



# Safety News

News for Members of the Contractors Insurance Safety Council – Group 44 Program

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## DIR Reduces Employer Assessments by 28%

California employers will pay \$113.3 million less in assessments next year than they did in 2011 under rates announced by the Department of Industrial Relations. The department mailed letters to employers on Dec. 1 that show the total assessment for 2012 of \$492,199,282 is actually 0.66% higher than the assessment of \$488,927,946 in 2011. However, the department was able to hold down the amount it is seeking using the money it has on hand, along with credits for amounts under-collected from employers in the previous fiscal year.

The 2012 assessment of \$291.6 million is a 28% reduction from the \$404.9 million collected from employers this year. The assessment funds the operations of the Division of Workers' Compensation, and partially funds the Division of Occupational Safety and the Division of Labor Standards Enforcement. Assessments also fund anti-fraud efforts by the California Department of Insurance and local district attorneys, pay benefits to injured workers whose employers were illegally uninsured, and provide compensation to injured workers who already

had a disability or impairment at the time of injury.

The total Workers' Compensation Administration Revolving Fund assessment, which pays for the operations of the DWC, is \$251.2 million, a 2% increase over the total assessment of \$246.2 million in 2011. After adjustments, the total amount was reduced to \$176.4 million, 8.5% less than the \$192.7 million collected last year.

After adjustments, the department is seeking \$19.7 million for the Uninsured Employers Benefit Trust Fund, down 65.9% from the \$57.8 million collected last year.

This fund was the subject of some controversy in September when Assemblyman Jose Solorio, D-Santa Ana, amended AB 436 to authorize a transfer of \$4.3 million from the fund to use as seed money to create a program within the Department of Industrial Relations to monitor prevailing wage issues on public works projects. Employer representatives blasted the proposed loan, saying that

**(ASSESSMENTS—Continued on page 2)**

## Senate Committee Focuses on Underground Economy and Work Comp

The head of the California Department of Industrial Relations says compliance with workers' compensation insurance requirements is one of the best tools for driving the so-called underground economy out of California, and she plans to step up efforts to catch violators next year.

Christine Baker, who was recently appointed to serve as director of the Department of Industrial Relations pending Senate confirmation, testified during a Dec. 5 hearing of the Select Committee of the California state Senate Business and the Underground Economy that Gov. Jerry Brown has made it a top priority to drive out employers who ignore labor laws and regulations.

"Lack of workers' compensation coverage is a good indicator that a business may be cheating and taking an unfair competitive advantage of those who do provide coverage and who are operating in compliance with the law," Baker said.

Brown signed legislation on Oct. 9 authorizing fines of \$500 to \$15,000 per violation for willfully classifying an employee as an independent contractor. The bill allows civil penalties of \$10,000 to \$25,000 for a pattern of willful misclassification.

Baker said a collaborative effort between her department, the Employment Development Department and the Workers' Compensation Insurance Rating Bureau is paying off.

Baker said 479 of 1,498 employers -- about 31% of those randomly selected for review by the Employment Development Department this year -- did not have workers' compensation insurance for their employees. Further review found that 80 of the employers actually did have a policy and an additional 45 purchased insurance after receiving a notification from the department.

Baker said the department issued 56 citations against employers who had no workers' compensation insurance and against 46 employers who let the coverage lapse. Fines totaled \$400,958, Baker said.

The department will continue to randomly identify employers to review, but will focus heavily on new employers and those in the construction, agriculture and

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# SAFETY... It



## 'Tis the Season to Celebrate Responsibly

*Drinking and driving are a problem all year around. But it becomes even a bigger issue at holiday time when so many people are out celebrating. Talk to your employees about their safety this holiday season.*

### 'Tis the Season to Celebrate Responsibly

**D**ecember is **National Drunk and Drugged Driving Prevention Month**, which makes it a good time to give your employees a brief reminder of the dangers of driving after imbibing. Begin with the bottom line by making sure employees know when they've had too much to drink.

For example, do they think they're OK to drive if they can speak without slurring their words and are not acting abnormally? Not so, according to the National Institute on Alcohol and Alcohol Abuse (NIAAA — [www.niaaa.nih.gov](http://www.niaaa.nih.gov)), which states that "the skills and coordination needed for driving are compromised long before the obvious signs of intoxication are visible."

Furthermore, emphasize to your employees that drinking a cup of strong coffee will not sober them up enough to drive, because caffeine "doesn't counteract the effect of alcohol on decision-making or coordination. The body needs time to metabolize (break down) alcohol and even more time to return to normal."

While you're on the topic of drinking and driving, you can also touch on alcohol in general. Your employees probably know that *excessive* alcohol consumption is bad for their health. But do they know how much is too much?

According to the Mayo Clinic ([www.mayoclinic.com](http://www.mayoclinic.com)), too much is more than two drinks a day for men under the age of 65 and one drink a day for women and men over the age of 65. And what constitutes one drink? One drink = 12 ounces of beer or 5 ounces of wine or 1.5 ounces of 80 proof distilled spirits.

So if employees stick to the moderate drinking listed above, can alcohol actually be good for them? Again according to the Mayo Clinic, alcohol in moderation may reduce one's risk for heart disease, strokes, gallstones, and diabetes.

In the end, it's up to employees to decide whether to drink alcohol in moderation. But let them know about these other precautions to help them make their decision. Medical professionals recommend that people who have the following health conditions should avoid alcohol:

- A history of a hemorrhagic stroke
- Liver disease
- Pancreatic disease

- Evidence of precancerous changes in the esophagus, larynx, pharynx, or mouth

Likewise, people who are taking the following medications should avoid alcohol:

- Antibiotics
- Anticoagulants
- Antidepressants
- Aspirin
- Diabetes medications
- Antihistamines
- Antiseizure medications
- Beta blockers
- Pain relievers
- Sleeping pills

If your employees are still unclear about their health and alcohol, encourage them to consult with their medical professional to assess their personal situations.

### Why It Matters

- Recent statistics from the National Highway Traffic and Safety Administration (NHTSA — [www.nhtsa.gov](http://www.nhtsa.gov)) revealed that in a 12-hour period from 6:00 p.m. New Year's Eve to 6:00 a.m. New Year's Day, 135 people died in alcohol-related car crashes.

- That's more than 5 people every minute!
- In addition to possibly leading to addiction, drinking too much alcohol can cause various cancers, including mouth, liver, and breast, pancreatitis, heart muscle damage leading to heart failure, stroke, brain damage, cirrhosis of the liver, miscarriage, and fetal alcohol syndrome.

**Source: BLR's Safety Daily Advisor**

### (ASSESSMENTS—continued from page 1)

is money paid by businesses to provide benefits to injured workers. If there is extra money in the account, they said it should be returned to employers or used in some way to hold down costs or improve benefits for workers.

Gov. Jerry Brown signed AB 436 into law on Sept. 30.

The final assessment for the Workers' Compensation Fraud Account is \$40.7 million; the Labor Enforcement and Compliance Fund assessment is \$36.6 million; the Occupational Safety and Health Fund assessment is \$35.5 million; and the Subsequent Injuries Benefits Trust Assessment is \$18.7 million.

"We made great strides in controlling costs and reducing operating expenses through strong financial controls," Labor and Workforce Development Agency Secretary Marty Morgenstern said in a statement. **Source: DIR**

## State UI Fund Debt Leads to Higher Federal Tax on Employers

**A**bsent an act of Congress, California employers will be paying higher taxes starting January 1, 2012 because the state has not repaid money it borrowed from the federal government to pay unemployment insurance (UI) benefits.

The tax increase amounts to \$21 per year for any employee who makes \$7,000 or more in 2012. California employers pay UI taxes on the first \$7,000 of wages per employee.

Statewide, the tax increase amounts to an estimated \$289.8 million in 2012 and \$615.7 million in 2013, according to the California Employment Development Department (EDD) October 2011 Unemployment Insurance Fund Forecast. This represents a loss of 0.3% of the federal tax credit in 2011 and 0.6% in

2012. These additional taxes paid will offset California's federal loan balance.

### Federal Requirements

State laws must meet certain federal requirements for employers to qualify for credits against the tax imposed under the Federal Unemployment Tax Act (FUTA).

Due to California's outstanding loan balances, the U.S. Department of Labor has notified the Internal Revenue Service and the EDD that California is a "credit reduction state."

California has carried an outstanding loan balance for two years in a row.

*(UI FUND DEBT—Continued on page 4)*

*(UNDERGROUND—continued from page 1)* restaurant industries in 2012, Baker said.

Starting in January, computer monitoring of payroll information reported to the state will also be used to identify employers who are using more workers than they claimed when purchasing a policy or who are logging more work hours than are being reported.

Computer monitoring should also help identify businesses that need to be investigated, sparing headaches for good employers, Baker said.

Bruce Wick, director of risk management for the California Professional Association of Specialty Contractors, testified that sweeps focusing on all contractors in a specific geographic area inherently "pick on some very good employers and waste their time." He said he supports the idea of using a computer system to identify "red flags," as long as state agencies act quickly. He said in the case of Petronella Roofing, an Orange County contractor accused of running the largest known workers' compensation insurance fraud case in the history of the state, red flags were identified long before the company was shut down. "When the red flags came up, it took five years to put them out of business," Wick testified. "Had they been shut down earlier, we could have given more business to legitimate contractors."

Devon Lynn Kile, 46, was sentenced on Nov. 30 to 10 years of probation and ordered to pay \$2.8 million in reimbursement to the Employment Development Department and the Franchise Tax Board. Her husband, Michael Vincent Petronella, was sentenced to 10 years in state prison on Nov. 4, 2010. Prosecutors say the company reported about \$3 million in payroll to State Compensation Insurance Fund when they were actually paying about \$29 million.

The Contractors State License Board will also be stepping up its efforts next year to ensure contractors are

carrying workers' compensation insurance, according to compliance chief David Fogt. Fogt said a board review of the more than 300,000 licensed contractors in California found about 60% are exempt from carrying workers' compensation insurance.

"They've signed under penalty of perjury that they have no employees and we know that is not true," Fogt testified. Fogt said Assembly Bill 484, which takes effect on Jan. 1, 2012, requiring contractors to provide proof of coverage or certify their exempt status every two years when renewing their license will help identify noncompliant employers.

The board also plans to target the pool-plastering industry in Southern California, working with district attorney offices in Orange, Los Angeles and San Bernardino counties to bring contractors into court for not having workers' compensation coverage.

Fogt said for every \$1 spent on enforcement efforts, he expects the state will see a \$4 return through increased tax collections and penalties.

Sens. Mark DeSaulnier, D-Concord, and Mimi Walters, R-Laguna Hills, asked during the hearing in Sacramento if employers are not carrying workers' compensation and violating other state laws because there are too many state regulations for them to follow. Wick said every regulation imposed on legitimate businesses gives the underground contractors a point of leverage, so he thinks the state's regulatory environment is partially to blame.

Scott Hauge, president of Small Business California, said he thinks some employers may not know the requirements, but the vast majority of those not carrying workers' compensation are doing so intentionally. "It is not over regulations," Hauge said. "Obviously, that should be addressed, but that is a front for somebody. Not to have workers' compensation and not to pay taxes is unconscionable."

*Source: WorkCompCentral*

***(UI FUND DEBT—continued from page 3)***

Therefore, the FUTA credit for California employers will decrease from 5.4% to 5.1% on January 1, 2012, a 0.3% credit reduction, according to the EDD website. Employers will use IRS Schedule A (Form 940), Part 2, to calculate the FUTA tax, EDD reports.

### **State UI Fund Insolvency**

The unemployment rate in California has been consistently higher than the U.S. rate for some time. October unemployment in California was 11.7% versus 9% for the United States, according to EDD. The October unemployment rate was a slight drop from the 11.9% EDD reported for September, and an improvement from the 12.5% rate recorded in October 2010.

California's UI Trust Fund has been insolvent since January 2009 due in part to the large numbers of unemployed Californians.

Also contributing to the UI fund's insolvency has been legislation that imposed benefit increases in 2001 without including cost-saving reforms.

### **More Information**

EDD is advising employers with questions on the FUTA credit reduction, Form 940 or Publication 15 (2011) (Circular E) Employer's Tax Guide to contact the IRS at [www.irs.gov](http://www.irs.gov).

**Source:** *California Chamber of Commerce*

## **Mileage Reimbursement Unchanged**

**T**he U.S. Internal Revenue Service is not changing the standard mileage reimbursement rate for 2012, meaning California workers' compensation claims administrators will not need to adjust the rate they pay injured workers to travel for medical treatment or evaluation of their injuries, according to the California Workers' Compensation Institute. Any adjustment to the IRS mileage rate affects rates paid to injured workers in California, because Labor Code Section 4600(e)(2), Government Code Section 19820 requires claims administrators to reimburse mileage at the rate adopted by the director of the Department of Personnel Administration for non-represented state employees. That rate is tied to the IRS published mileage rate. The IRS usually adjusts the travel reimbursement rate each fall, but announced that the 2012 rate will remain at 55.5 cents per mile, the same rate as in 2011.

For the past five years, the IRS has adjusted reimbursement rates in response to fluctuating gasoline prices. The announcement on the 2012 rate is the first time since 2007 that claims administrators will not need to apply a new rate for travel on or after Jan. 1, CWCI said.

In December 2010, the IRS set the rate at 51 cents for travel on or after Jan. 1, 2011. The rate was bumped up to 55.5 cents for travel on or after July 1 after gas prices spiked in spring.

**Source:** *CWCI*

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