

**State of California
Office of Administrative Law**

In re:
Department of Industrial Relations

**NOTICE OF APPROVAL OF REGULATORY
ACTION**

Regulatory Action:

Government Code Section 11349.3

Title 8, California Code of Regulations

OAL File No. 2015-0402-01 SR

Adopt sections: 17300, 17301, 17302,
17303, 17304, 17305,
17306, 17307, 17308,
17309, 17310

Amend sections:
Repeal sections:

This resubmittal of a previously withdrawn action implements the Return-to-Work Program established by the Legislature for the purpose of making supplemental payments to workers whose Workers' Compensation permanent disability payments are disproportionately low in comparison to their earnings loss. This action adopts provisions regarding the program scope, eligibility, notice, application, decisions, payments, appeals, and false claims. The applicant redeems a voucher mailed from the Department of Industrial Relations to the applicant.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 4/6/2015.

Date: 4/6/2015



Mark Storm
Senior Attorney

For: DEBRA M. CORNEZ
Director

Original: Christine Baker
Copy: Nathan Schmidt

RESUBMITTAL

STATE OF CALIFORNIA—OFFICE OF ADMINISTRATIVE LAW

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

| | | | |
|------------------|---|---|------------------|
| OAL FILE NUMBERS | NOTICE FILE NUMBER Z-2014-1014-01 | REGULATORY ACTION NUMBER 2015-0402-01SR | EMERGENCY NUMBER |
|------------------|---|---|------------------|

ENDORSED - FILED
In the office of the Secretary of State
of the State of California

APR 06 2015
3:27 PM

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| For use by Office of Administrative Law (OAL) only | |
| <p style="text-align: center;">NOTICE</p> | <p style="text-align: center;">REGULATIONS</p> |

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~~2014~~ APR -2 P 12:46
OFFICE OF ADMINISTRATIVE LAW

AGENCY WITH RULEMAKING AUTHORITY
Department of Industrial Relations

AGENCY FILE NUMBER (if any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

| | | | | |
|---|--|---|---|---|
| 1. SUBJECT OF NOTICE Return-to-Work Supplement Program | | TITLE(S) 8 | FIRST SECTION AFFECTED 25101 | 2. REQUESTED PUBLICATION DATE October 24, 2014 |
| 3. NOTICE TYPE <input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other | | 4. AGENCY CONTACT PERSON Fred Lonsdale | TELEPHONE NUMBER (510) 286-3800 | FAX NUMBER (Optional) |
| OAL USE ONLY | ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn | | NOTICE REGISTER NUMBER 2014 432 | PUBLICATION DATE 10/24/2014 |

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

| | |
|---|---|
| 1a. SUBJECT OF REGULATION(S) Return-to-Work Supplement Program | 1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2015-0130-03S |
|---|---|

2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

| | |
|---|---|
| SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.) | ADOPT 17300, 17301, 17302, 17303, 17304, 17305, 17306, 17307, 17308, 17309 and 17310 |
| | AMEND |
| TITLE(S) 8 | REPEAL |

3. TYPE OF FILING

| | | | |
|--|---|---|---|
| <input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) | <input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. | <input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) | <input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) |
| <input checked="" type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) | <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1) | <input type="checkbox"/> File & Print | <input type="checkbox"/> Print Only |
| <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b)) | | <input type="checkbox"/> Other (Specify) _____ | |

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)
March 16, 2015 through April 1, 2015

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

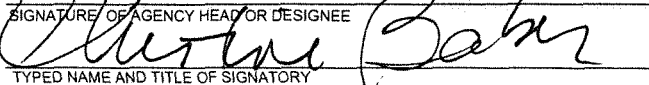
| | | | |
|---|---|---|---|
| <input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a)) | <input checked="" type="checkbox"/> Effective on filing with Secretary of State | <input type="checkbox"/> §100 Changes Without Regulatory Effect | <input checked="" type="checkbox"/> Effective other (Specify) Not earlier than April 1, 2015 |
|---|---|---|---|

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

| | | |
|---|--|---|
| <input checked="" type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) | <input type="checkbox"/> Fair Political Practices Commission | <input type="checkbox"/> State Fire Marshal |
| <input type="checkbox"/> Other (Specify) _____ | | |

| | | | |
|-------------------------------------|------------------------------------|---|--|
| 7. CONTACT PERSON Nathan Schmidt | TELEPHONE NUMBER (510) 286-1205 | FAX NUMBER (Optional) (510) 286-1220 | E-MAIL ADDRESS (Optional) nschmidt@dir.ca.gov |
|-------------------------------------|------------------------------------|---|--|

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

| | |
|--|--------------------------|
| SIGNATURE OF AGENCY HEAD OR DESIGNEE  | DATE 3/26/2015 |
| TYPED NAME AND TITLE OF SIGNATORY Christine Baker, Director | |

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED
APR 06 2015
Office of Administrative Law

**TITLE 8. INDUSTRIAL RELATIONS
DIVISION 1. DEPARTMENT OF INDUSTRIAL RELATIONS
CHAPTER 8. OFFICE OF THE DIRECTOR
SUBCHAPTER 7. RETURN-TO-WORK SUPPLEMENT
ARTICLE 1.**

17300. General, Scope and Application of Article

(a) This article governs the return-to-work program established by Labor Code section 139.48. This program shall be called the Return-to-Work Supplement Program. The Return-to-Work Supplement Program is located at 1515 Clay Street, 17th Floor, Oakland, California, 94612.

(b) This program is intended to provide supplemental payments to workers whose permanent disability benefits are disproportionately low in comparison to their earnings loss. This program is based on findings of studies done by RAND concerning permanent disability and in particular the study entitled Identifying Permanently Disabled Workers with Disproportionate Earnings Losses for Supplemental Payments, RAND, February 2014. http://www.dir.ca.gov/chswc/Reports/2014/Earnings_Losses_2014.pdf

Note: Authority cited: Sections 54, 55 and 139.48, Labor Code.
Reference: Section 139.48, Labor Code.

17301. Definitions

For the purpose of these rules:

- (a) "Supplemental Job Displacement Benefit" means the benefit provided under Labor Code 4658.7.
- (b) "Voucher" means a "Supplemental Job Displacement Nontransferable Voucher For Injuries Occurring on or After 1/1/13" (Form DWC-AD 10133.32) furnished by a claims administrator to an injured worker pursuant to section 10133.31.

Note: Authority cited: Sections 54, 55 and 139.48, Labor Code.
Reference: Section 139.48 and 4658.7, Labor Code.

17302. Eligibility

- (a) To be eligible for the Return-to-Work Supplement, the individual must have received the Supplemental Job Displacement Benefit (SJDB) Voucher for an injury occurring on or after January 1, 2013.
- (b) An individual who has received a Return-to-Work Supplement may not receive a second or subsequent Return-to-Work-Supplement, except where the individual

receives a Voucher for an injury which occurs subsequent to receipt of every previous Return to Work Supplement.

Note: Authority cited: Sections 54, 55 and 139.48, Labor Code.

Reference: Section 139.48 and 4658.7, Labor Code.

17303. Notice

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, 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.

Note: Authority cited: Sections 54, 55 and 139.48, Labor Code.

Reference: Section 139.48 and 4658.7, Labor Code.

17304. Deadline for Application

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 Voucher was served on the individual or within one year from the effective date of these regulations, whichever is later.

Note: Authority cited: Sections 54, 55 and 139.48, Labor Code.

Reference: Section 139.48, Labor Code.

17305. Method of Application

An application must be submitted by electronic means through the Department of Industrial Relations web site. The Department will make access to this web site available at each Division of Workers' Compensation Information and Assistance Office location in the state.

Note: Authority cited: Sections 54, 55 and 139.48, Labor Code.

Reference: Section 139.48, Labor Code.

17306. Application Contents

The application shall be made on the electronic form on the Department of Industrial Relations web site and shall include a declaration under penalty of perjury that the information provided is true and correct. The application shall contain the individual's first name, last name and middle name, social security number or tax ID number, address, telephone number and email address, if available, and the ADJ number of any workers' compensation cases filed by the individual, and the individual shall submit a .pdf or .tiff of the Voucher as an attachment to the application. The individual shall indicate whether the individual is a California resident or a non-resident.

Note: Authority cited: Sections 54, 55 and 139.48, Labor Code.
Reference: Section 139.48, Labor Code.

17307. Processing of Applications and Decision on Applications

All completed and timely filed applications will be reviewed and a decision will be made on whether the individual is entitled to the supplement within 60 days of the receipt of the completed application. Applications satisfying the requirements of sections 17302, 17304, 17305 and 17306 will be approved. The individual will be notified by mail or, where available, email, of the decision. The decision is a final decision of the Director.

Note: Authority cited: Sections 54, 55 and 139.48, Labor Code.
Reference: Section 139.48, Labor Code.

17308. Supplement Payment

The Return- to-Work Supplement Program will provide a supplement of \$5,000.00 to each eligible individual who submits a complete application by the deadline. The payment will be made within 25 days of the date the decision of the Director on the application and will be paid in one lump sum. Payment shall be made directly to the individual and is not assignable before payment. The amount of this supplement may be adjusted by the Director based on further studies conducted by the Director in accordance with Labor Code section 139.48.

Note: Authority cited: Sections 54, 55 and 139.48, Labor Code.
Reference: Section 139.48, Labor Code.

17309. Appeal to the WCAB

An individual dissatisfied with any final decision of the Director on his or her application for the Return-to-Work Supplement may, file an appeal at the Workers' Compensation Appeals Board (WCAB) District Office. The appeal must contain the name of the individual, the ADJ number of the case in which a voucher was provided, and a clear and concise statement of the facts constituting the basis for the appeal. A copy of the appeal shall be served on the Return-to-Work Program located at 1515 Clay Street, 17th Floor,

Oakland, California, 94612. Any appeal must be filed with the WCAB within 20 days of the service of the decision. After an appeal has been timely filed, the Return-to-Work Program may, within the period of fifteen (15) days following the date of filing of that appeal, amend or modify the decision or rescind the decision and take further action. Further action shall be initiated within 30 days from the order of rescission. The time for filing an appeal will run from the filing date of the new, amended or modified decision. Any such appeal will be subject to review at the trial level of the WCAB upon the same grounds as prescribed for petitions for reconsideration.

Note: Authority cited: Sections 54, 55 and 139.48, Labor Code.
Reference: Section 139.48, Labor Code.

17310. False Claims

An application for benefits from the Return-to-Work Supplement Program is a claim for benefits from the state.

The application shall contain the following notice:

“WARNING: any person who knowingly makes or uses a false record or statement material to the claim is liable for treble damages plus a civil penalty of not less than \$5,500 and not more than \$11,000 plus the cost of the action pursuant to the False Claims Act, Government Code sections 12650-12656.”

This warning does not constitute a limitation on any penalties that may attach to any action in violation of the law.

Note: Authority cited: Sections 54, 55 and 139.48, Labor Code.
Reference: Section 139.48, Labor Code; and Sections 12650, 12651, 12652, 12653, 12654, 12655 and 12656, Government Code.