

RETURN TO WORK REGULATIONS	45 DAY RULEMAKING COMMENTS	NAME OF PERSON/ AFFILIATION DATE COMMENT SENT MODE OF TRANSMISSION (E-MAIL, LETTER, FAX)	RESPONSE	ACTION
General Comment	<p>The commenter states that their comments are based on collective opinion that benefits to injured workers be provided timely and that the system incentivize the efficiency of benefit delivery. Conversely, we must be cautious that the regulations do not treat a segment of employees differently as may be the case with seasonal, temporary or Illegal aliens as well as 'termination for cause' events.</p> <p>There may be a need to consider a proposed regulation to address uncontrollable situations where the 12-month required employment status is required. Is there a provision necessary for volunteer workers? While these situations do not represent the majority of the work force in California, they do represent claim situations that will arise. Anticipating and addressing that through regulation would be helpful</p>	<p>Suzanne Guyan Director Employee Benefits Costco Wholesale</p> <p>December 8, 2005 Email</p>	We agree to some modifications and disagree with others. See below for specifics:	

	<p>and provide customer service. The alternative is determining benefits through the adversarial legal process. As this is a direct reflection of the relationship between an employer and their employee, resolving without litigation is preferable for all parties.</p> <p>The following are the commenter's specific recommendations for additions to proposed 8 CCR 10002:</p> <p>(f) Prior to any offer of work, the employer may inquire as to the immigration status of the injured worker. If, upon that inquiry, the employer determines that the injured worker is an alien who was unauthorized to work in the United States at the time of injury, no offer of employment shall be made. If the injured worker is permanently disabled and the injury occurred on or after the revisions to the permanent disability rating schedule adopted by the administrative director pursuant to section 4660, the employer shall pay permanent disability benefits pursuant to paragraph (1) of subdivision (d) of Labor Code section 4658.</p>		<p>We disagree with the language of this proposal. However, based on the <i>Del Taco</i> case, Labor Code § 1171.5 and the federal Immigration and Control Act, we agree that the applicability of the permanent disability adjustment regarding undocumented workers should be clarified in the regulations.</p>	<p>Add subdivision (f) to section 10002 in order to clarify the applicability of permanent disability adjustment to undocumented workers as follows:</p> <p>(f) When the employer offers regular, modified or alternative work to the employee that meets the conditions of this section and subsequently learns that the</p>
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	<p>(g) In the case of general employment where the general employer is liable for the entire cost of compensation payable on account of injury occurring in the course of and arising out of special employment, an offer of regular, alternative or modified work is considered made if the general employer continues to make available for a period of 12 months special employment as may have otherwise been available prior to the injury, provided that such special employment is within the ability of the</p>		<p>We disagree that this recommendation is necessary or clarifying.</p>	<p>employee cannot lawfully perform regular, modified or alternative work due to the employee's immigration status, the employer is not required to provide the regular, modified or alternative work.</p> <p>None</p>
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	<p>injured worker to perform taking into account any work restrictions that exist as identified at the time temporary disability payments are terminated.</p> <p>(h) If the injured worker was hired on a seasonal basis prior to injury, the offer of work required by this section shall be 12 months of regular, modified, or alternative work on a similar seasonal basis to the employee's previous employment.</p>		<p>We agree that a modification should be added to address seasonal workers.</p>	<p>The following subdivision will be added:</p> <p>(g) If the employer offers regular, modified, or alternative work to the employee for 12 months of seasonal work, the offer shall meet the following requirements:</p> <p>(1) the employee was hired on a seasonal basis prior to injury;</p> <p>(2) the offer of regular, modified or alternative work is on a similar seasonal basis to the</p>
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	<p>(i) If as a result of a good faith lawful personnel action the injured worker's employment is terminated prior to the injured worker's condition becoming permanent and stationary, then the employer shall pay permanent disability benefits pursuant to paragraph (1) of subdivision (d) of Labor Code section 4658. If as a result of a good faith lawful personnel action the injured worker's employment is terminated subsequent to accepting an offer of employment as required by this section but prior to the employment lasting 12 months, the employer shall pay permanent disability benefits pursuant to paragraph (3) of subdivision (d) of Labor Code section 4658.</p>		<p>We disagree that this situation should be addressed by regulations. The Labor Code does not provide authority to address the situation and because there will be facts in dispute, it is better to resolve the issue before the WCAB.</p>	<p>employee's previous employment, and</p> <p>(3) The offer meets the conditions set forth in this section.</p> <p>None.</p>
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<p>General Comment</p>	<p>Commenter recommends that the following instances be incorporated into the regulations, where necessary:</p> <p>The 15% increase for failure to retain the employee in an employment over a period of 12 months should not apply in the following instances:</p> <p>Employees who have been terminated for cause; Employees who are determined to be illegal aliens and seasonal employees.</p>	<p>Tina Coakley Legislative & Regulatory Analyst, The Boeing Company</p> <p>December 8, 2005 Email</p>	<p>We agree to add subdivisions to address seasonal employees and undocumented workers. We disagree that the terminated for cause situation should be addressed by regulations. The Labor Code does not provide authority to address the situation and because there will be facts in dispute, it is better to resolve the issue before the WCAB.</p> <p>Labor Code § 1171.5 requires that an undocumented worker be treated the same as any other injured worker. These regulations neither require nor permit employment prohibited by federal law.</p>	<p>The following subdivision will be added:</p> <p>(g) If the employer offers regular, modified, or alternative work to the employee for 12 months of seasonal work, the offer shall meet the following requirements:</p> <p>(1) the employee was hired on a seasonal basis prior to injury;</p> <p>(2) the offer of regular, modified or alternative work is on a similar seasonal basis to the employee's previous employment, and</p> <p>(3) The offer</p>
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General Comment	<p>The commenter states that the fundamental issue regarding the proposed return to work regulations, and to a certain extent the already adopted supplemental job displacement benefit regulations, is the scope of the Division's authority. Commenter strongly urges the Division to revisit this issue, as the narrow exercise of the Division's rule making authority to date will only lead to confusion and litigation within the workers' compensation community. Commenter states that both Labor Code §§ 4658 and 4658.6 state that offers of employment shall be in the "form and manner prescribed by the administrative director." [Labor Code §§ 4658(d)(2), 4658(d)(3), 4658.6(a) and 4658.6(b)] Labor Code § 133 states that the administrative director "...shall have power and jurisdiction to do all things necessary or convenient in the exercise of any power or jurisdiction conferred upon it under this code." The limitation to this authority is articulated in Government Code § 11342.2, which states that, "...no</p>	<p>Mark E. Webb Assistant General Counsel American International Group</p> <p>December 14, 2005 Email</p>	<p>We agree to some modifications and disagree with others. See below for specifics:</p>	None.

	<p>regulation adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute.”</p> <p>It should be reasonably clear that much of what was done in Assembly Bill 227 (Vargas) and Senate Bill 899 (Poochigian) was intended to create greater return to work opportunities for injured workers.</p> <p>It would also seem that regulations that clarify how or whether these opportunities can be provided for employers who cannot either by operation of law or through their business structure offer “employment” would be within the Division’s “necessary or convenient” powers and would not impermissibly “alter or amend the statute or enlarge its scope”. Pulaski v. Occupational Safety & Health Stds. Bd. (1999) 75 Cal.App.4th 1315, 1332, 90 Cal.Rptr.2d 54.</p>		<p>These regulations are clearly intended to implement this legislative intent.</p> <p>Without any reference to the vast range of factors that might influence an employer to offer or not to offer reemployment to an injured worker, Labor Code § 4658(d)(2) simply requires that permanent disability payments be increased by 15% where an employer with 50 or more employees <u>does not</u> make an offer to the employee, and requires that disability payments be decreased by 15% where an employer of any size <u>does</u> make an offer.</p> <p>The Labor Code provides no authority to create any regulatory exceptions to this plain statutory mandate.</p>	<p>None.</p>
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	<p>Specifically, employers who subsequent to a claim form being filed learn that the employee was an alien not authorized to work in the United States and general employers in a general/special employment relationship who do not offer employment directly cannot make an offer of employment for any duration or any specific wage. In the former case, the employer is prohibited by law from doing so. In the latter case, compliance with the strict letter of the law is an impossibility. In addition, while Labor Code § 4658 is silent on the issue of applicability of personnel policies to a worker who has been offered and has accepted a job, there is nothing to suggest that an employee has been insulated from the consequences of his or her own actions once having accepted an offer of employment under Labor Code § 4658(d).</p>		<p>Based on the <i>Del Taco</i> case, Labor Code § 1171.5 and the federal Immigration and Control Act, we agree that the applicability of the permanent disability adjustment regarding undocumented workers should be clarified in the regulations.</p>	<p>Add subdivision (f) to section 10002 in order to clarify the applicability of permanent disability adjustment to undocumented workers as follows:</p> <p>(f) When the employer offers regular, modified or alternative work to the employee that meets the conditions of this section and subsequently learns that the employee cannot lawfully perform regular, modified</p>
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	<p>The Regulations Should Clarify that an Alien not Authorized to Work in The United States is not Entitled to a Permanent Disability Adjustment under subdivision (d) of Labor Code § 4658. Del Taco v. WCAB (2000), 79 Cal.App.4th 1437, 94 Cal.Rptr.2d 825.</p> <p>The Division’s inability to clarify this issue within the context of the return to work regulations suffers from the same irrationality and arbitrariness that the WCAB exhibited in Del Taco. Indeed, it could be argued that the Division’s inaction is more egregious given that Del Taco clearly provides authority to clarify Labor Code § 4568(d) so as not to enforce a result that the Court of Appeal has already found to be unconstitutional.</p>		<p>With the single exception of reinstatement as a remedy prohibited by federal law, Labor Code § 1171.5, enacted two years after the Del Taco decision, requires, that an undocumented worker be treated the same as any other injured worker. These regulations neither require nor permit employment prohibited by federal law.</p>	<p>or alternative work due to the employee's immigration status, the employer is not required to provide the regular, modified or alternative work.</p> <p>Add subdivision (f) to section 10002 in order to clarify the applicability of permanent disability adjustment to undocumented workers as follows:</p> <p>(f) When the employer offers regular, modified or alternative work to the employee that meets the conditions of this</p>
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	<p>Furthermore, the Legislature is presumed to know the existing law and have in mind its previous enactments when legislating on a particular subject. <i>Security Pacific Nat. Bank v. Casavant</i> (1988) 205 Cal.App.3d 127, 252 Cal.Rptr. 175. As was stated in <i>Farmers Brothers Coffee v. WCAB</i>, (2005), ____ Cal.App.4th_____, the employee's immigration status is irrelevant to the issue of entitlement to compensation except as it relates to issues of reinstatement. [See Labor Code §§ 3351 (definition of employee) and 1171.5 (inquiries into immigration status)] Labor Code § 1171.5 was enacted in 2002 with the passage of Senate Bill 1818 (Romero). While Labor Code § 4658 standing alone is not ambiguous, the statutory language relating to an offer of employment required to trigger an adjustment in permanent disability benefits becomes ambiguous when read together with Labor Code §§ 1171.5 and 3351 as interpreted by the Court of Appeal in <i>Farmers Brothers</i>. Indeed, these three sections must be read in <i>pari materia</i>. [See: <i>Altaville Drug Store, Inc. v. Employment Development Department</i> (1988) 44 Cal.3d 231, 746 P.2d 871; 242</p>			<p>section and subsequently learns that the employee cannot lawfully perform regular, modified or alternative work due to the employee's immigration status, the employer is not required to provide the regular, modified or alternative work.</p>
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	<p>Cal.Rptr. 732. When so read, it is clear that the Legislature did not intend forcing employers to pay higher permanent disability benefits because to offer employment would be illegal. The law never requires impossibilities. Civil Code § 3531; Board of Supervisors v. McMahon (1990) 219 Cal.App.3d 286, 268 Cal.Rptr. 219:</p> <p>In short, because the offer of employment cannot legally be made, neither the employer nor the injured worker can benefit from these provisions. Any other conclusion will be held constitutionally and statutorily infirm and, to quote Del Taco, fundamentally unfair.</p>		<p>Without any reference to the vast range of factors that might influence an employer to offer or not to offer reemployment to an injured worker, Labor Code § 4658(d)(2) simply requires that permanent disability payments be increased by 15% where an employer with 50 or more employees <u>does not</u> make an offer to the employee, and requires that disability payments be decreased by 15% where an employer of any size <u>does</u> make an offer.</p> <p>The Labor Code provides no authority to create any regulatory exceptions to this</p>	<p>The following subdivision will be added:</p> <p>(g) If the employer offers regular, modified, or alternative work to the employee for 12 months of seasonal work, the offer shall meet the following requirements:</p> <p>(1) the employee was hired on a</p>
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	<p>The Return to Work Regulations should clarify that Termination for Cause does not Require the Employer to Pay Additional Permanent Disability Benefits. In addition, there are certain circumstances where employment is terminated for cause. The Division has made no effort to address this, but instead has simply repeated the</p>		<p>plain statutory mandate.</p> <p>Nonetheless, based on the <i>Del Taco</i> case, Labor Code § 1171.5 and the federal Immigration and Control Act, we agree that the applicability of the permanent disability adjustment regarding undocumented workers should be clarified in the regulations.</p> <p>Without any reference to the vast range of factors that might influence an employer to offer or not to offer reemployment to an injured worker, Labor Code § 4658(d)(2) simply requires that permanent disability payments be increased by 15% where an employer with</p>	<p>seasonal basis prior to injury;</p> <p>(2) the offer of regular, modified or alternative work is on a similar seasonal basis to the employee's previous employment, and</p> <p>(3) The offer meets the conditions set forth in this section.</p> <p>None.</p>
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	<p>substance of Labor Code § 4658(d)(3)(B) in its proposed regulation. [8 CCR § 10002(d)] The Division apparently considers any further rule making on this issue to be beyond its authority, relying instead on a literal recitation of the statute and, undoubtedly, the repeal of former Labor Code § 4644, which under the prior vocational rehabilitation program addressed the issue of termination for cause and relieved an employer of certain obligations under the vocational rehabilitation program. [former Labor Code § 4644(f); Robertson v. WCAB (2003), 112 Cal. App. 4th 893; relying on Anzelde v. WCAB (1996), 61 Cal. Comp. Cases 1458 (writ denied).]</p> <p>The issue of termination is raised in two circumstances. The first is where the termination occurs prior to the worker's condition becoming permanent and stationary and the second is after the injured worker has been offered and accepted employment. If as a result of a good faith lawful personnel action the injured worker's employment is terminated prior to the injured worker's condition becoming permanent and stationary, then the employer should pay permanent disability benefits pursuant to</p>		<p>50 or more employees <u>does not</u> make an offer to the employee, and requires that disability payments be decreased by 15% where an employer of any size <u>does</u> make an offer.</p> <p>The Labor Code provides no authority to create any regulatory exceptions to this plain statutory mandate. Whether or not an employee was terminated for cause will be require a factual finding and should be brought before the WCAB.</p>	
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	<p>paragraph (1) of subdivision (d) of Labor Code section 4658. Conversely, if as a result of a good faith lawful personnel action the injured worker's employment is terminated subsequent to accepting an offer of employment as required by this section but prior to the employment lasting 12 months, the employer shall pay permanent disability benefits pursuant to paragraph (3) of subdivision (d) of Labor Code section 4658.</p> <p>The rationale for this distinction is clear. In the former case, an injured worker should not benefit from his or her misconduct with increased permanent disability benefits and the employer should not be faced with the prospect of offering an employee employment after a good faith lawful termination simply to secure a reduction in permanent disability benefits. In the latter case, the reduction in permanent disability benefits is established once the qualifying offer is made.</p> <p>Return to Work Offers for Seasonal Employment should be Consistent with the offer under the Supplemental Job Displacement Benefit.</p>		<p>We agree that a modification should be added to address seasonal workers.</p>	<p>The following subdivision will be added:</p> <p>(g) If the</p>
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	<p>The Division cites Henry as authority for its decision to allow seasonal employers to offer employment on a seasonal basis to meet the requirements of Labor Code § 4658.6 in its supplemental job displacement benefit regulations, 8 CCR § 10133.60(a)(1)(A). The return to work regulations do not contain a similar clarification. That would appear to be inappropriate, as both Labor Code § 4658 and § 4658.6 use the same definitions of regular, modified, and alternative work in Labor Code § 4658.1. It would seem logical, therefore, that if the Division allows offers of seasonal employment to meet the modified or alternative work offer requirements for the supplemental job displacement benefit it should allow the same offer for regular, modified, or alternative work offered under subdivision (d) of Labor Code § 4658 because these are identical terms.</p>		<p>Regarding the “statutory</p>	<p>employer offers regular, modified, or alternative work to the employee for 12 months of seasonal work, the offer shall meet the following requirements:</p> <p>(1) the employee was hired on a seasonal basis prior to injury;</p> <p>(2) the offer of regular, modified or alternative work is on a similar seasonal basis to the employee’s previous employment, and</p> <p>(3) The offer meets the conditions set forth in this section.</p>
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	<p>The Division should Address Unique Return to Work Issues Involving Temporary Employment. The issue of compliance with section 4658 for temporary employment relationships is a difficult one. Temporary employment in its various forms is an increasingly large part of California’s workforce. According to the most recent (2002) labor market information available from the State of California, over 400,000 workers representing \$10.4B in wages are within the employment services classification. This number is steadily increasing. The various forms of employment that fall within pose unique problems for facilitating return to work. In some cases, such as professional employer organizations (PEO), the so-called “statutory employer” does not screen and hire the worker but rather provides administrative support and benefits as a co-employer once the worksite employer hires the worker. In such cases, the PEO cannot and does not offer employment at all, let alone employment of a specified duration or compensation.</p> <p>Employee staffing agencies, on the other hand, do indeed hire workers and then “lease” them to employers seeking</p>		<p>employer” or “leased employee” situations, we disagree that they should be addressed in these regulations. Because of the many issues of fact and law arising in particular cases, it is better to resolve such issues before the WCAB.</p> <p>As defined in Labor Code § 4658.1 and these regulations, “regular work” is defined in terms of occupation, position, compensation and location – not in terms of duration. The clear intent of Labor Code § 4658(d) is that an offer of alternative work must be for a term of at least 12 months, meaning that it must not be an offer for at-will employment, even though the employment may have been at will or characterized as “temporary” prior to the injury.</p>	<p>None.</p>
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	<p>workers for a limited duration. For the staffing agency, there is an ability to provide modified or alternative work, but by its very nature temporary employment is not of a 1 year duration and salaries fluctuate. This underscores a fundamental ambiguity in the statutes, which define “regular work” to be:</p> <p>“...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.” [Labor Code § 4658.1(a)]</p> <p>The offer of “regular work” in Labor Code § 4658(d)(3)(A), however, states that the offer of regular work must be, “...for a period of at least 12 months.” In other words, temporary employers are being asked to offer “regular work” to the worker that in fact is not the “regular work” the employee was engaged in prior to the date of injury.</p> <p>In virtually all temporary employment situations, the literal application of section</p>		<p>As to seasonal employment, we agree that a modification should be added consistent</p>	<p>The following</p>
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	<p>4658 compels either an offer of employment that provides compensation and a term of employment greater than existed prior to the date of injury or the payment of greater permanent disability benefits even though the injured worker returns to regular, modified, or alternative work as defined in section 4658.1 but that does not last for 12 months. This is precisely the result the Court of Appeal rejected in Henry.</p>		<p>with the court's reasoning in <i>Henry v. WCAB</i>,</p>	<p>subdivision will be added:</p> <p>(g) If the employer offers regular, modified, or alternative work to the employee for 12 months of seasonal work, the offer shall meet the following requirements:</p> <p>(1) the employee was hired on a seasonal basis prior to injury;</p> <p>(2) the offer of regular, modified or alternative work is on a similar seasonal basis to the employee's previous employment, and</p> <p>(3) The offer meets the</p>
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				conditions set forth in this section.
§ 10002(b)	<p>The proposed language in this regulation is problematic because in practice, the offers of “regular work” may be sent months before the permanent and stationary determination. For example:</p> <p>6/1/05 Date of injury 6/15/05 Employee returns to work, without restrictions. Treatment continues. 12/15/05 Treating doctor determines condition has stabilized with permanent disability that does not preclude employee from continuing in his/her “regular work”. Permanent disability payments must be issued back to the termination of temporary disability – 6/15/05. If the employer issued the “Notice of Offer of Regular Work” at the time of the employee return to regular work (6/15/05) the employer is entitled to a 15% reduction in the permanent disability payments. If the notice is not issued until 12/15/05, it is likely the permanent disability will all be due and payable and the employer will not be entitled to a reduction.</p>	<p>Jack Blyskal, CPCU Chief Claims Officer CSAC EIA</p> <p>December 14, 2005 Email</p>	<p>Although nothing prevents an employer from offering the employee regular, modified or alternative work at any time, for a decrease in liability to result Labor Code § 4658(d) clearly specifies that the offer including the required terms and conditions must be made “within 60 days of a disability becoming permanent and stationary.” The Labor Code provides no authority to create any regulatory exception to this plain statutory mandate.</p>	None.

<p>§ 10003</p>	<p>The language as written in this section implies the offer can ONLY be made AFTER the condition is Permanent and Stationary. Labor Code Section 4658(3)(A) does not appear to preclude the offer of regular work and the 15% offset prior to Permanent and Stationary date.</p> <p>The proposed “Notice of Offer of Regular Work” is a cumbersome, time-consuming, unnecessary process. While the documentation requirements appear appropriate for modified or alternate work, the documentation requirements are excessive for regular work. It would be much more efficient and sensible to the employee and employer to provide a simple written notice confirming the definition of “regular work” (LC 4658.1) and acknowledging that the employee returned to regular work on a given date. If necessary, space could be provided for the employee to object to this determination and identify the basis for the objection. This would alleviate the</p>		<p>We disagree. The information required in completing the form is no more and no less than required to document the terms and conditions of employment offered and the employee’s acceptance or rejection thereof.</p>	<p>None.</p>
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	<p>overly burdensome, time-consuming process of completing all the information on the form and having to send it with proof of service (as opposed to inter-office delivery or e-mail which would be much more efficient for many employees who have returned to work). Further, it would negate the requirement for the employee to “accept or reject” the offer. The kind of documentation required in the proposed regulations is confusing and intimidating for an employee who may have been off work a short period of time, if at all.</p>			
General Comment	<p>Labor Code Section 4658(d)(3)’s PD supplement or reduction depends on an employer’s offer of a job lasting at least 12 months. That works for full and part-time employees holding regular jobs, but what about those who are contract workers employed for a fixed period of time until a project is completed, or seasonal workers who do not hold 12 month jobs at all? Since there is nothing in the statute to indicate that legislators expected to make all employers in certain industries (film or farming, for example) automatically liable for a 15% benefit enhancement, we encourage you to consider making the rule inapplicable to</p>	<p>Ken Gibson, VP State Affairs American Insurance Assoc.</p> <p>December 15, 2005 Email</p>	<p>We agree to add a subdivision to address seasonal workers.</p>	<p>The following subdivision will be added:</p> <p>(g) If the employer offers regular, modified, or alternative work to the employee for 12 months of seasonal work, the offer shall meet the following requirements:</p>

<p>§10002(c)</p>	<p>limited term contract and seasonal workers.</p> <p>This section addresses the situation in which there is a dispute regarding an employee’s P&S status. It permits an employer who has served a job offer notice on the employee to withhold 15% of each indemnity payment until the dispute is resolved. However, it requires that the employee be reimbursed if the P&S date differs from the P&S date used by the employer. This is <i>inconsistent</i> with Labor Code Section 4658(d)(3) which</p>		<p>We agree that a modification would be appropriate.</p> <p>We disagree that the statute’s phrase “within 60 days of a disability becoming permanent and stationary...” provides authority for a 15% reduction when the offer is made before the employee is permanent and stationary.</p>	<p>(1) the employee was hired on a seasonal basis prior to injury;</p> <p>(2) the offer of regular, modified or alternative work is on a similar seasonal basis to the employee's previous employment, and</p> <p>(3) The offer meets the conditions set forth in this section.</p> <p>Modify §10002(c) as follows:</p> <p>(c) <u>If the claims administrator relies upon a permanent and stationary date contained in a</u></p>
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	<p>holds that any employer of 50 or more employees who provides notice within 60 days of the P&S date is entitled to the 15% reduction. The statute sets an outer limit on the timing offer; it doesn't penalize an employer who makes an earlier offer, including an offer prior to the time the employee's condition becomes permanent and stationery, which the proposed rule would do. In fact, the entire thrust of the statute is to encourage early RTW offers. That is clearly the rationale for Labor Code Sections 4658.5 and 4658.6 making an employer who fails to make a job offer within 30 days of the termination of temporary disability benefits liable for the supplemental job displacement benefit. Furthermore, requiring a second job offer where there is no change in the employee's functional capacity and need for any job modifications will be confusing and unnecessary.</p>			<p><u>medical report prepared by the employee's treating physician, QME, or AME, but there is subsequently</u> In the event there is a dispute as to an employee's permanent and stationary status, and there has been a notice of offer of work served on the employee in accordance with subdivision (b), the claims administrator may withhold 15% from each payment of permanent partial disability remaining to be paid from the</p>
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<p>§10002</p>	<p>Commenter recommends striking out the entire subparagraphs (c) (1) and (c) (2). As long as the job offer is timely and meets statutory requirements, 15% adjustments against PD advances as well as adjustments against benefits paid after the PD percentage has been finally established would be appropriate.</p>		<p>We disagree. These paragraphs are necessary to clarify how to handle funds withheld pending a final permanent and stationary decision.</p>	<p>date the notice of offer was served on the employee until there has been a final judicial determination of the date that the employee is permanent and stationary pursuant to Labor Code section 4062.</p>
<p>§10003</p>	<p>To improve clarity and ensure that injured workers are fully aware of their rights and responsibilities, including forfeiture of benefits if they fail to accept a suitable job offer or leave the job before the 12 months expire, commenter suggest the following amendment to the language following the name of the contact person.</p> <p>This position is expected to last for at least 12 months. <u>It provides wages and compensation equivalent to the wages and compensation paid you at the time you were injured.</u> If this position does not last for 12</p>		<p>We disagree.</p> <p>This statement is already on the form.</p>	<p>None.</p> <p>None.</p>

	<p>months, you may be entitled to an increase in your permanent disability benefit payments. <u>If you do not accept the position within 20 days of receipt of this offer or you voluntarily leave the position in fewer than 12 months, your permanent disability benefit payments may be reduced by 15%.</u> This position provides wages and compensation of \$ _____, that are equivalent to the wages and compensation paid to you at the time of your injury.</p> <p>The second page of the form asserts that an employee has the right to object to a job offer if the location or shift is different from the location or shift at the time of injury. The right is not located in the statute and it is indeed <i>contrary</i> to Labor Code 4658.1 (a) and without <i>authority</i>. The Labor Code includes within the definition of “regular work” the employee’s “usual occupation or position” (emphasis added), a phrase that is broad and flexible. An employee certainly has the</p>		<p>This statement is inaccurate. The 15% decrease begins as soon as the offer is made and, as long as the offer complies with the statute, the decrease will remain whether the offer is accepted or not, and whether the employee remains on the job 12 months or not. I</p> <p>Re the recommended deleted section, without a specified rate of pay the employee’s “agreement” to “equivalent” pay would be insufficient to document an unambiguous meeting of the minds.</p> <p>We disagree. Labor Code section 4658.1(f) states “the condition [that the work is within a reasonable commuting distance] shall be conclusively deemed to be satisfied if the offered work is the same location and same shift as the employment at he time of the injury.” Therefore, if the offered work is for a different shift, that offer may</p>	<p>None.</p> <p>None.</p>
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	<p>right to reject a job offer if the job is not within a reasonable commuting distance but he does not, under the statute, have the right to reject a position on the basis of a change in shift.</p> <p>No form has been provided for an offer of modified or alternative work. This is probably an oversight.</p>		<p>not qualify as a reasonable distance.</p> <p>We disagree. Section 10002(b)(3) specifies what forms should be used to offer modified or alternative work.</p>	<p>None.</p>
<p>§10002(b)(1) and (2)</p>	<p>Recommended modifications are indicated by <u>underline</u> and strikethrough</p> <p>(b) Within 60 days from the date that the condition of an injured employee with permanent partial disability becomes permanent and stationary:</p> <p>(1) If an employer does <u>has not served</u> the employee with a notice of offer of regular work, modified work or alternative work for a period of at least 12 months, each payment of permanent partial disability remaining to be paid to the employee from the date of the end of the 60 day period shall be paid in accordance with Labor Code section 4658(d)(1) and increased by 15 percent.</p> <p>(2) If an employer <u>has served</u> the employee with a notice of offer of</p>	<p>Brenda Ramirez Michael McClain California Workers' Compensation Institute</p> <p>December 14, 2005 By Hand and Email, Oral Testimony</p>	<p>Although nothing prevents an employer from offering the employee regular, modified or alternative work at any time (specifically, before the employee is permanent and stationary), for a decrease in liability to result Labor Code § 4658(d) clearly specifies that the offer including the required terms and conditions must be made "within 60 days of a disability becoming permanent and stationary." The Labor Code provides no authority to create any regulatory exception to this plain statutory mandate.</p>	<p>None.</p>

	<p>regular work, modified work or alternative work for a period of at least 12 months, each payment of permanent partial disability remaining to be paid from the date the offer was served on the employee shall be paid in accordance with Labor Code section 4658(d)(1) and decreased by 15 percent, regardless of whether the employee accepts or rejects the offer.</p> <p>The recommended changes in (1) and (2) will clarify that a 15% PD adjustment will depend on whether or not a work offer was served by the 60th day following the permanent and stationary (P&S) date. This change will eliminate confusion and disputes over what should occur if a work offer is made at any time prior to the P&S date, and employers will not be penalized for making return to work offers as soon as feasible. This will also reduce the need to serve a duplicate work offer following an offer of modified/alternative work within 30 days after last payment of temporary disability, as required under the Supplemental Job Displacement Benefit regulations. Duplicate work offers are not necessary, will confuse injured employees, and will raise costs.</p>			
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	<p>Coordinating Offers of Work Labor Code section 4658.5(c) requires the employer to provide the injured employee within 10 days of last TD payment, a notice outlining the injured worker's right to receive the supplemental job displacement benefit: <i>"(c) Within 10 days of the last payment of temporary disability, the employer shall provide to the employee, in the form and manner prescribed by the administrative director, information that provides notice of rights under this section. This notice shall be sent by certified mail."</i></p> <p>The purpose of the statute is to ensure that injured workers have adequate notice of their right to receive this benefit. In the implementing regulation (CCR section 10133.51(b)), the administrative director required the claims administrator to send the notice within 10 days of the last payment of temporary disability, if not previously provided (emphasis added): <i>"(b) Within 10 days of the last payment of temporary disability, if not previously provided, the claims administrator shall send the employee, by certified mail, the mandatory form "Notice of Potential Right to Supplemental Job Displacement Benefit Form" that is set forth in Section 10133.52."</i></p>		<p>We disagree. Often employees are TD for the same injury on more than one occasion. Thus, if the employer already sent the notice because the employee was previously TD, the regulations allows that the employer does not need to resend the notice. This is different than offering work to an employee before the employee is permanent and stationary. The job is required to be available for 12 months and based on the employee's permanent disability. Until the employee is permanent and stationary, the employer will be unable to make an appropriate return to work offer.</p>	<p>None.</p>
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	<p>This regulatory solution reduced the number of notices, allowed employers to notify the injured worker as early as feasible, and fostered efficient and effective communication, all of which supported the statutory goals and promoted the use of the benefit. Similarly, Labor Code section 4658(d) requires an employer to adjust permanent disability up or down depending on whether or not the employer has offered work <u>within 60 days of the P&S date</u>:</p> <p><i>“(2) If, within 60 days of a disability becoming permanent and stationary, an employer does not offer the injured employee regular work, modified work, or alternative work, in the form and manner prescribed by the administrative director, for a period of at least 12 months, each disability payment remaining to be paid to the injured employee from the date of the end of the 60-day period shall be paid in accordance with paragraph (1) and increased by 15 percent. This paragraph shall not apply to an employer that employs fewer than 50 employees.</i></p> <p><i>(3) (A) If, within 60 days of a disability becoming permanent and stationary, an employer offers the injured employee regular work, modified</i></p>			
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	<p><i>work, or alternative work, in the form and manner prescribed by the administrative director, for a period of at least 12 months, and regardless of whether the injured employee accepts or rejects the offer, 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 percent.”</i></p> <p>For the same policy reasons, the Institute recommends that the employer be permitted to make the offer of work at the earliest possible time to return the employee to suitable work as soon as practicable. This is a reasonable interpretation of the statutory scheme that will encourage prompt and effective communication between the employer and the injured employee, reduce the need for multiple notices, and harmonize the process for supplemental job displacement benefit and the work offer under section 4658(d), while accomplishing the statutory objectives more effectively.</p> <p>This recommended alternative is both more effective and less burdensome than what is currently proposed and we</p>			
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<p>§10002(c)</p>	<p>therefore urge its adoption.</p> <p>The PD adjustments depend on whether or not work is offered by the time that 60 days elapse from the date that the employee's condition is determined to be permanent and stationary. If the P&S date is re-determined, the PD adjustments should be re-assessed and adjusted accordingly by the claims administrator.</p> <p>The recommendation: (c) In the event there is a dispute as to an employee's permanent and stationary status, and there has been a notice of offer of work served on the employee in accordance with subdivision (b), the claims administrator may withhold 15% from each payment of permanent partial disability remaining to be paid from the date the notice of offer was served on the employee until there has been a final judicial determination of the date that the employee is permanent and stationary pursuant to Labor Code section 4062. <u>Where there is a final judicial determination that the employee is permanent and stationary on a date different from later than the disputed</u></p>		<p>We agree to modify the section as set forth in the next column.</p>	<p>Modify §10002(c) as follows:</p> <p>(c) <u>If the claims administrator relies upon a permanent and stationary date contained in a medical report prepared by the employee's treating physician, QME, or AME, but there is subsequently</u> In the event there is a dispute as to an employee's permanent and stationary status, and there has been a notice of offer of work served on the employee in accordance with subdivision (b), the claims</p>
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<p>§10002(c)(1), (2) and (3)</p>	<p><u>permanent and stationary date, date relied on by the employer in the making its offer of work, the claims administrator shall make any necessary adjustment to permanent partial disability payments.</u></p> <p>The recommendation: (1) <u>If the notice of offer of work was served after 60 calendar days have elapsed from the judicially determined permanent and stationary date, each permanent partial disability payment from the end of the 60 day period shall be paid in accordance with Labor Code section 4658(d)(1) and increased by 15%.</u></p>		<p>We disagree. Although nothing prevents an employer from offering the employee regular, modified or alternative work at any time, for a decrease in liability to result Labor Code § 4658(d) clearly specifies that the offer including the required terms and conditions must be made</p>	<p>administrator may withhold 15% from each payment of permanent partial disability remaining to be paid from the date the notice of offer was served on the employee until there has been a final judicial determination of the date that the employee is permanent and stationary pursuant to Labor Code section 4062.</p> <p>None.</p>
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	<p>(2) <u>If the notice of offer of work was served by the time that 60 calendar days have elapsed from the judicially determined permanent and stationary date, each permanent partial disability payment remaining to be paid shall be paid in accordance with Labor Code section 4658(d)(1) and decreased by 15%.</u></p> <p>(3) <u>Where there is a final judicial determination that the employee is not permanent and stationary, each payment of partial disability remaining shall continue to be paid in accordance with Labor Code section 4658(d)(1) and decreased by 15 percent. the employee shall be reimbursed any amount withheld up to the date of the determination.</u></p> <p>A work offer is often medically appropriate prior to permanent and stationary status. For example, the treating physician may release an injured employee back to full duty well in advance of a permanent and stationary finding. The determinative factor for calculating the PD adjustment is not whether a P&S date has changed but whether or not the work offer preceded the date 60 days after P&S date. If work</p>		<p>“within 60 days of a disability becoming permanent and stationary.” The Labor Code provides no authority to create any regulatory exception to this plain statutory mandate.</p>	
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	<p>was appropriately offered prior to 60 days from the P&S date, a finding of a later P&S, does not affect the timeliness of the work offer. Likewise a finding that the employee's condition is not yet P&S does not make the work offer untimely. If the employer offers a job and the employee accepts it prior to the condition becoming permanent and stationary, then the significant statutory criteria underlying the legislative incentive have been met and the reimbursement called for in this section would not be appropriate. The statute bases the return to work incentive on an offer of work and the employee's return to work, not simply on the permanent and stationary date. If the final judicial determination is that the employee is not able to return to the work offered, then the amount withheld should be reimbursed.</p> <p>The permanent disability rate for the situation contemplated in subsection (b)(2) can be corrected and there is no statutory basis for precluding the application of the correct rate. For the same policy reasons noted in the discussion under section 10002(b), when the employer makes a good faith offer of employment based on an anticipated</p>		<p>The permanent and stationary date must be based on a medical report, not just "anticipated. Therefore, to clarify we agree that a modification would be appropriate.</p>	<p>Modify §10002(c) as follows:</p> <p>(c) <u>If the claims administrator relies upon a permanent and stationary date</u></p>
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	<p>P&S date, it should not be precluded from the legislative incentive merely because the final determination of the P&S date shifted. Benefit payment corrections are routinely made based on medical evidence, factual circumstance, and judicial determinations. The regulation cannot narrow the scope of what is allowed under the statute. The employer should be entitled to take the appropriate permanent disability rate adjustment from the time the worker returns to work.</p>			<p><u>contained in a medical report prepared by the employee's treating physician, QME, or AME, but there is subsequently</u> In the event there is a dispute as to an employee's permanent and stationary status, and there has been a notice of offer of work served on the employee in accordance with subdivision (b), the claims administrator may withhold 15% from each payment of permanent partial disability remaining to be paid from the date the notice of offer was served on the employee until there has been a final</p>
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<p>§10003</p> <p>Page 1</p>	<p>Indicating that wages and compensation are equivalent to those paid at the time of injury is sufficient. To require a specific value for wages and compensation is unnecessary and burdensome.</p> <p>The recommendation is to make the following modification on page 1: This position provides wages and compensation of \$ _____, that are equivalent to the wages and compensation paid to you at the time of your injury.</p> <p>Instructions are necessary as to whom and by when the employee must submit the form and the consequence for failing to do so.</p> <p>The Institute suggests adding at the bottom of page 1 the following statement</p>		<p>We disagree. Without a specified rate of pay the employee's "agreement" to "equivalent" pay would be insufficient to document an unambiguous meeting of the minds. In the absence of a specified rate of pay, the disputes and litigation likely to arise would be truly unnecessary and burdensome to all concerned</p> <p>We disagree. The form provides the employer's name and provides a contact person.</p> <p>We disagree. As long as the offer is made, the PD</p>	<p>judicial determination of the date that the employee is permanent and stationary pursuant to Labor Code section 4062.</p> <p>None.</p> <p>None.</p> <p>None.</p>
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<p>Page 2</p>	<p>that is similar to the one appearing on the Notice of Offer of Modified or Alternative Work:</p> <p><u>Accept or reject this offer of regular work by completing page 2 of this form and returning it as soon as possible. The offer will be deemed rejected if you do not accept or reject it within 30 calendar days.</u></p> <p>It is necessary to instruct the employee to report to work on the agreed date. Failure to do so will result in needless confusion and unnecessary disputes.</p> <p>Recommendation on page 2, add: <u>“You must report to work on the date the job starts or the date you and your employer agree to.”</u></p> <p>after each of the following options: <input type="checkbox"/> I accept this offer of regular work. <input type="checkbox"/> I accept the offer and waive my right to object to a work offer when the location or shift is different than what I had at the time of my injury.</p> <p>As drafted, the proposed regulation gives the injured employee the right to object to an offer of regular work on a different</p>		<p>payments will decrease by 15%. The form provides a line for the starting date.</p> <p>We disagree. As long as the offer is made, the PD payments will decrease by 15%. The form provides a line for the starting date</p> <p>We disagree. Labor Code section 4658.1(f) states “the</p>	<p>None.</p> <p>None.</p>
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	<p>shift. Labor Code Section 4658.1 does not give the employee the right to object to an offer of regular work based on a shift change, nor does the proposed regulation. Section 4658.1 defines “regular work” exclusively in terms of “wages and compensation equivalent to those paid to the employee at the time of injury”. The only reference to the employee’s shift relates to an offer of work at the same location and the same shift that would be “conclusively deemed” to satisfy the requirements of the statute. The Form in section 10003 should be revised accordingly.</p> <p>The recommendation on page 2, revise the Form Offer of Regular Work as follows: Offer of Regular Work at a Different Location and/or Shift</p> <p>I understand that I have the right to object to a work offer when the location or shift is different than what I had at the time of my injury and is not within a reasonable commute from my residence.</p> <p>_____ I accept the offer and waive my right to object to the job location as not being within a reasonable commuting distance</p>		<p>condition [that the work is within a reasonable commuting distance] shall be conclusively deemed to be satisfied if the offered work is the same location and same shift as the employment at the time of the injury.” Therefore, if the offered work is for a different shift, that offer may not qualify as a reasonable distance.</p>	
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	<p>from the residence where I lived at the time of my injury.</p> <p>_____ I object to this offer because the job shift or job location that has been offered is different than the job shift or job location I held at the time of my injury, and I do not believe this job allows a reasonable commute from my residence. I understand if the claims administrator does not agree with this objection, my remaining permanent disability weekly benefit payment may be decreased by 15%.</p> <p>The injured employee needs to be informed that no increase in permanent disability payment will result from voluntarily quitting the position in less than 12 months.</p> <p>The recommendation above the signature line on page 2, the Institute suggests adding the following statement:</p> <p>I understand that if I voluntarily quit prior to working in this position for 12 months, I may not be entitled to an increase in permanent disability payments.</p>		<p>We disagree that the form needs to be revised. The purpose of the form is for the employer to make an offer. The form does state "I understand whether I accept or reject this offer, my remaining permanent disability payments may be decreased by 15%." This general statement covers all contingencies.</p>	<p>None</p>
§§10001	Committer believes that the Division has	Jose Ruiz, Asst.	We agree.	None

through 10005	drafted rules that comply with legislative changes pursuant to SB899. Overall, the rules are balanced and fair to both employers and employees when clarification is required to implement the law and at the same time provide sufficient guidance for claims administrators.	Claims Rehabilitation Manager State Compensation Insurance Fund December 15, 2005 Email		requested.
Section 10002(a)	Commenter believes the language of paragraphs (1) and (2) is vague and will lead to unnecessary disputes. Under the provisions of Labor Code section 4658(d), as implemented by these regulations, the permanent disability benefits received by a worker can be either increased or decreased by 15 percent depending upon whether the worker receives a return-to-work offer from his or her employer within 60 days after reaching a permanent and stationary condition. However, this "bump up/bump down" will apply only when the worker's employer has 50 or more employees. Consequently, it is extremely important that there be a simple and verifiable method for all parties, including the insurer, the injured worker, the WCAB, and the regulator, to determine whether the employer meets this standard. Although it is probable that self-insured employers will have more	Mark Gerlach California Applicant's Attorneys Association December 15, 2005 Written Comment and Oral Testimony	We disagree. The number of employees reported to the insurance carrier is a verifiable number and one that was reported before the employee's injury occurred. The number can be verified with the insurer. We disagree that only full time employees should be counted, as this status may change over the course of a year and therefore be difficult to verify.	None.

	<p>than 50 employees, literally hundreds of thousands of insured employers don't meet this standard. In order to prevent disputes over this issue, we suggest that these regulations be amended to require that every insured employer report the number of qualified employees to its insurer at each policy renewal. Insurers, who will be responsible for paying the correct benefit amount, need this information, and workers need to be able to access this information easily to confirm the accuracy of their benefits. Commenter further suggests that only fulltime employees subject to the California workers' compensation system should be counted for the purpose of meeting this 50 employee standard.</p>			
Section 10001 (b)	<p>Commenter states that this subdivision specifies that the employer must serve the employee with the required notice within 60 calendar days, and the form set forth in Section 10003 includes a form for proof of service by mail. Under California Code of Regulations Section 10510, service is also required on the worker's attorney, if represented.</p> <p>In order to prevent misunderstandings based on the current proposed language, commenter recommends that this</p>	<p>Mark Gerlach California Applicant's Attorneys Association</p> <p>December 15, 2005 Written Comment and Oral Testimony</p>	<p>We disagree. Because section 10510 requires service on a represented employee's attorney it is unnecessary to repeat the requirement on the proof of service.</p>	<p>None.</p>

	subdivision be amended to include notice that service on the attorney is required.			
Section 10002 (c)	Commenter states that this subdivision should be amended to provide that where the employer must reimburse the amount withheld by the employer after final determination of the date the workers' condition became permanent and stationary, the reimbursement shall also include interest at the same rate as judgments in civil actions. Further, commenter states that it is indisputable that interest is being earned on the money being withheld from the worker, and there is no justification for the insurance company to keep this undeserved added income.	Mark Gerlach California Applicant's Attorneys Association December 15, 2005 Written Comment and Oral Testimony	We disagree. We do not believe we have authority to include a payment of interest if the 15% was withheld based on a permanent and stationary date contained in a medical report prepared by the treating physician, QME or AME. We do agree to clarify this section that the reliance must be on a medical report.	The section will be amended to state "If the claims administrator relies upon a permanent and stationary date contained in a medical report prepared by the employee's treating physician, QME, or AME, but there is subsequently..."
Section 10003	Commenter believes that this form must provide much more information to the worker about this return-to-work offer and his or her rights and obligations. There is no information on this form telling the worker that an offer must be made within 60 days of the date of the worker's condition is determined to be permanent and stationary. A worker who receives this form after that time has elapsed should be informed that the 15% bump-down cannot be applied. If this	Mark Gerlach California Applicant's Attorneys Association December 15, 2005 Written Comment and Oral Testimony	We disagree. The purpose of the form is to inform the employee that the employer has an offer of regular work.	None.

	<p>information is not provided on this form, then the regulations should require that the worker be provided with a separate information sheet describing this and other rights and requirements of this program.</p> <p>Additionally, commenter notes that this form includes a statement that the worker “may object to the job offer ...” Later the form includes a “check off” section where the worker may signify that “I object to this offer ... “ Commenter believes that this language is unclear and should be amended. The form does not explain the practical effect of an “objection.” Using the term “I object” may leave workers uncertain of the ramifications of checking this option. If the meaning of the phrase, “I object to this offer” in actuality, “I reject this offer,” then commenter believes the form should be amended to make this clear.</p>		<p>We disagree. The employer may be able to make another acceptable offer if the employer is told the reason for the rejection.</p>	<p>None.</p>
<p>Section 10002(a); 10004(b)</p>	<p>Commenter believes that the wording in these two sections that discuss insured employers who employ 50 or more (section 10002(a)) and that states 50 or less (section 10004(b)) creates confusion for an employer who has exactly 50 employees. Commenter states that language should be clarified to read</p>	<p>Pearl Phoenix The Zenith December 15, 2005 Oral Testimony</p>	<p>We disagree. The language is based on the statutes. Also, the two programs are not mutually exclusive.</p>	<p>None.</p>

	<p>“fewer than 50 employees.”</p> <p>Commenter states the section also talks about on the date of injury, and so she wonders, for consistency, if that should also be for the recent policy inception or renewal date for the insurance. This would bring both of the ways of defining the employer more closely aligned.</p> <p>Commenter states that under “Full-Time Employee,” it’s defined under the “Return to Work” but not under the adjustment that has to be made.</p>		<p>We disagree. Labor Code section 139.48 requires the employer to have 50 or fewer employees on the date of injury in order to be eligible. Labor Code section 4658.1 instead does not apply to an employer who employs fewer than 50 employees. Because the standards are different under the statutes, defining employer in the same way in the regulations would not be consistent with the statutes.</p> <p>We disagree. “Full-time employee” is not defined under section 10001 because the term is not used with regard to the 15% increase or decrease.</p>	<p>None.</p> <p>None.</p>
General Comment	<p>Commenter does not know whether or not the Division can address be regulation a mechanism or provision for how the permanent disability payments are to be adjusted, in fact, if at all, for people who are with an employer that has over 50 employees, where that person,</p>	<p>Pearl Phoenix The Zenith</p> <p>December 15, 2005 Oral Testimony</p>	<p>We disagree that the division has authority to allow the rate to remain at the normal rate. The statute only provides for an up or down scenario. We agree to modify regulation 10002(g) to explain that in the</p>	<p>We agree to modify regulation 10002(g) to explain that in the situation where an</p>

	<p>for some reason, has voluntarily removed him or herself from that employer. For instance, they have moved to Massachusetts, or perhaps they have been terminated for cause prior to the permanent and stationary date. Commenter states that it is a struggle to figure out what to do. The law seems to say that the adjustment up or down depends on an actual documented offer. So, if you cannot make that, then the question is, you're actually making an adjustment perhaps by leaving the rate at the normal rate.</p>		<p>situation where an employer has made a return to work offer and subsequently learns that the employee cannot lawfully return to work due to the employee's immigration status, the employer is not required to provide the work. Therefore, the employer could reduce the PD payments by 15% even though the employer is unable to provide the job. Other factual situations will have to be brought before the WCAB.</p>	<p>employer has made a return to work offer and subsequently learns that the employee cannot lawfully return to work due to the employee's immigration status, the employer is not required to provide the work.</p>
<p>Verification of number of employees</p>	<p>Commenter states that many insurance policies are issued as master policies to a corporation and all its subsidiaries. In the past it has been extremely difficult to get counts for each location of the employer, especially an employer who may have multiple locations and subsidiaries around the United States. Commenter believes the most secure way to verify the number of employees is to cross-check with EDD records because the employer must report all employees and the withholding for EDD. Commenter suggests that there might be a way to compel the employer to</p>	<p>Debra Nosowsky DJN Consulting December 15, 2005 Oral Comment</p>	<p>We disagree. The statute and regulations apply to employers with 50 or more employees. The location of the employees is not an issue.</p>	<p>None.</p>

	provide a copy of that EDD record for the Division to cross-check with EDD.			
General	Commenter states that he has a few cases where the employer had actually taken the employee back to work, but there's no form yet for making the offer, so, according to the letter of the law, the permanent disability should be increased 15 percent, but commenter believes that, according to the spirit of the law, the permanent disability should be reduced 15 percent.	Mark Thorndal Hanna, Brophy, MacLean, McAleer & Jensen December 15, 2005 Oral Comment	These regulations include the form that is to be used. The statement therefore is not in reference to the proposed regulations, but to the obligation of the employer prior to the enactment of the regulations. This issue will have to be resolved by the WCAB.	None.