

**STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
OFFICE OF THE DIRECTOR**

INITIAL STATEMENT OF REASONS

**Subject Matter of Regulations: Return-to-Work Supplement Program
California Code of Regulations, Title 8, Article 1
Sections 25101-25111**

1. Introduction.

This Initial Statement of Reasons ("ISOR") describes the purposes, rationales, and necessity of the Department of Industrial Relations ("DIR") regulations establishing a return-to-work supplement program.

In passing Senate Bill 863 (Statutes of 2012, Chapter 363) ("SB 863"), the Legislature created a return-to-work program to be administered by the Director of Industrial Relations. This program has as its purpose the making of supplemental payments to workers whose permanent disability benefits are disproportionately low in comparison to their earning loss. This Initial Statement of Reasons fulfills the requirements of California's Administrative Procedure Act (see Government Code section 11340 et seq.).

Under SB 863, the Director has been authorized to establish a return-to-work supplement program. The authorizing statute, Labor Code section 139.48, requires the Director to adopt regulations for determining eligibility for supplemental payments from the fund established in section 139.48(a).

To implement these SB 863 changes, DIR proposes to add sections 25101 to 25111 to Subchapter 8 of Article 1 of title 8, California Code of Regulations.

The proposed amendments define certain terms, establish eligibility criteria, detail the method for application and provide for payment from the fund established in section 139.48.

DIR welcomes comments on the ISOR and on the proposed regulations that the ISOR describes. Please see the accompanying Notice of Rulemaking for instructions on how to submit comments electronically, on paper, and orally at the DIR hearing on the proposed regulations.

2. Technical, Theoretical, or Empirical Studies, Reports, or Documents.

DIR relied on the following studies: Identifying Permanently Disabled Workers with Disproportionate Earnings Loss for Supplemental Payments, RAND, February 2014; Workers' Compensation Reform and Return to Work: The California Experience, RAND, 2011; An Evaluation of California's Permanent Disability Rating System, 2005.

3. Problem Addressed with this Rulemaking.

This rulemaking allows the Department to comply with SB 863's mandate to establish eligibility for payments and the amount of payments from the return-to-work program for injured workers established by that bill.

4. Specific Technologies or Equipment.

None.

5. Reasonable Alternative to the Proposed Regulations and Reasons for Rejecting Those Alternatives.

The Director has not identified any equally effective and less burdensome alternative to the regulation at this time. The public is invited to submit such alternatives during the public comment process.

The Director considered two alternatives. One would have provided this Supplement to those workers whose wage loss was 30% greater than average. This alternative was rejected because of higher administrative costs and because of the delay introduced by having to determine the average wage loss and the individuals wage loss. The second rejected alternative would have provided the supplement to those individuals who received a Supplemental Job Displacement Benefit and whose actual wage loss was greater than average. Again, the administrative costs were too high and the delay imposed by having to determine the average wage loss would postpone payment of the supplement. In the case of both these rejected alternatives the amount of the supplement would not have substantially changed.

6. Duplication or Conflicts with Federal Regulations (Gov. Code section 11346.2(b)(7)).

The proposed regulations do not duplicate or conflict with any federal regulations. There are no federal regulations that prescribe rules for a Return-to-Work Supplement.

7. Facts, Evidence, Documents, Testimony, or Other Evidence on Which the Agency Relies to Support an Initial Determination That the Action Will Not Have a Significant Adverse Economic Impact on Business. (Gov. Code section 11346.2(b)(6)(A)).

The Director has determined that the proposed regulations will not have a significant adverse economic impact on business. These regulations concern eligibility for a return-to-work supplement and the process for applying for the supplement. As such the regulations do not have a significant impact on business.

8. Economic Impact Analysis ((Gov. Code section 11346(b)(1)(A)-(D)).

Purpose

The proposed regulations implement a program for a return-to-work supplement found in Labor Code section 139.48 as a result of the passage of SB 863 and are designed to create a process for applying for the Return-to-Work Supplement as well as establishing the level of payment for injured workers. (A more detailed explanation of the regulatory changes is stated in the introduction section above.) A Standardized Regulatory Impact Assessment is provided with this Initial Statement of Reasons.

The Creation or Elimination of Jobs within the State of California

The Director has determined that the proposed regulations will not have a significant impact on jobs within the State of California. SB 863 mandates the creation of the return-to-work supplement fund.

This should not result in the elimination of jobs in California. To the contrary, jobs within the State of California may be created as a result of this program as it may support workers who have lost employment due to an industrial injury.

Creation of New Businesses or the Elimination of Existing Businesses within the State of California

The Director has determined that the proposed regulations will not significantly create or eliminate businesses within the State of California. The additional costs to businesses due to the SB 863 mandatory changes should be absorbable by existing businesses and should not result in either a substantial change in their existing business practices or their elimination. The primary new requirement under SB 863 that could result in the creation of some new businesses is the addition of funds directly provided to workers most suffering wage loss as a result of industrial injury. The regulations do not impose new requirements but rather implement the return-to-work program in Labor Code section 139.48

The Expansion of Businesses Currently Doing Business Within the State of California

The Director has determined that the proposed regulations will not significantly expand businesses within the State of California.

Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety, and the State's Environment

The proposed regulations will establish eligibility criteria for the return-to-work program created by Labor Code section 139.48 and will set the amount of payments to injured workers under that program. These payments are intended to assist injured workers who cannot return to the job they had at the time of their industrial injury.

9. The Specific Purpose, Rationale, and Necessity of Each Section of the Proposed Revisions and Proposed New Regulations to the Return-to-Work Program (Gov. Code section 11346.2(b)(1)).

The specific purpose, rationale, and necessity of each section of the proposed revisions and proposed new regulations to the return to work statute, in accordance with Government Code section 11346.2(b)(1) is provided below.

Section 25101. General, Scope and Application of Article.

Specific Purpose:

This section sets out general background for the return-to-work program. The section gives the name and address of the program and describes the scope and purpose of the program.

Necessity:

It is necessary to clearly identify how the program will be referenced and to provide an address for members of the public to contact to program. This section is also necessary to set out the purpose of the program and to identify the particular study relied on by the Director in carrying out the legislative mandate which required that the program be based on findings from studies carried out by the Director.

Section 25102. Definitions.

Specific Purpose:

This section defines terms that are used on the remaining regulations.

Necessity:

This section is necessary to provide clear definitions and to allow the public to more easily follow the meaning of the regulations.

Section 25103. Eligibility.

Specific Purpose:

This section defines who are eligible for the Return-to-Work Supplement. The Labor Code established this program for workers whose permanent disability benefits are low compared to their wage loss. Under the regulation an individual must have a work related injury that results in an inability to return to the work they were doing at the time of the injury. Inability to return to the employment the worker was doing at the time of injury has been shown to be linked to higher than average wage loss. Those individuals who receive the Supplemental Job Displacement Benefit under Labor Code section 4658.7 meet the criteria of being unable to

perform the work they were doing at the time of the injury. The regulation further requires that an individual who receives the Return-to-Work Supplement may not receive a second Return-to-Work Supplement unless that individual returns to the work force and suffers an additional injury that prevents that individual from continuing in that job.

Necessity:

This section is necessary to implement the changes to Labor Code section 139.48 by establishing eligibility criteria for the legislatively mandated Return-to-Work Supplement.

Section 25104. Notice.

Specific Purpose:

An individual who receives the Supplemental Job Displacement Benefit under Labor Code section 4658.7 because that individual cannot return to the job they were performing when they were injured receives a voucher evidencing the promise to make payments under section 4658.7. That voucher is on a form mandated by 8 C.C.R. § 10133.32. This section requires that the voucher includes a notice that the individual may be eligible for the Return-to-Work Supplement and is intended to advise those individuals who may wish to apply for the Return-to-Work Supplement about the program and how to get additional information. The section also provides that the Director will arrange for publication of this notice targeted at those who have already received a voucher.

Necessity:

This section is necessary to implement the changes to Labor Code section 139.48 by providing notice of existence of the Return-to-Work Supplement.

Section 25105. Deadline for Application.

Specific Purpose:

This section establishes the deadline for an injured worker to apply for the Return-to-Work Supplement.

Necessity:

This section is necessary to alert potential applicants that there is a time limit for applying for the Return-to-Work Supplement.

Section 25106. Method of Application.

Specific Purpose:

This section creates the process for an individual to apply for the Return-to-Work Supplement. The regulation requires that all applications be made electronically through DIR's web site, and further provides that DIR will make access to the web site available at each Information and Assistance Office location in the state. These offices are located at the Workers' Compensation Appeals Board's District Offices.

Necessity:

This section is necessary to implement the changes to Labor Code section 139.48 in order to establish the means by which an individual may apply for the Return-to-Work Supplement.

Section 25107. Application Contents.

Specific Purpose:

This section spells out the contents of the application which must be filed to apply for the Return-to-Work Supplement.

Necessity:

This section is necessary to implement the changes to Labor Code section 139.48 by establishing the information and documents necessary to apply for the Return-to-Work Supplement.

Section 25108. Processing of Applications and Decision on Applications.

Specific Purpose:

This section establishes a time frame of 60 days for reviewing applications and for making a decision on an application. It also provides for the method of notifying applicants of the decision.

Necessity:

This section is necessary to implement the changes to Labor Code section 139.48 by establishing a time frame for decisions and method of providing notice.

Section 25109. Supplement Payment.

Specific Purpose:

This section establishes the amount of the Return-to-Work Supplement and sets out the time frame for payment. This section further allows the Director to adjust the amount of the payment based on further studies of wage loss and permanent disability and also based on consideration of the number of anticipated recipients.

Necessity:

This section is necessary to implement the changes to Labor Code section 139.48 by establishing the actual amount of the payment to those individuals who are eligible and by further allowing the Director to adjust the amount of the Return-to-Work Supplement to reflect the most up to date information about wage loss and the level of permanent disability benefits as well as the number of individuals who are eligible for the Return-to-Work Supplement.

Section 25110. Appeal to the WCAB.

Specific Purpose:

Labor Code section 139.48 requires that appeals of decisions concerning the Return-to-Work Supplement be handled at the Workers' Compensation Appeals Board trial level. This section establishes a time frame for such appeals and allows the Return-to-Work Supplement Program to correct errors or otherwise modify decisions.

Necessity:

This section is necessary to implement the changes to Labor Code section 139.48 which require that decisions by the Return-to-Work Supplement Program be subject to review by the Workers Compensation Appeals Board at the trial level.

Section 25111. False Claims.

Specific Purpose:

This section provides notice to individuals that the application for the Return-to-Work Supplement is a claim for benefits from the state and advises of the consequences of making a false claim.

Necessity:

This section is necessary to implement the changes to Labor Code section 139.48 by providing clear notice that this is a claim for benefits from the State.