

# ALERT

VOLUME 40, NUMBER 4 • FEBRUARY 7, 2014



## CalChamber Urges Action on Immigration Reform



Prospects for immigration reform brightened last week when the House Republican conference released its standards for reform on January 28 (*see Page 6*), then dimmed this

week, according to news reports that some Republicans were advocating waiting until next year.

The January 28 standards call for a fix to the nation's immigration system and acknowledge that failure to fix it will hurt the economy and jeopardize national security.

### Reform Needed This Year

While debate on this issue will be vigorous, the California Chamber of Commerce continues to push for comprehensive immigration reform this year.

Representatives Kevin McCarthy (R-Bakersfield), Darrell Issa (R-Vista), Jeff Denham (R-Atwater) and David Valadao (R-Hanford) are to be applauded for their efforts on this issue.

They are providing an important voice in the immigration reform discussion because immigration reform is critical to California—perhaps more so than for any other state. Without an improved California economy, the nation's economy will continue to lag.

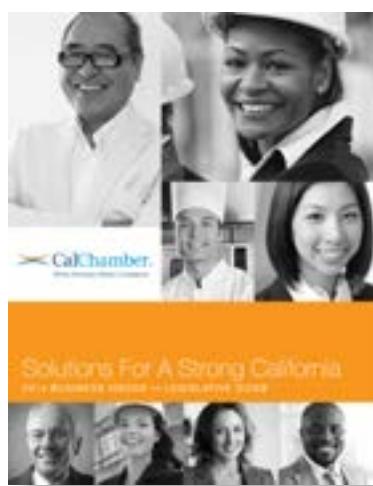
*See Immigration Reform: Page 6*

## 2014 Issues Guide Available on Website

The California Chamber of Commerce **2014 Business Issues and Legislative Guide** is available now at [www.calchamber.com/businessissues](http://www.calchamber.com/businessissues).

This easy-to-reference publication compiles background information on policies the CalChamber has identified as **Solutions for a Strong California**.

The *Guide* is a good research tool about the proposals that can serve as a foundation for positioning California to move from recovery to prosperity, boosting job creation and



minimizing uncertainty for job creators and investors.

CalChamber preferred and executive members currently receiving printed copies of *Alert* will be receiving hard copies of the *Guide* in the mail.

Additional hard copies are available for purchase through the CalChamber store, [www.calchamberstore.com](http://www.calchamberstore.com).

Also available is an e-book edition of the *Guide*, compatible with smartphones and tablets.

## Senate Passes Bill Limiting Fraud Protection Efforts



### OPPOSE

A California Chamber of Commerce-**opposed** bill that reduces and stifles innovation, making it more difficult to purchase digital goods and services online, leading to endless litigation, and hampering efforts to reduce fraud and identity theft, passed the Senate last week.

**SB 383 (Jackson; D-Santa Barbara)** imposes enormous burdens on online retailers of digital products because it would require companies to bifurcate their digital product offerings into two categories depending on the amount of information shared by the consumer.

### Creates Customer Confusion

The bill also creates a lot of consumer confusion and dissatisfaction. Under SB 383, individuals who do not opt-in and provide certain information frequently will receive an inferior product/service/subscription, since it will not be possible to share a product across platforms, send software update notifications, provide replacement downloads, grant upgrade pricing, or provide online support, without the appropriate data.

It is quite foreseeable that many consumers, post purchase, will be unhappy with a decision to not opt-in, but the terms of SB 383 will make it very difficult for a retailer to resolve those concerns.

*See Senate: Page 4*

### Inside

#### Guest Commentary: Page 5

## Labor Law Corner

# Exempt Employee's Part-Day Absence: OK to Deduct Less than 4 Hours



**Gary Hermann**  
**HR Adviser**

*Is a deduction from an exempt employee's vacation bank for a partial day's absence limited to increments of four or more hours?*

No!

In 2005, there was a California Supreme Court case involving the Pacific Gas and Electric Company. PG&E established a policy that if an exempt

employee took off four or more hours personal time in the course of a workday, PG&E would deduct that amount from the employee's vacation bank.

In *PG&E v. Conley*, 131 Cal App 4th 260 (2005), the court concluded that PG&E's policy neither imposed a forfeiture nor operated to prevent vacation from vesting as it is earned. The policy merely regulated the timing of exempt employees' use of their vacation time.

### Opinion Letter

The Chief Counsel for the Labor Commissioner, however, concluded in an opinion letter (OL 2009.10.15) that the *Conley* case did not provide that an employer could not make deductions from an employee's vacation time in amounts less than four hours pursuant to

a bona fide employer plan.

Under the salary basis test for exempt employees, the obligation is that the employee receive no less than the proportionate amount of the employee's salary in the case of a partial day's absence for personal reasons, even if a portion of such pay comes from the employee's vacation bank.

The full day's salary would be due if the employee's vacation bank was insufficient to cover the missed daily time.

*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](http://www.hrcalifornia.com).*

## CalChamber-Sponsored Seminars/Trade Shows

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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 Zaremberg. Executive Editor: Ann Amioka. Associate Editor: Sara Espinosa. Art Director: Neil Ishikawa. Capitol Correspondent: Christine Haddon.*

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### Labor Law

Clued in on Workplace Investigations. CalChamber. February 20, Webinar. (800) 331-8877.

HR Boot Camp. CalChamber. March 5, Long Beach; April 10, Fresno; May 1, Sacramento; June 10, Santa Clara. (800) 331-8877.

Responsible Sourcing Summit. UL. March 5–6, San Francisco. (310) 215-0554.

### Government Relations

California Maritime Leadership Symposium. California Association of Port Authorities, California Marine and Intermodal Transportation Advisory Council, California Maritime Academy. February 19–20, Sacramento. (310) 584-7933, extension 5.

### International Trade

Venture Summit West 2014. California Spain Chamber of Commerce. February 12, Mountain View. (212) 202-1002.

23rd International Black Sea Tourism Forum. Crimean Tourism Development Center. February 25–26, Yalta, Ukraine. (415) 316-9430.

NAFTA at Twenty. University of Southern California (USC) and Institute of the Americas. March 5, Los Angeles. (858) 453-5560.

Indonesia International Furniture Expo 2014. Indonesian Trade Promotion Center Los Angeles. March 11–14, Jakarta, Indonesia. (213) 387-7041.

Offshore Technology Conference 2014. Malaysia External Trade Development Corporation. March 25–26, Kuala Lumpur, Malaysia. (213) 892-9034.

Asia/Pacific Business Outlook Conference. USC. April 7–8, Los Angeles. (213) 740-7130.

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

China International Trade Mission and Expo. CalAsian Chamber of Commerce. May 22–June 1, Shanghai, China. (916) 446-7883.

China International Food Exhibition 2014. MERREBO Messe Marketing. May 27–29, Guangzhou, China.

The 15th Malaysia International Food and Beverage Trade Fair. Sphere Exhibits Malaysia Sdn Berhad and Mutiara Sigma (M) Sdn Bhd. June 19–21, Kuala Lumpur, Malaysia.

**Next Alert:  
February 28**

Vote Through February 28

## Creative Entries Abound in CalChamber's Off the Wall Photo Contest

Who knew there were so many creative ways to reuse your 2013 employment notices poster? Vote for your favorite photos, now through the end of February, in the California Chamber of Commerce Off the Wall Photo Contest.

"We created the poster photo contest to kick off the new year in a fun way," said Karen Olson, CalChamber vice president, marketing. "We're delighted with the response and the ingenuity of the 77 entries. People put a lot of thought and effort into their photos."

Online voting will determine which entrants will be among the four winners. The highest vote-getter will receive an Apple® iPad Air™ (one winner). Second prize is an Amazon Kindle Fire HD (three winners).

### Voting Rules

Each person may vote only once every seven days for his/her favorite photo(s). The following activities are prohibited:

- offering anything of value in exchange for a vote;
- requesting votes from any website, forum or group that exists for the purpose of assisting its members in garnering contest votes;
- any other activity aimed at unfairly influencing the voting numbers.

Any violation of these prohibitions will result in disqualification at the sole discretion of CalChamber.

### Vote Today

Voting began February 1 and ends February 28.

See the entries and vote for your favorites at [calchamber.com/postercontest](http://calchamber.com/postercontest).

### 2014 Poster Updates

Even a business that employs only one person in California must post and hand



The banner features a purple background with white text. At the top, it says "Time to Vote for Your Favorites!" and "OFF THE WALL PHOTO CONTEST". Below that is a large blue thumbs-up icon. To the right is a small photo of a person holding a poster. The text "Who most creatively reused their out-of-date poster?" and "Vote for your favorite photos every 7 days between 2/1/14 and 2/28/14." is displayed. On the right side, there is a "Vote!" button. At the bottom, it says "One 1st Prize: Apple® iPad Air™ • Three 2nd Prizes: Amazon Kindle Fire HD".

**Out with the old.**  
With California's minimum wage increase, we'll all need a new employment notices poster for 2014 (even if you only employ one person).

**In with the new.**  
Get your required 2014 California and Federal Employment Notices poster from CalChamber to keep the poster police away! [calchamber.com/newposter](http://calchamber.com/newposter)

out required state and federal employment notices in each company location.

AB 10 increases California's current minimum wage of \$8 per hour by two, one-dollar increments—the first in July 2014, and the second in January 2016. The new law marks the first increase to the minimum wage since January 1, 2008.

The new official notice displays:

- The current minimum wage of \$8 per hour;
- The new first increase in the minimum wage to \$9 per hour effective July 1, 2014; and
- The second increase in the minimum wage to \$10 per hour effective January 1, 2016.

The California Labor Commissioner included the current minimum wage rate and the two upcoming increases on the new official notice (MW-2014). The decision to include all three rates benefits employers. It gives businesses a legally

compliant minimum wage notice that can be used on January 1, 2014, and covers them when the July 2014 increase occurs.

Employers should further note there is a mandatory change to the California Department of Fair Employment and Housing notice "California Law Prohibits Workplace Discrimination and Harassment" that requires a new employment notice posting on January 1, 2014. This posting also is included in the CalChamber 2014 California and Federal Employment Notices Poster.

*Apple and iPad Air are trademarks of Apple, Inc. Amazon and Kindle Fire HD are trademarks of Amazon. The Apple iPad Air and Kindle Fire HDs are being offered by CalChamber solely as prizes. Neither Apple nor Amazon is a sponsor of the contest.*

### CalChamber Calendar

#### Business Services Committee:

March 6, Santa Monica

#### Fundraising Committee:

March 6, Santa Monica

#### Water Committee:

March 6, Santa Monica

#### Board of Directors:

March 6–7, Santa Monica

#### International Trade Breakfast:

March 7 Santa Monica



The banner features a blue background with white text. On the left is a partial image of the California State Capitol building. The text reads "Save The Date" and "MAY 20-21, 2014". Below that is the main title "LEGISLATIVE BRIEFING & SACRAMENTO HOST BREAKFAST". The CalChamber logo is in the top right corner.

## Fiscal Committee Holds Bill Regulating Consumer Products



### OPPOSE

after being held in the Senate Appropriations Committee on January 23.

#### **SB 747 (DeSaulnier; D-Concord)**

would have allowed the state Department of Public Health (DPH) to request information from selected manufacturers of consumer products the department determined contribute to a significant public health epidemic. It also would have allowed the department to impose a fee of up to \$20,000 per manufacturer to cover the costs of reviewing the information the manufacturers provided.

A California Chamber of Commerce-**opposed** bill that establishes a costly, duplicative and burdensome new program for consumer products is dead for the year,

Earlier versions of the bill went much further, granting DPH the authority to enforce mitigation strategies proposed by manufacturers, and even to ban the sale of products in the state. While deletion of these provisions helped minimize the immediate threat to manufacturers of consumer products, it also made the purpose of the legislation less clear.

The bill would have given DPH dual jurisdiction over consumer products already subject to regulation through Proposition 65, administered by the Office of Environmental Health Hazard Assessment, and the Safer Consumer Products Regulation run by the Department of Toxic Substances Control (DTSC). Virtually all consumer products are under the regulatory authority of one or both of these agencies, and the criteria for toxicity includes public health, not just environmental criteria.

In addition, food preparation safety is regulated already by local public health directors and inspectors, who coordinate with the DPH Food and Drug Branch and the U.S. Department of Agriculture. Food sourcing safety also is regulated already by the state Department of Food and Agriculture. Manufacturers also are subject to a number of federal rules.

SB 747 raised additional concerns because it limited DPH to seeking information (and presumably fees) from manufacturers that represent 80% of the costs the consumer product imposes on the state public health system, creating an unfair advantage for their unregulated competitors.

**Staff Contact:** Mira Guertin

## Senate Passes Bill Limiting Fraud Protection Efforts

*From Page 1*

Many of the world's most innovative technology companies rely on account-based business models to offer their digital goods and services to customers, and many of these companies are based in California. These account-based models simplify a consumer's experience by saving information from previous transactions so that past activity is readily at the customer's fingertips, repetitive information doesn't need to constantly be reviewed, and consumers can find products simply and quickly. The SB 383 approach would practically eliminate account-based transactions.

### Bill Is Unworkable

SB 383 is also unworkable in that it would essentially require websites to set up a separate transaction page for California customers.

In fact, at the beginning of any potential purchase of a downloadable product, online retailers would have to ask for a customer's home state and then create several "California only" pages. Dividing the online shopping experience in such a way will likely confuse customers further, lead to fewer transactions and have a negative economic impact on the state.

In today's global world of online commerce, a California-only requirement

makes no sense and will hurt many California-based Internet businesses.

### More Class Action Lawsuits

SB 383 also strengthens the specter of class-action litigation in multiple ways.

The Song-Beverly Act has a \$250/\$1,000 per occurrence civil penalty, which in the modern, online world could quickly reach enormous sums of money for a simple misinterpretation of the statute. The complexity of the act, combined with subjective judgments required by SB 383, will result in several unintended consequences, in addition to frivolous litigation.

Although the high cost of keeping meticulous records of how, when and where consumer information is collected is a significant issue, the most problematic aspect is the chilling effect the act will have on efforts to combat fraud and identity theft.

The bill allows the collection of only information a company requires to combat fraud, and it mandates destruction of the information when it is no longer necessary to combat fraud without defining that standard.

Given the risk of catastrophic litigation, SB 383 significantly complicates the incentives of companies to monitor for and prevent fraud and identity theft.

### Key Vote

SB 383 passed the Senate on January 30, 21-13.

**Ayes:** Calderon (D-Montebello), Corbett (D-San Leandro), Correa (D-Santa Ana), de León (D-Los Angeles), DeSaulnier (D-Concord), Evans (D-Santa Rosa), Hancock (D-Oakland), Hueso (D-Logan Heights), Jackson (D-Santa Barbara), Lara (D-Bell Gardens), Leno (D-San Francisco), Lieu (D-Torrance), Liu (D-La Cañada Flintridge), Mitchell (D-Los Angeles), Monning (D-Carmel), Padilla (D-Pacoima), Pavley (D-Agoura Hills), Roth (D-Riverside), Steinberg (D-Sacramento), Wolk (D-Davis), Yee (D-San Francisco/San Mateo).

**Noes:** Anderson (R-Alpine), Berryhill (R-Modesto), Fuller (R-Bakersfield), T. Gaines (R-Rocklin), Galgiani (D-Stockton), Hernandez (D-West Covina), Hill (D-San Mateo), Huff (R-Diamond Bar), Knight (R-Palmdale), Torres (D-Pomona), Vidak (R-Hanford), Walters (R-Irvine), Wyland (R-Escondido).

**No Vote Recorded:** Beall (D-San Jose), Block (D-San Diego), Cannella (R-Ceres), Nielsen (R-Gerber), Wright (D-Inglewood).

The bill is currently at the Assembly Desk awaiting its first Assembly policy committee assignment.

**Staff Contact:** Valerie Nera

# Demise of Car Tax Initiative Leaves Transportation Finance Unresolved



Loren Kaye

News last week that proponents have dropped their initiative to increase the car tax for transportation projects was unsurprising, but only leads to the larger question of

how to meet legitimate new needs for roads, highways and other transportation works.

Recent private polling has found that voters are disinclined to approve new taxes for ... almost anything. Even though most voters won't pay the Proposition 30 income tax hikes, they believe these tax increases are enough to address the state's problems, especially with their biggest concern: public education. Lingering uncertainty about California's modest economic recovery also dampens voter interest in new taxes.

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## Incipient Financial Crisis

This is cold comfort for transportation and economic development advocates, who see an incipient financial crisis for Californians' mobility.

The lion's share of money for roads, highways and transit in California is

## Guest Commentary By Loren Kaye

thrown off by the gasoline excise tax, which totals 39.5 cents a gallon—the highest such rate in the country. But changes in Californians' behavior—influenced by market forces and public policy—have disrupted this venerable source of transportation finance.

Higher mileage cars, including the penetration of hybrids and vehicles that don't run at all on gasoline, are fundamentally altering the shape of the fuel tax revenue curve. Last fiscal year, Californians purchased the least amount of gasoline since 1998–99.

## Downward Trend

While historic downturns in gasoline purchases have been temporary, the overall downward trend since the end of the last century seems apparent.

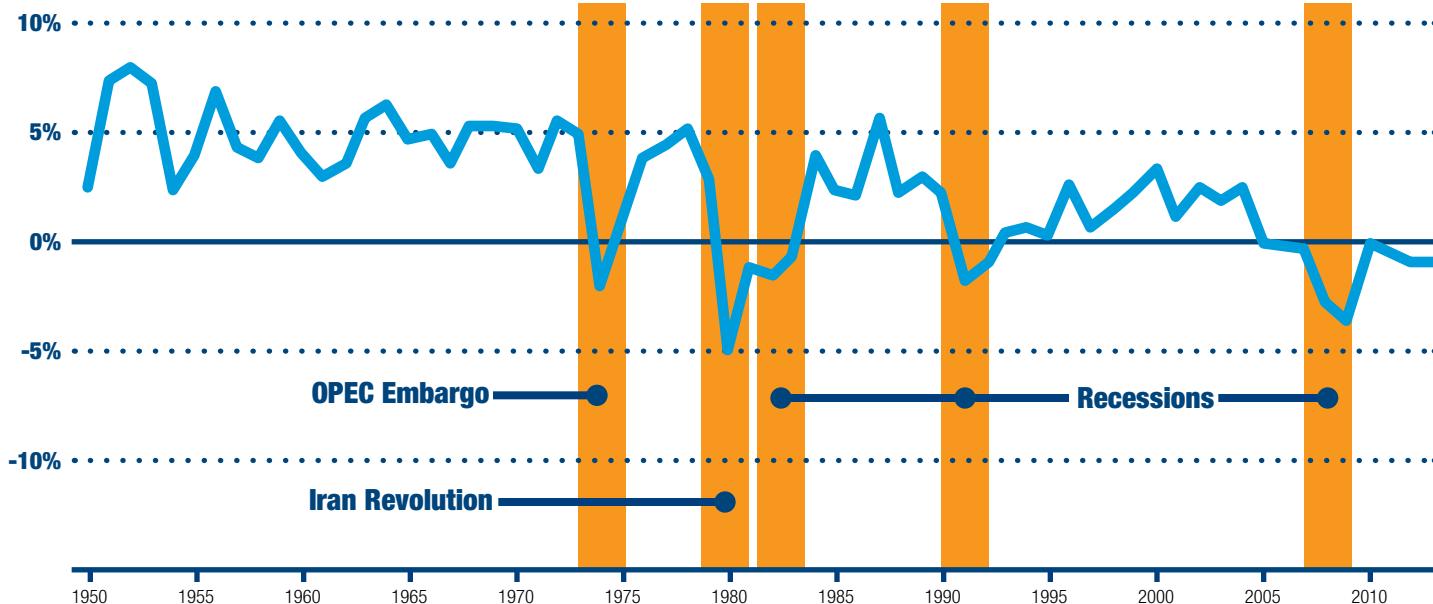
Add to this the inherent loss of purchasing power in an excise tax, and the result is a revenue source that is falling far behind the legitimate maintenance and growth needs of the system.

Governor Brown has dedicated some of next year's budget surplus to transportation finance, repaying loans from special funds and dedicating some new money to deferred maintenance.

But this is small ball compared with the looming needs for California's roads, highways and urban rail systems. Soon enough, California leaders—if not voters—will have to address this issue.

*Loren Kaye is president of the California Foundation for Commerce and Education, a nonprofit think tank affiliated with the California Chamber of Commerce.*

## Annual Change In California Gasoline Consumption



Source: California Foundation for Commerce and Education

*U.S. House Republicans*

# Standards for Immigration Reform

**Preamble**

*Our nation's immigration system is broken and our laws are not being enforced. Washington's failure to fix them is hurting our economy and jeopardizing our national security. The overriding purpose of our immigration system is to promote and further America's national interests and that is not the case today. The serious problems in our immigration system must be solved, and we are committed to working in a bipartisan manner to solve them. But they cannot be solved with a single, massive piece of legislation that few have read and even fewer understand, and therefore, we will not go to conference with the Senate's immigration bill. The problems in our immigration system must be solved through a step-by-step, common-sense approach that starts with securing our country's borders, enforcing our laws, and implementing robust enforcement measures. These are the principles guiding us in that effort:*

## Immigration Reform

*From Page 1*

### Solution Needed

"California's economy needs a solution to the problem," says CalChamber President and CEO Allan Zaremberg. "In order for us to be competitive in a global marketplace, California needs more visas for skilled technology workers or these jobs will go elsewhere. In addition, our agricultural industry needs a robust temporary worker program. California's economic growth is stifled by the uncertain status of 2.6 million residents here who do not have legal status, half of whom have been in California for over 10 years."

CalChamber encourages House Republicans to fight for a solution to this broken system. We need a long-term solution that will help us build a strong and prosperous future for our state and our nation.

Last July, a *CalChamber News* video detailed CalChamber's support for comprehensive immigration reform. Similarly, a *statement* discussing this issue was released by Zaremberg.

**Staff Contact: Marti Fisher**

### **Border Security and Interior Enforcement Must Come First**

It is the fundamental duty of any government to secure its borders, and the United States is failing in this mission. We must secure our borders now and verify that they are secure. In addition, we must ensure now that when immigration reform is enacted, there will be a zero tolerance policy for those who cross the border illegally or overstay their visas in the future. Faced with a consistent pattern of administrations of both parties only selectively enforcing our nation's immigration laws, we must enact reform that ensures that a President cannot unilaterally stop immigration enforcement.

### **Implement Entry-Exit Visa Tracking System**

A fully functioning Entry-Exit System has been mandated by eight separate statutes over the last 17 years. At least three of these laws call for this system to be biometric, using technology to verify identity and prevent fraud. We must implement this system so we can identify and track down visitors who abuse our laws.

### **Employment Verification and Workplace Enforcement**

In the 21st century, it is unacceptable that the majority of employees have their work eligibility verified though a paper-based system wrought with fraud. It is past time for this country to fully implement a workable electronic employment verification system.

### **Reforms to the Legal Immigration System**

For far too long, the United States has emphasized extended family members and pure luck over employment-based immigration. This is inconsistent with nearly every other developed nation. Every year thousands of foreign nationals pursue degrees at America's colleges and universities, particularly in high skilled fields. Many of them want to use their expertise in U.S. industries that will spur economic growth and create jobs for Americans. When visas aren't available, we end up exporting this labor and ingenuity to other countries. Visa and green card allocations need to reflect the needs of employers and the desire for these exceptional individuals to help to grow our economy.

The goal of any temporary worker program should be to address the economic needs of the country and to strengthen our national security by allowing for realistic, enforceable, usable, legal paths for entry into the United States. Of particular concern are the needs of the agricultural industry, among others. It is imperative that these temporary workers are able to meet the economic needs of the country and do not displace or disadvantage American workers.

### **Youth**

One of the great founding principles of our country was that children would not be punished for the mistakes of their parents. It is time to provide an opportunity for legal residence and citizenship for those who were brought to this country as children through no fault of their own, those who know no other place as home. For those who meet certain eligibility standards, and serve honorably in our military or attain a college degree, we will do just that.

### **Individuals Living Outside the Rule of Law**

Our national and economic security depend on requiring people who are living and working here illegally to come forward and get right with the law. There will be no special path to citizenship for individuals who broke our nation's immigration laws—that would be unfair to those immigrants who have played by the rules and harmful to promoting the rule of law. Rather, these persons could live legally and without fear in the U.S., but only if they were willing to admit their culpability, pass rigorous background checks, pay significant fines and back taxes, develop proficiency in English and American civics, and be able to support themselves and their families (without access to public benefits). Criminal aliens, gang members and sex offenders and those who do not meet the above requirements will not be eligible for this program. Finally, none of this can happen before specific enforcement triggers have been implemented to fulfill our promise to the American people that from here on, our immigration laws will indeed be enforced.

*Released January 28, 2014.*

## California Union Membership Percentage Declines in 2013

California union membership decreased in 2013 to 16.4% of public and private workers, down from 17.2% in 2012, according to union membership data recently released by the U.S. Bureau of Labor Statistics (BLS).

The largest numbers of union members lived in California (2.4 million) and New York (2 million), according to the BLS.

In addition, more than half of the 14.5 million union members in the United States lived in just seven states (California, 2.4 million; New York, 2 million;

Illinois, 0.9 million; Pennsylvania, 0.7 million; and Michigan, New Jersey, and Ohio, 0.6 million each), even though these states accounted for only about one-third of wage and salary employment nationally.

The overall U.S. union membership rate, the percent of wage and salary workers who were members of unions, remained unchanged from 2012 at 11.3%.

Overall, 16 million workers were represented by a union in 2013. This includes both union members (14.5 million) and workers who report no union

affiliation but whose jobs are covered by a union contract (1.5 million).

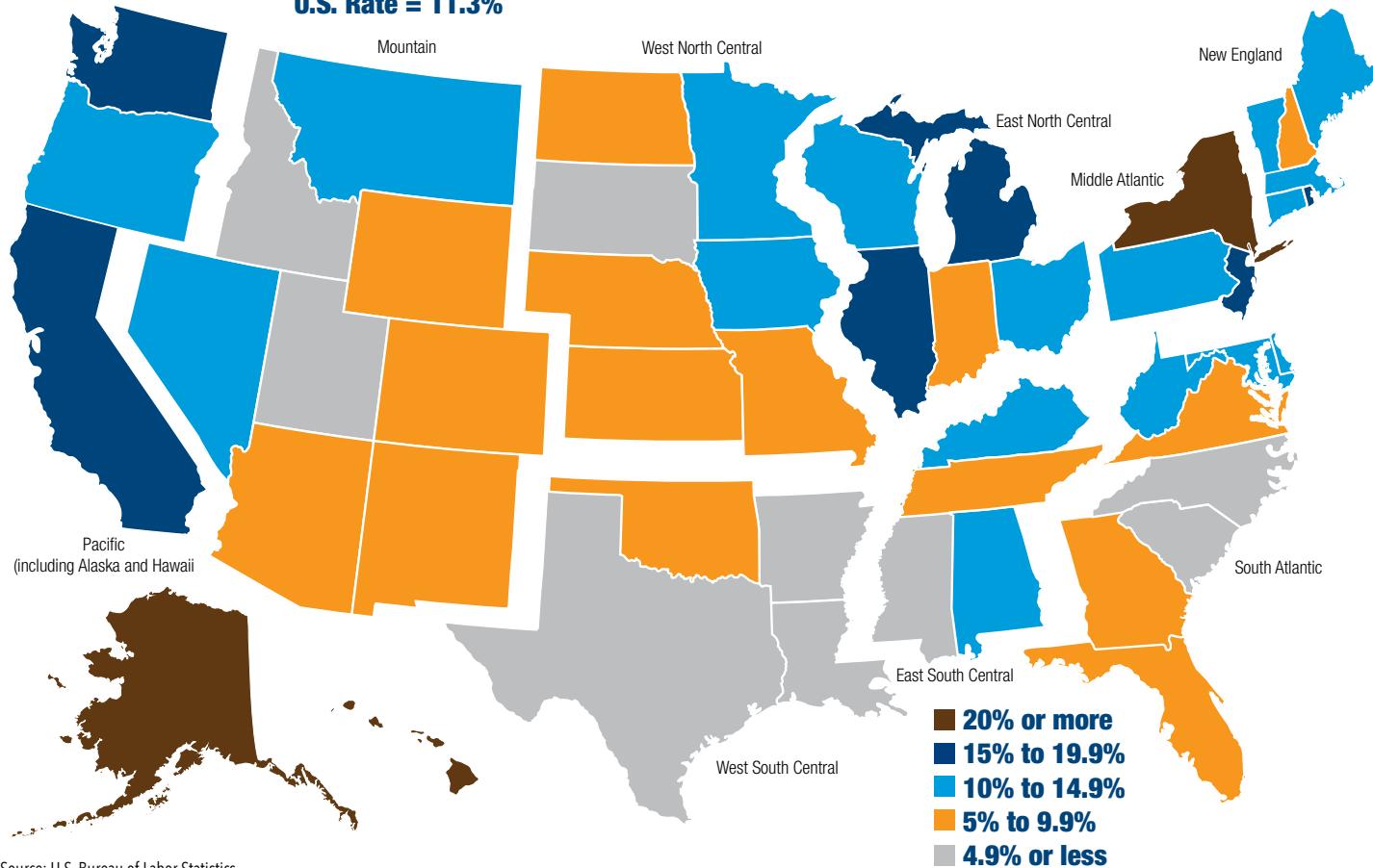
The percentage of private sector employees who belong to a union rose just slightly to 6.7% in 2013 from 6.6% in 2012. By contrast, public sector union membership for 2013 was 35.3%; a rate more than five times that of private-sector workers.

For private sector employers, the highest union membership rates last year were found in the transportation/warehousing and utilities industries.

**Staff Contact:** Gail Cecchettini Whaley

### Union Membership Rates by State, 2013 Annual Averages

**U.S. Rate = 11.3%**



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## New online tool takes the guesswork out of creating an employee handbook.

Employee Handbook Creator is simple to use, with no software to install or update. **Access the tool from your PC or Mac, desktop or tablet.** Its smart, comprehensive wizard asks a series of questions put together by CalChamber's employment law experts. It even identifies required policies. So you can decide what you want or need in your handbook.

Guiding you throughout the process are Employee Handbook Creator's helpful explanations, plus detailed notes about specific policies. Updating your handbook is easy, too. Just revise online, export to your PC or Mac, and print from your own printer.



Watch the demo: [calchamber.com/EHCvideo](http://calchamber.com/EHCvideo)

**LEARN MORE** at [calchamber.com/EHCtool](http://calchamber.com/EHCtool) or call (800) 331-8877 with priority code ALT.

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(916) 444-6670 FAX (916) 444-6685  
[www.calchamber.com](http://www.calchamber.com)

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