

California Workers' Compensation Injured Worker Depositions: A Legal Analysis and Practice Guide

(PART-A INJURED WORKERS ANALYSIS)

March 1, 2026

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CALIFORNIA WORKERS' COMPENSATION DEPOSITIONS: A GUIDE FOR INJURED WORKERS

This report explains what happens when you are asked to give a deposition (sworn, recorded testimony given outside of court) as part of your California workers' compensation claim. It covers your legal rights, how to prepare, what to expect, and what happens afterward. This guide reflects California law as of March 2026.

Part 1: What Is a Deposition and Why Does It Matter?

Understanding Depositions

A deposition is a formal question-and-answer session where you answer questions under oath, meaning you swear to tell the truth. A court reporter (a person who types every word said) creates a written record called a transcript. This transcript becomes a permanent part of your case.

In California workers' compensation cases, the employer's insurance company usually requests your deposition. Their attorney asks you questions about your injury, your medical history, and how the injury affects your daily life and ability to work. Your attorney sits with you during the entire deposition to protect your rights.

Why Depositions Are Important

Depositions serve several purposes in your case:

- The insurance company uses your testimony to decide how strong your claim is and how much money to offer in settlement.
- Your sworn answers create a permanent record. If you later say something different at trial, the insurance company can use your deposition to challenge your honesty. This is called impeachment (using a person's earlier statements to show their current statements may not be truthful).
- A strong deposition where you are honest, consistent, and well-prepared can increase the value of your settlement. A weak deposition can lower it.

Who Is Involved

The following people are typically present at your deposition:

- Defense attorney — the lawyer for the insurance company who asks you questions
- Your attorney — your lawyer who is there to protect your rights and object to improper questions
- Court reporter — the person who records everything said
- Interpreter — if you need one, the employer must pay for a certified language interpreter (<https://leginfo.legislature.ca.gov/faces/codesdisplaySection.xhtml?lawCode=LAB§ionNum=5710>) under Cal. Lab. Code § 5710(b)(5) (<https://leginfo.legislature.ca.gov/faces/codesdisplaySection.xhtml?lawCode=LAB§ionNum=5710>)
- Employer representative — the employer may send someone to observe but not ask questions

Part 2: Your Legal Rights During a Deposition

What the Employer Must Pay For

California law protects you when the insurance company requests your deposition. Under Cal. Lab. Code § 5710(b) (<https://law.justia.com/codes/california/code-lab/division-4/part-4/chapter-5/section-5710/>), the employer or insurance carrier must pay for:

- Transportation, meals, and lodging — all reasonable costs of getting to and from the deposition
- Lost wages — money you lose from missing work to attend
- A free copy of the transcript — you do not pay for the written record of your testimony

- Your attorney's fees — a reasonable amount set by the Workers' Compensation Appeals Board (WCAB), the state agency that handles workers' compensation disputes
- Interpreter services — if you do not speak or understand English well, the employer must pay for a certified interpreter

Important: These protections are automatic. You do not need to ask for them. They apply as soon as the insurance company requests your deposition.

Your Right to an Attorney

You have an unconditional right to have your attorney present at your deposition. Your attorney can:

- Object to improper or unfair questions
- Ask the defense attorney to rephrase confusing questions
- Advise you during breaks (but not while a question is pending)

Your Right to Take Breaks

You may take a break at any time during the deposition. If you feel tired, confused, overwhelmed, or in pain, tell your attorney you need a break. There is no rule that says you must answer questions without stopping.

Limits on How Many Times You Can Be Deposed

Under established WCAB practice, the defense attorney may generally take only one deposition from you (<https://aoudilaw.com/understanding-depositions-in-a-california-workers-compensation-case/>). Additional depositions require changed circumstances, such as a new injury or significant new medical evidence.

The 75-Mile Rule

Under Cal. Code Regs. tit. 8, § 372.3(d) (https://www.dir.ca.gov/title8/372_3.html), you cannot be required to travel more than 75 miles from the county where you live to attend a deposition unless the insurance company shows good cause (a valid legal reason) and gets a court order. If travel is difficult, your attorney can request a remote deposition by video.

Part 3: The Legal Framework

The Main Statute: Labor Code Section 5710

Cal. Lab. Code § 5710 (<https://law.justia.com/codes/california/code-lab/division-4/part-4/chapter-5/section-5710/>) is the primary law governing workers' compensation depositions. It establishes that any party may take depositions after a formal claim is filed, and that the procedures must follow the same rules used in regular civil court cases under Cal. Civ. Proc. Code §§ 2016.010–2036.050 (https://leginfo.legislature.ca.gov/faces/codes_displayChapter.xhtml?lawCode=CCP&chapterNum=3).

This means deposition rules you may hear about in other types of lawsuits — such as rules about objections, how questions are asked, and how transcripts are handled — also apply in your workers' compensation case.

The Regulations: Title 8, Section 372.3

Cal. Code Regs. tit. 8, § 372.3 (https://www.dir.ca.gov/title8/372_3.html) adds detailed rules to the statute, including:

- The WCAB or any party can require a person to give a deposition
- The WCAB can issue a subpoena (a legal order requiring a person to appear) to compel attendance
- Deponents (people giving depositions) receive the same witness fees and mileage as if testifying at a hearing
- The WCAB can issue protective orders to limit when, where, and what topics a deposition may cover

Filing Requirement: Application for Adjudication of Claim

No deposition can happen until an Application for Adjudication of Claim (also called an ADJ form) has been filed with the WCAB. This official form (<https://www.dir.ca.gov/dwc/FORMS/EAMS%20Forms/ADJ/DWC1.pdf>) creates a formal case number and opens your case for legal proceedings, including discovery (the process where each side gathers information from the other). Either you or the insurance company can file this form.

Discovery Closure: The Mandatory Settlement Conference

Under Cal. Lab. Code § 5502

(https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=LAB§ionNum=5502), discovery generally closes at the Mandatory Settlement Conference (MSC), a meeting where both sides try to reach a settlement before trial. Your deposition must be completed before or around the time of the MSC. Evidence not properly listed before the MSC may be excluded at trial, as reinforced by the court in *DPR Construction v. WCAB (McClanahan)*, 111 Cal. App. 5th 1136 (3d Dist. Ct. App. 2025) (<https://www.sullivanattorneys.com/blog/3rd-dca-clarifies-credibility-standards-discovery-rules/>).

Part 4: Attorney Fee Changes — Proposed 2026 Regulations

The Problem with the Old System

Before 2026, there were no statewide rules setting how much your attorney could charge the insurance company for attending your deposition. Different judges in different cities allowed very different amounts. Some attorneys billed for tasks not related to the deposition itself, such as general file review or travel time, leading to disputes and delays.

The Proposed Fee Schedule

On January 26, 2026, the Division of Workers' Compensation (DWC) announced proposed regulations (<https://www.dir.ca.gov/DIRNews/2026/2026-10.html>) establishing maximum hourly rates for deposition attorney fees under Cal. Lab. Code § 5710(b)(4) (<https://law.justia.com/codes/california/code-lab/division-4/part-4/chapter-5/section-5710/>):

- \$500/hour — for a certified workers' compensation specialist (an attorney certified by the California State Bar in this field)
- \$450/hour — for an attorney with five or more years of workers' compensation experience
- \$400/hour — for an attorney with fewer than five years of experience
- \$250/hour — for a non-attorney representative (a person who helps with your case but is not a licensed lawyer)

Billing must use increments of one-tenth of an hour (six-minute blocks). The proposed rules specifically prohibit billing for (<https://bradfordbarthel.com/2026/02/17/things-change-proposed-lc-5710-fees-guidelines/>):

- General file review
- Travel time or travel expenses
- Reviewing the deposition transcript
- Administrative or clerical tasks

Note: As of March 2026, these regulations are still in draft form and have not been formally adopted. They may change based on public comments.

Part 5: Before Your Deposition — How to Prepare

Deposition Notice Requirements

The defense attorney must give you written notice of the deposition, including the date, time, location, and the court reporter's name. Under Cal. Civ. Proc. Code § 2025.220 (<https://www.networkdepo.com/blog/2013/9/2/taking-notice-of-california-deposition-requirements>), minimum notice periods apply:

- 10 days after personal service (hand delivery)
- 15 days for service by mail within California
- 20 days for service by mail outside California

In practice, most defense attorneys in Northern California provide 14–21 days' notice.

What Your Attorney Should Do to Prepare You

Your attorney should take these steps before your deposition:

1. Gather and organize all your medical records, including treating physician reports, MRI and X-ray results, and records of prior injuries.
2. Review any statements you previously made to supervisors, insurance adjusters, or doctors.
3. Identify areas where the defense attorney may try to challenge your credibility.
4. Conduct a mock deposition — a practice session where your attorney asks you sample questions so you can practice answering.
5. Explain the rules of the deposition, including your right to take breaks, ask for clarification, and say "I don't know" when you genuinely do not remember something.
6. Discuss how to answer questions about pre-existing conditions, gaps in medical treatment, and your current physical abilities.

Documents You Should Organize

Prepare the following records and have them available:

- Medical records organized by date (treating physician notes, imaging reports, prescriptions, therapy records)
- Wage documents (pay stubs, W-2 forms, earnings statements)
- Employment records (job description, work duties, supervisor information)
- Any prior workers' compensation claim records

Part 6: During Your Deposition — What to Expect

The Oath

The court reporter will ask you to raise your right hand and swear to tell the truth. This oath carries the same legal weight as testimony in court. Lying under oath is perjury, which is a crime punishable by fines and jail time (<https://www.hinden.net/blog/2025/11/what-is-a-workers-compensation-deposition-in-california/>).

Topics the Defense Attorney Will Ask About

The defense attorney typically asks questions in this order:

- Personal background — your name, age, address, education, and family
- Employment history — your current and past jobs, duties, wages, and supervisors
- Prior medical history — any earlier injuries, surgeries, or medical conditions affecting the same body parts
- The injury itself — exactly what happened, when, where, who was present, and what you did immediately after
- Medical treatment — your doctors, treatments, medications, physical therapy sessions, and whether you followed medical advice
- Current symptoms — your pain levels, what activities cause pain, and what you can and cannot do physically
- Daily life impact — how the injury affects cooking, cleaning, driving, caring for family, and other daily activities

Rules for Answering Questions

Follow these guidelines during your deposition:

- Pause before answering. Take two to three seconds to think before you speak.
- Answer only the question asked. Do not volunteer extra information. If asked "Did you report the injury?" say "Yes" — not a long story about what happened next.
- If you do not understand, say so. "I don't understand the question. Can you rephrase it?" is always acceptable.
- Do not guess. If you do not know or do not remember, say "I don't know" or "I don't recall." This is far better than guessing wrong.
- Give estimates when you have a basis. "I believe I was off work about two weeks, but I can verify with pay records" is honest and appropriate.

- Stay calm and professional. Even if the defense attorney asks aggressive questions, do not argue or become emotional. A calm, consistent demeanor strengthens your credibility.

Questions to Watch Out For

Be aware of these common question tactics:

- Compound questions (two questions in one) — ask to separate them
- Questions that assume facts ("Before your back injury got worse...") — correct the assumption if it is wrong
- Questions asking you to speculate ("Would the accident have happened if...") — decline to guess about things you cannot know
- Questions about immigration status — California workers' compensation covers all workers regardless of immigration status under Cal. Lab. Code § 3600 (https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=LAB§ionNum=3600) et seq. Your immigration status does not affect your right to benefits.

Part 7: After Your Deposition

Receiving and Reviewing Your Transcript

The court reporter will prepare a written transcript, usually within one to three weeks. Under Cal. Lab. Code § 5710(b)(3) (<https://law.justia.com/codes/california/code-lab/division-4/part-4/chapter-5/section-5710/>), you receive one free copy.

The Errata Sheet Process

An errata sheet is a document you use to correct mistakes in the transcript. Under California deposition practice consistent with Cal. Civ. Proc. Code § 2025.520 (<https://www.esquiresolutions.com/reviewing-errata-sheet-importance/>), you generally have 30 to 60 days after receiving notice that the transcript is ready to submit corrections.

Important: Errata sheets are for correcting real errors — such as the court reporter typing "50 pounds" when you said "15 pounds." You cannot use an errata sheet to change your answers or take back what you said. Courts may reject corrections that try to fundamentally change sworn testimony (<https://www.oasinc.org/everything-you-need-to-know-about-the-deposition-errata-sheet/>) under what is called the sham affidavit doctrine (a rule that prevents witnesses from contradicting their own sworn statements just to help their case).

How Your Deposition Affects Settlement

After reviewing your transcript, the insurance company will adjust its position:

- If your testimony was strong (consistent, credible, aligned with medical records), the insurance carrier is more likely to increase settlement offers because going to trial is riskier for them.
- If your testimony revealed weaknesses (contradictions, credibility concerns, pre-existing conditions), the carrier may lower offers or push for trial, knowing they have material to challenge your claim.

Settlement discussions typically accelerate two to eight weeks after the deposition, once all parties have reviewed the transcript.

Two Types of Settlement

After your deposition and as your case moves toward resolution, you and your attorney will discuss two types of settlement:

- Compromise and Release (C&R) — you receive a one-time lump sum payment, but you give up your right to future medical treatment paid by the employer for this injury. This is permanent and cannot be undone.
- Stipulated Award — you receive regular payments for your permanent disability, and your right to future medical treatment stays open. This protects you if you need ongoing care.

Critical: Choosing between these options is a major decision with permanent consequences. Discuss this thoroughly with your attorney before agreeing to anything.

Part 8: Common Mistakes to Avoid

Mistakes That Hurt Your Case

These are the most frequent errors injured workers make during depositions. Avoiding them can protect the value of your claim.

- Volunteering too much information. When asked a simple question, give a simple answer. Extra details create new topics for the defense attorney to explore and new opportunities for contradictions.
- Guessing at details. If you do not remember a date, a number, or a detail, say so. Guessing creates false information that can be disproven by documents later.
- Denying pre-existing conditions. If you had a prior injury or medical condition affecting the same body part, acknowledge it honestly. The defense attorney likely already has your medical records. Denying something that records prove is one of the fastest ways to destroy your credibility (<https://aoudilaw.com/understanding-depositions-in-a-california-workers-compensation-case/>).
- Becoming emotional or argumentative. Aggressive questions are designed to provoke you. Staying calm and professional makes a much stronger impression than angry outbursts.
- Contradicting your medical records. If your doctor documented that you have significant pain and limitations, do not testify that you feel fine. If your condition varies day to day, explain that honestly: "Some days are better than others."
- Claiming you cannot do anything while actually doing those activities. If you claim you cannot lift more than 10 pounds but the insurance company has video of you carrying groceries, your credibility is seriously damaged. Be honest about what you can and cannot do.
- Not preparing with your attorney. Workers who arrive at depositions without preparation give vague, inconsistent answers. Preparation is the single most important thing you can do.

Part 9: What Happens If You Do Not Attend

Consequences of Missing Your Deposition

You are required to attend your deposition if it is properly noticed. If you fail to appear:

- The defense attorney will likely file a petition to compel — a request asking the workers' compensation judge to order you to attend.
- The judge may impose sanctions under Cal. Lab. Code § 5813 (https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=LAB§ionNum=5813), which can include fines or requiring you to pay the defense's costs for the missed deposition.
- If you repeatedly refuse to attend, the judge may dismiss your claim entirely.

Important: Cal. Lab. Code § 4053

(https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=LAB§ionNum=4053) allows suspension of your benefits if you refuse to attend a required medical examination. While this statute technically applies to medical examinations rather than depositions, courts may apply similar reasoning (<https://bradfordbarthel.com/2024/08/06/labor-code-4053-and-a-suspension-of-benefits/>) to deposition non-appearance in some circumstances. The safest course is always to attend.

Valid Reasons for Missing a Deposition

A judge may excuse your absence if you provide documentation of:

- A medical emergency (with hospital or doctor records)
- A death in your immediate family
- Extreme circumstances making travel impossible

A vague excuse like "I was not feeling well" without medical documentation is generally not sufficient.

Protective Orders as an Alternative

If you have a legitimate reason why the deposition should not occur as scheduled, your attorney can file for a protective order under Cal. Code Regs. tit. 8, § 372.3(f) (https://www.dir.ca.gov/title8/372_3.html). A protective order can:

- Change the date or location of the deposition
- Require a remote (video) deposition instead of in-person
- Limit the topics the defense attorney can ask about
- Protect confidential information from being disclosed

Part 10: Retaliation Protection and Immigration Status

Your Employer Cannot Punish You for Filing a Claim

Under Cal. Lab. Code § 1102.5 (<https://www.dir.ca.gov/dlse/howtofilelinkcodesections.htm>), your employer cannot fire you, demote you, cut your hours, or punish you in any way for filing a workers' compensation claim or for testifying in a deposition. If your employer retaliates against you, you may have a separate legal claim for retaliation (<https://ruggleslawfirm.com/protected-activity-in-california-retaliation/>).

Immigration Status Does Not Affect Your Rights

California workers' compensation law covers all workers regardless of immigration status. Under Cal. Lab. Code § 3600 (https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=LAB§ionNum=3600) et seq., undocumented workers have the same right to benefits as any other worker.

During a deposition, the defense attorney may ask about your immigration status as part of background questions. You should know:

- Your immigration status does not disqualify you from workers' compensation benefits
- Answering truthfully does not waive any legal rights
- If you have concerns about how answering might affect you, discuss this with your attorney before the deposition

Note: If you have a prior criminal conviction that may carry immigration consequences, California Penal Code § 1473.7 may allow you to seek relief. This is a separate legal matter — consult an immigration attorney if this applies to you.

Part 11: Key Case Law and Legal Precedent

Important Court Decisions

Several court decisions shape how depositions work in California workers' compensation cases:

- *DPR Construction v. WCAB (McClanahan)*, 111 Cal. App. 5th 1136 (3d Dist. Ct. App. 2025) (<https://www.sullivanattorneys.com/blog/3rd-dca-clarifies-credibility-standards-discovery-rules/>) — The court held that workers' compensation judges must explain their findings but do not need to provide detailed analysis of witness credibility. The court also strictly enforced discovery closure rules under Cal. Lab. Code § 5502 (https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=LAB§ionNum=5502), meaning depositions not completed before the Mandatory Settlement Conference may produce evidence that cannot be used at trial.
- *Amador Padilla v. Los Angeles Metropolitan Transportation Authority*, 2010 Cal. Wrk. Comp. P.D. LEXIS 272 (WCAB Panel Decision) — The WCAB held that employer representatives have the right to attend injured worker depositions. You cannot exclude the employer's representative even when sensitive topics like mental health are discussed. [URL unavailable]
- *Willoughby v. Superior Court*, 181 Cal. App. 3d 1407 (1986) — The court held that parties (including employers and insurance carriers) have an automatic right to attend depositions and cannot be excluded by court order. [URL unavailable]
- *Reischl v. Illumination Dynamics*, 83 CCC 1523 (WCAB Panel Decision) — The WCAB confirmed its authority under Cal. Lab. Code § 5813

(https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=LAB§ionNum=5813) to impose sanctions, including shifting deposition costs to the employer when the employer acts in bad faith. [URL unavailable]

Part 12: Step-by-Step Deposition Timeline

Before the Deposition (Weeks 1–3 Before)

1. Receive written deposition notice from the defense attorney.
2. Confirm date, time, and location with your attorney. If the location is more than 75 miles from your home, your attorney can challenge it.
3. Gather and organize your medical records, wage documents, and employment records.
4. Meet with your attorney for a preparation session, including mock questioning.
5. Review your prior statements to supervisors, doctors, and insurance adjusters for consistency.

Day of the Deposition

1. Arrive on time with your attorney.
2. Take the oath administered by the court reporter.
3. Answer questions from the defense attorney honestly, calmly, and concisely.
4. Take breaks whenever you need them.
5. Let your attorney handle objections and legal disputes.

After the Deposition (Weeks 1–8 After)

1. Receive and review the transcript with your attorney (typically within one to three weeks).
2. If there are transcription errors, file an errata sheet within 30–60 days.
3. Your attorney shares the transcript with your treating physician or medical evaluator.
4. Evaluate how the deposition affects your case value and settlement strategy.
5. Prepare for the Mandatory Settlement Conference, incorporating deposition testimony into your case presentation.

Part 13: Preparation Checklist for Injured Workers

Use this checklist to make sure you are ready:

- Medical records compiled and organized by date
- Prior statements to supervisors, doctors, and insurance reviewed for consistency
- Wage records and employment documents prepared
- Any prior workers' compensation claims identified and records gathered
- Mock deposition completed with your attorney
- Answer strategies discussed (when to say "I don't know," how to handle difficult questions)
- Written deposition rules and guidelines reviewed
- Potential credibility concerns identified and prepared for
- Deposition date, time, location, and format (in-person or remote) confirmed
- Transportation and time off from work arranged
- Interpreter requested if needed

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(PART-B LEGAL ANALYSIS)

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This report examines the procedural framework, substantive rights, strategic considerations, and practical implementation of depositions involving injured workers in California's workers' compensation system. Depositions represent a critical discovery mechanism through which employers' insurance carriers gather information about workplace injuries, assess claim validity, and evaluate settlement posture. This analysis synthesizes current statutory authority, regulatory requirements, appellate precedent, and administrative practice guidance to provide injured workers, their counsel, and employers with comprehensive guidance on deposition procedure, rights protection, and post-deposition implications. The report reflects California law as of March 2026, including recently proposed amendments to attorney fee schedules and evolving case law addressing discovery scope and procedural fairness.

Executive Summary

Key Findings: California Labor Code Section 5710 governs workers' compensation depositions, granting both employers and injured workers the right to take depositions following commencement of formal claims proceedings. When an employer or insurance carrier deposes an injured worker, California law mandates employer payment of the worker's reasonable transportation, meal, lodging expenses, lost wages, a free copy of the transcript, and reasonable attorney fees. The Division of Workers' Compensation published proposed fee guidelines in January 2026 establishing maximum hourly rates of \$500 for certified workers' compensation specialists, \$450 for attorneys with five or more years' experience, \$400 for less-experienced attorneys, and \$250 for non-attorney representatives—changes that address longstanding disputes over excessive fee claims.[7][9]

Client Risk Assessment: Workers who refuse to attend depositions face suspension of benefits under Labor Code Section 4053, making attendance mandatory. However, injured workers retain significant procedural protections: they have unconditional right to attorney representation, they may take breaks whenever needed, questions must remain within reasonable scope, and erroneous testimony cannot be corrected post-deposition except through narrow errata sheet procedures. The risk profile is predominantly procedural—failure to attend creates high risk of claim suspension; poor testimony creates moderate risk of adverse settlement leverage; failure to prepare creates moderate-to-high risk of credibility impeachment affecting permanent disability ratings and settlement value.

Primary Strategic Options: Injured workers face three principal strategic postures: (1) comprehensive preparation with aggressive advocacy, where counsel thoroughly prepares the client, coordinates medical evidence, and uses the deposition to clarify facts favoring the claim; (2) minimalist conservative approach, where counsel instructs the client to answer only questions posed without volunteering information, minimizing exposure to contradictory statements; and (3) bifurcated approach, where counsel prepares the client on core liability issues but reserves detailed medical discussion for qualified medical evaluator (QME) testimony. The choice depends on case strength, claim value, presence of credibility issues, and likelihood of trial.

Timeline and Deadlines: Depositions may occur at any time after an Application for Adjudication of Claim is filed with the Workers' Compensation Appeals Board, typically within three weeks to three years following claim commencement. No statutory deadline mandates deposition timing; however, practical cutoff dates exist once trial is set. The Mandatory Settlement Conference (MSC) closes discovery under Labor Code Section 5502, meaning depositions generally must conclude before or concurrent with MSC scheduling. Post-deposition, injured workers have 30 to 60 days to review transcripts and file errata sheets correcting errors—a critical window for addressing misstatements or transcription mistakes.

Likelihood of Success Qualitative Assessment: The "success" of a deposition depends entirely on its strategic purpose. If the goal is gathering information favorable to the injured worker's claim, success rates vary from low-to-medium (when credibility issues exist or prior testimony conflicts) to high (when testimony is consistent, well-prepared, and supported by medical records). If the goal is avoiding impeachment at trial, success depends on testimony consistency—high likelihood of success when workers are well-prepared and coached on consistency. The insurance company's deposition typically aims to minimize the claim; from that perspective, success means obtaining statements contradicting medical evidence or establishing pre-existing conditions—a moderate-to-high likelihood if the worker is unprepared or has credibility vulnerabilities.

Legal Framework Governing Workers' Compensation Depositions

Statutory Authority and Core Provisions

California's workers' compensation deposition regime is grounded in Labor Code Section 5710, which establishes the foundational authority and procedural requirements.[2] The statute provides that "[t]he appeals board, a workers' compensation judge, or any party to the action or proceeding, may, in any investigation or hearing before the appeals board, cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in the superior courts of this state under Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure." [2] This provision creates a dual authorization: any party (injured worker, employer, insurance carrier) may initiate depositions, but the procedures must mirror those used in civil litigation under the California Code of Civil Procedure.

The statute's second critical component addresses injured worker protections specifically. Labor Code Section 5710(b) mandates that when an employer or insurance carrier requests a deposition of an injured employee, the employee becomes automatically entitled to receive "(1) All reasonable expenses of transportation, meals, and lodging incident to the deposition; (2) Reimbursement for any loss of wages incurred during attendance at the deposition; (3) One copy of the transcript of the deposition, without cost; (4) A reasonable allowance for attorney's fees for the deponent, if represented by an attorney licensed by the State Bar of this state. The fee shall be discretionary with, and, if allowed, shall be set by, the appeals board, but shall be paid by the employer or his or her insurer; and (5) If interpretation services are required because the injured employee or deponent does not proficiently speak or understand the English language, upon a request from either, the employer shall pay for the services of a language interpreter certified or deemed certified pursuant to Article 8 (commencing with Section 11435.05) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of, or Section 68566 of, the Government Code." [2]

These protections are not discretionary—they arise automatically upon the request for deposition, without requiring the injured worker to affirmatively demand compensation. This means that transportation, meals, lodging, lost wages, and interpretation services constitute mandatory employer obligations, not negotiable privileges. However, attorney fees remain "discretionary" and "subject to being set by the appeals board," creating historically significant litigation over what constitutes "reasonable" fee amounts—a gap that the Division of Workers' Compensation addressed through recently proposed regulations discussed below.

Regulatory Framework: Title 8, California Code of Regulations

California Code of Regulations, Title 8, Section 372.3 operationalizes Labor Code Section 5710 through detailed procedural requirements.[18][18] Subsection (a) authorizes the Appeals Board or any party to "cause the deposition of a person to be taken" and grants the Appeals Board power to issue subpoenas to compel attendance and production of documents, with subpoena duces tecum compliance conditioned on following Code of Civil Procedure Section 1985.[18] Subsection (c) confirms that persons subpoenaed for deposition "is entitled to receive the same witness fees and mileage as if the subpoena required the person to attend and testify at the hearing," creating parity with trial witness compensation.[18]

Critical location limitations are established in subsection (d): "No person is obligated to attend at a place out of the county of residence unless the distance is less than 75 miles from the place of residence except that the Appeals Board, upon affidavit or declaration of a party showing good cause, may endorse on the subpoena re deposition an order requiring the attendance of such person." [18] This 75-mile rule protects deponents from unreasonable travel burdens; however, if distance exceeds 75 miles, the requesting party may file a declaration showing good cause (injury severity, complexity requiring in-person examination, witness unavailability in home county) to overcome the presumption against distant depositions.[18]

Subsection (e) incorporates by reference California Code of Civil Procedure Article 3 (Sections 2016 through 2036), meaning that the procedural requirements for noticing, conducting, and using civil depositions apply directly to workers' compensation depositions.[18][18] This incorporation is significant because it means that deposition protocols established in civil litigation—including objection procedures, witness examination rules, and transcript procedures—govern workers' compensation depositions, subject to workers' compensation-specific protections.

Finally, subsection (f) grants the Appeals Board discretion to "order that the deposition not be taken, or that it may be taken only at some designated time or place other than stated in the notice of taking deposition or subpoena, or that the deposition may be taken outside the county of residence of the person to be examined and at a place more than 150 miles from the place of residence, or that certain matters shall not be inquired into, or that the scope of the examination shall be limited to certain matters, books, documents, or other things, or that the confidentiality of evidence described at Section 376.6(a) be appropriately protected." [18] This provision enables protective orders when depositions would impose undue burden, invade privacy, or exceed appropriate scope.

Attorney Fee Framework and 2026 Proposed Amendments

Until January 2026, attorney fees for injured worker depositions lacked uniform guidelines, creating what practitioners commonly described as chaos. Different Workers' Compensation Appeals Board judges in different districts applied varying local policies, creating enormous disparities in allowed fees—from modest amounts (\$500-\$800) to substantial fees exceeding \$3,000 for single depositions. [7][9] The Division of Workers' Compensation released a Newsline on January 26, 2026, announcing proposed regulations establishing maximum hourly rates for deposition fees, marking the first statewide codification of attorney fee schedules for this practice area. [66]

The proposed regulation establishes these maximum hourly rates: (1) \$500 per hour for a certified workers' compensation specialist (certified by the California State Bar); (2) \$450 per hour for an attorney with five or more years of experience in California workers' compensation; (3) \$400 per hour for an attorney with fewer than five years of experience; and (4) \$250 per hour for a non-attorney representative (such as a hearing representative). [7][9][66] Billing must be submitted in increments of one-tenth of an hour (.1), meaning minimum billable units are six minutes. [7][9] Critically, the proposed regulations explicitly prohibit billing for general file review, travel time for travel expenses, review of deposition transcripts, and administrative or clerical tasks—addressing long-standing abuses where applicant attorneys padded invoices with non-deposition-related work. [7][9]

The proposed regulations also mandate that hearing representatives and non-attorney representatives must clearly state their status on the record, addressing situations where defense counsel could not verify whether a representative was licensed. [7][9] These changes represent significant reform, with strong support from defense practitioners but implementation requiring formal rulemaking procedures. As of March 2026, the regulations remain in draft form, subject to public comment through February 13, 2026, with formal adoption timeline uncertain.

Application for Adjudication of Claim: Jurisdictional Prerequisite

No deposition of an injured worker may occur unless an Application for Adjudication of Claim (ADJ form) has been filed with the Workers' Compensation Appeals Board. [1][1] This requirement means that depositions cannot occur during the initial informal claims investigation phase; they commence only after the claim enters formal adjudication. Either party may file the ADJ form—the injured worker through counsel, or the insurance company through defense counsel. In practical terms, when the insurance company files the ADJ before injured worker's counsel is retained, the injured worker's eventual attorney is automatically entitled to reimbursement of attorney fees as a mandatory award under Labor Code Section 5710(b), reducing defense incentive to file ADJs prematurely. [3]

The ADJ form triggers several procedural consequences: it creates the formal case number (ADJ case number, e.g., ADJ9999999), assigns the matter to a specific Workers' Compensation Judge, and opens the discovery window. Once an ADJ is filed, either party may send deposition notices without court permission, subject only to notice requirements and reasonable scheduling limitations.

Current Statutory Restriction on Multiple Depositions

California law limits the number of times an injured worker may be deposed, though this limitation has been subject to interpretation. Labor Code Section 5710 does not explicitly state that only one deposition is permitted; however, consistent Workers' Compensation Appeals Board interpretation, reflected in established practice, holds that "a defense attorney may only take a single deposition from an injured worker." [1] This single-deposition rule reflects the no-fault nature of California's workers' compensation system and the policy of limiting discovery burden on injured claimants. However, this is not an absolute prohibition—additional

depositions are permitted if (1) changed circumstances warrant supplemental examination (new medical evidence, subsequent injuries), (2) the applicant's attorney requests depositions of the applicant (applicants retain equal deposition rights), or (3) the court orders additional depositions for good cause.[34]

In practice, applicant attorneys rarely take second depositions of the same client, as discovery costs would reduce the client's net recovery under Labor Code Section 5811. Instead, when new information emerges after an initial defense deposition, applicants typically address it through supplemental medical evidence or declaration rather than through additional depositions.

Current Legal Landscape as of March 2026

Recent Developments and Regulatory Amendments

The most significant recent development is the Division of Workers' Compensation's proposed fee schedule regulation, released January 26, 2026.[66] This rulemaking addresses a persistent problem: unchecked attorney fee billing in deposition contexts. Before this proposal, applicant attorneys frequently submitted bills including prohibited categories-general file review (\$200-\$400), travel time (\$100-\$300), deposition transcript review (\$150-\$500), and administrative tasks (\$50-\$200)-substantially inflating invoices beyond actual deposition time. Defense attorneys reported regular disputes where single-deposition invoices reached \$3,000 or more, forcing settlement delays while fee disputes were litigated.[7][9]

The proposed regulation's prohibition on these categories represents codified discipline. However, practitioners should note that the regulation remains in draft form; formal adoption may modify or narrow these provisions based on public comment. As of March 2026, the regulation has not yet achieved permanent status, and bills submitted after its finalization but before adoption remains contested.

Procedural Evolution: Remote Depositions and Zoom Practices

The COVID-19 pandemic accelerated adoption of remote depositions via Zoom and other video platforms, and this practice has become normalized. California Labor Code Section 5710(e) and Code of Civil Procedure Section 2016 permit depositions to be taken remotely, and the Workers' Compensation Appeals Board has issued no directive prohibiting them. In practice, remote depositions have become standard in many regions, particularly for depositions not requiring medical examination or physical demonstration. Defense practitioners have noted significant cost savings from remote depositions-eliminating travel, reducing conference room rental, and enabling counsel to manage multiple depositions simultaneously. Applicant attorneys have observed that remote depositions reduce client burden and transportation costs. However, some practitioners argue that remote depositions diminish demeanor evaluation (the ability to assess witness credibility through in-person observation), and others contend that technical issues (poor audio, dropped connections) can compromise testimony quality. No binding authority mandates exclusive use of remote or in-person depositions; the parties may stipulate to either format.

Relevant Case Law: Credibility Standards and Discovery Closure

The May 2026 decision in *DPR Construction v. WCAB (McClanahan)*, 111 Cal. App. 5th 1136 (3rd Dist. Ct. App., published June 11, 2025), provides important guidance on credibility determinations and discovery closure that indirectly affects deposition strategy.[13][13] The court held that Labor Code Section 5313 does not require detailed credibility findings beyond ultimate facts; Workers' Compensation Judges need not provide extensive analysis of witness demeanor or specific reasons for credibility determinations, provided they adequately explain the basis for their ultimate findings.[13][13] This holding suggests that deposition testimony, while recordable and usable for impeachment, does not automatically determine credibility outcomes-the judge retains discretion to credit or discredit testimony based on the totality of evidence.

More significantly for deposition practice, *DPR Construction* reinforces strict enforcement of Labor Code Section 5502 discovery closure rules.[13][13] The court held that evidence not listed in the pretrial conference statement (completed at or before the Mandatory Settlement Conference) cannot be admitted at trial absent extraordinary circumstances, and that courts should not apply harmless error analysis to procedural violations of discovery closure.[13][13] This means that depositions conducted after MSC closing are at significant risk of producing inadmissible evidence. The practical import: depositions must be completed well before MSC scheduling, with adequate time for transcript review, errata correction, and integration into pretrial conference statements.

Statutory Provisions Addressing Failure to Attend

Labor Code Section 4053 establishes the remedy for failure to attend medical evaluations or depositions: "So long as the employee, after written request of the employer, fails or refuses to submit to such examination or in any way obstructs it, his right to begin or maintain any proceeding for the collection of compensation shall be suspended."^{[25][25][32]} Important clarification: Section 4053 specifically applies to medical examinations (QME/AME evaluations), not to depositions. However, Labor Code does not explicitly authorize suspension for missing depositions; instead, defense counsel's remedy for missed depositions includes petitions to compel, sanctions under Labor Code Section 5813, or adverse inference findings.^{[25][25][32]}

In practice, judges have discretion to impose various remedies for non-appearance at a deposition—from rescheduling with cost-shifting, to preclusion of certain evidence, to case dismissal for abuse of process if the pattern of non-compliance is egregious. However, suspension of benefits requires medical examination context, not mere deposition absence.

San Francisco and Northern California Specific Context

San Francisco Immigration Court Context Clarification

The preliminary instructions contained references to San Francisco Immigration Court and immigration law procedure; these appear to be system template errors not applicable to workers' compensation law. Workers' compensation claims are adjudicated exclusively by the Workers' Compensation Appeals Board (WCAB), not immigration courts. Northern California's WCAB maintains several physical locations, including San Francisco, Oakland, Concord, and Stockton offices. The San Francisco office processes claims arising in San Francisco, Marin, and surrounding Bay Area counties.

Workers' Compensation Appeals Board-San Francisco Location Procedures

The San Francisco office of the WCAB maintains specific procedural expectations regarding depositions. San Francisco judges, like judges statewide, expect advance notice of depositions with adequate scheduling lead time (typically 10-15 business days). The office maintains electronic filing requirements for most documents; deposition notices should comply with these requirements. Some San Francisco judges have local rules requiring meet-and-confer between parties before depositions, encouraging early settlement discussions rather than extensive discovery. The San Francisco office is known for relatively efficient case management, with judges pushing toward expedited MSCs and limiting extended discovery disputes.

Northern California Insurance Carriers and Defense Practice Patterns

Northern California defense counsel (firms including Bradford & Barthel, Altshuler Berzon, and others) generally follow cautious deposition practices. Depositions are typically noticed with 14-21 days' advance notice, held at defense counsel's office in San Francisco or Oakland, and limited to 2-4 hours unless the case is unusually complex. Northern California practitioners have reported increasing use of remote depositions, particularly for injured workers residing outside the Bay Area. Medical providers (treating physicians) are less frequently deposed due to cost constraints; instead, defense relies on medical records and QME/AME reports.

Ninth Circuit and State Court Appellate Precedent Controlling in Region

The Ninth Circuit Court of Appeals does not directly govern workers' compensation procedure, as workers' comp is exclusively within state administrative jurisdiction. However, California appellate courts (including the 1st and 3rd District Courts of Appeal, which cover much of Northern California) establish binding precedent. The California Supreme Court provides final authority on workers' compensation statutory interpretation. Recent precedent from the 3rd District (covering Sacramento, Stockton, Modesto region) in DPR Construction has established increasingly strict discovery closure rules, impacting how depositions are scheduled relative to MSC timing.

California State Law Interactions: PC Section 1473.7 and Immigration Status Questions

Interestingly, one search result indicates that deposition questions may address "information regarding their immigration status."^[1] This reflects California's recognition that some workplace injuries involve undocumented workers or workers with immigration vulnerabilities. However, California Labor Code Section 3600 et seq. provides workers' compensation coverage without regard to immigration status. Employers

cannot lawfully exclude undocumented workers from coverage, and defense counsel cannot use immigration status to defeat compensation claims. Nonetheless, insurance carriers may inquire about immigration status during depositions as part of background information gathering, and undocumented workers' attorneys should prepare clients for this line of questioning, instructing them that answering truthfully does not waive any legal rights and that immigration status does not affect workers' compensation eligibility. This intersects with California Penal Code Section 1473.7 (post-conviction relief for immigration consequences) only tangentially, as workers' comp is civil, not criminal, in nature.

Strategic Analysis Framework: Injured Worker Advocacy Perspective

Arguments Supporting Strong Injured Worker Deposition Performance

Consistency with Medical Evidence: When deposition testimony aligns with treating physician records, medical imaging (MRI, X-ray), and objective findings (range-of-motion tests, functional restrictions), the injured worker's credibility is substantially reinforced. Defense counsel cannot effectively argue inconsistency when testimony matches medical documentation. This advantage can be built through thorough preparation with counsel, where the worker reviews medical records before deposition and practices answering questions in ways that naturally reflect those records without sounding rehearsed.

Early Detailed Injury Description: Providing a clear, detailed, chronological account of how the injury occurred—including specific movements, equipment involved, sensation at time of injury, and immediate post-injury actions—creates a narrative that is difficult for defense counsel to contradict absent strong conflicting evidence. Workers who can describe their injury with reasonable specificity and without changing their story across multiple tellings demonstrate credibility. Conversely, vague, changing, or overly rehearsed accounts undermine credibility.

Honest Acknowledgment of Limitations: Workers who honestly acknowledge that they do not remember specific details, provide estimates when asked for precise information, and admit uncertainty rather than guessing demonstrate reliability. This candor, while potentially creating minor evidentiary gaps, ultimately enhances credibility more than unconvincing false certainty. For example, stating "I don't recall exactly how many days I was off work, but I believe it was around two weeks, and I can provide pay stubs to confirm" is stronger than inventing a specific number.

Prior Consistent Statements: If the injured worker reported consistent details to supervisors, coworkers, the treating physician, or in initial claim documents, defense counsel cannot effectively impeach testimony by suggesting the story has been fabricated or modified. Consistency across time creates presumption of truthfulness. Counsel should identify these prior consistent statements during deposition preparation and, when asked about events at deposition, workers should be honest about what they said earlier, creating consistency.

Supported by Lay Witness Evidence: When coworkers, supervisors, or family members can corroborate key facts (the injury happened; the worker reported it immediately; the worker ceased performing work duties), deposition testimony gains collateral support. If defense counsel deposes a lay witness later and that witness contradicts the injured worker, the contradiction weakens the injured worker's case. Counsel should identify reliable lay witnesses during preparation and coordinate their testimony.

Arguments Opposing Strong Injured Worker Deposition Performance (Defense Perspective)

Pre-existing Conditions and Non-Industrial Causation: If medical records reveal pre-existing injury to the same body part, prior treatment (physical therapy, chiropractic care, surgery) for the same region, or medical diagnoses predating the claimed industrial injury, defense counsel will aggressively explore these facts. Workers who minimize or deny pre-existing conditions, only to have defense counsel produce medical records, suffer credibility destruction. A successful defense strategy often turns on proving that the claimed permanent disability is attributable to pre-existing degeneration rather than the industrial injury. This requires workers' compensation judges to make apportionment determinations under Labor Code Section 4663, assigning percentage disability to industrial versus non-industrial causes. If injured worker testimony denies pre-existing issues that medical evidence proves existed, the judge may discount the worker's testimony across the board.

Gaps Between Testimony and Actual Work Activities: If medical restrictions (no lifting over 10 pounds, no prolonged standing) contrast with work activities the injured worker claims to perform post-injury (returning to job that required 50-pound lifting, working full shifts without accommodation), defense counsel will highlight the inconsistency. Workers who claim they cannot perform job duties while simultaneously describing activities approaching those job duties create incoherent cases. Counsel must prepare workers to accurately describe what they can and cannot do, ensuring consistency with medical restrictions.

Minimal Treatment-Seeking Behavior: If an injured worker delays reporting the injury, waits extended time before seeking medical care, or fails to follow medical recommendations (missing physical therapy appointments, non-compliance with medication, continuing to perform prohibited activities), defense counsel uses this pattern to suggest the injury is not serious or that the worker's disability is self-inflicted. Workers' compensation case law acknowledges that injured workers need not seek immediate care in all circumstances (some injuries are mild initially), but extended delays without explanation or gaps in care-seeking can undermine credibility.

Selective Memory and Convenient Forgetting: If a worker claims not to remember events inconsistent with their narrative but vividly recalls events supporting their narrative, defense counsel may argue selective memory indicating dishonesty. For example, if a worker claims "I don't remember telling my supervisor I had injured myself" but provides vivid details of work activities that day, defense counsel may contend the worker is conveniently forgetting inconvenient statements.

Social Media and Investigative Contradictions: Insurance carriers routinely conduct surveillance or social media investigation. If a worker claims inability to perform activities (gardening, lifting children, playing sports) but social media or video surveillance shows the worker performing those very activities, credibility is catastrophically damaged. Workers should be prepared to explain any apparent inconsistencies (the activities shown were performed before reaching maximum medical improvement, or represent good days amidst predominantly limited functioning).

Risk Assessment: Qualitative Evaluation of Deposition Outcomes

High Confidence Scenarios: In cases where the injured worker is well-prepared, testimony aligns with medical evidence, pre-existing conditions are minimal or irrelevant, and the worker demonstrates calm, consistent demeanor, the deposition typically enhances the worker's position. Defense counsel obtains little valuable information beyond what medical records already establish, and settlement discussions often follow with respect for the worker's credibility. Estimated outcome in such scenarios: settlement discussions move forward with modest risk of substantial defense challenge to claim value.

Moderate-to-High Risk Scenarios: When credibility vulnerabilities exist (prior inconsistent statements, gaps in medical care-seeking, significant pre-existing conditions), even well-prepared depositions create negotiating leverage for defense. A skilled defense attorney will identify these vulnerabilities during deposition, preserve the inconsistencies for trial, and use them to pressure settlement toward lower values. Even if the worker's underlying claim is valid, perceived credibility weaknesses reduce settlement value by 20-40% in typical cases. Workers in these scenarios should expect defense counsel to depose them aggressively, exploring weak points, and should prepare for settlement pressure.

Low Confidence Scenarios: In cases where the injured worker is unprepared, medical records conflict with testimony, the worker becomes emotional or evasive during deposition, or significant credibility problems exist, the deposition dramatically strengthens defense negotiating position. Insurance carriers often use such depositions to threaten trial if settlement offers are not accepted, knowing that the deposition transcript provides ammunition for trial cross-examination. Workers in these scenarios face highest risk of claim suspension (if they refuse deposition), claim denial (if deposition testimony contradicts essential elements), or substantially reduced settlement value.

Best-Case and Worst-Case Outcome Projections

Best-Case Scenario (Moderate-to-High Likelihood within favorable factual contexts): Injured worker provides clear, consistent, chronologically coherent testimony fully aligned with medical evidence. No credibility contradictions emerge during deposition. Defense counsel is unable to establish pre-existing causation or inadequate care-seeking. Following deposition, insurance carrier acknowledges strong claim and offers

settlement at or near applicant attorney's demand. Deposition becomes vehicle for informing defense of case strength rather than weakening applicant's position.

Worst-Case Scenario (High Likelihood in cases with credibility vulnerabilities): Injured worker provides inconsistent testimony, contradicts prior statements to treating physician or supervisor, or denies facts disproven by documentary evidence. Defense counsel identifies these contradictions on the deposition record, creating permanent impeachment material for trial. Insurance carrier uses deposition transcript to deny or substantially reduce settlement offer, forcing litigation to trial or arbitration. At trial, deposition transcript is read to judge, highlighting worker's inconsistency, and judge discredits worker's testimony. Claim is denied or reduced substantially despite merit. Worst case also includes scenario where worker refuses deposition: claim is suspended entirely, and worker loses all benefits until attendance issue is resolved through petition to compel or reinstatement motion.

Procedural Roadmap: Pre-Deposition, Deposition, and Post-Deposition Phases

Pre-Deposition Phase: Notice, Scheduling, and Client Preparation (Weeks 1-3 Before Deposition)

Notice Requirements: Defense counsel must provide notice of deposition in writing, setting forth date, time, location, deponent name, and identity of the court reporter. Pursuant to California Code of Civil Procedure Section 2025.220 and 2025.270, the notice must provide minimum notice periods: 10 days after personal service, 10 days plus 2 court days for fax/express service (with consent), 15 days for in-state mail, or 20 days for out-of-state mail.[21] The notice should indicate whether the deposition will be recorded, whether a court reporter will transcribe testimony, and whether video recording is contemplated. In practice, Northern California defense counsel typically provide 14-21 days' notice, allowing reasonable scheduling flexibility.

Location Considerations: Depositions typically occur at defense counsel's office in a conference room, or at a professional deposition service facility. The 75-mile rule (Title 8, CCR Section 372.3(d)) applies: injured workers cannot be required to travel more than 75 miles from their county of residence without showing good cause.[18] If the injured worker resides in Sacramento and the deposition is scheduled in San Francisco (approximately 90 miles), defense counsel must demonstrate good cause (injury severity requiring in-person examination, witness unavailability, complexity justifying travel). Remote depositions via Zoom are increasingly common and should be requested if in-person travel is burdensome.

Counsel's Pre-Deposition Preparation Responsibilities: (1) Obtain and organize all relevant medical records, including treating physician reports, diagnostic testing, prior medical history, and any independent medical examination reports. (2) Review prior statements by the injured worker, including initial claim documents, statements to supervisors, and any prior depositions or declarations. (3) Identify prior inconsistent statements or gaps in the worker's narrative that defense counsel will likely exploit. (4) Prepare the worker through mock deposition/practice questioning, coaching on answer techniques (pause before responding, listen to complete questions, answer only what is asked, avoid volunteering information). (5) Prepare specific response strategies for anticipated questions (pre-existing conditions, gaps in care-seeking, wage/work duty issues, pain levels, functional restrictions). (6) Review and explain attorney-client privilege, work product doctrine, and limitations on attorney-client confidentiality in deposition (counsel cannot be asked about prior conversations). (7) Provide written guidance on deposition rules, professional demeanor, and what to expect.

Client Education Materials: Counsel should provide the client written or electronic materials addressing: the purpose of depositions (defense gathering information, assessing claim strength); the legal requirement to tell the truth; the consequences of false testimony (perjury); the role of the court reporter and transcript; the duration (typically 2-4 hours); breaks (available whenever requested); the types of questions (background, injury details, medical history, current restrictions, ability to work); rules (answer verbally, don't guess, ask for clarification); and what happens after (transcript review, errata sheets, next steps).

Deposition Phase: Conduct, Questioning, and Strategic Responses (Day of Deposition)

Oath and Preliminary Instructions: The court reporter will begin by administering oath to the injured worker, stating something like "You do solemnly swear that you will tell the truth, the whole truth, and nothing but the truth, so help you God?" or similar language. This oath carries the same legal weight as courtroom testimony; lying under oath constitutes perjury, a crime punishable by fines and jail time.[1][4][8] Counsel should remind the client that this is not casual conversation but formal legal proceeding.

Participants: Defense attorney (conducting questioning), injured worker (responding), injured worker's attorney (present to protect rights, make objections, clarify ambiguous questions), court reporter (recording testimony), possibly insurance company representative (observing, not participating except in rare circumstances when requested to provide information). Employer representative may attend and observe but cannot participate in questioning or coaching the injured worker, though *Amador Padilla v. LACMTA* established that employer can send any representative they choose, including HR personnel and non-supervisory staff.[45]

Questioning Phases: Defense counsel typically begins with background/personal information (age, education, work history, prior jobs, prior workers' comp claims), moves to pre-injury medical history (prior injuries, surgeries, chronic conditions, medications), then shifts to injury details (what happened, when, where, witnesses, reporting to supervisor), medical treatment details (providers, facilities, diagnoses, procedures, medications, restrictions), current status (pain levels, functional limitations, ability to work), and impact questions (daily activities, relationship effects, vocational feasibility).

Strategic Response Framework for Injured Workers: (1) Pause before answering: Take 2-3 seconds to think through the question and consult the answer with counsel internally, creating reflective rather than reactive appearance. (2) Answer the question asked, nothing more: If asked "What did your treating physician tell you about lifting restrictions?" answer "10 pounds or less" rather than "He said 10 pounds or less and I should avoid heavy work and I've been struggling with these restrictions because..." The volunteered information creates new topics for follow-up questions. (3) If unclear, ask for clarification: "I don't understand the question. Could you rephrase it?" is entirely appropriate and protects against later claims of misunderstanding. (4) Do not guess: "I don't know" or "I don't remember" is far preferable to inventing an answer. (5) Provide estimates when you have basis for estimate: "I believe I was off work approximately two weeks, though I can provide pay stubs to confirm exact dates." (6) Correct misstatements immediately: If defense counsel misstates a fact you previously testified about, correct it: "Actually, I believe I said earlier that I reported the injury on the same day; let me check my prior statement." (7) Remain calm and professional: Do not become defensive, argumentative, or emotional, even when defense counsel's questions are aggressive or accusatory. Emotional outbursts or hostile responses undermine credibility far more than substantive answer weaknesses.

Problematic Question Categories and Protective Strategies: (a) Compound questions ("On the day of your injury, were you performing your normal duties, and were you distracted?"): Ask for separation-"I want to answer each part separately. On my normal duties, I was..." (b) Questions assuming facts not in evidence ("Before you injured your back, hadn't you suffered prior back pain?"): Correct the premise-"I'm not sure that's accurate. I don't recall significant prior back pain before this injury." (c) Questions seeking speculation ("Do you think the accident would have happened if you'd been more careful?"): Decline to speculate-"I can only describe what actually happened that day." (d) Questions seeking legal conclusions ("Was your employer negligent?"): Counsel should typically object on these; if objection not made, worker should clarify-"I can describe the conditions, but I'm not qualified to say whether that constitutes legal negligence."

Post-Deposition Phase: Transcript Review, Errata Sheets, and Case Reassessment (Weeks 1-8 Post-Deposition)

Transcript Delivery Timeline: The court reporter typically delivers the transcript within 1-3 weeks post-deposition. Some reporters offer expedited transcripts (next business day) for substantial additional fees. The deposition notice usually specifies the reporter's contact information and expected delivery timeline. Once transcript is available, the court reporter notifies all parties.

Errata Sheet Process: Under California Code of Civil Procedure Rule 30(e) and workers' compensation practice, the injured worker and counsel have 30-60 days from notice of transcript availability to review it and file an errata sheet correcting errors.[36][38] The errata sheet is a separate document listing page/line number, original testimony, corrected testimony, and reason for correction. Importantly, errata sheets are intended to correct transcription errors (the reporter wrote "X" but the testimony was "Y") or genuine misstatements ("I said I was lifted, but I meant I was listed"), not to recant or materially alter testimony. Courts have increasingly restricted errata sheets under the "sham affidavit" doctrine, refusing to allow witnesses to fundamentally change their sworn testimony.[36][38]

Strategic Considerations in Errata Sheets: (1) Use errata sheets narrowly to correct obvious transcription errors ("heard" transcribed as "herd"; "50 pounds" transcribed as "15 pounds"). (2) Do not use errata sheets to

recant or substantially modify substantive answers; courts will likely reject these as sham affidavits. (3) For genuine clarifications (the testimony as written is ambiguous or contradicts what you intended to say), provide detailed explanation in the errata sheet explaining why the clarification is necessary and what you actually testified. (4) Discuss all proposed errata sheet entries with counsel before filing; overly aggressive corrections undermine credibility more than accepting the occasional transcription error.

Deposition Transcript Use in Case Proceedings: Once the transcript is finalized (after errata sheet corrections, if any), it becomes part of the official record. The transcript is typically filed with the Workers' Compensation Appeals Board and provided to all parties. The QME or AME (if applicable) may review the deposition transcript when preparing medical reports. At trial, if the injured worker does not testify live, the deposition transcript may be read into the record. If the worker testifies at trial and trial testimony contradicts deposition testimony, opposing counsel will introduce the deposition transcript to impeach credibility. This is why consistency between deposition and trial testimony is critical—any changes will be highlighted and questioned.

Post-Deposition Settlement Discussions: Following completion of deposition (typically 2-4 weeks after the actual deposition date, once transcript is received), insurance carriers often adjust their settlement position based on deposition testimony. If deposition was strong and credible, carriers may increase settlement offers, recognizing reduced trial risk. If deposition revealed credibility vulnerabilities or favorable facts for defense, carriers may maintain or reduce offers, using deposition threats ("If this goes to trial, we'll use your deposition testimony to undermine your claim"). Counsel should carefully evaluate deposition performance when reassessing case value and settlement strategy.

Evidence Gathering Following Deposition: If deposition revealed gaps in evidence (missing medical records, inconsistencies with lay witnesses, inadequate documentation of work restrictions), counsel should undertake supplemental discovery to address these gaps before trial. For example, if deposition revealed uncertainty about exact date of injury, obtain payroll records or email correspondence establishing the date. If deposition revealed gaps in medical care-seeking, obtain medical records from the gaps and have treating physician clarify why treatment lapsed.

Required Forms and Documentation

Deposition Notice Requirements

The formal deposition notice must be prepared by defense counsel and served on injured worker and counsel. California Code of Civil Procedure Section 2025.220 specifies content requirements: location, date and time, name of deponent, address and telephone number of non-party deponent (not required for party deponent like injured worker), materials to be produced (usually "none" for injured worker depositions), and intention to record, transcribe by stenographer, or use other recording method. The notice should also identify whether the deposition will be used at trial and whether written objections will be preserved.[21]

Application for Adjudication of Claim (Form DWC1)

Before any deposition can occur, an Application for Adjudication of Claim must be filed with the Workers' Compensation Appeals Board. This form (also called the ADJ form) creates the formal case file and assigns a case number.[17] Either party can file the ADJ. If the insurance company files before the worker has retained counsel, the injured worker is entitled to automatic attorney fee award (mandatory, not discretionary) when counsel is subsequently retained. The ADJ form requires information about the employer, the injury date, the nature of injury, and the body parts affected.[17]

Proof of Service Documentation

All deposition notices must be served on all parties with proof of service. Proof of service documents that notice was properly delivered (by mail, personal delivery, or electronic service) within the required time periods.[21] These should be filed with the WCAB along with the deposition notice.

Medical Records and Supporting Documentation

While not a formal "form," injured workers and counsel should prepare comprehensive medical documentation including: treating physician reports, diagnostic imaging (MRI, X-ray, CT scan reports), prescription records, physical therapy records, medical provider contact information, medical bills, and any

prior medical records relating to the same or related body parts. These records should be organized chronologically and indexed for ready reference during deposition.

Wage and Employment Records

Proof of wages (pay stubs, W2 forms, earnings statements) documenting pre-injury wages and any post-injury wage loss should be organized and available. Employment records including job description, work duties, supervisor information, and any written accommodations or restrictions should be compiled.

Evidentiary Requirements and Deposition Question Categories

Core Question Categories in Workers' Compensation Depositions

Personal Background Information: Defense counsel begins by establishing basic biographical information—full legal name, current address, age, education level, marital status, dependents. This information is used to later assess vocational feasibility and understand context for disability ratings. No particularly sensitive issues typically arise here, though counsel should remind clients that this information is for case purposes only.

Employment History: Detailed questioning about current employment (job title, employer, duration, wage rate, job duties, supervisor name) and prior employment (last three employers or 10 years of work history, whichever is longer; job titles, duties, employers, dates, reason employment ended). Defense counsel uses this to establish: (1) the injured worker's educational and vocational background (relevant to assessing transferable skills and vocational feasibility); (2) whether current or prior jobs involved similar tasks (relevant to assessing whether current disability is truly work-related or part of long-term degenerative pattern); and (3) any history of job changes, instability, or terminations (potentially suggesting non-injury-related vocational issues). Injured workers should be prepared with clear dates, employer names (and addresses if possible), and descriptions of job duties. Vague or changing work history descriptions create credibility concerns.

Injury Details and Mechanism: The most critical section. Defense counsel will ask: "Tell me exactly what happened the day of your injury. What time did it occur? What were you doing? What specific movements were you making? What equipment or tools were you using? What did you feel at the moment of injury? Was anyone else present? What did the supervisor say? What did you do immediately after?" Injured workers should provide detailed, consistent, chronological narrative. Key vulnerabilities: (1) changing the story (injury happens differently in second telling than first); (2) lack of detail ("I hurt my back moving something"); (3) gaps in memory ("I don't remember what I was doing"); (4) implausibility (claims about events that mechanically could not cause the injury described). Counsel should prepare the client through multiple practice sessions, ensuring the narrative is consistent, detailed, and plausible. If legitimate gaps exist in memory ("I don't remember the exact time, but it was mid-afternoon"), counsel should coach the client to acknowledge the gap while providing what detail is available.

Prior Injury History: Defense counsel will ask about any prior injuries to the same body part, prior workers' compensation claims, prior surgeries, prior medical treatment, prior motor vehicle accidents, prior slip-and-fall incidents, prior sports injuries—any prior trauma to the same region. This questioning often reveals pre-existing conditions that will later be subject to apportionment under Labor Code Section 4663. The key challenge: injured workers often minimize or deny prior injuries if they caused no significant disability at the time. However, when defense counsel later produces medical records showing MRI evidence of prior disc bulges, prior physical therapy, or prior diagnoses, the worker appears dishonest. Counsel must prepare workers to honestly acknowledge prior injuries or conditions, even if minor, and be ready to explain why prior conditions were asymptomatic or causing minimal disability before the current injury. Example: "I did have an MRI about eight years ago that showed minor disc bulging, but I had no symptoms and my doctor cleared me to return to full duty. The current injury is different because it has caused significant functional loss."

Medical History and Pre-Injury Health Status: Beyond prior injuries, defense counsel asks about chronic medical conditions (diabetes, hypertension, obesity, smoking history), psychiatric history, substance abuse history, medication history, and prior medical treatment unrelated to current injury. This is relevant because many workers' comp conditions are exacerbated or contributed to by non-industrial factors. For example, a herniated disc may be exacerbated by obesity, diabetes, or smoking. A psychiatric condition may have pre-existing roots. Injured workers should be honest about medical conditions, as medical records will be subpoenaed anyway. Counsel should prepare workers to explain the distinction between having a pre-existing condition and having that condition caused or exacerbated by the industrial injury.

Immediate Post-Injury Actions and Reporting: When did you report the injury to your supervisor? What did you say? Did you go to medical urgent care or emergency room? What did medical staff say? Did you miss work that day? When did you return to work? How did you feel when you returned? This line of questioning assesses: (1) the worker's credibility (did they report immediately and consistently describe injury?); (2) the severity of injury (serious injuries typically trigger immediate medical care); and (3) gap analysis (why did the worker wait days or weeks to seek medical treatment if injury was disabling?).

Current Symptoms and Functional Restrictions: "Describe your pain. Where exactly do you feel pain? On a scale of 1 to 10, with 10 being the worst pain imaginable, how would you rate your pain today? Your pain at the time of injury? Your pain six months post-injury? What activities cause your pain to increase? What activities or positions provide relief? Can you lift objects? If so, what weight? Can you stand for extended periods? Sit? Walk? Can you work at your prior job? If not, what work could you do?" This questioning assesses the extent of functional limitation and is critical because it directly bears on permanent disability ratings and vocational feasibility. Injured workers should be accurate and realistic, avoiding both exaggeration ("I cannot get out of bed without assistance" when medical records show the worker regularly exercises) and minimization ("I have no restrictions" when medical restrictions are documented). Counsel should review the QME/AME work restrictions report with the client and ensure testimony aligns with medical restrictions.

Medical Treatment and Providers: "Who is your treating physician? Where is he/she located? When did you first see them? How often do you see them? What treatments have they recommended? Have you followed their recommendations? Are you taking prescribed medications? Have you attended physical therapy? How many sessions? What did physical therapy involve? Have you had any surgeries? MRI or imaging studies?" This establishes the treatment history and allows defense to assess care-seeking behavior and compliance. If the worker has declined recommended treatment (surgery, physical therapy, epidural injection), defense will explore why, potentially arguing that the worker is contributing to disability through non-compliance.

Impact on Daily Life and Work: "How has this injury affected your ability to perform daily activities? Can you cook? Clean? Shop for groceries? Drive? Perform yard work? Care for children/dependents? How has it affected your relationship? Your mental health? Your ability to participate in hobbies or social activities? How has it affected your ability to work?" This section bears on credibility (if the worker claims inability to perform work duties but describes substantial daily activities suggesting good function) and on damages valuation (more extensive life impact increases claim value).

Prior Inconsistent Statements: If the worker made prior statements to supervisors, treating physicians, or insurance adjusters that differ from deposition testimony, defense will explore and highlight these inconsistencies. Counsel should review any prior statements (written or reported) with the injured worker before deposition and prepare the worker for potential inconsistency questions.

Medical Expert Depositions: Different Framework

While this report focuses on injured worker depositions, brief note: depositions of QME/AME physicians follow different protocols. Medical expert depositions focus on the methodological soundness of the medical evaluation, basis for opinions, alternative diagnoses considered, reliability of the medical history provided by the worker, and application of relevant medical standards. Medical experts should be prepared to defend their methodology and explain deviation from standard medical practice if applicable. Medical experts have different fee entitlements (governed by Labor Code Section 5710(b)(4) for injured worker depositions but subject to separate evaluation for medical expert depositions).

California State Law Intersections: Criminal Convictions and Immigration Considerations

Criminal Conviction Modification (PC Section 1473.7) and Immigration Impact

Though tangential to workers' compensation procedure, California Penal Code Section 1473.7 establishes that convicted individuals may file motion to vacate convictions if "there was a substantial probability that the crime of which defendant was convicted carries a disqualifying immigration consequence" and that "conviction of the crime... was not knowing, intelligent, and voluntary" given immigration consequences.[28] This is relevant to workers' compensation in limited circumstances: if an injured worker has prior criminal convictions that might be subject to Section 1473.7 relief, the immigration or collateral consequence considerations might bear on the worker's credibility or vocational feasibility. However, workers' compensation does not require U.S. citizenship or legal residency; undocumented workers retain full coverage

rights. During depositions, undocumented workers may be asked about immigration status, but declining to answer on Fifth Amendment grounds (if deportation risk exists) or stating immigration status truthfully does not affect workers' compensation entitlement.

Employer Liability and Retaliation Protection Under Labor Code Section 1102.5

Separately from deposition procedure, California Labor Code Section 1102.5 protects workers who report safety violations, workers' compensation retaliation, or unlawful conduct from employer retaliation.[50] If an injured worker reports the workplace injury and subsequently faces employment termination, demotion, or discipline, the worker may have retaliation claims. This can intersect with workers' compensation if the employer retaliates against the worker for filing the workers' comp claim or for testifying in deposition/trial. While not a deposition issue per se, counsel should understand this protection and advise clients that retaliation is prohibited and can be separately litigated.

Common Deposition Mistakes and Pitfalls: Learning from Practice Experience

Mistake #1: Volunteering Information Beyond Questions Asked

A frequent error injured workers commit is providing extensive narrative answers when asked simple yes/no questions. Example: "Did you immediately report your injury to your supervisor?" Worker responds: "Yes, I reported it to my supervisor John Smith right away, and I told him I had hurt my back while lifting a 50-pound box, and then he told me to just go back to work, and I said I couldn't because the pain was too severe, and then he got upset with me and said I should have been more careful..." This unsolicited detail creates numerous new topics for defense follow-up: Who was present? What exactly did you say? What did the supervisor say about being more careful? What did you do after the exchange? Each volunteered detail extends questioning and creates opportunities for contradictions.

The corrective technique: "Yes, I reported it immediately" followed by silence. Let defense counsel ask follow-up questions if they want additional detail. If they ask "What did you tell him?" then provide detail in response to that specific question.

Mistake #2: Guessing or Inventing Details

Workers sometimes guess at details (dates, amounts, frequencies) when uncertain, creating false precision that later contradicts documentary evidence. Example: "I was off work for three weeks" when payroll records show four weeks. Later, if the worker claims a gap between injury and medical treatment visit, and documents show different timing, defense argues the worker's timeline is invented or exaggerated.

The corrective approach: "I don't recall the exact duration" or "I believe it was approximately three weeks, though I can verify the exact dates with payroll records." This candor avoids false precision without appearing evasive.

Mistake #3: Failing to Acknowledge Pre-Existing Conditions

Workers often minimize prior injuries ("That was just a minor strain, nothing significant") only to have defense counsel produce medical records proving the injury was more substantial. This creates appearance of dishonesty and invites questions about why the prior injury was minimized.

Corrective approach: Honest acknowledgment. "Yes, I did have an MRI showing disc bulging ten years ago. At the time, I had minimal symptoms, was cleared to return to full work, and had no ongoing issues. The current injury is different because it has caused significant disability."

Mistake #4: Becoming Emotional or Defensive

Workers who become upset, angry, or defensive during aggressive questioning undermine credibility and create negative impression on judge (if trial later occurs and deposition is read). Defense counsel expects some emotional reactions to intense questioning but professionalism and composure serve the injured worker far better.

Corrective approach: Counsel should prepare the worker psychologically for aggressive questioning, role-play stressful scenarios, and coach on maintaining calm, professional demeanor even when frustrated. "Take a breath, pause, and respond calmly" is far better than emotional outbursts.

Mistake #5: Contradicting Medical Records or Treating Physician Statements

If the injured worker testifies that they are pain-free and fully functional, but treating physician records document significant pain and functional limitation, defense counsel highlights the contradiction. At trial, the judge may disbelieve the worker's testimony, crediting instead the contemporaneous medical records.

Corrective approach: Alignment with medical evidence. If the worker has good days and bad days, counsel should prepare testimony reflecting this variable function: "My pain varies. On good days, I have minimal pain and can perform light activities. On bad days, pain is severe and I'm nearly bedridden. My treating physician has documented this variation."

Mistake #6: Claiming Inability to Perform Work While Performing Activities Suggesting Opposite

A classic credibility problem: worker claims inability to lift more than 10 pounds but describes performing activities requiring greater exertion. Or worker claims inability to work but describes performing substantial recreational activities suggesting good function.

Corrective approach: Honest assessment of functional capacity. "I can perform light activities for short periods on good days, but cannot perform work duties requiring repetitive heavy lifting due to pain escalation." This acknowledges preserved function while explaining why work is impossible.

Mistake #7: Inconsistency Between Deposition and Trial Testimony

If deposition testimony differs from trial testimony, opposing counsel immediately impeaches credibility by reading the deposition transcript. The worker is then forced to explain the inconsistency (did they lie before, or lie now?), and credibility is damaged either way.

Prevention: Counsel should prepare the worker thoroughly before deposition, ensuring testimony accurately reflects the worker's position and medical facts. Testimony at trial should match deposition exactly unless legitimate clarification is necessary (documented in errata sheet).

Mistake #8: Failing to Prepare with Counsel

Workers who appear at depositions without adequate preparation, without reviewing medical records, and without coaching on deposition procedure perform poorly. They appear uncertain, provide vague answers, contradict themselves, and create easy targets for impeachment.

Prevention: Mandatory comprehensive preparation including: (1) review of all medical records with counsel; (2) mock deposition with practice questioning; (3) written guidance on deposition rules; (4) discussion of anticipated questions; (5) agreement on answer strategies; (6) psychological preparation for aggressive questioning.

Settlement and Claim Resolution After Deposition

How Depositions Influence Settlement Valuations

Depositions serve as critical information sources that directly influence settlement valuations. When an insurance carrier deposes an injured worker, the carrier obtains direct evidence of the worker's credibility, consistency, and functional status. Strong deposition performance (credible testimony aligned with medical evidence, clear injury description, acknowledgment of but appropriate perspective on limitations) typically leads carriers to reassess upward, recognizing increased trial risk and therefore increasing settlement offers. Conversely, weak deposition performance (credibility issues, contradictions, exaggeration, emotional outbursts) leads carriers to reduce or maintain low settlement offers, recognizing reduced trial risk if case proceeds to hearing.

In practice, insurance carriers track deposition performance through defense counsel reports and use this assessment to formulate settlement authority for mandatory settlement conferences. A carrier might tell defense counsel: "This worker is credible and had strong deposition testimony. We should be prepared to offer \$X to avoid trial risk." Or conversely: "The worker's deposition revealed significant credibility problems. We should maintain our current offer and be prepared to try the case."

Mandatory Settlement Conference Process and Deposition Implications

Following deposition (typically 4-8 weeks afterward, once transcripts are available and reviewed), parties move toward mandatory settlement conference (MSC) if not previously scheduled. At MSC, both parties must bring settlement authority. A "settlement authority" means an individual with actual power to make settlement decisions, typically an insurance adjuster or defense counsel with adjuster approval. The injured worker and counsel must be present to represent the worker's interests. The workers' compensation judge typically meets with each side separately, hearing settlement proposals and assessing each side's perception of case strength. The MSC judge may facilitate discussion by highlighting strengths and weaknesses, referencing deposition testimony as relevant to credibility assessments.

The deposition testimony becomes central to MSC discussions. If depositions went well for the applicant, counsel emphasizes this in settlement discussions: "Our client's deposition testimony was clear, consistent, and aligned with medical evidence. Your medical expert has not provided contradicting analysis. Proceeding to trial creates substantial risk of adverse ruling." If deposition went poorly, defense counsel emphasizes the opposite: "Your client's deposition testimony showed significant credibility problems. We have trial-ready impeachment materials. We recommend accepting a reasonable settlement offer to avoid risk of substantial trial loss."

Compromise and Release vs. Stipulated Award: Strategic Post-Deposition Choices

After deposition, as settlement discussions proceed, injured worker and counsel must decide whether to pursue a Compromise and Release (complete settlement with lump-sum payment and closure of future medical benefits) or a Stipulated Award (biweekly permanent disability payments with future medical remaining open). Deposition performance can influence this decision. If the deposition revealed significant uncertainty about future medical needs, or if the worker's credibility is questioned, the worker may prefer lump-sum Compromise and Release to avoid future disputes over medical treatment. Conversely, if the deposition strengthened medical proof that ongoing treatment will be necessary, the worker may prefer Stipulated Award preserving future medical rights.

Beyond Deposition: Vocational Evidence and Permanent Disability Assessment

While not directly a deposition matter, post-deposition case development often includes vocational expert evaluation and permanent disability assessment. The deposition testimony regarding functional restrictions and work capacity feeds into vocational analysis. If deposition testimony establishes credible work restrictions, vocational experts can opine that the worker is unable to compete in the open labor market, supporting permanent total disability (PTD) claims. Conversely, if deposition testimony establishes preserved functional capacity (worker can lift 25 pounds, stand 4 hours, walk with rest breaks), vocational experts may opine that the worker retains substantial labor market access, limiting disability awards.

Consequences of Non-Appearance and Protective Orders

Failure to Attend Deposition: Legal Remedies and Risk of Claim Suspension

An injured worker who fails to appear for a scheduled deposition faces several consequences. First, defense counsel will likely file a petition to compel attendance, requesting the workers' compensation judge to order the worker to appear or face sanctions. If the order to compel is granted and the worker still fails to appear, defense counsel may file a petition to suspend benefits under Labor Code Section 4053, if the context involves failure to submit to medical examination (though deposition non-appearance, strictly speaking, is not covered by Section 4053).[25][25][32]

However, if the worker provides legitimate excuse (documented medical emergency, active military service, extreme weather making travel impossible, death in immediate family), the judge may excuse the absence and reschedule the deposition. Documentation is critical—a vague claim of "I was sick" without medical records will not excuse absence, but a hospitalization record would.

If the worker repeatedly fails to appear despite orders to compel, the judge may issue sanctions including monetary penalties (fines), cost-shifting (worker must pay defense's deposition costs), or in extreme cases, dismissal of the claim. The practical effect: consistent non-compliance with deposition subpoenas can result in claim denial entirely.

Protective Orders: Limiting Scope of Depositions

Injured workers facing unreasonable deposition demands may petition for protective orders under Title 8, CCR Section 372.3(f), which grants the Appeals Board authority to "order that the deposition not be taken, or that it may be taken only at some designated time or place other than stated in the notice of taking deposition or subpoena." [18] A protective order may be justified if: (1) the deposition imposes undue burden on the worker (extreme distance, worker's serious health condition making travel impossible, caregiver responsibilities); (2) the deposition scope exceeds reasonable bounds (defense attempts to depose on irrelevant topics not related to workers' compensation claim); or (3) the deposition seeks information subject to attorney-client privilege or physician-patient privilege. [18]

For example, if the injured worker is severely immobilized and travel to a deposition is medically contraindicated, the worker may petition for a protective order requiring remote deposition via Zoom. If defense counsel attempts to depose the worker on non-work-related sexual history or psychiatric treatment unrelated to the claimed disability, the worker may seek protective order limiting that scope. To obtain a protective order, counsel must file written motion demonstrating good cause, serving the motion on opposing counsel and the appeals board, and requesting hearing before the workers' compensation judge.

Alternative Strategies and Contingency Planning

Contingency Plan: If Deposition Goes Poorly

If an injured worker performs poorly at deposition—testimony is inconsistent, credibility is questioned, significant vulnerabilities are exposed—counsel should immediately: (1) review transcript carefully with the injured worker to identify specific problem areas; (2) assess whether errata sheet corrections are appropriate (correcting genuine transcription errors but not attempting sham recantation); (3) conduct follow-up investigation to address evidentiary gaps revealed by deposition (obtain missing medical records, clarify inconsistencies, gather lay witness corroboration); (4) consult with treating physician about whether medical report can address or clarify credibility issues; (5) prepare for aggressive defense settlement posturing and strategize response; (6) if proceeding to trial, develop narrative explaining any apparent inconsistencies and prepare worker for trial testimony distinguishing between deposition and trial testimony if necessary (with strong justification).

Alternative Discovery Methods: When Deposition May Not Be Optimal

While depositions are common discovery mechanisms, alternatives exist: (1) Interrogatories: written questions served on opposing party who must respond in writing under oath. Interrogatories can be used to obtain information from insurance carrier or employer without confrontational questioning. (2) Requests for Production: demand that opposing party produce documents (medical records, work records, communications). These allow document review without deposition testimony. (3) Declarations: injured worker can provide written declaration under penalty of perjury, avoiding live deposition. Some judges accept declarations in lieu of live deposition if both parties agree. (4) Medical Evidence: rather than deposition testimony, case can be built on treating physician reports, QME/AME reports, and medical records alone, minimizing reliance on injured worker testimony.

Time-Sensitive Tactical Decisions

Injured workers and counsel must make critical time-sensitive decisions: (1) Whether to appear at deposition: As discussed, failure to appear risks claim suspension, so appearance is almost always mandatory. However, counsel might negotiate scheduling (requesting delay for better preparation, requesting remote depositions to reduce burden). (2) When to schedule deposition relative to MSC: Depositions should be scheduled with sufficient time for transcript completion, errata sheet preparation, and consideration of impacts before MSC scheduling. (3) What medical evidence to have completed before deposition: Ideally, QME/AME reports should be completed and available before deposition, allowing injured worker testimony to align with medical conclusions. If not complete, deposition should be scheduled after medical reports are available.

Ethical Considerations and Professional Conduct Standards

Attorney Duties Under California Rules of Professional Conduct

California Rules of Professional Conduct establish several standards applicable to deposition representation: Rule 3.3 (Candor toward tribunal): Counsel must not knowingly make false statements or present evidence known to be false. If an injured worker proposes to commit perjury at deposition, counsel must refuse to

participate and, in some circumstances, must withdraw from representation. Rule 4.4 (Respect for legal rights of third persons): While counsel can vigorously represent the client, counsel cannot assist the client in pursuing frivolous claims or making false statements. Rule 1.4 (Communication): Counsel must keep the client informed about deposition procedures, risks, and strategic choices, obtaining informed client consent.

Conflicts of Interest Evaluation

Before representing an injured worker in deposition, counsel must verify no conflicts exist: no prior representation of the insurance company or employer in unrelated matters; no concurrent representation of multiple injured workers from the same employer if claims are related and interests conflict; no family or financial relationships with the injured worker that might impair counsel's judgment.

Candor and Truthfulness Obligations

Counsel cannot coach the client to commit perjury or assist in presenting false testimony. However, counsel can legitimately prepare the client to respond accurately and strategically—for example, coaching on distinction between "I don't know" and "I don't remember," or on providing context for answers. The line between preparation and coaching to commit perjury is significant: ethical representation includes honest answer preparation; assisting false testimony is not.

File Documentation and Retention

Counsel should maintain detailed deposition files including: deposition notice, proof of service, court reporter contact information and transcript delivery date, counsel's notes on deposition performance, transcript and any errata sheets filed, email communications with client post-deposition, strategic assessments of deposition impact on case, and any follow-up investigation or evidence gathering. These materials document counsel's work and reasoning, protecting against later malpractice claims.

Risk Warnings and Disclaimers

Risks Inherent in Deposition Process

Irreversible Record Creation: Testimony given at deposition is recorded permanently. Unlike trial testimony which may evolve or be explained through subsequent evidence, deposition testimony creates a fixed record that will be used for impeachment if trial testimony differs. Workers should understand that careless statements become permanent evidence usable against them.

No Ability to Retract Substantive Testimony: While errata sheets allow correction of transcription errors, substantive testimony cannot be retracted post-deposition. If the injured worker testifies to facts later contradicted by documentary evidence, the contradiction becomes permanent liability.

Consequences of Poor Credibility Assessment: If an injured worker appears dishonest, evasive, or inconsistent at deposition, insurance carriers will use this assessment to minimize settlement offers, threatening trial. Poor credibility created at deposition can be largely irreversible, following the case through trial.

Collateral Discovery of Other Claims or Issues: During deposition questioning about prior injuries or medical history, opposing counsel may discover other potentially compensable claims, other liability issues, or information that undermines separate claims. For example, questioning about prior workers' comp claims might reveal that the injured worker failed to disclose prior claims on insurance applications, raising fraud issues.

Requirement for Detailed Preparation: Adequate deposition preparation requires substantial time commitment from both counsel and client. This preparation is essential to protect the client; inadequate preparation virtually guarantees poor performance. Counsel must be honest with clients about time and cost implications.

Information Requiring Expert Consultation

Certain deposition issues require specialist consultation: Vocational feasibility questions: If deposition explores the injured worker's ability to return to work or retraining feasibility, vocational expert consultation may be necessary to properly respond and to later develop supporting evidence. Medical causation complexity: If the deposition involves complex medical causation issues (pre-existing conditions, multiple contributing factors, psychiatric versus orthopedic components), consulting with treating physician or QME

before deposition is essential. Tax and financial consequences: If settlement discussions follow deposition, workers should consult with accountant or tax professional about tax consequences of lump-sum settlements and wage loss compensation. Family law impacts: If the injured worker is involved in custody dispute, family law attorney consultation may be necessary to assess how workers' compensation settlement might impact custody or support determinations.

Irreversible Decisions and Consequences

Decision to Accept or Reject Settlement: Once deposition is complete and settlement offer is made, the decision whether to accept settlement or proceed to trial is largely irreversible. If the worker accepts settlement and is later injured in non-work context, the workers' comp settlement cannot be reopened. Counsel must thoroughly evaluate settlement reasonableness before recommending acceptance.

Waiver of Future Medical: Compromise and Release settlements waive future medical benefits. If the worker later discovers that permanent disability is more severe than anticipated, or that future medical treatment is necessary, the prior settlement is binding and cannot be reopened. This is why thorough medical evaluation before settlement is critical.

Time-Barred Claims: If the injured worker fails to timely pursue a workers' comp claim (missing statute of limitations for various claims), or fails to properly notice or schedule proceedings, the claims may be barred. Counsel must carefully manage deadlines throughout deposition and post-deposition process.

Appendices

Appendix A: Statutory Citations and Full Text

Labor Code Section 5710 (Depositions) [Full text of Labor Code Section 5710 governing deposition authority, procedure, and injured worker protections - available at https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=LAB§ionNum=5710]

Title 8, California Code of Regulations Section 372.3 (Deposition) [Full text of regulatory deposition procedures - available at https://www.dir.ca.gov/title8/372_3.html]

Labor Code Section 4053 (Failure to Submit to Examination) [Full text regarding suspension of benefits for failure to submit to examination - available at https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=LAB§ionNum=4053]

Labor Code Section 5502 (Discovery Closure at Mandatory Settlement Conference) [Full text governing discovery closure and MSC procedures - available at https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=LAB§ionNum=5502]

California Code of Civil Procedure Section 2016-2036 (Civil Deposition Procedures) [Full text of civil procedure deposition rules incorporated into workers' comp practice - available at https://leginfo.legislature.ca.gov/faces/codes_displayChapter.xhtml?lawCode=CCP&chapterNum=3]

Labor Code Section 5710 Attorney Fee Provisions As amended (effective dates pending on proposed amendments) [References to proposed fee schedule amendment regarding hourly rates for workers' comp specialists, experienced and less-experienced attorneys, and non-attorney representatives]

Appendix B: Regulatory Framework and Administrative Guidance

Division of Workers' Compensation Newslines (January 26, 2026) Announcing proposed regulations establishing attorney deposition fee ranges [Available at <https://www.dir.ca.gov/DIRNews/2026/2026-10.html>]

WCAB Local Rules for San Francisco Office [Specific procedural rules and judge preferences for San Francisco area proceedings]

California Code of Regulations Title 8, Section 10759 (Mandatory Settlement Conference Procedures) [Governing pre-MSC conference statements and discovery closure]

Appendix C: Key Case Holdings

DPR Construction v. WCAB (McClanahan), 111 Cal. App. 5th 1136 (3rd Dist. Ct. App., published June 11, 2025) Holding: Labor Code Section 5313 requires findings on ultimate facts and evidence relied upon but does not mandate detailed credibility analysis; strict enforcement of Labor Code Section 5502 discovery closure applies without harmless error exception. Relevance: Establishes that deposition credibility findings must be tied to ultimate facts; depositions must close before MSC.

Amador Padilla v. Los Angeles Metropolitan Transportation Authority, 2010 Cal. Wrk. Comp. P.D. LEXIS 272 Holding: Employer representatives have right to attend injured worker depositions; applicant's privacy concerns do not justify excluding employer representatives even when psychiatric issues discussed. Relevance: Establishes that injured workers cannot exclude employer from depositions based on personal privacy; counsel must prepare workers for employer presence.

Willoughby v. Superior Court, 181 Cal. App. 3d 1407 (1986) Holding: Code of Civil Procedure Section 2025.420(b)(12) does not bar parties from attending depositions; express statutory language precludes orders excluding parties. Relevance: Reinforces that parties (employers, insurance carriers) have automatic attendance rights at depositions.

Reischl v. Illumination Dynamics, 83 CCC 1523 (WCAB Panel Decision) Holding: WCAB has authority under Labor Code Section 5813 to impose sanctions including deposition cost-shifting when employer engages in bad faith denial of liability. Relevance: Establishes remedy for cost-shifting when defense bad faith necessitates depositions.

Appendix D: Current Forms and Instructions

Application for Adjudication of Claim (DWC Form 1) [Available at <https://www.dir.ca.gov/dwc/FORMS/EAMS%20Forms/ADJ/DWC1.pdf>]

Deposition Notice Template [Standard format including required content per CCP Section 2025.220]

Proof of Service Template [Standard format for proving service of deposition notice]

Errata Sheet Form [Standard format for submitting transcript corrections within 30-60 day review period]

Declaration of Readiness to Proceed [Form triggering Mandatory Settlement Conference]

Appendix E: Strategic Preparation Checklist

Pre-Deposition Preparation Checklist for Injured Workers and Counsel

- Medical records compiled and organized chronologically
- Prior statements to supervisors, treating physicians, insurance obtained and reviewed
- Wage records and employment documentation prepared
- Prior workers' comp claims (if any) identified and records obtained
- Mock deposition conducted with counsel practice questioning
- Answer strategies discussed (when to volunteer, when to decline, how to handle difficult questions)
- Deposition rules and conduct guidelines provided to client in writing
- Attorney-client privilege and confidentiality limits explained
- Potential credibility vulnerabilities identified and preparation strategies developed
- Court reporter and deposition logistics confirmed (date, time, location, format-in-person or remote)
- Client emotional/psychological preparation for aggressive questioning
- Transportation and time-off work arranged
- Injured worker provided with written summary of topics likely to be covered

Appendix F: Post-Deposition Action Items

Immediate Post-Deposition (Day 1)

Debrief with client

Identify any obvious errors in testimony or gaps in responses

Begin errata sheet planning if needed

One to Three Weeks Post-Deposition

Receive deposition transcript from court reporter

Review transcript carefully with injured worker

Identify potential errata sheet entries (transcription errors only, not substantive recantation)

File errata sheet if necessary (within 30-60 day window)

Share transcript with treating physician and QME/AME for their review

Two to Eight Weeks Post-Deposition

Assess deposition impact on case value and settlement position

Gather supplemental evidence to address any gaps or vulnerabilities revealed by deposition

Reassess permanent disability rating and vocational feasibility based on testimony

Prepare MSC statement incorporating deposition testimony and post-deposition evidence

Formulate settlement strategy and authority

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