

The Long-Run Effects of Employment Regulation on California's Economy

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Executive Summary

Thanks in part to such natural and man-made advantages as a favorable climate, excellent universities, and a culture of innovation, California's economy traditionally has surpassed the rest of the United States on many measures of economic performance. At the same time, California is one of the most heavily regulated markets in the United States, and research has shown that excessive regulation adversely affects economic performance. A critical question, then, is whether California's advantages are so significant that it is effectively immune to these effects, or if there is a point at which the costs of regulation become too heavy to bear.

This study examines that question with a particular focus on employment regulation—that is, the regulation of labor markets. There is a substantial body of literature demonstrating that such regulation slows economic growth and reduces employment, including a 2011 study by the U.S. Chamber of Commerce, *The Impact of State Policies on Job Growth: A 50-State Review*, which showed that employment regulation significantly reduces both job creation and new business formation. That study—which included a detailed analysis of 34 aspects of employment policies across all 50 states—found that California was among the most heavily regulated labor markets in the United States, sacrificing more than 130,000 new jobs and slowing new business formation by more than 10,000 businesses a year.

This study picks up where the *2011 Report* left off. It reaches three main conclusions:

- (1) There is an inverse relationship between the level of state employment regulation and economic performance.
- (2) California has one of the most heavily regulated labor markets in the United States, and the level of regulation has increased significantly in the last few years.
- (3) California's economic performance is declining relative to the rest of the United States—the state is relinquishing its lead on measures where it has traditionally had an advantage, such as business dynamism, and dropping further behind on metrics in which it has traditionally trailed, such as the rate of unemployment.

The study begins by reviewing recent economic literature on the effects of employment regulation on economic performance. In addition to finding that the literature continues to support the existence of an inverse relationship between the level of employment regulation and economic performance, it discusses a relatively new body of economic research that focuses on business dynamics—that is, the economy's ability to shift labor and capital to new uses in response to market and technological changes. This literature emphasizes the importance of new business formation and labor market fluidity to job creation and overall economic performance and finds, disturbingly, that the dynamism of the national economy, and of California's economy in particular, has been experiencing a long-run decline. Next, the study assesses recent changes in California's employment policies and finds that employment regulation has become significantly more burdensome since publication of the *2011 Report*. For example, California passed a significant increase in the minimum wage;

the cost of workers' compensation insurance increased further, making California's the most expensive in the country; and new restrictions have been put in place on the use of piece-rate compensation under the state's wage and hour law.¹

Finally, in this context, the study examines the recent performance of California's economy. Much has been made of the fact that, by some measures, California has outperformed the rest of the United States during the recovery from the 2008-2009 recession, a phenomenon some have dubbed the "California Miracle." A closer examination, however, suggests that caution is in order. Specifically:

- California's above-average performance over the past few years is due in part to the fact that its economy is more heavily affected by the business cycle than the rest of the United States—that is, recessions are deeper and recoveries are more pronounced. Thus, the last few years should not be taken as an indicator of long-run health.
- California's unemployment rate has been higher, and its employment rate lower, than the rest of the United States since the 1990s; in 2015, the unemployment rate was more than one percentage point higher than the unemployment rate for the rest of the United States. If California's unemployment rate for 2015 had been the same as the rest of the country's, nearly 200,000 more people would have been working.
- Based on the empirical results reported in the *2011 Report*, California's minimum wage increase to \$15 per hour by 2022 is expected to raise unemployment by roughly 1.97 percentage points (reducing the level of employment in 2022 by approximately 373,000 jobs), while decreasing the number of new businesses formed in the state by approximately 19,000 annually.

Further, by virtually every measure of economic performance and business dynamism examined, California's performance is slipping compared with the rest of the United States.

- California's traditional advantage in the rate of new business formation and the proportion of jobs created by startup companies has declined significantly over the past two decades.
- California's advantages over the rest of the United States in the employment rate and in the rate of growth of real output have steadily declined, while the gap between California's unemployment rate and the rest of the nation has increased.
- California's advantages in terms of labor market fluidity—as measured by job creation, job destruction, and job reallocation—have declined over the past quarter century.

By themselves, these data do not establish direct causation, but the weight of the evidence indicates that there is a significant connection between labor market regulation and economic performance. Indeed, the evidence suggests that an increasing thicket of labor and employment mandates is jeopardizing the long-run performance of California's economy.

I. Introduction

California's economy is the largest state economy in the United States; if California were a country, it would qualify as the sixth-largest national economy in the world.² More than 50 Fortune 500 companies are based in California,³ and more than 11 percent of private sector workers in the United States are employed there.⁴ From a quality of life perspective, California has numerous advantages, including a favorable climate, beautiful natural features, and world-leading institutions of higher learning. Moreover, and partially as a result of these factors, California's economy has traditionally performed well when compared with the rest of the nation. In particular, California has historically been among the most dynamic state economies as measured, for example, by new business formation and the rate of job creation by startup firms.

At the same time, California is also one of the most heavily taxed and regulated state economies in the United States as documented in numerous studies.⁵ The question that arises is whether the relatively high and growing regulatory burdens imposed on California's businesses have materially affected its economic performance, or will in the future—or, alternatively, whether

California's sunny climate, good schools and many other competitive advantages are so significant that the state can afford to continue, and expand upon, its current regulatory policies without paying a price in terms of reduced economic growth.

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This study addresses this question by looking in detail at the effects of employment regulation on California's economy, including, especially, the effects of regulation on business dynamism. Its starting point is a 2011 report published by the U.S. Chamber of Commerce (*2011 Report*) on the impact of state employment regulation on job creation and new business formation in the United States.⁶ That study concluded that California's labor market is among the most heavily regulated in the country, and that employment regulation imposes significant costs on the state's economy. Specifically, it estimated that employment

regulation reduced 2009 employment in California by more than 138,000 full-time jobs, effectively increasing the unemployment rate by 0.8 percent, while slowing the rate of new business formation by more than 10,000 new businesses annually. In each case, the costs were far higher than in any other state.

This report begins with a review of recent economic studies that assess the relationship between employment regulation and economic performance. It concludes that the weight of the economic evidence continues to support the proposition that higher levels of employment regulation are associated with reduced economic performance. The report also summarizes the relatively new body of economic research that focuses on business dynamics – that is, the economy's ability to quickly redeploy economic resources (i.e., capital and labor)

to their highest valued uses as markets and technologies change. This research finds that business dynamism plays a key role in economic growth and job creation and, disturbingly, that business dynamism has been declining in the United States for roughly two decades.

Next, the report turns to assessing recent changes in California's employment policies, finding that the state has continued to increase labor market regulation, including raising the minimum wage, expanding the burden of wage and hour regulations, and making it more difficult to hire temporary employees. There is a substantial body of research, including the *2011 Report*, suggesting that such policy changes are likely to reduce economic dynamism and slow economic growth and job creation.

Finally, the report looks at the recent performance of California's economy. Like some other states, California's economy has improved over the last few years as it recovers from the 2008-2009 recession. By some measures, the state has outperformed the United States' average, leading to budget surpluses that some have labeled the "California miracle."⁷

While California's economic performance has certainly improved relative to the recession years, a closer look reveals a long-term trend that should be of significant concern: On measure after measure, ranging from employment and unemployment rates to various measures of business dynamism, California's economic performance is declining compared with the United States overall. For example, while its employment rate has generally been lower, and its unemployment rate higher, than the rest of the United States, the gap has widened over the past 20 years. Conversely, on measures where California has traditionally performed better than the United States' average, such as new business formation and the rate at which new businesses create jobs, California's advantage has shrunk and, in many cases, all but disappeared. These findings suggest that the burden of increased regulation is taking a toll on California's economy. In short, while some observers look at the recent uptick in California's economic performance and conclude that the state's regulatory climate has been and will continue to be outweighed by its other advantages, the evidence here suggests a less sanguine view.

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The remainder of this study is organized as follows: Section II provides an overview of the economic evidence on the effects of employment regulation on economic performance, including summarizing the findings of the *2011 Report*; presents a review of more recent empirical results; and summarizes the new business dynamics literature. Section III focuses on employment regulation in California, including describing significant regulatory and legislative changes that have taken place since the *2011 Report*. Section IV presents an analysis of the post-recession performance of California's economy. While the evidence does not support a precise empirical estimate, it leaves little doubt that employment regulation is slowing job creation and growth and reducing the dynamism of California's economy. Section V presents a brief summary and conclusions.

II. The Economic Effects of Employment Regulation

Employment regulations have real effects on employers, workers, and consumers. They affect the costs employers bear in hiring, managing, and compensating their workforces; the costs and benefits workers face in the labor market; and the prices consumers pay for goods and services. They can also affect the mobility of both capital and labor and adversely impact the ability of entrepreneurs to start new businesses or create new products and services.

The *2011 Report* included a review of the existing economic literature relating to the impact of employment regulation on economic performance. Based on that review, it identified six specific categories of employment regulation that have been shown to affect economic performance, undertook an extensive state-by-state analysis of 34 specific regulatory policies falling into these six categories, and performed a pooled cross-sectional/time series regression analysis of the cumulative impact of these policies on state-level economic performance. The first section below summarizes the findings of the *2011 Report*.

Since the *2011 Report*, a number of additional empirical studies have been published that provide further evidence of the economic effects of employment regulation. The second section below reviews these more recent studies, which generally provide further support for the earlier findings. Thus, while the precise impact of specific employment policies remains difficult to measure, the existing body of economic research continues to indicate that such rules adversely affect job creation and economic growth.

A. Previous Findings: The 2011 Report

The *2011 Report* included a review of the empirical economic literature on the effects of employment policy on economic performance. Specifically, it examined prior studies of the effects of six categories of employment regulation: (a) rules governing the employment relationship and separation costs (b) minimum wage and living wage laws (c) unemployment insurance and workers' compensation (d) wage and hour policies (e) regulation of collective bargaining and (f) the litigation and enforcement climate as it relates to employment issues.⁸ The results of that review are summarized in Table 1.

Table 1: Summary of 2011 Literature Review

TOPIC	CONCLUSIONS
Employment Relationship and the Costs of Separation	The overall consensus of the literature concerning the causes of persistently high unemployment in Europe (“Eurosclerosis”) is that the erosion of the employment-at-will doctrine was a major contributing factor. The literature examining cross-state differences in policy demonstrates that states adopting common-law exceptions to employment-at-will saw slower employment growth and lower employment levels.
Minimum Wage and Living Wage Laws	The majority of the empirical literature finds a strong negative relationship between an increased minimum wage and employment. This consensus was challenged in the 1990s, but more recent evidence reaffirmed the previous consensus.
Unemployment Insurance and Workers’ Compensation	Empirical literature on the subject of unemployment insurance generally finds that increases in unemployment insurance benefits lengthen the duration of unemployment. Empirical evidence also suggests that providing incentives to employees to seek new employment can be effective. Similar to unemployment insurance, the empirical literature finds that increases in workers’ compensation benefits leads to decreases in employment.
Wage and Hour Policies	The empirical literature suggests that overtime regulation raises wage rates but reduces employment.
Regulation of Collective Bargaining/Right-to-Work Laws	Research suggests that higher rates of unionization lead to labor costs above the market rate, and that higher rates of unionization are also correlated with increased unemployment. The literature indicates that higher economic growth in the South and West regions of the United States is due in part to lower levels of unionization and (relatedly) to the presence of right-to-work laws.
Litigation and Enforcement Climate	The economic literature on the various factors that affect the litigation and enforcement climate suggest that these factors increase costs and reduce economic performance.
<i>Source: 2011 Report at 14-21.</i>	

The *2011 Report* gathered information on 34 specific employment policies and practices in all 50 states, ranked each state’s policies based on their stringency and level of intervention in the private market, and combined these rankings into a single Employment Regulation Index, or “ERI.” Using a pooled cross-section/time series regression analysis model, the report found that higher levels of employment regulation, as measured by the ERI, significantly reduced employment and slowed new business formation.⁹ Specifically, the *2011 Report* found that if all states had achieved a “perfect” ERI score in 2009, the effect on the United States economy would have been to increase employment by 746,000 jobs and raise the rate of new business formation by more than 50,000 new businesses annually.¹⁰

Based on these results, the *2011 Report* concluded that “the costs of excessive regulation are considerable. States with the heaviest regulatory burdens are sacrificing opportunities to reduce their unemployment rate and generate new business startups.”¹¹

B. Recent Research on the Effects of Employment Regulation on Economic Performance

Research published since the *2011 Report* provides further support for these findings. This research is summarized here.

Employment Relationship and Costs of Separation: A 2014 study by Maria Cervini-Plà et al. models the wage effects of reducing separation costs.¹² The study utilizes a reduction in dismissal costs and payroll taxes that occurred in Spain in 1997 as a natural experiment and finds that the change resulted in a 6.5 percent increase in wages for young men and a 4.5 percent increase for young women.¹³ Effects on wages for older workers were even greater, with increases in wages of 9.4 percent and 7.7 percent for older women and men, respectively.

Another study by Berdugo and Hadad analyzes the effects of legal probation periods (periods in which a firm can legally fire an employee without severance pay) and finds that if these periods are sufficiently short, then the high cost of separation will decrease specialization,

innovation, and growth.¹⁴ To further substantiate the theoretical results, the study estimates the correlation between the duration of probation periods and innovation as measured by the share of high-tech patents and total patenting across various countries. It finds that innovation is positively correlated with the duration of probation periods.¹⁵



Minimum Wage and Living Wage Laws: Recent studies have reinforced previous findings on the negative impacts of minimum wages, especially in light of recent state and federal proposals for significant increases. In 2014, President Obama called for increasing the federal minimum wage from \$7.25 per hour to \$10.10 per hour in a State of the Union address and signed an executive order

raising the minimum wage to \$10.10 per hour for federal contractors.¹⁶ Even larger increases have been proposed, and in some cases enacted, in a number of states and cities, most notably in California and New York, which have approved a \$15 per hour minimum wage.¹⁷

A 2014 study by Hanson and Hawley estimates the effects of the proposed federal minimum wage increase to \$10.10 per hour on state-level employment.¹⁸ The study finds that the increased minimum wage would directly affect 17-18 percent of workers nationwide.¹⁹ Using elasticity estimates from prior studies, Hanson and Hawley find that this would result in 550,000 to 1.5 million lost jobs.²⁰ A 2014 study by the Congressional Budget Office measures the effect of a minimum wage increase to \$10.10 per hour as well and finds similar results to Hanson and Hawley,²¹ showing that this would reduce total employment by 500,000 jobs or 0.3 percent.²²

A 2014 study by Neumark et al. analyzes the impact of the minimum wage on employment. Specifically, it examines recent claims that the panel data approach, which yields results showing that increasing the minimum wage lowers employment, does not take into account spatial heterogeneity.²³ Neumark et al. conclude that the methods that yield no effect from increases in minimum wage “do not isolate more reliable identifying information (i.e., a better counterfactual).”²⁴ The authors find results that are consistent with the conclusions of the bulk of the previous literature, which show that increases in the minimum wage lead to declines in low-wage employment.²⁵

Finally, a 2014 study by Sabia measures the effects of increases in the minimum wage on low-skilled workers over state business cycles using data from 1989 to 2012.²⁶ The study finds that minimum wage increases during both expansions and recessions reduce low-skilled employment. Specifically, employment elasticities with respect to the minimum wage were estimated to range from 0 to -0.2 during expansions and to be as low as -0.3 during recessions.²⁷

Unemployment Insurance and Workers’ Compensation: One of the findings of prior research is that more generous unemployment insurance (UI) tends to increase unemployment durations. A 2014 study by Meyer and Mok examines the effects of the unemployment insurance maximum weekly benefit increase that occurred in the state of New York in 1989 on unemployment claim incidence and duration.²⁸ The study estimates that the increase in weekly UI benefits led to increases in UI claims and found strong evidence that the increase in benefits increased the duration of UI claims.²⁹

Wage and Hour Policies: Prior research has demonstrated that more aggressive overtime rules and related policies (such as mandatory paid leave) tend to increase unemployment and reduce economic performance. More recently, a 2011 study by Bergemann and Riphahn, analyzes the effects of a 2007 change in German law that reduced the maximum amount of paid parental leave while increasing the amount paid upon a woman’s return to the labor force after childbirth.³⁰ Using a probit regression analysis, the authors find that this reform caused a significant increase in the rate of return to the workforce.³¹

Collective Bargaining Issues: A recent study by Hicks and LaFaive indicates right-to-work (RTW) laws have direct effects on employment and output. The authors observe a statistically significant impact of RTW statutes on growth in employment, real personal income, and population.³² Vedder and Robe’s 2014 study reaches similar conclusions regarding the relationship between RTW states and real per capita income growth.³³

Finally, a 2015 report by Eisenach investigates the impact of RTW laws on union density and economic performance.³⁴ The report presents empirical evidence consistent with the finding that RTW laws, and the lower union densities associated with such laws, have a positive impact on economic growth, employment, investment, and innovation.³⁵

Litigation and Enforcement Climate: Significant new research was not identified that would either strengthen or refute the established findings that a more litigious, enforcement-oriented regulatory environment increases costs and reduces economic performance.

C. Employment Regulation, Business Dynamism, and Economic Performance

It is well documented that employment regulation adversely affects new business formation, innovation, and the ability of firms to adjust to economic change and that such regulation disproportionately affects small businesses.³⁶ The significance of these findings is magnified by the results of a relatively new body of work that focuses on the importance of business dynamism (i.e., of entrepreneurship, new business formation, and labor market fluidity) for long-run economic performance. That research finds that business dynamism in the United States is declining and suggests that increasing regulation is a likely cause.³⁷

As summarized in a recent report by the Information Technology and Innovation Foundation:

Steady growth in employment masks the constant churning of job creation and destruction, as less innovative and efficient companies downsize or go out of business and more innovative and efficient companies grow or take their place. While startups have a higher failure rate than older, more established businesses, the ones that survive have very high rates of growth and job creation.³⁸

Similarly, a Brookings Institution study by Hathaway and Litan explains that:

Business dynamism is inherently disruptive; but it is also critical to long-run economic growth. Research has established that this process of “creative destruction” is essential to productivity gains by which more productive firms drive out less productive ones, new entrants disrupt incumbents, and workers are better matched with firms. In other words, a dynamic economy constantly forces labor and capital to be put to better uses.³⁹

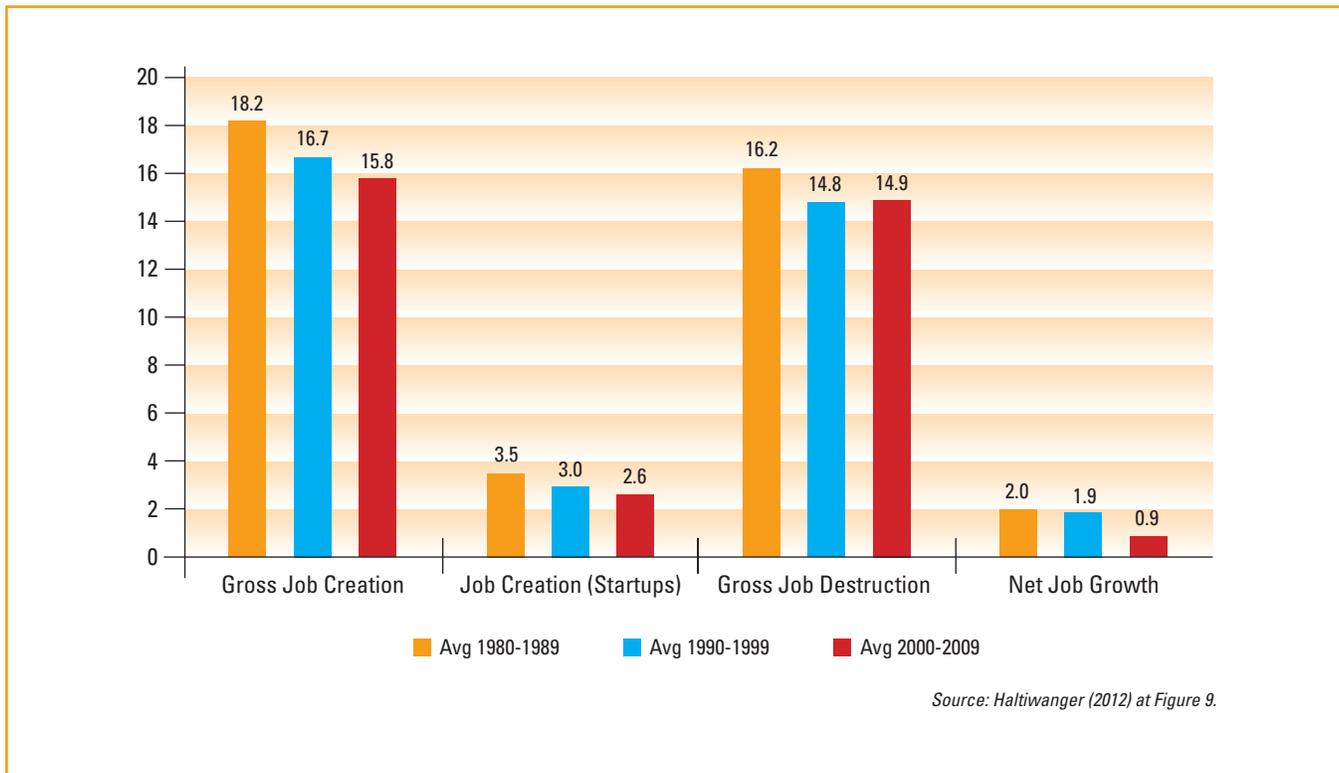
Much of the underlying empirical research on business dynamism has been led by John Haltiwanger and his colleagues at the University of Maryland. His 2012 study focuses on the role of reallocation (or “churn”)—the movement of jobs and resources from older, larger firms to newer, smaller ones—in the U.S. economy. It concludes that:

In healthy economic times, such churning contributes substantially to productivity growth. That is, churning reflects the moving of economic resources away from less productive to more productive establishments and firms. ... [T]he entry of new firms and the subsequent up-or-out dynamic of young firms contribute substantially to productivity growth.⁴⁰

One troubling finding from the business dynamics research is that the dynamism of the U.S. economy is declining. As Haltiwanger concludes (and as illustrated in Figure 1), “there is substantial evidence that the pace of U.S. business dynamism has fallen over time. ... The decline in business-level volatility is evident in a pronounced declining trend in the pace of gross job creation and gross job destruction.”⁴¹

Dynamism affects economic performance in several ways. First, Haltiwanger’s work demonstrates that churn is directly associated with productivity. For example, in a study focusing on retail establishments, he finds that “that entry and exit of establishments makes

Figure 1: Trends in Gross and Net Job Creation (U.S., 1980-2009)



a greater contribution to industry productivity growth than continuing establishments,⁴² such that “virtually all the productivity growth in the sector as a whole appears to be accounted for by net entry.”⁴³

Second, dynamism is also directly related to job creation, as demonstrated in a 2013 study by Haltiwanger, Jarmin, and Miranda that assesses whether firm size or age is the more significant determinant of job creation.⁴⁴ Consistent with prior research, the study finds that average net employment growth for the smallest firms is 15.2 percentage points higher than for the largest, but that this relationship seems to disappear when firm age is included as an explanatory variable—that is, that younger firms exhibit higher levels of net employment growth than older ones regardless of size.⁴⁵

Two studies from 2014 are of particular relevance to the analysis here. First, Davis and Haltiwanger examine the causes and consequences of declining labor market fluidity.⁴⁶ With respect to causality, they find a statistically significant link between employment policy and labor market fluidity. Specifically, using a cross-sectional regression model to estimate the effect of state-level employment-at-will exceptions on the job reallocation rate, they find that “good-faith” exceptions to the employment-at-will doctrine lower the job reallocation level by more than one percent across all firm sizes, and that the effect is even higher on smaller firms, decreasing the reallocation rate by more than two percent.⁴⁷ The study also applies a

regression model to estimate the impact of labor market fluidity on employment, finding a large, positive, and statistically significant impact of worker reallocation on the employment rate, especially for less educated workers.⁴⁸ The authors conclude that “if our assessment is correct, the United States is unlikely to return to sustained high employment rates without restoring labor market fluidity.”⁴⁹

Second, Haltiwanger, Hathaway, and Miranda assess the decline of business dynamism in the high-technology sector, an issue of particular salience for California.⁵⁰ Their study finds that the reallocation rate in the high-tech sector, which was trending upward prior to the

2000s, reversed course beginning in 2002 and has been declining compared with the private sector as a whole.⁵¹ The study concludes, “the findings here point to the possibility of a slowdown in productivity and economic growth in the high-tech sector in the last decade. The slowdown we find for the high-tech sector might be an even larger source of concern than that for the overall economy, since young high-tech firms may be more important for innovation and new job creation than their non-high-tech counterparts are.”⁵²

“*The economic evidence on the effects of employment regulation on economic performance—while in many ways nuanced and complex—demonstrates, on balance, that increased employment regulation reduces economic performance and has an adverse effect on entrepreneurship, business dynamism, and labor market fluidity.*”

To summarize this section, the economic evidence on the effects of employment regulation on economic performance—while in many ways nuanced and complex—demonstrates, on balance, that increased employment regulation reduces economic performance and has an adverse effect on entrepreneurship, business dynamism, and labor market fluidity. The data presented below suggest that California's economy is suffering from precisely these effects.

111. The Growing Burden of California's Employment Regulations

California has a high level of labor and employment regulation. As described in the first section below, the *2011 Report* rated California in the lowest of three tiers. Since then, as detailed in the second section, the state has imposed additional mandates on employers.

A. The Situation as of 2010

The *2011 Report* evaluated employment regulation in all 50 states on the basis of 34 specific characteristics, and on that basis developed an Employment Regulation Index (ERI), which was used to rank states in three categories: good, fair, and poor. California was among 15 states in the third tier. Indeed, California's third-tier ranking extended across each of the six categories of regulation that comprised the ERI. To summarize the situation as of 2010:

Employment Relationship and the Costs of Separation: California employment law was hostile to non-compete agreements, allowing the enforceability of such contracts only in very narrow circumstances.⁵³ Additionally, employee handbooks were enforceable contracts under California law.⁵⁴ California also had a very strict law mandating that all wages due to employees must be paid immediately at the time of separation.⁵⁵

Minimum Wage Laws and Living Wage Laws: California's minimum wage was \$8.00 per hour in 2010, \$0.75 higher than the federal minimum wage of \$7.25 per hour.⁵⁶ Many cities in California also had "living wage" laws that increased the minimum wage within city limits beyond the state minimum wage. For instance, in 2010, Los Angeles had a minimum wage of \$10.30 per hour, which was almost 30 percent higher than the state minimum wage at the time.⁵⁷

Unemployment Insurance and Workers' Compensation: California's workers' compensation premiums were among the highest in the country. As reported by the state of Oregon's workers' compensation premium ranking report in 2010, California ranked fifth highest in terms of its workers' compensation premium ratings index.⁵⁸ Relative to other states, California also had relatively high workers' compensation benefits paid. As reported by the National Academy of Social Insurance, California had the eighth-highest workers' compensation total benefits paid per \$100 of covered wages of all states at \$1.35 in 2010.⁵⁹

Wage and Hour Policies: California's wage and hour policies were among the most aggressive in the United States. For example, while federal law requires employers to pay overtime for hours worked over 40 in a given workweek, California required employers to also pay overtime for hours worked over eight in a given workday.⁶⁰ California also required 10 minute rest periods for every four hours of work, a requirement that does not exist under Federal law.⁶¹ Additionally, California law mandated the payout of vacation days earned upon termination of employment regardless of the circumstances.⁶²

Collective Bargaining Issues: California is not a right-to-work state, and state law included a number of other restrictive provisions relating to collective bargaining.

Litigation and Enforcement Climate: At the time of the *2011 Report*, California had one of the lowest ranking litigation and enforcement climates relative to other states.⁶³

The *2011 Report* estimated that California's burdensome employment policies were increasing unemployment by approximately 0.8 percent—the equivalent of 138,000 jobs—and preventing the creation of more than 10,000 new businesses every year.

B. Recent Changes in California's Employment Policies

Since the *2011 Report* was prepared, California has imposed additional mandates on employers. These changes are summarized here and are further detailed in Appendix 1.

Minimum Wage: In September 2013, Governor Brown signed Assembly Bill 10, raising the state minimum wage from \$8 per hour to \$10 per hour effective January 1, 2016.⁶⁴ Most recently, however, California raised its statewide minimum wage to \$15 per hour by 2022, albeit with potential "off ramps" in the event of an economic downturn.⁶⁵ Los Angeles, San Francisco and other municipalities had already increased minimum wages under their living wage laws, gradually raising the minimum wage to \$15 per hour over the span of three years in San Francisco and five years in Los Angeles.⁶⁶

Wage and Hour: California added several new laws regulating wage and hour policies. For example, the Healthy Workplaces, Healthy Families Act (AB 1522), passed in 2014, mandates paid sick leave for any employee who works in California for 30 days or more at an accrual rate of no less than one hour for every 30 hours worked.⁶⁷ The law went into effect on July 1, 2015, making California the second state after Connecticut to require paid sick leave benefits for all employees.⁶⁸ It is notable that the California Department of Finance opposed the bill, arguing that:

[the bill] results in significant unbudgeted state General Fund costs, and costs to local governments [...and] additional and potentially significant costs to private sector employers, which could diminish incentives for businesses to operate in California and therefore could be a sole or contributing factor to a business' decision to close or downsize. Such action by California businesses would have a state fiscal impact such as reduced tax revenues.⁶⁹

Another troubling aspect of the new law was its inclusion of a private right of action enabling labor unions to sue employers, thus increasing the threat of employment-related litigation.⁷⁰

Piecework: In October 2015, California approved Assembly Bill 1513. The bill requires payment of a separate hourly wage for the nonproductive time of piece-rate employees, greatly increasing the complexity of piece-rate compensation.⁷¹ Previously, to meet minimum wage compliance, piece-rate wage law in California required an employee's total

compensation for productive and nonproductive work per hour in a given work week to be greater than or equal to the minimum wage.⁷² AB 1513 codified recent decisions of the California courts, notably *Gonzalez v. Downtown LA Motors* and *Bluford v. Safeway, Inc.*, that found piece-rate and activity-based compensation plans to be in violation of minimum wage law.⁷³

Under AB 1513, pay for nonproductive time other than for rest and recovery periods must be no less than the proper minimum wage for all such time. Compensation for rest and recovery periods is more complex and must be the higher of the applicable minimum wage or the average hourly rate calculated for each employee as his or her total piece-rate pay for productive hours over total hours worked excluding rest and recovery periods. Thus, many employers need to recalculate the hourly wage rate for rest and recovery periods every week for each piece-rate employee.⁷⁴

According to attorneys Friedrichs and Kadue, this “will make it even more difficult for California employers to pay employees on a piece-rate basis for any part of their work ... [and] will make wage statement compliance for piece-rate employers even more complex and burdensome.”⁷⁵ The California court decisions upon which AB 1513 builds created back-pay and penalty liability for employers with piece-rate compensation practices previously deemed compliant. AB 1513 still requires back pay for the period from July 1, 2012 to December 31, 2015, but it protects employers from liability under certain conditions. The law has major implications for employers, especially in industries such as trucking and agriculture where piece-rate compensation is more common.⁷⁶



Temporary Employees: Assembly Bill 1897 (AB 1897), which became law in September 2014 and went into effect January 1, 2015, significantly increases the liability of businesses with respect to temporary employees and third-party labor contractors.⁷⁷ Previously, employers that contracted for labor were not liable for labor law violations involving temporary employees. Instead, the labor contracting agency or temporary employment agency was required to comply with labor laws and regulations (and liable for any violations).⁷⁸ Under AB 1897, employers using contracted labor are now liable for wage-and-hour violations as well as for failure to secure workers’ compensation coverage for temporary employees.⁷⁹

Employment Screening: New laws have limited the ability of employers to screen new hires, including restricting the ability to check a potential job applicant’s credit history or prior convictions,⁸⁰ and limits on the use of the federal E-Verify system to check the employment authorization of employees and potential employees.⁸¹

Discrimination: The 2015 Fair Pay Act revises the Labor Code Section dealing with gender pay inequality or disparity. The Fair Pay Act eliminates the requirement that pay differentials be within the same establishment and changes the wording of the requirement that pay be equal for "equal work," substituting instead "substantially similar work, when viewed as a composite of skill, effort and responsibility."⁸²

Unemployment Insurance Costs: As shown in Table 2, the burden of workers' compensation on California has continued to rise both in absolute terms and relative to other states. The Oregon Department of Consumer and Business Services releases an annual workers' compensation premium rate survey ranking all states based on the premium rate per \$100 of payroll. California ranked as the state with the highest premium per \$100 of payroll in 2014, moving up from the third spot in 2012.⁸³ It had a premium rate of \$3.48 per \$100 of payroll, which was 88 percent higher than the median rate.

Similarly, California ranks poorly relative to other states in terms of benefits paid. The National Academy of Social Insurance publishes an annual report on workers' compensation metrics across all states. California had the seventh-highest workers' compensation premiums paid per \$100 of covered wages of all states, up from eighth in 2010.⁸⁴

Litigation: California's Private Attorney General Act (PAGA) allows individuals to sue employers for alleged labor code violations in place of the Labor and Welfare Development Agency. Under the statute, these individuals can also sue on behalf of other employees without meeting all the procedural requirements of a typical class action lawsuit.⁸⁵ PAGA was amended in 2015 to allow employers to "cure" violations related to certain paycheck statement requirements, and the 2016-2017 budget agreement includes some additional oversight of PAGA claims.⁸⁶ However, the statute still substantially increases employers' litigation risk.

Thus, as shown above, California has added a variety of additional regulatory burdens on employers since the publication of the 2011 Report, covering a wide range of employment policy areas.

IV. The Impact of Increasing Employment Regulation on California's Economy

California is blessed with a variety of natural and man-made economic advantages, which have attracted capital and talent throughout its history. For most of that history, this has led to extraordinary economic performance. For example, from 1963 to 1980, California's population grew 74 percent faster than the U.S. overall,⁸⁷ while its GDP grew more than 10 percent faster.⁸⁸

More recent evidence, however, suggests that increasing regulatory burdens—including employment regulation—are having a substantial negative impact on California's economy.

The first section below reviews the existing empirical literature on the impact of employment regulation on California's economic performance.

The next section presents data on California's performance relative to the rest of the United States, focusing, in particular, on measures of business dynamism. Overall, the data suggest that the cumulative effects of employment regulation are harming California's economic performance relative to the performance of other U.S. states. Perhaps more importantly, the data show that California is losing, or has lost, its long-held advantage in important measures of business dynamism. These findings are significant in that they suggest that the recent rebound in California's economic performance, heralded by some as the "California Miracle," may not be sustainable unless steps are taken to improve the state's overall business climate and to reduce the dampening effects of employment regulation.

“Overall, the data suggest that the cumulative effects of employment regulation are harming California's economic performance relative to the performance of other U.S. states. Perhaps more importantly, the data show that California is losing, or has lost, its long-held advantage in important measures of business dynamism.”

A. California-Specific Studies of the Effects of Employment Regulation

A number of previous studies have assessed the effects of employment regulation on California's economy. For example, a 2005 study by Mitchell estimates the effects of a 1999 extension of overtime payment coverage to white-collar workers in California.⁸⁹ The study showed that increased coverage reduced the probability of working overtime by approximately 5.3 percent for workers in California, decreasing the population that works overtime by 18.8 percent.⁹⁰

A 2000 study by Bhattacharya et al. analyzes the effect of 1998 California legislation that changed the overtime regulation from daily overtime to weekly overtime.⁹¹ The study finds “that the hours effect of switching from a daily to a weekly overtime rule is equivalent to the hours effect one might expect from increasing the standard workweek by 0.6 hours.”⁹² That is, changing the overtime threshold from daily to weekly had the effect of increasing weekly hours worked for California employees, increasing net earnings for low-wage workers. The study

also concludes that the daily overtime rule harmed low-wage workers, noting that “[r]elative to weekly overtime, daily overtime is regressive, raising the number of work hours of high-wage workers at the cost of reduced work hours for low-wage workers.”⁹³

Prior studies also cast light on the effects of California's recent minimum wage increases. Hanson's and Hawley's analysis of the effects of increasing the federal minimum wage finds that an increase to \$10.10 (from the current \$7.25) would reduce California employment by between 13,203 and 85,626 jobs.⁹⁴ Because this estimate is based on a nationwide increase, it likely understates the effects of California's unilateral (and much larger) increases, which (unlike a nationwide increase) place the state at a competitive disadvantage.

The results of the *2011 Report* can also be used to estimate the impact of California's minimum wage increase. The study found that each one dollar increase in the minimum wage translates into a 0.281 percentage point increase in unemployment and a reduction of 71.47 new businesses per one million inhabitants.⁹⁵ Applying those estimates to the \$15 per hour minimum wage in California indicates that the result will be to increase unemployment by roughly 1.97 percentage points when the higher level is fully implemented in 2022 (meaning that 373,000 fewer people will be employed),⁹⁶ while reducing the annual rate of new business formation in the state by approximately 19,000.⁹⁷ It is appropriate to emphasize here that these estimates accurately describe the direction and order of magnitude of the effects, but they are not presented as precise estimates, in part because the magnitude of California's minimum wage increase is greater than the variation in the underlying data upon which the coefficient estimates are based. There is no reason, however, to believe that the estimates are biased—that is, they are as likely to under-predict as to over-predict the size of the effects.

B. Assessing the Performance of California's Economy

This section presents data on the performance of California's economy compared with other states. Like all such analyses, these comparisons cannot conclusively isolate the relationships between causes (e.g., increased regulation) and effects (e.g., economic performance). Nevertheless, the data demonstrate clearly that California's economic performance with respect to employment and unemployment rates, per capita output, and business dynamism (as measured by job reallocation rates, new business formation, and other metrics) is declining relative to the rest of the United States. This finding calls into question the proposition that California's regulatory climate and employment regulations are, and will continue to be, offset by the state's other advantages.⁹⁸

1. Employment

As discussed above, the economic literature documents a strong negative correlation between employment regulation and overall employment. Given California's heavily regulated market, one would expect to see lower levels of employment compared with the rest of the United States. Figure 2 illustrates the employment rate for California and the rest of the United States for the period from 1976 to 2015. The employment rate is calculated as

the number of employed workers as a percentage of the civilian noninstitutional population ages 16 and older.⁹⁹

As the figure highlights, California’s employment rate was higher than the rest of the United States in the period before the early 1990s, but has been lower ever since.

Figure 2: Employment Rate Trends (1976-2015)

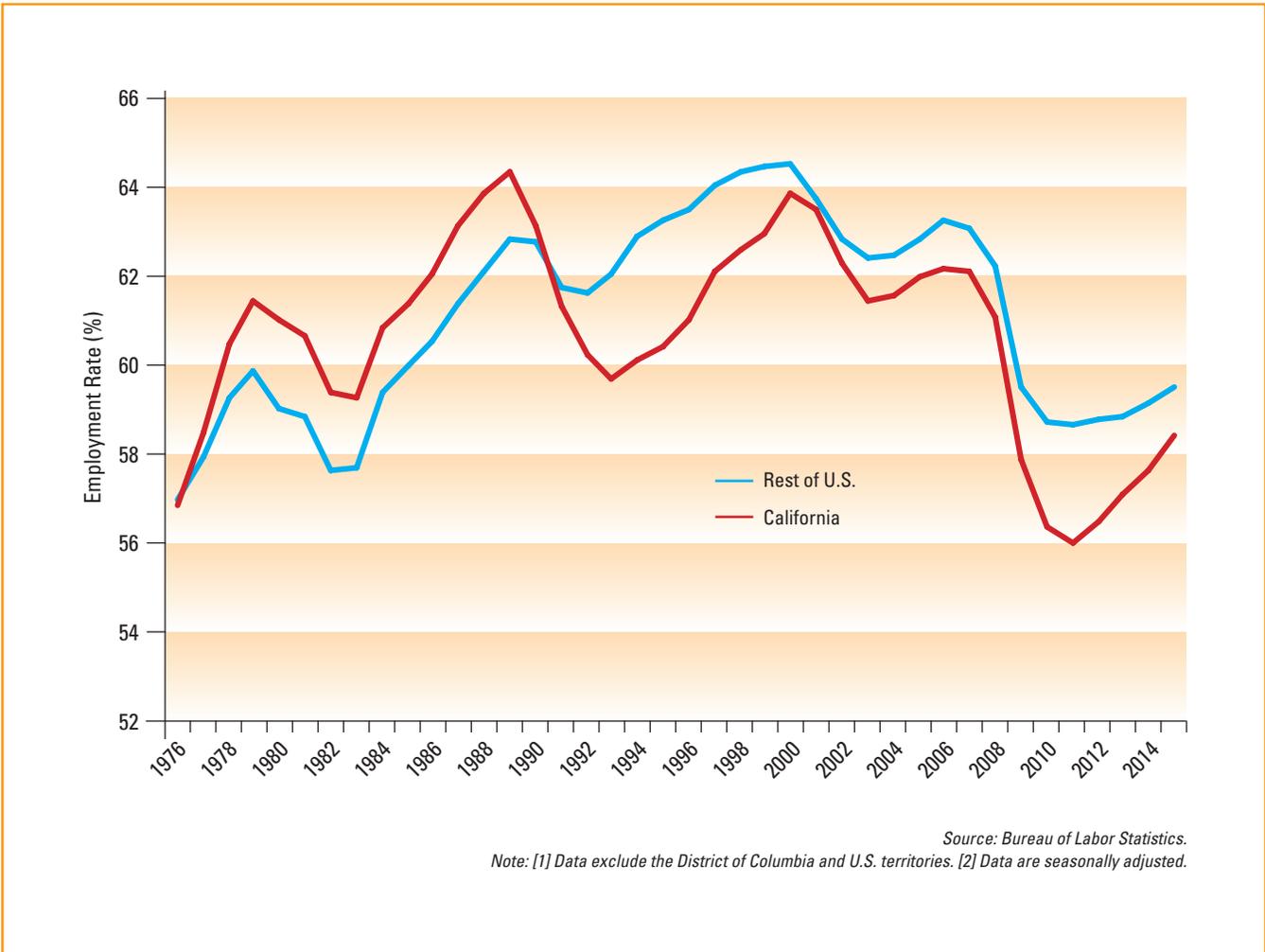
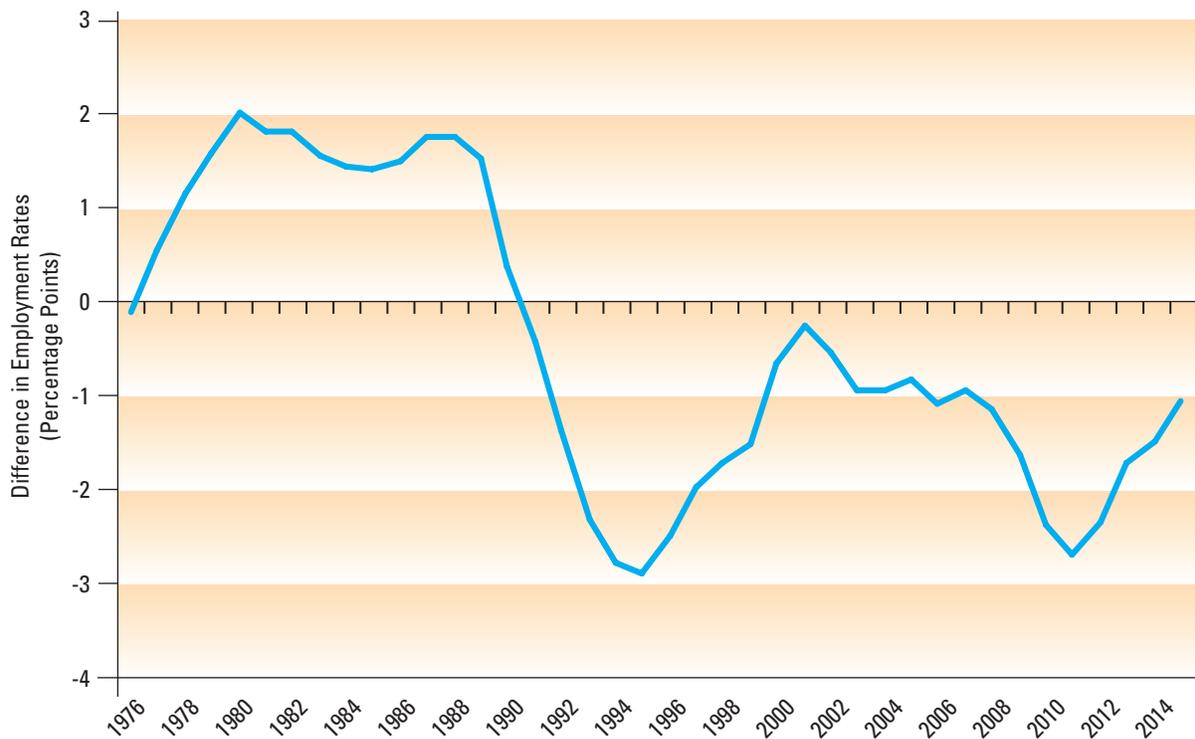


Figure 3 illustrates the difference in employment rates between California and the rest of the United States, measured in percentage points. It shows that California has not only lagged behind the rest of the country in terms of the employment rate, it is falling further behind over time. In 1980, the employment rate was approximately two points higher than the rest of the United States; by 2015—despite having improved significantly in the last three years—it was approximately one point lower.¹⁰⁰

Figure 3: Difference in Employment Rates
California vs. the Rest of the United States (1976-2015)



Source: Bureau of Labor Statistics.
Note: [1] Data exclude the District of Columbia and U.S. territories. [2] Data are seasonally adjusted.

2. Unemployment

The data present a similar picture when analyzing unemployment levels in California compared to the rest of the nation. As shown in Figure 4 below, California historically has had higher unemployment levels than the rest of the United States.

Figure 4: Average Annual Unemployment Rate Trends (1976-2015)

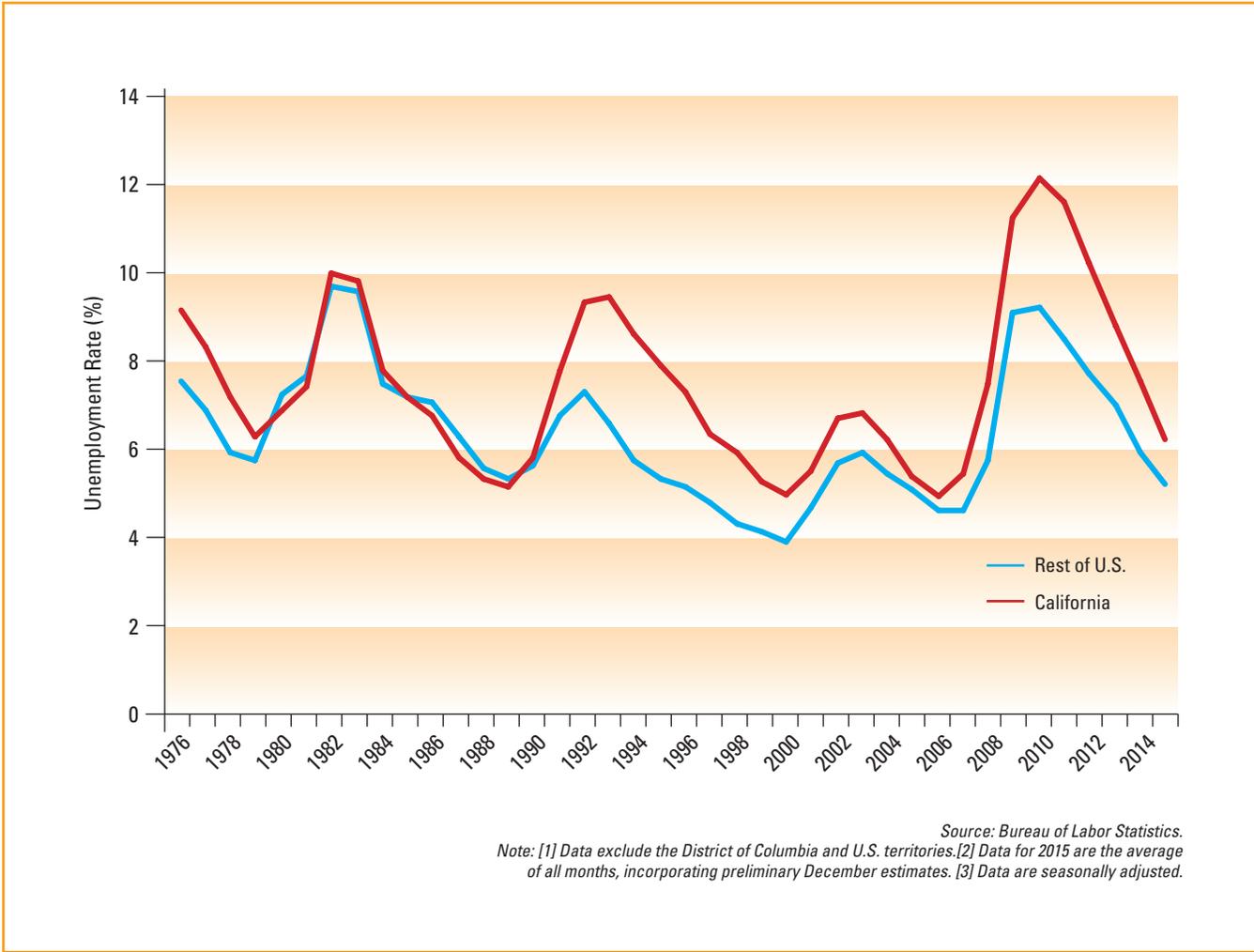
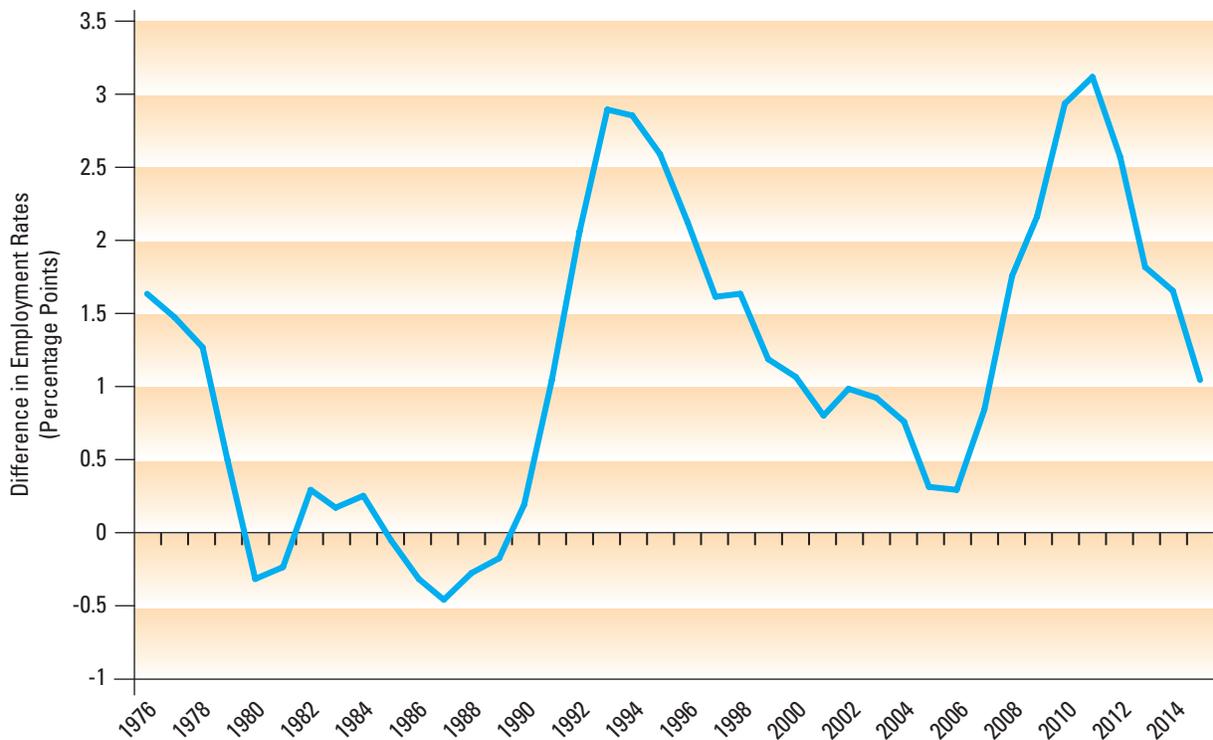


Figure 5 below shows the difference in the unemployment rates of California and the rest of the United States. Although the California economy is more responsive to the business cycle (hence, unemployment relative to the rest of the country is lower in expansions and higher in recessions than the nation as a whole), the trend is up: California's unemployment rate is increasing relative to the rest of the country.

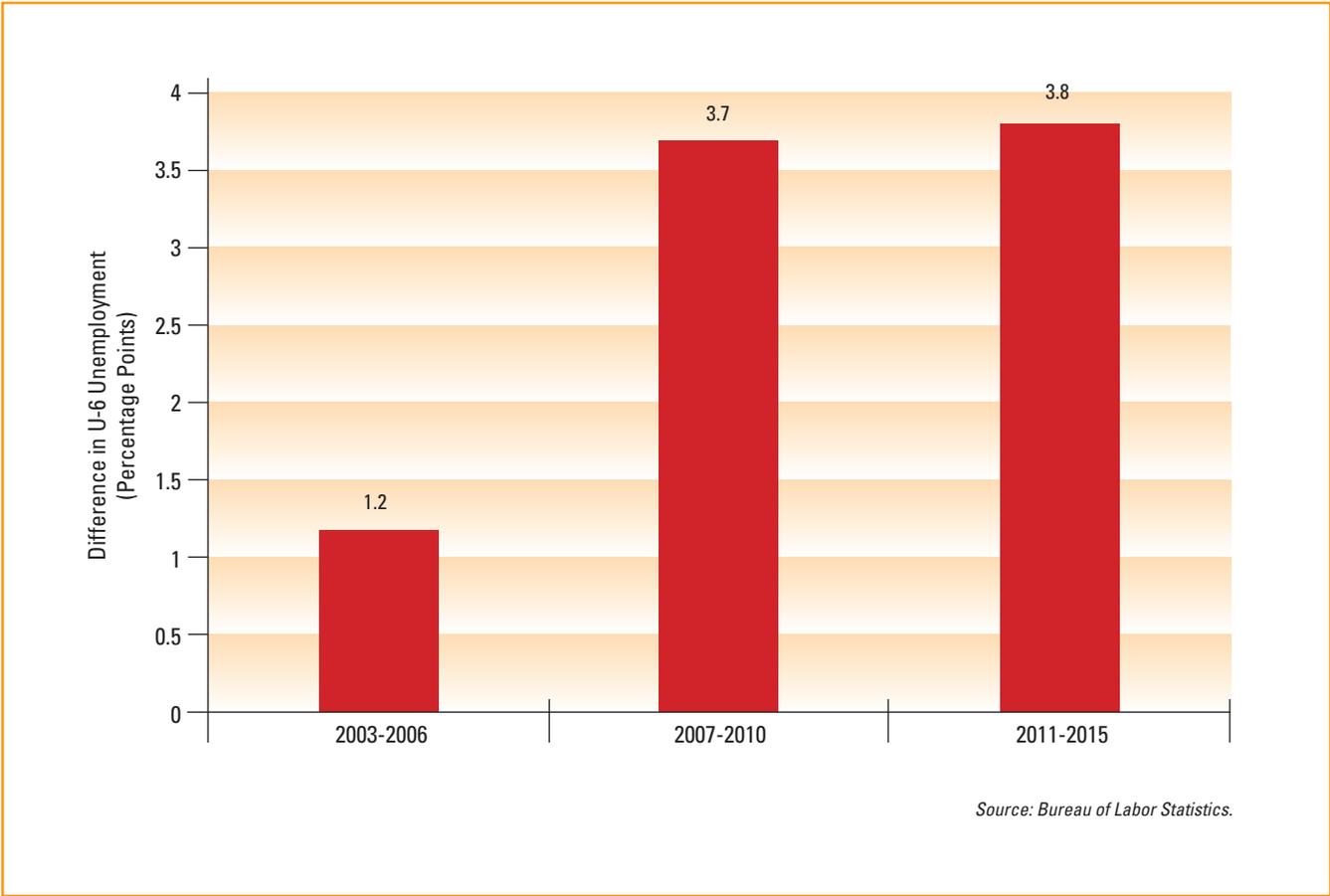
Figure 5: Difference in Average Annual Unemployment Rates
California vs. the Rest of the United States (1976-2015)



Source: Bureau of Labor Statistics.
Note:[1] Data exclude the District of Columbia and U.S. territories. [2] Data for 2015 are the average of all months, incorporating preliminary December estimates. [3] Data are seasonally adjusted.

The Bureau of Labor Statistics calculates multiple measures of unemployment with varying levels of inclusiveness. Figure 6 shows the most inclusive measure (U-6), which includes unemployed workers, marginally attached workers, and workers employed part time for economic reasons.¹⁰¹ California's U-6 unemployment rate has been above the rate for the rest of the United States for many years, and the difference increased significantly, from 1.2 percentage points in the 2003-2006 pre-recession period to 3.8 percentage points from 2011 to 2015.

Figure 6: Difference in Average U-6 Unemployment Rates California vs. United States (2003-2015)



3. Economic Output

The economic literature suggests that high levels of employment regulation depress economic output. Figure 7 shows growth in real per capita output for California and the rest of the United States from 1998 to 2014. As with the employment data, the output data indicate that California's economy is more sensitive to the business cycle than the rest of the United States, with California tending to outperform the rest of the country during economic expansions and underperform during recessions.

Figure 7: Growth in Real Per Capita Output (1998-2014)

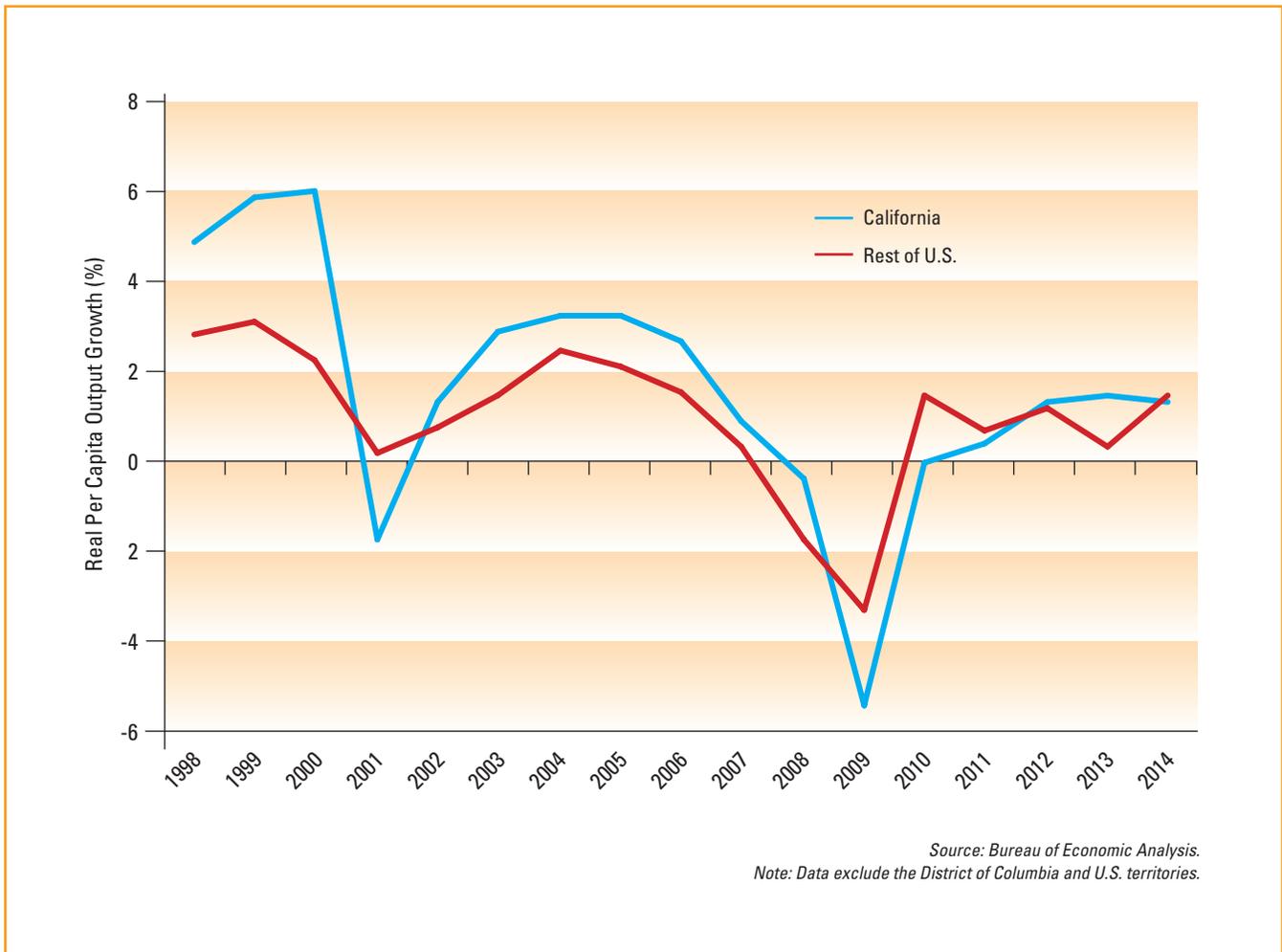
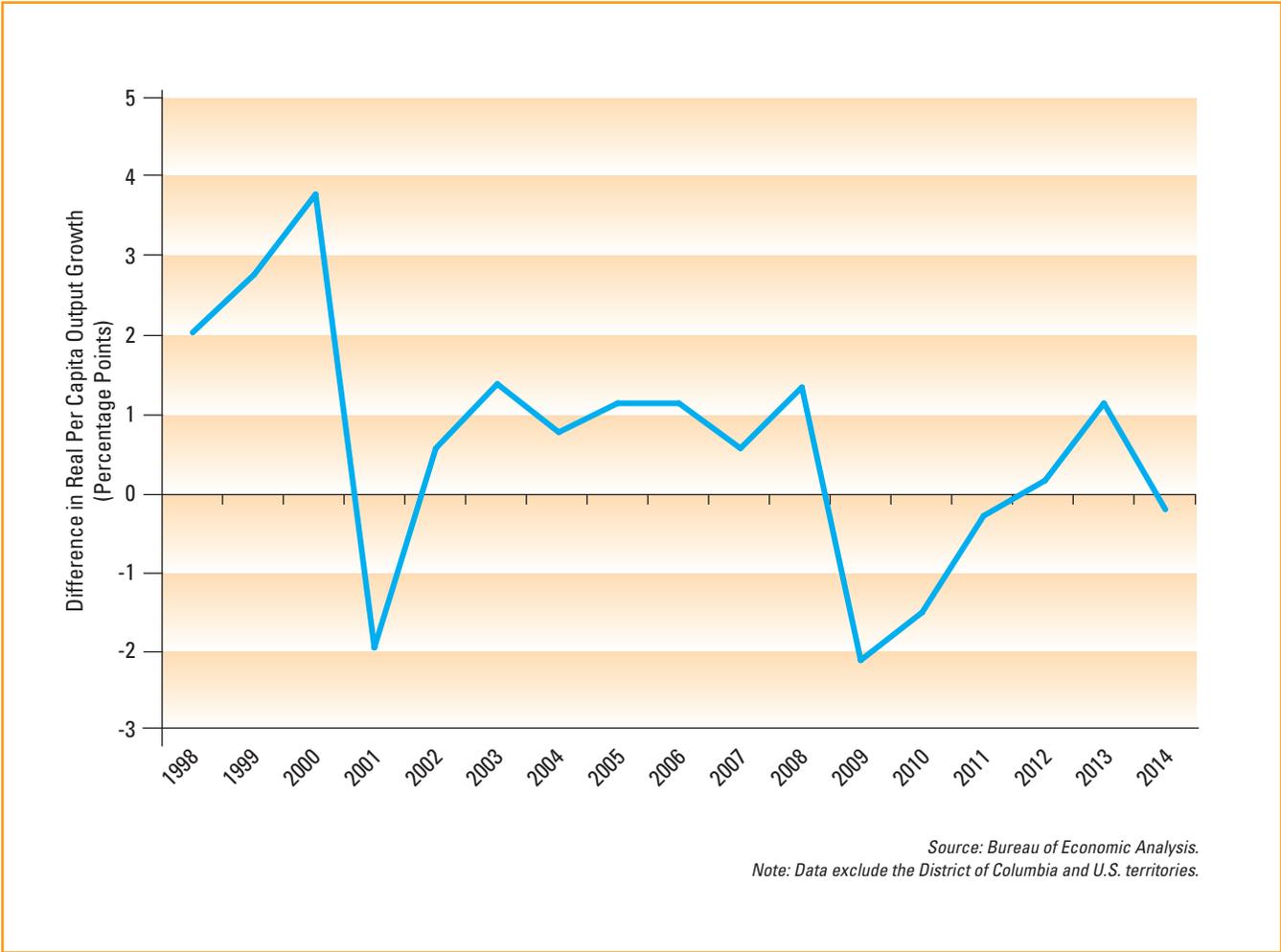


Figure 8 shows the difference between California and the rest of the country in terms of per capita output from 1998-2014. As the data indicate, California's relative growth advantage has been steadily declining. In 1998, California's real per capita output was about two percentage points higher than the rest of the United States. The balance has since shifted in favor of the rest of the nation, where per capita output is now higher by 0.2 percentage point. In 1998, California ranked seventh among the 50 states in real per capita output; by 2014, it had fallen to 23rd.

Figure 8: Difference in Growth in Real Per Capita Output California vs. the Rest of the United States (1998-2014)



4. Business Dynamism

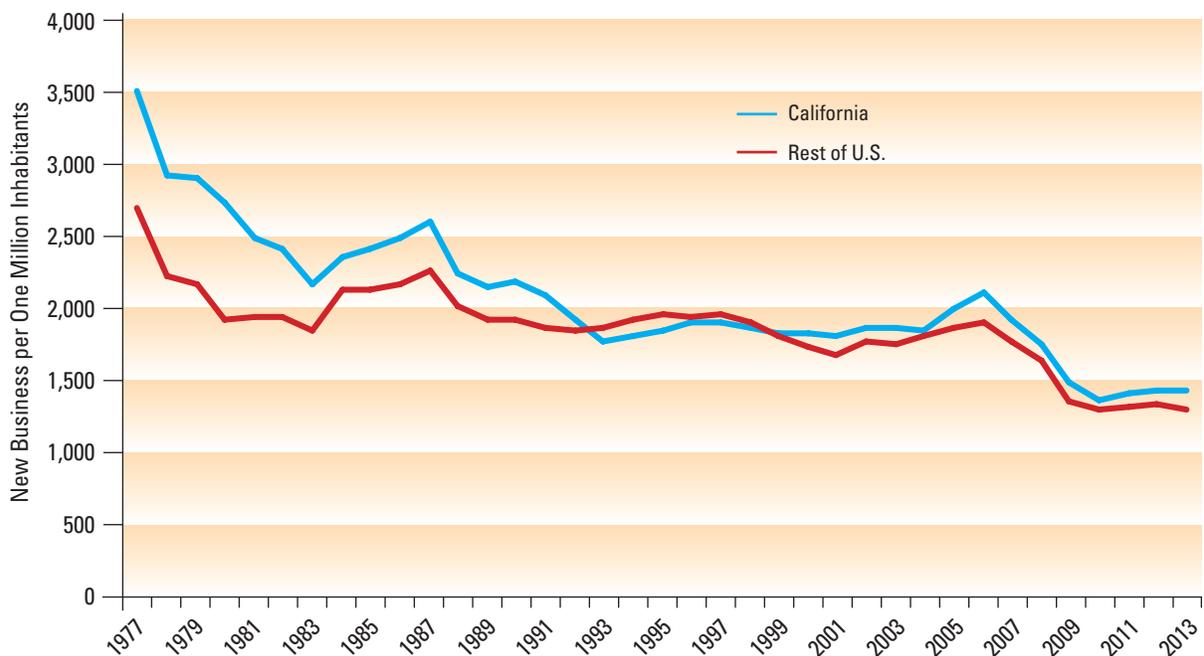
As discussed earlier, new research has found that business dynamism is a key factor in creating jobs, increasing productivity, and raising output; further, the United States has experienced a secular decline in dynamism in all regions and industries. California’s economy has historically performed well on key measures of dynamism—hardly a surprise in view of the innovation and entrepreneurship associated with California’s high-tech industries. Nonetheless, the data show that California’s performance on key measures of dynamism is deteriorating relative to the rest of the United States—that is, when it comes to business dynamism, California is “reverting to the mean.”

The first subsection below presents data on new business formation, entry, and exit. The second presents data on job creation and reallocation—that is, workforce fluidity.

a. New Business Formation, Entry, and Exit

One key measure of business dynamism is new business formation. Figure 9 shows new business formation per one million inhabitants for the period from 1977 to 2013 for California

Figure 9: New Businesses per One Million Inhabitants (1977-2013)

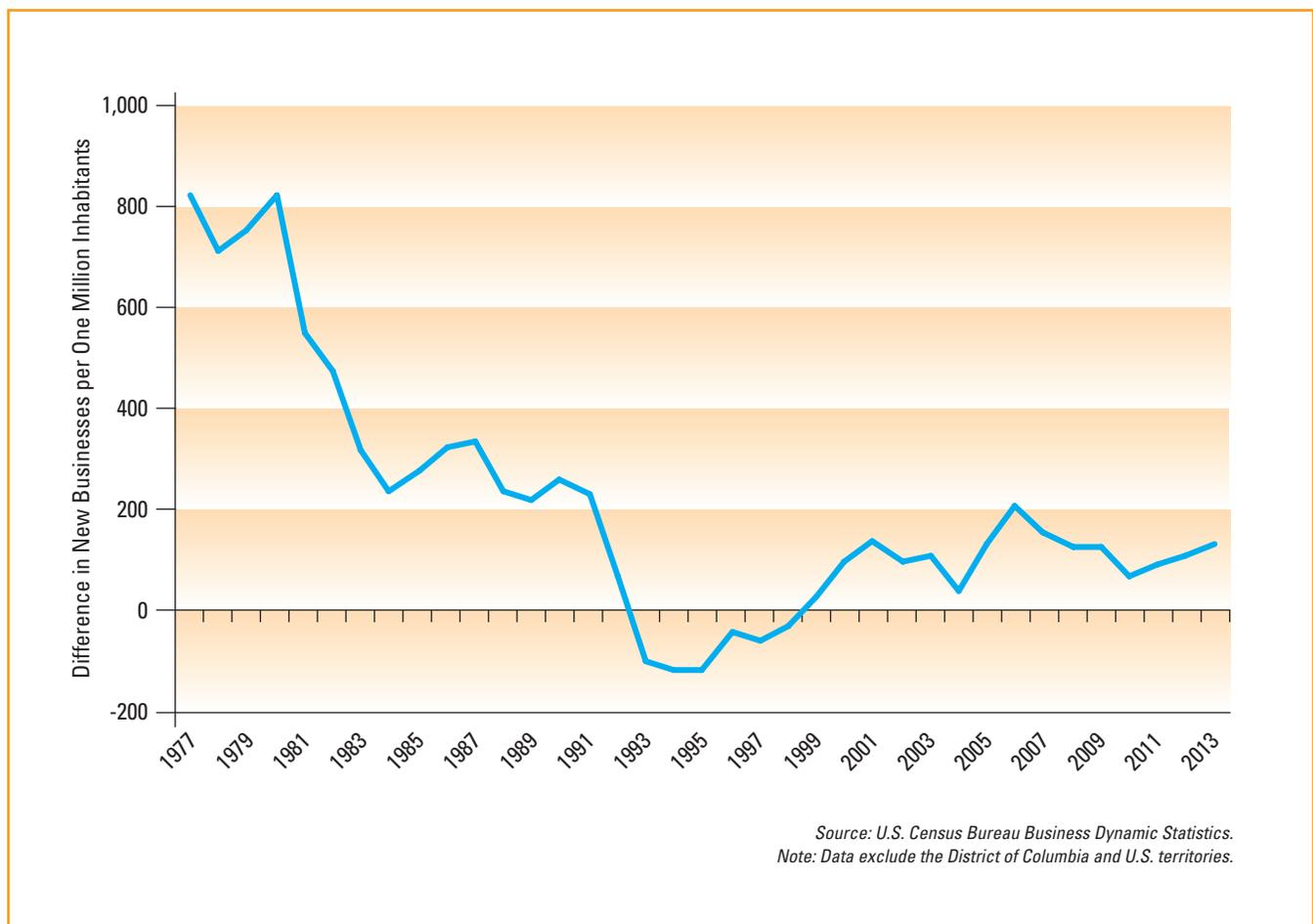


Source: U.S. Census Bureau Business Dynamic Statistics.
 Note: Data exclude the District of Columbia and U.S. territories.

compared with the rest of the United States. A new business is defined as an establishment owned by a firm less than a year old. As the figure shows, new business formation has been declining in California and the rest of the United States throughout this period, though California has held a consistent advantage.

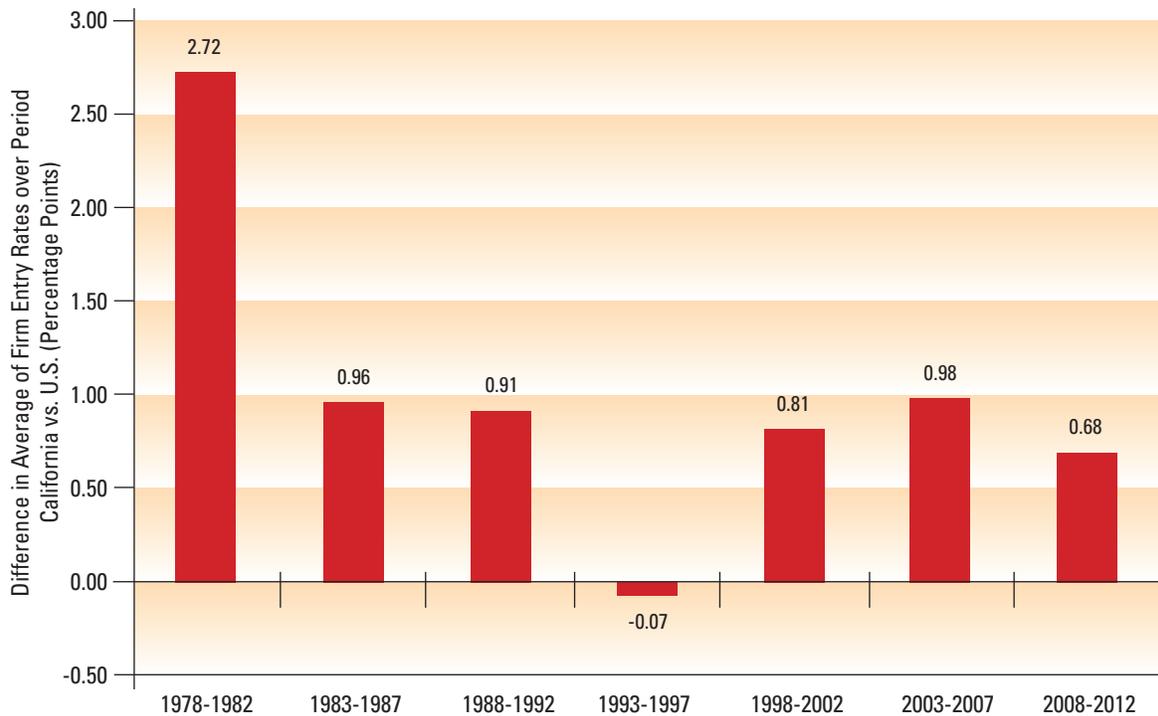
Figure 10 is based on the same data as in Figure 9, but it shows the difference between new business formation rates in California and the rest of the United States. The data indicate that California's advantage has nearly disappeared: In 1977, California added more than 800 more new businesses per million residents than the rest of the United States; by 2013, the difference had fallen to approximately 130 businesses. These data are consistent with the findings of the *2011 Report* (and other research) with respect to the effects of employment regulation on new business formation.

Figure 10: Difference in New Businesses per One Million Inhabitants California vs. the Rest of the United States (1977-2013)



In addition to the job creation rate, economists also track a related measure, the rate of new firm entry, which is defined as the number of firms with an age of less than one year in a given year divided by the total number of firms.¹⁰² Figure 11 shows the difference in the average of firm entry rates for all firm sizes between California and the United States as a whole over five-year periods from 1978 to 2012. As the data show, the average firm entry rate has been higher in California for every period except 1993-1997. However, California's advantage has declined significantly, from 2.72 percentage points in the 1978-82 period to 0.68 percentage point in the 2008-2012 period.

Figure 11: Difference in Average Firm Entry Rates over Five-Year Periods
California vs. United States (1978-2012)



Source: U.S. Census Bureau Business Dynamic Statistics.

Figures 12 and 13 narrow the focus to small businesses, which play an especially crucial role in business dynamism and innovation and are disproportionately affected by employment regulation. The data show that small business entry in California has declined relative to the United States as a whole.

Figure 12 shows the firm entry rate for those firms with fewer than 100 employees for the period 1978 to 2013. Once again, the data demonstrate that the rates for both California and the United States are declining, and that California has led the country for most of the period.

Figure 12: Entry Rate for Firms with Fewer Than 100 Employees (1978-2013)

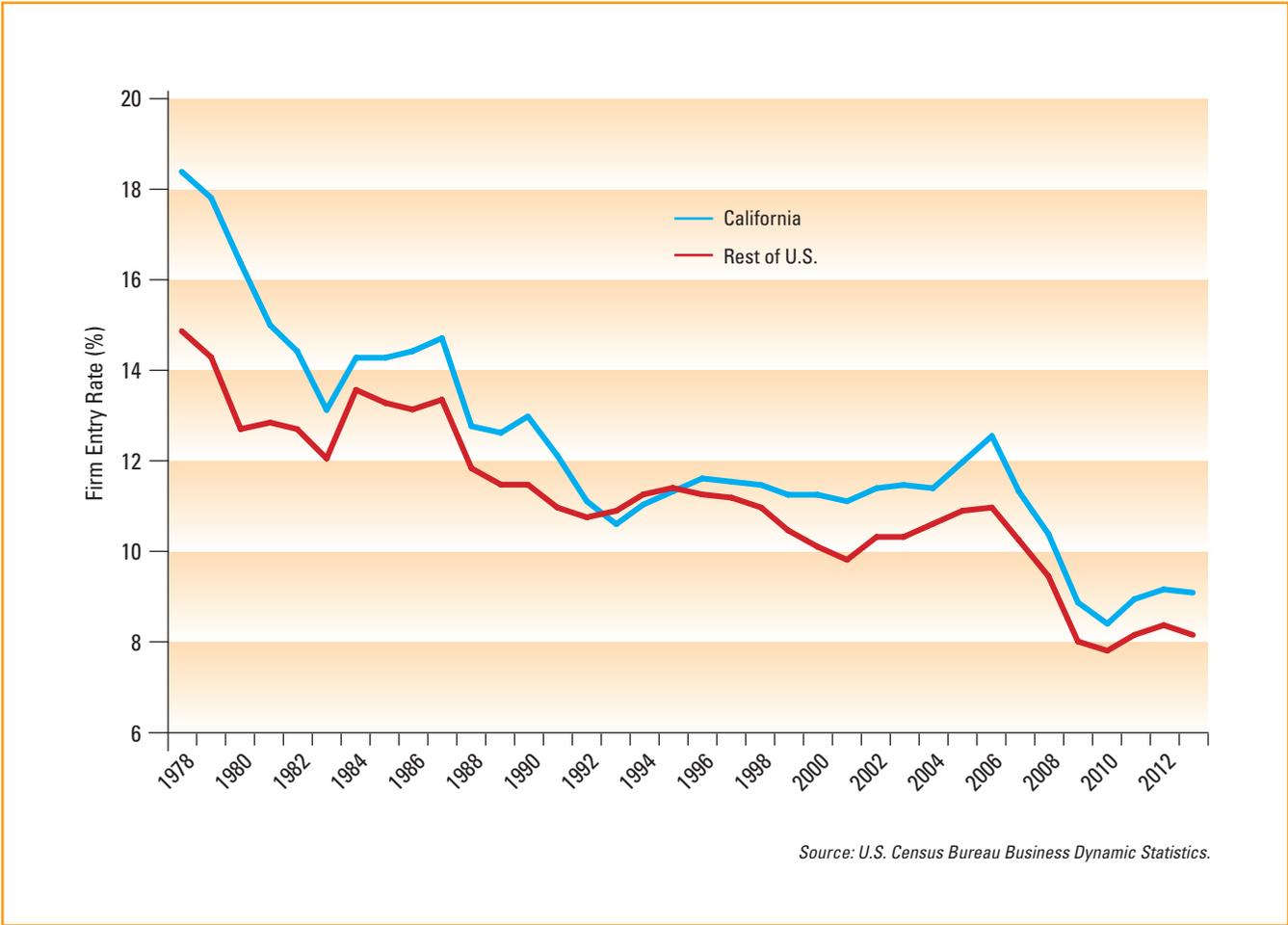
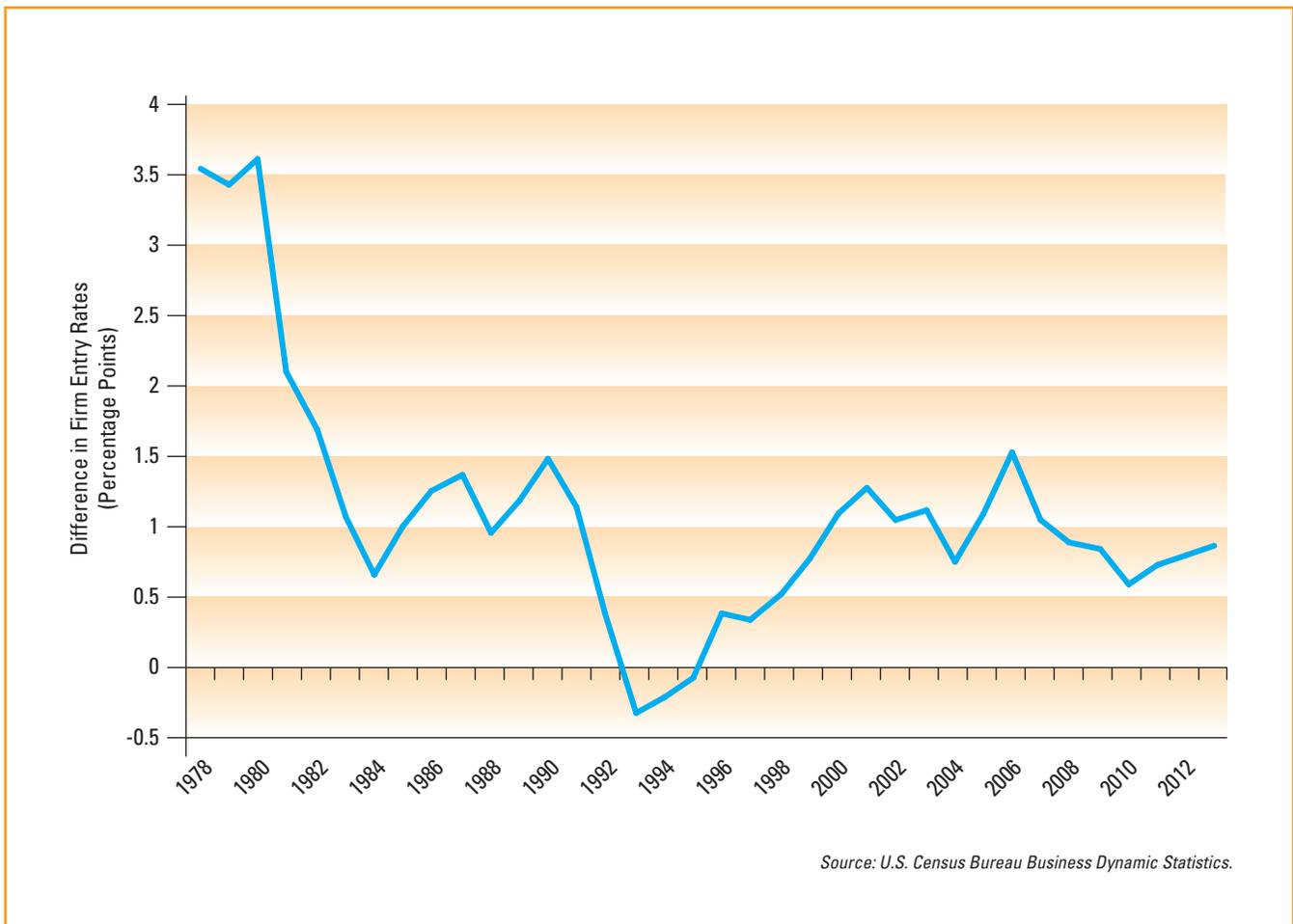


Figure 13 shows the difference in small business entry rates between California and the rest of the United States. California's advantage over the United States as a whole has narrowed dramatically, from approximately 3.5 percentage points in 1978 to less than one percentage point in 2013.

Figure 13: Difference in Entry Rate for Firms with Less Than 100 Employees
California vs. United States (1978-2013)

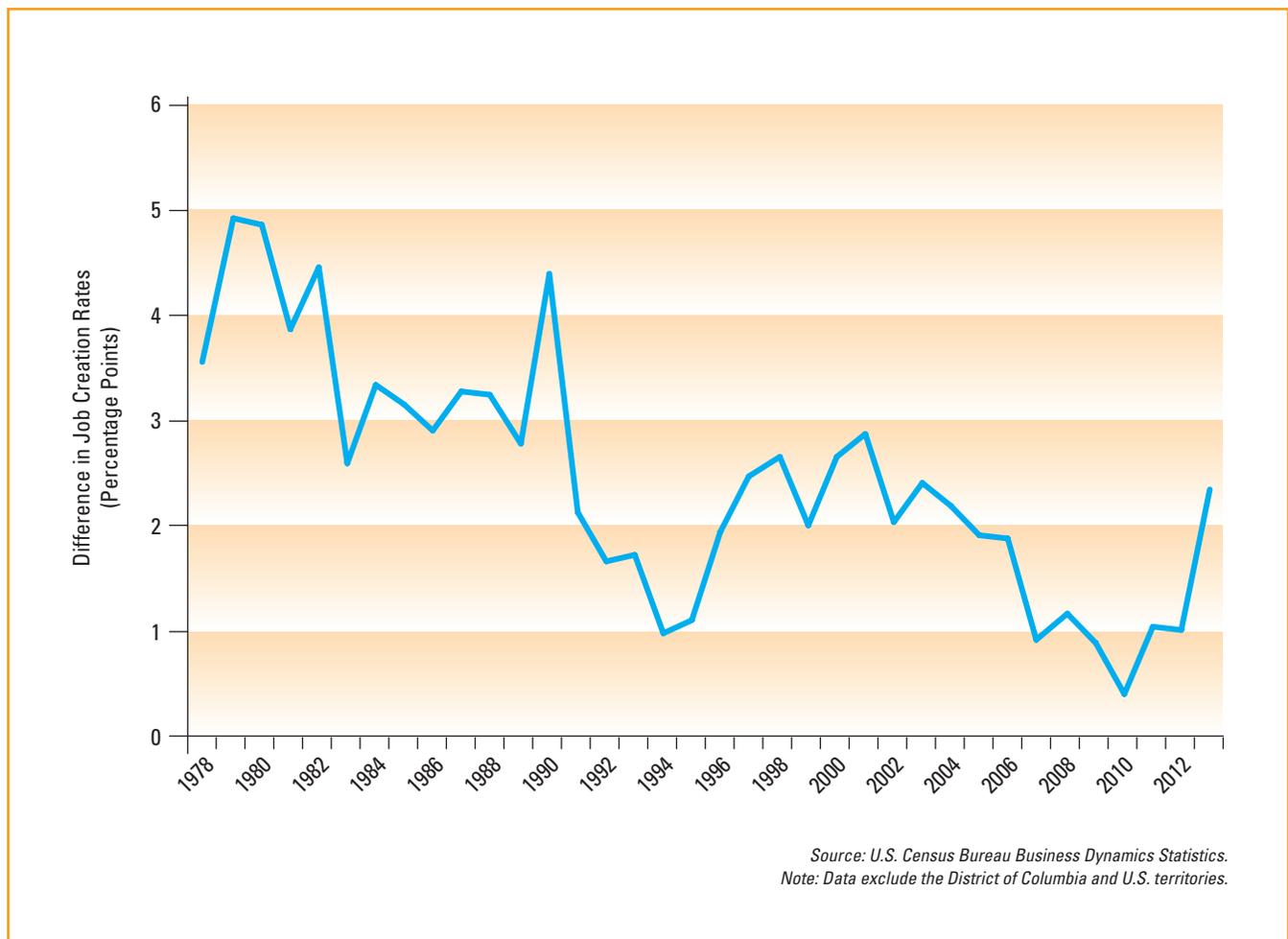


b. Job Creation and Labor Market Fluidity

A central finding of the business dynamism literature is that economic growth depends on labor market fluidity—that is, the ability of employers to match labor to its most productive uses. Thus, high levels of job creation and destruction are signs of an efficient market that effectively reallocates resources from less productive jobs to more productive ones.

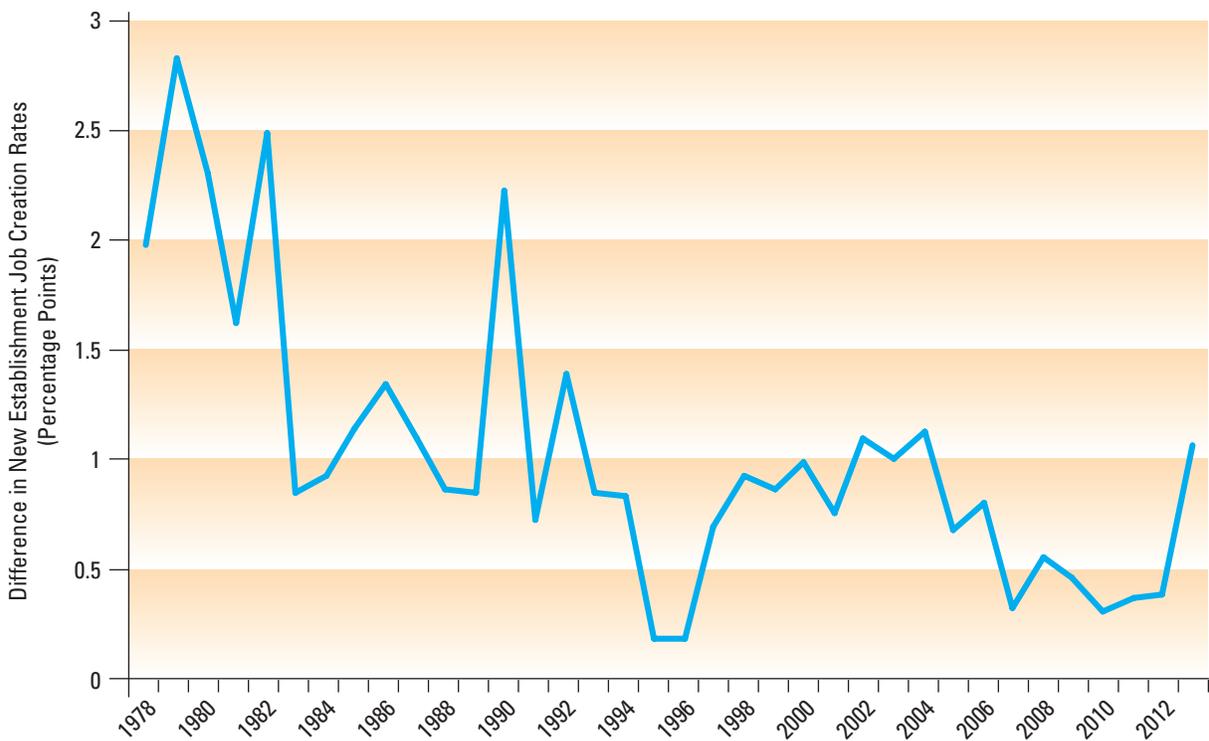
One measure of efficient labor markets is the rate of new job creation. Figure 14 shows the difference in the job creation rate between California and the rest of the United States for the period 1978 to 2013. The job creation rate in California has been higher than the rest of the country throughout this period. The difference between the two rates, though, has fallen steadily and significantly.

Figure 14: Job Creation Rate
California vs. the Rest of the United States (1978-2013)



One of most frequently studied measures of business dynamism is the rate of new job creation by startup businesses, defined as the number of jobs created by establishments less than a year old as a percentage of total employment. Figure 15 shows the difference between the startup job creation rates for California and the rest of the United States and the data display a familiar trend: The difference in the new establishment job creation rate decreased from approximately 2.0 percentage points in 1978 to about 1.1 percentage points in 2013.

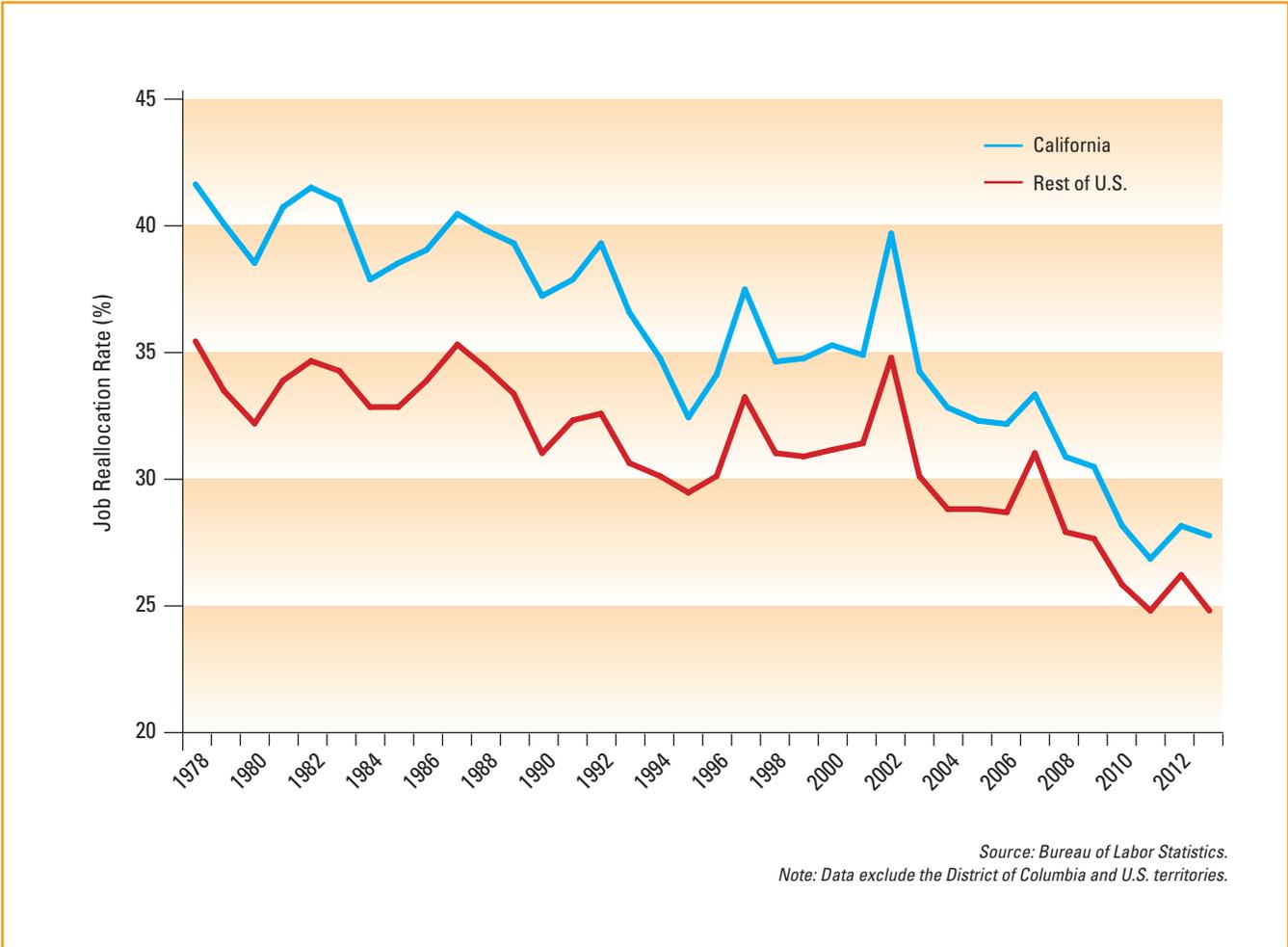
Figure 15: New Establishment Job Creation Rate
California vs. the Rest of the United States (1978-2013)



Source: U.S. Census Bureau Business Dynamics Statistics.
Note: Data exclude the District of Columbia and U.S. territories.

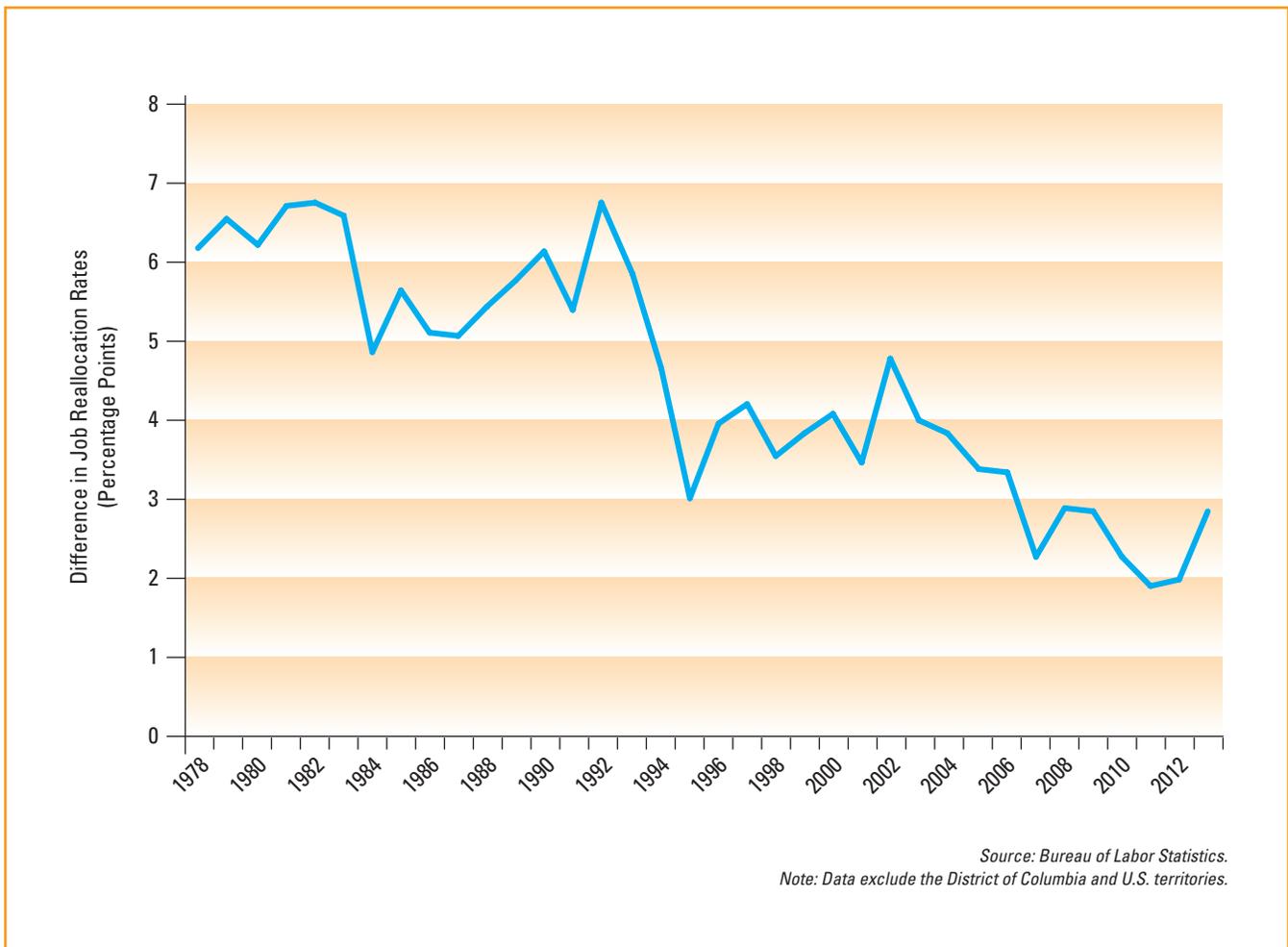
The last measure of labor market fluidity examined here is the job reallocation rate,¹⁰³ which is defined as the sum of the job creation rate and the job destruction rate.¹⁰⁴ Figure 16 shows the job reallocation rates of California and the rest of the United States from 1978 to 2013. California's job reallocation rate has been higher than that of the rest of the country throughout the period.

Figure 16: Job Reallocation Rate Trends (1978-2013)



Yet, as a visual inspection of Figure 16 suggests, and as illustrated further in Figure 17, California's advantage with respect to job reallocation has declined steadily over the past 35 years, with the gap falling from 6.2 percentage points in 1978 to 2.9 percentage points in 2013.

Figure 17: Difference in Job Reallocation Rates
California vs. the Rest of the United States (1978-2013)



Taken together, the measures of business dynamism and labor market fluidity tell a consistent story: California's economic performance is slipping relative to the rest of the United States.

V. Conclusion

This study has attempted to answer a question central to California's future: Are California's inherent advantages, such as a favorable climate, top universities, and a culture of innovation such that it can withstand a steadily increasing level of labor and employment regulation? The evidence presented in this study supports three major conclusions that may provide an answer.

- First, there is an inverse relationship between the level of state employment regulation and economic performance.
- Second, California has one of the most heavily regulated labor markets in the United States, and the level of regulation has increased significantly in the last few years.
- Third, California's economic performance is declining relative to the rest of the United States, with the state relinquishing its edge on measures where it has traditionally had an advantage, such as business dynamism, and dropping further on metrics in which it has traditionally trailed, such as unemployment.

Taken together, these conclusions suggest that the costs of employment regulation are having a harmful effect on California's economy, and that—absent changes—the effect is likely to grow.

Appendix 1: Changes in California Employment Policy and Labor Metrics (2011-2015)

TOPIC	CHANGE DESCRIPTION
Employment Relationships and the Costs of Separation	AB 1897 (2014) imposes liability on employers that contract for labor. The purpose of the law is to hold companies accountable for wage-and-hour violations when they use staffing agencies or other labor contractors to supply workers.
Minimum Wage and Living Wage Laws	Minimum wage increased from \$8.00 to \$9.00 on July 1, 2014, and increased to \$10.00 on January 1, 2016. Since that time, the state has enacted a \$15 per hour minimum wage. The current federal minimum wage is \$7.25. See "History of California Minimum Wage," California Department of Industrial Relations (available at https://www.dir.ca.gov/iwc/MinimumWageHistory.htm). See also "Wages," U.S. Department of Labor (available at http://www.dol.gov/dol/topic/wages/minimumwage.htm).
Unemployment Insurance and Workers' Compensation	<p>Workers' Compensation Benefits per \$100 of covered wages increased from \$1.35 in 2010 to \$1.41 in 2013, according to the most recent NASI Workers' Compensation Report. See Ishtar Sengupta and Marjorie Baldwin, <i>Workers' Compensation: Benefits, Coverage, and Costs, 2013</i>, National Academy of Social Insurance (August 2015) at Table 12 (available at https://www.nasi.org/sites/default/files/research/NASI_Work_Comp_Year_2015.pdf)</p> <p>California was ranked 1st in Workers' Compensation Premium Rate (Index Rate of 3.48 effective January 1, 2014 compared with 2.68 in 2010). See Oregon Department of Consumer and Business Services, "2014 Oregon Workers' Compensation Premium Rate Ranking Summary" (October 2014) (available at http://www.cbs.state.or.us/external/dir/wc_cost/files/report_summary.pdf) and Oregon Department of Consumer Business Services, "2010 Oregon Workers' Compensation Premium Rate Ranking Summary" (October 2010) (available at http://actprod.cbs.state.or.us/iportal/report_catalog.html).</p>

TOPIC	CHANGE DESCRIPTION
Wage and Hour Policies	<p>AB 241 (2013) enacted the Domestic Worker Bill of Rights which provides for specific overtime pay for certain in-home employees, e.g., a “domestic work employee who is a personal attendant.”</p> <p>SB 435 (2013) expanded meal and rest break mandates to cover heat-related issues.</p> <p>AB 1522 (2014), the Healthy Workplaces, Healthy Families Act of 2014, requires employers to provide paid sick leave to any employee who works in California for 30 days at an accrual rate of one hour for every 30 hours worked. Other enacted laws that increase state leave requirements include: SB 299 (2011), SB 272 (2011), SB 288 (2013), AB 11 (2013), SB 770 (2013), AB 1522 (2014), AB 2536 (2014), AB 304 (2015), SB 579 (2015), and AB 583 (2015).</p> <p>AB 1513 (2015) requires employers to pay a separate hourly wage for the nonproductive time of piece-rate employees.</p> <p>Several laws increased state posting and notice requirements. See SB 1193 (2012), AB 1384 (2013), AB 1522 (2014), and AB 438 (2015).</p> <p>AB 2674 (2012) requires an employer to maintain personnel records for a specified period of time and to provide a current or former employee, or his or her representative, with an opportunity to inspect and receive a copy of those records within a specified period of time, except during the pendency of a lawsuit filed by the employee or former employer relating to a personnel matter. See California State Assembly Bill No. 2674 (September 30, 2012) (available at https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201120120AB2674). AB 1522 (2014) states “[a]n employer shall keep for at least three years records documenting the hours worked and paid sick days accrued and used by an employee, and shall allow the Labor Commissioner to access these records pursuant to the requirements set forth in Section 1174.” See California State Assembly, Assembly Bill No. 1522 (September 10, 2014) (available at https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB1522).</p>
Collective Bargaining Issues	<p>SB 126 (2011) affects certification of bargaining representatives for agricultural employees. The new law provides that if the Agricultural Labor Relations Board (ALRB) finds employer misconduct that “in addition to affecting the outcome of the election, would render slight the chances of a new election reflecting the free and fair choice of employees,” then the ALRB can unilaterally certify the labor union as the exclusive bargaining agent for employees.</p>

TOPIC	CHANGE DESCRIPTION
<p>Litigation and Enforcement Climate</p>	<p>SB 588 (2015) amends the Labor Code and expands the powers of the Labor commissioner. The law allows the commissioner to issue levies and liens on employer property and to issue orders preventing employers from continuing to conduct business in California.</p> <p>There were many changes in restrictions on employers’ inquiries on applicant history, including restrictions on inquiries into credit history and prior criminal record. New laws also limit the use of the federal E-Verify system. See AB 22 (2011), AB 1236 (2011), SB 530 (2013), AB 218 (2013), AB 1650 (2014), and AB 622 (2015).</p> <p>SB 358 (2015) (Fair Pay Act) revises Labor Code section 1197.5, which deals with gender pay inequality or disparity. The Fair Pay Act expands the code eliminating the requirement that the pay difference be within the same establishment and changing the wording of the requirement that pay be equal for “equal work” for “equal skill, effort, and responsibility” to “substantially similar work, when viewed as a composite of skill, effort and responsibility.” There were many other additions to the statutes concerning discrimination. See SB 559 (2011), AB 887 (2011), SB 757 (2011), SB 117 (2011), AB 1964 (2012), AB 2386 (2012), SB 1038 (2012), AB 556 (2013), SB 400 (2013), AB 1443 (2014), AB 1660 (2014), AB 2751 (2014), AB 1792 (2014), SB 358 (2015), AB 1509 (2015), AB 560 (2015), and SB 703 (2015).</p>
<p><i>Sources: “An Overview of New 2012 Laws Affecting California Employers,” California Chamber of Commerce (2011); “An Overview of New 2013 Laws Affecting California Employers,” California Chamber of Commerce (2012); “An Overview of New 2014 Laws Affecting California Employers,” California Chamber of Commerce (2013); “An Overview of New 2015 Laws Affecting California Employers,” California Chamber of Commerce (2014); “An Overview of New 2016 Laws Affecting California Employers,” California Chamber of Commerce (2015).</i></p>	

Appendix 2: Methodology Used to Generate the Employment Regulation Index

The ERI was constructed by assigning a score of zero to one based on the level of regulation for each of the 34 characteristics. Higher scores signify more heavily regulated employment markets. For characteristics that are best categorized as binary, that is, with a yes or a no, such as whether a state has prevailing wage laws, a value of zero (no) or one (yes) is assigned. For characteristics that require more qualitative evaluation such as the aggressiveness of the state department of labor, states were placed into quartiles and given an integer score from zero to three. The integer scores were then normalized to the zero to one scale. Finally, for characteristics measured as continuous variables, such as the minimum wage, scores were normalized based on the highest and lowest values. The normalized scores were then aggregated for each state to produce a final score. The theoretical maximum raw score is 34, and the minimum is zero. The state scores were then normalized so that the maximum normalized score was 100.¹⁰⁵

Using a pooled cross-sectional/time series regression model that controlled for the main economic factors affecting economic growth, and including fixed effects to capture regional differences, the *2011 Report* estimated the cumulative incremental impact of employment regulation on two key measures of economic performance: job creation and new business formation.

Specifically, the *2011 Report* estimated separate regression models of the impact of employment regulation on the unemployment rate and new business formation (as measured by the number of new businesses per one million state inhabitants). For each model, two specifications were used. The first specification utilized three variables to measure the regulatory climate in each state: a small business tax climate index, the real state minimum wage, and the unionized share of the workforce.¹⁰⁶ The second specification replaced the minimum wage and union share variables with the ERI. All specifications contained several control variables to account for underlying economic factors expected to influence unemployment and new business formation, including the percentage of the population with a bachelor's degree, real state GDP per capita, and both annual and regional fixed effects.¹⁰⁷

As seen in Table 2, the regression results for Specification 1 showed that higher real minimum wages and levels of union participation are correlated with higher unemployment and less business creation, while a more business-friendly tax climate as measured by the small business tax climate index is correlated with lower unemployment and higher business creation. In Specification 2, which uses the ERI as an independent variable, higher ERI scores were associated with both higher unemployment rates and lower business creation.

Table 2: Summary of 2011 Employment Study Regression Analysis

Independent Variable	Coefficient	Standard Error	t-statistic	p> t
Model 1 - Dependent Variable = State Unemployment Rate				
<i>Specification 1</i>				
Real State Minimum Wage	0.281	0.116	2.42	0.016
Small Business Tax Climate Index	-0.088	0.049	-0.179	0.075
Unionized Share of Workforce	0.027	0.013	2.04	0.042
<i>Specification 2</i>				
Employment Regulation Index	0.008	0.004	2.35	0.019
Small Business Tax Climate Index	-0.109	0.049	-2.22	0.027
Model 2 - Dependent Variable = New Businesses per One-Million Inhabitants				
<i>Specification 1</i>				
Real State Minimum Wage	-71.47	47.92	-1.49	0.137
Small Business Tax Climate Index	138.97	20.33	6.84	0.000
Unionized Share of Workforce	-7.51	5.54	-1.35	0.177
<i>Specification 2</i>				
Employment Regulation Index	-2.757	1.482	-1.86	0.064
Small Business Tax Climate Index	142.636	20.049	7.11	0.000
<i>Source: 2011 Report at Appendix B.</i>				

Based on the coefficient estimates from the Specification 2 regression analyses, the 2011 Report estimated the impact of a “perfect” ERI score (i.e., a “1” on the 1-to-100 ERI scale) on both the unemployment rate and new business formation for each state.¹⁰⁸ As seen in Table 3, an increase/decline of 1.0 in the ERI is associated with a 0.008 percent increase/decline in the unemployment rate and a 2.757 decline/increase in the number of new businesses created annually per one-million inhabitants.

Endnotes

- 1 It is important to note that labor laws and regulations do not impact all employers equally. Some larger employers and employers in particular sections of the state (e.g., Silicon Valley) may have less difficulty than others in meeting regulatory requirements.
- 2 Robin Respaut, "California Surpasses France as World's Sixth-Largest Economy," Reuters, (June 17, 2016) (available at <http://www.reuters.com/article/us-california-economy-idUSKCN0Z32K2>).
- 3 See Jill Coplan, "5 States with the Most Fortune 500 Companies," *Fortune* (June 30, 2015) (available at <http://fortune.com/2015/06/30/states-most-fortune-500/>). California has the third-highest number of Fortune 500 companies (53) behind New York (55) and Texas (54).
- 4 See "Quarterly Census of Employment Wages," Bureau of Labor Statistics (available at http://www.bls.gov/cew/apps/data_views/data_views.htm#tab=Tables). Data are from the second quarter of 2015.
- 5 The 2016 edition of the Tax Foundation's *State Business Tax Climate Index* ranked California as the third-worst tax climate in the country, a position it has held since 2013. (See Jared Walczak, Scott Drenkard, and Joseph Henchman, *2016 State Business Tax Climate Index*, The Tax Foundation (November 17, 2015) at Table 2 (hereafter, *Tax Climate Index Report*) (available at http://taxfoundation.org/sites/taxfoundation.org/files/docs/TF_2016_StateBusinessTaxClimateIndex.pdf)). Similarly, the most recent edition of the Mercatus Center's *Freedom in the 50 States* report, which ranks states based on personal and economic freedom using data from 2011, ranked California as the worst state in terms of regulatory climate. (See William Ruger and Jason Sorens, *Freedom in the 50 States*, Mercatus Center (2013), available at <http://freedominthe50states.org/print>). The most recent *Rich States, Poor States* report ranked California as 37th in terms of economic performance among all states, but 44th in terms of economic outlook—reflecting its unfavorable regulatory climate. (See Arthur Laffer, Stephen Moore, and Jonathan Williams, *Rich States, Poor States* 8th Edition, American Legislative Exchange Council (2015) (hereafter *Rich State, Poor State*), available at https://www.alec.org/app/uploads/2015/10/RSPS_8th_Edition-Final.pdf). The U.S. Chamber Institute for Legal Reform ranks California fourth worst in the United States when it comes to business liability litigation. *2015 Lawsuit Climate Survey, Ranking the States, A survey of the Fairness and Reasonableness of State Liability Systems*, U.S. Chamber Institute of Legal Reform (September 2015) (available at http://www.instituteforlegalreform.com/uploads/sites/1/ILR15077-HarrisReport_BF2.pdf).
- 6 Jeffrey A. Eisenach et al., *The Impact of State Employment Policies on Job Growth*, U.S. Chamber of Commerce (2011) (available at https://www.uschamber.com/sites/default/files/documents/files/wfi_50_state_review.pdf) (hereafter, *2011 Report*).
- 7 See, e.g., Tim Dickinson, "Jerry Brown's Tough-Love California Miracle," *Rolling Stone* (August 29, 2013) (available at <http://www.rollingstone.com/politics/news/jerry-browns-tough-love-miracle-20130829>).
- 8 See *2011 Report* at 12-21 for a review of earlier research.
- 9 See Appendix 2 for a full explanation of the methodology used to generate the ERI. See also the *2011 Report* at Table 1 for a comprehensive list of categories and subcategories used to derive the ERI. A 2011 study by Hinton and McKnight utilizes the rankings from the ERI ("Good," "Fair," and "Poor") as an index in a regression analysis estimating the variation in tort costs across states. The estimated impact on tort costs of moving up one ranking in the index (increasing the level of employment regulation) is positive and significant at the 10 percent level. See Paul J. Hinton and David L. McKnight, "Creating Conditions for Economic Growth: The Role of the Legal Environment," NERA Economic Consulting (October 26, 2011) at 14 and 18 (available at http://www.instituteforlegalreform.com/uploads/sites/1/Economic_Growth_Working_Paper_Oct2011_0.pdf).
- 10 See *2011 Report* at 100-101 and Table 3-4.
- 11 *2011 Report* at 5.

- 12 Maria Cervini-Plà, Xavier Ramos, and Josè Ignacio Silva, "Wage Effects of Non-Wage Labour Costs," *European Economic Review* 72 (November 2014) 113-137 (hereafter, Cervini-Plà et al., 2014).
- 13 See Cervini-Plà et al. (2014) at Table 5.
- 14 Binyamin Berdugo and Sharon Hadad, "How Do Firing Costs Affect Innovation and Growth when Workers' Ability is Unknown? Employment Protection as a Burden on a Firm's Screening Process," *The European Journal of Comparative Economics* 9;1 (April 2012) 3-30 (hereafter, Berdugo and Hadad, 2012).
- 15 Berdugo and Hadad (2012) at 24.
- 16 See "Raise the Wage," the White House (available at <https://www.whitehouse.gov/raise-the-wage>).
- 17 For instance, Massachusetts passed legislation increasing the minimum wage to \$9.00, \$10.00 and \$11.00 in 2015, 2016 and 2017, respectively. See "Important Changes to Massachusetts Minimum Wage," Massachusetts Department of Labor Standards (available at <https://retailersma.org/sites/default/files/public-message-explaining-mw-increases-effective-1-1-15.pdf>). Maryland recently passed legislation similar to the White House proposal raising the minimum wage to \$10.10 effective July 1, 2018. See Michael Dresser, "O'Malley Signs Maryland Minimum-Wage Increase into Law," *The Baltimore Sun* (May 5, 2014) (available at http://articles.baltimoresun.com/2014-05-05/news/bs-md-minimum-signing-20140505_1_minimum-wage-increase-minimum-wage-bill-minimum-wage). For a full list of current and historical minimum wage by state, see "Changes in Basic Minimum Wages in Non-Farm Employment Under State Law: Selected Years 1968 to 2016," U.S. Department of Labor (available at <http://www.dol.gov/whd/state/stateMinWageHis.htm>). See also Heidi Shierholz, "On New Year's, 14 States Will #RaiseTheWage," U.S. Department of Labor Blog (December 29, 2015) (available at <https://blog.dol.gov/2015/12/29/on-new-years-14-states-will-raisethewage/>).
- 18 See Andrew Hanson and Zackary Hawley, "The \$10.10 Minimum Wage Proposal: An Evaluation across States," *Journal of Labor Research* 35 (2014) 323-345 (hereafter, Hanson and Hawley, 2014).
- 19 See Hanson and Hawley (2014) at Table 1.
- 20 See Hanson and Hawley (2014) at 323.
- 21 See "The Effects of a Minimum-Wage Increase on Employment and Family Income," Congressional Budget Office (February 2014) (available at https://www.cbo.gov/sites/default/files/113th-congress-2013-2014/reports/44995-MinimumWage_OneColumn.pdf) (hereafter, CBO, 2014).
- 22 CBO (2014) at 2.
- 23 See David Neumark, J.M. Salas, and William Wascher, "Revisiting the Minimum Wage-Employment Debate: Throwing Out the Baby with the Bathwater?" *Industrial and Labor Relations Review* 67 (2014) 608-648 (hereafter, Neumark et al., 2014). Neumark et al. analyze the methods of the 2010 study by Dube et al. as well as the 2011 study by Allegretto et al. These studies criticize the panel data approach used in previous studies because it does not control for spatial heterogeneity. These studies use research methods designed to correct for the heterogeneity found in the other studies. See Arindrajit Dube, T. William Lester, and Michael Reich, "Minimum Wage Effects across State Borders: Estimates Using Contiguous Counties," *Review of Economics and Statistics* 92;4 (2010) 945-964; see also Sylvia Allegretto, Arindrajit Dube, and Michael Reich, "Do Minimum Wages Really Reduce Teen Employment? Account for Heterogeneity and Selectivity in State Panel Data," *Industrial Relations* 50;2 (2011) 205-240.
- 24 Neumark et al. (2014) at 644.
- 25 See Neumark et al. (2014) at 617-634.

- 26 Joseph Sabia, "The Effects of Minimum Wages over the Business Cycle," *Journal of Labor Research* 35 (2014) 227-245 (hereafter, Sabia, 2014).
- 27 See Sabia (2014) at Table 5.
- 28 See Bruce Meyer and Wallace Mok, "A Short Review of Recent Evidence on the Disincentive Effects of Unemployment Insurance and New Evidence from New York State," *National Tax Journal* 67;1 (March 2014) 219-252 (hereafter, Meyer and Mok, 2014). New York increased the maximum weekly benefit by 36 percent. See Meyer and Mok (2014) at 226.
- 29 See Meyer and Mok (2014) at 229-238.
- 30 Annette Bergemann and Regina Riphahn, "Female Labour Supply and Parental Leave Benefits—The Causal Effect of Paying Higher Transfers for a Shorter Period of Time," *Applied Economics Letters* 18 (2011) 17-20 (hereafter, Bergemann and Riphahn, 2011).
- 31 Bergemann and Riphahn (2011) at 19.
- 32 Michael Hicks and Michael LaFaive, "Economic Growth and Right-to-Work Laws," Mackinac Center for Public Policy (2013) (hereafter, Hicks and LaFaive, 2013).
- 33 Richard Vedder and Jonathan Robe, "An Interstate Analysis of Right to Work Laws," Competitive Enterprise Institute (July 16, 2014) (hereafter, Vedder and Robe, 2014) (available at <https://cei.org/content/interstate-analysis-right-work-laws>).
- 34 Jeffrey A. Eisenach, *Right-to-Work Laws: The Economic Evidence*, NERA Economic Consulting (June 2015) (hereafter, Eisenach, 2015).
- 35 The report notes, "These data are broadly consistent with the weight of the academic literature and empirical studies of the impact of RTW laws and thus tend to support the proposition that RTW statutes and lower union density are associated with higher rates of economic performance." (Eisenach (2015) at 4).
- 36 See *2011 Report* at 6 (finding that state-level employment regulation reduced new business formation by 9.4 percent in 2009). See, generally, Lloyd Dixon et al., "The Impact of Regulation and Litigation on Small Businesses and Entrepreneurship: An Overview," *In the Name of Entrepreneurship?* (2007) 17-68 (hereafter Dixon et al., 2007) ; Ben Gitis and Sam Batkins, "Regulatory Impact on Small Business Establishments," American Action Forum (April 24, 2015) (hereafter, Gitis and Batkins, 2015) (available at <http://americanactionforum.org/research/regulatory-impact-on-small-business-establishments>); W. Mark Crain, "The Impact of Regulatory Costs on Small Firms," U.S. Small Business Administration Office of Advocacy (September 2005) (hereafter Crain (2005)) (<https://www.sba.gov/sites/default/files/files/rs264tot.pdf>). Note that the Small Business Administration released an updated report in 2010, which includes "Workplace" regulations in a much broader "Economic" regulation category. See Nicole Crain and W. Mark Crain, "The Impact of Regulatory Costs on Small Firms," Small Business Administration Office of Advocacy (September 2010) (available at <https://www.sba.gov/sites/default/files/The%20Impact%20of%20Regulatory%20Costs%20on%20Small%20Firms%20%28Full%29.pdf>).
- 37 See, e.g., Ryan Decker et al., "The Role of Entrepreneurship in U.S. Job Creation and Economic Dynamism," *Journal of Economic Perspective* 28; 3 (Summer 2014) 3–24 at 19 ("One possibility is that the business climate, broadly defined, has changed in ways that impede job reallocation—that is to say, by impeding entry, exit, expansion, and contraction."). See also Hugo Hopenhayn and Richard Rogerson, "Job Turnover and Policy Evaluation: A General Equilibrium Analysis," *Journal of Political Economy* 101(5) (1993) 915–938 at 937 ("We found that a tax on job destruction significantly reduced steady-state employment. More important, we also found that these policies implied large welfare losses, resulting primarily from a significant decrease in average labor productivity.")

- 38 Robert Atkinson and Adams Nager, *The 2014 State New Economy Index*, Information Technology and Innovation Foundation (June 2014) at 27 (hereafter *2014 State New Economy*) (available <https://itif.org/publications/2014/06/11/2014-state-new-economy-index>).
- 39 See Ian Hathaway and Robert Litan, "Declining Business Dynamism in the United States: A Look at States and Metros," The Brookings Institution (May 2014) at 1 (hereafter, Hathaway and Litan, 2014) (available at http://www.brookings.edu/~media/research/files/papers/2014/05/declining-business-dynamism-litan/declining_business_dynamism_hathaway_litan.pdf).
- 40 John Haltiwanger, "Job Creation and Firm Dynamics in the United States," *Innovation Policy and the Economy* 12 (April 2012) 17-38 at 20 (hereafter, Haltiwanger, 2012).
- 41 Haltiwanger (2012) at 29.
- 42 Haltiwanger (2012) at 25. Note a similar analysis was performed on the manufacturing industry. Although the results were more modest, the effects on net entry remained substantial.
- 43 Haltiwanger (2012) at 26.
- 44 John Haltiwanger, Ron Jarmin, Javier Miranda, "Who Creates Jobs? Small Versus Large Versus Young," *The Review of Economic Statistics* 95;2 (May 2013) 347-361 (hereafter, Haltiwanger et al., 2013).
- 45 See Haltiwanger et al. (2013) at 355. The authors note a caveat stating, "the base-year measure of firm size has several undesirable attributes for examining firm size and growth. The curve plotting the estimated effects from our preferred average size specification with no age controls shows that the inverse relationship remains, but the quantitative relationship is substantially muted. Comparing the base and average size results suggests that the effects of regression to the mean are quite strong in the smallest size classes." (Haltiwanger et al. (2013) at 355.).
- 46 Steven Davis and John Haltiwanger, "Labor Market Fluidity and Economic Performance," National Bureau of Economic Research (September 2014) (hereafter, Davis and Haltiwanger, 2014) (available at <http://www.nber.org/papers/w20479.pdf>).
- 47 See Davis and Haltiwanger (2014) at 15-16 and Table 1.
- 48 Davis and Haltiwanger (2014) at Table 2.
- 49 Davis and Haltiwanger (2014) at 37.
- 50 See John Haltiwanger, Ian Hathaway, and Javier Miranda, "Declining Business Dynamism in the U.S. High-Technology Sector," Kauffman Foundation (February 2014) (hereafter, Haltiwanger et al., 2014).
- 51 See Haltiwanger et al (2014) at Figure 2.
- 52 Haltiwanger et al. (2014) at 9.
- 53 See *2011 Report* at 38 stating, "California is unique in its hostility to noncompetition agreements. Even narrowly tailored restraints are not only unenforceable in California, but can also be considered unfair business practices."
- 54 California Supreme Court, *Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 100 Cal.Rptr.2d 352; 8 P.3d 1089 (October 5, 2000) (available at <http://scocal.stanford.edu/opinion/guz-v-bechtel-national-inc-31952>).
- 55 "Paydays, Pay Periods, and the Final Wages," California Department of Industrial Relations (available at http://www.dir.ca.gov/dlse/faq_paydays.htm).

- 56 See "History of California Minimum Wage," California Department of Industrial Relations (available at <https://www.dir.ca.gov/iwc/MinimumWageHistory.htm>); see also "History of Federal Minimum Wage Rates Under the Fair Labor Standards Act, 1938 – 2009," U.S. Department of Labor (available at <http://www.dol.gov/whd/minwage/chart.htm>).
- 57 See *2011 Report* at 39. The Los Angeles minimum wage also increases yearly with the Consumer Price Index.
- 58 See "2010 Oregon Workers' Compensation Premium Rate Ranking Summary," Oregon Department of Consumer and Business Services (October 2010) (available at http://actprod.cbs.state.or.us/iportal/report_catalog.html).
- 59 See NASI, "Workers' Compensation: Benefits, Coverage, and Costs, 2013" (2015) at Table 12 (available at https://www.nasi.org/sites/default/files/research/NASI_Work_Comp_Year_2015.pdf).
- 60 As noted by the California Department of Industrial Relations, "a nonexempt employee ... shall not be employed more than eight hours in any workday or more than 40 hours in any workweek unless he or she receives one and one-half times his or her regular rate of pay for all hours worked over eight hours in any workday and over 40 hours in the workweek." For more detail on California overtime law, see, "Overtime," California Department of Industrial Relations (available at http://www.dir.ca.gov/dlse/faq_overtime.htm). For a more detailed explanation of the differences between federal overtime law and California law see "Complying with California Overtime Payment Law," Society for Human Resource Management (January 1, 2014) (available at <https://www.shrm.org/templatestools/toolkits/pages/californiacomplyingwithcaliforniaovertimeandwagepaymentlaw.aspx>).
- 61 See "Rest Periods/Lactation Accommodation," California Department of Industrial Relations (Revised March 4, 2011) (available at http://www.dir.ca.gov/dlse/faq_restperiods.htm).
- 62 See "Vacation," California Department of Industrial Relations (available at http://www.dir.ca.gov/dlse/faq_vacation.htm).
- 63 *2011 Report* at 38.
- 64 Assembly Bill 10 was signed into law September 25, 2013, raising the minimum wage to \$9 effective January 1, 2014 and then increasing the minimum wage to \$10 effective January 1, 2016. See California Assembly Bill 10, California State Legislature (September 25, 2013) (available at <https://legiscan.com/CA/text/AB10/id/890697/California-2013-AB10-Chaptered.html>).
- 65 See David Siders, "Jerry Brown Signs \$15 Minimum Wage in California," *The Sacramento Bee* (April 4, 2016) (available at <http://www.sacbee.com/news/politics-government/capitol-alert/article69842317.html>). Lawmakers and the Governor embraced the higher level after union groups moved to bring the issue to a referendum.
- 66 See Patrick McGreevy, "California Senate Passes Bill Raising Minimum Wage to \$13 from \$9," *Los Angeles Times* (June 1, 2015) (available at <http://touch.latimes.com/#section/-1/article/p2p-83661767/>).
- 67 See "Assembly Bill 1522," California State Legislature (Chaptered September 10, 2014) (available at https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB1522).
- 68 See CalChamber Employment Law Counsel, "The Who, What, When and How of Mandatory Paid Sick Leave in California: New Amendments Effective July 13, 2015," California Chamber of Commerce (available at <http://www.calchamber.com/hr-california/Pages/paid-sick-leave.aspx?tsource=WSO>).
- 69 "Department of Finance Bill Analysis," California Department of Finance (June 15, 2014) (available at http://www.dof.ca.gov/legislative_analyses/LIS_PDF/13/AB-1522-20140804085812AM-AB01522.pdf).
- 70 Sean Wilson and Adam Siegel, "California Legislature to Decide Mandatory Paid Sick Leave Bill," *The National Law Review* (August 8, 2014) (available at <http://www.natlawreview.com/article/california-legislature-to-decide-mandatory-paid-sick-leave-bill>).

- 71 See Assembly Bill 1513, California State Legislature (Chaptered October 10, 2015) (available at https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201520160AB1513#).
- 72 Richard Rahm and Angela Rafoth, "California Governor Signs AB 1513, Severely Limiting Piece-Rate Compensation but Throwing a Liability Life Raft to Employers," Littler Mendelson P.C. (October 12, 2015) (available at <https://www.littler.com/publication-press/publication/california-governor-signs-ab-1513-severely-limiting-piece-rate>) (hereafter, Rahm and Rafoth, 2015).
- 73 Rahm and Rafoth (2015).
- 74 Victor Cosentino, "Three New California Laws Affecting Trucking Companies, Part 1: AB 1513," Larson & Gaston (November 12, 2015) (available at <http://www.larsongaston.com/blog/2015/11/three-new-california-laws-affecting-trucking-companies-part-1-ab-1513.shtml>).
- 75 Kerry Friedrichs and David Kadue, "Governor Signs Burdensome Piece Rate Legislation," Seyfarth Shaw (October 14, 2015) (available at <http://www.seyfarth.com/publications/MA1014015-LE>).
- 76 Rahm and Rafoth (2015).
- 77 See Assembly Bill 1897, California State Legislature (Chaptered September 28, 2014) (available at https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB1897).
- 78 Saba Shatar, "Passing AB 1897 Means Greater Liability for Employers Who Use Labor Contractors," DrinkerBiddle (May 22, 2014) (available at <http://www.drinkerbiddle.com/resources/publications/2014/passing-ab-1897-means-greater-liability-for-employers-who-use-labor-contractors>).
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- 80 See Assembly Bill 22, California State Legislature (Chaptered October 9, 2011) (available at http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_0001-0050/ab_22_bill_20111009_chaptered.pdf). See also Assembly Bill 218, California State Legislature (Chaptered October 10, 2013) (available at http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_0201-0250/ab_218_bill_20131010_chaptered.pdf). See also Assembly Bill 1650, California State Legislature (Chaptered September 30, 2014) (available http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_1601-1650/ab_1650_bill_20140930_chaptered.pdf).
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- 84 Ishita Sengupta and Marjorie Baldwin, *Workers' Compensation: Benefits, Coverage, and Costs, 2013*, National Academy of Social Insurance (August 2015) at Table 12 (available at https://www.nasi.org/sites/default/files/research/NASI_Work_Comp_Year_2015.pdf).
- 85 California Labor Code Section 2698-2699.5.

- 86 See Littler Mendelson Client Update: “Private Attorneys General Act Amended to Address Some Excesses,” October 5, 2015. (Available at <https://www.littler.com/publication-press/publication/private-attorneys-general-act-paga-amended-address-some-excesses>). See also Jackson Lewis California Workplace Law Blog, “State Budget Proposal Seeks to Reduce PAGA Litigation Through Increased State Oversight,” February 26, 2016. (Available at <http://www.californiaworkplacelawblog.com/2016/02/articles/paga/state-budget-proposal-seeks-to-reduce-paga-litigation-through-increased-state-oversight/>).
- 87 See “Population of California and the United States, 1940 to 2007,” California Department of Finance, Demographic Research Unit (available at http://www.dof.ca.gov/html/FS_DATA/STAT-ABS/documents/B1.pdf).
- 88 See “Annual Gross Domestic Product (GDP) by State,” Bureau of Economic Analysis (available at <http://www.bea.gov/itable/itable.cfm?ReqID=70&step=1#reqid=70&step=1&isuri=1>, last accessed February 12, 2016). Note the figure uses gross domestic product by state in current dollars.
- 89 See, e.g., Joshua Mitchell, “Forecasting the Effects of the August 23rd Fair Labor Standards Act Overtime Changes: Evidence from a California Natural Experiment” (May 2005) (hereafter, Mitchell, 2005). Under previous FLSA law, all workers making under \$250 had time and a half overtime payment coverage. White collar workers are defined as workers with salaries between \$250 and \$460 a week. (See Mitchell (2005) at 4).
- 90 See Mitchell (2005) at Table 3 and 41-42. The author also performs a tobit analysis and notes, “Tobit analysis of overtime hours suggests coverage does not significantly alter overtime behavior *directly*. This is consistent with an alternative contractual model of overtime where workers and firms adjust hourly wages to negate the effects of overtime regulations. But Tobit analysis also suggests *indirect* effects, firm substitution for hours of relatively less expensive workers.” (See Mitchell (2005) at 1).
- 91 Jay Bhattacharya, Thomas DeLeire and Thomas MaCurdy, “The California Overtime Experiment: Labor Demand and the Impact of Overtime Regulation on Hours of Work,” (October 2000) (hereafter, Bhattacharya et al., 2000). Note that after the 1998 change in overtime law, switching overtime from daily to weekly, Assembly Bill 60 (1999) (the “Eight-Hour-Day Restoration and Workplace Flexibility Act of 1999”) reinstated daily overtime. (See Assembly Bill 60, California State Legislature (Chaptered July 21, 1999) (available at <https://www.dir.ca.gov/iwc/ab60.html>)).
- 92 Bhattacharya et al. (2000) at 29.
- 93 Bhattacharya et al. (2000) at 1.
- 94 Hanson and Hawley (2014) at Table 3.
- 95 See *2011 Report* at Tables B-2 and B-4.
- 96 Note that this represents a decline in the level of employment, not a reduction in annual job creation.
- 97 To be clear, this analysis measures the change in unemployment caused by the increase in the California minimum wage from \$8.00 to \$15.00 over the period 2014 to 2022.
- 98 See, e.g., PPIC Report (2015) at 2.
- 99 In principle, the employment rate could be affected by the proportion of the population 65 or older (which BLS includes in the denominator). Because of the lower employment rate among this group, states with larger elderly populations will have lower employment rates, other things being equal. The proportion of Californians who were 65 or older was lower than for the United States as a whole throughout this period, with the difference ranging from 0.9 percentage points to 2.1 percentage points. (Data available from www.census.gov/popest/data/historical/index.html.) Thus, the data in Figure 2 likely overstate California’s employment rate among adults younger than 65 by a small amount.

- 100 Figures 2 and 3, and other comparable figures in the report, compare the differences between California's performance and the performance of other U.S. states over the past few decades. While all these measures show that California's relative performance has declined over the period, the measures behave differently over time, with some showing a "flattening out" in recent years and others suggesting continuing decline. As noted, the data are also affected by the fact that California's economic performance appears to be more highly correlated with the business cycle than the rest of the United States.
- 101 For a full definition of all the alternative measures of unemployment, see "Alternative Measures of Labor Underutilization for States, Fourth Quarter of 2014 through Third Quarter of 2015 Averages," U.S. Bureau of Labor Statistics (October 23, 2015), available at <http://www.bls.gov/lau/stalt15q3.htm>.
- 102 The total number of firms is the average of the current year and the prior year.
- 103 For instance, see Hathaway and Litan (2014) at 2 and Figure 2.
- 104 The job creation rate is measured as new jobs as a percentage of total employment, and the job destruction rate is measured as job losses as a percentage of total employment. The job reallocation rate is the sum of the job creation rate and the job destruction rate. Total employment is the average of the current year and the previous year.
- 105 For further explanation of the methodology used to produce the ERI, see the *2011 Report* at 24-31.
- 106 The real state minimum wage is the statutory state minimum wage adjusted for inflation. The Tax Foundation *Small Business Tax Climate Index* measures the favorability of the tax climate for businesses. States with higher taxes are ranked less favorably in the index compared to states with lower taxes. The unionized share of the workforce is the number of union members as a percentage of the state's workforce.
- 107 See *2011 Report* at Table B-1 for summary statistics and the sources of all variables used in the regression analysis.
- 108 See *2011 Report* at Tables 3 and 4 for the results of this analysis for all states.

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