

WORKERS' COMP

# Rating Bureau Asks for Another Rate Decrease

**T**HERE COULD be yet another workers' comp rate reduction coming down the pike, after California's rating agency filed a recommendation that benchmark rates for policies incepting on or after Jan. 1, 2019 be reduced by 14.5% from Jan. 1, 2018 levels.

The Workers' Compensation Insurance Rating Bureau's recommendation to cut the average benchmark rate comes on the heels of an order by Insurance Commissioner David Jones to reduce these "pure premium rates" by 10.3% as of July 1, compared with Jan. 1 rates.

The advisory pure premium rates proposed to be effective Jan. 1, 2019 average \$1.70 per \$100 of payroll, compared with \$1.94, the rate set for Jan. 1, 2018.

While the published benchmark rates are an average for California's 505 standard classifications, the pure premium rates approved by the insurance commissioner are only advisory and insurers may, and often do, file and use rates other than those approved.

Claims and claims-adjusting costs have continued sliding since 2015, the year after reforms addressed a number of cost drivers. Still, the sustained claims cost decreases have surprised industry actuaries, who had underestimated the full effect of reforms.

### The main drivers

The Rating Bureau cited the following as the main drivers of its recommendation:

**1.** Claims from prior years continue coming in short in terms of expected ultimate costs. The Rating Bureau has been missing the mark on how much it expected claims to cost as they age. As a result, in the last many rate filings it has adjusted rates to account for these expected effects on future claims.

**2.** Insurers and claimants continue settling the indemnity (disability payment) portion of claims with increasing frequency. The sooner claims are settled the less expensive they turn out to be since the indemnity portion is capped. Generally, the medical portion is not

## REPORT FIRST AID CLAIMS

Remember to report first aid claims that you may administer on your own.

To encourage reporting, changes that take effect Jan. 1, 2019 include a new experience rating formula that excludes the first \$250 of every claim from your X-Mod calculation.



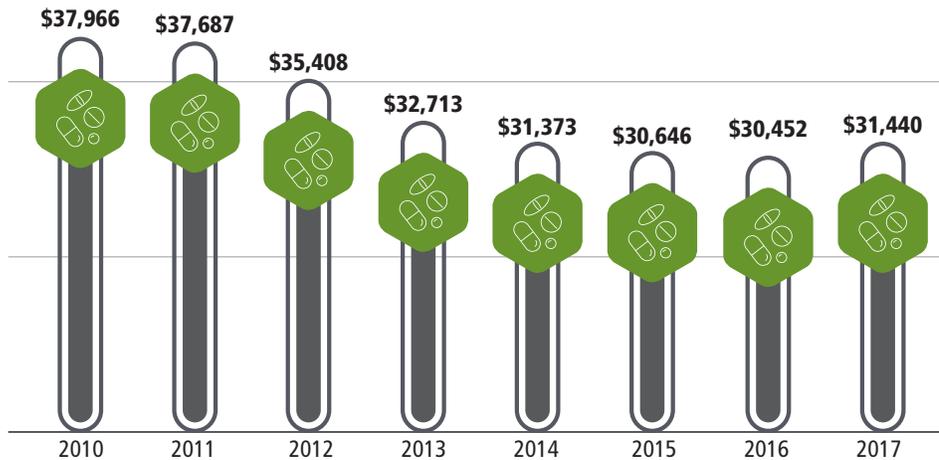
capped, in the best interest of the employee's health and recovery.

**3.** The cost of claims (both indemnity and the medical portion) continues to grow at a moderate rate. One of the biggest successes has been the continued slide in medical costs per lost-time claims (see chart below).

**4.** Claims costs for 2017 were lower than expected. This is in part due to the downward

See 'Surcharges' on page 2

## AVERAGE MEDICAL OUTLAY PER LOST-TIME CLAIM



Source: Workers' Compensation Insurance Rating Bureau

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## INSURANCE ISSUES

# Finding Coverage for the Latest E-mail Scams

**A**S CYBER scams and hacker attacks grow, the insurance industry has been frantically trying to keep up in providing appropriate coverage for these events.

Hacks, viruses, ransomware and exposure of sensitive personal information of your customers or employees, and any resulting regulatory implications, are often covered by cyber liability insurance. But what about the recent trend of criminals spoofing a company executive's e-mail address, posing as them and ordering accounts payable to cut a check and send it to the fraudsters?

Well, two firms suffered similar incidents, but different federal appeals courts issued opposite opinions – one saying that a crime insurance policy covered the event, while the other court said it didn't.

The fact that two courts came out with two different rulings illustrates how many traditional and even cyber policies are slow to keep up with evolving hi-tech threats to businesses. The devil is always in the details, so read your policies and discuss your concerns with us.

The number of business e-mail compromise scams quadrupled in 2017, and losses averaged \$352,000 per business and topped out at \$3 million, according to an analysis of insurer Beazley's clients. The FBI says these schemes are one of the fastest-growing cyber crimes.

## Court case one: Covered

Employees of Medidata, a clinical-trial software firm, wired \$4.7 million for what they thought was for an acquisition by their employer. They were sent a series of fraudulent e-mails that they thought were from their company president and the firm's outside lawyer.

The company didn't have a cyber insurance policy, but it had an executive protection policy, which had a crime section that included coverage for computer fraud, funds-transfer fraud and forgery.

The insurer rejected the claim and the firm sued in federal court. The lower court ruled in favor of the insurer, but upon appeal the federal appeals court ruled that the policy did in fact cover the loss.

The insurer argued the policy applies to only hacking-type intrusions. The appeals court found that while no hacking occurred, fraudsters inserted spoofing code into firm's e-mail system, which the court said is part of the computer system. The court held that the insurer must pay under the computer fraud portion of its policy.



## Court case two: Not covered

A federal district court found no crime policy coverage after a Michigan tool and die firm wired \$800,000 in funds to a fraudster's account in the belief the account belonged to one of its vendors.

The insurer faulted the company for not verifying the bank account with the vendor.

The district court agreed with the insurer that the loss was not a "direct loss" caused by the "use of a computer," and thus the crime policy did not apply.

## The takeaway

Computer fraud is evolving rapidly, so it's important that you talk to us about the types of fraud that appear in the news.

We will work with you to ensure that your coverage is forward-looking and covering more than just threats from last year. We can also discuss with you how computer fraud coverage interacts with other types of cyber crime policies. ❖

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# Southern California Employers Still See Surcharges

indemnity and medical estimated ultimate claims costs for the 2017 accident year, which are significantly below the level the Rating Bureau projected in the Jan. 1, 2018 rate filing that it made last August.

**5.** Wages are expected to continue growing in California. And since the benchmark rates are expressed in relation to payroll (x amount per \$100 dollars of payroll), growth in average wage levels on paper acts as a buffer on claims and claims-adjusting costs. That in turn could reduce the pure premium rate level indication.

**6.** Pharmaceutical costs are declining sharply as doctors curtail opioid prescriptions.

**7.** The number of liens filed continues to decrease thanks to reforms that dissuade the filing of liens when invoices are issued, a

common practice in the past.

## The takeaway

Rates will vary from industry to industry, and some sectors may actually see higher rates despite the new filing. And depending on location, industry and their own claims history, employers may or may not see rate decreases come renewal.

Also, employers in Southern California face surcharges on their policies due to the rampant filing of post-termination cumulative trauma cases in the region.

These cases are often filed without merit and are difficult to settle. ❖

## WORKPLACE SAFETY

# More Firms Ban Smartphones in Worksites

**M**ORE AND more employers are banning cell phones in the workplace because they are distracting enough to be a serious safety issue for workers.

Most notably, General Motors has banned all employees, including its CEO, from walking around with their mobile phones while talking, texting or using other smartphone functions.

You already know the dangers of using your phone while behind the wheel, as vehicular deaths have spiked since the ubiquity of smartphones. But in many workplaces – think warehouses, construction sites, factories and other worksites with equipment and inventory – the distraction of a smartphone can have deadly consequences.

In busy workplaces, safety should be your primary concern. Consider the following:

## Industrial machinery and phones don't mix

OSHA bars the use of cell phones in construction regulations pertaining to cranes and derricks, but the hazard exists across any dangerous equipment.

Some workers should absolutely not have their mobile phones on and within reach, such as powered industrial truck operators, forklift drivers and machinery users. If you have any of these among your workforce, you should strictly ban the use of mobile phones in any capacity during the use of industrial equipment.

You may consider extending the ban to include all of the other employees who regularly work around that equipment, particularly when they are walking or moving product to and from the warehouse. Also, if any staff from your office are in the work area, they too should refrain from using their phones while walking.

## The biggest dangers

The best way to prevent workplace injuries is for employees to be aware of their surroundings. When people are using cell phones in an operational environment, it impedes their ability to recognize and react to hazards, particularly moving equipment like forklifts.

The biggest concern is people who are in the middle of writing long messages and engaging with others on social media or texting. Many of these apps have been shown to greatly reduce the user's awareness of the real world around them.

There are many instances in which workers cause traumatic injuries or even death to themselves or others due to cell phone distractions that could have easily been prevented.

## Potential property damage

Distracted cell phone usage is known to cause workers to accidentally misuse equipment or machinery, which can result in either small or serious damage to company property.

Also, having a cell phone around hazardous chemicals or waste can pose a serious threat to the health and safety of all workers in the vicinity, in addition to property damage.

Furthermore, the cost of replacing damaged property can have a major financial impact on your organization and possibly be at your expense. ❖

## WHAT YOU CAN DO

Create a policy that explicitly explains when and where employees may use their mobile phones while on the job.

Some companies ban cell phones altogether, particularly call centers where employees' devices are collected at the beginning of the day and kept in lockers until breaks.

Consider the following for your rules:

- Mobile phones are barred for employees when performing on-site job-related tasks.
- Answering calls, texting, checking social media or using the Internet are all activities that fall under dangerous cell phone usage.
- Set parameters for when and where employees are allowed to use their phones.
- Consider restricting types of media and videos.
- Hold employees accountable to productivity levels. Note that time spent on the phone on personal matters is keeping them from focusing on their jobs.



**DEADLY DISTRACTION:** Using mobile devices in a busy work environment can lead to serious injuries, or worse.

# Why All Firms Need a Crisis Management Plan

**W**ITH RISKS to companies and employees growing, sometimes the unthinkable happens and a business has a real crisis on its hands.

While the largest companies are usually prepared for a crisis should one occur, many mid-sized and larger firms may lack the resources or have not put much thought into how they would handle a crisis.

One of the most difficult parts of crisis planning is just what to prepare for, since a crisis could be a number of different events, like:

- The sudden death of a key member of your team.
- A defective product leads to an injury, illness – or worse.
- An accident severely maims or kills a number of your workers.

## Your strategy

To get started, assemble a team that includes key members from your organization who will be responsible for creating your crisis-response plan. *Inc. Magazine* recommends the following for your team:

**Make a plan** – You cannot start planning without first identifying your objectives. Once you identify them, you can make response plans for each type of event. Typically, that includes:

- Safeguarding any person (employee, vendor, customer and/or the public) who may be affected by the crisis. Your plan would include how to respond to the crisis if people's health and wellness are at stake.
- Making sure the organization survives. This would include steps you would take to ensure the company can continue as a going concern after a significant disruption.
- Keeping stakeholders (employees, vendors, clients, the public and government) informed on developments.

**Create a succession plan** – You should clearly outline the necessary steps to follow if you or one of your key managers suddenly became unable to perform their duties. This plan may include selling the company, or transferring ownership to family members or key employees.

**Seek advice from the experts** – This includes your leadership team, employees, customers, communications experts, investment bankers, exit planners, lawyers and financial managers. Each of these individuals has unique insights that can be invaluable for how to tackle a crisis.

**Name a spokesperson** – This is important if you have a crisis that spreads beyond your organization and affects the health and safety of a member of the general public, your staff or customers. Funneling all media communications through a spokesperson can help you deliver a clear and consistent message to media, as well as to the public at large.

**Honesty is the best policy** – A lack of honesty and transparency can lead to rumors, as well as a general distrust of your organization if the truth is exposed. The best approach is to be transparent and truthful about what happened and what you are doing to resolve the crisis.

**Keep your staff up to speed** – To stop the rumor mill and also keep employees from becoming worried amidst the uncertainty, keep your workers abreast of developments – and what the crisis means for the organization, and what you are doing about it.

**Keep customers and suppliers informed** – If you have an event that's causing some disruptions, you also owe it to your clients and vendors to let them know what's happening. Like your employees, keep them regularly updated on events and the steps you are taking to address the crisis. Put together a plan for how you would keep them posted.

**Act fast and update regularly** – Keeping the communications alive is important and once you grasp the situation and its effects, you can issue summary statements of the crisis and what's happened. Then you can follow up with regular updates on your action plans, on people affected, any hotline you may set up, and more.

These days news travels fast and like wildfire on social media. You need to move at the same pace.

**Social media is vital** – More and more people get their news from social media and the discussions that ensue on posts, so you need to make sure that your company stays on top of the flow. You may want to assign a person or two to monitor social media and post and react to posts on social media. That way, your team can tell the company's side of the story and put to rest unfounded rumors.

Make a plan for what a social media contact's responsibilities would be during a crisis.

## Get an early start

Your plan won't be effective if you create it during a crisis. Plan in advance, so everyone can approach the strategizing unrushed and with a clear head. ❖

