

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

**NOTICE OF PROPOSED RULEMAKING**

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

**TITLE 8, CALIFORNIA CODE OF REGULATIONS  
SECTIONS 10133.50 – 10133.59**

**NOTICE IS HEREBY GIVEN** that the Administrative Director of the Division of Workers' Compensation, pursuant to the authority vested in him by Labor Code Sections 133, 4658.5, and 5307.3 proposes to adopt the proposed regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

**PROPOSED REGULATORY ACTION**

The Department of Industrial Relations, Division of Workers' Compensation, proposes to adopt Article 7.5 of Chapter 4.5, Subchapter 1.5, of Title 8, California Code of Regulations, commencing with Section 10133.50:

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

## **PUBLIC HEARING**

A public hearing has been scheduled to permit all interested persons the opportunity to present statements or arguments, oral or in writing, with respect to the subjects noted above, on the following dates:

**Date:** July 8, 2004  
**Time:** 10:00 am to 5:00 PM or conclusion of business  
**Place:** Gov. Hiram W. Johnson State Office Building, Auditorium  
455 Golden Gate Avenue  
San Francisco, California 94102

**The State Office Building and its Auditorium are accessible to persons with mobility impairments. Alternate formats, assistive listening systems, sign language interpreters, or other type of reasonable accommodation to facilitate effective communication for persons with disabilities, are available upon request. Please contact the State Wide Disability Accommodation Coordinator, Adel Serafino, at 1-866-681-1459 (toll free), or through the California Relay Service by dialing 711 or 1-800-735-2929 (TTY/English) or 1-800-855-3000 (TTY/Spanish) as soon as possible to request assistance.**

Please note that public comment will begin promptly at 10:00 a.m. and will conclude when the last speaker has finished his or her presentation. If public comment concludes before the noon recess, no afternoon session will be held.

The Administrative Director requests, but does not require that, any persons who make oral comments at the hearings also provide a written copy of their comments. Equal weight will be accorded to oral comments and written materials.

## **WRITTEN COMMENT PERIOD**

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department of Industrial Relations, Division of Workers' Compensation. The written comment period closes at **5:00 p.m., on July 8, 2004**. The Department of Industrial Relations, Division of Workers' Compensation will consider only comments received at the Department of Industrial Relations, Division of Workers' Compensation by that time. Equal weight will be accorded to oral comments presented at the hearing and written materials.

Submit written comments concerning the proposed regulations prior to the close of the public comment period to:

Marcela Reyes  
Regulations Coordinator  
Department of Industrial Relations  
Division of Workers' Compensation  
Post Office Box 420603  
San Francisco, CA 94142

Written comments may be submitted by facsimile transmission (FAX), addressed to the above-named contact person at (415) 703-4720. Written comments may also be sent electronically (via e-mail) using the following e-mail address: [dwcrules@dir.ca.gov](mailto:dwcrules@dir.ca.gov).

Unless submitted prior to or at the public hearing, Ms. Reyes must receive all written comments no later than 5:00 p.m. on July 8, 2004.

## **AUTHORITY AND REFERENCE**

The Administrative Director is undertaking this regulatory action pursuant to the authority vested in the Administrative Director by Labor Code Sections 59, 133, 4658.5, and 5307.3.

Reference is to Labor Code Sections 124, 4658.5, 4658.6, and 5410.

## **INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW**

Section 4658.5 of the Labor Code (effective 1/1/04) requires the Administrative Director to adopt regulations necessary to properly administrate the supplemental job displacement benefit. The supplemental job displacement benefit is available to an injured worker if the injury causes permanent partial disability and the injured employee does not return to work for the employer within 60 days of the termination of temporary disability. The statute requires that a voucher for education-related retraining or skill enhancement or both be provided to the eligible employee. The amount of the benefit is determined by the percent of the permanent partial disability award.

Section 4658.6 of the Labor Code (effective 1/1/04) provides that the employer shall not be liable for the supplemental job displacement benefit if the employer timely offers, and the employee rejects, modified or alternative work, which must meet certain criteria. The form and manner of the offer and acceptance or rejection is to be prescribed by the Administrative Director.

The Administrative Director now proposes to adopt the following administrative regulations. These proposed regulations implement, interpret, and make specific Section 4658.5 and Section 4658.6 of the Labor Code as follows:

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

This section provides definitions for key terms relating to the supplemental job displacement benefit.

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

This section states when the Notice of Potential Right to Supplemental Job Displacement Benefit is required to be sent. It also provides that the employer is required to use the forms set forth in Sections 10133.52.

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

This is the mandatory form that is required to be sent to the employee advising the employee of his or her right to the supplemental job displacement benefit. The form lists the amount of benefits that may be awarded to the employee, that the benefit may be used for payment of tuition, fees, books and other expenses required by the school for retraining or skill enhancement, when the employee will receive the voucher for the benefit, and advises the employee that modified or alternative work may be offered by the employer. It also advises the employee what steps to take if there is a dispute.

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

This is the mandatory two page form that is required to be sent to the employee if the employer has modified or alternative work available.

**5. Section 10133.54 Form DWC-AD 10133.54 “Request for Dispute Resolution before the Administrative Director”**

If a dispute arises regarding the supplemental job displacement benefit, the parties may request the Administrative Director to resolve the dispute. This is the mandatory form to request the Administrative Director to resolve a dispute.

**6. Section 10133.55 Requirement to Issue Supplemental Job Displacement Nontransferable Training Voucher**

This section sets forth when the voucher should be issued, what information it must contain and states that a mandatory form (Section 10133.56) must be used.

**7. Section 10133.56 Form DWC-AD 10133.56 “Supplemental Job Displacement Nontransferable Training Voucher”**

The voucher (mandatory form DWC-AD 10133.56) informs the injured worker what the value of the voucher is and percentage of permanent disability that is the basis for the award amount. The claims administrator is required to fill out lines 1 through 8 and send the form to the employee. The employee is instructed to complete lines 9 through 18 and to sign and date the form. The employee must return the form to the claims administrator and include receipts and documentation of costs. The claims administrator is required to make reimbursement payments to the employee or direct payments to providers within 45 days upon receipt of voucher, receipts and documentation from the employee.

**8. Section 10133.57 State Approved or Accredited Schools**

This section requires private providers of education-related retraining or skill enhancement to have approval from specific agencies.

**9. Section 10133.58 The Administrative Director's List of Vocational Return to Work Counselors**

This section provides that the Administrative Director shall maintain a list of Vocational & Return to Work Counselors who meet the specified qualifications. It also provides that the employee shall be responsible for providing the counselor with any necessary medical reports.

**10. Section 10133.59 Termination of Employer's Liability for the Supplemental Job Displacement Benefit**

This section sets forth the circumstances that end the employers' liability to provide a supplemental job displacement voucher.

## **DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION**

The Administrative Director has made the following initial determinations:

- Significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None. Labor Code §4658.5 provides for a supplemental job disability benefit for education and training. The benefit will be a voucher in the amount of \$4000, \$6000, \$8000, or \$10,000 depending upon the injured worker's percentage of permanent disability. Previously, the cap on vocational rehabilitation was \$16,000. Therefore, employers may save as much as \$6,000 to \$12,000 on each case where the injured worker previously was entitled to vocational rehabilitation benefits, but now is entitled to SJDB.
- Adoption of these regulations will not: (1) create or eliminate jobs within the State of California, (2) create new businesses or eliminate existing businesses within the State of California, or (3) affect the expansion of businesses currently doing business in California.
- Effect on Housing Costs: None.
- Cost impacts on representative private person or business: The Administrative Director has determined that the proposed regulations will not have a significant adverse economic impact on representative private persons or directly affected businesses. The entities directly affected by the regulations which allow for supplemental job disability benefits are those which administer workers' compensation claims in California. This includes three types of private businesses: (1) employers who are large and financially secure enough to be permitted to self-insure their workers' compensation liability and who administer their own workers' compensation claims; (2) private insurance companies which are authorized to transact workers' compensation insurance in California; and (3) third party administrators which are retained to administer claims on behalf of self-insured employers or insurers.

## **EFFECT ON SMALL BUSINESS**

The Administrative Director has determined that the proposed regulations may affect small businesses.

### **FISCAL IMPACTS**

- Costs or savings to state agencies or costs/savings in federal funding to the State: None.
- Local Mandate: None. The proposed regulations will not impose any new mandated programs or increased service levels on any local agency or school district. The potential costs imposed on all public agency employers by these proposed regulations, although not a benefit level increase, are not a new State mandate because the regulations apply to all employers, both public and private, and not uniquely to local governments.
- Cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: None. (See “Local Mandate” section above.)
- Other nondiscretionary costs/savings imposed upon local agencies: None. (See “Local Mandate” section above.)

### **CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code Section 11346.5(a)(13), the Administrative Director must determine that no reasonable alternative considered or that has otherwise been identified and brought to the Administrative Director’s attention would be more effective in carrying out the purpose for which the actions are proposed or would be as effective and less burdensome to affected private persons than the proposed actions.

The Administrative Director invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

### **PUBLIC DISCUSSIONS OF PROPOSED REGULATIONS**

Pursuant to Government Code Section 11346.45, the text of the draft proposed regulations was made available for pre-regulatory public comment through the Division’s Internet message board (the DWC Forums).

## **AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, RULEMAKING FILE AND DOCUMENTS SUPPORTING THE RULEMAKING FILE / INTERNET ACCESS**

An Initial Statement of Reasons and the text of the proposed regulations in plain English have been prepared and are available from the contact person named in this notice. The entire rulemaking file will be made available for inspection and copying at the address indicated below.

As of the date of this notice, the rulemaking file consists of the notice, the initial statement of reasons, the proposed text of the regulations, pre-rulemaking comments, and the Form 399. Also included are studies and documents relied upon in drafting the proposed regulations.

In addition, the Notice, Initial Statement of Reasons, and proposed text of regulations may be accessed and downloaded from the Division's website at [www.dir.ca.gov](http://www.dir.ca.gov). To access them, click on the "Proposed Regulations - Rulemaking" link and scroll down the list of rulemaking proceedings to find the current Supplemental Job Disability Benefit rulemaking link.

Any interested person may inspect a copy or direct questions about the proposed regulations and any supplemental information contained in the rulemaking file. The rulemaking file will be available for inspection at the Department of Industrial Relations, Division of Workers' Compensation, 455 Golden Gate Avenue, 9th Floor, San Francisco, California, between 9:00 a.m. and 4:30 p.m., Monday through Friday. Copies of the proposed regulations, initial statement of reasons and any information contained in the rulemaking file may be requested in writing to the contact person.

### **CONTACT PERSON**

Nonsubstantive inquiries concerning this action, such as requests to be added to the mailing list for rulemaking notices, requests for copies of the text of the proposed regulations, the Initial Statement of Reasons, and any supplemental information contained in the rulemaking file may be requested in writing at the same address. The contact person is:

Marcela Reyes  
Regulations Coordinator  
Department of Industrial Relations  
Division of Workers' Compensation  
Post Office Box 420603  
San Francisco, CA 94142  
E-mail: [mreyes@dir.ca.gov](mailto:mreyes@dir.ca.gov)

The telephone number of the contact person is (415) 703-4600.

### **BACKUP CONTACT/PERSON CONTACT PERSON FOR SUBSTANTIVE QUESTIONS**

In the event the contact person is unavailable, or to obtain responses to questions regarding the substance of the proposed regulations, inquiries should be directed to the following backup contact persons:

Notice of Proposed Rulemaking – Supplemental Job Displacement Benefit Regulations May 10, 2004

Destie Overpeck (doverpeck@dir.ca.gov)  
Division of Workers' Compensation  
Post Office Box 420603  
San Francisco, CA 94142

The telephone number of the backup contact persons is (415) 703-4600.

### **AVAILABILITY OF CHANGES FOLLOWING PUBLIC HEARING**

If the Administrative Director makes changes to the proposed regulations as a result of the public hearing and public comment received, the modified text with changes clearly indicated will be made available for public comment for at least 15 days prior to the date on which the regulations are adopted.

### **AVAILABILITY OF THE FINAL STATEMENT OF REASONS**

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the contact person named in this notice or may be accessed on the website: [www.dir.ca.gov](http://www.dir.ca.gov)

### **AUTOMATIC MAILING**

A copy of this Notice, the Initial Statement of Reasons, and the text of the regulations, will automatically be sent to those interested persons on the Administrative Director's mailing list.

If adopted, the regulations as amended will appear in Title 8, California Code of Regulations, commencing with Section 10133.50.