

# ALERT

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

## *Harvard Expert Comments*

# Higher Climate Change Costs If State Out of Sync with Feds



California will have to reconcile its greenhouse gas emission rules with federal requirements so as not to disrupt

the state's economy, according to a Harvard University expert.

Robert N. Stavins, Albert Pratt professor of business and government at Harvard's John F. Kennedy School of Government, made the observation at a recent forum presented by the California Chamber of Commerce and

the California Foundation for Commerce and Education.

A federal cap-and-trade system to control greenhouse gas emissions is likely to be in place by 2013, with precise timing depending on the pace of economic recovery, Stavins said. (See explanation of how cap-and-trade programs work: Page 3.)

Still being discussed are the specifics of how the cap-and-trade system would allow regulated companies to use the marketplace to trade emission allowances (credits) to stay below a government-set cap on emissions.

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## CalChamber Opposition Helps Stop 'Job Killer' Bills in Fiscal Committees



A number of "job killer" bills, strongly opposed by the California Chamber of Commerce, missed the deadline for winning approval from legislative fiscal committees and thus are unlikely to see further action this year.

### Barriers to Affordable Housing

#### **AB 212 (Saldaña; D-San Diego) Construction Costs Increase—**

Substantially increases the cost of new housing by mandating on-site or near-site energy generation for all new residential buildings.

### Costly Workplace Mandates

#### **AB 664 (Skinner; D-Berkeley) Increased Workers' Compensation**

**Costs**—Increases workers' compensation costs by creating a legal presumption that neck and back injuries, and bloodborne and specific infections suffered by hospital employees are related to employment.

#### **AB 842 (Swanson; D-Oakland)**

**Hurts Struggling Businesses**—Expands mandates and increases liability for employers related to the state version of the federal Workers Adjustment and Retraining Notification (WARN) Act of 1988.

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Harvard University Professor Robert N. Stavins describes the high cost of California-only climate change rules at a May 7 forum presented by the CalChamber and California Foundation for Commerce and Education.

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## Labor Law Corner

# Summer Work for Minors: Work Permits, Other Rules Still Apply



**Dana Leisinger**  
Senior Helpline  
Consultant

*Some of our employees would like their high school kids to work in our office this summer to gain experience. Do we have to pay them?*

First, before anyone under 18 works for a company (with limited exceptions), he/she must obtain a work permit. These permits are required year-round; there is no exception for casual summer

employment. The permits may be obtained from the local superintendent of each school district, and must be kept on file at the company.

Second, minors are entitled to minimum wage in most cases. Both state and federal law allow employers to pay subminimum rates, but the two bodies of law differ, and it is wise to seek legal counsel before paying the lower “learners” rate, which is only for a limited time in any case.

### Review Restrictions

Other restrictions apply to minors. A summary is available on *HR California* under the form title “Basic Provisions and Regulations – Child Labor Laws.” If a company is going to employ minors, it is wise to review these restrictions, which vary from 12-year-olds to 17-year-olds.

People often wish to work to gain experience and knowledge in certain fields, but there are limited circumstances when they do not have to be paid. Most people perform services as an employee or as an independent contractor, and are paid accordingly. Minors working in an

office as noted above, however, fall into the category of “employee” status.

### Other Worker Categories

Two other main categories of workers are as follows:

- **Volunteer:** When an individual is performing services for public service, religious or humanitarian objectives, not as an employee and without expecting pay.

- **Intern:** Students who work in the course of their studies as part of the curriculum and who are getting course credit (a must) need not be paid and are not employees.

If a company is going to hire people/minors for the summer, it is advisable to seek legal counsel in order to ensure all legal requirements are met.

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*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).*

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## CalChamber-Sponsored Seminars/Trade Shows

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

### Business Resources

Virtual Energy Forum. U.S. Department of Energy. June 24–25, Online. (617) 938-6020.

Hetch Hetchy Valley Tour. Water Education Foundation. July 22–24, San Mateo. (916) 444-6240.

Russian River Tour. Water Education Foundation. August 6–7, Santa Rosa. (916) 444-6240.

Northern California Tour. Water Education Foundation. October 7–9, Sacramento. (916) 444-6240.

### International Trade

Breaking Into the Trade Game. Centers for International Trade Development. June 10–August 6, Sacramento. (916) 566-7168.

Mexican Security in Decline. RAND Corporation. June 17, Santa Monica. (310) 393-0411.

China Building 2009. China Building Materials Industries Association and others. June 18–19, Beijing.

State of the Sea Ports. Northern California World Trade Center. June 25, West Sacramento. (916) 319-4262.

India Trade Conference. Port of Los Angeles, Southern California Edison, Quanta Consulting. June 26, Irwindale. (949) 480-9466.

Socially Responsible Investing Here and Abroad. Monterey Bay International Trade Association. June 26, Monterey. (831) 335-4780.

China International Enterprises Fair. American Carson International Inc. September 22–25, China. [harry@americancarson.com](mailto:harry@americancarson.com).

### Labor Law

Non-Exempt Employees Reimbursement Web Seminar. CalBizCentral. June 11. (800) 331-8877.



# How Cap-and-Trade Programs Work



A cap-and-trade program is a quasi-market-based approach to reducing emissions.

Typically, a central entity—usually

a government body—sets a limit (cap) on the total permissible emissions of a specified substance. The same entity then issues permits specifying the amount of the substance each company may emit in a given period.

A company emitting less than its allotted amount may sell (trade) unused emission allowances to another company that may be exceeding its limit.

In theory, the unused emission allowances would become a tradable commodity with the market price depending on the availability of emission credits and the demand for purchase of those credits.

The California Chamber of Commerce is working to ensure California businesses are not disadvantaged if a federal climate cap-and-trade program is developed by Congress and the new administration. Since the passage of AB 32, the CalChamber has urged the Governor and the California Air Resources Board (ARB) to ensure that its program allows for business growth in the state and minimizes any disadvantage the California economy would face vis-à-vis other states.

## Impact of Cap-and-Trade Scenarios on California

Cap-and-Trade Scenario	Effect on California
Federal cap-and-trade program: No state programs.	States would adhere to the same standards as the rest of the country, ensuring maximum environmental benefit at the least possible cost to businesses and consumers.
Federal cap-and-trade program: California pursues more stringent program measures and its own trading program.	California will be placed at a severe disadvantage to the rest of the country. Leakage of jobs, businesses and emissions is very likely.
No federal program: California pursues its own cap-and-trade program and greenhouse gas reduction measures.	Amount of trading and use of market measures will be limited as the market will be smaller. Costs to mitigate will be higher since California companies may have limited flexibility to offset and trade allowances with companies outside of the state.

California has a major stake in what is eventually agreed upon in Washington. The table shows three scenarios that may occur in the coming years.

A major concern for California businesses would be if the ARB requests the ability to pursue a more stringent program than what eventually may be adopted at the federal level. This scenario could be very problematic for the state's industries as it would dramatically increase costs only for California's businesses while creating additional uncertainty in the marketplace.

In addition, a more stringent California program would greatly

increase the number of jobs, businesses and even the amount of emissions leakage from the state.

California has the opportunity to be a true leader in shaping a federal climate program that effectively reduces greenhouse gas emissions while minimizing costs to California's consumers and businesses. For this reason, the CalChamber is urging the Governor and the ARB to advocate a federal program that highlights the leadership California has taken thus far while making the California program consistent with its federal counterpart.

## Higher Climate Change Costs If State Out of Sync with Feds

*From Page 1*

The simplest and cleanest way to avoid the unnecessary cost to the state from duplicate federal and state systems would be for all the state systems, including California's, to become part of the federal system, Stavins said. Should California maintain an independent program without any conforming changes, it could have a negative impact on the already-beleaguered economy, he noted.

### Environmental Impact

The interaction between a federal and an independent state system would

depend on the stringency of the systems and the degree of overlap in the scope of their coverage (electricity, manufacturing, carbon emissions), according to Stavins.

If a state and federal system did co-exist, sources in California would have to surrender emission allowances that would result in the state having a more stringent target, Stavins said. California's regulations would then have little effect incrementally on the environment by having those more stringent standards, however.

"That increment of stringencies would be completely undone by the national

trading that would take place," Stavins said. "The result is that having a more stringent state system does nothing incrementally for the environment because the cap becomes the federal cap."

But California would take on extra, unnecessary costs, in effect subsidizing other parts of the country, he said.

If California were to have less stringent regulations than the federal government, the price of the state's allowances on the market would gravitate to zero and, again, nothing would be done about the environmental problems, but

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# ‘Green’ Energy Bill Joins ‘Job Creator’ List



As a result of May 28 amendments, legislation dealing with solid waste

conversion to energy at a biorefinery has been added to the California Chamber of Commerce “job creator” list.

**AB 222 (Adams; R-Hesperia)** encourages new investment and job creation by allowing conversion of solid waste to energy at a biorefinery to count toward meeting the state mandate that 20 percent of energy come from renewable sources by 2010.

## Bipartisan Support

AB 222 passed the Assembly on June 1 on a bipartisan vote of 54–13 and is awaiting assignment to a Senate policy committee for consideration.

Although California is working aggressively to meet its ambitious environmental and energy goals, issues are arising that are delaying construction of needed infrastructure and systems.

For this reason, the CalChamber believes it is even more important that the state look for ways to develop a basket of tools to use in meeting these goals.

AB 222 provides such a tool by

allowing local governments to count the conversion at biorefineries toward their recycling diversion goals.

## Key Technology

Expanding the use of California’s waste streams through conversion will increase investment in this key technology and would help lessen a number of environmental impacts associated with solid waste.

The CalChamber believes that AB 222 is a commonsense bill that provides benefits to the state’s economy and environment.

**Staff Contact: Amisha Patel**

## CalChamber Opposition Helps Stop ‘Job Killer’ Bills in Fiscal Committees

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**AB 1000 (Ma; D-San Francisco)**  
**Paid Sick Days**—Unreasonably expands employers’ costs and liability for a new protected and paid sick leave for employees.

**SB 773 (Florez; D-Shafter)**  
**Workers’ Compensation Cost Increase**—Increases workers’ compensation costs significantly and makes it more expensive to employ Californians by arbitrarily increasing permanent disability benefits.

**SB 810 (Leno; D-San Francisco)**

### Government-Run Health Care—

Creates a new government-run, multibillion-dollar socialized health care system based on a yet-to-be specified “premium structure”—in essence, a tax on all employers.

### Expensive, Unnecessary Regulatory Burdens

**AB 283 (Chesbro; D-Arcata)**  
**Expanded Waste Bureaucracy**—Leads to increased cost for consumers and businesses by requiring producers of

select products sold in California to collect their products after use by the consumer and manage the recycling and/or disposal of those products.

**SB 601 (Padilla; D-Pacoima)**  
**Retail Restrictions**—Severely restricts retailers from growing their businesses in California by limiting the sale of a legal product in a legal venue.

For more information on the 2009 “job killers,” visit [www.calchamber.com/jobkillers](http://www.calchamber.com/jobkillers).

**Staff Contact: Marc Burgat**

## Higher Climate Change Costs If State Out of Sync with Feds

*From Page 3*

California would be taking on more costs, Stavins said.

Stavins said he expects the targets under California’s landmark emissions reduction law, AB 32, to be more stringent than that of any federal regulations.

### Higher Cost in California

Making sure the programs do not overlap would reduce the chances of California subsidizing other parts of the country, but would still lead to cost ineffectiveness nationally, Stavins said.

“It would mean that the marginal cost, the allowance price in California, would not be the same as the rest of the country; it would be higher,” Stavins said.

### Regulatory Impact Analysis

Stavins also said California would do well to model the federal process for reviewing the impact of proposed regulations.

Under the federal process (which is overseen by the U.S. Office of Management and Budget), a department or agency recommending a new rule must conduct a regulatory impact analysis whenever the cost burden of a proposed regulation exceeds \$100 million per year, said Stavins.

“That institution has existed and performed exceptionally well [for three decades] through both Democratic and Republican administrations,” said Stavins, noting that he helped write

guidelines for how the analysis should be developed.

Although California law includes a requirement for such analysis, enforcement of this mandate is weak and there is no consequence for non-compliance.

Stavins commented, “I’m not going to accept that it’s because of budgetary constraints. If you had a requirement that when an agency is developing a rule or regulation, it has to be approved every time by the legislative analyst’s office, there are some people over there who can do a back-of-the-envelope calculation.

“Within an hour and a half, you could look at something and say there will not be negative costs or there will be real costs.”

**Staff Contact: Amisha Patel**

## Special Election Results Get Scrutiny at CalChamber Public Affairs Retreat

The impact of voters' irritation with the political process was a recurring theme at the recent retreat of the California Chamber of Commerce Public Affairs Council.

The retreat agenda focused on the results of the 2009 special election, the

critical need for budgetary reform and the blanket primary initiative, which is on the November 2010 ballot.

CalChamber President and Chief Executive Officer Allan Zaremberg presided over the day's gathering at the CalChamber's offices in Sacramento.

Planning has begun for the October conference. For more information about the council and how to become a member, contact Rob Lapsley, [rob.lapsley@calchamber.com](mailto:rob.lapsley@calchamber.com).

Photos by Aaron Lambert



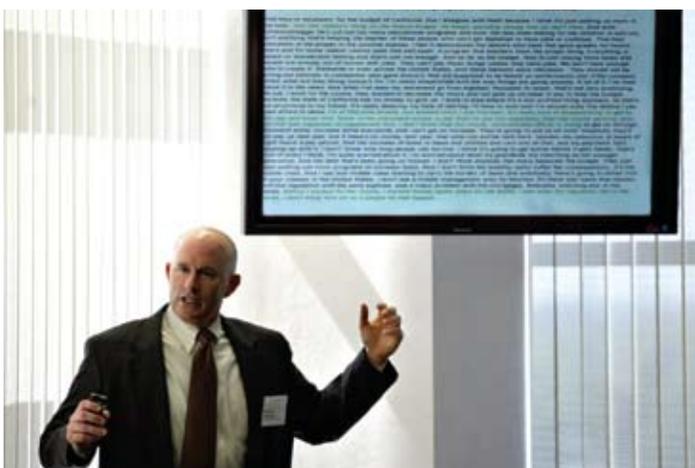
Offering insights on why Propositions 1A-1E failed are panelists (from left) Adam Mendelsohn, Mercury Public Affairs; Rick Claussen, Goddard-Claussen; Carla Marinucci, *San Francisco Chronicle*; Jon Coupal, Howard Jarvis Taxpayers Association; and Ron Nehring, California Republican Party chairman.



Debating the pros and cons of the blanket primary initiative to be voted on in June 2010 are (from left) Senator Abel Maldonado (R-Santa Maria), former Senator Steve Peace (D-San Diego); Dave Leshner, Public Policy Institute of California; Nehring; and Bob Mulholland, California Democratic Party.



Susan Kennedy, chief of staff to Governor Arnold Schwarzenegger, emphasizes the importance of passing a budget that can help grow business and create jobs.



Consultant Michael Baselice recaps attitudes of special election voters and the effect of absentee voters on the election outcome.



Consultant Joe Justin gives an update on efforts to recall several state legislators.

## New Federal Credit Card Restrictions Signed Into Law



President Barack Obama recently signed into law bipartisan legislation that will put new restrictions on the credit card industry with the goal of reducing for consumers the

financial risks associated with credit cards.

The Credit Card Accountability, Responsibility and Disclosure Act of 2009 (H.R. 627) was approved by a large majority of Congress late last month due at least in part to prevailing concerns over the struggling economy and rising consumer debt. The legislation is aimed at protecting the nation's more vulnerable credit card users—those struggling to pay off debt and thus subject to higher penalties, fees and interest rates.

Specifically, the new law includes the following consumer protection measures:

- Cardholders must be provided notice

45 days in advance of any interest rate increase.

- Card companies are prohibited from raising interest rates on a customer's existing balance unless payments are at least 60 days overdue. Such an increase in interest rate must later be terminated if the customer provides six months of subsequent on-time payments.

- Card companies must first apply excess payments (those above the minimum payment requirement) to the portion of the customer's balance that has the highest interest rate.

- Bans the use of payment deadlines that fall on the weekend, that vary from month to month, or that fall in the middle of the day.

- Requires customers to "opt-in" to over-the-limit transactions if fees are imposed, and limits how and when card companies can impose such fees.

- Card companies must provide account terms in plain language to consumers at issuance and make the terms available online for each account.

The sum impact of these provisions is hoped to be a lessening in the severity and frequency of consumer credit card debt and its associated expenses, an especially popular goal during these troubling economic times. The law goes into effect in February 2010.

### Concerns

Banks and credit card companies have raised concerns over the impact the new law ultimately could have on the availability of credit. They warn that the law's restrictions will fundamentally change the credit card business model by limiting the ability of card companies to price credit for risk.

Card companies also have indicated that they may be less likely to offer lower promotional interest rates and more likely to reduce credit limits. Any such reduction in credit availability is certain to affect businesses and consumers who have already felt the impact of a tightening credit market.

**Staff Contact: Robert Callahan**

## E-Verify Mandate for Federal Contractors Delayed Again



The effective date of the final rule requiring certain federal contractors and subcontractors to use E-Verify has been delayed until September 8 to allow the Obama administration more time to

review the rule.

Initially, federal contractors were required to use E-Verify beginning on January 15, but the rule was put on hold three times. The start date was first delayed to February 20, then until May 21, and most recently to June 30. September 8, 2009 is the fourth extension date.

E-Verify is an Internet-based system operated by the U.S. Department of Homeland Security and U.S. Citizenship and Immigration Services that allows employers to verify the employment

eligibility of their employees, regardless of citizenship. Information the employee provides on his or her Form I-9 is electronically checked by E-Verify against records in Homeland Security and Social Security Administration databases.

The rule will affect only federal contractors who are awarded a new contract after June 30, 2009 that includes the Federal Acquisition Regulation (FAR) E-Verify Clause (73 FR 67704).

Federal contractors may *not* use E-Verify to verify current employees until the rule takes effect and they are awarded a contract that includes the FAR E-Verify Clause.

The new rule implements Executive Order 12989, as amended by President George W. Bush on June 6, 2008, directing federal agencies to require that federal contractors agree to electronically verify the employment eligibility of their employees.

The amended executive order reinforces the policy, first announced in 1996, that the federal government do business with companies that have a legal workforce.

This new rule requires federal contractors to agree, through language inserted into their federal contracts, to use E-Verify to confirm the employment eligibility of all persons hired during a contract term, and to confirm the employment eligibility of federal contractors' current employees who perform contract services for the federal government within the United States.

### Updates on Watchdog Blog

The CalChamber is tracking these developments and will provide updates on the *HRCalifornia Watchdog* blog.

**Staff Contact: Jessica Hawthorne**

# Senate Rejects Granting State Air Board Broad Authority to Raise Fees/Taxes



A bipartisan vote of the Senate this week stopped California Chamber of Commerce-opposed legislation that would have increased costs and discouraged job growth

by granting the California Air Resources Board (ARB) broad authority to implement unlimited fees and taxes with little or no oversight.

Defeated on a vote of 16-19 was **SB 31 (Pavley; D-Agoura Hills)**. The broad purposes in SB 31 are far beyond ARB's current limited fee authority under the climate change law, AB 32 (Núñez; D-Los Angeles; Chapter 488).

SB 31 would have granted ARB vast new revenue-raising authority and would have imposed additional costs on the state that go beyond AB 32 implementation.

## Significant Costs

Implementing SB 31 would have resulted in significant costs for California. The bill required the ARB to distribute the funds collected under AB 32 for uses such as renewable energy and energy efficiency programs; investments in technologies reducing greenhouse gas emissions, including research, development and deployment; and green jobs development.

New ARB fees under SB 31 could have reached billions of dollars, but the bill provided no guidance, no limits and no controls over the amount ARB could raise, or from whom.

## Questionable Authority

As a majority vote bill, the fee-raising authority granted to the ARB must pass the tests set forth in the "Sinclair Paint" line of cases—showing a relationship between the social harms or benefits described in the purposes outlined in SB 31 and a payer's responsibility to pay a fee of a certain amount.

Absent such a relationship (a likely result), the fee must be declared invalid as an illegal tax. Fees imposed under SB 31 therefore would have been subject to litigation, regulatory uncertainty, delay

and damage to AB 32 implementation schedules.

Large new fees would be another burden on a fragile economy already absorbing the impact of tax increases to solve the budget crisis. SB 31 fees will make companies less competitive in California and/or raise costs for consumers.

## Cap-and-Trade System

Supporters of SB 31 asserted that the ARB has authority to raise billions of dollars in a cap-and-trade program and that SB 31 simply directs how the money can be spent.

When AB 32 passed, however, its author, Assembly Speaker Fabian Núñez, stated in a letter submitted to the *Assembly Journal*: "It is my intent that any funds provided by Health and Safety Code Section 38597 are to be used solely for the direct costs incurred in administering this division."

Thus, legislation that provides the ARB greater authority to implement an auction and to use the funds in addition to fees raised for other purposes than administering costs goes well beyond the intent of AB 32.

AB 32 allows the ARB to include "market-based compliance mechanisms" in its plan to achieve the 1990 target greenhouse gas levels in the state. A market-based compliance mechanism could include cap-and-trade systems or other mechanisms that involve recognizing or distributing greenhouse gas emission allowances, but AB 32 does not expressly sanction, or mention, distribution of greenhouse gas allowances by an auction mechanism.

An auction mechanism would be complex and affect all or most of the California economy and could raise and redistribute billions of dollars of auction revenues.

The CalChamber believes that the Legislature should keep firm control of the ability to impose, or relax, new fees and/or taxes to fund important government services and encourage the creation of new jobs. It should not provide the ARB with vast new revenue-raising authority.

## Key Vote

The June 3 vote on SB 31 was:

**Ayes:** Alquist (D-Santa Clara), Corbett (D-San Leandro), DeSaulnier (D-Concord), Ducheny (D-San Diego), Florez (D-Shafter), Hancock (D-Berkeley), Kehoe (D-San Diego), Leno (D-San Francisco), Lowenthal (D-Long Beach), Oropeza (D-Long Beach), Pavley (D-Agoura Hills), Romero (D-East Los Angeles), Simitian (D-Palo Alto), Steinberg (D-Sacramento), Wiggins (D-Santa Rosa), Wolk (D-Davis).

**Noes:** Aanestad (R-Grass Valley), Ashburn (R-Bakersfield), Benoit (R-Bermuda Dunes) Calderon (D-Montebello), Cedillo (D-Los Angeles), Cogdill (R-Modesto), Correa (D-Santa Ana), Cox (R-Fair Oaks), Denham (R-Merced), Dutton (R-Rancho Cucamonga), Harman (R-Huntington Beach), Hollingsworth (R-Murrieta), Huff (R-Diamond Bar), Maldonado (R-Santa Maria), Strickland (R-Moorpark), Walters (R-Laguna Niguel), Wright (D-Inglewood), Wyland (R-Del Mar), Yee (D-San Francisco).

**Absent/abstaining/not voting:** Liu (D-La Cañada Flintridge), Negrete McLeod (D-Chino), Padilla (D-Pacoima), Runner (R-Lancaster).

**Staff Contact:** Amisha Patel

## Many 'Job Killer' Bills Still Moving

Numerous "job killer" bills are still making their way through the Legislature.

The proposals still alive include costly workplace mandates, economic development barriers, expensive and unnecessary regulatory burdens and bills leading to inflated liability costs.

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

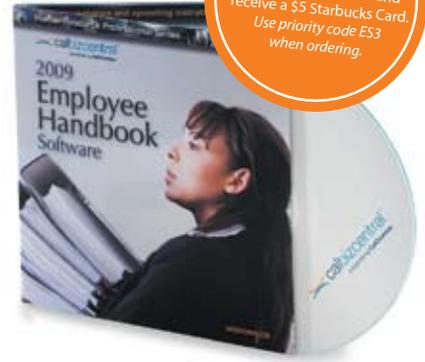
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