

**STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS**

**NOTICE OF PUBLIC HEARING ON PETITION  
TO AMEND REGULATIONS  
(Government Code section 11340.7)**

**TITLE 8, CALIFORNIA CODE OF REGULATIONS, SECTION 17304,  
ARTICLE 1 OF CHAPTER 8, SUBCHAPTER 7**

**PETITIONER: California Applicants' Attorneys Association**

By letter dated February 12, 2016, the California Applicants' Attorneys Association (Petitioner) petitioned the Director of Industrial Relations (Director) in accordance with Government Code section 11340.6. The Petitioner requests that the Director amend California Code of Regulations, title 8 (8 CCR), section 17304 to extend the Return-to-Work Supplement (RTWS) application deadline for individuals who became eligible for the benefit before December 1, 2015.

**AUTHORITY**

Labor Code section 55 authorizes the Director to make rules and regulations that are reasonably necessary to effectuate the purposes of the Department of Industrial Relations (Department). Labor Code section 139.48, subdivision (b) specifically authorizes the Director to adopt regulations determining eligibility for, and the amount of, benefit payments under the RTWS Program.

**PUBLIC HEARING**

The Director will hold a public hearing at 10:00 a.m. on April 15, 2016, at 1515 Clay Street, Oakland, California. The hearing room is wheelchair accessible. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the Petition and any reasonable alternatives thereto. The Director requests, but does not require, that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

**CONTACT PERSON**

Please direct any inquiries regarding this action to Nathan Schmidt, Counsel, Office of the Director – Legal Unit, P.O. Box 420603, San Francisco, CA 94142-0603.

**AVAILABILITY OF PETITION**

The Petition to amend regulations is available upon request directed to the Department's contact person.

## **SUMMARY OF THE PETITION**

Petitioner requests that 8 CCR section 17304 be amended as follows:

An application for the Return-to-Work Supplement must be received by the Return-to-Work Supplement Program within one year from the date the updated Voucher form containing notice was served on the individual ~~or within one year from the effective date of these regulations, or one year from the effective date of this amendment to the regulations for those individuals who received vouchers before December 1, 2015, whichever is later.~~

Petitioner states that the requested extension to the application deadline is necessary, because injured workers who received a voucher on or before the April 13, 2015 effective date of the regulations implementing the RTWS Program will no longer be able to apply for an RTWS benefit after April 13, 2016. This is despite the fact that those individuals did not receive notice of their eligibility to apply for an RTWS benefit when they received their Vouchers. Petitioner also notes that the Supplemental Job Displacement Voucher form, which is supposed to provide notice of eligibility to apply an RTWS benefit, was not updated to include that notice until December 1, 2015.

Petitioner believes that the low number of applicants to the RTWS Program in 2015 (less than 12,000 when at least 24,000 were projected by the Rand study which the Department relied on when developing the Program) is most likely due to this lack of notice of eligibility, as well as some difficulties in using the online application process.

## **DEPARTMENT DECISION**

The Director has determined to hold a hearing on the Petition.

The RTWS Program was established by the Legislature in Labor Code section 139.48, part of Senate Bill 863, the landmark workers' compensation reform measure of 2012, to provide "supplemental payments to workers whose [Workers' Compensation] permanent disability benefits are disproportionately low in comparison to their earnings loss." After Labor Code section 139.48 took effect on January 1, 2013, the Department, in coordination with the Commission on Health and Safety and Workers' Compensation, commissioned a study from the Rand Corporation of injured workers whose permanent disability benefits are disproportionately low in comparison to their earnings loss. Guided by the Rand study, which was completed in February 2014, the Department developed and adopted 8 CCR sections 17300 through 17310 to implement the RTWS Program. These regulations went into effect on April 6, 2015, and the Department began accepting applications for RTWS benefits on April 13, 2015.

8 CCR section 17302 establishes receipt of a Supplemental Job Displacement Benefit Voucher (Voucher) for an injury occurring on or after January 1, 2013, as the sole basis

of eligibility for the RTWS benefit. Existing section 17304 requires an application for the RTWS benefit to be submitted “within one year from the date the Voucher was served on the individual or within one year from the effective date of these regulations, whichever is later.” To protect the ability of individuals whose entitlement to receive an RTWS benefit is based on receipt of a voucher after January 1, 2013, the effective date of Labor Code section 139.48, but before the April 2013 effective date of the regulations implementing the RTWS Program, 8 CCR section 17304 gave individuals who received vouchers in that time period one year after the effective date of the regulations to apply for the benefit.

Because Vouchers are issued directly to eligible workers by Workers’ Compensation claims administrators on a form adopted by the Division of Workers’ Compensation (DWC), 8 CCR section 17303 established the following interim notice procedure pending amendment of the Voucher form:

Commencing 30 days after the effective date of these regulations, and continuing until the Administrative Director of the Division of Workers’ Compensation amends Form DWC-AD 10133.32 to include notice of the Return-to-Work Supplement application process, all Vouchers issued shall be accompanied by a cover sheet, prepared by the claims administrator, containing the following notice: “Because you have received this Voucher and are unable to return to your usual employment you may be eligible for a Return-to-Work Supplement. You must apply within one year from the date this Voucher was served on you. You should make a copy of the Voucher which you will need to apply for the Return-to-Work Supplement. Details about the Return-to-Work supplement program are available from the Department of Industrial Relations on its web site, [www.dir.ca.gov](http://www.dir.ca.gov), or by calling 510-286-0787.” The Director will arrange for publication on the Department web site of a notice targeted at eligible persons who received vouchers before the notice was included with the voucher.

As noted in the Petition, the amended Voucher form including a notice of eligibility for the RTWS benefit (DWC-AD Form 10133.32 (SJDB) Rev: 10/1/15) did not go into general use until approximately December 1, 2015. While 8 CCR 17303 required claims administrators to provide notice of eligibility via a cover sheet accompanying all Vouchers issued until the Voucher form was amended by DWC, the Department has been informed that at least some vouchers issued prior to December 1, 2015 were not accompanied by the required notice. Petitioner suggests that amendment of 8 CCR section 17304 is “a fair remedy to allow all eligible injured workers the opportunity to apply for the Return-to-Work Supplement payment.”

Before making a determination whether to grant or deny the Petition, or to address the identified situation via another means, the Director has determined to hold a public hearing to gather input on the Petitioner’s proposal and reasonable alternatives thereto.