

The Insurance Watch

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Cal/OSHA Update

More Serious Violation Citations Likely

EMPLOYERS WHOSE workplaces are being inspected by Cal/OSHA need to remember one thing beginning this year with the newly enacted AB2774: don't hesitate to have an open dialogue with Cal/OSHA inspectors. Make the case that you have a safe workplace, especially if you don't agree with the conclusions made by the inspector.

Those taking that strategy will have a much better chance of saving time and money, say lawyers. Employers may manage to convince inspectors not to file a violation by demonstrating safety diligence. They may argue, for instance, that an investigation came as a result of an isolated, uncontrollable incident and doesn't warrant a citation.

Enacted Jan. 1, AB2774 is aimed at beefing up the ability of Cal/OSHA to get more serious workplace safety violations against employers – without fine reductions – past the Appeals Board. The result will likely be an increase in citations for serious violations from Cal/OSHA, particularly for injuries requiring stays of one day or more in hospital.

Still, despite allowance for more dialogue with inspectors, an employer's best defense against safety violation citations remains awareness of the rules and making any needed changes in worker safety and health programs.

The new law was written in the wake of criticism by Fed-OSHA that Cal/OSHA's safety inspection processes didn't have sufficient legal teeth to produce enough serious safety violations and handed out too many fine reductions.

The feds' conclusions came after a June 2009 letter from Cal/OSHA staffers to the Appeals Board, claiming the board's actions limited its ability to hold employers accountable for serious workplace injuries



in their work sites.

The new law eases the definition of "substantial probability," which the Appeals Board has historically interpreted to be an alleged safety violation that "more likely than not" would cause death or serious injury. The new interpretation is a more legally vague "realistic possibility that death or serious physical harm could result" from a cited workplace hazard.

But the law also broadens the legal definition of "serious physical harm," to mean any job-related incident that requires a worker to be hospitalized for anything more than observation, and which causes dismemberment, disfigurement or a physical disability.

This includes things like serious burns, crushed body parts, respiratory illnesses, broken bones and repetitive-motion injuries. This is much more specific than the generic definition of "serious physical harm" that had been used by the Appeals Board. Before, it was only defined as a serious injury or illness.

Another provision of the new law requires state safety inspectors for the first

time to make their own findings as part of filing a violation. That enables Cal/OSHA to use the testimony of its inspectors to make cases alleging serious violations. Those findings include how well employer training keeps employees away from workplace hazards, how well the employer dis-

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CONTACT US

Whitman Samuelson
INSURANCE SERVICES, INC.

If you have any questions regarding any of these articles or have a coverage question, please contact us.

1012 Clegg Court
Petaluma, CA 94954
Office: 707.794.8701
Fax: 707.794.8707
E-mail: info@whitman-insurance.com
License No.: 0273555

Emergency Preparedness

Is Your Business Ready for an Earthquake?

THE MASSIVE 9-magnitude earthquake that struck off the coast of Japan, causing widespread damage, is a jolting reminder that a major quake could come at any time. Being prepared for an earthquake is a good investment in your business. At least one-fourth of all businesses that close because of a disaster never reopen, mostly because they are unprepared.

Start preparing a business continuity plan to ensure core functions and key personnel are identified and to ensure normal operations are resumed quickly. The Institute for Business and Home Safety offers free planning tools (www.disastersafety.org). This website also has an "Is Your Business Ready?" questionnaire to help you determine how well prepared you are to respond to a major earthquake.

Help get your employees involved by promoting individual preparedness by doing the following:

- Distribute information and offer training for all employees on individual and family preparedness.
- Create a list of phone contacts for all your employees, with an out-of-area contact.
- Maintain individual 72-hour "comfort kits" in the office.

Next, conduct a hazard assessment of your workplace. Take steps to reduce potential impacts such as loose shelving, remove heavy items from top shelves, secure cabinets with breakables in them, and secure wall art and inventory to avoid damage to the products or injury to staff.

Develop and test emergency evacuation and create a shelter in a place at your business where you can house employees or customers if necessary. Make sure you have one for each of your business locations.

Develop a communication plan to implement following a quake. Make sure you have a list of key contacts – personnel, vendors and suppliers, etc.

Take steps to protect vital records. There are many vendors who provide off-site storage of data. Ask your peers for recommendations or check with your independent insurance agent, who may have access to business recovery vendors.

Earthquake Insurance

Review insurance coverage on an annual basis to ensure you have adequate coverage to meet your risk level. Earthquake insurance is not covered under a standard business insurance policy. Similar to flood insurance, earthquake insurance usually must be purchased separately.

Earthquake insurance typically covers the cost of repairs to property damaged in a quake. Coverage is usually available for earthquake damage in the form of an endorsement to a business insurance policy. There may be coverage for fire following a quake.

These losses could involve claims for business interruption, and additional living expenses as well. Cars and other vehicles are covered for earthquake damage under the comprehensive part of an auto insurance policy.

Planning Ahead Is Essential

THE BEST way to prepare your company for the after-effects of an earthquake is to create a business continuity and disaster-response plan. When creating your plan, consider the following:

- ▶ Determine what parts of your business need to be operational as soon as possible following a disaster, and make a plan for how to resume those operations.
- ▶ Create a disaster-response plan to help ensure the safety of your staff. This should include how you and your employees can take care of yourselves until help arrives.
- ▶ How will you communicate with your employees if a disaster happens during work hours? How about after work hours?
- ▶ Can your building withstand the impact of a natural disaster, and are your contents and inventory sufficiently protected? If not, what can you do to boost protection?
- ▶ Ensure that your vital records are protected from the harm that could be caused by a disaster. You could arrange for off-site back storage for your company data.
- ▶ Devise a plan of action for business if your suppliers cannot deliver, your markets are inaccessible, or basic needs (e.g., water, sewage, electricity, transportation) are unavailable?
- ▶ Do you have plans for how to stay open for business even if you cannot stay in or reach your place of business?
- ▶ Find out what type of plans your community, public officials and other businesses have in terms of disaster preparedness. Your local municipality should have disaster plans with which you can coordinate.
- ▶ Have you consulted with an insurance professional to determine if your coverage is adequate to help you get back in business following a disaster?

Business owners should calculate the full sum it would take to repair or rebuild their small business in the event of an earthquake. They should consider the full range of costs, from engineering requirements for rebuilding office space to inventory storage while repairs are being done to the building.

Coverage for other kinds of damage that may result from earthquakes, such as fire and water damage due to burst gas and water pipes, is provided by standard business insurance policies. Cars and other vehicles are covered for damage by comprehensive insurance which also provides protection against flood and hurricane damage as well as theft.

Earthquake insurance carries a deductible, generally in the form of a percentage rather than a dollar amount. Deductibles can range anywhere from 2% to 20% of the replacement value of the structure.

Premiums also differ by location, insurance company and the type of structure that is covered.

Generally, older buildings cost more to insure than new ones. Wood-frame structures benefit from lower rates than brick buildings because they tend to withstand quake stresses better.

Regions are graded for likelihood of quakes, and this may be reflected in insurance rates offered in those areas. ❖

Accident Prevention

Don't Forget a Cell Phone Policy in Your IIPP

DRIVING IS the most dangerous work activity that most people do. Research indicates that about 20 people are killed and 250 seriously injured every week in crashes involving someone who was driving, riding or otherwise using the road for work purposes.

Remember that occupational health and safety laws also apply when employees are driving on company time, and as a result the risks should be effectively managed and addressed in your Injury and Illness Prevention Plan. But one area that you may have overlooked is the use of mobile phones while driving.

A substantial body of research shows that using a hand-held or hands-free mobile phone while driving is a significant distraction, and substantially increases the risk of the driver crashing. High-mileage and company-car drivers are more likely than most to use a mobile phone



SAY WHAT? Drivers are more distracted than ever, particularly since the advent of smart phones.

while behind the wheel.

Drivers who use a hand-held or hands-free mobile phone:

- are less aware of what's happening around them
- fail to see road signs
- fail to maintain proper lane position and steady speed
- are more likely to 'tailgate' the vehicle in front
- react more slowly and take longer to brake
- are more likely to enter unsafe gaps in traffic
- feel more stressed and frustrated.

Research indicates that they are also four times more likely to crash, injuring or killing themselves and/or other people.

To limit the risks of injury or worse to both employees and innocent bystanders, you need to implement a strong policy addressing cell phone use for your mobile workers. There are good business reasons to do so.

There are also good health and safety reasons for lone workers and staff who travel in areas where summoning help (if they break down, for example) may be difficult. A safety policy is enforceable, fair and realistic, you should include input from your mobile employees and managers to ensure you can feasibly implement and enforce the policy. Some key features of your policy could be:

- **Safe-driver course** – If your employees are using company vehicles, you should require that they complete a driver safety and defensive-driving course first. Safety courses typically include demonstrations related to driver distraction from cell phone usage. This can be a real eye-opener for drivers that might never have seen the devastation caused by vehicle crashes first-hand.

- **Post warnings in all company vehicles** – Post notices stating that cell phones should not be used while driving, but if employees have to make an emergency call, that they should either let the passenger make the call or they should pull over to make it.

- **Use of headsets** – The relative safety of using a hands-free device cannot be overstated, particularly if it has voice dialing. Answering incoming calls on hands-free devices is usually easier than dialing. So you may want to allow your mobile employees to use hands-free devices when on the road. While providing them with a hands-free device won't ensure that a worker isn't distracted by a phone conversation, such devices have been shown to reduce distraction.

- **Answering services or call forwarding** – If employees aren't using a headset, you should require them to have their calls forwarded to their voice mail or the company operator for message taking.

- **Require accountability** – To ensure your employees know you mean business, you could require them to be responsible for any fines or additional vehicle operating costs that are related to traffic violations incurred due to handset usage while driving.

- **Shutting off the phone** – You could even consider requiring employees to shut off their mobile phone when driving. That way there is no chance they will be distracted by the phone when behind the wheel.

- **Ban the phones altogether** – If you want the ultimate in safety and to ensure limited liability on your part, particularly if an employee's cell phone usage results in an accident, you could make the ultimate decision to implement a total cell phone ban. But this does carry some risk, as the employee would not be able to call emergency responders or your company in case of an accident or emergency. This should be a last resort, but you could institute it if you have employees that continually disregard the phone policy.

Raising awareness

As part of recruitment, training and staff appraisal, ensure that drivers and line managers are reminded about:

- the dangers of using a hand-held or hands-free mobile phone while driving
- the organization's policy on mobile phone use
- the need to go to voice mail, or to switch the phone off while driving, and to stop in a safe place to make or receive a call
- the dangers of checking messages while driving, and that good communication can easily be maintained without using a phone while behind the wheel
- the importance of line managers not expecting staff to make or receive calls when driving
- the legal, financial and bad PR consequences that could result from using a mobile phone while driving. ❖

Guide Helps Businesses Boost Cyber-security

AS CYBER-CRIME continues increasing, the U.S. Chamber of Commerce has published a new guide to help business owners, managers and employees identify cyber-threats that could compromise a company's network.

The free guide, "Internet Security Essentials for Business", aims to educate businesses about fundamental Internet security practices to reduce network weaknesses and susceptibility to hacking. It provides advice on how to best prepare your network and your staff to ward off hacking, inexpensive practices to improve security and how to report cyber-crimes.

There are a number of threats to a company's network security, not all of them criminal:

- **Hacking and malware.**
- **Lost or stolen physical storage media.**
- **Insider threat.**
- **Accidents and natural disasters.**



Annual cyber-crime complaints increased 668% between 2001 and 2009, according to the Internet Crime Complaint Center, a joint operation of the FBI and the National White Collar Crime Center. Law enforcement authorities received 336,655 cyber-crime complaints in 2009, up substantially from 275,284 in 2008 and 206,884 in 2007.

Losses from all cases of crime referred to law enforcement totaled \$559.7 million in 2009, a 112% increase from \$264.6 million in 2008.

The guide lays out step by step how to implement a program that encompasses your entire organization through:

- **Educating your employees.** Advise staff to think before sharing sensitive business or customer information, not click on links or buttons in pop-up windows, learn how to recognize e-mail hoaxes and bogus websites, and turn on pop-up blockers.

- **Designating a person to handle security and preparedness.**

This person should determine which information requires protection and maintain an inventory of the computer equipment needed to fulfill critical business functions in case of a disaster.

- **Using strong passwords.** Strong passwords that include a combination of numbers, capital and lower case letters and symbols are considerably harder to crack, even with the latest password-cracking software.



- **Controlling network access.** Consider creating a system administrator account. Limit access to this account to one or two people at the most. This way you can monitor all Internet traffic and control who has access to your network. You can also manage any media downloaded or installed onto your computers.



- **Organizing data.** Know where it is stored and prioritize by level of importance. Define information type by level of security. Create a table for all your business information types and list where they are stored. Think about personnel records, blueprints, tax forms, customer orders, credit reports and customer payment records. These all require protection.

- **Identifying digital and physical locations of business data.** Being aware of the information that's present within your business, which employees have access to it, where it goes, and whether it is connected to the Internet – which increases its chances of being stolen or corrupted – is critical to its protection.

- **Data separation.** Consider what data can be separated or segmented on the network or put on a stand-alone computer so that it's not immediately and easily accessible to those with bad intentions.

- **Keeping software current.** Download updates when they become available.

- **Firewall.** Activate a firewall on all company computers.

- **Use policy.** Establish an acceptable policy for information resources and IT systems that includes what data is sensitive and cannot be shared externally.

- **Response plan.** Fast and efficient responses can lead to quick recovery, minimize damage and help prevent future incidents. A plan could include taking infected computers out of service, notifying partners with whom you connect and notifying law enforcement when appropriate.

The full report can be downloaded at: www.uschamber.com/issues/technology/internet-security-essentials-business ❖

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Employers Have Right to Make Their Voices Heard

covers and corrects a hazard, and the key here for employers, any information an employer wants to provide on the matter, including assertions as to why a violation has not taken place. The new law encourages Cal/OSHA to submit to the employer a form that lists the alleged violations at least 15 days before issuing a citation. Courts will now expect the forms which include employers' written defense against alleged violations.

Employers can claim in their defense that there was no way for them to know the existence of an alleged violation and that

they took the reasonable steps needed to prevent one from happening. And they can claim they did all they could to keep employees away from a hazard cited in an alleged violation.

Attorneys say, however, it will be difficult for an employer to prove it took all reasonable preventative steps and eliminated employee exposure as soon as the violation was discovered.

To help win their cases, legal analysts say employers may need expert witness testimony to argue against testimony of Cal/OSHA inspectors. ❖