



BOLDS RISK & INSURANCE SERVICES

CONSTRUCTION WORKERS' COMPENSATION

Big Changes for Dual-Wage Class Codes

AS INFLATION drives up salaries in all sectors, the workers' compensation wage thresholds for construction dual class codes have increased in California as of Sept. 1, 2022.

State Insurance Commissioner Ricardo Lara in July approved the recommendation by the Workers' Compensation Insurance Rating Bureau to increase the wage thresholds for high-wage workers.

The new rates apply to workers' comp policies that incept on or after Sept. 1.

In these dual class codes, workers' compensation rates are different for workers above and below the wage threshold.

Rates are lower for workers whose hourly pay is above the threshold as statistics have shown higher-paid workers in these fields have fewer workplace injuries than those who are paid less.

Often the difference in premium rate between the workers who fall above and below the threshold can be significant.

Opposite are the new thresholds for each class code, that are now in effect. ❖

CLASS CODE		2021 Per/hour Threshold	2022 Per/hour Threshold (as of Sept. 1)
5027/5028	Masonry	\$28	\$32
5183(1)/5187(1)	Plumbing	\$28	\$31
5183(2)/5187(2)	Refrigeration equipment	\$28	\$31
5183(3)/5187(3)	Heating or air conditioning equipment	\$28	\$31
5185/5186	Auto sprinkler install.	\$29	\$32
5190/5140	Electrical wiring	\$32	\$34
5201(1)/5205(1)	Concrete or cement work (pouring, finishing, patios, sidewalks, driveways, etc.)	\$28	\$32
5201(2)/5205(2)	Concrete or cement work (pouring, finishing of concrete floor slabs)	\$28	\$32
5403/5432	Carpentry	\$35	\$39
5446/5447	Wallboard installation	\$36	\$38
5467/5470	Glaziers	\$33	\$36
5474(1)/5482(1)	Painting, wall-paper install.	\$28	\$31
5474(2)/5482(2)	Waterproofing	\$28	\$31
5474(3)/5482(3)	Painting, water, oil or gasoline storage tanks	\$28	\$31
5484/5485	Plastering, stucco work	\$32	\$36
5538(1)/5542(1)	Sheet metal work	\$27	\$29
5538(2)/5542(2)	Heating, AC ductwork	\$27	\$29
5552/5553	Roofing	\$27	\$29
5632/5633	Steel framing	\$35	\$39
6218(1)/6220(1)	Excavation	\$34	\$39
6218(2)/6220(2)	Grading land	\$34	\$39
6218(3)/6220(3)	Land leveling	\$34	\$39
6307/6308	Sewer construction	\$34	\$39
6315(1)/6316(1)	Water mains, connections construction	\$34	\$39
6315(2)/6316(2)	Gas mains, construction	\$34	\$39

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COMMERCIAL PROPERTY INSURANCE

Coverage Gets Scarce in At-Risk Areas

AS WILDFIRES grow in number, intensity and scope, the cost of paying for the resulting claims is causing a property insurance crisis in some parts of the state that shows no sign of disappearing anytime soon.

Commercial property insurance rates have skyrocketed for businesses in areas exposed to wildfire risks. Many have received non-renewal notices and have had to secure coverage with the market of last resort, the California FAIR Plan.

Here's what's going on and what your options are if your commercial property policy is non-renewed.

What insurers are doing

While rates are increasing nominally in most of California's larger cities due to higher construction costs, it's a different story in smaller cities and towns.

Insurers are responding. Some are pulling out of the state or ceasing to write policies in areas they deem high risk and are issuing non-renewal notices.

Those that continue to write business in high-risk areas are taking steps to rein in their risk:

- Increasing rates** – Many carriers have more than doubled rates for at-risk properties.
- Hiking deductibles** – Many carriers are raising deductibles in wildfire-prone areas.
- Stricter terms** – Some insurers are limiting the amount they will pay out if a building is destroyed. That can sometimes be as low as 20% of the value, meaning the rest would have to be covered out of pocket by the property owner.

Protective measures insurers may require

Defensible space: Maintain a defensible space around your building, usually all the way to the property line. You can find a thorough description of how to create a defensible space [here](#).

Non-combustible materials and other measures: Use only non-combustible building materials, such as fire-proof shingles for your roof. The insurer may require you to shore up roofs, gutters, vents and siding and ensure there are no gaps that would allow embers to penetrate.

They may require exterior wall cladding made of non-combustible siding materials.

Reliable water supply: Insurers are requiring property owners to have clear access to a reliable water supply, including proximity to public hydrants and the possible installation of private-site yard hydrants. The availability of a reliable water supply is critical and should be evaluated frequently.

You may also consider installing a back-up water supply, such as a fire pump and tank.

Routine clearing: Insurers are requiring property owners to have a routine property clearing regimen that includes regularly removing dried vegetation from the property and removing debris or other flammable materials. Debris and vegetation are the tinder for large fires.



Creating Defensible Space

Zone 0: 0-5 feet. No trees, only short bushes, non-combustible ground cover like gravel or paver; remove overhanging branches and dead or dry vegetation.

Zone 1: 5 to 30 feet. Space trees, keep branches 10 feet from other trees, remove dead vegetation and shrubbery that is flammable, if near wood structures.

Zone 2: 30 to 100 feet. Keep grass mown, space shrubs and trees, remove leaves, debris.

Your options if canceled

If you've been cancelled by your insurer, we can mount a search for replacement coverage. If all California-licensed insurers that we have access to reject your policy, we have two choices:

The non-admitted market – These are insurers that are not licensed in the state of California, but they are viable insurance

companies nonetheless. They can offer policies that may not cover everything a homeowner's policy from an admitted insurer would have. Policies can often be customized for the insured.

California FAIR Plan – We can only go to the FAIR Plan if you've thoroughly exhausted the options available through the voluntary market and been denied coverage.

If only one admitted insurance company is willing to write your policy, no matter how steep the premium is, you cannot go to the FAIR Plan for coverage.

Not only are FAIR Plans more expensive, but they offer fewer coverage options and lower policy limits. That said, the limits have doubled in 2022 to \$6.8 million per policy. ❖

AB 5 COURT DECISION

Tough Choices Ahead for Trucking Businesses

THE U.S. Supreme Court's decision to not hear an appeal of the sweeping California independent contractor law known as AB 5 is likely to cause serious personnel headaches for motor carriers in the Golden State.

While the law is already in effect, there had been an injunction exempting trucking companies after the California Trucking Association had sued to overturn the law as it applies to the industry. The Supreme Court's decision effectively lifts the injunction, and the CTA is sounding the alarm on how it will wreak havoc on motor carriers.

AB 5 and Truckers Explained

AB 5 establishes a three-pronged test to determine if someone is an independent contractor:

- They must be free from the control of the hiring entity (meaning they can choose when and how to perform their work);
- They must perform work outside the usual course of the hiring entity's business (meaning they must perform work that is not part of the hiring entity's main business); and
- They must be customarily engaged in an independent trade or occupation.

The middle prong is the top sticking point, since the main service motor carriers provide is moving cargo.

The effects

Owner-operators who are classified as employees under this test will be covered by California labor and employment laws. The hiring entity will have to treat them like employees, meaning they have to secure workers' compensation coverage, pay employment taxes and extend benefits to them. They also have to abide by labor laws and wage and hour statutes.

Here's how AB 5 will affect various owner-operators:

Exclusive leased owner-operators – These operators drive exclusively for a hiring trucking company and work under the latter's authority. They may or may not own their own trucking equipment

(tractors and trailers) and do not have their own motor-carrier operating authority from the Department of Transportation.

They've operated as independent contractors because the lease agreements let them choose their own loads, but the agreements bar them from using their equipment to drive for other entities.

Effect: These operators will essentially be illegal.

Non-exclusive leased owner-operators – These contractors own their own equipment and have DOT motor-carrier operating authority. They move cargo primarily for a motor carrier with which they contracted but they can also work for other customers.

Effect: This group may or may not be affected depending on the arrangements they have with the motor carrier.

For-hire owner-operators – These operators own their own equipment, have their DOT motor-carrier authority and source loads through brokers or other means. They are their own bosses and they choose whom they will move freight for.

Effect: This subset is the least likely to be affected by the law. ❖

Options for Motor Carriers

There are just a few options available for trucking firms:

- A motor carrier can switch to an employer-employee model and hire its current contractors as employees.
- A trucking firm can separate its brokerage operations from carrier business, essentially creating two distinct businesses: one that employs drivers directly and another that is a brokerage for independent contractors, for-hire operators who set their own rates and can accept work from multiple hiring entities.
- A motor carrier can pursue the business-to-business exemption in the law. AB 5 has a narrow exemption for independent contractors who provide services directly to a contracting business rather than to customers of that business. But, both the hiring entity and the contractors must meet a long list of requirements.



EMPLOYMENT LEGISLATION

Law Bars Discrimination Against Cannabis Users

GOVERNOR GAVIN Newsom has signed into law legislation that would bar employers from discriminating against employees and job applicants who use cannabis on their time off.

The law amends the California Fair Employment and Housing Act to prohibit discrimination against an individual based on “an employer-required drug screening test” that detects the presence of “nonpsychoactive cannabis metabolites in their hair, blood, urine, or other bodily fluids.”

The new law does not bar employers from drug-testing, but it does impose restrictions on what they can do in response to a positive test.

The law, AB 2188, prohibits employers from discriminating against employees and job prospects, or otherwise penalizing them for either:

- Their use of cannabis off the job and away from work, or
- An employer-required drug test that detects cannabis in their system (from either a hair, blood, urine or bodily fluid sample).

Employer rights

The law is not a green light for workers to use or possess cannabis on the job. Also, it won't impinge on an employer's rights to maintain a drug-free workplace.

They do also have some leeway in trying to judge someone's impairment, but it comes down to the type of test they use.

Acceptable tests

There are two types of tests:

- Ones that detect the presence of tetrahydrocannabinol (THC), the chemical compound in cannabis that causes impairment and psychoactive effects.
- Ones that detect the presence of nonpsychoactive cannabis metabolites, which is what is left after the body metabolizes THC. These metabolites do not indicate that an individual is impaired, but only reveal whether they have consumed cannabis recently (up to a month in the case of a urine test).

Under the new law, employers would be authorized to take disciplinary action if a THC test is positive, but not if they detect nonpsychoactive cannabis metabolites in their system. The latter is the more common type of test available.

Exemptions

There are some exemptions in AB 2188, in particular:

- It does not apply to workers in the building and construction trades. Employers would still be allowed to make employment decisions for workers and applicants who use cannabis in

their off hours and test positive for nonpsychoactive cannabis metabolites.

- The law does not apply to applicants or employees hired for positions that require a federal government background investigation or security clearance in accordance with regulations issued by the U.S. Department of Defense or other federal agencies.
- The law does not preempt state or federal laws requiring applicants or employees to be tested for controlled substances as a condition of employment, receiving federal funding or federal licensing-related benefits, or entering into a federal contract.

The takeaway

Employers have time to change any policies they have in place concerning drug-testing and cannabis use. The law takes effect Jan. 1, 2024.

Remember, you can still take action against someone who is impaired at work. ❖

