

**STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF WORKERS' COMPENSATION**

INITIAL STATEMENT OF REASONS

**Subject Matter of Regulations: Workers' Compensation –
Supplemental Job Displacement Benefit**

**CALIFORNIA CODE OF REGULATIONS,
TITLE 8, ARTICLES 6, 6.5, 7.5 and 8**

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| Section 9813.1 | Notice of Offer of Modified or Alternative Work For Injuries Occurring on or After January 1, 2004. |
| Section 10116.9 | Definitions for Articles 6.5 and 7.5. |
| Section 10117 | Offer of Work; Adjustment of Permanent Disability Payments. |
| Section 10118 | Form [DWC-AD 10118 "Notice of Offer of Work for Injuries Occurring Between 1/1/04 – 12/31/12."] |
| Section10133.31 | Requirement to Issue Supplemental Job Displacement Nontransferable Voucher for Injuries Occurring on or After January 1, 2013. |
| Section10133.32 | Form [DWC-AD 10133.32 "Supplemental Job Displacement Nontransferable Voucher For Injuries Occurring On or After 1/1/13."] |
| Section10133.33 | Form [DWC-AD 10133.33 "Description of Employee's Job Duties."] |
| Section10133.34 | Offer of Work for Injuries Occurring On or After January 1, 2013. |
| Section10133.35 | Form [DWC-AD 10133.35 "Notice of Offer of Work for Injuries Occurring On or After 1/1/13."] |
| Section10133.36 | Form [DWC-AD 10133.36 "Physician's Return-to-Work & Voucher Report."] |
| Section 10133.51 | Notice of Potential Right to Supplemental Job Displacement Benefit. |
| Section 10133.52 | Form [DWC-AD "Notice of Potential Right to Supplemental Job Displacement Benefit Form."] |
| Section 10133.53 | Form [DWC-AD 10133.53 "Notice of Offer of Modified or Alternative Work for Injuries Occurring Between 1/1/04 – 12/31/12."] |
| Section 10133.55 | Form [DWC-AD 10133.55 "DWC-AD 10133.55 "Request for Dispute Resolution Before the Administrative Director."] |
| Section 10133.57 | Supplemental Job Displacement Nontransferable Training Voucher Form for Injuries Occurring Between 1/1/04 – 12/31/12. |
| Section 10133.58 | State Approved or Accredited Schools. |
| Section 10133.60 | Termination of Claims Administrator's Liability for the Supplemental Job Displacement Voucher. |

BACKGROUND TO REGULATORY PROCEEDING

This Initial Statement of Reasons (“ISOR”) describes the purposes, rationales, and necessity of the Division of Workers’ Compensation’s (DWC) proposed amendments to the existing supplemental job displacement benefit regulations which became effective as emergency regulations on January 1, 2013. This ISOR fulfills the requirements of California’s Administrative Procedure Act. (See Government Code section 11340 et seq.)

The Legislature has added Section 4658.7 to the Labor Code and amended Sections 4658.5 and 4658.6 by implementing Senate Bill 863 (Chapter 363, stats. of 2012, effective January 1, 2013) changing the conditions under which an injured worker is entitled to the supplemental job displacement benefit.

A permanently partially disabled worker is entitled to a voucher unless the employer makes an offer of regular, modified, or alternative work that meets certain criteria. Instead of requiring the offer within 30 days of the termination of temporary disability, Labor Code section 4658.7 allows the employer to offer regular, modified, or alternative work within 60 days of receipt of a report finding that all conditions have become permanent and stationary and that the injury has caused permanent partial disability. The medical report must be from a primary treating physician, Agreed Medical Evaluator, or a Qualified Medical Evaluator.

The statute requires that the medical report that precipitates the offer must be made on a specific form created by the Administrative Director. The regulations are mandated by Labor Code section 4658.7(h), which provides the Administrative Director “shall adopt regulations for the administration of this section...” Therefore, without the implementation of these regulations, injured workers who are injured on or after January 1, 2013 will be without a means to retrain and return to gainful employment.

SUMMARY OF PROPOSED CHANGES

Section 9813.1 Notice of Supplemental Job Displacement Benefit, Notice of Offer of Modified or Alternative Work for Injuries Occurring on or After January 1, 2004.

Specific Purpose of Section 9813.1:

Section 9813.1(a) was deleted. Assembly Bill (AB) 355 (Chapter 544) repealed the requirement for this notice of the supplemental job displacement benefit by deleting former subdivision (c) of Labor Code section 4856. Benefit notice requirements were overhauled and much information has been transferred to the internet.

Necessity:

This section was deleted to conform to statutory changes.

Section 10116.9 Definitions for Articles 6.5 and 7.5

Specific Purpose of Section 10116.9:

This section provides definitions for key terms regarding vouchers. The definitions of “furnished” and “receipt” are added to ensure that its meaning, as used in the regulations, will be clear to the regulated public.

Necessity:

It is necessary to define the key terms used in the Supplemental Disability Benefit Regulations to ensure that the content and meaning of the regulations are clearly understood by the regulated community.

Section 10117 Offer of Work; Adjustment of Permanent Disability Payments.

Specific Purpose of Section 10117:

This section was amended to reflect its application to injuries occurring only until December 31, 2012.

Necessity:

This regulatory change is necessary to reflect application to injuries occurring only until December 31, 2012 to conform with statutory change.

Section 10118 Form [DWC-AD 10118 “Notice of Offer of Work for Injuries Occurring Between 1/1/04 – 12/31/12.”]

Specific Purpose of section 10118:

This section was amended to reflect its application to injuries occurring only until December 31, 2012.

Necessity:

This regulatory change is necessary to reflect application to injuries occurring only until December 31, 2012 to conform to statutory change.

Section 10133.31 Requirement to Issue Supplemental Job Displacement Nontransferable Voucher for Injuries Occurring on or After January 1, 2013.

Specific Purpose of Section 10133.31:

This section covers vouchers for injuries on or after January 1, 2013.

If the injury causes partial permanent disability, the employee is eligible for a voucher unless the employer makes an offer of regular, modified, or alternative work within 60 days after receipt by the claims administrator of the new form “Physician’s Return-to-

Work & Voucher Report” and the offer of work lasts at least 12 months. The time for issuance of the offer has changed. Instead of requiring the offer within 30 days of the termination of temporary disability, Labor Code section 4658.7 allows the employer to offer regular, modified, or alternative work within 60 days of receipt of a report finding that all conditions have become permanent and stationary and that the injury has caused permanent partial disability. The medical report must be from a primary treating physician, Agreed Medical Evaluator, or a Qualified Medical Evaluator.

The statute requires that the medical report that precipitates the offer must be made on a specific form created by the Administrative Director. Labor Code section 4658.7(h)(2) requires that the employer be fully informed of the work capacities and of activity restrictions resulting from the injury that are relevant to potential regular work, modified work, or alternative work. This is intended to make it easier for an employer to perform the return-to-work analysis and understand the injured worker’s work capacities so that it can make an informed decision.

Labor Code section 4658.7(b)(1)(A) provides that the employer has the option of providing the physician with a job description. If the option is exercised, the physician is to evaluate and describe in the form whether the work capacities and activity restrictions are compatible with the physical requirements set forth in that job description.

Labor Code section 4658.7(b)(1)(B) provides that the claims adjuster is to send the form to the employer.

Labor Code section 4658.7(c) requires an employer to offer an injured worker the voucher within 20 days after the window for making an offer of work.

Labor Code section 4658.7(d) provides that the voucher may be redeemed for as much as an aggregate of \$6,000. For injuries before January 1, 2013, the amount varies depending on the level of disability.

The expenses for which an injured worker could use the voucher were limited for injuries occurring before January 1, 2013. An injured worker could use the voucher for payment of tuition, fees, books and other expenses required by the school for retraining and skill enhancement, with 10 percent of the voucher for vocational or return-to-work counseling.

For injuries occurring on or after January 1, 2013, vouchers can be used for:

1. Payment of education-related retraining or skill enhancement, or both, at a California public school or with a provider that is certified and on the state’s Eligible Training Provider List, including payment of tuition, fees, books, and other expenses required by the school for retraining or skill enhancement;
2. Payment for occupational licensing or professional certification fees, related examination fees and examination preparation course fees;

3. Payment for the services of licensed placement agencies, vocational or return-to-work counseling and resume preparation, for as much as a combined 10 percent of the amount of the voucher;
4. Purchase of tools required by a training or educational program in which the employee is enrolled;
5. Purchase of computer equipment including, but not limited to monitors, software, networking devices, input devices (such as keyboard and mouse), peripherals (such as printers), and tablet computers of up to one thousand dollars (\$1,000) reimbursable after cost is incurred and submitted with appropriate documentation. The employee shall not be entitled to reimbursement for purchase of games or any entertainment media;
6. Up to \$500 for miscellaneous expense reimbursement or advance, payable on request without itemized documentation or accounting. The request can be made via email or regular mail. The employee is not entitled to any other voucher payment for transportation, travel, telephone or Internet access, clothing or uniforms or incidental expenses.

Necessity:

This regulation implements Labor Code section 4658.7, which provides for a Supplemental Job Displacement Benefit in the form of a \$6,000 voucher. This regulation is necessary to instruct the regulated public regarding the eligibility, timing, and manner of use of the voucher so that the regulated public is able to comply with the statute.

Section 10133.32 Form [DWC-AD 10133.32 “Supplemental Job Displacement Non-Transferable Voucher for Injuries Occurring on or after January 1, 2013.”]

Specific Purpose of Section 10133.32:

This section is the voucher form. It is sent to the injured worker with an expiration date and information on how to redeem the voucher.

Necessity:

Section 10133.32 is the mandatory form for the Supplemental Job Displacement Nontransferable Voucher for Injuries On or After January 1, 2013. It provides instructions to the employee regarding the purpose of the voucher and informs the employee that he or she must complete the voucher and return the form with documentation to the claims administrator for reimbursement and/or advances. This regulation is necessary to provide the mandatory voucher form to be used by the regulated public so that the regulated public is able to comply with the statute.

Section 10133.33 Form [DWC-AD 10133.33 “Description of Employee’s Job Duties”]

Specific Purpose of Section 10133.33:

This is an optional form which can be sent to a physician prior to any medical evaluation declaring the employee permanent and stationary with permanent partial disability.

Necessity:

Labor Code section 4658.7(b)(1)(A) provides that the employer has the option of providing the physician with a job description. If the option is exercised, the physician is to evaluate and describe in the form whether the work capacities and activity restrictions are compatible with the physical requirements set forth in that job description. If this option is exercised, this form will provide uniformity and consistency in reporting.

Section 10133.34 Offer of Work for Injuries Occurring on or after January 1, 2013.

Specific Purpose of Section 10133.34:

Labor Code section 4658.7 provides that the employer shall not be liable for the supplemental job displacement benefit if the employer timely offers regular, modified or alternative work, which must meet certain criteria. This section sets forth the criteria for an offer of work.

Necessity:

Labor Code section 4658.7 provides that the employer shall not be liable for the supplemental job displacement benefit if the employer timely offers regular, modified or alternative work, which must meet certain criteria. This regulation is necessary to clarify the criteria for an offer of work.

Section 10133.35 Form [DWC-AD 10133.35 “Notice of Offer of Work for Injuries Occurring on or after January 1, 2013.”]

Specific Purpose of Section 10133.35:

This section is a mandatory form that the employer must send to the injured employee if the employer has regular, modified or alternative work available.

Necessity:

Section 10133.35 is the mandatory form that the employer must send to the injured employee if the employer has regular, modified or alternative work available. This

regulation is necessary to provide the mandatory form to be used by the regulated public so that the regulated public is able to comply with the statute

Section 10133.36 Form [DWC-AD 10133.36 “Physician’s Return-to-Work & Voucher Report.”]

Specific Purpose of Section 10133.36:

This section is the mandatory form which Labor Code section 4658.7(h)(2) requires to fully inform the employer of work capacities and of activity restrictions resulting from the injury that are relevant to potential regular work, modified work, or alternative work.

Necessity:

Section 10133.36 is the mandatory form which Labor Code section 4658.7(h)(2) requires to fully inform the employer of work capacities and of activity restrictions resulting from the injury that are relevant to potential regular work, modified work, or alternative work. This regulation is necessary to provide the mandatory form to be used by the regulated public so that the regulated public is able to comply with the statute

Section 10133.51 Notice of Potential Right to Supplemental Job Displacement Benefit.

Specific Purpose of Section 10133.51:

This section was deleted to conform with AB 335 (Chapter 544) which deleted the requirement to provide a notice of potential rights to supplemental job displacement benefit.

Necessity:

This section was repealed to conform to statutory changes.

Section 10133.52 Form [DWC-AD "Notice of Potential Right to Supplemental Job Displacement Benefit Form."]

Specific Purpose of Section 10133.52:

This section was deleted to conform with AB 335 (Chapter 544) which deleted the requirement to provide a notice of potential rights to supplemental job displacement benefit.

Necessity:

This section was repealed to conform to statutory changes.

Section 10133.53 Form [DWC-AD 10133.53 "Notice of Offer of Modified or

Alternative Work for Injuries Occurring Between 1/1/04 – 12/31/12.”]

Specific Purpose of Section 10133.53:

This section was amended to reflect its application to injuries occurring only until December 31, 2012.

Necessity:

This section was amended to reflect its application to injuries occurring only until December 31, 2012 to conform to statutory changes.

Section 10133.55 Form [DWC-AD 10133.55 “DWC-AD 10133.55 “Request for Dispute Resolution Before the Administrative Director.”]

Specific Purpose of Section 10133.55:

This section is the form used to request dispute resolution before the Administrative Director regarding the supplemental job displacement benefit. This form was amended to include disputes regarding vouchers for injuries occurring after January 1, 2013.

Necessity:

Labor Code section 4658.5 provides that Administrative Director with the authority to prescribe the form and manner for the employer to provide the employee with the notice of rights pertaining to the Supplemental Job Disability Benefit. Labor Codes sections 133, 4658.5, and 5307.5 provide the administrative director with the authority to adopt regulations to enforce the Supplemental Job Disability Benefit. Because there may be disputes concerning the employee’s right to the Supplemental Job Disability Benefit or the employer’s offer of modified or alternative work, this form will allow the parties to present the dispute to the Administrative Director, who can then resolve the dispute.

Section 10133.57 Supplemental Job Displacement Nontransferable Training Voucher Form for Injuries Occurring between January 1, 2004 and December 31, 2012.

Specific Purpose of Section 10133.57:

This section was amended to reflect its application to injuries occurring only until December 31, 2012.

Necessity:

This section was amended to reflect its application to injuries occurring only until December 31, 2012 to conform to statutory changes.

Section 10133.58 State Approved or Accredited Schools.

Specific Purpose of Section 10133.58:

Labor Code section 4658.7(e)(1) provides that the voucher may be applied towards payment for education-related retraining or skill enhancement, or both at a provider that is on the state's Eligible Training Provider List. This section was amended to reflect changes to eligible providers.

Necessity:

This regulation is necessary to reflect changes to eligible providers of training to conform to statutory mandate.

Section 10133.60 Termination of Claims Administrator's Liability for the Supplemental Job Displacement Voucher.

Specific Purpose of Section 10133.60:

Time for use of the voucher is limited. Labor Code section 4658.7(f) provides that a voucher expires two years after the date it is furnished, or five years after the date of injury, whichever is later. The employee is not entitled to payment of reimbursement of any expenses that have not been incurred and submitted to the employer with appropriate documentation before the expiration date.

Necessity

This regulation is necessary to comply with the expiration timelines in the statute.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS

The Division of Workers' Compensation relied on the Workers' Compensation Insurance Rating Bureau (WCIRB) Updated Preliminary Estimate of Cost Impact of SB 863 as Amended August 27, 2012.

SPECIFIC TECHNOLOGIES OR EQUIPEMENT

None.

ECONOMIC IMPACT ASSESSMENT/ANALYSIS

Creation or Elimination of Jobs within the State of California

The Acting Administrative Director has determined that the proposed regulations will not have a significant adverse impact on jobs within the State of California. These regulations change existing procedures and forms to comply with statutory changes. The new statutory benefit amount is approximately equal to the average amount of the variable benefit it replaces. Minor transitional costs will be offset by the elimination of a

required notice. Therefore, the regulations will have a neutral fiscal and economic impact. The eligibility, amount, and format of the supplemental job displacement benefit are prescribed by statute. The regulations provide for the forms and procedures for receiving the benefit.

Creation of New or Elimination of Existing Business within the State of California

Businesses will not be created or eliminated. The eligibility, amount, and format of the supplemental job displacement benefit are prescribed by statute. The regulations provide for the forms and procedures for receiving the benefit.

Expansion of Business or Existing Businesses within the State of California

Businesses will not be expanded or eliminated. The eligibility, amount, and format of the supplemental job displacement benefit are prescribed by statute. The regulations provide for the forms and procedures for receiving the benefit.

Benefits of the Regulations

The benefits anticipated from the regulations are that injured workers with dates of injury on or after January 1, 2013 will also be eligible to receive the supplemental job displacement benefit. Without these regulations, there will be no obligation on the part of the employer to make a return-to-work offer and those injured after January 1, 2013 will not be entitled to the voucher. The benefit will be provided earlier in the life of the claim so that it can be fully utilized and return injured workers back to gainful employment.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESSES

The regulations will affect small businesses. However, the Acting Administrative Director has determined that the proposed regulations change existing procedures for those injured after January 1, 2013 to comply with statutory changes. The new statutory benefit amount is approximately equal to the average of the variable benefit it replaces. For injuries occurring before January 1, 2013, depending on the level of permanent disability, an eligible employee was entitled to a voucher ranging from \$4000 to \$10,000. For injuries occurring on or after January 1, 2013, eligible injured workers are entitled to the same statutory amount of \$6000 regardless of the level of disability. Therefore, the proposed regulations will not have a significant statewide adverse economic impact directly on small businesses.

REASONABLE ALTERNATIVES TO THE REGULATION AND THE DIVISION'S REASONS FOR REJECTING THOSE ALTERNATIVES

No more effective alternative, nor equally effective and less burdensome alternative, has been identified by the Acting Administrative Director at this time. The purpose of

the present rulemaking is to solicit and consider alternatives.

DUPLICATION OR CONFLICTS WITH FEDERAL REGULATIONS (Gov. Code section 11346.2(b)(7))

The proposed regulations do not duplicate or conflict with any federal regulations. There are no federal regulations that prescribe rules for workers' compensation interpreters.