

The Wright & Kimbrough Report



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CAPITOL REPORT

New Batch of Legislation Threatens Businesses

AS THE CALIFORNIA legislative session is in full swing, the California Chamber of Commerce has identified a number of bills that it considers "job killers."

While the list is extensive – some 27 measures in all – a handful affect large swaths of businesses. The bills run the gamut from a measure that would require employers to provide paid sick leave to another that would increase penalties for delayed workers' comp indemnity payments.

With Democrats controlling both houses of the Legislature, and a Democrat governor, the likelihood of these measures being signed into law is always greater.

History has shown this to be true. Since the chamber first started putting out its annual list of job killers in 1997, 44 such measures have been signed into law.

Since Democrat Jerry Brown took over the governor's office, he has vetoed 50

job killer bills and signed 12 of them.

The following list focuses on measures that have the broadest effects:

- **AB 1522 Paid Sick Leave** – Increases employer mandates by requiring all employers, large and small, to provide all employees in California with paid sick leave, and threatens employers with statutory penalties as well as litigation for alleged violations.
- **SB 935 Minimum Wage** – The chamber asserts that this unfairly increases employer costs by raising the minimum wage to \$13 by 2017, and then increasing it thereafter in line with the Consumer Price Index.
- **AB 1897 Contractor Liability** – This measure would require an employer to share all legal responsibility and liability – including employer contributions, worker contributions, personal income tax and workers' compensation – with an individual or company that supplies workers.

If, for example, a temp agency failed to pay its workers, the responsibility would fall on the temporary employer. The same goes if the labor contractor failed to pay

for workers' comp coverage, and/or failure to remit employee contributions.

- **AB 2416 Unproven Wage Liens** – The bill would allow employees to file liens on an employer's real or personal property, or property where work was performed, based upon alleged wage claims.

The chamber asserts that the employee would only have to believe they were owed back wages in order to enforce the lien. This would subject employers to "constant extortion in order to avoid dealing with a lien on their property," wrote CalChamber representatives in an opposition letter.

There was one other bill that had been on the list, but it never made it out of committee after employers complained it would severely increase their costs.

That bill, AB 2604, would have dramatically increased penalties and costs for delayed workers' comp benefit payments. The penalties would have been more than the actual amount of the delayed payment. ❖

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Wright & Kimbrough Insurance
2150 Douglas Blvd #210
Roseville, CA 95661
Phone: (800) 822-3694
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info@wkins.com

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Businesses Suffer as Employee Theft Grows

HERE'S A SCENARIO that you'd not want to see happen at your company: The owner of a motorcycle dealership is suing a former office manager for allegedly stealing nearly \$100,000 during the course of her employment.

Crescent City Partners, which runs the Harley-Davidson dealership, filed suit against Valerie Norment in the 24th Judicial District Court of Louisiana on April 28 after it discovered the extent of the alleged misappropriation of funds. According to the complaint, the dealership's general sales manager noticed that a cash payment of \$4,000 was missing and questioned the defendant about where it was.

First she said she'd given it to the finance and insurance manager, but later changed her story, saying that she'd left it in an unlocked desk drawer over the weekend, states the complaint.

After conducting a forensic accounting, Crescent City Partners says it discovered that the employee was responsible for the missing cash and that \$97,770 had gone missing from the dealership since she had begun working there.

An isolated incident? Not according to statistics.

The Association of Certified Fraud Examiners estimates that U.S. businesses lose some \$50 billion a year to employee theft, and that 75% of employees have stolen at least once from their employer – and 37% have stolen at least twice. It also estimates that about 33% of business bankruptcies are in part due to employee theft.

And unfortunately, small businesses take the brunt of the damage, largely because they do not have the same resources to combat internal theft.

So, what can you do to avoid falling victim? The U.S. Small Business Administration and the ACFE recommend that companies:

Use pre-employment background checks – Making the right hiring decision can greatly reduce the risk of future heartache. Basic pre-employment background checks are a good business practice for any employer, especially for employees who will be handling cash, high-value merchandise, or having access to sensitive customer or financial data.

But be aware that laws on background checks vary from state to state and if you go too far in your check, you risk being sued. Know the law before conducting a criminal check.

Check candidate references – Make a practice of calling all references, particularly if they are former employers or supervisors. If your candidate has a history of fraudulent behavior, then you'll want to know about it before you offer them a job.

Implement a fraud hotline – Occupational fraud is far more likely to be detected by a tip than by any other method. More than 40% of all cases are detected by a tip – with the majority of them coming from employees of the victim organization. There are several providers of hotline services that can help implement an anonymous tip-reporting system for businesses of all sizes and industries.

Conduct regular audits – Regular audits can help you detect theft and fraud, and can be a significant deterrent to fraud or criminal activity because many perpetrators of workplace fraud seize opportunity where weak internal controls exist. Items to look at include business expense reports, cash and sales reconciliation, vacation and sick day reports, and violations of e-mail/social media or Web-use policies.

Recognize the signs – Studies show that perpetrators of workplace crime or fraud do so because they are either under pressure, feel underappreciated, or perceive that management behavior is unethical or unfair.

Some of the potential red flags to look out for include:

- Not taking vacations. Many violations are discovered while the perpetrator is on vacation.
- Being overly protective or exclusive about their workspace.
- Employees that prefer to be unsupervised by working after hours or taking work home.
- Financial records sometimes disappearing.
- Unexplained debt.
- An employee living beyond their means.



Set the right management tone – One of the best techniques for preventing and combating employee theft or fraud is to create and communicate a business climate that shows that you take it seriously. You may want to consider:

- Reconciling statements on a regular basis to check for fraudulent activity.
- Holding regular one-on-one review meetings with employees.
- Offering to assist employees who are experiencing stress or difficult times.
- Having an open-door policy that encourages employees to speak freely and share their concerns about potential violations.
- Creating strong internal controls.
- Requiring employees to take vacations.
- Treating unusual transactions with suspicion. ❖

Employee Dishonesty Insurance

Employee dishonesty insurance coverage – sometimes referred to as fidelity bond, crime coverage or crime fidelity insurance – protects a small business employer from a financial loss as a result of fraudulent acts by employees.

The financial loss can be caused by an employee's theft of property, money or securities owned by the small business.



Work Absences Boom for Obesity, Skin Cancer

WORK ABSENCES related to obesity, treatment of skin cancer and herniated disc surgery skyrocketed in the past 20 years while hurting productivity for employers, according to a new study.

The study by Cigna Corp. concluded that lifestyle and behavior factors remain the key drivers of absences and that employers can address these factors with early intervention, vocational rehab services and wellness programs. Interestingly, earlier detection and new treat-

ments have increased the percentage of workers out on short-term disability for skin cancers and other conditions.

It's estimated that 2.8 million workdays are lost every year in the U.S. due to unplanned absences, costing more than \$74 billion.

Musculoskeletal disorders account for 25% of all non-maternity-related absences – the same as in 1992 – and rank as the most-frequently approved short-term disability claims. But, the study points to a new set of factors that are increasing time away from work:

Herniated discs

Absences increased 45% between 1992 and 2012. The results of advancements in back surgery have led to an increase in the number of operations but a decrease in the average time away from work. Absences increased largely because more people have become candidates for back surgery, which has resulted in an overall rise in absences.

Employer strategy: You can help your employees better cope with their specific back conditions, especially those that may not currently need surgery. You can inspect their workstations to ensure they are ergonomically correct. Also look for other issues in their daily work routine that may contribute to back and muscle problems.

If you do have someone that goes out on leave for back surgery and, if they may not be able to return to their old job, you may want to consider a vocational rehabilitation program.



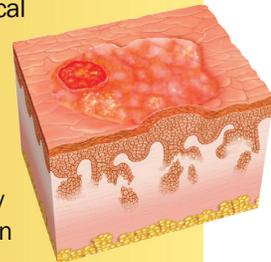
Skin cancer

Absences due to skin cancer increased 300%. Trends in cancers have been a mixed bag in terms of absences, with a big reduction in lung cancers but increases in skin cancers being the most pronounced. However, absenteeism due to cancer has increased because survival rates have risen and earlier detection has increased cancer duration.

Employer strategy: Employers should consider implementing absence management strategies that integrate wellness programs, disease management programs and vocational rehabilitation services to meet the needs of cancer patients. Cigna's study showed that a combination of these programs helped 97% of survivors rejoin the workforce.

Sometimes an employee may also have to become a caregiver should a family member come down with cancer. You will need to have in place policies for family and medical leave (FML) time. Because of the stress and mental toll caring for a cancer patient takes, nearly 80% of FML absences can also become a short-term disability absence.

Employees of companies that have an FML administration and integrated disability strategy in place and engage with employees will often



Obesity

Absences linked to obesity rose 3,300%. The increase in the number of absences due to obesity may be the result of "increasing effectiveness and popularity of bariatric surgeries," according to Cigna.

The numbers don't reflect the effects of chronic health problems like diabetes and others that can be linked to obesity.

Also, according to Cigna, "presenteeism" – defined as sick or distracted employees who choose to work anyway – accounts for 39% of the total cost of obesity to employers and as much as 75% of lost employee productivity from U.S. employers.

Meanwhile, although many people have benefited from stomach reduction surgeries, which require time off work afterwards, others struggle because they don't change their eating habits and they start gaining weight again.

Employer strategy: Employers that provide resources and coaching, such as employee assistance programs (EAP) and vocational rehabilitation services, can help employees become more productive and enjoy long-lasting health.



Depression

The fifth-leading cause of absence. While overall, the number of days missed for depression has decreased, it's still a major drain on companies. More than 25% of U.S. adults suffer from a diagnosable mental disorder in a given year.

The use of anti-depressants has likely helped reduce the numbers of people out for depression-related problems, but Cigna believes it may have resulted in increasing presenteeism.

At the same time, fewer people are seeking treatment.

While disability claims, durations and overall absences are down, major depressive disorder is still the leading cause of disability in the U.S. for ages 15-44. But presenteeism accounts for more of the total productivity loss than absenteeism.

Employer strategy: Once again, an EAP can help employees better access the care they need.



5 Things You Should Know about Cyber Coverage

THANKS TO frequent media reports about large cyber attacks, you are likely aware of the threat to businesses. The list of large companies hacked and their customers' data compromised is like a laundry list of bad information.

We've told you before about the need to have cyber liability insurance, which promises to cover costs associated with a breach. And if you are like most employers, you have questions. Hopefully they are among the five below, which are the most common questions employers of all sizes have about such coverage.

1. Don't my other policies cover me?

No. Your general liability policy's property form protects your physical computers and servers, but not the data that is stored on them.

The ISO general liability form specifically excludes claims of copyright, trademark and trade secret infringement. Business interruption coverage, an essential part of any risk management plan, will not respond to outages caused by computer viruses or hackers.

Most states have laws requiring notification in the event of a potential loss of PII (personally identifiable information), as well as fines and penalties for not reporting the breach. Most cyber policies cover regulatory fines or penalties you might incur because of a data breach.

Only a cyber policy will reimburse you for expenses incurred

to comply with regulatory requirements and out-of-pocket legal expenses.

2. How much does it cost?

Because cyber liability insurance is still a new and evolving concept, coverage will vary from policy to policy and there is often some room for negotiation. For many small to mid-sized companies, the costs can be less than \$1,000. One insurance company provided us with the following prices it recently quoted:

- Online retailer with sales of \$500,000 and a \$1 million policy limit. **Premium:** \$1,100.
- Psychologist's office with revenue of \$1 million and a \$1 million policy limit. **Premium:** \$1,600.
- Doctor's office with revenue of \$700,000 and a \$500,000 policy limit. **Premium:** \$649.
- Professional consulting firm with revenue of \$400,000 and a \$1 million policy limit. **Premium:** \$1,200.

Fast-food restaurant with revenue of \$15 million and a policy limit of \$1 million. **Premium:** \$9,000.

3. Aren't our IT department and firewalls enough?

Usually not. Many data breaches occur because of an employee error or an "inside job" from rogue employees. From passwords tacked on computer screens in plain sight and employees opening suspicious e-mail and downloading malware, to lost laptops and smart phones, many security breaches occur because of employee actions.

Also, keep in mind that a data breach can occur from paper records, as well. Outdated customer information, old credit card receipts and employee files that have been thrown into the dumpster are just as vulnerable as if a hacker logged into your network.

4. If we use a third party for credit cards, do we need coverage?

If you take credit card payments online, you are likely using a third party and your network is not storing the data. But, your customers' personal information, in case of a data breach, is still your responsibility.

5. What are my state's privacy notification laws and penalties?

In California, the law requires the inclusion of certain content in data breach notifications, including a description of the incident, the type of PII breached, the time of the breach, the toll-free numbers and the addresses of credit-reporting agencies.

In addition, state law requires the breached business to send an electronic copy of the notification to the California Attorney General if a single breach affects more than 500 residents. ❖

If you still have questions, call us and we will be happy to evaluate whether you need cyber coverage.

