

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

**INITIAL STATEMENT OF REASONS**

**Subject Matter of Regulations:  
Administrative Penalties Pursuant to Labor Code § 5814.6**

**TITLE 8, CALIFORNIA CODE OF REGULATIONS  
SECTIONS 10225 – 10225.2**

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| Section 10225   | Definitions   |
| Section 10225.1 | Schedule of Administrative Penalties Pursuant to Labor Code § 5814.6              |
| Section 10225.5 | Notice of Administrative Penalty Assessment, Appeal Hearing Procedures and Review |

**BACKGROUND TO REGULATORY PROCEEDING**

Labor Code § 5814.6 requires the Administrative Director of the Division of Workers' Compensation to impose administrative penalties in amounts up to \$400,000 on employers or insurers who have knowingly and unreasonably delayed or refused payment of compensation to injured workers in violation of Labor Code § 5814 with a frequency that indicates a general business practice. Administrative penalties authorized under Labor Code § 5814.6 are alternative to administrative penalties authorized under Labor Code § 129.5. All penalties collected must be deposited into the Workers' Compensation Return-to-Work Fund established pursuant to Labor Code § 139.48, to promote the early and sustained return to work of employees following work-related injuries or illnesses.

**SUMMARY OF THE PROPOSED REGULATIONS**

Implementing, interpreting and making specific the provisions of Labor Code § 5814.6, the proposed regulations

- define particular entities that are subject to the administrative penalties;
- specify the criteria that the Administrative Director must consider in finding that violations were knowing;
- specify the criteria that the Administrative Director must consider in determining that the frequency of violations indicates the existence of a general business practice;

- establish a schedule of penalties to be imposed based upon the nature, severity, frequency and duration of the relevant violations; and
- specify due process administrative procedures to be followed in assessing the administrative penalties and in appealing penalty assessments.

## **SECTION 10225      DEFINITIONS**

### Specific Purpose of Section 10225:

Section 10225 lists and defines the terms used in these regulations. The purpose of the definitions is to implement, interpret, and make specific the provisions of Labor Code § 5814.6, and to ensure that the meanings of the terms are clearly understood by the workers' compensation community.

### Necessity:

In general, it is necessary to define each of the key terms used in the Administrative Penalties Pursuant to Labor Code § 5814.6 regulations to ensure that the content and meaning of the regulations are clearly understood by the workers' compensation community.

In particular, the definitions of the terms "adjusting location," "claims administrator," and "third party administrator" are necessary to identify factors to be considered in determining that employers or insurers knowingly and unreasonably delayed or denied compensation payments, determining the existence of general business practices, or equitably adjusting penalty assessments.

The definition of the term "Administrative Director" is necessary to identify the public official with the authority and responsibility for assessing administrative penalties under Labor Code § 5814.6.

The definitions of the terms "claim," "claim file" and "utilization review files" are necessary to identify the particular basis for compensation for which unreasonable denial or refusal of payment may result in administrative penalties under Labor Code § 5814.6.

The definitions of the terms "compensation," "concurrent medical treatment authorization," "indemnity," "prospective medical treatment authorization," "retrospective medical treatment authorization," "salary continuation," and "supplemental job displacement benefits" are necessary to identify categories of compensation for which unreasonable denial or refusal of payment may result in administrative penalties under Labor Code § 5814.6.

The definitions of the terms "compensation order," "penalty award" and "workers' compensation administrative law judge" are necessary to identify the violations of Labor Code section 5814 that must be established in order for the Administrative Director to assess administrative penalties under Labor Code § 5814.6.

The definition of the term “employee” is necessary to identify the persons whose right to compensation payments is the principal element upon which administrative penalties under Labor Code § 5814.6 may be imposed where knowing and unreasonable delays or refusals to pay indicate the existence of a general business practice.

The definitions of the terms “employer,” “insurer,” and “joint powers authority” are necessary to identify the particular entities that are subject to administrative penalties under Labor Code § 5814.6.

The definitions of the terms “Final Determination and Order,” “Notice of Assessment,” “Petition Appealing Determination and Order” and “Recommended Determination and Order” are necessary to identify the principal documents to be used by the Administrative Director and by the parties in administrative procedures to be followed in assessing administrative penalties under Labor Code § 5814.6 and in appealing such penalty assessments.

The definitions of the terms “general business practice,” “knowingly” are necessary to clarify burdens that must be met by the Administrative Director in assessing administrative penalties under Labor Code § 5814.6.

The definition of the term “investigation” identifies the means by which the Administrative Director may determine whether, and in what amounts, administrative penalties under Labor Code § 5814.6 should be assessed.

The definitions of the terms “proof of service” and “serve” are necessary to clarify procedural requirements regarding the assessment of administrative penalties under Labor Code § 5814.6, and the appeal thereof.

Consideration of Alternatives:

No more effective alternative to any of the definitions, nor any equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

**SECTION 10225.1 SCHEDULE OF ADMINISTRATIVE PENALTIES  
PURSUANT TO LABOR CODE § 5814.6**

Specific Purpose of Section 10225.1:

The purpose of this proposed regulation is to comply with the statutory mandate of Labor Code § 5814.6 by establishing a schedule of administrative penalties for knowingly and unreasonably delaying or refusing payment of compensation to injured workers in violation of Labor Code § 5814 with a frequency that indicates a general business practice.

The Administrative Director’s intent in establishing this schedule of penalties is to provide a clear and effective disincentive to practices under which injured workers

are knowingly and systematically denied timely payment of compensation to which workers' compensation judges have found them to be entitled.

Also, the proposed regulation is intended to ensure that amounts imposed as penalties be in proportion to the nature, severity, frequency and duration of the particular patterns of violations for which they are imposed, and to ensure that such amounts are within the maximum limits prescribed by Labor Code § 5814.

At the same time, the proposed regulation is intended to shield claims administrators from penalties under Labor Code § 5814.6 for any single violation of Labor Code § 5814, or for any violation of Labor Code § 5814 that has not been found by a workers' compensation judge, or for any negligent violation or pattern of negligent violations, or for any reasonable delay or refusal to pay compensation, or for any conduct that occurred prior to June 1, 2004, the effective date of Labor Code § 5814.

Necessity:

This section is necessary to clarify the particular circumstance under which the Administrative Director may impose administrative penalties within specified ranges based upon consideration of the nature, severity, frequency and duration of the relevant violations.

Subdivision (a) is necessary to clarify the minimum number of violations necessary to support a finding of a general business practice.

Subdivisions (b) and (c) are necessary to authorize the Administrative Director to conduct investigations and hearings necessary to discover a factual basis for determining that violations subject to Labor Code § 5814.6 have occurred.

Sections (d) and (e) are necessary to make it clear that any entity's liability for administrative penalties under Labor Code § 5814.6 is limited to conduct occurring on or after the effective date of that statute.

Section (f) is necessary to make it clear that while conduct subject to administrative penalties under both Labor Code § 5814.6 and Labor Code § 129.5 may be investigated and taken to hearing together, the Administrative Director may not impose penalties under both statutes based upon the same conduct.

Section (g) is necessary to establish an administrative penalty of \$100,000 where a general business practice in violation of Labor Code § 5814 has been determined, with a detailed schedule of additional penalties ranging from \$1,000 to \$30,000 based upon the nature, severity, frequency and duration of the relevant violations.

Section (h) is necessary to specify the equitable factors to be considered by the Administrative Director in adjusting the scheduled penalties as he or she may deem appropriate in particular cases.

Section (i) is necessary to provide for multiplying the administrative penalties, up to a limit of \$400,000, where the Administrative Director finds multiple violations by the same entity within a five year period.

Consideration of Alternatives:

No more effective alternative to the proposed schedule of penalties, nor any equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

**SECTION 10225.2 NOTICE OF ADMINISTRATIVE PENALTY ASSESSMENT,  
APPEAL HEARING PROCEDURES AND REVIEW**

Specific Purpose of Section 10225.2:

The purpose of this proposed regulation is to specify administrative procedures to be followed in assessing administrative penalties under Labor Code § 5814.6, and in appealing such penalty assessments.

Necessity:

This section is necessary to ensure that the standards of due process are observed by the Administrative Director in performing the duties mandated by Labor Code § 5814.6.

Subdivisions (a) through (e) are necessary to ensure, upon the Administrative Director's finding that an entity has knowingly and unreasonably delayed or refused payment of compensation to injured workers in violation of Labor Code § 5814 with a frequency that indicates a general business practice, that entity shall be given notice of the facts upon which the finding is based, the amount of administrative penalties assessed, the right to admit or deny the allegations, and the right to appeal the Administrative Director's findings and assessment.

Subdivision (f) is necessary to specify the procedures to be followed in appealing the Administrative Director's findings and penalty assessment.

Subdivision (g) is necessary to specify rights and obligations regarding amended penalty assessments.

Subdivision (h) is necessary to provide for an informal pre-hearing conference, at the Administrative Director's discretion, to pursue the possibility of resolving a contested penalty matter without the need for an evidentiary hearing.

Subdivisions (i) through (p) are necessary to specify the procedures to be observed to ensure due process regarding evidentiary administrative hearings regarding penalties under Labor Code § 5814.6.

Subdivisions (q) through (t) are necessary to specify the procedures to be observed to ensure due process regarding the Administrative Director's recommended determination and final determination regarding administrative penalties under Labor Code § 5814.6.

Subdivision (u) is necessary to specify that administrative penalties under Labor Code § 5814.6 must be paid within 30 days after service of the Administrative Director's final order.

Subdivision (v) is necessary to specify the procedures to be observed to ensure due process with regard to appealing the Administrative Director's final decision to the Workers' Compensation Appeals Board.

Consideration of Alternatives:

No more effective alternative to the proposed schedule of penalties, nor any equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

**TECHNICAL, THEORETICAL, OR EMPIRICAL STUDIES OR DOCUMENTS RELIED UPON:**

None.

**SPECIFIC TECHNOLOGIES OR EQUIPMENT REQUIRED:**

None.

**FACTS RELIED UPON IN SUPPORT OF DIVISION'S INITIAL DETERMINATION THAT THE REGULATIONS WILL NOT HAVE A SIGNIFICANT ADVERSE IMPACT ON BUSINESS**

There will be no cost to any businesses except those that have knowingly and unreasonably delayed or refused payment of compensation to injured workers in violation of Labor Code § 5814 with a frequency that indicates a general business practice.