



Safety News

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

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Democrats Revive Independent Contractor Withholding Plan

Business groups throughout the state are opposing a Democratic leadership proposal to require companies to withhold 3 percent of their payments to independent contractors and turn that money over to the state.

The proposal, which could generate up to \$2 billion in one-time revenues for the state, first surfaced last year, but was vetoed by Gov. Arnold Schwarzenegger during budget negotiations. Now, it has reappeared in the state Senate Democratic Caucus budget proposal, and business groups fear it could squeak through.

The state Franchise Tax Board estimates the withholding tax would raise between \$1.5 billion and \$2 billion during the first year for the state, but much less in subsequent years as refunds would be paid back to independent contractors.

But in that first year especially, the tax would represent a hit to the cash flow of independent contractors, especially those in low-margin industries.

The withholding proposal would affect thousands of businesses and hun-

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Bill Seeks to Raise DWC Accountability on Assessments

Two California state lawmakers have introduced a bill that would give stakeholders more say in the annual assessments levied on employers to fund the state Department of Industrial Relations and its Division of Workers' Compensation.

AB 2423, authored by Assemblyman Roger Niello (R-Fair Oaks) would strike the current exemption the Department of Industrial Relations (DIR) has from the Administrative Procedures Act when setting assessments and require regulators to hold public meetings to gather input from employers, insurers, medical providers and injured workers. As with other forms of rulemaking, public notices would have to be issued and public comments received and responded to before making a final decision.

The bill was one of hundreds introduced on the last day for submitting proposed legislation in the current session. The bill's co-author is Assemblyman Jose Solorio (D-Santa Ana) chairman of the Assembly Insurance Committee.

"AB 2423 will ensure that the state is listening to the employees and employers that are directly impacted by the state's administration of this system," Niello said. "Our goal is to craft a bill that will be supported by all stakeholders and lead to a more efficient and responsive Division of Workers' Compensation."

The proposal follows a nearly 37% increase in 2010 assessments. In November, the Division of Workers' Compensation (DWC) issued invoices for a total of \$426.8 million from all California employers, up more than \$115 million from the \$311.7 million assessed last year.

DWC bills self-insured employers directly and insured employers through their insurance companies. Insurance companies are required to advance the money to the state and recover it through assessments on policies.

Along with money to pay for the operations of the DWC, the assessments also cover funding for the California Division of Occupational Safety and Health and the California Department of Insurance's Fraud Assessment Commission. Also, for the first time, the 2010 assessments include a levy to pay for operations of the Division of Labor Standards Enforcement.

"At this point it's nearly half a billion dollars. That's a lot of money. If they're going to take nearly half a billion dollars, ostensibly to relieve the state budget, we feel they should listen to their customers about the quality of the system and how it's working," said Jason Schmelzer, chief lobbyist for the California Workers' Compensation Coalition (CWCC), which sponsored the bill.

Reducing future assessments is not a primary motivation for the bill, said Schmelzer. He said many employers would be willing to pay more, provided the money was used to target specific issues, such as reducing the time needed to get disability ratings finalized.

Schmelzer said the DWC has been responsive to employers and other stakeholders in the past, but thinks the process of setting annual funding could be improved by additional communication.

"The division should welcome this bill. We could help them identify problems and solutions to problems that they may not have thought about. In doing so, we could help them save money and not only build a system that's more responsive to stakeholders but that works better," he said. "This provides us with another oppor-

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OSHA's 7-Step Training Guidelines

Is your safety training program all it could be? Have a look at OSHA's guidelines for setting up and conducting effective, compliant training.

Step 1. Determine if training is necessary. How do you know what training is necessary—or whether training is needed at all? Before you can answer that question, you have to ask yourself:

Does an OSHA regulation or other law mandate safety training?

Has there been an increase in workplace accidents recently?

Are new processes, procedures, equipment, or substances being introduced into the workplace?

Are employees performing certain jobs getting injured at a higher rate than other workers—for example, a high rate of back injuries among material handlers?

Are hazardous operations conducted in the workplace, such as those involving hazardous chemicals or hazardous equipment?

Training best addresses problems such as:

Lack of knowledge

Unfamiliarity with equipment or substances

Incorrect performance of a particular task

Step 2. Identify training needs. Once you know that training is necessary for certain needs and problems, you have to figure out what the training should accomplish.

OSHA says that if training is to familiarize employees with something new (a new piece of equipment, a recently introduced hazardous substance), you should gather all the information you can find about the issue—for example, operation manual, engineering data, MSDS, and any applicable OSHA standards. From these sources, you can pinpoint the information employees will need to know to work safely.

If the training deals with an existing job—such as the operation of a complicated stamping machine—you can conduct a job hazard analysis and determine where risks can be reduced or eliminated.

As for who needs training, OSHA says to train:

Employees who are required to be trained by OSHA regulations

Employees who may face particular hazards on the job

Employees who may reasonably be expected to be assigned to a job that requires safety training

Supervisors of these employees

Technical supervisors or technicians who work in potentially hazardous areas

Step 3. Identify goals and objectives. What should training accomplish? OSHA emphasizes that safety training goals should be absolutely clear and put into written, action-oriented, specific language. An objective such as "being able to use a fire extinguisher" is too vague. A stronger objective is: "An employee will be able to tell where the fire extinguishers are located, which classification to use for which types of fires, and demonstrate how to operate a fire extinguisher safely."

Step 4. Design learning activities. The best training uses interactive
(**GUIDELINES**—continued on page 3)

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tunity to say we have an issue we'd like taken care of. And it also gives them an opportunity to say, 'So, do you want to pay for it?'"

Several industry leaders said increased transparency in determining assessments should improve the system.

"It would seem to me that opening the process up, subjecting the assessments to the regulatory process, is a good thing. It provides for public participation and scrutiny," said Steve Suchil, assistant vice president of state affairs for the American Insurance Association's western region.

"Holding people accountable who are spending the money should be a fundamental part of government," said William M. Zachry, vice president of risk management for the Safeway Inc. grocery chain. "The question is, would EAMS have been done if there was more public input before it became a \$70-million problem? Maybe not."

Zachry was referring to the Electronic Adjudication Management System, a "paperless" computer system launched by the DWC that has failed to reduce the amount of paperwork and caused a backlog of case files that must be manually scanned into the system.

Philip Millhollon, executive director, California Self-Insurers Association, and Jerry Azevedo of the Workers' Compensation Action Network both pointed to the way DWC assessment invoices are issued in late fall with little advance notice of how much is being raised.

"We need more accountability rather than an invoice at the end of the year that says: 'Here's what you're going to pay,'" Millhollon said. "If you're running a business you have to justify your budgets."

Adam Dombchik, president of the California Applicants' Attorneys Association, worries that too much industry involvement could hurt the system and, ultimately, injured workers.

"We need more accountability rather than an invoice at the end of the year that says: 'Here's what you're going to pay'"

"I am concerned that allowing assessments to go through an administrative process could possibly result in funding delays that could slow down the

system significantly," Dombchik said. "The administrative director's office is usually very open to hearing from stakeholders on issues about funding the system, so the proposal, on its face, would seem to be a waste of administrative resources."

Schmelzer of CWCC said he expects to meet with numerous people throughout the industry in the coming weeks to develop consensus before the final language of the bill is crafted. *Source: WorkCompCentral*

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tive learning activities that engage employees and are designed to resemble or simulate the actual job or situation. For instance, an appropriate learning activity for the example in Step 3 might be to have employees mark fire extinguisher locations on a floor plan and then demonstrate how to operate an extinguisher using the PASS technique.

In executing Step 4, remember to consider workers with special needs—such as hearing or visual impairment or those whose primary language isn't English—when planning the content and delivery of the training.

Step 5. Conduct the training. Think of the training session as an important meal. And like a memorable meal, its presentation must be as appealing as its taste. A successful session will have both "sizzle and steak"—style and content—with lots of participation, give-and-take, questions, examples, opinions, and enthusiasm from the trainer and trainees. To help achieve success, trainers may:

Provide an overview of the material to help trainees focus and pace themselves.

Explain why a subject is being covered.

Relate new information or skills to the trainees' own jobs and experience.

Personalize and customize the information with names and specifics: "If Sam here locked and tagged out the compressor and Gina took off the tag ..." "If Joe left a file cabinet open and Kathy tripped over it ..."

Reinforce training by continually summarizing objectives and key points.

The final point is critical, but all too often under-emphasized. OSHA requires that workers not only receive the training but also understand it. Make sure everyone "gets it" by rephrasing and summarizing at intervals during the session.

Step 6. Evaluate the program's effectiveness. After the training is finished, how can you tell if it has done any good? Receiving the training is not enough; employees must understand it and integrate it into daily practice. To evaluate whether this is happening:

Quiz employees on the material after each session.

Solicit opinions from the trainees through questionnaires or informal discussions.

Ask supervisors if they've noticed any changes in attitudes or practices.

Chart your company's accident reports and look for trends.

Step 7. Improve the program. If you find through testing, feedback, and observation that the training was not effective, it's clearly time to investigate further. Important questions to ask both trainers and trainees:

Was too much of the material already known?

Was any material confusing or distracting?

Was anything missing?

What did trainees learn, and what did they fail to learn?

Whether or not you need to make changes, be sure to document that the training has occurred. Be sure to include dates, meeting times, meeting places, and other specifics. *Source: BLR's Safety Daily Advisor*

Roofing Contractor Faces 3 Years in Prison for Defrauding State Fund

A Southern California roofing contractor has been convicted of failing to provide workers' compensation insurance for an employee who injured himself in a fall from a roof.

Michael Amzie Hollings, 41, of Murrieta, pleaded guilty to 16 felony counts related to perjury, filing false documents, tax evasion and making a false statement to discourage an injured worker from claiming benefits. Hollings is expected to be sentenced to three years in state prison and ordered to pay restitution at his sentencing June 25, according to the Orange County District Attorney's office.

Hollings, who owns So Cal Roofing, is accused of buying a minimum workers' compensation policy from the State Compensation Insurance Fund (SCIF) and failing to reveal that he employed subcontractors, paid workers in cash, hired unlicensed employees and leased employees from other companies.

One of Hollings' employees was injured March 18, 2003, when he fell off a roof, and subsequently filed a worker's compensation insurance claim. Hollings denied that the injured employee worked for him.

In 2004 and again in 2005 Hollings fraudulently signed under penalty of perjury that So Cal Roofing had no employees on documents filed with the California State Contractor's Licensing Board to make him exempt from securing workers' compensation insurance, prosecutors say.

Source: Orange County District Attorney

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dreds of thousands of workers.

Most independent contractors in California pay estimated income taxes each quarter, with 70 percent due by June. The proposed 3 percent withholding tax would come in addition to the quarterly estimated payments. If an independent contractor's tax liability is equal to or less than the estimated tax payments, then the contractor gets the 3 percent withholding tax back in a refund. If not, the state keeps whatever is owed and the contractor pays any additional money due on filing.

“Every year that we face these multibillion-dollar deficits, the options become fewer and fewer, and the odds increase that something like this will pass”

A wide array of business interests – including the state and local chambers of commerce, trade groups and contracting associations – convinced Schwarzenegger to veto the withholding tax proposal last year. But now, they are concerned.

“Every year that we face these multibillion-dollar deficits, the options become fewer and fewer, and the odds increase that something like this will pass,” said Marc Burgat, vice president of government affairs for the California Chamber of Commerce.

Examples of operations that will see money withheld from payments to them include: builders, painters, plumbers, real estate agents, insurance agents, computer programmers, accountants, automotive mechanics, attorneys, doctors and other health care providers, engineers, gardeners, janitors, security guards and entertainers.

As businesses, independent contractors pay more kinds of taxes than employees, such as self-employment taxes and local business taxes; pay income taxes throughout the year through quarterly estimated tax payments; and are subject to penalties for not paying or underpaying.

Because of recent budget agreements, independent contractors already must pay 70 percent of their taxes by June of each year for the next two years.

Democratic leaders have been pushing hard for the withholding tax, saying it's preferable to making deeper cuts in state programs.

Business groups counter that the withholding tax is really an interest-free loan from independent contractors to the state and that it won't address California's long-term budget deficit.