

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

**FINAL STATEMENT OF REASONS AND
UPDATED INFORMATIVE DIGEST**

Subject Matter of Regulations: Public Disability Accommodations

**TITLE 8, CALIFORNIA CODE OF REGULATIONS
SECTIONS 9708.1-9708.6**

The Administrative Director of the Division of Workers' Compensation, pursuant to the authority granted by Labor Code sections 133, 5307.3, and 5307.4, has adopted the following Sections of Article 1.3 of Chapter 4.5, Subchapter 1, Division 1, of California Code of Regulations, title 8, pertaining to Public Disability Accommodations:

Section 9708.1	Definitions
Section 9708.2	Disability Accommodations Request Process
Section 9708.3	Confidentiality
Section 9708.4	Disability Accommodation Requests in Division of Workers' Compensation Hearings
Section 9708.5	Decision-making Process
Section 9708.6	Appeal Procedure

UPDATED INFORMATIVE DIGEST

The Administrative Director incorporates the Informative Digest prepared in this matter. In addition, there has been a change in applicable laws due to the passage of Assembly Bill ("AB") 1426 on October 7, 2011, which eliminates the Court Administrator position and thus the authority under the Court Administrator to promulgate rules and regulations. AB 1426 amended Labor Code sections 110, 123.5, 123.6, 127, 133, 138, 138.1, 138.2, 5307, 5307.3, 5310, 5311.5, 5500.3, 5502 and repealed section 127.5. AB 1426 was effective immediately.

UPDATE OF INITIAL STATEMENT OF REASONS

As authorized by Government Code §11346.9(d), the Administrative Director hereby incorporates the Initial Statement of Reasons prepared in this matter. Unless a specific basis is stated for any modification to the regulations as initially proposed, the necessity for the adoption of new regulations as set forth in the Initial Statement of Reasons continue to apply to the regulations as adopted.

All modifications from the initially proposed text of the regulations are summarized below.

THE FOLLOWING SUBDIVISIONS WERE AMENDED FOLLOWING THE PUBLIC HEARING AND CIRCULATED FOR ONE 15-DAY COMMENT PERIOD: (October 11, 2011 through October 26, 2011)

- **Amendments to Section 9708.1 - Definitions**

In response to comments received, the section is modified.

Modification

Subdivision (e) is revised to add that equipment and other physical modifications for physical access are also disability accommodations that the agency provides.

Purpose

These changes are necessary to clarify that the agency also provides accommodations for physical access as well as programmatic access.

Modification

Subdivision (g) is added to define what is meant by the use of the term, “disability coordinator” to indicate the individual(s) handling disability accommodations for the agency.

Purpose

This change clarifies for the public what the use of this term means and who is responsible for handling disability accommodations.

Modification

Former subdivision (g) is relettered to subdivision (h) and is revised to include “and locations” after the phrase, “and includes other offices” in the second sentence.

Purpose

This change is necessary to clarify that accommodations will be provided at all locations where the agency conducts business.

Modification

Subdivision (k) is added to define what is meant by the use of the term, “Statewide Disability Coordinator” as the individual handling disability accommodations statewide for the agency.

Purpose

This change clarifies for the public what the use of this term means and who is responsible for handling disability accommodations statewide.

Modification

Subdivisions (g) through (i) have been relettered to reflect the additional definitions.

Purpose

These changes are necessary for correct identification of the section's subdivisions.

Modification

Labor Code Section 138.2 is also added as an "Authority" for this section.

Purpose

This change clarifies the Administrative Director's authority and jurisdiction over agency offices and staff, which are referenced in this section.

- **Amendments to Section 9708.2 – Disability Accommodation Request Process**

Modification

Subdivision (b) is revised to capitalize references to "disability coordinator" and "statewide disability coordinator."

Purpose

These changes are made because the terms are titles.

- **Amendments to Section 9708.4 – Disability Accommodation Requests in Administrative Hearings under the Jurisdiction of the Administrative Director**

In response to comments received, the section has been modified.

Modification

The title of the section is revised to delete the phrase "in Administrative Hearings under the Jurisdiction of the Administrative Director" and is replaced by "in Division of Workers' Compensation Hearings."

Purpose

This change is necessary to clearly reflect that the section applies to all hearings under the Division of Workers' Compensation.

Modification

Subdivision (b) is revised to capitalize the title of "disability coordinator" and to include the phrase, "or the workers' compensation administrative law judge" after both references to hearing officers in the section.

Purpose

These changes are made because of a reference to a title and to clarify that this section applies to both workers' compensation judges and other hearing officers.

Modification

Subdivision (c) is revised to delete the term, "*ex parte*" from the first sentence. The subdivision is also revised to add a sentence that impermissible *ex parte* communications will be disclosed.

Purpose

These changes clarify that discussion regarding disability accommodations are permissible communications and that impermissible communications with a judge will be disclosed in accordance with judicial ethics.

- **Amendments to Section 9708.5 – Decision-making Process**

Modification

Subdivision (i) is revised to capitalize the reference to “disability coordinator” in the second sentence. Also, the second sentence is revised to delete “The” and replace it with “A.”

Purpose

This change is made to more clearly reflect that any disability coordinator may verbally inform the requestor of an accommodation decision. The first change is made because it is a reference to a title.

- **Amendments to Section 9708.6 – Appeal Procedure**

Modification

Subdivisions (b) and (d) are revised to capitalize the references to the “statewide disability coordinator.”

Purpose

These changes are made as they are references to titles.

- **Amendments to Sections 10226.1-10266.6**

Modification

These sections are deleted.

Purpose

These changes are necessary due to the passage of Assembly Bill (AB) 1426, eliminating the authority and position of the Court Administrator to promulgate rules and regulations, effective October 7, 2011.

UPDATE OF MATERIAL RELIED UPON

No additional documents beyond those identified in the Initial Statement of Reasons were relied upon by the Administrative Director except that public comments received were taken into consideration when finalizing the regulations.

LOCAL MANDATES DETERMINATION

- Local Mandate: None. The proposed regulations will not impose any new mandated programs or increased service levels on any local agency or school district.
- 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. The proposed amendments do not apply to any local agency or school district.
- Other nondiscretionary costs/savings imposed upon local agencies: None.

CONSIDERATION OF ALTERNATIVES

The Division considered all comments submitted during the public comment periods, and made modifications based on those comments to the regulations as initially proposed. The Administrative Director has now determined that no alternatives proposed by the regulated public or otherwise considered by the Division of Workers' Compensation would be more effective in carrying out the purpose for which these regulations were proposed, nor would they be as effective as and less burdensome to affected private persons and businesses than the regulations that were adopted.

SUMMARY OF COMMENTS RECEIVED AND RESPONSES THERETO CONCERNING THE AMENDED REGULATIONS

The comments of each organization or individual are addressed in the chart contained in the rulemaking binder. There is no chart for comments during the first 15-day comment period as there were no comments received.

The public comment periods were as follows:

- Initial 45-day comment period: August 12 through September 27, 2011.
- First 15-day comment period: October 11 through October 26, 2011.

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