

**STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS  
DIVISION OF WORKERS' COMPENSATION**

**FINAL STATEMENT OF REASONS AND  
UPDATED INFORMATIVE DIGEST**

**Subject Matter of Regulations: Workers' Compensation –  
Administrative Penalties Pursuant to Labor Code § 5814.6**

**TITLE 8, CALIFORNIA CODE OF REGULATIONS  
Sections 10225, 10225.1 and 10225.2**

The Acting Administrative Director of the Division of Workers' Compensation, pursuant to the authority granted by Labor Code Sections 133 and 5814.6, has adopted Article 5 of Chapter 4.5, Subchapter 1, of Title 8, California Code of Regulations, commencing with Section 10225:

Section 10225	Definitions
Section 10225.1	Schedule of Administrative Penalties Pursuant to Labor Code § 5814.6
Section 10225.2	Notice of Administrative Penalty Assessment, Appeal Hearing Procedures and Review

**UPDATED INFORMATIVE DIGEST**

There have been no changes in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Regulatory Action.

**UPDATE OF INITIAL STATEMENT OF REASONS**

As authorized by Government Code §11346.9(d), the Acting Administrative Director incorporates the Initial Statement of Reasons prepared in this matter. The purposes and rationales for the regulations as set forth in the Initial Statement of Reasons continue to apply.

The regulation changes from the initially proposed regulations are summarized below.

**THE FOLLOWING SUBDIVISIONS WERE AMENDED FOLLOWING THE PUBLIC HEARING AND CIRCULATED FOR A 15-DAY COMMENT PERIOD:**

**Modifications to Section 10225      Definitions**

Subdivision (l), the definition of “general business practice,” was amended to state:

(l) “General business practice” means a pattern of violations of Labor Code section 5814 at a single adjusting location that can be distinguished by a reasonable person from an isolated event. The pattern of violations must occur in the handling of more than one claim. However, where a claim file with a violation of Labor Code section 5814 has been adjusted at multiple adjusting locations, that claim file may be considered when determining the general business practice of any of the adjusting locations where the **conduct that caused the violation occurred even if the file has been transferred to a different adjusting location.** The pattern also may be based on evidence of violations of Labor Code section 5814 for failure to comply with an earlier compensation order in more than one claim. The conduct may include a single practice and/or separate, discrete acts or omissions in the handling of more than one claim.

The sentence beginning with “However” was added to address the situation when a claim file has been adjusted at more than one adjusting location.

The words “conduct that caused the” were added to clarify that when a claim file has been adjusted at more than one adjusting location, the relevant claims adjusting location is the one or ones where the conduct that caused the violations occurred.

In sections 10225 (g) and (s), the words “a workers’ compensation administrative law judge” were replaced with the words “the Workers’ Compensation Appeals Board.” This term is defined as the Appeals Board, commissioners, deputy commissioners, presiding workers’ compensation judges and workers’ compensation administrative law judges. The revision was necessary because compensation orders and awards to pay penalties due to a violation of Labor Code section 5814 may be issued by any of the entities defined as the Workers’ Compensation Appeals Board. Additionally, the previous definition in subdivision (dd) for “workers’ compensation administrative law judge” was deleted and a new subdivision (dd) was added to define “the Workers’ Compensation Appeals Board.” The specific revisions to this section are listed below:

(g) “Compensation order” means any award, order or decision issued by ~~a workers’ compensation administrative law judge~~ **the Workers’ Compensation Appeals Board** or the Division of Workers’ Compensation vocational rehabilitation unit by which a party is entitled to payment of compensation.

(s) “Penalty award” means ~~an final~~ **final** order or **final** award by ~~a workers’ compensation administrative law judge~~ **the Workers’ Compensation Appeals Board** to pay penalties due to a violation of section 5814 of the Labor Code

In subdivision (s), the word “final” was added clarify that the penalty award or order must be a final award or order.

*(dd) “Workers’ Compensation Appeals Board” means the Appeals Board, commissioners, deputy commissioners, presiding workers’ compensation judges and workers’ compensation administrative law judges.*

### **Modifications to Section 10225.1 Schedule of Administrative Penalties Pursuant to Labor Code § 5814.6**

Subdivision (a) was revised to state:

(a) Administrative penalties shall only be imposed under this section based on violations of Labor Code section 5814, after more than one penalty awards have been issued by ~~a workers’ compensation administrative law judge~~ *the Workers’ Compensation Appeals Board* on or after June 1, 2004 **based on conduct occurring on or after April 19, 2004** for unreasonable delay or refusal to pay compensation **within a five year time period. The five year period of time shall begin on the date of issuance of any penalty award not previously subject to an administrative penalty assessment pursuant to Labor Code section 5814.6.**

These changes refine the minimum prerequisites for imposing an administrative penalty under this section: the underlying conduct that is the basis of penalty award must have occurred on or after April 19, 2004; the penalty award must have issued on or after June 1, 2004; and there must be more than one penalty award within a five year period.

Also, subdivision (a) was revised to correct the grammar, changing “awards have” to “award has.”

Subdivision (b) and (c) were added to explain how the Division will determine if penalty awards have been issued and to clarify that the Audit Unit will not proceed with an investigation unless more than one final penalty award has been issued on or after June 1, 2004 against a claims administrator at a single adjusting location. The subdivisions state the following:

(b) The Division of Workers’ Compensation shall regularly submit copies of WCAB decisions, findings, and/or awards issued pursuant to Labor Code section 5814 to the Audit Unit.

(c) The Audit Unit shall obtain monthly Labor Code section 5814 activity reports and shall determine if the decisions, findings, and/or awards are final. If more than one final penalty award has been issued on or after June 1, 2004 against a claims administrator at a single adjusting location, the Audit Unit may proceed with an investigation.

Subdivisions (f) and (g) were deleted to be consistent with the change that the penalty awards must have issued on or after June 1, 2004 for conduct occurring on or after April 19, 2004. The subsequent subdivisions were re-lettered.

Throughout the new subdivision (g), the words “a workers’ compensation administrative law judge” were replaced with the words “the Workers’ Compensation Appeals Board.” This term is defined as the Appeals Board, commissioners, deputy commissioners, presiding workers’ compensation judges and workers’ compensation administrative law judges in section 10225 (dd). The revision is necessary because compensation orders and awards to pay penalties due to a violation of Labor Code section 5814 may be issued by any of the entities defined as the Workers’ Compensation Appeals Board.

In subdivision (g)(1), the word “each” was changed to “a.” Subdivision (g)(1) was also revised to use the defined term “knowingly;” and to refer to the parties as the “employer or insurer, or entity acting on its behalf.” In order to clarify that the \$100,000 is the initial penalty and that the penalties listed in (g)(2) – (9) will also be assessed if applicable, the words “and additionally for each applicable penalty award, the following” have been added. The section now states:

(g)(f)(g) Pursuant to Labor Code section 5814.6, administrative penalties may be assessed against an employer and/or insurer as follows:

(1) \$ 100,000 for ~~each a~~ finding by the Administrative Director, or his or her designee, that an employer or insurer, or entity acting on its behalf, knowingly violated of a knowing violation of Labor Code section 5814 with a frequency that indicates a general business practice, and **additionally** for each applicable penalty award, the following;

In subdivisions (g)(2)-(8) the phrase “unreasonable delay or refusal” replace the words “a failure...timely.” The replaced words are the same as the words used in the statute and therefore, the subdivision is easier to understand.

In subdivision (g)(3), the words “or proper objection” were deleted. In subdivision (g)(4), the words “or deny” were deleted. These changes were made in response to comments that penalties may only be imposed for failure to provide benefits.

In subdivision (g)(3) the penalties amounts listed in (A) were increased from \$1000 to \$5000 and in (B) the penalties were increased from \$5000 to \$10,000. The increased was made because 14 days of indemnity could equal \$1600 and 42 days of indemnity could equal \$5600. The penalty amount is now greater than the amount that was unpaid.

The penalty for unreasonable delay or refusal to reimburse an employee for self-procured medical treatment was removed from subdivision (g)(4) and set forth in a separate new subdivision for clarity. Additionally, subdivision (g) (5) was revised. As previously drafted, there was a gap between the medicals costs of \$100 and \$101, \$300 and \$301, and \$500 and \$501. The revised language corrects the syntax problem. The subdivisions now read as follows:

(4) For each penalty award by ~~a workers' compensation administrative law judge~~ ***the Workers' Compensation Appeals Board*** for a violation of Labor Code section 5814 for ~~an unreasonable delay or refusal a failure to timely provide or deny~~ authorization for medical treatment ~~or a failure to timely reimburse an employee for self-procured medical treatment costs~~:

(A) \$1,000 for retrospective medical treatment authorization ~~and reimbursement~~:

(B) \$5,000 for prospective or concurrent medical treatment authorization ~~and reimbursement~~:

(C) \$15,000 for prospective or concurrent medical treatment authorization when the employee's condition is such that the employee faces an imminent and serious threat to his or her health.

(5) For each penalty award by ~~a workers' compensation administrative law judge~~ ***the Workers' Compensation Appeals Board*** for a violation of Labor Code section 5814 for ~~an unreasonable delay or refusal to reimburse an employee for self-procured medical treatment costs~~:

(A) \$1,000 for medical treatment costs ~~up to of~~ \$100 ~~or less~~, excluding interest and penalty;

(B) \$2,000 for medical treatment costs of ~~\$101~~ ***more than \$100*** to \$300, excluding interest and penalty;

(C) \$3,000 for medical treatment costs of ~~\$301~~ ***more than \$300*** to \$500, excluding interest and penalty;

(D) \$5,000 for medical treatment costs of more than ~~\$500~~ ***\$501***, excluding interest and penalty;

In subdivision (g)(6), in response to comments, the reference to the notice of the supplemental job displacement benefit voucher was changed to refer instead to the supplemental job replacement benefit only. It now states:

(6) ~~(5)~~ \$ 2,500 for each penalty award by ~~a workers' compensation administrative law judge~~ ***the Workers' Compensation Appeals Board*** for a violation of Labor Code section 5814 for ~~an unreasonable delay or refusal a failure to provide the Notice or to provide the supplemental job displacement benefit voucher, as required by section 10133.51(b) and section 10133.56(c), respectively, of Title 8 of the California Code of Regulations, in a timely manner to an eligible employee.~~

The penalty amount in (g)(7) was increased from \$1,000 to \$2,500 to be consistent with the similar penalty set forth in (g)(6).

In subdivision (g)(8), the word “timely” was deleted (and replaced with the word “a”) to be consistent with the wording of the other subdivisions and because the word was unnecessary.

The penalty amount in (g)(9) was increased from \$1,000 to \$2,500 to be consistent with the similar penalties set forth in (g)(6) and (g)(7).

In subdivision (h), the word “adjust” was replaced with “mitigate” as the reasons listed will allow for a penalty to be lowered.

Also in subdivision (h), a mitigating factor was added as (h)(5): “The time period in which the violations occurred.” The penalty may be mitigated depending on how much time there is between the penalty awards.

In subdivision (i), the phrase “from the date of the first finding” was added to clarify when the five year time frame starts.

### **Modifications to Section 10225.2 Notice of Administrative Penalties Assessment, Appeal Hearing Procedures and Review**

Subdivision (g) was revised to require the employer or insurer to verify the facts set forth in the appeal. It now states:

(g) The appeal shall be in writing signed by, or on behalf of, the employer or insurer, and shall state the appellant’s mailing address. It need not be verified or follow any particular form. The appeal shall be verified, under penalty of perjury, by the employer or insurer. If the appellant is a corporation, the verification may be signed by an officer of the corporation. In the event the appellant is not the employer, the employer’s address shall be provided and the employer shall be included on the proof of service.

In subdivision (n), a duplicate word, “officer,” was deleted.

In subdivisions (q) and (r), the word “calendar” was added to clarify how many days the parties have to act. This was revised in response to comments.

### **UPDATE OF MATERIAL RELIED UPON**

No additional documents beyond those identified in the Initial Statement of Reasons and Notices of Revisions were relied upon by the Administrative Director.

### **LOCAL MANDATES DETERMINATION**

- Local Mandate: None. The proposed regulations will not impose any new mandated programs or increased service levels on any local agency or school district.

- 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. The proposed amendments do not apply to any local agency or school district.
- Other nondiscretionary costs/savings imposed upon local agencies: None. The proposed amendments do not apply to any local agency or school district.

## **CONSIDERATION OF ALTERNATIVES**

The Division considered all comments submitted during the public comment periods, and made modifications based on those comments to the regulations as initially proposed. The Acting Administrative Director has now determined that no alternatives proposed by the regulated public or otherwise considered by the Division of Workers' Compensation would be more effective in carrying out the purpose for which these regulations were proposed, nor would they be as effective as and less burdensome to affected private persons and businesses than the regulations that were adopted.

## **SUMMARY OF COMMENTS RECEIVED AND RESPONSES THERETO CONCERNING THE REGULATIONS ADOPTED**

The comments of each organization or individual are addressed in the charts contained in the rulemaking binder.

The public comment periods were as follows:

**Initial 45-day comment period:** April 27, 2006 through June 29, 2006

**First 15-day comment period:** September 12, 2006 through September 27, 2006.

**Second 15-day comment period:** October 25, 2006 through November 10, 2006.

**Third 15-day comment period:** November 3, 2006 through November 18, 2006.