

TITLE 8. INDUSTRIAL RELATIONS
DIVISION 1. DEPARTMENT OF INDUSTRIAL RELATIONS
CHAPTER 4.5. DIVISION OF WORKERS' COMPENSATION
SUBCHAPTER 1.5 INJURIES ON OR AFTER JANUARY 1, 1990
ARTICLE 1 AUDIT, GENERAL DEFINITIONS

§10100.2. Definitions.

The following definitions apply in Articles 1 through 7 of this Subchapter for audits conducted on or after January 1, 2003.

(a) Adjusting Location. The office where claims are administered. Separate underwriting companies, self-administered, self-insured employers, and/or third-party administrators operating at one location shall be combined as one audit subject for the purposes of audits conducted pursuant to Labor Code ~~§~~section 129(b) only if claims are administered under the same local management at that location.

~~Where claims are administered from an office that includes a satellite office at another location, claims administered at the satellite office(s) will be considered as part of the single adjusting location for auditing purposes when demonstrated that the claims are under the same immediate management.~~

For auditing purposes, any separate office or location whose staff includes local management may be considered a single adjusting location.

(b) Additional claim file. A claim selected for audit in addition to the random sample of claims selected. An additional claim file may include a companion claim file, a file selected for audit because it was incorrectly designated on the claim log, or a claim chosen based on criteria relevant to a target audit but for which no specific complaint has been received.

~~(b c)~~ Administrative Director. The Administrative Director of the Division of Workers' Compensation or the Director's duly authorized representative, designee, or delegee.

~~(e d)~~ Audit. An audit performed under Labor Code ~~§~~sections 129 and 129.5.

~~(d e)~~ Audit Subject. A single adjusting location of a claims administrator which has been selected for audit. If a claims administrator has more than

one adjusting location, other locations shall be considered as separate audit subjects for the purposes of implementing Labor Code ~~S~~sections 129(a) and 129(b). However, the Audit Unit at its discretion may combine more than one adjusting location of a claims administrator as a single targeted audit subject, or may designate one insurer, insurer group, or self-insured employer at one or more third-party administrator adjusting locations as a single targeted audit subject.

(e f) Audit Unit. The organizational unit within the Division of Workers' Compensation which audits and/or investigates insurers, self-insured employers and third-party administrators pursuant to Labor Code ~~S~~sections 129 and 129.5.

(g) Carve-Out Program.

(1) An alternative dispute resolution (ADR) system for employees and employers engaged in construction (or other enumerated activities), established pursuant to Labor Code section 3201.5.

(2) An alternative dispute resolution (ADR) system for any industry (other than construction), established pursuant to Labor Code section 3201.7.

(f h) Claim. A request for compensation, or record of an occurrence in which compensation reasonably would be expected to be payable for an injury arising out of and in the course of employment.

(g i) Claim File. A record in paper or electronic form, or a combination, containing all of the information specified in California Code of Regulations, title 8, Ssection 10101.1 ~~of these Regulations~~ and all documents or entries related to the provision, delay, or denial of benefits.

(h j) Claim Log. A handwritten, printed, or electronically maintained listing maintained by the claims administrator listing each work-injury claim as specified in California Code of Regulations, title 8, Ssection 10103.2 ~~of these Regulations~~.

(i k) Claims Administrator or Administrator. A self-administered workers' compensation insurer, a self-administered self-insured employer, a self-administered legally uninsured employer, a self-administered joint powers authority, or a third-party claims administrator for an insurer, a self-insured employer, a legally-uninsured employer or a joint powers authority.

(j l) Closed Claim. A work-injury claim in which future payment of compensation cannot be reasonably expected to be due.

(m) Companion claim file. A claim file that is related to a claim file selected for random or targeted audit, in that claims were filed by the same injured worker, and the Audit Unit cannot ascertain the extent to which benefits have been paid on the initial claim selected for audit without auditing the related claim file.

(n) Compensation. Every benefit or payment, including vocational rehabilitation, supplemental job displacement benefits, medical treatment, and medical-legal expenses, conferred by Divisions 1 and 4 of the Labor Code on an injured employee or the employee's dependents.

(o) Complaint claim file. A claim file that is selected for audit because the Audit Unit has received information indicating the existence of possible claims handling violations of the kind which, if found, would be subject to the assessment of an administrative penalty, the issuance of a notice of compensation due, or the assessment of a civil penalty.

(p) Date of Knowledge of Injury and Disability. The date the employer had knowledge or reasonably can be expected to have had knowledge, pursuant to Labor Code Section 5402, of (1) a worker's injury or claim for injury, and (2) the worker's inability or claimed inability to work because of the injury.

(q) Denied Claim. A claim for which all liability has been denied at any time, even if the claim was accepted before or after the denial. A claim which otherwise meets this definition is a denied claim even if medical treatment is provided and paid pursuant to Labor Code section 5402(c) or medical-legal expenses were paid.

(r) Employee. An employee, or in the case of the employee's death, his or her dependent, as each is defined in Division 4 of the Labor Code, or the employee's or dependent's agent.

(s) First Payment of Permanent Disability Indemnity. (1) The first payment of permanent disability indemnity made to an injured worker for a work injury; or (2) the resumed payment of permanent disability indemnity following any period of one or more days for which no permanent disability indemnity was payable for that work injury; or (3) the resumed payment of permanent disability indemnity following issuance of a lawful notice that permanent disability benefits were ending.

(t) First Payment of Temporary Disability Indemnity. (1) The first payment of temporary disability indemnity made to an injured worker for a work injury; or (2) the first resumed payment of temporary disability indemnity

following any period of one or more days for which no temporary disability indemnity was payable for that work injury; or (3) the first resumed payment of temporary disability indemnity following issuance of a lawful notice that temporary disability benefits were ending.

(u) First Payment of Vocational Rehabilitation Maintenance Allowance. (1) The first payment of Vocational Rehabilitation Maintenance Allowance made to an injured worker for a work injury; or (2) the resumed payment of Vocational Rehabilitation Maintenance Allowance following any period of one or more days for which no Vocational Rehabilitation Maintenance Allowance was payable for that work injury; or (3) the resumed payment of Vocational Rehabilitation Maintenance Allowance following issuance of a lawful notice that Vocational Rehabilitation Maintenance Allowance benefits were ending.

(v) Frequency. The ratio of the number of claim files with one or more of a specific type of violation divided by the number of claim files with exposure for the same specific type of violation selected for audit at the adjusting location.

(p w) General Business Practice. For the purposes of Labor Code section 129.5(e), conduct that can be distinguished by a reasonable person from an isolated event. The conduct can include a single practice and/or separate, discrete acts or omissions in the handling of several one or more claims.

(q x) Indemnity Claim. A work-injury claim that has resulted in the payment of any of the following benefits: temporary disability indemnity, including temporary partial disability indemnity, or salary continuation in lieu of temporary disability indemnity, permanent disability indemnity, death benefits, or vocational rehabilitation maintenance allowance.

(q y) Indemnity Payment. Compensation for any of the following benefits: temporary disability indemnity, including temporary partial disability indemnity, or salary continuation in lieu of temporary disability indemnity, permanent disability indemnity, death benefits, or vocational rehabilitation maintenance allowance. An indemnity payment includes any increase made pursuant to Labor Code section 4650(d), and any interest pursuant to Labor Code section 5800.

(r z) Insurer. Any company, group, or entity in, or which has been in, the business of transacting workers' compensation insurance for employers subject to the workers' compensation laws of this state. The term insurer includes the State Compensation Insurance Fund.

(s aa) Investigation.

- (1) As conducted by a claims administrator, an investigation is the process of examining and evaluating a claim to determine the nature and extent of all legally required benefits, if any, which are due under the claim. Investigation may include formal or informal methods of gathering information relevant to evaluating the claim such as: obtaining employment records; obtaining earnings records; informal or formal interviews of the employee, employer, or witnesses; deposition of parties or witnesses; and, obtaining expert opinion where an issue requires an expert opinion for its resolution, such as obtaining a medical-legal evaluation.
- (2) As conducted by the Audit Unit, an investigation is the process of reviewing and evaluating, pursuant to California Code of Regulations, title 8, Ssection 10106.5 of these regulations and/or Government Code Ssections 11180 through 11191, the extent to which a claims administrator meets its compensation obligations under the California Labor Code or Administrative Director's regulations. An investigation may be conducted concurrently as part of an on-going audit without separate notice issued by the Audit Unit, or may be conducted independently from a specific audit in order to determine if an audit will be conducted, or to determine the nature and extent of business practices for which one or more civil penalties may be assessed pursuant to Labor Code Ssection 129.5(e).

(‡ bb) Joint Powers Authority. Any county, city, city and county, municipal corporation, public district, public agency, or political subdivision of the state, but not the state itself, included in a pooling arrangement under a joint exercise of powers agreement for the purpose of securing a certificate of consent to self-insure workers' compensation claims under Labor Code Ssection 3700(c).

(‡ cc) Knowingly committed. Acting with knowledge of the facts of the conduct subject to an investigation and/or audit under Labor Code sections 129 and 129.5. A corporation is ~~presumed to have~~ has knowledge of facts any employee receives while acting within the scope of his or her authority. A corporation is ~~presumed to have~~ has knowledge of information contained in its records and of the actions of its employees performed in the course of employment. An employer or insurer has knowledge of information contained in the records of its third party administrator and of the actions of the employees of the third party administrator performed in the scope and course of employment.

(dd) Lawful delay. A delay permitted by law or regulation, and for which the claims administrator has given a proper and timely notice of delay when such a notice is required. Any other delay is an unlawful delay.

(ee) Local Management. Claims personnel, regardless of their job titles, who have supervisory authority at an adjusting location over claims administration.

(v ff) Medical-Only Claim. A work-injury claim in which no indemnity benefits have been paid or would reasonably be anticipated or expected to be paid.

(gg) Nontransferable Training Voucher. A document provided to an employee that allows the employee to enroll in education-related training or skills enhancement. The document shall include identifying information for the employee and claims administrator, and specific information regarding the value of the voucher pursuant to Labor Code section 4658.5 and California Code of Regulations, title 8, section 10133.50 et seq.

(w hh) Notice of Compensation Due. The Notice of Assessment issued pursuant to Labor Code Section 129(c).

(x ii) Open Claim. A work-injury claim in which future payment of compensation may be due or for which reserves for the future payment of compensation are maintained.

(y jj) Payment Schedule. Either:

(1) The two-week cycle of indemnity payments due on the day designated with the first payment as required by Labor Code Sections 4650(c) or 4702(b), including any lawfully changed payment schedule; or

(2) The two-week cycle of payments of vocational rehabilitation maintenance allowance (VRMA) required by ~~Title 8,~~ California Code of Regulations, title 8, Division 1, Chapter 4.5, Subchapter 1.5, Article 7, Section 10125.1.

(kk) Performance Standard. Criteria developed from historical audit findings data and used as a basis for judgment of quality, quantity, level, and grade to measure claim adjusting performance in the handling of the workers' compensation benefit areas set forth in California Code of Regulations, title 8, section 10107.1, subdivision (c)(3)(A). The standard rating factors will be calculated annually and based on all final audit findings as published in the Annual DWC Audit Reports over the three calendar years

before the year preceding the current audit. The Administrative Director shall determine and publish the performance standards for profile audit reviews and full compliance audits for the following calendar year.

(//) Random sample. For the purpose of audit or investigation, a random sample is a selection of claim files selected pursuant to California Code of Regulations, title 8, section 10107.1, subdivisions (c)(1), (d)(1) or (e)(1).

(z mm) Record of Payment. An accurate written or electronic record of all compensation payments in a claim file, including but not limited to:

- (1) The check number, date the check was issued, name of the payee, amount, and for indemnity payments, including self-imposed increases, penalties, and/or interest, the time period(s) covered by the payment;
- (2) All dates for which salary continuation as defined by Labor Code Section 4650(g) was provided instead of direct indemnity payments; the dates for which salary continuation was authorized; and documentation when applicable that sick leave or other leave credits were restored for any periods for which salary continuation was payable;
- (3) A copy of each bill received which included as part of the bill a medical progress or work status report; and either a copy of each other bill received or documentation of the contents of that bill showing the date and description of the service provided, provider's name, amount billed, date the claims administrator received the bill, the number of the check providing payment for each bill, including the check number, the date of the check, and date and the amount paid.

(aa nn) Self-insured Employer. An employer, either as an individual employer or as a group of employers, that has been issued a certificate of consent to self-insure as provided by Labor Code Section 3700(b) or (c), including a joint powers authority or the State of California as a legally uninsured employer.

(oo) Supplemental Job Displacement Benefit. An educational retraining or skills enhancement allowance for injured employees, with dates of injury on or after January 1, 2004, whose employers are unable to provide work consistent with the requirements of Labor Code sections 4658.5 and California Code of Regulations, title 8, section 10133.50 et seq.

(bb pp) Third-Party Administrator. An agent under contract to administer the workers' compensation claims of an insurer, a self-insured employer, a

legally uninsured employer, or a self-insured joint powers authority. The term third-party administrator includes the State Compensation Insurance Fund for locations that administer claims for legally uninsured and self-insured employers, and also includes Managing General Agents.

(ee qq) VRMA. Vocational rehabilitation maintenance allowance.

(rr) Workers' Compensation Information System (WCIS). The workers' compensation information system established pursuant to Labor Code sections 138.6 and 138.7.

Authority: Sections 59, 129, 129.5, 133, 138.4, and 5307.3, Labor Code.

Reference: Sections 7, 124(a), 129(a), (b), (c), 129.5(a), (b), 138.6, 138.7, 139.5, 3700, 3702.1, 4636, 4650(c), 4658.5, 4658.6, 5307.1, and 5402, Labor Code.

§10101.1. Claim File--Contents.

This section applies to maintenance of claim files for injuries occurring on or after January 1, 1994.

Every claims administrator shall maintain a claim file of each work-injury claim including claims which were denied. For injuries reported on or after (OAL TO INSERT A DATE 60 DAYS AFTER THE DATE OF FILING WITH SECRETARY OF STATE HERE), each claims administrator shall maintain a claim file for each indemnity and medical-only claim, including denied claims, and shall ensure that each file is complete and current for each claim. Contents of claim files may be in hard copy, in electronic form, or some combination of hard copy and electronic form. Files maintained in hard copy shall be in chronological order with the most recently dated documents on top, or subdivided into sections such as medical reports, benefit notices, correspondence, claim notes, and vocational rehabilitation. Files or portions of files maintained in electronic form shall be easily retrievable. All open claim files shall be kept maintained at the adjusting location for the file responsible for administering the claim. The file shall contain but not be limited to:

(a) Either (1) a copy of the Employee's Claim for Workers' Compensation Benefits, DWC Form 1, showing the employer's date of knowledge of injury, the date the employer provided the form to the employee and the date the employer received the completed form from the employee; or (2) if the employee did not return the claim form, documentation of the date the employer provided a claim form to the employee. If the administrator cannot obtain the form or determine that the form was provided to the employee by the employer, the file shall contain documentation that the administrator has provided the claim form to the employee as required by Title 8, California Code of Regulations Section 10119.

(b) A copy of the Employer's Report of Occupational Injury or Illness, DLSR Form 5020, or documentation of reasonable attempts to obtain it;

(c) A copy of every notice, correspondence either initiated or received by the claims administrator, or report sent to the Division of Workers' Compensation.

(d) A copy of every Doctor's First Report of Occupational Injury or Illness, DLSR Form 5021, or documentation of reasonable attempts to obtain them.

- (e) The original or a copy of every medical report pertaining to the claim, or documentation of reasonable attempts to obtain them.
- (f) All orders or awards of the Workers' Compensation Appeals Board or the Rehabilitation Unit pertaining to the claim.
- (g) A record of payment of compensation.
- (h) A copy of the application(s) for adjudication of claim filed with the Workers' Compensation Appeals Board, if any.
- (i) Copies of the following notices sent to the employee:
 - (1) Benefit notices, including vocational rehabilitation notices and supplemental job displacement benefit notices, required by ~~Title 8, California Code of Regulations, title 8, Division 1, Chapter 4.5, Subchapter 1, Article 8, beginning with Section 9810~~, or by ~~Title 8, California Code of Regulations, title 8, Division 1, Chapter 4.5, Subchapter 1.5, Article 7, beginning with Section 10122 through section 10133.60~~;
 - (2) Notices and forms related to the Qualified Medical Evaluation or Agreed Medical Evaluator process required by Labor Code ~~Sections 4061~~ Sections 4060 et seq.;
- (j) Documentation sufficient to determine the injured worker's average weekly earnings in accordance with Labor Code Sections 4453 through 4459. Unless the claims administrator accepts liability to pay the maximum temporary disability rate, including any increased maximum due under Labor Code Section 4661.5, the information shall include:
 - (1) Documentation whether the employee received the following earnings, and if so, the amount or fair market value of each: tips, commissions, bonuses, overtime, and the market value of board, lodging, fuel, or other advantages as part of the worker's remuneration, which can be estimated in money, said documentation to include the period of time, not exceeding one year, as may conveniently be taken to determine an average weekly rate of pay;
 - (2) Documentation of concurrent earnings from employment other than that in which the injury occurred, or that there were no concurrent earnings, or of reasonable attempts to determine this information;

(3) If earnings at the time of injury were irregular, documentation of earnings from all sources of employment for one year prior to the injury, or of reasonable attempts to determine this information.

(4) If the foregoing information results in less than maximum earnings, documentation of the worker's earning capacity, including documentation of any increase in earnings likely to have occurred but for the injury (such as periodic salary increases or increased earnings upon completion of training status), or of reasonable attempts to determine this information.

(k) Notes, correspondence, and documentation, including correspondence to or from any individual or entity, related to the provision, delay, or denial of benefits, ~~including any electronically stored documentation.~~

(l) Notes, correspondence, and documentation, including correspondence to or from any individual or entity, related to any utilization review process conducted under Labor Code section 4610.

(m) Notes, correspondence, and documentation, including correspondence to or from any individual or entity, related to a return to regular, modified, or alternative work as defined by Labor Code section 4658.1

(n) Notes, correspondence, and documentation, including correspondence to or from any individual or entity, evidencing the legal, factual, or medical basis for non-payment or delay in payment of compensation benefits or expenses.

(o) Notes, correspondence, and documentation, including correspondence to or from any individual or entity, describing telephone conversations relating to the claim which are of significance to claims handling, including the dates of calls, substance of calls, and identification of parties to the calls.

Authority: Sections 59, 129.5, 133, 138.4, 4603.5 and 5307.3, Labor Code.

Reference: Sections 124, 129, 129.5, 138.3, 138.4, 139.48, 139.5, 4060, 4061, 4062, 4453, 4454, 4600, 4603.2, 4616, 4621, 4622, 4636, 4637, 4641, 4643, 4644, 4650, 4658.5, 4658.6, 4701 through 4703.5, 5401, 6409 and 6409.1, Labor Code.

§10103.2. Claim Log--Contents and Maintenance.

This section shall govern claim log maintenance on or after January 1, 2003.

(a) The claims administrator shall maintain annual claim logs listing all work-injury claims, open and closed. Each year's log shall be maintained for at least five years from the end of the year covered. Separate claim logs shall be maintained for each self-insured employer and each insurer for each adjusting location.

(b) Each entry in the claim log shall contain at least the following information:

- (1) Name of injured worker.
- (2) Claims administrator's claim number.
- (3) Date of injury.
- (4) An indication whether the claim is an indemnity or medical-only claim. Indemnity claims shall be differentiated from medical-only claims or any other claim where no indemnity payment(s) has been made. Claims that only require the provision of first aid, as defined by California Code of Regulations, title 8, section 9780(d), should not be included in the claim log.
- (5) An entry if all liability for a claim has been denied at any time. All liability is considered to have been denied even if the administrator accepted liability for medical-legal expense.
- (6) If the claim log is for a self-insured employer and a Certificate of Consent to Self-Insure has been issued, the name of the corporation employing the injured worker. If the claim log consists of claims for two or more members of an insurer group, the log shall identify the insurer for each claim.
- (7) If the claim has been transferred from one adjusting location to another:
 - (A) The address of the new location shall be identified on the initial adjusting location's log along with the date of transfer.
 - (B) Claims that are transferred from one adjusting location to another shall be listed on the claim log of the new adjusting location for the

year in which the claim was initially reported, not for the year in which the claim was transferred. The claim log shall also indicate the address of the old adjusting location along with the date of transfer.

(c) The entries on a log provided to the Administrative Director shall reflect current information, to show at least any changes in status of a claim which occurred 45 days or more before the claim log was provided. However, once all liability for a claim has been denied the log shall designate the claim as a denial, even if the claim was later accepted.

(d) The claim log of each former self-insured employer and each self-insured employer that changes or terminates the use of a third-party administrator shall be maintained by that self-insured employer as required by subsection (a).

(e) A claims administrator shall provide a copy of a claim log within 14 days of receiving a written request from the Administrative Director.

Authority: Sections 59, 129.5, 133 and 5307.3, Labor Code.

Reference: Sections 124, 129, 129.5, 138.4, 3702.8 and 5401, Labor Code.

§10104. Annual Report of Inventory.

(a) Each claims administrator shall maintain, and shall file with the Administrative Director, an Annual Report of Inventory for each of its adjusting locations. The report shall be filed annually by April 1. It shall include the name, address, and telephone number of the adjusting location and the name and title of the person responsible for audit coordination. Reports due on or after April 1, 2003. Claims administrators shall report, as of the preceding January 1, the numbers of indemnity, denied, and medical-only claims reported to the claims administrator each of its adjusting locations during the preceding calendar year for insurers and private self-insured employers, or fiscal year for public self-insured employers. If the administrator adjusts for more than one entity at that location, the report shall give the total numbers of claims at that location and shall also identify the numbers of claims for each self-insured employer or insurer liable for the payment of compensation. Indemnity claims shall be differentiated on the Annual Report of Inventory from medical-only claims or any other claim where no indemnity payment(s) has been made.

(b) If a claims administrator relocates, opens a new adjusting location, closes an adjusting location, changes contact persons, changes the e-mail address, changes from third-party administered to self-administered or from self-administered to third-party administered, or changes from self-insured to insured, the claims administrator shall advise the Administrative Director by mailing written notice to the manager of the Audit Unit within 45 calendar days of the event.

(c) Adjusting locations that have no indemnity, denied, or medical-only claims reported during the preceding calendar year must file with the Administrative Director a statement indicating whether the location is actively adjusting workers' compensation claims. The statement, which shall be filed annually by April 1, shall contain the name, address, and telephone number of the adjusting location and the name and title of the person responsible for audit coordination.

(d)(1) A claims administrator's obligation to submit an Annual Report of Inventory under subdivision (a) of this section is waived upon a determination by the Administrative Director that the claims administrator is in compliance with the electronic data reporting requirements of the Workers' Compensation Information System, as set forth in California Code of Regulations, title 8, section 9702.

(2) Each claims administrator whose obligation to submit an Annual Report of Inventory is satisfied under subdivision (d)(1) of this section shall maintain and file with the Administrative Director an Annual Report of Adjusting Locations. This report shall be filed annually by April 1 of

each calendar year and shall report, as of the preceding December 31, each of the claims administrator's adjusting locations. The report shall include the name, street and mailing address, physical zip code, e-mail address, fax number, and telephone number for each adjusting location and the name, title, e-mail address, fax number and telephone number of the person responsible for audit coordination.

- (3) The claims administrator shall notify the Administrative Director, by mailing written notice to the manager of the Audit Unit, of any change in the information provided in the Annual Report of Adjusting Locations. A reportable change shall include the relocation of the claims administrator or the opening or closing of an adjusting location. The notification shall be made within 45 calendar days after the effective date of the change.
- (4) The waiver granted to a claims administrator under subdivision (d)(1) of this section shall be rescinded if the total number of claims reported by the claims administrator to the Audit Unit in a claim log submitted pursuant to California Code of Regulations, title 8, section 10107.1(a) is not within one percent of the total number of claims electronically reported by the claims administrator to the Workers' Compensation Information System for the same period of time as covered in the submitted claim log.

Authority: Sections 59, 129.5~~(b)~~, 133, 5307.3, Labor Code.

Reference: Sections 129~~(a)~~, ~~(b)~~, 129.5~~(a)~~, ~~(b)~~, ~~(d)~~, 138.6, Labor Code

§10105. Auditing, Discretion of the Administrative Director.

To carry out the responsibility pursuant to Labor Code ~~Sections 129(a) and Section 129(b)~~ or 129.5, the Administrative Director or his/her representative shall audit claim administrators' claim files and claim logs at such reasonable times as he/she deems necessary. The Administrative Director or his/her representative may also utilize the provisions of Government Code ~~Sections~~ 11180 through 11191.

Authority: Sections 59, 129, 129.5, 133, and 5307.3, Labor Code.

Reference: Sections 129 and 129.5, Labor Code.

§10106.1. Routine and Targeted Audit Subject Selection; Complaint Tracking; Appeal of Targeted Audit Selection.

For audits conducted on or after January 1, 2003:

(a) The Division of Workers' Compensation shall maintain and update annually a list of known adjusting locations of California workers' compensation claims. The list will be based on information provided to the Division in Annual Reports of Inventory submitted pursuant to California Code of Regulations, title 8, Section 10104, data submitted to the Division's Workers' Compensation Information System pursuant to Labor Code Section 138.6, and any other sources of information available. The list shall include all known adjusting locations, located in or out of California, of insurers, self-administered self-insured employers, and third-party administrators that administer California workers' compensation claims.

(b) The Audit Unit shall select each adjusting location from the list of adjusting locations for routine profile audit review pursuant to Labor Code Section 129(b)(1) at least once every five years. Audit subjects may be selected in any order, and routine audits may be scheduled by the Audit Unit in a manner to best minimize travel expenses and utilize audit personnel efficiently.

(1) For routine audit subject selection pursuant to Labor Code Section 129(b)(1), if the adjusting location includes claims of more than one insurance underwriting company, self-insured employer, or third-party administrator at the location and all claims at that location share the same local management, the location will be considered as one audit subject.

(2) Eligibility under this subsection for removal from the pool for routine audit subject selection shall not bar the targeted selection of the audit subject pursuant to ~~subsections~~ subdivisions (c)(2), (c)(3), (c)(4) of this section, Labor Code Section 129(b)(3), or for investigation and/or audit pursuant to California Code of Regulations, title 8, Section 10106.5 of these regulations.

~~(c) The Audit Unit shall target audit subjects based on prior audit results pursuant to Labor Code Section 129(b)(2) and subsection (c)(1) of this regulation. Pursuant to Labor Code Section 129(b)(3), the Audit Unit may also target audit subjects based on subsections (c)(2) through (c)(5) of this regulation.~~

Pursuant to Labor Code section 129(b), the Audit Unit may conduct a targeted profile audit review or full compliance audit of targeted audit subjects. An audit subject shall be selected for a targeted audit based on the following target audit criteria:

- (1) Prior ~~A~~ audit results pursuant to Labor Code section 129(b)(2) shall be used independently as factual information to support selection of a claims administrator for a return, targeted audit as follows:
 - (A) When a final audit report is issued, the report will include a final performance rating. The final performance rating will be calculated in the same manner as the performance audit review performance rating as set forth in California Code of Regulations, title 8, Section 10107.1(c)(3), except that the rating shall be determined based on audit findings from all claim files randomly selected pursuant to section 10107(c)(1), (d)(1), and (e)(1) claims, and selected including additional claims files selected pursuant to ~~Sections 10107.1(d)(1) and (e)(1)~~.
 - (B) If the audit subject's performance rating calculated pursuant to ~~Section 10107.1(c)(3) or (d)(3)~~ fails to meet or exceed the worst 10% of performance ratings for all audits conducted in the three calendar years before the year preceding the current audit year in which the current audit was commenced, the Audit Unit will return for a targeted audit of the audit subject within two years of the date the audit findings become final.
 - (C) In the final audit report, the Audit Unit shall notify the audit subject that a return, targeted audit will be conducted based upon its performance rating. ~~The return target audit shall be conducted in addition to any penalties assessed as a result of the qualifying audit.~~
 - (D) Any appeal of the audit subject's selection for a targeted audit based upon the audit findings must be made in the same manner as an appeal of the Notice of Penalty Assessment as set forth in California Code of Regulations, title 8, Section 10115.1, and must be made within seven days of receipt of the audit findings upon which the selection for targeted audit is based.
- (2) Audit subjects may be selected for targeted audit on final decisions or findings of the WCAB issued pursuant to Labor Code ~~Section 5814~~ as follows:
 - (A) The Division of Workers' Compensation will regularly submit to the Audit Unit copies of WCAB decisions, findings, and/or awards issued

pursuant to Labor Code Section 5814, and reports of WCAB cases involving section 5814 violations to the Audit Unit.

- (B) ~~Approximately once per year~~ The Audit Unit will establish a list of claims administrators identified for potential targeted audit based on the documentation provided pursuant to ~~subsection~~ subdivision (c)(2)(A). For each adjusting location, the total number of decisions, findings, and/or awards issued pursuant to Labor Code Section 5814 shall be compared to the total number of claims reported at that claims adjusting location for the last year for that potential audit subject, as indicated on the Annual Report of Inventory or the Self Insurer's Annual Report, or as indicated in the data reported by the claims administrator to the Division of Workers' Compensation as part of the Workers' Compensation Information System pursuant to Labor Code Section 138.6. The Audit Unit may obtain data runs or claim logs from the claims administrator to verify the accuracy of the claims reported.
- (C) The Audit Unit may select for target audit the highest-ranking subjects, based on the ratios of decisions, findings, and/or awards issued pursuant to Labor Code Section 5814 compared to the number of claims reported at the adjusting location, from the list. The Audit Unit may consider the results and recency of prior audits at the adjusting location, the resources of the Audit Unit, and the need to conduct routine audits in scheduling targeted audits. The Audit Unit is not required to audit every claims administrator on the list, nor is it required to audit in the order in which claims administrators appear on the list.
- ~~(D) The Audit Unit shall send the audit subject selected for targeted audit a Notice of Audit in accordance with §10107.1(a).~~
- (3) The Audit Unit may also target audit subjects based on credible complaints and/or information received by the Division of Workers' Compensation that indicate possible claims handling violations, except that the Audit Unit will not target audit subjects based only on anonymous complaints unless the complaint(s) is supported by credible documentation. Complaints received by the Division of Workers' Compensation may be kept confidential if confidentiality is requested by the complaining party. In order to establish priorities for audits pursuant to this subsection, the Audit Unit shall review and compile complaints and information that indicate claims administrator adjusting locations are failing to meet their obligations under Divisions 1 or 4 of the Labor Code or regulations of the ~~a~~Administrative Director. The Audit Unit may contact a claims administrator and

request information necessary to determine the validity of a complaint.
~~Approximately once per year,~~ eComplaints and information alleging improper claims handling shall be tracked and compiled into a list of claims administrators identified for potential target audits in two manners:

(A) On the basis of overall gravity and frequency of potential violations as measured by assigned points:

(i) 1. Complaints or information indicating possible violations of the kind which, if found on audit, would be subject to the assessment of administrative penalties or issuance of notices of compensation due shall be weighted on the basis of apparent severity of the alleged violation. One point shall be assigned for each \$100.00 in penalties assessable under the corresponding violations in California Code of Regulations, title 8, Sections 10111 through 10111.2 of these regulations.

(ii) 2. The Audit Unit may select for target audit the highest-ranking subjects, based on points assigned compared to the number of claims reported at the adjusting location. The Audit Unit may consider the results and recency of prior audits at the adjusting location, the resources of the Audit Unit, and the need to conduct routine audits in scheduling targeted audits. The Audit Unit is not required to audit every claims administrator on the list, nor is it required to audit in the order in which claims administrators appear on the list.

~~(iii) The Audit Unit shall send the audit subject selected for targeted audit a Notice of Audit in accordance with §10107.1(a).~~

(B) On the basis of credible complaints or information indicating claims handling for which a civil penalty may be assessed pursuant to Labor Code Section 129.5(e):-

(i) The Audit Unit may select for target audit the highest-ranking subjects based on the ratios of complaints or information regarding specific claims practices compared to the number of claims. In considering the potential for specific poor claims practices, the Audit Unit may consider the results and recency of prior audits at the adjusting location, the resources of the Audit Unit, and the need to conduct routine audits in scheduling targeted audits. The Audit Unit is not required to audit every claims administrator on the list, nor is it required to audit in the order in which claims administrators appear on the list.

~~(ii) The Audit Unit shall send the audit subject selected for targeted audit a Notice of Audit in accordance with §10107.1(a).~~

- (4) The Audit Unit may also select targeted audit subjects based on data from the Workers' Compensation Information System which indicates the claims administrator is failing to meet its obligations, including, but not limited to, high percentages of possible violations compared to other claims administrators. Possible violations include high percentages of apparent late first and/or subsequent indemnity payments, either overall or by class of indemnity, and/or high ratios of denied claims to indemnity claims.
- (5) The Audit Unit may also target an audit subject for any of the following:
- (A) Failure to produce a claim for the Audit Unit within 30 days of receipt of a written request in a profile audit review conducted pursuant to Labor Code Section 129(b).
- (B) Failure to pay or appeal pursuant to California Code of Regulations, title 8, Section 10115.1 any Notice of Compensation Due issued by the Audit Unit.
- (C) Failure to comply with the Workers' Compensation Information System (WCIS) requirements and timelines set forth in Labor Code section 138.6 or California Code of Regulations, title 8,, sections 9700 et seq.
- (D) The assessment of or a stipulation to a civil penalty pursuant to Labor Code section 129.5(e).
- (d) For targeted audits conducted in accordance with the target audit criteria set forth in subdivision (c) of this section:
- (1) The Audit Unit shall send the audit subject selected for targeted audit a Notice of Audit in accordance with section 10107.1(a).
- ~~(6)~~(2) For target audits the Audit Unit may randomly select claims pursuant to Section 10107.1 of these regulations and/or target claims based on information indicating the possible existence of specific claims handling practices on the basis that the Audit Unit has received information alleging the existence of an improper claim handling practice, and for the purpose of determining whether that practice occurred in those files. Companion claim files or additional claim files as defined by these regulations may be included for audit with the selected files.
- ~~(7)~~(3) For all types of target audits and/or for targeted claims in any audit, the Audit Unit is not required to audit an entire claim file, but may audit only those parts of the claim file that pertain to the complaint or to a specific type of possible violation(s).

~~(8)~~(4) The Notice of Audit for a targeted audit selected pursuant to ~~subsections subdivisions~~ (c)(2) through (c)(5) of this section may be appealed as follows:

- (A) Within 7 days after receiving a Notice of Audit the claims administrator may appeal its selection for audit by filing with the Administrative Director and serving on the Audit Unit a request for an appeals conference or a request for a written decision without a conference.
- (B) Within 21 days after the request for a written decision or an appeals conference is filed, the appellant shall file with the Administrative Director and serve the Audit Unit with a written statement setting forth the legal and factual basis of the appeal, and including documentation or other evidence which supports the appellant's position.
- (C) If a request for an appeals conference or a request for a written decision without conference or if the written statement and documentation are not timely filed and served under California Code of Regulations, title 8, Section 10115.1(g)(1) and (g)(2), the claims administrator shall be deemed to have waived any issue concerning its selection for audit. The claims administrator will be precluded from raising the issue at any subsequent appeals of Notices of Penalty Assessment or Notices of Compensation Due.
- (D) Service and filing are timely if the documents are placed in the United States mail, first class postage prepaid, or personally delivered between the hours of 8:00 a.m. and 5:00 p.m., within the periods specified in Section 10115.1(g). The original and all copies of any filing shall attach proof of service as provided in California Code of Regulations, title 8, Section 10975.
- (E) The appeal process shall be governed by California Code of Regulations, title 8, Section 10115.2.

Authority: Sections 59, 129, 129.5, 133, 138.6, 138.7, 5307.3, Labor Code.

Reference: Sections 7, 53, 111, 124, 129, ~~and~~ 129.5, 138.6 and 138.7, Labor Code; and Sections 11180, 11181 and 11182, Government Code.

§ 10106.5. Civil Penalty Investigation.

Notwithstanding California Code of Regulations, title 8, Sections 10106.1 and 10107.1 of these regulations, if the Audit Unit has information indicating the possible existence of claims handling practices which would be assessable as a civil penalty under Labor Code Section 129.5(e), it may conduct an investigation and/or audit pursuant to Labor Code Sections 129 and 129.5. The Audit Unit may also utilize the provisions of Government Code Sections 11180 through 11191 as the delatee of the Administrative Director's powers as a department head.

The Audit Unit shall report any suspected fraudulent activity uncovered during an audit and/or investigation to the appropriate law enforcement agencies, including but not limited to the Department of Insurance Fraud Bureau and the appropriate District Attorney having jurisdiction over the audit subject.

Authority: Sections 129.5, 133, and 5307.3, Labor Code.

Reference: Sections 11180 through 11191, Government Code. Sections 59, 60, 111, 124, 129, and 129.5, Labor Code.

§10107.1. Notice of Audit; Claim File Selection; Production of Claim Files; Auditing Procedure.

For audits conducted on or after January 1, 2003:

(a) Once a subject has been selected for an audit, the Audit Unit shall serve a Notice of Audit on the claims administrator. The Notice of Audit shall inform the claims administrator of its selection for audit, and may include a request to provide the Audit Unit with a claim log or logs. If the Audit Unit has requested claim logs, the audit subject shall provide two copies of ~~the~~ each requested specified claim log(s) within ~~fourteen~~ 14 days of the date of the receipt of the Notice of Audit. Only one copy of the requested claim log or logs shall be provided within 14 days of the date of the receipt of the Notice of Audit by the claims administrator if the copy is provided via electronic submission to the Audit Unit mailbox at DWCAuditUnit@dir.ca.gov.

(b) At least 14 days before the audit is scheduled, the Audit Unit shall send the audit subject a Notice of Audit Commencement identifying the claims to be audited. The audit shall commence no less than ~~fourteen~~ 14 days from the date the Notice of Audit Commencement was sent, unless the audit subject and Audit Unit agrees to earlier commencement. Claims selected for audit that are administered at the home of a telecommuting adjuster must be presented for audit at a California office location of the administrator, at a California location of the self insured employer, an Audit Unit office, or a Workers' Compensation Appeals Board district office. Other arrangements may be made as agreed between the audit subject and the Audit Unit.

(c) For profile audit reviews conducted pursuant to Labor Code ~~§~~section 129(b)(1), the Audit Unit shall randomly select samples of indemnity claims from the most recent three years of the audit subject's claim logs or from the list of claims for those years as reported to the Division of Workers' Compensation pursuant to Labor Code ~~§~~section 138.6 as part of the Workers' Compensation Information System. Claim samples randomly selected under this subdivision shall not include claims with a single indemnity payment that cannot be classified under the profile audit review performance standards set forth in subdivision (c)(3)(A) through (C)(3)(E). If any of the years have been the subject of a previous audit, claims will be randomly selected from the most recent unaudited year(s).

(1) The initial number of indemnity claims randomly selected for audit will be determined based on the following table:

| Population | Sample Size |
|------------|-------------------|
| 5 or less | all |
| 6 – 10 | 1 less than total |
| 11 – 13 | 2 less than total |
| 14 – 16 | 3 less than total |
| 17 – 18 | 4 less than total |
| 19 – 20 | 5 less than total |
| 21 – 23 | 6 less than total |
| 24 | 17 |
| 25 – 26 | 18 |
| 27 – 29 | 19 |
| 30 – 31 | 20 |
| 32 – 33 | 21 |
| 34 – 36 | 22 |
| 37 – 39 | 23 |
| 40 – 41 | 24 |
| 42 – 44 | 25 |
| 45 – 48 | 26 |
| 49 – 51 | 27 |
| 52 – 55 | 28 |
| 56 – 58 | 29 |
| 59 – 62 | 30 |
| 63 – 67 | 31 |
| 68 – 72 | 32 |
| 73 – 77 | 33 |
| 78 – 82 | 34 |
| 83 – 88 | 35 |
| 89 – 95 | 36 |
| 96 – 102 | 37 |
| 103 – 110 | 38 |
| 111 – 119 | 39 |
| 120 – 128 | 40 |
| 129 – 139 | 41 |
| 140 – 151 | 42 |
| 152 – 164 | 43 |
| 165 – 179 | 44 |
| 180 – 197 | 45 |
| 198 – 217 | 46 |
| 218 – 241 | 47 |
| 242 – 269 | 48 |

| | |
|---------------|----|
| 270 – 304 | 49 |
| 305 – 346 | 50 |
| 347 – 399 | 51 |
| 400 – 468 | 52 |
| 469 – 562 | 53 |
| 563 – 696 | 54 |
| 697 – 905 | 55 |
| 906 - 1,272 | 56 |
| 1,273 - 2,091 | 57 |
| 2,092 - 5,530 | 58 |
| 5,531 + | 59 |

- (2) In addition to the randomly selected indemnity claims, the Audit Unit may audit any claims for which it has received a complaint or information ~~indicating~~ over the past three years that indicate a failure to pay indemnity, including any companion claim needed to ascertain the extent to which benefits have been provided. Claims with complaints that are randomly selected will be audited as part of the random sample and included in the performance rating.

Complaints not involving a failure to pay indemnity will be provided to the audit subject, if confidentiality has not been requested, for review and corrective action, if warranted. Within 30 days of receipt of the report of audit findings issued pursuant to subdivision (f) of this section, the audit subject shall provide a written response to the Audit Unit, stating its review findings and corrective actions, if any.

- (3) After reviewing the claims selected pursuant to ~~subsection~~ subdivision (c)(1), the Audit Unit shall calculate the audit subject's profile audit review performance rating based on its review of the randomly selected claims. The profile audit review performance rating will be calculated as follows:

- (A) The factor for the failure to pay accrued and undisputed indemnity shall be determined by:

- (i-a) 1. Dividing the number of randomly selected claims with violations involving the failure to pay indemnity [pursuant to California Code of Regulations, title 8, section 10111.2, subdivisions (a)(1), (a)(2), (a)(3), (a)(4), and (a)(10)] by the number of randomly selected claims with accrued and payable indemnity, whether paid or not, to produce a frequency rate.

- (i-b) 2. Dividing the total amount of unpaid indemnity in randomly selected claims by the number of randomly selected claims with accrued and payable indemnity, ~~whether paid or not~~, to produce an average amount of unpaid indemnity per file with the obligation to pay indemnity.
- (i-c) 3. Dividing the average amount of unpaid indemnity per randomly selected audited claim with the obligation to pay indemnity for the audit subject by the average amount of unpaid indemnity per randomly selected audited claim for all audit subjects for the three calendar years before the year preceding the year in which the current audit ~~is being conducted~~ was commenced, to produce a severity rate.
- (i-d) 4. Multiplying the frequency rate by the severity rate by a modifier of 2 to determine the factor for the failure to pay accrued and undisputed indemnity.
- (ii)(B) ~~The factor for the late first payment of temporary disability indemnity and issuance of first temporary disability notices shall be determined by dividing the number of randomly selected claims with violations involving the late first payment of temporary disability indemnity [pursuant to section 10111.2, subdivisions (a)(5), (a)(8), and (a)(10)], or in claims that involve salary continuation, failure to comply with the requirements for first notices advising the injured employee of the provision of salary continuation in lieu of first temporary disability payments [pursuant to section 10111.2, subdivisions (b)(8)(B) and (b)(8)(C)], the late issuance of the first temporary disability notice by the number of randomly selected claims in which temporary disability payments or first notices advising the injured employee of the provision of salary continuation in lieu of first temporary disability notices were issued~~ required. In any claim that involves the payment of both salary continuation in lieu of first temporary disability payments and temporary disability payments, each benefit type paid will be considered in calculating this factor.
- (iii)(C) The factor for the late first payment of permanent disability indemnity, vocational rehabilitation maintenance allowance, and death benefits [pursuant to section 10111.2, subdivisions (a)(6), (a)(7), (a)(8), and (a)(10)] shall be determined by dividing the numbers of randomly selected claims with violations involving late first payments of those benefits by the numbers of randomly selected claims with payments for those benefits. In calculation of this factor, claims shall be counted for each type of exposure and late first payment.

~~(iv)~~(D) The factor for late subsequent indemnity payments [pursuant to section 10111.2, subdivisions (a)(8), (a)(9), and (a)(10)] shall be determined by dividing the number of randomly selected claims with violations involving late indemnity payments subsequent to first payment by the number of randomly selected claims with subsequent indemnity payments.

~~(v)~~(E) The factor for failure to comply with requirements for notices advising injured employees of the process for selecting Agreed Medical Examiners and/or Qualified Medical Examiners, and for injured workers with injuries prior to January 1, 2004, failure to comply with the requirements for notices advising injured workers of potential eligibility for vocational rehabilitation pursuant to Labor Code Section 4637, or for injured workers with injuries on or after January 1, 2004, failure to comply with the requirements for notices advising injured workers of the right to the supplemental job displacement benefit, shall be determined by dividing the numbers of randomly selected claims with violations involving the failure to comply with the applicable requirement to issue the notices by the numbers of randomly selected claims with the requirement to issue the notices. In calculation of this factor, claims shall be counted for each type of exposure and violation.

~~(vi)~~(F) The audit subject's profile audit review performance rating will be determined by adding the factors calculated pursuant to ~~subsections subdivisions~~ (c)(3)(A)~~(i)~~ through (c)(3)(A E)~~(v)~~.

(B 4) If the audit subject's profile audit review performance rating meets or exceeds the worst 20% of performance ratings for all final audit reports issued ~~over~~ for audits commenced in the three calendar years before the year preceding the current audit year in which the current audit was commenced, the Audit Unit will issue Notices of Compensation Due pursuant to California Code of Regulations, title 8, Section 10110 but will assess no administrative penalties for violations found in the profile audit review.

(~~C~~ 5) If the audit subject's profile audit review performance rating fails to meet or exceed the rating of the worst 20% of performance ratings as calculated based on all final audit findings as published in the Annual DWC Audit Reports over the three calendar years before the year preceding the ~~current audit year in which the current audit was commenced,~~ the Audit Unit will conduct a Full ~~C~~ompliance Audit by randomly selecting and auditing an additional sample of indemnity claims pursuant to ~~subsection subdivision~~ (d). Written notification of the Audit Unit's findings from the profile audit review, ~~intent to~~

~~proceed to a Full Compliance Audit, showing the calculation of the profile audit review performance rating, and intent to proceed to a full compliance audit,~~ will be provided to the audit subject in time for the timely filing of an objection. The audit subject may dispute whether or not a ~~F~~full ~~C~~ompliance ~~A~~udit is merited under this ~~subsection~~ subdivision at a post-profile audit review conference. ~~Following the post-profile audit review conference,~~ Unless the audit subject demonstrates that the factual basis for the Audit Unit's calculation of the profile audit review performance rating is incorrect within two working days of the receipt of the rating or at the post profile audit review conference, the Audit Unit may ~~continue with~~ complete the ~~F~~full ~~C~~ompliance ~~A~~udit. The audit subject may appeal the issues pursuant to California Code of Regulations, title 8, Section 10115.1 following the issuance of the final audit report. Failure of the audit subject to raise factual issues related to failing to meet or exceed the profile audit review performance standard within two working days of the receipt of the profile audit review performance rating or during the post-profile audit review conference shall constitute a waiver of appeal on those issues.

(d) If the audit subjects fails to meet or exceed the profile audit review performance standard, the Audit Unit shall conduct a ~~F~~full ~~C~~ompliance ~~A~~udit by selecting and auditing an additional sample of indemnity claims.

(1) The total number of indemnity claims randomly selected for audit, including the number audited pursuant to ~~subsection~~ subdivision (c)(1), will be determined based on the following table:

| Population | Sample Size |
|------------|-------------------|
| 8 or less | all |
| 9 – 15 | 1 less than total |
| 16 – 19 | 2 less than total |
| 20 – 23 | 3 less than total |
| 24 – 27 | 4 less than total |
| 28 – 30 | 5 less than total |
| 31 – 33 | 6 less than total |
| 34 – 36 | 7 less than total |
| 37 – 38 | 8 less than total |
| 39 – 41 | 9 less than total |
| 42 | 32 |
| 43 – 44 | 33 |

| | |
|-----------|----|
| 45 | 34 |
| 46 – 47 | 35 |
| 48 – 49 | 36 |
| 50 – 51 | 37 |
| 52 – 53 | 38 |
| 54 – 55 | 39 |
| 56 – 57 | 40 |
| 58 – 59 | 41 |
| 60 – 61 | 42 |
| 62 – 63 | 43 |
| 64 – 65 | 44 |
| 66 – 67 | 45 |
| 68 – 70 | 46 |
| 71 – 72 | 47 |
| 73 – 74 | 48 |
| 75 – 77 | 49 |
| 78 – 79 | 50 |
| 80 – 82 | 51 |
| 83 – 84 | 52 |
| 85 – 87 | 53 |
| 88 – 89 | 54 |
| 90 – 92 | 55 |
| 93 – 95 | 56 |
| 96 – 98 | 57 |
| 99 – 101 | 58 |
| 102 – 104 | 59 |
| 105 – 107 | 60 |
| 108 – 110 | 61 |
| 111 – 114 | 62 |
| 115 – 117 | 63 |
| 118 – 120 | 64 |
| 121 – 124 | 65 |
| 125 – 128 | 66 |
| 129 – 131 | 67 |
| 132 – 135 | 68 |
| 136 – 139 | 69 |
| 140 – 143 | 70 |
| 144 – 148 | 71 |
| 149 – 152 | 72 |
| 153 – 156 | 73 |
| 157 – 161 | 74 |
| 162 – 166 | 75 |

| | |
|-----------|-----|
| 167 – 171 | 76 |
| 172 – 176 | 77 |
| 177 – 181 | 78 |
| 182 – 187 | 79 |
| 188 – 192 | 80 |
| 193 – 198 | 81 |
| 199 – 204 | 82 |
| 205 – 210 | 83 |
| 211 – 217 | 84 |
| 218 – 223 | 85 |
| 224 – 230 | 86 |
| 231 – 238 | 87 |
| 239 – 245 | 88 |
| 246 – 253 | 89 |
| 254 – 261 | 90 |
| 262 – 270 | 91 |
| 271 – 279 | 92 |
| 280 – 288 | 93 |
| 289 – 298 | 94 |
| 299 – 308 | 95 |
| 309 – 319 | 96 |
| 320 – 330 | 97 |
| 331 – 342 | 98 |
| 343 – 354 | 99 |
| 355 – 367 | 100 |
| 368 – 381 | 101 |
| 382 – 396 | 102 |
| 397 – 411 | 103 |
| 412 – 427 | 104 |
| 428 – 444 | 105 |
| 445 – 463 | 106 |
| 464 – 482 | 107 |
| 483 – 503 | 108 |
| 504 – 525 | 109 |
| 526 – 549 | 110 |
| 550 – 575 | 111 |
| 576 – 603 | 112 |
| 604 – 633 | 113 |
| 634 – 665 | 114 |
| 666 – 700 | 115 |
| 701 – 739 | 116 |
| 740 – 781 | 117 |

| | |
|-----------------|-----|
| 782 – 827 | 118 |
| 828 – 879 | 119 |
| 880 – 936 | 120 |
| 937 - 1,000 | 121 |
| 1,001 - 1,072 | 122 |
| 1,073 - 1,154 | 123 |
| 1,155 - 1,248 | 124 |
| 1,249 - 1,356 | 125 |
| 1,357 - 1,483 | 126 |
| 1,484 - 1,633 | 127 |
| 1,634 - 1,814 | 128 |
| 1,815 - 2,036 | 129 |
| 2,037 - 2,315 | 130 |
| 2,316 - 2,677 | 131 |
| 2,678 - 3,163 | 132 |
| 3,164 - 3,852 | 133 |
| 3,853 - 4,904 | 134 |
| 4,905 - 6,710 | 135 |
| 6,711 - 10,530 | 136 |
| 10,531 - 23,993 | 137 |
| 23,994 + | 138 |

- (2) In addition to the randomly selected indemnity claims, the Audit Unit may audit any claims for which it has received a complaint or information ~~indicating~~ over the past three years that indicate a failure to pay indemnity or late-paid indemnity, including any companion claim needed to ascertain the extent to which benefits have been provided.

Complaints not involving a failure to pay indemnity or late paid indemnity will be provided to the audit subject, if confidentiality has not been requested, for self-review and corrective action, if warranted. Within 30 days of receipt of the report of audit findings issued pursuant to subdivision (f) of this section, the audit subject shall provide a written response to the Audit Unit stating its review findings and corrective actions, if any.

- (3) After reviewing the claims selected pursuant to ~~subsection~~ subdivision (d)(1), the Audit Unit shall calculate the audit subject's full compliance audit performance rating.
- (A) The audit subject's full compliance audit performance rating will be calculated pursuant to ~~subsection~~ subdivision (c)(3)(A), except that it

shall be based on the review of all claims selected pursuant to ~~subsection~~ subdivision (d)(1).

(B) If the audit subject's full compliance audit performance rating meets or exceeds the worst 10% of performance ratings for all final audit reports issued ~~over~~ for audits commenced in the three calendar years before the year preceding the current audit year in which the current audit was commenced, the Audit Unit will issue Notices of Compensation Due pursuant to ~~S~~section 10110 and will assess administrative penalties only for violations involving unpaid and late paid compensation, pursuant to Labor Code ~~S~~section 129.5(c)(2).

(e) If the audit subject's full compliance audit performance rating fails to meet or exceed the rating of the worst 10% of performance ratings for all final audit reports issued ~~over~~ for audits commenced in the three calendar years before the year preceding the current audit year in which the current audit was commenced, the Audit Unit will audit all claims selected for audit for all violations, and also randomly select a sample of denied claims. Written Notification of the Audit Unit's findings from the full compliance audit, the calculation of the full compliance audit performance rating, and intent to audit a sample of denied claims and assess penalties pursuant to Labor Code ~~S~~section 129.5(c)(3), will be provided to the audit subject based on findings at a meet and confer audit review conference in time for the timely filing of an objection. At that time ~~†~~The audit subject may dispute whether or not it met or exceeded the ~~F~~full ~~C~~ompliance ~~A~~udit performance standard at a meet and confer audit review conference. Following the meet and confer audit review conference, Unless the audit subject demonstrates that the factual basis for the Audit Unit's calculation of the full compliance audit performance rating is incorrect within two working days of the receipt of the rating or at the meet and confer audit review conference, the Audit Unit may continue with complete the Ffull Ccompliance Aaudit. The audit subject may appeal pursuant to ~~S~~section 10115.1 following the issuance of the final audit report. Failure of the audit subject to raise factual issues related to failing to meet or exceed the full compliance audit performance standard within two working days of the receipt of the full compliance audit performance rating or during the meet and confer audit review conference shall constitute a waiver of appeal on those issues.

(1) The number of denied claims randomly selected for audit will be based on the following table:

| Population | Sample Size |
|------------|-------------|
| 6 or less | all |

| | |
|-----------|-------------------|
| 7 – 10 | 1 less than total |
| 11 – 14 | 2 less than total |
| 15 – 17 | 3 less than total |
| 18 | 14 |
| 19 – 20 | 15 |
| 21 | 16 |
| 22 – 23 | 17 |
| 24 – 25 | 18 |
| 26 – 27 | 19 |
| 28 - 29 | 20 |
| 30 - 31 | 21 |
| 32 - 33 | 22 |
| 34 - 36 | 23 |
| 37 - 38 | 24 |
| 39 - 41 | 25 |
| 42 - 43 | 26 |
| 44 - 46 | 27 |
| 47 - 49 | 28 |
| 50 - 52 | 29 |
| 53 - 55 | 30 |
| 56 - 59 | 31 |
| 60 - 63 | 32 |
| 64 - 67 | 33 |
| 68 - 71 | 34 |
| 72 - 75 | 35 |
| 76 - 80 | 36 |
| 81 - 85 | 37 |
| 86 - 90 | 38 |
| 91 - 96 | 39 |
| 97 - 102 | 40 |
| 103 - 109 | 41 |
| 110 - 116 | 42 |
| 117 - 124 | 43 |
| 125 - 132 | 44 |
| 133 - 141 | 45 |
| 142 - 151 | 46 |
| 152 - 163 | 47 |
| 164 - 175 | 48 |
| 176 - 189 | 49 |

| | |
|------------------|----|
| 190 - 205 | 50 |
| 206 - 222 | 51 |
| 223 - 242 | 52 |
| 243 - 265 | 53 |
| 266 - 292 | 54 |
| 293 - 323 | 55 |
| 324 - 360 | 56 |
| 361 - 405 | 57 |
| 406 - 461 | 58 |
| 462 - 531 | 59 |
| 532 - 623 | 60 |
| 624 - 749 | 61 |
| 750 - 931 | 62 |
| 932 - 1,217 | 63 |
| 1,218 - 1,731 | 64 |
| 1,732 - 2,934 | 65 |
| 2,935 - 8,990 | 66 |
| 8,991 + | 67 |

(2) In addition to the random samples of indemnity and denied claims, ~~and the Audit Unit may select for audit all claims for which the Division received complaints or information indicating unpaid or late-paid compensation, the Audit Unit may select for audit any claims for which it received complaints or information~~ over the past three years that indicate the possible existence of any claims handling violations, including any companion claim(s) needed to ascertain the extent to which benefits have been provided.

(f) Following the conclusion of the audit, the Audit Unit shall issue a report of audit findings which may include, but is not limited to, the following: one or more requests for additional documentation or compliance, Notices of Intention to Issue Notice of Compensation Due, Preliminary Notices of Penalty Assessments, Notices of Compensation Due, or Notices of Penalty Assessments. If any additional requested documentation is not provided within thirty days of receipt of the report, additional audit penalties may be assessed under California Code of Regulations, title 8, Section 10111.1(d)(2) 10111.2(b)(23) of these Regulations.

(g) The audit subject shall pay all expenses of an audit of an adjusting location outside the State of California, including per diem, travel expense, and compensated overtime of audit personnel.

(h) The audit subject shall make each of the claim files selected for audit available at the audit site at the time of audit commencement. Claims will include but not be limited to the required contents of California Code of Regulations, title 8, section 10101.1. If claim files are maintained in an electronic or other non-paper storage medium, the claims administrator shall, upon request, provide to the Audit Unit, at the Audit Unit's discretion, direct computer access to electronic claim files and/or legible printed paper copies of the claim files, including all records of compensation payments. If a randomly selected indemnity, medical-only, or denied claim has been incorrectly classified as to type by the audit subject, the Audit Unit may randomly select an additional correctly designated claim file for audit, and may also assess penalties as appropriate in the misdesignated claim initially selected. If the audit subject fails to produce a claim selected for audit, the Audit Unit may assess a penalty for failure to produce the claim pursuant to ~~§~~Section Section 10111.2(b)(3) and may also select for audit another claim of the same type to complete the random sample. If, after the issuance of the Notice of Audit Commencement that notified the audit subject that the claim was selected for audit, the audit subject has transferred a claim ~~selected for audit~~ to a different adjusting location of the company being audited, the audit subject shall nonetheless produce the claim for audit within five working days of request, unless additional time is agreed upon by both the Audit Unit and the audit subject.

(i) The Audit Unit shall have discretion to audit claims in addition to those identified with the Notice of Audit Commencement. The audit subject shall make each of the additional claims selected for audit available at the audit site as follows:

- (1) Open claims and closed claims stored on site within one working day of request;
- (2) Closed claims stored off site within five working days of request, unless additional time is agreed upon by both the Audit Unit and the audit subject.

(j) The audit subject shall provide the auditor(s) an adequate, safe, and healthful workspace during the audit, which allows the auditors a reasonable degree of privacy. If the Audit Unit determines that this workspace is not provided, the Audit Unit may require the audit subject to deliver the files to ~~the nearest Audit Unit office~~ another California office location of the audit

subject, an Audit Unit office, or a Workers' Compensation Appeals Board district office, for completion of the audit. Other arrangements may be made as agreed between the audit subject and the Audit Unit.

(k) The Audit Unit may obtain and retain copies of documentation or information from claim files to support the assessment of penalties.

(l) The audit subject shall have the opportunity to discuss preliminary findings and provide additional information at a post-audit conference.

(m) The Audit Unit may at any time request additional information or documentation related to the claims being audited in order to complete its audit. Such information may include documentation demonstrating that, as specified by Labor Code ~~§~~sections 3751~~(a)~~ and 3752, compensation has not been reduced or affected by any insurance, contribution, or other benefit due to or received by or from the employee. The audit subject shall provide any requested documentation or other information within thirty ten working days from the Audit Unit's request, unless the Audit Unit extends the time for good cause.

Authority: Sections 59, 129, 129.5, 133, 5307.3, Labor Code.

Reference: Sections 11180, 11180.5, 11181, and 11182, Government Code. Sections 111, 124, 129, 129.5, 139.5, 3751, ~~and~~ 3752, 4658.5 and 4658.6, Labor Code.

§10108. Audit Violations--General Rules.

The following general rules apply to audits and audit processes under Labor Code ~~§§~~ sections 129, and 129.5:

(a) If the date or deadline (including any applicable extension) to perform any act falls on a weekend or holiday, the act may be performed on the last business day before or the first business day after the weekend or holiday. A payment date which is changed under this provision shall not change the normal dates for later payments in an existing two-week payment schedule.

(b) For the purpose of imposing audit penalties, if the claims administrator does not record the date it received a document, it shall be deemed received five days after the latest date the sender wrote on the document.

(c) Audit penalties will be based on each claim's status when the claim is audited.

(1) If, at the time of the audit, the claims administrator has failed to perform a required act, but remedies the failure prior to the issuance of the audit report receipt of the Notice of Audit Commencement, when the claims administrator was notified that the claim was selected for audit, the claims administrator will be accountable for the violation. The penalty for an unlawful delay of more than 30 days in performing an act is the same as the penalty for not performing the act unless these regulations specifically provide otherwise. However the penalty will be mitigated for good faith because the act, though late, was eventually performed.

(2) If the claims administrator remedies a failure to perform a required act only after receipt of the Notice of Audit Commencement, the claims administrator will nonetheless be accountable for the violation as a failure to act and audit findings related to the violation will be based on the failure to perform the act. In cases where there is an unlawful delay of more than 30 days in performing an act and the act was performed only after the audit subject was notified that the claim was selected for audit, penalties will be assessed as though there was a failure to perform the act rather than late performance of the act. Unless these regulations specifically provide otherwise, the penalty for an unlawful delay of more than 30 days in performing an act is the same as the penalty for not performing the act. However, the penalty will be mitigated for good faith because the act, though late, was eventually performed. There will be no mitigation for good faith,

~~however, if the act was performed after notification to the audit subject that the claim was selected for audit. In such cases where there is an unlawful delay of more than 30 days in performing an act and the act was performed only after the audit subject was notified that the claim was selected for audit, violations will be calculated as though there was a failure to perform the act rather than late performance of the act. A lawful delay is a delay permitted by law or regulation, and for which the claims administrator has given a proper and timely notice of delay when such a notice is required. Any other delay is an unlawful delay.~~

(d) Penalties will not be assessed during the period a claims administrator is actively investigating its liability for provision of benefits or payment of compensation, provided that a Notice of Delay has been timely and properly issued in accordance with California Code of Regulations, title 8, sections §9812 or §9813. However, penalties shall still be issued for violations during the period of delay for: the failure to timely pay or object to medical bills for treatment authorized under Labor Code section 5402(c); the failure to timely pay or object to medical treatment bills in accordance with §9792.5, Labor Code section 4603.2; or the failure to timely pay or object to or pay bills for medical legal expenses in accordance with §9794 Labor Code section 4620, et seq.

(e) Penalties will not be assessed for an act or omission where an injured worker's unreasonable refusal to cooperate in the investigation has prevented the claims administrator from determining its legal obligation to perform the act.

(f) Where a penalty is provided for failure to pay mileage fees related to medical treatment or evaluation, a penalty will be imposed if payment is not made at a rate that is at least ~~the greater of the following: (i) thirty-four cents per mile, or (ii) the minimum rate adopted by the Director of the Department of Personnel Administration pursuant to Section 19820 of the Government Code for non-represented (excluded) employees at Title 2, CCR § California Code of Regulations, title 2, section 599.631(a).~~

(g) Failure, delay, or refusal to pay compensation benefits or expenses shall be subject to the applicable penalties under California Code of Regulations, title 8, sections §10111, or §10111.1, or 10111.2 unless the legal, factual, or medical basis for the failure, refusal, or delay is documented in the claim file.

(h) The Audit Unit will not assess penalties for violations of failure to make payment of indemnity due if the total indemnity is less than ~~twenty-five ten~~

dollars (~~\$25.00~~ ~~\$10.00~~) aggregate per claim. Although penalties may not be assessed, the audit subject shall pay all indemnity owed.

(i) Nothing in these regulations will bar the assessment of a civil penalty under Labor Code ~~Section~~ 129.5(e), whether or not the audit subject meets or exceeds performance rating standards calculated pursuant to California Code of Regulations, title 8, Section 10107.1(c)(3) or (d)(3).

(j) Claims that are randomly selected for audit pursuant to California Code of Regulations, title 8, Section 10107.1(c)(1) and (d)(1) will be considered as randomly selected claims for purposes of determining whether or not an audit subject meets or exceeds performance standards pursuant to ~~Section~~ 10107.1(c)(3) or (d)(3), whether or not complaints or information indicating claims handling violations in those claims have been received by the Audit Unit. If the Audit Unit cannot ascertain the extent to which benefits have been paid on a claim randomly selected for audit without auditing a companion or master claim to that claim, the Audit Unit may add the companion or master claim to the random sample. The companion or master claims will be considered as randomly selected claims for purposes of determining whether or not the audit subject meets or exceeds performance standards pursuant to ~~Sections~~ ~~Section~~ 10107.1(c)(3) and/or (d)(3).

(k) Notwithstanding ~~Section~~ 10111.2(a) and (b), penalties may be assessed for failure to timely submit an accurate Annual Report of Inventory regardless of whether or not an audit has been conducted, or, if an audit was conducted, whether or not the audit subject's performance rating in the key performance areas calculated pursuant to ~~Section~~ 10107(c) warrants the audit of a full sample of indemnity claims pursuant to ~~Section~~ 10107(c)(4), or a return, targeted audit based on performance in those areas pursuant to California Code of Regulations, title 8, Section 10106(c)(2).

(l) Notwithstanding penalty amounts established pursuant to ~~Section~~ 10111.2, penalties for late performance of an act may not exceed penalty amounts for the failure to perform an act.

(m) If more than one claims administrator has adjusted a claim file that is being audited or investigated, penalties will be assessed against the audit subject only for violations that occurred subsequent to the date the audit subject began adjusting the claim file, except that the audit subject will be assessed penalties for the failure to pay compensation due if the claim was open when transferred to the audit subject or re-opened subsequent to its transfer and the compensation remained unpaid. ~~The claims administrator~~ audit subject is required to correct any failures to issue notices which are

still pertinent, to recalculate and correct any improperly calculated payments due to the worker, and to pay any interest and increase due for late paid medical payments.

(n) Successor liability may be imposed on a claims administrator or insurer that has merged with, consolidated, or otherwise continued the business of a corporation or other business entity that is a responsible party and failed to meet its obligations under Divisions 1 and 4 of the Labor Code or regulations of the administrative director. The surviving claims administrator shall assume and be liable for all the liabilities, obligations and penalties of the prior corporation or business entity. Successor liability will be imposed if there has been a substantial continuity of business operations; and/or the new business uses the same or substantially the same work force. In such circumstances, due consideration of the appropriateness of penalties with respect to the history of previous violations pursuant to Labor Code ~~Section~~ 129.5(b)(3) will encompass findings related to the last audit of the predecessor claims administrator applied in conjunction with audit results of the successor claims administrator pursuant to California Code of Regulations, title 8, Section 10111.2(c)(4) ~~of these regulations~~.

Authority: Sections 59, 129.5, 133, 138.3, 138.4, 138.6 and 5307.3, Labor Code.

Reference: Sections 124, 129, 129.5, 138.6, 4600, 4603.2, ~~and~~ 4621 and 5402, Labor Code; and Sections 7, 9, 10 and 11, Civil Code.

§10109. Duty to Conduct Investigation; Duty of Good Faith.

(a) To comply with the time requirements of the Labor Code and the Administrative Director's regulations, a claims administrator must conduct a reasonable and timely investigation upon receiving notice or knowledge of an injury or claim for a workers' compensation benefit.

(b) A reasonable investigation must attempt to obtain the information needed to determine and timely provide each benefit, if any, which may be due the employee.

(1) The administrator may not restrict its investigation to preparing objections or defenses to a claim, but must fully and fairly gather the pertinent information, whether that information requires or excuses benefit payment. The investigation must supply the information needed to provide timely benefits and to document for audit the administrator's basis for its claims decisions. The claimant's burden of proof before the Appeal Board does not excuse the administrator's duty to investigate the claim.

(2) The claims administrator may not restrict its investigation to the specific benefit claimed if the nature of the claim suggests that other benefits might also be due.

(c) The duty to investigate requires further investigation if the claims administrator receives later information, not covered in an earlier investigation, which might affect benefits due.

(d) The claims administrator must document in its claim file the investigatory acts undertaken and the information obtained as a result of the investigation. This documentation shall be retained in the claim file and available for audit review.

(e) Insurers, self-insured employers and third-party administrators shall deal fairly and in good faith with all claimants, including lien claimants.

Authority cited: Sections 59, 129.5, 133, 5307.3, Labor Code.

Reference: Article 14, Section 4, California Constitution; Sections 124, 129, 133, 4061, 4550, 4600, 4636 through 4638, 4650, 4701 through 4703.5, 5402 and 5814, Labor Code; *Ramirez v. WCAB*, 10 Cal.App.3d 227, 88 CR 865, 35 CCC 383 (1970); and Section 790.03(h)(3), (5), (13), Insurance Code.

§10111.1. Schedule of Administrative Penalties for Injuries on or After January 1, 1994.

The administrative penalties set forth in ~~subsections~~ subdivisions (a) through (d) of this section will be imposed for injuries occurring on or after January 1, 1994, subject to any applicable mitigation or exacerbation under ~~subsection~~ subdivision (e) of this section. Penalties will not be assessed for violations occurring during the period January 1, 1994 through March 31, 1994 for acts or omissions for which there previously existed no audit penalties.

- (a) The following Group A violations carry penalties of up to \$100:
- (1) The penalty for each failure to pay the 10% self-imposed increase with a late indemnity payment in accordance with Labor Code ~~§~~section 4650(d) is:
- \$25 if the self-imposed increase was paid after the late indemnity payment;
- If the self-imposed increase was not paid or was only partially paid, the audit penalty is based on the amount of the underlying indemnity and is as follows:
- \$25 if the late-paid indemnity totals not more than 3 days;
- \$50 if the late-paid indemnity totals more than 3 but not more than 7 days;
- \$75 if the late-paid indemnity totals more than 7 but not more than 14 days;
- \$100 if the late paid indemnity totals more than 14 days.
- (2) The penalty for each failure to make the first payment of permanent disability indemnity within 14 days after the last payment of temporary disability indemnity, or within 14 days of knowledge of the existence of permanent disability when there is no temporary disability, is:
- \$25 if the first payment was made 1 to 2 days late;
- \$50 if the first payment was made 3 to 7 days late;
- \$75 if the first payment was made 8 to 14 days late;
- \$100 if the first payment was made more than 14 days late;

- (3) The penalty for each failure to object or pay to the injured worker, within 60 days of receiving a request, reimbursement for the reasonable expense incurred for self-procured medical treatment in accordance with Labor Code Section 4600, is:

\$25 for \$100 or less in expense;

\$50 for more than \$100, to \$200, in expense;

\$75 for more than \$200, to \$400, in expense;

\$100 for more than \$400 in expense.

- (4) The penalty for each failure to pay mileage fees and bridge tolls when notifying the employee of a medical evaluation scheduled by the claims administrator, in accordance with Labor Code Sections 4600 through 4621; or to pay mileage fees and bridge tolls within 14 days of receiving notice of a medical evaluation scheduled by the administrative director or the appeals board; or to object or pay the injured worker for any other transportation, temporary disability, meal or lodging expense incurred to obtain medical treatment or evaluation, within 60 days of receiving a request, is:

\$25 for \$10 or less in expense;

\$50 for more than \$10, to \$50, in expense;

\$75 for more than \$50, to \$100, in expense;

\$100 for more than \$100 in expense.

- (5) The penalty for each failure to document a factual basis for paying less than the maximum indemnity rate is \$100.

- (6) The penalty for each failure to make temporary disability, permanent disability, death benefits or VRMA payments according to the payment schedule defined by California Code of Regulations, title 8, Section 10100.1(x) of these regulations is:

\$25 for each payment made 1 to 2 days late;

\$50 for each payment made 3 to 7 days late;

\$75 for each payment made 8 to 14 days late;

\$100 for each payment made more than 14 days late.

- (7) The penalty for each failure to comply with any regulation of the Administrative Director specified in this ~~subsection~~ subdivision is:

- [i] For each failure to include in a claim file a copy of the Employee's Claim for Worker's Compensation Benefits, DWC Form 1, showing the date the form was provided to and received from the employee, or documentation of the date the claim form was provided to the employee if the employee did not return the form, the penalty is:

\$100 if there was any late indemnity payments, or if notice of acceptance of the claim was not issued within 90 days after the employer's date of knowledge of injury and disability, or if the claim was denied.

- [ii] For each failure to issue a notice of benefits as required by ~~Title 8, California Code of Regulations, title 8, Division 4.5, Chapter 1, Article 8,~~ beginning with ~~Section 9810,~~ or by ~~Title 8, California Code of Regulations, title 8, Division 4.5, Chapter 1.5, Article 7,~~ beginning with ~~Section 10122,~~ unless penalties apply and are assessed under ~~Section 10111.1 subdivisions (b)(2), (b)(3), (b)(4), (b)(5), (b)(6), (b)(7) or (b)(8) of these Rules,~~ the penalty is \$100.

- [iii] For each Notice of Benefits which was not issued timely as provided in ~~Title 8, California Code of Regulations, title 8, Division 1, Chapter 4.5, Subchapter 1, Article 8,~~ beginning with ~~Section 9810,~~ or as provided in ~~Title 8, California Code of Regulations, title 8, Division 1, Chapter 4.5, Subchapter 1.5, Article 7,~~ beginning with ~~Section 10122,~~ unless penalties apply and are assessed under ~~Section 10111.1 subdivisions (b)(2), (b)(3), (b)(4), (b)(5), (b)(6), (b)(7) or (b)(8) of these regulations,~~ the penalty is:

\$25 for each notice of first, resumed, changed or final payment of temporary disability indemnity, wage continuation, death benefits, permanent disability indemnity, or VRMA which was issued from 1 to 7 days late;

\$50 for each notice of first, resumed, changed or final payment of temporary disability indemnity, wage continuation, death benefits, permanent disability indemnity, or VRMA which was issued more than 7 days late, and for each delay in decision notice which was issued from 1 to 7 days late;

\$75 for each delay in decision notice which was issued more than 7 days late.

- [iv] For each notice of benefits required by ~~Title 8, California Code of Regulations, title 8, Division 1, Chapter 4.5, Subchapter 1, Article 8,~~ beginning with ~~Section 9810,~~ (except a materially misleading denial notice assessed under ~~Section 10111.1(b)(9)),~~ or by ~~Title 8,~~

California Code of Regulations, ~~title 8, Division 1, Chapter 4.5, Subchapter 1.5, Article 7,~~ beginning with ~~Section~~ 10122, which is materially inaccurate or incomplete, the penalty is \$25.

[v] For each failure to include in a claim file, or document attempts to obtain, any of the required contents specified in ~~Section~~ 10101.1 ~~subdivisions~~ (b), (c), (d), (e), (f), (g), (h), (i), (j) ~~of these Regulations,~~ the penalty is \$100.

[vi] For each failure to comply with any regulation of the Administrative Director, not otherwise assessed in this ~~Subchapter,~~ the penalty is \$100.

(8) The penalty for each failure to pay or object to a billing for a medical-legal expense, in the manner required by ~~Section~~ 9794, within 60 days of receiving the bill and all reports and documents required by the Administrative Director incident to the services, is:

\$25 for each bill which was paid more than 60 days from receipt with interest and a 10% increase;

\$50 for each bill which was paid more than 60 days from receipt where either interest or a 10% increase was not included;

\$100 for each bill which was paid more than 60 days from receipt where neither interest nor a 10% increase was paid.

\$75 for each bill which was not paid at the time the audit subject was notified the claim was selected for audit where no timely objection was sent.

(9) The penalty for each failure to pay or object to, ~~within 60 days of receipt,~~ in the manner required by ~~law or regulation~~ Labor Code section 4603.2, a bill for medical treatment provided or authorized by the treating physician, is as follows when the bill remains unpaid at the time the audit subject is notified that the claim was selected for audit. For the purpose of this penalty the treating physician will be presumed chosen by the employee unless the claims administrator demonstrates otherwise:

\$25 for each bill of \$100 or less, excluding interest and penalty;

\$50 for each bill of more than \$100, but no more than \$200 excluding interest and penalty;

\$75 for each bill of more than \$200, but no more than \$300, excluding interest and penalty;

\$100 for each bill of more than \$300, excluding interest and penalty.

- (10) The penalty for each failure to pay or object to, ~~within 60 days of receipt,~~ in the manner required by ~~law or regulation~~ Labor Code section 4603.2, a bill for medical treatment provided or authorized by the treating physician, is as follows when the bill was paid before the audit subject was notified that the claim was selected for audit:

\$25 for each bill which included a an ~~10%~~ increase and interest with the late payment of any uncontested amount of the bill, in accordance with Labor Code section 4603.2;

\$50 for each bill which included either a ~~10%~~ the increase or interest with the late payment of any uncontested amount of the bill, in accordance with Labor Code Section 4603.2;

\$75 for any bill which included neither a ~~10%~~ the increase nor interest with the late payment of any uncontested amount of the bill, in accordance with Labor Code Section 4603.2.

- (11) The penalty for each failure to pay or object to a vocational rehabilitation bill within 60 days of receipt, as required by ~~Title 8,~~ California Code of Regulations, title 8, ~~Sections~~ Sections 10132 and 10132.1, is:

\$25 for each bill of \$100 or less;

\$50 for each bill of more than \$100, but no more than \$200;

\$75 for each bill of more than \$200, but no more than \$300;

\$100 for each bill of more than \$300.

- (12) The penalty for each failure to make a required first payment of temporary disability indemnity within 14 days after the employer's date of knowledge of injury and disability is:

\$25 if the first payment was made 1 to 7 days late;

\$50 if the first payment was made 8 to 14 days late;

\$75 if the first payment was made 15 to 21 days late;

\$100 if the first payment was made more than 21 days late.

- (13) The penalty for each underpayment of an indemnity payment (including death benefits and VRMA), when the balance of the indemnity was paid late, is:

\$25 for late payment of the equivalent of 3 days of indemnity or less;

\$50 for late payment of the equivalent of more than 3 but no more than 7 days of indemnity;

\$75 for late payment of the equivalent of more than 7 but no more than 14 days of indemnity;

\$100 for the late payment of the equivalent of more than 14 days of indemnity.

(14) The penalty for each failure to make a first payment of VRMA or death benefit when due is:

\$25 if the first payment was made 1 to 7 days late;

\$50 if the first payment was made 8 to 14 days late;

\$75 if the first payment was made 15 to 21 days late;

\$100 if the first payment was made more than 21 days late.

(b) The following Group B violations carry penalties of up to \$500:

(1) The penalty for each failure to maintain or provide to the Audit Unit a claim log which complies with these Regulations is:

\$25 for each failure to list on a claim log one or more of the following: employee's name; claim number; date of injury;

\$25 for each misdesignation of an indemnity file as a medical-only file on the claim log;

\$100 for each failure to identify self-insured employers on the log as required by California Code of Regulations, title 8, Section 10103.1(b)(6) ~~of these Regulations~~;

\$100 for each failure to identify the underwriting insurance company of an insurance group;

\$100 for each failure to designate a denied claim on the log;

\$100 for each claim not listed on the log;

\$250 for each failure to provide the claim log to the Audit Unit within 14 days of receipt of a written request if the claim log was provided more than 14 but no more than 30 days from receipt of the request;

\$500 for each failure for more than 30 days from receipt of a written request, to provide the claim log to the Audit Unit.

- (2) The penalty for each failure to provide information regarding the Americans with Disabilities Act, the Fair Employment and Housing Act, and workers' compensation vocational rehabilitation as required by Labor Code ~~Section~~ 4636(a) immediately after 90 days of aggregate temporary disability indemnity is \$100 if the information was provided or the employee returned to his or her usual and customary occupation more than 10 but not more than 20 days after 90 days of aggregate total disability, and an additional \$100 for each additional delay of not more than 10 days, to a maximum penalty of \$400 if the notice was issued more than 30 days late, and \$500 if the notice was overdue more than 40 days and was not issued at the time the audit subject was notified that the claim was selected for audit.
- (3) The penalty for each failure to issue notice of medical eligibility for vocational rehabilitation services (if not previously issued) within 10 days after knowledge of a physician's opinion that the employee is medically eligible, or for failure to issue notice within 10 days after 366 days of aggregate total temporary disability, is \$100 if the notice was issued not more than 10 days late, and an additional \$100 for each additional delay of not more than 10 days, to a maximum penalty of \$400 if the notice was issued more than 30 days late, and \$500 if the notice was overdue more than 40 days and was not issued at the time the audit subject was notified that the claim was selected for audit. Where the injured worker is represented by an attorney and documentation in the claim file indicates that the injured worker's attorney has received a copy of the physician's report indicating the employee is medically eligible for vocational rehabilitation, and if the knowledge is of a physician's opinion other than the injured worker's treating physician, a physician selected from a panel provided by the ~~Industrial Medical Council~~ DWC Medical Unit, or an agreed medical examiner, the penalty shall be assessed at 20% of the amount otherwise assessed under this ~~subsection~~ subdivision and shall not exceed \$100.
- (4) The penalty for each failure to provide the employee with a copy of the treating physician's final report together with notice of the procedure to contest the treating physician's determination, in accordance with Labor Code ~~Section~~ 4636(d), immediately upon receipt of that report, is \$100 for compliance more than 10 but not more than 20 days after receipt of the treating physician's final report, and an additional \$100 for each additional delay of not more than 10 days, to a maximum penalty of \$400 if the notice was issued more than 30 days late, and \$500 if the notice was overdue more than 40 days and was not issued at the time the audit subject was notified that the claim was selected for audit.

- (5) The penalty for each failure to notify an injured employee of the reasons he or she is not entitled to any, or to any further, vocational rehabilitation services, and the procedure for contesting the determination of non-eligibility, as required by California Code of Regulations, title 8, Sections 9813(a)(3) and 10131, is \$100 if notification was issued more than 10 but not more than 20 days after the determination, and an additional \$100 for each additional delay of not more than 10 days, to a maximum penalty of \$400 if the notice was issued more than 30 days late, and \$500 if the notice was overdue more than 40 days and was not issued at the time the audit subject was notified that the claim was selected for audit.
- (6) The penalty for each failure to notify an injured employee that his or her injury may have caused permanent disability and the procedures for evaluating the permanent disability, or of the employer's position that the injury has caused no permanent disability and the employee's remedies, in the manner provided by ~~Title 8, California Code of Regulations, title 8, Division 1, Chapter 4.5, Subchapter 1, Article 8~~, beginning with Section 9810; is \$100 if the notice was issued up to 10 days late, and an additional \$100 for each additional delay of not more than 10 days, to a maximum penalty of \$400 if the notice was issued more than 30 days late, and \$500 if the notice was overdue more than 40 days and was not issued at the time the audit subject was notified that the claim was selected for audit.
- (7) The penalty for each failure to notify a claimant of the denial of all death benefits claimed by that person (except a denial limited to all or any of: burial expense, benefits which were due to the injured worker before his or her death, or medical-legal expense), in the manner provided by ~~Title 8, California Code of Regulations, title 8, Division 1, Chapter 4.5, Subchapter 1, Article 8~~, beginning with Section 9810, is \$100 if the notice was issued up to 10 days late, and an additional \$100 for each additional delay of not more than 10 days, to a maximum penalty of \$400 if the notice was issued more than 30 days late, and \$500 if the notice was overdue more than 40 days and was not issued at the time the audit subject was notified that the claim was selected for audit.
- (8) The penalty for each failure to send a notice denying liability for all workers' compensation benefits, in accordance with ~~Title 8, California Code of Regulations, title 8, Division 4.5, Chapter 1, Article 8~~, beginning with Section 9810, is \$100 if the notice was issued up to 10 days late, and an additional \$100 for each additional delay of not more than 10 days, to a maximum penalty of \$400 if the notice was issued more than 30 days late, and \$500 if the notice was overdue more than 40 days and was not issued at the time the audit subject was notified that the claim was selected for audit.

40 days and was not issued at the time the audit subject was notified that the claim was selected for audit.

- (9) The penalty for each notice denying ~~liability~~ liability for all workers' compensation benefits, which was materially misleading, is \$500. The penalty for each materially incomplete denial notice is \$100.
 - (10) The penalty for each failure to pay any uncontested penalty assessment in a Notice of Penalty Assessments within 15 days of receipt of the Notice of Penalty Assessments is:
 - \$100 for each assessment paid more than 15 but not more than 30 days after receipt;
 - \$300 for each assessment paid more than 30 but not more than 45 days after receipt;
 - \$500 for each assessment not paid within 45 days after receipt.
 - (11) The penalty for each failure to comply with California Code of Regulations, title 8, Section 10104 ~~of this Subchapter~~ is:
 - \$100 for each period of 1 to 14 days' delay in filing the Annual Report of Inventory, to a maximum penalty of \$500 for each Annual Report of Inventory;
 - \$500 for each Annual Report of Inventory that overstates or understates the number of claims by 10% or more.
- (c) The following Group C violations carry penalties of up to \$1,000:
- (1) The penalty for each failure to pay compensation as ordered in a Notice of Compensation Due within 15 days of receipt, if no timely Request for Review of Notice of Compensation Due was filed, is:
 - \$250 if the compensation was paid more than 15 but not more than 30 days from receipt of notice;
 - \$500 if the compensation was paid more than 30 but not more than 45 days from receipt of notice;
 - \$1,000 for failure to pay the compensation within 45 days of receipt of notice.
 - (2) The penalty for each termination, interruption or deferral of vocational rehabilitation services other than as provided by Labor Code ~~Sections~~ 4637(b), 4644(b) is \$1,000.

- (3) The penalty for each failure to pay or denial of rehabilitation maintenance allowance, temporary disability indemnity, or salary continuation in lieu of temporary disability indemnity, without a factual, medical or legal basis for the failure or denial, is:

\$100 for the equivalent of 3 days or less of unpaid indemnity;

\$200 for the equivalent of more than 3 but not more than 7 days of unpaid indemnity;

\$300 for the equivalent of more than 7 but not more than 14 days of unpaid indemnity;

\$500 for the equivalent of more than 14 but not more than 21 days of unpaid indemnity;

\$750 for the equivalent of more than 21 but not more than 28 days of unpaid indemnity;

\$1,000 for the equivalent of more than 28 days of unpaid indemnity.

- (4) The penalty for each failure to pay permanent disability indemnity based on a reasonable estimate of permanent disability, or denial of permanent disability indemnity, without a factual, medical or legal basis, is:

\$200 for up to 6 weeks of unpaid indemnity;

\$400 for more than 6 but not more than 15 weeks of unpaid indemnity;

\$750 for more than 15 but not more than 30 weeks of unpaid indemnity;

\$1,000 for more than 30 weeks of unpaid indemnity.

- (5) The penalty for each failure to pay or denial of death benefits to any claimant without a factual, medical or legal basis for the failure or denial, is:

\$100 for the equivalent of 3 days or less of unpaid indemnity under Labor Code § section 4701(b), or for up to \$300 of unpaid burial expenses;

\$200 for the equivalent of more than 3 but not more than 7 days of unpaid indemnity under Labor Code § section 4701(b), or for more than \$300, up to \$600, of unpaid burial expenses;

\$300 for the equivalent of more than 7 but not more than 14 days of unpaid indemnity under Labor Code § section 4701(b), or for more than \$600, up to \$900, of unpaid burial expenses;

\$500 for the equivalent of more than 14 but not more than 21 days of unpaid indemnity under Labor Code § section 4701(b), or for more than \$900, up to \$1,500, of unpaid burial expenses;

\$750 for the equivalent of more than 21 but not more than 28 days of unpaid indemnity under Labor Code § section 4701(b), or for more than \$1,500, up to \$2,250, of unpaid burial expenses;

\$1,000 for the equivalent of more than 28 days of unpaid indemnity under Labor Code § section 4701(b), or for more than \$2,250 of unpaid burial expenses.

The penalty for each failure to pay or denial of payment to any claimant of compensation which was accrued and unpaid to the injured worker at the time of the worker's death is the same penalty which would apply for failure to pay or denial of payment of that compensation to the injured worker.

The penalty under this ~~subsection~~ subdivision does not supersede the penalty under ~~subsection~~ subdivision 10111.1(d)(1).

- (6) The penalty for each failure to investigate a claim as provided by California Code of Regulations, title 8, Ssection 10109 of these Regulations is:

\$250 if the failure to investigate involved a claim for medical treatment only, with no reasonable expectation of liability for indemnity payments;

\$500 if the failure to investigate involved a claim or reasonable expectation of liability for temporary or permanent disability indemnity or vocational rehabilitation benefits;

\$1,000 if the failure to investigate involved a claim or reasonable expectation of liability for death benefits, or a combination of two or more of the following classes of benefits temporary or permanent disability indemnity or vocational rehabilitation.

This penalty does not supersede a penalty for denial of claim without an investigation and documentation supporting a factual, medical, or legal basis for denial as set forth in Ssection 10111.1(d)(1) ~~of this subchapter~~.

- (d) The following Group D violations carry penalties of up to \$5,000:
- (1) The penalty for each denial of all liability for a claim without documentation supporting a factual, medical, or legal basis for the denial is specified in this ~~subsection~~ subdivision.

In order to avoid a penalty, the denial must state a legal, factual or medical basis recognized by applicable law and documented by information in the claim file. An employee's purported waiver of benefits in a compensable case is not a ground to deny liability.

The gravity portion of the penalty is based on the class or classes of benefits potentially payable if benefits were provided. The total penalty shall be determined by the applying the penalty assessment amount listed in [i] for gravity, subtracting the amount listed in [ii] for good faith if applicable, and increasing or decreasing the penalty as applicable for history and frequency as set forth in [iii] and [iv]:

- [i] For a claim involving potential for medical treatment only the penalty is \$3,500;

For a claim involving potential for medical treatment and either temporary or permanent disability the penalty is \$4,000;

For a claim involving potential for medical treatment and both temporary and permanent disability the penalty is \$4,500;

For a claim involving potential for medical treatment, temporary disability, permanent disability and vocational rehabilitation the penalty is \$5,000;

For a claim involving potential for death benefits the penalty is \$5,000.

- [ii] The penalty will be reduced by \$1,000 for good faith if there was a reasonable attempt to investigate the claim.

- [iii] Reduction or increase of the penalty for history shall be based on the following:

An audit subject having no prior Audit Unit history will receive a \$500 reduction;

An audit subject having a prior Audit Unit history of no more than one audited unsupported denial will receive a \$500 reduction;

An audit subject having a prior Audit Unit history of more than one audited unsupported denial but no more than 5% of audited denials as unsupported will receive no reduction or increase for history;

An audit subject having a prior Audit Unit history of more than one audited unsupported denial and more than 5% of audited denials as unsupported will receive a \$500 increase.

- [iv] Reduction of the penalty for frequency shall be based on the following:

An audit subject having no more than one audited unsupported denial will receive a \$500 reduction;

An audit subject having more than one audited unsupported denial but no more than 5% of audited denials which are unsupported will receive no reduction or increase for frequency;

An audit subject having more than one audited denial and more than 5% of audited denials which are unsupported will receive an increase of \$500.

- [v] The total amount assessed for a denial shall be reduced by 50% if the claim was accepted after the denial without evidence that the acceptance was the result of litigation or of the claim's selection for audit.

- (2) The penalty for each failure to comply with, show good cause for non-compliance with, or contest, within 30 days of receipt, any written request or order of the Administrative Director or Audit Unit which is not specified in ~~subsections~~ subdivisions (b)(1), (c)(1), or (d)(5) of this section is:

\$500 if there was compliance in more than 30 but not more than 40 days from receipt of the request or order;

\$1,000 if there was compliance in more than 40 but not more than 60 days from receipt of the request or order;

\$2,500 if there was compliance in more than 60 but not more than 90 days of receipt of the request or order;

\$5,000 for failure to comply within 90 days of receipt of the request or order.

- (3) The penalty for each failure by a claims administrator to provide a claim form within one working day of receipt of a request from an injured worker or the worker's agent is:

\$500 if the claim form was provided in more than 1 but not more than 5 working days from receipt of the request, if benefits were being provided to the employee at the time of the request;

\$1,000 if the claim form was not provided within 5 working days of receipt of the request, if benefits were being provided to the employee at the time of the request;

\$3,000 if the claim form was provided in more than 1 but not more than 5 working days from receipt of the request, if benefits were not being provided to the employee at the time of the request;

\$5,000 if the claim form was not provided within 5 working days of receipt of the request, if benefits were not being provided to the employee at the time of the request.

- (4) The penalty for each failure to comply in full with any final award or order of the Workers' Compensation Appeals Board or the Rehabilitation Unit within 20 days of service, allowing an additional five days for service by mail, is:

For any failure to pay all amounts payable as awarded or ordered, including interest, when partial nonpayment is due to a miscalculation or oversight and all other amounts have been paid, the penalty amount shall be determined based on the equivalent amount of unpaid indemnity as assessed under ~~subsection~~ subdivision (c)(3) of this section.

For late payment of an award or order, the penalty is:

\$500 for compliance in more than 20 but not more than 35 days from the date of service

\$1,000 for compliance (other than a late interest payment) in more than 35 but not more than 60 days from the date of service;

\$2,500 for compliance (other than a late interest payment) in more than 60 but not more than 90 days from the date of service;

\$5,000 if there was not compliance (other than failure to pay interest) within 90 days of the date of service. Penalties will be assessed separately for both late payment and the failure to pay a portion of an award or order.

- (5) The penalty for each failure to produce a legible paper copy of a claim file as required by California Code of Regulations, title 8, Section 10107 or at the time specified by the Administrative Director is:

\$100 if the file was produced not more than 3 days late;

\$250 if the file was produced more than 3 but not more than 14 days late;

\$500 if the file was produced more than 14 but not more than 29 days late;

\$1,000 if the file was produced more than 29 days late but not more than 40 days late;

\$2,500 if the file was produced more than 40 days late but not more than 90 days late;

\$5000 if the was produced more than 90 days late or was not produced.

- (6) The penalty for providing a backdated or otherwise altered or fraudulent document to the Audit Unit, or intentionally withholding a document from the Audit Unit, which would have the effect of avoiding liability for the payment of compensation or an audit penalty is:

\$5,000 for each backdated, altered, or withheld document. The amount of the penalty is not subject to reduction based on frequency, history, or good faith as set forth in ~~subsection~~ subdivision (e) of this section.

The claims administrator shall not be subjected to penalty under this ~~subsection~~ subdivision if it demonstrates by clear and convincing evidence that the backdating, alteration, or withholding of the document was due solely to unintentional clerical error.

- (e) The penalties otherwise applicable under ~~subsections~~ subdivisions (a) through (d) of this section shall be modified by any applicable provision of this ~~subsection~~ subdivision (e). However, the method of modifying penalties for unsupported denials is set forth in ~~Section~~ 10111(d)(2) and ~~Section~~ 10111.1(d)(1) and is not governed by this ~~subsection~~ subdivision (e).

- (1) Modification for the gravity of each violation is included within the penalty assessment amounts listed in ~~subsections~~ subdivisions (a) through (d);
- (2) Modification for the good faith of the audit subject shall be determined based on documentation of attempts to comply with requirements of the Labor Code and the Administrative Director's regulations, and may result in a reduction of 20% for each applicable violation.
- (3) Modification for frequency shall be considered for each type of violation. Frequency shall be determined by comparing the number of audited files which were randomly selected pursuant to ~~Section~~ 10107(c) and (d) of these regulations in which there is an assessment for a specific type of violation to the total number of those randomly

selected audited files in which the possibility of that type of violation exists. The frequency of violations in the complaint files selected for audit pursuant to ~~§~~section 10107(e) shall not be used to determine penalty amounts for these categories, except the mitigation or exacerbation of penalty amounts based on frequency of violations in the randomly selected files shall be applied to the audited complaint files.

- [i] If there are assessments for late first payments of temporary disability indemnity in 10% or less of the audited files in which payments of temporary disability indemnity are made, the penalty amounts of these assessments will be reduced by 20%. If there are assessments for late first payments of temporary disability indemnity in more than 30% of the audited files in which payments of temporary disability indemnity are made, the penalty amounts of these assessments will be increased by 20%.
- [ii] If there are assessments for late first payments of permanent disability indemnity in 10% or less of the audited files in which payments of permanent disability indemnity are made, the penalty amounts of these assessments will be reduced by 20%. If there are assessments for late first payments of permanent disability indemnity in more than 30% of the audited files in which payments of permanent disability indemnity are made, the penalty amounts of these assessments will be increased by 20%.
- [iii] If there are assessments for late first payments of vocational rehabilitation maintenance allowance in 10% or less of the audited files in which payments of maintenance allowance in 10% or less of the audited files in which payments of maintenance allowance are made, the penalty amounts of these assessments will be reduced by 20%. If there are assessments for late first payments of vocational rehabilitation maintenance allowance in more than 30% of the audited files in which payments of maintenance allowance are made, the penalty amounts of these assessments will be increased by 20%.
- [iv] If there are assessments involving late subsequent payments, including any payment in which all indemnity then due is not paid with that payment but is paid with a subsequent payment as assessed under ~~subsection~~ subdivision (a)(13) of this section, of temporary disability indemnity, permanent disability indemnity, or vocational rehabilitation maintenance allowance in 10% or less of the audited files in which these subsequent payments were made, the penalty amounts of these assessments will be reduced by 20%. If the number of audited files with assessments for late subsequent payments of

temporary disability indemnity, permanent disability indemnity, or vocational rehabilitation maintenance allowance exceeds 30% of the total number of audited files with subsequent payments of these benefits, the penalty amounts of these assessments will be increased by 20%.

- [v] If there are assessments involving late payments of death benefits in 10% or less of the audited files in which these payments were made, the penalty amounts of these assessments will be reduced by 20%. If the number of audited files with assessments for late payments of death benefits exceeds 30% of the total number of audited files with payments of death benefits, the penalty amounts of these assessments will be increased by 20%.
- [vi] If there are assessments involving failure to issue benefit notices (other than notices specifically mentioned elsewhere in this ~~subsection~~ subdivision (3)) in 10% or less of the audited files in which these benefit notices are required, no penalties will be assessed for those violations. If the number of audited files with assessments for failure to issue these notices exceeds 10%, but does not exceed 20%, the penalty amounts of these assessments will be reduced by 20%. If the number of audited files with assessments for failure to issue these notices exceeds 30% of the total number of audited files in which these notices are required, the penalty amounts of these assessments will be increased by 20%.
- [vii] If there are assessments involving late provision of benefit notices (other than notices specifically mentioned elsewhere in this ~~subsection~~ subdivision (3)) in 10% or less of the audited files in which these benefit notices are required, no penalties will be assessed for those violations. If the number of audited files with assessments for late issuance of these notices exceeds 10%, but does not exceed 20%, the penalty amounts of these assessments will be reduced by 20%. If the number of audited files with assessments for late issuance of these notices exceeds 30% of the total number of audited files in which these notices were required and issued, the penalty amounts of these assessments will be increased by 20%.
- [viii] If there are assessments involving the failure to pay or object to medical expenses within 60 days of receipt of the billing in 10% or less of the audited files with a requirement to pay or object to medical bills within 60 days of receipt of billing, the penalty amounts of these assessments will be reduced by 20%. If the number of audited files with assessments for failure to pay or object to medical expenses within 60 days of receipt of the billing exceeds 30% of the total

number of audited files in which there was a requirement to pay or object to medical bills within 60 days of receipt of billing, the penalty amounts of these assessments will be increased by 20%.

- [ix] If there are assessments involving the failure to pay or object to medical-legal expenses within 60 days of receipt of the billing in 10% or less of the audited files containing medical-legal expenses, the penalty amounts of these assessments will be reduced by 20%. If the number of audited files with assessments for failure to pay or object to medical-legal expenses within 60 days of receipt of the billing exceeds 30% of the total number of audited files in which there was a requirement to pay or object to medical-legal expenses within 60 days of receipt of billing, the penalty amounts of these assessments will be increased by 20%.
- [x] If there are assessments involving the failure to pay or object to vocational rehabilitation expenses within 60 days of receipt of the billing in 10% or less of the audited files containing vocational rehabilitation expenses, the penalty amounts of these assessments will be reduced by 20%. If the number of audited files with assessments for failure to pay or object to vocational rehabilitation expenses within 60 days of receipt of the billing exceeds 30% of the total number of audited files in which there was a requirement to pay or object to vocational rehabilitation expenses within 60 days of receipt of billing, the penalty amounts of these assessments will be increased by 20%.
- [xi] For injuries before January 1, 1994, if there are assessments involving the failure to assign a qualified rehabilitation representative within 10 days after 90 days of aggregate total disability in 10% or less of the audited files with 90 or more days of aggregate total disability, the penalty amounts of these assessments will be reduced by 20%. If the number of audited files with assessments involving the failure to assign a qualified rehabilitation representative within 10 days after 90 days of aggregate total disability exceeds 30% of the total number of audited files in which there was a requirement to assign a qualified rehabilitation representative within 10 days after 90 days of aggregate total disability, the penalty amounts of these assessments will be increased by 20%.
- [xii] For injuries on or after January 1, 1994, if there are assessments involving the failure to provide information to the employee required by Labor Code §section 4636(a) within 10 days after 90 days of aggregate total disability in 10% or less of the audited files with 90 or more days of aggregate total disability, the penalty amounts of these assessments will be reduced by 20%. If the number of audited files

with assessments involving the failure to provide the information specified in Section 4636(a) within 10 days after 90 days of aggregate total disability exceeds 30% of the total number of audited files in which there was a requirement to provide the information specified in Section 4636(a) within 10 days after 90 days of aggregate total disability, the penalty amounts of these assessments will be increased by 20%.

- [xiii] If there are assessments involving the failure to notify an employee in a timely manner of potential eligibility for vocational rehabilitation in 10% or less of the audited files in which these notices are required, the penalty amounts of these assessments will be reduced by 20%. If the number of audited files with assessments involving the failure to notify an employee in a timely manner of potential eligibility for vocational rehabilitation exceeds 30% of the total number of audited files in which these notices are required, the penalty amounts of these assessments will be increased by 20%.
- [xiv] If there are assessments involving the failure to notify an employee in a timely manner of non-eligibility for vocational rehabilitation in 10% or less of the audited files in which these notices are required, the penalty amounts of these assessments will be reduced 20%. If the number of audited files with assessments involving the failure to notify an employee in a timely manner of non-eligibility for vocational rehabilitation exceeds 30% of the total number of audited files in which these notices are required, the penalty amounts of these assessments will be increased by 20%.
- [xv] If there are assessments involving the failure to notify an employee in a timely manner of the procedure for evaluating the employee's permanent disability, as required by ~~Title 8,~~ California Code of Regulations, title 8, Sections 9812(f)(2), 9812(f)(4), (g)(2), and (g)(3), in 10% or less of the audited files in which these notices are required, the penalty amounts of these assessments will be reduced by 20%. If the number of ~~audited~~ audited files with assessments for failure to issue these notices exceeds 30% of the total number of audited files in which these notices are required, the penalty amounts of these assessments will be increased by 20%.
- [xvi] If there are assessments involving the failure to notify an employee or claimant in a timely manner of the denial of all liability for a claim, or of all liability for death benefits, in 10% or less of the audited files in which these notices are required, the penalty amounts of these assessments will be reduced by 20%. If the number of audited files with assessments for failure to issue these notices exceeds 30% of the

total number of audited files in which these notices are required, the penalty amounts of these assessments will be increased by 20%.

- [xvii] If there is an assessment for the failure to timely respond to a request to provide or authorize medical treatment in no more than one audited file, the penalty amount of that assessment will be reduced by 20%. If the number of audited files with assessments for the failure to timely respond to a request to provide or authorize medical treatment, the penalty amounts for these assessments will be increased by 20%.
 - [xviii] If there are assessments involving the failure to pay temporary disability indemnity, permanent disability indemnity, death benefits, vocational rehabilitation maintenance allowance, self-imposed increase for late indemnity payment, interest, or penalty in 5% or less of the audited files in which any of these forms of compensation are accrued and payable, the penalty amounts of these assessments will be reduced by 20%. If the number of audited files with assessments for the failure to pay any of these forms of compensation is more than 20% of the audited files in which any of these forms of compensation is accrued and payable, the penalty amounts of these assessments will be increased by 20%.
 - [xix] If there are assessments for failure to include items or properly designate entries on a claim log, and if no more than ten, or no more than 1%, of the entries on the log are affected, whichever is smaller, the penalty amounts of these assessments will be reduced by 20%. If more than fifty, or more than 5% of the entries on the log are affected, whichever is smaller, the penalty amounts of these assessments will be increased by 20%.
 - [xx] If there are other violations assessed which are not specified in [i] through [xix] above in 5% or less of the audited files, the penalty amounts of these assessments will be reduced by 20%. If the number of audited files with assessments exceeds 20% of the audited files, the penalty amounts of these assessments will be increased by 20%.
- (4) Modification of the history of previous violations, if any, shall be based on prior audits of the audit subject at the current adjusting location. However, no modification for history shall apply if a valid comparison cannot be made between the current and prior audit(s). The penalty shall be modified for history as follows:
- [i] There will be a reduction of 20% of any penalty for which there was no increase in the penalty amount based on frequency as described in ~~subsections~~ subdivisions (e)(3)[i] through (3)[xx] above in the previous audit, and for which there was a reduction in the penalty

amount based on frequency in the present audit at the audited adjusting location.

- [ii] There will be an increase of 20% of any penalty for which there was an increase in the penalty amount based on frequency as described in ~~subsections~~ subdivisions (3)[i] through (3)[xx] above in the previous audit, and for which there was no decrease in the penalty amount based on frequency of violations in the present audit at the audited adjusting location, provided that any increased penalty is limited to the maximum provided by statute and regulation for the violation.
- (5) No administrative penalties shall be assessed if the only violations found in an audit are violations which do not involve the denial of a claim without supporting documentation, or failure to pay or late payment of compensation, and the violations are found in 20% or less of the indemnity files audited.
- (6) Penalties may be mitigated outside the above mitigation guidelines in extraordinary circumstances, when strict application of the mitigation guidelines would be clearly inequitable.

Authority cited: Sections 59, 129.5, 133, 138.3, 138.4, 139.5, 4603.5, 4627 and 5307.3, Labor Code.

Reference: Sections 124, 129, 129.5, 4061, 4453, 4454, 4550, 4600, 4603.2, 4621, 4622, 4625, 4636 through 4638, 4639, 4641, 4642, 4650, 4651, 4701 through 4703.5, 4706, 4706.5, 5401, 5401.6, 5402, 5800 and 5814, Labor Code; and Section 2629.1(e), (f), Unemployment Insurance Code.

§10111.2. Full Compliance Audit Penalty Schedules; Target Audit Penalty Schedule.

(a) For full compliance audits conducted on or after January 1, 2003, administrative penalties will be assessed pursuant to ~~this subsection~~ subdivision (a) for audit subjects that fail to meet or exceed the profile audit review performance standards calculated pursuant to California Code of Regulations, title 8, Section 10107.1(c)(3) but meet or exceed the full compliance audit performance standards calculated pursuant to Section 10107.1(d)(3). However, for violations in claims with dates of injury from January 1, 1990 through December 31, 1993, penalty amounts may not exceed the amounts that would be assessed pursuant to California Code of Regulations, title 8, Section 10111, and for violations in claims with dates of injury from January 1, 1994 through December 31, 2002, penalty amounts may not exceed the amounts that would be assessed pursuant to Section 10111.1:

(1) The penalty for each failure to pay the 10% self-imposed increase due because of a late indemnity payment is:

If the self-imposed increase was not paid or was only partially paid, the audit penalty is based on the amount of the underlying indemnity and is as follows:

\$50 if the late-paid indemnity totals not more than 3 days;

\$100 if the late-paid indemnity totals more than 3 but not more than 7 days;

\$150 if the late-paid indemnity totals more than 7 but not more than 14 days;

\$200 if the late paid indemnity totals more than 14 but not more than 21 days;

\$300 if the late paid indemnity totals more than 21 but not more than 28 days;

\$500 if the late paid indemnity totals more than 28 days.

(2) The penalty for each failure to pay or denial of rehabilitation maintenance allowance, temporary disability indemnity, or salary

continuation in lieu of temporary disability indemnity, without a factual, medical or legal basis for the failure or denial, is:

\$200 for the equivalent of 3 days or less of unpaid indemnity;

\$400 for the equivalent of more than 3 but not more than 7 days of unpaid indemnity;

\$600 for the equivalent of more than 7 but not more than 14 days of unpaid indemnity;

\$1,000 for the equivalent of more than 14 but not more than 21 days of unpaid indemnity;

\$1,500 for the equivalent of more than 21 but not more than 28 days of unpaid indemnity;

\$2,000 for the equivalent of more than 28 but not more than 35 days of unpaid indemnity;

\$3,000 for the equivalent of more than 35 but not more than 42 days of unpaid indemnity;

\$5,000 for the equivalent of more than 42 days of unpaid indemnity.

(3) The penalty for each failure to pay permanent disability indemnity based on a reasonable estimate of permanent disability, or denial of permanent disability indemnity, without a factual, medical or legal basis, is:

\$400 for up to 6 weeks of unpaid indemnity;

\$800 for more than 6 but not more than 15 weeks of unpaid indemnity;

\$1,500 for more than 15 but not more than 30 weeks of unpaid indemnity;

\$2,000 for more than 30 but not more than 50 weeks of unpaid indemnity;

\$3,000 for more than 50 but not more than 95 weeks of unpaid indemnity;

\$5,000 for more than 95 weeks of unpaid indemnity.

(4) The penalty for each failure to pay death benefits pursuant to Labor Code Section 4701 to any claimant without a factual, medical or legal basis for the failure, is:

\$200 for the equivalent of 3 days or less of unpaid indemnity or for no more than \$300 of unpaid burial expenses;

\$400 for the equivalent of more than 3 but not more than 7 days of unpaid indemnity or for more than \$300, but not more than \$600, of unpaid burial expenses;

\$600 for the equivalent of more than 7 but not more than 14 days of unpaid indemnity or for more than \$600, but no more than \$900, of unpaid burial expenses;

\$1,000 for the equivalent of more than 14 but not more than 21 days of unpaid indemnity or for more than \$900, but no more than \$1,500, of unpaid burial expenses;

\$1,500 for the equivalent of more than 21 but not more than 28 days of unpaid indemnity or for more than \$1,500, but no more than \$2,000, of unpaid burial expenses;

\$3,000 for the equivalent of more than 28 but not more than 42 days of unpaid indemnity or for more than \$2,250 of unpaid burial expenses;

\$5,000 for the equivalent of more than 42 days of unpaid indemnity.

The penalty for each failure to pay to any claimant compensation which was accrued and unpaid to the injured worker at the time of the worker's death is the same penalty which would apply for failure to pay that compensation to the injured worker.

(5) The penalty for each late first payment of temporary disability indemnity is:

\$100 if the first payment was made 1 to 3 days late

\$200 if the first payment was made 4 to 7 days late

\$250 if the first payment was made 8 to 14 days late;

\$300 if the first payment was made 15 to 21 days late;

\$400 if the first payment was made 22 to 30 days late.

Penalty amounts for payments made over 30 days late are assessed pursuant to California Code of Regulations, title 8, Ssections 10108(c) and ~~subsection subdivision~~ (a)(2) of this section.

(6) The penalty for each late first payment of permanent disability is:

\$100 if the first payment was made 1 to 3 days late;

\$200 if the first payment was made 4 to 7 days late

\$250 if the first payment was made 8 to 14 days late;

\$300 if the first payment was made 15 to 21 days late;

\$400 if the first payment was made 22 to 30 days late.

Penalty amounts for payments made over 30 days late are assessed pursuant to Ssections 10108(c) and ~~subsection subdivision~~ (a)(3) of this section.

For purposes of this ~~subsection subdivision~~, the first payment of permanent disability indemnity shall be considered late if not made within 14 days after the last payment of temporary disability indemnity, or within 14 days of knowledge of the existence of permanent disability, whichever last occurs.

(7) The penalty for each late first payment of VRMA or death benefit is:

\$100 if the first payment was made 1 to 3 days late;

\$200 if the first payment was made 4 to 7 days late

\$250 if the first payment was made 8 to 14 days late;

\$300 if the first payment was made 15 to 21 days late;

\$400 if the first payment was made 22 to 30 days late.

Penalty amounts for payments made over 30 days late are assessed pursuant to Ssections 10108(c) and ~~subsection subdivision~~ (a)(2) of this section.

(8) The penalty for each underpayment of temporary disability, permanent disability, death benefits, or VRMA, when the balance of the indemnity was paid late, or late paid self-imposed increases, not paid together with the late indemnity payment is:

\$100 for late payment of the equivalent of 3 days of indemnity or less, except it is \$25 for late paid self-imposed increases;

\$200 for late payment of the equivalent of more than 3 but no more than 7 days of indemnity, except it is \$50 for late paid self-imposed increases;

\$250 for late payment of the equivalent of more than 7 but no more than 14 days of indemnity, except it is \$75 for late paid self-imposed increases;

\$300 for late payment of the equivalent of more than 14 but no more than 21 days of indemnity, except it is \$100 for late paid self-imposed increases;

\$400 for late payment of the equivalent of more than 21 days of indemnity, except it is \$125 for late paid self-imposed increases.

Penalty amounts for underpayments made more than 30 days late are governed by Section 10108(c).

(9) The penalty for each failure to make temporary disability, permanent disability, death benefits or VRMA payments according to the payment schedule defined by Section 10100.2(hh y) is:

\$100 for each payment made 1 to 3 days late

\$200 for each payment made 4 to 7 days late

\$250 for each payment made 8 to 14 days late;

\$300 for each payment made 15 to 21 days late;

\$400 for each payment made 22 to 30 days late.

Penalty amounts for payments made more than 30 days late are governed by Section 10108(c).

(10) Penalty amounts assessed pursuant to ~~subsections~~ subdivisions (a)(1) through (a)(9) will be increased by 100%, but will not exceed \$5000 except as provided by Labor Code section 129.5(c)(3), if the failure to pay or late payment was in violation of an award or order of the Workers' Compensation

Appeals Board, or an order of the Rehabilitation Unit, or the Administrative Director. When the award or order is not specific to, but only stated as a lump sum, of any benefit pursuant to subdivisions (a)(1) through (a)(9) above, the increased penalty amount of 100% as specified above shall be determined based on the equivalent amount of unpaid indemnity as assessed under subdivision (a)(2), (a)(3), or (a)(4) of this section. Increased penalties under this subdivision will be separately assessed for late compliance and/or the failure to pay any portion of an award or order.

(11) Notwithstanding Labor Code §section 129.5(c)(1) and whether or not the audit subject has met or exceeded performance standards calculated pursuant to California Code of Regulations, title 8, §section 10107.1(c)(3), penalties will be assessed for failure to pay, or late or partial payment of, a Notice of Compensation Due issued as a result of an audit conducted pursuant to Labor Code section 129(b). Penalties will be assessed as follows:

A penalty in the same amount as the total of the penalties applicable under ~~subsections~~ subdivisions (a)(1) through (a)(4) and (a)(10) will be assessed for any compensation paid more than 15 but not more than 30 days after receipt of the Notice of Compensation Due;

A penalty in the amount of 200% of the total of the penalties applicable under ~~subsections~~ subdivisions (a)(1) through (a)(4) and (a)(10) will be assessed for any compensation paid more than 30 but not more than 60 days late;

A penalty in the amount of 300% of the total of the penalties applicable under ~~subsections~~ subdivisions (a)(1) through (a)(4) and (a)(10) will be assessed for any compensation not paid within 60 days.

(12) Notwithstanding Labor Code §section 129.5(c)(2) and whether or not the audit subject has met or exceeded performance standards calculated pursuant to §section 10107.1(d)(3), additional penalties will be assessed for late payment or failure of the audit subject to pay any administrative penalties assessed pursuant to this section that are not timely appealed pursuant to California Code of Regulations, title 8, §section 10115.1. Penalties will be assessed as follows:

An additional penalty of 50% of the amount of each late paid penalty will be assessed for each penalty paid more than 30 but not more than 60 days from receipt of the Notice of Penalty Assessments;

An additional penalty of 100% of the amount of each applicable penalty will be assessed for each penalty not paid within 60 days of receipt of the Notice of Penalty Assessments.

(b) For full compliance audits conducted on or after January 1, 2003, administrative penalties will be assessed pursuant to ~~subsection~~ subdivision (a) and this ~~subsection~~ subdivision (b) for audit subjects that fail to meet or exceed the full compliance audit performance standards calculated pursuant to Section 10107.1(d)(3). However, for violations in claims with dates of injury from January 1, 1990 through December 31, 1993, penalty amounts may not exceed the amounts that would be assessed pursuant to Section 10111, and for violations in claims with dates of injury from January 1, 1994 through December 31, 2002, penalty amounts may not exceed the amounts that would be assessed pursuant to Section 10111.1:

(1) The penalty for each failure to investigate a claim as provided by California Code of Regulations, title 8, Section 10109 ~~of these Regulations~~ is:

\$500 if the failure to investigate involved a claim for medical treatment only, with no reasonable expectation of liability for indemnity payments, or if the failure to investigate involved the need for medical treatment or testing, but did not involve uncompensated lost time or permanent disability;

\$1,000 if the failure to investigate involved a claim ~~for~~ or reasonable expectation of liability for only one of the following classes of benefits: temporary disability; permanent disability indemnity; or, vocational rehabilitation;

\$2,500 if the failure to investigate involved a claim or reasonable expectation of liability for any combination two of the following classes of benefits: temporary disability; permanent disability indemnity; or, vocational rehabilitation;

\$5,000 if the failure to investigate involved a claim or reasonable expectation of liability for death benefits, or for all of the following classes of benefits: temporary disability; permanent disability indemnity; and, vocational rehabilitation.

(2) The penalty for each denial of all liability for a claim without documentation supporting a factual, medical, or legal basis for the denial is specified in this ~~subsection~~ subdivision.

In order to avoid a penalty, the denial must state a legal, factual or medical basis recognized by applicable law and documented by information in the claim file. An employee's waiver of benefits in an otherwise clearly compensable case is not a ground to deny liability.

The penalty is \$2,500 for a claim involving the potential for medical treatment only, with no potential for liability for indemnity payments;

The penalty is \$4,000 for a claim involving the potential liability for medical treatment and for only one of the following classes of benefits: temporary disability; permanent disability indemnity; or, vocational rehabilitation;

The penalty is \$4,500 for a claim involving the potential liability for medical treatment and for any combination of two of the following classes of benefits: temporary disability; permanent disability indemnity; or, vocational rehabilitation;

The penalty is \$5,000 for a claim involving the potential liability for death benefits, or for all of the following classes of benefits: medical treatment, temporary disability; permanent disability indemnity; and, vocational rehabilitation.

The penalty will be reduced by 20% for good faith if there was ~~an incomplete investigation of~~ a reasonable attempt to investigate the claim.

The total amount assessed for a denial shall be reduced by 50% if the claim was accepted after the denial without evidence that the acceptance was the result of litigation or of the claim's selection for audit.

(3) The penalty for each failure to produce a legible paper copy of a claim file as required by California Code of Regulations, title 8, Section 10107.1(h) or at the time specified by the Administrative Director is:

\$100 if the file was produced not more than ~~3~~ 2 days late;

\$250 if the file was produced more than ~~3~~ 2 but not more than ~~14~~ 4 days late;

\$500 if the file was produced more than ~~14~~ 4 but not more than ~~29~~ 7 days late;

\$1,000 if the file was produced more than ~~29~~ 7 days late but not more than ~~40~~ 15 days late;

\$2,500 if the file was produced more than ~~40~~ 15 days late but not more than ~~90~~ 30 days late;

\$5000 if the was produced more than ~~90~~ 30 days late or was not produced.

(4) The penalty for providing a backdated or otherwise altered or fraudulent document to the Audit Unit, or intentionally withholding a document from the Audit Unit, which would have the effect of avoiding liability for the payment of compensation or an audit penalty is: \$5,000 for each backdated, altered, or withheld document.

(5) The penalty for each failure to object to or pay ~~to the injured worker,~~ reimbursement to an injured worker, ~~within 60 days of receiving a request,~~ for the reasonable expense incurred for self-procured medical treatment, in accordance with the timeframes set forth for the payment of a medical bill in Labor Code section 4603.2(b)(1) in accordance with Labor Code Section 4600, is:

\$100 for \$100 or less in expense;

\$200 for more than \$100, to \$500, in expense;

\$300 for more than \$500, to \$1,000, in expense;

\$500 for more than \$1,000 in expense.

(6) The penalty for each failure to pay reasonable expenses of transportation, meals, and lodging incident to reporting to an examination, together with one day of temporary disability indemnity for each day of wages lost when submitting to the examination, when notifying the employee of a medical evaluation scheduled by the claims administrator in accordance with Labor Code ~~S~~sections 4600 through 4621; or to pay these expenses within 14 days of receiving notice of a medical evaluation scheduled by the Administrative Director or the appeals board; or to object or pay the injured worker for any reasonable transportation expenses incurred to obtain medical treatment or evaluation, within 60 days of receiving a request, is:

\$100 for more than \$10, to \$100, in expense;

\$200 for more than \$100, to \$300, in expense;

\$300 for more than \$300, to \$500, in expense.

\$500 for more than \$500 in expense.

(7) The penalty for each failure to document a factual basis for paying less than the maximum indemnity rate is:

\$50 if the total indemnity, paid and unpaid, totals not more than 3 days;

\$100 if the total indemnity totals more than 3 but not more than 7 days;

\$150 if the total indemnity totals more than 7 but not more than 14 days;

\$200 if the total indemnity totals more than 14 but not more than 21 days;

\$300 if the total indemnity totals more than 21 but not more than 28 days;

\$500 if the total indemnity totals more than 28 days.

(8) The penalty for each failure to comply with any regulation of the Administrative Director specified in this ~~subsection~~ subdivision is:

[~~i~~ A] For each failure to include in a claim file a copy of the Employee's Claim for Worker's Compensation Benefits, DWC Form 1, showing the date the form was provided to and received from the employee, or documentation of the date the claim form was provided to the employee if the employee did not return the form, the penalty is:

\$100 if there was any late indemnity payments, or if notice of acceptance of the claim was not issued within 90 days after the employer's date of knowledge of injury and disability, or if the claim was denied.

[~~ii~~ B] For each failure to issue a notice of benefits as required by ~~Title 8, California Code of Regulations, title 8, Division 4.5, Chapter 1, Article 8, beginning with Ssection 9810, or by Title 8, California Code of Regulations, title 8, Division 4.5, Chapter 1.5, Article 7, beginning with Ssection 10122, unless penalties are assessed pursuant to subsections subdivisions (b)(14) through (b)(20), the penalty is \$100.~~

[~~iii~~ C] For each Notice of Benefits that was not issued timely as provided in ~~Title 8, California Code of Regulations, title 8, Division 1, Chapter 4.5, Subchapter 1, Article 8, beginning with Section 9810, or as provided in Title 8, California Code of Regulations, title 8, Division 1, Chapter 4.5, Subchapter 1.5, Article 7, beginning with Ssection 10122, unless penalties are assessed pursuant to subsections subdivisions (b)(14) through (b)(20), the penalty is:~~

\$25 for each notice of first, resumed, changed or final payment of temporary disability indemnity, wage continuation, death benefits, permanent disability indemnity, or VRMA that was issued from 1 to 7 days late;

\$50 for each notice of first, resumed, changed or final payment of temporary disability indemnity, wage continuation, death benefits, permanent disability indemnity, or VRMA that was issued more than 7 days late, and for each delay in decision notice which was issued from 1 to 7 days late;

\$75 for each delay in decision notice, that was, issued more than 7 days late.

~~[iv D]~~ For each notice of benefits required by ~~Title 8,~~ California Code of Regulations, title 8, Division 1, Chapter 4.5, Subchapter 1, Article 8, beginning with ~~S~~section 9810, ~~{[except a materially misleading or materially incomplete denial notice assessed under subsection subdivision (b)(21)] or by California Code of Regulations, title 8, beginning with section 10117, or by Title 8, California Code of Regulations, title 8, Division 1, Chapter 4.5, Subchapter 1.5, Article 7, beginning with S~~section 10122, or by California Code of Regulations, title 8, beginning with section 10133.50, [unless penalties are assessed pursuant to subdivision (b)(27)] that is materially inaccurate or incomplete, the penalty is \$25.

~~[v E]~~ For each failure to include in a claim file, or document attempts to obtain, any of the required contents specified in ~~S~~section 10101.1(b), (c), (d), (e), (f), (g), (h), (i), (j), of these Regulations, the penalty is \$100.

~~[vi E]~~ For each failure to comply with any regulation of the Administrative Director, not otherwise assessed in this Subchapter, the penalty is \$100.

(9) The penalty for each failure to pay or object to a billing for a medical-legal expense, ~~in the manner required by Section 9794, within 60 days of receiving the bill and all reports and documents required by the Administrative Director incident to the services, in the manner required by Labor Code section 4622,~~ is:

\$100 for each bill that was paid ~~more than 60 days from receipt~~ late with interest and ~~10%~~ increase;

\$200 for each bill that was paid ~~more than 60 days from receipt~~ late where either interest or ~~10%~~ increase was not included;

\$300 for each bill that was paid ~~more than 60 days from receipt~~ late where neither interest nor ~~10%~~ increase was paid.

\$500 for each bill that was not paid at the time the audit subject was notified the claim was selected for audit where no timely objection was sent.

(10) The penalty for each failure to pay or object, in the manner required by law or regulation, to a bill for medical treatment provided or authorized by the treating physician, including medical treatment provided pursuant to Labor Code section 5402(c), is as follows when the bill remains unpaid at the time the audit subject is notified that the claim was selected for audit:

\$100 for each bill of \$100 or less, excluding interest and penalty;

\$200 for each bill of more than \$100, but no more than \$500 excluding interest and penalty;

\$300 for each bill of more than \$500, but no more than \$1,000, excluding interest and penalty;

\$500 for each bill of more than \$1,000, excluding interest and penalty.

Any penalty assessed under this subdivision shall be doubled if the medical treatment provided by the physician was authorized by a reviewer, as defined by California Code of Regulations, title 8, section 9792.6(q), through a utilization review process established pursuant to Labor Code section 4610 and California Code of Regulations, title 8, section 9792.7.

(11) The penalty for each failure to pay or object, in the manner required by law or regulation, to a bill for medical treatment provided or authorized by the treating physician, including medical treatment provided pursuant to Labor Code section 5402(c), is as follows when the bill was paid before the audit subject was notified that the claim was selected for audit:

\$100 for each bill that included a an ~~10%~~ increase and interest with the late payment of any uncontested amount of the bill, in accordance with Labor Code ~~S~~section 4603.2;

\$200 for each bill that included either a an ~~10%~~ increase or interest with the late payment of any uncontested amount of the bill, in accordance with Labor Code ~~S~~section 4603.2;

\$300 for each bill that included neither a an ~~10%~~ increase nor interest with the late payment of any uncontested amount of the bill, in accordance with Labor Code ~~S~~section 4603.2.

Any penalty assessed under this subdivision will be no greater than the penalty that would have issued under subdivision (b)(10) of this section had the bill been unpaid at the time the audit subject was notified that the claim was selected for audit.

(12) The penalty for each failure to pay or object to a vocational rehabilitation bill within 60 days of receipt, as required by ~~Title 8~~, California Code of Regulations, title 8, Sections 10132 and 10132.1, is:

\$25 for each bill of \$100 or less;

\$50 for each bill of more than \$100, but no more than \$200;

\$75 for each bill of more than \$200, but no more than \$300;

\$100 for each bill of more than \$300.

(13) The penalty for each failure to maintain or provide to the Audit Unit a claim log that complies with these Regulations is:

\$25 for each failure to list on a claim log one or more of the following: employee's name; claim number; date of injury;

~~\$25~~ 50 for each misdesignation of an indemnity claim as a medical-only claim on the claim log;

\$50 for each failure to distinguish on the claim log an indemnity claim that has no payment of indemnity from one that has indemnity payment(s).

\$100 for each failure to identify self-insured employers on the log as required by Section 10103.1(b)(6) of these Regulations;

\$100 for each failure to identify the underwriting insurance company of an insurance group;

\$100 for each failure to designate a denied claim on the log;

\$100 for each claim not listed on the log;

\$250 for each failure to provide the claim log to the Audit Unit within 14 days of receipt of a written request if the claim log was provided more than 14 but no more than 30 days from receipt of the request;

\$500 for each failure for more than 30 days from receipt of a written request, to provide the claim log to the Audit Unit.

(14) The penalty for each failure to provide information regarding the Americans with Disabilities Act, the Fair Employment and Housing Act, and workers' compensation vocational rehabilitation as required by Labor Code ~~§~~section 4636(a) immediately after 90 days of aggregate temporary disability indemnity is \$100 if the information was provided or the employee returned to his or her usual and customary occupation more than 10 but not more than 20 days after 90 days of aggregate total disability, and an additional \$100 for each additional delay of not more than 10 days, to a maximum penalty of \$400 if the notice was issued more than 30 days late, and \$500 if the notice was overdue more than 40 days and was not issued at the time the audit subject was notified that the claim was selected for audit.

(15) The penalty for each failure to issue notice of medical eligibility for vocational rehabilitation services (if not previously issued) within 10 days after knowledge of a physician's opinion that the employee is medically eligible, or for failure to issue notice within 10 days after 366 days of aggregate total temporary disability, is \$100 if the notice was issued not more than 10 days late, and an additional \$100 for each additional delay of not more than 10 days, to a maximum penalty of \$400 if the notice was issued more than 30 days late, and \$500 if the notice was overdue more than 40 days and was not issued at the time the audit subject was notified that the claim was selected for audit. Where the injured worker is represented by an attorney and documentation in the claim file indicates that the injured worker's attorney has received a copy of the physician's report indicating the employee is medically eligible for vocational rehabilitation, and if the knowledge is of a physician's opinion other than the injured worker's treating physician, a physician selected from a panel provided by the ~~Industrial Medical Council~~ DWC Medical Unit, or an agreed medical examiner, the penalty shall be assessed at 20% of the amount otherwise assessed under this ~~subsection~~ subdivision and shall not exceed \$100.

(16) The penalty for each failure to provide the employee with a copy of the treating physician's final report together with notice of the procedure to contest the treating physician's determination, in accordance with Labor Code ~~§~~section 4636(d), immediately upon receipt of that report, is \$100 for compliance more than 10 but not more than 20 days after receipt of the treating physician's final report, and an additional \$100 for each additional delay of not more than 10 days, to a maximum penalty of \$400 if the notice was issued more than 30 days late, and \$500 if the notice was overdue

more than 40 days and was not issued at the time the audit subject was notified that the claim was selected for audit. However, if a separate penalty is assessed under ~~subsection~~ subdivision (b)(17) for the violation, no penalty will be assessed under this ~~subsection~~ subdivision. If the injured worker was notified of the procedure to contest the treating physician's determination, but no copy of the treating physician's final report was provided with the notice, the maximum penalty shall be \$100 under this ~~subsection~~ subdivision.

(17) The penalty for each failure to notify an injured employee of the reasons he or she is not entitled to any, or to any further, vocational rehabilitation services, and the procedure for contesting the determination of non-eligibility, as required by California Code of Regulations, title 8, Sections 9813(a)(3) and 10131, is \$100 if notification was issued more than 10 but not more than 20 days after the determination, and an additional \$100 for each additional delay of not more than 10 days, to a maximum penalty of \$400 if the notice was issued more than 30 days late, and \$500 if the notice was overdue more than 40 days and was not issued at the time the audit subject was notified that the claim was selected for audit.

(18) The penalty for each failure to notify an injured employee that his or her injury may have caused permanent disability and the procedures for evaluating the permanent disability, or of the employer's position that the injury has caused no permanent disability and the employee's remedies, in the manner provided by ~~Title 8, California Code of Regulations, title 8, Division 1, Chapter 4.5, Subchapter 1, Article 8,~~ title 8, Division 1, Chapter 4.5, Subchapter 1, Article 8, beginning with Section 9810; is \$100 if the notice was issued up to 10 days late, and an additional \$100 for each additional delay of not more than 10 days, to a maximum penalty of \$400 if the notice was issued more than 30 days late, and \$500 if the notice was overdue more than 40 days and was not issued at the time the audit subject was notified that the claim was selected for audit.

(19) The penalty for each failure to notify a claimant of the denial of all death benefits claimed by that person (except a denial limited to all or any of: burial expense, benefits which were due to the injured worker before his or her death, or medical-legal expense), in the manner provided by ~~Title 8, California Code of Regulations, title 8, Division 1, Chapter 4.5, Subchapter 1, Article 8,~~ title 8, Division 1, Chapter 4.5, Subchapter 1, Article 8, beginning with Section 9810, is \$100 if the notice was issued up to 10 days late, and an additional \$100 for each additional delay of not more than 10 days, to a maximum penalty of \$400 if the notice was issued more than 30 days late, and \$500 if the notice was overdue more than 40 days and was not issued at the time the audit subject was notified that the claim was selected for audit.

(20) The penalty for each failure to send a notice denying liability for all workers' compensation benefits, in accordance with ~~Title 8~~, California Code of Regulations, title 8, ~~Division 4.5, Chapter 1, Article 8~~, beginning with ~~Section~~ 9810, is \$100 if the notice was issued up to 10 days late, and an additional \$100 for each additional delay of not more than 10 days, to a maximum penalty of \$400 if the notice was issued more than 30 days late, and \$500 if the notice was overdue more than 40 days and was not issued at the time the audit subject was notified that the claim was selected for audit.

(21) The penalty for each notice denying liability for all workers' compensation benefits, which was materially misleading, is \$500.

The penalty for each materially incomplete denial notice is \$100.

(22) The penalty for each termination, interruption or deferral of vocational rehabilitation services other than as provided by Labor Code ~~Sections~~ 4637(b)~~7~~ and 4644(b) is \$1,000.

(23) The penalty for each failure to comply with, show good cause for non-compliance with, or contest, within 30 days of receipt, any written request or order of the Administrative Director or Audit Unit which is not specified in ~~subsections subdivisions~~ subdivisions (a)(10), (a)(12), (b)(3), (b)(13), or ~~(b)(14)(24)~~ of this section is:

\$500 if there was compliance in more than 30 but not more than 40 days from receipt of the request or order;

\$1,000 if there was compliance in more than 40 but not more than 60 days from receipt of the request or order;

\$2,500 if there was compliance in more than 60 but not more than 90 days of receipt of the request or order;

\$5,000 for failure to comply within 90 days of receipt of the request or order.

(24) The penalty for each failure to fully and/or timely comply with any final award or order of the Workers' Compensation Appeals Board, or the Rehabilitation Unit, or the Administrative Director which is not assessed pursuant to subdivision (a)(10), is:

~~For late compliance with an award or order compliance with an award must be within 20 days of service, plus an additional five days for service by mail), the penalty is:~~

\$100 for each late payment of interest required pursuant to Labor Code section 5800.

\$250 for each failure to pay interest required pursuant to Labor Code section 5800.

\$500 for compliance (other than a late interest payment) in more than 20 but not more than 35 days from the date of service;

\$1,000 for compliance (other than a late interest payment) in more than 35 but not more than 60 days from the date of service;

\$2,500 for compliance (other than a late interest payment) in more than 60 but not more than 90 days from the date of service;

\$5,000 if there was not compliance (other than failure to pay interest) within 90 days of the date of service.

Penalties will be assessed separately for both late compliance and the failure to pay a portion of an award or order. Compliance with an award or order must be within 20 days of service of the award or order, unless the award or order expressly allows additional time, plus an additional five days for service by mail. If additional time for payment is allowed in the award or order, the penalties set forth under this subdivision will be assessed based on the date the payment is ordered due instead of the date of service.

(25) The penalty for each failure by a claims administrator to provide a claim form within one working day of receipt of a request from an injured worker or the worker's agent is:

\$100 in addition to those shown below, if the claim form provided to the injured worker is not the current form required by existing regulations;

\$500 if the claim form was provided in more than 1 but not more than 5 working days from receipt of the request, if benefits were being provided to the employee at the time of the request;

\$1,000 if the claim form was not provided within 5 working days of receipt of the request, if benefits were being provided to the employee at the time of the request;

\$3,000 if the claim form was provided in more than 1 but not more than 5 working days from receipt of the request, if benefits were not being provided to the employee at the time of the request;

\$5,000 if the claim form was not provided within 5 working days of receipt of the request, if benefits were not being provided to the employee at the time of the request.

(26) The penalty for each failure to comply with ~~Title 8,~~ California Code of Regulations, title 8, Section 10104 of this Subchapter is:

~~\$100 for each period of 1 to 14 days' delay in filing the Annual Report of Inventory to a maximum penalty of \$500 for each Annual Report of Inventory;~~

\$100 if the Annual Report of Inventory or Annual Report of Adjusting Locations was filed not more than 10 days late, and an additional \$100 for each additional delay of not more than 10 days, to a maximum penalty of \$500 if the Annual Report of Inventory or Annual Report of Adjusting Locations was filed more than 40 days late, and \$1,000 if the Annual Report of Inventory or Annual Report of Adjusting Locations was overdue more than 40 days and was not filed at the time the audit subject was notified that the claim was selected for audit.

\$500 for each Annual Report of Inventory that overstates or understates the number of claims by 10% or more.

(27) The penalty for each failure to comply with the supplemental job displacement benefit notice requirements of California Code of Regulations, title 8, section 10133.51 is:

(A) \$100 for each materially incomplete or inaccurate notice relating to the supplemental job disability benefit;

(B) \$100 for each failure to send the notice of supplemental job displacement benefits by certified mail.

(C) For each failure to issue the notice of supplemental job displacement benefits (if not previously issued) within 10 days of the last payment of temporary disability is:

\$100 for each failure to issue the notice of supplemental job displacement benefits within 10 days of the last payment of temporary disability if the notice was issued not more than 10 days late.

\$200 for each failure to issue the notice of supplemental job displacement benefits if the notice was issued more than ten but not more than 20 days late;

\$300 for each failure to issue the notice of supplemental job displacement benefits if the notice was issued more than 20 but no more than 30 days late;

\$400 for each failure to issue the notice of supplemental job displacement benefits if the notice was issued more than 30 but no more than 40 days late;

\$500 for each failure to issue the notice of supplemental job displacement if the notice was issued more than 40 days late or was not issued;

(28) For each failure to issue the voucher for education-related retraining/skill enhancement in compliance with California Code of Regulations, title 8, section 10133.56(c), unless the employer meets the conditions set forth in Labor Code section 4658.6, is:

\$100 for each failure to issue the voucher, in the manner required by law and regulations, not more than 10 days late;

\$200 for each failure to issue the voucher, in the manner required by law and regulations, more than ten but not more than 20 days late;

\$300 for each failure to issue the voucher, in the manner required by law and regulations, more than 20 but not more than 30 days late;

\$400 for each failure to issue the voucher, in the manner required by the law and regulations, more than 30 but not more than 40 days late;

\$500 for each failure to issue the voucher, in the manner required by the law and regulations, more than 40 but not more than 50 days late;

\$1000 for each failure to issue the voucher, in the manner required by the law and regulations, within 51 days.

(29) For failure to pay any properly documented supplemental job displacement benefit voucher billing within the time frames required by California Code of Regulations, title 8, section 10133.56(h) is:

\$100 for each bill of \$1000 or less;

\$200 for each bill of more than \$1000, but no more than \$2000;

\$300 for each bill of more than \$2000, but no more than \$3000;

\$500 for each bill of more than \$3000, but no more than \$5000;

\$1000 for each bill of more than \$5000.

(30) For claims reported on or after April 19, 2004, regardless of the date of injury, the penalty for each failure to authorize medical treatment for which the employer is responsible under Labor Code section 5402(c) is \$2,500.

(c) Mitigation of penalty amounts pursuant to Labor Code ~~S~~section 129.5(b)(1) through (b)(7) will be applied as follows:

(1) Mitigation for gravity of the violation is included within the penalty amounts set forth in ~~subsections~~ subdivisions (a) and (b).

(2) Mitigation for good faith of the insurer, self-insured employer, or third-party administrator will be determined based on documentation of attempts to comply with requirements of the Labor Code and the Administrative Director's regulations, and will result in a reduction of 20% for each applicable violation. Penalties may be mitigated for good faith in an amount greater than 20% in extraordinary circumstances, when strict application of this mitigation guideline would be clearly inequitable.

(3) Mitigation for frequency is considered as included within the numbers of penalties and their amounts established by this section and in conjunction with the frequency of violations that determines whether or not the audit subject meets or exceeds the profile audit review performance standards and/or full compliance audit performance standards pursuant to ~~S~~sections 10107.1(c)(3) and (d)(3).

(4) Mitigation for history shall be determined as follows:

(A) For audits that meet or exceed the full compliance audit performance standard, penalty amounts will be reduced by 20%, after modification for good faith, if any, in instances in which the audit subject met or exceeded the profile audit review performance standards in the audit preceding the current audit. No reduction shall apply if the preceding audit occurred before January 1, 2003.

(B) For audits that fail to meet or exceed the full compliance audit performance standards, mitigation for history shall be determined pursuant to Labor Code Section 129.5(e).

(5) Mitigation based on whether or not the audit subject has met or exceeded the profile audit review performance standard is determined pursuant to Labor Code Section 129.5(c) (1) and (c)(2).

(6) Mitigation based on whether or not the audit subject has met or exceeded the full compliance audit performance standard is determined pursuant to Labor Code Section 129.5(c)(3).

(7) Consideration of penalty amounts based on the size of the audit subject location pursuant to Labor Code Section 129.5(c)(3) shall be based on the number of indemnity claims reported at the audit subject's location for the ~~last audited~~ most recent complete calendar year. For an audit subject location that is handling only run-off claims, the penalty amount shall be based on the number of open run-off claims and claims that were closed at the audit subject location in the most recent complete calendar year. For audit subjects that fail to meet or exceed the full compliance audit performance standards calculated pursuant to Section 10107.1(d)(3), after penalty amounts are calculated pursuant to ~~subsections~~ subdivisions (a)(1) through (c)(6) of this section, penalty amounts will be modified based on the size of the adjusting location as follows:

| Number of indemnity claims reported at the audit subject location in last audited <u>most recent complete calendar year</u> : | Multiply the penalty amount calculated pursuant to subsections <u>subdivisions</u> (a)(1) through (c)(6) of this section by the following factor: |
|--|--|
| Less than 65: | 1.0 |
| 65-99 | 1.2 |
| 100-249 | 1.4 |
| 250-499 | 1.6 |
| 500-749 | 1.8 |
| 750-999 | 2.0 |
| 1,000-1,499 | 2.4 |
| 1,500-1,999 | 2.8 |
| 2,000-3,499 | 3.6 |
| 3,500 or more | 7.2 |

(8) The Audit Unit may assess penalties pursuant to ~~subsections~~ subdivisions (a), (b), and (c) in target audits in which the claims were audited to evaluate specific practices but in which full compliance audit samples of claims were not randomly selected pursuant to Section 10107.1(c) through (e).

Authority: Sections 59, 129, 129.5, 133, 138.3, 138.4, 138.6, 138.7, 139.5, 4603.5, 4610, 4658.5, 4658.6, 4627 and 5307.3, Labor Code.

Reference: Sections 124, 129, 129.5, 138.6, 138.7, 4061, 4453, 4454, 4550, 4600, 4603.2, 4610, 4621, 4622, 4625, 4636 through 4638, 4639, 4641, 4642, 4650, 4658.5, 4658.6, 4951, 4701 through 4703.5, 4706, 4706.5 5401, 5401.6, 5402, 5800 and 5814, Labor Code and Section 2629.1(e), (f), Unemployment Insurance Code.

§10112. Liability for Penalty Assessments.

The audit subject is liable for all penalty assessments, except that if the audit subject is acting as a third-party administrator, the client of that third-party administrator which secures the payment of compensation is jointly and severally liable with the administrator for all penalty assessments except civil penalties imposed under Labor Code ~~Section 129.5(d)~~ Section 129.5(e). Without affecting DWC's rights, a third-party administrator and its client may agree how to allocate the audit penalty expense between them.

Authority: Sections 59, 129.5, 133 and 5307.3, Labor Code.

Reference: Section 129, 129.5, 3200-6002, Labor Code.

§10113.4. Written Statement and Supporting Evidence.

(a) Not less than 30 calendar days prior to the date of hearing, the claims administrator shall file and serve a written statement with the Administrative Director specifying its legal and factual bases for its Answer. The written statement shall also include ~~list all witnesses the claims administrator intends to call to testify at the hearing, and~~ copies of all documents and all other evidence the claims administrator intends on introducing into evidence at the hearing ~~must be served with the written statement~~. If the written statement and supporting evidence are not timely filed and served, the Administrative Director shall dismiss the Answer and issue a written Determination. If the written statement and supporting evidence are not timely filed and served, the claims administrator may file a written request for leave to file a written statement and supporting evidence. The written request for leave must be filed and served no later than the date of the hearing. The Administrative Director may grant the request for leave to file the written statement and supporting evidence and continue the hearing, upon a showing of good cause.

(b) The claims administrator must file the original and one copy of the written statement and all supporting evidence on the Administrative Director and concurrently serve one copy of the written statement and all supporting evidence on the Audit Unit. The original and all copies of any filings shall have a proof of service.

Authority cited: Sections 59, 129, 129.5, 133 and 5307.3, Labor Code.

Reference: Sections 129 and 129.5, Labor Code.

§10113.5. Prehearing Conference; Subject Matter; Prehearing Order.

(a) The Administrative Director or designee shall set the time and place for the prehearing conference, and shall give reasonable written notice to all parties.

(b) The prehearing conference may deal with one or more of the following matters:

- (1) Exploration of settlement possibilities.
- (2) Preparation of stipulations.
- (3) Clarification of issues.
- (4) Rulings on identity and limitation of the number of witnesses.
- (5) Objections to proffers of evidence.
- (6) Order of presentation of evidence and cross-examination.
- (7) Rulings regarding issuance of subpoenas and protective orders.
- (8) Exchange of witness lists and of exhibits or documents to be offered in evidence at the hearing.
- ~~(9)~~ Schedules for the submission of written briefs and schedules for the commencement and conduct of the hearing.
- ~~(10)~~ ~~9)~~ Any other matters as shall promote the orderly and prompt conduct of the hearing.

(c) The Administrative Director or designee shall issue a prehearing order incorporating the matters determined at the prehearing conference. The Administrative Director or designee may direct one or more of the parties to prepare a prehearing order.

Authority cited: Sections 59, 129, 129.5, 133 and 5307.3, Labor Code.

Reference: Sections 129 and 129.5, Labor Code.

§10114.2. Affidavits.

The written affidavit or declaration of any witness may be offered and shall be received into evidence provided that (i) the witness was named in a witness list exchanged either through agreement of the parties or pursuant to an order issued under section 10113.5 (c) ~~listed in the written statement pursuant to section 10113.4,~~ (ii) the statement is made by affidavit or by declaration under penalty of perjury, (iii) copies of the statement have been delivered to all opposing parties at least 20 days prior to the hearing, and (iv) no opposing party has, at least 10 days before the hearing, delivered to the proponent of the evidence a written demand that the witness be produced in person to testify at the hearing. The Hearing Officer shall disregard any portion of the statement received pursuant to this regulation that would be inadmissible if the witness were testifying in person, but the inclusion of inadmissible matter does not render the entire statement inadmissible.

Authority cited: Sections 59, 129, 129.5, 133 and 5307.3, Labor Code.

Reference: Sections 7, 124 and 129.5, Labor Code.

§ 10115. Appeal of Notice of Compensation Due.

An audit subject which has filed a timely Objection under California Code of Regulations, title 8, Section 10110 ~~of these Rules~~ may seek further review of a Notice of Compensation Due by filing an appeal with the Workers Compensation Appeals Board pursuant to California Code of Regulations, title 8, section 10952, and serving copies of the appeal on the injured worker, any other person to whom the payment is due as specified in the Notice of Compensation Due, and the Administrative Director, within 15 days of receiving the Notice.

Authority cited: Sections 59, 129.5, 133, 4603.5, 5300, and 5307.3, Labor Code. Reference: Sections 129, 129.5, 3207, 4550, 4600, 4621, 4636 through 4638, 4639, 4701 through 4703.5, 4900 and 4902, Labor Code; and ~~Section 10952, Title 8,~~ California Code of Regulations, title 8, section 10952.

§ 10115.1. Appeal of Notice of Penalty Assessment--Filing and Contents.

(a) Within 7 days after receiving a Notice of Penalty Assessment issued under Labor Code ~~§~~section 129.5(a) and (c) the claims administrator may appeal all or a portion of the penalty assessments in the Notice by filing with the Administrative Director and serving the Audit Unit with a request for an appeals conference or a request for a written decision without a conference.

(b) If a request for a written decision or request for appeals conference is not timely filed and served, the Notice of Penalty Assessment will become final 7 days after the claims administrator received it, and must be paid in accordance with Labor Code § 129.5~~(e)~~(d) within 15 days of receipt.

(c) The request shall be in writing in a form specified by the Administrative Director and shall include at least the following information:

(1) The name and address of the person filing the request;

(2) A copy of the Notice of Penalty Assessment which is disputed.

(d) Within 21 days after the request for a written decision or appeals conference is filed, the appellant shall file with the Administrative Director and serve the Audit Unit with a written statement listing the assessments appealed, specifying the legal or factual basis of the appeal, and including documentation or other evidence, if any, which supports the appellant's position. If the written statement and supporting documentation are not timely filed and served, the Administrative Director shall dismiss the request for written decision or appeals conference. The Notice of Penalty Assessment becomes final on the date of the Administrative Director's notice of dismissal. Penalties shall be paid within 15 days of receipt of the notice of dismissal.

(e) The appellant is deemed to have finally waived any legal or factual basis for appeal which is not stated in a timely filed appeal or timely filed supporting statement. However, the appellant may move the Administrative Director, upon a written showing of good cause filed and served not later than thirty days after its written statement was timely filed, for leave to amend its appeal or statement to add a legal or factual basis for appeal not previously stated. The motion shall attach a copy of the proposed amendment. The motion may include a request to file additional supporting documentation, which shall also be attached. If leave to amend is granted,

the proposed amendment shall be deemed filed on the date the Administrative Director's order is served.

(f) Documentation which the appellant did not file with its appeal or supporting statement (including an amended appeal and statement allowed under ~~subsection~~ subdivision (e)) will not be admitted into evidence in support of the appeal without a showing of good cause. Good cause requires the appellant to show that the additional documentation was not reasonably available to accompany its appeal statement, and also requires that the appellant serve a copy of the proposed additional documentation on the Audit Unit before the hearing, as soon as the document becomes available.

(g) The appellant shall mail or deliver an original and one copy of its request under ~~subsection~~ subdivision (a) and its statement, documentation and any motion under ~~subsections~~ subdivisions (d) or (e) to the office of the Administrative Director at the address shown in the report of audit findings. Requests, statements, documentation and motions are timely if they were:

- (1) Placed in the United States mail in a fully prepaid, sealed envelope postmarked within the times specified in ~~subsections~~ subdivisions (a), (d) and (e); or,
- (2) Delivered to the office of the Administrative Director between the hours of 8:00 a.m. and 5:00 p.m. within the periods specified in ~~subsections~~ subdivisions (a), (d) and (e).

If a date to submit a request under ~~subsection~~ subdivision (a) or to submit a filing under ~~subsections~~ subdivisions (d) or (e) falls on a weekend or holiday, that date is extended to the next business day.

(h) The appellant shall serve two copies of any request, statement, document or motion filed with the Administrative Director concurrently on the Audit Unit, by the same means of delivery as the original which was filed with the Administrative Director. The original and all copies of any filing shall attach proof of service, which may be made as provided in ~~Title 8,~~ California Code of Regulations, title 8, Section 10975.

(i) If a request for a written decision or an appeals conference, or a written statement in support of the appeal, contests only a portion of a Notice of Penalty Assessment, the portions of which are not appealed (or not included in the supporting statement(s)) shall become final on the same date an entire Notice of Penalty Assessment would become final if not timely appealed or supported, and appellant shall pay the uncontested assessments

by the date payment would be due under ~~subsection~~ subdivision (b) if an entire Notice of Penalty Assessment were involved.

Authority cited: Sections 59, 129.5, 133 and 5307.3, Labor Code.

Reference: Sections 129 and 129.5, Labor Code.

§ 10115.2. Appeal of Notice of Penalty Assessment; Conference Process and Delegation of Authority; Notice of Findings, Service.

(a) The Administrative Director may appoint a designee to conduct the appeal conference.

(b) The conference shall be held at the place, time, and date scheduled unless, upon a showing of good cause, a continuance has been granted. Notice of the conference date will be provided to the parties no later than thirty days before the conference.

(c) The appeals conference is an informal hearing in which the parties are given an opportunity to explain their positions and to present evidence in support of their positions. The conference need not be conducted in accordance with the formal rules of evidence, and legal representation is not required.

(d) The conference will be tape recorded, unless a party chooses to have it recorded by a court reporter. Should a party choose to use a court reporter, the party shall: (1) notify the Administrative Director and the opposing party shall be notified no later than five days before the conference that a party will supply a court reporter will be provided; and (2) . ~~The party choosing to use a court reporter is responsible for making the arrangements for the reporter and for paying the costs of the reporter and transcription, including the cost of a copy of the transcript for the Administrative Director.~~

(e) Either party may present live testimony or documentary evidence at the conference. The Administrative Director may issue subpoenas for the attendance of witnesses at the conference, or subpoenas duces tecum for the production of documents, if requested by a party in writing within a reasonable time before the conference. Any person who is subpoenaed to appear may, instead of appearing at the time specified in the subpoena, agree with the party at whose request the subpoena was issued to appear at another time or upon agreed notice. Any failure to appear according to that agreement may be treated in all respects as a failure to appear in response to the original subpoena. The facts establishing or disproving the agreement and failure to appear may be proved by an affidavit of any person having personal knowledge of the facts.

(f) All testimony shall be made on oath or affirmation administered by the Administrative Director or designee.

(g) The Administrative Director or the Director's designee shall preside over the conference and shall have authority to admit any relevant testimony or documentary evidence into the record, ~~which (s)he deems relevant~~ and to decide any issues which arise during the conference including objections to evidence, privileges, claims and defenses.

(h) If the appellant fails to appear at the conference, the Administrative Director shall dismiss the request for conference and issue an order affirming the notice of penalty assessment.

(i) Within 15 days of the date the appeal is submitted for decision, the Administrative Director shall issue a Notice of Findings. When a written decision without a conference was requested, the date of submission is the date the Administrative Director receives the Audit Unit's written response to the appeal unless that date is extended by the Administrative Director for good cause. The time limits for action by the Administrative Director are directory and not jurisdictional.

(j) The Notice of Findings shall be served on the appellant by registered or certified mail, and is final for purposes of judicial review upon receipt.

(k) The appellant must pay any amount found due by the Administrative Director within 30 days after receiving the Notice of Findings, but the 30-day period shall be tolled if the appellant files a timely petition for writ of mandate, as to any assessment included for review in the petition proceeding, until that proceeding has become final.

(l) The appellant may file a petition for a writ of mandate from the Administrative Director's Notice of Findings in accordance with Labor Code ~~§~~section 129.5(e)(f). The deadline for filing the petition for writ is 30 days after receipt of the Notice of Findings.

Authority cited: Sections 59, 129.5, 133 and 5307.3, Labor Code.

Reference: Sections 7, 129 and 129.5, Labor Code.