

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

NOTICE OF PROPOSED RULEMAKING

**Subject Matter of Regulations:
Disability Evaluation Unit Regulations**

**TITLE 8, CALIFORNIA CODE OF REGULATIONS
Sections 10150 through 10168**

NOTICE IS HEREBY GIVEN that the Administrative Director of the Division of Workers' Compensation, pursuant to the authority vested in her by Labor Code sections 133, 139.5, 4061, 4660, 5307.3, and 5307.4 proposes to adopt, amend and repeal regulations within Article 9, Subchapter 1.6, Chapter 4.5 of Title 8, California Code of Regulations, commencing with section 10150, relating to the Disability Evaluation Unit.

PROPOSED REGULATORY ACTION

The Department of Industrial Relations, Division of Workers' Compensation, proposes to adopt, amend and repeal regulations within Article 9, Subchapter 1.6, Chapter 4.5 of Title 8, California Code of Regulations, commencing with section 10150, relating to the Disability Evaluation Unit.

Amended §10150	Authority
Proposed §10151	Filing Requirements.
Proposed §10150.1	Signature disputes and the signatures of consultants
Proposed §10150.2	Technical unavailability of EAMS
Proposed §10150.3	Disability Evaluation Unit File Retention.
Proposed §10150.4	Misfiled or misdirected documents
Amended §10160	Summary Rating Determinations, Comprehensive Medical Evaluation of Unrepresented Employee.
Amended §10160.1	Summary Rating Determinations, Report of Primary Treating Physician for Unrepresented Employee.
Amended §10160.5	Summary Rating Determinations, Represented Employees
Amended §10161	Forms.
Amended §10161.1	Reproduction of Forms.
Amended §10162	Summary Rating Determinations, Apportionment.
Amended §10164	Summary Rating Determinations, Reconsideration If Employee Is Unrepresented.
Amended §10165	Service of Summary Rating Determination and Notice of Options Following Permanent Disability Rating.
Amended §10166	Consultative Ratings Determinations.
Proposed §10166.1	Form (Request for Consultative Rating)
Amended §10167	Informal Ratings.
Repealed §10168	Records, Destruction of.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 subjects noted above, on the following dates:

Date: Monday, July 14, 2008
Time: 10:00 a.m. to 5:00 p.m. or conclusion of business
Place: Ronald Reagan State Building, Auditorium
300 South Spring Street
Los Angeles, CA 90013

Date: Tuesday, July 15, 2008
Time: 10:00 a.m. to 5:00 p.m. or conclusion of business
Place: Elihu Harris State 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 type of reasonable accommodation 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. If public comment concludes before the noon recess, no afternoon session will be held.

The Administrative Director requests, but does not require that, any persons who make oral comments at the hearings 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 15, 2008**. The Department of Industrial Relations, Division of Workers' Compensation will consider only 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
Division of Workers' Compensation
Post Office Box 420603
San Francisco, CA 94142

Written comments may be submitted by 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 15, 2008**.

AUTHORITY AND REFERENCE

The Administrative Director is undertaking this regulatory action pursuant to the authority vested in the Administrative Director by Labor Code sections 133, 139.5, 4061, 4660, 5307.3, and 5307.4.

Reference is to Labor Code sections 123.6, 123.7, 124, 139.5, 4061, 4062, 4062.01, 4062.1, 4062.2, 4062.5, 4064, 4067, 4660, 4662, 4663, 4664, 5275, 5451, 5502, 5701, and 5703.5.

INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW

This rulemaking amends the Disability Evaluation Unit (DEU) regulations to allow required documents to be filed with the Electronic Adjudication Management System (EAMS). In fiscal year 2004 to 2005, SB 1113 (chapter 208) authorized funds to establish EAMS within DWC. EAMS is a computer based document filing and management system that will simplify and improve the DWC case management process to more efficiently resolve claims, improve the ability to schedule and manage court calendars, allow files to be shared between multiple users, and transform paper files into secure electronic files. EAMS will replace the current workers' compensation court technology and supporting infrastructure, thereby reducing the need for physical storage space at local DWC offices and the State Records Center. Regulations that implement EAMS for claims adjudication will be filed concurrently with the Office of Administrative Law.

Utilizing the applicable Permanent Disability Rating Schedule adopted by the Administrative Director under Labor Code section 4660, DEU calculates permanent disability ratings for injured workers based on an evaluating physician's medical descriptions of physical and mental impairment. See Labor Code section 4061(e). The permanent disability ratings issued by DEU are used by workers' compensation administrative law judges, injured workers, and insurance claims administrators to determine the appropriate permanent disability indemnity benefit under Labor Code section 4658. DEU prepares four types of ratings: (1) formal, done at the request of a workers' compensation administrative law judge in a litigated case; (2) summary, done on a non-litigated case for an unrepresented injured worker; (3) consultative, generally done on litigated cases at the request of an attorney or DWC information and assistance officer; and (4) informal, done on non-litigated cases at the request of a claims administrator or injured worker. California Code of Regulations, title 8, section 10150 et seq. A summary rating issued by DEU is subject to review and reconsideration by the Administrative Director. Labor Code section 4061(g).

These proposed regulations implement, interpret, and make specific these sections of the Labor Code and EAMS as follows:

Amended §10150. Authority.

The changes to this section are non-substantive only: changing the case of the term “administrative director.”

Proposed §10151. Filing Requirements.

This proposed section defines “EAMS,” requires all forms, documents or correspondence submitted to the Disability Evaluation Unit to be signed by the filing party and stored in EAMS, and to contain a case number assigned by the Division of Workers’ Compensation.

Except for documents or forms which open a Disability Evaluation Unit file, all documents and forms shall contain a case number assigned by the Division of Workers' Compensation. The case number shall be preceded by the prefix "DEU". Case opening document shall be assigned a case number by the Division of Workers Compensation after filing. Documents or forms filed without a case number will be return to the sender with instructions for proper filing

All documents presented for filing shall conform to the requirements of section 10232 of title 8 of the California Code of Regulations. Section 10232 is proposed in the Court Administrator’s regulations.

The Division of Workers’ Compensation shall scan all documents and forms filed into the EAMS case file and then the paper document or form will be destroyed. A properly filed form or document shall be deemed a legal filing for all purposes.

The service of all documents and forms shall conform to the methods of service described in section of 10218 of title 8 of the California Code of Regulation. Section 10218 is proposed in the Court Administrator’s regulations.

Proposed §10150.1. Signature disputes and the signatures of consultants

This proposed section provides that anyone who disputes the authenticity of any signature must file an objection to the pleading or other paper within ten (10) days of the filing of that document. The objection shall contain a complete explanation of the basis for the objection.

It also provides that the filing of a document, signed with a "/s/ name" or an electronic image of the signature filed with the login and password of the Division of Workers' Compensation consultant assigned to the case shall constitute an original signature for all purposes.

Proposed §10150.2. Technical unavailability of EAMS

This proposed section provides that technical problems with filing documents shall be governed by section 10225 of title 8 of the California Code of Regulation, which is a proposed section in the court administrator regulations.

Proposed §10150.3. Disability Evaluation Unit File Retention.

This proposed section provides that following a period of fifty (50) years after the filing of a document used to open a case or file, the Division of Workers' Compensation may destroy the electronic and/or paper file in each case maintained by the Disability Evaluation Unit.

This section also provides that the Division of Workers' Compensation, at any time, may convert a paper file to an electronic file. If a paper case file has been converted to electronic form, the paper case file may be destroyed. The Division of Workers' Compensation shall inform the parties when a paper file is converted.

Proposed §10150.4. Misfiled or misdirected documents

This proposed section provides that a request to move or substitute a corrected a document shall be made in conformity with section 10223 of title 8 of the California Code of Regulation, except that a request to substitute shall be made in lieu of a petition to substitute as allowed under section 10223(b). The authority to approve moving a document from one file to another file shall reside with the Manager of the Disability Evaluation Unit or his or her designee. Section 10223 is a proposed section in the court administrator regulations.

Amended §10160. Summary Rating Determinations, Comprehensive Medical Evaluation of Unrepresented Employee.

This section is amended. In subdivisions (a)(1) and (2) reference to "DEU Form 101" is changed to "DWC AD Form 101(DEU)."

In subdivision (b), reference to "(DEU Form 100)" is deleted and the case is changed for the term "administrative director."

In subdivision (c), reference to "(DEU Form 101)" is deleted (c)

In subdivision (d) reference to "DEU Form 101" is changed to "DWC AD Form 101(DEU)."

In subdivision (d)(1), reference to "(DEU Form 101)" is deleted (c). In subdivision (d)(2), reference to "(DEU Form 100)" is deleted.

In subdivision (d)(3), reference to "IMC Form 1002" is changed to "QME Form 111."

Subdivision (d)(4) provides a document cover sheet and separator sheet pursuant to section 10232 (b) of title 8 of the California Code of Regulation, which shall only be served on the Disability Evaluation Unit. Section 10232 is a proposed section in the court administrator regulations.

Subdivision (e) is amended as follows: "(e) No request for a summary rating determination ~~will~~ shall be considered to be received until the Employee's Disability Questionnaire DEU Form 100, the Request for Summary Rating Determination of Qualified Medical Evaluator's Report DEU Form 101, and the comprehensive medical evaluation have been received by the office of the Disability Evaluation Unit having jurisdiction over the employee's area of residence. In the event an employee does not have a completed Employee's Disability Questionnaire (~~DEU Form 100~~) at the time of his or her appointment

with a Qualified Medical Evaluator, the medical evaluator shall provide this form to the employee for completion prior to the evaluation. Any requests received on or after April 1, 1994 without all the required documents will be returned to the sender.”

Amended §10160.1. Summary Rating Determinations, Report of Primary Treating Physician for Unrepresented Employee.

This section is amended. Letters are added to designate the subdivisions.

Subdivision (b) is amended as follows: “(b) The request may be made by completing a Request for Summary Rating Determination of Primary Treating Physician's Report (DWC AD DEU Form 102 (DEU) 2) and ~~sending~~ filing the request to the Disability Evaluation Unit together with a copy of the primary treating physician's report, if the report has not already been filed in EAMS.”

Subdivision (c) is amended as follows: “(c) A filed ~~C~~copy of the request form and a copy of the primary treating physician's report ~~must~~ shall be served ~~concurrently~~ immediately after filing on the non-requesting party, ~~including~~ with a proof of service on the non-requesting party.”

Amended §10160.5. Summary Rating Determinations, Represented Employees.

This section is amended. In subdivisions (a)(1) and (b) reference to “DEU Form 101” is changed to “DWC AD Form 101(DEU).”

In subdivision (b), the case is changed for the term “administrative director” and reference to “(DEU Form 101)” is deleted.

Subdivision (c) is amended as follows: “(c) Notwithstanding the provisions of subdivision (b), a party may request a summary rating determination following receipt of a medical report prepared by a Qualified Medical Evaluator or Agreed Medical Evaluator on a represented case. The party shall ~~send~~ file the Request for Summary Rating Determination (~~DEU Form 101~~) and the medical report ~~to~~ with the DEU office designated by the ~~A~~administrative ~~D~~director and shall ~~simultaneously~~ immediately serve a filed copy of the Summary Rating Determination the other party.”

Amended §10161. Forms.

This section, which lists the names of the DEU forms, is amended as follows:

- “(a) Employee's Disability Questionnaire (DWC AD DEU Form 100 (DEU))
- (b) Request for Summary Determination of Qualified Medical Evaluator's Report (DWC AD DEU Form 101 (DEU))
- (c) Request for Summary Determination of Primary Treating Physician's Report (DWC AD DEU Form 102 (DEU)).”

The forms themselves are changed to allow data (for example, first name and last name) to be routed into EAMS when the form is scanned.

Amended §10161.1. Reproduction of Forms.

This section is amended to delete reference to “(DEU Form 101),” “(DEU Form 100),” and “(DEU Form 102).” The word “content” is replaced with the phrase “printed layout of the form.”

Amended §10162. Summary Rating Determinations, Apportionment.

This section is amended. Letters are added to designate the subdivisions.

Throughout the section, the term “Workers’ Compensation Judge” is changed to “workers’ compensation administrative law judge.” The term “Presiding Workers’ Compensation Judge” is changed to “presiding workers’ compensation administrative law judge.” The term “Appeals Board” is changed to “appeals board.”

In subdivisions (b) and (c), the word “will” is changed to “shall.”

Amended §10164. Summary Rating Determinations, Reconsideration If Employee Is Unrepresented.

Throughout this section, “Administrative Director” is changed to “administrative director.” In subdivision (a), the word “must” is replaced with “shall” and the words “shall be accompanied by a copy of the summary rating, a copy of the comprehensive medical evaluation,” are deleted. The word “a” is added. In subdivision (a)(4), the term “Industrial Medical Council” is deleted and replace with “administrative director.”

In subdivision (c), the term “Industrial Medical Council” is deleted and replace with “Medical Unit.”

Amended §10165. Service of Summary Rating Determination and Notice of Options Following Permanent Disability Rating.

This section is amended as follows:

“Within the time specified in Labor Code section 4061(h e), the ~~Office of Benefit Determination Disability Evaluation Unit~~ shall serve the permanent disability rating determination and the Notice of Options Following Permanent Disability Rating on the employee and employer by ~~their the method of service described in section of 10218 of title 8 of the California Code of Regulation. first class mail. At the same time, the employee shall also be served with the Notice of Options Following Permanent Disability Rating.~~”

Amended §10166. Consultative Ratings Determinations.

In subdivision (a), “Workers’ Compensation Appeals Board” is changed to “appeals board.” The term “Workers’ Compensation Judge” is changed to “workers’ compensation administrative law judge.” The case is changed for the terms: “settlement conference referees,” “arbitrators,” “workers’ compensation judges pro-tempore” and “information & assistance officers.”

In subdivision (b), the case is changed for the term “compromise and release.” The following sentence is deleted: “These rating determinations are the ‘informal ratings’ referred to in subsection (k) of section 10301 of the Workers’ Compensation Appeals Board Rules of Practice and Procedure.”

In subdivision (c), the case is changed for the term “compromise and release.” Further, the repeated phrase “self-insurer seeks a consultative rating determination for the purpose of terminating its” is deleted.

In subdivision (e), the case is changed for the terms: “appeals board,” “settlement conference referees,” “arbitrators,” “workers' compensation judges pro-tempore” and “information & assistance officers.” The term “Workers’ Compensation Judge” is changed to “workers’ compensation administrative law judge.”

Proposed §10166.1. Form (Request for Consultative Rating).

This proposed section is the form to be used for a request for consultative rating.

Amended §10167. Informal Ratings.

This section is amended. Letters are added to designate the subdivisions.

In subdivisions (a) and (b), the case is changed for the terms “administrative director” and “appeals board.”

The following sentence is deleted: “The Disability Evaluation Unit may request the employee to submit to a medical examination as provided for under Labor Code Sections 4050, 4600, and 5703.5.”

Repealed §10168. Records, Destruction of. Records Retention

This section is repealed. Record retention is now addressed in proposed section 10150.3.

DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

The Administrative 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.
- 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 persons or business: The proposed regulations will not have a significant adverse economic impact on representative private persons or directly affected businesses.

EFFECT ON SMALL BUSINESS

The Administrative Director has determined that the proposed regulations will not affect small businesses. The businesses that are subject to these regulations are insurers, self-insured employers (who must by regulation have substantial net worth and income) and third party administrators, all of whom do not qualify as “small business.”

FISCAL IMPACTS

- Costs or savings to state agencies or costs/savings in federal funding to the State: The proposed regulations will not increase costs on State agencies.
- 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 that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: None. (See “Local Mandate” section above.)
- Other nondiscretionary costs/savings imposed upon local agencies: None. (See “Local Mandate” section above.)

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code § 11346.5(a)(13), the Administrative Director must determine that no reasonable alternative considered or that has otherwise been identified and brought to the Administrative 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 Administrative Director 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.

PUBLIC DISCUSSIONS OF PROPOSED REGULATIONS

Pursuant to Government Code § 11346.45, the text of the draft proposed regulations was made available for pre-regulatory public comment through the Division’s Internet message board (the DWC Forums).

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 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, the proposed text of the regulations, pre-rulemaking comments, and the Form 399. Also included are studies and documents relied upon in drafting the proposed regulations.

In addition, the Notice, Initial Statement of Reasons, and proposed text of regulations may be accessed and downloaded from the Division's website at www.dir.ca.gov. To access them, click on the "Proposed Regulations - Rulemaking" link and scroll down the list of rulemaking proceedings to find the current "Disability Evaluation Unit Regulations" rulemaking 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, Oakland, California, 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.

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:

Maureen Gray
Regulations Coordinator
Department of Industrial Relations
Division of Workers' Compensation
Post Office Box 420603
San Francisco, CA 94142
E-mail: mgray@dir.ca.gov

The telephone number of the contact person is (510) 286-7100.

BACKUP CONTACT/PERSON CONTACT PERSON FOR SUBSTANTIVE QUESTIONS

In the event the contact person is unavailable, or to obtain responses to questions regarding the substance of the proposed regulations, inquiries should be directed to the following backup contact persons:

Destie Overpeck (doverpeck@dir.ca.gov)
Division of Workers' Compensation
Post Office Box 420603
San Francisco, CA 94142

The telephone number of the backup contact person is (510) 286-7100.

AVAILABILITY OF CHANGES FOLLOWING PUBLIC HEARING

If the Administrative 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 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 website: 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 Title 8, California Code of Regulations, commencing with section 10150.