

October 31, 2016

The California Applicants' Attorneys Association (CAAA) offers the following comments regarding the proposed modification to the Return to Work Supplement program currently posted for a 45 day written comment period ending October 31, 2016.

We appreciate that the proposed modification to section 17304 extending the deadline to apply for the Return to Work Supplement benefit was made directly in response to our Petition filed on February 12, 2016.

We continue to believe that an extension to the application deadline as proposed is critical.

Injured workers who received a Voucher on or before the April 13, 2015 implementation date of the Return to Work Supplement application process lost their ability to apply for this benefit after April 13, 2016, under the existing regulation. This is despite the fact that those individuals did not receive notice of their eligibility to apply when they received their Vouchers.

In addition the proposed modification to section 17304 is necessary to insure that individuals who received Vouchers after April 13, 2015, and before the DWC-AD Form 10133.32 (SJDB) was amended (with the required notice of eligibility to apply for the Return to Work Supplement) have additional time to apply.

CAAA also learned since filing its' petition that some claims administrators are continuing to use the "old" voucher forms that do not contain any notice of the Return to Work Fund Supplement program. Several of these examples have been provided to the Director to demonstrate the continuing problem with workers not receiving adequate notice of their eligibility to apply for the Return to Work Supplement benefit.

However, while the proposed modification to the regulations will give individuals in each of these identified groups additional time to apply for the Return to Work Supplement benefit, it does not provide any method by which they will learn of their eligibility going forward.

CAAA strongly supports making certain all eligible injured workers have the opportunity to apply for supplemental payments from the Return to Work Supplement fund.

We believe that the legislature intended that 120 million dollars be paid annually to eligible workers when they enacted Labor Code Section 139.48.

We believe many eligible workers have not received the Return to Work Supplement payment due to a lack of notice to the worker, as well as a cumbersome and over technical application process.

As a consequence, in addition to the modification to section 17304, CAAA proposes the following modification to section 17303 to correct the deficiency in the notice requirements:

17303. Notice

~~Commencing 30 days after the effective date of these regulations, and continuing until the Administrative Director of the Division of Workers' Compensation amends Form DWC-AD 10133.32 to include notice of the Return to Work Supplement application process, all Vouchers issued shall be accompanied by a cover sheet, prepared by the claims administrator, containing the following notice: "Because you have received this Voucher and are unable to return to your usual employment you may be eligible for a Return to Work Supplement. You must apply within one year from the date this Voucher was served on you. You should make a copy of the Voucher which you will need to apply for the Return to Work Supplement. Details about the Return to Work supplement program are available from the Department of Industrial Relations on its web site, www.dir.ca.gov, or by calling 510-286-0787." The Director will arrange for publication on the Department web site of a notice targeted at eligible persons who received vouchers before the notice was included with the voucher.~~

(a) Within 30 days of the effective date of the amendments to this section, the employer or claims administrator shall send notice of eligibility to workers whose eligibility arose before the effective date of the amendments to this section, and shall notify the director of workers to whom a Supplemental Job Displacement Benefit Voucher was previously issued to establish this list of eligible workers.

(b) Payment shall be issued to the worker upon receipt by the director of the notice and Supplemental Job Displacement Benefit voucher required by (a), without further application by the worker.

(c) This section shall apply to all workers who are eligible for the payment established in section 17302, however, the director shall not issue payment based on a date of injury for which the worker has previously received the supplemental payment.

(d) The failure of the employer or claims administrator to timely send the notices required by this section shall be subject to an administrative penalty to be established by the Administrative Director pursuant to further regulations.

(e) The failure of the employer or claims administrator to use amended DWC-AD Form 10133.32 (with notice of the Return to Work Supplement Fund) shall be subject to an administrative penalty to be established by the Administrative Director pursuant to further regulations.

While CAAA does support the amendment to section 17304 as a fair remedy to allow all eligible injured workers the opportunity to apply for the Return-to-Work Supplement payment, if the Notice requirements in section 17303 are not also modified this will be a hollow victory for injured workers.

In the alternative, if no modification is to be made to section 17303, we recommend the following revision to section 17304 :

17304. Deadline for Application

(a) An application for the Return-to-Work Supplement must be received by the Return-to-Work Supplement Program within one year from the date the Voucher (DWC-AD Form 10133.32 (SJDB) Rev: 10/1/15, or later version) was served on the individual.

(b) Notwithstanding subdivision (a) of this section, the director shall not impose upon the employee a time limit for filing an application for the Return-to-Work Supplement when they have not been served with the revised DWC-AD Form 10133.32 (SJDB) from any individual who was issued a Voucher prior to December 1, 2015, for an injury occurring on or after January 1, 2013, must be

~~received by the Return to Work Supplement Program no later than one year from the effective date of this subdivision.~~

Thank you for including CAAA in this most important process. We look forward to continuing to work with the Department of Industrial Relations on the proper implementation of the Return to Work Supplement Program.