



Letter from the Managing Partner

California is one of the most employee-friendly states in the country when it comes to legal protection. This year there are plenty of changes in employment law affecting businesses. In May, the California Supreme Court handed down a decision that further clarifies the difference between an independent contractor and an employee. As we all know, every distinction on this issue has big implications for businesses. This decision comes on the heels of a new law, effective January 1, 2018, that prohibits California businesses from asking job candidates about salary history, a critical consideration when hiring. Large businesses often have one or more HR professionals who are paid to stay on top of these issues. But for mid-sized and small companies, that responsibility often falls on the owner, or an administrator with a lot of other responsibilities. Bottom line is, it's hard to keep up with these changes to the law. Kyle Nageotte, one of the attorneys here at Higgs Fletcher & Mack, will clarify the recent Supreme Court decision in a brief story below. If you have any other questions, our team of employment lawyers represent businesses in the community and are ready to help.

-- Steve Cologne

HFM News

Phil Samouris Win

Congratulations to Phil Samouris for successfully litigating a business fraud case that awarded his client their original investment in addition to damages totaling more than \$1 million. There are some good lessons learned from this case about how to protect yourself in a business transaction. For more details on this case, [click here](#).

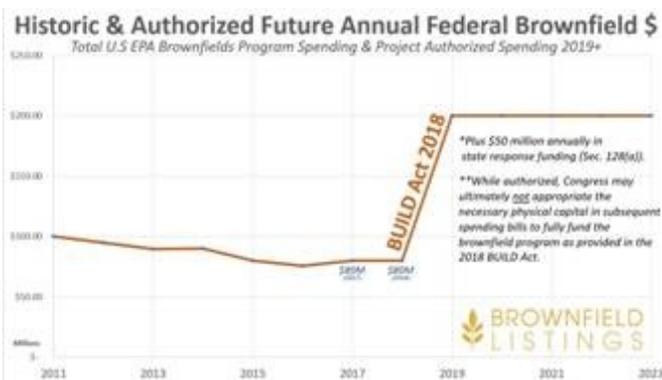


Hot Topics

Protection for Tenants and Operators (BUILD Act)

The Brownfield Utilization, Investment and Local Development (BUILD) Act, passed by Congress on March 23, 2018, amended the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) to include, among other things, new statutory defenses to tenants who lease and operate environmentally contaminated property.

Previously, whether a tenant could claim the “bona fide prospective purchaser” (BFPP) defense to strict, joint and several liability for environmental clean-up costs depended on whether the landlord/owner of the leased property could also avail itself of the BFPP defense. For a variety of reasons, it was possible that a tenant could qualify as a BFPP even though the landlord/owner could not, in which case the tenant could still be liable under CERCLA. The BUILD Act codified three different ways for a tenant to establish a BFPP defense, provided that the tenant’s lease commenced after January 11, 2002. First, that the landlord is a BFPP and has satisfied the All Appropriate Inquiry (AAI) requirements defined by CERCLA. Second, that the landlord at one time was a BFPP, but has since fallen out of that category (e.g., by failing to maintain compliance with AAI requirements). Third, and finally, that the tenant itself is a BFPP and has satisfied all of the AAI requirements. These new statutory defenses provide important and substantial liability protection to tenants in the business of operating potentially contaminated manufacturing or industrial properties. Among other commercial real estate transactional matters, [Eric Tetrault](#) has experience representing commercial tenants in the negotiation, structuring and documentation of leasing transactions, including counseling tenants on environmental matters and due diligence.



Independent Contractor or Employee?

A recent unanimous decision from the California Supreme Court makes it harder for businesses to classify an individual as an independent contractor rather than as an employee. Previously, businesses benefitted from using independent contractors to avoid paying overtime and other benefits that employees are entitled to. Businesses should take time to

understand the differences and to protect themselves when considering classifying an individual as an independent contractor. The change could have significant implications for companies in the “gig economy,” but also applies to more traditional employers as well. HFM attorney [Kyle Nageotte](#) recommends carefully examining the working conditions of those who are currently classified as independent contractors and reconsider classifying them as employees to avoid potentially stiff penalties. The attorneys in Higgs Fletcher & Mack’s [Employment Law Group](#) help California employers effectively navigate the complex array of state and federal laws regulating contractual relationships with employees.

Drones Are a Big Opportunity in SD, But

Make Sure You Understand the Regs

San Diego is shaping up to be an epicenter for drone technology, with a number of industry leaders headquartered here and a slew of startups developing their UAV technology in the region. Reinforcing this image, the Department of Transportation selected San Diego to participate in a three-year drone-testing program that provides fast-tracked approval for projects. However, the regulations surrounding the commercial operation of drones can be complicated. HFM attorney Doug Kerner is providing counsel to a consortium of drone companies organized through the South County Economic Development Council. [Doug Kerner](#) represents clients in corporate, business and commercial real estate matters.



Trust Me, It's Always a Good Time to Review Your Estate Planning Documents

Connecting with your trust and estate attorney every 3 to 5 years for an estate plan check-up can provide you valuable insight and monetary savings to your loved ones. Since the federal estate tax exemption increased significantly this

year, a trust designed to avoid or reduce estate taxes may no longer be needed and may be modified to take advantage of other tax laws such as portability and step-up in basis opportunities. Additionally, you may want to review your estate plan promptly if there have been changes in your family dynamics, such as a birth of a child or grandchild, a marriage or potential marriage for you or your children, a death or divorce of a family member, executor, trustee or guardian. Also, if your beneficiaries are getting older and wiser, the protections or restrictions you previously included in your documents may no longer be applicable. However, if a beneficiary has strayed down an undesirable path, you may want to consider adding certain protections as to when and how money will be utilized for the beneficiary and who should be in control of such decisions. Health changes for you or your spouse, as well as your executor and trustee, can also prompt a need for a review or update of your estate plan. If you are thinking of creating or reviewing your trust and other estate planning documents, be sure to meet with an attorney who specializes in this unique area of law and has spent a meaningful portion of his or her practice administering trusts and estates after the death or incapacity of clients. [Lisa Samuth](#) has been advising clients for more than 15 years with their estate planning and administration needs.

Got Permits? That Doesn't Always Mean You Can Build

Just because you have successfully pulled permits from the city planning department, that doesn't mean you can necessarily start building your dream home. Higgs Fletcher Mack attorney Sandy Brower, representing other neighborhood homeowners,



successfully stopped construction of a two-story home because it violated land use restrictions for a development. In this case, there were none of the usual warning signs – there was no homeowners association and nothing to stop the owner from pulling permits from the city. But there was a “declaration of restrictions” recorded on the property dating back more than 50 years that restricted owners from building a second story. If you are looking at building, make sure you do your

homework and understand all the restrictions on your property! Sandy Brower is an award-winning attorney, known for her expertise, experience and cooperative approach.

In the Community

Higgs Fletcher & Mack Fundraising Helps Those Affected by Cerebral Palsy

For the 12th year in a row, Higgs Fletcher & Mack raised money for United Cerebral Palsy of San Diego. In years past, the donations have placed HFM among the top fundraising firms in the region. United Cerebral Palsy is celebrating its 60th Anniversary later this year.



Maggie Schroedter Elected to Lawyers Club of San Diego Board of Directors

Congratulations to Maggie Schroedter, HFM business bankruptcy attorney, for being elected to the Board of Directors of Lawyers Club of San Diego. Founded in 1972, Lawyers Club is a specialty bar association and respected community organization working to advance the status of women in law and in society.

Higgs Fletcher & Mack Attorneys Rachel Moffitt and Jamie Ritterbeck Gain Asylum for Guatemalan Youth

Rachel Moffitt and Jamie Ritterbeck won political asylum for Carlos, a 17-year-old Guatemalan boy who arrived in the United States two years ago. Asylum is rarely granted, especially for those coming to the United States from Central America. After more than a year of pro bono legal work through Casa Cornelia, and as a direct result of their representation, Carlos was granted political asylum. Moffitt and Ritterbeck are now representing Carlos'



younger brother, hoping to achieve the same outcome.

Doug Kerner Named Friends of Balboa Park Board Member

Real Estate Practice Group Partner Doug Kerner will serve on the Friends of Balboa Park's Board of Directors. Friends of Balboa Park aims to preserve Balboa Park's legacy for future generations through park-wide projects. Kerner played an active role in acquiring the Balboa Park Carousel, providing pro bono legal counsel during the due diligence phase in 2017.



Higgs Fletcher & Mack is proud to be named to the San Diego County Bar Association's "100 Percent Club" for the 12th consecutive year. [Find out more here.](#)

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