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# Environmental Standard Bill Passes Senate Committee



A California Chamber of Commercesupported job creator bill that has the dual

benefit of facilitating job creation while ensuring environmental integrity passed a Senate committee this week.

AB 1846 (M. Pérez; D-Coachella) streamlines the California Environmental Quality Act (CEQA) approval process for certain projects by allowing industries subject to compliance with greenhouse gas regulations under AB 32 to go through an expedited environmental review through a focused environmental impact report (EIR).

AB 1846 passed the Senate Environmental Quality Committee by a 7–0 vote on June 14.

#### **Ambitious Goals**

California is aggressively working to meet its ambitious environmental goals set forth by AB 32, The California Global Warming Solutions Act of 2006. As regulations are being adopted to reduce California's greenhouse gas emission levels, companies subject to compliance with these regulations must make significant modifications to existing facilities in order to reduce emissions in compliance with the law.

By law, greenhouse gas regulations must be adopted by January 1, 2011, so companies have a short timeframe to become AB 32 compliant. In order to make infrastructure changes, these companies must go through the necessary CEQA permitting process before construction of significant project modifications/upgrades can begin.

See Environmental: Page 4

# Legislature Actively Considering Many 'Job Killer' Bills



Numerous California Chamber of Commerce-opposed "job killer" bills remain alive and will be considered by legislative policy committees in the coming weeks.

Below is a listing of those bills and scheduled hearing dates.

"Job killer" bills marked with an asterisk (\*) are tax proposals or urgency measures that have yet to win approval from the fiscal committee in the house where they were introduced. These bills are unlikely to move, but the concepts in the legislation probably will be considered as part of the larger budget discussion in the coming weeks.

#### **Costly Workplace Mandates**

#### • AB 482 (Mendoza; D-Norwalk) **Expanded Employer Liability.**

Increases potential liability exposure for hiring decisions by unduly restricting the ability of businesses to use consumer credit reports as part of the background check process. Hearing June 29 in Senate Judiciary Committee.

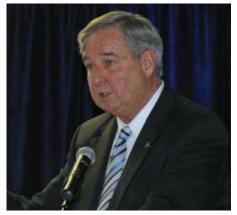
• AB 2187 (Arambula; I-Fresno) Expanded Employer Liability. Creates a significant disincentive to locate jobs and operations in California by potentially criminalizing almost any legitimate wage dispute with a terminated employee that See Legislature: Page 5

#### Inside-

HR Watchdog Offers Health Care Law Updates: Page 7

# Attorney General Candidates at CalChamber





Featured speakers at the CalChamber Public Affairs Council election retreat this week are (from left) Democrat candidate Kamala Harris, San Francisco district attorney, and Republican candidate Steve Cooley, Los Angeles County district attorney. More photos on Page 3.



#### Labor Law Corner

# Mandatory Service Charges Not Considered Tips for Employees



Barbara Wilber HR Advisor

We collect a mandatory service charge from our patrons that is not distributed to employees. Our employees are demanding that we distribute this amount. Is it a tip?

No, in most instances service charges are not considered tips. When a business establishes a non-voluntary, flat charge or a set percentage of a bill that must

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be paid by the customer, that amount belongs to the business and is not classified as a tip or gratuity.

#### 'Tip' Definition

The enforcement agency, Division of Labor Standards Enforcement (DLSE), describes the differences as follows:

"...a tip is a voluntary amount left by a patron for an employee. A mandatory service charge is an amount that a patron is required to pay based on a contractual agreement or a specified required service amount listed on the menu of an establishment. An example of a mandatory service charge that is a contractual agreement would be a 10 or 15 percent charge added to the cost of a banquet. Such charges are considered as amounts owed by the patron to the establishment and are not gratuities voluntarily left for the employees. Therefore, when an employer distributes all or part of a service charge to its employees, the distribution may be at the discretion of the employer and the service charge, which would be in the nature of a bonus, would be included in the regular rate of pay when calculating overtime payments.'

#### **Preventing Fraud**

In opinion letters dated November 2, 2000, and January 7, 1994, the DLSE further states that "any charge which the

patron *must* pay, cannot be considered in the category of a 'tip' which is defined in Labor Code Section 350(e) as a gratuity."

Having said that, the letters discuss the possibility that misleading patrons to believe that the charge is used to pay a tip when it is not may be fraud pursuant to Labor Code Section 356:

"The Legislature expressly declares that the purpose of this article is to prevent fraud upon the public in connection with the practice of tipping and declares that this article is passed for a public reason and can not be contravened by a private agreement. As a part of the social public policy of this state, this article is binding upon all departments of the state."

It is customary for businesses to notify customers through statements on the menu or other printed materials that a mandatory charge will be added to the bill. Unless you plan to distribute the amount to employees, best practice is to be clear and unambiguous and in no way imply to the customer that the charge is a tip or gratuity.

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-Sponsored Seminars/Trade Shows

More information at www.calchamber.com/events.

#### **Business Resources**

Entrepreneurial Institute. National Black MBA Association. September 24, Los Angeles. (312) 580-8569.

2010 Aerotech Expo Job Fair. Aerotech News and Review. September 25, Lancaster. (877) 247-9288.

Second Annual California Sustainable Tourism Summit. California Travel and Tourism Commission. October 14–15, Lake Tahoe. (916) 319-5426.

#### **Human Resources**

Rehiring Options. CalBizCentral. June 23, Live webinar. (800) 331-8877. Social Media and the Workplace—Can the Two Coexist? CalBizCentral. July 1, Live webinar. (800) 331-8877.

#### International Trade

Golden Triangle. U.S.-Mexico Chamber, California Regional Chapter. June 22, Los Angeles. (310) 586-7901.

7th Annual Global California Conference. Monterey Bay International Trade Association (MBITA). June 23, Los Angeles. (831) 335-4780.

See CalChamber-Sponsored: Next Page

## CalChamber Calendar

Public Affairs Council Spring Retreat: June 15, Sacramento



# Public Affairs Council Retreat Looks Ahead from California Primary Election



CalChamber Board member Gillian Zucker, president of Auto Club Speedway, chairs the CalChamber Public Affairs Council.



Commenting on the California gubernatorial campaign to date and in the future are panelists (from left) Rob Stutzman, Stutzman Public Affairs; Senator Tony Strickland (R-Thousand Oaks); Roger Salazar, Acosta Salazar Public Affairs; and Joe Shumate, Joe Shumate and Associates.





Weighing the prospects for the many initiatives qualified or attempting to qualify for the November ballot are (from left) Adam Mendelsohn, Mercury Public Affairs; Frank Schubert, Schubert Flint Public Affairs; Scott Day, California Teachers Association; and Christy Wilson, Goddard Claussen.

More photos, story at www.calchamber.com/publicaffairs.

# CalChamber-Sponsored Seminars/Trade Shows

From Previous Page

Global Readiness—Leadership Conference. Los Angeles Area Chamber of Commerce. June 30, Los Angeles. (213) 580-7569.

Indo Aquaculture 2010. Indonesia
Directorate General of Livestock
Services, Department of Agriculture.
July 8–10, Jakarta, Indonesia.
kontakt@merebo.de.

Indo Livestock 2010. Indonesia Directorate General of Livestock Services, Department of Agriculture. July 8–10, Jakarta, Indonesia. *kontakt@merebo.de*.

Africa's Big Seven. Exhibition Management Services. July 18–20, Johannesburg, South Africa. admin@ exhibitionsafrica.com.

Indowater 2010. PT. Napindo Media Ashatama. July 28–30, Surabaya, Indonesia. *contact@merebo.de*.

Indowaste 2010. PT. Napindo Media Ashatama. July 28–30, Surabaya,

Indonesia. contact@merebo.de.
Indomeelex 2010. PT. Napindo Media
Ashatama. July 28–30, Surabaya,
Indonesia. contact@merebo.de.

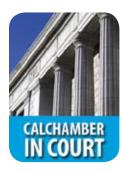
India Trade Conference. Quantaco. July 29, Irwindale. (949) 480-9466.

Destination India 2010. Port of Los Angeles, Southern California Edison and Quanta Consulting. July 29, Irwindale. (949) 480-9466.

N-Expo 2010. Nippo Co. Ltd. September 1–3, Osaka, Japan. (415) 392-1333.



# State Supreme Court to Review Liability of Employer for Employee Actions



At the urging of the California Chamber of Commerce and the California Civil Justice Association (CJAC), the state Supreme Court has agreed to review an important court case addressing employer liability

for employee actions at work and whether certain evidence may be used after the employer admits such liability.

The CalChamber and CJAC submitted a letter urging the California Supreme Court to grant review of this case on May 12.

In the case of *Diaz v. Carcamo, et al.*, the California Supreme Court will decide whether once an employer admits liability for an employee driver's negligence in causing an accident, a plaintiff can use evidence related to the employee's driving record to pursue other legal theories, such as negligent hiring and/or retention, against the employer and recover damages.

The case also turns Proposition 51, a 1986 ballot initiative approved by the voters, on its head. Proposition 51 reined in inequitable damage awards by providing that parties to a negligence action pay no more than their respective

percentage of fault for an injured party's non-economic damages. The *Diaz* case dismisses the allocation of fault dictated by Proposition 51.

#### Law Explained

Before the recent upswing in negligent hiring/retention cases, employers generally were held liable only for negligent and intentional acts of employees done in the course and scope of employment when such acts injured others, under the doctrine of *respondeat superior*. Under that doctrine, injured third parties generally could not recover against employers if the wrongful acts occurred outside the scope of the employee's employment or were not in furtherance of the employer's business.

Under the negligent hiring/retention doctrine, however, injured third parties have, in certain situations, successfully sued employers for negligent hiring/retention of employees who engage in criminal or violent acts that occur after working hours or outside the scope of employment.

Negligent hiring/retention, therefore, enables plaintiffs to recover damages in situations where the employer previously was protected from liability.

#### **CalChamber Letter**

The CalChamber believes that once vicarious liability of an employer for the

employee driver's negligence is admitted, there is no need to inflame a jury with evidence of the defendant's poor driving record or bad character when all that is necessary is for the plaintiff to prove that the employee was negligent in his driving and demonstrate the extent of damage the plaintiff sustained.

To do otherwise, and permit introduction of the "kitchen sink" of evidence about a defendant's driving record and character, will result in longer litigation and protracted satellite disputes over whether certain evidence was more prejudicial than substantiating. This is counter to efficiency, economy and fairness, goals essential to a viable civil justice system, CalChamber argued in its letter.

Moreover, the policy rationale behind Proposition 51 must be restored. As discussed in its letter, under the opinion of the case, the employer was made responsible for both the 20 percent of fault determined for its driver's negligence in causing the accident and an additional 35 percent for its own alleged negligent retention of its driver. As a result, the employer is responsible for 55 percent of the loss, or 35 percent more of its fair share. This result must be corrected such that an employer's liability is fairly apportioned under Proposition 51.

Staff Contact: Erika Frank

### **Environmental Standard Bill Passes Committee**

From Page 1

Since the CEQA process can be arduous, often marked by delays and great expense to business, it is important that the state look for ways to help streamline this process in order to help industries meet their AB 32 goals in a timely manner.

#### **Expedited Review**

AB 1846 provides such a path by requiring an expedited environmental review of greenhouse gas compliance projects through a focused EIR.

Specifically, this bill will clarify and streamline the CEQA process for projects

required to comply with emission reduction regulations under AB 32. This process will eliminate unnecessary layers of environmental review for specific projects without compromising necessary environmental review.

#### **Action Needed**

AB 1846 is scheduled to be considered next by the Senate Appropriations Committee. The CalChamber is urging members of the business community to contact their legislators and committee members and urge them to support AB 1846.

Staff Contact: Brenda M. Coleman

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

calchambervotes.com



# Legislature Actively Considering Many 'Job Killer' Bills



• SB 810 (Leno; D-San

Francisco) Government-Run Health Care. Creates a new government-run, multibillion-dollar socialized health care system based on a yet-to-be specified "premium structure"—in essence, a tax on all employers. Hearing June 29 in Assembly Health Committee.

• SB 1121 (Florez; D-Shafter)
Harms California Farms and Farm
Workers. Places farms at a competitive
disadvantage, increases cost of doing
business for California farmers, and
reduces available resources to invest in
workers and farms by removing overtime
exemption for agricultural employees.
Hearing June 23 in Assembly Labor and
Employment Committee.

• SB 1474 (Steinberg; D-Sacramento) Increased Agricultural Costs. Undermines the process that now guarantees through secret-ballot elections, a fair vote and the expression of agricultural employees' true sentiments on the selection of a collective bargaining representative. This act will hurt California's businesses by driving up costs, making employers less competitive in a global market. Hearing June 23 in Assembly Labor and Employment Committee.

#### **Economic Development Barriers**

• AB 656 (Torrico; D-Fremont)/
AB 1604 (Nava; D-Santa Barbara)/
ABX6 1 (Nava; D-Santa Barbara)
Gas Price Increase. Increases gas
prices and dependence on foreign oil
by targeting the oil industry for a tax
on only oil extracted in California, in
addition to other taxes not levied in
other states. AB 656: Hearing June 23
in Senate Education Committee. AB
1604: In Assembly Revenue and Taxation
Committee. ABX6 1: In Assembly.

• AB 846 (Torrico; D-Fremont)
Anti-Business Cost Increases.
Significantly increases the cost of doing business in California by placing an automatic increase on fines and penalties without legislative review and encourages

state agencies to levy the highest fine and penalty allowed. *Hearing June 22* in Senate Governmental Organization Committee.

- ◆ AB 1405 (De León; D-Los Angeles) Climate Change Tax Increase. Increases costs and discourages job growth by granting the Air Resources Board broad authority to implement unlimited fees and taxes with little or no oversight. *In Senate*.
- AB 1836\* (Furutani; D-South Los Angeles County) Increased Tax Burden. Harms small businesses, many of whom pay taxes under the personal income tax system, by imposing another temporary personal income tax increase on top of the existing personal income tax increase that was passed in last year's budget. Held in Assembly Revenue and Taxation
- AB 1935\* (De León; D-Los Angeles)/ SBX6 18\* (Steinberg; D-Sacramento) Discourages Business Growth in California. Raises taxes for many companies with significant investments of property and payroll in California by making the single sales factor apportionment method mandatory. AB 1935 held on Assembly Appropriations Suspense File. SBX6 18: Senate Revenue and Taxation Committee.
- AB 1936\* (De León; D-Los Angeles) Creates Inequity in the Tax Structure. Harms struggling small businesses and start-ups by repealing the Net Operating Loss (NOL) carry back deduction, a lifeline that helps employers stay afloat, retain employees, and continue investing in their businesses in an economic downturn. Held on Assembly Appropriations Suspense File.
- AB 2100\* (Coto; D-San Jose)/ SB 1210\* (Florez; D-Shafter) Targeted Tax Increase/Flawed Budget Philosophy. Threatens jobs in beverage, retail and restaurant industries by arbitrarily and unfairly targeting certain beverages for a new tax in order to fund obesity-prevention programs and services. AB 2100: Assembly Revenue and Taxation. SB 1210: Senate Revenue and Taxation Committee Suspense File.
- AB 2492 (Ammiano; D-San Francisco) Higher Employer Property Taxes. Undermines Proposition 13 protections and could result in higher property taxes for small businesses by creating an arbitrary and unfair standard

for determining that a business property has changed ownership and needs to be reassessed. *Assembly Floor*.

- ACA 6 (C. Calderon; D-Montebello) Discourages Investments. Discourages investments in jobs and operations by imposing an automatic sunset of seven years on any new or extended tax credit, exemption or deduction. Assembly Floor.
- ACA 22\* (Torlakson; D-Contra Costa) Targeted Tax Increase/Flawed Budget Philosophy. Exacerbates state budget problems and harms tobacco industry by unfairly targeting it for a new cigarette tax, a declining revenue source, to fund new government spending programs. Assembly Governmental Organization Committee and Assembly Revenue and Taxation.
- SB 967 (Correa; D-Santa Ana) Restricts Business Options. Limits choice and drives up prices for consumers and for state and local government by providing a preference to bidders who commit that 90 percent of the work will be performed by California employees. Hearing June 29 in Assembly Business, Professions and Consumer Protection.
- SB 974 (Steinberg; D-Sacramento) Undermines Economic Development. Threatens California's economy and economic recovery by effectively gutting the California Enterprise Zone (EZ) program hiring tax credit and in turn increasing employer taxes in order to fund a new education tax credit. Assembly Jobs, Economic Development and the Economy.
- SB 1272 (Wolk; D-Davis)
  Discourages Investment. Creates
  uncertainty for California employers
  making long-term investment decisions
  by requiring all future-enacted investment
  incentives to sunset after seven years.
  Hearing June 28 in Assembly Revenue
  and Taxation.
- SB 1275 (Leno; D-San Francisco)
  Delays Residential Construction
  Industry Recovery. Hinders recovery
  of the residential construction industry
  by reducing the availability of credit
  due to delays in resolving delinquent
  loans by requiring lenders to determine
  a borrower's eligibility for a loan
  modification prior to the filing of a
  notice of default. Hearing June 21
  in Assembly Banking and Finance
  Committee.

See Legislature: Page 6



# Hearing Set on Bill Boosting Construction Jobs



California Chamber of Commercesupported job creator legislation that

increases construction jobs is scheduled to be considered by the Assembly Judiciary Committee on June 29.

SB 1192 (Oropeza; D-Long Beach) provides a funding source for

construction to improve infrastructure at California airports and creates a better travel environment for state business and tourism.

SB 1192 will help finance consolidated rental car outlets at Los Angeles International Airport, Bob Hope Airport (Burbank), Fresno Yosemite International Airport and San Diego International Airport.

By allowing airport operators the authority to access increased Consumer

Facility Charges, SB 1192 will alleviate traffic congestion, saving travelers valuable time and reducing air pollution.

In addition, car rental agencies will be able to take advantage of common-use transportation systems and benefit from increased access provided to potential customers.

SB 1192 won Senate approval June 3 with bipartisan support.

Staff Contact: Mira Guertin

# Legislature Actively Considering Many 'Job Killer' Bills



From Page 5
SB 1316
(Romero; D-East Los Angeles)
Employer Tax Increase. Places
California out of step with federal law and creates a

disincentive for multi-state companies to invest in California by making it the only state to impose a tax liability when a company needs flexibility to exchange a California property with one owned in another state. *Hearing June 23 in Senate Revenue and Taxation*.

• SB 1391 (Yee; D-San Francisco) Creates Employer Tax Credit Uncertainty. Eliminates the incentive effect of future-enacted tax credits by requiring employers to repay the state for credits claimed in years where their businesses experience a net loss of employees, whether or not the reduction of employees was connected to the effectiveness of the credit. *Hearing June 28 in Assembly Revenue and Taxation*.

# **Expensive, Unnecessary Regulatory Burdens**

- AB 479 (Chesbro; D-North Coast) Expanded Waste Bureaucracy. Exposes employers to new requirements that may be unworkable or not cost effective by giving government broad new authority to impose programs that achieve a statewide solid waste diversion rate of 75 percent by 2020. Senate Appropriations Suspense File.
- AB 2578 (Jones; D-Sacramento)
  Inappropriate Price Control. Reduces health care choices, access and quality by creating additional bureaucracy to impose price controls on health insurance policies while failing to address the

major cost drivers of rising medical costs. *Hearing June 23 in Senate Health Committee*.

#### **Inflated Liability Costs**

- AB 1680 (Saldaña; D-San Diego) Interferes with Contractual Agreements. Burdens businesses with unnecessary litigation costs and slows resolution of disputes by prohibiting enforcement of voluntary arbitration agreements if someone is being sued for a hate crime. Hearing June 29 in Senate Judiciary Committee.
- AB 2773 (Swanson; D-Alameda) Undermines Judicial Discretion. Unreasonably increases business litigation costs by removing judicial discretion to reduce or eliminate exorbitant legal fees in fair employment and housing cases. Hearing June 29 in Senate Judiciary Committee.

Which candidate is best for California? Get the facts and decide for yourself.

Available exclusively at CalChamber2010.com





# HR Watchdog Offers Updates on Health Care Law Implementation

As federal agencies make information available on details or implementation of the new health care law, these updates are being presented at HRCalifornia's *HR Watchdog Blog*.

Just this week, regulations were issued clarifying the "grandfather" rule designed to allow businesses and individuals to maintain current coverage despite new mandates in the recently enacted health care law.

The rule does not exempt all mandates, however, and a plan can lose its grandfathered status if certain changes are made.

#### 'Grandfathered' Plans

For example, compared to their polices in effect on March 23, 2010, grandfathered plans:

- cannot significantly cut or reduce benefits:
  - cannot raise co-insurance charges;
- cannot significantly raise copayment charges;



- cannot significantly raise deductibles;
- cannot significantly lower employer contributions;
- cannot add or tighten an annual limit on what the insurer pays;
- cannot change insurance companies. If an employer decides to buy insurance for its workers from a different insurance company, this new insurer will not be considered a grandfathered plan. This does not apply when employers that provide their own insurance to their workers switch plan administrators or to collective bargaining agreements.

The California Chamber of Commerce is encouraging all employers to look at the new regulations, which are included in the fact sheet from the U.S. Department of Health and Human Services posted by the *HR Watchdog Blog*.

#### **Young Adults**

Also available are links to more information about the law's impact on coverage for young adults. The U.S. Department of Labor and the U.S. Department of Health and Human Services have released identical information and frequently asked questions and answers on the subject.

Following are examples of some of the details cited about the young adult provisions of the new law.

- The new federal law requires plans and issuers that offer dependent coverage to make the coverage available until a child reaches the age of 26. Both married and unmarried children qualify for this coverage.
- This rule applies to all plans in the individual market and to new employer plans. It also applies to existing employer plans unless the adult child has another offer of employer-based coverage (such as through his/her job).
- Beginning in 2014, children up to age 26 can stay on their parent's employer plan even if they have another offer of coverage through an employer.
- The law says that the extension of dependent coverage for children is effective for plan years beginning on or after six months after the enactment of the law—that means plan years beginning on or after September 23, 2010.
- The administration, however, has urged insurance companies and employers to prevent a gap in coverage for young adults aging off their parents' policy before this effective date.

For more information, visit the *HR Watchdog Blog* at *www.hrcalifornia.com* and click on the "Health Care Reform" link.

#### Webinar Available

To help employers understand the impact of the federal health care reform law, the CalChamber recently conducted a webinar on the subject.

The 90-minute session, What Health Care Reform Means to Your Business, is available now as a webinar on demand. Registration information for the ondemand webinar on health care reform is available at www.calbizcentral.com/training or by calling (800) 331-8877.

# CalChamber Labor Law Experts to Be Featured at Major HR Conference/Exhibition

Two California Chamber of Commerce employment law specialists will help HR professionals get their toughest HR questions answered during the Society for Human Resource Management (SHRM) 2010 annual conference and exhibition in San Diego June 28–29.

The SHRM conference and exposition is the largest forum in the world for HR professionals. The event draws more than 10,000 HR professionals from around the world and spans 120,000 square feet of exhibit space. More than 600 large and small exhibiting companies are expected.

#### **CalChamber Experts**



topics such as employee handbooks, se:

Susan Kemp, senior employment law counsel for CalChamber, has written and edited several CalChamber publications on topics such as employee handbooks, sexual harassment investigations, family and medical leave, and exempt/non-exempt employees. She is the manager of the CalChamber's Helpline and a frequent speaker on a variety of employment-related topics.



Erika Frank

Erika Frank, general counsel and head of the CalChamber Legal Affairs Department, has lobbied the legislative and executive branches on taxation, civil litigation and lawsuit abuse issues, and

submitted briefs on cases affecting workers' compensation reform, the general conduct of business, employee relations, taxation, litigation reform and commercial free speech.

For more information about attending the conference, visit the SHRM website, *http://annual.shrm.org*.



## Need assistance with HR issues? Try our HRConsultant Network.

We know you turn to CalChamber when you need current and accurate employment law information. When your human resources needs go beyond California employment law clarification, you can turn to the *CalChamber HRConsultant Network*.

Each participating HR consultant has gone through an application process that included a background verification, professional reference check and interview with CalChamber employment law counsel. Whether it's an employee handbook review, policy development, human resources outsourcing, employee retention strategies or other human resources services—you can now turn to the *HRConsultant Network* to find a local human resources consultant to assist with your HR needs.

The *HRConsultant Network* is just another way that CalChamber is helping California business do business.



To find out more about our HRConsultant Network, call (800) 331-8877 or e-mail us at hrconsultants@calchamber.com. To find a participating HRConsultant Network professional near you, visit www.calchamber.com/hrconsultant.

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