

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

INITIAL STATEMENT OF REASONS

**Subject Matter of Regulations:
Retraining and Return to Work Regulations**

**TITLE 8, CALIFORNIA CODE OF REGULATIONS
Sections 10116 through 10133.58**

Article 6. Retraining and Return to Work Definitions and General Provisions

Proposed §10116	Filing and Reporting Requirments
Proposed §10116.2	Incomplete Filings
Amended §10116.3	Reproduction of Forms, Notice
Proposed §10116.4	Technical unavailability of EAMS
Proposed §10116.5	Retraining and Return to Work File Retention
Proposed §10116.6	Misfiled or misdirected documents
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Article 6.5. Return to Work

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Article 7.0. Vocational Rehabilitation

Amended §10123	Vocational Rehabilitation Reporting Requirments
Amended §10127	Dispute Resolution
Amended §10127.1	Conference
Amended §10128	Request for Order of Rehabilitation Services
Amended §10133.13	Form RU-102 “Vocational Rehabilitation Plan” and Form Filing Instructions
Amended §10133.14	Form RU-103 “Request for Dispute Resolution” and Form Filing Instructions

Amended §10133.16 Form RU-105 “Notice of Termination of Vocational Rehabilitation Services.
Amended §10133.22 Form RU-122 “Settlement of Prospective Vocational Rehabilitation Services” and Form Filing Instructions.
Repealed §10133.3 Rehabilitation File Retention

Article 7.5. Supplemental Job Displacement Benefit

Repealed §10133.50 Definitions
Amended §10133.53 Form DWC-AD 10133.53 “Notice of Offer of Modified or Alternative Work.”
Amended §10133.54 Dispute Resolution
Amended §10133.55 Form DWC-AD 10133.55 “Request for Dispute Resolution Before the Administrative Director.”
Amended §10133.56 Requirement to Issue Supplemental Job Displacement Non Transferable Training Voucher.
Amended §10133.57 Form DWC-AD 10133.57 “Supplemental Job Displacement Nontransferable Training Voucher Form.”.
Amended §10133.58 State Approved or Accredited Schools

BACKGROUND TO REGULATORY PROCEEDING

This rulemaking amends the Retraining and Return to Work regulations to allow required documents to be filed with Electronic Adjudication Management System (EAMS). It also reorganizes the numbering of the sections so that the sections are consecutive and the same definitions can apply to both the return to work and the supplemental job displacement sections.

In fiscal year 2004 to 2005, the Senate Bill (SB) 1113 (chapter 208) authorized funds for EAMS. EAMS is a computer based system that will simplify and improve the Division of Workers’ Compensation’s (DWC) case management process to more efficiently resolve claims, improve the ability to schedule and manage court calendars, allow files to be shared between multiple users, and transform paper files into secure electronic files, thereby reducing the need for physical storage space at local DWC offices and the State Records Center. EAMS will replace the current workers’ compensation court technology and supporting infrastructure. The Court Administrator’s regulations that implement EAMS for claims adjudication will be filed concurrently with the Office of Administrative Law.

This set of regulations amends the vocational rehabilitation, supplemental job displacement benefit, and return to work regulations. As part of AB 227, the Legislature repealed Article 2.6, Labor Code sections 4635, et. seq., and Labor Code section 139.5. These statutes comprised the vocational rehabilitation program. As part of SB 899 (Chapter 34, stats. of 2004, effective April 19, 2004), Labor Code section 139.5 was reinstated with the addition of subdivisions (k) and (l). Subdivision (k) limits the application of the statute to injuries occurring before January 1, 2004. Subdivision (l)

provides that the statute shall remain in effect only until January 1, 2009, and as of that date is repealed, unless it is repealed or extended before this date.

Additionally, the Workers' Compensation Appeals Board has held the repealed vocational rehabilitation statutes remain applicable to prior injuries. "[E]ven though these sections were repealed in 2003 and not reenacted in 2004, they still have a shadowy existence for injuries prior to January 1, 2004. Like ghosts 'doomed for a certain term to walk to the night' (*Hamlet* I, v), these statutes have no material existence but linger until their work is done." (*Godinez v. Buffets, Inc.* (2004) 69 Cal.Comp.Cases 1311, significant WCAB panel decision.) Additionally, the Rehabilitation Unit continues to exist to oversee vocational rehabilitation issues.

In lieu of the former vocational rehabilitation system, AB 227 added Labor Code section 4658.5, which provides a supplemental job displacement benefit. This statutory benefit enables some injured workers who are precluded from returning to work to obtain vouchers to reimburse them for the costs of retraining or schooling. This benefit provides a maximum benefit of \$10,000 in the form of nonrefundable vouchers to be applied toward school or a training program, as opposed to the \$16,000 total allowable cost under the former program. Furthermore, unlike the former rehabilitation system, the appointment of a qualified rehabilitation representative and the establishment of a vocational rehabilitation plan are not required, and there is no provision for a weekly maintenance allowance provided to the injured worker while he or she is participating in a rehabilitation program.

SB 899 also added subdivision (d) to Labor Code section 4658, which increases the number of weeks of permanent disability indemnity for severe disabilities (70% and above). This subdivision also includes: (1) an incentive, by way of a permanent partial disability benefit payment reduction, for employers to offer to return injured employees to regular, modified, or alternative work, and (2) a disincentive, by way of a permanent partial disability benefit payment increase, for employers who fail to provide an injured employee with a return to work offer. Subdivision (d) is mandated to apply to injuries occurring on or after the effective date of the revised permanent disability schedule that was adopted by the Administrative Director pursuant to Labor Code section 4660 on January 1, 2005. AB 899 also added 4658.1, which provides definitions of terms used in Article 3, including section Labor Code section 4658.

SB 899 further included Labor Code section 139.48, which provides for the Return to Work Program, reimbursement, requirements for return to work of injured employees, regulatory authority, and funding source. Labor Code section 4658 provides for permanent disability, computation, benefits schedules, and increase or decrease in disability payments depending on offer or termination of regular, modified, or alternative work. Labor Code section 4658.1 defines the meaning of regular work, modified work, and alternative work.

Labor Code section 139.48(a)(1) provides that the Administrative Director shall establish the Return-to-Work Program in order to promote the early and sustained return to work

of the employee following a work-related injury or illness.

Labor Code section 139.48(2)(b) provides that upon submission by eligible employers of documentation in accordance with regulations adopted pursuant to subdivision (h), the Administrative Director shall pay the workplace modification expense reimbursement allowed under this section.

SUMMARY OF THE PROPOSED REGULATIONS

The purpose of these amendments is to update the vocational rehabilitation regulations, the supplemental job displacement regulations, and the return-to-work regulations in light of the technological changes required by EAMS. The amendments explain that the required documents will be filed in EAMS. The forms are revised so that the data provided on the forms can be scanned and routed to EAMS.

The changes to the regulations address only the requirements needed for the first stage of EAMS (the internal go-live stage), which will allow the DWC to store claim data electronically. External participants will continue to file on paper using new forms that employ optical character recognition (OCR). The OCR forms will be available online on DWC's Web page. DWC employees at district offices will scan forms and documents into EAMS. These proposed regulations also reorganize the regulations that are within the Retraining and Return to Work Unit (formally known as the Rehabilitation Unit) and to renumber the Retraining and Return to Work regulations so that they are in consecutive order.

Proposed §10116 Filing and Reporting Requirements

Specific Purpose of Section 10116:

The purpose of this proposed regulation is to inform the public that documents submitted to the Retraining and Return to Work Unit will be stored and maintained electronically instead of as paper files. The section also informs the public how the case number will be assigned, that the prefix to the case numbers will be "VOC" or "RSU," that the documents will be scanned and that paper copies of the electronic documents will be destroyed. The documents must be filed as set forth in section 10232, which is a proposed Court Administrator regulation that describes form and size requirements for filed documents. (The Court Administrator regulations have been filed simultaneously with these regulations.) Documents must be served as described in the proposed Court Administrator regulation section 10218.

Necessity:

EAMS is a computer based system that will simplify and improve the DWC case management process to more efficiently resolve claims, improve the ability to schedule and manage court calendars, allow files to be shared between multiple users and transform paper files into secure electronic files, thereby reducing the need for

physical storage space at local district offices and the State Records Center. EAMS will replace the current workers' compensation court technology and supporting infrastructure. Thus, it is necessary for the public to file documents as described in order for the documents to be scanned into EAMS.

Consideration of Alternatives:

No more effective alternative to the proposed regulation, nor any equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

Proposed §10116.2 Incomplete Filings

Specific Purpose of Proposed Section 10116.2:

The purpose of this regulation is to inform the public that a form filed without required attachments or enclosures 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.

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

The purpose is also to inform the public how to obtain filing instructions and venue lists.

Necessity:

It is necessary that the public understand that the forms will only be filed if required attachments or enclosures are included. Some forms, such as the RU-103 (sections 10128 and 10133.14), require records to be filed with the form. The attachments are necessary in order for the decision maker to have the necessary facts and to resolve the dispute. Therefore, unless all pages of the form and attachments are included and completed, the form will not be deemed filed.

Consideration of Alternatives:

No more effective alternative to the proposed regulation, nor any equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

Amended §10116.3 Reproduction of Forms, Notice

Specific Purpose of Proposed Section 10116.3:

The purpose of this amended regulation is to inform the public that it is no longer allowed to modify any form. The reason is because the forms are designed in a way to allow for the data to be scanned and then routed into EAMS.

Necessity:

EAMS is a computer based system that will simplify and improve the DWC case management process to more efficiently resolve claims, improve the ability to schedule and manage court calendars, allow files to be shared between multiple users, and transform paper files into secure electronic files, thereby reducing the need for physical storage space at local district offices and the State Records Center. EAMS will replace the current workers' compensation court technology and supporting infrastructure. Thus, it is necessary for the public to use the forms as designed in order for the documents to be scanned and for the data to be routed into EAMS.

Consideration of Alternatives:

No more effective alternative to the proposed regulation, nor any equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

Proposed §10116.4 Technical unavailability of EAMS

Specific Purpose of Proposed Section 10116.4:

The purpose of this proposed regulation is to refer the public to the Court Administrator's regulation that addresses what to do if there is a technical problem that prevents the filing of a document in EAMS.

Necessity:

This section is necessary to address untimely filings that are a result of a technical failure of EAMS or a technical problem in filing a document. Because there are strict due dates for the filing of pleadings and documents, the public needs to know what to do if it is unable to file with EAMS.

Consideration of Alternatives:

No more effective alternative to the proposed regulation, nor any equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

Proposed §10116.5 Retraining and Return to Work File Retention

Specific Purpose of Proposed Section 10116.5:

The purpose of this proposed regulation is to inform the public how long the Retraining and Return to Work unit will retain documents. The purpose is also to inform the public that the documents will only be maintained electronically, and that paper documents that are converted into an electronic form may be destroyed.

Necessity:

This section is necessary so the public knows how long the electronic records will be stored. Because workers' compensation law allows for apportionment of prior injuries, the records pertaining to an injury could be relevant to cases filed in the future. By retaining the records for fifty years, the public will have access to relevant injury records. Files that are currently maintained as paper files will eventually be converted to electronic files in order to reduce storage of paper files.

Consideration of Alternatives:

No more effective alternative to the proposed regulation, nor any equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

Proposed §10116.6 Misfiled or misdirected documents

Specific Purpose of Proposed Section 10116.6:

The purpose of this proposed regulation is to address corrective measures for documents that are unreadable because of technical or scanning problems, or for documents that were misfiled. The regulation refers to the Court Administrator's regulation, proposed section 10223, which informs the public that the division will have the ability to perform document substitution on filed documents, to repair scanned documents, and to move documents to other case files. The section also informs the public that a filer may, upon request for substitution, substitute a document if it was unreadable or illegible. The division may repair a document if the scanned image does not accurately reflect the original.

Necessity:

This section is necessary to address problems that may occur because of electronic filing with EAMS. This section is necessary because it is possible that the scanners may not be able to read the images on the original documents, and it is possible that the scanned documents may be directed into the wrong files.

Consideration of Alternatives:

No more effective alternative to the proposed regulation, nor any equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

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

Specific Purpose of Proposed Section 10116.7:

The purpose of this proposed regulation is to inform the public that the Retraining and Return to Work unit does not have jurisdiction until liability has been accepted or there has been a finding of injury by the appeals board.

Necessity:

This section is necessary so that in cases where the issue regarding whether the injury arose out of and occurred within the course of employment is disputed by the claims administrator, the injured worker will not file documents with the Retraining and Return to Work unit. Compensability of an injury is a legal issue and must be determined by the appeals board. Until that time or unless a dispute does not exist, the Rehabilitation, Retraining and Return to Work does not have jurisdiction and cannot act.

Consideration of Alternatives:

No more effective alternative to the proposed regulation, nor any equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

Amended §10116.8 Definitions for Article 6.5 and 7.5

Specific Purpose of Section 10116.8:

Section 10116.8 lists and defines the terms used in Article 6.5 and 7.5. None of the terms are newly defined. This regulation merges the terms previously listed in existing sections 10001 and 10133.50. The purpose of the definitions is to implement, interpret, and make specific the provisions of Labor Code sections relating to the supplemental job displacement benefits and return to work. The definitions ensure that the meanings of the terms are clearly understood by the workers' compensation community.

Necessity:

In general, it is necessary to define each of the key terms used in the regulations to ensure that the content and meaning of the regulations are clearly understood by the workers' compensation community. The two previous sections were combined so that all of the definitions for Articles 6.5 and 7.5 (which govern injuries occurring on or after January 1, 2004) are in one regulation.

All of the terms were previously defined in California Code of Regulations, title 8, sections 10001 and 10133.50. These terms are “alternative work” “approved training facility,” “claims administrator,” “employer,” “essential functions,” “insurer,” “modified work,” “nontransferable training voucher,” “notice,” “offer of modified or alternative work,” “parties,” “permanent and stationary,” “permanent partial disability,” “regular work,” “seasonal work,” supplemental job displacement benefit,” vocational & return to work coordinator (VRTWC),” and “work restrictions.”

Consideration of Alternatives:

No more effective alternative to any of the definitions, nor any equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

Amended §10117 Offer of Work; Adjustment of Permanent Disability Payments

Specific Purpose of Section 10117:

The purpose of this section is to clarify Labor Code section 4658 and to specify the application of adjustment of permanent disability payments. The purpose of the amendment of subdivision (b)(3) is to replace the former form number 10003 with new form number 10118. It also requires the employer to file form DWC-AD 10133.53 or DWC-AD form 10118 with the Retraining and Return to Work unit and have a proof of service indicating service on the employee.

Necessity:

It is necessary to replace the former form number with the new form number so that the public uses the correct form. The offers must be filed with the Retraining and Return to Work Unit because the unit maintains records and statistics regarding return-to-work offers. It is necessary that an offer made to an employee have a proof of service in case of dispute regarding whether the offer was served and what date the offer was served.

Consideration of Alternatives:

No more effective alternative to any of the definitions, nor any equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

Amended §10118 Form [DWC AD 10118 Notice of Offer of Work]

Specific Purpose of Section 10118:

The purpose of this section is to provide a form for the employer or claims administrator to fill out in order to give notice of offer of regular work. The form is the same as the former section 10003, except that the proof of service is now a separate document that can be used with all of the return to work forms. The form layout and spacing is changed to allow data (for example, first name and last name) to be routed into EAMS when the form is scanned.

Necessity:

The notice of offer of regular work form is necessary because Labor Code section 4658(d)(3)(A) provides that the offer shall be made in the form and manner prescribed by the Administrative Director. This section provides employers with a form that meets the statutory requirements. It also provides the employee with essential information regarding the offer of regular work, and provides a section for the employee to complete and indicate if the offer is accepted or rejected. It is necessary to provide information to the employee regarding the offer because the employee may otherwise fail to understand the significance and requirements of the offer to return to work. It is necessary to change the format and spacing to allow data (for example, first name and last name) to be routed into EAMS when the form is scanned.

Consideration of Alternatives:

No more effective alternative to the proposed regulation, nor any equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

Amended §10119 Return to Work Program

Specific Purpose of Section 10119:

This section amends former section 10004. The purpose of the section is to implement Labor Code section 139.48. The purposes of the changes to subdivisions (d), (e), (i), and (j) are non-substantive: a change of the case for the term “administrative director.”

The purpose of the change to subdivision (h) (deleting the sentence: “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”) is to avoid duplicity. The filing requirements for the return to work documents are contained in proposed section 10116.

The changes to subdivision (k) (change of the case for the terms “administrative director” and “declaration of readiness to proceed”) are non-substantive. The words “with the district office of the Workers' Compensation Appeals Board” and the

sentence: “A copy of the Declaration of Readiness to Proceed and the petition shall be concurrently served on the Administrative Director.” are deleted to avoid duplicity. The filing requirements for the return to work documents are contained in proposed section 10116.

Necessity:

The “Return to Work Program” section of the proposed regulations is necessary because Labor Code section 139.48 provides that the Administrative Director shall establish the Return to Work Program in order to promote the early and sustained return to work of the employee following a work-related injury or illness.

This section provides employers with necessary information regarding use of the Return to Work Program: who is eligible for the program; how the program is funded; what reimbursement is available; how to apply; how decisions are made regarding reimbursement; and how to appeal a decision made by the Administrative Director. Employers must be made aware of this information in order to effectively participate in the program.

The amendments to the section are non-substantive. The deletions are made to avoid duplicity with proposed section 10116, which sets forth the general filing requirements.

Consideration of Alternatives:

No more effective alternative to the proposed regulation, nor any equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

Amended §10120. Form [DWC AD 10120 Request for Reimbursement of Accommodation Expenses]

Specific Purpose of Section 10120:

This section amends former section 10005. The purpose of this section is to provide a form for the employer or claims administrator to fill out in order to request reimbursement of accommodation expenses for injuries occurring on or after July 1, 2004.

The format of the form is changed to allow data (for example, first name and last name) to be routed into EAMS when the form is scanned.

Necessity:

Labor Code section 139.48 provides that the Administrative Director shall establish the Return to Work Program in order to promote the early and sustained return to

work of the employee following a work-related injury or illness. This form is necessary because it provides for consistency in requesting reimbursement for accommodation expenses. The form is easy to use and therefore encourages employers to make workplace modifications to accommodate an employee's return to modified or alternative work.

It is necessary to change the format and spacing of the form to allow data (for example, first name and last name) to be routed into EAMS when the form is scanned.

Consideration of Alternatives:

No more effective alternative to the proposed regulation, nor any equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

Amended §10123 Vocational Rehabilitation Reporting Requirements

Specific Purpose of Section 10123:

The deletions of former subdivisions (a) through (f) are made to avoid duplicity with proposed section 10116, which sets forth the general filing requirements and proposed section 10116.7, which informs parties not to file documents with the retraining and return to work unit if there is a good faith issue of injury arising out of and in the course and scope of employment. The remaining sections are re-lettered (a) and (b) and are unchanged. The title of the section is changed to be more specific in light of the amendments to the section. The reference is amended to add the significant panel case of *Godinez v. Buffets, Inc.* (2004) 69 Cal.Comp.Cases 1311, in which the WCAB held the repealed vocational rehabilitation statutes remain applicable to prior injuries.

Necessity:

It is necessary to delete former subdivisions (a) through (f) to avoid duplicity with proposed sections 10116 and 10116.7. It is necessary to change the name of the section for clarity.

It is necessary to amend the reference so that the public will understand that the vocational rehabilitation statutes remain applicable.

Consideration of Alternatives:

No more effective alternative to the proposed regulation, nor any equally effective and less burdensome alternative, has been identified by the Administrative Director at

Amended §10127 Dispute Resolution

Specific Purpose of Section 10127:

The amendments made to this section consist of syntax and non-substantive changes. Subdivision (a)(1) is amended to replace the words “forward to” with “file with,” to add the word “a”, and to delete the words “to the correct Rehabilitation Unit district office.”

Subdivision (c) is amended as follows:

“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.”

The words “or updated” are deleted from subdivision (e).

The reference is amended to add the significant panel case of *Godinez v. Buffets, Inc.* (2004) 69 Cal.Comp.Cases 1311, in which the WCAB held the repealed vocational rehabilitation statutes remain applicable to prior injuries.

Necessity:

The non-substantive changes improve the clarity of the section.

It is necessary to amend the reference so that the public will understand that the vocational rehabilitation statutes remain applicable.

Consideration of Alternatives:

No more effective alternative to the proposed regulation, nor any equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

Amended §10127.1 Conference

Specific Purpose of Section 10127.1:

Subdivision (c) of this section is amended. The purpose is to simplify the cancellation procedure. EAMS will be able to generate notices that are sent to the parties.

The reference is amended to add the significant panel case of *Godinez v. Buffets, Inc.* (2004) 69 Cal.Comp.Cases 1311, in which the WCAB held the repealed vocational rehabilitation statutes remain applicable to prior injuries.

Necessity:

The change to (c) is necessary because EAMS will have the capacity to generate notices that are sent to the parties.

It is necessary to amend the reference so that the public will understand that the vocational rehabilitation statutes remain applicable.

Consideration of Alternatives:

No more effective alternative to the proposed regulation, nor any equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

Amended §10128. Request for Order of Rehabilitation Services

Specific Purpose of Section 10128.1:

This purpose of the amendment to this section is to delete the previous filing requirements. Under EAMS, any document already filed will be obtainable, and duplicates should not be filed. Documents will no longer be returned to the filing party, so the sentence regarding returning medical documents is deleted. The parties are now instructed to file reports not previously file with the DWC Form RU-103.

The reference is amended to add the significant panel case of [*Godinez v. Buffets, Inc.*](#) (2004) 69 Cal.Comp.Cases 1311, in which the WCAB held the repealed vocational rehabilitation statutes remain applicable to prior injuries.

Necessity:

This section is amended due to the change in filing requirements for EAMS. Because all reports must be scanned into EAMS, the division does not want parties to file duplicate documents. Paper documents may be destroyed once they are scanned, so it was necessary to delete the sentence that the medical records would be returned.

It is necessary to amend the reference so that the public will understand that the vocational rehabilitation statutes remain applicable.

Consideration of Alternatives:

No more effective alternative to the proposed regulation, nor any equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

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

Specific Purpose of Section 10133.13:

The purpose of Form RU-102 is to document objectives and methods to be used to implement a proposed rehabilitation plan. The purpose of the amendment to the section is to re-format the form so that the data (for example, first name and last name) will be routed into EAMS when the form is scanned.

The reference is amended to add the significant panel case of *Godinez v. Buffets, Inc.* (2004) 69 Cal.Comp.Cases 1311, in which the WCAB held the repealed vocational rehabilitation statutes remain applicable to prior injuries.

Necessity:

Labor Code Section 139.5 authorizes the Administrative Director to establish a vocational rehabilitation unit to foster, review, and approve vocational rehabilitation plans and to develop regulations and procedures relating to vocational rehabilitation. The Retraining and Return to Work Unit requires that Form RU-102 be used to document objectives and methods to be used to implement a proposed rehabilitation plan. It is necessary to change the format and spacing to allow data (for example, first name and last name) to be routed into EAMS when the form is scanned.

It is necessary to amend the reference so that the public will understand that the vocational rehabilitation statutes remain applicable.

Consideration of Alternatives:

No more effective alternative to the proposed regulation, nor any equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

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

Specific Purpose of Section 10133.14:

The purpose of Form RU-103 is to request the Unit to resolve a disputed rehabilitation issue. The purpose of the amendment to the section is to re-format the form so that the data (for example, first name and last name) will be routed into EAMS when the form is scanned.

The reference is amended to add the significant panel case of [*Godinez v. Buffets, Inc.*](#) (2004) 69 Cal.Comp.Cases 1311, in which the WCAB held the repealed vocational rehabilitation statutes remain applicable to prior injuries.

Necessity:

Labor Code Section 139.5 authorizes the Administrative Director to establish a vocational rehabilitation unit to foster, review, and approve vocational rehabilitation plans and to develop regulations and procedures relating to vocational rehabilitation. The Retraining and Return to Work Unit requires that Form RU-103 be used to request the Unit to resolve a disputed rehabilitation issue. It is necessary to change the format and spacing to allow data (for example, first name and last name) to be routed into EAMS when the form is scanned.

It is necessary to amend the reference so that the public will understand that the vocational rehabilitation statutes remain applicable.

Consideration of Alternatives:

No more effective alternative to the proposed regulation, nor any equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

Amended §10133.16 Form RU-105 “Notice of Termination of Vocational Rehabilitation Services.

Specific Purpose of Section 10133.16:

The purpose of Form RU-105 is to notify the employee of the employer’s termination of liability to provide rehabilitation services. The purpose of the amendment to the section is to re-format the form so that the data (for example, first name and last name) will be routed into EAMS when the form is scanned.

The reference is amended to add the significant panel case of [*Godinez v. Buffets, Inc.*](#) (2004) 69 Cal.Comp.Cases 1311, in which the WCAB held the repealed vocational rehabilitation statutes remain applicable to prior injuries.

Necessity:

Labor Code Section 139.5 authorizes the Administrative Director to establish a vocational rehabilitation unit to foster, review, and approve vocational rehabilitation

plans and to develop regulations and procedures relating to vocational rehabilitation. The Retraining and Return to Work Unit requires that Form RU-105 be used to notify the employee of the employer's termination of liability to provide rehabilitation services. It is necessary to change the format and spacing to allow data (for example, first name and last name) to be routed into EAMS when the form is scanned.

It is necessary to amend the reference so that the public will understand that the vocational rehabilitation statutes remain applicable.

Consideration of Alternatives:

No more effective alternative to the proposed regulation, nor any equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

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

Specific Purpose of Section 10133.22:

The purpose of Form RU-122 is to record the agreement between the employee and the employer to settle prospective vocational rehabilitation services for injuries on or after January 1, 2003. The purpose of the amendment to the section is to re-format the form so that the data (for example, first name and last name) will be routed into EAMS when the form is scanned.

The reference is amended to add the significant panel case of [*Godinez v. Buffets, Inc.* \(2004\) 69 Cal.Comp.Cases 1311](#), in which the WCAB held the repealed vocational rehabilitation statutes remain applicable to prior injuries.

Necessity:

Labor Code Section 139.5 authorizes the Administrative Director to establish a vocational rehabilitation unit to foster, review, and approve vocational rehabilitation plans and to develop regulations and procedures relating to vocational rehabilitation. Form RU-122 was originally created to comply with Labor Code 4646(b) and to record the agreement between the employee and the employer to settle prospective vocational rehabilitation services for injuries on or after January 1, 2003. It is necessary to change the format and spacing to allow data (for example, first name and last name) to be routed into EAMS when the form is scanned.

It is necessary to amend the reference so that the public will understand that the vocational rehabilitation statutes remain applicable.

Consideration of Alternatives:

No more effective alternative to the proposed regulation, nor any equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

Repealed §10133.3 Rehabilitation File Retention

Specific Purpose of Repealed Section 10133.3:

The purpose of this repealed regulation was state the retention period for documents filed with the Rehabilitation Unit. Newly proposed regulation section 10116.5 addresses this issue.

Necessity:

Newly proposed regulation section 10116.5 addresses this issue. The repealed section would conflict with the new section.

Consideration of Alternatives:

No more effective alternative to the proposed regulation, nor any equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

Repealed §10133.50 Definitions

Specific Purpose of Repealed Section 10133.50:

The purpose of this repealed regulation was set forth the definitions for the words relating to the supplemental job displacement benefit. The terms previously listed are now found in amended section 10116.8

Necessity:

The terms previously listed on section 10133.50 are now found in amended section 10116.8. This section must be repealed to prevent duplicative regulations.

Consideration of Alternatives:

No more effective alternative to the proposed regulation, nor any equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

Amended §10133.53 Form DWC-AD 10133.53 “Notice of Offer of Modified or Alternative Work.”

Specific Purpose of Section 10133.53:

Form DWC-AD 10133.53 is a mandatory form that the employer must send to the injured employee if the employer has modified or alternative work available. Labor Code §4658.6 provides that the employer shall not be liable for the supplemental job displacement benefit if the employer offers modified or alternative work that meets the specified conditions and the employee rejects the offer. The section 10133.53 form constitutes the Notice of Modified or Alternative Work for Injuries Occurring on or after 1/1/04 and requires the employer to provide the information necessary to determine if the offer of modified or alternative work meets the conditions set forth in Labor Code §4658.6.

The purpose of the amendment to the section is to re-format the form so that the data (for example, first name and last name) will be routed into EAMS when the form is scanned.

Necessity:

Because Labor Code §4658.6 provides that the employer shall not be liable for the Supplemental Job Displacement Benefit if the employer offers, and the employee rejects, modified or alternative work that meets the specified conditions, it is necessary for the regulations to provide a form that complies with the statute requirements for the employer to use when modified or alternative work is available. The required information also allows the employee (and the Administrative Director if there is a dispute) to determine if the specific offer complies with the requirements of the statute.

It is necessary to change the format and spacing to allow data (for example, first name and last name) to be routed into EAMS when the form is scanned.

Consideration of Alternatives:

No more effective alternative to the proposed regulation, nor any equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

Amended §10133.54 Dispute Resolution

Specific Purpose of Section 10133.54:

This purpose of the section is to set forth the procedure for requesting a dispute resolution before the Administrative Director. Subdivision (b)(4) is amended to state that a copy of the request should be submitted, because only copies of documents

should be scanned into EAMS. The paper documents may be destroyed once they are scanned.

Non-substantive changes are made: subdivisions (b), (d), (e), (f), and (g) change the case for the term “administrative director.”

Subdivision (g) has additional non-substantive changes and corrects the reference to section 10414 to section 10250. The procedure in (g) is changed because the petition will be served and scanned into EAMS.

Necessity:

It is necessary to change this section because documents will be scanned into EAMS.

Consideration of Alternatives:

No more effective alternative to the proposed regulation, nor any equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

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

Specific Purpose of Section 10133.55:

Form DWC-AD 10133.55 is a mandatory form that can be submitted by either the employee or the claims administrator to be used if the party requests the Administrator Director to resolve a dispute concerning the Supplemental Job Displacement Benefit.

The purpose of the amendment to the section is to re-format the form so that the data (for example, first name and last name) will be routed into EAMS when the form is scanned.

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 Displacement Benefit. Labor Code sections 133, 4658.5, and 5307.5 provide the administrative director with the authority to adopt regulations to enforce the Supplemental Job Displacement Benefit. Because there may be disputes concerning the employee’s right to the Supplemental Job Displacement 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.

It is necessary to change the format and spacing to allow data (for example, first name and last name) to be routed into EAMS when the form is scanned.

Consideration of Alternatives:

No more effective alternative to the proposed regulation, nor any equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

Amended §10133.56 Requirement to Issue Supplemental Job Displacement Non Transferable Training Voucher.

Specific Purpose of Section 10133.56:

The purpose of section 10133.56 is to set forth the requirements regarding the issuance of the Supplemental Job Displacement Nontransferable Training Voucher, the requirement to use the form set forth in Section 10133.56, the timeliness requirements for the employer to issue the voucher, and other instructions regarding the use of the voucher.

Some non-substantive changes are made to subdivision (c).

Subdivision (c)(1) informs the employer to 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. 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.”

Subdivision (d) is amended to advise the employer, or its representative, to file the completed form DWC-AD 10133.57 with the Retraining and Return to Work Unit pursuant to section 10232.

The purpose of the amendment to the section is to re-format the form so that the data (for example, first name and last name) will be routed into EAMS when the form is scanned.

Necessity:

Labor Code §4658.5 provides that (except as provided in Section 4658.6) if the injury causes permanent partial disability and the injured worker does not return to work within 60 days of the termination of temporary disability, the injured worker shall be eligible for a Supplemental Job Displacement Benefit in the form of a voucher. This regulation is necessary to instruct the regulated public regarding the timing of the issuance of the voucher and the form of the voucher, so that the regulated public is able to comply with the statute.

It is necessary to amend this section so that the employer files the form DWC-AD 10133.57 with the Retraining and Return to Work Unit simultaneously with serving the employee. The Unit maintains records and statistics regarding return-to-work offers. It is necessary to clarify that the claims administrator may serve the offer of work on behalf of the employer, as many employers expect the claims administrators to perform this type of function. 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. It is necessary that an offer made to an employee have a proof of service in case of dispute regarding whether the offer was served and what date the offer was served.

It is necessary to change the format and spacing to allow data (for example, first name and last name) to be routed into EAMS when the form is scanned.

Consideration of Alternatives:

No more effective alternative to the proposed regulation, nor any equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

Amended §10133.57 Form DWC-AD 10133.57 “Supplemental Job Displacement Nontransferable Training Voucher Form.”

Specific Purpose of Section 10133.57:

Form DWC-AD 10133.57 is the mandatory form for the Supplemental Job Displacement Nontransferable Training Voucher. 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 receipts and documentation to the claims administrator for reimbursement. The form contains lines to be filled out by the injured worker and the claims administrator. It also advises the claims administrator that reimbursement payments to the employee or direct payments to the Vocational Return to Work Counselor (if any) and the training providers must be made within 45 calendar days.

The purpose of the amendment to the section is to re-format the form so that the data (for example, first name and last name) will be routed into EAMS when the form is scanned.

Necessity:

Labor Code §4658.5 provides that (except as provided in Section 4658.6) if the injury causes permanent partial disability and the injured worker does not return to work within 60 days of the termination of temporary disability, the injured worker shall be eligible for a Supplemental Job Displacement Benefit in the form of a voucher. 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.

It is necessary to change the format and spacing to allow data (for example, first name and last name) to be routed into EAMS when the form is scanned.

Consideration of Alternatives:

No more effective alternative to the proposed regulation, nor any equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

Amended §10133.58 State Approved or Accredited Schools

Specific Purpose of Section 10133.57:

Section 10133.57 sets forth the approval criteria for private providers of education-related retraining or skill enhancement selected to provide training as part of the Supplemental Job Displacement Benefit. The section requires approval from specific agencies for providers located either in California or outside California.

The purpose of the amendment to the section is to remove the reference to Bureau for Private Postsecondary and Vocational Education because it lost its funding and no longer exists.

Necessity:

Labor Code §4658.5 provides that the Supplemental Job Displacement Benefit shall be in the form of a voucher for education-related retraining or skill enhancement at “state approved or accredited schools.” This regulation is necessary clarify the approval criteria for the schools.

The amendment to subdivision (b)(1) is necessary because the Bureau for Private Postsecondary and Vocational Education lost its funding and no longer exists.

Consideration of Alternatives:

No more effective alternative to the proposed regulation, nor any equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

TECHNICAL, THEORETICAL, OR EMPIRICAL STUDIES OR DOCUMENTS RELIED UPON:

None.

SPECIFIC TECHNOLOGIES OR EQUIPMENT REQUIRED:

None.

**FACTS RELIED UPON IN SUPPORT OF DIVISION'S INITIAL
DETERMINATION THAT THE REGULATIONS WILL NOT HAVE A
SIGNIFICANT ADVERSE IMPACT ON BUSINESS**

All revised forms will be posted on the DWC Web page and downloadable. The amendments to these regulations are either non-substantive or change procedures to allow for filing with EAMS. No new costs are imposed.