

ALERT

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No Penalty for Relying on State Agency Advice

Bill Promotes Certainty for California Employers



The California Chamber of Commerce is supporting legislation to prevent

employers from being punished for relying on written compliance advice from the state Division of Labor Standards Enforcement (DLSE).

The bill, **AB 2688 (Brown; D-San Bernardino)**, has been designated as a **job creator**. It prevents an employer from being financially penalized through the assessment of statutory civil and criminal penalties, fines, and interest if the employer relies in good faith on writ-

ten advice from the DLSE, and a court ultimately determines the DLSE's advice was wrong.

The CalChamber is urging members to express support for AB 2688.

Background

The DLSE is the state agency charged with enforcing the wage, hour and working condition labor laws. As a part of its effort to fulfill this responsibility, the DLSE issues opinion letters on various wage, hour, and working condition topics, as well as an enforcement manual giving its interpretation and position on these issues.

See Bill Proposes: Page 4

Job Creator Bill Will Discourage Frivolous Lawsuits



The California Chamber of Commerce is supporting a **job creator bill** that will

discourage bad faith litigation regarding alleged technical violations in an itemized wage statement that do not harm the employee.

AB 2095 (Wagner; R-Irvine) seeks to limit frivolous litigation regarding itemized wage statements for alleged technical violations that have not injured the employee, by awarding attorneys fees to an employer who can prove the litigation was filed in bad faith.

Labor Code Section 226 sets forth eight categories of information that must be included in an itemized wage statement provided to the employee. The intent and purpose of this information is to notify the employee of who his/her employer is and how the wages were calculated.

Failing to include required information in the wage statement can subject the employer to a lawsuit under the Private Attorneys General Act (Labor Code Section 2699).

Despite the good intentions of this section, there has been a recent trend by plaintiffs' attorneys to abuse this section and file litigation for "ticky tack" violations that do not result in any harm to the employee.

See Job Creator Will: Page 6

Competing to Keep Film/TV Production Jobs



A California Chamber of Commerce-supported **job creator bill** that encourages

film and television productions to locate or remain in California is scheduled to be considered by an Assembly policy committee on March 25.

The bill, **AB 1839 (Gatto; D-Los Angeles)**, ensures that California remains a competitive environment for the entertainment industry by extending and restructuring the film and television tax credit.

Since its inception in 2009, this credit has supported the creation of 51,000 jobs and \$4.5 billion in direct spending. In addition, it has stimulated the economy as industry productions make payments to

vendors providing goods and services.

Failure to extend this incentive would create uncertainty for businesses and harm the prospects of employment and production in the entertainment industry in California at a time when the state continues its recovery from the recession.

As other states continue to provide additional meaningful incentives to attract film and television producers, California should implement policies that would ensure competitiveness in the industry.

The targeted capped tax credit will provide the entertainment industry with incentives to remain, invest, and create jobs in California. The legislation is consistent with the goals of the CalChamber's **2014 Solutions for a Strong California**.

California has long been known as the
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Labor Law Corner

Use Straight-Time Hours When Calculating Overtime Pay



Barbara Wilber
HR Adviser

We're having an argument about how overtime is calculated for hours worked over 40. Do you count the total hours, including daily overtime hours, or do you use only the straight-time hours? When we read Section 3 in the Industrial Welfare Commission (IWC) order, it sounds like we have to include the total hours when determining whether the employee has worked more than 40 hours.

You use only the straight-time hours to calculate pay for the hours worked beyond 40 in the workweek. Do not include the daily overtime hours in your calculation because this would result in paying an increased rate for the same overtime hours.

You are certainly not alone in being confused about the language in the IWC order. However, the California Labor Code, Section 510, attempts to clarify that overtime rates are not pyramided by stating in part:

"Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work."

Calculation Example

Unless an alternative workweek is in effect or the agriculture IWC Order 14 applies, most overtime in California is calculated as shown in the following example. Some exemptions exist depending on which IWC order applies, such as certain residential care employees in IWC 5, or personal attendants in IWC 15.

This example uses the designated workweek of Monday (day 1) through Sunday (day 7); straight-time (ST) and

overtime (OT) hours are noted:

Mon: 10 hrs (8 ST and 2 OT)

Tue: 10 hrs (8 ST and 2 OT)

Wed: 6 hrs (6 ST)

Thu: 8 hrs (8 ST)

Fri: 8 hrs (8 ST)

Total: 42 hrs (38 ST and 4 daily OT hrs)

When the employee works on the sixth day of the workweek (Saturday in this case), he/she has not yet worked more than 40 straight-time hours; therefore, the first 2 hours (the 39th and 40th hours) are still calculated at the straight-time rate and 6 hours beyond 40 are paid at time and one half as follows:

Sat: 8 hrs (2 ST and 6 OT)

The employee has worked a total of 50 hours (40 ST and 10 OT).

For further information, review the overtime articles and the excellent overtime calculation worksheet on

HRCalifornia.com.

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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CalChamber-Sponsored Seminars/Trade Shows

More information: calchamber.com/events.
Labor Law

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

Business Resources

GO-Biz Tax Credit Workshop. Governor's Office of Business and Economic Development (GO-Biz). March 25, Los Angeles; March 26, Anaheim, Ontario; March 27, San Diego; March 28, San Francisco. (916) 322-0694.

GO-Biz Tax Credit Webinar. GO-Biz. April 1. (916) 322-0694.

International Trade

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

North Korea: How Should the International Community Respond? World Affairs Council Sacramento Chapter. March 26, Sacramento. (415) 293-4600.

China's High Tech Surge Report. Asia Society and CalChamber. April 1, San Francisco. (415) 421-8707.

U.S.-China Agriculture Trade Barriers. Monterey Institute of International Studies. April 4, Monterey. (831) 647-3556.

Qatar and Oman Executive Trade

See Seminars/Trade Shows: Page 4

CalChamber Calendar

Legislative Briefing and Host Breakfast:
May 20-21, Sacramento

Next Alert: April 4



Online Voting Determines Winners in CalChamber Off the Wall Photo Contest

The California Chamber of Commerce has announced the winning entries in its Off the Wall Photo Contest.

Contestants submitted photos of how they reused the outdated 2013 employment notices poster.

Competition was fierce as the 77 entrants parlayed their social network contacts into the online votes that determined the ultimate winners.

First place and recipient of an Apple® iPad Air™ is Shoshanna Moody, general manager of House of Air, an indoor trampoline park in San Francisco. Photo caption: "Jumping OFF THE WALL and catching some AIR to win an iPad Air!"

Second place winners, each receiving an Amazon Kindle Fire HD:

- Rosa Nelson, finance coordinator with Ocean Garden Products, Inc, a San Diego-based seafood importing, exporting, sales and marketing company. The photo showed a bag stitched from the 2013 poster.

- Francisco Cuellar of Browne George Ross LLP, a Los Angeles-based law firm. The photo depicted Nakatomi Plaza built from poster pieces.

- Maria Pope, human resources manager with Horizon Services, Inc., a Hayward-based nonprofit providing substance abuse recovery and rehabilitation services. The photo showed a football helmet made up of poster strips.



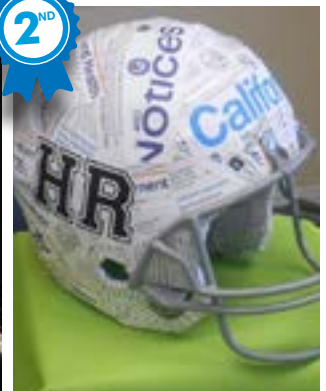
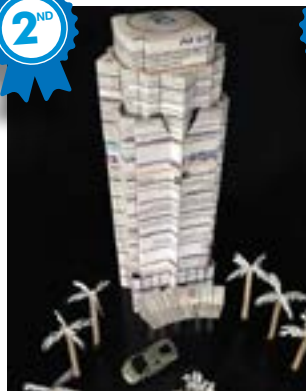
THE WINNERS! OFF THE WALL PHOTO CONTEST



2014 Poster Updates

Even a business that employs only one person in California must post and hand out required state and federal employment notices in each company location. More information is available at calchamber.com/poster.

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Go to CalChamber.com/postercontest to see all the entries.

Bill Proposes No Penalty for Relying on State Agency Advice

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Currently, employers are encouraged to refer to the DLSE's written materials for "guidance" on these topics when there is no published, on-point case available. Employers are provided with no certainty, however, that they will be shielded from liability if they comply in good faith with the DLSE's written opinions or interpretations.

AB 2688 eliminates this problem and provides businesses in California with the security to know that, if they seek out and receive written advice from the DLSE regarding how to comply with the law, they can actually rely upon that information.

Helps Small Businesses

California has unique and burdensome labor and employment laws. Small businesses that lack the financial resources to hire a human resources department or outside counsel for advice on how to comply with these labor and employment laws have only the DLSE for guidance.

AB 2688 helps such small businesses by encouraging them to seek out and rely upon the advice they receive from the DLSE regarding how to comply with the law.

Full Wages for Employees

Although AB 2688 prevents the assessment of any penalties, fines, or

interest against an employer who can prove its actions were based upon the DLSE's written guidance, the bill still requires the employer to pay all wages owed to an employee.

In fact, AB 2688 requires an employer who has asserted its good faith reliance on the DLSE as a defense to post a bond for the disputed amount of wages, thereby ensuring the employee is made whole.

Doesn't Protect Bad Actors

AB 2688 requires the employer to prove that it sought out the DLSE's written advice; provided accurate and factual information to the DLSE; conformed its conduct to comply with the DLSE's advice; and that no facts or circumstances changed between the time the advice was received to the time of the alleged act or omission.

A bad actor operating in the underground economy is not going to voluntarily seek advice from the regulatory agency from which it is trying to hide. Moreover, a bad actor will not be able to satisfy any of the safeguards in AB 2688.

This bill ensures that only the good actor who seeks out advice and conforms to it, will be able to avoid penalties, fines and interest.

Notably, since 1947, the federal government has provided employers who rely in good faith upon the advice, opinion letters, and guidance of the U.S. Department of Labor regarding the Fair

Labor Standards Act with a complete defense against liability (see 29 U.S. Code, sections 258–259).

This law, the Portal-to-Portal Act, has been in effect for more than 60 years, and there have not been any reported abuses of "bad actors" manipulating the system or process in order to gain an unfair advantage.

Sunsets in 2021

To avoid any concern about any potential change in administration or the Labor Commissioner's office, AB 2688 includes an automatic sunset date of January 1, 2021.

This sunset date does not preclude the Legislature from acting sooner if there are any alleged abuses, nor from extending this policy indefinitely when there is a lack of abuses, just like the lack of abuse at the federal level.

Creates Certainty for Employers

When enacting the Portal-to-Portal Act, Congress declared that "uncertainty on the part of industry," as well as "the difficulties in the sound and orderly conduct of business and industry," could have a negative impact on commerce.

Accordingly, it included an affirmative defense for employers who rely upon the interpretations and opinions of the Wage and Hour Division of the U.S. Department of Labor.

Similarly, uncertainty for California employers about correctly applying California's numerous labor and employment laws has a detrimental impact on the state's economy and employees.

Providing certainty through AB 2688 will assist all employers in their efforts to comply with the law, thereby producing a better business environment, growth in the economy, and an improved work environment for employees.

Action Needed

AB 2688 awaits a hearing in the Assembly Labor and Employment Committee.

The CalChamber is urging members to contact their Assembly representatives to voice **support for AB 2688**.

An easy-to-edit sample letter is available at www.calchambervotes.com.

Staff Contact: Jennifer Barrera

CalChamber-Sponsored Seminars/Trade Shows

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Mission. National U.S.-Arab Chamber. April 6–10, Qatar and Oman. (202) 289-5920.

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

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

Saudi Health Exhibition and Conference. U.S.-Saudi Arabian Business Council. May 19–21, Saudi Arabia. (703) 962-9300.

Consular Corps Luncheon. Northern California World Trade Center. May 21, Sacramento. (916) 321-9146.

China International Trade Mission and

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

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

Computex Taipei 2014. Taiwan External Trade Development Council. June 3–7, Taipei, Taiwan. (408) 988-5018.

Discover Europe Conference. U.S. Commercial Service and Los Angeles Area Chamber. June 3–4, Los Angeles. (213) 894-8785.

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.

Paid Sick Leave Mandate Bill Moves; CalChamber Seeks Ways to Offset Costs



The Assembly Labor and Employment Committee this week approved a “job killer” bill requiring employers to provide their employees with mandatory, protected, paid sick leave.

The bill, **AB 1522 (Gonzales; D-San Diego)**, also threatens employers with statutory penalties as well as litigation for alleged violations. The California Chamber of Commerce and a large coalition of employer groups and local chambers remain opposed to the bill unless it’s amended.

“The problem is that this mandate doesn’t distinguish between large employers, small employers of different industries and will potentially cause job loss,” CalChamber Policy Advocate Jennifer Barrera told the committee.

“While a large employer very well may be able to absorb this cost, and probably already does provide their employees with paid sick leave, a small employer may not and may be detrimentally impacted by this mandate,” she said.

Reduces Jobs

AB 1522 mandates that all employers, except those with collective bargaining agreements, provide any employee who has worked in California for seven days with paid sick leave, at an accrual rate of one hour for every 30 hours worked.

In July 2014, employers in California already will be facing a significant cost increase due to the \$1 increase in minimum wage that will take effect. This \$1 increase is in addition to the cumulative impact of other cost hikes employers are

already facing, including increased taxes under Proposition 30, increased workers’ compensation rates, loss of the federal unemployment insurance credit, increased energy costs, and increased health insurance costs associated with implementation of the Affordable Care Act

California employers cannot absorb all these costs and be forced to provide paid sick leave as well, without cutting other costs, such as labor. Accordingly, AB 1522 will have an impact on both jobs and future growth.

Incentivize Paid Sick Leave

Given the cumulative costs and existing protected leaves of absences with which California employers are already struggling, California should refrain from implementing new mandates such as AB 1522. Rather, California should incentivize employers to offer these additional benefits by reducing costs in other areas.

“While we don’t disagree with the importance of paid sick leave, we just can’t continue to mandate business and impose new burdens on them given the cumulative costs and burdens that we already have in the state,” Barrera testified.

California is one of only three states that mandate both daily and weekly overtime, creating a huge cost for employers. If this cost were reduced by conforming to federal law and mandating only weekly overtime, employers would more likely have the ability to offer paid sick leave as well as provide a more flexible schedule for working families.

In her testimony, Barrera cited the recently published report by Maria Shriver, *A Woman’s Nation Pushes Back from the Brink*, which made recommen-

dations to incentivize providing paid sick leave by providing cost savings to businesses. One area in which California can reduce costs on employers so that they have the capacity to offer paid sick leave is daily overtime.

Another option, also proposed by the CalChamber to the bill’s author, to partially offset the burden on employers to provide paid sick leave is to provide small employers with 50 or fewer employees with a tax credit for the amount expended each year on paid sick leave up to a maximum of 125% of minimum wage, thereby targeting lower-wage employees.

“The proponents of the bill have argued that sick leave is a social benefit; it benefits everyone in society by keeping people from getting sick and continuing to spread illnesses,” Barrera reminded the committee. “So since it is a social benefit, then it shouldn’t be a cost that is solely borne by the employer, but is something that we try to subsidize through a tax credit, limiting it to small employers, those who will be the most detrimentally impacted by this.”

Key Vote

AB 1522 passed Assembly Labor and Employment, 5-1.

Ayes: Alejo (D-Salinas), Chau (D-Alhambra), Gomez (D-Los Angeles), R. Hernández (D-West Covina), Holden (D-Pasadena).

Noes: **Morrell (R-Rancho Cucamonga).**

Absent/abstaining/not voting: Gorell (R-Camarillo).

The bill now heads to the Assembly Judiciary Committee.

Staff Contact: Jennifer Barrera

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2013 Advocacy Return on Investment

Lower Vote Requirement for Local Tax Hikes Stopped (SCA 3) **\$6 Billion Saved**

2013 Total Definable Return: **\$25.96 Billion = \$2,127 Return Per California Employee**

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.

Bill Presuming Employer Guilt in Safety Citations Passes Committee



OPPOSE

A bill **opposed** by the California Chamber of Commerce, and a coalition of more than 50 local chambers of commerce and associations because it will increase costs and undermine due process for appealing workplace safety citations passed the Assembly Labor and Employment Committee on March 19.

AB 1634 (Skinner; D-Berkeley) proposes a costly double-appeal process that presumes guilt for employers. The bill is unnecessary in light of recently adopted regulations for an expedited appeals process for these situations.

AB 1634 requires employers to abate safety hazards for which they have been cited before the appeal is resolved. In other words, while the employer exercises its right to contest the existence of a violation, Cal/OSHA could order the employer to fix the alleged violation before the Cal/OSHA Appeals Board has determined whether that condition even exists.

Requiring employers to specifically

contest an abatement where it would otherwise be stayed creates two separate appeals where currently there is one. The creation of a new ground for abatement appeal will place an unnecessary burden on Cal/OSHA, employers and other parties. In fact, the Senate Appropriations Committee predicted last year that the cost of a similar CalChamber-opposed bill ultimately vetoed by the Governor would exceed \$1 million.

Key Vote

Assembly Labor and Employment voted 5-1 to send AB 1634 on to the Assembly Appropriations Committee:

Ayes: Alejo (D-Salinas), Chau (D-Alhambra), Gomez (D-Los Angeles), R. Hernández (D-West Covina), Holden (D-Pasadena).

Noes: Morrell (R-Rancho Cucamonga).

Absent/abstaining/not voting: Gorell (R-Camarillo).

Staff Contact: Marti Fisher

Film/TV Production

From Page 1

center of the entertainment industry, which provides thousands of high-pay middle class jobs and millions of dollars in tax revenue.

Additionally, it supports thousands of businesses that service the industry. According to the Motion Picture Association of America, in 2012, the motion picture and television industry was responsible for more than 542,250 jobs and \$41.6 billion in total wages in California, including indirect jobs and wages

Recently, however, the number of film and television productions shot in California has been on the decline due to competition from other states that seek to grab a share of this industry; 44 states currently offer some film and tax incentive program.

Staff Contact: Jeremy Merz

Job Creator Will Discourage Frivolous Lawsuits

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A notable example of this abuse is *Elliot v. Spherion Pacific Work, LLC*, in which an employee sued because the employer used a truncated name on the wage statement—"Spherion Pacific Work, LLC," instead of Spherion's legal name, "Spherion Pacific Workforce, LLC."

The employee did not allege that this truncated version of the employer's name misled her, confused her, or caused her any injury. Although the court ultimately dismissed the lawsuit, the employer incurred unnecessary legal costs and

attorneys fees to have the case dismissed.

AB 2095 seeks to discourage such bad faith litigation by awarding an employer attorneys fees if the lawsuit is proven to be frivolous, unreasonable or without foundation.

Although AB 2095 will not eliminate all cases that lack merit, it will certainly dissuade the filing of some frivolous cases. Any reduction of bad faith litigation will allow employers to devote more financial resources to growing their business and growing their workforce.

Staff Contact: Jennifer Barrera

Capitol Press Corps Veterans to Speak at Chamber Legislative Briefing

Sacramento political journalists Anthony York and John Myers will be featured speakers at the California Chamber of Commerce legislative briefing on May 20 in Sacramento.

York and Myers, both longtime members of the Capitol Press Corps, will join CalChamber President and CEO Allan Zaremberg in presenting the inside scoop about the politics behind major issues affecting California employers' ability to stay competitive.

Also featured will be updates on CalChamber job creators and "job killers."

Lunch is included in registration for the briefing, set for 10:30 a.m.–1 p.m. Business leaders from throughout the state are invited to attend.

Host Reception/Breakfast

Following the briefing, the CalChamber co-sponsors with the Sacramento Host Committee the Sacramento Host Reception, a networking opportunity for busi-



ness leaders from all industries in California to discuss key issues facing the state.

The reception is a prelude to the Sacramento Host Breakfast the following morning, May 21. The Host Breakfast provides a venue at which California's top industry and government leaders can meet, socialize and discuss the contemporary issues facing businesses, the economy and government.

Traditionally, the Governor of California and the chair of the CalChamber Board of Directors speak on issues facing employers in California. Leaders from

business, agriculture, the administration, education, the military and legislators from throughout the state are invited to join the discussion.

Registration

Registration for the briefing, Host Reception and Host Breakfast is \$50. Space is limited. The registration deadline is May 9.

For more information or to register, visit www.calchamber.com/2014briefing-hostb.

Staff Contact: Danielle Fournier

GO-Biz Accepting Applications for New Income Tax Credit for Business



The Governor's Office of Business and Economic Development (GO-Biz) has begun accepting applications for the California Competes Tax Credit.

For the 2013–2014 fiscal year, applications will be accepted from March 19 until April 14.

The income tax credit is available to businesses—both large and small—that want to relocate to or stay and grow in California.

Twenty-five percent of available credit each year is reserved specifically for small businesses (gross receipts of less than \$2 million).

Tax credit agreements will be negotiated by GO-Biz and approved by a newly created "California Competes Tax Credit Committee," consisting of the State Treasurer, the Director of the Department of Finance, the Director of GO-Biz, one appointee from the Senate, and one appointee of the Assembly.

Workshops

GO-Biz has been conducting workshops throughout the state to help businesses learn how to apply for the new tax

credit. The remaining workshops and one webinar are scheduled as follows:

- Los Angeles: Tuesday, March 25, 1:30 p.m.–2:30 p.m.
- Ontario: Wednesday, March 26, 10 a.m.–11 a.m.
- Anaheim: Wednesday, March 26, 1:30 p.m.–2:30 p.m.
- San Diego: Thursday, March 27, 10 a.m.–11 a.m.
- San Francisco: Friday, March 28, 10 a.m.–11 a.m.
- Webinar: Tuesday, April 1, 11 a.m.–noon.

More information is available at www.business.ca.gov.

Small Business Advocate Award: Nominations Due April 21

The California Chamber of Commerce is seeking nominations for its annual Small Business Advocate of the Year Award, which recognizes small business owners who have done an exceptional job with their local, state and national advocacy efforts on behalf of small businesses.

The application should include infor-

mation regarding how the nominee has significantly contributed as an outstanding advocate for small business; and identify specific issues the nominee has worked on or advocated during the year.

Also required are a 300-word description of why the nominee should be selected; news articles or other exhibitions as sup-

porting materials; and a letter of recommendation from the local chamber of commerce president or chairman of the board.

Nominations are due by April 21. The nomination form is available at www.calchamber.com/smallbusiness or may be requested from the Local Chamber Department at (916) 444-6670.



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

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

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