

# ALERT

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 **CalChamber**<sup>™</sup>  
CALIFORNIA CHAMBER OF COMMERCE

## Bill Eliminates Secret Vote for Unionizing Employees



The California Chamber of Commerce has identified a new “job killer” bill that was amended on August 4 and eliminates the

requirement for secret ballot elections for union representation among farm employees.

**AB 2386 (Núñez; D-Los Angeles)** strips farm employees of their right to decide free of intimidation on that crucial subject by creating a new, unsupervised process called a “mediated election.”

The bill hurts the competitiveness of California agricultural producers by artificially increasing labor costs for California producers who must compete in a global market with lower-than-average operating costs.

### Mediated Election

Current state law requires the question of union representation for agricultural employees to be decided in a secret ballot election supervised by the Agricultural Labor Relations Board (ALRB).

AB 2386 creates a new, unsupervised “mediated election” which sidesteps that requirement by allowing a union to become the bargaining representative of a farm employer’s employees if a majority of them simply return to the ALRB via postal mail something like an absentee ballot. But under this system, the union organizers themselves may give the ballots to the employees, tell the employees what to mark on the ballots, and then collect and deliver the ballots to the ALRB.

This is simply “card check” repackaged, exposing workers to intimidation and

coercion by union organizers and denying employees their right to a secret ballot election.

Under current law, a union must demonstrate to the ALRB that it has evidence of majority support among the employees in order to be provided with a list of the agricultural employer’s workers for election purposes.

AB 2386 requires employers to provide their employees’ contact information to a union that has simply filed a petition with the ALRB to force a “mediated” election with no showing of interest by the employees. Providing this contact list to unions potentially exposes those employees to unwanted solicitation by union organizers, intimidation and coercion.

### Wrong Message

Labor unions in California are experiencing a decline in membership. Bolstering their membership should occur because employees see a need for union representation, not by adulterating the election process.

The CalChamber stands in support of the Agricultural Labor Relations Act and rejects attempts to undermine the secret ballot process in California in any way. Undermining that process sends the wrong message to new or growing businesses that could create jobs for California citizens.

### Action Needed

AB 2386 is awaiting a vote by the full Senate. The CalChamber urges members to contact their senators to **oppose AB 2386**.

For a sample letter, visit [www.calchambervotes.com](http://www.calchambervotes.com).  
**Staff Contact: Marti Fisher**

## Federal Bill Removes Secret Ballot on Union Selection



Congress is considering legislation allowing unions to establish representation for bargaining through a “card check” process instead of a secret ballot

S.1041 is labeled the “Employee Free Choice Act.” But “card check” is a procedure where an employer agrees to recognize a union once that union produces evidence that a majority of the employees have signed authorization cards. Once a majority has signed, the union is certified — no election is required.

Only a secret ballot system protects employees from both unions and employers. The current secret ballot system that is overseen by the National Labor Relations Board (NLRB) would cease to exist under S. 1041, opening the door for an environment of employee intimidation and coercion.

S.1041 undermines an employee’s democratic rights and protections of a fair and secret election to determine whether he /she really wants union representation.

In addition, this act is simply bad for business. It creates a system where unions hold all of the cards and imposes fines of up to \$20,000 on businesses

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## Labor Law Corner

# Employer Can Establish Cap on Earned Vacation Time



**Barbara Wilber**  
Labor Law Consultant

*We want to limit the number of vacation hours an employee may roll over to the next year to 40 hours, but isn't there a rule about capping vacation at one-and-one-half times an employee's accrual rate? We plan to cash out any unused hours that exceed 40 hours.*

An employer may implement a cash-out policy and limit the number of

hours that can be rolled over into the next year as long as the employee uses or is paid for all earned vacation or paid time off (PTO). As well, the employer may establish a cap on earned vacation that allows a reasonable time to use any earned vacation.

The one-and-one-half-times accrual is a concept associated with the reasonable cap, not the cash-out and rollover policy. These are two completely different methods that may be used to control vacation accumulation.

### California Policy

California does not require employers to provide vacation leave to their employees. Once a policy is established, however, certain rules apply.

Specifically, vacation vests as it is earned, and a "use-it-or-lose-it" policy, in which employees lose earned vacation that is not taken by a specific time, is prohibited (except for a limited opt-out

provision applying to collective bargaining agreements and vacation plans subject to the federal Employee Retirement Income Security Act).

Once vacation is earned, it cannot be forfeited, but a cap may be placed limiting the amount of vacation which may accrue. Any policy instituting a cap on accrued vacation must provide a reasonable time in which to use already-earned vacation.

In the interest of meeting the "reasonable cap" criteria, employers cap accrual at one-and-one-half or two times the annual earning rate.

For example, if the employee earns 40 hours of vacation each year, the employer may cap the total amount of vacation that can be earned at 60 hours. In using this method, employers must ensure that employees may use their vacation time as it is earned. If employers do not allow employees to take vacation before they

*See Employer: Page 6*

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## CalChamber-Sponsored Seminars/Trade Shows

For more information, visit  
[www.calchamber.com/events](http://www.calchamber.com/events).

### Business Resources

Free E-Recycling Drive. Volt Services Group. September 26, Sacramento. (916) 564-1144.

### International Trade

U.S.-Korea Free Trade Agreement Town Hall Meetings. Congressman Pete Stark. August 16, Fremont, Hayward, Alameda. (510) 494-1388.

The Americas Competitiveness Forum II. Secretary of Commerce Carlos Gutierrez. August 17-19, Atlanta. (404) 446-4179.

Building Bridges with Chile. Metro Atlanta Chamber. August 20, Atlanta. [ngligo@corfo.cl](mailto:ngligo@corfo.cl).

BIS Export Regulation Course. U.S. Bureau of Industry and Security. August 20-21, Universal City. (949) 660-1688.

Renewable Energy India 2008 Expo. Ministry of New & Renewable Energy, Government of India. August 21-23, New Delhi.

International Trade Finance: Methods of

Payment. Sacramento Regional Center for International Trade Development. August 20, Sacramento. (916) 563-3200. COPENMIND Exhibition 2008.

Copenmind. September 1-3, Copenhagen, Denmark. [Info@copenmind.com](mailto:Info@copenmind.com).

Fourth International Exhibition/Conference. Elcina Electronic Industries Association of India. September 10-12, New Delhi. (650) 740-6064.

### Labor Law

HR 201: Labor Law Update On-Demand Web Seminar. CalChamber. 90 minutes. (800) 331-8877.

## CalChamber Calendar

### Tourism Committee:

September 4, Half Moon Bay

### Water Committee:

September 4, Half Moon Bay

### Board of Directors:

September 4-5, Half Moon Bay

### Council for International Trade:

September 5, Half Moon Bay



# Court Orders State, Regional Water Boards to Revise Storm Water, Runoff Standards

## *Economic Considerations, Housing Needs Must Be Taken into Account*



A California superior court recently ordered the State Water Resources Control Board and the Los Angeles Water Quality Control Board to review and

revise their water quality standards governing storm water and urban runoff to reflect what can “reasonably be achieved,” taking into account economic considerations, housing needs and other factors.

In the case of *Cities of Arcadia, et al. v. State Water Resources Control Board, et al.*, the court’s order may ultimately lead the state and nine regional water boards to substantially revise water quality standards throughout the state because the boards have, for decades, largely disregarded calls to balance such factors when developing water quality standards for storm water and urban runoff, as well as for many other types of pollutants.

### Basin Plans

In California, the state and regional boards administer the parts of the federal Clean Water Act regarding the National Pollutant Discharge Elimination System (NPDES), which governs discharges of certain types of pollutants, including discharges of storm water from construction and industrial sites.

As a result, the state and regional boards have developed basin plans for the several regions of the state, which designate the “beneficial uses” of the various waters in each region and establish “water quality standards” designed to maintain those beneficial uses.

The boards may authorize certain discharges of pollutants into waters of the state by issuing NPDES permits. In order to obviate the need to issue individual NPDES permits for every construction and industrial site, the State Board issued two “general permits”—one for construction and one for industrial activities—that enable those with projects and facilities meeting certain requirements to enroll for authorization under the general permits by submitting short notices of

intent to comply with the permit terms.

The general permits require compliance with applicable water quality standards and, in certain circumstances, implementation of a site-specific storm water pollution prevention plan.

### Litigation

A coalition of cities and builder organizations sued the state and Los Angeles boards alleging that they had implemented storm water quality standards without complying with sections of the California Water Code requiring the boards to balance various factors, including “[w]ater quality conditions that [can] reasonably be achieved [and e]conomic considerations [and t]he need for developing housing in the region,” in order to “attain the highest water quality which is reasonable, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible.”

The coalition argued that the boards failed to balance these factors to assess the reasonableness of the standards when they first included them in the Los Angeles Basin Plan in the 1970s and repeated this failure in succeeding years during their statutorily required “triennial reviews” of the basin plan.

Of particular concern to the coalition was the boards’ recent addition of “numeric” storm water quality standards to supplement the conventional narrative standards. The boards countered that their triennial review is not the time or place to evaluate the reasonableness of the standards.

### Court Backs Coalition

The court agreed with the coalition. Setting aside the regional board’s resolution concluding the most recent triennial review of the basin plan, the court ordered the boards to review and revise their storm water standards “in light of the factors and requirements” prescribed in the Water Code and to cease and desist all activities relating to implementation and enforcement of the

standards until the review and revision is complete.

The court also invalidated the regional board’s practice of basing storm water standards on “potential” beneficial uses of the rivers, lakes and other waters into which the storm water flows. Finding this practice contrary to the Water Code’s requirements that standards be based on consideration of “probable future beneficial uses” and “all demands being made and to be made” on state waters, the court directed the regional board to remove “potential” beneficial use designations from the basin plan.

In response to the court’s July 2 order, the state board announced on July 16 that it would no longer authorize storm water discharges under its general permits for construction and industrial activities in the Los Angeles region until it has completed the review process—in effect imposing a moratorium on new construction there.

On August 1, the court issued a second order informing the boards that its earlier order plainly enables them to continue to enforce NPDES storm water permits except to the extent that such permits would implement a total maximum daily load (TMDL) or a “numeric” limit. The state board has announced that it will resume processing authorizations of storm water discharges under the general permits.

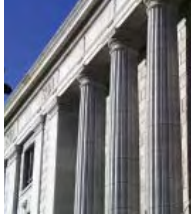
### Reshaping Water Standards

If the superior court’s decision is followed (the boards have yet to announce whether they will appeal), it could lead the state board and the nine regional water boards to profoundly reshape the state’s water quality standards throughout the state—not only for storm water and urban runoff, but also for discharges of all types of pollutants (termed “waste” in the Water Code).

The San Francisco regional board soon begins the triennial review of its basin plan, so it will be among the first to face how to address the issues raised by the court’s decision.

**Staff Contact: Valerie Nera**

## Judge Rules Water System Harms Salmon, But Water Still Flowing



A federal judge has ruled that water diversion and pumping out of the Sacramento-San Joaquin Delta is harming the salmon population, but stopped short of

halting water operations that keep Central Valley farmers and other businesses supplied with water.

Shortly after the July 18 ruling, U.S. Judge Oliver W. Wanger of the Eastern District Court of California scheduled a hearing for September 4 to discuss an interim plan, meaning farms and other businesses will continue receiving water at the same level through August.

The federal Central Valley Project requires a reasonable effort to prevent harm to the salmon. A biological opinion prepared by the U.S. Fish and Wildlife Service provided for mitigation of harm to Delta salmon from operation of the federal pumps.

Environmentalists and representatives from the fish industry argued that the biological opinion does not take global warming and other effects into consideration, resulting in harm to the fish. They asked the court to stop the pumping, which would have led to a massive reduction in the water supply.

In April, Wanger ruled that the biological opinion failed to take into account other stresses on Delta salmon, but disagreed with the need to take emergency measures, instead ordering that the biological opinion be redrafted to take a

more comprehensive look at the Delta.

Federal agencies responsible for preparing the biological opinion are expected to submit their new report in March 2009, in effect delaying any final decision. No serious changes to the water system are expected before that time.

### Irrigation Season

“I’m on cloud nine here,” said Jeff Sutton, a manager of a Central Valley canal system that delivers water to farms north of Sacramento. “We’re obviously ecstatic that the service area is going to continue to finish the irrigation season and be able to harvest the crops.”

But plans to look at interim remedies for protecting the salmon are making many California business operators nervous. Part of Wanger’s ruling stated that continued water operations through March 2009 “will appreciably increase jeopardy” to fish.

Those remedies could include letting water out of the Red Bluff Diversion Dam and reducing water transport into the Tehama-Colusa Canal, which provides water to farmers in Colusa, Glenn, Tehama and Yolo counties, generating \$200 million in business.

### Water Supply Shortage

The service area of the Central Valley Project spans most of the counties in the state, supplying water to the state’s farms and agriculture, which account for about 7 percent of the gross state product.

Other sources of water, such as the Colorado River and the Sierra snowpack, are in short supply as California remains

in the worst water crisis in its history.

Judge Wanger’s ruling came just weeks after Governor Arnold Schwarzenegger declared a statewide drought and proclaimed a state of emergency in nine Central Valley counties: Sacramento, San Joaquin, Stanislaus, Merced, Madera, Fresno, Kings, Tulare and Kern.

### Bond Proposal

In early July, Governor Schwarzenegger and U.S. Senator Dianne Feinstein unveiled a \$9.3 billion bond proposal to improve the state’s water infrastructure by increasing water storage, improving water conveyance, restoring the Delta ecosystem and increasing conservation.

The bond proposal calls for a comprehensive Delta sustainability program that includes water conveyance and ecosystem improvements based on recommendations of the Governor’s Blue Ribbon Task Force and the Bay-Delta Conservation Plan. There would be money for above-ground storage, below-ground storage and habitat mitigation.

Most of the language of the proposal is consistent with the initiatives filed last December by the California Chamber of Commerce.

A report recently issued by the Public Policy Institute of California concludes that a peripheral canal to carry water around the Sacramento-San Joaquin Delta is the “most promising” strategy to balance reviving the Delta ecosystem and ensuring a high-quality water supply for Californians. The canal option is under consideration by the task force.

**Staff Contact: Valerie Nera**

## Federal Bill Removes Secret Ballot on Union Selection

*From Page 1*

offering any type of increase in salary or benefits during the open-ended election period.

This allows only the union to compete for votes and seems to penalize employees

from reaping the benefits of employers offering better wages and benefits.

### Action Needed

S. 1041 is awaiting action on the U.S. Senate floor. The California Chamber of

Commerce urges members to contact U.S. Senators Dianne Feinstein (D-San Francisco) and Barbara Boxer (D-Greenbrae) and ask them to **oppose S. 1041**.

**Staff Contact: Marti Fisher**

Visit [www.calchamber.com](http://www.calchamber.com) for the latest business legislative news plus products and services to help you do business in California.

# CalChamber, Coalition Oppose Prop. 7, Costly Renewable Energy Proposal

The California Chamber of Commerce is part of a broad coalition **opposing Proposition 7**, the November ballot measure initiative that seeks to significantly increase the percent of renewable power that utilities must purchase.

The coalition includes environmentalists, renewable energy companies, taxpayers, labor and utility companies, PG&E Corporation and Southern California Edison Company, as well as many local chambers of commerce.

The CalChamber Board of Directors voted in May to oppose the measure due to its potential to substantially drive up energy prices in the state and its unworkable mandates

## Requirements

Proposition 7, The Solar and Clean Energy Act of 2008, requires all utilities, including government-owned utilities, to generate 20 percent of their power from renewable energy by 2010, a standard currently applicable only to private electrical corporations. Proposition 7 raises the requirement for all utilities to 40 percent by 2020 and 50 percent by 2025 while significantly altering the state's renewable power and energy markets.

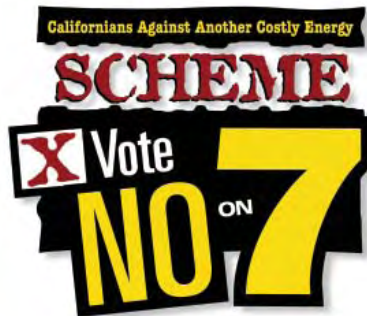
Experts warn that these market changes, combined with language that will eliminate competition from small renewable companies, will lead to price manipulation and significant increases in electric bills.

Renewable power providers and leading environmental organizations also have concluded that the measure could actually disrupt renewable power development in California.

## Poorly Drafted

The measure contains a "competition elimination" provision that forces smaller renewable energy companies out of California's market, costing thousands of jobs. The provision excludes renewable energy produced by facilities of less than 30 megawatts (MW) from counting toward the new renewable goals.

About 60 percent of the renewable energy projects currently under contract with the state's three investor-owned utilities would fail to meet this arbitrary



minimum size requirement and would be shut out of the market.

## Significant Rate Increases

Proposition 7 mandates that utilities accept renewable power contracts which are up to 10 percent of the market rate of other energy sources. This "must-take" provision would guarantee that renewable contracts would permanently be locked in at a level of at least 10 percent above market rates.

The measure also forces utilities to sign 20-year contracts without establishing any competitive process to ensure that consumers are receiving power from the most cost-efficient sources.

Renewable power isn't available at all

times of day (particularly during peak demand periods); therefore, utilities still will have to contract for significant backup power from traditional sources.

The non-partisan legislative analyst concludes that Proposition 7 could result in higher electricity rates.

## Still Paying off Debt

California consumers are still paying nearly \$1 billion per year to pay off the last energy crisis, and this initiative creates market conditions with problems. Doubling the amount of renewable energy utilities must purchase during a short period will create a sellers' market. The lack of a competitive market will lead to artificially increased prices for renewable power and create an environment ripe for market manipulation.

California is the nation's clean energy leader, with tough new standards that require utilities to use significantly more renewable power. At a time when businesses are already struggling from a sagging economy, higher energy costs and increased costs of doing business, the last thing businesses in the state need is more costs.

For more information, visit [www.noprop7.com](http://www.noprop7.com).

Staff Contact: Jeanne Cain

## Political Communications to Employees



As fall approaches, the California Chamber of Commerce is reminding 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 CalChamber 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 CalChamber website at [www.calchamber.com/guidelines](http://www.calchamber.com/guidelines).

# Legislative Outlook

An update on the status of key legislation affecting businesses. Visit [www.calchambervotes.com](http://www.calchambervotes.com) 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.

## One of Two 'Job Killer' Fuel Bills Still Moving



A California Chamber of Commerce-**opposed** bill that will lead to fuel price increases is awaiting action on the Senate floor.

The "job killer" bill, **AB 2558 (Feuer; D-Los Angeles)**, increases the price of doing business in the Los Angeles and Bay Area regions by assessing an unfair tax on vehicle fuel or vehicle registration. It also proposes a gas tax of up to 3 percent of the retail sales price, or up to \$90 per vehicle based on its emissions.

Such taxes, combined with rising energy prices due to existing environmental initiatives, are making it difficult for California's small businesses to remain in the state.

### Disregards ARB

AB 2558 disregards the multiple levels of work being done at the state Air Resources Board (ARB) to reduce the state's greenhouse gas emissions. ARB already is working on the scoping plan that will be the guidebook for putting AB 32 into motion and developing the regulations.

Instead of working on a comprehensive, state approach to combating climate change, this bill would set up a climate change mitigation and adaptation

expenditure plan funded by a new gas tax or tax on vehicles.

Lastly, all state taxes should require a two-thirds vote. AB 2558 proposes a special tax for a specific purpose and therefore should be subject to a two-thirds vote for approval.

The CalChamber is encouraging the business community to contact senators to urge them to **oppose AB 2558**.

A sample letter is available at [www.calchambervotes.com](http://www.calchambervotes.com).

### Restrictive Fuel Standard Dead

A former "job killer" bill, **SB 1240 Kehoe (D-San Diego)**, has been amended to deal with another subject.

Before amendments, the bill would have interfered with the development of a competitive alternative fuels market and threatened job creation in California by creating a costly Low Carbon Fuel Standard that conflicts with the existing standard created by Governor's Executive Order S-7-04.

The CalChamber believes that to meet increasing consumer demand, the fuels market needs to be full of options and represent a mix of alternatives.

**Staff Contact: Amisha Patel**

## Employer Can Establish Cap on Earned Vacation Time

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reach the cap, the cap would not be considered reasonable.

### Cash-Out

Another alternative is to pay or "cash out" earned vacation, either each year or as an employee option. Some employers cash out vacation each year and allow only a certain number of hours to be

rolled over into the next year.

In this instance, a one-and-one-half limit on the number of hours being rolled over does not apply because the employee receives payment for any vacation in excess of the rollover hours and earned vacation is not forfeited.

Both methods are legal alternatives to a "use-it-or-lose-it" policy and effectively control the accumulation of vacation

hours. When instituting a program, recognize the differences and develop a policy that best meets your needs.

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

**They won't know unless you tell them. Write your legislator. [calchambervotes.com](http://calchambervotes.com)**

## CalChamber Joins Celebration of Singapore Independence

An August 7 reception celebrating Singapore's 43rd National Day provided an opportunity to highlight the strong trading ties between Singapore and the United States, as well as California.

Singapore is a parliamentary republic, located between Malaysia and Indonesia. Once a colony of Great Britain and part of the East India Company, Singapore has been a major Asian port for centuries. Singapore formally separated from Malaysia on August 9, 1965, and became an independent republic.

National Day commemorates that independence.

A major strategic trading partner of the United States and one of the closest friends of the United States, Singapore has one of the most open, well-regulated, safe and secure investment climates in the world. It is consistently rated among the most competitive economies in the world.

### U.S.-Singapore

The U.S.-Singapore Free Trade Agreement (FTA) went into effect in January 2004. Under the agreement, most tariffs were eliminated immediately, with the remaining tariffs phased out over a three- to 10-year period.

The agreement was signed on May 6, 2003, by President George W. Bush and Goh Chok Tong, the Prime Minister of Singapore. The U.S. House of Representatives and U.S. Senate passed the FTA in July 2003 by votes of 277-155 and 66-32 respectively.

U.S. exports to Singapore topped \$26.2 billion, and two-way trade between the United States and Singapore increased to more than \$44.6 billion in 2007. Since implementation of the U.S.-Singapore FTA, U.S. exports to the nation have increased by \$7 billion.

According to the Office of the U.S. Trade Representative, new market opportunities have also been created,



Marc Burgat (left), CalChamber vice president of government relations, joins Heng Jee See, consul general of the Republic of Singapore, and Wendy Heng at a San Francisco reception celebrating Singapore's 43rd National Day.

including those for pharmaceutical products and organic chemicals.

### Trade With California

Singapore is the 10th largest export market for California. In 2007, California exports to Singapore totaled \$4.3 billion.

The U.S.-Singapore FTA enhances mutual interests in a stable, prosperous Association of South East Asian Nations (ASEAN) and East Asia, and will further strengthen the partnerships across the Pacific. With 4 million people, Singapore, one of the busiest port cities in the world, already has free trade pacts with New Zealand and Japan.

With this bilateral relationship, the United States and Singapore have put into place systems and procedures to ensure that only legitimate goods can claim preferential

treatment under the FTA. An increase in the amount of information exchanged has allowed both sides to use risk management techniques to block illegal trade.

### CalChamber Position

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

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

**Staff Contact: Susanne Stirling**



INTERNATIONAL TRADE UPDATES AT

[www.calchamber.com/international](http://www.calchamber.com/international)

## CalChamber Announces HRConsultant Program



HRConsultant Network Member

You turn to the CalChamber when you need current and accurate employment law information. Sometimes, however, your human resources needs go beyond clarifying California employment law.

That's why the CalChamber has developed the **CalChamber HRConsultant Network** in partnership with several California human resources consultants.

Each consultant went through an application process that included a background verification, professional reference check and interview with CalChamber employment law counsel. We went through this detailed process so you can be assured that if you are contacting a consultant partner in the network, you are reaching a highly knowledgeable professional who understands the complexity of California labor and employment laws.



**To learn more about the program or find an HRConsultant Network member near you, go to: [www.calchamber.com/hrconsultant](http://www.calchamber.com/hrconsultant)**



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