January 2021, Volume 10, Issue 1

ISU

Curry Insurance Agency

COMPLIANCE

Top 10 Business Laws and Regulations for 2021

EVERY YEAR starts with a bevy of new laws and regulations affecting employers and business in California, and many of the new rules this time around are an outgrowth of the COVID-19 pandemic and its effects on workers.

Employers in the year ahead have a number of changes they will have to contend with, some of which were enacted near the end of 2020 as emergency regulations or legislation.

The following are the top 10 laws and regulations affecting employers in 2021.

1. COVID-19 workers' compensation rules

AB 1159, which took effect in September, is an expansive law requiring that workers' compensation benefits be extended so that any employee who reports to a workplace and contracts COVID-19 is presumed to have contracted it at work, making them eligible for workers' comp benefits.

But the law also imposes sweeping reporting rules for employers that have outbreaks in their workplaces (it's considered an outbreak if 4% of an employer's workers test positive for COVID-19). Under new rules by the Workers' Compensation Insurance Rating Bureau, though, COVID-19 illness claims will not count against employers' experience modifiers (X-Mods).

Under the law, when reporting a COVID-19 claim employers must provide the following information:

- The date the worker tested positive,
- The workplace address of the worker during the 14 days before the positive test, and
- The highest number of employees who reported to work in the 45 days preceding the last day the employee worked in the workplace.

The above must be reported for each worker COVID-19 case. The law sunsets on Jan. 1, 2023.

2. Cal/OSHA COVID-19 regulations

Cal/OSHA in November enacted emergency regulations that impose strict rules on employers to implement safeguards in order to reduce the risk of COVID-19 spreading in the workplace.

The sweeping rules require employers to take a number of steps to ensure the safety of their workers, including creating a COVID-19 prevention plan, requiring masks, social distancing and other ways to reduce the likelihood of virus spread.

Employers must investigate coronavirus cases in their workplace. If a worker contracts COVID-19, they must notify all employees who may have been exposed, within one day. Workers who may have been exposed must be offered COVID-19 testing at no cost. Employers must report workplace coronavirus cases to local health authorities.

3. Cal/OSHA law adds confusion

Before Cal/OSHA came out with its emergency COVID-19 regulations, Governor Newsom signed into law AB 685, which adds to Cal/OSHA's responsibilites in policing COVID-19 protections.

The law expands the agency's authority to issue stop-work orders to workplaces it deems a COVID-19 "imminent hazard."

Many in the regulated community say the new law is duplicative and conflicts with the emergency regulations, and that it will confuse employers.

The law also requires employers to notify a number of parties (state agencies, local authorities, employees, contractors and more) if they have coronavirus infections in any of their facilities.

Notice to employees must include information regarding benefits the employee may be eligible for under federal, state and local laws, including workers' comp, COVID-19-related leave, company sick leave, state-mandated leave, and more.

4. Expansion of California Family Rights Act

SB 1383, which took effect Jan. 1, 2021, expands the California Family Rights Act to cover even small employers – those with five or more staff.

See 'AB 5'on page 2

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AB 5 Gets an Overhaul, Exempts Many Professions

The CFRA, which requires covered employers to provide up to 12 weeks of unpaid leave a year for family and medical leave purposes, had until now applied to employers with 50 or more workers.

The new law also expands the scope of "family members" for whom employees can take leave to help care for them to include siblings, grandparents, grandchildren and domestic partners. Also, the law expands the definition of "child" to include all adult children.

5. Independent contractor law tweaked

AB 2257, which took effect in September 2020, revises the controversial AB 5 independent contractor law by adding a number of exceptions for certain classes of workers.

AB 5 created a new standard for discerning what workers should be classified as employees or independent contractors and it swept up a number of professions in its net, causing some consternation and hand-wringing among both employers of those contractors and the independent contractors themselves.

The professions that are now exempt include (among others):

- Graphic designers
- Web designers
- Consultants
- Freelance writers
- Translators
- Editors and content contributors.

6. Wildfire smoke safety regulations

With wildfires becoming the new normal in California, Cal/OSHA has set about working on permanent wildfire smoke regulations to protect outdoor workers when the air worsens during major events.

An emergency regulation is set to expire Jan. 31, 2021, at which time Cal/OSHA hopes to introduce the permanent replacement that would require employers to protect their outdoor workers from smoke if the Air Quality Index (AQI) exceeds 150.

Workplace safety pros expect the permanent regs to mostly mirror the emergency rules that have been in place since August 2019.

The regulations apply when the AQI for airborne particulate matter 2.5 microns (PM2.5) or smaller is 151 or greater in an area where employees are working outdoors.

The permanent regulations are expected to cover training and methods for protecting workers (like moving them inside or providing N95 respirators during high-smoke conditions).

7. New classification for telecommuters

California employers have a new workers' compensation class code to assign to employees who work from home, an outgrowth of the coronavirus pandemic which thrust so many people into working from home.

The new class code, (Clerical Telecommuter Employees – N.O.C.), applies to employees that work from home or "away from any location of their employer," doing office clerical work.

This class code, available on policies effective Jan. 1 or later, is to be used for employees which would have been classified under class code 8810, Office Clerical employees, that are doing work at home 50% or more of the time.

8. Sick leave and kin care law

Under Labor Code, an employee was entitled to use up to half of their annual accrued sick leave to care for a family member, but not the full amount of sick leave they have.

AB 2017 amends Labor Code Section 233 to give employees the sole discretion to use as much of their sick leave as they want to care for a family member, with no approval from their employer required. The law took effect. Jan. 1.

A "family member" is defined as the employee's child, parent or guardian, spouse or domestic partner, grandparent, grandchild or sibling.

9. Data protections strengthened further

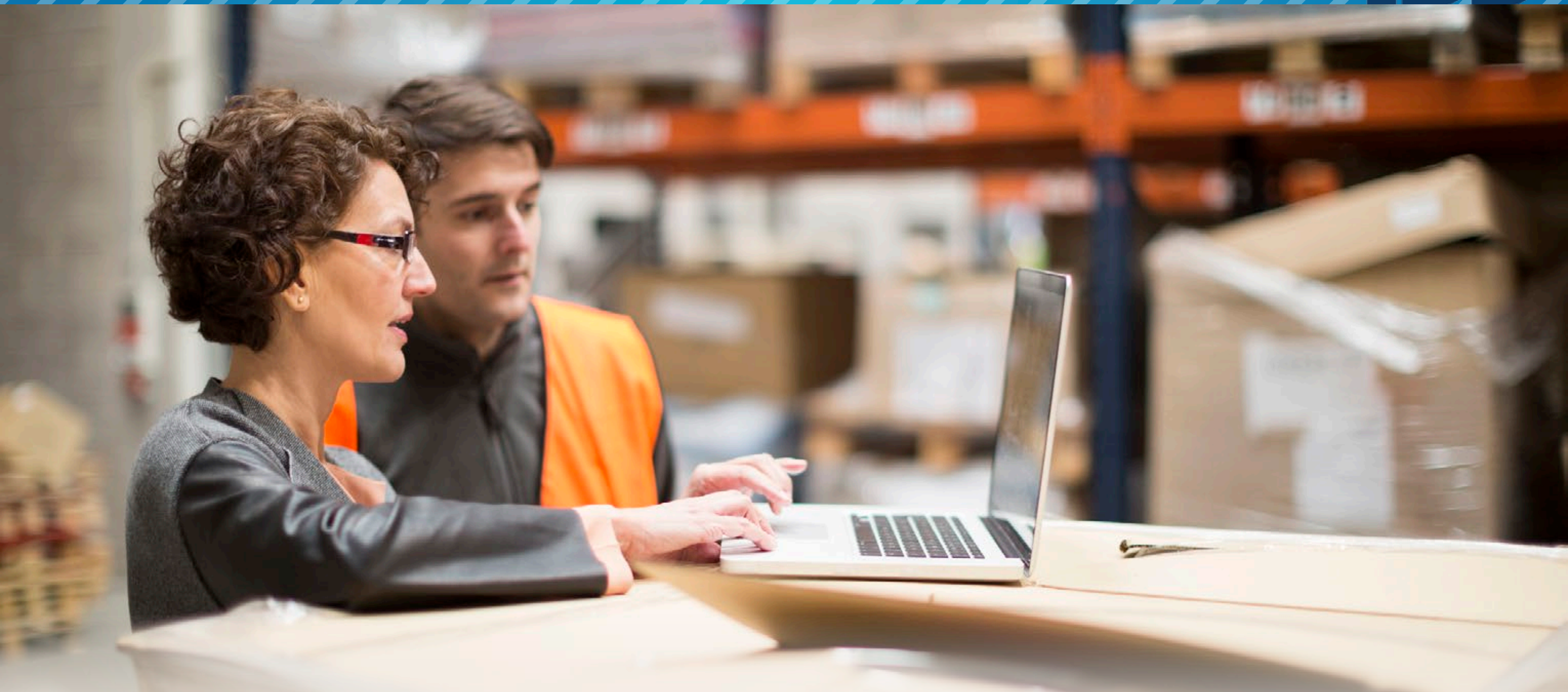
California voters last year passed Prop. 24, which established a new law: the California Privacy Rights Act of 2020. The CPRA amends and strengthens the state's current data protection privacy law, the California Consumer Privacy Act (CCPA), which governs how organizations have to protect personal data that they collect.

The CPRA gives additional rights to consumers and places extra obligations on businesses. It provides additional protections for sensitive personal information, expands the CCPA's opt-out rights to include new types of information-sharing, and requires businesses to provide additional mechanisms for individuals to access, correct or delete data, with a particular focus on information used by automated decision-making systems.

While the law doesn't take full effect until Jan. 1, 2023, it has a 12-month look-back period. Privacy experts advise companies to start working on their data protection infrastructure in 2021 in order to be ready for this expansive new law.

10. State minimum wage increases

As of Jan. 1, California's minimum wage increased to $14 for employers with 26 or more employees, and to $13 for those with 25 or fewer employees. Local minimum wages may also have risen. Check your local rules for other minimum wage requirements. ❖



COVERAGE ISSUES

Your New Year Insurance Checklist

AS 2021 gets underway and while you're making New Year's resolutions, you should also resolve to review the state of your business's insurance program.

The best way to do that is to start by reviewing your enterprise's activities in the past year and how they may affect your insurance policies in the new year. What you find as you go through the following checklist may surprise you.

Did your operations change last year? Workers' compensation and commercial general liability (CGL) insurance premiums are based in part on the type of work your business does.

If your business changed, the insurance company may revise how it classifies your operations when it audits your records. This could cause your premiums to increase; inform the company now to avoid a surprise later.

Did your payroll and sales change? These premiums are also based on the amounts of your payrolls and sales. Employment practices liability insurance premiums are based on the number of employees.

If you had a good year and these numbers increased, expect to pay additional premiums at audit time.

Conversely, if both shrunk, ask your insurer to reduce its estimates so you can get the return premium now.

Did you acquire, form or sell any businesses? CGL policies typically provide short-term coverage for some newly acquired or formed entities. After 30 or 90 days, that coverage disappears unless you report the new entities to the insurer.

Workers' comp policies do not automatically cover a new entity. If your business and the new entity have common ownership, you may be able to add that entity to your policy, but you must report it to the insurer.

Did your properties change? Did you buy or sell any buildings? Lease new ones? Add on to or upgrade any buildings? Buy new equipment? Make sure your insurer knows about these changes. Some property insurance policies provide limited automatic coverage, but only for 30 days or so.

Also, the amounts of insurance on your properties should reflect the cost of replacing them. If your building is 30% bigger than it was this time last year, you may be underinsured.

Did your auto schedule change? If you have sold, replaced or added any vehicles, make sure your insurance company has an up-to-date list of all vehicles.

Do you need new or additional insurance? Could you afford to pay for legal costs, settlements, penalties, lost income and recovery measures if you were sued over a network data breach or suffered a ransomware attack? If not, you may need cyber insurance.

Could a client sue you for alleged errors or omissions in your work? If so, you might need professional liability insurance.

Also, you may need greater amounts of general liability and automobile liability insurance, especially if you work for other firms. They often require their vendors and contractors to carry high insurance limits. You may need a commercial umbrella liability policy for additional amounts of insurance.

The takeaway

You've worked hard to build your business, and your work deserves protection. By using this checklist, you will get a good start on protecting what you have while you work in 2021 to make it grow. ❖

INSURANCE TRENDS

The Story Behind Increasing Commercial Auto Rates

COMMERCIAL AUTO insurance rates have been on the rise since 2011, increasing often by more than 10% a year as accidents and claims costs have soared.

The trucking industry has been the hardest hit by the steep increases, and there are a number of factors contributing to the rate hikes, according to a recent study by Risk Placement Services.

One of the biggest factors is that insurers have had trouble keeping up with increasing accidents and spiraling claims costs, leaving them in the red for most of the past decade. But there are other less-known factors, including the following:

Good drivers are aging and retiring – Half of all long-haul truck drivers are over 46 years old; they are aging and retiring, leaving a dearth of experienced drivers.

As the industry rushes to hire more drivers, it has to contend with having more inexperienced drivers who are more likely to be involved in accidents.

Large jury verdicts growing – The number of transportation sector damage awards exceeding $10 million for injuries and property damage has been increasing since 2012.

Claims for bodily injuries can take years to resolve, causing insurers to initially underestimate the eventual loss amounts.

High maintenance costs – While advanced technology has made trucks safer, that tech is expensive to maintain, repair or replace. On the flip side, skimping on maintenance can lead to more accidents.

Distracted driving – Truck drivers and those they're sharing the road with continue looking at their phones, eating, looking at their navigation systems, and taking their eyes off the road with increasing regularity. This increases the frequency of accidents.

Dangers of crumbling infrastructure – America's deteriorating roads and bridges are increasing wear and tear on trucks, making accidents more likely.

Expensive cargo – The goods inside the trucks are also requiring larger amounts of insurance at higher rates. For example, shipments of electronics and medicine are magnets for thieves. And if a flatbed trailer carrying expensive machinery flips over, the cargo will likely be damaged beyond repair and the insurer has to pay to replace it.

Products like food, flowers and some medicines must be refrigerated; if the driver makes a mistake or something goes wrong with the refrigeration in the trailer, the entire lot may be ruined.

The takeaway

Because of these high costs, some companies are opting to forgo buying essential coverages such as excess liability (which can protect against those $10 million lawsuits).

The Risk Placement Services report concludes that businesses with larger vehicle fleets, someone responsible for safety and that hire quality drivers and practice regular maintenance, will find insurance more affordable and available.

For the rest, the rate increases will likely continue. ❖