CalChamber

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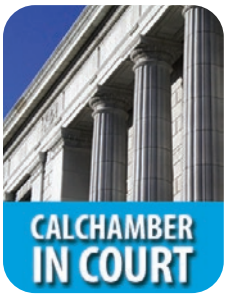
ALERT

Court Grants CalChamber Request in Prop 65 Case

In Favor of Californians' First Amendment Rights



The U.S. District Court for the Eastern District of California ruled on May 2 in favor of Californians' First Amendment rights.

In *California Chamber of Commerce v. Bonta*, the Court found that "Prop 65 warnings for dietary acrylamide are misleading and controversial as they state that dietary acrylamide is carcinogenic to humans despite vigorous scientific debate concerning that conclusion and compel CalChamber's members to espouse that view despite their disagreement."

The Court went on to find that "the State's Prop 65 warnings as to dietary acrylamide are unconstitutional and will grant CalChamber's request for declaratory relief and a permanent injunction enjoining enforcement of the Prop 65 warning requirements as to dietary acrylamide."

CalChamber Statement

"Now, after more than five years, businesses will have the longstanding issue of unnecessary Prop 65 warnings decided," said Jennifer Barrera, CalChamber President and CEO, in a statement released the day of the ruling. "Compelling businesses to provide burdensome warnings that lack scientific backing is simply unconstitutional."

The decision echoes concerns raised by Judge Daniel Calabretta during oral arguments, particularly that the average consumer is likely to misinterpret the warning as affirming a definitive cancer risk unsupported by a consensus of scientific evidence.

"Today's ruling not only protects businesses from enforcement actions based on these warnings, but also upholds the principle that government-mandated disclosures must be factually accurate and not misleading," added Barrera.

Background

On October 7, 2019, The California Chamber of Commerce filed a federal lawsuit in the Eastern District of California challenging California's requirement under Proposition 65 that businesses provide cancer warnings for products containing acrylamide, a chemical that forms naturally in cooking certain foods.

The lawsuit alleged that the mandatory warning violates the First Amendment by compelling false or misleading speech. The State of California and a private intervenor, the Council for Education and Research on Toxics (CERT), opposed the lawsuit and defended the warning requirement.

In March of 2021, the court granted a preliminary injunction halting new lawsuits to enforce the Prop 65 warning requirement for acrylamide. At that time, the court found the warning language likely violated the First Amendment because it conveyed a misleading impression of scientific certainty about cancer risk.

CERT appealed the preliminary injunction to the U.S. Court of Appeals for the Ninth Circuit, which upheld the injunction in March of 2022. After discovery and the full briefing and argument on CalChamber's summary judgment motion, the Eastern District granted CalChamber's motion.

Staff Contact: Nicole Wasylkiw

Cost Cutters Update: Bills Reducing Costs Moving through Legislature

A number of proposals identified by the California Chamber of Commerce as **Cost Cutters** that reduce expenses for Californians are moving in the Legislature.

Following is an update on the status of the CalChamber-**supported Cost Cutters**.

• **AB 1138 (Zbur; D-Hollywood)** and **SB 630 (Allen; D-Santa Monica) Film Tax Credit**: More than doubles the State's Film Tax Credit to $750 million annually that will help to grow and retain jobs in one of California's signature industries, and ultimately strengthening the economy. *AB 1138 passed Assembly Revenue and Taxation Committee on April 28. Set for hearing May 14 in Assembly Appropriations Committee. SB 630 passed Senate Revenue and Taxation Committee on April 23. In Senate Appropriations Committee Suspense File.*

• **AB 1308 (Hoover; R-Folsom) Expedites Entitlement Process for Housing Construction**: Requires the building department to provide an applicant of a residential building permit with an estimated timeframe in which the inspection of the permitted work will be

See Cost Cutters: Page 6

Inside

Cal/OSHA Corner

Residential Construction: Fall Protection Trigger Height Drops to 6 Feet

Mel Davis
Workplace Safety Expert

Has Cal/OSHA adopted new regulations to protect construction workers from falls on residential construction projects?

The Cal/OSHA Standards Board has adopted revisions to various sections of the Construction Safety Orders to address fall protection in residential construction (Sections 1671.1, 1716.2, 1730 and 1731).

The revisions go into effect on July 1, 2025, nearly three decades since the Federal Occupational Safety and Health Administration (Fed-OSHA) first published new residential fall protection standards on August 9, 1994.

Those standards required fall protection systems be provided when workers are working 6 feet or more above the surface below.

California's comparable standard, contained in the Construction Safety Orders (CSO) section 1716.2, establishes a fall protection trigger height of 15 feet for residential and light commercial framing. Title 8 residential roofing standards specify trigger heights varying from 0 to 20 feet, depending on the type and slope of the roof.

Rulemaking Chronology

After Fed-OSHA promulgated the new regulation, representatives of the residential construction industry argued that they needed more compliance flexibility than the standard allowed. This resulted in Fed-OSHA on December 8, 1995 issuing an interim compliance policy (3.1) that permitted employers engaged in certain residential construction activities to use specified alternative procedures instead of conventional fall protection.

On June 18, 1999, Fed-OSHA issued Standards Directive (STD) 3-0.1A2, re-designated as STD 03-00-001 — a plain language replacement for Standards Instruction 3.1. During this time, Cal/OSHA was still enforcing California's established residential framing and roofing industry fall protection standards, which emphasized the use of positive fall protection means with the trigger heights higher than Fed-OSHA.

On December 16, 2010, Fed-OSHA published another instruction, designated STD 03-11-002, rescinding STD 03-00-001 and requiring residential construction employers to comply with the adopted regulation 29 Code of Federal Regulations (CFR) Section 1926.501(b)(13) regarding compliance with the 6-foot fall requirements for employees.

By a letter to Cal/OSHA dated May 28, 2013, Fed-OSHA expressed concerns that California's residential fall protection standards did not conform to the Fed-OSHA regulation because of the difference in trigger heights — California being at 15 feet while Fed-OSHA was at 6 feet.

The issue was presented to the Standards Board on January 21, 2016. The Board saw that the issue needed to be addressed and directed staff to "…treat as high priority and work expeditiously with stakeholder involvement, to assure California's regulatory compliance with Federal construction industry fall protection standards."

See Residential: Page 5

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Human Resources

Revisiting Your Workplace Violence Prevention Program for 2025. CalChamber. May 15, Online. (800) 331-8877.

HR Boot Camp. CalChamber. June 5–6, September 11–12, Online. (800) 331-8877.

Supervisor Essentials: Workplace Compliance. CalChamber. July 17, Online. (800) 331-8877.

Leaves of Absence. CalChamber. August 7–8, Online. (800) 331-8877.

International Trade

Access Africa Now: Empowering Africa's Financial Future — Exploring Fintech's Role in Growth and Opportunity. Webinar Series. U.S. Commercial Service. April 29-June 24, Online. Webinar website.

Annual Export Conference. National Association of District Export Councils. May 19–20, Washington, D.C. Conference website.

Navigating the Evolving Tariff Landscape & Developing Mitigation Strategies. National Institute for World Trade. May 22, Online. Free: Pre-registration required.

14th World Chambers Congress. World Chambers Congress. September 2–September 4, Melbourne, Australia. ***https://wcc.iccwbo.org/***

CalChamber Calendar

California Business Outlook and Dinner: June 4, Sacramento

New Shipping Fees on Chinese Ships to Begin in 6 Months

In six months, the United States will be increasing fees on Chinese ships based on vessel capacity, as part of the Trump administration's bid to revive the domestic maritime and shipbuilding industries.

The Office of the U.S. Trade Representative (USTR) released a plan on April 17 outlining its targeted actions, which followed a year-long investigation.

According to the USTR Fact Sheet, these actions will occur in two phases over a period of time to allow businesses to adjust. For the first 180 days, applicable fees will be set at zero.

First Phase

The first phase actions, after 180 days, will consist of:

• Fees on vessel owners and operators of China based on net tonnage (NT) per U.S. voyage, increasing incrementally over the following years. The fee would start at $50/NT in 180 days and increase by $30/NT per year over the next three years;

• Fees on operators of Chinese-built ships based on net tonnage or containers, increasing incrementally over the following years. The fee would start at $18/NT or $120 per container in 180 days, and would increase by $5/NT per year, or the same proportional yearly amount per container (e.g., in year 2, to $154 per container), over the next three years; and

• To incentivize U.S.-built car carrier vessels, fees on foreign-built car carrier vessels based on their capacity. The fee would start at $150 per Car Equivalent Unit (CEU) capacity of the entering non-U.S.-built vessel in 180 days.

Second Phase

The second phase actions will not begin for three years:

• To incentivize U.S.-built liquified natural gas (LNG) vessels, limited restrictions on transporting LNG via foreign vessels. These restrictions will increase incrementally over 22 years.

Earlier Investigation

The USTR opened an investigation in April 2024 at the request of the United Steelworkers and four other unions, under Section 301 of the Trade Act of 1974, as a way to rebuild the U.S. shipbuilding industry.

The USTR released the results on January 16, 2025 in a 182-page report on the decline of U.S. shipbuilding and U.S. flag carriers, focusing on the dramatic expansion of China's shipbuilding and ship operating sectors.

The report concluded China increased its share of global shipbuilding tonnage from 5% in 1999 to more than 50% in 2023 because of massive subsidies from the Chinese government and preferential treatment for China government-owned enterprises that are squeezing out private sector international competitors.

On February 27, 2025, Trump administration's USTR issued a set of remedy recommendations that included port fees and export restrictions, some more extensive than that sought by the union petitioners, to penalize ocean carriers that use Chinese-built ships and to support the U.S. shipbuilding sector

However, a March 2025 study assessing the probable net economic effects of the proposed remedies found that overall, total exports and imports would decline, having a negative impact on the U.S. economy while the administration is striving to grow the overall economy and create jobs around the country.

The study prepared by Trade Partnership Worldwide, LLC, concluded that ocean carriers will respond to USTR's fees by reducing service to many U.S. ports (creating bottlenecks at larger ports like Los Angeles/Long Beach) and potentially diverting cargo to ports in Canada and Mexico based upon customer demand. The carriers' response will reduce ocean traffic at many smaller ports (such as Oakland), creating profound economic damage — including lost jobs — in communities where ports serve as vital economic hubs.

March 2025 Coalition Letter

On March 24, 2025 the California Chamber of Commerce joined more than 300 other organizations in urging the Office of the U.S. Trade Representative (USTR) to refrain from imposing proposed actions against China that will hurt U.S. businesses and consumers instead of deterring China's broader maritime ambitions.

The March 24, 2025 letter to the USTR was signed by organizations representing a wide breadth of the nation's economy, including importers, exporters, farmers and agribusinesses, retailers, manufacturers, energy providers, wholesalers, transportation and logistics providers, and other sectors.

The letter explained specifically how USTR's February 27 proposed fees would increase shipping costs, container and non-containerized, leading to higher prices for U.S. consumers, and undermine the competitiveness of many U.S. exports — leading to a decline in export revenues and increasing the U.S. trade deficit, contrary to the Trump administration's America First trade goals.

The coalition acknowledged that USTR was proposing export requirements to support a domestic shipbuilding industry and emphasized that all 300-plus organizations signing the letter share the goal of finding real remedies to address

See New Shipping: Page 4

Low-Value Imports from China, Hong Kong No Longer Duty-Free

Starting May 2, President Donald Trump ended duty-free *de minimis* treatment for low-value imports from the People's Republic of China (PRC) and Hong Kong. This follows notification by the Secretary of Commerce that adequate systems are in place to collect tariff revenue.

The President signed the Executive Order ending the *de minimis* exceptions on April 2. The White House Fact Sheet on the subject said the President was eliminating duty-free *de minimis* treatment "as a critical step in countering the ongoing health emergency posed by the illicit flow of synthetic opioids" into the United States.

Removal of the trade policy will affect Chinese e-commerce, as well as low-income American consumers and small businesses that rely on inexpensive products and materials from China.

Increased Tax

The tariff exemption previously allowed shipments worth $800 or less to come into the United States duty-free and often bypass certain inspections and paperwork. Now, items will be subject to a duty rate of either 30% of their value or $25 per item (increasing to $50 per item after June 1, 2025). That is on top of the 145% tariffs already placed on all Chinese imports.

Packages sent via the U.S. Postal Service now are subject to a tax of 120% of the package's value or a flat fee of $100 per package — which rises to $200 in June.

Congress established the *de minimis* policy in 1938 as Section 321 of the Tariff Act of 1930, allowed travelers returning to the United States to bring with them goods worth up to $5 without declaring them to customs. Since 2016, the threshold has been $800 and the *de minimis* rule helped to reduce administrative burdens while it has grown to encompass more than 90% of all cargo entering the United States — 60 % from China.

More Shipments

After Congress raised the qualifying threshold to shipments valued at less than $800 in 2016, the *de minimis* shipments increased — especially during the COVID years. China accounted for the majority of the shipments by far. In 2023, 62% of all *de minimus* shipments, valued at nearly $34 billion, came from China, according to U.S. Customs and Border Protection.

From 2018 to 2023, the amount of low-value e-commerce exports from China ballooned, according to the Congressional Research Service. The PRC expanded its global e-commerce exports by more than tenfold.

A key part of China's global e-commerce growth has been expanding PRC and PRC-tied e-commerce firms into the U.S. market. The U.S. retail e-commerce market makes up more than half of all global e-commerce sales. PRC e-commerce policies have promoted PRC exports while limiting the scope of PRC e-commerce imports.

Staff Contact: Susanne T. Stirling

New Shipping Fees on Chinese Ships to Begin in 6 Months

From Page 3

China's dominance in the maritime industry, while also revitalizing the U.S. shipbuilding industry.

The coalition supports scrutiny of China's efforts to dominate the maritime industry but argues that the USTR's proposed actions would not deter China's broader maritime ambitions and will instead directly hurt American businesses and consumers.

March Public Hearings

USTR held public hearings on March 24 and March 26 regarding proposed actions in the Section 301 investigation on China's targeting of the maritime, logistics, and shipbuilding sectors for dominance.

There was a mix of support and opposition to the earlier proposed remedies. Unions and steel makers were supportive of the remedies, while carriers, shippers and farm exporters were strongly opposed. There were 400 comments submitted and more than 30 witnesses.

All agreed that China's dominance of the shipping industry should be addressed as the United States has lost more than 70,000 jobs in the last few decades and now ranks 19th globally in shipbuilding. Further, while China builds more than 1,000 ocean vessels for commercial use per year, the United States produces fewer than 10.

Recent Reactions

Despite the April 17 actions being toned down from earlier proposals and the desire to strengthen U.S. shipbuilding and ports — in addition to improving the supply chain — the business and shipping communities continue to warn that fees will increase prices for shippers and consumers, harm exporters and could prompt possible legal challenges regarding U.S. authority to levy the fees.

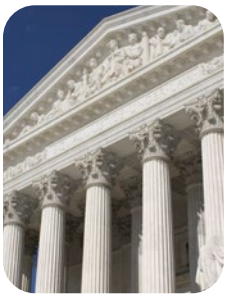
More: Cranes and Cargo

In addition to the ship fees, USTR also announced the initiation of Section 301 investigations into ship-to-shore cranes (100% tariff) and cargo handling equipment (20%–100%). The cargo handling equipment includes containers, chassis and chassis parts. USTR will hold a hearing on these investigations on May 19.

Previously, the Biden administration had imposed a 25% tariff on Chinese manufacturers of cranes in response to concerns about U.S. port security and potential cybersecurity threats from Chinese-manufactured port equipment.

Staff Contact: Susanne T. Stirling

Untimely 'Headless' PAGA Action Dismissed



In a win for employers, a California court affirmed the dismissal of a "headless" Private Attorneys General Act (PAGA) case — actions that do not allege an individual PAGA claim — because the plaintiff filed the case outside the one-year statute of limitations (*Williams v. Alacrity Solutions Group, LLC* (B335445, April 22, 2025).

In January 2022, plaintiff Corbin Williams' employment with defendant Alacrity Solutions Group, LLC ended. Over a year later, in March 2023, he notified California's Labor and Workforce Development Agency (LWDA) that he intended to pursue a PAGA action against Alacrity before filing a civil lawsuit alleging a PAGA claim on behalf of himself and other aggrieved employees.

In response, Alacrity asked the trial court to dismiss the case because, among other reasons, it was filed more than one year after Williams' employment ended (i.e., more than one year after the last alleged Labor Code violation suffered by Williams), which was past the statute of limitations for PAGA claims. The trial court agreed and dismissed the PAGA action, and Williams appealed.

On appeal, Williams conceded that his individual PAGA claim was no longer valid because it exceeded the statute of limitations, but he argued that was irrelevant — he was alleging only representative claims on behalf of other aggrieved employees, which were within the one-year statute of limitations.

Argument Rejected

The Second District Court of Appeal rejected his argument and in doing so, rejected Williams' attempt to resurrect his time-barred PAGA action through a representative — or headless — PAGA action.

The court held that the statute of limitations for a PAGA action is tied to a PAGA plaintiff's **individual** claim, not to a plaintiff's **representative** claim. In other words, a PAGA plaintiff must bring a PAGA action within one year of the last Labor Code violation the plaintiff personally suffered — not within one year of a violation suffered by any of the aggrieved employees covered by the lawsuit.

The court's decision was based on its conclusion that a PAGA action must always contain both an individual PAGA claim and a representative claim — as the Second District previously held in *Leeper v. Shipt*.

The court also concluded that tying the statute of limitations to a PAGA plaintiff's individual claim (as opposed to the representative claim) was most consistent with the California Legislature's intent that workplace violations "be addressed expeditiously." Removing the requirement that a plaintiff file a timely individual claim could result in a PAGA plaintiff filing a PAGA action "10, 20 or 30 years" after the plaintiff's employment ended and after Labor Code violations continued for years without being "remediated or deterred."

Since Williams' employment ended more than one year prior to his filing the PAGA action, it was past the statute of limitations, and the court affirmed the case's dismissal.

Consistent with PAGA Reform

Remember, in 2024, PAGA was significantly reformed. As amended, PAGA now explicitly requires that a PAGA plaintiff personally suffer each alleged violation within the one-year statute of limitations. Although this case was filed prior to these PAGA reforms, the court's holding that the statute of limitations is based on the PAGA plaintiff's individual claim is consistent with the current state of the law.

Although this case is another example of a court rejecting the use of a headless PAGA action, the California Courts of Appeal are currently split on whether plaintiffs can pursue headless PAGA actions. The California Supreme Court has ordered review of this issue in the *Leeper* case so a definitive answer will be forthcoming.

Staff Contact: Erika Barbara

Residential Construction: Fall Protection Trigger Height Drops to 6 Feet

From Page 2

Revisions

Cal/OSHA convened an advisory committee on April 11, 2016. Following is a synopsis of the committee's conclusions and OAL's approved rulemaking:

• In Section 1671.1 Fall Protection Plan, a note has been added that "There is a presumption that fall protection is feasible and will not present a greater hazard." The note continues that the employer has the burden of proving that conventional fall protection is not feasible.

• Definitions: Residential-type framing activities now include reference to the use of structural steel.

• Work on top plate, joists and roof structure framing: Traditional fall protection methods are to be implemented before a fall protection plan with safety monitors as described in Sections 1671.1 and 1671.2.

• Section 1731 is no longer specific to new production-type residential construction. The regulation has been revised to reference residential-type roofing.

Note that references to traditional fall protection are included within all the revised regulations.

Readers curious about the Standard Board's rationale for accepting or dismissing the many suggestions submitted by commenters can review the final statement of reasons as revised by the Office of Administrative Law (OAL) on the board's website. The regulatory text approved by OAL also is available.

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.

Cost Cutters Update: Bills Reducing Costs Moving through Legislature

From Page 1
completed, upon receiving a notice of the completion of the permitted work, to reduce costs and ultimately housing prices. *Passed Assembly Housing and Community Development Committee on April 30. Set for hearing May 14 in Assembly Appropriations.*

• **AB 941 (Zbur; D-Hollywood) CEQA Reform for Electricity Infrastructure Projects**: Reduces the time for electricity infrastructure projects to go through permitting, which will allow for projects to be built faster. Regulatory certainty will allow for a reduction in energy costs. *Passed Assembly Natural Resources Committee on April 21. Set for hearing May 14 in Assembly Appropriations*.

• **AB 685 (Solache; D-Lakewood) Small Business Recovery Act**: Authorizes the Office of Small Business Advocate to provide funding and technical assistance to small businesses impacted by the January 2025 fires in Los Angeles and Ventura counties. *Merged with AB 265.*

• **AB 609 (Wicks; D-Oakland) CEQA Reform for Infill Projects**: Will help to reduce the cost of housing, by reforming the permitting process for infill housing, which will allow for the state to build more housing and drive down prices. *Passed Assembly Housing and Community Development on April 30. Awaits action in Assembly Appropriations.*

• **AB 417 (Carrillo; D-Palmdale) Enhanced Infrastructure Financing Districts**: Improves the ability for local governments to build critical infrastructure and provide financing for economic development in targeted districts within their jurisdiction. It will allow economic development projects to receive additional financing, which incentivizes businesses to invest and create more jobs. *Passed Assembly on April 1. In Senate Local Government Committee.*

• **AB 265 (Caloza; D-Los Angeles) Small Business Recovery Act**: Allows the Office of Small Business Advocate to provide grants to small businesses impacted by the Los Angeles fires to help them recover and rebuild. *Passed Assembly Economic Development, Growth and Household Impact on April 22. In Assembly Appropriations Suspense File.*

• **AB 231 (Ta; R-Westminster) Work Opportunity Tax Credit**: Provides a tax credit to businesses who hire previously incarcerated individuals who are re-entering the workforce, reducing costs on businesses and improving opportunities for workers. *Passed Assembly Revenue and Taxation on May 5. Awaits action in Assembly Appropriations.*

• **SB 540 (Becker; D-Menlo Park) Independent Regional Energy Organization**: Authorizes the California Independent System Operator and California utilities to integrate into a broader regional energy market governed by an independent regional organization. Will reduce energy costs for Californians. *Passed Senate Judiciary Committee on April 29. Awaits action in Senate Appropriations Committee.*

• **SB 607 (Wiener; D-San Francisco) CEQA Reform for Infill Projects**: Exempts certain housing rezoning projects from the California Environmental Quality Act (CEQA) and improves current CEQA exemptions to make them easier to use for housing projects. Increased housing stock will lead to a reduction in the cost to buy or rent a house. *Passed Senate Local Government Committee on April 30. Awaits action in Senate Appropriations.*