

ALERT

Legislature Approves Bills Reforming PAGA System

Negotiations Improve Process for Workers, Employers



Months of negotiations between a coalition of business partners, labor and legislative

leaders, convened by the Governor’s office, culminated this week in the passage of legislation to reform the lawsuit-first Private Attorneys General Act (PAGA) system.

California Chamber of Commerce-supported **SB 92 (Umberg; D-Santa Ana)** and **AB 2288 (Kalra; D-San Jose)** passed the floors of both houses on June 27.

“We are grateful to Assembly Speaker Rivas, Senate President Pro Tempore McGuire and the Legislature for passing this reform package in an expeditious manner, providing immediate relief for employers,” said CalChamber President and CEO Jennifer Barrera. “Today is a historic day where we recognize an important step forward to curtail lawsuit abuse under PAGA that was hurting California businesses, our workers and our economy.”

She added, “The measures passed today return common sense to the process, will improve California’s busi-

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Major Wins for Employers, Employees in PAGA Reform Bills

FixPAGA The negotiated legislative agreement

that reforms the Private Attorneys General Act (PAGA) includes major wins for employers and employees while saving the business community an expensive campaign and ballot fight.

The agreed upon reforms include the following:

New penalty structure

- Caps penalties on employers acting in good faith who quickly address potential violations brought to their attention.
- Increases penalties on employers who act maliciously, fraudulently, or oppressively in violating labor laws.
- Increasing amount payable to employees from 25% to 35%.

Reduced and streamlined litigation

- Increases opportunities for employers to cure violations, reducing litigation.
- Protects small employers by providing a more robust right-to-cure process through the Labor and Workforce Development Agency (LWDA) to reduce litigation and costs.
- Codifies that a court may limit the scope of claims presented at trial to ensure cases can be managed effectively.

Standing reforms

- Requires the employee to personally experience the alleged violations brought in a claim.

Strengthened state enforcement

- Gives Department of Industrial Relations the ability to expedite hiring and fill vacancies to ensure effective and timely enforcement of employee labor claims.

Video Podcast Recaps PAGA Reform Agreement



CalChamber President and CEO Jennifer Barrera and CalChamber Associate General Counsel Matthew Roberts discuss in a [video podcast](#) the negotiated agreement leading to the passage of legislation reforming the Private Attorneys General Act (PAGA). Read more at the podcast link.

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Political Speech at Work: How to Manage While Protecting Rights



Vanessa M. Greene
Employment Law
Expert

As a small business owner, I've noticed an increase in political discussions in my workplace. Some employees are getting into heated debates, affecting productivity and morale. What can I do to manage political speech in the workplace without infringing on anyone's rights?

Managing political speech in the workplace can be particularly challenging during periods of intense political activity. Here are several strategies to help you address this issue while respecting everyone's rights:

Recognize Legal Boundaries

First, it's crucial to be aware of the legal protections surrounding employees' political speech. The First Amendment protects individuals' freedom of speech from government interference but does not extend to private workplaces. This means that private employers may restrict political speech in the workplace under appropriate circumstances (more on this below).

In California, however, the [Labor Code offers additional protections](#). Employees are protected from discrimination based on their political activities or affiliations under Sections 1101 and 1102. This means you cannot retaliate

against an employee for their political activities conducted outside of work.

Additionally, [federal protections under the National Labor Relations Act \(NLRA\)](#) may apply, protecting employees when they communicate about political activity related to their employment conditions, such as improving wages, workplace safety, and benefits like health care or leave.

For example, an employee may support a candidate who advocates increasing the minimum wage and discusses with co-workers how this candidate's platform could have a positive impact on their working conditions. This type of conversation, if related to collective workplace improvements, could be protected under the NLRA. Accordingly, you should be cautious about restricting political speech that pertains to working conditions, as it may

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Labor and Employment

Wage & Hour Essentials: Laws for Non-Exempt Employees. CalChamber. July 25, Online. (800) 331-8877.

Wage & Hour Essentials: Exempt Employee Requirements. CalChamber. July 26, Online. (800) 331-8877.

Leaves of Absence. CalChamber. August 8-9, Online. (800) 331-8877.

HR Boot Camp. CalChamber. August 22-23, Online. (800) 331-8877.

International Trade

Semicon West 2024 — The Premier Microelectronics Event. SEMI. July 9-11, San Francisco. (985) 240-5511.

Farnborough International Air Show: California Pavilion. Governor's Office of Business and Economic Development (GO-Biz), July 18-22, Farnborough, United Kingdom. patricia.utterback@gobiz.ca.gov.

15th Annual California Mexico Advocacy Day. CalChamber and Consulate General of Mexico in Sacramento. August 7, Sacramento. intlevents@calchamber.com.

2024 Green Expo: California Pavilion.

GO-Biz. September 3-5, Mexico City. Diana.Dominguez@gobiz.ca.gov.

2024 California Pavilion @ Industrial Transformation Mexico. GO-Biz. Register interest by August 9. October 8-11, Leon, Guanajuato, Mexico. Diana.Dominguez@gobiz.ca.gov.

Japan International Aerospace Exhibition: California Pavilion. GO-Biz. October 16-18, Tokyo, Japan. emily.desai@gobiz.ca.gov.

Africa Health. GO-Biz awarding export vouchers. October 22-24, Cape Town, South Africa. Register interest. patricia.utterback@gobiz.ca.gov.

Cosmoprof Hong Kong. GO-Biz. Registration of interest required. November 12-14, Hong Kong, China.

Rebuild Ukraine 2024: Business in Ukraine and Poland. GO-Biz. November 12-15, Warsaw, Poland. patricia.utterback@gobiz.ca.gov.

Next Alert: July 19

Cal/OSHA Standards Board Adopts Indoor Heat Illness Prevention Rule



Last week, the Cal/OSHA Standards Board adopted the long-awaited regulations to protect employees working indoors from

heat illness.

The California Legislature had directed the California Division of Occupational Safety and Health (Cal/OSHA) to develop indoor heat illness standards in 2016. Cal/OSHA has been working on this draft regulation since then, though its progress was paused during the COVID-19 pandemic as Cal/OSHA focused elsewhere.

The indoor heat illness standard was finally adopted on June 20, meaning employers should now look toward compliance as the summer heats up.

Requirements

The regulations apply to virtually all indoor work areas when the temperature equals or exceeds 82 degrees Fahrenheit indoors. Notably, state prisons have been

exempted from the indoor heat illness prevention rules due to concerns about the cost implications for the state.

The indoor heat rule includes an exemption for storage sheds and other outdoor areas used to store things — but if the storage space reaches 95 degrees or higher and an employee even briefly steps into that space, the indoor heat illness requirements are triggered.

Much like the outdoor heat illness prevention rules, the indoor heat standard requires employers to, among other requirements, provide cool drinking water, create an area where an employee can cool down, and give employees cooldown breaks.

In addition, the rules require that someone monitor employees while they are taking a cooldown break.

Employers need to provide training on the indoor heat rules, keep temperature records and frequently record an indoor space's heat index, which measures factors other than temperature, such as humidity.

Another new variable is the impact of "restrictive clothing" on the temperature threshold at which the indoor heat stan-

dard is triggered. The regulation's trigger temperature is lower when the employee is required to wear heavier safety equipment to account for the weight of the required clothing and how it retains heat.

Recognizing space limitations for small businesses that rent rather than own the buildings where they operate, the CalChamber worked hard to make sure the new standard includes an option to create a cooldown space outside.

Timing

Based on Cal/OSHA Standards Board staff comments, the new rule could be in place as early as August 1, if the Office of Administrative Law (OAL) expedites its review.

For the text of the adopted rule, [click here](#). The regulatory history of the indoor heat rule is available on the Cal/OSHA Standards Board [webpage](#).

For further insights on the substance of the rules, listen to The Workplace podcast [aired in May](#). Also, watch the CalChamber Store for the recording of yesterday's webinar on the new workplace heat illness standards.

Staff Contact: Robert Moutrie

Legislature Approves Bills Reforming PAGA System

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ness climate and ensure workers have robust labor law enforcement against the bad actors."

The bills now move to the Governor's desk for signature. Governor Gavin Newsom helped facilitate negotiations on PAGA reform.

Both bills passed the policy committees on June 25. The same day, Governor Newsom touched on the issue during his State of the State video address, noting PAGA reform was a thorny subject that had eluded compromise for decades.

"...California is enacting rational reforms and important labor protections, while sensibly managing reasonable concerns from small businesses," he said.

Committee Testimony

In concluding remarks before the SB 92 vote in the Assembly Judiciary Committee on June 25, Senator Tom Umberg thanked the California Chamber of Commerce and the California Labor

Federation for their collaboration in the reform proposal.

"[SB 92] is a monument to how we can get things done when we spend time collaborating and negotiating," the state Senator said. "I do think this is a great improvement for employees, as well as employers and I'm, of course, proud to have my name on it."

Watch video of Senator Umberg's closing remarks.

Testifying before the Senate Judiciary Committee for the AB 2288 hearing, CalChamber Senior Policy Advocate Ashley Hoffman reiterated the need for PAGA reform, explaining that due to the way that PAGA is structured, many small businesses and nonprofits end up paying millions of dollars in penalties that they simply cannot afford.

"What was once a well-intentioned law has unfortunately been manipulated by certain trial attorneys at the expense of workers, businesses and nonprofits who serve our most vulnerable Californians,"

she said. "What's in this bill...represents historic reforms...that address employers' concerns, but also ensure that California workers can feel confident that there is robust labor law enforcement against the bad actors."

Watch video of Hoffman's testimony.

The PAGA reform package was negotiated between business, labor, and legislative leadership. Together, SB 92 and AB 2288 bring long overdue reform to PAGA, a law that was intended to bolster labor law enforcement, but has been manipulated over its 20-year history by certain trial attorneys as a money-making scheme.

This reform package will ensure that workers are having claims resolved more quickly and that businesses and non-profits which comply with the law are not penalized. Employers will now have the means to better defend PAGA claims.

Staff Contact: Ashley Hoffman

CalChamber Continues Challenge to Proposed Antitrust Overhaul



The California Chamber of Commerce last week provided a second round of

comments to a state commission that California's antitrust and competition laws should not be radically changed absent compelling evidence of need and rigorous analysis of economic impacts.

The [Legislature in 2022](#) directed the California Law Revision Commission (CLRC) to examine whether California should make major changes to its antitrust and competition laws, affecting every industry in the state. The June 20 hearing was the second of three scheduled to cover seven subject matter topics, with the goal of providing recommendations to the Legislature by the end of the year. The Commission focused the June 20 hearing on the Mergers and Acquisitions and Technology Platforms.

CalChamber Testimony

Eric Enson, an antitrust attorney with Crowell and Moring representing CalChamber, in [testimony submitted to the Commission](#), argued that neither the Working Groups nor anyone else has made the case that the current law is inadequate to ensure competitive marketplaces in California.

No Demonstration of Need

There has been no showing that Californians are suffering from higher prices, inferior products or services, or less competition under the current California antitrust regime. The Commission should not recommend statutory revisions without finding a demonstrated need for those revisions.

No Cost-Benefit Analyses

Second, none of the Working Group Reports provide any cost-benefit analysis of the quantitative and qualitative effects — both economically beneficial and economically harmful — that are likely to result from statutory revisions. Antitrust policy making must utilize a cost-benefit methodology to craft policies that improve economic performance and efficiency, ultimately benefiting consumers and workers in California.

The absence of these foundational analytic approaches is compounded by the fact that many of the options identified in the Working Group Reports are not minor tweaks, but are instead major shifts in California antitrust law and enforcement that, in some cases, are not necessary given federal antitrust law and, in all cases, may have an impact on every level of the economy.

For example, Enson noted that the technology sector is an incredibly important driver of the California economy and is a source of dynamism in the overall U.S. economy. Changes in policy that may affect the incentives to innovate or invest in California — such as the development and implementation of *ex ante* regulation — should be considered carefully before any changes in policy are made. This concern is not limited to the application of antitrust standards or regulation to technology companies, but rather applies across the broader California economy.

Moreover, some of the suggested options are just not necessary given existing federal law, which specifically and adequately addresses, for example, concerns about concerted action and mergers and acquisitions. The CalChamber recommends that no legislation be proposed by the CLRC to the California Legislature until a cost-benefit analysis of

that legislation is performed and released for public review and comment.

Finally, because the Working Group Reports do not offer specific legislative proposals, they are too general and imprecise for stakeholders to analyze and comment on and they cannot be used by the CLRC as guides for crafting a specific legislative proposal to the Legislature.

Law Revision Commission

The Law Revision Commission is organized to study selected laws to discover defects and anachronisms and recommends legislation to make needed reforms. This study is among the most far-reaching projects the Commission has undertaken, as measured by its potential effects on the California economy.

The seven Commission-appointed working groups [have developed papers](#) on the following subjects: Single Firm Conduct, Concentration in California, Mergers and Acquisitions, Technology Platforms, Concerted Action, Consumer Welfare Standard, and Enforcement and Exemptions. The Commission discussed Single Firm Conduct and Concentration in California at its May hearing. Enson [provided testimony to the Commission](#) on behalf of CalChamber at that hearing.

Coalition

The CalChamber is organizing a coalition of industry associations and individual businesses to address this looming issue, which could have far-reaching implications for the competitive marketplace in the state.

The coalition will enlist a full suite of services to improve the California business community's capacity to engage on this issue before the Commission, and ultimately before the Legislature.

Contact: [Loren Kaye](#)



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Azores Delegation Visits CalChamber for Portuguese Heritage Month



This week, the California Chamber of Commerce hosted a gathering with representatives having Azores connections.

Present at the June 24 meeting was Artur Lima, the vice president of the Azores, who was visiting Sacramento for the presentation of Assembly Concurrent Resolution (ACR) 205 (Aguiar-Curry; D-Winters) in honor of Portuguese Heritage month.

Also present were Diniz Borges, president of the California Portuguese-American Coalition, and Cliff Costa, vice president of California Advocates.

Greeting the delegation was Susanne T. Stirling, CalChamber senior vice president of international affairs.

ACR 205 establishes June as Portuguese Heritage month, recognizing June 10 as the Day of Portugal and May 20 as the Day of the Azores. The measure honors the continued influences of Portugal and the Azores communities in California that have established themselves and contribute to the state and its economy.

Topics Discussed

The meeting focused on the continuing Azores and Portuguese relations in California, which have been strong and ongoing for many years. California continues to be the state with the largest Portuguese population. About 350,000 Portuguese Americans live in California; most hail from the Azores islands.

Also discussed was the future of California relations with the Azores. Climate change is a particular interest (the Azores are a good location for studying carbon dioxide between Europe and the United States), renewable energy sources, and the blue economy.

Worth noting is Google's announcement that the Portuguese Azores islands will be an additional landing point for its

upcoming transatlantic Nuvem cable.

First announced last year, Nuvem is a transatlantic subsea cable system that will connect Portugal, Bermuda and the United States. From Portugal, the cable can connect throughout Europe — making the Azores an attractive location for business development.

About the Azores

The Azores are an archipelago of nine volcanic islands off the west coast of Portugal. It is one of two autonomous regions in Portugal, the other being Madeira, another small island archipelago. The primary sectors of the economy for this region are agriculture, dairy farming, fishing and tourism.

For many years during the 20th and 21st centuries, the Azores served as a waypoint for refueling aircraft, with one of the oldest companies in Portugal being Azores Airlines.



(From left) Zeto Carvalho, representative for Azores Airlines; Susanne T. Stirling, senior vice president, international affairs, CalChamber; The Honorable Artur Lima, vice president of the Azores; Cliff Costa, vice president, California Advocates; and Diniz Borges, president, California Portuguese-American Coalition.

Despite being an autonomous region, the Azores are tied very closely with Portugal and its commitments to the European Union and Schengen area.

U.S.-Portugal Ties

Portugal had a nominal gross domestic product (GDP) of \$276 billion and a population of 10.3 million people as of 2023. A great deal of trade is with its neighboring EU members, but the United

States is Portugal's fourth largest export destination. The top five U.S. imports from Portugal are chemicals, petroleum and coal products, apparel and accessories, plastics and rubber products, and computer and electronic products.

U.S. foreign direct investment into Portugal totaled roughly \$3.8 billion in 2022, almost a 97% increase from 2021, according to the Bureau of Economic Analysis. Top sectors for U.S. investment are energy, agriculture, automotive, and information and communications technology.

California-Azores Ties

California and Portugal have longstanding ties that predate statehood, with Portuguese immigrants coming to the West Coast as early as the 19th century. The first large wave of Azores immigrants came to California in the late 1900s to 1920s, seeking better opportunities.

These communities have and continue to exist in San Francisco, Oakland, San Jose, Santa Cruz, and the dairy farming areas in the Central Valley, Los Angeles Basin, and San Diego. Some of these areas also have a deep connection with Portuguese fishermen.

Trade between California and Portugal remains strong, with California being one of the top U.S. states for exporting to and importing from Portugal.

In 2023, California exported to Portugal a total of \$74 million in goods, primarily computer and electronic products, non-electrical machinery, transportation equipment, fabricated metal products, and miscellaneous manufactures.

California imported roughly \$517 million, according to the U.S. Department of Commerce, with the top five imports being wood products, plastic and rubber products, apparel and accessories, leather and allied products, and processed foods.

For more information, visit www.calchamber.com/portugal.
Staff Contact: Susanne T. Stirling

California Bill Restricting Self-Checkout Lanes Could Raise Business Costs by Half-Billion Dollars Annually



OPPOSE

A California Chamber of Commerce-**opposed** proposal that dictates store staffing and operations could raise business operating costs by at least \$497.1 million annually,

according to a recent economic analysis.

SB 1446 (Smallwood-Cuevas; D-Los Angeles) is an overly prescriptive mandate regarding the use of self-checkout stations that will frustrate customers and increase costs to retailers and requires stores to notify all workers and the public any time they choose to utilize new technology.

Raises Cost to Do Business

Specifically, the bill prohibits a grocery retail store or a retail drug establishment from providing a self-service checkout option for customers unless specified conditions are satisfied, including having no more than two self-service checkout stations monitored by any one employee and requiring the employee to be relieved of all other duties.

Larger grocery retail stores that have self-checkout technology would have

to hire additional, dedicated cashiers to cover these stations.

An economic analysis of SB 1446, conducted by Encina Advisors, LLC on behalf of the California Foundation for Commerce and Education, estimates that approximately 10,200 additional cashiers could be needed statewide to comply with the mandate. This could result in at least \$497.1 million in additional costs falling upon grocery retailers annually.

Limits Choice

SB 1446 will limit the number and type of items that can be purchased at self-checkout—a requirement that will be difficult to enforce and will only frustrate customers.

Grocers and pharmacies currently staff and operate self-checkout lanes in a manner that reflects the clientele of that location. There's no one-size-fits-all approach, the CalChamber pointed out to legislators in a recent letter.

Further, SB 1446's restrictions regarding which items can go through self-checkout lanes will vary store to store, increasing customer frustration and subjecting stores to thousands of dollars in penalties.

Curbs Investment, Innovation

SB 1446 inserts burdensome regula-

tions on retailers that are already reevaluating how to best use self-checkout technologies, with some moving to new forms of technology to help deter theft and make the workplace safer.

"While it is important to consider the potential effects of new technologies on employees and consumers, overly burdensome regulations, such as those proposed in this bill, may stifle business growth, innovation, and competitiveness in an increasingly digital economy," the CalChamber said.

Grocers and pharmacies are developing and beginning to deploy numerous technologies meant to enhance the customer and employees experience at the store.

"Often these technologies play a critical role in achieving policy priorities we have here in California, such as improving energy efficiency, reducing food waste, and preventing retail theft. Grocery stores and pharmacies in California would fall behind those in other states when it comes to innovation," the CalChamber warned.

SB 1446 is scheduled to be considered in the Assembly Privacy and Consumer Protection Committee on Tuesday, July 2, 2024.

Staff Contact: Ashley Hoffman

CalChamber-Opposed Autonomous Vehicle Bill Held



OPPOSE

California Chamber of Commerce-**opposed** legislation creating a patchwork of potentially conflicting rules for autonomous vehicles has been put on hold

for the year.

The bill, **SB 915 (Cortese; D-San Jose)**, had been scheduled for a hearing last week in the Assembly Transportation Committee. The hearing was canceled at the author's request.

SB 915, dubbed the "robotaxi bill" in news articles, prohibits any commercial activity of autonomous vehicles that have

been approved by the California Public Utilities Commission and the Department of Motor Vehicles from beginning operation in a local jurisdiction until that local jurisdiction has passed an ordinance approving their operations.

In opposing SB 915 before it passed the Senate, a coalition including the CalChamber and organizations representing businesses pointed out that its potentially conflicting rules affected the 15 largest cities in the state, as well as adjacent cities.

Other concerns raised about SB 95 included:

- **Imposes more bureaucracy and gridlock** for transportation and safety solutions that are designed to alleviate congestion and help cities progress toward Vision Zero goals to reduce traffic

deaths and accidents.

- **Burdens cities with additional transportation responsibilities** by piling more work on local agencies that often do not have the staffing or expertise to thoughtfully create and implement rules for autonomous vehicles.

- **Impedes California's ability to keep pace with autonomous vehicle innovation** as other states advance large-scale deployment of these vehicles.

- **Worsens transportation equity** by reducing access to mobility services for aging and disabled communities.

The author has promised to reintroduce his bill at the beginning of the next legislative session.

Staff Contact: Ben Golombek

Political Speech at Work: How to Manage While Protecting Rights

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be protected under the NLRA.

Promote Respectful Workplace

Political discussion at work involving race, sex, gender identity, sexual orientation, or other legally protected categories can potentially lead to claims of discrimination or harassment. Employers must take proactive steps to prevent and address any discriminatory or harassing behavior that arises from political (or other) speech.

At a minimum, California employers should have a [policy addressing unlawful harassment](#) in the workplace. This policy should be reviewed and reinforced through [training every two years](#), outlining acceptable behavior and setting boundaries around discriminatory and harassing communication.

In addition, discourage managers from engaging in political discussions with subordinates. This may help minimize potential discrimination or harassment claims. Consider implementing a report-

ing system where employees can raise concerns confidentially about uncomfortable or inappropriate political conversations. Provide training to employees on respectful communication and conflict resolution.

Implement Clear Policies

As an employer, you have the right to prohibit activities that interfere with business operations and performance. For example, you can enforce policies that restrict political discussions during work hours if they disrupt productivity or job performance. Additionally, you should prohibit political speech that creates a [hostile work environment](#) (i.e., implement an unlawful harassment policy).

Consistency is key in applying these policies to avoid any claims of discrimination or unfair treatment. Ensure that decisions are based on objective documentation, avoiding any appearance of targeting employees based on political activity.

If you find it challenging to determine

whether an employee's political speech or activity is legally protected, proceed with caution and consult with legal counsel before taking any disciplinary action.

Handle Complaints Effectively

If you receive a complaint about political speech, it is crucial to take the complaint seriously and [investigate the matter promptly](#). This ensures that all employees feel heard and that the workplace remains respectful and professional.

By understanding the legal landscape, fostering a culture of respect, and managing policies consistently, you can effectively address political speech in the workplace without infringing on anyone's rights.

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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