

## **DIVISION OF WORKERS' COMPENSATION [876] REGULATORY PLAN FOR STATE FISCAL YEAR 2009**

### **I. Introduction**

This plan is intended to implement Governor Vilsack's Executive Order Number 9, V, signed September 14, 1999. This plan provides the Division of Workers' Compensation anticipated regulatory actions for potential rule making activity for State Fiscal Year 2009, which began July 1, 2008, and thereafter.

### **II. Current Regulatory Objectives**

The Division of Workers' Compensation is a rule making authority within the Iowa Department of Workforce Development. The functions of the Division of Workers' Compensation are to adjudicate the rights and duties of persons under the Iowa workers' compensation laws, Iowa Code chapters 85-87, and the agency's rules and to administer and enforce the workers' compensation laws, Iowa Code chapters 85-87, and the agency's rules. The functions of the Division of Workers' Compensation relate to the requirements under the workers' compensation laws, Iowa Code chapters 85-87. The functions of the Division of Workers' Compensation also relate to certain of the goals of the Governor's priorities as designated in the Vilsack/Pederson Leadership Agenda FY 2001, December 2, 1999. Those related goals are: Grow, retain, and recruit a skilled workforce; Government information and services will be offered when and where it is convenient to Iowans; and State government will reconnect with Iowans by achieving results valued by Iowans. The Division of Workers' Compensation will help in obtaining these goals by providing service and justice to the workforce, providing adjudication services and other services when and where needed in a fair and impartial manner, applying the law for the benefit of all employees and employers in the state and administering and enforcing the workers' compensation laws in a fair, impartial and efficient manner.

### **III. Contemplated Regulatory Actions**

For purposes of specifying the contemplated regulatory actions, need for action (paragraph V below) and the schedule for action (paragraph VI below) the Division of Workers' Compensation's rules in this document will be divided into four categories. Those categories are: 1) Rules required by statute; 2) Substantive or interpretative rules; 3) Procedural rules; and 4) Technical corrections for all chapters of rules.

- 1) Rules required by statute – The rules regarding the description of the purpose and function, Chapter 1; forms, Chapter 3; declaratory orders, Chapter 5; petition for rule making, Chapter 7; public records and fair information practices, Chapter 9; and formal review and waiver of rules, Chapter 12, will be amended to implement any new applicable legislation. The rules will also be amended to incorporate any changes appropriate following the assessment of the agency's rules pursuant to Executive Order 8.

- 2) Substantive or interpretative rules – The rules regarding general provisions, Chapter 2; settlements and commutations, Chapter 6; and substantive and interpretative rules, Chapter 8; will be amended to implement any new applicable legislation. The rules also will be amended to incorporate any changes appropriate following the assessment of the agency’s rules pursuant to Executive Order 8. Also, rule 8.8, payroll tax tables, will be amended effective July 1, 2009 to enable proper calculation of the weekly rate of workers’ compensation disability benefits. Amendments to rule 2.4 may be considered regarding use of the AMA Guides to the Evaluation of Permanent Impairment.
- 3) Procedural rules – The rules regarding contested cases, Chapter 4; informal dispute resolution procedures, Chapter 10; and electronic data interchange (EDI), Chapter 11, will be amended to implement any new applicable legislation. The rules also will be amended to incorporate any changes appropriate following the assessment of the agency’s rules pursuant to Executive Order 8. Also, amendments to contested cases, Chapter 4, which will facilitate resolution of contested cases, are contemplated. The contemplated changes to chapter 4 include but are not limited to the method of holding contested case hearings and the method of filing documents with the agency for contested cases. Amendments to Chapters 3 regarding forms the public uses in dealing with the agency are contemplated.
- 4) Technical corrections for all chapters – It is contemplated that appropriate technical corrections will be made, if necessary.

#### IV. Legal Basis

The statutory legal basis for all of the agency’s rules as generally given in the implementation clauses of the rules can be found in the following tables cross-referencing Iowa Code sections and rules.

#### Rule number [876]----Iowa Code section

1.1----17A.3(1)"a"; 84A.5(4)

1.2----17A.3(1)"a"

2.1----17A.7; 86.8

2.2----85A.16; 85B.14; 86.8

2.3----86.8; 87.11

2.4----85.34(2);86.8

2.5----Reserved; 86.8; 86.11

2.6----85.26(2); 86.8; 86.11; 86.13

3.1----17A.3(1)"b'

4.1----17A.2(2); 86.8

4.2---86.13; 86.18; 86.17; 86.24(1) & (2)  
4.3---86.8  
4.4---86.8  
4.5---86.8  
4.6---17A.12(2); 85.27 (4); 85.45; 85.48; 86.13; 86.17; 86.18; 86.24  
4.7---17A.3(2); 17A.12(9); 85.3(3)  
4.8---17A.12(9); 2008 Iowa Acts, House File 2699, sec. 16 (2)  
4.9---17A.12  
4.10---87.10  
4.11---17A.12  
4.12---17A.12; 86.18  
4.13---17A.12; 86.18  
4.14---86.18  
4.15---86.18  
4.16---86.18  
4.17---86.8; 86.18  
4.18---86.8; 86.18  
4.19---86.17; 86.18  
4.20---86.17; 86.18  
4.21---86.17; 86.18  
4.22---86.17; 86.18  
4.23---86.8; 86.18  
4.24---17A.16(2); 86.8  
4.25---17A.15; 17A.16; 86.24(1) & (2)  
4.26---Reserved  
4.27---17A.15; 86.24(1) & (2)  
4.28---86.24(1) & (2)  
4.29---17A.12; 17A.15; 86.24(1) & (2)  
4.30---17A.12(7); 17A.15; 86.19; 86.24(1) & (2); 86.40  
4.31---86.18  
4.32---86.19  
4.33---86.40  
4.34---17A.3(1)"b"; 86.8; 86.18;  
4.35---17A.1; 17A.12; 17A.13; 17A.14; 86.8  
4.36---86.8  
4.37---17A.10  
4.38---17A.17  
4.39---17A.12; 86.8  
4.40---17A.10; 86.8; 86.13; 1990 Iowa Acts, ch. 1261, sec. 3  
4.41--- Reserved  
4.42--- Reserved  
4.43--- Reserved  
4.44--- Reserved  
4.45---17A.12; 17A.15; 86.8; 86.18; 86.24(1) & (2)  
4.46---17A.10; 17A.12; 17A.14; 85.27(3); 86.8; 86.39  
4.47---Reserved

4.48---17A.12; 85.27(4); 86.8; 86.17  
4.49---17A.12; 85.27(4); 86.8; 86.17;86.18

5.1----17A.9  
5.2----17A.9  
5.3----17A.9  
5.4----17A.9  
5.5----17A.9  
5.6----17A.9  
5.7----17A.9  
5.8----17A.9  
5.9----17A.9  
5.10---17A.9  
5.11---17A.9  
5.12---17A.9  
5.13---17A.9

6.1----85.35  
6.2----85.45; 85.47  
6.3----85.45; 85.47  
6.4----85.45; 85.47  
6.5----85.35; 85.45; 85.47  
6.6----85.35; 85.47; 86.13; 86.27  
6.7----85.35;86.8  
6.8----85.35;85.47;85.48;86.8;86.13;86.27

7.1----17A.7(1)  
7.2----No rule  
7.3----17A.7(1)

8.1----85.27(1); 85.39  
8.2----85.3(6); 85.61(3)  
8.3----Reserved  
8.4----85.31; 85.34; 85.36; 85.37; 85.61  
8.5----85.27(1) and (5)  
8.6----85.31; 85.33; 85.34;  
8.7----86.18  
8.8----85.61(6)  
8.9----85.27(2); 85.31; 85.33; 85.34; 85.35; 85.36; 85.37; 85.39; 85.61; 86.6;  
86.10; 86.18; 86.39  
8.10---85B.4(3); 85B.9A

9.1----22.11  
9.2----No rule  
9.3----22.11  
9.4---- No rule

9.5---- No rule  
9.6----22.11  
9.7----No rule  
9.8----22.11  
9.9----22.11  
9.10---22.11  
9.11---22.11  
9.12---22.11  
9.13---22.11  
9.14---22.11

10.1---86.8; 1990 Iowa Acts, ch. 1261, sec. 3  
10.2---Reserved; 86.8; 1990 Iowa Acts, ch. 1261, sec. 3  
10.3---17A.10; 17A.12; 85.27(3); 86.8

11.1---85.26(2); 86.8; 86.11; 86.12; 86.13  
11.2---85.26(2); 86.8; 86.11; 86.12; 86.13  
11.3---85.26(2); 86.8; 86.11; 86.12; 86.13  
11.4---85.26(2); 86.8; 86.11; 86.12; 86.13  
11.5---85.26(2); 86.8; 86.11; 86.12; 86.13  
11.6---85.26(2); 86.8; 86.11; 86.12; 86.13  
11.7---85.26(2); 86.8; 86.11; 86.12; 86.13

12.1---17A.7  
12.2---17A.7  
12.3---17A.7  
12.4---17A.4(1)"b"

Code section---Rule Number [876]

17A.1-----4.35  
17A.2(2)-----4.1  
17A.3(1)"a"----1.1; 1.2  
17A.3(1)"b'----3.1; 4.34;  
17A.4(1)"b"----12.4  
17A.7-----2.1; 12.2; 12.3  
17A.7(1)-----7.1; 7.3  
17A.9-----5.1; 5.2; 5.3; 5.4;5.5; 5.6; 5.7; 5.8;5.9; 5.10; 5.11; 5.12; 5.13  
17A.10-----4.37;4.40;4.46;10.3  
17A.12-----4.9;4.11;4.12;4.13;4.29;4.35;4.39;4.45;4.46;4.48;4.49;10.3  
17A.12(2)-----4.6  
17A.12(7)-----4.30  
17A.12(9)-----4.7;4.8

17A.13-----4.35  
17A.14-----4.35;4.46  
17A.15-----4.25;4.27;4.29;4.30;4.45  
17A.16-----4.24; 4.25  
17A.17-----4.38  
22.11-----9.1; 9.3; 9.6; 9.8;9.9; 9.10; 9.11; 9.12;9.13; 9.14  
84A.5(4)-----1.1  
85.3(3)-----4.7  
85.3(6)-----8.2  
85.26(2)-----2.6  
85.26(2)-----11.1;11.2;11.3;11.4;11.5;11.6; 11.7  
85.27(1)-----8.1  
85.27(1) and (5)---8.5  
85.27(2)-----8.9  
85.27(3)-----4.46;10.3  
85.27(4)-----4.6;4.48;4.49  
85.31-----8.4;8.6;8.9  
85.33 -----8.6; 8.9  
85.34 -----8.4;8.6; 8.9  
85.34(2)-----2.4  
85.35-----6.1;6.5; 6.6; 6.7;6.8;8.9  
85.36-----8.4; 8.9  
85.37-----8.4; 8.9  
85.39-----8.1; 8.9  
85.45-----4.6;6.2;6.3;6.4;6.5  
85.47-----6.2;6.3;6.4;6.5; 6.6;6.8  
85.48-----4.6;6.8  
85.61-----8.4; 8.9  
85.61(3)-----8.2  
85.61(6)-----8.8  
85A.16-----2.2  
85B.4(3)-----8.10  
85B.9A-----8.10  
85B.14-----2.2  
86.8-----2.1;2.2;2.3;2.4;2.5;2.6;4.1;4.3;4.4;4.5;4.17;4.18;4.23;4.24;  
4.34;4.35;4.36;4.39;4.40;4.45;4.46;4.48;4.49;6.7;6.8;8.9;10.1;  
10.2;10.3;11.1;11.2; 11.3; 11.4;11.5;11.6; 11.7  
86.10-----8.9  
86.11-----2.5;2.6;11.1;11.2;11.3;11.4;11.5;11.6; 11.7  
86.12-----11.1;11.2;11.3;11.4;11.5;11.6; 11.7  
86.13-----2.6;4.2;4.6;4.40;6.6;6.8;11.1;11.2;11.3;11.4;11.5;11.6; 11.7  
86.17-----4.2;4.6;4.19;4.20;4.21;4.22;4.48;4.49  
86.18-----4.2;4.6;4.12;4.13;4.14;4.15;4.16;4.17;4.18;4.19;4.20;4.21;  
4.22;4.23;4.31;4.34;4.45;4.49;8.7; 8.9  
86.19-----4.30;4.32  
86.24(1) & (2)-4.6;4.2;4.25;4.27;4.28;4.29;4.30;4.45

86.27-----6.6;6.8  
86.39-----4.46; 8.9  
86.40-----4.30;4.33  
87.10-----4.10  
87.11-----2.3  
1990 Iowa Acts, ch. 1261, sec. 3-----4.40;10.1;10.2  
2008 Iowa Acts, House File 2699, sec. 16 (2) ----- 4.8

#### V. Need for Action

1. Rules required by statute (Chapter 1, purpose and function; Chapter 3, Forms; Chapter 5, Declaratory orders; Chapter 7, Petition for rule making; Chapter 9, Public records and fair information practices; and Chapter 12, Formal review and waiver of rules) – These rules will need to be amended to implement new applicable legislation, if any. The rules also will be amended to incorporate any changes appropriate following the assessment of the agency’s rules pursuant to Executive Order 8.
2. Substantive or interpretative (Chapter 2, General provisions; Chapter 6, Settlements and commutations; and Chapter 8, Substantive and interpretative rules) – These rules will be amended to implement new applicable legislation, if any. The rules also will be amended to incorporate any changes appropriate following the assessment of the agency’s rules pursuant to Executive Order 8. Also, rule 8.8, payroll tax tables, will be amended effective July 1, 2009 to enable proper calculation of the weekly rate of workers’ compensation disability benefits. Amendments to rule 2.4 may be considered regarding use of the AMA Guides to the Evaluation of Permanent Impairment.
3. Procedural (Chapter 4, Contested cases; Chapter 10, Informal dispute resolution procedures; and Chapter 11, Electronic data interchange – EDI) – These rules will be amended to implement new applicable legislation, if any. The rules also will be amended to incorporate any changes appropriate following the assessment of the agency’s rules pursuant to Executive Order 8. Also, amendments to contested cases, Chapter 4, which will facilitate resolution of contested cases, are contemplated. The contemplated changes to chapter 4 include but are not limited to the method of holding contested case hearings and the method of filing documents with the agency for contested cases. Amendments to Chapters 3 regarding forms the public uses in dealing with the agency are contemplated.
4. Technical corrections of all chapters - It is contemplated that appropriate technical corrections will be made. These changes are needed to correct any technical deficiencies in the rules.

VI. Schedule for Action

Category or Description	Reason for action	Targeted effective date of amendment
1. Required by statute	Comply with statutes or Executive Order 8 assessment	If needed, June 30, 2009
2. Substantive or interpretative	Comply with statutes or Executive Order 8 assessment	If needed, June 30, 2009
Rule 8.8 – Payroll tax tables	Iowa Code section 85.61(6) – determination of proper weekly benefit rate	July 1, 2009
3. Procedural	Comply with statutes or Executive Order 8 assessment	If needed, June 30, 2009
Chapter 3, Forms,	Update and forms the public uses	January 1, 2009
Chapter 4, Contested cases – various rules as necessary	Resolution of contested cases	July 1, 2009
4. Technical corrections – as necessary	Technical deficiencies	June 30, 2009

VII. Agency Contact

The public may contact Clair R. Cramer, Division of Workers' Compensation, 1000 East Grand, Des Moines, IA 50319-0209, telephone (515) 281-5387 or 1-800-Job Iowa (1-800-562-4692) [clair.cramer@iwd.iowa.gov](mailto:clair.cramer@iwd.iowa.gov) for additional information about any rule making action by the Division of Workers' Compensation.

VIII. Constituent Participation

Pursuant to Executive Order 8, IV, B the following agencies have identified themselves as agencies that are mentioned in (Category A) or have an interest in (Category B) the Division of Workers' Compensation rules.

Chapter Category A

- 1
- 2

Category B

- Transportation Dept. [761]
- Transportation Dept. [761]

3	Education Dept. [281]	Transportation Dept. [761]
4	Insurance Div. [191]	Insurance Div. [191]
	Education Dept. [281]	Transportation Dept. [761]
5		Transportation Dept. [761]
6		Transportation Dept. [761]
7		Transportation Dept. [761]
8	Revenue and Finance Dept. [701]	Transportation Dept. [761]
	Labor Svcs. Div. [875]	
9	Education Dept. [281]	Education Dept. [281]
	Libraries and Infor. Svcs. Div. [286]	Records Comm. [671]
10	Professional Lic. Div. [645]	Transportation Dept. [761]
		Professional Lic. Div. [645]
		Transportation Dept. [761]
11		Transportation Dept. [761]
12		Transportation Dept. [761]

A Public Notice in the May 3, 2000 Iowa Administrative Bulletin identified constituent groups interested in the Division of Workers' Compensation rules review pursuant to Executive Order 8 and requested any other constituent groups to inform the agency of their interest in the review of the agency rules. The identified constituent groups were as follows. The Iowa Workers' Compensation Advisory Committee, Inc. will be a constituent group participating in the review of the rules. The Iowa Bar Association Workers' Compensation Section, the Iowa Association of Workers' Compensation Lawyers, Inc., the Iowa Trial Lawyers Association, the Iowa Federation of Labor AFL-CIO, the Iowa United Auto Workers, the Iowa Association of Business and Industry, the National Federation of Independent Business, the Association of Iowa Hospitals and Health Systems, the Iowa Medical Society and the Iowa Medical Group Management Association will be invited to participate. Following the Public Notice AFSCME Council 61 and the American Insurance Association were added to the constituent groups who expressed an interest in the review of the agency's rules.

Any or all of the entities interested in agency rule making in the current state fiscal year or any future year may participate by contacting the person listed as the agency contact given in paragraph VII above. They may also participate by commenting on proposed rules that are published in the Iowa Administrative Bulletin. Once a rule has been proposed, the agency will consider comments and consider them before issuing a final rule. To be most effective, comments should contain information and data that support a position, suggest how the rule could be improved, if applicable, and explain why suggested changes should be incorporated in the final rule. Comments can be particularly helpful and persuasive if examples are provided to illustrate concerns and specific alternatives are offered.