Ridgemark Insurance Services

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NEWSALERT

Workers' Compensation

Insurance Commissioner Orders Another Rate Reduction

CALIFORNIA INSURANCE Commissioner Ricardo Lara has issued an order that cuts the average advisory workers' compensation benchmark rate across all classes by 2.6%, starting Sept. 1.

The benchmark rate, also known as the pure premium rate, is a baseline that covers just the cost of claims and claims adjusting, but not other overhead like rents, underwriting costs and provisions for profit. The rate is an average across all class codes, with some industries seeing higher increases and some seeing rate decreases.

The rate is advisory, meaning that insurers can use it as a guidepost for pricing their individual policies. Individual premiums that employers pay will depend on a number of factors, including the pure premium rate, the carrier's own pricing methodology, and the employer's claims and claims cost history, location and industry.

Why the rate is falling

The insurance commissioner's decision will cut the average published pure premium rate to $1.46 per every $100 of payroll, compared to the current $1.50. Despite the average rate decrease of 2.6%, individual class codes may see swings as much as plus or minus 25%.

Several factors are driving the lower rate decision:

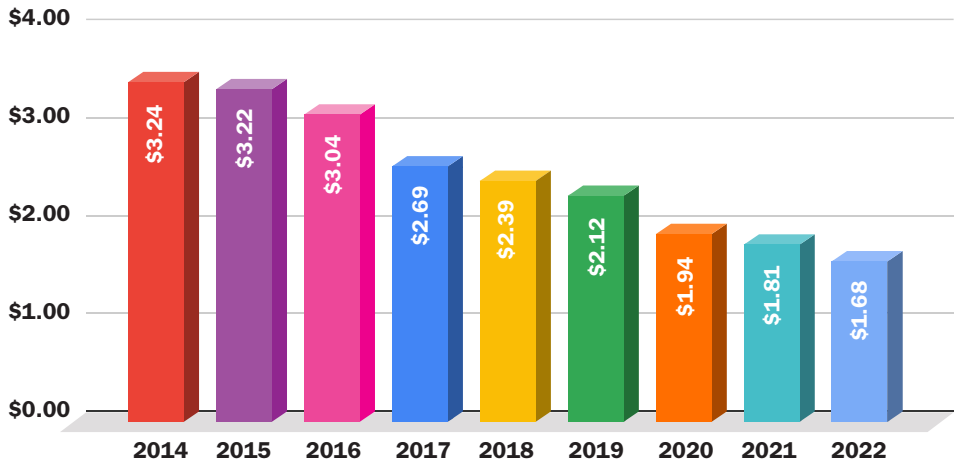
- Slowing claims cost inflation
- Falling frequency of claims
- Lower overall claims costs
- Stable medical costs
- Fewer COVID-19 claims
- Lower claims-adjusting costs.

One other reason rates continue to decline is that workplaces are generally safer than ever.

The number of workers' compensation claims hit a low of 13 per 1,000 workers last year. That's a historical low thanks to decades of falling claims frequency. For perspective, in 1991 there were 49 claims per 1,000 workers.

RATES AT HISTORIC LOWS

Average Rates Insurers Charge per $100 of Payroll



Source: Workers' Compensation Insurance Rating Bureau

What insurers are doing

As mentioned, the pure premium rate is advisory and insurers can charge what they want. However, they are typically charging more than the published rates.

The most recently available industry average level of pure premium rates filed by insurers with the Department of Insurance is $1.71 per $100 of payroll as of Jan. 1, 2023, which is about 14.6% higher than the current published rate of $1.50. In 2022, carriers were charging $1.68 on average.

While the workers' compensation market remains competitive and rates continue hovering around record lows, the final rate any employer will pay will depend on several factors beyond the pure premium rate. Some employers may see rate increases instead.

Factors that can influence the prices include the employer's:

- Industry.
- Geographical location (employers in Southern California, for example, face a unique claims environment that results in a surcharge).
- Individual claims experience. ❖

Ridgemark Insurance Services

Ridgemark Insurance Services

2130 Professional Drive, Ste 225,
Roseville, CA 95661

Phone: 916-306-1550
www.ridgemarkinsurance.com

If you would like to receive this newsletter electronically, e-mail us at:
info@ridgemarkinsurance.com

OSHA Making Changes to Construction PPE Standard

FED-OSHA has proposed new regulations that would require personal protective equipment for construction workers to be properly fitting.

The lack of access to properly fitting PPE for smaller-framed construction workers — especially women — has been a perennial problem, as ill-fitting gear may not protect employees properly in case of an incident. The proposed standard explicitly states that PPE must fit properly to protect workers from workplace hazards.

The proposed revision would align the construction PPE standard with the language in OSHA's PPE rules for general industry and the maritime sector.

What the new standard says

Most of the gloves, goggles, respirators, harnesses and work boots that help keep construction workers out of harm's way are made for average-sized men.

When women or small men wear PPE that wasn't designed for them, they have to deal with gaps, bulges and a poor overall fit that make it uncomfortable, reduce its effectiveness and increase the risk of sustaining an injury.

The takeaway

In the absence of current regulations, construction firms should ensure that they have different sizes of protective equipment to accommodate all of their employees. An employee with poorly fitting equipment can not only injure themselves, but they also put other workers at risk.

Manufacturers already make PPE in various sizes. If you are ordering new PPE for your workers, you should take into account that not all are 5.8 and taller and that women and some men are much shorter and perhaps weigh less as well. Even a pair of size "small" gloves may be too large for a small person.

OSHA noted in its proposed rule that an analysis it had carried out indicated that the cost to employers to comply with the new rule would be negligible.

The agency's cost analysis estimated a one-time cost to the construction industry could be approximately $545,000 in total. ❖

Specific dangers of ill-fitting PPE include:

- Sleeves of protective clothing that are too long or gloves that do not fit properly may make it difficult to use tools or control equipment, putting other workers at risk of exposure to hazards.
- The legs of a protective garment that are too long could cause tripping hazards and affect others working near the wearer.
- A loose harness when working at elevations may not properly suppress a person's fall and may get caught up in scaffolding and equipment.
- Goggles worn by an employee with a small face may leave gaps at their temples, allowing flying debris to enter their eyes.
- Gloves that are too large have a number of issues: the fingers are too long and too wide, the palm area too big and the cuffs allow sawdust to fill the fingers. Someone wearing such ill-fitting gloves risks getting their fingers caught in machinery and pinched when stacking or carrying lumber.

‘Nuclear’ Jury Verdicts Driving Rate Hikes

The sizes of large jury verdicts have exploded in recent years, putting a strain on businesses not only for what they have to pay out of pocket, but also the size of the premium they pay for their liability coverage.

These damages juries are awarding have gotten so large that they’ve been given a new name, “nuclear verdicts,” due to their destructive force.

A nuclear jury verdict is one that exceeds $10 million. The number of nuclear verdicts in 2019 was three times the annual average from 2001 to 2010. By 2022 it had doubled the 2019 level. Median jury awards (meaning half were below and half were above) rose from $19.3 million in 2010 to $41.1 million in 2022.

Increasingly large jury verdicts in liability lawsuits against businesses are a driving factor in rising insurance rates, as insurers, which often pay the lion’s share of these decisions, grapple with a more difficult legal landscape.

These massive verdicts are having a knock-on effect on commercial general liability, excess liability and commercial auto insurance rates, driving them up significantly in some cases.

The effects

The insurance lines below are now in hard-market territory.

THE MOST AFFECTED LINES

- Commercial trucking and auto insurance
- Commercial liability
- Excess liability, or umbrella insurance
- Product liability
- Medical malpractice
- Professional liability
- Directors and officers liability.

The trucking industry in particular has been described as “under siege” from nuclear verdicts. Between 2020 and 2023, jury awards against trucking companies averaged $27.5 million; half of all awards were greater than $760,000, according to a report by Travelers Insurance.

Companies who settled instead of going to trial did not fare much better. Settlements averaged $10.6 million, with half of them greater than $210,000.

What’s driving these awards

Some observers say these verdicts are the result of legal system abuse. Potentially abusive practices by plaintiffs’ attorneys include:

- Advertising more widely and aggressively.
- “Shopping” for courts where they believe they are likely to get favorable outcomes.
- Planting an arbitrary value of the damages in jurors’ minds early in court proceedings.
- Playing to jurors’ emotions, convincing them the defendant corporation may be a threat to the community.
- Obtaining “third party litigation funding,” in which investors finance the lawsuit in exchange for a share of the awarded damages.

Anger among members of the public about growing corporate power and income and wealth inequality also plays a role. Jurors may perceive corporations as having unfairly profited from society and decide to reclaim some of those profits in the form of a large damage award.

What businesses can do

There are steps companies can take to reduce the chances that they will be victimized by unsupportable jury awards:

- Work closely with their liability and auto insurers to reduce the hazards in their operations and minimize the likelihood of successful lawsuits.
- When faced with lawsuits, work in partnership with the insurer and the defense attorneys to plot legal strategies and prepare witnesses for questions designed to arouse jurors’ emotions.
- When preparing for a trial, evaluate the case from the jurors’ perspective so that effective counter-arguments can be prepared. ❖

SCOTUS Sets New Bar for Declining Requests

A RECENT DECISION by the U.S. Supreme Court will make it more difficult for employers to deny employees' requests for religious accommodations in the workplace.

The unanimous decision by the court in the case of *Groff vs. DeJoy* basically upends a standard for accommodating religious beliefs that has been in place since 1977.

The case concerns a mail carrier who asked not to work on Sundays due to his religious beliefs, after his employer, the U.S. Postal Service, contracted with Amazon to deliver its packages on Sundays.

The ruling will require that employers take a new approach to handling their employees' requests for religious accommodations in the workplace. Legal experts say the decision could spur a slew of new requests as well as renewed ones from employees whose requests had been declined.

The case

When mail carrier Gerald E. Groff's USPS location started requiring its staff to work on Sundays to fulfill the Amazon contract, he was able to swap shifts with co-workers. But they grew resentful and stopped swapping shifts with him. After a number of shifts went unfilled, the USPS informed him that it could not reasonably accommodate his request not to work on Sundays.

Groff quit and sued U.S. Postmaster General Louis DeJoy alleging Title VII religious discrimination and the case made its way to the Supreme Court, which sided with him in his appeal.

In its decision, the court wrote that an employer must accommodate an employee's religious practice as long as the proposed accommodation does not create "substantial increased costs in relation to the conduct of [the company's] particular business."

The decision jettisons a standard that has been in place since SCOTUS's 1977 decision in *Trans World Airlines, Inc. vs. Hardison*: That if making accommodation constitutes more than a *de minimis* cost to the employer, then the request was considered an "undue hardship" and the employer could deny the request. Even the Equal Employment Opportunity Commission deferred to this standard.

How it changes the equation

"Substantially" increasing costs in relation to the company's operations is a significantly higher bar and burden of proof for employers that reject religious accommodation requests.

One of the key takeaways from the decision is that employers must explore all of their options, like voluntary shift-swapping.

It also warned that "a hardship that is attributable to employee animosity to a particular religion, to religion in general, or to the very notion of accommodating religious practice cannot be considered 'undue.'" In other words: If other employees don't like the fact that their colleague is getting a certain day off, that is no excuse for denying the request.

In light of this ruling, you should revisit your workplace policies for dealing with religious accommodations. If you receive a request and are unsure how to proceed, consider consulting with counsel. ❖