

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

NOTICE OF PROPOSED EMERGENCY ACTION

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

PROPOSED EMERGENCY ACTION

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 on an emergency basis to implement amendments to the Labor Code approved as part of SB 863 (Chapter 363, Statutes of 2012) on September 19, 2012, and which take effect on January 1, 2013, requiring, among other-things, private self-insured employers to submit annual actuarial reports of their projected workers’ compensation losses and expenses as a basis for calculating their required security deposits.

FINDING OF EMERGENCY

Finding:

The Director finds that it is necessary 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 on an immediate basis to address the situation described below in order to avoid serious harm to the public peace and general welfare.

Specific Facts Demonstrating the Need for Immediate Action:

California 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.

On September 19, 2012, the Governor signed SB 863 (Chapter 363, Statutes of 2012). SB 863 takes effect on January 1, 2013, a mere 104 days after it was signed. Among other things, SB 863 amends section 3701 to change the calculation of security deposits. 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.” Existing Section 3702.10 of the Labor Code authorizes the Director to adopt, amend, and repeal regulations reasonably necessary to carry out the purposes of Labor Code sections 3701.

As a result of SB 863’s approval at the end of the legislative session, insufficient time remained between signing of the bill and its January 1, 2013, effective date to allow adoption of the required implementing regulations through the normal regulatory process. If the proposed regulations are not adopted on an emergency basis as proposed, private self-insured employers and self-insured groups will be unable to comply with the new reporting requirements when they go into effect on January 1, 2013, because they will lack necessary guidance regarding the required content of the annual actuarial reports required by Labor Code section 3701, subdivision (c) and the prescribed qualifications for the actuaries who may prepare them which can only be provided through the adoption of implementing regulations.

Because the required actuarial reports are not only a required component of each private self-insurer and group self-insurer’s required annual report but also provide the basis for calculation of their required security deposits, private self-insurers and group self-insurers will be unable to satisfy Labor Code section 3701, subdivision (a)’s requirement to post new security deposits “within 60 days of the filing of the self-insured employer’s annual report with the director, but in no event later than May 1” if the proposed regulations cannot be adopted on an emergency basis. Failure to timely file a complete annual report and failure to deposit and maintain a security deposit, neither of which will be possible after January 1, 2013, if the proposed regulations are not adopted on an emergency basis, are punishable by civil penalties of up to \$5,000.00.

Because private self-insured employers and self-insured groups cannot comply with the requirements of Labor Code section 3701 as amended if the proposed regulations are not adopted on an emergency basis, and, because failure to comply with those requirements may subject them to civil penalties under section 3702.9, the Director finds that failure to address this situation through the adoption of the proposed regulations on an emergency basis would result in serious harm to the public peace and general welfare.

Statement Under Title 1, California Code of Regulations, Section 48:

Government Code section 11346.1, subdivision (a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law, the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to the Office of Administrative Law, the Office of Administrative Law shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.

Title 1, California Code of Regulations, section 55(b) sets forth the requirements for submitting comments to the Office of Administrative Law on the proposed emergency action. Comments

must be in writing, must identify the topic of this rulemaking, and must be submitted directly to the Office of Administrative Law as follows:

OAL Reference Attorney
Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, CA 95814-4339
Fax: (916) 323-6826
e-mail: staff@oal.ca.gov

In addition, a copy of the comments must be transmitted to the Department's contact person for this rulemaking. To ensure prompt receipt and consideration of your comments, the Department requests that you transmit a copy either by e-mail to OSIPRulemaking@dir.ca.gov or by fax, to the attention of Jon Wroten, at (916) 483-1535.

AUTHORITY AND REFERENCE

Authority: Sections 54, 55, 3701 and 3702.10, Labor Code

Reference: Sections 3700, 3701, 3701.5, 3702.9 and 3702.10, Labor Code.

INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW

Overview:

Policy Statement: The objective of the proposed emergency 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) and to prescribe the qualifications for the actuaries who may prepare them.

Existing Law: Existing Section 3702.10 of the Labor Code authorizes the Director to adopt, amend, and repeal regulations reasonably necessary to carry out the purposes of Labor Code sections 3700, 3701, 3702, 3702.2, and 3702.8. 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 or by securing from the Director a certificate of consent to self-insure, either as an individual employer or as one employer in a group of employers. Existing Labor Code section 3701 requires private self-insuring employers, including groups of self-insuring employers, to post security deposits with the Department.

Effective January 1, 2013, Labor Code section 3701 as amended by SB 863 (Chapter 363, Statutes of 2012), requires private self-insuring employers to prepare an annual actuarial report that projects their ultimate liabilities at the expected actuarial confidence level, calculated as of December 31 each year, to ensure that all claims and associated costs are recognized. This report provides the basis for calculation of the self-insurer's security deposit for the ensuing year.

Proposed Emergency Regulations:

Section 15201. Definitions.

The proposed amendment adds new subdivisions (ll) through (pp) defining the following previously undefined terms necessary for the implementation of Labor Code section 3701 as amended: “Qualified Actuary,” “Actuarial Study,” “Regulatory Summary Actuarial Report,” “Chief” and “Public Self Insurer or Public Self Insured Employer.”

Section 15209. Actuarial Studies and Reports.

The proposed action adopts new section 15209 specifying the required content of the annual actuarial reports required by Labor Code section 3701, subdivision (c), prescribing the qualifications for the actuaries who may prepare them and specifying penalties for failure to timely submit the required reports as authorized by Labor Code section 3702.9.

Section 15210. Security Deposit.

The proposed amendment amends subdivision (c) regarding the calculation of the minimum required security deposit for private self-insurers to bring it into accord with the requirements of Labor Code section 3701 as amended and changes the term “Manager” to “Chief” in subdivision (h).

Section 15210.1. Adjustments in the Amount of Security Deposit.

The proposed amendment changes the term “Manager” to “Chief” throughout the section and amends subdivisions (b) regarding increases and decreases in the required security deposits for private self-insurers and (d) regarding requirements for additional security deposits to bring them into accord with the requirements of Labor Code section 3701 as amended.

Section 15475. Board of Trustees.

The proposed amendment amends subdivisions (d)(7) regarding the duty of the Board of Trustees of a group self-insurer to contract with an actuary to prepare an annual actuarial study and (d)(8) regarding the collection of contributions from employers who are members of the group to bring them into accord with the requirements of Labor Code section 3701 as amended and changes the term “Manager” to “Chief” in subdivision (d)(11).

Section 15477. Surplus or Insufficient Funding.

The proposed amendment changes the term “Manager” to “Chief” throughout the section and amends subdivisions (a)(1) and (a)(2) regarding the transfer or release of group self-insured funds on deposit to bring them into accord with the requirements of Labor Code section 3701 as amended.

Section 15481. Actuarial Studies and Reports.

The proposed amendment changes the title of the section from “Annual Actuarial Certification of Losses” to “Actuarial Studies and Reports” and replaces existing section 15481 with new language specifying the required content of the annual actuarial reports required of group self-insurers by Labor Code section 3701, subdivision (c), prescribing the qualifications for the actuaries who may prepare them and specifying penalties for failure to timely submit the required reports as authorized by Labor Code section 3702.9.

Section 15484. Continuing Financial Capacity of Groups Self Insurers.

The proposed amendment changes the term “Manager” to “Chief” throughout the section and amends subdivision (e)(1) regarding demonstration of sufficient income from annual member contributions and/or assessments to bring it into accord with the requirements of Labor Code section 3701 as amended.

Section 15496. Group Self Insurer’s Security Deposit.

The proposed amendment amends subdivisions (a) and (c) regarding calculation of a group self-insurer’s required security deposit to bring them into accord with the requirements of Labor Code section 3701 as amended and changes the term “Manager” to “Chief” in subdivision (g).

Section 15497. Adjustments in the Amount of a Group Self Insurer’s Security Deposit.

The proposed amendment changes the term “Manager” to “Chief” throughout the section and amends subdivisions (a) and (d) regarding review and adjustment of a group self-insurer’s required security deposit to bring them into accord with the requirements of Labor Code section 3701 as amended.

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 emergency regulatory action.

DISCLOSURES REGARDING THE PROPOSED ACTION

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 amendment 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 amendment of this regulation 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.

Small Business Impact:

This regulation will have no adverse impact on small business.

Assessment of Job/Business Creation or Elimination:

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