



TAX HIKES

California Cannabis Tax Will Increase Jan. 1

ON NEW Year's Day, 2020, state taxes on legal marijuana will increase both at the retail and wholesale levels, the California Department of Tax and Fee Administration has announced.

The marijuana mark-up rate from wholesale to retail has been set at 80% as of Jan. 1, and cultivation taxes will increase moderately as well.

Excise tax and mark-up rate

The CDTFA analyzes statewide market data to determine the average mark-up rate between the wholesale cost and the retail selling price of cannabis and cannabis products every six months, and it has increased it to 80% from the current 60%.

This mark-up rate is important in determining excise taxes owed, which are set at 15% of the retail selling price. The agency applies the excise tax based on the average market price of the cannabis or cannabis products sold in a retail sale.

The mark-up rate is used when calculating the average market price to determine the cannabis excise tax due in an arm's length transaction.

In such a transaction, the average market price is the retailer's wholesale cost of the cannabis or cannabis products, plus the mark-up rate determined by the CDTFA.

Cultivation tax rates

The CDTFA also announced higher tax rates for cultivators, as per law, that requires them to reflect an adjustment for inflation.

The below rates apply to cannabis that a cultivator sells or transfers to a manufacturer or distributor as of Jan. 1, 2020.

Cultivators' new tax rates

- **1 oz. of flower:** \$9.65, up 4.3% from the current \$9.25.
- **1 oz. of leaves:** \$2.87, up 4.3% from the current \$2.75.
- **1 oz. of fresh marijuana plant material:** \$1.35, up 4.6% from the current \$1.29.

** Cultivators will have to reflect these rates in their quarterly and annual tax returns.*



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WORKERS' COMP PREMIUMS

More Firms Get Bills for 'Misclassified' Workers

ONE OUTGROWTH of a new state law that applies more stringent criteria for what constitutes an independent contractor is that many employers are likely to see more audits and calls for additional premium from their workers' compensation insurers.

In fact, it's already happening in some sectors, according to the insurance trade press.

More employers are being hit with surprise bills for additional premium by their insurers for allegedly misclassifying independent contractors as employees, according to the *Workers' Comp Executive* trade publication.

And this problem is only likely to grow as the full effects of this year's landmark independent contractor law, AB 5, take hold.

What's happening now

The *Workers' Comp Executive* reported that the California Department of Insurance's Administrative Hearing Bureau is receiving an increasing amount of complaints from employers that are disputing their workers' comp insurers' request for additional premium for employees that had originally been classified as independent contractors.

The publication cited the case of a construction firm that State Compensation Insurance Fund says misclassified 42 individuals who worked for the company as independent contractors in 2017 and hence should pay an additional \$114,000 in premium for that year.

β The dispute is currently in front of the Administrative Hearing Bureau.

In 2018, the California Supreme Court handed down a game-changing decision in the case of *Dynamex Operations West, Inc. vs.*

Superior Court, in which it set forth a new test for who qualifies as an employee or independent contractor. Under this test, an employer must answer 'yes' to the following three questions if they want to classify a worker as an independent contractor:

- Is the worker free of the employer's direction and control?
- Does the worker perform work that is not ordinarily part of the employer's regular work?
- Is the worker involved in an independent trade or occupation that is the same/similar to the work being performed.

The impact of AB 5

A new law, Assembly Bill 5, which essentially codifies the Dynamex decision into state law, takes effect Jan. 1, 2020. While the Dynamex decision specifically excluded the independent contractor test from use in applying workers' comp premiums, AB 5 does not.

The new law will apply to workers' comp on or after July 1, 2020.

Industry observers say they expect more employers to receive additional premium calls from their workers' comp carriers after the law takes effect.

In order to reduce the possibility of a final audit with significant additional premium, please contact your Cannabis Connect representative to review individuals you currently classify as independent contractors.

Your workers' comp insurer will not send you a demand for additional premium without conducting an audit of your payroll.

If the insurance company deems any independent contractors that you use as employees, then it will calculate the amount of back premium it thinks you owe for them. ❖



HEALTH INSURANCE

New Rules Allow Employers to Reimburse for Health Premiums

STARTING JAN 1, 2020, employers can establish accounts for their employees to help them pay for individual health insurance policies they purchase, as well as for other health care expenses.

A new regulation expands on how health reimbursement accounts can be used.

Currently, employers and their workers can contribute to these accounts, which can be used to reimburse workers for out-of-pocket medical expenses.

With these new Individual Coverage HRAs, employers can fund the account workers would use to pay for health insurance premiums for coverage that they secure on their own.

Up until this new regulation, such arrangements were prohibited by the Affordable Care Act under the threat of sizeable fines in excess of \$36,000 per employee per year.

How it works

Under the new rule, if an employer is funding an ICHRA, the plan an employee chooses must be ACA-compliant, meaning it must include coverage for the 10 essential benefits with no lifetime or annual benefit maximums – and must adhere to the consumer protections built into the law.

Once the ICHRA is created, the employer will pay a set amount every month into the account on a pre-tax basis, which the employee can then use to buy or supplement their purchase of health insurance benefits in the individual market.

The law allows employers to set up as many as 11 different classes of employees for the purposes of distributing funds to ICHRAs.

The employer can vary how much they give to each group.

For example, one class may get \$600 a month per single employee with no dependents, while members of another class may receive \$400 a month. ❖

ALLOWABLE CLASSES

- Full-time employees
- Part-time employees
- Seasonal employees
- Temps who work for a staffing firm
- Salaried employees
- Union employees
- Employees in a waiting period
- Foreign employees who work abroad
- Employees in different locations, based on rating areas
- A combination of two or more of the above

THE RULES

- Any employee covered by the ICHRA must be enrolled in health insurance coverage purchased in the individual market;
- The employer may not offer the same class of workers both an ICHRA and a traditional group health plan;
- The employer must offer the ICHRA on the same terms to all employees in a class;
- Employees must be allowed to opt out of an ICHRA;
- Employers must provide information to staff on how an ICHRA works;
- Employers may not create a class of younger employees, who they want to keep in their plan because they're healthier;
- A class must have 10 or more workers if the firm has fewer than 100 staff. For employers with 100 to 200 employees, the minimum class size is 10% of the workforce, while for employers with more than 200 staff, the minimum class size is 20;
- While benefits must be distributed fairly to employees that fall within each class, each class can be broken down further by age and family size. Employees with families can be offered a higher amount per month and rates can be scaled by age.



INTERNAL CRIME

Prevent Employee Theft Before It Eliminates Your Firm

EMPLOYEE THEFT and fraud is a perennial problem. One rogue employee can seriously damage the finances of a company.

About a third of all business failures trace back to employee theft and crime, according to the U.S. Department of Commerce.

Small and midsize businesses accounted for 68% of all workplace theft, with median losses of \$290,000 in 2016, according to a study by insurance company Hiscox Ltd.

Given these figures, it's important that you protect your company against internal theft and forgery and take the proper steps if you discover a crime.

How employees steal

Understanding how theft happens can help you stay one step ahead of errant staffers. The most common thefts fall into three categories:

Larceny – Theft of property or cash is the easiest to detect because the cash or item usually has already been recorded on the books and adequate controls normally exist.

Skimming – This is the theft of cash before it is recorded on the company's books. It can happen when an employee has a customer pay them directly for goods or services. Receivables skimming is when the amount owed is reduced on the books by write-off schemes.

Also, personnel who have expense accounts may submit receipts twice – or inflate their expenses and mileage.

Fraudulent disbursements – This includes billing schemes, payroll schemes, register disbursement schemes, expense reimbursement schemes and check-tampering. Schemes include fake payrolls (paying a person who does not exist) or purchasing fraud (paying a fake supplier for goods that don't exist).

Preventing crime

For a measure of protection:

Perform background checks – Make sure you contact previous employers, references and schools and look for signs of any misconduct in terms of stealing or fraud. And consider getting a police report on the applicant.

Consider giving an 'honesty test' – These are standardized, commercially available written tests that are psychological evaluations of an applicant or employee. While many believe these tests weed out people with a propensity to steal, others feel that they are inaccurate and violate privacy and civil rights.

Supervise your employees – Research has shown that businesses with low levels of employee supervision show high rates of employee theft. Don't be hyper-vigilant, but do keep your eye out for the telltale signs of theft, such as a rise in an employee's spending habits.

Remember to be extremely careful about making accusations before conducting an investigation – a false accusation can result in a lawsuit against you.

Make it hard to steal – Don't allow only one person to deal with money. Conduct unscheduled inspections or audits of inventory and bookkeeping. Monitor bookkeeping records.

Create a fraud avoidance plan and set rules – Every company needs to develop a fraud avoidance and assessment plan and set the rules for consequences if an employee is caught embezzling money from the business. Proper planning will make sure that all employees know where the company stands in regard to employee theft and will give business owners the confidence to handle it properly should it occur.

A plan should include:

- Pre-employment and periodic background investigations.
- Periodic checking and changing of computer passwords.
- Internal and/or external auditors.
- The specific consequences for theft, such as termination and reporting them to authorities. ❖