

# ALERT

CALIFORNIA CHAMBER OF COMMERCE

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## Chamber Works to Improve California Labor Laws

The California Chamber of Commerce is sponsoring legislation changing state labor laws to make compliance simpler and more straightforward so employers and employees can understand and follow the law.

The Chamber-sponsored bills aim to prevent abuse of the Americans with Disabilities Act (ADA), make requirements easier to understand for both businesses and employees, bring payroll practices into the 21st century and provide an opportunity for employers to catch up on paying unemployment insurance taxes.

“California employers comply with the most stringent and complex labor laws in the nation and face some of the highest fines and penalties when they fail to do so,” said Julianne Broyles, Chamber director of employee relations and small business. “Both employers and employees would benefit from common-sense rules that clarify employer and employee responsibilities.”

### ADA Reform

The Chamber has received numerous reports that the access requirements of the ADA have become a new source of unnecessary lawsuits.

Among other provisions, the federal ADA requires a business that is open to the public to have designated parking and no steps or curbs blocking an entrance. Bathrooms and aisles must be able to accommodate patrons with wheelchairs and counters cannot be too high.

The ADA allows a disabled person who has been denied access to a public building because of access violations to file a lawsuit.

Unfortunately, businesses throughout the state are being targeted by what have been called “frequent filers,” who file look-alike lawsuits where a single plaintiff and his/her lawyers file lawsuits alleging the same violation against

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## More Court Rulings Find Proposition 64 Retroactive



Yet another California district court has found that California Chamber-backed Proposition 64, the initiative voters approved last November to

stop shakedown lawsuits, can be applied to cases filed before voters approved the measure.

In February, two district courts issued conflicting decisions about whether Proposition 64 is retroactive. The 1st District Court of Appeal ruled that Proposition 64 does not apply to cases filed, but not resolved when the initiative passed. The 2nd District Court of Appeal reached the opposite conclusion, finding that the reforms do apply to previously filed cases.

Proposition 64, approved in November 2004 by California voters, reformed the state’s unfair competition law (Business and Professions Code Section 17200) to stop unscrupulous lawyers from filing frivolous lawsuits. Through a legal loophole in Section 17200, lawyers were able to file lawsuits, mainly against small businesses, and demand fees with no real client or proof of harm.

More recently, the 4th District Court of Appeal has ruled in three cases that the

*See More: Page 6*

## Chamber Advocates Review Legislation

Legislative advocates for the California Chamber of Commerce are in the process of reviewing the 2,397 bills that, at first glance, have some bearing on business activities in the state.

February 22 was the deadline for introducing legislation to be considered this year. A total of 2,967 bills have been introduced.

After careful review, the Chamber public policy team will zero in on a priority bill list. The bills actively tracked by the Chamber on behalf of the business community following a more in-depth review still will number in the hundreds.



**Bills Introduced**  
2,967

**Bills Under Review by Chamber**  
2,397

### Inside

President Signs Class Action Fairness Act: Page 7

## Labor Law Corner

# New Military Leave Law Includes Updated Poster Requirement



**Susan Kemp**  
Senior Labor Law  
Counsel

*What must I do to comply with the new military leave law?*

The amendment to the Uniformed Services Employment and Re-employment Rights Act of 1994 (USERRA) is known as the Veterans Benefits Improvement Act (VBIA).

The legislation, S. 2486 of 2004, requires that employers post a notice that gives veterans information about their rights under USERRA.

In addition, the amendment increases the health benefit continuation (similar to COBRA rights) to 24 months, from the previous 18 months. The required poster language is not yet available from the U.S. Department of Labor (DOL).

The California Chamber of Commerce is in touch with DOL and will be creating a compliance kit with information about USERRA, the new amendments, the required poster and informational pamphlets to give employees who are going on military leave.

### Compliance

In order to comply with all the laws governing military leaves of absence, you should:

- Look for the Chamber's announcement of the new poster that complies with the DOL requirements. The DOL poster is likely to be different from any non-mandatory "USERRA poster" being offered currently by poster vendors.
- Post the new poster in your workplace where it can be seen by employees.
- Grant military leave to employees who request such a leave. The maximum amount of time that must be granted is five years.
- Reinstate the employee returning from military leave to the job that they

would have held had they not taken military leave.

- Permit, but do not require the use of vacation during a military leave.
- Provide continuation of health benefits as required by law.
- Count the time spent on active duty as time worked for determining eligibility for family and medical leave and as service for retirement plan eligibility.
- Maintain records of the military leave of absence.

### Additional Information

For additional information about USERRA, see the California Chamber's **2005 California Labor Law Digest**.

To read the text of the amendment to USERRA, go to the U.S. Government Printing Office website at [www.gpo.gov](http://www.gpo.gov). Under GPO Access, click on "A-Z Resource List." Scroll down to "Congressional Bills 103rd Congress forward." Under "Previous Congresses," choose "Search bills by Congress." Choose "Congressional Bill Search," select "108th Congress" and enter "2486" in the search box. Click on S. 2486 (Enrolled Bill).

*The Labor Law Helpline is a service to California Chamber 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 e-mail: [helpline@calchamber.com](mailto:helpline@calchamber.com).*

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## Chamber Calendar

**International Luncheon Forum:**

March 8, Sacramento.

**Water Committee:**

March 10, Los Angeles.

**Board of Directors:**

March 10-11, Los Angeles.

**International Trade Breakfast:**

March 11, Los Angeles.

**Tourism Committee:**

March 11, Los Angeles.

**Luncheon Forum:**

March 17, Sacramento.

## Seminars

For more information on the seminars listed below, visit [www.calchamber.com/events](http://www.calchamber.com/events).

### Workplace Safety

Cal/OSHA Management and Compliance Strategies. DuFour Seminars. March 9, Anaheim/Orange; March 30, Concord; April 6, Burbank. (866) 312-8885.

**calchamber.com**



## Employers, Employees Descend on Fresno for Final Hearing on Meal/Rest Period Rules



Employers and employees appeared in full force at the third and final public hearing this week to support proposed changes to make the state's meal and rest period regulations more flexible.

The California Chamber of Commerce and other employer groups testified at the Fresno hearing on March 2 in strong support of the changes proposed by the Schwarzenegger administration in the rules governing when employees may take a break from work for meals and rest periods.

The Chamber has argued that workers

need to eat and rest when they are hungry or tired, rather than at a time set by state bureaucrats. Both employers and employees have said they would appreciate greater flexibility than was permitted by the old rules.

### Simplification

The new proposed rules make no change to existing law; they simply provide clear instructions on how employers must provide meal breaks to their workers in compliance with existing Labor Code requirements.

The rules implement sections of the Labor Code that were added in 2000, but which have been subject to misinterpretation because of conflicting opinion letters issued by the Division of Labor Standards

Enforcement (DLSE) and further Labor Code changes that differed from the Industrial Welfare Commission orders.

DLSE has rescinded the conflicting opinion letters and is applying the new rules as the official enforcement policy on meal breaks. Employers who accurately follow the proposed rules will be deemed in compliance with California meal break requirements.

### Giving Workers More Say

The proposed permanent regulation clarifies that:

- Workers working less than six hours in a day can mutually agree with their employer to waive the meal period.

- Workers working more than five

*See Employers: Page 4*

## Comments Support Adding Flexibility to Meal/Rest Period Rules

Member comments sent to the California Chamber of Commerce in the closing week before the March 2 comment deadline highlight the desire of employers and employees for changes that provide more flexibility.

- A **Los Angeles County-based automobile dealership owner** writes: "I strongly support proposed rule changes covering meal and rest breaks in order to provide my employees greater flexibility to take their breaks anytime between the fifth and sixth hour of their work day. My salespersons simply cannot stop in the middle of demonstrating a vehicle or negotiating a sale and say, 'Sorry, folks. I have to leave you now. It's time for my lunch break.' First, this would be horrible and unacceptable customer service . . . Second, should a salesperson treat a customer so rudely as to take his/her lunch break in the middle of a vehicle deal, this salesperson is very likely to lose the sale. This means

that we are now forcing a salesperson to accept a large financial penalty when he/she complies with state law, which we can all agree is unjust and unacceptable public policy."

- A **Sacramento childcare provider** notes: "We must abide by very strict child/teacher ratios. While the children are napping, we are able to leave one teacher to oversee the children, while the second classroom teacher takes his/her lunch break. Then the roles are switched and both teachers are back in the classroom before the children awake. . . Our schools open at 6:30 a.m. Therefore, teachers who start their shifts between 6:30 a.m. and 7:30 a.m. are required to leave their classroom during core curriculum time to start their lunches. This disruption is very difficult for some children and our teachers would prefer to postpone their lunch breaks. We have teachers who have also requested late lunch breaks in order to pick up their own, older children from elementary school and deliver them to after-school care."

- A **San Diego manufacturer** comments: "We encourage breaks and lunches for all the right reasons, but our staff is very unhappy with our inability to be flexible! All we would like is to have the leeway to schedule breaks when they are needed and meals at a more normal meal time for all of our shift workers. . . having the timing flexibility would be a HUGE positive for our workforce."

- An **Orange County security service company** writes: "The current rules surrounding when rest breaks and meal periods must begin regularly impacts our ability to provide effective service to our clients. For example, a security professional cannot realistically stop in the middle of responding to a crisis to make sure that his break is starting on time, which is what we are required to do based on the existing, rigid, narrowly defined rules."

## Chamber Works to Improve California Labor Laws

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numerous small businesses in an area.

Employers support the ADA and its objectives. The problem is how the law is being enforced and how lawyers seem to end up being the ones who benefit financially from the predatory lawsuits.

The Chamber-sponsored bills will create a process where businesses have the opportunity to make a good faith effort to correct an alleged ADA violation before being subject to a lawsuit.

The bills are AB 20 (Leslie; R-Tahoe City/La Malfa; R-Richvale) and SB 855 (Poochigian; R-Fresno).

### Understandable Rules

Major studies show that regulatory mandates and costs have a disproportionate impact on small businesses. Accordingly, the Chamber is again sponsoring legislation to require state agencies to examine and understand the economic impacts a proposed rule might have on small businesses.

This year's bill, yet to be amended to include specific provisions, is AB 1302 (J. Horton; D-Inglewood). A Senate version also is being considered.

The Chamber also is sponsoring legislation to require workplace posters and regulations to be written in plain language so employers and employees can understand them easily. The bill is AB 1709 (Wyland; R-Del Mar).

### Modernizing Pay Practices

Current state law prevents California

employers and employees from taking advantage of new technologies that make new pay systems available.

Only three options are available in California if the law remains unchanged:

- A worker may be paid in cash, as long as a written or printed pay stub is provided.

- A worker may be provided a paper paycheck and pay stub that must be cashable for free at some established place of business in the state, the name and address of which must appear on the paycheck (unless the "established place of business" is a bank, in which case the bank's address does not need to appear on the payroll check).

- A worker may be paid by direct deposit of the paycheck into the worker's bank account.

Elsewhere in the United States, companies are providing workers their wages through a pay card. Typically, the company establishes a trust account with a financial institution and deposits the employee's wages in that account. The employee then is issued a credit card-sized pay card at no cost. The worker is not required to have a bank account to use the pay card system, and may use the card like an ATM or debit card.

The employer prepays the transaction fee on a certain number of withdrawals per month, permitting the worker to have access to some or all of the wages without fees or discount. Transactions beyond that amount would be subject to ATM or transaction fees. Workers also are pro-

vided a written or electronic copy of their pay stub. If transmitted electronically, the pay stub must be accessible to the worker 24 hours a day, seven days a week.

AB 822 (Benoit; R-Riverside) is the Chamber-sponsored bill that ultimately will include the language to permit pay practices in California to catch up with technology.

### UI Tax Amnesty

California's unemployment insurance (UI) system skirted insolvency in 2004 by borrowing money from the federal Department of Labor. Projections by the state Employment Development Department show the UI Trust Fund will continue to teeter on the brink of insolvency due to a structural imbalance between income and disbursements, dating to ill-advised benefit increases signed into law by former Governor Gray Davis without including employer-supported cost-saving or streamlining reforms.

A UI tax amnesty program can encourage an influx of payments from employers who have previously not paid or have underpaid their UI tax.

The Chamber-sponsored vehicle for putting a UI tax amnesty program in place is AB 793 (Benoit; R-Riverside).

### More Information

As the legislation develops, more information will be available on the Chamber's website at [www.calchamber.com](http://www.calchamber.com).

**Staff Contact: Julianne Broyles**

## Employers, Employees Descend on Final Meal/Rest Period Hearing

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hours in a day may begin a meal break at any point from the start of the fifth hour of work to the end of the sixth hour.

- Workers working between six and 10 hours in a day will be able to take their meal period at a time after the sixth hour, if the employee so requests and as long as the employer ensures that the worker had time available and the opportunity to eat before the end of the sixth hour.

- Meal breaks can begin at any point from the beginning of the fifth hour of work to the end of the sixth hour.

### What's Next

After going through the thousands of comments it received, DLSE will either submit the rule to the Office of Administrative Law (OAL) without any changes or only technical non-substantive changes; or change the proposed rule in response to public comments received.

If the changes are substantial, DLSE will start a 15-day comment period to accept additional comments on any changes made. While not mandatory, additional public hearings are likely if DLSE makes

substantial changes to the proposed rule.

If no other changes are made after the 15-day comment period, the proposed rule goes to OAL, which has 30 days to review it to ensure that the correct legal process has been followed and that the rule meets all of the requirements of the state Administrative Procedures Act (authority, reference, consistency, clarity, non-duplication and necessity).

From start to end, the DLSE has one year to complete a formal rulemaking. This rulemaking began January 4, 2005.

**Staff Contact: Julianne Broyles**

# State Agency Outlines Energy Plan to Cover Increased Summer Demand

The state Resources Agency has outlined a 10-point energy plan to ensure an adequate, stable supply of electricity at reasonable prices.

In addition, to avert a potential shortfall this summer, the Schwarzenegger administration is working with various agencies to bring additional resources on-line, conserve energy during peak periods and remove transmission bottlenecks.

The administration's energy plan, presented at a Senate committee hearing by Joe Desmond, deputy secretary at the Resources Agency, encourages the use of emerging technologies to preserve and protect California's environment and to promote economic growth.

## Agency Plans

The plan emphasizes:

- adequate resources through 15 percent reserve margins for all suppliers by 2006;
- competitive wholesale procurement;
- transmission — encouraging investment to reduce congestion, increase grid reliability and establish new transmission corridors;
- rate relief for all customers;
- natural gas — increasing in-state gas storage, production and natural gas import capability;
- renewable energy — including accelerating to a renewable mix of 20 percent by 2010 and implementing the Million Solar Roofs Initiative;
- energy efficiency — promoting energy efficiency through programs such as the state's Green Buildings Initiative;
- dynamic pricing and advanced metering to reduce power use during peak hours;
- core and non-core — allowing large customers to choose their electricity supplier; and
- research and development.

## Joint Effort

To address the potential shortfall this summer, the administration is working closely with the California Public Utilities Commission (PUC), the California Energy Commission (CEC) and the California Independent System Operator

(CAISO) to bring additional resources on-line. The administration also has reached agreement with the Metropolitan Water District to reduce water pumping during peak periods, has worked to resolve key transmission bottlenecks and identified surplus power from the Los Angeles Department of Water and Power.

Agreements with Southern California Edison and the PUC will enable mothballed plants to be upgraded and put into service by the summer. Moreover, state agencies, private businesses and the PUC will work together to maximize the impact of demand response programs (such as Flex Your Power) that provide financial incentives to companies or individuals to curtail power use during peak periods.

An analysis CEC prepared in conjunction with the PUC and CAISO stated that electricity supplies are expected to be stable under normal summer temperatures. If the state experiences an unusually hot summer or other adverse conditions, however, Southern California will

need additional resources to maintain its operating reserves.

Northern California will have abundant electricity supplies, even with hotter-than-normal temperatures, the Resources Agency reported. Southern California, however, cannot benefit from this surplus due to constraints in the transmission line system, according to the agency.

## Chamber Position

The California Chamber of Commerce believes California needs more electrical generation and transmission infrastructure to keep pace with growing demand. The administration's 10-point energy plan includes elements the Chamber has long supported, including attention to adequate resources, rate relief for all customers, encouraging new transmission capacity, promoting load reduction, using renewable energy and developing new sources of natural gas.

**Staff Contact: Dominic DiMare**

## Committee Reviews Health Care Proposals



The California Chamber of Commerce Health Care Policy Committee, chaired by Philip R. Schimmel (left) of KPMG LLP, listens to an overview of the bipartisan individual health care mandate proposal developed by Assemblyman Keith Richman (R-Northridge) (center) and Assemblyman Joe Nation (D-San Rafael). The committee also heard presentations from representatives of Senator Jackie Speier (D-San Francisco/San Mateo) on a plan to expand access to health care clinics; Senator Sheila Kuehl (D-Santa Monica) on a single payer universal health care proposal; and the Office of the Governor on the CalRx program to increase access to affordable prescription drugs.

## More Court Rulings Find Proposition 64 Applies Retroactively

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reforms in Proposition 64 are retroactive and apply to cases filed before the initiative took effect. These findings reinforce last month's ruling by the 2nd District Court of Appeal.

### **Benson v. Kwikset**

In the case of *Benson v. Kwikset* (C.A. 4th, No.G030956), the 3rd Division of the 4th District Court of Appeal held that unless the plaintiff can meet Proposition 64's standing requirements, "plaintiff has no cause of action under either the unfair competition law or the false advertising law."

As with many actions that were filed using Section 17200, plaintiff Benson brought an action against the defendant on behalf of the general public for restitution and injunctive relief under the unfair competition law and the false advertising law. While the case was pending on appeal, Proposition 64 passed, which prompted the current ruling.

The 4th District Court, however, did

give the plaintiff the opportunity to amend his complaint to satisfy the new standing and class action requirements. The court rejected the plaintiff's request that, if he could not satisfy these requirements, he be permitted to substitute another party that would.

### **Bivens v. Corel Corp.**

Following the ruling in *Benson v. Kwikset*, the 1st Division of the 4th District Court of Appeal published its opinion in *Bivens v. Corel Corp.* (C.A. 4th, No.D043407), holding that Proposition 64 applies to pending actions.

In this case, the plaintiff filed an unfair competition claim on behalf of the general public, against the defendant for allegedly failing to disclose certain conditions in rebate offers. The plaintiff had neither purchased the defendant's products nor applied for the rebates at issue.

At the trial court level, the defendant filed a motion for summary judgment seeking to dismiss the plaintiff's claims. The trial court granted the defendant's mo-

tion, after which the plaintiff appealed.

While the plaintiff's appeal was pending, voters approved Proposition 64. In light of Proposition 64's passage, the court asked that the parties address whether the proposition applied to the case.

The court ruled that Proposition 64's standing requirements did apply to the case. The court reasoned that because the plaintiff lacked standing under Proposition 64, his action must be dismissed unless the complaint could be amended to include a plaintiff who could meet the new standing requirements.

Notwithstanding the fact that plaintiff could not satisfy the standing requirements at that time, the court affirmed the lower court's ruling.

### **Lytwyn v. Fry's**

In the case of *Lytwyn v. Fry's Electronics Inc.* (C.A. 4th, No.D042401), the 1st Division of the 4th District Court of Appeal again concluded that Proposition 64 precludes the plaintiff's unfair competition claims. The court did, however, provide the plaintiff with the opportunity to amend his complaint in order to meet the proposition's new requirements.

In this case, the plaintiff brought a representative action against the defendant, alleging, among other things, violation of Business and Professions Code Section 17200.

As the case was pending on appeal, Proposition 64 passed, at which point the issue became ripe for the court to rule. In doing so, the court followed the precedent set in *Bivens* and concluded that Proposition 64 applies to the case and accordingly, required the plaintiff to meet the standing requirements.

### **Supreme Court Ruling Needed**

Thus far, two state appellate courts have found that Proposition 64 reforms do apply to pending cases, while one found the contrary.

Ultimately, it will take a ruling by the California Supreme Court to settle the question of whether Proposition 64 applies to actions that were filed but not yet resolved before its passage.

The Chamber will continue to provide updates as new court rulings regarding Proposition 64 are issued.

**Staff Contact: Erika Frank**

## New Labor Commissioner Meets with California Chamber Committees



Donna Dell, newly appointed labor commissioner, outlines her goals for making the Division of Labor Standards Enforcement more customer service-oriented at a joint meeting of the California Chamber's Small Business Committee, chaired by John Neal (left) of CXO Associates, and the Product Liability and Tort Reform Committee.

## President Bush Signs Legislation Aimed at Limiting Frivolous Class Action Lawsuits



President George W. Bush signed California Chamber-supported legislation on February 18 that aims to limit frivolous litigation.

Congressional leaders, including U.S. Senator Dianne Feinstein (D-San Francisco) led the effort to win passage of this reform bill.

The reform vehicle is the Class Action Fairness Act of 2005. It shifts more class action lawsuits to federal courts, providing greater uniformity in cases where plaintiffs are located in multiple states.

Feinstein is a co-author of the bill, S. 5 (Grassley; R-IA).

The Chamber is a long-time supporter of federal legislation to prevent class action lawsuit abuse, which drains business resources while providing little return for those being harmed.

### Current Abuses

Under current law, class action attorneys have great latitude to abuse the legal system by funneling national class actions involving defendants from many states into small courts known for producing high jury awards.

Trial lawyers have used counties with reputations for returning high verdicts to find alleged victims rather than filing

their national class actions in federal courts.

### Reforms

Besides preventing such “venue shopping” by moving large, multi-state class action lawsuits from state to federal court, the Class Action Fairness Act includes reforms such as:

- giving district courts greater latitude to hear class action lawsuits;
- prohibiting settlements in which class members lose money to pay attorneys’ fees; and
- ensuring fair and even distribution of damage awards to all plaintiffs.

**Staff Contact: Erika Frank**

## Employers Hit by Storms May Request Payroll Tax Filing Extension

Employers in the counties affected by January’s severe storms and mudslides may request an extension for filing state payroll reports and depositing state payroll taxes, the state Employment Development Department (EDD) has announced.

Governor Arnold Schwarzenegger declared states of emergency for Ventura, Kern, Los Angeles, Orange, Riverside, San Bernardino, San Diego and Santa Barbara counties due to the storm damage.

Employers in these counties may request up to a 60-day extension from EDD to file their state payroll reports and deposit state payroll taxes without

penalty or interest.

The extension applies only to the fourth quarter of 2004 and the first quarter of 2005. It may be granted under Section 1111.5 of the California Unemployment Insurance Code (CUIC).

Written requests for extension must be postmarked by March 14, 2005, or earlier, for Ventura County and March 16, 2005, or earlier, for the seven other affected counties.

To request an extension, employers must send a letter along with any late payment or report. The letter must provide detailed information as to why the report or payment could not be submitted in a timely fashion. The letter

should specifically request an extension of time under Section 1111.5 of the CUIC.

Employers should mail the tax return or payment to the address specified on the filing form.

Employers that have already been charged a late filing or payment penalty, but believe they may qualify for an extension under Section 1111.5 should send their written request to P.O. Box 826846, MIC 3A, Sacramento, CA 94246-0001.

More information is available at [www.edd.ca.gov/eddemerdisaster.htm](http://www.edd.ca.gov/eddemerdisaster.htm) or by calling the Taxpayer Assistance Center at (888) 745-3886.

## Know an Outstanding Advocate for Small Business?

The California Chamber of Commerce is seeking nominees for its Small Business Advocate of the Year award.

Nominees should have significantly contributed as an outstanding advocate for small business by being involved in such activities as working in a leadership role on statewide or local ballot mea-

sures, testifying before the state Legislature or representing the local chamber of commerce before local government, or being actively involved on federal bills.

News articles or other materials may be attached as exhibits with the application, which must include a letter of recommendation from a local chamber

president or chairman of the local chamber’s board of directors.

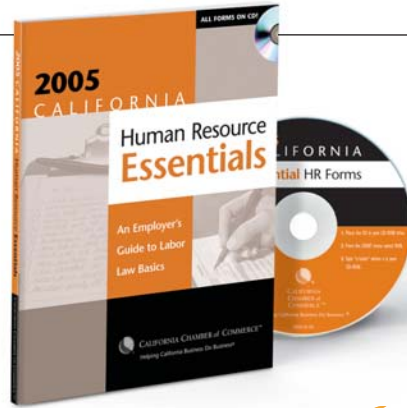
The California Chamber recognizes award winners each year at its Business Legislative Summit.

Nomination forms may be requested from the Local Chamber Department of the California Chamber at (916) 444-6670.

## Everything you need to know. One low price.

If you're someone who needs to be informed about labor laws, but doesn't need to be an "expert," the California HR Essentials guide and Forms CD is ideal for you. Presented in an easy-to-read, question-and-answer style, Essentials focuses on steps to follow, forms to use and helpful checklists. This guide addresses the top areas of concern to California businesses, including:

- Hiring and terminating employees
- Paying employees
- Providing benefits
- Workplace safety



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