

STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS  
Division of Workers' Compensation

**NOTICE OF MODIFICATION TO TEXT OF PROPOSED REGULATIONS**

**Subject Matter of Regulations: Workers' Compensation –  
Supplemental Job Displacement Benefit**

**TITLE 8, CALIFORNIA CODE OF REGULATIONS**  
**SECTIONS 10133.50 – 10133.60**

NOTICE IS HEREBY GIVEN that the Administrative Director of the Division of Workers' Compensation, pursuant to the authority vested in her by Labor Code Sections 133, 4658.5, and 5307.3 proposes to modify the text of the following proposed regulations:

Section 10133.50	Definitions
Section 10133.51	Notice of Potential Right to Supplemental Job Displacement Benefit
Section 10133.52	"Notice of Potential Right to Supplemental Job Displacement Benefit" Form
Section 10133.53	Form DWC-AD 10133.53 "Notice of Modified or Alternative Work for Injuries Occurring on or after 1/1/04"
Section 10133.54	Dispute Resolution
Section 10133.55	Form DWC-AD 10133.55 "Request for Dispute Resolution before the Administrative Director"
Section 10133.56	Requirement to Issue Supplemental Job Displacement Nontransferable Training Voucher
Section 10133.57	Form DWC-AD 10133.57 "Supplemental Job Displacement Nontransferable Training Voucher"
Section 10133.58	State Approved or Accredited Schools
Section 10133.59	The Administrative Director's List of Vocational Return to Work Counselors
Section 10133.60	Termination of Employer's Liability for the Supplemental Job Displacement Benefit

**PRESENTATION OF WRITTEN COMMENTS AND DEADLINE FOR SUBMISSION OF WRITTEN COMMENTS**

Members of the public are invited to present written comments regarding these proposed modifications. **Only comments directly concerning the proposed modifications to the text of the regulations will be considered and responded to in the Final Statement of Reasons.**

Written comments should be addressed to:

Destie Overpeck  
Department of Industrial Relations  
Division of Workers' Compensation  
Post Office Box 420603  
San Francisco, CA 94142

The Division's contact person must receive all written comments concerning the proposed modifications to the regulations no later than 5:00 p.m. on **March 2, 2005**. Written comments may be submitted by facsimile transmission (FAX), addressed to the contact person at (415) 703-4720. Written comments may also be sent electronically (via e-mail), using the following e-mail address: [dwcrules@hq.dir.ca.gov](mailto:dwcrules@hq.dir.ca.gov).

## **AVAILABILITY OF TEXT OF REGULATIONS AND RULEMAKING FILE**

Copies of the original text and modified text with modifications clearly indicated, and the entire rulemaking file, are currently available for public review during normal business hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays, at the offices of the Division of Workers' Compensation. The Division is located at 455 Golden Gate Avenue, 9th Floor, San Francisco, California.

Please contact Ms. Kathleen Llemos at (415) 703-4600 to arrange to inspect the rulemaking file.

### **The specific modifications proposed include changes to the text of the following regulations:**

Section 10133.50	Definitions
Section 10133.51	Notice of Potential Right to Supplemental Job Displacement Benefit
Section 10133.52	"Notice of Potential Right to Supplemental Job Displacement Benefit" Form
Section 10133.53	Form DWC-AD 10133.53 "Notice of Modified or Alternative Work for Injuries Occurring on or after 1/1/04"
Section 10133.54	Dispute Resolution
Section 10133.55	Form DWC-AD 10133.55 "Request for Dispute Resolution before the Administrative Director"
Section 10133.56	Requirement to Issue Supplemental Job Displacement Nontransferable Training Voucher
Section 10133.57	Form DWC-AD 10133.57 "Supplemental Job Displacement Nontransferable Training Voucher"
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Section 10133.59	The Administrative Director's List of Vocational Return to Work Counselors
Section 10133.60	Termination of Employer's Liability for the Supplemental Job Displacement Benefit

## **DOCUMENTS SUPPORTING THE RULEMAKING FILE**

Print outs of emails and correspondence to and from various interested parties concerning the Division's proposed changes have been added to the rulemaking file.

## **FORMAT OF PROPOSED MODIFICATIONS**

### **Proposed Text Noticed for 45-Day Comment Period:**

The proposed text was indicated by underlining, thus: underlined language.

The proposed Forms (DWC-AD 10133.53 Notice of Offer or Modified or Alternative Work and DWC-AD 10133.55 Request for Dispute Resolution Before the Administrative Director for Injuries Occurring on or after 1/1/04) were presented without underlining or strike-through.

## **Proposed Text Noticed for This 15-Day Comment Period on Modified Text:**

Deletions from the proposed regulatory text, as proposed on May 10, 2004, are indicated by strike-through under-line, thus: ~~deleted language~~.

Additions to the proposed regulatory text, as proposed on May 10, 2004, are indicated by a double underline, thus: added language.

Deletions from the Forms, as proposed on May 10, 2004, are indicated by strike-through, thus: ~~deleted language~~.

Additions to the Forms, as proposed on May 10, 2004, are indicated by a double underline, thus: added language.

## **SUMMARY OF PROPOSED CHANGES**

### **1. Section 10133.50 Definitions**

The definitions of “alternative work” and “modified work” were changed to comply with Labor Code section 4658.1. The definition of “parties” was amended to include “the employer.” The definition of “regular work” was added to comply with the definition in Labor Code section 4658.1. The definition for “regular position” was deleted because AB 277 repealed prior Labor Code section 139.5 which referred to “regular position.” The reference to Labor Code section 4658.1 was also added.

### **2. Section 10133.51 Notice of Potential Right to Supplemental Job Displacement Benefit**

This section was modified to include the phrase “if not previously provided,” so that the claims administrator will be required to send the Notice only one time. Additionally, the section was reorganized for clarity and syntax.

### **3. Section 10133.52 “Notice of Potential Right to Supplemental Job Displacement Benefit” Form**

This mandatory form was modified by adding the words, “and your employer or the claims administrator has not provided you with a Notice of Offer of Modified or Alternative Work as described below,” in order to have all of the eligibility conditions included in the first paragraph. In the third paragraph, the word “determined” was replaced by “issued” for clarity. The following sentences were also added to the third paragraph: “You may also settle your entitlement to a voucher as part of a compromise and release settlement for a lump sum payment. Any settlement must be reviewed and approved by a Workers’ Compensation Administrative Law Judge.” These sentences were added to advise the employee that the benefit may be settled.

The former fifth paragraph was replaced, as the former paragraph advised the employee that if he or she were eligible, the employee would receive the voucher once the claims administrator began paying permanent disability payments. The section has been change to comply with Labor Code section 4658.1 which states that the amount of the voucher is based on the permanent partial disability award. The new language states: “If you are eligible, and you have not already settled the benefit, you will receive the voucher from your employer or the claims administrator within 25 calendar days from the date the permanent partial disability award is issued by the Workers’ Compensation Administrative Law Judge

or the Workers' Compensation Appeals Board.”

The note stating that the employee must use the voucher within 5 years of the date of injury was removed as Labor Code section 5604 applies only to the collection of benefits commencing with section 4700.

In the second bulleted paragraph on page two, “within 15 percent” is replaced with “at least 85 percent” for clarity and to be in conformity with Labor Code section 4658.1 (b) and (c).

The words “claims administrator” was added to the next paragraph for clarity and the word “employer” was replaced with the word “offer” also for clarity.

Reference to section 10133.54 was changed to 10133.55 as the numbering has been changed. The form also was modified to include a statement that the employee may contact the claims administrator or information and assistance officer for more information. A line for the claims administrator’s email address was added.

#### **4. Section 10133.53 Form DWC-AD 10133.53 “Notice of Modified or Alternative Work for Injuries Occurring on or after 1/1/04”**

This mandatory two-page form was modified to reflect Labor Code section 4658.1’s definitions of modified and alternative work. The sentence “Regardless of whether you accept or reject this offer, your permanent disability award may be decreased by 15%” was added. This sentence was added to comply with Labor Code section 4658 and because this form may also be used by employees offering alternative or modified work pursuant to Labor Code section 4658. The word “this” is replaced with “the attached” for clarity. The reference to 10133.54 was changed to 10133.55. On page two, “within 15%” is replaced with “at least 85%” to be in conformity with the notice on page one and with Labor Code section 4658.1 (b) and (c). On page two, “more than” is replaced with “at least” to comply with the statutory language. A section requesting information regarding the permanent and stationary date, whether the permanent and stationary status was determined by a doctor’s report or the Findings and Award, and the date of the last payment of Temporary Total Disability was added so that the parties will be able to confirm that the appropriate timeframes have been met with regard to the offers of modified and alternative work. Page numbers were added so that the parties will know that it is a two-page form. Labor Code sections 4658, 4658.1 and 4658.6 were added as references.

#### **5. Section 10133.54 Dispute Resolution**

This section was added to provide a procedure to follow if there is a dispute about the supplemental job disability benefit. Either party may submit the completed form DWC-AD 10133.55 to the Administrative Director who will issue a determination and order.

**6. Section 10133.55 Form DWC-AD 10133.55 “Request for Dispute Resolution before the Administrative Director”**

This section has been renumbered. “If applicable” has been added to the line following the request for the counselor’s name. A proof of service section has been added so that the parties and the Administrative Director will know the date the Request was mailed.

**7. Section 10133.56 Requirement to Issue Supplemental Job Displacement Nontransferable Training Voucher**

This section and references to other sections have been renumbered. The reference to “30 days from the date that the employer has commenced permanent disability payments” has been replaced with “25 calendar days from the issuance of the permanent partial disability award by the Workers’ Compensation Administrative Law Judge or the Workers’ Compensation Appeals Board.” The change was made to comply with Labor Code section 4658.5. Twenty five days was chosen to allow a party twenty days to file an appeal plus five days for mailing. Former subdivision (c) was removed as the voucher will be based on the final award amount. The subsequent subdivisions were renumbered. New subdivision (c) was amended to include “claims administrator.” The numerical reference to the voucher was corrected to reflect the renumbering of the sections. Subdivision (g) was added to state: “The employer or claims administrator shall issue the reimbursement payments to the employee or direct payments to the VRTWC and the training providers within 45 calendar days from receipt of the completed voucher, receipts and documentation.”

**8. Section 10133.57 Form DWC-AD 10133.57 “Supplemental Job Displacement Nontransferable Training Voucher”**

This section has been renumbered. In the first paragraph, the words “Supplemental Job Disability Benefit” were removed in order to make the sentence more readable. The phrase, “If you decide to voluntarily withdraw from a program, you may not be entitled to a full refund of the voucher amount utilized,” has been added in response to a comment. The sentence stating that the employee must use the voucher within 5 years of the date of injury was removed as Labor Code section 5604 applies only to the collection of benefits commencing with section 4700. The word “employer” was added next to the words “or claims administrator” in two places on the first page and one place on page two for clarity.

The words “per claims administrator’s estimate of permanent disability or C&R or Award” have been removed to comply with Labor Code section 4658.5. The phrase, “attach additional pages for each provided is necessary,” has been added as an employee may utilize more than one provider.

**9. Section 10133.58 State Approved or Accredited Schools**

This section has been renumbered. The website for the Bureau of Private Postsecondary and Vocational Education has been added. The sentences have been re-structured for clarity and syntax.

**10. Section 10133.59 The Administrative Director’s List of Vocational Return to Work Counselors**

This section has been renumbered. The department’s website, which will have a list of Vocational & Return to Work Counselors, has been added. Subdivision (b) has been amended to include the phrase: “to facilitate an employee’s vocational training or return to work in connection with the Supplemental

Job Disability Benefit set forth in this Article,” for clarity. Subdivision (c) was amended to include: “However, a claims administrator shall provide a VRTWC with any medical reports, including permanent and stationary medical reports, upon an employee’s written request and a signed release waiver.” The word “worker” was replaced with “employee” to be consistent.

**11. Section 10133.60 Termination of Employer’s Liability for the Supplemental Job Displacement Benefit**

This section has been renumbered. “The claims administrator” was added to the section to clarify that both the employer’s and the claims administrator’s liability ends if the itemized circumstances occur. Subdivision (a)(6) was reworded for clarity. Some words were replaced for syntax purposes. Reference to Labor Code section 4658.1 was added.