

ALERT

CALIFORNIA CHAMBER OF COMMERCE

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‘Job Killer’ List Dwindling; Keep Pressure on Legislators



With just two weeks remaining before the Legislature is scheduled to start its interim recess on September 9, lawmakers continue to remove more “job killers” from active consideration for this year.

As *Alert* went to press, strong opposition from the California Chamber of Commerce and other employer represen-

tatives had helped reduce the list of active “job killer” bills to less than a third of the 45 bills identified as such this year (not counting tax proposals).

Fiscal committees in the Senate and Assembly also were scheduled to consider whether to advance a number of “job killers” or place them on hold for now.

Every vote will count as the remaining “job killers” come up for consideration
See ‘Job Killer’: Page 4

Chamber Urges Confirmation of Cynthia Tuck as Air Board Chair

The California Chamber of Commerce is urging employers to ask state senators to **confirm** Cynthia Tuck as chair of the California Air Resources Board (ARB).

Tuck, an attorney and registered professional engineer, was named by Governor Arnold Schwarzenegger earlier this summer to chair the ARB.

“Cynthia has the technical background that is necessary to succeed as the chair of the ARB,” Chamber President Allan Zaremberg wrote in his letter to Senate President Pro Tem Don Perata supporting Tuck’s confirmation.

Zaremberg cited Tuck’s experience with air quality, water quality and hazardous materials, plus her training in environmental engineering and knowledge of the state’s regulatory process.

“Cynthia’s personal integrity and professional approach to problem solving in the complex world of air quality management make her an easy and natural choice for the chair of the ARB,” Zaremberg

See Chamber: Page 6

See sample support letter at calchamber.com

Chamber Names New Policy Team Members



John Hooper

The California Chamber of Commerce has announced the addition of two new members to its public policy team.

John Hooper III will serve as the Chamber’s legislative advocate in the educa-

tion, banking and finance, and housing and land use policy areas, lobbying both the executive and legislative branches.

“Growing California’s economy is vital to our businesses, and a well-educated workforce, strong financial institutions, and business-friendly land use policies are key to that growth. John Hooper’s background in legislative advocacy will enhance the Chamber’s efforts to move the state’s economy forward,” said Chamber President Allan Zaremberg.

Hooper brings to the Chamber more

than six years of governmental consulting and advocacy experience. Most recently, he worked with the California Senate Majority Caucus, analyzing legislative issues, developing policy solutions, and planning and implementing constituent communication strategies. He also has served as legislative aide and assistant for two California senators.

Hooper earned his bachelor’s degree in government from California State University, Sacramento (CSUS).

Media Relations Deputy

Also joining the Chamber as deputy director of media relations/communications will be Christine Haddon, a recent graduate of CSUS with a bachelor’s degree in government/journalism. Her experience includes work for two state senators and a Sacramento television station. Her duties will include assisting with the Chamber’s media contacts and writing on legislative issues.

Staff Contact: Dominic DiMare

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Labor Law Corner

Employer Policy Determines Holiday Pay for Alternative Work Schedule



Barbara Wilber
Labor Law Advisor

We have a group of non-exempt employees who work an alternate workweek schedule of four 10-hour days, Tuesday through Friday. Must we pay them for holidays that fall on Monday? If we do pay them, do we pay them for eight hours or for 10 hours?

Neither federal nor state law requires any type of holiday pay or holiday time off for private sector employees. Payment of holidays depends on whether the employer has established a holiday policy. The employer policy will determine under what circumstance holiday pay may be owed to employees, including alternative workweek employees.

Before adopting an alternative workweek schedule, an employer must hold one or more meetings and provide a written disclosure outlining the effects of the proposed schedule on the employees' wages, hours and benefits, including holiday pay.

If the employer has established a holiday policy, one of the key items for discussion in the meeting(s) should be how the policy is affected by the alternative workweek. Failure to comply with this requirement invalidates the alternative workweek election.

Two Common Questions

Two common issues related to holiday pay for alternative workweek employees are payment for holidays that fall on employees' scheduled day(s) off and the number of hours that should be paid if a holiday pay policy is in place.

The employer should establish a policy for the situation where a holiday falls on a day that is the employee's usual "day off" or outside the alternative workweek schedule (as in the question posed, when a holiday occurs on Monday, and the employees' alternative work schedule is Tuesday through Friday).

If you wish to establish non-payment of holiday pay for a usual day off, the policy must clearly specify non-payment.

The number of hours to be paid is also governed by the employer's policy. In most instances, employers pay a day's pay (the employee's usual number of hours worked) at an employee's regular rate. This does not mean that employees working an alternative workweek of 10-hour days would have to be paid for 10 hours.

An employer needs to designate whether alternative workweek employees will be paid for the hours established by the alternative workweek or for the regular eight-hour day. This information

should be part of the required meetings and written disclosure.

Preventing Misunderstandings

Employers can avoid misunderstandings by addressing the following issues in any holiday pay policy:

- Identify the holidays your company recognizes. Specify what happens if one of those holidays falls on a weekend or during an employee's vacation or other leave of absence.
- Identify which employees are entitled to the holiday benefit.
- Identify whether holiday time off will be paid or unpaid. Since providing time off for holidays is a benefit provided at the employer's discretion, time off without pay is an option.

- Identify what will happen when an employee must work on a day you have designated as a paid holiday. The courts view the promise of a paid holiday as a contract. The normal procedure to fulfill your obligation under the contract is either to grant another day off with pay or to pay the amount designated by your policy in addition to any wages earned that day.

For more information on holiday pay, review Chapter 17 of the California Chamber's *2005 California Labor Law Digest* or visit www.hrcalifornia.com.

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.

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Chamber Calendar

Board of Directors:
September 8-9, La Jolla

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Time to Focus on Reform *Issues* on Ballot

Californians Have Chance to Fix State's Broken Budget, Political Systems



With little more than 10 weeks remaining before the November 8 special election, it is time to move beyond all the rhetoric and

begin discussing the *issues* that will be going to a vote of the people.

Two priorities for the California Chamber of Commerce are giving Californians an opportunity to repair California's broken budget and political systems, both elements of the Governor's reform package.

Opponents of Governor Arnold Schwarzenegger are spending a great deal of time and money trying to impugn him rather than discussing the merits of his reform proposals because they can't defend the status quo. In any credible debate, nobody could assert that California's budget system is fine just the way it is, or that a November general election without competitive seats is real democracy.

Repair Budget System

The state's budget system is so badly broken that it has produced budget deficits for five years in a row now. Unless we change the system, the current budget structure will continue to produce chronic deficits.

Proposition 76, the Live Within Our Means Act, is designed to cut to the heart

of the problem and stabilize the state's fiscal future. It will ensure the state never has an unmanageable budget deficit.

The measure prevents the state from spending one-time money for ongoing programs — the shortsighted error that has led to budget deficits in this decade.

Proposition 76 gives legislators and the Governor the tools they need to deal with sudden drops in revenue, such as occurred in the early 1990s. The initiative limits budget increases to the average revenue growth over three fiscal years.

Commentary

By Allan Zaremborg

First in a series of commentaries on special election measures

In any credible debate, nobody could assert that California's budget system is fine just the way it is, or that a November general election without competitive seats is real democracy.

The Live Within Our Means Act will bring stability to California's finances. It requires an adequate budget reserve that will protect funding for necessary programs — including education, public safety, health and welfare, and transportation — when the inevitable economic downturns occur. It eliminates automatic reductions in education funding when state revenues decline. Finally, Proposition 76 guarantees that legislators can't steal for unrelated programs the transportation taxes Californians pay at the pump.

Repair Political System

Just repairing the budget system, however, isn't enough to get California government back on track. We also need to reform our political system.

In that broken system, legislators get to draw their own district lines and choose their constituents. As a result, in the November 2004 elections, not one of 153 seats in the California congressional delegation, state Senate or state Assembly changed parties.

California needs to give people throughout the state a chance to choose their elected representatives. The way to ensure they will have a choice on the general election ballot is to create more competitive political districts.

Proposition 77, the Voter Empowerment Act, will assign the task of drawing fair, competitive districts to a bipartisan,

independent three-person panel of retired judges. That reform removes the inherent conflict of interest when politicians design their own districts. Reform also marks a first step toward restoring competition to the political process. Competition, in turn, will be a start toward making legislators accountable to the voters,

their constituents.

Timely Action

The mound of evidence that our budget and political systems need reform will only grow larger unless we act now. The time is right for Californians to approve Proposition 76, the Live Within Our Means Act, and Proposition 77, the Voter Empowerment Act, this November.

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

Visit calchamber.com for sample letters to use in contacting your legislators on the issues that affect your business.

'Job Killer' List Dwindling; Keep Pressure on Legislators



From Page 1

by the full Senate or Assembly. The impacts of the "job killers" vary from business to business.

Employers need to let their legislators know

how these bills affect operations and businesses' abilities to attract and maintain the jobs California needs for its growing economy.

In Fiscal Committee

Awaiting final action by the fiscal committees in each house were the following:

● **SB 109 (Ortiz; D-Sacramento)**

Excessive litigation. Increases litigation costs and potential lawsuits by allowing for both civil and criminal penalties for specified air quality violations.

● **SB 600 (Ortiz; D-Sacramento) Bio-monitoring.** Makes California unfriendly to business by establishing a biomonitoring program that could potentially lead to the elimination or reduction of use of certain chemicals which have not been scientifically proven harmful, based on mere detection.

● **SB 646 (Kuehl; D-Santa Monica) Water discharge.** Jeopardizes jobs and agriculture and timber industry revenues by imposing mandatory annual fees for water discharge waivers with no accountability requirements.

On Assembly Floor

To be considered next by the Assembly:

● **SB 44 (Kehoe; D-San Diego) Affordable housing development impediment.** Slows development of affordable housing and increases the opportunities for unnecessary litigation by forcing local government to integrate two incompatible planning processes.

● **SB 174 (Dunn; D-Garden Grove) New "sue your boss" lawsuits.** Increases employer liability by providing new incentives for plaintiffs and their attorneys to file lawsuits by establishing new types of "sue your boss" lawsuits.

● **SB 399 (Escutia; D-Norwalk) Health care cost increase.** Increases litigation costs on insurers and the self-insured by requiring medical payments in excess of Medi-Cal reimbursement rates and increasing non-economic damage awards.

● **SB 833 (Bowen; D-Redondo Beach) Onerous fax communication restrictions.** Increases costs by placing onerous administrative and economic burdens on associations and employers by requiring express written consent from their own members and/or customers prior to sending certain fax communications.

On Senate Floor

Awaiting consideration by the full Senate were:

● **AB 48 (Lieber; D-Mountain View) Minimum wage increase.** Provides significant disincentive for employers to create jobs in California by giving our state the highest minimum wage in the country. Increases the cost of doing business by billions annually by raising the state minimum wage to \$7.25 in 2006 and to \$7.75 in 2007, and indexing increases every year thereafter.

● **AB 169 (Oropeza; D-Long Beach) Excessive litigation.** Negatively distinguishes California from the rest of the country by exposing every business to excessive litigation and increases the cost of doing business by mandating damage awards and new civil penalties for gender pay equity violations.

● **AB 391 (Koretz; D-West Hollywood) UI benefit expansion.** Increases the cost of doing business in California by forcing California employers to subsidize a strike against their own company by providing unemployment insurance benefits to workers unemployed due to a strike.

● **AB 875 (Koretz; D-West Hollywood) Government agency potential harassment of employers.** Opens the door to potential harassment by government labor and taxing agencies by requiring the referral of an unspecified labor violation to taxing agencies for a tax audit, exposing employers to an expensive, time-consuming fishing expedition for possible employer tax code violations.

● **AB 1310 (Núñez; D-Los Angeles) Severance offers; increased litigation.** Establishes new reasons to sue certain private sector employers by setting in statute a very detailed notice process that an employer must follow exactly in order to be able to utilize any severance agreement.

Not Moving

On the Assembly's unfinished business file, and not expected to move is

AB 6 (Chan; D-Oakland) Personal income tax increase. Increases the tax burden on small business by increasing personal income tax rate to 10 and 11 percent and the alternative tax rate to 8.5 percent.

Other "job killer" tax bills never passed the house in which they were introduced and also are considered unlikely to move further this year.

Held in fiscal committees this week:

● **AB 581 (Klehs; D-Castro Valley) New reasons to sue.** Makes California less desirable as a place to establish or expand a business by opening new avenues to sue employers by establishing a broad new private right of action that permits joint labor-management committees to sue any employer for certain Labor Code violations that may have occurred up to four years previously, among other provisions.

● **SB 300 (Kuehl; D-Santa Monica) Family leave law abuse.** Opens California's leave law to potential abuse by removing controls that require that the employee actually provides the care, among other provisions.

Next Stop

If passed, SB 44, SB 174, AB 48 and AB 391 will go directly to the Governor for approval or veto. SB 399 and SB 833 were amended after passing the Senate and, therefore, will return to the Senate for a vote on whether senators concur with the Assembly amendments. AB 169, AB 875 and AB 1310 were amended after passing the Assembly and will return there for a vote on whether Assembly members concur with the Senate amendments.

Action Needed

Let your legislators know how the "job killer" bills affect your business. Ask them to **stop** these bills now.

For updates, sample letters and more information on the "job killers," visit www.calchamber.com/jobkillers.

Staff Contact: Dominic DiMare

See sample letters and updates at calchamber.com/jobkillers

Member Profile

Old Town Trolley Blends History, Transportation, Entertainment

If you're hankering for a Southern California adventure that blends relaxation and entertainment with unique local insight, Old Town Trolley Tours of San Diego is the place to turn. A subsidiary of Historic Tours of America (HTA) in Key West, Florida, this small business offers a variety of historically oriented guided journeys on land and sea.

Trips include the Old Town Trolley Tour, which gives on-and-off access to guests wanting to see historic sites of their choosing; an amphibious SEAL (SEA and Land) Tour that starts on *terra firma* then splashes down onto San Diego Bay for a glimpse of aquatic points of interest; a spooky Ghosts and Gravestones sojourn through historic graveyards and other haunted locales; and ready access to other local diversions.

"We are the attraction that takes you to the attractions, the choo choo that takes you around San Diego Land," says Lorin Stewart, director of HTA's San Diego divisions.

Between locals (who especially like the SEAL Tour for its unique look at familiar sites) and out-of-town guests, HTA San Diego yearly serves more than 400,000 people on its specialty tours and its Balboa Park tram (a separate product).

HTA was founded in the 1970s in Key West by Chris Belland and Ed Swift III and has four other East Coast sites. It expanded to San Diego in 1989. Because San Diego was the first coastal city settled in California, it makes an interesting — and the only — West Coast Historic Tour destination.

HTA's San Diego operation has expanded considerably since its inception. It started with a handful of trolleys; today, it has more than 25 trolleys and amphibious vehicles. It has gone from serving 75 people per day to serving more than 800 per day in season. The number of employees varies seasonally between 130 and 150.

'Selling Air'

HTA combines an entertaining appreciation of a city's beauty and local flavor with its historical significance to make tours fun and engaging.

As business expanded in the 1990s, the challenge of meshing two different



Lorin Stewart (center), director of the San Diego divisions of Historic Tours of America, a California Chamber of Commerce member, says he loves dealing with people on holiday.

industries — transportation and entertainment (Transportainment®) — into a satisfying customer experience required a massive rethinking of HTA's business model.

HTA developed a wider variety of niche tours and began conducting surveys to discover what people enjoyed the most about their trips. It found that customers liked hearing real people tell real stories about life in the tour city; these personal touches added authenticity and human interest to the tour.

As Stewart puts it, tour-based entertainment is about "selling air. Customers walk away with nothing but the experience." Thus, the company works daily to keep its products novel and exciting.

To do so, according to Stewart, "the tours are a continual laboratory. Although some pieces of each tour need to be done each time, the personality of each tour guide can come out. Good tour guides look for things that change each day, the daily life on the street — and getting the right person to do that is the key."

Management provides continual feedback of a guide's presentation, and each month the company recognizes employees for positive customer feedback they receive, which keeps them motivated to do their best. All employees are encour-

aged to excel by refining their performance of daily responsibilities, allowing ownership of each position and product.

These management strategies have allowed HTA's San Diego operations to garner awards from the Gaslamp Quarter Historical Foundation, the San Diego Convention and Visitors Bureau, and the San Diego Chamber of Commerce.

Adapting in Difficult Times

In 2000, HTA's San Diego operations were in a bloom of growth, with several new brands created to fit niche markets, including the amphibious SEAL Tour.

The company had just reconstructed a historic adobe building, the Casa de Aguirre, to house its retail component. The building was rehabilitated following the Secretary of the Interior Standards of Reconstruction and is designated a historic site. A free museum displaying items found in the archaeological dig of the site was incorporated into the retail store.

All of this expansion occurred right before 9/11.

Stewart believes that the operational changes HTA already had implemented helped it weather that difficult time successfully: "We had to be very fluid and adaptable and try to be a better-managed

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Legislative Outlook

An update on the status of key legislation affecting businesses. Visit www.calchamber.com/position_letters for more information, sample letters and updates on other legislation. Staff contacts listed below can be reached at (916) 444-6670. Address correspondence to legislators at the State Capitol, Sacramento, CA 95814. Be sure to include your company name and location on all correspondence.

Emergency Heat Stress Regulations Now in Effect

Emergency regulations to prevent heat stress illnesses or fatalities were approved this week by the state Office of Administrative Law (OAL) and are now in effect.

The emergency rules were adopted by a unanimous vote of the Cal/OSHA Standards Board on August 12, then sent to OAL for approval.

In announcing the adoption of the emergency regulations, Cal/OSHA said they “apply equally to all who work outdoors in conditions that induce heat stress — from the farm worker to the roofer to the laborer paving the highway.”

Now that they have been approved by OAL, the emergency regulations will be in effect for 120 days, during which time Cal/OSHA and the Labor and Workforce Development Agency will work to create and adopt permanent regulations.

The proposed emergency regulations:

- Require that access to a shaded area is available to any worker suffering from heat illness or needing shade to prevent the onset of illness;
- Re-state existing law requiring water to be available at all times and ensure workers understand the importance of frequent consumption of water; and
- Require education of employees and supervisors likely to be exposed to heat

stress on how to prevent heat illness and what to do should it occur.

The California Chamber and other employer groups are seeking refinements to the emergency regulations before they are adopted and implemented to prevent unintended consequences.

If the unclear definitions in the emergency regulations are a problem for employers trying to comply, the Chamber is urging the businesses to contact Cal/OSHA’s Consultation Unit for specific answers on how to apply the emergency regulations to the workplace. To reach the unit, call (800) 963-9424 or e-mail InfoCons@dir.ca.gov.

The Chamber and its members are committed to worker safety and health, and support laws and regulations that permit businesses to address occupational safety and health issues in a reasonable, sensible, flexible and cost-effective manner.

More Information

Information about protecting workers from heat stress is available on the Department of Industrial Relations website at www.dir.ca.gov.

A more detailed story appeared in the August 19 *Alert*.

Staff Contact: Julianne Broyles

Chamber Urges Confirmation of Cynthia Tuck as Air Board Chair

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wrote. “The California Chamber of Commerce strongly supports Cynthia without reservation.”

When appointing Tuck to the ARB, the Governor noted that she has more than 20 years of direct air quality experience in California. She has worked in developing air quality laws, regulations and programs.

Until her appointment, Tuck had served since 2000 as general counsel and manager of the State and Bay Area Air

Quality Committees at the California Council for Environmental and Economic Balance (CCEEB), a statewide coalition of business, labor and public leaders. She had served as a consultant to the council for the three years before that.

Tuck’s experience includes more than a decade as an associate or government relations advisor with several law and lobbying firms, three years as a civil engineer for the Pacific Gas and Electric Company and two years as an environmental engineering research assistant.

Tuck holds a J.D. from the McGeorge School of Law, University of the Pacific, and an M.S. in environmental engineering and a B.S. in civil engineering from the University of Illinois. She is a member of the State Bar of California and a registered professional engineer.

Tuck’s confirmation hearing has been set for August 31 before the Senate Rules Committee. A sample letter in support of her confirmation as chair of the ARB is available at www.calchamber.com.

Staff Contact: Dominic DiMare

Interest in Harassment Prevention Training Grows as Deadline Nears

Since the California Chamber of Commerce launched its two-hour online sexual harassment prevention training course in June, more than 15,000 trainees have signed up for the program.

Interest in the web-based course continues to grow as businesses move to comply with state law requiring employers of 50 or more employees to provide two hours of sexual harassment prevention training for supervisors by January 1, 2006.

The law (AB 1825; Reyes; D-Fresno; Chapter 933, Statutes of 2004) specifies certain required course content and that the training “shall be presented by trainers or educators with knowledge and expertise in the prevention of harassment, discrimination and retaliation.”

Customer Testimonials

Managers who have completed the course praise both the content and convenience of training it provides:

One company’s legal counsel said it had reviewed several harassment prevention courses and chose the Chamber’s

“because it was engaging and captured our message.”

A human relations manager for a financial service company reports, “I appreciated the flexible schedule to complete the training, and the web access just added to that flexibility. . . Overall, it was a pain-free experience and one that had value in my job.”

Fully Interactive

The Chamber’s online course provides the content required by law and allows the learner to ask a qualified instructor/expert questions at any time during the course.

An “Ask the Trainer” button is located on every page of the course, so each learner can send direct questions to the course instructor. Once questions are submitted, the learner receives a response within the next business day. The course instructors are practicing labor law attorneys.

Attorneys and training experts developed the course, which contains information and guidance regarding

federal and state laws about prohibiting, preventing and correcting sexual harassment. The course also covers the remedies available to victims.

Key Features

Key course features that enhance the learning experience include an audio version, frequent quizzes, summary review sections, case studies, a supervisor handbook that includes best prevention practices and the “Ask the Trainer” feature.

Each course includes a timer, which obliges each learner to spend the required two hours in the course before the course can be completed.

The course also is available in English or Spanish and comes in both California and national versions.

More Information

More information on the course is available at www.calchamberstore.com.

Staff Contact: John Gouveia

Old Town Trolley Blends History, Transportation, Entertainment

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organization. When you’re successful, there are luxuries you can take . . . but when there’s a challenge, the organization is more efficient, engaged and flexible.”

‘Trolley Guy’ and the Chamber

HTA San Diego also faces other challenges. According to Stewart, most of its costs — including fuel, insurance, workers’ compensation and availability of affordable workforce housing — generally are higher than those of its sister companies around the country.

Further, the need to comply with new state mandates requires constant vigilance. For Stewart, the California Chamber of Commerce “helps with being aware of what’s happening from a legislative standpoint that could really affect business. It also helps me know how to vote and how to be an advocate in circles I work in.”

A member of the Chamber since

1996, HTA San Diego uses many Chamber products, including issues of *Alert*, which Stewart keeps in a binder on his desk, “job killer” updates and human resource compliance products, such as the Chamber’s online sexual harassment compliance training.

“The Chamber not only gives direction on how to comply but also gives me ability to comply through training,” says Stewart. “It’s nice to have a state resource that offers that.”

Stewart also keeps the Chamber-produced legislative voting records at his fingertips. They come in handy during San Diego’s Fleet Week, when he meets and exchanges ideas with area legislators.

As Stewart sees it, everything relates back to how he will be able to run his business, so these tools are vital to keeping him informed. The knowledge, he says, “helps to build bridges with people because you can discuss a voting record and issues. A trolley guy in isolation wouldn’t know these things.”

People Make or Break It


The most exciting and demanding aspect of his business, according to Stewart, is the people: “A lot of people are looking to have maximum fun, especially on their vacations. Being the fulfillment of a vacation dream” and satisfying those great expectations is quite a task — one that Stewart and his employees meet with enthusiasm.

“I love dealing with people on holiday. People are looking for that vacation, that break. Vacations mean more and more to people’s lives. Being in the crux of that is the best part of this business,” grins Stewart, the pleasure apparent in his voice. “You can see the reflection of your efforts in your customers’ eyes.”

More information about HTA is available at www.historictours.com.

Deadline Approaching Quickly to Complete Sexual Harassment Training

California law, AB 1825, mandates two hours of sexual harassment training for supervisors before January 1, 2006 for employers of 50 or more. Online training is an easy, cost-effective way to protect your company.

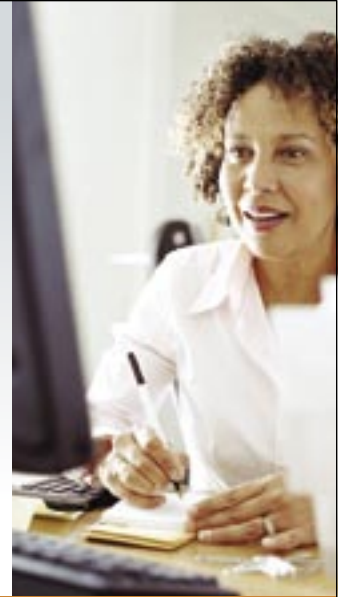
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