

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

NOTICE OF PROPOSED RULEMAKING

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

NOTICE IS HEREBY GIVEN that the Director (“Director”) of the Department of Industrial Relations (“Department”) proposes to amend sections 15201, 15210, 15210.1, 15475, 15477, 15481, 15484, 15496 and 15497 and to adopt new section 15209 of Subchapter 2, Chapter 8, Division 1, Title 8, California Code of Regulations to implement amendments to the California Labor Code regarding the administration of Self Insurance Plans pursuant to SB 863 (Chapter 363, Statutes of 2012), as described below, after considering all comments, objections and recommendations regarding the proposed action. These regulations were amended and adopted on an emergency basis effective January 1, 2013, and are currently in effect in a substantially similar form to that proposed herein.

PUBLIC HEARING

The Department will hold a public hearing at 10:30 a.m. on Thursday, June 13, 2013, at 1515 Clay Street, Suite 701, Oakland, California. The hearing room is wheelchair accessible. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. The Department requests, but does not require, that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department. The written comment period closes at 5:00 p.m. on Monday, June 10, 2013. The Department will only consider comments received at the Office of Self Insurance Plans (“OSIP”) by that time. Submit comments to:

Jon Wroten, Chief
Office of Self Insurance Plans
2265 Watt Avenue, Suite 1
Sacramento, CA 95825

Comments may also be submitted prior to the close of the written comment period by e-mail to OSIPRulemaking@dir.ca.gov or by facsimile, to the attention of Jon Wroten, at (916) 483-1535.

AUTHORITY AND REFERENCE

Labor Code sections 55 and 3702.10 authorize the Director to adopt, amend, and repeal regulations reasonably necessary to implement and make specific the provisions of Chapter 2 of Division 1 of the California Labor Code and to carry out the purposes of Article 1 (commencing with section 3700), Article 2 (commencing with section 3710), and Article 2.5 (commencing with section 3740) of the California Labor Code. The proposed regulations implement, interpret and make specific section 3701, subdivision (c) of the California Labor Code.

INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW

The objective of the proposed rulemaking action is to exercise the Department's authority under Labor Code section 3702.10 to adopt and amend regulations necessary to define the content of the annual actuarial reports required by Labor Code section 3701, subdivision (c), to prescribe the qualifications for the actuaries who may prepare those required annual actuarial reports, and to bring the requirements for self-insurers' security deposits into conformity with Labor Code section 3701, subdivision (c) as amended by SB 863 (Chapter 363, Statutes of 2012).

Existing Labor Code section 3700 requires every employer except the State to secure the payment of compensation by either 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 a certificate of consent to self-insure either as an individual employer, or as one employer in a group of employers, which may be given upon furnishing proof satisfactory to the Director of ability to self-insure and to pay any compensation that may become due to his or her employees. Existing 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.

Among other things, SB 863 amended Labor Code section 3701 to change the calculation of security deposits. Effective January 1, 2013, Labor Code 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."

The regulations proposed in this rulemaking action would 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.

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 the amendments to Labor Code section 3701, subdivision (c) discussed above which are 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.

Inconsistency or Incompatibility with Existing State Regulations:

None. Proposed new section 15209 and sections 15201, 15210, 15210.1, 15475, 15477, 15481, 15484, 15496 and 15497, amendments to which are proposed by this rulemaking, constitute the entirety of the state regulations addressing the content of the annual actuarial reports required by Labor Code section 3701, subdivision (c), the qualifications for the actuaries who may prepare those required annual actuarial reports, and the requirements for self-insurers' security deposits. Therefore, the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

Comparable Federal Statutes and Regulations:

None.

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.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

Costs or Savings to State Agencies:

No costs or savings to state agencies will result as a consequence of the proposed action.

Determination of Mandate:

The Director has determined that the proposed regulations do not impose a mandate on local agencies or school districts or 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 will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, these 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."

Cost or Savings to Local Agencies or School Districts Required to be Reimbursed:

No costs to local agencies or schools are required to be reimbursed in accordance with Government Code Sections 17500 through 17630.

Other Non-discretionary Costs or Savings Imposed on Local Agencies or School Districts:

This proposal does not impose non-discretionary costs or savings imposed on local agencies or school districts.

Costs or Savings in Federal Funding to the State:

This proposal will not result in costs or savings in federal funding to the state.

Impact on Housing Costs:

The Department has made an initial determination that the amendment of these regulations will not have a significant effect on housing costs.

Cost Impact on Representative Private Persons or Businesses:

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. Individual private self-insurers may find the new security deposit requirements to be slightly higher than current requirements and may incur some additional costs related to preparation of the required annual actuarial reports, but the increased costs are necessary to ensure that the security deposits posted are adequate to cover the self-insurer's liabilities.

Impact on Business:

The Department has made an initial determination that the proposed regulations will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California business to compete with businesses in other states.

Results of Economic Impact Assessment:

The Department has made an assessment that the proposed regulations will not (1) create or eliminate jobs within California, (2) create new business or eliminate existing businesses within California, or (3) affect the expansion of businesses currently doing business within California. 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.

Business Reporting Requirement:

The proposed regulations define the content of the annual actuarial reports that are required by Labor Code section 3701, subdivision (c), and prescribe the qualifications for the actuaries who may prepare those required annual actuarial reports, but the proposed regulations do not impose

any additional reporting requirements upon California businesses that are not already required by statute.

Small Business Impact:

The Department has determined that the proposed regulations will have no adverse impact on small business because most, if not all, self-insured employers and members of self-insured groups are not small businesses. To the extent that any small businesses are members of self-insured groups, they may find that the new security deposit requirements result in slightly higher contributions to the group than current requirements, but the increased costs, if any, are necessary to ensure that the security deposits posted are adequate to cover the group self-insurer's liabilities.

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 as and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. To date, no reasonable alternative has been brought to the attention of the Director that would be as effective as 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.

AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, RULEMAKING FILE AND DOCUMENTS SUPPORTING THE RULEMAKING FILE/INTERNET ACCESS

An Initial Statement of Reasons and the text of the proposed regulations in plain English have been prepared and are available from the Regulations Coordinator named in this notice. The entire rulemaking file will be made available for inspection and copying at the address indicated below.

As of the date of this Notice, the rulemaking file consists of this Notice, the Initial Statement of Reasons, the Form 399 and the proposed text of the regulations.

Any interested person may inspect a copy or direct questions about the proposed regulations and any supplemental information contained in the rulemaking file. The rulemaking file will be available for inspection at the Department of Industrial Relations, Office of Self Insurance Plans, 2265 Watt Avenue, Suite 1, Sacramento, California 95825, between 8:00 A.M. and 5:00 P.M., Monday through Friday. Copies of the proposed regulations, Initial Statement of Reasons and

any information contained in the rulemaking file may be requested in writing to the Regulations Coordinator.

In addition, the Notice, Initial Statement of Reasons and proposed text of the regulations being proposed may be accessed and downloaded from the Department's website at <http://www.dir.ca.gov/SIP/>. To access them, click on the "Proposed Regulations – Rulemaking" link.

CONTACT PERSON FOR GENERAL QUESTIONS

Non-substantive 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:

Tina Freese
Workers' Compensation Compliance Officer/Regulations Coordinator
Department of Industrial Relations
Office of Self Insurance Plans
2265 Watt Avenue, Suite 1
Sacramento, CA 95825
E-mail: OSIPRulemaking@dir.ca.gov

The telephone number of the contact person is (916) 574-0737.

CONTACT PERSON FOR SUBSTANTIVE QUESTIONS

In the event the contact person above is unavailable, or for questions regarding the substance of the proposed regulations, inquiries should be directed to:

Jon Wroten, Chief
Department of Industrial Relations
Office of Self Insurance Plans
2265 Watt Avenue, Suite 1
Sacramento, CA 95825
E-mail: OSIPRulemaking@dir.ca.gov

The telephone number of this contact person is (916) 574-0300.

AUTOMATIC MAILING

A copy of this Notice, the Initial Statement of Reasons and the text of the regulations, will automatically be sent to those interested persons on the Director's mailing list. If adopted, the regulations with any final amendments will appear in Title 8 of the California Code of

Regulations, commencing with section 1. The text of the final regulations also may be available through the website of the Office of Administrative Law at www.oal.ca.gov.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the close of the forty-five (45) day public comment period, the Director may adopt the proposed regulations. As a result of public comments, either oral or written, that are received by the Director regarding this proposal, the Director may determine that changes to the proposed regulation are appropriate. If the Director makes substantive modifications which are sufficiently related to the originally proposed text, the Department will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Director adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Tina Freese at the above address. The Department will accept further written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF FINAL STATEMENT OF REASONS

The Department is required to prepare a Final Statement of Reasons. Once the Department has prepared a Final Statement of Reasons, a copy will be made available to anyone who requests it. Requests for copies should be addressed to the Department Contact Person identified in this Notice.

DEPARTMENT INTERNET WEBSITE

The Department maintains an Internet website for the electronic publication and distribution of written material. Copies of this Notice of Proposed Rulemaking, the Initial Statement of Reasons, and the text of the regulations in underline and strikethrough can be accessed through our website at <http://sip.dir.ca.gov>.