

ALERT

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Marijuana Bill Very Similar to Voter-Rejected Prop. 19



Voters rejected the idea of creating workplace protections for medical marijuana users, but the concept has been revived in a proposal awaiting

action by the Legislature.

California Chamber of Commerce-opposed **SB 129 (Leno; D-San Francisco)** undermines employers' ability to provide a safe and drug-free workplace by establishing a protected

classification for employees who utilize medical marijuana. The bill will appear as a "job killer" on the CalChamber's soon-to-be-released list.

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.

At a recent gathering of experts from throughout the nation focusing on the impact of marijuana from a variety of perspectives, Erika Frank, CalChamber vice president, legal affairs, and general counsel, compared SB 129 with Prop-

See Marijuana: Page 6

Tax Targeting California Oil Production Awaiting Vote in Assembly



A California Chamber of Commerce-opposed bill that will result in higher fuel costs, lost jobs and greater dependence on imported oil

is awaiting a vote in the California Assembly.

AB 1326 (Furutani; D-South Los Angeles County) creates a targeted tax on the oil and natural gas industry to fund the California Higher Education Endowment Corporation, thereby discouraging oil production in this state which may lead to the loss of more jobs.

CalChamber has identified AB 1326 as a "job killer." The full "job killer" bill list will be released soon.

CalChamber understands these are difficult times for the state budget, but California consumers are facing tough times too. California is still in the grip of a prolonged economic recession, the worst since the 1930s. Millions of people have lost their jobs and their homes. CalChamber believes this is not the time to create further burdens on families through AB 1326.

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CalChamber: More Flexibility Will Help Small Businesses Use Alternative Workweeks



Photo by Megan Wood

CalChamber Policy Advocate Jennifer Barrera and Senate Republican Leader Bob Dutton (R-Rancho Cucamonga) emphasize to a Senate committee how the flexibility in Dutton's SB 378 will help small businesses provide alternative workweek schedules. See story on Page 3.

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Cal/OSHA Corner

Heat Illness Prevention Rules Now Apply to All Outdoor Workplaces



Mel Davis
Cal/OSHA Adviser

How will the revisions to the heat illness prevention regulation affect my company?

Title 8 of the California Code of Regulations, Section 3395 (Heat Illness Prevention in Outdoor Places of Employment) has been revised by the Occupational Safety and Health Standards Board (OSHSB).

The amendments to the regulation were effective November 2, 2010 and now apply to all outdoor places of employment. The regulations specifically list industries subject to all provisions of the standard, including the “High Heat Procedures.”

The industries subject to all provisions of the regulation include:

- Agriculture;
- Construction;
- Landscaping;
- Oil and gas extraction; and
- Transportation and delivery of agricultural products, construction materials or other heavy materials. There is an exemption for employees who are not performing loading or unloading duties but who are operating an air-conditioned vehicle.

New Definitions

There are several new definitions in the regulations, including:

- “shade”—which can be artificial or natural if it meets the other requirements; and
- “temperature”—with instructions on how and where to take the temperature reading.

Shade Requirements

If the temperature is 85 degrees, the shade must accommodate at least 25 percent of the employees. Additionally, if the temperature is less than 85 degrees, shade must be provided initially, or upon request from an employee. The employees must be allowed and encouraged to take a break in the shade for at least five minutes, when they feel the need to do so to protect themselves from overheating.

High Heat Procedures

When the temperature reaches 95 degrees, additional requirements must be met by the industries listed above as

subject to all provisions of the regulation. The additional requirements include:

- Providing and maintaining an effective communication system so that employees at the work site can contact a supervisor when necessary. The system/communication may be direct voice contact, observation or electronic, such as a cell phone or text messaging device, but only if reception in the area is reliable.
- Observing employees for symptoms of heat illness.
- Reminding employees periodically throughout the shift to drink plenty of water.
- Closely supervising a new employee for the first 14 days of employment, unless the employee has been doing similar outdoor work for at least 10 of the past 30 days for four or more hours per day.

Training

Training must be provided for employees who are reasonably expected to be exposed to the risk of heat illness, and to their supervisors as well. The following training must be provided to all such employees and supervisors:

- The environmental and personal risk factors for heat illness, as well as the added burden of heat load on the body caused by exertion, clothing, and personal protective equipment.
- The employer’s procedures for complying with the requirements of this standard.
- The importance of frequent consumption of small quantities of water, up to four cups per hour, when the work environment is hot and employees are likely to be sweating more than usual in performing their duties.
- The importance of acclimatization.
- The different types of heat illness, and the common signs and symptoms of heat illness.

See Heat: Page 4

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Labor law answers
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CalChamber Highlights Need for Flexibility in Setting Alternative Workweek Schedules



SUPPORT

Both employers and employees will benefit from legislation providing flexibility in implementing alternative workweek schedules, the

California Chamber of Commerce told a Senate policy committee this week.

Speaking in **support of SB 378 (Dutton; R-Rancho Cucamonga)**, CalChamber Policy Advocate Jennifer Barrera commented that the bill will help eliminate administrative costs and burdens for small employers in particular.

"Although this bill is not a comprehensive fix to the various problems employers face with alternative workweek schedules, it does provide incremental changes that will provide some relief to employers who are dealing with the alternative workweek process," Barrera stated.

California Labor Code Section 511 requires that in order to remain valid, an alternative workweek schedule must be "regularly scheduled."

Unexpected Changes

CalChamber-sponsored SB 378 defines "regularly scheduled" to clarify that the combination of days and hours adopted as the alternative workweek schedule through the secret ballot

election, such as four, 10-hour days a week, must remain consistent, but the actual days the schedule falls upon does not.

For example, if the four, 10-hour days are scheduled Monday through Thursday, but an employee has a sick child at home on Wednesday and would like to switch that workday to Friday, SB 378 would allow the employer to do so without risking the validity of the alternative workweek schedule.

Similarly, if the employer's business fluctuates depending upon the time of the year, SB 378 would allow the employer to adjust the schedule accordingly.

Basically, the definition of "regularly scheduled" provided by SB 378 allows employers the flexibility to accommodate unexpected changes in an employee's schedule that require the employee to change his/her schedule with limited notice, as well as to adjust for changing business needs.

12-Hour Workday

Equally important is codifying the state Court of Appeals holding in *Mitchell v. Yoplait*, 122 Cal.App.4th Supp. 8 (2004), which confirms employees may adopt an alternative workweek schedule that requires employees to work up to 12 hours in a workday, as long as the employees are paid at the appropriate overtime rate as set forth in Labor Code Section 511.

Codifying this language confirms employees' ability to adopt an alternative workweek schedule, with daily work hours that best fit their needs.

Help for Small Employers

Finally, SB 378 exempts small employers with five employees or fewer from incurring the administrative cost and burden of conducting an election for the adoption of an alternative workweek schedule.

The CalChamber believes employers with such few employees should be able to negotiate through a written agreement, revocable by either party, the daily/weekly schedule that satisfies the needs of both the employee(s) and the employer.

Action Needed

At the May 11 hearing, the Senate Labor and Industrial Relations Committee did not vote on SB 378, but agreed to schedule an informational hearing at some unspecified date in the future to hear more evidence about the need for the bill.

The CalChamber encourages employers to contact their Senate representatives to voice **support** for the flexibility provided by SB 378.

An easy-to-edit sample letter is available at www.calchambervotes.com.
Staff Contact: Jennifer Barrera



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Heat Illness Prevention Rules Now Apply to All Outdoor Workplaces

From Page 2

- The importance to employees of immediately reporting to the employer, directly or through the employee's supervisor, symptoms or signs of heat illness in themselves, or in co-workers.

- The employer's procedures for responding to symptoms of possible heat illness, including how emergency medical services will be provided should they become necessary.

- The employer's procedures for contacting emergency medical services, and if necessary, for transporting employees to a point where they can be reached by an emergency medical service provider.

- The employer's procedures for en-

suring that, in the event of an emergency, clear and precise directions to the work site can and will be provided as needed to emergency responders.

The employer must designate someone to be available to invoke the emergency procedures when necessary.

Before assigning supervisors for the outdoor workers, the supervisors must also receive training about:

- The procedures the supervisor is to follow to implement the applicable provisions in this section.

- The procedures the supervisor is to follow when an employee exhibits symptoms consistent with possible heat illness, including emergency response procedures.

- How to monitor weather reports and how to respond to hot weather advisories.

More Information

Additional information on regulations is available in the law library at HRCalifornia.com or click on "Heat Illness Prevention" on Cal/OSHA's website at www.dir.ca.gov/DOSH.

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

Small Business Advantage. Internal Revenue Service. May 18, Webinar. (916) 974-5281.

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

9th Annual Workers' Compensation Conference. California Coalition on Workers' Compensation. July 20–22, Anaheim. (916) 441-4111.

International Trade

National Export Initiative Update with Congressman Farr. Monterey Bay International Trade Association (MBITA). May 18, Monterey. (831) 335-4780.

Los Angeles Economic Development Corporation International (LAEDC) Trade Outlook. LAEDC. May 18, Los Angeles. (213) 622-4300.

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.

Executive Trade Mission to Qatar and Oman. National U.S. Arab Chamber of Commerce. June 1–June 8, Doha, Qatar and Muscat, Oman.

(202) 289-5920.

Business Opportunities for America and Azerbaijan. United States-Azerbaijan Chamber of Commerce. June 3, Baku, Azerbaijan. (203) 333-8702.

Clean-Tech Trade Mission to China. MBITA. June 4–11, Jiaxing and Wuxi, China. (831) 335-4780.

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

Energex Africa 2011. Exhibition Management Services. June 7–9, Johannesburg, South Africa.

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

Labor Law

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.

Exempt—When You've Properly Classified. CalChamber. On Demand. (800) 331-8877.

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

Workplace Safety

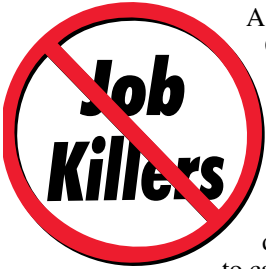
Heat Illness Prevention—How to Comply with New Rules. CalChamber. May 21, On Demand. (800) 331-8877.



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PETER C. NELSON
PRESIDENT AND CHIEF EXECUTIVE OFFICER
CALIFORNIA WATER SERVICE COMPANY, SAN JOSE

‘Card Check’ for Farm Workers Ready for Vote on Assembly Floor



A California Chamber of Commerce-opposed bill that will eliminate an agricultural employee's democratic right to cast an

independent vote in a secret ballot election regarding whether to unionize is awaiting a vote on the Assembly Floor.

SB 104 (Steinberg; D-Sacramento) essentially eliminates a secret ballot election and replaces it with the submission of representation cards signed by more than 50 percent of the employees, leaving employees susceptible to coercion and manipulation by labor organizations.

CalChamber has identified SB 104 as a “job killer” bill. The complete “job killer” bill list will be released in the coming weeks.

Currently Protected

The current provisions of the Agricultural Labor Relations Act (ALRA) adequately protect the rights and interests of employees and employers, as well as unions. Modeled on the National Labor Relations Act, the ALRA affords agricultural employees the opportunity to select—or to refrain from selecting—a particular union as their collective bargaining representative through a formal and secure secret ballot election. Each employee votes in a private booth, without any pressure or coercion from the employer, union or co-employees. In this way, the employees' true and current preferences on unionization are reliably determined.

How It Works

SB 104 seeks to strip employees of this fundamentally democratic right, instead allowing unions to bypass secret ballot elections under an alternative “majority sign-up” procedure. Under SB 104, a union would be installed as a bargaining unit's representative merely by submitting a petition to the Agricultural Labor Relations Board (ALRB) along with representation cards signed by a majority of affected employees and designating that union for that purpose.

But unlike the current process, which guarantees that employees ultimately express their true sentiments about unionization in the tightly controlled setting of a supervised secret ballot election, this new procedure provides no safeguards to ensure the representation cards really indicate the employees' free, uncoerced and current choice.

For example, all ballots issued for an election are required to include a space for the employee to check “No Labor Organizations.” No such space or designation is required for a representation card. Additionally, nothing in SB 104 prohibits a union from completing a card for an employee and then pressuring the employee to sign it.

In fact, SB 104 specifically provides that it is lawful for the union to complete the card for the employee and just have the employee sign. Further, while the ALRB will be required to maintain the confidentiality and secrecy of the cards, the union will be under no such restriction.

Accordingly, the union and employees who support it will be able to easily identify, target and hassle those employees who have not given cards to the union.

Moreover, SB 104 allows the representation cards signed by employees to remain valid for up to a year before the union submits them to the ALRB. With no provision for allowing employees who have changed their minds to revoke their cards, this process will not guarantee that the cards when submitted reliably indicate employees' then-current preferences.

Additionally, SB 104 provides the ALRB wide discretion in ignoring discrepancies when determining which representative cards submitted to accept or reject. Specifically, even if the name on the card does not directly match the name of an employee on the employer's payroll, the ALRB can still accept that card if the ALRB decides that a “preponderance of the evidence” suggests the individual who signed the card is an employee. This opens the door for the submission of invalid representation cards by unions in order to meet the threshold of obtaining signed representation cards from a majority of employees.

‘Majority Sign-Up’

Equally concerning is the fact that the “majority sign-up” process proposed to designate a particular union will not also be allowed to decertify a union. Although SB 104 eliminates an employee's right to vote to certify a union as the representative labor organization through a secret ballot election, thereby easing the way for a union to be installed, employees will still be required to vote in a secret ballot election to decertify and remove a union. The law should not favor labor organizations by making the process for employees to remove a union from their workplace more difficult than the process to put a union in place.

Unfair Labor Practices

Finally, SB 104 creates a huge disparity in the remedies provided for unfair labor practices committed by an employer versus unfair labor practices committed by a union. Under SB 104, if an employer is charged with interfering, coercing, or discriminating against an employee through the exercise of his/her rights to unionize, the charge will be elevated to priority level and take precedence over any other case filed in that ALRB office. Thereafter, if the ALRB finds the employer committed an unfair labor practice, the ALRB can issue a statutory civil penalty against the employer for up to \$20,000 per violation.

Disturbingly, no such comparable treatment or penalty is provided where a union is charged with and found to have committed an unfair labor practice. This proposed treatment of an unfair labor charge against an employer is significant as it is not only one-sided, but completely alters the nature of the remedies traditionally awarded by the ALRB. As set forth in the state Labor Code, the current available remedies are essentially the same regardless of whether the guilty party is the employer or union and are designed to make the employee whole, not to penalize the employer and/or create a windfall for the employee.

Action Needed

SB 104 is awaiting a vote by the entire Assembly. Contact your Assembly member and urge him/her to **oppose SB 104**.
Staff Contact: Jennifer Barrera

Marijuana Bill Very Similar to Voter-Rejected Proposition 19

From Page 1

osition 19, the marijuana initiative California voters rejected in November 2010.

Similarities to Proposition 19

Like Proposition 19, SB 129 creates a protected class of employees that doesn't exist today (medical marijuana users).

SB 129 precludes compliance with state and federal drug-free workplace laws, jeopardizes workplace safety and exposes employers to litigation.

Like Proposition 19, SB 129 treats marijuana users differently than alcohol users, establishing a new undefined standard for when an employer could take action to ensure a safe workplace.

Slight Differences

Unlike Proposition 19, SB 129 forbids the use of marijuana on the employer's premises. The bill does not, however, preclude marijuana use before or during work outside of the employer's premises.

Moreover, SB 129 does not preclude possession of marijuana.

Although Proposition 19 set a standard of "actual impairment" before an employer could, for example, remove an employee from duty, SB 129 calls for an "impairment" standard.

In both cases, however, the standard is higher than the "reasonable suspicion" standard that exists today and is very subjective.

Promotes Litigation

SB 129 makes it "unlawful for an employer to discriminate against a person in hiring, termination, or any term or condition of employment or otherwise penalize a person" for being a medical marijuana patient or testing positive for marijuana use that doesn't occur on the employer's premises.

The bill also creates a private right of action, allowing an employee who believes he/she was discriminated against for use of medical marijuana to sue the employer even if the reason the employee was "penalized" was unrelated to the medical use of marijuana.

Workplace Impacts

Although SB 129 precludes an employee from "using" marijuana at the workplace, it does not preclude an employee from either possessing marijuana in the workplace, or "using" marijuana minutes before coming onto the worksite and beginning work.

Under current law, signs of marijuana use in an employee (such as marijuana odor or red eyes) would likely be enough cause to send the employee home or conduct a drug test. If SB 129 becomes law, the employer would have to wait to do anything until the employee's performance showed signs of "impairment."

The subjective nature of the term

"impairment," coupled with the private right of action provided under SB 129 for any alleged violation, would make employers hesitant to take any action.

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

SB 129 also creates a significant disadvantage for California employers with federal contracts or grants. Federal law requires federal contractors and grantees to provide a drug-free workplace, which includes implementing a policy that prohibits the use or possession of marijuana.

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.

Action Needed

SB 129 awaits a vote by the full Senate. The CalChamber is urging employers to ask their legislators to **oppose SB 129**.

An easy-to-edit sample letter is available at www.calchambervotes.com.

**Staff Contacts: Erika Frank,
Jennifer Barrera**

Tax Targeting California Oil Production Awaiting Vote in Assembly

From Page 1

Oil Severance Tax Study

The costs associated with AB 1326 would be over and above the state's already-high tax burden on oil production and transportation fuels. In fact, according to respected economists, California oil resources are already among the most heavily taxed in the country. This new severance tax would make California's combined taxes on oil production one of the highest in the nation.

California oil producers would pay significantly more tax than in other major oil-producing states if California adopted a 9.9 percent oil severance tax, according to a study by LECG, a global expert services and consulting firm. AB 1326 is proposing

a 12.5 percent oil severance tax.

The LECG study, "Comparison of Oil Tax Burden in the Ten Largest Oil-Producing States," examined a proposed 9.9 percent oil severance tax, more than 50 percent higher in California than the rates imposed by the other nine states analyzed. The study concluded that if the proposed oil severance tax were enacted, California would become the state with the heaviest tax burden on oil producers.

CalChamber Position

The CalChamber opposes tax increases that single out a specific industry or profession to shoulder billions of dollars of permanent tax burden. These industry-specific taxes kill good jobs and harm industries unique to California.

A new tax on oil production in California ultimately will make California oil more expensive than that produced in foreign countries and will harm the state's competitiveness. It won't change the amount of oil used in California, but will result in the loss of high-quality jobs in the industry, as well as increased imports to the state.

Action Needed

AB 1326 is scheduled to be considered by the Assembly Revenue and Taxation Committee on May 16. Contact your Assembly representatives and urge them to **oppose AB 1326**.

Staff Contact: Jennifer Barrera

California Political Expert to Speak at CalChamber Business Summit



Dan Walters

Political columnist Dan Walters will be a featured morning speaker at the California Chamber of Commerce Business Summit on June 1 in Sacramento.

The day-long Summit offers business owners, CEOs, public affairs staff, local chamber of commerce staff, board members, committee members and many more a look at current policy issues, and action needed to promote certainty for businesses in today's uncertain economy.

Other morning speakers at the Summit will be John S. Watson, chairman and CEO of Chevron Corporation, and California Legislative Analyst Mac Taylor.

The luncheon speaker will be Dr. Frank I. Luntz, communications expert, political pollster and bestselling author.

Governor Jerry Brown and CalChamber Chair S. Shariq Yosufzai will be the featured speakers at the Host Breakfast, which is set for the morning after the Summit.

Dan Walters

Walters has been a journalist for more than 40 years, working almost exclusively for California newspapers.

He joined *The Sacramento Union's* Capitol bureau in 1975 and later became *The Union's* Capitol bureau chief. In 1981, he began writing the state's only daily newspaper column devoted to California political, economic and social events. In 1984, Walters and the column moved to *The Sacramento Bee*.

Walters has written more than 7,500 articles about California and its politics, and his column now appears in more than 50 California newspapers. His articles also have appeared in *The Wall Street Journal* and the *Christian Science Monitor*, among other publications.

Walters is the founding editor of the *California Political Almanac*, co-author of *The Third House: Lobbyists, Money and Power in Sacramento* and contributed chapters to two other books, *Remaking California* and *The New Political Geography of California*. Walters is also the author of *The New California: Facing the 21st Century*, which is widely used as a college textbook about socioeconomic and political trends in the state.

Registration Deadline: May 20

The two-day registration package, including Summit with lunch, the Host Reception and Host Breakfast is \$275. Other registration options are available. The deadline for registration is May 20.

UnitedHealthcare is again the major sponsor for this year's Summit.

Online registration and more information are available at www.calchamber.com/summit.

Staff Contact: Danielle Fournier

New Burden on Internet Commerce Awaits Senate Action



OPPOSE

commerce is awaiting action by the Senate.

SB 761 (Lowenthal; D-Long Beach) indirectly regulates virtually all businesses that collect, use or store information from a website.

The CalChamber and a coalition of businesses and trade associations opposing SB 761 are pointing out that the restrictions SB 761 seeks to establish will have a negative impact on consumers who have come to expect rich content and free services through the Internet. The bill will make those consumers more vulnerable to security threats.

Figuring out how to establish regulations under the bill and to enforce the law would prove costly to the state

California Chamber of Commerce-**opposed** legislation creating an unnecessary, unenforceable and unconstitutional regulatory burden on Internet

and cumbersome for the attorney general.

California law already provides significant privacy protections for consumers to safeguard sensitive personal information, including Social Security number, video rental records, health records and financial records.

In addition, California law requires websites to post a privacy policy so consumers can determine what information is collected and how it is used with third parties.

Unlike SB 761, existing laws regulate only personally identifiable information. The laws also contain important exceptions and balances to make them workable.

SB 761 contains none of these limitations. It imposes a free-standing ban on any covered entity sharing or transferring any covered information for any purpose, regardless of whether that information identifies the individual.

The bill fails to recognize the significant challenges of establishing a "do not track" regime. Such a requirement would stifle innovation and

prevent companies from bringing new and useful products to market.

For example, features like automatic spell check, product recommendations, real-time traffic mapping and search suggestions have been developed using customer data in a safe and unintrusive way.

SB 761 ignores costs for the state and the severe economic harm it would impose on the state's economy and job creation due to the uncertainty its vast restrictions would create for companies storing covered information.

Key Vote

SB 761 passed the Senate Judiciary Committee on May 3, 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).

Action Needed

Contact your senator to urge a "no" vote on SB 761.

Staff Contact: Valerie Nera



The HR Handbook Every Manager Should Have



California labor laws can change often. But with the **2011 HR Handbook for California Employers** on your desk, it's simple to make sure your HR policies are up-to-date and compliant.

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