



California Restaurants Learn: Workers' Compensation Insurance Is Essential

Insights

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Workers' compensation coverage is a substantial expense for many smaller restaurants, but essential (and required) for all employers. The workers' compensation system is a no-fault system that provides medical coverage, disability payments or compensation for employees injured or killed on the job. In exchange for this no-fault coverage, employees are generally not permitted to sue their employers for the tort of negligence in civil courts. Awards for disabling industrial injuries and death are typically significantly lower than what employees could recover if they were allowed to file a civil lawsuit.

The insurance coverage for workers' compensation is an expense that must be borne by the employer as part of the cost of doing business. Employees cannot be required to share in the premium costs, and employers cannot pay medical providers in cash to avoid having insurance coverage.

Employers are sometimes tempted to forego workers' compensation insurance coverage when business is bad or the premiums are increased, but this is a mistake. Employers are required to maintain such coverage and states can impose severe fines on non-compliant employers. While a few states, such as Texas, allow employers to opt out under certain circumstances, others such as California, consider the failure to secure workers' compensation coverage as a criminal offense punishable by either a fine of up to \$10,000 or imprisonment for up to one year, plus additional penalties of up to \$100,000 levied by the state.

And when the employer fails to maintain required insurance coverage, the employee or his estate can sue the employer in civil court for injury, illness, or death. The recovery for the employee is likely to be far greater outside the workers' compensation system than in it.

Hospitality Crackdown

The California Labor Commissioner recently issued more than \$800,000 in fines to businesses in the restaurant industry for labor law fines during a statewide enforcement effort. A total of 29 investigators conducted 245 inspections in 26 counties around the state over two days in January 2009. Of the 245 businesses inspected, 143 were cited for various labor law violations and fully 129 of the 143 businesses cited did not carry workers' compensation insurance.

Labor Commissioner Angela Bradstreet said of this enforcement action, "We issued penalties of \$676,000 to employers who failed to carry workers' compensation [coverage] during this enforcement action. All businesses must provide workers' compensation insurance for their employees. If they continue to operate without the proper coverage, we will refer the case to the local district attorney's office for possible criminal prosecution." The fines for workers' compensation coverage violations averaged to more than \$4,700 per cited employer.

This sweep targeting the restaurant industry was just one in a long series of monthly enforcement actions targeting various industries. Employers can expect these enforcement actions to continue, even as the economy continues to make it difficult for employers to pay the premiums.