

# ALERT

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## *Independent Contractor Withholding*

# CalChamber Cites Proposal as Small Business Job Killer

A proposal to require businesses to withhold 3 percent of payments to independent contractors amounts to an interest-free loan to the state from small businesses, the California Chamber of Commerce has pointed out to state leaders.

"We respectfully urge you to abandon this proposal," CalChamber President and CEO Allan Zaremberg wrote in a letter to Senate President Pro Tem Darrell Steinberg (D-Sacramento), who has been quoted in news articles as expressing support for independent contractor withholding.

The CalChamber also sent copies of the letter to Governor Arnold Schwarzenegger and all state legislators.

**See Fact Sheet/FAQs:  
Pages 5-6**

## **'Job Killer' Vetoed in 2009**

An independent contractor withholding mandate was included in special session legislation last year that was vetoed by the Governor. The "job killer" proposal (SBX3 17; Ducheny; D-San Diego) would have required a 3 percent across-the-board withholding on payments to resident independent contractors.

*See CalChamber: Page 6*

## Proposition 17 on June Ballot Will Lower Auto Insurance Rates



A California Chamber of Commerce-supported measure

that will lower auto insurance rates and increase competition in the auto insurance market will appear on the June ballot as Proposition 17.

Proposition 17 fixes an inconsistency in auto insurance law and will ensure California drivers who continually maintain auto insurance qualify for the "continuous coverage discount," even if they switch insurance companies.

Under current law, insurance companies are allowed to offer a discount to customers who maintain continuous coverage. An inconsistency in current law, however, prohibits drivers from taking their continuous coverage discount with them if they change insurance carriers.

This inconsistency penalizes more than 80 percent of drivers who purchase auto insurance coverage as required by California law.

## **Competitive Market**

Proposition 17, the Continuous Coverage Auto Insurance Discount Act, makes the already-existing discount portable even if motorists change insurance companies, rewarding responsible drivers and promoting competition and lower rates by

*See Proposition 17: Page 4*



Howard Fineman

CalChamber.

## **2010 Business Summit**

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**Howard Fineman**  
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## Labor Law Corner

### Baby Bonding Leave Frequently Asked Questions



Sunny Lee  
Senior Labor Law  
Consultant

● ***We are an employer covered by the federal Family Medical Leave Act (FMLA) and California Family Rights Act (CFRA). If an employee has not been with us one year and worked 1,250 hours, is the employee eligible for baby bonding leave?***

No. Baby bonding leave under the federal FMLA and CFRA requires that an employee satisfy eligibility requirements,

one year of employment and 1,250 hours worked during the last 12 months of employment.

● ***An employee is asking if she can use her baby bonding leave by taking every Friday off for the next 12 weeks. Are we required to do that?***

No. Under California law an employee may request baby bonding leave on two occasions for less than two weeks in duration. Thereafter you may require that the employee take leave in increments of two or more weeks. In this case, the employee should be granted two Fridays off and then you can require that the remainder of her leave be taken in increments of two or more weeks.

● ***Are we required to change an employee's schedule to part-time during her baby bonding leave?***

No. If an employee is a full-time employee, you are not required to accommodate her desire to work part-time. You may, however, agree to intermittent leave under the federal regulations, which may result in the employee actually working part-time.

● ***If we allowed one employee to take baby bonding leave intermittently, are we required to provide other employees with the same provisions?***

While the new federal regulations allow an employee to agree to intermittent leave during baby bonding, employees should be treated equally or the employer may face a discrimination claim by an employee who is denied what another employee was granted.

● ***Both parents of a newborn are employed by the same company. Are we required to give both of them baby bonding leave?***

You are required to provide both employees with the opportunity to take baby bonding leave; however, you may limit the total time available to both employees to one period of 12 weeks. It is up to the employees then to decide how they will divide the time.

● ***Can we deny baby bonding leave to a father who is not married?***

No. Baby bonding leave is not based on marital status.

● ***Can we deny baby bonding leave when it is not convenient or would result in an undue hardship to the company?***

No. There are no provisions for an employer to deny a request for baby bonding on the basis that it is either inconvenient or would result in an undue hardship. If the employee is eligible for a leave, the request must be granted.

● ***Our employee has not met the FMLA/CFRA requirements of having worked one year and 1,250 hours. Can we deny baby bonding leave?***

Yes. The ability to take baby bonding leave under the FMLA/CFRA requires that the employee satisfy eligibility requirements, unlike the pregnancy leave, which has no work eligibility requirements. Keep in mind that once an employee does meet the eligibility requirements, the employee will be eligible for a leave at that point, provided that the leave occurs within one year of the child's birth.

● ***Does the employer have to continue health care benefits for a father who chooses to take the six-week paid family leave to bond with his newborn child?***

The requirement to provide health insurance falls under the FMLA/CFRA and not the state paid family leave benefit. If the employee is eligible for FMLA/CFRA leave, then insurance benefits must be continued. If the employee is not eligible for FMLA/CFRA, it is a matter of your company policy or practice as to what you would provide.

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Labor law answers  
online **HRCalifornia.com**



# CalChamber Encourages Businesses to Hire Employees with Developmental Disabilities

The California Chamber of Commerce is educating businesses about WE Include, an initiative launched by First Lady Maria Shriver to give people with developmental disabilities the opportunity to join California's workforce.

WE Include raises awareness of resources that address the needs of the developmentally disabled community and works to enable persons with developmental disabilities to live fulfilling and purpose-filled lives by gaining meaningful employment.

The WE Include program is a partnership with the California First Lady's Office, the Department of Developmental Services, the Association of Regional Center Agencies (ARCA), and others. The program facilitates the employment and training of individuals with developmental disabilities.

## Publication/Video

As part of this outreach effort, the WE Include website offers informational resources to help employers learn about



myths and realities involving people with developmental disabilities.

One publication, ***Disability: Dispelling the Myths***, explores several myths associated with employing people with developmental disabilities.

Also featured on the WE Include site is a video highlighting California businesses that have hired individuals with developmental disabilities, with an introduction by First Lady Maria Shriver.

## Hiring Resources

Employers interested in adding persons with developmental disabilities to their workforce can tap several resources for additional information:

- **Local regional centers** throughout California coordinate services for individuals with developmental disabilities and can connect businesses with these qualified potential employees, as well as arrange for on-the-job training and support.

- **ARCA** represents regional centers in California that provide services to more than 200,000 Californians with developmental disabilities. Regional centers are non-profit organizations that contract with the state Department of Developmental Services.

More information about hiring is available from ARCA via its website, [www.arcanet.org/weinclude](http://www.arcanet.org/weinclude), e-mail: [employ@arcanet.org](mailto:employ@arcanet.org), or telephone (916) 446-7961.

ARCA will connect employers with the regional center employment specialist in their area and provide additional information about WE Include.

- **WE Include** maintains a website at [www.weinclude.ca.gov](http://www.weinclude.ca.gov).

## CalChamber-Sponsored Seminars/Trade Shows

More information at  
[www.calchamber.com/events](http://www.calchamber.com/events).

### Business Resources

Verio & Inc. Networking Event/Panel Discussion. Edelman. February 9, San Francisco. (312) 240-2727.

Economic Summit. Beverly Hills Chamber. February 24, Beverly Hills. (310) 248-1000.

Gallup Special Event. Youth Development Network. March 4, McClellan. (916) 228-2227.

### International Trade

Trade Connect. Inland Empire Asian Business Association. February 11, Corona. (714) 309-0472.

U.S.-Japan Clean Tech Symposium. Japan External Trade Organization (JETRO). February 18, San Francisco. (415) 392-1333.

Tex-Styles India. India Trade Promotion Organisation. February 24-27, Pragati Maidan, New Delhi, India. [info@texstylesindia.com](mailto:info@texstylesindia.com).

The Americas Business Forum. Los Angeles Area Chamber. March 3-4, Los Angeles. (866) 264-3536.

CalAgX. Center for International Trade Development (CITD). March 9, Classes in Sacramento, Fresno and San Luis Obispo. (888) 638-7888.

Cairo International Fair. General Organization for International Exhibitions and Fairs. March 11-22, Cairo, Egypt. [info@cairofair.com](mailto:info@cairofair.com).

Globe 2010. The GLOBE Foundation. March 24-26, Vancouver, British Columbia. (604) 695-5001.

Stonetech 2010. CCPIT Building Materials Sub-council. April 6-9, Shanghai, China. [kontakt@merebo.de](mailto:kontakt@merebo.de).

Asiawater 2010. AMB Exhibitions Sdn Bhd. April 6-9, Kuala Lumpur, Malaysia. [kontakt@merebo.de](mailto:kontakt@merebo.de).

### Labor Law

HR101 Part 1—Hiring Employees. CalBizCentral. February 25, Webinar. (800) 331-8877.

HR101 Part 2—Compensation and Benefits. CalBizCentral. March 11, Webinar. (800) 331-8877.

HR101 Part 3—Harassment and Discrimination. CalBizCentral. March 25, Webinar. (800) 331-8877.

HR101 Part 4—Discipline and Termination. CalBizCentral. April 1, Webinar. (800) 331-8877.

## CalChamber Calendar

*Water Committee:*

March 11, La Jolla

*Fundraising Committee:*

March 11, La Jolla

*Board of Directors:*

March 11-12, La Jolla

*International Trade Breakfast:*

March 12, La Jolla

*CalChamber PAC Workshop:*

March 19, Long Beach



## CalChamber, Japan Trade Organization Promote Business Opportunities

The California Chamber of Commerce recently has signed onto the Japan External Trade Organization (JETRO) Affiliation Program.

The “JETRO Connection” is designed to foster dynamic and mutually beneficial relationships between JETRO and various industry-affiliated and government-related organizations and media.

Working as a bridge, JETRO helps organizations stay connected with up-to-date Japanese market information, and makes it easy to reach vibrant and competitive Japanese companies.

Both organizations have agreed to support events, distribute information and assist members in trade-related endeavors.

### Leading Export Partner

California exports to Japan, the world’s third largest economy, increased to total \$13.1 billion in 2008.

# JETRO



Computers and electronic products accounted for 28 percent of total exports. Japan, which ranks third among California’s leading export partners, is also a major source for overall foreign direct investment in California.

U.S. exports to Japan grew to \$66.1 billion in 2008, with imports from Japan to the United States growing to \$139.2 billion.

### JETRO

JETRO is a government-related organization that works to promote mutual trade and investment between Japan and the rest of the world.

Originally established in 1958 to promote Japanese exports abroad, JETRO has shifted its core focus in the 21st century toward promoting foreign direct investment into Japan and helping small to medium-sized Japanese firms maximize their global export potential.

### Trading Partner Portal

The CalChamber has recently expanded a web portal for information about Japan. The portal is one of a series of online international portals featuring California’s top trading partners.

The Japan portal links to key country contacts, including business resources and cultural and educational references. Also available for easy reference are trade statistics and information on foreign direct investment in California.

The trading partner portal for Japan is at [www.calchamber.com/japan](http://www.calchamber.com/japan).

**Staff Contact:** Susanne Stirling

## Proposition 17 on June Ballot Will Lower Auto Insurance Rates

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encouraging consumers to shop around when purchasing insurance.

“Changing the law to allow insurance companies to offer the same discounts to new and existing customers will make the auto insurance market more competitive,” said Jim Conran, president of Consumers First and former director of the California Department of Consumer Affairs. “If auto insurers want to attract new customers and keep their existing ones, they will have to offer lower prices, better plans and better service.”

### Who Benefits?

Small businesses that buy auto policies through personal lines of insurance and consumers will benefit from the passage of Proposition 17.

The measure does not change the primary factors that determine a person’s auto insurance rates under California law. Insurance companies still will be required to base auto insurance rates primarily on driving safety records, miles driven annually and driving experience. Other discounts, like the good driver or student discount, will remain in place.

“Disappointingly, there are a few who



are trying to defeat this pro-consumer measure,” Conran said. “Recognizing the uphill battle before them, they have attempted to cloud the issue by implying this very simple measure will cause massive upheaval in the market and have an adverse effect on some consumers.

“The fact is that no one will be made worse off under Proposition 17 than under current law. The only difference is that the 82 percent of consumers who currently qualify for this discount will be able to take it with them if they want to switch insurance companies.”

### Consumer Options

If Proposition 17 passes, customers would be free to shop around and shift from one insurance company to another without losing their continuous coverage discount.

Under current law, consumers are

punished for switching auto insurance companies. Under Proposition 17, they would be free to keep their continuous coverage discount and seek additional savings.

“Much also has been made of the fact that the initiative is being spearheaded by Mercury Insurance,” Conran said. “Clearly, Mercury wants to offer this discount to lure new customers and increase its business in California. But the only way it—or any insurer—can gain market share is by offering better rates or plans than the competition.

“That, of course, means consumers will have more options and lower prices. That’s a very clear benefit and one that deserves voter support.”

### Action Needed

The CalChamber is encouraging local chambers of commerce and businesses to join the other business, consumer and taxpayer groups in support of Proposition 17, the Continuous Coverage Auto Insurance Discount Act, on the June ballot.

For more information, or to sign up in support of Proposition 17, visit [www.YesProp17.org](http://www.YesProp17.org).

# Oppose Independent Contractor Withholding

*Forces small businesses to pay taxes they don't owe*

*Forces companies to become the state's tax collector*

## Job Killer When Priority Is Jobs, Jobs, Jobs

- Small business bankruptcies are up 81 percent and unemployment is at an all time high. The President, the Governor and legislators have said jobs are this year's top priority.

- Independent contractor withholding will chill job creation and economic recovery by forcing businesses to send the government money they would otherwise use to stay afloat, meet payroll and pay bills.

- Requirement may tip companies toward keeping work in house or hiring corporations instead of independent contractors, taking work from already-suffering small businesses.

- California's investment competitiveness will take a hit, as it becomes the only state in the nation with this onerous burden.

## Makes Small Business the "Bank" that Loans Money Interest-Free to State

- Even if an independent contractor owes no taxes, 3 percent will still be withheld. In this economic downturn, it is common for businesses to have payroll and expenses that exceed their income.

- The state will use the money—interest-free—until tax return time. Refunds are not subject to any deadline. Last year, the state had to give IOUs.

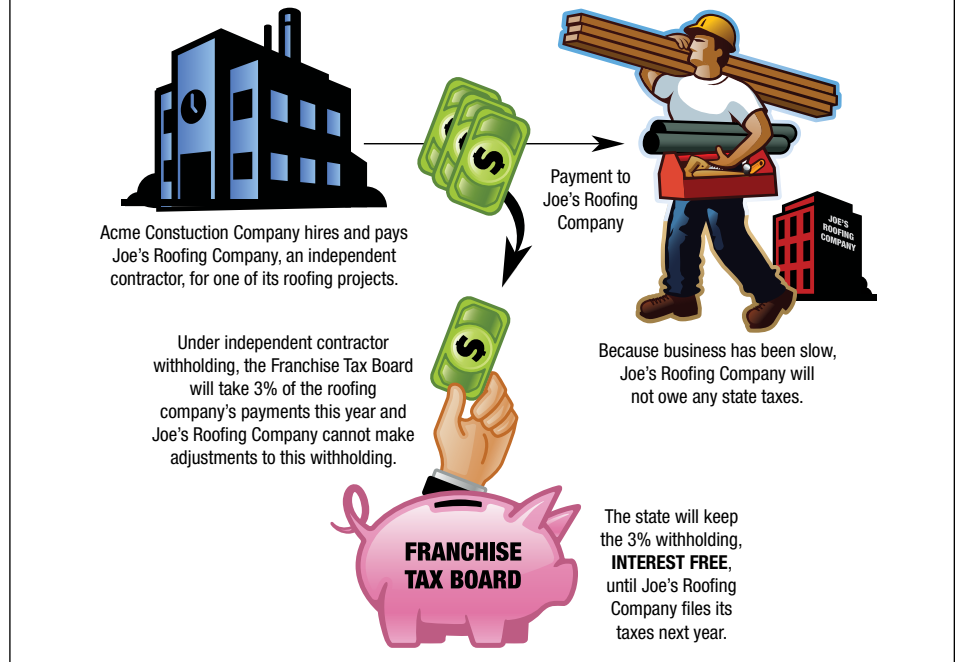
- Businesses that do owe taxes will have to pay early through withholding, which also is a loan to state government. The early payment creates cash flow problems for businesses with slim profit margins that are struggling to cover expenses.

## Generates Little—if Any—New Revenue for State

- Most of the revenue generated is not new; the collection is merely accelerated. Recent budgets already have speeded collections so that 70 percent of independent contractors' tax liability is collected in the first six months of the year, a more than \$2 billion hit.

- Captures only taxpayers who already are reporting, around 90 percent, according to the Franchise Tax Board (FTB).

### Independent Contractor Withholding = Interest-Free Loan to State from Small Business



## Targets Wrong Taxpayers

- Rather than focusing enforcement on the 10 percent that aren't paying taxes, independent contractor withholding will impose new costs on the 90 percent of responsible businesses that are in compliance with tax laws.

- About 500,000 California companies and government agencies that hire independent contractors will have to spend thousands to millions of dollars to serve as the state's tax collector.

- In some cases, the one-time and ongoing costs to implement withholding may exceed the revenues an agency or company generates for years to come.

- Withholding will require significant personnel resources and costly changes to computerized accounts payable systems. Even the state has acknowledged the expense of computer system updates. In 2008, when the Governor ordered state pay cuts, State Controller Chiang declared that computer system changes to accommodate the change would require six months and \$177 million.

## Shifts FTB's Tax Collection Burden and Expense onto Businesses

- Businesses will be collecting income taxes from other businesses. In other words, clients will be collecting income taxes from their service providers and prevented from paying the full amount owed on an invoice.

- Taxpayers already pay for FTB to collect taxes. The burden of tax collection and enforcement should not be shifted to businesses, which cannot recover the costs.

## Creates New Liability and Penalty Exposure

- Determining withholding on thousands of payments from multistate and multinational accounts payable systems can be complex, and it's easy to make a mistake.

- If a company makes a mistake on withholding, it can be liable to the state and the independent contractor for penalties and amounts wrongly over or under withheld.

## Independent Contractor Withholding: Frequently Asked Questions

### ● *What is independent contractor withholding?*

Companies, public agencies, and non-profits must subtract 3 percent off the top of all payments they make to independent contractors for California services rendered and remit the 3 percent to the Franchise Tax Board.

### ● *Why isn't it like employee withholding?*

Employee withholding is handled though an employer's payroll process. Independent contractor withholding affects payments owed to outside service providers for services rendered.

### ● *What payments would be affected?*

Almost all payments to services providers who receive a Form 1099-

MISC. Payments to corporations aren't affected, unless for medical and health care or attorneys fees.

### ● *Who are independent contractors?*

Independent contractors are a host of self-employed individuals and businesses, ranging from small businesses and entrepreneurs to large firms. Examples include: builders, real estate agents, computer programmers, accountants, automotive mechanics, attorneys, medical doctors, engineers.

### ● *When do independent contractors pay taxes?*

They pay their income taxes throughout the year through quarterly estimated tax payments. If they don't and underpay, they are subject to

penalties. Because of recent budget agreements, independent contractors must pay 70 percent of their taxes by June of each year for the next two years.

### ● *Why are independent contractor tax burdens greater than employees'?*

Independent contractors are not on anyone's payroll. They are self-employed and may have employees of their own. Independent contractors are businesses and are taxed as businesses. They pay more kinds of taxes than employees, such as self-employment taxes and local business taxes. They must also pay taxes not only on a personal level, but also on business income, purchases and property.

## CalChamber: Independent Contractor Withholding Kills Small Business Jobs

*From Page 1*

Independent contractors are self-employed individuals and businesses, ranging from small businesses and entrepreneurs to large firms. Examples include: builders, real estate agents, computer programmers, accountants, automotive mechanics, attorneys, medical doctors, engineers.

As businesses, independent contractors pay more kinds of taxes than employees, such as self-employment taxes and local business taxes; pay income taxes throughout the year through quarterly estimated tax payments; and are subject to penalties for not paying or underpaying.

Because of recent budget agreements, independent contractors must pay 70 percent of their taxes by June of each year for the next two years.

### Threatens Small Business

In a year when the Governor and legislative leaders have indicated that job creation is a top priority, independent contractor withholding "will destroy rather than create California jobs," Zaremberg wrote.

CalChamber opposition to independent contractor withholding is based on the following:

- Independent contractors already have a greater tax burden than employees;
- Withholding will wrongly force

small businesses to loan money to the state, interest-free;

- Withholding could generate little if any new revenue for the state; and
- Withholding targets the wrong group of taxpayers—taxpayers who are already compliant.

A fact sheet on independent contractor withholding appears on Pages 5–6 of this *Alert*.

### Action Needed

CalChamber members need to make their voices heard! To join the opposition coalition, contact [kyla.christoffersen@calchamber.com](mailto:kyla.christoffersen@calchamber.com).

**Staff Contact: Kyla Christoffersen**

## Small Business Advocate Award Nomination Form Available

The California Chamber of Commerce has opened nominations for its Small Business Advocate of the Year Award.

Nominees should have contributed significantly as an advocate for small business by being involved in such activities as taking leadership roles in or working on state or local ballot

measures, testifying before the state Legislature, representing a local chamber of commerce before local government, and being actively involved on federal legislation.

### Deadline: April 2

Award nominations are due to the

CalChamber Local Chamber Department by April 2. The CalChamber will recognize award winners at its Business Summit on May 17 in Sacramento.

The nomination form and criteria are available at [www.calchambervotes.com](http://www.calchambervotes.com) or may be requested from the Local Chamber Department at (916) 444-6670.

## *Small Business Advocate of Year Award*

# Fresno Attorney Finds Time to Make Change in Local Business Scene



**Victoria Salisch**

Victoria Salisch spent 10 years behind the scenes at the Greater Fresno Area Chamber of Commerce, networking, helping out at events and attending ribbon cuttings.

Then something changed.

After chairing the chamber's marketing committee for a few years and acting as a member of the board, Salisch was approached by the chamber president, who asked her to be the vice chair of the governmental affairs division.

"My first reaction was I didn't have enough time," said Salisch, who since 1993 has been a partner at the law firm Lang, Richert & Patch, responsible for real estate, business and financial transactions, having served as both a lawyer and real estate broker.

She accepted the invitation, however, and since 2005 has been a highly active business advocate.

"Victoria has proven to be a valuable asset for the chamber, and a strong representative for the business community," said Al Smith, president/CEO of the Fresno Chamber.

## **Public Safety Consolidation**

Salisch helped spearhead an effort by the chamber to consolidate city and county public safety activities to increase safety and ease budget constraints.

The campaign began after the former sheriff, police chief and fire chief came to the chamber asking for assistance in establishing a complete consolidation of public safety programs.

Consequently, the chamber hired a consultant to find the areas where the city and county could create efficiencies, and save lives in some cases. Consolidating property and evidence storage, communications and dispatch services, and joint prisoner processing, among others, became top priorities.

Initially, the goal was to have a single, joint dispatch center and to also work on some of the consultant's other suggestions.

"The city and county were buying different communication systems. They put a lot of money into these systems that couldn't be integrated," said Salisch.

The chamber helped create a Joint Powers Authority for the effort.

"We thought at least if they are at the same table, then they will be talking to each other before they make these decisions about big expensive expenditures of money. At some point, their communications equipment will be obsolete," Salisch said.

Progress has slowed since some of the recommendations for governance were not accepted during negotiations between the city and county, but the chamber remains dedicated to the effort.

"We have pushed them further than we have before and we haven't given up," Salisch said.

## **Revitalizing Downtown**

Having lived in Fresno for three decades, Salisch has a good grasp on the city's culture.

"This is a community with many large city amenities, but it is very much like a small town in terms of the way people interact—everyone seems to know everybody," she said.

Her local business knowledge, tenure as a resident and time on the Fresno Chamber Board of Directors led her to yet another venture: revitalizing downtown Fresno.

As a member of the chamber executive committee, she met frequently with the mayor about community issues, along with other interested parties. At one of these meetings, Salisch suggested to the mayor that due to term limits, there was a lack of consistency in the revitalization efforts. She further suggested that the chamber could be the long-term facilitator of a revitalization effort, and he approved.

"So I told him the chamber would be willing to put together a task force to try to keep everybody moving forward and he thought it was a great idea," she said.

Salisch then helped create a task force (planners, people who worked downtown, people who owned property downtown and people who were just interested) that met twice a month to discuss possible improvements.

"Our feeling has been that the community must have a core central downtown that is lively and vibrant. You can't just be a number of suburban communities strung together by roads and freeways," she said.

The group of stakeholders worked at changing the zoning ordinances and creating a specific plan for the downtown area while Salisch led the effort. Since the start of the effort, the city has elected a new mayor who is continuing the effort and seems to recognize the value of the chamber's work on revitalization, Salisch said.

"Some of the people on the chamber task force are now on the mayor's payroll, including the chamber's former governmental affairs manager," Salisch said. "They have a new department there now and are continuing the work started by the task force."

Salisch said she is happy the city has taken over most of the revitalization effort, even while the chamber remains a facilitator.

## **More Activities**

Other community-building activities with which Salisch has been involved include:

- As the chamber board chair, Salisch created a relationship between the chamber and younger professionals by reaching out to existing groups, including Creative Fresno and Fresno's Leading Young Professionals. Some of these professionals also worked on the downtown revitalization.
- In addition, Salisch recently traveled with a group of 10 volunteers from the Fresno Chamber to Washington, D.C. to speak to California representatives on the union card check legislation.

- She also has debated California representatives in Fresno on the pending health care reform bills.

- She created the Fresno Chamber Entrepreneurial Awards, including the Zinkin award, which goes to a local businessperson who has created something recognized beyond the Fresno area. In addition, cash prizes are awarded to a "rising star" (in business for five years or less), a college entrepreneur and a high school entrepreneur.

It seems she has made plenty of time for her chamber career.



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contains it all: one poster (laminated or non-laminated, English or Spanish) and 20 copies each of the *Workers' Compensation*, *State Disability Insurance*, *Paid Family Leave*, *Unemployment Insurance* and *Sexual Harassment Information* pamphlets.

**Hurry!**  
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Offer



Purchase the **Required Notices Kit** and get a \$10 Starbucks® Card.\* Offer expires 3/12/2010. Use priority code RST when ordering. \*CalChamber Preferred and Executive members will receive their additional 20% off.

Order online at [www.calbizcentral.com](http://www.calbizcentral.com) or call 1-800-331-8877

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