

ALERT

CALIFORNIA CHAMBER OF COMMERCE

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Bills Ignore Need to Balance Environment with Economy



Before legislators adjourn for the year next week, they are scheduled to consider a number of California Chamber-opposed bills that ignore the need to strike a balance between

environmental and economic concerns.

One of the most contested proposals is **AB 32 (Núñez; D-Los Angeles)**. The bill will increase costs for California businesses, make them less competitive and discourage economic growth with little or no proven environmental benefit by adopting an arbitrary cap on carbon emissions.

Global Approach Needed

The Chamber and the broad coalition Sustainable Environment and Economy for California (SEE California) have pointed out that it is important that all

strategies used to address greenhouse gas emissions ensure the infrastructure needed for advancing cleaner technologies, the availability of an adequate energy supply over the long-term, a strong manufacturing sector and a thriving state economy.

The Chamber and coalition also have emphasized repeatedly that making an impact requires focusing on a truly global solution to address climate change concerns and curb worldwide carbon emissions.

A better way for California to lead in the fight against global warming includes promoting protection of intellectual property worldwide to foster and encourage the transfer of cleaner, environmentally friendly technologies to countries like China and India, where such action could have a significant impact on this global problem.

Tax credits to spur earlier adoption of
See Bills: Page 4

Chamber Works to Uphold Workers' Comp Reform



The California Chamber of Commerce is back in court to defend cost-saving workers' compensation reforms passed in 2004.

The Chamber has filed a friend-of-the-court brief with the 3rd

District Court of Appeal in the case of *Lopez v. Workers' Compensation Appeals Board et al.*, supporting fair apportionment of an employer's legal responsibility for a permanent disability.

Apportionment Unchanged

In its brief, the Chamber argues that the 2004 workers' compensation reform legislation did not expressly change the formula for calculating apportionment from a percentage-based formula to a dollar-based formula.

The Chamber therefore urges the court to settle two decisions so that future workers' compensation cases apportion an employer's proportionate liability by subtracting percentages of an employee's disability as a result of a work-related injury, not by subtracting the dollar value of the injury.

Workers' Comp Reforms

Chamber-supported **SB 899 (Poochigian; R-Fresno)** of 2004 made funda-

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Legislative Updates at calchamber.com

Changes in both legislation and the status of pending proposals are happening quickly. The Legislature begins its final recess on August 31. For the latest updates, use the Bill Tracking feature in the Government Relations section at www.calchamber.com.



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Labor Law Corner

Family Leave Laws Apply to Both Mothers and Fathers



Jessica Hawthorne
Assistant Employment
Law Counsel

Am I required to provide FMLA or CFRA leave to a man whose girlfriend is about to have his baby? If so, what if the girlfriend works for me, too, and she already has requested leave?

All eligible employees of an employer covered by the Family Medical Leave Act

(FMLA) or California Family Rights Act (CFRA) are eligible in the same manner for leaves under the FMLA and the CFRA.

The FMLA and the CFRA, collectively called "family leave laws," apply to all private employers with 50 or more employees and require covered employers to provide eligible employees with leave for up to 12 weeks per year for, among other things, bonding with a newborn or adopted child.

Employers are required to offer only a total of 12 weeks for one event, however.

An employee is eligible for such leave if he/she has worked at least 1,250 hours in the prior year for that employer and has been employed by the covered employer for at least 12 months.

The employee also must work at a worksite with 50 or more employees, either on the same premises or within 75 road miles of the worksite.

Under most circumstances, FMLA and CFRA leave run concurrently.

Fathers Eligible, Too

A father who wishes to take leave to bond with his new child is eligible for up to 12 weeks of unpaid leave. There is no requirement that the father be married to the mother or that the parents reside together.

FMLA and CFRA, however, require employers to provide only a total of 12 weeks leave per event. If both the mother and the father work for the same employer, they are eligible for only a total of 12 weeks of unpaid leave for baby bonding. This limitation does not have an impact on the mother's eligibility for pregnancy disability leave (PDL).

Clarifying Policies

Employers can follow these tips to clarify their leave law policies:

- Ensure FMLA and CFRA policies describe how the company will divide baby bonding leave if both parents work for the company.

- Ensure FMLA and CFRA policies are clear, concise and up-to-date.

- Understand the difference between FMLA, CFRA and PDL, and how these leave laws interact.

For more information, 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 submit your question at www.hrcalifornia.com.

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Seminars/Trade Shows

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

Business Resources

Corporate Governance. National Association of Corporate Directors. September 28, San Francisco. (916) 977-3700.

International Trade

International Business Leadership Program. Northern California World Trade Center. August 31, Sacramento. (916) 447-9827.

Labor Law

Workers' Compensation in California Web Seminar. California Chamber of Commerce. September 21. (800) 331-8877.

Managing Leaves of Absence Recorded Web Seminar. California Chamber of Commerce. Through October 31. (800) 331-8877. www.calbizcentral.com.

Chamber Calendar

Water Committee:

September 7, Santa Monica

Transportation Committee:

September 7, Santa Monica

Fundraising Committee:

September 7, Santa Monica

Board of Directors:

September 7-8, Santa Monica

Tourism Committee:

September 8, Santa Monica

**Next Alert:
September 15**



Fast-Growing Coalition Builds Support for November Bond Infrastructure Package

The California Chamber of Commerce is part of a fast-growing coalition supporting the Rebuild California Plan, the package on the November ballot to fund the state's infrastructure needs and protect transportation funding.

Governor Arnold Schwarzenegger and legislative leaders of both parties joined forces in May to place on the ballot Propositions 1A, 1B, 1C, 1D and 1E.

Supporters of the entire infrastructure package, in addition to the Chamber, include organizations representing labor, growers, teachers and city mayors. Numerous other organizations are backing

various pieces of the package.

Approval of the measures will bring critically needed investment into the state's transportation network and prepare for state population growth over the next decade, as well as ensure that gas tax revenues Californians pay at the pump are dedicated to transportation projects, as voters agreed when they approved Proposition 42 in 2002.



The Chamber-supported Rebuild California Plan consists of:

- **Proposition 1A**, a constitutional amendment that protects existing state gas tax revenues from being diverted for non-transportation purposes.

- **Proposition 1B**, a \$19.9 billion bond measure to fund projects to relieve traffic congestion, improve highway safety, air quality and port security.

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Help Fight Ballot Initiatives Designed to Impede Business Voice in State

CALBUSPAC, the issues political action committee of the California Chamber of Com-



merce, is urging all of its members to get involved in defeating several onerous ballot initiatives, including the tax on corporations to publicly finance political campaigns, Proposition 89.

CALBUSPAC accepts contributions in any amount, but it cannot accept

contributions from foreign nationals. Additionally, it cannot accept any funds earmarked

for any specific issue. The board of CALBUSPAC decides its funding priorities based on its analysis of the importance of the issues to the business community and the needs and viability of the ballot measure committees formed to support the interests of business.

To contribute to CALBUSPAC online, visit www.calchamber.com/calbuspac. You may also contribute by sending a check to CALBUSPAC, ID #761010, c/o California Chamber of Commerce, 1215 K Street, Suite 1400, Sacramento, CA 95814.

Contributions to CALBUSPAC are not deductible as charitable contributions for federal income tax purposes.

Staff Contact: Michele Zschau

Chamber Positions to Date on November Ballot Measures

Ballot Number	Subject	Chamber Position
Proposition 1A	Transportation funding protection	Support
Proposition 1B	Transportation bond	Support
Proposition 1C	Housing bond	Support
Proposition 1D	Education facilities bond	Support
Proposition 1E	Disaster preparedness and flood prevention bond	Support
Proposition 86	Cigarette tax hike to fund health care	Oppose
Proposition 87	Tax on California oil production	Oppose
Proposition 89	Corporate income tax hike to pay for publicly financed political campaigns	Oppose

The California Chamber of Commerce Board of Directors will be considering other November ballot measures in September.

California Chamber Works to Uphold Workers' Comp Reform

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mental changes in the way the workers' compensation system determines the level of injury and the amount of disability assigned to an injury and created a new medical network to provide quality, cost-effective care to workers.

This package ensured that medical treatment follows nationally recognized guidelines and sets clear parameters for what is acceptable treatment for injured workers in the system, while also reducing excessive litigation.

Included in the reform package were changes in the law designed to bring

rationality to the process of determining which conditions contributed to an injury and how much, so that employers would be responsible for only the portion of an injured worker's disability resulting from the existing job-related injury.

Recent Court Decisions

In the case of *E. & J. Gallo Winery v. Workers' Comp. Appeals Board*, the 5th District Court of Appeal issued an opinion holding that the employer's proportionate liability is calculated based upon the dollar value of the disabilities as opposed to the percentage method.

Shortly thereafter, the 1st District Court of Appeal followed the earlier decision by the 5th District in *Nabors v. Workers' Compensation Appeals Board (WCAB)*.

As in the *Lopez* matter, the Chamber submitted a friend-of-the-court brief in *Nabors*, arguing in favor of the percentage method.

The 3rd District Court of Appeal heard oral arguments on August 23 and is expected to rule within the next few months.

To view the friend-of-the-court brief, visit www.calchamber.com.

Staff Contact: Erika Frank

Bills Ignore Need to Balance Environment with Economy

From Page 1

more efficient generators and manufacturing also should be explored.

Discussions on amendments to AB 32 were continuing as *Alert* went to press. For updates, visit the Chamber website at www.calchamber.com.

Other 'Job Killers'

Also pending before legislators are:

● **Ports: Regulatory Complexity. AB 1101 (Oropeza; D-Long Beach)** hampers operations at ports, rail yards, and airports by shifting regulatory authority over emissions from state to local entities, creating a patchwork of potentially inconsistent regulations statewide, creating conflicts with federal law.

● **Increases Electricity Costs. SB 1368 (Perata; D-Oakland)** limits the available power sources to meet California's energy demands while substantially increasing the price of electricity to consumers and businesses by establishing an unattainable greenhouse gas emission performance standard.

● **Punitive Regulation. SB 1205 (Escutia; D-Norwalk)** makes California unattractive to business by raising maximum fines for emission violations, creating a new category of violators with no due process for the determination of who is a violator while ignoring that there is no demonstrated connection between penalties and emission rates.

● **Resource Regulation. SB 1252 (Flores; D-Shafter)** penalizes businesses that

are in the process of implementing the latest air standards by imposing an additional civil penalty.

● **Biomonitoring. SB 1379 (Perata; D-Oakland)** makes California unfriendly to business by establishing a biomonitoring program that could generally lead to the elimination or reduction of use of certain chemicals that have not been scientifically proven harmful, based on mere detection.

Last-Minute Proposal

● **Ports: Goods Movement Cost Increase.** As *Alert* went to press, it appeared that **SB 927 (Lowenthal; D-Long Beach)**, pending on the Assembly floor, would be amended to increase the cost of goods movement in California by imposing a \$60 fee on each shipping container processed through the Los Angeles and Long Beach ports to fund infrastructure, security and

environmental improvements.

Interested members should join the Chamber and a coalition of businesses and industry groups in urging legislators to **oppose the container fee**. It amounts to a half-billion dollar goods movement tax that could drive economic activity from California to neighboring states.

Action Needed

Contact your legislators and urge them to vote "no" on the "job killer" proposals outlined above. Emphasize the importance of striking a balance between the strong economy needed to support jobs for California's growing population and making the state a leader in protecting the environment.

Staff Contacts: Moira Topp

Amisha Patel

Dominic DiMare

November Bond Infrastructure Package

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● **Proposition 1C**, a \$2.9 billion bond measure to provide housing for low-income seniors, families, homeless and the disabled.

● **Proposition 1D**, a \$10.4 billion bond measure to repair, modernize and expand K-12 public schools, university and community college facilities.

● **Proposition 1E**, a \$4.1 billion bond

measure to prevent catastrophic floods, protect water supplies and prepare for disasters.

Details on the infrastructure package appeared in the May 19 and May 26 *Alerts*.

For more information on the Rebuild California Plan, visit www.readforyourself.org.

Staff Contact: Jeanne Cain

Chamber-Opposed 'Job Killer' Bills Expanding UI Benefits Head to Governor



Two California Chamber of Commerce-opposed "job killer" bills expanding unemployment insurance (UI) benefits have passed the Legislature and await action by Governor Arnold

Schwarzenegger.

AB 1884 (Chu; D-Monterey Park) increases the cost of doing business in California by forcing California employers to subsidize a strike against their own company by providing UI benefits to workers unemployed due to a strike.

AB 2209 (Pavley; D-Agoura Hills) increases the cost of doing business in California by forcing employers, in essence, to subsidize a strike against their company by creating a new monetary penalty payment equivalent to all lost wages and benefits that employers must pay directly to all workers unemployed due to the strike.

Huge Cost Increases

AB 1884 would add \$16 million in new costs to the UI fund, which currently is funded 100 percent through employer UI tax contributions. Those tax rates have been set at the highest permitted levels for several years. California employers also have been forced to pay an additional \$815 million annually in emergency solvency surcharges since 2004.

The Chamber believes that employers shouldn't be forced to pay for new UI program costs, such as those proposed by AB 1884, until the long-term solvency of the UI system is assured.

AB 1884 will prolong disputes and add to economic damages suffered by both sides and will eliminate an incentive for both the employee and employer to settle as soon as possible.

New Penalty

AB 2209 establishes a new mandatory monetary award to be paid by employers to workers who are ineligible to receive UI benefits. Recent amendments to the bill would establish a new employer penalty process where workers deemed ineligible for UI benefits paid out of the UI

Trust Fund due to the existence of a trade dispute receive payments equivalent to all lost wages and benefits directly from the employer.

The penalty award would apply if any legal body finds any employer misconduct during a trade dispute. This bill does not require the finding to be final before the new penalty payment is imposed.

Even with notification to employees in advance that a lockout would occur, AB 2209 would provide payments equivalent to UI benefits to workers unemployed due to a lockout during a trade dispute.

End-Run Around Existing Law

Both AB 1884 and AB 2209 fly in the face of long-established case law.

Workers choose to strike with full knowledge of consequences.

In *McKinley v. California Employment Stabilization Commission* (1949) 24 Cal. 2d 239, an employer association notified the union that if there was a strike against any member of the association, the other members would lock out their employees.

The court held that all of the employees were ineligible for UI benefits under the "trade dispute" disqualification because the unemployment was caused by the workers' own actions, which were taken with full knowledge of the consequences.

The Chamber believes that AB 2209 attempts to go around this bar to UI benefits by providing for payments equal to all lost

wages and benefits to be sent directly from the employer to affected employees if there is any finding of employer misconduct.

Similar Legislation Vetoed

AB 1884 and AB 2209 are similar in tone to last year's vetoed "job killer," AB 391 (Koretz; D-West Hollywood).

In vetoing AB 391, Governor Schwarzenegger noted that UI benefits "are predicated on the principle that workers should receive assistance when they have lost their job through no fault of their own." That principle, the Governor wrote, "is key to maintaining the balance that prevents both employers and workers from taking precipitous actions to affect unemployment insurance payouts."

AB 391, the Governor said, "disrupts that balance by allowing workers to receive unemployment benefits when they have initiated the process for a strike that results in a lockout." He pointed out that current UI law already protects workers from lockouts called by an employer when there is no strike notice.

Action Needed

The Chamber is strongly urging employers to send Governor Schwarzenegger a letter asking that he **veto AB 1884 and AB 2209**. For sample letters, visit www.calchamber.com.

Staff Contact: Julianne Broyles

Political Communications with Employees

As election season heats up, the California Chamber of Commerce reminds employers to brush up on the dos and don'ts of political communications with employees.

Business owners are within their rights to inform employees and stockholders about the potential impacts of proposed ballot measures.

The Chamber has prepared a

brochure giving a quick overview of what employers can and cannot do, as well as when they need to report what they spend on political communications.

A pdf file of the "*Guidelines to Political Communications to Employees*" brochure is available on the Chamber's website at www.calchamber.com/guidelines.

Legislative Outlook

An update on the status of key legislation affecting businesses. Visit www.calchamber.com/positionletters 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.

Minimum Wage Hike Bill Moving without Automatic Indexing



OPPOSE

Governor Arnold Schwarzenegger and Democratic legislative leaders announced a compromise this week on a proposal that increases the state's minimum wage, but does not include automatic annual increases.

Following the agreement, California Chamber of Commerce-**opposed AB 1835 (Lieber; D-Mountain View)** was amended to raise the state minimum wage to \$7.50 an hour in 2007 and to \$8 an hour in 2008.

Removal of the automatic indexing provisions is an important victory for business. Nevertheless, the Chamber remains opposed to AB 1835, which will give California the highest minimum wage rate in the nation and increase both public and private employer wage costs by at least \$2.6 billion annually.

The Chamber is asking lawmakers to consider whether forcing employers to absorb two major increases in the

minimum wage rate in a 12-month period will increase inflationary pressure on California's economy.

When government mandates an increase in the minimum wage, businesses affected by the increase raise the price of goods and services, where possible. As a result, persons earning the minimum wage then pay a higher price for consumer goods and services the consumer paid less for before the minimum wage increase.

Action Needed

AB 1835 was awaiting action by the full Senate as *Alert* went to press. If it passes that house, it will go to the Assembly for concurrence in the amendments.

The Chamber urges employers to ask their senators and Assembly members to **oppose AB 1835**.

Staff Contact: Julianne Broyles

'Blank Check' Litigation Bill Stalls in Assembly



California Chamber of Commerce-**opposed** "job killer" legislation that in effect creates a "blank check" for the Attorney General's office to pursue lawsuits against business was rejected on the Assembly floor on August 17.

SB 1489 (Ducheney; D-San Diego) invites unlimited "fishing expeditions" by the Attorney General under numerous statutes, including the Unruh Civil Rights Act and environmental laws, by permitting judges to make defendant companies pay all the investigation and lawsuit costs, including attorneys' fees, if the Attorney General "prevails." The term "prevail" could include settlements, changes in operation by the defendant or even a miniscule monetary award. The bill applies retroactively to any lawsuits pending as far back as 2003 or 2004.

The Chamber and the diverse coalition of businesses opposing SB 1489 believe the ambiguity and scope of the bill in essence create a blank check for the Attorney General's office to conduct fishing

expeditions and pursue lawsuits of all types against businesses. SB 1489 could also open the door to numerous actions by private plaintiff's lawyers retained by the Attorney General's office.

Key Vote

SB 1489 was rejected on a 24-43 vote in the Assembly. A request to grant the bill reconsideration was pending as *Alert* went to press.

Ayes: Bass (D- Los Angeles), Berg (D-Eureka), Chan (D-Oakland), Chu (D-Monterey Park), Dymally (D-Compton), Frommer (D-Glendale), Goldberg (D-Los Angeles), Hancock (D-Berkeley), Jones (D-Sacramento), Karnette (D-Long Beach), Klehs (D-Castro Valley), Laird (D-Santa Cruz), Leno (D-San Francisco), Levine (D-Van Nuys), Lieber (D-Mountain View), Montañez (D-San Fernando), Mullin (D-South San Francisco), Nation (D-San Rafael), Núñez (D-Los Angeles), Pavley (D-Agoura Hills), Ridley-Thomas

See 'Blank Check': Page 7

Chamber, Business Groups Support Los Angeles School District Reforms



SUPPORT

The state's three leading business groups this week announced **support of AB 1381 (Núñez; D-Los Angeles)** to bring about reform of the Los Angeles Uni-

fied School District (LAUSD).

The California Chamber of Commerce, California Business for Education Excellence (CBEE) and California Business Roundtable endorsed the measure after the most recent set of amendments.

The bill is consistent with the business community's strong belief in setting high expectations for all students, closing achievement gaps by bringing all students to grade-level proficiency and ensuring accountability provisions to measure ongoing student academic achievement.

"We endorse AB 1381 and are strongly supportive of Mayor Villaraigosa's willingness to set the highest expectations for all students in LAUSD," said Jim Lanich, Ph.D., president of CBEE. "We know from our work throughout the state and around the country that the number one trait among high-performing schools is that they set the same high expectations for every single student."

Continued Lanich: "I've met with Mayor Villaraigosa on several occasions, and I've talked with him about how

adults must hold all students to the highest standards no matter their background. He completely agrees, and I know he's committed to closing achievement gaps in LAUSD."

Improving Student Achievement

"The California Chamber is pleased to be joining with leaders from the Los Angeles business community and across the state to support Mayor Villaraigosa's effort to improve student academic achievement in LAUSD," said Chamber President Allan Zaremborg.

"There is no issue of greater importance to our future economic well-being than raising academic achievement and closing achievement gaps. Using valid, accurate student data to measure academic achievement is essential for accountability and, ultimately, success," Zaremborg said.

Accountability Provisions

The business groups endorsed AB 1381 after specific accountability provisions were included in the bill in the most recent set of amendments. Under AB 1381, LAUSD student academic success will be measured in terms of grade-level proficiency and student test scores on the California Standards Test.

"No successful enterprise would operate without setting clear goals and doing

regular assessments to see if progress is being made to reach those goals," said Zaremborg. "Our schools should be no different. We hope that including these provisions to measure LAUSD improvement will lead to similar reforms extending to all school districts throughout California."

Meaningful Measurements

"The accountability provisions in AB 1381 are a major step forward," said Lanich. "Student academic success and improvement will be measured by looking at real data, real student test scores. This is quite a departure from the system we have outside LAUSD where school success is determined by meaningless numbers like an API score."

CBEE and the business community have been on record strongly opposing the state's Academic Performance Index (API). The API masks achievement gaps among students, can be manipulated and is too confusing and too complicated for parents, educators and the public to easily understand.

Action Needed

Write or call your senator to voice **support for AB 1381**. Find the sample letter at www.calchamber.com/positionletters.

Staff Contact: John Hooper

'Blank Check' Litigation Bill Stalls in Assembly

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(D-Los Angeles), Saldaña (D-San Diego), Torrico (D-Newark), Umberg (D-Santa Ana).

Noes: Aghazarian (R-Stockton), Baca (D-Rialto), Benoit (R-Riverside), Blakeslee (R-San Luis Obispo), Bogh (R-Beaumont), Canciamilla (D-Pittsburg), Chavez (D-La Puente), Cogdill (R-Modesto), Cohn (D-Saratoga), Daucher (R-Brea), DeVore (R-Irvine), Emmerson (R-Redlands), Garcia (R-Cathedral City), Haynes (R-Murrieta), J. Horton (D-Inglewood), S. Horton

(R-Chula Vista), Houston (R-Livermore), Huff (R-Diamond Bar), Keene (R-Chico), Koretz (D-West Hollywood), La Malfa (R-Richvale), La Suer (R-La Mesa), Leslie (R-Tahoe City), Lieu (D-Torrance), Matthews (D-Tracy), Maze (R-Visalia), McCarthy (R-Bakersfield), Mountjoy (R-Monrovia), Nakanishi (R-Lodi), Negrete-McLeod (D-Chino), Niello (R-Fair Oaks), Parra (D-Hanford), Plescia (R-La Jolla), Richman (R-Northridge), S. Runner (R-Lancaster), Spitzer (R-Orange), Strickland (R-Thousand Oaks), Tran (R-Garden

Grove), Villines (R-Clovis), Walters (R-Laguna Niguel), Wolk (D-Davis), Wyland (R-Del Mar), Yee (D-San Francisco).

Absent/abstaining/not voting: Arambula (D-Fresno), Bermúdez (D-Norwalk), Calderon (D-Montebello), Coto (D-San Jose), De La Torre (D-South Gate), Evans (D-Santa Rosa), Liu (D-La Cañada Flintridge), Nava (D-Santa Barbara), Oropeza (D-Long Beach), Ruskin (D-Palo Alto), Salinas (D-Salinas), Vargas (D-San Diego).

Staff Contact: Kyla Christoffersen

Unlock the mystery to leaves of absence

The *Managing Leaves of Absence Recorded Web Seminar* offers, in one hour, an in-depth tutorial on the various leaves of absence, both state and federal, available to California employees, how they interact with each other, and what types of wage replacement benefits are available to employees on leave. Leave of absence topics include: pregnancy disability, family and medical leave, workers' compensation and disability leave. We've made it easy for you so you can do what's best for your employees.



Leaves of Absence in California reference book

Seminar purchasers will receive a copy of the Leaves of Absence in California guide (a \$39.99 value), as well as access to download the seminar presentation slides

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