

## Business Brief

### Business and Client Advisory



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Vogt, Resnick & Sherak's new website is now live. Our website currently has an online archive of our legal publications, accessible at any time, as well as recent firm news and transactions. Our new website affirms that Vogt, Resnick & Sherak is your trusted lawyer with experience and committed to providing excellence, value and personal service. Please visit our new website at [www.vrslaw.net](http://www.vrslaw.net).

### Workers' Compensation Premium

Many of our clients are not sure how their workers' compensation premiums are determined from year to year. The workers' compensation premium calculation is based upon how employees are classified according to their specific work duties and the rate assigned to each corresponding classification. Classifications are developed and assigned by the Workers' Compensation Insurance Rating Bureau (WCIRB). Workers' compensation insurers assign a specific "class rate" to each occupational classification code. Currently, California's Workers' Compensation insurers operate under an "open" rating system. This open rating system means that individual companies set rates based on their perceived ability to adequately cover losses and expenses in each occupational business class.

The classification code and corresponding class rate is the first part of the rating formula. The payroll for each class is estimated and then multiplied by \$100 of payroll for each applicable rates and is called the "base" premium. Next an "experience modification" is calculated from loss information that an insurance company is required to submit to the WCIRB on an annual basis, which then uses a mathematical formula to calculate an experience modification for each employer. The formula takes into account reported paid losses, claim loss reserves, and payroll amounts for a specific experience period. The experience modification developed indicates the average loss experience of employers throughout a similar industry and acts as a means of comparison between employers. When the experience modification is applied to the class rate, along with any other modifications, the final rate is multiplied per \$100 of payroll and the "estimated premium" is established.

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The final premium of a workers' compensation policy cannot be calculated until the policy term is over and the employer's payroll records have been audited. The final audit of payroll records determines if the initial payroll estimate was either high or low for the policy period.

Employers need to be aware that their insurance company has the right to audit payroll records. Usually this right is reserved for the final audit, but an insurance company can conduct interim audits as well. Failure to comply with an insurance company audit can lead to cancellation or non-renewal of a policy. More importantly, the insurance company can review and redetermine employee classifications for additional premium. Also, insurance companies can use all legal means at their disposal to collect outstanding premium. The employer has certain appeal rights under the policy but the requirements must be followed exactly and the appeal must be timely. If you have questions concerning this process, Vogt, Resnick & Sherak can assist.

### **Employers Are Now Required to Post A Bond to Appeal A Wage Claim Award**

Effective in 2011, California Labor Code Section 98.2 has been amended to require an employer to post an appeal bond or cash deposit in order to appeal a wage claim award of the Labor Commissioner.

Within 10 days after service of notice of an order, decision or award of the labor commissioner, either party may seek review of the decision by filing an appeal with the Superior Court. Appeals are heard "de novo", meaning an entirely new hearing of the claim. Under the new law, the employer (and not the employee) must first post an undertaking with the court in the amount of the award. The undertaking may either be paid in cash or by filing an appeal bond issued by a licensed surety. The employer must give written notice of the posting of the undertaking to the other party and the Labor Commissioner. The undertaking is on the condition that if a judgment is entered in favor of the employee, the employer will pay the judgment within 10 days of the date of entry, or if the appeal is withdrawn or dismissed the employer shall pay the award of the Labor Commissioner, or other amount agreed in a written settlement agreement, within 10 days of the withdrawal or dismissal, or execution of the settlement agreement. If payment is not made within the 10 day period, the bond will be forfeited.

Employers should be mindful that if they lose the appeal they will be responsible for the employee's costs and reasonable attorney's fees. Labor Code Section 98.2 (c) provides that an employee is deemed successful if the court awards any amount greater than zero. A seemingly successful appeal of a \$5,000 award resulting in a \$100 judgment in favor of the employee may be outweighed by an award of attorney's fees and costs to the employee. Therefore, the risks must be carefully weighed before an appeal is filed.

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### **IRS Announces 2011 Standard Mileage Rates**

The Internal Revenue Service issued the 2011 optional standard mileage rates used to calculate the deductible costs of operating an automobile for business, charitable, medical or moving purposes on December 13, 2010. Beginning on January 1, 2011, the standard mileage rates for the use of a car are 51 cents per mile for business miles driven, 19 cents per mile driven for medical or moving purposes, and 14 cents per mile driven in service of charitable organizations.

### **Corporate Board Consent Allowed Without Meeting**

The existing corporate law allows that an action taken by the board of directors of a corporation is valid if written consent is provided by all members. Any member may also abstain in writing. This law can help if an agenda item needs to be processed with expediency or if board members have difficult or conflicting schedules.

### **Vogt, Resnick & Sherak in the Community**

Vogt, Resnick & Sherak is very active in the community. California Elwyn is a 501(c)(3) charitable organization that helps adults with disabilities prepare for employment. Our file clerk of over 13 years, Marty Felsenfeld, is a participant of California Elwyn. David Sherak, a partner at Vogt, Resnick & Sherak, sits on the Community Board of Advisors for the organization. California Elwyn recently hosted a Bowlathon. Vogt, Resnick & Sherak participated in and was a top tier sponsor of this event.

Vogt, Resnick & Sherak also took part in Barco's Nightingales Foundation Walk for Kids, in association with the Ronald McDonald House Charities Walk for Kids. Barco's Nightingales Foundation is an organization that promotes the profession of nursing and focuses their funding on helping children.

In April, members of Vogt, Resnick & Sherak attended an event to benefit Vocational Visions, Inc. Barry Resnick, managing partner of Vogt, Resnick & Sherak, was a founding board member of Vocational Visions, Inc. This charitable organization provides vocational training and support services for people with developmental disabilities in the south Orange County area. Artwork by Vocational Visions participants is proudly displayed in Vogt, Resnick & Sherak's Newport Beach office.

Vogt, Resnick & Sherak is proud to contribute to these groups and participate in our community.

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### Mountain Biking: Perfect for the Extreme Attorney

Jeff Resnick is a partner at Vogt, Resnick & Sherak, but also competes in long-distance mountain bike races. His goal is to do six races per year. Jeff has been mountain biking for over 15 years, but has only been racing for about four years. Jeff says other business professionals like himself also compete in the sport.

In January, Jeff finished 1<sup>st</sup> of 15 in the 40+ solo class at the 12 Hours of Temecula race. This accomplishment was directly followed by placing 10<sup>th</sup> of 120 in the solo class in February's 24 Hours of Old Pueblo. From 12 noon on Saturday to 12 noon on Sunday, Jeff rode approximately 175 miles of desert singletrack on a course just north of Tucson, Arizona.

In March, he competed in a local race in the Santa Ana Mountains called the Vision Quest. This race is one of the most difficult in the country and consists of 55 miles of terrain with 11,000 feet of climbing. Jeff rode this race on a singlespeed mountain bike and finished 24<sup>th</sup> out of 150 overall, and was the 2<sup>nd</sup> singlespeeder to cross the finish line.