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Curry Insurance Agency

WORKPLACE SAFETY

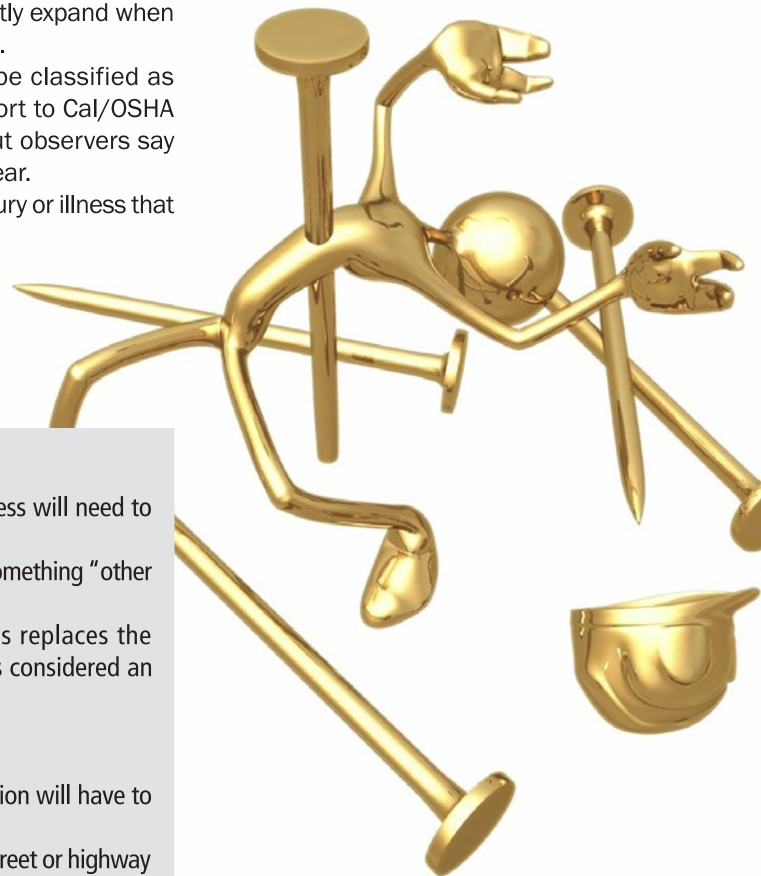
New Law Changes Serious Injuries Reporting

GOV. GAVIN Newsom has signed a measure into law that will greatly expand when employers are required to report workplace injuries to Cal/OSHA.

The new law, AB 1805, broadens the scope of what will be classified as a serious illness or injury which regulations require employers to report to Cal/OSHA "immediately." As of yet there is no effective date for this new law, but observers say regulations will first have to be written, a process that would start next year.

The definition of "serious injury or illness" has for decades been an injury or illness that requires inpatient hospitalization for more than 24 hours for treatment, or if an employee suffers a "loss of member" or serious disfigurement.

The definition has excluded hospitalizations for medical observation. Serious injuries caused by a commission of a penal code violation (a criminal assault and battery), or a vehicle accident on a public road or highway have also been excluded.



THE NEW RULES

- Any inpatient hospitalization for treatment of a workplace injury or illness will need to be reported to Cal/OSHA.
- For reporting purposes, an inpatient hospitalization must be required for something "other than medical observation or diagnostic testing."
- Employers will need to report any "amputation" to Cal/OSHA. This replaces the terminology "loss of member." Even if the tip of a finger is cut off, it's considered an amputation.
- Employers must still report any serious disfiguration to Cal/OSHA.
- Loss of an eye will have to be reported.
- Serious injuries or deaths caused by a commission of a penal code violation will have to be reported.
- While the exclusion for injuries resulting from auto accidents on a public street or highway remains in effect, accidents that occur in a construction zone will have to be reported.

Compliance

Rules for reporting serious injuries and illness or fatalities are as follows:

- The report must be made within eight hours of the employer knowing, or with "diligent inquiry" should have known, about the serious injury or illness (or fatality).
- The report must be made by phone to the nearest Cal/OSHA district office (note that a companion bill, AB 1804, eliminated e-mail as a means of reporting because e-mail can allow for incomplete incident reporting).

Because of the "diligent inquiry" component, employers should monitor any injured worker's condition once they learn of an injury, particularly if they need to seek out medical treatment.

A member of the staff should be on hand to monitor the employee and report to supervisors immediately if that person will need to be hospitalized.

See 'Train' on page 2

CONTACT US

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RISK MANAGEMENT

Driving Risk: When Employees Run Business Errands

HAVE YOU ever sent an employee out to pick up needed supplies? Offered to buy lunch for the crew and asked an employee to pick it up?

Unless you only send employees who are insured to drive your company vehicles, you may be putting your business at risk.

Your business may also incur liability if you travel on company business and have an accident in a rented car while traveling to meet a client or for other business-related purposes.

If there is an accident that causes damage to a third party and the driver's insurance doesn't cover the full costs, your company may be sued to recover the excess amount. Employees who use their personal cars are generally required by law to have insurance.

But unless you hire them as drivers, you probably have no idea how much insurance coverage employees actually carry – or even if they have insurance at all.

If you're traveling on company business in a rental car, you're probably covered by your personal insurance or by a policy purchased through the rental agency.

But if you're in an accident and cause damage that exceeds the amount of personal coverage you have, an attorney for the injured party would almost certainly seek damages from your company.

The solution

The good news is that there's a simple and relatively inexpensive solution: a non-owned auto insurance policy. This type of policy protects your business if an employee gets in an accident and causes damage while running a company errand. It also protects your company if you cause damage in an accident while driving a rental car on company business.

Keep in mind that non-owned auto insurance generally doesn't cover drivers – its purpose is to protect the organization. These policies do not generally function as primary insurance; they are designed for excess liability protection.

In other words, if your employee causes damage or injury in an accident while driving a personal car on company business, the employee's insurance would generally pay first.

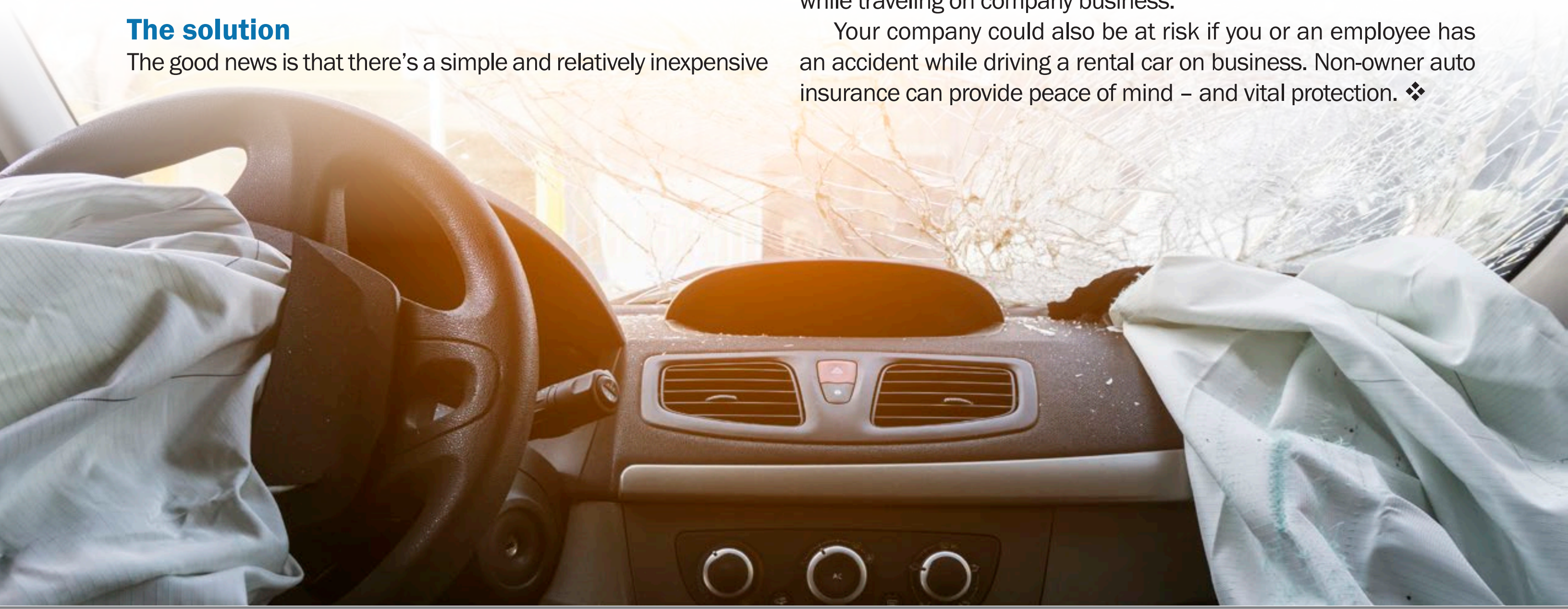
But if the liability exceeds the amount of the employee's coverage, non-owned auto insurance would protect your business from being responsible for damage costs not covered by the employee's coverage.

The bottom line

Liability claims caused by vehicular damage can run into the millions of dollars.

Your business could be at risk if an employee has an accident while traveling on company business.

Your company could also be at risk if you or an employee has an accident while driving a rental car on business. Non-owner auto insurance can provide peace of mind – and vital protection. ❖



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Train Supervisors in the New Reporting Rules

Employers should make sure that supervisors are made aware of the new rules so that any time a worker is injured to the point that they need to be hospitalized, they know to notify Cal/OSHA within eight hours.

Also, if you have an employee that suffers a medical episode at work – such as a seizure, heart attack or stroke – you are required to report the hospitalization to Cal/OSHA.

It's better to err on the side of caution if an employee is hospitalized for any reason. Not doing so can result in penalties for failure to report or failing to report in a timely manner.

Accordingly, it is important to educate management representatives, particularly those charged with the responsibility to make reports to Cal/OSHA, about the nuances of Cal/OSHA's reporting rules.

One final note: The results of a serious injury or illness or workplace fatality will usually trigger a site inspection by Cal/OSHA, so be prepared if one should occur. ❖

HUMAN RESOURCES

New Overtime Exemption Regs Take Effect 2020

NEW FEDERAL overtime regulations have finally been introduced for non-exempt workers after years of wrangling over the issue.

Under the new rule, employers will be required to pay overtime to certain salaried workers who make less than $684 per week – or $35,568 per year – up from the current threshold of $455, or $23,660 in annual salary.

The new regulations are a midway point from Obama administration rules that would have seen the salary cap increased to $47,476, a move that was blocked by a court after protests from the employer community in December 2016.

After the Trump administration took over, it decided not to pursue an appeal of the judge's orders and instead created replacement regulations that appeased the employer community, which had protested the doubling of the cap as too costly for businesses.

The Fair Labor Standards Act requires that most employees in the United States be paid at least the federal minimum wage for all hours worked, and overtime pay at not less than time and one-half the regular rate for all hours worked over 40 in a workweek. However, the law includes exemptions for certain workers, as long as they satisfy a certain salary threshold.

Under the final rule issued by the Department of Labor, executive, administrative, professional, computer or outside sales employees who make more than $684 a week are exempt from the FLSA's minimum wage and overtime pay requirements. The new regulations also allow employers to count a portion of certain bonuses (and commissions) towards meeting the salary level.

The new rule takes effect Jan. 1, 2010. ❖

EXEMPT PERSONNEL*

Executive employees – Managers or supervisors who direct the work of at least two other workers and have authority to hire or fire staff or have input in their hiring, firing and promotions.

Administrative employees – Workers who do non-manual work related to the general business operations and exercise discretion and independent judgment with respect to matters of significance.

Professional employees – Typically these are staff in the field of science or advanced learning (engineers, architects, lab scientists, doctors, nurses, etc.)

Computer employees – This includes computer systems analysts, computer programmers, software engineers, and other similarly skilled workers in the computer field.

Outside sales employees – Sales staff who are often working in the field and not making calls from the office.

** If earning more than $684 per week in 2020*

GET CURRENT NOW

- Check whether your salaried employees satisfy the duties and salaries components of the FLSA white-collar exemptions.
- Identify all positions that will be affected under the rule, and decide whether it is worth it to increase someone's salary.
- Analyze the financial impact of reclassifying employees as non-exempt.
- Consider reassigning certain tasks to reduce the effects of the rule.

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EMPLOYEE LAWSUITS

New Law Bars Mandatory Arbitration Agreements

AFTER YEARS of trying and rejections by former governors, a bill banning mandatory employment arbitration agreements in California has become law.

Gov. Gavin Newsom on Oct. 10 signed into law Assembly Bill 51, which prohibits almost all employment arbitration agreements, starting Jan. 1 next year. But because the new law conflicts with federal law, it will most certainly be challenged in court.

That said, because it is now the law of California, employers would be wise to understand just what it does and how they should change their employment policies and agreements to keep from running afoul of AB 51.

AB 51 broken down

The new law bars employers from requiring applicants, employees and independent contractors to sign mandatory arbitration agreements and waive rights to filing lawsuits if they file a complaint for:

- Racial discrimination
- Religious discrimination
- National origin or ancestral discrimination
- Disability discrimination
- Sex or sexual orientation discrimination
- Age discrimination
- Discrimination based on pregnancy or related conditions
- Sexual and other forms of harassment
- Wage and hour issues
- Other protections under the California Fair Employment and Housing Act and California Labor Code.

In addition, the bill creates a new private right of action under the state's FEHA, meaning that a company that requires staff to sign a mandatory arbitration agreement could be subject to a lawsuit by that employee. This provision exposes California employers to another layer of costly litigation related to arbitration agreements.

And any employee who successfully challenges a violation of the law would also be entitled to attorneys' fees.

Legal issues

One problem for this new legislation is that it may violate federal law, as former Gov. Jerry Brown noted when he vetoed a similar bill in 2018. He said at the time: "Since this bill plainly violates federal law, I cannot sign this measure."

Many legal analysts predict that AB 51 will be overturned once challenged in court on the grounds that is preempted by the Federal Arbitration Act, which would eventually invalidate the law. Such a challenge could mean that the law's validity may remain unsettled for some time.

The FAA was enacted in 1925 by Congress to ensure the validity and enforcement of arbitration agreements. State laws attempting to interfere with arbitration have been repeatedly and consistently struck down by the U.S. Supreme Court, as preempted by the FAA.

What you should do

AB 51 applies to contracts entered into, modified or extended on or after Jan. 1, 2020. If you require new employees to sign arbitration agreements, you could be at risk of violating the new law.

Do not consider including an opt-out clause in your agreements, as the bill prohibits employers from using voluntary opt-out clauses.

The best course of action is to contact your legal counsel to see if you should continue including mandatory arbitration agreements in new employment contracts, and also whether you need to modify any existing agreements you may have. ❖