

# News You Can Use

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## WORKERS' COMP

### Agency to File for 3.4% Rate Increase for 2015

**T**HE STATE'S workers' compensation rating agency is preparing to file for a 2015 benchmark rate increase that is about 3.4% above the rates approved for this year.

The Workers' Compensation Insurance Rating Bureau noted after examining industry data and trends that treatment costs for injured workers continue climbing and that claims are being filed with increasing frequency.

The recommended benchmark rate is also 7.9%, above the pure premium rates that insurers had on file as of July this year. The Rating Bureau could amend the filing in late September after it receives more data on claims costs through July of this year.

The new average benchmark rate level, across all class codes in California, should be \$2.77 per \$100 of payroll effective January 1, 2015, according to the Rating Bureau.

That's compared with the \$2.57 average insurers had on file as of July 1, and with the average advisory pure premium rate of \$2.68 as of Jan. 1, 2014.

The insurance commissioner has the final say on benchmark rates, but insurers are free to price as they please, using the benchmarks as guideposts.

Benchmark rates cover just the cost of claims and administering them and don't include insurers' other overhead costs.

In a cover letter accompanying the filing, the Rating Bureau cited a number of factors contributing to the proposed increase, including:

- Continued adverse medical loss

development.

- Greater recognition of changing long-term medical paid-loss development patterns.
- Continued high levels of indemnity claim frequency.
- Claims-adjusting expenses that are higher than anticipated, in part attributable to lower-than-projected frictional cost savings resulting from the latest workers' comp reform legislation, SB 863, which was passed in 2012 and took effect in 2013.
- Wage growth that is lower than forecast.

#### Claims frequency varies by region

A new report by the Rating Bureau, "State of the California Workers' Compensation Insurance System," released in August 2014, indicates that geography also plays a part in claims, which plays out in the final price you pay.

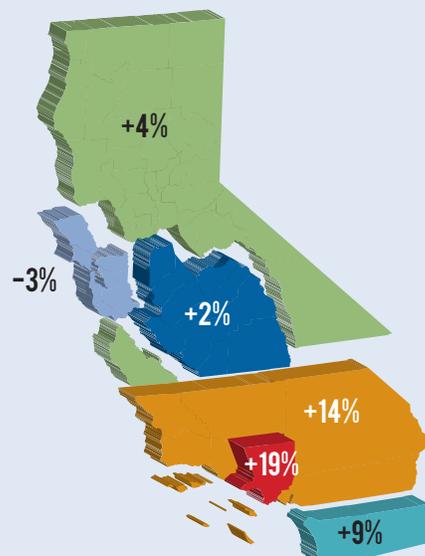
The report notes that overall, the number of indemnity claims (those that include payments to workers for lost time at work) has steadily increased over the last few years, largely driven by inordinate growth in claims numbers in Southern California.

In the last three years, the number of indemnity claims has increased by 19% in Los Angeles County, 14% in the Los Angeles Basin and 9% in San Diego, according to the Rating Bureau (see chart).

"The frequency of permanent partial disability claims – including those involving cumulative injuries or multiple injured body parts – has increased sharply in the Los Angeles area," the report says. ❖

#### Claims Frequency up 9%\*

Overall claims frequency (the number of claims filed per 100 workers) varies wildly in the state.



\* Average for all workers in state.  
Source: Workers' Compensation Insurance Rating Bureau

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## CYBER THREAT

# Hackers Can Tap USB Devices in New Attacks

**N**EW RESEARCH says that USB devices like thumb drives, and even keyboards and mice, pose one of the biggest cyber threats to enterprises.

Two scientists and researchers with Berlin's SR Labs presented on the newest cyber threat at the recent "Black Hat" hacking conference in Las Vegas in a presentation titled: "Bad USB – On Accessories that Turn Evil."

Malicious code can creep into these devices through malware on a computer and be used to hack both personal and business computers, according to SR Labs. Karsten Nohl, chief scientist at the German company, said that hackers or malware can load malicious software onto the computer chips that control the functions of USB devices, which typically don't have any protection against tampering with their code.

Even more disconcerting is the fact that it's virtually impossible to tell from where the virus originated.

SR Labs is known for uncovering major flaws in mobile phone technology.

The new research indicates just how easy it is for hackers to exploit weaknesses in simple devices in order to do serious damage to a computer or network.

SR Labs has performed attacks by writing malicious code onto USB control chips used in thumb drives and smart phones. Once the USB device is attached to a computer, the malicious software can log keystrokes, spy on communications and destroy data, he said.

A USB device that appears completely empty can still contain malware, even when formatted.

Interestingly, the computer to which the infected USB device is attached does not detect the virus because anti-virus programs only scan software written into a computer or a device's memory. However, these viruses can be implanted in the "firmware" which controls the device's functions, and anti-virus programs do not scan firmware.

SR Labs, when running its tests, was able to gain remote access to a computer by having the USB instruct the computer to download a malicious program with instructions that the PC believed were

coming from a keyboard. The virus in the USB device was also able to change DNS network settings on a computer, instructing it to route all of its Internet traffic through malicious servers.

Once a computer is infected, it could be programmed to infect all USB devices that are subsequently attached to it, which would then in turn corrupt machines that they contact. In other words, if one tainted USB device is inserted into a workplace computer attached to a network, it can infect all USB devices in your workplace.

"It becomes self-propagating and extremely persistent," Nohl said in a prepared statement. "You can never remove it."

In one demonstration shown at the "Black Hat" conference, a standard USB drive was inserted into a normal computer. Malicious code implanted on the stick tricked the machine into thinking a keyboard had been plugged in.

After just a few moments, the "keyboard" began typing in commands – and instructed the computer to download a malicious program from the Internet.

Another demo involved a Samsung smart phone. When plugged in to charge, the phone would trick the computer into thinking it was in fact a network card. It meant that when the user accessed the Internet, their browsing was secretly hijacked.

Nohl demonstrated how they were able to create a fake copy of PayPal's website, and steal user log-in details as a result.

Unlike other similar attacks, where simply looking at the Web address can give away a scam website, there were no visible clues that a user was under threat.

### The takeaway

USB is ubiquitous across all devices, and all desktop and laptops have at least two and often more than four USB outlets for plugging in keyboards, mice, peripherals like printers and scanners, mobile phones, tablets and USB devices.

If you have not already done so, you should have a policy prohibiting your staff from plugging in USB devices that were not issued to them at work. In fact, you may want to consider even prohibiting your staff from using company-issued USB devices such as memory sticks or mobile phones. ❖



## DIFFERENCE IN CONDITIONS

# A Policy That Can Cover an Earthquake Claim

**T**HE EARTHQUAKE in Napa last month illustrates the exposure that all businesses in the Golden State have to this unpredictable risk.

While most modern structures are built to withstand earthquakes of a certain size, many older buildings throughout the state are not up to standard, resulting in more damage and replacement costs should a temblor strike. The reality is that whatever its age, a building could suffer structural damage that could cost millions to repair.

Besides the risk to people and property, many business owners are unfortunately surprised to learn after the fact that their commercial property policy won't cover damage from an earthquake.

Insurers set rates so that the premium they collect on policies will cover any money expected to be paid out in claims. The company spreads the risk of loss over many policies in the hope that only a small number will suffer damage.

However, large disasters, like floods and earthquake, will typically affect many policyholders at once, a scenario that many insurers try to avoid – and they do so often by excluding such coverage in their commercial policies.

To fill this gap, you can turn to a “Differences in Conditions” policy. A DIC policy can be useful if you face either flood or earthquake risk in your area and your property carrier doesn't offer coverage for these risks, cannot provide full limits to cover potential losses, or can only offer this coverage at rates that are essentially cost-prohibitive.

Most property policies are written on an “open perils” basis (meaning they will cover many types of claims resulting from acts of God), but they usually exclude flood and earthquake risk.

Besides providing coverage for flood and earthquake losses, a DIC policy may also be used to provide excess limits over flood and earthquake coverages made available by endorsements to a commercial property policy or through the National Flood Insurance Program.

Furthermore, because a DIC is often written as a type of inland marine insurance, it also may be used to address other risks that may not be covered in commercial property policies, such as property in transit, property overseas, or business interruption claims arising from an earthquake or transit loss.

One thing you should know, however, is that a DIC policy is what's known as a “non-filed” policy.

That means insurers do not have to file rates for approval with state insurance departments, and they have greater flexibility in setting rates and drafting policy language. Insurers are often willing to negotiate coverages and limits with policyholders.

Often, the terms and conditions in a DIC policy can vary in important ways from one insurer to the next, so you need to choose carefully.

Opting for a DIC policy with terms and definitions that conflict with your underlying commercial property insurance policy can cause coverage problems.



### Does your business need a DIC policy?

You need to ask yourself if you need more protection than that provided by standard property insurance, especially with regard to flood and earthquake perils.

If you live in a region that is prone to earthquakes and your commercial property policy excludes such events, you may need a DIC policy.

This holds true especially for contractors, manufacturers, retailers, and a variety of service and professional businesses.

Since flood or earthquake losses can be catastrophic, no one insurer may be willing to write a DIC policy with the limits requested or needed by the insured.

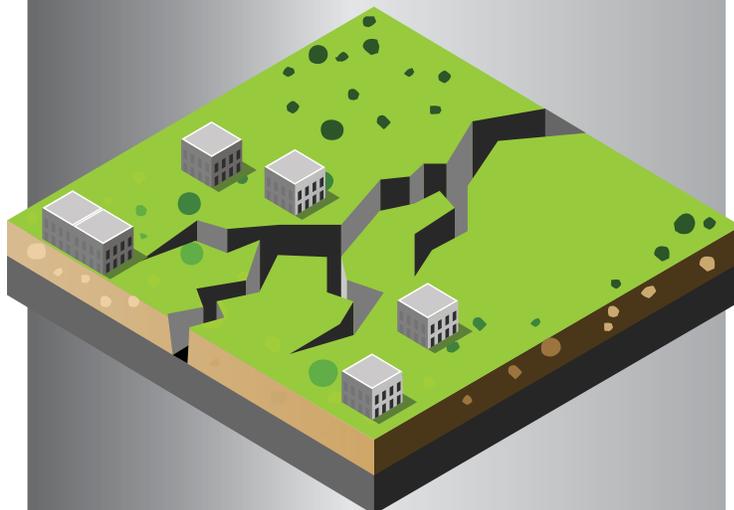
In such cases, two or more insurers may be willing to share the risk on a layered basis or through a quota share (an agreed-on percentage) approach.

We are here to help you by comparing the coverages and exclusions of various DIC policies to find which one would best fit your business's needs. ❖

## What a DIC Covers

THE TYPICAL commercial DIC policy can provide earthquake and/or flood coverage for:

- Buildings.
- Tenant improvements and betterments.
- Business personal property and/or stock.
- Loss of business income, rental income or if you incur extra expenses.



**We can help you decide whether a policy is right for you. Call us today!**

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## LITIGATION THREAT

# EEOC: Don't Ask Staff for Sick Day Medical Details

**A** LAWSUIT FILED by the U.S. Equal Employment Opportunity Commission illustrates the dangers employers face if they ask workers who take sick days to provide medical details.

The company that was sued is accused of improperly demanding disability-related information from its employees and enforcing progressive disciplinary measures when they refused to comply.

The recent case should serve as a warning that asking employees for details about their health after calling in sick can land you in hot water. And if the policy is too intrusive, it could lead to legal action and the potential of high legal and settlement costs.

In the case, the EEOC filed suit in U.S. District Court in Erie, PA against Erie Strayer Co., which had a long-running policy that required all of its employees who were absent from their jobs "for any period of time" to fill out an "authorization for disclosure of health information" form.

The form authorized the company to obtain from the employee's health care provider a certification stating the "nature of the illness or injury" and the "physical limitations, if any."

The employer's policy included increasingly tough disciplinary measures (which could lead to firing) against employees who were absent and failed to fill out the form, or if after filling out the form their medical provider failed to provide the required medical information.

The ultimate goal of this policy, according to the agency, was "for the express purpose of identifying whether these employees are disabled within the meaning of the ADA (Americans with Disabilities Act)."

The EEOC said the disciplinary measures the company subjected its employees to include "coercion, intimidation, threats and interference with the exercise and enjoyment of their protected rights for refusing to comply with its policy and practice of unlawful medical inquiries."

### EEOC cites ADA violation

The EEOC accused the company of violating the ADA, which protects employees from discrimination based on their actual or perceived disabilities.

It filed suit after it had failed to reach a settlement with the company through its conciliation process.

"Requiring employees to reveal the specific nature of their medical illness in order to have necessary sick leave count as an excused absence is an unlawful disability-related inquiry under the ADA," regional attorney Debra Lawrence of the EEOC's Philadelphia District Office said in a statement. "Employees should not have to worry that this very sensitive, private and potentially harmful information will be used by the employer against them," she added.

The EEOC is seeking compensatory and punitive damages and injunctive relief from the company.

The takeaway here is that to avoid breaching your employees' rights to medical privacy, you should refrain from requiring details of their illnesses if they miss work.

But you can ask for a doctor's note, as explained in the sidebar to the right.

You may want to consider an added level of protection for your

firm by purchasing an employment practices liability policy, which will cover costs associated with legal issues arising from how you manage your employees.

For more information, contact us and we can walk you through this important coverage. ❖



**JUST WHAT THE DOCTOR ORDERED:** *You can demand a doctor's note, but don't ask for details of what's ailing your employee, says the EEOC.*

## Can You Require a Doctor's Note?

**YOU CAN** generally require employees to supply a doctor's note if they are absent for a period of time, but make sure that your policy says nothing about the nature of the illness.

The required note should not ask the medical provider to reveal the diagnosis or medical condition. Instead, require that the note include only that the employee was seen at a specific time and date.

If the doctor recommends the employee stay home, it should stipulate any period of partial or total incapacity to perform a job. Requesting more information could run afoul of the ADA.

Just make sure that you don't make the same mistake that Dillard's Department Store made in California. A California appeals court held that the retailer's attendance policy violated the ADA because it required any health-related absence to be supported by a doctor's note stating "the nature of the absence (such as migraine, high blood pressure, etc...)"

