

ALERT

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 **CalChamber**
CALIFORNIA CHAMBER OF COMMERCE

Potential Higher Legal Costs Stopped by Governor's Veto



A California Chamber of Commerce-opposed “job killer” bill that would have undermined judicial discretion, eliminated the incentive to use an effective expedited form of dispute resolution, and forced taxpayers to foot the bill for exorbitant legal fees when public entities are involved, was vetoed by Governor Edmund G. Brown Jr. on September 26.

In vetoing **AB 559 (Swanson; D-Alameda)**, the Governor agreed with the CalChamber, saying, “In this case, I think the Supreme Court got it right. Judges are in the best position to decide whether to award or deny fees in these instances.”

AB 559 would have unreasonably increased business litigation costs by limiting judicial discretion to reduce or deny exorbitant attorneys fees in fair employment and housing claims that should have been raised in a limited civil proceeding.

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New Union Rights Notice Mandate Faces Challenges in Court



A number of organizations are challenging the National Labor Relations Board (NLRB) rule requiring most private sector employers to notify employees of their rights under the National Labor Relations

Act (NLRA) by posting an 11”x17” notice beginning November 14, 2011.

The first lawsuit was brought by the National Association of Manufacturers (NAM). The NAM lawsuit alleges that the NLRB acted outside of its jurisdiction and should suspend the rule. The lawsuit was brought in the federal district court for Washington, D.C.

The National Right to Work Foundation also filed a lawsuit in D.C. challenging the NLRB’s authority to issue the rule.

In addition, the U.S. Chamber of Commerce and the South Carolina Chamber of Commerce filed a lawsuit against the NLRB in the U.S. District Court of South Carolina.

The U.S. Chamber’s lawsuit argues that the NLRB’s poster requirement violates federal labor and regulatory laws, as well as the First Amendment. The lawsuit argues that:

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State Hosts High-Level Diplomatic Gathering



Governor Edmund G. Brown Jr. welcomes delegates from Pacific Rim economies to California for an intensive series of high-level meetings in San Francisco, hosted by the CalAPEC (Asia Pacific Economic Cooperation) committee, of which the CalChamber is a founding member. Story on Page 13.

Photo by Susanne Stirling

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Labor Law Corner

Protections to Consider Before Firing Employee for Excessive Absences



Sunny Lee
HR Adviser

We have an employee who has had some attendance problems and we were just getting ready to terminate her when she called in sick again. Can we terminate her?

The answer to that question depends on what rights the employee has to be off work. If the employee is out due to a workers' compensation injury or illness, a pregnancy disability, or a medical

condition that would qualify for either a Family Medical Leave Act (FMLA) leave or accommodation under the Americans with Disabilities Act (ADA), the employer needs to be cognizant of those rights and proceed cautiously.

Workers' Comp Claim

An employee who has a workers' compensation claim for a work-related injury or illness may need some period of time off to recover and return to work. The employee's absence may be covered by FMLA, California Family Rights Act (CFRA), and/or disability law.

Additionally, if during the claim an employee calls in sick or misses work due to that injury or illness, an employer may not proceed with discipline or termination without the risk of invoking a discrimination or retaliation claim.

When an employer terminates an employee or takes an adverse employment action against an employee with a pending or open workers' compensation claim, or if the employee has told you that he/she intends to file a claim, the employer may be subject to a 132 (a) workers' compensation discrimination claim, which is not defended or paid for by the workers' compensation carrier.

If an employer feels the need to take action against an employee protected by these rights, the employer should seek legal advice.

Pregnancy

If the employee is pregnant or has a pregnancy-related medical condition, the employee's job is protected for up to four months or 88 working days, whichever is greater.

Although it may be frustrating for an employer to have an employee call in sick throughout her pregnancy, state law requires that an employer accommodate absences related to the pregnancy as well as prenatal care appointments.

The employer may, however, advise the employee that it will count the time taken for the pregnancy-related absences from the total leave time available to the employee and the employer may request medical verification that the employee will need to miss work due to the pregnancy.

Medical Leave Protections

If the employer has a legal obligation to provide family medical leave or has voluntarily adopted a family medical leave policy, the employer must provide the employee with a notice of FMLA/CFRA rights if the employee is eligible (worked for the employer for one year and within the last 12 months worked 1,250 hours).

The employer may require a serious health condition certification form to be completed by the employee's medical provider to substantiate the need for the leave. *See Protections: Page 5*

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CalChamber-Sponsored Seminars/Trade Shows

More information at www.calchamber.com/events.

Business Resources

Northern California Tour. Water Education Foundation. October 12-14, Sacramento. (916) 444-6240.

Licensing Executives Society Annual Meeting. Licensing Executives Society (USA and Canada). October 16-19, San Diego. (703) 836-3106.

San Joaquin River Restoration Tour. Water Education Foundation. November 2-3, Fresno. (916) 444-6240.

International Trade

Introduction to Global Exporting.

California Manufacturing Technology Consulting. October 5, Torrance. (310) 263-3060.

See CalChamber-Sponsored: Page 4

CalChamber Calendar

Taking Your Chamber's PAC to the Next Level: October 14, Orange

**Next Alert:
October 14**



Red Frog Events, based in Chicago, Illinois, accepts the \$10,000 prize after being named the DREAM BIG Small Business of the Year 2011.



THIS COULD BE YOU!

Make your business' **BIG DREAM** come true. Apply for the **DREAM BIG Small Business of the Year Award** and get the chance to win a **\$10,000 cash prize!**

75 Blue Ribbon Award® winners will be named on March 1.
All award winners will be recognized at **America's Small Business Summit** on May 22 in Washington, D.C.



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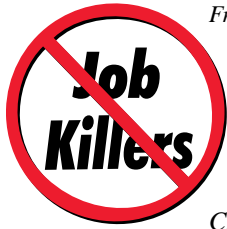
Apply today at www.uschambersummit.com/award.



Help celebrate the U.S. Chamber's 100th anniversary by joining more than 600 business owners from across the country at **America's Small Business Summit 2012**, May 21–23. Network, gain political insight, and speak out for small business on Capitol Hill.

Go to www.uschambersummit.com for event details and group discounts.

Potential Higher Legal Costs Stopped by Governor's Veto



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Attempt to Overrule Court Decision

The bill attempted to overrule *Chavez v. City of Los Angeles*, 47 Cal.4th 970, and would have made it easier for plaintiffs lawyers to receive attorneys fees in employment cases.

Even after the *Chavez* decision, however, trial court judges do not have unlimited discretion to deny attorneys fees in Fair Employment and Housing Act (FEHA) cases.

Rather, a judge can deny these awards only if "the trial court is firmly persuaded that the plaintiff's attorney had *no reasonable basis* to anticipate a FEHA damages award in excess of the amount recoverable in a limited liability case, and also that the *action could have been fairly and effectively litigated* as a limited civil case..."[emphasis added]."

Ample Protections

The California Supreme Court has left ample protections in place for the victims of workplace civil rights violations and

for plaintiffs attorneys, who often take these cases on under a contingency fee arrangement to ensure low-income workers have access to justice.

There is no evidence, aside from speculation by the appellate court, that the denial of the attorneys fees in the *Chavez* case has discouraged any attorney from representing a plaintiff in a FEHA case on a contingency fee basis, yet AB 559 proposed to eliminate all incentive for plaintiffs to bring these cases expeditiously through a limited civil proceeding when appropriate.

Carve-Outs Create Uncertainty

As a threshold issue, the CalChamber opposes legislative attempts to carve out an entire category of claims from any statute, particularly when there is no showing that such a bold step is needed to protect the rights of individuals.

The carve-outs create uncertainty for parties who rely on the laws being applied equally and fairly to all cases. In particular, this approach creates a problem for employers struggling to make the best of the state's already-poor legal climate by managing risks and potential litigation costs up front, before any dispute arises.

AB 559 would have exposed

employers to unanticipated costs after the fact merely because a plaintiff happens to allege a FEHA claim.

The facts surrounding the denial of attorneys fees in the *Chavez* case show that the trial court properly used its discretion to deny an exorbitant fee request, saving the taxpayers of Los Angeles more than \$870,000, while showing adequate deference to the important policy reasons for awarding attorneys fees in FEHA cases. Under the circumstances, there is no justification for undermining judicial discretion in an entire class of cases.

Remaining 'Job Killer' Bills

Three "job killer" bills remain on the Governor's desk. He has until October 9 to sign or veto them. For more information on the status of the "job killer" bills, visit www.calchamber.com/jobkillers.

CalChamber-Sponsored Seminars/Trade Shows

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Silicon Dragon Chinov8. Silicon Dragon. October 6, Menlo Park.

International Trade Finance.

Center for International Trade Development. October 7, Sacramento. (916) 563-3200.

India Business Conference 2011.

Michigan Ross School of Business. October 7-8, Ann Arbor, Michigan. (734) 763-5796.

Incoterms. Women in International Trade.

October 19, Torrance. (800) 514-6407.

26th Trade Expo Indonesia. Trade

Expo Indonesia. October 19-23,

Kemayoran, Indonesia.

Gateway California. Northern California

World Trade Center. October 26,

San Francisco. (916) 321-9124.

District Export Council Conference.

District Export Council. November

2-5, Las Vegas. (949) 283-1024.

International Exhibit of Chemical

Industry. Trust International Group.

November 28-30, Alexandria, Egypt.

WITmas. Women in International

Trade. December 7, Long Beach.

(916) 563-3200.

Labor Law

Determining Independent Contractor

Status. CalChamber. On Demand.

(800) 331-8877.

CalChamber Occupational Safety Group Seeking Members

The California Chamber of Commerce is looking for representatives of CalChamber member firms to serve on the Occupational Safety Advisory Group.

The advisory group reviews proposed regulations and legislation to recommend approaches that produce cost-effective and practical safety and health regulations while protecting the competitive position of California employers.

The advisory group is a subcommittee of the CalChamber Labor and Employment Committee.

Readers with an interest in serving on the advisory group should email or call Marti Fisher for details at (916) 444-6670, marti.fisher@calchamber.com.

CalChamber Urges Air Board to Minimize Cost, Maximize Benefits of AB 32 Rules

Challenges Proposed Illegal Tax on California Employers in Cap-and-Trade Plan



The California Chamber of Commerce has urged the California Air Resources Board (CARB) to minimize cost and maximize benefits for the economy

in developing the cap-and-trade rules to implement the AB 32 climate change law.

In comments submitted to CARB on September 27, the CalChamber urged elimination of an illegal and arbitrary tax and highlighted the need to adopt an operable, cost-effective market designed to meet the goals of AB 32 without creating undue harm to the economy

Non-Essential Programs

"It is unfortunate that as California is cutting critical programs such as K-12 education, higher education, public safety and the courts, CARB is contemplating raising taxes for non-essential programs," said CalChamber President and CEO Allan Zaremborg.

"The \$2 billion that will be raised through this program will reduce funds employers might otherwise have used to hire workers and make investments in our economy. It is troubling that CARB would consider imposing an illegal tax that will pass higher costs onto consumers at a time when they can least afford it," he said.

CalChamber has been an active voice representing the interests of nearly 15,000 California employers throughout the process of AB 32 implementation.

Competitive Disadvantage

In the comments submitted to CARB on draft amendments to the cap-and-trade regulation, CalChamber specifically challenged CARB's proposal to levy an unjustified and illegal tax on business that will place California companies at an immediate competitive disadvantage.

A CARB member recently said the proceeds from the tax will raise \$2 billion from California businesses.

According to CalChamber's comments, "Imposing a tax on business

via CARB's proposal does nothing to maximize environmental benefits required under AB 32 and it is not needed to ensure the stringency of the overall cap."

Contradicts AB 32

In fact, the CalChamber wrote in its comments, "the tax proposed by CARB contradicts the AB 32 requirements of minimizing costs and maximizing benefits for California's economy in the design of emission reduction measures. The tax will negatively affect all California businesses and increase costs that will be passed down to consumers."

A full copy of CalChamber's September 27 letter to CARB, plus the CalChamber's August 11 letter outlining concerns similar to those expressed this week can be found at www.calchamber.com.

Staff Contact: Brenda M. Coleman

Protections to Consider Before Firing Employee for Excessive Absences

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Once a certification is obtained:

- absences related to that serious health condition are counted toward the total amount of time that the employee has available (12 weeks maximum within a 12-month period).

- the employee is not required to provide doctor's notes for each time the employee is off work related to that serious health condition.

A more difficult reality may exist for employers that are not required to provide FMLA/CFRA or for those that have provided FMLA/CFRA and the employee is unable to return to work at the end of the leave.

Disability

The ADA requires that employers with 15 or more employees provide reasonable accommodation to employees with permanent disabilities. The act also requires that employers enter into an interactive good faith discussion about what accommodations are needed. Whether something is or is not a disability protected by the ADA is often a legal question and dependent on the facts.

Physical disabilities and many chronic medical conditions, such as cancer, diabetes, heart disease, arthritis and severe depression, are definitely recognized as permanent disabilities and

result in employees needing to be off work more for medical reasons.

Since these situations are individual and often difficult to manage, employers are well advised to consult with a labor law attorney to know whether they need to accommodate a particular situation and for how long.

The Labor Law Helpline is a service to California Chamber of Commerce preferred and executive members. For expert explanations of labor laws and Cal/OSHA regulations, not legal counsel for specific situations, call (800) 348-2262, or submit your question at www.hrcalifornia.com.

Proposed CalPERS Policy Has Potential to Stifle Business Political Activity

The California Chamber of Commerce is leading opposition to a proposal for governing the California Public Employees Retirement System (CalPERS) that has the potential to stifle the business community's political activity.

A similar proposal is being considered by the California Teachers Retirement System.

California Treasurer Bill Lockyer has proposed a new corporate governance policy for CalPERS that would "create the framework by which CalPERS executes its proxy voting responsibilities."

Proposed Requirements

The proposed new policy would require corporate boards to, among other things:

- Monitor, assess and approve significant charitable and political contributions (including trade association contributions) made by the company.
- Annually publicly disclose the board's guidelines for contribution approval as a corporate contributions policy. The board should annually disclose the amounts and recipients of significant monetary and non-monetary contributions made by the company during the prior year, including spending "for political or charitable activities



provided to or through a third party to influence elections of candidates or ballot measures or governmental action."

CalPERS is the nation's largest public retirement system, with an investment portfolio topping \$230 billion. The system is overseen by a board comprised mostly of elected employee representatives and statewide elected officials or their designees.

Investments at Risk

Because these approval and disclosure mandates would apply only to publicly traded companies in which CalPERS invests, it leaves these companies at a competitive disadvantage, vulnerable to the myriad private companies, labor

unions, other non-profit corporations and advocacy organizations, or overzealous regulators that can marshal enormous financial resources or influence to harm the interests of these very CalPERS investments.

The investments in these companies will be placed at greater risk if these companies are unable to defend themselves against the political attacks of their adversaries. This proposal will therefore have massive unintended consequences for the very people CalPERS is obligated to protect and support.

The political playing field is a robust and high-stakes environment, where all players must have equal access to the tools of competition. Whether a company faces a competitor who seeks unfair regulatory advantage, a labor union in the midst of a collective bargaining dispute, a "not in my backyard" (NIMBY) group seeking to derail a project, a company must have access to a level playing field to defend itself.

Invalid Premise

Indeed, the premise of Lockyer's proposal—that corporate value is negatively correlated with corporate political transparency—is simply not true.

Professor Lawrence Ribstein of the University of Illinois notes that the negative correlation "may be because firms hurt most by government regulation must engage in more political activity."

Professor Roger Coffin of the University of Delaware has found that companies "that signed the 'anti-Citizens United pledge' in the aftermath of the decision did not see a material increase in firm value. Nor did the value of several industry-specific indexes go down. This represents good news for shareholders and the companies themselves."

October 17 Hearing

The addition to the CalPERS "Global Principles of Accountable Corporate Governance" is scheduled to be considered October 17 by the CalPERS Investment Policy Subcommittee.

Contact: Loren Kaye

CalChamber Board Election to Go Electronic

The upcoming election to choose members of the California Chamber of Commerce Board of Directors will be conducted via email and website this year.



Instead of receiving a paper ballot in the mail, key contacts of CalChamber member companies will receive an email

with links to the ballot and brief biographies of the candidates for the CalChamber Board.

The ballot email will launch on October 17, and members will have until November 1 to make their choices.

For information on adjusting spam filters to be sure you receive the ballot email, please send your request to alert@calchamber.com.

Signs of Recovery Continue Slowly; High Jobless Rate Feeds Uncertainty

U.S. Economic Upturn Continues

Many economic statistics for the nation showed only marginal gains during the past three months. Revised gross domestic product (GDP) data showed the recession was deeper than originally thought and growth was slower than previous estimates indicated. The government's advance estimate of GDP in the second quarter came in at a +1.3% annual rate, following a revised +0.4% uptick in the first quarter.

Progress, though slow, was fairly widespread in the second quarter.

Consumer spending, business inventory additions, business investment in equipment and software, and exports all increased. Even business investment in non-residential structures and residential investment posted gains! Collectively these sectors contributed +1.8 percentage points to second-quarter GDP growth.

However, on the downside, federal, state and local government spending declined, and imports increased. Together, those changes reduced the second-quarter growth rate by -0.5 percentage points.

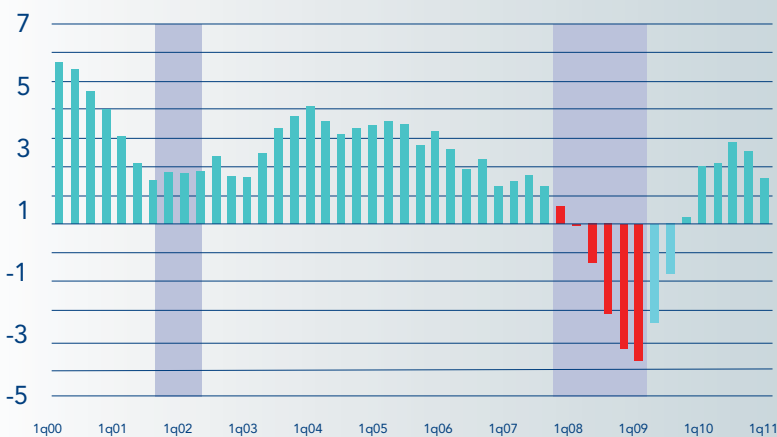
Growth

Final domestic demand (which includes spending by U.S. consumers, business firms and all levels of government, but excludes changes in inventories and net exports) was up by +1.5% last quarter, compared with +2.5% in the first quarter of 2011. These increases marked the economy's seventh and eighth quarters of growth after six quarters of downturn.

Labor market conditions continued to improve during the second quarter, as non-farm payroll employment across the nation grew by +315,000 jobs, after gaining +497,000 jobs during the first quarter.

U.S. Domestic Demand

Year/Year % Change, Constant \$



Source: Bureau of Economic Analysis

For the year that ended in June 2011, non-farm employers added +1,092,000 workers, an increase of +0.8%. Meanwhile, the nation's unemployment rate, which peaked at 10.1% in October 2009, fell to 9.2% in June 2011. Consumer confidence faltered a bit during the second quarter in response to slow job growth, high gasoline prices and concerns about the near-term economic outlook.

Other economic indicators recorded smaller gains in the second quarter. Industrial production grew by +0.3% in the second quarter, slower than the first quarter pace of +1.2%. The value of shipments by U.S. manufacturers also decelerated, growing by +1.7% in the second quarter after increasing by +5.1% in the first quarter. Similarly, retail and food service sales rose by +1.2% last quarter, following a strong +2.5% gain in the first quarter.

Inflation

Trends on the inflation front have continued fairly moderate, though energy and food prices are a growing concern. Excluding food and energy, the annual core consumer inflation rate rose to +1.8% in June 2011, compared with annual increases mostly below the 1% mark in 2010.

However, the consumer inflation rate including food and energy moved up to +3.6% in June from the 1.1% low posted in November. Rising food and commodity prices were the major problem.

The price of West Texas Intermediate crude oil moderated during the second quarter. In June, the price eased to \$96 a barrel, but was still high compared with 2010. The average price of regular gasoline in California edged down to \$3.92/gallon in June from \$3.96/gallon three months earlier (Prices were down to \$3.78 midway through the third quarter).

The U.S. economy had not recovered fully by second quarter 2011. Further, the recovery has been unbalanced, with residential and non-residential construction and real estate still well below pre-recession levels.

The California Chamber of Commerce Economic Advisory Council applauds the continued improvement in national economic activity, though federal stimulus programs are winding down and there remains some uncertainty as to monetary policy in the near term. As other recoveries in the past were slowed by financial industry restructuring, a bit of caution still seems appropriate.

Interest Rates and Financial Markets

The Federal Reserve's main concern continues to be low levels of resource utilization (that is, high unemployment rates and low capacity utilization). While the incoming economic data mostly show improvement (outside of housing and non-residential construction), growth is slower than expected.

The Fed feels no need to raise short-term rates from current rock-bottom levels,

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citing high unemployment and still-modest underlying inflation rates, among other factors.

At its August meeting, the Federal Open Market Committee said it would keep the target federal funds rate at 0% to 0.25% until mid-2013. The Fed completed its program of \$600 billion in purchases of Treasury securities in June (as planned) and will continue to reinvest principal payments from its security holdings. Meanwhile, it is keeping a wary eye on developments in global capital markets, which took a turn for the worse in early August.

Long-term interest rates reversed course and fell in the second quarter to levels below a year earlier. Corporate bond rates followed suit. Outside of the capital markets, however, credit conditions for less-than-prime households and small to mid-size business firms still remain difficult.

Many of these firms face strict credit quality constraints when they apply for new or renewal business loans from commercial banks. A number of locally oriented and community banks are still wrestling with delinquency problems (in real estate and elsewhere) and consequently are reluctant to take on additional risks.

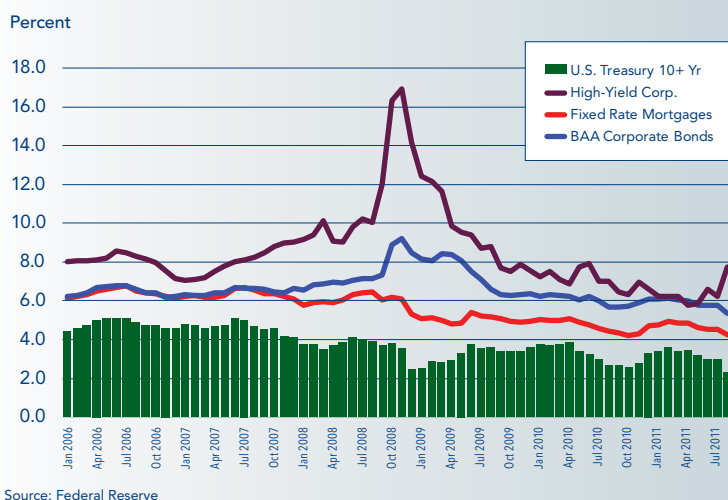
Commercial banks' residential lending declined steadily during the first and second quarters of this year after posting a small increase during the fourth quarter of 2010. Meanwhile, commercial and industrial loans recorded modest growth for the third consecutive quarter.

The Advisory Council's prognosis: the capital markets have improved significantly, but volatility remains a recurring problem, especially in Europe. It remains unclear when the central bank will be able to return to traditional policymaking.

California: Getting Better

California's economy saw some positive signs in second quarter 2011. The state gained +28,600 farm and non-farm

Long-Term Interest Rates



jobs last quarter, following a gain of +87,200 jobs in the first quarter.

Like the U.S., California's unemployment rate continued to be elevated, standing at 11.8% in June 2011, compared with 12.4% a year earlier. Joblessness has hovered near or above 12% since August 2009, almost two years ago.

Other Indicators

Other broad-based indicators also paint an improving picture. Personal income earned in California increased by 4.5% during first quarter 2011 compared with first quarter 2010 (latest data available). This increase was the highest since fourth quarter 2007 and marked the fifth annual uptick in personal income following five quarters of decline.

The biggest contributors to personal income growth in the 12 months to March 2011 were: professional, scientific and technical services, manufacturing (durable goods), health care, information (especially the entertainment industry) and wholesale trade.

Problems in the state/local government, construction and utilities sectors caused personal income to decline in those sectors [Note that the personal income figures are subject to revision].

Taxable sales sagged during the recession, but here too the year-to-year comparisons turned positive in 2010 and reached an estimated +8.5% during the first quarter, another sign of progress.

While more tax receipts are coming into the General Fund, the Governor's Revised Budget in May estimated the combined budget gap for fiscal years 2011 and 2012 (which ends June 30, 2012) at -\$27.2 billion. The "solutions" enacted include deep spending reductions, some targeted revenue increases and reliance upon an unspecified "improvement in the state's revenue outlook."

If the revenue outlook does not improve as anticipated, spending cut triggers will kick in next year, so some caution about the budget situation seems to be warranted at this time.

Jobs

The state gained a total of +129,600 non-farm jobs over the 12 months to June. Twelve industry sectors recorded year-over gains, led by leisure and hospitality; administrative services; professional, scientific and technical services; health care; and the information sector.

Job counts fell the most in California's government sector, trailed at some distance by financial activities, company management (headquarters operations), and other services.

Five of the state's major metro areas reported year-to-year gains in non-farm employment over the year to June, while the other eight recorded declines [Note that the 2010 totals included federal Census workers, who were no longer employed in 2011].

- Leading the way were the San Jose metro area (+2% over the year), San Diego (+1.2%), Bakersfield (+0.4%), Orange County (also +0.4%), and Ventura (+0.3%).

- Job losses were smallest in three areas: San Francisco (-0.0%), Los Angeles (-0.2%) and Stockton (-0.3%).

- Among the remaining areas, employment declined the least in Modesto and the Oakland area (both -0.5%). The Sacramento area followed at -0.9%.

- Fresno and the Riverside-San Bernardino area recorded the deepest

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Bay Area employment increased overall during the second quarter compared with the previous quarter, with job gains in all three primary metro areas—San Jose, San Francisco and Oakland (using seasonally adjusted figures for all three areas).

Construction

Compared with June 2010, construction activity was up in the San Jose area but down elsewhere. High tech manufacturing provided a bright spot, especially in San Jose, but also in San Francisco and the East Bay.

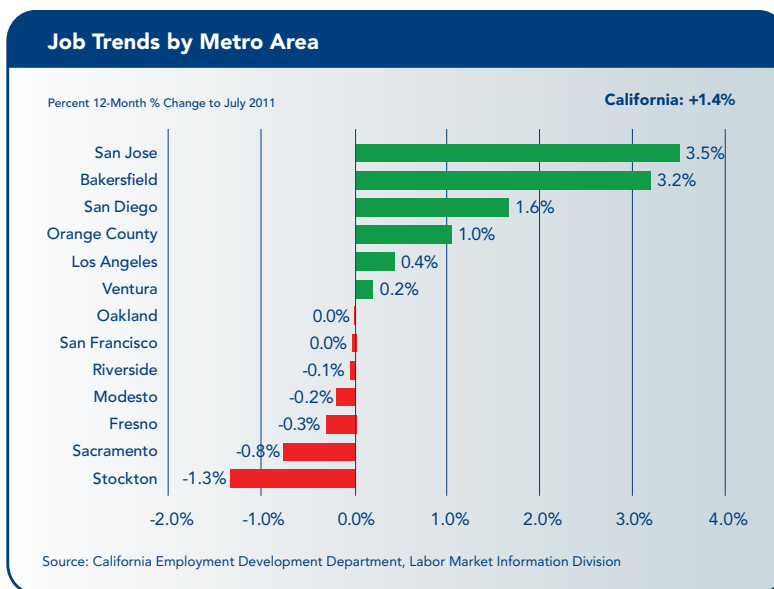
Travel and tourism indicators looked better this year, with higher international and domestic passenger traffic through San Francisco International Airport and San Jose International Airport. Also, hotel occupancies and room rates were up around the Bay.

On the downside, local schools, city and county governments reduced employee counts, a drag on the regional economy that likely will continue in 2011.

Non-farm employment decreased in Southern California during the second quarter (on a seasonally adjusted basis), as the gains made in Orange County, San Diego and Ventura were not large enough to offset losses in Los Angeles and the Riverside-San Bernardino area.

Compared with June 2010, downturns were most pronounced in local government and construction combined with some manufacturing distress. International trade flows through the area's ports continued healthy, but dipped in second quarter 2011, reflecting Japan's disasters in March and American retailers' return to normal holiday shipping patterns (the shipping season started early in 2010). The dip in port traffic had little noticeable impact on the region's wholesale trade and the distribution centers in Orange County and the Inland Empire, which are seeing more business.

The region's entertainment sector also continued to recover from 2009's sharp



decline, with increased local filming of feature films notable in the second quarter. The Southern California tourism sector also made progress, with hotel occupancies up (though room rates did rise as much as in the Bay Area).

Aerospace firms are mostly stable, but anxious about the future of their defense and space work. New Department of Defense proposals for fiscal year 2012 and forward include procurement declines in several programs of regional interest.

Note: NASA's active space program has been cut back severely, impacting firms involved in that sector.

International Trade

California-made and -grown exports increased by +12.5% in the second quarter of 2011 compared with a year ago. The largest category of exports—computers and electronic products (semiconductors, computer equipment and navigational instruments)—rose by +8.5% on a year-to-year basis in the second quarter. Exports of California's second largest export product—industrial machinery—rose by +13.1%.

Meanwhile, exports of transportation equipment experienced the second largest gain, advancing by +14.6%. Exports of the fourth-largest export product—miscellaneous manufactured commodities (including medical equipment and supplies)—witnessed the largest gain, growing by +19.1%. Finally, exports of chemicals

(including pharmaceuticals and medicines) climbed by +2.8% versus the same quarter last year.

Tourism

Travel and tourism indicators looked good in the second quarter, continuing the industry upswing that began last year. Both business travel and pleasure travel look more positive in 2011. Hotel occupancy rates increased and average daily room rates were up. State-wide hotel room revenues grew by +11% in the first two quarters of 2011 compared with 2010. Theme park receipts also have improved.

Passenger traffic has increased at the state's major airports. Most of the improvement is due to rising domestic passenger traffic; however, international traffic is growing nicely as well. While the outlook is generally optimistic, some parts of the state's tourism industry face one issue this year. The number of Japanese visitors is expected to decline in 2011, impacting the specific areas, hotels and venues that cater to that group.

Agriculture and Resources

California's agriculture sector continued to strengthen in 2011. Gross agricultural receipts have increased by 10.1% through May. Prices of several products have risen, including beef, nuts and dairy. Demand for California wine grapes has improved, and prices for raisin grapes are up sharply.

California-grown agricultural exports increased by +17% in second quarter 2011 compared with a year ago. A major issue continues to be that feed costs are rising, in some cases as fast as product prices. Water availability for California farms is markedly better in 2011.

The water situation has eased considerably in California, at least for the short term. Precipitation and runoff look very good in 2011, and storage levels have recovered at in-state reservoirs and even along the Colorado River. The State Water Project and the Central Valley Project both

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have promised significantly higher water deliveries in 2011.

However, the supply of water that must transit the Delta is still at risk due to actual and threatened pumping cutbacks to protect native species of fish. These problems won't be solved soon.

The supply of electricity in California also should be adequate in the near term, as capacity has grown in recent years and industrial demand has not fully recovered from the recession.

The outlook for electricity prices is much less certain. While natural gas prices are relatively moderate and many of the power contracts signed by the state during the energy crisis are unwinding, the state's utilities face significantly higher costs associated with mandated investments to reduce their environmental footprints and to improve their distribution networks. Prices are quite likely to increase.

Real Estate and Construction

Existing home sales in California, which had improved between late 2008 and the middle of 2010, continued to weaken through the first half of this year. Here are some recent statistics for the state's resale home market:

- Existing single-family home sales in California were up by +4.5% over the year to July 2011, but condo sales were down by -2.9%.
- Prices have weakened somewhat since the middle of 2010. By July 2011, the median statewide price of single-family homes sold (at \$294,230) was down by -7.6% compared with July 2010.
- The number of homes available for sale represented 5.5 months supply (at July's sales rate) compared with 5.6 months a year earlier.

The housing market's performance early in 2011 continued to disappoint. Mortgage rates remain extremely low and, at current transaction prices, many home sales in California fall inside the govern-

ment housing agencies' conforming loan limits (\$729,750 through September 2011), which increases the availability of mortgage loans to well-qualified buyers. Even so, falling prices and stricter mortgage underwriting are keeping many potential buyers on the sidelines.

The outlook for existing home sales is uncertain. On the demand side, significant further improvement in the pace of sales seems unlikely until the state's economy—and buyers' confidence—begin to revive more strongly. On the supply side, the rate of new mortgage delinquencies has abated somewhat, though it continues to be relatively high. The ebb and flow of foreclosures complicate the picture.

It's unclear when lenders will bring the rest of their distressed homes onto the market and in what volumes. In addition, private lenders are seeking higher down payments for home loans, and the administration is proposing to restrict government agencies' future role in housing support. While these moves reduce lenders' risk, they also could dampen activity in the housing market.

Residential Construction

Residential construction activity increased during the second quarter, bringing total housing permits up to an annual rate of 47,600 units during the second quarter of 2011, compared with 40,300 units a year ago. The increase was all in attached housing: 25,800 multi-family

homes were permitted (+67.5%), while 21,800 single-family residences were permitted (-12.4%).

The near-term outlook for new home construction is just as uncertain as that for existing homes. Most important, newly built dwellings have to compete against very low-priced, previously foreclosed homes, making them unprofitable. The more optimistic industry observers don't expect a significant upturn in new home construction until 2012, while the pessimists worry that substantial improvement might be several years away.

Commercial Real Estate

California's commercial real estate markets still have not recovered the ground lost during the recession. There are signs of improvement, however. Vacancy rates appear to be stabilizing and have even started to fall in some areas. Rental rates are still falling in most regions, but at a much slower rate, indicating the bottom may be near.

External development funding is still difficult to obtain. During the recession, most lenders and investors were unwilling to commit to new funds for commercial real estate development and construction of new commercial space plunged. The volume of transactions turned up in 2010 and again during the first half of 2011, though the level of activity remains muted compared to the pre-recession period.

Demand for office space continued to be slow in the second quarter, reflecting weak employment trends in office-based industries. Many firms are still reluctant to hire new workers, and those adding staff are reconfiguring existing space to accommodate them.

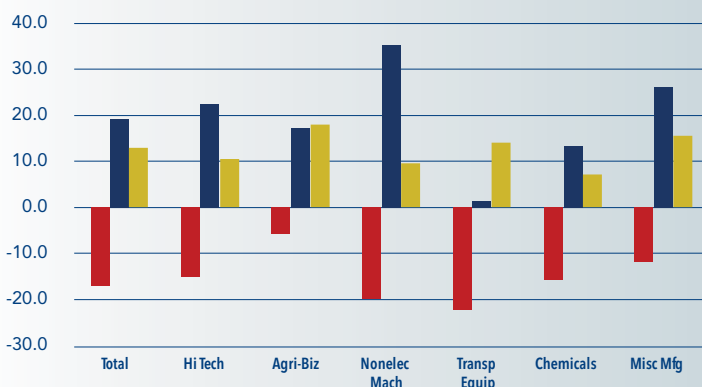
Office rents continued to weaken in most locations due to space overhang. Fewer firms are vacating space, but they are taking advantage of soft market conditions to negotiate concessions from landlords. Both rents and vacancy rates are showing signs of stabilizing, suggesting

See Signs: Next Page

California Exports by Industry

Year/Year % Change

*First 6 months of 2011 Year/Year % Change



Source: U.S. Census Bureau

Signs of Recovery Continue Slowly; High Jobless Rate Feeds Uncertainty

From Previous Page

the office market may be near bottom.

Office vacancy rates continued high in most California metro areas during the second quarter.

- In the **Inland Empire**, the office vacancy rate was 24.2% (unchanged from the first quarter of 2011), while in **Sacramento**, it rose to 21.5% (from 21.1% first quarter 2011).

- The vacancy rate in **San Diego County** edged down to 19.6%, while in **Ventura County** it ticked up to 18.6%.

- In **Orange County**, the average vacancy rate moved down to 18.4% (from 19.6% first quarter 2011) and in **Silicon Valley**, it was 17.9%.

- **Oakland** recorded 17.1% for the quarter and in **Los Angeles County**, the office vacancy rate moved down to 16.5%.

- **San Francisco** posted the lowest vacancy rate at 16.1%

Industrial vacancy rates started to decline in several areas during the first quarter and continued their downward drift in the second quarter. The lowest vacancy rates were in Los Angeles County, at 3.1%, followed by Orange County at 5.5%, the Inland Empire at 7.3% and East Bay (8.4%). Vacancy rates were highest in San Jose (14.4%), Sacramento (13.3%) and San Diego (11.9%).

Non-Residential Building Permits

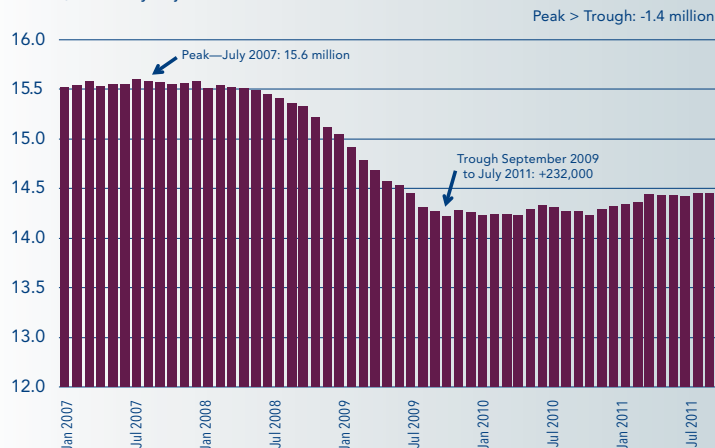
The total value of non-residential building permits in California increased by +11.8% during the first half of 2011, compared to the same period last year. Permits for office buildings fell by -10.3%, while the value of industrial permits increased by +33.9%.

Several metropolitan areas posted significant gains in total non-residential permit activity during the first half of 2011: San Diego (+93.6%), San Jose (+36.5%), Sacramento (+23.5%) and Los Angeles (+13.3%).

Lender financing for most types of commercial real estate projects continues

Total Employment—California

Millions, Seasonally Adjusted



Source: California Employment Development Department

to be difficult to obtain. However, traditional investors do have some funds available for well-priced, high-quality projects in favorable locations. Non-residential permit values are expected to continue at relatively low levels until the economic recovery gathers more strength.

Risks

Risks appear to be at least even, though the downside issues certainly receive more attention. While the economy clearly has moved up since the 2008–2009 recession, the level of activity is not visibly higher except in certain industries (for example, high tech and tourism in California) and certain locations (for example, San Jose).

Recent volatility in global capital markets reminds us that many institutions outside the U.S. have not restructured since the 2009 financial crisis. For example, European banks hold large, but unknown amounts of troubled debt in the peripheral EU nations that could reverberate across the U.S., including California. As the biggest American banks often have trading relationships with many of these banks, problems in their portfolios could reverberate across the U.S., including California.

Federal, state and local governments all are wrestling with budget problems.

Solutions that can close the gap between revenues and expenditures likely will dampen the economy.

Another identifiable risk concerns the state's still-troubled housing industry. Existing home sales slowed and prices weakened after federal government tax credit programs expired in 2010. And the state's homebuilding industry is in a depressed state. Recovery will come eventually, but not until the economy and employment get visibly stronger.

And yet the California economy is on the road to recovery. Retail sales have improved and so have international trade flows. Industrial production rates are

rising, especially in the state's high technology sector. Employment is rising, at least in the private sector. Attitudes are being shaped by headlines about high rates of joblessness, falling home prices and events abroad. No wonder they have not improved as much as revenues. Economic recoveries often begin without much public notice and then run faster than economists project. The council would be delighted if this recovery follows such a path!



The California Chamber of Commerce Economic Advisory Council, made up of leading economists from the private and public sectors, presents a report each quarter to the

CalChamber Board of Directors. The council is chaired by Nancy Sidhu, vice president and chief economist, Los Angeles County Economic Development Corporation.

Publication of this report is a project of the California Foundation for Commerce and Education.

5 CalChamber Members Among Top 500 of *Inc.* Fastest-Growing Companies List



Five members of the California Chamber of Commerce ranked within the first 500 companies on the *Inc.* magazine list of fastest-growing private companies in the nation.

Inc. published the first list 30 years ago, highlighting the “Inc. Private 100.” The list was subsequently expanded to 500 and then 5,000 companies.

This year’s print magazine focused on the top 500 companies. The website, however, divides the 5,000 fastest-growing companies into various sublists.

The website cited California as a leader in job creation—the companies ranked within the 5000 list were responsible for creating more than 51,300 jobs. New York was the state with the second most jobs produced (creating approximately 37,335 jobs), and Illinois came in third (creating approximately 31,502 jobs).

CalChamber Members



● **Agilience** was the highest-ranked CalChamber member on the list. Ranked at 39, the company is the fastest-growing company to be based in San Jose and

the third fastest-growing company in the software industry.

Agilience provides security software and cloud computing services, with a focus on compliance and risk management, for companies managing massive amounts of data, assets and processes.

The company has grown almost 5,000% in the last three years and brought in \$6.3 million in 2010.



KG Technologies, Inc.

● **KG Technologies** came in at 49 on the list, growing almost 4,000% in the last three years, and made \$40.7 million in revenue in 2010.

The manufacturing company, located in Cotati, designs and manufactures latching relays that allow its customers to manage their energy loads more effectively through remote disconnect/reconnect capabilities.



● **Optimum Outsourcing** is a human resources outsourcing firm for small to midsize businesses that offers payroll processing, government compliance services, and administration of 401(k) plans, workers’ compensation, employee assistance plans, and employee benefits.

While the Newport Beach company was ranked 302 on the list overall, it ranked as the second fastest-growing company in the human resources industry. In 2010, the firm generated \$4.7 million in revenue. It has grown 1,085% in the last three years.



● **Vinculums** was ranked at number 341, but is ranked as 11th within the telecommunications industry. Vinculums was number 447 on the list in 2008.

The Irvine company offers engineering services, network design, site development, and project management for telecommunications operators. Last year, it produced \$51.9 million in revenue.



● **TrueCar** has grown 721% in the last three years, and is ranked 480 on *Inc.*’s overall list. The Santa Monica company was 209 on the 2010 list.

The company provides and manages private label, online car buying programs for the nation’s largest brands, including USAA, AAA, American Express, Capital One, eBay and Overstock.com.

The company leverages group buying power to provide consumers with low upfront prices from its nationwide network. Car buyers have access to a complete car purchasing service (including receiving an upfront, guaranteed low price for an actual configured car) while they are still online.

How Companies Were Chosen

Inc. ranks companies according to percentage revenue growth from 2007 to 2010. To qualify, companies must have been founded and generating revenue by March 31, 2007. The companies have to be based within the United States, privately held, for profit and independent as of December 31, 2010.

The full list is at www.inc.com/inc5000.

Visit www.calchamber.com for products and services to help you do business in California.

High-Level Pacific Rim Delegates Gather in San Francisco for Wide-Ranging Talks

Delegates from around the Pacific Rim have concluded the largest set of high-level diplomatic talks to be held in San Francisco.

Hosting the September 12 through September 26 gathering was the CalAPEC (Asia Pacific Economic Cooperation) committee, of which the California Chamber of Commerce is a founding member.

California's participation in APEC was first announced at the CalChamber Council for International Trade (CIT) meeting in 2008 by CIT member Paul Oliva, who since has been directing the CalAPEC organization.

The core mission of the APEC is to promote trade and investment among the Asia-Pacific member economies, strengthen economic integration in the Asia-Pacific region, as well as make regional economic growth more inclusive and sustainable.

The APEC Senior Officials' meeting attracted approximately 3,000 delegates representing the 21 APEC member economies. In total there were 100 foreign ministers, Cabinet-level ministers and ambassadors participating.

Dignitaries

Dignitaries attending the APEC gathering included U.S. Secretary of State Hillary Rodham Clinton, Energy Secretary Steven Chu, Transportation Secretary Ray LaHood and Health and Human Services Secretary Kathleen Sebelius.

The schedule included 150 official and public-private sessions and functions. There were an intensive series of meetings, including the Senior Officials' Meeting, working group and committee meetings, together with public-private forums involving senior government and private sector leaders. Discussions centered on energy, transportation, women and the economy, digital prosperity, health care innovation, and many other topics.

The positive local economic impact of the APEC is expected to total at least \$20 million.

With statements on topics ranging from transportation, energy, small and medium enterprises (SMEs), and women



Photo by Susanne Stirling

Michael Obermire, director of business planning for USS-POSCO Industries, addresses the APEC Transportation and Energy Ministerial on September 13. USS-POSCO, the largest steel producer in the U.S. and ranked 10th globally, is a longtime CalChamber member. Obermire is an active member of the CalChamber Council for International Trade.

in the economy, APEC leaders, including U.S. President Barack Obama, will meet next in Honolulu in November for the final 2011 meeting hosted by the U.S.

San Francisco Topics

In San Francisco, APEC transportation ministers pledged to continue working toward a safe, secure, seamless and sustainable transportation system. At the conclusion of the ministerial meeting, a joint ministerial statement was issued covering: promoting green growth and innovation in transportation; enhancing regulatory cooperation; and strengthening regional economic integration.

The summit addressed access to capital and markets for women, building their capacities and skills, and supporting the rise of women leaders in the public and private sectors. Participants also discussed innovation, green growth, technology, entrepreneurship, and public-private partnerships.

APEC trade ministers had already identified three "next generation" trade

and investment issues: facilitating global supply chains; enhancing SME participation in global production chains; and promoting effective, non-discriminatory and market-driven innovation policy.

CalChamber Members

Supporting the effort to bring the Senior Officials' Meeting to San Francisco were a number of CalChamber member companies, including:

- Bank of America;
- Better Place;
- Cange International, Inc.;
- Chevron Corporation (S. Shariq

Yosufzai of Chevron) is the 2011 CalChamber chair;

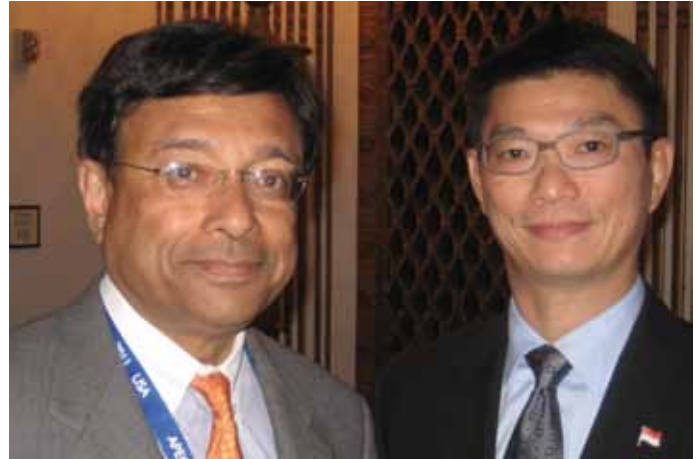
- Cisco Systems, Inc.;
- DeVry Inc.;
- Echelon;
- Levi Strauss & Co.;
- Marvell Technologies;
- Otis-McAllister, Inc.;
- Toyota USA;
- USS-POSCO Industries;

See Pacific: Page 14

Pacific Rim Delegates Gather in San Francisco for Wide-Ranging Talks



John Leitner (left), president and CEO of W.J. Byrnes & Company, hosts APEC delegates participating in the Customs Procedures discussions at a cultural event—"The Journey to America." Delegates sailed on the historic Presidential Yacht Potomac and visited Angel Island to tour the historic U.S. Immigration Station. The U.S. Coast Guard was on board to welcome delegates as well.



CalChamber 2011 Chair S. Shariq Yosufzai (left), vice president of Chevron Corporation, and Singapore Consul General Hock Seng Chin at the APEC Transportation and Energy Ministerial.

From Page 13

- Visa Inc.; and
- W.J. Byrnes & Co.

Christopher Reynolds of Toyota Motor Sales, USA Inc. and Margaret Wong of McWong International, Inc., both members of the CalChamber Board of Directors, were delegates.

CalAPEC

The APEC 2011 California Host Committee, or CalAPEC, was the local host committee for APEC 2011 talks. It is a statewide coalition of business, government and international organizations under the umbrella of the Bay Area Council Economic Institute and the CalChamber. The

committee also ensured that U.S. objectives reflect good policy for the Golden State as California is more dependent on Asia-Pacific business than any other U.S. state.

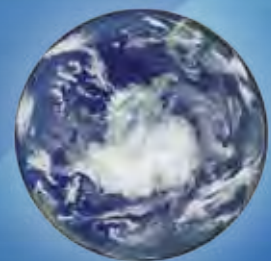
Susanne Stirling, CalChamber vice president of international affairs, was a private sector adviser to the U.S. delegation.
Staff Contact: Susanne Stirling

Breakfast Forum Features Close Look at Role of International Trade in California Economy



Dr. Peter Cowhey (right), dean of the Graduate School of International Relations at the University of California, San Diego, gave a long-term view of what international trade and the liberalization of trade through free trade agreements with other nations means for the California economy at a breakfast forum earlier this month hosted by the CalChamber Council for International Trade, chaired by Susan Corrales-Diaz (center). Others in attendance included CalChamber Second Vice Chair Frederick E. Hitchcock (left).

INTERNATIONAL TRADE UPDATES



[www.calchamber.com/
international](http://www.calchamber.com/international)

Sexual Harassment Prevention Training Deadline Approaching

The California Chamber of Commerce is reminding employers with 50 or more employees that the mandatory supervisor sexual harassment training that must occur every two years may be due before the end of 2011.

The deadline for many companies probably falls at the end of this calendar year, given that the original requirement went into effect in 2005.

AB 1825, signed in 2004, requires California employers with 50 or more total employees (including temporary service employees, independent contractors and employees outside the state) to provide newly hired or promoted supervisors working in California with two hours of classroom or other interactive sexual harassment training within six months of assuming a supervisor position.

Training Requirements

Employers must provide training to all employees who have "supervisory authority." California law also requires

that the training be "interactive." This means that video training alone is likely insufficient without discussion, role playing, a question-and-answer session, or other similar techniques led by a qualified trainer.

Businesses that do not complete the training are subject to a corrective order from the state Department of Fair Employment and Housing.

Tracking Compliance

If a company started training supervisors and managers in 2005, it must have updated that training in 2007 and 2009. This also means that 2011 is time for another update.

Employers can choose either of the following methods or a combination to track compliance:

- **Individual Tracking:** An employer may track training for each supervisory employee, measured two years from the date the supervisor completed the last training. For example, a supervisor trained February 15, 2009 must be trained

by February 14, 2011.

- **Training Year Tracking:** An employer may designate a "training year" in which it trains some or all of its supervisory employees and thereafter must again retrain these supervisors by the end of the next "training year," two years later. For example, a supervisor trained February 15, 2009 must be trained by the end of 2011.

If newly hired or promoted supervisors receive training within six months of assuming their supervisory positions and that training falls in a different training year, the employer may include them in the next group training year, even if that occurs sooner than two years. An employer shall not extend the training year for the new supervisors beyond the initial two-year training year.

CalChamber Course

More information on the CalChamber course *Harassment Prevention Training for Supervisors* is available at www.calchamber.com/harassment.

New Union Rights Notice Faces Court Challenges

From Page 1

- The NLRB does not have authority to coerce employers to post such notices.

- The mandatory notice arbitrarily excludes an adequate description of the fundamental rights of employees to be free from compulsory union membership and union dues.

- The NLRB failed to properly assess the significant impact the new requirement would have on small businesses.

- The mandatory notice violates the First Amendment by compelling employers to post the NLRB's ideological views about unionization.

On September 28, the National Federation of Independent Business (NFIB) asked a federal court to temporarily enjoin the NLRB from enforcing the rule until the court has ruled on its legality.

NFIB's lawsuit charges that NLRB's posting rule is an overreach of statutory authority under the NLRA. Moreover, NFIB estimates the rule will have an impact on up to 6 million private-sector

businesses around the country.

Small businesses are particularly vulnerable to accidental violations, the NFIB contends, as the regulatory compliance burden most often falls on the small business owner and small businesses don't have dedicated compliance staff.

In addition to these lawsuits, the California Chamber of Commerce has submitted a letter asking the NLRB to at least delay implementation of the notice requirement to January 1, 2012.

Poster Still Required

The legal challenges have not halted the current status of the rule. Employers should assume they will be required to comply with the posting requirement and post the notice on or before November 14, 2011.

More guidance, including information on which employers must comply, is available as a free white paper at HRCalifornia.com: "Questions and Answers: NLRA Poster."
Staff Contact: Gail Cecchetti Whaley

Pre-Order 2012 Posters by Halloween to Get Required NLRA Poster Free

The California Chamber of Commerce will have the 11"x17" poster and instructions available in time for employers to post it by the November 14, 2011 deadline. Pre-order the **2012 California and Federal Notices** and get the required NLRA poster FREE by 11/14/11. Offer expires 10/31/11.

Pre-order posters at www.calchamberstore.com/2012preorder or call (800) 331-8877.



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Don't let harassment hurt your company. Train with the best resources available.



Your company's harassment liability may be on the rise. California companies are held to the strictest laws, including mandatory harassment prevention training and retraining for supervisors. Our online course can help you curb your risk. Features include:

- Realistic video scenarios based on feedback from managers like you.
- Controls that allow users to take the required two hours at their own pace and choose between video and text displays.
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CalChamber Preferred and Executive members will **not** receive their additional 20% off with this offer.

30% OFF*

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