

2019 Year-End Report on the Final Activities of the California State Legislature



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Prepared by our Legislative Advocate on October 2019



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**REPORT ON THE FINAL ACTIVITIES
OF THE CALIFORNIA STATE
LEGISLATURE
FOR THE YEAR 2019**

**PRESENTED TO:
ACCLAMATION INSURANCE MANAGEMENT
SERVICES (AIMS) & ALLIED MANAGED CARE (AMC)**

**BY: PHILIP M. VERMEULEN,
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California's march to the left of the political spectrum in the Capitol accelerated greatly this legislative session in large part due to the 'help' of the labor unions. To no one's surprise, Democrats' huge gains in last year's legislative elections, coupled with the election of Gavin Newsom as governor, who had strong union support, foretold what would happen.

What is amazing is how quick a turn-around labor had this year! Indeed, last summer, after the U.S. Supreme Court ruled public sector unions couldn't compel fees from nonunion workers (The Janus Decision), the talk was that organized labor had been hit hard, was facing a mass exodus, and was playing defense even in pro-labor California.

Talk about a comeback!

The biggest of union victories, [Assembly Bill 5](#), was also arguably the highest-profile bill of the session. It codifies the state Supreme Court's [Dynamex decision](#), defining which private economy workers must be placed on payrolls and which can remain independent contractors.

The author of the bill, Assemblywoman Lorena Gonzalez, a San Diego Democrat and a former union official, granted a few exemptions, but shunned most of the requests submitted to sponsoring unions by specific employer groups.

Hundreds of thousands of independent contractors will be potentially affected, but Newsom's signature on the bill is clearly not the last word on the issue.

Ride-hailing services Uber, Lyft and other businesses built on the contractor model have declared that they will spend \$90 million or more on a ballot measure to overturn AB 5 by asking voters to endorse a hybrid employment system of contractors with income guarantees and fringe benefits that unions dislike (which only affects the gig economy workers, not construction, et. al.).

Labor had the upper hand this year because of the court's decision on this matter, despite having lost the Janus Case. Indeed, even if nothing was done in the Legislature, the court's **three-factor test** of employment status would prevail in California law. **To review the 3-part factor, please go to:** <https://www.hklaw.com/en/insights/publications/2019/09/new-california-law-codifies-and-expands-strict-abc-test>

In their deliberations deciding the best course of action, labor knew that qualifying an initiative would 'shoot the political tennis ball into labor's side of the net,' forcing its leaders to decide whether to agree to a compromise in the Legislature or take their chances on the outcome of an election campaign that could cost them tens of millions of dollars.

Underlying AB 5 and other union-backed legislation this year is an arithmetic fact. Union membership in California has declined from a quarter of the state's workers in the mid-1980s to 14.7% in 2018, according to the federal Bureau of Labor Statistics, and is still dropping. Honing down even further, according to the [Bureau of Labor Statistics](#), the unionization rate here is 50% in the public sector and just 8.3% in the private sector.

It's truly amazing to think of the power the unions possess; yet traditionally unionized industries, particularly manufacturing, have faded in economic importance, while expanding post-industrial sectors, such as technology, have been resistant to unionization!

With the passage of AB 5, the unions, should they choose to be aggressive in their recruiting, could have significant growth in their membership. But, remember, there is still the potential of the 'fight of the century' with the ridesharing firms now that a commitment has been made to move forward with a ballot initiative challenging AB 5 in November of 2020 (assuming it qualifies for the ballot).

Another important point to consider is what Governor Newsom alluded to 'cryptically' in his signing message for AB 5 as to what may be an Achilles' heel in the legislation: the fact that, however California regards its 200,000-plus gig workers, the federal government still categorizes them as freelancers.

While the future of AB 5 'hangs in the balance' due to the aforementioned, the unions had another HUGE bill signed by the governor that will significantly aid in their membership growth - [Assembly Bill 378](#). Sponsored by the Service Employees International Union, it paves the way for as many as 40,000 workers who provide childcare to low-income families with state vouchers to join SEIU's Child Care Providers United and bargain with state officials on pay and other benefits.

So, what does unionizing workers accomplish other than increasing union membership and dues, some of which would be diverted into the campaign treasuries of politicians such as Newsom? SIGNIFICANT organizing movement into the **private sector in a growth industry**, such as ridesharing, assuming that labor prevails in a ballot fight next year!

But, on the other side, AB 5 **IS** going to push more employers into mechanizing their workforce. For instance, have you been to a McDonald's lately? Many are installing ATM-type machines to place customer's orders. And, you can bet that ridesharing will turn to self-driving cars as soon as it is feasible. And, these are 'just' two of myriad companies who will be looking closely at automation!

And, so it goes!! For every action, there's a reaction. And, this was JUST the first year of a new session and a new governor!

About Governor Newsom's First-Year

The California Legislature sent **Gov. Gavin Newsom** 1,042 bills this year and he ultimately signed 870. When he completed his vetting of bills on Sunday, October 13th, Newsom had largely given legislators what they wanted. And in doing so, he continued a tradition set by his long-serving predecessor.

Interestingly, Newsom and former Gov. **Jerry Brown** both vetoed 16.5% of the bills ratified by the Legislature over the last few years. (To be clear, that was Brown's *highest* veto percentage during his record-breaking 16 years in office.) Republican governors have said no to proposed

laws more than Democrats, and Newsom's veto rate was looking as if it would be quite low until he rejected 68 of the 80 bills left to consider in the final hours.

A spokesman for Newsom said the last batch of rejections mostly came down to money, proposals that would have boosted state government spending by \$1.2 billion in their first year on the books, rising to a \$3-billion annual price tag once fully implemented.

In many cases, Newsom wrote veto messages that lamented bills aimed at imposing rules on local government that would have been treated as a mandate that must be paid for with state tax revenues, a rationale used to reject measures such as language translation of documents related to special education and independent redistricting commissions to draw supervisorial districts in large counties.

By the way, while [Brown holds the record for fewest vetoed bills](#) and lowest veto percentage, which modern governors were the stingiest? The record for the most bills vetoed — 436 — belongs to the late Gov. **George Deukmejian** in 1990. The highest veto percentage was 35% of bills vetoed in 2008 by then-Gov. **Arnold Schwarzenegger**.

And, 'Digging-Down' Into the Signed Bills

As political columnist Dan Walters wrote in his review of Newsom's first year:

“Newsom's (signatures on bills) included an extraordinary number that used the state's police powers to prohibit activities deemed to violate the Capitol's often unique sensibilities. They ranged from the semi-ridiculous, such as banning tiny plastic bottles of shampoo and other toiletries from hotel rooms, to the obviously justified, such as tightening up the ban on unvaccinated school children.

Guns and gun owners were the targets of several legislated bans, such as one on gun shows in San Diego County's Del Mar fairgrounds and another to limit purchases of rifles to no more than one every 30 days, emulating a pre-existing limit on handgun purchases.

Some of the newly minted prohibitions would affect, or even erase, whole economic sectors, such as eliminating cash bail, banning the sale of some animals, barring circuses from using elephants and other wild animals in their shows, or making it difficult, if not impossible, to work on contract, rather than as a payroll employee.

The latter, if not overturned by voters, is one of several union-sponsored bills aimed at changing employer-employee relationships in favor of the latter. Another would prohibit employers from requiring binding arbitration of disputes as a precondition to employment.

In signing both the binding arbitration ban and another measure prohibiting smoking on state beaches and in state parks, Newsom departed sharply from his predecessor, Jerry Brown, who

had a streak of libertarianism and sometimes rejected bills he saw as going too far down the path of official nannyism.

Brown vetoed beach smoking bans three times, saying last year, “Third time is not always a charm. My opinion on the matter has not changed. We have many rules telling us what we can’t do and these are wide open spaces.”

Newsom is a more conventional liberal, or “progressive” in the preferred nomenclature of those on the left side of the political scale, and generally endorses their latter-day puritanism.

That said, during his first experience with the Legislature’s 11th-hour blizzard of more than 700 bills approved before adjournment in September, Newsom did show a bit of political fortitude.

Clearly worried about a slowing economy, the freshman governor rejected several bills that would have committed the state budget to multi-billion-dollar spending increases backed by influential interest groups.

One would have reinstated a new version of redevelopment, which local governments once used to remake neighborhoods deemed to be blighted. Brown and the Legislature eliminated redevelopment seven years ago, and the revised version Newsom vetoed would have cost the state budget as much as \$2 billion a year. In doing so, he bucked local governments and construction unions.

Newsom also vetoed legislation that local governments and their unions had wanted to change the wording of local ballot measures for a tax increase and bond as they were presented to voters. Such measures must now be up-front with voters on their financial consequences, but local officials wanted to bury that information in the voter pamphlet.

Finally, Newsom signed a bill to require the state’s middle and high schools to eliminate early classes that, pediatric physicians said, were depriving teenagers of much-needed sleep. The entire education establishment, including the very influential California Teachers Association, wanted Newsom to veto the bill that Brown had previously rejected.

Scarcely two months hence, the Legislature will return to Sacramento and the whole process will begin again.”

Besides labor’s victories this session, plaintiff attorneys also had a huge year:

Plaintiffs, lawyers won big in 2019

Largely spurned for eight years by Gov. Jerry Brown, the plaintiffs’ bar has found a new political ally on workplace issues in Gov. Gavin Newsom. **Newsom signed legislation** expanding the right to sue that Jerry Brown vetoed or that had stalled in the Legislature.

Besides codifying **Dynamex** through AB 5, AB 9 (Reyes) will extend from 1 year to 3 years an employee’s right to sue due to harassment, et. al.; employers, starting next year, **cannot** force

new hires to sign arbitration agreements, due to the signing of **AB 51 (Gonzales)**, as a condition of their employment under the terms of a new law that may tee up a big case for the U.S. Supreme Court; and, settlement agreements can no longer contain **no-rehire provisions** due to the signing of **AB 749 (Stone)**;

And, there you have it! A ‘winning’ track record for both labor and the applicant attorneys. And to think, it all begins anew in early January, 2020! That political ‘canoe’ that Jerry Brown paddled “a little to the left, and then a little to the right,” is now going around in circles.....to the left!

ALL BILLS SIGNED BY THE GOVERNOR THAT IMPACT YOUR BUSINESS BY SUBJECT MATTER

Following are the highlights of bills signed by the governor that I tracked on your behalf this session, sorted according to subject matter. To access the complete text of a bill, click on the link directly below the bill summary. All Chaptered bills become law effective January 1, 2020 unless it states it is an urgency measure which means it became law immediately upon the governor’s signature; OR lists another effective date.

Cal OSHA

[AB 1804 \(Committee on Labor and Employment\) Chapter 199, Statutes of 2019. - Occupational injuries and illnesses: reporting.](#)

Current law requires an employer to immediately report a serious occupational injury, illness, or death to the Division of Occupational Safety and Health by telephone or email, as specified. This bill, instead, will require the report of serious occupational injury, illness, or death to the division to be made immediately by telephone or through an online mechanism established by the division for that purpose. The bill, until the division has made the online mechanism available, will require that the employer be permitted to make the report by telephone or email.

http://ctweb.capitoltrack.com/Bills/19Bills/asm/ab_1801-1850/ab_1804_96_C_bill.pdf

Employer/Employee

[AB 5 \(Gonzalez\) Chapter 296, Statutes of 2019. - Worker status: employees and independent contractors.](#)

Will state the intent of the Legislature to codify the decision in the Dynamex case and clarify its application. The bill will provide that for purposes of the provisions of the Labor Code, the Unemployment Insurance Code, and the wage orders of the Industrial Welfare Commission, a person providing labor or services for remuneration shall be considered an employee rather than an independent contractor unless the hiring entity demonstrates that the person is free from the control and direction of the hiring entity in connection with the performance of the work, the person performs work that is outside the usual course of the hiring entity’s business, and the person is customarily engaged in an independently established trade, occupation, or business.

The bill, notwithstanding this provision, will provide that any statutory exception from employment status or any extension of employer status or liability remains in effect, and that if a court rules that the 3-part test cannot be applied, then the determination of employee or independent contractor status shall be governed by the test adopted in *S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341 (Borello). The bill will exempt specified occupations from the application of *Dynamex*, and will instead provide that these occupations are governed by *Borello*.

http://ctweb.capitoltrack.com/Bills/19Bills/asm/ab_0001-0050/ab_5_91_C_bill.pdf

Governor's Message: To Members of the California Assembly: Assembly Bill 5 is landmark legislation for workers and our economy. It will help reduce worker misclassification—workers being wrongly classified as "independent contractors," rather than employees, which erodes basic worker protections like the minimum wage, paid sick days and health insurance benefits. The hollowing out of our middle-class has been 40 years in the making, and the need to create lasting economic security for our workforce demands action. Assembly Bill 5 is an important step. A next step is creating pathways for more workers to form a union, collectively bargain to earn more, and have a stronger voice at work -- all while preserving flexibility and innovation. In this spirit, I will convene leaders from the Legislature, the labor movement and the business community to support innovation and a more inclusive economy by stepping in where the federal government has fallen short and granting workers excluded from the National Labor Relations Act the right to organize and collectively bargain. Sincerely, GOVERNOR GAVIN NEWSOM

AB 9 (Reyes) Chapter 709, Statutes of 2019. - Employment discrimination: limitation of actions.

The California Fair Employment and Housing Act makes specified employment and housing practices unlawful, including discrimination against or harassment of employees and tenants, among others. Existing law authorizes a person claiming to be aggrieved by an alleged unlawful practice to file a verified complaint with the Department of Fair Employment and Housing within one year from the date upon which the unlawful practice occurred, unless otherwise specified.

This bill will extend the above-described period to 3 years for complaints alleging employment discrimination, as specified. The bill will specify that the operative date of the verified complaint is the date that the intake form was filed with the Labor Commissioner.

http://ctweb.capitoltrack.com/Bills/19Bills/asm/ab_0001-0050/ab_9_95_C_bill.pdf

AB 35 (Kalra) Chapter 710, Statutes of 2019. - Worker safety: blood lead levels: reporting.

Will require the State Department of Public Health (department) to consider a report from a laboratory of an employee's blood lead level at or above 20 micrograms per deciliter to be injurious to the health of the employee and to report that case within 5 business days of receiving the report to the Division of Occupational Safety and Health (division). The bill will further provide that the above-described report will constitute a serious violation and subject the employer or place of employment to an investigation, as provided, by the division, and will require the division to make any citations or fines imposed as a result of the investigation

publicly available on an annual basis. http://ctweb.capitoltrack.com/Bills/19Bills/asm/ab_0001-0050/ab_35_95_C_bill.pdf

AB 51 (Gonzalez) Chapter 711, Statutes of 2019. - Employment discrimination: enforcement.

Will prohibit a person from requiring any applicant for employment or any employee to waive any right, forum, or procedure for a violation of any provision of the California Fair Employment and Housing Act (FEHA) or other specific statutes governing employment as a condition of employment, continued employment, or the receipt of any employment-related benefit. The bill will also prohibit an employer from threatening, retaliating or discriminating against, or terminating any applicant for employment or any employee because of the refusal to consent to the waiver of any right, forum, or procedure for a violation of specific statutes governing employment. http://ctweb.capitoltrack.com/Bills/19Bills/asm/ab_0051-0100/ab_51_96_C_bill.pdf

AB 749 (Stone, Mark) Chapter 808, Statutes of 2019. - Settlement agreements: restraints in trade.

Will prohibit an agreement to settle an employment dispute from containing a provision that prohibits, prevents, or otherwise restricts a settling party that is an aggrieved person, as defined, from working for the employer against which the aggrieved person has filed a claim or any parent company, subsidiary, division, affiliate, or contractor of the employer.

Californians now have one more thing to add to their holiday to-do lists: reviewing their standard settlement agreements to remove any no-rehire provisions. California employers have until the end of the year to revise their agreements to comply with AB 749, the legislation signed into effect by Governor Gavin Newsom October 12. What do California employers need to know about this new law?

The Basics

It is very common for employers to settle threatened claims or lawsuits with an agreement that includes a no-rehire provision. These provisions typically prohibit the employee from ever again applying for a job with the company anywhere in the country. If they do, the employer can reject the application and the employee can't protest that decision. Some agreements go so far as to say that the employer can fire them scot-free if the worker is accidentally hired by any division of the company or a subsidiary.

Under California's new law, these provisions will soon be no more. As of January 1, 2020, settlement agreements can no longer contain any provision that prohibits, prevents, or otherwise restricts an employee from obtaining future employment with that employer. The same is true for the any parent companies, subsidiaries, divisions, affiliates, or contractors. Any such provision that remains in a settlement agreement created on or after that date will be void.

This prohibition will only apply to no-hire provisions in agreements between employers and "aggrieved persons," meaning a person who has filed a claim against their employer in court, before an administrative agency, in an alternative dispute resolution forum, or through the employer's

internal complaint process. So, a typical severance agreement offered to a worker upon their termination can still contain a no-rehire provision, so long as the severance is not offered as settlement of an employment dispute and that worker has not yet filed a claim against you.

http://ctweb.capitoltrack.com/Bills/19Bills/asm/ab_0701-0750/ab_749_95_C_bill.pdf

AB 1554 (Gonzalez) Chapter 195, Statutes of 2019. - Employers: dependent care assistance program: notice to employees.

Current law relating to the obligations of an employer requires an employer to notify employees of prescribed information relating to employment and benefits. This bill will require an employer to notify, in a prescribed manner, an employee who participates in a flexible spending account of any deadline to withdraw funds before the end of the plan year.

http://ctweb.capitoltrack.com/Bills/19Bills/asm/ab_1551-1600/ab_1554_95_C_bill.pdf

Opioids

AB 149 (Cooper) Chapter 4, Statutes of 2019. - Controlled substances: prescriptions.

Current law classifies certain controlled substances into designated schedules. Current law requires prescription forms for controlled substance prescriptions to be obtained from security printers approved by the department, as specified. Current law requires those prescription forms to be printed with specified features, including a uniquely serialized number.

This bill will delay the requirement for those prescription forms to include a uniquely serialized number until a date determined by the Department of Justice that is no later than January 1, 2020. The bill will require, among other things, the serialized number to be utilizable as a barcode that may be scanned by dispensers.

http://ctweb.capitoltrack.com/Bills/19Bills/asm/ab_0101-0150/ab_149_94_C_bill.pdf

Governor's Message: To the Members of the California State Assembly: I am signing Assembly Bill 149, which will delay the requirements imposed by AB 1753 (Low, Chapter 479, Statutes of 2018) for prescription forms. When AB 1753 went into effect, a timeline for implementation was not established, which caused confusion and frustration for medical professionals and consumers alike. This bill will impose an implementation timeline for the provisions of AB 1753 and alleviate the confusion faced by patients and prescribers. AB 149 is needed to ensure patients throughout the state continue to receive their prescriptions quickly and easily, while meeting the State's need to aggressively address the opioid crisis. Sincerely, Gavin Newsom

AB 528 (Low) Chapter 677, Statutes of 2019. - Controlled substances: CURES database.

Will, on and after January 1, 2021, require a dispensing pharmacy, clinic, or other dispenser to instead report the information required by the CURES database no more than one working day after a controlled substance is released to a patient or a patient's representative, except as specified. The bill will similarly require the dispensing of a controlled substance included on Schedule V to be reported to the department using the CURES database. The bill will make conforming changes to related provisions.

http://ctweb.capitoltrack.com/Bills/19Bills/asm/ab_0501-0550/ab_528_94_C_bill.pdf

AB 714 (Wood) Chapter 231, Statutes of 2019. - Opioid prescription drugs: prescribers.

Current law requires a prescriber, as defined, to offer to a patient a prescription for naloxone hydrochloride or another drug approved by the United States Food and Drug Administration for the complete or partial reversal of opioid depression when certain conditions are present, including if the patient presents with an increased risk for overdose or a history of substance use disorder, and to provide education on overdose prevention to patients receiving a prescription and specified other persons.

This bill will make those provisions applicable only to a patient receiving a prescription for an opioid or benzodiazepine medication, and will make the provisions specific to opioid-induced respiratory depression, opioid overdose, opioid use disorder, and opioid overdose prevention, as specified. The bill, among other exclusions, will exclude from the above-specified provisions requiring prescribers to offer a prescription and provide education prescribers when ordering medications to be administered to a patient in an inpatient or outpatient setting.

http://ctweb.capitoltrack.com/Bills/19Bills/asm/ab_0701-0750/ab_714_94_C_bill.pdf

Personal Information

AB 25 (Chau) Chapter 763, Statutes of 2019. - California Consumer Privacy Act of 2018.

The California Consumer Privacy Act of 2018, beginning January 1, 2020, grants consumers various rights with regard to their personal information held by businesses, including the right to request a business to disclose specific pieces of personal information it has collected and to have information held by that business deleted, as specified. The act requires a business to disclose and deliver the required information to a consumer free of charge within 45 days of receiving a verifiable consumer request from the consumer. The act prohibits a business from requiring a consumer to create an account with the business in order to make a verifiable consumer request. This bill will provide an exception to that prohibition by authorizing a business to require authentication of the consumer that is reasonable in light of the nature of the personal information requested in order to make a verifiable consumer request.

http://ctweb.capitoltrack.com/Bills/19Bills/asm/ab_0001-0050/ab_25_92_C_bill.pdf

NOTE: Third Party Administrators, such as AIMS, and UROs, such as AMC, will be exempt from the provisions of the Consumer Privacy Act for 1 year. We will be working during the 2020 legislative session to ensure that this exemption remains. In a preliminary meeting at the end of October, stakeholders from ALL sides agreed to make this provision permanent. A bill will be introduced in early-January to remove the 1-year sunset, along with other ‘tweaks’ to the law.

AB 874 (Irwin) Chapter 748, Statutes of 2019. - California Consumer Privacy Act of 2018.

The California Consumer Privacy Act of 2018 defines “personal information” to mean information that identifies, relates to, describes, is capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household. The act excludes “publicly available information” from the definition of “personal information,” and defines the term “publicly available” to mean information that is lawfully made available from federal, state, or local government records, if any conditions associated with that information.

Existing law further specifies that information is not “publicly available” if that data is used for a purpose that is not compatible with the purpose for which the data is maintained and made available in the government records or for which it is publicly maintained and specifies that “publicly available” does not include consumer information that is deidentified or aggregate consumer information.

This bill will redefine “personal information” to mean information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household.

http://ctweb.capitoltrack.com/Bills/19Bills/asm/ab_0851-0900/ab_874_94_C_bill.pdf

Safety

AB 1116 (Grayson) Chapter 388, Statutes of 2019. - Firefighters: peer support.

Will enact the California Firefighter Peer Support and Crisis Referral Services Act. The bill will authorize the state or a local or regional public fire agency to establish a Peer Support and Crisis Referral Program to provide an agency-wide network of peer representatives available to aid fellow employees on emotional or professional issues. The bill will, for purposes of the act, define a “peer support team” as a team composed of emergency service personnel, as defined, hospital staff, clergy, and educators who have completed a peer support training course, as specified. http://ctweb.capitoltrack.com/Bills/19Bills/asm/ab_1101-1150/ab_1116_92_C_bill.pdf

Workers Compensation

AB 672 (Cervantes) Chapter 98, Statutes of 2019. - Public employees’ retirement: disability retirement: reinstatement.

PERL authorizes a person retired for disability to be employed by any employer without reinstatement in the system if specified conditions are met, including, among others, that the person is below the mandatory age for retirement for persons in the job in which the person will be employed, the person is found by the board to not be disabled for that employment, and the position is not the position from which the person retired or a position in the same member classification from which the person retired.

This bill will prohibit a person who has retired for disability from being employed by any employer without reinstatement from retirement if the position is the position from which the person retired or if the position includes duties or activities that the person was previously restricted from performing at the time of retirement, unless an exception applies.

http://ctweb.capitoltrack.com/Bills/19Bills/asm/ab_0651-0700/ab_672_97_C_bill.pdf

AB 1400 (Kamlager-Dove) Chapter 717, Statutes of 2019. - Employment safety: firefighting equipment: mechanics.

Current law requires the Commission on Health and Safety and Workers' Compensation to conduct a continuing examination of the workers' compensation system and of the state's activities to prevent industrial injuries and occupational diseases. This bill will require the commission, in partnership with the County of Los Angeles and relevant labor organizations, on or before January 1, 2021, to submit a study to the Legislature, the Occupational Safety and Health Standards Board, and the Los Angeles County Board of Supervisors on the risk of exposure to carcinogenic materials and incidence of occupational cancer in mechanics who repair and clean firefighting vehicles. http://ctweb.capitoltrack.com/Bills/19Bills/asm/ab_1351-1400/ab_1400_94_C_bill.pdf

NOTE: This bill, as introduced, would have made a cancer presumption applicable to fire service personnel with exposure to active fires or health hazards resulting from firefighting operations, rather than active firefighting members, only.

SB 537 (Hill) Chapter 647, Statutes of 2019. - Workers' compensation: treatment and disability.

Will require the Administrative Director of the Division of Workers' Compensation to issue a report to the Legislature, on or before January 1, 2023, comparing potential payment alternatives for providers to the official medical fee schedule. The bill will also require, on or before January 1, 2024 and annually thereafter, the administrative director to publish on the division's internet website provider utilization data for physicians, as specified, who treated 10 or more injured workers during the 12 months before July 1 of the previous year, including the number of injured workers treated by the physician and the number of utilization review decisions that resulted in a modification or denial of a request for authorization of medical treatment based upon a determination of medical necessity. The bill will authorize the administrative director to withhold data if deemed necessary to protect patient privacy.

http://ctweb.capitoltrack.com/Bills/19Bills/sen/sb_0501-0550/sb_537_91_C_bill.pdf

SB 542 (Stern) Chapter 390, Statutes of 2019. - Workers' compensation.

Under current law, a person injured in the course of employment is generally entitled to receive workers' compensation on account of that injury. Current law provides that, in the case of certain state and local firefighting personnel and peace officers, the term "injury" includes various medical conditions that are developed or manifested during a period while the member is in the service of the department or unit, and establishes a disputable presumption in this regard.

This law will provide, only until January 1, 2025, that in the case of certain state and local firefighting personnel and peace officers, the term "injury" also includes post-traumatic stress that develops or manifests itself during a period in which the injured person is in the service of the department or unit. **The bill will apply to injuries occurring on or after January 1, 2020.**

http://ctweb.capitoltrack.com/Bills/19Bills/sen/sb_0501-0550/sb_542_95_C_bill.pdf

Bills and Issues For 2020

California's Legislature tackled big issues in 2019. Bigger Fights Might be Coming

This is an article written by the LA Times that best 'sums-up' what lies ahead in 2020:

“Sixteen weeks will pass between the first and second acts of the California Legislature’s two-year session, which is often seen as a chance to switch gears from one set of topics to another.

But this time, the second year could be consumed by battles left over from the first.

It’s not likely to be because Democrats in the state Senate and Assembly picked too many fights in 2019, but rather ones that provoked strong reactions, embracing a panoply of far-reaching measures affecting the state’s economy and its environment as well as the rights of Californians at home, school and work.

“We have sent the governor a number of bills that will have a lasting impact on California and, in some cases, were a long time coming,” said Assembly Speaker Anthony Rendon (D-Lakewood).

If the 2019 Legislative Session is any indication for what is to come, the business community will continue to see strong legislative pushes in the areas of labor and employment, environmental regulation, consumer privacy and data security, litigation, health care, and consumer products regulation, among others.

In years past, the business community, with the help of a large bloc of moderate Democratic legislators in the Assembly, had greater strength and could often squash bills either on the Assembly Floor or before a bill was even put up for a vote. As long-time Capitol columnist Dan Walters stated in the *Sacramento Bee* in 2016, “[m]od squad influence is rarely demonstrated in showdown votes on specific bills. Rather, legislation that fails because of their presence is usually placed on the shelf without votes after legislative leaders count noses and come up short.”

But things are different today.

Now, the business community needs to convince a whopping 21 Democrats in the Assembly and 9 Democrats in the Senate to abstain or no vote for a measure in order to stop bills on their respective floors. In reality, even more Democratic votes are needed in order to demonstrate that the particular measure does not have a sufficient number of votes to pass.

The more common question for businesses moving forward will be “how do we make this bill workable?” rather than “how can we defeat this bill?”

While the moderate bloc of Democrats continues to wield some influence, the stark reality for the business community is that the numbers speak for themselves. For that reason, much of the business community appears to have adjusted its legislative strategy by expressing an increasing willingness to strike a compromise on high-profile legislation.

In other words, bills that the business community would have overwhelmingly opposed and successfully “killed” in previous years are now the subject of intense negotiations instead. The idea is that, if the business community determines early in the legislative process that a bill “has legs,” many have opted to sit at the negotiation table to make the bill as workable as possible, rather than risk the bill passing in an unworkable form without any input.

The result is that the business community has and indeed will need to continue to adjust its expectations in California, particularly from a national perspective. The more common question for businesses moving forward will be “how do we make this bill workable?” rather than “how can we defeat this bill?”

Making a bill more “workable” requires serious negotiation. And in order to negotiate effectively, one must have a deep understanding of the relevant issues and the ability to engage meaningfully and substantively in the legislative process. This is not to say that the business community was not successful in defeating a number of bills in 2019, or that the business community will not be successful in doing so moving forward. However, with some exception, those wins may only be temporary.

And, if predictions come true for the 2020 November elections, we could see even larger Democratic super-majorities in one or both of the houses of the California Legislature. This would make amending or defeating problematic California legislation even more difficult than it is today.

Workers’ Comp Issues in 2020

There were several workers’ comp bills that failed to make it out of the legislature this session and will be ‘in-play’ starting in January of 2020:

[AB 932 \(Low\) Failed Deadline pursuant to Rule 61\(a\)\(10\). \(Last location was L., P.E. & R. on 5/16/2019\) \(May be acted upon Jan 2020\) - Workers’ compensation: off-duty firefighters.](#)

Current law grants workers’ compensation benefits to a firefighter, or the firefighter’s dependents, if the firefighter is injured, dies, or is disabled by proceeding to or engaging in a fire-suppression or rescue operation, or the protection of life or property, anywhere in California, but is not acting under the immediate supervision of the employer. This bill would expand the scope of this provision to apply when a firefighter engages in a fire-suppression or rescue operation, or the protection or preservation of life or property, outside of this state.

http://ctweb.capitoltrack.com/Bills/19Bills/asm/ab_0901-0950/ab_932_99_I_bill.pdf

AB 1107 (Chu) Failed Deadline pursuant to Rule 61(a)(11). (Last location was L., P.E. & R. on 5/16/2019) (May be acted upon Jan 2020) - Workers' compensation.

Current law requires, when payment of compensation has been unreasonably delayed or refused, either prior to or subsequent to the issuance of an award, the amount of the payment unreasonably delayed or refused to be increased up to 25% or up to \$10,000, whichever is less, except for unreasonable delay in the provision of medical treatment for periods of time necessary to complete the utilization review process. Current law provides that a determination by the appeals board or a final determination of the administrative director pursuant to independent medical review that medical treatment is appropriate is not conclusive evidence that medical treatment was unreasonably delayed or denied for purposes of imposing those penalties. This bill would exclude a final determination of the administrative director pursuant to independent medical review from the latter provision regarding conclusive evidence that medical treatment was unreasonably delayed or denied. http://ctweb.capitoltrack.com/Bills/19Bills/asm/ab_1101-1150/ab_1107_97_A_bill.pdf

AB 1750 (Burke) Failed Deadline pursuant to Rule 61(a)(2). (Last location was INS. On 3/28/2019) (May be acted upon Jan 2020) – Workers' compensation: rehabilitation.

Would require the Department of Rehabilitation to issue a report to the Legislature on or before January 1, 2022, and every 5 years thereafter, that outlines the extent to which injured full-time public employees were rehabilitated or retrained and rehired for other available positions in public service.

http://ctweb.capitoltrack.com/Bills/19Bills/asm/ab_1701-1750/ab_1750_98_A_bill.pdf

AB 1815 (Committee on Insurance) Failed Deadline pursuant to Rule 61(a)(10). (Last location was L., P.E. & R. on 5/29/2019) (May be acted upon Jan 2020) – Workers' compensation.

Current law requires the Division of Workers' Compensation to annually report to the Director of Industrial Relations the number of collective bargaining agreements received, the number of labor-management agreements received, and the number of employees covered by those agreements. Existing law also requires certain other related, but obsolete, reporting requirements, among other things, to biannually include updated loss experience with respect to aggregate data for employers participating in an alternative program established pursuant to these provisions, including, among other information, the projected incurred costs and actual costs of claims and the number of workers participating in vocational rehabilitation and light duty programs. This bill would make those reporting requirements to provide updated information apply to the collective bargaining agreements and labor management agreements described above, make the reporting requirements annual, rather than biannual, and delete obsolete provisions and cross-references.

http://ctweb.capitoltrack.com/Bills/19Bills/asm/ab_1801-1850/ab_1815_99_I_bill.pdf

AB 1832 (Salas) From printer. May be heard in committee August 11. – Workers’ compensation: medical-legal expenses.

Current law requires an employer to provide medical, surgical, chiropractic, acupuncture, and hospital treatment, as specified, that is reasonably required to cure or relieve the injured worker from the effects of the worker’s injury. Current law also requires the employer to reimburse the employee for the employee’s medical-legal expenses, as specified. Current law requires the Administrative Director of the Division of Workers’ Compensation to adopt and revise a fee schedule for medical-legal expenses and requires the fee schedule to consist of a series of procedure codes, relative values, and a conversion factor to produce the fees that provide remuneration to physicians performing the medical-legal evaluations, as provided. This bill would require the conversion factor to be at least \$18.75. The bill would require the administrative director to increase the conversion factor quarterly, as necessary, to reflect any increase in the Bureau of Labor Statistics Consumer Price Index for medical care, as specified.

http://ctweb.capitoltrack.com/Bills/19Bills/asm/ab_1801-1850/ab_1832_99_I_bill.pdf

SB 416 (Hueso) Failed Deadline pursuant to Rule 61(a)(15). (Last location was DESK on 9/13/2019) (May be acted upon Jan 2020) – Employment: workers’ compensation.

Current law establishes a workers’ compensation system to compensate employees for injuries sustained arising out of and in the course of their employment. Existing law designates illnesses and conditions that constitute a compensable injury for various employees, such as members of the Department of the California Highway Patrol, firefighters, and certain peace officers. These injuries include, but are not limited to, hernia, pneumonia, heart trouble, cancer, meningitis, and exposure to biochemical substances, when the illness or condition develops or manifests itself during a period when the officer or employee is in service of the employer, as specified. Would expand the coverage of the above provisions relating to compensable injuries to include all persons defined as peace officers under certain provisions of law, except as specified. This bill contains other related provisions and other existing laws.

http://ctweb.capitoltrack.com/Bills/19Bills/sen/sb_0401-0450/sb_416_97_A_bill.pdf

SB 567 (Caballero) Failed Deadline pursuant to Rule 61(a)(2). (Last location was L., P.E. & R. on 3/7/2019) (May be acted upon Jan 2020) – Workers’ compensation: hospital employees.

Would define “injury,” for a hospital employee who provides direct patient care in an acute care hospital, to include infectious diseases, cancer, musculoskeletal injuries, post-traumatic stress disorder, and respiratory diseases. The bill would create rebuttable presumptions that these injuries that develop or manifest in a hospital employee who provides direct patient care in an acute care hospital arose out of and in the course of the employment. The bill would extend these presumptions for specified time periods after the hospital employee’s termination of employment. The bill would also make related findings and declarations.

http://ctweb.capitoltrack.com/Bills/19Bills/sen/sb_0551-0600/sb_567_99_I_bill.pdf

SB 731 (Bradford) Failed Deadline pursuant to Rule 61(a)(11). (Last location was INS. On 5/30/2019) (May be acted upon Jan 2020) – Workers’ compensation: risk factors.

Current law requires a physician who prepares a report addressing the issue of permanent disability due to an industrial injury to address the cause of the permanent disability in the report, including what approximate percentage of the permanent disability was caused by other factors before and after the industrial injury, if the physician is able to make an apportionment determination. This bill would prohibit consideration of race, religious creed, color, national origin, age, gender, marital status, sex, sexual identity, sexual orientation, or genetic characteristics to determine the approximate percentage of the permanent disability caused by other factors.

http://ctweb.capitoltrack.com/Bills/19Bills/sen/sb_0701-0750/sb_731_99_I_bill.pdf

Other Workers’ Comp Issues that May Appear

I expect we will be hearing a ‘great deal’ from the Plaintiff Attorneys in 2020. I’ve been ‘quietly’ told that the Plaintiff Attorneys are meeting with labor to ‘convince’ them that Utilization Review (UR) needs to be amended (although their preference would be to eliminate it completely).

So too, the attorneys are also discussing with labor either amending or eliminating Independent Medical Reviews (IMR). According to the attorneys, IMR is not working. In reply I say, we will be ‘loaded for bear’ if they try and mess with either! Indeed, to the contrary, the system is working and saving BIG bucks!!

But wait, the Plaintiff Attorneys are not stopping with ‘just’ workers’ comp! **The big test:** Expect a legislative effort to overhaul the 1975 law that caps damages in medical practice lawsuits. Jerry Brown signed that legislation in his first stint as governor. Plaintiffs’ attorneys say the cap, which has never been raised, limits their ability to represent malpractice victims.

And, that’s the news of what I’m hearing thus far will be ‘hot button’ issues for 2020. Hold on to your hats!

ADDITIONAL SERVICES PROVIDED

I want to remind you of your having direct access through me into “the government” to resolve **any and all** problems; or, to address **any** need that may arise. Regardless of the problem or issue, **call me!** Even if I don’t have the immediate answer or solution, my almost, ugh, 47 years in Sacramento means that I most likely know someone who can assist us with your problem or issue! I can be reached at (916) 784-7055, or by email phil@pvgov.com

Thank you for allowing me to serve as your legislative advocate. It is truly an honor and a privilege!

2020 marks my 16th year of representing your interests in Sacramento!!