

**FINDING OF EMERGENCY
OF THE
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF WORKERS' COMPENSATION**

**REGARDING THE CALIFORNIA LABOR CODE
CALIFORNIA CODE OF REGULATIONS,
TITLE 8, ARTICLE 5.7
INTERPRETER SERVICES**

Government Code Section 11346.1 requires a finding of emergency to include a written statement with the information required by paragraphs (2), (3), (4), (5) and (6) of subsection (a) of Section 11346.5 and a description of the specific facts showing the need for immediate action.

The Acting Administrative Director of the Division of Workers' Compensation finds that the adoption of these regulations is necessary for the immediate preservation of the public peace, health and safety, or general welfare, as follows:

FINDING OF EMERGENCY

Basis for the Finding of Emergency

- On September 18, 2012, the Governor signed Senate Bill (SB) 863 (Chapter 363) which takes effect on January 1, 2013.
- Action is necessary in order to implement, on an emergency basis, the provisions of Labor Code Section 4600(g), which reads, in part:

(g) If the injured employee cannot effectively communicate with his or her treating physician because he or she cannot proficiently speak or understand the English language, the injured employee is entitled to the services of a qualified interpreter during medical treatment appointments. To be a qualified interpreter for purposes of medical treatment appointments, an interpreter is not required to meet the requirements of subdivision (f), but shall meet any requirements established by rule by the administrative director that are substantially similar to the requirements set forth in Section 1367.04 of the Health and Safety Code.

- Regulations are necessary to establish the definition of a "qualified interpreter for purposes of medical treatment appointments" so that employers can furnish, and non-English-speaking injured employees can receive, medical treatment in accordance with the statute.

- SB 863 also removed the authority for provisionally certified interpreters to act as interpreters in hearings. The regulation accordingly deletes that part of the definition of “provisionally certified” that referred to hearings and arbitrations.
- There is insufficient time to go through the regular rulemaking process.
- The Division, recognizing the need for implementation of emergency regulations, held a pre-rule-making discussion on October 2, 2012 to obtain input from stakeholders.
- Thereafter, on December 4, 2012 the Division posted draft regulations on its public forum for public comment.
- These emergency regulations will ensure that qualified interpreters will be recognized in the medical treatment aspects of the system, and only interpreters who are certified are used in the judicial aspects of the workers’ compensation system.
- Without the emergency regulations, injured workers will be deprived of qualified interpreters at medical examinations and certified interpreters at the judicial aspects of the workers’ compensation system, causing significant harm to the health and safety of injured workers who cannot proficiently speak or understand English.

Background

- The Division of Workers’ Compensation develops regulations to implement, interpret, and make specific California Government and Labor Codes.
- SB 863 was signed into law by Governor Brown on September 18, 2012 to become effective January 1, 2013.
- Prior to SB 863, non-certified interpreters would translate for injured workers at medical examinations and obtain reimbursement from the claims administrator and provisionally certified interpreters would translate at the judicial aspects of the workers’ compensation system.
- Labor Code section 4600(g) now states that the injured worker is entitled to the services of a “qualified interpreter” at medical appointments if the injured worker is not proficient in English. The current regulations have no provision regarding how an interpreter for medical treatments can meet the requirements to be a “qualified interpreter.”
- Without these regulations, there would be no definition of a “qualified interpreter” for the purposes of translating for an injured worker at medical appointments. A claims administrator is not required to pay for the services of a non-certified interpreter. Therefore, these emergency regulations are necessary to prevent significant harm to the health and safety of injured workers who cannot proficiently speak or understand English.

AUTHORITY AND REFERENCE

The Acting Administrative Director of the Division of Workers' Compensation, pursuant to the authority vested in her by Labor Code Sections 133, 5307.3, 5710 and 5811, proposes to amend Article 5.7 of Chapter 4.5, Subchapter 1 of Title 8, California Code of Regulations, sections 9795.1 and 9795.3.

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

- None.

INFORMATIVE DIGEST

Summary of Existing Laws

Labor Code section 4600 requires the employer to provide medical treatment that is reasonably required to cure or relieve an employee from the effects of his or her injury. Labor Code section 4600(g) provides that "if the injured employee cannot effectively communicate with his or her treating physician because he or she cannot proficiently speak or understand the English language, the injured employee is entitled to the services of a qualified interpreter during medical treatment appointments.

Labor Code section 4600(g) also defines a qualified interpreter for the purposes of an examination. It states, "To be a qualified interpreter for purposes of medical treatment appointments, an interpreter... shall meet any requirements established by rule by the administrative director that are substantially similar to the requirements set forth in Section 1367.04 of the Health and Safety Code." Labor Code section 4600(g) also states, "an employer shall not be required to pay for the services of an interpreter who is not certified or is provisionally certified by the person conducting the medical treatment or examination unless either the employer consents in advance to the selection of the individual who provides the interpreting service or the injured worker requires interpreting service in a language other than the languages designated pursuant to Section 11435.40 of the Government Code."

Labor Code section 4600(f) allows for interpreters at medical-legal examinations at the request of the employer, administrative director, the appeals board or a Workers' Compensation Judge. Labor Code section 4620 is amended and reinforces this right.

Labor Code section 4620(d) has been added and states, "if the injured employee cannot effectively communicate with an examining physician because he or she cannot proficiently speak or understand the English language, the injured employee is entitled to the services of a qualified interpreter during the medical examination... An employer shall not be required to pay for the services of an interpreter who is provisionally certified unless either the employer consents in advance to the selection of the individual who provides the interpreting service or the injured worker requires interpreting service in a language other than the languages designated pursuant to Section 11435.40 of the Government Code."

Labor Code section 5710(b)(5) which relates to interpreters at deposition, has been amended. It states, "If the injured employee or any other deponent does not proficiently speak or understand the English language, upon a request from either, the employer shall pay for the

services of language interpreter certified or deemed certified pursuant to Article 9 (commencing with Section 11435.05) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of Section 68566 of the Government Code.”

Labor Code section 5811(b) has been amended to add several provisions concerning interpreter involvement. Labor Code section 5811(b)(1) reaffirms that for WCAB hearings and conferences, any party producing a witness requiring an interpreter is responsible for arranging for the presence of a qualified interpreter.

Labor Code section 5811(b)(2) has been added. It defines a qualified interpreter as someone who is certified, or deemed certified, pursuant to Government Code section 11435.05 (Title 2, Division 3, Part 1, Chapter 4.5, Article 8), or Government Code section 68566.

A new sentence describes the duties of an interpreter. It states, “The duty of an interpreter is to accurately and impartially translate oral communications and transliterate written materials, and not to act as an agent or advocate. An interrupter shall not disclose to any person who is not an immediate participant in the communications the content of the conversations or documents that the interpreter has interpreted or transliterated unless the disclosure is compelled by court order. An attempt by any party or attorney to obtain disclosure is a bad faith tactic that is subject to Section 5813.”

Labor Code section 5811(b)(2) also was amended to add medical appointments to the list of allowable venues for interpreters.

Summary of Proposed Regulations

The Administrative Director amends administrative regulations governing interpreters.

Section 9795.1 Definitions

- This section provides definitions for key terms regarding interpreters.
- The definition of “qualified interpreter for purposes of medical treatment appointments” is added to ensure that its meaning, as used in the regulations, will be clear to the regulated public.
- “Provisionally certified” interpreters have been deleted from the regulations.
- Deleted from the definitions is the term “formal rehabilitation conference,” as the vocational rehabilitation benefit was repealed and these no longer exist.

Section 9795.3 Fees for Interpreter Services.

- This section was amended to add medical treatment appointments to conform with Labor Code section 5811(b)(2) which was amended to add medical appointments to the list of venues where a qualified interpreter may render services.

Small Business Effect

- The Department of Industrial Relations, Division of Workers' Compensation has determined no adverse impact on small business.

Policy Statement Overview

The proposed emergency regulations govern the use of interpreters at medical treatment appointments, medical-legal examinations, depositions and appeals board hearings as mandated by Government Code sections 11435.30, 11435.35, and Labor Code sections 4620, 5710, and 5811.

MATTERS PRESCRIBED BY STATUTE APPLICABLE TO THE AGENCY OR TO ANY SPECIFIC REGULATION OR CLASS OF REGULATIONS

NONE

MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The Department of Industrial Relations, Division of Workers' Compensation has determined that this proposed regulatory action would not impose a mandate on local agencies or school districts.

FISCAL IMPACT STATEMENT (attached Form 399)

- A. Cost or Savings to any state agency: **NONE**
- B. Cost to any local agency required to be reimbursed under Part 7(commencing with Section 17500) of Division 4: **NONE**
- C. Cost to any school district required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: **NONE**
- D. Other nondiscretionary cost or savings imposed on local agencies: **NONE**
- E. Cost or savings in federal funding to the state: **NONE**

**STATEMENT OF CONFIRMATION OF
MAILING OF FIVE-DAY EMERGENCY NOTICE**
(Title 1, CCR section 50(a)(5)(A))

The Division of Workers' Compensation sent notice of the proposed emergency action to every person who has filed a request for notice of regulatory action at least five working days before submitting the emergency regulations to the Office of Administrative Law in accordance with the requirements of Government Code section 11346.1(a)(2).