

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

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Report

TO: Members of the Judicial Council

FROM: Administrative Office of the Courts Staff
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DATE: September 23, 2004

SUBJECT: Trial Courts: Workers' Compensation Program (adopt Cal. Rules of Court,
rule 6.302) (Action Required)

Issue Statement

Government Code section 71623.5(a) requires the Judicial Council to adopt rules of court directing the Administrative Office of the Courts (AOC) to establish a workers' compensation program for the trial courts and to provide guidance to the trial courts to ensure that the courts' workers' compensation coverage meets the requisite legal requirements and is cost-efficient.

The AOC has made workers' compensation coverage available through a program it developed with the State Compensation Insurance Fund effective July 1, 2001. The program provides the legally mandated coverages for job-related injuries for all the covered employees of participating trial courts. As of July 1, 2004, 53 courts are participating in the AOC program. To comply fully with the legislative directive, the Judicial Council must adopt the rules required by Government Code section 71623.5(a).

Recommendation

AOC staff recommend that the Judicial Council, effective January 1, 2005, adopt rule 6.302 of the California Rules of Court to:

1. Establish the governing policies and procedures of the AOC's workers' compensation program for the trial courts; and
2. Establish procedures by which the AOC ensures that any trial court workers' compensation coverage provided by a different vendor complies with

applicable law and is cost-efficient, as mandated by Government Code section 71623.5(a).

The text of the proposed rule is attached at pages 5–6. A copy of Government Code section 71623.5(a) is attached at page 8 for reference.

Rationale for Recommendation

The Trial Court Employment Protection and Governance Act established California trial courts as the employers for employees working in the trial courts in January 2001. Until that time, those employees had been county employees, eligible for the particular benefits individual counties negotiated with the applicable union (or, in the case of unrepresented employees, the benefits set out by the individual county's policies). Trial courts began to function as independent employers in January 2001. Because of the complexity of workers' compensation programs, however, counties were directed to make their existing workers' compensation programs available to the trial courts for a 24-month period (which could be extended by mutual agreement). That 24-month period is now over.

The proposed rule reflects current practice in allowing trial courts to participate in either the ongoing AOC-sponsored program or a separate workers' compensation program. Presently, when courts choose to participate in a program that is independent of the AOC, the AOC has oversight responsibilities for that program. The proposed rule, reflecting the statutory mandate, would require AOC approval of programs selected by the trial courts in lieu of the AOC-sponsored program.

Adoption of a new rule is necessary to comply with Government Code section 71623.5(a), which mandates the two ways in which trial courts can satisfy their workers' compensation obligations. The rule would clarify the responsibilities of both the AOC and the trial courts with respect to all workers' compensation programs covering trial court employees.

Subdivision (a) sets forth the basic intent of the rule, which is to establish appropriate procedures and to ensure cost-efficient workers' compensation coverage that complies with applicable law.

Subdivision (b) sets forth the AOC's responsibilities for workers' compensation coverage in the trial courts. These include maintaining a contract with an outside vendor to provide trial courts with a voluntary workers' compensation program and monitoring that program. Implied in these responsibilities is the ability to make changes to the existing contract or to negotiate a new contract with another vendor if appropriate. The AOC is also charged with notifying the trial courts about the terms of the program it is offering, providing the trial courts with information about the legal requirements of workers' compensation programs (so the trial courts can make informed decisions), and consulting with the trial courts regarding the advantages and disadvantages of the AOC-sponsored

program. For courts that choose not to participate in the AOC-sponsored program, the rule also reflects the AOC's responsibility, under Government Code section 71623.5(a), to approve alternate programs the trial courts may select.

Subdivision (c) sets forth the trial courts' responsibilities in this area. It is divided into two parts: one detailing the responsibilities of courts that participate in the AOC-sponsored program and the other detailing the responsibilities of courts that decline such participation. For those courts participating in the AOC-sponsored program, the requirements are limited to what is necessary for the efficient functioning of the program: timely notification of the court's decision to participate, timely completion of the necessary paperwork, and timely payment of the associated costs. For those courts not participating in the AOC-sponsored program, the requirements again are only those that are necessary to comply with the law and allow the program to function efficiently: the identification of a suitable workers' compensation provider, the timely submission of the relevant information to the AOC in order to secure the AOC's approval, and the maintenance of a cost-efficient contract with the workers' compensation provider that fulfills the legal requirements related to workers' compensation coverage.

There is no requirement in the rule that a court must notify the AOC of its intent not to participate in the AOC-sponsored program. By requiring courts that wish to participate in the program to notify the AOC affirmatively of their intent to do so, but not having an analogous notice requirement for courts not wishing to participate in the program, the procedure assigns responsibility to courts wishing to participate to so inform the AOC and avoids any ambiguity if no notice is given. Courts that do not participate would still be required to submit the necessary information about their respective alternative programs to the AOC for approval on a timely basis.

Alternative Actions Considered

No alternative actions were considered. The rule is mandated by Government Code section 71623.5(a).

Comments From Interested Parties

The Joint Rules Subcommittee of the Presiding Judges and Court Executives Advisory Committees reviewed the proposed rule and recommended its adoption. The draft rule also was circulated as part of the spring 2004 comment process. Four individuals, representing three trial courts and one county bar association, submitted comments on this proposal. Overall, three commentators agreed with the proposal without suggesting changes, one agreed with the proposal only if modified, and none disagreed with the proposal.¹

¹ The full text of the comments that were submitted and the committee responses to these comments is set forth on the accompanying comment chart, beginning on page 7.

One court's HR manager noted that while her court was already a participant in the AOC-sponsored workers' compensation program and had a satisfactory experience thus far, she was concerned about the process by which a court's separate workers' compensation program would be evaluated by the AOC. She also questioned whether an appeals process should be available in the event that the AOC disapproved a separate workers' compensation program. The proposed rule is intended to provide the AOC with the flexibility it will need to adjust the workers' compensation program as legal requirements and market pressures change over time. Because the AOC sponsors its own program for the trial courts, it will be well-informed about competitive programs and, thus, use realistic criteria in evaluating alternative programs. It seems unlikely there will be a need for a formal appeals process, but should one become necessary, the rule can be amended in the future.

Implementation Requirements and Costs

Implementing the rule should not result in new requirements or costs (other than those already mandated by Government Code section 71623.5).

Attachments

Rule 6.302 of the California Rules of Court is adopted, effective January 1, 2005, to read:

1 **TITLE SIX. Judicial Administration Rules**

2
3 **DIVISION II. Administration of the Judicial Branch**

4
5 **CHAPTER 4. Management of Human Resources**

6
7 **Rule 6.302. Workers' compensation program**

- 8
9 **(a) [Intent]** The intent of this rule is to (1) establish procedures for the
10 Administrative Office of the Courts (AOC) workers' compensation program
11 for the trial courts and (2) ensure that the trial courts' workers' compensation
12 coverage complies with applicable law and is cost-efficient.
- 13
14 **(b) [Duties of the AOC]** To carry out the duty of the Judicial Council to establish
15 a workers' compensation program for the trial courts, the Administrative
16 Office of the Courts, through its Human Resources Division, must:
- 17
18 (1) Maintain a contract with a vendor to provide courts, on a voluntary basis,
19 with a cost-efficient workers' compensation coverage program;
- 20
21 (2) Monitor the performance of the vendor with whom it contracts to provide
22 such services;
- 23
24 (3) Timely notify the trial courts concerning the terms of the workers'
25 compensation coverage program;
- 26
27 (4) Timely inform the trial courts about the legal requirements with which a
28 workers' compensation program must comply;
- 29
30 (5) Make personnel available by telephone to consult with trial courts
31 regarding the cost and benefits of the plan being offered by the
32 Administrative Office of the Courts; and
- 33
34 (6) Review and approve or disapprove any other workers' compensation
35 programs identified by a trial court for consideration as a vendor to
36 provide workers' compensation benefits to its employees.

1 **(c) [Duties of the trial courts]**
2

3 (1) Each trial court that elects to participate in the program made available
4 through the Administrative Office of the Court must:

5
6 (A) Timely notify the AOC Human Resources Division of its decision to
7 participate in the workers' compensation program being offered
8 through the Administrative Office of the Courts;

9
10 (B) Timely complete and return necessary paperwork to the Human
11 Resources Division; and

12
13 (C) Timely pay all costs associated with the program.

14
15 (2) Each trial court that elects not to participate in the workers' compensation
16 program available through the Administrative Office of the Courts must:

17
18 (A) Independently identify a workers' compensation benefits provider
19 that fulfills all legal responsibilities to offer such benefits in
20 California in a cost-efficient manner;

21
22 (B) Timely submit to the AOC Human Resources Division for its
23 approval the information necessary to evaluate the workers'
24 compensation program identified by the trial court to provide
25 benefits for its employees; and

26
27 (C) Maintain a contract with a workers' compensation benefits provider
28 that fulfills all legal responsibilities to offer such benefits in
29 California in a cost-efficient manner.
30

SPR04-32
Workers' Compensation Program
(adopt Cal. Rules of Court, rule 6.351)

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
1.	Ms. Mary Majich Davis Chief Deputy Executive Officer Superior Court of California, County of San Bernardino	A	N	No further comments submitted.	No response required.
2.	Ms. Kim Hubbard President Orange County Bar Association Irvine	A	Y	No further comments submitted.	No response required.
3.	Ms. Donna Nichols HR Manager Superior Court of California, County of Butte Oroville	AM	N	What are the criteria that the AOC will use to “evaluate” a worker’s compensation program identified by the “Court”? What factors can be used to disapprove a non-AOC program? How do you define “cost-efficient”? Does this “grandfather” in existing programs or cause a review of all courts’ programs? Is there an appeal process? Please note: We are participating in the AOC’s WC program and are pleased with it so far. My comments are just general ones I’d ask if we were not participating.	The draft rule is designed to give the AOC the necessary discretion to evaluate, approve and/or disapprove a court’s workers’ compensation program in comparison with the overall costs and benefits of the AOC-provided program, consistent with Government Code section 71623.5(a). No court will be compelled to abandon its current workers’ compensation coverage midterm; the AOC, however, will have the right to evaluate, approve or disapprove existing programs before they are renewed. Staff does not anticipate a need for a formal appeal process, and the rule could be amended in the future in more formal procedures are required.
4.	Mr. Michael D. Planet Court Executive Officer Superior Court of California, County of Ventura	A	N		No response required.

Government Code ([Refs & Annos](#))

Title 8. The Organization and Government of Courts ([Refs & Annos](#))

[Chapter 7](#). Trial Court Employment Protection and Governance Act ([Refs & Annos](#))

[Article 2](#). Authority to Hire, Classification, and Compensation ([Refs & Annos](#))

§ 71623.5. Workers' compensation coverage

(a) As of July 1, 2001, trial courts shall provide workers' compensation coverage for trial court employees under a workers' compensation program established by the Administrative Office of the Courts or a program selected or approved by the Administrative Office of the Courts. The Judicial Council shall adopt rules of court requiring the Administrative Office of the Courts to establish a workers' compensation program for the trial courts and to provide guidance to the trial courts to ensure that the courts' workers' compensation coverage, including workers' compensation employer liability coverage, meets all legal requirements and is cost-efficient.

(b) If, as of the implementation date of this chapter, the county provides workers' compensation coverage for trial court employees, the county shall continue to provide the coverage, under the same terms and conditions as coverage was provided immediately preceding implementation of this chapter. This coverage shall continue for a transition period of up to 24 months after the implementation date of this chapter, unless the court gives the county 60 days' notice, or a mutually agreed to period of notice, that the court no longer needs the county to provide the coverage. Subject to approval by the Administrative Office of the Courts, the parties may mutually agree to county-provided coverage beyond the 24-month transition period.

(c) County provision of workers' compensation coverage for trial court employees shall not be construed to create a meet and confer obligation between the county and any recognized employee organization.

CREDIT(S)

(Added by [Stats.2000, c. 1010 \(S.B.2140\), § 14](#). Amended by [Stats.2001, c. 270 \(S.B.128\), § 2](#).)