

HAZARD COMMUNICATIONS

Cal/OSHA Requires Training for New Standard

STARTING DEC. 1, Federal OSHA as well as Cal/OSHA are requiring that companies that handle hazardous chemical and toxic substances train their employees in the new Hazard Communication Standard (HCS).

Under the new Hazcom Standard, you should be receiving new compliance labels and safety data sheets that are consistent with the United Nations' Globally Harmonized System (GHS). The Dec. 1 deadline is the first of four implementing the HCS.

Employers must train their employees on how to read safety data sheets (SDSs) and labels in the new format by Dec. 1.

Training has to be completed by this date, so it's wise if you get a jump start on the new safety regulations. If you handle

chemical and toxic substances, it's likely that you've already seen the new labels and SDSs on the products.

The training involves ensuring employees understand and know how to read the updates being made primarily in the following areas:

- Hazard classification
- Chemical labels
- Safety data sheets

The new labels were designed to be more user friendly than the current ones, in order to reduce the likelihood of errors that can cause chemically hazardous accidents in the workplace.

If you'd like to see just how these labels have changed, you can compare the old and new ones here:

<http://www.osha.gov/dsg/hazcom/index.html>

The site also features QuickCards (in both English and Spanish) and briefs to assist you with the required training, as well as further information on training requirements.

The other three deadline dates you need to be aware of are:

- **June 1, 2015** – Chemical manufacturers and distributors must complete their reclassification of chemicals based on the GHS criteria, and update their SDSs and labels by this date.

- **December 1, 2015** – Distributors may ship inventory with old SDSs and labels until this date. In effect, distributors get an extra six

months to "use up" their old inventory, hence the different date of compliance for them.

- **June 1, 2016** – Full employer compliance is expected by this date. This is the date by which employers must:

- Provide additional training regarding any of the new hazards that have been identified during that reclassification process, and

- Update all labeling and Hazard Communication programs to align them with the new Cal/OSHA 5194 standard.

With the primary changes coming to hazard classifications, SDSs and labels, start preparing now.

You should also regularly check the Cal/OSHA website for any implementation guidance to ensure proper awareness of any resolution to areas of conflict between Cal/OSHA and Federal OSHA in regards to hazard communication.

See 'Resources' on page 2

Contact Us



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WORKERS' COMP

Rating Bureau Recommends 7.6% Rate Increase

DESPITE THE California Legislature's best efforts in passing workers' comp reform legislation last year, the agency that helps set rates is recommending that rates increase about 7.6% at the start of next year.

The Workers' Compensation Insurance Rating Bureau in early August recommended that the average benchmark pure premium rates for all of the state's class codes increase to \$2.70 per \$100 of payroll for policies incepting on or after Jan. 1, 2014.

A good portion of the rate increase is due to a spike in medical costs related to older claims and a significant increase in the frequency of workers' comp claims being filed.

In addition, benefit levels continue to increase as required by the workers' comp reforms that took effect at the start of this year. Already this year, the benefit increase added another \$620 million in system costs, the Rating Bureau has estimated. In 2014, the increase will add another \$590 million in costs for all workers' comp payers in the state.

That said, many of the cost increases are expected to be offset by savings from reforms contained in SB 863, which was signed into law in 2012 and took effect at the start of this year. Those savings include using independent review for claims requiring medical services and fees for filing workers' comp liens.

All told, the Rating Bureau projected the \$1.2 billion in additional permanent disability benefits will be offset by \$1.7 billion in savings, reducing overall costs by \$520 million a year starting in 2014.

The good news, according to the Bureau, is that overall, claims cost inflation seems to be moderating even as claims-filing frequency has leveled off.

Changes in calculation method

You may be confused by different percentages being publicized regarding the rate increase. Because of changing methodologies and changes in the way the benchmark rate is expressed, calculating the exact amount of proposed rate increases has become more difficult.

While some news articles have stated the rate increase

would be 4.4%, the true magnitude of the increase is actually 7.6%, but that may not be the rates you see as insurance carriers can price policies independently of the benchmark rates.

The Rating Bureau makes the rate recommendation to the state insurance commissioner, who has the authority to either approve it or reject it and set another benchmark.

The rating agency submitted its filing to the California Department of Insurance in September, and the insurance commissioner has scheduled a hearing on the filing for Oct. 28.

Heffernan Insurance Brokers will work hard to find you the best possible rates for your company in the marketplace as the upward trend is likely to continue at least for policies incepting on Jan. 1, 2014. We can also work with you to keep your rates low by helping you improve accident prevention methods in your workplace. ❖

AVERAGE CHARGED RATE*

THE OVERALL average rate charged by insurers in California had been falling since 2003, the year major reforms were enacted. But starting in 2011, rates have been climbing. It is hoped the new reforms will reverse this new trend.

2003	\$6.29
2005	\$4.96
2007	\$2.75
2009	\$2.10
2011	\$2.32
2013	\$2.60



* Per \$100 of payroll across all industries

Continued from page 1

Train Your Employees by Dec. 1 with These Resources

The Federal OSHA website has a number of resources. They should serve as guidance for California employers, since Cal/OSHA may or may not adopt the federal regulations verbatim.



The Fed-OSHA rules guidance can be found here:
www.osha.gov/dsg/hazcom/HCSFactsheet.html



A training fact sheet can be found here:
<https://www.osha.gov/Publications/OSHA3642.pdf>



A Fed-OSHA fact sheet is here:
www.osha.gov/dsg/hazcom/



A fact sheet on the new labels and pictograms is here:
<https://www.osha.gov/Publications/OSHA3636.pdf>

QuickCards for Use in Safety/Tailgate Meetings

• www.osha.gov/Publications/HazComm_QuickCard_Pictogram.html

• www.osha.gov/Publications/HazComm_QuickCard_Labels.html

TEXTING WHILE DRIVING

Appeals Court Adds New Layer of Employer Liability

A NEW APPEALS court decision should serve as an additional reminder about the liability you as an employer can face for not properly ensuring that your staff who drive on the job do not send texts while behind the wheel.

In what could be a test case for employer liability in states that ban texting while driving, the New Jersey Appellate Division has held that “a person sending text messages has a duty not to text someone who is driving if the texter knows, or has special reason to know, the recipient will view the text while driving.”

This low bar that the New Jersey court has set means courts could find a person who knowingly texts a driver liable if an accident is caused by the distraction created by the exchange of text messages.

While the case in question was not in the context of an employer texting an employee, the logic would also apply if the employer knowingly sent a text message to an employee that was driving in the course of their employment, according to an analysis of the case by the labor and employment law firm of Schnader Harrison Segal & Lewis LLP.

“This appellate opinion, *Kubert v. Best*, opens the door to a new form of potential liability to third parties for employers,” Schnader Harrison wrote in a blog. “When automobile accidents occur involving a driver texting (or perhaps just speaking) on a cell phone, litigation against a driver’s employer may be brought based on such communications arguably causing or contributing to the accident.”

Although this case was in New Jersey and is likely to be appealed to the New Jersey Supreme Court, employers should take note nonetheless.

What you can do

The law firm recommends that employers should create a policy that bars texting while driving that includes not only those employees who are driving in the course of their jobs, but also those that may be communicating with them.

“These policies may have to caution workers that it is equally forbidden to send a text message or phone an employee who may be driving at the time – an extremely constraining practice,” the law firm writes.

The policy should also state that employees driving on the job should pull over before reading or writing text messages. And if they are going to talk on the phone, they should be using hands-free equipment.

The National Highway Transportation Safety Administration (NHTSA) also recommends asking your employees to sign a pledge to abide by the same rules when driving on their personal time.

Although it cannot be enforced, it is a good way to remind your staff about the dangers of texting while driving, and that you value their well-being.

The NHTSA has issued sample language for a no-texting policy, which can be found to the right. ❖

SAMPLE DISTRACTED DRIVING POLICY

Please read the Distracted Driving Policy, sign and return to your supervisor.

In order to increase employee safety and eliminate unnecessary risks behind the wheel, [Company Name] has enacted a Distracted Driving Policy, effective [Date]. We are committed to ending the epidemic of distracted driving, and have created the following rules, which apply to any employee operating a company vehicle or using a company-issued cell phone while operating a personal vehicle:

- *Company employees may not use a hand-held cell phone while operating a vehicle – whether the vehicle is in motion or stopped at a traffic light. This includes, but is not limited to, answering or making phone calls, engaging in phone conversations, and reading or responding to e-mails, instant messages, and text messages.*
- *If company employees need to use their phones, they must pull over safely to the side of the road or another safe location.*
- *Additionally, company employees are required to:*
 - *Turn cell phones off or put them on silent or vibrate before starting the car.*
 - *Consider modifying voice mail greetings to indicate that you are unavailable to answer calls or return messages while driving.*
 - *Inform clients, associates and business partners of this policy as an explanation of why calls may not be returned immediately.*
- *[Company consequences for failing to follow policy]*

I acknowledge that I have received a written copy of the Distracted Driving Policy, that I fully understand the terms of this policy, that I agree to abide by these terms, and that I am willing to accept the consequences of failing to follow the policy.



WORKPLACE SAFETY

Older Drivers More Likely to Die in Work Accidents

WORKERS WHO are 55 and older are 50% more likely to be killed in vehicle accidents than drivers who are younger than them, a new study by the Centers for Disease Control has found.

The reason, according to the CDC, is declining cognition, which can lead to errors while driving and avoiding potential collisions, as well as a greater susceptibility to injuries and more difficulty in recovering from injuries.

While vehicle accidents are already the leading cause of workplace deaths, the new findings mean you should consider added safety precautions for workers older than 55.

Highway deaths are the leading cause of occupational fatalities in the U.S., and workers 65 and older have a highway fatality rate more than three times that of workers ages 18-54 — 3.1 deaths per 100,000 full-time workers vs. 0.9 deaths per 100,000, according to the CDC analysis.

Workers 55-64 also had a higher fatality risk than their younger peers — 1.4 deaths per 100,000 full-time workers. These are occupational deaths, not people driving to or from work.

“This pattern held across all demographic and occupational categories,” says the report in the CDC’s “Morbidity and Mortality Weekly Report.” “These results demonstrate the need to further implement interventions that consider road safety risks specific to older workers.”

Keep in mind that older people are becoming more prevalent in the workforce and because they have invaluable experience, the solution is not to take them off the road. There are other ways to accommodate older workers who drive as part of their job so that your company can still enjoy the benefits of keeping them on staff.

You have to keep in mind that there are both physical and cognitive changes that affect individuals as they age, including declines in visual acuity, processing complex visual information, reaction times, executive functioning and contrast and glare

sensitivity. For example, older drivers are more likely to crash at intersections — especially when turning left — and when merging or changing lanes on a freeway, according to National Institute for Occupational Safety and Health (NIOSH) data.

They also have higher prevalence of other underlying health conditions that can affect their ability to recover from an accident.

Mitigating your risks

Obviously you don’t want to sideline career drivers as they are likely invaluable to your operations.

Unlike retirees, who can delay their trips until driving conditions improve, older workers often must drive in poor conditions to meet deadlines or make deliveries.

There are a number of ways to mitigate the factors through prevention and wellness programs, and workers can help by getting regular health exams and screenings.

You can address a number of contributing factors in your safety training and Injury and Illness Prevention Plan, including avoiding long hours behind the wheel to reduce fatigue and occupational stress; not pressuring drivers to drive too fast in order to meet time-sensitive delivery promises; reducing the probability of distracted driving; and enforcing the use of seatbelts.

Most state laws already address these issues and they pertain to all drivers.

The CDC recommends the following additional interventions of particular benefit to all older drivers, although some of these points may not be feasible:

- Selection and adaptation of vehicles to better accommodate them;
- Policies encouraging less driving overall, less night-time driving, and alternative modes of transportation;
- Requiring route and trip planning to reduce stress and fatigue;
- Refresher driver training; and
- Providing your workers with information about medical conditions and medications known to affect driving ability.

The CDC also recommends that you allow your drivers to use their judgment to reschedule travel or stop driving in cases of fatigue, illness, bad weather or darkness.

NIOSH recommends that

- Employers assign a key manager to enforce driver safety policy and mandatory seatbelt use,
- Assess driving ability through regular physical exams,
- Restrict driving based on “assessment of actual driving ability — not solely on general health status or an arbitrary age limit.”

For their part, workers should make sure they’re well-rested and in good physical health, keep their vehicles maintained, use caution at intersections and interchanges and avoid using a cell phone while driving. ❖



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