



# George Petersen Insurance Agency

## News You Can Use

### INDEPENDENT CONTRACTORS

## New State Law Alters Employment Landscape

**G**OVERNOR GAVIN Newsom has signed a bill into law that codifies a court ruling from last year that set new ground rules for what constitutes an independent contractor, and which expands on that ruling.

There's been a lot written in the media about the law, AB 5, and much of it misses the point.

Some news reports have said it will spell the end of independent contractors in the state and that anyone a company hires to do a temporary job on contract must be treated as an employee.

Now that AB 5 is the law, labor laws will apply to any independent contractors who have to be reclassified as employees.

That means they would be afforded all of the associated worker protections, from overtime pay and minimum wages to the right to unionize. Employers would have to cover them under their workers' comp policies, and extend benefits to them as they do to other employees.



AB 5 codifies and expands on a 2018 California Supreme Court decision that adopted a strict, three-part standard for determining whether workers should be treated as employees.

Known as the "ABC test," the standard requires firms to prove that people working for them as independent contractors meet certain standards:

#### THE ABC TEST

- A)** Must be free from the company's control when they're on the job;
- B)** Must be doing work that falls outside the company's normal business; and
- C)** Must be operating an independent business or trade beyond the job they were hired for.

The first prong aligns with the common-law test for employment, and evaluates the degree of control exercised by the company over the worker.

The second prong examines whether the worker can reasonably be viewed as working in the hiring company's business.

The third prong inquires whether the worker independently made the decision to go into business. The fact that the hiring company does not prohibit the worker's engagement in such an independent business is not sufficient.

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### OCCUPATIONS THE LAW TARGETS AND TYPES OF COMPANIES AFFECTED

- **Rideshare & delivery services** - Like Uber, Lyft, DoorDash and Postmates
- **Truck drivers** - Heavy duty trucks, Amazon delivery trucks, some tow truck companies
- **Janitors and housekeepers** - Commercial cleaning services
- **Health aides** - Nursing homes, assisted living facilities
- **Newspaper carriers** - The bill's author agreed to delay implementation by one year in a concession to newspaper publishers.
- **Unlicensed manicurists** - Licensed manicurists will get a two-year exemption.
- **Land surveyors, landscape architects, geologists**
- **Campaign workers**
- **Language interpreters**
- **Strippers**
- **Rabbis**

## Cities Expediting Minimum Wage Increase

The cities of Santa Rosa, Petaluma and Sonoma have adopted a local minimum wage ordinance that expedites the effective date of the California decision to increase minimum wage to \$15 per hour. The timeline of the increases will vary depending on the city, but they are all set to increase before the California requirement of 2022. The first city to see an increase will be Sonoma. Effective Jan. 1, 2020 any Sonoma company with 26 or more employees are required to pay a minimum of \$13.50.

If you will need to increase your employees' pay as a result of these local minimum wage ordinances, we highly recommend contacting your agent and advising how the hikes will impact your overall payroll for the year. Advising your agent of payroll increases will save you from a surprise audit with significant additional premium at the end of your policy term.

See the below links for the required minimum wage changes in your city.

[Santa Rosa](#)      [Sonoma](#)      [Petaluma](#)



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### CONTACT US:

If you have a question about any article in this newsletter or coverage questions, contact your broker at one of our offices.

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## EMERGENCY REGULATIONS

# Wildfire Smoke Protection Rules Now in Effect

**C**AL/OSHA has issued emergency regulations that require employers of outdoor workers to take protective measures, including providing respiratory equipment, when air quality is significantly affected by wildfires.

The rules require employers to take action when the Air Quality Index (AQI) for particulate matter 2.5 is more than 150 (the “unhealthy” range).

The protections also would be triggered when a state agency issues a wildfire smoke advisory or when there is a “realistic possibility” that workers would be exposed to wildfire smoke. The regs apply to all employers with “a worker who is outdoors for more than an hour cumulative during a shift.”

### Check the Air Quality Index

Employers of outdoor workers must check the AQI at the worksite to see if it is above 150, which would require the employer to take protective measures for the workers. AQI can be checked in the following ways:

- The U.S. Environmental Protection Agency’s [AirNow website](#).
- The California Air Resources Board [website](#).
- Your local air pollution control district website.
- Checking PM2.5 levels at the worksite and converting them to the corresponding AQI (Appendix A of the regulations explains how).

### PROTECTION OPTIONS

When the AQI exceeds 150, employers with outdoor workers can implement:

#### Engineering controls

Such as providing enclosed structures where employees can continue working, or

#### Administrative controls

- Relocating workers,
- Changing work schedules,
- Reducing work intensity, or
- Giving them additional rest periods, or

#### Respiratory protective equipment

The employer must provide respirators to all employees for voluntary use, and encourage them to use them.

Respirators shall be NIOSH (National Institute for Occupational Safety and Health)-approved devices that effectively protect the wearers from inhalation of PM2.5, such as N95 filtering face-piece respirators.

Respirators shall be cleaned, stored, maintained and replaced so that they do not present a health hazard to users.

When the AQI for PM2.5 is 501 or more, respirators are required.

### Communications

Employers must implement a system for communicating smoke hazards to affected employees, including allowing employees to inform the employer of such hazards at the worksite. Communications should include:

- The current AQI for PM2.5.
- Protective measures available to workers.
- Reporting symptoms such as asthma attacks, difficulty breathing and chest pain.

## HARASSMENT PREVENTION TRAINING DEADLINE EXTENDED

### Complete your trainings using GPTrack.

Governor Newsom has signed new legislation into law (SB 778) that extends the harassment prevention training deadline from January 1, 2020 to **January 1, 2021**. [Click here to learn more about the requirements to comply with the state-mandated training](#). To help you satisfy the requirements, all George Petersen Insurance clients have free access to anti-harassment training videos in English and Spanish using our GPTrack risk management system. This training will satisfy the requirements of California law and keep you in compliance. GPTrack has both required trainings:

- The one-hour training for employers with five or more employees, and
- The two-hour training for managers/ supervisors.

If you already have been set up with a GPTrack account, [then you can follow these instructions](#) to assign trainings to employees. If you need to be set up with a GPTrack account, please contact Brianna Hernandez at [bhernandez@gpins.com](mailto:bhernandez@gpins.com).



### Employers with outside workers should train them in:

- The health effects of wildfire smoke.
- The right to obtain medical treatment without fear of reprisal.
- How employees can obtain the current AQI for PM2.5.
- The requirements in Cal/OSHA’s regulation about wildfire smoke.
- The employer’s communication system.
- The employer’s methods to protect employees from smoke.
- The importance, limitations and benefits of using a respirator when exposed to wildfire smoke.
- How to use and maintain respirators provided by the employer. ❖



## PROPERTY RISK

# Protecting Your Home from Threat of Wildfire

**T**HE DEVASTATING wildfires of the last few years have resulted in insurers becoming more selective about the properties they are willing to cover. This intense spate of yearly wildfires has led to a record \$12.8 billion in insurance claims.

Some insurers have started non-renewing in these high-risk areas and others have just stopped writing new policies altogether in California.

Homeowners that receive a notification that their insurer plans to non-renew their policies are faced with shopping in a market that is more selective, and with insurers requiring that they take certain steps to better safeguard their properties.

The issue is even more acute for owners of high-end homes as there are only a handful of insurers that will underwrite them in the first place.

If you have a custom home in a wildfire risk area that has been struck by wildfires in the past or is in a high-risk area, the marketplace can be difficult.

## What's going on

The practice of non-renewing policies has been growing. And the remaining insurers are applying three metrics in evaluating exposure:

- 1. Brush mapping** – This is a map of the tinder and brush, nearby trees and other natural items that could contribute to your home catching fire. The insurer will use the mapping to see if you are keeping up your property by removing combustible materials from the perimeter and limiting the amount of shrubbery and trees.
- 2. The nearby wildland-urban interface** – The closer that your home is to wildlands (open spaces with combustible materials), the more likely it is that insurers will non-renew. A wildland-urban interface is defined by the Forest Services

as a place where “humans and their development meet or intermix with wildland fuel.” Communities that are within a half a mile of the zone are included.

- 3. Concentration of other homes an insurer covers in your area** – If your insurance company already writes policies for many other homeowners in your area and they feel they have too much risk concentrated in that zone, they may opt to non-renew policies to reduce their exposure.

While we can sometimes work with an insurer to have the homeowner clear brush and take measures that would reduce the chances of their home catching fire to satisfy the brush-mapping metric, it's more difficult to negotiate about numbers two and three.

## The options

If you have a home in a wildfire area and your insurer plans not to renew your coverage, and if other companies are not willing to underwrite your policy, we can help you find new coverage. If no admitted insurers (those that are licensed and regulated in California) are willing to cover your home, we have two options:

**The non-admitted market** – These insurers are not licensed to do business in California, but we can still use them to write policies for high-end homes. These carriers, which include Lloyd's of London, Marketplace, XL Catlin and Scottsdale, are usually willing to write homes, but they too have increased their underwriting criteria.

**The California FAIR Plan** – The FAIR plan is the state-run market of last resort for homeowners that cannot get coverage in the regular market. There are two problems for owners of high-end homes:

- 1.** The maximum limit for coverage is \$1.5 million.
- 2.** Coverage is limited to only damage from fire or lightning, or other types of sudden damage like windstorms. The policy will not cover other claims that a typical homeowner's plan would cover like, water damage, theft and liability. ❖



**HARD TO INSURE:** *Too many trees and shrubs can make it tough to find coverage.*

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## A DIFFERENT APPROACH

# Getting the Benefits of Self-Funding without the Risks

**T**HERE ARE typically two approaches to securing health coverage for your staff – group health insurance or self-funding.

But, self-funding can be costly and risky and is usually only done by larger organizations with thousands of employees. However, there is a hybrid model that can help small and mid-sized employers provide their staff with affordable health coverage: partial self-insuring.

In a fully self-insured plan, the employer pays the cost incurred under the plan for claims and administration.

The employer will usually contract with a third-party administrator or an insurance company to process claims and provide access to a network of physicians and other health care providers.

Partially self-insured arrangements provide some of the benefits of being self-funded, without all the risks.

### HOW IT WORKS

- Employers and their employees still pay premiums, a portion of which goes into an account that will be tapped to pay the first portion of claims that are filed.
- The other portion of the premium is paid to an insurance company. This is sometimes known as a stop-loss policy.
- Plans have an aggregate deductible for all claims filed by employees, meaning that once that deductible is reached an insurer starts paying the claims instead.
- Premiums are calculated to fund the claims fund to the aggregate deductible amount.
- If claims are lower than expected, the employer can receive a refund at the end of the policy year or use it for the next year.

### Lower risk than fully self-insured plan

Typically, an employer should have at least 25 workers if it is considering a partial self-funded arrangement, but we've seen plans with fewer enrollees.

Many employers will opt for a partially self-insured plan to save money,

but these types of plans also allow the employer to design a more useful and valuable plan for their workers.

The key to making this work is cost controls, without which claims can spiral and drive up premiums at renewal. Also, knowing exactly how much to set aside for reserves and how much you should set your employees' premiums, deductibles and other cost-sharing, can be complicated.

With the right mixture of benefits, plan design and education you control behavior, which drives claims, in order to keep renewal rates from increasing too much each year.

### The fine print

There are some reasons partial self-insuring is not for all employers:

- There is additional responsibility as the employer basically becomes an insurer or sorts.
- There is additional paperwork for these plans since the employer also becomes a payer.
- There are compliance issues that the employer needs to consider (ERISA and the Affordable Care Act, for example).
- There is some added risk to employers since they are paying claims.
- If you have too many claims, you could face a non-renewal by your stop-loss insurer. If you are cancelled, it may be difficult to seamlessly enter the insured market. ❖



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## Many Contractors Exempted from New Law

Occupations that would specifically be exempted by the bill include the following: (Please note, these occupations are only exempt from the Dynamex ABC Test, they will still be subject to the Borello Test that has been used in the past to determine if they're in fact an independent contractor.)

- Doctors
- Some licensed professionals (lawyers, architects, engineers)
- Accountants, securities broker-dealers, investment advisors
- Real estate agents
- Direct sales (compensation must be based on actual sales)
- Builders and contractors (who work for construction firms that build major infrastructure projects and large buildings)
- Freelance writers, photographers (provided the worker contributes no more than 35 submissions to an outlet in a year)
- Hair stylists, barbers (must set their own rates and schedule)
- Estheticians, electrologists, manicurists (must be licensed)

- Tutors (must teach their own curriculum)
- AAA-affiliated tow truck drivers.

### What employers should do

Legal experts recommend that employers:

- Perform a worker classification audit, and especially review all contracts with personnel.
- Determine which benefits and protections should be provided to any workers who are reclassified from independent contractor to employee (think health insurance and other benefits).
- Notify any state agencies about changes to a worker's status.
- Discuss with your lawyer if you should also include a worker as an employee for the purposes of payroll taxes, workers' comp, federal income tax withholding, FICA payment and withholding.

- *Note: Federal law remains unchanged. The IRS and National Labor Relations Board have their own independent contractor tests. ❖*