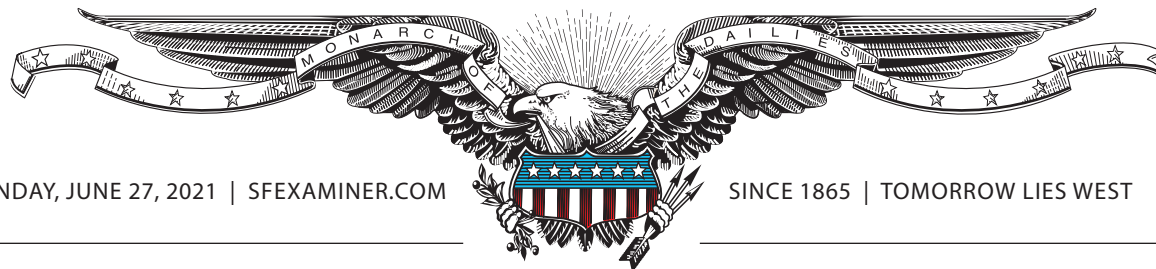


San Francisco Examiner



SUNDAY, JUNE 27, 2021 | SFEXAMINER.COM

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California Recall: How Do I Review My Ballot And Why Is It So Confusing?

By Christopher B. Dolan and Kim Levy



This week's question comes from Matty G. in San Francisco:

I got my recall ballot in the mail today. It is a little confusing. To start with, it's asking me two questions. Do I answer the second question even if I vote "no" on the recall? Also, there are more than 40 candidates. Is there a minimum percentage of votes that the winner would need if Newsom were recalled? How did we end up here?

Thank you for your important questions, Matty.

Recall Vote Background: On September 14, 2021, California voters will decide whether Governor Gavin Newsom should be recalled (removed) from office, and if he is removed, who should replace him. Forty-six candidates, including nine Democrats and 24 Republicans are vying to replace Governor Newsom.

Orrin Heatlie, a retired Patrol Sergeant, is the man behind this, and multiple previous recall campaigns, against Newsom. According to his twitter page, he began his efforts to remove Newsom from office in August 2019, months before Coronavirus hit. The efforts didn't really pick up steam until Newsom's French Laundry dinner—a year and some months later. As the story goes, Newsom attended a dinner party with a dozen friends at a luxurious restaurant in the wine country. It didn't help that this party was a few weeks before he announced sweeping stay-at-home orders in mid-November 2020.

This perceived hypocrisy was used to anger voters. How dare Newsom prohibit others from doing that he himself did

not refrain from doing? It didn't matter if Newsom and his dinner guests were seated outside and complied with state guidelines at the time.

Recall supporters used this momentum against Newsom to gather sufficient signatures necessary to trigger the recall election.

Logistics of the Recall Election: [Understanding the ballot](#)

The recall ballot asks two questions:

- (1) Shall GAVIN NEWSOM be recalled (removed) from the office of Governor?
- (2) If GAVIN NEWSOM is recalled from office, who shall replace him?

Voters are not required to vote on both questions. Instead, a voter may vote on either one or both parts of the recall ballot. It is important to note that a voter may vote "no" to the question of recalling Governor Newsom from office and also select a replacement candidate.

If one-half or more of the votes on the recall question are "no," Governor Newsom will remain in office. If a majority of the votes are in favor of recalling Governor Newsom, he will be removed and replaced with the candidate that received the

most votes, even if proportionally, that candidate received a smaller percentage of the vote than those who voted for Newsom to remain in office. For example, 49.9% of California voters could vote to keep Newsom in office (essentially a "Newsom for Governor" vote), but he would be removed as he did not earn a majority; he could then be replaced with a candidate earning only slightly more than 3% of the California popular vote.

After the Election

If a majority of voters vote "yes" on the recall, Governor Newsom will be removed from office. After the election, county elections officials have 30 days to complete the official canvass. The election would be certified on the 38th day following the election. The new governor would take the oath of office for the remainder of Newsom's term, though January 2, 2023.

If half of voters vote "no" on the recall, California will carry on with Newsom as Governor.

If Governor Newsom is Recalled, His Successor May Be Elected with Slightly More Than 3% of the Vote. Is this unconstitutional?:

As has been mentioned, although the recall effort must win more than 50% of the vote to succeed, the successor candidate simply needs to do better than all of the other 45 candidates. Newsom may be removed despite 49% of Californians



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desiring him to stay. His replacement may be elected with as little as 3% of the vote. This implies that 95-97% of voting Californians disapprove of the candidate selected under this scenario and applies unequal weight to votes.

This inequality could be resolved by simply allowing voters to vote for Newsom to replace himself should the recall vote succeed. Currently, this solution is prohibited by California Elections Code. However, a lawsuit seeking to stop the recall election or to add Governor Newsom's name to the ballot as his own replacement has been filed in Federal Court. The suit argues that the election, as is, violates the equal protection

clause of the Constitution because it allows a sitting governor to be unseated by a candidate who received fewer votes.

Preserving and Restoring Voting Rights Must Become a Priority: No matter the outcome of this lawsuit and the recall election, US citizens must recognize the importance of preserving the rights of all voters, regardless of political affiliation. Since 2011, 22 laws passed in 14 states that restrict voting. Within the last year, more than 389 bills introduced have been 48 states that include broad restrictions, and nothing is being done to counteract these laws and ensure access of all eligible voters. Although laws can restrict voting and at times

make ballots confusing change starts with awareness, research and action. Make your voice count and vote.

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Is Anyone To Blame If Customers Drink Too Much?

By Christopher Dolan and Taylor French



Debra M. from Daily City writes: I have often noticed people serving alcohol to individuals who had too much to drink. Are there certain laws that can hold people accountable for providing alcohol to people who are clearly intoxicated and should probably stop drinking?

Dear Debra: As the COVID-19 era's restrictions ease and we gradually return to our lives outside of the home, it is important to be mindful of the threat posed by intoxicated drivers on the road. Too often, tragedy strikes, and an innocent person is injured or killed by a driver who was overserved at their local bar, restaurant, or other social gathering. When this happens, the question of whom can be held civilly liable presents itself.

Unfortunately for victims and their families, California law prohibits holding someone civilly liable for having overserved alcohol to an adult, which subsequently led to an injury or death. This is commonly referred to as Dram Shop Immunity, in the case of commercial vendors, such as bars, liquor stores, restaurants, etc.; or Social Host Immunity if involving a private individual. While overserving alcohol to an adult may result in an arrest and misdemeanor conviction, punishable by less than one year in jail, the individual or business cannot be liable for the monetary harms and damages suffered as a result of the adult's actions.

Why does California law prohibit civil liability under these circumstances? Because, according to the Legislature and established case law, "the consumption of alcoholic beverages rather than the serving of alcoholic beverages is the proximate

cause of injuries inflicted on others by an intoxicated person." In other words, the drinker not the pourer is the responsible party.

However, Dram Shop Immunity and Social Host Immunity do not necessarily apply in the case of serving alcohol to a minor. If a business overserves a minor who was "obviously intoxicated," which led to an injury or death, it can face civil liability for damages suffered as a result. Pursuant to Business and Professions Code section 25602.1, "a cause of action may be brought by or on behalf of any person who has suffered injury or death against any person licensed, or required to be licensed, ... who sells, furnishes, gives or causes to be sold, furnished or given away any alcoholic beverage ... to any obviously intoxicated minor where the furnishing, sale or giving of that beverage to the minor is the proximate cause of the personal injury or death sustained by that person." For the purposes of section 25602.1, the term "minor" refers to persons under the age of 21.

A supplier of alcohol must use reasonable care to ensure the patron receiving the alcoholic beverage is not an obviously intoxicated minor. It is not enough for the supplier to simply know that the minor had been drinking. The minor must actually appear drunk. The courts consider many factors to determine whether the minor was "obviously intoxicated" when served the alcohol. These include whether the minor had alcohol on his or her breath, incoherent or slurred speech, poor muscular coordination, a staggering or unsteady walk or loss of balance, a flushed face, bloodshot or glassy eyes, an unkempt appearance, or loud, boisterous, or argumentative conduct. The determination is made by "a reasonable person having normal powers of observation."

In the case of a "social host," Civil Code section 1714 provides for civil claims "against a parent, guardian, or another adult

who knowingly furnishes alcoholic beverages at his or her residence to a person whom he or she knows, or should have known, to be under 21 years of age, in which case, ... the furnishing of the alcoholic beverage may be found to be the proximate cause of resulting injuries or death." In other words, the minor need not be obviously intoxicated for the social host to face liability. The social host only needs to have known, or should have known, that the minor was indeed under 21.

California law provides for this exception involving minors for number of reasons. First, minors generally have less experience as it relates to both drinking and driving compared to adults and therefore require further safeguards. And second, it is foreseeable that serving alcohol to an intoxicated minor will result in his or her increased or continued inebriation, which may result in damages, whereas it is not necessarily foreseeable in the case of an adult.

Regardless of potential liability, it is important that we stay vigilant, as drunk drivers will inevitably be out on the road. Equally important, however, is that we are proactive in preventing ourselves and others from driving after having too much to drink. Always arrange for a designated driver, taxi, or rideshare service for yourself and your friends. Remember, nothing is worth getting behind the wheel after drinking too much.

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Safely Returning to Work

By Christopher B. Dolan and Mari Bandoma Callado

This week's question comes from Geraldine W. in San Leandro:

My employer informed us that we will be returning to the office three times a week beginning in August. I am fully vaccinated against COVID-19 but I am worried about safely returning to work because I believe some of my co-workers are not vaccinated. What measures are required for employers to re-open safely and reduce the risk of COVID-19 infections at work? Now that California lifted the mask mandate, can employers require masks indoors? Are we still required to maintain physical distance? Can employers require employees to get a COVID-19 vaccine? Is there anything I can do if my employer does not appear to be doing what they are supposed to do to protect workers from getting COVID-19?

Dear Geraldine: Thank you for asking several important questions. Cal/OSHA and other state agencies have developed guidance on the steps employers should take to reduce the risk of COVID-19 at work. Employees have a right to a safe and healthy workplace. Employers must establish, implement and maintain an effective COVID-19 Prevention Program, provide effective training and instruction to employees on how COVID-19 is spread, infection prevention techniques, and information regarding COVID-19-related benefits that affected employees may be entitled to under the law, and exclude employees who have COVID-19 symptoms and/or not fully vaccinated.

Unless they are covered by the Cal/OSHA Aerosol Transmittable Diseases standard, employers must comply

with the COVID-19 Prevention Emergency Temporary Standards (ETS) which were revised on June 17, 2021. These revised standards set forth requirements for employers relating to training, testing, face coverings, exclusion of employees with COVID-19 and those who had close contact with them, and more

Masks and Physical Distancing Requirements in the Workplace

Key amendments to the Cal/OSHA ETS on June 17, 2021 with regards to masks and physical distancing requirements include:

	Fully Vaccinated Employees	Unvaccinated Employees
Face Coverings Indoors (including in vehicles)	Not required except for certain situations during outbreaks and in settings where CDPH requires all persons to wear them. However, employees are explicitly allowed to wear a face covering without fear of retaliation from employers. Note that Employers must document the vaccination status of fully vaccinated employees if they do not wear face coverings indoors.	Required.
Face Coverings Outdoors	Not Required.	Not Required.
Physical Distancing	Not required except where an employer determines there is a hazard and for certain employees during major outbreaks.	Not required except where an employer determines there is a hazard and for certain employees during major outbreaks.
Access to Respirators		May request N95 respirators for voluntary use from their employers at no cost and without fear of retaliation from their employers
Testing Requirements	Fully vaccinated employees do not need to be offered testing or excluded from work after close contact unless they have COVID-19 symptoms.	Employees who are not fully vaccinated and exhibit COVID-19 symptoms must be offered testing by their employer.

Note that there are Cal/OSHA industry-specific mandates and local orders that may have different requirements. Also, employers can have policies that are stricter than those required by the Cal/OSHA, but accommodation must be made for those:

- Who cannot wear face coverings due to a medical or mental health condition or disability;
- Who are hearing-impaired or communicating with a hearing-impaired person; and
- When an employee performs specific tasks which cannot be performed with a face covering.

Vaccinations

Under the California Fair and Employment Housing Act, employers may require employees to receive an FDA-approved vaccination against COVID-19 infection so long as employers do not discriminate against or harass

employees on the basis of a protected characteristic, provide reasonable accommodations related to disability or sincerely-held religious beliefs or practices, and do not retaliate against anyone for engaging in protected activity (such as requesting a reasonable accommodation).

Employers' Duty to Maintain a Safe and Healthy Workplace

If you believe that your employer is not doing what they are supposed to do to protect workers from getting COVID-19, you may communicate with your employer using the pre-designated channels of communication that they are required to have in place for employees with regards to matters of workplace safety and health. You may also file a confidential complaint with the nearest Cal/OSHA district office. Whether you choose to raise your concerns directly to your employer or by filing a complaint with Cal/OSHA, the law prohibits your employer from discriminating or retaliating against you for complaining about safety or

health concerns in the workplace.

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The COVID-19 (Coronavirus) outbreak is an ongoing, rapidly developing situation and the local, state, and federal responses are changing regularly. The Dolan Law Firm takes efforts to keep the information on this page updated, however, to guarantee up to date information it is necessary to confirm with publicly-available federal, state and local health organization guidance and government mandates.



California Tenants Are Still Protected From Eviction Through September 30, 2021

By Christopher B. Dolan and Katelyn P. Dembowski

Gina from San Francisco asks: What is going to happen now that Congress failed to extend the eviction moratorium? What is California doing to protect tenants during this time?

Dear Gina: These are really pressing questions. On September 4, 2020, the Centers for Disease Control and Prevention imposed a nationwide temporary federal moratorium on residential evictions for the nonpayment of rent. Legislatures in California had done this on a state level a few days prior, protecting California residents from eviction during the COVID-19 pandemic. The CDC federal eviction moratorium was set to expire on July 31, 2021. Congress failed to extend it, leaving millions of Americans vulnerable to evictions starting as early as August 1.

Ultimately, House Democrats did not have the votes they needed to extend the moratorium, and Congress adjourned for a seven-week recess (they are expected to be back September 20). The Biden administration is unable to extend the moratorium through executive action, citing a recent court ruling for their lack of power. The Supreme Court held, in a case by landlords against the federal government, that the CDC's eviction moratorium was beyond their scope of authority as a federal agency. Unfortunately, the end of the eviction moratorium will leave roughly 3.6 million people in the U.S. on the brink of eviction in the next two months, according to the U.S. Census Bureau's Household Pulse Survey.

On June 28, 2021, California Governor Gavin Newsom signed AB 832 to extend the state's eviction moratorium through September 30, 2021. This is the third, and likely final, time he has extended the eviction moratorium in California.

In addition to extending the moratorium, the legislation cleared rent debt for low-income Californians who have

suffered hardships during the pandemic. AB 832 will also cover 100% of past-due and prospective rent payments, as well as utility bills, for income-qualified tenants from April 2020 through September 2021.

Here's how to protect yourself as the eviction moratorium comes to an end:

1. If your landlord gives you a notice to "pay or quit," you cannot be evicted if you return a Declaration of COVID-19 Related Financial Distress. You must return the declaration to your landlord within 15 business days of receiving the notice to "pay or quit." **If you do not provide the signed declaration within 15 business days, an eviction proceeding may be filed against you.** If you are unable to provide the declaration to your landlord within 15 business days, you may still submit the declaration to the court, provided you have "good reasons" for not providing it within the 15 days. This includes, but is not limited to, mistakes, inadvertence, surprise, or excusable neglect under the California Code of Civil Procedure.
2. Under AB 832, to be eligible for cleared rent debt, tenants must earn 80% or less of the area median income, which varies for each county within the state. To put that into perspective, San Francisco's median income in 2019 was \$96,265. You would need to earn \$77,012 or less to qualify for the additional assistance through AB 832.
3. If you make more than the median income and are ineligible for rent debt clearance, you are still protected from eviction if you pay at least 25% of what you owe your landlord by September 30, 2021.
4. If your household income is more than 130% of the median household income in your county or more than \$100,000,

your landlord may demand proof of your COVID-19 related hardships be provided to support your declaration. This could be satisfied by tax returns, pay stubs, statements from your employer, etc.

5. Until October 1, 2021, a landlord can only evict a tenant if they provide a legally valid reason. For example, you may still be evicted during the moratorium if you break your lease agreement, do something illegal on the property, or the landlord must do necessary renovations. The moratorium is only for past-due rent payments.

The extension of the eviction moratorium in California should give tenants some breathing room as the pandemic goes on. The surge in the COVID-19 Delta variant could potentially be as bad as when the pandemic started. While these are the guidelines in place right now, changes are happening every week, day, and hour, as we have seen throughout the pandemic. Stay safe and keep informed as we continue to navigate this pandemic together.

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