

ALERT

After 3 Weeks of Storms, What's State Water Outlook?



Following a barrage of storms at the end of December and beginning of January,

California made a quick about-face from critically dry conditions to floods across the state.

The abrupt change exemplifies California's boom-and-bust patterns in precipitation in a condensed period of time. It also highlights how important it is to be prepared for the lows as well as the highs when it comes to rainfall.

Atmospheric Rivers

In recent weeks, many areas of the state received much higher-than-average rainfall. The atmospheric rivers helped raise water levels in reservoirs across the state, many of which were at very low levels in early December.

The high flows have raised Shasta and Oroville reservoirs to their highest levels in the last 2.5 years. Snowpack in the Sierra Nevada is well over average for this time of year, with many sensor locations showing snowpack at more than 200% of normal. Hopefully, this snow

See After 3 Weeks: Page 8

New Fast Food Council Law on Hold Until 2024



The new law establishing a fast food sector council will remain on hold until voters decide

its fate in November 2024.

The Secretary of State [confirmed this week](#) that the industry challenge to the law, led by the Save Local Restaurants Coalition, had submitted enough signatures to place the referendum on the law, AB 257 (Holden; D-Pasadena; Chapter 246, Statutes of 2022), on the November 2024 ballot.

The California Department of Industrial Relations tried to put AB 257 into effect temporarily on January 1 of this year despite the pending signature verification process for the referendum, but the coalition sued to stop enforcement of the law.

The Sacramento Superior Court [ruled on January 13](#) that there was "very little harm" to the public in delaying enforcement of AB 257 until completion of the signature verification process.

Fast Food Council

AB 257, opposed by the California Chamber of Commerce, establishes the unelected Fast Food Council with unprecedented authority to write its own labor and employment laws for fast food restaurant employees.

The [Save Local Restaurants](#) coalition
See New Fast Food: Page 7



Photo by Kenneth James / California Department of Water Resources

Sean de Guzman (left), chief of the California Department of Water Resources Snow Surveys and Water Supply Forecasting Section, and Andy Reising, water resources engineer in the Snow Surveys and Water Supply Forecasting Unit, work the measurement phase of the first media snow survey of the 2023 season at Phillips Station in the Sierra Nevada Mountains. The survey is held approximately 90 miles east of Sacramento off Highway 50 in El Dorado County. The January 3 survey recorded 55.5 inches of snow depth and a snow water equivalent of 17.5 inches, 177% of average for the location.

Inside

[2022 Advocacy Return on Investment: Pages 5–6](#)

Labor Law Corner

Meal Breaks Generally Depend on Actual Number of Hours Worked



Ellen S. Savage
HR Adviser

Are meal break requirements determined by the total length of an employee's shift, or by the number of hours the employee actually works?

Meal break requirements in California are determined by the number of hours an employee actually works each day. The length of the employee's assigned shift may be longer than the number of hours actually worked in a few situations.

Basic Meal Break Requirements

First, let's take a look at the basic

meal break requirements for nonexempt employees in California:

- An employee who works more than 5 hours is required to take an unpaid meal break of at least 30 minutes. The employer and employee can mutually agree to waive the meal break so long as the employee works no more than 6 hours.
- A second 30-minute meal break is required if the employee works more than 10 hours. However, that second meal break may be waived by mutual consent so long as the employee works no more than 12 hours and as long as the first meal break of the day was actually taken.

Shift Length vs. Hours Worked

Confusion over meal break requirements can arise when comparing shift length to hours worked. When calculating hours worked, we look at the total shift length and subtract out any unpaid meal periods or other time off.

Consider the following example:

- Joe is scheduled to work from 8 a.m. to 6:15 p.m., which is 10 hours and 15 minutes. Because Joe is scheduled for more than 6 hours, he of course must take at least one 30-minute meal break. But since Joe's shift is 10 hours and 15 minutes long, is he then entitled to a second meal break? The answer is no, since Joe actually worked only 9 hours and 45 minutes because he took a 30-minute meal break.

The law looks to how many hours the employee actually worked, not the total

number of hours of the assigned shift. It's important to remember though that all required 10-minute rest breaks do count as time worked for calculating meal break requirements, even though employees are not working during their rest breaks.

Another situation that sometimes causes confusion is where an employee takes time off during the day, such as for a medical appointment, and uses paid leave time:

- Jane regularly works an 8-hour day from 8 a.m. to 4:30 p.m., and normally takes a half-hour lunch around noon. If Jane was planning to leave work at noon for a medical procedure and use sick leave for the rest of the day, she would not be entitled to a meal break because she would be working less than 5 hours. Although Jane would be paid 8 hours for the day (4 hours worked plus 4 hours of sick leave) she would not actually work enough hours to trigger the meal break requirement.

It's important to note that there are exceptions to these general meal break requirements in certain industries, such as health care and construction, as well as under some collective bargaining agreements.

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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CalChamber-Sponsored Seminars/Trade Shows

More at www.calchamber.com/events.

Labor and Employment

Finding the Right Fit: Tips for Recruiting and Hiring. CalChamber. February 16, Online. (800) 331-8877.

Leaves of Absence: Making Sense of It All Virtual Seminar, February 23–24, April 13–14, Online. (800) 331-8877.

HR Boot Camp Virtual Seminar. CalChamber. March 9–10, May 4–5, Online. (800) 331-8877.

International Trade

China Clean Beauty Trade Mission. U.S. Commercial Service. February 21–22, Online. Cindy.Ma@trade.gov.

Exporting 101: Pathways to Developing

International Markets. California Centers for International Trade Development. February 22, Online. (559) 243-7280.

2023 Taiwan Trade Shows. Taiwan Trade Center, San Francisco. March 6–November 8, Taiwan and Online. (408) 988-5018.

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

Panama and CAFTA-DR Trade Mission. Foreign Agricultural Service, U.S. Department of Agriculture. March 19–23, Panama City, Panama. trade-missions@fas.usda.gov.

The Workplace

Compliance During Emergency Conditions



In Episode 168 of The Workplace podcast, CalChamber employment law expert Matthew Roberts sits down with

CalChamber Labor Law Helpline expert Ellen Savage to discuss what has affected every Californian over recent weeks — natural disasters and their specific impacts on workers and workplaces.

Wages and Hours

Paying employees correctly during emergency conditions often is a hot topic on the Helpline. For nonexempt or hourly employees, employers should be mindful that the time an employer may require an employee to wait for work, for example while waiting for power to come back without excusing employees, must be paid.

California also has reporting time pay; if you send an employee home before they've worked at least half their shift, you may be required to pay them for half of their expected shift. However, there are many exceptions to this law which you can see more of on *HR California*.

For exempt employees during emergency conditions, the guidance is less clear. The general rule applies: if an exempt employee works in a week, they get paid for the week. If an act of God occurs and the employee is ready and willing to work, but unable to for some reason, Roberts suggests using best practice and paying the employee.

However, Savage also notes that in today's remote work environment, it is

easy for exempt employees to perform work remotely. If an employer wants to exercise an exception and doesn't believe the employee should be paid, the employer should first consult legal counsel.

Leaves of Absence

During emergency conditions, there may be some unique leaves of absence issues as employees may leave work for various reasons. Employees may take leave for volunteer civil service, such as volunteer firefighters, reserve peace officers, etc. There may be unique circumstances for each of these which are further outlined on *HR California*; however, the general consensus is to let those emergency workers do the job they need to do in order to help keep everyone safe.

There also is a school emergency leave law, which is a part of the school activities leave law, which states that if a parent needs to leave work due to an emergency, the parent is entitled to take up to 40 hours each year for this situation. However, it doesn't have to be a parent; this could apply to any sort of guardian who stands in loco parentis to the child. This applies to employers with 25 employees or more. The law requires advance notice, but does not define what advance notice is.

Workplace Safety

According to OSHA principles, employers have a general duty to ensure the health and safety of their workforce. Employees have the right to refuse work, without repercussions, in conditions that could increase the risk of harm.

SB 1044

As of January 1 of this year, SB 1044

builds on this OSHA principle, stating that during emergency conditions an employer can't punish an employee if they leave work, or refuse to report to work, if they have a reasonable belief that work is unsafe. SB 1044 defines an emergency condition as a disaster or extreme peril to the safety of people or property at the workplace caused by natural forces or by a criminal act (such as an active shooter).

The law requests employees to give advance notice when feasible before failing to report to or leave work, letting employees use their judgment based off foreseeability of the emergency. There's also an aspect of this law which has brought a lot of questions into the Helpline. For workplaces that don't allow cell phones, SB 1044 prohibits employers from enforcing personal cell phone policies if the device is used during an emergency condition for safety reasons.

Employment Benefits

Savage notes two important employment benefits to be aware of during emergency conditions.

- First, during a declared emergency by the Governor, the one-week waiting period for unemployment insurance benefits is waived.

- Second, under certain circumstances when there is a disaster, employers have a longer time to file certain things with the Employment Development Department (EDD), payroll taxes, and other reports. The EDD's website is a great resource for more information on disaster assistance.

For more information on workplace compliance during emergency conditions, visit the [HR Library on HR California](#).



CalChamber Member Feedback

"The CalChamber's work is as important as it's ever been. They are a critical partner for ensuring a strong and dynamic business climate for California companies. Their analytical capabilities, ability to respond rapidly in a constantly changing environment, and skilled advocates are first-rate and highly effective."

Derrick Miller
President
The Wonderful Company, POM Wonderful

In Memoriam: Jeremy Merz, Former CalChamber Policy Advocate



Jeremy Merz, former policy advocate for the California Chamber of Commerce, passed away on January 24 at the age of 42.

“Jeremy was a force for good and an effective advocate throughout his life. While Jeremy was with CalChamber, he was a strong voice representing California employers in the Capitol,” said CalChamber President and CEO Jennifer Barrera. “When he was diagnosed with ALS, he immediately began using his advocacy skills to make a huge difference for all those impacted by ALS, fighting for more resources and care for the victims of this terrible disease. Jeremy was a friend to so many people in the Capitol community and he is extremely well-respected by all who were lucky enough to work with him. He leaves behind an incredible legacy of leadership — both professionally and personally — and his larger-than-life presence will be missed by all of us.”

Last week, Merz was honored as the Dean and Kathleen Rasmussen Advocate of the Year by the Golden West Chapter of the ALS Association, which works to increase awareness and support for families facing ALS — amyotrophic lateral sclerosis.

Merz, who was department vice presi-

dent of state government relations for the American Property Casualty Insurance Association, leveraged his professional expertise and network to improve access to care and accelerate the search for effective treatments and cures for ALS. He worked closely with Golden West Chapter leaders to advance a significant one-time allocation in state funding to support the organization’s Wraparound model of care.

The additional funding will support essential care services, development of two new Certified Treatment Centers of Excellence and five multidisciplinary satellite ALS clinics. The funding also will cover costs for durable medical and communication equipment and offset out-of-pocket costs for respite care for ALS families.

Merz joined the CalChamber policy team in December 2011 to specialize in workers’ compensation, transportation, local government and international trade issues. He later added taxation and privacy issues to those for which he lobbied on behalf of the business community.

He came to the CalChamber from Downey Brand, LLP, where he represented private defendants in state and federal courts on business litigation, employment law and workers’ compensation litigation.

Merz served as a judicial extern to the Honorable Frank C. Damrell, Jr., U.S. District Court judge for the Eastern District of California. He also was a workers’ compensation claims case manager for Liberty Mutual.

At 6-foot-7, Merz was a standout

football player at Jesuit High School, headed for Idaho State University on a full football scholarship. A brain tumor ended his football career. After the tumor was removed, Merz transferred to the University of California, Davis, majoring in economics.

Upon earning his B.A., he went on to earn a J.D. with distinction from the McGeorge School of Law, University of the Pacific, where he also served on the editorial board of the *McGeorge Law Review*.

In March 2022, a month after learning that he and his wife were going to be the parents of twins, Merz got the diagnosis that ALS was the reason for the muscle twitches and other symptoms that had concerned him for about the previous year.

In a [September 16, 2022 story](#) by Joe Davidson of *The Sacramento Bee*, Merz acknowledged the growing difficulties of his condition, but said, “You have to adjust. I appreciate the things that bring me joy.” He praised his wife as “the strongest person I’ve ever met” and also called attention to the other support he has received. “I know I’m loved,” Merz told Davidson. “People, the way they’ve rallied around me, helping with meals, helping me walk, talking to me, the Sacramento community support has been absolutely amazing.”

Merz is survived by his wife, Megan, their three children, and a wide network of supportive friends.

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“CalChamber’s strategic thinking and its commonsense advocacy and policy solutions to our biggest business growth and job creation issues in the private sector make CalChamber a critical partner for our organization.”

Kailash Karavadra
 Partner
 Ernst & Young LLP
 2022 CalChamber Chair

CAPITOL WATCHDOG

Each year, the CalChamber tracks close to 3,000 legislative proposals on behalf of member businesses.

MAJOR VICTORIES

CalChamber scores major victories for employers through targeted advocacy and political action. See www.calchamber.com/majorvictories

ABOUT US

CalChamber is the largest broad-based business advocate in California, working at the state and federal levels to influence government actions affecting all California business. As a not-for-profit, we leverage our front-line knowledge of laws and regulations to provide affordable and easy-to-use compliance products and services.

FOR MORE INFORMATION

Contact Drew Savage,
 Vice President, Corporate Relations, (916) 930-1277.

Advocacy Return on Investment

2022 Sample Return on Investment for CalChamber Members

Government-run health care stopped (AB 1400/ACA 11)	\$400 billion
Net operating loss (NOL) deduction restored (SB 113)	\$5.2 billion
Tax hike to fund zero-emission vehicle purchases, wildfire prevention defeated (Proposition 30)	\$5 billion
Unemployment Insurance Fund deficit reduced (2022/2023/2024 budget)	\$1.5 billion
Expansion of costly workers’ compensation presumption for public/private hospital workers defeated (SB 213)	\$1 billion
Health care: fertility services mandate stopped (AB 2029)	\$500 million
Intrusive climate tracking mandate defeated (SB 260)	\$450 million
Increased funding for performing arts jobs statewide signed (SB 1116)	\$300 million
Arbitrary climate change mandate defeated (AB 2133)	\$275 million
Health care: deductible mandate stopped (SB 568)	\$126.4 million
Prescription drug pricing mandate stopped (AB 933)	\$109 million
Dialysis clinic mandate defeated (Proposition 29)	\$100 million
Health care: diagnostic imaging mandate stopped (AB 2024)	\$55 million
Expensive diagnostic imaging mandate vetoed (SB 974)	\$55 million
Specialty care services mandate stopped (SB 1337)	\$41 million
Prescription drug mandate stopped (SB 853)	\$27 million
Health care: insulin cost mandate stopped (SB 473)	\$14 million
Total Definable Return	\$414.752 billion

Return Per California Employee: \$26,971

Other Savings from Legislation Stopped or Amended

Litigation Threats

\$160,000 per lawsuit prevented

- Expansion of subjective California Environmental Quality Act (CEQA) standards stopped (AB 1001)
- Overly broad, unworkable mandate on use of employee data in workplace stopped (AB 1651)
- Public disclosure of workplace metrics stopped (AB 2095)
- New, uncapped leave and discrimination classification stopped (AB 2182)
- Mandatory 32-hour workweek stopped (AB 2932)
- New private right of action for use of biometric information stopped (SB 1189)
- New permit requirements for stormwater discharges vetoed (AB 2106)
- State interference with local groundwater controls stopped (AB 2201)
- Extreme liability on social media platforms stopped (AB 2408)
- Costly duplicative workers' compensation requirement for use of short-term employees amended (AB 2614)
- Tax break incentivizing abuse of attorneys' fees stopped (SB 1377)

Broad-Based Returns

Hosted ambassadors, foreign dignitaries, consular corps members at forums throughout the year, thus providing opportunities for CalChamber members to interact with trading partner representatives, contributing to state's continuing strength in international exports (\$175.12 billion in 2021), imports (\$174.927 billion in 2021), and total California goods trade (\$350.047 billion in 2021).

Preserved thorough cost-benefit analysis for all future workplace regulations completed at Cal/OSHA (SB 410).

CalChamber to Host MCLE Course on PAGA Landscape



On January 31, at 10 a.m., a virtual MCLE course hosted by the California Chamber of Commerce, in coordination with the [Stop Small Business Shakedowns](#) committee and Fisher Phillips LLP, will look at businesses' Private Attorneys General Act (PAGA) liability landscape in 2023 and beyond.

This course will specifically focus on the impact PAGA has had on California businesses and the landscape for the next year. PAGA, which has provided a litigation tool for attorneys to file costly lawsuits against California employers to

recover significant penalties for alleged Labor Code violations, has forced businesses to settle more than \$8 billion collectively in just the last seven years — and that number likely will double over the next five. These settlements primarily benefit attorneys, leaving little financial recovery for employees.

Although the U.S. Supreme Court's *Viking River Cruises* case gave some temporary reprieve for companies with valid arbitration agreements in place, the California Legislature and courts may change that, potentially increasing liability exposure for all California employers.

In this one-hour virtual course, CalChamber President and CEO Jennifer Barrera, along with four partners from Fisher Phillips LLP — Benjamin Ebbink,

Anet Drapalski, Tyler T. Rasmussen, and Hannah Sweiss — will cover the following:

- The current litigation landscape and how cases currently are playing out in the courts.

- How *Viking River Cruises* has affected PAGA cases with arbitration agreements in place.

- What is on the horizon for PAGA and how that will affect businesses (court rulings, legislation, and a relevant 2024 ballot measure).

CalChamber members, employers, and attorneys representing businesses in California are encouraged to [register for this important free webinar](#).

CalChamber Offers Foundations of Diversity, Equity & Inclusion Course



In today's workplace, the importance of incorporating diversity, equity and inclusion

(DEI) cannot be understated.

Specifically, 74% of U.S. workers say corporate investment in DEI is "very important" or "somewhat important" to them when considering a new job, according to [Indeed & Glassdoor's Hiring and Workplace Trends Report 2023](#), which also found that 72% of workers aged 18 to 34 said they would consider turning down a job offer or leaving a company if they didn't think their manager or potential manager supported DEI initiatives.

To help employers move the needle on DEI, the California Chamber of Commerce has launched its [Foundations of Diversity, Equity & Inclusion course](#), which aims to:

- Help learners become more conscious about DEI and understand its value to an organization's bottom line;
- Support learners in becoming more self-aware; and
- Identify inclusive leadership behaviors that will ensure a workplace where people can thrive.

Employers can use this approximately one-hour training to empower teams, amplify underrepresented voices, attract and retain an enthusiastic workforce, and establish an infrastructure that supports change and promotes professional development.

So, although having employees complete DEI training isn't a legal requirement, implementing such training would benefit workplaces, employers and employees through improved performance, increased retention, enhanced engagement and loyalty, and more. Participants also are eligible for HRCI, SHRM and MCLE credits.

"The workforce of tomorrow will care deeply about DEI initiatives," according to the Workplace Trends Report, "and employers will use these programs to continue to differentiate themselves in a continuously competitive labor market."

New Fast Food Council Law on Hold Until 2024

From Page 1

is made up of small business owners, restaurateurs, franchisees, employees, consumers, and community-based organizations. The coalition effort is co-chaired by the National Restaurant Association, the U.S. Chamber of Commerce and the International Franchise Association.

The coalition argues that AB 257, the

Fast Food Accountability and Standards Recovery Act (FAST Act) will increase the cost of food for the 70% of Californians who visit a counter-service restaurant each week and the working families who already are struggling with high gas, electricity and housing costs.

Moreover, the new government bureaucracy created by the FAST Act

will cost California taxpayers millions of dollars every year. The new regulations will eliminate thousands of jobs in California and harm thousands of small, family-, minority- and woman-owned businesses across the state.

Staff Contact: Ashley Hoffman

After 3 Weeks of Storms, What's California Water Outlook?

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will melt slowly and keep rivers and reservoirs full into the spring.

If the last few years have taught us anything, however, it is that water supply in California is volatile. All the recent precipitation has downgraded the state from extreme drought to severe drought. This means that California is experiencing flood events while still facing significant drought conditions. Although it may seem like a contradiction in terms, this is the reality.

Water Storage/Conveyance

This reality also means that investing in new water storage and conveyance infrastructure is important for dry times as well as wet times. For instance, reservoirs can use excess flows from atmospheric river events to replenish stores lost during drought events.

At the same time, those excess flows also can be redirected to help recharge groundwater. Moreover, functional conveyance also can help move flows to where water can be stored and keep

floodwaters away from communities.

Sites Reservoir

For example, the proposed Sites Reservoir, which would be a new lake situated in Colusa County, would have been able to capture 120,000 acre-feet of water between January 3–15, 2023, if it had been operational.

As river levels continue to run high, the reservoir could have diverted more water over time. Later, these stored flows would have been released in dry years for communities, businesses and the environment.

The Sites project, which is slated to receive Proposition 1 bond funds, is seeking necessary permits and aims to break ground in late 2024 or early 2025.

A quick calculation shows what this one project could have meant for California: a single acre-foot (enough water to cover an acre of land one-foot deep — 326,000 gallons) usually can meet the annual indoor and outdoor water needs of at least one to two households.

Groundwater Recharge

Irrigation districts in the Fresno area

used high storm flows to flood farmland, allowing water to percolate into the ground in an effort to recharge groundwater. These efforts are new, due to regulatory hurdles that have slowed attempts to divert high storm flows for recharge purposes.

The Governor's March 2022 Executive Order, for instance, exempted such recharge projects from certain regulatory approvals, meaning that these projects could come online in order to utilize the storm systems early this year.

Water Infrastructure

Finally, the ability to move water from where it falls as precipitation to where it can be used or stored for later use is important. This can allow more water to be saved rather than lost as runoff or lost when conveyance capacity is reached.

If we expect California to receive more precipitation in shorter periods of time, properly sized conveyance infrastructure will be essential to ensuring that sufficient flows are saved for a *nonrainy* day.

Staff Contact: Brenda Bass



LIVE WEBINAR | FEBRUARY 16, 2023 | 10 AM - 11:30 AM PT

Finding the Right Fit: Tips for Recruiting and Hiring

Are you complying with California laws when recruiting and hiring?

It can be challenging to navigate the rules — from drafting compliant job postings and asking appropriate interview questions to conducting lawful pre-employment background checks, drug tests and medical exams.

Preferred Members and above receive their 20% member discount.



Best practices for a compliant recruitment and hiring process

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