

ALERT

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Persistent Drought Highlights Need for Water Infrastructure

Snow water content is 61 percent of normal for the date, according to the second snow survey of the winter season, announced January 28 by the state Department of Water Resources (DWR).

DWR Director Lester Snow said that low precipitation in January and snowpack results indicate California is heading for a third dry year.

“We may be at the start of the worst California drought in modern history. It’s imperative for Californians to conserve water immediately at home and in their businesses,” he said.

DWR took manual survey results at four locations near Lake Tahoe. Those, combined with electronic readings, indicate a statewide snowpack water content of 61 percent (49 percent in the Northern Sierra, 63 percent in the Central Sierra, and 68 percent in the Southern Sierra).

Last year at this time, snowpack was 111 percent of normal, but the driest spring on record followed, resulting in a second consecutive dry water year.

California’s snowpack water content is particularly significant this year because the state has endured two years of drought and the state’s reservoirs are low. Because less-than-normal water supply conditions exist, the initial State Water Project allocation for 2009 was placed at only 15 percent of water contractors’ requested amounts. The results of this survey could have an impact on future allocations.

Dry Year

Exacerbating the problem is the fact that it is unlikely that water contractors will receive any water allocations from the

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New Federal Law Increases Employer Liability Exposure



President Barack Obama recently signed into law federal legislation that significantly increases liability exposure for employers by overturning a U.S. Supreme Court decision and

extending the statutes of limitation for lawsuits relating to employer decisions.

The Lilly Ledbetter Fair Pay Act of 2009 overturns a 2007 U.S. Supreme Court decision and is retroactive to May 28, 2007—the day before the Supreme Court issued its decision almost two years ago.

As a result of the President’s action, any pending federal cases that were filed after May 28, 2007 will be subject to this new law.

Case Background

Lilly Ledbetter sued her former employer, Goodyear Tire & Rubber, claiming discrimination under federal Title VII because of disparate pay going back almost 19 years. She claimed the discrimination occurred on each paycheck, and argued that the statute of limitations began at each paycheck.

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Photos Courtesy of California Department of Water Resources

The decrease in the snowpack is evident in photos from a state Department of Water Resources study in the Sierra Nevada at Phillips Station near Highway 50 in 1989 (left) and this year on January 29 (right).

Labor Law Corner

Final Paycheck Deductions for Stolen Company Equipment Illegal



Jessica Hawthorne
Employment Law
Counsel

Can I hold an employee's final paycheck if he/she fails to turn in company equipment or required paperwork for expense reimbursements?

It is first important to distinguish between wages and expense reimbursements. All earned wages, including accrued but unused vacation or paid time off, must be provided to the employee on the final day of work or

within 72 hours if the employee gave less than 72 hours notice of quitting.

Expense reimbursements may be paid out according to your reimbursement policy or schedule. As such, expense reimbursement may not necessarily be paid out on the last day of employment so long as the monies are provided to a departing employee according to your policy or schedule.

Illegal Deductions

Making deductions from pay for a company's benefit is illegal. Examples of this are deducting the cost of reissuing a lost paycheck from an employee's pay and deducting the cost of lost company equipment. The Division of Labor Standards Enforcement (DLSE) *Policies and Enforcement Manual* discusses these issues in Chapter 11 and considers these monies to be part of the cost of doing business.

One way to avoid incurring this expense, especially at termination, is to have employees sign acknowledgments that they have been entrusted with valuable company property and if the property is damaged or lost, the company will file a claim in small claims court to retrieve the value of the lost or damaged item. Employers also may discipline employees who damage or lose company property.

Expense Reimbursements

Expense reimbursements are another story. Typically employers require employees to submit expense reimbursement paperwork before they issue an expense reimbursement check.

It is advisable to specify how often and when (for example, what day of the month) expense reimbursements must be submitted and when checks will be issued (for example, on the 15th of the month following the date the paperwork was received).

If your workplace has issues with employees inconsistently submitting this paperwork, you should consider rewarding employees who submit the paperwork in a timely manner with a \$5 gift card or other encouragement to meet the deadline.

It also is advisable to remind employees before or upon termination that any expense reimbursements must be submitted no later than their last day of employment and refer to your expense reimbursement policy as to when a check will be issued.

Keep in mind, even if an employee has not submitted expense reimbursement paperwork in a timely manner, you must issue a reimbursement check once the paperwork is received.

For example, an employee who once worked for your company mails you expense receipts incurred while working for your company more than a year after quitting. You still must pay the employee for these expenses — the Labor Code provides a three-year statute of limitations on these monies.

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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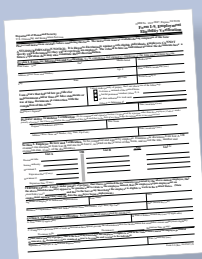
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*E-mail: alert@calchamber.com.
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New I-9 Form Use: Delay to April 3



The U.S. Citizenship and Immigration Services (USCIS) announced last week that use of the new I-9 form will be delayed until April 3.

The California Chamber of Commerce is recommending that until then, employers should use the current I-9 form with the 06/05/07 revision date and June 30, 2009 expiration date.

Updates on this subject will be provided on the **HRCalifornia Watchdog** blog.



SB 1608 Disability Access Law Reform: How Does It Help Business Owners?

During the 2007-08 legislative session, the California Chamber of Commerce and other business groups worked closely with legislators and their staff, disability rights groups and the consumer attorneys to achieve historic reform to California's disability access laws.

The reform legislation, **SB 1608 (Corbett; D-San Leandro, Chapter 549, Statutes of 2008)**, is designed to promote and increase compliance with laws providing equal public access in places of business to individuals with disabilities, while reducing unwarranted litigation that does not advance that goal.

This article provides guidance to business on how SB 1608 helps to reduce unwarranted Americans with Disabilities Act (ADA) litigation and what business owners need to do to benefit from the new law:

- How can business owners ensure compliance and reduce chances of getting sued?
- If a business owner does get sued, how does SB 1608 help to encourage early resolution of the lawsuit?
- What elements of SB 1608 help to reduce unwarranted ADA lawsuit practices?

Ensuring Compliance

How can business owners ensure compliance and reduce chances of getting sued?

One of the best ways to avoid being sued under the disability access laws is to ensure that buildings are in compliance. SB 1608 provides a number of ways to help business owners:

✓ **Businesses should hire a CASp.**

A certified access specialist (CASp) is a person business owners can be assured has been tested and certified by the state as an expert in disability access laws. SB 1608 sets up a process whereby business owners can voluntarily hire a CASp to inspect their buildings to ensure compliance with disability access standards and obtain an inspection report as proof they did so. A link to a list of certified CASp inspectors is available at www.calchamber.com/ADA.

When: Businesses should begin the process of obtaining an inspection as soon as possible.

- As with any other hired consultant, a price will need to be negotiated for this service. It will pay to shop around and obtain trusted referrals.
- Either building owners or tenants can order a CASp inspection. (Either can be sued for non-compliance.) If you are a tenant, you may want to discuss with the building owner whether a CASp inspection was already completed or if there are plans for one.
- Businesses should ensure when they hire a CASp that the CASp provides an inspection report detailing what was inspected. SB 1608 requires the CASp to notify you of the right to an inspection report. Without one, business owners will not have proof of the inspection.

- If the CASp determines that corrections are needed in order for the site to be approved, the business owner is entitled to a written report identifying changes that need to be made and recommended reasonable timeframes for fixes.

- Business owners should keep the inspection report confidential and in a safe place. If you are ever sued, you must have a CASp inspection report in order to be eligible to request a 90-day stay of the lawsuit and an Early Evaluation Conference (more about this on the next page). If you do not have a report, you will be barred from this benefit.

✓ **Businesses should request and post a CASp window sign.** Businesses whose structures have been approved by CASps will be able to request a window sign signifying they have been

See SB 1608: Page 4

New Business Window Sign Available Soon



A new window sign will be available by March 1, 2009 for CASp-inspected businesses. The state-issued sign will be similar to this one.

SB 1608 Disability Access Law Reform: How Does It Help Businesses?

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CASp-inspected. The window sign will send the message that the business has taken proactive steps to comply with the disability access laws and is not an easy target for lawyers seeking to earn quick money.

When: The official window signs should be available by March 1, 2009.

✓ **Improved expertise in new construction and building inspections.** For the first time, there will be minimum continuing education requirements for building inspectors and architects on disability access laws, to help reduce the problem of new construction failing to comply. Moreover, by July 2010, local building inspection offices will be required to have at least one CASp on staff, available to provide consultation. Eventually all permitting and plan checks must be CASp-inspected.

When: The continuing education requirement will apply to license renewals beginning July 1, 2009. A CASp should be on staff in building inspection offices by July 1, 2010.

✓ **New state disability access commission part of the solution.** SB 1608 created a new California Commission on Disability Access (CCDA), which will be a 17-member state advisory commission made up of legislative and gubernatorial appointees from both the disability and business communities. The commission will be assigned the task of evaluating and providing recommendations on further disability access issues having an impact on the disability and business communities.

When: The anticipated start date for the commission is May 1, 2009.

The commission's duties will include:

- Establishing a website resource for businesses that provides information on compliance with disability access laws.
- Establishing a master checklist for building inspectors to use in determining compliance with disability access laws, which also can be used as a guide for business owners.
- Evaluating continuing education requirements for those involved in building construction.

- Evaluating whether SB 1608 reforms are working as they should and are effective.

✓ **Deadline for state to address inconsistencies between state and federal regulations.** A significant frustration for the business community has been inconsistent federal and state regulations — compliance with one may mean violation of the other. For the first time ever, SB 1608 establishes a deadline for the state to propose amendments to the federal government that resolves these inconsistencies.

When: The deadline is December 31, 2010.

Resolving Lawsuits Early

If a business owner does get sued, how does SB 1608 help to encourage early resolution of the lawsuit?

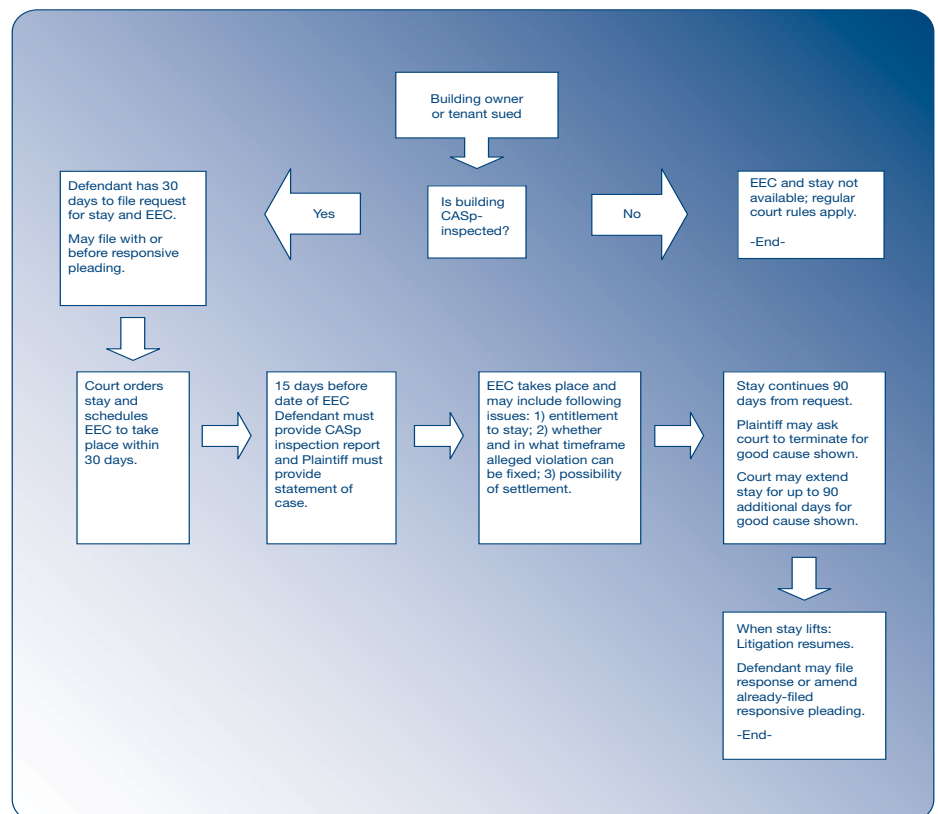
Even when businesses have reduced their chances of a lawsuit by hiring a CASp to ensure their building is in compliance and posting their CASp sign, unfortunately, there is never a 100 percent guarantee of not getting sued. However, SB 1608 gives CASp-approved businesses some tools for helping to resolve unnecessary litigation and encouraging early resolution.

✓ **90-day stay of the lawsuit and early evaluation conference.** Businesses that have been CASp-inspected *before* being sued — and only those businesses — are entitled to request a 90-day stay of the lawsuit and an Early Evaluation Conference (EEC).

When: The anticipated date of implementation is May 1, 2009.

- A stay is a temporary halting of
- See SB 1608: Page 5*

Use of Certified Access Specialists Encourages Early Resolution of Lawsuits



SB 1608 Disability Access Law Reform: How Does It Help Businesses?

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all litigation. A major benefit of halting litigation temporarily is that attorneys will not be able to engage in motions or discovery and other activities that incur expensive attorneys' fees.

- The EEC is a court-run conference between the parties, at which the parties will have the opportunity to explore whether the lawsuit can be settled. For example, if the lawsuit is based on an alleged violation that would be easy for the business to fix, and the business is willing to resolve the issue quickly, the parties will be able to discuss whether further litigation is necessary.

- ✓ **How to request the stay and EEC.** A defendant must file a request form with the court within 30 days of being sued. The appropriate form is required to be delivered with the lawsuit, but all necessary forms and instructions also will be made available on the state's court self-help website later this year. A link to this information will be posted at www.calchamber.com/ADA when it becomes available.

The court will grant the stay and EEC upon receipt of the request and schedule a time for the conference, within 50 days from the filing of the request. The plaintiff and defendant will be directed to appear in person at the time of the conference.

- ✓ **Defendant must provide the CASp inspection report.** No later than 15 days before the EEC, the defendant absolutely must file with the court and provide the plaintiff with a copy of the CASp inspection report. If the defendant does not do so, the court may lift the stay absent a showing of good cause. The confidentiality of the report must be maintained until the conclusion of the lawsuit.

The plaintiff, in turn, must provide the court and defendant with a statement that includes the basis for the claimed violations, amount of damages claimed, amount of attorney's fees and costs incurred to date, and any settlement demands.

Reducing Unwarranted Lawsuits

What elements of SB 1608 help to reduce unwarranted ADA lawsuit practices?

SB 1608 also established important reforms that will help to reduce inappropriate attorney monetary demands and provide significant clarifications in the law for both plaintiffs and defendants concerning recoverable damages and settlement offers:

- ✓ **Attorneys who issue demands for money must also provide the business owner with an advisory statement.**

SB 1608 requires that written demands for money by attorneys be accompanied by an explanation of the legal rights of the building owner/tenant, including the ability to contact their insurance company as well as an attorney experienced with ADA lawsuits. In addition, the advisory will explain that receipt of a demand for money does not necessarily mean the business is liable.

Attorneys who fail to comply may be reported to the State Bar. The advisory statement will be available in multiple languages on the state court website.

When: The anticipated implementation date is May 1, 2009.

- ✓ **Multiple damages may not be recovered at a single facility.** SB 1608 will help to ensure that damages may be

claimed only when a plaintiff personally encountered a violation or was deterred from gaining access on a particular occasion. SB 1608 clarifies that a denial of full and equal access constitutes one violation per distinct facility for purposes of damages. Damages may not be recovered for each and every single offense that may exist at the particular facility.

In addition, the plaintiff may not recover for violations that may have existed at a facility but which never caused harm or injury to the plaintiff, either in the form of an encounter or deterrence on a particular occasion.

When: The anticipated implementation date is May 1, 2009.

- ✓ **Parties will be encouraged to consider reasonable settlement offers.** SB 1608 clarifies that a court can consider, among other relevant factors, reasonable written settlement offers made and rejected by either party in determining the amount of an attorneys' fees award at the conclusion of a case.

When: The anticipated implementation date is May 1, 2009.

Staff Contact: Kyla Christoffersen

Free CalBizCentral Web Seminar Explains New Disability Access Law



A free web seminar explaining how businesses can reduce their risk of disability access lawsuits is being offered by

CalBizCentral, the source for California business and human resource compliance products, presented by the California Chamber of Commerce.

The live web seminar focuses on *SB 1608: What California's New Accessibility Law Reforms Mean to California Employers*. The half-hour web seminar, set for February 19 beginning at 10 a.m., will outline how the new law can help businesses and illustrate the new protections the law creates for employers.

Topics to be covered include:

- California's new state-licensed CASp inspectors and why a business

should consider hiring one through a lawyer right away.

- How CASp inspectors can confirm that a business meets appropriate accessibility standards, or help the business do so.

- How a CASp inspection can provide important protections if a business does get served with a lawsuit.

- The new law's major reforms to ADA/accessibility litigation in California.

- New strategies for dealing with ADA/accessibility claims.

- Limitations to the protections of CASp inspections and SB 1608.

- New parking area changes that were required July 1, 2008.

- Common pitfalls and emerging claims.

For more information or to register for the free webinar, visit www.calbizcentral.com/training or call (800) 331-8877.

CalChamber Highlights Benefits of Free Trade to California



The California Chamber of Commerce is opposing the unnecessary and restrictive “Buy American” provisions being considered by the U.S.

Congress as part of the economic stimulus legislation.

With international-related commerce (including exports and imports of goods and services) accounting for about one-quarter of the state’s economy, California stands to lose more than most states if the nation moves toward protectionist policies (better known as “isolationist” ones in previous years). A move toward protectionism only invites retaliation

from U.S. trade partners, which will have a negative impact on trade-related jobs in California.

For the moment, California maintains its perennial position as a top exporting state and leads the nation in export-related jobs. California exports amount to more than \$134 billion annually.

California is one of the 10 largest economies in the world with a gross state product topping \$1.8 trillion. California exports to more than 220 foreign markets.

The California Chamber of Commerce 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.

The CalChamber opposes protectionism, which results in higher prices to the consumer for the specific product protected and in limited choices of products for consumers. Protectionism causes a net loss of jobs in related industries, retaliation by trading partners, and violates provisions of the World Trade Organization, as well as U.S. free trade agreements with numerous nations.

The CalChamber supports allowing California companies to compete more effectively in foreign markets, as well as to attract foreign business to California. Increased protectionism has not helped the economy in the past and won’t in today’s increasingly global economy.

Staff Contact: Susanne Stirling

New Federal Law Increases Employer Liability Exposure

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The Supreme Court disagreed, ruling that she must file the claim with the Equal Employment Opportunity Commission (EEOC) within 180 days of the pay decision and not within 180 days of the receipt of pay.

The Supreme Court noted that a pay decision is a “discrete act” and that the time period for filing a claim involving a discriminatory pay decision begins when the act occurs (the pay decision), not when the consequence of that decision arises (receiving the paycheck). *Ledbetter v. Goodyear Tire & Rubber Co.* 550 U.S. 618 (U.S. Supreme Court, May 29, 2007)

Impact on California

California law, including equal pay statutes and the Fair Employment and Housing Act, provides these protections. However, California law is not as clear regarding when the statute of limitations begins to run for these types of cases.

It is established in California that a “continuing violation” is a cause of action based upon a series of actions by the employer that discriminate against an employee or employees. The Lilly Ledbetter Act more clearly defines for purposes of federal equal pay what a continuing violation is. It is unclear whether California courts will adopt this clearly defined standard.

It also is important to note that should a person file a federal case under these new requirements, he or she will be eligible to recover damages going back only two years (the statute of limitations) even if the claim extends beyond that period. In California, the statute of limitations also is two years under the equal pay law, but can extend to three years if the violation is willful.

New Law

Title I of the Lilly Ledbetter Act reverses the U.S. Supreme Court decision from 2007 that limited the statute of limitations for federal claims of discrimination and unequal pay to when the pay decision was made. This new law, which amends Title VII, the Age Discrimination in Employment Act, the Rehabilitation Act and the Civil Rights Act, specifically states:

“An unlawful practice occurs, with respect to discrimination in compensation, when a discriminatory-compensation decision or other practice is adopted, when a person becomes subject to a discriminatory-compensation decision or other practice, or when a person is affected by application of a discriminatory-compensation decision or other practice, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision or

other practice.”

Title 2 of the new law is the Paycheck Fairness Act. This section expands retaliation protections and increases penalties for violations of equal pay requirements. It also provides for increased training within government agencies and for girls and women relating to negotiation skills and additional education.

Staff Contact: Jessica Hawthorne

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LEGISLATIVE SUMMIT

Persistent Drought Highlights Need for Water Infrastructure

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federal Central Valley Project water supply. Precipitation to date is at only 70 percent of normal statewide, indicating this may be a dry year, while unseasonably warm and dry conditions are rapidly melting the snowpack.

Furthermore, regardless of snowpack conditions, it is clear water deliveries through the Sacramento-San Joaquin Delta will remain in jeopardy because of recent and pending regulatory uncertainty.

In preparation for another dry year, DWR is facilitating what water transfers may be available through the state's Drought Water Bank Program and working with local water agencies to update their Urban Water Management Plans.

Many providers have already enacted mandatory or voluntary water rationing, and it is likely more agencies will require some form of rationing if dry conditions persist.

The existing water supply for residents, business and agriculture has been constrained, not only by nature, but also by various court orders and environmental regulations restricting deliveries.

Water Bond

Last year started out as one that many hoped would include approval of a water bond which would provide new reservoirs

or dams and lay the groundwork for an isolated facility to protect the Delta from further deterioration while ensuring that sufficient water could be provided to all those communities relying on the State Water Project for their supplies. That was not to happen.

In December 2007, a coalition of business, agriculture and labor representatives submitted several versions of an initiative bond with funds for increased water storage and conveyance, for improvements in the Delta ecosystem, and to protect the Delta from catastrophic earthquakes and levee failures. The filing of multiple versions was designed to preserve options and ensure there would be time to gather signatures for a November 2008 bond initiative.

Early in 2008, a couple of legislative water bond proposals were introduced and debated. They were geared more toward conservation than increased storage capacity. Serious conversations were taking place about placing a legislative bond on the ballot until the state's budget deficit surfaced, derailing the effort.

It wasn't until late in the legislative session that the water bond issue surfaced again, but not in time to place a proposal on either ballot. Not even the combined energies of Governor Arnold Schwarzenegger and U.S. Senator Dianne

Feinstein could move the issue forward.

The state's water supply has moved from critical status to dire straits. A third dry year will bring more restrictions on water use, moving from outdoor restrictions to indoor limits, further stressing the state's fragile economy.

On January 29 during the inaugural State of the Santa Ana River Watershed Conference in Ontario, Allan Zarembert, California Chamber of Commerce president and chief executive officer, explained to more than 1,000 business, environmental and water stakeholders that California must find united solutions to balancing population growth, economics, the environment and securing safe, reliable water.

"If we do not address our water challenges, the state of our economy now will be the state of our economy in perpetuity," Zarembert said.

CalChamber Position

The CalChamber supports a balanced approach to securing a safe and reliable supply of water for all businesses and residents of the state. Water conservation, recycling, reuse and water use efficiencies, in combination with an adequate water supply, storage and conveyance system, would provide enough water to ensure the state's viability.

Staff Contact: Valerie Nera

CalChamber-Sponsored Seminars/Trade Shows

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

Business Resources

Lower Colorado River Tour. Water Education Foundation. March 4-6, Las Vegas. (916) 444-6240.

Water 2009: Building on Change. Water Education Foundation. March 12-13, Sacramento. (916) 444-6240.

Central Valley Tour. Water Education Foundation. April 15-17, Bakersfield. (916) 444-6240.

International Trade

Second World Forum on Delta and Coastal Development. Aquaterra. February 10-12, Amsterdam, Netherlands. (202) 274-2618.

International Trade Finance: Methods of Payment. Sacramento Regional Center

for International Trade Development. February 11, Sacramento. (916) 566-7169.

18th U.S. Trade Show. American Chamber of Commerce in Bangladesh. February 26-28, Bangladesh. amcham@amchambd.org.

Trade and Investment with the AGOA Countries. Monterey Bay International Trade Association (MBITA). February 27, Monterey. (831) 335-4780.

Water China 2009. China Foreign Trade Centre Group. March 3-6, Canton (Guangzhou). contact@merebo.com.

CeBIT 2009: Take Your Business to the Next Level. Hannover Fairs. March 3-8, Hannover, Germany.

17th Convergence India. Exhibitions India Pvt. Ltd. March 18-20, Pragati

Maidan, New Delhi, India. (650) 740-6064.

Asia Pacific Business Outlook Conference. University of Southern California. April 6-7, Los Angeles. (213) 740-7130.

63rd World Affairs Council Annual Conference. World Affairs Council of Northern California. April 2-3, San Francisco. (415) 293-4626.

Renewal Energy Conference. Center for International Trade Development. April 27-29, San Francisco. (858) 208-9227.

Labor Law

HR 201: Labor Law Update Live Web Seminar. CalBizCentral. February 12. (800) 331-8877.

Don't Miss These Web Seminars About Critical HR Topics

Get the latest information from attorneys with employment law expertise at our February web seminars. Attendees to the paid events will be able to: ask questions, receive a copy of the seminar slides and all questions and answers, and get access to a recording of the seminar.



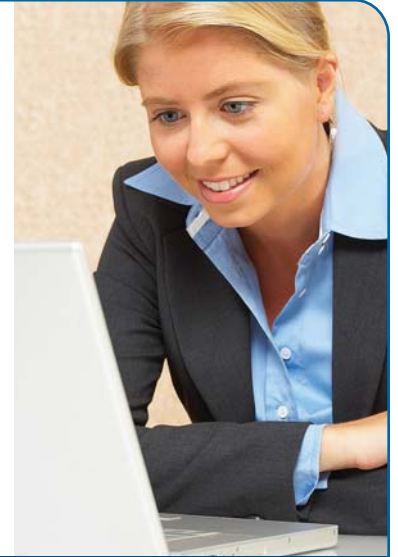
FMLA/CFRA 201: FMLA Update for California Employers February 11

Labor Law Update: HR 201 Live Web Seminar February 12

*Web Seminars 10 a.m.–11:30 a.m., \$170 each.**

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SB 1608: What California's New Accessibility Law Reforms Mean to Employers February 19, 10 a.m.–10:30 a.m. **FREE**

* CalChamber Preferred and Executive members will receive their 20% member discount.



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Helping California Business Do BusinessSM

P.O. BOX 1736 SACRAMENTO, CA 95812-1736
(916) 444-6670 FACSIMILE (916) 444-6685
www.calchamber.com

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