

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF WORKERS' COMPENSATION

NOTICE OF PROPOSED RULEMAKING:
CLAIM FORM AND NOTICE OF POTENTIAL ELIGIBILITY; NOTICE TO NEW
EMPLOYEES POSTER; AND WRITTEN NOTICE TO NEW EMPLOYEES

NOTICE IS HEREBY GIVEN that the Administrative Director of the Division of Workers' Compensation, pursuant to the authority vested in him by Labor Code §§133, 138.4, 3550, 3551, 3600, 5307.3 and 5401, proposes the following regulatory changes to Chapter 4.5, Subchapter 1, Title 8, California Code of Regulations:

Amend Section 9810	General Provisions
Amend Section 9880	Written Notice to New Employees
Amend Section 9881	Posting of Notice to Employees
Propose Section 9881.1	Notice to Employees Poster
Repeal Section 9882	Written Notice to Injured Employees; Pamphlet Contents
Amend Section 9883	Publication of Information, Approval, Spanish Translation
Repeal Section 10117	Claim Form
Propose Section 10117.1	Claim Form and Notice of Potential Eligibility for Benefits
Repeal Section 10118	Form
Propose Section 10118.1	Workers' Compensation Claim Form (DWC 1) and Notice of Potential Eligibility

These regulations concern the employee claim form for workers' compensation benefits (DWC 1) and the notice of potential eligibility for benefits, the notice to employees poster, and the written notice to new employees.

PUBLIC HEARING

A public hearing has been scheduled to permit all interested persons the opportunity to present statements or arguments, oral or in writing, with respect to the subjects noted above, on the following dates:

Date:	July 15, 2003
Time:	10:00 a.m. to 5:00 p.m. or conclusion of business.
Place:	Gov. Hiram W. Johnson State Office Bldg. Auditorium 455 Golden Gate Avenue San Francisco, California 94102

The State Office Building and its Auditorium are accessible to persons with mobility impairments. Alternate formats, assistive listening systems, sign language interpreters, or other type of reasonable accommodation to facilitate effective communication for persons

with disabilities, are available upon request. Please contact the State Wide Disability Accommodation Coordinator, Adel Serafino, at 1-866-681-1459 (toll free), or through the California Relay Service by dialing 711 or 1-800-735-2929 (TTY/English) or 1-800-855-3000 (TTY/Spanish) as soon as possible to request assistance.

Please note that public comment will begin promptly at 10:00 a.m. and will conclude when the last speaker has finished his or her presentation. If public comment concludes before the noon recess, no afternoon session will be held.

The Administrative Director requests, but does not require that, any persons who make oral comments at the hearings also provide a written copy of their comments.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department of Industrial Relations, Division of Workers' Compensation. The written comment period closes at **5:00 p.m., on July 15, 2003**. The Department of Industrial Relations, Division of Workers' Compensation will consider only comments received at the Department of Industrial Relations, Division of Workers' Compensation by that time. Equal weight will be accorded to oral comments presented at the hearing and written materials.

Submit written comments concerning the proposed regulations prior to the close of the public comment period to:

Marcela Reyes
Regulations Coordinator
Department of Industrial Relations
Division of Workers' Compensation
Post Office Box 420603
San Francisco, CA 94142

Written comments may be submitted by facsimile transmission (FAX), addressed to the above-named contact person at (415) 703-4720. Written comments may also be sent electronically (via e-mail) using the following e-mail address: dwcrules@dir.ca.gov.

Unless submitted prior to or at the public hearing, Ms. Reyes must receive all written comments no later than 5:00 p.m. on July 15, 2003.

AUTHORITY AND REFERENCE

Labor Codes §§133 and 5307.3 authorize the Administrative Director to adopt or amend regulations and to enforce the laws. Labor Code §138.4 no longer requires a pamphlet approved by the Administrative Director to be provided to an injured worker with the first notice of payment or notice of delay. Labor Code §§3550, 3551 and 3600 authorize the Administrative Director to prescribe the form and content of the Notice to New

Employees poster and the content of the written notice to new employees. Labor Code §5401 authorizes the Administrative Director to prescribe the form and content of the notice of potential eligibility and claim form. The regulations are intended to implement, interpret or make specific Labor Code §§138.4, 3550, 3551 and 5401.

INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW

The Administrative Director of the Division of Workers' Compensation proposes new regulations and proposes to amend existing regulations concerning concern the employee claim form for workers' compensation benefits (DWC 1) and the notice of potential eligibility for benefits, the notice to employees poster, and the written notice to new employees. The Administrative Director proposes to repeal the regulation which required a pamphlet to be sent to injured employees. The Administrative Director also proposes to repeal the regulations concerning the current claim form (DWC 1).

The Administrative Director of the Division of Workers' Compensation proposes the following new, amended, or repealed regulations:

Amended Section 9810	General Provisions
Amended Section 9880	Written Notice to New Employees
Amended Section 9881	Posting of Notice to Employees
Proposed Section 9881.1	Notice to Employees Poster
Repealed Section 9882	Written Notice to Injured Employees; Pamphlet Contents
Amended Section 9883	Publication of Information, Approval, Spanish Translation
Repealed Section 10117	Claim Form
Proposed Section 10117.1	Claim Form and Notice of Potential Eligibility for Benefits
Repealed Section 10118	Form
Proposed Section 10118.1	Workers' Compensation Claim Form (DWC 1) and Notice of Potential Eligibility

Amended §9810 General Provisions

Labor Code §138.4 was amended effective January 1, 2003. As a result, the Labor Code no longer requires a pamphlet to be sent to the injured employee, included with the first notice of payment or notice of delay in payment. Section 9810 is amended by deleting subdivision (d), which referenced the general benefits information pamphlet that was previously required by Labor Code §138.4.

Amended §9880 Written Notice to New Employees

Labor Code §3551 was amended effective January 1, 2003. In compliance with the changes to Labor Code §3551, Section 9880 is amended to require the written notice to new employees to be easily understandable and to be provided in English and Spanish. The notice is required to include information concerning: how to obtain appropriate medical care for a job injury; the role and function of the primary treating physician; how to get emergency medical treatment; the kinds of events, injuries and illnesses covered by

workers' compensation; the injured employee's right to receive medical care; information about who the employer's workers' compensation insurance carrier is, or if the employer is self insured, a statement of permissible self-insurance; time limits imposed on the employee; and the location and telephone number of the nearest information and assistance officer. The notice must also include a form that the employee may use as an optional method for notifying the employer of the name of the employee's "personal physician."

Amended §9881 Posting of Notice to Employees

Effective January 1, 2003, Labor Code §3550 was amended. Former Labor Code §3550 required employers to post a notice providing information to its employees about workers' compensation. Amended Labor Code §3550 requires additional information to be posted and mandates that the Administrative Director make available the form and content of the notice required to be posted. The proposed amended §9881 reflects the additional required information as mandated by Labor Code §3550. The amended §9881 also provides that the employer may post the Administrative Director's approved notice to employees poster provided in Section 9881.1. If the employer chooses not to use the notice to employees poster provided in Section 9881.1, the employer may use a poster which meets the posting requirements of Labor Code §3550 and this regulation, provided it has been approved by the Administrative Director.

Proposed §9881.1 Notice to Employees Poster

Proposed Section 9881.1 is the Notice to Employees poster that is approved by the Administrative Director and may be used by employers. Pursuant to the requirements of Labor Code §3550, which was amended effective January 1, 2003, the poster is available in both English and Spanish, is easily understandable, sets forth the types of benefits to which an injured worker may be entitled, provides information regarding obtaining emergency medical treatment, explains the rights of the employee to select and change the treating physician, provides information concerning obtaining medical care, provides information regarding the existence of time limits for the employer to be notified of an occupational injury, sets forth the protections against discrimination and sets forth the location and telephone number of the nearest information and assistance officer.

Repealed §9882 Written Notice to Injured Employees; Pamphlet Contents

Labor Code §138.4 was amended effective January 1, 2003. As a result, the Labor Code no longer requires a pamphlet to be sent to the injured employee, included with the first notice of payment or notice of delay in payment. Therefore, §9882, which set forth the information that was required to be in the pamphlet, will be repealed.

Amended §9883 Publication of Information, Approval, Spanish Translation

Section 9883 is amended to delete the reference to the §9882 pamphlet for injured workers, as the requirement for the employer to send a pamphlet to an injured employee (included with the first notice of payment or notice of delay in payment) was repealed pursuant to the January 1, 2003 revision of Labor Code §138.4. Pursuant to the January

1, 2003 amendments to Labor Code §3550 and 3551, the specific requirement that the notice to employees poster and written notice to new employees shall be available in English and Spanish is now set forth in this regulation.

Repealed §10117 Claim Form

Section 10117, which referred to the Employee's Claim Form (DWC 1) set forth in §10118, is repealed as §10118 no longer complies with the requirements set forth in Labor Code §5401. The claim form has been revised and will be Section 10118.1. Former §10117 will be repealed, however §10117.1 will serve as its replacement.

Proposed §10117.1 Claim Form and Notice of Potential Eligibility for Benefits

Proposed §10117.1 will replace repealed §10117. Section 10117.1 provides that §10118.1 is the mandatory workers' compensation claim form and notice of potential eligibility for benefits. Proposed §§10117.1 and 10118.1 reflect the requirements of Labor Code §5401, which was amended effective January 1, 2003. Section 10117.1 also allows the employer to include other information pertinent to the claim and to include a logo or other employer-identifying information.

Repealed §10118 Form

Section 10118, the employee's claim form for workers' compensation benefits (DWC 1), no longer complies with the requirements set forth in Labor Code §5401, which was amended effective January 1, 2003. The claim form has been revised and will be Section 10118.1.

Proposed §10118.1 Workers' Compensation Claim Form (DWC 1) and Notice of Potential Eligibility

Labor Code §5401, which was amended effective January 1, 2003, sets forth the requirements pertaining to the notice of potential eligibility and claim form, which shall be a single document. The form and content is required to be prescribed by the Administrative Director after consultation with the Commission on Health and Safety and Workers' Compensation. The notice is easily understandable and available in both English and Spanish. Proposed §10118 complies with the requirements mandated by Labor Code §5401. It includes the following information: how to file a workers' compensation claim, a description of the different types of workers' compensation benefits, what happens to the claim form after it is filed, from whom the employee can obtain medical care for the injury, the role and function of the primary treating physician, the right of an employee to select and change the treating physician, how to obtain medical care, the protections against discrimination, and the three required statements concerning the right to disagree with decisions affecting the claim, information about information and assistance officers, and information about consulting an attorney. The notice of potential eligibility is two pages. The claim form consists of an original and three copies. Changing the claim form from a multi-colored, multi-paged form to a form that consists of an original and three copies will allow the claim form to be downloaded

and printed from the Department of Industrial Relations, Division of Workers' Compensation web site.

STATE REIMBURSABLE MANDATE

The Administrative Director of the Division of Workers' Compensation has determined that the proposed amendments to the regulations will not impose any new mandated programs on any local agency or school district. The California Supreme Court has determined that an increase in workers' compensation benefit levels does not constitute a new State mandate for the purpose of local mandate claims because the increase does not impose unique requirements on local governments. (*County of Los Angeles v. State of California*, 43 Cal.3d 46 (1987)). The requirements imposed on all employers by these proposed amendments to the regulations, although not a benefit level increase, is similarly not a new State mandate because the amended regulations apply to all employers, private and public, and not uniquely to local governments.

DETERMINATION OF DISCRETIONARY COSTS ON LOCAL AGENCIES

The proposed regulations may impose discretionary costs on local agencies and school districts. Any such costs, however, will be non-discretionary because the requirement that every employer comply with the requirements of California's workers' compensation laws is a statutory obligation. Furthermore, any such costs are non-reimbursable because the requirement for employers to comply with California's workers' compensation laws is not unique to local agencies or school districts and applies to all employers alike, public and private, including the State of California.

COST OR SAVINGS TO STATE AGENCIES

The proposed regulations may impose costs on State agencies. (State government accounts for about 3% of the occupational injuries and illnesses.) Any such costs are, however, are non-reimbursable since the requirement on an employer to comply with California's workers' compensation laws is not unique to State agencies and applies to all employers alike, public and private. The proposed regulations may impose minimal costs on State agencies that are employers. These costs stem from the need to update the notice to employees posters (which will be provided by the Division of Workers' Compensation and available on its website) and to update and provide written notices to new employees. (The written notice to new employees' pamphlet will be obtainable from workers' compensation groups.) Additionally, there may be a minimal cost to the Division of Workers' Compensation caused by printing and providing the notice to employees poster to employers. However, the poster (and the claim form) will also be posted on the Division's website and downloadable.

COST OR SAVINGS IN FEDERAL FUNDING TO STATE

The proposed amendment to regulations will not affect any federal funding.

DETERMINATION REGARDING SIGNIFICANT STATEWIDE ADVERSE IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING ABILITY TO COMPETE

The Administrative Director has made an initial determination that the proposed regulations will not have an adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states.

POTENTIAL COST IMPACT ON REPRESENTATIVE PRIVATE PERSONS OR DIRECTLY AFFECTED BUSINESSES

The agency has determined that there may be minimal cost impacts on representative private person or directly affected business. The proposed amended regulations revise the form and content of information which employers must already provide to employees under Labor Code §§138.4, 3550, 3551 and 5401. The potential minimal costs stem from the need to update the notice to employees posters (which will be provided by the Division of Workers' Compensation and available on its website) and the need to provide written notices to new employees. (The written notice to new employees' pamphlet will be obtainable from workers' compensation groups.) There should be no additional costs incurred as a result of the changes to the claim form. The form will still be available from the WCAB and will be downloadable from the Division's website. The entities directly affected by the regulations which require changes in the claim form, the notice to new employees and the poster are those which administer workers' compensation claims in California. This includes three types of private businesses: (1) employers who are large and financially secure enough to be permitted to self-insure their workers' compensation liability and who administer their own workers' compensation claims; (2) private insurance companies which are authorized to transact workers' compensation insurance in California; and (3) third party administrators which are retained to administer claims on behalf of self-insured employers or insurers.

ECONOMIC IMPACT ON SMALL BUSINESSES

The Administrative Director has determined that the proposed regulations may result in a minimal adverse economic impact on small businesses. The proposed regulations revise the form and content of information which employers must already provide to employees under Labor Code §§138.4, 3550, 3551 and 5401. The potential minimal costs stem from the need to update the notice to employees posters (which will be provided by the Division of Workers' Compensation and available on its website) and the need to provide written notices to new employees. (The written notice to new employees' pamphlet will be obtainable from workers' compensation groups.) There should be no additional costs incurred as a result of the changes to the claim form. The form will still be available from the WCAB and will be downloadable from the Division's website.

ASSESSMENT OF EFFECTS ON JOB AND/OR BUSINESS CREATION, ELIMINATION OR EXPANSION

The Administrative Director has determined the proposed amendment to regulations will have no effect on the creation or elimination of jobs or existing businesses within California, or effect the expansion of current California businesses.

IMPACT ON HOUSING COSTS

The proposed amendment to regulations will have no effect on housing costs.

CONSIDERATION OF ALTERNATIVES

As required by Labor Code §§3550, 3551 and 5401, the Administrative Director has consulted with the Commission on Health and Safety and Workers' Compensation (CHSWC) with regard to the form and contents of the notice to new employees poster, written notice to new employees, claim form (DWC 1) and notice for potential eligibility. Many of the recommendations made by CHSWC have been incorporated into the proposed regulations. Due to space considerations, some of CHSWC's recommendations were not included. Additionally, although CHSWC proposed a pamphlet which would comply with Labor Code §3551's requirements for a written notice to new employees, members of the regulated public objected that the pamphlet was too long and contained information that was unnecessary for most minor workers' compensation injuries.

In accordance with Government Code section 11346.5(a)(13), the Administrative Director must determine that no reasonable alternative considered or that has otherwise been identified and brought to the Administrative Director's attention would be more effective in carrying out the purpose for which the actions are proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The Administrative Director invites interested persons to present statement or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, RULEMAKING FILE AND DOCUMENTS SUPPORTING THE RULEMAKING FILE / INTERNET ACCESS

An Initial Statement of Reasons and the text of the proposed regulations in plain English have been prepared and are available from the contact person named in this notice. The entire rulemaking file will be made available for inspection and copying at the address indicated below.

As of the date of this notice, the rulemaking file consists of the notice, the initial statement of reasons, the proposed text of the regulations in strikeout/underline format, and the Form 399. The documents in the pre-notice rulemaking file include the

November 7, 2002 CHSWC consultation on the DWC draft Claim Form Notice; the November 12, 2002 CHSWC consultation on the DWC Proposed Poster; the December 12, 2002 CHSWC consultation on New Employee Notice per Labor Code §3551(a); Advisory Committee Meeting sign-in sheets; and written pre-notice comments to the proposed regulations that were posted on the Division's website.

In addition, the Notice, Initial Statement of Reasons, and proposed text of regulations may be accessed and downloaded from the Department's website at www.dir.ca.gov.

Any interested person may inspect a copy or direct questions about the proposed regulations and any supplemental information contained in the rulemaking file. The rulemaking file will be available for inspection at the Department of Industrial Relations, Division of Workers' Compensation, 455 Golden Gate Avenue, 9th Floor, San Francisco, California, between 9:00 a.m. and 4:30 p.m., Monday through Friday. Copies of the proposed regulations, initial statement of reasons and any information contained in the rulemaking file may be requested in writing to the contact person.

CONTACT PERSON

Nonsubstantive inquiries concerning this action, such as requests to be added to the mailing list for rulemaking notices, requests for copies of the text of the proposed regulations, the Initial Statement of Reasons, and any supplemental information contained in the rulemaking file may be requested in writing at the same address. The contact person is:

Marcela Reyes
Regulations Coordinator
Department of Industrial Relations
Division of Workers' Compensation
Post Office Box 420603
San Francisco, CA 94142

The telephone number of the contact person is (415) 703-4600.

BACKUP CONTACT/PERSON CONTACT PERSON FOR SUBSTANTIVE QUESTIONS

In the event the contact person is unavailable, or to obtain responses to questions regarding the substance of the proposed regulations, inquiries should be directed to the following backup contact person:

Destie Overpeck
Industrial Relations Counsel
Division of Workers' Compensation
Post Office Box 420603
San Francisco, CA 94142

The telephone number of the backup contact person is (415) 703-4600.

AVAILABILITY OF CHANGES FOLLOWING PUBLIC HEARING

If the Administrative Director makes changes to the proposed regulations as a result of the public hearing and public comment received, the modified text with changes clearly indicated will be made available for public comment for at least 15 days prior to the date on which the regulations are adopted.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the contact person named in this notice or may be accessed on the website: www.dir.ca.gov

AUTOMATIC MAILING

A copy of this Notice, the Initial Statement of Reasons, and the text of the regulations, will automatically be sent to those interested persons on the Administrative Director's mailing list, and to all persons who have requested notice of the hearing as required by Labor Code §5307.4.

If adopted, the regulations as amended will appear in Title 8, California Code of Regulations, Sections 9810, 9880, 9881, 9881.1, 9882 (repealed), 9883, 10117 (repealed), 10117.1, 10118 (repealed), and 10118.1.