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Trovillion, Inveiss & Demakis, APC has grown in reputation as one of Southern California's premier law firms specializing in representation of employers, insurance carriers and third party administrators in workers' compensation litigation.

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COPY SERVICE FEE SCHEDULE EFFECTIVE JULY 1, 2015

In connection with the workers' compensation reforms of Senate Bill 863 passed on August 1, 2012, Labor Code §5307.9 was created to address the issue of insurance carriers being faced with copy service bills in the hundreds and sometimes thousands of dollars, extreme variances in the amounts charged by different companies for the same services, and bills for unnecessary or duplicate records requested by the applicant attorneys. After a long wait, the Administrative Director has finally adopted a fee schedule which takes effect on July 1, 2015. This new fee schedule is intended to apply uniformity to the fees charged and provide guidance to the parties when records are requested.

Labor Code §5307.9 provides that before December 31, 2013, the Administrative Director shall adopt a schedule of reasonable maximum fees payable for copy and related services, including, but not limited to, records or documents that have been reproduced or recorded in paper, electronic, film, digital, or other format. The schedule shall specify the services allowed and shall require specificity in billing, and shall not allow for payment for services provided within thirty days of a request by an injured worker or their authorized representative to an employer, claims administrator, or workers' compensation insurer for copies of records in the employer's, claims administrator's, or workers' compensation insurer's possession that are relevant to the employee's claim.

The various copy service fee regulations adopted, modified or repealed by the Administrative Director pursuant to LC §5307.9 take effect on July 1, 2015. The relevant regulation sections are §9980,

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§9981, §9982, §9983, §9990, §1991, §9992, §9994 and §1208.8. The following is a brief synopsis of these regulations, highlighting some of the key aspects of each and is intended only as a road map. The regulations themselves should be read in their entirety when analyzing bills for copy related services or developing case management procedures:

- § 9980 contains definitions of the operative terms in the copy service regulations.
- §9981 sets forth format and content requirements for the actual bills produced by copy service providers for their services. In addition to information about the service provider, the service itself, and the case for which services were provided, all bills must now include a statement that Labor Code §139.32 was not violated. The regulation also contains the billing codes that correspond to the description for each copy related service covered by the copy service fee schedule in §9983.
- §9982 outlines when the copy service fee schedule applies and when it does not. For example, the fee schedule *does not* apply to copy related services when there is a contract between the employer and copy service provider. Conversely, the fee schedule *does* apply if the claims administrator fails to provide written notice, pursuant to Labor Code §4055.2, to the injured worker of records which they are seeking by subpoena.
- §9982 outlines what copy related service charges the claims administrator is *not* liable for and their exceptions. For example, the claims administrator is *not* liable for the cost of records previously obtained by subpoena or authorization by the same party and served from the same source, *unless* the subpoena or authorization is accompanied by a declaration setting forth good cause to seek duplicate records, such as new counsel seeking records or destruction of records due to natural disaster.
- §9883 contains the copy related services fee schedule. The fee schedule is quite detailed and should be referred to in its entirety when analyzing bills for copy related services. The fees listed in the statute include a \$180.00 flat fee for a set of records from a single custodian, \$75.00 for

cancellation of a subpoena post authorization but prior to production, \$20.00 for records obtained from the Employment Development Department and \$30.00 for records obtained from the Workers' Compensation Insurance Rating Bureau. The schedule also contains an exception to the \$180.00 flat fee which allows for an additional charge of \$0.10 per page for every page copied after the first 500 pages.

- §9990 sets forth the fee schedule applicable to obtaining copies of records and documents from the Division of Workers' Compensation and the fee schedule applicable to electronic transaction fees. The maximum fees allowed for some of the more common record and document requests are as follows: the copy cost for the first page of records is \$1.00 and \$0.20 for each additional copy of the same page, except to the injured worker, to whom the fee will be \$0.10 per page; certification of copies of official records or documents is \$10.00 for each certification; inspection of a case file not stored in the place where the inspection is requested cost \$10.00 plus any postage or other delivery costs, except when requested by an injured worker or their attorney. With regard to electronic transaction fees, listing of WCAB new case filings is \$85.00 per complete download for WCAB new case opening records transmitted to the requestor by direct electronic download.
- §9991, formerly §9992, requires that payment for the fees outlined in 8 CCR §1990 accompany the records request to the DWC.
- §10208.7 outlines the DWC's policy for retention, return and destruction of records and exhibits. The regulation was modified with respect to the destruction of paper and electronic documents. The DWC is required to request authorization from the California Secretary of State before destroying any records. All paper and electronic *duplicate* copies of pleadings, notices, findings, orders, decisions, awards and other documents in the DWC's possession will now be destroyed by the DWC. The DWC will also begin destroying paper documents and records after twenty years has elapsed since the filing of the initial application or other case opening document.

This is a synopsis of some of the key aspects of the copy service fee regulations. Please refer to the regulations themselves when analyzing bills for copy related services or developing case management procedures to address request for records. Most applicant attorney's initial letter of representation contains demands for multiple records, many of them unnecessary or not really needed by the applicant attorney. Since the majority of these records are generic "form" letters, we recommend the claims handler contact their defense attorney to address a response and whether this would trigger the 30 day notice requirement of Labor Code § 5307.9.

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