

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

NOTICE OF RULEMAKING

Workers' Compensation – Public Disability Accommodations

NOTICE IS HEREBY GIVEN that the Division of Workers' Compensation (hereafter "Division" or "DWC") proposes to adopt regulations to implement the provisions of the Americans with Disabilities Act 42 USC 12101 *et seq.*, California Civil Code sections 51 and 54 *et seq.*, and California Government Code sections 11135 *et seq.*, governing the disability accommodations process for members of the public participating in DWC activities, services or programs, after considering all comments and recommendations regarding the proposed action. This action is taken pursuant to the authority vested by Labor Code sections 127.5, 133, 5307, 5307.3, and 5307.4 and Government Code section 11138.

When adopted, the proposed regulations will constitute sections 9708.1 through 9708.6 of Article 1.3, Subchapter 1, Chapter 4.5, Division 1 of Title 8 of the California Code of Regulations, and sections 10226.1 through 10226.6 of Article 2.5, Subchapter 1.9, Chapter 4.5, Division 1 of Title 8 of the California Code of Regulations. The regulations make specific the manner in which the Division of Workers' Compensation will provide disability accommodations to the public in compliance with federal and state disability laws.

PROPOSED REGULATORY ACTION

The Department of Industrial Relations, Division of Workers' Compensation proposes to adopt in Division 1, Article 1.3, Chapter 4.5, Subchapter 1, of title 8, California Code of Regulations, commencing with Section 9708.1:

Section 9708.1	Definitions
Section 9708.2	Disability Accommodation Request Process
Section 9708.3	Confidentiality
Section 9708.4	Disability Accommodation Request in Administrative Hearings under the Jurisdiction of the Administrative Director
Section 9708.5	Decision-making Process
Section 9708.6	Appeal Procedure

The Department of Industrial Relations, Division of Workers' Compensation also proposes to adopt in Division 1, Article 2.5, Chapter 4.5, Subchapter 1.9, of title 8, California Code of Regulations, commencing with Section 10226.1:

Section 10226.1	Definitions
Section 10226.2	Disability Accommodation Request Process
Section 10226.3	Confidentiality
Section 10226.4	Disability Accommodation Requests in Workers' Compensation Cases
Section 10226.5	Decision-making Process
Section 10226.6	Appeal Procedure

PUBLIC HEARING

A public hearing has been scheduled to permit all interested persons the opportunity to present statements or argument, either orally or in writing, about the subjects noted above. The hearing will be held at the following time and place:

Date: Tuesday, September 27, 2011
Time: 10:00 A.M. to 5:00 P.M., or until conclusion of business
Place: Elihu Harris State Office Building – Auditorium
1515 Clay Street
Oakland, California 94612

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 Statewide Disability Accommodation Coordinator 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 Division requests, but does not require, that any persons who make oral comments at the hearing also provide a written copy of their comments. Equal weight will be accorded to oral comments and written materials.

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 September 27, 2011. The Division of Workers' Compensation will consider only comments received at the Division by that time. Equal weight will be accorded to comments presented at the hearing and to other written comments received by 5 P.M. on that date by the Division.

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

Maureen Gray
Regulations Coordinator
Division of Workers' Compensation, Legal Unit
P.O. Box 420603
San Francisco, CA 94142

Written comments may be submitted by facsimile transmission (FAX), addressed to the above-named contact person at (510) 286-0687. 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. Gray must receive all written comments no later than 5:00 P.M. on September 27, 2011.

AUTHORITY AND REFERENCE

The Division is undertaking this regulatory action pursuant to the authority vested by Labor Code sections 111, 127.5, 133, 5307, 5307.3, and 5307.4 and Government Code section 11138.

Reference is made to Labor Code sections 123.6(a), 5500.3; Civil Code sections 51, 54, 54.1, 54.8, 4450, 4451, 4452; Government Code sections 11135, 11138, 11351(c); 42 USC sections 12101, 12102, 12111, 12112, 12113, 12131, 12132, 12133.

INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW

In 1990, the Americans with Disabilities Act ("ADA") was passed by Congress to combat discrimination against individuals with disabilities. The intent of the law is to protect individuals with disabilities from discrimination and to enable them to participate more fully in society. The law requires not only that reasonable accommodations be provided to individuals with disabilities in employment, but also that physical structures,

programs, activities and services be made accessible to individuals with disabilities to remove barriers to their participation in society. California has passed similar laws, including Civil Code sections 51 and 54 *et seq.* and Government Code section 11135 *et seq.*, to protect disabled individuals from discrimination and denial of physical and programmatic access in society.

This rulemaking action proposes regulations to set forth the procedure by which the Division of Workers' Compensation will carry out its responsibilities under California Labor Code sections 111, 127.5, 133, 5307, 5307.3, 5307.4, and Government Code section 11138. These provisions authorize the Division of Workers' Compensation of the Department of Industrial Relations to promulgate regulations that enforce state and federal laws protecting the rights of individuals with disabilities to participate equally in the activities, programs and services offered by the state. Two sets of regulations are proposed to ensure all of the Division's programs, services and activities are covered under both the Administrative Director's jurisdiction over the Division (sections 9708.1-9708.6) and the Court Administrator's jurisdiction over the Division's adjudication system (sections 10226.1-10226.6).

The regulations now proposed by the Division implement, interpret and make specific the manner in which the Division of Workers' Compensation will provide reasonable accommodation to individuals with disabilities participating in the activities, programs and services provided by the Division. The proposed regulations are as follows:

Section 9708.1 Definitions

This section defines key terms used in the regulations and terms commonly used in the disability accommodations process and in related state and federal disability laws.

Section 9708.2 Disability Accommodation Request Process

This section specifies who can request an accommodation, how to request an accommodation, who to contact about an accommodation request, what information needs to be provided for the accommodation, and the time frame for the request. The section also states the responsibility of the disabled individual to engage in the interactive process to find a reasonable accommodation.

Section 9708.3 Confidentiality

This section states that information relating to a disability accommodation request will be kept confidential to the extent possible, unless waived by the individual.

**Section 9708.4 Disability Accommodation Request in Administrative Hearings
under the Jurisdiction of the Administrative Director**

This section clarifies that the disability accommodation process is procedural and is not intended to address the substantive issues in a legal case. This section also reinforces that accommodation requests should be directed to the disability coordinators, not a judge or hearing officer, unless an immediate need arises during a legal proceeding. When an accommodation request arises during a legal proceeding, the judge or hearing officer may hear the request as a permissible and confidential *ex parte* procedural request.

Section 9708.5 Decision-Making Process

This section sets forth the decision-making process when a request for accommodation is received by the Division. Subsection (a) explains that each request is handled individually and on a case-by-case basis. Subsection (b) states that federal and state legal standards will be considered in reviewing the request. Subsection (c) clarifies the types of decisions the Division may make on a request. Subsection (d) establishes that the Division will seek to make a timely decision on the request. Subsection (e) states that the Division's policy is to grant effective reasonable accommodations. Subsection (f) clarifies that a granted accommodation is for the specified appearance requested unless otherwise stated. Subsection (g) states the reasons for a denial of an accommodation. Subsection (h) clarifies who in the Division will make the decision to deny an accommodation request. Subsection (i) states how a requestor will be informed of a denial of an accommodation. Subsection (j) states that despite a denial of an accommodation request, the Division will still seek to provide a reasonable accommodation.

Section 9708.6 Appeal Procedure

This section sets out the process to appeal the Division's decision on a request for accommodation. Specifically, subsection (a) informs the requestor of the time frame for submitting the appeal of the decision. Subsection (b) sets forth the process and required information to be submitted in support of the appeal. Subsection (c) states the time frame for the Division's review of the appeal. Subsection (d) provides the process to request an expedited review and the supporting information needed for such a review.

Section 10226.1 Definitions

This section defines key terms used in the regulations and terms commonly used in the disability accommodations process and in related state and federal disability laws.

Section 10226.2 Disability Accommodation Request Process

This section specifies who can request an accommodation, how to request an accommodation, who to contact about an accommodation request, what information

needs to be provided for the accommodation, and the time frame for the request. The section also states the responsibility of the disabled individual to engage in the interactive process to find a reasonable accommodation.

Section 10226.3 Confidentiality

This section states that information relating to a disability accommodation request will be kept confidential to the extent possible, unless waived by the individual.

Section 10226.4 Disability Accommodation Requests in Workers' Compensation Cases

This section clarifies that the disability accommodation process is procedural and is not intended to address the substantive issues in a workers' compensation case. The section states that accommodation requests should be given to the disability coordinators, not the workers' compensation judges, unless an immediate need arises during a hearing. When an accommodation request arises during a workers' compensation proceeding, the judge may hear the request as a permissible *ex parte* confidential procedural request. It also clarifies that discussion with the judge about substantive issues in the case will not be considered permissible *ex parte* communication and will be disclosed to the other parties.

Section 10226.5 Decision-Making Process

This section sets forth the decision-making process when a request for accommodation is received by the Division. Subsection (a) explains that each request is handled individually and on a case-by-case basis. Subsection (b) states that federal and state legal standards will be considered in reviewing the request. Subsection (c) clarifies that the types of decisions the Division may make on a request. Subsection (d) establishes that the Division will seek to make a timely decision on the request. Subsection (e) states that the Division's policy is to grant effective reasonable accommodations. Subsection (f) clarifies that a granted accommodation is for the specified appearance requested unless otherwise stated. Subsection (g) states the reasons for a denial of an accommodation. Subsection (h) clarifies who in the Division will make the decision to deny an accommodation request. Subsection (i) states how a requestor will be informed of a denial of an accommodation. Subsection (j) states that despite a denial of an accommodation request, the Division will still seek to provide a reasonable accommodation.

Section 10226.6 Appeal Procedure

This section sets out the process to appeal the Division's decision on a request for accommodation. Specifically, subsection (a) informs the requestor of the time frame for submitting the appeal of the decision. Subsection (b) sets forth the process and required information to be submitted in support of the appeal. Subsection (c) states the time frame

for the Division's review of the appeal. Subsection (d) provides the process to request an expedited review and the supporting information needed for such a review.

DISCLOSURES REGARDING THIS PROPOSED REGULATORY ACTION

The Division has made the following initial determinations:

- **Determination regarding whether this rulemaking imposes a Local Mandate:** None is imposed by these proposed regulations since the regulations facilitate access to existing rights and set forth the procedures under which the Division will operate. No impact is expected on local governments as a result of this rulemaking.
- **Significant statewide, adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states:** None. The procedures that are the subject of this rulemaking do not impose financial obligations on private business.
- **Effect on Housing Costs:** None.
- **Cost Impacts Incurred By Private Persons or Businesses:** The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The procedures that are the subject of this rulemaking do not impose financial obligations on private business.
- **Other Impacts on Jobs and Businesses:** The Division has determined that because the legal obligations involved are imposed on the Division, this rulemaking will not: (1) create or eliminate jobs within the State of California; (2) create new businesses or eliminate existing businesses within the State of California; or (3) affect the expansion of businesses in the State of California.

EFFECT ON SMALL BUSINESS

- The Division has determined that this rulemaking will not have any new impact on small business. The procedures that are the subject of this rulemaking impose obligations on the Division, not on small businesses.

FISCAL IMPACTS

- **Costs or savings to state agencies or costs/savings in federal funding to the State:** None. Accommodations are already being provided and these regulations set forth the procedure for requesting the accommodations.
- **Cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of division 4 of the Government Code:** None. (See Local Mandate bullet above)
- **Other nondiscretionary costs/savings imposed upon local agencies:** None. (See Local Mandate bullet above)

CONSIDERATION OF ALTERNATIVES

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

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

PUBLIC DISCUSSIONS OF PROPOSED REGULATIONS

The text of the draft proposed regulations was made available for pre-regulatory public comment on one occasion through the Division’s Internet website (the “DWC Forum”), as required by Government Code section 11346.45.

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, pre-rulemaking comments and the Form 399.

In addition, the Notice, Initial Statement of Reasons, and proposed text of the regulations being proposed may be accessed and downloaded from the Division’s website at

www.dir.ca.gov. To access them, click on the “Proposed Regulations – Rulemaking” link and scroll down the list of rulemaking proceedings to find the Public Disability Accommodations link.

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, 1515 Clay Street, 17th Floor, Oakland, California 94612, 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 FOR GENERAL QUESTIONS

Non-substantive 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:

Maureen Gray
Regulations Coordinator
Department of Industrial Relations
Division of Workers’ Compensation
P.O. Box 420603
San Francisco, CA 94142
E-mail: mgray@dir.ca.gov

The telephone number of the contact person is (510) 286-7100.

CONTACT PERSON FOR SUBSTANTIVE QUESTIONS

In the event the contact person above is unavailable, or for questions regarding the substance of the proposed regulations, inquiries should be directed to:

Yu-Yee Wu
Industrial Relations Counsel
Division of Workers’ Compensation
P.O. Box 420603
San Francisco, CA 94142
E-mail: Yu-YeeWu@dir.ca.gov

The telephone number of this contact person is (510) 286-7100.

Notice of Proposed Rulemaking – Public Disability Accommodations
8 CCR §§ 9708.1-9708.6, 10226.1-10226.6
(August 2011)

AVAILABILITY OF CHANGES FOLLOWING PUBLIC HEARING

If the Division makes changes to the proposed regulations as a result of the public hearing and public comment received, the modified text with changes clearly shown 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 Division's website at 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 Division's mailing list.

If adopted, the regulations with any final amendments will appear in title 8 of the California Code of Regulations, commencing with section 9708.1 and 10226.1. The text of the final regulations also may be available through the website of the Office of Administrative Law at www.oal.ca.gov.