through the program, in collaboration with 8,500 VSP network doctors who participate annually.

As VSP Eyes of Hope celebrates its 25th anniversary this year, the company is building on its promise through an investment of $1 million in two key initiatives: enhancing its eye care and eyewear gift certificates and reinvesting in its mobile clinics.

Watch a video about how the VSP Eyes of Hope clinic helps San Diego students see.

Gift Certificates Enhanced

Each year, 50,000 adults and children receive access to free vision care through VSP Eyes of Hope gift certificates, which

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VSP Vision: On a Mission to Empower Human Potential Through Sight

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reimburse VSP network doctors for the services they provide.

In response to a growing need for vision care among disadvantaged communities, exacerbated by the pandemic, the frame coverage for the gift certificates is being expanded to make it easier for adults and children to access high-quality care and eyewear from a local VSP doctor.

Mobile Clinics Back on the Road

Since first responding to the needs of the New Orleans community in the aftermath of Hurricane Katrina, the VSP Eyes of Hope mobile clinics have remained foundational to removing barriers to care and helping people experience all that is possible through clear vision. Partnering with local charitable organizations and eye doctors, the mobile clinic staff deliver no-cost eye exams and prescription glasses to communities in need.

The mobile clinics are fully equipped with an eye exam room, portable eye exam lanes, an eyewear dispensary stocked with frames and a finishing lab to produce prescription eyewear for many patients the same day they are provided care.

Recently, the VSP Eyes of Hope mobile clinics partnered with the San Diego County Optometric Society at Monarch School, which provides education and social services for K-12 students experiencing homelessness in San Diego, CA.

"By continuing to invest in these key initiatives, we remain focused on supporting better health equity across the country by increasing access to eye care and eyewear in places where it's needed most," said Michael Guyette, president and CEO of VSP Vision.

VSP Vision

President and CEO: **Michael Guyette**

Net Fiscal Sales: **Revenue of $7.6B (2021)**

Employee Count: **13,000 worldwide**

Company headquarters: **Rancho Cordova, CA**

Company business segments:
- **Eye Care Services**
- **Eyewear Solutions**
- **Practice Solutions**

Medical Documentation Requirements for Disability Leaves

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guidance documents that employers may need to be more flexible about documentation due to delays caused by the current COVID pandemic.

Employers should consider creating a disability accommodation policy that lays out the steps and expected timeframes for the interactive process required under the ADA and FEHA.

Although there is no formal paperwork required under these laws, employers may choose to create forms to request accommodation as well as medical documentation forms, and would be wise to include the expected timeframes for returning them at the top of the forms.

Keep in mind that the employer has more responsibility for participating in the interactive process to determine reasonable accommodations than does the employee, so a prudent employer should make and document their attempts to seek documentation even after the deadline.

Starting Accommodation Before Receiving Medical Documentation

The ADA and FEHA do not provide specific guidance about whether an employer is obligated to begin an accommodation, such as providing a leave of absence, before receiving medical certification.

The EEOC provides this guidance: "An employer should respond expeditiously to a request for reasonable accommodation… Similarly, the employer should act promptly to provide the reasonable accommodation. Unnecessary delays can result in a violation of the ADA." *(EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act).*

California's regulations implementing FEHA, however, say: "If the medical documentation provided to date does not support any reasonable accommodation, no reasonable accommodation need be required." (California Code of Regulations, Title 2, Section 11069(d)(6)).

Employers should therefore consider granting a leave as an accommodation even before receiving medical documentation, absent undue hardship, conditioned on receiving documentation in a timely fashion.

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.

Virtual Summit Reviews Initial Findings from Maritime Data Initiative Meetings

Initial findings from five months of weekly virtual meetings with maritime and intermodal stakeholders were presented on June 1 at a virtual summit of the Federal Maritime Commission (FMC).

The Maritime Transportation Data Initiative (MTDI) Summit had been planned as an in-person gathering, but the surge in COVID-19 rates in Washington D.C. prompted the switch to a virtual format.

Commissioner Carl Bentzel, who led the data initiative, opened the plenary session by discussing the overwhelming need for transparency of data related to the movement of goods within the supply chain.

Bentzel referred to the FMC's annual report, which found that overseas containerized cargo from pre-pandemic to the late fall of 2021 averaged a sustained growth of more than 20%.

In 2020, however, the world container fleet lost as much as 13% of its total carrying capacity, while the United States likely lost even greater capacity due to the higher levels of congestion.

He noted that this combination of increased trade and decreased capacity due to congestion is a reason the nation is suffering from inflation.

FMC Mission

Commissioner Bentzel reviewed the FMC's mission to ensure an economically efficient system of international ocean shipping liner services, while looking back at his interactions and visits to the nation's ports over the last several months during the initiative.

"The adage that once you've seen one port, you've seen one port is true," Bentzel said, noting that the operations of each port within the United States are vastly different. During his port visits, Bentzel said, he was struck continually by the immensity and complexity of port operations and the need for "closer cooperation between multiple actors."

In summarizing the need for change in the system, Commissioner Bentzel once again cited the example of "why can I track my pizza every step of the way from order to delivery, but not my cargo container that is worth millions of dollars."

Remarks from Other Commissioners

Commissioners Rebecca Dye and Max Vekich also made brief remarks during the plenary session. Commissioner Dye said she understands that change in complex systems is challenging, especially when human behavior is involved.

Commissioner Vekich added that he hopes the MTDI is able to create solutions without unintended consequences and collateral damage, and that more communication between stakeholders is necessary.

Breakout Sessions

During the Maritime Data Initiative meetings, held from December 2021 to April 2022, every stakeholder answered four questions:

- What are the key data elements that are integral to your operations?
- What data do you not currently have access to that would improve your efficiency and performance?
- How do you get the data you need from other parts of the supply chain? Does this create inefficiencies?
- How do you provide data to your customers?

Summit breakout sessions reviewed these questions again and session facilitators presented the conclusions of each session at the closing meeting of the summit.

Better Data Definitions

The first breakout session facilitator reported back to the group on the need for better data definitions, specifically when it comes to the definition of container availability. The data on the status of a container is often plagued with inaccuracies between the physical release of the container and its readiness location in a terminal. This creates inefficiencies within the system.

The group also noted that harmonized system (HS) codes can be complicated to apply to goods as they can be both broad and narrow at the same time and making the best use of HS codes requires the services of an expert who is familiar with the system.

Data Transmission/Access

The second breakout session highlighted the importance of all parties being on the same page in regards to definitions of the data, with standardization and interoperability being paramount when it comes to data transmission.

Multiple parties often can be involved in the handling and exchanging of data which can create redundancies, making it essential to ensure the right entity is updating data as it is transferred within the supply chain.

Data Quality/Classification

The lack of data and data fluidity, as well as issues with data accuracy, were discussed at the third breakout session. Stakeholders are eager to see good accurate data become available to answer a host of questions on a container's cargo: what commodities are in a container; who owns it; by what method is it traveling; is it going a short or a long distance; and are all the products in a container going to one destination or multiple destinations.

The answers to all these questions are important to create efficiency.

Information Sharing

Participants in the fourth breakout session noted the need for information sharing within the supply chain and the problems that could arise with the sharing.

Some entities within the supply chain don't want to share information for confidentiality or security reasons. For example, if there is a container full of play stations sitting at the port, that is not information the entities would want to be shared publicly.

Creating a safe, secure data technology and infrastructure takes a lot of time and money, and some entities, such as small trucking companies, simply don't have the capability for it.

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Western Hemisphere Leaders Gather in Los Angeles for Summit of the Americas

Leaders from the Western Hemisphere, with a few notable absences, gathered in Los Angeles last week for the Ninth Summit of the Americas.

The June 6–10 gathering enabled attendees to discuss common policy issues, affirm shared values and commit to concerted actions at the national and regional levels to address continuing and new challenges facing the Americas.

In addition to the ministerial meeting, three stakeholder forums were held: the CEO Summit, Civil Society Forum, and Young Americas Forum.

Attendance

Twenty-three heads of state attended the Ninth Summit. Some controversy surrounded the Summit as Mexican President Andrés Manuel López Obrador opted not to attend the events as a result of the White House not inviting Cuba, Nicaragua and Venezuela to participate.

Following Mexico's lead, El Salvador, Honduras and Guatemala also opted not to participate.

Brazilian President Jair Bolsonaro decided at the last minute to attend the events, where he met with President Joe Biden for the first time.

The theme of the Ninth Summit of the Americas was "Building a Sustainable, Resilient, and Equitable Future" for our hemisphere.

As many as 10,000 participants — including support staff, security, media and businesspersons — were expected to attend the events in Los Angeles. Many official and informal events, bilateral meetings, and media events organized by the U.S. government and private organizations were held.

Multiple Agendas

At the Summit of the Americas, President Biden announced a "new and ambitious economic agenda" called the Americas Partnership for Economic Prosperity.

The new partnership, which notably does not include any new trade agreements, will aim to mobilize new investment in the region, fortify supply chains, promote decarbonization and biodiversity, facilitate inclusive trade and update the "social contract" between governments and their people.

California Governor Gavin Newsom attended the events along with a delegation of state officials. He touted the diversity of not only the city of Los Angeles but the state of California.

Governor Newsom also met with Canadian Prime Minister Justin Trudeau to announce a new partnership with Canada to advance climate action.

The U.S. Chamber of Commerce hosted the 4th annual CEO Summit of the Americas for the private sector in partnership with the U.S. Department of State.

The aim of the CEO Summit was to "leverage the power of the private sector" to bring together diverse business leaders — including those from small and medium-sized enterprises — to drive innovative and practical solutions for a "brighter future across the Americas."

History of Summit

The Summit of the Americas, originally scheduled for 2021 and postponed due to the COVID-19 pandemic, is held every three years. The Summit is the only gathering that brings together all the leaders from the countries of North, South and Central America and the Caribbean.

The 2022 Summit was the first time the meeting was held in the United States since the inaugural summit in Miami in 1994. The most recent Summit of the Americas was held in Lima, Peru in 2018.

History of U.S. Involvement

In 1994, President Bill Clinton brought together 34 democratically elected leaders in Miami for the first Summit of the Americas. President Clinton was unequivocal about the summit's mission. He called on leaders from across the region to open new markets and to create new free trade zones, to strengthen the movement toward democracy, and to improve the quality of life for all our people.

Clinton said, "If we're successful, the summit will lead to more jobs, opportunity and prosperity for our children and for generations to come."

President Donald Trump was unable to attend the 2018 Summit of the Americas in Lima as planned as he had to tend to other international matters. Vice President Mike Pence attended in Trump's place.

The theme of the 2018 summit was "Democratic Governance against Corruption." Leaders vowed to confront systemic corruption at a time when graft scandals plague many of the governments that make up the Americas.

Sixteen nations gathered at the 2018 summit issued a statement on the sidelines of the event calling on Venezuela to hold free and transparent elections as well as allow international aid. Vice President Pence gave remarks at the summit.

President Biden announced the host city of the Ninth Summit in January 2022 with the goal of underscoring the United States' deep and historical commitment to the people of the Western Hemisphere and realizing the Build Back Better World (B3W) Initiative.

Staff Contact: Susanne T. Stirling

CalChamber, Japan Business Leaders Discuss Ways to Collaborate

INTERNATIONAL

The 21st annual meeting between the California Chamber of Commerce and Japan business leaders was held in person once again following the COVID-19 pandemic. The meeting highlighted California's continuing interdependence with one of its largest trade and investment partners.

Leading the Japanese business delegation were Hironori Kobayashi, president of the Japan Business Association of Southern California (JBA) and vice president general administration in the Americas and the Los Angeles office of All Nippon Airways Co., Ltd.; as well as Tsuyoshi Tsurumi, president of the Japanese Chamber of Commerce of Northern California (JCCNC) and managing director of MUFG Union Bank.

Representing the CalChamber at the Wednesday, June 15, 2022 luncheon were Jennifer Barrera, president and CEO, and Susanne T. Stirling, vice president, international affairs.

The JCCNC was established as a nonprofit corporation in 1951 to promote business, mutual understanding and good will between Japan and the United States.

JBA, founded in 1961, is a nonprofit organization consisting of nearly 500 Japanese corporations doing business across Southern California.

Discussion Themes

The JBA and JCCNC meeting covered a variety of themes, including the economy, homelessness, the supply chain, labor laws, the semiconductor market, and the tight labor market that both California and Japan currently are experiencing.

Environmental and trade policies also were on the agenda, on a state and federal level. The Japanese business delegation also discussed any incentives that may exist for companies that are considering moving their operations out of California.

The group also spoke about the many important Japanese contributions to the California economy, as Japan is the top foreign direct investor in California.

(Seated, from left) Tasha Yorozu, managing attorney, Yorozu Law Group/ auditor, Japanese Chamber of Commerce of Northern California (JCCNC); Tsuyoshi Tsurumi, managing director, MUFG Union Bank/president, JCCNC; Jennifer Barrera, president and CEO, CalChamber; Hironori Kobayashi, vice president general administration in the Americas and the Los Angeles office, All Nippon Airways Co., Ltd./ president, Japan Business Association of Southern California (JBA); and Tomoki Nakatani, general manager of the Los Angeles branch and head of Japanese corporate banking west, MUFG Union Bank/ vice president and chair, Business and Commerce Committee, JBA. (Standing, from left) Kenichi Tsuji, executive director, JCCNC; Akemi Koda, founder and CEO, USAsia Venture Partners Inc./ board member, JCCNC; Kazuhiro Gomi, president and CEO, NTT Research, Inc./ chair, Government Relations Committee, JCCNC; Susanne T. Stirling, vice president of international affairs, CalChamber; Ryo Amada, vice president, Kintetsu Enterprises Company of America/ Business and Commerce Committee member, JBA; Aya Dorwart, deputy director, JCCNC; and Fumio Yasue, executive director, JBA.

Trade Statistics

The United States is a large supplier of chemicals, transportation equipment, and computer and electronic products to Japan. Japan is also one of the largest U.S. foreign markets for agricultural products.

U.S. exports to Japan were $74.97 billion in 2021, making it the fourth largest export destination for the United States. Imports from Japan to the United States were $135.13 billion, with transportation equipment accounting for 35.5%.

According to the most recent figures, U.S. direct investment to Japan totaled $131.64 billion in 2020, largely in financial, software and internet services. Foreign direct investment (FDI) from Japan into the United States was $679 billion in 2020, making it the largest source of FDI in the United States that year.

In 2019, Japanese FDI in the United States supported 973,800 jobs and contributed $12.9 billion to research and development, as well as another $82.3 billion to expanding U.S. exports. The top industry sectors for Japanese FDI are auto components, industrial equipment, plastics, automotive OEM, software and information technology services, and metals (Select USA).

California continues to be the top exporting state to Japan, accounting for more than 15.8% of total U.S. exports. Japan has remained California's fourth largest export market since 2010, after Mexico, Canada and China.

California exports to Japan, the world's third largest economy, totaled $11.869 billion in 2021. Computers and electronic products accounted for 16% of total exports. Imports into California from Japan were $22.39 billion, with transportation equipment accounting for more than a fifth of total imports. California is currently the top importing state in the United States for products from Japan.

In 2020, Japan was the largest source of FDI in California through foreign-owned enterprises (FOEs). Japanese FOEs in California provided 115,420 jobs through 3,672 firms, amounting to $10.6 billion in wages. The top jobs by sector are manufacturing, wholesale trade, retail trade, financial activities, and professional/ business services (World Trade Center Los Angeles FDI Report, June 2021).

Staff Contact: Susanne T. Stirling

U.S. High Court Ruling Supports Arbitration

From Page 1

the parties could not bring any dispute as a class, collective or representative action under the PAGA. It also had a severability clause stating that if any portion of the waiver was found to be invalid, the remaining valid portion would be enforced in arbitration. Viking moved to compel arbitration of Moriana's individual PAGA claim and dismiss her other PAGA claims.

Under California Supreme Court precedent, the state courts denied Viking's motion. Applying the California Supreme Court's *Iskanian* case, the lower courts held that categorical waivers of PAGA standing are contrary to California policy and that PAGA claims cannot be split into arbitrable individual claims and non-arbitrable representative claims.

The U.S. Supreme Court granted review of this case to decide whether the FAA preempts the California *Iskanian* ruling.

Supreme Court Decision

The Supreme Court ruled that *Iskanian's* prohibition on the division of PAGA claims into their constituent parts, the employee's individual claims and those asserted on behalf of other employees, conflicts with the FAA.

The court noted that the California rule unduly circumscribes the freedom of parties to determine the issues subject to arbitration and the rules by which they will arbitrate.

California's indivisibility rule allowed parties to expand the scope of the anticipated arbitration by introducing claims that the parties did not jointly agree to arbitrate, effectively coercing parties to opt for a judicial forum rather than arbitration — a result, according to the Supreme Court, that is incompatible with the FAA.

The Supreme Court did not overrule *Iskanian* entirely — stating that the FAA doesn't preempt *Iskanian's* prohibition on wholesale waivers of PAGA claims. But the rule that PAGA actions cannot be divided into individual and non-individual claims is preempted. As such, Viking was entitled to compel arbitration of Moriana's individual claim.

The Supreme Court said the correct course is to dismiss Moriana's non-individual PAGA claims, noting that PAGA doesn't provide a mechanism to enable a court to adjudicate non-individual PAGA claims once an individual claim has been committed to a separate proceeding.

In other words, when an employee's own dispute is separated from the PAGA action, the employee no longer has standing to maintain the non-individual claims in court.

It's important to note that the Supreme Court's decision does not in any way invalidate the PAGA — it simply means that if a PAGA plaintiff is a party to a valid arbitration agreement, their individual PAGA claim can be compelled to arbitration. Employees not subject to a valid arbitration agreement can still bring PAGA representative actions. Even those that have agreements in place can challenge their validity in court, resulting in litigation costs before they even get to arbitration.

In sum, PAGA's overreach, undermining of class action rules, and negative impact on businesses of all sizes is still very real.

California's AB 51

In addition to its immediate effects, the ruling may have an impact on the continuing litigation involving California's AB 51, which was supposed to take effect January 1, 2020, prohibiting employers from requiring arbitration agreements as a condition of employment.

However, the CalChamber and other groups challenged the law in court and the law was put on hold pending review because it conflicts with the FAA. The Ninth Circuit U.S. Court of Appeals reversed the injunction from the lower court, after which the CalChamber-led coalition of business groups sought an *en banc* review by all the judges in the Ninth Circuit. The court decided to defer consideration of the *en banc* petition until the U.S. Supreme Court ruled on *Viking*. Now that *Viking* has been decided, attention is turning back to the Ninth Circuit and AB 51 litigation.

This is an impactful ruling for California employers that may help limit their exposure to PAGA representative claims through carefully drafted arbitration agreements. Employers that use arbitration agreements, or are considering their use, should consult with their legal counsel regarding the impact of this decision and should also continue monitoring the AB 51 litigation. The CalChamber will continue to provide updates on this rapidly evolving area of law.

Staff Contact: James W. Ward

Virtual Summit Reviews Initial Findings from Maritime Data Initiative

From Page 7

Another challenge raised was that keeping data in a centralized location could make it vulnerable to bad actors and could wreak havoc on the entire supply chain.

Next Steps

Commissioner Bentzel concluded the summit by discussing the next steps for the MTDI. He will continue to review comments and tapes and then present the preliminary recommendations to the other commissioners in July.

Following this, Commissioner Bentzel plans to go out into the field and meet further with industry stakeholders during the summer to get input on the preliminary recommendations.

In his closing remarks, Commissioner Bentzel acknowledged that the industry and federal government need to do better. He expects to encounter new obstacles, but also new opportunities in continuing to learn how to better integrate data into the supply chain, but said he is committed to the pursuit, which is "too important not to invest in."

He thanked all participants for their efforts the last several months and said he hopes to put a national policy into place which results in the implementation of national standards for national maritime data transparency.

To see the dates and topics of the past initiative meetings, plus links for online viewing, visit the FMC Maritime Transportation Data Initiative website at ***www.fmc.gov***.

CalChamber coverage of previous meetings is available here.

Information compiled by Nicole Ellis, CalChamber international affairs and media relations specialist.

Staff Contact: Susanne T. Stirling

Film Tax, Manufacturing Tax Credit Bills Continue On

CalChamber recently released its eighth semi-annual California Chamber of Commerce Poll and the results were clear: two-thirds of voters believe the country is headed down the wrong track, while a majority feel the same about California.

While our state's shortcomings grab all the attention, and deservedly so, there still are areas where California is quietly getting it right.

Two CalChamber-**supported** bills currently moving through the state Legislature show that our leaders want to assist some of California's most important industries.

Film/TV Tax Credit

The first is SB 485, authored by Senator Anthony Portantino (D-La Cañada Flintridge). This bill would extend the film and television tax credit, authorizing the California Film Commission to allocate $330 million in tax credits each fiscal year from 2024–25 to 2029–30.

California's Film and Television Tax Credit Program contributed almost $21.9 billion in economic output over five years and supported more than 110,000 total jobs in the state, according to a study released by the Los Angeles County Economic Development Corporation (LAEDC).

The study findings show that for every tax credit dollar allocated, the state benefitted from at least $24.40 in economic output, $16.14 in gross domestic product (GDP), $8.60 in wages and $1.07 in state and local tax revenues. The program also returned to state and local governments an estimated $961.5 million in tax revenue. (A more in-depth look at the credit can be found here).

SB 485 passed the Assembly Arts, Entertainment, Sports, Tourism and Internet Media Committee on June 15 and will be considered next by the Assembly Revenue and Taxation Committee.

R&D Credit

The second bill moving through the Legislature is AB 1951, whose primary author is Assemblymember Tim Grayson (D-Concord). The bill provides a sales and use tax exemption for the purchase of manufacturing, and research and development (R&D) equipment, expanding investment and production opportunities in California.

AB 1951 will provide California manufacturers the opportunity to continue to lead and compete in a domestic and global economy that operates on razor-thin margins. Further, the bill will facilitate further innovation, production of wide-ranging goods, and provide high-quality jobs throughout California's regionally diverse economies.

AB 1951 is important to California because the state currently ranks among the highest in the nation in state and local sales tax rates. While the base state sales tax rate is 6%, when combined with local and district portions, the sales and use tax rate can reach up to 10.75%.

AB 1951 sends an important message: California is serious about retaining and attracting high-quality jobs and production. Every California manufacturing job supports at least 2.5 other jobs.

AB 1951 passed the Assembly and awaits action in the Senate Governance and Finance Committee.

California's problems abound. But some solutions do too.

Staff Contact: Preston Young

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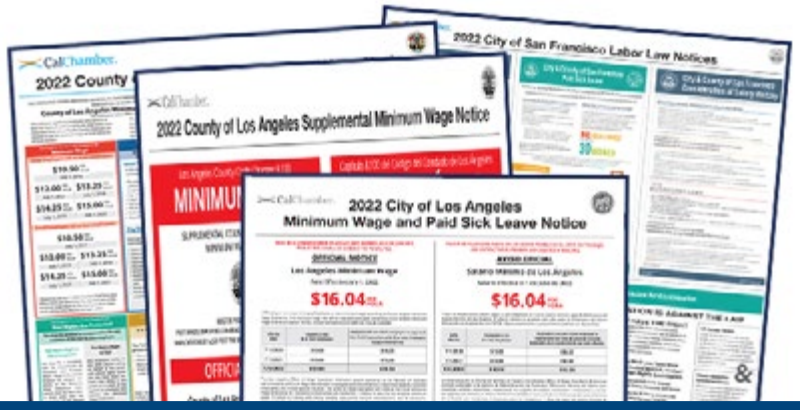

On July 1, 2022, minimum wage increases take effect in 13 California localities, requiring updated postings at each workplace or jobsite.

Do you know which posters apply to your business? It depends on the city in which your employees work — whether at your facilities, remotely from their homes, or while traveling.

Save 20% through June 30th. Preferred and Executive Members receive their 20% member discount in addition to this offer.

LEARN MORE at calchamber.com/july1. Use priority code JA22.