

ALERT

VOLUME 34, NUMBER 9 • MARCH 28, 2008



CalChamber Sponsors Bill to Clarify Meal Period Law

Disputes Account for Half of Job-Related Lawsuits Annually



Senator Ron Calderon

The California Chamber of Commerce, along with 33 other organizations, is **sponsoring** and **supporting** legislation that provides a comprehensive solution to compliance with and enforcement

of meal period laws.

The bill, **SB 1539 (Calderon; D-Montebello)**, provides clarity and flexibility to employers and employees across all industries, regardless of employer size or union status.

The Senate Labor and Industrial Relations Committee is scheduled to

consider SB 1539 on April 9.

Confusion with Current Law

Employees and employers are struggling to comply with the current confusing law, which mandates an employee take a 30-minute meal period after working more than five hours.

The law states that “an employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes.”

This provision, enacted in 1999, has been interpreted in various ways by state enforcement officials and the courts. The confusion has led to costly litigation against California businesses that now may face closure due to exorbitant settlements.

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Governor, CalChamber Chair to Speak at Post-Summit Breakfast



Governor
Arnold Schwarzenegger



CalChamber Chair
Edwin A. Guiles

Governor Arnold Schwarzenegger and California Chamber Chair Edwin A. Guiles will be the featured speakers at this year's Sacramento Host Breakfast on May 21.

The breakfast is scheduled the morning after the CalChamber-sponsored California Business Legislative Summit, set for May 20 in Sacramento. Summit attendees have the opportunity to attend the invitation-only breakfast, which marks its 82nd anniversary this year.

A special guest speaker at the Summit will be George Stephanopoulos, chief Washington correspondent for ABC News and former senior adviser to President Bill Clinton.

Host Breakfast

Following the Summit, attendees also have an opportunity to mingle with their

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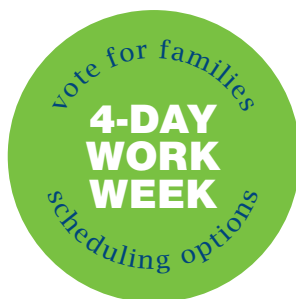
Have you written your legislator?

Flexible Work Schedule Bill

AB 2127 (Benoit; R-Bermuda Dunes)
CalChamber-Sponsored

Hearing: April 9, 1:30 p.m.
Assembly Labor and
Employment Committee

Sample support letter at
www.calchambervotes.com.



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Labor Law Corner

Federal Overtime May Apply to Truck Driver Exempt from State Rule



Barbara Wilber
Labor Law Consultant

As a follow-up to the March 14 "Labor Law Corner," can an intrastate truck driver be exempt from California overtime but still be subject to federal overtime?

Yes, this is a possibility. In some instances an intrastate driver who is not

subject to the U.S. Department of Transportation (DOT) hours of service regulations and meets all the criteria to be exempt from California overtime, pursuant to the Industrial Welfare Commission Orders 1 to 10, 13 and 14, may be subject to federal overtime in accordance with the Fair Labor Standards Act (FLSA).

Eligibility

Determine whether the business or individual is subject to the FLSA. The majority of businesses in California are covered by FLSA. Coverage occurs in two ways:

- An entire "enterprise" (business) may be covered if it meets certain tests. If the FLSA covers an enterprise, it covers all employees of the enterprise.
- Even if an enterprise does not meet those tests, there may be "individual" coverage of certain employees. See the CalChamber's "FLSA Worksheet — Determining Coverage" (available at www.hrcalifornia.com) to assist in concluding whether your business is covered by the FLSA. If coverage exists, overtime payment is required for all hours worked beyond 40 in a workweek unless there is a specific exemption, such as the truck driver exemption.

Interstate Commerce

The definition of interstate commerce pursuant to the FLSA is much broader than the DOT definition. An employer may not meet the interstate commerce definition for the purpose of DOT coverage, but may meet the definition of interstate commerce pursuant to the FLSA.

Confirm whether the driver is subject to DOT regulations even though the truck operates solely within the borders of California.

In addition to covering transport of property between two states, the DOT definition of "interstate commerce" includes transport of property within one state if the transport is part of a flow of property across state lines.

If the driver is not subject to DOT regulations, the federal overtime exemption does not apply and the FLSA requires that premium pay in excess of 40 hours be paid.

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.

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Home page: www.calchamber.com.*

Seminars/Trade Shows

For more information, visit
www.calchamber.com/events.

Business Resources

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

Career Networking Breakfast — "Speed Networking." Wilcox Miller & Nelson/ Career Partners International. April 8, Sacramento. (916) 977-3700.

International Trade

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

U.S. Trade/Investment Mission to Algeria. U.S. Algeria Business Council. April 5-10. Algiers, Algeria. (703) 418-4150.

Asia Pacific Business Outlook Conference. University of Southern California. April 7-8, Los Angeles.
Central Valley International Business Forum. University of the Pacific. April 7, Stockton. (916) 566-7168.
Trade and Investment with Mexico. Los Angeles Area Chamber. April 9, Los Angeles. (213) 580-7538.
Global California — Online with the World. Monterey Bay International Trade Association (MBITA). April 25, Sacramento. (831) 335-4780.

Labor Law

HR 201: Labor Law Update On-Demand Web Seminar. CalChamber. 90 minutes. (800) 331-8877.



Governor Vetoes ‘Card Check’ Bill



OPPOSE

A California Chamber of Commerce-**opposed** bill that would have exposed individuals to interference and intimidation in deciding whether to join a union was vetoed by Governor Arnold

Schwarzenegger on March 20.

SB 867 (Cedillo; D-Los Angeles) removed individuals' right to a secret ballot and replaced it with a "card check" system overseen by union organizers.

The bill would have hurt California's competitiveness by artificially increasing labor costs for California child care providers, thereby reducing funds available to subsidize child care for working parents.

Loss of Privacy

The CalChamber opposes the method of unionization known as "card check" proposed in SB 867 because it takes away an individual's right to a private ballot when deciding whether to join a union. It does this by replacing the private ballot with this scheme that allows a union to organize if a

majority of workers simply sign a card. Under this system, the union organizers themselves oversee the process, and the workers' votes are made public to the employer, the union organizers and co-workers.

The CalChamber believes that workers are better protected from interference and intimidation by casting their vote privately with a secret ballot. To take away employees' access to a private secret ballot is undemocratic.

Higher Child Care Rates

SB 867 would have allowed child care providers to join a union in order to negotiate benefits and pay. Although the bill excluded negotiations for pay in the first year, subsequent contract negotiations would have inappropriately limited the state's ability to determine reimbursement rates for subsidized child care.

To the extent collective bargaining would drive up rates paid by the state, poor families with children would actually lose because fewer families could be served by the program. Furthermore, if collective bargaining leads to higher rates for subsidized caregivers, that increase in rates might

begin to drive the market, thus forcing up rates paid by families that are not eligible for state subsidies.

Although child care is typically conceptualized as a human development or social welfare program, it's important to point out that without this valuable work support, many families would not be able to work.

Wrong Intentions

Labor unions in California are experiencing a decline in membership. Efforts to bolster membership should occur because workers see a need, not because the election process has been adulterated.

The CalChamber strongly rejects SB 867 and any attempt to undermine the California secret ballot process in any way.

Previously Vetoed

Governor Schwarzenegger previously vetoed two bills nearly identical to SB 867: **AB 1164 (De León; D-Los Angeles)** in 2007, and **SB 697 (Kuehl; D-Santa Monica)** in 2006.

Staff Contact: Marti Fisher

Governor's Campaign Seeks to Help Homeowners Avoid Foreclosures

To help the more than half million Californians having non-traditional mortgage loans that will jump to higher rates in the next two years, Governor Arnold Schwarzenegger has launched an ongoing public education campaign to raise awareness of the options homeowners have to possibly avoid foreclosure.

Many Californians are having trouble paying their mortgages and some of these families will lose their homes to foreclosure without ever seeking help, causing great financial strain on the state budget and businesses.

90 Days

The "90 Days of Hope" campaign features real California families that have struggled with foreclosure, offering others a path to real solutions and hope.

Ninety days represents the average amount of time homeowners have to take action after being informed that their

interest rate is set to increase. Ninety days of missed payments often equals a foreclosure. It's also the approximate amount of time it can take to work out new payment options for those who proactively contact their lenders before missing any payments.

Mortgage Task Force

In 2007, Governor Schwarzenegger formed the Interdepartmental Task Force on Non-Traditional Mortgages, making California one of the first states in the nation to form a task force to examine the alarming developments in the non-traditional mortgage market. The task force consists of leadership from the Business, Transportation and Housing Agency and the State and Consumer Services Agency, as well as numerous state departments responsible for all aspects of this complex issue.

The task force successfully lobbied Congress to raise federal loan limits so

that more California families can take advantage of these secure products, rather than relying on subprime loans. Currently, the task force is working to ensure California homeowners and organizations see their fair share of the recent federal counseling funding package.

The task force will continue to advise Governor Schwarzenegger on ways to increase protections for Californians who own or plan to purchase homes, and to expand affordable housing opportunities.

Additional Information

For more information on ways California businesses can help, visit www.yourhome.ca.gov and click on the "90 Days of Hope" tab. Available there is a printable flyer to display in public areas or insert into a newsletter to inform employees who could be facing foreclosure that there is hope for them to stay in their homes and continue to be responsible taxpayers.

CalChamber Sponsors Bill to Clarify Meal Period Law



SUPPORT

From Page 1

Meal period disputes make up 40 percent of all California class-action lawsuits and approximately half of all employment-related lawsuits filed in

California each year.

"This bill is a comprehensive solution providing clarification so employees have the opportunity to take meal breaks, enter into on-duty meal period agreements in appropriate situations, and collectively bargain for meal periods," said CalChamber Policy Advocate Marti Fisher.

Enforcement Interpretations

The current enforcement interpretation requires the following:

- The employer must compel the

worker to cease work during the meal period, which requires the employer to police its workforce, watch the clock to ensure the meal period is taken at the prescribed time, for the entire time, and without interruption.

- The employee may not voluntarily skip the meal period.
- The employee may not take the meal period at another time.
- The employee may not return early, leave late or do any work during the meal period.
- Non-compliant, independent employee action with regards to the meal period creates a liability for the employer.
- The conditions permitting an on-duty meal period are so rigidly interpreted that most workplaces which should appropriately permit on-duty meal periods do not qualify.

- There is confusion over when the meal period should commence.

- As a result of a recent court challenge (*Bearden v. Borax*), a collective bargaining agreement does not supersede the statute.

To avoid liability under these interpretations, some employers have had to discipline or discharge employees for not taking meal periods as directed. As a result, employers and employees are seeking clarity.

Action Needed

The CalChamber is encouraging businesses to contact the Governor, their senators and members of Senate Labor and Industrial Relations to urge them to support SB 1539.

For a sample letter, visit www.calchambervotes.com.
Staff Contact: Marti Fisher

Governor, CalChamber Chair to Speak at Post-Summit Breakfast

From Page 1

peers and other leaders from business, agriculture, education and the military, as well as administration officials and legislators, at the Sacramento Host Reception the evening of May 20.

The reception welcomes out-of-town guests to the Host Breakfast.

Sacramento business leaders host the annual reception and breakfast to spotlight California's role in national and international commerce. The goal of both events is to provide California leaders an opportunity to exchange views, establish and renew friendships and create statewide atmospheres of good will and understanding at the informal setting of a common table.

Summit Agenda

The CalChamber Summit provides business and local chamber of commerce leaders a forum to meet with peers and state policy experts and to focus on issues facing California businesses.

The agenda will feature a morning introduction from CalChamber President Allan Zaremborg, as well as discussions with noted experts on key policy issues and time to visit with state legislators.

The Summit aims to prepare attendees to be active in the policy-making process and to present the business perspective on issues affecting businesses' bottom lines.

State legislators are invited to join their constituents at the Summit luncheon,

which also features presentations recognizing outstanding advocacy on behalf of small businesses and by local chambers of commerce. The CalChamber will present the HR Partner of the Year Award, which recognizes the local chamber that excels at working with the CalChamber to inform members about new state and federal laws.

Early Bird Savings

Attendees who register for the Summit on or before April 18 save 20 percent on the two-day fee, paying \$220 per person. After April 18, the two-day fee increases to \$275.

Other registration options are available. For more information or to register, visit www.calchamber.com/legsummit08.
Staff Contact: Alicia Smith

California Business Legislative Summit
May 20-21, 2008

Register before April 18 and save!
www.calchamber.com/legsummit08

Profiles in Trade

Colombia Offers Growing Export Market for CalChamber Member Cange International

Cange International Inc., a San Diego-based export management company and member of the California Chamber of Commerce, is keeping a close eye on the upcoming congressional vote on the U.S.-Colombia Trade Promotion Agreement.

A vote by Congress in favor of the agreement would go a long way toward sustaining the company's staff positions in San Diego and Los Angeles, and creating new California jobs in international marketing and sales.

Cange International's business is 100 percent export. The company sells U.S. manufactured high-end consumer goods for the home, including such well-known kitchen appliance brands as Viking Range Corporation, Northland Corporation and Marvel Industries.

Cange International has been exporting Viking Range Corporation products into Colombia through a distributor in Barranquilla for more than five years. Cange has experienced triple-digit growth in sales there for each of the last four years, coinciding closely with Colombia's own remarkable growth statistics.

Promising Market

"At this point in time the market of Colombia holds great promise for our company and many other California companies," notes Robert Cange, president. "Over the past several years, under President Uribe's highly effective leadership, Colombia's transformation has been nothing short of miraculous.

"Its economy has strengthened significantly and at the same time all levels of drug-related crime have been greatly reduced. In addition, Colombia's consumers consistently exhibit a strong recognition of and preference for U.S. brands. This is very important for our company because our primary competitors in Colombia's high-end sector are from Europe."

The United States has already been offering Colombia preferential duty

treatment on a unilateral basis since the 1980s, with more than 90 percent of Colombia's exports already entering the United States duty-free.

Level Playing Field

A vote in favor of the U.S.-Colombia Trade Promotion Agreement would finally "even the playing field" for U.S. companies exporting to Colombia. If the agreement is passed, the duties for more than 80 percent of U.S. products currently exported to Colombia will be eliminated immediately; duties for the remaining U.S. products will be phased out over time.

Without the agreement in place, the government of Colombia presently charges for Cange International's products a duty rate of 20 percent, which is calculated on the CIF value, meaning an amount of 20 percent of the total cost of the product plus insurance plus freight is charged.

High Duties Hurt Exports

High duty rates create higher prices to consumers; however, even more detrimentally, duties can prevent a company from successfully making a high enough volume of sales to make the exercise of exporting to that market worthwhile.

For example, some companies require a two-step distribution structure and cannot effectively market their products in a direct way or through a one-step distribution arrangement.

"The elimination of a 20 percent

Photo Courtesy of Cange International Inc.

Magazine ads such as this one placed by Solid Brass, distributor for Cange International Inc., help the company market its Viking products to Colombian consumers.

duty can mean the difference between being able to afford to set up a viable distribution structure in Colombia or, conversely, simply opting not to attempt to sell into that market at all. For this reason we are so pleased that this agreement could afford companies in California and throughout the U.S. some substantial distribution opportunities," says Cange.

"Profiles in Trade" is a new regular feature in *Alert* highlighting the international trade activities of member companies.

Legislative Policy Committees Reject CalChamber-Supported Legal Reform



SUPPORT

Three California Chamber of Commerce-supported bills aimed at improving California's legal climate were voted down by legislative policy committees in the Assembly and Senate on March 25.

● **AB 1891 (Niello; R-Fair Oaks)** aimed to reduce frivolous litigation by giving the judge more latitude to respond to, and punish individual harassing, meritless tactics and claims that take place during the course of a lawsuit, while allowing meritorious aspects of the lawsuit to go forward.

● **AB 1905 (Adams; R-Hesperia)** would have improved equity of appeals of class certification deny or grant decisions by giving both plaintiffs and defendants the right to immediate appeal, rather than just plaintiffs.

● **SB 1202 (Harman; R-Huntington Beach)** sought to ensure class action settlements are fairly administered by allowing the judge to require that prevailing plaintiffs receive the settlement amounts to

which they are entitled before the plaintiffs' attorney is awarded attorney fees.

Improving Legal System

Enactment of these bills would have brought greater balance and fairness to California's legal system. This would in turn have helped improve California's legal climate reputation, which continues to register near the bottom nationally for fairness and reasonableness — 45 out of 50 in the 2007 U.S. Chamber/Harris legal climate survey of in-house counsel and senior attorneys across the nation representing businesses.

California's litigation risk ranking is 44 out of a worst of 50 in the 2008 U.S. Tort Liability Index recently released by the Pacific Research Institute (PRI), which considers a range of economic variables.

Impact on Economy

Recent economic data confirms that states with fair and balanced legal systems thrive fiscally. According to PRI economists, states with legal systems ranking as the 10 best for fairness and reasonableness experienced impressively greater rates of economic growth than the

10 worst-ranked states in 2006 — job growth was 57 percent greater, tax revenues grew 24 percent more and migration inflow from other states registered 232 percent greater.

Further, in a 2002 U.S. Chamber study examining whether a state's legal framework affects its economy, economists found that per capita state gross domestic product rises 0.75 percent for every 10 percent improvement in a state's legal climate ranking.

Reform Bills

AB 1891 would have provided courts important tools for reducing meritless lawsuits by giving them a way to stop harassing, frivolous litigation.

AB 1905 would have created the same balance of appealable class action litigation that exists in federal courts and many states (under current California law only the denial of a class certification motion by plaintiffs is appealable).

SB 1202 would have allowed judges to withhold part of the plaintiffs' attorney fees until the class members have received their portion of the settlement.

Key Votes

● The Assembly Judiciary Committee rejected AB 1891 and AB 1905 by votes of 3-7:

Ayes: Adams (R-Hesperia), Garrick (R-Solana Beach), Keene (R-Chico).

Noes: Evans (D-Santa Rosa), Feuer (D-Los Angeles), Jones (D-Sacramento), Krekorian (D-Burbank), Laird (D-Santa Cruz), Levine (D-Van Nuys), Lieber (D-Mountain View).

● The Senate Judiciary Committee voted down SB 1202, 2-3:

Ayes: Ackerman (R-Tustin), Harman (R-Huntington Beach).

Noes: Corbett (D-San Leandro), Kuehl (D-Santa Monica), Steinberg (D-Sacramento).

Staff Contact: Kyla Christoffersen

Video clips on AB 1891/AB 1905 at calchamber.com

CalChamber Members Can Help Guide State Policies

The California Chamber of Commerce is encouraging members with an interest in the state's future to consider joining a CalChamber policy committee.

The principles that guide CalChamber policy advocates grow out of the work of the member volunteers on CalChamber standing and ad hoc committees.

In presenting the business perspective to state policymakers, the CalChamber relies on members to tell us about the real world impact of legislative and regulatory proposals.

Each committee focuses on a subject (or related subjects) of concern

to business. Current CalChamber policy committees cover issues such as health care policy, labor and employment, international trade, legal reform and protection, small business, taxation, transportation and infrastructure, and workers' compensation.

When issues arise that fall outside the realm of standing committees, the CalChamber forms ad hoc groups to review and recommend policies in the new area.

To join a committee, contact Deanna Tibbett at (916) 444-6670 or submit an online form at www.calchamber.com/getinvolved.

H-1B Visa Petition Filing Rule Changes in April for Next Fiscal Year

Employers may file only one petition for an H-1B visa for a single employee in a fiscal year under an interim final rule issued by the U.S. Citizenship and Immigration Service (USCIS).

U.S. businesses use the H-1B visa program to employ foreign workers in occupations — such as scientists, engineers or computer programmers — that require theoretical and practical application of highly specialized knowledge and a bachelor's degree or higher (or its equivalent).

The change to prohibit the filing of more than one H-1B visa petition per employee in a fiscal year is intended to promote a fair and systematic process for petitioners. This rule ensures that companies filing H-1B petitions that are subject to numerical limits will have an equal chance to receive consideration for an H-1B worker.

This rule does not preclude related employers, such as a parent company and its subsidiary, from filing petitions on behalf of the same alien for different positions based on a legitimate business need.

Petition Filing Opens April 1

On April 1, 2008, employers may file petitions requesting H-1B workers for fiscal year 2009 employment starting on October 1, 2008.

For fiscal year 2009, Congress has set a limit of 65,000 for most H-1B workers. The first 20,000 H-1B workers who have a U.S. master's degree or higher are exempt from the cap.

Under current procedures, which are not changed by this rule, once USCIS receives 20,000 petitions for aliens with a U.S. master's degree or higher, all other requests for the educational exemption are counted toward the 65,000 cap. Once the 65,000 cap is reached for a fiscal year, USCIS will announce the cap has been filled and reject further petitions subject to the cap.

When the numerical limitations have been reached, USCIS randomly chooses among the petitions received on the "final receipt date." If that date falls within any one of the first five business days, the random selection uses all cap-subject petitions received during those five days.

If USCIS determines the number of H-1B petitions meets the cap within the first five business days of accepting applications for the coming fiscal year, USCIS will apply a random selection process among all H-1B petitions received during this period.

If the 20,000 advanced degree limit is reached during the first five business days, USCIS will randomly select from those petitions ahead of conducting the

random selection for the 65,000 limit. Petitions subject to the 20,000 limit that are not selected will be considered with the other H-1B petitions in the random selection for the 65,000 limit.

The rule further clarifies that USCIS will deny petitions that incorrectly claim an exemption from any H-1B numerical limits. Those filing fees will not be returned.

Current H-1B Workers

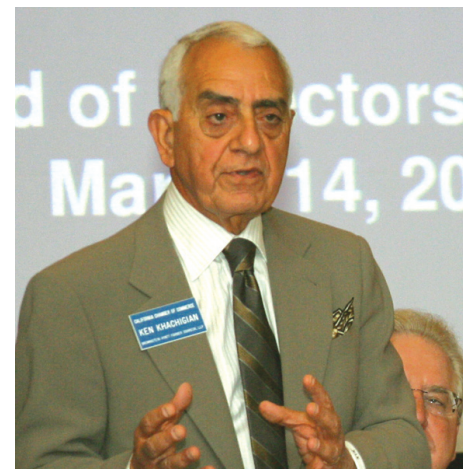
Petitions filed on behalf of current H-1B workers do not count toward the congressionally mandated H-1B cap. Accordingly, this rule does not affect USCIS processing of petitions filed to:

- extend the time a current H-1B worker may remain in the United States;
- change the terms of employment for current H-1B workers;
- allow current H-1B workers to change from one cap-subject position to a different cap-subject position with a different employer; or
- allow current H-1B workers to work concurrently in a second H-1B position.

This interim final rule can be viewed, along with additional information on this rule and the H-1B program, at the USCIS website at www.uscis.gov.

Staff Contact: Marti Fisher

Presidential Politics Get Close Look at CalChamber Board Meeting



The CalChamber Board of Directors begins its look at presidential election politics with a dinner presentation on March 13 by Chuck Rund (left), Charlton Research Company, on "the pulse of the nation." Following up the next morning are Roger Salazar (center), Acosta|Salazar LLC, with a review of the Democratic candidates; and CalChamber Board member Ken Khachigian, Brownstein Hyatt Farber Schreck, LLP, assessing the Republican candidates.

There's still time to prepare for 2008! View **HR 201: Labor Law Update On-Demand Web Seminar!**

In 90 minutes, you will learn the top key laws, regulations and case studies of 2008 that affect how you and your company do business in California. And because you watch it over the Internet, you will avoid the hassle of traveling and enjoy learning all you need to know for 2008 from the comfort of your own office. Topics covered include:

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- Sexual Harassment Supervisor Training Regulations
- Military Spouse Leave
- Discrimination, Retaliation and Supervisor Liability
- Calculating Expense Reimbursements
- Hiring Practices and Employment Eligibility
- Cases to Watch for in 2008
- And more

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