

ALERT

Governor's 2020–2021 Budget Proposal

Finance Director Outlines Investment Objectives



California is now into the 11th year of the U.S. economic recovery and all of the state's economic vitals continue to be strong, state Finance Director Keely Martin Bosler told business leaders at a California Chamber of Commerce luncheon this week.

Budget 'Structurally Balanced'

The Department of Finance (DOF) expects the state's economy to keep growing, though at a slower pace than

before. The state saw an overall \$5.6 billion surplus this year, and though the figure is lower than in previous years, Bosler cited improvements in the DOF's ability to estimate the impact of federal tax policies on California's revenue as the main cause.

See video at calchamber.com/videos.

Other positives for the state: unemployment is currently at record lows, and the state has paid off all its budgetary debts and deferrals, some of which had been on the books for more than a decade. The state also is continuing to fund long-term liabilities, Bosler said, dedicating \$6 billion last year in supplemental payments to pension fund liabilities.

See *Finance Director*: Page 4

Job Killer Bill Increases Workers' Compensation Costs for Hospitals



The California Chamber of Commerce reminded legislators this week that pending job killer legislation will significantly increase workers' compensation costs for public and private hospitals.

CalChamber-**opposed SB 567 (Caballero; D-Salinas)** presumes certain diseases and injuries are caused by the workplace and establishes an extremely concerning precedent for expanding presumptions into the private sector. The January 8 amendments fail to address these concerns.

The bill creates a legal presumption that blood-borne infectious diseases, tuberculosis, meningitis, Methicillin-resistant Staphylococcus aureus (MRSA) and musculoskeletal injury are presumptively workplace injuries for all hospital employees who provide direct care.

Workers' Compensation

Injuries occurring within the course and scope of employment already are covered automatically by workers' compensation insurance, regardless of fault.

Workers' compensation insurance is a "no fault" system that is intentionally constructed in a way that leads to the vast majority of claims being accepted.

The Workers' Compensation Appeals Board administrative law judge is

See *Job Killer Bill*: Page 7



California Finance Director Keely Martin Bosler presents highlights of the Governor's 2020–2021 budget proposal and explains the investment priorities the plan reflects at a CalChamber luncheon on January 13. See video excerpts at www.calchamber.com/videos.

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Labor Law Corner

Employers/Co-Workers Now May Seek Gun Violence Restraining Order



Bianca Saad
Employment Law
Subject Matter Expert

What is a gun violence restraining order, and how does the new law (AB 61) on gun violence restraining orders affect employers?

Employers have a duty to ensure that employees have a safe and healthy workplace, and in certain situations where violence or threats of violence are involved, an employer may find itself investigating dangerous behaviors, or

even having to seek a restraining order against a dangerous individual.

California Code of Civil Procedure 527.8 allows an employer to obtain a temporary and permanent restraining order on an employee's behalf where there is evidence of violent acts or credible threats of violence (see [Labor Law Corner article](#)).

And now, under AB 61, there is another type of restraining order that employers may seek to have issued by the court where circumstances warrant it—one that is specific to guns and ammunition.

Gun Violence Restraining Order

An *ex parte* gun violence restraining order is an order that can be issued by a court, prohibiting an individual from owning, purchasing, possessing, receiving, or otherwise having in their custody or control, a firearm or ammunition.

In order for a gun violence restraining order to be issued, it must be shown that there is a substantial likelihood that:

- The subject of the petition poses a significant danger of self-harm or harm to another in the near future by having a firearm, and that
- The order is necessary to prevent personal injury to the subject of the petition, or someone else.

Who May Petition

Under AB 61, the types of individuals who can file a petition for a gun violence restraining order include:

- An employer of the subject of the petition;
- A co-worker of the subject of the petition, if the co-worker has had substantial and regular interactions with

the subject for at least one year and has obtained approval of the employer;

- An employee or teacher of a secondary or postsecondary school that the subject has attended in the last six months, if the employee or teacher has obtained the approval of a school administrator or a school administration staff member with a supervisory role;
- An immediate family member of the subject of the petition;
- A law enforcement officer.

Previously, only an immediate family member of an individual or a law enforcement officer could file a petition requesting that the court issue a gun violence restraining order.

Under the new law, beginning September 1, 2020, employers and co-workers will be included on the list of individuals who can file such a petition. Once in place, the gun violence restraining order may last between one to five years.

Talk to Legal Counsel

In situations where violence or credible threats of violence are involved in the workplace, it is best to work with an attorney to conduct a thorough investigation, prepare a plan of action, and for assistance with filing the required legal documents if seeking any type of restraining order.

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

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

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CalChamber-Sponsored Seminars/Trade Shows

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Labor Law

2020 Employment Law Updates.
CalChamber. January 23, Los Angeles-Sold Out; January 24, Sacramento-Sold Out; January 28, San Francisco; January 30, Webinar. (800) 331-8877.

Leaves of Absence: Making Sense of It All. CalChamber. February 21, Sacramento; April 24, Costa Mesa; June 26,

San Diego; August 13, Oakland. (800) 331-8877.

HR Boot Camp. CalChamber. March 5, Modesto; March 27, San Diego; April 23, Costa Mesa; May 6, Sacramento;

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The Workplace

HR Experts Recap New State Lactation Accommodation Rules



California's new lactation accommodation law, effective January 1, 2020, affects a broad spectrum of California employers.

In Episode 44 of The Workplace podcast, CalChamber Executive Vice President and General Counsel Erika Frank and employment law experts Matthew Roberts and Bianca Saad discuss new lactation accommodation requirements, highlighting location specifications, a new policy requirement, rest and meal break premium pay penalties, private right of action, exceptions, and the undue hardship exemption.

More Than Just a Location

Prior to the passage of the new lactation accommodation law, employers only had to provide a location other than a toilet stall. Now, there are a number of new requirements employers have to meet.

Under the new law, Roberts explains, the employer must meet the following expanded requirements for the room they provide to the lactating parent:

- The room cannot be a restroom;
- It must be a room in close proximity to the employee's workplace;
- Within the room, there must be an electrical outlet or a way for the lactating parent to charge a battery-operated breast pump;
- There must be a place to sit;
- There must be a shelf to place a breast pump or other personal items;
- The room must be free from intrusion; and
- No toxic or hazardous materials can be present in the room (i.e., a storage closet).

In addition to the space itself, an employer must provide access to a sink with running water and a refrigerator in close proximity to the employee's work area. If the employer cannot provide a refrigerator, the statute allows for an employer to provide an alterna-

tive mechanism, Saad says, such as an employer-provided cooler.

Three P's: Policy, Penalties and Protections

In addition to the requirements outlined, a new policy requirement accompanies the new lactation accommodation law, Saad explains. The policy needs to be given to all new hires and any employee who makes a request about parental leave.

The statute does not make a distinction between genders; all new hires receive the policy, Saad says. Similarly, any employee who requests or makes an inquiry about parental leave will need to be given the policy as well.

The new law also attaches rest and meal break premium pay penalties to lactation accommodation breaks, Roberts says. An employer may be liable if the employer fails to provide the time needed for an employee to express milk.

An employee may take as many breaks as needed to pump or express breast milk, with the expectation that the employee coordinates such time with regularly scheduled rest and meal breaks. However, if an employee needs additional time, the time must be provided. Any additional time or breaks provided are unpaid unless the employer chooses to pay the employee during these breaks.

"...That means that premium pay is under Labor Code Section 226.7, which is the equivalent of one hour of the employee's regular rate of compensation, so their base rate... is not only attaching to meal and rest break violations, but also this new lactation accommodation break," Frank clarifies.

A private right of action coexists with this new law as well. So, any employee who is either denied the proper location or the time to express milk can bring a lawsuit against the employer for violating protections. Moreover, the employee is protected from discrimination or retaliation for needing a location or taking time away to express milk, Frank says.

Exceptions

Frank also brings up the question of how non-office workplaces (for example,

an agricultural field setting) can provide a room for lactation.

"The statute does allow for temporary facilities to be erected, but remember the keyword there is 'temporary,'" Roberts says. "For agricultural workers, a temporary facility would be something like an air-conditioned trailer or tractor. Moreover, since there are a lot of multi-tenant buildings or workshare areas, multiple employers in one building are allowed to share one lactation accommodation space."

Although the statute includes an undue hardship exemption, it is a high burden to meet, Frank emphasizes.

First, the exemption is limited for employers with fewer than 50 employees, Saad explains. Then, employers need to show that meeting the lactation accommodation requirements would impose an undue hardship, which means it would cause significant difficulties or expense based on company size, financial resources or the nature or structure of the business.

If the employer does meet the exemption requirements, the business still is required to provide a location to express milk other than a toilet stall.

Frank recommends that employers that meet the undue hardship exemption consult with legal counsel.

Resources Available

The [California Chamber of Commerce HRCalifornia](#) website provides up-to-date information explaining the new lactation accommodation law. A [sample lactation accommodation policy](#) and other resources are available to CalChamber members.

Not a member? A [free trial](#) is currently available, providing 15 days of free access to *HRCalifornia*, plus your choice of one premium form or checklist.

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Finance Director Outlines Investment Objectives

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ities, saving the state \$15 billion over a 30-year period.

Still, risks remain on the horizon, Bosler warned. In a recession scenario created by the DOF, a recession (larger than the dot-com bust, but shorter in duration than the Great Recession) would lead to a \$70 billion decline in revenue over a three-year period.

“There is definitely...no resting on our laurels; we have to continue to be very laser focused on budget resiliency and on being able to handle any recession or slowdown that comes our way,” she said.

The state, Bosler explained, now has \$18 billion in Rainy Day Fund reserves, which is \$2 billion more than last year. The Rainy Day Fund is expected to grow to over \$19 billion next year, she added.

Housing, Infrastructure

The Governor’s 2020–2021 budget commits \$331 million to set up a housing trust fund to provide legal aid protection for renters and those facing foreclosure.

The administration, Bosler said, also plans to turn excess state properties and lands into affordable housing units or infrastructure to service homeless populations.

But the budget alone cannot fix the housing crisis, Bosler stressed. The state will be seeking private investment to help build more housing and the budget commits an additional \$500 million to the State Low Income Housing Tax Credit program.

Education

Thanks to Proposition 98, education funding is at an all-time high at \$84 billion, Bosler explained.

The state has closed achievement gaps for some populations of students, such as low-income and Latino students, but gaps persist for other groups, such as African American and special education students. To improve education outcomes, the state will focus on:

- Increasing base pay for teachers, and investing in teacher preparedness and training;
- Providing \$300 million in opportunity grants for lowest-performing schools; and
- Providing \$300 million in grants to build community school models.

Another major investment in the state budget is higher education, Bosler said.

“Higher education is...really a driver of innovation and job creation,” she remarked.

In addition to a 5% increase in funding to the California State University and University of California systems, the state is contributing \$10 million to the universities’ online extension programs. Not to be left out, the California Community Colleges system will see increased funding in its apprenticeship programs to meet workforce needs.

Economy

Another budget aspect that Bosler highlighted was the Governor’s efforts to create jobs and build “a stronger and more inclusive economy.” To help do so, the budget:

- Expands by \$1 billion the Earned Income Tax Credit;
- Supports new business creation by establishing a Minimum Franchise Tax cut for small businesses;
- Commits to \$53.3 billion in infrastructure investments over the next five

years, the majority of which is in transportation; and

- Funds projects in inland California, such as the construction of two new medical schools, and a \$33 million private-public partnership in Fresno between the school systems and local industry to create high-wage jobs that meet education, health care, and agricultural workforce needs.

Health Care

A major priority for the Governor this year is reducing health care costs, Bosler said. The administration will be creating the Office of Health Care Affordability to focus on lowering costs, increasing transparency, analyzing hospital trends and consolidation costs, and ways to return costs to consumers.

Other objectives Bosler outlined were expanding job protections for paid family leave; strengthening the state public option; manufacturing state-branded generic drugs; and establishing a new Golden State Pricing Schedule to lower drug costs.

Medi-Cal also will be undergoing several changes to improve outcomes and achieve savings, such as investing in dental preventative care and preventative medical care to ease burdens on emergency services, she said.

Court Funding

The Governor’s approach to the courts has been to focus on equity and access to justice, Bosler said. The upcoming budget will continue to invest in the judiciary by funding improvements in technology and infrastructure, and funding court navigators and civil staff.

Emergency Services

Lastly, the budget will make additional investments in the state’s emergency infrastructure by:

- Hiring more firefighters and support staff;
- Funding more helicopters and air tanker improvements;
- Establishing a new Wildfire Forecast and Threat Center;
- Investing in new hazard assessment technology; and
- Hardening community infrastructure and forest health (through a new Climate Resilience Bond).

See video excerpts from Bosler’s remarks at www.calchamber.com/videos.



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Successes help employers, jobs and the economy

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

IMPACT CALIFORNIA

By speaking out, employers can make a difference. See hot issues at www.impact-california.com.

ABOUT US

CalChamber is the largest broad-based business advocate, 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.

2019 Major Victories

California Promise: Opportunity for All

The California Chamber of Commerce is the voice of California businesses of all sizes, expert at promoting pro-job policies and advising employers on the practical impact of state laws and regulations in the workplace. We track more than 3,000 legislative proposals every year, speaking up when a bill will hurt employers and the economy, and working to win support for legislation that will help the jobs climate. Policymakers listen to CalChamber policy advocates, knowing that we represent nearly 14,000 member businesses that together employ a fourth of the state's private workforce and reflect the diversity of the California business community.

Strengthening our message are the thousands of individuals who use our web-based center, www.impact-california.com, to express their views to their elected representatives. Each year, website visitors use the center to send some 200,000 letters about state, federal and international issues affecting business operations.

Read on to learn how CalChamber advocacy in 2019 helped employers. See the **Advocacy Return on Investment** sheet for estimates of employer savings on some of these victories.

Stopping All But 1 Job Killer Bill

CalChamber policy advocates joined forces with other business groups and pro-jobs legislators to stop all but one of the 31 job killer bills identified this year from becoming law as originally proposed. Below is a sampling of job killers stopped or amended before they passed the Legislature. More information at www.calchamber.com/jobkillers.

- **Unnecessary litigation costs:** Stopped addition of private right of action to California Consumer Privacy Act (SB 561).
- **Tax increases:** Prevented targeted taxes on California businesses, oil and gas operators, sweetened beverages, new tires, drug distributors, and proposal to make it easier to increase parcel taxes on disfavored industries (SB 468, SB 37, SB 246, AB 138, AB 755, AB 1468, SCA 5).
- **Unprecedented product regulation:** Secured amendments to prevent ban on single-use packaging (AB 1080, SB 54).
- **Water management/litigation:** Supported veto of proposal establishing rigid approach to water management and creating potential for costly litigation (SB 1).
- **Higher energy prices:** Stopped proposal that in effect banned new/existing oil and gas wells in California, leading to increased energy prices for all Californians and greater state reliance on supplies from other states or nations (AB 345).
- **Increased labor costs:** Stopped unemployment for striking workers, expansion of protected leaves of absence, and increased workers' compensation costs; secured amendments to prevent unfair expansion of penalties for alleged wage violation (AB 1066, AB 628, SB 567, SB 135, AB 673).

Supporting Job Creation in the Aftermath of Disasters

Supported legislation signed into law that will help California businesses rebuild after disasters by allowing state agencies to establish a procedure to reduce licensing fees for businesses or individuals affected by a federal- or state-declared emergency (SB 601).

Reducing Impact of Cal/OSHA Smoke Regulations on Employers

Led coalition of employer groups that spoke up at every stage of the process to prevent Cal/OSHA smoke regulations from unnecessarily inflicting harm on employers.

Limiting Litigation Threats

- Backed vetoes stopping bills adding another private right of action to Labor Code provisions; creating inconsistent standards for sexual harassment; requiring employers to provide employees with unnecessary notice about their rights regarding immigration-related documents; and permitting local enforcement of state employment/housing discrimination laws (AB 1478, AB 171, AB 589, SB 218).
- Stopped proposed criminal/civil liability for wellness programs; expansion of False Claims Act to taxes; state ban on doing business with federal government contractors (AB 648, AB 1270, AB 1332).

Continuing Cleanup of Consumer Privacy Law

- Protected consumer access to vehicle safety information by backing legislation signed into law that enacts a reasonable fix to the California Consumer Privacy Act so that consumers still can receive information about vehicle warranty repairs or safety recalls (AB 1146).
- Supported signing of bills delaying application of the California Consumer Privacy Act to employment-related data for a year; clarifying the definition of personal information and fixing a provision that violated the First Amendment; and delaying the law's application to business-to-business data for one year (AB 25, AB 874, AB 1355).

Helping Create a Better-Prepared Workforce

- Stopped proposal impeding the ability of the University of California to use restricted state funding in the most efficient manner possible without compromising on the quality of education it provides by placing an unreasonable contract prohibition on the UC for support services (ACA 14).
- Called for approval of a bill signed into law that encourages high schools to allow students to complete both college preparation requirements and a career technical education (CTE) course sequence, thereby helping reduce dropout rates and increase graduation rates (AB 1240).

Preserving Californians' Ability to Use Tools of Direct Democracy

Supported veto of bill making it a crime to pay petition gatherers on a per-signature basis, thereby denying Californians right to address grievances with government through state/local initiatives, referendums and recalls (AB 1451).

Easing Housing Crisis

- Negotiated amendments to rent cap bill that would have discouraged unit maintenance and new housing construction (AB 1482).
- Stopped new restrictions that discourage housing construction (AB 725).
- Urged signing of bills preventing fee changes midway through housing development permitting process and promoting construction of accessory dwelling units (SB 330, SB 13).
- Backed law allowing victims of natural disasters to rebuild without having to install costly photovoltaic panels (AB 178).
- Supported veto of bill that would have led to increased housing construction costs (AB 520).

Protecting Small Businesses

- Gained approval of law providing gender pricing discrimination education so small businesses can protect themselves from predatory lawsuits (AB 1607).
- Stopped expansion of paid sick leave mandate to small businesses with 5 or more employees (AB 555).

Reducing Regulatory Burdens

- Secured amendments to remove a local air district's ban on industry stakeholder participation, eliminate duplicative administrative requirements, and remove burdensome permit delays (AB 423).
- Supported amendments narrowing proposed unnecessary requirements for warehouse distribution centers (AB 485).
- Scaled back scope of duplicative air board reporting mandate (AB 617 regulation).

Strengthening Relations with Important Trading Partners

Supported and participated in the Lieutenant Governor's October trade mission to Mexico, California's No. 1 trading partner.

Opening Export Opportunities for California Businesses

Supported seven-year reauthorization of the Export-Import Bank, enabling California and U.S. companies, large and small, to turn export opportunities into real sales that help maintain/create jobs.

Amendments Neutralize Housing Job Killer Bill



Changes adopted last week have removed onerous provisions from an inclusionary housing requirement bill.

With the amendments, the California Chamber of Commerce has **no position** on **AB 725 (Wicks; D-Oakland)**, now a former job killer.

Before the January 6 amendments, AB 725 would have exacerbated California's housing crisis by restricting suburban and metropolitan jurisdictions' share of regional housing need for above moderate-income housing to only 20% single-family homes.

This indirect inclusionary housing requirement would have substantially

reduced single-family home construction throughout California.

Approximately half of all residential permits issued in California in 2018 were for single-family homes. AB 725 would have placed income restrictions on 40% of all residential housing built in suburban and metropolitan California jurisdictions, in effect creating an 80% inclusionary housing requirement that would have had a negative impact on thousands of California families who have the means to buy a single-family home.

After amendments, AB 725 balances the state's goal of promoting the construction of multifamily development in moderate- and above moderate-income sites with Californians' desire to buy single-family homes.

Decades of empirical evidence have shown that housing affordability and displacement problems are due to significant long-term shortfalls in new housing construction.

The single most important factor driving high housing costs "is the significant shortage of housing," as the nonpartisan Legislative Analyst's Office (LAO) acknowledged in its February 21, 2019 report on housing, "California's Housing and Homelessness Challenges in Context."

California must pass legislation that encourages the development of all types of housing. California's housing shortage remains a classic example of a supply-demand mismatch that is driving home and rental prices to all-time highs.

Staff Contact: Adam Regele

Job Killer Bill Increases Workers' Compensation Costs for Hospitals

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required to interpret the facts liberally in favor of injured workers when determining compensability, creating few obstacles for employees who believe that they have been injured at work.

Work Causation Presumed

SB 567 mandates that hospital employees do not need to demonstrate work causation for specified injuries or illnesses in any circumstance. Instead, these injuries and illnesses are presumed to be work-related, saddling hospitals with a higher burden of proof when attempting to contest a claim that they

believe is nonindustrial.

SB 567 would make it nearly impossible for an employer to contest any claim for benefits, unnecessarily increasing costs for employers.

Moreover, there generally is a one-year statute of limitations for workers' compensation claims, ensuring that claims will be resolved while evidence and witnesses are still available. Per SB 567, however, a former employee could come back and file a claim based on this presumption for up to 5 years after employment had ended, and the employer would be virtually powerless to question the compensability of the claim.

Job Killer

The CalChamber opposes SB 567 as a job killer because it will create an astronomical financial burden on health care employers and the system, creating an appreciable impact on the cost of health care at a time when the focus is on trying to make health care more affordable.

SB 567 failed passage in the Senate Labor, Public Employment and Retirement Committee last year, but was granted reconsideration.

Staff Contact: Laura Curtis

CalChamber-Sponsored Seminars/Trade Shows

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June 12, Walnut Creek; August 21, Pasadena; September 10, Sacramento. (800) 331-8877.

International Trade

U.S.-Europe Research University Collaboration Opportunities and Challenges Webinar. National Council of University Research Administrators, European American Enterprise Council and Hannover Fairs. January 22, Webinar. (202) 482-3787.

Global Outlook 2020. Northern California World Trade Center. January 27, Sacramento. (916) 447-9827.

Property Technology U.S.-Mexico Real Estate Business Opportunities.

U.S.-Mexico Chamber of Commerce, Immobiliare Magazine and Inbound Logistics LATAM. January 30, San Francisco. (310) 922-0206.

CSU Alumni Reception. The California State University. February 10, Seoul, South Korea; February 13, Tokyo, Japan. (562) 951-4717.

Exporting Mechanics Webinar Series II: Drop Shipments and Routed Transactions. National Customs Brokers & Forwarders Association of America, Inc. and U.S. Department of Commerce. February 18, Webinar. (202) 466-0222.

Israel-USA Business Summit. Israel-America Chamber of Commerce,

U.S. Chamber of Commerce, Federation of Israeli Chambers of Commerce, U.S. Commercial Service and SelectUSA. February 26, Tel Aviv, Israel. +972-544370124.

CalChamber Calendar

Board of Directors:

February 27-28, La Jolla.

Capitol Summit:

June 3, Sacramento

Host Breakfast:

June 4, Sacramento



THURSDAY, JANUARY 30, 2020 | 10:00 - 11:30 AM PT

2020 Employment Law Updates Webinar

If you're not up to date on your employer obligations for the new year, don't miss our annual live webinar on January 30. Learn how recent California and federal laws, regulations and court rulings may require changes to your workplace policies and practices.

CalChamber's legislative presence at the California State Capitol means you can trust us for expert analysis and clear explanation of employment-related legislation signed into law for 2020.

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