

# News You Can Use

Jan. 2014 Volume 2, Issue 3

## WEBINAR SCHEDULE

# Heffernan Webinars Can Keep Lawsuits at Bay

**W**ITH EACH passing year lawsuits against employers continue growing as more workplace laws are codified on the federal and state level.

Keeping up with all of these changes can be difficult, particularly as you manage your business. Failing to keep tabs on new workplace regulations and laws can land you in hot water, typically in the form of a lawsuit by an employee or a government agency targeting your operation after an employee complaint or incident.

Workplace-related lawsuits have soared recently as new discrimination and harassment laws take effect.

To help keep you up to date on these laws and regulations, Heffernan Insur-

ance Brokers offers its clients a series of interactive webinars hosted by experts and labor law experts that break down the law for you.

In our webinars, we explain how to prevent personnel actions that can lead to a complaint or a lawsuit by an employee.

We are also featuring seminars this year that look at the latest developments at Cal/OSHA and its latest enforcement efforts, and the most recent workplace safety regulations promulgated in California.

Finally, we'll keep you up to date on changes affecting workers' compensation and how the new laws affect your company as well as your workers should any of them be injured on the job. ❖

## Register Here



To register for our webinars visit our online calendar at:

[www.heffins.com/about-us/news-publications/events](http://www.heffins.com/about-us/news-publications/events)

If you have questions about an upcoming webinar, feel free to drop us a line and we'll provide you with a list of topics and main points that we'll be covering. Write us at: [seminar@heffgroup.com](mailto:seminar@heffgroup.com)

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## 2014 Webinar Schedule

DATE	TOPIC	TIME
JAN. 14	EMPLOYMENT LAW UPDATE	10-11 AM
Jan. 22	FINANCIAL ACUMEN WORKSHOP	7.30 AM-1 PM
JAN. 28	Hrsa YEAR OF INVESTING REVIEW	12.30-1.30PM
JAN. 28	SEXUAL HARASSMENT PREVENTION - ENGLISH	10 AM-12 PM
FEB. 5	HEALTH CARE REFORM UPDATE	11 AM-12 PM
FEB. 11	WORKERS' COMPENSATION UPDATE	10-11 AM
MARCH 11	OSHA UPDATE	10-11 AM
MARCH 19	SEXUAL HARASSMENT PREVENTION - SPANISH	10 AM-12 PM
MARCH 25	SEXUAL HARASSMENT PREVENTION - ENGLISH	10 AM-12 PM
APRIL 8	NAVIGATING CALIFORNIA LEAVE OF ABSENCE LAWS	10-11 AM
MAY 13	TERMINATIONS: TIPS FOR SUCCESSFUL SEPARATIONS	10-11 AM
JUNE 24	SEXUAL HARASSMENT PREVENTION - ENGLISH	10 AM-12 PM
SEPT. 9	CONDUCTING EFFECTIVE WORKPLACE INVESTIGATIONS	10-11 AM
OCT. 14	EMPLOYMENT LAW UPDATE	10-11 AM
OCT. 22	SEXUAL HARASSMENT PREVENTION - SPANISH	10 AM-12 PM
OCT. 28	SEXUAL HARASSMENT PREVENTION - ENGLISH	10 AM-12 PM
NOV. 11	TOP 10 WAYS TO PREVENT EMPLOYEE LAWSUITS	10-11 AM

COVERING AMERICA

# Insurers Reeling from Sudden ACA Rule Changes

**T**HE FLURRY of changes the Obama administration has made to the Affordable Care Act since mid-November could undermine the whole concept of the public exchanges and result in hefty rate increases in 2015, insurers say.

The latest change came when the administration announced that anybody who'd had their coverage cancelled would be allowed to purchase low-cost, bare-bones "catastrophic" policies if they found the ones on the public insurance exchanges too pricey.

These high-deductible plans' benefits kick in for severe illnesses or injuries and were originally supposed to be available only to individuals under 30 years of age who can't find coverage for less than 8% of their income.

The administration expects some 500,000 of the 6 million people whose old plans were cancelled because they didn't meet the minimum coverage standards of the ACA to take advantage of the new rule.

Or they could opt not to purchase coverage for 2014.

That change was preceded by three others that were announced at different times since November.

Two things have driven the changes:

- 1) the public outcry over the poorly functioning federally run insurance marketplace, and
- 2) President Obama's promise that people who like their coverage could keep it under the ACA, which was not true.

Other significant announcements that changed the rules of the game include:

- An announcement in November that people should be able to keep the policies that were being cancelled because they didn't comply with the ACA. Obama urged insurers to keep offering the plans for another year to ease the burden on individuals.
- Delaying the enrollment deadline from Dec. 15 to Dec. 23 and then again until Christmas Eve, which left insurers scrambling to add the new individuals to their books before coverage kicked in Jan. 1.
- The administration asked insurers to start covering medical services for individuals even if they hadn't paid their premiums.

**Catastrophic plans 'not much cheaper'**

Interestingly, an article in *Forbes* claims that these catastrophic plans are not much cheaper than the lowest-level "bronze" plans on the exchanges. That's because an ACA-compliant catastrophic plan must cover all of the services defined as "preventive" by the government, along with all of the essential health benefits.

"In California, for example, the median cost of a pre-Obamacare plan on eHealthInsurance.com, for a 25-year-old male non-smoker, was \$92," writes *Forbes*. "The Obamacare bronze plans cost an average of \$205 a month. The Obamacare catastrophic plans? \$184. In some parts of the country, the catastrophic plans are actually more expensive than the bronze plans."

These changes, so soon before 2014, left insurers in a bind. They had already priced their policies based on existing regulations and they were worried that the tweaks would result in them losing money on policies.

One of the keys to the success of the public health care

exchanges is the assumption that they will sign up elderly, young, healthy and sick individuals, essentially spreading the risk. But the new rules make it easier for the young and healthy to opt out of the mainstream plans, which removes healthier people from the pool.

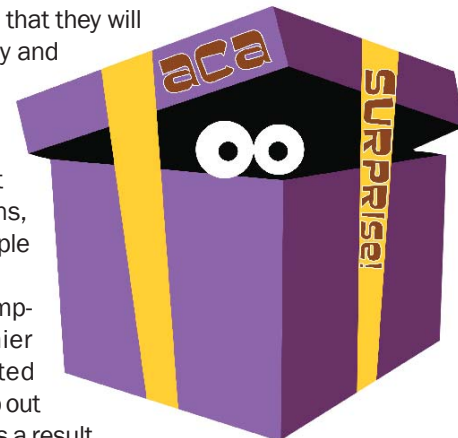
"This new 'hardship exemption' will encourage healthier individuals, whose expected spending would be low, to drop out of the pool," writes *Forbes*. "As a result, average [health care] spending per enrollee on the exchanges is likely to be substantially higher than the insurers had planned for, forcing them to lose money on their policies."

And that could spur a big bounce in the costs of policies in 2015.

The bigger crux is that even before the new spontaneous rules, more older individuals were signing up for coverage on exchanges than expected.

According to an analysis of five state-run exchanges by the firm McKinsey & Co., 62% of the people who signed up in the first month were more than 45 years old.

Insurers interviewed by *Forbes* said they were in "panic mode" after the administration's spate of spontaneous rule-making. ❖



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HAPPY NEW YEAR



## ACCIDENT PREVENTION

## As Construction Rebounds, Put a Focus on Safety

**A**S THE ECONOMY gathers a bit more steam, employment in the construction industry is surging as pent-up demand means that more homes are being built at a brisk pace.

But this new growth in housing has come at a price for those working in the industry: a significant jump in construction workplace deaths and injuries. In 2012, 775 construction workers died on the job, up 5% from 2011 and the first increase in the industry since 2006.

The fatality rate also increased to 9.5 deaths per 100,000 workers in 2012, up from 9.1 in the year prior, according to figures from the U.S. Bureau of Statistics.

Reports suggest that the trend will continue as human resources shortages force contractors and construction firms to promote relatively inexperienced workers into supervisory roles.

As they grow construction firms should double down on safety training for their managers and supervisors to build a culture of safety at all levels of their organizations. It is also recommended that companies focus on their human resources, recognize that the labor pool is more diverse, hire competent and experienced supervisors and managers, and ensure they are all properly trained.

There are other issues facing construction firms as they grow: labor costs and employee turnover.

“Some increase in project overhead may be expected by customers as construction firms harness the skills of available labor, protect older workers, and train the new employees required for successful project completion,” one report states. “However, contractors will continue to struggle to offer adequate compensation and benefits packages to retain employees while holding down project costs as competition for labor with other builders grows.”

It recommends that construction employers invest in high-quality leadership as a means of both keeping valued workers and maintaining a safe work environment. It also recommends that companies engage in continuous training, review and application of lessons learned from earlier workplace injuries or near misses.

In terms of management, the report recommends that companies assess their current management systems to identify what is working, what needs improvement and what is missing.

Some managers, whether new to the task or seasoned veterans, may need to be taught basic leadership principles while others, in a different stage of leadership development, may benefit from a higher level of skill building.

And, like the construction work they oversee, managers' and supervisors' leadership performance must be properly and effectively monitored.

All of this ties into improving safety as a company grows.

The main causes of construction fatalities are:

- Falls, slips and trips: 36%
- Transportation incidents: 28%
- Contact with objects and equipment: 18%
- Exposure to harmful substances or environment: 13%
- Violence and injuries by persons or animals: 4%
- Fires and explosions: 1%

The following list includes the top five contractor sectors in terms of workplace fatalities in 2012:

- Roofers: 81 deaths.
- Site preparation: 71 deaths
- Electrical: 54 deaths
- Plumbing, heating and air-conditioning: 39 deaths
- Painting and wall covering: 33 deaths

Accordingly, the report recommends that construction firms focus on training management to ensure effective leadership and help build a culture of safety at every level of their organization.

As projects vary, it's wise to hold tailgate safety meetings before starting a new job to identify specific hazards in the new worksite and also go over basics as a refresher. ❖



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## MEDICAL MARIJUANA

# Pot on a Collision Course with Workers' Comp

**A**S MORE states legalize marijuana, and even more allow doctors to prescribe the substance to patients, the drug is headed on a collision course with the workers' comp system.

The National Council on Compensation Insurance (NCCI) has highlighted marijuana as an emerging issue in the workers' comp universe. It notes that physicians are prescribing medical marijuana for injured workers, and that insurers are left in a bind as to how to respond.

The legalization of medical marijuana in more than 20 states has the workers' comp industry on guard for a potential surge of claims seeking payment for the drug.

For now, insurers are falling back on federal law, which still bans its use. There is also the issue that pot has not been approved by the U.S. Food and Drug Administration (FDA) to treat any malady.

That said, in some of the states that have already had medical marijuana laws on the books for many years, some observers say that marijuana claims are already creeping into the system.

The bigger concern is how prescribing marijuana to injured workers will affect their rehabilitation.

The NCCI notes that the drug could impair injured workers, increase workers' comp costs and lengthen the recovery from injuries due to the lethargy many users have after ingesting or smoking marijuana. Also, a recovering worker who is still smoking cannabis and working may pose a danger to himself and others.

### Opinion divided

Insurance claims executives say that since the FDA has not approved marijuana to treat any medical conditions, the drug will likely be kept out of the workers' comp system.

But while pharmacy benefit managers and certain states have workers' comp prescription formularies that exclude marijuana as a permissible medication, claims adjusters could still approve marijuana payments if they have lax attitudes about the drug.

Meanwhile, some states – Colorado, Michigan, Montana, Montana, Oregon and Vermont – have laws that bar insurers from paying for marijuana.

Still, some workers' compensation administrative decisions have allowed reimbursement.

In June 2012, in *Cockrell vs. Farmers Insurance Co.*, a California workers' compensation judge awarded a worker reimbursement for medically recommended marijuana that he had acquired to relieve pain after spinal surgery.

Marijuana was prescribed as an alternative to OxyContin because of alleged complica-

tions arising from the employee's use of that drug.

But in September 2012, the California's Workers' Compensation Appeals Board granted a request for reconsideration of that decision, and rescinded the judge's finding.

It ordered the judge to consider California law stating that "Nothing in this article shall require a governmental, private, or any other health insurance provider or health care service plan to be liable for any claim for reimbursement for the medical use of marijuana."

And, in 2002, in *McKinney vs. Labor Ready and Reliance Insurance Co.*, a workers' compensation commissioner in Iowa allowed an employee who was living in Oregon to recover for an Iowa workers' compensation claim for medical marijuana. Oregon has a medical marijuana statute.

There is also the issue of employers that have zero-tolerance drug policies. What are they to do if an employee has been prescribed medical marijuana?

Court decisions in many states (including some at the highest state appeals courts) have upheld the right of employers to terminate employees under zero-tolerance drug policies that conflict with authorized medical marijuana use.

Those cases at least imply, if not openly hold, that an employee seeking to use medical marijuana due to a workers' compensation injury, and who tested positive for that drug while on the job, likely would face termination for doing so if the employer had a zero-tolerance policy.

Insurers are starting to draft policies on how to deal with medical marijuana claims.

If they are averse to paying for it, they'll likely require proof of medical necessity as well as medical evidence that supports the use of marijuana.

And that will be hard for any doctor to produce. ❖

