

ALERT

CALIFORNIA CHAMBER OF COMMERCE

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Slew of Initiative Proposals Await Special Election

The possibility of a special election this year has prompted the filing of numerous proposals on a wide range of topics with the attorney general's office.

As of this week, 71 initiative proposals were awaiting review by the attorney general's office, which must assign each proposal a title and summary before its supporters can begin gathering signatures.

In addition, 10 initiative proposals have been cleared to circulate for signatures.

Initiative supporters want to be ready to take their proposals to California voters if legislative inaction moves the Governor to call a special election on his government reform plans.

Multiple Proposals

In light of the tight timelines expected if a special election is called, proponents have filed multiple versions of some proposals to enable them to choose the variation that seems most likely to succeed.

- Five reapportionment reform proposals give redistricting duties to a panel of retired judges, removing the inherent conflict of interest in having legislators draw their own districts. One proposal would have the panel redraw district lines in time for use in the 2006 elections. Another calls for the new process to go into effect after the next census. Others lay out different procedures for the process, with one calling for public hearings as the panel redraws the lines.

- Several initiatives offer varying approaches to the Governor's goal of reforming the budget process to force the state to live within its means.

- Five versions of a new spending limit have been filed.

- One proposal attacks taxes disguised as fees by changing the state Constitution to spell out the difference and ensure that taxes are subject to a two-thirds vote of approval by either legislators at the state level or the people at the local level.

Other Proposals

Other proposals include:

- Six initiatives related to school funding.
- Three prescription drug initiatives.
- Three variations on a proposal to prevent

casinos in urban areas.

- A proposal to change the state's public pension program to one with defined contributions for new employees, rather than defined benefits.

- A measure to protect the ability of public agencies to contract with the private sector for services.

- A proposal to overturn Proposition 63 from last November, the initiative taxing personal income above \$1 million to fund expanded mental health services.

- Two versions of the proposal that limited credit sources for the purchase of personal vehicles and harmed many car dealers by curbing their ability to profit on certain types of sales.

- Two versions of an initiative to increase the minimum wage.

- Two proposals expanding the powers of the state Public Utilities Commission and further dictating how electricity service providers do business.

The California Chamber Board of Directors will be taking positions on several key initiatives at an upcoming meeting.

State Courts Issue Conflicting Rulings on Proposition 64



The question of whether Proposition 64, the California Chamber-backed initiative to end shakedown lawsuits, applies to cases filed before voters approved

the measure remains unsettled following two conflicting court rulings on the issue.

One California court of appeal has ruled that Proposition 64 does not apply to cases filed, but not resolved when the initiative passed. A second court of appeal has reached the opposite conclusion.

Proposition 64, approved in November 2004 by California voters, reformed the state's unfair competition law (Business and Professions Code Section 17200) to stop unscrupulous lawyers from filing frivolous lawsuits. Through a legal loophole in Section 17200, lawyers were able to file lawsuits, mainly against small businesses, and demand fees with no real client or proof of harm.

Although the reforms in Proposition 64 took effect immediately, it was unclear whether the measure could be used in pending cases.

First Ruling

On February 1, 2005, the 1st District

See Courts: Page 4

**INITIATIVES
2005**

Inside

Tax 'Amnesty' Traps Good Faith Taxpayers: Page 3

Labor Law Corner

Wages for Suspended, Terminated Employee Can Vary Dramatically



Dale Louton
Labor Law Advisor

If I know ahead of time that I am going to suspend or terminate an employee, should I have the employee report to work anyway? If I do, do I have to pay the employee?

Basically, your course of action is a matter of strategy and how best

to comply with the Labor Code on payment of wages, the Industrial Welfare Commission Wage Orders on reporting time pay and your company's personnel policy.

Suspensions

A suspension can be easily handled by telephone. Simply call the employee and inform him/her of the suspension and when to report back to work. This person is employed during the suspension and the payday is not changed. Reporting time pay is not an issue because the employee did not report for work.

Non-exempt employees can be suspended for periods of time less than a week. An exempt employee could be suspended without pay for disciplinary reasons for a full week, and the deduction of that week of salary would not defeat his/her exempt status, provided that the monthly salary does not fall below the minimum monthly salary required under Labor Code Section 515(a) for exempt status, currently \$2,340.

Terminations

A termination presents a different problem, as Labor Code Section 201 requires that a terminated employee be paid immediately and, if not, Labor Code Section 203 provides that the wages continue as a penalty up to 30 days.

Termination in person is the logical way to end an employment relationship. The employee can be paid wages including accrued vacation immediately, thus satisfying Labor Code Section 201. Required documents can be handed over and an exit interview conducted if desired.

The drawback is that reporting time must be paid. If an employee reports to work and is not allowed to work, he/she must be paid one-half the scheduled day's work — not more than four hours and not less than two hours. Full details are listed in the Industrial Welfare Commission Wage Orders. Exempt employees are not

entitled to reporting time pay.

Waiting Times

A suspension in lieu of immediate discharge designed to buy time so that a final paycheck can be prepared is not recommended and most likely will raise a red flag with the Labor Commissioner, causing your firm to be subject to waiting time penalties.

Termination by telephone creates the problem of how to pay wages immediately. Waiting time penalties will be an issue until the ex-employee is paid. Payment by mail or courier takes time and should be considered in making a decision whether to terminate in person or by telephone.

The Labor Law Helpline is a service to California Chamber 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 e-mail: helpline@calchamber.com.

Seminars

For more information on the seminars listed below, visit www.calchamber.com/events.

Business Resources

Best Practices in Leadership. Claremont McKenna College Kravis Leadership Institute. February 25-26, Claremont. (909) 607-8111.

International

California Council for International Trade Policy Forum. California Council for International Trade Policy. February 23-25, San Diego. (619) 615-0868.

SCORE Import/Export Workshop. Service Corps of Retired Executives (SCORE). February 24, San Diego. (619) 557-7272.

Labor Law

Labor Law Training Seminars. California Chamber of Commerce. February 25, Sacramento; March 3, web seminar. www.calchamberstore.com/llseminar.

Workplace Safety

Cal/OSHA Management and Compliance Strategies. DuFour Seminars. February 23, Fremont; March 2, Ontario; March 9, Anaheim/Orange; March 30, Concord. (866) 312-8885.

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Chamber Calendar

International Luncheon Forum:
March 8, Sacramento.



So-Called Tax ‘Amnesty’ Program Traps Good Faith Taxpayers with Huge Penalties



The state’s much-publicized tax “amnesty” program creates a trap for good faith taxpayers who are trying to pay their taxes.

The program forces amnesty seekers to pay their taxes by a certain date with increased penalties, even though their tax liability is not settled due to, for example, a federal audit yet to be completed.

These new penalties send the wrong message to businesses that are seeking to invest in California.

Amnesty and the subsequent penalties should be directed at taxpayers who willfully refuse to pay the taxes to be owed. When tax liability has yet to be resolved, it is ridiculous for government to impose such penalties.

So far, the Franchise Tax Board (FTB) has failed to take action on requests from the California Chamber of Commerce and other business organizations to administer the tax “amnesty” program in a way that doesn’t make it a tax trap for taxpayers who are making good faith attempts to comply with tax requirements.

At an FTB hearing last week, the Chamber and others explained their concerns that the breadth of the so-called

amnesty programs handle similar issues.

The FTB’s inaction hurts the “amnesty” program and the state’s economy. If not improved, the program unfairly and severely penalizes all taxpayers — not just those who intentionally fail to file or underreport taxes.

Any tax uncertainty gives businesses cause to delay or even halt plans to invest in jobs in California, thus slowing the state’s economic recovery.

At the request of the FTB, the Chamber is working with the California Taxpayers Association on outlining for the board how to resolve the negative fallout from the amnesty program through the administrative process.

But time is short. The deadline for filing for the amnesty program is March 31.

For the good of the tax amnesty program and the state’s economy, the FTB would be wise to move quickly to remove the unintended tax traps from the program.

Allan Zarembert is president and chief executive officer of the California Chamber of Commerce.

Commentary By Allan Zarembert

tax “amnesty” program will not only catch numerous taxpayers unaware, but also will expose extreme financial penalties to taxpayers who are doing their best to pay and report taxes accurately.

Rather than taking action to remove the unintended negative consequences of the “amnesty” program, the FTB instead instructed its staff to look for more information about how other states with

California Chamber to Host Central American Ambassadors

The California Chamber of Commerce will be hosting in March the ambassadors of the six nations included in the proposed U.S.-Central American Free Trade Agreement (CAFTA).

The ambassadors, on a visit arranged by the U.S. Chamber of Commerce, will speak at a California Chamber International Luncheon Forum in Sacramento on March 8, and the Chamber’s International Trade Breakfast in Los Angeles on March 11.

Trade Agreement

The CAFTA was signed on May 28, 2004 in Washington, D.C. On August 5, 2004, representatives from the United States and the Dominican Republic signed an agreement formally including the Dominican Republic in the agreement. Upon implementation, more than 80 percent of U.S. exports will be able to

enter the Dominican Republic and CAFTA countries duty-free, with all products having duty-free access in 10 years.

The six nations represented by the CAFTA will be the second largest U.S. export market in Latin America, behind Mexico. The United States exported nearly \$11 billion in goods to the five Central American countries included in CAFTA in 2003, more than U.S. exports to Russia, India and Indonesia combined.

Two-way trade was more than \$23 billion. With the Dominican Republic added to the CAFTA-5, total two-way trade increases to \$32 billion. The CAFTA is awaiting U.S. Congressional approval.

Featured Speakers

The six visiting ambassadors who will be featured speakers at the March 8 International Luncheon Forum in

Sacramento and the March 11 International Trade Breakfast in Los Angeles are:

- Ambassador H.E.F. Tomás Duenas, Costa Rica;
- Ambassador Flavio Dario Espinal, Dominican Republic;
- Ambassador Rene Antonio León Rodríguez, El Salvador;
- Ambassador Jose Guillermo Castillo, Guatemala;
- Ambassador Mario Canahuati, Honduras;
- Ambassador Salvador Stadthagen, Nicaragua.

More Information

For more information or to sign up for either event, please visit the Chamber’s website at www.calchamber.com.

Staff Contact: Susanne Stirling

Courts Issue Conflicting Prop. 64 Rulings

From Page 1

Court of Appeal (San Francisco) ruled that Proposition 64 did not apply to cases that were filed but not resolved when Proposition 64 passed.

The case, *California For Disability Rights v. Mervyn's, LLC*, began in 2002, when California for Disability Rights (CDR), filed suit under Section 17200, alleging that Mervyn's denied access to individuals with mobility disabilities by failing to provide sufficient space between merchandise displays.

The case went to trial in 2003 and in February 2004, the trial court found in favor of Mervyn's. Shortly thereafter, CDR appealed the trial court's decision. While the case was pending on appeal, Proposition 64 was passed, thereby amending the statute that formed the basis of the lawsuit. As a result, Mervyn's asked the court to dismiss CDR's claim on the grounds that Proposition 64 precluded the case from proceeding.

Applying case law related to when a change in the law has retroactive effect, the 1st District Court held that Proposition 64 did not apply to pending actions and denied Mervyn's request for dismissal. The court reached its conclusion on the basis that the text of the initiative, the Legislative Analyst's analysis and ballot arguments were silent as to whether Proposition 64 was intended to apply to pending cases. Because there was no express language stating that the voters intended the initiative to apply retroactively, the court found that it did not.

Second Ruling

About one week later, the 2nd District

Court of Appeal (Los Angeles) reached the opposite conclusion, ruling that Proposition 64 does apply to pending actions.

In this case, *Branick v. Downey Savings and Loan Association*, a representative action on behalf of the general public was brought against Downey Savings and Loan for allegedly overcharging certain fees in real estate transactions.

The court ruled that pursuant to Government Code Section 9606, Proposition 64 applies to actions that were pending as of the date the initiative was passed by voters.

In reaching its decision, the 2nd District Court rejected the 1st District's reasons for finding that Proposition 64 does not apply to pending cases.

Government Code Section 9606 provides that "any statute may be repealed at any time, except when vested rights would be impaired. Persons acting under any statute act in contemplation of this power to repeal."

In other words, the presumption that a change in the law applies from the time of the change forward, rather than being retroactive, does not apply when the change repeals a cause of action that is authorized by a state statute.

By applying a California Supreme Court case that interpreted the meaning of Section 9606, the 2nd District Court concluded that because Proposition 64 repeals a purely statutory cause of action, the change in the law applies retroactively to all pending cases.

In this case, the plaintiff brought a representative action that did not include any allegation that the plaintiff himself

suffered injury that was caused by the defendant's conduct.

Because Proposition 64 eliminated the ability for representative actions on behalf of the general public to be brought absent an identifiable plaintiff who suffered injury in fact and lost money or property as a result of the alleged unfair competition, the plaintiff's action will be dismissed unless they can prove that they were personally injured by the defendant's conduct.

Accordingly, the court remanded the case back to the trial court in order to give the plaintiff the opportunity to amend its complaint to meet Proposition 64's requirements. If the plaintiff is unable to do so within a specified time, the case will be dismissed.

Supreme Court Ruling Needed

Both appellate court rulings were published opinions, which means any party to a lawsuit may use the cases in support of his or her position. There is a high probability that we will see similar rulings coming out of the remaining courts of appeal.

Ultimately, it will take a ruling by the California Supreme Court to settle the question of whether Proposition 64 applies to actions that were filed but not yet resolved before its passage.

The Chamber will continue to provide updates as new court rulings regarding Proposition 64 are issued.

For more information on Proposition 64, please visit the Chamber's website at www.calchamber.com.

Staff Contact: Erika Frank

State Summit to Take Look at Identity Theft Problems, Solutions

"Locking Up the Evil Twin" is the theme of a summit on identity theft solutions scheduled for March 1 in Sacramento.

Jeanne Cain, senior vice president of the California Chamber of Commerce, is a member of the advisory committee for the summit, which will focus on clarifying the major obstacles to successful prosecution of identity theft crimes, and solutions to overcoming those obstacles.

The summit is presented by Governor

Arnold Schwarzenegger, the State and Consumer Services Agency and the California Department of Consumer Affairs, and hosted by the California District Attorneys Association.

The agenda for the day-long gathering includes a technology expo, plus panel discussions:

- business representatives will outline their strategies for preventing and detecting identity theft;

- state agencies will explain how they are responding to identity theft;

- consumer representatives will describe victims' experience;

- investigators and prosecutors will explain the challenges they face and propose new approaches and solutions.

Registration is free on a first-come, first-served basis at www.idtheftsummit.ca.gov.

For information on exhibiting, visit www.cdaa.org.

Chamber Member Earns Cal/OSHA Award for Excellence in Safety, Energy Efficiency

Recognized as one of the safest refineries in the nation, the Wilmington branch of Valero, a California Chamber of Commerce member, recently received a high honor from the California Division of Occupational Safety and Health (Cal/OSHA).

Valero's Southern California site is the first refinery in the state to be accepted into Cal/OSHA's Voluntary Protection Program (VPP) as a Cal/VPP Star Site. The refinery received the award because its performance demonstrates a commitment to safety.

A Chamber member since 2001, Valero is a San Antonio, Texas-based oil company with approximately 22,000 employees. The company owns and operates 15 refineries throughout the United States, Canada and the Caribbean, producing approximately 2.4 million barrels of oil per day. The company also operates more than 4,500 retail and wholesale outlets.

"None of our success would be possible without the hard work and dedication of our employees," said Bill Greehey, chairman and chief executive officer of Valero. "Thanks to them, 2004 was a record year in every way, and we're positioned for even greater success going forward."

Voluntary Protection Program

Cal/OSHA's VPP promotes effective worksite-based safety and health. This certification program is designed to recognize employers whose occupational safety and health programs are exemplary and meet specific Cal/VPP guidelines.

The program sets performance-based criteria for a managed safety and health system, invites sites to apply and then assesses applicants against these criteria.

In addition to receiving national recognition, applicants approved to participate in Cal/VPP are exempt from Cal/OSHA programmed inspections for three years, freeing Cal/OSHA inspectors to visit other establishments and industries.

Cal/OSHA's verification includes an application review and onsite evaluation by a team of safety and health consultants from Cal/OSHA's consultation unit.

Consultants from Cal/OSHA begin

the evaluation process with a series of interviews with management, safety committee personnel and randomly selected non-supervisory personnel.

Additionally, onsite documentation review of records includes, but is not

limited to: injury and illness prevention program, Cal/OSHA 200 log, safety and health manual, emergency procedures, annual audits, onsite safety rules and the company system for enforcing safety rules, accident investigations, safety committee minutes, employee orientation and safety training programs, preventive maintenance programs, employees' report of safety and health problems, and documentation of response.

Cal/OSHA approves qualified sites to one of two programs: CalStar and Cal-Reach (for employers who have not yet reached CalStar status, but have demonstrated the commitment and potential to achieve that status).

Sites that have been awarded the CalStar report advantages including: increased employee involvement, increased productivity, government and industry partnerships, and exemption from routine Cal/OSHA compliance inspections for three years.

The average VPP worksite has a Days Away Restricted or Transferred case rate of 52 percent below the average for its industry, according to Cal/OSHA.

Refinery

Valero reports that its Wilmington refinery is one of the few refineries capable of producing 100 percent environmentally friendly reformulated gasoline that has been approved by the California Air Resources Board.

Refined products are distributed from the Wilmington refinery through a network of third-party pipelines and terminals in Southern California, Nevada and Arizona, and then on to the company's wholesale and retail customers. The refinery also has 2.7 million barrels of onsite storage capacity and 1.6 million barrels of offsite storage.

The Wilmington plant, which is near Los Angeles, is connected by pipeline to marine terminals and associated dock facilities that can be used for movement and storage of crude oil and other feedstocks.

The refinery also operates a refined product marine terminal and dock facility, which is leased from the Port of Los Angeles and City of Los Angeles.

Additional Accolades

For the last three years, Valero has been listed by *Fortune* magazine as one of its "100 Best Companies to Work For" and the magazine recently named the corporation among the top performing companies in the country. Ranked 23 on the list of best companies to work for, Valero has grown in five years from 900 employees to more than 22,000, but overall company injuries are 40 percent lower than the industry standard, *Fortune* reports. The company also offers employees an on-site cafeteria, dry cleaning, massages and a car wash.

Forbes magazine ranked the company at the very top of its list of "Best Big Companies in America," for 2004, and also listed the company among its "Best-Managed Companies in America."

Also Cal/VPP Sites

The following Chamber members also have received Cal/OSHA designation as a VPP Star Site:

- 3M ESPE (Irvine);
- Cardinal Cogen-GECS (Stanford);
- Frito-Lay, Inc. (Visalia);
- Fluor Corporation (San Jose);
- General Electric (San Jose, Sunol and Victorville);
- Georgia-Pacific Corporation (Madera);
- Golden-Kraft (La Mirada);
- International Business Machines (San Jose);
- Lockheed Martin Aeronautics Corporation (Palmdale);
- Northrop Grumman Space Systems Division (Azusa);
- Signode Western Operations (Pittsburg).



Mark Your Calendar Now

California Business Legislative Summit: May 24-25



Photos by Steve Snyder

More information will be coming soon on the California Chamber's annual California Business Legislative Summit, May 24-25 in Sacramento. Watch for details at www.calchamber.com. Scenes from 2004 included (clockwise from upper left) a surprise appearance by Governor Arnold Schwarzenegger at the Sacramento Host Breakfast preceding the Summit; presentation of the Small Business Advocate of the Year awards; a town hall with Senator Charles Poochigian (R-Fresno), author of last year's landmark workers' compensation reform legislation, and Senator Don Perata (D-Oakland), now Senate president pro tempore; and a discussion of the multibillion-dollar health care mandate (ultimately rejected by California voters last November).

California Chamber Seeks Nominees for Small Business Advocate Award

The California Chamber of Commerce is seeking nominees for its Small Business Advocate of the Year award.

Nominees should have significantly contributed as an outstanding advocate for small business by being involved in such activities as working in a leadership role on statewide or local ballot measures, testifying before the state Legislature or representing the local chamber of commerce before local government, or

being actively involved on federal legislation.

News articles or other materials may be attached as exhibits with the application, which must include a letter of recommendation from a local chamber president or chairman of the local chamber's board of directors.

The California Chamber recognizes award winners each year at its Business Legislative Summit.

Nomination forms may be requested from the Local Chamber Department of the California Chamber at (916) 444-6670.

**Next Alert:
March 4**

Last Hearing on Meal/Rest Period Rules, Comment Deadline Looms: March 2

March 2 is the deadline for submitting comments on the state's new meal/rest period rules and the date of the final public hearing.

The California Chamber of Commerce is encouraging all businesses and employees to continue voicing support for adding flexibility to the state's meal/rest period rules.

The Chamber has emphasized again and again that workers need to eat and rest when they are hungry or tired, rather than at a time set by state bureaucrats. Both employers and employees say they

would appreciate greater flexibility than was permitted by the old rules.

Readers who would like to join the Chamber's task force on implementing the proposed rule change, or testify at the remaining hearing, please contact julianne.broyles@calchamber.com.

The final hearing is set for 9 a.m. on March 2 in Fresno at 2550 Mariposa Mall, Room 1036.

The deadline for submitting comments is 5 p.m. on March 2.

Send letters of support to: Allen Perlof, Senior Deputy Labor Commissioner,

Division of Labor Standards Enforcement, 9th Floor West, P.O. Box 420603, San Francisco, CA 94142; e-mail: dlsecomments@dir.ca.gov; fax (415) 703-4807.

Please send copies of your comments to the Chamber at ccc@calchamber.com or fax (916) 325-1272.

A copy of the proposed regulations, including examples, is available at www.dir.ca.gov/dlse/MealandRestPeriod2.pdf.
Staff Contact: Julianne Broyles

Comments Highlight Workers' Desire for Meal/Rest Period Flexibility

Comments from California Chamber members in support of changing the state's meal/rest period rules continue to highlight the strong desire expressed by employees for greater flexibility in determining when they may take a break from work.

● **A Los Angeles County employer** writes: "Our employees are constantly complaining that we cannot accommodate their wishes when it comes to their meal periods. A segment of our employees begin working at 6 a.m. and are forced to take their lunch break at 10:30 a.m. Sometimes they want the flexibility to use their meal break to work around appointments or school activities for their kids. Under the current regulation, we cannot accommodate them. This regulation has caused great havoc with our employees. Employees are adults and therefore should be able to have the flexibility, along with their employer, to schedule their lunch period as they see fit."

● The human resources director at a **Southern California** company reports: "Our company policies on meal and rest periods strictly comply with regulations currently in place. Our

employees, while they do want to take a meal break, want the latitude to schedule meal periods to meet their and their customer needs. Our employees view the requirements to start their meal period by the start of the fifth hour of work as unfair and disruptive to their workflow and customer service. Due to staggered staffing on production shifts, we have had situations where a manager had to excuse certain employees from a department production meeting because of the requirement to start the meal period by a certain time. We have some employees who work a 12-hour shift who want to combine the meal periods. They have made multiple requests to combine the two required 30-minute meal periods into an hour so that they have sufficient time to relax or take care of personal business... The proposed changes will be a step in the right direction toward allowing employees the freedom to decide when they would like to take their allotted breaks."

● **A Sonoma County** writer who describes herself as "single working mother, accounting manager, human resource director, supervisor and employee"



writes: "It is time that we catch up to the times. I live and work in the *real world*. In the *real world* meal periods are more often than not used for something other than sitting and eating while reading a book and relaxing. The *real world* places some of us using our meal period to pick up a child from school and delivering the child to another place, bills are paid, shopping is done, appointments are made and kept. As long as the employer provides the window for time for the meal period to be taken, and the employer does not have an issue with the time period that the employee chooses, why would the state even want to be a part of the decision?"

● **A Central Valley manufacturer** comments: "Our employees work a 10-hour day, four days a week. As a manufacturer, there are times when the employees will need to work a 12-hour day to meet customer demands. The employees prefer to work and waive the second lunch break to complete the orders; otherwise, they may have to work on the fifth day."

REGISTER NOW!
NEW DATE ADDED.

Don't Labor Over New 2005 Laws. Attend the Labor Law Seminars.



Attend the most valuable in-depth training available to learn about the new 2005 labor laws and how to comply with them.

The Labor Law Training Seminars are being offered at locations throughout California. Select the date and location most convenient for you from the list at right.

NEW DATE ADDED

■ February 25 –
Sacramento

\$136 Executive or Preferred Members

\$170 Online Members and Non-members

LABOR LAW WEB SEMINAR

Interact in the Labor Law Web Seminar right from your desk.

March 3 – 10 a.m. PST

\$120 Executive or Preferred Members

\$150 Online Members and Non-members



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These programs have been approved for recertification credit hours toward PHR and SPHR recertification through the Human Resource Certification Institute (HRCI).

For more information
or to register visit



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and Susan Kemp, Senior Labor Law Counsel
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