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BOLDS RISK & INSURANCE SERVICES

DOL RULEMAKING

50% Increase in Overtime Pay Threshold On Tap

THE U.S. Department of Labor has issued its long-awaited proposed changes to the nation's overtime rules for American workers, proposing to increase the threshold for exempt status by more than 50% to just over $55,000.

Under DOL rules, workers who are exempt from overtime rules — typically managers, executives and certain administrators — must make at least the threshold amount, which is currently $35,568.

If the new threshold goes into effect, employers will have a choice to either raise the pay of their currently exempt staff to the new threshold (or above) or change those workers to non-exempt, meaning they must be paid overtime wages (typically time and a half) if they work overtime.

It's rumored this proposal is on a fast track and that it could become permanent in the next few months, giving employers a short window to make changes.

WHAT'S CHANGING

- The exempt salary threshold will increase to $1,059 per week (or $55,068 per year). That's up from the current $684 a week, or $35,568 a year.
- The exempt salary threshold will automatically increase every three years based on cost of living increases.
- The propsoal will raise the threshold for the "highly compensated employee" exemption to $143,988 (from the current threshold of $107,432).

Title alone does not designate someone as "exempt." There is a two-pronged test for classifying a worker as exempt from overtime pay:

- Their salary, which will have to be $55,068 per year, under the rule.
- The duties test, which outlines exactly what someone's duties must be in order to qualify for exempt status (see box in the column on the right).

THE DUTIES TEST

A worker must have certain duties to be an exempt employee. The three main exemptions are:

Executive exemption – These employees must manage a department or division, direct the work of at least two workers and have the authority to hire and fire.

Administrative exemption – Primary duties must be office or non-manual work related to the management or general business operations, and the employee's duties must include exercising independent judgment on significant issues.

Professional exemption – The employee's primary duty must be the performance of work requiring advanced knowledge, predominantly intellectual in character and which requires the consistent exercise of discretion and judgment.

To find out how to get ready, see 'Short' on page 2

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TRANSPORTATION HIRING

Always Check New Drivers' Clearinghouse Records

FLEET OPERATORS face an increased risk of potential liability if they are not diligent about checking their drivers' moving violation records with the state Department of Motor Vehicles, in addition to the Federal Motor Carrier Safety Administration's Drug and Alcohol Clearinghouse.

To ensure the safety of our roadways, as of 2020, it became mandatory that all registered motor carriers sign up their drivers in the Clearinghouse and run their driver rosters through the system to clear them for duty. But many companies are skipping this step and only checking their drivers' records with the DMV, which may not reflect any suspensions issued by the Clearinghouse.

Clearinghouse rules require that drivers be tested for drugs prior to being hired and randomly throughout the year. This helps employers weed out drivers who may be at higher risk of both moving violations and accidents.

The Clearinghouse

The Clearinghouse was created to keep commercial drivers who have violated federal drug and alcohol rules from lying about those results and getting a job with another motor carrier.

This electronic database tracks commercial drivers' license holders who have tested positive for prohibited drug or alcohol use, as well as refusals to take required drug tests, and other drug and alcohol violations.

The Clearinghouse tracks a driver's drug and alcohol tests and bars them from operating commercial vehicles after they fail a test. If they want to return to driving, they must successfully pass a return-to-duty process that includes substance abuse treatment and a test to evaluate their readiness.

The Clearinghouse restriction can be lifted should the driver sign up for a Clearinghouse program that will test them 14 times in two years, with the first 12 tests having to occur in the first year. This cost all comes out of the driver's pocket.

This system is an important check on drivers and helps employers reduce their exposure.

State Departments of Motor Vehicles are required to check the Clearinghouse before issuing a new or renewing a commercial driver's license.

The takeaway

While it is the law that employers follow Clearinghouse procedures, because it's a new system, many companies are failing to follow the rules, and are possibly allowing suspended drivers to operate their vehicles.

If you are relying only on pulling a driver's moving violation record and not the Clearinghouse, you are in breach of regulations and you could leave your organization exposed.

If you employ a driver who is under suspension from driving by the Clearinghouse and they are involved in an accident, the victims could build a case that your organization was negligent in letting the individual drive and not checking the Clearinghouse first.

If they can prove negligence on a fleet operator's part, the business could be in for a hefty court judgment. ❖

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Short Ramping Up Period for Employers to Prepare

How to prepare

Start by making a list of all your current exempt employees who earn between $35,568 and $55,068 a year.

You will have a decision to make about each of these workers:

- Raise their salaries to meet the new threshold, or
- Change them to non-exempt status so they are eligible for overtime pay if they work extra hours. You'll also have to put in place systems for tracking their hours worked, including overtime.

Also, your benefits package may differ for non-exempt and exempt workers and you may have to change benefits for anyone whose status changes. You should plan how you are going to communicate these changes to your workforce.

Finally, you can expect business groups to protest this rule and sue to stop its implementation. We will keep you posted on future developments. ❖

WORKERS' COMPENSATION

Insurance Commissioner Orders Another Rate Reduction

CALIFORNIA INSURANCE Commissioner Ricardo Lara has issued an order that cut the average advisory workers' compensation benchmark rate across all classes by 2.6%, starting Sept. 1.

The benchmark rate, also known as the pure premium rate, is a baseline that covers just the cost of claims and claims adjusting, but not other overhead like rents, underwriting costs and provisions for profit. The rate is an average across all class codes, with some industries seeing higher increases and some seeing rate decreases.

The rate is advisory, meaning that insurers can use it as a guidepost for pricing their individual policies. Individual premiums that employers pay will depend on a number of factors, including the pure premium rate, the carrier's own pricing methodology, and the employer's claims and claims cost history, location and industry.

Why the rate is falling

The insurance commissioner's decision cuts the average published pure premium rate to $1.46 per every $100 of payroll, compared to the current $1.50. Despite the average rate decrease of 2.6%, individual class codes may see swings as much as plus or minus 25%.

Several factors are driving the lower rate decision:

- Slowing claims cost inflation
- Falling frequency of claims
- Lower overall claims costs
- Stable medical costs
- Fewer COVID-19 claims
- Lower claims-adjusting costs.

One other reason rates continue to decline is that workplaces are generally safer than ever.

The number of workers' compensation claims hit a low of 13 per 1,000 workers last year. That's a historical low thanks to decades of falling claims frequency. For perspective, in 1991 there were 49 claims per 1,000 workers.

What insurers are doing

As mentioned, the pure premium rate is advisory and insurers can charge what they want. However, they are typically charging more than the published rates.

The most recently available industry average level of pure premium rates filed by insurers with the Department of Insurance is $1.71 per $100 of payroll as of Jan. 1, 2023, which is about 14.6% higher than the current published rate of $1.50. In 2022, carriers were charging $1.68 on average.

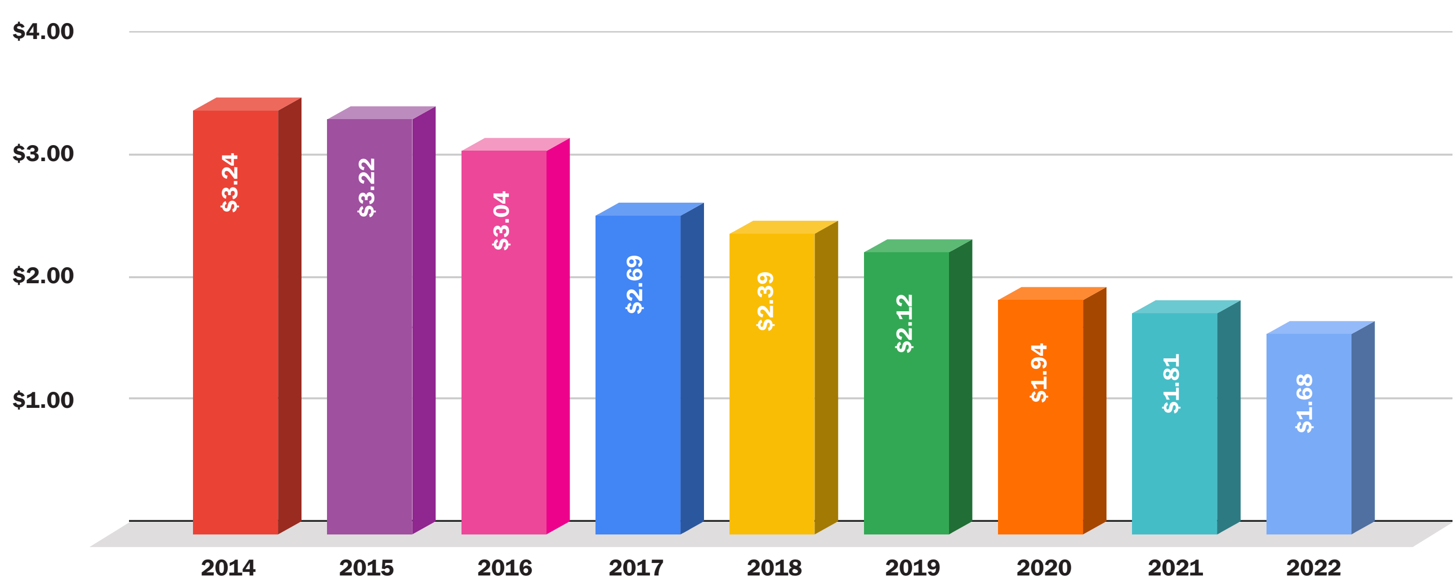
While the workers' compensation market remains competitive and rates continue hovering around record lows, the final rate any employer will pay will depend on several factors beyond the pure premium rate. Some employers may see rate increases instead.

Factors that can influence the prices include the employer's:

- Industry.
- Geographical location (employers in Southern California, for example, face a unique claims environment that results in a surcharge).
- Individual claims experience. ❖

RATES AT HISTORIC LOWS

Average Rates Insurers Charge per $100 of Payroll



Source: Workers' Compensation Insurance Rating Bureau

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COMMERCIAL PROPERTY INSURANCE

The Hidden Cost Driver behind Rate Hikes

COMMERCIAL PROPERTY owners throughout California are getting hit with significant insurance rate hikes and non-renewal notices as a confluence of factors reverberate through the market.

The commercial property insurance industry is struggling with years of losses after paying out billions of dollars annually for increasingly costly and numerous wildfire claims in California and other natural disasters around the country.

While massive costs dominate the conversation, there is another factor that is contributing just as much to rising insurer costs: The role of reinsurance.

Reinsurance explained

Just like you mitigate your risks by buying insurance, your insurance company does the same by purchasing reinsurance. This coverage steps in to pay claims when they reach catastrophic levels or a certain threshold, like those from massive wildfires.

These arrangements call for the reinsurer to cover the cost of claims for a certain region or for a certain risk, like wildfires or hurricanes. Each reinsurance treaty is different and they are often tailor-written for individual insurance companies.

Without reinsurers taking on a good portion of catastrophic claims, insurance rates would be much higher than they are today. But that's changing.

Reinsurers pay for a significant portion of any global catastrophe as they are the backstop for insurers around the world. And catastrophes have been growing in number and scope all over the planet.

During the first half of 2023, natural catastrophes caused $52 billion in insured damage globally, which is 18% higher than the average of $44 billion in the past 10 years and 39% higher than the 21st-century average of $38 billion, according to a report by Swiss Re.

The U.S. accounted for $34 billion of the world's insured property losses in the first half. The nation also accounted for 13 of the 17 global natural catastrophe events that each caused more than $1 billion in insured losses, according to the report.

What reinsurers are doing

Raising rates – Reinsurance companies have been raising their rates significantly. A recent report on the trade news site *Artemis.com* said property catastrophe reinsurance rates had seen a substantial average increase of approximately 30% during July 1 renewals.

Reconsidering where they provide coverage – Reinsurers have also started pulling back from covering properties in areas or regions that are at higher risk for natural disasters, particularly California and Florida, the latter due to increasingly costly hurricane damage and the former due to the increasing wildfire risk.

When reinsurers pull back, the primary insurers often have to take on more of the risk themselves.

Changing terms – Besides raising their rates, reinsurers are also making moves to take on less risk than they have in the past by raising attachment points, forcing primary insurers to take on more of the cost of claims.

Additionally, reinsurers are changing conditions for paying claims, getting more stringent in their definitions of various catastrophic events and triggers for paying claims.

The takeaway

While this hard reinsurance market continues, there is hope that rates will stabilize in the future bringing relief to insurers, and more importantly: You.

The market is cyclical and both reinsurers and insurers are struggling to catch up with increasing costs and the "new normal." Once they adapt, your premium may be more predictable. ❖