



# Curry Insurance Agency

## COMMERCIAL PROPERTY INSURANCE

# Coverage Gets Scarce in At-Risk Areas

**A**S 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:** Using 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 noncombustible 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 pavers, 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.

See 'Options' on page 2

**CONTACT US**

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## EMPLOYMENT LEGISLATION

# Law Bars Discrimination Against Cannabis Users

**G**OVERNOR 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. ❖



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## You Have Options If Your Policy Is Not Renewed

### 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. ❖

## TECH RISK

# Staff Texting Blows Holes in Communications Policies

**I**F YOUR employees are communicating with each other and clients via texting or instant messaging using their own phones, should you ever need access to those communications you could be in for a rude surprise.

While the immediacy of texting and instant messaging is great for business as it allows faster communications, better collaboration and more responsiveness, the downside is that your organization likely can't easily track and retrieve those communications if the employees are using their own phones for those purposes.

It becomes even harder if the communications are via instant messaging apps like WhatsApp or another encrypted messaging service.

As an employer, it's important that you set clear rules for communications for your employees in order to protect your company's interests, particularly if you are sued and require backup evidence to support your case.

Plaintiffs' lawyers have already started demanding the production of text messages and e-mails during discovery. If litigation ensues on an issue, you may have a duty to preserve text messages if they are business-related. When they are on one of your employees' phones, you have another hurdle to overcome.



### Roadblocks

There is a history of instant messaging and texts on phones; the trouble is how do you access it if you need it?

In most cases, an employee who uses their phone for work will gladly provide the text or messaging communications when asked, but if they refuse, things get trickier.

Due to privacy laws, you cannot demand to see their phone and start rifling through their apps and files.

But various courts have ruled that employers have a right to compel discovery for business-related text messages sent on a worker's personal device.

However, the courts have not been inclined to allow an employer to look at an employee's personal device if the individual didn't use it for written business communications. In other words, the employer can't go on a fishing expedition on their employee's phone looking for "evidence."

If you're caught in a situation where your employee refuses to turn over business-related e-mails, or deletes them, discuss options with your lawyer.

### Pre-empting the problem

Texting and instant messaging are a potential minefield for employers. It's your right to access all company communications among employees and between them and clients and vendors.

To ensure you have a handle on it, you should set rules on the method of communication staff may use for business purposes.

## Setting the Ground Rules

- Require the use of company-issued devices for all business-related communications.
- If you don't want texting or instant messaging of any kind for company business, that needs to be spelled out – including ramifications for breaking the rule.
- If you decide to allow texting and instant messaging, your policy should be clear on what kind of communications are okay (using WhatsApp, for example).
- Create policies on the use of personal devices for business purposes, including rules for preserving business-related data on these devices.
- Set policies that give you the right to access employees' mobile devices to obtain and preserve business-related data if necessary.

The above steps may ensure that you can access communications that could be crucial if your firm is drawn into litigation.

As mobile phone communications evolve to new platforms, ensure that your policy includes broad definitions of messaging apps to cover any new ones that will eventually come to market.



## DRIVING EMPLOYEES

# Teach Your Staff to Be Defensive Drivers

**W**HEN YOU have staff who drive on the job, you have to ensure they do so safely to avoid accidents that can injure themselves as well as other drivers or pedestrians.

While your workers' compensation insurance will cover an employee's injuries, your commercial auto insurance would cover claims for third party injuries.

But an accident can also result in lost productivity and higher insurance rates. If someone is seriously injured or killed, your company can be sued for negligence.

Every time one of your employees gets behind the wheel, they should remember the importance of using defensive driving techniques. That's why it's important you train them properly.

Defensive driving can save lives. It means staying alert, avoiding distractions and being ready for anything – such as an erratic driver, bad weather, road hazards and slow-moving vehicles. It also means avoiding bad habits.



### Train employees to avoid:

- Aggressive driving
- Tailgating
- Drowsy driving
- Speeding
- Moving in and out of traffic
- Using their phone

### And remember to:

- Be aware of blind spots
- Slow down at intersections
- Keep a safe following distance
- Minimize distractions

### Safety training tips

Teaching your employees about defensive driving not only lets them know it's a priority for you, but also an expectation of their performance.

During your safety meeting, discuss the importance of using these defensive driving techniques:

**Be aware of surroundings** – Check mirrors frequently and scan conditions 20 to 30 seconds ahead. Watch for pedestrians, bicyclists and pets along the road.

**Pay attention** – Avoid distractions (eating and cell phones).

**Avoid aggressive driving** – If another motorist shows signs of aggressive driving, don't engage them. Instead, slow down or pull over to avoid that driver.

**Get plenty of rest** – When motorists don't get enough sleep, they increase their chances of getting into an accident. Getting enough rest goes hand in hand with safe driving.

**Don't depend on other drivers** – Don't assume another driver is going to move out of the way. Drive defensively and be considerate of other drivers.

**Follow the three-second rule** – When the car in front of you passes a certain point, count three full seconds. If you reach that same point in less than three seconds, you're following too close.

**Have an escape route** – In all driving situations, the best way to avoid potential danger is to position the vehicle where it has the best chance of seeing and being seen by other drivers.

Try to have someplace to move your vehicle if the immediate path is suddenly blocked.

### The takeaway

We cannot control what other drivers do, but we can control how we drive. Defensive driving techniques can help your employees reduce the chance of getting into a traffic accident and potentially hurting themselves or someone else.

Regularly remind your driving staff to be on the defensive when they get behind the wheel. ❖