LEADERS' CHOICE INSURANCE

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NEWSALERT

Workers' Compensation

Commissioner Orders 2% Benchmark Rate Cut

CALIFORNIA INSURANCE Commissioner Ricardo Lara has ordered that the state's average benchmark workers' compensation rate be cut by 2.1%, starting Sept. 1.

The decision rejected the Workers' Compensation Insurance Rating Bureau's recommendation that the rate be raised by 0.9%, citing a slight uptick in claims costs and claims-adjusting costs.

The benchmark rate, also known as the pure premium rate, is a base rate that insurers can use to price their policies. It only includes only the cost of claims and claims-adjusting costs and does not take into account other forms of overhead and profits.

Also, insurers are not required to use the pure premium rate and are free to price their policies as they see fit, using their own modeling.

Experience Matters

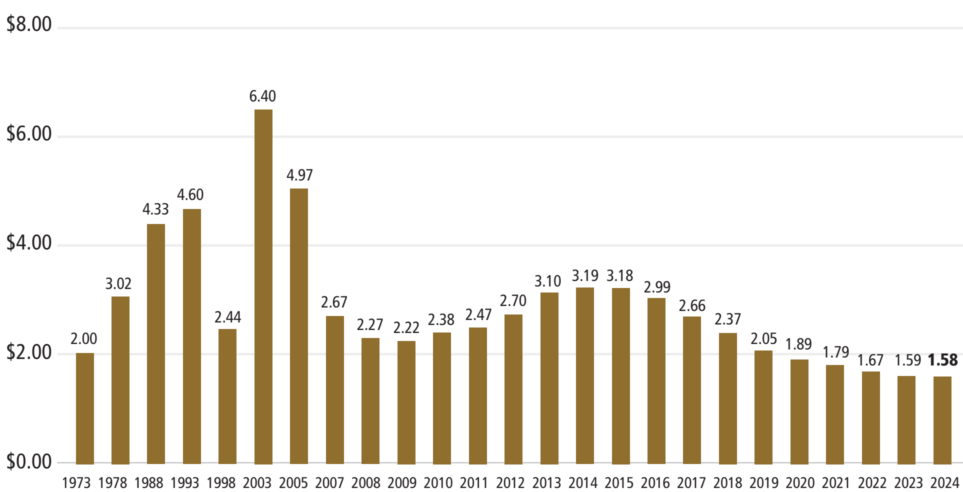
While this year's pure premium rate will decline, some employers may see higher rate increases or rate reductions, depending on their class code, claims experience and X-Mod, and location.

The decision is a further reflection of the low pricing environment for workers' compensation, a rare bright spot in an insurance market that has seen hefty rate increases in other lines, such as commercial property and liability coverage.

The average benchmark rate will fall to $1.38 per $100 of payroll, down from the current $1.41.

RATES LOWEST IN MORE THAN 50 YEARS

Average charged workers' compensation rate (per $100 of payroll)



Source: Workers' Compensation Insurance Rating Bureau

What's affecting rates

The tiny rate-increase recommendation by the Rating Bureau was based on continuing downward pressure on claims costs since last year. Drivers of the recommendation included:

- Lower claims cost inflation
- Lower frequency of claims
- Lower overall claims costs
- Higher medical costs
- HIgher claims-adjusting costs.

Reasons behind Lara's decision

Factors that the commissioner cited as influencing his decision include:

- The continuing decrease in the number of medical services associated with each workers' comp claim, and
- A continuing decline in the percentage of claims with permanent disability benefits.

The new rate applies to policies incepting on or after Sept.1, 2024.

If you have questions about your coverage, please give your agent a call. ❖

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Cost Trend

Cyber Insurance Rates Ebb, Insurers Add Exclusions

RAPID REACTION FORCE: *Businesses are reacting more quickly to breaches, which can minimize the damage.*

WHILE CYBERATTACKS continue to grow in number, the cost of cyber insurance has been dropping thanks to businesses implementing better controls to thwart such activity and reduce their losses if they become victims of a malicious attack, according to a new report.

Rates fell an average of 17% last year after surging in 2021 and 2022 as the COVID-19 pandemic spurred cyber criminals to ramp up attacks, according to insurance group Howden's 2024 cyber report. The trend has continued in 2024, yet at a slower clip.

Another report found that rates fell 5% in the second quarter, compared to the same period in 2023.

Premiums have declined despite ransomware attacks growing an eye-popping 218% year-on-year in 2023. But, fewer ransomware victims (just 17% according to one report) are paying the ransom as businesses have implemented stronger risk controls that keep an attack from posing an existential or costly threat to them.

Factors affecting rates

While the number of cyber claims grew 65% in 2023, according to a report by Aon, businesses have gotten better at detecting, quarantining and shutting down attacks, as well as reacting quickly if their systems are breached. This has reduced the cost of claims when they are filed.

Employees have also been better trained to detect malicious e-mails and avoid clicking on the types of links that can release a malware, ransomware or other code, thus thwarting attacks that could be costly.

Companies have also been able to reduce their business interruption costs after a cyberattack by employing better back-up systems, such as through cloud providers.

Also, more insurers have entered the cyber insurance market, which has increased competition and helped tamp down pricing

Some analysts, however, attribute the rate hikes to a blip, pointing to growing numbers of ransomware and business e-mail compromise scams, attacks that may spur rate hikes again. And they point to evolving threats, like artificial intelligence and the threat of cyber warfare in an increasingly volatile world.

New exclusions

Cyber insurers continue adding new exclusions to their policies. Some new ones that you should be aware of include:

War risk and systemic risks – Volatile geopolitics have spurred cyber insurers to expand exclusions around war and they are imposing sub-limits for other systemic events.

Regulatory – Some cyber insurers are also restricting coverage for regulatory risks due to increasing claims and costs like investigations, settlements, fines and penalties.

Wrongful data collection – With more state, federal and even foreign laws barring website owners from collecting certain kinds of data without the permission of website users, businesses have great exposure to actions by regulators and government prosecutors.

As a result, more cyber insurers are also restricting coverage of costs related to a business being hit with fines, penalties or legal action for breaching data privacy laws.

The takeaway

Businesses need to continuously be vigilant against the always present threat of cyberattacks.

When it's time for renewal we recommend that you meet with us to discuss your potential exposure. Every company has a different risk picture.

And considering the increasing use of exclusions, we can help you cut through the policy language to look for changes that may increase exclusions and restrict coverage of certain events. ❖

Growing Risk

'Nuclear' Jury Verdicts Are Straining U.S. Businesses

THE SIZE of jury awards has been exploding in the last few years, and they are often exceeding the limits that businesses have on their liability policies.

These excessively large awards are known as "nuclear" verdicts, which are defined as those with damages of $10 million or more. In 2023, such verdicts totaled $14.5 billion, according to one analysis.

In 2020, half of them were greater than $21 million; that number jumped to $44 million last year. There were 89 nuclear verdicts in 2023, and 27 of them were for more than $100 million.

This is happening at the same time that corporations in general are purchasing smaller amounts of liability insurance, according to a report by major insurer Chubb.

The median limits of insurance purchased have shrunk over the last 10 years. They are 44% less today in the construction industry than they were in 2014, 31% less in health care and 28% lower in consumer products.

This has created a large and growing gap between the amounts of insurance corporations are buying to protect themselves and the jury verdicts they may face. When a jury award surpasses a policy's limit, the insured has to cover the rest out of pocket.

Recent nuclear verdicts:

- In Georgia, a truck veered into oncoming traffic, causing a driver to swerve out of its way and strike a man exiting his truck in the emergency lane. A jury ordered the trucking company to pay $47 million to the man's family.
- In Seattle, a jury awarded a former ultramarathon runner $13.1 million in damages for a crippling injury she suffered when she fell on a sidewalk.

Investors financing lawsuits

Analysts have pointed to several reasons for the increase in these verdicts. People today are pessimistic, they have lost trust in corporations, they have become desensitized to large numbers, and they are more pro-plaintiff, according to these explanations.

However, another major factor is how these suits are financed. Lawsuits have become an investment vehicle for hedge funds and other large investors through a concept known as "third party litigation funding."

In a TPLF arrangement, investors fund plaintiffs or law firms for the costs of these lawsuits. The benefit they receive is contingent on the suit's outcome. If the plaintiff wins, the investors receive a share of the awarded damages. If the plaintiff loses, they get nothing.

Given that they invested $15.2 billion in TPLF arrangements in the U.S. in 2023, they appear to be optimistic about their chances.

TPLF provides financial incentives to file frivolous lawsuits because defendants may choose to settle cases rather than go to trial. The investors also get a say in whether or when to settle a suit. They may push for a trial in the hope of a nuclear verdict.

Because TPLF increases liability insurance premiums, out-of-pocket damage payments, or both, it increases corporations' costs.

The takeaway

Liability insurance rates have been rising as a result of these nuclear verdicts, which you have probably noticed on your last premium bill. However, the worst thing you can do is reduce your limits, particularly in light of increasing jury awards.

And it's not just nuclear awards that have become a problem. Awards are increasing for small cases, as well. ❖

Compliance Alert

Cal/OSHA's Indoor Heat Illness Regulations Take Effect

CAL/OSHA's indoor heat illness prevention regulations took effect July 24, requiring employers to implement safety measures when indoor workplace temperatures reach or exceed 82 degrees Fahrenheit.

The new rules apply to most indoor workplaces, such as restaurants, warehouses and manufacturing facilities, and require employers to provide water, rest, cool-down areas and training when temperatures exceed the threshold.

The standard requires employers who have indoor worksites with higher temperatures to take immediate steps to ensure they are in compliance with the new rules.

Under the standard, most requirements for additional protections start at the 82-degree trigger, but additional ones kick in at 87 degrees.

At that point, businesses would be required to take additional steps, when feasible, including cooling down the work areas, implementing work-rest schedules and providing personal heat-protective equipment.

Where workers wear clothing that restricts heat removal or work in high-radiant-heat areas, the additional requirements apply at 82 degrees.

THE MAIN REQUIREMENTS OF THE NEW STANDARD

Indoor Heat Illness Prevention Plan

Employers whose indoor workplaces may exceed the 82-degree threshold will need to create, maintain and make available to employees a heat illness prevention plan (HIPP), which all affected employees should be trained in and read. The plan covers all of the following.

CHILLIN': *Once indoor temperatures reach 82 degrees, employers are required to provide cool-down areas and access to fresh cool water.*

Access to a cool-down area

You must provide access to at least one cool-down area, where the temperature must be kept at below 82 degrees. The cool-down area should be blocked from direct sunlight, be shielded from other high-radiant heat sources and be large enough to accommodate the number of workers on rest breaks so they can sit comfortably without touching each other. The area should be as close as possible to work areas.

Cool-down rest periods

Encourage workers to take preventive cool-down rest breaks and allow those who ask for a cool-down rest break to take one. Workers should be monitored for symptoms of heat-related illness when they are taking such cool-down rests.

Access to water

You must provide access to potable water that is fresh, suitably cool and free of charge. The water shall be located as close as possible to work areas and cool-down areas.

Other Compliance Issues

The standard requires employers to:

- Provide first aid or emergency response to any workers showing heat illness signs or symptoms, including contacting emergency medical services.
- Closely observe new workers and newly assigned employees working in hot areas during a 14-day acclimatization period, as well as all employees working during a heatwave.
- Provide training to both workers and supervisors in the company's HIPP and prevention measures.

The takeaway

The solutions for many businesses will be installing air conditioning that ensures that temperatures never exceed the 82-degree threshold in an indoor workspace. While costly, it can reduce the need for employers to take any additional steps to protect employees against heat illness.

However, this may not be feasible in larger facilities like warehouses and production operations due to costs and difficulty in cooling a large area. ❖