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STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS

PUBLIC HEARING
IN RE: RETURN-TO-WORK SUPPLEMENT PROGRAM
OAKLAND, CALIFORNIA
MONDAY, OCTOBER 31, 2016

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REPORTED BY: MICHELLE D. BARBANTE, CSR NO. 12601
FILE NO.: AA0B7BF

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DEPARTMENT OF INDUSTRIAL RELATIONS

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IN RE: RETURN-TO-WORK SUPPLEMENT PROGRAM
OAKLAND, CALIFORNIA
MONDAY, OCTOBER 31, 2016

Proceedings taken at California Department of
Industrial Relations, 1515 Clay Street, 2nd Floor, Room 7,
Oakland, California, 94612, commencing at 10:00 a.m.,
October 31, 2016, before Michelle Barbante, CSR No. 12601.

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A P P E A R A N C E S:

THE OFFICE OF THE DIRECTOR:

DEPARTMENT OF INDUSTRIAL RELATIONS
BY: GAYLE OSHIMA
1515 Clay Street
Suite 701
Oakland, California 94612

DEPARTMENT OF INDUSTRIAL RELATIONS
BY: TESS GORMLEY
REGULATIONS COORDINATOR
1515 Clay Street
Oakland, California 94612

PUBLIC COMMENTS:

DEBBIE FREEMAN
Freeman Rehabilitation Services

DIANE WORLEY
California Applicants' Attorneys Association

MITCH SEAMAN
California Labor Federation

MARIA SERVANO
Ortega Counseling Center

1 MS. OSHIMA: Okay. Good morning, everybody. I
2 guess we're on the record.

3 Today is October 31st, 2016, and we're gathered
4 here at 1515 Clay Street, Oakland, California, in the
5 Elihu Harris State Building. This is a public hearing on
6 the Return-To-Work Supplement Program Regulations
7 Proposal. It was published on September 16th, 2016.

8 And on behalf of the Director, I am
9 Gayle Oshima, staff counsel in the Office of the Director
10 - Legal Unit of the Department of Industrial Relations.
11 Also present is Ms. Tess Gormley, Chief of the Claims and
12 Risk Management units here at DIR.

13 I'd also like to say that we do have a Spanish
14 interpreter, if anybody who is making comments needs an
15 interpreter. Could you raise your hand, please.

16 THE INTERPRETER: (Raises hand.)

17 MS. OSHIMA: Okay. Thank you very much. And if
18 you have not yet signed in, even the return-to-work
19 employees, if you don't mind signing in, I'd like a record
20 of all who are present here. And as usual, if you could
21 print so that we could read your name.

22 And while on the subject of making this record,
23 you have noted that we have a court reporter here, so if
24 you could make sure to speak clearly. And then if you are
25 going to be making comments, I'd appreciate it, some of

1 you have already provided her with your business card, but
2 if you could, provide it to you so that she can get the
3 name of your spelling -- the spelling of your name
4 correct.

5 And let's see. So before we begin, as you may
6 know, this hearing is designed to take your comments on
7 the proposal so that your comments may be considered. If
8 you have questions for the agency to us for the proposal,
9 we may or may not answer them today, but your questions
10 and comments of course are welcome so that we can consider
11 the points that you raise.

12 As with all public comments for these
13 regulations, both written and in today's hearing, we will
14 respond to questions and comments within the final
15 statement of reasons. That document will be submitted to
16 the Office of Administrative Law for review when the
17 proposal is finalized.

18 If you haven't already done so, we have some
19 copies of the notice and the proposed regulations at the
20 table and the table up here, so, you know, you may want to
21 look at them during the hearing.

22 As of 9:45 this morning, we received two email
23 comments regarding the proposed regulations. You will
24 have until the close of business, 5:00 p.m. today, to, you
25 know, provide written comments, so if you don't want to

1 make comments here today, that's fine, but you do have
2 until 5:00 p.m. But we do invite people, okay, for the
3 oral comment period. So did you have any procedural --

4 MS. GORMLEY: No.

5 MS. OSHIMA: Okay. So let's begin.

6 section 17304, which the Department proposes to be
7 amended, will extend the Right-To-Work [sic] Supplement
8 application deadline for individuals who became eligible
9 for the benefit prior to December 1st, 2015, for an
10 additional year from the effective date of this rule.

11 The proposal was initially brought to the
12 Director's attention by the California Applicants'
13 Attorney Association, or CAAA, by way of letter dated
14 February 12th, 2016. The letter stated that there were
15 some individuals who may have received a voucher for the
16 return-to-work supplement, but also may not have received
17 notice of their eligibility. The proposed change to the
18 rule would rectify that by extending the deadline for an
19 additional year.

20 Is there anyone who wishes to testify or comment
21 on this regulation? Would you like to start?

22 DEBBIE FREEMAN: Oh, boy.

23 My name is Debbie Freeman, and I am a
24 return-to-work coordinator that works with claims
25 administrators and employers trying to get injured workers

1 back to their regular, modified or alternative positions
2 at their current employer, so that's my role in the
3 industry.

4 And one thing that I do for these claims
5 administrators when they get a voucher request from the
6 various parties is I look to see are all the forms
7 properly filled out by the proper parties. And what is
8 happening in our industry right now is the form that's
9 supposed to be filled out by the insurance company, the
10 10133.32 form, is now being filled out by other parties
11 other than the claims administrator, which is fraud. And
12 why that's happening is, injured workers are going to the
13 Return-to-Work Supplement page to fill out an application,
14 and in order to even fill out the application, you have to
15 have that form to even proceed to try to get the \$5,000.

16 So I don't have an issue with extending the
17 statute of limitations. I think that's appropriate,
18 because insurance companies are still not sending out the
19 right forms, so I don't -- my beef is, I would like the
20 rules and regs to reflect some warning about fraud like
21 you have on your Return-to-Work Supplement Program
22 application FAQs and your application. And what I would
23 like added on there is that any party other than the
24 claims administrator that fills out this 10133.32 form is
25 committing fraud. I don't know how that would be in the

1 rules and regs on your website, but that's what I would
2 like to be added in the rules and regs and the website.

3 MS. OSHIMA: Okay. Do you have your comments in
4 written form or --

5 DEBBIE FREEMAN: I handwrote it, but I can --

6 MS. OSHIMA: Oh, okay. It's okay. I just
7 wanted to -- because if you had proposed language --

8 DEBBIE FREEMAN: I'm not a lawyer, so I don't
9 have, like, any right language, but I think it needs to be
10 brought to the people who are actually going on your
11 website, on the FAQs, I went on all your pages and none of
12 it has that it is committing fraud if a party other than a
13 claims administrator fills out that form.

14 And the reason why that's really important is
15 some injured workers aren't even eligible for the voucher.
16 In two instances where that would happen is if a claim was
17 denied for AOE/COE entirely, they're not entitled to a
18 voucher or a Return-to-Work Supplement form, and there has
19 to be a 10133.36 form filled out by the doctor, and that's
20 when the carrier has 60 days to start the process. And a
21 lot of times, neither one of those instances has occurred
22 and these people are still trying to get the voucher
23 fraudulently in my opinion.

24 MS. OSHIMA: Okay. Thank you very much.

25 Is there anybody else? Oh, please.

1 DIANE WORLEY: I have a card for you.

2 Good morning.

3 MS. OSHIMA: Good morning.

4 DIANE WORLEY: Good morning. I'm Diane Worley,
5 and I'm the Policy Director for the California Applicants'
6 Attorneys Association.

7 And first of all, we must acknowledge and thank
8 you for scheduling this hearing, as it was in response to
9 our petition which we filed back in February 2016. We
10 continue to believe that an extension to the application
11 deadline is critical.

12 This morning I submitted written comments on
13 behalf of the California Applicants' Attorneys
14 Association, and certainly we support that a modification
15 needs to be made to the regulation to extend the deadline.
16 However, in the past eight months since we filed our
17 petition, it has become apparent to us that there are many
18 other issues relating to the delivery and of the
19 Return-to-Work Fund Supplement to eligible workers.

20 When we filed our petition, we looked at
21 two different groups that weren't getting notice of their
22 eligibility to apply. One was workers who got vouchers
23 before the implementation date for the regulations, which
24 was April 13, 2015. Those workers didn't get notice
25 whatsoever of their eligibility, so this -- this extension

1 of the deadline would certainly help those workers have
2 more time to apply.

3 The second group were those that got vouchers
4 after April 15th, 2015, up until the time that the voucher
5 form was amended. It was amended in October 2015, but
6 notice didn't go out to claims administrators that they
7 were supposed to use the new form until December 2015, so
8 there's a group of workers that were in kind of this gray
9 period, many of whom did not get notice, didn't know
10 anything about the fund.

11 And then there's a new group of workers.
12 There's workers who received vouchers after the form was
13 amended, but for whatever reasons, certain claims
14 departments are still using the old forms. That's a
15 smaller group, but they're still out there, and it
16 continues through the present.

17 CAAA has tried to, whenever we're aware of a
18 particular claims organization not using the amended form,
19 letting you all know this is going on, and we've gotten a
20 response from you saying, "We're going to talk to the
21 claims people."

22 So the extension of the deadline is going to
23 help people get more time to apply, but it's not going to
24 solve the problem of this -- these three groups who never
25 got notice learning that they're eligible, that they're

1 still sitting out there.

2 So in our written comments that I submitted this
3 morning, we came up with several different ways of
4 amending regulation 17303, which is the provision of
5 dealing with notice. Quite frankly, right now, that has
6 failed that section, because it's for a time period right
7 after the regulations were implemented.

8 So we've come up with five different ways to
9 make notice more effective because, quite frankly, if this
10 regulation is finalized by the Secretary of State, it will
11 be a hollow victory for injured workers. While they'll be
12 given more time to apply, there's still these large work
13 groups that don't know anything about the Return-to-Work
14 Fund.

15 Our goal is to make sure that the money is paid
16 out every year. There's \$120 million that is targeted to
17 be paid out each year to injured workers. We truly
18 appreciate that the numbers are going up. This morning I
19 got some statistics which shows that -- that the
20 applications are averaging I think around a thousand a
21 month, and at one point, I think in August, they were up
22 around 1400 a month. So it continues -- that trend
23 continues. That's good. But we think there are more
24 workers out there that need to get notice of this fund.

25 So the last thing in our written comments is

1 that, if there isn't a modification that's going to be
2 made to section 17304, then our suggestion is an
3 alternative with regard to the proposed modification for
4 17304(b), for those workers who never got notice with the
5 amended Supplemental Job Displacement Benefit voucher
6 form, that it read, "Notwithstanding subdivision (a) of
7 this section, the director shall not impose upon the
8 employee a time limit for filing an application for the
9 Return-to-Work Supplement when they have not been served
10 with the revised DWAC-AD Form 10133.32."

11 What that would do is not continue to penalize
12 workers that haven't gotten any notice. I mean, if you
13 haven't gotten notice, how do you apply? It would also
14 help the Return-to-Work unit maybe come up with a more
15 long-term solution how to capture those workers that are
16 currently getting the amended form.

17 So thank you for the opportunity. I have a copy
18 of my written comments if you'd like that.

19 MS. OSHIMA: Oh, excellent.

20 DIANE WORLEY: Thank you.

21 MS. OSHIMA: If you could give it to the court
22 reporter --

23 DIANE WORLEY: Sure.

24 MS. OSHIMA: -- that would be fantastic. Thank
25 you.

1 DIANE WORLEY: Thanks.

2 MS. OSHIMA: Is there anyone else who wishes to
3 testify on the proposed regulation?

4 Do you have a business card?

5 MITCH SEAMAN: I do.

6 MS. OSHIMA: If you could provide it to the
7 court reporter.

8 MITCH SEAMAN: Thank you. All right. Good
9 morning. My name is Mitch Seaman. I'm with the
10 California Labor Federation, and we just wanted to briefly
11 expression our appreciation to DIR for looking into this
12 issue and proposing -- well, responding to a proposal to
13 make the changes necessary to make sure the injured
14 workers who have the right to take advantage of this
15 program actually do effectively have that right and could
16 secure these benefits when appropriate.

17 When this provision was put into Senate
18 Bill 863, it was pretty late in the game, and it was kind
19 of down to the wire, and so it was sort of put in there on
20 faith that, were any problems or any issues identified
21 afterwards, that we would be able to come back and fix
22 those as quickly as possible. And so the specific issues
23 just raised by Applicants' Attorneys Association,
24 notwithstanding, we think this -- this change does -- does
25 kind of achieve that goal of identifying the problem and

1 making an effort to solve it, and so hopefully we can do
2 whatever we can to make sure that any and all workers that
3 should have the right to take advantage of this program do
4 so. Those who didn't get notice have enough time to make
5 sure that they can file their application under authority
6 of the benefits that they should be awarded. But overall,
7 we just wanted to express our appreciation for the
8 responsiveness and coming back to make sure that injured
9 workers have access to the rights and benefits they
10 deserve. Thank you.

11 MS. OSHIMA: Thank you. Did anyone else --
12 please. Thank you.

13 MARIA SERVANO: Hi. Excuse me, I'm sorry, my
14 voice is bad.

15 MS. OSHIMA: Okay.

16 MARIA SERVANO: My name is Maria Servano, and
17 I'm with Ortega Counseling Center. We're a
18 Return-to-Work -- we're a vocational return-to-work
19 center.

20 And I think it -- the extension is actually not
21 only a good idea but it's actually very necessary because
22 there's a lot of injured workers that we've been seeing
23 that have been awarded vouchers and either get the wrong
24 voucher or get the correct voucher and then the insurance
25 companies do not want to honor the vouchers because they

1 did not receive physician's return-to-work forms, and even
2 though the voucher has been awarded and even the client is
3 eligible for it, they do not want to honor them. So
4 trying to get that physician's return to work form from
5 the doctors after the fact is actually delaying the
6 process of the client being able to not only enroll in
7 some kind of program, but also be able to apply, because
8 they don't want to honor the actual vouchers or they never
9 included a proof of service, which apparently is something
10 that the DIR needs attached with the voucher in order for
11 the application to be submitted.

12 That's also another thing that a lot of carriers
13 are not doing is signing the forms or issuing the signed
14 proof of service. We actually called the DIR once,
15 actually twice, to find out why the proof of service needs
16 to be signed or if there's an alternative to it if the
17 voucher has been issued. We actually were not given any
18 actual answer to that. We were just literally told, "I
19 don't know, but it needs to be included."

20 So -- and the problem is that, if it's not
21 complete, the clients are getting rejection notices from
22 the DIR, but the insurance companies refuse to issue it if
23 there's no physician's return-to-work form. So I think
24 trying to resolve all that takes time, especially when
25 doctors are not willing to because even though it says

1 it's an obligational form, they feel they have no
2 obligation to do so, and that delays everything. And it
3 reaches sometimes the one-year mark for the injured
4 workers and then they can no longer apply, so -- which I
5 think would at least help the time frame that -- or the
6 constraint that we have within the time frame to get all
7 the documents in order for them.

8 MS. OSHIMA: Okay. Thank you very much.

9 MARIA SERVANO: Thank you.

10 MS. OSHIMA: Was there anyone else who wanted to
11 provide comments? No one else.

12 Okay. This is your last chance to make oral
13 comments on the proposed regulation changes. As I
14 mentioned earlier, you do have the opportunity to provide
15 written comments until close of business, 5:00 p.m. today.
16 The information is contained in the notice, and if you
17 haven't already done so, you may, you know, pick up a
18 packet.

19 Let's see. Okay. Hearing nothing further, that
20 concludes the presentation of the proposed changes to the
21 regulations as published on September 16th, 2016. I want
22 to thank you all who have commented, and we appreciate
23 your attendance today. This will conclude the hearing for
24 today. Thank you very much.

25 (End of proceedings 10:21 a.m.)

REPORTER'S CERTIFICATE

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4 I, MICHELLE BARBANTE, CSR No. 12601, Certified
5 Shorthand Reporter, certify:

6 That the foregoing proceedings were taken before me
7 at the time and place therein set forth;

8 That the testimony of the witness, the questions
9 propounded, and all objections and statements made were
10 recorded stenographically by me and were thereafter
11 transcribed;

12 That the foregoing is a true and correct transcript
13 of my shorthand notes so taken.

14 I further certify that I am not a relative or
15 employee of any attorney of the parties, nor financially
16 interested in the action.

17 I declare under penalty of perjury under the laws of
18 California that the foregoing is true and correct.

19 Dated this 8th day of November, 2016.
20

21 _____
22 MICHELLE BARBANTE, C.S.R. No. 12601
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REPORTER'S CERTIFICATION OF CERTIFIED COPY

I, MICHELLE BARBANTE, CSR No. 12601, a Certified Shorthand Reporter in the State of California, certify that the foregoing pages constitute a true and correct copy of the original public hearing taken on October 31, 2016.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated this 8th day of November, 2016.

MICHELLE BARBANTE, C.S.R. NO. 12601