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**NEWSBLAST**

## Workers' Compensation

# COVID-19 Emergency Rating Changes on Tap

# X-MOD

**E**MERGENCY RULES have been developed to guide workers' compensation classification and claims for coronavirus-affected employers and their workers.

The Workers' Compensation Insurance Rating Bureau is pursuing the temporary rules to ensure fairness for employers, so that their workers' comp rates and experience modifiers (X-Mods) are not adversely affected by COVID-19-related issues.

The Rating Bureau's Governing Committee, whose members include the top executives for a number of workers' comp insurers in the state, on April 17 approved three changes to the state rating plan, according to David Bellusci, senior vice president, chief operation officer and chief actuary for the Bureau:

### 1. COVID-19-related claims

COVID-19-related claims filed by workers will be excluded from an employer's experience rating and will not affect their X-Mod. The most obvious industries where claims will be filed are hospitals and emergency services, but grocery store workers, warehouse personnel and delivery drivers, among others, could make claims as well.

Since the occurrence of COVID-19 workers' compensation claims is unlikely to be a strong predictor of future claim costs incurred by an employer, their inclusion in an experience modification calculation would not meet the intended goal of experience rating, according to the Rating Bureau.

### 2. Non-working, paid staff

Salaries paid to workers who are at home not working yet still collecting a paycheck, will be excluded for workers' comp premium calculations.

The reasoning here is that they are not working and are technically on leave. This should alleviate the premium burden on employers who have opted for these types of arrangements.

### 3. Classification changes

As a result of the California stay-at-home order, many employers have altered employees' duties so they can be accomplished from home.

Under the proposed rule, anyone doing the same job at home and performing mostly desk work can be assigned Classification 8810, Clerical Office Employees, if their job duties, during California's stay-at-home order, meet the definition of a clerical office employee.

For example, an architect who is still working but at home, would have a lower risk than during normal times when they may also be out in the field to check on projects.

### What's next

Having approved the rules changes, the Rating Bureau's Governing Committee has submitted them to the state insurance commissioner, who will hold a hearing May 18 to review the proposals.

All of the changes would apply while California's stay-at-home order is in place and up to 30 days thereafter.

If you have any questions about your premiums and claims, feel free to call us. ❖



**INTERWEST**  
INSURANCE SERVICES, LLC

### INTERWEST INSURANCE SERVICES LLC

8950 Cal Center Dr., Bldg 3, Suite 200  
Sacramento, CA 95826

Phone: (800) 444-4134

Fax: (916) 979-7992

E-mail: [newsletters@iwins.com](mailto:newsletters@iwins.com)  
[www.iwins.com](http://www.iwins.com)

CA License No.: 0B01094

**LOW RISK:** *With so few cars on the road the number of collisions has plummeted.*

## Coronavirus Fallout

# Insurers Ordered to Refund Some Premiums

**C**ALIFORNIA'S INSURANCE commissioner has ordered insurers to refund some premium payments to policyholders for a number of commercial lines, as well as personal auto insurance policies, due to the reduced risk of claims in light of the COVID-19 outbreak and shelter-at-home orders.

Commissioner Ricardo Lara issued the notice, which requires insurers to "make an initial premium refund for the months of March and April" to affected California policyholders as quickly as practicable, and no later than within 120 days.

Lara's notice covers premiums paid for at least March and April – and could include May if "shelter-in-place" restrictions continue – in the following lines of insurance:

- Commercial automobile,
- Workers' compensation,
- Commercial multi-peril,
- Commercial liability,
- Medical malpractice,
- Private passenger automobile, and
- Any other insurance line where the risk of loss has fallen substantially as a result of the COVID-19 pandemic.

The order was made to reflect the reduced risks across the board. For example, with fewer people driving, the risk of accidents has fallen dramatically and, with fewer people working, the risk of workplace injuries has also plummeted.

The order gives insurance carriers flexibility in how to handle the refunds, including providing a premium credit, reduction, return of

premium or other appropriate premium adjustment within 60 days of the notice, which was issued April 13.

In making the announcement, Lara cited a study by UC Davis which found that reduced driving had resulted in fewer accidents, injuries and fatalities on the roads.

Declining payroll and receipts due to closure orders have also dramatically reduced the risk of a liability loss for businesses.

The order comes on the heels of a handful of insurance companies that have voluntarily offered premium refunds or discounts to policyholders because the risk of claims has fallen due to the pandemic and shelter-at-home orders.

For example, Chubb announced that small policyholders whose policies will renew between April 1 and Aug. 1, will see a 25% reduction in the sales and payroll exposures used to calculate their premium, as well as a 15% reduction in premiums for commercial auto policies.

Additionally, several auto insurance companies have recently announced voluntary premium refunds to drivers.

Meanwhile, State Compensation Insurance Fund (State Fund) announced in late March that it had placed a moratorium on policy cancellations and late payment penalties. It will also extend credit to any business negatively impacted by COVID-19 events and offer businesses the ability to adjust their payroll reporting.

## The takeaway

Lara said this was just the first announcement on the issue. The Department of Insurance may issue further notices if the stay-at-home order continues beyond May. ❖

## Coronavirus

# Ten Employee Lawsuit Risks During Outbreak

**T**HE NOVEL coronavirus that broke out in the winter has caused immeasurable suffering, both physical and economic.

For employers struggling to stay in business, this is a fraught time where mistakes in managing their workforces could lead to employee lawsuits. Here are 10 potential trouble spots to watch for.

**1. Workplace safety** – Businesses that still have employees working on-site run the risk that a single infected worker may send the virus ripping through the entire workforce.

While workers' compensation laws may prevent employees from suing, their family members who become ill or suffer through a worker's illness face no such constraints.

**2. Sick time and paid leave** – Congress enacted the Families First Coronavirus Response Act in March, guaranteeing full-time employees of small businesses 80 hours of sick leave (part-timers get a prorated amount.)

Mistakes in administering these benefits could prompt lawsuits.

**3. Workplace discrimination** – Because the coronavirus originated in China, there have been reports of Asian-Americans being targets of racist actions. Employers must take care to avoid the appearance of making workplace decisions based even partly on employees' race.

**4. Americans with Disabilities Act** – The ADA prohibits discrimination against disabled individuals and requires employers to make reasonable accommodations for these workers.

Employees who become ill from COVID-19 (the illness caused by the virus) may suffer after-effects that include trouble breathing, speaking and working at their former pace. Employers must accommodate these workers to the extent that is practical.

**5. Wage and hour violations** – Non-exempt employees working remotely may be working more than their regular hours, missing rest and meal breaks, and using their own equipment.

Employers must keep careful records, reimburse employees for their use of personal equipment where warranted, and remind employees to take mandatory breaks.

**6. Battered retirement plans** – Stock markets have cratered since the beginning of the year, taking retirement account balances down with them.

Questions may be asked about whether fund managers did enough to limit the damage. Employees who are not satisfied with the answers may go to court.

**7. Health information privacy** – Employee health information privacy is protected by law. Employers must secure the records of infected employees from unauthorized access by individuals within and outside the company.

**8. Union contracts** – Collective bargaining agreements may contain provisions that go beyond federal requirements for breaks, paid leave, layoff notices, and workplace safety.

Employers must keep their CBAs in mind and work with their unions to avoid contract violations.

**9. Disparate impact from layoffs** – If layoffs are necessary, employers must take a thoughtful approach when deciding which employees to part company with.

An appearance of singling out older workers or other protected classes under discrimination laws could invite lawsuits.

**10. WARN Act** – The Workers Adjustment and Retraining Notification Act requires some employers to provide at least 60 days' notice before layoffs. Many businesses' revenues fell off the cliff so quickly that they were unable to provide that much notice.

## A final thought

The pandemic is a crisis that few businesses foresaw. The effects, including the litigation, may haunt them for a long time to come. ❖



## Rule Change

# OSHA Won't Require COVID-19 Reporting

**T**HE OCCUPATIONAL Safety and Health Administration announced in April that it won't be enforcing COVID-19 recordkeeping requirements.

The announcement reverses an earlier decision requiring that transmission of the virus in the workplace, unlike the flu or common cold, would be considered a recordable injury for the sake of OSHA reporting.

The agency said it would only require the reporting of COVID-19 cases for non-frontline employers if there was objective evidence that a case may be work-related without an alternative explanation and the evidence was reasonably evident to the employer.

It said the new order would allow companies to “focus on implementing good hygiene practices rather than “making difficult work-relatedness decisions.”

Some employers are still required to record COVID-19 cases among their staff, including health care entities, emergency response outfits and correctional institutions.

### OSHA complaints rise

The change comes as OSHA is flooded with COVID-19 complaints from workers reporting safety breaches in relation to the pandemic, across a range of industries and regions of the country.

Employment law attorneys say that shortly after the outbreak got a foothold in the U.S., OSHA started receiving complaints and began sending letters to employers telling them to respond by a certain time. But the agency has seen such a flood of complaints that the letters no longer require a response, and instead direct businesses to OSHA guidance and resources on how to address COVID-19 risk in the workplace.

The federal agency has received thousands of inquiries regarding COVID-19. And individual state OSAs also report a spike in COVID-19 complaints by workers against their employers.

Most are from health care workers, but others are from workers in other essential industries like grocery stores, warehouses, delivery operators, and more.

But while Fed OSHA may not be requiring employers to respond to complaints concerning coronavirus safety complaints, many state plans are in fact requiring employers to provide in-depth responses – and some are actively investigating complaints.

### What employers can do

If you have employees who may be exposed to some degree at work, you should have in place procedures and a plan to reduce the possibility of exposure.

### SAFETY PROTOCOLS

- Shields around workspaces and workers.
- Requiring the use of face masks and surgical gloves.
- Placing sanitizing gel in strategic locations in the workplace.
- Using personal protective equipment.
- Spacing personnel apart from each other to ensure appropriate distancing.
- Staggering work shifts.
- Frequently wiping down high-touch areas with an alcohol-type solution.

The key to protecting your workers and being able to provide a defense should OSHA conduct a workplace investigation is to show that you made a sincere effort to mitigate hazards to your employees.

There are no guidelines for COVID-19 in OSHA's regulations currently, but its General Duty Clause requires that you take appropriate precautions to protect your workers. ❖

