

ALERT

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 **CalChamber**
CALIFORNIA CHAMBER OF COMMERCE

CalChamber Urges Congress to Reform Immigration Law



Immigration reform is especially important to California, says Allan Zarembeg, president and CEO of the California Chamber of Commerce, in a letter sent June 17 to members of

Congress urging action on national immigration reform.

More than 20 local chamber of commerce executives from throughout California also signed the letter, part of a growing coalition supporting comprehensive immigration reform.

“Four significant issues critical to our

citizens and employers are why immigration reform is more important to California than any other state,” said Zarembeg. “These issues include H-1B visas, the temporary worker program, enhancing border security in a way that does not hamper trade with Mexico, and resolving uncertainty over the legal status of the largest undocumented population in the country.”

Tech Industry

California is home to the technology industry, which relies on highly skilled talent to innovate, design, manufacture, create jobs and grow the economy to enable success in the global marketplace. Currently, employers cannot find enough

See CalChamber Urges Congress: Page 4

Second Appeals Court Strikes NLRB Union Poster Rule



The U.S. Court of Appeals for the Fourth Circuit has rejected a National Labor Relations Board (NLRB) rule requiring most companies to post a notice informing employees of their union rights.

The court held that the posting requirement is unenforceable. This is the second federal appellate court to invalidate the requirement in the past two months.

Controversial Rule

The controversial poster rule required most private sector employers to put up an NLRB-created workplace poster entitled, “Employee Rights Under the National Labor Relations Act.”

The poster generally informs employees of their rights to organize a union, bargain collectively through representatives chosen by the employees and make efforts to improve the terms and conditions of their employment.

The posting requirement was initially scheduled for implementation in November 2011. That deadline was first delayed until April 30, 2012, and then put on hold indefinitely pending the outcome of legal challenges.

This challenge was brought by the U.S. Chamber of Commerce and the South Carolina Chamber of Commerce.

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Senate Committee OKs ‘Job Killer’ Legislation to Make Passage of New Taxes Easier



Four California Chamber of Commerce-opposed “job killer” bills that will make it easier for lawmakers to approve new taxes passed the Senate Elections and Constitutional Amendments Committee on June 18.

All the measures propose amending the State Constitution to lower the vote requirement for tax increases from two-thirds to 55%, thereby adding complexity and uncertainty to the current tax structure and pressure to increase taxes on commercial, industrial and residential property owners.

● **SCA 3 (Leno; D-San Francisco)** gives school districts and community

colleges new authority to enact a parcel tax for education programs through the lowered vote requirement.

● **SCA 7 (Wolk; D-Davis)** gives local governments the new authority to enact special taxes, including parcel taxes, to finance library construction.

● **SCA 9 (Corbett; D-San Leandro)** gives local governments the new authority to enact special taxes, including parcel taxes, to finance community and economic development projects.

● **SCA 11 (Hancock; D-Oakland)** simply gives local governments new authority to enact special taxes, including parcel taxes, through lowering the vote threshold.

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Labor Law Corner

State/U.S. Laws Protect Employees Entering Alcohol/Drug Rehabilitation



Sunny Lee
HR Adviser

My employee has informed me that she will be entering an alcohol rehabilitation program. Can we terminate her employment? Does it make any difference if she is a new employee and has told me that she has been in two other rehabilitation programs?

Under California law, an employer who regularly employs 25 or more

employees must reasonably accommodate an employee who voluntarily enters drug or alcohol rehabilitation and also must protect the employee's privacy in regard to being in rehabilitation.

This law applies to all employees, even new employees, and does not require that an employee satisfy any eligibility of work requirements, such as working for the employer for one year and 1,250 hours worked during the prior 12 months as is required under the Family Medical Leave Act (FMLA).

According to Labor Code Section 1025, an employee is protected if he/she voluntarily enters a rehabilitation program. There is no requirement that the employee be limited to one rehabilitation program or that the employee complete the program.

As long as the employee is in rehabilitation and the employer is able to reasonably accommodate the leave, the employee's job may be protected. As to multiple rehabs within the same year, an employer may want to check with legal counsel if claiming that it is unable to provide reasonable accommodation and that doing so would result in an undue hardship.

FMLA May Apply

In addition to this state law protection, an employer may be required to offer an FMLA leave to the employee if FMLA applies to the employer and the employee is eligible for an FMLA leave. That law will apply if the work eligibility requirements are met and the employee provides certification from a medical provider that indicates there is a serious health condition.

The FMLA does limit the leave to 12 weeks during a 12-month period and also requires that the employer continue to provide the health insurance coverage under the same basis as if the employee were not on a leave.

Even if the employee has not asked for a leave, but the employer knows of the circumstances and the rights that the employee may have, the employer should proceed on the basis of protecting the employee's job and providing benefits as required by law.

Other Protections

As to the fact that the employee has informed the employer that she has already been in two rehabilitation programs, she may be protected under the Americans with Disabilities Act (ADA) for having a history of alcohol addiction.

ADA protection applies to employers of 15 or more employees. California has a similar law under the Fair Employment and Housing Act which applies to employers of five or more employees.

Although these laws do not protect current use of alcohol, a history of addiction or the employer's perception that the employee is addicted may protect the employee.

Labor Code Section 1025 does not prohibit an employer from refusing to hire, or discharging an employee who, because of the employee's current use of alcohol or drugs, is unable to perform his/her duties, or cannot perform the duties in a manner that would not endanger his/her health or safety or the health or safety of others.

As each situation may vary and there may be multiple laws that may apply to protect employees from losing their job, it is best to consult with legal counsel before terminating any employee who may be in rehab.

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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Senate Committee OKs 'Job Killer' Bills to Make Passage of New Taxes Easier

From Page 1

Few Parameters

A chief concern with these proposals is that they provide blanket authority to the local government entity, school district or community college district to impose the designated tax.

There are few parameters or restrictions under which the tax may be imposed, other than that the revenue be used for the designated purpose.

With such broad discretion in the type or scope of the tax to impose on real property, the CalChamber is concerned that the constitutional amendments could lead to targeted taxes at the local level against unpopular taxpayers, industries, products or property.

Disproportionate Impact

For example, a parcel tax could be disproportionately directed at commercial

property within the local jurisdiction, thereby potentially undermining Proposition 13 protections and discriminating against commercial property versus residential.

Similarly, a special sales tax could be imposed solely on sweetened beverages or high-calorie items.

The CalChamber appreciates the current financial pressure many cities, counties, or special districts are under to maintain levels of funding for important services, such as services for educational entities, but believes it is improper to amend the Constitution to reduce the level of local voter approval necessary to impose nearly any type of tax.

The current two-thirds vote requirement for taxes provides a mechanism by which voters can still approve tax increases while protecting the interests of a small minority of taxpayers.

The business community consistently

maintains that if a tax is necessary, it should be only temporary and broad-based so that the impact is minimized as the tax is uniformly shared by all instead of an individual business, industry, or taxpayer.

Reducing the threshold for voter approval of a new tax increases the threat of unfair and economically harmful targeted taxes.

Key Votes

SCA 3, 7, 9 and 11 all passed Senate Elections and Constitutional Amendments on June 18, 3-0.

Ayes: Hancock (D-Oakland), Padilla (D-Pacoima), Yee (D-San Francisco/San Mateo).

No Vote Recorded: Anderson (R-Alpine), Torres (D-Pomona).

The measures will now go to the Senate Rules Committee.

Staff Contact: **Jeremy Merz**

Tax Credits for Hiring Veterans Extended Through End of Year

Employers who hire U.S. veterans can still take advantage of the Returning Heroes and Wounded Warrior federal tax credits, which Congress extended in January to December 31, 2013.

The Returning Heroes Tax Credit provides incentives of up to \$5,600 for hiring unemployed veterans:

- Short-term unemployed: A new credit of 40% of the first \$6,000 of wages (up to \$2,400) for hiring veterans who have been unemployed at least four weeks.

- Long-term unemployed: A new credit of 40% of the first \$14,000 of wages (up to \$5,600) for employers who hire veterans who have been unemployed longer than six months.

The Wounded Warriors Tax Credit doubles the existing Work Opportunity Tax Credit for long-term unemployed veterans with service-connected disabilities, to up to \$9,600. The credit:

- Maintains the existing Work Opportunity Tax Credit for veterans with

service-connected disabilities (currently the maximum is \$4,800);

- Provides a new credit of 40% of the first \$24,000 of wages (up to \$9,600) for firms that hire veterans with service-connected disabilities who have been unemployed longer than six months.

More Information

For more information regarding veteran tax credits or information on hiring veterans, visit www.calvet.ca.gov.

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CalChamber Urges Congress to Reform Immigration Law

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“home grown” engineers and scientists and are urging reform of the inadequate H-1B visa program.

According to the letter, “If the industry can’t find and bring enough skilled workers to California, they will go to where the engineers and scientists live—most likely offshore, which would not be a good outcome for the state.”

Agriculture

In addition, California’s unique and successful agriculture industry needs a temporary worker program that will

provide a predictable workforce, the chamber executives say. “Immigration reform should bring certainty to employers, employees and families.”

California also is home to about 23% of the nation’s undocumented immigrants, half of whom have lived here for more than 10 years.

Zarembeg and the other local chamber executives believe uncertainty over the legal status of so many undocumented immigrants in the state is a drag on the economy. The letter noted: “resolving the issue would stimulate consumer spending and investment.”

Finally, while border security is necessary to accomplish comprehensive reforms, it must be done in a way that protects legitimate commerce and travel. Mexico is California’s No. 1 export partner.

Action Needed

The CalChamber is encouraging letters to the California congressional delegation to urge support for comprehensive national immigration reform this year. An easy-to-edit sample letter is available at www.calchambervotes.com.

Staff Contact: Marti Fisher

Second Appeals Court Strikes NLRB Union Poster Rule

From Page 1

The Fourth Circuit’s decision directly questions the NLRB’s rulemaking authority. The case is *Chamber of Commerce v. National Labor Relations Board*, No. 12-01757, U.S. Court of Appeals for the Fourth Circuit.

No Power to Require a Poster

The Fourth Circuit ruled that there was nothing in the National Labor Relations Act (NLRA) that gave the NLRB power to require the posting of notices. Although Congress gave other agencies, such as the U.S. Department of Labor, the explicit power to require notices, it never granted the NLRB power to do so.

“Had Congress intended to grant the NLRB the power to require the posting of employee rights notices, it could have amended the NLRA to do so,” U.S. Circuit Judge Allyson Duncan wrote for the Fourth Circuit.

No ‘Carte Blanche’ Authority

The Fourth Circuit also ruled that the NLRB’s powers are limited to reacting to unfair labor practices and conducting representation elections upon request—the NLRB does not have proactive rulemaking powers.

“We agree with the district court that the rulemaking function provided for in the NLRA, by its express terms, only empowers the board to carry out its statutorily defined reactive roles in addressing unfair labor practice charges and conducting representation elections upon request,” the Fourth Circuit said. “Indeed, there is no function or responsibility of the board not predicated upon the filing of an unfair labor practice charge or a representation petition.”

Rachel Brand, U.S. Chamber of Commerce chief counsel for regulatory litigation, told Thomson Reuters that the

U.S. Chamber was pleased with the result and the court’s reasoning.

“The board has a reactive authority, not a carte blanche regulatory authority,” Brand said.

D.C. Circuit Rejection

Last month, the D.C. Circuit also struck down the poster rule. The D.C. Circuit reasoned that the rule violated free speech rights. Judge Raymond Randolph noted that federal law protects “the rights of employers (and unions) not to speak” and that the poster rule was “compelled speech.”

The D.C. Circuit did not reach the issue of the NLRB’s rulemaking authority.

The NLRB has statutory jurisdiction over private sector employers whose activity in interstate commerce exceeds a minimal level.

Staff Contact: Gail Cecchetti Whaley

CalChamber-Sponsored Seminars/Trade Shows

More information: calchamber.com/events.

Labor Law

California Employers and Workplace Privacy Webinar. CalChamber. July 18. (800) 331-8877.

HR Boot Camp: Toughest Challenges. CalChamber. September 11, San Diego. (800) 331-8877.

Put It in Writing: Employee Handbooks Webinar. CalChamber. September 19. (800) 331-8877.

California Rules for Pay/Scheduling

Nonexempt Webinar. CalChamber. October 17. (800) 331-8877.

Business Resources

Internship Program Workshop. University of the Pacific and Collegial Services.

July 17, Sacramento. 10% discount for CalChamber members. Use promo code “Chambers” when registering. (925) 818-2280.

California HR Conference. Professionals in Human Resources Association. August 26–28, Anaheim. (310) 416-1210.

International Trade

Intellectual Property Rights Seminar.

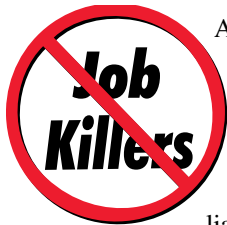
U.S. Department of Commerce - Office of Intellectual Property Rights, U.S. Patent and Trademark Office,

See Seminars/Trade Shows: Page 5

CalChamber Calendar

2013 PAC Workshop:
September 27, Burbank

Liability for Car Dealers/Rental Companies If Pending ‘Job Killer’ Bill Becomes Law



A California Chamber of Commerce-opposed “job killer” bill exposing car dealers and rental car companies to significant liability related to

“safety” recalls will be considered next week by an Assembly committee.

SB 686 (Jackson; D-Santa Barbara) precludes car dealers and rental car companies from renting, leasing, loaning, or selling a car despite the lack of actual knowledge that the car was subject to a recall that may or may not pose any imminent harm to the consumer or renter.

No National Database of Repairs

Although there is a national database of information regarding general recalls issued for certain makes and models of vehicles, there is no similar database that identifies whether a particular vehicle has undergone the repairs necessary to fix the defect.

SB 686 implicitly recognizes this problem by setting forth other potential means for a dealer or rental car company to obtain information regarding the status

of a recall, including: the Internet website of a manufacturer; telephone number of a manufacturer; a franchisee of the manufacturer; or a vehicle history report.

While one of these four possibilities ultimately may produce the necessary information, there is no guarantee that it will. Nevertheless, the dealer is imputed with knowledge that it has never received.

Moreover, there is no indication how many times or for what period the dealer must attempt to obtain information from any of these four options, before the dealer can reasonably assume the vehicle is not under a safety recall. Failure on behalf of a dealer to satisfy these requirements will result in litigation or liability.

Delay Implementation

May 24 amendments to SB 686 delayed implementation of the prohibitions in the bill on a licensed dealer until the effective date of federal regulations that require the creation of a national database that lists all recalls by vehicle identification number and whether the recall has been repaired. The effective date of the regulations, however, is not necessarily the date upon which the federal database will be functional.

The CalChamber has asked that SB 686 be delayed until there is a federal database that is searchable by make, model, and vehicle identification number (VIN) to identify whether a specific vehicle is subject to a recall and has been repaired. Until this database is created, SB 686 subjects dealers to a difficult standard.

‘Safety’ Undefined

Furthermore, the term “safety” is undefined and extremely subjective. Essentially all recalls could be characterized as a safety issue, regardless of how imminent or significant the safety threat is as related to the defect.

Further clarity needs to be provided in order for licensed dealers to avoid needless litigation.

Last, SB 686 prohibits a licensed dealer from selling a vehicle as “certified” if it has been subject to a safety recall and the required repairs have not been performed. As set forth above, this is an extremely difficult standard for used car dealers to satisfy until the national database is available.

Even then, it is unlikely that the database will designate the recall as a “safety” issue versus a nonsafety recall. Accordingly, SB 686 will create uncertainty for used car dealers with regard to whether a specific recall falls within the “safety” category versus a minor fix, and whether such cars may be sold as “certified.”

Of course, any mistake by the dealer with regard to this characterization will result in litigation and possible liability.

The prohibition will have an impact on the used-car market as well as consumers’ ability to trade in such a car, thereby potentially forcing them to engage in a private party sale in the underground economy.

Action Needed

SB 686 is scheduled to be considered June 25 by the Assembly Business, Professions and Consumer Protection Committee.

Contact committee members and your Assembly representative and urge them to **oppose SB 686.**

Staff Contact: Jennifer Barrera

CalChamber-Sponsored Seminars/Trade Shows

From Page 4

- U.S. Commercial Service. June 25, Los Angeles. (213) 200-7172.
- U.S.-Saudi Auto Conference. U.S. Saudi Arabian Business Council. June 26, Birmingham, Michigan. (703) 204-0332.
- Japan America Society of Southern California (JASSC) 104th Anniversary Celebration. JASSC. July 2, Los Angeles. (213) 624-6217.
- Trade Mission to Colombia. Los Angeles County Business Federation and Los Angeles Metro Hispanic Chambers. July 14–19, Bogota, Colombia. (818) 984-5080.
- Go Global Webinars. U.S. Department of Commerce. July 16: Finding Buyers and Making Contacts; July 30 and August 13: Trade Financing; August 27: Documentation and Shipping; September 10 and September 24: Under-

- standing Export Regulations; October 8: Avoiding and Resolving Problems. America’s Cup: San Francisco 2013. America’s Cup. September 7–22, San Francisco.
- China International Auto Parts Expo 2013. Consulate General of People’s Republic of China, San Francisco. September 13–15, Beijing, China. (415) 852-5972.
- Guy Fox Maritime Industry Salute Dinner. International Seafarers Center of Long Beach-Los Angeles. September 18, Aboard RMS Queen Mary. (310) 816-6510.
- The Americas Business Forum. Los Angeles Area Chamber. September 25–26, Los Angeles. (213) 580-7570.
- Expo Pakistan. Trade Development Authority of Pakistan. September 26–29, Karachi, Pakistan.

Legislative Outlook

An update on the status of key legislation affecting businesses. Visit www.calchambervotes.com for more information, sample letters and updates on other legislation. Staff contacts listed below can be reached at (916) 444-6670. Address correspondence to legislators at the State Capitol, Sacramento, CA 95814. Be sure to include your company name and location on all correspondence.

Costly New Environmental Law Requirement Pending



OPPOSE

Legislation establishing a costly new requirement for complying with the California Environmental Quality Act (CEQA) is scheduled to be considered July 3 by the Senate Environmental Quality Committee.

The California Chamber of Commerce **opposes AB 543 (Campos; D-San Jose)**, which increases the cost and burden of development, and exposes lead agencies and project proponents to new lawsuits, by requiring them to translate CEQA notices into all languages spoken by 25% or more of the individuals located at or near an area of the proposed project.

As the bill is drafted, it is unclear what threshold would trigger the translation requirement in the bill. This ambiguity means a project proponent must choose between having the entire project tied up in court and delayed, or incurring tens of thousands in additional costs to translate these documents into any language that might arguably meet that threshold.

For large urban areas like San Francisco and Los Angeles, where more than 100 languages are spoken and ethnic groups often live in linguistically isolated communities that could be deemed “at or

near” a proposed project, the translation costs will be particularly burdensome.

Even assuming a lead agency could clearly determine which projects require translation into which languages, AB 543 still would increase the risk of litigation for most projects under CEQA because highly technical documents do not translate well into other languages.

By dramatically increasing the litigation risk for projects subject to CEQA, AB 543 will drive up costs for project proponents and create delays for good projects.

In addition, because AB 543 creates a new basis on which a project may be challenged in court, project proponents will have to account for higher litigation costs when deciding where to locate a project.

AB 543 increases the liability, time and expense associated with CEQA compliance at a time when legislators are trying to update the law to accomplish the opposite.

The CalChamber is urging Senate Environmental Quality members to **oppose AB 543**.

Staff Contact: Mira Guertin

Fair Employment and Housing Council Members Take Office

The Fair Employment and Housing Council, successor to the Fair Employment and Housing Commission, held its inaugural meeting on June 18.

Legislation signed in 2012 (SB 1038) eliminated the commission and replaced it with the council, which assumed the former commission’s regulatory functions. The council is part of the Department of Fair Employment and Housing (DFEH).

SB 1038 also eliminated the administrative adjudication of claims under the Fair Employment and Housing Act. Instead, the DFEH is now authorized to bring cases directly in court.

New Members

The council consists of seven council members appointed by the Governor and confirmed by the Senate. On May 8, Governor Edmund G. Brown Jr. announced the appointment of the first five council members. Their terms expire on January 1, 2017. There are two vacancies.

The five current council members are:

● **Chaya Mandelbaum**, chair: Mandelbaum has served in multiple positions at Sanford Heisler LLP since 2011, including senior litigation counsel and associate.

● **Dale Brodsky**: Brodsky is a partner at Beeson Tayer and Bodine, where she has served as an attorney since 2002.

● **Chanee Franklin Minor**: Minor has been a staff attorney for the Rent Stabilization Board at the City of Berkeley since 2011.

● **Patricia Perez**: Perez has been president and CEO at Puente Consulting APC since 2001.

● **Andrew Schneiderman**: Schneiderman has been vice president and general counsel at the California Commerce Club Inc. since 1994.

Staff Contact: Gail Cecchettini Whaley

CalChamber, Japan Business Representatives Exchange Trade Updates



A June 13 luncheon in Sacramento provides an opportunity for CalChamber representatives to exchange comments on international trade and the world economy with members of the Japan Business Association of Southern California (JBA) and the Japanese Chamber of Commerce of Northern California (JCCNC). From left are: Hitoshi Yamamuro, vice president and regional manager, Japan Airlines Co., Ltd.; Takashi Amino, regional officer and general manager, Mitsui & Co. (USA), Inc.; Susanne Stirling, CalChamber vice president, international affairs; Masumi Muroi, JBA president and Western States regional officer, Mitsui & Co. (USA), Inc.; Norio Minato, vice president, R&D engineering, Mazda North American Operations; Allan Zaremborg, CalChamber president and CEO; Masao Sasayama, senior vice president, Union Bank, N.A., Pacific Rim Corporate; Hiroshi Tomita, JCCNC president and president, Konica Minolta Laboratory USA, Inc.; Masahiro Miyazaki, president and CEO, Hitachi High Technologies America, Inc.; Akihiko Hara, president and CEO, FX Global, Inc.; June-ko Nakagawa, JCCNC executive director; Hideki Kishimoto, executive vice president, Union Bank, and general manager, The Bank of Tokyo-Mitsubishi UFJ, Ltd.; and Scott Keene, adviser.

IRS Launches Webinars Designed Especially for Small Business Owners

The Internal Revenue Service (IRS) is providing two free webinars on topics that will help small business owners develop sound business practices.

The one-hour webinars cover available tax benefits and tips on how best to avoid common mistakes small business owners may make.

The sessions are ideal for:

- small business owners;
- small business and industry leaders and organizations; and
- tax professionals.

Tax Benefits Webinar

The *Small Business Owners: Get All the Tax Benefits You Deserve* webinar will

cover the following topics:

- Available business tax credits;
- Business expenses and deductions information;
- Latest facts about the American Taxpayer Relief Act;
- Qualifications for the Earned Income Tax Credit; and
- What is a business depreciation deduction?

Tax Mistakes Webinar

The *Avoiding the Top Tax Mistakes that Small Businesses Make* webinar will include the following topics:

- Good recordkeeping strategies;
- Helpful tax information resources;

- How to carefully choose a tax preparer;
- Tips to avoid common mistakes with business taxes; and
- What is reportable income?

Webinar Access

These webinars will be available on the IRS video portal Web page, www.irsvideos.gov/Professional/Webinars, in mid-July.

The IRS also provides a virtual workshop for new business owners that covers federal tax obligations at www.irsvideos.gov/SmallBusinessTaxpayer/virtualworkshop.

THURSDAY, JULY 18, 2013 | 10:00 – 11:30 A.M. PT

Live Webinar: What California Employers Should Know About Workplace Privacy

Employers must tread carefully when it comes to privacy rights. For example, it's important to know the limits you can place on mobile device use, emails and other employee communications during and outside of work. But how do you balance lost productivity with being too restrictive? What if you suspect misconduct? Privacy issues are a growing concern for all involved.

Join our employment law experts for clarity on employee privacy rights related to:

- State and federal guarantees and limitations
- Pre-hire background and social media checks
- Use of employer's electronic devices and employees' personal mobile devices
- Social media posts by employees while at work
- Employee monitoring
- Drug and alcohol testing

They'll also address drafting company policies on what employees can and can't expect to remain private in the workplace.



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