Supplemental Job Displacement Benefit	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
DWC Form 10133.36	Commenter opines that a correction is needed to the question near the bottom of the form seeking comment from the physician on the job description. "Are the Work Duties compatible with the activity restrictions set forth in the provided job description." • The term "Work Duties" has been substituted for "physical requirements" which is the term used elsewhere in both statute and regulation. • As written, the question mistakenly indicates that activity restrictions are set forth in a job description. The following rewording is consistent with LC Section 4658.7(b)(1)(A) and with the instructions on Page 2 of the form: "Are the ~~Work Duties~~ work capacities and activity restrictions compatible with the ~~activity restrictions~~ physical requirements set forth in the provided job description?"	Alan C. Jenkins Workers' Compensation Consultant Kaiser Permanente May 28, 2013 Written Comment	Agree.	The form has been amended. "Are the ~~Work Duties~~ work capacities and activity restrictions compatible with the ~~activity restrictions~~ physical requirements set forth in the provided job description?"
10133.31(c) and	Commenter states that §10133.31(c)	Peggy Thill	Agree.	The regulation has

Supplemental Job Displacement Benefit	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
(d)	clarifies that for dates of injury on or after January 1, 2013, if the injury causes partial permanent disability but the employee has not lost any time from work or has returned to the same job for the same employer, he/she is deemed to have been offered and accepted regular work in accordance with the criteria set forth in Labor Code section 4658 (b). Commenter points out that the modified regulations make it clear that the employer is not required to provide a written job offer to employees in these situations, but does not appear to reference the correct Labor Code section. Commenter recommends revising the Labor Code reference in §10133.31(c) as follows: 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 (b)~~ 4658.7(b). Commenter states that §10133.31(d) indicates that if a regular job offer is not made, the claims administrator must provide the voucher to the	Claims Operations Manager State Compensation Insurance Fund May 31, 2013 Written Comment	 Disagree. Vouchers don't have to be furnished if offers of work (lasting for at least 12 months) are made. Whether	been corrected. "Labor Code section ~~4658 (b)~~ 4658.7(b)." No change.

	employee "…within 20 calendar days from expiration of time for making an offer of regular work…" On no lost time claims or claims where the employee has returned to the same job for the same employer, if the employer is not able to offer the position for a full 12 months as required by Labor Code section 4658.7(b)(2), the timeframe specified in §10133.31(d) may have already passed. For injured employees who have not lost any time from work or who have returned to the same job for the same employer, commenter recommends that the proposed regulations specifically address the claims administrator's timeframe for furnishing the SJDB voucher once it is determined that the employer cannot continue providing regular work for a full 12 months.		the work actually lasts 12 months raises issues which can be addressed by a trier of fact. An employer would not automatically be required to furnish a voucher. 10133.1(c) provides that an employee who has lost no time from work is deemed to have been offered and accepted regular work. The timeframe in (d) would not be triggered if an employee has lost no time from work.	
10133.31 and 10133.34	Commenter states that Labor Code §4658.7 provides that for injuries occurring on or after January 1, 2013, the employee shall be entitled to the Supplemental Job Displacement Benefit if an offer of regular, modified, or alternative work is not made within 60 days after the claims	Peggy Thill Claims Operations Manager State Compensation Insurance Fund May 31, 2013 Written Comment	Agree.	The regulation has been amended. <u>10133.31 (b) If the injury causes partial permanent disability, the employee shall be entitled to a</u>

Supplemental Job Displacement Benefit	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	administrator's receipt of the first report indicating that the disability from all conditions for which compensation is claimed becomes permanent and stationary and the injury has caused permanent partial disability. The modified regulations remove reference to the 60-day timeframe for offering regular, modified, or alternative work in §10133.31 and §10133.34. Commenter opines that failure to specifically address this issue and to clearly define when the 60 days commence may result in unnecessary litigation. Commenter recommends that the proposed regulations include the claims administrator's 60-day timeframe for offering regular, modified, or alternative work and that they clearly define when the 60 days commence.		Agree in part. The Physician's Return to Work & Voucher Report should indicate the work capacities and activity restrictions that are relevant to regular work, modified work, or alternative work.	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.***
DWC Form 10133.35	Commenter states that this form advises the employee that if he/she voluntarily quits prior to working in a position for 12 months, he/she may not be entitled to SJDB. Commenter states that the proposed form does not address whether the employee is	Peggy Thill Claims Operations Manager State Compensation Insurance Fund May 31, 2013 Written Comment	Disagree. Employers do not have to furnish vouchers if they make offers of work lasting 12 months. Whether the employee actually works for at least 12 months is a different question than whether	No change.

	eligible for SJDB if he/she retires or is terminated for cause before the 12 months expire. Commenter recommends adding the following on page 4 of the DWC-AD 10133.35: I understand that if I voluntarily quit, retire, or am terminated for cause prior to working in this position for 12 months, I may not be entitled to the Supplemental Job Displacement Benefit.		the offered work lasts 12 months. Whether the work actually lasts 12 months raises issues which can be addressed by a trier of fact.	
DWC Form 10133.36	Commenter states that according to the proposed "Physician's Return-to-Work & Voucher Report Instructions," the first physician who finds that disability from all conditions for which compensation is claimed has become Permanent and Stationary and has caused permanent disability is required to complete the DWC-AD 10133.36. While the instructions indicate, "This form does not need to be completed until all conditions for which compensation is claimed have become permanent and stationary," they do not give the physician a specific timeframe for completing the	Peggy Thill Claims Operations Manager State Compensation Insurance Fund May 31, 2013 Written Comment	Disagree. The form is an attachment to reports that have timelines, adding a timeline requirement to the attachment is unnecessary.	No change.

	form. Commenter opines that failure to specify a timeframe for completing the form may result in untimely submission to the claims administrator and unnecessary delay of injured workers' permanent disability benefits. Commenter recommends adding instructions to DWC-AD 10133.36 requiring the physician to complete the form within 20 days of determining that the employee has reached permanent and stationary status for all conditions for which compensation is claimed and permanent disability exists.			
10133.31(c)	Commenter would like to thank the division for modifying this section to clarify that an injured worker that has a) lost no time, or b) returned to the same job for the same employer is deemed to have been offered regular work. Commenter states that this will ease the burden on employers without jeopardizing benefits for injured workers.	Jason Schmelzer CCWC Jeremy Merz CalChamber May 30, 2013 Written Comment	No response necessary.	No change.
101331.34	Commenter would like to recommend the addition of language in§101331.34 that would clarify that an employer is not liable for a Supplemental Job	Jason Schmelzer CCWC Jeremy Merz	Disagree. Employers do not have to furnish vouchers if they make offers of work lasting 12 months. Whether	No change.

	Displacement benefit Voucher in situations where an offer of regular, modified, or alternative work was not made because a) the employee voluntarily quit employment, or b) the employee was terminated for cause. Commenter opines that in both of these situations it would be inappropriate to penalize an employer for not offering regular, modified, or alternative work. Commenter strongly supports a modification to the regulation that would reflect this reality.	CalChamber May 30, 2013 Written Comment	the employee actually works for at least 12 months is a different question than whether the offered work lasts 12 months. Whether the work actually lasts 12 months raises issues which can be addressed by a trier of fact.	
DWC Form 10133.36	Commenter has modified the proposed Physician's Return to Work & Voucher Report and the accompanying instructions. [Copy available upon request.] Commenter eliminated the checklist of activities for the form because he felt that it is confusing. Commenter opines that it is unclear whether the checklist is for functions that the employee is capable of performing, or restricted from performing. Commenter requests that if the Division decides to maintain the	Jason Schmelzer CCWC Jeremy Merz CalChamber May 30, 2013 Written Comment	Agree.	The form has been changed to eliminate some of the activities which were confusing, “finger” has been eliminated and “keyboarding” has been added.

	checklist, the purpose should be clarified.			
10117(b)	Commenter states that the current language of this subdivision requires a job offer to be made "within 60 days from the date that the condition of an injured worker with permanent disability becomes permanent and stationary ...." The proposed amendment provides that the job offer must be made "within 60 days from the date that **the employer has knowledge that** the condition of an injured worker with permanent disability becomes permanent and stationary .... According to the Notice of Modification to Text of Proposed Regulations, this change is necessary because "The claims administrator and employer may not become aware of the finally determined permanent and stationary date until the 60-day period to act has expired." Commenter opines that this change is inconsistent with the authorizing statute, Labor Code section 4658(d)(2). The plain language of Section 4658(d)(2) requires a job offer	Mark Gerlach California Applicants' Attorneys Association May 31, 2013 Written Comment	Agree.	The proposed change has been withdrawn.

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	to be made "within 60 days of a disability becoming permanent and stationary." Had the Legislature meant to trigger the job offer on the *employer's knowledge* of the permanent and stationary status, it would have so provided. However, the language of the statute is unambiguous, and the Division may not adopt regulations that give an entirely different meaning than the plain language of the statute. Commenter does not believe the current language of this subdivision needs to be revised. The statutory 60 day period gives the employer nearly two months after the employee's disability becomes permanent and stationary to determine whether or not to make a qualifying job offer to the employee. Furthermore, by regulation medical-legal reports must be prepared and submitted within 30 days (CCR section 38), and if this standard is met there is sufficient time for the employer to review the report and decide what to do. Commenter opines that if there are procedural problems that make it difficult for employers to make a determination within 60 days,			

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	the solution is not to extend the already lengthy time period, but instead to resolve the problems causing the delay. Commenter recommends that this proposed change be withdrawn.			
10133.31(c)	Commenter states that according to the Notice of Modification to Text of Proposed Regulations, this new subdivision is proposed to clarify that if an injured worker loses no time from work or returns to his or her regular job no return-to-work offer need be made. Commenter opines that the statutory reference to section 4658(b) is incorrect; that subdivision sets out the number of weeks to be provided for injuries on and after 1/1/1992. Commenter opines that the intent was to cite section 4658.7(b). With regard to the substance of the proposed change, commenter opines that the language is unclear and should be amended to clarify the intent. The protections provided to the employee by the mandates in section 4658.7(b) are critically important. Those	Mark Gerlach California Applicants' Attorneys Association May 31, 2013 Written Comment	Agree. Disagree. Employers do not have to furnish vouchers if they make offers of work lasting 12 months. Whether the employee actually works for at least 12 months is a different question than whether	The regulation has been amended. "Labor Code section ~~4658 (b)~~ 4658.7(b)." No change.

Supplemental Job Displacement Benefit	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	mandates require that any job offer must comply with the provisions set forth in section 4658.1 defining a regular, modified, or alternative job offer, and that the work must last at least 12 months. Importantly, the language of section 4658.7(b) applies to all employees who have a work injury that causes permanent partial disability. Commenter states that there is nothing in the statutory language that states or even implies that these protections do not apply if the employee has lost no work time or has returned to the same job for the same employer. Commenter opines that the intent of the proposed language is to make certain all workers receive these protections but that the proposed language is awkward and would likely result in disputes and unnecessary costs and delays. In addition, commenter opines that the application of this new subdivision should be clarified. This section – section 10133.31 – establishes rules applicable to a Supplemental Job		the offered work lasts 12 months. Whether the work actually lasts 12 months raises issues which can be addressed by a trier of fact.	

	Displacement Voucher for dates of injury on or after 1/1/13. In order to clarify that subdivision (c) applies only to vouchers for post-1/1/13 injuries, and to eliminate potential disputes caused by the proposed language, commenter recommends that this subdivision be amended as follows: (c) For the purposes of this section, 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. As used in this subdivision, "the same job for the same employer" means regular, modified, or alternative work as defined in Labor Code section 4658.1 that lasts at least 12 months.			
10133.31(j)	Commenter recognizes that this subdivision has not been amended in this 15 day notice and that the Notice advised that only comments directly concerning the modifications to the text will be considered. Commenter understands the Division is under no legal obligation to respond to this comment.	Mark Gerlach California Applicants' Attorneys Association May 31, 2013 Written Comment	Disagree. Labor Code section 4658.7(e)(5) provides that the voucher may be applied to the *purchase* of computer equipment, not as an *advance* as discussed in section (e)(6).	No change.

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	Commenter expresses his strong disappointment that these rules continue to obstruct the clear intent of the statutory changes to the SJDB. Subdivision (e) of Labor Code section 4658.7 sets out a list of specific expenses that the voucher may be used for at the choice of the injured employee. One item is the purchase of computer equipment, up to $1,000. Commenter opines that this benefit is extremely important to virtually every person seeking work in the modern economy. Job listings are frequently posted only on-line, and many job listings show only an email or internet address. Furthermore, listings for office jobs generally require computer literacy and familiarity with specific business programs, and even jobs that previously were considered "manual labor" now require some knowledge of computers. Commenter opines that by requiring that the employee first pay for a computer with his or her own funds makes a mockery out of the statutory directive that the voucher may be used for expenses "at the choice of the			

Supplemental Job Displacement Benefit	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	injured employee." The simple fact is that many employees in this situation cannot meet even their normal expenses. Commenter states that for employees who don't have $1,000, these rules deny them the "choice" to use the voucher to purchase computer equipment. Commenter reiterates his recommendation that these rules be amended to provide that the claim adjuster shall provide payment upon receipt from the worker of a written bid from a computer retail supplier, and that following purchase of the computer the worker must provide copies of receipts documenting the purchase.			
DWC Form 10133.35	Commenter acknowledges that this form has not been amended in this 15 day notice and that the Division is under no legal obligation to respond to this comment. Commenter reiterates his request that this form be amended to explain to the worker that he or she has the right to object if the offer of work is for a different location or shift. Commenter states that in a virtually identical	Mark Gerlach California Applicants' Attorneys Association May 31, 2013 Written Comment	Agree in part. The form has been amended as part of the first 15 day notice. Agree.	No change. The form has been amended to include: "If the job offered is at a different location than the job you held at the time of your

	situation, current form 10118, the Notice of Offer of Regular Work, includes language that clearly explains that the work being offered is at a different location and/or shift. That form gives the worker the opportunity to either accept the job or to object to the offer because of the different location and/or shift. Commenter opines that for consistency sake - not to mention the protection of the injured employee - Form 10133.35 should include similar language.			injury, and you believe the commuting distance to this job from the residence where you lived at the time of your injury is not reasonable, you may object to the job offer as not being within a reasonable commuting distance."
10117	Commenter states that the regulation sections outlining the 60 day time requirement for making an offer of Regular, Modified or Alternative Work for DOI after 1/1/13 have been completely eliminated from the current draft of the regulations. 10117 outlines a 60 day requirement to serve a notice of offer of regular, modified or alternative work but that section only applies to DOI between 1/1/04-12/31/12 based on the current language proposed. In addition, the section is specific to the 15% increase/decrease and not the voucher.	Aaron Hice Corporate Claims Consultant Corporate Claims May 31, 2013 Written Comment	Agree.	The regulation has been amended.: (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 **~~that meets both the following: criteria:~~ 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.
10133.31(d)	Commenter states this subdivision outlines that a voucher form must be sent out within 20 days of the expiration of the time to make an offer of regular, modified or alternative work as outlined in paragraph (1) of subdivision (b). The paragraph that was originally there (which contained the 60 day deadline) is being deleted and the new paragraph inserted in its place references the Physician's Return to Work and Voucher Report Form. Commenter states that if the division were to amend section (d) to point to subsection (b) we would end up being directed to a different regulation (10133.34) for guidance on the offer of work process and that	Aaron Hice Corporate Claims Consultant Corporate Claims May 31, 2013 Written Comment	Agree.	The regulation has been amended. (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 ~~**that meets both the following: criteria:**~~ ***pursuant to section 10133.34 no later than 60 days after***

	section also does not provide a time limit for making the offer of regular, modified or alternative work either (section (b) which previously outlined a 60 day window looks like it is being removed from the current version). Commenter states that LC4658.7(b)(1) specifies a 60 day time limit (from the date of receipt of PTP, QME or AME report finding MMI) for making an offer of regular, modified or alternative work for DOI on or after 1/1/13. It may be easiest to reference that code section in 10133.31 (d) to correct this issue and provide clarity.			***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.***
10133.60	Commenter states that this section outlines the situations where liability for the Supplemental Job Displacement Benefit is terminated. Section (a)(1) specifies that liability is terminated when an offer is made for regular, modified or alternative work in compliance with 10133.34. 10133.34 no longer appears to specify a 60 day limit for the provision of the offer.	Aaron Hice Corporate Claims Consultant Corporate Claims May 31, 2013 Written Comment	Agree.	The regulation now refers to 10133.31.
10133.31(c)	Commenter opines that a significant concern for all injured workers is what becomes of their job after they report an injury. The injured worker lives	Bret Graham President LatinoComp May 31, 2013	Disagree. Labor Code section 4658.7 does not require an employer to make offers of work to qualified injured	No change.

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	under a cloud of doubt as to how long or if he/she will continue to have a job. Those justifiable concerns are answered under SB 863 and Labor Code 4658.7 as the employer is REQUIRED to make an offer of "regular, modified or alternative work" within 60 days of the reporting finding the injured worker permanent and stationary with permanent partial disability. LC 4658.7(b). If such an offer is not affirmatively made, then the employer will be required to provide the SJDB. Commenter opines that for reasons unknown and NOT supported by statute, Regulation 10133.31(c) now eliminates the affirmative requirement that employers provide an actual offer of "regular, modified or alternative work" to qualified injured workers. Under the proposed language, employers can now (1) fail to make any job offer; and (2) avoid providing a voucher to an otherwise qualified injured worker with permanent partial disability by allowing (or forcing) the injured worker to return to the pre-injury job even if that job's physical requirements are in excess of any	Written Comment	workers. Vouchers are to be furnished unless the employer makes an offer of work lasting at least 12 months.	

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	work restrictions provided by the treating doctor(s). Commenter opines that rather than encouraging employers to MODIFY job requirements to accommodate injured workers, this Regulation rewards those employers who do not recognize the need to modify job duties to accommodate injured workers. Commenter also states that this Regulation relieves the unscrupulous employer of the written obligation to provide "regular, modified or alternative work" for 12 months at 85% of prior salary (and other requirements) or otherwise to provide the SJDB. Commenter opines that the injured worker who returns to work does not have the security that the employment will last at least 12 months and may be terminated at any time – even after one day of work – without the employer becoming responsible for providing the SJDB. Commenter opines that this Regulation will eviscerate the SJDB program and allow employers to terminate injured workers after returning them to work for as short a period of one day without any		Whether the employee actually works for at least 12 months is a different question than whether the offered work lasts 12 months. Whether the work actually lasts 12 months raises issues which can be addressed by a trier of fact.	No change.

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	consequence. Commenter opines that this Regulation will, once again turn back the clock, and foster an atmosphere where injured workers who should be doing modified work (or receiving the SJDB) are working "in excess of their work restrictions" and thus continuing to injure themselves or being more susceptible to injury. Commenter opines that this is NOT what the Legislature intended when it passed SB 863 and specifically enumerated the affirmative employer requirements for providing offers of work or, failing to do so, providing the SJDB in LC 4658.7. Commenter opines that the concept that an injured worker who has not "missed time" form work, but has permanent partial disability, cannot be in need of protection in terms of a firm written offer that their job will continue to be available, misses the whole point of the workers' compensation system – to get injured workers the treatment they need to either continue or resume working without fear of termination or discrimination. See LC 132a		Labor Code section 132a is not affected by this rulemaking; discrimination against injured workers is still prohibited.	

	prohibiting discrimination for filing, intending to file or testifying in a workers' compensation matter. As written, Regulation 10133.31(c) eliminates that protection. Commenter urges the Administration to remove Regulation 10133.31(c) from the SJDB regulations and conform the regulations to the actual language and intent of LC 4658.7 and maintain the spirit and intent of LC 132a.		Supplemental job displacement benefits are intended to support workers who have been displaced because of their injuries.	
10133.31(b)	Commenter recommends the following changes to subdivision (b): (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. (1) Upon receipt of the first admissible Physician's Return-to-Work & Voucher Report (Form DWC-AD 10133.36) complete with job restrictions, the claims administrator shall forward the form to the employer.	Steven Suchil Assistant Vice President/Counsel American Insurance Association May 31, 2013 Written Comment	Disagree. Admissibility of evidence is an issue for triers of fact.	No change.

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	In regard to the addition of the word "admissible", commenter believes it is necessary to prevent the need to process the form, as required by regulation, when it is received from a physician whose report will not be admissible. Commenter has noted that the Instructions regarding this form state that only the PTP, AME, or QME are to complete the form. Commenter suggests that this should also be repeated, in some way, in the regulation. Commenter realizes that the Physician's Return-to-Work & Voucher Report contains an area for the physician to detail the employee's physical abilities but historically there have been problems when the claims administrator/employer receives knowledge of permanent and stationary status but is lacking sufficient, or any, information regarding physical restrictions. Without this vital information the restructuring of job duties or determining an alternate job is impossible. Commenter opines that the time limit to complete this process			

	should be based on when sufficient information is available to adjust or create a safe position for the injured employee.			
DWC Form 10133.32	Commenter recommends that the instructions for this form should advise the employee that the voucher will be invalid if unused within two years of issue or five years from the date of injury whichever is last.	Steven Suchil Assistant Vice President/Counsel American Insurance Association May 31, 2013 Written Comment	Disagree. This is unnecessary. The form already says, "after this voucher expires, it will be unusable."	No change.
DWC Form 10133.33	In order to ensure that the job offer process can move forward within the regulatory time frames, commenter states that there must be a requirement for the employee to return the signed job description within a reasonable amount of time. Commenter recommends that if a dispute arises regarding the job duties, either party should be instructed to utilize the Request for Dispute Resolution (Form DWC-AD 10133.55).	Steven Suchil Assistant Vice President/Counsel American Insurance Association May 31, 2013 Written Comment	Disagree. The job description is an optional form.	No change.
DWC Form 10133.36	Commenter states that the Physical Restriction area of the form must include standing, walking, sitting, and bending. Some or all of these are present in all jobs and are especially	Steven Suchil Assistant Vice President/Counsel American Insurance Association	Agree.	Standing, walking, and sitting have been added to the form.

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	relevant for orthopedic conditions that comprise the vast majority of Workers' Compensation injuries. At the bottom of the form itself the following question is set forth: Are the Work Duties compatible with the activity restrictions set forth in the provided job description? Commenter has brought up problems with this question before during the Forum and Public Hearing comment periods, but it remains unchanged. Commenter opines that as it stands, the question is unclear and will create confusion, and it should be amended. Commenter states that a job description is completed by the employee and/or employer and should depict the physical functioning that occurs during the work day for a given job. The job description does not include activity restrictions. The physician reviews the job description and determines if he/she believes that any of the activities need to be restricted. Any restrictions are then communicated to the employee,	May 31, 2013 Written Comment		Agree. The form has been amended. "Are the ~~Work Duties~~ work capacities and activity restrictions compatible with the ~~activity restrictions~~ physical requirements set forth in the provided job description?"

	employer, and/or claims administrator for determinations about return to work at regular, modified or alternative work potential. Commenter recommends that the question be rewritten to something similar to: Are these physical activities compatible with any physical restrictions you have determined necessary?			
10133.32	Commenter requests that on the instruction page, the employee be advised: "<u>This voucher must be used before it expires (2 years after it is provided or 5 years from the date of your injury, whichever is later)</u>.	Michael McClain General Counsel California Workers' Compensation Institute May 31, 2013 Written Comment	Disagree. This is unnecessary. The form already says, "after this voucher expires, it will be unusable."	No change.
10133.33	Commenter asks that the following language be added: <u>NOTICE TO THE PARTIES</u> <u>If the job description is not signed and returned within 10 days after receipt, the job description is deemed to be acceptable to the employee.</u>	Michael McClain General Counsel California Workers' Compensation Institute May 31, 2013 Written Comment	Disagree. The job description is an optional form.	No change.

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	If a dispute occurs regarding the above description of the job duties, either party may request the Administrative Director to resolve the dispute by filing a Request for Dispute Resolution (Form DWC-AD 10133.55) with the Administrative Director. Commenter opines that the employee should be notified on this form that the job description must be signed within a reasonable period (10 days after receipt) and that if a dispute occurs, the employee may request assistance from the AD or the Information and Assistance Office.			
DWC Form 10133.35	Commenter recommends the following revisions: The claims administrator type for employer should read "Self-insured Employer" On page 4, where the injured worker is advised regarding the consequences of quitting his position, there should also be advice that if the position ends or the employee is laid off within the 12-month period, he may apply for an	Michael McClain General Counsel California Workers' Compensation Institute May 31, 2013 Written Comment	Disagree. This is unnecessary. Disagree. Employers do not have to furnish vouchers if they make offers of work lasting 12 months. Whether the employee actually works for at least 12 months is a	No change. No change.

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	SJDB voucher at that time. On page 4, the notice regarding the length of time the employment is to last should also include a notice of the consequences of leaving the employment. I understand that this offer is expected to last at least 12 months. If seasonal work is being offered, I understand that the 12 months may be satisfied by cumulative periods of seasonal work. In the event this position ends or I am laid off prior to working 12 months, I understand that I may be entitled to the Supplemental Job Displacement Benefit. <u>The employer will not be liable for the supplemental job displacement benefit, if I retire, am terminated for cause, or quit my regular, modified, or alternative work.</u> Commenter opines that the consequences of leaving the employment voluntarily or being terminated for cause must be clear to		different question than whether the offered work lasts 12 months. Whether the work actually lasts 12 months raises issues which can be addressed by a trier of fact.	

Supplemental Job Displacement Benefit	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	the injured worker.			
DWC Form 10133.36	Commenter makes the following recommendations: The check-box at the top of this form should be eliminated. This form should be optional, available, if necessary, and not simply a repetition of previous medical reports. The area provided for the description of restrictions should include standing, walking, and sitting. This form must provide an accurate assessment of actual work restrictions, as opposed to 'work preclusions' similar to the 1997 permanent disability rating schedule. The form should be revised and simplified to be consistent with and not redundant of the other physician reporting forms. The form can be used if the reporting physician has not provided the necessary information in the PR-3 or PR-4 or other permanent and stationary report. This form should also allow the	Michael McClain General Counsel California Workers' Compensation Institute May 31, 2013 Written Comment	Disagree. The form is a mandatory attachment. Agree. Disagree. This is unnecessary	No change. Standing, walking, and sitting have been added to the form. No change.

Supplemental Job Displacement Benefit	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	reporting physician to attach additional pages in order to fully describe the relevant work restrictions arising from the worker's impairment.		as there is a box on the form for clarification and another box to list other restrictions.	
	Commenter opines that the check-box on the first page is misleading and can only be checked in accordance with the reporting physician's knowledge of the condition(s). It is also likely to lead to unintended consequences. This form is a return to work and voucher form only. A "report" that the injured worker is permanent and stationary from all conditions could be used, inappropriately, to terminate TD benefits. Commenter opines that since too many physicians could not address this question correctly, it should be deleted.		Disagree. The form is for voucher purposes only; this is stated in the instructions of the form.	No change.
	Commenter states that it is important to make the use of Form 10133.36 optional. The return to work process should begin whenever the employer has adequate information to make the necessary determinations, whether they are based on the medical legal evaluator's report, a PR-3 or PR-4, or the Physician's Return to Work and Voucher Report.		Disagree. The form is mandatory per Labor Code section 4658.7.	No change.

Supplemental Job Displacement Benefit	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	Commenter opines that the problem with Form 10133.36 is that with regard to the SJDB the employer requires specific, accurate work restrictions before key decisions can be made. If the form is too restrictive, then the employee's impairment cannot be fully described and the form will be misleading and ineffective. There is considerable overlapping information with this form and the PR-3 and PR-4, yet the required information in these reports may be inconsistent. Commenter states that expecting the treating or the evaluating physician to reiterate this information on a different form is unnecessary.		Disagree. See above.	No change.