

ALERT

VOLUME 38, NUMBER 9 • MARCH 23, 2012



CalChamber Releases Business Climate Survey

The California Foundation for Commerce and Education this week released its 2012 survey of business executives detailing current attitudes about the state's economy, business climate, and budget. The study was sponsored by the California Chamber of Commerce.

Business executives are more optimistic about the state's economy, as well as the prospects for their own businesses. But they continue to have a poor outlook on the California business climate, mainly citing overregulation as the key culprit.

Economic and Business Climate

- Business owners and operators are deeply concerned about the direction

California has taken: More than four-out-of-five answered that the state is "on the wrong track," while only 19% believe California is going "in the right direction."

- Business owners are slightly more optimistic about the state's economy and more upbeat about their own business prospects, compared to one year and four years ago, but decidedly more negative over the California business climate.

- While half of business owners said the economy was in poor shape and only 22% said it would improve over the next year, that is a somewhat better response than in 2011, when 61% said the economy was in poor shape and only

See CalChamber: Page 4

Senators Focus on Employment Law Issues



A CalChamber Labor and Employment Committee-hosted luncheon on March 15 provides a forum for discussing employer concerns. From left are Thomas Cawley, committee chair, Senator Ted Lieu (D-Torrance), Senator Mark DeSaulnier (D-Concord) and Tony Sabatino, committee vice chair. Lieu chairs and DeSaulnier is a member of the Senate Labor and Industrial Relations Committee.

CalChamber Opposes New Leave Mandate



OPPOSE

A California Chamber of Commerce-**opposed** bill that burdens employers with a mandated benefit different from federal law will be considered

by the Assembly Labor and Employment Committee next week.

AB 2039 (Swanson; D-Alameda) significantly expands the type of individuals or circumstances under which employees can take a 12-week, protected leave of absence under California's Family Rights Act (CFRA), as well as creates an even further disconnect with the federal Family and Medical Leave Act (FMLA).

Expands California Law

Currently, CFRA requires an employer with 50 or more employees to allow an employee who has worked at least 1,250 hours to take up to 12 weeks of leave in a 12-month period for his/her own serious medical condition, for the birth or placement of a child, or to care for the serious medical condition of a child (under 18 years of age or adult dependent), spouse, or parent.

The current definition of "parent" includes step-parents as well as individuals who stand in place of a parent, "in loco parentis," to the child.

AB 2039 seeks to expand CFRA by

See CalChamber: Page 6

Inside

Need for State Court Funding: Page 3

Labor Law Corner

Partial Deduction of Exempt Employee Salary OK If Absent for Full Day



Gary Hermann
HR Adviser

We have an exempt employee who took a day off for vacation. However, the employee did not have enough vacation accrued to cover an absence for a complete day. Are we required to advance the vacation or can we make a deduction from salary for a partial day of absence?

An employer is not required to advance vacation to any employee and doing so for exempt employees has some risks.

California Chamber Officers

Timothy S. Dubois
Chair

Frederick E. Hitchcock
First Vice Chair

Anne Buettner
Second Vice Chair

Joseph M. Otting
Third Vice Chair

S. Shariq Yosufzai
Immediate Past Chair

Allan Zarembeg
President and Chief Executive Officer

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: Sara Espinosa. Art Director: Marcy Wacker. Capitol Correspondent: Christine Haddon. Photographer: Megan Wood.

Permission granted to reprint articles if credit is given to the California Chamber of Commerce Alert, and reprint is mailed to Alert at address above.

*E-mail: alert@calchamber.com.
Home page: www.calchamber.com.*

Partial-Day Work

In order to maintain the employee's exempt status, you must pay the exempt employee if he/she performs any work during the work day; you cannot deduct from the salary of an exempt employee for a partial day's absence.

If an exempt employee absents him or herself in full-day increments, such absences may be deducted on a pro rata basis from the salary owed without affecting the exemption.

No Work Performed

You may deduct from an exempt employee's salary if he or she performed no work that day. In 2005, the California Supreme Court ruled (*Conley v. PG&E*) that a policy of using vacation to pay, *when available*, to cover absences of four or more hours was valid. The court concluded that the employee had not suffered a salary reduction.

In 2009, in response to an inquiry from an employer, the Chief Counsel for the Labor Commissioner, following the court's reasoning, stated that an employer might establish a policy to cover partial-day absences for personal

reasons from the employee's leave bank, *when available*, in less than four-hour increments.

If the employee is ready, willing and able to work, deductions may not be made for time when work is not available. No salary need be paid to an exempt employee, however, when no work is performed within the workweek.

The employer may dock the pro rata amount of the exempt employee's salary for a full-day absence, unless the employer requires the employee to perform some work on a day when the employee was absent for personal reasons.

If an employer chooses to close his or her business for a full week, exempt employees would not be entitled to any salary for that week, providing, of course, that they performed no work for the employer.

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
REACH Workshop. Tetra Tech. March 27, Los Angeles. (734) 213-5057.

Labor Law
HR 101: Intro to HR Administration Seminar. CalChamber. April 11, Sacramento. (800) 331-8877.
Hiring, Onboarding and Recordkeeping 101. CalChamber. April 12, Sacramento. (800) 331-8877.
Performance Evaluations, Discipline and Termination. CalChamber. April 12, Sacramento. (800) 331-8877.

Paying and Scheduling Non-Exempt Employees Webinar. CalChamber. April 19. (800) 331-8877.

Pregnancy Disability Leave & Baby Bonding Webinar. CalChamber. May 17. (800) 331-8877.

Paid or Unpaid—Leaves of Absence

Webinar. CalChamber. June 21. (800) 331-8877.

Hiring and Onboarding Basics Webinar. CalChamber. July 19. (800) 331-8877

International Trade
Basics of Exporting—Webinars. U.S. Department of Commerce. April 4—How to Find HS Codes, Duties and Taxes; April 18—Understanding Export Controls. (800) 872-8723.

Border Legislative Conference. Council of State Governments. March 28–30, Sacramento. (916) 446-5760.

See Seminars/Trade Shows: Page 6

CalChamber Calendar

International Breakfast Forum:

March 30, Sacramento

Host Reception/Host Breakfast:

May 21–22, Sacramento



Chief Justice Highlights Need for State to Adequately Fund Court System



Chief Justice
Tani G. Cantil-Sakauye

Severe budget cuts are hurting the ability of California courts to operate at the same time that more Californians are turning to the judicial system for help, state Chief Justice Tani G. Cantil-Sakauye told legislators this week.

“Now, more than ever, after four years of successive cuts. . . the judicial branch is finding itself to be a safety net for a democratic and civil society,” Cantil-Sakauye said in her first “State of the Judiciary” address on March 19.

“Yet judges don’t have any control over the kinds or types of cases we hear and the cruel irony is that the forces that have caused our reductions are the same forces that are driving citizens to court more and more for help in evictions, debt collections and child support modifications,” she said.

Severe Cuts, More Cases

The judicial branch budget—just 2.4% of the state’s General Fund—has been cut 24% since 2008, according to Cantil-Sakauye. In just the last two years, she noted, superior court filings have “increased beyond 10 million.”

During the last decade, court filing has increased 20%, according to a news release from the California courts.

“The budget struggles of the branch have not gone unnoticed by the attorneys who practice in our courts,” said Cantil-Sakauye. She applauded the “extraordinary effort” by the Open Courts Coalition Committee, State Bar, One Justice and the Bench-Bar Coalition to call attention to the need to restore funding to the courts.

Independent studies, she said, document the need for more judges due to the population boom in the Inland Empire and the Central Valley. Judges are especially needed in family law, she said.

“In order to keep the promise of justice alive in California, we ask that the judicial branch be fully funded,” said Cantil-Sakauye.

‘Fresh Approach’

Acknowledging that “it’s not our fiscal challenges alone that are driving the transformation of change in the judicial branch,” the Chief Justice said she brings “a fresh approach to governance. That means new and different leadership, greater transparency, greater accountability, collaboration, communication and on-site handling of big issues.”

The new judicial council leadership has made every council meeting public and held meetings up and down the state to exchange information with the trial courts about branch governance, she said.

The Chief Justice also appointed committees to examine the role and responsibilities of the Administrative Office of the Courts, to oversee the court construction program and to examine the court case management system.

She thanked the Legislature for its “pivotal role” in informing judicial branch decisions on how to proceed with the court case management system with a state audit she received just a few weeks after taking office. The Judicial Council will have an open public meeting on March 27 to discuss its options.

“We know now, we have a system that works,” said Cantil-Sakauye. “But we have a changed fiscal reality, a changed landscape, reduced resources, and next week judicial council will face the difficult options about how to go forward in this grim fiscal reality.”

Essential for Economy

Earlier this year, the California Chamber of Commerce voiced support for adequate court funding as part of a rally sponsored by the Open Courts Coalition Committee.

The CalChamber has been a member of the California Commission on Access to Justice since 1996 and has long been a vocal advocate for adequate court funding, stressing that an efficient court system is necessary to support California’s economy.

CalChamber President and CEO Allan Zaremborg refers often to Italy’s broken court system and how it has resulted in greatly reduced investments in the economy.

“A fully funded court system is essential to growing California’s economy,” said Zaremborg. “Without it, business disputes will go unresolved, causing greater uncertainty and creating yet another barrier to job creation in our state.”

CalChamber Vice President and General Counsel Erika Frank noted, “California businesses have a vested interest in ensuring our court system is adequately funded. Whether it is a business owner trying to resolve a contract dispute or an employee who needs to take time off to resolve a personal matter, an underfunded and inefficient court system hurts everyone’s pocketbook.”

In November 2011, the CalChamber co-sponsored a series of hearings across California that demonstrated the fundamental role of the courts and legal assistance in society and explored the devastating effects of chronic underfunding and recent budget cuts, especially for low-income Californians.

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

CalChamber Releases Business Climate Survey

From Page 1

19% said it would improve.

- Company owners had a brighter outlook on their own businesses. More than two out of five business leaders said their own business outlook will be getting better next year, compared with only 14% who said it will be getting worse, and 45% who said it will stay the same. This optimistic trend has been increasing since 2008, when only 29% said prospects would be better, and in 2011, when 38% said so.

- Nearly a third of businesses reported adding employees over the past year, compared with just a quarter of businesses in 2011. Fewer firms reported reducing their workforces this year compared to last.

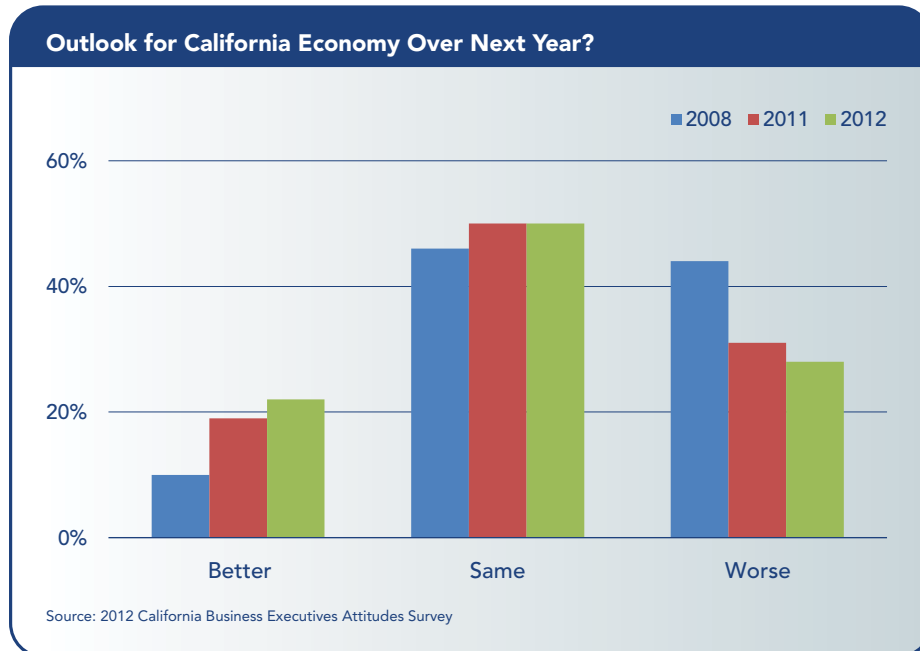
- Looking ahead, 31% of businesses plan on adding employees next year, which was a better outlook than businesses gave in 2011, when only 27% planned on adding new employees. Only 15% of employers plan to reduce their workforces next year.

State Business Climate

- Regarding the business climate, business owners report that it is getting even harder to do business in California than it was one year or four years ago.

- By far and away, employers have identified the biggest challenge to doing business in California as “too much government regulation,” with 64% of respondents saying it’s the first or second biggest challenge.

- High state and local taxes, and the state budget deficit were in the next level of business challenges, identified by 29% and 22% of business leaders, respectively. High health care costs, high labor costs and the difficulty of hiring and maintaining a qualified work force



rounded out the biggest concerns of business leaders.

- Climate, weather and quality of life were identified as the top advantages to doing business in California. The state’s leadership in certain industries (high tech, biotech, ag), its culture of innovation, and access to markets were also noted as being strong advantages.

State Government Policies

- According to business leaders, the top priorities for state elected officials should be the economy and job creation, and resolving the state budget deficit. These priorities ranked among the top two issues (46% and 44%, respectively) for business leaders.

- The other high priority issues to be addressed by state leaders should be labor regulations governing overtime, wages and rest periods, and the quality of public schools and higher education.

Health Care

- CalChamber surveys have consistently shown that about 89% of CalChamber members provide health care benefits for their employees. (The offer rate for California businesses as a whole tends to be closer to 60%.)

- For survey respondents who do not

provide health care, the primary reasons given are that it’s too expensive or the company is too small.

- The main reason companies say they provide health care benefits is improved ability to recruit and retain employees and that providing the benefits helps employees stay healthy and productive.

- More than half of employers report that their health care premiums increased “a lot” last year.

- Employers said their response

to these increases will be primarily to increase employee premiums or increase co-pays or deductibles. Few employers report that they will drop health care benefits altogether or restrict eligibility of employees or dependents.

- About a third of employers reported it was likely they would make no changes to their benefit structures next year.

- Employers are strongly negative about the Affordable Care Act, by about a two-to-one margin.

- While most employers (68%) are aware of the tax credit for small businesses that provide health care to employees, only a minority say that the tax credit will influence whether they will continue to provide (35%) benefits or will begin to provide (34%) new benefits.

State Budget Crisis

- Business leaders continue to say that ongoing state budget deficits are an extremely or very serious problem, but they are split on the optimal solution.

- A majority (59%) of business owners and operators said the budget deficit should be resolved by “mostly” or “all” spending cuts, while 38% said they would prefer a mix of both spending cuts and tax increases.

- The percentage of business leaders

See CalChamber: Next Page

CalChamber Releases Business Climate Survey

From Previous Page who said they prefer that a balanced budget be achieved “without raising taxes” is 56%, compared with 44% who favor “raising some taxes.”

● When asked which should be the highest priority of an elected leader in dealing with the state budget:

✓ “Holding the line on taxes, regardless of the impact this may have on the budget or leading to major cuts in services,” remained the choice of a plurality of business owners, by a narrow margin of 37%.

✓ “Protecting funding for essential services like education, health care and public safety, even if that means higher taxes,” was favored by 35% in 2012—which is within the margin of error when compared with the previous choice.

✓ “Balancing the budget, even if that means raising some taxes and making cuts to essential services,” was favored by 28% in 2012.

● Top budget priorities for business leaders remained consistent: K-12 education should be most spared from budget cuts, followed by economic development and job creation, higher education, and courts and public safety.

Policy Reforms

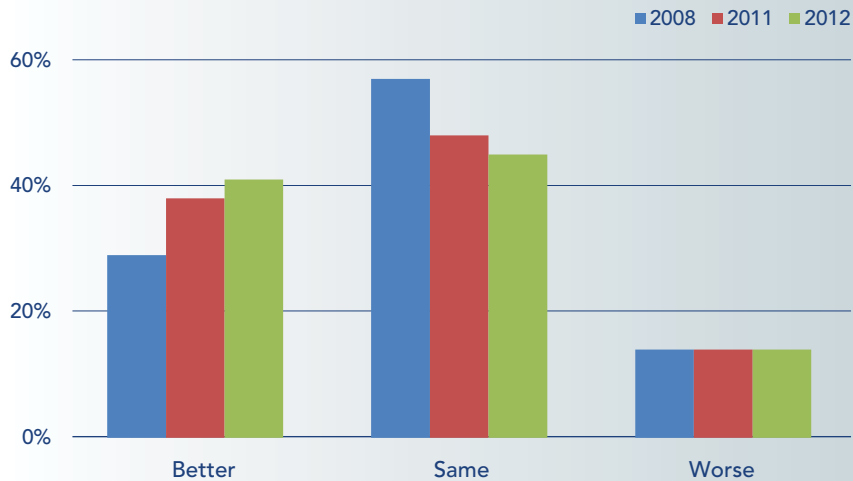
Top reforms that business leaders said should be part of a legislative budget deal were very consistent with priorities in 2011:

● Ensure that whatever mix of new taxes and spending cuts are adopted, the end result is a truly balanced budget without gimmicks.

● Reform public employee pensions to more resemble private sector 401(k) plans.

● Conform overtime rules to federal law, which would return California to a 40-hour workweek before adding on any overtime (rather than on each eight-hour

Outlook for Own Business Over Next Year?



Source: 2012 California Business Executives Attitudes Survey

cannot finance ongoing state programs.

The third portion of reforms included:

● Place a cap of up to 5% of an employee’s salary as the most a public agency can contribute to an employee’s retirement per year.

● Reform environmental regulations to increase certainty and reduce the time to develop a project.

● Provide long-term funding certainty for California universities and colleges to ensure continued

innovation and skilled workforce.

● At the bottom of the popularity list was: Release some non-violent criminals early to reduce prison costs.

The California Business Executives Attitudes survey was conducted between February 20, 2012 and March 19, 2012. A total of 699 California business executives were polled for the survey.

The entire survey is available at www.calchamber.com/businessclimate.
Contact: Loren Kaye, President, California Foundation for Commerce and Education

day) to provide workers and employers greater flexibility and savings.

The next set of priorities included:
 ● Place a cap on all state spending so it cannot grow faster than the rate of inflation plus population growth.

● With approximately half the state budget going to education, reform the education system to strengthen the role of principals, expand teacher training, ease termination of incompetent teachers, and pay higher salaries to teachers who improve student performance.

● Ensure that one-time revenues



“In addition to its advocacy work, CalChamber membership includes human resource tools and consulting that is invaluable to small and medium-size businesses.”

DAN GORDON
 CO-FOUNDER
 GORDON BIERSCHE BREWING COMPANY
 SAN JOSE

CalChamber Member **Feedback**

State Budget Overview, Cybercrime on Agenda for CalChamber Board



State Legislative Analyst Mac Taylor (left), the nonpartisan fiscal adviser to the Legislature, explains California's budget challenges at the March 9 meeting of the CalChamber Board of Directors. Greg Auer, Los Angeles Field Office of the U.S. Secret Service, gives an overview of activities and recommendations from the Electronic Crimes Task Force, consisting of full-time investigators and detectives from a variety of federal, state and local law enforcement agencies, plus members from academia and private industry.

CalChamber Opposes New Leave Mandate

From Page 1

allowing an employee a protected leave to care for adult children, parents-in-law, grandparents and siblings.

Substantial Burden

Expanding the types of individuals or circumstances under which an employee can take a leave of absence under CFRA, through AB 2039, would only further increase the cost of doing business for employers in California.

Given that the individuals proposed by AB 2039 are not covered by the FMLA, an employee could use his/her 12 weeks of CFRA to care for the serious medical condition of a parent-in-law, then take another 12-week leave under FMLA to care for the medical condition for his/her spouse, child or parent.

This significant expansion of leave for employees would create such a substantial burden on employers that it would discourage employers from growing to more than 50 employees in order to avoid triggering CFRA/FMLA or from locating to this state. California cannot afford to impede growth and

overburden employers with such a requirement.

Leave Already Protected

The new burden that AB 2039 creates is unnecessary. The proposed category of individuals that AB 2039 seeks to include under the protections of CFRA are generally already protected. A grandparent or step-parent who stands in loco parentis to a child, can already take a protected leave of absence under CFRA to care for that child, and vice versa. There is no need to create another exception for the parent-in-law, daughter-in-law, or son-in-law to also be able to take leave.

Action Needed

AB 2039 will be heard in Assembly Labor and Employment on March 28. Contact your Assembly representative and committee members and ask them to **oppose AB 2039**.

Staff Contact: Jennifer Barrera

Seminars/Trade Shows

From Page 2

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

Webinar: Basic Guide to Exporting. U.S. Commercial Service. April 4. (800) 872-8723.

Webinar: Exhibit or Not to Exhibit. U.S. Commercial Service. April 5. (212) 809-2676.

Monterey Bay Global Destination for Wine and Tourism. Monterey Bay International Trade Association. April 12, Monterey. (831) 335-4780.

Ag Trade Mission to Asia. California State Trade and Export Promotion and Fresno Center for International Trade Development. April 21–28, China and South Korea. (559) 324-6401.

Export Green Trade Mission. Brazil-U.S. Business Council. April 22–27, São Paulo, Brazil. (202) 463-5496.

Hannover Messe—Technology Meets Progress. Deutsche Messe. April 23–27, Hannover, Germany.

Trade Inspection Certificates Webinar. Women in International Trade - Los Angeles. April 25. (213) 545-6479.

CalChamber Opposes Bill Interfering with Hiring Decisions



OPPOSE

A California Chamber of Commerce-**opposed** bill that prevents employers from legitimately inquiring into an applicant's employment history, out of fear

of being charged with discrimination, will be considered by an Assembly policy committee next week.

AB 1450 (Allen; D-Santa Rosa) also unfairly targets state contractors by imposing a three-year debarment from state contracts if the business is found to have violated the provisions of the bill. The provision in essence provides a hiring preference for the unemployed with state contractors.

Current 'Employment Status'

AB 1450 prohibits employers from considering an applicant's current "employment status" when hiring for an available position, unless such status satisfies a "bona fide occupational" requirement. Although the bill states it does not prohibit an employer from reviewing the applicant's employment status or the reasons for any separation from employment, AB 1450 will essentially do just that.

In order to avoid accidentally exposing an applicant's current status as "unemployed" during the application process, employers ultimately will be barred from asking for: information regarding the applicant's most recent employer; the dates of employment with the most recent employer; or reasons for the separation from employment with the most recent employer.

Any of these legitimate inquiries could reveal that the applicant is currently unemployed, thereby subjecting the prospective employer to fees, penalties and an administrative claim through the Division of Labor Standards Enforcement (DLSE), as well as potential litigation under the Labor Code Private Attorney General Act (PAGA), or Business and Professions Code Section 17200 for alleged unfair business practices.

Moreover, AB 1450 does not differentiate between applicants who are unemployed due to their inadequate or

They won't know unless you tell them. Write your legislator.

calchambervotes.com

insufficient performance with their most recent employer, versus applicants who were unfortunately a part of a layoff.

An employer should be allowed to investigate the reasons a person is unemployed, including whether the applicant was recently terminated for serious misconduct, before offering that person a job and bringing him/her into the workplace.

Creates Hiring Preference

AB 1450 will in essence create a hiring preference for unemployed individuals, especially for state contractors. Instead of basing an employment decision on the actual qualifications of the applicant, employers will likely lean toward an unemployed applicant solely to eliminate any claim of alleged discrimination.

No Impact on Unemployment

Moreover, AB 1450 will not affect the unemployment rate. If there is an available position, the employer will ultimately hire someone.

The only thing AB 1450 does is inappropriately instruct private employers on who they can and cannot hire. The ability to determine which candidate is the most qualified for an available position is an independent decision that should be left to the employer, not state government.

Action Needed

AB 1450 will be heard in the Assembly Labor and Employment Committee on March 28. Contact your Assembly representative and committee members and ask them to **oppose AB 1450**.

Staff Contact: Jennifer Barrera

World Trade Opportunities in the Americas Get Attention at CalChamber Breakfast



Ambassador Charles Shapiro (center), president and CEO of The Institute of the Americas in San Diego, gives an overview of the trade and investment climate in the Americas at a March 9 breakfast presented by the CalChamber Council for International Trade, chaired by Susan Corrales-Diaz (right) of Systems Integrated. At left is Mark Jansen, council vice chair, of Blue Diamond Growers.



Quick Reference for Managers or Anyone New to HR

CalChamber's *2012 HR Handbook for California Employers* is an easy-to-understand guide for complying with complex California and federal employment laws. Make confident HR decisions about hiring, policies, benefits, compensation, workplace safety, termination and more.



Step-by-step guide to managing HR issues and complying with labor laws: **\$39.99**

The 2012 version includes important legal updates such as:

- New notice of pay details
- New restrictions for performing credit checks
- New law requiring employees continue to receive health benefits during Pregnancy Disability Leave
- Overtime for out-of-state employees

With this comprehensive guide you also get online access to download nearly 200 required and recommended forms.

Get a \$5 Starbucks Card when you buy a 2012 HR Handbook for California Employers by 4/4/12.

Use priority code HRST2A.

Preferred and Executive members receive their 20% discount in addition to this offer.

ORDER online now at calchamber.com/hrhandbook or call (800) 331-8877.

ADDRESS SERVICE REQUESTED

Helping California Business Do BusinessSM

www.calchamber.com

P.O. BOX 1736 SACRAMENTO, CA 95812-1736
(916) 444-6670 FACSIMILE (916) 444-6685

CALIFORNIA CHAMBER OF COMMERCE



Periodicals
Postage
PAID
Sacramento, CA