

**Department Of Industrial Relations
Title 8, Chapter 8, Subchapter 2
Office of Self Insurance Plans**

**NOTICE OF PROPOSED RULEMAKING
September 27, 2005**

Notice is hereby given that the Director of the Department of Industrial Relations proposes to adopt the regulations described below after considering all comments, objections and recommendations regarding the proposed action.

Proposed Regulatory Action

The Department has not scheduled a formal public hearing on this proposed action. However, the Director will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period.

Written Comment Period

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to Office of Self Insurance Plans. The written comment period closes at 5:00 p.m. on November 21, 2005. The Department will consider only comments postmarked or received at the Office of Self Insurance Plans by that date. Submit comments to:

Mark Johnson, Manager
Office of Self Insurance Plans
2265 Watt Avenue, Suite 1
Sacramento, CA 95825

Authority and Reference

Labor Code Sections 55 and 3702.10, authorizes the Director of Industrial Relations to adopt, amend, and repeal regulations which would implement and make specific the provisions of Labor Code Sections 3702.1, 3702.2, and 3702.6.

Informative Digest and Policy Statement Overview

Existing Section 3702.10 of the Labor Code authorizes the Director of Industrial Relations to adopt, amend, and repeal regulations reasonably necessary to carry out the purposes of Articles 1, 2, and 2.5 of the California Labor Code. Existing Labor Code Section 3701 requires private

self insured employers to post security deposits with the Department of Industrial Relations that are based on estimates of future liability of claims, and existing Labor Code Section 3702.6 requires the Department of Industrial Relations to establish an audit program to ensure that estimates of future liability of claims are adequate. Existing Labor Code Section 3702.1 requires each person given discretion to deny, accept, or negotiate workers' compensation claims to demonstrate competence, and requires each adjusting location of a third-party administrator authorized to administer self insured claims to be in possession of a Certificate to Administer.

Department of Industrial Relations proposes to amend existing sections 15201, 15300, 15400, 15400.2, 15402.4, 15403, 15450, 15450.1, 15452, 15454, and 15463 in Title 8 of the California Code of Regulations. These sections define terms in Articles 1 through 13, establish requirements for estimating future liabilities of workers' compensation claims for self insured employers, indicate claim file contents for self insured employers' workers' compensation claims, establish requirements for the transfer of claims records from one administrator to another, and address audit site locations. In addition, these sections address the issuance of Certificates to Administer to third party administrators of workers' compensation claims, establish annual license fees for these administrators, and establish application fees for the testing of technical knowledge and certification of competence of individual administrators.

Existing Section 15201 provides definitions for commonly used terminology related to workers' compensation self insurance. Amendments to this section will expand the definition of "Adjusting Location" to address telecommuter claims adjuster locations, and expand the definition of "Claims Log" to specify that each year's log will list claims by the year reported, that claim logs of private self insurers will be by calendar year, and logs of public self insurers will be by fiscal year.

Existing Section 15300 requires that a list of open indemnity claims be submitted with each Self Insurer's Annual Report, requires that indemnity and medical-only claims reflect realistic estimates of future liabilities due or potentially due, prohibits reduction of estimates for third party recoveries or aggregate excess insurance, addresses procedures for claiming credit for specific excess insurance, and requires that estimates of future liability and paid costs be made available when claims are audited. This section will be amended to clarify that estimates of future liability reflect future liabilities reasonably expected to be due rather than potentially due, and specifies the required components for both indemnity and medical reserves. The section will also be amended to prescribe how to reserve in case of conflicting information, to specify that medical reserves must be established for the duration of treatment and the life of the claim based on the life expectancy of the injured worker in claims with lifetime awards for benefits, and to specify the principles that must be considered when reducing estimates based on utilization review or expected reductions in costs.

Existing Section 15400 indicates the required contents of claim files for injuries reported before January 1, 1990 and for injuries occurring on or after January 1, 1990, and requires that estimates of future liability be reasonable and be adjusted upon receipt of certain items. The existing section indicates the use of a reserve calculation worksheet is recommended but not required. This section will be amended to delete the requirement for a reasonable estimate to be adjusted following certain events because requirements regarding the basis and timing of establishing reserves are covered in Section 15300. This section will also be amended to

indicate that, for injuries reported on or after January 1, 2006, claim files shall be maintained in chronological order or subdivided into sections based on the nature of the documents, that electronic portions of files shall be easily retrievable, and that itemized written documentation showing the basis for the calculation of estimated future liability shall be in each file.

Existing Section 15400.2 requires all claim files be kept and maintained for at least five years from the date of injury or date that benefits are last provided, whichever is later, and indicates that claims may be closed two years after benefits are last provided. This section will be amended to clarify that claims may not be closed if there is a reasonable expectation that future benefits will be payable.

Existing Section 15402.4 requires that in the event claims are transferred from one administrator to another, all open claims will be provided immediately to the new administrator, and all closed claims and all computerized claims data shall be transferred within 30 days unless otherwise provided by agreement. This section will be amended to require that the old administrator shall provide hard copies of computerized claims contents to the new administrator at its own expense in instances where it is not providing the computerized claim contents.

Existing Section 15403 states that the Manager of Self Insurance Plans may order an audit at such reasonable times as is deemed necessary and claim files must be made readily available. This section will be amended to require the claims administrator to make claims available for audit at a California office location of the administrator or the self insured employer in the event of an audit of claims that are administered at a telecommuting adjuster's home.

Existing Section 15450 requires that each claims administrator be in possession of a Certificate to Administer and provides certain exceptions. This section will be amended grammatically and to delete references to minimum, maximum, and median periods of time to issue Certificates to Administer.

Existing Section 15450.1 prohibits self administration of workers' compensation claims by a self insured employer for its first three years of self insurance. This section will be amended grammatically and to remove redundancies.

Existing Section 15452 requires that self insured workers' compensation claims be administered in California unless good cause to administer out of state is shown, establishes a process for testing technical knowledge of workers' compensation so that individual adjusters may demonstrate competence, provides for an application form in the index of the regulations, and establishes a fee of \$100 to take the Self Insurance Administration examination. This section will be amended to specify that the desire to consolidate claims or the demonstration of competence of an out of state adjuster do not show good cause for out of state administration, to delete the application form from the regulations, and to increase the fee for taking the exam to \$150.

Existing Section 15454 indicates time periods for the renewal of Certificates to Administer for third party administrators, and sets annual license fees of \$650 per year for each third party administrator with an additional charge of \$100 per each additional adjusting location. This section will be amended to increase the annual license fees to \$1,000 per year for each third party administrator and the additional charge to \$200 for each additional adjusting location.

Disclosures Regarding the Proposed Action

Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action.

Determination of Mandate

The Director of Industrial Relations has determined that the proposed regulations do not impose a mandate on local agencies or school districts or a mandate requiring reimbursement by the State pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendment will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, these regulations do not constitute a "new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California constitution."

Cost or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or schools are required to be reimbursed in accordance with Government Code Sections 17500 through 17630.

Other Non-discretionary Costs or Savings Imposed on Local Agencies or School Districts

This proposal does not impose non-discretionary costs or savings imposed on local agencies or school districts.

Costs or Savings in Federal Funding to the State

This proposal will not result in costs or savings in federal funding to the state.

Impact on Housing Costs

The Department of Industrial Relations has made an initial determination that the amendment of this regulation will not have a significant effect on housing costs.

Cost Impact on Representative Private Persons or Businesses

The department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. Individual private self insurers may find the new deposit assessment to be higher than current costs for providing individual security deposits.

Impact on Business

The Department of Industrial Relations has made an initial determination that the amendment of this regulation will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California business to compete with businesses in other states.

Small Business Impact

This regulation will have no adverse impact on small business because it does not impose any new requirements on employers nor does it amend any existing requirements impacting small business. The increases in fees to third party administrators and to candidates for the Self

Insurance Administration exam are minimal, are easily within the range of fees charged by other state agencies, and are the first increases in 20 years.

Assessment of Job/Business Creation or Elimination

The Department has made an assessment that the proposed amendment to the regulation would not (1) create or eliminate jobs within California, (2) create new business or eliminate existing businesses within California, and (3) affect the expansion of businesses currently doing business within California.

Alternatives Considered

The Director must determine that no reasonable alternative has been considered by the agency or has otherwise been identified and brought to its attention that 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. No reasonable alternative has been brought to the attention of the Director that would be less effective or less burdensome to affected persons than the proposed action.

Contact Persons

Inquiries concerning the proposed administrative action may be directed to:

Mark Johnson, Manager
Office of Self Insurance Plans
2265 Watt Avenue, Suite 1
Sacramento, CA 95825
916-483-3392
mjohnson@dir.ca.gov

The backup contact person for these inquiries is:

Tina Freese
Office of Self Insurance Plans
2265 Watt Avenue, Suite 1
Sacramento, CA 95825
916-483-3392
tfreese@dir.ca.gov

Questions on the substance of the proposed regulation should be directed to Mr. Johnson.

Please direct requests for copies of the proposed text, the initial statement of reasons, the modified text of the regulations, if any, or any other rulemaking documents to Tina Freese at the above address.

Availability of Changed or Modified Text

After the close of the forty-five (45) day public comment period, the Director of the Department may adopt the proposed regulations. As a result of public comments, either oral or written, that are received by the Director regarding this proposal, the Director may determine that changes to the proposed regulation are appropriate. If the Director makes substantive 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 Director adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Tina Freese at the above address. The Department will accept further written comments on the modified regulations for 15 days after the date on which they are made available.

Availability of Initial Statement of Reasons, Rulemaking File And Express Terms of the Proposed Regulations

The Agency has established a rulemaking file for this regulatory action, which contains those items required by law. The file is available for inspection at the Office of Self Insurance Plans at 2265 Watt Avenue, Suite 1, Sacramento, California 95825 during normal business working hours. As of the date this Notice is published in the Notice Register, the rulemaking file consists of this Notice, the Initial Statement of Reasons and the proposed text of the regulations. Copies of these items are available, upon request, from the Agency Contact Person designated in this Notice.

Availability of Final Statement of Reasons

The Department is required to prepare a Final Statement of Reasons. Once the Department has prepared a Final Statement of Reasons, a copy will be made available to anyone who requests a copy. Requests for copies should be addressed to the Department Contact Person identified in this Notice.

Department Internet Website

The Department maintains an Internet website for the electronic publication and distribution of written material. Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed through our website at <http://sip.dir.ca.gov>.