

ALERT

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Job Creator Bill Targets Loophole in State Law

Reduces Costly Employment Class Action Litigation



The California Chamber of Commerce has identified a “job creator” bill that will

address a loophole in state law and help limit frivolous class action litigation against California employers that are creating highly paid jobs.

CalChamber-sponsored/supported [AB 1470 \(Alejo; D-Salinas\)](#) is similar to federal law. The bill will create a rebuttable presumption that employees who earn at least \$100,000 a year performing nonmanual labor, and have at least one exempt duty are exempt from overtime.

Federal law has recognized for more than 10 years that employees performing nonmanual labor and annually receiving at least \$100,000 are likely properly classified as exempt.

Although such employees also must perform at least one exempt duty, such as supervising other employees or exercising independent judgment and discretion, courts have a “relaxed” analysis of the duties if the employee is highly compensated.

In an appellate case (*Anani v. CVS RX Services, Inc.*, 730 F.3d 146 (2d Cir. 2013)), the court said, “A high level of compensation is a strong indicator of an employee’s exempt status, thus eliminating the need for a detailed analysis of the employee’s job duties.” The court cited the Code of Federal Regulations (29 CFR 541.601 (c)).

AB 1470 seeks to create a similar exemption at the state level.

Class Action Litigation in State

In the last few years, there have been
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‘Job Killer’ Bill Increasing Health Care Costs in Senate Policy Committee



A California Chamber of Commerce-opposed “job killer” health care rate regulation bill is scheduled to be considered April 22 by the Senate Health Committee.

[SB 546 \(Leno; D-San Francisco\)](#) threatens employers with higher premiums and interferes with their ability to provide health care benefits for their employees by giving the Department of Managed Health Care and the Department of Insurance authority to modify or deny rate changes in the large group market, and imposing unnecessary and burdensome new reporting requirements on health plans and insurers that will increase premiums.

Uncertainty for Employers

SB 546 requires regulators to approve proposed rate changes in the large group market even though voters rejected a similar proposal just last fall when they voted down Proposition 45. This provision of the bill creates uncertainty for large employers with adequate bargaining strength, and interferes with their ability to negotiate health benefits on behalf of, and in some cases with, their employees.

Although the CalChamber shares the author’s concern about rising health care costs, rate regulation is not the solution to controlling these costs or ensuring the affordability of health care for Californians.

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MAY 27-28, 2015
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Labor Law Corner

Temporary Driver License Acceptable List B Document for Form I-9



Sunny Lee
HR Adviser

Can an employer accept a temporary driver license as a document for Form I-9 purposes?

Yes, according to the U.S. Citizen and Immigration Services (USCIS) website, a state-issued temporary license is acceptable.

For Form I-9 purposes, an employee must present original documents that establish both identity and work authorization. An original driver license is an acceptable document to establish identity.

When an employee applies for or renews a driver license and completes the application or renewal process in California, he/she will be issued a temporary driver license good for 60 days until he/she receives the original replacement license in the mail.

Temporary Driver License

The USCIS recently posted an update to its website that deals with the acceptability of state-issued temporary driver licenses. According to the update, a temporary license is an acceptable identity document provided the following is included:

“A state-issued temporary driver’s license is an acceptable Form I-9 List B document if it contains a photograph or identifying information such as name, date of birth, gender, height, eye color, and address. Any conditions on the temporary driver’s license, such as that the

expired license must accompany the temporary driver’s license for it to be valid, must be followed.” (Last Reviewed/Updated: 11/25/2014)

Form I-9 Guidance

The California Chamber of Commerce Labor Law Helpline addresses many member questions relating to the I-9 form, process and documents.

In addition, employers may access the [Handbook for Employers: Guidance for Completing Form I-9](#) at the USCIS website, www.uscis.gov (search for form M-274).

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 at www.calchamber.com/events.

Labor Law

HR Boot Camp. CalChamber. April 23, San Diego; June 10, Santa Clara; August 18, Sacramento; September 2, Laguna Beach. (800) 331-8877.

Business Resources

Federal/State Basic Payroll Tax Seminar. Employment Development Department. May 15, Carson. (562) 903-2168.
34th National UI Conference. National Foundation for Unemployment Compensation and Workers' Compensation. June 17-19, San Diego. (202) 223-8904.

International Trade

Kiss of the Oceans Reception. Mayor Kevin L. Faulconer, San Diego International Sister Cities Association and The House of Panama. April 23, San Diego.
MEXPORT Trade Show 2015. Otay Mesa Chamber. April 23, San Diego. (619) 661-6111.
Ex-Im Bank's Annual Conference. Export-Import Bank of the United States. April 23-24, Washington, D.C. (703) 536-4992.
China-U.S. Business Summit. China-U.S. Business Summit Organizing Committee. April 26-28, Los Angeles. (626)

810-0820.

Making Hay: The Future of U.S. Competitiveness. Monterey Bay International Trade Association. April 30, San Jose. (831) 335-4780.

World Trade Week Kickoff Breakfast. Los Angeles Area Chamber. May 5, Beverly Hills. (213) 580-7569.

Japan/South Korea Trade and Leadership Mission. CalAsian Pacific Chamber. May 9-21, Seoul, South Korea and

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CalChamber Calendar

Capitol Summit and Host Breakfast:

May 27-28, Sacramento

International Forum:

May 27, Sacramento

Water Committee:

May 27, Sacramento

Environmental Regulation Committee:

May 27, Sacramento

Fundraising Committee:

May 27, Sacramento

Education Committee:

May 27, Sacramento

Board of Directors:

May 28, Sacramento



‘Job Killer’ Bill Increases Health Care Costs

From Page 1

According to a 2012 report by the Henry J. Kaiser Family Foundation, “rate review itself cannot alter the factors driving increases in healthcare costs [growing pharmaceutical expenses, rates charged by providers and hospitals, increasing healthcare utilization, and expensive new medical technologies].” Instead, this expansion of California’s existing rate review program imposes costly new administrative burdens on health care plans and insurers that are apt to result in higher premiums for purchasers while ignoring the real cost drivers in the system.

Furthermore, there is nothing in SB 546 that limits the grant of rate approval authority to premium rates, meaning a regulator could unilaterally decide to adjust co-payments, deductibles or other cost-sharing rates established by an employer, resulting in potentially signifi-

cant unanticipated costs for that employer during the year.

The bill also creates an unreasonable risk of delay for employers seeking to renew their health care contracts because it sets no time limit for regulators to act on a proposed rate change.

Reduces Quality of Benefits

Rate approval can also have a negative impact on the quality of care employees receive. A 2004 study funded by the California Healthcare Foundation to determine the likely effects of premium regulation in the California health insurance market found that increases in health insurance premiums were generally not caused by higher profits for insurers. Because of this, researchers concluded that if regulators were to freeze rates even as health care costs continue to rise, rate regulation could force health plans and insurers to reduce payments to providers,

shrink their provider networks or cut benefits for enrollees to maintain profitability, and ultimately could drive some insurers from the market and limit consumer choice.

Action Needed

SB 546 will be considered by Senate Health on April 22. Contact committee members and your Senate representatives and urge them to **oppose SB 546**.

Let them know the expanded rate review and regulation requirements proposed by SB 546 are not apt to provide much benefit for large employers or their employees, and could reduce the quality of health care benefits, increase their cost, and even drive some insurers from the market.

An easy-to-edit sample letter is available in the Action Center at www.calchambervotes.com.

Staff Contact: Mira Morton

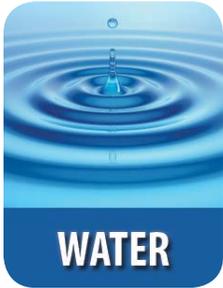
CalChamber Tax Committee Hosts Lunch Meeting with Assemblyman



Photo by Sara Espinosa

Assemblyman Philip Y. Ting (D-San Francisco), chair of the Assembly Revenue and Taxation Committee, discusses fair tax policy with the CalChamber Taxation Committee on April 9, noting the dangerous fiscal situation created by California’s dependence on tax revenue collected from top earners who have the means to pack up and move to anywhere in the world. Seated are CalChamber President and CEO Allan Zaremberg (center) and CalChamber Policy Advocate Jeremy Merz.

CalChamber Urges Water Board to Consider Previous Conservation Efforts by Business



The California Chamber of Commerce has asked the State Water Resources Control Board to clarify some elements of its framework for the drought emergency mandatory

regulations.

In an April 13 letter to the water board, CalChamber Policy Advocate Valerie Nera asks the board to give consideration to water conservation measures already in place when the Governor issued his April 1 executive order for a 25% reduction in water use.

As a part of the 2009 water package, urban and agricultural water suppliers were to implement measures to reduce usage 20% per capita by 2020.

To achieve those reductions, many

water districts asked the business and agricultural communities to evaluate their usage and conserve where possible. Many businesses undertook a variety of improvements to reduce their water use.

The letter points out that there are situations that lead some businesses to use water based on strategies to meet health and safety regulations.

For instance, the food industry must meet stringent sanitation standards like the requirement that employees wash their hands for a set amount of time to ensure cleanliness and to limit spreading diseases, and all surfaces must be cleaned and rinsed, and utensils washed at a certain temperature. Institutional settings like hospitals, medical and dental facilities all have stringent requirements for cleanliness that use water and may not easily find alternatives.

For other businesses, reducing water usage would equate to reducing product lines and therefore would result in lost

jobs. Beverage manufacturers, bottlers, coffee shops, and industries like micro chip processors and food processors, for example, would be put in jeopardy if 25% of their water usage were cut or if they had to pay significantly more for their water.

Also, a number of businesses purchase water under contract from districts for a set amount of time, commonly a year or more at a time. What happens to those contracts? What, if any, provisions will be made for the instances where the business owner does not have control over the water used, such as in apartment complexes that do not have individual meters per apartment or are in rent-controlled cities that don't include the ability to raise rents to cover water usage?

The draft regulations were due to be issued on April 17; the board will consider them in early May.

Staff Contact: Valerie Nera

Job Creator Bill Targets Loophole in State Law

From Page 1

multiple examples of California employers that are creating highly compensated jobs, yet are being subject to class action litigation based upon the allegation that such employees are misclassified as salaried, exempt workers.

Although such claims cannot proceed under federal law, courts have no choice but to allow these costly actions to proceed under state claims, given California's lack of conformity on this issue.

Although similar to federal law, AB 1470 actually differs in that it would create only a presumption that the employee is exempt, thereby allowing an employee who believes he/she has truly been misclassified to still challenge his/

her status as a salaried employee.

Not Covered

Notably, AB 1470 would not apply to:

- employees performing manual labor, no matter how much they are paid;
- employees covered under a collective bargaining agreement; or
- the following specific occupations: nonmanagement production-line workers and nonmanagement employees in maintenance, construction, and similar occupations, such as carpenters, electricians, mechanics, plumbers, iron workers, craftsmen, operating engineers, long-shoremen, construction workers, laborers, and other employees who perform work involving repetitive operations with their

hands, physical skill and energy, regardless of the amount of their compensation.

AB 1470 is limited to employees who are actually performing exempt, non-manual labor duties and being highly compensated.

Action Needed

AB 1470 will be considered by the Assembly Labor and Employment Committee on April 22. Contact committee members and your Assembly representatives and urge them to **support AB 1470**.

For background information, see the [2015 CalChamber Business Issues and Legislative Guide](#) article on Labor and Employment.

Staff Contact: Jennifer Barrera

Tools to stay in touch with your legislators.

calchambervotes.com

‘Job Killer’ Hearings Set for Next Week



The following “job killer” bills are scheduled to be considered next week by legislative policy committees.

The California Chamber of Commerce is encouraging members to voice to legislators their concerns about the harm these proposed measures could do to employers, the job climate and economic recovery.

Easy-to-edit sample letters are available in the action center at www.calchambervotes.com.

Tax Increases

- **ACA 4 (Frazier; D-Oakley)**

Lowers Vote Requirement for Tax Increases — Adds complexity and uncertainty to the current tax structure and pressure to increase taxes on commercial, industrial and residential property owners by giving local governments new authority to enact special taxes, including parcel taxes, by lowering the vote threshold from two-thirds to 55%. *Assembly Transportation, April 20.*

Increased Unnecessary Litigation Costs

- **AB 244 (Eggman; D-Stockton)**

Private Right of Action Exposure — Jeopardizes access to credit for home

mortgages, increasing the challenge to attract business to California because of high housing prices, by extending the homeowner’s bill of rights to others, thereby opening the door to more private rights of action. *Assembly Banking and Finance, April 20.*

- **SB 203 (Monning; D-Carmel)**

Lawsuit Exposure — Exposes beverage manufacturers and food retailers to lawsuits, fines and penalties based on state-only labeling requirements for sugar sweetened drinks. *Senate Health, April 22.*

Increased Labor Costs

- **AB 357 (Chiu; D-San Francisco)**

Predictable Scheduling Mandate/Protected Leave of Absence — Imposes an unfair, one-size fits all, two-week notice scheduling mandate on certain retail and food employers that penalizes these employers with “additional pay” for making changes to the schedule with less than two weeks notice, and additionally imposes new, protected leave of absence from work as well as a broad new protected class of employees who are receiving public assistance or have an identified family member receiving such assistance. *Assembly Labor and Employment, April 22.*

• **SB 3 (Leno; D-San Francisco)/Leyva; D-Chino) Automatic Minimum Wage Increase** — Unfairly increases

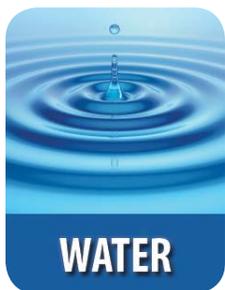
employers’ costs while ignoring the economic factors or other costs of employers by increasing the minimum wage by \$3.00 over the next two and a half years with automatic increases tied to inflation. *Senate Appropriations, April 20.*

• **SB 406 (Jackson; D-Santa Barbara) Significant Expansion of California Family Rights Act** — Creates less conformity with federal law by dramatically reducing the employee threshold from 50 to less than 5 employees and expanding the family members for whom leave may be taken, which will provide a California-only, separate 12-week protected leave of absence on both small and large employers to administer, thereby increasing costs and risk of litigation. *Senate Labor and Industrial Relations, April 22.*

Increased Health Care Costs

• **SB 546 (Leno; D-San Francisco) Health Care Rate Regulation** — Threatens employers with higher premiums and interferes with their ability to negotiate with health plans by imposing unnecessary and burdensome new reporting requirements on health plans and insurers in the large group market, and giving the Department of Managed Health Care and the Department of Insurance authority to modify or deny all rate changes in the large group market. *Senate Health, April 22.*

Water Policy Center Opens at Public Policy Institute



The Public Policy Institute of California (PPIC) has established a water policy center to help meet the state’s need for timely information and innovative water management solutions.

In conjunction with the launch of the center earlier this month, PPIC released *California’s Water: Managing Droughts*, a set of nine short policy briefs on the state’s most critical water management challenges and the actions needed to address them.

In a press release, PPIC said the center will focus on “three critical, interrelated water management challenges facing California in the 21st century”: ensuring clean and reliable water supplies, building healthy and resilient ecosystems, and preparing for droughts and floods.

Serving as director of the center is PPIC senior fellow Ellen Hanak. Hanak started PPIC’s research program on water policy in 2001 and has published numerous reports and articles on the state’s water management challenges and opportunities.

Last year, Hanak appeared in a Cal-Chamber video featuring an in-depth discussion of issues stemming from the California drought.

In addition to PPIC experts, the center

includes a broad research network of specialists who examine the state’s water challenges from the perspective of a range of disciplines, including biology, economics, engineering, geology and law.

The website for the PPIC water policy center is at www.ppic.org/water.

Staff Contact: Valerie Nera



Bill to Protect Small Businesses from Frivolous Lawsuits Fails



A California Chamber of Commerce-supported job creator bill that would have

helped protect small businesses from unwarranted lawsuits failed to pass an Assembly policy committee earlier this week, but was granted reconsideration with the hope and expectation that the author would work with stakeholders to come to an agreement.

AB 1252 (Jones; R-Santee) would have provided needed relief to small businesses by prohibiting a person from bringing a Proposition 65 lawsuit against a business employing fewer than 25 employees.

Proposition 65

Proposition 65, “The Safe Drinking Water and Toxic Enforcement Act of 1986,” was designed to protect California’s drinking water from chemicals known to cause cancer or birth defects, and to warn members of the public about the presence of those chemicals in their environment to help them avoid exposure.

The law requires, among other things, that private businesses with more than 10

employees post warnings when they knowingly expose workers or the public to listed chemicals. These warnings can take the form of placards in business establishments where listed chemicals exist or are released into the environment, or as part of the labeling of a consumer product that contains a listed chemical.

Unfortunately, because Proposition 65 incentivizes individual pursuits by entitling private enforcers to 25% of the penalty collected for successful enforcement in addition to legal fees, a limited number of plaintiffs have engaged in shakedown lawsuits against small businesses over a lack of a sign.

These lawsuits can easily cost several thousand dollars to litigate, causing many small businesses to settle out of court regardless of whether they were required by law to provide a warning.

Determining Exposure

Currently, more than 900 chemicals are included on the Office of Environmental Health Hazard Assessment (OEHHA) Proposition 65 chemicals list. With so many chemicals on the list, including everyday products, it’s easy to understand why business owners sometimes fail to realize a warning sign is required. In fact,

according to OEHHA, “determining anticipated levels of exposure to listed chemicals can be very complex.”

Furthermore, many business owners determine that signage is not warranted given the exposure levels of a particular chemical at their business establishment, but attorneys will still make an allegation in a demand letter in order to pressure businesses into handing over a small settlement or risk ruinous litigation.

AB 1252 will help eliminate the inappropriate use of litigation against these small businesses who can least afford these drive-by lawsuits, while ensuring that the public does receive Proposition 65 warnings when appropriate.

Key Vote

AB 1252 failed to pass the Assembly Environmental Safety and Toxic Materials Committee on April 14, 2-5.

Ayes: Dahle (R-Bieber), Gallagher (R-Yuba City).

Noes: Alejo (D-Salinas), Gonzalez (D-San Diego), Gray (D-Merced), McCarty (D-Sacramento), Ting (D-San Francisco).

Staff Contact: Anthony Samson

Committee Rejects Giving Opportunity to Cure Minor Air Violations



A California Chamber of Commerce-supported bill that would have given businesses the opportunity to cure minor air violations before being fined failed to pass the

SUPPORT

Assembly Natural Resources Committee on April 13.

AB 335 (Patterson; R-Fresno) would have reinstated the California Air Resources Board’s (CARB) Minor Violation Program, which was in effect from 1995 to 2005, to provide businesses with a cure period to fix minor air violations before being fined.

The Minor Violation Program, when instated, allowed for most minor air

violations to result in a “notice to comply” rather than a “notice of violation,” providing the violator with an opportunity to correct a violation without an on-the-spot assessment of a fine or penalty.

Specifically, Health and Safety Code sections 39150 through 39153 required CARB and California’s 35 local and regional air pollution control districts and air quality management districts to adopt rules establishing a minor violation program. These sections, however, were repealed effective January 1, 2006.

Reinstating the Minor Violation Program would have offered relief to businesses by providing them with a cure period to fix violations before being fined. The relief would have been for truly minor violations, which as a practical reality may occur from time to time given the multitude of procedural and

substantive requirements with which facilities must comply in California.

Importantly, AB 335 would not have provided an opportunity to cure for violations that could endanger health or human safety, or cause environmental damage. It also would not have provided a cure opportunity to recalcitrant violators or for intentional violations, including those committed to benefit the business economically.

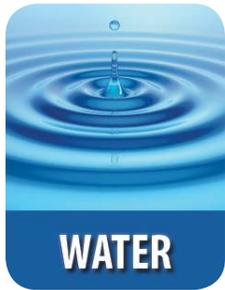
Key Vote

Ayes: Dahle (R-Bieber), Hadley (R-Manhattan Beach), Harper (R-Huntington Beach).

Noes: Williams (D-Santa Barbara), Cristina Garcia (D-Bell Gardens), McCarty (D-Sacramento), Rendon (D-Lakewood), Mark Stone (D-Scotts Valley), Wood (D-Healdsburg).

Staff Contact: Anthony Samson

Legislative Analyst Report Notes Drought Has Limited Statewide Economic Impact



The state Legislative Analyst's Office (LAO) this week said the drought will have a limited statewide economic impact.

"While the drought is affecting many Californians and communities in different ways, we currently do not

expect the drought to have a significant effect on statewide economic activity or state government revenues," the LAO said in its April 14 report.

"The national press is falsely sounding the alarm that our state's economy is falling apart," said California Chamber of Commerce President and CEO Allan Zaremberg. "While the drought is a serious issue, its current impact is mostly limited to agriculture, and California is definitely still open for business. The administration and local water districts are managing our scarce resource, and the LAO report will help national businesses understand that our lack of precipitation is not a barrier to

expanding their operations."

Limited Statewide Impact

The drought will have a limited statewide impact because agriculture directly generates only about 2% of total state gross domestic product (GDP) and 3% to 4% of all jobs in the state, the LAO report stated.

The report acknowledged that local communities with "economies heavily concentrated in particular aspects of agriculture could be heavily affected," and some communities already have been heavily affected.

The drought could force farmers to fallow more fields or switch to different crops or livestock either temporarily or permanently, the LAO report noted. The switches could be to lower-value crops or livestock in some cases, higher-value crops in other instances.

Even a substantial decline in agriculture's share of the economy, such as occurred during and after the 1976–1977 drought, probably would have only a limited impact on the state's overall economy, the LAO said, pointing out that real state GDP rose during 1976 and 1977.

Residential Water

The residential water changes are

"notable, but not likely a major drag" on the economy, the LAO said.

The Governor has ordered a mandatory 25% water use reduction in urban areas, including restrictions on water use by golf courses and other large landscaped areas, plus a prohibition on sprinkler usage in new homes unless water-efficient drip irrigation is used.

These noticeable changes "seem unlikely in and of themselves to result in a significant drag on the state's economy," the LAO said, pointing out that California homebuilders already are required to meet water efficiency and other requirements.

Landscaping and other aspects of residential and commercial construction in some communities seem likely to change if the new restrictions are finalized and stay in place, the LAO said.

"Still, homebuilding and other construction continues in the state, and there is no broad change in overall consumer spending or sentiment at this time resulting from the drought," the report concludes.

The LAO report, "Limited Statewide Economic Impact of Drought," is available at www.lao.ca.gov.

Staff Contact: Valerie Nera

CalChamber-Sponsored Seminars/Trade Shows

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- Tokyo, Japan. (916) 446-7883.
- SelectUSA Road Show in Mexico. SelectUSA. May 12–14, Merida, Mexico City and Tijuana, Mexico. (202) 482-6800.
- Orange County World Trade Week. Irvine Chamber and UPS. May 14, Irvine. (949) 502-4128.
- SelectUSA Greater China Road Show. SelectUSA. May 18–29, Hong Kong, Shenzhen, Dongguan, Guangzhou, Shanghai, Shenyang and Dalian, China. (202) 482-6800.
- 21st Annual World Trade Conference. California Inland Empire District Export Council. May 21, Riverside.
- Chongqing International Investment Fair. CalAsian Pacific Chamber. May 23–31, Chongqing/Chengdu, China. (916) 446-7883.
- 18th Annual International Business Luncheon. World Trade Center Northern California. May 28, Sacramento. (916) 321-9146.
- 9th World Chambers Congress. International Chamber of Commerce. June 10–12, Torino, Italy.

- Korea Overseas Investment Fair. Korea Trade-Investment Promotion Agency. June 24–25, Gyeonggi-do, South Korea. (408) 432-5021.
- Hong Kong/China Trade and Leadership Mission. CalAsian Pacific Chamber. August 14–27, Hong Kong, Guangzhou, Shanghai, and Beijing, China. (916) 446-7883.

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ONE-DAY SEMINAR IN SACRAMENTO AND SAN DIEGO

Leaves of Absence: Making Sense of It All



Ask anyone who handles HR: managing leaves of absence is easier said than done. A complicated mix of federal and California employment laws govern how employers administer leaves and provide benefits. No one certainly wants to risk litigation for noncompliance in either instance.

“When you combine the considerable number of legally required leaves with the recent CFRA regulations effective July 1, we have a lot to cover,” said seminar co-presenter and employment law expert Erika Frank.

Sacramento: Wednesday, May 6, 2015, CalChamber
San Diego (La Jolla): Tuesday, June 16, 2015, The Lodge at Torrey Pines
9:00 a.m. – 4:00 p.m.

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



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