M&G|exposure

MESSAGE FROM THE CEO: EMPLOYEE APPRECIATION THROUGH THE YEARS

It's hard to believe that August is already here, and that means that we are celebrating our Annual Employee Appreciation Day! Our employees are what makes Morris & Garritano such a strong company. They are the ones who ensure our clients are being taken care of, who choose to develop their skills through licensing and continuing education, and who embrace a culture of doing the right thing and going the extra mile.

While the months have flown by in 2018, it seems that the years fly by too. As part of this year's employee celebration, we wanted to look back on our history to remind ourselves that M&G has always taken the time to recognize the hard work and dedication that goes into keeping our agency at the top of its game.

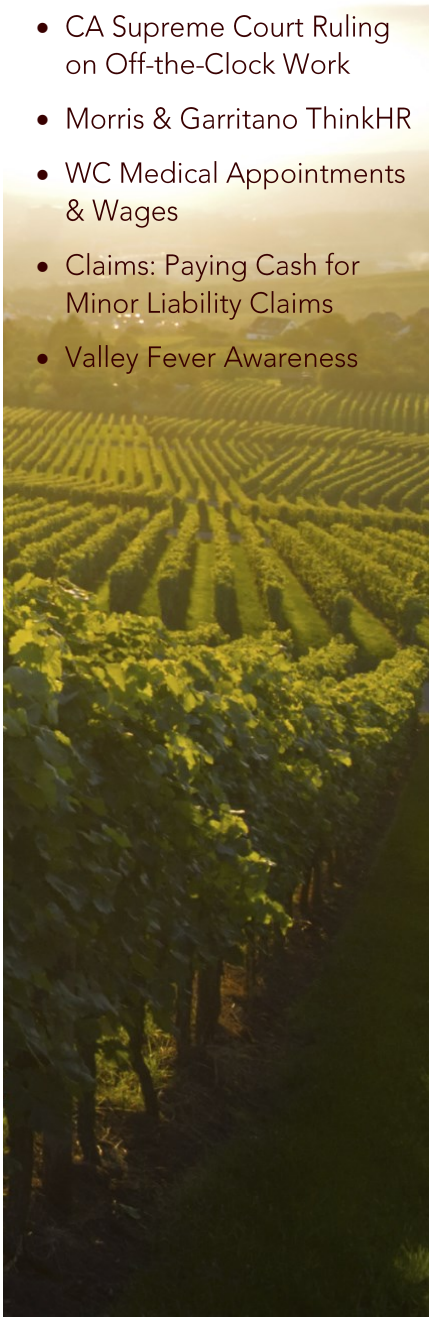
While our documenting skills have certainly improved, and the decorations get more over-the-top each year, one thing has remained constant; our genuine appreciation for the people that are the heart and soul of M&G – our employees.

I hope you enjoy this look back on M&G's employee appreciation through the years.

INSIDE THIS ISSUE

SPECIAL POINTS OF INTEREST

- CA Supreme Court Ruling on Off-the-Clock Work
- Morris & Garritano ThinkHR
- WC Medical Appointments & Wages
- Claims: Paying Cash for Minor Liability Claims
- Valley Fever Awareness



CA SUPREME COURT RULING ON OFF-THE-CLOCK WORK

Contributed by: Louise Matheny, Human Resources Consultant

On July 26, the California Supreme Court made the ruling that California employers must pay employees for routine off-the-clock duties, such as locking up a store or time spent booting up a computer – even if the time is minimal.

The federal "de minimus" rule allows employers to disregard "insubstantial or insignificant periods of time beyond the scheduled working hours" when determining their compensation. Upon examination of the California Labor Code, it was found that "[n]othing in the language of the wage orders or Labor Code shows an intent to incorporate the federal de minimis rule" and "neither the Labor Code statutes nor any wage order has been amended to recognize a de minimis exception." Meaning, that according to the state labor code, employees must be paid for all work performed.

This ruling came about from a lawsuit filed against Starbucks in which an employee argued that he should be paid for the time spent closing up the coffee shop after he had clocked out – a task that sometime required him to work an additional 10 minutes each day. While the time may seem trivial, if performed on a regular basis, the wages from those accumulative minutes could really add up.

California employers should review any tasks that an employee may engage in before or after clocking in or out and determine if it's best to adjust shifts to avoid such work or to compensate the employees who routinely work those affected shifts. It should be noted that the Supreme Court's ruling will likely not affect any lawful, reasonable, or fair rounding policies that an employer has in place.

LABOR LAW POSTER UPDATE

Contributed by: Louise Matheny, Human Resources Consultant

It was recently brought to our attention by the California Employment Development Department (EDD), that updates were made to the "EDD Notice to Employees". The notice was just published in July 2018, but is dated May 2018.

While it is important to maintain accurate and up-to-date publications and postings, the EDD has noted that employers may continue to use the previous version of the mandatory employer notice (DE 1857A) until **January 1, 2019.** At that time, employers will be required to post the updated version of the notice.

So, at this time, no action is required of employers. However, come the first of the year, you will want to be sure to update your California Labor Law Poster(s) accordingly. Don't forget to contact Louise Matheny at lmatheny@morrisgarritano.com in January to order your poster.

Morris & Garritano ThinkHR!

Have you heard about ThinkHR, the newest addition to our existing HR Business Consulting service?

If you are involved with employee and compliance issues, this HR knowledge solution is a value-added benefit that will save you time and money.

With Morris & Garritano Workplace Pro, you receive:

- HR Live
- HR Comply
- HR Learn
- Mobile App

If you are interested in learning more about ThinkHR please contact Louise Matheny at lmatheny@morrisgarritano.com.

THE RETURN OF NORMAL HR POLICIES

Contributed by: Louise Matheny, Human Resources Consultant

The National Labor Relations Board (NLRB) recently announced that, under the National Labor Relations Act, nine standard employer policies will now be presumed lawful. Several of these policies were deemed unlawful because they could have a "chilling effect" on employees' rights to engage in "protected concerted activity" under Section 7 of the NLRA.

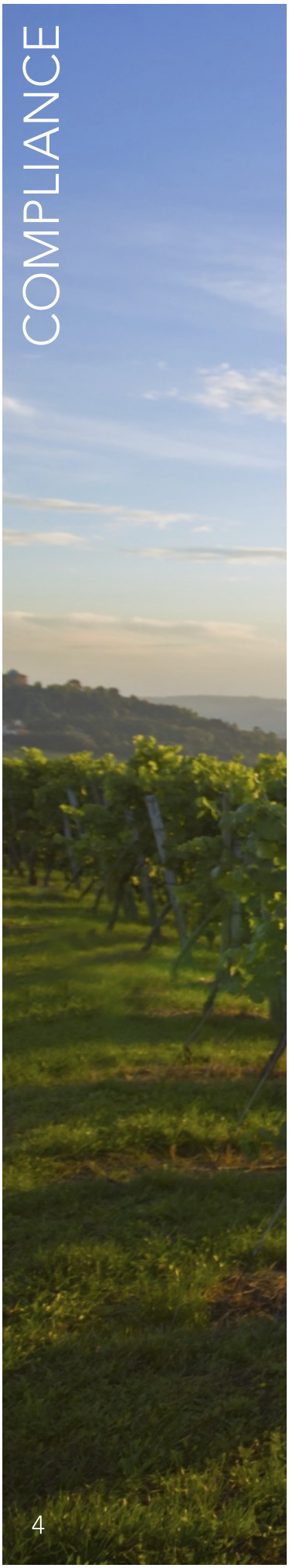
From the Memorandum, the following standard employment policies are now legal, absent evidence that they are being applied to protected concerted activity.

1. **Civility rules.** An expectation of civility does not interfere with employee's right to engage in protected concerted activity because they can almost always criticize their employer or supervisor in a civil manner.
2. **No photography, no recording.** Rules prohibiting unauthorized recordings have no impact on Section 7 rights and are therefore lawful. However, "a ban on mere possession of cell phones at work may be unlawful where the employees' main method of communication during the work day is by cell phone." Meaning, any ban should be on *unauthorized recording,* rather than possession of the recording device itself.
3. **Bans on insubordination, non-cooperation, adversely affecting operations.** "An employer has a legitimate and substantial interest in preventing insubordination or non-cooperation at work. Furthermore, during working time an employer has every right to expect employees to perform their work and follow directives."
4. **Bans on disruptive behavior.** Employers have the right to prohibit behavior consisting of "fighting, roughhousing, horseplay, tomfoolery, other shenanigans, yelling, profanity, hostile or angry tones, throwing things, slamming doors, waving arms or fists, verbal abuse, destruction of property, threats, or outright violence."
5. **Protecting confidential and proprietary information, and customer information.** Employers may prohibit employees from disclosing your company's confidential and proprietary information. Additionally, they may not disclose any employee information obtained from unauthorized access/use of confidential records.
6. **Bans on defamation or misrepresentation. "**Defamatory" statements or "misrepresentations" imply a level of deliberate misleading or falsehood. These bans would not apply to subjectively honest protected concerted speech.
7. **Bans on unauthorized use of company logo or intellectual property.** "Employers have a significant interest in protecting their intellectual property, including logos, trademarks, and service marks." If displayed inappropriately, the use of such items could have a negative impact on the company and its reputation.
8. **Requiring authorization to speak for the employer.** "Employers have a significant interest in ensuring that only authorized employees speak for the company."
9. **Bans on disloyalty, nepotism, or self-enrichment.** Employers have the right to ban (or require disclosure of) conflicts of interest, or employees who had financial interests in competitors of the employer.

It is important to note that the Memorandum also lists two types of employer rules that **continue to be unlawful** as they are directly related to Section 7 of the NLRA.

- Prohibiting employees from discussing or disclosing information about wages, benefits, or other conditions of employment.
- Prohibiting employees from joining outside organizations or "voting on matters concerning" the employer.

Source: https://www.constangy.com/employment-labor-insider/woo-hoo-normal-hr-policies-are-legal



HEALTHCARE REFORM LEGISLATIVE UDPATE

Contributed by: Keith Dunlop, Director of Compliance & HR

Large scale efforts to repeal and replace the Affordable Care Act (aka Obamacare) have been temporarily put on the back-burner in Washington following the failure of the American Health Care Act in 2017. That doesn't mean that Congress hasn't been busy with a series of other legislative proposals that address several issues including the employer mandate, expansion of HSA accounts, and certain healthcare taxes. The following is a brief summary of several of these proposals.

- **HR 6311** – Expands access and use of Health Savings Accounts (HSAs) in several ways including: permitting Flexible Spending Account balances to be carried over for up to three times the annual FSA contribution limit; increasing the maximum contribution limit to HSAs to the amount of the deductible and out-of-pocket limitation of an HSA-qualified health plan under current law; allowing Medicare-eligible persons to contribute to an HSA; allowing spouses to make catch-up contributions to the same HSA account; creating a special 60-day grace period rule where certain medical expenses incurred after enrollment in a high-deductible health plan (HDHP), but prior to the establishment of an HSA, are honored; and allowing catastrophic "copper" health plans to be eligible for the purpose of making HSA contributions.

  The bill passed the House on 7/25/18 and was received in the Senate on 7/26/18.

- **HR 6199** – Provides relief from the ACA tax on over-the-counter medications, and expands the definition of qualified medical expenses to include over-the-counter medications, feminine hygiene products, and amounts paid in connection with gym memberships, participation in exercise classes and activities, or safety equipment used in conduction with a physical activity program.

  The bill passed the House on 7/25/18 and was received in the Senate on 7/26/18.

- **HR 184** – Repeals the excise tax on the sale of medical devices by manufacturers, producers, and importers.

  The bill passed the House on 7/26/18 and has been placed on the Senate Legislative Calendar.

- **HR 4616** – Amends the Affordable Care Act to provide for a temporary moratorium on the employer mandate until January 1, 2019. The bill also provides for a delay in the excise tax on high cost employer-sponsored health coverage, also known as the Cadillac Tax, until December 31, 2020.

  The bill passed a Committee vote on July 11, 2018, but no further action has been taken to bring to the bill to the House floor for a vote.

With the 2018 mid-term elections on the horizon this coming November, the final passage of these bills in both chambers of Congress is far from certain, especially bills like HR 4616 that significantly alter major provisions of the ACA. Morris & Garritano will continue to watch the progress of these matters, and well as any new initiatives, and will keep our clients informed of updates as they develop.

ACCURATELY INSURING PROPERTY VALUES

Contributed by: Justin Maire, Commercial Lines Risk Advisor

With the recent fires across both Northern and Southern California, one of the things we're hearing from insurance carriers, and across the industry, is that many policyholders were not carrying high enough limits to adequately secure them against the loss. The property insurance limits on their homes and businesses were not enough to rebuild at current construction costs.

If you have not reviewed or updated your existing building values in the past three to five years there is a strong chance your property is underinsured and your recovery value may not be enough to rebuild at your existing size or quality.

Additionally, many commercial insurance policies include co-insurance clauses. Co-insurance is a provision in the policy that reduces the policyholder's recovery amount if their limit is not equal to or greater than a percentage of the CURRENT building replacement cost. Commonly that requirement is 80% of the current replacement cost, but it can be as high as 90% or 100%. In these cases, not only is the policyholder's limit not enough to rebuild, but the amount paid by the insurance carrier would also be reduced depending on the percentage by which the property is underinsured.

Another area in which we are seeing business owners and individuals be significantly affected is the recovery of business income loss or the loss of use of their property. Following a claim (if covered) a business owner can recover their loss of income and extra expenses experienced as a result of the claim. For a home or farm owner they may need to pay for temporary housing until their home or ranch can be repaired or replaced. Most commonly those coverages carry a 12-month time limit. However, with the fires in Santa Rosa last summer, many of the destroyed properties are still a long way out from even beginning construction. It may be two to three years until the property can be rebuilt. Meanwhile,
insureds are renting new office space or dwellings until they are able to retake possession of their property. With a 12-month limit in these situations, the coverage is not enough.

Insurance is a tool designed to indemnify the policyholder and make them whole following a loss; however, in order to do so the right limits and coverages need to be set forth in the policy. We are dedicated to ensuring our clients carry the coverages and receive the services needed to get through a loss. If you have any questions or would like to meet and review your existing coverage, please let us know.

WC MEDICAL APPOINTMENTS & WAGES

Contributed by: Mary Jean Collins, Workers' Compensation Claims Analyst

My employee has a WC injury and needs to go to the doctor. Am I required to pay for his/her time while at the doctor?

There is no specific written regulation that an employer must continue wages for an employee who misses time from work for doctor appointments, physical therapy, diagnostic testing, etc. Employers are only required to pay wages for time worked; time at a medical appointment is not considered time worked.

However, we recommend that the employer pay the employee for the lost work time while at the doctor for his/her *initial appointment following the injury.* An employee is able to schedule appointments before their work shift, during a lunch break, or after a work shift and, if available, can use PTO for any lost work hours during their appointments.

While you are not obligated as an employer to pay an employee wages for the time they are at their appointment, the WC carrier will pay mileage reimbursement to the employee for going to an appointment.

Claims FAQs

A series by Heather Ross, Claims Advocate

PAYING CASH FOR MINOR LIABILITY CLAIMS

Question:
I hit a parked car in a parking lot, and it's clearly my fault. There's no damage to my car, and I don't want to have a claim on my policy, so is it okay for me to just pay the other party for the cost of their repairs

Answer:
Paying for a claim outside of insurance might not seem like a big deal, but it's rarely a good idea.

First, your auto policy requires that you do not assume any liability, make a payment, or incur any expense without your insurance company's consent. By accepting fault and making out-of-pocket payments to settle the loss, you could potentially void coverage under your policy.

Apart from the coverage considerations, it's been our experience that even small claims can get pretty messy. For example, what if you pay the other party based on the initial estimate, and then he/she comes back requesting a supplemental payment to address additional damages? Are you qualified to evaluate the shop's estimate to determine whether the charges are reasonable? What if the claimant wants a rental car while his/her vehicle is in the shop?

The potential complications become even more serious if someone was sitting in the car when it was struck, as the claimant could return at a later date and allege injury due to the accident.

No one likes to get into an accident, especially the little avoidable ones where we just weren't paying close attention. It's tempting to try to avoid getting dinged for having an at-fault accident on your record. In most cases, though, trying to handle a claim "out of pocket" just leads to more headaches than solutions.

NEW PROP 65 REQUIREMENTS TAKE EFFECT ON AUGUST 30, 2018

Contributed by: Michael Schedler, Loss Control Consultant

New regulations for California's Safe Drinking Water and Toxic Enforcement Act, also known as Proposition 65 ("Prop 65") will go into effect on August 30, 2018. Prop 65 applies to businesses with 10 or more employees that either operate in California or sell products in California. It requires the businesses to provide a "clear and reasonable warning" before "knowingly and intentionally" exposing anyone to "a chemical known to the state to cause cancer or reproductive toxicity." Failure to comply can result in penalties of up to $2,500 per day, per violation.

The new regulations make changes to both the form and the content required for the "safe harbor" warning and applies to consumer products as well as certain situations where "environmental exposure" or "occupational exposure" may occur. Manufacturers have the primary responsibility for providing Prop 65 warnings and have the option to put warning labels directly on their products or provide notices and warning signs/materials to their distributors, importers, or retail sales outlets. If they choose to give a notice, retailers must confirm in writing that they received the notice and use the provided warning signs/materials.

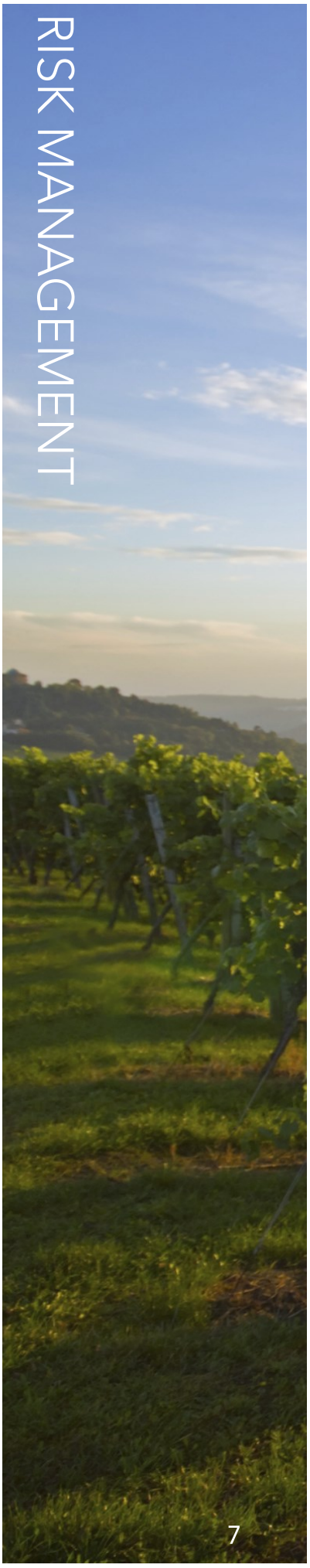
Warning Requirements

The more significant changes to the appearance, form, and content for the Prop 65 warnings are as follows:

- "**WARNING**" must appear in all capital letters and bold font
- A pictogram of a yellow triangle with an exclamation mark must be included ⚠
- Wording changes from "This product contains…" to "This product can expose you to…"
- Must include the full name of at least one chemical that prompted the warning
- Must appear in at least 6-point font size and be no smaller than the largest font size used for other consumer information on the product
- If the product has consumer information listed in a second language, in addition to English, the warning must be provided in both languages
- For internet sales, the warning must be prominently displayed on the product page or presented to the purchaser prior to completing the transaction
- If listed in a catalog, the warning must be presented in a way that clearly associates it with the proper item
- **"**Tailored" warnings are necessary for certain products (food, dietary supplements, alcohol, furniture, etc.) or industries and areas (restaurants, wood dust, dental care, parking facilities, service stations, hotels, etc.)

WARNING

New Prop 65 Regulations



REMINDER: PROTECT YOUR OUTDOOR WORKERS FROM HEAT ILLNESS

Contributed by: Michael Schedler, Loss Control Consultant

We've seen some scorching temperatures over the last few weeks, so we wanted to take a moment to remind employers about protecting their outdoor workers from heat illness.

Outdoor workplaces include construction, road work, agriculture, landscaping, and other various operations. Amongst all these industries, workers should be encouraged to take preventative cool-down breaks in the shade before they get too hot.

California employers with outdoor workers are required to follow heat illness prevention regulations:

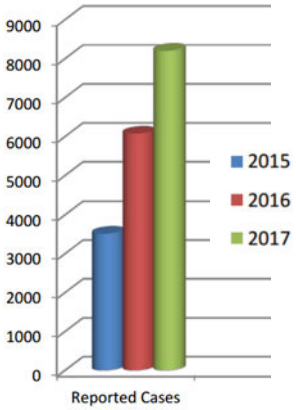
- Design and implement a written heat illness prevention plan that includes emergency response procedures.
- Train all supervisors and employees on heat illness prevention.
- Provide shade for workers when requested or when temperatures exceed 80 degrees. Rather than waiting until they feel sick, encourage employees to take periodic, five-minute breaks in the shade to cool down.
- Provide enough free, fresh, pure, suitably cool water to allow for each worker to drink at least one quart of water per hour and encourage them to do so.

It is important that supervisors are effectively trained on emergency procedures, as heat illness can develop into serious illness or death. You can access information on heat illness prevention requirements and training materials through Cal/OSHA at https://www.dir.ca.gov/DOSH/HeatIllnessInfo.html .

VALLEY FEVER AWARENESS

Contributed by: Michael Schedler, Loss Control Consultant

Coccidioidomycosis, more commonly referred to as Valley Fever, is an illness caused by a fungus occurring in the soil of various regions. It can infect the lungs, causing flu-like symptoms or severe illness. If left untreated, Valley Fever can even be fatal. The fungus is prevalent in the Central Valley region of California, making it a concern for area industries that work outdoors – construction, agriculture, engineering and surveying, etc.



Reported cases of Valley Fever are on the rise in California. According to the California Department of Public Health, there were 8,203 reports in 2017, nearly double the amount of reported cases in 2015. So far in 2018, the illness rate is on par with the upward trend, as over 4,600 potential cases have already been reported in the first seven months of the year. As the summer months tend to be the peak "season" for Valley Fever, it is likely that number will increase significantly.

There are precautions that can be taken to prevent outdoor workers from exposure to the fungus, particularly during hot, dry, or windy conditions:

- When digging in soil, try to keep the ground damp to prevent material from becoming airborne
- Provide employees with N95-rated respirator masks
- If possible, use machinery and vehicles with enclosed cabs and use air conditioning
- Clean skin injuries well with soap and water to reduce the chances of developing a skin infection, especially if the wound was exposed to dirt or dust
- Remove dusty clothing and store in plastic bags until washed

While these recommendations may not prevent all infections, they can help reduce the number of fungal spores workers are exposed to, thus lowering the chances of a more serious form of the disease from developing.

Source: California Department of Public Health – Infectious Diseases Branch – Surveillance and Statistics Section. Cumulative Reported, Suspect, Probably, and Confirmed Annual Cases of Coccidioidomycosis by Local Health Jurisdiction and Year of Estimated Onset, California, 2015-2017

SLO HEART WALK - SEPTEMBER 15TH!

Contributed by: Sara Holloway, Marketing Coordinator

Team M&G is once again participating in the SLO Heart Walk on September 15th to raise funds and awareness for cardiovascular disease and stroke.

If you'd like to donate to our fundraising goal, or if want to become a member of Team M&G and walk with us on September 15th, **click on the heart below**.

DATE & TIME
September 15, 2018
Check-In Festivities begin at 8:30 AM
Starts Walk begins at 9:30 AM
Length of Walk 5K (3.1 mi)

WHERE
Avila Beach Promenade, Bob Jones Trail
400 Front Street
Avila Beach, CA 93401
Get Directions

MORRIS & GARRITANO INSURANCE

With a tradition of excellence in insurance services since 1885, we offer all lines of business and personal coverage with a staff of over 120 professionals.

Our monthly newsletter is where you can find informative articles relating to the Commercial Lines and Employee Benefits industries.

For day-to-day updates and more information about our community and our company, follow us on Facebook, Twitter, Instagram, or LinkedIn. Visit our website, or check us out on Yelp!

Please contact us for more information or questions on anything mentioned in this newsletter.

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