

**Department of Human Resources
Initial Statement of Reasons**

I. Purpose and Rationale for Proposed Regulatory Changes

The California Department of Human Resources (CalHR) administers the Industrial Disability Leave (IDL) program for state employees. Under the IDL program, state employees are eligible to receive paid time off for qualifying work-related injuries. (Gov. Code, §§ 19869-19877.1) This proposed rulemaking action would do the following:

- A. Eliminate regulatory references to certain statutory programs and benefit options that have been repealed by the Legislature;
- B. Clarify the number of working hours in a 52-week period and a 22-day period to help assist in the administration and calculation of IDL benefits;
- C. Clarify how the employee's absence on the day of the injury should be compensated;
- D. Explain how to pay and track IDL when employees transfer between agencies;
- E. Clarify employees' rights to supplement IDL benefits with leave credits;
- F. Eliminate outdated criteria governing the payment of Enhanced IDL (EIDL) to excluded employees; and
- G. Eliminate unnecessary and inaccurate verbiage regarding the appeals process.

The purpose and rationale for each of these changes is discussed below.

A. Elimination of Repealed Programs & Benefit Options

Under Government Code section 19877, CalHR is charged with adopting and modifying any rules or regulations necessary to the administration of the IDL benefit. Part of CalHR's responsibility under this provision is to ensure that its regulations accurately reflect the statutory framework enacted by the Legislature.

Prior to 1994, employees had the option, under Government Code section 19871, to utilize either IDL or Workers Compensation benefits to compensate for time off due to a work-related injury. This option was further clarified and explained in CalHR regulations. (Cal. Code Regs., tit. 2, §§ 599.755, 599.759, 599.760.) In 1994, the Legislature eliminated the employee option in section 19871. (Assem. Bill No. 810 (1993-1994 Reg. Sess.) § 2.) Thus, the current CalHR regulations refer to a right which is no longer permitted by the authorizing statutes.

In addition, employees receiving IDL are required to participate in a vocational rehabilitation program if one is established by the state. (Gov. Code, § 19876.) CalHR regulations currently require employees to participate the Vocational Rehabilitation program established by Labor Code sections 139.5, 4635-4647, and 5405.5. (Cal. Code Regs., tit. 2, §§ 599.755, 599.764 – 599.768) In 2003, however, the Legislature decided to abolish that program by repealing the

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above Labor Code sections, effective January 1, 2009. (See Sen. Bill No. 899 (2003-2004 Reg. Sess.) § 4.) Thus, the current CalHR regulations refer to a vocational rehabilitation program which no longer exists.

These legislative changes rendered the regulations referring to the repealed benefit options and programs no longer valid. Consequently, the purpose of the proposed modification and repeal of the affected regulations is to bring the CalHR's regulations in line with the current statutory framework.

B. Number of Working Hours in a 52-Week Period and a 22-Day Period

Per Government Code 19871, eligible employees are entitled to 52 weeks of IDL benefits to be used within 2 years from the first date of disability. Furthermore, for the first 22 working days of disability IDL shall be paid at the employees full pay less withholding for federal and state income plus social security taxes. Thereafter, the IDL payment shall be two-thirds of full pay.

Under current regulation, the 52-week period is defined as 365 days. The first 22 working days is not defined.

The original intent of the legislation was to provide up to one year's worth of benefits with the first month paid at a special rate. Defining one year as 365 days is difficult to administer when the time off does not occur in one consecutive period. These difficulties lead to confusion and inconsistent application which, in turn, leads to disparate results and an inability to determine if benefits were paid correctly. The proliferation of alternative work schedules compounds the problem. In order to reduce confusion, promote consistency, and ensure payment of the proper benefit, we propose to switch from counting days for any time missed from work to counting the hours missed from work. Full time employees work 2080 hours per year and 22 working days is equivalent to 176 hours. These totals will be prorated for employees who are not employed on a full time basis.

C. How to Compensate Day of Injury

Per Labor Code 4652, injured employees are to serve a waiting period of three days after the employee leaves work as a result of the injury (unless the employee is hospitalized or disabled for more than fourteen days). For purposes of tracking the waiting period, the day of injury shall be included unless the employee was paid full wages that day. Labor Code 4650.5 adds another exception to the three day waiting period – if the injury was the result of a criminal act of violence against the employee. Government Code 19875 states that employees will be placed on IDL on the fourth day after the injured employee leaves work as a result of the illness or injury with the same exceptions as Labor Code 4652 and 4650.5.

Clearly the legislature intended that injured workers should serve a three day waiting period before receiving temporary disability benefits unless they are hospitalized, disabled more than fourteen days, or are assaulted.

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In order to promote consistency and uniformity among all State agencies, we propose that any time lost on the date of injury be paid as Administrative Time Off (ATO) by the appointing authority and therefore not considered a day of disability for calculating the three day waiting period.

Furthermore, it is our intention that the payment of ATO on the date of injury will ensure that employees are directed to immediate medical treatment (to be paid by the employer per Labor Code 5402).

This is consistent with current policy.

D. Tracking IDL When Employees Transfer to Different Agencies

IDL benefits are paid by the appointing authority after verification of the time by State Compensation Insurance Fund. The appointing authority is also responsible for tracking the days (current) or hours (proposed) of available IDL benefits. There is no direction to State agencies when an employee leaves one appointing authority but continues his or her eligibility for IDL.

This proposed rule would provide clear direction to the State agencies that the current hiring authority is responsible for payment and tracking of IDL benefits and is responsible for providing documentation of IDL paid to the new hiring authority, ensuring that injured employees are accurately paid the benefits to which they are entitled.

This is consistent with current policy.

E. Clarifying Employees' Right to Supplement IDL Benefits with Leave Credits

Government Code 19872 gives State employees the choice to supplement their IDL benefit with available leave credits in an amount to approximate full net pay.

Current regulation 599.759 includes both the choice to supplement and the choice to elect IDL instead of temporary disability benefits. Since the Legislature eliminated the option to choose temporary disability benefits in 1994, we propose to eliminate all reference to that eliminated option.

We also propose to enhance the language to provide clear direction to the State agencies on the procedures to follow when offering and processing the supplementation.

These changes are consistent with current policy.

F. Eliminating outdated criteria governing the payment of Enhanced IDL (EIDL) to excluded employees

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Government Code 19871.2 gives excluded employees an enhanced industrial disability benefit if they are disabled for more than 22 days by a type of injury designated by the director as qualifying for this benefit.

The current regulation lists specific qualifying injuries, which are drawn from the bargaining unit contracts. This list is out of date and inaccurate. We propose to eliminate this list. The remainder of the regulation has been reformatted but is substantively the same. These revisions will not alter the administration of the benefit other to prevent erroneous application caused by the outdated information drawn from past bargaining contracts.

G. Eliminate unnecessary and inaccurate verbiage regarding the appeals process for complaints arising out of IDL

The current regulation, 599.768, provides inaccurate information, referring to the Department of Rehabilitation which has nothing to do with the provision of IDL benefits.

We propose to eliminate this inaccurate information along with the unnecessary examples.

II. Technical, Theoretical, and/or Empirical Studies, Reports or Documents

CalHR has not relied upon any technical, theoretical, or empirical studies, reports or documents in deciding to revise these regulations.

III. Reasonable Alternatives To The Regulation And The Agency's Reasons For Rejecting Those Alternatives

No other alternatives were presented to or considered by CalHR.

IV. Evidence Supporting Finding Of No Significant Statewide Adverse Economic Impact Directly Affecting Business

CalHR has found no evidence that the regulations would impose a significant statewide adverse economic impact affecting business. The proposed regulatory changes only affect state employees.