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John A. Norwood
Counselor at Law

Erin Norwood
Publisher

Contributor
Ted Wait

Contact Us

info@nalobby.net

Capitol Place
915 L Street, Suite 1110
Sacramento, CA 95814

(916) 447-5053
(916) 447-7516 fax

California Links

State Senate

State Assembly

**Department of
Insurance**

Secretary of State

Official Legislative

As a reminder, the Legislature is in summer recess until August 6. At which time, legislation with fiscal implications to state and local government will be considered by the Assembly and Senate Appropriations Committees up to August 17. No other policy committees can meet during this period.

Governor Signs Two Wildfire-Related Insurance Bills

Two insurance bills relevant to wildfire insurance policies were signed by Governor Jerry Brown on Monday.

AB 1799 (Levine, Dem-Marine) requires the complete copy of a residential insurance policy provided to an insured after a loss to include the full insurance policy, any endorsements to the policy, and the policy declarations page. AB 1799 provides that if the request for a copy of the policy is a result of a loss in a state of emergency, the insurer may, upon the request of the insured, provide an electronic copy of the entire policy. The bill also provides that a request by an insured for an electronic copy of the policy does not constitute a request to participate in electronic communications or transactions for any other purpose.

Until recently, and unlike other financial services, it was not lawful for an insurer to offer policyholders the opportunity to conduct all or most of their transactions electronically. However, over the past few years, the law has incrementally developed to the point where most transactions and communications between an insurer and a policyholder can be conducted electronically, provided both parties agree to opt in, and provided that several statutory requirements are met. This bill provides a narrow, specific exception to the electronic transactions law so that a policyholder can request an email copy of their policy, and an insurer can provide the email copy, irrespective of either party's status with respect to the electronic transactions law.

The California Department of Insurance, California Association of Realtors, Napa County Board of Supervisors, and the Sonoma County Board of Supervisors are all in support of the bill. There are none registered in opposition.

AB 2229 (Wood, Dem-Santa Rosa) requires a residential property insurer to disclose any fire safety discounts it offers upon offer or renewal of a homeowner's insurance policy on or after January 1, 2020. Existing law requires an insurer to provide the Residential Property Insurance Disclosure (RPID) when issuing or renewing a homeowner's insurance policy. The bill also requires the RPID to include information explaining coverage option choices, including actual cash value, replacement cost, extended replacement cost, guaranteed

Information

replacement cost, and building code upgrade coverages, and information regarding factors to be considered by the homeowner when selecting coverage limits

Supporters – the California Association of Realtors, California State Association of Electrical Workers, and Coalition of California Utility Employees – contend homeowners who take proactive steps to reduce their homes' vulnerability have a greater chance of having their homes withstand a wildfire. Such defensive measures may also be key to finding an insurer willing to offer homeowners' insurance. There is no formal opposition to the measure.

Assembly-Senate Wildfire Preparedness & Response Conference Committee Has A Few Weeks In August To Take Action

Asked by reporters to identify the most important issue facing California lawmakers, the leader of the Senate, Toni Atkins (Dem-San Diego), said "wildfires." With fires blazing from the Oregon border to San Diego, legislators are about to venture into a political firestorm sparked by last year's historic fires and mudslides, which destroyed about 10,000 buildings and killed at least 66 people.

The biggest fight will be over liability, as in who pays for billions of dollars of damages from the loss of so many homes, businesses, and lives. The key battle is over how much utilities, particularly Pacific Gas & Electric Company (PG&E), can pass liability costs on to customers, and whether the state should step in to help. All of this will take place in the Assembly-Senate Wildfire Preparedness and Response Conference Committee formed to create new laws aimed at preventing wildfires and addressing the response them. The Conference Committee has from August 6-August 31 to work because July is summer recess and the Legislature adjourns September 1.

Naturally, major players are involved. Insurance companies and a coalition of fire victims that includes local governments and homeowners are on one side. The other side is, of course, electric utilities, which are allied with the electrical workers union, and some environmentalists who see utilities as critical to the issue of climate change. Governor Jerry Brown and legislative leaders have stated that they will not retroactively change liability laws for the 2017 fires, which caused damages that will likely top \$10 billion. But lawmakers will discuss changing liability laws to limit the financial burden on utilities in the future, when the next wildfires ignite.

The key issue is a legal doctrine called inverse condemnation; courts have ruled that the state Constitution gives utilities eminent domain rights – the power to take private land for public use. Subsequent rulings determined that utilities bear the associated responsibility in the form of strict liability. Under inverse condemnation, utilities are liable for any wildfire damage traced to their equipment – even if they were not negligent in maintaining it. PG&E and other utilities are pushing to change inverse condemnation, arguing that it, combined with regulators' decision barring San Diego Gas & Electric Company from passing liability costs on to customers following a 2007 wildfire, could place them in financial peril. PG&E maintains without reform the application of inverse condemnation could make them responsible for billions of dollars in liability without any ability to spread these costs across

customers, irrespective of whether they are at fault for these wildfires.

Department of Fire and Forestry investigations allege PG&E's equipment was involved in 16 of last year's fires, and that in 11 of those the company violated state codes that require keeping trees and shrubs away from power lines. The utilities argue that climate change contributes to wildfires, and that liability rules should reflect a "new normal" that involves greater risk. Utilities submit that if all available precautions are taken and yet the environment causes a problem that leads to a large disastrous fire, the legal structure needs to be modernized.

Insurance companies and fire victims want to keep the inverse condemnation law, seeing the enormous liability it creates as an incentive for utilities to do everything possible to make the electrical system safe. There has to be some type of liability so there continue to be responsible parties, the Property Casualty Insurers Association of America asserts. Currently insurers pay their policyholders after a disaster, then turn to utilities for reimbursement. Without that, insurers would likely charge homeowners more.

Workplace Sexual Harassment Measure Signed By Governor; Bill Supported By Chamber & Women's Rights Advocates

AB 2770 Irwin (Dem-Thousand Oaks) was signed by Governor Brown on Monday. The bill codifies California defamation case law as it relates to allegations of workplace sexual harassment, making it explicit in statute that:

(1) employees who report sexual harassment to their employer are not liable for any resulting injury to the alleged harasser's reputation, so long as the communication is made based on credible evidence and without malice; (2) communications between employers and anyone with an interest in a sexual harassment complaint, such as victims and witnesses, are not liable for any resulting damage to the alleged harassers reputation, as long as the communication is made without malice; and, (3) former employers are not liable for any resulting injury to a former employee's reputation if, in response to inquiries from prospective employers, the former employers indicate that they would not rehire the former employee based on a determination that the former employee engaged in sexual harassment, so long as the statement is made without malice.

As sponsor of the bill, the California Chamber of Commerce explains this bill allows former employers to inform potential employers about whether a decision to terminate or not rehire an individual is based upon the employer's determination that the former employee engaged in sexual harassment. This bill does not provide an absolute privilege to these types of communications, but a conditional privilege whereby the statements made by the former employer cannot be made with malice. This bill also protects the victims of sexual harassment from defamation lawsuits that arise when the victim makes a credible harassment complaint.

This bill has no opposition. Among the supporters are the American Association of University Women of California, American Insurance Association, California Manufactures & Technology

Association, Civil Justice Association of California, and 16 local chambers of commerce.

Legislature Sends Governor A Bill On Use Of Job Applicant's Prior Salary

Before adjourning last Friday for summer recess, the Senate passed [AB 2282](#) (Eggman, Dem-Stockton) 35-0, which makes clarifying changes to existing law regarding the use of a job applicant's prior salary to justify any gender disparity in compensation. Existing law prohibits an employer from paying an employee at wage rates less than the rates paid to employees of the opposite sex or of a different race or ethnicity for substantially similar work, when viewed as a composite of skill, effort, and responsibility, and performed under similar working conditions.

This bill clarifies that an employer may make a compensation decision based on a current employee's existing salary, so long as the wage differential resulting from that compensation decision is justified by factors in current law such as a seniority system, merit system, or system which measures earnings by quantity or quality of production, but not gender. This bill also specifies that the prohibition on asking a job applicant about prior salary does not forbid an employer from asking the applicant about his or her salary expectations for the position being applied for.

There is no registered opposition to the bill. It is sponsored by the California Employment Lawyers Association and Equal Rights Advocates, and supported by the American Civil Liberties Union of California and California Women's Law Center.

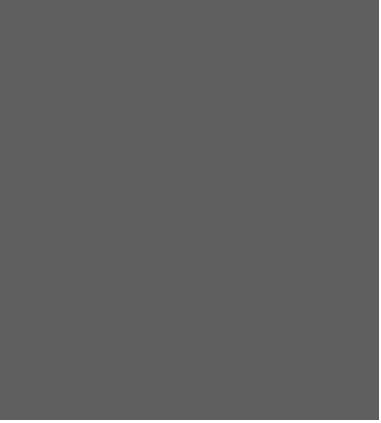
Department of Insurance Tax Cuts Filing Order

The July 2, 2018 California Department of Insurance Workers Compensation Insurer Tax Data Reporting Order continues to raise concerns among industry participants. The Order requires every insurer licensed to write workers' compensation insurance in California to report their federal income tax savings annually through a rate filing in light of the new federal tax law. The recent revision to the Federal Tax Schedule for 2018 reduced the corporate tax rate from 35% to 21%. The Insurance Commissioner is calling for any savings to insurers be passed along to California businesses.

Data shows that in states where the National Council on Compensation Insurance submits full rates, there has been a rate reduction by varying percentages. The savings from the tax cuts are neither loss nor expense, so the Insurance Commissioner should have been more precise and told carriers not "what it is" but rather "where it goes" and to make sure rate filings took this into account in the amount recorded in filings for profit and contingencies, according to industry expert Mark Webb of Prop 23 Advisors.

Division of Workers Compensation Creates Pharmacy & Therapeutics Committee

To implement AB 1124 (Perea, 2015), the Department of Industrial Relations – Division of Workers Compensation has created a prescription drug formulary for workers'



compensation. The Pharmacy and Therapeutics (P&T) Committee will meet periodically to determine what drugs should be added or removed from the formulary and recommend other changes consistent with best medical evidence to keep the formulary current, according to the Division. The P&T Committee has scheduled its initial meeting for September 26 in Oakland.

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