

Division of Labor Statistics and Research

NOTICE OF PUBLIC HEARING

Title 8. Division of Labor Statistics and Research

NOTICE IS HEREBY GIVEN that the Division of Labor Statistics and Research is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held beginning at 10 a.m. in the 10th floor conference room at 455 Golden Gate Avenue, San Francisco, California on October 22, 2002. These facilities are accessible to persons with mobility impairments.

Written comments must be received by mail, by fax or by email no later than 5:00 p.m. on October 22, 2002 or must be received at the hearing. Comments must be addressed to either of the following:

Robert Nakamura, Senior Industrial Hygienist
Department of Industrial Relations
Division of Occupational Safety and Health
455 Golden Gate Avenue, 10th Floor, San Francisco, CA 94102
Fax: (415) 703-5114
email: DOSHInfo@dir.ca.gov

Ramon Cruz, Research Manager
Department of Industrial Relations
Division of Labor Statistics and Research
455 Golden Gate Avenue, 8th Floor, San Francisco, CA 94102
Fax: (415) 703-3029
email: DOSHInfo@dir.ca.gov

The official record of the rulemaking proceeding will be closed at 5:00 p.m. on October 22, 2002. The Division of Labor Statistics and Research shall not consider written comments received after that date and time unless an extension of time in which to receive specific written comments is announced at the public hearing.

The Division of Labor Statistics and Research may thereafter adopt the proposed regulations substantially as described below, or may modify it if such modification is sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification or any changes to the proposal.

Authority and Reference

Authority cited: Labor Code Section 6410.

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Informative Digest/Policy Statement Overview

Pursuant to Labor Code Section 6410, the Division of Labor Statistics and Research (DLSR), a division within the Department of Industrial Relations, is charged with prescribing and providing the forms necessary for maintenance of records of occupational injuries and illnesses required by the United States Department of Labor under the Federal Occupational Safety and Health Act of 1970 (P.L. 91-596). Requirements for fulfilling this mandate are currently found in Article 2 of Subchapter 1, Chapter 7, Division 1 of Title 8 in the California Code of Regulations ("Article 2").

On July 1, 2002, the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) promulgated revisions to regulations at 29 CFR 1904 addressing Occupational Injury and Illness Recording and Reporting Requirements. See Federal Register Volume 67, No. 126, pages 44037-44048. The State of California, through DLSR, is now required by the provisions of 29 CFR 1902.3(k), 29 CFR 1952.4, and 29 CFR 1956.10(i), to adopt regulations for recording of occupational injuries and illnesses that are substantially identical to the requirements of revised 29 CFR 1904.10; 29 CFR 1904.12; and 29 CFR 1904.29 Forms, subpart (b)(7)(vi).

DLSR now proposes to adopt requirements for the recording of occupational injuries and illness that are substantially identical to the requirements of revised 29 CFR 1904.10 "Recording criteria for cases involving occupational hearing loss, with the exception of paragraph (b)(7) How do I complete the 300 Log for a hearing loss case?" The OSHA final rule revises the criteria for recording hearing loss cases in several ways, including requiring the recording of Standard Threshold Shifts (10 dB shifts in hearing acuity) that have resulted in a total 25 dB level of hearing above audiometric zero, averaged over the frequencies at 2000, 3000, and 4000 Hz, beginning in year 2003.

DLSR also proposes to adopt identical implementation dates that are in revised 29 CFR 1904.12 "Recording criteria for cases involving work-related musculoskeletal disorders"; and 29 CFR 1904.29 "Forms", subpart (b)(7)(vi). OSHA is delaying the effective dates of three provisions of the Occupational Injury and Illness Recording and Reporting Requirements rule that are presently scheduled to take effect on January 1, 2003 until January 1, 2004. The first defines "musculoskeletal disorder (MSD)" and requires employers to check the MSD column on the OSHA Log if an employee experiences a recordable musculoskeletal disorder. The second provision states that musculoskeletal disorders (MSDs) are not considered "privacy concern cases." The third provision requires employers to enter a check mark in the hearing loss column on the 300 Log for cases involving occupational hearing loss. OSHA is requesting comment on these proposed delays.

To implement the new federal provisions, DLSR proposes to amend the existing provisions of Article 2, subsections 14300.12 by retaining the current language for another year and to amend 14300.29(b)(7) by amending the statement for the effective date of the second sentence. The third OSHA provision requires no amendment to the existing Cal/OSHA Form 300 which currently does not have a column for either musculoskeletal disorders or hearing loss.

More Information

The full text of the proposed regulations, and all information upon which the proposed regulations are based, including an initial statement of the reasons for the proposed regulations, are available upon request. Inquiries concerning the proposed regulations, including questions regarding the substance of the proposed regulations, may be directed to:

Robert Nakamura, Senior Industrial Hygienist
Department of Industrial Relations
Division of Occupational Safety and Health
455 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102
Phone: (415) 703-5160
Fax: (415) 703-5114

The designated back-up contact person is:
Ramon Cruz, Research Manager
Department of Industrial Relations
Division of Labor Statistics and Research
455 Golden Gate Avenue, 8th Floor
San Francisco, CA 94102
Phone: (415) 703-4757
Fax: (415) 703-3029

The Division's rulemaking file on the proposed regulations is open for public inspection Monday through Friday, from 8:00 a.m. to 5:00 p.m., at 455 Golden Gate Avenue, 10th Floor, San Francisco, California. Interested parties may obtain copies of the Initial Statement of Reasons, the actual text of the proposed regulations, this notice, and the final statement of reasons, (once it has been prepared pursuant to Government Code Section 11346.9(a)) from the Division representatives named above, or from the Department's website >www.dir.ca.gov<. Click on "Rulemaking - Proposed Regulations."

Cost or Savings of the Proposed Regulations

Costs or Savings to State Agencies: No costs or savings to state agencies will result as a consequence of the proposed regulations.

Impact on Housing Costs: The proposed regulations will not significantly affect housing costs.

Impact on Businesses: OSHA determined the nationwide cost of the regulatory change to be \$1,049,650 and concluded that this was not an economically significant cost (67FR44045). Based upon the Federal analysis, the Division concurs that the California portion of costs from the proposed regulations will not result in a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Cost Impacts on Representative Private Persons or Businesses: The Division is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed regulations.

Costs or Savings in Federal Funding to the State: The proposed regulations will not result in costs or savings in federal funding to the State.

Costs or Savings to Local Agencies or School Districts: No costs to local agencies or school districts are required to be reimbursed. See explanation under "Determination of Mandate".

Other Nondiscretionary Costs or Savings Imposed on Local Agencies: The proposed regulations do not impose nondiscretionary costs or savings on local agencies.

Determination of Mandate

The proposed regulations do not impose a mandate on local agencies or school districts. The Division has determined that the proposed regulations do not impose 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 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."

The California Supreme Court has established that a "program" within the meaning of Section 6 of Article XIII of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.).

The proposed regulations do not require any local agency to carry out the governmental function of providing services to the public.

Effect on Small Businesses

It has been determined that the proposed regulations may affect small businesses.

Assessment.

The adoption of the proposed regulations will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

Consideration of Alternatives.

The Division must determine that no reasonable alternative considered by the Division, or that has been identified and brought to the attention of the Division, 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.