

RISK REPORT

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WORKERS' COMPENSATION

New Rules on First Aid Claims Reporting Take Effect

NEW CHANGES to the California Workers' Compensation Uniform Statistical Reporting Plan require that even small, medical-only first aid claims be reported.

The Workers' Compensation Insurance Rating Bureau has always required that these small claims be reported, but the requirement has never been codified.

Effective Jan. 1, insurance companies will be required to report to the Rating Bureau the cost of all claims for which any medical care is provided and medical costs are incurred – including those involving first aid treatment – even if the insurer did not make the payment.

Because the rules require insurers to report these claims, they will likely pass that requirement on to you, the policyholder.

That will likely include requiring you to submit all first aid bills to them for payment, rather than paying for treatment yourself.

First aid is defined in California Labor Code as “any one-time treatment, and any

follow-up visit for the purpose of observation of minor scratches, cuts, burns, splinters, or other minor industrial injury, which do not ordinarily require medical care.”

For workers' comp purposes, that also means that the injured worker did not miss work because of the injury.

Besides these rules, there is a very good reason for reporting these claims because what starts as a first aid claim can develop into a larger claim over time.

At that point, if you never reported the claim in the first place, coverage issues may arise.

Current insurer rules

While State Compensation Insurance Fund has already had a policy in place for the last three years which enforces that all claims must be reported, many other insurance carriers have historically allowed first aid claims to be pulled out of the formula and paid for by the employer. ❖

First Aid Claim Examples

- Abrasions and cuts that require cleaning, flushing or soaking.
- Using hot or cold therapy for a muscle injury.
- Drilling a fingernail to relieve pressure, or draining fluid from a blister.
- Removing foreign bodies from the eye using only irrigation or a cotton swab.
- Removing splinters or foreign material from areas other than the eye by irrigation, tweezers, cotton swabs or other simple means.



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TOP 10 LAWS/REGULATIONS

Host of New Laws Affecting Businesses in 2017

AT THE START of every year, a raft of new laws and regulations that affect businesses take effect and companies that fail to stay on top of the changes may end up being fined, cited or sued for not following them.

We know it's hard to keep track of all of the changes, so in this article we look at the top 10 changes for 2017 that you should be aware of.

1. Owners/officers workers' comp exemption

A new law has changed who in an organization can be excluded from workers' comp coverage.

Going forward, only owners and officers who own at least 15% of a company can claim an exemption from workers' compensation coverage in California.

Any company that claims this exemption was required to submit waivers to their insurer by Dec. 31, 2016 for each officer/owner who is exempt.

2. New overtime laws or not?

Department of Labor regulations that were set to hike the white-collar overtime exemption salary threshold to \$47,476 starting Dec. 1, 2016 were put on ice by a federal judge in Texas in late November.

Many employers had already taken action like giving out raises to executive, administrative and professional workers, in order to keep the exemption from having to pay overtime when they work more than eight hours a day or 40 hours a week.

The judge ordered a temporary halt to implementation while he reviewed the case, so for now, the current \$23,660 annual salary threshold will remain – but that could change with short notice.

The big wildcard is what President-elect Donald Trump will do, as many pundits expect he will scrap the regulations.

FROZEN O.T.: *With Donald Trump entering the White House, there is chance that he will order the Department of Labor to not challenge the ruling that has put the new regulations on hold.*



3. New X-Mod regimen

California has new rules for calculating employer X-Mods.

The Workers' Compensation Insurance Rating Bureau has replaced its static "split-point" experience rating system, in which an employer's actual workers' comp losses are divided into actual primary losses and actual excess losses below and above a \$7,000 threshold.

Under the new system, the Rating Bureau will use a variable split-point system that gives more weight to claims frequency than claims cost. This change is expected to limit the impact of one large claim on an employer's (particularly a small business's) X-Mod.

At the same time, an employer's X-Mod would be more affected by the frequency of claims.

4. ACA questions

With the election of Donald Trump for president and the Republican-led Congress's promises to repeal the Affordable Care Act, all the rules that have been created for the landmark health insurance reform law are now thrown into doubt.

While Republican leaders in both the House and Senate have promised to repeal the ACA as well, it's not clear how far they will go and what they would replace it with. They have to tread carefully now that nearly 20 million people buy their coverage from exchanges, and eliminating the law overnight would send shockwaves through the country.

The likely scenario will be a delayed repeal to avoid major disruptions. Trump has said he wants to eliminate public insurance exchanges and the individual mandate, but he has not touched on the employer mandate. Congress has its own extensive wishlist.

For now, continue following the law and wait for further news as Congress and the next president act.



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New Deadline for Certain ACA Reporting Documents

5. Minimum wage climbs

Effective Jan. 1, the state minimum wage for businesses with more than 25 employees is \$10.50 per hour, against \$10 previously. This is another step toward a \$15 per hour minimum wage on Jan. 1, 2022.



6. First aid rules reporting

New amendments to the California Workers' Compensation Uniform Statistical Reporting Plan require that even small, medical-only first aid claims be reported.

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Effective Jan. 1, 2017, insurance companies are required to report to the Rating Bureau the cost of all claims for which any medical care is provided and medical costs are incurred – including those involving first aid treatment – even if the insurer did not make the payment.

Because the rules require insurers to report these claims, they will likely pass that requirement on to you, the policyholder. That will likely include requiring you to submit all first aid bills to them for payment, rather than paying for treatment yourself. (Full details on page 1.)

7. Marijuana is legal

Many businesses have become concerned about the legalization of marijuana in California, particularly how it affects their rights as employers to conduct pre-employment drug testing and dealing with employees who try to use pot on the job.

Proposition 64 included a number of safeguards for employers, allowing them to have anti-drug workplace rules in place. In fact, these safeguards were built into the initiative to the point that the California Chamber of Commerce took a neutral stance on the measure.

And despite California's medical marijuana laws, courts have said that employers are not required to allow patients to imbibe prior to or while on the job. Also, because it is still illegal under federal law, you can also bar employees from keeping marijuana, transporting it or selling it at work.

Just as you have rules against working while intoxicated from alcohol, you should have similar rules for pot.

8. New cellphone law

California already bars texting or talking on the phone without a hands-free device while driving, and now there's a new law that takes into account the many new uses of smartphones.

If you have any employees that drive on the job, you need to update your employee manual to reflect Assembly Bill 1785, which prohibits motorists from driving "while holding and operating" a hand-held wireless telephone or a wireless electronic communication device.

Because people use their phones now for more than just texting and talking – think interacting with apps, using Facebook or surfing the Net – the law needed updating.

But it authorizes a driver to operate a smartphone mounted on a vehicle's windshield like a GPS or on the dashboard or center console "in a manner that does not hinder the driver's view of the road," and if the driver can activate or deactivate a feature or function "with the motion of a single swipe or tap of the finger."

9. ACA document deadline change

The IRS extended the deadline for employers to distribute Affordable Care Act health insurance reporting forms to their employees to March 2 from Jan. 31.

This law only applies to applicable large employers as defined by the ACA (those with 50 or more full-time or full-time equivalent workers). The law requires those employers to distribute Form 1095-C (Employer-provided Health Insurance Offer and Coverage).

The deadline to file Form 1094-C (IRS Transmittal) with the IRS remains Feb. 28 to file paper forms and March 31 for electronic forms.

10. Smoking in the workplace

There has been a loophole in the state law that bars smoking of tobacco products inside an enclosed place of employment, unless the only employee is the owner and operator of the business.

The new law expands the prohibition on smoking in all enclosed places of employment to all establishments of any size, including a place of employment where the owner-operator is the only employee. ❖





RISK MANAGEMENT

Five Common Types of Employee Fraud

AT SOME POINT, the odds are that every company will be affected by some form of employee theft or outright fraud.

According to the Association of Certified Fraud Examiners' global "Report to the Nations on Occupational Fraud and Abuse" for 2016, the median loss from a single case of employee fraud was \$120,000 in 2015 in the U.S. and in nearly 25% of the cases, losses were more than \$1 million.

With technology, fraud has in some ways become easier, but at the same time, it typically leaves a trail of electronic breadcrumbs that may be hard to disguise.

Here we look at the five main types of employee fraud, and what you can do to thwart it from occurring.

1. Purchase order fraud

This is typically carried out in one of two ways:

- The employee initiates purchase orders for goods that he diverts for personal use, or
- The employee sets up a phantom vendor account, into which he pays fraudulent invoices – with funds eventually being diverted to the employee.

2. Company credit cards

Employees that have company credit cards may use them for illegitimate purposes to purchase items, or on entertainment and travel. Some of the common types of fraudulent use of credit cards are fuel purchases, airfares, home supplies, meals that are not work-related and entertainment.

3. Payroll fraud

There are typically three ways that an employee can pull off payroll fraud:

- Setting up phantom employees on your payroll systems, who are paid like regular employees but the funds are diverted to the perpetrator's account.
- Paying out excessive overtime.
- Continuing to pay employees after they die or after they leave your employ.

4. Sales and receivables

Some employees may collude with vendors to make payments for services never rendered or products never received.

Other times, you may have sales reps who inflate sales to receive higher commissions or bonuses.

5. Data theft

This involves an employee stealing important company data, like trade secrets, personally identifiable information, client credit card numbers or client lists. In some cases, the employee would provide this data to third parties.



Focusing your efforts

According to the report, most theft occurs at one or more of the following stages:

- Procurement
- Payment
- Expense

If you are going to do any employee monitoring, these are the places that you may want to first focus your efforts and monitoring.

The Association of Certified Fraud Examiners says that by analyzing transactions in these areas (such as with continuous monitoring systems that are driven by data analysis), it is often possible to test for a wide range of employee fraud, as well as bribery and conflicts of interest. ❖

Higher positions, higher losses

Median losses vary depending on the fraud perpetrator



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