

**STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS  
Division of Workers' Compensation**

**NOTICE OF PROPOSED RULEMAKING**

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

**TITLE 8, CALIFORNIA CODE OF REGULATIONS  
Sections 10225 et seq.**

**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 adopt regulations within Article 1, Subchapter 1.8.1 to Chapter 4.5 of Title 8, California Code of Regulations, commencing with section 10225, relating to Administrative Penalties Pursuant to Labor Code § 5814.6.

**PROPOSED REGULATORY ACTION**

The Department of Industrial Relations, Division of Workers' Compensation, proposes to adopt regulations within Article 1, Subchapter 1.8.1 to Chapter 4.5 of Title 8, California Code of Regulations, commencing with section 10225, relating to Administrative Penalties Pursuant to Labor Code § 5814.6:

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

**PUBLIC HEARING**

A public hearing has been scheduled to permit all interested persons the opportunity to present statements or arguments, oral or in writing, with respect to the subjects noted above, on the following dates:

**Date:** Thursday, June 29, 2006  
**Time:** 10:00 a.m. to 5:00 p.m. or conclusion of business  
**Place:** Elihu Harris State Building, Auditorium  
1515 Clay Street,  
Oakland, CA 94612

**The State Office Building and its Auditorium are accessible to persons with mobility impairments. Alternate formats, assistive listening systems, sign language interpreters, or other type of reasonable accommodation to facilitate effective communication for persons with disabilities, are available upon request. Please contact the State Wide Disability Accommodation Coordinator, Adel Serafino, at 1-866-681-1459 (toll free), or through the California Relay Service by dialing 711 or 1-800-735-2929 (TTY/English) or 1-800-855-3000 (TTY/Spanish) as soon as possible to request assistance.**

Please note that public comment will begin promptly at 10:00 a.m. and will conclude when the last speaker has finished his or her presentation. If public comment concludes before the noon recess, no afternoon session will be held.

The Administrative Director requests, but does not require that, any persons who make oral comments at the hearings also provide a written copy of their comments. Equal weight will be accorded to oral comments and written materials.

### **WRITTEN COMMENT PERIOD**

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department of Industrial Relations, Division of Workers' Compensation. The written comment period closes at **5:00 p.m., on June 29, 2006**. The Department of Industrial Relations, Division of Workers' Compensation will consider only comments received at the Department of Industrial Relations, Division of Workers' Compensation by that time. Equal weight will be accorded to oral comments presented at the hearing and written materials.

Submit written comments concerning the proposed regulations prior to the close of the public comment period to:

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

Written comments may be submitted by facsimile transmission (FAX), addressed to the above-named contact person at (510) 286-0687. Written comments may also be sent electronically (via e-mail) using the following e-mail address: [dwcrules@dir.ca.gov](mailto:dwcrules@dir.ca.gov).

Unless submitted prior to or at the public hearing, Ms. Gray must receive all written comments no later than **5:00 p.m. on June 29, 2006**.

### **AUTHORITY AND REFERENCE**

The Administrative Director is undertaking this regulatory action pursuant to the authority vested in the Administrative Director by Labor Code sections 133, 5307.3 and 5814.6.

Reference is to Labor Code §§ 129.5, 139.48, 5300, 5814 and 5814.6.

## **INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW**

Labor Code § 5814.6 requires the Administrative Director of the Division of Workers' Compensation to impose administrative penalties in amounts up to \$400,000 on employers or insurers who have knowingly and unreasonably delayed or refused payment of compensation to injured workers in violation of Labor Code § 5814 with a frequency that indicates a general business practice. Administrative penalties authorized under Labor Code § 5814.6 are alternatives to administrative penalties authorized under Labor Code § 129.5. All penalties collected must be deposited into the Workers' Compensation Return-to-Work Fund established pursuant to Labor Code § 139.48, to promote the early and sustained return to work of employees following work-related injuries or illnesses.

These proposed regulations implement, interpret, and make specific these sections of the Labor Code as follows:

### **1. Section 10225**

This proposed section defines key terms to ensure that their meaning within the regulations proposed for sections 10225.1 and 10225.2 will be clear to the workers' compensation community.

### **2. Section 10225.1**

This proposed section provides that:

(a) Administrative penalties pursuant to Labor Code § 5814.6 may only be imposed after one or more penalty awards have been issued by a Workers' Compensation Administrative Law Judge based on violation(s) of Labor Code § 5814.

(b) The Administrative Director is authorized to conduct investigations and hearings necessary to discover a factual basis for determining that violations subject to Labor Code § 5814.6 have occurred, either independent of, or concurrently with, audits conducted pursuant to Labor Code §§ 129 and 129.5.

(c) The Administrative Director may utilize the provisions of Government Code §§ 11180 – 11191 regarding investigations and hearings in carrying out the responsibilities mandated by Labor Code § 5814.6.

(d) No penalty shall be based solely on conduct occurring before June 1, 2004.

(e) Penalty awards for violations based on conduct occurring on or after June 1, 2004 may be considered as evidence of a general business practice regardless of the date of injury.

(f) The Administrative Director may charge penalties under both Labor Code §§ 129.5 and 5814, however only one penalty may be imposed following the hearing on such charges.

(g) Penalties are specified for the following particular violations of Labor Code § 5814:

1. \$100,000 for a finding of knowing violation with a frequency indicating a general business practice;

2. \$30,000 for each finding by a Workers' Compensation Administrative Law Judge of failure to comply with an existing award;
3. \$1,000 to \$15,000, depending on duration, for delay in payment of temporary disability benefits;
4. \$1,000 to \$15,000, depending on severity, for each penalty award by a Workers' Compensation Administrative Law Judge for unreasonably denying authorization for treatment or failing to reimburse an employee for self-procured treatment;
5. \$2,500, for each penalty award by a Workers' Compensation Administrative Law Judge for failure to provide a notice or training voucher regarding a supplemental job displacement benefit in a timely manner;
6. \$1,000 for each penalty award by a Workers' Compensation Administrative Law Judge for failure to reimburse an injured worker for supplemental job displacement services, or where a failure to pay the training provided results in an interruption of training.
7. \$1,000 to \$15,000, depending on duration, for each penalty award by a Workers' Compensation Administrative Law Judge for failure to make timely payment of permanent disability benefits;
8. \$1,000 for each penalty award by a Workers' Compensation Administrative Law Judge for any other violation of Labor Code § 5814.

(h) The Administrative Director may adjust a penalty based on consideration of specified equitable factors.

(i) Each administrative penalty shall be doubled upon a second finding, and tripled upon a third finding under Labor Code § 5814.6 within a five-year period.

### **3. Section 10225.2**

This proposed section specifies the administrative procedures to be followed in assessing penalties under Labor Code § 5814.6, including:

- Notice of penalty assessment
- Appeal from penalty assessment
- Discretionary prehearing conference
- Evidentiary hearing
- Recommended determination and order
- Final determination and order
- Petition to WCAB appealing final determination and order

## DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

The Administrative Director has made the following initial determinations:

- Significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None. The only entities subject to these administrative penalties are those who have knowingly and unreasonably delayed or refused compensation to injured workers with a frequency indicating a general business practice.
- Adoption of these regulations will not: (1) create or eliminate jobs within the State of California, (2) create new businesses or eliminate existing businesses within the State of California, or (3) affect the expansion of businesses currently doing business in California.
- Effect on Housing Costs: None.
- Cost impacts on representative private persons or business: The proposed regulations will not have a significant adverse economic impact on representative private persons or directly affected businesses. The only entities subject to these administrative penalties are those who have knowingly and unreasonably delayed or refused compensation to injured workers with a frequency indicating a general business practice.

### EFFECT ON SMALL BUSINESS

The Administrative Director has determined that the proposed regulations will not affect small businesses. The businesses that are subject to the Administrative Penalties Pursuant to Labor Code §5814.6 are insurers, self-insured employers (who must by regulation have substantial net worth and income) and third party administrators, all of whom do not qualify as “small business.”

### FISCAL IMPACTS

- Costs or savings to state agencies or costs/savings in federal funding to the State: The proposed regulations may impose costs on State agencies. (State government accounts for about 3% of the occupational injuries and illnesses.) Any such costs are, however, are non-reimbursable since the requirement on an employer to comply with California’s workers’ compensation laws is not unique to State agencies and applies to all employers alike, public and private. All penalties collected must be deposited into the Workers’ Compensation Return-to-Work Fund established pursuant to Labor Code § 139.48, to promote the early and sustained return to work of employees following work-related injuries or illnesses. The proposed regulations will not affect any federal funding.
- Local Mandate: None. The proposed regulations will not impose any new mandated programs or increased service levels on any local agency or school district.

- Cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: None. (See “Local Mandate” section above.)
- Other nondiscretionary costs/savings imposed upon local agencies: None. (See “Local Mandate” section above.)

## CONSIDERATION OF ALTERNATIVES

In accordance with Government Code § 11346.5(a)(13), the Administrative Director must determine that no reasonable alternative considered or that has otherwise been identified and brought to the Administrative Director’s attention would be more effective in carrying out the purpose for which the actions are proposed or would be as effective and less burdensome to affected private persons than the proposed actions.

The Administrative Director invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

## PUBLIC DISCUSSIONS OF PROPOSED REGULATIONS

Pursuant to Government Code § 11346.45, the text of the draft proposed regulations was made available for pre-regulatory public comment through the Division’s Internet message board (the DWC Forums).

## AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, RULEMAKING FILE AND DOCUMENTS SUPPORTING THE RULEMAKING FILE / INTERNET ACCESS

An Initial Statement of Reasons and the text of the proposed regulations in plain English have been prepared and are available from the contact person named in this notice. The entire rulemaking file will be made available for inspection and copying at the address indicated below.

As of the date of this notice, the rulemaking file consists of the notice, the initial statement of reasons, the proposed text of the regulations, pre-rulemaking comments, and the Form 399. Also included are studies and documents relied upon in drafting the proposed regulations.

In addition, the Notice, Initial Statement of Reasons, and proposed text of regulations may be accessed and downloaded from the Division’s website at [www.dir.ca.gov](http://www.dir.ca.gov). To access them, click on the “Proposed Regulations - Rulemaking” link and scroll down the list of rulemaking proceedings to find the current “Administrative Penalties Pursuant to Labor Code § 5814.6” rulemaking link.

Any interested person may inspect a copy or direct questions about the proposed regulations and any supplemental information contained in the rulemaking file. The rulemaking file will be available for inspection at the Department of Industrial Relations, Division of Workers' Compensation, 1515 Clay Street, Oakland, California, between 9:00 a.m. and 4:30 p.m., Monday through Friday. Copies of the proposed regulations, initial statement of reasons and any information contained in the rulemaking file may be requested in writing to the contact person.

## **CONTACT PERSON**

Nonsubstantive inquiries concerning this action, such as requests to be added to the mailing list for rulemaking notices, requests for copies of the text of the proposed regulations, the Initial Statement of Reasons, and any supplemental information contained in the rulemaking file may be requested in writing at the same address. The contact person is:

Maureen Gray  
Regulations Coordinator  
Department of Industrial Relations  
Division of Workers' Compensation  
Post Office Box 420603  
San Francisco, CA 94142  
E-mail: mgray@dir.ca.gov

The telephone number of the contact person is (510) 286-7100.

## **BACKUP CONTACT/PERSON CONTACT PERSON FOR SUBSTANTIVE QUESTIONS**

In the event the contact person is unavailable, or to obtain responses to questions regarding the substance of the proposed regulations, inquiries should be directed to the following backup contact persons:

Destie Overpeck (doverpeck@dir.ca.gov)  
Division of Workers' Compensation  
Post Office Box 420603  
San Francisco, CA 94142

The telephone number of the backup contact person is (510) 286-7100.

## **AVAILABILITY OF CHANGES FOLLOWING PUBLIC HEARING**

If the Administrative Director makes changes to the proposed regulations as a result of the public hearing and public comment received, the modified text with changes clearly indicated will be made available for public comment for at least 15 days prior to the date on which the regulations are adopted.

## **AVAILABILITY OF THE FINAL STATEMENT OF REASONS**

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the contact person named in this notice or may be accessed on the website: [www.dir.ca.gov](http://www.dir.ca.gov)

## **AUTOMATIC MAILING**

A copy of this Notice, the Initial Statement of Reasons, and the text of the regulations, will automatically be sent to those interested persons on the Administrative Director's mailing list.



If adopted, the regulations as amended will appear in Title 8, California Code of Regulations, commencing with section 10225.