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BOLDS RISK & INSURANCE SERVICES

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WORKERS' COMP

Class Code Changes Okayed by Insurance Dept

IF YOU have staff who work remotely, you'll want to pay attention to changes that are coming to the workers' compensation class code you use for them.

Starting Sept. 1, California's telecommuter class code will finally get its own pure premium rate, that is lower than what's currently being charged.

Since many people started working remotely after the COVID-19 pandemic began in 2020, the Workers' Compensation Insurance Rating Bureau created a new telecommuter class code (8871) and tethered its pure premium advisory rate to the 8810 clerical classification for easier administration.

Now, under the Rating Bureau's workers' compensation regulatory filing which was adopted by the California Department of Insurance on May 25, code 8871 will receive its own rate, separate from the clerical rate. In fact, the new telecommuter rate will be 25% lower than the clerical rate due to the former's lower losses and higher average payroll.

If you have remote workers, you'll want to ensure they are in the telecommuter class code to enjoy the lower premium.

New X-Mod threshold

The approval of the filing also increases the workers' comp premium threshold for experience rating (being eligible for an X-Mod) to $10,200 from $9,200 to account for wage inflation.

NEW CODE: *Remote workers will get their own unique workers' comp class code starting in September.*

Restaurant classification split

Other changes include splitting the 9079 restaurant classification into six new codes (see box below), effective Sept. 1, 2024.

While there will be six codes, they will still be combined for rate-making purposes until the Rating Bureau collects a few years of data from the new codes, so that it can set individual rates for each of them. ❖

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EEOC GUIDANCE

New Rules for Using AI in Employment Decisions

THE EQUAL Employment Opportunity Commission has issued new guidance on how employers can properly use software, algorithms and artificial intelligence-driven decision-making tools when screening job applicants and selecting candidates.

The EEOC has grown concerned about possible adverse impacts of these technologies that can help employers with a wide range of employment matters, like hiring decisions, recruitment, retention, monitoring performance, and determining pay, promotions, demotions, dismissals and referrals.

The guidance follows the EEOC's recent announcement that it would pursue enforcement of violations of Title VII of the Civil Rights Act of 1964 and other statutes under its jurisdiction arising from use of AI in employment decisions.

Algorithmic Decision-Making Tools

- Resumé scanners that prioritize applications using certain keywords,
- Monitoring software that rates employees on the basis of their keystrokes or other factors, and
- Testing software that provides "job fit" scores for applicants or employees.

The new guidance includes a series of questions and answers to help employers prevent the use of AI and other technologies from leading to discrimination on the basis of on race, color, religion, sex or national origin, in violation of Title VII.

Main points of the guidance:

Responsibility: Employers are ultimately responsible for discriminatory decisions rendered by algorithmic decision-making tools, even if they are administered by another entity, such as a software vendor.

Assessment: Employers should assess whether their use of technology has an adverse impact on a particular protected group by checking whether use of the procedure causes a selection rate for individuals in the group that is "substantially" less than the selection rate for individuals in another group.

The selection rate for a group of applicants or candidates is calculated by dividing the number of persons hired, promoted or otherwise selected from the group by the total number of candidates in that group.

Adverse Selection Example

An employer screens applicants by having them take a personality test that is scored using an algorithm. During the process, 100 white individuals and 50 Black individuals take the test, after which 60 of the white applicants and 15 of the Black applicants advance to the next round of the selection process.

Based on these results, the selection rate for whites is 60/100 (equivalent to 60%), and the selection rate for Blacks is 15/50 (equivalent to 30%).

This may indicate adverse selection.

If an employer is in the process of implementing a selection tool and discovers that using it would have an adverse impact on individuals of a protected class, it can take steps to reduce the impact or select a different tool, per the guidance.

If an employer fails to adopt a less discriminatory algorithm than that which was considered during the implementation process, it could result in liability, according to the EEOC.

The takeaway

Employers using algorithmic decision-making tools for employment decisions need to take the same care as they do when making employment moves without assistance from technology.

Firms should not implement these technologies without considering possible adverse decision-making that could lead to violations of the law and prompt litigation and regulatory action by the EEOC.

Experts advise that you move forward carefully and work with the vendor to ensure the technology doesn't get your organization in trouble. ❖

CAL/OSHA RULE-MAKING

Indoor Heat Illness Prevention Standard on Tap

CAL/OSHA HAS proposed its long-awaited indoor heat illness prevention standard as increasingly hot summers are affecting workers in indoor spaces like warehouses, production operations, restaurants and more.

The proposed standard, largely based on the state agency's outdoor regulations, will require employers whose workplaces at times are at least 82 degrees to have a written Indoor Heat Illness Prevention Plan.

The standard, once it takes effect, will affect employers throughout the state and many will have to take steps and invest in equipment and planning to ensure compliance. The preventative measure to which most employers will likely resort is air-conditioning.

The Standards Board wrote in its proposal, according to the *Cal-OSHA Reporter* trade publication: "There is likely to be a particular need to reduce temperatures in large warehouses, manufacturing and production facilities, greenhouses, and wholesale and retail distribution centers."

Other facilities that would likely also need to install HVAC units include restaurant kitchens and dry cleaners. They may also need to improve air circulation in their operations.

Under the proposal, the following regulations apply to a workplace where the indoor temperature exceeds 82 degrees.

Access to drinking water

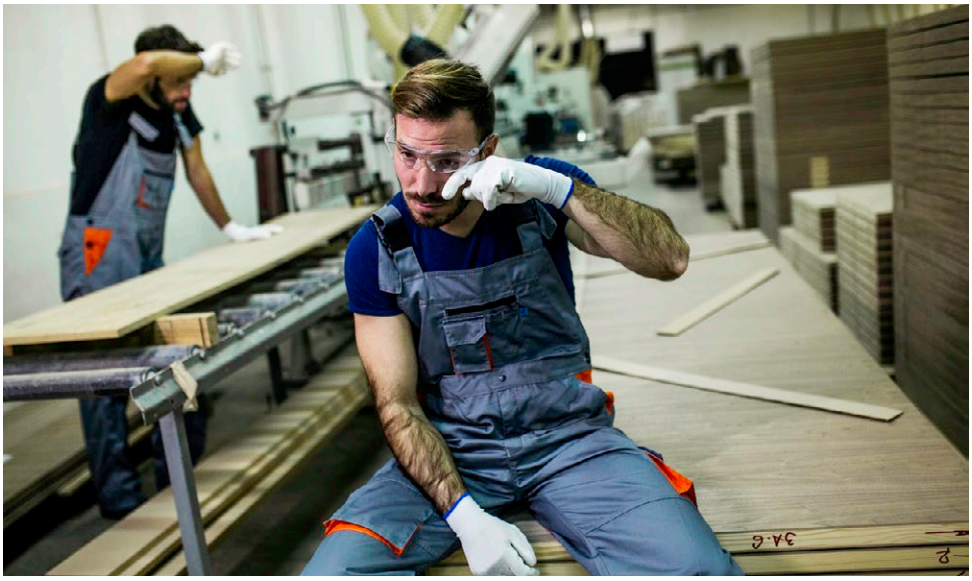
Employers are required to provide access to potable water that is fresh, suitably cool and free of charge.

It must be located as close as practicable to the work area, as well as indoor cool-down areas where employees can rest. If an employer doesn't provide water continuously, it will be required to provide at least one quart per hour per employee per shift.

Employers should encourage frequent water consumption.

Access to cool-down areas

Employers must provide at least one cool-down area during shifts, and grant a cool-down break to staff who ask for one.



Workers taking cool-down breaks shall be monitored and asked to stay in the area if they are experiencing heat illness symptoms. As long as symptoms persist, they may not be ordered back to the work they were doing.

Control measures

Employers can implement a number of measures to protect their workers:

Engineering controls – This can include barriers between heat sources and employees, isolating hot processes from workers, air-conditioning, cooling fans, mist fans, swamp coolers, ventilation, etc.

Administrative controls – This can include limiting exposure by adjusting work procedures, practices or schedules (working during cooler periods, using work/rest schedules or reducing the speed of work).

Personal heat-protective equipment – This could include water- and air-cooled garments, cooling vests and more.

Emergency response procedures

Employers will need to develop and have in place emergency response procedures that workers and supervisors can follow in case they are experiencing heat illness.

Acclimation steps

Employees should be closely observed during heat waves, and new workers must be closely observed during their first 14 days of work to ensure they are acclimating.

Training

Employees and supervisors will need to be trained on:

- Personal risk factors for heat illness.
- Their employer's procedures for complying with the regulation.
- The importance of frequent water consumption.
- The importance of acclimation.
- Signs and symptoms of heat illness, and first aid or emergency response procedures. ❖

COMMERCIAL PROPERTY INSURANCE

FAIR Plan More Than Doubles Coverage Limits

WITH MORE and more California businesses being forced to go to the California FAIR Plan for their coverage, the market of last resort has moved to increase its commercial property coverage limits significantly.

This should bring a semblance of relief to companies located in wildfire-prone areas, who have seen their commercial property insurance non-renewed and who have been unable to find replacement coverage. The decision comes as commercial property rates continue rising due to inflationary pressures, but in particular for companies located in areas that are considered urban-wildland interfaces.

Insurers have pulled back on underwriting commercial properties as well as homes in these areas. They've taken a number of actions, including:

- Retreating from the California market altogether.
- Selectively underwriting properties that are not considered at-risk.
- Capping their exposures by only covering a set number of properties.
- Requiring property owners to create defensible spaces and take other measures to harden their properties against wildfires.
- Raising rates significantly.

Businesses whose policies are not renewed and who can't find coverage in the market are able to go to the FAIR (Fair Access to Insurance Requirements) Plan for coverage. This is the market of last resort and premiums can be substantial, while the policy limits have often been inadequate to cover the full cost of the commercial enterprise's property.

New Limits

The new coverage limits per business location are as follows:

Division I commercial property program

The limit has increased to $20 million per location from $8.4 million.

Division II commercial property program

The limit has increased to $20 million per location from $7.2 million.

Policies cover damage caused by:

- Fire
- Lightning
- Internal explosion

Optional coverages are available at an additional cost, such as coverage for vandalism and malicious mischief.

If you have to go to the FAIR Plan, we can arrange for a "differences in conditions" policy that will cover the areas in which the plan is deficient compared to a commercial property policy.

The FAIR Plan will cover the following commercial structures:

Habitational buildings – Buildings with five or more habitational units such as apartment buildings, hotels or motels.

Retail establishments – Shops such as boutiques, salons, bakeries and convenience stores.

Manufacturing – Companies that manufacture most types of products.

Office buildings – Offices for professionals such as design firms, doctors, lawyers, architects, consultants or other office-based functions.

Buildings under construction – Residential and commercial buildings under construction from the ground up.

Farms and wineries – Basic property insurance for commercial farms, wineries, and ranches, not including coverage for crops and livestock. ❖