

# ALERT

## Many Privacy Rights Act Provisions Take Effect Jan. 1 *CalChamber Explains What Employers Need to Know*



Originally passed in 2018 and effective in 2020, the California Consumer Privacy Act

(CCPA) is a comprehensive privacy law aimed at enhancing California residents' privacy rights and consumer protection.

To ensure those privacy rights and protections, the act requires covered businesses to follow strict privacy requirements regarding personal information they collect about consumers, such as requiring a covered business to notify consumers about the kinds of personal information it collects about them and what it's used for.

But those privacy rights and consumer protections didn't stop there: At the end of 2020, California voters approved Proposition 24, known as the California Privacy Rights Act (CPRA). The CPRA amended the CCPA, building on its framework and expanding some of its protections. While some amendments took effect immediately on approval, **many provisions will take effect on January 1, 2023.**

Also on January 1, 2023, the **exemption of employment-related information** from most of the law's requirements expires — which means covered employers must get ready to comply.

### White Paper

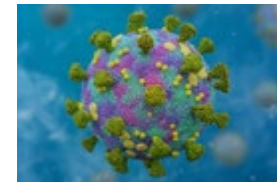
CalChamber tackles the CPRA's impact on employers in its latest free white paper, *California Privacy Rights Act: What Employers Need to Know*, and an upcoming live webinar: "The California Privacy Rights Act and Employee Information."

The new *California Privacy Rights Act: What Employers Need to Know* white paper answers frequently asked questions about the law and its upcoming changes, including:

- Are the CCPA and the CPRA different laws?
- Does the CPRA apply to my business?
- My business is covered, so what's changing on January 1, 2023?
- What CPRA information do we need to include in our employee privacy policy?
- And more!

*See Many California Privacy Rights: Page 6*

## Cal/OSHA Considers Removing Exclusion Pay Mandate from New COVID Rule



As the California Division of Occupational Safety and Health (Cal/OSHA) prepares to

vote on the next iteration of California's COVID-19 emergency regulation, one important change being considered is whether to extend California employers' obligation to provide exclusion pay to all workers out on leave.

### Current Regulation to Expire

California's current COVID-19 emergency regulation expires at the end of this year, and the Cal/OSHA Standards Board will be voting on a two-year, nonemergency extension of the regulation in December.

Although the proposed draft language has been public since June 2022, the Cal/OSHA staff recently released a set of adjustments to the two-year draft that will be voted upon in December with comments on the 15-day change notice due at the end of October.

In an [article published in the October 21 Alert](#), California Chamber of Commerce Policy Advocate Robert Moutrie explained some of the key changes Cal/OSHA has made to the COVID-19 emergency regulation in the 15-day change notice, including:

*See Cal/OSHA: Page 4*



Election Day: November 8

## Remember to Vote

CalChamber Recommends  
**No on Prop. 29 and Prop. 30**

[www.calchamber.com/ballot](http://www.calchamber.com/ballot)



### Inside

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*Labor Law Corner*

**Applicant’s Criminal History Off Limits Until After Making Job Offer**



**Sarah Woolston**  
Employment Law  
Subject Matter Expert

*We want to protect our company and staff from criminals. Can we ask applicants if they have a felony conviction in our application or during their interview?*

It can be very tempting to ask about felony convictions during the application process as a way to filter candidates. If you have five or more employees, however, you cannot include a question on your application asking whether the applicant has any prior felony convictions.

In fact, you cannot ask about criminal history at any time before the conditional

offer of employment has been made. Covered employers cannot include any question on a job application that directly or indirectly seeks the disclosure of the applicant’s conviction history. You cannot inquire or consider the conviction history of an applicant until after a conditional offer of employment has been made.

**Fair Chance Laws**

It used to be common for job applications to include a box applicants would mark to note they had a felony conviction. This practice, however, drastically affected a felon’s fair chance at a job for which they otherwise would be qualified.

This is where state and local “ban-the-box” laws came in to protect applicants from having to disclose a felony conviction without a fair chance to explain any past convictions.

California’s Fair Employment and Housing Act (FEHA) and several local ordinances protect against the use of

criminal history as a basis for making an offer of employment. The reason the timing is after an offer has been made is so that an applicant is not evaluated for the position based on a past conviction.

**Limited Exceptions**

The very limited exceptions to California’s “ban-the-box” law include:

- Positions for which a state or local government agency is required by law to conduct a conviction history background check;
- Positions with a criminal justice agency;
- Farm labor contractors (as defined in Labor Code Section 1685); or
- Positions in which an employer is required by any state, federal or local law (including the Securities Exchange Act) to check criminal background for employment purposes or to restrict employment based on criminal history.

Employers who must conduct crim-

*See Applicant’s: Page 7*

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**CalChamber-Sponsored Seminars/Trade Shows**

More at [www.calchamber.com/events](http://www.calchamber.com/events).  
**Labor and Employment**

The California Privacy Rights Act and Employee Information. CalChamber. November 17, Online. (800) 331-8877.  
HR Boot Camp Virtual Seminar. CalChamber. December 8–9, Online. (800) 331-8877.

2023 Employment Law Updates. CalChamber. January 6, 2023, Online; January 10, 2023, Online; January 12, 2023, Sacramento; January 19, 2023, Costa Mesa; January 24, 2023, Online. (800) 331-8877.

**International Trade**

Aerospace and Defense Trade Mission to the Middle East. U.S. Department of Commerce. November 6–11, Tel Aviv, Israel; Riyadh, Saudi Arabia; Manama, Bahrain. (623) 377-9641.

2022 ASEAN Dried Fruit & Nut Inbound Mission to New Mexico/California. Western United States Agricultural Trade Association. November 7–11. (360) 693-3373.

Exporting 101: Pathways to Developing International Markets. California Centers for International Trade Devel-

opment. November 9, February 22, 2023, Online. (559) 243-7280.

Global Supply Chain Disruptions: Challenges and Solutions. Women  
*See CalChamber-Sponsored: Page 8*

**CalChamber Calendar**

*Public Affairs Conference:*  
November 29–30, Laguna Niguel

*Water Committee:*  
December 8, San Francisco

*ChamberPAC Advisory Committee:*  
December 8, San Francisco

*Board of Directors:*  
December 8–9, San Francisco

*International Trade Breakfast:*  
December 9, San Francisco

*Annual Meeting:*  
December 9, San Francisco

**Next Alert: November 18**

## *The Workplace*

# Trending Topics on the Labor Law Helpline: Listening to Music and More



In Episode 162 of The Workplace podcast, CalChamber employment law expert Matthew Roberts and CalChamber HR Adviser

Ellen Savage discuss the issues employers are asking about most often on the CalChamber Labor Law Helpline, including: balancing religious beliefs with holiday parties, employee handbook policies, listening to music in the workplace, accommodating unprotected time off and employee privacy concerns.

### Religious Beliefs and Holiday Parties

A question Roberts gets asked every year is what to do if an employee objects to a holiday party based on their individual religious beliefs. If one employee complains due to religious concerns, does that mean that the employer can't have the party at all?

Savage replies that a religious accommodation can be made without having to cancel the entire party. For example, the employee can be excused from attending the party and be given some type of paid time off to go home if they so choose. Also, the employer should make available any benefit that other employees may get from the party.

For example, if everyone's name is thrown into a hat for a prize drawing, make sure that the employee who is not attending has the option to enter the drawing if they want.

### Employee Handbooks

To prepare for the new laws that take effect every year, employers have to figure out which policies will need to be updated in the employee handbook. Around this time of year, Roberts says, many employers are asking about the handbook itself, such as does it need to be printed? Can employees electronically sign their acknowledgment?

Having an employee handbook is technically not a legal requirement and is a "best practice." Savage explains that the handbook outlines the rules of the road for employees and can legally protect the employer.

Because the handbook is not legally required, there's no law that states that the handbook has to be physically printed, so employers can absolutely only make it electronically available. Likewise, acknowledgment pages can either be printed or be signed electronically.

Signed acknowledgment is important because it allows employers to discipline employees who violate the laws in the book and the acknowledgment page provides evidence that the employer received the rules and understands them, Roberts explains. But what happens if an employee refuses to sign the acknowledgment?

Savage replies that it's up to the employer on how to handle this situation. The best and simplest way to handle it is to create a record that the employee did receive the handbook but chose not to sign an acknowledgment, even after being explained that the rules are still applicable to them, even if they don't sign the acknowledgment.

### New Laws that Should Be in Your Handbook

Not every new law that gets passed requires a change in the employee handbook. There are a couple of laws which actually state that if you have an employee handbook, you have to include a policy on this topic, Savage explains. These laws would be the state and federal family leave laws and the Pregnancy Disability Leave law. Policies that could be added to a handbook or be a stand-alone policy are a harassment, discrimination and retaliation prevention policy; and a lactation accommodation policy.

In terms of new 2023 laws, employers are asking about the new salary range disclosure law. Savage explains that this new law does not need to be in an employee handbook, but it's up to the employer whether to include it.

Employers also are asking about California's new bereavement leave law, which requires employers to provide five days of protected unpaid bereavement leave starting January 1, 2023. While the law itself does not explicitly require it to be included in an employee handbook, it should be included in the handbook since there are a lot of rules that go along with the law, in terms of documentation and pay issues.

### Music Policies

An employer recently asked whether they should create a personal music policy that indicates what type of music an employee may listen to at the worksite, Roberts says.

*See Trending Topics: Page 7*



## CalChamber Member Feedback

*"For over 125 years, CalChamber has been a leader in the business community. CalChamber has continually promoted a healthy and thriving business climate for the entire state, so that jobs and economic opportunity stay in California."*

John H. Kautz  
Chairman  
Kautz Ironstone Vineyards



# Despite Economic Ranking, California Has Third Worst Business Tax Climate in U.S.



Loren Kaye

California's global rank among economies may be fifth, sixth or even fourth, but bragging rights make little difference to the day-to-day struggles that business owners and

operators face in California.

Without a doubt, California has an enormous and productive economy, testament to the thousands of business women and men, entrepreneurs and investors

who risk their time, capital and reputations to create enterprises and nurture jobs in the Golden State.

But [where we rank globally](#) should not obscure the discouraging and persistent obstacles to doing business in California.

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## Guest Commentary By Loren Kaye

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Another, [less-publicized national index](#) was just released showing California with the nation's third worst state business tax climate.

The Tax Foundation's annual index is designed to show how well states structure their tax systems to optimize

tax collections, compliance and fairness. States with a low ranking tend to have complex, nonneutral taxes with comparatively high rates — an apt description of California's system.

California's personal income, corporate and sales taxes all ranked in the cellar, with only the state's property tax system achieving a ranking in the top two deciles. Thank you, Proposition 13!

Policymakers should take our tax competitiveness to heart as a state revenue growth begins to slow and the economic cycle turns toward contraction.

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

## Cal/OSHA Considers Removing Exclusion Pay Mandate

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- A new “close contact” definition based on the cubic footage of a workplace;
- Easing of the threshold to end an “outbreak” — now one case in a two-week period will not extend the outbreak. Instead, two cases will be the threshold to continue outbreak precautions; and
- Changes to statutory exposure notice requirements — with 2022's AB 2963 (Reyes; D-San Bernardino) changing statutory notice requirements in the workplace, the regulation is being adjusted to match.

### Exclusion Pay Burden

A significant change that labor advocates have sought is extending the exclusion pay requirement of the COVID-19 emergency regulation in the two-year nonemergency regulation, instead of allowing it to expire in December per the present draft text.

Exclusion pay is similar to COVID-19-specific sick leave, but may be unlimited in certain ways. Cal/OSHA's

requirement of exclusion pay provides simply that: “... [E]mployers shall continue and maintain an employee's earnings, wages, seniority, and all other employee rights and benefits, including the employee's right to their former job status, as if the employee had not been removed from their job.”

This blanket requirement has essentially created unlimited paid sick leave related to COVID-19 throughout the pandemic for both positive cases and those excluded due to an exposure. Although employers eventually were permitted to require employees to use their employer-provided paid sick leave until such leave was exhausted, exclusion pay in effect was unlimited and went past any exhaustion of paid leave. Notably, exclusion pay did not include any of the traditional elements of sick leave legislation, such as an accrual rate or a cap on usage.

In addition, although exclusion pay was supposed to be used for COVID-19 cases contracted at the workplace, the burden was on the employer to prove that a case was due to social spread in order to

avoid paying — which many employers found impossible to do, leading to exclusion pay being used for social cases, as well as workplace cases in virtually all workplaces.

### Exclusion Pay End Appropriate

The CalChamber believes the removal of exclusion pay from the proposed regulation draft is a reasonable and appropriate change, given that exclusion pay was an emergency-level precaution that was relatively unprecedented and given the Governor's recent announcement that the state emergency likely will end in February 2023 (that is, just after an anticipated holiday spike).

If exclusion pay is to be re-added to the December draft regulation, Cal/OSHA will need to issue another 15-day change notice in early-to-mid November in order to be prepared for their December 15 vote. As this article was being finalized for publication, such a change notice had not been issued.

**Staff Contact: Robert Moutrie**

*California Works*

# General Motors: Driving All-Electric Future



*This article is a part of a series of profiles of CalChamber member companies that are contributing to the state's economic strength and ability to stay competitive in a global economy. Visit [California Works](#) to learn more about this series and read past and future profiles.*



With more than 500 employees, 14 facilities, and 326 suppliers in California, General Motors continues to invest in innova-

tion, infrastructure and workforce development in communities throughout the state.

The global automaker has maintained an active presence in the state for more than a century and shares California's vision of an all-electric future with zero emissions.

GM aspires to eliminate tailpipe emissions from all new light-duty vehicles by 2035 and plans to be carbon neutral by 2040 in global products and operations. GM is focused on delivering zero-emissions vehicles across a range of categories and price points for retail and commercial customers.

## Investing in Innovation and Jobs for Californians

To advance electric and autonomous vehicle innovation in the state, GM is building a new business campus in Pasadena for GM's Advanced Design Center operations. Set to open next year, the new center will increase GM's operational capacity in California and enhance its growing design footprint globally.

GM's investment in Pasadena represents a long-term commitment to maintaining a physical presence in one of North America's largest hubs for multidisciplinary design and cutting-edge innovation. The new campus and jobs that come with it will expand GM's

capacity to support emerging business opportunities in areas of advanced technology, software integration and future mobility solutions.

## Building the Future of Mobility in California

GM believes all autonomous vehicles should be electric vehicles. Cruise,

to bring \$25 million in net economic benefits, including new construction and maintenance jobs, to San Francisco.

Headquartered in Palo Alto, BrightDrop, a tech startup within GM focused on decarbonizing last-mile deliveries, is tapping into California's workforce to help revolutionize the movement of goods.

Launched in 2021, BrightDrop is empowering delivery and logistics companies to move goods more efficiently, reducing emissions and congestion in our cities.

BrightDrop's offerings include an integrated ecosystem of electric first-to-last mile products, software and services designed to help make deliveries smarter, safer and more sustainable.

## Driving Equitable Mobility in California Communities

GM believes that equitable access to electric vehicles and charging infrastructure can help uplift underserved communities while strengthening local economies across California.

In Imperial Valley, GM collaborated with Comite Civico del Valle and the California Air Resources Board to expand charging accessibility by creating the region's first public charging station. This partnership exemplifies the power of public-private partnerships when it comes to making the all-electric future into reality.

As part of GM's Equitable Climate Action initiative, the company dedicated \$50 million to its [Climate Equity Fund](#) to help close equity gaps in the transition

*See General Motors: Page 6*



## General Motors: Driving All-Electric Future

*From Page 5*

to electric vehicles and other sustainable technology.

It is estimated that only 20% of the needed zero-emissions-vehicle (ZEV) maintenance technicians receive training. GM provided a grant to Valley Clean Air Now (Valley CAN) and its partners to expand the nonprofit's EV workforce training program at five community colleges across the San Joaquin Valley.

After launching at Bakersfield College, the training program expanded to Reedley College, San Joaquin Delta College, Fresno City College and Merced College. More than 100 students have graduated since the first program, and many have been placed in permanent full-time positions at local car dealerships and maintenance shops where they are able to use their skills in professional settings.

Separately from the Climate Equity Fund, GM loaned zero-emission vehicles to support the Latino Equity Advocacy & Policy (LEAP) Institute's "Green Raiteros" electric ridesharing program in order to increase sustainable transportation options to Fresno County farmworkers and their families.

The zero-emission vehicles helped restart LEAP's "Green Raiteros" program and increase equitable access to COVID-19 vaccinations and testing in the area.

Across all corporate giving last year, GM supported more than 20 California-



based nonprofit organizations, six of which are focused on workforce training programs.

Working in collaboration with GM, Cruise also supports training and certification programs for technicians in California, providing transferable skills that help increase workforce readiness around the needs of California's push for broader electrification. Cruise offers its technicians access to skills training through the GM Center of Learning as well as Cruise Academy, and also provides reimbursements for technicians seeking ASE Certification.

GM continues to identify local opportunities where its expertise and leader-

ship can be of help to students, potential EV owners and small businesses alike throughout California.

### General Motors

Chair and CEO: **Mary Barra**

President: **Mark Reuss**

Global Headquarters: **Detroit, Michigan**

Employee Count in California: **543**

Company Business Segment: **Automotive**

## Many California Privacy Rights Act Provisions Take Effect January 1

*From Page 1*

This white paper also offers some steps employers can take in preparation for the new year, starting with determining whether the law applies given that the law's original coverage criteria are changing on January 1, 2023.

### Live Webinar

If the CPRA does apply to your business, the 90-minute live webinar hosted by CalChamber's employment law experts will explain the expired exemption and what businesses need to consider as they prepare to comply with the new law.

Topics will include:

- A brief background on the law and how we got here;
- Requirements under the law and what they mean for your business;

- Ways to prepare for compliance by January 1, 2023; and

- Enforcement and consequences of noncompliance.

This live webinar is created for CPRA-covered employers, and the personnel responsible for collecting and storing the personal information of job applicants, employees and independent contractors, and is formatted so participants can submit questions during the event.

### **[90-Minute Live Webinar] The California Privacy Rights Act and Employee Information**

**Date:** Thursday, November 17, 2022

**Time:** 10 a.m. to 11:30 a.m. PT

**Price:** \$249 (\$199.20 for CalChamber Preferred or Executive Members)

[Register online](#) or by calling (800) 331-8877. Each webinar purchase

includes a recorded version of the live event.

The CPRA is a complicated law, and compliance will be challenging. Although there is a grace period for enforcement, which won't begin until July 1, 2023, employers should prepare to comply by January 1, 2023, when the changes take effect.

The *California Privacy Rights Act: What Employers Need to Know* white paper is available now for nonmembers to download.

CalChamber members can access this white paper under Cases & News on [HRCalifornia](#).

Not a member? See how CalChamber can help you.



## Trending Topics on the Labor Law Helpline: Listening to Music and More

*From Page 3*

Employees do not have a right to free speech at work and they don't have a free music right either, Savage says. Employees also don't have the right to pop in earbuds while at work. So no, a music policy is not necessarily required. An employer can decide what music must be played in the workplace.

### Accommodating Unprotected Time Off

Another employer recently asked whether they must give time off to an employee to meet with his probation officer? Also, Roberts asks, must an employer rearrange an employee's schedule because he's only allowed supervised visits with his children?

Savage tells Roberts that while

California has protected time off for an awful lot of things, such as school activities, organ donation and so on, the two circumstances he's asking about are not legally protected in any way.

"An employer could choose to agree to them, but they certainly would not be required to," she says.

### Smelling an Employee's Drink

In closing the podcast, Roberts shares that an employer asked whether it's an invasion of an employee's privacy to sniff their open Gatorade bottle while they're away from their desk in order to determine if there was alcohol in it. The employer had reasonable suspicion the drink contained alcohol due to the lighter blue color of the liquid.

California is one of a handful of states

where the right to privacy extends into the workplace.

"Anytime we're talking about privacy, we ask ourselves, would a reasonable person expect that particular thing to be private? So like at work, I would expect that my supervisor would not be snooping around in my purse," Savage says.

So, what about a Gatorade bottle sitting open on a desk?

Roberts replies that while there may be an expectation of privacy with food-stuffs, if there is a public policy interest or employer interest, it's going to override that privacy. For example, was the employee noticeably intoxicated, stumbling or slurring words? Ultimately, it's a tricky area to navigate and the employer should be cautious.

## Applicant's Criminal History Off Limits Until After Making Job Offer

*From Page 2*

inal background checks to comply with various state or federal laws should consult with legal counsel.

### After Conditional Job Offer

There are lawful ways you can protect your business. Once you make a conditional offer of employment, you may seek conviction history information if you follow a specific process and comply with strict notice requirements.

If you improperly obtain or use criminal history information, you can be subject to a civil lawsuit. An applicant can bring an action to recover actual damages or \$200, whichever is greater,

plus costs and reasonable attorney fees.

If the violation is intentional, the applicant is entitled to three times actual damages or \$500, whichever is greater, plus costs and reasonable attorney fees.

In addition, an intentional violation is a misdemeanor punishable by a fine not to exceed \$500. Furthermore, a violation of the ban-the-box law can result in a lawsuit under the California FEHA.

An applicant or employee also can bring a discrimination lawsuit under FEHA if the applicant or employee can show that the criminal background check practice had an adverse impact on a protected class.

### More Info on HRCalifornia

For a discussion of the fair chance laws and the process for obtaining criminal history, see [Restrictions on Obtaining Criminal History](#) in the HR Library on [HRCalifornia](#).

*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](http://www.hrcalifornia.com).*

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## CalChamber-Sponsored Seminars/Trade Shows

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in International Trade, Los Angeles. November 9. (213) 545-6479.

U.S. Pavilion at Formnext 2022. U.S. Department of Commerce. November 15–18, Frankfurt, Germany. 49-211-737767-30.

Beijing International Life and Health Industry Expo. Ministry of Commerce, World Federation of Chinese Medicine Societies, Chinese Research Hospital Association, China Chamber of International Commerce. November 25, Online. +86 15801079798.

2022 Canada Craft Beverage Inbound Trade Mission. November 28–29, Missoula, Montana; December 1–2, Reno, Nevada. Western United States Agricultural Trade Association. (360) 693-3373.

2022 WUSATA Mexico Outbound Mission to Mexico City & Monterrey with Buyers from Central America. Western U.S. Agricultural Trade Association. December 4–9, Mexico City and Monterrey. (360) 693-3373

U.S. EXIM Bank 2022 Annual Conference. Export-Import Bank of the United States. December 13, Washington, D.C. and Online. (800) 565-3946.

9th Annual Global Trade Awards Gala. Women in International Trade, Los Angeles. January 19, 2023. (213) 545-6479.

Arab Health. Governor's Office of Business and Economic Development (GO-Biz). December 2 voucher application deadline. January 30–February 2, 2023, Dubai. Voucher questions: [diana.dominguez@gobiz.ca.gov](mailto:diana.dominguez@gobiz.ca.gov).

China Clean Beauty Trade Mission. U.S. Commercial Service. February 21–22, 2023, Online.

Avalon 2023 California Pavilion. Governor's Office of Business and Economic Development. (GO-Biz). February 28–March 5, 2023, Avalon, Australia. Space limited. [Jason.Sproule@trade.gov](mailto:Jason.Sproule@trade.gov).

Trade Winds Southeast Asia! U.S. Commercial Service. March 9–16, 2023, Bangkok, Thailand. [TradeWinds@trade.gov](mailto:TradeWinds@trade.gov).

11th Annual Pan African Global Trade and Investment Conference. Center for African Peace and Conflict Resolution. April 26–30, 2023, Sacramento. [info@panafricanglobaltradeconference.com](mailto:info@panafricanglobaltradeconference.com).

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## Mandatory Updates to Required Employment Notices

 **CalChamber**  
HR Expert & Business Advocate™



**Will you be ready to post and distribute updated employment notices on January 1, 2023?**

Now's the time to preorder your 2023 California and Federal Labor Law posters and pamphlets through CalChamber, as well as applicable California Wage Order posters and local California labor law posters.

Preferred and Executive Members receive their 20 percent member discount.

**PREORDER** at [calchamber.com/required2023](https://calchamber.com/required2023) or call (800) 331-8877.