

ALERT

VOLUME 34, NUMBER 7 • MARCH 7, 2008



Truck/Bus Replacement Rule Looms for State Businesses

Costliest Requirement in Air Resources Board History

The California Air Resources Board (CARB) is formulating regulations that could affect the more than 1.5 million trucks and buses in use on California's roads, highways and farms.

Given the millions of consumer and industrial goods and products delivered via truck each day in the state, these regulations threaten to have a profound, negative impact on the business community.

What CARB is proposing to adopt are the nation's most stringent new emissions regulations that could also be the most costly and far-reaching rule that business has yet to face.

Many industries covered by this rule also have been subject to other recent regulations, further burdening

California's industries under the weight of overregulation.

New Proposal

Under the new proposed rule, **any heavy-duty vehicle with a pre-1998 engine will need to be replaced or retrofitted with yet-to-be developed technologies by December 31, 2010.**

In addition:

- All vehicles with engines manufactured between 1998 and 2002 must be retrofitted or replaced by December 31, 2011.
- All vehicles with 2003-04 engines must be retrofitted or replaced by December 31, 2012.
- All 2005 and newer engines must be

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CalChamber in Court

State High Court Says Supervisors Not Liable for Retaliation



The California Supreme Court has resolved a disagreement between the state's ap-

pellate courts, ruling on March 3 that supervisors cannot be held personally liable for retaliation under the Fair Employment and Housing Act (FEHA).

At issue was the meaning behind the word "person" contained in Government Code Section 12960, subdivision (h), and whether the Legislature intended to make employees personally liable for retaliation.

Past Ruling

In holding that neither the statute nor public policy supports extending liability for retaliation to employees, the state high court followed a 1998 ruling in which it held that employees are not personally liable for discrimination under FEHA (*Reno v. Baird* (1998) 18 Cal.4th 640).

In *Reno*, the court declined to extend individual liability to employees because doing so would ultimately chill the ability or desire of supervisory employees

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California Business Legislative Summit

May 20-21, 2008

Register before April 18 and save!

www.calchamber.com/legsummit08

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Labor Law Corner

Job Offer Letters Beneficial; Advisable to Have Legal Counsel Review



Dana Leisinger
Senior Helpline
Consultant

We are considering sending job offer letters to successful applicants. What are the pros and cons of this practice?

Job offer letters are a good way to set forth a clear understanding between an employer and applicant, spelling out the terms and conditions of employment.

Offer letters usually go out to the applicant you have selected for the job, and often follow a series of interviews and negotiations regarding the conditions of hire.

Letter Contents

Indeed, often the candidate for the job has already indicated he/she will be accepting the job, and the offer letter is a formality. Typically, the specifics of this type of letter set forth the following:

- scope of duties;
- compensation;
- reporting relationships;
- benefits;
- confidentiality; and
- protection of trade secrets.

At-Will Statement

In addition, if the company is an at-will employer, that should be set forth in the letter. In *Dore v. Arnold World-*

wide Inc. (August 3, 2006), the California Supreme Court held that California employers may rely on clearly worded and unambiguous statements of at-will status.

In the *Dore* case, an employee sued his former employer several years after receiving, and signing, an offer letter that made clear his employment was at-will. When he sued for breach of contract and breach of the covenant of good faith and fair dealing, the high court concluded that the letter “defined ‘at-will,’ and contained no ambiguity, obvious or concealed, in its termination provisions,” dismissing those causes of action.

It is advisable to have legal counsel review your offer letters in order to preserve protection from claims that may be made years later, as in the *Dore* case.

The Labor Law Helpline is a service to California Chamber of Commerce preferred and executive members. For expert explanations of labor laws and Cal/OSHA regulations, not legal counsel for specific situations, call (800) 348-2262 or submit your question at www.hrcalifornia.com.

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Alert (ISSN 0882-0929) is published weekly during legislative session with exceptions by California Chamber of Commerce, 1215 K Street, Suite 1400, Sacramento, CA 95814-3918. Subscription price is \$50 paid through membership dues. Periodicals Postage Paid at Sacramento, CA.

POSTMASTER: Send address changes to Alert, 1215 K Street, Suite 1400, Sacramento, CA 95814-3918. Publisher: Allan Zaremborg. Executive Editor: Ann Amioka. Associate Editor: Blake Ellington. Graphics Assistant: Jason Untalan. Capitol Correspondent: Christine Haddon.

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.

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Seminars/Trade Shows

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

Business Resources

The Green California Summit. Green Technology. April 7-9, Sacramento. (323) 936-7125.

International Trade

California-Asia Business in the Year of the Rat. California-Asia Business Council (Cal-Asia). March 19, San Francisco. (510) 272-7331.

International Benefits and Compensation Seminars. National Foreign Trade Council. April 1 - Santa Clara; April 2 - Costa Mesa.

Asia Pacific Business Outlook Conference. University of Southern California. April 7-8, Los Angeles.

Global California — Online with the World. Monterey Bay International Trade Association (MBITA). April 25, Sacramento. (831) 335-4780.

Labor Law

Lawful Terminations 201 Live Web Seminar. CalChamber. March 19, (800) 331-8877.

CalChamber Calendar

CalChamber Fundraising Committee:

March 13, La Jolla

Water Committee:

March 13, La Jolla

Board of Directors:

March 13-14, La Jolla

Climate Change Committee:

March 14, La Jolla

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CalChamber Urges Members to Help State Fight Insect Threat to Food, Environment

The California Chamber of Commerce is urging members to join a coalition to protect California's food supply, environment and economy from the destructive light brown apple moth.

The light brown apple moth is an invading insect from Australia that has infested numerous areas along California's north coast and poses a major threat to California's native plants and \$32 billion agricultural industry.

Scientists, farmers and other experts are strongly urging California to treat the light brown apple moth infestations as quickly as possible to prevent the pests from spreading to other locations.

If this voracious, destructive insect is not eradicated, the economic impact on California could escalate to an estimated \$160 million to \$640 million a year in the current infested counties alone.

Canada and Mexico already restrict exports of crops and plants from light

brown apple moth-infested areas in California. Neighboring states and other trading partners are likely to follow, adversely affecting the industry and employment for years to come.

Multiple Industries Affected

Tourism and dozens of other industries are affected because the moths feed on more than 2,000 types of native and ornamental plants and trees, including the Central Coast cypress, redwoods, oaks, grapes, citrus, stone fruits and many others.

Currently, the light brown apple moth is infesting nine California counties: Alameda, Contra Costa, Marin, Monterey, Napa, San Francisco, San Mateo, Santa Clara and Solano.

The light brown apple moth infestation could grow exponentially with approximately five mating cycles per year and each female moth laying hundreds

of eggs per cycle. Failure to act quickly invites substantial environmental and economic impacts.

In order to combat the light brown apple moth, the California Department of Food and Agriculture (CDFA) and the U.S. Department of Agriculture have developed a program that uses pheromones to disrupt the mating cycle, thus reducing the moth population and eventually eradicating the pest.

Join Coalition

For more information about joining the Californians for the Environment, Economy and Food Safety coalition, contact Denise Davis at denise.davis@calchamber.com.

For more information about the light brown apple moth, visit the CFDA website at www.cdfa.ca.gov.

Staff Contact: Denise Davis

Truck/Bus Replacement Mandate Looms for State Businesses

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retrofitted or replaced by 2013.

- All trucks must meet 2007 emissions standards by the year 2014 and 2010 emission standards by the year 2022.

This rule applies to diesel engines and means businesses will be required to replace a most critical asset in just a few years.

If the rule goes into effect, the market will be flooded with "outdated" trucks, greatly diminishing the ability of busi-

nesses to sell used equipment or recoup any resale value.

Coalition Organizing

Businesses have an opportunity to make sure their voice is heard in this process and have an impact on the final adopted rule. The California Chamber of Commerce and other associations are leading a coalition effort called "Driving Toward a Cleaner California."

Other coalition members include the California Beer and Beverage Distribu-

tors, the California Cattlemen's Association, the California Trucking Association, the American Trucking Association, the California Independent Marketers Association, the California Grocers Association and the Construction Industry Air Quality Coalition.

For more information on joining Driving Toward a Cleaner California, contact Jason Schmelzer at the CalChamber, (916) 444-6670, jason.schmelzer@calchamber.com.

Staff Contact: Jason Schmelzer

Make a difference on proposed laws

calchambervotes.com

CalChamber *Labor Law Digest* Helps Businesses Comply with New Laws

To help businesses comply with new laws in 2008, CalBizCentral, the source for California business and human resource compliance products, presented by the California Chamber of Commerce, has available for sale the newest edition of its comprehensive resource for California-specific and employment law information.

The *2008 California Labor Law Digest* offers legal background information, including legislation, court cases and regulatory requirements in plain language, organized to make complex laws understandable for businesses.

Key Topics

Key topics covered include:

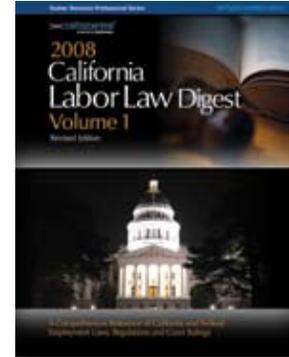
- hiring;
- training;
- personnel records and privacy;
- wage and hour laws;
- compensation;
- exempt and non-exempt;
- unemployment insurance;
- state disability insurance and paid family leave;
- family/medical and sick leave;

- pregnancy disability leave; and
- workers' compensation.

The *Digest* provides a comprehensive listing and explanation of labor and employment laws for any company or entity doing business in the state of California. Organized by intuitive topic categories, each section explains the law, what it means and what employers must do to comply. The *Digest* also includes access to checklists, forms and sample documents online for easy review.

The *Digest* covers vital topics for businesses in 2008, such as:

- new federal and state minimum wage;
- new finalized regulations on handling notices from the Internal Revenue Service (IRS) or immigration authorities that an employee's Social Security number does not match his or her name;
- new sexual harassment training regulations for managers;
- new guidelines lessening the employer's burden of proof in discrimination lawsuits;
- new implementation guidance for bonus programs;



- new guidelines for employee cell phone usage; and
- expanded selection of forms, checklists and policies, including: telecommuting, alternative workweek, workplace violence, make-up time and meal/break waiver forms.

Discount for Members

CalChamber preferred and executive members receive a 20 percent discount on products. For more information or to order, visit www.calbizcentral.com or call (800) 331-8877.

State High Court Says Supervisors Not Liable for Retaliation

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to perform their job out of fear that any decision rendered could expose them to liability. The court in its March 3 ruling followed the same rationale for claims of retaliation.

Decision

The court reasoned, "If an employee gains a reputation as a complainer, supervisors might be particularly afraid to impose discipline on that employee or make other lawful personnel decisions out of fear the employee might claim the action was retaliation for complaining."

In addition, the court concluded that there was no legislative history supporting the position that by adding the word "person," the Legislature intended to extend personal liability for retaliation to employees. The word "person" was added through the enactment of AB 1167 of the 1987-88 regular legislative session.

In viewing the legislative history, the court was particularly persuaded by the fact that the amendment was viewed as a "technical change to the law."

The court reasoned that had the Legislature intended to change the law to impose individual liability for retaliation, the amended change would not have been viewed as "technical," but rather as substantive. Moreover, the court noted that the bill adding the word "person" passed both houses of the Legislature with very few dissenting votes.

The court opined, "It is hard to imagine that a bill that created individual liability for retaliation where none had existed could be considered so non-controversial."

CalChamber Stance

The California Chamber of Commerce submitted a "friend of the court" brief urging the court to rule that just as individual managers and supervisors

are immune from lawsuits for personnel actions alleged to be motivated by race, sex and discriminatory intent, they are equally protected against lawsuits claiming that the very same personnel actions were motivated by a desire to retaliate against the employee.

California's intricate and complex state laws present countless challenges to businesses seeking to comply. Accordingly, compliance is made easier when employers have bright lines and clear rulings rather than conflicting and confusing legal precedent, the CalChamber argued in its brief.

This case resolves the split in decisional law affecting California's employers and employees. The decision will bring California employers a much-needed final determination on the extent to which they, as well as their supervisors, could be held liable for specific workplace conduct.

Staff Contact: Erika Frank

Fortune Ranks 28 CalChamber Members on '100 Best Companies to Work For' List

Twenty-eight members of the California Chamber of Commerce have been ranked among the "100 Best Companies to Work For" by *Fortune* magazine.

California-based companies had a higher representation in the list than last year, with 14 companies listed this year, compared to 13 in 2007.

Companies nominate themselves by going through a detailed application process. Of the 1,500 firms that were contacted, 446 companies participated in last year's study. More than 105,000 employees at those companies responded to a 57-question survey created by the Great Place to Work Institute, a global research and consulting firm.

Two-thirds of each company's score relies on the employee survey, which covers such topics as employees' attitude toward management, camaraderie and job satisfaction. Factors such as a company's demography, pay, benefits and job growth capabilities make up the rest of the score.

Companies must be at least seven years old and have at least 1,000 employees to qualify.

Best to Work For

The following CalChamber members made *Fortune's* 2008 list of the "100 Best Companies to Work For." Company headquarter locations are noted in parentheses.

- **American Express** (New York). Ranked 62. The company's employees have the ability to move around. In 2007, 6,000 internal jobs moved, mostly overseas, where the majority of the company's employees work. Employees tenured 12 to 24 months can apply to rotate to a different job, even if it is in another country.

- **American Fidelity Assurance** (Oklahoma City). Ranked 24. Bill Cameron, grandson of the founder, fosters an environment that leads employees to call this Oklahoma insurer their "second family." On-site amenities include fitness, training and banking services.

- **Bingham McCutchen** (Boston). Ranked 41. This international law firm is proud of its elite graduates: 72 from nearby Harvard Law School, 24 from



Yale and 20 from Stanford. They all start at \$160,000 a year.

- **Booz Allen Hamilton** (McLean, VA). Ranked 81. This 93-year-old management-consulting firm takes in more than \$4 billion a year and puts 10 percent of employees' pay into 401(k)s regardless of whether the employees contribute.

- **Bright Horizons Family Solutions** (Watertown, MA). Ranked 89. This company sets up child care services for various businesses. Child-care givers at the 639 centers get health insurance, 401(k), access to an online Bright Horizons University — all benefits that generally are not available in the field.

- **CarMax** (Richmond, VA). Ranked 46. The nation's largest used-car dealer has been labeled a friendly place to work because of its "no-haggle" policy, on-site nurses available at 11 locations and a diverse staff.

- **Cisco Systems** (San Jose). Ranked 6. Chief Executive Officer John Chambers won praise for his leadership and his new blog, *On My Mind*, which solicits employee ideas. The network equipment provider offers programs and opportunities for recent college graduates and students still in school.

- **Deloitte & Touche USA** (New York). Ranked 95. This audit and consulting firm spends one day each year to help

non-profits solve business challenges. Last year's "Impact Day" saw 31,000 employees engaged in 600 projects. Mark A. Edmunds, vice chairman and regional managing partner, Northern Pacific region, is a CalChamber Board member.

- **eBay** (San Jose). Ranked 68. The website auctioneer's headquarters boasts perks like golf lessons, bike repair, a dentist and prayer and meditation rooms. Employees also are offered four-week paid sabbaticals every five years.

- **Ernst & Young** (New York). Ranked 57. Over three months in 2007, this company built the fastest-growing recruitment group on *Facebook.com*, and it now has more than 12,200 members.

- **FedEx** (Memphis). Ranked 97. The company continues to strive for a no-lay-off policy, offers health insurance to retirees and part-timers. It also promotes from within — 90 percent of FedEx Express managers worked their way up.

- **General Mills** (Minneapolis). Ranked 69. A new company policy that enables women to phase back into work on a part-time basis for eight weeks following maternity leave has been successful. Of the women who took maternity leave last year, 96 percent returned.

- **Granite Construction** (Watsonville). Ranked 74. This company, which builds roads, bridges and dams, has a zero-accident goal. Employees have been rewarded for reporting anything that feels unsafe. Chairman David H. Watts is a CalChamber Board member.

- **Intuit** (Mountain View). Ranked 43. All new employees get options at this financial-software maker, and everyone gets four days off, with pay, each year to perform community service. In addition, employees are offered tuition assistance, loans to purchase computers, product discounts and commute alternatives.

- **Kimley-Horn & Associates** (Cary, NC). Ranked 38. Employees of this engineering and land planning firm rave about the freedom new hires receive. "Young people are given the chance to expedite their career from the beginning," says one.

- **KPMG** (New York). Ranked 71. This audit-tax firm offers employees five

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CalChamber Cites Conflict Potential Due to Piecemeal Climate Change Actions



As the implementation of AB 32, The Global Warming Solutions Act of 2006, continues to unfold at the California Air Resources Board (CARB), busi-

nesses are hoping to make sense of the various climate plans developing across the state.

AB 32 granted CARB the sole authority to regulate significant sources of greenhouse gas emissions in the state. Since the passage of AB 32, the California Chamber of Commerce has been working with CARB to develop a program that is cost-effective, while achieving carbon reductions, to keep California competitive with the rest of the world.

Local Entities Propose Fees

Recent actions, however, have created more uncertainty for the business community.

Local entities have begun to create proposals to drive climate change plans within their own jurisdictions. For example, the Bay Area Air Quality Management District has proposed imposing a new fee on dozens of large and small companies to pay for expenses related to the district's climate change program.

Although it is important for cities, counties and air districts to be a part of the overall solution, this piecemeal approach has the potential to create conflict between programs. It will also lead to duplication of regulations.

The CalChamber is very concerned that such local plans will not fit into the state's

overall vision and will create inconsistencies in the system. If businesses are required to report their greenhouse gas emissions to different entities, additional unnecessary costs will be incurred to meet the various reporting requirements that deal with the same effort.

Unified Approach Needed

CARB has not yet released its draft scoping plan —the comprehensive road-map of what the state's program will look like. Until this plan is finalized, there is no certainty of what the state program will include and at what cost.

The CalChamber believes it is vitally important for all government, industry and stakeholder interests to work together in support of CARB's effort to develop a unified approach to this tremendous challenge.

Staff Contact: Amisha Patel

Fortune Ranks 28 CalChamber Members on '100 Best Companies

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weeks of vacation after one year, while 75 percent of employees said they are encouraged to balance work and family life. Managing Partner Philip R. Schimmel is a CalChamber Board member.

- **Marriott International** (Washington, D.C.). Ranked 72. J.W. Marriott Jr., the 75-year-old chief executive officer, visits 250 of the company's hotels every year to meet with employees. The turnover rate for the hotel chain is among the lowest in the field at 18 percent.

- **Mattel** (El Segundo). Ranked 70. After a 10-year absence from the *Fortune* "Top 100" list, the toy company returned after Chief Executive Officer Bob Eckert gained recognition for his quick and responsible actions in recalling defective toys from China.

- **Microsoft** (Redmond, WA). Ranked 86. The large software company offers 2,300 courses — training consumes 3 percent of its budget. It has also expanded the campus to include 5.5 million square feet of new office space.

- **Network Appliance** (Sunnyvale).

Ranked 14. Executives are "easy to approach" at this data-storage company. Responding to feedback, NetApp introduced an autism benefit that 28 staffers have used.

- **Nixon Peabody** (New York).

Ranked 66. This nationwide law firm is recognized for its policies on gay, lesbian, bisexual or transgender employees, with a 100 percent rating from the Human Rights Campaign. It targets 3 percent of billable hours annually for pro bono work.

- **PricewaterhouseCoopers** (New York). Ranked 90. This accounting firm pays at least \$75 of employee cell phone or BlackBerry bills for its professionals. New York City employees even get umbrellas on rainy days.

- **Qualcomm** (San Diego). Ranked 8. New employees for the wireless communications company get stock options and 100 percent health insurance coverage. The popular on-site primary care clinic is quadrupling in size.

- **Scripts Health** (San Diego). Ranked 56. Responding to feedback, this

hospital group introduced adoption aid, increased tuition reimbursement by 50 percent and now subsidizes health insurance for low-income workers.

- **Umpqua Bank** (Portland). Ranked 13. This community bank gives its employees 40 paid hours a year for volunteering. The bank has 147 branches and owns its own coffee blend.

- **Valero Energy** (San Antonio). Ranked 67. The largest oil refiner in North America makes its corporate jet available for employees with medical emergencies and covers 100 percent of health insurance premiums.

- **Vision Service Plan** (Rancho Cordova). Ranked 53. On the *Fortune* "Top 100" list for its ninth consecutive year, this non-profit eye-care insurer has given its employees an annual 401(k) contribution of 15 percent of pay every year since 1970.

- **Whole Foods Market** (Austin). Ranked 16. This natural and organic foods retailer opened a record 21 new stores in 2007, and also acquired Wild Oats in a \$565 million deal.

Talk of ‘Split Roll’ Tax Resurfaces; CalChamber Urges Business to Be Wary

Talk of a “split roll” property tax has resurfaced in the midst of the state budget crisis, leading the California Chamber of Commerce to warn the business community of the dangers of such proposals.

A “split roll” tax seeks to divide the tax treatment of commercial and residential properties by removing Proposition 13 protections from commercial properties, while leaving those protections intact for residential properties.

When passed, Proposition 13 capped property tax rates at 1 percent of assessed value, and restricted that value from growing more than 2 percent a year. Only when ownership changes or there is new construction may the value of the property be reassessed at more than 2 percent. These protections were extended to both residential and commercial properties under the 1978 landmark proposition.

Proposition 13 resulted in a very stable property tax structure that is top-ranked nationally — fifth best in the nation in the Tax Foundation’s *2008 State Business Tax Climate Index*.

By contrast, California’s other major tax revenue sources — personal income tax, corporate tax and sales tax — are considered extremely volatile and ranked 50th, 40th and 42nd nationally, with 50 being worst.

“Any attempt to erode Proposition 13 protections will have a dramatic, detrimental impact on the state’s economy,” said CalChamber Policy Advocate Kyla Christoffersen. “California’s property tax structure is a bright spot for both

homeowners and business owners in this state.”

Recurring Theme

There have been numerous attempts to erode the protections of Proposition 13 via a “split roll” tax — proposals seeking to tax income-producing properties such as apartment buildings, commercial developments and industrial facilities at a higher rate than residential properties.

A recent well-known “split roll” property tax measure was the one proposed by the California Teachers Association in 2005. The proponents opted not to submit signatures for the measure, a move the CalChamber praised as a major victory for the state’s economy. The measure would have led to \$3.5 billion in higher taxes each year, according to the non-partisan legislative analyst.

Some legislative efforts to increase the tax burden on commercial properties, however, can be subtle and structured to be majority-vote only bills. An example is bills that attempt to redefine change of ownership, which can be a complex determination for business properties owned by multiple interests, such as shareholders.

Adverse Effects

A “split roll” tax would undermine the intent of the protections cemented in Proposition 13, and have a negative effect on job-producing operations and the state’s well-regarded property tax structure.

Commercial properties already contribute significantly in tax dollars — generating approximately two-thirds of the property tax revenues, just as they did before the passage of Proposition 13. Implementation of a “split roll” tax would mean tax increases for California businesses likely to exceed \$3 billion per year.

Increasing commercial property taxes will not occur in a vacuum — it will harm not only businesses, but also their ability to provide jobs, benefits, and cost savings to tenants and customers. Consumer costs could increase as a result of the increased cost of doing business.

“Higher property taxes could unfortunately result in higher rents for the thousands of California businesses that lease their commercial space,” Christoffersen said. “This could significantly worsen the already-troubled housing market and state budgetary situation.”

Pending/Potential Legislation

Legislation has been introduced, AB 2461 (Davis; D-Los Angeles), which directs the Board of Equalization to conduct a study of the amount of revenue that could be generated from imposing a “split roll” tax.

No proposals have surfaced yet that directly propose a “split roll” tax, but the CalChamber will keep close watch and let members know if any legislation develops that would advance a “split roll” tax.

Staff Contact: Kyla Christoffersen

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- What steps you can take to avoid terminating an employee
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10 a.m. (PST)
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