2022 Federal Year-End Review: Policy & Politics

By Lynn Jacquez, *CJ Lake LLC*

Election Update

This cycle, Democrats increased their Senate majority by one, ending the 50-50 power sharing agreement with Republicans and taking full control of the chamber next Congress. Senator Kyrsten Sinema (I-AZ) left the Democratic Party in December, declaring as an Independent. Her departure will not affect the balance of power in the Senate next year, as she has decided not to caucus with Republicans.

In the House, Republicans won majority control of the chamber by a slim 5-seat margin, making passage of Republican priorities through the House next Congress a challenging feat for the incoming House leadership. The House will likey focus on investigations of the Biden Administration, while the Senate will focus its attention on processing judicial and executive branch nominations.

Legislative Update

In August, Congress passed the Inflation Reduction Act, which allows Medicare to negotiate prices for high-cost drugs, provides $20 billion to support USDA's conservation programs within the Natural Resources Conservation Service, $3.1 billion for USDA to provide relief for distressed borrowers, $4 billion to mitigate the impacts of drought and $3 billion for renewable energy projects in rural areas.

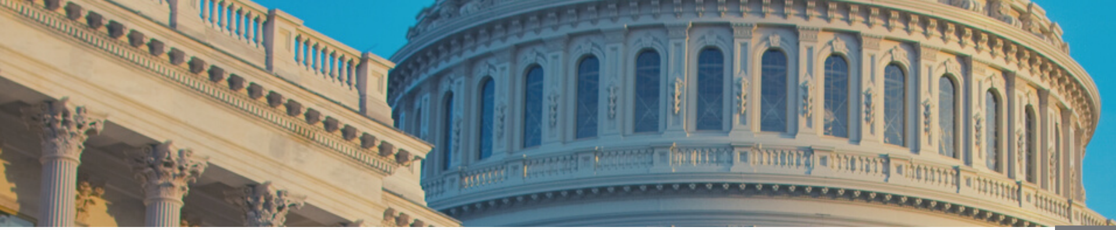
The Senate worked to include a compromise version of the House-passed Farm Workforce Modernization Act, which makes critical reforms to the H-2A program and provides a pathway to citizenship for domestic farm workers, in the omnibus funding package but its fate this Congress remains uncertain.

This year, Congress will work to reauthorize USDA programs through the Farm Bill to address agricultural sustainability, crop support programs, and nutrition. We expect the new House majority to also work on legislation to provide additional funding for state and local police, bolster national security, and address inflation.

Regulatory Update

The Biden Administration has been very active in the regulatory space. On October 12, 2022, the Biden Administration published a final rule regarding the H-2A Temporary Agricultural Worker Visa Program. This was a regulation started under the Trump Administration that was sent to the Federal Register during the last week of his Administration and subsequently withdrawn on Inauguration Day. The rule published by the Biden Administration will have far reaching effects on agricultural employers, especially those that use Farm Labor Contractors ("FLC") to help on the farm. We expect significant cost increases to the FLCs and subsequent cost increases to the fixed-site growers who use FLCs.

Article continues on the next page



Federal Year-End Review Continued

The Biden Administration is awaiting interagency clearance of another Final Rule in the H-2A Temporary Agricultural Worker Visa Program that will make changes to the Adverse Effect Wage Rate ("AEWR"), the wage required to be paid to H-2A workers and workers in corresponding employment. This rule will affect all employers who either use the H-2A program or use an FLC that uses the H-2A program, especially in states that have broad joint employer protections for workers. As proposed the rule would disaggregate wages in a way that if certain job duties in the job description are included in a higher wage occupation DOL will certify that wage instead of the typical AEWR.

Two other rulemakings that are further away from finalization that are worth watching are the Occupational Safety and Health Administration ("OSHA") Heat Illness Standard and the National Labor Relations Board ("NLRB") Joint Employer Rule.The OSHA Heat standard is at the advanced notice of proposed rulemaking stage, meaning the agency has signaled they intend to regulate a national heat standard. In this pre-rulemaking phase OSHA seemed to lean towards adopting a California, Oregon, or Washington state type standard that would be applied to all employers.

We are anxiously watching for the official rulemaking here. Second is the NLRB Joint Employer notice of proposed rulemaking.Though the National Labor Relations Act does not apply to agricultural employers, when the NLRB acts typically DOL is not far behind. This rule, as proposed, would make virtually every contractor a joint employer with the contractee. If a contractee has any ability to control any aspect of a contractor's workforce terms and conditions of employment, they will be a joint employer. Exercise of the control no longer matters under this proposed rule.

Advocacy Committee

Chairman
Eric Bream
Bream Family Farms

Member
Tom Amaro
Pacific Ag Consulting

Member
Danielle McShane
Merrill Farms, LLC

Member
Mack Ramsay
Pacific Commerce Group

Member
Rob Roy
Ventura County Agricultural Association

Member
Steve Tripp
Pacific International Marketing

2022 State Year-End Review: Policy & Politics

By Louie A. Brown, Jr., ***Kahn, Soares & Conway, LLP***

2022 is definitely a year to remember for policy and politics!

California continued its record for punishing employers by passing legislation and adopting regulations that continue to increase paperwork and costs. Employers with more than 100 employees will be required to submit pay scale data annually to the State. Employers will be required to provide 5 days of bereavement leave. Changes are also forthcoming in the area of Paid Family Leave. While not all changes are bad policy, changes do create potential for PAGA claims to be filed.

Even with Governor Newsom declaring his intent to end the COVID-19 State of Emergency in early 2023 and all other States in the Nation moving away from COVID-19 rules and restrictions, the CalOSHA Standards Board has doubled down during the Holiday season by adopting a permanent two-year regulation requiring employers to continue contact tracing and reporting exposure incidents related to COVID-19.The Board was prepared to continue exclusion pay for employees but was deterred at the last minute only due to procedural issues that prevented it from amending the rule.

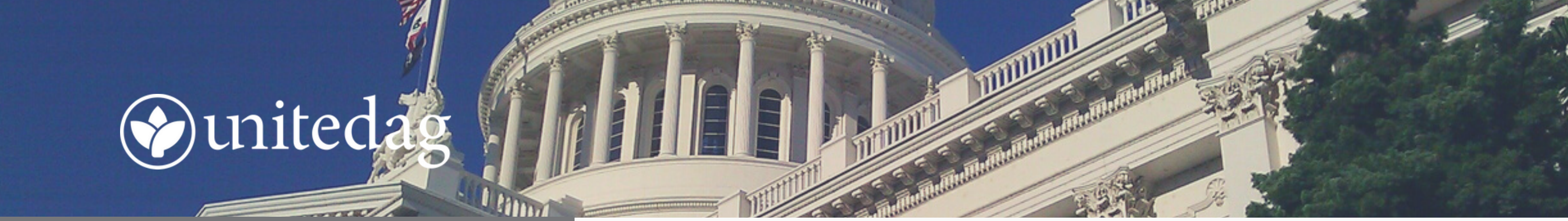
Governor Newsom also delivered a blow specific to agriculture by signing “card check” legislation, which pretends to allow mail-in ballots in agricultural union elections. In reality, it undermines the right to fair, secret balloting for farm employees.

How he signed the bill was just as disappointing. For weeks his staff stated he would not approve the bill because it did not address the issues raised in 2021, when he vetoed a similar bill. Regardless, after hours of negotiations with unions but without ever meeting with representatives of the agricultural industry, the Governor walked out unannounced to a makeshift memorial and sit-in on the Capitol grounds hosted by UFW to sign the bill. The press release issued after the signing told the rest of the story. It stated the bill was signed on the condition that the Legislature send him another version of the bill in 2023. The agreed upon language was linked in the press release; a side deal cut by the Governor and sponsors with no public process, no participation by the Legislature or by the impacted industry.

The normal course of events for a Governor in this situation would be to veto the bill and request follow up legislation in the veto message. This is normal because the Legislature writes laws, not the Governor. However, this year’s action beckons back to the infamous line by former Governor Gray Davis when he said the Legislature was there to ‘implement his vision’. Time will tell if the Legislature reclaims their place as an equal third branch of government.

2022 can also be best described as the “year of the budget.” California enjoyed the largest budget surplus of any state in the Nation’s history at $97 billion.

Article continues on the next page



ISSUES

HEALTH
We advocate for legislation that improves access to quality healthcare and patient outcomes for our members.

LABOR
We partner with lawmakers and our industry stakeholders to advocate for labor reform and ensure a reliable ag workforce.

IMMIGRATION
We work with legislators and members of the industry to help build a legal and reliable workforce for agriculture.

WATER
We advocate for policies that improve water supply reliability and promote a comprehensive approach to water policy and management.

Donate to AgPAC & UnitedAgPAC

Consider making a donation to our political action committees. Our PACs work to elect pro-agriculture candidates to the U.S. Senate and House of Representatives, allowing legislators to support our industry.

Donate at **unitedag.org/agpac**

State Year-End Review Continued

The $300 billion annual budget was a product of the to the state's tax system, which overly relies on income taxes and capital gains taxes, which performed extraordinarily well due positive stock market performance, allowing the Governor and Legislature to entertain many policy initiatives and district benefits. But while 2022 was a boom, the fiscal outlook for 2023 looks to be a bust with a projected $25 billion plus deficit. Many of the Administration and Legislature's multi-year funding proposals are likely to be trimmed.

While COVID-19 brought on the great resignation throughout the country, redistricting, an event that occurs once every 10-years, has had the same effect in the State Capitol. Nearly 20 incumbent members decided not to seek reelection to the Legislature due to the new lines. Some chose to simply retire, while others sought to seek a different office either in Congress or local politics.

2022 was also an election year. The most notable outcome of the election was the defeat of competing sports wagering initiatives. With nearly $500 million spent (one of the most expensive campaigns), both initiatives failed leaving status quo in place, meaning the largest market for sports wagering will continue to be off limits.

The single party control of California was reaffirmed on election night and will continue for the foreseeable future. Even though the Governor lost in a majority of California's counties, he won handedly, with the Associated Press calling it for Newsom at 8:01 pm on election night. In the Legislature, the Senate Democrats added one seat to their super-majority. They now have 32 of the 40 seats. In the Assembly, even though the Rules Committee Chair was defeated in his reelection bid, the Democrats picked up 2 seats. They now have 62 of the 80 seats.

Every year is challenging when it comes to representing agriculture and business in California, but 2022 was extraordinary. Let's hope 2023 will be better.