

Supplemental Job Displacement Benefit	COMMENTS 2nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
§10133.52 Settlement of SJDB	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.	March 24, 2005: Mark Remas March 28, 2005 Esteban Magallanes April 4, 2005 Mary Ciddio April 5, 2005 Stephen Weathersbee April 7, 2005 CARRP April 8, 2005 Larry Qualls Tom Gilmore Terry Theocharides Derek S. Swezey Josue Matos Esteban Magallanes Rey Lopez Trish Lane James Magdaleno Gary Mann Elena Astashkina	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.	None.
Section 10133.52	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	March 25, 2005: Yanela Burek Adrienne L. Malka James Magdaleno March 28, 2005	1. We disagree. The proposed regulations do not state that the voucher may be settled, but that the “potential eligibility” to the voucher may be settled. Further, if the regulations	1. None.

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	<p>negotiation and (c) the agency does not have authority to allow settlement of benefit.</p> <p>2. Believe the notice that the employee must use the voucher within 5 years is appropriate. They believe Labor Code section 5410 does apply and lack of time limits places an unreasonable demand for reserves upon the carrier.</p> <p>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.</p>	<p>Sherris Goodwin, PhD American College of CA</p>	<p>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. Also, in many cases the award does not issue within 5 years from the date of injury.</p> <p>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.</p> <p>3. We disagree. The statute does not provide authority to require issuing the voucher before the PPD award.</p>	<p>2. None.</p> <p>3. None.</p>
Section 10133.52	<p>Recommends including language that there is a time limit in which to use the voucher, perhaps five years from the date of the issuance of the voucher.</p>	<p>March 25, 2005 Beth Harville</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>

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			the award does not issue within 5 years from the date of injury.	
Section 10133.52	There is a text error. "Not" is improperly crossed out. The text should read "The claims administrator will not be required to pay for ..."	March 25, 2005 Steve Pierce Judith A. Barry (SCIF)	We agree.	We will correct this error.
General	Believes the changes to the current vocational rehabilitation system that might compromise the re-training of the injured worker would be a step backwards.	March 28, 2005 Donald Peterson	The statutes and regulations which authorized vocational rehabilitation have been repealed. This comment goes beyond the scope of these regulations.	None.
General	The regulations refer to the claims administrator instead of the employer, but the employer is responsible for finding the job.	March 28, 2005 Cathy O'Brien	We disagree. Claims administrator is defined in section 10133.50 and includes the person or entity responsible for the payment of compensation. Reference to employer could result in documents being returned to an employer whose claims are administered by an insurer or TPA.	None.
Section 10133.52	Requests that an expiration date be included on the voucher.	March 30, 2005 Karen Sickels	We disagree. None of the Labor Code statutes of limitations appear to limit the time period in which the	None.

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			injured worker must use the voucher. Also, in many cases the award does not issue within 5 years from the date of injury.	
General	The laws are not written with the consideration of the staffing industry. We are unable to guarantee a 12 month length of assignment.	April 4, 2005 Tisha Bertlow Manpower	The Labor Code section 4658.6 requires that in order for the employer not to be liable for the SJDB, the offer for modified or alternative work must be for a regular position lasting at least 12 months.	None.
Sections 10133.53 10133.55	Recommends adding the mailing address of the AD on the job offer form and the dispute resolution form.	March 31, 2005 April 6, 2005 Carolyn Bradford	We agree.	We will make these non-substantive changes.
Section 10133.52	Is the employer liable for a voucher where the employee is released to return to work to usual and customary, or "regular" work, due to a work injury but the employee simply does not return to work within 60 days of the end of TD? Is the employer or claims administrator required to offer "regular" work to preclude liability for the voucher in such instances? And if so, what form should the offer take, and who should offer the job - the employer or the claims administrator?	March 31, 2005 April 6, 2005 Carolyn Bradford	As set forth in section 10133.52, in order to be entitled to SJDB, the employee's injury must have prevented the employee from returning to work within 60 days. The return to work regulations will address the notice of offer of regular work.	None.

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General	Does the employer have liability for a voucher where the employee loses no time from work but has permanent partial disability due to a work injury, and the employer is unable to provide modified or alternative work on a permanent basis?	March 31, 2005 April 6, 2005 Carolyn Bradford	No. Labor Code section 4658.5 requires that the employee be off work at least 60 days from the termination of temporary disability.	None.
Section 10133.52	I have re-read the first complete paragraph at the top of page 6 of the proposed regulation several times. It appears that the intent is that the claims administrator would not be required to pay for a voucher if the offer of modified or alternative work meets the four conditions specified at the end of the paragraph. Currently the word "not" is struck from the second sentence, when it would appear that "not" needs to be left in.	March 31, 2005 April 6, 2005 Carolyn Bradford	We agree.	We will correct this error.
Section 1033.52	I suggest that the claims administrator not be required to use the last 4 lines of section 10133.52 when the claim administrator provides the same information in the notice through use of the claim administrator's letterhead, and the notice contains the date it is issued. This is similar to the practice used with benefit notices in section 9812 and section 9813.	March 31, 2005 April 6, 2005 Carolyn Bradford	We disagree. The forms are mandatory in order to ensure that the employee is provided accurate information.	None.

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Section 10133.60	<p>Another reason for termination of liability should be “no job modification is necessary to accommodate the permanent partial disability” or “the injured worker is not displaced as a result of the permanent partial disability.”</p> <p>This section should be modified to include language that the injured worker is not entitled to the SJDB if regular, modified or alternative work is offered within 60 days of permanent and stationary date per Labor Code section 4658(d)(3)(A-B).</p>	April 6, 2005 Craig Rogers	We disagree. Labor Code section 4658.5 requires the employer to offer modified or alternative work.	None.
Section 10133.52	There will be many cases where permanent work restrictions are not known within 30 days of ending temporary disability making it impossible for the employer to offer permanent modified or alternative work. A delay mechanism should be implemented allowing for such situations.	April 6, 2005 Craig Rogers	We disagree. The statute requires the employee be provided with the Notice within 10 days of the last TD payment. 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 10133.51	Define and clarify temporary total disability and temporary partial disability. If an injured worker sustains	April 6, 2005 Craig Rogers	We disagree. Section 10133.51 requires that the Notice of Potential Right to	None.

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	wage loss/temporary partial disability only, does the 30-day time limit to offer permanent modified or alternative work start when wage loss stops?		SJDB be sent within 10 days of the last payment of temporary disability. As set forth in section 10133.52, the employee's injury must cause permanent partial disability before the employer is liable for the SJDB.	
Section 10133.53	I recommend adding language that if a timely offer is made by the employer and it is later deemed to be "medically inappropriate," the employer shall have another opportunity to offer permanent modified or alternative work.	April 6, 2005 Craig Rogers	We disagree. The employer may rely on the physician's report. There is no authority to go beyond the statutory timeframes. Any dispute may be resolved by the Administrative Director or the WCAB.	None.
Section 10133.52	Retain language advising the injured worker to the SJDB must be used within 5 years of the date of injury.	April 6, 2005 Craig Rogers	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.	None.
Section 10133.52	There is no authority to add the phrase "which prevented you from returning" to this section." There is no statutory requirement that the worker must be unable to return to work because of the	April 7, 2005 J. David Schwartz CAAA	We disagree. The phrase was added to clarify that if the injured worker is able to return to work, he or she is required to do so. This is consistent	None.

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	disability.		with the requirement that the employer offer modified or alternative work to the employee who is permanently disabled.	
Section 10133.56	Believes the SJDB is payable following once the injured worker has not returned to work within 60 days of the termination of temporary disability benefits, as opposed to when the employee receives the permanent disability award.	April 7, 2005 J. David Schwartz CAAA	We disagree. Labor Code section 4658.5 ties the benefit to the permanent partial disability award.	None.
Section 10133.54	Disagrees that the Administrative Director has authority to hear these disputes.	April 7, 2005 J. David Schwartz CAAA	We disagree. Labor Code section 4658.5 (b) provides authority.	None.
Section 10133.52.	“Not” is improperly crossed out. The text should read “The claims administrator will not be required to pay for ...”	April 7, 2005 Sharon L. Faggiano Employers Insurance Group	We agree.	We will correct the error.
Section 10133.60	Requests adding as reason for termination of liability for SJDB: (6) the claims administrator offers the employee modified or alternative work in compliance with Labor Codes section 4658.6 and the employee is terminated for good cause prior to working in the regular, modified or alternative position for 12 months.	April 7, 2005 Sharon L. Faggiano Employers Insurance Group	We disagree. This is an issue for the WCAB to determine.	None.
Section 10133.52	Suggests replacing the word “benefit” in the fifth paragraph to “potential eligibility to a voucher” to be consistent	April 7, 2005 Jose Ruiz SCIF	We disagree. The language is clear as written.	None.

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	with the third paragraph.			
Section 10133.52	“Not” is improperly crossed out. The text should read “The claims administrator will not be required to pay for ...”	April 7, 2005 Jose Ruiz SCIF March 25, 2005 Judith Barry SCIF April 8, 2005 Anthony Velasquez	We agree.	We will correct the error.
Section 10133.56	There are two clerical errors: Subdivision (a), first sentence contains an extra word “Disability” that should be deleted. Subdivision (b) should be corrected: “in unable” should be changed to “is unable.”	April 7, 2005 Jose Ruiz SCIF	We agree.	We will correct the errors.
Section 10133.56	Recommends changing (a)(3) to state: “except as set forth in (b), this injury has prevented the employee from returning to work for the employer within 60 days of the termination of temporary disability benefits.”	April 7, 2005 Jose Ruiz SCIF	We disagree. This section tracks the language used in Labor Code section 45658.5. Section 10133.52 does set forth the fact that the employee’s injury must be the reason the employee.	None.
Section 10133.59	Recommends correcting the clerical error in (b) from “Supplemental Job Disability Benefits” to “Supplemental Job Displacement Benefits.”	April 7, 2005 Jose Ruiz SCIF	We agree.	We will correct the error.
Section 10133.60	Subdivision (a) addresses the issue of when the claims administrator’s liability to provide the voucher “shall end.”	April 7, 2005 Jose Ruiz SCIF	We agree with the first recommendation and disagree with the second. Subdivision	We will delete the redundant language in (a)(3).

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	Delete the language in paragraph (3), “the claims administrator is not required to provide SJDB” and in paragraph (4) “is terminated.” This language is redundant because (1) through (4) specify the circumstance that end liability to provide a SJDB.		(a)(4) is not redundant because the phrase is referring to how long the claims administrator must provide modified or alternative work.	
Section 10133.60	Change the word “obligation” in paragraph (4) to “offer” to maintain consistency with paragraphs 1, 2, and 3.	April 7, 2005 Jose Ruiz SCIF	We disagree. This paragraph is dealing with the on-going obligation of maintaining the job position for a 12 month period	None.
Section 10133.60	Paragraph (4) might be incorrectly interpreted to imply that the claims administrator’s obligation is to provide 12 months of seasonal work. The intent is to identify that seasonal work is cumulative rather than 12 months of consecutive work. The proposed language may cause unnecessary litigation, inappropriately increase claims administrator’s liability and unnecessarily increase costs to the claims administrators. Recommends, “(4) The claims administrator’s offer to provide modified or alternative work to a seasonal employee if the following conditions apply...”	April 7, 2005 Jose Ruiz SCIF	We disagree. The claims administrator is obligated to provide 12 months of cumulative seasonal work.	None.
Section 10133.50	Modify (a)(10) as: “Offer of <u>Regular, Modified or Alternative Work</u> . An offer of medically appropriate <u>employment</u>	April 7, 2005 Pearl Phoenix The Zenith	We disagree. Offers of regular work will be included in the return to work regulations.	None.

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	<u>regular, modified or alternative work</u> to the injured employer in a form and manner prescribed by the Administrative Director.”	April 8, 2005 Suzanne Guyan Costco		
Section 10133.52	Suggests replacing the word “benefit” in the fifth paragraph to “potential eligibility to a voucher” to be consistent with the third paragraph.	April 7, 2005 Pearl Phoenix The Zenith April 8, 2005 Suzanne Guyan Costco	We disagree. The language is clear as written.	None.
Section 10133.52	“Not” is improperly crossed out. The text should read “The claims administrator will not be required to pay for ...”	April 7, 2005 Pearl Phoenix The Zenith April 8, 2005 Suzanne Guyan Costco April 8, 2005 Anthony Velasquez	We agree.	We will correct the error.
Section 10133.56	Subdivision (a), first sentence contains an extra word “Disability” that should be deleted.	April 7, 2005 Pearl Phoenix The Zenith April 8, 2005 Suzanne Guyan Costco	We agree.	The error will be corrected.
Section 10133.56	In (a)(3) replace “does not” with “is	April 7, 2005	We disagree. The words are	None.

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	unable to.”	Pearl Phoenix The Zenith April 8, 2005 Suzanne Guyan Costco	from Labor Code section 4658.5.	
Section 10133.56	Subdivision (b) should be corrected: “in unable” should be changed to “is unable.”	April 7, 2005 Pearl Phoenix The Zenith April 8, 2005 Suzanne Guyan Costco	We agree.	The error will be corrected.
Section 10133.57	Recommends modifying to: “If you decide to voluntarily withdraw from a program <u>or for any other reason do not complete 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.”</u> ”	April 7, 2005 Pearl Phoenix The Zenith April 8, 2005 Suzanne Guyan Costco	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	None.

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			injured worker to return any refunded funds when it sends the reimbursement. Finally, the claims administrator may report suspected fraud to the appropriate authorities.	
Section 10133.60	Recommends adding to (a)(2) that employer's liability for SJDB ends if employee is terminated for good cause.	April 7, 2005 Pearl Phoenix The Zenith April 8, 2005 Suzanne Guyan Costco	We disagree. This is an issue for the WCAB to determine.	None.
Section 10133.60	Subdivision (a) addresses the issue of when the claims administrator's liability to provide the voucher "shall end." Delete the language in paragraph (3), "the claims administrator is not required to provide SJDB" and in paragraph (4) "is terminated after 12 months of seasonal work." This language is redundant because (1) through (4) specify the circumstance that end liability to provide a SJDB. Also, the term "season" is unclear.	April 7, 2005 Pearl Phoenix The Zenith April 8, 2005 Suzanne Guyan Costco	We agree in part. We disagree that the term "season" is unclear. We agree with the first recommendation regarding (a)(3) and disagree with the second. Subdivision (a)(4) is not redundant because the phrase is referring to how long the claims administrator must provide modified or alternative work.	We will delete the redundant language in (a)(3).
Delay Notices	Recommends a mechanism to manage delays that may be necessary while the parties obtain necessary information.	April 7, 2005 Pearl Phoenix The Zenith April 8, 2005	We disagree. The statute requires the employee be provided with the Notice within 10 days of the last TD payment. The statute also	None.

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		Suzanne Guyan Costco	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.	
Section 10133.52	Suggests that the voucher is time limited by Labor Code section 5410.	April 7, 2005 Pearl Phoenix The Zenith April 8, 2005 Suzanne Guyan Costco	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.	None.
Section 10133.50	(a)(7) – Definition of modified work is not consistent with federal and state requirements.	April 4, 2005 Allen Leno April 8, 2005 Enrique N. Vega Choices Vocational Rehabilitation April 8, 2005 Suzanne Guyan Costco April 8, 2005	We disagree. The definition is based on Labor Code section 4658.1.	None.

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		Jamie Charter Charter and Company		
Section 10133.50	(a)(15) – VRTWC This definition does not allow for certification of new counselors.	April 4, 2005 Allen Leno April 8, 2005 Enrique N. Vega Choices Vocational Rehabilitation April 8, 2005 Suzanne Guyan Costco April 8, 2005 Jamie Charter Charter and Company	We disagree that this section needs to be changed. The definition sets forth the qualifications required. Section 10133.59 sets forth how to apply to be included on the Administrative Director’s list.	None.
Section 10133.52	DWC does not indicate its authority to state that the right to a voucher can be settled.	April 4, 2005 Allen Leno April 8, 2005 Enrique N. Vega Choices Vocational Rehabilitation April 8, 2005 Jamie Charter Charter and Company	All benefits are subject to settlement unless it is prohibited. For example, there is no statute that specifically authorizes the settlement of permanent disability or temporary disability.	None.

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Delay Notices	Recommends a mechanism to manage delays that may be necessary while the parties obtain necessary information.	<p>April 4, 2005 Allen Leno</p> <p>April 8, 2005 Enrique N. Vega Choices Vocational Rehabilitation</p> <p>April 8, 2005 Jamie Charter Charter and Company</p> <p>April 8, 2005 Kathleen Bissell Liberty Mutual</p>	We disagree. The statute requires the employee be provided with the Notice within 10 days of the last TD payment. 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 10133.52	Suggests that the voucher is time limited by Labor Code section 5410.	<p>April 4, 2005 Allen Leno</p> <p>April 8, 2005 Enrique N. Vega Choices Vocational Rehabilitation</p> <p>April 8, 2005 Jamie Charter Charter and Company</p> <p>April 8, 2005 Kathleen Bissell</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 the award does not issue within 5 years from the date of injury.	None.

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Section 10133.56	Believes the wording problems have been corrected.	<p>Liberty Mutual</p> <p>April 8, 2005 Enrique N. Vega Choices Vocational Rehabilitation</p>	We agree, except for the typographical errors that have been pointed out.	We will correct the typographical errors.
Section 10133.57	It is inappropriate that the employee will receive refund of tuition money if he or she drops out.	<p>April 4, 2005 Allen Leno</p> <p>April 8, 2005 Enrique N. Vega Choices Vocational Rehabilitation</p> <p>April 8, 2005 Jamie Charter Charter and Company</p> <p>April 8, 2005 Kathleen Bissell Liberty Mutual</p>	We disagree with adding the language to the voucher that states that the employee must return refund money to the claims administrator because the purpose of the voucher 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 appropriate authorities.	None.

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Section 10133.53	Why must the notice be filed with the AD?	<p>April 4, 2005 Allen Leno</p> <p>April 8, 2005 Enrique N. Vega Choices Vocational Rehabilitation</p> <p>April 8, 2005 Suzanne Guyan Costco</p> <p>April 8, 2005 Jamie Charter Charter and Company</p>	The DWC reviews the Notice of Offers for statistical and research purposes. The information is also used when the Legislature requests data.	None.
Section 10133.55	Section 10133.54 requires the parties to attach all pertinent documents, but the form does not set forth this requirement. It should be added so that everyone knows the process.	<p>April 4, 2005 Allen Leno</p> <p>April 8, 2005 Enrique N. Vega Choices Vocational Rehabilitation</p> <p>April 8, 2005 Suzanne Guyan Costco</p> <p>April 8, 2005 Jamie Charter</p>	We agree. We will correct this clerical error.	We will add to the form the words: "Attach all pertinent documents."

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		Charter and Company		
General	A PEO has no authority to offer alternative or modified work – only the client can ensure availability or qualifying employment if the PEO relationship terminate.	April 8, 2005 John Norwood\ Administaff	We are limited to the authority provided by the Labor Code, especially sections 4658.5 and 4658.6.	None.
General	The proposed regulations fail to take into account employers who are general employers as that term is used in Insurance Code section 11663 and employers who offer regular work for a term less than one year or on a project-specific basis. One option would be to state that the return to work offer applies only to those employers who hire workers for regular work that prior to the date of injury was for an indefinite term that could last up to and beyond 12 months. It is true, though, that such a position would be contrary to the express intent of the Legislature to foster return to work programs. A second option would be to clarify that the general employer may offer employment consistent with the employment provided to the injured worker prior to the injury.	April 8, 2005 Mark Webb AIG	We disagree. We are limited to the authority provided by the Labor Code, especially sections 4658.5 and 4658.6. If the employer cannot offer work as set forth in the Labor Code, the employee is entitled to the SJDB.	None.
Section 10133.58	Requests section to be modified to include “Providers of Adaptive Equipment and Services for Persons	April 8, 2005 Anthony J. Benach	The DWC does not have staff available to approve services. The training must either be	None.

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	with Disabilities listed under the State of California, State Price Schedule 01-01-2002.		approved by the Bureau of Private and Postsecondary Education or the provider should contract with an approved service provider. The Bureau also approved instructors.	
Section 10133.50	(a)(15) Recognizing that a VRTWC position requires a demonstrated level of competency to perform this important function, we would suggest that the second line reflect a level of experience in this field or a supervisory oversight of individuals with the education qualification but no or limited experience. VRTWCs, in our view, do not need to be “certified” but should be able to demonstrate to the DWC possibly through the audit process that they are qualified and experienced.	April 8, 2005 Kathleen Bissell Liberty Mutual	We disagree. The regulations requires three or more years of experience.	None.
Section 10133.52	Recognizing that the DWC is somewhat limited by statute to develop a mechanism for explaining a claimant’s potential eligibility for SJDB under Labor Code section 4658.5, we feel this form is acceptable. We do believe, however, that the form does not provide appropriate information regarding the impact of the SJDB and its relationship to future benefits or additional	April 8, 2005 Kathleen Bissell Liberty Mutual	We agree in part. The comment regarding the relationship of SJSB and its relationship to future benefits is vague and therefore we are unable to respond to it. See above for the remainder of the April 8, 2005 Liberty Mutual comments and the	We will correct the error.

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	vocational training. We also note that in the paragraph that describes the conditions under which an employer would <u>not</u> be responsible for an offer, the critical “not” has been removed. We expect that this is a typographical error that will be corrected in the final regulations.		responses to the comments from Liberty Mutual.	