

Vol. 21 - No. 3
May/June 2009

At a Glance

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... and more

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

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

www.califmerchants.com



The California Merchant



State Fund Files for Significant Workers' Comp Rate Increase

What better time to seek alternative options for your upcoming insurance renewal?

State Compensation Insurance Fund has filed for an 8.9% average workers' compensation rate increase. Some classifications have increased by more than 20%.

California employers in industries such as retail and service industries who are already hurting from the struggling economy will feel the effects of this increase. The higher rates went into effect for policies inception and renewing on or after January 1, 2009.

If you are one of these employers struggling to keep workers' compensation costs down and preserve jobs, contact us for a quotation.

Please contact Heffernan Insurance Brokers at 866.500.6359 or complete the information on the reverse side and fax it to the number indicated.

Rate Comparison of our preferred carrier rates to those of State Fund:

Class Code	Preferred Carrier Rates 2009	State Fund 2009
8015	\$5.51	\$9.75
8017	\$2.69	\$6.99
8018	\$6.72	\$11.92
8008	\$2.45	\$6.34
8032	\$7.24	\$12.89
8042	\$4.46	\$7.50

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Workers' Compensation Program Quotation Request



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Current Policy Number: _____

Current Renewal Date: _____

Please provide your estimated annual payrolls by class code below OR simply provide a copy of your most recent payroll report.

Classification	Code	Rate	Estimated Payroll
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____

For questions please contact us toll free 866.500.6359 or visit www.heffgroup.com

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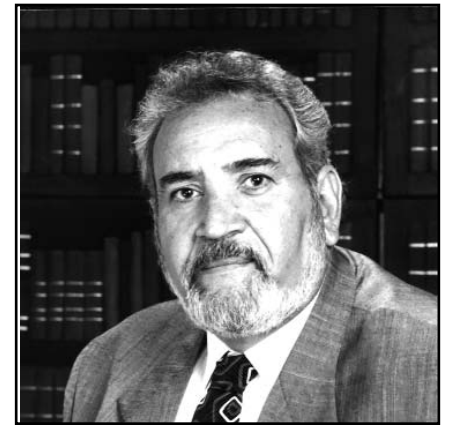
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LAW TALK



By Sam Abdulaziz
Abdulaziz, Grossbart & Rudman



Liability for condo association may be different than for directors

The Churchill, a 110-unit apartment building in Los Angeles was built in 1962. When it was constructed, concrete slabs were laid between the ceiling of each apartment and the floor of the unit directly above it. The slabs had large holes to accommodate water and electrical pipes. Although the plans for the building called for the unused holes to be covered prior to completion of the building, this was not done. The uncovered holes were a fire hazard and also allowed odors to pass from one apartment to another.

In 1976, the building was converted into condominiums. Afterwards, purchasers of two units (Ritter & Ritter) noticed odor problems in both of the units. They had purchased the units in 1995 & 1998. They then discovered that the holes in the concrete slabs were the source of the problem. They

After a trial, the jury found no liability on the part of the individual Directors; however, the jury found the Association was liable to the owners of the property on each cause of action.

demanded that the condominium Association cover the holes. The Association stated that the Ritters were responsible for fixing the problem since they are the owners. Therefore, the Ritters are responsible for fixing the problem. The owners of the units then sued the Association itself, and the individual Directors. The Ritters sued and asked for financial damages due to odor intrusion into their units and sought an injunction

requiring the Churchill to fill all the uncovered holes at the Churchill's expense.

After a trial, the jury found no liability on the part of the individual Directors; however, the jury found the Association was liable to the owners of the property on each cause of action. The Ritters were also awarded all of their attorneys' fees.

The Court of Appeal affirmed the holding of the lower court. The Court found that the liability of the Churchill was separate and distinct from the personal liability of the Directors. It was legally possible to have one without the other.

Members of the Association can recover damages from the Association resulting from a dangerous condition in the common area, as long as the members themselves were not responsible for the poor conditions.

The Court of Appeal also cited a well accepted principle of condominium law, which is that a homeowner can sue the homeowners association for damages to get the association to stop their improper behavior and enforce the provisions of a declaration, and they can sue directly to enforce the declaration.

Attorney Sam Abdulaziz of Abdulaziz, Grossbart & Rudman has been practicing construction law for over 30 years. He has written a book called "California Construction Law" which is updated annually. He represents numerous construction trade associations and contractors. He appears at Contractors State License Board meetings and has argued a number of cases before the appellate courts, including the California Supreme Court dealing with the "Pay-If-Paid Clause." Abdulaziz,

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WCIRB approves recommended 24.4% workers' comp increase for July

On March 18, the Workers' Compensation Insurance Rating Bureau decided to recommend a 24.4 percent rate increase beginning in July. Earlier indications had suggested that the WCIRB's governing committee was ready to recommend a mid-year rate increase of this size.

Governor Schwarzenegger has asked the California Dept. of Insurance and Insurance Commissioner Steve Poizner to reject the recommendation, but it is unknown if the request will have any effect. In 2008, Poizner reduced a 16 percent rate increase to 5 percent, but will have to decide if he can hold off the industry advisory group for another year. Insurers aren't legally required to follow the Dept. of Insurance's recommendations, but often do. Actual premiums are affected by other factors, including individual experience rating and industry niche.

According to Amy Vitarelli, a vice president at Heffernan Insurance Brokers in San Francisco, the WCIRB recommendation is a sure sign that rates hit bottom last year and are on the way up.

Government officials have acknowledged that they are under "intense pressure" to keep rates down, but the final rate increase amount will not be available for some time. A public hearing is scheduled for April 28.



SAFETY MATTERS



How aging workers affect safety plan

Last July, the Bureau of Labor Statistics projected that between 2008 and 2016, the number of workers age 55 to 64 will climb by 36.5 percent, while the numbers of workers between the ages of 65 and 74, and age 75 and up, will rise by more than 80 percent. By contrast, the number of workers between the ages of 25 and 54 will only increase by 2.4 percent.

The "baby boom" -- workers born after World War II -- has had a large impact on both age distribution in the workforce and the size of the retired population in the next 30 years. With recent economic and Social Security woes making a comfortable retirement out of reach, many older people are staying in the workforce longer, many in part-time jobs.

A well-designed workplace benefits all workers. Workstations and job tasks that are matched to the needs of each employee are always best. However, there are some things older workers may need to work safely and comfortably -- and there are some qualities about older workers of which employers should be aware.

Most studies say that older workers, due to their carefulness and experience, tend to have fewer accidents. When they do get injured, however, the injury may be more severe. It also may take longer for them to recover fully.

Many workplace injuries are the result of repetitive motion. An older

worker may be more prone to developing this type of injury due to more years of performing the same motion.

Older workers may be one of a company's greatest advantages. They are often more reliable than younger workers, have a stronger work ethic, exhibit less absenteeism, and are loyal to their employers. They are also experienced and display patience and good judgment.

On the other hand, it's important to note that since chronic medical conditions often appear or worsen after middle age, older adults are more likely to need more health care treatment. Diabetes, cataracts, glaucoma, high blood pressure or arthritis may create a need for more rest periods, medication breaks or stretching. Hearing, eyesight and muscle mass also often diminish, which may limit specific tasks an older employee can safely perform.

Changes in mental capacity also occur as a person ages. Older people may not think as quickly or clearly as they once did. It may take longer to learn new skills. Generally, verbal tasks and vocabulary remain constant or improve, while tasks that depend on short-term memory may take longer. Older workers tend to use experience and expertise when working, but may find it tricky to multi-task quickly or to work in a busy environment where lots is going on. Training requirements may be dif-



OSHA CORNER

Cal/OSHA Safety Publications

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

ferent for older workers. Since learning is based on previous experience, training may need to be more "practically" based. New skills need to be explained in a way that fits into what they already know. Justification and the logic behind the information -- why you're doing what you're doing -- are more important. Training may take longer, and there may be a need for more help or practice. However, several studies have shown that there may not be a difference in how well someone works once the learning curve has been reached.

Everyone, at every age, thinks and learns differently. How we learn and think is dependent on each individual, and their experience. People who have had a lot of training or education over their lives, or who have had to carry out a lot of tasks, are experienced learners. They are typically able to learn new skills well and improve the ones they have easily. Those people who have had less formal training, or who have carried out more simple or repetitive tasks for many years, may find it harder to take in new information or ways of

doing things.

What physical changes happen as workers age?

* Maximum muscular strength and range of joint movement declines.

* Regulation of posture and balance may become more difficult.

* Sleep may not be as regulated, leading to a concern regarding long shifts or night shifts.

* Body temperature is less easily maintained, so workers may be more susceptible to heat or cold.

* Vision and hearing changes. Workers may have more difficulty reading small print or distinguishing voices in a noisy environment.

Experienced older workers are in the workforce to stay. These employees are highly valuable for their experience and institutional knowledge. Improving policies and workplace design will allow these workers to contribute fully in a safe, healthy environment.

Recession, job losses hit those with disabilities hard

Whether forced out of work by layoffs or severe health problems, people with disabilities are among the hardest hit during tough economic times, according to Allsup, a leading provider of Social Security disability, financial and healthcare-related services to people with disabilities.

A new Allsup study shows that Social Security Disability Insurance (SSDI) claims have generally increased during the seven recession periods over the past four decades. The 40-year analysis includes the current recession, which began in December 2007, according to National Bureau of Economic Research data. During 2008, the number of disabled workers applying for SSDI benefits reached a record high of more than 2.3 million, according to data from the Social Security Administration (SSA). Disability applications overall have reached 2.6 million. Separately, the government announced that the number of long-term unemployed (out of work for 27 weeks or more) also rose to 2.6 million during 2008.

"We know people with disabilities are struggling in the current economy," said Edward Swierczek, an Allsup senior claimant representative and former state

Disability Determination Services employee. "Many people have been laid off. They're being hit with mortgage and credit problems, resulting in foreclosures and bankruptcies. They also may not be taking care of their health. We've seen evidence of many people holding off on treatment for serious conditions because of finances."

As the economy contracts, people who have struggled with a disability are forced to look for alternatives they might not have otherwise considered, including SSDI, which is why applications are increasing. Another factor in the increasing number of SSDI applications is the aging of the U.S. population, with the resulting increase in chronic conditions that may prevent people from working. There also is a recessionary connection to the segment of the population that some call "working wounded."

"These individuals have been working and want to hold on to their job as long as they can, but they are suffering from a chronic disease or condition," said Swierczek. "In some cases, they are enduring significant pain or difficulty, but continue to work because they still

Please see **DISABILITY**, page 4



DUES REMINDER... DUES REMINDER... DUES REMINDER...

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!

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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 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

Disability

Continued from page 3

have to feed their families and pay their bills."

When these workers lose their jobs in an economic downturn, their condition may worsen during the time they are looking for a new position, or their disabilities may stand in the way of getting hired by another employer. For example, many disabilities, such as diabetes, heart disease and chronic obstructive pulmonary disease (COPD), can progressively worsen to the point where working is no longer possible. When this happens, people should consider applying for SSDI.

On the other hand, some individuals who apply for SSDI are not going to be able to qualify because they do not meet the technical or medical criteria. So it's important that individuals considering filing for SSDI benefits understand the requirements outlined by the Social Security Administration regarding their eligibility.

Deciding to Apply for SSDI Benefits

One of the earliest challenges for people with severe disabilities is accepting that they truly are disabled and unable to work. Eligibility for SSDI is based on the inability to work, as determined by the SSA. Generally, a person is considered disabled by the SSA if:

- They cannot do the work they did previously;
- They cannot do other work because of their disability; and
- Their disability has lasted or is expected to last at least one year, or result in death.

To qualify for SSDI, a person also must have worked and paid into the program (via FICA payroll taxes) for five of the last 10 years and be under retirement age.

The SSA denies most SSDI applicants at the initial level and it can take two to four years to finally be awarded benefits. Swierczek emphasizes it is important that people who are truly unable to work because of a disability apply for benefits and remain in the process.

Periodicals
Postage PAID at
Sacramento, CA

CALIFORNIA MERCHANT
4153 Northgate Blvd., #6
Sacramento CA 95834

CALIFORNIA MERCHANT (USPS 002498) is published bi-monthly by SMC Publishers, 4153 Northgate Blvd., #6, Sacramento CA 95834. Annual subscription is available with membership in the California Merchant Safety Association. For membership information, call 1-800-823-4038. Periodicals Postage Paid at Sacramento, CA. POSTMASTER: Send address changes to *The California Merchant* at 4153 Northgate Blvd., #6, Sacramento CA 95834.