

WORKERS' COMPENSATION

Rating Bureau Recommends 7.6% Rate Increase

THE WORKERS' Compensation Insurance Rating Bureau of California is recommending that advisory benchmark workers' compensation rates increase an average of 7.6% starting Sept. 1.

The proposal comes as the economy heats up and workplace injuries increase, all while COVID-19 workers' compensation claims continue growing in number. The recommendation still needs to be approved by Insurance Commissioner Ricardo Lara, who last year rejected a proposed rate hike and instead ordered a cut.

However, because the benchmark rates – also known as the pure premium rate – are advisory only, insurers are free to price as they feel fit so the full effects will vary from employer to employer and some may see rate decreases.

the projected costs of future COVID-19 claims in the coming year.

The effects of wage hikes are also expected to increase claims costs. Payouts for lost wages while sick workers recuperate are expected to rise more than 11% by 2024.

Medical costs per claim are projected to increase about 6.5% from \$29,896 as of Dec. 31, 2021, to \$31,847 at year-end 2024.

The next step

The WCIRB has submitted the proposal to the Department of Insurance, which will hold a hearing on June 14, during which actuaries representing employers and labor will make counter-proposals, which are usually lower than the bureau's.

After that, the insurance commissioner can approve the proposal or reject it and order his own rate increase or decrease.

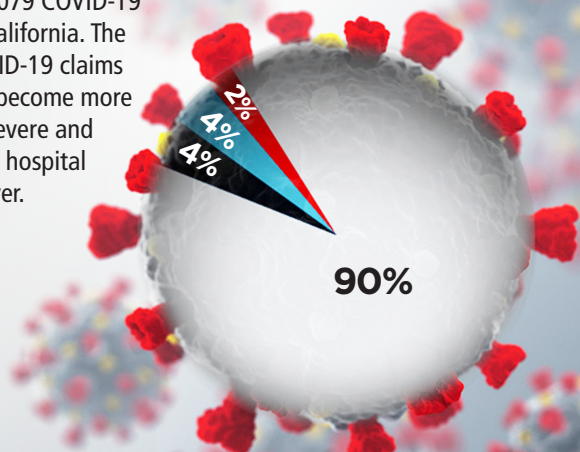
That's what happened last year, when the WCIRB proposed a 2.7% hike, and Lara rejected it and instead ordered a decrease of 3.3%.

And remember: A number of factors go into calculating your insurance rate, including your industry, your history of claims and your geographic location. ❖

THE COVID EFFECT ON WORKERS' COMP

As of May 31, there had been 265,079 COVID-19 workers' compensation claims in California. The average medical payments on COVID-19 claims increase significantly as infections become more severe, and for those claims with severe and critical infections, the payments for hospital admissions were the main cost driver.

- **Mild**
(no hospitalization)
- **Severe**
(hospitalization, no ICU)
- **Critical**
(with ICU care)
- **Death**



What's happening

The Rating Bureau says there are number of factors that are contributing to the increasing rates, including:

- An overall claims costs increase,
- Expected increases in the frequency of workplace injuries and claims,
- A rise in claims adjusting costs,
- Wage increases (part of workers' comp includes replacement of a portion of wages via temporary and permanent disability payments), and
- Expected future costs of COVID-19 workers' compensation claims.

Since the pandemic started, insurers have been barred from considering COVID-19 workers' comp claims when calculating an employer's claims history. But that exemption will come to an end on Sept. 1. So, the WCIRB is including a 0.5 percentage point provision for

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CONSTRUCTION

Spiking Materials Costs Imperil Building Projects

CONSTRUCTION FIRMS are reeling from snowballing costs of building materials due to spiking demand and supply chain snarls, which are resulting in massive budget cost overruns.

This is especially affecting construction businesses that are managing apartment or commercial projects. These cost overruns are imperiling profits – and risking red ink – on the projects after the contractors won carefully constructed bids.

Building materials and labor costs are going through the roof. According to the U.S. Census Bureau, construction costs spiked 17.5% year-over-year from 2020 to 2021, the largest increase in this data from year to year since 1970. And 2021's costs were more than 23% higher than pre-COVID-19 pandemic 2019.

Many of the materials used in the construction of apartment and commercial buildings, including concrete, flat glass and steel products, are affected by volatile prices, with steel seeing a more than 123% increase in costs in the past year.

The fallout

With the prices of materials climbing rapidly, it's easy for project costs to quickly exceed expectations and sink a project if those costs break the profit margin and force a loss.

To avoid this fate, construction firms need to be proactive and put in place procedures for dealing with materials cost increases, supply chain disruptions and a shortage of capable manpower. It could mean the difference between turning a modest profit or losing their shirt.

There are steps that contractors can take to avoid that fate. In an article on the website *Construction Dive*, Ripley Bickerstaff related what Hoar Construction, where he works as director of business development in Nashville, is doing to reduce the risks of price shocks and materials shortages so that builders can keep projects on track and in the black.

Verify materials

Builders should visually verify large orders, like 700 bathroom washbasins or 500 kitchen countertops, in person before they ship. That way, they can make sure that all of the items are built to specifications and that they aren't faulty.

Inspecting orders well in advance of shipment can reduce the chance of faulty or improperly sized items and having to reorder new

product. With the woeful state of supply chains, that could mean having to wait months for a replacement order.

"You have to walk in and actually make sure supplies work for the job and then have face-to-face conversations with production teams to ensure adjustments can be made in real time," Bickerstaff wrote.

Don't delay

Bickerstaff also recommends ordering items as early as possible, not just when needed. Due to supply chain issues, some items require a year lead time from order to delivery.

This way, you can lock in the price ahead of time. Even if it's an item you'll need for later in the project, considering the rapid pace of price increases, it's best to order in advance so you avoid being hit with higher prices later. This can protect your profit margin.

Additionally, the general contractor should work with architects and designers of the project to identify which materials they should order and which ones make sense in the current cost environment.

This can also give the builder time to shop around and find deals on similar or comparable items made of different materials to save money.

Contractors that order materials early will have to arrange for storage as well. So securing warehouse space should be a priority.

Secure your workforce, subs early

With demand for construction workers and contractors exceeding supply, general contractors have to get in line and book them early.

For example, in some markets, electrical contractors are booking projects as far as a year out. Builders should secure subcontractors in advance to give them time to book their crews and order the materials they'll need.

"Many builders are now shooting to lock in 70% of costs prior to construction documents, which should minimize the chances of double-digit material price hikes after a developer closes their loan," Bickerstaff writes.

The takeaway

Working on a large construction project now requires greater foresight and planning.

You'll need to price in factors you normally may not consider to ensure that you can meet your project budget and turn a profit. ❖



SUPREME COURT ACTION

PAGA Ruling a Big Win for Employers

THE U.S. Supreme Court has put a significant dent in California's Private Attorneys General Act, which in recent years has resulted in a surge in legal actions against California employers by their workers.

The law has been a huge thorn in the side of employers, who have been on the receiving end of litigation by workers who allege Labor Code violations.

The high court ruled that employers can compel arbitrations for employee-initiated PAGA actions. The court also held that if a plaintiff in a PAGA action is bound to arbitration, they automatically lose standing to prosecute claims on behalf of other "aggrieved" employees and remaining PAGA claims must be dismissed.

This is good news for businesses. Those that move to cement policies that comport with the new decision, will have a chance to drastically reduce their exposure should they be targeted by one of these actions. And because various court rulings have expanded the law's breadth, PAGA has been a source of confusion among employers. The new ruling provides clarity.

The history of PAGA

The law was enacted in 2004, after the Legislature grew concerned that the state lacked the resources to fully enforce the California Labor Code.

PAGA permits employees to sue for civil penalties on behalf of themselves, fellow employees and the State of California for alleged Labor Code violations. If they are filing on behalf of other employees, the other workers do not participate in the lawsuit.

The employee in essence acts as the state's watchdog; they need not suffer any actual harm from an alleged violation in order to file a lawsuit. One employee has the ability to file a suit alleging multiple Labor Code violations.

For any provision of the Labor Code that does not specify a civil

penalty, PAGA permits employees to seek a default penalty of up to \$100 for each aggrieved employee per pay period for an initial violation, and up to \$200 for each aggrieved employee per pay period for a subsequent violation.

If a suit is successful, the state receives 75% of the damages and the rest is distributed among the aggrieved employees.

The number of PAGA lawsuits filed in California on behalf of groups of workers has skyrocketed since 2014, when the California Supreme Court held that because PAGA plaintiffs step into the state's shoes, their claims cannot be forced into individual arbitration.

A resounding decision

The U.S. Supreme Court's 8-1 ruling in the case of *Viking River Cruises Inc. vs. Moriana* is likely to stem a flood of lawsuits filed in recent years accusing companies of widespread wage law violations.

The court ruled that the Federal Arbitration Act, which states that in employer-worker agreements employees are required to arbitrate legal claims, trumps the earlier California Supreme Court decision barring forced arbitration.

SCOTUS ruled that PAGA plaintiffs can only establish standing to sue by first alleging an individual claim. And since the FAA requires individual claims to go to arbitration if a worker has signed an arbitration agreement, the plaintiff cannot add additional claims for other employees, Justice Samuel Alito wrote in the decision.

Here's what employers should take away from the decision:

- Individual PAGA claims can be arbitrated if an employee has signed a contract agreeing to arbitrate Labor Code and other employment-related actions.
- PAGA claims for other alleged aggrieved employees that the complaining employee includes in the lawsuit are not subject to arbitration, and those claims should be dismissed.
- If you have arbitration agreements for your workers, you should revisit them to ensure they allow you to compel arbitration of PAGA claims. ❖



PRIVACY LIABILITY

Companies Bleed Data as Workers Move It Offsite



THE MORE employees are working from home, the greater the risk that their employers' sensitive data is also being stored on their poorly secured devices and laptops.

A new study by Symantec Corp. found many workers are sharing, moving and exposing sensitive company data as part of carrying out the requirements of their jobs, and they may not realize they could be compromising the information or that what they are doing is wrong.

More worrisome, the study found that half of all employees surveyed who left or lost their jobs in the prior 12 months had kept confidential company data. When that happens, the departing worker, your company and the new employer are all put at risk.

How Data Leaks from Your Firm

- Workers move it to their personal devices, both mobile and at home,
- Employees transfer the data or save it on cloud services or personal hard drives, or
- Employees take data with them to their new jobs.

Worse still, the majority of employees put these files at further risk because they don't take steps to delete the data after transferring it.

"In most cases, the employee is not a malicious insider," writes Symantec, "but merely negligent or careless about securing IP. However, the consequences remain. The IP theft occurs when an employee takes any confidential information from a former employer."

Why Data Leaks from Your Business

- 47% of employees say their organization doesn't take action when employees take sensitive information offsite.
- 68% say their employer does not take steps to ensure staff do not use confidential competitive information from third parties.
- 56% do not believe it is a crime to use a competitor's trade secrets.

What you can do

Symantec suggests attacking the problem from multiple angles:

- **Educate employees** – You should take steps to ensure that IP migration and theft awareness is a regular and integral part of security-awareness training. Create and enforce policies dictating how they can and cannot use company data in the workplace and when working remotely.

Help employees understand that sensitive information should remain on corporate-owned devices and databases. Also, new employees must be told that they are not to bring data from a former employer to your company.

- **Enforce non-disclosure agreements** – If you have not done so already, you need to craft new employment agreements to ensure they include specific language on company data.

They should include language that the employee is responsible for safeguarding sensitive and confidential information (and define what that is).

For employees that are leaving your employ, conduct focused conversations during exit interviews and make sure they review the original IP agreement. Include and describe, in checklist form, descriptions of data that may and may not transfer with a departing employee.

- **Track your data** – You need to know where your data is going and how you can find out by using monitoring technology. One option is to install data-loss-prevention software that notifies managers and employees in real time when sensitive information is inappropriately sent, copied or otherwise improperly exposed.

Also introduce a data-protection policy that monitors inappropriate access or use of company data and notifies the employee and you of violations.

This increases security awareness and deters theft. When you know how data is leaving your company, you can then take steps to prevent it from seeping out. ❖