

ALERT

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Governor's Prudent Budget Adds to Rainy Day Fund



Governor Edmund G. Brown Jr, this week proposed a prudent and balanced state budget for 2017–18 that eliminates a projected \$2 billion deficit and bolsters the state's Rainy Day Fund, while

continuing to invest in core programs.

"In the midst of economic and policy uncertainty, Governor Brown's prudent budget proposal is a smart approach that will protect taxpayers and important state programs for the long run," said California Chamber of Commerce President and CEO Allan Zaremberg.

In a **letter to the Legislature**, the Governor commented, "In all likelihood, the coming years will bring even worse financial news—either from the start of the next inevitable recession or from changes at the federal level. This uncertainty about the future makes acting responsibly now even more important."

Budget Highlights

According to the **Governor's news release**, significant details of the Governor's 2017–18 State Budget include:

• Keeping Budget Balanced

The budget proposes \$3.2 billion in solutions to ensure a balanced budget. By tempering spending growth rather than cutting existing program levels, these actions minimize the negative effects on Californians.

The solutions include adjusting Proposition 98 spending, recapturing unspent allocations from 2016 and constraining some projected spending growth. In total, General Fund spending remains flat compared to 2016–17.

• Bolstering State Reserves

Proposition 2 establishes a constitutional goal of having 10% of tax revenues in the state's Rainy Day Fund. With a \$1.15 billion deposit in the budget, the Rainy Day Fund will total \$7.9 billion by the end of 2017–18, 63% of the constitutional target.

Although a full Rainy Day Fund

See Governor's Prudent Budget: Page 5

CalChamber Names Senior Policy Advocate



Jennifer Barrera

Jennifer Barrera, policy advocate at the California Chamber of Commerce since 2010, has been promoted to senior policy advocate.

In her new role she will work closely with

Jeanne Cain, executive vice president, policy, in setting the strategic direction of the policy unit.

Barrera will continue to represent the CalChamber for labor and employment, litigation and tax issues.

CalChamber Identifies Four Job Killer Bills



The California Chamber of Commerce has identified four job killer bills that would have a negative impact on California's economy if they become law. CalChamber will release the full list of job killer bills in the spring.

• **AB 5 (Gonzalez Fletcher; D-San Diego/Kalra; D-San Jose) Hampers Ability to Manage Workforce Effectively.**

• **SB 33 (Dodd; D-Napa) Discriminates Against Arbitration.**

• **SB 62 (Jackson; D-Santa Barbara) Expands Employment Litigation.**

• **SB 63 (Jackson; D-Santa Barbara) Expansive Leave Mandate.**

More information at www.calchamber.com.



California Finance Director Michael Cohen explains details of the Governor's budget proposal for 2016–17 at the CalChamber Luncheon Forum on January 12.

Labor Law Corner

Make Sure Grooming Standards Consider Job Needs, Protected Practices



Dana Leisinger
HR Adviser

Our receptionist came in after the holiday weekend with “crazy hair.” She dyed it bright pink—it isn’t remotely a natural color. Can we ask her to change the color to a more natural hue or tone down the color?

While changing hair color to a “crazy” color is increasingly popular, it isn’t always a protected practice in the workplace. Employers are still free to mandate that employees maintain a business-like appearance.

Job Expectations

Nevertheless, a policy banning an unnatural hair color should take into consideration the job the employee is performing. If you have an employee working in a warehouse with no contact with the public, it might be acceptable for him/her to change his/her hair to a “crazy” color.

In the instant situation, however, this employee is greeting the public and is the face of the company—the first person guests encounter, so a more business-like appearance is a realistic requirement of the job.

Religious Protections

Additionally, an employer must not take action if the change in hair color is related to a religious practice. Although few such practices, if any, appear to be on record, caution should be used before mandating a change.

Certain styles, however, are protected if tied to race or culture. For example, many people wear their hair in dreadlocks, which is culturally based. Hair length also

can be protected, as with Nazirites whose religion forbids them to cut their hair.

Proceed with Caution

Further, if the employee isn’t required to change his or her hair color, an employer must be careful not to perceive the employee as a “ditz.” Impressions are everything in the workplace, but employers need to take action based on job performance, not based on crazy hair color.

Bottom line: Employers need to be cautious in today’s world when addressing grooming standards. “Neat and clean” is good, and leaves the employer free to address individual cases that come up as opposed to having a standard that is discriminatory on its face.

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

2017 Employment Law Update. CalChamber. January 19, San Francisco; January 26, San Jose; January 27, Oakland; January 31, webinar. (800) 331-8877.

HR Boot Camp. CalChamber. February 7, Modesto; March 1, Burlingame; March 23, Pasadena; May 11, Sacramento; May 25, San Diego; June 6, Santa Clara; August 24, Thousand Oaks; September 6, Beverly Hills. (800) 331-8877.

Leaves of Absence. CalChamber. April 6, Sacramento; April 25, Oakland; June 22, Huntington Beach. (800) 331-8877.

Business Resources

Linked Learning Convention. Linked Learning. January 23–25, Oakland. (916) 248-4848.

International Trade

Global Smart Grid Regulatory Reverse Trade Mission. U.S. Trade and Development Agency. January 28–February 4, San Diego. (772) 388-6496, ext. 104.

Steps to College Fair. Cien Amigos,

Mexican Cultural Center of Northern California, Consulate General of Mexico in Sacramento. February 4, Sacramento. (916) 329-3500.

ExporTech Program. California Manufacturing Technology Consulting. February 16, Los Angeles. (310) 984-0728.

SelectUSA 2017 China Road Show. SelectUSA. March 13–23, Changchun, Jianan, Zhengzhou, Kunming, Xiamen and Nanjing, China.

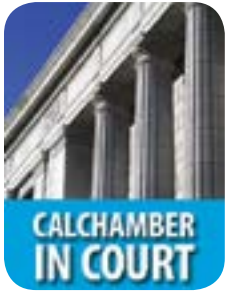
Connect to Thrive—Impact of Digital Data and Commerce Across the Global Supply Chain. California Centers for International Trade Development. March 23–24, San Bruno. (650) 738-7117.

Asia Pacific Business Outlook Conference 2017. University of Southern California Marshall School of Business. March 27–28, Los Angeles. (213) 740-7130.

Next Alert: January 27



On-Call Rest Periods Not Allowed, California Supreme Court Rules



In a disappointing decision for California businesses, the California Supreme Court ruled recently that on-call rest periods are not permissible. This decision will

require many California employers to re-examine their rest-break policies and practices.

Supreme Court Ruling

In *Augustus et al. v. ABM Security Services, Inc.*, the California Supreme Court reversed the 2nd District Court of Appeal, concluding that, “state law prohibits on-duty and on-call rest periods. During required rest periods, employers must relieve their employees of all duties and relinquish any control over how employees spend their break time.” The 10-minute rest break must be uninterrupted. “The rest period, in short, must be a period of rest.”

Although rest breaks are compensable time (unlike meal breaks), the employer must still relinquish control over the rest break, said the Supreme Court. An employer cannot meet its rest-period obligations by requiring employees to

remain on-call. A “broad and intrusive degree of control” exists when there is an on-call rest period because the employee is forced to remain “on call, vigilant, and at the ready.”

The state high court noted that its ruling does not prevent employers from being able to reasonably reschedule a rest period when the need arises—although such circumstances should be “the exception rather than the rule.”

Moreover, if a rest period is interrupted, an employer can restart the rest period or pay the premium pay for the missed rest break.

CalChamber Brief

The California Chamber of Commerce filed a friend-of-the court brief prepared by Greg Valenza of Shaw Valenza in this case. The California Building Industry Association joined in the brief.

The brief argued that the court should define “rest period” as a period of freedom from exertion or performing usual duties. The brief also pointed out that rest breaks already are compensable as “hours worked.”

Background

ABM Security Services, Inc. (ABM) employs security guards across California. Jennifer Augustus and others sued

ABM, claiming that ABM failed to provide guards with uninterrupted, 10-minute rest periods as required by California law because ABM required its security guards to keep their radios and pagers on during rest breaks, remain vigilant and respond to emergencies.

The guards presented no evidence that anyone’s rest break was ever actually interrupted, only that they were required to remain on call.

A trial court ruled in favor of the guards who sued, concluding that an employer must relieve its employees of all duties during rest breaks, including the obligation to remain on call. The guards sought a one-hour penalty every day for every one of nearly 15,000 security guards, plus waiting time penalties and interest. The trial court eventually awarded the guards about \$90 million in damages, interests and penalties.

The 2nd District Court of Appeal reversed the trial court, ruling that on-call rest periods are lawful. This petition to the California Supreme Court followed.

This case was discussed in detail in the *HRCalifornia Extra*, a biweekly e-newsletter reporting on the latest labor laws and how they could affect your company. CalChamber members can sign up for the e-newsletter at www.calchamber.com/newsletters.
Staff Contact: Gail Cecchetti Whaley

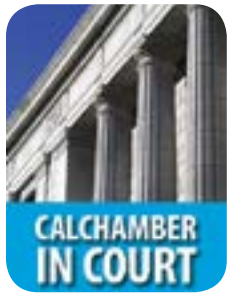
CalChamber Experts Take Employment Law Updates to Local Venues



Erika Frank (left), CalChamber vice president and general counsel, and Erika Pickles, CalChamber employment law counsel and HR adviser, are on the road in January, explaining what employment law changes will occur this year due to state/federal legislation and regulations, as well as court decisions. Remaining seminars are: January 19, San Francisco; January 26, San Jose; January 27, Oakland. To sign up for the half-day seminars or the upcoming January 31 webinar covering the employment law updates, visit the CalChamber store, www.calchamberstore.com.

CalChamber in Court

Workers' Comp Case Attacks Basic Premise of System, Opens Door to Broader Liability



The California Chamber of Commerce recently filed a friend-of-the-court brief in a California Supreme Court case that will determine whether doctors who review workers'

compensation cases can be sued for certain medical decisions.

The January 5 amicus brief in *King v. CompPartners, Inc.* (S232197) argues that the appellate court erred by ruling that utilization review doctors—who look at records to decide whether a worker's treatment was appropriate, but do not examine the patient personally—have established a physician-patient relationship and therefore owe a duty of care to the injured workers.

"If allowed to stand, the decision will create extensive future litigation and can be expected to increase costs that will put upward pressure on malpractice premium rates for all physicians, and have a chilling effect on utilization review physicians," the CalChamber amicus brief states.

The case also will determine whether

medical malpractice claims against utilization review doctors are barred, because all workers' compensation claims are under the purview of the state Division of Workers' Compensation. Joining the CalChamber on the brief were national and statewide insurer groups.

"By establishing potentially unlimited liability for utilization review physicians," the brief states, "the decision will increase overall costs of the system, which will put significant upward pressure on workers' compensation premium rates for employers," potentially lead to higher premiums for employers and could drive future and existing business away from California.

Background

According to court filings, the plaintiff in the case, Kirk King, sustained a back injury while on the job in February 2008. In July 2011, King suffered anxiety and depression due to chronic back pain resulting from the injury. He was prescribed an antianxiety drug.

Two years later, the workers' compensation insurance company hired CompPartners Inc. to review the medical treatment for injured employees such as King. A CompPartners doctor, Naresh Sharma, decided King's prescription was not

medically necessary and the prescription was discontinued.

King sued, asserting he was injured due to seizures he suffered because of the sudden cessation of the drug. His lawsuit contended that Sharma and a second doctor employed by CompPartners had a duty to warn King of the dangers of abruptly ceasing the medication.

The trial court rejected the lawsuit on the grounds that the claim should have been handled through the workers' compensation system. The Fourth Appellate District Court of Appeal partly reversed the ruling, finding that the trial court should have allowed King to amend his complaint because it was plausible that Sharma had a duty to warn King about the risk of seizures.

CalChamber Brief

In its amicus brief, the CalChamber argues that the appellate court decision "wrongly thrusts the utilization review physician, who merely read plaintiff's treatment records and applied the appropriate treatment guidelines, in the role of a treating physician—with all of the concomitant duties and obligations that are properly the responsibility of the physician actually providing treatment to the patient."

Utilization review communications are between physicians, and the reviewing physician "is acting solely as a gatekeeper for the prescribing physician," the brief points out. The law makes peer-to-peer communication available if the prescribing physician wants to discuss the ramifications of a decision to deny or modify a treatment request, the brief states.

The brief concludes by urging the state high court to reverse the appellate court decision: "Letting this decision stand would result in wildly expanding potential liability in a system specifically designed to limit liability in exchange for certainty of benefits."

The CalChamber amicus brief was prepared by Randall G. Poppy of Finnegan Marks Theofel & Desmond APC.

Staff Contact: Heather Wallace

Analysis Finds California Factors Dampen Upward Mobility for Poor



Loren Kaye

Children born to low-income parents in California have slightly higher lifetime earnings than children born to low-income parents in other states—but not

because they live in California.

1970s when the incomes of nearly all offspring outpaced their parents. While the news is good that low-income Californians have slightly better upward mobility prospects than their counterparts in other states, the fact that they live in California holds them back.

Researchers credit the better income mobility to the parents. In fact, these same children would have experienced even greater upward income mobility had they grown up outside of California. These findings were released by the Legislative Analyst, using data developed by a team of researchers led by Raj Chetty of Stanford. The national study found that barely half of 30-year-olds earn more than their parents did at a similar age, a steep decline from the early

1970s when the incomes of nearly all offspring outpaced their parents. While the news is good that low-income Californians have slightly better upward mobility prospects than their counterparts in other states, the fact that they live in California holds them back.

But without attributing the difference to any of these factors, the Analyst calculated that the fact of growing up in California, compared with the nation as a whole, will depress a low-income resident's income by more than \$400 a year.

Variations by county within California are enormous, unsurprising given the vast differences in economic opportunity and social conditions within the state.

A recently released **California Chamber of Commerce poll** buttresses these empirical findings. We found 59% of voters with children living at home agree that “My children will have a better future if they leave California.”

This belief that moving out of state will provide a better future for their children is especially strongly held in Orange County and the Central Valley.

Compared with the rest of the country, much of California is prospering. But residents in many regions of the state, especially parents, are raising warning flags. Growth and opportunity should be key touchstones for policy makers in 2017.

Loren Kaye is president of the California Foundation for Commerce and Education, a nonprofit think tank affiliated with the California Chamber of Commerce.

Guest Commentary By Loren Kaye

Governor's Prudent Budget Adds to Rainy Day Fund

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might not eliminate the need for further spending reductions in case of a recession or major federal policy changes, saving now would allow the state to soften the magnitude and length of necessary cuts.

- **Increasing Education Funding**

K–14 funding is expected to grow to \$73.5 billion in 2017–18, up 55% (\$26.2 billion) from 2011–12. For K–12 schools, funding levels will increase by about \$3,900 per student in 2017–18 over 2011–12 levels. This reinvestment provides the opportunity to correct historical inequities in school district funding with continued implementation of the Local Control Funding Formula.

- **Continuing Health Care Expansion**

Under the optional expansion provisions of the federal Affordable Care Act, the budget increases enrollment of this Medi-Cal population to 4.1 million Californians, with the state's General Fund

share of cost increasing from \$888 million to nearly \$1.6 billion.

- **Counteracting Poverty**

California has an extensive safety net for the state's residents who live in poverty. Since 2012, the General Fund has invested about \$18 billion annually to help those in poverty.

The budget continues to fund several programs, including the Earned Income Tax Credit and a cost-of-living adjustment for recipients of supplemental income payments.

- **Strengthening Transportation Infrastructure**

Annual maintenance and repairs of California's highways, roads and bridges are billions of dollars more than can be funded annually within existing revenues.

The budget reflects the Governor's transportation package, first proposed in September 2015, which would provide \$4.2 billion annually to improve the

maintenance of highways and local roads, expand public transit and strengthen critical trade routes.

- **Climate Change**

The state has appropriated \$3.4 billion in cap-and-trade auction proceeds to help reduce greenhouse gas emissions, with funding prioritized in disadvantaged communities. With volatility in recent auctions due in part to uncertainty about the program's post-2020 future, the administration proposes two-thirds urgency legislation to confirm the program's continued authority beyond 2020.

Assuming approval, the budget proposes \$2.2 billion in expenditures from auction proceeds, with a continued emphasis on low-income and disadvantaged communities.

Full Summary

The full summary of the Governor's budget proposal is at www.ebudget.ca.gov.

California Drops to No. 2 Ranking Among ‘Judicial Hellholes’ in Nation



California has once again been identified as one of the nation’s top “Judicial Hellholes,” according to the latest ranking of the “most unfair” civil litigation courts by the American Tort

Reform Foundation (ATRF).

Trailing only “Judicial Hellhole” leader The Circuit Court for the City of St. Louis, California drops to the No. 2 ranking after previously topping the “Judicial Hellhole” list in 2012, 2013 and 2015. Specific California cities and counties have regularly been cited for their civil justice system imbalances by the Judicial Hellholes report since its inaugural edition in 2002.

The report, available to download at www.judicialhellholes.org, cites the latest data available from the Court Statistics Project of the National Center for State Courts, showing that more than a million new lawsuits are being filed annually in California’s state courts alone. Tens of thousands more are filed in federal courts here.

According to the report, California is the epicenter for lawyers trolling to bring disability access lawsuits against small businesses and class action lawsuits against food and beverage companies.

Sitting Down on the Job

California’s high court in April 2016 unanimously ruled that state law entitles employees to sit in a chair at work on a task-by-task and location-by-location basis. Employers found in violation are liable for civil penalties to each employee for each separate instance.

Food and Beverage Lawsuits

Food and beverage makers and sellers frequently are the target of no-injury fraud and false advertising class action lawsuits in California state and federal courts. The federal Northern District of California has been referred to as the “Food Court” as cases pile up there.

Few lawsuits are thrown out and many drag on for years, allowing plaintiffs to amend their grievances and re-tool their

arguments. Because many of these food and beverage lawsuits eventually show up in court records as “voluntarily dismissed,” it’s likely that parties often come to a private settlement with the amount of money changing hands virtually unknown.

Proposition 65

Becoming law as a voter-passed referendum in 1986, Proposition 65 requires businesses to post warning signs where even trace amounts of some 800 chemicals may be present. The signs have been an invitation for personal injury lawyers to bring numerous lawsuits, with Proposition 65 claims producing hundreds of settlements each year.

CEQA

According to the state Department of Fish and Wildlife, the California Environmental Quality Act (CEQA) “is California’s broadest environmental law,” helping to “guide the Department during issuance of permits and approval of projects.”

Despite CEQA’s well-intentioned purpose, it has had many unintended consequences. For years, CEQA has been used increasingly as a tool to challenge, block or delay construction projects across the state. Concerned with protecting their own property values rather than the environment, wealthy plaintiffs level these lawsuits, which are a significant factor in the state’s shortage of affordable housing, the Judicial Hellholes report states.

CEQA’s most frequently targeted private sector project is housing, specifically high-density urban projects such as multi-family (including affordable) housing and transit-oriented development.

Asbestos

A December 2016 decision by the California Supreme Court found that “the duty of employers and premises owners to exercise ordinary care in their use of asbestos includes preventing exposure to asbestos carried by the bodies and clothing of on-site workers” where it is “reasonably foreseeable” that workers “will act as vectors carrying asbestos from the premises to household members.”

Despite different appellate courts disagreeing, the Supreme Court embraced

such liability for this so-called “take home” asbestos exposure.

ADA

ADA lawsuits in California continue to surge. Brought under both the federal Americans with Disabilities Act (ADA) and state civil rights law allowing for damages and attorney fees, these claims are especially damaging for small business owners— particularly minorities and recent immigrants who are unable or unwilling to fight back.

Plaintiffs rarely seek renovations and actual access to an allegedly ADA-non-compliant restaurant, convenience store, nail salon or auto garage. “They just want to get paid and are happy to settle out of court,” the Judicial Hellholes report comments, regardless of whether the ramp’s angle is adjusted by a few degrees or the men’s room sink is ever lowered by an inch-and-a-half.

California lawmakers took a step toward curing California’s ADA lawsuit ills when Governor Edmund G. Brown Jr. signed SB 269 (Roth; D-Riverside) into law in May 2016. The bill allows small businesses time to cure certain technical violations without penalty. The California Chamber of Commerce supported SB 269 as a job creator bill.

PAGA

Unsurprisingly, California’s Private Attorneys General Act (PAGA) generates many lawsuits. PAGA authorizes aggrieved employees to file lawsuits seeking civil penalties on behalf of themselves, other employees, and the state.

Based on the pretense that employees are bringing these claims on behalf of the state, 75% of the penalties from non-compliant employers goes to the state’s Labor and Workforce Development Agency while only 25% goes to “aggrieved employees.”

Many PAGA lawsuits stem from “technical nitpicks,” the report states, such as an employer’s failure to list on an employee’s pay stub the inclusive dates of the pay period, or an employer’s failure to print its address on the employee’s pay stub, even though the address is printed on the paycheck itself.



“The California Chamber is committed to do its part to make California the very best we can be.”

Michael W. Murphy
 President and Chief Executive Officer
 Sharp HealthCare
 2016 CalChamber Chair

CAPITOL WATCHDOG

Each year, CalChamber tracks more than 3,000 legislative proposals on behalf of member businesses.

MAJOR VICTORIES

CalChamber scores major victories for employers through targeted advocacy and political action. See www.calchamber.com/majorvictories

ABOUT US

CalChamber is the largest broad-based business advocate in California, working at the state and federal levels to influence government actions affecting all California business. As a not-for-profit, we leverage our front-line knowledge of laws and regulations to provide affordable and easy-to-use compliance products and services.

FOR MORE INFORMATION

Contact Drew Savage,
 Vice President, Corporate Relations, (916) 930-1277.

Advocacy Return on Investment

2016 Sample Return on Investment for CalChamber Members

Voters approve K-14 school construction bond	\$9 billion
Bill jeopardizing production of California-based fuel stopped (AB 1759)	\$6.7 billion
California-only food labeling mandate blocked (AB 2725)	\$6.4 billion
Split roll property tax reassessment cost stopped (SCA 5)	\$6 Billion
Lower vote threshold to approve local taxes stopped (ACA 8)	\$6 billion
1% "surcharge" on \$3 million+ properties failed to qualify for ballot (15-0043)	\$6 billion
Targeted tax on certain beverages stopped (AB 2782)	\$4.1 billion
Federal matching funds for hospitals preserved (Proposition 52)	\$3 billion
Landmark federal water legislation signed	\$558 million
Smart Manufacturing Innovation Institute secured for state	\$140 million
Funding for University of California innovation and entrepreneurship centers approved (AB 2664)	\$22 million
Double-pay on Thanksgiving defeated (AB 67)	\$4.7 million
Scheduling mandate stopped (SB 878)	\$2.8 million
Costly idle well mandate averted with amendments (AB 2729)	\$1.5 million
Linked Learning program funded	\$544,425

Total Definable Return \$47.929 Billion

Return Per California Employee \$3,337

Other Savings from Legislation Stopped

New leave program for small employers stopped (SB 1166)	\$125,000 per lawsuit averted
Provisions permitting frivolous litigation for seeking prior salary/benefit history amended (AB 1676)	\$70,000 per lawsuit prevented
Price setting by independent contractors stopped (AB 1727)	\$70,000 per lawsuit averted
Random investigations for alleged retaliation stopped (AB 2261)	\$70,000 per lawsuit prevented
Unnecessary/redundant workers' compensation consultations stopped (AB 2407)	\$70,000 per lawsuit prevented
Unclear injury reporting obligation stopped (AB 2425)	\$70,000 per lawsuit avoided
Clarifying law to preclude litigation for wage statement violations (AB 2535)	\$70,000 per lawsuit prevented
Duplicative privacy policy requirements amended (AB 2623)	\$70,000 per lawsuit averted
Anti-consumer arbitration bill stopped (AB 2667)	\$70,000 per lawsuit prevented
Exposure to multiple rounds of environmental litigation vetoed (AB 2748)	\$70,000 per lawsuit prevented
Discrimination against employment arbitration stopped (AB 2879)	\$70,000 per lawsuit not filed
Disability access "right to cure" signed (SB 269)	\$70,000 per lawsuit prevented
Restriction of effective pesticide stopped (SB 1282)	\$70,000 per lawsuit prevented
Litigation alleging gender-based goods pricing discrimination prevented (SB 899)	\$4,000 per violation alleged



TUESDAY, JANUARY 31, 2017 | 10:00 - 11:30 AM PT

2017 Employment Law Updates Webinar

Start the new year with a better understanding of changes to California and federal employment laws. CalChamber’s annual webinar explains how recent state and federal court cases, new laws and regulatory changes apply to your workforce.

Our legislative presence at the State Capitol means you can trust CalChamber for accurate information and clear explanation of employment-related legislation signed into law for 2017.

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



This webinar is mobile-optimized for viewing on tablets and smartphones.

LEARN MORE at calchamber.com/2017updates or call (800) 331-8877.

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