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NEWSALERT

DOL Rulemaking

50% Increase in Overtime Pay Threshold On Tap

THE U.S. Department of Labor has issued its long-awaited proposed changes to the nation's overtime rules for American workers, proposing to increase the threshold for exempt status by more than 50% to just over $55,000.

Under DOL rules, workers who are exempt from overtime rules – typically managers, executives and certain administrators – must make at least the threshold amount, which is currently $35,568.

If the new threshold goes into effect, employers will have a choice to either raise the pay of their currently exempt staff to the new threshold (or above) or change those workers to non-exempt, meaning they must be paid overtime wages (typically time and a half) if they work overtime.

It's rumored this proposal is on a fast track and that it could become permanent in the next two months, giving employers a short window to make changes.

WHAT'S CHANGING

- The exempt salary threshold will increase to $1,059 per week (or $55,068 per year). That's up from the current $684 a week, or $35,568 a year.
- The exempt salary threshold will automatically increase every three years based on cost of living increases.
- The propsoal will raise the threshold for the "highly compensated employee" exemption to $143,988 (from the current threshold of $107,432).

Title alone does not designate someone as "exempt." There is a two-pronged test for classifying a worker as exempt from overtime pay:

- Their salary, which will have to be $55,068 per year, under the rule.
- The duties test, which outlines exactly what someone's duties must be in order to qualify for exempt status (see box in the column on the right).

THE DUTIES TEST

A worker must have certain duties to be an exempt employee. The three main exemptions are:

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.

To find out how to get ready, see 'Short' on page 2

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Transportation Hiring Alert

Always Check New Drivers' Clearinghouse Records

FLEET OPERATORS face an increased risk of potential liability if they are not diligent about checking their drivers' moving violation records with the state Department of Motor Vehicles, in addition to the Federal Motor Carrier Safety Administration's Drug and Alcohol Clearinghouse.

To ensure the safety of our roadways, as of 2020, it became mandatory that all registered motor carriers sign up their drivers in the Clearinghouse and run their driver rosters through the system to clear them for duty. But many companies are skipping this step and only checking their drivers' records with the DMV, which may not reflect any suspensions issued by the Clearinghouse.

Clearinghouse rules require that drivers be tested for drugs prior to being hired and randomly throughout the year. This helps employers weed out drivers who may be at higher risk of both moving violations and accidents.

The Clearinghouse

The Clearinghouse was created to keep commercial drivers who have violated federal drug and alcohol rules from lying about those results and getting a job with another motor carrier.

This electronic database tracks commercial drivers' license holders who have tested positive for prohibited drug or alcohol use, as well as refusals to take required drug tests, and other drug and alcohol violations.

The Clearinghouse tracks a driver's drug and alcohol tests and bars them from operating commercial vehicles after they fail a test. If they want to return to driving, they must successfully pass a return-to-duty process that includes substance abuse treatment and a test to evaluate their readiness.

The Clearinghouse restriction can be lifted should the driver sign up for a Clearinghouse program that will test them 14 times in two years, with the first 12 tests having to occur in the first year. This cost all comes out of the driver's pocket.

This system is an important check on drivers and helps employers reduce their exposure.

State Departments of Motor Vehicles are required to check the Clearinghouse before issuing a new or renewing a commercial driver's license.

The takeaway

While it is the law that employers follow Clearinghouse procedures, because it's a new system, many companies are failing to follow the rules, and are possibly allowing suspended drivers to operate their vehicles.

If you are relying only on pulling a driver's moving violation record and not the Clearinghouse, you are in breach of regulations and you could leave your organization exposed.

If you employ a driver who is under suspension from driving by the Clearinghouse and they are involved in an accident, the victims could build a case that your organization was negligent in letting the individual drive and not checking the Clearinghouse first.

If they can prove negligence on a fleet operator's part, the business could be in for a hefty court judgment. ❖

Coverage Issues

Pay Attention to Exclusions in Cyber Policies

WHILE CYBER threats grow and the cyber insurance market evolves, insurers are regularly adjusting their policy terms and conditions in response to new threats and exposure.

Carriers have amassed nearly a decade's worth of data and are getting more stringent about underwriting and demanding that policyholders do their share by implementing best practices aimed at preventing cyber attacks and reducing their impacts.

They have also been adding more exclusions to policies, according to a new report by Delinea. The report is a sobering reminder that business owners need to carefully read their policies. The access-management software firm notes that:

- All respondents to its survey had at least one exclusion in their policy that would void coverage.
- All respondents had at least one attack-related expense that wouldn't be paid for by cyber insurance.
- Businesses should create a "rainy day" fund to pay for situations that won't be covered by their cyber insurance. The report notes that the average cost of a data breach in 2023 exceeds $4 million.

Exclusions to watch out for

Obviously, the crucial question is: What are the most common exclusions in cyber insurance policies?

Missing security protocols – Insurers require businesses to have certain security protocols in place, such as keeping software and systems updated as well as security patches and regularly training staff on cyber security.

Internal threats – Acts by employees, like hacking, cyber extortion, data theft and other illegal or unauthorized activities, are typically excluded.

Human error – If an incident is caused or worsened by a mistake, like misconfiguring or failing to address known vulnerabilities, a cyber claim may be denied as the insurer could argue that the event could have been prevented or mitigated.

Act of war or terrorism – While many cyber insurance policies have these exclusions, courts have increasingly pushed back on them as a pretext for denying a claim after a cyber attack. Often it's difficult for the carrier to prove it was an act of terrorism or war.

Out of compliance – Misrepresentations or nondisclosure of material information on a cyber insurance application may cause the insurer to deny coverage.

Failure to report an event in a timely fashion – If you fail to inform your cyber insurer of an event within the timeframe specified in the policy, or if you provide incomplete information, the company may deny the claim.

The takeaway

If your firm is hit by a cyber attack, you'll be doing most of the heavy lifting and you'll be dealt many expenses to get back to normal.

Respondents to the Delinea poll said that their cyber insurance policies were most likely to cover expenses related to data recovery, although insurers' definitions of that term vary depending on the circumstances.

"For example, say an attacker is holding your data for ransom. Some insurance companies may say they want to make the decision whether to pay the ransom to recover your data (regardless of your preference)," the report states.

The key is to understand your policy's coverage and have protocols in place to reduce the chances of an excluded event taking place. ❖

Commercial Property Insurance

The Hidden Cost Driver behind Rate Hikes

COMMERCIAL PROPERTY owners throughout California are getting hit with significant insurance rate hikes and non-renewal notices as a confluence of factors reverberate through the market.

The commercial property insurance industry is struggling with years of losses after paying out billions of dollars annually for increasingly costly and numerous wildfire claims in California and other natural disasters around the country.

While massive costs dominate the conversation, there is another factor that is contributing just as much to rising insurer costs: The role of reinsurance.

Reinsurance explained

Just like you mitigate your risks by buying insurance, your insurance company does the same by purchasing reinsurance. This coverage steps in to pay claims when they reach catastrophic levels or a certain threshold, like those from massive wildfires.

These arrangements call for the reinsurer to cover the cost of claims for a certain region or for a certain risk, like wildfires or hurricanes. Each reinsurance treaty is different and they are often tailor-written for individual insurance companies.

Without reinsurers taking on a good portion of catastrophic claims, insurance rates would be much higher than they are today. But that's changing.

Reinsurers pay for a significant portion of any global catastrophe as they are the backstop for insurers around the world. And catastrophes have been growing in number and scope all over the planet.

During the first half of 2023, natural catastrophes caused $52 billion in insured damage globally, which is 18% higher than the average of $44 billion in the past 10 years and 39% higher than the 21st-century average of $38 billion, according to a report by Swiss Re.

The U.S. accounted for $34 billion of the world's insured property losses in the first half. The nation also accounted for 13 of the 17 global natural catastrophe events that each caused more than $1 billion in insured losses, according to the report.

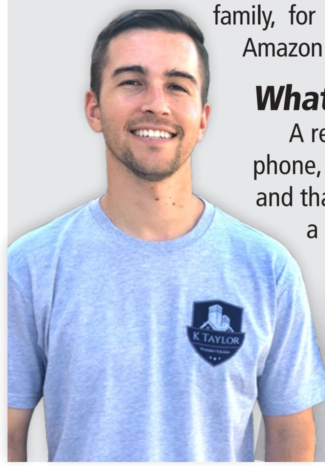
REINSURERS TAKE MASSIVE HITS

The world's top three reinsurers paid out record amounts for catastrophes in 2022:

Swiss Re	$2.7 billion
hannover re	$2.3 billion
Munich RE	$2.7 billion

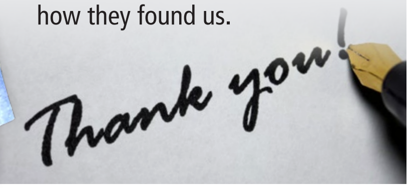
THE K TAYLOR INSURANCE SOLUTIONS "THANK YOU" REFERRAL PROGRAM

Your referrals mean the world to us. We work hard to earn each referral with great service and appreciation for your business every day. As a way of saying thank you to clients that refer friends and family, for each referral you will receive a $20 Amazon gift card.



What qualifies as a referral?

A referral is when we are contacted by phone, e-mail or social media for a quote and that friend or family member becomes a client of K Taylor Insurance Solutions. Don't worry, we ask every caller how they found us.



What reinsurers are doing

Raising rates – Reinsurance companies have been raising their rates significantly. A recent report on the trade news site *Artemis.com* said property catastrophe reinsurance rates had seen a substantial average increase of approximately 30% during July 1 renewals.

Reconsidering where they provide coverage – Reinsurers have also started pulling back from covering properties in areas or regions that are at higher risk for natural disasters, particularly California and Florida, the latter due to increasingly costly hurricane damage and the former due to the increasing wildfire risk.

When reinsurers pull back, the primary insurers often have to take on more of the risk themselves.

Changing terms – Besides raising their rates, reinsurers are also making moves to take on less risk than they have in the past by raising attachment points, forcing primary insurers to take on more of the cost of claims.

Additionally, reinsurers are changing conditions for paying claims, getting more stringent in their definitions of various catastrophic events and triggers for paying claims.

The takeaway

While this hard reinsurance market continues, there is hope that rates will stabilize in the future bringing relief to insurers, and … more importantly: You. The market is cyclical and both reinsurers and insurers are struggling to catch up with increasing costs and the "new normal." Once they adapt, your premium may be more predictable. ❖