

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

INITIAL STATEMENT OF REASONS

Subject Matter of Regulations: Public Disability Accommodations

**TITLE 8, CALIFORNIA CODE OF REGULATIONS
SECTIONS 9708.1-9708.6, 10226.1-10226.6**

Section 9708.1	Definitions
Section 9708.2	Disability Accommodations Request Process
Section 9708.3	Confidentiality
Section 9708.4	Disability Accommodation Request in Administrative Hearings under the Jurisdiction of the Administrative Director
Section 9708.5	Decision-making Process
Section 9708.6	Appeal Procedure
Section 10226.1	Definitions
Section 10226.2	Disability Accommodation Request Process
Section 10226.3	Confidentiality
Section 10226.4	Disability Accommodation Requests in Workers' Compensation Cases
Section 10226.5	Decision-making Process
Section 10226.6	Appeal Procedure

BACKGROUND TO REGULATORY PROCEEDING

In 1990, the Americans with Disabilities Act (“ADA”) was passed by Congress to combat discrimination against individuals with disabilities. The intent of the law is to protect individuals with disabilities from discrimination and to enable them to participate more fully in society. The law requires that reasonable accommodations be provided to individuals with disabilities at work and also that physical structures and programs be made accessible to individuals with disabilities to remove barriers to their participation. California has passed similar laws, including Civil Code sections 51 and 54 *et seq.* and Government Code section 11135 *et seq.*, that protect disabled individuals from discrimination and denial of physical and programmatic access to public services and facilities.

This rulemaking action proposes regulations to set forth the procedure by which the Division of Workers’ Compensation (“DWC” or “Division”) will comply with its obligations under California Labor Code sections 111, 127.5, 133, 5307, 5307.3, 5307.4, and Government Code section 11138. These provisions authorize the Division of Workers’ Compensation of the Department of Industrial Relations to promulgate

regulations that enforce state and federal laws protecting the rights of individuals with disabilities to participate equally in the activities, programs and services offered by the state.

In summary, the proposed regulations in this rulemaking: 1) define key terms related to public disability accommodations (sections 9708.1, 10226.1); 2) describe the process to be used by the public to request a reasonable disability accommodation (sections 9708.2, 10226.2); 3) state the confidential nature of accommodation requests (sections 9708.3, 10226.3); 4) clarify the procedural nature of accommodation requests as being separate from the substantive issues in a legal case as well as the process by which accommodation requests may be made before a judge or hearing officer at a legal proceeding (sections 9708.4, 10226.4); 5) describe the decision-making process for a request, the factors to be considered by the Division in deciding requests, and the process used to inform requestors of the agency's decision (sections 9708.5, 10226.5); and 6) explain the appeal process to be used after a decision is made by the Division on an accommodation request (sections 9708.6, 10226.6).

NECESSITY

Government Code section 11138 authorizes rulemaking to ensure that individuals with disabilities may equally participate in the Division's programs, activities and services. Pursuant to its obligations, the Division has developed procedures to consistently and effectively provide reasonable accommodations to the public. The Division has obtained the requisite approval of this rulemaking from the Secretary of Health and Welfare Agency. (See rulemaking file.)

Accordingly, these regulations clarify and set forth the process and criteria to be used by the Division to provide accommodations for individuals with disabilities participating in its services, programs or activities.

Two sets of regulations are being proposed to ensure all of the Division's programs, services and activities are covered, including the workers' compensation court system. As set forth in Labor Code section 111(a), the Administrative Director exercises jurisdiction as the head of the Division (excluding the Workers' Compensation Appeals Board), and the Court Administrator has specific jurisdiction over promulgating rules in the workers' compensation court system, pursuant to Labor Code section 127.5 and section 5307(c). Both sets of regulations are substantively the same and are intended to meet the same legal obligations to accommodate individuals with disabilities. Accordingly, the regulations have been combined into one rulemaking as they act effectively as one set of rules encompassing the entire Division of Workers' Compensation.

TECHNICAL, THEORETICAL, OR EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS

None.

SPECIFIC TECHNOLOGIES OR EQUIPMENT REQUIRED (if applicable)

Available technologies or equipment are required by these proposed regulations. The law requires that auxiliary aids be provided as reasonable accommodations. Auxiliary aids can include: assistive listening devices, ergonomic chairs, texts in Braille or large print, audio recordings, readers, magnifiers, voice amplifiers, teleconferencing, and computer-aided realtime translation. These technologies are among the general technologies often used to accommodate individuals with disabilities.

Technologies that are specifically required to be made available in California courts are assistive listening devices and computer aided transcription services, pursuant to Civil Code section 54.8. Other technologies and equipment, such as voice amplifiers and audio recordings, will be made available if the request is reasonable.

FACTS ON WHICH THE AGENCY RELIES IN SUPPORT OF ITS INITIAL DETERMINATION THAT THE REGULATIONS WILL NOT HAVE A SIGNIFICANT ADVERSE IMPACT ON BUSINESS

DWC has determined that these proposed regulations will not have a significant adverse impact on private businesses because the regulations do not create new obligations on businesses. These regulations provide an established process to make the workers' compensation system more accessible to the public. The proposed regulations would make public the Division's process for providing reasonable accommodations to disabled individuals and would not have a significant negative impact on business. Pursuant to state and federal disability laws, the Division has been providing reasonable accommodations and has done so without significant impact to the conduct of its own business. The cost to provide accommodations has not risen to the level of a financial and administrative burden and thus has not had an unacceptable impact on the Division's resources.

Because the regulations address the Division's obligations to accommodate the public, there is no anticipated adverse impact on private business due to the regulations proposed in this rulemaking.

Administrative Director Regulations

Necessity: This set of regulations, sections 9708.1-9708.6, apply to the Division programs, sections and activities under the authority granted to the Administrative Director.

SECTION 9708.1:

Specific Purpose of This Section:

The purpose of section 9708.1 is to help implement, interpret and make specific the technical and legal terms associated with the disability accommodations process.

Providing these definitions helps to ensure that the meaning of the terms are clearly understood by the public and the workers' compensation community, which may not be familiar with these terms as used in the context of disability accommodations.

Necessity:

This section is necessary to define for the workers' compensation community the key terms the public will need to understand to properly engage in the accommodation process. The definitions are also necessary to establish the parameters of the terms used in the public accommodations process.

Consideration of Alternatives:

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Division at this time to promote equal access for members of the public who are participating in the agency's activities, programs and services.

SECTION 9708.2

Specific Purpose of This Section:

The purpose of section 9708.2 is to implement, interpret and make specific state and federal disability law requirements by informing the public of the process to follow to request an accommodation from the Division.

Necessity:

This section is necessary to inform the public and the workers' compensation community of the proper procedure to follow to request an accommodation and helps the Division to accommodate individuals in an effective, efficient, and timely manner. Also, the proposed regulation is necessary for the public to understand what information is needed for the Division to provide a reasonable accommodation, including the necessary interactive engagement on both sides about the requested accommodation.

Consideration of Alternatives:

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Division at this time to promote equal access for members of the public who are participating in the Division's activities, programs and services.

SECTION 9708.3

Specific Purpose of this Section:

The purpose of section 9708.3 is to inform all participants in the workers' compensation system that requests for accommodation will be treated as protected confidential information.

Necessity:

This section is necessary to establish compliance with the confidentiality requirements under federal disability law. This provision also informs individuals with disabilities that their medical privacy rights will be protected, and helps to create a safe environment for them to make accommodation requests. Keeping requests and related information protected will reduce fear of discriminatory actions against individuals requesting accommodation and addresses medical privacy concerns by individuals requesting accommodations. If accommodation requests were not confidential, a chilling effect may occur, as individuals do not want to be seen as being different or needing help and fear being treated adversely as a result of their disability. In addition, this provision is necessary to inform the other parties involved who are not requesting accommodations, that these requests are confidential so they have notice that they will not be provided information regarding the accommodation process.

Consideration of Alternatives:

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Division at this time.

SECTION 9708.4

Specific Purpose of this Section:

The purpose of section 9708.4 is to clarify that the disability accommodation request and the accommodation process are to be considered procedural and separate from an individual's legal case.

This section clarifies the limited role of the judge or hearing officer in the accommodation process when an immediate accommodation need arises during a legal proceeding. In that circumstance, the judge or hearing officer is allowed, as an exception, to hear the request as a permissible *ex parte* confidential procedural request to ensure the needs of an individual with a disability are being met so they can properly participate in a proceeding.

Necessity:

This section is necessary to address significant confusion by participants in the workers' compensation system about how a disability accommodation request and the accommodation process fit within the larger framework of the workers' compensation

adjudicatory system. This section is needed to clarify that the accommodation request process does not involve the substantive issues of a case and does not concern the merits of a case to avoid misuse of the accommodation process and unnecessary complications in or circumventions of the judicial process on the case.

Participants also need to know that if a need for an accommodation arises during a legal proceeding, an *ex parte* accommodation request to the judge is considered a permissible confidential request and will be allowed. Such a clarification is necessary to establish the exception to the normal rule barring *ex parte* communication with a judge.

Consideration of Alternatives:

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Division at this time.

SECTION 9708.5

Specific Purpose of this Section:

The purpose of section 9708.5 is to establish the parameters and factors involved in the decision-making process when a request for accommodation is received by the Division. The section is intended to provide transparency of the process used by the Division in making determinations on accommodation requests.

Necessity:

This section is necessary for participants to understand the decision-making process used by the Division by knowing what the criteria are for an accommodation to be granted or denied. These parameters are necessary to establish compliance with disability laws.

Subdivision (a) is necessary to clarify that each request is legally required to be considered on a case-by-case basis and what is reasonable is determined by the circumstances at the time, so participants do not assume that the same request will be granted every time for the same individual or for others. Subdivision (b) is necessary to inform the requestor what legal standards will be used in considering the request to establish that the Division is acting in accordance with the law. Subdivision (c) is necessary to inform the public of the different responses possible for each request. Subdivision (d) gives the requestor information regarding the time frame for the Division to make a determination on the request. Subdivision (e) is important to let the public know that the Division will meet its legal obligations to provide effective accommodations. Subdivision (f) is necessary to clarify that the granting of a request is for a specific appearance only to avoid assumptions that an accommodation will be provided at all appearances in the future. Subdivision (g) is necessary to set forth the legal standards applied by the Division when denying an accommodation request, in accordance with federal and state laws. Subdivision (h) clarifies that an agency head will

make the decision to deny a request, in accordance with federal regulations. Subdivision (i) is necessary to assure the requestor that they will be notified in a timely manner of any denial and provided the reasons for the denial. Subdivision (j) is necessary to establish that in furtherance of its legal obligations, the Division will still attempt to provide an alternate reasonable accommodation if the original request is not provided.

Consideration of Alternatives:

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Division at this time.

SECTION 9708.6

Specific Purpose of this Section:

The purpose of section 9708.6 is to give requestors the opportunity to appeal the Division's decision on an accommodation request and to inform the public how to appeal a decision regarding an accommodation request.

Necessity:

This section is necessary to provide a grievance or complaint procedure for the Division's decisions on accommodation requests, pursuant to federal disability regulatory requirements. Subsections (a) through (d) are necessary to inform the requestor of the specific time frames and information that needs to be submitted for the regular or expedited review.

Consideration of Alternatives:

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Division at this time.

Court Administrator Regulations

Necessity: This set of regulations, sections 10226.1-10226.6, applies to the workers' compensation adjudication system under the authority of the Court Administrator.

SECTION 10226.1:

Specific Purpose of This Section:

The purpose of section 10226.1 is to help implement, interpret and make specific the technical and legal terms associated with the disability accommodations process. Providing these definitions helps to ensure that the meaning of the terms are clearly

understood by the public and the workers' compensation community, which may not be familiar with these terms as used in the context of disability accommodations.

Necessity:

This section is necessary to define for the workers' compensation community the key terms the public will need to understand to properly engage in the accommodation process. The definitions are also necessary to establish the parameters of the terms used in the public accommodations process.

Consideration of Alternatives:

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Division at this time to promote equal access for members of the public who are participating in the agency's activities, programs and services.

SECTION 10226.2

Specific Purpose of This Section:

The purpose of section 10226.2 is to implement, interpret and make specific state and federal disability law requirements by informing the public of the process to follow to request an accommodation from the Division.

Necessity:

This section is necessary to inform the public and the workers' compensation community of the proper procedure to follow to request an accommodation and helps the Division to accommodate individuals in an effective, efficient, and timely manner. Also, the proposed regulation is necessary for the public to understand what information is needed for the Division to provide a reasonable accommodation, including the necessary interactive engagement on both sides about the requested accommodation.

Consideration of Alternatives:

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Division at this time to promote equal access for members of the public who are participating in the Division's activities, programs and services.

SECTION 10226.3

Specific Purpose of this Section:

The purpose of section 10226.3 is to inform all participants in the workers' compensation system that requests for accommodation will be treated as protected confidential information.

Necessity:

This section is necessary to establish compliance with the confidentiality requirements under federal disability law. This provision also informs individuals with disabilities that their medical privacy rights will be protected, and helps to create a safe environment for them to make accommodation requests. Keeping requests and related information protected will reduce fear of discriminatory actions against individuals requesting accommodation and addresses medical privacy concerns by individuals requesting accommodations. If accommodation requests were not confidential, a chilling effect may occur, as individuals do not want to be seen as being different or needing help and fear being treated adversely as a result of their disability. In addition, this provision is necessary to inform the other parties involved who are not requesting accommodations, that these requests are confidential so they have notice that they will not be provided information regarding the accommodation process.

Consideration of Alternatives:

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Division at this time.

SECTION 10226.4

Specific Purpose of this Section:

The purpose of section 10226.4 is to clarify that the disability accommodation request and the accommodation process are to be considered procedural and separate from an individual's legal case.

This section clarifies the limited role of the judge or hearing officer in the accommodation process when an immediate accommodation need arises during a legal proceeding. In that circumstance, the judge or hearing officer is allowed, as an exception, to hear the request as a permissible *ex parte* confidential procedural request to ensure the needs of an individual with a disability are being met so they can properly participate in a proceeding.

Necessity:

This section is necessary to address significant confusion by participants in the workers' compensation system about how a disability accommodation request and the accommodation process fit within the larger framework of the workers' compensation adjudicatory system. This section is needed to clarify that the accommodation request process does not involve the substantive issues of a case and does not concern the merits

of a case to avoid misuse of the accommodation process and unnecessary complications in or circumventions of the judicial process on the case.

Participants also need to know that if a need for an accommodation arises during a legal proceeding, an *ex parte* accommodation request to the judge is considered a permissible confidential request and will be allowed. Such a clarification is necessary to establish the exception to the normal rule barring *ex parte* communication with a judge. In addition, a statement is included to reassure the other participants that any violation of this rule will not disadvantage them, as impermissible *ex parte* communication will be disclosed.

Consideration of Alternatives:

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Division at this time.

SECTION 10226.5

Specific Purpose of this Section:

The purpose of section 10226.5 is to establish the parameters and factors involved in the decision-making process when a request for accommodation is received by the Division. The section is intended to provide transparency of the process used by the Division in making determinations on accommodation requests.

Necessity:

This section is necessary for participants to understand the decision-making process used by the Division by knowing what the criteria are for an accommodation to be granted or denied. These parameters are necessary to establish compliance with disability laws.

Subdivision (a) is necessary to clarify that each request is legally required to be considered on a case-by-case basis and what is reasonable is determined by the circumstances at the time, so participants do not assume that the same request will be granted every time for the same individual or for others. Subdivision (b) is necessary to inform the requestor what legal standards will be used in considering the request to establish that the Division is acting in accordance with the law. Subdivision (c) is necessary to inform the public of the different responses possible for each request. Subdivision (d) gives the requestor information regarding the time frame for the Division to make a determination on the request. Subdivision (e) is important to let the public know that the Division will meet its legal obligations to provide effective accommodations. Subdivision (f) is necessary to clarify that the granting of a request is for a specific appearance only to avoid assumptions that an accommodation will be provided at all appearances in the future. Subdivision (g) is necessary to set forth the legal standards applied by the Division when denying an accommodation request, in accordance with federal and state laws. Subdivision (h) clarifies that an agency head will make the decision to deny a request, in accordance with federal regulations. Subdivision

(i) is necessary to assure the requestor that they will be notified in a timely manner of any denial and provided the reasons for the denial. Subdivision (j) is necessary to establish that in furtherance of its legal obligations, the Division will still attempt to provide an alternate reasonable accommodation if the original request is not provided.

Consideration of Alternatives:

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Division at this time.

SECTION 10226.6

Specific Purpose of this Section:

The purpose of section 10226.6 is to give requestors the opportunity to appeal the Division's decision on an accommodation request and to inform the public how to appeal a decision regarding an accommodation request.

Necessity:

This section is necessary to provide a grievance or complaint procedure for the Division's decisions on accommodation requests pursuant to federal disability regulatory requirements. Subsections (a) through (d) are necessary to inform the requestor of the specific time frames and information that needs to be submitted for the regular or expedited review.

Consideration of Alternatives:

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Division at this time.