

RESOLUTION 10-02-2013

DIGEST

Workers' Compensation: Minimum Penalty for Unreasonable Delay or Refusal

Amends Labor Code section 5814 to provide for a minimum penalty where it is found an employer has unreasonably delayed or refused a payment of compensation.

RESOLUTIONS COMMITTEE RECOMMENDATION DISAPPROVE

History:

No similar resolutions found.

Reasons:

This resolution amends Labor Code section 5814 to provide for a minimum penalty where it is found an employer has unreasonably delayed or refused a payment of compensation. This resolution should be disapproved because the discretionary penalties of section 5814 are meant to be commensurate with the level of culpability and loss.

When an employer fails to make timely payment of Workers' Compensation benefits, there is an automatic penalty under Labor Code section 4650, subdivision (d), for 10% of the late payment. This penalty is "self-imposed" and requires no finding of fault or unreasonable delay. If there is such a finding, however, section 5814 allows additional penalties.

Prior to 2005, section 5814 penalties were 10% of the amount awarded for a class of benefit. For example, the penalty for a delay in paying any medical cost would be 10% of all past, present and future medical costs. This led to the imposition of large penalties, even if only one payment had been delayed, and increased penalty litigation. In 2004, SB 899 amended section 5814 so the penalty would be based only on the amount of the late payment, and would be capped at 25% or \$10,000, whichever is less. That amount is offset by the automatic section 4650 penalty. Under the new law, section 5814 penalties are more in line with the amount of loss suffered by the employee.

According to the proponent, many injured workers no longer seek these penalties because pursuing 25% of a minimal under- or non-payment is not cost effective, thus creating an incentive for employers to delay or refuse benefits to large numbers of workers, viewing the eventual penalties as a reasonable cost of doing business. This resolution proposes to lessen that incentive by imposing a minimum \$500 penalty per violation.

The proponent provides no authority for the underlying premise that employers are routinely taking advantage of the lower section 5814 penalties. Indeed, an employer found to do so with such frequency as to indicate a general business practice may be fined up to \$400,000. (Lab. Code, § 5814.6, subd. (a).) Nor is any basis provided for the \$500 figure. If the delayed payment is for a \$1,000 MRI, what is the justification for a 50% penalty?

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Association recommends that legislation be sponsored to amend Labor Code section 5814, to read as follows:

1 § 5814

2 (a) When payment of compensation has been unreasonably delayed or refused, either
3 prior to or subsequent to the issuance of an award, there shall be a minimum award of five
4 hundred dollars (\$500.00) per violation, or the amount of the payment unreasonably delayed or
5 refused shall be increased up to 25 percent for an amount above the minimum, but no more than
6 ~~or up to~~ ten thousand dollars (\$10,000), whichever is less . In any proceeding under this section,
7 the appeals board shall use its discretion to accomplish a fair balance and substantial justice
8 between the parties.

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

14 (c) Upon the approval of a compromise and release, findings and awards, or stipulations
15 and orders by the appeals board, it shall be conclusively presumed that any accrued claims for
16 penalty have been resolved, regardless of whether a petition for penalty has been filed, unless the
17 claim for penalty is expressly excluded by the terms of the order or award. Upon the submission
18 of any issue for determination at a regular trial hearing, it shall be conclusively presumed that
19 any accrued claim for penalty in connection with the benefit at issue has been resolved,
20 regardless of whether a petition for penalty has been filed, unless the issue of penalty is also
21 submitted or is expressly excluded in the statement of issues being submitted.

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

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

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

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

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

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

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem: Current law provides a maximum penalty for unreasonable delay or refusal to make payment of workers compensation benefits. Existing law does not provide for a minimum penalty amount. This allows those required to provide benefits to underpay benefits to injured workers in amounts small enough to where the injured worker either does not realize it or an amount generally viewed by individual workers as not worth the time and cost to pursue. The current system allows providers to gamble that enough of a savings can be generated through small withholdings or underpayment of benefits across a large number of injured workers, even if some of those injured workers pursue penalties under existing Labor Code section 5814.

This Solution: This resolution would amend Labor Code section 5814 to provide for a minimum penalty amount per violation for unreasonable delay or refusal to make payment of worker's compensation benefits. This resolution would solve the problem by imposing a minimum penalty for a violation thereby making it economically unfeasible to try to extract a savings by cumulative small underpayment of benefits.

LEGISLATIVE HISTORY

Not known

IMPACT STATEMENT

The proposed resolution does not affect any other law, statute or rule.

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