



WRIGHT & KIMBROUGH

# REPORT

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## WORKERS' COMP

# New Rule Simplifies X-Mod Calculation

**A** NEW method for calculating workers' compensation experience modifications came into effect in California on Jan. 1.

The Workers' Compensation Insurance Rating Bureau of California has created a new simplified formula for calculating X-Mods as part of its efforts to add more transparency to the process. The new formula excludes the first \$250 of every claim for the X-Mod computation, no matter how large or small the claim is.

This also means that if an employer pays, say, \$200 for first aid on a minor workplace injury, they are required to report it as a claim. Doing so will not affect their X-Mod in any way, no matter how many first aid claims they have.

The goal is to encourage employers to report all claims, even those that may require minimal medical treatment or first aid.

### X-Mod effects

The change may have an effect on your current X-Mod.

Any claim incurred against policies incepting during the experience period for your 2019 experience modification, which

includes 2015, 2016 and 2017 policy years, will be used in the X-Mod computation at \$250 less than its reported value.

Claims costing \$250 or less will be shown on worksheets, but will not be used in X-Mod calculation.

### How it works

- If you have a \$10,000 primary threshold and you have a claim that ends up costing \$6,000, the amount used to compute your X-Mod would be \$5,750.
- If you have a \$10,000 primary threshold and you have a claim that ends up costing \$17,000, the amount used for calculating your X-Mod would be \$9,750.
- If you have a claim that's valued at \$250 or less, the claim will still show on your experience rating worksheet, but it will not be used at all when calculating your X-Mod.

### Reporting first aid claims

Workers' comp regulations require that all injuries that cost some amount of money to treat must be reported to your workers' comp carrier. In turn, insurers must report those claims to the Rating Bureau so that it can accurately keep workers' comp records on employers that are experience rated.

The rules have already been on the books for years, but the problem of non-reporting became too great, so the Rating Bureau has stepped up to encourage employers to follow the rules. And in this case, it can't work against you. ❖

## FIRST AID DEFINED FOR CLAIMS REPORTING

"First aid" means any one-time treatment on premises, at a clinic or doctor's office that is usually administered immediately after the injury occurs. It often consists of a one-time, short-term treatment.

First aid can include:

- Cleaning minor cuts, scrapes or scratches
- Treating a minor burn
- Applying bandages and dressings
- Using hot or cold therapy
- Using temporary immobilization devices
- Draining blisters
- Removing debris from the eyes
- Removing splinters or foreign material from areas other than the eye
- Using finger guards.



## HAVE QUESTIONS?

**CALL US: (800) 822.3694**

If you have any questions regarding any of these articles or have a coverage question, please call us at:

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# Top 10 Laws and Regulations for 2019

**E**VERY YEAR comes with new laws and regulations that affect employers. It pays to stay on top of all the new requirements, so we are here to help you understand those that are most likely to affect your business. The following are the top 10 laws, regulations and trends that you need to know about for 2019.

## 1. Sexual harassment training

Existing state law requires employers with 50 or more workers to provide at least two hours of sexual harassment training to supervisors every two years.

SB 1343 changes this by requiring employers with five or more employees to provide all employees with at least one hour by Jan. 1, 2020. Training must be held every two years. Also, employers with five or more workers must provide (or continue to provide) two hours of the biennial supervisory training.

## 2. Data privacy

Companies that collect data on their customers online should start gearing up in 2019 for the Jan. 1, 2020 implementation of the California Consumer Privacy Act of 2018, which is the state's version of the European Union's General Data Protection Regulation.

The law applies to businesses that:

- Have annual gross revenues in excess of \$25 million,
- Annually buy, receive for their own commercial purposes, or sell or share for commercial purposes, the personal information of 50,000 or more consumers, households or devices, and/or
- Derive 50% or more of their annual revenues from selling consumers' personal information.

## NEW PRIVACY RIGHTS

The law gives consumers:

- The right to know, through a general privacy policy and with more specifics available upon request, what personal information a business has collected about them, where it was sourced from, what it is being used for, whether it is being disclosed or sold, and to whom it is being disclosed or sold;
- The right to "opt out" of allowing a business to sell their personal information to third parties; and
- The right to have a business delete their personal information.

## 3. Independent contractors

While this legal development happened in 2018, now is a good time to go over it. In May 2018, the California Supreme Court handed down a decision that rewrites the state's independent contractor law.

In its decision in *Dynamex Operations West, Inc. vs. Superior Court*, the court rejected a test that's been used for more than a decade in favor of a more rigid three-factor approach, often called the "ABC" test.

Employers now must be able to answer 'yes' to the following if they want to classify someone as an independent contractor:

- The worker is free from the control and direction of the hirer in relation to the performance of the work, both under the contract and in fact;
- The worker performs work that is outside the usual course of the hirer's business; and
- The worker is customarily engaged in an independently established trade, occupation or business of the same nature as the work performed for the hirer.

See 'New' on page 3

# TOP 10

# New Requirements for Form 300A Electronic Submission

The second prong of the test is the sentence that really changes the game. Now, if you hire a worker to do anything that is central to your business's offerings, you must classify them as an employee.

## 4. Electronic submission of Form 300A

In November 2018, Cal/OSHA issued an emergency regulation that required California employers with more than 250 workers to submit Form 300A data covering calendar year 2017 by Dec. 31, 2018. The new regulation was designed to put California's regulations in line with those of Federal OSHA.

This year, affected employers will be required to submit their prior year Form 300A data by March 2. The law applies to:

- Employers with 250 or more employees, and
- Employers with 20 to 249 employees in high-risk sectors.

## 5. Harassment non-disclosure

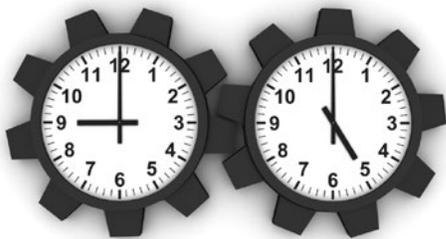
This law, which took effect Jan. 1, bars California employers from entering into settlement agreements that prevent the disclosure of information regarding:

- Acts of sexual assault;
- Acts of sexual harassment;
- Acts of workplace sexual harassment;
- Acts of workplace sex discrimination;
- The failure to prevent acts of workplace sexual harassment or sex discrimination; and
- Retaliation against a person for reporting sexual harassment or sex discrimination.

## 6. New tiered minimum wage

On Jan. 1, the state minimum wage increased, depending on employer size, to:

- \$11 per hour for employers with 25 or fewer workers.
- \$12 an hour for employers with 26 or more workers.



## 7. Overtime laws

The U.S. Department of Labor plans to propose new regulations governing overtime exemptions from the Fair Labor Standards Act in March 2019.

The DOL is aiming to update FLSA regulations that set a salary threshold below which employees must be paid overtime. Today, it remains at \$23,660, after the Obama administration unsuccessfully attempted to raise it to \$47,476.

President Trump's DOL is expected to propose a threshold somewhere between \$32,000 and \$35,000.

## 8. Accommodating lactating mothers

A new law for 2019 brings California statute into conformity with federal law that requires employers to provide a location other than a bathroom for a lactating mother to express milk.

## 9. New bar for harassment liability

A California Appeals Court ruling in 2018 set a new standard for what constitutes harassment in the workplace in a case that concerned a correctional officer at a prison who was mocked about his speech impediment on numerous occasions by co-workers.

The significance of the case for employers is that even teasing and sporadic verbal harassment can be enough to create a hostile work environment and, hence, liability.

This year, reduce the chances of liability by having an anti-harassment policy. Include training and make sure there are steps for reporting harassment, a mechanism for investigating it, and that the ramifications for harassers are clear.

## 10. Indoor heat illness regulations

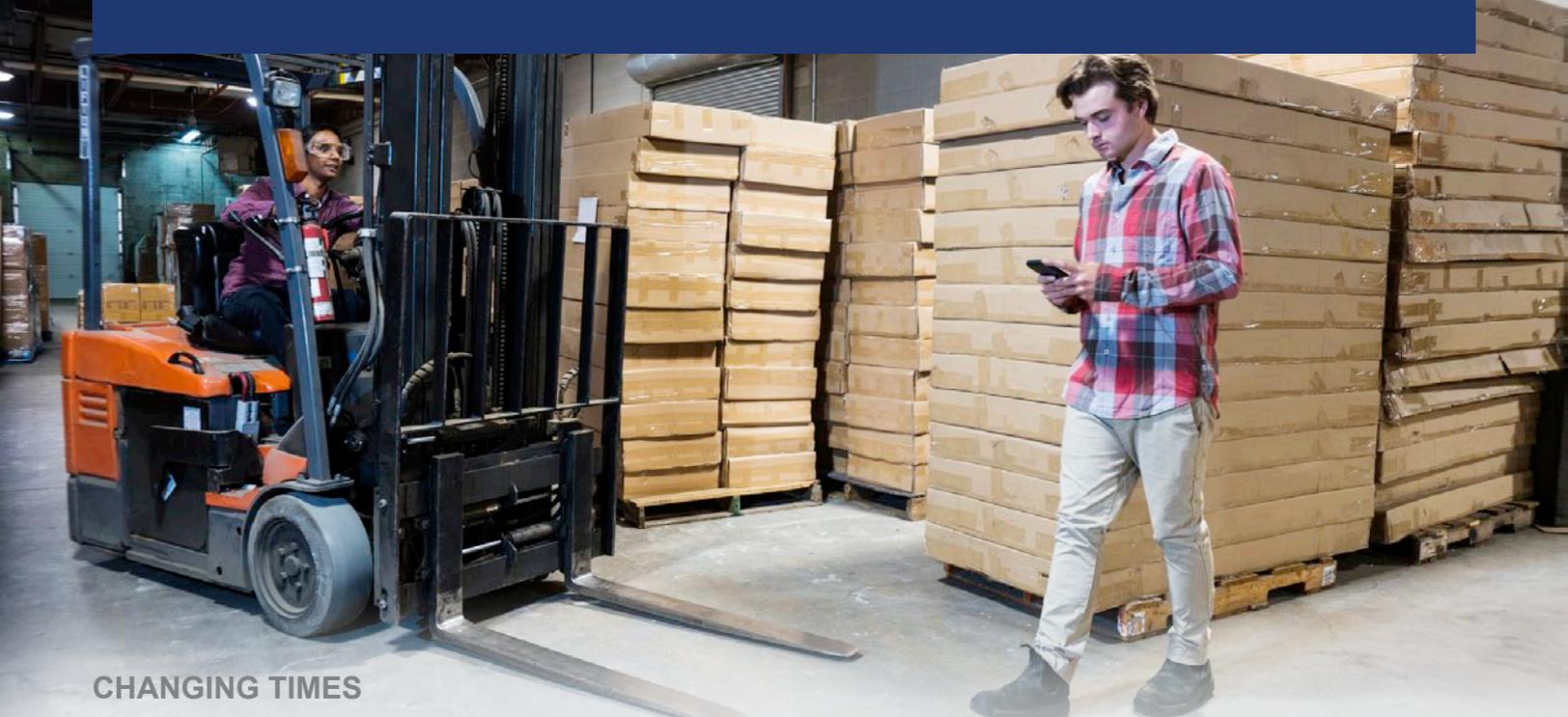
Look for the Division of Occupational Safety and Health to release its proposed indoor heat illness regulations in the first quarter, with possible implementation by the summer.

Draft rules that have been floated so far would apply the standard to indoor work areas where temperatures equal or exceed 82 degrees. All of the provisions would apply to workplaces where it's at least 92 degrees.

Under draft rules, those employers would have to:

- Provide cool-down areas at all times.
- Encourage and allow employees to take preventative cool-down rests when they feel the need to protect themselves.
- Implement control measures like:
  - Engineering controls
  - Isolating employees from heat
  - Using air conditioning, cooling fans, cooling-mist fans, and natural ventilation. ❖





## CHANGING TIMES

# Safety Risks Soar as Job Market Tightens

**O**NE BY-product of a strong economy is more employment, but the increased activity usually results in more workplace injuries.

That's because there are more inexperienced people on worksites and when a company is busy and there is more activity, the chances of an incident occurring also increase. This is especially the case in manual labor environments from production facilities, warehousing and logistics to construction and other trades.

The September USG + U.S. Chamber of Commerce Commercial Construction Index found that 80% of contractors said that the skilled labor shortage is affecting jobsite safety and it's the number one factor increasing safety risk on the jobsite.

As business activity grows and the job market tightens, many companies are forced to hire more inexperienced workers who are not skilled at understanding all safety hazards.

Experienced personnel have the know-how to identify workplace hazards and understand the safety protocols for all aspects of their work. While training can help new hires, nothing beats experience.

Additionally, with many businesses working hard to fulfill orders, workplaces are busier. Amidst all that hustle and bustle and people moving quickly, the speed and activity can also contribute to accidents in the workplace.

Also, aggressive scheduling may cause employers to use workers with less experience or training, and can push employees to work longer hours. If employees are working overtime, they may also be tired and fatigued, which can contribute to poor judgment and workplace incidents.

One other issue that's affecting workplace safety and is related to the tight job market is that employers are often having to settle for workers they may not normally hire in other times. As you know, the scourge of opioid addiction has been rampant and unfortunately if someone who has an addiction is hired, they may be a serious liability for the employer.

Not only that, but more states are legalizing recreational marijuana and nearly 40 states have medical marijuana laws on the books.

Here's what's concerning construction employers on the worker addiction front, according to the USG + U.S. Chamber of Commerce Commercial Construction Index:

- 39% were concerned about the safety impacts of opioids.
- 27% were concerned about the safety impacts of alcohol.
- 22% were concerned about the safety impacts of cannabis.

The report showed that while nearly two-thirds of contractors had strategies in place to reduce the safety risks presented by alcohol (62%) and marijuana (61%), only half had strategies to address their top substance of concern: opioids, which is a growing issue.

### What you can do

In this environment of labor shortages and high competition for workers, employers need to put a premium on safety. ❖

### Putting safety first

- Train all new employees in safety and housekeeping procedures.
- Improve the safety climate in the worksite with ongoing training.
- Get buy-in from management on safety.
- Provide more leadership training for supervisors.
- Track near misses and injuries, and identify the factors that led to the near miss or accident.
- Ensure accountability at all levels.
- Empower and involve employees in the safety process.

### Tackling substance abuse safety risks

Top strategies to reduce safety risks caused by substance abuse:

- Testing
- Prescreening before hiring
- Education
- Zero-tolerance policies
- Counseling
- Access to rehab services