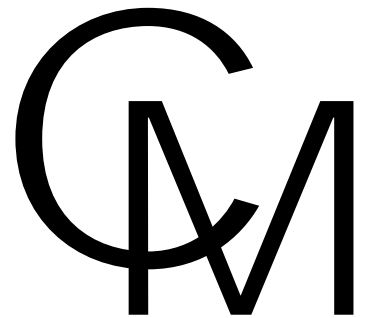


The California Merchant



September, 2008

Vol. 20, No 8

Great rates for 2008!

As you probably know, your association, California Merchants Safety Association (C.M.S.A.), is no longer working with the State Compensation Insurance Fund. We have partnered with Heffernan Insurance Brokers to bring our members a new workers' compensation insurance program with **AMAZING** rates.

Check out the 2008 base rates comparison below and make sure to get a quote for your company A.S.A.P!!!

Workers' Comp Class Code	New Heffernan 2008 base rate*	Compare	SCIF 2008 base rate	Class Code Description
8017	\$4.52	vs.	\$6.52	Stores- Retail- N.O.C.
8018	\$7.61	vs.	\$10.98	Stores- Wholesale- N.O.C.
8387	\$5.44	vs.	\$7.86	Auto Service Stations
8389	\$5.92	vs.	\$8.54	Auto Repair Shops
8392	\$9.21	vs.	\$13.30	Auto or Truck Storage Garages
8061	\$5.69	vs.	\$8.21	Store, Groceries
8391	\$4.24	vs.	\$6.12	Auto Truck Dealers- employees
8324	\$6.08	vs.	\$8.77	Auto Gas Stations
9516	\$5.25	vs.	\$7.58	Television, Video, Audio Equip. - service/repair
9519	\$8.03	vs.	\$11.59	Household Appliance- service/repair
7198	\$11.28	vs.	\$16.28	Parcel Delivery Companies
7232	\$10.86	vs.	\$15.67	Mail Delivery Service Companies

* All 2008 rates are the filed base rates and do not include any individually earned merits or credits. Actual rates may be lower.

Our new workers' compensation program through Heffernan Insurance Brokers offers a substantial savings over the State Fund rates. To participate in this new program, be sure to get your quote today!!!

Call **Heffernan Insurance Brokers** at: **(866) 500-6359** and let them know you are a member of Western Regional Master Builders Association. If you currently use a broker for your insurance needs, you may have your broker call **Tangram Insurance** to get the same program and rates, at **(800) 676-2213 ext. 662** and speak to **Riley Binford**.

Don't miss out on these savings! Call today for a quote!!!



HEFFERNAN INSURANCE BROKERS

A Member of the Heffernan Group

(866) 500-6359

California businesses rally to minimize effect of high fuel prices on employees

Gas prices at the pump are hovering near \$4 a gallon, and predicted to rise back up to the almost \$5 of recent times — prompting businesses to look at practical, cost-effective options that provide relief to employees. Employers Group, a human resources expert and advocate serving California employers, just released the results of a two-day survey of 222 California employers, asking what they are doing to minimize the effect of gas prices on their employees. The full survey results are available at www.employersgroup.com:



goods and services.

21% reported a drop in sales.

33% reported that they are reassessing budget allocations.

To help their employees better afford their commutes, 45 per-

Have fuel costs impacted your company?

77% of total respondents said “yes.”

79% of companies in Southern California said “yes” and 67% in Northern California said “yes.”

Larger companies reported impact at a higher rate than smaller size firms:

87% agreed that increased fuel costs had impacted their organization.

How have fuel costs impacted your business?

27% of companies reported voluntary terminations from employees needing to reduce their commuting time.

10% reported experiencing higher absenteeism rate.

13% reported impact on their productivity levels.

56% reported an increase in cost of

percent of companies surveyed reported they would allow flexibility in starting/quitting times to avoid high traffic commute times, and 20 percent, would institute telecommuting. Another 17 percent would compress workweeks, such as four 10-hour shifts, and 14 percent would implement 9/80 shifts, whereby an employee works nine hours every Monday through Thursday, and takes off every other Friday.

When asked what work strategies companies were instituting to offset higher fuel costs, results were:

65% - encouraging the use of web-based conferences or training

73% - encouraging conference calls rather than traveling to other offices

42% - reevaluating business contracts to make sales and service calls more cost effective

30% - opting for phone-based sales or service support calls rather than calling in person

22% - considering alternatives to the use of personal cars for sales and service calls.

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

www.califmerchants.com





LAW TALK

By Bruce D. Rudman
Law Offices of Abdulaziz, Grossbart & Rudman



The hidden effects of an indemnity clause buried in your contract

We have written in the past regarding indemnity clauses that are contained within contracts. Insurers are becoming more vigilant in requiring such clauses in virtually every type of contract, whether it be a lease, the sale of property, a construction agreement, or even agreements for the purchase of material or goods. Indeed, it is common for liability insurance policies to require such provisions in contracts for goods and services.

These types of clauses are intended to shift the risk of a claim to a party that caused the claim to arise. More recently, the wording of such clauses shifts the risk and the expense for any claim, even if nothing was wrongly performed. In a sense, an indemnification claim is yet another form of insurance being provided to the other party to a contract.

Below are some examples of the impact of a claim where there is an indemnity provision in a contract:

In the construction realm, if a claim (a lawsuit, demand, or other request for payment) is made by an owner or a third party (such as an injured bystander), that relates to a subcontractor in any manner, the subcontractor could have to defend and indemnify the owner or prime contractor for the claims that are being made. As an example, the electrical subcontractor could have to indemnify the owner and general contractor for the effects of a fire to the building if an allegation that the electrical system was to blame for the fire.

In a landlord-tenant situation, if a visitor to a building is injured by slipping on a wet floor, the tenant may

These types of clauses are intended to shift the risk of a claim to a party that caused the claim to arise. More recently, the wording of such clauses shifts the risk and the expense for any claim, even if nothing was wrongly performed.

have to indemnify the landlord for the claims, even if the tenant did not cause the floor to become wet or slippery.

In certain cases, indemnity rights are provided by statute. As an example, someone who sells products may have the protection of a statute that provides that the manufacturer of the product must reimburse seller or distributor for repair costs, if the manufacturer does not have repair facilities in the state.

There are different types of indemnity clauses as well. In some cases, the person must provide indemnity to the extent they are responsible for the claim. While this is the fairest type of clause, this certainly is the least common. Rather, the person in the transaction with the most bargaining power usually imposes the clause on the other person, and that clause usually requires indemnity for any type of claim whatsoever, regardless of the proportion or fault of the person providing the indemnity, even if that person is not at fault at all, so long as the claim was

not entirely the other contracting party's negligence or misconduct. Look for words such as, "this indemnity obligation shall apply whether the seller is passively or actively negligent with regard to the claim..."

This sounds like a mouthful, but an explanation is simple. In a case that came from the San Diego area a few years ago, claims of defective tile installation were made in a construction case. A very large homebuilder demanded that the tile installer provide indemnity for the claim. The tile installer claimed that it did nothing wrong. In fact, the trial court actually held that the tile installer did absolutely nothing wrong. However, the tile installer was nevertheless required to provide a defense, including attorney's fees, for the claims made against the homebuilder, so long as the homebuilder was not 100% at fault for the claims that arose.

That line of reasoning has been extended in a number of cases, including in a recent case which held that insurers could not obtain reimbursement from the other company's insurers, where an indemnity clause made one company absolutely responsible for defending the type of claim.

You may ask, how does this affect you?

As to the practical application on your business, if you have a contract with an indemnity clause, and a claim comes in, you will likely have to provide a defense. In some cases you've done nothing wrong. In some cases, these are claims that you do not have

Please see CLAUSE, page 7



SAFETY MATTERS



What happens when Cal-OSHA comes to visit?

If you prepare now by implementing an effective safety program, and supervisors and employees in your company know and understand their roles in implementing the safety program, you will be ready for the Cal/OSHA inspector who is waiting in your reception.

Since Cal/OSHA's purpose is to ensure safe and healthful workplaces for all employees, there are several reasons why a Cal/OSHA inspector might visit:

- A complaint is filed by an existing employee
- A serious injury has occurred that is reportable to Cal/OSHA within eight hours – this includes the use of paramedics for transportation of a work related injury
- A letter of complaint indicates an alleged violation (reported by a former employee) and corresponding General Industry Safety Order violation number
- While rare, a Cal/OSHA



inspector might drop by because he/she is "in the area"

- Programmed High Hazard Inspections, which are planned inspections that are aimed at specific industries or occupations; industries are selected based on factors, such as, injury and illness incident rates and employee exposure to toxic substances

The Cal/OSHA inspector might request:

- Cal/OSHA log for the

current year and previous two years, or up to five years

- Accident records including first report of injury, doctor's first report, and supervisor's accident investigation reports for all listed injuries

• Injury Illness Prevention Program policy

- Employee training records which would include new employee orientation and ongoing safety meeting documentation

• For a specific serious injury, Cal/OSHA will ask for information regarding the individual's training records, or records with users' name, or names for the specific piece of equipment

- Emergency action plan

• Hazardous communications program including Material Safety Data Sheets (MSDS) regarding hazardous chemicals or substances, hearing conservation, forklift certification, ergonomic program, lock-out/tag out (control of hazardous energy), and other programs appropriate to the inspection

Cal/OSHA inspectors may also request copies of the supporting material and programs which must be provided within a reasonable amount of time. Generally, this request is within 24 hours. Cal/OSHA will request to visit the area of the injury/complaint and also interview employees.

Cal/OSHA will inform you that whatever violations may be witnessed while in transit to the place in question will

be included in Cal/OSHA's report. Try not to spend time with the inspector in the plant as he/she will continue to observe your operations. The inspector is required to assess anything that he/she observes. If a general visit is conducted, Cal/OSHA will need a complete tour.

Be sure to ask for credentials. It is important that you insist on seeing compliance officer's credentials. A Cal/OSHA compliance officer carries the U.S. or California Department of Labor credentials bearing his/her photograph and a serial number that can be verified with a phone call to the nearest Cal/OSHA office. Anyone who tries to collect a penalty at the time of inspection or promotes the sale of a product or service at any time is not a Cal/OSHA compliance officer.

Cal/OSHA inspectors are allowed by regulation to interview workers privately, but this is only mandated if at the employee's request. You are permitted to be in the room unless the employee specifically asks for a personal interview. Following the tour, the Cal/OSHA inspector will sit down, review any obvious violations, and advise you of the final decision on possible violations. Cal/OSHA has six months from the time of the visit to issue notice of violations. Beyond that period, Cal/OSHA cannot issue citations.



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>

Protect workers from air pollution

The wildfires across California this summer have focused attention on ways to reduce exposure to airborne pollutants. Windborne wildfire smoke can be a hazard for people who work in office and commercial buildings many miles from evacuation zones. Cal/OSHA has posted tips on protecting workers in indoor workplaces from smoke and other pollutants.

Using the HVAC system to protect building occupants from smoke

As a first step to protect building occupants from outdoor air pollution, including the hazardous conditions resulting from wildfire smoke, building managers and employers should ensure that the HVAC system filters are not dirty, damaged, dislodged, or leaking around the edges. Before the wildfire season, or during smoke events if necessary, employers and building operators should ensure that a qualified technician inspects the HVAC system, makes necessary repairs, and conducts appropriate maintenance. Filters should fit snugly in their frames, and should have gaskets or sealants on all perimeter edges to ensure that air does not leak around the filters.

Building operators should consider installation of the highest efficiency filters that do not exceed the static pressure limits of the HVAC system, as specified by the manufacturer or system designer.¹ Pressure gauges should be installed across the filter to indicate when the filter needs replacing, especially in very smoky or dusty areas. Indoor contaminants can be further reduced by using stand-alone High Efficiency Particulate Air (HEPA) filtering units. For more information on air cleaners, see the California Air Resources Board webpage at: <http://www.arb.ca.gov/research/indoor/particles.htm>.

Other actions to protect employees from wildfire smoke

In addition to assessing and if necessary modifying the function of the HVAC system, employers are encouraged to take other reasonable steps to reduce employee exposure to smoke, including alternate work assignments or relocation and telecommuting. Some buildings rely on open windows, doors, and vents for outdoor air, and some may have mechanical ventilation systems that lack a functioning filtration system to remove airborne particles. In these cases, the employees may need to be relocated to a safer location. Employees with asthma, other respiratory diseases, or cardiovascular diseases, should be advised to consult their physician for appropriate measures to minimize health risks.



Respirators, such as N95s and other filtering facepiece respirators, may provide additional protection to some employees against environmental smoke. Employees whose work assignments require the use of respirators must be included in a respiratory protection program (including training, medical evaluations, and fit-testing). However, employers may provide filtering facepiece respirators to employees who voluntarily choose to use them to protect themselves against environmental smoke; in this situation employers are not required to provide a medical evaluation or fit-test. Employers should tell these employees that the respirator will provide some protection against the particles in smoke, but that it will not provide complete protection, and that a respirator that has not been fit-tested may not provide the maximum level of protection. Employees should be told that the respirator does not protect against gases or vapors. Although a medical evaluation is not required, the employer should advise employees to consult their doctor about potential exposures to smoke and respirator use, particularly if they have certain health problems such as respiratory or heart conditions. Employees should also be provided with a copy of Cal/OSHA Regulation, Title 8, Section 5144, Appendix D. (<http://www.dir.ca.gov/Title8/5144d.html>) The California Department of Public Health has prepared a fact sheet on the use of N95 respirators called "Protect Your Lungs From Wildfire Smoke," which can be found at: <http://bepreparedcalifornia.ca.gov/epo/>.

Prepare your business for natural disaster

As residents in Louisiana and Texas recover from Tropical Storm Edouard and business owners throughout parts of the Midwest and Southern California evaluate the damage caused by recent tornadoes and earthquakes, Office Depot, a leading global provider of office products and services, is urging small businesses across the U.S. to get prepared and to protect their business assets.

A recent national survey, commissioned by Office Depot, reveals that 40 percent of small businesses admit they are not ready for a disaster and one-third indicate having no current plans to get prepared. Of those businesses indicating they were not prepared for a natural disaster:

- 37 percent said they had not taken the time to do so;
- 17 percent indicated it was too expensive; and
- 11 percent claim not to know what to do.

While the most important step in readiness planning is to ensure the safety of family and friends, business owners also need to protect their organization and property in order to bring operations up-to-speed as quickly as possible after an unexpected event. Not only is valuable data and property at risk, but also the ability to financially support employees who might not have the ability to endure a lapse in pay due to a disaster.

“Heed the storm warnings and protect your most important assets: your people and your data,” said Tom Serio, Director of Global Business Continuity Management for

Office Depot. “There are simple and affordable steps you can take to protect your business now.”

Before a storm, Serio advises small businesses to take the following steps:

Protect your people

Build solid contact lists. Include names and phone numbers of employees, vendors, and emergency agen-

cies.

Establish emergency communications procedures.

Organize supplies. Ensure you have sufficient water, batteries, food, and janitorial products, and that your company has access to cash, generators, and batteries.

Provide employee assistance. Train at least one staff member in CPR and first aid and, if possible, prepare fam-

ily disaster kits and alternative family housing.


Protect your data

Copy data to removable media such as DVD-R or CD-R discs, or removable disk drives, like the Ativa flash memory drive, that


Please see DISASTER, page 7

FREE Theme Park Discount Coupons!!!
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**To receive these discounted admission coupons...
 call the Association office at
 (800) 823-4038**

Clause

Continued from page 3

insurance for. Thus, you are hiring an attorney to defend someone else for something that you didn't do wrong, and something that you don't have insurance to protect.

As an example, in a recent case that our office has handled, a subcontractor purchased material from a material supplier ("A"), and paid "A" in full. The material supplier ("A") did not pay the distributor ("B") who sold material to "A," and that person is now making claims against the project owners and the bonds provided by the general contractor on those projects. Demands have been made upon the subcontractor to defend the claims brought by "B." While the subcontractor is not to blame for the actions of "A" in failing to pay "B," because of the indemnity clause, the subcontractor is paying all of the legal fees to defend three different sets of people for the claims by "B."

Now, you may ask what you can do to protect yourself?

First, check with your insurance carrier to assure you have coverage for your indemnity obligations; also verify that you are complying with any obligations you have to provide such provisions in your contracts.

Secondly, try to have the clause modified into a clause that requires you to indemnify for claims that are proven to have been your fault, or your proportionate fault. Thus, if you are 50% responsible for the claim, then you should provide 50% of the indemnity, rather being an insurer to someone else.

Lastly, you should also make sure that any contracts that you enter into with persons that supply material to you, or do work for you, have indemnity clauses, so that if a claim relates to their work, you can pass on your indemnity obligations to them.

While this sounds very complex, it is a simple matter of reading your contract and making sure you know what it means when you sign it. All business contains some risk, and you must weight the potential expense with the benefits you gain by entering into the contract containing this type of clause.

Abdulaziz, Grossbart and Rudman provides this information as a service to its friends & clients. The contents of the article are of a general nature and are intended to highlight areas of the subject matter and should not be used as a substitute for specific legal advice. You should seek the aid and advice of a competent attorney and/or accountant instead of relying on the presentation and/or documents. Bruce Rudman can be reached at P.O. Box 15458, North Hollywood, CA 91615-5458; (818) 760-2000, Facsimile (818) 760-3908; or by E-Mail at bdr@agrlaw.net. On the Internet, visit our Website at www.agrlaw.net.

Disaster

Continued from page 6

connect to systems via their USB ports.

Back-up as much data as possible and store hard copies of important documents (such as insurance forms) in a fire- and water-proof safe.

Take a copy of software used to make backups to a secure, off-site location.

At its core, disaster planning is about business survival. One in four businesses will experience a significant crisis in a given year, according to the Association of Small Business Development Centers, and of those businesses that experience a disaster and have no emergency plan, 43 percent never reopen.

While these statistics are startling, the Office Depot survey did show that small business owners living in natural disaster-prone regions (Coastal areas or the Midwest) are far more inclined towards disaster preparation. But nationally speaking, a full 25 percent of business owners describe their attitude towards disaster preparation as "live and let live," explaining they would rather deal with a disaster when it occurs than get ahead of a potential problem.

How did the regions compare?

Conducted by TNS NFO, the survey of 5,000 business owners reveals surprising regional differences in the readiness efforts of businesses operating in disaster-prone regions:

The Gulf Coast and Eastern seaboard region lead in preparedness planning, however, nearly a third (27 percent) of business owners across the hurricane-prone Gulf Coast and Eastern seaboard report their businesses are not prepared for a disaster; and

Slightly less than half (42 percent) of business owners survey in Southern California say they are not prepared, despite the devastation caused by recent wildfires and earthquakes; and

Nearly four out of 10 (39 percent) of businesses in the Midwest, which has experienced one of the most destructive tornado seasons this year, state they do not have a disaster readiness plan in place.

"Preparedness planning is vital to business survival, regardless of where you live," said Serio. "If you are a small business owner, you can't afford not to be prepared."

For more information, and to download Office Depot's free brochure titled Expecting the Unexpected: Disaster Preparedness Strategies for Small Business, visit www.officedepot.com/getprepared.

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New Federal Labor Law poster available

A new version of the required “Equal Employment Opportunity is The Law” poster has been issued by the U.S. Department of Labor’s Office of Federal Contract Compliance Programs.

The updated EEO poster has a revision date of August 2008 and must be posted by employers with 15 or more employees. It includes new information about religious discrimination, an expanded definition of discrimination on the basis of sex to include pregnancy and sexual harassment, and an expanded definition of “equal work” regarding payment of wages to women and men.

Other changes are new information on meeting timelines for filing discrimination charges and a language change regarding reasonable accommodations for employees and applicants with disabilities.

The section of the poster that applies to private employers is required under Title VII of the Civil Rights Act of 1964 and the Americans with Disabilities Act, both enforced by the U.S. Equal Employment Opportunity Commission.

This poster is also required for state and local governments and education institutions that employ

15 or more individuals, as well as certain federal contractors and programs receiving federal financial assistance.

To order up to 10 free copies of the poster from the Equal Employment Opportunity Commission, visit <http://www.eeoc.gov/posterform.htm> or call (800) 669-3362. For free copies of other federal required posters please contact the U.S. Dept. of Labor at (202) 693-0200 or visit <http://www.dol.gov/osbp/sbre-fa/poster/matrix.htm>.

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