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## At a Glance

**Law Talk: How you can protect your business**

**Shelter your workers from heat illness**

**New COBRA law: Will you be affected?**

... and more

The California Merchant has a new format and a new delivery schedule! Look for your next issue in September.

Please visit your association, California Merchants Safety Association, at its website:

[www.califmerchants.com](http://www.califmerchants.com)



# The California Merchant



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		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$

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# LAW TALK

By Bruce Rudman  
Abdulaziz, Grossbart & Rudman



## How you can protect your business

Every now and then, we write an article discussing the basic steps you should take to protect your business—and by protecting your business, you protect your personal livelihood. This article is not a substitute for legal or tax advice and every business is different. However, for most businesses, there are things that can be done to protect the business. Some of these things may seem like common sense or “no-brainers” though it is surprising you to see how many people ignore obvious legal as well as practical requirements of their businesses.

First is the way you do business. Have you considered incorporation? If you are incorporated, you should make sure that all leases, contracts, letterhead, purchases, and every single document you use for your business reflects the fact that you are a corporation. If you do not hold yourself out as a corporation, and you are sued, it is likely that you

**Have you considered incorporation? If you are incorporated, you should make sure that all leases, contracts, letterhead, purchases, and every single document you use for your business reflects the fact that you are a corporation.**

could be personally sued in addition to your corporation. This is one of the reasons why people incorporate, and by not holding yourself out as a corporation in every way, you can threaten that. If you are doing business under a fictitious name, you must file the appropriate Fictitious Name Statement with the county recorder, and

it must be published. This is also a requirement if you ever need to file a lawsuit to collect your fees for services.

Next, is the place that you do business. If you lease your premises or equipment, you should know the expiration dates and plan ahead. Under a lease, unless there is an option for additional terms, your landlord may have no obligation to renew your lease. You should know your rights and plan ahead. Also, when time comes to renew a lease, there may be neighboring properties that would value your rental business at a discount of your current rent. However, always keep in mind that moving expenses can be substantial, including the cost of moving equipment, telephone lines and advertising the change.

Your employee relationships and the protection of workers are each very important. You should make sure that you have the appropriate workers compensation coverage. More than likely, you should have an employee policy manual setting forth your rules and regulations of

employment. Most workers compensation insurance companies as well as the Cal-OSHA laws require most employers to have written safety policies. Thankfully, there are a multitude of companies that offer customize safety manuals for a nominal cost. You should consult with an employment lawyer and/or your accountant to discuss benefits for your employees that not only help you retain employees, but help you save money by valuable deductions. Remember that there are substantial penalties and fines for noncompliance with the employment and immigration laws. All of your paper work should be in order with clear and concise files for easy review.

One area of increasing litigation is the subject of audits by workers compensation insurance companies against employers. Particularly in the trades where companies hire independent contractors, such as the construction trades, you could be subject to pay additional insurance premiums if your subcontractors or persons you hire do not have licenses to do their work, where licenses are required.

Do you have sufficient liability insurance, including sufficient insurance for your company/owned or operated vehicles? Are your policies claims-made policies (which apply only where a claim is made without regard to when the incident that led to the litigation occurred), or occurrence-based policies (which protect you for a claim that occurred during the policy period). You should discuss your needs with your broker and be wary of policies that are substantially cheaper than others, as they may limit the type of claims or the circumstances in which coverage can be denied. On the same subject of insurance, if you have any employees or independent salespeople who use their own vehicles while conducting business for your company, they should name your company as additional insured on their own insurance policies, as you could find yourself the subject of a lawsuit if those persons get into an automobile accident while conducting business. To that end, you may also want to impose restrictions

on the use of cell phones while conducting business in automobiles.

Last, but certainly not least, are your customer relations. Do you have a good contract that complies with all consumer-protection laws as well as the rules and regulations that govern your particular vocation? Most licensed businesses have laws and regulations that require certain provisions to be in your contracts. These laws change regularly. Even where people buy their forms from “national distributors,” we see occasions where the forms do not comply with California law. You should consider whether you want to have an alternative dispute resolution mechanism such as arbitration or mediation in your contracts with your customers. Requiring mediation before a party can file a lawsuit can save you money. Requiring arbitration rather than a court suit can make it more expensive for smaller lawsuits to be brought, though that can also be beneficial to some businesses.

In conclusion, when running your business you should think of all of the possibilities and plan for the future. That is the only way to assure the continuation of your business.

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# SAFETY MATTERS



## Summer health dangers

When the temperature soars and humidity rises, it's time to take precautions to avoid dangerous health consequences such as heat exhaustion, heat stroke and overexposure to the sun. Working outside or in buildings without air conditioning can make employees susceptible to heat illness.

elevated.  
 Dry mouth.  
 Fatigue, weakness.  
 Dizziness.  
 Headache.  
 Nausea, sometimes vomiting.  
 Weak and rapid pulse.  
 Sweating.  
 Cool, clammy, pale skin.

NOTE: Symptoms take time to develop - sometimes several hours after dehydration occurs.

The early symptoms of heat exhaustion can sneak up. Some people feel a bit lightheaded and weak and might have a touch of nausea. The serious problems develop when symptoms are ignored and additional fluids are not taken right away. The primary cause of heat exhaustion is dehydration and a loss of electrolytes such as sodium. Generally, try to stay well-hydrated and take in extra salt. Drink even though you don't feel like it - you can't count on your thirst mechanism to prompt you.

Here are the major symptoms of heat exhaustion and heat stroke and some safety tips to help you cope with health emergencies during the dog days of summer.

### Symptoms of heat exhaustion include:

Body temperature usually normal or only slightly



## OSHA CORNER

Cal/OSHA Safety Publications

Please visit the following address on the web to download helpful safety posters, guides and pamphlets for a safer workplace.

<http://www.dir.ca.gov/dosh/PubOrder.asp>

### Treatments for heat exhaustion:

Get out of the sun and into a cool place.

Drink more fluids (electrolyte sports drinks may help), but don't drink too fast or you could become nauseous.

Eat salty snacks.

Rest.

Loosen clothing.

Be aware that heat stroke can come after heat exhaustion, but it can also develop quickly and independently if one's core body temperature rises too high.

### Symptoms of heat stroke include:

Very high body temperature (103 degrees or higher).

Hot, dry, red skin.

No sweating.

Disorientation, hallucinations, delirium

Rapid breathing and fast pulse, then slow breathing and weak pulse.

Convulsions.

Loss of consciousness.

NOTE: Symptoms can come on quickly.

Heat stroke can occur within 10 - 15 minutes of the first symptoms. If treatment is not given immediately, permanent damage can occur to internal organs.

**HEAT STROKE IS A MEDICAL EMERGENCY. CALL 9-1-1 OR TRANSPORT VICTIM TO A HOSPITAL IMMEDIATELY.**

Immediate care for a heat stroke victim includes:

Move person to cool place indoors or in the shade outdoors.

Lower body temperature as soon as possible.

Remove clothing and wrap person in a wet sheet, or wet their cotton clothing.

Fan person with electric fan or manually (do not place wet items too close to electric fan).

Place ice packs or cold compresses on the neck, under armpits, and in the groin area.

Person may not be able to drink if delirious (do not force it).

## Health Insurance News Update

*Attention Employers: You may be impacted by the new law included in the February 2009 Economic Stimulus Package, under the title COBRA Subsidy.*

The COBRA provisions of the American Recovery and Reinvestment Act of 2009 (the "Act") provide for an employer subsidy of COBRA premiums for involuntarily terminated employees. The new law will have a substantial impact on employers' ongoing obligations under COBRA. This summary discusses how employers may be impacted and who is eligible for benefits.

\* **How the Subsidy Works** An "assistance eligible individual" will only be required to pay 35% of his or her COBRA premium. The remaining 65% of the COBRA premium will be reimbursed by means of a payroll tax credit to the employer (in the case of a self-funded plan), the plan (in the case of a multiemployer plan), or the insurer (in the case of an insured plan that is not subject to federal COBRA). The Secretary of the Treasury will issue guidance on how a claim for the tax credit is to be filed. If the payroll tax credits are insufficient to cover the COBRA expense, then the entity entitled to reimbursement will receive the remainder of reimbursement directly from the Secretary of the Treasury through the completion of the newly revised IRS Form 941.

\* **Who is Eligible** An assistance eligible individual ("Eligible Individual") is a person who

becomes eligible for COBRA between September 1, 2008 and December 31, 2009 due to a covered employee's involuntary termination of employment. The subsidy applies to spouses and dependents who are eligible for COBRA coverage as well. If an individual is denied treatment as an Eligible Individual by a group health plan, the Act requires the Department of Labor to provide for an expedited review of such denial.

\* **Income Limitations** If the amount you earn for the year is more than \$125,000 (or \$250,000 for married couples filing a joint federal income tax return), you may have to repay all or part of the premium reduction through an increase in your income tax liability for the year.

\* **Duration of Subsidy** The subsidy will be available for nine months, but not beyond the end of the maximum period of coverage required under COBRA or the individual's becoming entitled to coverage under another group health plan or Medicare.

\* **Special Election Period** Individuals who would have qualified as an Eligible Individual except that they had not elected COBRA as of February 17, 2009 have a special 60-day election

period under the Act. The election period begins February 17, 2009 and ends 60 days after the date notice of the subsidy is provided. If an employee elects COBRA during this special election period, coverage shall commence with the first period of coverage beginning after February 17, 2009 and will not go beyond the period of COBRA coverage that would have been required if COBRA had been initially elected.

\* **Notice Requirements** A general notice needs to go out to all qualified beneficiaries, whether they are currently enrolled in COBRA coverage or not, who have a qualifying event during the period from September 1, 2008 through December 31, 2009. This notice may be provided separately or with the COBRA election notice following a COBRA qualifying event. A notice of the extended COBRA election period to any Assistance Eligible Individual who had a qualifying event at any time from September 1, 2008 through February 16, 2009; and who either did not elect COBRA continuation coverage or who elected but subsequently discontinued COBRA. This notice must be provided within 60 days following

Please see SUBSIDY, page 4



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Annual C.M.S.A. membership dues are now due. To be sure that you remain a member and continue to receive this newsletter and all other membership benefits, your membership payment is due to the Association’s office by July 1st, 2009. Please send in your annual fee of \$50.00 made payable to C.M.S.A.

Thank you!

**CALIFORNIA MERCHANTS SAFETY ASSOCIATION**  
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**(800) 823-4038**

## Subsidy

Continued from page 3

February 17, 2009.

\* **Effective Date** The subsidy will apply to premiums paid for periods of COBRA coverage beginning on or after February 17, 2009.

\* **Employer Considerations** Employers or plan administrators should update their COBRA forms and notices and/or contact their third party administrator to ensure compliance with the new law. Employers or plan administrators should inform their payroll personnel and vendors as to the premium reimbursements that will be treated as payroll tax credits and make the appropriate application. Employers should also take steps to determine which involuntarily terminated employees are Eligible Individuals, as notice of the special election period described above must be provided within 60 days after the enactment of the Act.

\* **Alternative Option** For some the new American Recovery and Reinvestment Act will be beneficial, for others, the 35% responsibility of the employee can still be expensive. There are some individual policies available at a lower cost. If you would like to see more affordable options please contact us toll free at 888-321-0141. For additional information, please contact your Employee Benefits attorney or for general information about employee benefits feel free to contact us at [www.icbenefits.com](http://www.icbenefits.com)

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