

ALERT

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 **CalChamber**
CALIFORNIA CHAMBER OF COMMERCE

Governor's Budget Plan Aligns Spending/Income

Risks: Economy, Federal Debt, Health Care

Governor Edmund G. Brown Jr. has proposed a “live within its means” state budget for 2013–14. If the projections and assumptions play out as planned, it will be the first time in decades that California has a balanced budget.

In announcing his proposed plan, the Governor said his budget would be adequately financed with existing general tax revenues and conclude the fiscal year with a billion-dollar reserve.

Nonpartisan Legislative Analyst Mac Taylor this week generally agreed that the state’s “underlying expenditures and revenues are roughly in balance,” but pointed to uncertainties (also acknowledged by the Governor) due to federal fiscal issues

that might have an impact on state revenues.

The Governor’s proposal achieves balance by:

- using the tax increases voters approved in November 2012 with Proposition 30 (more taxes for upper-income taxpayers, retroactive to the beginning of 2012 and continuing through 2018, plus a four-year quarter-cent state sales tax hike) and Proposition 39 (billion-dollar tax increase on certain multistate corporations);

- substantial spending cuts in ongoing programs; and

- more revenues from a forecast of “modest” economic growth.

See Governor’s Budget Plan: Page 3

IRS Issues Proposed Rules on Employer Tax Under Affordable Health Care Act



In January, the U.S. Treasury Department and the Internal Revenue Service published proposed rules and new *Q&As* providing guidance with respect to the employer “shared responsibility” excise tax under section 4980H of the Internal Revenue Code, which was added by the Patient Protection and Affordable Care Act and is effective beginning in 2014. *78 Fed. Reg. 217* (January 2, 2013)

The proposed rules are broad in scope and contain several new rules and clarifications. For example, the proposed rules:

- Expand upon earlier IRS safe harbor guidance for determining whether an employee is full-time and for determining whether coverage is affordable.

- Clarify that an employer will not be subject to tax for failure to offer coverage to spouses.

- Clarify that an employer that offers coverage to all but 5% of its full-time employees (or, if greater, five full-time employees) and their dependents will be

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Post Log 300A Starting
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Photo by Megan Wood

State Finance Director Ana Matosantos presents highlights of the Governor’s “live within its means” budget at the CalChamber Luncheon Forum on January 11.

Labor Law Corner

Mixed Business Shares Same Industry Order If Managed as One



Barbara Wilber
HR Adviser

We have a golf course that also has a snack bar/café. Which Industrial Welfare Commission order applies to our café? Is it different than the golf course?

Industrial Welfare Commission (IWC) Order 10, Amusement and Recreation Industry, covers golf courses and other businesses incidental to the main business. Unless the café is operated as a separately organized and managed entity, it also will be covered by IWC Order 10.

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To determine the correct order, it is necessary to understand how the classification system works in California.

Private Business

Private businesses are subject to 17 IWC orders regulating wages, hours and working conditions (such as meal periods, overtime, alternative workweeks, etc.), each with differing nuances, exceptions and exemptions that pertain to that particular business.

When determining which IWC order applies, follow a process of elimination. The orders are classified as either an industry order or an occupational order, and if an industry order exists for your type of business, it takes precedence over the particular occupation an employee is performing.

One must first review the descriptions of covered businesses in each order that contains the word “industry or industries” in the title. There are 12 orders identified as industry orders (1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 12 and 13) and five as occupational orders (4, 14, 15, 16 and 17). Occupational orders apply only when a business is not covered by an industry order.

Mixed Business

Mixed businesses require an assessment of the main purpose of the business and applying the order which corresponds to that purpose. There may be instances where a multipurpose business has two or more corporate entities operated for different purposes and the management is separately organized at all levels. In this case, two separate IWC orders may be appropriate.

The Division of Labor Standards Enforcement offers the following

examples of coverage situations:

- IWC Order 1 (manufacturing industry) applies to an office assistant employed by a company that builds automobiles because the company is covered by an industry order.
 - IWC Order 4 (an occupational order) applies to an office assistant employed in a law firm because a law firm is not covered by any industry order.
 - A business’s main purpose is operating a warehouse and incidental thereto the business employs a separate sales staff to sell goods. IWC Order 9 covers this operation even though sales are covered under IWC Order 7 because the main purpose of the business is to operate a warehouse.
 - A retail department store (IWC Order 7) owns a restaurant (IWC Order 5) that is located on the department store premises, but is operated as a separate corporate entity. These businesses are covered by different industry orders because they are operated for different business purposes, and the management is separately organized at all levels.
- The California Chamber of Commerce website, www.calchamber.com, also has a more in-depth discussion of the California wage order classification system.

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.

**Next Alert:
February 1**

CalChamber Calendar

Water Resources Committee:

March 7, Santa Monica

Fundraising Committee:

March 7, Santa Monica

Board of Directors:

March 7–8, Santa Monica

International Trade Breakfast:

March 7, Santa Monica

**Quick Answers
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HR Questions**

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Governor's Budget Plan Aligns Spending/Income

From Page 1

Budget Highlights

- **No new general taxes**, but some reforms to the state's enterprise zone tax incentives;
- **New investment in education**, accompanied by a new school finance allocation formula for grades K-12 and a push for the University of California (UC) and California State University (CSU) systems to shorten the time it takes for students to earn degrees;
- **Expanded coverage in the Medi-Cal program** to implement the federal health care act;
- **Continued debt reduction**; and
- **A plan to invest in infrastructure** while relying less on bonds.

Following is a closer look at specific areas of the Governor's budget plan. Fees continue to be significant funding sources in a number of areas.

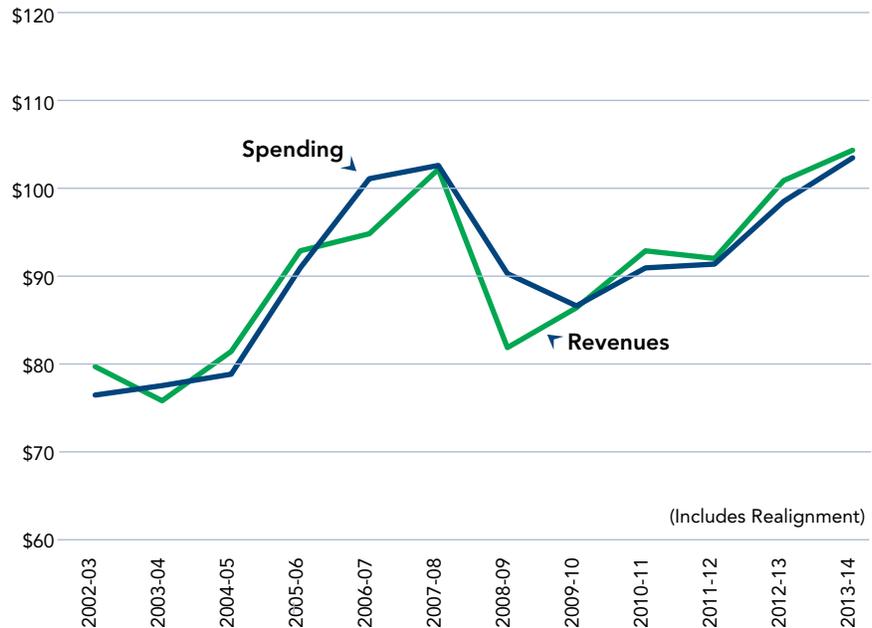
Education

Most of the growth of revenues in the Governor's proposed budget go to education, both public schools as well as colleges and universities.

Schools will maintain their promised funding for 2012, with a 5% increase in 2013. About \$2 billion has been dedicating to repay budgetary debt attributed to schools. Overall, funding for K-12 schools and community colleges will grow by 40% from the low point in 2011-12 through 2016-17.

For public schools, the administration has proposed a new school finance allocation formula that provides most of the new funds to districts that serve low-income and English language

State General Fund Growth (billions)



Source: California Foundation for Commerce and Education

learners. The "Local Control Funding Formula" also will consolidate numerous categorical education program funding into the school grants to reduce bureaucracy and allow greater spending flexibility by local school districts.

The budget also proposes transferring \$450 million from Proposition 39 revenues into a special fund for energy efficiency projects in schools and community colleges.

The UC and CSU systems also will receive augmentations promised with the passage of Proposition 30. Each segment

will receive another \$250 million (about a 5% increase). The Governor set out an expectation that the institutions will use the new funding to:

- maintain current tuition and fees, and not increase them for at least four years (UC has already indicated that a tuition hike this year is unlikely);
- implement reforms to enable students to progress through their college education more rapidly by providing needed courses and penalizing nonproductive coursework;

See Governor's Budget Plan: Page 4

Remember to Post Log 300A Beginning February 1

Reminder: The Log 300A must be completed and posted beginning February 1. This form contains a summary of the total number of job-related injuries and illnesses that occurred during the previous year. Employers are required to post only the summary (Form 300A)—not the Form 300 (Log)—from February 1 to April 30. The summary must list the total number of job-related injuries and illnesses that occurred in the previous

year and were logged on the Form 300 (Log). Companies with no recordable injuries or illnesses in the previous year must post the summary with zeros on the "total" line. A company executive must certify all establishment summaries.

The form is to be displayed in a common area where notices to employees usually are posted. Employers must make a copy of the summary available to employees who move from worksite to

worksite, such as construction workers, and employees who do not report to any fixed establishment on a regular basis.

A free Log 300 wizard is available at www.calchamberstore.com/log300wizard to help a business determine whether it is subject to recordkeeping requirements.

For more information on Form 300 filing and posting requirements, or copies of the OSHA Forms 300, 300A and 301, visit www.hrcalifornia.com.

Governor's Budget Plan Aligns Spending/Income

From Page 3

- better use technology to expand course offerings; and
- better use faculty and facilities by, for example, expanding summer sessions.

The Governor emphasized his concern that UC and CSU are not sufficiently committed to enabling students to efficiently reach their educational goals nor to easing transfer of students from community colleges. His budget aims to address these concerns.

Environment

Based on the budget summary, the administration will be suggesting more activity in environmental areas this spring.

The Governor plans to recommend potential funding mechanisms to provide communities with access to safe drinking water. This could include fees on industry sectors deemed to contribute to drinking water pollution.

Also proposed is streamlining the fee system that funds the state Department of Toxic Substances Control because the current structure provides inconsistent revenue and has led to program reductions.

The Governor also will propose reforms to the beverage container recycling fund in the spring to help address fraud, review program operations

and secure funding to support the long-term viability of the recycling program.

In the wake of the first carbon auction, held in November 2012, the budget addresses the expenditure of only \$200 million in auction proceeds for 2012–13 and \$400 million in 2013–14. The spending plan for AB 32 (climate change act) auction proceeds will be addressed in the May revise.

Health Care

The Governor's proposal devotes a substantial increase of funds to implement the federal Affordable Care Act. Specifically, the plan devotes about \$350 million to expand coverage in the Medi-Cal program to indigent adults and certain low-income families. The administration also is working on a new state-county partnership to implement the expansion of Medi-Cal eligibility.

Labor/Employment

Of interest in the labor/employment areas of the budget are proposals for:

- Enhanced data sharing between the Franchise Tax Board (FTB) and Employment Development Department (EDD)—projected to increase revenues by \$2 million as a result of increased payroll taxes, including increased

penalties, and \$649,000 in interest.

- Eliminating the July 1, 2013 sunset for employer assessments that help fund the Labor Enforcement Compliance Fund, which conducts audits and investigations for unfair work conditions.

- Redirecting \$2.5 million from the General Fund that normally goes to workers' safety and labor enforcement to the compliance fund to ensure prevailing wages are being paid on public projects. This redirection will be backfilled to the labor and enforcement compliance monitoring fund through employer assessments, possibly a sign that higher assessments are coming.

- Funding the compliance monitoring fund (currently operating at a deficit) for prevailing wages through "cost recovery" from other sources that support public work projects, and a \$5 million loan from the Targeted Inspection and Consultation Unit, also known as the high-hazard inspection program.

- An increase to the Workers' Compensation Administration Revolving Fund of \$152.9 million to support 82 positions to implement the recent reforms and fund the new Special Earnings Loss Supplement program.

See Governor's Budget Plan: Page 6

CalChamber-Sponsored Seminars/Trade Shows

More information at

www.calchamber.com/events.

Labor Law

HR 101: Intro to HR Administration. CalChamber. January 23: San Jose. (800) 331-8877.

HR 201: California Labor Law Update Seminar. CalChamber. January 24: San Jose; January 25: Emeryville. (800) 331-8877.

Exempt Employees Seminar. CalChamber. January 24: San Jose. (800) 331-8877.

Guidelines for New PDL and Disability Discrimination Rules Seminar. February 15, Sacramento. (800) 331-8877.

Leaves of Absence: Making Sense of It All. CalChamber. May 9: Sacramento. (800) 331-8877.

Business Resources

Networking/Recruiting Fair for Employers. University of California (UC), Merced. March 13, 2013: University

of the Pacific, Stockton; March 14: UC Merced; March 15: Fresno State University. (209) 228-7272.

International Trade

Next Generation of China's Entrepreneurs. Asia Society Northern California Center. January 23, San Francisco. (415) 421-8707.

2013 North America Road Show. inPeru. January 31, San Francisco. (511) 619-3333 ext. 2169.

Immigrants and Entrepreneurship. Asia Society Northern California Center. January 31, San Francisco. (415) 421-8707.

2013 California Agriculture/Culinary Tour. Culinary One Investments Group and Linder & Associates. February 10–16. (916) 799-8345.

China-Americas Trade on the Pacific Rim. Institute of the Americas. February 20, Los Angeles. (858) 453-5560.

Investing in Bulgaria. Consulate General of Bulgaria in Los Angeles. February 28, Palo Alto. (310) 756-4383.

CeBit 2013: Shareconomy. Deutsche Messe. March 5–9, Hannover, Germany. Asia Pacific Business Outlook. U.S. Commercial Service. April 8–9, Los Angeles. (213) 740-7130.

Hannover Messe 2013: Integrated Industry. Deutsche Messe. April 8–12, Hannover, Germany.

China-U.S. Business Summit 2013. China-U.S. Business Summit Committee. April 28–30, Los Angeles. (562) 437-8885.

World Trade Week Kickoff Breakfast. Los Angeles Area Chamber. May 2, Los Angeles. (213) 580-7569.

China International Technology Fair. Shanghai International Technology Exchange Center. May 8–11, Shanghai, China.

Journal Recognizes CalChamber Members as ‘Best Places to Work in San Diego’

Fourteen California Chamber of Commerce member companies have been recognized by the *San Diego Business Journal* as top places to work.

The list, released in August 2012, featured 85 companies, organized by size. The *Journal* also provided a profile summary for each company in the top five in each category.

The following are the CalChamber member companies that made it onto the “Best Places to Work in San Diego” list, along with excerpts from the summary featured in the article for those companies in the top five.

Small Businesses

- **No. 3—Cavignac & Associates**

Cavignac supports professional and personal growth for its employees. The insurance organization offers full financial support of continuing education, including paid time off for classes and exams. Staff members receive bonuses for industry designations or certifications achieved. Additionally, staff members receive periodic lunch and dinner bonuses if annual budget goals are met.

Cavignac encourages its staff to become active in community causes. Through the Employee Charity Fund, donations reached \$16,050 in 2011 and 100% of the employees contributed. The agency is a corporate donor that contributed \$55,040 to local charities in 2011.

- **No. 9—Innovative Employee Solutions, Inc.**, payroll and HR outsourcing services.

- **No. 17—San Diego Trust Bank**, banking services.

- **No. 30—MiresBall**, a San Diego-based brand strategy agency.

- **No. 32—Council of Community Clinics**, centralized support services to community clinics and health centers.

Medium Businesses

- **No. 1—Red Door Interactive Inc.**

Red Door offers employees flexible work schedules, telecommuting, and work-from-home options. The advertising and marketing firm provides opportunities to cross-train in different departments. The company supports employees’ individual learning through company-



sponsored attendance at industry seminars and conferences. It also offers tuition reimbursement, leadership training, and an on-staff career coach.

The San Diego office has an in-building fitness club that employees may join at a reduced membership rate. In the Carlsbad office, an office shower facility is available so employees can take advantage of a midday surf or run on the beach.

- **No. 13—Vistage International**, professionally facilitated peer advisory groups to CEOs, business owners and senior executives.

- **No. 17—TechFlow**, information technology services to government.

- **No. 19—Underground Elephant**, a technology-based performance marketing company.

- **No. 22—Digitaria**, a full-service digital agency founded in 1997.

Large Businesses

- **No. 1—PCL Construction Services, Inc.** PCL Construction Services, Inc.

encourages continuing education with its own college of construction and reimbursement for outside training.

Health and fitness is supported by a reimbursement of \$200 annually for gym memberships and exercise classes. The company offers unlimited paid sick time in the event an employee has an intermittent illness or must attend to a sick child or relative.

PCL supports its employees’ charitable causes as well. Since 2010, the company has been a platinum sponsor of the Susan G. Komen Race for a Cure and has donated more than \$40,000 in monetary and in-kind support. Additionally, the organization developed a team, “PCL Constructing a Cure,” for employees to walk the race and support the cause.

- **No. 16—Kaiser Permanente**, one of the nation’s largest not-for-profit health plans.

- **No. 28—Harrah’s Rincon Casino & Resort**, located in North San Diego, has 662 rooms and a 21 story tower.

Help CalChamber Identify Overlapping/Duplicative Regulations

The targets of regulations often know best how government requirements work in the real world. The California Chamber of Commerce would appreciate your help in identifying

overlapping and duplicative state regulations affecting your business. *Please email your comments to regs@calchamber.com.*

Governor's Budget Plan Aligns Spending/Income

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Judicial/Legal Reform

The budget plan proposes a \$200 million cut in allocations for the trial courts—to be patched through a \$200 million loan from the “Immediate and Critical Needs Account,” which is supposed to be used only for court construction and renovation. The borrowing of this money will delay planned construction on courthouses, except the Long Beach Courthouse. For that project, there will be an increase of \$34.8 million in the Immediate and Critical Needs Account.

Also referenced in the budget proposal is a reduced workload for the courthouses through statutory changes and more administrative resolutions.

Tax

A closer look at the tax-specific areas of the budget proposal reveals an increase of \$152 million to the FTB to continue the Enterprise Data to Revenue Project—including 184 new positions within the FTB. The project modernizes the FTB to make more information and tax-related functions available online. So far the project has helped to increase revenues to the FTB—double what was expected initially. The FTB expects this program to generate another \$4.9 billion through 2017.

The FTB predicts an increase of \$3 million in personal income tax collection as a result of the enhanced data sharing between FTB and EDD.

Proposition 30 is estimated to increase personal income tax collections by \$3.2 billion in 2011–12; \$4.8 billion in 2012–13; and \$4.9 billion in 2013–14. The increased sales-and-use tax will generate an additional \$611 million in 2012–13 and \$1.3 billion in 2013–14.

Proposition 39 is projected to increase corporate tax revenue by \$440 million in 2012–13 and \$900 million in 2013–14.

General Fund revenue sources for 2013–14 are: 62.7% from personal income tax; 23.6% from sales-and-use tax; and 9.3% from corporate tax. The top 1% of earners pay 40% of personal income tax collected.

The budget predicts \$150 million in 2013–14 from the use tax on Internet retailers.

Alcohol tax revenue is forecasted to decline from \$346 million in 2011–12 to \$326 million in 2013–14 due to a decline in consumption.

Also forecasted is a 3.6% decline in cigarette tax revenue due to decline in consumption.

Statewide property taxes are expected to increase by 1% in 2012–13 and 2.5% in 2013–14 due to the stabilizing of the real estate market.

Elimination of redevelopment agencies (RDA) is projected to save the General Fund \$2.1 billion in 2012–13, \$1.1 billion in 2013–14 and \$1 billion ongoing. The greater initial savings are a result of a one-time distribution of unencumbered funds being held in various RDA funds and accounts.

Enterprise zone regulatory reform is forecasted to increase General Fund revenue by \$10 million in 2012–13 and \$50 million in 2013–14.

Timber

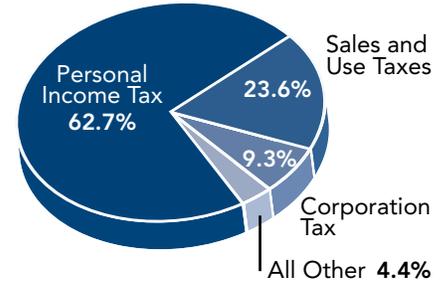
The budget includes more resources to quickly process timber harvest plans, but uses the timber tax passed last year as the funding source, so no new fees are anticipated

Transportation

The budget proposal:

- Appropriates \$8 billion for the high-speed rail project, including \$5.8 billion for the first phase of the initial operating section from Madera to

General Fund Revenue Sources by Taxation Type



Source: 2013-14 Governor's Proposed Budget

Bakersfield, \$1.1 billion for improvements to existing rail lines and \$819.3 million for intercity connectivity projects that will ultimately link to the high-speed rail system.

- Transfers \$67 million in special fund revenue to partially offset General Fund transportation debt service costs.

Legislative Analyst

The Legislative Analyst said the Governor's “emphasis on fiscal discipline and paying off the state's accumulated budgetary debts is commendable, especially in light of the risks and pressures that the state still faces.”

Among those pressures are uncertainties related to the federal debt discussions, which the Legislative Analyst described as “the key forecast risk now.”

IRS Issues Proposed Rules on Employer Tax Under Affordable Health Care Act

From Page 1

considered to have offered coverage to “substantially all” full-time employees.

- Clarify that each single employer within a controlled group of employers will be separately liable for the tax.

- Provide that employers will be notified that an employee has received a premium tax credit or a cost-sharing reduction for coverage on an Exchange and will have an opportunity to respond before the IRS issues a notice and demand for payment.

Visit this Groom Law Group Web page (www.groom.com/resources-734).

html) for comprehensive coverage of the new proposed rules. Interested parties do have an opportunity to **submit comments**—any comments on the proposed rules are due on March 18, 2013, and a public hearing is scheduled for April 23, 2013.

*This article has been reprinted with permission from **Groom Law Group, Chartered**. Groom Law Group is a Washington, DC-based law firm of 60 attorneys that focuses exclusively on employee benefits issues. More information about the firm and its attorneys can be found at www.groom.com.*

CalChamber Seeking Nominees for Small Business Advocate Award

The California Chamber of Commerce is seeking nominations for its Small Business Advocate of the Year Award.

Each year, the CalChamber recognizes several small business owners who have done an exceptional job with their local, state and national advocacy efforts on behalf of small businesses.

Application

The application should include information regarding how the nominee has significantly contributed as an outstanding advocate for small business in any of the following ways:

- Held leadership role or worked on statewide ballot measures;
- Testified before state Legislature;
- Held leadership role or worked on local ballot measures;
- Represented chamber before local government;
- Actively involved in federal legislation.

The application also should identify specific issues the nominee has worked on or advocated during the year.

Additional required materials:

- Describe in approximately 300 words why nominee should be selected.
- News articles or other exhibitions as supporting materials.
- Letter of recommendation from local chamber of commerce president or chairman of the board.

Deadline

Award nominations are due to the CalChamber Local Chamber Department by April 15. The nomination form is available on the CalChamber website at www.calchamber.com/smallbusiness or may be requested from the Local Chamber Department at (916) 444-6670.

CalChamber Labor Law Experts Share Human Resources Best Practices



CalChamber employment law experts Susan Kemp (left) and Erika Frank field questions at a CalChamber Labor Law Update seminar in Sacramento on January 17. The seminars in the HR 101/HR 201 series conclude next week with stops in San Jose and Emeryville. An exempt employees seminar also is scheduled for San Jose. Spaces still are available. Registration information at www.calchamberstore.com.

Wells Fargo Economist to Chair CalChamber Economic Advisory Council



Mark Vitner

Mark Vitner, managing director and senior economist for Wells Fargo, has been named 2013 Chair of the California Chamber of Commerce Economic Advisory Council.

Vitner is responsible for tracking U.S. and regional economic trends for Wells Fargo Securities, LLC. He also writes for the company's *Monthly Economic Outlook* report, the *Weekly Economic & Financial Commentary*, and provides regular updates on the housing markets, commercial real estate, regional economies and inflation. Vitner's commentary has been

featured in *The New York Times*, *The Wall Street Journal*, *Bloomberg* and other publications.

Vitner is a member of the National Association of Business Economists, American Economic Association, and the American Real Estate and Urban Economics Association.

He earned his B.B.A. in economics from the University of Georgia, an M.B.A. from the University of North Florida, and has completed the National Association of Business Economics (NABE) Advanced Training in Economics program at Carnegie Mellon University.

The CalChamber Economic Advisory Council is made up of leading economists from the private and public sectors. It presents a report each quarter to the CalChamber Board of Directors.

LIVE SEMINAR | FEBRUARY 15, 2013 | SACRAMENTO

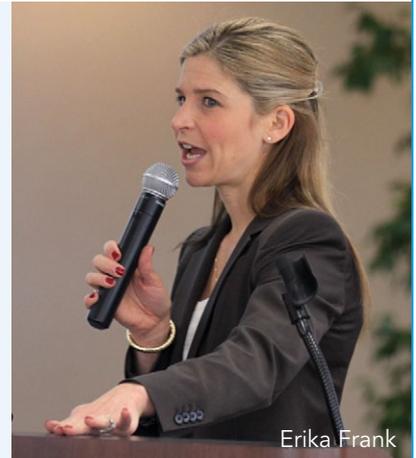
Guidelines for New PDL and Disability Discrimination Rules



New pregnancy disability leave (PDL) and disability discrimination regulations took effect on December 30, 2012. Even if you've reviewed the significant changes, you probably have compliance questions.

CalChamber's half-day seminar in Sacramento covers the amended regulations in detail, and their impact on employers and employees. How do you apply the new laws to your workplace situations? What's now considered reasonable accommodation? How should you handle pregnancy leave requests?

Special guest presenter Jennifer Brown Shaw, founding partner of Shaw Valenza LLP and innovative trainer on employment law topics, joins CalChamber employment law experts Erika Frank and Susan Kemp for an interactive, enlightening discussion. Leave with tips and pointers you can use.



Erika Frank

REGISTER at calchamber.com/feb15seminar or call (800) 331-8877 and mention priority code REG.

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