

ALERT

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U.S. Senate Passes Repeal of 1099 Reporting Requirement



The U.S. Senate has passed legislation to repeal the unpopular 1099 tax reporting requirement in the health care law.

California Representative Dan Lungren

(R-Gold River) introduced H.R. 4 earlier this year and the bill finally passed the Senate 87-12 on April 5.

The U.S. House of Representatives voted 314-112 on March 3 to repeal the filing requirement.

H.R. 4

The bill repeals the filing requirement, which would have forced millions of

businesses to file a tax form for every vendor selling more than \$600 in goods each year, starting in 2012. Although the filing requirement isn't directly related to health care, it was expected to increase reporting of tax obligations that would then be used to pay for part of the new health law.

Businesses already must file a Form 1099 with the IRS when they purchase more than \$600 in services from a vendor in a year. The new provision would have extended the requirement to the purchase of goods, starting in 2012.

The requirement would have hit about 38 million businesses, charities and tax-exempt organizations, many of them small businesses already swamped by government paperwork, according to a report by the National Taxpayer

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Governor Signs CalChamber-Backed Bill Removing State Tax on Health Care



Governor Jerry Brown has signed a California Chamber of Commerce-supported bill that conforms the state with federal law by removing

SUPPORT

the state tax on health care coverage for adult children.

AB 36 (Perea; D-Fresno) specifically provides conformity between California and federal law regarding the taxable status of health care coverage for an adult child up to the age of 26, as well as payments or reimbursements made by an employer for an employee's adult child. The law takes effect immediately.

Federal Health Care Law

The federal Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act, both passed in March 2010, allowed children up to the age of 26 to remain on their parents' health care plans.

The federal government also amended the Internal Revenue Code to reflect that the value of the coverage provided for these adult children, as well as any payments/reimbursements made by the

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Marijuana Bill Passes Senate Committee



OPPOSE

Committee this week.

The California Chamber of Commerce opposes **SB 129 (Leno; D-San Francisco)**, which undermines employers' ability to provide a safe and drug-free workplace by establishing a protected classification for employees who utilize medical marijuana.

Legislation that exposes employers to costly litigation and safety hazards by creating workplace protections for medical marijuana users passed the Senate Judiciary

Specifically, SB 129 seeks to prohibit employers from terminating, disciplining, or refusing to hire persons who, as qualified patients, can legally possess and use marijuana for medical purposes.

Exemptions

Although SB 129 provides an exemption to exclude medical marijuana users from "safety-sensitive" positions, the narrow and subjective manner in which this term is defined renders it useless to employers.

Moreover, although the bill precludes an employee from "using" marijuana at the workplace, it does not preclude an employee from either possessing

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Labor Law Corner

Mandatory Retirement Policies Violate Discrimination Act for Most Jobs



Dana Leisinger
HR Adviser

Our company is thinking of instituting a policy of mandatory retirement at age 65. Can we legally implement this policy?

The Age Discrimination in Employment Act (ADEA) prohibits employment discrimination against anyone over the age of 40 years in the United States. Specifically, the ADEA prohibits mandatory retirement in most job sectors, with certain limited exceptions.

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Exceptions

An age limit may be legally specified in certain limited circumstances where age has been shown to be a “bona fide occupational qualification” (BFOQ) and such a policy is necessary to the normal operation of the particular business.

In practice, BFOQs for age are limited. One example would be the obvious requirement of hiring a young actor to play a child in a television show or movie. Another BFOQ is when public safety is at stake. This requirement has been upheld for pilots and bus drivers.

Aging Workforce

The reality of today’s world is that, increasingly, workers are staying active in their careers longer than in previous years. Studies are showing that many U.S. workers can’t afford to retire at age 65 or until their 70s.

Many employers are concerned that older workers will have problems learning new tasks quickly, or that their physical health and stamina might become a problem. Often, companies are slow and/or reluctant to adapt to an aging workforce.

Due to the reality expressed above, however, more and more companies will be dealing with older employees in their workplace population.

Suggestions

Questions come to the Helpline on how to deal with an older worker who is not performing up to acceptable standards. Often, a simple adjustment in job duties may solve the problem—such as assistance in lifting/carrying heavy loads on an infrequent basis.

When the performance problem is not easy to solve, however, counseling often is the answer. Meet with your employee and specifically outline the problems. Often, the problem can be resolved by working with the individual to improve the situation.

Before taking any disciplinary or termination steps involving an employee in any protected category, including older employees, it is best to consult with legal counsel. Age may not be the only issue and your legal counsel can help you sort through the various types of legal protection that should be reviewed before taking action.

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.

CalChamber-Sponsored Seminars/Trade Shows

More information at
www.calchamber.com/events.

Business Resources

Economic Summit: A New Dawn or a New Bubble? Beverly Hills Chamber of Commerce. April 26, Beverly Hills. (310) 248-1000.

Aging in America Conference. American Society on Aging. April 26–30, San Francisco. (415) 974-9638.

Small Business Resource Summit. Small Business Administration Sacramento District Office. May 26, Citrus Heights. (916) 735-1700.

International Trade

Import/Export Orientation Seminar. Sacramento Regional Center for International Trade Development. April 19, Roseville. (916) 563-3200.

Peru Moda 2011 and Peru Gift Show 2011. Trade and Investment Office of Peru, Los Angeles. April 28–30, Lima, Peru. (213) 632-1951.

IBAGlobal Conference & Expo. Pacific Palms Hotel & Conference Center. May 4–5, City of Industry. (702) 506-0833.

Honduras Is Open for Business. Honduras General Consulate. May 5–6, San Pedro Sula, Honduras. (213) 383-1806.

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CalChamber Calendar

International Luncheon Forum:

April 14, Sacramento

California Business Summit/Host

Breakfast: June 1–2, Sacramento



New Lawsuits Against Small Business If Senate Proposal Becomes Law



OPPOSE

A California Chamber of Commerce-**opposed** bill that could result in new shakedown lawsuits against small businesses won approval from the Senate

Judiciary Committee this week.

SB 111 (Yee; D-San Francisco)

makes it a strict liability violation of the Unruh Civil Rights Act, subject to minimum damages of \$4,000, if a business limits the use of a customer's language, even if it's done unintentionally.

Unclear Language

The bill may have unintended consequences that result from the vague and ambiguous language currently used in it. The bill is unclear as to what obligations businesses have under SB 111, such as whether businesses will be required to:

- provide written notice in all

recognized languages to all customers regarding any required language used in the establishment; or

- ensure that all menus, signage and services offered in the establishment are provided in all recognized languages.

Moreover, if a business establishment fails to offer such written documentation in multiple languages, SB 111 shifts the burden of proof to the establishment to show that a business necessity justified the omission.

The costs associated with complying with such requirements and/or defending claims of alleged discrimination would be significant for all businesses.

Exposure to Meritless Lawsuits

Given that SB 111 creates a private right of action for any alleged violation, along with the availability of minimum statutory damages of \$4,000 under Civil Code Section 52, there is a significant chance that this provision will be used as a new avenue for meritless lawsuits to be filed for the sole purpose of obtaining a quick settlement, similar to such cases

afflicting businesses with regard to disability access.

There are a significant number of repeat offenders who have exploited the minimum damages allowed under Civil Code Section 52 as a way in which to pressure businesses into a quick monetary settlement in order to avoid costly litigation, without actually improving upon access for the disabled.

It is very likely that a similar result could occur if SB 111 is implemented, thereby burdening businesses in California that are already being unfairly targeted.

California is currently recognized as one of the top 10 most litigious states in the nation, and SB 111 will only further that reputation.

Key Vote

SB 111 passed Senate Judiciary on April 5, 3-2.

Ayes: Corbett (D-San Leandro), Evans (D-Santa Rosa), Leno (D-San Francisco).

Noes: **Blakeslee (R-San Luis Obispo), Harman (R-Huntington Beach).**

Staff Contact: **Mira Guertin**

State 'Card Check' for Farm Workers Moving in Legislature



OPPOSE

A California Chamber of Commerce-**opposed** proposal seeking to limit agricultural employees' ability to make their union choice in a private secret ballot is

moving rapidly through the Legislature.

SB 104 (Steinberg; D-Sacramento)

essentially eliminates the secret ballot election and replaces it with the submission of representation cards signed by more than 50 percent of employees, thereby leaving employees susceptible to coercion and manipulation by labor organizations.

SB 104 is similar to SB 789 (Steinberg; D-Sacramento), which the CalChamber designated as a "job killer" bill in 2009. SB 789 was vetoed by Governor Arnold Schwarzenegger.

SB 104 passed the Senate on March 31, 24-14, with Democrats in support and Republicans opposing.

On April 6, it passed the Assembly Labor and Employment Committee,

again with Democrats supporting and Republicans opposing.

SB 104 goes next to the Assembly Appropriations Committee.

Staff Contact: **Jennifer Barrera**



"CalChamber is the definitive voice for California business and the unifying force for job creators in the state."

MICHAEL ZIEGLER
PRESIDENT AND CHIEF EXECUTIVE OFFICER
PRIDE INDUSTRIES, ROSEVILLE

Marijuana Bill Passes California Senate Judiciary Committee

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marijuana in the workplace, or “using” marijuana minutes before coming onto the worksite and beginning the work shift.

Economic Impact

Even if an employer could detect signs of marijuana use in an employee (such as marijuana odor or red eyes), the employer would have to wait until the employee’s performance is “impaired.”

The subjective nature of the term “impairment,” coupled with the private right of action provided under SB 129, would deter employers from any action until there was objective evidence of actual impairment, such as an industrial accident or injury.

This would increase the likelihood of industrial accidents and injuries, which would have a direct impact on employers’ workers’ compensation premiums and increase employers’ litigation expenses as a result of the likelihood of negligent hiring claims to follow.

Federal Contracts at Risk

The bill creates a significant disadvantage for California employers with federal contracts or grants. The federal Drug-Free Workplace Act requires federal contractors and grantees to provide a drug-free workplace, which includes implementing a policy that prohibits the use or possession of marijuana.

The restrictions under SB 129 directly conflict with this federal mandate, and force California employers to either:

- comply with SB 129 and risk losing all federal contracts/grants; or
- comply with federal law by enforcing a drug-free workplace and risk civil litigation.

California has a \$25 billion budget deficit and is already lagging the rest of the country in recovering from the recession. It simply cannot afford to lose federal money or encourage businesses to relocate to other states where they do not have to worry about complying with a state law that jeopardizes their receipt

of federal contracts or grants.

Supreme Court Ruling

In 2008, the California Supreme Court confirmed that regardless of the criminal exemptions made for medical marijuana users, employers are still allowed to manage their own workplaces, including deciding whether to hire medical marijuana users.

Moreover, Proposition 19, which would have provided marijuana users with workplace protections similar to SB 129, was rejected by California voters in November 2010.

The decisions of the voters and the state Supreme Court should be respected.

Key Vote

SB 129 passed Senate Judiciary on April 5, 3-2.

Ayes: Corbett (D-San Leandro), Evans (D-Santa Rosa), Leno (D-San Francisco).

Noes: Blakeslee (R-San Luis Obispo), Harman (R-Huntington Beach).
Staff Contact: Jennifer Barrera

U.S. Senate Passes Repeal of 1099 Reporting Requirement



SUPPORT

businesses was to generate revenue to cover the costs associated with the health care reform law.

The Joint Committee on Taxation estimated that this new requirement would raise \$17 billion from 2012 through 2019 as it would capture a large

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Advocate, an independent watchdog within the IRS.

The stated purpose of this heightened reporting requirement for

percentage of income that currently goes unreported. Conversely, it creates a huge administrative burden on businesses to keep track of all purchases and to obtain taxpayer identification information.

Previous Attempts to Repeal

Following the 2010 midterm election, President Barack Obama acknowledged at a November 3, 2010 press conference that the revised 1099 reporting requirements are “too burdensome” for small businesses and “probably counterproductive.”

Shortly after President Obama’s comment, U.S. Senator Max Baucus (D-Montana), chair of the U.S. Senate

Finance Committee, introduced S. 3946, “Small Business Paperwork Relief Act,” to repeal the 1099 reporting requirement.

Senator Baucus and Senator Mike Johanns (R-Nebraska) also proposed amendments to S. 510 (Durbin; D-Illinois) to repeal the 1099 reporting requirement. Two efforts to waive U.S. Senate rules to allow consideration of the amendments fell short of the votes necessary for passage on November 29, 2010.

H.R. 4 is awaiting a signature from President Obama.

Staff Contact: Jennifer Barrera

Visit www.calchamber.com for products and services to help you do business in California.

Proposed Ban on Polystyrene Foam Food Containers Threatens Jobs



OPPOSE

Legislation that threatens thousands of California jobs by banning food vendors from using polystyrene foam food service containers passed the Senate Environmental

Quality Committee this week.

The California Chamber of Commerce **opposed SB 568 (Lowenthal; D-Long Beach)**, which inappropriately bans all food vendors from using polystyrene foam food service containers, ignoring the numerous environmental benefits associated with polystyrene products and threatening thousands of manufacturing jobs within the state.

Proponents of SB 568 argue that foam polystyrene is not recyclable, while replacement products are. Opponents of the bill point out that recycling any package that is contaminated with food waste—whether it is plastic, paper or foam—presents a recycling challenge.

Many communities now are accepting polystyrene foam containers in curbside and/or drop-off recycling programs.

A company in Chino that uses recycled foam to make premium picture frames has grown from a three-person operation to more than 30 employees and has processed up to 500,000 pounds of used foam in one month.

Economic Impact

A study by Keybridge Research on the economic impact of a ban on polystyrene containers in California found that:

- Reduced demand for polystyrene foam food service products in California and resulting plant closures are estimated to result in losses of more than \$1 billion in output, \$222 million in earnings, and 4,800 jobs; and
- The operations of the six polystyrene foam manufacturing facilities in California contributed at least \$6 million to the state in tax revenues.

Environmental Impact

All packaging leaves an environmental footprint, regardless of the material type, as it takes energy and raw materials to produce, transport, and recover or dispose any material.

Polystyrene cups weigh two to five times less than comparable paper packaging products, which mean fewer air emissions when transporting products. In addition, a polystyrene hot beverage cup requires about 50 percent less energy to produce than a similar plastic-coated paperboard cup with a corrugated cup sleeve.

Studies conducted for Seattle Public Utilities showed that banning polystyrene foam food take-out containers would dramatically increase environmental impacts by doubling the greenhouse gas emission, energy use and waste associated with the use of alternative products.

Unintended Trade-Offs

The CalChamber, along with nine other organizations, urged the Senate Environmental Quality Committee not to approve SB 568 as the bill fails to consider potential unintended environmental trade-offs.

Given the present state of the economy, the Legislature should not consider passing a bill that would put more people out of work.

The coalition also noted that “bio based” or “degradable containers” degrade only in a controlled composting environment, which amounts to a large industrial facility where temperatures can exceed 140 degrees for several days.

A litter audit conducted after the city of San Francisco banned polystyrene containers showed that paper cup litter increased after the ban was enacted.

Key Vote

SB 568 passed Senate Environmental Quality on a party-line vote of 5-2 on April 4.

Ayes: Hancock (D-Berkeley), Kehoe (D-San Diego), Lowenthal (D-Long Beach), Pavley (D-Agoura Hills), Simitian (D-Palo Alto).

Noes: Blakeslee (R-San Luis Obispo), Strickland (R-Thousand Oaks).

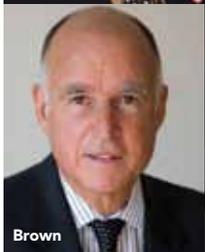
Staff Contact: Robert Callahan



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Watson



Brown



Yosufzai

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CalChamber Seeks Changes in Tax Credit Legislation

The California Chamber of Commerce is urging the author to amend legislation requiring all future-enacted investment credits to sunset after seven years.

The automatic seven-year sunset requirement in **SB 508 (Wolk; D-Davis)** will discourage investment in the state because it creates uncertainty for California employers making long-term investment decisions, the CalChamber argues.

The bill is set for hearing April 11 by the Senate Appropriations Committee.

When businesses choose to locate in a state, factors such as the availability of a skilled workforce, infrastructure, regulatory environment and tax structure all play a significant role, the CalChamber contends. Businesses evaluate whether they can rely on these factors to remain relatively stable and consistent in the long term.

For capital-intensive industries like manufacturing and research and development, investment decisions are made many years into the future. The ability for corporate decision-makers in these industries to plan anticipated costs over a span of many years is an important factor when determining locations for these investments.

Establishing an arbitrary seven-year sunset puts the long-term viability of any credit in jeopardy and, in many cases, could ultimately render the credit's value useless in a company's final siting determination, the CalChamber has pointed out.

The CalChamber and other business groups have urged the author to amend the arbitrary seven-year sunset requirement and allow individual tax credits introduced in the future to be evaluated on their merit and have a reasonable sunset applied, if appropriate.

Key Vote

SB 508 passed the Senate Governance and Finance Committee on March 30 without changes on a party-line vote.

Ayes: Wolk (D-Davis), DeSaulnier (D-Concord), Hancock (D-Berkeley), Hernandez (D-West Covina), Kehoe (D-San Diego), Liu (D-La Cañada Flintridge).

Noes: Huff (R-Diamond Bar), LaMalfa (R-Richvale).

No vote recorded: Fuller (R-Bakersfield).

Action Needed

The CalChamber is asking businesses to contact their senator and members of Senate Appropriations to urge them to **oppose SB 508 unless it is amended.**

Staff Contact: Mira Guertin

Inc. Magazine Taking Applications for Fastest-Growing Companies List

Applications for *Inc.* magazine's list of the fastest-growing companies in America are being accepted now.

For companies that have experienced positive revenue growth when comparing 2007 to 2010, applying to the Inc.500/5000 list could result in a host of benefits.

Companies that make the list are featured in *Inc.* or at *Inc.com*. The



achievement is a catalyst for much press—local and national—and companies have the opportunity to be featured on a variety of targeted lists, covering areas such as industry,

geography and select interesting characteristics.

Applications are being accepted until April 30 at www.inc5000apply.com. When registering, please make sure to use ID code: CaliforniaCC or use the link on the CalChamber website at www.calchamber.com.

CalChamber-Sponsored Seminars/Trade Shows

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World Trade Week Kickoff Breakfast.

Los Angeles Area Chamber. May 6, Los Angeles. (213) 580-7569.

Black Markets: The Dark Side of the Global Economy. World Affairs Council. May 9, Sacramento. (916) 691-4713.

Export 101. Northern California District Export Council. May 18, San Jose; June 15, Oakland.

Futurallia Kansas City 2011. El Camino College Center for International Trade Development. May 18–20, Kansas City, Missouri. (310) 973-3173.

Clean-Tech Trade Mission to China. Monterey Bay International Trade Association (MBITA). May 21–28, Jiaxing and Wuxi, China.

(831) 335-4780.

Chile: Investment Opportunities in the Food Industry. Chilean Economic Development Agency (CORFO). June 6–9, Santiago, Chile.

7th World Chambers Congress. International Chamber of Commerce World Chambers Federation. June 8–10, Mexico City. (212) 703-5065.

India Trade Conference. Port of Los Angeles, Network of Indian Professionals, U.S. Commercial Service, Quanta Consulting, Inc. June 23, Los Angeles. (949) 480-9466.

Labor Law

Exempt – When You've Properly Classified. CalChamber. April 14, Webinar; April 25, On Demand.

(800) 331-8877.

How to Hire Employees and Reduce Liability. CalChamber. May 12, Webinar. May 25, On Demand. (800) 331-8877.

How to Conduct Effective Performance Evaluations. CalChamber. June 9, Webinar; June 20, On Demand. (800) 331-8877.

How to Conduct Workplace Investigations. CalChamber. July 14, Webinar; July 25, On Demand. (800) 331-8877.

Workplace Safety

Heat Illness Prevention—How to Comply with New Rules. CalChamber. May 12, Webinar; May 21, On Demand. (800) 331-8877.

Breakthrough in U.S.-Colombia Trade: Agreement on Labor, Judicial Reforms



The United States has reached an agreement with Colombia on labor and judicial reforms that will open the door for U.S. congressional approval of the long-pending U.S.-Colombia

Free Trade Agreement (FTA).

The Obama administration has worked closely with the government of Colombia and interested stakeholders, including members of Congress, to address labor concerns resulting in an agreed Action Plan Related to Labor Rights that will lead to greatly enhanced labor rights in Colombia.

Successful implementation of key elements of the action plan will be a precondition for the U.S.-Colombia agreement to enter into effect.

Expanding Export Market

Colombia is an emerging economy that is providing California with a quickly expanding export market and opportunity for future collaboration. Since 2006, exports to Colombia have more than doubled.

In 2010, California exports to Colombia totaled just over \$409 million. Colombia became California's 34th

largest export market, progressing from its 2009 place as the 35th largest market. This growth is indicative of the potential of California-Colombia trade.

California's strongest to-Colombia exporting sector is computers and electronic products. With exports in this sector topping \$146 million, computers and electronic products make up 35.8 percent of total California exports to Colombia. This is a 51.5 percent increase over exports from 2009.

In 2010, fabricated metal products exports dramatically expanded, growing from less than \$4 million to almost \$11 million. Chemical manufactures and machinery manufactures also showed strong improvement, as the second and third strongest export groups, respectively.

In November 2006, the United States and Colombia signed an FTA. Colombia's Congress approved the agreement in 2007.

According to the U.S. Department of Commerce, International Trade Administration, the U.S.-Colombia FTA offers tremendous opportunities for California exporters. When the FTA enters into force, 80 percent of U.S. consumer and industrial exports to Colombia will be duty-free immediately, including nearly all information technology products; mining, agriculture and construction equipment; medical and

scientific equipment; auto parts; paper products; and chemicals. The remaining tariffs phase out over 10 years.

U.S. farmers and ranchers will also become much more competitive, benefiting from immediate duty-free treatment of 77 percent of current U.S. agriculture exports. Key U.S. agriculture exports—such as cotton, wheat, soybeans, high-quality beef, apples, pears, peaches, cherries and almonds—will be duty-free when the agreement enters into force. Colombia will phase out all other agricultural tariffs within 19 years.

CalChamber Position

The California Chamber of Commerce, 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.

For further information, see www.calchamber.com/Colombia.
Staff Contact: Susanne Stirling

Governor Signs CalChamber-Backed Bill Removing State Tax on Health Care

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employer for the medical expenses of such children, is not taxable income to the parent.

California SB 1088 (Price; D-Los Angeles), signed and chaptered on September 30, 2010, expanded medical coverage to dependents up to the age of 26 on or after September 23, 2010 in order to match the federal health care law. SB 1088, however, did not adopt the federal tax rules for adult child medical coverage or medical payments.

As a result, the fair market value of medical coverage provided to adult

children from 19 to 25 years of age was taxable income in California, except if other exclusions that existed in the law before the adoption of SB 1088 applied.

CalChamber Support

Without the passage of AB 36, businesses and employees in California would have been faced with the administrative and financial burden of determining the fair market value of the insurance coverage or medical payments provided solely for the adult child in order to properly calculate the state taxes owed.

CalChamber supports AB 36 because it resolves this discrepancy between California and federal tax law and thereby relieves California businesses and employees from this unnecessary cost.

Conforming to federal law and treating the value of the adult health care coverage as non-taxable income is an income tax reduction for employees and a payroll tax reduction for employers. The intent of the federal health care law and SB 1088 was to expand insurance coverage to adult children.

Staff Contact: Jennifer Barrera

Learn How to Properly Classify Your Employees on April 14

Some of the largest multimillion-dollar awards of back pay by the courts have been due to employers misclassifying employees as exempt. If your company employs exempt workers and you are responsible for job descriptions and classifying employees, you will benefit from attending this webinar.



Avoid common and costly mistakes California employers make. Register for this webinar. Our employment law experts will explain:

- Exempt vs. nonexempt—what's the difference?

Plus, which employees qualify for:

- Administration exemption;
- Professional exemption;
- Computer professional exemption;
- Inside and outside sales exemption.

**CalChamber Preferred and Executive Members will receive their 20% discount*



Register now!*
"Exempt—When You've Properly Classified"

Thursday, April 14
Webinar
10 a.m.—11:30 a.m. PDT
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