

Workers' Comp

New Rule Simplifies X-Mod Calculation

A NEW method for calculating workers' compensation experience modifications came into effect in California on Jan. 1.

The Workers' Compensation Insurance Rating Bureau of California has created a new simplified formula for calculating X-Mods as part of its efforts to add more transparency to the process. The new formula excludes the first \$250 of every claim for the X-Mod computation, no matter how large or small the claim is.

This also means that if an employer pays, say, \$200 for first aid on a minor workplace injury, they are required to report it as a claim. Doing so will not affect their X-Mod in any way, no matter how many first aid claims they have.

The goal is to encourage employers to report all claims, even those that may require minimal medical treatment or first aid.

X-Mod effects

The change may have an effect on your current X-Mod.

Any claim incurred against policies incepting during the experience period for your 2019 experience modification, which

includes 2015, 2016 and 2017 policy years, will be used in the X-Mod computation at \$250 less than its reported value.

Claims costing \$250 or less will be shown on worksheets, but will not be used in X-Mod calculation.

How it works

- If you have a \$10,000 primary threshold and you have a claim that ends up costing \$6,000, the amount used to compute your X-Mod would be \$5,750.
- If you have a \$10,000 primary threshold and you have a claim that ends up costing \$17,000, the amount used for calculating your X-Mod would be \$9,750.
- If you have a claim that's valued at \$250 or less, the claim will still show on your experience rating worksheet, but it will not be used at all when calculating your X-Mod.

Reporting first aid claims

Workers' comp regulations require that all injuries that cost some amount of money to treat must be reported to your workers' comp carrier. In turn, insurers must report those claims to the Rating Bureau so that it can accurately keep workers' comp records on employers that are experience rated.

The rules have already been on the books for years, but the problem of non-reporting became too great, so the Rating Bureau has stepped up to encourage employers to follow the rules. And in this case, it can't work against you. ❖

FIRST AID DEFINED FOR CLAIMS REPORTING

"First aid" means any one-time treatment on premises, at a clinic or doctor's office that is usually administered immediately after the injury occurs. It often consists of a one-time, short-term treatment.

First aid can include:

- Cleaning minor cuts, scrapes or scratches
- Treating a minor burn
- Applying bandages and dressings
- Using hot or cold therapy
- Using temporary immobilization devices
- Draining blisters
- Removing debris from the eyes
- Removing splinters or foreign material from areas other than the eye
- Using finger guards.



**HAVE QUESTIONS?
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Risk Management

Address Your Passwords After Huge E-Mail Breach

NEWSPAPERS OF the latest global data breach of some 773 million e-mail addresses and passwords should prompt individuals and organizations alike to change their passwords – particularly for any accounts that have financial, credit card or other personal information.

The scope of this breach cannot be overstated as the list includes log-in credentials from more than 2,000 websites, according to an article on the website *Marketwatch*, which cited a report by security researcher Troy Hunt.

Hunt said that the files were collected from a number of breaches and uploaded to a cloud service called MEGA, and the data was promoted on popular hacking forums. MEGA eventually removed the data, so it's not clear how many hackers gained access to the files.

Considering the size and scope of the data trove, you should immediately change your passwords on sites such as:

- Your online e-mail services (like Gmail, Hotmail, etc.)
- Your banking and other financial services accounts (retirement accounts, credit cards, etc.)
- All of your social media accounts.
- E-commerce sites.
- Subscription sites and other sites that store your credit card information.

Hunt has created a page on his website for anybody to check to see if their e-mail address and passwords were compromised. You can check here for free: www.haveibeenpwned.com.

Hunt said even his own data appeared in the giant trove of stolen e-mails and passwords, despite his intensive security practices as a privacy professional.

If you have employees, you should notify all of them about the breach and urge them to change their passwords. It should be an organization-wide endeavor.

To best protect your privacy, Hunt recommends using strong passwords, a password manager and two-factor authentication. Two-factor authentication requires users to input a code sent to their phone or e-mail for log in, adding an extra layer of security.

Top five password tips

- 1. Adopt long passwords** – And don't use things like \$ for the letter "s" or 3 for "E", and other such changes that hackers are on to.
- 2. Avoid periodic changes** – Instead, change your passwords only when you feel there has been a threat. Most people will recycle old passwords or make small changes to their existing password.
- 3. Create a password blacklist** – Use this as the list of codes to avoid when making a new password.
- 4. Implement two-factor authentication** – Two-factor authentication has already become a de facto standard for managing access to corporate servers. In addition to traditional credentials like username and password, users have to confirm their identity with one-time code sent to their mobile device or using a personalized USB token.
- 5. Organize regular staff training** – Nearly 41% of company data leaks occur because of negligent or untrained workers who open phishing e-mails. It's important to train employees to detect and avoid phishing and other social media attacks. ❖

Enforcement

OSHA Stays Serious About Temp Worker Safety

WHILE THE Trump administration has eased off a number of regulations and enforcement actions during the past two years, Fed-OSHA continues focusing on the safety of temporary workers as much as it did under the Obama presidency.

This puts the onus not only on the agencies that provide the temp workers, but also on the companies that contract with them for the workers.

As evidence of its continued focus on temp workers, OSHA recently released guidance on lockout/tagout training requirements for temporary workers. This was the third guidance document released in 2018 and the 10th in recent years that was specific to temp workers.

One reason OSHA is so keen on continuing to police employers that use temporary workers, as well as the staffing agencies that supply them, is that temp workers are often given some of the worst jobs and possibly fall through the safety training cracks.

OSHA launched the Temporary Worker Initiative in 2013. It generally considers the staffing agency and host employer to be joint employers for the sake of providing workers a safe workplace that meets all of OSHA's requirements, according to a memorandum by the agency's office in 2014 to its field officers.

That same memo included the agency's plans to publish more enforcement and compliance guidance, which it has released steadily since then.

OSHA TEMP WORKER GUIDANCE

- Injury and illness record-keeping requirements
- Noise exposure and hearing conservation
- Personal protective equipment
- Whistleblower protection rights
- Safety and health training
- Hazard communication
- Bloodborne pathogens
- Powered industrial truck training
- Respiratory protection
- Lockout/tagout

Joint responsibility

OSHA started the initiative due to concerns that some employers were using temporary workers as a way to avoid meeting obligations to comply with OSHA regulations and worker protection laws, and because temporary workers are more vulnerable to workplace safety and health hazards and retaliation than workers in traditional employment relationships.

With both the temp agency and the host employer responsible for workplace safety, there has to be a level of trust between the two. Temp agencies should come and do some type of assessment to ensure the employer meets OSHA standards, and the host employer has to provide a safe workplace.

Both host employers and staffing agencies have roles in complying with workplace health and safety requirements.

Each employer should consider the hazards it is in a position to prevent and correct, and in a position to comply with OSHA standards. For example: staffing agencies might provide general safety and health training, and host employers provide specific training tailored to the particular workplace equipment/hazards.

KEYS TO SUCCESS

- Communication between the temp agency and the host is key to ensuring that the necessary protections are provided.
- Staffing agencies have a duty to inquire into the conditions of their workers' assigned workplaces. They must ensure that they are sending workers to a safe workplace.
- Ignorance of hazards is not an excuse.
- Staffing agencies need not become experts on specific workplace hazards, but they should determine what conditions exist at the host employer, what hazards may be encountered, and how best to ensure protection for the temporary workers.
- The staffing agency has the duty to inquire and verify that the host has fulfilled its responsibilities for a safe workplace.
- Host employers must treat temporary workers like any other workers in terms of training and safety and health protections.

Find all of OSHA's temp worker guidance documents here: www.osha.gov/temp_workers/. ❖



Succession

Estate Planning: Passing On the Family Business

A SUCCESSFUL family business is a cornerstone of many families' wealth. But passing the business along to the next generation takes substantial planning and preparation.

A recent Pricewaterhouse Coopers report found that while just over half of family-owned business executives wanted to pass on their businesses to children, just 27% of these companies had a robust, actionable succession plan in place.

Here are some important things to keep in mind:

Choose the appropriate entity

You can't pass on an existing family business as a sole proprietorship or general partnership. You can pass on the assets, but not the business itself. Also, you can't pass S-corporation shares to a non-resident alien.

Involve family in business succession discussions

Get family input years ahead of time, and involve them when discussing succession planning. Sometimes family members may not want to go into the family business.

Knowing this in advance can help you make a solid plan.

Have a will and buy-sell agreement in place

All shareholders should have a will precisely defining what happens to their share of the business upon their death. Without a will, a deceased owner's interest would automatically go to his or her spouse, children or other next of kin according to most states' default intestate laws.

A will and a buy-sell agreement ensure that control of the company will remain with the people committed to the business.

A life insurance policy on each shareholder, with the company or with the other owners as beneficiaries, may be a good way to ensure that there will be enough cash available to buy out surviving spouses or other heirs of any deceased shareholder.

Consider passing on ownership, not management

Sometimes adult children of entrepreneurs may not want to manage the day-to-day business. But they could be excellent as directors and shareholders. In this case, work on recruiting and

developing a manager to run the firm as an employee.

If this isn't practical, it may be best to explore selling the business outright.

Make equitable arrangements for other children

If you have multiple children, chances are at least one of them will not want to take over the family business, or will be unable to do so for any number of reasons. Possible solutions:

- Start amassing assets outside of the business.
- Own life insurance sufficient to equalize the inheritances.
- Divide the business's ownership into voting and non-voting shares, in order to give the most capable or involved child operational control without disinheriting the others.

Provide for founder's retirement income security

The business should provide an income for the founder and their spouses for as long as they live. Possible techniques include:

- **Purchase.** The founder's children pay the founder outright in cash for his or her shares, either in a lump sum or installments.
- **Preferred stock.** Convert the founder's interest from common stock to preferred stock. The founder doesn't get to vote shares anymore, and no longer controls the company.

But preferred stock dividends get paid first. Nobody can take dividends out unless the preferred stock dividend is paid.

Upon the founder's death, the preferred stock goes to the surviving spouse, and then gets passed on according to the last will and testament. ❖

THE TAKEAWAY

Don't try to wing this process! Family-business succession planning is a long process, and you'll need the help of attorneys, tax professionals, insurance professionals and business valuation experts along the way.

IF YOU HAVE QUESTIONS, CALL US!