

LEGAL UPDATES

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Industry

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California's Commercial Tenant Protection Act Shifts Burdens, Costs to Landlords

California Governor Gavin Newsom signed the Commercial Tenant Protection Act (SB 1103) into law on September 30, 2024, in what supporters billed as first-in-the-nation commercial tenant protections to safeguard the smallest businesses and nonprofits from displacement. To make these protections available, however, SB 1103 has created new costs and potential liabilities for landlords, many of whom are small businesses themselves. The act goes into effect on January 1, 2025.

What enterprises are covered by SB 1103

The act creates a new category of commercial tenant that includes microenterprises with five or fewer employees; restaurants with fewer than 10 employees; and nonprofits with fewer than 20 employees. Notably, the act does not similarly distinguish between large and small property owners; while new protections were enacted for covered small businesses—the new regulations apply to all commercial leases with qualified tenants—there was no carve-out or exception for smaller landlords, many of whom may struggle with the costs associated with complying with SB 1103.

SB 1103 key provisions

Broadly, SB 1103's burden-shifting provisions can be viewed as having five main features. First, the new law introduces new restrictions on cost allocation adjustments, prohibiting landlords from altering their methodology for passing through operating costs to tenants during the lease term. Second, the act requires commercial leases with qualified commercial tenants to contain provisions that obligate landlords to provide a 90 days' notice for rent increases exceeding 10% and 60 days' notice for lease terminations. Third, the

act increases administrative and compliance-related costs for landlords, requiring landlords to provide extensive documentation of building operating costs within 30 days of a tenant's written request. Fourth, the act introduces new translation requirements for commercial leases negotiated in non-English languages. SB 1103 specifically identifies commercial lease negotiations that primarily occur in Spanish, Chinese, Tagalog, Vietnamese, and Korean as requiring lease documents in those languages. Last, the act allows tenants to rescind leases at any time for noncompliance with these new translation requirements and also fails to establish a time limit for such rescissions. Additionally, SB 1103 establishes a landlord's noncompliance with documentation requirements as an affirmative defense in eviction or possession actions.

Potential costs and impacts of SB 1103

A quick, back-of-the-napkin analysis of the economics associated with SB 1103 demonstrates how the act could present challenges for landlords, particularly smaller landlords that lack scale. The translation requirement alone, which at first glance appears to be a relatively minor provision within the law, can vastly alter the economics of leases. Translation of technical and legal documents runs into the thousands of dollars. Meanwhile, the average square foot/year cost of Class C commercial real estate—the most likely premises for micro-enterprises—is approximately \$25 in large California cities like Los Angeles and San Diego, according to CommercialCafe, an online commercial real estate marketplace. For a 2,000 square foot office, translating the lease into a non-English language could equate to several months of rent; the economics of smaller offices are even more challenging.

Even before SB 1103 was enacted, industry and business groups in California and across the country sought to highlight the perceived shortcomings of the new law. In July 2024, 36 groups were signatories on a letter stating opposition to SB 1103, warning state legislators that the act could have unintended consequences, including “increased costs for tenants” and “reduced commercial space availability” and could “ultimately harm the very businesses and nonprofits it purports to support.”

What this means to you

While the new category of tenant created by SB 1103 represents a relatively small portion of the commercial real estate market, the enactment of SB 1103 upends the longstanding notion that commercial leases should mostly fall under contract law where landlord and tenant are free to bargain and agree to terms as they see fit. Introducing protections grounded in state law, however, removes a significant element from the contract-law framework of commercial leases and leads one to question what other elements of commercial leasing—such as rent—legislators might target in the future.

Nevertheless, as the effective date of SB 1103 draws near, landlords should act immediately to update all aspects their operations impacted by the law's provisions. The law's effects are potentially broad

and could touch points all along the lease cycle—from the boilerplate language often employed in leases to the administrative processes that address tenant communications.

Contact us

If you have questions regarding SB 1103, please contact Mhare Mouradian, MaryBeth Heydt, or your Husch Blackwell attorney.