

ALERT

Governor Signs CARE Court Support System into Law



SUPPORT

A California Chamber of Commerce-supported proposal to establish a support system for homeless individuals with mental illnesses or substance

abuse disorders was signed into law last week by Governor Gavin Newsom.

The proposal, **SB 1338 (Umbarger; D-Santa Ana)**, enacts the Community Assistance, Recovery, and Empowerment (CARE) Act. It changes the state's process for caring for individuals facing extreme mental illness or drug addiction, creating a system with advocates for those who need care, but also wraparound services to ensure those most in need get the treatment that's needed.

The law authorizes specified persons to petition a civil court to create a voluntary CARE agreement or a court-ordered CARE plan and implement services to provide behavioral health care, including stabilization medication, housing, and other services to adults who are suffering from psychotic disorders and other conditions.

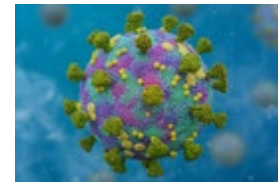
The CARE Court will be implemented statewide, starting with the counties of Glenn, Orange, Riverside, San Diego, Stanislaus, Tuolumne and San Francisco.

Employer Support

"We appreciate the leadership of Governor Newsom and the authors of the CARE Court proposal in taking on one of the most difficult and heart-wrenching challenges facing our communities — providing lifesaving services to severely

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CalChamber Calls for Changes to Nonemergency COVID Draft Rule



The Cal/OSHA Standards Board's draft proposal to extend the state's COVID-19

regulation for another two years — with some significant changes from the COVID-19 emergency regulation — still needs adjustments, the California Chamber of Commerce told the Standards Board last week.

In both testimony and a letter submitted to the Standards Board, the CalChamber said the COVID-19 rule should be extended only a year and identified problems with the proposal's revised definition of "close contact," notice provisions, requirements related to outbreaks, and recordkeeping requirements.

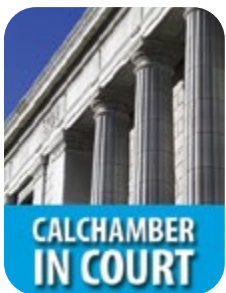
Joining the CalChamber on the letter expressing concerns about the draft COVID-19 rule was a diverse coalition of more than 50 groups representing business, agriculture, construction, local government, and local chambers of commerce.

The Standards Board met on September 15 to review the draft proposal, which:

- Continues to require that employers provide testing and notice after exposure (as they are doing now).
- Contains a two-year sunset, so the

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Ninth Circuit Panel to Rehear Arguments on California's Mandatory Arbitration Ban



A Ninth Circuit Court of Appeals panel has voted to withdraw its original ruling on California arbitration agreements in employment and rehear arguments on AB 51, leaving the law unresolved.

AB 51 prohibited employers from requiring employees to sign agreements to arbitrate any disputes arising from the employee's employment — a longstanding employer practice.

CalChamber Challenge

Since passage of AB 51 in 2019, the California Chamber of Commerce and others have challenged the law, which resulted in the law initially being invalidated by the U.S. district court, then reinstated at the Ninth Circuit Court of Appeals, and now, with a recent order from the Ninth Circuit, the law has been left in limbo.

In 2021, a Ninth Circuit three-justice panel held that the Federal Arbitration Act (FAA) didn't preempt AB 51, and thus California could enforce its prohibi-

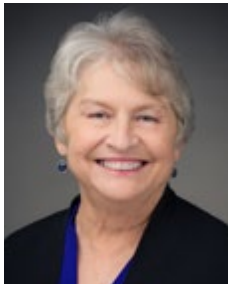
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Labor Law Corner

Employee Arrested While Off Duty? Proceed Cautiously; Gather Facts



Sharon Novak
HR Adviser

One of our employees did not show up for work yesterday and failed to call or otherwise notify us of his absence. We have a no-call/no-show/no-job policy. Another employee told us that the missing employee was arrested over the weekend and is in jail. Can we fire him?

Employers need to proceed carefully before taking any adverse action against employees who have been arrested while off duty for crimes that are unrelated to their jobs. The main reason for caution is that *California prohibits termination*

and other adverse actions based on an employee's arrest.

Labor Code Section 432.7(a) provides that no employer shall "utilize, as a factor in determining any condition of employment including hiring, promotion, termination... any record of arrest or detention that did not result in conviction."

An arrest is an accusation, and the employer should not assume that the employee committed the crime. Because the initial information that an employer receives about the arrest usually is incomplete, the employer must be careful to gather the facts and not to overreact or rely on gossip and hearsay.

Investigation

Employers are permitted to ask about arrests and the circumstances surrounding them. The primary purposes of an investigation are to:

- Understand the nature of the alleged conduct underlying the arrest.

Was the arrest for violent conduct?

Is the employee alleged to have committed a property crime such as theft or embezzlement?

- Confirm the employee's job duties and the impact of the alleged conduct.

Does the alleged conduct pose a risk because the arrested employee interacts regularly with co-workers and/or provides face-to-face customer service?

Does the employee handle money and was accused of a money or property crime?

- Determine how much work the employee is likely to miss.

Is it likely that the employee will be released from jail shortly and be able to return to work?

Will the employer be able to hold the job open for the employee through the judicial process?

- Evaluate the impact to the employer.

Is the arrested employee's position integral to business operations?

See Employee Arrested: Page 8

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CalChamber-Sponsored Seminars/Trade Shows

More at www.calchamber.com/events.

Labor and Employment

Leaves of Absence: Making Sense of It All Virtual Seminar. CalChamber. September 29–30: SOLD OUT. (800) 331-8877.

Virtual HR Symposium. CalChamber.

November 3–4, Online. (800) 331-8877.

HR Boot Camp Virtual Seminar.

CalChamber. December 8–9, Online. (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.

2022 La Jolla Energy Conference: Debating the Future of Energy in Latin America and the Caribbean. Institute of the Americas. September 28–29, La Jolla. (858) 453-5560.

Investing in Our Global Future Webinar: Language Diversity, Culture with California Superintendent Tony Thurmond. UNITE-LA and California Asian Pacific Chamber of Commerce. September 30, Online.

Fundamentals of Importing Webinar. Northern California World Trade Center. October 4, Online. (916) 447-9827.

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

Automated Commercial Environment (ACE) Exports Compliance Webinar. U.S. Census Bureau, Bureau of Industry and Security, South Florida District Export Council. October 5, Online.

Singapore Week of Innovation and Technology (SWITCH). October 25–28, Singapore.

Women in Tech Trade Mission to Europe. U.S. Department of Commerce. October 30–November 5.

43rd World Congress of Vine and Wine. National Assembly, International

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Next Alert: October 7

CalChamber Calendar

Public Affairs Conference:
November 29–30, Laguna Niguel

The Workplace

California Consumer Privacy Act Will Apply to Employers in 2023



In **Episode 160** of The Workplace podcast, CalChamber employment law expert Matthew Roberts and CalChamber policy advocate

Ashley Hoffman discuss the current state of the California Consumer Privacy Act (CCPA) and how it will affect employers starting January 1, 2023.

What Is the California Consumer Privacy Act?

Initially created in 2018, the CCPA went into effect on January 1, 2020, Roberts says.

The CCPA was intended to provide data protection rights to California consumers, such as the right to know what data about a consumer is being collected or the right to certain protections of personal data, Hoffman explains. The law also provides some remedies in the event of a data breach and a right to inspect records. Certain companies have a few rights, for example, to opt out of some selling of information, right to request deletion of information, etc.

While the law does not apply to every business in California, it does apply to three categories of for-profit businesses:

- Businesses with a gross annual revenue of \$25 million or more;
- Businesses that buy, receive or sell personal information of 50,000 California household residents or devices. This figure will soon change to 100,000 California household residents or devices; and
- Businesses that derive 50% or more

of annual revenue from selling consumers' personal information.

Who Is Covered by the CCPA?

As defined in the law, a "consumer" means a California resident. Businesses crafting a CCPA policy should be very clear that its policies apply only to California residents, Hoffman stresses. Otherwise, if a policy is written too broadly, the business could find itself in a bind if the policy expresses the business is willing to apply these rights to people even outside of California.

Any type of information can be covered under the CCPA, such as personalized information or anything that identifies or could be linked to a consumer or their household, she says. This includes things like names, birth dates, and Social Security numbers.

Starting January 1, 2023, the law will also apply to business-to-business information. So, if you are a smaller company that is doing business with a company covered by the California Privacy Rights Act (CPRA), Hoffman recommends you familiarize yourself with the CCPA because it will affect you soon.

CCPA Was Never Intended to Apply to Employees

The CCPA was never intended to apply to employees, and the legislators who wrote the law were very clear that that was never the intent, Hoffman says.

"But what happened was, when they were doing some cleanup, there was some concern from folks, that 'consumer' was written so broadly, that it could include employees," she says.

In response, an amendment was

written to exclude employees and business-to-business transactions. When the bill was going through the Legislature, however, some groups wanted to force a discussion on worker privacy, and so a sunset was put in to force business, labor and attorney groups to come to the table and talk about worker privacy, Hoffman explains.

Shortly after, the COVID-19 pandemic hit and the sunset was extended to January 1, 2023, thanks to Proposition 24.

Because no bill was formally passed to extend the current sunset this year, absent another bill or executive order, the employee and business-to-business exemption will expire on January 1, 2023, but enforcement will not begin until July 1, 2023.

What Employers Should Begin Doing

Employers should consult with their legal counsel to determine how the CCPA will affect their business and to ensure that proper policies are created, Hoffman says. Employers will need to know how to treat employee data, what data to collect and how long to retain the data. Employers also need to evaluate what other laws exist that have certain retention requirements.

Employers will need to disclose to employees what data is being retained, and establish a system to manage requests protected under the law, such as rights to accessing information, a right to correct, etc.

There also is a right to delete, which can be extremely concerning in the employment context, especially when one

See California Consumer Privacy: Page 13



CalChamber Member Feedback

"We appreciate the continued leadership from CalChamber to support companies in the communities we serve across the state. Their efforts enable continued growth and foster innovation, benefitting every Californian."

Janet W. Lamkin
Senior Vice President, Global Market and Community Innovation
United Airlines

CalChamber Calls for Changes to Nonemergency COVID Draft Rule

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regulation would not be truly permanent (this is consistent with the overall recognition that COVID-19 is now an endemic disease, so emergency-level notice provisions may not be appropriate on a permanent basis).

- Allows more flexibility than the emergency regulation, recognizing the need to keep up with evolving science.
- Ends the repeatedly extended requirement of exclusion pay, which had burdened employers with paying for even nonworkplace cases, and frustrated employment law attorneys because of its vagueness.

Changes Still Needed

Specific provisions of the draft none-emergency regulation in need of changes include:

- **The definition of “close contact.”** The CalChamber and coalition urge a return to the prior longstanding 6 feet/15 minutes standard with the ongoing ability for a public health order to supersede the proposed regulation when necessary.

The recent shift from the 6 feet/15 minutes definition to a new definition that treats all workers who “share” the same indoor airspace” as close contacts has been a “mess of confusion” for California employers, the CalChamber commented. The prior definition prioritized those at greatest risk and was feasible to enforce.

Despite the efforts of the California Department of Public Health (CDPH) and Cal/OSHA to draft frequently asked questions, the new analysis remains ambiguous at best, and particularly difficult for smaller employers.

- **Notice provisions.** Legislation awaiting action by the Governor, AB 2693 (Reyes), will make some cross references in the proposed regulation inaccurate if it is signed into law. The CalChamber urges that changes be made if AB 2693 becomes law to prevent inaccurate and confusing references.

- **Outbreaks.** The emergency standard and the proposed regulation contain language requiring employers to immediately review potentially relevant COVID-19 policies, procedures and controls, and implement changes as needed to prevent further spread of COVID-19 whenever an “outbreak” of three cases occurs at a workplace.

The CalChamber urges that this requirement be changed to require employers “periodically” review relevant procedures and update them as conditions and best practices evolve, which is more in line with the proposed regulation’s shift toward Injury and Illness Prevention Program (IIPP)-based enforcement.

The CalChamber commented that the “every outbreak” language made some sense when the pandemic was new and scientific knowledge and best practices were evolving rapidly. Now that vaccinations are widespread, compliance policies well-developed, and positive cases are not the same concern as previously, the constant re-review of policies doesn’t make sense.

Moreover, the requirement isn’t tied to instances where COVID-19 was spread in the workplace, meaning employers must re-examine their workplace policies even when there is no evidence of any deficiencies with those public health protective policies.

- **Outbreak precautions.** The CalChamber proposes an easier end to outbreak precautions. Specifically, the CalChamber proposes that an outbreak begin when three cases occur in a two-week period (as presently required) but end if, 14 days later, only one new case has been found. If a second additional case is found, then outbreak precautions could be continued.

The present emergency regulation and the proposed regulation require zero cases in a 14-day period to end outbreak precautions. This threshold was created early in the pandemic and, notably, fails

to distinguish between cases due to workplace spread and those with confirmed out-of-workplace causes.

The low exit threshold has led to workplaces across California remaining in outbreak-level precautions of testing due to background social spread that has *nothing to do with the workplace*, the CalChamber emphasized.

- **Recordkeeping requirements.** The CalChamber asked that the contact tracing requirement for workplace cases be removed from the proposed regulation as a relic of an earlier phase of the COVID-19 pandemic. The proposed regulation requires employers to identify and maintain for two years records of all persons who had a close contact, including their names and contact information.

In March 2022, the CDPH issued guidance that universal contact tracing was no longer recommended. In line with changing federal guidance, the CDPH recognized that COVID-19 had changed (becoming more widespread but also less likely to cause major symptoms), which therefore lessened the impact and feasibility of contact tracing.

Background

The COVID-19 emergency regulation was first put into place in the fall of 2020 and has been repeatedly extended (including via the unusual step of an Executive Order [N-23-21]), but it will expire on December 31, 2022. Notably, the emergency regulation has evolved considerably over that time (see Cal/OSHA’s website for details <https://www.dir.ca.gov/oshsb/COVID-19-Prevention-Emergency.html>).

The emergency regulation will expire at the end of this year unless Cal/OSHA votes to turn it into a “permanent” regulation before then. A vote is anticipated on the proposed two-year extension in November or December of this year.

Staff Contact: Robert Moutrie

California Works

Health Net: Expanding Access to Care



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.



Health Net was founded more than 40 years ago in California, remains headquartered in the state and maintains operations in all 58 counties. The company provides health plans for individuals, families, businesses of every size and people who qualify for Medi-Cal or Medicare, including offering several health plans through [Covered California](#).

Health Net also offers access to substance abuse programs, behavioral health services, employee assistance programs and more.

As the company has grown over the decades, Health Net has become one of the state's longest serving and most experienced Medi-Cal partners.

Today, two-thirds of Health Net's members are Medi-Cal enrollees: low-income adults, seniors, pregnant women, children, people with disabilities and others. With decades

of experience caring for California's most vulnerable residents, Health Net has worked hand in hand with the state to build Medi-Cal and serve those who depend on its health care safety net.

"Health Net's teams live in, and reflect, the diversity of the communities we serve," said Brian Ternan, president and CEO at Health Net. "Our employees are woven in the fabric of California, and partner closely with local clinics, community-based organizations and other providers to deliver culturally appropriate and locally driven programs. The Health Net team has the deep experience a

company can only get from knowing the people it serves firsthand."

Committed to California

Health Net/Centene, a Fortune 30 company, recently located its West Coast hub to Sacramento, anchoring 3,500 high-quality jobs in the region.

The focus at the new campus has been on hiring from within the community and employing a workforce that reflects the communities Health Net serves. As a result, the company's employee base is 70% women and 60% employees who

down barriers, [improve access](#) and reduce health disparities.

As Health Net has shifted to focusing more on social drivers of health during the past five years, the company has contributed more than \$100 million to more than 500 community-based initiatives. It continues to work closely in collaboration with its local partners to innovate new programs and models of care.

Focus on Quality and Innovation

Quality care requires that Health Net and its partners consider the needs of their members holistically. Health Net's solutions, driven by innovation, help promote whole-person health. Alongside CalAIM —the California Advancing and Innovating Medi-Cal framework of the Department of Health Care Services — the Health Net model delivers more seamless, coordinated care for its members.

Health Net has developed, implemented and evolved this whole-person model over several years. It has found that leveraging data strategically, simplifying solutions and caring for patients through channels they trust are critical to driving improvements in quality care. Health Net has outlined these observations and best practices in a report, "[Innovating Within Medi-Cal](#)."

As part of this evolution, Health Net has contributed to the development of the state's new and groundbreaking CalAIM program. Health Net has led in CalAIM implementation across its statewide footprint. To help strengthen the system and drive equity, Health Net's experts shared

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identify as African American, Latino/Hispanic, Asian American or Native American.

Also important is that nearly a third of Health Net's Sacramento-based employees have been with the company for 10 or more years.

Driving Health Equity

California's incredible diversity is reflected throughout the state. That's why the company has pioneered [innovative approaches](#) to health equity for more than a decade. It has built teams, models and innovative approaches that work to break

Health Net: Expanding Access to Care

From Page 5

early lessons learned with key stakeholders throughout the health care industry.

This deep experience, expertise and evolution has made a real difference for Californians. Health Net has received a variety of awards and accolades for driving health equity, implementing culturally centered care and delivering world-class customer service to support its members.

A View to the Future

A longtime CalChamber member, Health Net has been here for California for more than a generation and is ready for generations to come.

For more information on Health Net's ongoing commitment to California's Medi-Cal community, [visit here](#).

Health Net

President and CEO:
Brian Ternan

Members: **3 million in 58 counties**

Network providers: **90,000**

West Coast hub: **Sacramento, CA**

Company business segments:

- Medi-Cal
- Medicare
- Commercial health coverage



Governor Signs CARE Court Support System into Law

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mentally incapacitated homeless individuals,” said CalChamber President and CEO Jennifer Barrera.

“California employers have a clear stake in improving treatment and outcomes for these individuals. They are fellow Californians for whom we have an obligation of care. Many employers share neighborhoods with mentally ill individuals or those dealing with substance abuse addictions and can attest to the failure so far to adequately serve these individuals who are in crisis. This new law signals a change in how we are dealing with this crisis.

“The issues surrounding the tragedy of homelessness in California are affecting the ability of businesses to operate in healthy, thriving communities. We offer our support and assistance as the program is being implemented.”

New Path

At the September 14 signing ceremony, Governor Newsom described CARE Court as “offering hope and a new path forward for thousands of struggling Californians and empowering their loved ones to help. I thank our legislators and the broad coalition of partners who made this day possible and look forward to our work together to implement this transformative program in communities across California.”

Funding for the CARE Court framework, according to the Governor's news release, is part of the state's \$15.3 billion investment to address homelessness and includes \$1.5 billion for behavioral bridge housing, more than \$11.6 billion annually for mental health programs throughout the state, and more than \$1.4 billion for the state's health and human services workforce. Another \$88.3 million in CARE Court start-up funds

was provided for the state, counties, courts, self-help and legal aid.

As described in the release and on the program website, the CARE Court will provide individuals with clinically appropriate, community-based and court-ordered CARE plans consisting of culturally and linguistically competent county mental health and substance use disorder treatment services. These include short-term stabilization medications, wellness and recovery supports, social services and housing.

Services are provided to the individual while they live in the community. Plans can be between 12 and 24 months. The individual's team also includes a volunteer supporter to help them make self-directed care decisions, and an attorney.

More information about the CARE Court framework is available at [this link](#).
Staff Contact: Ben Golombek

CalChamber-Sponsored Seminars/Trade Shows

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Organization of Vine and Wine. October 31–November 4, Baja California. +52 (55) 9000-0199.

Information and Communication Technology (ICT) and Clean Technology Trade Mission to Serbia and Montenegro.

U.S. Department of Commerce. October 31–November 4. (817) 684-5348.

Aerospace and Defense Trade Mission to

the Middle East. U.S. Department of Commerce. November 6–11, Tel Aviv, Israel; Riyadh, Saudi Arabia; Manama, Bahrain. (623) 377-9641.

Exporting 101: Pathways to Developing International Markets. California Centers for International Trade Development. November 9, February 22, 2023, Online. (559) 243-7280.

U.S. Pavilion at Formnext 2022. U.S.

Department of Commerce. November 15–18, Frankfurt, Germany. 49-211-737767-30.

Beijing International Life and Health Industry Expo. Ministry of Commerce, World Federation of Chinese Medicine Societies, Chinese Research Hospital Association, China Chamber of International Commerce. November 25, Online. +86 15801079798.

Shared Values Core of Australia-California Partnerships on Climate, New Technology



Ambassador Jane Duke, Consul General of Australia in Los Angeles



(From left) Ryan Harnden, Rio Tinto Borates; Ambassador Jane Duke, Consul General of Australia in Los Angeles; Craig Gott, Suburban Water Systems; and Stuart Woolf, Woolf Farming and Processing.



Multiple connections enhance continuing strong economic relations

between Australia, the United States and California, Ambassador Jane Duke, Consul General of Australia in Los Angeles, told a California Chamber of Commerce breakfast audience last week.

Speaking at the September 9 gathering of the CalChamber Council for International Trade, the Ambassador pointed to private sector opportunities in sectors such as critical minerals, supply chains, quantum, defense and space industries, and green energy. The breakfast meeting, attended by more than 30 representatives of the business community and the CalChamber Board of Directors, was sponsored by United Airlines.

Australia-U.S. Free Trade Agreement

Ambassador Duke recapped the benefits to the United States, Australia and California from the Australia-U.S. Free Trade Agreement (AUSFTA), which in 2020 had been in operation for 15 years.

"It is a special agreement which befits our special relationship," Duke said.

Examples include: U.S. investors enjoy special treatment for investments worth less than US\$1 billion, while U.S. exporters face zero tariffs entering Australia.

The United States is Australia's second largest two-way trading partner in goods and services while California exports more to Australia and imports more from Australia than any other U.S. state.

Duke encouraged listeners "to view AUSFTA as the door which opens U.S. businesses' expansion into Asia's growth markets." She explained that Australia has a network of 15 trade agreements providing preferential market access to export markets in the Indo-Pacific, including new bilateral agreements with India and Indonesia.

Indo-Pacific Economic Framework

Having just come from the first face-to-face ministerial meeting for discussions on the Indo-Pacific Economic Framework (IPEF) launched in May by President Joe Biden, Ambassador Duke said Australia commends the U.S. for its leadership role.

She said the IPEF features four pillars, with details to come from the post-meeting ministers' statement:

- trade;
- supply chains;

- clean energy, decarbonization and infrastructure; and
- tax and anti-corruption.

Inflation Reduction Act

The recent passage of the U.S. Inflation Reduction Act (IRA) will further strengthen U.S.-Australia relations by allowing the two countries to expand their critical minerals supply chain partnership, according to the Ambassador. The IRA includes tax incentives for U.S. trade partners like Australia that can contribute critical minerals for manufacturing electric vehicle batteries.

She pointed out that Australia is the world's largest producer of lithium, third largest producer of raw cobalt and fifth largest producer of nickel, making it "very well placed to meet the needs of U.S. automakers as they seek to diversify their supply chains and source responsibly."

Australia-California Relations

Key sectors for Australian investment in California include finance, construction and manufacturing, and professional services. More than 400 Australian firms employ nearly 12,000 people in California.

Many Australian companies find California a friendly place to invest, Duke observed. Examples she cited

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Shared Values Form Core of Australia-California Partnerships

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include Resmed, a major Australian medical company, which is headquartered now in San Diego and became a major supplier of U.S.- and Australian-made ventilators to California at the beginning of the pandemic.

Australian climate technology innovators are coming to California to take advantage of the entrepreneurial climate, deep venture capital resources and ambitious climate policy settings, Duke said. One such company is Tritium, a Brisbane-based designer and manufacturer of direct current (DC) fast chargers that has a facility in Torrance, California and was listed on the NASDAQ earlier this year.

Other Australian companies are leading in green hydrogen, lithium and geothermal energy, and energy storage, she said. Smaller companies in rooftop solar and other industries also are enjoying growth opportunities, she added.

Invest in Australia

Summarizing reasons for California companies to invest in Australia, Ambassador Duke pointed out that Australia has just 0.3% of the global population but makes up 1.6% of the world's economy and is the 13th largest economy in the world. Australia has enjoyed three decades of economic

growth, including during the COVID-19 pandemic, when most developed economies shrank.

Although Australia is known for its resources exports, 80% of the economy



Maggie Ronan (left) of United Airlines, breakfast sponsor; CalChamber First Vice Chair Greg Bielli of Tejon Ranch; and Ambassador Jane Duke, Consul General of Australia in Los Angeles.

is made up of services, with the country's largest services export being education. Australian universities consistently rank among the world's best, Duke said, providing highly skilled workers, particularly in engineering, software development and R&D.

Australia's legal system is similar to that of the United States and the ease of doing business in Australia ranks competitively in global surveys, the Ambassador commented.

Australia is a great place to visit and

to live, she concluded, noting that four cities in the Economist's 2021 most livable cities are in Australia — Adelaide, Perth, Melbourne and Brisbane.

Skilled Workers

Australia recently announced a major uptick in its skilled migration program to address growing demand. Moreover, a special visa category available only to Australian nationals, the E-3, enables businesses to fill specific skills shortages in a range of industries at no cost, Ambassador Duke said, strengthening the U.S. economy without displacing American workers.

For employers, there are no fees associated with the E-3 visa, which is valid for two years with an unlimited number of extensions.

Closer Connections

The Ambassador said she has been working over the last year in Los Angeles with the [American Australian Association](#) to help bring the Australian and U.S. business communities closer together. They have established a West Coast chapter of the association's business council, made up of members from a diverse range of industries having operations across Australia and the United States.

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

Employee Arrested While Off Duty? Proceed Cautiously; Gather Facts

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Is the arrest public information that may damage the employer's reputation?

Does the employer face potential civil liability if the employee returns to work?

Options

An employer's options are no action, paid suspension, unpaid suspension, or termination *for a reason other than the arrest*.

Placing an arrested employee on leave is an appealing choice because it allows the employer to gather information, consult with legal counsel, and allow the judicial process to unfold. If the leave is unpaid, and no conviction results from the arrest, backpay may be considered.

Court Case

The complexity of this situation is reflected in the facts underlying *Tilkey v. Allstate*, 56 Cal.App.5th (2020). In 2014, Michael Tilkey, who had worked for Allstate Insurance for 30 years, was fired after he was arrested for disorderly conduct, disruptive behavior, and domestic violence. Tilkey sued for wrongful termination, defamation, and a violation of Labor Code Section 432.7.

The jury awarded him \$2,663,137 in compensatory damages and \$15,978,822 in punitive damages. Allstate appealed.

The appellate court held that Allstate had not violated Labor Code Section 432.7 because Tilkey had agreed to a plea

bargain, which the court held was a conviction. However, the court found for Tilkey on his self-compelled defamation claim.

Tilkey is a cautionary tale. If you learn that an employee has been arrested, it is best to deliberate carefully and consult with legal counsel before taking any adverse action against the employee.

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.

Federal Reserve Fights Inflation, Walks Line Between Soft Landing, Recession

The Economy

The Drumbeat of a Recession Is Growing Louder, But It Is Probably Not Here Yet

We are sure in an odd place, economically speaking. Job growth is solid and households keep spending money. Yet the world seems to think we are in a recession.

Question: What is the opposite of a jobless recovery?

A recession without layoffs? Is that a recession? We are also in a quirky time with data continuing to be volatile due to the ebbs and flows of consumption and supply chain disruptions from the pandemic.

The news seems to focus on the risks of the economy being in a recession or soon to enter a recession. This can be seen in the number of people asking that question to Google, which has skyrocketed.

It is higher now than in the past two recessions, but in the past two, it was pretty obvious since there were massive increases in the unemployment rate. This time is more confusing since the unemployment rate is falling.

It is not officially known whether the economy is in a recession. The National Bureau of Economic Research (NBER) is the self-appointed arbiter of the American business cycle and has been dating recessions for almost a century. They are precise with the start and end dates of a recession, but they are not timely when announcing when a recession happens.

They need to wait for the release of economic reports and revisions before they make a decision. They take a deliberate retrospective approach, so they do not have to revise. Since 1980, there has been an average of 7.2 months from the start of the recession to the NBER announcement.

The NBER defines a recession as a

significant decline in economic activity spread across the economy, lasting more than a few months. It is usually visible in real gross domestic product (GDP), real income, employment, industrial production and wholesale-retail sales.

Three of the six indicators they follow are directly related to the labor market. The others deal with income, spending

Labor

If the U.S. Economy Is in a Recession, No One Seems to Have Told Employers

The unemployment rate stands at 3.5%, reaching the lowest level since February 2020 and tying for the lowest rate since 1969.

Payrolls have surpassed the previous record high just before the pandemic; they now stand at 152.5 million, 32,000 above the previous high.

So far this year, payrolls have increased 3.6 million. That is higher than the average of a good year of growth, and there are five more months of data to go.

Inflation

The Fed's Fight Against High Inflation Is Not Over

The drop in inflation this past month was welcome news and offers hope that inflation

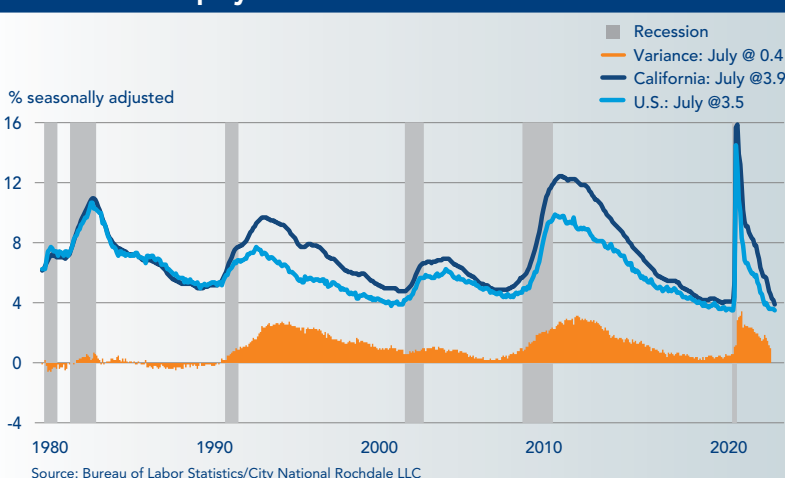
may begin to cool off going forward. The yearly change in the consumer price index (CPI) fell to 8.5% in July after hitting a 40-plus-year high of 9.1% the month before. This change in the inflation trajectory is good news for consumers, businesses and the Fed, which has labeled inflation as "public enemy No. 1."

Lower energy prices were the driving force behind the decline in inflation and are on track to make a more significant drop in the August CPI report. The July report saw prices fall about 40 cents in the cost of a gallon of gasoline. For the upcoming August report, there will be a decline of about 60 cents (the CPI report measures changes from mid-month to mid-month).

But the decline in inflation is not in response to the Fed's actions of reducing monetary stimulus. The Fed has very little control over energy and food prices.

See Next Page

California Unemployment Rate



and manufacturing. For the past three months, five of these six indicators have been in the positive territory. So although many may think the economy is in a recession, it probably is not now.

That said, the pace of growth of these indicators has been slowing. But slowing is not contracting. The important question is where the economy is headed. Is it transitioning to a slower, more sustainable pace or to a contraction?

Complicating the outlook is the Federal Reserve, which is firmly committed to reducing the high pace of inflation by raising interest rates by another 100 basis points (bps) by year-end. This will put the funds rate above the neutral level and well into the restrictive territory.

With the Fed actively trying to slow the pace of economic growth, the path to a soft landing is becoming narrower, and the risk of a recession continues to grow.

Federal Reserve Walks Line Between Soft Landing, Recession

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The drop in energy prices represents the slowing in global demand as the pace of growth slows.

As for food prices, they continue to be a problem. In the past year, they have increased by 13.1%, the highest rate since 1979. A surge in fuel and fertilizer prices started the upward pressure in food prices. But prices have since been affected by a series of supply shocks (drought in the South and West that pushed up meat and fresh vegetable prices, the avian flu outbreak in the Midwest that caused a spike in the price of chicken and eggs, and the war in Ukraine that caused corn and wheat prices to surge).

Fortunately, the shocks are beginning to unwind. This is showing up in the falling of spot and futures prices of many of these food commodities. That is a start, but a significant portion of the cost of food is transportation, packaging and labor. Those costs haven't retreated as much, so the expected decline in food prices in the CPI calculation will be slow.

Despite the price decline of the highly volatile component of energy putting inflation on the downward path, and the fact that food inflation is expected to be the next shoe to drop in the deflation story, the Fed still has concerns about inflation.

They are worried about the components that are not as volatile, what is called "sticky inflation" — items that don't tend to fall in price when demand slows (for example, a haircut, cell phone, medical care, etc.). These prices represent about 70% of CPI and are still on an upward trajectory. The rate above 5.0% is well above the Fed's comfort zone.

So the Fed will continue to keep upward pressure on the federal funds

rate until it has seen clear evidence of a sustained slowdown in inflation.

The Fed

The Next Hike in Rates Will Probably Be 50 Basis Points (bps)

The Fed has now raised the federal funds rate four times in this cycle, increasing it by a total of 225 bps from 0.125% to 2.375%, in an effort to corral soaring inflationary pressures. They are raising interest rates at the most aggressive pace since the 1980s. The recent

economy may enter a recession. This has helped drive down the price of many commodities like oil, gasoline, wheat, corn and copper.

Although the public may seem worried that the economy may soon enter a recession, Fed officials see it differently. They believe the strong labor market will allow the pace of economic growth to continue to grow despite the higher level of interest rates, what they call a soft landing.

With the funds rate in the neutral range, managing monetary policy now gets tricky (back when interest rates were at 0.125%, raising rates didn't have much of an impact, since they were still in the stimulative range; now future hikes will be in the restrictive range). Aside from a spike in inflation, the Fed may start opting for smaller interest rate increases going forward.

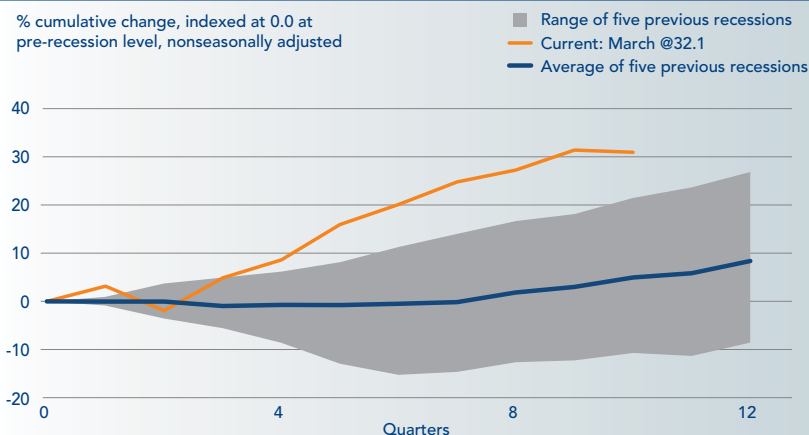
The Fed will want to tread carefully and see how the economy responds to their actions. Since monetary action takes an estimated 12–18 months to affect the markets, the slower pace of raising rates will mitigate the risk of overtightening — this would mean the Fed is moving into the "data dependency mode."

The impact of Fed actions has already been seen in the housing sector, one of the corners of the economy most sensitive to interest rates; sales are beginning to slump.

Staff Contact: Dave Kilby

Household Net Worth

% cumulative change, indexed at 0.0 at pre-recession level, nonseasonally adjusted



Source: Federal Reserve/City National Rochdale LLC

move of 75 bps is the second in a row and matches the largest increase since 1994.

The Fed has little choice; they have taken a bare-knuckled approach to fighting inflation. They are determined to slow the pace of economic growth because inflation recently hit a 40-year high of 9.1% year over year.

Since the Fed started raising rates back in March, economic indicators of spending and production have softened. But at the same time, job gains this year have been strong and the unemployment rate remains near the 50-year low of 3.6%.

That said, the Fed downgraded its assessment of the current state of the economy. The Fed is also benefiting from the growing belief that the global



This economic outlook report to the CalChamber Board of Directors was prepared by Paul Single, managing director, senior economist, senior portfolio manager, City National Rochdale.

CalChamber Board Hears Update on Future Energy Possibilities for State



A panel discussion at the CalChamber Board of Directors meeting on September 9 in the middle of an energy grid-challenging heat wave features presentations by industry leaders. From left are CalChamber Board member Maryam Brown, president of Southern California Gas Company; Marybel Batjer, partner of California Strategies and former president of the California Public Utilities Commission; Steve Powell, president and CEO of Southern California Edison; and CalChamber Board member Patti Poppe, CEO of PG&E Corporation. Panelists discussed the integration of renewable and traditional energy sources (such as natural gas), current practices to handle peak demand on hot days and prevent outages, and the potential for innovations in battery and green hydrogen technology to ensure the state's energy infrastructure can provide affordable, equitable and reliable clean energy. Panelists agreed that communications among the energy generators go a long way toward keeping the lights on when the system is under stress.

Commentator Predicts Party Numbers to Shift in November Elections



Chris Stirewalt, senior fellow at the American Enterprise Institute, entertains attendees at the CalChamber Board of Directors dinner on September 8 with anecdotes and observations on the upcoming November midterm elections, how Democrats and Republicans will fare and ways in which maneuvers over federal legislation like the Inflation Reduction Act might affect election results. When it comes to parties, he comments, "Americans like divided government," putting one party in power and then taking that power away.

A Collaborative Road to Growing Food When Water, Energy Scarce



A.G. Kawamura, owner/partner of Orange County Produce LLC and former secretary of the California Department of Food and Agriculture, explains to the CalChamber Board of Directors on September 9 how “collaborative innovation” led quickly to using previously idle land on the former El Toro Marine Base to grow crops used by a local food bank. Waking up our imaginations, he says, leads to rethinking approaches to water, energy and food scarcity. The resulting investment in infrastructure, new technology and ability to grow food in different places, he says, can be a step toward making California the first large region on the planet to reach sustainable development goals.

Water Managers Present Look at California Water Needs



Heather Dyer (left), CEO/general manager of the San Bernardino Valley Municipal Water District, and Craig Miller, general manager of the Western Municipal Water District, appear before the CalChamber Water Resources Committee on September 8 to give their perspectives on solutions to the state’s water supply shortfall. The two are board members of the [Solve the Water Crisis](#) coalition, a group of water agencies that is calling attention to steps the coalition members believe the state must take to update infrastructure and policies to ensure there is sufficient water to support California food producers and jobs.

Ninth Circuit Panel to Rehear Arguments on Mandatory Arbitration Ban

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tion on mandatory employment arbitration agreements (*Chamber of Commerce of the United States of America, et al. v. Bonta, et al.*, No. 20-15291 (9th Cir. Sept. 15, 2021)).

In the majority decision, the panel said that AB 51 regulated only pre-contract behavior that is not regulated by the FAA. The FAA, according to the majority, regulates only whether the agreements, once entered into, are enforceable. Because of this difference in approach, the majority upheld AB 51.

Split Decision

The panel was split 2-1, however, as Justice Sandra Ikuta dissented from the majority. Justice Ikuta cited a significant history of U.S. Supreme Court cases where state legislatures passed “work-around” laws that didn’t directly affect arbitration agreement enforcement. Instead, those laws made it more difficult

to enter into arbitration agreements in the first place. The U.S. Supreme Court found in those cases that laws designed to burden the formation of arbitration agreements violated the FAA.

Justice Ikuta found that AB 51 was a similar type of law as those the U.S. Supreme Court struck down and, for this reason, dissented from the majority.

Following the Ninth Circuit decision, a petition for a rehearing *en banc* was filed asking for all the Ninth Circuit justices to weigh in on the law. While the petition was pending, AB 51 remained unenforceable.

U.S. High Court Ruling

The Ninth Circuit chose not to rule on the petition until after the U.S. Supreme Court issued its decision in *Viking River Cruises v. Moriana*, a separate lawsuit regarding a California Supreme Court decision preventing mandatory arbitration of California Private Attorneys General Act (PAGA) claims.

The U.S. Supreme Court found that the California Supreme Court decision affected enforceability of arbitration agreements and, thus, violated the FAA.

Following this ruling, two justices from the original Ninth Circuit panel decision, Justice Ikuta and Justice William Fletcher, voted on their own to withdraw the original opinion. This means that the Ninth Circuit panel will rehear arguments, in light of the U.S. Supreme Court’s *Viking River Cruises* ruling, to determine whether AB 51 violates the FAA.

While the rehearing and the ruling are pending, AB 51 continues to be unenforceable. Employers who wish to continue using mandatory arbitration agreements are still strongly encouraged to consult legal counsel to evaluate risks and benefits to using arbitration agreements.

Staff Contact: **Matthew Roberts**

California Consumer Privacy Act Will Apply to Employers in 2023

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considers a situation where an employee is engaging in discriminatory or harassing behavior, and they may want to try and cover that up.

Hoffman stresses that employers should learn about any exemptions that apply, such as an exemption for legal claims, or things like that. While employers should ensure there is a system in

place for employees who seek to exercise their rights, employers also should know what the bounds of those rights are to ensure the integrity of key documents in a workplace investigation.

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