Ridgemark Insurance Services

SEPTEMBER 2022 | VOLUME 3 | ISSUE 9

NEWSALERT

Construction Workers' Compensation

Big Changes for Dual-Wage Class Codes

AS INFLATION drives up salaries in all sectors, the workers' compensation wage thresholds for construction dual class codes have increased in California as of Sept. 1, 2022.

State Insurance Commissioner Ricardo Lara in July approved the recommendation by the Workers' Compensation Insurance Rating Bureau to increase the wage thresholds for high-wage workers.

The new rates apply to workers' comp policies that incept on or after Sept. 1.

In these dual class codes, workers' compensation rates are different for workers above and below the wage threshold.

Rates are lower for workers whose hourly pay is above the threshold as statistics have shown higher-paid workers in these fields have fewer workplace injuries than those who are paid less..

Often the difference in premium rate between the workers who fall above and below the threshold can be significant

Opposite are the new thresholds for each class code, that are now in effect. ❖

CLASS CODE		2021 Per/hour Threshold	2022 Per/hour 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, construction	$34	$39

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Tough Choices Ahead for Trucking Businesses

THE U.S. Supreme Court's decision to not hear an appeal of the sweeping California independent contractor law known as AB 5 is likely to cause serious personnel headaches for motor carriers in the Golden State.

While the law is already in effect, there had been an injunction exempting trucking companies after the California Trucking Association had sued to overturn the law as it applies to the industry. The Supreme Court's decision effectively lifts the injunction, and the CTA is sounding the alarm on how it will wreak havoc on motor carriers.

AB 5 and Truckers Explained

AB 5 establishes a three-pronged test to determine if someone is an independent contractor:

- They must be free from the control of the hiring entity (meaning they can choose when and how to perform their work);
- *They must perform work outside the usual course of the hiring entity's business* (meaning they must perform work that is not part of the hiring entity's main business); and
- They must be customarily engaged in an independent trade or occupation.

The middle prong is the top sticking point, since the main service motor carriers provide is moving cargo.

The effects

Owner-operators who are classified as employees under this test will be covered by California labor and employment laws. The hiring entity will have to treat them like employees, meaning they have to secure workers' compensation coverage, pay employment taxes and extend benefits to them. They also have to abide by labor laws and wage and hour statutes.

Here's how AB 5 will affect various owner-operators.

Exclusive leased owner-operators – These operators drive exclusively for a hiring trucking company and work under the latter's authority. They may or may not own their own trucking equipment (tractors and trailers) and do not have their own motor-carrier operating authority from the Department of Transportation.

They've operated as independent contractors because the lease agreements let them choose their own loads, but the agreements bar them from using their equipment to drive for other entities.

Effect: These operators will essentially be illegal.

Non-exclusive leased owner-operators – These contractors own their own equipment and have DOT motor-carrier operating authority. They move cargo primarily for a motor carrier with which they contracted but they can also work for other customers.

Effect: This group may or may not be affected depending on the arrangements they have with the motor carrier.

For-hire owner-operators – These operators own their own equipment, have their DOT motor-carrier authority and source loads through brokers or other means. They are their own bosses and they choose whom they will move freight for.

Effect: This subset is the least likely to be affected. ❖

Options for Motor Carriers

There are just a few options available for trucking firms:

- A motor carrier can switch to an employer-employee model and hire its current contractors as employees.
- A trucking firm can separate its brokerage operations from carrier business, essentially creating two distinct businesses: one that employs drivers directly and another that is a brokerage for independent contractors, for-hire operators who set their own rates and can accept work from multiple hiring entities.
- A motor carrier can pursue the business-to-business exemption in the law. AB 5 has a narrow exemption for independent contractors who provide services directly to a contracting business rather than to customers of that business. But, both the hiring entity and the contractors must meet a long list of requirements.

Coverage Costs

Many Factors Drive Climbing Insurance Premiums

INFLATION IS not just affecting the cost of food and fuel. It's also spilled over to the price of almost every industrial item, as well as building materials and services.

Anybody running a business, particularly one that carries inventories or has to invest in machinery or electronics, has seen prices increase on top of wage inflation in a red-hot job market with strong economic expansion.

All of that inflation, however, is leading to higher insurance costs, largely due to the increasing cost of claims in almost all areas of coverage.

On top of that, jury awards for both third party injuries and employees filing discrimination, harassment or other employment-related lawsuits are also on the rise.

Additionally, even the cost of adjusting and managing claims has jumped nearly 20% in the last year, according to a recent American Property Casualty Insurance Association (APCIA) report.

A survey by The Council of Insurance Agents & Brokers found that in the second quarter of 2022, businesses were paying on average 6.1% more for their commercial insurance policies than they were in the same quarter of 2021.

But rates will vary between regions as well as business sectors. Companies in areas at high risk for natural disasters are seeing higher rate hikes than those in relatively calmer areas, for example. Additionally, some states have higher jury awards than others.

Insurance lines that are seeing the most noticeable increases in claims costs, and in turn insurance rates, include:

Commercial auto

Auto insurance is feeling pressure on two fronts: the cost to repair vehicles and liability costs in terms of rising jury awards and medical costs for injured third parties. The average rate hike for commercial auto policies was 7.2% in the second quarter of 2022, compared to the same period in 2021.

According to the APCIA report: "The frequency of attorney representation in commercial auto claims has been increasing, and the relative costs of resolving claims are significantly higher for claims with attorney representation, including taking considerably longer to resolve for consumers."

Repair costs have increased substantially, adding to the cost of claims.

General liability

General liability insurance is affected by many of the same lawsuit trends that affect commercial auto policies, including the number of large "nuclear" verdicts in lawsuits. These verdicts can be in the tens of millions of dollars, if not more. Settlement costs and legal fees continue to increase as well, adding to the cost of claims.

According to the APCIA, insurance industry incurred losses for commercial general liability have skyrocketed more than 57% since 2017. According to the agents' and brokers' council, rates increased an average of 4.7% in the second quarter of this year.

Commercial property

Construction costs have skyrocketed in the wake of unprecedented building material cost increases, a labor shortage in the construction industry and supply chain constraints, leaving contractors short of materials to complete jobs.

CATASTROPHES DRIVE PROPERTY RATES: *Commercial properties are not immune to the ravages of natural disasters, like this motel that was destroyed by a wildfire.*

For example, between December 2019 and December 2021 the price of construction materials boomed 44%, with some lumber prices up 400% in the summer of 2021.

Rates in the second quarter increased 8.3% from the second quarter of 2021, and while that rate is high, it's compared to average rate increases of 10.3% in the fourth quarter last year.

Cyber

The cost of cyber insurance is climbing 25% a year, thanks to increasing cyber attacks, increasing costs of ransoms demanded by ransomware criminals and rising cyber-attack business interruption costs, according to the agents' and brokers' council.

Another factor affecting the cost of cyber coverage is capacity (not enough insurers in the market). Also, insurers are raising deductibles and offering more restrictive terms to reduce their overall exposure.

The takeaway

With rates continuing to increase, it's important that businesses take steps to manage their risks and reduce the chances of being sued, be that by third parties or their own employees.

It means having your internal policy procedures geared toward reducing the chances of discrimination (disability, race, sex, sexual orientation, etc.) or harassment lawsuits being filed by your staff.

It also means regular safety training for your workers to reduce the chances of customers, the general public or vendors that come onto your property being injured.

And it means taking steps to reduce the chances of your business being affected by a natural disaster. Mitigation steps will vary depending on the type of threat your business may face. ❖

The Dual Threat of Understaffing and New Employees

WITH A RED-hot economy and many companies forced to operate with more new employees and/or limited staffing, mistakes are bound to happen – and that can be costly.

These mistakes can result in workplace accidents, lagging productivity leading to missed deadlines, or errors that result in returns or, in the worst-case scenario, lawsuits by angry clients.

If your business has taken on new employees or if you're understaffed, you have to get firm control of your operations and properly manage your risk.

The risks of new employees

Workplace injuries can increase when you have new staff with less experience on the floor. In prior recoveries, when employers increased their workforce to meet the growing demand for their products and services, the number of workers' compensation claims tended to rise disproportionately.

New employees with less experience typically are more likely to sustain a workplace injury or injure other workers.

Double down on workplace safety if you have new staff, particularly if you operate a busy workplace.

Inexperienced employees can also make mistakes, which can cause problems with customers. If the mistakes are large enough, like a large print mailer that went out with the wrong phone number, you could be sued by your client.

Again, training is key to reducing the chance of mistakes. You should have safeguards in place, like supervisors double-checking products before they are delivered to clients.

Inexperienced employees are also more likely to contribute to incidents where third parties are hurt. Moreover, new hires may still be going through their training or may not be properly supervised when they work.

The risk of being short-staffed

Because of the labor shortage, many employers have been forced to operate with fewer employees than they actually need, squeezing more work out of existing staff. But tired workers make mistakes.

What's at stake

Working short-staffed can result in:

- Employees who are unproductive and stressed out.
- Lower production, service delays, or missed deadlines.
- Disgruntled workers, who may initiate legal action.
- Staff cutting corners, which can result in shoddy final products.
- Employees cutting corners and causing workplace accidents.

The takeaway

Yout need to be especially vigilant to ensure that your existing staff are not overworked and that new workers are trained properly in their jobs, as well as in the dangers in your particular workplace.

If possible, pair up new workers with experienced ones who can show them the ropes and proper work techniques, and how to avoid workplace accidents. Safety training is also key and safe work practices need to be reinforced regularly. ❖