

Administrative Penalties Pursuant to Labor Code Section 5814.6	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
§10225.(1)(a)	Commenter questions why the violator will be given essentially one free bite of the apple before the administrative penalties are invoked. Commenter believes that the first violation, if it is egregious enough to be call a violation and have a penalty assessed that the administrative penalties should also be assessed right at the very first time.	Steve Cattolica California Society of Industrial Medicine and Surgery and the California Society of Physical Medicine and Rehabilitation Oral testimony June 29, 2006	Disagree. Labor Code section 5814.6 requires a frequency to indicate a general business practice. This requires more than one violation.	None.
General Comment	Commenter supports the adoption but makes one suggestion for improvement. Commenter understands that the Division has made administrative decisions to require Judges offices to submit copies of all F&A or findings and orders on 5814 of violations; and in the past, some judges have been reluctant to do this for fear that they might be singling out a defendant, and considered not, subject to a preemptory challenge. Commenter suggests to take the policy in existence today requiring judges to submit all 5814 penalties and put that in regulation and make that an administrative perfunctory process so that the judges don't have to make a decision whether to turn something in, or they don't	Peggy Sugarman. Votersinjuredatwork.org Oral testimony June 29, 2006	Agree.	The following subdivisions will be added: <u>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.</u> <u>(c) The Audit Unit shall obtain monthly Labor Code section 5814 activity reports and shall determine if the decisions, findings,</u>

Administrative Penalties Pursuant to Labor Code Section 5814.6	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	have to remember this function is part of the normal process for the workers' compensation judge's secretary.			<u>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.</u>
§10225.1(i)	Commenter echoes Ms. Sugarman's comment about requiring judges to report on penalties as part of a regulation, rather than simply a policy. Commenter also believe that it would be important to extend the 5-year period to 10 years because of the length of the time that the process may take to actually get these findings done and over with.	David Rockwell President of the California Applicant's Attorney Association Oral testimony June 29, 2006	Agree. Disagree. Five years is an adequate time period.	See above. None.
General Comment	Commenter states that in the last 14 years they found that penalties were not being sought after, and that means in all areas the judges deferred penalties. Penalties were included into the C&R which was to be	Dina Padilla Voices Best Injured Worker Oral testimony	This comment goes beyond the scope of the regulations.	None.

Administrative Penalties Pursuant to Labor Code Section 5814.6	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>absorbed by the employer. Attorneys would not file penalties. If they did, they were waived. So when they make a penalty, if they want to make sure that it gets enforced, they need to go through the system to systemic preventing penalties because eventually either the employer or insurance carriers pay it and neither one of them wants to pay it.</p> <p>Second Comment: 5814.6 and any other penalty does not get acknowledged. The serious and willful, if the commenter goes to court and wants a trial, she will be penalized and sanctioned for going to trial. This applies to anybody who wants to have a 5814.6, a 132a, a 5814. People are being threatened and intimidated by judges to get their penalties, because there are penalties. What is needed is a tracking mechanism of every penalty that has been filed, because it goes to the WCAB and that's where it stays. There should be somebody looking through every single case in those files and looking to see what penalties have been filed, and that they don't just get waived or tossed out or get forgotten or get deferred or never seen. Every injured worker should have a 5814.6,</p>	June 29, 2006	Agree that the awards will be tracked.	<p>The following language will be added:</p> <p><u>(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.</u></p> <p><u>(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</u></p>

Administrative Penalties Pursuant to Labor Code Section 5814.6	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	and if the insurance carrier uses 5814, that's multiple penalties. Any penalty, just like if they go after fraud for the injured worker, the penalty should be considered a part of a fraud issue because they are not paying. It's the fiduciary responsibility of the insurance company.			<u>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.</u>
General Comment	Commenter was injured in 1993 and was not given any penalty back pay money, and was only offered on at a trial hearing for a finding and awards, no benefits, no penalties, no medical care, no follow-up, and commenter feels that penalties should be assessed due to the fact that the injured worker is left without money, without care, and without a cost of living.	Cathon Adams Rhodes Injured workers University Davis, UCD Medical Center Oral testimony June 29, 2006	We agree that Labor Code section 5814.6 penalties should be assessed and have drafted the regulations to address this.	None.
General Comment	Commenter is concern about the whole enforcement procedure of workers' comp. Judges are not going after forgeries and criminal activity by the insurance companies against the injured workers. It's a problem and should be addressed by any regulation as far as enforcement of penalties against the violations or violators of	Steve Zeltzer California Coalition for Workers Memorial Day June 29 2006 Oral testimony	These comments go beyond the scope of these regulations. These regulations are drafted by the Division of Workers' Compensation, not the Department of Insurance. Labor Code section 5814.6 does not authorize the imposition of criminal	None.

Administrative Penalties Pursuant to Labor Code Section 5814.6	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>the law. The problem with enforcement is that the insurance industry is running the workers' comp. programs. There is a large amount of fraud and violation of workers' rights, injured workers' rights, and these insurance companies are not being gone after by this commission and by the district attorneys of California. As far as penalties being enforced, an independent agency is needed to enforce the law against the insurance companies when they refuse to pay injured workers. Workers' comp. under 899, the workers' comp. has been deregulated, and as a result of that, the insurance companies are basically refusing to pay workers who they admit have been injured on the job. What is happening is cost shifting in this industry. Commenter thinks that there should be triple penalties for employers and insurance companies who force workers to go to a public agency for service to get their health care costs and other costs taken care of. There is nothing in this act about penalizing insurance companies and insurance agencies; also in this penalty phase, there needs to be legislation that the penalties against insurance carriers and self-insured</p>		penalties or charges.	

Administrative Penalties Pursuant to Labor Code Section 5814.6	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>employers cannot be mitigated in settlement agreements with lawyers. Many injured workers are being told by the lawyers that they need to settle so that the attorney can get their fee. Lawyers are pressuring the injured worker to go through to make a precipitous settlement, so the lawyer gets paid off, the injured worker is taking a loss. His injuries are not covered. He's not getting proper compensation, and the penalties are being mitigated under that settlement. That's part of the settlement. Dropping the penalties should be illegal. If there is a violation of the law by insurance companies and self-insured employers, they should be penalized regardless of the settlement.</p> <p>There should also be a criminal phase against the employers if there is a period, consistent period of violating the law where they have a record of three or more, there should be criminal measures and penalties against the employer or against the insurance carrier for a record, a systemic record of violating the law.</p> <p>Second Comment: Commenter wants to point out</p>		<p>These regulations also apply to self-insured employers. For clarification, section</p>	<p>Section 10225.1(i)(1) will be revised as follows.</p>

Administrative Penalties Pursuant to Labor Code Section 5814.6	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>information about the Commission and DIR which is under this Commission. DIR is in charge of regulating the self-insured employers. Commenter raised a question about regulations and who is regulating who. The Commission and the DIR is in charge of regulations as well as the DOI.</p>		<p>10225.1(i)(1) will be revised. However, these regulations are for penalties for knowingly violating Labor Code section 5814 with a frequency that indicates a general business practice – not fraud.</p>	<p><u>(1) \$ 100,000 for each 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 for each applicable penalty award, the following;</u></p>
General Comment	<p>Commenter states that the law itself is appalling because the solution that is apparent here is that workers are defrauded. In response to workers being defrauded, the DOI gets to make a slush fund for itself without any promises to help the workers who were defrauded. The creation of the slush fund creates a burden on the shoulders of injured workers who have to go to into WCAB and at their own efforts and expense try to get these judgments against insurers. Most of these workers are struggling to survive themselves. Many injured workers</p>	<p>Nina Bartholomew Former Attorney Oral testimony June 29, 2006</p>	<p>These regulations are drafted by the Division of Workers' Compensation, not the Department of Insurance. Labor Code section 5814.6 directs that that the penalties shall be directed into the Return to Work fund established pursuant to section 139.48. These comments go beyond the scope of these regulations.</p>	None.

Administrative Penalties Pursuant to Labor Code Section 5814.6	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>can't get attorneys to represent them at all. They're representing themselves. When they call the Board, a lot of times, they can't get through and when they do get through, the person who is there is not an attorney and most of the time gives false or inaccurate information and engaging in unlicensed practice of the law, which is another issue. It takes a very long time for injured workers to get hearings. Many workers have no idea of how to request a hearing before the WCAB. It is not as though when a person becomes disabled, there is in any requirement of the law that's enforced that the worker is entitled receive from their employer a handbook that tells them what their rights are and includes the necessary forms so know what to do. Many of them don't know what to do. They can't find an attorney to represent them. There's got to be a hot line. There should be someone who can take down the reports and investigate. When an insurer is conspiring to defraud workers of benefits, frequently they're using the telephone, they're using the mails, they are committing Federal crimes of wire and mail fraud, which could result in</p>			

Administrative Penalties Pursuant to Labor Code Section 5814.6	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>criminal prosecution for racketeering. There should be a section that says those workers who are found to have been defrauded, and on the basis of whose cases these penalties are imposed, should have a preferential entitlement to the use of these funds for their rehabilitation. If the injured workers who are defrauded don't benefit from these penalties, but if you referred these insurers for criminal prosecution, maybe it would inhibit some fraud, and in the long run, the majority of workers would see a result. Here we have everybody benefits, and the worker is left out in the cold, while the work and the benefit, the work to get these penalties is placed first and foremost on the backs of the workers. This is wrong.</p> <p>If you go on section 10225.1(b) and (c) and compare it to (a), it's very ambiguous and unclear, because it appears that the Administrative Director might be authorized to conduct some kind of parallel proceedings. It is not clear what he is supposed to do. Maybe it should be clarified to set up one system and say what it is that they have to do. It also raises an issue if you don't put in the</p>		<p>Agree to clarify how the audit unit will receive copies of WCAB decisions, findings and awards and that the audit unit must receive one or more final penalty awards before it proceeds with an investigation.</p> <p>These regulations are for penalties for knowingly violating Labor Code section</p>	<p>The following language will be added: <u>(b) The Division of Workers' Compensation shall regularly submit copies of WCAB decisions, findings, and/or awards issued pursuant to Labor</u></p>

Administrative Penalties Pursuant to Labor Code Section 5814.6	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	criminal prosecution referral, it raises an issue of a constitutional issue regarding equal protection of the law.		5814 with a frequency that indicates a general business practice – not fraud.	<u>Code section 5814 to the Audit Unit.</u> <u>(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.</u>
General Comment	<p>Commenter speaks in Spanish (translated through interpreter Francisco Jimenez)</p> <p>The commenter had injury in his work. It was very bad. He has lived with this injury for the last ten years and had problems with his lawyer because the lawyer abandoned him at the end of the case. He can't find</p>	<p>Victor Romeros</p> <p>Injured Worker</p> <p>Oral testimony June 29, 2006</p>	This comment goes beyond the scope of the proposed regulations.	None.

Administrative Penalties Pursuant to Labor Code Section 5814.6	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	anybody who wants to take care of his case in the last months.			
General Comment	<p>Commenter became disabled under workers' comp. in 1992 and the insurer did every tactic available to delay payments, stop payments, refuse payments, and commenter applied through the system to get the penalties. She got a portion of them two years after it settled in 1995. When this bill was address on the penalties for temporary disability, it needs to have a clear accounting. There should be a greater penalty not just to the insurer, but a bonus to the injured worker. Everything that the insurer is penalized should actually be duplicated to the injured worker in the penalty part, and commenter thinks that it would be a greater deterrent for them doing it, because workers do have to learn to document when they're being defrauded when these practices occur, and there is little out there to show them what to do and how to do it.</p>	<p>Latrice Holley Injured Worker Oral testimony June 29, 2006</p>	<p>Disagree. Labor Code section 5814.6 directs that that the penalties shall be directed into the Return to Work fund established pursuant to section 139.48. There is no statutory authority to award the Labor Code section 5814.6 penalties to the injured worker.</p>	None.
General Comment	<p>Commenter concurs with most of the speakers on behalf of injured workers particularly, Steve Zeltzer. Commenter had a 9 ½ year case and</p>	<p>Paul Morgan Injured Worker</p>	<p>These comments are directed to the utilization review penalties (Labor Code section 4610) as opposed to these</p>	None.

Administrative Penalties Pursuant to Labor Code Section 5814.6	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	through that time, the insurance company and his employer has just preceded with impunity with denying, delaying, demurring, deferring treatment. Commenter suggests giving the same treatment to the rest to obey and conform to the law, and not take 90 days for a 30-day time limit approval.	Oral testimony June 29, 2006	regulations for Labor Code section 5814.6.	
General Comment	Commenter experienced the same as others with the insurance company, denial of benefits, termed life with temporary disability benefits were terminated illegally, and it was based on fabricated reports that the insurance company tried to claim that commenter's present condition is a condition that was due to the previous workers' comp. injury. People who have done wrong to the injured workers need to be convicted, prosecuted, and they need to go to jail like injured workers who commit fraud and abuse the system. They need the same punishment and worse, because they're in an authoritative position and they're bound by law and ethics of their profession.	Shahidah Marie Musawwir aka Maureen Shahidah Injured Worker Oral testimony June 29, 2006	These comments go beyond the scope of these regulations. Labor Code section 5814.6 does not authorize the imposition of criminal penalties or charges.	None.
General Comment	Commenter states that penalties are not effective if they are not enforced.	Jack Harrison	This comment goes beyond the scope of these regulations and	None.

Administrative Penalties Pursuant to Labor Code Section 5814.6	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	If it's not obligatory to pay the penalty, if you can waive it, what good is it?	Candidate for Attorney General, Peace and Freedom Party Oral testimony June 29, 2006	the authority provided by Labor Code section 5814.6.	
General Comment	Commenter's question is about the Fraud Assessment Commission which is under the DOI, rather sort of under the DOI. Last year the State auditor issued a report on problems with fraud assessment and Workers' Compensation, which found among other things, that a large amount of money, which insurance companies had collected as fraud assessments was unaccounted for, was unknown when turned over to the State. And the other problem they found which is relative to these hearings is that there was no systematic reporting from DLSE to DWC on what are the persistent violations of workplace safety rules by employers. Because that relates to the question of whether dealing with willful misbehavior on the part of employers in terms of the penalties which would be assessed on them. If they then after that willful misbehavior engaged in willful misbehavior of not paying their Workers' Comp, people have to realize	Tom Condit Candidate for State Insurance Commissioner, Peace and Freedom Party Oral testimony June 29, 2006	This comment goes beyond the scope of these regulations. These regulations are drafted by the Division of Workers' Compensation, not the Department of Insurance or the Fraud Commission. These regulations are for penalties for knowingly violating Labor Code section 5814 with a frequency that indicates a general business practice – not workplace safety violations.	None.

Administrative Penalties Pursuant to Labor Code Section 5814.6	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>most accidents at least at work are not really accidents. A lot of employers willfully refuse to recognize that kind of fact, and then they and their insurance companies claim that there's really no such thing as repetitive stress injury. Think of how to get DLSE to give more consistent input to deal with these things on a preventative basis rather than on hassling with how we deal with the outcome, and the other is to see if there's some way to adopt a regulation which will in fact increase workers' comp penalties against employers if the employers are willful violators of labor safety laws.</p>			
General Comment	<p>Commenter's case has been going on since 1997 with industrial injury as a result of repetitive action. Commenter had to go to court at least four times where the insurance company refused to pay, but they would always pay as soon as they get to court. To correct this, insurance companies needs to fulfill their responsibilities to the worker.</p>	<p>William England Injured Worker Oral testimony June 29, 2006</p>	<p>We agree that Labor Code section 5814.6 penalties should be assessed and have drafted the regulations to address this.</p>	<p>None.</p>