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California chamber of commerce

Immigration Reform Critical for California Economy

FEDERAL UPDATE The California Chamber of Commerce is urging members of the California congressional delegation to take the lead to promote comprehensive immigration reform.

Reform will ensure that California's critical industries have the workers and talent they need to create necessary California jobs. Technology, agriculture, and tourism, among others, must have comprehensive immigration reform to thrive.

Leadership Needed

"We need California's congressional delegation to be leaders," says CalCham-

ber President and CEO Allan Zaremberg in a CalChamber News video released July 12. Immigration reform "is so important to California's economy. This is more important here than anywhere else. And that is exactly why California's representatives need to dominate the debate in Washington. They can't let somebody else, who doesn't have a stake in this, determine the outcome."

What happens in California affects the rest of the country, Zaremberg adds. "Our economy is going to help drive the economic recovery in the rest of the United States."

Reform This Year

On June 27, California's two U.S. senators—Dianne Feinstein and Barbara Boxer—joined with more than two-thirds of the U.S Senate to pass comprehensive *See Immigration Reform: Page 4*

Employer Mandate in Health Care Reform Act Put Off Until 2015, Administration Announces



The White House announced on July 2 that it was delaying implementation of the employer mandate portion of the Patient Protection and Affordable Care Act until 2015. The U.S.

Treasury also issued a notice of the delay. The mandate originally was scheduled to begin January 1, 2014.

Businesses expressed relief over the decision.

Allan Zaremberg, president and CEO of the California Chamber of Commerce, told *USA Today* that the decision to delay implementation "is a recognition of how complex the implementation is."

Zaremberg also commented that many regulations implementing the act weren't published until late last year; many companies wouldn't be ready to implement it; and that more than 90% of CalChamber member companies already offer coverage.

The California Department of Insurance released a statement in response to the Obama administration's See Employer Mandate: Page 7

Manufacturing, R&D Jobs Get Boost from Tax Incentive Bill

Governor Edmund G. Brown Jr. has signed legislation that improves tax treatment for manufacturing and research and development (R&D) investments.

"This legislation will help grow our economy and create good manufacturing jobs...Let's get to work!" Governor Brown said.

The legislation encourages employers to maintain and expand their manufacturing operating in California by providing a full sales-and-use tax exemption for purchases of manufacturing and R&D equipment for eight years on purchases made on or after July 1, 2014.

The CalChamber is a longtime advocate of eliminating the cost of sales tax on equipment in long-term capital investments as most states already do. The tax exemption is necessary to ensure a level playing field to make California more competitive in attracting long-term capital investment.

The tax exemption for manufacturing equipment or R&D equipment purchases for biotech and manufacturing companies was part of a package that eliminates enterprise zones as of January 1, 2014. Enterprise zone credits that have already been acquired can be carried forward for 10 years from the elimination date.

Also in the Governor's economic development initiative are:

• Hiring credits for businesses within former enterprise zones; and

See Manufacturing, R&D Jobs: Page 4

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Governor's Economic Development Incentives: Page 3



Labor Law Corner Unemployment Insurance: Quitting/Firing Not Automatic Disqualification



Ellen Savage HR Adviser

Why do my employees always win their unemployment insurance claims against me, even when they were the ones who quit or when I fire them for poor performance that is clearly documented?

Your former employees can collect unemployment insurance (UI) if they quit their job with good cause, as well as if they are terminated for reasons other than misconduct.

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Email: alert@calchamber.com. Home page: www.calchamber.com. It is important to understand the term "good cause," as well as the difference between poor performance and "misconduct" when deciding whether it is a worthwhile investment of your company's time and money to fight a claim for UI.

'Good Cause'

An employee who quits is not automatically disqualified from receiving UI benefits. An employee who quits with good cause can collect benefits.

"Good cause" means the employee's reason for leaving must be something substantial and compelling that would cause a reasonable person who genuinely wanted to remain employed to quit anyway.

Some common examples include quitting to take a substantially better job, to move to another state when the employee's spouse's job is transferred, or as a result of a substantial reduction in pay (usually 20% or more).

In order to be eligible for benefits after quitting, the employee must also show he/she attempted to preserve the employment relationship, such as by asking for transfer to another location closer to his/her new home or explaining that the reduction in pay is so drastic that he/she will not be able to pay necessary expenses such as rent.

Misconduct

Terminating an employee for poor performance, even when well documented, will not generally prevent the employee from receiving UI benefits. UI benefits will be denied only if the employer can show the employee engaged in miscon-

CalChamber Calendar

Water Committee: September 12, La Jolla CalChamber Fundraising Committee: September 12, La Jolla Board of Directors: September 12–13, La Jolla International Trade Breakfast: September 13, La Jolla 2013 PAC Workshop: September 27, Burbank duct, which generally is defined as willfully doing something that substantially injures the employer's interests.

Typical examples of misconduct include theft, intoxication, deliberate violation of an important safety rule, deliberately falsifying a timecard, or unexcused absences without a compelling reason.

Mere poor performance, incompetence, violation of minor rules, good faith errors in judgment, or not getting along with co-workers do not rise to the level of misconduct.

In order for poor performance to rise to the level of misconduct, the employer must be able to show the employee is deliberately choosing to do a bad job. This requires showing the employee previously demonstrated the ability to do better, his/ her work performance has substantially deteriorated, and there is no reasonable explanation for the deterioration.

Unfortunately, deliberate bad work is difficult to prove in most instances, meaning employees who are fired for poor performance are more likely than not able to collect UI benefits.

More information about UI benefit eligibility is available in the Employment Development Department's *Benefit Determination Guide*, available at *www. edd.ca.gov/uibdg*.

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.

Next Alert: July 26

Quick Answers to Tough HR Questions







Governor's New Econ Development Tools Have Promise for Improving Jobs Outlook



Governor Brown executed a political double-play last week: wrapping top priorities for business and labor into a single bill and gaining bipartisan

Loren Kaye

support for the package.

At issue was the future of the once-popular, but recently embattled enterprise zone program. Eliminating that program's hiring tax incentives had been a priority for the Governor since he regained the office—and for much longer for his union allies.

While labor wanted to dismantle a program they believed was subsidizing nonunion workforces (and incidentally grab the money for general programs), the Governor had wanted to redeploy the economic resources for more effective incentives.

Fortunately for the California economy, the Governor's path prevailed.

Out of the ashes of the enterprise zone program arose several new economic development incentives, including one long sought by businesses and economic developers.

Sales Tax Exemption

The most important new incentive is creation of a true exemption from the state general sales tax for equipment and personal property used in manufacturing and in research and development. The exemption is limited to equipment and property with a useful life of more than one year, and does not include equipment used in agriculture or natural resource extraction.

The exemption would be limited annually to the first \$200 million of equipment purchased per taxpayer, but there is no overall cap on the total amount or number of exemptions that could be claimed statewide.

This means that beginning in one year, July 1, 2014, manufacturers and researchers will no longer be subject to the 4.19% state general sales tax, until June 30, 2022. The sales tax exemption is a long-

overdue step in rationalizing California's treatment of business property used for manufacturing, bringing California closer to the policies followed by nearly every other state with a sales tax. But with the average California state and local rate at around 8.4%, this exemption offsets only about half of the overall sales tax burden on manufacturing equipment.

Guest Commentary By Loren Kaye

The challenge for business leaders and economic development officials during the next eight years will be to demonstrate the importance of this reform to justify making it permanent and expanding it to encompass the entire sales tax rate.

But wait, there's more.

Select Tax Incentives

The administration also devised an intriguing new economic development incentive that is unprecedented in California. For five years, the Governor's Office of Business and Economic Development (GO-Biz)—with the approval of an oversight committee—will distribute up to \$780 million in income or corporate tax incentives to companies seeking to locate, expand or remain in California.

Compared to a typical tax credit or exemption, which the taxpayer automatically receives if the targeted activity qualifies, the criteria to qualify for these credits are vague. GO-Biz will have wide latitude in determining how to select eligible companies.

At a minimum, GO-Biz must "give priority" to companies with projects in areas of high unemployment or high poverty. In addition, GO-Biz must differentiate the amount of the credit according to 11 enumerated factors, such as job creation, compensation levels, economic impact and the "strategic importance" of a project.

Every tax credit agreement must be ratified by an oversight committee, comprising the director of GO-Biz, the Treasurer, Director of Finance and two legislative appointees. The identities and tax credit terms of all applicants would be discussed in open meetings and become public records.

The tax credit program ramps up quickly, with \$30 million provided to GO-Biz this year, \$150 million next year, and \$200 million each for the three following years.

At least one-quarter of all credits annually allocated must be reserved for small businesses, and no single business may receive more than 20% of any single year's total allocation. The credit may be carried forward for up to five years, and is subject to recapture if the business does not meet the terms and conditions negotiated with GO-Biz.

This new program has the potential to launch GO-Biz into the upper tier of state economic development agencies—at least for five years—in terms of incentives available to attract and retain businesses.

Competition will be fierce for these incentives among individual businesses and local economic development agencies seeking to land new economic development. After all, with the demise of redevelopment agencies and enterprise zones, the GO-Biz incentives will become one of the few competitive incentives available in California.

Challenge

The challenge for GO-Biz will be to develop transparent, predictable, and de-politicized criteria that serve a region's and the state's economic and growth interests, and not the interests of narrow constituencies. Enterprise zones may have been inefficient and overbroad, but the new grants will help create more jobs if they are not constrained by, for example, prevailing wage requirements and other costly mandates.

California's unemployment and poverty rankings are shameful. Used properly, the new sales tax exemption and GO-Biz incentives can materially improve them.

Loren Kaye is president of the California Foundation for Commerce and Education, a nonprofit think tank affiliated with the California Chamber of Commerce.



Immigration Reform Critical for California Economy

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immigration reform.

"While I am heartened that the Senate has taken action, we must continue the fight to get immigration reform done this year," Zaremberg said following the vote. "This is one of the most compelling challenges of our time. America—and particularly California—cannot compete and win in a global economy without attracting and retaining a talented workforce of big dreamers."

News reports this week indicate the U.S. House is unlikely to take up the Senate legislation, S. 744, and will instead begin crafting its own immigration reform legislation.

"Unfortunately, it appears the U.S. House members from states that have no economic stake in the outcome of immigration reform are dominating the debate on this crucial issue," Zaremberg said. "California's House members need to protect California's economy and be the dominant voice on immigration reform."

Zaremberg pointed out: "California's economy needs more visas for skilled technology workers or the programs will go elsewhere. Our agriculture industry needs a robust temporary worker program. Strong border security will be essential to a final solution, but it must not destroy our commercial relationship with California's number one export partner, Mexico. Finally, California's economic growth is stifled by the



In the latest CalChamber News video, CalChamber President and CEO Allan Zaremberg emphasizes that because immigration reform is so important to the California economy, the state's representatives in Congress need to lead the debate. See the video at *calchamber.com/calchambernews*.

uncertain status of 2.6 million residents here who do not have legal status, half of whom have been in California for over 10 years."

Reform Principles

The CalChamber and a coalition of 30 local chambers of commerce support the following comprehensive reform principles:

• Strong border security without jeopardizing trade with Mexico (California's largest trading partner);

• A temporary worker program that meets the needs of employers for both

high- and low-skilled jobs that cannot be filled by U.S. workers;

• Strict enforcement of employment verification;

• An earned pathway to legal status.

Action Needed

The CalChamber is asking members to contact their representatives in Congress to urge them to lead the effort for real immigration reform.

An easy-to-edit sample letter is available at *calchambervotes.com*. Staff Contact: Marti Fisher

Manufacturing, R&D Jobs Get Boost from Tax Incentive Bill

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• Investment incentives providing the opportunity for California businesses to compete for available tax credits based on a number of factors, including jobs created/retained and wages paid in those jobs. This part of the program will be overseen by the Governor's Office of Business and Economic Development (GO-Biz).

The new initiative will be funded by redirecting approximately \$750 million annually from the enterprise zone program.

The Governor signed the two-bill economic development package on July

11 in San Diego. The bills are AB 93 (Committee on Budget) and SB 90 (Galgiani; D-Stockton).

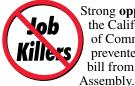
See the *Guest Commentary on Page 3* for further discussion of the economic development package. **Staff Contact: Jeremy Merz**

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

calchambervotes.com



Opposition Stops Employer Penalty Bill



Strong **opposition** from the California Chamber of Commerce has prevented a "job killer" bill from passing the Assembly

AB 880 (Gomez; D-Los Angeles)

would have required the state's largest employers to pay a penalty for each worker who opted to enroll in the state's Medi-Cal program.

The bill fell short of the two-thirds vote needed (54 votes) to pass the Assembly on June 27.

Targeted Tax

AB 880 would have discouraged hiring of entry or re-entry workers, increased costly litigation and threatened access to part-time work for public assistance recipients. The CalChamber argued that the bill was a targeted tax on large employers because it applied a penalty even if the employer offered health care coverage, but the employee opted to enroll in the Medi-Cal program.

Under the failed proposal, California

employers would have been faced with expanded discrimination litigation due to the creation of a new protected classification for any person who is enrolled in California's Medi-Cal program or in the California Health Benefit Exchange.

The bill affected a wide range of industries, including large nonprofits, all of which would have been hit hard with new significant financial penalties related to health care coverage for their workforce.

Bill Components

AB 880 would have:

• Established a new, costly employer mandate. Specifically, AB 880 would have forced larger employers to pay the state an additional penalty for any employee who works 12 hours or more a week and chooses to use Medi-Cal.

• Shifted the costs of funding public health programs from government to employers. The additional penalties included in AB 880 were on top of another penalty that the federal health care program already requires. These monies would have gone to the Medi-Cal program, with 10% used to fund state bureaucracy.

• Reduced part-time workers. AB 880 would have created a disincentive to hiring part-time workers.

• Harmed California companies. AB 880 would have disadvantaged companies who do business in California since it did not apply to companies doing business in other states.

'Job Killer' Update

Only 11 of the 37 "job killer" bills identified by the CalChamber remain active.

For more information on the remaining "job killer" bills, visit *www. CAJobKillers.com*.



CalChamber-Sponsored Seminars/Trade Shows

More information: *calchamber.com/events*. *Labor Law*

- California Employers and Workplace Privacy Webinar. CalChamber. July 18. (800) 331-8877.
- HR Boot Camp: Toughest Challenges. CalChamber. September 11, San Diego. (800) 331-8877.
- Put It in Writing: Employee Handbooks Webinar. CalChamber. September 19. (800) 331-8877.
- California Rules for Pay/Scheduling Nonexempt Webinar. CalChamber. October 17. (800) 331-8877.

Business Resources

- Internship Program Workshop. University of the Pacific and Collegial Services. July 17, Sacramento. 10% discount for CalChamber members. Use promo code "Chambers" when registering. (925) 818-2280.
- Affordable Care Act: Tax and Accounting Considerations Webinar. CalChamber and Moss Adams. August 1. (800) 331-8877.

- Affordable Care Act: Employee Benefits Webinar. CalChamber and Wells Fargo Insurance. August 15. (800) 331-8877.
- California HR Conference. Professionals in Human Resources Association. August 26–28, Anaheim. (310) 416-1210.

International Trade

- Brazil: Exploring a Changing Culture. World Affairs Council of Northern California. July 18, San Francisco. (415) 293-4600.
- Go Global Webinars. U.S. Department of Commerce. July 30 and August 13: Trade Financing; August 27: Documentation and Shipping; September 10 and September 24: Understanding Export Regulations; October 8: Avoiding and Resolving Problems.
- Modern China: Creation of a Global Power. World Affairs Council of Northern California. July 31, San Francisco. (415) 293-4600.
- America's Cup: San Francisco 2013. America's Cup. September 7–22.

- China International Auto Parts Expo 2013. Consulate General of People's Republic of China, San Francisco. September 13–15, Beijing, China. (415) 852-5972.
- Guy Fox Maritime Industry Salute Dinner. International Seafarers Center of Long Beach-Los Angeles. September 18, Aboard RMS Queen Mary. (310) 816-6510.
- The Americas Business Forum. Los Angeles Area Chamber. September 25–26, Los Angeles. (213) 580-7570.
- Expo Pakistan. Trade Development Authority of Pakistan. September 26–29, Karachi, Pakistan.
- SelectUSA 2013 Investment Summit. U.S. Department of Commerce, International Trade Administration, and SelectUSA. October 31–November 1, Washington, D.C. (202) 482-6800.
- Interwine China 2013. MÉREBO Messe Marketing. November 28–30, Guangzhou, China.



CalChamber Opposition Stops 'Job Killer'



Strong **opposition** from the California Chamber of Commerce stopped a "job killer" bill from passing the Assembly Business and Professions Committee on July 2.

SB 686 (Jackson; D-Santa Barbara) would have exposed car dealers and rental car companies to significant liability related to "safety" recalls.

According to *The Sacramento Bee CapitolAlert*, Senator Hannah-Beth Jackson pulled the measure and "... declared after a committee debate that she would put the bill over until 2014."

SB 686 would have precluded car dealers and rental car companies from renting, leasing, loaning, or selling a car despite the lack of actual knowledge that the car was subjected to a recall that may or may not pose any imminent harm to the consumer or renter.

No National Database of Repairs

Although there is a national database of information regarding general recalls issued for certain makes and models of vehicles, there is no similar database that identifies whether a particular vehicle has undergone the repairs necessary to fix the defect.

SB 686 implicitly recognized this

problem and set forth other potential means for a dealer or rental car company to obtain information regarding the status of a recall, and included: the Internet website of a manufacturer; telephone number of a manufacturer; a franchisee of the manufacturer; or a vehicle history report.

While one of these four possibilities ultimately may have produced the necessary information, there was no guarantee that it would. Nevertheless, the dealer would have been imputed with knowledge that it has never received.

Moreover, there was no indication how many times or for what period the dealer must have attempted to obtain information from any of these four options, before the dealer could have reasonably assumed the vehicle was not under a safety recall. Failure on behalf of a dealer to satisfy these requirements would have resulted in litigation or liability.

Delayed Implementation

May 24 amendments to SB 686 delayed implementation of the prohibitions in the bill on a licensed dealer until the effective date of federal regulations that require the creation of a national database that lists all recalls by vehicle identification number and whether the recall has been repaired. The effective date of the regulations, however, is not necessarily the date upon which the federal database will be functional.

The CalChamber had asked that SB 686 be delayed until there is a federal database that is searchable by make, model, and vehicle identification number (VIN) to identify whether a specific vehicle is subject to a recall and has been repaired. Until this database is created, SB 686 subjected dealers to a difficult standard.

'Safety' Undefined

Furthermore, the term "safety" was undefined and extremely subjective.

Essentially all recalls could be characterized as a safety issue, regardless of how imminent or significant the safety threat is as related to the defect.

Further clarity needed to be provided in order for licensed dealers to avoid needless litigation.

Last, SB 686 prohibited a licensed dealer from selling a vehicle as "certified" if it has been subject to a safety recall and the required repairs have not been performed. As set forth above, this was an extremely difficult standard for used car dealers to satisfy until the national database is available. **Staff Contact: Jennifer Barrera**

Workshop to Present Key Strategies for Success in State/Local Elections

The California Chamber of Commerce will be holding a political action committee (PAC) training workshop September 27 at Woodbury University in Burbank, from 9 a.m. to 4 p.m.

The workshop will focus on key strategies for business success in state and local elections, and will cover candidate assessments and endorsements, new Fair Political Practices Commission (FPPC) regulations, and PAC management.

Agenda

• A discussion of legal issues and requirements associated with a PAC led by attorneys Brian Hildreth, partner, Bell, McAndrews & Hiltachk, LLP, and Bradley Hertz, partner, The Sutton Law Firm.

• How to interact with the California



FPPC, featuring Lynda Cassady, chief of the FPPC Technical Assistance Division.

• Keynote presentations by: Assemblyman Raul Bocanegra (D-Pacoima), Assemblyman Jeff Gorell (R-Camarillo), and Senator Alex Padilla (D-Pacoima).

• How to recruit, train, assess and endorse candidates. Panelists are Joe Savarise, vice president of the Business Industry Political Action Committee (BIPAC); former Assemblymember Audra Strickland; and Brendan Huffman, Huffman Public Affairs, LLC.

Registration

Online registration is available at *www.regonline.com/calchamber2013 pacworkshop*.



Webinars Provide Expert Guidance on Affordable Care Act Components

To help employers prepare for implementing key components of the Patient Protection and Affordable Care Act (ACA), the California Chamber of Commerce is continuing its series of free webinars for members in August.

The August webinars will feature experts from Moss Adams LLP and Wells Fargo Insurance Services, and will be moderated by Erika Frank, CalChamber vice president, legal affairs and general counsel.

The 90-minute webinars are \$99 for nonmembers. Both are scheduled for 10 a.m.-11:30 a.m. PT.

• August 1: Affordable Care Act: Tax and Accounting Considerations will feature Brian Conner, CPA and partner at Moss Adams LLP, who will provide compliance strategies and expert guidance on the financial impact of the ACA, from both small business and large employer perspectives.

• August 15: Affordable Care Act: Employee Benefits Compliance. Special guest presenter Diana Craig, compliance director, Wells Fargo Insurance Services, will offer tips on navigating the employer mandate and designing a plan that is strategic and realistic.

Registration

Registration is available by calling (800) 331-8877 or visiting *calchamber*. *com/acawebinars*. Recorded versions of these live webinars will be made available.



Also available is a recorded version of the June 20 webinar on Strategies for Employer Compliance Under the Affordable Care Act.

Employer Mandate in Health Care Reform Act Put Off Until 2015

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announcement: "The requirement that large employers provide health insurance to their employees is an important component of ObamaCare and the Administration should make sure that this provision can be implemented in 2015. In the meantime, uninsured workers will be able to purchase health insurance through the California health benefit exchange."

On July 9, the U.S. Treasury Department and the Internal Revenue Service (IRS) announced transition relief from the employer shared responsibility provisions for 2014. For more information, see the IRS question-and-answer document (Notice 2013-45) at www.irs.gov.

CalChamber webinars explaining strategies for employer compliance with the reform act, tax implications and employee benefits are available at *calchamber.com/acawebinars*. Staff Contact: Gail Cecchettini Whaley

CalChamber Webinar to Examine Workplace Privacy Issues for Employers

The California Chamber of Commerce is making available a webinar to teach businesses about workplace privacy.

Employers must tread carefully when it comes to privacy rights. With ever-changing social media and other technological innovations in communication, the webinar will examine the limits employers can place on employee communications at work and outside of work.

Webinar

The What California Employers Should Know About Workplace Privacy Webinar is being held on Thursday, July 18, 10 a.m.-11:30 a.m. PT.

CalChamber's employment law experts will provide clarity on employee privacy rights related to:

• state and federal guarantees and limitations;

• pre-hire background and social media checks;

• drug and alcohol testing;

- social media in the workplace;
- drafting written policies; and
- employee monitoring.

Live webinar attendees will receive downloadable webinar slides, plus a recording of the live event when it becomes available July 28. Customers who purchase the recorded webinar or the kit (both the live and recorded webinars) will also receive downloadable webinar slides. Questions can be submitted only during the live event.

CalChamber Presenters

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



Erika Frank, CalChamber vice president, legal affairs, and general counsel, 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.

Registration

For more information or to register, call (800) 331-8877 or sign up at *calchamber.com/july18*.



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prepare to implement health care reform.



LIVE WEBINAR | THURSDAY, AUGUST 1, 2013 | 10:00 - 11:30 AM PT

employers until 2015 to provide health care coverage or face penalties.

On July 2, 2013, the U.S. Treasury announced a one-year delay that gives certain

Employers thankfully have more time to plan for the Patient Protection and Affordable Care Act (PPACA) mandate. But the new tax provisions are complicated and impact

What tax incentives and credits are available to small businesses? What are tax

reporting requirements for larger employers?

Find out August 1 when Brian Conner, CPA and Partner of Moss Adams LLP, explains tax/accounting considerations and provides compliance strategies as you

Moderated by CalChamber, the 90-minute webinar is free to CalChamber members and \$99 for nonmembers. Can't make the live event? Register for the recorded version.

employers differently based on workforce size.





