

**STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS**

OFFICE OF THE DIRECTOR

NOTICE OF PROPOSED RULEMAKING

Subject Matter of Proposed Amendment to Regulations: Annual Collection of the Workers' Occupational Safety and Health Education Fund Fee

PROPOSED REGULATORY ACTION

NOTICE IS HEREBY GIVEN that the Director of the Department of Industrial Relations, (hereinafter "Director") acting pursuant to the authority granted by Labor Code Sections 50.5, 54 and 55 proposes to amend an existing regulation, and adopt a new regulation to implement the provisions of Labor Code Section 6354.7, Statutes 2002, Chapter 6, Sections 1 and 84 (AB 749 (Calderon, 2001-2002)).

Labor Code Section 6354.7, effective January 1, 2003 will require the Director to levy and collect fees from workers' compensation insurers for the purposes of funding a workers' occupational safety and health training and education program administered by the Commission on Health and Safety and Workers' Compensation and an insurance loss control services coordinator. The fees collected are to be deposited in the Workers' Occupational Safety and Health Education Fund, which will be established as a special account in the state treasury. These fees and the fund will replace the loss control certification fee and loss control certification fund which will both be eliminated.

TIME AND PLACE OF PUBLIC HEARING

A public hearing has been scheduled to permit all interested persons the opportunity to present statements or arguments, either orally or in writing, with respect to the subjects noted above. The hearing will be held at the following time and place:

Date: Friday, September 13, 2002
Time: 10:00 a.m.
Place: Auditorium
The Governor Hiram Johnson State Office Building
455 Golden Gate Avenue
San Francisco, California 94102

The public hearing room is wheelchair accessible. Persons requiring additional accommodation of a disability are requested to alert the contact person identified below so that special arrangements may be made.

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 or 5:00 p.m., whichever is earlier. If public comment concludes before the noon recess, no afternoon session will be held.

The Director requests, but does not require, that any persons who make oral comments at the hearing also provide a written copy of their comments. Equal weight will be accorded to oral comments and written materials.

AUTHORITY AND REFERENCE

The Director is undertaking this regulatory action pursuant to the authority vested in the Director of the Department of Industrial Relations by Labor Code Sections 50.5, 54 and 55 to implement and make specific the provisions of Labor Code Section 6354.7 (Statutes 2002, Chapter 6, Section 84, (AB 749 - Calderon, 2001-2002,) effective January 1, 2003.

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

The Director proposes to amend an existing administrative regulation to eliminate the loss control certification fee regulation and to replace that regulation with two regulations to govern the manner and procedure for collecting the new fee required by Labor Code Section 6354.7 to fund the Commission on Health and Safety and Workers' Compensation's workers' occupational safety and health training and education program and an insurance loss control services coordinator. Once adopted, the regulations, as amended and adopted, will have an effective date of January 1, 2003.

This regulations are required by a legislative enactment, Statutes 2002, Chapter 6, Section 84, which enacts Labor Code Section 6354.7, effective January 1, 2003.

Labor Code Section 6354.7 will require the Director to levy and collect fees from workers' compensation insurers for the purposes of funding a workers' occupational safety and health training and education program administered by the Commission on Health and Safety and Workers' Compensation and an insurance loss control services coordinator. The fees collected are to be deposited in the Workers' Occupational Safety and Health Education Fund.

Labor Code Section 6354.7 will provide that the fee assessed against any insurer shall not exceed the greater of one hundred dollars (\$100) or 0.0286 percent of paid workers' compensation indemnity claims as reported by the insurer for the previous calendar year to the designated rating organization for the analysis required under subdivision (b) of Section 11759.1 of the Insurance Code.

Section amended: Title 8, California Code of Regulations, Section 339.8.

The existing regulation provides for the collection of a fee for application for certification and/or recertification of loss control consultation services.

The regulation as amended will provide for the annual collection of the workers' occupational safety and health training and education program fee.

Specifically, the regulation as amended will provide that:

- The Director designates the Commission on Health and Safety and Workers' Compensation to collect the workers' occupational safety and health training and education program fee.
- On or before April 1 of each year, each insurer required to do so shall pay to the Commission on Health and Safety and Workers' Compensation the workers' occupational safety and health training and education program fee required by Labor Code Section 6354.7. The fees collected are to be deposited in the Workers' Occupational Safety and Health Education Fund.
- The annual fee required shall be the greater of one hundred dollars (\$100) or 0.0286 percent of paid workers' compensation indemnity claims as reported for the previous calendar year to the designated rating organization for the

analysis required under Insurance Code Section 11759.1(b).

- Along with the required payment, each insurer shall submit:
 - A copy of the insurer's response to the annual "Call for California Workers' Compensation Experience" for the preceding calendar year.
 - A summary report, on a form CHSWC-1 "Workers' Occupational Safety and Health Education Fee Annual Report. (Rev.1/03)" A copy of the form CHSWC-1 will be provided to the insurer by the Commission not later than February 1 of the year in which the fee is collected.

The report will require the following information:

- the name of the insurer submitting the report, including a list of all insurer names used to write workers' compensation insurance in California. For each insurer listed, copy of each insurer's Certificate of Authority, issued by the California Department of Insurance, to write workers' compensation insurance will be required to be submitted as an attachment.
 - the name and contact information for a company officer to be contacted concerning the insurer's loss control services or the workers' occupational safety and health training and education program;
 - the amount of paid indemnity as reported by the insurer for the previous calendar year to the Workers' Compensation Insurance Rating Bureau in response to the annual "Call for California Workers' Compensation Experience;" and,
 - the amount of the fee being paid by the insurer.
- A group of insurers under the same management, direction and control may elect to submit a single consolidated payment so long as the information required by the Commission is separately provided for each insurer.

Section adopted: Title 8, California Code of Regulations, Section 339.9.

The Director also proposes to adopt a new regulation, Section 339.9, in order to adopt the form CHSWC-1 "Workers' Occupational Safety and Health Education Fee Annual Report" form that insurers will be required by Section 339.8 to submit with their fee payment. In addition to requiring the information specified in Section 339.7, the proposed form CHSWC-1 form will advise the insurer that payment is due on or before April 1 of the current year and provide a space for the insurer to calculate the fee owed by the insurer.

DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

The Director has made the following initial determinations:

- Significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None. The economic effects of the proposed regulations will be minor and will be limited to insurance companies who transact workers' compensation insurance. These effects are discussed in the analysis of the fiscal impact of these proposed amendments, dated July 8, 2002. This document is included in the

rulemaking file.

- Adoption of these regulations will not: (1) create or eliminate jobs within the State of California, (2) create new businesses or eliminate existing businesses within the State of California, or (3) affect the expansion of businesses currently doing business in California.
- Effect on Housing Costs: None.
- Cost impacts on representative private person or business: 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 action. The proposed regulations would only apply to workers' compensation insurers. A representative workers' compensation insurer would incur minimal compliance costs as described in the analysis of the economic impact of these proposed amendments, dated July 8, 2002. This document is included in the rulemaking file.

FISCAL IMPACTS

- Costs or savings to state agencies or costs/savings in federal funding to the State: None. The proposed regulations will not affect any federally funded program.
- 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 for which Government Code Sections 17500 through 17630 require reimbursement: None. The proposed regulations do not apply to local agencies or school districts.
- Other nondiscretionary costs/savings imposed upon local agencies: None. The proposed regulations do not apply to local agencies or school districts.

EFFECT ON SMALL BUSINESS

The proposed regulations will not affect small businesses. The proposed regulations only apply to insurance companies. Government Code Section 11342.610(b)(2) provides that the term "small business" does not include an insurance company.

PUBLIC DISCUSSIONS OF PROPOSED REGULATIONS

A pre-notice workshop, pursuant to Government Code Section 11346.45, is not required to implement the proposed regulations because the issues addressed are not so complex that they cannot easily be reviewed during the comment period.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the Director must determine that no reasonable alternative considered or that has otherwise been identified and brought to the Director's attention would be more effective in carrying out the purpose for which the actions are proposed or would be as effective and less burdensome to affected private persons than the proposed actions.

The Director invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations either at the scheduled hearing or during the written comment period.

Pursuant to Government Code Section 11346.3(c), the Director finds that it is necessary for the health, safety, or welfare of the people of the state that the reporting requirement imposed by Section 339.8 apply to the insurers subject to that section.

This finding is based on need to accurately account for the fees owed by and collected from the insurers. Accurate accounting is required in order to ensure that adequate and uninterrupted funding is provided for the continuing operation of the workers' occupational safety and health training and education program and the insurance loss control services coordinator.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS / INTERNET ACCESS

An Initial Statement of Reasons and the text of the proposed regulations have been prepared and are available from the contact person named in this notice. The express terms of the proposed regulations are written in plain English, and are available from the contact person named in this notice.

The entire rulemaking file will be made available for inspection and copying at the address indicated below or a copy will be provided upon written request.

As of the date of this notice, the rulemaking file consists of the notice, the Initial Statement of Reasons, the proposed text of the regulations in strikeout/underline format and the Form 399. In addition, the Notice, Initial Statement of Reasons, and proposed text of regulations may be accessed and downloaded from the Department of Industrial Relations' website at www.dir.ca.gov

PRESENTATION OF ORAL AND/OR WRITTEN COMMENTS AND DEADLINE FOR SUBMISSION OF WRITTEN COMMENTS

Members of the public are invited to present oral and/or written statements, arguments or evidence at the public hearing. If you provide a written comment, it will not be necessary to present your comment as oral testimony at the public hearing.

Any person may submit written comments on the proposed regulations, prior to the public hearings to:

Ms. Marcela Reyes,
Regulations Coordinator
Department of Industrial Relations
Division of Workers' Compensation
Post Office Box 420603
San Francisco, CA 94142-0603

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 September 13, 2002. Equal weight will be accorded to oral and written materials.

COMMENTS TRANSMITTED BY E-MAIL OR FACSIMILE

The Director will accept written comments transmitted by e-mail provided they are sent to the following e-mail address: dwcrules@hq.dir.ca.gov

The Director will also accept written comments transmitted by facsimile provided they are directed to the attention of Marcela Reyes and sent to the following facsimile number: (415) 703-4720.

Due to the inherent risks of non-delivery by electronic communications, the Director suggests, but does not require, that a copy of any comments transmitted electronically be submitted by regular mail.

Comments sent to other e-mail addresses or other facsimile numbers will not be accepted. Comments sent by e-mail or facsimile are subject to the deadline set forth above for written comments.

AVAILABILITY OF RULEMAKING FILE AND LOCATION WHERE RULEMAKING FILE MAY BE INSPECTED

Any interested person may inspect a copy or direct questions about the proposed regulations, the Initial Statement of Reasons, and any supplemental information contained in the rulemaking file.

The rulemaking file, including the Initial Statement of Reasons, the complete text of the proposed regulations and all documents relied upon in this rulemaking may be inspected during normal business hours (8:00 a.m. to 5:00 p.m., Monday through Friday, excluding public holidays) at the following location:

Division of Workers' Compensation
455 Golden Gate Avenue, Ninth Floor
San Francisco, California 94102

CONTACT PERSON:

Nonsubstantive inquiries concerning this action, such as requests to be added to the mailing list for rulemaking notices, requests for copies of the text of the proposed regulations, the Initial Statement of Reasons, and any supplemental information contained in the rulemaking file may be requested in writing at the same address. The contact person is:

Ms. Marcela Reyes
Regulations Coordinator
Department of Industrial Relations
Division of Workers' Compensation
Post Office Box 420603
San Francisco, CA 94142

The telephone number of the contact person is (415) 703-4600.

BACK-UP CONTACT PERSON / CONTACT PERSON FOR SUBSTANTIVE QUESTIONS

To obtain responses to questions regarding the substance of the proposed regulations, or in the event the contact person is unavailable, inquiries should be directed to: James M. Robbins, Industrial Relations Counsel, at the same address and telephone number as noted above for the contact person.

AVAILABILITY OF CHANGES FOLLOWING PUBLIC HEARING

If the Director makes changes to the proposed regulations as a result of the public hearing and public comment received, the modified text with changes clearly indicated will be made available for public comment for at least 15 days prior to the date on which the regulations are adopted.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon the completion of this rulemaking, a Final Statement of Reasons will be prepared. The Final Statement of Reasons will be available upon request from the contact person named in this notice or it may be accessed on the website: www.dir.ca.gov

AUTOMATIC MAILING

A copy of this Notice, including the Informative Digest, will automatically be sent to those interested persons on:

- the Division of Workers' Compensation's mailing list;
- the Division of Occupational Safety and Health Loss Control Certification Unit's mailing list; and,
- all insurers admitted to transact workers' compensation insurance in California.

If adopted, the regulations as amended will appear in Title 8, California Code of Regulations, Section 339.8.

-o0o-