

RISK REPORT

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Top New Laws and Regs Affecting Businesses

THE NEW decade is starting off with a tsunami of new laws and regulations that will affect California businesses.

Companies operating in California will have to be prepared for significant changes or open themselves up to potential litigation, fines and other risks. Here's what you need to know coming into the new year:

1. AB 5

The controversial AB 5 creates a more stringent test for determining who is an independent contractor or employee in California.

Known as the "ABC test," the standard requires companies to prove that people working for them as independent contractors are:

- A) Free from the firm's control when working;
- B) Doing work that falls outside the company's normal business; and
- C) Operating an independent business or trade beyond the job for which they were hired.

Legal experts recommend that employers:

- Perform a worker classification audit, and review all contracts with personnel.
- Notify any state agencies about corrections and changes to a worker's status.
- Discuss with legal counsel whether they should now also include them as employees for the purposes of payroll taxes, workers' compensation insurance, federal income tax withholding, and FICA payment and withholding.

2. Wildfire safety regulations

Cal/OSHA issued emergency regulations that require employers of outdoor workers to take protective measures, including providing respiratory equipment, when air quality is significantly affected by wildfires.

Under the new regs, when the Air Quality Index (AQI) for particulate matter 2.5 is more than 150, employers with workers who are outdoors are required to comply with the new rules.

These include providing workers with protection like respirators, changing work schedules or moving them to a safe

location.

3. Arbitration agreements

Starting Jan. 1, the state will bar almost all employee arbitration agreements.

AB 51 bars employers from requiring applicants, employees and independent contractors to sign mandatory arbitration agreements and waive rights to filing lawsuits if they lodge a complaint for discrimination, harassment, wage and hour issues.

Businesses groups sued to overturn the law on the grounds that it is preempted by the Federal Arbitration Act.

4. Overtime rules

New federal overtime regulations are taking effect for non-exempt workers.

Under the new rule, employers will be required to pay overtime to certain salaried workers who make less than



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New Workers' Comp Audit, X-Mod Thresholds Take Effect

\$684 per week – or \$35,568 per year – up from the current threshold of \$455, or \$23,660 in annual salary.

5. Consumer privacy

Starting Jan. 1, under the California Consumer Protection Act, businesses that keep personal data of residents are required to safeguard that information and inform website users how their personal data may be used.

The law applies to firms with \$25 million or more in annual revenues or those that sell personal information as part of their business.



6. Return of the individual mandate

A new law brings back the individual mandate requiring Californians at least to secure health insurance coverage or face tax penalties. This comes after the penalties for not abiding by the Affordable Care Act's individual mandate were abolished by Congress in late 2017.

Starting in 2020, California residents are required to have health insurance or pay excess taxes.

This will affect any of your staff who have opted out of your group health plan as it may mean they are going without coverage, unless they have opted to be covered by their spouse's plan.

If you have staff who didn't enroll in your plan for 2020, they may have to wait until your group's next open enrollment at the end of the year. That could force them to pay tax penalties.

7. New audit, X-Mod thresholds

The threshold for physical workers' compensation audits for California policies incepting on or after Jan. 1 is \$10,500 in annual premium, a drop from \$13,000. This means that any employer with an annual workers' comp premium of \$10,500 or more will be subject to a physical audit at least once a year.

On top of that, the threshold for experience rating (to have an X-Mod) has also fallen – to \$9,700 in annual premium as of Jan. 1, from \$10,000.

8. Harassment training partly pushed back

Employers with five or more workers were required to conduct sexual harassment prevention training for their staff by the end of 2019 under a California law passed in 2018.

A new law extends the compliance deadline for some employers who had already conducted training prior to 2019.

The original law, SB 1343, required all employers with five or more staff to conduct sexual harassment prevention training to their employees before Jan. 1, 2020 – and every two years after that. If you have never trained your staff, you should have done so in 2019.

But if you have, here are the new rules:

- If you trained your staff in 2019, you aren't required to provide refresher training until two years from the time the employee was trained.
- If you trained your staff in 2018, you can maintain the two-year cycle and comply with the new Jan. 1, 2021 deadline. You did not have to repeat the training in 2019.

9. Hairstyle discrimination

A new law makes it illegal for employers to discriminate against employees and job applicants based on their hairstyle if it is part of their racial makeup.

The CROWN Act (Create a Respectful and Open Workplace for Natural Hair), defines race or ethnicity as "inclusive of traits historically associated with race, including, but not limited to hair texture and protective hairstyles like braids, locks and twists."

This new definition of race means that natural hair traits fall under the context of racial discrimination in housing, employment and school matters.



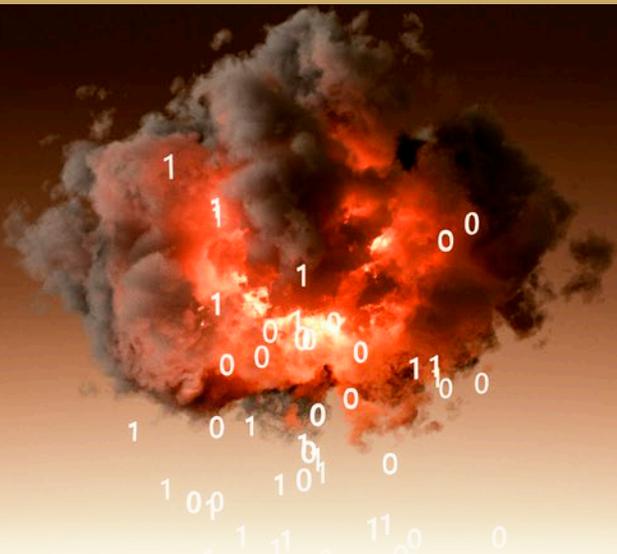
10. Reporting serious injuries

A new law broadens the scope of what will be classified as a serious illness or injury which regulations require employers to report to Cal/OSHA "immediately."

The new rules being implemented by AB 1805 are designed to bring California's rules more in line with Federal OSHA's regulations for reporting. It will mean that some injuries that were not reportable before will be, such as:

- Any inpatient hospitalization for treatment of a workplace injury or illness will need to be reported to Cal/OSHA.
- An inpatient hospitalization must be required for something "other than medical observation or diagnostic testing."
- Employers will need to report any "amputation" to Cal/OSHA. This replaces the terminology "loss of member." Even if the tip of a finger is cut off, it's considered an amputation.

As of yet, there is no effective date for this new law, as enabling regulations have to be written – a process that will start this year.



Risk Management

Coverage Gap Concerns as Cyber Threat Grows

SMALL AND mid-sized businesses are increasingly bearing the burden of cyber threats, as criminals are betting they do not have the resources in place to mount a strong defense.

A severe attack on a small company can incapacitate its ability to do business, and the expenses of getting operations back on track – coupled with loss of goodwill – can easily force a firm into bankruptcy.

Unfortunately, with more data breaches hitting the news, one of the main concerns that executives have is if their insurance will cover the costs of recovering from an attack.

If you are running a small or mid-sized company, do not underestimate the growing threat to your business. Your chief priorities should be protecting against the threat and having proper insurance coverage in place.

TOP REASONS FOR CYBER LOSSES

- Malicious breaches resulting in data losses: 52%
- Unintentional data disclosure by staff: 16%
- Physical loss or theft of data: 13%
- Network or website disruptions: 5%
- Phishing, spoofing and social engineering: 5%
- Other: 9%

Source: *Advisen and Nationwide Insurance Co.*

Insurance concerns

One of the chief concerns for executives is any overlap or gaps between their property, liability, crime and cyber policies when it comes to covering the costs of recovering from an attack, according to a report by insurance news website *Advisen* and *Nationwide Insurance*.

Some companies feel they don't need cyber coverage because they believe their property and liability policies will cover any related losses.

EXECUTIVES' INSURANCE WORRIES

- 95% of respondents named data breach as the number-one risk they expect to be covered by a cyber insurance policy.
- 94.5% said they expect cyber-related business interruption to be covered by a cyber policy.
- 89% said they expect their cyber policy to cover ransom demands.
- 36% said they have cyber-related property damage/bodily injury coverage under another policy, reflecting the belief that some coverage for cyber-related losses can be found under traditional policies.
- 60% of respondents said they are concerned about perceived gaps and overlaps in their insurance coverage.
- 53% of respondents said coverage for funds-transfer losses should be found under the crime policy, but also stated they would like to be able to recover under both crime and cyber policies – or have separate policies with higher limits.

The takeaway

Since cyber insurance is a new and evolving product, all policies do not cover the same thing. That's why it's important to weigh your choices carefully and consult with us.

While the cyber threat grows, more insurers are changing language in their property and liability policies to limit coverage of cyber events.

Because of the high costs associated with a data loss, more executives want to see higher limits for business interruption coverage on their cyber stand-alone policies.

This market demand may drive insurers to refine their cyber insurance policies, including increasing cyber-related business interruption limits, according to the *Advisen* report.

To find the best coverage for your business, please talk to us. We can help you evaluate your risks and coverages and identify any gaps by looking at your existing policies.



Worker Safety

Double Down on Safety This New Year

AS THE new year gets underway, now would be a good time to double down on your workplace safety efforts to see if there are any areas that you may be overlooking.

While your safety regimen may be top notch, there is always room for improvement and you can consider these options as recommended by EHS Today:

Use a 10-second rule

Workers should consider using the 10-second rule before resuming a task after a break or disruption. During this time before resumption, the worker can conduct a mental hazard check, which EHS Today refers to as STEP:

- S** - Stop before resuming a job or beginning a new task.
- T** - Think about the task you are about to do.
- E** - Ensure potential hazards have been identified and mitigated.
- P** - Perform the job.

Take advantage of OSHA training

The OSHA Outreach Training Program provides training for workers and employers on the recognition, avoidance, abatement and prevention of safety and health hazards in workplaces.

Through this program, workers can attend 10-hour or 30-hour classes delivered by OSHA-authorized trainers. The 10-hour class is intended for entry-level workers, while the 30-hour class is more appropriate for workers with some safety responsibility. Information is on OSHA's website.

Communicate with non-English-speaking workers

Non-English-speaking laborers have more workplace accidents than their peers. The language barrier may keep them from reporting workplace hazards and they may not understand safety instructions.

If you have non-English-speaking workers:

- Ensure that training is fully understood.

- Try to get any safety training materials also printed up in Spanish, and other languages prevalent in your workplace.
- If you have one, provide them a contact in your organization that speaks their language, so that they can get answers to any questions they may have or to report concerns.

Urge employees to speak up

Let your workers know that there will be no retribution for reporting perceived workplace hazards, no matter how minor. You can also implement the third suggestion above, and reward employees that point out safety issues.

Make your training engaging

The best safety training programs are those that employees remember. Some good ways to make sure the information is retained include using real-life examples, story-telling, skits and strong video presentations.

Do more than OSHA requires

OSHA's regulations are meant to be comprehensive, but every workplace is different and for a truly effective safety program you should fine-tune your safety requirements specifically for your workplace. In other words, you can go a step beyond what OSHA requires.

Watch each other's back

You should also instill a sense of responsibility among your staff to look out for each other. If a worker sees another performing a job in an unsafe manner, they should step in to offer assistance. This can be done without being intrusive or confrontational.

Some good approaches include: "Hey, would you like me to watch out for your safety?" and "As you know, you need to be wearing cut-resistant gloves to perform that task."

