

**STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
OFFICE OF THE DIRECTOR**

FINAL STATEMENT OF REASONS

**Subject Matter of Regulations: Return to Work Supplement Program
California Code of Regulations, Title 8, Chapter 8, Section 17304**

UPDATED INFORMATIVE DIGEST

There have been no changes in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Rulemaking and Initial Statement of Reasons.

**ADDITIONAL DOCUMENTS RELIED UPON
OR INCORPORATED BY REFERENCE**

None.

DETERMINATION OF MANDATE

The Director has determined that the proposed regulations do not impose a mandate on local agencies or school districts or a mandate requiring reimbursement by the State pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed regulations will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, these regulations do not constitute a "new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California constitution."

DETERMINATION OF ALTERNATIVES

In accordance with Government Code section 11346.9, subdivision (a)(4), the Director has determined that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the Department's attention would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in carrying out the purpose for which the regulations are proposed. The Department invited 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. Except as set forth and discussed in the summary and responses to comments, no reasonable alternative has been brought to the attention of the Director that would be as effective and less burdensome to affected persons than the proposed action.

MODIFICATIONS TO THE TEXT OF THE PROPOSED REGULATIONS AS ORIGINALLY NOTICED

None.

SUMMARY AND RESPONSE TO WRITTEN COMMENTS RECEIVED DURING THE 45-DAY PUBLIC COMMENT PERIOD

The Department received four letters and emails of written comments during the 45-day public comment period.

1. Ms. Diane Worley, Director of Policy Implementation of the California Applicants' Attorneys Association (CAAA) sent written comments in an email dated October 31, 2016, and also provided oral comments at the Public Hearing of the same date.

COMMENT No. 1: CAAA suggests that changes be made to section 17303, the notice part of the Return to Work Supplement (RTWS) program regulations because CAAA believes many eligible workers have not received notice of their eligibility to apply for the RTWS benefit. The proposed amendments require that within 30 days of the effective date of the regulation, the employer or claims administrators would be required to send notice of eligibility to workers regarding the RTWS benefit. The proposal also requires that the RTWS benefit be paid to the worker without further application. Lastly, the proposal to amend the notice requirements also subject employers or claims administrators to administrative penalties if the notice is not provided, or if the incorrect form is used.

Response: The Director thanks CAAA for the suggested revisions to section 17303. However, the Director declines to adopt the proposed language as it is beyond the scope of the current rulemaking. As mentioned in the original RTWS program rulemaking promulgated in April 2015, one of the goals in developing the RTWS regulations was to contain administrative costs while limiting increased burdens on claims administrators in providing the benefit. The proposal may also increase costs in administering the RTWS program without commensurate benefits to workers. However, the comment will be retained and considered for future rulemaking.

COMMENT No. 2: With respect to section 17304, the regulation setting the filing deadline for the RTWS application, CAAA proposes to eliminate any time limit for filing a RTWS application if the worker was not served with the revised Voucher form.

Response: The Director appreciates CAAA's further suggested amendments to section 17304, the subject of this rulemaking. The Director, however, declines to adopt the suggested revisions because the claims process must have reasonable limits for administration of the claims. Indeed, the current proposal would extend the deadline for one year from the effective date of this rulemaking, which would allow individuals who were issued Vouchers prior to December 1, 2015 to submit applications until March 1, 2018.

2. Mr. Jeremy Merz, Policy Advocate for the California Chamber of Commerce and Mr. Jason Schmelzer of the California Coalition on Workers' Compensation, on behalf of the

California Chamber of Commerce, California Coalition on Workers' Compensation, California State Association of Counties, American Insurance Association, Association of California Insurance Companies, and the Leagues of California Cities, jointly submitted comments via email dated October 31, 2016.

COMMENT No. 3: The above-referenced organizations state that they had not intended on making comments to the proposed rule because they support the proposed changes as embodied in the current rulemaking. However, they find it is necessary to specifically comment on CAAA's suggested changes to sections 17303 and 17304. (See Comment Nos. 1 and 2 above.) The organizations believe that CAAA's new proposal would create friction and add duplicative penalties to the claims process. The organizations urge the Department of Industrial Relations to promulgate the regulations as initially proposed in this rulemaking.

Response: The Director thanks the coalition of organizations that submitted their comments jointly. The Director agrees with the organizations and declines to implement the changes proposed by CAAA at this time. Please see Responses to Comment Nos. 1 and 2 above.

3. Ms. Ellen Sims Langille, General Counsel of the California Workers' Compensation Institute (CWCI) emailed comments dated October 31, 2016.

COMMENT No. 4: CWCI states that it does not have comments or concerns regarding the rule as proposed. However, CWCI states that it has concerns over CAAA's new proposed language. (See Comment Nos. 1 and 2 above.) The CWCI states that the RTWS benefit claims process was originally envisioned to be implemented by the Department of Industrial Relations without involvement by employers and claims administrators. Moreover, CWCI states that CAAA's new language is unworkable and would create additional burdens on claims administrators.

Response: The Director thanks the CWCI for their comments to the proposed rulemaking. The Director declines to implement the changes proposed by CAAA at this time. Please see Responses to Comment Nos. 1 and 2 above.

4. Mr. Robert Edward "Bo" Lawson emailed comments dated October 31, 2016.

COMMENT No. 5: Mr. Lawson supports extending the time deadline for submitted RTWS applications. He states that many injured workers are busy with rehabilitation efforts and may not be aware of the availability of benefits until it is too late.

Response: The Director appreciates Mr. Lawson providing his comments to the proposed rulemaking.

SUMMARY AND RESPONSE TO ORAL COMMENTS RECEIVED AT THE PUBLIC HEARING

The Department received four oral comments at the public hearing on October 31, 2016, in Oakland, California.

5. Ms. Debbie Freeman of Freeman Rehabilitation Services, a return-to-work coordinator testified at the hearing.

COMMENT No. 6: Ms. Freeman states that she supports the proposed rule. However, she suggests a new rule to specify that the Vouchers should be filled out by claims administrators, and not by third parties. She suggests that a fraud warning should be specified on the form or on the website.

Response: The Director thanks Ms. Freeman for her comments and suggestions. Ms. Freeman's suggested amendment is beyond the scope of this rulemaking. However, the comment will be retained and considered for future rulemaking.

6. Ms. Diane Worley, Director of Policy Implementation of the California Applicants' Attorneys Association (CAAA) provided oral comments at the Public Hearing and also sent written comments dated October 31, 2016. (See Comment Nos. 1 and 2 above.)

Response: The Director thanks Ms. Worley for testifying at the hearing, and for providing written comments.

7. Mr. Mitch Seaman, California Labor Federation provided comments at the hearing.

COMMENT No. 7: Mr. Seaman expressed appreciation for the proposed rulemaking. He states that the proposal provides adequate time for workers to file their RTWS application.

Response: The Director thanks Mr. Seaman for providing comments.

8. Ms. Maria Servano, Ortega Counseling Center testified at the hearing.

COMMENT No. 8: Ms. Servano states that the extension of time for workers to file their RTWS application is necessary. She observes that the documentation necessary for the benefit is often not provided to the workers. Therefore, the extension of time will assist the worker in filing their applications.

Response: The Director thanks Ms. Servano for commenting on the proposed regulation.