

**STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS**

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

**Subject Matter of Regulations: Workers' Compensation - Administration Revolving Fund Assessment, Uninsured Employers Benefits Trust Fund Assessment, Subsequent Injuries Benefits Trust Fund Assessments, Labor Enforcement and Compliance Fund Assessment, Occupational Safety and Health Fund Assessment, Fraud Surcharge, and Cal-OSHA Targeted Inspection Assessment**

**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 Director of 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 15609:     Credit for Undercollection

**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, 3701, 4800, and 4850, Labor Code; Section 1872.83, Insurance Code

**EXEMPTION FROM ADMINISTRATIVE PROCEDURE ACT**

The amendment 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.

The regulations will become effective upon filing with the Secretary of State.

**INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW**

Labor Code section 62.5 creates the Workers' Compensation Revolving Fund, the Uninsured Employers Benefits Trust Fund, the Subsequent Injuries Benefits Trust Fund,

the Occupational Safety and Health Fund, and the Labor Enforcement and Compliance Fund.

Labor Code section 62.6 creates the Workers' Compensation Fraud Account in the Insurance Fund.

These sections also provide 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.

Prior to June 30, 2014, Labor Code sections 62.7 and 62.9 provided for the Cal-OSHA Targeted Inspection and Consultation Fund. Section 62.7 became inoperative on June 30, 2014 and was repealed effective January 1, 2015. Section 62.9 was repealed effective June 27, 2013. (Stats. 2013 ch. 28 section 36 (SB 71).)

Labor Code sections 62.5 and 62.6 require the Director of the Department of Industrial Relations to adopt regulations to implement them. This regulatory change implements, interprets, and makes specific sections 62.5 and 62.6 of the Labor Code as follows:

#### **Section 15600      Definitions**

This section sets forth necessary definitions. It is being amended by excluding the effects of retrospective rating from the calculation of assessable premium. It is further amended by adding a definition of the term "Insurance group", which is defined as a group of insurers under the same management, direction, and control. The subdivisions following this new definition are being renumbered accordingly.

The subdivision is also being amended to remove a reference to the Cal-OSHA Targeted Inspection Assessment, which became inoperative on June 30, 2014, and was repealed effective January 1, 2015.

#### **Section 15609      Credit for Undercollection**

This section provides a procedure for providing a credit to an insurer when the insurer demonstrates that they paid an assessment advance in an amount greater than the actual assessments collected from its insured employers.

This section is being amended to allow insurers with excess credits, under section 15609, subdivision (a), to obtain a refund of those credits in specified circumstances.

This section is also being amended to allow an insurance group (as defined in one of the amendments being made to section 15600 regulations) to transfer excess credits within the group in specified circumstances.

### **STATEMENT OF REASONS**

Labor Code section 62.5 requires the Director to adopt reasonable regulations governing the manner of collection of the surcharges referenced in that section. Section 62.5 is implemented by regulations first adopted in 1990, contained in Title 8, California Code of Regulations sections 15600 - 15611.

Under the existing assessment methodology, advances (against the assessment amount charged throughout the year on workers' compensation policies purchased by insured employers) are collected on an annual basis from insurers. The advances are calculated based on "direct workers' compensation premium as reported in the most recent year's financial statement on file with the Insurance Commissioner, multiplied by the ratio of the expected total current year premium to the total direct written workers' compensation premium of all insurers as reported in the latest year's annual financial statements on file with the Insurance Commissioner," while collection of the assessments from employers is based on "assessable premium." The advances include retrospective adjustments and deductible credits; the assessments paid by insured employers only include retrospective adjustments, but exclude the impact of deductible credits.

In December of 2014, the Director received a letter from AIG, alleging that the current regulations do not adequately implement their intended purpose of ensuring that the assessment advances collected from insurers are fully passed through to their insureds. AIG asserted that the existing regulations are inconsistent, as the effects of retrospective rating are taken into account in determining the individual insured employer assessments, but not the insurer advances against those assessments. This, AIG asserted, led to their (and possibly other companies writing retrospectively-rated policies) advancing assessments in amounts that cannot be fully recouped from their insureds.

The Director confirmed with the WCIRB that this difference in methodology does exist, and in response, has drafted an amendment to section 15600(a) to correct this disparity.

In addition to addressing this issue, the Director is adopting a regulation to formalize and provide standards and guidance for what has been, up until now, an informal process relying on the Director's inherent authority, under Labor Code sections 51, 54, and 59 to allow insurers and insurance groups to make use of their excess assessment credits accrued under section 15609 of the regulations.

Finally, the Director is repealing a reference in the definitions section of the regulations to the Cal-OSHA Targeted Inspection and Consultation Fund for which the statutory authority, Labor Code section 62.7, became inoperative on June 30, 2014 and was repealed effective January 1, 2015. Labor Code section 62.9 was repealed effective June 27, 2013.

## **DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION**

The Director has made the following initial determinations:

- **Mandate on local agencies and school districts:** None.
- **Cost or savings to any state agency:** None.
- **Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630:** None.
- **Other nondiscretionary cost or savings imposed on local agencies:** None.
- **Cost or savings in federal funding to the state:** None.
- **Cost impacts on a representative private person or business:** The agency is not aware of any significant cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The regulations do not apply to individuals. The regulations may slightly increase the costs of workers' compensation insurance and the assessments imposed by Labor Code sections 62.5 and 62.6.
- **Statewide adverse economic impact directly affecting businesses and individuals:** None. The proposed regulations do not create the obligation to pay the assessment or surcharge, or determine the total annual amount thereof. These matters are controlled by Labor Code sections 62.5 and 62.6. The regulations merely provide the methodology required to determine and collect the assessment.
- **Significant effect on housing costs:** None.

### **Results of the Economic Impact Analysis/Assessment**

The Director concludes that it is (1) unlikely that the proposal will create any jobs within the State of California, (2) unlikely that the proposal will eliminate any jobs within the State of California, (3) unlikely that the proposal will create any new businesses within the State of California, (4) unlikely that the proposal will eliminate any existing businesses within the State of California, and (5) unlikely that the proposal would cause the expansion of businesses currently doing business within the State of California.

The regulations only affect the methodology for determining and collecting the assessments. The requirement to pay the assessments is imposed by statute and the amount of the assessments is determined by the annual budget act.

**Small Business Determination:** The Director has determined that the amendments to these regulations will increase the costs of small businesses, because the regulations may slightly increase the costs of workers' compensation insurance and the assessments imposed by Labor Code sections 62.5 and 62.6.

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

This Notice, with its Informative Digest and Statement of Reasons, and the text of the amended regulations, may be accessed and downloaded from the Department of Industrial Relations' Internet site at [www.dir.ca.gov](http://www.dir.ca.gov), under the heading "Rulemaking-proposed regulations."

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