

News You Can Use



Because You're Different

COVID-19 Safety

## Cal/OSHA Clarifies Emergency Regulations



**D**UE TO confusion among California employers, Cal/OSHA has revised guidance for the emergency COVID-19 regulations that took effect on Nov. 30, 2020.

Under the emergency regulations employers are required to take a number of actions to safeguard their workers against the coronavirus, but businesses have had difficulty interpreting the regulations, which could result in substantial penalties if improperly implemented.

Guidance issued in December didn't seem to help much, so on Jan. 8 Cal/OSHA revised its guidance to provide more clarity on the following:

### Testing

The COVID-19 temporary standard obligates employers to:

- Inform all employees how they may obtain testing, whether it is through the employer, local health department, health plan or community testing.
- Offer no-cost testing to employees who may have a COVID-19 workplace exposure.
- Provide no-cost periodic testing – either weekly or twice weekly, depending on the severity of the outbreak – to all employees who were in an exposed workplace during the outbreak.
- Provide testing in a manner that ensures employee confidentiality.

Here's the guidance:

- Employers may provide testing to employees at a testing site separate from their work location, and need not provide on-site testing unless desired.
- Employers can send their employees to a free public testing site, as long as they incur no out-of-pocket costs to be tested. That means paying them for their time to get tested, including traveling to and from the testing site.
- If a worker refuses to be tested, and the employer follows its obligations to provide free testing, there will be no repercussions for the employer. Businesses don't have to obtain a signed declination from employees who refuse to test.

### Exclusion pay

The guidance states that in order for employees to receive exclusion pay, they must be "able and available to work."

### WHEN IT APPLIES

Cal/OSHA provides some examples of when employers must pay exclusion pay:

- When the employee is symptomatic and would be unable to work due to the symptoms.
- If the employee is out of work for more than a standard quarantine period based on a single exposure or positive test.
- If the employee is receiving temporary disability benefits through workers' compensation.
- If the employee is unable to work for reasons other than protecting the workplace from possible transmissions (e.g., business closure, caring for a family member, disability or vacation).

Employees are only entitled to exclusion pay if the exposure or infection was work-related.

See 'Measure' on page 2

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## Coronavirus

# EEOC Issues Vaccination Guidelines for Employers

**T**HE EQUAL Employment Opportunity Commission has affirmed that employers can mandate COVID-19 vaccines for employees, subject to some limitations.

The EEOC's updated guidance offers direction regarding employer-mandated vaccinations, accommodations for employees who cannot be vaccinated due to a disability or sincerely held religious belief, and certain implications of pre-vaccination medical screening questions under the Americans with Disabilities Act (ADA) and the Genetic Information Nondiscrimination Act.

Asking a patient pre-screening questions is a routine part of a vaccination. These questions may constitute a "medical examination" as defined by the ADA. An employer must be able to show that the inquiries are "job related and consistent with business necessity" and that an unvaccinated employee could pose a direct threat to the health of others in the workplace.

The guidance makes clear that administration of a COVID-19 vaccination to an employee itself does not constitute a medical examination for the purposes of the ADA.

Urging employees to get the vaccine voluntarily or requiring them to submit proof that a non-contracted third party (physician, pharmacist or public health center) administered it may be a better alternative with fewer legal complications.

## Reasonable accommodations

Some employees may be unable to get the vaccine for health or disability reasons. Others may have sincere religious objections to getting inoculated. In both cases, employers must make reasonable accommodations for the employees. The law permits them to exclude these employees from the workplace only if no reasonable accommodation is possible.

Employers and employees might not agree on what "reasonable accommodation" means. For this reason, employers should consult with human resources experts and carry employment practices liability insurance. Expert advice will help avoid these kinds of conflicts, and the insurance will pay for legal defense and settlement of resulting employee lawsuits.

Requiring employees to get vaccinated will also have implications

for the employer's obligations under state workers' compensation laws. On the positive side, a vaccinated workforce should reduce the employer's exposure to claims that an employee got the virus on the job.

On the negative side, some employees may experience adverse side effects. Since the vaccine would be a job requirement, the employee could make a claim for workers' comp benefits due to the adverse reaction. In addition, the employer may have to pay the worker for the time spent getting vaccinated and for the cost of the injection.

## What you can do

Employers can protect themselves by following these guidelines:

- Follow federal and local health guidelines for the vaccine.
- Vary the requirements depending on work conditions and locations, such as requiring vaccines for those who regularly interact with the public but making them optional for remote workers.
- Accommodate employees unable to get the vaccine or resistant to it, to the extent you reasonably can without endangering other employees or the public.
- Apply the requirements consistently to all employees.

No one wants to catch or spread this virus. Employers can help halt the spread by thoughtfully addressing the issue of vaccinating employees. ❖



*Continued from page 1*

# Cal/OSHA Outlines How to Measure Social Distancing Space

## Distancing, other controls

Under the emergency rules, employers must ensure that workers maintain at least 6 feet of distance from other persons at all times possible.

In the new guidance, Cal/OSHA outlines how to measure that space:

- Measuring the space between two peoples' bodies; or
- Measuring the distance between two peoples' breathing zones (i.e., the distance between their heads).

Employers with "fixed work locations" must install cleanable solid partitions that reduce the risk of aerosol transmission, such as Plexiglas barriers.

## Enforcement

Cal/OSHA states in its latest guidance that it will give employers a break from monetary penalties for citations made prior to Feb. 1 as long as:

- The employer made a good-faith effort to comply;
- The violation would not have been considered a violation of the employer's Injury and Illness Prevention Program, respiratory protection program or other applicable Cal/OSHA standard in place prior to the date emergency rules took effect;
- The employer abates the violation; and
- The violation does not involve an imminent hazard. ❖

# Commercial Insurance Rates to Continue Climbing

**T**HE COMMERCIAL insurance rate hikes that have been ongoing since 2017 are expected to continue into this year with double-digit increases for most lines of insurance, according to a new report.

The survey of insurance executives by Alera Group Inc. forecasts that commercial rates will increase across all lines nationwide by an average of 11.6% this year.

The rate increases continue a trend that's been driven by different factors depending on the line of insurance. These range from increased litigation and jury awards, higher property claims costs from a growing number and intensity of natural catastrophes, and higher medical costs for injury claims, to higher reinsurance costs for insurers for extraordinary claims.

## Predictions by insurance line

The Alera survey predicts the following rate increases:

**Medical malpractice: 17.5%** – The increase is being driven by the number of large payouts and the severity of those payouts. Additionally, there has been a shift from an abundance of independent solo or small physician groups to larger groups and hospital employment, which have more resources and hence juries award larger damages due to the perceived deep pockets.

**Umbrella and excess liability: 16.6%** – Higher claims costs and larger and more frequent jury awards are contributing to the rise.

**Commercial auto: 14.2%** – Distracted driving due to smartphone use has increased the number of accidents resulting in death, and the cost of repairing modern vehicles and medical costs continue rising at rates higher than inflation.

**Commercial property: 13.6%** – As the frequency and intensity of natural disasters increases across the country and more buildings are exposed to those catastrophes, insurers are facing an unprecedented number of damage claims.

**Directors & officers liability: 13.2%** – Rates are increasing because of investors suing boards and officers over poor performance or overly optimistic forecasts in annual reports.

**Environmental: 12%** – There has been an uptick in lawsuits filed by individual states against perceived polluters.

**Professional liability: 11.7%** – Pricing influences include heightened litigation across a number of industries that purchase this line of insurance.

**General liability: 11.3%** – Increasing claims costs and larger and more frequent jury awards are fueling the climb.

**Cyber insurance: 10%** – Cyber attacks continue growing against businesses both large and small, and the fast spread of ransomware that requires companies to pay a ransom to criminals to unlock their systems has exploded.

**Employment practices liability: 10%** – The number of cases of employees suing employers for discrimination and sexual harassment is on the rise, as more states have enacted employment-related laws that expanded protections for victims of workplace harassment and discrimination. These laws have also created new training requirements for employers related to sexual harassment.

**Workers' compensation: 4.3%** – Rates vary across many states, but for the most part they are holding steady.

The only one of the above lines of insurance that has been profitable for the industry is workers' compensation. For the rest, the rising costs of claims have exceeded the insurers' ability to keep pace in terms of rate hikes.

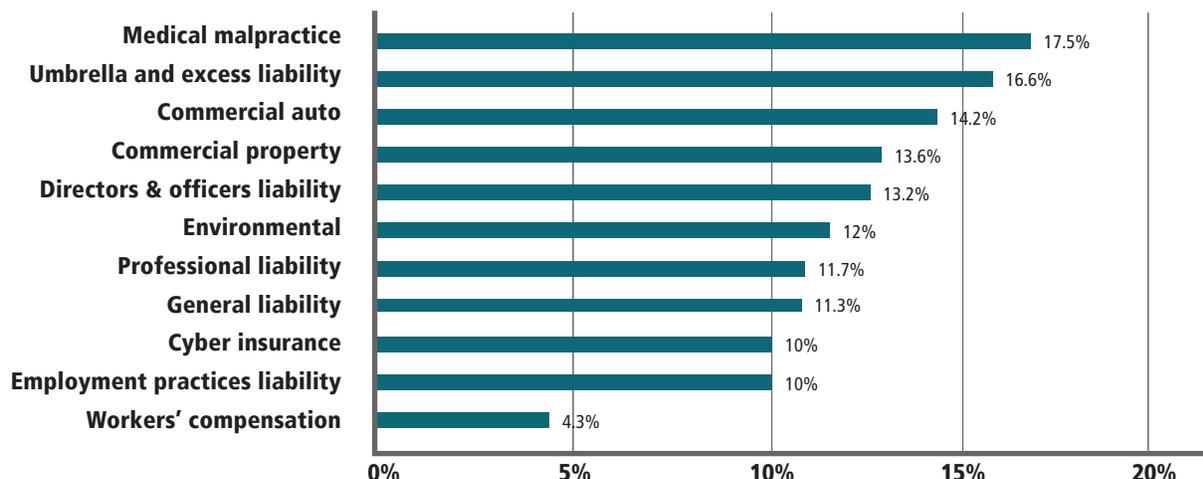
Additionally, in the low interest rate environment, insurers' investment income has also been low (they are usually barred from investing in securities, which are too risky, and have to settle for bonds and other safer vehicles).

## The takeaway

At this time, with many commercial insurance lines hardening, businesses need to double down on their risk management, safety and adherence to laws and regulations covering employment, pollution and more.

While your efforts may not shield your business from higher rates, you can reduce the chances of having to file a claim that would add to any rate increases your firm would face. ❖

## RATE FORECASTS BY INSURANCE LINE



# Workplace Sexual Harassment Moves Online

**W**ITH SO many people working from home during the COVID-19 pandemic, logic would dictate that instances of workplace sexual harassment would have plummeted since people are not in the office or any other facility together.

Logic would be wrong. Sexual harassment of employees by other employees or superiors has moved online, according to recent reports.

In fact, since the pandemic has started, the nonprofit Stop Street Harassment found that there has been a 20% increase in sexual harassment complaints among American workers.

The increase is not surprising considering an earlier study by Stop Street in 2018, which found that 41% of women experienced sexual harassment via text, phone and the internet.

One of the problems is that when people are working from home and dress codes are out the window, it's easy for them to be less formal, which can also lead to less civility and professionalism.

Also, some people may be bolder when not face-to-face with someone, and they may make inappropriate comments that they would not make if they were in front of the person.



Employers should reiterate that any sexual harassment, even if not perpetrated in person, is unacceptable and that there will be consequences, including losing one's job if caught.

Anti-sexual harassment policies may not spell out that they apply while working at home. That's why it's important to consider extending anti-sexual harassment, discrimination and bullying policies to online platforms and text messaging as well.

Consider anti-sexual harassment training to cover online harassment. During these meetings you should:

- Use real-world examples with interactive discussions on what constitutes online harassment.
- Tell people who feel they are being sexually harassed to document the events. The best tool at their disposal is taking screenshots on their phones or laptops. They should learn how to do that quickly as images can be fleeting, particularly on video.
- Explain how staff can report inappropriate conduct.
- Explain how employees can file complaints if they feel they've been the target of sexual harassment. Provide different safe channels of reporting and guarantee anonymity.
- Explain how complaints are handled and resolved.
- Spell out the ramifications for sexual harassment, including potential termination.
- Monitor employee communications and video-conferencing regularly to check for inappropriate conduct
- Hold supervisors accountable for inappropriate conduct in their ranks.

You should take online sexual harassment just as seriously as in-person harassment, and it should be dealt with using the same consequences spelled out in your current anti-sexual harassment policies. ❖

## FORMS OF HARASSMENT

- Inappropriate comments, jokes, pictures or videos sent in e-mails, message chats or text messages.
- Sexual or discriminatory innuendo or comments during video conferences.
- Colleagues displaying inappropriate pictures in the background that make others on the call feel uncomfortable.
- E-mails or texts asking for sexual favors.
- E-mail, text or chat messages with lewd photos or videos.
- Calling late at night for something that can be handled during work hours.
- Talking down to in a demeaning, intimidating or disrespectful fashion; or bullying behavior.