

# ALERT

*Cal/OSHA Rulemaking*

## Formal Stage Begins to Prevent Heat Illness Indoors



The California Division of Occupational Safety and Health (Cal/OSHA) has started the formal

rulemaking phase of its work on developing regulations to prevent heat illness in indoor workplaces.

A California Chamber of Commerce-led coalition has submitted written comments and oral testimony at each step of the process, encouraging Cal/OSHA to develop a rational policy that isn't unnecessarily burdensome on employers while minimizing the risk of heat illness to workers in indoor workplaces.

The coalition represents employers

large and small across diverse industries and recommends revisions to the proposed indoor heat illness regulation that provide clarity to foster better compliance and improved employee safety and health.

### Background

Many coalition members were involved with developing and implementing California's outdoor heat illness regulation (California Code of Regulations, Title 8, Section 3395). Adopted in 2005, the outdoor heat illness prevention standard requires employers to provide outdoor workers with water, shade, rest breaks and training.

Legislation passed and signed in 2016, **SB 1167 (Mendoza; D-Artesia)**, directed Cal/OSHA to develop a regulation to

*See Cal/OSHA Begins: Page 4*

## Study Finds Job Killer Health Care Pay Bill Increases Costs \$8B/Year



An **economic analysis** released last week found that a health care industry wage increase proposal would increase costs

for public and private health care providers by \$8 billion each year. If passed, this California Chamber of Commerce job killer measure would also increase costs to state and local governments by \$4.8 billion annually.

The bill, **SB 525 (Durazo; D-Los Angeles)**, imposes significant costs on health care facilities and any employer who works with health care facilities by mandating an increase in the minimum wage to \$25.

A broad coalition of community clinics, hospitals, doctors, minority business advocates, seniors and consumers is opposed to SB 525 because it would significantly raise costs and would lead to hospital cutbacks and closures.

"Health care providers go to great lengths to support and reward workers, but SB 525 is a massive \$8 billion increase in health care costs we simply cannot afford," said Cathy Martin, chief executive officer, Association of California Healthcare Districts. "Cost increases of this magnitude on an already-fragile health care system will lead to cuts and closure of services, health care worker

*See Study Finds: Page 7*

### *The Workplace*

## Five 2023 Legislative Proposals Having Negative Impact on California Employers



In **Episode 174** of The Workplace podcast, CalChamber employment law expert Matthew Roberts and CalChamber

Policy Advocate Ashley Hoffman discuss five troubling employment law bills being discussed in the California Legislature this year: SB 809, SB 616, SB 723, SB 627, and AB 1356.

### Background Checks

Discussed in a **previous podcast**, **SB 809 (Smallwood-Cuevas; D-Los Angeles)**, which generally banned criminal history checks and created a new Fair Credit Reporting Act and California-equivalent notice requirements, was softened a little bit, Roberts says.

Hoffman explains that recent amendments reverted back to the existing framework, where an employer is able to conduct a background check after making a conditional offer. Nevertheless, the bill

*See Five Bill Proposals: Page 6*

### Inside

**Nurturing a Culture of Wellness: Page 3**

## Labor Law Corner

# Reporting Time Pay: When It's Owed Depends on Circumstances



**Sarah Woolston**  
Employment Law  
Subject Matter Expert

*My employee showed up for her shift in the wrong safety equipment, then later went home sick after clocking in for 30 minutes. Do I owe her "reporting time pay"?*

"Reporting time pay" is a type of wages owed to employees in two situations.

- First, when an employee reports to work as scheduled, but their employer cancels the shift or offers them less than half the hours for which they were scheduled or usually work. The amount due in this situation is at least half the hours for

which the employee was scheduled or usually worked at the employee's regular rate of pay, but it is never less than two hours pay and never more than four hours pay.

- Second, reporting time pay is triggered when an employee is required to report to work a second time in any one workday and is given less than two hours of work on the second reporting. In this situation, the employee is owed reporting time pay for the difference between the hours worked and the two-hour minimum.

### Exceptions

Employers are excused from paying reporting time pay when:

- Operations cannot begin due to threats to the business or property, or when recommended by civil authority;
- Public utilities fail, such as water, gas, electricity, or sewer;
- Work is interrupted by an act of God or other causes not within the employer's control; and

- An employee is on a paid standby status then called to work at times other than their usual shift.

Failure to wear proper safety equipment or being sent home sick are not exemptions from the reporting time pay rules.

### Opportunity to Work

That said, the Department of Industrial Relations clarifies reporting time pay is required only when the employer *deprived* the employee of the opportunity to work. If an employee went home sick based on their own volition, or even just left for a personal matter — they are not entitled to reporting time pay.

If an employer sends an employee home because they are in the wrong safety equipment, however, or even sends them home because the employee is sick, then the employer is depriving the employee of the opportunity to work and none of the above exceptions will apply either, so reporting time pay would be due.

*See Reporting Time: Page 4*

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## CalChamber-Sponsored Seminars/Trade Shows

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

### Business Resources

California Privacy Rights Act (CPRA) Compliance. CalChamber and Mariner Strategies. May 24, Online. (800) 331-8877.

### Labor and Employment

Avoiding Meal and Rest Break Traps. CalChamber. May 18, Online. (800) 331-8877.

HR Boot Camp 1-Day Seminar. CalChamber. May 25, Sacramento. (800) 331-8877.

Pregnant Pause: Providing Pregnancy and Child Bonding Leaves. CalChamber. June 15, Online. (800) 331-8877.

Leaves of Absence: Making Sense of It All Virtual Seminar. CalChamber. August 24–25, September 21–22, Online. (800) 331-8877.

### International Trade

2023 Taiwan Trade Shows. Taiwan Trade Center, San Francisco. March 6–November 8, Taiwan and Online. (408) 988-5018.

Access Africa Now Webinar Series. U.S. Commercial Service. April 11–September 27. (512) 936-0039.

9th Annual Orange County World Trade Week Forum: Global Trade: Transitioning, Resilient and Growing. District Export Council of Southern California. May 17, Irvine.

U.S. to EU: How to Sell into European Union via eCommerce. International Trade Administration, Getting to

*See CalChamber-Sponsored: Page 6*

## CalChamber Calendar

### Capitol Summit:

May 17, Sacramento

### International Forum:

May 17, Sacramento

### Sacramento Host Breakfast:

May 17–18, Sacramento

### Board of Directors:

May 17–18, Sacramento

**Next Alert: May 26**

## *The Workplace*

# Nurturing a Culture of Wellness Helps Employees, Business Thrive



In **Episode 175** of The Workplace podcast, CalChamber employment law expert Matthew Roberts and CREtelligent Chief Expe-

rience Officer Tobi Lutz discuss how employers can create a better work environment for mental health.

May is Mental Health Awareness Month and it's an important topic, because whether it's an employee, a co-worker, friend, family member or ourselves, we all know someone who is struggling or needs our compassionate support, Lutz says in kicking off the podcast.

And the statistics bear this out. Studies show that as recently as 2021, 76% or three in four workers have experienced a mental health issue like depression or anxiety, Roberts says.

Part of the uptick may certainly be increased awareness overall, but part of the issue is the uncertainty we are all facing in the post-COVID world. Whether it is inflation or job security, there are a lot of life stressors that are coming to work with us every day, Lutz says.

Employers should be aware that mental health may potentially be a disability, Roberts stresses. If an employee is having a mental health crisis that affects their job performance, it's important for

employers to understand the difference between discrimination issues and accommodations, and other legal rules.

### **A Culture of Wellness**

Employers and human resources professionals can help create a wellness environment where employees have the ability to thrive. Lutz says that in creating a wellness environment where employees feel cared for, employers are also creating that same type of environment for their customers.

It's Maslow's Hierarchy of Needs, she says. Employers can ensure that employees have basic necessities like strong benefit offerings and competitive compensation packages—things that are part of an employee's essential needs. Meeting these needs will truly help employees thrive.

Employers should also foster a culture of "belonging, collaboration, inclusion," Lutz says.

"And that means that we talk about and we educate our teams on important topics like mental health, and we make mental health and wellness a space where everybody feels validated and supported. And when you have that type of environment and culture that you built, your people thrive," she says.

And when your people thrive, she adds, so does your city, customers, and business.

### **How HR Professionals Can Help**

Lutz urges employers to take a multi-

faceted approach when it comes to creating a better workplace for employees' mental health:

- First, employers should recognize that the employee's mental health needs don't just arise during business hours.

- Second, mental health should be talked about in the workplace to remove the stigma that may be associated with it. For example, a workplace can run a holistic wellness challenge that focuses on nutrition, physical activity, education and how to unplug and unwind.

- Third, leaders and managers should be educated on what signs to look for in their employees, and what to say or do if they see an employee who may be struggling. Leaders and managers should know what resources the company offers so that they don't have to go to HR as a first response.

"We should have a way that we can respond to an employee in the moment, who's gone to the person that they trust the most, for some guidance," Lutz says.

Last, let employees know that there are 24/7 resources available to help:

- Call or text 988: This is a suicide and crisis lifeline, routing callers to a local crisis center.

- Call or text 1-833-9-HELP4MOMS (1-833-943-5746): This is a suicide and crisis hotline specific to maternal mental health, such as pregnant moms, or new moms who are at home and trying to balance work and life.



## 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

## Cal/OSHA Begins Formal Stage on Rule to Prevent Heat Illness Indoors

*From Page 1*

prevent heat illness among indoor workers. The CalChamber and a large coalition opposed SB 1167, arguing that a specific regulation is unnecessary because the state's existing Injury and Illness Prevention Program (Title 8, Section 3203) requires employers to identify and address workplace hazards, including the risk of heat illness in indoor workplaces.

The draft indoor heat rule, published for public comment on March 31, 2023, applies to workplaces where the temperature exceeds 82 degrees Fahrenheit. Although no date is presently set, Cal/OSHA will likely consider it for a final vote by the Standards Board late in 2023 or early in 2024.

If adopted, it will require temperature monitoring, cooldown areas, and other heat-related precautions to protect employees. Known as the high heat provisions, additional requirements apply when the outdoor temperature exceeds 95 degrees Fahrenheit.

### Coalition Concerns

The CalChamber coalition's primary concerns with the latest draft indoor heat rule include the following:

- **Compatibility with Existing Outdoor Heat Illness Regulation.** Many employers have both outdoor and indoor workplaces with some or all employees transitioning between both. Like earlier versions, the latest draft regulation fails to explain how employees who are covered by either the draft indoor heat rule or the existing outdoor heat rule (Section 3395) will switch between the two compliance regimes. This structural issue is the result of adopting two separate regulations for dealing with one concept — temperature.

For industries covered by the existing rule (agriculture, landscaping, construction, oil and gas, or transportation of related materials), a worker might switch between the two regulations repeatedly throughout the day. For example, on a hot day, a construction worker walking into the building on which they are working will transition from coverage under Section 3395 to the draft regulation. An agricultural or landscaping worker might walk into a shed (or step into a vehicle) and face momentarily different temperatures and a different compliance regime.

- **Temporal Trigger.** The draft regulation's requirements are triggered regardless of how briefly the temperature rises above 82 degrees. The lack of a time element creates unintended, nonsensical obligations.

For example, if an employee enters a remote building (such as a storage shed) or a vehicle that has warmed up to 85 degrees due to sunlight, that employee may briefly be exposed to a temperature above 82 degrees. In a vehicle, the temperature will likely drop as soon as the air conditioning is functioning. For a shed, the employee may grab a tool and step out immediately.

Even though the exposure was minimal, both cases would trigger the draft regulation's obligations for the employer, including recording the temperature in that space, potentially creating a cooldown area, etc.

With the understanding that at certain higher temperatures (such as above 95 degrees), even brief exposure may be deemed significant, the coalition proposes adding a time delay trigger for the draft regulation where employees are exposed to heat below 95 degrees Fahrenheit for less than 10 cumulative minutes in any 30-minute period.

- **Definitions.** Applying the definition of "indoor" to vehicles and equipment cabs is confusing and unproductive. The coalition encourages Cal/OSHA to either add to the draft rule a temporal trigger for vehicles or clarify that workers in industries covered by the existing outdoor heat rule (Section 3395) can continue to comply with Section 3395.

- **Access to Cooldown Areas.** The coalition remains concerned with the breadth and open-ended nature of the draft regulation's language on preventive cooldown breaks and cooldown areas, the obligation to "monitor" employees whenever they take a rest (regardless of whether they are experiencing signs of heat illness), and how employers can simultaneously "encourage" an employee to remain in the cooldown area and order them back to work.

The coalition has proposed adding language to the draft regulation to permit an employer to limit the number of preventive cooldown breaks taken during a shift to no more than two breaks per hour if the temperature in an employee's work area is less than 95 degrees — unless the employee demonstrates symptoms of heat illness, in which case the employee shall be allowed a cooldown break until such signs have abated.

- **Training.** Employers with employees working in both indoor and outdoor areas should be able to provide one training program to comply. The CalChamber coalition recommends the draft rule be changed to clarify that training for the indoor heat illness rule can be integrated into Section 3395 training when employees are covered by both the indoor heat illness and outdoor heat illness regulations.

**Staff Contact: Robert Moutrie**

## Reporting Time Pay: When It's Owed Depends on Circumstances

*From Page 2*

For this employer, whether reporting time pay is due will depend upon this distinction.

For purposes of discussion, let's assume that the employer chose to send the employee home immediately for the safety equipment issue.

### Company Policy

Although the employee will be enti-

led to reporting time pay, this does not mean the employer cannot address the situation. The employer can discipline her for violating company policy.

If you have a policy on what safety equipment is required, like steel-toed boots for example, and an employee fails to abide by it and shows up in flip flops, you can — and probably should — discipline her.

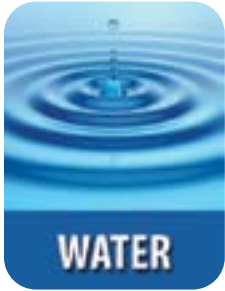
Ensure your policy includes what consequences will result from repeated violations

of your uniform and safety policies. Reporting time pay is nuanced and should be handled carefully by your business.

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*Column based on questions asked by callers on the Labor Law Helpline, a service to California Chamber of Commerce preferred members and above. 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).*

## Statewide Poll Shows 76% of Voters Support Delta Conveyance Project Modernizes California's Main Water Distribution Infrastructure



This week, Californians for Water Security released results of a recent statewide poll showing that voters across all regions, political parties and major demographics are highly supportive of the

Governor's Delta Conveyance Project.

Seventy-six percent (76%) of voters say they support the Delta Conveyance Project when read a description, with 40% of voters strongly favoring the project. Only 13% of voters oppose the project.

Voters across party and region also strongly support the project, with 81% of Democrats, 65% of Republicans and 76% of No Party Preference voters expressing support.

### Water Supply Reliability

"Californians are saying loud and clear: it's time to move forward with the Delta Conveyance Project to improve the reliability of our state's water supply," said Jennifer Pierre, general manager of the State Water Contractors.

"The local infrastructure that supplies water to two-thirds of our state is in serious need of modernization and is more vulnerable than ever due to the impacts of extreme weather and climate change," said Charles Wilson, executive direc-

tor and CEO of the Southern California Water Coalition. "As this poll shows, Californians know the Delta Conveyance Project is the right project at the right time to help ensure the State Water Project can continue to meet California's water needs into the future."

### Project Summary Statement

*"More than two-thirds of Californians rely on the state water project — a system of dirt levees, canals and pipes to transport water long distances from the Sierra Nevada Mountains through the Sacramento-San Joaquin Delta to homes, farms and businesses in the Bay Area, Northern California, Central Valley, Southern California and San Diego. This system is more than 60 years old and engineers say it is outdated and must be modernized to continue operating reliably. The project would upgrade California's primary water delivery infrastructure, including building a new tunnel underneath the Sacramento-San Joaquin Delta, as well as upgrading pumps and levees to carry and deliver the water more reliably throughout the state."*

### Background

Currently, two-thirds of water for Californians starts in the Sierra Nevada Mountains and flows through the state's main water distribution system through the Sacramento San Joaquin Delta to other parts of the state, including the Bay

Area, Central Valley, the Central Coast and Southern California. But this system is aging, vulnerable to natural disasters, and must be updated to better protect against climate change.

The Delta Conveyance Project would:

- **Protect water security for two-thirds of the state.** Without action, water supplies through our main distribution infrastructure will continue to decrease.

- **Improve the reliability and security of our water system** by fixing aging infrastructure using the most innovative technologies and engineering practices.

- **Protect water supplies from earthquakes, floods and natural disasters** by delivering them through a modern water pipeline, rather than solely through today's deteriorating levee system.

- **Prepare for the impacts of climate change** by improving our ability to move and store water to account for extreme swings in drought and flood and to protect against salinity caused by sea-level rise.

- **Serve as a critical component** of a comprehensive water portfolio.

The poll, conducted by FM3 Research, surveyed 1,099 likely California voters from February 9–16, with a margin of error of 3.1%.

For more information, visit [www.watersecurityca.com](http://www.watersecurityca.com).

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## Five Bill Proposals Having Negative Impact on California Employers

From Page 1

still contains several rules that concern the CalChamber.

For example, the penalties the bill imposes are pretty high, Hoffman says. In conjunction with the densely technical notice requirements, the CalChamber is concerned that employers will be exposed to steep penalties and maybe a class action lawsuit if an employer misses even one thing.

Another concern is that the bill allows an applicant to dispute a background check report and not have to submit any evidence to support their claim, and the employer cannot hold this lack of evidence against the applicant.

“All an applicant would have to do is say that the report is inaccurate. And then there’s really nothing we could do from there,” she says.

### Paid Sick Leave

Under current law, employers must provide at least three paid sick leave days per year, Hoffman explains. **SB 616 (Gonzalez; D-Long Beach)** would increase these minimum days to seven, which is concerning not only for small businesses, but even for larger businesses as well. This is because even if an employer already offers more than three days of sick leave, under SB 616, employers will not be able to ask for documentation for those seven days.

Roberts adds that the issue of documentation is a concern shared by many employers, as employers often want a doctor’s note to be submitted to ensure that the leave is not being abused.

### Right to Rehire

Generally, in California, outside of a collective bargaining context, employees are not entitled to be rehired if they are laid off, Roberts explains. During the COVID-19 pandemic, there was some change to this via SB 93, which required employers in the hospitality and airport industries to provide a rehire opportunity to those who lost their job because of lockdowns and closures. Now, two legislative proposals are aiming to impose more rules.

• **SB 723 (Durazo; D-Los Angeles)** would extend the sunset date in SB 93 and would apply the right to be rehired to anyone in these industries who has been laid off for any non-disciplinary reason and does not have to be related to COVID-19, Hoffman says.

“The larger impact we see is this is actually chipping away at at-will employment by having really overly prescriptive hiring rules, only allowing us to consider seniority and not consider any other aspect of the person’s application,” she says.

Some of the employers that would be covered by SB 723 include hotels and businesses located at an airport, such as gift shops, restaurants, etc.

• The second proposal establishing a right to rehire is **SB 627 (Smallwood-Cuevas; D-Los Angeles)**. This bill applies to any chain employer that has at least 100 establishments nationwide. If an employer has a location in California and has another location within 25 miles, that location must hire anyone from the closed location in order of seniority for a job they are qualified for, Hoffman explains.

So, if a store down the street closes,

and a supervisory position opens at a nearby store, the nearby store must hire someone from the store that closed and won’t be able to promote anyone from their current store, Hoffman says.

“Again, we see this as chipping away at at-will employment, but then also really acting to the detriment of some of the employees in the store that didn’t close and barring them from promotional opportunities, potentially for an entire year,” she says.

### WARN Act

The last bill discussed on the podcast is **AB 1356 (Haney; D-San Francisco)**, which significantly expands the WARN Act. The WARN Act requires employers that conduct mass layoffs of 50 or more employees, or relocate or close an entire facility, to provide a 60-day notice to both employees and the California Employment Development Department (EDD).

Under AB 1356, employers will have to provide a 90-day notice and would extend WARN Act rules to employees of labor contractors, Hoffman says. Additionally, the bill changes the definition of “covered establishment” so that instead of applying to single locations with 75 or more employees, it now covers any business that employs 75 or more employees between all of their locations.

Roberts points out that if employers fail to provide notice, there are reinstatement remedies and backpay remedies.

“The damages for a WARN Act violation are huge, which is why the broadening expansion of this kind of bill is something that causes concern,” Roberts says.

## CalChamber-Sponsored Seminars/Trade Shows

From Page 2

Global and U.S. Commercial Service. May 18, Online. (800) 872-8723.

NAFSA Annual Conference & Expo.

National Association of International Educators. May 30–June 2, Washington, D.C. (202) 737-3699.

Trade Mission 2: California Water Tech Trade Mission to Mexico. Governor’s Office of Business and Economic Development (GO-Biz). June 5–9, Tijuana and La Paz. [diana.dominiguez@gobiz.ca.gov](mailto:diana.dominiguez@gobiz.ca.gov).

Infosecurity. Infosecurity Europe. June 20–22, London. (+44) 20 82712130.

2023 Canada Specialty Food & Beverage Outbound to Canada. Western U.S. Agricultural Association. June 25–30, Toronto and Vancouver, Canada. (360) 693-3373.

Select USA San Francisco Spin-Off Program. GlobalSF and QB3. June 30, Berkeley. [info@globalsf.biz](mailto:info@globalsf.biz).

Trade Mission to Africa. Global Diversity Export Initiative. August 6–15, South Africa, Ghana and Nigeria (optional

stop). [eve.lerman@trade.gov](mailto:eve.lerman@trade.gov).

The Green Expo 2023. The Green Expo and International Environmental Congress of the Consejo Nacional de Industriales Ecologistas (CONIECO). September 5–7, Mexico City. 55-1087-1650.

Smart City Expo World Congress (SCEWC). Smart City Expo World Congress. November 7–9, Barcelona, Spain. (704) 248-6875.

## Study Finds Job Killer Health Care Pay Bill Increases Costs \$8B/Year

From Page 1

job losses, and massive cost increases for consumers and state and local governments.”

The bill’s broad language also covers employers of all sizes outside of the health care sector, including those that may employ any worker who sets foot on the premises of a health care facility or who performs any “health care service” for a facility. In a letter submitted to legislators, the CalChamber pointed out that these services are broadly defined to include janitorial staff, food service, laundry, and more.

“The astronomical increase in labor costs that will result from SB 525 is simply not sustainable,” the CalChamber said.

### Study Key Findings

The [economic report](#), which was compiled by California’s former director of the Department of Finance and the former chief economist for the California State Legislative Analyst’s Office, found that if SB 525 were to pass, public

and private health care expenses would increase by \$8 billion each year and would increase to \$11.3 billion annually by 2030.

Of the \$8 billion, \$4.9 billion in costs would be related to wage increases for workers making less than \$25 an hour, and \$1.5 billion in costs would go to employers offsetting wage compression by raising pay rates for employees earning up to double the new \$25 per hour minimum wage.

The study also estimated that costs to state and local governments will be \$4.8 billion annually, with all levels of government directly affected by the minimum wage increase. This is because state and local governments are employers of workers in state and county hospitals and correctional facilities; and are major purchasers of health care services — through county health care programs, the state’s Medi-Cal program, and as purchasers of health insurance for their active and retired employees.

The following are anticipated costs for state and local governments:

### **Total State Government Costs: \$4.01 billion**

- Medi-Cal: \$3.6 billion;
- State Employee Health Insurance: \$112.9 million;
- Department of Corrections: \$53.4 million;
- Department of State Hospitals: \$19.7 million;
- State Retiree Health Insurance: \$78.5 million;
- California State University Retiree Health Insurance: \$11.8 million;
- University of California (UC) Employee Health Benefits: \$74.6 million;
- UC Retiree Health Benefits: \$10.3 million.

### **Total Local Government Costs: \$770.9 million**

- County Health Program Costs: \$406 million;
- County, City, Special District (including School District) Employee Health Insurance Costs: \$364.9 million.

**Staff Contact: Ashley Hoffman**



LIVE WEBINAR | MAY 18, 2023 | 10 AM - 11:30 AM PT

## Avoiding Meal and Rest Break Traps

California’s meal and rest break laws are not only robust, they’re also rapidly evolving — making it more challenging than ever to comply with all the rules.

Join CalChamber’s employment law experts for a discussion of this important and highly litigated area of wage and hour law.



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