

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

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

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

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

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

Section 10133.50	Definitions
Section 10133.51	Notice of Potential Right to Supplemental Job Displacement Benefit
Section 10133.52	“Notice of Potential Right to Supplemental Job Displacement Benefit” Form
Section 10133.53	Form DWC-AD 10133.53 “Notice of Offer of Modified or Alternative Work for Injuries Occurring on or after 1/1/04”
Section 10133.54	Dispute Resolution
Section 10133.56	Requirement to Issue Supplemental Job Displacement Nontransferable Training Voucher
Section 10133.57	Form DWC-AD 10133.57 “Supplemental Job Displacement Nontransferable Training Voucher”
Section 10133.58	State Approved or Accredited Schools
Section 10133.60	Termination of Employer’s Liability for the Supplemental Job Displacement Benefit

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

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

Written comments should be addressed to:

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

The Division’s contact person must receive all written comments concerning the proposed modifications to the regulations no later than 5:00 p.m. on **April 8, 2005**. Written comments may be submitted by facsimile transmission (FAX), addressed to the contact person at (415) 703-4720. Written comments may also be sent electronically (via e-mail), using the following e-mail address: [dwcrules@hq.dir.ca.gov](mailto:dwcrules@hq.dir.ca.gov).

## AVAILABILITY OF TEXT OF REGULATIONS AND RULEMAKING FILE

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

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

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

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

## DOCUMENTS SUPPORTING THE RULEMAKING FILE

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

## FORMAT OF PROPOSED MODIFICATIONS

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

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

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

### Proposed Text Noticed for 1st 15-Day Comment Period on Modified Text:

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

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

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

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

### **Proposed Text Noticed for this 2nd 15-Day Comment Period on Modified Text:**

Deletions from the proposed regulatory text, as proposed on February 16, 2005, are indicated by double strike-through, thus: ~~deleted language~~.

Additions to the proposed regulatory text, as proposed on February 16, 2005, are indicated by a broken underline, thus: added language.

Deletions from the Forms, as proposed on February 16, 2005, are indicated by italic font and strike-through, thus: ~~*deleted language*~~.

Additions to the Forms, as proposed on February 16, 2005, are indicated by italic font and double underline, thus: *added language*.

## **SUMMARY OF PROPOSED CHANGES**

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

The definitions of “(5) Employer offer” was deleted and re-named “(10) Offer of Modified or Alternative Work” in order to be consistent with the use of the terms in the regulations. The subdivisions were renumbered to accommodate the change in the order. The word “employer” was deleted from the definitions for “Notice” and “Parties” because the definition of “claims administrator” includes self-insured, self-administered employers. The definition for “(12) Permanent Partial Disability Award” was modified for clarity.

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

The word “employer” was deleted from this section because the definition of “claims administrator” includes self-insured, self-administered employers.

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

The word “employer” was deleted throughout this section because the definition of “claims administrator” includes self-insured, self-administered employers. The phrase “which prevented you from returning...” was added to clarify that the employee must be off work due to his or her disability as opposed to his or her choice. The word “entitlement” was replaced with “potential eligibility” to clarify that the employee is not settling the voucher, but has the right to settle the potential eligibility to the voucher.

The phrase “A list of vocational return to work counselors (VRTWCs) is available on the Division of Workers’ Compensation’s website [www.dir.ca.gov](http://www.dir.ca.gov) or upon request” was added to the Notice so that the

injured worker will know how to access information regarding VRTWCs. The two bulleted statements on page two pertaining to modified and alternative work were deleted. Instead, there is one list of the requirements for both modified and alternative work, which is consistent with the requirements listed in section 10133.53 and Labor Code section 4658.1.

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

The title of this section was modified by adding the word “Offer” to match the name of the form. The word “employer” was deleted from top sentence on the form because the definition of “claims administrator” includes self-insured, self-administered employers. The words “the remainder of” and “payments” were added to the sentence advising that the permanent disability payments may be decreased by 15%. These changes were made to more accurately reflect the effect of Labor Code section 4658.

On the second page of the form, the lines for information concerning the Permanent and Stationary date and the date of the Findings and Award were deleted, as the Notice of Offer or Modified or Alternative Work will occur prior to these dates. The line for “Doctor’s name” was modified to state “Name of doctor who approved job restrictions (optional)” for clarity. If a doctor has approved job restrictions, it will assist all parties to be able to refer to the report and will help reduce disputes regarding whether the offer is medically appropriate.

**5. Section 10133.54 Dispute Resolution**

The word “employer” was deleted from this section because the definition of “claims administrator” includes self-insured, self-administered employers. Grammatical errors were corrected in subdivisions (a), (b)(5) and (e). Subdivision (f) was re-worded for clarity.

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

Subdivisions (a) and (b) were re-written to clarify that a seasonal employee is entitled to the benefit if the work season has ended during the 60 days that the injured worker was off work because of his or her permanent partial disability. The first line in subdivision (c) was modified by the introductory line, “When the requirements under subdivision (a) have been met.”

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

The word “employer” was deleted from this section because the definition of “claims administrator” includes self-insured, self-administered employers. The phrase “A list of Vocational & Return to Work Counselors (VRTWCs) is available on the Division of Workers’ Compensation’s website [www.dir.ca.gov](http://www.dir.ca.gov) or upon request” was added to the Voucher so that the injured worker will know how to access information regarding VRTWCs. The sentence advising the employee which numbers to complete was corrected by changing the number from “18” to “19” and removing the number “20” from the signature line.

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

Subdivision (b) was re-worded for better syntax.

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

The word “employer” was deleted from this section because the definition of “claims administrator” includes self-insured, self-administered employers. Subdivision (a)(4) was clarified by adding the words “of seasonal work.” Subdivision (a)(5) was deleted because Labor Code section 5410 does not bar the supplemental job displacement benefit and therefore the reference to the section was confusing. Subdivision (a)(6) was renumbered, and the words “and applicable law” were deleted for clarity.