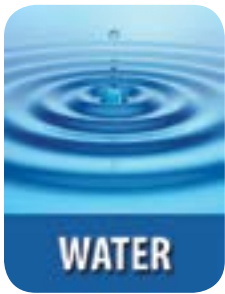


ALERT

VOLUME 40, NUMBER 3 • JANUARY 31, 2014

 **CalChamber**
CALIFORNIA CHAMBER OF COMMERCE

Drought Concerns Escalate



This week's rain did little to dispel concerns about water shortfalls in California.

Governor Edmund G. Brown Jr. proclaimed a State of Emergency on January 17 and directed

state officials to take all necessary actions to prepare for severe drought conditions. For the second straight year, California's snowpack levels are only 20% of average, the driest on record, according to a recent survey by the Department of Water Resources (DWR).

In the State of Emergency declaration, Governor Brown directed state officials to assist farmers and communities that are economically impacted by dry condi-

tions and to ensure the state can respond if Californians face drinking water shortages.

The Governor also directed state agencies to use less water and hire more firefighters, and initiated a greatly expanded water ration public awareness campaign (www.saveourh2o.org).

The proclamation gives state water officials more flexibility to manage supply throughout California.

Low Snowpack

As *Alert* went to print, DWR was conducting its second snow survey (see www.water.ca.gov). The first winter snow survey on January 3 found "more bare ground than snow," adding to concerns about the state's water supply.

DWR and cooperating agencies conduct manual snow surveys around the

See Drought: Page 5

U.S. Supreme Court Rules for Employer in Donning/Doffing Case



In a unanimous decision this week, the U.S. Supreme Court said that steelworkers who do their job wearing flame-retardant gear are not entitled to compensation for the time they spend

putting on the gear before and after their shift.

The January 27 ruling was in the case of *Sandifer v. U.S. Steel Corp.*

Section 203(o) of the Fair Labor Standards Act (FLSA) allows parties to collectively bargain over whether time spent changing clothes at the beginning or end of a workday must be compensated. U.S. Steel and United Steel Workers had a contract that did not provide for changing time.

The steel workers argued that putting on and taking off (donning and doffing) their mandatory flame-retardant safety wear does not constitute "changing clothes" as used in the FLSA and should be compensable time.

The U.S. Supreme Court disagreed, siding with U.S. Steel and finding that there was "no basis" for the steelworkers claim that the "unmodified term 'clothes' somehow omits protective clothing."

However, the court did not expand the ruling as far as U.S. Steel had requested—to define clothes as every-

See U.S. Supreme Court: Page 4

Opposition Stops 'Job Killer' Holdovers



A number of California Chamber of Commerce-opposed "job killer" bills first identified in 2013 appear to be dead for this year after missing legislative deadlines or being amended.

Missed Deadlines

• **AB 1164 (Lowenthal; D-Long Beach)** would have created a dangerous and unfair precedent in the wage-and-hour arena by allowing an employee who claims a wage violation to assert a lien on an employer's real or personal property, or even a third party's real or personal property, before any trial or administrative hearing has been held to determine if any wages are actually owed by the employer.

AB 1164 was placed on the Assembly Inactive File on January 30, thereby missing the January 31 deadline to pass the house in which it was introduced in 2013.

• **SB 626 (Beall; D-San Jose)** would have resulted in dramatic workers' compensation cost increases for employers. The bill was pulled from the January 15 hearing agenda for the Senate Labor and Industrial Relations Committee at the author's request, therefore missing the January 17 legislative deadline for a 2013 bill to pass from policy committee to fiscal committee in the house in which it was introduced.

SB 626 would have resulted in employers paying nearly \$1 billion in benefit increases to injured workers without an expectation that the increases will be fully offset by system savings.

See Opposition: Page 4

Inside

Bill Increases Health Care Premiums: Page 3

Labor Law Corner

Job Interviews May Be Conducted Online; Employment Laws Still Apply



Jessica Hawthorne
Helpline Manager

Can we interview potential job candidates online through a video or Internet-based system, instead of having them come to our office in person? If not, do we have to pay people who travel to our office for a job interview?

Yes, using a video or Internet-based system to interview candidates is an alternative to the “face-to-face” interview that

can save employers and job candidates time and money.

Laws Still Apply

The same rules for the interview regarding potential discrimination issues would still apply using these alternatives, such as asking all candidates the same, nondiscriminatory questions; providing reasonable accommodation for the interview, as required by the federal Americans with Disabilities Act (ADA) and California’s Fair Employment and Housing Act (FEHA); and ensuring the interviewer takes objective, proper notes during the interview.

Furthermore, you must ensure the required postings for applicants (all of which are included in the California Chamber of Commerce all-in-one **2014 California and Federal Employment Notices Poster**) are visible to the candidate during the interview.

Employers want to be cautious when mandating the use of technology for interviews—if certain candidates are not “tech-savvy” or do not have the appropriate equipment to participate in the video

interview, a disparate impact on a particular protected class may result. Therefore, it is recommended that employers limit video interviews to an option for potential job candidates rather than a requirement (unless use of the technology is required of the job for which the interview is being conducted).

Recordings

In addition, California law prohibits recording of conversations without the consent of all parties present. If employers intend to record the interview (whether on video or online-based, or a face-to-face interview), all parties present must provide consent, either in writing or verbally on tape, the former being preferable.

Compensation

Finally, employers do not need to pay job candidates for their travel to or attendance at the job interview unless the employer requires the candidate to work.

The Division of Labor Standards Enforcement will look at whether the candidate is required to demonstrate a

See Job Interviews: Page 4

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CalChamber-Sponsored Seminars/Trade Shows

More information: calchamber.com/events.
Labor Law

HR Boot Camp. CalChamber. March 5, Long Beach; April 10, Fresno; May 1, Sacramento. (800) 331-8877.

Responsible Sourcing Summit. UL. March 5–6, San Francisco. (310) 215-0554.

Government Relations

California Maritime Leadership Symposium. California Association of Port Authorities, California Marine and Intermodal Transportation Advisory Council, California Maritime Academy. February 19–20, Sacramento. (310) 584-7933, extension 5.

International Trade

Outlook on the Americas Luncheon. Association of American Chambers in Latin America. February 5, Los Angeles. (202) 463-5532.

International Luncheon Forum. CalChamber and the Hong Kong Economic and Trade Office. February 6, Sacramento. (916) 444-6670.

Australia and New Zealand Business Mission. World Trade Center San Diego. February 8–16, Australia and New Zealand. (619) 615-0868.

Trade Mission to Mexico. California Centers for International Trade Development. February 10–14, Chihuahua City and Mexico City, Mexico. (916) 563-3219.

Japan-J.S. Business and Technology Symposium. Japan External Trade Organization. February 10, San Francisco. (415) 392-1333.

Venture Summit West 2014. California Spain Chamber of Commerce. February 12, Mountain View. (212) 202-1002.

23rd International Black Sea Tourism Forum. Crimean Tourism Development Center. February 25–26, Yalta, Ukraine. (415) 316-9430.

Indonesia International Furniture Expo 2014. Indonesian Trade Promotion Center Los Angeles. March 11–14,

See Seminars/Trade Shows: Page 3



Bill Increasing Health Care Premiums Wins California Senate Approval



OPPOSE

A California Chamber of Commerce-opposed bill that will increase premium costs for employers already struggling with the rising cost of

health care passed the Senate this week.

SB 780 (Jackson; D-Santa Barbara) had passed the Senate Appropriations Committee on January 23 without any amendments. Its requirements will harm employers' bottom lines and potentially affect their ability to provide coverage for their employees.

Burdensome Paperwork

SB 780 increases costs for some health plans by imposing new, burdensome record-keeping, filing and notice requirements on preferred provider organizations (PPOs), requiring insurers to track which patients have been treated by a given provider group or hospital and submit a filing to the Department of Insurance and possibly affected customers if a contract termination could affect 1,700 or more enrollees.

The breadth of the notices required by SB 780 creates a costly and unnecessary burden for insurers, whose policy holders can still obtain covered services from these providers under the Continuity of Care statutes and/or as an out-of-network option.

New Prior-Approval Process

SB 780 also establishes a completely new prior-approval process requirement whereby insurers would be prohibited from notifying insureds that a contract had been terminated or might be terminated, until and unless the notice has been reviewed and approved by the Department of Insurance. This new requirement has the potential, in and of itself, to hold insurers hostage and effectively limit their negotiating power with provider groups and hospitals.

The imposition of these new and unnecessary requirements has the potential to increase premiums for PPOs, ultimately leading to reduced consumer choice in the health care market at a time when many businesses and individuals are struggling and health care costs are already expected to continue to rise by close to 6% annually due to inadequate cost controls and recent changes to the health care system.

Key Vote

SB 780 passed the Senate on January 28, 22-8.

Ayes: Beall (D-San Jose), Block (D-San Diego), Corbett (D-San Leandro), De León (D-Los Angeles), DeSaulnier (D-Concord), Evans (D-Santa Rosa), Hancock (D-Oakland), Hernandez (D-West Covina), Hill (D-San Mateo), Hueso (D-Logan Heights), Jackson (D-Santa Barbara), Lara (D-Bell Gardens), Leno (D-San Francisco), Liu (D-La Cañada Flintridge), Mitchell (D-Los Angeles), Monning (D-Carmel), Padilla (D-Pacoima), Pavley (D-Agoura Hills), Steinberg (D-Sacramento), Torres (D-Pomona), Wolk (D-Davis), Yee (D-San Francisco/San Mateo).

Noes: Anderson (R-Alpine), Berryhill (R-Modesto), Cannella (R-Ceres), Fuller (R-Bakersfield), Huff (R-Diamond Bar), Knight (R-Palmdale), Vidak (R-Hanford), Wyland (R-Escondido).

No Vote Recorded: R. Calderon (D-Montebello), Correa (D-Santa Ana), T.Gaines (R-Rocklin), Galgiani (D-Stockton), Lieu (D-Torrance), Nielsen (R-Gerber), Roth (D-Riverside), Walters (R-Irvine), Wright (D-Inglewood).

Staff Contact: Mira Guertin

Seminars/Trade Shows

From Page 2

- Jakarta, Indonesia. (213) 387-7041.
- Offshore Technology Conference 2014. Malaysia External Trade Development Corporation. March 25–26, Kuala Lumpur, Malaysia. (213) 892-9034.
- World Trade Week Kickoff Breakfast. Los Angeles Area Chamber. May 2, Los Angeles. (213) 580-7569.
- China International Food Exhibition 2014. MEREBO Messe Marketing. May 27–29, Guangzhou, China.
- The 15th Malaysia International Food and Beverage Trade Fair. Sphere Exhibits Malaysia Sdn Berhad and Mutiara Sigma (M) Sdn Bhd. June 19–21, Kuala Lumpur, Malaysia.

Remember to Post Log 300A Beginning Feb. 1

Reminder: The Log 300A must be completed and posted beginning February 1. This form contains a summary of the total number of job-related injuries and illnesses that occurred during the previous year.

Employers are required to post only the summary (Form 300A)—not the Form 300 (Log)—from February 1 to April 30.

The summary must list the total number of job-related injuries and illnesses that occurred in the previous year and were logged on the Form 300 (Log). Companies with no recordable injuries or illnesses in the previous year must post the summary with zeros on the “total” line. A company executive must certify

all establishment summaries.

The form is to be displayed in a common area where notices to employees usually are posted. Employers must make a copy of the summary available to employees who move from worksite to worksite, such as construction workers, and employees who do not report to any fixed establishment on a regular basis.

A free Log 300 wizard is available at www.calchamber.com/log300wizard to help a business determine whether it is subject to recordkeeping requirements.

For more information on Form 300 filing and posting requirements, or copies of the OSHA Forms 300, 300A and 301, visit www.hrcalifornia.com.

Opposition Stops ‘Job Killer’ Holdovers

From Page 1

The bill would have distorted the entire balance of the 2012 workers’ compensation reform deal, SB 863 (De León; D-Los Angeles; Chapter 363), that provides injured workers with needed benefit increases, but offsets these increased costs by closing certain loopholes and making California’s workers’ compensation system operate more efficiently with fewer disputes and litigation.

● **SB 622 (Monning; D-Carmel)** would have imposed an excise tax on sweetened beverages—\$0.01 on each fluid ounce of a bottled sweetened beverage and \$0.01 of each fluid ounce produced from a concentrate from which a sweetened beverage is derived.

SB 622 was held on the Senate Appropriations Committee Suspense File on January 23, therefore missing the January 24 deadline for any committee to send to the floor a bill introduced in that house last year.

● **SB 529 (Leno; D-San Francisco)** would have placed an unworkable ban on disposable food services containers or single-use carryout bags. The bill man-



dated that specified “fast food facilities” provide customers with only disposable food service packaging or single-use bags that are either “compostable” or “recyclable.”

These terms are defined as packaging that is accepted for composting in a local curbside collection program available to at least 60% of residents in that jurisdiction.

The bill also established tiered composting and recycling targets for these materials of 25%, 50% and 75% between 2016 and 2020.

SB 529 missed the deadline to be considered on the Senate Floor.

Drastically Amended

● **AB 59 (Bonta; D-Alameda)** Split Roll Parcel Tax — Potentially would have increased the tax burden on busi-

nesses by permitting local agencies to assess a higher parcel tax on commercial property than residential property, overturning an appellate decision that determined such taxes were unconstitutional.

The bill has been amended to deal with a different subject.

● **SB 761 (DeSaulnier; D-Concord)** Expansion of Paid Family Leave Program — Would have transformed the paid family leave program from a wage replacement program into a new protected leave of absence that will burden small and large businesses by allowing an employee to file litigation for any alleged retaliation or discrimination as a result of their intent, request, or use of the paid family leave program.

The bill has been amended to deal with a different subject.

Job Interviews May Be Conducted Online

From Page 2

particular skill or if the candidate is required to engage in some form of training that will benefit the employer—sometimes referred to as “try-out time.”

In general, however, job candidates attend an interview for their own benefit and do not need to be paid for their time or travel.

More Information

More information on interview proto-

col, required postings, and try-out time is available on HRCalifornia.com.

The **2014 California and Federal Employment Notices Poster** is available at calchamber.com/2014Poster.

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.

**Quick Answers
to Tough
HR Questions**



U.S. Supreme Court Rules for Employer

From Page 1

thing worn on the body.

“Our definition leaves room for distinguishing between clothes and wearable items that are not clothes, such as certain equipment and devices,” the court said.

This case affects unionized employers and will be covered in more detail in the February 6 issue of the *HRCalifornia Extra* e-newsletter.

Staff Contact: Gail Cecchetti Whaley

CalChamber Member Feedback



“CalChamber has been an invaluable partner in helping OUTSOURCE provide excellent resources and tools to help our clients navigate the complexities of staying up-to-date and in compliance with state and federal employment laws.”

SANDRA FLOYD
PRESIDENT AND CHIEF EXECUTIVE OFFICER
OUTSOURCE CONSULTING SERVICES
OAKLAND

Drought Concerns Escalate

From Page 1

first of the month from January to May. The manual measurements supplement and check the accuracy of real-time electronic readings.

In addition to the sparse snowpack, many areas of the state ended 2013 with the lowest rainfall amounts on record. Sacramento normally gets about 18 inches of annual rainfall, but ended the year with 5.74 inches of precipitation. Downtown Los Angeles, which averages 14.74 inches of rain, ended with 3.4 inches, beating the previous low of 4.08 inches recorded in 1953.

California Agriculture

Another major concern is the toll a drought will take on irrigation-dependent San Joaquin Valley farms and surrounding areas. These areas feel the impact if California has another dry year without the cushion of reservoir storage that it had in calendar year 2013 due to the storms in late 2012 before California began sliding toward drought.

On January 15, the U.S. Department of Agriculture designated parts of 11 states, including California, as primary natural disaster areas due to drought. The designation, which includes Sacramento, Fresno and San Luis Obispo counties, makes certain farmers eligible for low-interest emergency loans to cover losses.

One farmer from the west side of the valley has determined that only 500 acres of his 10,000 will be planted this year, equating to a loss of 700 agricultural jobs.

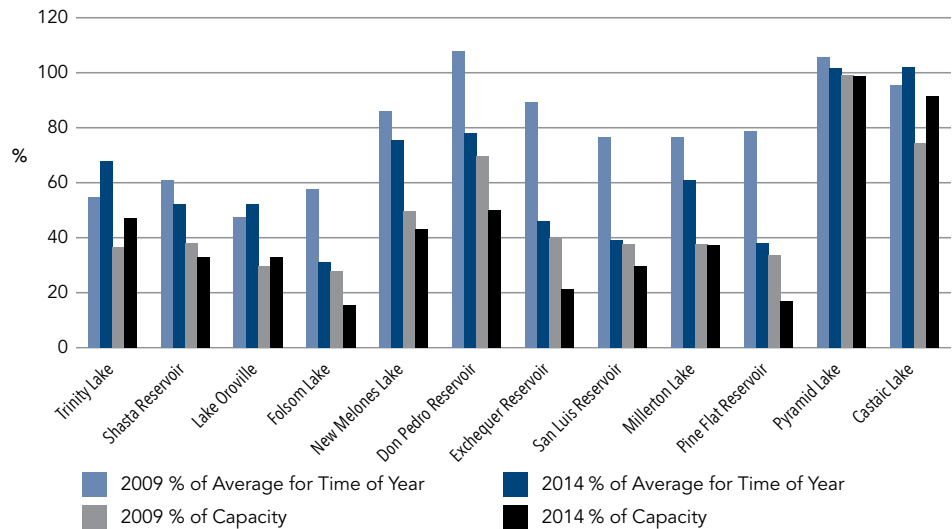
Ranchers are culling their herds early because lack of rain has decimated pasture lands and trucking in feed is prohibitively expensive. For example, a Central Coast cattle auction reports an increase in cows being sold—800–1,000 animals weekly instead of the typical 100–150.

Other Impacts

Water shortages also will be felt in other water-intense business enterprises, such as chip manufacturing, breweries, utilities and hospitals.

In past dry years, public utilities have had to shift away from hydropower to generate electricity, relying more on natural gas-fired resources, which can be more expensive.

California Reservoir Capacity (2009 Versus 2014)



Source: Department of Water Resources, December 22, 2009, January 29, 2014.

Water Deliveries

State water officials say that California's rivers and reservoirs are below their record lows (see chart).

Folsom Lake in Northern California was at 17% of its 977,000 acre-foot capacity—so low that the outskirts of an old Gold Rush-era mining town were exposed.

DWR estimates it will be able to deliver only 5% of the slightly more than 4 million acre-feet of State Water Project (SWP) water requested for the 2014 calendar year by the 29 public agencies that collectively supply more than 25 million Californians and nearly a million acres of irrigated farmland.

The final SWP allocation for 2013 was 35% of the more than 4 million acre-feet requested.

In 2012, the final allocation was 65%, and in 2011 it was 80%.

Water contractors pay for the full amount requested, even if only a portion is allocated and actually delivered.

DWR and other agencies will streamline transfers of water from areas of relative abundance to areas of critical need, monitor water supply impacts in small rural communities whose groundwater sources are stressed by prolonged dry conditions, and take other steps to mitigate the effects of dry weather.

Earlier Administrative Actions

The Governor's drought State of Emergency follows a series of administration actions to ensure that California is prepared for record dry conditions.

- In a May 2013 executive order, the Governor directed state water officials to expedite the review and processing of voluntary transfers of water and water rights.

- In December 2013, the Governor formed a task force to review expected water allocations, California's preparedness for water scarcity and whether conditions merit a drought declaration.

- In January 2014, the Governor toured the Central Valley and spoke with growers and others affected by California's record dry conditions.

The Governor is asking California residents and businesses to voluntarily reduce their water consumption by 20%. Although the Governor's appeal is for voluntary conservation, he suggested the state could impose mandatory reduction measures if the drought lasts.

"As we go down the road—you know, January, February, March—we will keep our eye on the ball and intensify, even to the point of mandatory conservation," he told *The Sacramento Bee*. "But we're not going to do that quite yet."

Staff Contact: Valerie Nera

California Tourism on the Rise

More than 230 million people visited California last year, pumping about \$112.4 billion into the state's economy, estimates Tourism Economics, an industry forecasting firm.

Growth on Horizon

The figures show 2013 was a record year, as tourism spending in the state rose 5.7% from 2012. Total spending by international visitors brought \$22.1 billion in revenue, up 9.3% from 2012. Tourism Economics expects 2014 will see continued growth, estimating an additional 5.9% increase in tourism spending.

California is the No. 1 travel destination in the United States, attracting visitors from other states and around the world. The number of international visitors is projected to increase by 5% this year and by 2015, it is expected that more than 1 million Chinese tourists will visit the state, according to a Visit California Travel and Tourism Industry fact sheet.

Top Export

The travel industry generates more than \$100 billion in revenue for California businesses each year. The industry directly supports almost 1 million travel and tourism-related jobs in the state, making tourism an important commodity of California. It is the state's fifth largest export industry employer, providing more jobs than agriculture, transportation, information, or educational services.

Spending by international travelers alone equals the combined value of the state's top four product exports: civilian aircraft, computer parts, nonindustrial diamonds, and voice/image/data equipment.

A large cross-section of the state's industries—including accommodations, transportation, attractions, restaurants, retail—benefit from increased tourism. As an industry that largely relies on hands-on service, rather than machines

and technology, to thrive, tourism helps to reduce statewide unemployment levels, according to the fact sheet.

"Tourism is remarkably resilient, weathering down economies better than

most other industries," Visit California states. "This resilience helps to ensure a steady, reliable, much-needed tax revenue stream at both local and state levels."

Staff Contact: Marti Fisher



Yosemite National Park spans the eastern parts of Tuolumne, Mariposa and Madera counties. Visitor-generated sales tax receipts accounted for more than 90% of local taxes collected in 2011 in the less populated counties of Mariposa and Mono (located between Yosemite Park and the Nevada border), according to a report by Dean Runyan Associates.

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Profiles in Trade

CalChamber Board Member, Trade Experts Launch California Center in China



California Chamber of Commerce Board member Margaret Wong is among the partners who have launched a new facility—the *California Center*—to promote China-California trade.

Wong is president and CEO of McWong International, Inc. The Sacramento-headquartered company is a supporting partner of the California Center, along with the CalAsian Chamber of Commerce and CHIC Group.

Earlier this month, the California Center hosted a *special reception* in Sacramento to *announce the launch* of its new facility in China. A large group of business and government leaders attended the event, including Allan Zarembeg, CalChamber president and CEO, and Susanne Stirling, CalChamber vice president of international affairs.

Strategically located in the Jiading district of Shanghai, the California Center storefront offers a myriad of services to California companies looking to showcase their goods, products and services directly to Chinese consumers, buyers and wholesalers.

Services Offered

Utilizing the California Center provides California businesses a unique opportunity to benefit from the know-how of trusted Chinese business professionals, as well as marketing and logistics experts.

The center provides door-to-door service to bring products to Chinese

buyer destinations in a seamless operation that includes: shipping, customs clearance, warehousing, sales transactions and customer services. Through the center's portal, Chinese buyers can navigate through listed California companies seamlessly and with ease.

Operated by a group of well experienced China trade experts, the California Center will help California businesses gain entry to China with minimum investment. It also will provide access to hands-on international services that include logistics, marketing, trade, investment and legal help.

The California Center strategically utilizes the Yangshan Port (in Shanghai), which is the world's largest deep-water operating port and gateway to the world's largest consumer population. Additionally, it is located in the newly established free trade zone, which provides a revolutionary new level of benefits to businesses in California.

For more information on the California Center, visit www.CaliforniaCenter.US or contact Gordon Hinkle, ghinkle@californiacenter.us.

California-China Trade

U.S.-China trade has risen rapidly over the past several decades. Total trade between the two nations has increased from \$4.8 billion in 1980 to slightly more than \$536 billion in 2012. Exports to China in 2012 were approximately \$110.6 billion, a steady increase from previous years.

In 2012, China continued as California's third largest export destination, with

more than \$14 billion in exports. Computer and electronic products accounted for approximately 28% of exports, totaling close to \$3.9 billion. Waste and scrap material brought in \$2.4 billion, or 17.4%, while both the machinery (except electrical) and the transportation equipment categories each accounted for approximately 10% of the total, with roughly \$1.4 billion in exports each, according to the U.S. Department of Commerce.

Staff Contact: Susanne Stirling

"Profiles in Trade" is a regular feature highlighting the international activities of CalChamber member companies.



Save The Date

MAY 20-21, 2014

LEGISLATIVE BRIEFING & SACRAMENTO HOST BREAKFAST

CalChamber.



New online tool takes the guesswork out of creating an employee handbook.

Employee Handbook Creator is simple to use, with no software to install or update. **Access the tool from your PC or Mac, desktop or tablet.** Its smart, comprehensive wizard asks a series of questions put together by CalChamber's employment law experts. It even identifies required policies. So you can decide what you want or need in your handbook.

Guiding you throughout the process are Employee Handbook Creator's helpful explanations, plus detailed notes about specific policies. Updating your handbook is easy, too. Just revise online, export to your PC or Mac, and print from your own printer.



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