

Trucking/Transportation

More Big Rigs Phased Out as EV Rules Loom

STARTING JAN. 1 of this year, heavy duty diesel trucks and buses built prior to 2010 and weighing more than 14,000 pounds are banned from operating in California. The new rule is part of phased-in California Air Resources Board regulations that aim to reduce emissions from diesel trucks and buses.

But while the change is good for the state's air, industry insiders warn of the hardships it creates for thousands of truckers in the state, who are faced with only a few choices if they want to keep working and have a truck that was built before 2010.

On top of that, CARB is in the midst of new rulemaking that would see virtually all diesel trucks in California phased out and replaced by electric trucks.

It's estimated that about 10% of the trucks plying California's roads will be affected by the changes for 2023, leaving owners of pre-2010 trucks and buses that weigh more than 14,000 pounds two options to comply:

- Replace the vehicle with a rig that was built in 2010 or later, or
- Retrofit the current truck by replacing the older engine with a new one that was made in 2010 or later. That also entails installing a diesel particulate filter and a selective catalytic reduction unit.

The regulation has been implemented in stages and this year constitutes the final step.

Enforcement Mechanism

- The Department of Motor Vehicles will deny registration for vehicles that don't comply with the CARB rules.
- CARB will audit fleets, conduct inspections and issue citations.
- CARB is working with the U.S. Environmental Protection Agency to help enforce the rule on out-of-state vehicles coming into California.

Trucks and buses that drive less than 1,000 miles per year in California may qualify for an exemption from the rule, as may those operating in what is designated as a low oxides of nitrogen (NOx) emissions area.

What's next?

The industry is bracing for even more regulations as state regulators plan to phase out the sale of new diesel and gas-powered engines.

Under proposed rules:

- 10% of box trucks and light-duty package delivery vehicles owned by fleet owners must be electric beginning in 2025, and be 100% of their fleets by 2035.
- Electric work trucks and day cab tractors must equal 10% of their fleets in 2027, and 100% by 2039.
- Sleeper cab tractors must be 10% electric in 2030, and 100% by 2042.

See 'Changes' on page 2



New Cal/OSHA Standard Coming Soon

CAL/OSHA IS in the process of updating its regulations on first aid kit requirements, an effort that's stirred up controversy over some of the proposed elements.

According to a report by the trade publication *Cal-OSHA Reporter*, one of the most controversial parts of the proposal is that a doctor or other licensed health care professional approve the first aid kit for use.

As an alternative, however, a company can avoid seeking approval if the first aid kit complies with the 2021 version of the American National Standards Institute/International Safety Equipment Association Z308.1 standard (ANSI/ISEA Z308.1).

California employers should expect the new rules to take effect sometime this year.

ANSI/ISEA first aid kit requirements

The ANSI/ISEA Z308.1 standard includes requirements for two types of first aid kits: Class A and Class B. The latter is intended for larger workplaces, and mostly contains more of everything that's in Class A kits, plus a few extra items. And in larger workplaces, more than one Class B kit is required.

Approving your kit

If you don't opt for an ANSI/ISEA-compliant

first aid kit, you'll have to seek out a doctor or a licensed health care professional to approve the kit. It's still unclear how this process will work.

Once the final regulations are released, we'll have a clearer picture and will provide an update.

Other requirements

All employees shall have ready access to a first aid kit, including employees at remote worksites or in work vehicles. The location of each first aid kit shall be clearly indicated.

Employers are required to "frequently" inspect their first aid materials, which they must replenish as necessary.

The takeaway

While the proposed regulation has not yet taken effect, it's likely that it will be soon.

You may want to get a head start by securing an ANSI/ISEA-compliant first aid kit or kits for your workplace(s). It will likely be a less expensive and bureaucratic option than assembling your own kit and seeking approval from a doctor or licensed health care practitioner. ❖



Proposed Class A Kit Contents Requirement

16 Adhesive Bandages: 1" x 3" (2.5 x 7.5 cm)
1 Adhesive Tape: 2.5 yd (2.3 m)
10 Antibiotic Applications: 1/7 oz (0.5 g)
10 Antiseptics: 1/7 oz (0.5 g)
1 Burn Dressing (gel soaked): 4" x 4" (10 x 10 cm)
10 Burn Treatments: 1/32 oz (0.9 g)
1 Cold Pack: 4" x 5" (10 x 12.5 cm)
1 CPR Breathing Barrier
2 Eye Coverings with means of attachment: 2.9" sq (19 sq cm)

Source: Cal/OSHA proposed regulation

1 Eye/Skin Wash: 1 fl oz total (29.6 ml)
1 First Aid Guide
1 Foil Blanket: 52" x 84" (132 x 213 cm)
10 Hand Sanitizers: 1/32 oz (0.9 g)
4 Medical Exam Gloves
1 Roller Bandage: 2" x 4 yd (5 cm x 3.66 m)
1 Scissors
2 Sterile Pads: 3" x 3" (7.5 x 7.5 cm)
2 Trauma Pads: 5" x 9" (12.7 x 22.9 cm)
1 Triangular Bandage: 40" x 40 x 56" (101 x 101 x 142 cm)

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Next Up: Changes to Proposed Electric Truck Rules

Despite proposing its Advanced Clean Fleets regulation in 2022, CARB is making plans to modify the proposal to address possible charging infrastructure delays and unavailability of models of zero-emission trucks.

It's considering amending the rule as follows:

- Adding a provision that delays zero-emission truck purchases

up to five years due to charging infrastructure construction delays, and

- Providing a right for a fleet to buy a California-certified truck with an internal combustion engine when there is no electric truck with "equivalent configurations" available for purchase. ❖

Flood Insurance Considerations After Storms

THE ATMOSPHERIC river that pummeled California over three weeks in December and January caused an estimated \$30 million in insured damage, much of it from flooding.

With flooding events increasing nationwide, it's noteworthy that many companies located in or near flood zones do not carry commercial flood insurance, without which any damage their properties sustain won't be covered. Damage from flooding typically is not covered under a standard commercial property or a business owner's policy.

Companies located in flood plains will usually carry some flood insurance, but 30% of all floods in the U.S. occur outside such areas. As the recent storms illustrate, even businesses and homes located outside of flood plains are at risk.

What does flood insurance cover?

If your business is located in a high-risk flood area and you have a mortgage, you are likely required to purchase flood insurance. But as mentioned above, properties outside of designated flood zones can also flood.

Insurance covers damage to your building and contents caused by flooding. This includes losses resulting from water overflowing rivers or streams, heavy or prolonged rain, ocean storm surge, snow melt, blocked storm drainage systems, broken dams or levees, or other similar causes.

Also, damage from mold and mildew resulting from the after-effects of a flood may be covered.

On the other hand, if water comes from above – for instance from rain or melting snow overflowing gutters and leaking onto your inventory – your property policy may cover the damage.

What's my risk for flooding?

If you are not in a designated flood plain, the best general indicator for the risk you face is whether your commercial property is at ground level or on an elevation.

Location is the most important factor for weighing your risk. Is your business situated in or near a flood zone?

Flood map search tools can be found online.

If not in a flood zone, is it near the coast or a river, lake or stream? As seen in the past, even areas with low flood risk can also be inundated during particularly heavy storms.

Also consider in which parts of the building your business's equipment and inventory are located. Anything housed on a lower floor, for instance, would be at greater risk.

Where can I get coverage?

Flood insurance is available from the National Flood Insurance Program and some private insurers.

However, NFIP coverage can only be purchased through an insurance professional; you cannot buy it directly from the federal government.

Feel free to call us about your options and a review of your property.

Important: Typically, there's a 30-day waiting period from date of purchase before your policy goes into effect. This is to keep firms from purchasing a policy just before an expected deluge or when it looks like their property may imminently flood.

Limits

Commercial flood insurance premiums can cost a few hundred dollars a month up to several thousand dollars a year depending on the size of your facilities.

Policies typically provide up to \$500,000 of coverage for your building and up to \$500,000 for its contents.

You may be able to purchase additional insurance for catastrophic events. This type of coverage usually includes protection against business interruption.

Think ahead

While California has been in a drought and the storms are not enough to alleviate it completely, the wild weather this winter illustrates how unpredictable weather can flood properties that are not in designated flood zones. ❖



New Protections for Pregnant, Nursing Workers

IN THE WANING days of 2022, Congress passed a bipartisan \$1.7-trillion spending bill that includes legislation that expands rights for pregnant and nursing employees.

The budget bill, which President Biden has signed into law, included the Pregnant Workers Fair Act (PWFA) and the Providing Urgent Maternal Protections for Nursing Mothers Act (PUMP Act). Employers will need to adjust their policies to comply with these two measures.

The PWFA

This measure is modeled after the Americans with Disabilities Act and includes many of the same protections and steps employers must take if a pregnant employee asks for accommodations.

The law requires employers with 15 or more workers to make reasonable accommodations to limitations the worker conveys related to pregnancy, childbirth or a related medical condition.

Like under the ADA, employers are required to enter into an interactive process with an employee covered by the PWFA to determine what kinds of reasonable accommodations they need and the employer can provide (as long as it does not create an undue hardship on the employer).

The law also bars employers from requiring an employee covered by the PWFA to take paid or unpaid leave if another reasonable accommodation is available. Employers may also not retaliate, coerce, intimidate, threaten or interfere if any worker requests or is provided with a reasonable accommodation.

Relief Available under the PWFA

- Reinstatement
- Back pay
- Front pay
- Compensatory damages
- Punitive damages
- Recovering attorneys' fees

PUMP Act

This new law requires employers to provide employees who are nursing “reasonable time” and a private space to express milk.

The law expands on the Fair Labor Standards Act, which requires employers to provide nursing employees who are non-exempt under the FLSA with break time and a private space to express milk for one year after they give birth.

This new law expands the right to both exempt and non-exempt employees.

Firms with fewer than 50 workers can qualify for an exemption from the law if they can establish that complying would create an undue hardship (defined as creating significant difficulty or expense in relation to the business’s size or financial resources).

Employees who are denied a private place and time to express milk must first notify their employer of its alleged failure.

If the employer doesn’t remedy the situation within 10 days, the employee may commence an action against them and seek damages, including:

- Unpaid wages,
- Reinstatement,
- Back pay,
- Front pay, and
- Liquidated damages.

Your next step

You should update your company policies to ensure they are in compliance with the new laws.

Even though smaller employers can claim an exemption, it’s smart business to try to accommodate pregnant workers, new mothers and lactating employees if possible.

You should also avoid taking adverse action against this new protected class. ❖

