

**STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
Division of Workers' Compensation**

NOTICE OF PROPOSED RULEMAKING

Subject Matter of Regulations: Copy Service Fee Schedule

**TITLE 8, CALIFORNIA CODE OF REGULATIONS,
SECTIONS 9980-9984, 9990, 9992, 9994, and 10208.7**

NOTICE IS HEREBY GIVEN that the Acting Administrative Director of the Division of Workers' Compensation ("DWC") pursuant to the authority vested in her by Labor Code sections 59, 133, 4616, 5307.3, and 5307.9 proposes to amend, adopt and repeal the proposed regulations described below to implement the provisions of Labor Code section 5307.9, of Senate Bill 863 (Chapter 363, stats. of 2012, effective January 1, 2013). Labor Code section 5307.9 mandates this Copy Service Fee Schedule for copy and related services and provides that the schedule shall specify the services allowed and shall require specificity in billing for these services. The proposed amendments provide for a maximum flat fee of \$180 for records up to 500 pages and includes all associated services such as pagination, witness fees for delivery of records, and subpoena preparation. For excess over 500 pages, an additional per page fee of ten cents per page is allowed. Certificates of no records would be payable at a maximum of \$75. The proposed changes to regulations also include allowing DWC to bill \$85.00 an hour instead of \$40.00 for electronic requests made under the Public Records Act and to charge \$1.00 for CDs of those records. In addition, the proposed changes include an allowance for DWC to dispose of paper adjudication documents after 20 years and replaces deposits required for DWC transcripts with an up-front \$150 fee for transcripts of 50 pages and under. For transcripts over 50 pages, an extra \$3.00 a page would be paid before the transcript is released.

PROPOSED REGULATORY ACTION

The Department of Industrial Relations, Division of Workers' Compensation, proposes to adopt, Article 11, Subchapter 1, of Title 8, California Code of Regulations, sections 9980-9984, amend sections 9990, and 9992, and repeal section 9994, and amend Article 8, Subchapter 1.8.5, of Title 8, California Code of Regulations, section 10208.7.

Adopt Section 9980	Definitions
Adopt Section 9981	Bill for Copy Services
Adopt Section 9982	Allowable Services
Adopt Section 9983	Fees for Copy and Related Services
Adopt Section 9984	Declaration of Completion of Records Obtained by Authorization
Amend Section 9990	Division Fees for Transcripts; Copies of Documents; Certification;

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Amend Section 9992	Case File Inspection; Electronic Transactions
Repeal Section 9994	Payment of Fees in Advance to the Division
Amend Section 10208.7	Payment of Transcripts
	Retention, Return and Destruction of Records and Exhibits

TIME AND PLACE OF PUBLIC HEARING

A public hearing has been scheduled to permit all interested persons the opportunity to present statements or arguments, oral or in writing, with respect to the proposed regulatory action, on the following date:

Date: Tuesday, July 1, 2014

Time: 10:00 a.m. to 5:00 p.m., or until conclusion of business

Place: Elihu Harris State office Building – Auditorium

1515 Clay Street

Oakland, CA 94612

The State Office Building and its Auditorium are accessible to persons with mobility impairments. Alternate formats, assistive listening systems, sign language interpreters, or other types of reasonable accommodations to facilitate effective communication for persons with disabilities are available upon request. Please contact the State Wide Disability Accommodation Coordinator, Kathleen Estrada, at 1-866-681-1459 (toll free), or through the California Relay Service by dialing 711 or 1-800-735-2929 (TTY/English) or 1-800-855-3000 (TTY/Spanish) as soon as possible to request assistance.

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 Acting Administrative 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.

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 of Industrial Relations, Division of Workers' Compensation. The written comment period closes at 5:00 P.M., on July 1, 2014. The Division of Workers' Compensation will only consider comments received at the Department of Industrial Relations, Division of Workers' Compensation by that time. Equal weight will be accorded to oral comments presented at the hearing and written materials.

Submit written comments concerning the proposed regulations prior to the close of the public comment period to:

Maureen Gray

Regulations Coordinator
Department of Industrial Relations
P.O. Box 420603
San Francisco, CA 94612

Written comments may be submitted via facsimile transmission (FAX), addressed to the above-named contact person at (510) 286-0687. Written comments may also be sent electronically (via e-mail) using the following e-mail address: dwcrules@dir.ca.gov.

Unless submitted prior to or at the public hearing, Ms. Gray must receive all written comments no later than 5:00 P.M., on July 1, 2013.

AUTHORITY AND REFERENCE

The Acting Administrative Director is undertaking this regulatory action pursuant to the authority vested in her by Labor Code sections 59, 133, 5307.3, 5307.9.

Reference is to Labor Code sections 5307.3, 5307.9; Business and Professions Code section 22450; Code of Civil Procedure section 2019.030; and Evidence Code sections 1562 and 1563.

INFORMATIVE DIGEST/POLICY OVERVIEW

The regulations are required by legislative enactment – Senate Bill 863 (Chapter 363, stats. of 2012, effective January 1, 2013), which directed the Administrative Director to adopt a schedule of reasonable maximum fees payable for copy and related services.

Labor Code section 5307.9 mandates this Copy Service Fee Schedule for copy and related services and provides that the schedule shall specify the services allowed and shall require specificity in billing for these services.

To implement this SB 863 fee schedule, DWC proposes to add sections 9980-9984, and to make some related changes to sections 9990, 9992, and 10208.7, and to repeal section 9994.

The proposed new regulations provide for a maximum flat fee of \$180 for records up to 500 pages and includes all associated services such as pagination, witness fees for delivery of records, and subpoena preparation. For excess over 500 pages, an additional per page fee of ten cents per page is allowed. Certificates of no record would be payable at a maximum of \$75. The maximum fee for release of information services of witness costs is controlled by Evidence Code section 1563.

The proposed changes to regulations include allowing DWC to bill \$85.00 an hour instead of \$40.00 an hour for electronic requests made under the Public Records Act and to charge \$1.00 for CDs of these records. The proposed changes also include an allowance for DWC to dispose of paper adjudication documents after 20 years. The proposed changes also replace deposits required for DWC transcripts with an up-front \$150 fee for transcripts of 50 pages and under.

For transcripts over 50 pages, an extra \$3.00 a page would be paid before the transcript is released.

Labor Code section 5307.9 provides that the schedule must not allow payment for services provided within 30 days of a request by an injured worker or his or her authorized representative to an employer, claims administrator or workers' compensation insurer for copies of records in the employer's, claims administrators', or workers' compensation insurer's possession that are relevant to the employee's claim. It is not uncommon for an employee's attorney to subpoena records even though they have been subpoenaed by defendant. If the claims adjuster fails to provide notice to the employee that records are being sought either by subpoena or authorization, then the fee schedule would allow the employee to obtain those records. Without notice that records are being sought, the employee would not know that the second request for records was a duplicate request.

The schedule will apply to all copy and related services regardless of whether the costs are claimed under the authority of medical treatment, which is governed by Labor Code section 4600, medical-legal, which is governed by Labor Code section 4620, or costs, which are governed by Labor Code section 5811. Labor Code section 5307.9, allows the employer and the copy service provider to contract for costs outside the fee schedule.

The proposed regulations, amendments to the regulations, and repeal of a regulation are intended to implement, interpret or make specific Labor Code section 5307.9 as follows:

Proposed Section 9980 - Definitions

- This section defines key terms used in the copy service fee schedule.
- "Copy and related services," "claims administrator," "custodian of records," "set of records," and "Professional Photocopier," are defined to ensure that their meanings, as used in the regulations, will be clear to the regulated public.

Proposed Section 9981 Bill for Copy Services

- This section makes billing for copy services specific.
- Billing codes must be used for administrative and copy fees.
- Bills must include a statement that there was no violation of Labor Code section 139.32, and must include a copy of the professional photocopier certificate.

Proposed Section 9982 Allowable Services

This section covers what services are included in the copy service fee schedule.

- The fee schedule covers copy and related services for records that are relevant to an injured worker's claim.
- The fee schedule covers records which were not timely served.
- The fee schedule excludes payment for services provided within 30 days of a request by an injured worker for copies of records in defendants' possession.
- The fee schedule excludes records from the Workers' Compensation Insurance Rating Bureau, the DWC's Electronic Data Exchange System, and the Employment Development Department.

Proposed Section 9983 Fees for Copy and Related Services

This section is the fee schedule for copy and related services.

- A \$180 flat fee covers a set of records up to 500 pages and is inclusive of all associated services such as pagination, witness fees, subpoena preparation, and release of information services.
- For excess over 500 pages, an additional per page fee of ten cents per page is allowed.
- For additional sets of records ordered within 30 days, \$50.00 is allowed for paper form records.
- For additional sets of records ordered within 30 days, \$5.00 is allowed for electronic form records.
- If electronic copies are available after 30 days, \$30 is allowed.
- For certificates of no record, or cancellations, \$75 is allowed.
- The maximum fee for release of information services of witness costs is controlled by Evidence Code section 1563.

Proposed Section 9984 Declaration of Completion of Records Obtained by Authorization

- This section requires the custodian of records to issue a declaration that all responsive documents have been produced with pre-lawsuit production of documents via authorization.
- This section will reduce duplicate requests using a subpoena following the filing of an Application for Adjudication.

Proposed Amendments to Section 9990 Division Fees for Transcripts; Copies of Documents; Certifications; Case File Inspection; Electronic Transactions

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Copy Service Fee Schedule, California Code of Regulations, title 8, sections 9980, 9981, 9982, 9983, 9984, 9990, 9992, 9994, and 10208.7

This section has been amended to clarify that it covers fees charged by DWC.

- Allows DWC to bill \$85.00 an hour instead of \$40.00 an hour for electronic requests made under the Public Records Act.
- Allows DWC to charge \$1.00 for CDs containing electronic copies of documents.

Proposed Amendments to Section 9992 Payment of Fees in Advance to the Division

- Amended to clarify that the regulation covers fees paid to DWC.

Proposed Repeal of Section 9994 Payment for Transcripts to the Division

- This section has been repealed because deposits are no longer needed to order transcripts from DWC.

Proposed Section 10208.7 Retention, Return and Destruction of Records and Exhibits

- This section has been amended to allow DWC to dispose of paper adjudication documents after 20 years.

Objective and Anticipated Benefits of the Proposed Regulations:

The objective of the proposed regulations is to reduce disputes among copy service providers and payors in the workers' compensation system, thereby making the system more efficient. The proposed fee schedule will reduce litigation and will provide more certainty to copy service providers and parties in the workers' compensation system. A 2011 report by the Commission on Health and Safety and Workers' Compensation described a lien problem that was "choking the system." The study also found that the large number of copy service liens added burden on the courts and that much litigation could be avoided with a copy service fee schedule.

The proposed regulations will be beneficial to California employers and workers by reducing disputes and making the system more efficient.

This rulemaking also updates the hourly billing rate for electronic requests made under the Public Records Act to reflect more current costs, allows the DWC to dispose paper adjudication documents after 20 years to reduce storage costs, and provides a more efficient payment method for DWC transcripts.

Determination of Inconsistency/Incompatibility with Existing State Regulations:

The Acting Administrative Director has determined that the proposed regulations are not inconsistent or incompatible with existing regulations, except Workers' Compensation Appeals Board Rule 10740 which will be amended in a separate rulemaking. After conducting a review for any regulations that would relate to or affect this area, the Acting Administrative Director has concluded that these are the only regulations that concern a copy service fee schedule for purposes of Labor Code section 5307.9.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Acting Administrative Director has made the following initial determinations:

- Mandate on local agencies and school districts: None.
- Cost or savings to any state agency: The State Compensation Insurance Fund will have reduced workers' compensation costs. To the extent that state agencies are employers, there will be reduced workers' compensation costs.
- Cost to any local agency or school district which must be reimbursed in accordance with Government Code section 17500 through 17630: None.
- Other nondiscretionary cost or savings imposed on local agencies: None.
- Cost or savings in federal funding to the state: None.
- Cost impacts on a representative private person or business: The Acting Administrative Director is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- Significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: The Acting Administrative Director initially determines that the proposed regulations will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.
- Significant effect on housing costs: None.

Results of the Economic Impact Analysis/Assessment

The Acting Administrative Director concludes that it is (1) unlikely the proposal will create jobs within the State of California, (2) unlikely that the proposal will eliminate any jobs within the State of California, (3) unlikely that the proposal will create new businesses within the State of California, (4) unlikely that the proposal will eliminate any existing businesses within the State of California, and (5) unlikely the proposal would cause the expansion of businesses currently doing business within the State of California.

Benefits of the Proposed Action: The proposed fee schedule will reduce litigation and will provide more certainty to copy service providers and parties in the workers' compensation system.

Small Business Determination: The Acting Administrative Director has determined that the proposed regulations may affect small businesses, although not to a significant degree. There will be an impact on copy service providers.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Acting Administrative Director must determine that no reasonable alternative considered or brought to

the attention of the Acting Administrative Director'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 or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Acting Administrative Director invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period, or at the public hearing.

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:

Maureen Gray
Regulations Coordinator
Department of Industrial Relations
Division of Workers' Compensation
P.O. Box 420603
San Francisco, CA 94612
E-mail: mgray@dir.ca.gov
Telephone: (510) 286-7100

CONTACT PERSON FOR SUBSTANTIVE QUESTIONS

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

Carol N. Finuliar
Industrial Relations Counsel
Division of Workers' Compensation
P.O. Box 420603
San Francisco, CA 94142
Email: cfinuliar@dir.ca.gov
Telephone: (510) 286-7100

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

An Initial Statement of Reasons and the text of the proposed regulations in plain English have been prepared 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.

As of the date of this Notice, the rulemaking file consists of the Notice, the Initial Statement of Reasons, proposed text of the regulations, pre-rulemaking comments and the Economic Impact Statement (Form STD 399). In addition, the Notice, Initial Statement of Reasons, and proposed text of the regulations being proposed may be accessed and downloaded from the Division's website at http://www.dir.ca.gov/dwc/Laws_Regulations.htm. To access them, click on the "Proposed Regulations" link and scroll down the list of rulemaking proceedings to find the Copy Service Fee Schedule link.

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, Division of Workers' Compensation, 1515 Clay Street, 17th Floor, Oakland, California 94612, between 9:00 A.M. and 4:30 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 contact person.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, the Acting Administrative Director may adopt the proposed regulations substantially as described in this notice. If the Acting Administrative Director makes modifications which are sufficiently related to the originally proposed text, the Acting Administrative Director will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Acting Administrative Director adopts the regulations as received.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the contact person named in this Notice or may be accessed on the Division's website at www.dir.ca.gov.

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 Administrative Director's mailing list.

If adopted, the regulations as amended, will appear in California Code of Regulations, title 8, commencing with section 9980. The text of the final regulations also may be available through the website of the Office of Administrative Law at www.oal.ca.gov.