

**State of California
DEPARTMENT OF INDUSTRIAL RELATIONS
Division of Workers' Compensation**

**NOTICE OF MODIFICATION TO TEXT OF
PROPOSED REGULATIONS**

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

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

NOTICE IS HEREBY GIVEN that the Acting Administrative Director of the Division of Workers' Compensation, pursuant to the authority vested in her by Labor Code sections 133 and 5814.6, proposes to modify the text of the following proposed amendments to Title 8, California Code of Regulations:

Section 10225 Definitions

Section 10225.1 Schedule of Administrative Penalties Pursuant to Labor Code § 5814.6

PRESENTATION OF WRITTEN COMMENTS AND DEADLINE FOR SUBMISSION OF WRITTEN COMMENTS

Members of the public are invited to present written comments regarding these proposed modifications. **Only comments directly concerning the proposed modifications to the text of the regulations will be considered and responded to in the Final Statement of Reasons.**

Written comments should be addressed to:

Maureen Gray, Regulations Coordinator
Department of Industrial Relations
Division of Workers' Compensation
Post Office Box 420603
San Francisco, CA 94142

The Division's contact person must receive all written comments concerning the proposed modifications to the regulations no later than **5:00 p.m. on November 10, 2006**. Written comments may be submitted by facsimile transmission (FAX), addressed to the contact person at (510) 286-0687. Written comments may also be sent electronically (via e-mail), using the following e-mail address: dwcrules@hq.dir.ca.gov.

SUMMARY OF PROPOSED CHANGES

Modifications to Section 10225 Definitions

Subdivision (l), the definition of “general business practice,” was amended to state:

(l) “General business practice” means a pattern of violations of Labor Code section 5814 at a single adjusting location that can be distinguished by a reasonable person from an isolated event. The pattern of violations must occur in the handling of more than one claim. However, where a claim file with a violation of Labor Code section 5814 has been adjusted at multiple adjusting locations, that claim file may be considered when determining the general business practice of any of the adjusting locations where the **conduct that caused the** violation occurred even if the file has been transferred to a different adjusting location. The pattern also may be based on evidence of violations of Labor Code section 5814 for failure to comply with an earlier compensation order in more than one claim. The conduct may include a single practice and/or separate, discrete acts or omissions in the handling of more than one claim.

These words are added to clarify that when a claim file has been adjusted at more than one adjusting location, the relevant claims adjusting location is the one or ones where the conduct that caused the violations occurred.

Subdivision (s), the definition of “penalty award” was amended to state:

(s) “Penalty award” means ~~an~~ **final** order or **final** award by a workers’ compensation administrative law judge to pay penalties due to a violation of section 5814 of the Labor Code.

This change was made to clarify that the penalty award or order must be a final award or order.

Modifications to Section 10225.1 Schedule of Administrative Penalties Pursuant to Labor Code § 5814.6

Subdivision (a) was revised to state:

(a) Administrative penalties shall only be imposed under this section based on violations of Labor Code section 5814, after more than one penalty awards ~~have~~ been issued by a workers’ compensation administrative law judge on or after June 1, 2004 **based on conduct occurring on or after April 19, 2004** for unreasonable delay or refusal to pay compensation **within a five year time period. The five year period of time shall begin on the date of issuance of any penalty award not previously subject to an administrative penalty assessment pursuant to Labor Code section 5814.6.**

These changes refine the minimum prerequisites for imposing an administrative penalty under this section: the underlying conduct that is the basis of penalty award must have occurred on or after April 19, 2004; the penalty award must have issued on or after June 1, 2004; and there must be more than one penalty award within a five year period.

Subdivisions (f) and (g) have been deleted to be consistent with the change that the penalty awards must have issued on or after June 1, 2004 for conduct occurring on or after April 19, 2004. The subsequent subdivisions were re-lettered.

In subdivision (g)(1), the word “each” was changed to “a,” and the word “additionally” was added to clarify that the penalties listed following (g)(1) will be in addition to the \$100,000 penalty listed in (g)(1).

In subdivision (g)(3), the words “or proper objection” were deleted. In subdivision (g)(4), the words “or deny” were deleted. These changes were made in response to comments that penalties may only be imposed for failure to provide benefits.

In subdivision (h), the word “adjust” was replaced with “mitigate” as the reasons listed will allow for a penalty to be lowered.