



## Workers' Compensation

# Insurance Commissioner Orders Another Rate Reduction

**C**ALIFORNIA INSURANCE Commissioner Ricardo Lara has issued an order that cuts the average advisory workers' compensation benchmark rate across all classes by 2.6%, starting Sept. 1.

The benchmark rate, also known as the pure premium rate, is a baseline that covers just the cost of claims and claims adjusting, but not other overhead like rents, underwriting costs and provisions for profit. The rate is an average across all class codes, with some industries seeing higher increases and some seeing rate decreases.

The rate is advisory, meaning that insurers can use it as a guidepost for pricing their individual policies. Individual premiums that employers pay will depend on a number of factors, including the pure premium rate, the carrier's own pricing methodology, and the employer's claims and claims cost history, location and industry.

### Why the rate is falling

The insurance commissioner's decision will cut the average published pure premium rate to \$1.46 per every \$100 of payroll, compared to the current \$1.50. Despite the average rate decrease of 2.6%, individual class codes may see swings as much as plus or minus 25%.

Several factors are driving the lower rate decision:

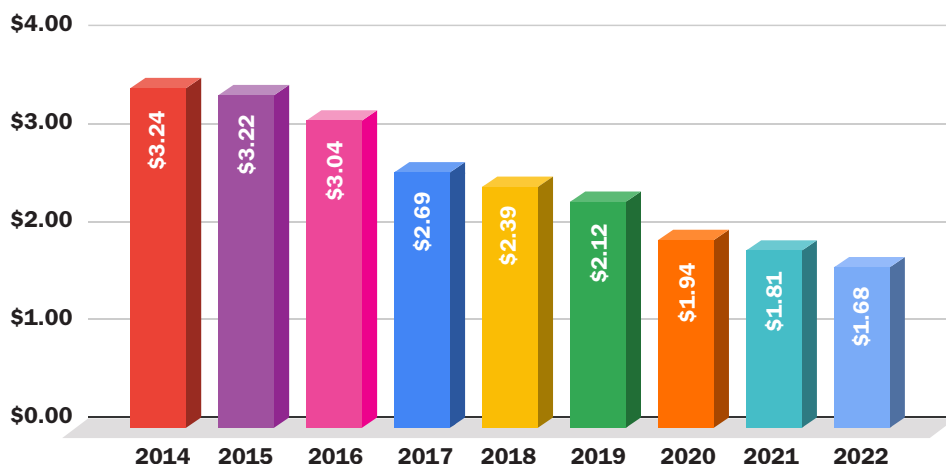
- Slowing claims cost inflation
- Stable medical costs
- Falling frequency of claims
- Fewer COVID-19 claims
- Lower overall claims costs
- Lower claims-adjusting costs.

One other reason rates continue to decline is that workplaces are generally safer than ever.

The number of workers' compensation claims hit a low of 13 per 1,000 workers last year. That's a historical low thanks to decades of falling claims frequency. For perspective, in 1991 there were 49 claims per 1,000 workers.

## RATES AT HISTORIC LOWS

Average Rates Insurers Charge per \$100 of Payroll



Source: Workers' Compensation Insurance Rating Bureau

### What insurers are doing

As mentioned, the pure premium rate is advisory and insurers can charge what they want. However, they are typically charging more than the published rates.

The most recently available industry average level of pure premium rates filed by insurers with the Department of Insurance is \$1.71 per \$100 of payroll as of Jan. 1, 2023, which is about 14.6% higher than the current published rate of \$1.50. In 2022, carriers were charging \$1.68 on average.

While the workers' compensation market remains competitive and rates continue hovering around record lows, the final rate any employer will pay will depend on several factors beyond the pure premium rate. Some employers may see rate increases instead.

Factors that can influence the prices include the employer's:

- Industry.
- Geographical location (employers in Southern California, for example, face a unique claims environment that results in a surcharge).
- Individual claims experience. ❖

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# ‘Nuclear Jury’ Verdicts Driving Rate Hikes

**T**HE SIZE of large jury verdicts has exploded in recent years, putting a strain on businesses not only for what they have to pay out of pocket, but also the size of the premium they pay for their liability coverage.

These damages juries are awarding have gotten so large that they’ve been given a new name, “nuclear verdicts,” due to their destructive force.

A nuclear jury verdict is one that exceeds \$10 million. The number of nuclear verdicts in 2019 was three times the annual average from 2001 to 2010. By 2022 it had doubled the 2019 level. Median jury awards (meaning half were below and half were above) rose from \$19.3 million in 2010 to \$41.1 million in 2022.

Increasingly large jury verdicts in liability lawsuits against businesses are a driving factor in rising insurance rates, as insurers, which often pay the lion’s share of these decisions, grapple with a more difficult legal landscape.

These massive verdicts are having a knock-on effect on commercial general liability, excess liability and commercial auto insurance rates, driving them up significantly in some cases.

## The effects

The insurance lines below are now in hard-market territory.

### THE MOST AFFECTED LINES

- Commercial trucking and auto insurance
- Commercial liability
- Excess liability, or umbrella insurance
- Product liability
- Medical malpractice
- Professional liability
- Directors and officers liability.

The trucking industry in particular has been described as “under siege” from nuclear verdicts. Between 2020 and 2023, jury awards against trucking companies averaged \$27.5 million; half of all awards were greater than \$760,000, according to a report by Travelers Insurance.

Companies who settled instead of going to trial did not fare much better. Settlements averaged \$10.6 million, with half of them greater than \$210,000.

## What’s driving these awards

Some observers say these verdicts are the result of legal system abuse. Potentially abusive practices by plaintiffs’ attorneys include:

- Advertising more widely and aggressively.

- “Shopping” for courts where they believe they are likely to get favorable outcomes.
- Planting an arbitrary value of the damages in jurors’ minds early in court proceedings.
- Playing to jurors’ emotions, convincing them the defendant corporation may be a threat to the community.
- Obtaining “third party litigation funding,” in which investors finance the lawsuit in exchange for a share of the awarded damages.

Anger among members of the public about growing corporate power and income and wealth inequality also plays a role. Jurors may perceive corporations as having unfairly profited from society and decide to reclaim some of those profits in the form of a large damages award.

## What businesses can do

There are steps companies can take to reduce the chances that they will be victimized by unsupportable jury awards:

- Work closely with their liability and auto insurers to reduce the hazards in their operations and minimize the likelihood of successful lawsuits.
- When faced with lawsuits, work in partnership with the insurer and the defense attorneys to plot legal strategies and prepare witnesses for questions designed to arouse jurors’ emotions.
- When preparing for a trial, evaluate the case from the jurors’ perspective so that effective counter-arguments can be prepared. ❖



# Estate Management Checklist



## Do you have a will?

A will enables you to specify who you want to inherit your property and other assets. A will also enables you to name a guardian for your minor children.

## Do you have health care documents in place?

Health care documents spell out your wishes for health care if you become unable to make medical decisions for yourself. They also authorize a person to make decisions on your behalf if that should prove necessary. These documents may include a living will, a power of attorney agreement, and a durable power of attorney agreement for health care.

## Do you have financial documents in place?

Certain financial documents can outline your financial wishes. If you become unable to make decisions for yourself, these financial documents can be structured to empower a person to make decisions on your behalf. These documents may include joint ownership, durable power of attorney, and living trusts.

## Have you filed beneficiary forms?

In some cases, naming a beneficiary for bank accounts and retirement plans makes these accounts “payable on death” to your beneficiaries. In other cases, you will need to fill out a “Payable on Death” form.

## Do you have the right amount, type of insurance?

When was the last time you assessed your life insurance coverage? Have you compared the life insurance benefit with your financial obligations? Keep in mind that several factors will affect the cost and availability of life insurance, including age, health, and the type and amount of insurance purchased.

Life insurance policies have expenses, including mortality and other charges. If a policy is surrendered prematurely, the policyholder also may pay surrender charges and have income tax implications.

You should consider determining whether you are insurable before implementing a strategy involving life insurance. Any guarantees associated with a policy are dependent on the ability of the issuing insurance company to continue making claim payments.

## Have you taken steps to manage your estate tax?

If you and your spouse have more than \$25.84 million in assets (for 2023), you may want to consider taking steps to manage federal estate taxes, which will be due at the second spouse’s death.\*

## Have you taken steps to protect your business?

Do you have a succession plan? If you own a business with others, you may also want to consider a buyout agreement.

## Have you created a letter of instruction?

A letter of instruction is a non-legal document that outlines your wishes. A strong, well-written letter may save your heirs time, effort and expense as they administer your estate.

## Will your heirs be able to find your key documents?

Your heirs may need access to the specific documents you have created to manage your estate. These documents may include:

- Your will
- Trust documents
- Life insurance policies
- Real estate deeds, and stocks, bonds, annuities certificates
- Information on your financial accounts and safe deposit boxes
- Information on your retirement plans
- Information on your debt: credit cards, mortgages and loans.

Note: Power of attorney laws can vary from state to state. An estate strategy that includes trusts may involve a complex web of tax rules and regulations. Consider working with a knowledgeable estate management professional before implementing such strategies.

\* IRS.gov, 2023

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# SCOTUS Sets New Bar for Declining Requests

**A** RECENT DECISION by the U.S. Supreme Court will make it more difficult for employers to deny employees' requests for religious accommodations in the workplace.

The unanimous decision by the court in the case of *Groff vs. DeJoy* basically upends a standard for accommodating religious beliefs that has been in place since 1977.

The case concerns a mail carrier who asked not to work on Sundays due to his religious beliefs, after his employer, the U.S. Postal Service, contracted with Amazon to deliver its packages on Sundays.

The ruling will require that employers take a new approach to handling their employees' requests for religious accommodations in the workplace. Legal experts say the decision could spur a slew of new requests as well as renewed ones from employees whose requests had been declined.

## The case

When mail carrier Gerald E. Groff's USPS location started requiring its staff to work on Sundays to fulfill the Amazon contract, he was able to swap shifts with co-workers. But they grew resentful and stopped swapping shifts with him. After a number of shifts went unfilled, the USPS informed him that it could not reasonably accommodate his request not to work on Sundays.

Groff quit and sued U.S. Postmaster General Louis DeJoy alleging Title VII religious discrimination and the case made its way to the Supreme Court, which sided with him in his appeal.

In its decision, the court wrote that an employer must accommodate an employee's religious practice as long as the proposed accommodation does not create "substantial increased costs in relation to the conduct of [the company's] particular business."

The decision jettisons a standard that has been in place since SCOTUS's 1977 decision in *Trans World Airlines, Inc. vs. Hardison*: That if making accommodation constitutes more than a *de minimis* cost to the employer, then the request was considered an "undue hardship" and the employer could deny the request. Even the Equal Employment Opportunity Commission deferred to this standard.

## How it changes the equation

"Substantially" increasing costs in relation to the company's operations is a significantly higher bar and burden of proof for employers that reject religious accommodation requests.

One of the key takeaways from the decision is that employers must explore all of their options, like voluntary shift-swapping.

It also warned that "a hardship that is attributable to employee animosity to a particular religion, to religion in general, or to the very notion of accommodating religious practice cannot be considered 'undue.'" In other words: If other employees don't like the fact that their colleague is getting a certain day off, that is no excuse for denying the request.

In light of this ruling, you should revisit your workplace policies for dealing with religious accommodations. If you receive a request and are unsure how to proceed, consider consulting with counsel. ❖

