

News You Can Use



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Workers' Compensation

New Changes to X-Mods, Classification Rules



INSURANCE COMMISSIONER Ricardo Lara has approved a regulatory filing that will change the premium threshold for employers to qualify for an experience modifier (X-Mod).

The approval was part of a larger regulatory filing the Workers' Compensation Rating Bureau made to also change expected claims costs, eliminate a few class codes and make new rules for companies that operate multiple enterprises.

The approved filing also updates expected claims cost rates for all 500-plus worker class codes that are used to calculate workers' comp rates. Here's a rundown of the changes:

X-Mod change

Currently, the minimum premium an employer must pay annually to receive an X-Mod is \$9,900, but that is falling to \$9,500, starting Sept. 1. That means any employer that has an annual premium of \$9,500 starting on that date will be "experience rated."

The X-Mod is a number used by insurance companies to either discount or increase the premiums you pay for workers' compensation insurance. It is based on your company's workers' comp claim history and reflects the most recent three years.

Multiple enterprises rule

The new rules make changes to what is known as the "multiple enterprises rule," which applies to companies that have two or more operations that perform work that is classified differently. In those cases, the distinct operations must be classified under the multiple enterprises rule.

In the new rule, separation is the key requirement. If distinct operations are physically separated, each distinct location shall be separately classified.

Separation can be separate operations:

- Located in separate buildings,
- Located on separate floors of a building, or
- Separated by walls if they are on the same floor.

However, if two or more of the distinct operations are not physically separated, they must be assigned to the highest-rated classification applicable to the operations conducted in the common workspace.

The rule also addresses personnel that may float between multiple enterprises, performing different types of work at each operation.

Under the rule, such an employee's work

may be divided into two classifications. If you plan to classify them this way, make sure to keep accurate and complete records supported by time cards or time book entries that show how much time they spent performing each distinct work task for each entity.

If the employer fails to keep those records, the entire pay of the worker will be assigned to the highest-rated classification applied to any part of the work the employee performs.

Classification changes

There are also changes being made to some construction classes.

The 8110 - Stores Welding supplies classification is being eliminated and covered operations will be reassigned to 8010 - Stores hardware, electrical or plumbing supplies.

Also, the iron or steel erection classes 5057 and 5059 will be eliminated, as well as subclasses 5102(3), 5040(2) and 5040(3).

Operations in those eliminated classifications will instead be assigned into one of two consolidated classes:

- 5040 - Structural Iron or Steel operations, or
- 5102 - Iron, Steel, Brass, Bronze or Aluminum Erection - non-structural. ❖

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Cal/OSHA Regulations

New Rules Relax COVID-19 Emergency Standard

CAL/OSHA LAST November issued COVID-19 emergency temporary standards, and now the agency has revised those standards to reflect the reduced risk of infection as more people get vaccinated.

The revisions provide respite to many businesses ahead of the planned reopening of the state on June 15. Here are the more significant changes in the rules:

Exemptions for the vaccinated

The revised rules provide significant exemptions to COVID-19 prevention rules for workers who have been fully vaccinated against the coronavirus, as well as for workers who have tested positive for COVID-19 in the past 90 days and have recovered or are no longer contagious as they are considered “immune.” The rules are:

- As long as they remain symptom-free, fully vaccinated and immune, workers will not need to quarantine if they come into close contact with another co-worker who tests positive.
- Fully vaccinated workers who later contract COVID-19 will not need to quarantine as long as they remain symptom-free.
- Fully vaccinated employees will be exempt from wearing face coverings if everyone in the room is also fully vaccinated and/or has no symptoms.

Definition of face coverings

The rule redefines what constitutes a face covering as “a medical, surgical or two-fabric layer mask, or respirator.” It excludes things like a scarf, ski mask, balaclava, bandana, turtleneck, collar or mask made of a single layer of fabric.

Physical distancing

Physical distancing requirements (6 feet between workers, typically) sunset on July 31.

Also, distancing requirements will not apply to workers wearing

respirators and at locations where all staff are fully vaccinated.

Partitions

The rules sunset on July 31 a requirement that employers install cleanable solid partitions when employees are at workstations such as cash registers, desks, production lines and other locations where physical distancing cannot be maintained at all times.

COVID-19 testing

The rules require employers to provide free COVID-19 testing for workers who have COVID-19 symptoms and who are not fully vaccinated (as of July 31).

The revision also jettisons the requirement that employers offer testing to staff who have come into contact with an infected colleague if those staff are either fully vaccinated or have natural immunity.

The rule also changes the testing requirements if there is an outbreak of cases in the workplace. Existing rules have required all staff at a workplace to be tested if 4% of them test positive.

The rules have also require that employers provide free twice-a-week COVID-19 testing to all staff present at the exposed workplace during the relevant 30-day period.

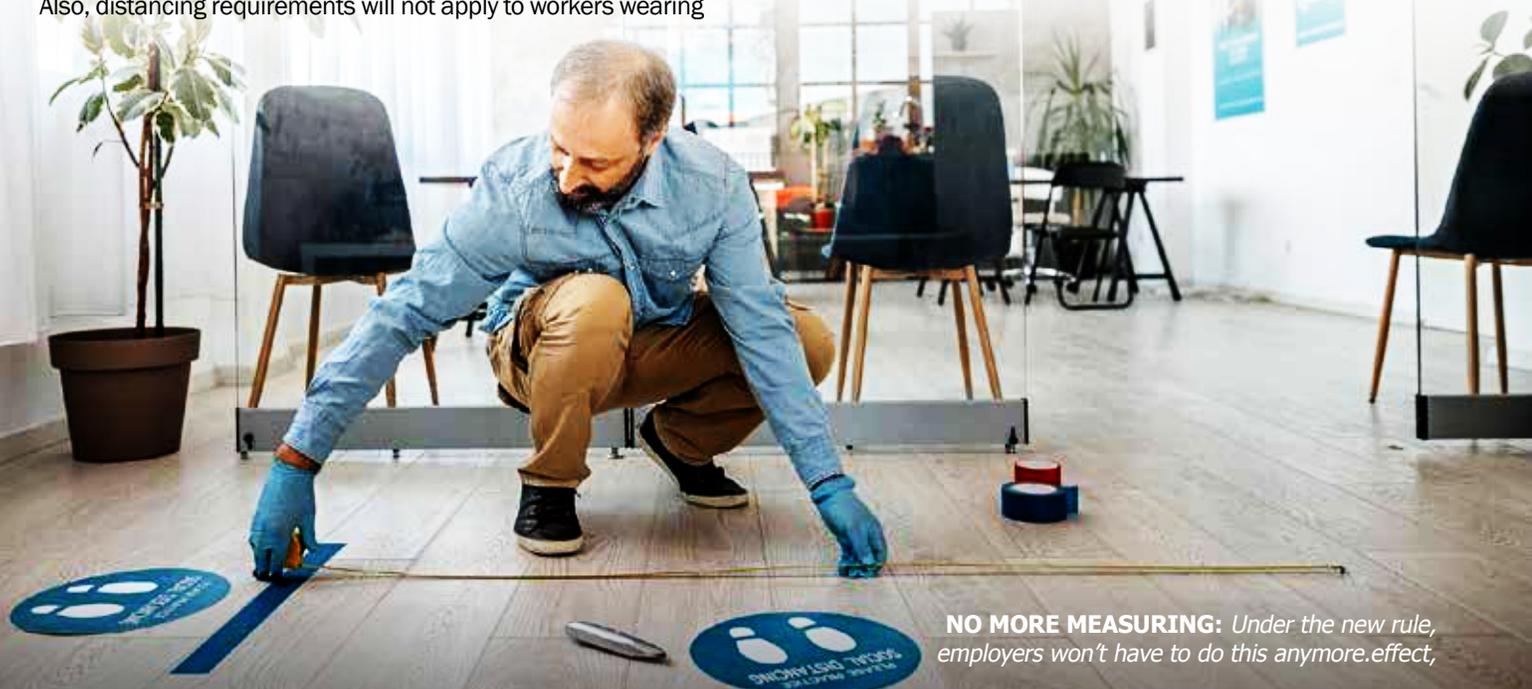
The new rule changes the word “workplace” to “work location at a worksite.” In other words, you will only need to offer testing to staff who were working in the work area where the infected employee was.

Also, outbreak testing will now required after there are three or more COVID-19 cases in an exposed group.

What's next

The new rules took effect on June 4 after the Cal/OSHA Standards Board approved them on June 3.

The rules will allow many employers to start relaxing some of the requirements they've put in place to protect their employees, but consult Cal/OSHA's website before making any changes. ❖



NO MORE MEASURING: Under the new rule, employers won't have to do this anymore, effect,



Construction Coverage

Builder's Risk, Excess Liability Rates Climbing Fast

INSURANCE RATES are rising rapidly for contractors, particularly for builder's risk and excess liability policies as the cost of claims continues to increase dramatically.

While rates for builder's risk have been averaging 10 to 20%, pricing for excess liability and umbrella coverage has in some cases doubled from the year prior.

Both lines of insurance have seen steep and unexpected losses in recent years, resulting in some insurers leaving the market and others becoming stricter in their underwriting and choosier about which builders they are willing to extend coverage to.

If you've been in the market for these lines of insurance, you know that it's become more difficult to secure similar policies to those you may have had in years past. Here's a look at what's going on.

Builder's risk

According to *Construction Executive* magazine, rates are going up between 10% and 20% for builder's risk policies.

There are a number of factors affecting rates:

- The cost of claims has increased, primarily because of the cost of rebuilding after a loss event due to the rapidly rising cost of materials, in particular lumber, the prices of which have tripled in the last year.
- The increasing cost and frequency of natural disasters. Projects that are near areas at high risk for natural catastrophes like brush fires, hurricanes, tornadoes or flooding, are all seeing higher rates and/or difficulty in securing coverage.
- Some insurers have also left the market, leaving fewer players willing to write this risk, which has driven up pricing.

Insurers are tightening eligibility guidelines and restricting how much they will cover. Some insurers are getting more selective and demanding that their insureds take extra precautions before they are willing to bind a policy. Some of the more common demands include requiring:

- Video surveillance systems on worksites.
- Guards to patrol worksites at night.
- The installation of fencing and lighting.

One of the biggest pinch points is policy extensions, which are needed when projects go beyond the time expected to complete them.

Due to the issues mentioned in the bullet points above, policy extensions for ongoing projects have been difficult to secure, according to a report by WillisTowersWatson. The problem has been exacerbated by the COVID-19 pandemic, which disrupted many construction projects across the country and required more companies to seek out extensions for their builder's risk policies.

Excess liability

Renewals for excess liability and umbrella insurance have been running 50 to 100% higher than in 2020, according to a recent report by Marsh LLC. Excess liability and umbrella coverage kicks in after a claim breaches the limits of a primary general liability policy or auto liability.

The drivers: Increasingly large jury awards and the spiraling cost of liability claims, particularly for commercial vehicle accidents. Commercial auto insurance rates have also been climbing as the cost of auto injury and property claims continues to rise due to the increasing cost of repairs and medical costs for injured third parties..

Those claims are covered by primary auto and general liability insurers, but because more claims are exceeding limits, excess liability carriers are increasingly on the hook for those high-dollar claims.

Like in the builder's risk segment, this has resulted in fewer insurers willing to write new policies.

Those that are willing to write new business or renew policies have imposed stricter underwriting terms on the policies they are willing to accept.

Additionally, according to Marsh, primary and excess insurers are limiting the overall capacity extended to an individual buyer by capping per-project aggregate limits.

The takeaway

With the volatility in the marketplace, we recommend that you reach out to us early – and months before your policy is coming up for renewal – so we can work with you to make sure we can secure the coverage you need. ❖

Emerging Risk

New Policy Covers Costs from Workplace Violence

AS VIOLENCE and mass shootings in American workplaces increasingly make the news, more businesses are taking added precautions to prevent these acts at their facilities, but they also face substantial costs if violence does erupt.

The Occupational Safety and Health Administration reports nearly 2 million people suffer from workplace violence every year, and the National Institute for Occupational Safety and Health estimates those incidents cost employers more than \$120 billion.

While your workers' compensation policy would cover treatment for any injuries your staff sustain during an event, it does not cover other risks.

Also, general liability and property policies rarely cover acts of violence, active shooters or terrorism in the workplace.

Some of the costs that your existing policies wouldn't cover include:

- **Legal liability.** If you are sued for negligence for not doing enough to prevent violence in the workplace, your company's general liability policy would not cover any legal costs and judgments, as acts of violence are typically excluded from coverage.

While employers usually prevail in these types of lawsuits because they often cannot have predicted what was going to happen, the company will still incur legal costs that can quickly run into the hundreds of thousands of dollars, which would have to be paid out of pocket.

- **Psychiatric care for affected workers.** Your workers' compensation policy would cover any physical injuries that an employee sustains in a workplace violence episode, but what about the trauma suffered by any employee witnesses? It's not clear if it would apply, but chances are that a worker who is witness to a violent work event and suffers trauma could qualify just as much as a victim.

- **Business interruption.** Often a business will be forced to close after an act of violence in the workplace as police conduct an investigation and employees are unable to work because they are shaken by the event. The business interruption portion of your business property insurance policy will not cover lost income during that time.

The answer

Fortunately, insurers have been introducing policies that cover costs associated with these types of incidents. This workplace violence insurance is usually purchased as an endorsement to an existing general liability policy, but there are also stand-alone policies.

What policies cover

Workplace violence liability policies usually cover:

- Legal liability for lawsuits that may be filed.
- Public relations counseling costs.
- Costs of psychiatric care for traumatized employees.
- Medical or dental care costs.
- Costs for temporary security measures after an event.
- Death benefits for victims' families.
- Rehabilitation expenses for any injured parties.
- Business interruption expenses for an act of workplace violence that results in the business shutting temporarily as police investigate and if employees are too traumatized to work. It will usually cover ongoing operating expenses until the business can resume operations.

The takeaway

Workplace violence policies vary widely with regard to exclusions, terms and conditions.

Comprehensive policies will cover everything from the human costs associated with injured people, to the intangible costs of restoring business operations and reputational damage.

Coverage limits can range from \$1 million to \$100 million on both primary and excess liability. Premiums start at around \$1,800 annually.

Employers can often qualify for lower premiums if they have certain safeguards in place, such as on-site security measures and conducting employee drills and training so staff can know how to respond in case of an incident at work. ❖