

The CoreMark Report

TOP 10 LAWS/REGULATIONS

Host of New Laws Affecting Businesses in 2017

AT THE START of every year, a raft of new laws and regulations that affect businesses take effect and companies that fail to stay on top of the changes may end up being fined, cited or sued for not following them.

We know it's hard to keep track of all of the changes, so in this article we look at the top 10 changes for 2017 that you should be aware of.

1. Owners/officers exemption

A new law has changed who in an organization can be excluded from workers' comp coverage.

Going forward, only owners and officers who own at least 15% of a company can claim an exemption from workers' compensation coverage in California.

Any company that claims this exemption was required to submit waivers to their insurer by Dec. 31, 2016 for each officer/owner who is exempt.

2. New overtime laws or not?

Department of Labor regulations that were set to hike the white-collar overtime exemption salary threshold to \$47,476 starting Dec. 1, 2016 were put on ice by a federal judge in Texas in late November.

For now, the current \$23,660 annual salary threshold will remain – but that could change with short notice.

The big wildcard is what President-elect Donald Trump will do, as many pundits expect he will scrap the regulations.

3. New X-Mod regimen

California has new rules for calculating employers' experience modifier – or X-Mod.

The Workers' Compensation Insurance Rating Bureau has replaced its static "split-point" experience rating system, in which an employer's actual workers' comp losses are divided into actual primary losses and actual excess losses below and above a \$7,000 threshold.

Under the new system, the Rating Bureau will use a variable split-point system that gives more weight to claims frequency than claims cost. This change is expected to limit the impact of one large claim on an employer's (particularly a small business's) X-Mod.

At the same time, an employer's X-Mod would be more affected by claims frequency.

4. ACA questions

With Trump's and the Republican-led Congress's promises to repeal the Affordable Care Act, all the rules that have been created for the landmark law are now in doubt.

While Republican leaders in both the House and Senate have promised to repeal the ACA as well, it's not clear how far they will go and what they would replace it with.

Trump has said he wants to eliminate public insurance exchanges and the individual mandate, but he has not touched on the employer mandate.

For now, continue following the law and wait for further news as Congress and the next president act.

See 'Deadline' on page 2



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New Deadline for Certain ACA Reporting Documents

5. Minimum wage climbs

Effective Jan. 1, 2017, the California minimum wage for businesses with more than 25 employees is \$10.50 per hour, against \$10 previously. This is another step toward a \$15 per hour minimum wage on Jan. 1, 2022.

6. First aid rules reporting

New amendments to the California Workers' Compensation Uniform Statistical Reporting Plan require that even small, medical-only first aid claims be reported.

The Workers' Compensation Insurance Rating Bureau has always required that these small claims be reported, but the requirement has never been codified.

Effective Jan. 1, 2017, insurance companies are required to report to the Rating Bureau the cost of all claims for which any medical care is provided and medical costs are incurred – including those involving first aid treatment – even if the insurer did not make the payment.

Because the rules require insurers to report these claims, they will likely pass that requirement on to you, the policyholder. That will likely include requiring you to submit all first aid bills to them for payment, rather than paying for treatment yourself.

7. Marijuana is legal

Many businesses have become concerned about the legalization of marijuana in California, particularly how it affects their rights as employers to conduct pre-employment drug testing and dealing with employees who try to use pot on the job.

Fortunately, Prop. 64 included a number of safeguards for employers, allowing them to have anti-drug workplace rules in place. In fact, these safeguards were built into the initiative to the point that the California Chamber of Commerce took a neutral stance on the measure.

And despite California's medical marijuana laws, courts have said that employers are not required to allow patients to imbibe prior to or while on the job. Also, because it is still illegal under federal law, you can also bar employees from keeping marijuana, transporting it or selling it at work.

Just as you have rules against working while intoxicated from alcohol, you should have similar rules for pot.

GOOD NEWS: *While marijuana is now legal in California, employers can still have drug-testing and no-tolerance policies in place.*



REPORT SMALL INJURIES:

A new law requires you to report even small first aid claims to your workers' comp insurer.



8. New cellphone law

California already bars texting or talking on the phone without a hands-free device while driving, and now there's a new law that takes into account the many new uses of smartphones.

If you have any employees that drive on the job, you need to update your employee manual to reflect Assembly Bill 1785, which prohibits motorists from driving "while holding and operating" a hand-held wireless telephone or a wireless electronic communication device.

Because people use their phones now for more than just texting and talking – think interacting with apps, using Facebook or surfing the Net – the law needed updating.

But it authorizes a driver to operate a smartphone mounted on a vehicle's windshield like a GPS or on the dashboard or center console "in a manner that does not hinder the driver's view of the road," and if the driver can activate or deactivate a feature or function "with the motion of a single swipe or tap of the finger."

9. ACA document deadline change

The IRS extended the deadline for employers to distribute Affordable Care Act health insurance reporting forms to their employees to March 2 from Jan. 31.

This law only applies to applicable large employers as defined by the ACA (those with 50 or more full-time or full-time equivalent workers). The law requires those employers to distribute forms 1095-C (Employer-provided Health Insurance Offer and Coverage) and 1095-B (Health Coverage) to employees.

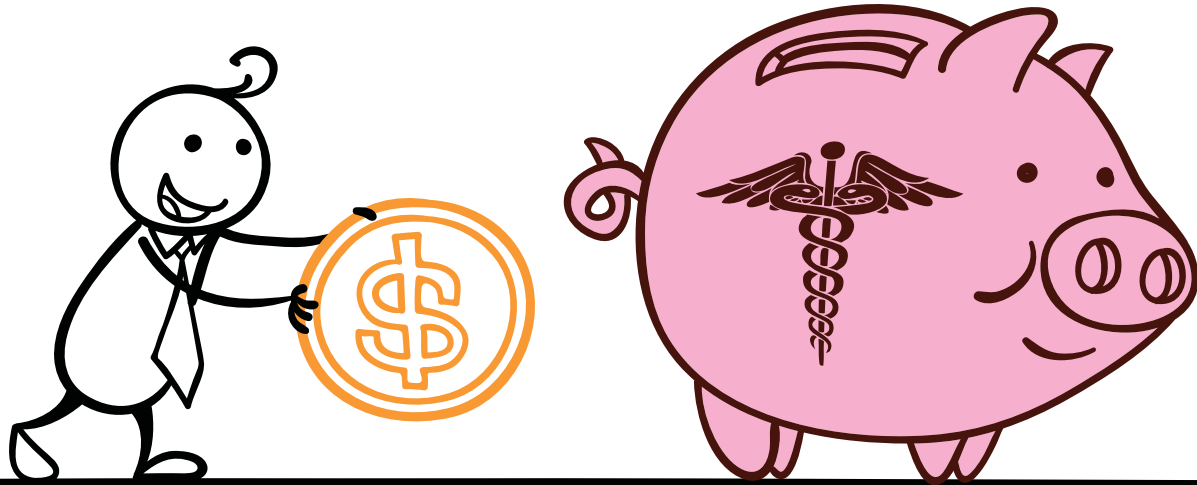
The deadlines for filing other ACA-related forms with the IRS have not changed.

10. Smoking in the workplace

There has been a loophole in the California law that prohibits smoking of tobacco products inside an enclosed place of employment, unless the only employee is the owner and operator of the business.

The new law expands the prohibition on smoking in all enclosed places of employment to all establishments of any size, including a place of employment where the owner-operator is the only employee. ❖

Small Employers Can Reimburse for Insurance under New Law



A NEW LAW allows employers with fewer than 50 full-time employees to reimburse their workers for health plans that they purchase on their own.

The law, which took effect Jan. 1, reverses an onerous IRS provision imposing a maximum \$36,500 fine on small employers found to have reimbursed an employee for health coverage that they purchased on the open market or a government-run health insurance exchange.

The fine still stands for applicable large employers, as defined by the Affordable Care Act, and only applies to small employers who are not required to purchase coverage for their employees under the law.

The new law creates something known as a qualified small employer health reimbursement arrangement – or QSEHRA – the vehicle through which employers would funnel the reimbursements.

Why is this important?

The IRS in late 2013 issued guidance that prohibited most employers from reimbursing employees who purchased individual coverage on the grounds that these arrangements violated a number of ACA provisions.

While the law was meant to keep employers that are required to purchase coverage for their employees (those with 50 or more full-time workers), it also covered small employers who are not required to buy coverage.

The new provisions, part of the 21st Century Cures Act, a sweeping law that covers the Food and Drug Administration approval process and a number of health initiatives, are meant to correct that inequity.

Employers that want to go this route will need to make some accounting and reporting adjustments to ensure they are in compliance with the new law.

The caveats

Employees that receive reimbursements from their employers would be required to report any such reimbursement to the insurance exchange. And receiving a reimbursement could make them ineligible for government subsidies to help pay for coverage on an exchange.

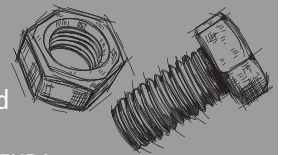
Even if the employee remains eligible for a subsidy, the amount of the subsidy will be reduced by the amount of funds available under the QSEHRA. This likely limits the attractiveness of a QSEHRA for many employers who might otherwise consider it.

Also, as a result of Donald Trump's election and Republican control of both houses of Congress, anything concerning the ACA could be subject to change quickly. ❖

HOW IT WORKS

The new law has a number of provisions:

- Small employers that are not considered applicable large employers under Code 4980H(c)(2) are permitted to offer a QSEHRA.
- The employer cannot offer a group health plan to any employee.
- Reimbursements are limited to \$4,950 for individuals and \$10,000 for families. The amounts are indexed to inflation and will increase over time.
- The QSEHRA must be offered on the same terms to all employees, although offers may vary depending on age and the number of eligible family members.
- The employee must purchase minimum essential coverage, as defined by the ACA, and provide proof to the employer.
- The reimbursement will not be subject to income taxes.
- Employers will have to report the reimbursements on W-2 forms.



Indoor Heat Illness Prevention Standard on Tap

LEGISLATION SIGNED into law by Gov. Jerry Brown will expand Cal/OSHA's heat illness prevention standard to indoor workers. SB 1167 requires the state workplace safety agency to devise new regulations that will apply to indoor workers starting Jan. 1, 2019. Cal/OSHA's rulemaking body will therefore have the next two years to draft and finalize those regulations.

SB 1167 does not specify to which types of workplace the eventual regulations would apply. But a broad reading of the law means it could apply to all indoor workplaces, including air-conditioned offices.

The new law also does not specify the provisions of the eventual rules, other than that they minimize the risk of heat-related illness and injury among workers working in indoor places of employment.

The law requires that the indoor heat illness standard be based on environmental temperatures, work activity levels, and other factors.

The Department of Industrial Relations created a booklet on indoor heat illness prevention in 2012 that outlines best practices and engineering controls employers can use. ❖

Engineering controls

Engineering controls are changes to equipment, machinery, materials or to the work processes that eliminate, reduce or isolate hazards.

They are the most effective means of control because they do not depend on people to provide protection against hazards.

Engineering controls include:

- Installing and maintaining ventilation systems.
- Providing equipment to do a strenuous job more easily (i.e., a pallet jack or conveyor belt).
- Enclosing hot machinery and pipes.
- Installing local exhaust systems to remove heat.
- Installing local ventilation to provide cool air.
- Fixing steam leaks and repairing other broken equipment generating heat.

Indoor Heat Illness Best Practices

- Rotate workers in hot, strenuous jobs.
- Slow down the pace when hot.
- Change schedules during hot weather.
- Allow workers to acclimate to working in the heat.
- Allow for breaks in areas with good ventilation so that workers can seek relief from the heat.
- Encourage workers to participate in heat stress prevention activities, such as drinking water, watching out for each other, monitoring heat, conducting inspections, and taking rest breaks.
- Ensure there are no restrictions or obstacles to workers drinking water.
- Encourage workers to drink water often when working in hot conditions.
- Provide drinking cups or drinking fountains nearby the workspace.
- Train supervisors in how to respond if someone gets ill from heat.
- In hot work areas, install equipment to monitor air temperature and humidity. It should be visible to anyone working in the area.
- Train workers in:
 - » How to recognize heat illness symptoms and how to respond to emergencies.
 - » The importance of immediately reporting to their supervisor symptoms or signs of heat illness in themselves or in co-workers.
 - » Your procedures for responding to symptoms of possible heat illness.
 - » Understanding that personal factors increase the risk of heat-related illnesses (clothing, hydration, and physical fitness, use of some medications, drugs and alcohol.)

Source: Cal/OSHA

