

CLEAR ADVOCACY

CLEAR COMMENTARY
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Seizing the Opportunity

The COVID pandemic has condensed what should have been a four-month committee hearing process into an abbreviated 6-week sprint. As the weeks wind down to the August 31 adjournment, keeping abreast of amendments has required a close read of daily changes to bills, many morphing from one subject to the next overnight.

If there is an overall theme to this year's pandemic-influenced session, we suggest it's the bundle of employer-mandate issues which reflect a concerted effort by organized labor to occupy the field for further advantage over employers.

Here are a handful of the high-level major employee/employer skirmishes:

[AB 3216 \(Kalra\)](#) establishes a new "right to recall" requirement (expanding job protection and leave benefits) that applies to certain hotels, event centers, airport hospitality operations, or the provision of building services to office, retail, or other commercial buildings. These rights also extend where an employer goes out of business and there is a change in control or ownership. **Any violation of the complex and confusing requirements of AB 3216 subjects a covered business to an entirely new private right of action** and because AB 3216 establishes a new section of the Labor Code, any violation

(even a technical or minor one) would subject a business to liability under the LABOR Code Private Attorney General Act (PAGA).

[AB 685 \(Reyes\)](#) would require employers to notify their employees, Cal/OSHA and the California Department of Public Health of any employee exposure to COVID-19 that the employer knew about or should have known about.

[SB 1383 \(Jackson\)](#) greatly expands family leave policy. The California Family Rights Act (CFRA) currently applies to employers with 50 or more employees and provides covered employees with job-protected, unpaid time off for several reasons. The New Parent Leave Act applies to businesses with at least 20 employees and provides job-protected time off to bond with a newborn or a child who was recently adopted or placed into foster care. SB 1383 would expand these leave laws to cover businesses with at least five employees. Two major bills are moving that would affect presumptions and burdens of proof in establishing workers' compensation claims and benefits.

[AB 196 \(Gonzalez\)](#) would create a "conclusive presumption" that certain essential workers who become ill with COVID-19 were exposed to the coronavirus at work.

[SB 1159 \(Hill\)](#) would create a "rebuttable presumption," which would give employers the opportunity to show that the exposure was not work related. There are pieces of SB 1159 the employer community objects to; however, there are expectations that changes will be made by the close of session that may address concerns.

A Shape of Things to Come?

In what is a clear setting of the table for the 2021 legislative year, Assembly Democrats foreshadowed intent this week by gutting and amending [AB 2088 \(Bonta\)](#), which would increase taxes by 0.4% on residents earning more than \$30 million annually. The funds would be used to help close the yawning state budget gap certain to come next year as the 5th largest economy continues to struggle through the pandemic.

Normally a major policy reveal is accompanied by assertions of commitment and success. Not so AB 2088, about which the author stated, "...this bill is not going to have a hearing and is not going to move through the process."

So...why introduce it with three weeks of session left and no plan to move it? To lay down a marker and claim the issue for next year, in what is certain to be a very, very complicated and demanding session.

Given that a wealth tax (like any other tax) requires a 2/3rd vote, that sound you hear is a sigh of relief from moderate democrats recognizing a need to do something to avoid painful cuts next year, but dreading to vote on a tax increase immediately prior to an election.

Next year may be another story.

Initiative Update

The November ballot in California contains twelve initiatives for voters to decide. In an effort to inform, we will periodically highlight some of the major ballot measures.

Prop 15 - Split Roll Property Tax

Background: Paring back Proposition 13 has been a progressive dream ever since its passage in 1978. The tax protection is sacred among longtime homeowners whose property taxes remain low, while businesses have also benefited from the limit on their holdings. Efforts in the past to split the tax roll between business and residential property have proved unsuccessful.

What it does: Lifts commercial property tax caps imposed by Prop 13 for land and properties worth more than \$3 million. The so-called “split roll” measure could generate between \$7 billion and \$12 billion a year for schools and local governments by requiring that commercial and industrial real property be taxed based on current market value. Exempts from this change: residential properties; agricultural land but not related buildings; and owners of commercial and industrial properties with combined value of \$3 million or less.

What the two sides say:

YES: The schools and local governments need revenue in light of budget shortfalls. The richest corporations have enjoyed a loophole for paying property taxes for over 40 years and it is time for them to pay their fair share.

NO: Despite the argument that only corporations will pay the tax increase, that is simply not the case. Over 75% of the small businesses in the state lease properties and most hold triple-net-leases which contractually require them to pay tax increases on the property. Consumers will pay higher prices for food, goods and services when the tax is passed on.



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