

# ALERT

VOLUME 42, NUMBER 18 • JUNE 10, 2016

 **CalChamber**  
CALIFORNIA CHAMBER OF COMMERCE

## Just Four Job Killers Move to Second House by June 3



Only four job killer bills subject to the June 3 deadline for bills to pass the house in which they were introduced have moved on to the second house.

The remaining four subject to the deadline were stopped or amended on the Assembly Floor.

The deadline was waived for a fifth bill before amendments led to the California Chamber of Commerce removing the job killer tag while remaining opposed.

### Job Killers Stopped

Strong opposition from the CalChamber and the business community helped to stop the following two job killers from passing the Assembly:

• **AB 2667 (Thurmond; D-Richmond) Arbitration Agreements Discrimination:** Unfairly discriminates against arbitration agreements and therefore is likely preempted by the Federal Arbitration Act, which will lead to confusion and litigation, by prohibiting arbitration of Unruh Civil Rights violations made as a condition of a contract for goods or services. *Fell short of votes needed to pass Assembly.*

• **AB 2879 (M. Stone; D-Scotts Valley) Employment Arbitration Agreements Discrimination:** Unfairly discriminates against arbitration agreements and is likely preempted by the Federal Arbitration Act, which will lead to confusion and litigation, by prohibiting an employer from requiring an individual who is a member of the military to sign a

*See Just Four Job Killers: Page 4*

## A Look at Tuesday Night's Legislative Results—Counting Continues



In looking at the results from Tuesday's California primary in Democratic open seats, we can say preliminarily that the outcomes look very positive for the employer community in

terms of our goals for the primary election. But with 100% of the precincts reporting, why are the results still preliminary?

For the primary, it is a simple answer as people who held on to their absentee ballots had until Tuesday to either put them in the mail or drop them off at an election location like a polling place. Election experts estimate that there is in the range of 1.5 million votes left to count, so results in many close races are still in doubt and outcomes could change.

In addition, however, with the top two primary vote getters advancing to the November ballot, many more races will be contested in the fall, some pitting Democrats against Republicans, and others featuring members of the same party.

In the past, seats have changed party hands between a presidential election year and a nonpresidential one because turnout normally is greater when the presidency is in play. Due to presidential politics this year, turnout may be difficult to predict.

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### 1937-2016

## Remembering Kirk West



Kirk West, longtime California business leader and confidante to governors, passed away on June 2 after battling cancer. He was 79.

For two decades Kirk

was the leading voice for business in California—as a strategist and spokesman for the California business community, and as an influential voice inside government.

Kirk served as president of the Cali-

fornia Chamber of Commerce from 1986 to 1997, and as chief executive of the California Taxpayers' Association from 1974 to 1982.

Between those stints, Kirk served in the Cabinet of Governor George Deukmejian as secretary of the state Business, Transportation and Housing Agency.

"Kirk was a special person," said CalChamber President and CEO Allan Zaremberg. "He showed us all that being gracious, humble and respectful is the perfect recipe for success."

Zaremberg recalled that Kirk was far from a micromanager: "Soon after I joined the Chamber, I found that we were right in

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### Inside

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## Labor Law Corner

# Sick Leave Accruals May Vary Based on Hours Worked



**Ellen Savage**  
HR Adviser

*Will all employees earn three days or 24 hours of paid sick leave each year no matter how many or how few hours they work?*

Under California's "Healthy Workplaces, Healthy Families Act of 2014" there are several methods available for employers to choose from when establishing sick leave policies, and one of them may result in some employees actually earning less than three days or 24 hours.

The Healthy Workplaces, Healthy Families Act of 2014 allows employees to either earn their sick leave over the course of each year under one of several accrual methods, or to receive their sick leave as a lump sum. The employer chooses the method, and is permitted to choose different methods for different groups of employees.

### Accrual Method

If an employer chooses to offer sick leave on an accrual basis, some employees may earn less than three days or 24 hours per year without any violation of the sick leave law.

Specifically, under the accrual method where employees earn one hour of sick leave for every 30 hours that they work, an employee who works less than 720 hours throughout the course of a year will not accrue a full 24 hours of sick leave.

For example, an employee who works one eight-hour day per week would work 416 hours each year, and based on the one hour for every 30 hours worked method would accrue a little less than 14 hours of paid sick leave. Even though the employee will earn less than 24 hours of sick leave, an employer using this method is not in violation of the law.

### Lump Sum Method

If an employer chooses to offer sick leave as a lump sum, meaning employees receive three days or 24 hours up front at the beginning of employment and each year after that, then every employee must receive the full amount no matter how many or few hours they work per year.

No proration of sick leave hours is permitted for part-time employees if an employer chooses to use the lump sum method, so every employee would in fact have 24 hours or three days to use each year.

Using the example above, an employee who only works one eight-hour day per week would be entitled to the full 24 hours under the lump sum method.

Note that the other accrual methods permitted under the law will always result in a minimum of 24 hours or three days of accrual per year. It is only the one hour for every 30-hour method that may result in a lower annual accrual.

*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 at [www.calchamber.com/events](http://www.calchamber.com/events).

### Labor Law

Leaves of Absence. CalChamber. June 23, Huntington Beach; August 16, Sacramento. (800) 331-8877.

HR Boot Camp. CalChamber. September 7, San Diego; September 22, Sacramento. (800) 331-8877.

### International Trade

Select LA Investment Summit. World Trade Center Los Angeles. June 16-17, Los Angeles. (213) 622-4300.

SelectUSA Investment Summit 2016. SelectUSA. June 19-21, Washington, D.C. (202) 482-6800.

Japan-U.S. Innovation Awards. Japan Society of Northern California. July 22, Stanford. (415) 986-4383.

G-20Y Summit. G-20Y Association. September 21-25, St. Moritz, Switzerland.

2016 Public Forum on "Inclusive Trade."

World Trade Organization. September 27-29, Geneva, Switzerland.

2016 Sima-Sipsa International Ag Expo. U.S.-Algeria Business Council.

October 4-7, Algiers, Algeria. (703) 418-4150.

GetGlobal. Geoskope. October 20-21, Los Angeles.

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## How Is Paid Sick Leave Law Working at Your Business?

How is implementing the paid sick leave law affecting day-to-day operations at your company? Share your experience by emailing [sickleave@calchamber.com](mailto:sickleave@calchamber.com).

Including information about your industry, location and the number of employees at your company will help CalChamber identify any patterns. No

company-specific information will be published. The infographic below illustrates important information about the paid sick leave law.

If you don't define your paid sick leave policy, California does it for you.

### DOSE OF REALITY



Under California's mandatory paid sick leave (PSL) Law, employers can limit the amount of PSL to 3 days or 24 hours per year. **But you must communicate this limitation in writing.** Without a written policy, your company must use the statutory mandated accrual rate of 1 hour of sick pay for every 30 hours worked. This can result in a FT employee potentially accruing over 69 hours of PSL per year and being allowed to carry that over to the next year, and so on. **That's nearly 9 days per year if the employee works a 40 hour workweek.**

To learn more about providing California's required paid sick leave benefit, download CalChamber's free "**10 Things You Might Not Know About California's Paid Sick Leave Law**" white paper.

CalChamber members simply sign in to *HRCalifornia* and then go to "White Papers" under "Cases & News."

Nonmembers go here: [calchamber.com/PSLwp](http://calchamber.com/PSLwp)



## Just Four Job Killers Move to Second House by June 3

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mandatory arbitration agreement as a condition of employment. *Never brought up for a vote by entire Assembly and therefore missed deadline to pass house in which it was introduced.*

### Job Killers Amended

Two job killer bills were amended on the Assembly Floor to remove the job killer tags.

- Before the June 1 amendments, **AB 2748 (Gatto; D-Glendale)** eliminated incentives to settle lawsuits and instead exposed businesses to multiple rounds of litigation at great expense to the parties and the courts by creating statutory prohibitions on “release” clauses in settlements pertaining to “environmental disasters.”

The amendments made clarifications and narrowed the bill to apply only to the Porter Ranch area gas leak or to contamination surrounding the Exide Technologies facility, but CalChamber remains opposed.

- Also amended on the Assembly Floor was **AB 2729 (Williams; D-Santa Barbara/ Thurmond; D-Richmond)**, which would have jeopardized the production of California-based fuel supply and increased costs to the industry by revising the definition of an idle well and requiring permanent closure of 25% of California’s long-term idle wells each year.

The June 1 amendments establish a reasonable closure rate by requiring operators with 250 to 1,000 wells to close

5% of their long-term idle wells each year until they have no more long-term idle wells.

CalChamber has no position on AB 2729.

- **AB 2502 (Mullin; D-South San Francisco/Chiu; D-San Francisco)** was granted a rule waiver by Assembly Speaker Anthony Rendon (D-Lakewood) and therefore will return to the Assembly Local Government Committee. This action also exempts the bill from the June 3 deadline to pass the house in which it was introduced. The CalChamber removed the job killer tag for AB 2502 following June 2 amendments, but remains opposed.

AB 2502 increases the cost and reduces the supply of housing by authorizing local governments as a condition of development to impose a costly and inflexible price-controlled inclusionary housing requirement and, in doing so, legislatively repeals an established court decision upholding developers’ ability to set initial rental rates for new dwelling units.

### Job Killers in Second House

Moving on to the second house are the following CalChamber-opposed job killer bills:

#### *Affordable Housing Barriers*

- **SB 1150 (Leno; D-San Francisco)**  
**Erodes Housing Availability:** Increases liability risk and the cost of residential loans by allowing a party not on the mortgage loan to interfere with appropri-

ate foreclosures and creates a private right of action for violations of overly complex and burdensome requirements. *To Assembly.*

- **SB 1318 (Wolk; D-Davis)**  
**Erodes Housing Affordability:** Inappropriately leverages necessary affordable housing in order to solve infrastructure issues with the consequence that the housing won’t be built by imposing requirements on water or waste water districts to serve certain communities first. *To Assembly.*  
**Increased Labor Costs**

- **SB 1166 (Jackson; D-Santa Barbara)**  
**Imposes New Maternity and Paternity Leave Mandate:** Unduly burdens and increases costs of small employers with as few as 10 employees, as well as large employers with 50 or more employees, by requiring 12 weeks of protected employee leave for maternity or paternity leave, and exposes all employers to the threat of costly litigation. *To Assembly.*

#### *Meritless Litigation*

- **SB 899 (Hueso; D-San Diego)**  
**Increased Meritless Litigation Costs:** Drives up consumer costs and increases frivolous litigation similar to the disability access lawsuits in California, by prohibiting a retailer or grocery store from discriminating against a person on the basis of gender with the price of goods and subjecting them to a minimum \$4,000 of damages for each violation. *Assembly Judiciary Committee.*



See all the video highlights from the 2016 Host Breakfast and Capitol Summit at [calchamber.com/summit](http://calchamber.com/summit).

# Three Job Creator Bills Moving



Three of 14 bills identified by the California Chamber of Commerce as job creators are

still alive following the June 3 deadline for bills to pass the house in which they were introduced.

## Active Job Creator Bills

Moving into their second houses are:  
**Reducing Affordable Housing Barriers**

- **SB 1069 (Wieckowski; D-Fremont)**  
**Increases Housing Supply:** Creates and expedites additional housing supply by streamlining the permitting process for Accessory Dwelling Units. *Assigned to the Assembly Housing and Community Development Committee and Assembly Local Government Committee; no hearing date set.*

### Economic Growth Incentives

- **AB 2664 (Irwin; D-Thousand Oaks)**  
**Increased Innovation and Entrepreneurship:** Makes it easier to establish a business by expanding capacity and increasing access to the University of California (UC) and Berkeley National Laboratory to their innovation and entrepreneurship centers, which provide incubator space, legal services, entrepreneur training and more for researchers and other individuals looking to develop innovative solutions. *In Senate Rules awaiting policy committee assignment.*

- **SB 936 (Hertzberg; D-Van Nuys)**  
**Loan Access:** Encourages creation of small businesses by expanding their access to loans, which helps them grow. *Assembly Jobs, Economic Development and the Economy Committee hearing June 21.*

## SB 1069: Increases Housing Supply

The housing shortage in California has reached crisis levels. The average California home currently costs about two-and-a-

half times the national average home price. The average monthly rent in California is 50% higher than the rest of the nation and even higher in cities such as San Francisco, San Jose, Oakland, and Los Angeles. All four of these cities' average rents are among the top 10 most unaffordable in the nation. San Francisco's average rent is the highest in the United States, at an average of \$3,500 per month.

In a seminal 2015 publication, *California's High Housing Costs: Causes and Consequences*, authored by the State Legislative Analyst's Office, data clearly show that the lack of affordable housing, particularly in coastal California, is one of the biggest drivers of institutional and generational poverty cycles. The analysis showed that the bottom 25% of income earners are spending 67% of their income on housing. This is clearly not acceptable or sustainable.

The inability of the traditional housing delivery system to meet demands has resulted in increased competition for fewer available homes, rising prices, overcrowding, community dislocation, and adverse environmental impacts caused by longer commutes and more traffic congestion. California families are hurting and the economy is slowing.

Innovative solutions are needed to make a dent in this crisis.

Accessory Dwelling Units (ADUs) are the only widely supported approach to get thousands of low-cost units on the market fast. ADUs provide lower cost and low-carbon footprint homes in existing neighborhoods consistent with architectural traditions. ADUs are great for low- and middle-income renters, small families, and align with state climate change goals. Studies demonstrate that ADUs cost less to build and rent for less than new market rate housing, making ADUs affordable by design.

Santa Cruz, Berkeley, Oakland and San Francisco have already approved

legislation to facilitate the development of ADUs. The states of Hawaii and Massachusetts are considering similar bills. With simple policy changes, such as reduced process, parking and lot coverage requirements, California can vastly increase its housing stock.

In the San Francisco Bay Area, there are approximately 1.5 million single family homes. If just 10% of households adopted ADUs, housing stock would increase by 150,000 units.

SB 1069 amends existing State Second Unit Enabling law to further simplify the process of ADU adoption for residents by reducing parking requirements, streamlining the permitting process, and allowing ADUs by permitting building within existing structures. State and local laws should enable residents to quickly and easily provide a home to someone in their community rather than set up barriers that make this impossible.

## AB 2664: Increased Innovation, Entrepreneurship

AB 2664 will allow the University of California (UC) and Berkeley National Laboratory to expand their capacity and increase access to existing innovation and entrepreneurship centers.

The UC's innovation and entrepreneurship centers provide incubator space, legal services, entrepreneur training and more for researchers and other individuals looking to establish new businesses and develop innovative products and solutions that benefit Californians. These centers have a proven track record for helping to turn ideas into companies that provide jobs for Californians and help drive the state's economy.

AB 2664 directs the UC to expand the infrastructure necessary to keep up with the growing need for workspace and training for start-ups, and help attract private sector investors. In exchange, the

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## Three Job Creator Bills Moving

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state will benefit from increased economic activity and job growth, as well as from the innovative solutions new companies are able to bring to market due to the help they receive from the UC and Berkeley National Laboratory.

### SB 936: Loan Access

An Assembly policy committee will soon consider SB 936, which expands the availability of loans through the Infrastructure and Economic Development

Bank's (IBank) California Small Business Loan Guarantee Program.

The program helps businesses create and retain jobs. The bill promotes statewide economic development by supporting loans to small businesses that would not otherwise qualify.

Small businesses establish a favorable credit history with a lender under this program and then are able to obtain future loans on their own. The program has been in place since 1968 with almost no defaults.

SB 936 increases the IBank's ability to leverage state and federal funding, thus incentivizing private lending and economic investments. The loan guarantee program uses state and federal funding to create a loan loss reserve, which reduces the risk of lending to small businesses.

### More Information

For more information on the 2016 job creator bills, visit [www.calchamber.com/jobcreators](http://www.calchamber.com/jobcreators).

## Remembering Kirk West

*From Page 1*

the middle of a dispute between Governor Wilson and Speaker Willie Brown. I sought Kirk's sage counsel and direction. After several minutes of deep thought, he wheeled around in his chair and announced, "That's why I hired you!"

Kirk led the California business community to new levels of political sophistication and influence. He not only helped broker legislative deals on workers' compensation, civil liability, and transportation finance, but also established the infrastructure for and oversaw multimillion-dollar efforts to turn back anti-business ballot initiatives to raise taxes or increase regulation.

Under Kirk's leadership, CalChamber initiated its long-running Job Killer program, identifying and leading opposition to the worst anti-business legislation.

Kirk graduated from Stanford University in 1958 and earned a master's degree in political science in 1962 from the

University of California, Berkeley.

He began his political career in Sacramento in the early 1960s on the staff of Assemblyman Don Mulford, the Republican Caucus chairman, and later worked for Minority Leader Bob Monagan. Kirk also worked as a deputy director of the Department of Finance under Governor Ronald Reagan until being recruited as chief deputy state controller under Houston Flournoy.

In a recent tribute, former Governor Pete Wilson reflected on a long-ago conversation with Kirk as Wilson considered a run for Assembly: "I remember vividly and gratefully the Saturday morning in Sacramento when you dispensed not only practical wisdom about how to win and then make a useful difference in the Assembly, but also the hilarious observations and impressions you provided of some of the more pompous and self-important senior members of both parties."

Kirk was born of Christian missionary parents, Dr. Donald Kirkland West and

Dr. Helen Fraser West, in China in 1937. He would proudly regale listeners that "I was the largest baby born in Shangdong Province in 1937." Nobody who knew Kirk would doubt that claim. On a trade mission to China in 1988, Kirk arranged a reunion with his childhood nanny ("my Oma"), to his everlasting delight.

Kirk was mentor to generations of Sacramento policy and political professionals. He led by example, and was generous in delegating responsibilities and spreading credit. He approached his work as he did his golf game, with humor and humility.

Kirk is survived by his wife, Kathleen; his children, Sarah, Jennifer and David; stepdaughters Sharon Hilliard and Christine Sutherland; as well as his grandchildren: Christopher Sutherland, Rachel Story, Rebecca Story, Charles LaSalle, Isabelle LaSalle, Josephine LeClerc, Natalie LeClerc.

Services are pending.

**Contact: Loren Kaye**

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## A Look at Tuesday Night's Legislative Results—Counting Continues

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### Open Democratic Seats

Still, based on what we know as *Alert* went to print, here's what we can report on outcomes in the three major open Democratic Assembly seats.

• **Assembly District 4—Davis/Napa.** Democrat Cecilia Aguiar-Curry, mayor of Winters, appears to be in a runoff against Republican Charlie Schaupp, who ran unsuccessfully for the same seat in 2014. This safe Democratic seat saw more than \$2 million in spending by the business community, including JobsPAC, to boost Aguiar-Curry's candidacy.

Aguiar-Curry garnered 28.2% of the vote and Schaupp received 29.1%. Assuming these results hold, this is an outright win for supporters looking to expand the membership in the "Mod Dem" caucus.

There were five candidates in the field, but most of the union spending was for Davis Mayor Dan Wolk with more than \$300,000 to oppose his candidacy from the pro-Aguiar-Curry forces.

• **Assembly District 14—Concord/Vallejo.** The November race in this East Bay district will be a matchup between two Democrats, Mae Torlakson and Tim Grayson, a Concord city councilman. This race became a proxy war between the teachers' unions and the education reform proponents, led by EdVoice.

Education reformers spent more than \$1.5 million to boost Grayson's candidacy while spending close to \$400,000 to oppose Torlakson. Similarly, a labor coalition including the California Teachers Association spent close to \$400,000 to oppose Grayson.

Less than 500 votes separated Torlakson (32.5% of the vote) and Grayson (32.1% of the vote) the day after the election. The Republican in the race received more than 25% of the votes and finished third. The more moderate Grayson is in a good position to gain those GOP voters.

• **Assembly District 27—San Jose.** Democrat Madison Nguyen, former San Jose city councilmember and one-time mayoral candidate, is holding a strong lead with 35% of the vote over likely runner up labor-backed San Jose City Councilman Ash Kalra, who captured less than 20%.

Spending from education reform groups led by the California Charter School Association and business groups heavily backed Nguyen with approximately \$1.3 million,

also spending more than \$600,000 in opposition to Kalra. Labor stepped up to spend close to \$500,000 for Kalra.

### Other Assembly Seats

There are a few other Democratic seats worth noting:

• **Assembly District 24—San Mateo/Sunnyvale.** Palo Alto City Councilman Marc Berman will square off against fellow Democrat Vicki Veenker, an attorney. Berman was the recipient of more than \$1.2 million in spending from allied business groups, which spent about \$120,000 against Veenker. Berman won 28.2% of the votes, while Veenker came in on his heels with 21.8%.

• **Assembly District 43.** This will be an all-Glendale runoff between two Democrats, City Councilwoman Laura Friedman against City Clerk Ardy Kassakhian. Education reformers heavily backed Friedman while Kassakhian received the endorsement of the California Teachers Association. Friedman won nearly 32% of the votes to 24% for Kassakhian.

• **Assembly District 48.** Democrat Blanca Rubio, a Baldwin Park School Board member, will face Republican Cory Ellenson, a small business owner/tax attorney in this safe Democratic district to replace termed-out Democratic Assemblyman Roger Hernández (West Covina). Ellenson captured just under 27% of the vote to Rubio's 25%.

### Senate Races

In some of the key open Senate seats, the Tuesday night outcomes likely will hold up.

• **Senate District 3—Yolo/Solano/Napa Counties.** Democrats Bill Dodd and Mariko Yamada are the contestants for November. After serving one term representing Assembly District 4, Dodd stepped up to run for this vacant Senate seat. Dodd was the recipient of heavy spending by the business community in his first run for the Legislature in 2014 and benefited from close to \$2.5 million in outside spending from the education reform coalition and business groups including CalChamber this year. He captured 37% of the vote to Yamada's 29%, and is well positioned to win the quarter of the electorate that voted for the third-place Republican.

• **Senate District 21—Part of Los Angeles/San Bernardino Counties.**

Republican Assemblyman Scott Wilk (Santa Clarita) is well positioned to hold this Republican seat in a runoff against Democrat Johnathon Ervin.

• **Senate District 25—Part of Los Angeles/San Bernardino Counties.** Storied Los Angeles County Supervisor Mike Antonovich, a Republican, won 40% of the vote and will face second-place finisher Democrat Anthony Portantino in a competitive November matchup.

• **Senate District 27.** Democrat Henry Stern, a longtime aide to termed-out Senator Fran Pavley (Agoura Hills) benefited from late spending by labor to finish in the second spot and will face businessman and Republican Steve Fazio.

• **Senate District 29.** Ling Ling Chang, a freshman Republican member of the Assembly, received more than 40% of the vote and will likely face Democrat Josh Newman, a veterans advocate. This is a district where the outcome may change as Newman has less than a 4,000-vote margin over third-place finisher, Sukhee Kang (former mayor of Irvine), who was endorsed by the Democratic Party.

### Long-Term Implications

This is the last election cycle to replace members elected under the old term limits law that limited service to six years in the Assembly and eight in the Senate. Following the last two election cycles, more than 80% of Assembly members now are eligible to serve until 2024/2026. And the class of 2016 will be eligible to remain in office until 2028, so the short-term nature of politics has long-term implications for California's business community:

• There are 17 open Assembly districts; nine are Democratic and eight are Republican; and

• The Senate has nine open districts; seven are Democratic and two are Republican.

As the counting continues, CalChamber will continue to monitor Tuesday's results to gain a more complete understanding of the results and what they portend for November. The composition of the electorate will be different in November so we should not rush to judgment about who wins and who doesn't based only on June election results.

**Staff Contact: Martin Wilson**

LIVE WEBINAR | THURSDAY, JUNE 16, 2016 | 10:00 - 11:30 AM PT

## How to Avoid Sick Leave, Vacation and PTO Uh-Ohs

The summer months bring not only high temperatures but also planned and sometimes unplanned vacation or paid time off (PTO).

While employers can opt to offer vacation and PTO benefits, California law determines how you apply them. Specific rules also apply when administering and providing California's protected paid sick leave benefit. Avoid common uh-ohs (and oh no's) of noncompliance when you attend this informative webinar.

Cost: \$199.00 | Preferred/Executive Members: \$159.20



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