

# ALERT

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## CalChamber Receives President's Export Award

The California Chamber of Commerce has received the President's "Excellence for Export Service Award," the nation's highest award to honor U.S. exporters.

U.S. Commerce Secretary Gary Locke presented the award to CalChamber Vice President of International Affairs Susanne Stirling in an afternoon ceremony in Washington, D.C. on November 5.

The award was created by President John F. Kennedy via executive order in 1961 to recognize persons, firms or organizations that contribute significantly to expanding U.S. exports.

Three CalChamber members—Capstone Turbine Corporation (Chatsworth), Medtronic, Inc. (Minneapolis) and Otis McAllister, Inc. (San Francisco)—also were among the award recipients (see story on Page 4).

### CalChamber International Activities

For the last three decades, the CalChamber has been the only statewide business organization continually devoted to promoting international trade and exports.

Through its Council for International Trade, the CalChamber serves as California's voice on trade, with influence reaching well beyond its membership of 15,000 with 400 affiliated local chambers of commerce and 200 trade associations.

The council boosts the ability of California businesses and organizations to advocate sound international business policies via a unified group of business leaders speaking out on international

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## CalChamber Provides Updates on Important New Laws for 2010

Updates on important human resources and employment law issues that businesses must take into consideration when planning for 2010 will be covered in seminars available from the California Chamber of Commerce.

Available free to members at HRCalifornia is a recording of the 30-minute **Preview for 2010** webinar first offered on November 11 by CalBizCentral, the source for California business and human resource compliance products, presented by CalChamber.

### Overview

More than 1,100 people registered for the live version of the webinar, which provides employers with a general overview of the employment policies, processes, posters and pamphlets that should be considered in preparation for 2010, such as:

- Which 2010 tax issues businesses want to remember, including an Earned Income Tax Credit overview and employee withholding increase update from the Franchise Tax Board.
- What businesses must look for when reviewing and updating their employee handbook for 2010, including electronic media and sexual harassment policies.
- Which critical human resources and employment policies should be considered when preparing an employee training plan, including updating the

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Susanne Stirling, CalChamber vice president of international affairs, accepts the President's 'Excellence for Export Service Award' from U.S. Commerce Secretary Gary Locke.

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## Labor Law Corner

# Employers Not Obligated to Classify Employees as Exempt



**Barbara Wilber**  
Labor Law  
Consultant

*We have an hourly, non-exempt employee whose duties may make him eligible to be classified as an exempt administrative employee. The employee is demanding that we classify him as exempt. Are we required to change his classification?*

No, an employer is not obligated to classify employees as exempt. In California, depending upon the exemption, employees may be exempt only from

overtime or from Sections 3-12 of the Industrial Welfare Commission orders.

The use of these exemptions is simply available to the employer; nothing in the law requires an employer to utilize an exemption. On the contrary, misclassifying an employee as exempt who is not can be a very costly error.

### Specific Criteria

The law outlines the specific criteria required for the exempt classifications. Employers should establish that each and every criterion is met in order to correctly classify employees as exempt. Ultimately, the burden lies with the employer to defend the decision.

Employees frequently view an exempt classification as a promotion even if the wage is commensurate with an hourly position. As a result, employees are willing to trade overtime compensation for the perceived status or prestige of an exempt position. Carefully consider

employee requests before taking an action that may be hard to defend and may result in a substantial overtime obligation later.

### Status Irrelevant

There are a few laws that apply to the duties of an employee irrespective of their classification status. For example, the fact that an employee is not actually classified as an "exempt" supervisor will not affect the obligation to provide any required training. Mandated tip pooling prohibitions may apply if the employee is an agent of the employer who hires, fires and disciplines employees.

*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

More at [www.calchamber.com/events](http://www.calchamber.com/events).

### International Trade

Silicon Valley Open Doors Investment Conference. American Business Association of Russian Professionals. December 9-10, Mountain View. (408) 480-3190.

Tex-Styles India. India Trade Promotion Organisation. February 24-27, 2010, Pragati Maidan, New Delhi, India. [info@texstylesindia.com](mailto:info@texstylesindia.com).

Cairo International Fair. General Organization for International Exhibitions and Fairs. March 11-22, 2010, Cairo, Egypt. [info@cairofair.com](mailto:info@cairofair.com).

### Labor Law

HR 101: Intro to HR Administration.

CalBizCentral. December 3, Sacramento. (800) 331-8877.

HR 201: California Labor Law Update.

CalBizCentral. December 2, Sacramento; January 13, 2010, Glendale; January 14, Costa Mesa; January 15, San Diego; January 20, San Jose; January 21, Emeryville; January 28, Live Webinar. (800) 331-8877.

## CalChamber Calendar

*Business Services Committee:*

December 3, San Francisco

*Taxation Committee:*

December 3, San Francisco

*Education Committee:*

December 3, San Francisco

*Water Committee:*

December 3, San Francisco

*Fundraising Committee:*

December 3, San Francisco

*Board of Directors:*

December 3-4, San Francisco

*International Trade Breakfast:*

December 4, San Francisco

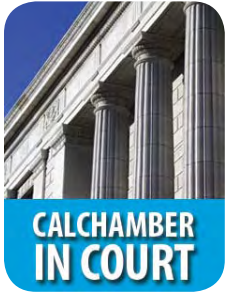
*Annual Meeting:*

December 4, San Francisco

**Next Alert:  
December 4**



# CalChamber Goes to Court to Protect Businesses from More Lawsuits



The California Chamber of Commerce is urging the 9th Circuit Court of Appeals to reverse a district court ruling that could result in numerous more wage-and-hour lawsuits against

California employers.

The CalChamber is arguing that the district court ruling fails to follow the plain language of the law and disregards the long-standing California requirement that exemption determinations be made based on an analysis of employees' individual job duties.

The CalChamber has joined the U.S. Chamber of Commerce and the Employers Group in filing a friend-of-the-court brief in a case that if left standing could result in a flood of wage-and-hour class action lawsuits alleging that large groups of employees have been misclassified as exempt from overtime requirements, *Jason Campbell and Sarah Sobek v. PricewaterhouseCoopers LLP*.

## Increasing Litigation

Professional service firms and other employers in almost every industry in California have been subjected to an increasing amount of litigation, both class actions and individual lawsuits, challenging the exempt status of countless numbers of employees.

Since 2005, California employers have been sued in more than 2,000 wage-and-hour class action lawsuits, with the number of lawsuits increasing each year, according to *Courthousenews.com*.

The district court ruled as a matter of law that a class of accounting professionals, who had not yet obtained their Certified Public Accountant (CPA) licenses from the State of California, were precluded from meeting the criteria for exemption from California overtime requirements set forth in the Professional Exemption and the Administrative Exemption of California Wage Order 4-2001.

## Wage Order Disregarded

The CalChamber believes that the district court took the unprecedented step of disregarding the plain language of the wage order on which California employers

have relied for so long, and fashioned an entirely new meaning of the administrative and professional exemptions.

The CalChamber argues in its brief that the district court's ruling could be extended to serve as the basis for any suit claiming that unlicensed employees working in any of the other professions enumerated in the wage order were improperly classified as exempt.

The ruling also could serve as the basis for any argument that any employee treated as qualified for the administrative exemption was misclassified. As a result, thousands of California employers could be subject to these types of claims if the district court's ruling is allowed to stand.

Although California employers do not dispute their obligation to pay overtime wages to employees whose job duties render them non-exempt, it makes little sense to uphold a district court ruling when upholding the decision would dramatically increase California employers' exposure to wage-and-hour class action lawsuits and the extremely high cost of defending them.

The entire brief is available on the legal affairs page at [www.calchamber.com](http://www.calchamber.com).  
Staff Contact: Erika Frank

## Seminars Provide Updates on Important New Laws for 2010

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Injury and Illness Prevention Plan and planning for heat stress training.

- Which required notices must be updated and displayed come January 1, 2010, and which employment pamphlets must be replaced.

- What additional resources are available to help businesses.

For businesses planning to attend any of the *HR 201: Labor Law Update* seminars, the 2010 preview lays a solid foundation of information to help attendees maximize their seminar learning.

### HR 201

Labor law changes affecting California employers in 2010 stem from action by the state Legislature and Obama administration, as well as regulatory

agencies and the courts. *HR 201: Labor Law Update* will cover important changes, such as:

- the new I-9 form;
- E-Verify for federal contractors;
- "reverse" discrimination;
- arbitration agreements;
- alternative workweeks and flexible scheduling for exempt and non-exempt employees;
- discrimination, retaliation and harassment;
- leaves of absence;
- the Genetic Information Non-Discrimination Act;
- the Lilly Ledbetter Fair Pay Act;
- cases to watch in 2010.

The *HR 201: Labor Law Update* seminar kicks off December 2 in Sacramento and is available at other

locations throughout the state in 2010. An early bird special is available for registering for one of the 2010 seminars by December 15 (use priority code LEB).

### CalChamber Presenters

Leading the seminars will be Susan Kemp, senior employment law counsel for CalChamber, and Erika Frank, general counsel and head of the CalChamber Legal Affairs Department.

### Special Offer

CalBizCentral is offering a 50 percent discount on sexual harassment prevention training to anyone who registers for the *Preview for 2010* webinar.

More information on the employment law updates and other training is available at [www.calbizcentral.com](http://www.calbizcentral.com).



## CalChamber Receives President's Export Award

From Page 1

issues that support California's global success, job creation and sustainability.

In addition, the CalChamber created the California Coalition for Free Trade, a broad-based group of companies and business organizations, to secure a national free trade agenda.

The CalChamber, with organizational roots dating to 1890, 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.

The CalChamber also offers a variety of services to help businesses comply with complex laws and regulations, as well as compete in the international marketplace:

- trade policy engagement;
- an extensive international website at [www.calchamber.com/international](http://www.calchamber.com/international). The site outlines the CalChamber's activities to assist members with general export and

import needs, as well as covering trade legislation/issues, answers to frequently asked questions, web links to additional international trade organizations, and trade statistics. The web section enhances visitors' international knowledge through sections focusing on country trade portals, profiles in trade, trade forums and trade mission;

- a weekly e-trade newsletter, which also is available on the website; and
- an **Exporting Guide for California Businesses**, a reference tool to help companies and entrepreneurs understand the complexities of export regulations and guidelines when preparing to ship goods internationally.

### Exports Fuel GDP

The "Excellence for Export Service Award" acknowledges that employment levels throughout the country, the strength of the national economy and the nation's capacity to carry out its international responsibilities can be increased substantially by establishing

foreign markets for U.S. products and that it is in the national interest to promote and expand the export trade of the United States.

World gross domestic product (GDP) and world merchandise exports not only move in tandem, but export growth exceeds GDP growth, according to the World Trade Organization's recent Annual Compilation of International Trade Statistics.

In 2008, the United States exported more than \$1.3 trillion and remained a top exporter on the world scene. California is one of the top export states; exports exceeded \$144 billion in goods, more than 11 percent of total U.S. exports, in 2008.

California is one of the 10 largest economies in the world with a gross state product of more than \$1.7 trillion. International-related commerce accounts for approximately one-quarter of the state's economy.

**Staff Contact: Susanne Stirling**

## CalChamber Members Win President's Export Award

Three of the 21 companies receiving the President's "Excellence for Export Service Award" this month are members of the California Chamber of Commerce.



- **Capstone Turbine Corporation.**

Capstone Turbine Corporation (Chatsworth) produces low-emission microturbine systems, and was first to market with commercially viable microturbine energy products. Capstone Turbine has shipped thousands of Capstone MicroTurbine systems to customers worldwide.

The company has seen a large increase in sales overseas. It increased its export sales by 266 percent over the last four years and has seized opportunities in markets in Europe, Latin America and Asia.

Capstone Turbine also has been a delegate on several U.S. government trade missions over the years, including missions to China, India and Vietnam.

- **Medtronic, Inc.** Headquartered in Minneapolis, Medtronic Inc. is a leader in medical technology, serving patients and partners with medical professionals in 120 countries.

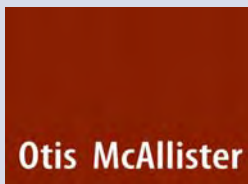


Since opening its first Bakken Education Center in Minneapolis in 1990, Medtronic has added 21 centers in North America, Europe, Asia, Africa, Latin America and the Middle East.

Thousands of medical professionals visit the facilities every year to gain hands-on experience with the latest medical technologies.

- **Otis McAllister, Inc.** This global food company provides a wide range

of services worldwide to a substantial and diversified client base that includes club stores, traditional and non-traditional retail, and food service.



The company, which operates on six continents and in more than 100 countries from its San Francisco headquarters, saw export sales increase by more than 22 percent between 2005 and 2008.

In 2009, Otis McAllister sponsored orphanages in India and supported "Saving Girls," sustainability and leading corporate social responsibility programs overseas and in the United States

# Gold Medals for CalChamber Members Recognize Promotion of Employee Fitness

Six members of the California Chamber of Commerce received Gold Medals at the 2009 Fit Business Awards ceremony.

The annual awards, presented by the California Task Force on Youth and Workplace Wellness, recognize companies that promote the positive connection between employee health and return on investment.

In announcing the awards, the task force cited a recent study published by the California Center for Public Health Advocacy, which found that physical inactivity, obesity and other health-related problems cost California employers an estimated \$41 billion each year; this is a \$12 billion increase from 2004 estimates.

The six CalChamber members were among seven receiving the Gold Medal for their "clear commitment to employee wellness," according to the task force news release.

Winners were selected based on the priority employers have placed on employee health at the workplace, including the presence of healthy food options; employer-provided time, space and support for physical activity during the work day; CEO/management support; and worksite policies for providing health promotion programs during company time (other than the lunch hour).

Following is information presented by the task force on the CalChamber members receiving the Gold award:



## BD Biosciences

BD Biosciences in San Diego brings innovative diagnostic research to the development of biopharmaceutical production and disease management. Through its workplace wellness program, BD Biosciences has seen decreased costs associated with its employee health care plan and workers' compensation injuries.

For example, over the last 18 months, the number of workers' compensation injuries has been reduced from 32 to 12, resulting in an associated cost reduction

from \$120,000 to \$10,000.

Company employees are offered several health-related competitions and training workshops, such as the Biggest Loser Weight Loss Program, biweekly yoga sessions, boot camp strengthening classes and an annual health fair.

Each month, BD Biosciences highlights specific health or fitness topics, which include "lunch-and-learn" sessions, wellness instructional materials, and company-sponsored activities based upon the monthly theme.

BD Biosciences also sponsors co-ed employee teams in sports such as softball, basketball and soccer.

## BENTLEY PRINCE STREET

### Bentley Prince Street

Programs for commercial carpet manufacturer Bentley Prince Street (headquarters in City of Industry) are designed to provide the education, tools and training to help improve employees' quality of life, health and well-being, extending far beyond typical workplace benefits.

A core element of this commitment is Bentley Prince Street's comprehensive health and wellness program offered to all employees—developed with the advisement of Catherine Rudat's Wellness Corporation—which includes bilingual wellness coaching for employees who speak Spanish.

Every Bentley Prince Street employee can take advantage of a personal nutrition, fitness and wellness plan based on individual needs, with tailored exercise, nutrition, weight loss and training programs. More than 70 percent of employees have used and/or consistently use Bentley Prince Street's on-site 3,000 square-foot, fully staffed state-of-the-art gym and workout facility for exercise, weight training and specialty classes, such as yoga.

Daily morning flexibility and stretch sessions for all employees have a near-100 percent participation rate, and 40 percent of associates participate in the company's daily "walking club."

Regular "lunch-and-learn" sessions

feature guest speakers on topics such as nutrition, fitness, women and hormones, money management and stress management, with more than 50 percent employee participation.

"The Survival of the Fittest" physical activity competitions, including walking, gym attendance, yoga and sports, with gift certificates awarded to winners, have attracted participation from 70 percent of associates. The program has resulted in a 12 percent decrease in the number of paid sick days in 2009.

Bentley Prince Street recently ranked second on the *Los Angeles Business Journal's* 2009 "Best Places to Work" list.

**DES**  
ARCHITECTS  
ENGINEERS

## DES Architects + Engineers

This 100-person Redwood City firm provides architectural, engineering and interior design services. The fitness program is defined and developed to include five major fitness components: physical, mental, financial, sustainable and community.

DES ensures its employees have access to a variety of healthy foods, including "fresh fruit Wednesdays," a companywide salad bar and corporate food delivery services.

Its "Punch for Lunch" program furnishes a punch card for employees to participate in fitness events, "lunch-and-learns" and activities. After receiving 10 punches, employees receive a \$10 gift card to purchase a healthy lunch.

Food Pop Quizzes are done through e-mail. The first three employees who answer the most questions correctly get a \$25 gift certificate to Trader Joe's or Whole Foods Market.

The company also offers its employees a \$25 per-month fitness stipend that can

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## CalChamber Members Get Medals for Promoting Employee Fitness

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be used for gym memberships, golfing, dance classes, bicycle commuting, hiking gear, etc.

DES Architects estimates that more than \$1,000 per employee is spent annually on promoting and engaging employees in fitness programs.

### McDonough Holland & Allen PC

This law firm, which has offices in Sacramento and Oakland, shows its commitment to the health and well-being of its employees by offering everything from cash incentives to on-site fitness classes to healthy food options.



McDonough Holland & Allen PC

McDonough provides activity classes for all employees multiple times per week at a low cost or no cost. In addition to yoga, Pilates and resistance training, the firm also offers a cardio salsa class, which is taught by one of the firm's employees, and a soul line dancing class. Wellness walks are scheduled twice a week and lead Sacramento employees through the downtown area, the river and farmers markets.

The law firm offers free fresh fruit and healthy snacks to all employees firm-wide. In addition, the Sacramento office has had a vending machine "make over" and now provides nearly 50 percent healthy snack options and 65 percent healthy drink options, including organic soups, herbed raw almonds, yogurt and naturally sweetened beverages. The firm's Oakland office gets together twice a week to drink freshly juiced fruits and vegetables at the office.

McDonough brings in physicians, professors and wellness leaders from all over the Sacramento and Bay Area to provide "lunch-and-learn" sessions with high intellectual content to employees.

McDonough offers personal coaching services through Sutter Health Partners, whose Live Well for Life program

includes a Health Risk Assessment (HRA), online tools and various workshops.

To get employees to read their regular Wellness Walk invitations, McDonough inserts funny health comics into the e-mails. It also organizes periodic contests to inspire friendly competition among employees. These efforts spark levity and almost guarantee exposure to the firm's outreach efforts.

### Safeway, Inc.

Safeway's focus on the health and wellness of its employees is manifested through a variety of programs. Safeway's campaign to promote healthy eating in the workplace includes changing options in the cafeteria to healthier foods, posting calorie and fat counts of menu items and subsidizing the cost of healthier options for employees.



Employees have access to a free, on-site, state-of-the-art fitness center at the corporate office in Pleasanton or membership at one of multiple major chain fitness centers at a discounted rate. The company has implemented an employee-friendly, market-based health care plan for non-union employees (and is currently negotiating many of these same concepts into union contracts) with prevention and behavior as core elements.

In 2008, Safeway added Healthy Measures, a free voluntary program designed to encourage employees to identify and understand their major health risks. Employees opt in to this program and agree to have their cholesterol level and blood pressure checked and recorded, their body mass index calculated, and take a test that shows whether they use tobacco products.

If all measures are good, the employee saves \$780 in health care premiums. Those whose scores don't meet the criteria for a discount can get reimbursed the discount amount if they make a change for the better.

All these measures helped hold down health care costs for the company and its employees, and helped foster a healthier workforce.

### Vons

Vons, a division of Safeway, is committed to the health and wellness of its employees and strives to offer diversity in programs for healthy living. The Health and Wellness Committee, made up of 11 committed members, including the company's chief financial officer, six members of management and a registered dietician, has launched 12 partnerships with nutrition and exercise organizations.

The most successful by far has been Lindora, a Southern California medically based and clinically proven weight control program. Vons employees receive a significant discount to both the clinic and the online programs.

Since July 2008, Lindora has enrolled 48 Vons employees, resulting in 1,033 pounds of weight loss. The committee also introduced The Healthy Cafeteria Program, which incorporated 20 new subsidized healthy entrees, snacks and beverages, and relocation of junk food items off the main floor. The company has subsidized more than \$1,000 in healthy entrees and increased healthy snack choices by 10 percent.



In addition, the committee created the "Workplace Walk-Off Challenge," with a goal to instill healthy exercise habits through a 10,000-step-a-day challenge. Thirty teams of five participated (33 percent participation) and tracked their steps for four weeks.

Positive outcomes of the challenge included increased morale, increased on-site gym usage (65 percent), and recognition to the team with the most steps, as well as the 37 individuals who completed at least 10,000 steps a day.



## Deadline Near for Local Chamber Recognition Award



The Local Chamber Relations Department of the California Chamber of Commerce is continuing its program designed to recognize local

chambers of commerce for excellence in business advocacy and marketing business compliance products to members.

“The goal of this program is to reward local chambers in the state that do an outstanding job in partnering with the CalChamber in its business advocacy efforts, and for marketing our HR

compliance products to their members to ensure that they are up-to-date on state and federal notice requirements,” said Steve Snyder, CalChamber vice president of local chamber relations.

### Award Criteria

To qualify for the “President’s Circle,” the local chamber must meet the following initial criteria:

- Publish and distribute to its members a voting record of its state legislators on key business issues;
- Generate letters (and copy the CalChamber) to state elected officials on issues of interest to the local chamber’s members;
- Participate in the CalChamber’s Local Chamber Resale Program, generating a minimum of \$1,500 in sales

of various compliance products offered by the CalChamber each year.

- Bring a delegation (minimum three people) representing the local chamber to the CalChamber’s annual Business Legislative Summit in the spring.

Chambers achieving “President’s Circle” status will be recognized at the CalChamber Business Legislative Summit on May 17, 2010 in Sacramento.

### December 31 Deadline

To qualify for the program, local chambers must submit vote records by December 31.

For more information, contact Steve Snyder, (916) 930-1241, [steve.snyder@calchamber.com](mailto:steve.snyder@calchamber.com).

## Non-Profit Offers Tools to Prevent Early Retirement Scams

The California Chamber of Commerce wants employers and employees to be aware of aggressive salespeople or even fraudsters who try to convince employees to cash in their retirement investments early with misleading promises of big financial returns that simply can’t be sustained.

To prevent these scams, California companies can take advantage of expert resources currently available through the Financial Industry Regulatory Authority (FINRA).

FINRA, an independent, non-profit regulatory organization, works to protect investors by making sure the securities industry operates fairly and honestly.

FINRA has several free resources and services to help older workers protect themselves. The resources include free hard copies of the employee brochure that can be included in retiree kits, the “Help Your Employees Achieve Their Retirement Dream: Tips for Spotting Early Retirement Scams” brochure and evaluations of materials used in retirement seminars.



Financial Industry Regulatory Authority

### Be Skeptical

Because the allure of a leisurely retirement can be tempting, and those who promote early retirement schemes can be extremely persuasive, FINRA has labeled the following statements as things employers and employees should be skeptical of if approached with retirement advice:

- **Everyone can retire early.** The reality is that many employees do not have the resources to do so. Early retirement is not feasible for many people, and is particularly risky for workers who haven’t saved enough for an extended retirement and who have limited opportunities for other employment.

- **You can make as much in retirement as you can by continuing to work.** Promises like this usually hinge on unrealistically high returns on investments and unsustainably large yearly withdrawals.

- **You can expect returns of 12 percent or more.** No one can predict what an investment will do from one year to the next—and even if an investment performed well in the past, this is no guarantee it will do so in the future. In addition, any return

more than 10.4 percent exceeds the historical long-term returns for the stock market.

- **You can withdraw 7 percent or more and never run out of money.** Being conservative with withdrawals, especially during the first years of retirement, is the wisest decision. Many experts recommend withdrawal rates between 3 and 5 percent per year, especially in the first years of retirement.

### More Information

Free hard copies of materials are available. Companies also can send seminar information to FINRA to review for consistency with applicable standards.

For more information, contact FINRA Associate Director of Investor Education Peter Chandler, (202) 728-8827, [peter.chandler@finra.org](mailto:peter.chandler@finra.org), or visit [www.finra.org](http://www.finra.org).

# Learn HR In Class, Not Court



Make sure your management staff is up to speed on the latest legislation that affects employment law. Join the California Chamber of Commerce on December 3 for **HR 101: Intro to HR Administration**, or choose from select locations for **HR 201: California Labor Law Update**.

These engaging seminars are:

- taught by CalChamber employment law experts;
- held in a collegial setting with an open question-and-answer forum; and
- approved for credit hours toward human resources recertification through the Human Resource Certification Institute (HRCI).

Order online at [www.calbizcentral.com](http://www.calbizcentral.com).

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