



Changes to California Workers' Compensation and OSHA

Effective January 1, 2017

The WCIRB proposed changes to the experience modification formula, which was adopted by the Insurance Commissioner.

WCIRB Experience Modification Formula Change

The fixed primary loss threshold of \$7,000 has changed to Variable Primary Loss Thresholds, ranging from \$4,500 to \$75,000. WCIRB research indicates applying a Variable Primary Loss Threshold amount to an employer, based on the employer size and expected losses within their industry, will perform better than a one-size-fits-all approach.

Losses below the employer's primary threshold will be used at their full value and losses above the primary threshold, considered excess losses, will no longer be used in the Experience Modification calculation.

The variable primary threshold places greater weight on claim frequency than on claim severity, due to the expectation that employers have more control over claim frequency than severity.

The new formula uses expected losses as a measure of employer size. Expected losses are calculated based on the reported payroll for all policies in the experience period and expected loss rates of workers' compensation class codes applicable to that years' experience modifications.

Employers with greater claim frequency than the average for their industry are expected to have higher experience modifications under this new calculation.

For more information, please visit:

[WCIRB California](#)

AB 2883: California WC Changes To the Definition of Excluded Employees

California Assembly Bill 2883 amended the requirements for determining inclusion or exclusion of Directors, Officers, Partners and Members of Limited Liability Companies under workers' compensation policies in effect January 1, 2017 (includes new, in-force and renewal policies).

This new law includes, within the WC act all officers, directors, partners, and members of LLC's, and provides that the following individuals may exclude themselves with a written, signed waiver:

- Directors and Officers of Corporation, if they own 15% or more of the issued and outstanding stock of the Corporation.
- General Partners of Partnerships, and
- Managing -Members of LLC's

California has promulgated waiver forms to be used when a qualified individual opts to exclude themselves from coverage. The waiver is effective on the date of receipt and acceptance by the carrier, and remains in effect until the individual provides the carrier with a written withdrawal of the waiver.

If an individual is eligible to exclude themselves and does not do so, they will be included for workers' compensation coverage and his/her payroll will be accounted for in the final premium developed upon final audit.

A policyholder notice was sent by carriers which indicates the waiver form will be endorsed onto each policy in effect 1/1/2017, whether in force or renewal.

For more information, please visit the following:

[California Department of Insurance](#)
[WCIRB The Standard Class System](#)
[WCIRB Bulletin: Impact of Assembly Bill No. 2883](#)

Payroll Minimum and Maximum Changes

The limits to the amount of payroll included in the workers' compensation premium for Executive Officers, Partners, Individual Employers and Members of an LLC have been amended, as follows:

Officer Minimum: \$48,100
Officer Maximum: \$122,200

Temporary Total Disability Rate Increases

The Division of Workers' Compensation announced that the temporary total disability (TTD) rates will increase in 2017.

The minimum TTD rate will increase from \$169.26 to \$175.88 and the maximum TTD rate will increase from \$1,128.43 to \$1,172.57 per week. This increase will apply to workers with a date of injury on or after January 1, 2017 who are unable to return to work.

For more information, please visit:

[Department of Industrial Relations](#)



First Aid Injuries

The Insurance Commissioner recently approved amendments to the California Workers'

Compensation Uniform Statistical Reporting Plan, 1995 to clarify the reporting requirements for small medical only or first aid claims.

The amendments specifically clarify first aid as defined in California Labor Code Section 5401(a), as follows:

All claims for which any medical care is provided and medical costs incurred, including those involving first aid treatment must be reported to the employer's workers' compensation insurance carrier or third party claims administrator and the WCIRB.

For more information, please visit:

[WCIRB Bulletin: Reporting of Small Medical or First Aid Claims](#)

Cal OSHA Repeat Violations

Cal OSHA has amended the definition of a repeat violation. These changes include:

- The ability to base a repeat citation on a previous citation going back five years instead of three years, which matches Federal OSHA's standard.
- Can cite a repeat violation for a violation of a 'substantially similar' regulatory requirement.
- Eliminates 'fixed site' limitations. A citation can be issued for the same violation at any operation or job site of an employer throughout the state of California.

The maximum penalty for repeat violations in California is \$70,000. That amount will grow, however, when the state adopts Federal OSHA's new fine schedule raising maximum repeat violations to \$124,709.

For more information, please visit:

[Department of Industrial Relations](#)

Federal OSHA Ruling on Electronic Filing of Injuries and Illness Data

A new OSHA rule, will requires certain employers to electronically submit injury and illness data that they currently record on their OSHA record-keeping logs.

OSHA will provide a secure website that offers three options for data submission. First, users will be able to manually enter data into a webform. Second, users will be able to upload a CSV file to process single or multiple establishments at the same time. Last, users of automated record-keeping systems will have the ability to transmit data electronically via an API (application programming interface). The site is scheduled to go live in February 2017.



The new reporting requirements will be phased in over two years:

Establishments with 250 or more employees in industries covered by the record-keeping regulation must submit information from their 2016 Form 300A by July 1, 2017. These same employers will be required to submit information from all 2017 forms (300A, 300, and 301) by July 1, 2018. Beginning in 2019 and every year thereafter, the information must be submitted by March 2.

Establishments with 20-249 employees in certain high-risk industries must submit information from their 2016 Form 300A by July 1, 2017, and their 2017 Form 300A by July 1, 2018. Beginning in 2019 and every year thereafter, the information must be submitted by March 2.

OSHA state plans, including **Cal OSHA** must adopt requirements that are substantially identical to the Federal requirements, within 6 months after publication of this final rule.

The rule also prohibits employers from discouraging workers from reporting an injury or illness. The final rule requires employers to inform employees of their right to report work-related injuries and illnesses free from retaliation.

For more information, please visit:

[US Department of Labor](#)

OSHA's Form 300A (Rev. 01-2016)
Summary of Work-Related Injuries and Illnesses

Year 20__

U.S. Department of Labor
 Occupational Safety and Health Administration

Establishment Information
 Your establishment name: _____
 City: _____ State: _____ ZIP: _____
 Industry description (e.g., Manufacturer of household goods): _____
 Standard Industrial Classification (SIC) or NAICS (e.g., 7212): _____
 OR
 North American Industry Classification (NAICS) (e.g., 721210): _____

Employment Information (If you do not have this data, or do not have it for the full year, please enter "0")
 Annual average number of employees: _____
 Total hours worked by all employees last year: _____

Signature
 Knowledge (affirming this document may result in a fine)
 I certify that I have examined this document and that it is the best of my knowledge of the maintenance, access, and completion.
 Signature: _____
 Title: _____

Number of Cases
 Total number of deaths: (a) _____ Total number of cases with lost work days or restriction: (b) _____ Total number of cases with job transfer or restriction: (c) _____ Total number of other recordable cases: (d) _____

Number of Days
 Total number of days away from work: (a) _____ Total number of days of job transfer or restriction: (b) _____

Injury and Illness Types
 Total number of: (a) _____
 (1) Injuries (2) Poisonings _____
 (3) Skin diseases (4) Hearing loss _____
 (5) Respiratory conditions (6) All other illnesses _____

File this Summary page from February 1 to April 30 of the year following the year covered by the form.

OSHA's Form 300A: Summary of Work-Related Injuries and Illness

Future Workers' Compensation Issues to Watch

AB 1124

Mandates the California's Division of Workers' Compensation(DWC) adopt a prescription drug formulary for the WC system by July 1, 2017.

The intent is to ensure medications prescribed to injured workers meet evidence-based standards with respects to frequency, duration, strength, appropriateness and to reduce delays associated with utilization review and independent medical reviews.

For more information, please visit:

[State of CA Department of Industrial Relations](#)

Proposition 64, Legalization of Marijuana for Recreational Use

California's passage of Prop 64 has prompted discussions amongst employers, physicians and insurance companies on numerous unanswered questions regarding the potential impact this may have on the Workers' Compensation system, such as will physicians prescribe marijuana for the treatment of work related injuries and how or will claim administrators accept and pay for these treatments?

Complexities that surround these questions include; Federal laws defining marijuana as a schedule 1 substance, FDA rulings, proof of medical efficiency and evidence -based guidelines, employer's policies on drug free workplaces, employee safety and compensability of WC claims caused by marijuana use.

Electronic Filing of OSHA Record-Keeping Logs

Will Cal OSHA adopt Federal OSHA's ruling on electronic filing of injuries and illnesses or develop their own ruling in 2017?

Please contact a member of your ABD team with any questions you may have on these changes.