

Cal/OSHA

Emergency Rules Issued for Electronic Posting

CAL/OSHA is implementing emergency regulations that require California employers with 250 or more employees to submit their 2017 Form 300A summaries electronically by the end of this year.

That's the form that you signed and posted in your workplace from Feb. 1 to April 30.

Form 300A contains only the summary of injuries and is not the actual log, which contains the names of the employees who were injured.

For the electronic filing, you will simply take the same information on the form you posted earlier this year and enter it into an electronic database.

The short ramp-up period will require employers to quickly act to comply with the emergency regulations, which were approved by the state's Office of Administrative Law in early November.

The new regulations were implemented on an emergency basis to put California's

regulations on par with those of Federal OSHA.

Starting next year the deadline for posting the form electronically is expected to begin around Feb. 1.



WHO THE RULES APPLY TO

- Those with 250 or more employees.
- Certain firms with 20 to 249 employees in specific industries that are listed in Appendix H of the emergency regulations, including:
 - Agriculture
 - Construction
 - Manufacturing
 - Various retail businesses
 - Transportation
 - Warehousing
 - Health care

You can find a full list of the Appendix H industries on pages 8 through 10 in Cal/OSHA's emergency regulations: www.dir.ca.gov/dosh/doshreg/Recording-and-Reporting/Text-of-Amended-Regulation-Revised.pdf

Employers that do not have to fill out OSHA logs include:

- Those that had 10 or fewer employees during the entire year; and
- Those that have 20-249 employees, but their industry does not fall within the list of "high-risk industries," as above.

After this catch-up period at the end of the year, all applicable employers will be required to submit their Form 300A electronically every year going forward.

Until Cal/OSHA promulgates new regulations to make that a permanent rule, the agency advises all applicable employers to follow the instructions on Fed-OSHA's "Injury Tracking Application" webpage: www.osha.gov/injuryreporting/index.html

Cal/OSHA will be implementing its own online tool and when it does, we will notify you. ❖



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Risk Management

Limiting Liability During a Company Holiday Party

WITH THE fallout from the #MeToo movement forcing employers to change their conduct policies, many are also reassessing the office holiday party.

While gatherings can be a good time for your staff to mingle casually with their colleagues and clients, they can also prove to be a liability for businesses – particularly if you serve alcohol.

Not all companies are canceling holiday parties, though. Some are being a little more careful and limiting or eliminating alcohol served at holiday celebrations.

If you are throwing a holiday party, you should take steps to limit risks and make sure you have proper insurance coverage.

Your biggest concern should be intoxicated workers leaving the party and driving. Almost all states have liquor liability laws that allow an injured third party to sue not only the person who injured them or damaged their property, but also the individual or organization that overserved them alcohol.

While these laws were originally written to cover bars and other establishments that serve alcohol, they have been extended to cover “social hosts,” which include:

- Business events that serve alcohol.
- Individuals or groups that hold events (including weddings and summer barbeques).

Limiting your liability

Experts recommend that you:

Lay down the ground rules – You should hold a meeting and create documentation for your employees to sign that spells out their duty to act responsibly and treat all other staff with respect. This should also include advising them to drink in moderation and not drink and drive.

Lead by example – Management should model good behavior like polite conversation and drink in moderation, if at all.

Hold the party offsite – If problems arise, it’s best they don’t happen at your place of business.

Consider not serving alcohol – This is the safest bet to ensure you are not vicariously liable for any intoxicated employees.

Use different approaches if you serve alcohol – If you do plan to serve alcohol, consider requiring your staff to pay for drinks. This also has the effect of people drinking less if it’s on their dime. Another option is to issue drink vouchers to limit the amount of drinks each person can have.

Hire a professional bartender – Most bartenders are trained to detect signs of intoxication and are better able to cut someone off in a professional and polite manner.

Offer alternative beverages – Serve non-alcoholic beverages, and always serve food so people don’t drink on empty stomachs.

Stop serving towards the end of the party – Stop serving alcohol at least one hour before the end of the party, and instead bring out the coffee, tea and soda.

Arrange transportation – If you are serving alcohol, you should make special transportation arrangements before the party. Encourage your employees to take advantage of the transportation for their and the public’s safety if they have had drinks.

Insurance considerations

If you have liability concerns, you should call us to discuss your current commercial general liability coverage to make sure that it doesn’t have any exclusions or conditions for these kinds of risks.

If you have gaps, you may want to consider special event coverage that would cover liquor liability and other liability exposures specific to the event.

We can help you check your policy to see if liquor liability is covered .

If there is any harassment at the party that could put you in the crosshairs for a harassment lawsuit, you could also be sued. This kind of action would not be covered by your CGL policy, but it would be covered under an employment practices liability insurance policy.

An EPLI policy will extend coverage to your business for any discrimination, sexual harassment, emotional distress, and other workplace-related charges.

The policy should include third party coverage, which covers claims made by non-employees, usually clients or customers, who allege that an employee engaged in wrongful conduct such as sexual harassment or discrimination. ❖





Changing Times

Marijuana Laws Require New Workplace Policies

AS STATES continue to liberalize marijuana use, employers are left in a bind in terms of enforcing no-drug policies, respecting their employees' right to privacy and keeping a safe workplace.

California has established case law stating that employers do not have to accommodate someone who has a medical marijuana prescription. Complicating matters for employers, the state has legalized recreational marijuana.

Since employers have to balance their legal obligations to their employees, they also have to be able to ensure they have a safe workplace that is free of drugs. Here's a guide to the main issues facing employers:

ADA compliance

Often, medical marijuana is prescribed to people with disabilities who are considered protected individuals under the Americans with Disabilities Act.

In many cases, the use of marijuana can be vital in allowing a disabled worker to do their job and also perform major life activities.

While the ADA bars discrimination against individuals with disabilities for employment purposes, courts in many states have ruled that medical marijuana use is not a reasonable accommodation.

But, in 2008, the California Supreme Court ruled that employers have a right to drug-test and fire workers who test positive for marijuana, regardless of their medical use of the drug.

It based its decision on the fact that because the state's Fair Employment and Housing Act does not require employers to accommodate illegal use, an employer can lawfully terminate an employee who uses medical marijuana.

More recently, in 2012, the Ninth Circuit similarly held that the ADA does not offer job protection for medical marijuana users because marijuana is an illegal substance under federal law.

That said, as medical marijuana becomes more accepted, companies may want to consider revising their policies to include accommodations for use.

One way to do this is to create policies that bar marijuana use in the workplace, but be more forgiving with use outside of work hours. If you also drug-test, you can make exceptions as employees can show positive for drug use at work even though they may have used marijuana the day before at home.

Your policies should take into account that you have a legitimate interest in ensuring that any medications the employee takes are used in a responsible manner and will not affect job performance.

Your company policy could state that a prescription for medical marijuana does not entitle an employee:

- To be impaired at work.
- To compromise his or her safety, or the safety of others.
- To smoke in the workplace.
- To unexcused absences or late arrivals.



Recreational use

In light of California's legalization of recreational marijuana, you should consider revising your company's drug policies.

While you cannot legally bar employees from using cannabis outside the workplace, you can regulate them using it on the job or showing up intoxicated at work.

One good solution is to model your recreational marijuana policy after your current policies on alcohol.

You should bar employees from using marijuana at the office or work under influence of any psychoactive substance. The policy should outline the specific consequences for breaking the rule.

Some employers may consider continuing to drug-test workers. But this approach could run into legal challenges and would be difficult to enforce if the employees are not using on the job.

The exception should be for workers that operate heavy machinery, or work in construction, transportation or other dangerous occupations. In these jobs, working under the influence of marijuana should be strictly prohibited.

Since the effects of marijuana can last many hours, you will also specifically need to spell out the rules for lunch breaks. Employees should be able to return from their breaks and be ready to start work again without being under the influence.

The takeaway

Overall, while it seems daunting, these issues will get ironed out over time. For now, you should try to set policies that will ensure that you can keep a safe workplace, while respecting employee privacy.

Over time, the policies that will be recommended for employers are likely to be similar to those for alcohol use and intoxication in the workplace. ❖





Commercial Auto

Protect Your Officers with Drive Other Car Coverage

LINDA IS a senior sales rep for a software company and drives a car that the firm owns and insures. The company's auto insurance covers her when she is driving it. She doesn't own another car, so she doesn't have her own policy.

Most of the time, this is not a problem. However, spring break comes and she takes her kids to DisneyWorld. She rents a car at the Orlando airport and never gives a thought to whether her firm's insurance will cover her if she has an accident with the rental. In this case, a phone conversation with the firm's insurance agent would have been a great idea.

While driving to her hotel one night, Linda rear-ends a new Lexus.

The damage to the other car is extensive; Linda looks to her firm's auto liability coverage for the cost of repairing it.

The ISO Business Auto Policy covers the person or organization shown in the policy declarations (the information page at the beginning.) In this case, the name shown in the policy declarations is the name of Linda's firm.

The policy goes on to say that, for liability insurance, the firm is an insured and so is anyone else using, with the firm's permission, a covered auto the firm owns, hires or borrows, with some exceptions.

Unfortunately for Linda, the firm didn't rent the car; she did ... in her own name.

Consequently, the firm's insurance will not cover her liability for this accident. She will be forced to pay for it out of her own funds.

But, there are policy endorsements that her firm could have purchased that would have solved her problem:

Drive Other Car Coverage

This broadens coverage for the individuals that are named in the endorsement.

It extends several of the policy's coverages so that they apply to the listed individuals and their resident spouses.

Endorsement features

- It extends to listed individuals coverages the policy already provides; it does not add coverages not provided in the main policy.
- It covers the named individual's spouse.
- The only family member it automatically covers is the resident spouse. It will not cover any other family members in the household unless the endorsement specifically lists their names.

Individual Named Insured

An alternative to this endorsement is to list individuals' names in the policy declarations along with the firm's name and attach an endorsement called Individual Named Insured.

The endorsement covers the individual listed in the declarations and automatically covers the person's resident spouse and family members. It also covers these individuals should they injure another of the firm's employees.

These policy changes affect several coverages, including liability, uninsured motorist, medical payments, and physical damage.

If you are considering doing this, you should consult with us to discuss the endorsements' details and identify the one that will best insure the concerned individuals.

With the right coverage in place, Linda could have enjoyed her vacation without having to worry about who would pay for the fender-bender. ❖

