

Article 7.5
Supplemental Job Displacement Benefit

§10133.50 Definitions

(a) The following definitions apply for injuries occurring on or after January 1, 2004:

~~(1) Alternative Work. A job or occupation, other than modified work, with the same employer which is compatible with the injured employee's work restrictions. Alternative work for injuries occurring on or after 1/1/04 shall also meet the criteria of Labor Code Section 4658.6. Work that the employee has the ability to perform, that offers wages and compensation that are at least 85 percent of those paid to the employee at the time of injury, and that is located within reasonable commuting distance of the employee's residence at the time of injury.~~

~~(2) Approved Training Facility. A training or skills enhancement facility or institution that meets the requirements of Section §10133.578.~~

~~(3) Claims Administrator. The person or entity responsible for the payment of compensation for a self-administered insurer providing security for the payment of compensation required by Divisions 4 and 4.5 of the Labor Code, a self-administered self-insured employer, or a third-party claims administrator for a self-insured employer, insurer, legally uninsured employer, or joint powers authority.~~

~~(4) Employer. The person or entity that employed the injured employee at the time of injury.~~

~~(5) Employer Offer. An offer of medically appropriate employment to the injured employee by the date of injury employer in a form and manner prescribed by the administrative director.~~

~~(5) (6) Essential Functions. Job duties considered crucial to the employment position held or desired by the employee. Functions may be considered essential because the position exists to perform the function, the function requires specialized expertise, serious results may occur if the function is not performed, other employees are not available to perform the function or the function occurs at peak periods and the employer cannot reorganize the work flow.~~

~~(6) (7) Insurer. Has the same meaning as in Labor Code Section 3211.~~

~~(7) (8) Modified Work. An injured employee's usual and customary job or occupation with the same employer after modification to accommodate required work restrictions. Modification includes, but is not limited to, changing or excluding certain tasks, reducing the time devoted to certain tasks, modifying the work station, changing the work location, and providing helpful equipment or tools. Modified work for injuries occurring on or after 1/1/04, shall meet the criteria of Labor Code Section 4658.6. Regular work modified so that the employee has the ability to perform all the functions of the job and that offers wages and compensation that are at least 85 percent of those paid to the employee at the~~

time of injury, and located within a reasonable commuting distance of the employee's residence at the time of injury.

(8) ~~(9)~~ Nontransferable Training Voucher. A document provided to an employee that allows the employee to enroll in education-related training or skills enhancement. The document shall include identifying information for the employee and claims administrator, specific information regarding the value of the voucher pursuant to Labor Code § 4658.5.

(9) ~~(10)~~ Notice. A required letter or form generated by the claims administrator ~~and/or the employer~~ and directed to the injured employee.

~~(10) ~~(5) Employer Offer of Modified or Alternative Work. An offer of medically appropriate employment to the injured employee with the date of injury employer in a form and manner prescribed by the Administrative Director.~~~~

(11) Parties. The employee, ~~the employer~~, the claims administrator and their designated representatives, if any.

(12) Permanent Partial Disability Award. ~~The document by which~~ A final award of permanent partial disability ~~is~~ determined by a Workers' Compensation Administrative Law Judge or the Workers' Compensation Appeals Board.

~~(13) Regular Position. A position arising from the ongoing business needs of the employer which consists of defined activities that can be reasonably viewed as required or prudent in view of the company's business objectives and is expected to last at least 12 months.~~

(13) Regular Work. The employee's usual occupation or the position in which the employee was engaged at the time of injury and that offers wages and compensation equivalent to those paid to the employee at the time of injury, and located within a reasonable commuting distance of the employee's residence at the time of injury.

(14) Supplemental Job Displacement Benefit. An educational retraining or skills enhancement allowance for injured employees whose employers are unable to provide work consistent with the requirements of Labor Code § 4658.6.

(15) Vocational & Return to Work Counselor (VRTWC). A person or entity capable of assisting a person with a disability with development of a return to work strategy and whose regular duties involve the evaluation, counseling and placement of disabled persons. 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 of disabled adults.

(16) Work Restrictions. Permanent medical limitations on employment activity established by the treating physician, Qualified Medical Examiner or Agreed Medical Examiner.

Authority: Sections 133, 4658.5, 5307.3, Labor Code.

Reference: Sections 124, 4658.1, 4658.5, and 4658.6, Labor Code.

§10133.51 Notice of Potential Right to Supplemental Job Displacement Benefits.

(a) This section shall only apply to injuries occurring on or after 1/1/04.

(b) Within 10 days of the last payment of temporary disability, if not previously provided, the employer or claims administrator shall send the employee, by certified mail, shall provide notice of the employee's potential right to the supplemental job displacement benefit to the employee. The employer shall use the mandatory form "Notice of Potential Right to Supplemental Job Displacement Benefit" that is set forth in Section 10133.52. The notice shall be sent to the employee by certified mail.

Authority: Sections 133, 4658.5, and 5307.3, Labor Code.

Reference: Section 4658.5, Labor Code.

§10133.52 “Notice of Potential Right to Supplemental Job Displacement Benefit Form”

If your injury causes permanent partial disability, which prevented you from returning and you do not return to work within 60 days of the last payment of temporary disability, 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 voucher for education-related retraining or skill enhancement, or both, at state approved or accredited schools.

The amount of the voucher for the supplemental job displacement benefit will be as follows:

Up to four thousand dollars (\$4,000) for a permanent partial disability award of less than 15%.

Up to six thousand dollars (\$6,000) for a permanent partial disability award between 15 and 25 %.

Up to eight thousand dollars (\$8,000) for a permanent partial disability award between 26 and 49 %.

Up to ten thousand dollars (\$10,000) for a permanent partial disability award between 50 and 99 %.

A permanent partial disability award is ~~determined~~ issued by a Workers’ Compensation Administrative Law Judge or the Workers’ Compensation Appeals Board. You may also settle your ~~entitlement~~ potential eligibility 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.

The voucher may be used for payment of tuition, fees, books, and other expenses required by the school for retraining or skill enhancement. Not more than 10 percent of the voucher moneys may be used for vocational or return to work counseling. A list of vocational return to work counselors is available on the Division of Workers’ Compensation’s website www.dir.ca.gov or upon request.

If you are eligible, you will receive the voucher from the claims administrator within 30 days from the date that the claims administrator has commenced permanent disability payments. If the permanent disability award is greater than the permanent disability percentage estimated by the claims administrator, a revised voucher for any additional amount due shall be issued by the claims administrator within 30 days of the issuance of the permanent disability award.

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.

Note: The employee must use the voucher within 5 years of the date of injury or risk losing the right to the benefit.

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. Neither your employer nor the claims administrator will not be required to pay for supplemental job displacement benefits if the employer offer for modified or alternative work meets either of the following conditions:

- ~~• 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 provided offers wages and compensation 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.

If there is a dispute regarding the Supplemental Job Displacement Benefit, the employee or claims administrator may file a "Request for Dispute Resolution before the Administrative Director" (8 C.C.R. §10133.5455).

If you have a question or need more information, you can contact your employer or the claims administrator listed below. You can also contact a State Division of Workers' Compensation Information and Assistance Officer.

Date: _____
Name of Claims Administrator: _____ Phone No.: _____
Address of Claims Administrator: _____
Email (optional): _____

Authority: Sections 133, 4658.5, and 5307.3, Labor Code.
Reference: Section 4658.5, Labor Code.

§10133.53 Form DWC-AD 10133.53 “Notice of Offer of Modified or Alternative Work for Injuries Occurring on or after 1/1/04”

[See attached.]

Authority: Sections 133, 4658.5, and 5307.3, Labor Code.

Reference: Sections 4658, 4658.1, 4658.5, and 4658.6, Labor Code.

§10133.54 Dispute Resolution

(a) When there is a dispute regarding the Supplemental Job ~~Disability~~ Displacement Benefit, the employee, ~~the employer,~~ or claims administrator may request the Administrative Director to resolve the dispute.

(b) The party requesting the Administrative Director to resolve the dispute shall:

(1) Complete a “Request for Dispute Resolution before the Administrative Director” using form DWC-AD 10133.55;

(2) Clearly state the issue(s) and identify supporting information for each issue and position;

(3) Attach all pertinent documents;

(4) Submit the original request and all attached documents to the Administrative Director and serve a copy of the request and all attached documents on all parties; and

(5) Sign and date the proof of service section of the “Request for Dispute Resolution before the ~~Administrator~~ Administrative Director.”

(c) The opposing party shall have twenty (20) calendar days from the date of the proof of service of the Request to submit the original response and all attached documents to the Administrative Director and serve a copy of the response and all attached documents on all parties.

(d) The Administrative Director or his or her designee may request additional information from the parties.

(e) The Administrative Director or his or her designee shall issue a written determination and order based solely on the request, response, and any attached documents within thirty (30) calendar days of the date the opposing party’s response and supporting information is due. If the ~~Administrator~~ Administrative Director or his or her designee requests additional information, the written determination shall be issued within thirty (30) calendar days from the receipt of the additional information. In the event no decision is issued within sixty (60) calendar days of the date the opposing party’s response is due or within sixty (60) calendar days of the Administrative Director’s receipt of the requested additional information, whichever is later, the request shall be deemed to be denied.

(f) Either party may ~~seek review of~~ appeal the determination and order of the Administrative Director by filing a written ~~appeal~~ petition together with a Declaration of Readiness to Proceed with the local district office of the Workers’ Compensation Appeals Board, and serving a copy of the ~~appeal petition and Declaration of Readiness on the Administrative Director and all parties,~~ within twenty calendar days ~~after receipt~~ of the issuance of the decision or within twenty days after a request is deemed denied pursuant to subdivision (e). The petition shall set forth the specific factual and/or legal reason(s) for the appeal. A copy of the petition and a copy of the Declaration of Readiness to Proceed shall be concurrently served on the Administrative Director.

Authority: Sections 133, 4658.5, and 5307.3, Labor Code.

Reference: Sections 4658.5 and 4658.6, Labor Code.

§10133.5455 Form DWC-AD 10133.5455 “Request for Dispute Resolution before the Administrative Director”

[See attached.]

Authority: Sections 133 4658.5, and 5307.3, Labor Code.

Reference: Section 4658.5, Labor Code.

**§10133.55-56 Requirement to Issue Supplemental Job Displacement
Nontransferable Training Voucher**

~~(a) When the injury causes permanent partial disability 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 that complies with Labor Code §4658.6, and the injured employee does not return to work for the employer within 60 days of the last payment of temporary disability benefits, the employee shall be eligible for the Supplemental Job Displacement Benefit.~~

~~(a) The employee shall be eligible for the Supplemental Job Disability Displacement Benefit when:~~

~~(1) the injury causes permanent partial disability; and~~

~~(2) within 30 days of the termination of temporary disability indemnity payments, the claims administrator does not offer modified or alternative work in accordance with Labor Code section 4658.6; and~~

~~(3) except as set forth in (b), the injured employee does not return to work for the employer within 60 days of the termination of temporary disability benefits.~~

~~(b) In the case of a seasonal employee, where the employee is 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 injured employee does not return to work on the next available work date of the next work season.~~

~~(c)(b) When the requirements under subdivision (a) have been met, the employer or claims administrator shall provide a nontransferable voucher for education-related retraining or skill enhancement or both to the employee within 30 days from the date that the employer has commenced permanent disability payments 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.~~

~~(c) If the permanent disability award is greater than the permanent disability percent estimated by the employer at the commencement of permanent disability payments, a revised voucher for education related retraining or skill enhancement or both for any additional amount due shall be issued by the employer within 30 days of the issuance of the employee's permanent partial disability award.~~

~~(d)(d) (e) The voucher shall be issued to the employee allowing direct reimbursement to the employee upon the employee's presentation to the employer's or claims administrator of documentation and receipts or as a direct payment to the provider of the education related training or skill enhancement and/or to the VRTWC.~~

~~(e)(e) (d) The voucher must indicate the appropriate level of money available to the employee in compliance with Labor Code §4658.5.~~

~~(f)(f) (e)~~ The mandatory voucher form is set forth in Section 10133.5657.

~~(g)(g) (f)~~ The voucher shall certify that the school is approved and if outside of California, approval is required similarly to the Bureau for Private Postsecondary (BPPVE).

~~(h)(g) 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.

Authority: Sections 133, 4658.5, 4658.6, and 5307.3, Labor Code.

Reference: Sections 4658.5 and 4658.6, Labor Code.

**§10133.5657 Form DWC-AD 10133.5657 “Supplemental Job Displacement
Nontransferable Training Voucher Form”**

[See attached.]

Authority: Sections 133, 4658.5, and 5307.3, Labor Code.

Reference: Section 4658.5, Labor Code.

**Supplemental Job Displacement
Nontransferable Training Voucher Form**

(8CCR §10133.5657 – Mandatory Form)

You have been determined eligible for this nontransferable, Supplemental Job Displacement Voucher. This Supplemental Job Displacement Benefit voucher may be used for the payment of tuition, fees, books, and other expenses required by a state approved or accredited school that you enroll in for the purpose of education related retraining or skill enhancement, or both.

The state approved or accredited school will be reimbursed upon receipt of a documented invoice for tuition, fees, books and other required expenses required by the school for retraining or skill enhancement. If you pay for the eligible expenses, you may be reimbursed for these expenses upon submission of documented receipts. No more than 10 percent of the value of this voucher may be used for vocational or return to work counseling. If you decide to voluntarily withdraw from a program, you may not be entitled to a full refund of the voucher amount utilized.

Please present this original letter to the state approved or accredited school and/or the Vocational & Return to Work Counselor of your choice, chosen from the list developed by the Division of Workers' Compensation's Administrative Director, in order to initiate your training and return to work counseling. A list of Vocational & Return to Work Counselors is available on the Division of Workers' Compensation's website www.dir.ca.gov or upon request. The school and/or counselor should contact me regarding direct payment from your supplemental job displacement benefit.

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.) This voucher must be submitted within 5 years of your date of injury or you may lose your rights to this benefit.

1. Injured Employee Name _____

2. Address _____

 City _____ State _____ Zip Code _____

3. Claim Number _____ Phone Number _____

The Employer or Claims Administrator

4. Name _____

5. Claims Mailing Address _____
6. City _____ State _____ Zip Code _____
7. Claims Representative _____ Phone Number _____
8. \$ _____ is available to the injured employee based on _____ % of Permanent Partial Disability Award per claims administrator's estimate of permanent disability or C & R or Award.

The injured employee must complete #'s Nos. 9 – 18, 19 and sign and date this voucher form.

(VRTWC) Vocational Return to Work Counselor (if any)

9. Name _____ Phone Number _____
10. Address _____
11. City _____ State _____ Zip Code _____
12. Funds used for vocational and return to work counseling \$ _____ (10% maximum of voucher value)

Training Provider Details (Attach additional pages for each provider if necessary.)

13. Provider Name _____
14. Provider Address _____ Phone Number _____
15. City _____ State _____ Zip Code _____
16. Provider approval number _____
17. Expiration Date _____
18. Provider Contact Name _____
19. Training Cost _____

~~20.~~ Injured Employee Signature _____ **Date** _____

Note to ~~Employer or~~ Claims Administrator: Upon receipt of voucher, receipts and documentation from the employee, reimbursement payments to the employee or direct payments to VRTWC and training providers must be made within 45 calendar days.

§10133.5758 State Approved or Accredited Schools

- (a) Private providers of education-related retraining or skill enhancement selected to provide training as part of a supplemental job displacement benefit shall ~~be~~ have either approval from
- (1) approved by the Bureau for Private Postsecondary and Vocational Education (www.bppve.ca.gov), ~~approval from~~ or a California state agency that has an agreement with the Bureau for the regulation and oversight of non-degree-granting private postsecondary institutions,
 - (2) ~~accreditation from~~ accredited by one of the Regional Associations of Schools and Colleges authorized by the United States Department of Education, or
 - (3) ~~certification from~~ certified by the Federal Aviation Administration. ~~Out of state training is not prohibited so~~
- (b) ~~a~~Any training outside of California must ~~include an approval~~ be approved by an agency in that state similar to the Bureau for Private Postsecondary and Vocational Education (BPPVE).

Authority: Sections 133, 4658.5, and 5307.3, Labor Code.

Reference: Section 4658.5, Labor Code.

§10133.58-59 The Administrative Director's List of Vocational Return to Work Counselors

For injuries occurring on or after 1/1/04.

- (a) The Administrative Director shall maintain a list of Vocational & Return to Work Counselors (VRTWC) who perform the work of assisting injured employees. A VRTWC who meets the qualifications specified in Section 10133.50(a)(15) must apply to the Administrative Director to be included on the list throughout the year. The list shall be reviewed and revised on a yearly basis, and shall be made available on the website www.dir.ca.gov or upon request.
- (b) The injured employee may select a Vocational & Return to Work Counselor whenever the assistance of a Vocational & Return to Work Counselor is needed to facilitate an employee's vocational training or return to work in connection with the Supplemental Job Disability Benefit set forth in this Article.
- (c) The injured employee shall be responsible for providing the VRTWC with any necessary medical reports. 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. ~~If, for any reason, it is necessary for the employee to request permanent and stationary medical reports, the request shall be made in writing to the claims administrator with a signed release waiver.~~
- (d) The VRTWC shall communicate with the injured ~~worker~~ employee regarding the evaluation.

NOTE: Authority cited: Sections 133, 4658.5, and 5307.3, Labor Code. Reference: Sections 4658.5.

§10133.5960 Termination of Employer's Claims Administrator's Liability for the Supplemental Job Displacement Benefit

(a) For injuries occurring on or after January 1, 2004, the employer's and claims administrator's liability to provide a supplemental job displacement voucher shall end if any of the below following circumstances occur:

(1) the employer or claims administrator offers modified or alternative work meeting the requirements of Labor Code §4658.6;

(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 prior to working in the modified or alternative work position for 12 months;

(3) the employer or claims administrator offers modified or alternative work to the employee on the DWC-AD Form 10133.53 that meets the conditions of Labor Code Section 4658.6 and subsequently learns that the employee cannot lawfully perform modified or alternative work due to the employee's immigration status, the employer and the claims administrator are is is not required to provide supplemental job displacement benefit;

(4) the employer's claims administrator's obligation to provide modified or alternative work to a seasonal employee is terminated after 12 months of seasonal work if the following conditions apply:

(A) the employee was hired on a seasonal basis prior to injury;

(B) the offer of modified or alternative work is on a similar seasonal basis to the employee's previous employment; and

(C) the offer is made on the DWC-AD Form 10133.53 that meets the conditions of Labor Code Section 4658.6; or

~~(5) the eligible employee fails to enroll for retraining pursuant to Labor Code §4658.5 within the time allowed by limits set forth in Labor Code § section 5410; or~~

~~(6) (5) the maximum funds allowed by of the voucher and applicable law have been exhausted.~~

Authority: Sections 133 and 5307.3, Labor Code.

Reference: Sections 4658.1, 4658.5, 4658.6, and 5410, Labor Code.