

**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
Section 10225.2	Notice of Administrative Penalty Assessment, Appeal Hearing Procedures and Review

**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 February 20, 2007**. 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](mailto:dwcrules@hq.dir.ca.gov).

## AVAILABILITY OF TEXT OF REGULATIONS AND RULEMAKING FILE

Copies of the original text and modified text with modifications clearly indicated, and the entire rulemaking file, are currently available for public review during normal business hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays, at the offices of the Division of Workers' Compensation. The Division is located at 1515 Clay Street, 17<sup>th</sup> Floor, Oakland, California.

Please contact the Division's regulations coordinator, Ms. Maureen Gray, at (510) 286-7100 to arrange to inspect the rulemaking file.

The specific modifications proposed include changes to the text of the proposed amendments Title 8, California Code of Regulations:

Section 10225	Definitions
Section 10225.1	Schedule of Administrative Penalties Pursuant to Labor Code § 5814.6
Section 10225.2	Notice of Administrative Penalty Assessment, Appeal Hearing Procedures and Review

## DOCUMENTS SUPPORTING THE RULEMAKING FILE

- Comments from various interested parties concerning the regulations have been added to the rulemaking file.
- The following cases have been added to the rulemaking file: *Abney v. Aera Energy* (WCAB Case No. GRO 024430, en banc decision) 69 Cal. Comp. Cases 1552; *Abney v. WCAB* (2005) 70 Cal. Comp. Cases 460; and *Dodrill v. Nationwide Mutual Insurance Company* (1996) 201 W. Va. 1; 491 S.E.2d 1.

## FORMAT OF PROPOSED MODIFICATIONS

### Proposed Text Noticed for 45-Day Comment Period:

The new text is indicated by Arial font and underlining, thus: underlined language.

### Proposed Text Noticed for First 15-Day Comment Period on Modified Text:

Deletions from the regulatory text, as proposed in April 2006, are indicated by Arial font and double strike-through, thus: ~~deleted language~~.

Additions to the regulatory text, as proposed in April 2006, are indicated by Arial font and a double underline, thus: added language.

### Proposed Text Noticed for Second 15-Day Comment Period on Modified Text:



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

The word “regularly” in subdivision (b) was replaced with the words “at least monthly” for clarity.

In subdivisions (d) and (f) the citations to various regulations were corrected to refer to Title 8 of the California Code of Regulations.

Subdivision (g) was clarified. It now reads:

“Pursuant to Labor Code section 5814.6, the Administrative Director, or his or her designee, shall issue a Notice of Assessment for administrative penalties against an employer and/or insurer as follows:

- (1) \$ 100,000 when the Administrative Director, or his or her designee, has evidence to support a finding that an employer or insurer knowingly violated Labor Code section 5814 with a frequency that indicates a general business practice, and additionally for each applicable penalty award, the following;”

Subdivision (g)(1) now mirrors the wording in section 10225.2(a).

Subdivision (i) was revised for clarity. The term “finding” was replaced with “Order” and the sentence structure was changed. The subdivision now states:

“(i) Each administrative penalty assessed under this section shall be doubled upon a second Order (which may be a Stipulated Order or a final Determination and Order) by the Administrative Director under Labor Code § 5814.6 against the same employer or insurer within a five (5) year period. Each administrative penalty under this section shall be tripled upon a third Order (which may be a Stipulated Order or a final Determination and Order) by the Administrative Director under Labor Code § 5814.6 against the same employer or insurer within the same five (5) year period.”

The last sentence of former subdivision (i) is now subdivision (j). The sentence was also clarified by adding the phrase “in a single Stipulated Order or final Determination and Order.”

## **Modifications to Section 10225.2 Notice of Administrative Penalty Assessment, Appeal Hearing Procedures and Review**

Subdivision (a) was revised to replace the phrase “reason to believe” with “evidence to support a finding.” The change is to create a more objective standard and for clarity.

Subdivision (f) was added. It states: “If the employer or insurer pays the penalties within thirty (30) calendar days, the Notice of Assessment shall be deemed a Stipulated Order.” This subdivision was added because the employer or insurer may pay the penalties in the Notice of Assessment without dispute, which in effect is a stipulation. The timely paid Notice of Assessment will then be considered an order for the purposed determining the amount of any future orders as set forth in section 10225.1 (i) and (j).

Subdivision (g) was added to provide the introductory clause: “If the employer or insurer files an appeal of the Notice of Assessment with the Administrative Director, the appeal shall:” Following this clause is a list of issues to be addressed in the appeal.

In subdivision (k), the word “reasonable” is replaced with “sixty (60) calendar days” for clarity and to assure the parties of adequate notice before the prehearing conference.

In subdivision (q), the following language was added: “Upon timely demand for production of a witness in lieu of admission of an affidavit or declaration, the proponent of that witness shall ensure the witness appears at the scheduled hearing and the proffered declaration or affidavit from that witness shall not be admitted. If the Administrative Director, or the designated hearing officer, determines that good cause exists that prevents the witness from appearing at the hearing, the declaration may be introduced in evidence, but it shall be given only the same effect as other hearsay evidence.” This language was added to address the situation where the opposing party objects to the use of an affidavit or declaration in lieu of having the witness present at the trial. It requires the proponent to ensure that the witness will appear. Or, if there is good cause that prevents the witness from testifying, it allows the declaration to be introduced with the same effect as other hearsay evidence.

In subdivision (s), the words “Administrative Director or the” are added in case the Administrative Director issued the Recommended Determination and Order. The word “Final” has been deleted from modifying “Determination and Order” for clarity (as the Order is not final until the time to appeal has elapsed). The words “on the sixty-first calendar day” are added for clarity.

Subdivision (t) is added. It states: “The Determination and Order shall be served on all parties personally or by registered or certified mail by the Administrative Director.” This is added to ensure the parties receive the Determination and Order and to clarify that it is the Administrative Director’s responsibility to serve the Determination and Order.

Subdivision (u) was revised for clarity. The word “Final” has been deleted from modifying “Determination and Order” for clarity (as the Order is not final until the time to appeal has elapsed). The phrase “for the purposes of review within twenty (20) days of” was deleted, as it was contradictory with the phrase that followed and did not make sense when read with the timeframe in which to appeal.

In subdivision (v), the word “Final” has been deleted from modifying “Determination and Order” for clarity (as the Order is not final until the time to appeal has elapsed). The phrase “or amend the Final Determination and Order for good cause” was deleted as it was vague.

In subdivision (w) the following sentence was added: “The penalties shall be deposited into the Return-to-Work-Fund.” This is provided by the statute and is repeated here to advise the public where the funds are deposited.

In subdivision (x), the word “Final” has been deleted from modifying “Determination and Order” and the word “the” is inserted in the phrase “Petition Appealing the Determination and Order.”