



WORKERS' COMPENSATION

# Rating Bureau Recommends 0.9% Rate Hike

**T**HE ORGANIZATION that helps set workers' compensation rates in California will recommend that benchmark rates increase 0.9%, with effect from Sept. 1, 2024.

While the recommendation is less than 1%, the Workers' Compensation Insurance Rating Bureau noted that it was driven by increasing medical costs for injured workers and higher claims-adjusting costs for insurers.

The Rating Bureau's governing committee approved the rate-change recommendation, which will be sent to the state insurance commissioner, who can either approve it or order another rate adjustment.

If history is any guide, it's likely that Commissioner Ricardo Lara won't approve the rate hike and will instead recommend a lower increase or even a reduction, as he did last year and the year before.

In 2023, the Rating Bureau had recommended an increase of 0.3% in the average benchmark rate (also known as the pure premium rate), and the commissioner instead ordered that it be cut by 2.6%. The requested increase is an average across the WCIRB's 700 class codes, each of which has its own pure premium rate.

The pure premium rate is a base rate that includes only the cost of claims and claims-adjusting costs, and does not take into account other forms of overhead and profits. Insurers use the rate as a guidepost for pricing their policies. They are not obliged to follow the rates.

## EXPERIENCE MATTERS

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

### What's affecting rates

The tiny rate-increase recommendation is based on continuing downward pressure on claims costs since last year. Drivers of the Rating Bureau's recommendation include:

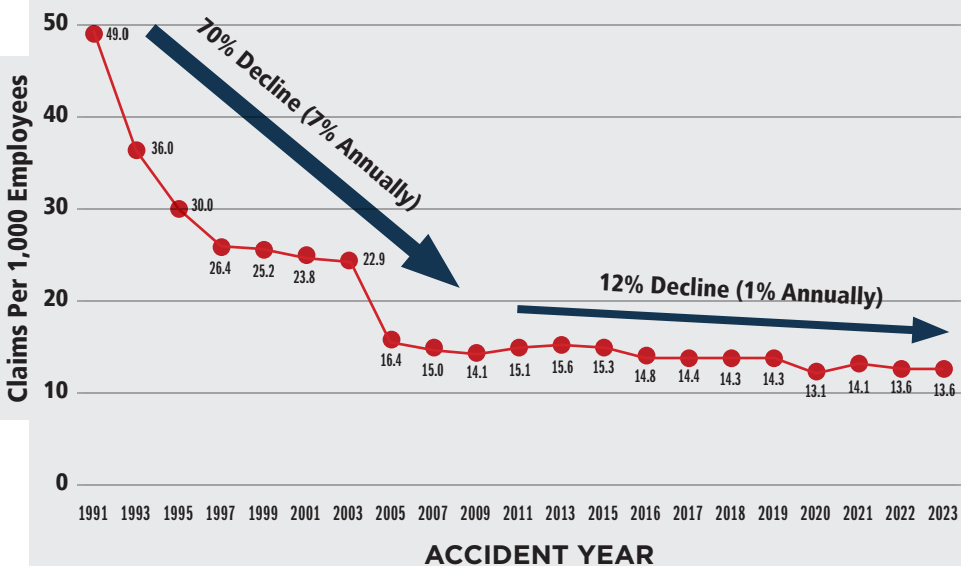
- Lower claims cost inflation
- Lower frequency of claims
- Lower overall claims costs
- Higher medical costs
- Higher claims-adjusting costs.

### Decision expected in June

Commissioner Lara will hold a public hearing in the coming months, after which he will issue a decision to approve the filing or set another rate. We'll keep you posted at the time.

After he makes his final decision, the Insurance Department will publish pure premium rates which will be effective for all policies incepting on or after Sept. 1, 2024. ❖

## CLAIM FREQUENCY CONTINUES FALLING



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## NEW RULEMAKING

# Final Overtime Regs Raise Exempt Salary Threshold 65%

**T**HE U.S. DEPARTMENT of Labor has issued a final rule increasing the federal salary threshold for overtime exemptions by 65%, with the full increase starting in 2025.

Currently, any worker who does not earn at least \$35,568 per year (\$684 per week) must be paid overtime if they work more than 40 hours in a week, regardless of if they are classified as a manager or professional. A salaried bona fide executive, administrative or professional employee must earn that amount or more if an employer wants to exempt them from federal overtime requirements.

## TWO-PHASE INCREASE

The minimum exempt salary threshold will increase in two quick, successive phases from the current \$684 per week.

**July 1:** \$844 per week (\$43,888 per year)

**Jan. 1, 2025:** \$1,128 per week (\$58,656 per year)

After that, the threshold will be increased every three years, starting in 2028. The DOL will be required to provide 150 days' notice before making changes to the threshold.

### White-collar exemption explained

The Fair Labor Standards Act requires that employees be paid overtime (typically a rate of 1.5 times their regular rate of pay) for

any hours they work in excess of 40 per week, unless the employee falls under one of three exemptions and is paid the minimum salary under the law.

The three exemptions have different qualifying responsibilities:

**Executive exemption** – These employees must manage a department or division, direct the work of at least two workers and have the authority to hire and fire.

**Administrative exemption** – Primary duties must be office or non-manual work related to the management or general business operations, and the employee's duties must include exercising independent judgment on significant issues.

**Professional exemption** – The employee's primary duty must be the performance of work requiring advanced knowledge, predominantly intellectual in character, and which requires the consistent exercise of discretion and judgment.

### Highly compensated employee exemption

There is also an overtime exemption for certain highly compensated employees. The new salary threshold for this group of workers is rising from \$107,432 annual compensation to \$132,964 starting on July 1, and to \$151,164 on Jan. 1, 2025.

For the employee to qualify for this exemption:

- Their primary duty must include performing office or non-manual work; and
- They must customarily and regularly perform at least one of the exempt duties or responsibilities of an exempt executive, administrative or professional employee.

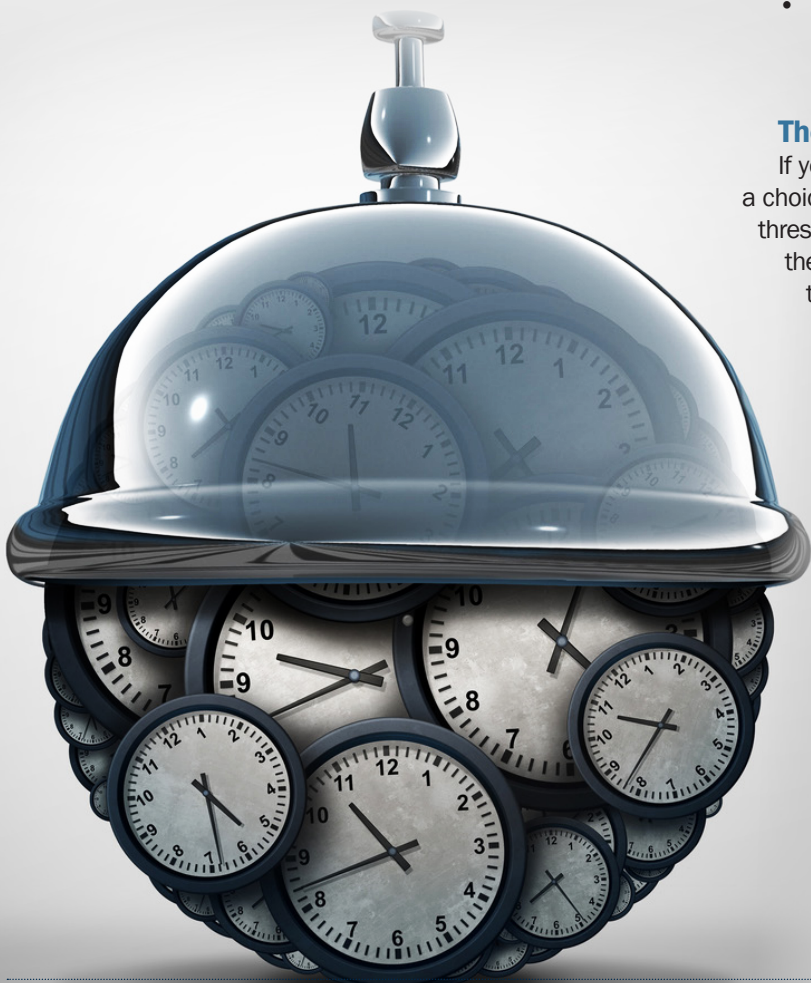
### The fallout

If you have currently exempt employees on staff, you will have a choice to make come July 1: Either raise their salary to the new threshold of \$43,888 or higher, or pay them overtime for any hours they work in excess of 40 a week. Then you'll have to do it again to account for the even higher threshold come Jan. 1, 2025.

Also, your benefits package may differ for non-exempt and exempt workers, so you will want to review any affected employees' packages.

You should also plan for how you will communicate these changes to your affected workers.

Finally, although business groups have vowed to challenge the final rule in court, companies will need to ramp up their payroll systems to comply with the new rule. There is no guarantee that a court would stay the final rule until legal challenges are exhausted. ❖



GROUNDBREAKING DECISION

# New FTC Rule Bans Non-Compete Agreements

**T**HE FEDERAL Trade Commission on April 23 approved a new rule that bans employers from requiring new employees to sign non-compete agreements. The rule will take effect in August 2024, after the commission voted 3-2 to approve it.

Besides banning future non-compete agreements, the new rule also nullifies all existing non-competes and requires employers to inform current and past employees that they will not be enforced.

Obviously, employers will need to scramble to comply with the new rule as the ramping up period is relatively short. However, it should be noted that the day after the regulations were announced, the U.S. Chamber of Commerce and other business groups filed lawsuits to block the rule from taking effect.

This new federal rule comes after four states — California, Minnesota, North Dakota and Oklahoma — banned non-competes and 13 others have laws limiting their use.

Under the FTC's new rule, existing non-compete agreements for the vast majority of workers will no longer be enforceable after its effective date.

Existing agreements for senior executives — who represent less than 0.75% of workers — can remain in force under the final rule. The rule defines senior executives as workers earning more than \$151,164 annually and who are in policy-making positions.

That said, employers are banned from entering into or attempting to enforce any new non-competes, even if they involve senior executives.

Employers will be required to provide notice to workers other than senior executives who are bound by existing non-competes that they will not be enforcing the agreements.

## The next step

Since the rule has already been challenged in court, a judge may put a stay on it while litigation proceeds, but employers can't count on that.

Time is quite short to prepare for the new rule. If you have any current non-competes, or if you require new employees to sign one, you should consult with your legal counsel to discuss your procedures going forward and the steps you'll have to take to comply with the new rule.

To help employers adhere to the requirement that they inform current and former employees that their non-compete agreements are null and void, the FTC has included model language in the final rule.

The commission said that employers have several alternatives to non-compete agreements that still enable firms to protect their investments without having to enforce a non-compete.

Trade secret laws and non-disclosure agreements both provide employers with well-established means to protect proprietary and other sensitive information. Researchers estimate that over 95% of workers with a non-compete already have an NDA. ❖



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## COMMERCIAL PROPERTY INSURANCE

# New Rules Aim to Ease Availability Crisis

**W**ITH THE California commercial property market increasingly stressed with fewer and fewer insurers willing to write policies in the Golden State, the state insurance commissioner has floated a plan aimed at easing the crisis.

The main thrust of the new proposal is to make it easier for insurers to get their rate-hike requests approved, efforts that have been stifled due to laws that have been on the books since the early 1990s from a law known as Prop. 103. As well, insurers are limited in the types of data they can use to justify rate increases, which has constrained them from being able to ask for hikes that are adequate to cover their potential liabilities.

The proposed rule changes, along with others that are coming this year, are aimed at luring insurers back into the marketplace after one carrier after another has either stopped writing commercial property in the state altogether, or restricted how many policies they will write in California, and where.

While insurers are still writing policies in California, their numbers are shrinking, making renewals a difficult process for many businesses. Insurers have also gotten pickier about properties they are willing to cover, with some setting limits on the age of a building and taking into consideration whether the property owner has filed any claims in the last three years.

## The commissioner's plan

Insurance Commissioner Ricardo Lara's proposed regulations, one of those prongs, would allow insurers to use catastrophe models to better predict insurance rates for wildfire, terrorism and flooding. Currently, they are only allowed to use historical claims data, which is backward-looking and does not account for the surge in risk and costs that's occurred during the last five to 10 years.

As well, they are not allowed to consider the growing risk caused by climate change, or wildfire risk mitigation measures taken by communities or regionally as a result of local, state and federal investments.

Mark Sektnan, vice president for state government relations for the American Property Casualty Insurance Association, said this change would go a long way towards addressing the insurance crisis in the state.

"As Californians grapple with record inflation and become increasingly vulnerable to climate-driven extreme weather, including catastrophic wildfires, this is a critically needed tool to help identify future risks more accurately and set rates that reflect our new reality," he said. "More accurate ratemaking will help restore balance to the insurance market and ensure all Californians have access to the coverage they need."

The trade-off for consumers will be the likelihood of more insurers coming back into the market to write commercial property and homeowner's insurance in exchange for them asking for large rate hikes.

The latest proposed regulation follows another that was introduced in late February that would speed up approvals of rate-increase requests. These can sometimes take years if the Department of Insurance asks for more supporting documentation, which can reset the rate approval process, delaying final approval. Some insurers have waited more than two years to get their rate hikes even considered.

Current rules "lack clarity and fail to specify the exact materials and information required in a complete rate filing application given the change in times and increased complexity of filing," according to the Department.

This proposed rule codifies clearer instructions for what supporting documentation insurers must submit when filing for rate increases.

## The takeaway

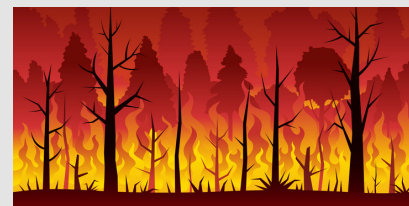
A public hearing on the proposed catastrophe-modeling regulations will be held on April 23 and it's the department's plan to get these new rules implemented by the end of 2024, along with the rules on speeding up rate-increase requests.

In the coming months, the department plans to propose additional regulations as well as legislation in order to get insurers to write business in the state again.

If enacted, it's hoped that the various planned changes will provide some relief to homeowners and businesses in the state.

We'll keep you posted as this develops. ❖

## FOUR FACTORS BEHIND INSURANCE CRISIS



Massive wildfire insurance claim losses, which have increased exponentially as wildfires have grown more destructive and in number.



The cost of rebuilding, which has surged as construction and material costs have exploded.



The rising cost of reinsurance, which carriers buy to cover themselves if they have catastrophic claims.



Difficulties in getting rate hikes approved.