

ALERT

Congress Moves Quickly to Avert Railroad Strike

CalChamber, 400 Groups Urged Preventive Action



Congress is moving swiftly to prevent a rail strike between the major freight railroads and

12 labor unions.

On November 30, the U.S. House of Representatives passed legislation to require the companies and workers to accept an agreement reached in Septem-

ber but rejected by some of the labor unions. The U.S. Senate was to act next and President Joe Biden [urged](#) it to act quickly.

At the beginning of the week, the California Chamber of Commerce and more than 400 other organizations urged Congress to act quickly to avert the looming rail strike.

In a [letter](#) sent November 28 to congressional leadership, the large and diverse coalition states that immediate

See Congress Moves: Page 4

CalChamber Welcomes New Policy Advocate on Energy Issues



Brady Van Engelen has joined the California Chamber of Commerce as a policy advocate specializing in energy issues. He also leads CalChamber advocacy on climate change,

Brady Van Engelen

environmental regulation and transportation matters.

Before joining the CalChamber policy team, Van Engelen served as a senior policy manager at Bloom Energy, representing the company before the California Legislature and California Public Utilities Commission.

He previously was a gubernatorial appointee to the California Geologic Energy Management Division (CalGEM) and served as special assistant to the state oil and gas supervisor. Van Engelen also was defense legislative assistant to then-U.S. Senator John Kerry and prior to working on Capitol Hill, worked in policy and advocacy roles at Veterans For America.

Van Engelen served in the U.S. Army from 2002 to 2005, and received a Purple Heart and Bronze Star. He earned a master's degree in government from Johns Hopkins University, and has an M.B.A. from the University of California, Davis.

CalChamber Public Affairs Conference Gives New Legislators Chance to Tell Their Stories



Photos by Matt Lara

First-time legislators have an opportunity to recount their journeys to office in a panel discussion on November 29, the first day of the CalChamber Public Affairs Conference. From left are moderator Ben Golombek, CalChamber executive vice president and chief of staff for policy; Assemblymember-Elect Josh Lowenthal (D-Long Beach); Assemblymember Tina McKinnor (D-Inglewood); Assemblymember-Elect Avelino Valencia (D-Anaheim); Assemblymember-Elect Damon Connolly (D-San Rafael); and (inset) Assemblymember-Elect Diane Dixon (R-Newport Beach). More photos to come in the next edition of *Alert*.

Inside

[San Francisco to Host Asia-Pacific Leaders: Page 5](#)

Labor Law Corner

Workers' Comp: Ways to Protect Employee's Health Benefits



Dana Leisinger
HR Adviser

We have an employee who has been on workers' compensation leave for a few months. How long do we have to continue to pay for his health insurance?

This issue was decided in 2002, yet the question continues to come up. California Labor Code Section 132a makes it clear that employers may not discriminate against an employee who has filed a workers' compensation claim, and until 2002, discontinuing an employee's health benefits was considered such a form of discrimination under that code section.

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Workers' Comp Ruling

In 2002, however, the entire panel of workers' compensation judges decided in the case of *Navarro v. A&A Farming* that the Employee Retirement Income Security Act (ERISA), the federal body of law that governs health benefit plans, preempted the state law.

The panel also held that when an employee goes out on workers' compensation leave, it is a reduction in hours that triggers continuation coverage requirements of the Consolidated Omnibus Budget Reconciliation Act (COBRA).

This means that workers' compensation does not protect an employee's health benefit plan.

Family/Disability Leaves

If your employee qualifies for the federal Family and Medical Leave Act (FMLA) or state leaves such as the California Family Rights Act (CFRA) or pregnancy disability leave (PDL), you can place the employee on family leave running concurrently with workers' compensation leave, and that will protect the employee's benefits for 12 weeks as long as your plan is ERISA qualified.

Some employees don't want to be placed on FMLA or CFRA, intending to use those leaves for another reason later

in the year. It is the employer, however, who makes the decision and places the qualifying employee on whichever leave is appropriate.

Keep in mind also that if the employee doesn't qualify for family leave, their being out on workers' compensation leave is a reduction in hours triggering COBRA.

If the injured employee does qualify for family leave but requires workers' compensation leave for longer than 12 weeks, then the continuation of benefits under family leave expires and the employer is required to send a timely notice of COBRA rights.

Many employers are under the misconception that if an employee is disabled, health benefits cannot be discontinued. Those benefits, however, are protected only by state and federal family leave and pregnancy disability leave laws.

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.

CalChamber-Sponsored Seminars/Trade Shows

More at www.calchamber.com/events.

Labor and Employment

HR Boot Camp Virtual Seminar. CalChamber. December 8-9, SOLD OUT; March 9-10, 2023, Online. (800) 331-8877.

2023 Employment Law Updates.

CalChamber. January 6, 2023, Online; January 10, 2023, Online; January 12, 2023, Sacramento; January 19, 2023, Costa Mesa; January 24, 2023, Online. (800) 331-8877.

International Trade

2022 WUSATA Mexico Outbound Mission to Mexico City & Monterrey with Buyers from Central America. Western U.S. Agricultural Trade Association. December 4-9, Mexico City and Monterrey. (360) 693-3373.

VI International InvestChile Forum 2022.

See CalChamber-Sponsored: Page 6

CalChamber Calendar

Water Committee:

December 8, San Francisco

ChamberPAC Advisory Committee:

December 8, San Francisco

Board of Directors:

December 8-9, San Francisco

International Trade Breakfast:

December 9, San Francisco

Annual Meeting:

December 9, San Francisco

Next Alert: December 16

The Workplace

Best Practices for Fostering Diversity and Inclusion in the Workplace



In Episode 165 of The Workplace podcast, CalChamber employment law expert Matthew Roberts, and diversity and inclusion

consultant Jonathan Mayes discuss best practices for fostering diversity, equity, inclusion and belonging in the workplace.

The shift in workforce demographics from a majority of baby boomers to a majority of Millennial and Gen Z employees has brought the importance of fostering workplace diversity, equity, inclusion (DEI) and belonging to the forefront for many employment lawyers and HR professionals, Roberts says in kicking off the podcast.

Research has shown that organizations that truly lean into diversity, equity and inclusion typically outperform those that do not, Mayes says. For example, in a study conducted by McKinsey & Company, companies that do best in terms of women in leadership positions are 25% more likely to outperform others at the other end of the spectrum.

Likewise, organizations that do best in terms of being in the top quartile, organizations that embrace DEI, are 36% more likely to outperform organizations at the other end of the spectrum, he says.

And the benefits don't stop there — companies see increased ability to attract diverse talent with diverse perspectives that can represent the demographics and communities they serve, Mayes adds.

Strategies to Increase DEI

It's important that companies develop a true mission statement or vision statement as to what their commitment is to DEI. Importantly, the company's leadership also should actively communicate their support for this effort in all that the organization does, Mayes stresses.

Organization leaders also should think about how the organization demographically represents the communities they serve. Questions leaders can ask are: how closely does the organization's leadership resemble the community's demographics? How are prospective employees being hired? How broad is the hiring net to find folks from different groups, different demographics, to come in to interview for open positions? How will these candidates be interviewed? What does the interview panel look like and is there diversity in the panel in terms of not only ethnicity, sexual orientation and age, but also gender?

"My recommendation to companies is that they be really intentional about looking fundamentally in the mirror. What do we look like now demographically? How does that compare across the demographics, areas where we operate? And how can you better reflect that in terms of management in our organization?" Mayes says.

For legal reasons, it's also important to distinguish between talking about increasing workforce diversity and making hiring or promotion decisions based on someone's protected class, which can include race or sex, Roberts explains. Employers should not make choices based on someone's protected

class; rather, employers should grant greater opportunities from a more diverse recruitment pool.

DEI and Belonging

Many are familiar with the terms "diversity, equity and inclusion," but equally important is "belonging."

Mayes shares that DEI expert Verna Meyers describes diversity as being invited to a dance party, inclusion as being invited to come onto the dance floor, equity as being able to get to the dance floor if you're in a wheelchair and the floor is elevated, and belonging as a sense that you can walk over to the DJ and request a song like everyone else.

Research has shown that where there are instances of a sense of belonging, there's a higher percentage of retention and higher potential to attract talent because employees feel happy to be with the organization, Mayes says.

Starting a DEI Initiative

Mayes recommends that companies that want to move forward with a DEI initiative find someone internally or externally who can help guide the process. A thoughtful, clear vision/mission statement should be carefully crafted that outlines what the organization aspires to be in all things DEI. Before going public with this statement, the organization should get different voices in the room as part of the discussion process.

The next step after developing a clearly defined statement, he says, is to

See Best Practices: Page 6



CalChamber Member Feedback

"CalChamber moves quickly to keep legislators informed about employers' concerns when it comes to proposed new laws and regulations. They communicate commonsense solutions to those at the State Capitol."

Kevin P. Kelly
President and Chief Executive Officer
West Valley Construction Company, Inc.

Coastal Commission Approves Project to Bring Reliable Water to Monterey



A multi-pronged effort to bring a reliable, sustainable water supply to the Monterey Peninsula was approved by the California Coastal Commission at the end of a lengthy hearing on

November 17 in Salinas.

The **Monterey Peninsula Water Supply Project's** desalination facility will be developed in the city of Marina and will bring reliable water to a region that has struggled with water supply issues for many years.

The commission staff recommended approval of the project, which also is supported by the Reliable Water for Monterey County Coalition, made up of dozens of local stakeholders, advocacy organizations, the building trades, environmental justice groups and conservation advocates.

The California Chamber of Commerce joined local stakeholders in supporting the project and testified at the hearing. Vigorous pursuit of desalination is an important part of a comprehensive solution to the state's chronic water shortage.

Monterey Peninsula Water Shortage

The Monterey Peninsula currently receives the majority of its water from the Carmel River. Since 1995, state water authorities have limited the amount of water to be pumped from the river to protect threatened species that live there.

The lack of reliable water led to a moratorium on new building and construction in the region nearly 15 years ago. As a result, there is a shortage of affordable housing in the region and businesses looking to expand have been stymied.

Businesses and residents in the region have used water conservation and water efficiency strategies to good effect; the Monterey Peninsula has some of the

lowest water usages in the state — about 57 gallons per person each day.

But water supplies continue to be at risk from climate change, drought and seawater intrusion.

Project Components

In addition to establishing a water desalination plant in the region, the Monterey Peninsula Water Supply Project by California American Water includes components to capture stormwater and replenish groundwater.

California American Water has announced a phased approach, stating that the first phase will protect the Carmel River ecosystem and create a drought-proof new water supply for the company's service area. Other aspects of the project aim to reduce greenhouse gases, ensure low-income assistance programs, and provide public access to the coastline around the project, according to California American Water.

Staff Contact: Brenda Bass

Congress Moves Quickly to Avert Railroad Strike

From Page 1

action to avert a strike is necessary or the result could be “interruptions in the delivery of fertilizers, chlorine and other products essential to clean water, our food supply, and electricity generation.”

In addition, the coalition letter notes that “a potential rail strike only adds to the headwinds facing the U.S. economy.

A rail stoppage would immediately lead to supply chain shortages and higher prices.”

Many businesses and communities rely on regular, uninterrupted rail service and the current uncertainty created during this year's protracted contract negotiations has created enormous anxiety.

In September, during the last threat of

a strike, the mere possibility of a rail service stoppage created significant disruptions to the timely delivery of critical goods and products.

Unions and railroads are working against a December 9 deadline to come to an agreement.



Capitol Insider

presented by **CalChamber**

The Capitol Insider blog presented by the California Chamber of Commerce offers readers a different perspective on issues under consideration in Sacramento.

Sign up to receive notifications every time a new blog item is posted at capitolinsider.calchamber.com.

San Francisco Announced as Host City for Asia-Pacific Leaders Meeting in Fall 2023



Asia-Pacific leaders will gather in San Francisco in the fall of 2023 during the

United States' host year for the Asia-Pacific Economic Cooperation (APEC).

U.S. Vice President Kamala Harris announced San Francisco as the host city on November 18 during the APEC Annual Leaders Meeting in Bangkok, Thailand.

The California Chamber of Commerce supported California hosting the APEC meeting and responded to the announcement: "Exciting news that San Francisco has been selected to host the APEC Summit next November. With California's trade and investment connections to the Pacific Rim, together with our historical and cultural ties to this region, California was a natural choice to host this prestigious event."

Vice President Harris noted that there is "no better place to host APEC 2023 than California, a state known for economic innovation." She reiterated the United States' "enduring economic commitment" toward the Indo-Pacific region by working to increase two-way trade flows, the free flow of capital, and focus on sustainability and the decarbonization commitments.

Vice President Harris announced in Singapore in August 2021 that the U.S. was offering to host APEC 2023 and six months later in February 2022, the U.S. was formally chosen. At that time, the Biden administration outlined their top objectives for their host year including trade facilitation, standards for the digital economy and technology, supply chain resiliency, decarbonization and clean energy, infrastructure, and worker standards.

Earlier this fall, the other U.S. host cities for APEC 2023 Senior Official and Ministerial meetings were announced with Honolulu, Palm Springs, Detroit, and Seattle being chosen. APEC, which is the destination for more than 62% of U.S. goods exports, was last hosted by the United States in 2011.

APEC Business Advisory U.S. Chair

In July, the U.S. State Department announced that Dominic Ng, chairman and CEO of East West Bank, who was appointed as a U.S. member of the APEC Business Advisory Council (ABAC) on April 25, will serve as the chair during the United States' APEC host year in 2023. In this role, Ng will work closely with other ABAC members to provide recommendations to APEC leaders reflecting the perspectives of key APEC stakeholders.

East West Bank is represented on the CalChamber Board.

Created in 1995, ABAC consists of up to three business representatives from each APEC economy and is a key component of APEC's multi-stakeholder approach to trade and economic policies. ABAC meets throughout the year to discuss policy recommendations, undertakes activities to promote trade and investment as well as sustainable and inclusive growth, and reports annually to APEC leaders.

APEC History

Formed in 1989, APEC serves as a multilateral forum in which Asian and Pacific economies can solve economic problems and cooperate in developing key economic sectors.

The APEC economies are: Australia, Brunei Darussalam, Canada, Chile, People's Republic of China, Hong Kong, Indonesia, Japan, Republic of Korea, Malaysia, Mexico, New Zealand, Papua New Guinea, Peru, Republic of the Philippines, Russia, Singapore, Chinese Taipei, Thailand, United States and Vietnam.

APEC Facts

The 21 APEC economies are home to 2.9 billion people and represent approximately 60% of world gross domestic product (GDP), and 48% of world trade as of 2018.

APEC commitments to promoting regional economic integration and trade, making trade and business easier across borders, supply chain connectivity, energy efficiency and renewables, and making sure growth is inclusive for everyone has seen great benefits for the region thus far as regional trade has increased more

than seven times since 1989, with average tariffs falling from 17% to 5.3%.

According to APEC, growth has soared in the region with real GDP increasing from \$19 trillion USD in 1989 to \$46.9 trillion in 2018. Residents of APEC saw their per capita income increase by 74%; APEC has lifted millions out of poverty and created a flourishing middle class.

California-APEC Trade

In 2021, California exported \$120.4 billion to APEC, 10.9% of the national total. Of total California exports to APEC, 23.8% consisted of computer and electronics (\$28.75 billion). Other top exports included non-electrical machinery, transportation equipment, chemicals, and processed foods.

California imported \$385 billion from APEC in 2021, 31.8% of which was made up computers and electronic products. Other top imports included transportation equipment, electrical equipment, miscellaneous manufactured goods, and non-electrical machinery.

In 2021, California was the top importing state from APEC and the second largest exporting state to the region.

CalChamber Position

The CalChamber, in keeping with long-standing policy, enthusiastically supports free trade worldwide, 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. New multilateral, sectoral and regional trade agreements ensure that the United States may continue to gain access to world markets, resulting in an improved economy and additional employment of Americans.

The APEC is important as a vehicle for all Asia-Pacific economic integration.

This regional group sets a high standard that will enhance the competitiveness of the countries that are part of it and help facilitate trade and promote investment among them, increasing their economic growth and development.

Staff Contact: Susanne T. Stirling

Best Practices for Fostering Diversity and Inclusion in the Workplace

From Page 3

outline the steps needed to achieve this mission statement. What are your metrics going to be? How does the leadership look like and at what point do you want the organization to more closely resemble the demographics? Is it by 2028 or 2030?

Next, training will need to be provided to help people understand how best to attain DEI. A company can find resources internally or hire someone externally, but should make sure it gets done.

“It’s one thing to say you’re committed to this culture, but it’s another thing altogether to take steps to try to bring that culture into life, and the steps involve things like training or workshops,” Mayes points out.

The fourth step is retention. An organization should think about how to attract diverse talent, and think about employee resource groups, like a woman’s network group or LGBTQ+ to help inform the organization about how to be better

equipped to welcome diverse voices into the workplace.

“When people feel they have a voice, people feel they have a sense of belonging and inclusion,” Mayes says. “And when they have a sense of belonging and inclusion, they’re more likely to want to perform their best, to give their best, to be their best.”

CalChamber-Sponsored Seminars/Trade Shows

From Page 2

December 5–7, Pre-register to watch on streaming platform. (56-2) 2663 9200.

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

Setting the Stage for a Successful 2023: A Look Back and Forward at Global Trade. Northern California World Trade Center. December 13, Online. (916) 447-9827.

9th Annual Global Trade Awards Gala. Women in International Trade, Los

Angeles. January 19, 2023. (213) 545-6479.

China Clean Beauty Trade Mission. U.S. Commercial Service. February 21–22, 2023, Online.

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

Avalon 2023 California Pavilion. Governor’s Office of Business and Economic Development. (GO-Biz). February 28–March 5, Avalon, Australia. Space

limited. Jason.Sproule@trade.gov. 2023 Taiwan Trade Shows. Taiwan Trade Center, San Francisco. March 6–November 8, 2023, Taiwan and Online. (408) 988-5018.

Trade Winds Southeast Asia. U.S. Commercial Service. March 9–16, 2023, Bangkok, Thailand. TradeWinds@trade.gov.

11th Annual Pan African Global Trade and Investment Conference. Center for African Peace and Conflict Resolution. April 26–30, 2023, Sacramento. info@panafricanglobaltradeconference.com.



VIRTUAL & IN-PERSON SEMINARS | JANUARY 2023 | 9:00 AM - 12:30 PM PT

2023 Employment Law Updates

From mandatory bereavement leave to pay scale requirements, Governor Newsom signed numerous bills into law that will have a broad impact on all California businesses in 2023.

Don’t miss CalChamber’s annual Employment Law Updates in January. Whether you attend a 3.5-hour virtual or in-person seminar, get specifics and best practices from our California legal experts.

Preferred/Executive Members receive their 20% member discount.



Recent California and federal laws, regulations and court decisions

LEARN MORE at calchamber.com/2023updates