

COMMERCIAL PROPERTY

Wildfires Make for Difficult Insurance Market

MORE BUSINESSES in wildfire-prone areas are facing a difficult commercial property insurance market as insurers reduce their exposure and some have left the market altogether.

Many businesses in areas that have already been ravaged by fires in the past, or those located in areas that are near forests and large grassy areas, are seeing their premiums increase – sometimes substantially by 300% or 400%.

Also, more businesses are finding few insurers that are willing to cover their properties.

According to a new report by insurance rating firm AM Best, California wildfires have caused over \$4 billion in commercial property losses for insurers in three of the past four years.

It's expected that 2021 fire losses could be even greater than those of the prior four years.

The fallout

- Some insurers have stopped writing property insurance in high-risk areas.
- Most insurers are increasing their rates substantially in high-risk areas.
- Insurers are requiring policyholders to have mitigation measures like defensible space (see below).
- Many policies have worse terms. One winery owner interviewed by the *Los Angeles Times* said that his premium was typically \$200,000 with a \$25,000 deductible. His new policy costs \$800,000 and includes a \$500,000 deductible, and would only cover 20% of the value of his buildings.

The new playbook

Many insurers are applying three metrics in evaluating exposure to fire:

Brush mapping – This is a map of the tinder and brush, nearby trees and other items that could contribute to your building(s) catching fire.

Wildland-urban interface – The closer that a building is to nature, the more at risk it is. A wildland-urban interface is defined by the Forest Services as a place where “humans and their development meet or intermix with wildland fuel.”

Concentration of properties an insurer covers in your area – If your carrier has a high concentration of policies for other properties in your area, they may opt to non-renew policies in order to reduce their exposure.

See 'FAIR Plan' on page 2

PROTECTING YOUR COMMERCIAL PROPERTY

- **Zone 1 (0-5 feet):** Concrete, gravel mulch and low-growing plants or lawns are good choices for this zone. Avoid combustible materials.
- **Zone 2 (5-30 feet):** Vegetation island. Prune low tree branches. Remove shrubs.
- **Zone 3 (30-100 feet):** Thin out vegetation between trees. Don't let tree canopies touch.

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WORKERS' COMPENSATION

COVID-19 Payroll Reporting Rules Have Ended

THE WORKERS' Compensation Insurance Rating Bureau's two temporary payroll reporting rules to reflect changes brought on by the COVID-19 pandemic stay-at-home orders have sunsetted.

The move came after Gov. Gavin Newsom's June 9 executive order which revoked the statewide stay-at-home order that had been in place since March 19, 2020.

You may recall that after the stay-at-home order took effect, the Rating Bureau issued new rules for classifying staff who were suddenly working remotely, as well as payroll reporting for staff who were at home but not working.

The Coronavirus Disease 2019 (COVID-19) rules that expired are:

A. Classifying remote workers in the Classification 8810 – Clerical Office Employees – As a result of the California stay-at-home order, many employers altered employees' duties so they could be accomplished from home, and often those duties were clerical-like in nature.

Under the rule, an employee could be assigned payroll Classification 8810 if:

- Their duties met the definition of a "clerical office employee" while working from home,

- Their payroll for the balance of the policy period was not assignable to a standard classification that specifically excludes clerical office employees.

Expiration: This rule expired 60 days after the end of the stay-at-home order, or Aug. 10.

B. Salaries of non-working staff – Salaries paid to workers who were at home not working, yet still collecting a paycheck, would be excluded from payroll for workers' comp premium calculation purposes when the payments were less than or equal to the employee's regular rate of pay.

Expiration: This rule expired 30 days after the end of the stay-at-home order, or July 11.

The takeaway

What this means is that if you have been classifying remote workers under Classification 8810, they will need to be returned to their original classification. Also, the rules still require that you maintain records that document any changes in duties for your staff during the period these rules were in effect and they were working from home.

The rules also require you to maintain records of their payroll during that period. ❖



FILLING UP: With the stay-at-home orders expired, the special classification for employees working remotely due to the pandemic has sunsetted.

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The California FAIR Plan Is the Market of Last Resort

Coverage options

If all insurers have rejected a property, we have two options:

The non-admitted market – These insurers, which include Lloyd's of London, are usually willing to write buildings in higher-risk areas, but they too have increased their underwriting criteria.

The California FAIR Plan – If we cannot find an insurer in the non-admitted market, the last choice is the FAIR Plan, which is the market of last resort for property owners that cannot get coverage elsewhere.

Policies cover losses from fire, lightning and explosion only. Also, policies are limited in what they will pay out, so if you have millions of dollars tied up in equipment and/or inventory, the policy may not be enough to cover all the damage you incur from a wildfire.

The maximum limit for commercial properties is \$3 million for structures and \$1.5 million for all other coverages, for a combined \$4.5 million limit for all commercial properties at one location. But there are some exceptions.

Your options if you go to the FAIR Plan

If the FAIR Plan coverage is not enough for your needs, we can find another insurer that provides excess coverage that would kick in at a certain dollar amount of damage.

And for risks that are not covered, we would have to also find you a "differences in conditions" policy. Combined with FAIR Plan coverage, adding such a policy can nearly mimic the coverage of a commercial policy. ❖

WORKPLACE SAFETY

Permanent COVID-19 Standard Coming Soon

CAL/OSHA has taken the first step towards creating a semi-permanent COVID-19 standard to replace the emergency temporary standard that currently governs workplace coronavirus prevention measures in the state.

On Sept. 17, Cal/OSHA released a discussion draft for permanent COVID-19 regulations to give stakeholders the chance to comment on it before it starts work on writing the regs.

Even though they are “permanent,” the rules would be subject to renewal after two years from the effective date or they would expire if the threat has receded by that time.

Elements of the draft standard

Here’s what the draft standard would do:

Follow CDPH rules – Require that employers follow California Department of Public Health COVID-19 prevention orders.

Masks for unvaxxed staff – Unvaccinated staff must wear masks. Employers must provide masks when the CDPH requires them.

Outbreak rules – During an outbreak in the workplace, all staff would be required to wear face coverings regardless of vaccination status. Employers would need to provide respirators during major outbreaks to all employees.

No COVID-19 Prevention Plan – Employers would not need to have a COVID-19 Prevention Plan, as required in the temporary emergency standard. Instead, they would be required to address COVID-19 prevention strategies in their Injury and Illness Prevention Plan.

Masks for at-risk staff – Require employers to provide N95 respirators to employees who have been identified by a doctor as being at increased risk of severe illness from COVID-19, regardless of their vaccination status.

‘Fully vaccinated’ defined – Define a “fully vaccinated employee” to mean that the employer has a copy of their vaccination record that includes the vaccine maker and date of the last dose.

Retaining records – Require employers to keep COVID-19 vaccination records for two years after the period requiring them to keep the records ends. That means if the rule sunsets in a few years, employers would be required to keep those records for another two years.

Testing rules – Require that employers provide COVID-19 testing to all employees who have come into close contact with another team member who has tested positive for the virus. Testing must be provided at no cost to the employee.

No paid leave for infected staff – Eliminate the provision for paid leave for workers who contract the coronavirus.

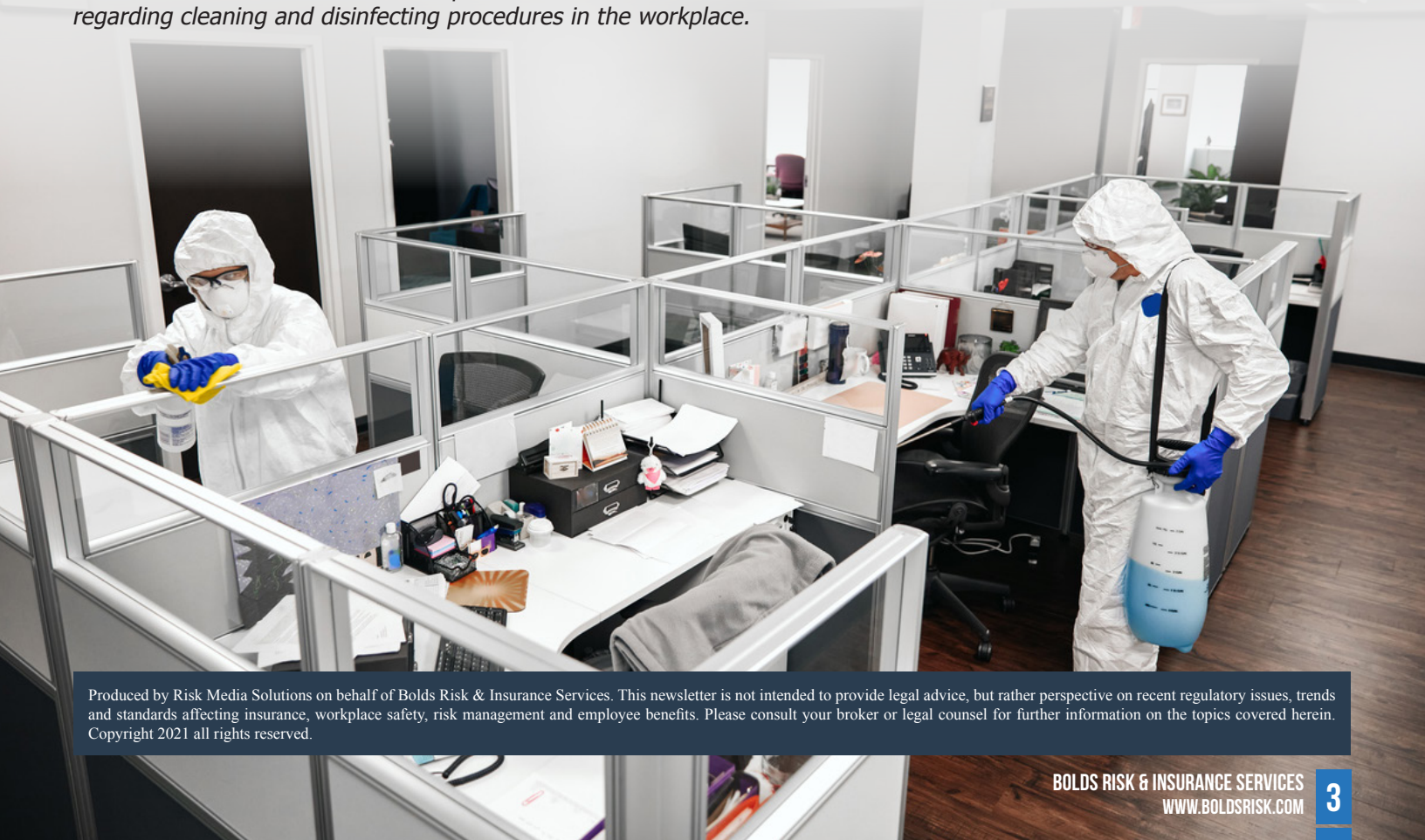
Handwashing and cleaning – Eliminate rules regarding handwashing and cleaning and disinfecting procedures in the workplace.

The takeaway

If you have been following Cal/OSHA’s emergency temporary standard, you should continue to follow the current requirements.

The new rules simplify the emergency standard, particularly concerning the requirement that COVID-19 prevention plans can be included in your IIPP rather than in a separate document. ❖

NO MORE DEEP CLEANING: *The permanent standard eliminates rules regarding cleaning and disinfecting procedures in the workplace.*



CONSTRUCTION INDUSTRY

Building Risks Evolve, Creating Unique Challenges

AS THE CONSTRUCTION industry booms, contractors face evolving risks that, left unchecked, can leave their operation exposed to new liabilities.

If you already operate a construction firm, you know that there is a labor shortage that has made it difficult to find experienced workers, and that hiring entities are asking builders to take on more of the design function, as well.

Your liability picture has also likely changed with the increasing use of wrap-ups and, if you're using technology in your operation, you now have rising cyber-security risks, too.

Lack of qualified workers

The bottom fell out of the construction industry in the U.S. during the first few months of the COVID-19 pandemic, and many worksites were idled. Now that the industry has found its footing, it's been dealing with a severe labor shortage.

As construction firms struggle to find workers, the ones who are on the job are having to take on larger workloads, which can put them at risk of injury or making mistakes.

Also, many contractors are having to take on younger, less-seasoned laborers, who may lack the experience to identify and avoid hazards, which puts them and others at risk of injury.

Those injuries in turn affect your workers' comp premiums.

A lack of workers coupled with inexperienced new ones on sites, can also end up drawing out projects, forcing contractors to miss deadlines.

Professional liability risks

As more project owners want an all-in-one job with the lead contractor designing and building the project, contractors now face a new type of risk: professional liability.

But the typical contractor's insurance policy doesn't provide protection for any design work you take on.

Courts have ruled that:

- Designers who perform "builder activities" lose limitation of liability typically enjoyed by design professionals.
- Builders who perform "design activities" assume responsibility for design deficiencies.

Wrap-ups more prevalent

Many construction projects are now covered under one general liability policy to cover the work of the general contractor, as well as of all the subs. More lenders are requiring that liability is set up in one all-encompassing policy.

A properly assembled general liability wrap-up should provide coverage not only during the construction period, but also up to 10 years after the work is completed.

These policies often reduce the cost of coverage.

More cyber-security risks

Like all industries, the construction sector has grown increasingly reliant on technology to get the job done. That exposes contractors to a variety of cyber risks, including keeping project designs, client records and employee records confidential.

Many building contracts today include clauses requiring the contractor to be responsible for potential cyber breaches.

Given the increasing popularity of practices such as "building information modeling," "integrated project delivery," and file-sharing between participants in a construction project, contractors may be at increased risk of liability in the event of a data breach. ❖

