

Chapter 4.5. Division of Workers' Compensation
Subchapter 1. Administrative Director -- Administrative Rules
Article 1.3 Public Disability Accommodations

9708.1 **Definitions**

- (a) **Auxiliary aids:** services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities.
- (b) **Braille:** written text for use by the blind.
- (c) **Computer-Aided Realtime Translation (CART):** a form of captioning in which spoken words are translated onto a computer screen as the words are spoken.
- (d) **Disability:** any mental or physical disability or medical condition as defined in California Government Code section 12926 *et seq.*, California Civil Code section 51 *et seq.*, the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 *et seq.*), or other applicable state and federal law.
- (e) **Disability Accommodation:** actions that result in services, programs or activities being readily accessible to and useable by an individual with a disability. Reasonable disability accommodations that may be provided include the use of auxiliary aids and services, such as, but not limited to, assistive listening devices, texts in Braille or large print, audio recordings, or Computer Aided Realtime Translation (CART) reporters. Reasonable disability accommodations may also include reasonable modification of policies and procedures.
- (f) **Disability Accommodation Request:** a written or oral request for an accommodation that is needed for a disability.
- (g) **Division of Workers' Compensation ("Division"):** The Division of the Department of Industrial Relations overseeing the state's workers' compensation system. The Division includes its headquarters, administrative offices, the district offices servicing workers' compensation cases and includes other offices used by the Division when conducting business, including but not limited to, the holding of public hearings.
- (h) **Individual with a Disability:** an individual seeking to access or participate in the Division's services, programs or activities who has a physical or mental impairment that limits one or more major life activities, or has a record of such impairment, or is regarded as having such an impairment, as covered by California Government Code section 12926 *et seq.*, California Civil Code section 51 *et seq.*, the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 *et seq.*), or other applicable state and federal law.

- (i) **Requestor:** a member of the public, a representative, relative or friend of a member of the public, or any other participant who requests disability accommodation on behalf of himself, herself, or another individual with a disability to use or participate in a program, activity or service of the Division.

Authority: Sections 111(a), 133, 5307.3, Labor Code; and Section 11138 Government Code.

Reference: Sections 51, 54, 54.1, 54.8, Civil Code; Sections 11135, 11351(c), Government Code; and 42 USC Sections, 12102, 12111, 12112, 12113, 12131, 12132.

9708.2 Disability Accommodations Request Process

- (a) The Division will provide reasonable accommodations to individuals with disabilities to promote equal access to and equal participation in the Division's programs, activities and services.
- (b) A request for a disability accommodation to participate in the Division's programs, activities, or services may be made in writing on an optional disability accommodation request form, or orally to a disability coordinator. If the request concerns activities, programs or services provided at a Division district office, then the request should be directed to the disability coordinator located in each district office. If the request concerns other Division activities, programs or services, then the request should be directed to the Division's statewide disability coordinator.
- (c) Written notice of how to request a disability accommodation shall be posted and made available to the public.
- (d) Disability accommodation requests shall include a statement regarding the limitation or impairment necessitating the accommodation; what accommodation is requested; how the requested accommodation would mitigate the impact of the disability or impairment in accessing the program; and the location, date and time the accommodation is needed.
- (e) Disability accommodation requests shall not address substantive issues involved in a legal proceeding.
- (f) Additional information, including medical documentation, may be requested by the Division as support for the accommodation request.
- (g) In general, requests should be made with as much notice as possible. If the request is made less than five days before the date it is needed, the Division will provide a reasonable accommodation by that date unless it is unreasonable to do so.
- (h) Upon submitting a request, the requestor must enter an interactive process to assist in determining what, if any, reasonable accommodation may be provided. The interactive process includes providing additional information and timely correspondence with the Division as needed to address the accommodation request.

Authority: Sections 111(a), 133, 5307.3, Labor Code; and Section 11138 Government Code.
Reference: Section 11138, Government Code; Sections 51, 54, 54.1, 54.8, 4450, 4451, 4452, Civil Code; Sections 11135, 11351(c), Government Code; and 42 USC Sections, 12101, 12102, 12111, 12112, 12113, 12131, 12132, 12133.

9708.3 Confidentiality

Information concerning a disability accommodation request will be kept confidential to the extent possible, unless confidentiality is waived by the individual with a disability or disclosure is required by law. Confidential information may be disclosed to other Division staff involved in the accommodation process to the extent necessary.

Authority: Sections 111(a), 133, 5307.3, Labor Code; and Section 11138, Government Code.
Reference: Section 123.6(a), Labor Code; Sections 51, 54, 54.1, Civil Code; Sections 11135, 11351(c), Government Code; and 42 USC Sections, 12101, 12112, 12132.

9708.4 Disability Accommodation Requests in Administrative Hearings under the Jurisdiction of the Administrative Director

- (a) Disability accommodations requests are considered to be non-substantive requests that are separate from the merits of a legal case.
- (b) Disability accommodation requests should be raised with and handled by a disability coordinator. If an immediate need for a disability accommodation arises during the course of a hearing and is more expeditiously handled by the hearing officer, the request for an accommodation may be made directly to the hearing officer.
- (c) Disability accommodation requests are permitted *ex parte* communications.

Authority: Sections 111(a), 133, 5307.3, Labor Code; and Section 11138, Government Code.
Reference: Section 123.6(a), Labor Code; Sections 51, 54, 54.1, Civil Code; Sections 11135, 11351(c), Government Code; and 42 USC Sections, 12101, 12132.

9708.5 Decision-making Process

- (a) Each disability accommodation request shall be considered on a case-by-case basis.
- (b) In determining whether to grant a request for disability accommodation and what disability accommodation may be provided, the Division shall consider, California Civil Code section 51 *et seq.*, the provisions of the Americans with Disabilities Act of 1990, and other applicable state and federal laws.
- (c) For each disability accommodation request, the Division shall, either:

- (1) Issue a decision to provide the requested disability accommodation in whole or in part, or to provide a reasonable alternative accommodation; or
 - (2) Issue a decision denying the request for a disability accommodation.
- (d) The Division will make a decision on an accommodation request before the date the requested accommodation is needed.
- (e) If the Division is informed that the provided accommodation is not effective, the Division will seek to provide an effective alternative reasonable accommodation.
- (f) Unless otherwise specified, the disability accommodation is provided only for the specific appearance or proceeding for which the accommodation was requested.
- (g) A request for a disability accommodation may be denied if it is determined that:
- (1) The individual who would receive the disability accommodation is not legally entitled to a disability accommodation; or
 - (2) The requestor has failed to satisfy the requirements for requesting a disability accommodation, including failing to engage in a good faith interactive process; or
 - (3) The requested disability accommodation would create an undue financial and administrative burden; or
 - (4) The requested disability accommodation would fundamentally alter the nature of the service, program, or activity provided by the Division; or
 - (5) The requested disability accommodation is unreasonable, including requesting an accommodation that is not within the Division's jurisdiction to grant under the law.
- (h) The decision to deny a disability accommodation shall be issued by the Administrative Director or the designee of the Administrative Director.
- (i) A denial of a disability accommodation shall be in writing and shall set forth the reasons for denial and sent to the requestor. The disability coordinator may also verbally inform the requestor of the denial.
- (j) If the Division denies a requested disability accommodation, the Division shall seek to provide a reasonable alternative disability accommodation, unless a reasonable accommodation is not available or any provision under subdivision (g) of this section is met.

Authority: Sections 111(a), 133, 5307.3, Labor Code; and Section 11138 Government Code.
Reference: Sections 51, 54, 54.1, Civil Code; Sections 11135, 11351(c), Government Code; and 42 USC Sections, 12101, 12102, 12111, 12113, 12131, 12132, 12133.

9708.6 **Appeal Procedure**

- (a) A requestor may seek review of an accommodation decision within 15 calendar days of the date the accommodation decision is received.
- (b) A requestor seeking review of an accommodation decision shall submit a request to the Division's statewide disability coordinator setting forth the disability accommodation requested, the accommodation decision to be reviewed, and the reasons for review, with any relevant documentation provided.
- (c) The Division's Administrative Director or a designee shall issue a decision within 30 calendar days from the date the request for review is received.
- (d) If circumstances require a more expedited review, a request to expedite the review process shall be submitted to the Division's statewide disability coordinator along with the appeal requirements under section (b) within five calendar days of the date the accommodation decision was received and before any pending proceeding is scheduled for which the accommodation is requested. The request shall include a detailed explanation of the justification for an expedited review, the time frame requested, and the reasons for the appeal, with any relevant documentation provided. The Division will address the appeal and issue a decision no later than 15 calendar days from the date the requested for expedited review was received.

Authority: Sections 111(a), 133, 5307.3, Labor Code; and Section 11138, Government Code.

Reference: Sections 51, 54, 54.1, Civil Code; Sections 11135, 11351(c), Government Code; and 42 USC Sections, 12101, 12132, 12133.