



WHAT'S NEW IN 2021 DEVELOPMENTS IN CONSTRUCTION LAW

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PRESENTERS



DARRYL J. HOROWITT

Darryl, the managing partner of the Firm, is an experienced trial lawyer, mediator and arbitrator. He has tried over 40 jury and non-jury cases to verdict in state and federal courts as well as numerous arbitrations in complex commercial, banking, consumer finance, class action, real property, unfair competition, construction and intellectual property disputes throughout California.



DAVID J. WEILAND

David, a registered civil engineer, represents clients in complex commercial, construction, real estate, professional liability defense, tort defense, as well as municipal law, real estate transactions, and land use matters. David is experienced in all phases of real estate and construction litigation and public agency law. He also has significant experience in the defense of professional liability claims against design professionals and attorneys.



CRAIG A. TRISTAO

Craig is a partner in the litigation and transactions departments of the firm's Fresno and Sacramento offices. He provides representation to clients in litigation matters involving agricultural law, environmental law, construction law, land use and natural resource law, water law, probate and estates, and eminent domain matters that involve the California High Speed Rail Authority.

The topics we will cover today are:

- COVID- 19
- License CSLB
- Public Works
- Housing/Residential
- Worker Classification
- Wage & Hour
- Leave of Absence
- Pay Data
- CEQA
- Wildfires



COVID-19

GET



AB 685

Requires employers to notify ALL employees that they may have “potentially been exposed” to COVID-19 on a jobsite if a single person tests positive, regardless of whether or not an employee ever came in contact with the employee who tested positive.

Because construction is a multi-employer industry, once a single employer notices their employees, the obligation would trickle down to all employers.

SB 1159

Creates a rebuttable workers' compensation presumption for workers who contract COVID-19 under certain conditions and requires employers to report COVID-19 cases to their workers' compensation carriers. The bill went into effect immediately and will remain in effect until January 1, 2023.

AB 1867

Expands supplemental paid sick leave for COVID-19-related reasons for certain employers not already covered by the federal Families First Coronavirus Response Act (FFCRA). This law is in effect and its expiration is tied to the FFCRA, which is set to expire on March 31, 2021.



LICENSING/CSLB

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SB 1189

Establishes a new “B-2” classification of contracting business called **“residential remodeling contracting,”** which is defined as projects that make improvements to, on, or in an existing residential wood frame structure that use at least three unrelated building trades or crafts for a single contract.



- The bill also includes in the definition of **“home improvement”** the reconstruction, restoration, or rebuilding of residential property damaged or destroyed by a disaster for which either the governor or president has declared a state of emergency.
- The bill also **expands the type of contracting activity in a declared disaster zone** for which a person without a contractor license can be prosecuted.

SB 1474

Requires the CSLB to retroactively reinstate an expired contractor license if a completed license renewal application is received with the appropriate fees within 90 days of the license expiration date.



AB 3075

Requires annual statement of information for corporations and LLCs to include an attestation that the filer is not affiliated with an employer who has an outstanding judgment issued by the DLSE or a court of law for violation of any wage order or provision of the Labor Code.

This bill will become effective January 1, 2022, or upon certification by the Secretary of State that its requirements have been implemented in the California Business Connect online system

Comment: The bill could result in inconsistent enforcement of wage and hour laws by local jurisdictions. What is affiliated?



AB 2210

Allows the Contractors State License Board (CSLB) to take disciplinary action against a licensed contractor for violations of tree worker safety regulations administered by the California Division of Occupational Safety and Health without regard to whether death or serious injury to an employee resulted from the violation.

This bill also extends the time for the CSLB to bring disciplinary action against a licensed contractor for such violations from **180 days to 18 months**.

AB 2471

Continues the right to cancel contracts for persons 65 years of age or older from three business days to five business days for the following contracts: home solicitation contracts, home improvement contracts, Property Assessed Clean Energy assessment contracts, service and repair contracts, and seminar sales contracts.



SB 865

- **Makes several changes to the Dig Safe Act of 2016, including renaming the California Underground Facilities Safe Excavation Board to “Dig Safe Board”; updating requirements about the exchange of information and records between the Dig Safe Board and regional notification centers (RNC); requiring that all new subsurface installations use specified mapping technology; and requiring that an excavator notify the RNC within 48 hours of discovering or causing damage.**
- **The bill also updates some of the enforcement responsibilities of the Dig Safe Board, including the option to require that violators take an educational course in lieu of paying a fine.**



PUBLIC WORKS CONTRACTS

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AB 2231

Enacts a safe harbor from the payment of prevailing wages if a public subsidy is:

- (1) less than \$600,000.00, and
- (2) less than two percent (2%) of the total project cost.

For single-family residential projects, the safe harbor from the payment of prevailing wages applies if a public subsidy is less than two percent (2%) of the total project cost. Overturning the established practice of viewing the subsidy in the context of the entire project.

The safe harbor applies to bids and contract that post-date July 1, 2021.



AB 2311

Requires a public entity to include in all documents and contracts a notice that a project is subject to the skilled-and-trained workforce requirement.

AB 2765

Requires the payment of prevailing wages for construction work done under private contract on a charter school if the project is paid in whole or in part with proceeds from a conduit revenue bond issued on or after January 1, 2021.

SB 588

Allows state agencies, on contracts entered into on or after January 1, 2021, to withhold the lesser of (1) \$10,000, or (2) the final payment owed to a prime contractor who fails to provide the required certification of amounts paid to a disabled veteran business enterprise when required to. Once notified a contractor has fifteen (15) to thirty (30) days to provide such certification or it forfeits the withholding.



HOUSING/RESIDENTIAL

GET

AB 1561

Extends the time frame for the expiration, effectuation, or utilization of a housing entitlement for any housing entitlement that was issued prior to, and was in effect on, March 4, 2020, by 18 months, and will expire prior to December 31, 2021.

AB 168

Implements a pre-consultation process with a California Native American tribe prior to the submission of an SB 35 (Wiener), Chapter 366, Statutes of 2017, permit, which entitles a developer to a streamlined housing approval process, in order to identify and protect tribal cultural resources (TCRs).



WAGE & HOUR

GET

AB 2257

Amends AB 5 (Independent Contractors), by making revisions and clarifications to some of the existing exceptions and added new ones.

Dynamex Operations West, Inc., v. Superior Court (2018) 4 Cal.5th 903 applies retroactively per *Vasquez v. Jan-Pro Franchising, Inc.*, 2021 WL 127201 (Cal.), (Jan 14, 2021).

Dynamex established the “ABC” Test presumes a worker is an employee unless the employer can prove all of the following:

Dynamex Cont'd:

1. The worker is free from control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact;
2. The worker performs work that is outside the usual course of the hiring entity's business;
3. The worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed

AB 1947

- Extends the time in which a person who believes that they have been discharged or otherwise discriminated against to file a complaint with the DLSE from six months to one year.
- The bill also overturns the existing balance by prohibiting an employer from recovering its attorney's fees, which could create an incentive for more potentially frivolous litigation.





LEAVE OF ABSENCE

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SB 1383

Expands the California Family Rights Act (CFRA) that began January 1, 2021 by expanding employer coverage to include all employers with only five or more employees, one-tenth of the 50 or more employees requirement.

The definition of “family members” is expanded beyond those covered under the federal Family and Medical Leave Act (FMLA), thereby affecting larger employers who will have to administer CFRA and FMLA separately in some cases.

California employees are eligible for CFRA leave if they:

- 1) have completed at least 12 months of employment with the company,
- 2) have worked for the company for at least 1,250 hours in the past 12 months, and
- 3) are employed at a worksite that has 50 or more employees within 75 miles of that worksite.

Businesses are encouraged to review and revise policies and procedures, as well as supervisor training materials, to ensure compliance with the CFRA's expanded leave rights. Amendments prior

ABSENCE REQUEST FORM

Absence Information

d:

☐ Vacation ☐ Bereavement ☐

☐ Jury Duty ☐ Maternity/Paternity ☐

To: _____

An employee can take 12 weeks of leave to care for a sibling under the CFRA and then another separate 12 weeks to cover an illness under the FMLA for total of 24 weeks of protected leave.

Employers should become familiar with the law's details and be prepared to revise or implement compliant policies and practices by 2021.



PAY DATA

GET

SB 973

A private employer who has 100 or more employees is required to file an annual Employer Information Report (EEO-1) under federal law, to submit a pay data report to the Department of Fair Employment and Housing (DFEH) that contains information about employees' race, ethnicity and gender in various job categories on or before March 31, 2021.

The DFEH is given related enforcement authority. This essentially creates California's version of the federal EEO-1 information that some employers must submit to the federal Equal Employment Opportunity Commission (EEOC).



CEQA

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SB 974

Exempts specific water infrastructure projects for small disadvantaged community water systems that improve the water system's water quality, water supply, or water reliability, from CEQA.

The intent is to make it easier and more affordable to provide clean water for small disadvantaged communities.

SB 288

Exempt from the requirements of CEQA certain projects for the institution or increase of new bus rapid transit, bus, or light rail services on public rail or highway rights-of-way, as specified, whether or not the right-of-way is in use for public mass transit, as specified, and projects for the designation and conversion of general purpose lanes, high-occupancy toll lanes, high-occupancy vehicle lanes, or highway shoulders, as specified.

For projects over \$100,000.00 there must still be three noticed hearings in advance of the project in the project area to address questions, conduct a racial equity analysis, and two noticed meetings annually during construction to address questions.



WILDFIRES

CT

AB 3074

Applies to wildfire risk: requires defensible space: ember-resistant zones.

AB 3164

Applies to fire prevention: wildland-urban interface wildfire risk model: model use guidelines.





Q&A

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THANK YOU!



Thank you for joining us. If you have questions, comments, or ideas for other webinars please send us an email.

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