

The

# Wright & Kimbrough Report



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## WORKERS' COMPENSATION

### New Rule Tightens Exclusion for Officers, Owners

**A** NEW LAW has made changes to the officer exclusion for workers' compensation in California, but it could cause problems for policies that incept prior to the effective date of Jan. 1.

Starting in 2017, an officer can only be excluded from workers' comp coverage if he or she owns 15% or more of the company's stock. That's changed from the current rules that set no ownership levels for officers and directors that want to claim a workers' comp exclusion, which has created confusion as well as an opportunity for fraud.

However, the law is written in such a way that it also applies to policies that are in effect as of 2017 and not just those incepting on Jan. 1.

In other words, if your policy incepts at another point in the year, and if you have owners or officers who are claiming this exemption, you will need to bring your policy into compliance before the start of the year.

#### Current law

To be eligible for a workers' comp exclusion:

- The employee must be an executive

officer of the corporation (president, vice president, secretary, assistant secretary, treasurer, assistant treasurer, for example).

- The employee must own some stock in the corporation.
- The company must be a "closed corporation." That means that all of the company stock must be owned by the executive officers and directors.

#### The problem with current law

The election process to opt out of coverage is not very clear under current law. Beyond one limited statutory reference and very little regulatory guidance, insurers and LLCs are left to figure it out for themselves.

The Association of California Insurance Companies, one of the supporters of the bill – AB 2883 – argues that this lack of clarity has led to abuses that have hurt injured workers and driven fraudulent activity.

There have been cases of some companies making a janitor the "vice president of janitorial services" in order to avoid paying for their workers' comp coverage. ❖

#### What's new Jan. 1, 2017

AB 2883 requires:

- That an officer or member of the board of directors own at least 15% of the stock of the corporation in order to opt out of workers' compensation coverage.
- That the officer or member of the board of directors sign a waiver stating that the individual is a qualifying officer or member.
- To continue receiving the exemption, you will have to submit a waiver to your insurer by Dec. 31. Your insurer will send you the form.
- If the signed waiver/exclusion form is not received on or before Dec. 31, individuals will be included for coverage effective Jan. 1, 2017 and subject to officer minimum/maximum payrolls.
- The minimum officer payroll for 2017 is \$48,100 and the maximum officer payroll is \$122,200.
- Officer premiums will be determined based on job duties, class code rates and payroll.



## CONTACT US

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# Why Your Business May Need Pollution Coverage

**A**LMOST ALL businesses have some risk of being sued or cited for pollution, even the most benign, such as a property owner.

Pollution exposures for many businesses are obvious – like dry cleaners from the chemicals they use, to printing companies from the ink they use. And any manufacturer would face some type of pollution exposure as well, in addition to warehouse operators and contractors.

Think you're not exposed? Say you own a business property, even an office building for example, you could have pollution exposure such as:

- The existence of lead (paint and pipes) or asbestos.
- Releases of pollutants by tenants from improper or inadequate storage or disposal of lubricant oils, primer or lab waste material.
- Inadequate containment in loading areas that could lead to the release of pollutants.

However, as the risks have grown for pollution liability, most commercial general liability policies now exclude pollution coverage. It's something to be aware of for most any business, particularly as the list of what is considered to be a pollutant has grown dramatically.

## The exclusion

The easiest way to think of a pollution exclusion is that it can apply to a contaminant. Virtually every commercial general liability policy includes a pollution exclusion.

These policies used to cover pollution but as the risk for being sued for pollution has grown, so then has the exclusion.

The standard policy has two pollution liability coverage forms. It also has a special form for underground storage tanks.

The current version of the Insurance Services Office (ISO) commercial general liability form has pollution coverage narrowed down to a few covered occurrences, typically including:

- Certain off-premises exposures
- Certain product-completed operations
- Smoke, fumes, soot, vapors from your heating equipment or from a fire in your building
- Gas or fumes from materials you bring into a work site.

## The broad definition of pollution

Consider these examples:

- A food company in Wisconsin recalled a batch of listeria bacteria-contaminated sandwiches and filed a product recall claim with its insurer. However, the insurer denied coverage based on the policy's pollution exclusion. The court sided with the insurer, concluding that bacteria were an excluded ISO form pollutant.
- A hospital in California was sued after an outbreak of legionnaire's disease was traced back to a drinking fountain in the hospital lobby. The insurer rejected coverage for the lawsuits, citing a fungus and bacteria exclusion in their general liability policies.



## The solution

What are the possible answers when it comes to the pollution insurance question? You can have a specific commercial liability form or a separate pollution liability policy.

Pollution liability insurance is designed to address claims and suits involving pollution losses in which it is alleged that the insured is responsible, as well as property losses related to pollution on owned or occupied property. ❖

## Pollution liability policy coverage

**Premises pollution liability** – Covers first-party claims associated with pollution on the premises of the insured. (Example: It is discovered that instead of clean soil, contaminated soil was used to fill a space formerly occupied by an underground storage tank that leaked. The cost of remediation would be covered.)

It would also cover third-party claims associated with the pollution (like when a person falls sick due to the pollution).

**Contractors pollution liability** – Covers bodily injury, property damage and remediation costs for which a contractor who causes pollution is liable.

**Errors and omissions liability** – Covers losses that result from wrongful acts performed in conducting professional services, such as a soil engineer erroneously rendering an opinion that there is no soil pollution, when in fact, there is.

# Rates Trend Higher amid More and Costlier Crashes



**Y**OU SHOULD prepare for increases in your commercial vehicle insurance coverage for 2017 as accidents, injuries and costs rise for the first time in decades and insurers make up for years of low pricing.

Commercial auto insurance premiums have been trending between 6 and 10% higher since early this year and, if you're policy comes due Jan. 1 or during next year, you may see your premiums increase. Experts say that rates are increasing in nearly all commercial auto segments – but trucking is feeling it more acutely.

The reason for the increase is that there are more accidents taking place on the roads and the costs of the claims – everything from vehicle repair to medical costs – are increasing for various reasons.

Auto insurance rates are rising at the fastest pace in almost 13 years, according to the Insurance Information Institute. The effects are being felt harder in the commercial auto insurance market than in the personal market.

That's because commercial insurance rates have been stable for many years, barely budging despite rising costs. And now some insurers have left the market, reducing the supply of insurers in the segment, which has reduced competition and bumped up pricing.

The premium hike therefore essentially boils down to two factors: more accidents and rising claims costs.

## Higher accident frequency

The increase in accidents, injuries and deaths is the result of:

- More people on the road due to cheaper fuel.
- More people on the road because the economy has improved and more people are driving.
- An increase in accidents due to distracted driving (mostly from texting using a smart phone or talking on the phone while behind the wheel).

One of the main contributing issues is risky behavior, which studies have found to be widespread. About 87% of drivers surveyed by the AAA Foundation for Traffic Safety in February 2016 reported that they

had engaged in at least one risky behavior while driving in the past month, including using their phone or not wearing a seat belt.

## Rising claims costs

According to the Insurance Research Council, the average cost of a liability claim increased 32% from \$11,738 in 2005 to \$15,506 in 2013. In 2014, it had reached \$16,600, up 7% from the year prior.

Meanwhile, the average cost of personal injury protection claims (often referred to as no-fault claims) increased by 38.2% – from \$5,802 to \$8,017 – between 2005 and 2013.

### Factors that are increasing costs:

- The cost of medical care for injured parties is increasing, particularly in the commercial auto segment, as victims of car or truck crashes tend to take longer to recover.
- As cars have become more high-tech, it has gotten more expensive to repair them. Also, more commercial vehicles than ever are being totaled, meaning the insurer has to pay out for the market value of the vehicle, because designs are often being altered to meet fuel and weight standards.
- Prices have been suppressed in the commercial market, and there are now fewer players in the market.

## What you can do

While base rates are rising and out of your control, you can double down on safe-driver training for your employees.

If you can educate your driving employees in safe-driving best practices, you will reduce your accident rates, which will be reflected in the premium you pay.

For example, motor carriers that are very safe and have good "Compliance, Safety, Accountability" scores from the Federal Motor Carrier Safety Administration, are finding premium renewal rates that are consistent.

You can also adopt advanced technology like telematics and dash-cams, both of which have been shown to improve overall driver safety. Cameras also help insurance companies when adjusting claims. ❖

# Keep Safe When Decorating Your Workplace

**A**S THE HOLIDAY season rolls around again, your business will have new safety considerations to confront.

From holiday parties and risk of electrical shock to fires and trips and falls, companies have a set of safety and risk management challenges that may not be present during most of the year.

But decorating and decorations present their own set of safety challenges and this is what you need to be aware of when decking your office's halls:



## Lighting safety

- Use LED lights. Not only do they burn cool, they are also more economical because they only use 10% of the electricity consumed by other bulbs.
- Use lights that are recommended by a reputable testing laboratory. Such lights are usually labeled "UL" or "ETL".
- Prior to use, inspect lights and extension cords for defects or damage. Check for loose connections, cracked or broken sockets and bare or frayed wires. Workers should report all defects to their supervisor.
- Immediately replace burned-out bulbs with ones that have the same wattage. Unplug Christmas lights when replacing bulbs.
- Make sure you don't create a maze of wires, cords and plugs when plugging in Christmas lighting.
- Never use outdoor lights indoors.
- Make sure Christmas lights and other electrical outdoor decorations are plugged into a ground-fault circuit interrupter. This device helps prevent electric shock and fire.
- Never use nails or tacks to secure cords of lights. Also, don't run strings of lights through hooks.
- Never pull on a string of Christmas lights.
- Always turn off Christmas lights before leaving the business premises. Never leave them on overnight.

## Christmas trees

- Consider an artificial tree, which poses less risk than a live one.
- If you have a live tree, make sure that it is properly watered so it doesn't dry out, which is a fire hazard.
- Live trees can be safer when sprayed with flame retardant.
- Put your tree in an area that doesn't impede foot traffic or movement of workers.
- Don't put live trees near heat sources such as space heaters, where they can dry out and pose a greater fire hazard.



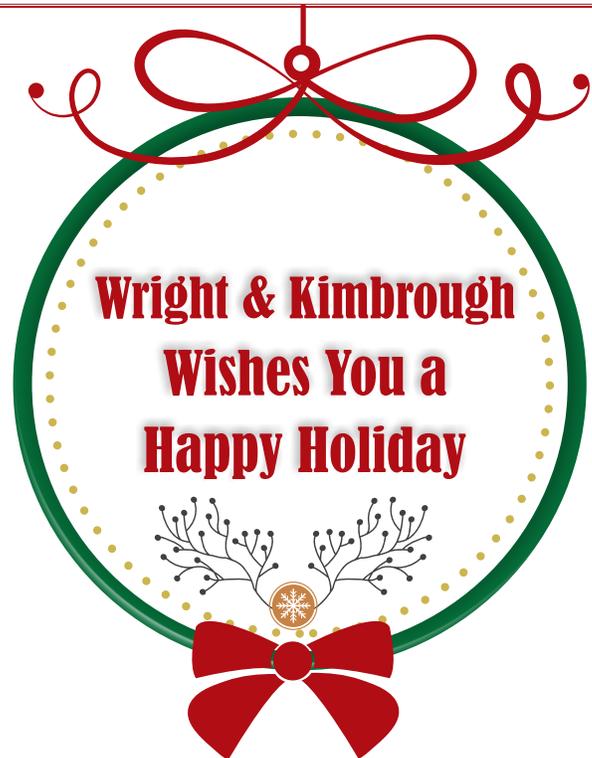
## Safety while decorating



Keep all relevant OSHA regulations in mind when decorating your workplace: both when in the process of decorating and making sure you don't create new safety hazards that will last for the duration of the month.

When your staff are decorating the office, ensure that they stick to the same safety guidelines that they would otherwise follow:

- **Ladder safety** – Make sure employees don't stand on tables, desks or rolling desk chairs when hanging lights or other decorations. Insist that they use ladders and that they have a partner to hold the ladder when they are working on high.
- **Keep walkways unobstructed** – You may have boxes of Christmas decorations that you bring out every year, or you may purchase new decorations too. When employees are decorating, make sure they keep all walkways free of wires, cords, boxes or any of the material you are putting up. When people are working in a disorderly fashion, they can easily trip and fall.
- **Install wisely** – Also make sure employees don't put up decorations in a way that can impede movement of your workers or office visitors, or create trip hazards or expose staff to getting caught in the decorations.
- **Unobstructed exits** – Do not place any type of decorative items in exit corridors or on sprinklers. It's essential to verify that none of your decorations block exit signage or fire safety equipment.



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