

# ALERT

*CalChamber-Led Effort*

## Coalition Builds Support for Independent Workers

The California Chamber of Commerce is leading a coalition of businesses and organizations in support of workers' ability to work independently.

Through its website at [imindependent.co](http://imindependent.co), the coalition explains why state lawmakers need to suspend putting a recent court decision into effect so that there can be a robust legislative discussion about how best to balance worker protections with a flexible work model.

The livelihoods of nearly 2 million Californians who choose to work as independent contractors are at risk after the California Supreme Court decision in *Dynamex Operations West, Inc. v. Superior Court* (April 30, 2018).

Independent contractors work in many industries, including health care, education, financial planning, agriculture, beauty, creative fields (filmmaking, editors, writers), technology development, insurance, construction, on-demand marketplace, and transportation.

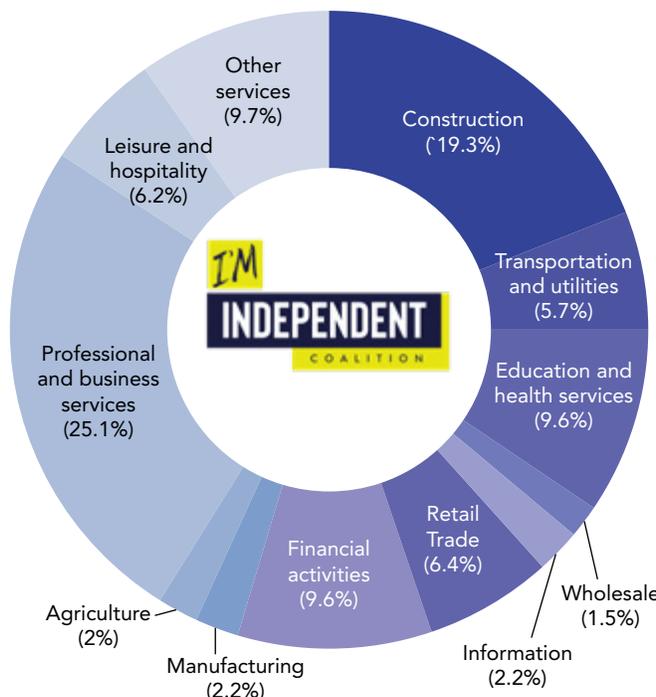
In addition, the franchise business model is based on an independent contractor relationship between a franchisor and franchisee. California has more than 76,000 franchise locations that support nearly 730,000 jobs.

### Dynamex Decision

The California Supreme Court decision overturned more than three decades of state employment law based on a set of rules called the Borello test for deciding whether a worker was an independent contractor. This approach weighed multiple factors to account for the variety of California industries and professions that would be regulated.

The *Dynamex* ruling replaced the *See Coalition: Page 3*

Percentage of Independent Contractors by Industry



\*Bureau of Labor Statistics, Report on Contingent and Alternative Employment Arrangements (2018)

## New Proposition 65 Regulations Take Effect August 30



**WARNING:** Beginning August 30, 2018, [new Proposition 65 regulations](#) will take effect that significantly overhaul longstanding warning regulations and depart from the rules that businesses

have relied on for decades.

Accordingly, it is imperative that businesses operating or selling into California reassess and potentially overhaul their long-established Proposition 65 compliance programs before the effective date.

Failure to comply could subject businesses to potential liability, including penalties of up to \$2,500 per day, per violation, as well as injunctive relief (for example, a court order requiring a product to be reformulated to remove the listed chemical) and attorney fees.

This story highlights the most important changes and explains how those changes apply to manufacturers, distributors, and retailers.

### Current/Pre-August 30 Rules

Under current Proposition 65 regulations, businesses with 10 or more employees are required to provide a "clear and reasonable" warning before exposing individuals in California to any chemical listed by the state for its potential to cause cancer or reproductive toxicity.

*See New Proposition 65 Regulations: Page 4*

### Inside

[Regional Power Grid Brings Energy Security: Page 5](#)

## Labor Law Corner

# Options for Paying Outside Salesperson Include Hourly or Salary Basis



**Barbara Wilber**  
HR Adviser

*I usually see information about paying outside salespeople commission payments. Is it OK to pay a salary and follow the minimum salary rules for exempt employees?*

Yes, it is OK to pay outside salespeople a salary instead of a commission. Actually, an outside salesperson may be paid in any manner, including hourly.

Outside salespeople do not need to

meet the minimum salary requirement that covers the executive, administrative and professional exemptions.

### Outside Salesperson

Outside salesperson means any person, 18 years of age or over, who customarily and regularly works more than half the working time away from the employer's place of business selling tangible or intangible items or obtaining orders or contracts for products, services or use of facilities.

Any individual properly classified as an outside salesperson is exempt from coverage of Section 1 of the Wage Orders, meaning that the rules regarding minimum wage, overtime, meal and rest breaks, timekeeping, etc., do not apply.

In addition, the salary deduction rules for exempt administrative, executive, or professional employees do not apply to an outside salesperson who is paid a salary.

### Develop Agreement

When paying a salary, it is best to consult legal counsel to develop an agreement that defines how the salary will be paid. What are the expectations? Will the salary be based on a certain number of hours per workweek with deductions for absences, or will it be a guaranteed salary with no deductions for absences?

Although outside salespersons are not subject to the time record requirements, it is always OK to require a time record.

For additional information about the outside salesperson classification, visit [HRCalifornia.com](http://HRCalifornia.com).

*Column based on questions asked by callers on the Labor Law Helpline, a service to California Chamber of Commerce preferred and executive members. For expert explanations of labor laws and Cal/OSHA regulations, not legal counsel for specific situations, call (800) 348-2262 or submit your question at [www.hrcalifornia.com](http://www.hrcalifornia.com).*

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*Alert (ISSN 0882-0929) is published weekly during legislative session with exceptions by California Chamber of Commerce, 1215 K Street, Suite 1400, Sacramento, CA 95814-3918. Subscription price is \$50 paid through membership dues. Periodicals Postage Paid at Sacramento, CA.*

*POSTMASTER: Send address changes to Alert, 1215 K Street, Suite 1400, Sacramento, CA 95814-3918. Publisher: Allan Zaremborg. Executive Editor: Ann Amioika. Associate Editor: Sara Espinosa. Art Director: Neil Ishikawa. Capitol Correspondent: Christine Haddon.*

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## CalChamber-Sponsored Seminars/Trade Shows

More at [www.calchamber.com/events](http://www.calchamber.com/events).

### Labor Law

Leaves of Absence: Making Sense of It All. CalChamber. August 10, Oakland. (800) 331-8877.

HR Boot Camp. CalChamber. August 21, Sacramento; September 5, Long Beach. (800) 331-8877.

Lead the Charge: Preventing Sexual Harassment in Your California Workplace. CalChamber. September 17, Pasadena. (800) 331-8877.

HR Checklist for California Supervisors. CalChamber. September 20, Webinar. (800) 331-8877.

### Business Resources

13th Annual Prop. 65 Conference. Prop. 65 Clearinghouse. September 24, San Francisco. (415) 385-4364. Special rate for CalChamber members.

### International Trade

Latin America and Caribbean Power Technologies for Ports—Reverse Trade Mission: Business Roundtable. U.S. Trade and Development Agency. August 7, San Diego. (202) 312-1322.  
Brazil Passenger Rail Technologies—Reverse Trade Mission: Business

Briefing. U.S. Trade and Development Agency. August 13, San Francisco. (757) 342-2149.

Hong Kong Food Expo. CalAsian Chamber. August 14–20, Hong Kong. (916) 389-7470.

*See CalChamber-Sponsored: Page 7*

## CalChamber Calendar

### Water Committee:

September 6, Dana Point

### ChamberPAC Advisory Committee:

September 6, Dana Point

### Board of Directors:

September 6–7, Dana Point

### International Trade Breakfast:

September 6, Dana Point

### Public Affairs Conference:

November 27–28, Huntington Beach

**Next Alert: August 10**



## HRCalifornia Now Includes Quick Link to Legislative Action Center

Letting legislators know what you think about proposals being considered is easier than ever using the “Take Legislative Action” link under the “Cases & News” tab on *HRCalifornia*.

Selecting that link takes the visitor to the Grassroots Action Center where easy-to-edit sample letters are organized by subject, including Labor and Employment, Industrial Safety and Health, Legal Reform and Protection, Recycling, and more.

The California Chamber of Commerce encourages members and others in the business community to make their views known to legislators and other policymakers because contact from a constituent heightens interest in a proposal like no other communication.

Letters (hard copy and electronic), emails, personal calls and visits can be very effective in influencing state policymakers as they develop legislation and regulations.

Hearing directly from you helps guide your elected representatives as they see whether a particular position matches voter opinion in their district.



The active involvement of our members is a critical ingredient in ongoing CalChamber efforts to shape the laws and regulations affecting you. Please take a

few minutes to review the letters available and act on those of greatest importance to your company at [HRCalifornia.com](http://HRCalifornia.com).  
**Staff Contact: Cathy Mesch**

## Coalition Builds Support for Independent Workers

*From Page 1*

multiple factors with a one-size-fits-all approach consisting of just three factors that also are far more restrictive.

The new “ABC test” has never existed in any form of California law, either in law or by regulation. The ABC test is the first time in U.S. history that a court has imposed such a test without legislative approval, with three independently dispositive factors.

### Growing Freelancer Economy

- According to Freelancing in America 2017, the top reasons that motivate individuals to pursue independent work include: 1) to be their own boss; 2) to choose when they work; 3) to choose their own projects; 4) to choose where they work; and 5) to earn extra money.

- Nearly half of all millennials (47%) across the United States freelance, a 9% increase since 2014.

- The court decision moves the state backward and does not accurately reflect today’s realities. It would eliminate the

choice that more and more Californians are making for their work and quality of life. In fact, 79% of independent contractors prefer it over traditional employment, according to the Bureau of Labor Statistics Economic Release (June 7, 2018).

- Economic stability is being redefined as 63% of freelancers increasingly think that a diversified portfolio of companies to contract with is more secure than working for one employer.

- A majority of freelancers who left full-time traditional employment made more money within a year.

- Full-time independent contractors are able to work fewer than 40 hours per week (on average 36 hours), and the majority believe they have the right amount of work.

- Technology such as online platforms have also benefited brick-and-mortar businesses with significant increases in sales and expansion of their customer base. This has helped small businesses across the state not only survive but thrive.

- With innovation expanding opportu-

nities, more and more Californians are choosing to work independently full-time or to supplement their income. In fact, at its current growth rate, a majority of the U.S. workforce will be independent contractors/freelancers by 2027.

### Action Needed

Given the rapidly changing economy and how more Californians choose to work, time is needed to discuss and develop laws that best reflect today’s realities.

The Supreme Court made its decision with limited information on a decade-old case. The Legislature has the ability to identify criteria for independent contractors that better reflect California’s economy and protect workers.

To voice support for the ability of individuals to work independently, fill out and send in the letter at <https://imindependent.co>. Ask lawmakers to suspend the court decision so we can work together to modernize our laws to protect workers and their choices.

## New Proposition 65 Regulations Take Effect August 30

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Because the thresholds under Proposition 65 are so low, even a very small amount of any Proposition 65 listed chemical will be enough to support a claim against your company. See the [list](#) on the Office of Environmental Health Hazard Assessment (OEHHA) website, <https://oehha.ca.gov>.

The best way to protect your company from such a claim is to provide warnings that fall within the Proposition 65 regulations' "safe harbor" provisions, which set forth specific warning language and methods of transmission that the state has deemed "clear and reasonable."

### New/August 30 Regulations

The new regulations continue to provide "safe harbor" warning content and methods for consumer product exposures, environmental exposures, occupational exposures, and tailored "safe harbor" warnings and methods for specific types of products and facilities.

However, the new regulations significantly revise the required content and specify separate safe harbor warnings based on the types of listed chemicals, the number of listed chemicals, and the method of transmission.

In addition, businesses have the option to provide two different types of safe harbor warnings: a full warning and an abbreviated "short-form" warning if the warning is placed on the product. However, companies that use the so-called "on product" warning face different size requirements.

The short-form, on-product warning "must be in a type size no smaller than the largest type size used for other consumer information on the product."

Finally, the new regulations also clarify the responsibility between manufacturers, retailers and others in the supply chain to provide warnings.

### Required New Content

- **"Can Expose":** Consumer product warnings must begin with "This product can expose you to . . ." This is a departure from the current warning regulations, which require safe harbor warnings to begin with "This product contains . . ."

- **Chemical Specification:** If a warning is not provided on the product itself, such as on a shelf display or a store sign, a business must name at least one chemical for which the warning is being provided and specify whether that chemical is known to cause birth defects or reproductive harm, cancer, or both. If warning for one chemical that is a carcinogen and a separate chemical that is a reproductive toxicant, the warning must specify both chemicals. If warning for one chemical that is both a carcinogen and a reproductive toxicant, such as lead, the warning need only specify that chemical. This is a significant change. With the exception of warnings for alcohol, the prior safe harbor warnings do not require warnings to specify chemicals.

- **Pictogram:** All safe harbor warnings except for food and dietary supplement exposures must contain a pictogram on the left side of the warning of an exclamation point encompassed by an equilateral triangle. Although the triangle must be printed in yellow, it may be printed in black-and-white only if the sign, label, or shelf tag for the product is not printed using the color yellow.

- **URL:** All safe harbor warnings must end with "For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)."

- **Translation Requirements:** Safe harbor warnings must be provided in English, and if a product sign, label, or shelf tag used to provide a warning also contains consumer information in a language other than English, the Proposition 65 warning also must be provided in that language.

### Examples

#### Full Cancer Warning



WARNING: This product can expose you to chemicals including [name of one or more chemicals], which is [are] known to the State of California to cause cancer. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

#### Truncated/Short-Form Cancer Warning



WARNING: Cancer – [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

### Not Legal Advice

This information is not intended to convey or constitute legal advice, and is not a substitute for obtaining legal advice from a qualified attorney. You should not act upon any such information without first seeking qualified professional counsel.

To read the full regulation, visit the OEHHA website: <http://oehha.ca.gov/media/downloads/crnr/art6regtextclean090116.pdf>.

OEHHA also has posted a questions-and-answers document about the warning requirements for businesses: <https://oehha.ca.gov/media/downloads/crnr/art6businessqa.pdf>.

Staff Contact: Adam Regele

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# Why a Regional Power Grid Brings Energy Security to Businesses/Consumers

**Allan Zarembeg**

Reliable energy infrastructure is a hallmark of a modern world, and affordable power is vital for economic development and social cohesion.

Ensuring that

electricity is both affordable and reliable are ultimately the responsibility of our state government leaders when they set the ground rules for how electricity is generated and how it is transmitted around the grid.

California's world-leading greenhouse gas reduction efforts have curbed the state's carbon footprint, but have also resulted in more expensive electricity and greater challenges to utilities to maintain service reliability, issues of great concern to California businesses.

Just as the Legislature has led the way in insisting that more of our electricity come from renewable sources, it must also have a plan to ensure that our electricity grid can deliver power when businesses and residents need it, at the most affordable rates possible.

That's why business groups are encouraging the Legislature to approve legislation that could reshape the future of the state's energy infrastructure and lower energy costs for consumers and businesses.

## Setting Stage

AB 813, authored by Assemblyman Chris Holden (D-Pasadena), sets the stage for the development of a Western regional energy market that would allow California and neighboring states to integrate their energy resources and meet rapidly

changing supply and demand conditions in an electricity system increasingly reliant on renewables.

Regional energy markets function in a straightforward manner. In a regional market, when the sun is shining in California and producing an oversupply of solar energy within the state, that energy can be exported to other states.

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## Commentary By Allan Zarembeg

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Likewise, when the wind is blowing in abundance in the Northwest and creating a surplus of power there, that energy can be imported cheaply to meet demand in California when our own state's renewable energy resources are unable to meet it.

In the absence of a Western regional market, large swings in electricity oversupply and undersupply conditions could increase, threatening the reliable delivery of power. Both scenarios are occurring with more frequency each passing year.

When California renewable energy generators are overproducing, solar and wind plants are forced to curtail their output or sell their energy at a loss—undermining the value of the investments California businesses and homeowners have made.

On the other hand, when renewable generation is unable to meet demand, the reliability of the state's grid is threatened, and California is typically forced to rely on fossil fuel generators that are more expensive, undercut our environmental goals and increase the cost of electricity.

## Economic Benefits

The economic benefits of such a system are clear. A regional energy market has the potential to reduce energy costs in all participating states by integrating diverse generating resources into a

single coordinated grid. A recent economic study estimates that a regional system will reduce energy costs for California households and businesses by up to \$1.5 billion annually by 2030, along with boosting the state's economy and income.

AB 813 will incentivize other states in the region who are not as far along in developing renewable energy sources to speed things up. The bill will create a ready market for renewables where one state provides clean power to others during the times when they must now rely on less clean sources of energy like coal.

## Lowering Prices

The plan is a win-win because it helps us meet our own environmental goals while also lowering energy prices for consumers who will benefit from access to surplus electricity generated by renewable sources from states that may otherwise dump that power.

A Western grid is especially important for cities like San Diego, which is aiming to boost its use of renewable energy to meet citywide electricity demand over the next two decades. An integrated regional grid could help ensure the city has access to the renewable resources it needs to meet its energy demand in a secure, reliable fashion.

The promise of energy cost savings and reliability is why the California Chamber of Commerce and many other business groups join Governor Jerry Brown in supporting a regional energy market. We need a system that will help California meet its climate change goals and mitigate future cost increases.

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*Allan Zarembeg is president and CEO of the California Chamber of Commerce. This commentary first appeared in the San Diego Union-Tribune.*

# CalChamber Seeking Changes to Make Panic Button Legislation More Workable



A California Chamber of Commerce-led coalition continues to seek changes to make more

workable a bill that, among other provisions, requires hotels to provide employees who work alone with a panic button to summon immediate assistance when called.

Although the coalition does not oppose providing panic buttons to employees working alone in hotels, the coalition supports amendments to **AB 1761 (Muratsuchi; D-Torrance)** to ease administrative burdens. The CalChamber and coalition remain opposed to the bill unless it is amended because AB 1761 creates unworkable requirements for paid leave and allows for a patchwork of state and local rules on the subject. So far, the coalition's amendments have not been accepted.

The Senate Appropriations Committee is scheduled to consider AB 1761 when legislators return from summer recess.

## Proposed Amendments

The amendments supported by the coalition include deleting the section of AB 1761 which specifies that cities and counties can adopt their own rules regarding panic buttons that are different than the provisions of AB 1761. Various and numerous local jurisdictions could require lodging establishments to purchase new panic buttons (different in each jurisdiction) and create new protocols. Implementing the protocols that differ from state requirements will be costly, and an administrative burden, particularly

for hotels that have multiple properties in various cities and counties.

Under AB 1761, hotel employers in compliance with the bill could be subject to ever-changing requirements for new and different equipment, as well as new and different protocols. Each local ordinance could be different from all other local ordinances. The result will be a patchwork of requirements that could have owners of multiple properties in different cities with not only potentially different panic buttons for different locations, but also different protocols, leave policies, complaint response procedures and civil penalties. This lack of conformity and predictability for businesses creates costly equipment purchase requirements and administrative burdens, which is why the state occupies this space so that employers can create consistent policies across the state.

The CalChamber and coalition also propose the deletion of unnecessary signage requirements mandating that hotels post a notice on the back of each guestroom door with specific information about the law and the employees being equipped with panic buttons.

As the coalition letter states, the sign requirement is burdensome, and will merely add to other behind-the-door notices that guests do not typically read. The signage will do nothing to protect employees, but will expose employers to needless liability for civil penalties for each room that either does not include the notice, or posts an incorrect notice.

## Paid Time Off, Accommodation

The bill also requires employers to provide paid time off to an employee who is the victim of assault in order to contact

the police, a counselor, medical professional, or an attorney, thus creating a new paid leave requirement. But current law already offers employees protections to use available time off for these purposes, without retaliation.

In addition to the situations for which employees can take time off under Labor Code sections 230 and 230.1, employees that are subjected to an act of violence, sexual assault, or sexual harassment by a hotel guest should be included. The CalChamber and coalition state that AB 1761 should be amended to reflect the inclusion of hotel workers in those Labor Code sections.

The CalChamber and coalition also propose amending AB 1761 so that the reasonable accommodation it mandates for an employee who has informed the employer of being subjected to an act of violence, sexual assault or harassment by a hotel guest is limited to the time during which the guest remains on the premises. Once the guest is no longer on the premises, there should be no reason to transfer, reassign, modify schedules or change work facilities of the employee.

## Action Needed

AB 1761 is set for hearing in the Senate Appropriations Committee on August 6.

CalChamber asks members to contact their senator and members of the committee and urge them to vote "no" on AB 1761, unless it is amended as proposed by CalChamber and the coalition.

An [easy-to-edit sample letter](#) is available in the grassroots action center at [www.calchambervotes.com](http://www.calchambervotes.com).  
**Staff Contact: Marti Fisher**

Tools to stay in touch with your legislators.

[calchambervotes.com](http://calchambervotes.com)

# U.S., New Zealand Conclude Talks for Trade/Investment Framework Agreement



The United States and New Zealand concluded two days of meetings on

July 20 under the Trade and Investment Framework Agreement (TIFA), noting the strong and growing trade relationship between the two countries and discussing a full range of bilateral issues.

## U.S.-New Zealand Relations

Members of the U.S. Congress have requested negotiations for a free trade agreement with New Zealand for years. New Zealand and the United States have been strong partners and good friends for more than a century. Political ties are close, business links are strong, and cultural links are many and varied.

In the aftermath of September 11, New Zealand Prime Minister Clark quickly and firmly offered diplomatic, political, and military support. New Zealand is one of only two countries that has fought side-by-side with the United States in every war since World War I.

## Framework Agreement

According to the Office of the U.S. Trade Representative, the United States and New Zealand agreed to a program of expanded cooperation on issues of shared interest, including working together to address trade barriers in third-country markets and exchanging information about unfair trade practices.

The meeting recognized the importance of building on the strong and close ongoing cooperation between the United States and New Zealand at the World

Trade Organization (WTO), the Asia-Pacific Economic Cooperation (APEC), and other international organizations. The United States raised concerns regarding intellectual property and pressed for improvements.

The meetings were led by Deputy U.S. Trade Representative Jeffrey Gerrish for the United States and Ambassador Tim Groser for New Zealand, with Ministry of Foreign Affairs and Trade Director General Clare Kelly leading a delegation from Wellington for the talks. The U.S. delegation included officials from the Office of the U.S. Trade Representative and the Departments of Agriculture, Commerce, and State.

## Background

Two-way goods trade between the United States and New Zealand totaled \$8.1 billion in 2017, with U.S. goods exports to New Zealand totaling \$3.9 billion and imports totaling \$4.2 billion. The United States had a \$237 million goods trade deficit with New Zealand in 2017.

U.S. services exports to New Zealand totaled \$2.5 billion in 2016 (latest available data), while services imports from New Zealand amounted to \$2.2 billion in 2016 (latest available data). The United States had a \$315 million services trade surplus with New Zealand in 2016.

New Zealand is one of the strongest U.S. allies in international trade liberalization. New Zealand has worked consistently with the United States in trade forums, such as the WTO and APEC. Two-way trade between the United States and New Zealand has increased by 41.8% in the last five years to approximately \$7.9 billion in 2015.

According to the U.S. Department of Commerce, California exported approximately \$573.74 million to New Zealand in 2017. Top exports included transportation equipment (19.1%), food manufactures (16.2%), computer/electronic products (13.7%), and agricultural products (10.7%).

## CalChamber Position

The California Chamber of Commerce, in keeping with long-standing policy, enthusiastically supports free trade worldwide, expansion of international trade and investment, fair and equitable market access for California products abroad, and elimination of disincentives that impede the international competitiveness of California business.

New multilateral, sectoral, regional and bilateral trade agreements ensure that the United States may continue to gain access to world markets, resulting in an improved economy and additional employment of Americans.

It is critical to consumers, workers, businesses, farmers, and ranchers in our state that job-creating trade agreements are negotiated and approved at a time when they are needed more than ever.

Trade agreements ensure that the United States may continue to gain access to world markets, which will result in an improved economy and additional employment of Americans. The CalChamber urges support of trade agreements that will continue to keep U.S. and California businesses competitive.

**Staff Contact: [Susanne T. Stirling](#)**

## CalChamber-Sponsored Seminars/Trade Shows

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Vehicle Aftermarket Trade Mission to Chile. Auto Care Association and International Trade Administration. August 21–22, Chile. (301) 654-6664.  
International Trade Financial Strategies Symposium. Women in International Trade – Los Angeles. August 22, Los

Angeles. (213) 545-6479.  
83rd Thessaloniki International Fair. HELEXPO. September 8–16, Thessaloniki, Greece.  
Brazil Fintech Roadshow. Fintech. September 17–19, São Paulo, Brazil. (772) 388-6496.  
2018 U.S.-Taiwan Business Day. Bureau of

Foreign Trade, Ministry of Economic Affairs and Taiwan External Trade Development Council. October 4, Taipei, Taiwan. (408) 988-5018, ext. 202.  
China International Import Expo. China International Import Export Bureau. November 5–10, Shanghai, China.

## Don't Miss One Informative Day by the Bay



Ready to sharpen your HR know-how and interact with your peers? Kicking off with a networking breakfast, the 2018 CalChamber HR Symposium offers an interactive day of engaging sessions with top experts on a variety of HR compliance issues important to California employers.

This is your rare opportunity to hear from the **Director of the California Department of Fair Employment and Housing (DFEH), Kevin Kish**, regarding trends and enforcement priorities, upcoming regulations and updates on new legislation.

The cost of admission is \$499 (\$399.20 for Preferred and Executive members), and the event is approved for 8 HRCI California recertification credits and SHRM PDCs.

# HR 2018 SYMPOSIUM

NOVEMBER 2, 2018

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HYATT REGENCY SAN FRANCISCO  
7:30 a.m. – 4:00 p.m.

Networking Breakfast | 5 HR Sessions  
Keynote: Kevin Kish, DFEH Director

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