

# Workers' Compensation Newsletter



## April 2009

### **Workers' Comp Rates Rising - 24.4% - Recommendation Coming?**

The Workers' Compensation Insurance Rating Bureau's Actuarial Committee met on March 16, 2009 and it appears likely that the Governing Committee will recommend a whopping 24.4% mid-term pure premium rate increase when it meets again. The Bureau's staff is continuing to evaluate the numbers, but this is the recommendation from the Actuarial Committee to the Governing Committee.

California Insurance Commissioner Steve Poizner last fall whittled down a 16% recommended increase for January 1, 2009 to just 5%. It's unclear what the Department of Insurance will do with this recommendation as it will likely include some data that has been excluded in the past, as well as costs that have not yet been incurred by insurance companies. This latter issue relates to the projected impact of recent decisions by the Workers' Compensation Appeals Board involving permanent disability awards, notably *Alvarez/Guzman* and *Ogilvie*. Insurance Companies are increasing reserves and bracing for closed cases petitioning to be reopened to recalculate disabilities as a result of the WCAB decision.

The Bureau projected medical cost inflation and other costs, and had the rate increase it proposed last been adopted the recommendation this time would not have been so dramatic. The rates as recommended by the Bureau and as amended by the Commissioner are purely advisory. Insurance Companies are free to use their own judgment.

After much discussion about which claims would be affected and the likely costs, the committee concluded that the recent decisions by the Workers' Compensation Appeals Board would account for 7 points of the recommended 24.4 point increase. Most of the cost is expected to come from the *Alvarez/Guzman* decision, which attacks the heart of how ratings are calculated and creates an even more adverse relationship between employer and injured worker. The case is expected to increase costs in several ways, by generating a higher rating than would have been generated under the current guidelines by increasing the "frictional costs." Frictional costs are the added costs associated with litigated claims, such as added expenses for reports by economists, vocational rehabilitation specialists and others, as well as the associated loss adjustment expenses.

Even without the expected costs from these WCAB decisions, a mid-year increase would still be in the offing as California's workers' comp system is seeing a steady deterioration on the medical loss front with increases in severity sharply outpacing the savings from any modest frequency deviations. A Bureau Actuary called the development in medical severity since 2005 "staggering." The Bureau's projections on medical severity trends show a 14.8% increase in 2006, a 15.7% increase in 2007, and a 20.1% increase last year.

**REMINDER: POST OSHA FORM 300A THROUGH APRIL 30th****Dual Wage Construction Classifications Audit Procedures**

All policies with January 1, 2008 or later, effective dates. The California Insurance Commissioner approved amendments to the CA Workers' Compensation Uniform Statistical Code. Here is some brief information: Employers must submit timecards or timesheets that document the actual employee start and stop times. Additional Records (e.g. pay stubs) will be required to verify the actual number of hours worked. For salaried employees, hourly wages will be determined by dividing total payroll by 2000 hours. Note, if timecards/timesheets are not provided at the time of audit, wages will be classified to the higher rated dual wage classification. For additional detailed information, please visit the WCIRB website: [www.wcirbonline.org](http://www.wcirbonline.org).

**Employers Without Workers' Compensation Coverage Face Fines**

The Ventura County District Attorney's Office is cracking down on employers who don't carry workers' compensation insurance. If you do not have workers' compensation insurance, it is a misdemeanor. Punishment typically involves a fine starting at \$10,000, but can include up to a year in jail. The law is spelled out in California Labor Code 3700.5. The District Attorney's office is now aggressively prosecuting uninsured employers. This crackdown began in early 2006 when investigators started showing up at businesses and requesting written proof of workers' compensation insurance. Employers that are insured but cannot immediately provide written proof are given 10 days to provide it before a criminal misdemeanor complaint is filed. Over the past 2 years, investigators visited about 200 businesses and filed about 30 misdemeanor cases. Now, businesses are gaining awareness and they are seeing fewer violators. "Businesses that don't have workers' compensation...have an unfair advantage over employers who do not have insurance", per Deputy District Attorney Thomas Frye. The DA's office believes that insured businesses welcome the effort as a way of leveling the playing field, evidenced by the tips that businesses supply about others that are not in compliance. Article information is from [www.venturacountystar.com](http://www.venturacountystar.com). In addition, in workers' compensation, if you are not insured and a work related injury/illness occurs, there are other fines.

**Stop Telemarketers  
from calling  
your cell  
phone!**

There was a recent radio report advising that telemarketers can now call cell phones. To block these calls, you need to call the National Do Not Call Registry line at 888-382-1222. This is the same way you did from your home phone. You need to call from the phone that you want stopped. Please stay on the line long enough to get the instructions to insert your phone number.

## MEAL BREAKS AND REST PERIODS: The Effect of the Brinker Case.



In California with respect to meal breaks the law states as follows:

“No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an “on duty” meal period and counted as time worked. An “on duty” meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.”

California requires that employers provide a paid 10 minute break to an employee who works a minimum of 4 hours with a rest period given after any major factor of that four hour period is worked.

The confusion arose as to what exactly the employer’s duty was with respect to ensuring that any given employee took their prescribed meal break and or rest period. How far was an employer required to go to ensure the law was followed? Did the employer have to simply tell the employee of the availability of meals and rest periods or was it upon the employer’s shoulders to stand over the employee and make sure he or she took their rest or had a meal?

Enter the Brinker case in July 2008 and some clarity to the issue. (See *Brinker Restaurant Corp. vs. San Diego County Superior Court*) A class action was brought against the Brinker Restaurant Corp., claiming the company systematically denied them the rest and meal breaks required under California law. Plaintiffs argued that Brinker failed to give the rest periods in the middle of a four hour period and that the employer failed to ensure that meal breaks were taken. Brinker countered that it was only required to provide rest periods “when practicable” during work shifts and not to ensure that all employees took breaks. The appeals court agreed with Brinker. In its reasoning the court stated that the California Labor Code did not prohibit an employer from offering rest periods at intervals other than exactly in the middle of any four hour period and the court when on to hold that employers are granted discretion not to have rest periods or meal breaks at specified times because of the nature of the work or the circumstances of a particular employee. With specific reference to the restaurant industry the court noted that employees, such as waiters and waitresses, usually want to work during normal meal break times because that is when customer volume is at its greatest and thereby an opportunity to maximize tips. Lastly, the court held that employers were not required to “police their employees and force them to take meal breaks.”

So how should employers conduct themselves in light of the Brinker case? While Brinker brings clarity to the issue and removes some of the burdens that had plagued employers, employers must still be cognizant of the legal requirements surrounding meal breaks and rest periods and should at a minimum do the following:

- ◇ Have well drafted written policies for meal breaks and rest periods
- ◇ Educate staff as to these policies
- ◇ Train management on the importance of consistent implementation of these policies
- ◇ Ensure that all meal breaks are taken away from any given work station
- ◇ Rest periods may be taken at a work station since they are paid for but no work can take place
- ◇ Meal break waivers must be in writing and freely consented to by the employee
- ◇ Waivers should only be used for business necessity
- ◇ Keep accurate written records of all meal breaks taken or waived

While Brinker was a favorable decision for employers it must not be mistaken as a carte blanche to deny employees their meal breaks and or rest period rights enshrined under California law. If you have further questions about this or any other human resource matter please feel free to contact your Ogilvy Hill Insurance representative.

\*NOTHING IN THIS ARTICLE SHOULD BE CONSIDERED LEGAL ADVICE. IF YOU ARE CONSIDERING ANY EMPLOYMENT POLICIES OR HAVE ANY ISSUES THAT RELATE TO ANYTHING DISCUSSED IN THIS ARTICLE YOU ARE ENCOURAGED TO CONTACT A LICENSED ATTORNEY WITH EXPERIENCE IN THE AREA OF EMPLOYMENT LAW.

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## **Incident Analysis: Finding Facts, Not Faults**

By David Wylie; article from Texas Mutual Insurance (online); tailored for general use

Every gardener knows that you haven't pulled a weed until you've pulled it out by its root. The same logic applies to analyzing workplace accidents and near misses: You must discover the root cause of the incident before you can correct it.

For workplace safety purposes, we describe accidents and near misses under one umbrella term: incidents. Whenever an incident occurs at your workplace, you should conduct a four-step incident analysis to discover and correct its root cause.

### **Step I. Gather facts**

Start by making it clear that your objective is to correct safety hazards, not assign blame. Don't use the term "accident investigation." It may sound like a witch-hunt to your employees. "Incident analysis" is less threatening and more accurately describes your mission. Go to the scene of the incident as soon as possible. The longer you wait, the greater the chance that evidence will get tainted or the site itself will change.



Look for equipment, work conditions, and unsafe behaviors that may have contributed to the incident. Interview witnesses before they have time to influence each other's version of what happened. Try to ask open-ended questions in a non-threatening way.

### Step 2. Analyze the facts

The key to this step is being able to tell the difference between root causes and symptoms. For example, if an employee slipped on a wet spot, don't assume that the wet spot was the root cause of the incident. Before moving to step three in the process, ask why there was a wet spot on the floor.



Was it from a leaky air conditioner, perhaps? Maybe an employee spilled a glass of water and didn't take the time to clean it. The root cause of an incident is the very beginning of the hazard. If you only correct the symptom, the air conditioner will continue to leak or the employee will continue to act carelessly. In short, you're setting yourself up for another incident.

### Step 3. Take corrective action

Corrective actions have three parts: what should be done, who should do it, and when it should be completed. Assign individuals to complete each action within a specific timeframe.



Begin by correcting all work environment factors as soon as possible to prevent similar incidents from recurring. For items that will take longer to complete, set a specific time line for corrective action. Often, you will identify unsafe behaviors that contributed to incidents. A behavior-based safety program can help correct these behaviors.

### Step 4. Follow up

Just because you assigned corrective action tasks doesn't necessarily mean your staff completed them. Furthermore, it doesn't mean the corrective actions were effective. Follow up to make sure all corrective actions are in place and that they eliminated the root cause. Collect data on the costs of the incident. You may be able to use this information to evaluate whether the cost of the incident justifies the purchase of new equipment or changes in production methods.



### Make it all-inclusive

If your staffing allows, consider forming a team of employees to investigate all incidents. Hourly and salary employees, managers, supervisors, and safety personnel should be represented. Include employees who work in areas where incidents have been a problem. Use the loss run and claim information to analyze your accident trends and help uncover high-hazard areas.

The team will gather and analyze facts, communicate findings, and supervise corrective actions. The team should share their findings and recommendations for corrective actions with all employees.

Make sure the team approaches every investigation as a fact-finding mission, not a faultfinding mission. When employees understand your goal is to make the workplace safer for everyone, they are more likely to participate in the process.

## How Workers Get Injured

**Courtesy of Javier Mendez Safety Consulting: 562-428-1806**

Accidents can happen anywhere and at any time. Many workplace accidents and injuries can be prevented if workers know the causes of accidents and they are taught how to protect themselves to avoid injury. Although no one wants to get hurt at work, there are 4 major causes for injuries on the job.



**Back Injuries:** The number one cause of on-the-job injuries is physical overload. These injuries are caused by lifting (too heavy a load or lifting improperly), straining, overreaching, bending and twisting. To protect your back against injury, learn and use proper lifting techniques, never bend or twist while lifting and carrying, and whenever possible, use a mechanical aid or get help with the load from another worker.



**Hitting or Striking Against:** The second most common cause of worker injury is being hit by or hitting against an object. The best way to protect against these accidents is to be alert to the potential hazards and to use appropriate protective equipment (hard hats, eye protection, gloves). Be aware of your body and the space around you. Give yourself enough clearance when passing by or ducking under equipment or going through a passageway.



**Falls:** To avoid injuries from falls, be sure that your footing is firm and wear slip-resistant soled shoes. Watch where you're walking. Don't walk backward to direct equipment or leap from one level to another. Make sure you can see over the load you carry and that walkways are well-lighted and clear of obstacles. Clean up spills or grease spots and use handrails when walking on stairs.

**Machine Accidents:** The fourth major cause of on-the-job injury is machine-related accidents, that is, getting caught by moving machine parts. When working around any moving equipment (a machine that rotates, slides, or presses) always use safety shields, guards, and lock-out procedures. Only work on a machine that you have been trained to use. Never wear jewelry or loose-fitting clothing that could get caught in the moving equipment.



Be alert to the hazards you face on your job and learn what you should do to protect yourself against accidents and injuries and follow your company's established safety guidelines.

The website for the DIR is: [www.dir.ca.gov](http://www.dir.ca.gov). This website contains information in relation to workers' compensation, labor law, Cal OSHA and many other employer related items. There are forms, new items, laws (work comp, employment, etc.) and just some general information of interest.

**Great information for employers**

**@ Department of Industrial Relations**



# HOT INSURANCE TOPIC

## Credit Insurance

Lately credit insurance has become of greater interest to the business owner. Every business should have a strategy in place to manage a bad-debt loss event. On average, 40% of a company's assets are in the form of trade debts, sometimes the figure is far higher. It is very difficult for a company to predict which client will default on payment.

### **What is trade credit insurance?**

Trade credit insurance, also called accounts receivable insurance, provides your business with protection against your customer's failure to pay its trade debts. This can arise because your customer becomes insolvent or because your customer fails to pay within a set timeframe. Companies that export can also protect themselves against a range of political risks that may prevent or delay payment. Business trade credit insurance is for short-term accounts receivable, those due in less than one year.

### **What are the benefits of trade credit insurance?**

- ◇ Safer sales expansion to existing and new customers
- ◇ Better credit control and protection against catastrophic bad-debt losses
- ◇ Better risk management through an "early warning system"
- ◇ Better business planning through elimination of unknown risks
- ◇ Improved working capital from your lender as you have enhanced the quality of your accounts receivable
- ◇ Improved cash flow, because you receive payment from unpaid accounts receivable that are insured.

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