

**STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
OFFICE OF SELF INSURANCE PLANS**

INITIAL STATEMENT OF REASONS

**Workers' Compensation – Self Insurance Regulations
(Title 8, California Code of Regulations, Sections 15201, 15209, 15210,
15210.1, 15475, 15477, 15481, 15484, 15496 and 15497)**

INTRODUCTION

Labor Code section 3700 requires every employer in California, except the State, to secure the payment of workers' compensation either by being insured against liability to pay compensation by one or more insurers duly authorized to write workers' compensation insurance in this state, or by securing from the Department of Industrial Relations ("Department") a certificate of consent to self-insure. A certificate of consent to self-insure may be secured either as an individual employer, or as one employer in a group of employers, upon furnishing proof satisfactory to the Director of the Department of Industrial Relations ("Director") of ability to self-insure and to pay any compensation that may become due to its employees. Labor Code section 3701 requires private self-insuring employers, including groups of self-insuring employers, to post security deposits with the Department and specifies how those deposits are to be calculated. Labor Code section 3702.10 authorizes the Director to adopt, amend, and repeal regulations reasonably necessary to carry out the purposes of Labor Code sections 3701.

On September 19, 2012, the Governor signed SB 863 (Chapter 363, Statutes of 2012). Among other things, SB 863, which took effect on January 1, 2013, amended Labor Code section 3701 to change the manner in which security deposits are calculated. Section 3701, subdivision (c), as amended, requires that the calculation of a self-insurer's projected losses and expenses upon which the security deposit is based "be reflected in a written actuarial report that projects ultimate liabilities of the private self-insured employer at the expected actuarial confidence level, to ensure that all claims and associated costs are recognized. The written actuarial report shall be prepared by an actuary meeting the qualifications prescribed by the Director in regulation."

As a result of SB 863's approval at the end of the legislative session, insufficient time remained between signing of the bill and its January 1, 2013, effective date to allow adoption of the required implementing regulations through the normal regulatory process. To give private self-insured employers and self-insured groups the necessary guidance regarding the required content of the annual actuarial reports they would be required to submit under Labor Code section 3701, subdivision (c) before the new reporting requirements went into effect on January 1, 2013, the versions of Title 8, California Code of Regulations, Sections 15201, 15209, 15210, 15210.1, 15475, 15477, 15481, 15484, 15496 and 15497 which are currently in effect were adopted on an emergency basis. The existing emergency regulations remain in effect until July 2, 2013.

The regulations proposed in this rulemaking action would permanently: define the content of the annual actuarial reports required by Labor Code section 3701, subdivision (c); prescribe the

qualifications for the actuaries who may prepare those required annual actuarial reports; and bring the requirements for self-insurers' security deposits into conformity with Labor Code section 3701, subdivision (c) as amended by SB 863.

PROPOSED REGULATIONS

Section 15201. Definitions.

Existing section 15201 provides definitions for commonly used terminology related to workers' compensation self-insurance.

The proposed amendments to section 15201 make two changes without regulatory effect: 1) the location of some existing definitions is changed, without changing the definitions themselves, to place the list of definitions in alphabetical order; and 2) existing subdivision designations (a) through (kk) are deleted to facilitate the addition of future definitions in their correct alphabetical sequence without the need to amend multiple subdivision designations.

Five new definitions are added for previously undefined terms necessary for the implementation of Labor Code section 3701, as amended.

The proposed amendment to section 15201 adds a new definition for "Actuarial Study" which contains the results of the actuarial analysis and study required by Labor Code section 3701, as amended, and refers to the requirements specified in proposed new section 15209 for private self-insurers and in the proposed amendment to section 15481 for self-insured groups.

The proposed amendment to section 15201 adds a new definition for "Actuarial Summary" which is a summary of the Actuarial Study that will be electronically filed with the Office of Self-Insurance Plans containing data specified in proposed new section 15209 for private self-insurers and in the proposed amendment to section 15481 for self-insured groups.

The proposed amendment to section 15201 adds a new definition for "Chief" which replaces, and is synonymous with the existing term "Manager." New language is also added to the existing definition of "Manager" clarifying that it is synonymous with the term "Chief."

The proposed amendment to section 15201 adds a new definition for "Public Self Insurer or Public Self Insured Employer" as those entities are exempt from the new reporting requirements of Labor Code section 3701, as amended.

The proposed amendment to section 15201 adds a new definition for a "Qualified Actuary" who is authorized to prepare Actuarial Studies and refers to the qualifications specified in proposed new section 15209 for private self-insurers and in the proposed amendment to section 15481 for self-insured groups.

Section 15209. Actuarial Studies and Reports.

Proposed new section 15209 specifies the content and deadline for submission of the annual actuarial reports required by Labor Code section 3701, subdivision (c), as amended, and echo the statutory requirements.

Proposed new section 15209, subdivisions (a)(2) and (a)(3) specify the qualifications for actuaries authorized to prepare the required annual actuarial reports as directed by Labor Code section 3701, subdivision (c). These qualifications are based on the existing requirements contained in section 15471, subdivision (d) for actuaries preparing actuarial projections for group self-insurers. An additional professional category of qualification, member of the Society of Actuaries who is qualified to sign a statement of actuarial opinion on loss reserves, has been added as a result of verbal recommendations from the actuarial community. A new requirement has also been added requiring a qualified actuary or actuarial firm to carry one million dollars (\$1,000,000.00) of professional liability and errors and omissions insurance in order to provide financial protection to the public from actuarial errors or negligence.

In addition, proposed new section 15209, subdivision (h) specifies penalties for failure to timely submit the required reports as authorized by Labor Code section 3702.9.

Section 15210. Security Deposit.

Existing section 15210 specifies the minimum security deposit requirements for private self-insured employers.

The proposed amendment amends subdivision (c) regarding the calculation of the minimum required security deposit for private self-insurers to bring it into accord with the new requirements of Labor Code section 3701, as amended, and changes the term “Manager” to “Chief” in subdivisions (g) and (h).

Section 15210.1. Adjustments in the Amount of Security Deposit.

Existing section 15210.1 specifies the procedures for annual review and adjustment of the required security deposits for private self-insured employers.

The proposed amendment changes the term “Manager” to “Chief” throughout the section and amends subdivisions (b), regarding increases and decreases in the required security deposits for private self-insurers. and (d), specifying requirements for additional security deposits, to bring them into accord with the new requirements of Labor Code section 3701, as amended.

Section 15475. Board of Trustees.

Existing section 15475 specifies the duties of the Boards of Trustees of group self-insurers.

The proposed amendment amends subdivisions (d)(7), regarding the duty of the Board of Trustees of a group self-insurer to contract with an actuary to prepare an annual actuarial study,

and (d)(8), regarding the collection of contributions from employers who are members of the group, to bring them into accord with the new requirements of Labor Code section 3701, as amended, and changes the term “Manager” to “Chief” in subdivision (d)(2) and (d)(11).

Section 15477. Surplus or Insufficient Funding.

Existing section 15477 specifies the procedures for addressing both surplus and insufficient funding of self-insured groups.

The proposed amendment changes the term “Manager” to “Chief” throughout the section and amends subdivisions (a)(1) and (a)(2), regarding the transfer or release of surplus group self-insured funds on deposit, to bring them into accord with the requirements of Labor Code section 3701, as amended.

Section 15481. Actuarial Studies and Reports.

Existing section 15481, entitled “Annual Actuarial Certification of Losses” requires self-insured groups to obtain an annual actuarial study.

The proposed amendment changes the title of the section to “Actuarial Studies and Reports” and replaces existing section 15481 with new language specifying the required content of the annual actuarial reports required of self-insurers by Labor Code section 3701, subdivision (c), as amended. The text of the proposed amendment is substantially identical to the language of proposed new section 15209 with minor variations applicable only to group self-insurers.

Proposed new section 15481, subdivisions (a)(3) and (a)(4) specify the qualifications for actuaries authorized to prepare the required annual actuarial reports as directed by Labor Code section 3701, subdivision (c). These qualifications are identical to those specified in proposed new section 15209, subdivisions (a)(2) and (a)(3). The basis for the proposed qualifications is discussed above in the discussion of proposed new section 15209.

Finally, as in proposed new section 15209, subdivision (h), discussed above, section 15481, subdivision (h), as amended, specifies penalties for failure to timely submit the required reports as authorized by Labor Code section 3702.9.

Section 15484. Continuing Financial Capacity of Group Self Insurers.

Existing section 15484 requires group self-insurers to submit annual financial statements to the Office of Self-Insurance Plans and to provide any additional financial documentation necessary to demonstrate the group’s financial capacity to fund the group’s workers’ compensation liabilities.

The proposed amendment changes the term “Manager” to “Chief” throughout the section and amends subdivision (e), regarding demonstration of sufficient income from annual member contributions and/or assessments, and subdivision (g), specifying circumstances under which a self-insured group’s solvency is presumed to be impaired, to bring them into accord with the new

requirements of Labor Code section 3701, as amended. In addition, the proposed amendment corrects a typographical error in the title of the section by changing it from “Continuing Financial Capacity of Groups Self Insurers” to “Continuing Financial Capacity of Group Self Insurers.”

Section 15496. Group Self Insurer’s Security Deposit.

Existing section 15496 specifies the minimum security deposit requirements for self-insured groups.

The proposed amendment amends subdivisions (a) and (c), regarding calculation of a group self-insurer’s required security deposit, to bring them into accord with the new requirements of Labor Code section 3701, as amended; amends the reference to “Labor Code Section 3701(b)” in subdivision (b)(1) to refer to “Labor Code Section 3701(c)”, which is the correct reference to Labor Code section 3701, as amended; and changes the term “Manager” to “Chief” in subdivision (g).

Section 15497. Adjustments in the Amount of a Group Self Insurer's Security Deposit.

Existing section 15497 specifies the procedures for annual review and adjustment of the required security deposits for self-insured groups.

The proposed amendment changes the term “Manager” to “Chief” throughout the section and amends subdivisions (a) and (d), regarding review and adjustment of a group self-insurer’s required security deposit, to bring them into accord with the requirements of Labor Code section 3701, as amended.

Comparable Federal Statutes and Regulations:

None.

**ECONOMIC IMPACT ASSESSMENT
(Government Code section 11346.3, subdivision (b))**

- (A) The creation or elimination of jobs within the State of California: The Department has determined that there will be no significant impact on job creation or elimination. The Department believes that the cost impacts, if any, from the implementation of the new statutory reporting requirements under Labor Code section 3701, as amended, will be nominal, as self-insured groups are already required to obtain annual actuarial reports and most private self-insured employers already voluntarily obtain actuarial reports for their own use. Consequently, the Department expects the employment decisions of the 791 individually self-insured California businesses and self-insured groups that are currently self-insured for workers’ compensation purposes to be unaffected by the proposed regulations.
- (B) The creation of new businesses or the elimination of existing businesses within the State of California: The Department has determined that there will be no impact on the

creation of new businesses or the elimination of existing businesses. There are currently 791 individually self-insured California businesses and self-insured groups that are self-insured for workers' compensation purposes. Due to the nominal cost impacts expected to result from the proposed regulations, the Department does not anticipate that any decisions to cease doing business in California by those existing self-insured employers will be influenced by the proposed regulations. Similarly, the Department does not anticipate that these proposed regulations implementing the new statutory reporting requirements under Labor Code section 3701, as amended, will influence the decision making processes of individuals considering the creation of new businesses in California.

- (C) The expansion of businesses currently doing business within the State of California: There are currently 791 individually self-insured California businesses and self-insured groups that are self-insured for workers' compensation purposes. Due to the nominal cost impacts expected to result from the proposed regulations, the Department does not anticipate that any decisions to expand by those existing self-insured employers will be influenced by the proposed regulations.
- (D) The benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment: The proposed regulations will benefit the health and welfare of California residents and workers employed by private self-insuring employers and employers who are part of a group of self-insuring employers by implementing amendments to Labor Code section 3701, subdivision (c) intended to ensure that the security deposits posted by private self-insuring employers and self-insured groups are adequate to cover all of their workers' compensation claim liabilities and associated costs.

Technical, Theoretical or Empirical Studies, Reports or Documents:

The Department did not rely on any technical, theoretical or empirical studies, reports or documents in proposing this regulatory action.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Director must determine that no reasonable alternative that has been considered by the Department or that has otherwise been identified and brought to the Department's attention 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. To date, no reasonable alternative has been brought to the attention of the Director that would be as effective and less burdensome to affected persons than the proposed action.

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