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DEPARTMENT OF INDUSTRIAL RELATIONS
COUNTY OF LOS ANGELES

DECEMBER REGULATORY HEARINGS
RETURN-TO-WORK SUPPLEMENT PROGRAM

DECEMBER 9, 2014

DEPARTMENT OF INDUSTRIAL RELATIONS
320 WEST 4TH STREET, PUBLIC HEARING ROOM
LOS ANGELES, CALIFORNIA 90013

APPEARANCES:
SPECIAL ADVISOR FOR DIRECTOR: TESS GORMLEY
COUNSEL FROM OFFICE OF THE DIRECTOR: NATHAN D. SCHMIDT,
ESQ
COURT REPORTER: CELINDA ALIGADA, CSR 13724

1 P R O C E E D I N G S

2
3 MS. GORMLEY: Good afternoon. Thank you for
4 coming today. I am Tess Gormley, special advisor to
5 the director of the Department of Industrial Relations,
6 and this is a public hearing for the Return-to-Work
7 Supplemental Program.

8 Please make sure you sign in the sign-in sheet
9 and indicate if you want to testify. I would like to
10 introduce the other DIR staff member here today, Nathan
11 Schmidt, attorney from the office of the director, and
12 Sylvia Cabrales Return-to-Work Supplemental manager,
13 and our court reporter is Celinda Aligada.

14 When you come up to testify, please leave your
15 business card with Celinda and also state your name.
16 All testimony given today will be taken down by
17 Celinda. If you have any written testimony you want to
18 hand in, please give it to Sylvia or to me. I will
19 check that they want to testify and we also check to
20 see if anyone has decided to comment.

21 The hearing will continue as long as there are
22 people present who wish to comment on the regulations,
23 but it will close at 4:30 P.M.

24 Written comments can be given to Sylvia or to
25 me if you have them with you or will be accepted by fax

1 or e-mail or delivery to the Oakland office up to
2 5:00 P.M. today.

3 The purpose of these hearings is to receive
4 comments on the proposed Return-to-Work Supplemental
5 Program Regulations, and we welcome any comments you
6 have about that.

7 All your comments given here today enclosed in
8 writing will be considered by the director in
9 determining what revisions we may make to the
10 regulations.

11 Please restrict the subject of your comments
12 to the regulations and to any suggestions you have for
13 changes to the proposed regulations. Also, please
14 limit comments to ten minutes in length. We will not
15 enter into any discussions this afternoon, although, we
16 may ask for clarification or ask you to elaborate
17 further on any points you understand.

18 Again, when you come up to give your
19 testimony, please give your business card to Celinda so
20 we can get your correct spelling of your name. And if
21 you want, you can speak in the microphone and identify
22 yourself before starting with your testimony.

23 So would the first speaker come to the
24 microphone and introduce yourself.

25 MR. McLAUGHLIN: Good afternoon. My name is

1 Robert McLaughlin, and I'm an attorney representing
2 injured workers in San Diego, and I'm also a member of
3 the California Applicant Attorney's Association.

4 First I'd like to thank the administrator
5 director and the department for the hard work they did
6 on these regulations. It is clear that they have
7 looked at the RAND study and have reviewed them. And
8 there's much to like about the regulations. They're
9 simple and they're efficient which means they'll be low
10 cost for administrating this program which I think is
11 an excellent idea.

12 I also like the fact that -- perhaps we can
13 emphasize a little more that the \$120 million needs to
14 be paid out each year. It is clear from the
15 legislative goal that the intent was to make sure that
16 120 million gets to the injured workers that need it
17 the most.

18 And towards that there is a bit of an issue
19 because we're going to have approximately three years
20 of back-payments by the time these start getting paid
21 out, and so I know that you said the \$5,000 would be
22 reviewed each year to see if it needs to be changed,
23 but you need to take into account that there may be a,
24 like, a mouse going through a snake effect.

25 I have some clients that were eligible for

1 this fund in 2013. I have done my best to keep track
2 of them; however, some have left the state and some
3 have left the country. So the amount that you're
4 anticipating, assuming all the funds are there, you
5 might find you have an excess that you might have to
6 reevaluate and then after that go back to the 5,000
7 level, so ask that you take that into account.

8 With regards to what I'm mainly here about is
9 assessability. First of all, I know that yesterday
10 there were comments made that the notification this
11 week put on page six about these funds, you really need
12 to make that more up front for injured workers.
13 Remember what I was telling you, I don't always know
14 where all my injured workers were that were eligible,
15 many have left the state so they may not be able to get
16 ahold of me or they may not even want to. So you need
17 to make sure they're notified of this right.

18 Secondly, I would also like to talk about the
19 fact that the application ought to be filled on-line.
20 In San Diego we not only represent San Diego County at
21 our board but also Imperial County, and for some of my
22 clients that is a two-and-a-half drive to get to the
23 WCAB in San Diego unless you drive like my wife then
24 it's two hours. But for most people who follow the
25 speed limit, it's two-and-a-half-hours from certain

1 areas. And I was wondering if there was any way we
2 could use the EDD offices because they have computer
3 banks already there, especially looking for jobs. I
4 know that there is the, I think the American's Job
5 Center of California. They have four offices in
6 Imperial County, two in El Centro, one in Brawley --
7 actually, one in Calexico and one in Winterhaven, and
8 that would make it so accessible for them to use those
9 computers at that location to access on-line, plus
10 there would be people there to maybe assist them if
11 them got stuck. So that would be very valuable
12 because, what I'm afraid of is, that making it only
13 available online, some of my clients don't have
14 internet access, they just don't have the resource for
15 the funds, now you throw in the fact that they're going
16 to be eligible for this fund because they lost their
17 job. Funds are going to be even harder for them to get
18 internet access and driving two-and-a-half-hours up to
19 the WCAB in San Diego may also not be financially
20 viable for them.

21 For that reason I also think perhaps an
22 application should be mailed to them so they can just
23 sign it and mail it back in, that would be the cost of
24 a stamp but that would be a little bit better. Also I
25 noticed that the regulations indicate there's going to

1 be a web page set up for the DIR for this. I'm not
2 sure what you're going to do about the language
3 problems; however, I notice on the EDD website, when I
4 was just there the other day looking up where all their
5 offices are, they actually have a Google button, when
6 you click it, and in 81 different languages you could
7 have that page translated. It'd be nice if the DIR
8 could do something like that to assist these injured
9 workers. I don't have any other comments.

10 MS. GORMLEY: Thank you.

11 MS. SCHOENFELDER: I'm Christel Schoenfelder.
12 I'm an applicant attorney, and I am also representative
13 of the California Applicant Attorney's Association. So
14 SB63 went into effect on January 1st of 2013. We had a
15 prolonged period of time where it seemed like we could
16 not get those regulations up for access to those
17 injured workers, and so today I wanted to describe the
18 situation as real as I possibly can.

19 So on March 5th of 2014, I was representing an
20 injured worker who was in desperate financial straits.
21 Due to the AME Work Restrictions she could not return
22 back to her job as a night cook making \$12 an hour. On
23 top of dealing with the aftermath of her work injury,
24 we were trying to get her a \$1,000 permanent disability
25 advance which was not granted.

1 So on May 29th, 2014, she settled her case.
2 She did receive the supplemental job displacement
3 voucher. She gave up her right to future medical
4 because she needed the funds so badly, and based on the
5 RAND study, we can presume she probably has not found
6 another job or has some significant earnings lost. She
7 has been waiting nearly seven months, and she's going
8 to have to continue to wait for access to the funds.

9 Although the fund monies will not complete
10 eradicate her pain or help her pay all of her bills,
11 certainly it is something that would ease some very
12 brief, quick financial hardship for her.

13 I do represent another injured worker as
14 Robert McLaughlin had indicated who also settled her
15 case. She has a stipulated award -- she has already
16 received the voucher, as well. She's been waiting for
17 nearly five months for her voucher funds, supplemental
18 funds, and she's going to have to continue to wait for
19 that.

20 I am certainly concerned when I read the
21 regulations about notice to these clients. The Statute
22 of Limitation begins to run for them one year from the
23 effective date of the regulations, and my understanding
24 is that notice is going to be via publication on the
25 DIR website. Both of these ladies may not have

1 internet access, and so I am concerned that they will
2 not know how they can actually access the fund monies.

3 One additional comment I'd like to make, it is
4 not lost on me that both of these injured workers that
5 I represent are females and they are both females over
6 the age of 40. And so I would respectfully request
7 that the Department of Industrial Relations track the
8 gender of the applicants for this fund money because if
9 it shows the disproportionate amount of female
10 applicants is something that I believe the Commission
11 on Health and Safety and Workers' Compensation should
12 study. Thank you.

13 MR. GRAHAM: Good afternoon. Brent Graham on
14 behalf of Latino Comp. I'm the past president of
15 Latino Comp and the current legislative share. Latino
16 Comp thanks the administration for allowing us to
17 comment on the Return-to-Work fund regulations and
18 related matters. Latino Comp's perspective is to
19 consider how the regulations will impact the injured
20 worker as they navigate their way through and out of
21 this complicated system. We have a couple areas of
22 concern about the proposed regulations.

23 First is the ability of Spanish speakers or
24 other non-English speakers to even comprehend that they
25 are entitled to participate in the Return-to-Work Fund.

1 I don't see in the regulations that they're going to be
2 in Spanish or required, that the notices are going to
3 be in Spanish, and for all of the hundreds of thousands
4 or, frankly, millions of non-English speakers who speak
5 a language other than English or Spanish, there needs
6 to be a way for them to understand and apply for these
7 funds.

8 Second, given the decreases in benefits for
9 all the injured workers brought about SB863, the
10 \$120 million Return-to-Work fund was promised to be
11 available to offset some of the benefits decrease.
12 We're now two years down the line, presumably 240
13 million should be in the Return-to-Work fund available
14 for people to apply for. So I would hope that the
15 administration airs on the side of given too much to
16 the injured workers who are eligible and exhausting
17 those 240 million dollars which should be sitting there
18 rather than airing on the side of too little and then
19 later on changing the amount that is provided.

20 The RAND study which is the basis for the
21 proposed regulations basically gives a range of \$4,950
22 to \$11,662 for each eligible injured worker. Latino
23 Comp would propose that the administration change the
24 regulations so that the maximum \$11,662 is provided to
25 each eligible worker.

1 Based on the RAND study, obviously this is
2 just a small fraction of the actual earning losses that
3 each of these eligible injured workers has suffered and
4 we think they should be entitled to the maximum.

5 Second issue or third concern that Latino Comp
6 has is that under the RAND study, there's an assumption
7 that the usage rate for the supplemental job
8 displacement benefit, the vouchers, will double from
9 its current level based on the fact there's additional
10 funds available. That assumption is not backed up by
11 any study, data or evidence, rather, it's based on the
12 assumption that people would use the supplemental job
13 displacement benefits similar to the usage rate under
14 the old vocational rehabilitation system which went out
15 of use ten years ago; however, there's two critical
16 differences: One, is that under the old vocational
17 rehabilitation system, injured workers were actually
18 paid while they were going to school. Under the
19 current voucher program there is no such payment.

20 Secondly, the old vocational rehabilitation
21 program had 16,000 in funds available to the injured
22 worker to use for retraining. Obviously, we only have
23 6,000 under the current voucher program for these
24 injury 1113. So I think it's wrong and erroneous to
25 assume that automatically the participation rate will

1 double because of the availability of the
2 Return-to-Work fund. So I think that the numbers need
3 to be looked at again which is basically giving the
4 maximum 11,662 which is the amount from the RAND white
5 paper, table five.

6 Lastly, there's a third, fourth barrier for
7 injured workers to be able to obtain participation
8 eligibility under the Return-to-Work fund, that is the
9 current supplement job displacement benefit
10 requirement, requiring Form 10133.36 which is the
11 Return-to-Work form that has to be filled out by either
12 the treating doctor, QME, AME, or anyone else from a
13 medical standpoint that finds the injured worker
14 permanent stationary. That form is required to obtain
15 a supplemental job displacement benefit which is a
16 requirement to obtain participation for Return-to-Work
17 fund.

18 Unfortunately, because the newness of this
19 form, it's been revised 1114, the vast majority of
20 treating doctors, QME's, and AME's do not fill out this
21 form, have no idea they're supposed to fill out this
22 form which will have the effects of tens or hundreds of
23 thousands of injured work who otherwise are not able to
24 go back to their jobs and they're going to suffer 90%
25 or higher loss of earnings according to the RAND study

1 from getting their share of the Return-to-Work fund.
2 So I would hope there would be a way in these
3 regulations to publicize and encourage the doctor to do
4 what they're supposed to do, which is to fill out the
5 WC Form 10133.36. Latino Comp thanks you for your
6 time.

7 MS. GORMLEY: Next speaker.

8 MR. DELATORRE: Good afternoon. My name is
9 Bernardo Delatorre. I'm here on behalf of Comp. I'm
10 the president of Comp. And first of all, I'd like to
11 thank the Department of Industrial Relations for
12 allowing public input and allowing us to read and to
13 comment on these regulations, proposed regulations.

14 I would also like to comment on how simple it
15 is and how easy it can be for most workers to acquire
16 this Return-to-Work Fund. However, I believe it needs
17 a little bit more simplification, but the basic problem
18 being is, unfortunately, even though we depend on our
19 internet and we depend on our smart phones and we can
20 get the latest information we want in an instance, not
21 everyone can do that. And those are the people who
22 need these forms, those are the people who need this
23 money. Now in order to do that, we should be able to
24 have a printed form to apply for this. And even more
25 important than the printed form, it should also be in

1 the languages that the injured worker speak. To not
2 have a printed form and to not have it in the languages
3 the injured workers speak and in addition I'd like to
4 thank the speaker from Latino Comp regarding the form
5 10133.36, the way the regulations are made up, it's
6 really now one set of regulations.

7 And what I'm talking about is the supplemental
8 job displacement benefit regulations are now
9 intertwined with the Return-to-Work regulations, really
10 making them one set. And the requirement of this form,
11 which doctors are not filling out so carriers are not
12 paying out, or not sending out the voucher, so those
13 people will not be able to get the Return-to-Work Fund.

14 I believe it can be resolved very simply by
15 saying that if any doctor finds a person PNS after 113
16 and does not fill out this form, that report is not
17 substantial evidence. It is not valid until that form
18 is filled out, for any purposes. Once that form is
19 then acquired and the person can acquire this voucher,
20 then they can apply for the Return-to-Work Fund which
21 again should be in the language of the people speaking,
22 should be simplified to require to have someone
23 internet access as common as most of us, maybe all of
24 us in this room have, not everyone has it. And to
25 leave it as it is would seemingly require that only

1 those workers who have an attorney are going to be able
2 to get this voucher, and I believe the Return-to-Work
3 Fund and the voucher is now being set up so that they
4 will not need an attorney.

5 So, therefore, these regulations are
6 contradicting the intent of the Return-to-Work Fund.
7 So I believe it can be fixed, either require this from
8 the very beginning, require these doctors that their
9 report will not be valid which may not be paid for
10 until they fill out this form or also that this form
11 not be necessary to get the voucher. Either way I
12 believe that would be the simplification. Again, thank
13 you for your time.

14 MS. GORMLEY: Thank you. Anybody else want to
15 testify? So we're open until 4:30.

16 MR. RUEDAFLORES: Good afternoon, everybody.
17 Tommy A. Ruedaflores, and I'm a consumer advocate, a
18 member of Comp and Latino Comp and basically try to
19 fight for the rights of injured workers. A lot of this
20 stuff that has already been said by my state colleagues
21 already. I won't try to reiterate, but I wanted to
22 tell everyone here, and it's going to consider this
23 right to work fund, you know, practicing as an
24 applicant's lawyer over 30 years we seen the 80's where
25 the old rehab benefits included a stipend so our

1 clients could live while they go through school, you
2 know, that has been legislated out. We're now just
3 left with a voucher which is only \$6,000, and back in
4 2012 when these regulations were again getting
5 rewritten, we got the right to Return-to-Work Fund of
6 120 million which was supposed to help our clients out
7 that had a great loss of earning capacity based on the
8 current AMA Guides and ratings that take place now.

9 So what I'd like to say, I don't know if I'm
10 talking too close to this -- I would like to say that
11 there shouldn't be a lot of restrictions for our
12 injured workers in order to get what they're due. The
13 form DWC 10133.36 says, my colleagues have already
14 indicated to everybody here, is another barrier that is
15 so new that most AME doctors, QME doctors or treating
16 doctors, don't even fill them out. So when they're not
17 filled out our clients cannot get a voucher. So it
18 doesn't make sense to me or to my clients to say that
19 form is a prerequisite to get what they deserve in that
20 they have suffered a great earning loss capacity due to
21 their work injury.

22 Also, many of my clients are illiterate. Now
23 I could count the dozens and dozens and dozens and
24 dozens of clients over the years that will make an
25 appointment with me just for me to read a letter from

1 the insurance company, their daughter couldn't decipher
2 it, their sons whose in our schools, their family, so
3 they come to us, the lawyers or the representatives, to
4 make sure they don't create an error.

5 So even if they get a form, oftentimes they
6 don't understand it because of the comprehension
7 problems, and if you look at current studies in this
8 great state of ours -- I forget the two or three
9 cities, one was El Centro, but we had the worse
10 schooling and illiteracy rate in our country. So to
11 put an additional burden on a worker to get what he
12 deserves, we feel that isn't valid or correct or it
13 shouldn't be done.

14 What's wrong with the representative or if
15 they're in pro per with their family, just sending a
16 simple notice or letter to the carrier that I would
17 like to be entitled to my work to fund monies, please
18 tell me what I need to do. That's what we think that
19 should happen. No more for the barriers.

20 Also, it is come to our understanding some of
21 the vouchers notwithstanding the fact that they are
22 illegal to settle, get settled any way, a PR agreement,
23 to what I call the "back door," at sometimes these are
24 resolved by our own client's representatives so there
25 won't be a voucher to implement, there won't be a

1 voucher to get, and oftentimes those clients don't
2 understand when they settlement matters, that that
3 could have been snuck in there in a 9 to 12, 13-page
4 CNR agenda. So that's why we feel there shouldn't be a
5 barrier or a notice requirement by a doctor to get
6 these funds that were promised to us by our great
7 California legislator back in 2012.

8 And if the terms of the fund being 120
9 million, now it should be 240 million, and it should
10 climb yet again another fiscal year. So there is
11 enough funding to provide that money whether they use a
12 voucher or not, you know, the crux of the decision was
13 to compensate injured workers for anticipated earning
14 losses due to the AMA guides and the ratings which
15 undercut a lot of the value of their claims that were
16 based on the old schedules we used to use from 1913 up
17 to 2004.

18 And that's why we feel that there shouldn't be
19 more stringent controls like that notice. It should be
20 we as their applicants or them as they represent
21 themselves should ask for it through a simple letter
22 through a carrier. And it shouldn't be dependant on a
23 voucher because there are still a lot of in pro pers in
24 the system, and oftentimes they don't understand
25 procedural forms of what needs to be done by those

1 third parties such as a doctor to get what they
2 deserve.

3 And recently in my practice, I haven't seen
4 that form yet. And I stand corrected if it's not out
5 yet, but we're fighting for vouchers that the board or
6 at settling conferences with nothing from a doctor,
7 just basically his report. And that's why myself being
8 president of Latino Comp and a consumer advocate and a
9 board of direct of Comp and us representing injured
10 workers for many years, keep it simple. Don't put more
11 burdensome requirements on people that are necessary
12 and don't assume the representative or their doctor is
13 going to follow all procedural requirements. It
14 shouldn't be that stringent, that burdensome and that
15 difficult.

16 We always get benefits through letters or
17 notices on their cases or injuries and that's the way
18 it should be done and there will be enough funds, 240
19 million and counting, to compensate those injured
20 workers. Thank you.

21 MS. GORMLEY: Thank you.

22 It's 4:30 P.M. now. The hearing for the
23 return to work supplemental program regulations is
24 closed.

25 (Proceedings adjourned.)

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CERTIFICATION

I, CELINDA ALIGADA, CSR. No. 13724, Certified Shorthand Reporter for the State of California, do hereby certify;

That said proceedings were taken down by me in shorthand at the time and place therein named and were thereafter transcribed by means of computer-aided transcription; and the same is a true, correct and complete transcript of said proceedings.

I further certify that I am not of counsel nor attorney for any of the parties hereto or in any way interested in the events of this cause and that I am not related to any party hereto.

WITNESS my hand this_____day of_____, 2014.

CELINDA ALIGADA C.S.R. No. 13724