



# Safety News

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

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## WCIRB: Formula Changes Lead to Lower Ratings

Recent changes to California's experience rating formula has resulted in most policyholders receiving lower ratings, the Workers' Compensation Insurance Rating Bureau said in a press release in early December.

The WCIRB's analysis of 2010 experience modifications already issued show the majority of experience-rated policyholders are seeing lower X-Mods than would otherwise be the case because of the formula changes.

Fewer than 40% are seeing an increase, however, as noted in the filing, roughly 6% of experience-rated policyholders are seeing increases in their experience modifications of between 11 and 20 points, and 2% are seeing increases of more than 20 points due to these formula changes. The small number of policyholders experiencing large increases are generally employers with worse-than-average underlying loss experience. Insurance Commissioner Steve Poizner approved several changes to the experience rating formula Nov. 9, including updated credibility values and a revised mechanism for segregating claims into their primary and excess components.

To review the WCIRB announcement, go here: [https://wcirbonline.org/wcirb/wcirb\\_wire/2009/2009\\_15.html](https://wcirbonline.org/wcirb/wcirb_wire/2009/2009_15.html)  
Source: WCIRB

### IN THIS ISSUE

WCIRB: Formula Changes Lead to Lower Ratings

DIR's Public Works Training Seminar

What You Need to Know About New Changes to the Ex Mod Formula

and more....

## DIR's Public Works Training Seminar:

*Helping to Build California's Future through Public Works Construction*

The California Department of Industrial Relations (DIR) has announced the fourth in a series of public meetings focusing on Public Works construction projects in California. This educational seminar is designed to help those working in public works construction understand the laws pertaining to the use of public funds. This seminar will have a greater level of information for contractors than past seminars and will kick off with a presentation on the availability of new federal and state stimulus finds for public works.

"By investing and leveraging billions of dollars in the state's infrastructure over the next 20 years, California can create vibrant economic growth, improve the environment and ensure our infrastructure will accommodate future generations," said Director John C. Duncan.

**What:** Department of Industrial Relations Holds Fourth Public Works Training Seminar for California's Construction Industry

**Who:** Public Works experts from DIR  
US Dept of Labor representative

**When:** Thursday, January 21, 2010

**Where:** Orange County Hilton  
3050 Bristol Street  
Costa Mesa, California

**Why:** To train the regulated public works community about critical issues affecting use of public funds in construction.

### Background

*(PUBLIC WORKS SEMINAR — continued on page 4)*

## "Ex" Marks the Spot: What You Need to Know About New Changes to the Experience Modification Formula

*By State Compensation Insurance Fund*

Changes to the California Experience Rating Plan may make a difference in the premium you will pay in 2010 and beyond. Insurance Commissioner Steve Poizner recently approved revisions to the formula for calculating experience modifications (ex-mods). As California's workers' compensation expert and your association's business partner, State Fund wants to help you learn more about what to expect.

The changes, applicable for ex-mods with rating dates on or after January 1, 2010, will not impact the ratings of all employers in the same way. The degree of change for an individual employer attributable to the revised formula will largely be determined by the number and size of losses and the employer's payroll. Most employers will experience a change of a few percentage points under the new methodology. However, greater changes are possible, with larger employers the least af-

*(CHANGES—continued on page 3)*



## CISC

Contractors Insurance  
Safety Council

Group 44 Program

### Participating Exchanges

#### Valley Builders Exchange

Modesto—Chapter 12

Karen Bowden, Executive Director  
Phone 209/522-9031

#### Kern Co. Builders Exchange

Bakersfield—Chapter 16

Tom Hartnett, Interim Executive Manager  
Phone 661/324-4921

#### Southern California

Builders Association

Whittier—Chapter 17

John Troccoli, Insurance Administrator  
Phone 909/792-9190

#### Santa Maria Valley Contractors Association, Santa Maria—Chapter

27/29

Robin Hayhurst, Executive Director  
Phone 805/925-1191

#### San Luis Obispo County Builders Exchange. San Luis Obispo—Chapter 28

Leslie Halls, Executive Director  
Phone 805/543-7330

#### Builders Exchange of Merced Mariposa

Merced—Chapter 30

Bernice Vigil, Manager  
Phone 209/722-3612

#### Santa Barbara

Contractors Association

Santa Barbara—Chapter 32

Karin Perissinotto, Executive Director  
Phone 805/884-1100

#### Tulare Kings Builders Exchange

Visalia—Chapter 38

George Elam, Executive Director  
Phone 559/732-4568

[www.ciscgroup44.org](http://www.ciscgroup44.org)

## Are Back Belts Effective?

Although many workers swear by back belts, claiming these devices help prevent lower back injury and pain, neither OSHA nor NIOSH tout the use of back belts. They say there are no good data showing that back belts prevent injury.

While OSHA does not prohibit the use of back belts, it doesn't encourage their use, either. OSHA safety experts say that there is simply no reliable proof to support the effectiveness of back belts in the prevention of lower back injuries.

NIOSH, which has conducted extensive studies on the issue, concurs. NIOSH maintains there is insufficient evidence to require, or even recommend, the use of back belts in the workplace.

### Workplace Study Discounts Belt Value

To examine the effects of back belt use on back injuries in the workplace, NIOSH conducted a large research project among material handlers in the retail industry. The study, published some years back in the *Journal of the American Medical Association*, found that elastic support back belt use was not associated with reduced incidence of back injuries or lower back pain.

Findings from the NIOSH study include the following:

There was no statistically significant difference between the rates of back injuries among workers who wore back belts every day and workers who never wore back belts or wore them no more than once or twice a month.

There was no statistically significant difference between the incidence of self-reported back pain among workers who wore back belts usually every day (17.1 percent) and the incidence of self-reported back pain among workers who never wore back belts or wore them no more than once or twice a month (17.5 percent).

There was no statistically significant difference between the rate of back-related workers' comp claims in stores requiring the use of back belts and the rate in stores where back belt use was voluntary.

A history of back injury was the strongest risk factor for predicting either a back-injury claim or reported back pain among employees, regardless of back-belt use. The rate of back injury among those with a previous history of back pain was nearly twice as high as the rate among workers without a previous history of back pain.

Even for employees in the most strenuous types of jobs, comparisons of back injury claims and self-reported back pain failed to show any differences in rates or incidence associated with back belt use.

### Other Research

However, a different result conclusion was reached in a laboratory evaluation conducted around the same time that examined human motion effects of the same back belt used in the material handlers study. The lab study found that the use of a back belt when lifting boxes significantly reduced the distance of forward spine bending

(**BACK BELTS**—continued on page 4)

# Planning a Cal/OSHA Appeal? Better Copy This Decision

The Cal/OSH Appeals Board has been criticized for dismissing Division of Occupational Safety and Health (DOSH) citations, sometimes in serious cases, on technicalities. But sometimes employers pay the price for not paying attention to details. One such case landed in the California Court of Appeal, which upheld the board's rejection of petition for reconsideration after it affirmed three citations (including two for serious violations) and \$15,600 in penalties because the employer failed to include copies of the citations with its appeal.

The case, *Murray Company*, was decided by California's Second Appellate District in Los Angeles. A Superior Court judge previously denied the company's appeal.

After Murray was cited, it appealed by sending in the requisite forms but neglected to include copies of the citations. The Appeals Board notified the firm and gave it 10 days to comply with the requirement, but Murray did not submit the copies until it filed for reconsideration.

That petition stated that as a lay person, the employer's representative failed to include the citations because he misunderstood the appeal process, which should be considered "excusable neglect," referencing Code of Civil Procedure §473. The board rejected that argument, pointing out that information included with the citations Murray was issued provided "explicit instructions" about filing an appeal.

Murray's safety director, who filed the documents, said he did not understand that DOSH and the Appeals Board are two separate entities, and thought the requirement referred to another document.

The employer's failure to read the appeal filing documents thoroughly enough to understand the requirement to send copies of citations to the board "does not constitute the requisite degree of care," the board held.

The appellate court cited precedent that defers to the board's expertise that "entitles its interpretation of the statute or regulation to be given great weight unless it is

clearly erroneous or unauthorized."

Murray argued that the board, which at the time of the petition decision was composed of only two members, exceeded its powers in denying reconsideration because only a three-member panel can act as a board. The appellate court rejected this argument.

As to the contention that the board should have applied the doctrine of excusable neglect, the court concluded that Murray "is mistaken." California Labor Code §6617, which governs Appeals Board reconsideration, takes precedence over CCP §473, the appeal court ruled. "The record discloses ample evidence that appellant did not submit copies of the citations, despite repeated warnings that appellant was obligated to do so to avoid a dismissal of its appeals," the ruling states.

Murray also argued that the board was obligated to apply the "doctrine of substantial compliance" because the policy of the law is to favor, whenever possible, a hearing on the merits. Murray said its failure to submit copies of the citations was a "minor irregularity" and the timely filing of the appeal forms and other documents should have sufficed.

"We disagree," the appellate court said. The Division and board are separate entities, and the citations frame the issues on appeal. "Because the citations are critical to proceedings before the board, we discern no error in the board's ruling that appellant's failure to provide the citations was fatal to its appeals."

## Bottom Line

This case demonstrates the importance of carefully reviewing and understanding the procedure for appealing a decision by an administrative agency. Even if your appeal has merit, it won't be considered if it lacks the necessary paperwork.

*(Murray Company v. California Occupational Safety and Health Appeals Board, B212674, Second Appellate District, Division Four)*

## (CHANGES—continued from page 1)

fected.

### What Is Changing—and Why

At the request of Commissioner Poizner, the Workers' Compensation Insurance Rating Bureau (WCIRB) formed a task force to examine the ex-mod formula in 2007. The group set out to enhance the ex-mod's predictive value and make it easier to understand, so that employers would more strongly perceive their ex-mod rating as an incentive to manage a safe workplace.

For 2010, the methodology used for splitting actual losses into Primary and Excess components has been changed to the "single split" model used in many other jurisdictions. The first \$7,000 of every loss will be considered primary. According to the WCIRB, this change will improve the predictive accuracy of the Experience Rating

Plan by approximately 12 percent and is intended to better reflect two statistical tendencies:

- The incidence of claims is more predictive of an employer's future losses than the actual size of a given claim, which could be driven by factors beyond an employer's control. In other words, claims frequency matters more than claims severity.
- The loss experience of a large employer tends to be more predictive of future losses than that of a small employer.

### Projecting the Impact

Each employer's situation is unique, however, and it is impossible to predict the exact outcome without doing the math. If you have any questions about the Experience Rating Plan, please contact your State Fund group representative.

(**BACK BELTS**—continued from page 2)

and the velocities of forward and backward spine bending.

These results would seem to indicate that back belts might do some good after all. Unfortunately, the findings were not tested in the workplace and didn't examine the association between back belt use and back injury or back pain. So this study does little to refute the views of OSHA and NIOSH concerning back belt use in the workplace.

### What's Better Than Belts?

Whichever side of the back belt issue you come down on, however, one thing is certain. Nothing replaces effective safe lifting training when it comes to preventing back injuries and back pain. Employees who are trained in proper lifting techniques can avoid injuries and don't need to wear a back belt to do it.

Source: *BLR Safety Daily Advisor*

(**PUBLIC WORKS SEMINAR**— from page 1)

The seminar holds importance because billions of dollars in federal stimulus funds will be available for public works construction in the coming years. With this funding, thousands of new and renovated classrooms will be built throughout the state, transportation construction projects will begin to reduce congestion of goods and traffic, and work on dozens of critical levee improvements is already underway.

This seminar, open to all interested parties, addresses public works legal requirements and opportunities. Training sessions include:

- The availability of new Federal and State stimulus funds
- How contractors can locate and understand prevailing rates
- Apprenticeship requirements
- How prevailing wage requirements are enforced
- The administrative review process

The seminar was developed to complement Governor Schwarzenegger's comprehensive Strategic Growth Plan to address California's critical infrastructure needs over the next 20 years.

For more information about this Public Works training session for contractors, go to: [www.dir.ca.gov/DACpw/](http://www.dir.ca.gov/DACpw/)

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## Audits: Dual-Wage Classes and Time Cards

California created the dual-wage system for 19 construction industry classifications to provide a more equitable premium distribution. Under the system, construction industry employers may pay lower premium rates for workers whose hourly wages are above certain thresholds. Qualifying for the high-wage, low-rate classes requires accurate, verifiable record-keeping.

In accordance with a rules clarification last year by the Workers' Compensation Insurance Ratings Bureau, construction records must clearly show distinct information for each employee, including:

- Daily start and stop times on time logs.
- Hours worked.
- Job duties and type of work performed.
- Wage rates or salary.

State Fund payroll auditors will review these logs during your premium audit. Without clear verifiable records on hours, duties, and wages, the auditor will assign all construction payroll into the appropriate low-wage, high-rate classifications.

For your own protection, it is important to fill out the payroll report as accurately as possible. If an employer does not maintain separate records for each classification, and the end-of-year audit cannot determine the correct classifications, the higher-rated classification will apply.

Employers can benefit from any lower-rated classifications for which they qualify. With good record-keeping habits, streamline the audit process, save premium dollars, and reduce the possibility of unexpected premium owed at the end of the policy period.

Source: *State Compensation Insurance Fund*