

ALERT

Years of Discussions Yield Far-Reaching Packaging Deal



A workable compromise on a circular economy policy for California was reached in the

final days before the Legislature left for summer recess and resulted in the billion-dollar plastics tax ballot initiative being pulled by proponents.

After years of negotiation, the compromise bill, **SB 54 (Allen; D-Santa Monica)**, passed the Assembly (June 29) and Senate (June 30) with bipartisan support.

The bill was supported by a wide mix of stakeholders, including environmental groups, industry advocates, local governments and agriculture.

After the legislation passed, the pending plastics initiative — the California Plastic Waste Reduction Regulations Initiative — which was slated to appear on the November ballot, was pulled from the ballot by the three ballot proponents.

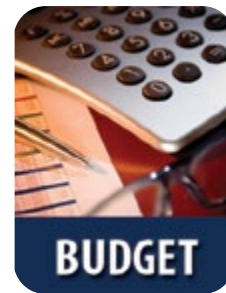
The initiative, which was opposed by the California Chamber of Commerce, had proposed a new tax of up to \$0.01 on every piece of single-use plastic packaging and foodware sold in California.

The CalChamber has taken no position on SB 54, but the current legislative approach offers far more long-term policy certainty than was proposed in the ballot measure.

“While California businesses, both large and small, will face a maze of environmental regulations as a result

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Adopted Budget Includes Targeted Tax Benefits, One-Time Increases



This week the Legislature passed, and the Governor signed a \$300 billion state budget that includes a number of targeted tax benefits for businesses, plus one-time increases in other areas.

The budget also included a \$17 billion inflation relief package that includes tax refunds to Californians on a sliding scale based on income. It takes a small step toward returning the state’s unemployment insurance fund to solvency, committing \$250 million toward the \$17.7 billion the state owes the federal government.

Targeted Tax Benefits

As proposed by the Governor in his May budget revision, the adopted budget includes targeted tax benefits for businesses, such as:

- Extending the CalCompetes tax credit program for five years at \$180 million per year, and extending the CalCompetes grant program for another year at \$120 million.
- Fully conforming California law to the extended federal Paycheck Protection Program (PPP), which prevents these federal grants from being subject to state taxation.

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The Workplace

What Supreme Court Ruling on Arbitration and PAGA Means for Employers



In **Episode 154** of The Workplace podcast, CalChamber Labor and Employment Vice President Bianca Saad and CalChamber

employment law expert Matthew Roberts discuss how the U.S. Supreme Court decision in *Viking River Cruises v. Moriana* affects employers and arbitration agreements.

This summer, the U.S. Supreme Court has made a number of high-profile decisions across many complex policy

issues. Nestled among these high-profile decisions is yet another case that affects California law, says Roberts in kicking off the podcast.

In *Viking River Cruises v. Moriana*, the Supreme Court ruled 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.

California Private Attorneys General Act

Saad explains that PAGA allows employees to file lawsuits on behalf of the state to recover civil penalties

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Labor Law Corner

California Laws Generally Apply Only within Borders of State



David Leporiere
HR Adviser

Since the pandemic, my company has been allowing employees to work from home. Without informing our human resources department, several of these employees have moved to other states. Now that these employees are living in other states, do the California overtime laws apply to these employees?

The short answer is “no.” Generally speaking, the laws of each state apply only within the borders of that state. In “legal-ese,” there is a presumption against extra-territorial application of the laws of a state.

That means that unless a state specifically states in its laws that it intends to apply those laws across state borders, then the law applies only to individuals within the state.

Court Ruling

This issue was discussed in the California Supreme Court case of *Sullivan v. Oracle Corporation* ((2011) 51 Cal 4th 1191). In that case, employees who lived outside of California were coming to California several times a year and were working within our state for days or weeks at a time.

These plaintiffs alleged that they were entitled to overtime under California law for the time they were working in California. The court agreed with this assertion and granted them damages.

These same plaintiffs, however, claimed that they were entitled to the protections of California laws while they were in their home states as well.

The court disagreed, citing the presumption against the extension of California law across state borders.

There is no language in the overtime or unfair competition laws regarding the extension of those laws across state

lines. Moreover, the vast majority of laws in California do not extend beyond the borders of this state.

Exception

One of the few exceptions is in the area of sexual harassment prevention training. If a company has an employee living in another state who is supervising employees within California, that employee is subject to the harassment prevention training mandate.

If you have employees working in other states, in most circumstances, those employees will be covered by the laws of that other state, and not the laws of California.

We advise our members who have employees working in other states to contact experts in the laws of those states for questions regarding the laws that apply to those employees.

Column based on questions asked by callers on the Labor Law Helpline, a service to California Chamber of Commerce preferred and executive members. For expert explanations of labor laws and Cal/OSHA regulations, not legal counsel for specific situations, call (800) 348-2262 or submit your question at www.hrcalifornia.com.

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Alert (ISSN 0882-0929) is published weekly during legislative session with exceptions by California Chamber of Commerce, 1215 K Street, Suite 1400, Sacramento, CA 95814-3918. Subscription price is \$50 paid through membership dues.

Send email address changes to alert@calchamber.com. Publisher: Jennifer Barrera. Executive Editor: Ann Amioka. Art Director: Neil Ishikawa. Capitol Correspondent: Sara Proffit.

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More at www.calchamber.com/events.

Labor and Employment

HR Boot Camp Virtual Seminar.

CalChamber. 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.

Vietnam-U.S. Business Forum. Women in International Trade, Los Angeles. July 11, Online. (213) 545-6479.

Beijing International Life and Health Industry Expo. July 15, Online. 86 15801079798.

Creative Expo Taiwan. Taipei Economic and Cultural Office in San Francisco.

August 10–14. Kaohsiung, Taiwan. (415) 362-7680.

10th Annual Global Supply Chain Summit. University of Southern California.

August 11–12, Los Angeles and Online.

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.

Discover Global Markets: The Blue

Economy: A New Age in Ocean Technology, Sustainability and Logistics.

U.S. Commercial Service. September 20–22, Providence, Rhode Island.

Next Alert: July 22

California Works

Staffing Company Works Hard to Deliver Human Spirit to Clients of All Sizes



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.



Sandra O. Floyd

Sandra O'Neal Floyd founded OUTSOURCE Consulting Services Inc. (OCSI.co) in 1994 as a staffing, contingent and direct hire human workforce management firm, building and sustaining a diverse workforce of information technology (IT), professional and engineering disciplines.

OCSI.co recently celebrated 28 years in the staffing industry. The company is a proud partner of major Fortune 500

companies with a focus on private investment, wireless telecommunications, oil and gas, mass transportation, defense contractors, software companies, state and federal agencies.

Moreover, OCSI.co is a national provider of human workforce management solutions as a small, minority, woman-owned, disability enterprise business and former 8 (a) firm. Through these certifications, OCSI.co has facilitated access to contracts in major markets across the nation, including California, Texas, Georgia, South Carolina, Washington, D.C., and New Jersey.

Floyd has been a member of the California Chamber of Commerce Board of Directors since July 2010 and is co-chair of its health care policy committee.

Recognition

Her role in the success of OCSI and its clients has gained recognition in recent years.

- Staffing Industry Analysts (SIA) named her one of its [2021 Global Power 150 Phenomenal! Women In Staffing](#).
- She was listed in Forbes Top 100 of the Top Women-Owned Businesses in Northern California.

- The *San Francisco Business Times* designated her among the 100 Most Influential Women in Business in 2019.

Core Values

Two statements sum up the company's approach to its work.

- **Your Brand. Your Business. Our Contract Workforce.**

OCSI.co has the business maturity of delivering professional services in the local, state, and federal government. The company's enhanced business processes and government experience working with professional and nonexempt employees provides a competitive advantage to its clients' teams along with cost savings and high-quality services offering as a subcontractor.

OCSI.co is a corporate member of the [Staffing Industry Analysts \(SIA\)](#). SIA's partnership allows the OCSI.co team to deliver best practice staffing services and solutions while maintaining a competitive edge.

- **We provide exactly what you need — precisely when you need it.**

OCSI.co's core strengths are providing staffing, contingent and direct hire

See Staffing Company: Page 4



CalChamber Member Feedback

"CalChamber's ability to produce results at the State Capitol for both large and small businesses is unrivaled. I have been a member and on the board of directors for years and it has been a great investment."

Ted J. Balestreri
Chairman and Chief Executive Officer
Cannery Row Company

Staffing Company Works Hard to Deliver Human Spirit to Clients

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workforces, independent contractors, payrolling/compliance and working with management services firms to deliver high quality technical, professional, engineering, construction management and administrative support human capital. OCSI.co also provides online training and accreditation through its partnership with the Global Academy online training portal.

The OCSI.co team is a group of talented and dedicated professionals with a common goal. They are committed to delivering the human spirit whether they are supporting their contractors, clients, sub-suppliers, or vendors.

Community Involvement

Involvement in its community is a focused corporate objective for OCSI.co. For more than 28 years, the company has contributed financial support and manpower hours to improve the communities where its staff and clients live, work, and play. This is just one of the many ways OCSI.co demonstrates its commitment to being a good corporate citizen.

Beneficiaries of the company's involvement include:

- Berkeley Symphony.
- Covenant House California (CHC),

a local nonprofit agency that helps at-risk homeless youth. As part of its commu-



Outsource Consulting Services, Inc.
President and CEO: **Sandra O. Floyd**
Company Headquarters: **7901 Oakport Street, Suite 3800, Oakland, CA 94621**
Company Business Segments:

- **Contingent Workforce Staffing**
- **Direct Hire Recruiting**
- **Payroll/Compliance Services**
- **Technical and Professional Online Training and Accreditation**
- **Administrative Support Services**

nity immersion, the OCSI.co staff visited CHC to provide personal hygiene kits, as well as financial support to the agency to personally give their donation.

- Big Brothers Big Sisters Bay Area (BBBSBA) provides mentorship programs for disadvantaged youth. OCSI.co encourages donations to assist its annual support for the BBBSBA Walkathon Fundraiser.

Focus on People

“At the end of the day, it’s all about

the people.” OCSI.co’s mission is to earn the respect of its clients and employees, so that they will become their biggest champions.

A Glassdoor review on May 20 by a senior talent development consultant reflected OCSI.co’s focus: “**Impressive Company & Service!** Top of the list — the staff is awesome, great to work with, extremely timely with everything, great benefits, and so many resources for me as a part of OCSI.co.”

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of SB 54, we believe that this proposal ensures long-term policy certainty around recycling and packaging to help create a circular economy and avoids a costly and disruptive ballot initiative that would substantially raise taxes on all Californians and leave California’s businesses susceptible to future attempts at expanded regulations,” said CalChamber President and CEO Jennifer Barrera. “Notably, the legislative compromise on this issue allows the Legislature to make changes to the proposal in the future, if necessary, rather than having to go back to the ballot.

SB 54 Stakeholder Discussions

The CalChamber was among the involved stakeholders working to reach

agreement on a legislative proposal that would result in proponents pulling the plastics initiative from the ballot.

SB 54, as revised on June 29, represents the culmination of hundreds of hours of meticulous discussions with all stakeholders, from local governments and waste haulers to nongovernmental organizations and businesses. Initial negotiations between environmental and business advocates on circular economy legislation began in 2018 and have continued every year since.

Unlike prior versions of SB 54, the 2022 version of the bill provides certainty, funding for recycling infrastructure, and places limits on agency rulemaking. In addition, SB 54 now provides protections for small businesses, agriculture and ratepayers.

Ballot Initiative

The initiative proposal, which now will be removed from the ballot, called for enacting a new tax of up to \$9 billion annually on businesses selling in or into California. If enacted, the tax would have been the second largest tax increase in California history.

In addition, the ballot measure would have resulted in the arbitrary selection of winners and losers in the marketplace and would have granted almost unlimited regulatory authority to the state agency responsible for managing recycling in California. Also, the initiative provided no protections for small business or agriculture.

Staff Contact: Adam Regele

U.S., Taiwan Strengthen Connections at Inaugural Trade Meeting in Washington



This week, representatives of the United States and Taiwan met for the first time on the newly

agreed upon trade framework meant to strengthen ties as a counter to China's influence in the Indo-Pacific region.

Dubbed the U.S.-Taiwan Initiative on 21st Century Trade, the framework was announced by the Biden administration at the beginning of June as a supplement to the Indo-Pacific Economic Framework (IPEF), which includes 13 countries in the region, but not Taiwan.

Trade talks at the [inaugural June 27 meeting](#) with Taiwan in Washington D.C. were led by Deputy U.S. Trade Representative Sarah Bianchi, who met with Taiwan's top trade negotiator. Discussions covered many of the same areas as the IPEF, including digital trade, expanding agriculture trade, aligning technological standards, and responding to non-market economies in the region, like China.

The negotiations are expected to take two different tracks with the U.S. Trade Representative leading the way on trade issues and the U.S. Department of Commerce heading discussions on technology and investment, including securing semiconductor supply chains. The global shortage of semiconductors has shed increased light on the strategic importance of Taiwan as it is home to major global microchip manufacturers.

Much like the IPEF, the U.S.-Taiwan Initiative on 21st Century Trade will not include market access provisions, so the Biden administration will not need to seek congressional approval for any agreements. The meetings took place under the auspices of the American Institute in Taiwan (AIT) and the Taipei

Economic and Cultural Representative Office in the U.S. (TECRO).

U.S.-Taiwan Trade

Taiwan is the 11th largest importer of U.S. goods. In 2021, the United States imported \$77.13 billion in goods from Taiwan and exported \$36.94 billion in goods to Taiwan. Top export categories included computer and electronic products, non-electrical machinery, oil and gas, and chemicals.

The United States is Taiwan's second largest trading partner and a key choice for Taiwanese investors.

California-Taiwan Trade

California exported more than \$8.94 billion worth of goods to Taiwan in 2021. Top categories included computer and electronic products, transportation equipment, waste and scrap, and chemicals.

California has the second highest amount of exports to Taiwan within the U.S. and Taiwan is the sixth largest importer of California goods and services, the fourth largest in Asia.

Foreign Direct Investment with Taiwan

U.S. foreign direct investment (FDI) in Taiwan was \$31.54 billion in 2020, while Taiwanese FDI into the United States was \$19.68 billion in the same year.

In 2020, Taiwan was the ninth fastest growing source of FDI into the United States. Taiwanese FDI in the United States supported 21,000 jobs through workers employed by U.S. affiliates of majority Taiwan-owned firms and \$178 million in research and development in 2019. Taiwan also contributed \$1.5 billion to expanding U.S. exports. The top industry sectors for Taiwanese FDI were semiconductors, communications, business machines, software and information tech-

nology (IT) services, electronic components, and transportation. (Select USA)

Taiwan supports an estimated 323,456 jobs in the United States through trade and investment from Taiwanese companies and exports of U.S. goods and services to Taiwan. Almost 90,000 of these jobs are in California.

In California, Taiwan is the 11th largest source of FDI through foreign-owned enterprises (FOEs). In 2020, Taiwanese FOEs in California provided 17,493 jobs through 409 firms amounting to \$1.55 billion in wages. The top jobs by sector are wholesale trade, manufacturing, professional/business services, transportation/warehousing/utilities, and other services (World Trade Center Los Angeles FDI Report, June 2021).

CalChamber Position

The California Chamber of Commerce 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.

The Indo-Pacific region represents nearly half of the Earth's population, one-third of global gross domestic product (GDP) and roughly 50% of international trade. The large and growing markets of the Indo-Pacific already are key destinations for U.S. manufactured goods, agricultural products, and services suppliers.

Following the U.S. withdrawal from the Trans-Pacific Partnership, a highlighted Indo-Pacific relationship is welcomed, as this is a key area in geopolitical, strategic, and commercial terms. Taiwan, particularly, is of strategic importance and more engagement with the economy is critical to counter China's influence in the region.

Staff Contact: Susanne T. Stirling



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specified in the Labor Code. Under 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, she says. Plaintiffs could bring claims for alleged violations that they didn't personally experience, and the penalties are harsh.

Common PAGA actions have included wage statement violations, rest and meal break penalties, failure to pay overtime, or minimum wages. Because the primary driver of PAGA actions is attorney fees awarded, PAGA claims have disproportionately affected the business community in relation to the actual value they provide workers.

Roberts highlights the issue with PAGA actions. For example, there's been recent litigation where attorneys filed suit against employers because their pay stubs didn't have the four-digit postal code on the zip code. Litigation was filed on that basis in a PAGA action because the attorneys were seeking attorneys' fees, not so much because they were trying to correct some egregious wrongdoing.

This is sometimes referred to as a "gotcha game," where it's not about the interests of the employees, but rather what technical violations can an employer be caught in to make a claim, Saad replies.

Viking River Cruises v. Moriana

Moriana was a former employee of Viking River Cruises, and she had signed an employment arbitration agreement that prevented her from bringing a PAGA action, and the agreement otherwise forced her to arbitrate her individual PAGA claim and dismiss the representative action, Saad explains.

Up to this point, 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). In *Iskanian*, the court also held that an employer cannot split or divide the PAGA action, meaning an individual claim cannot be separated from a non-individual/representative PAGA claim.

In *Viking*, Saad continues to explain, the Supreme Court considered whether this California law that prevents division of PAGA actions is preempted by the Federal Arbitration Act (FAA). The court held that Moriana's individual PAGA claim could indeed be forced into arbitration and recognized that the arbitration agreement was valid.

The court also recognized, however, that the employer could not compel the representative action to arbitration, she says. Along those lines, the court also held that the rule under *Iskanian* that says PAGA claims cannot be split is preempted by the FAA's broad enforcement of arbitration agreements.

In *Viking*, Moriana is forced into arbitration and with no one left to bring the representative action, the claim goes away, Roberts says.

Eight of the nine Supreme Court justices sided with the majority, but Justice Sonia Sotomayor authored a concurring opinion that highlights some practical realities of the case, Roberts says.

Justice Sotomayor acknowledged that the court's decision is based on the Supreme Court's understanding of California law, but that if the Supreme Court's understanding is wrong, then California courts will have the last word, Saad explains. The Justice also stated that the standing issue is something that the state Legislature is free to modify and correct, leaving the door open for what can transpire in the future.

On the same day as the *Viking* ruling, the chair of the California Senate Labor, Public Employment and Retirement Committee, Senator Dave Cortese, issued a statement committing to the changes that Sotomayor had suggested, Saad says.

AB 51

Now that *Viking* has been decided, there continues to be broader arbitration litigation in the form of AB 51, Roberts says.

To refresh everyone's memory, AB 51 bans mandatory arbitration agreements as a condition of employment for applications or a condition of continued employment for employees in California.

AB 51 was originally set to take effect on January 1, 2020, but the CalChamber led a coalition to prevent the enforcement of it, which was successful at the trial level, Saad explains. However, on appeal at the Ninth Circuit, the decision was reversed, and the ban was reinstated.

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• Another \$500 million for a grant program administered by the Small Business Advocate to provide additional relief to small businesses most affected by the pandemic, focusing on the top 10 industries hardest hit by the pandemic.

One-Time Increases

The adopted budget continues to add

to the state's reserve to provide a cushion against future downturns in the economy. It also includes funding to help stabilize state energy supplies over the summer if renewable energy is insufficient to meet the demand for power.

Tax relief programs in the adopted budget include:

- A temporary reduction to the diesel sales tax.

- Funding for rental assistance and payments for outstanding utility bills built up during the pandemic.

- Hazard pay for working through the COVID-19 pandemic to doctors, nurses and other frontline health care workers, as well as on-site employees in supportive services for health care facilities.

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Thereafter, the CalChamber petitioned for the entire Ninth Circuit to rule on the issue. While this litigation is pending in the Ninth Circuit, the arbitration ban is stayed and we will now have to wait and see what happens with AB 51 in light of the *Viking* decision.

Arbitration Agreements

So now, the million-dollar question is, what does this mean for employers who want to use mandatory arbitration agreements going forward with new hires and existing employees, Roberts asks?

While *Viking* was a win, Justice Sotomayor's concurring opinion opened a door and so it's definitely not the end of the story, Saad replies. Nevertheless, in light of *Viking*, employers can certainly use arbitration agreements, but they should do so with the assistance of legal counsel and also keep in mind that the effect of the current AB 51 litigation on mandatory agreements signed after January 1, 2020 may be held void, depending on the outcome of the litigation.

Regardless of AB 51's litigation, Saad explains, agreements signed before

January 1, 2020 will continue to be valid. Even with *Viking*, and the AB 51 litigation set aside, there are always going to be procedural and substantive issues that employers need to consider and review when it comes to arbitration agreements, because these arbitration agreements are very frequently challenged in court.

"When drafting an agreement, it's important, again, to consult with competent legal counsel, have their assistance, make sure that everything about the agreement is going to be enforceable down the road," Saad urges.



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