

# ALERT

VOLUME 40, NUMBER 24 • AUGUST 22, 2014



## Flood of Costly Proposals Moving in Legislature



### OPPOSE

California Chamber of Commerce-opposed bills that don't earn the "job killer" label still pose problems for California businesses and

deserve to be rejected.

The CalChamber is urging lawmakers to oppose the following proposals. If passed, these bills will create onerous burdens for California firms, slow economic development, lead to increased costs for labor or health care, or boost excuses for costly litigation.

In a state where business operating costs average 19% higher per job than

elsewhere in the nation, the negative impact of proposals like the following should not be ignored.

### Barriers to Economic Development

- [SB 605 \(Lara; D-Huntington Park/Long Beach\) Expensive Regulatory Burdens](#). Creates regulatory burdens and increases the cost of doing business in California by directing the California Air Resources Board to create a new program to regulate short-lived climate pollutants.

- [SB 1204 \(Lara; D-Huntington Park/Long Beach\) Premature AB 32 Auction Revenue Expenditures](#). Prematurely allocates auction revenues to fund zero and near-zero emission truck and bus technologies.

*See Flood: Page 4*

## New Law Provides Incentive to Bring Aerospace Jobs to California



An economic incentive program to attract new aerospace jobs to California is

now in place with the signing of two California Chamber of Commerce-supported bills.

The CalChamber lists both [SB 718 \(Roth; D-Riverside; Chapter 189\)](#) and [AB 2389 \(Fox; D-Palmdale; Chapter 116\)](#) as job creators because they increase the state's economic competitiveness and will help attract new aerospace engineering and manufacturing jobs to California.

### Strong Message

By signing SB 718 and AB 2389, Governor Edmund G. Brown Jr. has sent a strong message to the aerospace industry that California favors economic policies that make the state more investment-friendly.

For nearly the past century, California has been the home to the world's most advanced aeronautics and aerospace companies. This industry directly supports thousands of high-pay, high-skill jobs and provides millions of dollars in tax revenue.

Additionally, the aerospace industry has a substantial multiplier effect as it supports thousands of small suppliers and contractors that service large projects.

*See New Law: Page 5*

## 'Job Killer' Bills Still Alive in Legislature



In the final days of the legislative session, a handful of "job killer" proposals remain alive despite strong opposition from the California Chamber of

Commerce and other groups.

Legislation that increases the cost burden on employers is unacceptable, particularly in light of a recent study by the California Foundation for Commerce and Education showing that operating costs for California businesses are, on average, 19% higher than competitors in the rest of the nation ([see August 15 Alert](#)).

Ongoing discussions mean the substance and status of some bills may change,

but as *Alert* went to print, the following "job killer" bills remained in play.

[CalChamber Capitol Report videos](#) have highlighted problems with the bills.

### Economic Development Barriers

- [AB 2617 \(Weber; D-San Diego\) Interference with Arbitration Agreements and Settlement Agreements](#). Unfairly prohibits the enforcement of arbitration agreements or pre-litigation settlement agreements that require the individual to waive their right to pursue a civil action for the alleged violation of civil rights.

- [AB 2416 \(Stone; D-Scotts Valley\) Unproven Wage Liens](#). Creates a dangerous and unfair precedent in the wage

*See 'Job Killer': Page 5*

### Inside

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## Labor Law Corner

# Handling Vacation Deductions for Exempt Employee's Part-Day Absence



**Jessica Hawthorne**  
Helpline Manager

*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 court of appeal case involving the Pacific Gas and Electric Company. PG&E established a policy that if an exempt employee took off four or more hours of personal time in

the course of a workday, PG&E would deduct that amount from the employee's vacation bank. See *Conley v. PG&E*, 131 Cal App 4th 260 (2005).

### Timing of Vacation Use

In *Conley*, 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.

The Chief Counsel for the Labor Commissioner then concluded in a [2009 opinion letter \(OL 2009.10.15\)](#) that the *Conley* case did not restrict an employer from making deductions from an employee's vacation time in amounts less than four hours pursuant to a bona fide employer plan.

### Vacation/Leave Deductions

In 2014, a California appeals court adopted the analysis in *Conley* and the 2009 Opinion Letter and confirmed that an employer can deduct from an employee's vacation or leave time for partial-day

absences in any time increment specified by the employer's policy. See [Rhea v. General Atomics, 174 Cal.Rptr.3d 862](#) (2014).

Under the salary basis test for exempt employees, the obligation is that the employee receives 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.

You are never permitted to deduct from the salary of an exempt employee for a partial day of absence. The full day's salary would be due if the employee's vacation bank was insufficient to cover the missed daily time.

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*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).*

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## CalChamber-Sponsored Seminars/Trade Shows

More information: [calchamber.com/events](http://calchamber.com/events).  
**Labor Law**

2014 California HR Conference. Professionals in Human Resources Association (PIHRA). August 25–26, Anaheim. (310) 606-8262.

HR Boot Camp. CalChamber. September 3, Anaheim. (800) 331-8877.

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

### Business Resources

Olix Awards. Olix Global. September 1–2, Hollywood. (949) 679-6066.

### International Trade

Investment Summit of the Dominican Republic. Consulate General of the Dominican Republic. September 4–5, Santo Domingo, Dominican Republic. (818) 504-6602.

Brazil Business Briefing. U.S. Trade Development Agency. September 11, San Francisco. (617) 868-0018.

California Asian Business Summit. CalAsian Chamber, Asian and Pacific

Islander American Chamber of Commerce and Entrepreneurship, ChinaSF. September 18–19, San Francisco. (916) 444-7883.

Ukraine Tech Gem. Consulate General of Ukraine in San Francisco. September 18, San Francisco. (415) 398-0240.

K-TECH Silicon Valley 2014 Conference/Expo. Korea Trade-Investment Promotion Agency (KOTRA) and National IT Industry Promotion Agency (NIPA). September 24–25, Santa Clara. (408) 432-5044.

Trade Expo Indonesia. Ministry of Trade of the Republic of Indonesia. October 8–12, Jakarta, Indonesia.

Tissue Middle East Show. Nile Trade Fairs. October 22–24, Cairo, Egypt.

**Next Alert:  
September 5**



# An Unhealthy Dependence on the Rich



Loren Kaye

Upper-income taxpayers are paying the highest share ever of the California personal income tax.

This is good news in good times, but underscores the

need for [Proposition 2](#), the rainy day reserve measure placed on the November ballot by the Legislature at the Governor's request.

## Guest Commentary By Loren Kaye

[Data recently released](#) by the Franchise Tax Board (FTB)—with the first year of Proposition 30 tax increases in the books—shows taxpayers with more than \$200,000 in tax liabilities paid a record 70% of all personal income taxes. This exceeds the previous high of 66% in 2007.

This tax burden will undoubtedly rise even higher in 2013, as the steeply progressive income tax rates in revenues during an economic expansion.

California's general budget has developed an unhealthy dependence on high-income Californians. With personal income taxes [amounting to nearly two-thirds](#) of all general revenues, fewer than 800,000 taxpayers will contribute more than 46% of the revenues used to

support education, universities, health care, prisons, and other state programs.

But what goes up will inevitably come down. Much of the spike in tax revenues is from a run-up of capital gains tax revenues. These revenues over-track the economy—surging in good times and collapsing during a contraction.

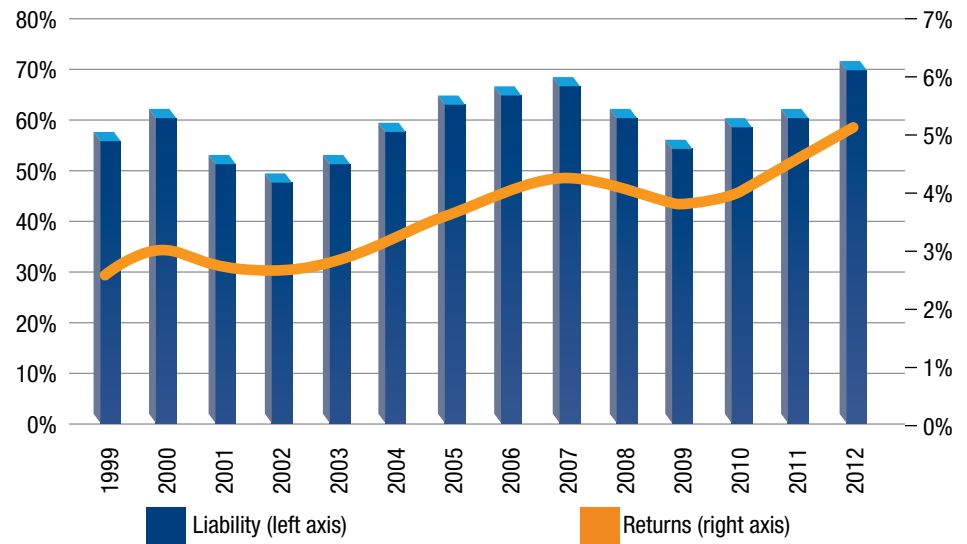
The inevitable turning of the business cycle will shrink those tax revenues. This calls for prudence, even as budget coffers fill to the brim.

A robust rainy day reserve, which socks away unanticipated taxes, is the best hedge against a return to the bad old days of budget deficits.

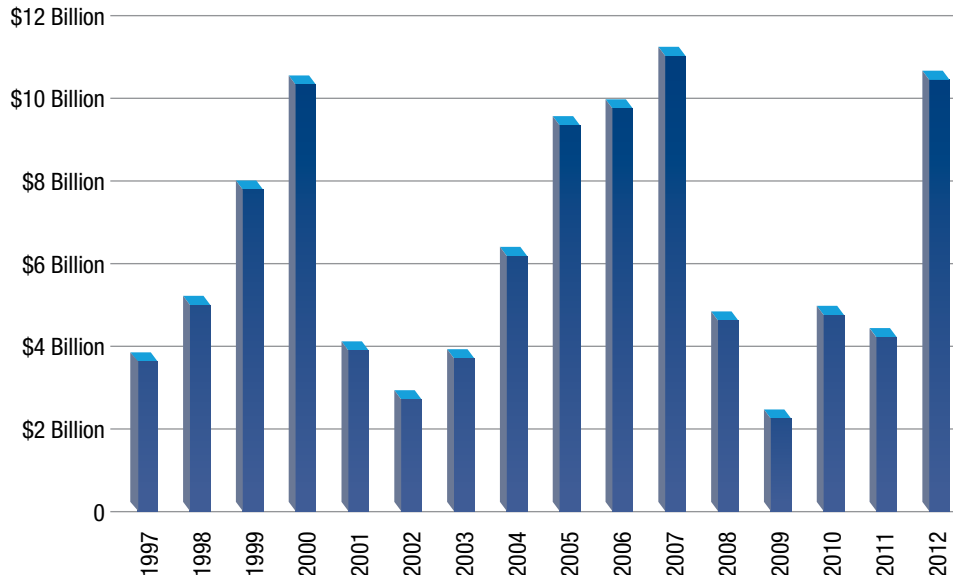
*(Hat tip to Fred Silva at [California Forward](#) for unearthing the FTB data.)*

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

## Tax Share of >\$200k Personal Income Tax Filers



## Capital Gains Tax Revenues



## CalChamber Calendar

*Business Services Committee:*

September 4, Anaheim

*Water Committee:*

September 4, Anaheim

*Fundraising Committee:*

September 4, Anaheim

*Board of Directors:*

September 4-5, Anaheim

*International Trade Breakfast:*

September 5, Anaheim

*Public Affairs Conference:*

November 11-12, Laguna Niguel

## Flood of Costly Proposals Moving in Legislature

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• **[SB 1139 \(Hueso; D-Logan Heights\)](#) Geothermal Procurement Mandate.** Increases the cost of energy and threatens current renewable generation jobs by requiring the procurement of 500 MW of new geothermal energy.

• **[SB 812 \(de León; D-Los Angeles\)](#) Creates Unworkable Permitting System for Hazardous Waste Facilities.** Fundamentally undermines the Department of Toxic Substances Control's recently proposed plan to issue protective and timely hazardous waste permits by creating extraordinarily aggressive and arbitrary permit processing timelines.

• **[AB 1739 \(Dickinson; D-Sacramento\)](#) Premature Regulations.** Potentially devalues land prices of commercial and agricultural properties by limiting groundwater rights on which credit worthiness is based by requiring groundwater management plans without careful and thoughtful review of all monitoring data and without clear definitions or directions.

• **[SB 1168 \(Pavley; D-Agoura Hills\)](#) Premature Regulations.** Potentially devalues land prices of commercial and agricultural properties by limiting groundwater rights on which credit worthiness is based by requiring groundwater management plans without careful and thoughtful review of all monitoring data and without clear definitions or directions.

### Increased Labor Costs

• **[AB 1723 \(Nazarian; D-Sherman Oaks\)](#) Labor Commissioner Investigation.** Expands the authority of the labor commissioner to issue waiting time penalties during the citation process instead of just the administrative hearing, without setting forth the basis of the penalty in citation.

• **[AB 1556 \(Perea; D-Fresno\)](#) Unemployment Insurance Tax Increase Risk.** Prematurely adopts new statutes while rules and decisions from the federal Department of Labor regarding state requirements for waivers of looming unemployment insurance tax hikes are pending.

• **[AB 2616 \(Skinner; D-Berkeley\)](#) Expands Costly Presumptions.** Increases workers' compensation costs for public and private hospitals by presuming certain diseases and injuries are caused by the workplace.

• **[SB 25 \(Steinberg; D-Sacramento\)](#) Due Process for Agricultural Employers.** Denies due process for agricultural employers by requiring employer to implement a collective bargaining contract ordered by the Agricultural Labor Relations Board while appealing the order, unless the employer meets a high standard to win a stay.

### Increased Health Care Costs

• **[AB 1792 \(Gomez; D-Los Angeles\)](#) Publicly Shames Employers.** Unfairly exposes private-sector employers with more than 50 employees who are beneficiaries of Medi-Cal and CalFresh to liability, to public protests and media attacks by creating a public list of those employers and the cost to the state of the benefits being provided to their workers.

• **[AB 1917 \(Gordon; D-Menlo Park\)](#) Increases Health Care Premiums.** Increases health care premiums for individuals and employers, and forces plans to increase cost-sharing for other health care products and services, by capping what health care enrollees can be charged for prescription drugs each month to 1/12th of the annual out-of-pocket maximum for individuals.

• **[AB 2533 \(Ammiano; D-San Fran-](#)**

**[cisco\)](#) Undermines Managed Care.** Significantly increases health care costs and makes premiums less affordable for employers by requiring health care service plans, in some cases, to arrange out-of-network care with noncontracting providers regardless of their rates.

• **[SB 1094 \(Lara; D-Huntington Park/Long Beach\)](#) Interference with Private Contracts.** Inappropriately interferes with the ability of struggling hospitals to seek financing and transfer control to a larger health facilities operator by allowing the California Attorney General (AG) to retroactively amend the contract rather than resorting to traditional remedies when one of the parties breaches the contract or makes material misrepresentations to the AG.

• **[SB 1182 \(Leno; D-San Francisco\)](#) Unnecessary Oversight of Health Plans.** Imposes unnecessary new administrative burdens on health plans and insurers by requiring them to file rate information about proposed large group rate increases exceeding 5% with their departments 60 days prior to any rate increase, and to annually disclose aggregate data about all large group rate filings and make that information available to certain purchasers for free upon request.

### Increased Litigation Exposure

• **[SB 610 \(Jackson; D-Santa Barbara\)](#) Expansion of Litigation for Franchisors.** Creates a new private right of action for failure to act in "good faith" as defined, with the right to recover attorneys fees only for franchisees.

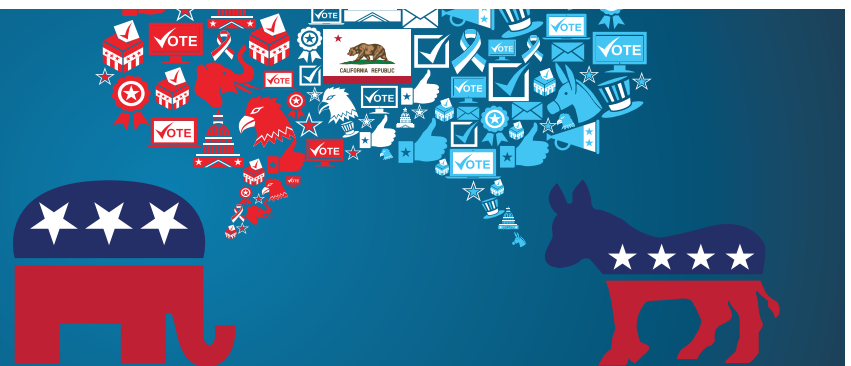
### Action Needed

Contact your legislators and the Governor and urge them to **oppose** these anti-business bills.

 CalChamber

## 2014 Fall Public Affairs Conference

November 11 & 12, 2014  
The Ritz-Carlton, Laguna Niguel



## ‘Job Killer’ Bills Still Alive in Legislature

From Page 1

and hour arena by allowing employees to file liens on an employer’s real or personal property, or property where work was performed, based upon alleged yet unproven wage claims.

• **AB 1897 (R. Hernández; D-West Covina) Contractor Liability.** Unfairly imposes liability on a contracting entity for the contractor’s wage and hour violations and lack of workers’ compensation coverage despite the lack of any evidence that the contracting entity controlled the working conditions or wages of the contractor’s employees.

• **AB 52 (Gatto; D-Los Angeles) Substantial Expansion of California Environmental Quality Act (CEQA).** Creates more opportunities for litigation and substantially increases project cost and delay by creating mandatory consultation requirements with Native American Tribes and by requiring lead agencies to analyze a project’s impacts to an entirely new resource area called Tribal Cultural Resources.

### Costly Workplace Mandates

• **AB 1522 (Gonzalez; D-San Diego) Paid Sick Leave.** Increases employer mandates by requiring all employers,

large and small, to provide all employees in California with paid sick leave, and threatens employers with statutory penalties and litigation under the Private Attorneys General Act (PAGA) for alleged violations.

### Action Needed

The CalChamber is urging members to ask their legislators to **oppose** these “job killer” bills.

**Easy-to-edit sample letters** are available at [www.calchambervotes.com](http://www.calchambervotes.com).



CalChamber Policy Advocate Jennifer Barrera appears in videos on the unproven wage lien bill, AB 2416 (Stone; D-Scotts Valley), and contractor liability, AB 1897 (R. Hernández; D-West Covina).

## New Law Provides Incentive to Bring Aerospace Jobs to California

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### Aerospace Jobs

SB 718 and AB 2389 create a competitive economic environment to support a new aerospace manufacturing project, which—if located in California—would provide 1,100 direct jobs and more than

5,000 indirect jobs.

In addition to creating jobs, this project is also estimated to generate more than \$1 billion in state and local tax revenue.

Both bills provide a narrow tax incentive—capped in both amount and duration—tied to the creation of jobs that would otherwise be located in another

state. Without these bills, California would be at a competitive disadvantage and less likely to land this new project.

The ability to meet the state’s economic needs depends on a healthy and competitive California economy. Both bills are an important step toward that goal.

**Staff Contact: Jeremy Merz**

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## Legislative Outlook

An update on the status of key legislation affecting businesses. Visit [www.calchambervotes.com](http://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.

### Legislators Advance Proposal to Restore Tax Credit Funding



California Chamber of Commerce-supported job creator legislation to restore full funding to the California Competes Tax Credit program is moving through the Legislature.

#### **AB 1560 (Quirk-Silva; D-Fullerton)**

ensures California remains a competitive environment for employer investment.

Last year, Governor Edmund G. Brown Jr. signed legislation that created a new tax credit program administered by the Governor's Office of Business and Economic Development (GO-Biz). This program enables GO-Biz to negotiate agreements and provide economic incentives to employers in exchange for investment and employment expansion in California.

Employers must apply for this program and, before awarding any incentives, GO-Biz evaluates each application based on a number of factors, including the number of jobs created, the amount of wages and benefits provided to employees, the duration of the investment, and the overall size of the investment in the state.

In addition, 25% of the funds awarded must be provided to small business.

The program proved to be very successful in its first year—nearly 400 employers applied for the program and it was oversubscribed by \$470 million. The awards that were approved by GO-Biz are projected to create nearly 6,000 jobs and generate more than \$2 billion in investments.

Unfortunately, recently enacted legislation reduces the amount of funding in future years, weakening a valuable economic tool that has contributed to a more competitive environment in the state.

AB 1560 authorizes the Department of Finance to restore funding to the program and, in doing so, sends a strong message to employers that California favors economic policies that make the state more investment-friendly.

As *Alert* went to print, AB 1560 had passed the Assembly with bipartisan support and was awaiting action in the Senate.

**Staff Contact: Jeremy Merz**

### Legislation Clarifies 'Money Transmissions'



## SUPPORT

Legislation to clarify a "money transmission" under state law has passed the Legislature and awaits action by the Governor.

The California Chamber of Commerce supports **AB 2209 (Dickinson; D-Sacramento)**, which accommodates use of new technologies and the movement toward online and mobile apps for transmitting funds by updating the Money Transmitters Act.

Supporters believe current law does not apply to situations where one party accepts payment as an agent of the payee and the delivery of funds to the payee's agent satisfies the payer's obligation. The clarification in AB 2209 is needed to

ensure that "money transmission" does not include the payee's agents in these types of transactions.

The clarification is critical to companies that operate online marketplaces and other similar services. Many of these marketplaces provide California's small businesses with the opportunity to reach and sell to a global audience.

AB 2209 will also give consumers the confidence to buy from small companies because the consumers know and trust the marketplace operator. The bill encourages growth as California's economy continues to recover from the recession.

**Staff Contact: Valerie Nera**

## Bill Clarifying Health Care Waiting Period Requirements Signed



SUPPORT

California Chamber of Commerce-supported legislation that will resolve confusion between state and federal rules governing health care enrollment waiting periods has been signed into law.

The bill, **SB 1034 (Monning; D-Carmel; Chapter 195)**, eliminates confusion for employers by deleting certain provisions of California law related to waiting period limitations for health care coverage and clarifying that employer-imposed waiting periods are governed by federal law.

SB 1034 prohibits group health care benefit plans from imposing any waiting or affiliation period before issuing health coverage in order to resolve confusion between state and federal law and to better conform to provisions of the federal Affordable Care Act (ACA). California has a long-standing 60-day waiting period for insurers, but the ACA estab-

lished a 90-day waiting period that applies broadly to employers.

Inconsistencies between the state and federal laws have had an indirect impact on employers and created confusion about whether health care can be treated like other benefits, which often are instated after 90 days of employment. SB 1034 will allow employers to continue treating all employee benefits as a group, easing administration and compliance with the law, while ensuring that employees receive coverage in a timely manner, as required by the ACA.

Clarification of the law also will help multi-state employers by ensuring they have just one date to keep in mind when determining when a new hire or otherwise newly qualified employee must be enrolled in a health care plan.

**Staff Contact: Mira Guertin**

ONE-DAY SEMINAR AT CALCHAMBER IN DOWNTOWN SACRAMENTO

## Leaves of Absence: Making Sense of It All



Managing leaves of absence is confusing, especially since California has some very unique leave laws. To avoid costly litigation, it's essential to understand various types of leaves and any state and federal legal requirements that apply to them.

CalChamber's employment law experts will cover the most common and more difficult-to-resolve issues related to leaves of absence when you join them at our upcoming seminar in Sacramento.

**Thursday, October 9, 2014**

**9:00 a.m. – 4:00 p.m.**

**California Chamber of Commerce**

Cost: \$399.00 | Preferred/Executive Members: \$319.20



**PURCHASE** at [calchamber.com/LOAseminar](http://calchamber.com/LOAseminar) or call (800) 331-8877.

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