

**STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS**

**NOTICE OF ADOPTION OF REGULATIONS,
INFORMATIVE DIGEST, AND
STATEMENT OF REASONS**

**Subject Matter of Regulations: Occupational Safety and Health Fund
And Assessments**

NOTICE IS HEREBY GIVEN that the Director of Industrial Relations (hereinafter “Director”), exercising the authority vested in the Director by Labor Code sections 54, 55, and 62.5, has adopted the regulations described below.

REGULATORY ACTION

The Department of Industrial Relations, has amended Chapter 8, Subchapter 2.06 of Title 8, California Code of Regulations, commencing with Section 15600:

Amend Section 15600	Definitions
Amend Section 15601	Determination of Revolving Fund, Subsequent Injuries Fund, Occupational Safety and Health Fund, and Uninsured Employers Fund Total Assessment
Amend Section 15602	Allocation of Revolving Fund Assessment, Subsequent Injuries Fund Assessment, Occupational Safety and Health Fund Assessment, Uninsured Employers Fund Assessment, and/or Fraud Surcharge Among Insured and Self-Insured Employers
Amend Section 15603	Determination of Insured and Self-Insured Employer Revolving Fund Assessment, Subsequent Injuries Fund Assessment, Occupational Safety and Health Fund Assessment, Uninsured Employers Fund Assessment, and Fraud Surcharge Factors
Amend Section 15604	Surplus in Funding
Amend Section 15605	Collection of the Revolving Fund Assessment, Subsequent Injuries Fund Assessment, Occupational Safety and Health Fund Assessment, Uninsured Employers Fund Assessment, and Fraud Surcharge from Self-Insured Employers
Amend Section 15606	Collection of Advances Against Insured Employers
Amend Section 15607	Collection of Revolving Fund Assessment, Subsequent Injuries Fund Assessment, Occupational Safety and Health Fund Assessment, Uninsured Employers Fund Assessment, and Fraud Surcharge from Insured Employers
Amend Section 15611	Collection of Interim Assessments

AUTHORITY AND REFERENCE

The Director has undertaken this regulatory action pursuant to the authority vested in the Director by Labor Code sections 54, 55, and 62.5. Reference is to Labor Code Sections 51, 62.5, 62.6, 3700 and 3701 and Insurance Code section 1872.83.

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

These amendments to regulations are required by a legislative enactment - the adoption of Statutes of 2008, Chapter 751 (A.B. 1389) which amended Labor Code section 62.5, effective September 30, 2008

Existing law, before the adoption of Chapter 751 (A.B. 1389), provided in Labor Code sections 62.5 through 62.9 for the Workers' Compensation Revolving Fund, Subsequent Injuries Benefits Trust Fund, Uninsured Employers Benefits Trust Fund, and the Cal-OSHA Targeted Inspection and Consultation Fund. These sections provided for assessments on workers' compensation insurance carriers and on self-insured employers to pay for the funds and for the funding of the Division of Workers Compensation. They also provided for the assessment of the workers' compensation Fraud Investigation and Prosecution Surcharge. The recently enacted A.B. 1389 created the Occupational Safety and Health Fund, to fund operations of the Division of Occupational Safety and Health, and provided that it should be funded by assessments in the same manner as the assessments for the other funds.

Labor Code section 62.5 requires the Director of Industrial Relations to adopt regulations to implement it.

This regulatory change implements, interprets, and makes specific Section 62.5 of the Labor Code as follows:

Section 15600 Definitions

This section sets forth necessary definitions. It is amended by adding definitions for the Occupational Safety and Health Fund and for the Occupational Safety and Health Fund Assessment. The section is re-numbered to maintain alphabetic order.

Section 15601 Determination of Revolving Fund, Subsequent Injuries Fund, Occupational Safety and Health Fund, and Uninsured Employers Fund Total Assessment

This section provides for the Director to determine, on or before November 1 of each year, in accordance with Labor Code Section 62.5, the total amount of funds appropriated for the Division of Workers' Compensation, the aggregate amount of the assessment for the Subsequent Injuries Fund, and the aggregate amount of the assessment for the Uninsured Employers Fund. A new subdivision is added that provides that the Director shall also determine the aggregate amount of the assessment for the Occupational Safety and Health Fund.

Section 15602 Allocation of Revolving Fund Assessment, Subsequent Injuries Fund Assessment, Occupational Safety and Health Fund Assessment, Uninsured Employers Fund Assessment, and/or Fraud Surcharge Among Insured and Self-Insured Employers

This section provides for the Director to determine, on or before November 1 of each year, the proportional payroll allocation factors to use to determine the total insured employer Revolving Fund Assessment, Subsequent Injuries Fund Assessment, Uninsured Employers Fund Assessment, and Fraud Surcharge, and the total self-insured employer Revolving Fund Assessment, Subsequent Injuries Fund Assessment, Uninsured Employers Fund Assessment, and Fraud Surcharge, and specifies how the allocation factors are to be determined and the total self-insured employer assessments are to be determined.

Subdivision (a) is amended to include the Occupational Safety and Health Fund Assessment

among the assessments to be determined and for which payroll allocation factors will be determined.

Section 15603 Determination of Insured and Self-Insured Employer Revolving Fund Assessment, Subsequent Injuries Fund Assessment, Occupational Safety and Health Fund Assessment, Uninsured Employers Fund Assessment, and Fraud Surcharge Factors

This section provides the method for determining the insured and self-insured assessment and surcharge factors for the Revolving Fund Assessment, Subsequent Injuries Fund Assessment, Uninsured Employers Fund Assessment, and Fraud Surcharge. The section is amended to provide the same method for determining the insured and self-insured assessments for the Occupational Safety and Health Fund assessment.

Section 15604 Surplus in Funding

This section provides that if there should be an unexpended surplus in a fiscal year's balance in the Revolving Fund, Subsequent Injuries Fund, or Uninsured Employers Fund, the balance shall be carried forward and credited to the subsequent year's assessment. The section is amended to provide the same treatment of an unexpended surplus in a fiscal year's balance in the Occupational Safety and Health Fund.

Section 15605 **Collection of the Revolving Fund Assessment, Subsequent Injuries Fund Assessment, Occupational Safety and Health Fund Assessment, Uninsured Employers Fund Assessment, and Fraud Surcharge from Self-Insured**

(a) This subdivision designates the Manager of Self-Insurance Plans to collect the Revolving Fund Assessment, Subsequent Injuries Fund Assessment, Uninsured Employers Fund Assessment, and Fraud Surcharge from self-insured employers. The subdivision is amended to also designate the Manager to collect the Occupational Safety and Health Fund assessment.

(b) This subdivision provides that the Manager of Self-Insurance Plans is to bill each self-insured employer for the amount of the assessment for the Revolving Fund Assessment, Subsequent Injuries Fund Assessment, Uninsured Employers Fund Assessment, and Fraud Surcharge by December 1 of each year. The subdivision is amended to provide that the Manager of Self-Insurance Plans is to also bill each self-insured employer for the amount of the assessment for the Occupational Safety and Health Fund assessment.

(d) This subdivision provides that if the Manager of Self-Insurance Plans collects funds in excess of the total self-insured employer assessment in the Revolving Fund Assessment, Subsequent Injuries Fund Assessment, Uninsured Employers Fund Assessment, or Fraud Surcharge, the excess funds shall be paid to the Director to be held in a trust account for credit to the next year's assessment. The subdivision is amended to provide that the Manager of Self-Insurance Plans is also to pay to the Director funds collected in excess of the total self-insured employer assessment in the Occupational Safety and Health Fund assessment, for credit to the next year's assessment.

Section 15606 **Collection of Advances Against Insured Employers**

(a) This subdivision provides that by December 1 each year, the Director is to notify each insurer of the amounts due from the insurer for its policy holders for the Revolving Fund Assessment, Subsequent Injuries Fund Assessment, Uninsured Employers Fund Assessment, and Fraud Surcharge. The subdivision is amended to also provide the same notice in regard to the Occupational Safety and Health Fund assessment.

(b) This subdivision prescribes the method for calculating insurer advances against the Revolving Fund Assessment, Subsequent Injuries Fund Assessment, Uninsured Employers Fund Assessment, and Fraud Surcharge. The subdivision is amended to prescribe the same method for calculating insurer advances against the Occupational Safety and Health Fund assessment.

(f) This subdivision provides that if the Director collects advances from insurers in excess of the total assessments and surcharge due from insurers relative to the Revolving Fund Assessment, Subsequent Injuries Fund Assessment, Uninsured Employers Fund Assessment, or Fraud Surcharge, the excess funds shall be held by the Director in a trust account for credit to the next year's total assessment and surcharge on insured employers for the respective assessments. The subdivision is amended to provide that the same treatment for excess funds collected relative to the Occupational Safety and Health Fund assessment.

Section 15607 Collection of Revolving Fund Assessment, Subsequent Injuries Fund Assessment, Occupational Safety and Health Fund Assessment, Uninsured Employers Fund Assessment, and Fraud Surcharge from Insured Employers

(a) This subdivision requires that each insurer collect the Revolving Fund Assessment, Subsequent Injuries Fund Assessment, Uninsured Employers Fund Assessment, and Fraud Surcharge from each of its insureds, after the Director has made the determinations of the aggregate amount of assessments for the Subsequent Injuries Fund and Uninsured Employers Fund, the aggregate Fraud Surcharge, and the total appropriations for the Division of Workers' Compensation. Each insurer is to apply a separate charge to each of its workers' compensation policies with an inception date after January 1 of the successive year. The subdivision is amended to provide that each insurer is also to collect the Occupational Safety and Health Fund assessment at the same times.

(b) This subdivision provides that the assessments for each policy are to be rounded to the nearest dollar, and separately shown on the policy. The subdivision is amended to provide the same procedure is to apply to the Occupational Safety and Health Fund assessment.

Section 15611 **Collection of Interim Assessments**

This section provides that if the Director determines that there are insufficient funds to support the Revolving Fund, Subsequent Injuries Fund, or Uninsured Employers Fund, the Director may make an interim assessment. The subdivision is amended to provide that the Occupational Safety and Health Fund may also be funded by interim assessment under the same circumstances.

STATEMENT OF REASONS

All of the regulatory changes are required by statute – Labor Code section 62.5 - which requires the Director to adopt reasonable regulations governing the manner of collection of the surcharges referenced in that section. A.B. 1389, enacted as a budget trailer bill with an immediate effective date, created the Occupational Safety and Health Fund to fund the Division of Occupational Safety and Health. In subdivision (e)(1), it placed the name of the Occupational Safety and Health Fund within the list of the other three funds (Workers' Compensation Revolving Fund, Subsequent Injuries Benefits Trust Fund, and Uninsured Employers Benefits Trust Fund) in the sentence directing the Director to levy separate surcharges for each fund on all employers. The subdivision goes on to direct how the surcharges are to be allocated between insured employers and self-insured employers, and directs the Director to regulations to govern the collection of the surcharges.

Because the statute treats the Occupational Safety and Health Fund identically to the Subsequent Injuries Benefits Trust Fund and Uninsured Employers Benefits Trust Fund, the Director has determined to treat all three funds identically in the Director's regulations governing assessment and allocation. The regulations have therefore been amended by providing for the identical treatment of the Occupational Safety and Health Fund.

DISCLOSURES REGARDING THE REGULATORY ACTION

The Director has made the following initial determinations:

- **Significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states:** None.
- **Adoption of this regulation will not: (1) create or eliminate jobs within the State of California; (2) create new businesses or eliminate existing businesses within the State of California; or (3) affect the expansion of businesses currently doing business in California.**
- **Effect on Housing Costs:** Slight increase. To the extent that workers' compensation insurance premiums and assessments or the assessments imposed by Labor Code section 62.5 on self-insured employers contribute to housing costs, these costs will be slightly increased.
- **Cost impacts on representative private person or business:** The Director has made an initial determination that the regulations will impose cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the regulations.

FISCAL IMPACTS

- **Costs or savings to state agencies or costs/savings in federal funding to the State:** No costs, and no savings.
- **Mandate on Local Agencies:** None. The new regulations will not impose any new mandated programs or increased service levels on any local agency or school district. If there were any potential costs imposed on all public agency employers by these amendments to regulations, although not a benefit level increase, they would not be a new State mandate because the regulations apply to all employers, both public and private, and not uniquely to local governments. The Director has determined that the regulations will not impose any new mandated programs on any local agency or school district. The California Supreme Court has determined that an increase in workers' compensation benefit levels does not constitute a new State mandate for the purpose of local mandate claims because the increase does not impose unique requirements on local governments. See County of Los Angeles v. State of California (1987) 43 Cal.3d 46. If there were any potential costs that might be imposed on public agency employers and payors by these regulations, although not a benefit level increase, they would similarly not be a new State mandate because the regulations apply to all employers and payors, both public and private, and not uniquely to local governments.

- **Cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code:** None. (See “Local Mandate” section above.)
- **Other nondiscretionary costs/savings imposed upon local agencies:** None. (See “Local Mandate” section above.)

EFFECT ON SMALL BUSINESS

The Director has determined that the amendments to these regulations will increase the costs of small business, because the regulations will slightly increase the costs of workers’ compensation insurance and the assessments imposed by Labor Code section 62.5 on self-insured employers.

EXEMPTION FROM ADMINISTRATIVE PROCEDURE ACT

The adoption of these regulations, is exempt from the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code) pursuant to Labor Code section 62.5.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF REGULATIONS / INTERNET ACCESS

This Notice, the Statement of Reasons and the text of regulations may be accessed and downloaded from the Department of Industrial Relations’ Internet site at www.dir.ca.gov under the heading "Rulemaking-proposed regulations."

The regulations will appear in Title 8, California Code of Regulations, commencing with section 15600.