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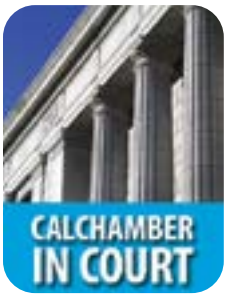
CalChamber

ALERT

Sac Court: Privacy Agency Must Wait to Enforce Rules

Ruling Agrees with CalChamber Lawsuit



The Sacramento Superior Court has ruled that the California Privacy Protection Agency (CPPA) must delay enforcement of any individual regulation for a one-year period following the date the regulation goes into effect.

In the June 30 ruling, the court agreed with the assertion by the California Chamber of Commerce that voters intended there to be a gap between adoption of final regulations by the CPPA and the time they could be enforced. The CalChamber argued that it would be unfair to enforce a law against businesses when they don't even know what the rules are yet.

CalChamber President and CEO Jennifer Barrera said the ruling would provide some certainty and basic fairness for California businesses as they work to comply with the complicated mandates called for in Proposition 24.

"In passing Proposition 24, voters understood that businesses should be provided time to implement new rules before any enforcement action is taken. The Court underscored this today, recognizing that it would be unfair for the

See Sac Court: Page 8

CalChamber, Coalition Join Forces to Stop, Improve Major Water Rights Legislation

After strong opposition from the California Chamber of Commerce and a broad coalition of public and private water agencies and users, legislative committees this week doused two major bills that would have undermined more than a century of water rights protections in California and given state regulators broad and unaccountable powers to modify and reduce water rights. A third measure was productively negotiated and improved.

AB 460 (Bauer-Kahan; D-Orinda) and **AB 1337 (Wicks; D-Oakland)** were held by the Senate Natural Resources and Wildlife Committee after the authors determined the bills would have insufficient support to continue.

AB 460 would have granted expansive new authority for the State Water Resources Control Board to issue immediate orders to apply or enforce far-reaching doctrines and statutes, including the fact-specific constitutional Reasonable Use Doctrine.

These doctrines currently allow the modification of existing water rights only under robust evidentiary proceedings that fully consider circumstances. The bill instead would have granted to the Board greater authority to vitiate these rights at

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Governor Signs Infrastructure Streamlining, Budget Trailer Bills

This week, Governor Gavin Newsom signed into law a slate of bills to accelerate critical infrastructure projects across California that upgrade the electric grid, ensure safe drinking water and improve the state's water supply, and modernize the transportation system.

The legislation culminates an urgent push by Governor Newsom to take full advantage of an unprecedented $180 billion in state, local, and federal infrastructure funds over the next 10 years — critical to achieving California's ambitious climate and clean energy goals and underpinning future economic growth in the state.

California Chamber of Commerce Jennifer Barrera said in a statement that the infrastructure package is an important step forward in helping California achieve the state's ambitious climate goals.

"This legislation will help reduce litigation and unnecessary delays in much of California's infrastructure development," she said.

By streamlining permitting, cutting red tape, and allowing state agencies to use new modern project delivery methods, the legislation will accelerate timelines of projects and reduce unnecessary

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Inside

Labor Law Corner

LA County Minimum Wage Applies to Unincorporated Areas

David Leporiere
Employment Law Expert

I own a small business in Glendora, California, which is located within Los Angeles County. I just saw something on the news that said that the minimum wage in Los Angeles County increased on July 1. Do I have to pay my employees this new minimum wage?

The minimum wage for Los Angeles County is based upon an ordinance adopted by the county supervisors. In situations where a law is based upon a county ordinance, that ordinance is applicable only in unincorporated areas of the county. "Unincorporated areas" are the areas in the county that fall outside of the city limits of the various cities within the county.

If your business lies within the city limits of a city, it is not subject to the county ordinance because it is not in an unincorporated area. Ordinances adopted by a county do not apply to businesses, people, or things that occur or exist within the boundaries of a city.

Because Glendora is an incorporated city, the county ordinance does not apply to your business or employees, so long as the employees work within the city limits of Glendora. If your employees work only within the city of Glendora, then your business is only obligated to pay its employees the minimum wage established by the state of California, unless and until the city of Glendora adopts its own minimum wage ordinance.

The Los Angeles County website has a resources page to help businesses determine whether they are subject to its minimum wage ordinance.

To determine if your business is operating within a city, you also can look to your business license to determine if it was issued by a city or by a county.

If the license was issued by the county, it is likely that your business is operating in an unincorporated area, and you would be subject to county ordinances.

Column based on questions asked by callers on the Labor Law Helpline, a service to California Chamber of Commerce preferred members and above. 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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Leaves of Absence: Making Sense of It All Virtual Seminar. CalChamber. August 24–25, September 21–22, Online. (800) 331-8877.

International Trade

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

Access Africa Now Webinar Series. U.S. Commercial Service. April 11–September 27, Online. (512) 936-0039.

Selling to South Korea, Your Next Big eCommerce Opportunity. U.S. Commercial Service and Coupang. July 18, Online. (800) 872-8723.

Trade Mission to Africa. Global Diversity Export Initiative. August 6–15, South Africa, Ghana and Nigeria (optional stop). *eve.lerman@trade.gov*.

The Green Expo 2023. The Green Expo and International Environmental Congress of the Consejo Nacional de Industriales Ecologistas (CONIECO). September 5–7, Mexico City. 55-1087-1650.

2023 Taiwan Innotech Expo. Taiwan External Trade Development Council (TAITRA) and Industrial Technology Research Institute (ITRI). October 12–14, Taiwan. (415) 362-7680.

EXIM 2023 Annual Conference. Export-Import Bank of the U.S. October 19–20, Washington, D.C. (800) 565-3946.

Smart City Expo World Congress (SCEWC). Smart City Expo World Congress. November 7–9, Barcelona, Spain. (704) 248-6875.

APEC CEO Summit 2023. National Center for APEC (Asia-Pacific Economic Cooperation). November 15–16, San Francisco. (206) 441-9022.

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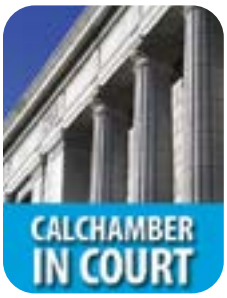
California Supreme Court Rules on 'Take-Home-COVID-19'

Employers Not Liable for Household Members Infected with COVID



On July 6, 2023, the California Supreme Court issued a significant ruling related to "take-home-COVID-19."

In short, the court said employers don't owe a duty of care to prevent the spread of COVID-19 to their employees' household members.

"We are grateful the Court recognized that holding employers liable for nonemployees who contracted COVID-19 would be a significant expansion of tort law that would have forced employers to bear the responsibility of subsidizing the health care costs of the pandemic," said CalChamber Corporate Counsel Nicole Wasylkiw. "The Court clearly understood that, given the public policy considerations in play during the pandemic, employers should not have to absorb the considerable costs and liability that were at issue in the case."

Case Background

In *Kuciemba v. Victory Woodworks, Inc.*, Robert Kuciemba worked at a construction site in San Francisco for defendant Victory Woodworks, Inc. (Victory).

After he worked there for a couple of months, and without the employer taking precautions required by the county's health order, a group of workers was transferred to Kuciemba's site from another location where they may have been exposed to COVID-19.

Kuciemba was required to work in close contact with those workers and became infected. He then carried the virus home and transmitted it to his wife, Corby Kuciemba, who was hospitalized for several weeks.

The Kuciembas filed suit against the employer for negligence among other claims, asserting that it caused Mrs. Kuciemba's injuries by failing to follow the local public health order in effect at the time.

The lower district court dismissed the Kuciembas' case in May 2021, and they appealed to the Ninth Circuit Court of Appeals. After briefing concluded but the case was still pending on appeal, the Second District Court of Appeal on nearly identical facts held in December 2021 that the derivative injury rule does not bar claims brought by an employee's spouse.

The case, *See's Candies, Inc. et al. v. Superior Court of California for the County of Los Angeles*, however, did not address whether the employers in that case owed a duty of care or whether plaintiffs could demonstrate that either of them contracted COVID-19 because of any negligence in the defendant's workplace.

Recognizing the widespread public policy implications and the absence of controlling precedent, in April 2022, the Ninth Circuit Court of Appeal certified the following two questions to be addressed by the California Supreme Court:

1. If an employee contracts COVID-19 at their workplace and brings the virus home to their spouse, does the derivative injury doctrine bar a spouse's claim against the employer?

2. Does an employer owe a duty of care to prevent the spread of COVID-19 to an employee's household members?

Supreme Court Ruling

On July 6, 2023, the California Supreme Court answered no to both of those questions.

In answering the first question, the Supreme Court aligned with the 2021 *See's Candies* ruling that the workers' compensation exclusivity doctrine does not apply in this type of fact pattern. As previously mentioned, the facts in *See's* are almost identical to those in the Kuciembas' case: A wife contracted COVID-19 at work due the company's poor safety practices and subsequently infected her husband, who died from the illness.

In answering the second question, the Court looked at Civil Code Section 1714, which establishes a general duty of care, and noted that although there may be a "default rule of duty," there may be appropriate exceptions when supported by compelling policy considerations. The Court looked at the *Rowland* factors — a multifactor test articulated in 1968's *Rowland v. Christian* that has been used by the courts to decide whether limiting such a duty would be justified.

The *Rowland* factors fall into two categories:

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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

Climate Change Emissions Reporting Bills Move with Assembly Committee Amendments

Two California Chamber of Commerce-**opposed** bills creating climate change-related reporting challenges for large companies and potential increased costs for all businesses passed an Assembly policy committee this week.

• **SB 253 (Wiener; D-San Francisco)** imposes mandatory climate tracking and auditing of climate emissions that will fall heavily on all California businesses resulting in a negative impact on competitiveness and increasing costs.

• **SB 261 (Stern; D-Canoga Park)** requires any business with revenues exceeding $500 million annually to prepare a climate financial risk assessment on its holdings, including any supply chain assets.

Joining the CalChamber in opposing both bills are broad coalitions that include employer, agricultural and other industry groups, as well as local chambers of commerce.

Climate Goals

In testimony to the Assembly Natural Resources Committee and in response to questions from committee members, CalChamber Policy Advocate Brady Van Engelen pointed out that the state could make greater strides toward its climate goals by encouraging companies to continue their voluntary data gathering rather than using mandates tied to high penalties.

SB 253's mandate to report on greenhouse gas (GHG) emissions data throughout the supply chain regardless of location won't lead to emission reductions, Van Engelen told the committee. Instead, the mandate will result in misapplication of useful information that companies have been compiling voluntarily, he said.

As defined in SB 253, Van Engelen told the committee, the emissions reported will lead to irrelevant comparisons between different companies' emissions, based on technical guidance from the World Resources Institute (WRI).

The WRI is a global organization that works with policymakers, businesses and governments to reduce GHG emissions and build resilience to climate change impacts.

A report prepared by Encina Advisors, LLC for the California Foundation for Commerce and Education estimates that a typical upstream firm will spend from $38,500 to $123,100 on calculating and documenting its emissions, resulting in a potential loss of $1.0 billion to $1.3 billion in state tax revenue.

These economic impacts will likely create inefficient supply chains that will further add to consumers' costs.

Later in the hearing, Van Engelen identified concerns with SB 261, such as the need to clarify whether emissions reporting should be done by parent companies on behalf of their subsidiaries, and the reporting standard to be used.

SB 261 includes a requirement that reporting entities disclose their climate-related financial risk in accordance with the recommendations put forth by the Task Force on Climate-Related Financial Disclosures (TCFD). Those recommendations differ from requirements adopted by the European Union and the United Kingdom.

A better approach considering that companies reporting emissions operate on a global scale, Van Engelen said, would be for SB 261 to identify reporting metrics for businesses rather than placing in law a requirement to follow the recommendations of a single task force.

Key Vote

Assembly Natural Resources sent both bills along to the Assembly Appropriations Committee with some clarifying amendments on identical votes of 8-3:

Ayes: Addis (D-Morro Bay), Friedman (D-Glendale), Muratsuchi (D-Torrance), Pellerin (D-Santa Cruz), Luz Rivas (D-San Fernando Valley), Ward (D-San Diego), Wood (D-Santa Rosa), Zbur (D-West Hollywood).

Noes: Flora (R-Ripon), Hoover (R-Folsom), Mathis (R-Porterville).

Staff Contact: Brady Van Engelen

SB 770 Paves Way for Massive Tax Hikes


Preston Young

A proposal moving its way through the Legislature seeks to eliminate Medicare in California and pave the way for massive tax increases on California workers and employers.

SB 770 would create a workgroup to petition the federal government to redirect hundreds of billions of dollars in annual Medicare and Medicaid funding that currently flows to California to a new health care system known as "single payer" instead.

In doing so, SB 770 would set in motion a complicated scheme envisioned by its proponents that would result in the elimination of Medicare and all private health coverage in California, replace it with a costly, untested health system run by state government, and require the largest tax increase in state history.

Concerns to Consider

For those who think dismantling our health system is a good idea, here are a few specific concerns to consider:

SB 770 / single payer proponents seek to eliminate all private health coverage in California and force all Californians into a new untested health system — with no ability to opt out or choose private coverage instead. Study after study shows Californians like their health coverage and Medicare, and strongly support protecting their right to choose it, and strongly support protecting the Medicare coverage seniors have earned.

Commentary
By PrestonYoung

The waiver sought by SB 770 would redirect roughly $200 billion annually to the new single payer health system. But that system is projected to cost more than $500 billion/year. The missing $300+ billion a year would be raised by new, higher taxes on payroll, employers, and the goods and services Californians purchase.

Many people and employers in our state are already struggling with the high cost of living here — a recent Public Policy Institute of California (PPIC) survey showed 57% of adults are experiencing some form of financial hardship due to rising costs. We cannot afford any kind of tax increase, much less one that is bigger than the entire state budget — especially to fund a massive new untested health system they don't want or need.

SB 770 gambles California's health care on the whims of Congress. The waiver SB 770 seeks is not permanent — it is dependent on approval by future Congresses, who could decide to withdraw it. This would immediately deprive the new single payer health system of more than $200 billion a year (roughly 40% of its funding), throwing it into chaos and forcing even more massive tax hikes on Californians.

Disruption

Ultimately, single payer would cause overwhelming disruption in the health care some 38 million Californians rely on, all paid for by tax increases and questionable federal funding.

We do not need to embark down this path. California is already on the cusp of ensuring everyone has access to health coverage. There are changes we can make to improve California's health care system, including quality improvements and lower costs, but dismantling our health system is unnecessary, costly, and harmful.

Preston Young is a policy advocate for the California Chamber of Commerce.

Governor Signs Infrastructure Streamlining, Budget Trailer Bills

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and wasteful bureaucratic activity and litigation, while ensuring appropriate environmental review and community engagement.

Governor Newsom also signed components of the 2023–24 state budget agreement, which includes $37.8 billion in total budgetary reserves, and no general tax increases.

Infrastructure Package

The bills the Governor signed on July 10:

• **Speed Construction**: Current construction procurement processes drive delays and increase project costs. The legislation includes methods to offer a streamlined process for project delivery to reduce project timeframes and costs.

• **Expedite Court Review**: Legal challenges often tie up projects even after they've successfully gone through environmental review. The legislation speeds up judicial review to avoid long delays and advance projects without reducing the environmental and government transparency benefits of the California Environmental Quality Act (CEQA).

• **Streamline Permitting**: Make changes to California law to accelerate permitting for certain projects, reducing delays and project costs.

• **Address Cumbersome CEQA Processes**: Streamline procedures around document collection and assembly in litigation after projects have already been approved.

• **Maximize Federal Dollars**: Establish a Green Bank Financing Program within the Climate Catalyst Fund so that the state can leverage federal dollars for climate projects that cut pollution, with an emphasis on projects that benefit low-income and disadvantaged communities.

The infrastructure package bills are SB 145 (Newman; D-Fullerton), SB 146 (Gonzalez; D-Long Beach), SB 147 (Ashby; D-Sacramento), SB 149 (Caballero; D-Merced), SB 150 (Durazo; D-Los Angeles).

Budget

Also signed was AB 102 (Ting; D-San Francisco), the budget trailer bill that includes funding to re-start the Industrial Welfare Commission, which updates and adopts regulations on wages, hours of work and other workplace conditions.

What Three Recent U.S. Supreme Court Decisions Mean for California Businesses

Just before the U.S. Supreme Court broke for recess at the end of June, it issued several landmark decisions, some of which have caught the attention of California businesses and employers for their potential — and in some cases unknown — impact.

The following U.S. Supreme Court cases about affirmative action, public accommodations and religious accommodation may affect businesses and employers, not just in California, but across the nation.

Affirmative Action

On June 29, the U.S. Supreme Court ruled that the race-conscious admissions programs used by Harvard College and University of North Carolina (UNC) violated the Equal Protection Clause of the 14th Amendment, effectively striking down the use of affirmative action programs for college and university admissions across the country (*Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, No. 20-1199 (June 29, 2023)).

Under such programs, applicants' race could be a factor, in part, when being considered for admission. But the Court struck this practice down, holding in part that:

• Harvard and UNC's asserted compelling interests for race-based admissions programs lacked sufficiently focused and measurable objectives that allow for court review under the strict scrutiny standard that must be applied for equal protection violations;

• Both failed to articulate a meaningful connection between the methods they used and their diversity goals; and

• The admissions programs failed strict scrutiny by using race as a stereotype or a negative, and by lacking a logical end point.

The Court also held that such programs violated Title VI of the Civil Rights Act of 1964, which states that no person in this country "shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

However, the Court specified that nothing prohibits universities from considering an applicant's discussion of how race affected their life, "so long as that discussion is concretely tied to a quality of character or unique ability that the particular applicant can contribute to the university."

In California, this decision aligns with the 1996 passage of Proposition 209, a ballot initiative that eliminated the use of affirmative action programs for state colleges and employment in the public sector. Now, however, any private colleges or universities within the state of California (and any higher education institutions in the nation) that have been utilizing this practice will need to reevaluate their current admissions programs in light of the Court's ruling.

While many legal experts in the education law arena continue analyzing the decision and its implications (to the extent they can be predicted at this time), employers also are curious about the ruling's legal significance on the workplace.

Employment-related decisions fall primarily under Title VII of the Civil Rights Act of 1964 (Title VII) and other state-level anti-discrimination laws, such as California's Fair Employment and Housing Act (FEHA) — both of which prohibit race discrimination in all significant employment decisions that negatively affect the terms, conditions or privileges of employment.

Diversity, Equity and Inclusion

Although neither of these laws, nor the context of the workplace, were at issue in this case, some may wonder if the decision could have an indirect and negative impact on corporate diversity, equity and inclusion (DEI) programs, potentially through litigation that would attempt to take the Court's reasoning and apply it to the workplace.

The short answer is that DEI is and will remain an accepted practice.

"It remains lawful for employers to implement diversity, equity, inclusion, and accessibility programs that seek to ensure workers of all backgrounds are afforded equal opportunity in the workplace," said Charlotte A. Burrows, chair of the U.S. Equal Employment Opportunity Commission (EEOC), the agency enforcing anti-discrimination laws at the federal level, in a statement.

CalChamber President and CEO Jennifer Barrera echoed that sentiment for California employers.

"We strongly support the efforts of companies who prioritize creating fair, diverse and inclusive environments for all workers," she said. "While the U.S. Supreme Court's decision does not directly apply to employers, we understand the ruling has sparked concern about the future of DEI efforts in many organizations. Outreach, training and other DEI fundamentals should not be impacted by the court's decision, and we strongly encourage all employers to continue to make these a priority."

Potential future legal challenges aside, another concern is how the U.S. Supreme Court's ruling will affect diversity on college campuses, which many employers rely upon as a pipeline of diverse and qualified talent during the recruitment process.

California's Proposition 209 provides a tangible example of the impact that banning affirmative action had on state schools: According to a 2020 study, enrollment among Black and Latino students at the University of California, Berkeley and UCLA dropped significantly two years after Proposition 209's ban on affirmative action. So, if a similar result occurs on a broader scale, employers may need to be even more intentional and creative in looking for qualified diverse talent during their recruitment efforts.

Employers should review their DEI efforts through the lens of this recent ruling to ensure nothing in their policies or practices can be perceived as unlawful.

Additionally, continuing to train those involved in recruiting and hiring efforts around the importance of DEI and its

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What Three Recent U.S. Supreme Court Decisions Mean for Businesses

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significance in the workplace will help businesses to continue to foster an inclusive work environment.

Lastly, employers should continue to monitor any state and local laws that may affect their DEI efforts.

Public Accommodations

On June 30, the U.S. Supreme Court held that it would violate the Free Speech Clause of the First Amendment for Colorado to force a website designer to create a wedding website for a same-sex couple, because it would compel her to create speech in which she did not believe (*303 Creative LLC, et al. v. Elenis*, No. 21-476 (June 30, 2023)).

Under Colorado's Anti-Discrimination Act (CADA), it's unlawful for a business to hold itself out to the public and deny any individual the full and equal enjoyment of the business's good or services because of a protected class, including sexual orientation.

The petitioner in the case, Lorie Smith, business owner of graphic design business 303 Creative LLC, wanted to expand her graphic design business to include the creation of wedding websites — but she didn't want to be compelled by Colorado to create such websites celebrating same-sex marriages, which is inconsistent with her religious belief that marriage should be reserved to unions between a man and a woman.

To clarify her rights before even offering such services, she sought injunctive relief. The Tenth Circuit ruled in favor of the state, but the U.S. Supreme Court reversed, finding that the First Amendment prohibits Colorado from forcing a website designer to create expressive designs speaking messages with which she disagrees (i.e., same-sex marriage).

The Tenth Circuit, like the U.S. Supreme Court, found that Smith's websites would constitute speech, but where the lower court diverged was in holding that CADA's accommodation clause didn't impermissibly compel speech or violate free speech rights, and that overall, CADA was a neutral law of general applicability not subject to strict scrutiny for a free exercise challenge.

The U.S. Supreme Court found that under the Court's precedents, the wedding websites Smith seeks to create qualify as "pure speech protected by the First Amendment."

Specifically, it was stipulated among parties that Smith's websites would express and communicate ideas, primarily those that "celebrate and promote the couple's wedding and unique love story" and those that "celebrat[e] and promot[e]" what Smith understands to be marriage. It was also stipulated that the websites she plans to create "will be expressive in nature," and "customized and tailored" through close collaboration with individual couples — and that Smith does not seek to sell an "ordinary commercial good but intends to create 'customized and tailored' speech for each couple."

California is one of several states (approximately half in the country, as mentioned in the Court's opinion) that expressly prohibit discrimination on the basis of sexual orientation. Protections are provided under the FEHA, as well as the Unruh Civil Rights Act (California's version of Colorado's CADA), which requires both public and private businesses to provide individuals "full and equal accommodations, advantages, facilities, privileges or services in all business establishments."

This ruling has raised significant concerns around LGBTQ rights and its ramifications, and there is a broader question of what this may mean for other protected classes as currently protected by California's public accommodations laws. Whether this will open the door to similar cases — and not just in the context of same-sex marriage and sexual orientation, but related to other protected characteristics, such as race, gender, etc. — remains to be seen.

As it stands today, however, California businesses that are open to the public are still obligated to offer their goods and services in a nondiscriminatory manner that complies with the Unruh Civil Rights Act.

Religious Accommodation

On June 29, the U.S. Supreme Court unanimously revised Title VII's religious accommodation and "undue hardship" analysis, unanimously holding that Title VII requires an employer that denies a religious accommodation to show that the burden of granting an accommodation would result in **substantial** increased costs in relation to the conduct of its particular business (*Groff v. Dejoy*, No. 22–174 (June 29, 2023)).

The Court also stated that a prospective accommodation's impact on coworkers is relevant only to the extent that impact goes on to affect the conduct of the business. In other words, employers must make a logical connection between the impact an accommodation has on its employees (e.g., covering someone's shifts, working overtime) and how that affects the conduct of the business (e.g., productivity, morale, workplace safety, etc.).

The Court also clarified that hardship, in the form of hostility to a religious belief, practice or accommodation, is not "undue," i.e., it cannot provide a defense.

As previously reported, this case doesn't change the applicable legal standard under California law. The California Fair Employment and Housing Act (FEHA) also requires employers to provide reasonable accommodations for religion unless it would impose an undue hardship, which the FEHA defines as "an action requiring significant difficulty or expense," when considering several enumerated factors.

California employers should consult with their legal counsel on the potential impact of this case on their policies and potential defenses under federal and state law, and multi-state employers should review their religious accommodation policies and consult with their legal counsel to determine if any changes are necessary.

CalChamber members can read more about laws prohibiting discrimination, including Title VII of the Civil Rights Act and California's Fair Employment and Housing Act in the HR Library on *HRCalifornia*.

Not a member? Learn how to power your business with a CalChamber membership.

Staff Contacts: Bianca Saad and James Ward

Sac Court: Privacy Agency Must Wait to Enforce Rules

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CPPA to enforce new regulations when the impacted businesses did not even know what was going to be required of them. We are grateful that the Court recognized the predicament faced by California businesses in these circumstances and provided a commonsense interpretation that aligns with what voters approved in passing Proposition 24," she said.

Background

In November 2020, California voters approved Proposition 24, known as the California Privacy Rights Act of 2020 (CPRA), amending and expanding upon the California Consumer Privacy Act of 2018. The CPRA established new standards regarding the collection, retention, and use of consumer data and created the California Privacy Protection Agency (CPPA) to implement and enforce the law. The CPRA also imposed new obligations governing personal information, including requirements that businesses adopt certain mechanisms permitting consumers to opt out of data sharing.

In March 2023, the CalChamber filed suit against the newly created CPPA to enjoin the agency from bringing any enforcement actions under CPRA regulations.

The CalChamber argued that because the regulations implementing Proposition 24 (CPRA) were finalized eight months later then the CPPA was mandated to issue the regulations, the agency did not provide businesses with the required 12-month grace period to come into compliance as contemplated under the CPRA.

The CPPA was to have published complete and final regulations by July 1, 2022 with an enforcement date of July 1, 2023. However, the CPPA had not promulgated a final and complete set of regulations in the timeframe called for in Proposition 24 (CPRA) nor by the time the litigation was filed in March 2023. The agency had finalized only its first set of rules on March 29, 2023.

Following the June 30 ruling, the CPPA must create enforcement deadlines that tie directly to the implementation date of each individual rule — a full 12 months following the date they become effective. Accordingly, the first set of rules cannot be enforced until March 29, 2024.

CalChamber, Coalition Join Forces to Stop, Improve Water Rights Bills

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a moment's notice, reduced due process for water rights holders before the Board, and weakened judicial review of Board actions.

AB 1337 would have greatly expanded the Water Board's ability to curtail the diversion or use of water under any claim of right during any water year, even in the absence of any drought emergency (when this tool is actually necessary and when its impacts are managed carefully).

The bill would have authorized curtailments even during very wet years, and with few guard rails to mitigate against the major economic and agricultural disruptions that naturally flow from curtailments.

Senators on the committee variously indicated that the bills either went too far, or in any case that the solutions offered were disproportionate to the stated problems.

Negotiations

After productive negotiations with the author of **SB 389 (Allen; D-Santa Monica)**, spanning much of this year and resulting in amendments significantly improving the measure, the CalChamber will remove its opposition to the bill.

As introduced, SB 389 would have undermined the reliability of water rights by changing the burden of proof for rights holders and by making it easier for the Board to decide that water rights have been lost, or "forfeited," with little due process protections for water rights holders.

Amendments negotiated with the author restored the water rights holders' due process rights and provided narrow and specific authority for the Board to obtain information from rights holders, including requiring justification by the Board for the information requests.

Due Process Rights Preserved

These bills were hard fought, and their proponents tried to leverage lingering concern about the recent drought to increase the regulatory powers of the State Water Board.

The Legislature generally agreed with opponents that the bills were an overreach, and that the existing approach taken by the Water Board provides the necessary due process for rights holders and appropriately accommodates concerns that balance the needs for human consumption, economic growth, agricultural viability and habitat protection.

Staff Contact: Brenda Bass

California Supreme Court Rules on 'Take-Home-COVID-19'

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• Foreseeability (i.e., what was known at the time of the alleged negligence); and

• Public policy, which the court described as more "forward-looking."

While the Court did find a household member contracting COVID-19 as a foreseeable consequence of an employer failing to take adequate workplace precautions against the virus, in this context, "policy considerations ultimately require an exception to the general duty."

Recognizing that public policy strongly favors compliance with health orders to prevent the spread of COVID-19 — and that imposing a duty of care beyond the workplace could enhance employer vigilance in that context — the Court also recognized that "there is only so much an employer can do."

The Court noted that several factors are outside an employer's control, such as safety precautions taken outside of the workplace by employees and their household members. Additionally, even if an employer fully complies with all health and safety protocols, it's impossible to eliminate the risk of infection.

And unlike the "take-home-asbestos" cases discussed as a comparison by both sides, which involved a much smaller pool of potential plaintiffs, extending a duty to prevent secondary COVID-19 infections "would extend to *all* workplaces, making every employer in California a potential defendant." Also noted was the "potential litigation explosion" and the significant burdens that would be placed on not only the judicial system, but also the community overall.

Thankfully, the Court appreciated the significant ramifications of expanding the law in such a way.

While the Court acknowledged the foreseeability factors (and the policy factor of moral blame) largely tilted in favor of finding a duty of care, the policy factors related to the burdens on defendants and the community weighed against imposing a duty.

"Although it is foreseeable that an employer's negligence in permitting workplace spread of COVID-19 will cause members of employees' households to contract the disease, recognizing a duty of care to nonemployees in this context would impose an intolerable burden on employers and society in contravention of public policy," the Court stated in its opinion. "These and other policy considerations lead us to conclude that employers do not owe a tort-based duty to nonemployees to prevent the spread of COVID-19."

CalChamber members can read more about COVID-19-related rules in regulations still in effect in the HR Library on *HRCalifornia*.

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