CalChamber

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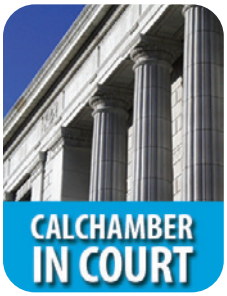
ALERT

US Court Largely Suspends California's New Labor Law



On December 26, 2025, a federal court temporarily blocked major provisions of a new California labor law that would have given the California Public Employment Relations Board (PERB) — the state agency within the Labor and Workforce Development Agency that is responsible for overseeing government employer/employee labor relations — authority to handle private-sector labor disputes, which traditionally have been under the exclusive jurisdiction of the National Labor Relations Board (NLRB).

California's New Labor Law

Signed by Governor Gavin Newsom on October 1, 2025, AB 288 seeks to substantially expand the PERB's jurisdiction, giving it the ability to enforce labor laws affecting private-sector employees, including, for example, deciding unfair labor practice cases, certifying bargaining representatives, conducting elections and ordering "any appropriate remedy."

The law provides that employees could petition the PERB under the following circumstances:

• When the worker is employed in a position that would be covered by the National Labor Relations Act (NLRA), but they lose coverage because the NLRA is repealed or narrowed, or its enforcement is enjoined by a court.

• When the NLRB is deemed to have "expressly or impliedly ceded jurisdiction," which may include when the NLRB lacks quorum (has less than three members on the Board), loses its "independence" because of the U.S. Supreme Court finding that NLRB members are not protected from removal, and experiences certain processing delays.

The law also states that once PERB took up a case, it would maintain jurisdiction, even if the conditions above no longer apply, unless ordered by a court to cede jurisdiction. Additionally, PERB would be allowed to follow its own procedures and NLRA precedents.

NLRB Files Legal Challenge

As previously reported, on October 15, 2025, the NLRB filed a lawsuit against California challenging the law as being preempted by the NLRA. The California Chamber of Commerce, with several other organizations including the U.S. Chamber of Commerce, filed an amicus brief in support.

Rooted in the Supremacy Clause of the U.S. Constitution, preemption is a legal doctrine that invalidates state laws

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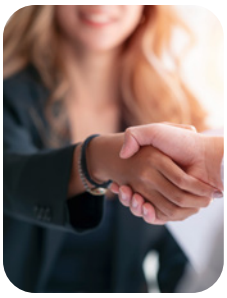
SoCal Chamber Network Presents Unified Voice for South Bay Business



Local chambers of commerce and regional networks have been strong supporters of the California Chamber of Commerce efforts to advance policies that promote good-paying jobs and improve affordability for all Californians.

One such group in Southern California is the South Bay Association of Chambers of Commerce (SBACC), which frequently joins CalChamber advocacy coalitions to highlight legislation and regulations of significance to employers.

Chairing the SBACC for 2026 will be Jeremy Harris, president and CEO of the Long Beach Area Chamber of Commerce.

The SBACC unites 15 chambers across the South Bay region that together represent more than 90,000 businesses.

The SBACC member chambers are Carson, Gardena Valley, Hawthorne, Hermosa Beach, Inglewood Airport Area, LAX Coastal, Long Beach Area, Lomita, Manhattan Beach, Palos Verdes Peninsula, Redondo Beach, San Pedro, Torrance Area, Wilmington, and El Segundo.

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Inside

Labor Law Corner

How to Decide When to Keep Record in Personnel File or Store It Apart

Vanessa M. Greene
Employment Law Counsel

For California employers, what should go in an employee's personnel file, and what should be stored separately?

In California, the law doesn't give employers a single "required contents" checklist for a personnel file. Labor Code Section 1198.5 focuses on the "personnel records" an employee can inspect later, which are records related to the employee's performance or any grievance.

With that in mind, most employers use the personnel file to store employment documents such as:

- Any application, resume, offer letter and/or signed acknowledgments;
- Job/position or pay-rate change notices;
- Performance evaluations;
- Attendance records (without medical information); and
- Formal documentation of acclamation, coaching, discipline and separation.

Grievance-related materials also are commonly kept in an employee's personnel file, at least to the extent they reflect the complaint and outcome.

New Requirement

Now, as of January 1, 2026, employers are required to store education and training records in employees' personnel files. The law requires those records contain specific details (for example, employee name, trainer/provider name, date and duration, competencies covered, and any certification/qualification).

Although personnel files are a great place to store most employment-related documents for each employee, some records should be stored outside the personnel file because they are confidential or sensitive.

Store Separately

California law mandates that employers establish appropriate procedures to ensure all employee medical records and information will remain confidential and will be protected from unauthorized use and disclosure.

A practical approach is to maintain a confidential medical file for accommodation documentation, work restrictions, doctor's notes, medical leave forms, and similar materials, as well as to keep other highly sensitive documents in a separate confidential file (for example, confidential workplace investigation documents or wage garnishments).

Form I-9 records also should be stored in a safe, secure location separate from an employee's personnel file to facilitate an inspection request and limit unnecessary exposure of sensitive documents.

In addition, effective January 1, 2026, California employers now are required to

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Human Resources

2026 Employment Law Updates. CalChamber. January 15, 16, 22, Virtual Seminar. Reserve Now. (800) 331-8877.

2026 Employment Law Updates. CalChamber. January 29, Webinar. (800) 331-8877.

California Employers' Guide to AI Decision Making. CalChamber. February 19, Webinar. (800) 331-8877.

HR Boot Camp. CalChamber. February 26–27, April 23–24, June 4–5, September 10–11, Virtual Seminar. (800) 331-8877.

Navigating Paid Sick Leave and Time Off Requests in California. March 5, Webinar. (800) 331-8877.

Leaves of Absence. CalChamber. March 26–27, May 7–8, August 6–7, Virtual Seminar. (800) 331-8877.

Workplace Violence Prevention Program Tips for 2026. CalChamber. April 16, Webinar. (800) 331-8877.

Wage & Hour 101: Nonexempt/Hourly Employees. CalChamber. May 21, Webinar. (800) 331-8877.

Wage & Hour 101: Exempt Employees. CalChamber. June 18, Webinar. (800) 331-8877.

Supervisor Essentials. CalChamber, July 16, Virtual Seminar. (800) 331-8877.

An Employer's Playbook for ICE Audits & Workplace Raids. CalChamber. Recorded Webinar. Free to members on HRCalifornia. (800) 331-8877.

International Trade

California Trade Mission: India – Health Tech. Governor's Office of Business and Economic Development (GO-Biz). January 27–January 31. Mumbai & New Delhi, India. Event website.

Expo Manufactura. GO-Biz. February

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The Workplace

Employers' Obligations Under the Workplace Know Your Rights Act

In Episode 236 of The Workplace podcast, CalChamber General Counsel, Labor and Employment Bianca Saad and CalChamber Associate General Counsel, Labor and Employment Matthew Roberts discuss a new employment law taking effect on January 1, 2026, that affects California employers — the Workplace Know Your Rights Act.

New Notice

To comply with the new law, California employers have several new obligations. First, employers must proactively give all their employees a *Know Your Rights* notice, which must cover several categories of information, including:

• The right to workers' compensation benefits, including disability pay and medical care for work-related injuries and illnesses.

• The right to notice of inspection when immigration agencies notify employers that they will inspect *Form I-9s* and other documents.

• Constitutional rights, such as when interacting with law enforcement at the workplace, including an employee's right under the U.S. Constitution's Fourth Amendment to be free from unreasonable searches and seizures.

• A list of enforcement agencies that may enforce the rights identified in the notice.

So, although the new required notice doesn't create any new rights or obligations for employees, employers still are obligated to provide this notice to all employees.

Template Notice

The good news is that the California Labor Commissioner's Office must create a template notice for employers to use by January 1, 2026. Once the template is available, employers have until February 1, 2026, to provide this notice to their existing employees and any new hires after that date.

Employers can send this notice in several ways, including hand-delivery, email or text, as long as they reasonably anticipate the employee will receive it within one business day.

Note: The state Department of Industrial Relations landing page on the Workplace Know Your Rights Act includes links to the notice, available in English and in Spanish. Notices in additional languages were to be available soon as of January 6, 2026.

Keep in mind that this isn't a one-time notice requirement — employers must provide this notice annually. Employers also must keep certain records demonstrating compliance for at least three years.

In addition to the notice requirement, beginning no later than March 30, 2026, the Workplace Know Your Rights Act requires employers to allow existing employees and new hires to name an emergency contact and be able to update that information throughout their employment.

And employees must be allowed to designate an emergency contact for an employer to contact if the employee is arrested or detained at the work site or during working hours.

New Employment Laws White Paper, Seminars

The Workplace Know Your Rights Act isn't the only new employment law affecting employers in 2026. Download CalChamber's free "New 2026 Labor and Employment Laws" white paper for a summary of upcoming changes for next year (CalChamber members can download it here).

For an in-depth look at these new laws, register now for CalChamber's popular 2026 Employment Law Updates seminars. During these virtual, half-day seminars, our employment law experts will provide clear explanations of compliance obligations, and a comprehensive review and discussion of recent state and federal laws, regulations and court cases.

How to Decide When to Keep Record in Personnel File or Store It Apart

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collect and store demographic information gathered for pay data reporting separately from employees' personnel records.

Who Has Access

What is included in the personnel file may depend on who has access. Many employers maintain more than one file; for example, a supervisor file with performance-related documents and attendance records (excluding medical information), and an HR-only file that contains payroll-related documents and other sensitive materials such as wage garnishments or certain investigation records.

If only HR has access to the full file, the employer may be comfortable keeping a broader range of documents together, as long as confidential and legally protected records remain segregated.

However records are kept, it is important to bear in mind that information related to an employee's employment with you is subject to privacy rules and should be kept secured with access allowed only to those who have a need to know the information contained in those records.

Finally, keep in mind that an employee (or former employee) can request to inspect or receive a copy of personnel records relating to performance or a grievance, and you generally must comply within 30 calendar days of a written request. This means that these records should be easily accessible and reproducible to respond to such a request.

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.

Federal Court Largely Suspends California's New Labor Law

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that conflict with federal laws to ensure a consistent legal standard across the country.

Although the NLRA doesn't have an express preemption provision, the U.S. Supreme Court, in a doctrine known as the Garmon preemption, has held that conduct involving NLRA rights falls under the exclusive jurisdiction of the NLRB, to which states and federal courts must defer.

California argued that AB 288 doesn't infringe on the NLRB's authority because under the circumstances described in the law, the NLRB no longer has jurisdiction. The federal district court disagreed, however, with respect to several key provisions of the law.

Court Grants Preliminary Injunction

The court granted a preliminary injunction barring California from enforcing the new law's provisions that would have given PERB jurisdiction over private-sector disputes based on:

- The lack of NLRB quorum,
- Loss of independence, and
- Processing delays.

Contrary to the state's arguments, the court concluded that the NLRB has not ceded its jurisdiction and given up its authority under any of those circumstances.

On the issue of quorum, the court noted that the NLRA itself anticipates periods where the Board lacks a quorum. During such times, federal law requires the NLRB to carry on, which it does through delegating certain functions to the General Counsel, Regional Directors, Regional Offices and Administrative Law Judges.

While some functions cannot be performed without a quorum, the court concluded that the loss of quorum doesn't equate to the NLRB ceding its jurisdiction.

Similarly, for processing delays, the NLRA doesn't have fixed deadlines. Investigating complaints, issuing decisions and performing other functions take time and may be delayed for numerous reasons. Delay, however, is nothing new, and it doesn't mean the NLRB has given up its authority over a matter.

Lastly, while the court agreed generally with the idea that Congress intended the NLRB to be independent, the court can't get behind the notion that Congress' interest in the NLRB's independence was so strong that in its absence, Congress intended the NLRB to be stripped of authority.

In sum — California can't simply take over labor law enforcement in the private sector when the federal process is slow or bogged down in politics. As such, the AB 288 provisions purporting to give jurisdiction to PERB in these instances are preempted by the NLRA and cannot be enforced.

The court left some narrow provisions of the state law standing, finding that California could step in under the following limited circumstances:

- When the employee is no longer covered by the NLRA.
- Cases in which the NLRB expressly ceded jurisdiction.
- Cases in which a court has enjoined NLRA enforcement.

What Happens Now?

The court's ruling is temporary, and appeals are likely. But for now, the NLRB will continue to have jurisdiction over private-sector labor issues. Employers should note that the U.S. Senate recently confirmed two new NLRB Board members — restoring a quorum and allowing the Board to resume operations — which means the NLRB can start issuing decisions again.

Staff Contact: James Ward

SoCal Chamber Network Presents Unified Voice for South Bay Business

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Since forming in 1979, SBACC has worked to build a resilient South Bay economy.

The organization "unites chambers across the South Bay around a shared purpose," said Harris when he was installed as the 2026 chair. "When we come together to advocate for our businesses, our cities, and our region, we strengthen the entire Southern California economy."

CalChamber looks forward to continuing its partnership with SBACC in the coming year.

Chamber executives at the South Bay Association of Chambers of Commerce installation and awards luncheon last year include (from left) Leah Skinner, president, Carson Chamber; Jeremy Harris, ACE, IOM, president/CEO, Long Beach Area Chamber; Donna Duperron, president and CEO, Torrance Area Chamber; Mara Santos, president and CEO, Redondo Chamber; Jill Lamkin, president and CEO, Manhattan Beach Chamber; Heidi Butzine, president/CEO, Lomita Chamber; Elise Swanson, president and CEO, San Pedro Chamber; Rana Ghadban, vice president, small business advocacy, CalChamber; and Nikkie Nguyen, government affairs manager, Western Region, U.S. Chamber.

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3–5, Monterrey, Mexico. Apply today.

Agriculture Tech in South Africa, Export Training. GO-Biz and Zurcom International. February 5–March 30, Virtual.

EXIM Annual Conference. Export-Import Bank of the United States. April 29–30, Washington, D.C. Registration open. Conference website.

SelectUSA Investment Summit. Select USA. May 3–6, National Harbor, Maryland. Event website.

NADEC Annual Trade Conference: Global Trade and Transition. National Association of District Export Councils. May 12–13, Nashville, Tennessee. Event website.

Farnborough Airshow. GO-Biz to lead delegation of economic developers. July 20–26, London, United Kingdom. Event website.