

Supplemental Job Displacement Benefit	COMMENTS 1 st 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
<p>§10133.52 Settlement of SJDB</p>	<p>These comments state that the voucher should not be settled because (1) Labor Code section 4658.5 describes the voucher as “non-transferable” and (2) the voucher is supposed to provide the injured worker with retraining so he or she can return to work.</p>	<p>February 28, 2005 John Cirillo March 1, 2005: Mark A. Bermudez Jeff Clark Esteban R. Magallanes James Magdaleno Ana M. Hanson March 2, 2005: Esteban Lopez Blanco R. Lopez Ana Mancia April Marion Joaquin Montalvan Jeff Pederson Bill Posada Vickie L. Sheehan Robert Sniderman Vivian Vo Tom Yankowski March 3, 2005: Estela Ascencio Ezer A. Campos David Cardenas John Cirillo Noe Hernandez Alfredo A. Guerra Erika Landauro</p>	<p>We disagree. The proposed regulations do not state that the voucher may be settled, but that the “entitlement” to the voucher may be settled. Further, if the regulations prohibit the settlement of the potential eligibility to a voucher and the case ultimately settles, the injured worker would not be entitled to the voucher, as it must be based on the permanent partial disability award.</p>	<p>The word “entitlement” will be changed to “potential eligibility.”</p>

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		Camilo Lopez Jose Morales Jorge Padilla Bill Posada Marion Richardson David Vice David Zamata		
Section 10133.52	<p>These comments adopt CARRP’s three point position:</p> <ol style="list-style-type: none"> 1. The voucher should not be settled because (a) the voucher is suppose to provide the injured worker with retraining so he or she can return to work (b) the amount will be reduced by negotiation and (c) the agency does not have authority to allow settlement of benefit. 2. Believe the notice that the employee must use the voucher within 5 years is appropriate. They believe Labor Code 5410 does apply and lack of time limits places an unreasonable demand for reserves upon the carrier. 	<p>March 1, 2005: CARRP Catherine Bridges Laura Dillard Drake Garvin Tom Gilmore Marsha Rouse Sharon Shelgren Terry Theocharides Jeff Walikonis</p> <p>March 2, 2005: Andrea Adoms Paul Allen Yanela Burke Julie Ford Eleanor Galvan Dave Johnson Robert Johnson Stella Murga Everett O’Keefe Raul Pero Amy Wise</p> <p>March 3, 2005:</p>	<ol style="list-style-type: none"> 1. We disagree. The proposed regulations do not state that the voucher may be settled, but that the “entitlement” to the voucher may be settled. Further, if the regulations prohibit the settlement of the potential eligibility to a voucher and the case ultimately settles, the injured worker would not be entitled to the voucher, as it must be based on the permanent partial disability award. 2. We disagree. None of the Labor Code statutes of limitations appear to limit the time period in which the injured worker must use the voucher. Also, in many cases the award does not issue within 5 years from the date of injury. 	<ol style="list-style-type: none"> 1. The word “entitlement” will be changed to “potential eligibility.” 2. None.

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	3. Believe there should be flexibility regarding distribution of the voucher prior to determination of permanent partial disability and/or 60 days of the last temporary disability payment. Suggest a compromise is to authorize employers to provide at least the minimum amount of the voucher (\$4000) to begin training as early as possible.	Tom Gilmore mzalvarez@aol.com Brenda Terry March 4, 2005: Maria Pritchard	3. We disagree.	3. The statute does not provide authority to require issuing the voucher before the PPD award.
General	The voucher should be available when it will do some good.	February 18, 2005 Esteban Magellanes	We disagree. We disagree. Labor Code section 4658.5 ties the voucher to the permanent partial disability award.	None.
Section 10133.56	The voucher should not be settled. It is non transferable and intended to be issued to a designated approved vocational school.	February 22, 2005 Steve Price	We disagree. The proposed regulations do not state that the voucher may be settled, but that the “entitlement” to the voucher may be settled. Further, if the regulations prohibit the settlement of the potential eligibility to a voucher and the case ultimately settles, the injured worker would not be entitled to the voucher, as it must be based on the permanent partial disability award.	The word “entitlement” will be changed to “potential eligibility.”

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	<p>If settlement is allowed, judge should not be allowed to compromise the value of the benefit. The C&R should state the exact amount of the dollar value of the voucher and how it is to be issued, either to the school or to the employee.</p> <p>The intent of the legislature was to provide a means to train the injured worker. These rules are violating the intent.</p> <p>The rule that the voucher can only be issued once a C&R or an award is issued is too rigid. The benefit should be issued once the employee is P & S based on the PD range.</p>		<p>We disagree. All settlements are approved by the WCALJ. The statute does not provide further authority to limit settlements.</p> <p>We disagree. If the injured worker receives a permanent partial disability award, the claims administrator is required to issue a non-transferable voucher for training.</p> <p>We disagree. Labor Code section 4658.5 ties the amount of the voucher to the permanent partial disability award. The injured worker is not entitled to the voucher if a C&R is issued.</p>	<p>None.</p> <p>None.</p> <p>None.</p>
Section 10133.52	Opposes language that allows SJDB to be settled. This will encourage short term solution to long term problem.	February 22, 2005 John T. Collins Shoreline Occupational Services	We disagree. The proposed regulations do not state that the voucher may be settled, but that the “entitlement” to the voucher may be settled. Further, if the regulations prohibit the settlement of the	The word “entitlement” will be changed to “potential eligibility.”

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			potential eligibility to a voucher and the case ultimately settles, the injured worker would not be entitled to the voucher, as it must be based on the permanent partial disability award.	
Section 10133.52	<p>The voucher should not be settled. The purpose is to retrain workers.</p> <p>Believes an injustice was committed in minimizing the Counselor's role in the process.</p>	February 23, 2005 Ken Winter Arise Associates	<p>We disagree. The proposed regulations do not state that the voucher may be settled, but that the "entitlement" to the voucher may be settled. Further, if the regulations prohibit the settlement of the potential eligibility to a voucher and the case ultimately settles, the injured worker would not be entitled to the voucher, as it must be based on the permanent partial disability award.</p> <p>We disagree. Labor Code section 4658.5 states, "No more than 10% of the voucher moneys may be used for vocational or return to work counseling."</p>	<p>The word "entitlement" will be changed to "potential eligibility."</p> <p>None.</p>
General	Is the employee entitled to the voucher if the company closes or has massive lay	February 23, 2005 Lu Well	Yes, if the employee has permanent partial disability	No action requested.

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	<p>offs?</p> <p>Is an injured worker with an '03 and '04 injury (same employer) entitled to voc rehab and SJDB?</p> <p>I worked with an employer who is and was able to have his worker who was injured return to his usual and customary occupation, but the employee failed to provide him with a doctor's note and the insurance company did the same. Now the employee is entitled to a voucher as he has minimal PD.</p> <p>An employee wants to take art classes with his \$10,000 voucher.</p> <p>If an employee has already returned to work with 85% of pre-injury earnings, then the entitlement to a voucher should be restricted.</p>	<p>Vocational Trends, Inc.</p>	<p>that prevents him or her from returning to work for 60 days after the last payment of TTD and does not receive a timely offer or modified or alternative work.</p> <p>Possibly, depending on the facts.</p> <p>The claims administrator (insurance company) should have provided the employer with the necessary information.</p> <p>The employee's use of the voucher is self-directed.</p> <p>If the employer has made a modified or alternative work offer, or the employee has returned to work within 60 days of the last TTD payment, the employee is not entitled to the voucher.</p>	<p>No action requested.</p> <p>No action requested.</p> <p>No action requested.</p> <p>No action requested.</p>
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Section 10133.50(a)(8)	State and federal law require that employees must be paid the same wages for doing the same job. The fact that an employee has a job modification does not justify a change in wages. Labor Codes section 4658.1 is in error.	February 23, 2005 Allan Leno	We disagree. Labor Code section 4658.1 authorizes the offer of modified or alternative work that offers wages and compensation that are at least 85% of those paid to the employee at the time of injury.	None.
Section 10133.50(a)(9) 10133.52	<p>What does non-transferable mean? Is settlement a form of transference? Labor Code section 4658.5(b) appears to limit payments to training facilities or to injured employees for reimbursement of allowable tuition and related costs, yet section 10133.52 indicates the benefit can be settled. It could be argued that allowing settlement of the voucher is, in effect, a form of transference prohibited by the statute.</p> <p>If the legislature had intended for settlement as an option, it could have as it did in Labor Code section 4646.</p> <p>The Notice should indicate that the benefit has some time constraints under Labor Code section 5410.</p>	February 23, 2005 Allan Leno	<p>We disagree. The proposed regulations do not state that the voucher may be settled, but that the “entitlement” to the voucher may be settled. Further, if the regulations prohibit the settlement of the potential eligibility to a voucher and the case ultimately settles, the injured worker would not be entitled to the voucher, as it must be based on the permanent partial disability award.</p> <p>We disagree. None of the Labor Code statutes of limitations appear to limit the time period in which the injured worker must use the voucher.</p>	<p>The word “entitlement” will be changed to “potential eligibility.”</p> <p>None</p>
Section	How do we get new people qualified as	February 23, 2005	Section 10133.50(a)(15)	None.

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10133.50(a)(15)	the experienced VRTWCs retire? Since there is no VR system where they can obtain this experience, we need to have a way to qualify new entrants. The simplest way would be to require a new entrant to work for the required three years under supervision of someone who is already qualified.	Allan Leno	provides the requirements.	
Section 10133.51	Initiating notice requirements based on the last payment of TTD creates serious problems: many employees have broken periods of TD or they return to transitional work while still TD from regular duties. The claims administrator and employer need to have a mechanism to delay the offer of modified/alternative work until the employee is P&S and work restrictions are known.	February 23, 2005 Allan Leno	We disagree. The statute requires the employee be provided with the Notice within 10 days of the last TD payment. Because some employees have broken periods of TD, section 10133.51 only requires the notice be sent one time. The statute also does not provide authority to allow for a delay of the offer of modified or alternative work. The claims administrator will need to contact the employee's physician to determine what work restrictions apply at the time the offer is due.	None.
Section 10133.53	Why must claims administrator forward completed form to DWC? What will DWC do with them? Why not let the claims administrator retain a copy in case of dispute?	February 23, 2005 Allan Leno	The DWC reviews the Notice of Offers for statistical and research purposes.	None.

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	<p>Salary offer of 85% does not comply with state and federal law.</p> <p>Is information re P&S date and doctor's report needed prior to a dispute?</p>		<p>We disagree. Labor Code section 4658.1 authorizes the offer of modified or alternative work that offers wages and compensation that are at least 85% of those paid to the employee at the time of injury.</p> <p>We agree in part. The P&S date has been stricken. The name of the doctor who approved the job restrictions is included to reduce disputes between the parties concerning the adequacy of the offer.</p>	<p>None.</p> <p>The P&S date and dated of Findings and Award is stricken.</p>
Section 10133.54	In the first line, "Disability" should be "Displacement." "Administrator" should be "Administrative."	February 23, 2005 Allan Leno	We agree.	The errors will be corrected.
Section 10133.56	Recommends (a) to be amended to state: When the injury causes permanent partial disability <i>resulting in the need for a permanent job accommodation</i> and if the employer or claims administrator does not offer modified or alternative work within 30 days of the TTD indemnity payments <i>and receipt of permanent work restrictions</i> that complies with Labor Code section 4658.6..."	February 23, 2005 Allan Leno	We disagree. The statute does not require the disability to result in permanent job accommodation. It must accommodate the employee's work restrictions (the employee must be able to perform the essential functions of the job) and must last 12 months.	None.

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Section 10133.57	<p>In the second paragraph, recommends stating “any amount refunded will be returned to the claims administrator.” Any other option could serve to encourage fraud. Since claims administrator is responsible for paying or reimbursing tuition, the refund should go to the claims administrator.</p> <p>Recommends including language that there is a time limit by Labor Code section 5410.</p>	<p>February 23, 2005 Allan Leno</p>	<p>We disagree with adding the language to the voucher, the purpose of which is to inform the injured employee the amount of the benefit available and to provide the injured worker with a form to submit re-training details and documentation. The form will be returned to the claims administrator once it is filled out. If the claims administrator pays the tuition directly, it can arrange for any refund with the institution. Additionally, the claims administrator can advise the injured worker to return any refunded funds when it sends the reimbursement. Finally, the claims administrator may report suspected fraud to the district attorney.</p> <p>We disagree. None of the Labor Code statutes of limitations appear to limit the time period in which the injured worker must use the voucher. Also, in many cases</p>	<p>None.</p> <p>None.</p>

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	<p>Page 2, recommends deleting “The Employer.” Claims administrator includes self insured/self administered employers. Reference to employer could result in documents being returned to an employer whose claims are administered by an insurer or TPA.</p> <p>On line 8 (page 2) adds “Compromise and release agreement.”</p> <p>On page three, recommends deleting “Employer.”</p>		<p>the award does not issue within 5 years from the date of injury.</p> <p>We agree.</p> <p>We disagree. The statute ties the benefit amount to the PPD award.</p> <p>We agree.</p>	<p>Reference to the employer has been stricken.</p> <p>None.</p> <p>Reference to the employer has been stricken.</p>
Section 10133.58	<p>(b) Adds “must include <i>documentation of program approval by...</i>”</p> <p>Will DWC establish a web page with a state-by-state of approving agencies? It will be difficult for injured employees and claims administrators to find this information.</p>	<p>February 23, 2005 Allan Leno</p>	<p>We disagree. The employee already must include documentation for the programs with the voucher. The claims administrator can confirm approval is necessary.</p>	<p>None.</p>
Section 10133.60	<p>(a)(2) Adds “or terminated for cause”</p> <p>(a)(3) Adds “<i>is able to offer modified or</i></p>	<p>February 23, 2005 Allan Leno</p>	<p>We disagree. This is an issue for the WCAB to determine.</p> <p>We disagree. The statute does</p>	<p>None.</p> <p>None.</p>

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	<p>alternative”</p> <p>(a)(3) Adds “lawfully <i>return to work</i> due to the employee’s immigration...”</p> <p>This section allows the employee to receive a voucher if she or he informs the employer of his or her undocumented status the day before a mod/alt job is offered. Case law suggests that the employer should be exempt from the voucher requirement if the employer’s knowledge of undocumented status occurred between the date of injury and determination that modified or alternative work would otherwise be available for the injured employee.</p> <p>(a)(4)(B) Adds “and Section 10133.51(b).</p>		<p>not include this condition.</p> <p>We disagree. The worker is not returning to work, but is offered a new job (modified or alternative).</p> <p>We disagree that this section needs to be changed. The employer will need to follow the appropriate Federal and State laws regarding undocumented workers. This regulation only covers the specific situation that was dealt with in <i>Del Taco</i> (2000) 65 CCC 342, 79 Cal. App. 4th 1437.</p> <p>We disagree. The reference is not correct.</p>	<p>None.</p> <p>None.</p> <p>None.</p>
Section 10133.52	One condition to be eligible for benefit includes, “you do not return to work within 60 days of the last payment of TD.” Intent is that the employee returns	February 28, 2005 Laurence Gordon The EARN Network	We agree.	The section has been amended to state, “ <u>If your injury causes permanent partial</u>

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	to work with the at-injury employer.			<u>disability, which prevented you from returning and you do not return to work within 60 days of the last payment of temporary disability...</u> "
Section 10133.52	<p>Object to the elimination of the language that would have allowed the injured worker to start retraining 60 days after termination of TTD. If workers are required to wait for an Order the benefit is practically useless and workers will be forced to take a global settlement.</p> <p>The section should also advise the injured worker that if he or she has a question, "you can contact...or your attorney if you are represented." The telephone number for the information and Assistance Officer should be included.</p>	March 1, 2005 Peggy Sugarman VotersInjuredat Work.org	<p>We disagree. Labor Code section 4658.5 ties the amount of the voucher to the permanent partial disability award.</p> <p>We disagree. An injured worker who has hired an attorney knows that he or she can contact the attorney.</p>	None. None.
Section 10133.54	Does not believe AD has authority for dispute resolution. Labor Code section 5300 provides that proceedings for compensation should be before WCAB.	March 1, 2005 Peggy Sugarman VotersInjuredat Work.org	We disagree. Labor Code section 4658.5 provides the AD with authority to "...adopt regulations governing...any other matters necessary to the proper administration of the supplemental job displacement	None.

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			benefit.”	
Section 10133.56	This section provides 45 days for claims administrator to reimburse injured worker. It should be 14 days.	March 1, 2005 Peggy Sugarman VotersInjuredat Work.org	We disagree. 45 days is a reasonable time period.	None.
Section 10133.57	This section requires the injured worker to complete numbers 9-18. There are 20 numbers and the injured worker needs to fill in 19 and 20. Objects to having the injured worker provide the “provider approval number” and “Approval Expiration Date” as this information is difficult to obtain. The training facility should be required to provide this information.	March 1, 2005 Peggy Sugarman VotersInjuredat Work.org	We agree there was an error regarding the numbers. The injured worker may have the provider fill in the provider information and return to the form to the employee	We have corrected the form instructions. None.
Section 10133.52 (Settlement of SJDB)	The voucher should not be settled. It is non transferable and intended to be issued to a designated approved vocational school. The amount will be reduced by negotiation. Who will bear the burden of the impact of having injured workers unable to return to work? The State, the Counties and families. Functional Earning Capacity will also be impacted by lack of training available	March 1, 2005 Mary Ciddio	We disagree. The proposed regulations do not state that the voucher may be settled, but that the “entitlement” to the voucher may be settled. Further, if the regulations prohibit the settlement of the potential eligibility to a voucher and the case ultimately settles, the injured worker would not be entitled to the voucher, as it must be based on the permanent partial disability award.	The word “entitlement” will be changed to “potential eligibility.”

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	and this will result in higher PD ratings and potentially more individuals who are unable to earn anything in the labor market.			
Section 10133.50	Unclear why a distinction is made between employer and claims administrator. Labor Code refers to employer which is inclusive of claims administrator, defense counsel, vendors, etc. It is unnecessary and cumbersome to make distinction. Reference is inconsistent in regulations. Requests that the term “employer” replace term “employer or claims administrator.”	March 2, 2005 Marlon Robbins Elk Grove Unified School District	We agree.	We have deleted the references to “employer.”
Section 10133.52	<p>First paragraph adds requirement (that employer or claims administrator has not provided you with a Notice of Offer of Mod or Alt work) which is not required by Labor Code 4658.5. This should be removed. If the employer has no offer, then providing the Notice is moot.</p> <p>Second paragraph also in conflict with the statute. Statute provides for a voucher, not a lump sum that can be settled. Reimbursement must be based on appropriate documentation.</p> <p>The statute also prohibits voucher</p>	March 2, 2005 Marlon Robbins Elk Grove Unified School District	<p>We disagree. If the employer has not offered modified or alternative work as required by Labor Code section 4658.5, the employee may be eligible for the SJDB.</p> <p>We disagree. The proposed regulations do not state that the voucher may be settled, but that the “entitlement” to the voucher may be settled. Further, if the regulations prohibit the settlement of the</p>	None.

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	<p>amounts for more than is set forth in section 4658.5. A lump sum payment negates the intent of the legislature.</p> <p>The time limit for issuing the voucher is contingent upon the date of the permanent partial disability award. Often the type of training is not known at that time. The amount of the voucher is based on the amount of tuition etc. Recommends changing paragraph to state: "If you are eligible, you will receive the voucher from your employer or claims administrator with 25 calendar days from the date you have notified your employer of the name of the school, and the amount of tuition, fees and books, and other expenses required by the school for retraining or skill enhancement or submission of the Supplemental Job Displacement Nontransferable Voucher Form."</p> <p>Proposed regulation states Notice of Offer will be provided by employer within thirty days of termination of TTD. Statute does not require this, just</p>		<p>potential eligibility to a voucher and the case ultimately settles, the injured worker would not be entitled to the voucher, as it must be based on the permanent partial disability award.</p> <p>We disagree. The section is based on the language of the statute. First the amount of the voucher is determined, then the employee can be reimbursed for the payment of the tuition and fees.</p> <p>We disagree. The proposed regulation language is clearer.</p>	<p>None.</p> <p>None.</p>

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	<p>provides that there will be no liability for SJDB if offer is provided. Section should be rewritten to state: “If modified or alternative work is available, you will receive a Notice of Offer of Modified or Alternative Work (Form DWC-AD 10133.53) from your employer or the claims administrator. Neither your employer nor the claims administrator will be required to pay for supplemental job displacement benefits if the offer meets either of the following conditions:</p> <ul style="list-style-type: none"> (a) Within 30 days of the termination of temporary disability indemnity payments, the employer offers, and the employee rejects, or fails to accept, in the form and manner prescribed by the administrative director, modified work, accommodating the employee’s work restrictions, lasting at least 12 months, or (b) Within 30 days of the termination of temporary disability indemnity payments, the employer offers, and the employee rejects, or fails to accept, in the form and manner prescribed by the administrative 			
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	<p>director, alternative work meeting all of the following conditions:</p> <ol style="list-style-type: none"> (1) The employee has the ability to perform the essential functions of the job provided. (2) The job is in a regular position lasting at least 12 months. (3) The job provided offers wages and compensation that are within 15% percent of those paid to the employee at the time of the injury. (4) The job is located within reasonable commuting distance of the employee's residence at the time of injury. 			
Section 10133.53	<p>Modify the title of the section to include the word "offer": "Notice of Offer of Modified or Alternative Work for Injuries Occurring on or after 1/1/04"</p> <p>Suggests changing 30 days to accept offer to 7 days. Labor Code section 4658.6 states employer must offer and employee must accept within 30 days.</p> <p>Statement regarding a decrease of 15% of the permanent disability award is in conflict with the statute. Labor Code</p>	March 2, 2005 Marlon Robbins Elk Grove Unified School District	<p>We agree.</p> <p>We disagree. Thirty days to accept is a reasonable period.</p> <p>We agree.</p>	<p>The title has been corrected.</p> <p>None.</p> <p>The section has been amended to state</p>

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	<p>section 4658 states “each disability payment” will be decreased. Also, section 4658(d)(3)(A) states “each disability payment remaining to be paid to the injured employee from the date the offer was made shall be paid in accordance with paragraph (1) and decreased by 15 %.” Recommends modifying statement to state “Regardless of whether you accept or reject this offer, each permanent disability payment may be decreased by 15% effective the date of the offer of modified or alternative work.”</p>			<p>“payments” instead of “award.”</p>
Section 10133.55	<p>Requests that the limitation for filing a Request for Dispute Resolution be set at 20 days from the due date for responding to an offer.</p> <p>Requests opposing party to have 20 calendar days from the date of receipt versus date of proof of service.</p>	<p>March 2, 2005 Marlon Robbins Elk Grove Unified School District</p>	<p>We disagree. The statute requires the job to continue for 12 months. Also, this form may be used for many types of disputes concerning the modified or alternative job offer.</p> <p>We disagree. The proof of service date is known to all parties.</p>	<p>None.</p> <p>None.</p>
Section 10133.57	<p>Recommends the “Training Provider” provide verification of enrollment, costs for tuition and books, and be printed/signed by an authorized representative.</p>	<p>March 2, 2005 Marlon Robbins Elk Grove Unified School District</p>	<p>We disagree. The statute provides that the reimbursement shall be made upon the employee’s presentation of receipts.</p>	<p>None.</p>
Section	<p>Recommends: “Regular work modified</p>	<p>March 2, 2005</p>	<p>We disagree. The definition is</p>	<p>None.</p>

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10133.50(a)(8)	so that the employee has the ability to perform all the <u>essential</u> functions of the job and ...”	Brenda Ramirez CWCI	based on Labor Code section 4658.1.	
Section 10133.51(b)	<p>Recommends” “Within 10 days of the last payment of temporary disability and <u>receipt of permanent work restrictions</u>, if not previously provided, the employer or claims administrator shall send the employee, by certified mail...”</p> <p>An employer cannot offer a permanent job accommodation without having work restrictions. Otherwise, employer will need to have a delay mechanism to delay the mod/alt work offer until the employee’s permanent work restrictions are known.</p>	March 2, 2005 Brenda Ramirez CWCI	<p>We disagree. The proposed recommendation conflicts with the statutory requirement of 10 days.</p> <p>We disagree that there must be a “permanent” work restriction determination. The claims administrator can call the physician to determine the work restrictions.</p>	<p>None.</p> <p>None.</p>
Section 10133.52	<p>Recommends” “if your injury causes permanent partial disability, <u>which precludes a return to regular work, and the modified or alternative position you are offered does not commence you do not return to regular work</u> within 60 days...”</p> <p>Modification is necessary to indicate that returning to work is not merely matter of employee choice.</p> <p>Recommends restoring language that voucher must be used in 5 years.</p>	March 2, 2005 Brenda Ramirez CWCI	<p>We agree.</p> <p>We disagree. It is not clear what the statute of limitations</p>	<p>The section is modified to include the condition that the injury prevented the employee from returning to work.</p> <p>None.</p>

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	<p>Modify as follows: If modified or alternative work is available, you will receive a Notice of Offer of Modified or Alternative Work (Form DWC – AD 10133.53) from your employer or the claims administrator within 30 days of the termination of temporary disability indemnity payments <u>and receipt of permanent work restrictions.</u> Neither your employer nor the claims administrator will be required to pay for Supplemental job displacement benefits <u>will not be provided</u> if the offer meets either <u>all</u> of the following conditions:</p> <ul style="list-style-type: none"> • If the offer is for modified work which accommodates your work restrictions and lasts at least 12 months; or • If the offer is for alternative work meeting all of the following conditions: (1) You have the ability to perform the essential functions of the job provided; (2) the job provided is in a regular position lasting at least 12 months; (3) the job <u>modified or alternative provided offers wages and compensation</u> 		<p>is for this benefit.</p> <p>We agree to strike “employer” throughout and to use the term claims administrator.</p> <p>We disagree that there must be a determination of the “permanent” work restriction. The claims administrator can call the physician to determine the work restrictions.</p> <p>We agree to put the conditions for modified work and alternative work together in one list.</p>	<p>“Employer” is stricken throughout.</p> <p>None.</p> <p>The section is revised.</p>

Supplemental Job Displacement Benefit	COMMENTS 1 st 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	that are within 15 at least 85 percent of those paid to you at the time of the injury; and (4) the job is located within reasonable commuting distance of your residence at the time of injury.			
Section 10133.53	<p>Suggests changing the title to “Notice of Work Offer Form.”</p> <p>Delete “For injuries on or after 1/1/04” from title. It is not necessary.</p> <p>Move the modified and alternative boxes up.</p> <p>Only injuries that occur on or after 1/1/05 are subject to the 15% reduction for a modified job.</p> <p>Employees should not be entitled to a voucher is terminated for cause in less than 12 months.</p> <p>It is not necessary to send a copy to the</p>	March 2, 2005 Brenda Ramirez CWCI	<p>We disagree. Having the return to work offer on the form also is too confusing. The return to work regulations will provide this form.</p> <p>We disagree. There are pending cases that predate 1/1/04.</p> <p>We disagree. This is not necessary.</p> <p>We disagree that the section needs to be changed, as the word “may” is used.</p> <p>We disagree. Whether or not a job is terminated for cause is a question of fact that will need to be brought before the WCAB.</p> <p>We disagree. The AD requires</p>	<p>None.</p> <p>None.</p> <p>None.</p> <p>None.</p> <p>None.</p> <p>None.</p>

Supplemental Job Displacement Benefit	COMMENTS 1 st 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>AD. The claims administrator will retain a copy and can serve it at the time of any dispute that may arise.</p> <p>The Permanent and Stationary date, determined by, doctor’s name, date of report and date of findings and award are likewise unnecessary to the purpose of the form.</p> <p>Recommends adding a line for the receipt date of permanent work restrictions below the line for date of last payment of TTD. If DWC adopts the recommendation regarding permanent work restrictions, this date will be necessary.</p>		<p>the copies for statistical purposes and to determine how the benefit is working.</p> <p>We agree regarding the p& S date and award. The doctor’s name and date of report will help resolved disputes.</p> <p>We disagree. The offer does not need to be based on permanent work restrictions.</p>	<p>We will strike the lines of the P&S date and award.</p> <p>None.</p>
Section 10133.56	<p>Recommends:</p> <p>“(a) When the injury causes permanent partial disability, <u>which precludes a return to regular work</u>, and if the employer or claims administrator does not offer modified or alternative work within 30 days of the termination of temporary disability indemnity payments <u>and the receipt of permanent work restrictions</u> that complies with Labor Code §4658.6, and the offered position does not commence injured employee does not return to work for</p>	<p>March 2, 2005 Brenda Ramirez CWCI</p>	<p>We agree.</p> <p>We disagree. Waiting for “permanent restrictions” may go beyond the time stated in the statute.</p>	<p>The subdivision will be revised to make this change.</p> <p>None.</p>

Supplemental Job Displacement Benefit	COMMENTS 1 st 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>the employer within 60 days of the last payment of temporary disability benefits <u>and the receipt or permanent work restrictions</u>, the employee shall be eligible for the Supplemental Job Displacement Benefit.”</p> <p>Recommendation based on need for the permanent and stationary report with final work restrictions. Also, removes impression that injured employee may qualify for the voucher by simply failing to report to work within 60 days.</p> <p>Recommends adding new subsection (b): “A seasonally employed injured employee whose injury causes permanent partial disability resulting in the need for a modified or alternative job, shall be eligible for a Supplemental Job Displacement Benefit unless the employer offers modified or alternative work within 30 days of the termination of temporary disability payments and receipt of permanent work restrictions, and the offered position does not commence within 60 days of receipt of permanent work restrictions and the last payment of temporary disability benefits during the working season or the first day of the next working season,</p>		<p>See above.</p> <p>We agree that there should be a subdivision for seasonal employees.</p>	<p>None.</p> <p>The following language is added: “(b) In the case of a seasonal employee, where the employee in unable to return to work within 60 days of the termination of temporary disability benefits because the work season has ended, the requirement in paragraph (3) above is met when the</p>

Supplemental Job Displacement Benefit	COMMENTS 1 st 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>whichever occurs first.”</p> <p>Reason: The working season may end and not begin again within the 60-day period following the last payment of temporary disability and receipt of permanent work restrictions.</p> <p>Delete “employer or” from original subsection (b) because claims administrator should be responsible party for providing the vouchers.</p> <p>Delete proposed subsection (c) and re-order the following subsections accordingly. Subsection (c) duplicates subsection (g) and is not necessary. If subsection (c) is retained, remove “employer’s” from (c).</p> <p>Delete “employer or” from proposed (g). Substitute “business days” for “calendar days.” Directing employees to present documentation only to the claims administrators will avoid confusion and reimbursement delays.</p>		<p>We agree.</p> <p>We disagree. One subdivision deals with eligibility, the other deals with the time frame to pay.</p> <p>We agree.</p>	<p>injured employee does not return to work on the next available work date of the next work season.”</p> <p>The section has been re-written, but the references to “employer” throughout are deleted.</p> <p>None.</p> <p>“Employer” is deleted.</p>
Section 10133.57	To avoid fraud, modify end of second paragraph: “If you decide to voluntarily withdraw	March 2, 2005 Brenda Ramirez CWCI	We disagree. The claims administrator may have closed the file at this point in time.	None.

Supplemental Job Displacement Benefit	COMMENTS 1 st 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>from a program, you may not be entitled to a full refund of the voucher amount utilized you must notify your claims administrator promptly. Any amount refunded will be returned to the claims administrator and credited to the voucher account.”</p> <p>Modify the fourth paragraph: “Injured Employee Information: Upon completing the voucher form the injured employee must return the form with receipts and documentation to the employer or claims administrator immediately for reimbursement. (The employer or claims administrator must complete Nos. 1 – 8 of this voucher form prior to sending it to the injured employee.) <u>This voucher must be submitted within 5 years of your date of injury or you may lose your rights to this benefit.</u>”</p> <p>There are time constraints per Labor Code section 5410. Assigning sole responsibility to the claims administrator will avoid confusion and delay.</p> <p>Delete “Employer or” from title above</p>		<p>We agree.</p> <p>We disagree. It is not clear what statute of limitations applies to this benefit. Also, in many cases the award does not issue within 5 years from the date of injury.</p> <p>We agree.</p>	<p>“Employer” is deleted.</p> <p>None.</p> <p>“Employer” is deleted.</p>

Supplemental Job Displacement Benefit	COMMENTS 1 st 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	item 4 and below item 20.			
Section 10133.58	<p>Modify (b): Any training outside of California must include <u>be approved by approval</u> an agency in that state similar to the Bureau for Private Postsecondary and Vocational Education. <u>Documentation of program approval is required.</u></p> <p>Documentation of program approval would help establish that an out of state program qualifies for a voucher. Alternatively, access via the DWC website to out of state approval agencies links would be necessary to administer this program.</p>	March 2, 2005 Brenda Ramirez CWCI	<p>We agree.</p> <p>We disagree. This would put an undue burden on the injured employee. The information can be obtained by the claims administrator.</p>	<p>The requested change is made.</p> <p>None.</p>
Section 10133.60	<p>Modify (a)(2): “(2) the employer or claims administrator offers the employee modified or alternative work in compliance with Labor Code §4658.6 and the employee voluntarily quits <u>or is terminated for cause</u> prior to working in the modified or alternative work position for 12 months;”</p> <p>Modify (a)(3): (3) the employer or claims administrator <u>is able to</u> offers modified or alternative</p>	March 2, 2005 Brenda Ramirez CWCI	<p>We disagree. This is a factual question that must be brought before the WCAB.</p> <p>We disagree. “Is able to” is not the statutory requirement.</p>	<p>None.</p> <p>None.</p>

Supplemental Job Displacement Benefit	COMMENTS 1 st 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>work to the employee on the DWC-AD Form 10133.53 that meets the conditions of Labor Code Section 4658.6 but and subsequently learns that the employee cannot lawfully perform modified or alternative <u>return to</u> work due to the employee's immigration status, the employer and the claims administrator are not required to provide <u>the</u> supplemental job displacement benefit.</p> <p>These modifications clarify that the SJDB is not required whenever an employer or claims administrator learns that an employee cannot lawfully return to work, not only when subsequent to an offer. It is not appropriate to make an offer of work to a person who may not legally work.</p> <p>Modify (a)(4), (5) and (6): “(4) the employer’s obligation to provide modified or alternative work to a seasonal employee is terminated after 12 months if the following conditions apply: (A) the employee was hired on a seasonal basis prior to injury; (A)(B) the offer of modified or alternative work is on a similar seasonal</p>		<p>We disagree. This section is addressing the limited situation that was presented in the <i>Del Taco</i> case.</p> <p>We disagree. Subdivision (a) clarifies that the employee must have been a seasonal employee prior to the injury.</p>	<p>None.</p> <p>None.</p>

Supplemental Job Displacement Benefit	COMMENTS 1 st 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>basis to the employee’s previous employment; and (B)(C) the offer is made on the DWC-AD Form 10133.53 that meets the conditions of Labor Code Section 4658.6 <u>and section 10133.51(b).</u>”</p> <p>(A) is unnecessary and may cause confusion.</p>		We disagree that this added language is correct.	None.
Section 10133.56	The voucher should not be settled. It is non transferable and intended to be issued to a designated approved vocational school.	March 2, 2005 Rey Lopez Business Learning Center, Inc	We disagree. The proposed regulations do not state that the voucher may be settled, but that the “entitlement” to the voucher may be settled. Further, if the regulations prohibit the settlement of the potential eligibility to a voucher and the case ultimately settles, the injured worker would not be entitled to the voucher, as it must be based on the permanent partial disability award.	The word “entitlement” will be changed to “potential eligibility.”
Section 10133.56	Subsection (b): The proposal now delays the voucher until 25 days after the PD award. Labor Codes section 4658.5 does not require delay until after final determination of award. To return to work, the voucher needs to be available months after injury, not years. Labor Code section 4650(b) requires	March 2, 2005 J. David Schwartz CAAA (Jacquie Kelly)	We disagree. Labor Code section 4658.5 requires the benefit to be based on the amount of the permanent partial disability award.	None.

Supplemental Job Displacement Benefit	COMMENTS 1 st 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>employers to begin paying PD payments within 14 days after the date of the last payment of TD “regardless of whether the extent PD can be determined at that date...” Voucher should be the same and based on the employer’s or insurer’s “reasonable estimate of PD indemnity due.”</p> <p>Section should be modified to provide that a nontransferable voucher must be offered to the worker within 10 days after the worker becomes eligible for the benefit – when the worker does not return to work for the at-injury employer within 60 days of the termination of TD. The Notice (10133.52) should also reflect these changes.</p> <p>(g)Amend subdivisions (c) and (g) to allow all eligible workers the opportunity to participate in this program without requiring them to make any direct payment of program costs. Section 10133.57 must also be amended to reflect this change.</p> <p>Where employee chooses to pay costs directly, benefits for reimbursement must also include appropriate interest.</p>		<p>We disagree. Labor Code section 4658.5 requires the benefit to be based on the amount of the permanent partial disability award.</p> <p>We disagree. Labor Code section 4658.5(b) provides that the claims administrator will make a direct reimbursement to the employee.</p> <p>There is no authority in Labor Code section 4658.5 for this, however, the employee could seek a Labor Code section</p>	<p>None.</p> <p>None.</p> <p>None</p>

Supplemental Job Displacement Benefit	COMMENTS 1 st 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
			5814 penalty if appropriate.	
Section 10133.59	<p>The fact that the list of counselors is on the DWC website should be on the voucher, so the injured worker will know. The form doesn't provide any information regarding how to choose a counselor.</p> <p>Voucher also needs more information regarding the worker's rights and responsibilities under this benefit.</p>	<p>March 2, 2005 J. David Schwartz CAAA (Jacquie Kelly)</p>	<p>We agree.</p> <p>We disagree. The comment fails to provide specifics to respond to.</p>	<p>Section 10133.57 is revised to advise the injured employee that a list of the counselors is on the DWC website.</p> <p>None.</p>
Section 10133.54	<p>Recommends withdrawing section 10133.54 because does not believe the AD has authority to hear the disputes because Labor Codes section 5300 provides the disputes should be instituted before the WCAB.</p>	<p>March 2, 2005 J. David Schwartz CAAA (Jacquie Kelly)</p>	<p>We disagree. Labor Code section 4658.5(b) provides authority to adopt regulations in any matters necessary to the proper administration of the benefit.</p>	<p>None.</p>
Section 10133.51	<p>Concerned that section, as written, will allow employer to provide notice at time of hire. Suggests requiring at least one notice be given to worker within 10 days following termination of TD.</p>	<p>March 2, 2005 J. David Schwartz CAAA (Jacquie Kelly)</p>	<p>We disagree. "If not previously provided" is included for cases with broken periods of TD.</p>	<p>None.</p>
Section 10133.52	<p>Amend language to state that injured worker may also consult with his or her attorney.</p>	<p>March 2, 2005 J. David Schwartz CAAA (Jacquie Kelly)</p>	<p>We disagree. If the injured worker has an attorney, s/he does not need to be advised that s/he can consult with the attorney.</p>	<p>None.</p>
Section 1033.50	<p>(a)(5) "Employer offer" - Recommends deleting "medically appropriate" because labor code does not require this and a doctor is not required to authorize</p>	<p>March 2, 2005 Susan Guyan Costco</p>	<p>We disagree. The job must be modified so that the employee is able to perform it.</p>	<p>None.</p>

Supplemental Job Displacement Benefit	COMMENTS 1 st 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>or approve the job offer. Also, recommends deleting ‘by the date of injury employer’ because who else would offer the employee a return to work option?</p> <p>(a)(6) “Essential Functions” recommends adding phrase “or hardship to the employer” to be consistent with employment law and ADA.</p> <p>(a)(8) “Modified Work” recommends adding word “essential” before “functions of the job” to make it consistent with the plain meaning of the subdivision and the definition of essential functions in (a)(6).</p> <p>(a)(12) “Permanent Partial Disability Award” – recommends “A final determination of permanent partial disability that is approved by a WCALJ or the WCAB pursuant to Labor Code section 4660.” The award is not, in and of itself, a document.</p> <p>(a)(14) “Supplemental Job Displacement Benefit” Recommends “Specified amount of money available to injured employees whose employers are unable to provide work consistent</p>	<p>Pearl Phoenix The Zenith</p>	<p>“Date of injury employer” is stated to differentiate from another employer who might offer the employee a job.</p> <p>We disagree. The definition is based on legislation. “Hardship to the employee” is too vague.</p> <p>We disagree. The definition complies with Labor Code section 4658.1.</p> <p>We agree in part.</p> <p>We disagree. The suggested definition does not comply with Labor Code section 4658.5.</p>	<p>None.</p> <p>None.</p> <p>None.</p> <p>The definition is revised.</p> <p>None.</p>

Supplemental Job Displacement Benefit	COMMENTS 1 st 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>with the requirements of Labor Code section 4658.6. Made available to injured workers at the time of the permanent disability award and to be used only for educational retraining or skill enhancement.”</p> <p>(a)(15) “VRTWC” Recommends “A person or entity qualified to assist people to develop return to work strategies and whose regular duties involve vocational evaluation and career counseling. A VRTWC must have at least an undergraduate degree in any field and three or more years full time experience in conducting vocational evaluations, counseling and placement.” Commenter states that the VRTWC should be qualified regardless whether an individual has a disability.</p> <p>(a)(16) “Work Restrictions” Recommends “Final restriction or limitations in functional work capacity established by the treating physician, Qualified Medical Examiner or Agreed Medical Examiner. r</p>		<p>We disagree. The benefit is for employees with permanent disabilities.</p> <p>We disagree. The restrictions do not need to be “final” restrictions.</p>	<p>None.</p> <p>None.</p>
Section 10133.51	(b) Recommends adding “Within 10 days of the last payment of temporary disability <u>and doctor’s indication of final work restrictions,</u> if not	March 2, 2005 Susan Guyan Costco	We disagree. This goes beyond the requirements in the statute. The restrictions do not need to be final.	None.

Supplemental Job Displacement Benefit	COMMENTS 1 st 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>previously...” Recommends adding “(c) Where final work restrictions are not available and the employee has returned to transitional work assignment or temporary light duty, the claims administrator shall advise the employee in writing that eligibility for the SJDB is unknown at that point.”</p> <p>It is common for employees to return to work within a temporary work restriction at which time TD is stopped. Requiring an offer of work to occur within 60 days from the last payment of TD is inappropriate under these conditions.</p>	<p>Pearl Phoenix The Zenith</p>		
<p>Section 10133.52</p>	<p>Modify first paragraph to state “If your injury <u>results in permanent partial disability that prevents you from returning to your regular job, the modified or alternative position offered by your employer does not commence within 60 days of the last payment of temporary disability</u>, and your employer or the claims administrator has not provided you with a Notice of Offer of Modified or Alternative Work as described below, you may be eligible for a supplemental job displacement benefit in the form of a nontransferable</p>	<p>March 2, 2005 Susan Guyan Costco</p> <p>Pearl Phoenix The Zenith</p>	<p>We agree.</p>	<p>This subdivision is revised.</p>

Supplemental Job Displacement Benefit	COMMENTS 1 st 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>voucher for education-related retraining or skill enhancement, or both, at state approved or accredited schools.”</p> <p>This modification is necessary to clarify the conditions that must be in place related to eligibility for the voucher and also that return to work under these circumstances is not simply a matter of the employee’s choice.</p> <p>The note concerning the 5 year limit should be put back in per Labor Code section 5410.</p> <p>Recommends: “If modified or alternative work is available, you will receive a Notice of Offer of Modified or Alternative Work (Form DWC – AD 10133.53) from your employer or the claims administrator within 30 days of the termination of temporary disability indemnity payments <u>and receipt of final work restrictions</u> <u>Supplemental job displacement benefits will not be provided the offer meets all of the following conditions:</u></p> <p>(1) You have the ability to perform the essential functions of the job provided;</p>		<p>We disagree. It is unclear if there is a statute of limitations that applies to this benefit. Also, in many cases the award does not issue within 5 years from the date of injury.</p> <p>We disagree. “Final work restrictions” are not required by the statute.</p> <p>We agree.</p>	<p>None.</p> <p>None.</p> <p>The alternative and modified conditions are consolidated into one list.</p>

Supplemental Job Displacement Benefit	COMMENTS 1 st 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>(2) the job provided is in a regular position lasting at least 12 months; (3) the job provided offers wages and compensation that are at least 85 percent of those paid to you at the time of the injury; and (4) the job is located within reasonable commuting distance of your residence at the time of injury.</p> <p>Commenter notes that since the requirements for mod and alt work are the same, just one list is needed.</p>			
Section 10133.53	Recommends changing the name of the form to “Notice of Work Offer for Injuries Occurring on or after 1/1/04”	March 2, 2005 Susan Guyan Costco Pearl Phoenix The Zenith	We disagree. The return to work offers will be addressed in the return to work regulations.	None.
Section 10133.54	(a) “Displacement” should replace “Disability.” (e) “Administrative Director” should replace word “Administrator.”	March 2, 2005 Susan Guyan Costco Pearl Phoenix The Zenith	We agree.	These errors will be corrected.
Section 10133.56	Modify: “(a) When the injury <u>results in permanent partial disability that prevents a return to the regular job</u> , and	March 2, 2005 Susan Guyan Costco Pearl Phoenix	We agree.	The subdivision is revised.

Supplemental Job Displacement Benefit	COMMENTS 1 st 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>if the employer or claims administrator does not offer modified or alternative work within 30 days of the termination of temporary disability indemnity payments <u>and the receipt of final work restrictions</u> that complies with Labor Code §4658.6, <u>and the offered position does not commence within 60 days</u> of the last payment of temporary disability benefits <u>and receipt of the final work restrictions</u>, the employee shall be eligible for the Supplemental Job Displacement Benefit.”</p> <p>There is need for a final work restriction in order to provide a viable offer of mod or alt work. This modification also has language to remove any impression that an injured employee can choose not to return to work.</p> <p>Recommends:</p> <p>“(b) An injured employee who worked on a seasonal basis and who has an injury resulting in permanent disability that prevents a return to the seasonal position shall be eligible for a SJDB</p>	The Zenith	<p>We disagree. The requirement for final work restrictions goes beyond statutory authority.</p> <p>We agree in part.</p>	<p>None.</p> <p>Subdivision (b) is revised to state: “In the case of a seasonal employee, where the employee is unable to return to work</p>

Supplemental Job Displacement Benefit	COMMENTS 1 st 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>unless the employer offers modified or alternative work within 30 days of the termination of temporary disability indemnity payments and the receipt of final work restrictions; and a return to work date within 60 days of the last temporary disability indemnity payment during the season or the first date of the next working season, whichever occurs first.”</p> <p>(g) Substitute business days for calendar days to be consistent with the period allowed for medical treatment reimbursements.</p> <p>It may be worth adding a regulation allowing employers, at their discretion, to offer a voucher prior to the final PD award. There needs to be protection for the employer so that any additional amount will be added to the total amount of money available to the injured worker.</p>		<p>We disagree. 45 calendar days is a sufficient amount of time.</p> <p>We disagree. There is no statutory authority for this.</p>	<p>within 60 days of the termination of temporary disability benefits because the work season has ended, the requirement in paragraph (3) above is met when the injured employee does not return to work on the next available work date of the next work season.”</p> <p>None.</p> <p>None.</p>
Section 10133.57	Recommends adding language that	March 2, 2005	We disagree. The claims	None.

Supplemental Job Displacement Benefit	COMMENTS 1 st 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>states that any amount refunded from the training facility will be returned to the claims administrator and credited to the voucher to avoid possible fraud.</p> <p>Recommends replacing the language that the voucher must be used within 5 years.</p>	<p>Susan Guyan Costco</p> <p>Pearl Phoenix The Zenith</p>	<p>administrator should make the arrangements with the facility.</p> <p>We disagree. It is unclear if any statute of limitation applies to this benefit.</p>	<p>None.</p>
Section 10133.58	<p>(b) Modify to require documentation of program approval for training outside California.</p>	<p>March 2, 2005 Susan Guyan Costco</p> <p>Pearl Phoenix The Zenith</p>	<p>We disagree. The claims administrator can verify that the program is approved.</p>	<p>None.</p>
Section 10133.59	<p>Modify:</p> <p><u>“(c) The injured employee shall be responsible for providing the VRTWC or the training facility with any medical reports containing their functional capacities. Upon an employee’s written request, the claims administrator shall provide the employee with the aforementioned report (s).</u></p> <p>The Claims Administrator should not be required to provide any medical</p>	<p>March 2, 2005 Susan Guyan Costco</p> <p>Pearl Phoenix The Zenith</p>	<p>We agree.</p>	<p>The section is revised to include the language “However, a claims administrator shall provide a VRTWC with any medical reports, including permanent and stationary medical reports, upon an employee’s written</p>

Supplemental Job Displacement Benefit	COMMENTS 1 st 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	information to the VRTWC. The injured employee is responsible for his or her own vocational plan.			request and signed release waiver.”
Section 10133.60	<p>(a)(2) Add “or is terminated for cause.”</p> <p>(a)(3) The employer should not have to offer a SJDB if it is learned after the date of injury that the individual is not legally able to work in this country, not only when subsequent to an offer.</p> <p>Modify (a)(4); “(4) the employer’s obligation to provide offers modified or alternative work to a seasonal employee is terminated after 12 months if under the following conditions apply: (A) the employee was hired on a seasonal basis prior to injury; (A)(B) the offer of modified or</p>	<p>March 2, 2005 Susan Guyan Costco</p> <p>Pearl Phoenix The Zenith</p>	<p>We disagree. This is a question of fact that must be brought before the WCAB.</p> <p>We disagree that this section needs to be changed. The employer will need to follow the appropriate Federal and State laws regarding undocumented workers. This regulation only covers the specific situation that was dealt with in <i>Del Taco</i> (2000) 65 CCC 342, 79 Cal. App. 4th 1437.</p> <p>We disagree. Subdivision (a) clarifies that the employee must have been a seasonal employee prior to the injury.</p> <p>We disagree that the cross reference is correct.</p>	<p>None.</p> <p>None.</p> <p>None.</p> <p>None.</p>

Supplemental Job Displacement Benefit	COMMENTS 1 st 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>alternative work is on a similar seasonal basis to the employee's previous employment; and (B)(C) the offer is made on the DWC-AD Form 10133.53 that meets the conditions of Labor Code Section 4658.6 <u>and section 10133.56(b)</u>.</p>			
Section 10133.52	<p>Voucher should not be settled. The benefit should go to workers to learn new skills.</p> <p>Request a PD percentage stated in any C&R so Voucher amount can be determined.</p>	<p>March 2, 2005 Todd Kelley Workers' Task Force Chamber of Commerce for Ventura</p>	<p>We disagree. The proposed regulations do not state that the voucher may be settled, but that the "entitlement" to the voucher may be settled. Further, if the regulations prohibit the settlement of the potential eligibility to a voucher and the case ultimately settles, the injured worker would not be entitled to the voucher, as it must be based on the permanent partial disability award.</p> <p>We disagree. The voucher must be based on the PD award, not C&R.</p>	<p>The word "entitlement" will be changed to "potential eligibility."</p> <p>None.</p>
Section 10133.56	<p>The voucher should be available before the award. The lower amount could be</p>	<p>March 2, 2005 Todd Kelley</p>	<p>We disagree. Labor Code section 4658.5 required the</p>	<p>None.</p>

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	<p>provided. This will assist the worker in returning to work.</p> <p>Employers want language that will protect them from ADA of FEHA.</p>	<p>Workers' Task Force Chamber of Commerce for Ventura</p>	<p>voucher amount to be based on the PD award.</p> <p>We disagree. DWC is a state agency and does not have authority over federal requirements.</p>	<p>None.</p>
Section 10133.52	<p>Voucher should not be settled. The benefit should go to workers to learn new skills.</p> <p>The voucher should be issued after 60 days rather than wait for the award.</p>	<p>March 2, 2005 Mark Remas</p>	<p>We disagree. The proposed regulations do not state that the voucher may be settled, but that the "entitlement" to the voucher may be settled. Further, if the regulations prohibit the settlement of the potential eligibility to a voucher and the case ultimately settles, the injured worker would not be entitled to the voucher, as it must be based on the permanent partial disability award.</p> <p>We disagree. Labor Code section 4658.5 required the voucher amount to be based on the PD award.</p>	<p>The word "entitlement" will be changed to "potential eligibility."</p> <p>None.</p>
General	<p>The voucher is non-transferable. There is no clear provision for settlement. The benefit is intended to be used for</p>	<p>March 3, 2005 Richard Alarcon Chair Senate Labor and</p>	<p>We disagree. The proposed regulations do not state that the voucher may be settled, but that the "entitlement" to the</p>	<p>The word "entitlement" will be changed to "potential eligibility."</p>

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	educational purposes. Encouraged that CHSCW is investigating to see if SJDB might be offered at an earlier point in the process.	Industrial Relations	voucher may be settled. Further, if the regulations prohibit the settlement of the potential eligibility to a voucher and the case ultimately settles, the injured worker would not be entitled to the voucher, as it must be based on the permanent partial disability award.	
Section 10133.53	<p>Recommends: “For dates of injury on or after 1/1/05 when applicable, regardless of whether you accept or reject this offer, your permanent disability payments may be decreased by 15%.” Payments should be used instead of award per Labor Code.</p> <p>Title of form should be changed to “Notice of Offer of Regular, Modified or Alternative Work.”</p> <p>Further modifications should include information for the injured worker regarding who is eligible for the 15% modification.</p>	March 3, 2005 Jose Ruiz SCIF	<p>We agree.</p> <p>We disagree. The return to work offer form will be part of the return to work regulations.</p> <p>We disagree. This will be addressed by the return to work regulations.</p>	<p>The section is revised to state “payments.”</p> <p>None.</p> <p>None.</p>

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	<p>“Regular Work” information should be included in the same manner as “Modified Work.” State Fund recommends including: Regular Work (a) The regular job will not last at least 12 months; (b) Wages offered are less than the wages paid at the time of injury; (c) The job is beyond a reasonable commuting distance from residence at the time of injury.</p> <p>Section “This section to be completed by the Employee” SCIF recommends including the word “Regular” in the two sentences in this section.</p> <p>Section “Position Requirement,” the first line should be modified to “Is salary of regular work the same as pre-injury job?”</p> <p>Page 2 – Position Requirements: SCIF recommends amending “P&S date” to include “(if applicable)” and to relocate</p>		<p>We disagree. This will be addressed by the return to work regulations.</p> <p>We disagree. This will be addressed by the return to work regulations.</p> <p>We disagree. This will be addressed by the return to work regulations.</p> <p>We agree in part and disagree in part. The P&S date and F&A date will both be after the requirement to make the</p>	<p>None.</p> <p>None.</p> <p>None.</p> <p>The P&S date and Findings and award date are stricken. The name of the</p>

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	<p>“P&S date” and place on same line as “Date of last payment of TTD?”</p> <p>Recommends removing “Doctor’s name, Date of Report: P&S Date:, Determined by:, and the Date of an F&A.” The doctor’s information is irrelevant and this job offer must precede any F&A regarding PD.</p>		<p>offer and therefore irrelevant. The doctor’s report will help reduce disputes regarding the appropriateness of the modified work offer.</p>	<p>doctor who prepared report and date of report are added.</p>
Section 10133.54	<p>(a) “Displacement” should replace “Disability.”</p> <p>(b) and (e) “Administrative Director” should replace word “Administrator.”</p>	<p>March 3, 2005 Jose Ruiz SCIF</p>	<p>We agree.</p>	<p>These errors will be corrected.</p>
Section 10133.57	<p>To avoid fraud, SCIF recommends adding “A copy of a written notice advising the Training Provider and VRTWC of your withdrawal is to be submitted with the voucher.”</p>	<p>March 3, 2005 Jose Ruiz SCIF</p>	<p>We disagree. It is the claims administrator's responsibility to pay the provider and VRTWC. Any fraud concerns should be reported to the appropriate authorities.</p>	<p>None.</p>
Sections 10133.50(1) and 10133.59 10133.56(c) and (g)	<p>AB 227 repealed the vocational rehabilitation benefit. Labor Code section 4658.5 does not suggest that vocational or return to work counseling may occur other than at a state approved or accredited school. There is no authority to adopt these sections and reference to vocational counselors</p>	<p>March 7, 2005 (per e-mail_ March 2, 2005 (per letter) Mark Webb American International Companies</p>	<p>We disagree. Labor Code section 4658.5 specifically refers to vocational or return to work counselors.</p>	<p>None.</p>

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	<p>should be deleted.</p> <p>The proposed regulations should acknowledge that regular employment may be seasonal or periodic. The offer of employment should be for 12 months if the regular work at the time of injury was not for a specific duration. If, however, the regular work was for a specific duration, the offer should be of equivalent time.</p> <p>The structure of this benefit will be difficult for professional employment organizations. In such a case, the agency cannot guaranty employment and the injured worker is likely not interested in training.</p>		<p>We agree.</p> <p>We disagree. The benefit is required by Labor Code section 4658.5.</p>	<p>The words "seasonal work" were added to section 10133.60(a)(4).</p> <p>None.</p>