

WACA ALERT

Politico Group - "Connecting you to California"

11127 11th St., Suite 747 • Sacramento, CA 95814 • (916) 444-3770 • FAX (916) 442-6437 • www.politicogroup.com

Legislature Concludes 2020 Disjoined Legislative Year in Chaotic Fashion Due to COVID-19

California's 2020 State legislative session ended in profanities, chaos, and remote access 'mute' malfunctions. Frustrated republican members, who in the Senate were participating remotely because of a positive COVID-19 test within their caucus, expressed extreme displeasure over the lack of public discourse and process during the session's final hours. This was a sentiment shared by many throughout the disjointed 2020 legislative session.

From an advocate's perspective, the end of session is usually marked by hurried last-minute negotiations and roaming the halls of the State Capitol, often late at night as the Legislature conducts its final business. This year, almost all the end-of-session lobbying was done remotely due to the COVID-19 pandemic. Lobbyists — your advocates included — got their business done via email, phone, and text. This was par for the course on a very unusual year that included the legislature taking two COVID-19 related breaks, constantly changed legislative deadlines, and legislators reducing their bill load by about 75 percent due to the shortened legislative calendar.

In the end, our industry had some wins, mitigated a few potential big losses, killed a host of bad bills and was hit with a terrible "large employer" COVID 19 paid time off requirement in the 11th hour. That measure, which requires employers with more than 500 employees to provide paid time off for COVID-19 impacted employees, was pushed by the democratic super majority and the Governor's office and was passed with zero debate or ability to influence as it was hidden in a budget trailer bill and passed in the last hours of the 2020 session.

Below are brief summaries of the high priority bills that industry needs to be aware of that are pending Governor Newsom's signature or veto. Almost all are COVID-19 related. We are advocating all our positions to the administration and are working closely with the Governor's staff.

[Industry Sponsored:](#)

AB 2311 (Low) - Skilled and Trained Workforce: Notice Requirement - SUPPORT

AB 2311 ensures all parties to a construction contract, including subcontractors, are aware of the skilled and trained workforce requirement prior to bidding on a project. The measure requires public entities, on projects subject to skilled and trained workforce requirement, to place a notice of the requirement in all project bid documents and contracts.

[COVID-19 Workers' Compensation:](#)

SB 1159 (Hill) - Workers' compensation: COVID-19 - NEUTRAL

For employers with more than 5 employees, SB 1159 establishes a presumption of compensability for employees who contract COVID-19 from any employer that experiences an "outbreak" of COVID-19 cases at a particular work location. As it relates to our industry, the measure defines an "outbreak" as 4 or more employees who worked at the same jobsite and contracted COVID-19 within a 14-day period. The

measure was amended to ensure that this presumption is rebuttable and the evidence to rebut the presumption includes, but is not limited to, evidence of measures in place to prevent transmission of COVID-19 and evidence of an employee's nonoccupational exposure to COVID-19. The presumptions established by the bill sunset on January 1, 2023. The bill was passed with bipartisan support and was the employer-preferred COVID-19 related workers' compensation legislation being contemplated. We opposed prior versions of the bill, but did not oppose the final version, due to the amendments that established a sunset date, created a specific evidentiary standard for employers to use to controvert a claim, created an "outbreak" threshold trigger, continued a reasonable claim rejection timeline, and excluded "work-from-home" employees. It's expected Governor Newsom will sign the bill, as his office helped negotiate the final version. In contrast, we were able to defeat **AB 196 (Gonzalez)**. That measure similarly would have created a rebuttable presumption for COVID-19 workers' compensation claims, but it did not contain any provisions advantageous to employers. For example, it did not have a sunset date — the presumption would exist in perpetuity — nor did it have a threshold trigger of an "outbreak," meaning any single employee could submit a presumed claim.

[COVID-19 Workplace Prevention:](#)

AB 685 (Reyes) – COVID-19 Workplace Notification - OPPOSE

Would require employers to notify their employees (by written notice) of potential COVID-19 exposures in the workplace. It also requires employers to alert their local health department of outbreaks. "Outbreaks" are defined as three or more positive cases within 14 days. The bill also authorizes Cal/OSHA to enforce the notice rules. While we are still opposed to the bill, we were able to amend out many of the most problematic provisions, including the requirement that the state publicize all ongoing workplace outbreaks, the \$10,000 penalty on employers for noncompliance and the employer being cited with a misdemeanor if found in violation, which could have impacted a contractor's license status. In addition, we were able to secure an amendment stating that the written notice to employees may be provided by email or text.

AB 1867 (Committee on Budget) – COVID-19 Supplemental Paid Sick Leave - OPPOSE

Establishes the California COVID-19 Supplemental Paid Sick Leave (SPSL) program. The bill would require employers that employ 500 or more employees in the United States, to provide 80 hours of paid leave to workers that are unable to work because they are subject to one of the following: 1) a federal, state, or local shelter in place order related to COVID-19; 2) have been advised by a health care provider to self-quarantine or self-isolate due to exposure to COVID-19 or; 3) have been prohibited from working by their employer due to health concerns related to the potential transmission of COVID-19. The measure is similar to ordinances passed in some of California's largest cities and mirrors the federal requirements under the Families First Coronavirus Response Act which applies to employers that employ 500 or less employees.

That said, the bill is unneeded in our industry and hits union construction the hardest as it doesn't reflect common provisions applied to similar mandates. Unlike the federal law, the measure doesn't provide large employers a pathway to recoup costs and unlike many California city ordinances on the subject, the language doesn't include a collective bargaining agreement (CBA) exemption.

The rationale for a CBA exemption is simple; unionized workers receive higher wages and better benefits than their non-union counterparts. The Legislature has recognized the benefits of CBAs by allowing the negotiated contracts between organized labor and employers to govern a variety of employer/employee rules, such as paid sick leave. To encumber unionized employers with additional benefit obligations that go above and beyond their negotiated agreement with their labor counterparts places these employers

at a competitive disadvantage versus their non-union competitors who already have lower operating costs.

The most frustrating part of this bill is the process in which the bill was handled. The measure was amended in the final hours before the amendment deadline, ensuring no changes could be made due to the constitutional 72 hours in print rule for bills. The vehicle used was a budget trailer bill allowing the language to be buried as a budget item. As a budget implementation measure, the Governor has no choice but to sign it. The lack of public discourse and the willful removal of opportunity to debate and influence this bill was horrific.

The SPSL program will take effect 10 days after being signed into law by Governor Newsom. The supplemental leave provided under this legislation expires on December 31, 2020.