

Commercial Property Insurance

New Rules Aim to Ease Availability Crisis

WITH THE California commercial property market increasingly stressed with fewer and fewer insurers willing to write policies in the Golden State, the state insurance commissioner has floated a plan aimed at easing the crisis.

The main thrust of the new proposal is to make it easier for insurers to get their rate-hike requests approved, efforts that have been stifled due to laws that have been on the books since the early 1990s from a law known as Prop. 103. As well, insurers are limited in the types of data they can use to justify rate increases, which has constrained them from being able to ask for hikes that are adequate to cover their potential liabilities.

The proposed rule changes, along with others that are coming this year, are aimed at luring insurers back into the marketplace after one carrier after another has either stopped writing commercial property in the state altogether, or restricted how many policies they will write in California, and where.

While insurers are still writing policies in California, their numbers are shrinking, making renewals a difficult process for many businesses. Insurers have also gotten pickier about properties they are willing to cover, with some setting limits on the age of a building and taking into consideration whether the property owner has filed any claims in the last three years.

The commissioner's plan

Insurance Commissioner Ricardo Lara's proposed regulations, one of those prongs, would allow insurers to use catastrophe models to better predict insurance rates for wildfire, terrorism and flooding. Currently, they are only allowed to use historical claims data, which is backward-looking and does not account for the surge in risk and costs that's occurred during the last five to 10 years.

As well, they are not allowed to consider the growing risk caused by climate change, or wildfire risk mitigation measures taken by communities or regionally as a result of local, state and federal investments.

Mark Sektan, vice president for state government relations for the American Property Casualty Insurance Association, said this change would go a long way towards addressing the insurance crisis in the state.

"As Californians grapple with record inflation and become increasingly vulnerable to climate-driven extreme weather, including catastrophic wildfires, this is a critically needed tool to help identify future risks more accurately and set rates that reflect our new reality," he said. "More accurate ratemaking will help restore balance to the insurance market and ensure all Californians have access to the coverage they need."

The trade-off for consumers will be the likelihood of more insurers coming back into the market to write commercial property and homeowner's insurance in exchange for them asking for large rate hikes.

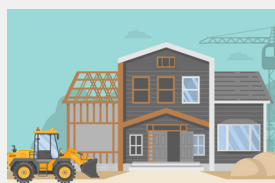
The latest proposed regulation follows another that was introduced in late February
See 'Rate' on page 2

FOUR FACTORS BEHIND INSURANCE CRISIS



Massive wildfire insurance claim losses, which have increased exponentially

as wildfires have grown more destructive and in number.



The cost of rebuilding, which has surged as construction and material

costs have exploded.



The rising cost of reinsurance, which carriers buy to cover themselves if they have

catastrophic claims.



Difficulties in getting rate hikes approved.



Ridgemark Insurance Services

2130 Professional Drive, Ste 225,
Roseville, CA 95661

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

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info@ridgemarkinsurance.com

Model Violence Prevention Plan Has Been Published

CAL/OSHA has published a model plan to help employers comply with a new law requiring that they have in place a workplace violence plan.

The model is designed to provide structure for employers to create their own plans. Businesses have the option to use the model plan, create their own or use another plan template. Alternatively, they may incorporate workplace violence prevention into their current injury and illness prevention plan.

The new requirements are the result of SB 553, which was signed into law last year in response to increases in workplace violence incidents around the country.

Cal/OSHA has posted the model plan and a fact sheet for general industry [here](#). The model plan is written for a broad spectrum of employers, and companies will need to revise it and add their own information to address the specific needs of their workplace.

Cal/OSHA notes that employers who plan to use the model should identify an individual or individuals to be responsible for implementing the plan, and ensure that they:

- Review the full requirements of the new law (Labor Code sections 6401.7 and 6401.9).
- Review the requirements for each of the elements found in the model plan and fill in the parts that will focus the plan on their particular workplace.
- Obtain the active involvement of employees and their authorized employee representatives in developing and implementing the plan.
- Make the plan available and easily accessible to affected employees, authorized employee representatives, and representatives of Cal/OSHA upon request.

The law also requires you to train your staff on the details of the plan to ensure they know what to do in case of an incident or if they want to report a threat of violence in the workplace.

To ensure the plan is effective requires planning, evaluating the workplace, putting in place procedures and training.

Getting started

Employers who are unsure how to proceed with a workplace violence prevention plan should visit the Cal/OSHA website and download the model plan. The same accompanying fact sheet provides further guidance on:

- How to create the plan.
- How to create and maintain a workplace violence log.
- How to train employees on the plan.
- How to comply with the law's record-keeping requirements. ❖



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VIOLENCE PREVENTION RESOURCES**

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Rate Hike Requests Can Take Years to Be Considered

that would speed up approvals of rate-increase requests. These can sometimes take years if the Department of Insurance asks for more supporting documentation, which can reset the rate approval process, delaying final approval. Some insurers have waited more than two years to get their rate hikes even considered.

Current rules “lack clarity and fail to specify the exact materials and information required in a complete rate filing application given the change in times and increased complexity of filing,” according to the Department.

This proposed rule codifies clearer instructions for what supporting documentation insurers must submit when filing for rate increases.

The takeaway

A public hearing on the proposed catastrophe-modeling regulations will be held on April 23 and it's the department's plan to get these new rules implemented by the end of 2024, along with the rules on speeding up rate-increase requests.

In the coming months, the department plans to propose additional regulations as well as legislation in order to get insurers to write business in the state again.

If enacted, it's hoped that the various planned changes will provide some relief to homeowners and businesses in the state.

We'll keep you posted as this develops. ❖

Directors of Small, Mid-sized Firms Increasingly Sued

JURY AWARDS and settlements against directors and officers of companies have increased dramatically, largely due to federal securities class-action lawsuits.

But while small and mid-sized business owners often believe they won't be targeted by those kinds of lawsuits, directors and officers of privately held companies can also be sued, leaving their personal assets at risk.

Unfortunately, many small and mid-sized business owners, while insuring their firms, often overlook their directors' liability.

This protection gap can be covered with directors and officers (D&O) liability insurance, which protects company leaders from litigious employees, competitors, investors, vendors — and even customers.

Directors and officers can be held personally liable for civil, criminal or regulatory proceedings should they fall short of their obligations, and their personal assets could all be at risk.

General liability or umbrella business insurance policies do not cover claims involving directors and officers.

For smaller firms, which typically have fewer resources to defend allegations or fund potential fines, penalties or awards for damages, D&O is becoming an increasingly important coverage.

One in eight owners of small businesses surveyed by Chubb Group reported having been sued in the previous five years. The average damage from the lawsuits was \$225,682 in losses. Some suits cost much more, with losses approaching \$5 million.

What D&O covers

One of the most important aspects of a D&O policy is that it's a protection against the costs of frivolous lawsuits.

D&O covers court costs and lawyers' fees if a business becomes the target of regulators, or even a criminal investigation. But the policy will not shield managers if they commit fraud or participate in crime.

That said, if one board member is convicted of fraud while the other board members are innocent, a policy could still cover the legal costs of those who did no wrong.

The typical action that would trigger a D&O policy would allege that management committed some wrongful acts.

COMMON CLAIMS FOR SMALL FIRMS

- Allowing misleading information in a company prospectus.
- Not complying with regulations and laws.
- Employee-driven lawsuits alleging management allowed harassment or discrimination despite knowing about it.
- Suits by investors about decisions concerning mergers and acquisitions.

DIFFERENT 'SIDES' OF D&O POLICIES

There are varying deductibles for the different "sides" of the policy.

Side A – Known as the "personal protection" part of the policy, this indemnifies directors and officers if the company is unable to do so.

Side B – This part reimburses a company if it pays the legal bills of its directors and officers due to an action against them in their company capacity. Side B responds most commonly in the majority of claims brought against directors and officers.

Side C – Known as "entity coverage," this part covers a company if it is sued alongside any directors and officers.

Sometimes it's best to mix and match coverages based on your organization-specific risks. For some companies, a Side A will do.

We can evaluate and review the coverages and policy language associated with D&O insurance for you to find a policy that best suits your organization and board.

Cost of coverage

There are a number of low-cost D&O policies available for small firms. The cost of providing a director with a \$1 million limit is more affordable than you may realize. Call us for details.

Sometimes you will have little choice but to purchase a policy. For example, many directors and officers may refuse to take on a position without the coverage. And if your business wants to attract new funding, most institutional investors require the protection. ❖



Drug Use Skyrockets among American Workers

DRUG USE is rapidly increasing among American workers, as more states liberalize marijuana laws, cocaine makes a resurgence and more people abuse amphetamines and heroin.

A new study by Quest Diagnostics Inc., a workplace drug-testing lab, found that the number of workers testing positive for illicit drugs is higher than at any time in the past two decades.

That puts employers in a tricky predicament, particularly if employees are using at work, which could reduce productivity and also make them more susceptible to workplace injuries since they may not be as focused as they should be on their work.

While there were marked increases in positive tests for most illicit drugs, the surprising exception was prescription opioids like hydrocodone and oxycodone, thanks to stricter enforcement in many jurisdictions around the country.

Marijuana is the most commonly used drug among U.S. workers and was identified in 2.5% of all urine tests for the general workforce in 2021, up from 2.4% a year earlier.

The highest increases for marijuana usage among workers seemed to be in states that have legalized the recreational use of cannabis.

The number of workers testing positive in Colorado rose 11%, while in Washington there was a 9% increase. The rates of increase were more than double the increase nationwide in 2016.

Implications for businesses

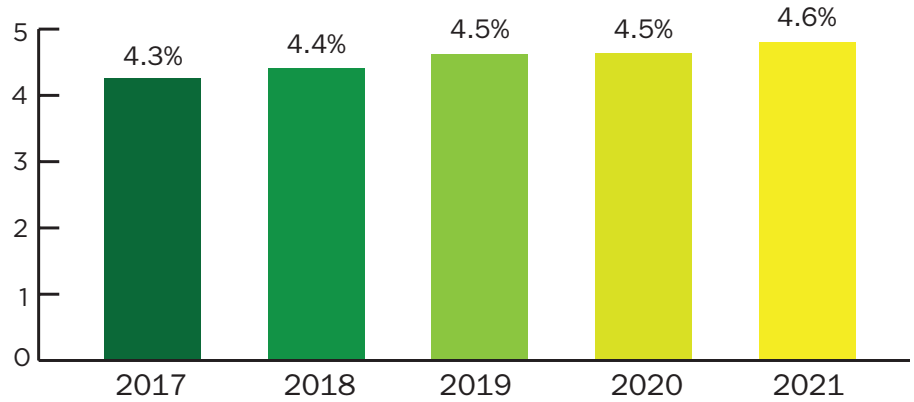
About 12% of workers who die on the job test positive for drugs or alcohol in their system at the time of the incident. And incidentally, one OSHA study found that the most dangerous occupations, like construction and mining, also have the highest drug use rates among workers.

Substance Abuse Fallout

- Poor work performance.
- Often call in sick or arrive late.
- Frequently change workplaces.
- Struggle with productivity.
- Injure themselves or others.

TRENDING HIGHER

Percent of employee urine tests coming up positive.



POSITIVE TESTS PER DRUG

Amphetamine: Up 8%

Marijuana: Up 4.6%

Heroin: 0% (after 146% increase in four years prior)

Oxycodone: Down 4%

Cocaine: Up 12%

The takeaway

If you're concerned, you can initiate an effective workplace drug program that includes drug testing before hiring and during employment – and the consequences for violating the rules.

You may also want to consider an employee assistance program for workers who feel they may have a problem, as well as for those who feel they're developing a problem. And you may also want to consider holding meetings about health and safety and drug use.

Provide education about what addiction looks like and why people begin to abuse drugs and/or alcohol. ❖

