

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

NOTICE OF PROPOSED RULEMAKING

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 and 5307.3, proposes to modify existing regulations, by amending Chapter 4.5, Subchapter 1, Title 8, California Code of Regulations, §§ 9714 and 9714.5.

These regulations concern procedures to be followed by Workers' Compensation Administrative Law Judges in order to comply with Labor Code § 123.5(a) provisions which prohibit Worker's Compensation Administrative Law Judges from receiving their salary should a cause before them remain pending and undetermined for ninety days or more after it has been submitted for decision.

PUBLIC HEARING

Public hearings have 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: March 1, 2001
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

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 March 1, 2001.** The Department of Industrial Relations, Division of Workers' Compensation will consider only comments received at the Department of

Industrial Relations, Division of Workers' Compensation offices by that time. Equal weight will be accorded to oral comments presented at the hearing and written materials.

Submit comments to:

Ms. Guia Carreon,
Regulations Coordinator
Department of Industrial Relations
Division of Workers' Compensation
PO Box 420603
San Francisco, California 94142

Those persons wishing to submit written comments by facsimile transmission (FAX) may send their written comments to the contact person at (415) 703-4720. To submit comments by electronic mail (e-mail), use the following e-mail address:
dwcrules@hq.dir.ca.gov.

Unless submitted prior to or at the public hearing, all written comments must be received by the agency contact person no later than 5:00 p.m. on March 1, 2001. If you provide a written comment, it will not be necessary to present oral testimony at the public hearing.

AUTHORITY AND REFERENCE

The Administrative Director of the Division of Workers' Compensation, is undertaking this regulatory action pursuant to the authority vested in him by Labor Code §§ 133, 139.5, and 5307.3, to adopt regulations to implement, interpret and make specific Labor Code Sections 123.5(a) and 5313.

INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW

The Administrative Director of the Division of Workers' Compensation proposes to amend existing regulations concerning procedures to be followed by Workers' Compensation Administrative Law Judges in order to be in compliance with Labor Code § 123.5(a) requirements for receipt of salary. Amendments are proposed which will revise the language contained in the salary affidavits signed by Worker's Compensation Administrative Law Judges.

Amendments to Sections 9714 and Section 9714.5

Labor Code § 123.5(a) provides that a Workers' Compensation Administrative Law Judge may not receive his or her salary when any cause remains pending and undetermined for ninety days or more, after it has been submitted for decision. Existing §§ 9714 and 9714.5 provide for an affidavit which must be executed by a Worker's Compensation Administrative Law Judge prior to receipt of salary, declaring under penalty of perjury the Worker's Compensation Administrative Law Judges have personal

knowledge that no cause submitted to them is still pending and undetermined. This language requires that prior to the conclusion of every pay period, each Worker's Compensation Administrative Law Judge take whatever steps are necessary, including if need be a personal review of each file, to determine if any matter remains pending and undetermined in order to execute the affidavit to receive their salary.

In changing the language in the declaration to allow the Workers' Compensation Administrative Law Judge to declare upon information and belief, the Worker's Compensation Administrative Law Judges are able to devise and implement a file management system which allows the Worker's Compensation Administrative Law Judges to efficiently manage their case loads without committing excessive resources and time to reviewing each file on a monthly basis.

FISCAL IMPACTS

STATE REIMBURSABLE MANDATE

The Administrative Director of the Division of Workers' Compensation has determined the proposed amendments to Title 8, CCR §§ 9714 and 9714.5 will not impose any new mandated programs on any local agency or school district.

COST OR SAVINGS TO LOCAL AGENCIES OR SCHOOL DISTRICTS

The Agency has estimated, in accordance with instructions adopted by the Department of Finance, that the proposed amendment to regulations proposed herein will not impose any costs or result in savings for local agencies or school districts; result in any costs to local agencies or school districts that would be required to be reimbursed under Part 7 of Division 4; or result in any nondiscretionary cost or savings imposed on local agencies.

COST OR SAVINGS TO STATE AGENCIES

The Agency has estimated, in accordance with instructions adopted by the Department of Finance, that the proposed amendment to regulations proposed herein will not impose any costs or result in savings for state agencies.

COST OR SAVINGS IN FEDERAL FUNDING TO THE STATE

The Agency has estimated, in accordance with instructions adopted by the Department of Finance, that the proposed amendment to regulations proposed herein will not result in any cost or savings in federal funding to the state.

DETERMINATION REGARDING SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS

The Administrative Director declares he has initially concluded 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.

COST IMPACTS ON REPRESENTATIVE 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 proposed regulations only impact Workers' Compensation Administrative Law Judges.

ECONOMIC IMPACT ON SMALL BUSINESSES

The Administrative Director has determined the proposed amendments to regulations will not have an impact on small businesses. The proposed regulations only impact Workers' Compensation Administrative Law Judges.

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

The Agency must determine that no reasonable alternative considered by the Agency, or that has otherwise been identified and brought to the attention of the Agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

CONTACT PERSON

Any interested person may inspect a copy, or direct questions regarding, the proposed regulations, the Initial Statement of Reasons, and any supplemental information contained in the Rulemaking File. The Rulemaking File will be available for inspection at the Division of Workers' Compensation, 455 Golden Gate Avenue, 9th Floor, San Francisco, California between the hours of 9:00 AM and 4:30 PM, Monday through Friday. Please direct requests for copies of the proposed text of the regulations, the initial

statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to:

Ms. Guia Carreon,
Regulations Coordinator
Department of Industrial Relations
Division of Workers' Compensation
PO Box 420603
San Francisco, California 94142

Tel. (415) 703-4600

Note: 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 at the same address and telephone number as noted above: Michael R. Philippi.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

An Initial Statement of Reasons has been prepared for the proposed regulations, in addition to the Informative Digest included in this Notice. The Initial Statement of Reasons and the text of the proposed regulations will be made available for inspection or provided upon written request. Please direct all such requests to the contact person who is identified below. In addition, the above-cited materials may be accessed on the Division's Internet homepage at: www.dir.ca.gov.

Ms. Guia Carreon
Department of Industrial Relations
Division of Workers' Compensation
455 Golden Gate Avenue
9th Floor
San Francisco, California

As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations and the initial statement of reasons.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the public hearing and considering all timely and relevant comments received, the Department of Industrial Relations, Division of Workers' Compensation may adopt the proposed regulations substantially as described in this notice. If the Department of Industrial Relations, Division of Workers' Compensation makes modifications which are sufficiently related to the originally proposed text, it will make

the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department of Industrial Relations, Division of Workers' Compensation adopts the regulations as revised. Requests for copies of any modified regulation text should be directed to the contact person disclosed above. The Department of Industrial Relations, Division of Workers' Compensation will accept written comments on the modified regulation text for 15 days after the date they are made available.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Following its preparation, a copy of the Final Statement of Reasons mandated by Government Code § 11346.9(a) may be obtained from the contact person indicated above. In addition, the Final Statement of Reasons will be posted on the Division's internet homepage, and may be accessed at: www.dir.ca.gov.

AUTOMATIC MAILING

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

**Title 8, California Code of Regulations
Division 1. Department of Industrial Relations
Chapter 4.5. Division of Workers' Compensation
Subchapter 1. Administrative Director- Administrative Rules
Article 1.5. Receipt of Salary by Workers' Compensation Administrative Law Judge**

§ 9714. Procedures for Compliance with Labor Code Section 123.5

(a) In order to receive his or her salary for each pay period, at some time before 5:00 p.m. on the last working day of each State payroll period, the Workers' Compensation Administrative Law Judge shall submit to the Division of Workers' Compensation an affidavit based upon ~~personal knowledge~~ information and belief in the form prescribed by Section 9714.5, and executed under penalty of perjury, declaring that no cause submitted before him or her remains pending and undetermined for a period of ninety (90) days or more.

(b) When a Workers' Compensation Administrative Law Judge who receives salary by automatic direct deposit does not timely submit the affidavit required by subsection (a), he or she shall, before 5:00 p.m. on the next working day following the direct deposit of salary into his or her account, deliver to the Presiding Workers' Compensation Administrative Law Judge of the district office to which the judge is assigned a money order or cashier's check for the amount of salary automatically deposited.

Authority cited: ~~Sections 123, 123.5(a) and~~ 133, Labor Code. Reference: Sections 123.5(a) and 5313, Labor Code.

§ 9714.5. Affidavit

Department of Industrial Relations
Division of Workers' Compensation
Workers' Compensation Appeals Board

AFFIDAVIT
(Labor Code Section 123.5(a))

I, _____, (Name) Workers' Compensation Administrative Law Judge in the _____ (City) office of the Division of Workers' Compensation/Workers' Compensation Appeals Board, Department of Industrial Relations, State of California, declare that I have ~~personal knowledge~~ made a reasonable and diligent inquiry concerning those matters submitted to me, and based on information and belief, state that no cause remains pending and undetermined that has been submitted to me for the period of ninety (90) days prior to the first day of _____, ~~2019~~ _____. (Date) (Year)

Executed on _____ at _____, (Date) (City) California.
I declare under penalty of perjury that the foregoing is true and correct.

(Signature)
Workers' Compensation Administrative Law Judge

Authority cited: Section 133, Labor Code. Reference: Sections 123.5(a) and 5313, Labor Code.

**STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL REGULATIONS
Division of Workers' Compensation**

INITIAL STATEMENT OF REASONS

(Workers' Compensation Administrative Law Judge Salary Affidavit)

Subject Matter of Proposed Regulations:

**Receipt of Salary by Workers' Compensation Administrative Law Judges:
Revised Procedures for Compliance with Labor Code § 123.5(a),
Revised Salary Affidavit.**

BACKGROUND TO REGULATORY PROCEEDING:

Labor Code § 123.5(a) prohibits a Workers' Compensation Administrative Law Judge from receiving his or her salary while any cause before the referee remains pending and undetermined for ninety days or more after the cause has been submitted for decision. The Administrative Director has previously promulgated regulations mandating procedures to be followed by all referees to ensure compliance with Labor Code § 123.5(a).

SECTIONS AMENDED: 9714 and 9714.5.

Problem Addressed:

Currently § 9714 provides that the salary affidavit submitted by each Workers' Compensation Administrative Law Judge declaring compliance with Labor Code § 123.5(a) be based on the Worker's Compensation Administrative Law Judge's personal knowledge. There has been concern among some of the Worker's Compensation Administrative Law Judges that they would be required to personally inspect every file in their caseload in order to declare they have "personal knowledge" that matters submitted to them do not remain pending for ninety days or more. This requires each Worker's Compensation Administrative Law Judge to commit a significant amount of valuable time and resources on a monthly basis in order not to commit perjury and comply with the requirements of Labor Code § 123.5(a).

Section 9714.5 is the form currently used by the Worker's Compensation Administrative Law Judges for the required affidavit to comply with Labor Code § 123.5(a). This section should be amended to be in conformity with § 9714, to allow the affidavit to state it is being made on information and belief.

Specific Purpose of Amendments to §§ 9714 and 9714.5.

To allow each Workers' Compensation Administrative Law Judge the ability to devise and implement a file management system so that causes submitted for decision are decided in a timely fashion and to foster the conservation of time and resources on the

part of Workers' Compensation Administrative Law Judges and their staff. In promoting the efficient use of time and resources, provisions should be in place to allow for assurances that the referees are still in compliance with the requirements of Labor Code § 123.5(a), without requiring the unduly burdensome task of personal, individual file review.

Factual Basis That Amendments Are Necessary

Labor Code § 5313 mandates that a referee's decision issue within thirty days of a case being submitted. Labor Code § 123.5(a) prohibits a referee from receiving his or her salary where any case remains pending and undetermined for ninety days or more after it has been submitted for decision. The California Code of Judicial Ethics requires that a referee "shall dispose of all judicial matters fairly, promptly, and efficiently." In order to comply with these provisions, a referee must monitor and supervise his or her cases. The proposed change in the language of §§ 9714 and 9714.5, requiring a referee to declare he or she has made a reasonable inquiry concerning those matters submitted to them and based upon that reasonable inquiry to declare under penalty of perjury that no cause remains undecided for ninety days or more, promotes the efficient use of the referee's time and resources while still ensuring compliance with Labor Code § 123.5(a).

Business Impact

The regulations will not have a significant effect on businesses.

Specific Technologies or Equipment

The regulations do not mandate the use of specific technologies or equipment.

Consideration of Alternatives

The Administrative Director must determine that no alternative would be more effective in carrying out the purpose for which the amendments to regulations are proposed, nor would it be as effective and less burdensome to affected persons than the proposed actions.