

ASSEMBLY BILL

No. 2604

Introduced by Assembly Member Brown

February 21, 2014

An act to amend Section 5814 of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 2604, as introduced, Brown. Workers' compensation: proceedings: payment delay.

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an employee for injuries arising out of and in the course of his or her employment. Existing law requires that certain proceedings, including for the recovery of compensation, or concerning any right or liability arising out of or incidental thereto, be instituted before the Workers' Compensation Appeals Board. The appeals board may fix and determine, in its award, the total amount of compensation to be paid and specify the manner of payment, or may fix and determine the weekly disability payment to be made and order payment during the continuance of disability. Existing law requires that when payment of compensation has been unreasonably delayed or refused, either prior to or subsequent to the issuance of an award, the amount of the unreasonably delayed or refused payment be increased up to 25% or up to \$10,000, whichever is less, and the appeals board is required to use its discretion to accomplish a fair balance and substantial justice between the parties.

This bill would instead require that when payment of compensation has been unreasonably delayed or refused, either prior to or subsequent

to the issuance of an award, the amount of the unreasonably delayed or refused payment be increased up to 25% or up to \$10,000, whichever is more. In using its discretion to accomplish a fair balance and substantial justice between the parties, the appeals board would be required to consider the amount of the original award, the reason for and length of the delay, and whether there were prior violations.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 5814 of the Labor Code is amended to
2 read:

3 5814. (a) When payment of compensation has been
4 unreasonably delayed or refused, either prior to or subsequent to
5 the issuance of an award, the amount of the payment unreasonably
6 delayed or refused shall be increased up to 25 percent or up to ten
7 thousand dollars (\$10,000), whichever is ~~less~~ *more*. In any
8 proceeding under this section, the appeals board shall use its
9 discretion, *including, but not limited to, consideration of the*
10 *amount of the original award, the reason for and length of the*
11 *delay, and whether there are prior violations of this section,* to
12 accomplish a fair balance and substantial justice between the
13 parties.

14 (b) If a potential violation of this section is discovered by the
15 employer prior to an employee claiming a penalty under this
16 section, the employer, within 90 days of the date of the discovery,
17 may pay a self-imposed penalty in the amount of 10 percent of the
18 amount of the payment unreasonably delayed or refused, along
19 with the amount of the payment delayed or refused. This
20 self-imposed penalty shall be in lieu of the penalty in subdivision
21 (a).

22 (c) Upon the approval of a compromise and release, findings
23 and awards, or stipulations and orders by the appeals board, it shall
24 be conclusively presumed that any accrued claims for penalty have
25 been resolved, regardless of whether a petition for penalty has
26 been filed, unless the claim for penalty is expressly excluded by
27 the terms of the order or award. Upon the submission of any issue
28 for determination at a regular trial hearing, it shall be conclusively
29 presumed that any accrued claim for penalty in connection with

1 the benefit at issue has been resolved, regardless of whether a
2 petition for penalty has been filed, unless the issue of penalty is
3 also submitted or is expressly excluded in the statement of issues
4 being submitted.

5 (d) The payment of any increased award pursuant to subdivision
6 (a) shall be reduced by any amount paid under subdivision (d) of
7 Section 4650 on the same unreasonably delayed or refused benefit
8 payment.

9 (e) No unreasonable delay in the provision of medical treatment
10 shall be found when the treatment has been authorized by the
11 employer in a timely manner and the only dispute concerns
12 payment of a billing submitted by a physician or medical provider
13 as provided in Section 4603.2.

14 (f) Nothing in this section shall be construed to create a civil
15 cause of action.

16 (g) Notwithstanding any other ~~provision of law~~, no action may
17 be brought to recover penalties that may be awarded under this
18 section more than two years from the date the payment of
19 compensation was due.

20 (h) This section shall apply to all injuries, without regard to
21 whether the injury occurs before, on, or after the operative date of
22 this section.

23 (i) This section shall become operative on June 1, 2004.