



# Safety News

News for Members of the Contractors Insurance Safety Council – Group 44 Program

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## Cal/OSHA Revises High Heat Safety Rules

The Division of Occupational Safety and Health has approved revisions to the state's Heat Illness Prevention Standard. The modifications address high-heat safety requirements for five industries, clarification of shade rules including temperature triggers, and provisions granting flexibility to employers under the standard.

The high-heat rules affect employers and workers in construction, landscaping, oil and gas extraction, and transportation or delivery of agricultural products, construction material or other heavy materials.

The rules now require employers to provide shade:

- \* When temperatures reach or exceed 85 degrees. When temperatures are below 85 degrees, employers shall provide timely access to shade upon an employee's request.

- \* Shade must be located as close as practicable to the areas where employees are working.

- \* All industries, excluding agricul-

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## WCIRB Votes to File For 29.6% Pure Premium Rate increase

The governing committee of the Workers' Compensation Insurance Rating Bureau (WCIRB) has approved a recommendation for a 29.6% increase in pure premium rates for California workers compensation policies effective or renewing Jan. 1, but Gov. Arnold Schwarzenegger urged Insurance Commissioner Steve Poizner to reject it. The rating bureau submitted a formal rate filing to the Insurance Department on Aug. 17. The insurance department is expected to hold a public hearing on the request Sept. 28.

Rising medical costs, a steady number of injury claims in 2009 and the rejection of earlier recommendations to increase the benchmark rate have led to the latest proposal, said bureau spokesman Jack Hannan. The pure premium recommendation is based, in part, on the assumption that medical costs will increase by 9% in 2011 and indemnity costs will rise 6%.

"All the data shows the cost to provide workers' compensation insurance continues to increase and the rating bureau is factoring that into the 29.6% rate," said Mark Sektan, vice president of the Association of California Insurance Companies (ACIC).

But Schwarzenegger sent a letter to Poizner urging him to again reject a double-digit increase in the proposed benchmark rate. The governor wrote a similar letter a year ago, and Poizner did reject any increase in the benchmark rate.

"I am confident you will not allow such a tremendous financial burden on California businesses at this time," the governor wrote. "We must protect the 2004

(**RATE INCREASE**—continued on page 3)

## Worker Fatalities Fall 17% on Decline in Construction Deaths

U.S. workplace deaths fell 17 percent in 2009 to a record low on a decline in construction fatalities, as [unemployment surged](#) to the highest level in a quarter century.

There were 4,340 deaths across all industries, compared with 5,214 a year earlier. Fatalities among private construction firms dropped 16 percent in 2009, the [Bureau of Labor Statistics](#) said recently.

Workplace injuries have been falling for more than a decade, according to the National Council of Compensation Insurance. Workers' compensation insurers that are facing lower sales and rising medical costs may benefit from a decline in job-related accidents as U.S. payrolls shrink. New claims for unemployment jumped 500,000 in the week ended Aug. 14.

"Economic factors played a major role in the fatal work injury decrease in 2009," the bureau said in the statement.

Construction spending [dropped 15 percent in 2009](#), the worst performance on record, signaling an industry at the forefront of the economic crisis will be slow to

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## Workplace Lead Exposure Still a Problem, CDC Reports

OSHA says that exposure to lead occurs in at least 120 different occupations. Overexposure to lead can result in serious illness and death. And according to a recent CDC study, occupational exposures are on the rise.

Lead exposure continues to be a risk for workers in the United States, reports the Centers for Disease Control and Prevention (CDC). CDC bases its conclusion on a study that looked at data from a large number of states over the past several years.

Although the rate of lead exposure dropped between 2004 and 2005, it climbed 3 percentage points between 2005 and 2007 to 7.4 cases per 100,000 adults. The majority of adults with elevated blood-lead levels were employed in manufacturing, construction, and mining.

To reverse the trend, the researchers suggest strengthening existing efforts, including:

- \* Employer-maintained worker-protection programs
- \* Government programs such as CDC's Adult Blood Lead Epidemiology and Surveillance that tracks lab-reported elevated lead levels
- \* NIOSH and OSHA initiatives such as OSHA's national emphasis program to reduce lead exposure
- \* Research and interventions by worker-affiliated organizations
- \* Public education to prevent nonoccupational exposures

### How Lead Affects Health

Lead is a toxic substance that can be absorbed into the body by inhalation (breathing) and ingestion (eating). Except for certain organic lead compounds, lead is not absorbed through the skin.

When lead is airborne as a dust, fumes, or mist, it can be inhaled and absorbed through the lungs and upper respiratory tract. Inhalation of airborne lead is generally the most common source of occupational lead exposure.

Ingestion is possible, but less likely. For example, an employee who handles food, cigarettes, chewing tobacco, or makeup that have lead in them, or touch them with hands contaminated with lead, could end up swallowing enough lead to make him or her sick.

A significant portion of the lead that a worker inhales or ingests gets into the bloodstream. Once in the bloodstream, lead is circulated throughout the body and stored in various organs and body tissue. Some of this lead is quickly filtered out of the body and excreted, but the rest remains in the blood and in other tissue.

As exposure to lead continues, the amount stored in the body will increase if a worker is absorbing more lead than the body is excreting. Even though the worker may not be aware of any immediate symptoms, this lead stored in tissues can slowly cause irreversible damage—first to individual cells, then to organs and whole body systems.

### Symptoms of Overexposure

Short-term, or acute, exposure to high concentrations of lead can cause immediate serious health effects or even kill a worker within just a few days after exposure. Such exposures are fortunately rare.

Much more common is long-term, or chronic, exposure to small amounts of lead. Chronic exposure occurs over a period of years and can result in anemia, kidney disease, and damage to nervous and reproductive systems.

Common symptoms of chronic overexposure to lead include:

Loss of appetite; Metallic taste in the mouth; Anxiety and nervous irritability; Nausea; Pallor; Excessive fatigue; Weakness; Insomnia; Headache; Muscle and joint pain or soreness; Fine tremors; Numbness and Dizziness.

*Source: BLR's Safety Daily Advisor*

## **(FATALITIES—continued from page 1)**

rebound.

Construction has “fallen off a cliff,” said [Ed Priz](#), president of Riverside, Illinois-based Advanced Insurance Management LLC, a consulting firm, in an interview on Aug. 11. “It reflects a shift in the kind of work Americans are doing. There are a lot less hazardous jobs.”

Workplace deaths among blacks declined 24 percent last year to 407 from 533 in 2008. There was a 16 percent decline for whites to 3,059 and a 17 percent drop for Hispanics to 668.

Homicides, Suicides

Homicides at work fell 1 percent to 521 deaths in 2009. That marked a decline of more than 50 percent from the high of 1,080 in 1994. Shootings made up about 80 percent of the homicides last year, according to the bureau’s statement.

Workplace suicides declined 9.9 percent to 237 last year from a record 263 in 2008.

Transportation accidents were the most frequent cause of worker deaths for the second straight year. The num-

ber of fatalities involving cars, trucks, airplanes, trains, and other vehicles was 1,682, compared with 2,130 in 2008. About 20 percent of the deaths were on highways.

Fatalities in agriculture, forestry, fishing and hunting fell to 551 from 672 a year earlier. Deaths in crop production dropped to 278 from 304.

Falling Sales

Liberty Mutual Group Inc. was the largest workers’ compensation insurer in the U.S. by [2009 policy sales](#), according to data from the National Association of Insurance Commissioners, followed by American International Group Inc., Travelers Cos. and Hartford Financial Services Group Inc.

U.S. workers’ compensation insurance, an industry tied closely to payrolls, posted sales that fell for the third straight year as the economic slump curbed employment, according to the NCCI. The jobless rate was 9.5 percent in July.

“Any decline in fatalities indicates that element of workers’ compensation costs is continuing to moderate,” Priz said. “The rapid decline in employment -- that’s got to be a factor.”

## **(RATE INCREASE—continued from page 1)**

workers’ compensation reforms, which reduced rates by 65% and have saved employers more than \$50 billion. These reforms provided insurance companies with powerful tools to control costs, and they must use these tools effectively before we consider raising employer rates.”

Even if the full 29.6% increase is approved, pure premium rates would still be, on average, 53% lower than the approved pure premium rates in effect Jan. 1, 2004, according to the bureau. The pure premium rate is only an advisory to the insurance industry; insurers may set rates as they wish as long as the Insurance Department considers their rates adequate to cover loss costs.

But the benchmark rate has at least some symbolic impact. Insurers and brokers doubt Insurance Commissioner Steve Poizner will be persuaded to approve anything close to the proposed number. Poizner rejected the two most recent rate requests submitted by the ratings bureau. Poizner declined a 23.7% increase recommended for July 1, 2009, and a 22.8% rate hike for Jan. 1, 2010. He criticized insurers, saying they had not done enough to control costs, and said any increases would not be wise during a recession. Poizner had earlier recommended no change in rates when the rating bureau sought a 5.2% increase for policies beginning Jan. 1, 2008.

Don Chambers, president of the Colonial Western brokerage in Camarillo, said the response from the Insurance Department is not surprising. “Poizner is clearly not going to approve this. He’ll discount it at best. And carriers don’t appear to be ready to jump in at that level,” Chambers said.

Sektan of ACIC said industry data shows California workers’ compensation insurers had a pre-tax underwriting loss of \$1.5 billion in 2009, with incurred losses plus expenses totaling nearly \$10.7 billion, or 116.5% of earned premium. “The facts keep justifying the need to

increase pure premium rates and we hope the Insurance Department and the commissioner will look at that closely,” Sektan said.

Mark Webb, vice president at Pacific Compensation Insurance Co., said the repeated rejections of the ratings bureau’s recommendations suggest a broken system.

“What the industry needs from this process is acknowledgment that costs are increasing rather than a statement that we can’t afford the costs,” Webb said. “We don’t get to solutions on some of these cost drivers if we do everything we can to discourage the rating bureau from identifying costs in the system and discourage insurers from setting rates that reflect those costs.”

Jerry Azevedo, spokesman for the California Workers’ Compensation Action Network, an employer’s group, said insurance companies have been making moderate increases in their rates for the past 18 months. Insurance Department figures show rates increased an average of 5.8% in the first half of 2009, 8.5% in the second half of the year, and by 4% for the first six months of 2010.

“Employers need stable insurance rates, but we know if insurers don’t price responsibly it ends up being a cost to employers. Employers end up footing the bill when insurers go insolvent,” Azevedo said.

Mark Gerlach of the California Applicants’ Attorneys Association said workers’ compensation costs for employers are effectively unchanged from 17 years ago. He based that statement on rating bureau statistics that show 2009 earned premium of \$9.1 billion is close to 1993’s earned premium rate of \$8.9 billion when there were 2 million fewer covered workers.

“That’s a remarkably low figure for employers to be paying, especially when compared to the spike in general health care costs,” said Gerlach.

**Source: WorkCompCentral**

## With Staff Cuts, BOI Case Referrals Decline in Recent Years

Not only does the Division of Occupational Safety and Health Bureau of Investigations (BOI) have less time to investigate serious cases for possible referral to prosecuting authorities because of state-mandated furloughs, the bureau has been working with only half of its traditional staff levels. That's because it was not given authorization to fill two vacant positions until last August, and dated civil service examination lists delayed recruitment of qualified candidates.

These factors translated to 25 case referrals last year, according to the 2009 BOI report to the state Legislature. That's a 26% decrease from 2008, when 34 cases were referred, and 55% less than 2006, when 56 cases were referred. Compared to 2000 and 2002, when between 64 and 72 cases, respectively, were referred to district attorneys, the number is way down.

"Despite this major field staff reduction, the productivity achieved by Bureau field investigators reflects a rate of referrals for 2007 and 2008 that is higher than would be expected by a strict correlation of reduced Bureau staff for these years," DOSH told the Legislature. (BOI referred 47 cases in 2007.)

BOI in past years has had three field investigators in Northern California and five in the Southland, but in 2009 it had a supervising special investigator and two field investigators in Northern California, and just one field investigator in Southern California.

BOI directs accident investigations involving violations of standards where there is a fatality, serious injury or illness to five or more employees, or where it receives a prosecution request from DOSH's civil compliance staff. It also reviews all inspection reports on serious injuries or exposure, and has the authority to investigate cases where criminal violations might have occurred. BOI then refers the investigation results to the appropriate prosecuting authority.

Last year, BOI closed 132 cases for administrative reasons and another 29 after full field investigations due to lack of sufficient evidence or violative conditions. The bureau had 91 investigations in progress as of Dec. 31, 2009, and of the 25 cases it referred to prosecutors, 14 cases actually were filed for prosecution. The accompanying table lists 16 such cases, but BOI reports that two

cases were filed in 2008 that had not been reported.

BOI notes that since AB 1127 became law in 2000, which allowed prosecutors to charge safety and health cases as either misdemeanors or felonies (so-called "wobblers"), there has been a "significant increase in the number of criminal cases in which felony allegations have been filed." Of the 14 referred cases in 2009 that prosecutors filed, 10 were charged as felonies. The number has increased significantly since 2006, when three of 14 filed cases included felony allegations.

Among the cases prosecuted in 2009 based on a BOI referral was the conviction of Rick Whitall, who impersonated a Cal/OSHA inspector to shake down businesses in 2007. Placer County filed a felony complaint against Whitall last year for defrauding two Roseville restaurants, and in October 2009 a jury found him guilty. He was sentenced to 54 years to life, and a Fresno County conviction and sentence of 25 years to life and a Monterey County probation violation mean Whitall could face a final sentence of 97 years to life, BOI reports. **Source: Cal/OSHA Reporter**

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### **(HEAT SAFETY RULES— from page 1)**

ture, may implement alternative procedures for providing access to shade in instances where the employer can demonstrate that it is infeasible or unsafe to have a shade structure, or otherwise to have shade present on a continuous basis. Alternative procedures or cooling methods must provide equivalent protection and can include methods such as misting machines.

"The amendments adopted today represent important measures to clarify and strengthen the heat illness prevention standard," Cal/OSHA Chief Len Welsh stated in a press release.

The Office of Administrative Law now has 30 business days to review and approve the modifications, which are expected to take effect this fall.

**Source: Cal/OSHA**

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