

ALERT

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 **CalChamber**[™]
CALIFORNIA CHAMBER OF COMMERCE

Senate Committee Rejects Appeal for Flex Workweeks

Testimony Highlights Need to Balance Work, Life



Given the current economic situation and reduced competitiveness,

employers and employees this week called on a Senate policy committee to change workplace laws to permit flexible schedules that include four-day workweeks for individual workers desiring a balance between work and personal lives.

Despite overwhelming support from employers, employees and sponsorship

from 103 local chambers of commerce, the Senate Labor and Industrial Relations Committee rejected California Chamber of Commerce-sponsored **SB 187 (Benoit; R-Bermuda Dunes)** on a party line vote of 2-4 on April 29.

SB 187, a CalChamber "job creator" bill, would have established a voluntary, employee-driven process where the employees could have requested and their employer could have mutually agreed to, a four-day compressed workweek schedule.

If the employer agreed to the proposed

See Senate: Page 4

Bills Encourage Investment in California Jobs



In the coming weeks, California legislators will be considering

several California Chamber of Commerce-supported bills that encourage investment in job-producing activities in the state.

On May 4, the Assembly Revenue and Taxation Committee is scheduled to consider:

● **AB 765 (Caballero; D-Salinas) Research and Development Credit** — Encourages investment and jobs in research and development (R&D) by increasing the R&D tax credit rate from 15 percent to 20 percent, in conformity with federal law, beginning in 2011.

● **AB 829 (Caballero; D-Salinas) Manufacturing Investment Incentive** — Encourages investment and jobs in manufacturing by establishing a sales and use tax exemption for manufacturing equipment, beginning in 2013.

On May 13, the Senate Revenue and Taxation Committee is scheduled to consider legislation identical to AB 829, **SB 699 (Alquist; D-Santa Clara) Manufacturing Investment Incentive** — Encourages investment and jobs in manufacturing by establishing a sales and use tax exemption for manufacturing equipment, beginning in 2013.

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Photo by Aaron Lambert

Cynthia Schneider of American Security Bank in Corona highlights benefits of the flexible work schedule bill by Senator John J. Benoit (center). Also testifying was Kerry Pendergast (right) of Premier Service Bank in Riverside.

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Labor Law Corner

Resources Available to Employers for Dealing with Swine Flu



Jessica Hawthorne
Employment Law
Counsel

The Helpline has received numerous calls about the recent outbreak of swine flu and what employers can do to protect their employees. Here is information about resources and steps for employers to take.

As of April 30, more than 100 cases of swine flu have been reported in the United States, according to the Centers

for Disease Control and Prevention (CDC), www.cdc.gov/swineflu.

In response to an intensifying outbreak in the United States and internationally caused by a new influenza virus of swine origin, the World Health Organization raised the worldwide pandemic alert level to Phase 5 on April 29. A Phase 5 alert is a “strong signal that a pandemic is imminent and that the time to finalize the organization, communication and implementation of the planned mitigation measures is short.”

The CDC website contains information about the symptoms of swine flu, as well as information about preventing transmittal.

Protecting Workplace

To protect your workplace, you can do the following now:

- Enact hygienic protocol, which includes recommending frequent hand washing, respiratory etiquette (cough into sleeves or handkerchiefs, not hands) and cleanliness of work spaces.

- Be aware of countries with confirmed swine flu cases before scheduling employee travel. Information can be found on the World Health Organization website, www.who.int/en.

- Consider the use of teleconferencing rather than travel to avoid exposure until the spread of the disease is contained.

- Consider allowing employees who may have exposure to a communicable disease to work from home during the period they may be infectious.

- Obtain information from an infected employee’s health care provider (if the employee will release the information) regarding advice to other employees who may have been exposed.

- Consult with your company’s health care provider for information on how to limit the spread of disease if you have an employee who is ill with swine flu.

- Communicate with your insurance and risk management providers regarding recommended health and safety procedures and equipment.

Develop Plan

- Consult with your legal counsel to develop a plan, which should include:

- ✓ Provisions for requiring employees to stay away from the workplace.

- ✓ For employees who cannot return to the workplace, how these employees will be compensated during this time, taking into consideration the employee’s status as exempt or non-exempt and benefits.

- ✓ Communication of information about potential exposure to other employees.

- ✓ Provisions for a leave of absence under company policies or state and federal family and medical leave laws. For more information about employee leaves, visit the Law Library at www.hrcalifornia.com and look at the overviews for sick leave and family and medical leave.

- ✓ Consideration of workers’ compensation issues—if the employee was traveling on business when the exposure occurred, or exposure of other employees in the workplace.

- ✓ Consideration of the implication of reasonable accommodation in regard to disability issues as well as race and/or national origin in regard to discrimination issues.

State Guidance

California’s Department of Public Health has additional guidance at www.cdph.ca.gov.

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.

CalChamber Calendar

Business Summit:

May 18–19, Sacramento

Workers’ Compensation Committee:

May 18, Sacramento

Council for International Trade:

May 18, Sacramento

Water Committee:

May 18, Sacramento

Board of Directors:

May 18–19, Sacramento

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*E-mail: alert@calchamber.com.
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Small Business Impact Analysis Passes



A California Chamber of Commerce-supported bill to help reduce regulatory

compliance costs for small businesses won bipartisan approval from a Senate policy committee this week.

SB 356 (Wright; D-Inglewood), a “job creator,” gives small businesses a greater voice in the regulatory development process by requiring regulatory agencies to more carefully assess the economic impact of new regulations on small businesses.

The bill creates more accountability in the regulatory process by requiring state agencies to involve small businesses early in the drafting process so that the small business perspective is carefully considered as regulations are developed.

Closes Loopholes

The bill also closes problematic loopholes that currently allow state

agencies to declare that a proposed regulation has no significant economic impact without providing an explanation for that finding

In addressing these loopholes, SB 356 also requires agencies to prepare and submit a small business economic impact statement and to justify their conclusions as to the regulation’s effect on small business.

SB 356 also requires agencies to more carefully explore reasonable regulatory alternatives that are less burdensome to small business and to provide an explanation for not pursuing an alternative if one does exist.

The combined impact of these provisions would be more cost-effective small business compliance with government regulations, all while preserving the stated objectives of the relevant statutes being implemented.

A 2005 study by the U.S. Small Business Administration found that federal regulatory compliance cost small businesses (20 or fewer employees) 45 percent more than it did large businesses (500 or more employees).

A California-specific study mandated by 2006 legislation, AB 2330 (Arambula; D-Fresno; Chapter 232), is expected to be released soon.

Key Vote

The Senate Business, Professions and Economic Development Committee approved SB 356 on a vote of 6-2

Ayes: Negrete McLeod (D-Chino), Wyland (R-Del Mar), Aanestad (R-Grass Valley), Correa (D-Santa Ana), Walters (R-Laguna Niguel, Yee (D-San Francisco).

Noes: Florez (D-Shafter), Romero (D-East Angeles).

Absent/abstaining/not voting: Corbett (D-San Leandro), Oropeza (D-Long Beach).

Action Needed

SB 356 will be considered next by the Senate Appropriations Committee. Ask committee members and your Senate representative to **support SB 356**.

Staff Contact: Robert Callahan

CalChamber-Sponsored Seminars/Trade Shows

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

Business Resources

The Global Financial Crisis: How Did We Get Here? Asia Society Northern California. June 6, San Francisco. (415) 421-8707.

Bay-Delta Tour. Water Education Foundation. June 10–12, Sacramento. (916) 444-6240.

Russian River Tour. Water Education Foundation. August 6–7, Santa Rosa. (916) 444-6240.

International Trade

California Ag Export Training Series. Center for International Trade Development. Through June 18, various locations. (888) 638-7888.

Asia Business Outlook Luncheon. Cal-Asia. May 6, San Francisco. (510) 272-7331.

Importing to the United States. Center for International Trade Development.

May 7, Long Beach. (562) 938-5018.

World Trade Week Kickoff Breakfast.

Los Angeles Area Chamber. May 7, Los Angeles. (213) 580-7569.

Game Changers in the Supply Chain Infrastructure. U.S. Department of Commerce and U.S. Department of Transportation. May 11, Washington D.C. (202) 482-1134.

8th Annual Maritime Leadership Symposium. California Association of Port Authorities; California Marine Affairs and Navigation Conference. May 12–14. (916) 444-7158.

U.S. Business Mission to Vietnam. U.S. Vietnam Chamber. May 16–24, Ho Chi Minh City (Saigon). (202) 271-8200.

12th Annual Consular Corps Luncheon. Northern California World Trade Center. May 19, Davis. (916) 319-4262.

Busan International Machinery Fair. Busan Metropolitan City and others. Busan (South Korea), May 20–24.

California-China Trade and Investment Conference. Southern California Regional District Export Council. May 21, Los Angeles. (213) 894-4022.

The Americas Business Forum. Los Angeles Area Chamber. May 27–28, Los Angeles. (213) 580-7570.

6th World Chambers Congress. World Chamber Federation. June 3–5, Kuala Lumpur, Malaysia. aps@iccwbo.org.

TIBCO Bucharest International Fair. Consulate General of Romania. June 3–7, Bucharest, Romania. (310) 477-0197.

Thailand-Los Angeles Port Seminar. Los Angeles Port Authority. June 12, San Pedro. (310) 732-3870.

China Building 2009. China Building Materials Industries Association and others. June 18–19, Beijing.

Labor Law

ADA and Reasonable Accommodations 201 Web Seminar. CalBizCentral. May 7. (800) 331-8877.

Non-Exempt Employees Reimbursement Web Seminar. CalBizCentral. June 11. (800) 331-8877.

News Report Highlights High Cost of California Climate Change Law

As Congress debates tough new federal energy laws, California companies face adjusting to the nation's first mandate for low-carbon fuels, one response to the greenhouse gas emission limits in AB 32, the climate change law passed in 2006.

California Chamber of Commerce member CalPortland Cement Company was highlighted in a Fox News Report on April 24 to demonstrate how environmental regulations are pushing some businesses to consider closing California operations.

Financial Burden

CalPortland turns limestone into cement—a process that takes large amounts of energy. The company has been making cement for more than 100 years.

Because of AB 32 regulations, the company will have to cut its carbon dioxide emissions in California by 12 percent—something CalPortland estimates will cost around \$250 million, forcing the company to lay off 140 people, according to the report.

The company will have to take part in the expensive conversion process of switching from coal to natural gas.



James Repman, president/chief executive officer of CalPortland Cement Company, explains in a Fox news interview the impact of California greenhouse gas emissions limits on the company's plant in Colton.

"It is in the order of magnitude of maybe adding 40 or 50 percent to our cost structure and adding \$250 million in capital investment that we do not believe we could ever get out of. If it ultimately comes to that, we will probably be forced to shut this plant down," said James Repman, president/chief executive officer of CalPortland, while standing at the company's Colton plant.

Eleven companies in California will have to do the same conversion process, according to the news report.

Leakage

William La Jeunesse of Fox News reported that 40 percent of the cement in California is imported from Mexico and China, countries that have no pollution controls. Forcing companies like CalPortland to make their emissions cleaner and forcing them out of business could actually cause more harm to the environment globally because more cement must come in from overseas from countries that have no emissions regulations, Jeunesse said in the report.

CalChamber Position

The CalChamber believes it is impossible to create a successful program and achieve real, quantifiable reductions without understanding the various industries targeted by the regulations. Furthermore, regulations should be developed in a way that allows for business growth in California and the nation.

Staff Contact: Amisha Patel

Senate Committee Rejects Appeal for Flex Workweeks

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four-day workweek schedule, the four-day workweek would be paid at straight time rates. Any work performed beyond the compressed work schedule would have remained subject to current California overtime requirements.

Employers, Employees Benefit

In testimony to the committee, Kerry Pendergast, a representative of the Corona Chamber of Commerce and president of Premier Service Bank in Riverside, highlighted the employee protections in SB 187 and explained how this balanced approach would benefit both employers and employees, all while providing an opportunity to address work/life balance issues.

"Increased scheduling flexibility in this ever-changing and volatile economy will help us compete for years to come," Pendergast testified. "It is also clear that employers will stand to benefit

from the passage of SB 187 because it will translate into increased employee productivity while at the same time creating more flexibility for those very same employees. Doing more with less in today's economy is what has kept our businesses strong and our key members employed."

In his closing remarks, Pendergast told the committee that SB 187 gives employees and businesses the balanced approach to solving the dire need for employee scheduling flexibility.

Cynthia Schneider, senior vice president of American Security Bank in Corona, also emphasized the opportunity that SB 187 offers to identify and manage the often-conflicting demands of work/life and family issues in these extremely challenging economic times.

"I truly believe that SB 187 represents a viable solution to this problem," Schneider said. "I am convinced that SB 187 is an effective, welcome solution

to the work/life challenges of both employers and employees."

Most important, Schneider reiterated that SB 187 would provide the flexibility that would "create the environment in the workplace that would balance the things like family conflicts and health issues—the things that matter most to the employee—with the things that are critical to the employer: retention of employees and the ability to manage schedules effectively. It's a win-win situation for both sides."

Key Vote

SB 187 failed to pass Senate Labor and Industrial Relations on a party-line vote of 2-4:

Ayes: Hollingsworth (R-Murrieta), Wyland (R-Del Mar).

Noes: DeSaulnier (D-Concord), Ducheny (D-San Diego), Leno (D-San Francisco), Yee (D-San Francisco).

Staff Contact: Marti Fisher

Opposition Delays Action on Legislation Threatening Technology Jobs, Small Firms



OPPOSE

Following strong **opposition** from a California Chamber of Commerce-led coalition, the author of legislation that will harm California online

marketplaces, web-service providers, and websites of small businesses and non-profits opted not to proceed with a hearing on the bill this week.

AB 178 (Skinner; D-Berkeley) was not considered as scheduled April 27 by the Assembly Revenue and Taxation Committee. AB 178 is now a two-year bill, meaning the proposal is still alive,

but will not be eligible for hearing and movement through the Legislature again until January 2010, the second year of the current two-year legislative session.

Driving Business Away

AB 178 changes California's sales tax law in a way that encourages out-of-state retailers to instead use out-of-state online marketplaces and websites.

The bill seeks to establish that California nexus is created when any retailer enters into any referral agreement with a California resident in exchange for compensation or commission—including online marketplaces and websites—that generates referrals in excess of \$10,000 in sales.

"Nexus" refers to the U.S.

Constitution's requirement that an out-of-state retailer have a sufficient physical connection with a state before the state can force the retailer to collect the state's sales or use tax.

Harm to California Companies

Although aimed at out-of-state companies, AB 178 could inflict significant harm on California companies. The language of AB 178 impedes numerous ways that California companies currently survive or earn money, including: offering online-marketplace services to customers that are retailers around the globe, placing banners and other advertisements on websites, and earning commissions from placing "click-through" advertisement links on websites.

By using out-of-state competitor web-service companies, out-of-state retailers can lawfully avoid collecting California sales or use tax, while still reaching California consumers.

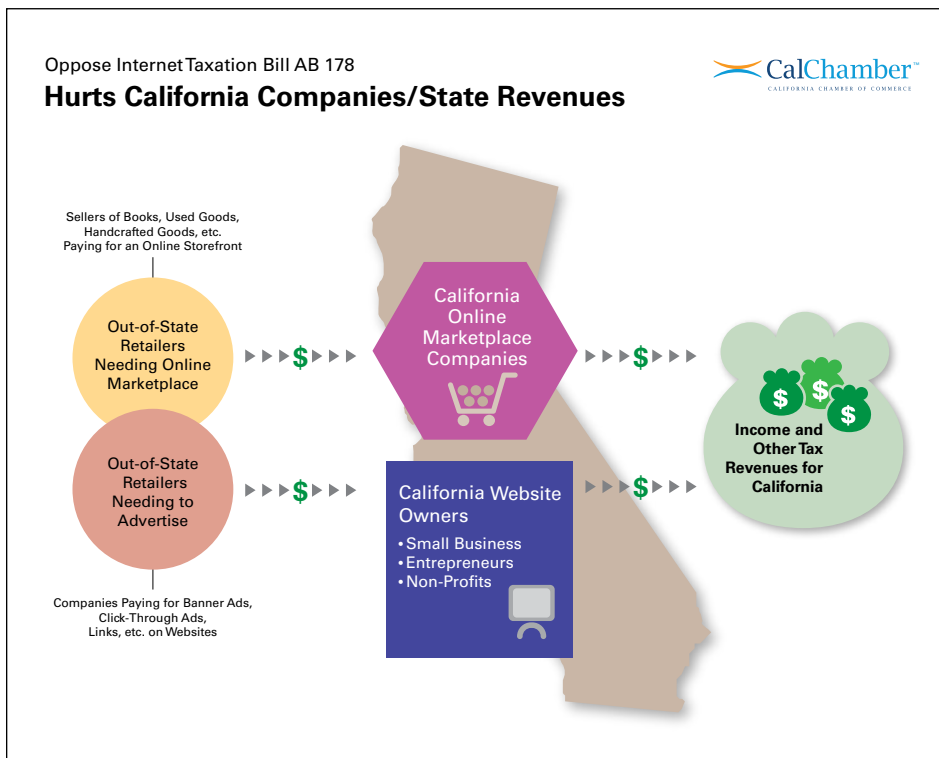
New York Experience

Only New York has adopted a similar nexus standard, prompting a major Internet retailer to terminate all of its "click-through" arrangements with New York-based websites almost immediately.

The constitutionality of the form of nexus that AB 178 attempts to establish has not been decided by the U.S. Supreme Court and thus could be subject to immediate court challenge under the U.S. Commerce Clause. New York was sued immediately after adoption of its nexus law last year and is still in litigation with no end in sight.

A special session bill similar to AB 178, **ABX3 27 (C. Calderon; D-Montebello)**, may be acted upon by the Assembly at any time while the third extraordinary session remains open.

Staff Contact: Kyla Christoffersen



They won't know unless you tell them. Write your legislator. calchambervotes.com

Legislative Outlook

An update on the status of key legislation affecting businesses. Visit www.calchambervotes.com for more information, sample letters and updates on other legislation. Staff contacts listed below can be reached at (916) 444-6670. Address correspondence to legislators at the State Capitol, Sacramento, CA 95814. Be sure to include your company name and location on all correspondence.

CalChamber-Opposed Bill Places Costly Sick Leave Mandate on Employers



OPPOSE

A California Chamber of Commerce-**opposed** bill that would burden California employers with a costly paid sick leave mandate and result in job loss passed the Assembly Judiciary Committee April 27 on a party-line vote of 7-3.

AB 1000 (Ma; D-San Francisco) unreasonably expands employers' costs and liability for a new protected and paid leave for employees.

The bill mandates all employers provide paid sick leave to an employee after seven days of work in a calendar year to care for the employee's own illness or to provide care to a sick child, spouse, domestic partner or other relative. The mandate would extend to all employers and all employees, as specified. There are no exceptions.

The provisions of this bill will have an impact on all employers, large and small, regardless of the level of sick leave currently provided.

According to a study by the National Federation of Independent Business, an estimated 370,000 more jobs would be lost over the next five years if the paid sick leave was mandated as proposed by an identical bill last year.

Because of both the administrative burdens and the additional cost to provide sick leave, public employers believe that AB 1000 will severely restrict the use of part-time, temporary and seasonal employees, further slowing economic recovery. This loss of flexibility also will increase costs and reduce efficiencies in the delivery of services to the public by cities and counties.

The CalChamber believes that in an already-troubled economy, California should be seeking ways to stimulate job growth and recovery while avoiding costly mandates on employers.

Staff Contact: Marti Fisher

Senate Committee OKs New Workers' Comp Penalty Calculation



SUPPORT

California Chamber of Commerce-**supported** legislation that will resolve problems in the current penalty structure passed the Senate Labor and Industrial Relations Committee this week on a unanimous vote.

SB 313 (DeSaulnier; D-Concord) applies to employers that intentionally violate the law and leave their employees uncovered for workers' compensation.

Although the vast majority of California employers comply with the state's mandate to provide workers' compensation insurance for their employees, some seek to obtain a competitive advantage by avoiding this cost. SB 313 punishes those employers and helps level the playing field for compliant businesses.

When the Division of Labor Standards Enforcement finds an employer lacks workers' compensation insurance, the employer is subject to a penalty of \$1,000 per employee, or twice the amount the employer would have paid to have insurance, whichever is greater. Difficulty in accurately calculating the amount

of premium that would have been paid by the employer has created a situation where the maximum penalty oftentimes is not applied, even in the most severe situations.

SB 313 fixes this problem by creating a new system of calculating the premium-based penalty option, which will lead to more significant penalties for those with the most significant violations. The penalties recovered would be deposited into the Uninsured Employers Benefits Trust Fund (UEBTF), which provides benefits to the injured employees of illegally uninsured employers. Most of its funding comes from a levy on all law-abiding employers.

The CalChamber believes that not only will SB 313 discourage employers from taking a calculated business decision not to carry insurance, but the increase in penalties will also reduce the amount that honest employers have to pay to the UEBTF to cover the cost of injuries for the employees of illegally uninsured employers.

Staff Contact: Jason Schmelzer

Bills Encourage Investment in California Jobs

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Manufacturing Investment

Most states recognize that taxing the input as well as the final manufactured product is double taxation and discourages investment. The current policy has resulted in less production in California—out-of-state companies electing to grow elsewhere and in-state companies continuing to shift workers or facilities to other regions that do not burden capital investments with excess taxation.

AB 829 and SB 699 seek to address this tax inequity and barrier to capital investment by exempting purchases of manufacturing equipment (productive assets) from all but 1 percentage point of the state sales and use tax rate of 8.25 percent and fully exempting sustainable development and research and development equipment from the state portion of sales and use tax.

The high cost of doing business in California has already prompted many manufacturers to expand elsewhere or shift operations to other states. Many states provide both a sales tax exemption and investment tax credits to encourage manufacturing investment.

AB 829 and SB 699 would provide manufacturers some relief from the high cost of doing business in the state, which is more than 23 percent higher than the national average, according to the Milken Institute's annual study, Removing barriers to investments to promote new machinery and equipment purchases in California will foster productivity gains, making manufacturers more competitive and allowing them to keep employees and grow the middle class in California.

Furthermore, AB 829 and SB 699 will further the state's ambitious climate change objectives. California has become a recognized leader in setting targets for energy efficiency, water conservation and overall climate improvements through greenhouse gas reductions like the Global Warming Solutions Act of 2006. This bill will take those ambitious goals and objectives one step further by more heavily promoting investments in machinery and equipment aimed at achieving those goals.

Finally, AB 829 and SB 699 provide no upfront cost to the state as exemptions granted would not be collectable until

January 1, 2013. This three-year window allows for business to make investments in the state now, thus allowing California's economy to benefit from increased job retention and growth in an industry that pays above-average salaries and helps to promote the overall growth of California's middle class.

California's ability to meet the state's economic needs depends on a healthy and competitive California economy. A healthy and stable economy for California is one that relies on production rather than just services and consumption occurring in the state. A new and improved tax treatment for manufacturing and R & D investments will send a strong message that California is able to maintain fair and stable tax policies and make the state more business-friendly, even during difficult economic times.

Research and Development

AB 765 will help retain and expand the number of high-paying research-oriented jobs in California, and would help to grow a green economy by providing greater incentives for green technology companies to conduct their research in the state.

The R&D tax credit is, at its essence, a jobs credit. Industry-wide, 70 percent of the credit goes toward wages/salaries, Ernst & Young has estimated. With

California unemployment currently at 10.5 percent, the R&D tax credit provides California companies with an additional tool in retaining employees in a down economy and provides greater incentive for reinvesting in California when the economy improves.

Augmenting credits for investments to promote the retention and hiring of new middle- to high-wage R&D jobs in California will foster productivity gains, making businesses more competitive and allowing them to keep employees and grow the middle class.

Moreover, a more robust R&D tax credit will help in cultivating a green economy and provide greater incentive for sustainable technology companies to locate or expand their operations here in California instead of other less costly states.

Action Needed

The CalChamber urges members to contact their legislators to seek support for these bills.

Ask Assembly Revenue and Taxation members and your Assembly representative to **support AB 765 and AB 829**.

Ask Senate Revenue and Taxation members and your senator to **support SB 699**.

Staff Contact: Kyla Christoffersen

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Chuck Todd
NBC News Political Director
Chief Washington Correspondent

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- Implement policies in accordance with legal requirements.
- Identify issues to consider, such as confidentiality, privacy and medical certification.

CalChamber employment law experts Jessica Hawthorne, Susan Kemp and Erika Frank will provide you with comprehensive material on running your business efficiently while maintaining compliance.

ADA & Reasonable Accommodations 201

Thursday, May 7, 10 a.m.,
90 minutes, \$170*

*CalChamber Preferred and Executive members will receive their 20% member discount. Prepayment by check or credit card is required for Web seminars, online training and orders under \$150.



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