

ALERT

VOLUME 37, NUMBER 33 • DECEMBER 2, 2011



CalChamber Launches Redesigned HRCalifornia

Improved Site Offers Speedier Access to Answers



This week, the California Chamber of Commerce launched its redesigned **HRCalifornia** website to speed navigation and improve

access for CalChamber members and subscribers.

HRCalifornia is California's No. 1 employment law resource, providing

thousands of employers and HR professionals with immediate answers to tough HR questions on issues such as family and medical leave, overtime, hiring, termination, exempt versus nonexempt employees, and more.

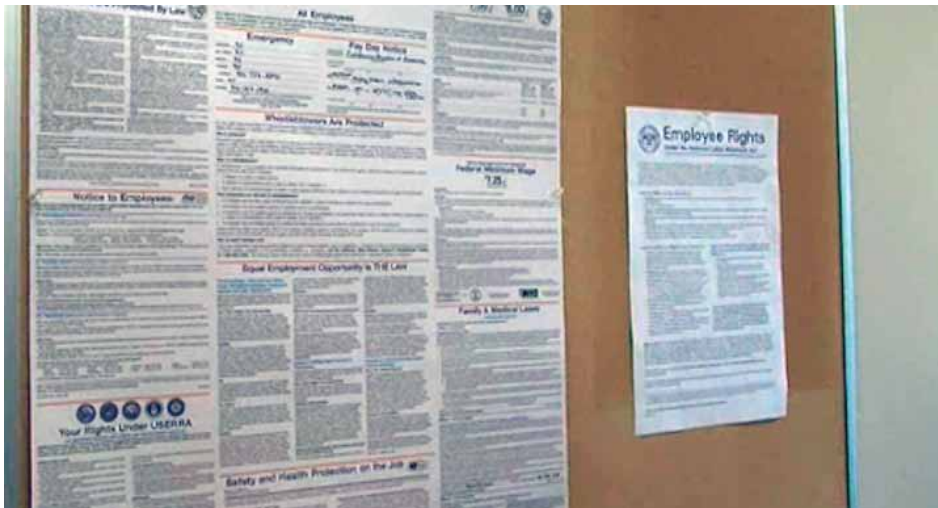
CalChamber's team of labor law experts and HR advisers continually updates **HRCalifornia** to ensure the site is accurate and current.

Praise for **HRCalifornia**

HRCalifornia has been praised by HR professionals, business owners, managers

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Controversial Poster Requirement Subject of New Short Video from CalChamber



A new CalChamber video explains employers' responsibility to begin displaying an 11"x17" poster providing information to employees about unionizing and the right to strike. See story on Page 3.

CalChamber Expands Legal Affairs Staff to Spearhead Court Battles



The California Chamber of Commerce has expanded the Legal Affairs Department to strengthen its ability to represent the business perspective in court battles.

Joining the CalChamber in November as associate general counsel was Heather Wallace, a seasoned litigator with experience on employment law, health care, intellectual property and more.

Serving as employment law editor/staff counsel since June has been Gail Cecchettini Whaley, with nearly 20 years of practice in employment law.

"Many issues having a huge impact on California's economy, business climate and how California employers manage daily operations are being decided in court," said CalChamber President and CEO Allan Zarembeg. "The CalChamber's enhanced legal staff will help us stay on top of the most significant cases."

The Legal Affairs Department is headed by Vice President and General Counsel Erika Frank. Through their active involvement on the front lines of California's legal and labor law compliance scene, Frank and her team are first

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Labor Law Corner

Pregnancy Leave: Employers Now Must Continue Health Benefits



Dana Leisinger
HR Adviser

Our company is small, only 13 employees. We have an employee going on Pregnancy Disability Leave (PDL) in January. Do we have to continue her health insurance benefits while she's on PDL?

As of January 1, 2012, yes.

For the last 10 years, the only law that required an employer to continue

an employee's group health insurance benefits was the Family Medical Leave Act (FMLA).

New Law

A new law, however, SB 299 (Evans; D-Santa Rosa; Chapter 510, Statutes of 2011), requires an employer to continue an employee's health benefits the entire time she's on PDL.

This means an employer might have to cover the benefits longer than the time frame of FMLA, because PDL can continue for up to four months, while FMLA is only for up to 12 weeks. This law applies to all employers with five or more employees.

Employee Contribution

The employee must continue to pay her portion of the premium (unless the employer covers the entire premium). Most employers require the employee to pay a certain percentage via a wage deduction, so if the employee is on an unpaid leave of absence (such as PDL or FMLA), the employee must remit payment directly each month for her portion.

Many employers remember that yet another law required employers to continue health insurance benefits—which was workers' compensation. That requirement was challenged in 2002, however, when it was ruled that employees on workers' compensation leave are entitled only to the same continuation of benefits as employees on other types of disability leaves.

Therefore, if an employee goes on workers' compensation and qualifies for FMLA, it is recommended that the employer place the employee on FMLA at the same time as workers' compensation and continue the health benefits for up to 12 weeks.

If an employee does not qualify for FMLA and sustains a workers' compensation injury, however, the employee has no entitlement to benefit continuation.

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.

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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 Zaremborg. Executive Editor: Ann Amioka. Associate Editor: Sara Espinosa. Art Director: Marcy Wacker. Capitol Correspondent: Christine Haddon. Photographer: Megan Wood.

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Home page: www.calchamber.com.*

CalChamber-Sponsored Seminars/Trade Shows

More information at www.calchamber.com/events.

International Trade

Export Training Assistance Program (ETAP). Centers for International Trade Development. November 2–January 18. (714) 310-6908.

Compete Successfully in the Global Marketplace. TradePort and Monterey Bay International Trade Association. December 8, Santa Cruz. (831) 335-4780.

Exporting for Growth. Washington Post Live. December 8, Los Angeles. (703) 599-3836.

World Ag Expo. California State Trade and Export Promotion (STEP). February 14–16, 2012, Tulare. (209) 384-5892.

CeBIT. California STEP. March 6–10, 2012, Hannover, Germany.
IE Expo. California

STEP. March 7–9, 2012, Shanghai, China. (310) 973-3161.

COSMOPROF Worldwide. California STEP. March 9–12, 2012, Bologna, Italy. (562) 938-5018.

GLOBE 2012. GLOBE. March 14–16, 2012, Vancouver, Canada. (800) 274-6097.

WorldBEX. California STEP and

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CalChamber Calendar

Public Affairs Council Retreat:

February 2–3, 2012, Santa Monica

Next Alert:
December 16



CalChamber Releases New Video on Controversial Poster Requirement

The California Chamber of Commerce has released a new, short video detailing employers' responsibility to begin displaying an 11"x17" poster that provides information to their employees about unionizing and the right to strike.

Under orders of the National Labor Relations Board (NLRB), most private-sector employers must have the poster up in their places of business by January 31, 2012.

In the video, CalChamber President and CEO Allan Zaremborg says that most business owners will think the

requirement is "stupid" and that it amounts to unwanted meddling by the government.

He also calls into question the political wisdom of the timing of the mandate. "When you're heading into an election year, when you're trying to say 'I'm for the economy,' to impose these additional requirements on businesses—to have to tell their employees you have the right to strike—is troubling."

Even though the issue remains controversial and is the subject of pending litigation, it is the law and

employers must begin displaying the poster by January 31, 2012.

Among other things, the poster notifies workers about the rights of employees to act together to improve wages and working conditions, to form, join and assist a union, to bargain collectively with their employer, and to refrain from any of these activities.

To see the video, visit www.calchamber.com.

The poster may be ordered through CalChamber by visiting www.calchamberstore.com.

NLRB Advances Proposal to Cut Most Challenges Before Union Elections



The National Labor Relations Board (NLRB) voted November 30 to proceed with a controversial election rule despite strong dissent from one member of the board.

In a 2-1 vote, Chairman Mark Pearce and Board Member Craig Becker voted to advance the proposal while member Mark Hayes voted no.

Rumors swirled earlier this week that Hayes might resign or refuse to participate in the vote, leaving the NLRB without the quorum it needs to make major rule changes. However, Hayes said that he did not intend to resign even though he strongly opposes the rule.

The California Chamber of Commerce *HR Watchdog* blog covered the NLRB's mid-June announcement of the original proposed changes to the election process. The NLRB received more than 65,000

written comments on the proposed changes and heard testimony from 66 speakers over a two-day period.

Fewer Pre-Election Challenges

On November 29, Pearce made changes to the proposed rule. Only the revised proposal was approved, but this revised proposal retains significant portions of the original proposal—portions that remain troubling to businesses.

The NLRB vote advanced changes that would eliminate most pre-election challenges and move them to after the workers' vote. Litigation surrounding union elections would be limited. Pre-election appeals would no longer be allowed, which would speed up the election process.

The NLRB will now draft a final rule which will have to be voted on again. Board Member Becker's appointment expires at the end of the year, which will bring the NLRB down to two members and without a necessary quorum. The NLRB will have to try to get this rule through to a vote before that time.

Original Proposal

Several provisions of the original proposal were not up for vote this week, including provisions that would have:

- required employers to provide the union with email addresses of employees,
- required parties to identify issues and describe evidence soon after an election petition is filed, no later than the start of the hearing and prior to any other evidence being accepted; and
- required that hearings be set for seven days after service of the notice of hearing. These items are still up for consideration for later action.

Dissent

In dissent, Hayes argued that the NLRB should not proceed with the vote given the significance of the proposed changes.

"I deeply believe that whatever one's view of the need for election rule revisions may be, a final rule should not be issued in the absence of three affirmative votes to do so," Hayes said.

Staff Contact: Gail Cecchettini Whaley

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CalChamber Expands Legal Affairs Staff to Spearhead Court Battles

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to know when and how changes in law affect employers.

Heather Wallace



Heather Wallace

Existing Condition Insurance Plan and the Major Risk Medical Insurance Program.

For four years, she offered legal counsel in various capacities to EdFund, a non-profit organization providing student loan guarantee services to students seeking higher education. EdFund, based in Rancho Cordova, was succeeded by ECMC in December 2010, continuing to provide information on education finance and student loan services.

Wallace's responsibilities at EdFund/ECMC included intellectual property, employment law, contract negotiations, bond-related issues, regulatory analysis, security, privacy, retirement plans and medical benefits, state business filings and records retention.

Before joining EdFund, Wallace was in private practice. She litigated commercial and intellectual property matters for a Sacramento firm. She also represented technology companies on intellectual property cases for a Cupertino

Wallace comes to the CalChamber from the Managed Risk Medical Insurance Board (MRMIB), where she was senior staff counsel, providing legal advice on the Healthy Families Program, the Pre-

firm, in addition to litigating antitrust and contract disputes.

Wallace holds a B.A. in history from the University of New Orleans. She earned honors in legal research and writing, and civil procedure while attending Gonzaga University School of Law in Spokane, Washington. She received her J.D. with honors from Santa Clara University School of Law, where she was technical editor of the *Computer and High Technology Law Journal*.

Gail Cecchetti Whaley



Gail Cecchetti Whaley

editor of CalChamber's various human resources compliance products.

Her practice before coming to the CalChamber included representation of private employers and public agencies in employment-related disputes, including harassment, discrimination, retaliation, wrongful termination, and tort claims.

She also specialized in providing advice and counsel to employers on a wide range of labor and employment issues and conducting neutral workplace investigations. She has provided training to employers on numerous topics, including performance management and how to conduct effective workplace investigations.

Since joining the CalChamber staff, Whaley has been chief author of the popular *HRWatchdog* blog and *HRCalifornia Extra* e-newsletter, as well as a contributor to and

Whaley earned a B.A. in political science with high honors from the University of California, Berkeley and a J.D. from the University of Southern California.

Erika Frank



Erika Frank

years of combined legal, governmental and legislative experience.

Before assuming full-time general counsel responsibilities in late 2005, Frank also lobbied the legislative and executive branches on taxation, civil litigation and lawsuit abuse issues.

As CalChamber's subject matter expert on California and federal employment law, she oversees and contributes to CalChamber's labor law and human resources compliance publications; co-produces and presents webinars and seminars; and heads the Labor Law Helpline.

She uses her employment law expertise to develop and facilitate training courses for HR professionals, and she is a sought-after speaker at industry events.

Frank holds a B.A. in political science from University of California, Santa Barbara, and received her J.D. from McGeorge School of Law, University of the Pacific.

Staff Contact: Erika Frank

CalChamber-Sponsored Seminars/Trade Shows

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Northern California Regional Center for International Trade Development. March 14–18, 2012, Manila, Philippines and Singapore. (916) 563-3222.

Sri Lanka Expo 2012. Sri Lanka Consulate. March 28–30, 2012, Colombo, Sri Lanka. (213) 387-0214.

Labor Law

HR 101: Intro to HR Administration

Seminar. CalChamber. December 7, Emeryville; January 9, 2012, Costa Mesa; January 12, 2012, Long Beach; January 18, 2012, San Jose; April 11, 2012, Sacramento. (800) 331-8877.

HR 201: California Labor Law Update Seminar. CalChamber. December 9, Sacramento; January 10, 2012, Costa Mesa; January 11, 2012, Anaheim; January 13, 2012, Long Beach; January 19, 2012, San Jose; January

20, 2012, Emeryville; January 26, 2012, Webinar; February 6, 2012, On Demand. (800) 331-8877.

FMLA/CFRA: Beyond the Basics Seminar. CalChamber. January 10, 2012, Costa Mesa; January 19, 2012, San Jose; January 20, 2012, Emeryville. (800) 331-8877.

CalChamber: Simplifying Workplace Rules Will Encourage Economic Growth

California Chamber of Commerce Policy Advocate Jennifer Barrera provided an employer perspective on the need for more workplace flexibility at a November 15 informational hearing of the Senate Labor and Industrial Relations Committee.

She pointed to alternative workweek schedules as one means of providing flexibility, as did Michael Pope, in-house counsel for Securitas Security Services USA Inc. Another employer representative, Rick Albiero from The Telecommuting Advantage, talked about telecommuting.

Employer Struggle

California has some of the most stringent and complex labor laws in the nation, Barrera said, which means that employers struggle with meeting the overwhelming employment requirements imposed, rather than being able to focus on trying to develop and grow their businesses.

Significant hurdles for employers in California discourage growth and job development, providing no flexibility for either the employer or the employee to develop alternative work schedules or options, Barrera said.

Barrera highlighted two areas in which California can provide relief to employers and employees:

- Minimizing the procedures for adopting alternative workweek schedules;
- Minimizing the risk of litigation for California employers.

Alternative Workweeks

Given the current interpretations and/or requirements surrounding these issues, there is limited flexibility for employers to work with employees and adjust work schedules to accommodate the employees' requests. Simplifying these requirements and providing the employee and employer with more authority to manage the work environment will alleviate some of the burden on employers while still addressing employee needs, Barrera told the committee.



Photo by Megan Wood

CalChamber Policy Advocate Jennifer Barrera and Michael Pope (center) of Securitas Security Services USA Inc. highlight alternative workweek schedules as one means of providing employers and employees with scheduling flexibility at an informational hearing of the Senate Labor and Industrial Relations Committee. Rick Albiero (left), The Telecommuting Advantage, waits to discuss telecommuting.

Million-dollar class action lawsuits regarding alleged missed meal periods are rampant throughout California, and have a devastating impact on all industries, Barrera said. She cited several cases in which settlements exceeded \$1 million, but a significant portion of the judgment went to the attorneys who litigated the cases, leaving limited monies for employees.

Telecommuting

Telecommuting is becoming increasingly popular in today's work environment because of technological advances, Barrera told the committee. Although many California employers would like to offer this option to their employees, these arrangements generate a number of legal issues relating to federal

and state wage-and-hour laws, she said.

For example, with the employee off-site, it becomes difficult to track time worked, overtime liability, compliance with meal-and-rest periods, and work off the clock. Regardless of the challenge, employers must ensure compliance with federal and state wage-and-hour laws, Barrera noted.

Telecommuting arrangements also raise questions concerning federal and state workplace safety laws. Although an employer doesn't control an employee's premises and work station, employers still bear responsibility for the safety of their employees, she said. In addition, injuries that arise out of and in the course of performing the job are compensable under workers' compensation.

Staff Contact: Jennifer Barrera

State UI Fund Debt Leads to Higher Federal Tax on Employers

Absent an act of Congress, California employers will be paying higher taxes starting January 1, 2012 because the state has not repaid money it borrowed from the federal government to pay unemployment insurance (UI) benefits.

The tax increase amounts to \$21 per year for any employee who makes \$7,000 or more in 2012. California employers pay UI taxes on the first \$7,000 of wages per employee.

Statewide, the tax increase amounts to an estimated \$289.8 million in 2012 and \$615.7 million in 2013, according to the California Employment Development Department (EDD) *October 2011 Unemployment Insurance Fund Forecast*.

This represents a loss of 0.3% of the federal tax credit in 2011 and 0.6% in 2012. These additional taxes paid will offset California's federal loan balance.

Federal Requirements

State laws must meet certain federal requirements for employers to qualify for

credits against the tax imposed under the Federal Unemployment Tax Act (FUTA).

Due to California's outstanding loan balances, the U.S. Department of Labor has notified the Internal Revenue Service and the EDD that California is a "credit reduction state."

Employers subject to unemployment tax laws of a credit reduction state must pay additional federal unemployment tax when filing a Form 940, according to the IRS website.

California has carried an outstanding loan balance for two years in a row. Therefore, the FUTA credit for California employers will decrease from 5.4% to 5.1% on January 1, 2012, a 0.3% credit reduction, according to the EDD website.

Employers will use IRS Schedule A (Form 940), Part 2, to calculate the FUTA tax, EDD reports.

State UI Fund Insolvency

The unemployment rate in California has been consistently higher than

the U.S. rate for some time. October unemployment in California was 11.7% versus 9% for the United States, according to EDD. The October unemployment rate was a slight drop from the 11.9% EDD reported for September, and an improvement from the 12.5% rate recorded in October 2010.

California's UI Trust Fund has been insolvent since January 2009 due in part to the large numbers of unemployed Californians.

Also contributing to the UI fund's insolvency has been legislation that imposed benefit increases in 2001 without including cost-saving reforms.

More Information

EDD is advising employers with questions on the FUTA credit reduction, Form 940 or Publication 15 (2011) (Circular E) *Employer's Tax Guide* to contact the IRS at www.irs.gov.

Staff Contact: Marti Fisher

CalChamber Launches Redesigned HRCalifornia

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and those new to HR because it gives them ready access to the tools they need to navigate some of the most stringent and complex labor laws in the nation.

"I always check *HRCalifornia* before calling my labor attorney. More often than not, I find exactly what I need. It's a great value for the money," said Evie Baldwin, HR director, Landmark Healthcare, Inc.

The HR director of CalChamber small business member Prime Shine Car Wash says that *HRCalifornia* is invaluable.

"With 13 car wash locations, we run a very labor-intensive business. I could not do my job without *HRCalifornia*," said Staci Coffey, director of human resources for Prime Shine Car Wash.

HR Library Features

The comprehensive HR library is continually updated with information on California and federal law.

As redesigned, the HR library allows faster navigation and access to information on the most commonly referenced HR topics. Flyout menus allow the user to drill down quickly, and each topic page takes the user directly to legal explanations, forms, checklists, wizards, Q&As and more.

The HR library provides explanations of employment law in plain language on the following topics:

- Recruiting and hiring;
- Benefits;
- Pay and scheduling;

- Leaves of absence;
- Discrimination;
- Harassment;
- Disabilities and accessibility;
- Discipline and termination;
- COBRA and Cal-COBRA;
- Workplace safety;
- Workers' compensation;
- Privacy;
- Personnel records;
- Unions.

HRCalifornia subscriptions are available for \$399 a year.

Site Tours Available

For more information, visit HRCalifornia.com/overview, or sign up for a free 30-minute tour at HRCalifornia.com/topictour.

Small Business Advocate of the Year

Retired Long Beach City Manager Promotes Business Development

When Gerald “Jerry” Miller retired from serving the city of Long Beach as city manager and helped form a real estate and development consulting firm, he found himself reconnecting with people in the business community.

It wasn’t long before Miller got in touch with Randy Gordon, president and CEO of the Long Beach Area Chamber of Commerce, and the Long Beach Area Chamber. While working for the city, Miller had worked closely with the business community and the chamber.

“I had a long-standing respect and knowledge of the role chambers play,” Miller said.

Helping Business

Soon after meeting Gordon, Miller was asked to join the chamber board of directors. Since then, Miller has actively been involved with the chamber’s efforts.

In 2010, the Long Beach Area Chamber secured a \$200,000 grant to fund a layoff aversion program with the regional business community. Miller led the effort, helping establish a “Red Team” of dedicated local business leaders and three other chambers.

He also assisted in the chamber’s outreach efforts on the importance of enterprise zones to the community and state legislators, initiating a call to action that generated letters of support and business testimonials.

Miller also founded the chamber’s Green Business Council, which works to promote sustainable business practices and advocates business development opportunities for companies that produce green products or provide green services.

“The Port of Long Beach has done a number of things, through policy and direct investment, to become greener and support sustainability. We recognized that this focus area is not going to go away,” Miller said. “It’s an area to exploit, in a good way. This is a business opportunity and we look at ways to address environmental needs or solutions to the environmental challenges we face.”

Approximately 30 companies are members of the council and “it’s going to grow,” Miller predicted.

Reaching Out

In June, the California Chamber of Commerce named Miller as a 2011 Small



Jerry Miller

Business Advocate of the Year Award recipient to recognize him for his advocacy efforts on behalf of small businesses.

“[Miller] is one of the most active and passionate advocates for our business community,” Gordon wrote to the CalChamber. “[He] is most deserving of this award because of his strong desire to make Long Beach the best place to do business. He is a masterful consensus builder and is dedicated to working with others to improve the economic vitality of our city.”

Overtime Exemption: New Minimum Pay Set in 2012 for Certain Employees

Starting January 1, 2012, new minimum pay rates will go into effect for computer software employees and licensed physicians or surgeons to be exempt from overtime requirements, according to the California Department of Industrial Relations (DIR).

For computer software employees:

- The minimum hourly rate of pay exemption will increase to \$38.89 from its current rate of \$37.94;
- The minimum monthly salary will be \$6,752.19, compared to the current rate of \$6,587.50;
- The minimum annual salary exemption increases to \$81,026.25 from its current rate of \$79,050.00.

For licensed physicians and surgeons:

- The minimum hourly rate of pay exemption increases to \$70.86 from its current rate of \$69.13.

Miller believes the primary role of a chamber of commerce is to support and advocate.

“Clearly, the role of the chamber is to represent to the city or local government the plight of business, to advocate for either assistance or regulatory relief, or to unlock business from problems they are facing,” he said.

Business owners often are too busy running their business and don’t take the time to develop relationships with their local government, Miller said. The chamber puts resources in front of businesses and ensures they get the help they need or make the connection they need to make, he said.

“Government doesn’t have all the answers,” Miller added. “However, there are opportunities for businesses to be part of the solution.”

Life Outside the Chamber

Miller is now chairman elect of the board and vice chairman for economic development. When not running his consulting business, Miller serves on five boards of directors for non-profit organizations in the Long Beach area.

In his spare time, Miller enjoys spending time with family and friends, and playing golf.

These rates are tied to the California Consumer Price Index (CCPI) for Urban Wage Earners and Clerical Workers. The rates for computer software employees had not changed since 2008, while the rates for licensed physicians and surgeons was last adjusted in 2009.

There was no net percentage increase in the CCPI, which dropped by 1.4% from 2008 to 2009, then increased 1.1% from 2009 to 2010, according to DIR. The 2012 rate changes reflect a 2.5% increase in the CCPI since 2008.

More information is available in the DIR memos announcing the rate changes, posted on the Division of Labor Statistics and Research page on the DIR website at www.dir.ca.gov.



A Site to See: the New HRCalifornia

The redesigned HRCalifornia website is better than ever before. Its smart new design and enhanced navigation make it faster and easier to find the HR compliance information you need. Instantly access explanations, forms, checklists, wizards and Q&As on California and federal employment laws.



Join us Tuesdays at 10 a.m. PST for a free, 30-minute online tour featuring a different topic each week:

- Paying and Scheduling (12/6/11)
- Hiring and Termination Procedures (12/13/11)
- Leaves of Absence (12/20/11)
- Harassment and Discrimination (12/27/11)
- Determining Independent Contractor Status (1/3/12)
- COBRA (1/10/12)

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"I always check HRCalifornia before calling my labor attorney. More often than not, I find exactly what I need. It's a great value for the money."

Evie Baldwin, HR Director
Landmark Healthcare, Inc.



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