

News You Can Use



Because You're Different

Cal/OSHA Rules

As Wildfire Season Heats Up, Protect Workers

CAL/OSHA has issued a reminder to employers that they are required to protect their outdoor workers from unhealthy air due to wildfire smoke.

Cal/OSHA's Protection from Wildfire Smoke emergency regulation, put in place in August 2019, was made permanent in February 2021. For the safety of your workers and to comply with the regulation, it's important that you follow the rules and know when you will need to take action to protect them from outdoor smoke.

The regulation applies when the Air Quality Index (AQI) for airborne particulate matter 2.5 microns (PM2.5) is 151 or greater in an area where employees are working outdoors. Here are the details:

Identification

When wildfire smoke affects a worksite, employers must monitor the AQI for PM2.5.

Employers can monitor the index using the following agency websites:

- U.S. EPA AirNow
- U.S. Forest Service Wildland Air Quality Response Program
- California Air Resources Board
- Local air pollution control district websites or local air quality management district websites.

Communication

Employers must implement a system for communicating wildfire smoke hazards in a form readily understandable by all affected employees, including provisions designed to encourage employees to inform the employer of wildfire smoke hazards without fear of reprisal.

Training and instruction

Employers with outdoor workers need to provide training that covers at least:

- The health effects of wildfire smoke.
- The right to obtain medical treatment without fear of reprisal.
- How employees can obtain the current AQI for PM2.5.
- Possible actions they must take if the AQI exceeds 150 PM2.5

Options for protecting workers

The regulation provides three ways employers can protect their workers:

1. Modifications – If possible, employers should implement modifications to the workplace, in order to reduce exposure. Examples include providing enclosed structures or vehicles for employees to work in, where the air is filtered.

2. Changes to procedures and schedules – Another option is to change work procedures or schedules. Examples include changing the location where employees work or reducing the amount of time they work outdoors or exposed to unfiltered outdoor air

3. Respiratory protection – Employers also have the option to provide proper respiratory protection equipment, such as disposable respirators, for voluntary use without fit-testing if AQI PM2.5 levels are below 500.

To filter out fine particles, respirators must be labeled N-95, N-99, N-100, R-95, P-95, P-99 or P-100, and must be labeled as approved by the US National Institute for Occupational Safety and Health.

If the AQI PM2.5 is above 500, respirator use is required, and fit-testing and a medical examination prior to use are mandatory.

See 'Videos' on page 2

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Workers' Comp

Construction Dual-Wage Changes Ahead

AS INFLATION drives up wages in all sectors, nearly all of the workers' compensation dual class codes for the construction sector will be increasing as of Sept. 1, 2022.

Insurance Commissioner Ricardo Lara in July approved the recommendation by the Workers' Compensation Insurance Rating Bureau of California to increase the wage thresholds for high-wage workers, who enjoy lower pure premium rates than those who are paid less. The new rates apply to all workers' comp policies incepting on or after Sept. 1.

Dual-wage thresholds divide high- and low-wage classifications in various construction industry sectors that have different pay structures for workers and which have proven to have different workers' comp injury rates and costs.

Statistically, higher-paid workers in a high-wage classification are less likely to suffer an on-the-job injury, which in turn means that their employers will pay a lower rate.

On the other hand, the low-wage/high workplace injury rate tier of employee in the dual-wage classification means higher workers' comp premium rates. ❖



CLASS CODE		2021 Threshold	2022 Threshold (as of Sept. 1)
5027/5028	Masonry	\$28	\$32
5183(1)/5187(1)	Plumbing	\$28	\$31
5183(2)/5187(2)	Refrigeration equipment	\$28	\$31
5183(3)/5187(3)	Heating or air conditioning equipment	\$28	\$31
5185/5186	Auto sprinkler install.	\$29	\$32
5190/5140	Electrical wiring	\$32	\$34
5201(1)/5205(1)	Concrete or cement work (pouring, finishing, patios, sidewalks, driveways, etc.)	\$28	\$32
5201(2)/5205(2)	Concrete or cement work (pouring, finishing of concrete floor slabs)	\$28	\$32
5403/5432	Carpentry	\$35	\$39
5446/5447	Wallboard installation	\$36	\$38
5467/5470	Glaziers	\$33	\$36
5474(1)/5482(1)	Painting, wall-paper install	\$28	\$31
5474(2)/5482(2)	Waterproofing	\$28	\$31
5474(3)/5482(3)	Painting, water, oil or gasoline storage tanks	\$28	\$31
5484/5485	Plastering, stucco work	\$32	\$36
5538(1)/5542(1)	Sheet metal work	\$27	\$29
5538(2)/5542(2)	Heating, AC ductwork	\$27	\$29
5552/5553	Roofing	\$27	\$29
5632/5633	Steel framing	\$35	\$39
6218(1)/6220(1)	Excavation	\$34	\$39
6218(2)/6220(2)	Grading land	\$34	\$39
6218(3)/6220(3)	Land leveling	\$34	\$39
6307/6308	Sewer construction	\$34	\$39
6315(1)/6316(1)	Water mains, connections construction	\$34	\$39
6315(2)/6316(2)	Gas mains, connections construction	\$34	\$39

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Resources for Protecting Workers From Wildfire Smoke

Cal/OSHA

- [Training videos](#) on wildfire smoke protection and using N-95 respirators
- [Guidance for employers and workers](#) on wildfire smoke
- [Frequently asked questions](#) about N-95 masks
- [Training Academy](#) (free resources in English and Spanish)

Western Center for Agricultural Health and Safety

- [Checklists, training handouts and posters](#) on smoke health effects, monitoring AQI
- [Pocket cards](#) for respirator use
- [Checklist](#) for wildfire smoke exposure

Workers' Compensation

Commissioner Rejects Proposed Hike

FOR THE third year in a row, California Insurance Commissioner Ricardo Lara has rejected the Workers' Compensation Insurance Rating Bureau's proposal for a workers' compensation rate increase, and has ordered instead that benchmark rates remain the same.

Lara rejected the WCIRB's proposal that benchmark rates increase 7.6% for policies incepting on or after Sept. 1, saying that there was not enough data to support such a large increase.

That means the average benchmark rate will remain unchanged at \$1.45 per \$100 of payroll over the next year, compared to the \$1.56 per \$100 of payroll the Rating Bureau had recommended.

The commissioner also rejected a proposal to include a 0.008 cent add-on to account for costs of COVID-19 claims.

The benchmark rate – also known as the pure premium rate – is an average across all of California's 500-plus class codes. The pure premium rate is a base rate that carriers can use as a guidepost to price their policies.

Pure Premium Rate Explained

The benchmark rate – or pure premium rate – is the amount needed to pay for adjusting and settling workers' compensation claims for each of the class codes. The insurance company then applies a loss cost multiplier to cover their expenses and profits.

Insurers are not required to follow the benchmark rate and they can choose to use it or not when pricing their policies.

That said, most carriers follow the rate closely, as evidenced by the continuing low pricing for workers' comp policies in California.

COVID-19 claims

Lara also rejected the Rating Bureau's proposal to start including COVID-19 claims in the computation of employers' experience modifications (X-Mods) for claims, starting Sept. 1.

In 2020, at the start of the pandemic, Gov. Gavin Newsom ordered that illness claims for COVID-19 infections contracted in the workplace be covered by workers' compensation and that those claims not be included when calculating an employer's X-Mod.

At the time, the reasoning was that employers had no experience in limiting transmission in the workplace and that COVID-19 infections among workers did not reflect a company's safety efforts.

The Rating Bureau recommended that COVID-19 claims be included in X-Mod calculations for all claims incurred on or after Sept. 1. It argued that "like many other workers' comp hazards, COVID-19 is now part of the ecosystem, and employers can take steps to mitigate the risk and protect their workers."

In rejecting the proposal, the Department of Insurance said that employers should not be penalized with higher premiums for failing to keep employees from contracting a disease that is spreading throughout society.

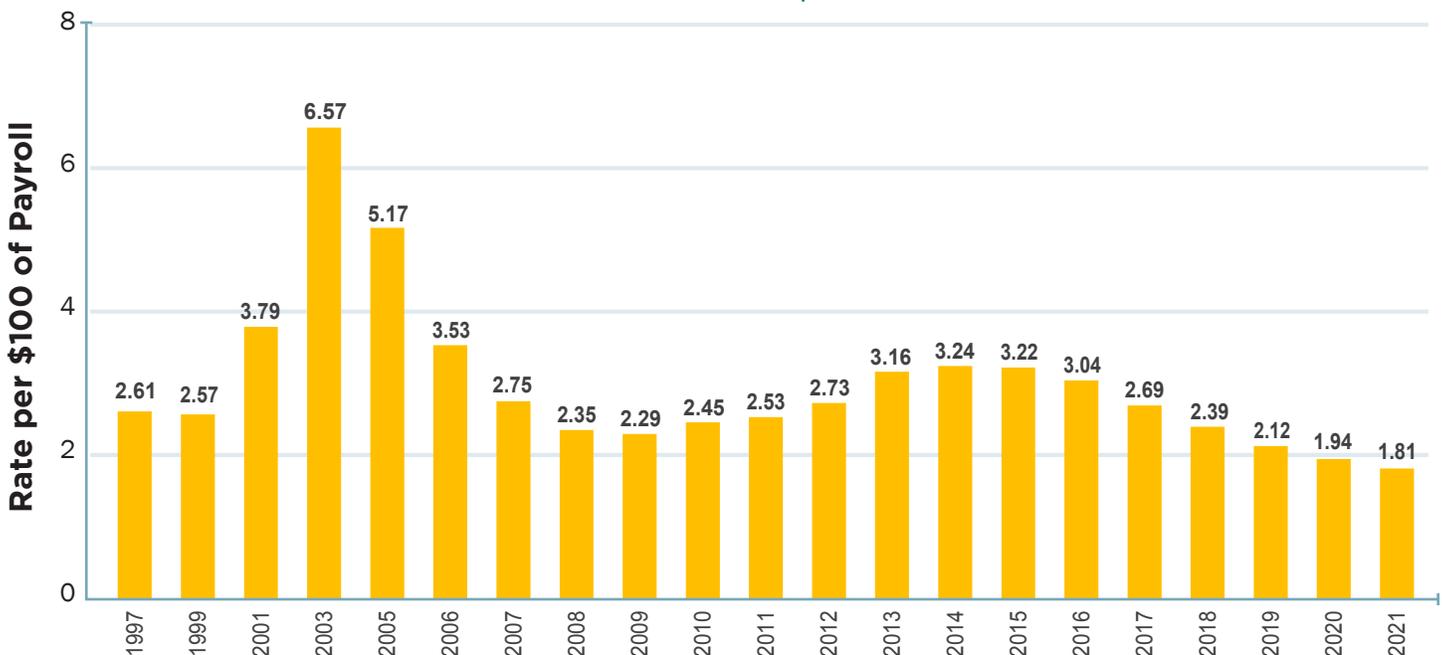
How rate decision affects your policy

Whether an employer's insurance rate stays the same, increases or decreases will depend on its claims history, industry and location. Some employers may still see rate increases if they've had claims, especially ones that require costly medical treatment.

If you are concerned about your workers' comp rates, please give us a call to discuss. ❖

AVERAGE CHARGED RATES ARE AT HISTORICAL LOWS

As of December 31, 2021



Source: Workers' Compensation Insurance Rating Bureau

H.R. Risk

Workplace Bullying Can Cost Your Company

WORKPLACE BULLYING is on the increase, and it constitutes a major risk to companies that fail to take action.

If you learn of a bully in your ranks, you need to take immediate steps to mount a serious investigation and take action if the accusations turn out to be valid. The financial future of your company is riding on it, as a bullied employee could sue your firm for failing to take appropriate action.

But cases are not always cut and dry, and you need to have rules to go by if you receive a complaint. Your bullying prevention policy needs to:

Define bullying

In 1976, San Francisco doctor Carroll Brodsky defined workplace bullying or harassment as:

“Repeated and persistent attempts by one person to torment, wear down, frustrate, or get a reaction from another. It is treatment which persistently provokes, pressures, frightens, intimidates or otherwise discomforts another person.”

The website workplacebullying.org describes it as:

“Repeated, health-harming mistreatment, verbal abuse, or conduct which is threatening, humiliating, intimidating or sabotage that interferes with work or some combination of the three.”

Identify bullies

If you receive a complaint about bullying in the workplace, you’ll need to collect evidence, and interview other workers who may have witnessed the bullying.

You’ll need to document the behavior and evaluate if it rises to the level of your definition of bullying.

Identifying a bully that yells and swears is easy, and others engage in childish pranks such as hiding personal possessions, gluing lockers shut or defacing property. But others do it quietly.

Subtle Forms of Bullying

- Giving false or misleading information about fellow workers or subordinates,
- Scapegoating,
- Abusing authority by threatening to or giving poor or undeserved evaluations,
- Stealing credit,
- Giving arbitrary instructions, and
- Threatening untoward consequences for failing to comply with directives.

Spell out complaint and response procedures

Spell out how workers can file a complaint and your procedures for responding to them, including how you would investigate.

Include disciplinary procedures if you have an employee who is found to be harassing others. Depending on the severity, punishment can be light like a warning; or severe, including termination.

Whatever you do, don’t ignore complaints of bullying.

The takeaway

The costs for tolerating bullying are many: low morale, absenteeism, high turnover, difficulty recruiting and retaining talented staff, or litigation against the business..

Often the target of the bully is afraid to report such actions for fear that the bullying will get worse. Make sure your policies ensure protection against retaliation from the bully.

Finally, if you have employment practices liability insurance, it may cover the legal fees and court judgments, but you may still have to suffer through depositions, discovery and even a court trial. Prevention and swift action if you discover bullying in your ranks are the best, and cheapest option. ❖

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