

ALERT

VOLUME 40, NUMBER 9 • APRIL 4, 2014



Labor Secretary: Take Pause on Workers' Comp Changes



Photo by Sara Espinosa

David Lanier

Development Secretary David Lanier said this week at the California Chamber of Commerce.

The reform bill aimed to reduce costs to employers to support benefit increases

The 2012 workers' compensation reform legislation still needs time to be fully implemented before any changes should be considered, California Labor and Workforce

for injured workers and potentially reduce underlying system costs.

"The Administration is very committed to seeing SB 863 work," Secretary Lanier assured the group.

2012 System Reforms

In September 2012, Governor Edmund G. Brown Jr. signed into law a workers' compensation reform package negotiated by employers and labor that addressed both system costs and permanent disability benefits. The goal of this reform legislation was to offset an increase in permanent disability benefits with cost-saving proposals.

See Labor Secretary: Page 4

Senate Committee to Consider Enhanced Driver License Bill



A California Chamber of Commerce-supported bill that encourages international

trade and tourism is scheduled to be considered by a Senate policy committee next week.

SB 1213 (Hueso; D-Logan Heights) is a job creator bill that authorizes the Department of Motor Vehicles to issue enhanced driver licenses to U.S. citizens to expedite legal traffic at the border.

The legislation is consistent with the goals of the CalChamber's **2014 Solutions for a Strong California** and will help position California for economic recovery.

The ports of entry along the California-Mexico border are among the busiest in the world. Each year, 45 million vehicle passengers cross the border via one of the six ports of entry. At San Ysidro Port, 50,000 vehicles are processed by the U.S. Customs and Border Patrol (CBP) each day.

The average wait for travelers at these ports is over an hour. These delays result in a loss of 8 million trips each year. In the San Diego region alone, this results in an estimated loss of \$1.2 billion in revenues.

SB 1213 relieves the border congestion by implementing the federal enhanced driver license program. This

See Senate Committee: Page 7

Labor Commissioner Targeting Violators



Photo by Sara Espinosa

California Labor Commissioner Julie Su explains to the CalChamber Labor and Employment Committee, chaired by Anthony L. Sabatino (right), Securitas Security Services USA Inc., her focus on improved targeting of labor law violators and protecting law-abiding businesses ([story on Page 3](#)).

Inside

[CalChamber Backs Computer Science Bills: Page 5](#)

Labor Law Corner

Conduct Medical Examinations in Last Step of Hiring Process



Dana Leisinger
HR Adviser

We have made an offer to an applicant, and I was going to send him through our hiring process—which includes background checks and a medical exam; however, I've been told that I have to have the medical exam done last in the process. Is this true?

Indeed, the employer can conduct nonmedical testing, such as background checks and consumer credit checks (if

applicable). Any physical examination, however, must be conducted after all the other checks have taken place.

Applicable Laws

The Americans with Disabilities Act (ADA) and California's Fair Employment and Housing Act (FEHA) not only bar intentional discrimination on the basis of a disability, but both acts regulate the sequence of the employer's hiring processes, and hold that a medical exam can be conducted only after a "real" offer has been made to the individual.

A real offer is one which is made after the employer has evaluated all nonmedical information (background checks, job testing), analyzed the information, and made the offer.

All testing is invasive of privacy rights; hence the requirement to make an initial offer before investigating an applicant. A medical examination is particularly invasive, however, and many individuals wish to guard their condition/history for fear of losing an opportunity in the event the employer finds out about a medical condition the employer perceives as undesirable.

Two-Step Process

This "two-step" process helps applicants to determine if they were rejected due to a disability. If the medical examination is the last step before employment and the applicant has passed all other tests/checks, the individual will know if they are being denied employment on medical

grounds and can take action accordingly.

Many employers have argued that this two-step process is more costly and time consuming, preferring to send the applicant in for a battery of exams at the same time. Alternatively, employers have argued they review all the nonmedical information before considering the medical information.

Again, however—both the ADA and the FEHA contain statutes regulating the sequencing of all pre-hire testing, specifying the medical testing must be conducted last.

An employer would have to prove that there were no reasonable alternatives in order to conduct the medical examinations earlier, which is not an easy test under the laws. Nor is it a reasonable argument to claim that conducting the tests all at once is for the convenience of the applicant. This argument does not justify reordering the hiring process.

As the Equal Employment Opportunity Commission states, "An employer may not ask disability-related questions or require a medical examination, even if the employer intends to shield itself from the answers to the quest or the results of the examination until the post-offer stage."

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.

California Chamber Officers

Anne Buettner
Chair

Joseph M. Otting
First Vice Chair

Michael W. Murphy
Second Vice Chair

Susan Corrales-Diaz
Third Vice Chair

Frederick E. Hitchcock
Immediate Past Chair

Allan Zaremborg
President and Chief Executive Officer

Alert (ISSN 0882-0929) is published weekly during legislative session with exceptions by California Chamber of Commerce, 1215 K Street, Suite 1400, Sacramento, CA 95814-3918. Subscription price is \$50 paid through membership dues. Periodicals Postage Paid at Sacramento, CA.

POSTMASTER: Send address changes to Alert, 1215 K Street, Suite 1400, Sacramento, CA 95814-3918. Publisher: Allan Zaremborg. Executive Editor: Ann Amioka. Associate Editor: Sara Espinosa. Art Director: Neil Ishikawa. Capitol Correspondent: Christine Haddon.

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

Email: alert@calchamber.com. Home page: www.calchamber.com.

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

12th Annual Job and Resource Fair. California Department of Corrections and Rehabilitation. April 17, Stockton. (916) 324-6508.

International Trade

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

Scottish Trade and Investment Roundtable. Northern California World Trade Center. April 8, San Francisco. (855) 667-2259.

Grow Your Business in California. Danish-American Business Council-Los Angeles. April 24, Los Angeles. (714) 333-7979.

Branding the Monterey Bay Region. Monterey Bay International Trade Association. April 25, Monterey. (831) 335-4780.

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



California Labor Commissioner Focusing on Scofflaws, Not Those That Comply

Since being appointed in 2011, California Labor Commissioner Julie Su has been focusing on returning the agency to its most fundamental purpose: protecting minimum wage workers and businesses that are following the law, and creating an overall culture of compliance.

Improved targeting of violators and protecting law-abiding businesses from indiscriminate investigations were two other achievements Su cited in a labor and employment roundtable discussion March 27 at the California Chamber of Commerce.

The Labor Commissioner's office is part of the Division of Labor Standards Enforcement (DLSE). Su pointed out that the division is doing a better job of targeting violators since her appointment.

In 2012, the Labor Commissioner's office had the highest rate of civil penalty citations (80%) in the past decade (compared to an average citation rate of only 48% from 2002 to 2010).

"We don't ever want to do an inspection of an employer who's playing by the rules," Commissioner Su said. "It's not good for them, it's not good for the state, it's not good for the taxpayers and it doesn't make any sense."

To illustrate her point, Commissioner Su explained that her agency has discontinued random sweeps of workplaces. "Our measure of success is not the number of inspections that we do, but the number of violations that we find and the amount of compliance by which we can increase among the employer community."

Wage Theft

Enforcement agencies in California have stepped up efforts to target employers who perpetrate "wage theft." With wage theft at the top of the enforcement agenda, employers need to make certain they are properly complying with California's sometimes-confusing wage and hour laws.

"My job is to protect two main constituencies: working people in California, the lowest-wage workers in California; it's the basic-wage floor, minimum wage workers, attacking abuses of the underground economy," Commissioner Su said.

"And the second are the employers in

California who are playing by the rules and who struggle mightily against those who don't. My job is to use my enforcement resources to bring folks into compliance and to create a culture of compliance, and to make sure that those who follow the rules know the state is on their side and those who break it, there are consequences for doing so."

Fighting wage theft has been flagged as a top priority by the California Department of Industrial Relations (DIR), which defends and enforces workplace rights, and the Labor Commissioner, which enforces the state Labor Code and Wage Orders.

In 2012 Su announced the creation of a Criminal Investigation Unit (CIU) to target employers who perpetrate "wage theft."

Generally, "wage theft" is a phrase used to refer to infractions of the California Labor Code involving the payment of wages to workers. Wage theft might refer to employers who fail to pay for all hours worked, fail to pay nonexempt employees overtime, fail to pay minimum wage or fail to properly classify workers as employees and report them to the various state and federal agencies.

The goal is to protect workers and to allow companies that follow the law to compete. Cases handled by the CIU include:

- Workers' compensation violations;
- Theft of labor (felony or misdemeanor);
- Payment of wages with bounced checks or insufficient funds;
- Unlicensed farm labor contractors and garment manufacturers;
- Kickbacks on public works projects;
- Violations involving minors on the job.



Photo by Sara Espinosa

California Labor Commissioner Julie Su

The CIU conducts investigations, makes arrests for Labor Code violations, files criminal charges and serves subpoenas and inspection warrants. The CIU is made up of sworn peace officers who have completed the police academy and who qualify to carry firearms.

Wage Theft Media Campaign

Commissioner Su announced that in April the DLSE will be launching an education outreach campaign using local media and employee stories to spread the word about wage theft in the San Bernardino, Riverside, San Diego, Fresno and Sacramento markets. The ads will target employees and their employers. The ads will be in English, Spanish, Chinese, Vietnamese and Tagalog.

The program, once it is launched can be viewed at www.wagetheftisacrime.com.



www.calchamber.com/2014briefing-hostb

Labor Secretary: Give Workers' Comp Reform Bill Time to Work

From Page 1

“Fundamentally we were looking to seize the opportunity of the parties coming together to try to put the system back on track,” Lanier explained. “The goals were to improve medical care, increase benefits, try to reduce delays and disputes, and ultimately bend the cost curve for employers.”

SB 863 (De León; D-Los Angeles, Chapter 363) works by increasing benefits to injured workers through direct increases in permanent disability benefits and through the creation of a \$120 million return to work fund for workers whose permanent disability award inadequately reflects wage loss.

These benefit increases are projected to be offset by reforms that should reduce frictional costs, decrease litigation, stem abuses by vendors within the system, speed up the claims administration process, and make delivery of benefits more efficient.

Implementation Process

The passage of SB 863 represented a major first step to reform California’s workers’ compensation system. Much of this bill, however, including many of the major cost-saving reforms, were not legislatively self-executing, meaning the system savings associated with this reform will be a function of effective regulatory implementation.

“We’re really only a year into implementation,” Lanier reminded the group.

Of the 14 key reform provisions due to take effect by January 1, 2014, nine have been completed. Employers continue to anticipate that the bulk of the implementation will be completed by the end of 2014.



Photo by Sara Espinosa

David Lanier, secretary of the California Labor and Workforce Development Agency, emphasizes the administration’s commitment to giving the workers’ compensation reform bill time to work to a CalChamber-hosted audience including Jeanne Cain, CalChamber executive vice president, policy, and Jeremy Merz, CalChamber policy advocate.

‘Not a Static System’

As the implementation of SB 863 continues, employers—both public and private—are experiencing increasing costs and rates. Late last year, the Department of Insurance approved a workers’ compensation insurance pure premium advisory rate increase of 6.9%. Although this rate is only advisory, it serves as a benchmark for the workers’ compensation insurance market.

Public employers face similar workers’ compensation cost challenges. The Governor’s proposed 2014–15 budget allocated millions of dollars from the General Fund to several state agencies to

cover their increasing workers’ compensation costs.

Despite these challenges, Lanier indicated it is unlikely that the Administration would make any significant changes to the workers’ compensation system before SB 863 is fully implemented.

“The Governor and I are committed to giving the reforms an opportunity to work,” Secretary Lanier said. “We both clearly understand that it’s not a static system, there will be further changes needed, but we’re also going to take a pause here and let the massive amount of changes work through and get the regulations in place.”

Staff Contact: Jeremy Merz

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.

CalChamber Backs Computer Science Bills to Benefit Future California Economy



SUPPORT

important growing sector of today's economy, are expected to be considered by legislative policy committees next week.

Computer Science Education

Computer science involves the study of computers and algorithmic processes, their principles, their hardware, their applications, and their impact on society. Studying computer science prepares students for careers in a large variety of sectors, not just information technology (IT), teaching them valuable computational and critical thinking skills, and how to create, not just use, new technologies.

The subject is applicable to careers in manufacturing, health care, retail, the arts, and financial services. In fact, the U.S. Bureau of Labor Statistics estimates one of every two science, technology, engineering and mathematics (STEM) jobs in the country in the coming decades will be in computing occupations, representing more than 150,000 new job openings each year. Jobs related to computing pay significantly more than the national average salary.

Although computer science education promises many benefits for students regardless of the field in which they ultimately plan to work, and while there is a huge need for graduates who possess computer science skills, California has largely ignored this subject as a part of K-12 education until now.

Computer science is currently treated like an elective, which means very few students take it in those high schools that offer it either directly or through a local community college. There are no state standards on computer science to ensure that the curriculum for those courses is

Seven California Chamber of Commerce-supported bills that will generate interest and enrollment in computer science education, an impor-

rigorous and comparable throughout the state, and no clear pathway for teachers to earn a credential in computer science.

Supported Bills

The following bills demonstrate the state's commitment to an important growing sector of the economy, and will provide employers with a larger pool of qualified workers who possess the skills that are relevant to today's economy:

In Senate Education Committee

- [SB 1200 \(Padilla; D-Pacoima\)](#)

creates an incentive for more students to take a computer science course in high school by requesting that the University of California and California State Universities establish guidelines for high school computer science courses that would satisfy the "a-g" subject requirements for the area of mathematics for the purposes of undergraduate admissions at both institutions. *April 9 hearing.*

In Assembly Education Committee

- [AB 1530 \(Chau; D-Alhambra\)](#)

requests that the state Superintendent of Public Instruction develop a model curriculum for computer science to help teachers expose students to this important subject early on, thereby increasing the chances they will develop an interest and continue to study computer science as they progress in their education. *April 9 hearing.*

- [AB 1539 \(Hagman; R-Chino Hills\)](#)

ensures that computer science courses will be rigorous by requiring the State Board of Education to adopt content standards to provide guidance for teaching computer science in grades 7-12 to be

used by schools that choose to teach this important subject. *April 9 hearing.*

- [AB 1540 \(Hagman; R-Chino Hills\)](#) provides more students with exposure to computer science courses in high school by permitting the governing board of a school district to allow a high school student to take one or more computer science courses at the community college level during any session or term with a recommendation from the community college dean and parental consent. *April 9 hearing.*

- [AB 1764 \(Olsen; R-Modesto and Buchanan; D-Alamo\)](#) creates an incentive for more students to take a computer science course in high school by making it possible for a school district to count completion of such a course as a math course that meets one of the student's graduation requirements. *April 9 hearing.*

- [AB 2110 \(Ting; D-San Francisco\)](#) helps students understand the importance of computer science and develop coding skills that may be applied to any number of careers in later life by instructing the State Board of Education to incorporate computer science curriculum into the math, science, social studies and language arts frameworks when those frameworks are next revised. *April 9 hearing.*

- [ACR 108 \(Wagner; R-Irvine\)](#) draws attention to the importance of computer science education and demonstrates the state's commitment to a growing sector of our economy by designating the week of December 8, 2014 as Computer Science Education Week. *April 9 hearing.*

Staff Contact: Mira Guertin

Download the Free
CalChamber **Alert** App
at Calchamber.com/mobile



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.

California-Only Food Labels Pending; Higher Grocery Costs Likely



OPPOSE

Food costs are likely to increase if two California Chamber of Commerce-**opposed** proposals to mandate California-only labeling for certain foods become law.

- **SB 1381 (Evans; D-Santa Rosa)** is a California-only labeling requirement that will increase food costs for families, raise liability and compliance costs for the food industry and confuse consumers with a label that lacks context and scientific evidence and stigmatize food ingredients that are safe and healthy.

SB 1381 would add up to \$400 per year to the grocery bill of the average California family, based on economic studies of a similar initiative from 2012, Proposition 37.

In addition to requiring the labeling of “genetically engineered” foods, SB 1381 includes a private right of action to enforce its provisions.

SB 1381 passed the Senate Health Committee on March 26, 5-2:

Ayes: Beall (D-San Jose), DeSaulnier (D-Concord), Evans (D-Santa Rosa), Monning (D-Carmel), Wolk (D-Davis).

Noes: **Anderson (R-Alpine), Hernandez (D-West Covina).**

No vote recorded: De León (D-Los Angeles), Nielsen (R-Gerber).

SB 1381 is in the Senate Rules Committee awaiting assignment to another policy committee.

- **SB 1000 (Monning; D-Carmel)** imposes an economic burden on some beverage manufacturers and food outlets by requiring specific state-only labels on some sweetened beverages.

In addition to containing inconsistencies that would be confusing to consumers and expensive for businesses, SB 1000 duplicates a new, national effort on packaging by the U.S. Food and Drug Administration.

SB 1000 is scheduled for a hearing in Senate Health on April 9.

Staff Contact: Valerie Nera

Job Creator Bill Moves with Unanimous Support



A California Chamber of Commerce-**supported** job creator bill that encourages film and television productions to locate or remain in California has passed an Assembly policy committee with unanimous support.

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

The bill passed the Assembly Arts, Entertainment, Sports, Tourism and Internet Media Committee, 7-0 on March 25, and will be considered next by the Assembly Revenue and Taxation Committee.

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.

The legislation is consistent with the goals of the CalChamber’s [2014 Solu-](#)

[tions for a Strong California.](#)

California has long been known as the center of the entertainment industry, which provides thousands of high-pay middle class jobs. 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.

The targeted capped tax credit will provide the entertainment industry with incentives to remain, invest, and create jobs in California.

Key Vote

Ayes: **Bloom (D-Santa Monica), Brown (D-San Bernardino), I. Calderon (D-Whittier), Gomez (D-Los Angeles), Levine (D-San Rafael), Waldron (R-Escondido), Wilk (R-Santa Clarita).**

Staff Contact: Jeremy Merz

Former CalChamber President Receives Award for Public Service



Photo by Sarah Maren Photography

Kirk West

Kirk West, president and CEO of the California Chamber of Commerce from 1985 to 1997, is the 2014 recipient of the Rose Institute Award for Excellence in Public Service.

The award from one of the 10 research institutes at Claremont McKenna College recognizes West for a distinguished career that includes longtime advocacy for California job creators, protecting the state's competitiveness and job climate, and supporting improvements to education, transportation and water programs.

In addition to leading the CalChamber, West served as secretary of business, transportation and housing for Governor George Deukmejian; and as executive vice president of the California Taxpayers' Association.

He also served as chief deputy state

controller and as deputy director for the state Department of Finance; and for three years as a trustee of the San Juan Unified School District in Sacramento. He has been a guest instructor on state and local government at the University of California, Davis. Other past roles include his service as director at Accela Inc., Federal Home Loan Bank of San Francisco, and Wyle Electronics Corporation in Irvine.

West is a 1958 graduate of Stanford University and went on to earn a master's degree in political science from the University of California, Berkeley. He recently served as chairman of Goddard Claussen. Since his retirement in 2003, he has worked as a public affairs consultant in Granite Bay, California. He also is a director of the Blue Shield of California Corporation.

Senate Committee to Consider Enhanced Driver License Bill

From Page 1

program permits U.S. residents who possess an enhanced driver license access to "ready lanes" at California ports of entry.

An enhanced driver license is a standard driver license that has been enhanced in process, technology, and security to denote identity and citizenship for purposes of entering the United States. This technology provides CBP real-time access to a traveler's biometric and biographical information, allowing the CBP officer to look quickly at the results and focus on the traveler's vehicle as opposed to scanning documents—reducing wait time by up to 60%.

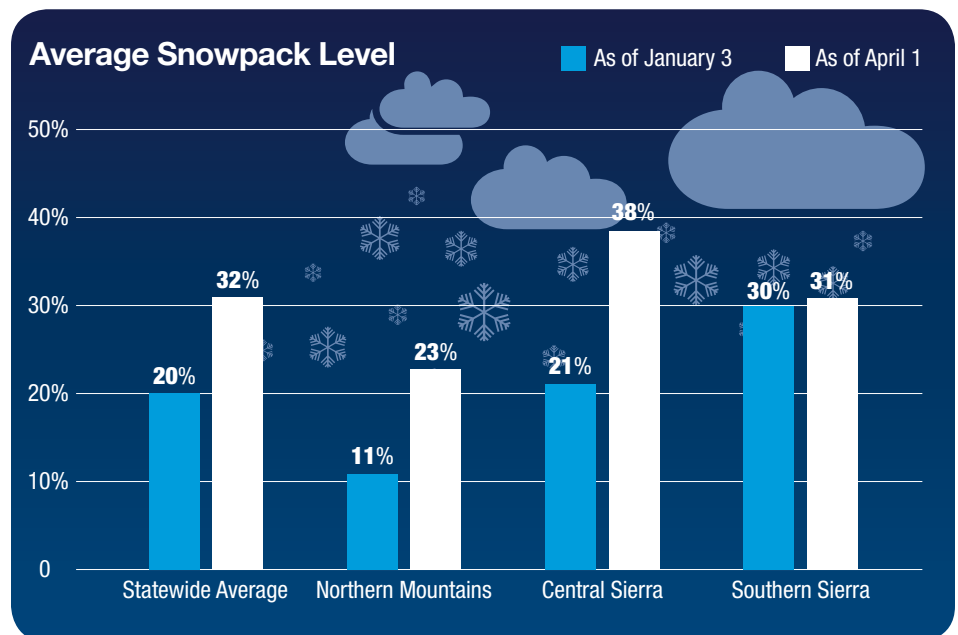
As California continues to recover from the recession, it is essential to enact legislation that promotes economic growth. Reducing border wait times will allow greater movement of travelers and consumers and achieve significant economic benefits.

SB 1213 will be considered on April 8 by the Senate Transportation and Housing Committee.

Staff Contact: **Jeremy Merz**

April Survey Shows Snowpack Still Below Normal

Late-season storms have boosted the Sierra snowpack from the levels noted in January (the driest on record), but those levels still are far below normal, according to the April 1 survey by the state Department of Water Resources. Updates on how the state is dealing with the drought appear at www.drought.ca.gov.



Source: California Department of Water Resources



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.

ADDRESS SERVICE REQUESTED

Where Advocacy Meets Compliance®

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

CALIFORNIA CHAMBER OF COMMERCE

ALERT

Periodicals
Postage
PAID
Sacramento, CA