

Division of Labor Statistics and Research

NOTICE OF PUBLIC HEARING

Title 8. Division of Labor Statistics and Research

NOTICE IS HEREBY GIVEN that the Division of Labor Statistics and Research is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held beginning at 10 a.m. in the Division of Occupational Safety and Health conference room on the tenth floor of the Hiram Johnson State building at 455 Golden Gate Avenue, San Francisco, California on, November 12, 2003. These facilities are accessible to persons with mobility impairments.

Written comments must be received by mail, by fax or by email no later than 5:00 p.m. on November 12, 2003 or must be received at the hearing. Comments must be addressed to either of the following:

Robert Nakamura, Senior Industrial Hygienist
Department of Industrial Relations
Division of Occupational Safety and Health
455 Golden Gate Avenue, 10th Floor, San Francisco, CA 94102
Fax: (415) 703-5114
email: DOSHInfo@dir.ca.gov

Ramon Cruz, Research Manager
Department of Industrial Relations
Division of Labor Statistics and Research
455 Golden Gate Avenue, 8th Floor, San Francisco, CA 94102
Fax: (415) 703-3029
email: DOSHInfo@dir.ca.gov

The official record of the rulemaking proceeding will be closed at 5:00 p.m. on November 12, 2003. The Division of Labor Statistics and Research shall not consider written comments received after that date and time unless an extension of time in which to receive specific written comments is announced at the public hearing.

The Division of Labor Statistics and Research may thereafter adopt the proposed regulations substantially as described below, or may modify it if such modification is sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification or any changes to the proposal.

Authority and Reference

Authority cited: Labor Code Sections 50.7 and 6410.

Reference: Labor Code Section 6410.

Informative Digest/Policy Statement Overview

Pursuant to Labor Code Section 6410, the Division of Labor Statistics and Research (DLSR), a division within the Department of Industrial Relations, is charged with prescribing and providing the forms necessary for maintenance of records of occupational injuries and illnesses required by the United States Department of Labor under the Federal Occupational Safety and Health Act of 1970 (P.L. 91-596). Requirements for fulfilling this mandate are currently found in Article 2 of Subchapter 1, Chapter 7, Division 1 of Title 8 in the California Code of Regulations ("Article 2").

On July 1, 2002, the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) promulgated amendments to regulations at 29 CFR 1904 addressing Occupational Injury and Illness Recording and Reporting Requirements for occupational hearing loss and musculoskeletal disorders (MSDs) and setting an implementation date of January 1, 2003. See Federal Register Volume 67, No. 126, pages 44037-44048 and 44124-44127. OSHA then delayed the implementation of the hearing loss column and MSD instructions on December 17, 2002 until January 1, 2004. See Federal Register Volume 67 pages 77165-77170. OSHA subsequently eliminated the requirement for recording work-related musculoskeletal disorders (MSDs) as a specific category on June 30, 2003 but did not eliminate the hearing loss column. See Federal Register 68 pages 38601-38607.

29 CFR 1902.3(k), 29 CFR 1952.4, and 29 CFR 1956.10(i), require the State of California to adopt regulations for recording occupational injuries and illnesses that are substantially identical to the requirements of revised 29 CFR 1904.10; 29 CFR 1904.12; and 29 CFR 1904.29 Forms, subpart (b)(7)(vi).

DLSR now proposes to adopt requirements for the recording of occupational hearing loss that are substantially identical to the requirements of the revised OSHA standards. Section 14300.10 "Recording criteria for cases involving occupational hearing loss, paragraph (b)(7) How do I complete the 300 Log for a hearing loss case?" would be amended by adding the instruction to record hearing loss cases in the column on the Form 300 beginning on January 1, 2004. The "Cal/OSHA Form 300 Log of Work-Related Injuries and Illnesses" would be modified to include a column to indicate occurrences of recordable hearing loss in section M of the form. Also, the "Cal/OSHA Form 300A Annual Summary of Work-Related Injuries and Illnesses" would be modified to include a space for the number of hearing loss cases in section M. In a similar manner, Appendix D Required Elements for the Cal/OSHA 300 Equivalent Form, would be amended to require a hearing loss column for the type of injury or illness, and Appendix E Required Elements for the Cal/OSHA 300A Equivalent Form would be amended to require a space for the number of hearing loss cases.

In response to the OSHA final rule regarding MSD recordkeeping, DLSR proposes to amend Section 14300.12 by deleting the time span statement. DLSR also proposes to amend Section 14300.29 (7)(F) by deleting the statement; "Musculoskeletal disorders (MSDs) are not considered privacy concern cases." and the reference to this statement in the Note.

More Information

The full text of the proposed regulations, and all information upon which the proposed regulations are based, including an initial statement of the reasons for the proposed regulations, are available upon

request. Inquiries concerning the proposed regulations, including questions regarding the substance of the proposed regulations, may be directed to:

Robert Nakamura, Senior Industrial Hygienist
Department of Industrial Relations
Division of Occupational Safety and Health
455 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102
Phone: (415) 703-5160
Fax: (415) 703-5114

The designated back-up contact person is:
Ramon Cruz, Research Manager
Department of Industrial Relations
Division of Labor Statistics and Research
455 Golden Gate Avenue, 8th Floor
San Francisco, CA 94102
Phone: (415) 703-4757
Fax: (415) 703-3029

The Division's rulemaking file on the proposed regulations is open for public inspection Monday through Friday, from 8:00 a.m. to 5:00 p.m., at 455 Golden Gate Avenue, 10th Floor, San Francisco, California. Interested parties may obtain copies of the Initial Statement of Reasons, the actual text of the proposed regulations, this notice, and the final statement of reasons, (once it has been prepared pursuant to Government Code Section 11346.9(a)) from the Division representatives named above, or from the Division's website >www.dir.ca.gov/DOSH<. Click on "Proposed Regulations."

Cost or Savings of the Proposed Regulations

Costs or Savings to State Agencies: No costs or savings to state agencies will result as a consequence of the proposed regulations.

Impact on Housing Costs: The proposed regulations will not significantly affect housing costs.

The Division determined that the proposed regulations will not result in a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. OSHA has determined that there may be a small training cost and a minimal cost for revising software if an employer voluntarily produces their own form. The Division concurs with this assessment.

Cost Impacts on Representative Private Persons or Businesses: The Division is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed regulations.

Costs or Savings in Federal Funding to the State: The proposed regulations will not result in costs or savings in federal funding to the State.

Costs or Savings to Local Agencies or School Districts: No costs to local agencies or school districts are required to be reimbursed. See explanation under "Determination of Mandate".

Other Nondiscretionary Costs or Savings Imposed on Local Agencies: The proposed regulations do not impose nondiscretionary costs or savings on local agencies.

Determination of Mandate

The proposed regulations do not impose a mandate on local agencies or school districts. The Division has determined that the proposed regulations do not impose 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 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."

The California Supreme Court has established that a "program" within the meaning of Section 6 of Article XIII of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.).

The proposed regulations do not require any local agency to carry out the governmental function of providing services to the public.

Effect on Small Businesses

It has been determined that the proposed regulations may affect small businesses.

Assessment.

The adoption of the proposed regulations will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

Consideration of Alternatives.

The Division must determine that no reasonable alternative considered by the Division, or that has been identified and brought to the attention of the Division, 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.