



# RISK REPORT

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## Masks for Vaccinated Staff No Longer Required

**T**HE CAL/OSHA Standards Board has approved changes to the COVID-19 Emergency Temporary Standard that greatly loosen workplace restrictions that were implemented last year to protect California workers.

The biggest news in the changes is that workers who have been fully vaccinated are no longer required to wear face masks as protection or physically distance, regardless of the vaccination status of co-workers.

After the decision, Gov. Gavin Newsom issued an executive order enabling the revisions to take effect without the normal 10-day approval period by the state Office of Administrative Law. They came into effect when the office received the changes.

### The main changes

Here are the main changes affecting employers in California:

**Physical distancing and barrier requirements** – These are eliminated regardless of an employee's vaccination status, except where an employer determines there is a hazard and for certain employees during major outbreaks.

**Testing** – Fully vaccinated employees do not need to be offered testing or be excluded from work after close contact with someone who has COVID-19, unless they have symptoms. Employees who are not fully vaccinated and exhibit COVID-19 symptoms must be offered testing by their employer.

**Masks** – Vaccinated workers are not required to wear face masks generally. For unvaccinated workers, masks will be required indoors or when in vehicles, with limited exceptions.

Employees are not required to wear face coverings when outdoors regardless of vaccination status, except for certain employees during outbreaks.

### Document vaccination status

– Employers must document the vaccination status of fully vaccinated employees if they do not wear face coverings indoors.

**No mask retaliation** – Employees that choose to, are explicitly allowed to wear a face covering without fear of retaliation from employers.

**Respirator availability** – Employees who are not fully vaccinated may request respirators for voluntary use from their employers at no cost and without fear of retaliation from their employers.

Businesses that need help in securing N95 respirators for unvaccinated employees can find distribution locations for state-provided N95 respirators [here](#).

**Review rules** – Review the Interim Guidance for Ventilation, Filtration, and Air Quality in Indoor Environments.

**Ventilation** – Employers must evaluate ventilation systems to maximize outdoor air and increase filtration efficiency, and must evaluate the use of additional air cleaning systems.

See 'Employers' on page 2



**I CAN SMELL THE COFFEE AGAIN:** Under the new rule, most vaccinated employees are not required to wear masks or physically distance at work.

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## Workers' Compensation

# New Changes to X-Mods, Classification Rules

INSURANCE COMMISSIONER Ricardo Lara has approved a regulatory filing that will change the premium threshold for employers to qualify for an experience modifier (X-Mod).

The approval was part of a larger regulatory filing the Workers' Compensation Rating Bureau made to also change expected claims costs, eliminate a few class codes and make new rules for companies that operate multiple enterprises.

The approved filing also updates expected claims cost rates for all 500-plus worker class codes that are used to calculate workers' comp rates. Here's a rundown of the changes:

### X-Mod change

Currently, the minimum premium an employer must pay annually to receive an X-Mod is \$9,900, but that is falling to \$9,500, starting Sept. 1. That means any employer that has an annual premium of \$9,500 starting on that date will be "experience rated."

The X-Mod is a number used by insurance companies to either discount or increase the premiums you pay for workers' compensation insurance. It is based on your company's workers' comp claim history and reflects the most recent three years.

### Multiple enterprises rule

The new rules make changes to what is known as the "multiple enterprises rule," which applies to companies that have two or more operations that perform work that is classified differently. In those cases, the distinct operations must be classified under the multiple enterprises rule.

In the new rule, separation is the key requirement. If distinct operations are physically separated, each distinct location shall be separately classified.

Separation can be separate operations:

- Located in separate buildings,
- Located on separate floors of a building, or
- Separated by walls if they are on the same floor.

However, if two or more of the distinct operations are not physically separated, they must be assigned to the highest-rated

classification applicable to the operations conducted in the common workspace.

The rule also addresses personnel that may float between multiple enterprises, performing different types of work at each operation.

Under the rule, such an employee's work may be divided into two classifications. If you plan to classify them this way, make sure to keep accurate and complete records supported by time cards or time book entries that show how much time they spent performing each distinct work task for each entity.

If the employer fails to keep those records, the entire pay of the worker will be assigned to the highest-rated classification applied to any part of the work they perform.

### Classification changes

There are also changes being made to some construction classes.

The 8110 - Stores Welding supplies classification is being eliminated and covered operations will be reassigned to 8010 - Stores hardware, electrical or plumbing supplies.

Also, the iron or steel erection classes 5057 and 5059 will be eliminated, as well as subclasses 5102(3), 5040(2) and 5040(3).

Operations in those eliminated classifications will instead be assigned into one of two consolidated classes:

- 5040 - Structural Iron or Steel operations, or
- 5102 - Iron, Steel, Brass, Bronze or Aluminum Erection - non-structural.



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## Employers Must Maintain COVID-19 Prevention Program

### What remains

Parts of the Emergency Standard still in effect include:

- Employers must maintain an effective written COVID-19 Prevention Program that includes:
  - » Identifying and evaluating your employees' exposures to COVID-19 health hazards.
  - » Implementing effective policies and procedures to correct unsafe and unhealthy conditions.
  - » Allowing adequate time for handwashing and cleaning frequently touched surfaces and objects.
- Employers must provide training to employees on how COVID-19 is spread, infection-prevention techniques, and information regarding COVID-19-related benefits that affected employees may be entitled to under state or federal laws.
- Employers must bar from coming to work employees who have COVID-19 symptoms and/or are not fully vaccinated and have had a close contact from the workplace, if that close contact is work-related.



## Construction Coverage

# Builder's Risk, Excess Liability Rates Climbing Fast

**I**NSURANCE RATES are rising rapidly for contractors, particularly for builder's risk and excess liability policies as the cost of claims continues to increase dramatically.

While rates for builder's risk have been averaging 10 to 20%, pricing for excess liability and umbrella coverage has in some cases doubled from the year prior.

Both lines of insurance have seen steep and unexpected losses in recent years, resulting in some insurers leaving the market and others becoming stricter in their underwriting and choosier about which builders they are willing to extend coverage to.

If you've been in the market for these lines of insurance, you know that it's become more difficult to secure similar policies to those you may have had in years past. Here's a look at what's going on.

### Builder's risk

According to *Construction Executive* magazine, rates are going up between 10% and 20% for builder's risk policies.

There are a number of factors affecting rates:

- The cost of claims has increased, primarily because of the cost of rebuilding after a loss event due to the rapidly rising cost of materials, in particular lumber, the prices of which have tripled in the last year.
- The increasing cost and frequency of natural disasters. Projects that are near areas at high risk for natural catastrophes like brush fires, hurricanes, tornadoes or flooding, are all seeing higher rates and/or difficulty in securing coverage.
- Some insurers have also left the market, leaving fewer players willing to write this risk, which has driven up pricing.

Insurers are tightening eligibility guidelines and restricting how much they will cover. Some insurers are getting more selective and demanding that their insureds take extra precautions before they are willing to bind a policy. Some of the more common demands include requiring:

- Video surveillance systems on worksites.
- Guards to patrol worksites at night.
- The installation of fencing and lighting.

One of the biggest pinch points is policy extensions, which are needed when projects go beyond the time expected to complete them.

Due to the issues mentioned in the bullet points above, policy extensions for ongoing projects have been difficult to secure, according to a report by WillisTowersWatson. The problem has been exacerbated by the COVID-19 pandemic, which disrupted many construction projects across the country and required more companies to seek out extensions for their builder's risk policies.

### Excess liability

Renewals for excess liability and umbrella insurance have been running 50 to 100% higher than in 2020, according to a recent report by Marsh LLC. Excess liability and umbrella coverage kicks in after a claim breaches the limits of a primary general liability policy or auto liability.

The drivers: Increasingly large jury awards and the spiraling cost of liability claims, particularly for commercial vehicle accidents. Commercial auto insurance rates have also been climbing as the cost of auto injury and property claims continues to rise due to the increasing cost of repairs and medical costs for injured third parties..

Those claims are covered by primary auto and general liability insurers, but because more claims are exceeding limits, excess liability carriers are increasingly on the hook for those high-dollar claims.

Like in the builder's risk segment, this has resulted in fewer insurers willing to write new policies.

Those that are willing to write new business or renew policies have imposed stricter underwriting terms on the policies they are willing to accept.

Additionally, according to Marsh, primary and excess insurers are limiting the overall capacity extended to an individual buyer by capping per-project aggregate limits.

### The takeaway

With the volatility in the marketplace, we recommend that you reach out to us early – and months before your policy is coming up for renewal – so we can work with you to make sure we can secure the coverage you need.

## Non-Admitted Carriers

# The Option When No Insurers Will Cover You

**S**OME BUSINESSES are finding fewer insurers willing to write their policies for certain types of coverage that are seeing rapidly rising claims costs, particularly in liability lines as well as property insurance in areas with exposure to natural catastrophes.

When no insurers that are licensed in California are willing to write a policy, we as your agent have to go to another market made up of insurance companies that are not licensed or regulated by the state.

It's called the surplus lines (or "non-admitted") market, and it can be a valuable alternative for insurance buyers.

As insurers get more selective writing some risks, it's important for you as an insurance buyer to understand this market.

### Why use a non-admitted carrier?

The most well-known non-admitted insurer is Lloyd's of London, famous for insuring insurance companies and celebrities' or sports figures' body parts and global sporting events. Often non-admitted insurance companies are located in other states or domiciled abroad, like Bermuda or another tax-haven country.

Unlike licensed insurance companies, non-admitted companies do not have to obtain approval from state regulators for the policy forms they use or the rates they charge.

### Filling a void

Non-admitted companies insure businesses that licensed insurers may avoid or restrict underwriting for, such as:

- Businesses in sectors where the cost of claims is suddenly rising, resulting in fewer licensed insurers willing to write policies.
- Firms and sectors with histories of frequent or large claims.
- Businesses with the potential for severe losses, such as amusement parks or manufacturers of power tools.
- New companies.
- Homes and commercial properties that are vulnerable to extreme events such as hurricanes and wildfires.
- Properties that require very large amounts of insurance.

Since they are not regulated by the state, non-admitted insurers can offer creative coverage options and they can quickly and easily introduce new types of insurance that businesses need.

Some types of policies that are standard today, such as cyber insurance and employment practices liability insurance, got their start in the non-admitted market.

State laws typically permit a broker to obtain coverage from a non-admitted insurer only if at least a few standard insurance companies refuse to offer coverage. However, most also have coverage options that are not available in the standard market.

When someone needs one of the latter coverages, no rejections from licensed companies are required. An example might be liability insurance for contractors who demolish buildings.

### Risks

There are risks to purchasing insurance in the non-admitted market. Policies may provide less coverage than do standard policies, or there may be restrictions on when coverage applies.

Policies should be reviewed carefully. Also, because the insurers can charge whatever they feel is appropriate, premiums can be higher than you may expect. The policies may also be exempt from state laws regarding notices of cancellation and non-renewal.

Also, in every state but one (New Jersey), non-admitted policies are not backed by a guaranty fund. Guaranty funds cover claims left unpaid when an insurer is unable to pay for them. If a non-admitted company becomes insolvent, the policyholder has no recourse.

### The takeaway

Despite the risks, the non-admitted market serves an important function, giving buyers a place to get needed coverage that would be otherwise unavailable.

Those who think they may need to tap this market should consult with us to find the right coverage at an acceptable price.

**TO THE ENDS OF THE EARTH:** *Sometimes we have to bind insurance with overseas insurers that are willing to accept unusual risk and high claims-cost sectors.*

