



# M&G|exposure

## M&G NAMED #1 BEST PLACE TO WORK ON THE CENTRAL COAST

Morris & Garritano was recently named the #1 Best Place to Work on the Central Coast by the *Pacific Coast Business Times*. It is an honor to be included in the list along with so many other influential and dynamic companies in the tri-county area.

We are proud to be recognized for having a workplace that fosters collaboration, trust, support, and a little bit of fun. You've heard me talk about it numerous times, but Morris & Garritano is the company it is today because of our employees.

As a third-generation family-owned company, we are committed to living our core values: always be improving, love what you do, do the right thing, build collaborative relationships, and go the extra mile. We know that what we have here is unique. We have a team of experienced and knowledgeable insurance experts – and we're all learning more each day. But what's most important to us is building relationships with our customers. That's where our passion lies.

We have taken some amazing strides in the last few years, and we certainly don't plan on slowing down. We will remain focused on hiring the right people and staying dedicated to our clients, our employees, and our mission and values to ensure we continue to be trusted advisors for generations to come.

*Blenda*



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### SPECIAL POINTS OF INTEREST

- Hiring Teens for the Summer
- Morris & Garritano Workplace Pro
- Navigating Property Claims: Dealing with the Damage
- Electronic Logging Devices for Motor Carriers & Drivers



## HIRING TEENS FOR THE SUMMER

Contributed by: Louise Matheny, Human Resources Consultant

Bringing on teen workers during the summer is a rather common practice. It's a great way to distribute extra work, help your full-time staff develop training and management skills, and it can also bring about some fresh ideas and perspective to your business. However, there are additional rules and regulations that must be followed when hiring young help.



### Basic Laws

The California Labor Code and Education Code as well as the federal Fair Labor Standards Act all regulate the employment of minors – persons under the age of 18.

- Children under 18 may not work during certain hours of the day or in certain industries;
- Children under 18 are restricted in the total number of hours per day they may work;
- Employers who hire minors must generally acquire work permits for their under-18 employees and must comply with special record-keeping requirements for minors; and
- Minors must be paid in accordance with California's minimum wage.

If a minor has graduated from high school or obtained a graduation equivalency certificate, they are excluded from the California child labor laws.

### Work Permits

With very few exceptions, employers must obtain work permits before employing a minor. According to California law, there must be two forms in place prior to a minor starting work. The following steps should be taken to ensure the forms are finalized and accurate:

- A Statement of Intent to Employ and Request for Work Permit – Form B1-1 must be completed by the employer and the minor. The minor will fill out the form first, then you and the minor's parent or guardian must sign it.
- When completed, you must file Form B1-1 with the superintendent for the school district in which the minor attends school.
- The minor's work schedule must comply with the hours on the permit.
- Make sure to keep track of the work permit's expiration date. It will expire five days after the new school year begins. A new work permit must be obtained for every new hire or re-hire of a minor.

### Safety on the Job

Even though minors are forbidden from working in many hazardous occupations, injuries can occur in any workplace, so safety training is important. The Labor Occupational Health Program has some tips for training teens in particular:

- Provide clear instructions and hands-on training, particularly for any equipment use.
- Observe their work and correct any mistakes.
- Encourage them to ask questions if they don't understand directions or if there is a problem.
- Ensure your supervisors are properly overseeing their work and setting a good example.

As with any worker, minors are protected by state labor, employment, and civil rights laws, so an employer can be liable for any violations under these laws. Young workers may not be familiar with their employment rights, so close supervision is important, at least as they are settling into their new job.

## NEW INDEPENDENT CONTRACTOR TEST

Contributed by: Louise Matheny, Human Resources Consultant

The new independent contractor test, a groundbreaking decision from the California Supreme Court, will make it more difficult for employers to classify workers as independent contractors. While nearly every industry will be affected, the trucking and transportation industry will be directly impacted due to the fact that the workers involved in the case (Dynamex Operations West, Inc. v. Superior Court of Los Angeles) were delivery drivers.

Under the new ruling, individuals are presumed to be employees. Should a company want to classify an individual as an independent contractor, they must justify the classification under the “ABC test.” The ABC test replaces the current “right to control” or “common law” test, which put the focus on the employer’s ability to control how the work was performed. With the ABC test, a company must prove **all** of the following to classify an individual as a contractor:

- A. **The worker is free from the control and direction of the hiring entity in connection with the performance of the work.** This is similar to the current common law standard, so it should not be too much of a surprise to employers. It is tests B and C that completely change the process.
- B. **The worker performs work that is not the hiring entity’s usual business.** Workers whose roles are “most clearly comparable” to those of employees include workers whose “services are provided within the usual course of the business.” This includes almost any worker who engages in the same business as the hiring entity.
- C. **The worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed for the hiring entity.** If the worker has independently made the decision to go into business for themselves, they are likely to be found as satisfying this requirement.

The question of how a worker is classified has a significant impact on the workers and the employers. Should it be determined that a worker be classified as an employee, the employer then bears the responsibility of paying the proper employment taxes, insurance, and complying with the state and federal regulations governing wages, hours, and employee working conditions.

California businesses that currently treat workers as independent contractors, would be wise to confer with their legal counsel to determine if any workers should be reclassified under the ABC test.

For a discussion on how the Dynamex ruling may affect welfare benefit plans and ACA compliance, see Keith Dunlop’s article in the Compliance section of this month’s newsletter.



*Please contact Louise Matheny, our Human Resources Consultant, with questions pertaining to these articles or any other HR inquiries.*

## MORRIS & GARRITANO WORKPLACE PRO

Contributed by: Louise Matheny, Human Resources Consultant



If you haven't already heard, we would like to introduce a new addition to our existing HR Business Consulting service, **Morris & Garritano Workplace Pro**, powered by ThinkHR. 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** - Certified HR experts standing by to answer your questions, render advice, and follow up with research to resolve issues. This phone-based support service is available from 6am to 5pm PST each business day.

**HR Comply** - A comprehensive resource center with all the forms, checklists, and tools needed to manage HR and maintain compliance.

**HR Learn** - More than 200 online training courses including **California sexual harassment prevention training**, that ensure compliance, reduce risk, and drive employee engagement. Your employee training program is easier to manage with an intuitive admin dashboard and robust reporting.

Convenient **mobile app** that provides access to ThinkHR's resources anywhere, anytime.

[Use this link](#) to view a brochure that describes more about Workplace Pro's unique and useful solutions.

If you are interested in learning more about Workplace Pro and how it can assist with HR, safety, and compliance, please contact Louise Matheny at [lmatheny@morrisgarritano.com](mailto:lmatheny@morrisgarritano.com).

## ZHEILA POURAGHABAGHER JOINS TEAM M&G

We would like to introduce Zheila Pouraghabagher, one of the newest additions to the Morris & Garritano family. Zheila joined as our Employee Benefits Director and is working side-by-side with our Employee Benefits Department Manager, Celia Silacci. Together, they will help improve the client experience by introducing new technologies and service practices.

Zheila is a seasoned professional development and operations executive who has consulted with a broad range of professionals and C-level management teams. Her experience mentoring staff and management will be imperative as we roll out new onboarding platforms and technologies to our employee benefits groups.

She specializes in employee engagement, which will foster stronger relationships with clients and between various teams within M&G. Her ability to improve communication, productivity, and the overall work experience will help us continue to provide the highest quality service to our customers and keep us the best place to work on the Central Coast.

Zheila is an exciting addition to our company of friendly, knowledgeable, and dedicated professionals. We look forward to the enhancements that she and her team will bring to the company and to your employees.



## INSURANCE MADE EASY(ER)

Contributed by: Ben Hoover, Senior Employee Benefits Advisor

We know that insurance can seem complicated, but we are here to help! As your partner and advisor, we make every effort to make the confusing parts a little less confusing. But, even with all that, we understand that questions can remain.

At times, such as open enrollment or policy renewal, it is necessary to provide significant detail on a subject. We communicate these pieces with either in-person meetings or detailed summaries. But, sometimes we simply want to remind our clients of the insurance basics or review a specific topic – like “What is Open Enrollment?”

We are excited to bring a new form of communication to you and your employees. The video below is an example of what you can look forward to from M&G.



We will be making more of these informational videos and posting them in the News & Events section of our website and on our YouTube page. Look for other feature videos in upcoming newsletters and our social media sites as well. They will cover a variety of topics relating to Employee Benefits, Property & Casualty, and Personal Insurance.

Is there a question that you'd like to see answered with a video? Just send an email to [info@morrisgarritano.com](mailto:info@morrisgarritano.com) with your suggestion and we'll add it to our list!

## IRS ENFORCEMENT OF ACA EMPLOYER MANDATE CONTINUES

Contributed by: Keith Dunlop, Director of Compliance

Morris & Garritano has reported on the IRS enforcement of the Affordable Care Act's (ACA) employer mandate over the past several months, including IRS Letter 226J. Applicable Large Employers (ALEs) must offer healthcare coverage to their eligible employees or face significant penalties (see our January 2018 newsletter for a detailed discussion of employer penalties).

The IRS is also targeting employers that *they* judge to be an ALE, and demanding a response to why annual ACA informational returns were not filed.

**Employers that did not file annual ACA information returns with the IRS may receive Letter 5699 – Request for Employer Reporting of Offers of Health Insurance Coverage (Forms 1094-C and 1095-C)**

### IRS Letter 5699

In addition to Letter 226J which alerts an Applicable Large Employer of a potential penalty for failure to comply with the employer mandate provision of the ACA, the IRS is also issuing Letter 5699 which is targeted at companies that the IRS deems to be an ALE, but did not file annual informational returns (e.g. Forms 1094-C and 1095-C). It is not known what criteria the IRS is using to judge if an employer is an ALE in their eyes – presumably the IRS is using W2 data.

The opening paragraph of the letter states,

*“A review of our records shows you may have been an Applicable Large Employer (ALE) in 2015 and therefore required to file certain information returns for 2015. We have not received those returns”.*

An employer who receives Letter 5699 has thirty (30) days upon which to reply to the IRS and select one of the following responses:

1. You were an ALE and already filed Forms 1094-C and 1095-C;
2. You were an ALE and are including your forms as an attachment to your response;
3. You were an ALE and will file your forms by a given date;
4. You were not an ALE for calendar year 2015; or
5. Other (a statement explaining why you have not filed the required returns and what actions you plan to take).

Employers are encouraged to consult with counsel prior to responding to Letter 5699.

### Review of the Large Employer Mandate

Applicable Large Employers (those with 50 or more full time and full time equivalent employees in the prior calendar year) are required to offer medical coverage to their eligible full time employees and their dependents that meets minimal essential coverage (MEC) and minimal value (MV) requirements. The offer of coverage must also be affordable – meaning the employee's share of the monthly premium does not exceed 9.56% (in 2018) of the employee's household income. Large employers that fail to offer affordable health coverage to at least 95% of their full time employees face penalties under Section 4980H(a) and (b).

Need a fun refresher on how to know if you are an Applicable Large Employer? Checkout this video!



## THE DYNAMEX RULING AND WELFARE BENEFIT PLAN COMPLIANCE

Contributed by: Keith Dunlop, Director of Compliance

In this month's edition of M&G Exposure, Louise Matheny discusses the recent ruling by the California Supreme Court providing a new standard which significantly narrows the parameters upon which an employer can classify a worker as an independent contractor. The accurate classification of workers has a bearing on issues such as Social Security and payroll taxes, wage and hour compliance, workers' compensation, and regulations governing working conditions. But, the practical effect of the Dynamex ruling would also likely play a role in benefit plan administration and an employer's compliance obligations under the Affordable Care Act (ACA).

What are an employer's obligations with a welfare benefit plan covered by ERISA to a contractor who is later reclassified as an employee? Are benefits to be offered retroactively to the date of the contract relationship, or on a go-forward basis from the date of reclassification? Would insurance carriers accept retroactive enrollment and claims responsibilities, or would an employer bear the costs of claims out-of-pocket? How would financial issues such as pre-tax premium cost sharing be handled? Welfare benefit plan documents rarely, if ever, address these consequences of retroactive worker reclassification.

Companies that must comply with the ACA have additional concerns. Employers with 50 or more full time and full time equivalent employees (or FTEs), are required by the ACA to offer health coverage to at least 95% their eligible employees and dependents. Contractors who are reclassified as full time employees would have to be included in an employer's FTE count, and also factored into the percentage of workers that must receive an offer of coverage. Incorrectly classified workers may cause an employer to miss these critical compliance targets and find themselves with unforeseen ACA penalty liabilities – the regulations provide no retroactive relief for these potential problems.

Employers who are currently engaging the services of "contractors" are encouraged to thoroughly examine the application of the Dynamex ruling with qualified labor counsel, and additionally consider the ramifications of misclassified workers to welfare benefit plan administration.





# Navigating Property Claims

A series by Heather Ross, Claims Advocate



## DEALING WITH THE DAMAGE

We've all seen shows like *CSI* and *Bones*, in which the police secure a perimeter around a crime scene, effectively sealing everything off until the investigators arrive.

Fortunately, most property claims don't need to be treated like crime scenes. Rather than leaving everything "as is" until the adjuster arrives, it's much better – and required by your policy – to act immediately to prevent further damage.

In practical terms, this means stopping whatever it is that's causing the damage, and then making whatever temporary repairs are needed to prevent additional damage from occurring. For example:

- If you have a broken pipe, it's okay to cut a hole in the drywall and make the repairs to the pipe. You also should call a disaster restoration contractor to start drying out any property that has been soaked by the water; household cooling fans, even the big ones, aren't usually large or powerful enough to dry a saturated area quickly.
- If one of your windows breaks, have the window boarded up so that rain (or thieves) can't get into your building.
- If severe damage to the building raises questions about its stability, it may be necessary to hire a trained professional to safely remove any undamaged property from the area.

Be sure to document everything you're doing as you go along. Take pictures of the damage before, during, and after you start taking things apart. If you can, set damaged items neatly aside, so that they're available for the company's inspection. Keep receipts for all your expenses, so that they can be included for consideration under your claim.

With all that said, you shouldn't undertake any major repairs until your insurance company has had the opportunity to review the damage and confirm coverage under your policy. While trying to decide how far to go in making temporary repairs, a good rule of thumb is to ask yourself, "What would I do to minimize my damages if I didn't have insurance to help?"

Of course, if you're reading this, you do have insurance, and you also have a team at M&G that's happy to help. Please give our office a call if you ever have a claim and need assistance with next steps.

# THE IMPORTANCE OF AN EMERGENCY ACTION PLAN

Contributed by: Michael Schedler, Loss Control Consultant

Unfortunately, it has become more common to hear news stories about active shooters within businesses. While the events are tragic, they do bring to light the importance of having an emergency action plan (EAP) in place, no matter the size of your business.

But EAPs aren't just for active shooters – they are for any emergency situation, including:

- Natural disasters, such as floods, earthquakes, or wildfires
- Terrorism
- Medical emergencies
- Structural fires
- Chemical or hazardous material spills
- Employee fatalities, including unintentional or natural deaths, suicide, or homicide
- Bomb threats
- Outbreaks of disease or infection

Oddly enough, even with all of these potential threats, Cal/OSHA does not require most employers to have an EAP. However, some cities and counties may have local EAP requirements for their employers.

If you choose to implement an EAP, the California Department of Public Health's Occupational Health Branch (OHB) recommends that an employer's first step should be to form an emergency committee comprised of key employees. "Effective planning begins with leadership, management support, and open communication," according to the OHB.

While Cal/OSHA may not require all employers to have an EAP, the General Industry Safety Orders §3220 states that those who do have an EAP must include specific elements or could be cited for non-compliance. An EAP should have:

- Emergency evacuation procedures
- Procedures for those employees that remain behind to operate critical plant operations (if applicable)
- The preferred method for reporting fires or other emergencies
- Rescue and medical duty procedures
- The name and title of each employee or department who can explain the details of the EAP

Additionally, the Safety Orders standard requires employers with EAPs to establish an emergency alarm system, using a distinct signal for alerting fire crews. Proper training of employees is also a requirement.

The standards may seem minimal, but some employers feel that Cal/OSHA is strict on their citations. To ensure the best of both worlds, providing a safe emergency plan for your employees and staying compliant with Cal/OSHA, it is best to treat an EAP as a living document – something that can be amended or revised as needed. OHB suggests reviewing your EAP at least once a year and ensuring employees are trained or educated on any changes.



## ELECTRONIC LOGGING DEVICES FOR MOTOR CARRIERS & DRIVERS

Contributed by: Adam Peterson, Commercial Lines Risk Advisor



In December of 2015, a federal ruling went into effect requiring the use of Electronic Logging Devices (ELDs) for the majority of motor carriers and drivers. In the first two years following the mandate's publication, carriers and drivers were given time to prepare to comply and could voluntarily use ELDs. December 18, 2017 marked the start of the "Phased-In Compliance" phase, which gives carriers and drivers two years to come to full compliance and the mandatory use of ELDs to maintain records of duty status.

While many larger carriers required the use of ELDs prior to the ruling, smaller operations have had their concerns regarding the costs associated with ELD implementation. Not only are the devices themselves expensive to purchase, install, and maintain, but there was a fear of productivity decreasing due to the availability of precise records.

That being said, for those companies who are not trying to cut corners, many will see a decrease in insurance costs. The implementation of ELDs industry-wide will lead to safer roads, fewer accidents, and will force drivers and companies to comply with the law. The logbook tracking of an ELD will enforce drivers to take their required breaks, remain within their allotted drive time, and encourage sleep. This will all lead to fewer accidents, fewer lawsuits, and better insurance rates.

The ELDs can also provide GPS tracking and engine data reporting that can be used for improved asset utilization and more preventive maintenance, both of which have insurance benefits.

Fleets currently complying with Hours of Service (HOS) regulations – whether they are using ELDs or paper logs – shouldn't see any financial impact from loss of productivity or increased insurance rates. However, those that have drivers pushing and exceeding the limits may see both a productivity hit and a rise in their insurance rates.

## WHAT IS A NURSE CASE MANAGER?

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

In Workers' Compensation cases where there isn't significant medical improvement, a Nurse Case Manager (NCM) can be assigned by the insurance carrier. Their main role is to help facilitate the medical treatment for your employee and get them back to work.

The NCM coordinates medical benefits for injured workers, which includes:

- Treatment of injured workers
- Reviewing and analyzing medical records
- Corresponding with the treating physicians
- Coordinating the referral to specialists if necessary
- Making sure that all of the physicians are keeping the carriers up to date on their recommendations, prescriptions, and prognoses for the future.

The NCM can discuss alternate treatment plans with the physician, which may have a better medical result for your employee. In some cases, the nurse will attend the doctor's appointment with the employee. The carrier may assign a Telephonic Nurse (TCM) who will call the doctor's office after the appointment to get an updated medical status and treatment plan.

The NCM and the TCM report back to the insurance examiner after every doctor's visit. The ultimate goal is to have the employee treated appropriately with positive results and back to work in some type of capacity.



## JUST A LITTLE SUNDAY RUN

Contributed by: Sara Holloway, Marketing Coordinator

Race SLO had another successful SLO Marathon + Half and Relay this year, and Team M&G was proud to be part of it! As an annual sponsor and with numerous race participants and volunteers each year, you can bet that we are already gearing up for the next race!



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## 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.

