

TITLE 8. INDUSTRIAL RELATIONS
DIVISION 1. DEPARTMENT OF INDUSTRIAL RELATIONS
CHAPTER 4.5. DIVISION OF WORKERS' COMPENSATION
SUBCHAPTER 1. ADMINISTRATIVE DIRECTOR -- ADMINISTRATIVE RULES
ARTICLE 8. BENEFIT NOTICES; CLAIMS ADMINISTRATOR'S DUTIES AND
RESPONSIBILITIES; CLAIM FORM AND NOTICE OF POTENTIAL ELIGIBILITY FOR
BENEFITS; REGULATORY AUTHORITY OF THE ADMINISTRATIVE DIRECTOR

§ 9813.1. Notice of Offer of Modified or Alternative Work. For Injuries Between January 1, 2004 and December 31, 2012, Inclusive

Notice of Offer of Modified or Alternative Work. Within 30 days of the termination of temporary disability indemnity payments, the employer may offer, in the form and manner prescribed by section 10133.53 of these regulations, modified or alternative work accommodating the employee's work restrictions, lasting at least 12 months.

Authority: Sections 59, 133, 138.3, 138.4, 4658.5 and 5307.3, Labor Code.
Reference: Sections 124, 4658.1, 4658.5 and 4658.6, Labor Code.

ARTICLE 6
Retraining and Return to Work – Definitions and General Provisions

§ 10116.9. Definitions for Articles 6.5 and 7.5.

The following definitions apply to the provisions of Articles 6.5 and 7.5 governing injuries occurring on or after January 1, 2004:

(a) "Alternative work" means work (1) offered either by the employer who employed the injured worker at the time of injury, or by another employer where the previous employment was seasonal work, (2) that the employee has the ability to perform, (3) that offers wages and compensation that are at least 85 percent of those paid to the employee at the time of injury, and (4) that is located within a reasonable commuting distance of the employee's residence at the time of injury.

(b) "Approved training facility" means a training or skills enhancement facility or institution that meets the requirements of section 10133.58.

(c) "Claims administrator" means 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, a self-administered joint powers authority, a self-administered legally uninsured, or a third-party claims administrator for a self-insured employer, insurer, legally uninsured employer, or joint powers authority.

(d) "Employer" means the person or entity that employed the injured employee at the time of injury.

(e) "Essential functions" means 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.

(f) "Furnished" means five days after the date of deposit in the United States mail or the date of personal service.

(g) "Insurer" has the same meaning as in Labor Code section 3211.

(h) "Modified work" means 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.

(i) "Nontransferable voucher" means 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.

(j) "Notice" means a required letter or form generated by the claims administrator and directed to the injured employee.

(k) "Offer of modified or alternative work" means an offer to the injured employee of medically appropriate employment with the date-of-injury employer through the use of Form DWC-AD 10133.53, Notice of Offer of Modified or Alternative Work for Injuries Occurring Between 1/1/04 – 12/31/12, Inclusive or Form 10133.35 Notice of Offer of Regular, Modified, or Alternative Work for Injuries Occurring on or after 1/1/13.

(l) "Parties" means the employee, the claims administrator and their designated representatives, if any.

(m) "Permanent and stationary" means the point in time when the employee has reached maximal medical improvement, meaning his or her condition is well stabilized, and unlikely to change substantially in the next year with or without medical treatment, based on (1) an opinion from a treating physician, AME, or QME; (2) a judicial finding by a Workers' Compensation Administrative Law Judge, the Workers' Compensation Appeals Board, or a court; or (3) a stipulation that is approved by a Workers' Compensation Administrative Law Judge or the Workers' Compensation Appeals Board.

(n) "Permanent partial disability award" means a final award of permanent partial disability determined by a workers' compensation administrative law judge or the appeals board.

(o) "Receipt" means the date of actual receipt by electronic delivery, personal service, or five days after the date of deposit in the United States mail.

(p) "Regular work" means 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.

(q) "Seasonal work" means employment as a daily hire, a project hire, or an annual season hire.

(r) "Supplemental job displacement benefit" means an educational retraining or skills enhancement allowance for injured employees whose employers are unable to provide work consistent with the requirements of Labor Code sections 4658.5, 4658.6 and 4658.7.

(s) "Vocational & return to work counselor (VRTWC)" means 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.

(t) "Work restrictions" means permanent medical limitations on employment activity established by the treating physician, qualified medical examiner or agreed medical examiner.

Authority: Sections 133, 4658.5, 4658.7 and 5307.3, Labor Code.

Reference: Sections 124, 4658.1, 4658.5, 4658.6 and 4658.7, Labor Code; and Henry v. WCAB (1998) 68 Cal.App.4th 981.

ARTICLE 6.5

RETURN TO WORK

§ 10117. Offer of Work; Adjustment of Permanent Disability Payments.

(a) This section shall apply to all injuries occurring between January 1, 2005 and December 31, 2012, inclusive and to the following employers:

(1) Insured employers who employed 50 or more employees at the time of the most recent policy inception or renewal date for the insurance policy that was in effect at the time of the employee's injury;

(2) Self-insured employers who employed 50 or more employees at the time of the most recent filing by the employer of the Self-Insurer's Annual Report that was in effect at the time of the employee's injury; and

(3) Legally uninsured employers who employed 50 or more employees at the time of injury.

(b) Within 60 calendar days from the date that the condition of an injured employee with permanent partial disability becomes permanent and stationary:

(1) If an employer does not serve 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.

(2) If an employer serves the employee with a notice of offer of regular work, modified work or alternative work for a period of at least 12 months, and in accordance with the requirements set forth in paragraphs (3) and (4), 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.

(3) The employer shall use form DWC-AD 10133.53 (Section 10133.53) to offer modified or alternative work, or form DWC-AD 10118 (Section 10118) to offer regular work. The claims administrator may serve the offer of work on behalf of the employer.

(4) The regular, alternative, or modified work that is offered by the employer pursuant to paragraph (2) shall be located within a reasonable commuting distance of the employee's residence at the time of the injury, unless the employee waives this condition. This condition shall be deemed to be waived if the employee accepts the regular, modified, or alternative work, and does not object to the location within 20 calendar days of being informed of the right to object. The condition shall be conclusively deemed to be satisfied if the offered work is at the same location and the same shift as the employment at the time of injury.

(c) 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 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.

(1) Where there is a final judicial determination that the employee is permanent and stationary on a date later than the date relied on by the employer in making its offer of work, the employee shall be reimbursed any amount withheld up to the date a new notice of offer of work is served on the employee pursuant to subdivision (b).

(2) Where there is a final judicial determination that the employee is not permanent and stationary, the employee shall be reimbursed any amount withheld up to the date of the determination.

(3) The claims administrator is not required to reimburse permanent partial disability benefit payments that have been withheld pursuant to this subdivision during any period for which the employee is entitled to temporary disability benefit payments.

(d) If the employee's regular work, modified work, or alternative work that has been offered by the employer pursuant to paragraph (1) of subdivision (b) and has been accepted by the employee, is terminated prior to the end of the period for which permanent partial disability benefits are due, the amount of each remaining permanent partial disability payment from the date of the termination shall be paid in accordance with Labor Code section 4658 (d) (1), as though no decrease in payments had been imposed, and increased by 15 percent. An employee

who voluntarily terminates his or her regular work, modified work, or alternative work shall not be eligible for the 15 percent increase in permanent partial disability payments pursuant to this subdivision.

(e) Nothing in this section shall prevent the parties from settling or agreeing to commute the permanent disability benefits to which an employee may be entitled. However, if the permanent disability benefits are commuted by a workers' compensation administrative law judge or the appeals board pursuant to Labor Code section 5100, the commuted sum shall account for any adjustment that would have been required by this section if payment had been made pursuant to Labor Code section 4658.

(f) If the employer offers regular, modified, or alternative seasonal work to the employee, the offer shall meet the following requirements:

(1) the employee was hired for seasonal work prior to injury;

(2) the offer of regular, modified or alternative seasonal work is of reasonably similar hours and working conditions to the employee's previous employment, and the one year requirement may be satisfied by cumulative periods of seasonal work;

(3) the work must commence within 12 months of the date of the offer; and

(4) The offer meets the conditions set forth in this section.

Authority: Sections 133, and 5307.3, Labor Code.

Reference: Sections 4658, Labor Code; Del Taco v. WCAB (2000) 79 Cal.App.4th 1437; Anzelde v. WCAB (1996) 61 Cal. Comp. Cases 1458 (writ denied); and Henry v. WCAB (1998) 68 Cal.App.4th 981.

§ 10118. Form [DWC-AD 10118 “Notice of Offer of Work for Injuries Occurring Between 1/1/05 - 12/31/12, Inclusive.”]

[See attached]

Authority: Sections 133, and 5307.3, Labor Code.

Reference: Sections 4658, Labor Code.

ARTICLE 7.5

SUPPLEMENTAL JOB DISPLACEMENT BENEFIT

§ 10133.31. Supplemental Job Displacement Nontransferable Vouchers for Injuries Occurring on or After January 1, 2013.

(a) This section shall apply to all injuries occurring on or after January 1, 2013.

(b) If the injury causes partial permanent disability, the employee shall be entitled to a Supplemental Job Displacement Benefit unless the employer makes an offer of regular, modified, or alternative work pursuant to section 10133.34 no later than 60 days after receipt by the claims administrator of the Physician's Return to Work & Voucher Report (Form DWC-AD 10133.36) that indicates the work capacities and activity restrictions that are relevant to regular work, modified work, or alternative work.

(1) Upon receipt of the first Physician's Return-to-Work & Voucher Report (Form DWC-AD 10133.36), the claims administrator shall forward the form to the employer.

(2) If the claims administrator provides the physician with a job description of the employee's regular work, proposed modified work, or proposed alternative work, the physician shall complete the bottom portion of the Physician's Return-to-Work & Voucher Report (Form DWC-AD10133.36.)

(c) An employee who has lost no time from work or has returned to the same job for the same employer, is deemed to have been offered and accepted regular work in accordance with the criteria set forth in Labor Code section 4658.7(b).

(d) If no offer for regular, modified, or alternative work is made, pursuant to subdivision (b), the claims administrator shall furnish a "Supplemental Job Displacement Nontransferable Voucher For Injuries Occurring on or After 1/1/13" (Form DWC-AD 10133.32) within 20 calendar days from expiration of time for making an offer of regular, modified, or alternative work pursuant to paragraph (1) of subdivision (b).

(e) The voucher shall be redeemable up to an aggregate of six thousand dollars (\$6,000).

(f) The voucher may be applied to any of the following expenses at the choice of the injured worker:

- (1) Payment for education-related training or skill enhancement, or both, at a California public school or with a provider that is certified on the state's Eligible Training Provider List at <http://etpl.edd.ca.gov>, including payment of tuition, fees, books, and other expenses required by the school for retraining and skill enhancement.
- (2) Payment for occupational licensing or professional certification fees, related examination fees, and examination preparation course fees.
- (3) Payment for services of licensed placement agencies, vocational or return-to-work counseling, and resume preparation, all up to a combined limit of six hundred dollars (\$600).
- (4) Purchase of tools required by a training or educational program in which the employee is enrolled.
- (5) Purchase of computer equipment including, but not limited to monitors, software, networking devices, input devices (such as keyboard and mouse), peripherals (such as printers), and tablet computers of up to one thousand dollars (\$1,000) payable upon submission of a Request for Purchase of Computer Equipment (page 4 of the DWC-AD Form 10133.32) and submitted with appropriate documentation of either a written invoice payable to a computer retailer or itemized receipts showing the purchase(s) of computer equipment. At the time the voucher is provided, the claims administrator or employer may give the employee the option to obtain computer equipment directly from the employer. The employee shall not be entitled to reimbursement for purchase of games or any entertainment media.
- (6) Up to five hundred dollars (\$500) as a miscellaneous expense reimbursement or advance, payable upon submission of a Request for Miscellaneous Expenses (page 3 of the DWC-AD Form 10133.32) and without need for itemized documentation or accounting. The claims examiner may provide an email address on Form [DWC-AD 10133.32 "Supplemental Job Displacement Nontransferable Voucher for Injuries Occurring on or After 1/1/13]; if an email address is provided, the employee can submit the request via email or regular mail. The employee shall not be entitled to any other voucher payment for transportation, travel expenses, telephone or internet access, clothing or uniforms or incidental expenses.
- (g) The voucher will expire two years after the date it is furnished to the employee, or five years after the date of injury, whichever is later. The employee may not receive payment or reimbursement of any expenses that have not been incurred and submitted with appropriate documentation to the claims administrator prior to the expiration date.
- (h) Settlement or commutation of a claim for the supplemental job displacement voucher is not permitted.

(i) An employer shall not be liable for compensation for injuries incurred by the employee while utilizing the voucher.

(j) The claims administrator shall issue the voucher payments to the employee or direct payments to the VRTWC, training providers, and/or computer retailer within 45 calendar days from receipt of the completed voucher, receipts, and documentation. If computer equipment will be provided directly to the employee, the employer must provide the computer equipment along with documentation of the cost of the computer equipment to the employee within 45 days of receipt of the Request for Purchase of Computer Equipment.

Authority: Sections 133, 4658.1, 4658.7 and 5307.3, Labor Code.

Reference: Sections 4658.6 and 4658.7, Labor Code.

§ 10133.32. Form [DWC-AD 10133.32 “Supplemental Job Displacement Nontransferable Voucher For Injuries Occurring on or After 1/1/13.”]

[See attached]

Authority: Sections 133, 4658.1, 4658.7 and 5307.3, Labor Code.

Reference: Sections 4658.6 and 4658.7, Labor Code.

§ 10133.33. Form [DWC-AD 10133.33 “Description of Employee’s Job Duties Form.”]

Prior to any medical evaluation declaring the employee permanent and stationary, the physician may be sent Form [DWC- AD 10133.33, “Description of Employee’s Job Duties.”]

Form [DWC-AD 10133.33 “Description of Employee’s Job Duties”]

[See attached]

Authority cited: Sections 133 and 4658.7, Labor Code.

Reference: Sections 4658.6 and 4658.7, Labor Code.

§ 10133.34. Offer of Work for Injuries Occurring on or After January 1, 2013.

(a) This section shall apply to all injuries occurring on or after January 1, 2013.

(b) The injured employee shall be entitled to a supplemental job displacement benefit unless the employer makes an offer of regular, modified, or alternative work on Form [DWC-AD10133.35 “Notice of Offer of Regular, Modified, or Alternative Work For injuries occurring on or after 1/1/13” no later than 60 days after receipt of Form [DWC-AD 10133.36 “Physician’s Return-to-Work & Voucher Report”] that indicates the work capacities and activity restrictions that are relevant to regular work, modified work, or alternative work.

(1) The claims administrator may serve the offer of work on behalf of the employer.

(2) The regular, alternative, or modified work that is offered by the employer pursuant to paragraph (1) shall be located within a reasonable commuting distance of the employee's residence at the time of the injury, unless the employee waives this condition. This condition shall be deemed to be waived if the employee accepts the regular, modified, or alternative work, and does not object to the location within 20 calendar days of being informed of the right to object. The condition shall be conclusively deemed to be satisfied if the offered work is at the same location and the same shift as the employment at the time of injury.

(3) The offer of regular, modified, or alternative work must be for work lasting at least 12 months.

(4) If the employer offers regular, modified, or alternative seasonal work to the employee, the offer shall meet the following requirements:

(A) the employee was hired for seasonal work prior to injury;

(B) the offer of regular, modified or alternative seasonal work is of reasonably similar hours and working conditions to the employee's previous employment, and the one year requirement may be satisfied by cumulative periods of seasonal work;

(C) the work must commence within 12 months of the date of the offer; and

(D) The offer meets the conditions set forth in this section.

Authority: Sections 133, 4658.7 and 5307.3, Labor Code.

Reference: Sections 4658 and 4658.7, Labor Code.

§ 10133.35. Form [DWC-AD 10133.35 “Notice of Offer of Regular, Modified, or Alternative Work For Injuries Occurring on or After 1/1/13.”]

[See attached]

Authority: Sections 133, 4658.7 and 5307.3, Labor Code.

Reference: Sections 4658 and 4658.7, Labor Code.

§ 10133.36. Form [DWC-AD 10133.36 “Physician’s Return-to-Work & Voucher Report.”]

[See attached]

Authority: Sections 133, 4658.7 and 5307.3, Labor Code.

Reference: Sections 4658 and 4658.7, Labor Code.

§ 10133.53. Form [DWC-AD 10133.53 "Notice of Offer of Modified or Alternative Work for Injuries Occurring Between 1/1/04 – 12/31/12, Inclusive."]

[See attached]

Authority: Sections 133, 4658, and 5307.3, Labor Code.

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

§ 10133.55. Form [DWC-AD 10133.55 "Request for Dispute Resolution Before the Administrative Director."]

[See attached form]

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

Reference: Sections 4658.5 Labor Code.

§ 10133.56. Requirement to Issue Supplemental Job Displacement Nontransferable Training Voucher

(a) This section and section 10133.57 shall only apply to injuries occurring between January 1, 2004 and December 31, 2012, inclusive.

(b) The employee shall be eligible for the Supplemental Job 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) either the injured employee does not return to work for the employer within 60 days of the termination of temporary disability benefits; or

(4) 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 injured employee does not return to work on the next available work date of the next work season.

(c) When the requirements under subdivision (b) have been met, the claims administrator shall provide a nontransferable voucher for education-related retraining or skill enhancement or both to the employee within 25 calendar days from the issuance of the permanent partial disability award by the workers' compensation administrative law judge or the appeals board.

(d) The voucher shall be issued to the employee allowing direct reimbursement to the employee upon the employee's presentation to the 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) The voucher must indicate the appropriate level of money available to the employee in compliance with Labor Code section 4658.5.

(f) The mandatory voucher form is set forth in Section 10133.57.

(g) The voucher shall certify that the school is approved pursuant to section 10133.58.

(h) The 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:

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

§ 10133.57. Form [DWC-AD 10133.57 "Supplemental Job Displacement Nontransferable Training Voucher Form for Injuries Occurring Between 1/1/04 – 12/31/12, Inclusive."]

[See attached form]

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

Reference: Sections 4658.5 Labor Code.

§ 10133.58. State Approved or Accredited Schools.

(a) This section shall apply to all injuries occurring on or after January 1, 2004.

(b) For injuries between January 1, 2004 and December 31, 2012, inclusive, private providers of education-related retraining or skill enhancement selected to provide training as part of a supplemental job displacement benefit shall be:

(1) approved by the Bureau for Private Postsecondary and Education (www.bppe.ca.gov), or a California state agency that has an agreement with the Bureau for the regulation and oversight of non-degree-granting private postsecondary institutions; or

(2) accredited by one of the Regional Associations of Schools and Colleges authorized by the United States Department of Education; or

(3) by a California State agency that has an agreement with the United States Department of Education or Regional Associations of School and Colleges for the regulation and oversight of non-degree granting private postsecondary providers; or

(4) certified by the Federal Aviation Administration.

(c) For injuries on or after January 1, 2013, private providers of education-related retraining or skill enhancement selected to provide training as part of a supplement job displacement benefit shall be certified and on the state's Eligible Training Provider List at <http://etpl.edd.ca.gov/wiaetplind.htm>.

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

Reference: Sections 4658.5 and 4658.7, Labor Code.

§ 10133.60. Termination of Claims Administrator's Liability for the Supplemental Job Displacement Benefit.

(a) For injuries occurring on or after January 1, 2004, the claims administrator's liability to provide a supplemental job displacement voucher shall end if either (a)(1), (a)(2), or (a)(3) occur:

(1) the employer offers regular, modified or alternative work to the employee, meeting the requirements as set forth in section 10133.3.

(A) 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:

1. the employee was hired on a seasonal basis prior to injury; and

2. the offer of regular, modified or alternative work is on a similar seasonal basis to the employee's previous employment;

(2) the maximum funds of the voucher have been exhausted. Vouchers issued on or after January 1, 2013, shall expire two years after the date the voucher is furnished to the employee or five years after the date of injury, whichever is later.

(3) Settlement or commutation of a claim for the supplemental job displacement voucher has been approved for dates of injury prior to January 1, 2013.

Authority: Sections 133, 4658.7 and 5307.3, Labor Code.

Reference: Sections 4658.1, 4658.5, 4658.6, 4658.7 and 5410, Labor Code; and Henry v. WCAB (1998) 68 Cal.App.4th 981.