

# ALERT

VOLUME 36, NUMBER 26 • AUGUST 20, 2010

 **CalChamber**  
CALIFORNIA CHAMBER OF COMMERCE

## Pro-Jobs Business Candidate Wins in Key Senate District



Sam Blakeslee

An independent effort by JobsPAC, a coalition of California employers political action committee, helped push the pro-jobs candidate to victory this week in the hotly contested campaign for Senate District 15 on the Central California Coast.

The Secretary of State's website showed Assemblyman Sam Blakeslee (R-San Luis Obispo) won with 48.8 percent of the vote to 44.1 percent for former Assemblyman John Laird (D-Santa Cruz).

The victory for Blakeslee, a former Assembly Republican leader, helps prevent Senate Democrats from attaining a veto-proof two-thirds majority and the ability to raise taxes and increase spending.

"This election demonstrates that employer contributions *do* make the critically important difference. By getting involved in this campaign, JobsPAC helped sustain an important check-and-balance on the Legislature," said California Chamber of Commerce President and CEO Allan Zaremborg.

Before Blakeslee's victory, Democrats held 25 of the 40 seats in the Senate, two short of the 27 that would constitute a two-thirds majority. A Democrat victory in Senate District 15 would have

*See Pro-Jobs: Page 4*

## New Job Creator Bill Boosts Construction Jobs



The California Chamber of Commerce has identified a new job creator bill that is estimated

to create some 18,000 jobs in the Riverside area, which has been hit particularly hard by the economic downturn.

**AB 2098 (Miller; R-Corona)** authorizes the Riverside County Transportation Commission to use design-build to construct a portion of State Highway 91, thus putting more jobs on the ground more quickly.

### Expand Design-Build

The CalChamber supports the expanded use of design-build and other

alternative project delivery methods by the state and local governments. While design-build is not appropriate in all cases, for appropriate instances, projects can be completed more quickly and at a lower cost than through traditional design-bid-build contracting.

### Reduces Lawsuits

The number of change orders is lessened as is the potential for disagreements and lawsuits among contractors, architects and the local government entity as the project is being built. Essentially, design-build can put more construction and engineering jobs on the ground faster, which is integral to stimulating the state's economy and rehabilitating the infrastructure network.

*See New: Page 5*

## 'Job Killer' Bills Moving; Senate, Assembly Votes Next



A number of California Chamber of Commerce-opposed "job killer" bills won approval from the fiscal committees of the Senate and Assembly last week.

The next stop for these proposals will be consideration by either the entire Senate or the entire Assembly.

### Senate Appropriations

#### *Expensive, Unnecessary Regulatory Burdens*

● **AB 2578 (Jones; D-Sacramento)**  
**Inappropriate Price Control.** Reduces health care choices, access and quality by creating additional bureaucracy to impose price controls on health insurance policies while failing to address the major cost drivers of rising medical costs.

AB 2578 passed the Senate Appropriations Committee on a party-line vote of 7-4:

**Ayes:** Kehoe (D-San Diego), Alquist (D-Santa Clara), Corbett (D-San Leandro), Leno (D-San Francisco), Price (D-Inglewood), Wolk (D-Davis), Yee (D-San Francisco).

**Noes:** Ashburn (R-Bakersfield), Emmerson (R-Redlands), Walters (R-Laguna Niguel), Wyland (R-Carlsbad).

*See 'Job Killer': Page 4*

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Product Ingredient Disclosure Mandate Stopped: Page 5

## Labor Law Corner

# Job Protection for Cosmetic Surgery Depends on Reasons for Procedure



**Ellen Savage**  
HR Advisor

*My employee wants time off for cosmetic surgery. Do I have to hold her job? Would she be able to collect state disability insurance (SDI)?*

Depending on the reasons for the cosmetic surgery, you may be required to hold the employee's job. To make that determination, you must take into account which laws might apply.

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*Alert (ISSN 0882-0929) is published weekly during legislative session with exceptions by California Chamber of Commerce, 1215 K Street, Suite 1400, Sacramento, CA 95814-3918. Subscription price is \$50 paid through membership dues. Periodicals Postage Paid at Sacramento, CA.*

*POSTMASTER: Send address changes to Alert, 1215 K Street, Suite 1400, Sacramento, CA 95814-3918. Publisher: Allan Zarembeg. Executive Editor: Ann Amioka. Associate Editor: Blake Ellington. Art Director: Marcy Wacker. Capitol Correspondent: Christine Haddon. Photographer: Megan Wood.*

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### Family Leave Coverage

The first thing to consider is whether the family leave laws may provide job protection. If you are a large enough employer (50 or more employees) and the employee meets the eligibility tests, you may need to provide family leave.

To be eligible, the employee must have worked for you for at least one year, have worked at least 1,250 hours within the last year and work at a location with 50 or more employees (either at the location or within a 75-mile radius).

Some purely elective cosmetic procedures, such as most outpatient surgeries and acne treatments, are not protected by the family leave laws, so you would not be required to hold the employee's job.

On the other hand, both state and federal family leave laws consider certain types of cosmetic surgery as "serious health conditions" that would allow up to 12 weeks of leave.

Family leave *would* cover cosmetic surgery when:

- inpatient care (an overnight hospital stay) is required; or
- complications develop; or
- the employee undergoes restorative dental or plastic surgery after an injury or removal of a cancerous growth.

### Disability Law Coverage

Even if the family leave laws do not apply, consider whether the Americans with Disabilities Act and California's related Fair Employment and Housing Act might come into play. Both require an employer to provide reasonable accommodation to a disabled employee unless undue hardship would result.

For example, an employee may need cosmetic surgery as part of rehabilitation from a severe injury, or as reconstruction after having had surgery to remove cancer, in which case a leave of absence may be a reasonable accommodation.

Finally, even if the employee is not eligible for family leave and the

reasonable accommodation laws do not apply, consider whether your company's policies or past practices might permit a leave of absence.

Many companies have medical leave of absence policies that could cover cosmetic surgeries. Even if you do not have such a written policy, you may have established a practice of allowing leaves for cosmetic surgeries.

For example, if you have allowed one employee to take time off for a rhinoplasty (nose surgery), another employee may be entitled to time off for a tummy tuck or breast augmentation.

Your employee should be able to collect SDI as a result of undergoing cosmetic surgery. The employee must meet the basic SDI eligibility requirements, including being unable to do his or her regular or customary work for at least eight consecutive calendar days, as well as being under the care and treatment of a licensed doctor or accredited religious practitioner.

Remember, eligibility for SDI does not protect an employee's job; it simply replaces wages if an employee is eligible for a leave.

*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).*

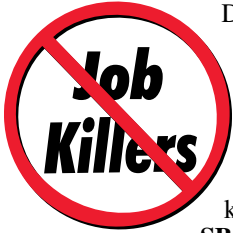
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Next Alert:  
September 10



## ‘Job Killer’ Bill Amendments Undermine Secret-Ballot Union Elections



Despite recent amendments, a California Chamber of Commerce-opposed bill remains a “job killer.”

**SB 1474 (Steinberg; D-Sacramento)** is

designed to increase union representation even when it is against the will of employees. Despite the recent amendments, the proposal undermines the process that now guarantees, through secret-ballot elections, a fair vote and the expression of agricultural employees’ true sentiments on the selection of a collective bargaining representative. This act will hurt California’s businesses by driving up costs, making employers less competitive in a global market.

SB 1474 passed the Senate Labor and Industrial Relations Committee on August 18 on a party-line vote.

### Card-Check

As currently drafted, SB 1474 proposes a back door to unionization through the card-check process, undermining agricultural employees’

right to a private ballot when deciding on union representation. It requires the Agricultural Labor Relations Board (ALRB) to certify a union when an election is set aside due to employer misconduct.

In contrast, current law requires that a rerun secret-ballot election be held unless the ALRB finds only a slight possibility that the effects of employer-committed unfair labor practices can be erased and a fair rerun election held.

### Secret Ballot Necessary

The certification “remedy” in this bill for employer misconduct is premised upon the assumption that the authorization cards a union submitted to trigger an election showed a majority of employees supported the union.

Employees may sign authorization cards for other reasons, however, such as to merely call for an election, to stop a union organizer from continuing to pester them for their cards, or because they were tricked by misrepresentation as to the consequence of signing cards. To determine employees’ true preference regarding unionization—even in the wake of employer misconduct—a secret-ballot election is necessary.

### CalChamber Position

Labor unions in California are experiencing a decline in membership. Bolstering their membership should occur because workers see a need, not by adulterating the election process. The CalChamber supports the Agricultural Labor Relations Act and its provisions for agricultural labor protections, and rejects attempts to undermine the secret-ballot process in California in any way.

Undermining the secret-ballot process sends the wrong message to new or growing businesses that could create jobs for California citizens.

### Key Vote

SB 1474 passed Senate Labor and Industrial Relations on August 18 on a 4–2 vote.

**Ayes:** DeSaulnier (D-Concord), Ducheny (D-San Diego), Leno (D-San Francisco), Yee (D-San Francisco).

**Noes:** Hollingsworth (R-Murrieta), Wyland (R-Carlsbad).

SB 1474 goes next to the Senate floor for concurrence in Assembly amendments.

**Staff Contact:** Marti Fisher

## CalChamber Positions on November Ballot Propositions

Proposition	Subject	Position
Proposition 18	Safe, Clean and Reliable Drinking Water Supply Act of 2010	Moved to 2012 ballot
Proposition 19	Regulate, Control and Tax Cannabis Act of 2010	Oppose
Proposition 20	Redistricting of Congressional Districts—Voters FIRST Act for Congress	Support
Proposition 21	\$18 Vehicle License Surcharge to Help Fund State Parks/Wildlife Programs	On Sept. 3 Board Agenda
Proposition 22	Local Taxpayer, Public Safety and Transportation Protection Act	Support
Proposition 23	Suspends Implementation of Air Pollution Control Law (AB 32)	On Sept. 3 Board Agenda
Proposition 24	Repeal Corporate Tax Loopholes Act	Oppose
Proposition 25	On Time Budget Act of 2010	Oppose
Proposition 26	Stop Hidden Taxes Initiative	Support
Proposition 27	Eliminates State Commission on Redistricting	Oppose

## Pro-Jobs Business Candidate Wins in Key Senate District

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narrowed the margin to 26 Democrats, 14 Republicans.

The seat had been held by Abel Maldonado (R-Santa Maria), who Governor Arnold Schwarzenegger appointed as Lieutenant Governor when John Garamendi was elected to Congress.

### JobsPAC Effort

“When you’re one vote away from two-thirds, anything can happen,” said Rob Lapsley, executive director of JobsPAC, the CalChamber-led employer coalition political action committee that backed Blakeslee.

“That’s what this is about. It’s simple and straightforward math.”

JobsPAC mounted an independent

campaign in the district to educate the public about Laird’s anti-jobs record on the budget, spending and taxes.

The district has the longest coastline in the state and Democrats tried to use the oil spill in the Gulf of Mexico to turn voters against Blakeslee, who once worked for the Exxon energy company.

Semi-official returns from the Secretary of State show Blakeslee won in the counties of San Luis Obispo (56.6 percent) and Santa Barbara (61.8 percent). Laird was ahead in the counties of Santa Cruz (57.7 percent), Monterey (54.2 percent) and Santa Clara (46.7 percent).

Blakeslee’s strong showing reflects a shift in voter sentiment from 2008, when the district supported President Barack

Obama by a margin of more than 20 percentage points.

Independent Jim Fitzgerald received 5.1 percent of the overall votes and Libertarian Mark Hinkle received 2 percent.

### CalChamber Vote Record

In the five years since being elected to the Assembly in 2004, Blakeslee has voted in accord with CalChamber positions nearly 100 percent of the time.

During six years in the Assembly, before being termed out of office in 2008, Laird voted in accord with CalChamber positions less than 40 percent of the time, frequently having only one or two votes in the positive column.

**Staff Contact: Rob Lapsley**

## ‘Job Killer’ Bills Moving; Senate, Assembly Votes Next

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### Assembly Appropriations

There was bipartisan opposition to the following barrier to economic development, but it still passed the Assembly Appropriations Committee.

● **SB 1275 (Leno; D-San Francisco)**

#### Delays Residential Construction

**Industry Recovery.** Hinders recovery of the residential construction industry by reducing the availability of credit due to delays in resolving delinquent loans by requiring lenders to determine a borrower’s eligibility for a loan modification prior to the filing of a notice of default.

Ayes: Fuentes (D-Sylmar), Bradford (D-Gardena), Huffman (D-San Rafael), Coto (D-San Jose), Davis (D-Los Angeles), De León (D-Los Angeles), Gatto (D-Los Angeles), Skinner (D-Berkeley), Torlakson (D-Contra Costa).

**Noes: Conway (R-Tulare), Harkey (R-Dana Point), Miller (R-Corona), Nielsen (R-Gerber), Norby (R-Fullerton), Solorio (D-Anaheim), Torrico (D-Fremont).**

Absent/abstaining/not voting: Hall (D-Los Angeles).

The following “job killers” passed Assembly Appropriations on party-line votes of 12-5:

#### Costly Workplace Mandates

● **SB 810 (Leno; D-San Francisco)**  
**Government-Run Health Care.** Creates a new government-run, multibillion-dollar socialized health care system supported by an unspecified ‘premium structure’ that would conflict with recently enacted federal health care reform.

#### Economic Development Barriers

● **SB 967 (Correa; D-Santa Ana)**  
**Restricts Business Options.** Limits choice and drives up prices for consumers and for state and local government by providing a preference to bidders who commit that 90 percent of the work will be performed by California employees.

● **SB 1272 (Wolk; D-Davis)**

**Discourages Investment.** Creates uncertainty for California employers making long-term investment decisions by requiring all future-enacted investment incentives to sunset after seven years.

● **SB 1391 (Yee; D-San Francisco)**  
**Creates Employer Tax Credit Uncertainty.** Eliminates the incentive

effect of future-enacted tax credits by requiring employers to repay the state for credits claimed in years where their businesses experience a net loss of employees, whether or not the reduction of employees was connected to the effectiveness of the credit.

Ayes: Fuentes (D-Sylmar), Bradford (D-Gardena), Huffman (D-San Rafael), Coto (D-San Jose), Davis (D-Los Angeles), De León (D-Los Angeles), Gatto (D-Los Angeles), Hall (D-Los Angeles), Skinner (D-Berkeley), Solorio (D-Anaheim), Torlakson (D-Contra Costa), Torrico (D-Fremont).

**Noes: Conway (R-Tulare), Harkey (R-Dana Point), Miller (R-Corona), Nielsen (R-Gerber), Norby (R-Fullerton).**

### Action Needed

The CalChamber is urging members of the business community to contact their legislators and ask them to **oppose** these “job killers.”

Sample letters are available at [www.calchambervotes.com](http://www.calchambervotes.com).

**Staff Contact: Marc Burgat**

# Mandate to Disclose Product Ingredients Stopped in Assembly Fiscal Committee



## OPPOSE

A California Chamber of Commerce-**opposed** bill that would have put financial stress on manufacturers and wholesalers was stopped in an Assembly committee last week.

**SB 928 (Simitian; D-Palo Alto)** would have increased costs to consumers and exposed confidential business information by prohibiting the manufacture, sale or distribution of a designated consumer product unless the manufacturer disclosed each ingredient contained in the product on a website.

### Onerous Provisions

The CalChamber and a coalition of business groups pointed out a number of definitions in the bill that made it particularly onerous:

- **“Consumer Product”**—Although the bill focused on four specific product categories, the definition of consumer product under the bill encompassed the definition included under the Green Chemistry Law. This is an extremely broad definition and suggested that the law would be expanded to include additional categories of products in future years.

- **“Hazardous Substances”**—Incredibly broad such that it included not

only chronic results, but also eye and skin irritation, endocrine disruption and ecotoxicity.

- **“Incidental Ingredients”**—Failed to prioritize and focus on those products containing intentionally added chemical ingredients in concentrations above applicable thresholds and products containing chemical ingredients that pose more than a de minimis exposure threat.

- **“Trade Secrets”**—Although the bill appropriately defined trade secrets based on Civil Code Section 3426.1, it exempted from that definition hazardous substances and any ingredient that can be reverse engineered. It is impossible for manufacturers to know in advance what is capable of being reversed engineered for the purposes of disclosing ingredients.

### Trade Secrets

The CalChamber and coalition pointed out that disclosure of all chemical ingredients in products may lead to final product manufacturers being placed in the awkward situation of asking suppliers to divulge ingredient information, unique combinations of ingredients, and/or formulas that are patented, proprietary or considered trade secrets. Many times these formulas are provided to final product manufacturers under confidentiality agreements.

SB 928, in those cases, would have required manufacturers to violate those confidentiality agreements by disclosing chemical ingredient information.

The bill also would have eliminated trade secret protection after six years unless the manufacturer renewed its claim. There is no purpose for such a sunset provision on a trade secret claim other than to burden and place additional expense on the manufacturer and the Department of Toxic Substances Control.

### Website Posting

Requiring companies, small manufacturers in particular, to establish websites just to comply with this law would have added unnecessary increased ongoing costs to doing business. For companies unable to absorb the cost of creating and maintaining a website, this could have limited access to the California market.

### Third Party Lawsuits

It was unclear how the state of California intended to ensure compliance with the proposal and a level playing field for those complying. It also was not certain how the state monitors and audits worldwide websites and if there was to be sampling and verification of testing.

In addition, the bill provided no protections against private rights of action, including actions that may arise under California Business and Professions Code Sections 17200 and 17500. A manufacturer or wholesaler acting in good faith should not be liable to third party lawsuits.

**Staff Contact: Robert Callahan**

## New Job Creator Bill Boosts Construction Jobs

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The Legislative Analyst’s Office made a series of recommendations, including utilizing a uniform statute for all design-build local government entities and removing any limitations to project costs.

The CalChamber supports broadening design-build authority to all local governments—cities, counties and special districts. Design-build is an important tool in local governments’ tool box that

can save taxpayers money, get projects completed quickly and get jobs on the ground faster.

### Action Needed

AB 2098 is awaiting a vote by the Assembly. The CalChamber is encouraging members of the business community to contact their Assembly representatives to urge **support for AB 2098**.

**Staff Contact: Thomas Vu**

**CalChamber**  
**2010**

**JOBS**  
•  
**ECONOMY**  
•  
**WORKING FAMILIES**

# Constitution Protects Employer Ability to Ask Court to Stop Union Picketing



Two state laws that have made it almost impossible for businesses to obtain a court order to stop unions from picketing on their property are unconstitutional, according to a

recent ruling by the 3rd District Court of Appeal.

The July 19 pro-employer ruling is expected to be appealed to the California Supreme Court.

In *Ralphs Grocery Company v. United Food and Commercial Workers, Union Local 8* (2010 DJDAR 11197), the 3rd District Court of Appeal held that

property owners can stop unions from picketing on their property.

## Unconstitutional Laws

In doing so the court overturned two statutes:

● The first law is the Moscone Act, passed in 1975 “to promote the rights of workers to engage in concerted activities for the purpose of collective bargaining, picketing or protection and to prevent the evils which frequently occur when courts interfere with the normal process of dispute resolution between employers and recognized employee organizations....”

The court held that the Moscone Act is unconstitutional because it “favors speech related to labor disputes over speech related to other matters, based on the content of the speech.”

● The court also ruled that Labor Code Section 1138.1 is unconstitutional for the same reasons. Labor Code Section 11381.1 was enacted in 1999 and added requirements that businesses must meet in order to obtain an injunction in labor disputes.

Although independent from the Moscone Act, the Labor Code section nonetheless restricts the court’s authority to issue injunctions in such disputes.

Before this ruling, courts were in effect precluded from interfering with union picketing. The *Ralphs* ruling eliminates this prohibition.

## More Information

More information, including the 3rd District Court of Appeal decision, is linked from the *HRWatchdog Blog* at [www.hrcalifornia.com](http://www.hrcalifornia.com).

**Staff Contact:** Erika Frank

## CalChamber-Sponsored Seminars/Trade Shows

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

### Business Resources

- Northern California Water Tour. Water Education Foundation. September 22–24, Sacramento. (916) 444-6240.
- Entrepreneurial Institute. National Black MBA Association. September 24, Los Angeles. (312) 580-8569.
- 2010 Aerotech Expo Job Fair. Aerotech News and Review. September 25, Lancaster. (877) 247-9288.
- Green Initiatives Conference. Fidelity One Conferences. September 29–30, Atlanta. (404) 865-1438.
- Second Annual California Sustainable Tourism Summit. California Travel and Tourism Commission. October 14–15, Lake Tahoe. (916) 319-5426.

### International Trade

- N-Expo/Kansai '10. Japan External Trade Organization/Nippo Co. Ltd. September 1–3, Osaka, Japan. (415) 392-1333.
- U.S.-Asia Expo 2010. U.S. Asia Business Forum. September 17–19, Los Angeles. (562) 607-2861.

- Trade Mission to Africa. National U.S.-Arab Chamber of Commerce. September 20–30, Libya, Tunisia, Algeria. (202) 289-5920.
- Business Mission to Dubai. Chester County Chamber of Business and Industry. September 21–28, Dubai. (610) 725-9100.
- Green ICT and Energy Trade Mission to Mexico City. U.S. Commercial Service. September 27–29, Mexico City. [Aliza.Totayo@trade.gov](mailto:Aliza.Totayo@trade.gov).
- U.S.-Sri Lanka: Pvt-Public Partnership. Sri Lanka Embassy-WDC. October 13–14, Sri Lanka. (202) 483-4029.
- Cambodia Industry Shows. Merebo Messe Marketing. October 21–23, Phnom Penh, Cambodia. [contact@merebo.com](mailto:contact@merebo.com).
- Deal-Making Clean Tech Trade Mission to China. Monterey Bay International Trade Association (MBITA). October 23-30, Shanghai, China. (831) 335-4780.
- Americas Business Trade Mission. U.S. Commercial Service of the International Trade Administration,

- U.S. Department of Commerce. October 25–28, Mexico City and Monterrey, Mexico. (310) 235-7205.

### Labor Law

- Meal and Rest Break Basics (Free Webinar). CalBizCentral. August 25. (800) 331-8877.
- Paid Time Off Issues (Live Webinar). CalBizCentral. September 1. (800) 331-8877.
- HRCalifornia Guided Site Tour (Free Webinar). CalBizCentral. September 22. (800) 331-8877.

## CalChamber Calendar

### Water Committee:

September 2, Dana Point

### Environmental Regulation Committee:

September 2, Dana Point

### Board of Directors:

September 2–3, Dana Point

### International Trade Breakfast:

September 3, Dana Point

### Public Affairs Council Post-Election Retreat:

November 10–12

# CalChamber, Coalition Urge Congress to Approve U.S.-Korea Free Trade Agreement

The California Chamber of Commerce and the California Coalition for Free Trade—which now boasts nearly 100 members—is voicing strong support for approval of the pending U.S.-Korea Free Trade Agreement (FTA).

“California businesses and their employees will benefit greatly from the increased trade the U.S.-Korea FTA will bring between California and its fifth largest export market, Korea,” said Allan Zaremberg, CalChamber president and CEO.

“This agreement will be the biggest free trade pact the United States has reached since it entered into the North American Free Trade Agreement. Agreements like this proposed FTA ensure that the United States will continue to gain access to world markets, which will result in an improved economy and additional employment of Americans,” Zaremberg said.

After a year-and-a-half of negotiations, the U.S.-Korea FTA was signed on June 30, 2007. Since then, it has been awaiting congressional approval.



## Benefits

Korea is a significant market for U.S. small and medium-sized companies, which make up a majority of U.S. businesses exporting to Korea. Passage of the U.S.-Korea FTA will eliminate tariffs and other barriers to trade in goods and services, promote economic growth, enhance trade between the United States and Korea, and help expand market access in Korea for U.S. farmers, manufacturers, service providers and financial services firms.

In 2009, California exported \$5.9 billion to Korea. Korea is a \$1 trillion economy and is the United States' eighth largest goods trading partner. Korea's commercial relationship with the United States is largely complementary. In 2009,

two-way trade between the two countries topped \$69 billion. In 2009, U.S. goods exports to Korea were \$28.6 billion, a slight decrease from the previous year.

Under the FTA, more than half of current U.S. agricultural exports to Korea will become duty-free immediately, including high-value agricultural products such as almonds, pistachios, wine and cherries. For many other key agricultural goods, such as pork and citrus products, the FTA will provide unparalleled access to the South Korean market and its prosperous consumer base.

## Action Needed

The CalChamber is urging members of the business community to contact California congressional representatives before September 10—the close of the congressional summer district work period—and urge **support for the US-Korea FTA**.

For further information, visit [www.calchamber.com/korea](http://www.calchamber.com/korea).  
Staff Contact: **Susanne Stirling**

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You are not legally required to provide paid vacations, holidays or personal days to your employees. If you do offer these benefits, however, you must comply with certain laws and regulations. This 90-minute webinar will explain the differences between sick time, vacation time and paid time off. It also will explain how these types of time off apply to exempt and nonexempt employees and help you better understand time off issues related to leaves of absence and what state and federal laws require.

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