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Curry Insurance Agency

REGULATORY CHANGES

The Top 10 New Laws Affecting Businesses in

AS HAPPENS at the start of every year, a wide range of new laws and regulations take effect that can have a significant impact on your day-to-day operations.

Businesses have to comply with these new laws at the risk of fines, penalties or even lawsuits.

To ensure that you don't run astray of these laws, we are providing you with the top 10 new requirements you need to know about in 2014.

1. Paid family leave rights expanded – Paid family leave is mandatory in California and allows workers to take up to six weeks of paid leave to care for a seriously ill child, spouse, parent or domestic partner, or to bond with a newborn or a child recently placed through adoption or foster care. The wages are paid from a fund that is funded by deductions from all employees in the state.

The rights to paid family leave starting Jan. 1 are now extended to workers who need time to care for siblings, grandparents, grandchildren and parents-in-law.

2. Minimum wage increased – The minimum wage in California jumps to $9 an hour starting July 1, 2014, from the current $8. This wage applies to more than just non-exempt workers.

It also applies to those working in administrative, professional and executive exemptions in California (who must earn a salary equivalent to at least two times the state minimum wage for full-time employment to qualify for the exemption).

Heads up! The minimum wage increases to $10 in 2016.

3. Sexual harassment law expanded – This new amendment to existing sexual harassment statutes in California may end up causing confusion and additional litigation.

The new law states that sexual harassment doesn't have to be motivated by sexual desire. The law was promulgated in response to a court judgment in a case where a man was sexually harassed by a male co-worker, even though his co-worker did not actually have sexual desires for the plaintiff.

4. Crime victim protections – A piece of legislation that you need to be aware of come 2014 is SB 400, which expands existing laws that prohibit discrimination against victims of domestic violence or sexual assault to include stalking victims. The new law also requires employers to reasonably accommodate (which may include taking safety measures) victims of domestic violence, sexual assault or stalking.

Companion legislation bars discrimination against victims of certain felonies (child abuse, domestic violence, physical abuse of the elderly or a dependent adult, sexual

See 'Heat' on page 2

OVERTAXED PROGRAMMERS? *If you pay any of your computer professionals less than $84,130.53 in 2014, they will be eligible for overtime.*

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Continued from page 1

Meal, Rest Breaks Expanded to Heat Recovery Periods

assault, and solicitation for murder) and requires that they be given time off to appear in court.

5. Computer-professional overtime exemption hiked – The minimum compensation required to qualify for California's computer-professional overtime exemption in 2014 will be $84,130.53 (that equates to $40.83 an hour). If you pay them anything less than that, if they work more than 40 hours in a week, you have to pay overtime,

6. Whistleblower statute expanded – The Labor Code already prohibits an employer from making, adopting or enforcing any rule, regulation or policy preventing an employee from disclosing information to a governmental or law enforcement agency, and prohibits retaliation against employees who do, if the employee has reasonable cause to believe such information discloses a violation of state or federal law.

7. Illegal immigrant statutes expanded – Effective Jan. 1, 2014, employers are prohibited from engaging in an "unfair immigration-related practice" against an employee, such as:

(i) requesting more or different documents than required under federal immigration laws,

(ii) using the federal E-Verify system to check an employee's work authorization status at a time or in a manner not required under federal law,

(iii) threatening to file a false police report, or

(iv) threatening to contact, or contacting, immigration authorities. The law allows employees to sue for relief and penalties.

Also new for 2014, employers cannot fire or discriminate against someone who updates their "personal information." This is code for someone you may have unwittingly hired who was undocumented and then later receives a green card and social security card.

8. New discrimination area in California – New legislation makes "military and veteran status" a protected category under the state Fair Employment and Housing Act, which already includes race, creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age and sexual orientation as protected categories.

9. Meal and rest breaks expanded to heat illness recovery periods – SB 435 expands meal and rest break prohibitions to "recovery" periods taken to prevent heat illness. Under the law, an employer cannot require an employee to work during a recovery period mandated by state law under Cal/OSHA's heat illness standard.

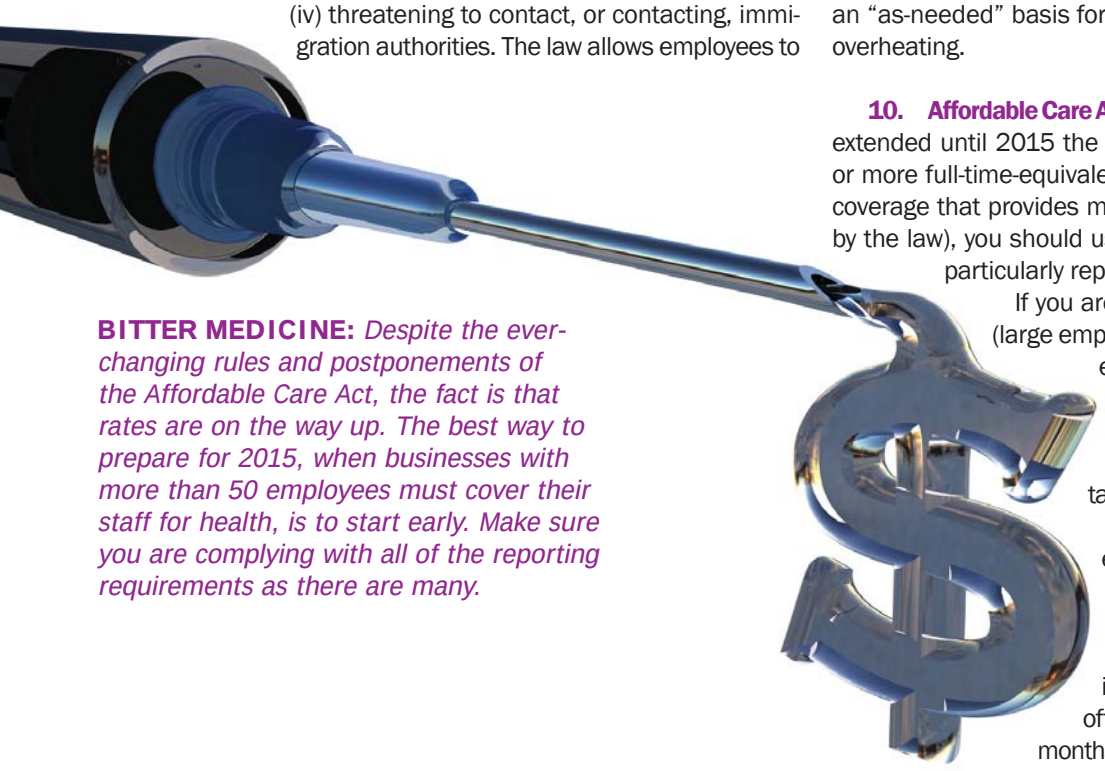
An employer that does not provide an employee with a recovery period must pay the same premium penalty that exists for unprovided meal or rest breaks – one additional hour of pay for each workday that the meal, rest or recovery period is not provided.

Employers with outdoor places of employment are subject to Cal/OSHA's heat illness standard, which allows for cool-down periods in the shade of no less than five minutes at a time on an "as-needed" basis for employees to protect themselves from overheating.

10. Affordable Care Act prep – After the Obama administration extended until 2015 the requirement that all employers with 50 or more full-time-equivalent employees provide affordable health coverage that provides minimum essential coverage (as outlined by the law), you should use 2014 as time to prepare for the law, particularly reporting requirements.

If you are on the cusp of the 50-employee mark (large employer), you need to carefully monitor your employee counts so that you know how to act in 2015. Also, the IRS will start requiring that employers that provide health coverage report certain data to the tax agency.

The new reporting rules have not yet taken effect, but draft rules require that "large employers" provide to the IRS information describing the health coverage provided to their full-time employees, including: the identity of those employees, the coverage offered to each full-time employee, and the months for which coverage was available. ❖



BITTER MEDICINE: *Despite the ever-changing rules and postponements of the Affordable Care Act, the fact is that rates are on the way up. The best way to prepare for 2015, when businesses with more than 50 employees must cover their staff for health, is to start early. Make sure you are complying with all of the reporting requirements as there are many.*

Covering America

Insurers Reeling from Sudden ACA Rule Changes

THE FLURRY of changes the Obama administration has made to the Affordable Care Act since mid-November could undermine the whole concept of the public exchanges and result in hefty rate increases in 2015, insurers say.

The latest change came when the administration announced that anybody who'd had their coverage cancelled would be allowed to purchase low-cost, bare-bones "catastrophic" policies if they found the ones on the public insurance exchanges too pricey.

These high-deductible plans' benefits kick in for severe illnesses or injuries and were originally supposed to be available only to individuals under 30 years of age who can't find coverage for less than 8% of their income.

The administration expects some 500,000 of the 6 million people whose old plans were cancelled because they didn't meet the minimum coverage standards of the ACA to take advantage of the new rule.

Or they could opt not to purchase coverage for 2014.

That change was preceded by three others that were announced at different times since November.

Two things have driven the changes:

1) the public outcry over the poorly functioning federally run insurance marketplace, and

2) President Obama's promise that people who like their coverage could keep it under the ACA, which was not true.

Other significant announcements that changed the rules of the game include:

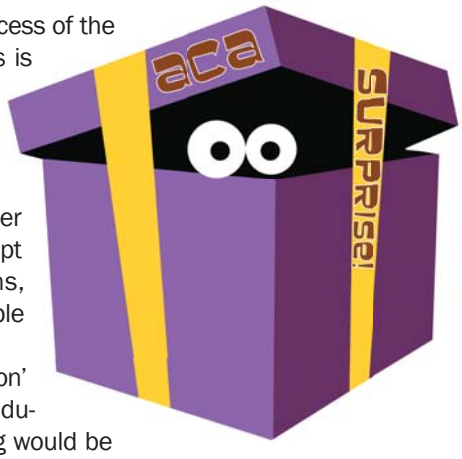
- An announcement in November that people should be able to keep the policies that were being cancelled because they didn't comply with the ACA. Obama urged insurers to keep offering the plans for another year to ease the burden on individuals.
- Delaying the enrollment deadline from Dec. 15 to Dec. 23 and then again until Christmas Eve, which left insurers scrambling to add the new individuals to their books before coverage kicked in Jan. 1.
- The administration asked insurers to start covering medical services for individuals even if they hadn't paid their premiums.

Catastrophic plans 'not much cheaper'

Interestingly, an article in *Forbes* claims that these catastrophic plans are not much cheaper than the lowest-level "bronze" plans on the exchanges. That's because an ACA-compliant catastrophic plan must cover all of the services defined as "preventive" by the government, along with all of the essential health benefits.

"In California, for example, the median cost of a pre-Obamacare plan on eHealthInsurance.com, for a 25-year-old male non-smoker, was $92," writes *Forbes*. "The Obamacare bronze plans cost an average of $205 a month. The Obamacare catastrophic plans? $184. In some parts of the country, the catastrophic plans are actually more expensive than the bronze plans."

These changes, so soon before 2014, left insurers in a bind. They had already priced their policies based on existing regulations and they were worried that the tweaks would result in them losing money on policies.



One of the keys to the success of the public health care exchanges is the assumption that they will sign up elderly, young, healthy and sick individuals, essentially spreading the risk. But the new rules make it easier for the young and healthy to opt out of the mainstream plans, which removes healthier people from the pool.

"This new 'hardship exemption' will encourage healthier individuals, whose expected spending would be low, to drop out of the pool," writes *Forbes*. "As a result, average [health care] spending per enrollee on the exchanges is likely to be substantially higher than the insurers had planned for, forcing them to lose money on their policies."

And that could spur a big bounce in the costs of policies in 2015.

The bigger crux is that even before the new spontaneous rules, more older individuals were signing up for coverage on exchanges than expected.

According to an analysis of five state-run exchanges by the firm McKinsey & Co., 62% of the people who signed up in the first month were more than 45 years old.

Insurers interviewed by *Forbes* said they were in "panic mode" after the administration's spate of spontaneous rule-making. ❖

ISU Curry Insurance Wishes You a Happy New Year 2014

MEDICAL MARIJUANA

Pot on a Collision Course with Workers' Comp

AS MORE states legalize marijuana, and even more allow doctors to prescribe the substance to patients, the drug is headed on a collision course with the workers' comp system.

The National Council on Compensation Insurance (NCCI) has highlighted marijuana as an emerging issue in the workers' comp universe. It notes that physicians are prescribing medical marijuana for injured workers, and that insurers are left in a bind as to how to respond.

The legalization of medical marijuana in more than 20 states has the workers' comp industry on guard for a potential surge of claims seeking payment for the drug.

For now, insurers are falling back on federal law, which still bans its use. There is also the issue that pot has not been approved by the U.S. Food and Drug Administration (FDA) to treat any malady.

That said, in some of the states that have already had medical marijuana laws on the books for many years, some observers say that marijuana claims are already creeping into the system.

The bigger concern is how prescribing marijuana to injured workers will affect their rehabilitation.

The NCCI notes that the drug could impair injured workers, increase workers' comp costs and lengthen the recovery from injuries due to the lethargy many users have after ingesting or smoking marijuana. Also, a recovering worker who is still smoking cannabis and working may pose a danger to himself and others.

Opinion divided

Insurance claims executives say that since the FDA has not approved marijuana to treat any medical conditions, the drug will likely be kept out of the workers' comp system.

But while pharmacy benefit managers and certain states have workers' comp prescription formularies that exclude marijuana as a permissible medication, claims adjusters could still approve marijuana payments if they have lax attitudes about the drug.

Meanwhile, some states – Colorado, Michigan, Montana, Montana, Oregon and Vermont – have laws that bar insurers from paying for marijuana.

Still, some workers' compensation administrative decisions have allowed reimbursement.

In June 2012, in *Cockrell vs. Farmers Insurance Co.*, a California workers' compensation judge awarded a worker reimbursement for medically recommended marijuana that he had acquired to relieve pain after spinal surgery.

Marijuana was prescribed as an alternative to OxyContin because of alleged complications arising from the employee's use of that drug.

But in September 2012, the California's Workers' Compensation Appeals Board granted a request for reconsideration of that decision, and rescinded the judge's finding.

It ordered the judge to consider California law stating that "Nothing in this article shall require a governmental, private, or any other health insurance provider or health care service plan to be liable for any claim for reimbursement for the medical use of marijuana."

And, in 2002, in *McKinney vs. Labor Ready and Reliance Insurance Co.*, a deputy workers' compensation commissioner in Iowa allowed an employee who was living in Oregon to recover for an Iowa workers' compensation claim for medical marijuana. Oregon has a medical marijuana statute.

There is also the issue of employers that have zero-tolerance drug policies. What are they to do if an employee has been prescribed medical marijuana?

Court decisions in many states (including some at the highest state appeals courts) have upheld the right of employers to terminate employees under zero-tolerance drug policies that conflict with authorized medical marijuana use.

Those cases at least imply, if not openly hold, that an employee seeking to use medical marijuana due to a workers' compensation injury, and who tested positive for that drug while on the job, likely would face termination for doing so if the employer had a zero-tolerance policy.

Insurers are starting to draft policies on how to deal with medical marijuana claims.

If they are averse to paying for it, they'll likely require proof of medical necessity as well as medical evidence that supports the use of marijuana.

And that will be hard for any doctor to produce. ❖