

DEPARTMENT OF INDUSTRIAL RELATIONS

OFFICE OF THE DIRECTOR

Division 1. Department of Industrial Relations

Chapter 8. Office of the Director

Subchapter 2.06. Workers' Compensation-Administration Revolving Fund Assessment,  
Uninsured Employers Benefits Trust Fund Assessment, Subsequent Injuries Benefits Trust Fund  
Assessments, Fraud Surcharge and Cal-OSHA Targeted Inspection Assessment

**TEXT OF AMENDED REGULATIONS**

Added language is indicated by underlining: added language.

Deletions are indicated by strikeout ~~deleted language~~.

**Article 1. Definitions**

**Amend: Section 15600. Definitions.**

(a) Assessable Premium. The premium to which the assessment and/or surcharge is to be applied is the premium the insured is charged after all rating adjustments (experience rating, schedule rating, premium discounts, expense constants, etc.) except for adjustments resulting from the application of deductible plans, retrospective rating, or the return of policyholder dividends.

(b) Assessment. Includes those assessments levied upon insured and self-insured employers to establish and maintain the Workers' Compensation Administration Revolving Fund, the Uninsured Employers Benefits Trust Fund, the Labor Enforcement and Compliance Fund, the Occupational Safety and Health Fund, and the Subsequent Injuries Benefits ~~Employers~~-Trust Fund.

(c) Assessment Waiver. Calculation of an insurer's advances against the Revolving Fund Assessment, Subsequent Injuries Fund Assessment, Labor Enforcement and Compliance Fund Assessment, Occupational Safety and Health Fund Assessment, and Uninsured Employers Fund Assessment amounts pursuant to the terms and procedures of section 15606.1 of these Regulations.

(~~e~~d) Base Year. For purposes of calculating the self-insured employer assessment factors, that time period as provided by the Office of Self-Insurance Plans pursuant to section 15602. For public self-insured employers, the base year is a fiscal year basis. For private self-insured employers, the base year is a calendar year basis.

(~~d~~e) Director. The Director of the Department of Industrial Relations.

(~~e~~f) Expected total current year premium. Total direct workers' compensation premium of all insurers who were not granted assessment waivers, as reported to the Department of Insurance's designated licensed rating organization for the period of January 1 through June 30 of the year immediately preceding the assessment, and adjusted by the Department of Insurance's designated licensed rating organization, to a full year basis.

(fg) Indemnity. The payments made by a self-insured employer directly to injured employees or their dependents as compensation pursuant to Labor Code divisions 4 and 4.5 including vocational rehabilitation maintenance and salary continuation payments pursuant to Labor Code sections 4800 and 4850. In reporting periods beginning July 1, 2013, and later, for the purpose of calculating self-insured employer assessments only, the indemnity amount attributable to payments made pursuant to Labor Code sections 4800 and 4850 will be calculated as if those payments had instead been made at the applicable temporary disability rate.

(gh) Inception date. The inception date of a workers' compensation insurance policy is the normal anniversary rating date of a workers' compensation insurance policy as defined in the California Workers' Compensation Insurance Manual published by the Workers' Compensation Insurance Rating Bureau.

(hi) Insured employer. Any employer, including any agency or division of the State of California, who secures workers' compensation insurance coverage under provisions of subdivision (a) of Labor Code section 3700.

(ij) Insurer. Any person, including the State Compensation Insurance Fund, authorized to transact workers' compensation insurance in California.

(jk) Insurance group. A group of insurers under the same management, direction, and control.

(kl) Labor Enforcement and Compliance Fund. The Labor Enforcement and Compliance Fund established pursuant to the provisions of Labor Code section 62.5.

(lm) Labor Enforcement and Compliance Fund Assessment. The user fee assessment levied upon insured and self-insured employers to establish and maintain the Labor Enforcement and Compliance Fund.

(mn) Occupational Safety and Health Fund. The Occupational Safety and Health Fund established pursuant to the provisions of Labor Code section 62.5.

(no) Occupational Safety and Health Fund Assessment. The user fee assessment levied upon insured and self-insured employers to establish and maintain the Occupational Safety and Health Fund.

(op) Payroll. Remuneration subject to workers' compensation insurance premium for insured employers and that remuneration to employees of a self-insured employer which would be subject to premium charges if the employer were an insured employer.

(pq) Revolving Fund. The Workers' Compensation Administration Revolving Fund established pursuant to the provisions of Labor Code section 62.5.

(qr) Revolving Fund Assessment. The user fee assessment levied upon insured and self-insured employers to establish and maintain the Workers' Compensation Administration Revolving Fund.

(rs) Self-insured employer. Any employer who is authorized by the Director to self-insure its workers' compensation liability under subdivisions (b) or (c) of Labor Code section 3700. A self-insured employer shall include the State of California.

(~~st~~) Subsequent Injuries Fund. The Subsequent Injuries Benefits Trust Fund established pursuant to the provisions of Labor Code section 62.5.

(~~tu~~) Subsequent Injuries Fund Assessment. The user fee assessment levied upon insured and self-insured employers to establish and maintain the Subsequent Injuries Benefits Trust Fund.

(~~uv~~) Surcharge. Surcharge means the “State Fraud Investigation and Prosecution Surcharge” assessed under authority of Labor Code ~~Section~~ section 62.6.

(~~w~~) Uninsured Employers Fund. The Uninsured Employers Benefits Trust Fund established pursuant to the provisions of Labor Code section 62.5.

(~~wx~~) Uninsured Employers Fund Assessment. The user fee assessment levied upon insured and self-insured employers to establish and maintain the Uninsured Employers Benefits Trust Fund.

Note: Authority cited: Sections 54, 55 and 62.5, Labor Code; and Section 1872.83, Insurance Code. Reference: Sections 51, 62.5, 62.6, 3700, 3701, 4800 and 4850, Labor Code; Section 1872.83, Insurance Code.

## **Article 2. Determination of Assessments and/or Surcharge**

### **Amend: Section 15601. Determination of Revolving Fund, Subsequent Injuries Fund, and Uninsured Employers Fund Total Assessment.**

On or before November 1 of each year, the Director shall, in accordance with Labor Code ~~Section~~ section 62.5:

- (a) Determine the total amount of funds appropriated for the Division of Workers' Compensation;
- (b) Determine the aggregate amount of the assessment for the Subsequent Injuries Fund;
- (c) Determine the aggregate amount of the assessment for the Labor Enforcement and Compliance Fund;
- (d) Determine the aggregate amount of the assessment for the Occupational Safety and Health Fund; and
- (e) Determine the aggregate amount of the assessment for the Uninsured Employers Fund.

Note: Authority cited: Sections 54, 55 and 62.5, Labor Code. Reference: Section 62.5, Labor Code.

### **Amend: Section 15603. Determination of Insured and Self-Insured Employer Revolving Fund Assessment, Subsequent Injuries Fund Assessment, Uninsured Employers Fund Assessment, and Fraud Surcharge Factors.**

(a) The insured employer Revolving Fund Assessment, Subsequent Injuries Fund Assessment, Labor Enforcement and Compliance Fund Assessment, Occupational Safety and Health Fund Assessment, Uninsured Employers Fund Assessment, and Fraud Surcharge factors shall be determined by dividing the total amount of each respective insured employer assessment and the total amount of the insured employer surcharge, as the case may be, by the expected total current year premium, ~~as determined by the Department of Insurance's designated licensed rating organization.~~

(b) The self-insured employer Revolving Fund Assessment, Subsequent Injuries Fund Assessment, Labor Enforcement and Compliance Fund Assessment, Occupational Safety and Health Fund Assessment, Uninsured Employers Fund Assessment, and/or Fraud Surcharge factors shall be determined by dividing the total amount of each respective self-insured employer assessment or surcharge, as the case may be, by the total amount of workers' compensation indemnity paid under California law by all self-insured employers during the most recent base year available, as determined by the Office of Self-Insurance Plans.

NOTE: Authority cited: Sections 54, 55 and 62.5, Labor Code. Reference: Sections 62.5 and 62.6, Labor Code.

### **Article 3. Collection of Assessments and/or Surcharges**

#### **Amend: Section 15605. Collection of the Revolving Fund Assessment and Fraud Surcharge from Self-Insured Employers.**

(a) The Director designates the Manager of Self-Insurance Plans to collect the Revolving Fund Assessment, Subsequent Injuries Fund Assessment, Labor Enforcement and Compliance Fund Assessment, Occupational Safety and Health Fund Assessment, Uninsured Employers Fund Assessment, and/or Fraud Surcharge from self-insured employers on the Director's behalf.

(b) No later than December 1 of each year, the Manager of Self-Insurance Plans shall bill each self-insured employer for the amount of the individual self-insured employer's Revolving Fund Assessment, Subsequent Injuries Fund Assessment, Labor Enforcement and Compliance Fund Assessment, Occupational Safety and Health Fund Assessment, Uninsured Employers Fund Assessment, and/or Fraud Surcharge. The billing shall identify each assessment and/or surcharge separately and shall include the calculations utilized to determine each assessment factor. Each individual assessment and/or surcharge shall be determined by multiplying the self-insured employer assessment factor by the total amount of worker's compensation indemnity paid and reported by each self-insured employer on its Self-Insurer's Annual Report during the base year, as determined by the Office of Self-Insurance Plans. The Self-Insurer's Annual Report shall include all indemnity payments as defined in section 15600(f). For reporting periods beginning July 1, 2013, and later, the Self-Insurer's Annual Report shall include, as separate items, both: (1) the full amount of any vocational rehabilitation maintenance or salary continuation payments made pursuant to Labor Code sections 4800 and 4850, and (2) the amount that would have been paid for those benefits had they instead been paid at the applicable temporary disability rate. The

latter amount will be used when calculating self-insured employers' assessments under this section.

(c) The amount of any assessment and/or surcharge shall be paid to the Office of Self-Insurance Plans within 30 days of the billing. Upon the request of any Joint Powers Authority, the Manager may agree to bill the Joint Powers Authority directly for the total amount of each assessment and/or surcharge owed by its public agency members.

(d) In the event the Manager collects funds in excess of the total self-insured employer assessment in the (1) Revolving Fund Assessment; (2) Subsequent Injuries Fund Assessment; (3) Labor Enforcement and Compliance Fund Assessment, (4) Occupational Safety and Health Fund Assessment; (5) Uninsured Employers Fund Assessment; and/or (6) Fraud Surcharge, such excess funds shall be paid over to the Director to be held in a trust account and credited to the next year's respective assessments and/or surcharge on self-insured employers.

(e) Should the Manager determine that any self-insured employer has understated or overstated its total payroll or indemnity paid on the self-insured employer's annual report, the Manager may issue a corrected billing.

(f) If an employer has paid the assessments and/or surcharge as an insured employer, and during the year of such assessments and/or surcharge is granted a certificate of consent to self-insure, the newly self-insured employer is not required to pay an additional assessments and/or surcharge as a self-insured employer for the current assessments and/or surcharge year. Such an employer shall submit to the Manager a copy of the assessments and/or surcharge billing paid as insured employer in lieu of payment as a self-insured employer.

(g) A self-insured employer that does not have a self-insurers' annual report on file with the Office of Self-Insurance Plans which covers the base year of the assessments and/or surcharge, and that did not pay the assessments and/or surcharge for the base year as an insured employer, shall pay the assessments and/or surcharge through the Office of Self-Insurance Plans.

(1) To enable the Manager to determine such self-insured employer's liability for the assessments and/or surcharge, each such self-insured employer shall file a report prescribed by the Manager, setting forth such self-insured employer's total annual payroll for the base year, and the total workers' compensation premium paid for each calendar quarter of the preceding year.

(2) The Manager shall bill the self-insured employer by applying the self-insured employer assessment factors to the last annual premium paid by the self-insured employer until the self-

insured employer's experience as a self-insured employer exceeds two complete calendar years for private self-insured employers or two complete fiscal years for public self-insured employers.

(h) A self-insured employer that ceases to be self-insured and ceases to operate as a functioning employer with no legal requirement to secure the payment of compensation, but continues to have open workers' compensation claims arising from the period of self-insurance, shall continue to be liable for assessments and/or surcharge for a period of 3 calendar years following the termination, revocation, or surrender of the employer's certificate of consent to self-insure. The Manager shall bill the former self-insured employer in accordance with this ~~Section~~ section.

Note: Authority cited: Sections 54, 55 and 62.5, Labor Code; and Section 1872.83, Insurance Code. Reference: Sections 62.5, 62.6, 4800 and 4850, Labor Code; and Section 1872.83, Insurance Code.

**Amend: Section 15606. Collection of Advances Against Insured Employers.**

(a) Not later than December 1 of each year, the Director shall notify each workers' compensation insurer, except for those that were granted assessment waivers, of the amounts due from the insurer on behalf of its policyholders for, respectively, the Revolving Fund Assessment, Subsequent Injuries Fund Assessment, Uninsured Employers Fund Assessment, Labor Enforcement and Compliance Fund Assessment, Occupational Safety and Health Fund Assessment, and the Fraud Surcharge levied pursuant to the authority of Labor Code ~~Sections~~ sections 62.5 and 62.6 and these regulations. The notice shall include a bill that sets forth separately the total amounts of the assessments and the surcharge.

(b) ~~The Insurer~~ For insurers who were not granted assessment waivers, the insurer advances against the Revolving Fund Assessment, Subsequent Injuries Fund Assessment, Labor Enforcement and Compliance Fund Assessment, Occupational Safety and Health Fund Assessment, Uninsured Employers Fund Assessment, and Fraud Surcharge amounts shall be calculated by multiplying the insurer's California direct written 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 who were not granted assessment waivers as reported in the latest year's annual financial statements on file with the Insurance Commissioner by the respective factors determined pursuant to subsection (a) of ~~Section~~ section 15603 of these regulations.

(c) Where the amount of the assessments or surcharge owed is less than \$5.00 the Director may elect not to bill the insurer therefor.

(d) Each insurer who was not granted an assessment waiver shall pay to the Director one half of the amounts billed under subsection (a) on behalf of its insured employers on or before the

following January 1. Each insurer shall pay the balance of the assessments and surcharge to the Director on the following April 1. The Director may extend either deadline to pay at his or her sole discretion.

(e) Upon agreement of the affected insurers, the Director may elect to consolidate in one billing the assessments and surcharge of all insured employers that are insured by insurers under the same management, direction and control.

(f) In the event the Director collects advances from insurers in excess of the total assessments and surcharge due from insured employers in the (1) Revolving Fund Assessment; (2) Subsequent Injuries Fund Assessment; (3) Labor Enforcement and Compliance Fund Assessment; (4) Occupational Safety and Health Fund Assessment; (5) Uninsured Employers Fund Assessment; and/or (6) Fraud Surcharge, the excess funds shall be held by the Director in a trust account and credited to the subsequent year's total respective assessments and surcharge on insured employers.

(g) Commencing with the assessment payment due April 1, 1993, the insurer shall submit a summary report on a form provided by the Director, which includes the following information: (1) the total amount of assessments and surcharges billed insured employers by the insurer; (2) the respective factors used by the insurer in assessing and surcharging insured employers.

(h) The summary report due April 1, 1993 shall include the information specified in this subsection for all workers' compensation insurance policies with an inception date between August 1, 1990 and December 31, 1991. Commencing April 1, 1994, the summary report shall include the information specified in this subsection for all workers' compensation insurance policies with an inception date in the next preceding calendar years.

Note: Authority cited: Sections 54, 55 and 62.5, Labor Code; and Section 1872.83, Insurance Code. Reference: Sections 62.5 and 62.6, Labor Code; and Section 1872.83, Insurance Code.

**New: Section 15606.1 Waiver of Assessments for Insured Employers.**

(a) An insurer may submit an assessment waiver application to request that the Director ascertain the insurer's expected total premium for the coming policy year to be \$0.00, rather than as determined by the Department of Insurance's designated licensed rating organization.

(b) The application shall be submitted no later than October 1 of each year and must include all of the following:

(1) Name of insurance carrier seeking the assessment waiver;

(2) Group name of insurance group, if applicable;

(3) Insurance carrier ID number;

(4) Mailing address of insurance carrier or an authorized contact;

- (5) Business address of insurance carrier, if different than mailing address;
- (6) E-mail address of insurance carrier or an authorized contact;
- (7) Phone number of insurance carrier or an authorized contact;
- (8) Printed name of signatory;
- (9) Title of signatory;
- (10) Policy year for which waiver is requested;
- (11) A declaration that is dated, signed under penalty of perjury, and notarized by a duly-authorized notary public, that:
- (A) the signatory is authorized by the insurance carrier to submit this declaration on its behalf;
- (B) the company is authorized to transact workers' compensation insurance in California, but has not and will not issue workers' compensation policies for the identified policy year for which the waiver is requested.
- (c) The decision to grant the assessment waiver is at the sole discretion of the Director. In making the decision, the Director may, but is not required to, consider whether there are sufficient funds available to grant the application without impairing the fiscal integrity of the programs funded by the respective assessment(s) and surcharge(s). The Director may, but is not required to, consider other factors.
- (d) Not later than December 1 of each year, the Director shall notify each workers' compensation insurer that has been granted an assessment waiver that:
- (1) Its application for a waiver has been granted.
- (2) Pursuant to such waiver, the insurer's expected current year premium is \$0.00.
- (3) The amounts due from the insurer on behalf of its policy holders are \$0.00 for, respectively, the Revolving Fund Assessment, Subsequent Injuries Fund Assessment, Uninsured Employers Fund Assessment, Labor Enforcement and Compliance Fund Assessment, and Occupational Safety and Health Fund Assessment.
- (4) The amounts due were calculated by multiplying expected current year premium of \$0.00 by the respective factors determined pursuant to subsection (a) of section 15603 of these regulations.
- (5) Eligibility for an assessment waiver is determined on a year-by-year and case-by-case basis at the sole discretion of the Director.
- (6) The insurer is required to comply with the notice requirements and payment deadlines specified in subsections (e) and (f) and failure to do so can affect its future eligibility for assessment waivers.



(e)(1) If an insurer issues a workers' compensation insurance policy in the state of California during the year for which it was granted an assessment waiver, the insurer must within 10 calendar days of issuing the policy provide written notice to the Director with a description and detail of its plans and expected total premium for the policy year.

(2) Within 60 calendar days of receiving such notice, the Director shall invoice the insurer for any advances against the Revolving Fund Assessment, Subsequent Injuries Fund Assessment, Labor Enforcement and Compliance Fund Assessment, Occupational Safety and Health Fund Assessment, and Uninsured Employers Fund Assessment amounts that have become due. The insurer shall pay the full amounts due within 30 days of receiving the invoice. The Director may extend the deadline to pay at his or her sole discretion.

(f) When an insurer fails to provide the notice required in subsection (e), the Director may invoice the insurer for any advances against the Revolving Fund Assessment, Subsequent Injuries Fund Assessment, Labor Enforcement and Compliance Fund Assessment, Occupational Safety and Health Fund Assessment, and Uninsured Employers Fund Assessment amounts that have become due. The insurer shall pay the full amounts due within 10 days of receiving the invoice. The Director may extend the deadline to pay at his or her sole discretion.

(g) If, for any reason described in section 15606.1 (e) or (f) of these regulations, an insurer who was granted an assessment waiver advances any funds to the Director, the Director shall hold such funds in a trust account and either credit the respective amounts to any deficiency in the current assessments, or, if there is no deficiency, to the subsequent year's respective assessments on insured employers.

Note: Authority cited: Sections 54, 55, and 62.5, Labor Code. Reference: Section 62.5, Labor Code.

**Amend: Section 15608. Assessment and/or Surcharge Collection in Excess of Insured Employer Assessment Advance.**

If the summary report required by subsections (g) and (h) of ~~Section~~ section 15606 of these regulations shows that the insurer has collected assessments and surcharges from employers in excess of the advances paid to the Director for policies incepting in the calendar year covered by the summary report, the insurer shall pay the excess amount to the Director upon submission of the summary report. The Director shall hold any excess amounts in a trust account and either credit the respective amounts to any deficiency in the current assessments and surcharge, or, if there is no deficiency, to the subsequent year's respective assessments and/or surcharges on insured employers.

Note: Authority cited: Sections 54, 55 and 62.5, Labor Code; and Section 1872.83, Insurance Code. Reference: Sections 62.5 and 62.6, Labor Code; and Section 1872.83, Insurance Code.

## **Amend: Section 15611. Collection of Interim Assessments**

(a) Notwithstanding the provisions of this subchapter, if the Director determines that there are insufficient funds to support the Workers' Compensation Administration Revolving Fund, the Subsequent Injuries Fund, the Labor Enforcement and Compliance Fund, the Occupational Safety and Health Fund, or the Uninsured Employers Fund for fiscal year 2003-2004, or any fiscal year thereafter, the Director may collect a ~~an~~ single interim assessment for these respective funds, in an amount determined by the Director, to provide sufficient funding for these funds.

(b) Any assessment collected under this ~~Section~~ section shall not reduce the amount to be collected in the subsequent year's assessments, except as provided by ~~Section~~ section 15608 of these regulations.

(c) Any assessment collected under this ~~Section~~ section shall be included on the next annual report required under ~~Section~~ section 15606 (g) of these regulations.

Note: Authority cited: Sections 54, 55 and 62.5, Labor Code. Reference: Section 62.5, Labor Code.