

Proposed Amended Retraining and Return to Work Regulations Sections 10116 through 10133.58

~~Article 12. Return To Work~~

Chapter 4.5. Division of Workers' Compensation Subchapter 1. Administrative Director--Administrative Rules

Article 6 ~~Claim form: Availability, Filing, Acknowledgement of Receipt, Dismissal~~ Retraining and Return to Work-Definitions and General Provisions

The provisions of this article are applicable to Articles 6.5, 7, and 7.5 of these regulations, except for the definitions in section 10116.8.

§10116. Filing and Reporting Requirements.

(a) "Electronic Adjudication Management System" or "EAMS" means the computer case management system used by the Division of Workers' Compensation to electronically store and maintain the Division of Workers' Compensation or appeals board's case files and to perform other case management functions.

(b) All forms, documents or correspondence submitted to the Retraining and Return to Work Unit shall be signed by the filing party and stored in the EAMS:

(1) Except for documents or forms which open a Retraining and Return to Work Unit file, all documents and forms shall contain a case number assigned by the Division of Workers' Compensation.

(2) Case opening documents shall be assigned a case number by the Division of Workers' Compensation after filing; where no case number has been previously assigned for the date of injury alleged by the injured worker. The case number shall be preceded by the prefix "VOC" for cases governed by Article 7 of these rules and "RSU" for cases governed by Article 6.5 and 7.5 of these rules. If a case number has been previously assigned by the Division of Workers' Compensation, the prefix "VOC" or "RSU" shall precede the assigned case number on a form or document filed with the Retraining and Return to Work Unit. Documents or forms filed in existing cases without a case number will be returned to the sender with instructions for proper filing.

(3) All documents presented for filing shall conform to the requirements of sections 10217, 10228 and 10232 of title 8 of the California Code of Regulations.

(4) The Division of Workers' Compensation shall scan all documents and forms filed into the EAMS case file and then the paper document or form will be destroyed not less than 30 business days after filing. A properly filed form or document shall be deemed a legal filing for all purposes.

(5) The service of all documents and forms shall conform to the methods of service described in section of 10218 of title 8 of the California Code of Regulation.

(c) All required notices, any documents or forms shall be sent to the employee and his or her attorney, if any, on a timely basis by the claims administrator in the form and manner prescribed in section 10219 of title 8 of the California Code of Regulation. Failure to provide notices timely shall subject the insurer, third party administrator or self-insured employer to administrative or civil penalties. The notices are timely when sent according to the requirements of Section 9813.

Authority cited: Sections 133, 139.48, 139.5, 4658, 4658.5 and 5307.3, Labor Code.

Reference: Sections 139.5, ~~4636, 4637, 4638 and 4645~~, Labor Code; *Godinez v. Buffets, Inc.* (2004, Significant Panel Decision) 69 Cal. Comp. Cases 1311, *Vulean Materials Co. v. WCAB* (2006, Writ Denied) 71 Cal. Comp. Cases 1346.

§10116.1. Electronic Filing Exemption

If a document is filed with EAMS as part of the electronic filing trial, that document does not need to be filed in compliance with sections 10228 and 10232 of title 8 of the California Code of Regulation.

Authority cited: Sections 111, 133, 5307.3 and 5307.4, Labor Code.

Reference: Sections 124 and 4061, Labor Code.

§10116.2. Incomplete filings.

~~(1a)~~ A form filed without the attachments or enclosures required by these rules is deemed incomplete and shall not be deemed filed for any purpose. All incomplete requests will be date stamped by the Division of Workers' Compensation.

~~(2b)~~ The Retraining and Return to Work Unit shall notify the filer and the other parties when a form or document is deemed not filed.

~~(3c)~~ Forms including filing instructions and venue lists shall be provided upon request by the Retraining and Return to Work Unit. Requests shall be submitted to:

Retraining and Return to Work Unit Headquarters
P. O. Box 420603
San Francisco, CA 94142

Or may be found at <http://www.dir.ca.gov/dwc/forms.html>

Authority cited: Sections 133, 139.48, 139.5, 4658, 4658.5 and 5307.3, Labor Code.

Reference: Sections 139.5, ~~4636, 4637, 4638 and 4645~~, Labor Code; *Godinez v. Buffets, Inc.* (2004, Significant Panel Decision) 69 Cal. Comp. Cases 1311, *Vulean Materials Co. v. WCAB* (2006, Writ Denied) 71 Cal. Comp. Cases 1346.

§10123.1 §10116.3. Reproduction of Forms, Notices.

For injuries occurring before January 1, 2004, ~~any person or entity may reproduce all the forms required vocational rehabilitation forms by this article and Article 2.6 of Chapter 2, Part 2 of Division 4 of the Labor Code (commencing with section 4635), including the pamphlet entitled "Help In Returning To Work-94" (Section 10133.2), and may only modify the heading to permit imprinting the name, address, telephone number and logo type or other identifier of an employer, insurer, or third party administrator but may not modify any form.~~

Authority cited: Sections 133, 139.5 and 5307.3, Labor Code.

Reference: Sections 139.5, ~~4636, 4637, 4638 and 4645~~, Labor Code; *Godinez v. Buffets, Inc.* (2004, Significant Panel Decision) 69 Cal. Comp. Cases 1311, *Vulean Materials Co. v. WCAB* (2006, Writ Denied) 71 Cal. Comp. Cases 1346.

§10116.4. Technical problems and unavailability of EAMS.

Technical problems with filing documents shall be governed by sections 10223 and 10225 of title 8 of the California Code of Regulation.

Authority cited: Sections 133, 139.48, 139.5, 4658, 4658.5 and 5307.3, Labor Code.

Reference: Sections 139.5, ~~4636, 4637, 4638 and 4645~~, Labor Code; *Godinez v. Buffets, Inc.* (2004, Significant Panel Decision) 69 Cal. Comp. Cases 1311, *Vulean Materials Co. v. WCAB* (2006, Writ Denied) 71 Cal. Comp. Cases 1346.

§10116.5. Retraining and Return to Work File Retention.

(a) Following a period of fifty (50) years after the filing of a document used to open a case or file, the Division of Workers' Compensation may destroy the electronic and/or paper file in each case maintained by the Retraining and Return to Work Unit.

(b) The Division of Workers' Compensation, at any time, may convert a paper file to an electronic file. If a paper case file has been converted to electronic form, the paper case file may be destroyed. The Division of Workers' Compensation shall inform the parties when a paper file is converted. If a paper case file has been converted to electronic form, the paper case file may be destroyed no less than 30 business days after the parties have been informed of the conversion.

Authority cited: Sections 133, 138.4, 139.5 and 5307.3, Labor Code.

Reference: Section 139.5, Labor Code.

§10116.6. Misfiled or misdirected documents.

(a) A request to move , substitute, or correct a document shall be made in conformity with section 10223 of title 8 of the California Code of Regulation, except that a request to substitute shall be made in lieu of a petition to substitute as allowed under section 10223(b). The authority to approve moving a document from one file to another file shall reside with the Manager of the Retraining and Return to Work Unit or his or her designee.

(b) If a document is not filed in compliance with sections 10217, 10228 and 10232 of title 8 of the California Code of Regulations and these regulations, the administrative director may in his or her discretion take the actions set forth in section 10222 of title 8 of the California Code of Regulations.

Authority cited: Sections 133, 138.4, 139.5 and 5307.3, Labor Code.

Reference: Section 139.5, Labor Code.

§10116.7. Jurisdiction where the issue of injury has not been resolved.

(a) No forms, notices or reports shall be filed with the Retraining and Return to Work Unit until the claims administrator has accepted liability for the injury or there has been a finding of compensable injury by the appeals board.

(b) Any requests for provision of retraining or return to work services and for intervention/dispute resolution require confirmation on the appropriate form by the employee or his/her representative that liability for the injury has been accepted.

(c) Forms sent to the Retraining and Return to Work Unit when a good faith issue of injury exists or where there has been no confirmation of acceptance of injury shall be returned to the sender.

Authority cited: Sections 133, 139.48, 139.5, 4658, 4658.5 and 5307.3, Labor Code.

Reference: Sections 139.5, ~~4636, 4637, 4638 and 4645~~, Labor Code; *Godinez v. Buffets, Inc.* (2004, Significant Panel Decision) 69 Cal. Comp. Cases 1311, *Vulean Materials Co. v. WCAB* (2006, Writ Denied) 71 Cal. Comp. Cases 1346.

~~§10001~~ §10116.8. Definitions for Article 6.5 and 7.5.

The following definitions apply to the provisions of Article 6.5 and 7.5 governing injuries occurring on or after January 1, 2004:

(a) "Alternative work" means work (1) offered either by the employer who employed the injured worker at the time of injury, or by another employer where the previous employment was seasonal work, (2) that the employee has the ability to perform, (3) that offers wages and compensation that are at least 85 percent of those paid to the employee at the time of injury, and (4) that is located within a reasonable commuting distance of the employee's residence at the time of injury.

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(b) "Approved ~~T~~training ~~F~~facility": means ~~a~~ training or skills enhancement facility or institution that meets the requirements of section 10133.58.

~~(b)~~ (c) "Claims ~~A~~administrator" means a self-administered insurer providing security for the payment of compensation required by Divisions 4 and 4.5 of the Labor Code, a self-administered self-insured employer, a self-administered joint powers authority, a self-administered legally uninsured, or a third-party claims administrator for a self-insured employer, insurer, legally uninsured employer, or joint powers authority.

(d) "Employer": means ~~T~~the person or entity that employed the injured employee at the time of injury.

(e) "Essential ~~F~~functions": means ~~J~~job duties considered crucial to the employment position held or desired by the employee. Functions may be considered essential because the position exists to perform the function, the function requires specialized expertise, serious results may occur if the function is not performed, other employees are not available to perform the function or the function occurs at peak periods and the employer cannot reorganize the work flow.

(f) "Insurer": ~~H~~has the same meaning as in Labor Code section 3211.

~~(e)~~ (g) "Modified ~~W~~work" means regular work modified so that the employee has the ability to perform all the functions of the job and that offers wages and compensation that are at least 85 percent of those paid to the employee at the time of injury, and located within a reasonable commuting distance of the employee's residence at the time of injury.

(h) "Nontransferable ~~T~~training ~~V~~voucher": means ~~A~~a document provided to an employee that allows the employee to enroll in education-related training or skills enhancement. The document shall include identifying information for the employee and claims administrator, specific information regarding the value of the voucher pursuant to Labor Code section 4658.5.

(i) "Notice": means ~~A~~a required letter or form generated by the claims administrator and directed to the injured employee.

(j) "Offer of ~~M~~modified or ~~A~~alternative ~~W~~work": means ~~A~~an offer to the injured employee of medically appropriate employment with the date-of-injury employer in a form and manner prescribed by the Administrative Director.

(k) "Parties": means ~~T~~the employee, the claims administrator and their designated representatives, if any.

~~(d)~~ (l) "Permanent and stationary" means the point in time when the employee has reached maximal medical improvement, meaning his or her condition is well stabilized, and unlikely to change substantially in the next year with or without medical treatment, based on (1) an opinion from a treating physician, AME, or QME; (2) a judicial finding by a Workers' Compensation Administrative Law Judge, the Workers' Compensation Appeals Board, or a court; or (3) a stipulation that is approved by a Workers' Compensation Administrative Law Judge or the Workers' Compensation Appeals Board.

(m) "Permanent ~~P~~artial ~~D~~isability ~~A~~ward" means a final award of permanent partial disability determined by a workers' compensation administrative law judge or the appeals board.

(~~e~~)(n) "Regular ~~W~~ork" means the employee's usual occupation or the position in which the employee was engaged at the time of injury and that offers wages and compensation equivalent to those paid to the employee at the time of injury, and located within a reasonable commuting distance of the employee's residence at the time of injury.

(~~f~~)(o) "Seasonal ~~W~~ork" means employment as a daily hire, a project hire, or an annual season hire.

(p) "Supplemental ~~J~~ob ~~D~~isplacement ~~B~~enefit" means ~~A~~n educational retraining or skills enhancement allowance for injured employees whose employers are unable to provide work consistent with the requirements of Labor Code section 4658.6.

(q) "Vocational & ~~R~~eturn to ~~W~~ork ~~C~~ounselor (VRTWC)" means ~~A~~a person or entity capable of assisting a person with a disability with development of a return to work strategy and whose regular duties involve the evaluation, counseling and placement of disabled persons. A VRTWC must have at least an undergraduate degree in any field and three or more years full time experience in conducting vocational evaluations, counseling and placement of disabled adults.

(r) "Work ~~R~~estrictions" means ~~P~~ermanent medical limitations on employment activity established by the treating physician, qualified medical examiner or agreed medical examiner.

Authority cited: Sections 133, 139.48, 4658.5 and 5307.3, Labor Code.

Reference: Sections 124, 139.48, 4658.1, 4658.5 and 4658.6, Labor Code; *Henry v. WCAB* (1998) 68 Cal.App.4th 981.

Article 6.5 Return to Work

~~§10002~~ §10117. Offer of Work; Adjustment of Permanent Disability Payments.

(a) This section shall apply to all injuries occurring on or after January 1, 2005, and to the following employers:

(1) Insured employers who employed 50 or more employees at the time of the most recent policy inception or renewal date for the insurance policy that was in effect at the time of the employee's injury;

(2) Self-insured employers who employed 50 or more employees at the time of the most recent filing by the employer of the Self-Insurer's Annual Report that was in effect at the time of the employee's injury; and

(3) Legally uninsured employers who employed 50 or more employees at the time of injury.

(b) Within 60 calendar days from the date that the condition of an injured employee with permanent partial disability becomes permanent and stationary:

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(1) If an employer does not serve the employee with a notice of offer of regular work, modified work or alternative work for a period of at least 12 months, each payment of permanent partial disability remaining to be paid to the employee from the date of the end of the 60 day period shall be paid in accordance with Labor Code section 4658(d)(1) and increased by 15 percent.

(2) If an employer serves the employee with a notice of offer of regular work, modified work or alternative work for a period of at least 12 months, and in accordance with the requirements set forth in paragraphs (3) and (4), each payment of permanent partial disability remaining to be paid from the date the offer was served on the employee shall be paid in accordance with Labor Code section 4658(d)(1) and decreased by 15 percent, regardless of whether the employee accepts or rejects the offer.

(3) The employer shall use Form DWC-AD 10133.53 (Section 10133.53) to offer modified or alternative work, or Form DWC-AD 10003 10118 (Section 10003 10118) to offer regular work ~~and shall file the forms with the Retraining and Return to Work Unit immediately after serving the form on the employee.~~ The claims administrator may serve the offer of work on behalf of the employer.

~~(A) The DWC-AD 10133.53 (Section 10133.53) or form DWC-AD 10118 (Section 10118) filed with the Retraining and Return to Work Unit by the claims administrator shall contain a proof of service on the employee.~~

~~(B) The employee, or their representative, within the time specified in the form DWC-AD 10133.53 (Section 10133.53) to offer modified or alternative work or form DWC-AD 10118 (Section 101018) shall file the completed form as paper document under section 10232.~~

(4) The regular, alternative, or modified work that is offered by the employer pursuant to paragraph (2) shall be located within a reasonable commuting distance of the employee's residence at the time of the injury, unless the employee waives this condition. This condition shall be deemed to be waived if the employee accepts the regular, modified, or alternative work, and does not object to the location within 20 calendar days of being informed of the right to object. The condition shall be conclusively deemed to be satisfied if the offered work is at the same location and the same shift as the employment at the time of injury.

(c) If the claims administrator relies upon a permanent and stationary date contained in a medical report prepared by the employee's treating physician, QME, or AME, but there is subsequently a dispute as to an employee's permanent and stationary status, and there has been a notice of offer of work served on the employee in accordance with subdivision (b), the claims administrator may withhold 15% from each payment of permanent partial disability remaining to be paid from the date the notice of offer was served on the employee until there has been a final judicial determination of the date that the employee is permanent and stationary pursuant to Labor Code section 4062.

(1) Where there is a final judicial determination that the employee is permanent and stationary on a date later than the date relied on by the employer in making its offer of work, the employee shall be reimbursed any amount withheld up to the date a new notice of offer of work is served on the employee pursuant to subdivision (b).

(2) Where there is a final judicial determination that the employee is not permanent and stationary, the employee shall be reimbursed any amount withheld up to the date of the determination.

(3) The claims administrator is not required to reimburse permanent partial disability benefit payments that have been withheld pursuant to this subdivision during any period for which the employee is entitled to temporary disability benefit payments.

(d) If the employee's regular work, modified work, or alternative work that has been offered by the employer pursuant to paragraph (1) of subdivision (b) and has been accepted by the employee, is terminated prior to the end of the period for which permanent partial disability benefits are due, the amount of each remaining permanent partial disability payment from the date of the termination shall be paid in accordance with Labor Code section 4658 (d) (1), as though no decrease in payments had been imposed, and increased by 15 percent. An employee who voluntarily terminates his or her regular work, modified work, or alternative work shall not be eligible for the 15 percent increase in permanent partial disability payments pursuant to this subdivision.

(e) Nothing in this section shall prevent the parties from settling or agreeing to commute the permanent disability benefits to which an employee may be entitled. However, if the permanent disability benefits are commuted by a ~~Workers' Compensation~~ Administrative Law Judge or the ~~Workers' Compensation Appeals Board~~ pursuant to Labor Code section 5100, the commuted sum shall account for any adjustment that would have been required by this section if payment had been made pursuant to Labor Code section 4658.

(f) When the employer offers regular, modified or alternative work to the employee that meets the conditions of this section and subsequently learns that the employee cannot lawfully perform regular, modified or alternative work, the employer is not required to provide the regular, modified or alternative work.

(g) If the employer offers regular, modified, or alternative seasonal work to the employee, the offer shall meet the following requirements:

(1) the employee was hired for seasonal work prior to injury;

(2) the offer of regular, modified or alternative seasonal work is of reasonably similar hours and working conditions to the employee's previous employment, and the one year requirement may be satisfied by cumulative periods of seasonal work;

(3) the work must commence within 12 months of the date of the offer; and

(4) The offer meets the conditions set forth in this section.

Authority cited: Sections 133, 139.48 and 5307.3, Labor Code.

Reference: Sections 139.48 and 4658, Labor Code; *Del Taco v. WCAB* (2000) 79 Cal.App.4th 1437; *Anzelde v. WCAB* (1996) 61 Cal. Comp. Cases 1458 (~~Writ~~ denied); and *Henry v. WCAB* (1998) 68 Cal.App.4th 981.

~~§ 10003.~~ §10118. Form [DWC AD ~~10003-10118~~ Notice of Offer of Work].

DWC AD ~~10003-10118~~ Notice of Offer of Work.

[Insert New Form]

Authority cited: Sections 133, 139.48 and 5307.3, Labor Code.

Reference: Sections 139.48 and 4658, Labor Code.

~~§ 10004.~~ §10119. Return to Work Program.

(a) This section shall apply to injuries occurring on or after July 1, 2004;

(b) An "Eligible Employer" means any employer, except the state or an employer eligible to secure the payment of compensation pursuant to subdivision (c) of Section 3700, who, based on the employer's payroll records or other equivalent documentation or evidence, employed 50 or fewer full-time employees on the date of injury.

(c) "Full-time employee" means an employee who, during the period of his or her employment within the year preceding the injury, worked an average of 32 or more hours per week.

(d) The Return to Work Program is administered by the ~~A~~administrative ~~D~~director for the purpose of promoting the employee's early and sustained return to work following a work-related injury or illness.

(e) This program shall be funded by the Return to Work Fund, which shall consist of all penalties collected pursuant to Labor Code section 5814.6 and transfers made to this fund by the ~~A~~administrative ~~D~~director from the Workers' Compensation Administrative Revolving Fund established pursuant to Labor Code section 62.5. The reimbursements offered to eligible employees as set forth in this section shall be available only to the extent funds are available.

(f) An eligible employer shall be entitled to reimbursement through this program for expenses incurred to make workplace modifications to accommodate an employee's return to modified or alternative work, up to the following maximum amounts:

(1) \$1,250 to accommodate each temporarily disabled employee, for expenses incurred in allowing such employee to perform modified or alternative work within physician-imposed temporary work restrictions; and

(2) \$2,500 to accommodate each permanently disabled employee, for expenses incurred in returning such employee to sustained modified or alternative work within physician-imposed permanent work restrictions; however, if an employer who has received reimbursement for a temporarily disabled employee under paragraph (1) is also requesting reimbursement for the same employee for accommodation of permanent disability, the maximum available reimbursement is \$2,500. For the purpose of this subdivision, "sustained modified or alternative work" is work anticipated to last at least 12 months.

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(g) Reimbursement shall be provided for any of the following expenses, provided they are specifically prescribed by a physician or are reasonably required by restrictions set forth in a medical report:

- (1) modification to worksite;
- (2) equipment;
- (3) furniture;
- (4) tools; or
- (5) any other necessary costs reasonably required to accommodate the employee's restrictions.

(h) An eligible employer seeking reimbursement pursuant to subdivision (d) shall submit a "Request for Reimbursement of Accommodation Expenses" (Form DWC AD ~~10005~~ 10120, section ~~10005~~ 10120) to the Division of Workers' Compensation Return to Work Program within ninety (90) calendar days from the date of the expenditure for which the employer is seeking reimbursement. As a condition to reimbursement, the expenditure shall not have been paid or covered by the employer's insurer or any source of funding other than the employer. The filing date may be extended upon a showing of good cause for such extension. The employer shall attach to its request copies of all pertinent medical reports that contain the work restrictions being accommodated, any other documentation supporting the request, and all receipts for accommodation expenses. ~~Requests should be sent to the mailing address for the Division of Workers' Compensation Return to Work Program that is listed in the web site of the Division of Workers' Compensation, at:~~
~~http://www.dir.ca.gov/dwc/dwc_home_page.htm.~~ Requests should be sent to the mailing address for the Division of Workers' Compensation Return to Work Program that is listed in the web site of the Division of Workers' Compensation, at: http://www.dir.ca.gov/dwc/dwc_home_page.htm

(i) The ~~Administrative Director~~ or his or her designee shall review each "Request for Reimbursement of Accommodation Expenses," and within sixty (60) business days of receipt shall provide the employer with notice of one of the following:

- (1) that the request has been approved, together with a check for the reimbursement allowed, and an explanation of the allowance, if less than the maximum amounts set forth in subdivision (d); or
- (2) that the request has been denied, with an explanation of the basis for denial; or
- (3) that the request is deficient or incomplete and indicating what clarification or additional information is necessary.

(j) In the event there are insufficient funds in the Return to Work Fund to fully reimburse an employer or employers for workplace modification expenses as required by this section, the ~~Administrative Director~~ shall utilize the following priority list in establishing the amount of reimbursement or whether reimbursement is allowed, in order of decreasing priority as follows:

- (1) Employers who have not previously received any reimbursement under this program;

(2) Employers who have not previously received any reimbursement under this program for the employee who is the subject of the request;

(3) Employers who are seeking reimbursement for accommodation required in returning a permanently disabled employee to sustained modified or alternative work; and,

(4) Employers who are requesting reimbursement for accommodation required by a temporarily disabled employee.

(k) An eligible employer may appeal the ~~Administrative Director's~~ notice under subdivision (i) by filing a ~~Declaration of Readiness to proceed with the district office of the Workers' Compensation Appeals Board~~ within twenty calendar days of the issuance of the notice, together with a petition entitled "Petition Appealing Appeal of Administrative Director's Reimbursement Allowance," setting forth the basis of the appeal pursuant to section 10294 of title 8 of the California Code of Regulations. ~~A copy of the Declaration of Readiness to Proceed and the petition shall be concurrently served on the Administrative Director.~~

Authority cited: Sections 133, 139.48 and 5307.3, Labor Code.

Reference: Sections 62.5, 139.48 and 5814.6, Labor Code.

~~§10005-§10120~~. Form [DWC AD ~~10005-10120~~ Request for Reimbursement of Accommodation Expenses].

Form DWC AD ~~10005-10120~~ - Request for Reimbursement of Accommodation Expenses For injuries on or after July 1, 2004

[Insert New Form]

Authority cited: Sections 133, 139.48 and 5307.3, Labor Code.

Reference: Sections 62.5, 139.48 and 5814.6, Labor Code.

Article 7. Vocational Rehabilitation

§10123. Vocational Rehabilitation Reporting Requirements.

~~(a) Except for notices required by this article to be sent to an employee, all forms or correspondence submitted to the Rehabilitation Unit shall include:~~

~~(1) Rehabilitation Unit file number, or and neither a Rehabilitation Unit file or a Case Initiation Document.~~

~~(2) Case Initiation Document or promulgated form requesting action which includes the Rehabilitation Unit file number as the cover sheet for the information being submitted.~~

~~(b) All forms, notices, reports and other communications subject to Labor Code section 139.5 and article 2.6 commencing with Labor Code section 4635 are to be served simultaneously on all parties.~~

~~(c) All forms and reports as required by this article shall be submitted to the correct Rehabilitation Unit District Office in the manner prescribed by the Administrative Director.~~

~~(1) Incomplete forms or forms with incomplete information attached may be returned to the sender. Each form has instructions as to the reports/information which must be attached.~~

~~(2) A form filed without the attachments and a specific listing of all enclosures as required by the instruction section of the form is deemed incomplete and shall be denied or returned to sender for proper submission. All incomplete requests will be date stamped.~~

~~(3) The Rehabilitation Unit shall serve a copy of the transmittal information upon the other parties when a form is returned.~~

~~(d) Filing instructions and venue lists shall be provided upon request by the Rehabilitation Unit. Requests shall be submitted to:~~

REHABILITATION UNIT HEADQUARTERS
P. O. BOX 420603
SAN FRANCISCO, CA 94142

~~(e) All forms submitted to the Rehabilitation Unit shall bear original signatures and shall be on forms as issued by the Administrative Director or forms approved by the Administrative Director.~~

~~(1) No forms, notices or reports shall be forwarded to the Rehabilitation Unit when the claims administrator has raised a good faith issue of injury arising out of and occurring in the course of employment, until the claims administrator has accepted liability for the injury or there has been a finding of injury by the Workers' Compensation Appeals Board.~~

~~(2) Any requests for provision of rehabilitation services and for intervention/dispute resolution require confirmation by the employee or his/her representative that liability for the injury has been accepted.~~

~~Forms sent to the Rehabilitation Unit when a good faith issue of injury exists or where there has been no confirmation of acceptance of injury, shall be returned to the sender.~~

~~(f) All required notices shall be sent to the employee and his or her attorney, if any, on a timely basis by the claims administrator in the form and manner prescribed by the Administrative Director. Failure to provide notices timely shall subject the insurer, third party administrator or self-insured employer to administrative or civil penalties. The notices are timely when sent according to the requirements of Section 9813.~~

~~(g-a) For injuries occurring prior to January 1, 2004, t~~The insurer shall advise the employer of a potential refund as described in former Labor Code section 4638 no later than the required date of the initial notice of potential eligibility.

(h-b) The claims administrator shall retain a true copy of all vocational rehabilitation notices sent to the employee and shall provide the unit with a copy upon request.

Authority cited: Sections 133, 139.5 and 5307.3, Labor Code.

Reference: Sections 139.5, ~~4636, 4637, 4638 and 4645~~, Labor Code; *Godinez v. Buffets, Inc.* (2004, Significant Panel Decision) 69 Cal. Comp. Cases 1311, *Vulean Materials Co. v. WCAB* (2006, Writ Denied) 71 Cal. Comp. Cases 1346.

§10127. Dispute Resolution.

When there is a dispute regarding the provision of vocational rehabilitation services, either the employee or claims administrator may request the Rehabilitation Unit to resolve the dispute. All requests for dispute resolution shall be submitted as follows:

(a) If the request for dispute resolution results from an employee's objection to the claims administrator's intention to withhold maintenance payment pursuant to section 4643:

(1) The employee shall ~~forward to file with~~ file with the Rehabilitation Unit a request for Dispute Resolution, DWC Form RU 103, ~~to the correct Rehabilitation Unit district office~~ with copy to all parties;

(2) The employee shall state his/her position with full explanation of his/her objection, and attach the same to the request for Rehabilitation Unit dispute resolution; copies shall be served on all parties;

(3) The Rehabilitation Unit shall schedule and hold a conference and issue a determination within ten (10) days of the date of receipt of the employee's objection.

(b) If a dispute exists regarding identification of a vocational goal for injuries occurring on or after 1/1/94, the parties may contact the Rehabilitation Unit for a telephone conference discussion. The Rehabilitation Unit Consultant will provide direction, issue a determination or schedule a conference to be held on an expedited basis within 10 days.

(c) Excluding (a) above, all other requests for Rehabilitation Unit dispute resolution shall be submitted by completing a Request For Dispute Resolution, DWC Form RU-103, and attaching all medical and vocational reports not previously ~~submitted to the Rehabilitation Unit~~ filed, along with and a format summary of the Informal Conference. ~~The format summary identifies the disputed issues and the positions of the parties, including supporting information which shall be attached.~~ The request for dispute resolution and all attached documentation shall be served on the parties.

(d) Excluding (a) above, and in instances where an informal conference is either impossible or impractical:

(1) The requesting party shall:

~~(aa)~~ A) Complete the request form;

~~(bb)~~ (B) Attach all pertinent medical and vocational reports not previously submitted to the Rehabilitation Unit;

~~(cc)~~ (C) Clearly identify why an informal conference is inappropriate.

~~(dd)~~ (D) Clearly state the issue(s) and identify supporting information for each issue and position;

~~(ee)~~ (E) Serve copies on all parties.

(2) Upon receipt of the request above, the opposing party shall have twenty (20) days to forward their position with supporting information to the Rehabilitation Unit with copies to all parties.

(3) Upon receipt of all information, the Rehabilitation Unit shall either issue its determination based on the record, will ask for additional information, set the matter for formal conference, or direct the parties to meet informally.

(e) Pursuant to (b), (c) and (d) above, the Rehabilitation Unit shall issue a determination within fifty (50) days of the receipt of the original request. Where a determination denying a request issues, any further requests for dispute resolution must be accompanied with a new or updated DWC Form RU-103.

(f) When a dispute arises concerning the cost-effectiveness of providing vocational rehabilitation services outside of California, the Rehabilitation Unit may assign an Independent Vocational Evaluator (IVE) or Qualified Rehabilitation Representative (QRR), at the expense of the employer and subject to the maximum vocational rehabilitation expenditure contained in Labor Code Section 139.5, to assist the Unit in issuing a determination pursuant to Labor Code Section 4644(g).

Authority cited: Sections 133, 139.5 and 5307.3, Labor Code.

Reference: Sections 139.5, ~~4639, 4644 and 4645~~, Labor Code; *Godinez v. Buffets, Inc.* (2004, Significant Panel Decision) 69 Cal. Comp. Cases 1311, *Vulean Materials Co. v. WCAB* (2006, Writ Denied) 71 Cal. Comp. Cases 1346.

§10127.1. Conferences.

(a) Upon receipt of "Request for Dispute Resolution," DWC Form RU-103, the Rehabilitation Unit shall determine if a formal conference is necessary. Notices shall be served by the Rehabilitation Unit on all parties, identifying the time, date, and location of any conference. Where the request is initiated by an unrepresented employee, the Rehabilitation Unit or an Information & Assistance Officer may assist the employee in completing and serving the form.

(b) Rehabilitation Unit Conferences shall be held on the date and time scheduled. Any party unable to attend the conference, may submit his/her position, on the issue(s) in writing, to the Rehabilitation Unit district office holding the conference. Following the conference, the Rehabilitation Unit shall issue a determination based on its file, information provided during the conference, and any written positions submitted prior to or at the time of the conference.

(c) If the dispute is resolved by the parties before the conference has been held, the party who requested the conference shall contact the Rehabilitation Unit for permission to cancel the conference. The Rehabilitation Unit shall notify the parties of the cancellation. If permission to cancel is given, the requesting party shall notify all parties of the cancellation, and forward, in writing to the Rehabilitation Unit, with copies to all parties, notification that the conference has been cancelled. The requesting party shall include in the notification the issue(s) in dispute and the resolution reached by the parties.

(d) Except where the conference is held pursuant to Labor Code section 4643, a determination shall be issued within thirty (30) days of the date of conference unless additional information is requested by the Rehabilitation Unit, in which case, determination shall be issued thirty (30) days from the date of receipt of all further requested information.

Authority cited: Sections 133, 139.5 and 5307.3, Labor Code.

Reference: Sections 139.5, ~~4638 and 4639~~, Labor Code; *Godinez v. Buffets, Inc.* (2004, Significant Panel Decision) 69 Cal. Comp. Cases 1311, *Vulean Materials Co. v. WCAB* (2006, Writ Denied) 71 Cal. Comp. Cases 1346.

§10128. Request for Order of Rehabilitation Services.

If the claims administrator fails to voluntarily provide services, subsequent to the employee's written demand with substantiation of eligibility for services upon the claims administrator, the employee may, on DWC Form RU-103 "Request for Dispute Resolution", request the Rehabilitation Unit to order the provisions of vocational rehabilitation services at the expense of the employer. A copy of the demand and copies of all medical and vocational reports not previously filed including a listing of documents shall be attached to the DWC Form RU-103, with a completed Case Initiation Document, ~~DWC form RU-101. Medical reports filed by the parties will be returned upon request.~~

Authority cited: Sections 133, 139.5 and 5307.3, Labor Code.

Reference: Sections 139.5 and ~~4639~~, Labor Code; *Godinez v. Buffets, Inc.* (2004, Significant Panel Decision) 69 Cal. Comp. Cases 1311, *Vulean Materials Co. v. WCAB* (2006, Writ Denied) 71 Cal. Comp. Cases 1346.

§10133.13. Form RU-102 “Vocational Rehabilitation Plan” and Form Filing Instructions.

Rehabilitation Unit California Division of Workers' Compensation Form RU-102.

[Insert New Form]

Authority cited: Sections 133, 139.5 and 5307.3, Labor Code.

Reference: Sections 139.5, ~~4635, 4636 and 4638~~, Labor Code; *Godinez v. Buffets, Inc.* (2004, Significant Panel Decision) 69 Cal. Comp. Cases 1311, *Vulean Materials Co. v. WCAB* (2006, Writ Denied) 71 Cal. Comp. Cases 1346.

§10133.14. Form RU-103 “Request for Dispute Resolution” and Form Filing Instructions.

Rehabilitation Unit California Division of Workers' Compensation Form RU-103.

[Insert New Form]

Authority cited: Sections 133, 139.5 and 5307.3, Labor Code.

Reference: Section 139.5 ~~4638~~, Labor Code; *Godinez v. Buffets, Inc.* (2004, Significant Panel Decision) 69 Cal. Comp. Cases 1311, *Vulean Materials Co. v. WCAB* (2006, Writ Denied) 71 Cal. Comp. Cases 1346.

§10133.16. Form RU-105 “Notice of Termination of Vocational Rehabilitation Services” and Form Filing Instructions.

Rehabilitation Unit California Division of Workers' Compensation RU-105.

[Insert New Form]

Authority cited: Sections 133, 139.5 and 5307.3, Labor Code.

Reference: Sections 139.5, ~~4637 and 4644~~, Labor Code; *Godinez v. Buffets, Inc.* (2004, Significant Panel Decision) 69 Cal. Comp. Cases 1311, *Vulean Materials Co. v. WCAB* (2006, Writ Denied) 71 Cal. Comp. Cases 1346.

§10133.22. Form RU-122 “Settlement of Prospective Vocational Rehabilitation Services” and Form Filing Instructions.

Rehabilitation Unit California Division of Workers' Compensation Form RU-122
SETTLEMENT OF PROSPECTIVE VOCATIONAL REHABILITATION SERVICES.

[Insert New Form]

Authority cited: Sections 133, 139.5 and 5307.3, Labor Code.

Reference: Sections 139.5 ~~and 4646~~, Labor Code; *Godinez v. Buffets, Inc.* (2004, Significant Panel Decision) 69 Cal. Comp. Cases 1311, *Vulean Materials Co. v. WCAB* (2006, Writ Denied) 71 Cal. Comp. Cases 1346.

§10133.3. Rehabilitation File Retention.

~~(a) The unit shall retain its files until 90 days from the date of the filing of the "Notice of Termination of Rehabilitation Services", DWC RU 105, unless a timely objection to the notice is filed by the employee. File retention shall be extended to 90 days beyond a final decision of the appeals board on a petition which appeals a unit finding, decision or determination. If no activity on a file is reported to the Rehabilitation Unit for more than 18 months, the Unit shall not retain its file.~~

~~(b) When the parties, subsequent to the time limits in subsection (a), request a determination by the unit, the unit may require the parties to provide copies of pertinent notices, reports and documents which are necessary for the unit to make its determination. If no activity on a file is reported to the Rehabilitation Unit for more than 18 months, the Unit shall not retain its file.~~

~~Authority cited: Sections 133, 138.4, 139.5 and 5307.3, Labor Code.
Reference: Section 139.5, Labor Code.~~

Article 7.5. Supplemental Job Displacement Benefit

§10133.50. Definitions.

~~(a) The following definitions apply for injuries occurring on or after January 1, 2004:~~

~~(1) Alternative Work. Work that the employee has the ability to perform, that offers wages and compensation that are at least 85 percent of those paid to the employee at the time of injury, and that is located within reasonable commuting distance of the employee's residence at the time of injury.~~

~~(2) Approved Training Facility. A training or skills enhancement facility or institution that meets the requirements of section 10133.58.~~

~~(3) Claims Administrator. The person or entity responsible for the payment of compensation for a self-administered insurer providing security for the payment of compensation required by Divisions 4 and 4.5 of the Labor Code, a self-administered self-insured employer, or a third-party claims administrator for a self-insured employer, insurer, legally uninsured employer, or joint powers authority.~~

~~(4) Employer. The person or entity that employed the injured employee at the time of injury.~~

~~(5) Essential Functions. Job duties considered crucial to the employment position held or desired by the employee. Functions may be considered essential because the position exists to perform the function, the function requires specialized expertise, serious results may occur if the function is not performed, other employees are not available to perform the function or the function occurs at peak periods and the employer cannot reorganize the work flow.~~

~~(6) Insurer. Has the same meaning as in Labor Code section 3211.~~

~~(7) Modified Work. Regular work modified so that the employee has the ability to perform all the functions of the job and that offers wages and compensation that are at least 85 percent of those paid to the employee at the time of injury, and located within a reasonable commuting distance of the employee's residence at the time of injury.~~

~~(8) Nontransferable Training Voucher. A document provided to an employee that allows the employee to enroll in education-related training or skills enhancement. The document shall include identifying information for the employee and claims administrator, specific information regarding the value of the voucher pursuant to Labor Code section 4658.5.~~

~~(9) Notice. A required letter or form generated by the claims administrator and directed to the injured employee.~~

~~(10) Offer of Modified or Alternative Work. An offer to the injured employee of medically appropriate employment with the date of injury employer in a form and manner prescribed by the Administrative Director.~~

~~(11) Parties. The employee, the claims administrator and their designated representatives, if any.~~

~~(12) Permanent Partial Disability Award. A final award of permanent partial disability determined by a Workers' Compensation Administrative Law Judge or the Workers' Compensation Appeals Board.~~

~~(13) Regular Work. The employee's usual occupation or the position in which the employee was engaged at the time of injury and that offers wages and compensation equivalent to those paid to the employee at the time of injury, and located within a reasonable commuting distance of the employee's residence at the time of injury.~~

~~(14) Supplemental Job Displacement Benefit. An educational retraining or skills enhancement allowance for injured employees whose employers are unable to provide work consistent with the requirements of Labor Code section 4658.6.~~

~~(15) Vocational & Return to Work Counselor (VRTWC). A person or entity capable of assisting a person with a disability with development of a return to work strategy and whose regular duties involve the evaluation, counseling and placement of disabled persons. A VRTWC must have at least an undergraduate degree in any field and three or more years full time experience in conducting vocational evaluations, counseling and placement of disabled adults.~~

~~(16) Work Restrictions. Permanent medical limitations on employment activity established by the treating physician, Qualified Medical Examiner or Agreed Medical Examiner.~~

~~Authority cited: Sections 133, 4658.5 and 5307.3, Labor Code.~~

~~Reference: Sections 124, 4658.1, 4658.5 and 4658.6, Labor Code.~~

§10133.53. Form DWC-AD 10133.53 "Notice of Offer of Modified or Alternative Work."

Form DWC-AD 10133.53.

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Authority cited: Sections 133, 4658.5 and 5307.3, Labor Code.
Reference: Sections 4658, 4658.1, 4658.5 and 4658.6, Labor Code.

§10133.54. Dispute Resolution.

(a) This section and section 10133.55 shall only apply to injuries occurring on or after January 1, 2004.

(b) When there is a dispute regarding the Supplemental Job Displacement Benefit, the employee, or claims administrator may request the ~~A~~aadministrative ~~D~~director to resolve the dispute.

(c) The party requesting the ~~A~~aadministrative ~~D~~director to resolve the dispute shall:

(1) Complete Form DWC-AD 10133.55 "Request for Dispute Resolution before the Administrative Director;"

(2) Clearly state the issue(s) and identify supporting information for each issue and position;

(3) Attach all pertinent documents;

(4) Submit ~~the original~~ a copy of the request and all attached documents to the ~~A~~aadministrative ~~D~~director and serve a copy of the request and all attached documents on all parties; and

(5) Sign and date the proof of service section of Form DWC-AD 10133.55 "Request for Dispute Resolution before the Administrative Director."

(d) The opposing party shall have twenty (20) calendar days from the date of the proof of service of the Request to submit the original response and all attached documents to the ~~A~~aadministrative ~~D~~director and serve a copy of the response and all attached documents on all parties.

(e) The ~~A~~aadministrative ~~D~~director or his or her designee may request additional information from the parties.

(f) The ~~A~~aadministrative ~~D~~director or his or her designee shall issue a written determination and order based solely on the request, response, and any attached documents within thirty (30) calendar days of the date the opposing party's response and supporting information is due. If the ~~A~~aadministrative ~~D~~director or his or her designee requests additional information, the written determination shall be issued within thirty (30) calendar days from the receipt of the additional information. In the event no decision is issued within sixty (60) calendar days of the date the opposing party's response is due or within sixty (60) calendar days of the ~~A~~aadministrative ~~D~~director's receipt of the requested additional information, whichever is later, the request shall be deemed to be denied.

(g) Either party may appeal the determination and order of the ~~A~~aadministrative ~~D~~director or by filing a written petition together with a ~~D~~declaration of ~~R~~readiness to ~~P~~proceed pursuant to section ~~10414~~ 10250 ~~with the local district office of the Workers' Compensation Appeals Board~~ within twenty

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calendar days of the issuance of the decision or within twenty days after a request is deemed denied pursuant to subdivision (f). The petition shall set forth the specific factual and/or legal reason(s) for the appeal as set forth in section 10294.5 of title 8 of the California Code of Regulations. ~~A copy of the petition and a copy of the Declaration of Readiness to Proceed shall be concurrently served on the Administrative Director.~~

Authority cited: Sections 133, 4658.5 and 5307.3, Labor Code.

Reference: Sections 4658.5 and 4658.6, Labor Code.

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

Form DWC-AD 10133.55.

[Insert New Form]

Authority cited: Sections 133, 4658.5 and 5307.3, Labor Code.

Reference: Section 4658.5, Labor Code.

§10133.56. Requirement to Issue Supplemental Job Displacement Nontransferable Training Voucher.

(a) This section and section 10133.57 shall only apply to injuries occurring on or after January 1, 2004.

(b) The employee shall be eligible for the Supplemental Job Displacement Benefit when:

(1) the injury causes permanent partial disability; and

(2) within 30 days of the termination of temporary disability indemnity payments, the claims administrator does not offer modified or alternative work in accordance with Labor Code section 4658.6; and

(3) either the injured employee does not return to work for the employer within 60 days of the termination of temporary disability benefits; or

(4) in the case of a seasonal employee, where the employee is unable to return to work within 60 days of the termination of temporary disability benefits because the work season has ended, the injured employee does not return to work on the next available work date of the next work season.

(c) When the requirements under subdivision (b) have been met, the claims administrator shall provide a nontransferable voucher for education-related retraining or skill enhancement or both to the employee within 25 calendar days from the issuance of the permanent partial disability award by the

Workers' Compensation Administrative Law Judge or the Workers' Compensation Appeals Board.

~~(1) The employer shall file the form DWC-AD 10133.57 with the Retraining and Return to Work Unit simultaneously with serving the employee. The claims administrator may serve the offer of work on behalf of the employer.~~

~~(2) After the service of the form on the employee, the employer shall file a completed proof of service with the Retraining and Return to Work Unit.~~

(d) The voucher shall be issued to the employee allowing direct reimbursement to the employee upon the employee's presentation to the claims administrator of documentation and receipts or as a direct payment to the provider of the education related training or skill enhancement and/or to the VRTWC. ~~The employer, or its representative, shall file the completed form DWC-AD 10133.57 with the Retraining and Return to Work Unit pursuant to section 10232.~~

(e) The voucher must indicate the appropriate level of money available to the employee in compliance with Labor Code section 4658.5.

(f) The mandatory voucher form is set forth in Section 10133.57.

(g) The voucher shall certify that the school is approved ~~and if outside of California, approval by one of the Regional Associations of Schools and Colleges authorized by the United States Department of Education or has approval from a California State agency that has an agreement with the United States Department of Education or Regional Associations of School and Colleges for the regulation and oversight of non-degree granting private post secondary providers.; ois required similarly to the Bureau for Private Postsecondary (BPPVE).~~

(h) The claims administrator shall issue the reimbursement payments to the employee or direct payments to the VRTWC and the training providers within 45 calendar days from receipt of the completed voucher, receipts and documentation.

Authority cited: Sections 133, 4658.5, 4658.6 and 5307.3, Labor Code.

Reference: Sections 4658.5 and 4658.6, Labor Code.

§10133.57. Form DWC-AD 10133.57 "Supplemental Job Displacement Nontransferable Training Voucher Form."

10133.57. Form DWC-AD 10133.57 "Supplemental Job Displacement Nontransferable Training Voucher Form."

Authority cited: Sections 133, 4658.5 and 5307.3, Labor Code.

Reference: Section 4658.5, Labor Code.

§10133.58. State Approved or Accredited Schools.

(a) This section shall only apply to injuries occurring on or after January 1, 2004.

(b) Private providers of education-related retraining or skill enhancement selected to provide training as part of a supplemental job displacement benefit shall be:

~~(1) approved by the Bureau for Private Postsecondary and Vocational Education (www.bppve.ca.gov), or a California state agency that has an agreement with the Bureau for the regulation and oversight of non-degree granting private postsecondary institutions;~~

~~(2 1) accredited by one of the Regional Associations of Schools and Colleges authorized by the United States Department of Education; or~~

~~(2) has approval from a California State agency that has an agreement with the United States Department of Education or Regional Associations of School and Colleges for the regulation and oversight of non-degree granting private post secondary providers.; or~~

~~(3)(3 2)~~ certified by the Federal Aviation Administration.

~~(c) Any training outside of California must be approved by one of the Regional Associations of Schools and Colleges authorized by the United States Department of Education or an agency in that state similar to the Bureau for Private Postsecondary and Vocational Education.~~

Authority cited: Sections 133, 4658.5 and 5307.3, Labor Code.

Reference: Section 4658.5, Labor Code.