

**STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS  
Division of Workers' Compensation**

**NOTICE OF PROPOSED RULEMAKING**

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

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

**NOTICE IS HEREBY GIVEN** that the Administrative Director of the Division of Workers' Compensation, pursuant to the authority vested in her by Labor Code sections 133, 138.4, 139.48, 139.5, 4658.5, 4658.6, and 5307.3, proposes to adopt regulations within Articles 6, 6.5, 7, and 7.5, Subchapter 1 to Chapter 4.5 of Title 8, California Code of Regulations, commencing with section 10116, relating to Retraining and Return to Work.

**PROPOSED REGULATORY ACTION**

The Department of Industrial Relations, Division of Workers' Compensation, proposes to adopt regulations within Articles 6, 6.5, 7, and 7.5, Subchapter 1 to Chapter 4.5 of Title 8, California Code of Regulations, commencing with section 10116, relating to Retraining and Return to Work.

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

- Proposed §10116 Filing and Reporting Requirements
- 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
- Proposed §10116.7 Jurisdiction where the issue of injury has not been resolved
- Amended §10116.8 Definitions for Article 6.5 and 7.5

**Article 6.5. Return to Work**

- Amended §10117 Offer of Work; Adjustment of Permanent Disability Payments
- Amended §10118 Form [DWC AD 10118 Notice of Offer of Work]
- Amended §10119 Return to Work Program
- Amended §10120 Form [DWC AD 10120 Request for Reimbursement of Accommodation Expenses]

**Article 7.0. Vocational Rehabilitation**

- Amended §10123 Vocational Rehabilitation Reporting Requirements
- 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

### **PUBLIC HEARING**

A public hearing has been scheduled to permit all interested persons the opportunity to present statements or arguments, oral or in writing, with respect to the subjects noted above, on the following dates:

**Date:** Monday, July 14, 2008  
**Time:** 10:00 a.m. to 5:00 p.m. or conclusion of business  
**Place:** Ronald Reagan State Building, Auditorium  
300 South Spring Street  
Los Angeles, CA 90013

**Date:** Tuesday, July 15, 2008  
**Time:** 10:00 a.m. to 5:00 p.m. or conclusion of business  
**Place:** Elihu Harris State Building, Auditorium  
1515 Clay Street  
Oakland, CA 94612

**The State Office Building and its Auditorium are accessible to persons with mobility impairments. Alternate formats, assistive listening systems, sign language interpreters, or other type of reasonable accommodation to facilitate effective communication for persons with disabilities, are available upon request. Please contact the State Wide Disability Accommodation Coordinator, Kathleen Estrada, at 1-866-681-1459 (toll free), or through the California Relay Service by dialing 711 or 1-800-735-2929 (TTY/English) or 1-800-855-3000 (TTY/Spanish) as soon as possible to request assistance.**

Please note that public comment will begin promptly at 10:00 a.m. and will conclude when the last speaker has finished his or her presentation. If public comment concludes before the noon recess, no afternoon session will be held.

The Administrative Director requests, but does not require that, any persons who make oral comments at the hearings also provide a written copy of their comments. Equal weight will be accorded to oral comments and written materials.

## WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department of Industrial Relations, Division of Workers' Compensation. The written comment period closes at **5:00 p.m., on July 15, 2008**. The Department of Industrial Relations, Division of Workers' Compensation will consider only comments received at the Department of Industrial Relations, Division of Workers' Compensation by that time. Equal weight will be accorded to oral comments presented at the hearing and written materials.

Submit written comments concerning the proposed regulations prior to the close of the public comment period to:

Maureen Gray  
Regulations Coordinator  
Department of Industrial Relations  
Division of Workers' Compensation  
Post Office Box 420603  
San Francisco, CA 94142

Written comments may be submitted by facsimile transmission (FAX), addressed to the above-named contact person at (510) 286-0687. Written comments may also be sent electronically (via e-mail) using the following e-mail address: [dwcrules@dir.ca.gov](mailto:dwcrules@dir.ca.gov).

Unless submitted prior to or at the public hearing, Ms. Gray must receive all written comments no later than **5:00 p.m. on July 15, 2008**.

## AUTHORITY AND REFERENCE

The Administrative Director is undertaking this regulatory action pursuant to the authority vested in the Administrative Director by Labor Code sections 133, 138.4, 139.48, 139.5, 4658.5, 4658.6, and 5307.3.

Reference is to Labor Code sections 62.5, 124, 139.48, 139.5, 4636, 4637, 4638, 4645, 4658.1, 4658.5, 4658.6, and 5814.6; and *Godinez v. Buffets, Inc.* (2004) 69 Cal.Comp.Cases 1311.

## INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW

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 1113 (chapter 208) authorized funds for EAMS. 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 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 Assembly Bill 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 Senate Bill 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 returning 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.

These proposed amended regulations implement, interpret, and make specific these sections of the Labor Code and EAMS as follows:

#### **Proposed Section §10116. Filing and Reporting Requirements**

This proposed section defines “EAMS,” requires all forms, documents or correspondence submitted to the Retraining and Return to Work Unit to be signed by the filing party and stored in EAMS, and to contain a case number assigned by the Division of Workers’ Compensation.

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.

All documents presented for filing shall conform to the requirements of section 10232 of title 8 of the California Code of Regulations. Section 10232 is proposed in the Court Administrator’s regulations.

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. A properly filed form or document shall be deemed a legal filing for all purposes.

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 Regulations. Section 10218 is proposed in the Court Administrator’s regulations.

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 10218 of title 8 of the California Code of Regulations. 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.

### **Proposed §10116.2. Incomplete filings.**

This section provides that 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.

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

The forms, including filing instructions and venue lists, shall be provided upon request by the Retraining and Return to Work Unit and are posted on the Division of Workers' Compensation's website. The address and website are set forth in the regulation.

### **Amended §10116.3. Reproduction of Forms, Notices.**

This section amends former section 10123.1. It no longer allows any form to be modified.

### **Proposed §10116.4. Technical unavailability of EAMS**

This proposed section provides that technical problems with filing documents shall be governed by section 10225 of title 8 of the California Code of Regulations. Section 10225 is a proposed section in the Court Administrator's regulations.

### **Proposed §10116.5. Retraining and Return to Work File Retention.**

This proposed section provides that 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.

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.

### **Proposed §10116.6. Misfiled or misdirected documents**

This proposed section provides that 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 Regulations, except that 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. Section 10223 is a proposed section in the Court Administrator's regulations.

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

This proposed section provides that 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.

In addition, any requests for provision of retraining or return to work 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 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.

### **Amended §10116.8. Definitions for Article 6.5 and 7.5**

This section amends former section 10001. It combines the definitions that were previously listed separately in section 10001 and 10133.50. It now provides definitions for Article 6.5 and 7.5 governing injuries occurring on or after January 1, 2004:

The definition for “Approved Training Facility” is the same as former section 10133.50(a)(2).

The definition for “Employer” is the same as former section 10133.50(a)(4).

The definition for “Essential Functions” is the same as former section 10133.50(a)(5).

The definition for “Insurer” is the same as former section 10133.50(a)(6).

The definition for “Nontransferable Training Voucher” is the same as former section 10133.50(a)(8).

The definition for “Notice” is the same as former section 10133.50(a)(9).

The definition for “Offer of Modified or Alternative Work” is the same as former section 10133.50(a)(10).

The definition for “Parties” is the same as former section 10133.50(a)(11).

The definition for “Permanent Partial Disability Award” is the same as former section 10133.50(a)(12).

The definition for “Supplemental Job Displacement Benefit” is the same as former section 10133.50(a)(14).

The definition for “Vocational & Return to Work Counselor (VRTWC)” is the same as former section 10133.50(a)(15).

The definition for “Work Restrictions” is the same as former section 10133.50(a)(16).

### **Amended §10117. Offer of Work; Adjustment of Permanent Disability Payments**



This section amends former section 10002. Subdivision (b) (3) is amended to replace the former DWC AD form 10003 with the new number: 10118. The words: “and shall file the forms with the Retraining and Return to Work Unit immediately after serving the form on the employee,” are added.

Subdivisions (b)(3)(A) and (B) are added and state:

“(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 on the employee 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.”

Subdivision (e) is amended to change the case for the terms “workers’ compensation administrative law judge,” and “appeals board.” The references section is amended to change the case for the word “writ.”

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

This section amends former section 10003. The form is changed to allow data (for example, first name and last name) to be routed into EAMS when the form is scanned.

### **Amended §10119. Return to Work Program**

This section amends former section 10004.

Subdivisions (d), (e), (i), and (j) are amended to change the case for the term “administrative director.”

Subdivision (h) is amended to delete 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](http://www.dir.ca.gov/dwc/dwc_home_page.htm)”

Subdivision (k) is amended to change the case for the terms “administrative director” and “declaration of readiness to proceed.” 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.

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

This section amends former section 10005. The form is changed to allow data (for example, first name and last name) to be routed into EAMS when the form is scanned.

### **Amended §10123. Vocational Rehabilitation Reporting Requirements.**

The title of the section is changed to “Vocational Rehabilitation Reporting Requirments.”

Subdivisions (a) through (f) are deleted. Former subdivisions (g) and (h) are now (a) and (b).

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.

#### **Amended §10127. Dispute Resolution.**

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.

#### **Amended §10127.1. Conferences.**

Subdivision (c) is amended as follows:

“(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.~~ “

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.

#### **Amended §10128. Request for Order of Rehabilitation Services.**

This section has been amended as follows:

“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.~~

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.

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

Form RU 102 is changed to allow data (for example, first name and last name) to 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.

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

Form RU-103 is changed to allow data (for example, first name and last name) to 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.

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

Form RU-105 is changed to allow data (for example, first name and last name) to 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.

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

Form RU-122 is changed to allow data (for example, first name and last name) to 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.

### **Repealed §10133.3. Rehabilitation File Retention.**

This section has been repealed. File retention is now found in proposed section 10116.5.

### **Repealed §10133.50. Definitions.**

Section 10133.50 is repealed. The terms previously listed are now found in amended section 10116.8

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

Form DWC-AD 10133.53 is changed to allow data (for example, first name and last name) to be routed into EAMS when the form is scanned.

### **Amended §10133.54. Dispute Resolution.**

Subdivision (b)(4) is amended as follows:

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

Subdivisions (c), (d), (e), and (f) change the case for the term “administrative director.”

Subdivision (g) is amended as follows:

“(g) Either party may appeal the determination and order of the Administrative Director 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 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. ~~A copy of the petition and a copy of the Declaration of Readiness to Proceed shall be concurrently served on the Administrative Director.~~”

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

Form DWC-AD 10133.55 is changed to allow data (for example, first name and last name) to be routed into EAMS when the form is scanned.

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

Subdivision (c) is amended as follows:

“(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 ~~W~~workers' ~~C~~ompensation ~~A~~administrative ~~L~~aw ~~J~~udge or the ~~Workers' Compensation Appeals B~~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.”

Subdivision (d) is amended as follows:

“(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.”

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

Form DWC-AD 10133.57 is changed to allow data (for example, first name and last name) to be routed into EAMS when the form is scanned.

### **Amended §10133.58. State Approved or Accredited Schools.**

Subdivision (b)(1) is deleted because the Bureau for Private Postsecondary and Vocational Education is no longer funded, and the remaining subdivisions are re-numbered.

Subdivision (c) is amended as follows:

(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~~an agency in that state similar to the Bureau for Private Postsecondary and Vocational Education.~~

## **DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION**

The Administrative Director has made the following initial determinations:

- Significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None.
- Adoption of these regulations will not: (1) create or eliminate jobs within the State of California, (2) create new businesses or eliminate existing businesses within the State of California, or (3) affect the expansion of businesses currently doing business in California.
- Effect on Housing Costs: None.
- Cost impacts on representative private persons or business: The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

## EFFECT ON SMALL BUSINESS

The Administrative Director has determined that the proposed regulations will not affect small businesses. The businesses that are subject to these regulations are insurers, self-insured employers (who must by regulation have substantial net worth and income) and third party administrators, all of whom do not qualify as “small business.”

## FISCAL IMPACTS

- Costs or savings to state agencies or costs/savings in federal funding to the State: The proposed regulations will not increase costs on State agencies or cost/savings in federal funding to the State.
- Local Mandate: None. The proposed regulations will not impose any new mandated programs or increased service levels on any local agency or school district.
- Cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: None. (See “Local Mandate” section above.)
- Other nondiscretionary costs/savings imposed upon local agencies: None. (See “Local Mandate” section above.)

## CONSIDERATION OF ALTERNATIVES

In accordance with Government Code § 11346.5(a)(13), the Administrative Director must determine that no reasonable alternative considered or that has otherwise been identified and brought to the Administrative Director’s attention would be more effective in carrying out the purpose for which the actions are proposed or would be as effective and less burdensome to affected private persons than the proposed actions.

The Administrative Director invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

## PUBLIC DISCUSSIONS OF PROPOSED REGULATIONS

Pursuant to Government Code § 11346.45, the text of the draft proposed regulations was made available for pre-regulatory public comment through the Division’s Internet message board (the DWC Forums).

## **AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, RULEMAKING FILE AND DOCUMENTS SUPPORTING THE RULEMAKING FILE / INTERNET ACCESS**

An Initial Statement of Reasons and the text of the proposed regulations in plain English have been prepared and are available from the contact person named in this notice. The entire rulemaking file will be made available for inspection and copying at the address indicated below.

As of the date of this notice, the rulemaking file consists of the notice, the initial statement of reasons, the proposed text of the regulations, pre-rulemaking comments, and the Form 399.

In addition, the Notice, Initial Statement of Reasons, and proposed text of regulations may be accessed and downloaded from the Division's website at [www.dir.ca.gov](http://www.dir.ca.gov). To access them, click on the "Proposed Regulations - Rulemaking" link and scroll down the list of rulemaking proceedings to find the current "Retraining and Return to Work" rulemaking link.

Any interested person may inspect a copy or direct questions about the proposed regulations and any supplemental information contained in the rulemaking file. The rulemaking file will be available for inspection at the Department of Industrial Relations, Division of Workers' Compensation, 1515 Clay Street, Oakland, California, between 9:00 a.m. and 4:30 p.m., Monday through Friday. Copies of the proposed regulations, initial statement of reasons and any information contained in the rulemaking file may be requested in writing to the contact person.

### **CONTACT PERSON**

Nonsubstantive inquiries concerning this action, such as requests to be added to the mailing list for rulemaking notices, requests for copies of the text of the proposed regulations, the Initial Statement of Reasons, and any supplemental information contained in the rulemaking file may be requested in writing at the same address. The contact person is:

Maureen Gray  
Regulations Coordinator  
Department of Industrial Relations  
Division of Workers' Compensation  
Post Office Box 420603  
San Francisco, CA 94142  
E-mail: [mgray@dir.ca.gov](mailto:mgray@dir.ca.gov)

The telephone number of the contact person is (510) 286-7100.

## **BACKUP CONTACT/PERSON CONTACT PERSON FOR SUBSTANTIVE QUESTIONS**

In the event the contact person is unavailable, or to obtain responses to questions regarding the substance of the proposed regulations, inquiries should be directed to the following backup contact persons:

Destie Overpeck (doverpeck@dir.ca.gov)  
Division of Workers' Compensation  
Post Office Box 420603  
San Francisco, CA 94142

The telephone number of the backup contact person is (510) 286-7100.

## **AVAILABILITY OF CHANGES FOLLOWING PUBLIC HEARING**

If the Administrative Director makes changes to the proposed regulations as a result of the public hearing and public comment received, the modified text with changes clearly indicated will be made available for public comment for at least 15 days prior to the date on which the regulations are adopted.

## **AVAILABILITY OF THE FINAL STATEMENT OF REASONS**

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the contact person named in this notice or may be accessed on the website: [www.dir.ca.gov](http://www.dir.ca.gov)

## **AUTOMATIC MAILING**

A copy of this Notice, the Initial Statement of Reasons, and the text of the regulations, will automatically be sent to those interested persons on the Administrative Director's mailing list.

If adopted, the regulations as amended will appear in Title 8, California Code of Regulations, commencing with section 10116.