



Workers' Comp Reforms Helping Rates Decline

Chamber Battles Attempt to Overturn Reforms

Amid reports that the 2004 workers' compensation reforms have led to lower rates, the California Chamber of Commerce and other business groups are gearing up to fight an initiative seeking to roll back those system improvements.

The average statewide insurer rate declined 18 percent between the first half of 2005 and the third quarter of the year — to \$4.42 per \$100 of payroll, according to the Workers' Compensation Insurance Rating Bureau (WCIRB).

But opponents of the Chamber-supported reforms have prepared three versions of an initiative to reverse the beneficial changes, and Chamber President Allan Zaremberg is co-chairing the committee to battle the initiative attempt.

Continuing Rate Decline

The WCIRB figures show that the av-

erage insurer rate has continued to drop since Governor Arnold Schwarzenegger signed Chamber-supported SB 899 (Poochigian; D-Fresno) in April 2004, overhauling the workers' compensation

The third quarter rate for 2005 was 26 percent below the average in the first half of 2004.

The continuing decline in average rates shows the workers' compensation reforms have drastically changed and improved the system for California businesses," said Marti Fisher, Chamber legislative advocate. "The relief from skyrocketing increases has been a help to the state's economic recovery."

More savings are expected, according to a report prepared for the state Department of Industrial Relations. That report

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Average Workers' Comp Insurer Rate Per \$100 of Payroll 6.46 5.76 5.37 Total in Dollars 4.94 4.39 4.42 3.58 2.71 2000 1/02-7/02-1/03-7/03-1/04-7/04-7/05-6/02 12/02 12/03 6/04 12/04 6/05 9/05 6/03 Source: Workers' Compensation Insurance Rating Bureau of California

Workplace Improvement Bills Die in Legislature



Legislators have made no move to actively consider several California Chamber-sponsored bills aimed at improving the workplace for employers

and employees. The bills did not pass the house in which they were introduced by the January 31 deadline and now are considered dead for this legislative session.

Stops Predatory Lawsuits

Two Chamber-sponsored bills aimed to help stop predatory shakedown lawsuits filed under the auspices of the Americans with Disabilities Act (ADA).

- AB 20 (Leslie; R-Tahoe City) would have established much-needed definitions of what constitutes an ADA access barrier and to whom it constitutes a barrier, among other provisions.
- SB 855 (Poochigian; R-Fresno) would have required a specific notice of intent to sue and a brief period of time where a business can repair an ADA access problem.

The federal ADA permits a disabled person who has been denied access to a public building because of access violations to file a lawsuit. California businesses have been targeted by "frequent

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Labor Law Corner

Federal Law Trumps State Statute in Drug-Free Workplace Court Case



Dana Leisinger Labor Law Consultant

Our company has a post-offer/pre-hire drug testing policy. A qualified applicant tested positive for marijuana, but he claims he has a prescription for medical marijuana. Can we rescind our offer?

In November 1996, 56 percent of California voters approved Proposition 215,

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Permission granted to reprint articles if credit is given to the California Chamber of Commerce Alert, and reprint is mailed to Alert at address above.

E-mail: alert@calchamber.com. Home page: www.calchamber.com. allowing the use of medical marijuana for treatment of various ailments for which the substance has been proven to have a certain degree of efficacy.

Right to Enforce Policy

This is a state law, however (now codified as Health and Safety Code Section 11362.5 as the California Compassionate Use Act of 1996). Federal law still holds that marijuana is an illegal drug and, as such, its use is punishable.

Marijuana is classified as a Schedule I substance under the Controlled Substances Act. Schedule I drugs are those having a high potential for abuse. Accordingly, employers have the right to enforce a drug-free policy in their workforce, even though medical marijuana use is permitted under state law.

Similar Case Under Appeal

A case currently under appeal involves a similar situation.

When an employer discharged an employee after receiving the results of his pre-employment drug test, the employee sued for wrongful termination, employment discrimination and breach of contract. The employee alleged he was permitted to use marijuana under his doctor's prescription for pain.

The situation was complicated by the fact the employer actually had allowed the applicant to begin working; therefore, it was not a matter of rescinding a job offer, but actual termination.

Chamber Calendar

Water Committee:

February 23, Anaheim Transportation Committee:

February 23, Anaheim

Fundraising Committee: February 23, Anaheim

Board of Directors:

February 23-24, Anaheim International Trade Breakfast:

February 24, Anaheim Tourism Committee:

February 24, Anaheim

Legitimate Interest

A California appeals court found that the employer's action was justified, even though the conduct was permitted under state criminal laws. The appeals court said employers have legitimate interests in not employing persons who use illegal drugs.

Nothing in the state Fair Employment and Housing Act precludes an employer from firing, or refusing to hire, a person who uses an illegal drug, even if state law makes that use lawful for medicinal purposes.

Because this case is on appeal, it is advisable to seek legal counsel should this situation occur. It is an area of the law subject to change, and employers should exercise caution before making any decisions.

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.

Seminars/Trade Shows

For more information on the seminars listed below, visit www.calchamber. com/events.

Business Resources

Tech Start-Up and Angel-Funded Jobs. Wilcox Miller & Nelson. February 14, North Sacramento. (916) 977-3700.

Labor Law

Labor Law Web Seminar. California Chamber of Commerce. February 21. (800) 331-8877.

International Trade

Global California — Doorstep to the World. Monterey Bay International Trade Association. February 16, Sacramento. (831) 335-4780.

U.S. Trade Policy: Regaining Momentum in 2006. Graduate School of International Relations and Pacific Studies, University of California, San Diego. March 23, La Jolla. (858) 822-3933.





Governor's Infrastructure Bond Package Will Help State Prepare for Future Growth



Governor Arnold Schwarzenegger's emphasis on investing in California infrastructure is good news for business and the economy.

It is clear from recent floods, crowded freeways, crumbling schools and other problems throughout our state that California's infrastructure needs a significant investment. It has been ignored for far too long, and the plan outlined by Governor Schwarzenegger in his State of the State remarks and budget proposal is essential to keep California's economy growing.

Individuals who are concerned about incurring the amount of debt the Governor has proposed should be reassured that the level is no more than California has historically experienced — between 5 percent and 6 percent.

For critics who ask whether the state can afford the bonds, the answer is: we can't afford *not* to issue the bonds. Not only will the state's bond capacity be filled if we allow a vacuum to exist, but the General Fund revenues also will get spent on programs and projects less essential to getting California's infrastructure back in shape.

Projects that Help Economy

In contrast to the past piecemeal adoption of bond measures, the Governor proposes dealing with the infrastructure crisis in a strategic, comprehensive way. The guiding principle of the Governor's budget and bond proposals is to focus on projects that help generate the economic activity so critical to California.

• For example, the Governor's \$107 billion **transportation investment package** is intended to reduce the amount of time Californians spend stuck in traffic, with an additional emphasis (\$2 billion) on decreasing congestion caused by goods movement near California's ports.

The answer is not to reduce port activity, because the ports provide good quality jobs, but to improve the transportation network. Reducing congestion and giving truckers enough mobility to make a profit moving goods in and out of the ports means those truckers will be able to afford new technology, such as clean diesel vehicles. Cleaner-burning engines, in turn, will reduce pollution and improve air quality — a benefit for everyone in the region.

Commentary By Allan Zaremberg

Traffic issues around the ports are just one example of the gridlock that threatens to stifle the movement of both goods and people throughout the state. A statewide solution to traffic congestion is essential.

• Investing in water infrastructure helps fill another basic need for the people and businesses of California. Restoring levees in the Sacramento region, as proposed in the Governor's \$35 billion water infrastructure investment plan, serves two purposes: It will both boost flood protection and enhance the state's ability to deliver a quality water supply throughout California, given that much of the water for the state flows through the fragile Sacramento-San Joaquin Delta.

An adequate supply of water is essential to business operations throughout the state, from high tech operations to fields and farms, as well as to the daily lives of the growing number of Californians.

• Dealing with school infrastructure needs also is a key for California's future economic prosperity. Although voters have recently approved resources for new school construction, the money allocated for rehabilitating facilities has been exhausted and needs to be replaced because demand is so high.

The infusion of \$38 billion in funding through the K-12 and higher education bond package will help provide the classroom space and up-to-date facilities our schools and universities need. Learning in these improved facilities will, in turn, bet-

ter equip students to become the educated workforce California employers need for fast-changing operations in the global market.

Delay Costs More

The bottom line is that you can't pour concrete — for roads, water systems or classrooms — without spending money. Our choices when it comes to investing in infrastructure are to pay now or pay later, and the more we delay, the more we will pay.

The practical consequences of the bonding proposal are not substantially different than setting aside a set portion of the General Fund for transportation or other infrastructure. Experience at the local level shows that issuing bonds up front is an essential part of a successful infrastructure-financing package.

Numerous counties have adopted additional sales taxes to provide revenue over a 20-year period to fund congestion-relief programs. The counties sell bonds at the beginning of the cycle to finance the projects, and then pay the bonds off with the added revenues that come in over the life of the tax increase.

This approach enables the counties to get the benefits of building the congestion-relief projects earlier and at a more affordable price than if they had to wait until they had accumulated sufficient revenues at the end of the 20 years of tax collections to launch the projects.

Similarly, on a statewide level, the Governor's bond package can jump-start the effort to halt the deterioration in our roads, levees, water supply system and school facilities. The resulting construction will create quality jobs and prepare the state for future growth. Californians should support the Governor's agenda to invest in California's infrastructure.

Allan Zaremberg is president and chief executive officer of the California Chamber of Commerce.



Workers' Comp Reforms Helping Rates Decline

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projects claims cost savings of \$8.1 billion for 2006, compared to 2003 costs, and \$15 billion in savings compared to what 2006 costs might have been without the reforms.

Another positive sign for the system is that the total amount of written premium purchased by employers was down 10 percent for the first nine months of 2005, compared to the previous year, according to the WCIRB. If the trend holds, it will be the first time since 1996 that total written premium has dropped in the state's workers' compensation system.

Substantial Changes

SB 899 made fundamental changes in the way the workers' compensation system determined the level of injury and the amount of disability assigned to an injury and created a new medical network to provide quality, cost-effective care to workers.

This package ensured that medical treatment follows nationally recognized guidelines and sets clear parameters for what is acceptable treatment for injured workers in the system, while also reducing excessive litigation.

Experience Varies

The experience of individual employers may vary from the average rates reported.

California insurance rates vary from company to company and many factors contribute to when businesses see a decrease in rates, including history of workplace injuries, changes to industry classifications for employees, projected liability for all policy holders, anticipated losses for policies, and the newly enacted reform laws and prospective regulations.

To ensure they are achieving the greatest savings possible, California companies would do well to shop around to find the best rates.

Threats to Reform

Three versions of the initiative threatening to roll back the 2004 reforms have been submitted to the Attorney General for title and summary. All three versions of the so-called "Worker Empowerment Act" propose to:

- eliminate the use of medical provider networks;
- reinstate the ability of injured workers and/or their advocates to select a doctor who would be granted a presumption of correctness; and
- undermine the ability to utilize pharmaceutical benefit managers to help contain prescription drug costs.

Further, versions 1 and 2 include provisions to eliminate workers' compensation as the exclusive remedy for injured workers and grant injured workers the ability to pursue an action at law. Version 3 proposes a benefits increase for injured workers that could be greatly inflated by any prospective minimum wage increase.

Rallying Business Community

The committee co-chaired by Zaremberg, Californians Against the Job Killer Initiative, aims to rally California's business community to preserve the 2004 reforms, which have helped produce and preserve thousands of jobs in the state.

Staff Contact: Marti Fisher

Workplace Improvement Bills Die in Legislature

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filers," where a single plaintiff and his/her lawyers file lawsuits alleging the same minor ADA access violation against numerous small businesses in an area.

The Chamber sponsored AB 20 and SB 855 to create a process where businesses have the opportunity to make a good faith effort to correct an alleged ADA violation before being sued.

AB 20 never moved out of the Assembly Judiciary Committee.

The Senate Judiciary Committee rejected SB 855 on a 2-3 vote last May. Although the bill was granted reconsideration at that time, it never was brought up for another vote in the committee.

Employment Tax Amnesty

AB 793 (Benoit; R-Riverside) would have increased revenues for the nearly insolvent Unemployment Insurance Trust Fund by creating a one-time unemployment insurance tax amnesty program. The bill was modeled on a UI tax am-

nesty program implemented in 1995 that brought more than \$37 million in new revenues to the UI Trust Fund.

In 2004, the UI Trust Fund skirted insolvency by borrowing money from the U.S. Department of Labor for the first time. The state has been levying an emergency solvency surcharge on employers, which have been paying taxes at the highest UI tax level — the F tax schedule.

The Chamber supported the UI tax amnesty program to alleviate some of the pressure for further tax hikes on employers and to help restore the financial solvency of the state's UI fund.

The Assembly Insurance Committee rejected AB 793 last April on a 4-6 vote. The committee granted the bill reconsideration, but did not vote on AB 793 again before the deadline this year.

Paycheck Cards

AB 822 (Benoit; R-Riverside) would have expanded employer options for compensating employees to include elec-

tronic paycheck cards.

Current California law provides for only three ways in which an employer can pay an employee:

- in cash, as long as a written or printed pay stub is provided;
- by paper paycheck and accompanying 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 that business is a bank); and
- by direct deposit of the paycheck into a worker's bank account.

Companies in other states already are using pay cards to compensate their workers. The Chamber sponsored AB 822 to enable California employers and employees to take advantage of new pay system technologies.

Last May, the Assembly Labor and Employment Committee declined to vote on AB 822. The committee did not reconsider the bill before the deadline.

Staff Contact: Dominic DiMare



Safety First Brings Management, Employees Together at Chamber Member Morton® Salt



The record shows that safety gets top consideration at California Chamber member Morton® Salt of Long Beach.

The company has received many safety awards, and in January its

Long Beach plant was recertified as a Cal/OSHA Voluntary Protection Program (VPP) Star Site.

First certified in November 2002, Morton Salt of Long Beach is the first VPP site to gain recertification primarily through employee involvement. It also had the shortest list of items to rectify and the smallest turnaround time in addressing those issues before recertification was finalized.

A Chamber member since 1994, Morton Salt Long Beach buys, repackages and ships solar-derived salt for industrial and home water conditioning.

Bolstering the employee-management cooperation that led to the benchmark recognition are safety-specific strategies from the Morton Salt Group and parent Rohm and Haas, manufacturer of industrial chemicals.

Employees and Safety First

According to Ken Dobson, facility manager at the Long Beach plant, "The company's goal is to have everybody go home to their families 'whole' at the end of each day. The president of Morton Salt [Walter W. Becky] says, 'Nothing is more important in the Salt Group than health and safety...not production, not sales, not profit."

Morton Salt Long Beach has excelled in implementing this philosophy: the facility has had no recordables (more severe, significant accidents beyond basic first aid and typically requiring medical treatment) in nearly three years, attaining an Occupational Injury and Illness (OII) rate of zero. The OII rate for the Morton Salt Group is 1.50 compared to an industry-wide rate of 2.74 in 2004.

"Morton is the safest large company in the salt industry and has been for the last five years, at least, winning the Safety Recognition Contest put on by the Salt Institute. Morton Salt Long Beach has gone 11 years without an accident severe enough to require anyone to miss even one day from work," says Melissa Peña, the plant's environmental health and safety coordinator.

'Above and Beyond'

Clearly, Morton Salt Long Beach has a safety plan that works, but sometimes, it doesn't hurt to check.

To test the extent of the company's commitment to employee safety, Gilbert Aceves, a maintenance electrician, asked Dobson and Dick Wilson, a visiting vice president, during a plant Safety Day last May if employees could be in charge of the upcoming VPP recertification process. Dobson did not hesitate in giving Aceves the go-ahead and putting him in charge.

Now the plant's VPP coordinator, Aceves was stunned and gratified by this immediate display of management confidence in the employees: "It was earth-shattering to get Ken's approval to run the recertification program. Not many companies go above and beyond for their employees."

These days, a VPP committee, headed by employees, does safety inspections, makes recommendations to management on things that need attention or need to be fixed, reminds fellow workers of their safety responsibilities and recently completed the rigorous recertification process in conjunction with management and Cal/OSHA

"Workers feel good about being involved in the program because they can get what they ask for in terms of safety," says Aceves.

VPP and the Safety Journey

OSHA established the VPP to recognize and partner with businesses that demonstrate occupational health and safety excellence and that are committed to protecting employees beyond OSHA requirements and to being occupational health and safety leaders.

VPP Star sites not only have attained high health and safety standards, but maintain those standards self-sufficiently. Star sites are re-evaluated every three to five years with incident rates reviewed annually.

The VPP falls directly into line with a safety strategy instituted by Rohm and Haas in 2000: the Safety Journey.

The Safety Journey has three pieces. In the Dependent Stage, management directs employees in the safety process. In the Independent Stage, management and employees work together. The Interdependent Stage finds employees in charge of safety programs and processes.

According to Peña, the Long Beach plant has become a prime example of what it takes to reach the Interdependent stage.

Unified Effort

Management support, according to Dobson, is critical for companies trying to participate successfully in the VPP. "VPP is for the benefit of employees; that is management's motivation." At the Long Beach plant, "Management does its best to empower employees to run the program, and the employees do a good job," he says.

The best things to come out of the Morton Salt Long Beach VPP participation, according to Dobson, are a polished safety program and improved employee investment in the safety process.

According to Peña, "Most safety programs work through rules and enforcement and allow employees to go through their workday without thinking about their actions."

Employees at the Long Beach plant, on the other hand, have become actively involved in the safety process, including "checking on contractors periodically to make sure they're complying with our facility rules, presenting a safety topic during meetings and participating in safety inspections," says Peña.

Iraj Pourmehraban, director of the

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Basin States Reach Agreement on Colorado River Water Sharing

Accord Affects California's Largest Interstate Source of Water

After six years of drought on the Colorado River, the seven states that share the river's water reached an agreement last week that will provide guidance and planning for future drought years and cooperation for avoiding costly litigation over potential interstate water feuds.

Water Supply in High Demand

The Colorado River is California's largest interstate water source, with the state receiving a basic allotment of 4.4 million acre-feet (MAF) of water annually — plus a portion of any surplus water available — through the Colorado River Aqueduct.

Historically, California has brought in an average of 5.2 MAF per year due to surplus river water availability, but the drought and population spikes in Arizona and Nevada have made that surplus disappear.

More than 18 million people in parts of Los Angeles, Orange, San Diego, Riverside, San Bernardino and Ventura counties rely on this water source as a lifeline for the areas' residential, business and agricultural communities.

The potential for drought and subsequent water shortages in the Colorado River are of serious concern to Southern California residents and businesses, which use more than 1.7 billion gallons of water per day.

New Management Guidelines

After mounting pressure from U.S. Interior Secretary Gale Norton, the Basin states — Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming — agreed to new guidelines for managing limited supplies of water when reservoirs are low.

Greater conservation efforts among the Lower Basin states — California, Arizona and Nevada — are to be combined with more prudent water usage by the Upper Basin states in hopes of increasing usable water supplies. California cities also are to focus on greater levels of seawater desalinization for additional use.

The goals of the measures are to mini-

mize Lower Basin shortages and to avert curtailment of uses in the Upper Basin.

Focus on Powell, Mead

Many of the proposed management improvements come from detailed guidelines to properly balance Lake Powell and Lake Mead reservoir water levels.

For example, in years where Lake Powell's water content is below 3.575 feet but above 3.525 feet, the Interior Department will release 7.48 MAF of water from Powell to replenish Mead, which provides both water and

Basin
States

O 50 100 Miles
O 100 Kilometers

UTAH

Vanga River

Vanga River

Colorado

Ganal

California

ARIZONA

ARIZONA

River

Canal

Canal

California

Galfornia

California

California

California

California

California

California

California

Source: U.S. Department of the Interior, Bureau of Reclamation

power to California, Arizona and Nevada.

Different water levels in Powell and Mead would result in the department transferring different amounts of water according to the detailed proposal.

Goal: Interstate Cooperation

The states sharing the Colorado River also made clear their intentions to improve cooperation and communication so the water supply can be delivered with greater certainty, and so circumstances that might lead to court battles over the application of

the law might be avoided.

The proposal agreed upon by the Basin states now will be included in the U.S. Department of the Interior Environmental Impact Statement on the river's future management.

The California Chamber of Commerce recognizes the importance of interstate cooperation when managing the Colorado River's water supply and applauds the Basin states' efforts to better protect water supply reliability and quality.

Staff Contact: Valerie Nera



U.S., South Korea to Begin Discussions on Bilateral Free Trade Agreement

The United States and South Korea have announced they will begin negotiations toward a bilateral free trade agreement (FTA).

"California exports to South Korea have been increasing in recent years, making it our fifth largest exporting partner," said Susanne Stirling, vice president of international affairs for the California Chamber of Commerce. "Completion of a U.S.-South Korea free trade agreement will bring significant benefits to the economies of both nations and California as well."

In 2004, two-way trade between the United States and South Korea totaled more than \$72 billion. Korea is the seventh largest U.S. trading partner, and the 12th largest economy in the world. In 2004, California exported \$5.9 billion of goods to South Korea.

California is one of the 10 largest economies in the world with a gross state

product of approximately \$1.4 trillion. International-related commerce accounts for approximately one-quarter of the state's economy.

Huge Trade Boon

U.S. companies hope that a bilateral agreement with South Korea will enable them to sell more cars, pharmaceutical products and financial services in South Korea. The FTA would eliminate the 8 percent tariff South Korea currently has on imported vehicles.

For Korea, the agreement has the potential to give its steel and textile industries an edge over China, Japan and other countries.

A study completed in September 2001 by the U.S. International Trade Commission found that the FTA would increase U.S. exports to Korea by 54 percent and Korean imports to the United States by 21 percent.

A successful FTA would be the largest free trade pact the United States has reached since it entered into the North American Free Trade Agreement (NAFTA) more than a decade ago. Talks between the United States and South Korea are expected to take up to a year.

Chamber Position

The Chamber, in keeping with longstanding policy, enthusiastically supports free trade worldwide, expansion of international trade and investment, fair and equitable market access for California products abroad and elimination of disincentives that impede the international competitiveness of California business.

For more information on the U.S.-South Korea Free Trade Agreement or other international issues, visit www.calchamber.com/international.
Staff Contact: Susanne Stirling

Safety First Brings Management, Employees Together at Morton® Salt

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California VPP unit at Cal/OSHA, says, "Morton Salt Long Beach employees play a very critical role and are exceptional in managing the recertification process" at their plant. The employees, he continues, "have the support of their top management in the state."

The plant's experience with the VPP has been so successful, it is being used as a model for other plants trying to implement the program, and Aceves is involved in mentoring employees at other plants as they learn about the program.

Keep Doing Business

At the end of the day, says Dobson, "We want to perpetuate who we are. We want to keep taking care of people. It's nice to be able to do something good for our workers, their families and the community. We are dedicated to continue down this path."

In that regard, he says, the Chamber is "a valuable entity for us. We take your

recommendations seriously and find them extremely useful to be able to e-mail or call the Chamber about human resources issues, SB 899 [workers' comp reform], etc. At every opportunity, we use the Chamber for guidance."

For Dobson, the best thing about being at Morton Salt is that "It allows us to provide a living for 25 people. Califor-

nia is not inexpensive, but we feel very good about taking care of our employees and their families. Morton Salt has been around for 155 years, and salt has been an integral part of family life since time began. We feel good about being able to support people and families in that respect."

California Business Legislative Summit April 25, Sacramento







Registration information at www.calchamber.com



Learn about the new California legislation effective January 1, 2006 — from the convenience of your desk

Don't miss this live one-hour Web seminar presented by Paul Schechter and Susan Kemp, the California Chamber of Commerce employment and labor law experts. This interactive Web seminar packs the information presented at the Chamber's half-day live presentation into 60 minutes and offers you insight to help you and your company do business and stay in compliance in California. By attending you will:

- · Learn about changes in federal and California employment law and regulations
- Discover how important court decisions or employment law issues can affect your business
- Participate in a live interactive presentation with online Q&A during and after the one-hour presentation
- Enjoy access to the seminar with your Web browser no software to load and phone line



Live Labor Law Web Seminar Tuesday, February 21, 2006. 10:00-11:00am PST

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