

Supplemental Job Displacement Benefit	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
9813.1 Form 10118	<p>Commenter questions the use in §9813.1 and Form DWC-AD 10118 of the word “between.” Commenter opines that it is unclear whether the use of “between” here is inclusive or exclusive of the starting and ending dates.</p> <p>Other uses of the word "between" [sections 204(a), 205.5(b), and 1703.1(b)] add the word "inclusive" following the time periods in order to clarify the exact time period. If the current language is maintained, commenter recommends adding the word "inclusive" following "December 31, 2012."</p> <p>Commenter states that a title on the form misspells “Occuring,” as it should read “Occurring.”</p> <p>Commenter states that the regulation uses the phrase “Between January 1, 2004 and December 31, 2012.” Commenter points out that the listing of the regulation on the DWC Proposed Regulations website still contains the former language “Occurring on or After January 1, 2004.” As the listing probably is not</p>	David Rockwell California Applicants’ Attorneys’ Association March 18, 2013 Written Comment	<p>Agree.</p> <p>Agree.</p> <p>Agree</p> <p>This comment is unrelated to the SJDB voucher regulations and therefore beyond the scope of the regulatory proceeding.</p>	<p>The regulations will state that it is “inclusive.”</p> <p>The regulations will state that it is “inclusive.”</p> <p>The misspelling has been corrected.</p> <p>No change.</p>

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	part of the regulation he opines that the discrepancy may be meaningless, but there should be conformity.			
10133.33(e)(5)	<p>Commenter is concerned that this provision requires the injured worker to expend his or her own funds for computer equipment, and then seeks reimbursement from the carrier. Commenter opines that such a requirement is unrealistic; most injured workers who have lost their jobs and are now unable to return to their pre-injury employment are unlikely to have such funds available to purchase computer equipment, given the more exigent needs of their families to pay housing, food and transportation costs. Commenter believes that this requirement is, in reality, a method of denying such equipment to injured workers.</p> <p>Commenter recommends that this subdivision be amended to require that the claim adjuster shall provide payment after receiving from the employee a written bid from a computer retail seller for the equipment; <i>payment can be made either directly to the retail seller</i></p>	David Rockwell California Applicants' Attorneys' Association March 18, 2013 Written & Oral Comment	<p>Disagree. 10133.33 (f) provides for a \$500 advance which can be used to purchase equipment. In contrast, the purchase of computer equipment is not provided as an advance. It is redeemable as a reimbursement. It does not effectively deny provision of equipment.</p> <p>Agree in part. This was later changed, see response on page 10 of Rulemaking Comments 3rd 15 day comment period.</p>	<p>No change.</p> <p>This was later changed, see Action on page 10 of Rulemaking Comments 3rd 15 day comment period.</p>

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	<p>or to the employee, who must provide copies of receipts documenting the purchase. A time limit of 20 days for this payment or reimbursement should be imposed. Commenter opines that the statutory language that requires the Administrative Director to adopt regulations governing the form of payment for the voucher, and believes that the AD has the both the authority and the responsibility to establish rules that will actually get these benefits to injured workers. Commenter believes this suggested change to be consistent with the intent of this section, which is to make certain workers receive the help they need to get back to work.</p>		<p>Agree in part. This was later changed, see response on page 10 of Rulemaking Comments 3rd 15 day comment period.</p>	<p>This was later changed, see Action on page 10 of Rulemaking Comments 3rd 15 day comment period.</p>
<p>10133.31(e)(6)</p>	<p>Commenter states that in order to provide the best opportunity to injured workers to benefit from this program, timeliness in providing payment should be of utmost importance and recommends that time limits be established for payments to the injured worker to assist him or her in using this benefit.</p> <p>Commenter recommends the addition of the following language:</p> <p>“The claims administrator shall issue</p>	<p>David Rockwell California Applicants’ Attorneys’ Association March 18, 2013 Written Comment</p>	<p>Agree in part. This was later changed, see response on page 10 of Rulemaking Comments 3rd 15 day comment period.</p> <p>Agree in part. This was later changed, see response on page 10 of Rulemaking Comments</p>	<p>This was later changed, see Action on page 10 of Rulemaking Comments 3rd 15 day comment period.</p>

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	the expense reimbursement or advance within 20 calendar days of receipt of the request.” Commenter notes that this will require a modification of §10133.31(I) so that payment of these expenses can be made as promptly as possible to enable the injured worker to begin his or her retraining as soon as possible.		3 rd 15 day comment period.	
Form DWC-AD 10133.32	<p>Commenter recommends, in accordance with his recommendations for change to §10133.33, that the instructions (Item5, p. 1) regarding computer equipment purchases be modified to incorporate our suggestions, namely, that payment be made in advance to the injured worker or the retail seller of the equipment, with appropriate documentation of purchase, to allow this expense to be of benefit to the injured employee.</p> <p>On page 2, commenter recommends that a bold or thick line be inserted between the section about the name and address of the Vocational Return-to-Work Counselor and the section about the Training Provider or School. Commenter opines that this visual separation will help injured workers understand that they have the separate</p>	David Rockwell California Applicants’ Attorneys’ Association March 18, 2013 Written Comment	<p>Agree in part. This was later changed, see response on page 10 of Rulemaking Comments 3rd 15 day comment period.</p> <p>Disagree. The instructions and the form are clear.</p>	<p>No change.</p> <p>No change.</p>

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	<p>rights to a Vocational Return-to-Work Counselor as well as to name the Training Provider or School. On the other hand, if a worker has already chosen a school, commenter fears that the lack of a clear separation may confuse the worker into thinking a Vocational Return-to-Work Counselor is needed before a school is chosen.</p> <p>Commenter further suggests that the form regarding the Training Provider or School Details on page 2 should be changed to remove the blanks for “Last Name/First Name/ MI.” Commenter opines that these have no meaning for the name of any Training Provider or School. Rather, the form should simply ask for “Name of Training Provider or School,” along with the address, city, state, etc.</p> <p>On Page 2, commenter suggests a change to the language about request “reimbursement for computer equipment, [etc.]” to conform to his earlier suggestions on payment by the carrier without requiring prepayment by the employee. This will entail a change at p. 4 of this form, to inform the worker that he or she must submit</p>		<p>Agree</p> <p>Agree in part. This was later changed, see response on page 10 of Rulemaking Comments 3rd 15 day comment period.</p>	<p>The form has been amended.</p> <p>This was later changed, see Action on page 10 of Rulemaking Comments 3rd 15 day comment period.</p>

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	<p>a written bid from a computer retail seller to the carrier, and the carrier must pay within 20 days of receipt of the bid or proof of payment.</p> <p>Commenter states that pages 3 and 4, contains two pages titled “Request for Miscellaneous Expenses.”</p> <p>Commenter opines that page 3 is clearly for the \$500 miscellaneous expenses reimbursement request. Commenter recommends that page 4 be clearly marked as “Request for Payment of Expenses for Computer Equipment.”</p> <p>Commenter opines that it be modified to reflect the other recommended changes for prepayment upon presentation of a written bid from a computer retail seller, with payment directly to the retail seller or to the worker, with a requirement for proof of payment by the worker. The name of the retail seller should be included, along with instructions to the worker to attach or include the written bid.</p>		<p>Disagree. Page 3 is for miscellaneous expenses while page 4 is for reimbursement of all other expenses, including computer equipment, tuition, fees, books, and tools, as detailed at the bottom of the page 4.</p> <p>Agree in part. This was later changed, see response on page 10 of Rulemaking Comments 3rd 15 day comment period.</p>	<p>No change.</p> <p>This was later changed, see Action on page 10 of Rulemaking Comments 3rd 15 day comment period.</p>
10133.34(b)(4)	Commenter recommends that where no offer of regular, modified or alternative work is available because the employee cannot “lawfully”	David Rockwell California Applicants’ Attorneys’	Disagree. This issue has been addressed by case law. <i>Del Taco v. WCAB (2000) 79 Cal. App.4th 1437.</i>	No change.

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	<p>perform such work, that should not excuse the requirement of the employer to provide a voucher. Commenter opines that an injured worker who was providing useful services to an employer, who may or may not have known of the worker's immigration status at the time of the injury, should not be further punished by reason of his or her injury by the failure to provide a voucher.</p> <p>This recommendation recognizes the significance and validity of Labor Code §1171.5, which states that “[a]ll protections, rights, and remedies available under state law, except any reinstatement remedy prohibited by federal law, are available to all individuals regardless of immigration status who have applied for employment, or who are or have been employed in this state.” [Labor Code §1171.5(a)] That section further states that “[f]or purposes of enforcing state labor and employment laws, a person's immigration status is irrelevant to the issue of liability,” and that, in general, “no inquiry shall be permitted into a person's immigration status” [Labor</p>	<p>Association March 18, 2013 Written Comment</p>	<p>Disagree. This issue has been addressed by case law. <u>See Del Taco v. WCAB (2000) 79 Cal. App.4th 1437.</u></p>	<p>No change.</p>

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Form DWC-AD 10333.35	<p>Code § 1171.5(b)]</p> <p>Commenter opines that the form’s caption should have capitalization conforming to other forms: For Injuries Occurring On or After 1/1/13.</p> <p>Commenter opines that SB863 did not change the language in Labor Code §4658.1 which defines “regular,” “modified,” and “alternative” work for the purposes of Article 3 (commencing with section 4650). Section 4658.1(f) provides that where work is offered at the same location and the same shift as the employment at the time of injury, the statutory condition that the work must be located within a reasonable distance of the employee’s is deemed waived. Commenter opines that this statutory language regarding the importance of returning the injured worker to the same shift demonstrates that the legislature intended that if the offer of work is not the same shift as the employment at the time of injury, the employee is not required to accept the offer.</p> <p>Commenter finds that the current form is confusing and does not clearly</p>	David Rockwell California Applicants’ Attorneys’ Association March 18, 2013 Written & Oral Comment	<p>Agree.</p> <p>Agree.</p> <p>Agree.</p>	<p>The form has been amended.</p> <p>The form has been amended.</p> <p>The form has been amended.</p>

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	<p>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.</p> <p>In order to clarify this, commenter recommends that the form be amended to adopt the language from page 4 of current form 10118, the Notice of Offer of Regular Work. This language clearly explains that the work being offered is at a different location and/or shift, and it gives the worker the opportunity to either accept the job or to object to the offer because of the different location and/or shift.</p>			
Form DWC-AD 10118	<p>Page 1 – Name of Job Commenter requests modification to allow for more characters</p> <p>Page 1 – Date job starts Commenter would like this to be a text field in order to add text such as “See Attached.” Commenter states that often the employer is able to offer a position absent a voluntary resignation and the date filed is not really applicable.</p> <p>Page 3 – Commenter states that there is no “Preparers name, signature and</p>	Debbie Freeman Freeman Rehabilitating Services March 19, 2013 Written & Oral Comment	<p>Agree.</p> <p>Disagree. If the field is inapplicable, it can be left blank.</p> <p>Disagree. The form provides fields to input this type of</p>	<p>The form has been amended.</p> <p>No change.</p> <p>No change.</p>

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	<p>ate” like there is on form DWC-AD 10133.53.</p> <p>Page 3 and 4 – Commenter requests addition of claim number and injured worker name to these pages since the injured worker needs to sign these pages in order to accept or decline the offer. Commenter states that most injured workers only mail back pages 3 and 4 of the form to the claims administrator and without the printed name and claim number the Claims Administrator has trouble deciphering the handwriting in order to identify the claim.</p>		<p>information.</p> <p>Disagree. The same information does not need to be repeated on all pages. On page 3, there is space for name and claim number.</p>	No change.
Form DWC-AD 10133.33	<p>Commenter states that because the form has not been turned on as a “fillable PDF document” that she has been unable to test the form for errors.</p> <p>Commenter suggests that the form be redone to capture more details. She provided the Division with examples (available upon request).</p>	Debbie Freeman Freeman Rehabilitation Services March 19, 2013 Written & Oral Comment	<p>Disagree. The form is fillable.</p> <p>Disagree. The form captures sufficient data and provides additional space for employer and employee comments..</p>	No change. No change.
Form DWC-AD 10133.53	Page 1 – Name of Job Commenter requests the division modify the form to allow for more characters in order to fill in the actual name of the job.	Debbie Freeman Freeman Rehabilitation Services March 19, 2013 Written & Oral	Agree.	The form has been amended.

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	<p>Page 1 – Date job starts Commenter would like this to be a text field in order to add text such as “See Attached.” Commenter states that often the employer is able to offer a position absent a voluntary resignation and the date filed is not really applicable.</p> <p>Page 2 – Actual Job Title Commenter requests that the Division revise the form to allow more character in order to fill in the actual name of the job.</p> <p>Page 2 – Wages Commenter would like the division to add “Yearly” to the option.</p> <p>Page 3 Commenter requests that the Division add the claim number and injured worker name to this page since the injured worker needs to sign this page in order to accept or decline the offer. Commenter states that most injured</p>	<p>Comment</p>	<p>Disagree. The employer or claims administrator is not prohibited from attaching additional documents and may leave the date field blank.</p> <p>Agree.</p> <p>Agree.</p> <p>Disagree. The same information does not need to be repeated on this page. There is sufficient information on page 3.</p>	<p>No change.</p> <p>The form has been amended.</p> <p>The form has been amended.</p> <p>No change.</p>

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	workers only mail back page 3 of the form to the Claims Administrator and without the printed name and claim number the Claims Administrator has trouble deciphering the handwriting in order to identify the claim.			
Form DWC-AD 10133.57	<p>Commenter requests that the division add a proof of service page like the Form DWC-AD 10133.32 has since claims administrators need to enforce the statute of limitations for forms issued after 1/1/13 on all DOI's.</p> <p>Page 2 - Commenter opines that the number and expiration date should be deleted as most training facilities do not have this. Commenter states that schools will now have to comply with AB 2296, Chapter 585, Statute of 2012 and RR 10133.58 and RR 10133.31. Commenter states that most, if not all, facilities do not have a provider number and expiration date.</p> <p>Page 3 - Commenter requests that the Division add the "dispute paragraph" like the on listed on page 2 of the new form DWC-AD 10133.32. Commenter also recommends the addition of the website link and the correct address to file a "Request for</p>	Debbie Freeman Freeman Rehabilitation Services March 19, 2013 Written & Oral Comment	<p>Disagree. This is unnecessary as the "Date Voucher Expires" has been added to the form.</p> <p>Agree. Only BPPE schools have provider numbers and expiration dates.</p> <p>Agree.</p>	<p>No change.</p> <p>Provider numbers and expiration date fields are now optional.</p> <p>The form has been amended.</p>

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	<p>Dispute Resolution.”</p> <p>Page 3 - Commenter requests the addition of an “information and assistance” office paragraph like the one listed on page 2 of Form DWC-AD 10133.32. Commenter requests the addition of “Answers to frequently asked questions about SJDB benefits and the link: http://www.dir.ca.gov/faqslist.html</p>		Agree.	The form has been amended.
Form DWC-AD 10133.55	<p>Commenter states that the prior Rules and Regulations outlining the Request for Dispute process were outlined in RR 10133.54. Commenter cites page 19 of the final Rules and Regulations dated September 2008. Commenter states that there is no section in the Emergency Rules and Regulations that was filed with the OAL on December 14, 2012 and effective January 1, 2013 for the “Request for Dispute Resolution process”.</p> <p>Page 3 – Commenter states that the summary of informal efforts to resolve dispute area does not “turn in to caps” once you are done typing up the information in the box.</p> <p>Page 3 – Commenter recommends</p>	Debbie Freeman Freeman Rehabilitation Services March 19, 2013 Written & Oral Comment	<p>Disagree. 10133.54 applies to injuries occurring on or after January 1, 2004.</p> <p>This is unnecessary.</p> <p>Agree.</p>	<p>No change.</p> <p>No change.</p> <p>The form has been</p>

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	adding the correct address to mail in the form and responses to the form. Additionally, commenter recommends that this address be added to the DIR/DWC/SJDB website.			amended.
Form DWC AD 10133.35	<p>Commenter dislikes the idea of having one form for both the regular work offers and permanent offers as different situations apply to the different offers. Commenter prefers to have “separate forms” for regular offers vs. modified or alternative offers. Commenter opines that the form will be confusing to injured workers.</p> <p>Pages 1: Name of Job: Commenter states the need to revise form to allow more characters for the actual name of the job. The line is longer than actually allows for typed characters.</p> <p>Page 1 - Date job starts: Commenter recommends that this be a text field to add items like: “See attached” as quite often the employer is able to offer a position absent a voluntary resignation and a date field is not really applicable.</p> <p>Page 1 – Claim phone number:</p>	Debbie Freeman Freeman Rehabilitation Services March 19, 2013 Written & Oral Comment	<p>Disagree. One form is easier for employers to use.</p> <p>Agree.</p> <p>Disagree.</p> <p>Agree.</p>	<p>No change.</p> <p>The form has been amended.</p> <p>No change.</p> <p>The form has been amended.</p>

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	<p>Commenter states that field does not work correctly. Commenter states that she needs to insert a text box in order to properly list a phone number.</p> <p>Page 1 – Claim number: Commenter states that field does not work correctly. Commenter states that she needs to insert a text box to properly list the claim number.</p> <p>Page 2 - Actual Job Title: Commenter recommends revision of form to allow more characters for the actual name of the job. The line is longer than actually allows for typed characters.</p> <p>Page 2 – The top of the page states “if the offer is for regular work skip this page”. Commenter opines that one still needs to fill out the actual job title, wages and address as some injured workers have a new “regular position” due to various circumstances. IE: Promotion, moved to a different position due to an employer downsizing due to the economy etc....</p> <p>Page 3 – Proof of service: There is one large box for the party who is mailing</p>		<p>Agree.</p> <p>Agree.</p> <p>Disagree.</p> <p>Agree.</p>	<p>The form has been amended.</p> <p>The form has been amended.</p> <p>No change.</p> <p>The form has been amended.</p>

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	<p>the document. There is only one small line to list out all of the parties and their addresses to confirm who is being mailed a copy of the document. Commenter opines that there is no room to list out an injured worker, employer, applicant attorney and defense attorney name, much less the address, if all four are applicable.</p> <p>Page 3 – Executed on: Commenter states that there needs to be a date field added.</p> <p>Page 4: Commenter recommends the addition of fields for a claim number and the injured workers name to the page that injured workers needs to sign to accept or decline the offer. The reason this would be helpful is because most injured workers will sign and date page 4 only and only return that one page to the Claims Administrators. This makes it very difficult for Claims Administrators to “decipher” the handwriting and identify the claim.</p> <p>Commenter states that the entire form does not convert to caps after you type in the information like the DWC AD</p>		<p>Disagree. There already is a date field.</p> <p>Disagree. The same information does not need to be repeated.</p> <p>Agree in part. All caps is not necessary.</p>	<p>No change.</p> <p>No change.</p> <p>No change.</p>

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	10133.53 form and point out the all of the fields are slightly off once the information is typed in.			
Form DWC AD 10133.32	<p>Commenter states that because this form has not been turned on to be a “fillable PDF document” she could not test the form for any errors.</p> <p>Page 2: Commenter requests that the Division add the “Answers to frequently asked questions about SJDB benefits and the link: http://www.dir.ca.gov/faqslist.html</p> <p>Page 2: Commenter requests that Division add the “dispute paragraph” from the website link to the form as well as the correct address to file a “Request for Dispute Resolution”.</p> <p>Page 4 – Proof of service: Commenter notes that there is one large box for the party who is mailing the document and that there is only one small line to list out all of the parties and their addresses to confirm who is being mailed a copy of the document. However, there is no room to list out an injured worker, employer, applicant attorney and defense attorney name, much less the address, if all four are</p>	Debbie Freeman Freeman Rehabilitation Services March 19, 2013 Written & Oral Comment	<p>Disagree. The form is fillable.</p> <p>Agree in part. Contact information for Information & Assistance has been added to the form.</p> <p>Agree.</p> <p>Agree.</p>	<p>No change.</p> <p>Contact information for Information & Assistance has been added to the form.</p> <p>The form has been amended.</p> <p>The form has been amended.</p>

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	applicable.			
Form DWC AD 10133.36	<p>Page 1: Commenter suggests the removal of “voucher report” at the top of the form as this is not a voucher report but a “Physician’s Return-To-Work” status on returning to regular, modified or alternative work.</p> <p>Page 1: Commenter recommends that all of the check the box options that a PTP, QME or AME are going to fill out should really match up exactly what is on the DWC AD 10133.33 form – Description of Employee’s Job Duties form.</p>	Debbie Freeman Freeman Rehabilitation Services March 19, 2013 Written & Oral Comment	<p>Disagree. The form is for voucher purposes.</p> <p>Disagree. The two forms have different purposes.</p>	<p>No change.</p> <p>No change.</p>
General Comment	<p>Commenter notes that there is nothing in the R&R to state that an injured worker is not entitled to a voucher if they voluntarily resigned and the employer is unable to offer a regular or permanent offer – this is especially important for small employers as they may need to hire someone quickly if an injured worker voluntarily resigns. Commenter opines that they should not be penalized for not being able to make an offer just because an injured work voluntarily resigned and they no longer have a position available. The RR touch on the injured workers who cannot lawfully perform a position –</p>	Debbie Freeman Freeman Rehabilitation Services March 19, 2013 Written & Oral Comment	<p>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 offered work lasts 12 months.</p>	<p>No change.</p>

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	but not for injured workers who voluntarily resign.			
	Commenter requests that the Division add in R&R for the Dispute process – refer to the DWC AD 10133.55 comments.	Debbie Freeman Freeman Rehabilitation Services March 19, 2013 Written Comment	Disagree. This is unnecessary. 10133.54 covers the dispute resolution process.	No change.
	Commenter would like for the Division to add a paragraph about offers not being mandatory on no lost time cases to follow the recent case law: City of Sebastopol v. WCAB (Braga), (2012) 77 CCC 783 which confirms the 15% increase / decrease is not applicable on no lost time claims.	Debbie Freeman Freeman Rehabilitation Services March 19, 2013 Written & Oral Comment	Agree.	10133.31(c) has been amended, <u>“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).”</u> will be added.
Form DWC AD 10133.35 And Form DWC AD 10133.57	Commenter states that while testing out the new forms she noted that the forms do not have protection or error messages that the former (old) forms did. Commenter also makes the following	Vicki Takahama Sr. Claims Assistant Disney Anaheim January 30, 2013 Written Comment	Agree.	The form has been amended.

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	<p>observations:</p> <ul style="list-style-type: none"> The phone number put commas in the format after you tabbed off the field 7,147,817,923 instead of 714 781-7923 Dates are no longer formatted MM/DD/YYYY. It will allow you to put in 1-1-13; 01-01-2013; 01/01/2013 – the format is not consistent throughout the form. Address now allow periods The forms no longer put everything into Capital format so whichever way you type it, is how it stays. 		<p>Agree.</p> <p>Agree.</p> <p>Disagree, these changes are not necessary.</p>	<p>The form has been amended.</p> <p>The form has been amended.</p> <p>No changes.</p>
9813.1	Commenter wants to confirm that the requirement to send out the Notice of Supplemental Job Displacement Benefit is now gone.	Tony Velasquez Senior Claims Examiner Adventist Health February 20, 2013 Written Comment	9813.1(a) has been repealed.	No change.
10133.31	Commenter believes the DWC must consider whether an exception to	Jeremy Merz California Chamber	Agree.	10133.31(c) has been amended, “An

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	<p>section 10133.31 should be made in cases where an injured worker either loses no time or returns to his or her regular job as defined by Labor Code section 4658.1(a) prior to becoming permanent and stationary. In light of the recent Court of Appeal decision, <i>City of Sebastopol v. WCAB (Braga)</i>, it would seem that the issuance of a job offer is unnecessary where an injured worker, at a minimum, did not lose any time due to an industrial injury. In these situations, the injured worker is already working at his or her regular job and, thus, does not need a retraining benefit. Commenter opines that requiring employers to go through the process outlined in section 10133.31 would add costs, administrative friction and potentially result in inappropriately providing retraining benefits to a worker who is already working at his or her regular job.</p> <p>Commenter recommends that the DWC add the following language to Section 10133.31:</p> <p><u>(c) An employee who has lost no time from work or has returned to the same</u></p>	<p>of Commerce</p> <p>Jason Schmelzer California Coalition on Worker's Compensation</p> <p>March 19, 2013 Written & Oral Comment</p>		<p><u>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)."</u></p>

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	<p><u>job for the same employer, is deemed to have been offered regular work in accordance with the criteria set forth in Labor Code section 4658(b).</u></p>			
10133.31	<p>Commenter states that under section 10133.31, employers now have 60 days from when they receive the Physician’s Return to Work and Voucher Report (Form DWC-AD 10133.36) to analyze the report and determine if they can offer an injured worker regular, modified or alternative work. Currently, the receipt of this report – regardless of its completeness - is dispositive of when the 60-day clock starts. Physician reports, however, are often incomplete and lack critical information needed by employers to determine whether a work offer can be made. When employers receive an incomplete report, they are forced to send the report back to the physician and wait until a complete report is provided – cutting into the 60 days they have to make a decision.</p> <p>Commenter opines that a simple and equitable solution exists for this issue: do not start the clock until a complete report is provided. Specifically, the</p>	<p>Jeremy Merz California Chamber of Commerce</p> <p>Jason Schmelzer California Coalition on Worker’s Compensation</p> <p>March 19, 2013 Written & Oral Comment</p>	<p>Disagree. Labor Code section 4658.7 was written with the intent that vouchers be provided earlier in the life of the claim so as to be viable for injured workers.</p>	

Supplemental Job Displacement Benefit	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>60-day time period should only begin once the employer receives Form DWC-AD 10133.36 from the primary treating physician, the agreed medical examiner, or the qualified medical examiner (the latter two as defined by Labor Code sections 4060-62) stating that:</p> <ol style="list-style-type: none"> 1. the injured worker's condition is permanent and stationary or reached maximum medical improvement; 2. the injured worker suffered some permanent partial disability; and 3. there are permanent work restrictions that are set out in the report. 			
10133.31; 10133.32; and 10133.60	<p>Commenter recommends that the Division should amend these sections so that there is consistency amongst all regulatory language referencing the voucher's expiration date. Commenter opines that the current inconsistent language creates uncertainty over the voucher's start date and will likely lead to litigation over whether a voucher has expired. Section 10133.31 uses the term "date furnished," Form DWC-AD 10133.32 uses the term "after receipt," and section 10133.60 uses the term "furnished." Commenter</p>	<p>Jeremy Merz California Chamber of Commerce</p> <p>Jason Schmelzer California Coalition on Worker's Compensation</p> <p>March 19, 2013 Written & Oral Comment</p>	<p>Agree in part. "Furnished" has been defined. "After receipt does not conform with Labor Code section 4658.7.</p>	<p>No change.</p>

Supplemental Job Displacement Benefit	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	request that the term “date issued” be used throughout the regulations when referencing the voucher’s start date.			
10133.34(b) and 10133.31(b)(1)	<p>Commenter states that under the proposed regulations employers must make a job offer within a 60 day timeframe. Specifically, the offer must be made after receipt of the Physicians Return to Work and Voucher Report (Form DWC-AD 10133.36) but before the 60 day limitation. Employers, however, should not be limited to this strict 60 day window. Commenter opines that if employers have already made an acceptable job offer prior to receiving Physicians Return to Work and Voucher Report (Form DWC-AD 10133.6), they should not be forced to go through the sham process of reoffering the job just to comply with the regulations. In this pre-report offer scenario an employee would receive the job offer well before the 60 day limit in the regulation. Commenter recommends that the DWC adopt the following changes:</p> <p>Section 10133.34(b):</p> <p>The injured employee shall be entitled to a supplemental job displacement</p>	<p>Jeremy Merz California Chamber of Commerce</p> <p>Jason Schmelzer California Coalition on Worker’s Compensation</p> <p>March 19, 2013 Written Comment</p>	Agree.	10133.34(b) and 10133.31(b)(1) have been amended to state “no later than 60 days”

Supplemental Job Displacement Benefit	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>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 within 60 days after receipt of Form [DWC-AD 10133.36 “Physician’s Return-to-Work & Voucher Report.”]</p> <p>Section 10133.31(b)(1)</p> <p>The offer is made no later than within 60 days after receipt by the claims administrator of the Physician’s Return-to-Work & Voucher Report (Form DWC-AD 10133.36).</p>			
10133.31	<p>Commenter is concerned that the regulations do not address what occurs when the physician’s report (Form DWC-AD 10133.36) is disputed by one of the parties. Section 10133.31 seems to indicate that the mere receipt of the Form DWC-AD 10133.36 triggers the 60-day clock to make an offer of regular, modified or alternative work. However, disputes over portions of the report vital to making a decision about regular, modified or alternative work could</p>	<p>Jeremy Merz California Chamber of Commerce</p> <p>Jason Schmelzer California Coalition on Worker’s Compensation</p> <p>March 19, 2013 Written & Oral Comment</p>	<p>Disagree. Labor Code section 4658.7 provides that vouchers should be provided unless the employer makes an offer no later than 60 days after “receipt” of the Physician’s Return-to-Work & Voucher Report.</p>	<p>No change.</p>

Supplemental Job Displacement Benefit	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>leave employers without enough information to fulfill their obligations within the 60-day window. Commenter believes that the DWC should provide direction in the regulations so that the parties understand how to address benefit eligibility when a vital piece of the Form DWC-AD 10133.36 is being disputed during the 60-day time period.</p>			
10133.31(b)(1) and 10133.34(b)	<p>Commenter opines that the proposed regulations do not appear to contemplate the employer's obligation to engage in the interactive process with disabled employees under federal and state disability discrimination law. As illustrated in the recent regulations adopted by the Fair Employment and Housing Commission, this process can extend over a period of time in excess of 60 days, particularly where the treating physician is not aware of all of the employee's abilities/disabilities. In recognition of this scenario, one option would be to direct that the voucher be issued 20 days after the expiration of the 60 day period in 10133.31(b)(1) and 10133.34(b) if no offer was made and the employer had not initiated the interactive process</p>	<p>Jeremy Merz California Chamber of Commerce</p> <p>Jason Schmelzer California Coalition on Worker's Compensation</p> <p>March 19, 2013 Written Comment</p>	<p>Agree in part. Labor Code section 4658.7 deals with vouchers in workers' compensation. The interactive process is a separate process and vouchers are not a substitute for federal and state disability obligations.</p>	<p>No change.</p>

Supplemental Job Displacement Benefit	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>during that 60 day period. If the parties are engaged in the interactive process the voucher would be issued 20 days at the conclusion of that process if no offer was made. Assuming the pending disability discrimination regulations are adopted, the “interactive process” would be defined pursuant to proposed 2 CCR 7293.6(j).</p>			
10133.33	<p>Commenter believes this form should be a tool to assist employers in developing a description of an injured worker’s job duties, but that use of this form should not be mandatory. Commenter suggests the following modification to the form’s “INSTRUCTIONS” section:</p> <p>This form <u>may be</u> developed jointly by the employer and employee injured worker and is intended to describe the employee’s job duties. The completed form <u>may be</u> reviewed to determine whether the employee is able to return to work.</p>	<p>Jeremy Merz California Chamber of Commerce</p> <p>Jason Schmelzer California Coalition on Worker’s Compensation</p> <p>March 19, 2013 Written Comment</p>	<p>Agree. 10133.33 indicates that the “physician <i>may</i> be sent Form DWC – AD 10133.33. (emphasis added). The form is optional.</p>	<p>No change.</p>
10133.31(e)(3)	<p>This section refers to “licensed placement agencies.” Commenter is not familiar with this category of “placement agencies.” If placement agencies are not in fact licensed,</p>	<p>Jeremy Merz California Chamber of Commerce</p> <p>Jason Schmelzer</p>	<p>Disagree. “licensed placement agencies” and “vocational or return to work counseling” is in Labor Code section 4758.7(e)(3). DWC does not</p>	<p>No change.</p>

Supplemental Job Displacement Benefit	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	commenter opines that some other qualification should be developed. Additionally, the reference to “vocational or return to work counseling” should be VRTWC as that is defined earlier.	California Coalition on Worker’s Compensation March 19, 2013 Written Comment	have the authority to develop qualifications that contradict the Labor Code.	
10133.34 (b)(4)	Commenter states that the reference to whether an employee can “lawfully” perform the work is unclear. Commenter requests that this be clarified.	Jeremy Merz California Chamber of Commerce Jason Schmelzer California Coalition on Worker’s Compensation March 19, 2013 Written Comment	Disagree. This issue has been addressed by case law. <i>Del Taco v. WCAB (2000) 79 Cal. App.4th 1437.</i>	No change.
10116.9(e)	Commenter states that the term “essential job functions” has a well-developed meaning in the context of federal and state disability law. Commenter opines that the proposed definition was borrowed from that body of law but that it fails to recognize this is a non-exhaustive list. Commenter requests that clarification be added.	Jeremy Merz California Chamber of Commerce Jason Schmelzer California Coalition on Worker’s Compensation March 19, 2013 Written Comment	Disagree. This definition was not changed as part of this regulatory package; it is unnecessary.	No change.
General Comment	Commenter states that the administrative director has done well to translate the statutory components	Michael McClain General Counsel CWCI	No comment necessary.	No change.

Supplemental Job Displacement Benefit	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>of the Supplemental Job Displacement Benefit into a workable regulatory scheme to provide the benefit earlier in the process for those workers who cannot return to their job; to state the specific programs, equipment, and tools available; to establish the time limit for the use of the voucher; and to preclude the settlement of it. Commenter opines that in certain areas, the division has stopped short of eliminating inconsistencies or clarifying ambiguities, while staying within the letter of the law but the regulator is constrained to craft rules that implement both the letter and the spirit of the law. Commenter’s suggestions are intended to bring additional clarity and efficiency to the process.</p>	<p>Written Comments March 19, 2013</p>		
10116	<p>Commenter opines that the reference to “physician” throughout the regulations needs to be changed to “the primary treating physician, qualified medical examiner or agreed medical examiner” to identify more precisely the physician who has the authority and responsibility to prepare the required forms and reports, and to be consistent with the pre-2013 regulations.</p>	<p>Michael McClain General Counsel CWCI Written Comments March 19, 2013</p>	<p>Disagree. Form DWC – AD 10133.36’s instructions discuss who is responsible for filling out the Physician’s form.</p>	<p>No change</p>

Supplemental Job Displacement Benefit	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>Commenter suggests the following revisions:</p> <p>(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 <u>the primary</u> 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.</p> <p>Commenter suggests the following revisions:</p> <p>(t) "Work restrictions" means permanent medical limitations on employment activity established by the <u>primary</u> treating physician, qualified medical examiner or agreed medical examiner</p>			
10117(c)	<p>Commenter suggests the following revisions:</p>	<p>Michael McClain General Counsel CWCI</p>	<p>Disagree. Form DWC – AD 10133.36’s instructions discuss who is responsible for filling</p>	<p>No change.</p>

Supplemental Job Displacement Benefit	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>Section 10117(c) If the claims administrator relies upon a permanent and stationary date contained in a medical report prepared by the employee's <u>primary</u> treating physician, QME, or AME, but there is subsequently a dispute as to an employee's permanent and stationary status ...</p>	<p>Written Comments March 19, 2013</p>	<p>out the Physician's form.</p>	
<p>Form DWC AD 10133.33</p>	<p>Commenter suggests the following revisions:</p> <p>Section 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 <u>primary treating physician, qualified medical examiner or agreed medical examiner</u> may be sent Form [DWC- AD 10133.33, "Description of Employee's Job Duties."]</p> <p>Commenter states that the references to this form in the regulations need to conform to this revision: Sections 10133.31(1)(A) and 10133.34</p> <p>Commenter states that the current</p>	<p>Michael McClain General Counsel CWCI Written Comments March 19, 2013</p>	<p>Agree in part. Form DWC – AD 10133.36's instructions discuss who is responsible for filling out the form.</p>	<p>DWC-AD 10133.36 has been amended: "The physician must be either the primary treating physician, a Qualified Medical Evaluator, or the Agreed Medical Evaluator."</p>

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	<p>proposed regulations do not make it clear that only the authorized primary treating physician, qualified medical examiner or agreed medical examiner, can prepare the necessary medical reports and forms supporting the eligibility for the SJDB. The simple reference to “the physician” could be construed to mean any physician or any physician providing treatment. The term “primary treating physician” is defined in the statute and is, essentially, a term of art. Labor Code section 4658(b)(1) states that the offer is to be made within 60-days of the receipt of the first report from the primary treating physician, agreed medical examiner, or qualified medical examiner. Commenter opines that his level of specificity is required to avoid disputes and delays.</p>			
Form DWC AD 10133.36	<p>Commenter suggests the following revisions:</p> <p>Form 10133.36 – Physician’s Return to Work and Voucher Report Recommendation Form 10133.36 – Physician’s Return to Work and Voucher Report <u>of the Primary Treating Physician, Qualified</u></p>	<p>Michael McClain General Counsel CWCI Written Comments March 19, 2013</p>	<p>Disagree. Form DWC – AD 10133.36’s instructions discuss who is responsible for filling out the form.</p>	<p>No change.</p>

Supplemental Job Displacement Benefit	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p><u>Medical Examiner or Agreed Medical Examiner</u></p> <p>Commenter states that the references to this form in the regulations need to conform to this revision: Sections 10133.31(1)(A) and 10133.34</p> <p>Commenter states that the current proposed regulations do not make it clear that only the authorized primary treating physician, qualified medical examiner or agreed medical examiner, can prepare the necessary medical reports and forms supporting the eligibility for the SJDB. The simple reference to “the physician” could be construed to mean any physician or any physician providing treatment. The term “primary treating physician” is defined in the statute and is, essentially, a term of art. Labor Code section 4658(b)(1) states that the offer is to be made within 60-days of the receipt of the first report from the primary treating physician, agreed medical examiner, or qualified medical examiner. Commenter opines that his level of specificity is required to avoid disputes and delays.</p>			
10117(b)	Commenter suggests the following	Michael McClain	Agree.	10117(b) has been

Supplemental Job Displacement Benefit	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>revisions:</p> <p>Section 10117(b) -- Offer of Work; Adjustment of Permanent Disability Payments Recommendation</p> <p>(b) Within 60 calendar days from the date that the <u>employer has knowledge that the</u> condition of an injured employee with permanent partial disability becomes permanent and stationary: ...</p> <p>Commenter opines that the situation created by a literal reading of the statute and never addressed by the regulations is that 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. This Catch 22 leads to absurd results and the WCAB has addressed such an anomaly arising from different areas of the statute. In numerous Board Panel Decisions, the WCAB has harmonized the statute and set forth a rationale that triggers the 60-day period from “knowledge of the permanent and stationary date”.</p>	<p>General Counsel CWCI Written Comments March 19, 2013</p>		<p>amended. “(b) Within 60 calendar days from the date that the <u>employer has knowledge that the</u> condition of an injured employee with permanent partial disability becomes permanent and stationary ...”</p>

Supplemental Job Displacement Benefit	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p><u>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).</u></p> <p>Commenter opines that section 10133.31 should clarify that if the injured worker lost no time from work due to the industrial injury or returned to his regular job prior to the permanent and stationary report, then the Supplemental Job Displacement Benefit (SJDB) does not apply and no formal return-to-work offer need be made.</p> <p>Commenter states that the statute presents an either or proposition for employers: either make a job offer within the statutory criteria or provide the voucher for retraining. But if an injured worker requires neither of those tools because he has, in fact, lost no time from work or has returned to his job with his current employer, then the worker is not eligible for the benefit and the regulations should state that clearly.</p>			<p><u>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).</u></p> <p>will be added.</p>
10133.34(b)(3)	Commenter suggests the following	Michael McClain	Disagree. Whether the	No change.

Supplemental Job Displacement Benefit	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>revisions:</p> <p>Section 10133.34(b)(3) – Offer of Work (3) The offer of regular, modified, or alternative work must be for work lasting at least 12 months. <u>An employer or claims administrator shall not be liable for the supplemental job displacement benefit pursuant to Section 4658.5, if the employee retires, is terminated for cause, or voluntarily terminates his or her regular work, modified work, or alternative work/employment.</u></p> <p>Commenter opines that the consequences of leaving the employment voluntarily or for termination for cause needs to be clear to the injured worker.</p>	<p>General Counsel CWCI Written Comments March 19, 2013</p>	<p>employee actually works for at least 12 months is a different question than whether the offered work lasts 12 months.</p>	
<p>Form DWC AD 10133.32</p>	<p>Commenter suggests the following revisions:</p> <p>Form 10133.32 – Non-Transferable Voucher Form In the last sentence of this section add: “This voucher must be used before it expires <u>(2 years after it is provided or 5 years from the date of your injury,</u></p>	<p>Michael McClain General Counsel CWCI Written Comments March 19, 2013</p>	<p>Disagree. This is unnecessary The expiration date should be filled in when the employee receives the form.</p>	<p>No change.</p>

Supplemental Job Displacement Benefit	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<u>whichever is later).</u>			
Form DWC AD 10133.33	<p>Commenter suggests the following revisions:</p> <p>Form 10133.33 – Description of Job Duties</p> <p><u>Add: NOTICE TO THE PARTIES</u></p> <p><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></p> <p><u>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.</u></p> <p>Commenter states that the employee should be advised that the job description must be signed within a reasonable period (10 days after receipt) and that if a dispute occurs the</p>	<p>Michael McClain General Counsel CWCI Written Comments March 19, 2013</p>	<p>Disagree. The job duties form is optional.</p>	<p>No change.</p>

Supplemental Job Displacement Benefit	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>employee may request assistance from the AD or the Information and Assistance Office.</p> <p>Commenter opines that Form 10133.33 is suitable for an offer of regular work and can be completed before the permanent and stationary report. For an offer of modified or alternative work, the employer must await the description of the employee's physical limitations before an appropriate offer of re-employment can be made. Commenter recommends that a separate form be created for that purpose.</p>		Disagree. The form is optional.	No change.
Form DWC AD 10133.35	<p>Commenter recommends that the claims administrator type for employer should read "<u>Self-Insured Employer</u>."</p> <p>If employers are required to use this form when the injured worker has lost no time from work or has returned to work to his regular job, commenter believes that needs to be addressed in the area for the "Date job starts".</p> <p>On page 3 of the form, there is a reference to "proof of service by</p>	Michael McClain General Counsel CWCI Written Comments March 19, 2013	<p>Agree.</p> <p>Disagree. The proof of service is added at the bottom of the</p>	10133.31 (c) <u>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</u>

Supplemental Job Displacement Benefit	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>mail,” which commenter opines should be eliminated or made optional because it serves no useful purpose and simply adds more paper to the system.</p> <p>On page 4, where the injured worker is advised regarding the consequences of quitting his position, commenter recommends that 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 SJDB voucher at that time.</p>		<p>third page which does not add any more pages to the form.</p> <p>Agree.</p>	<p><u>accordance with the criteria set forth in Labor Code section 4658(b).</u></p> <p>will be added.</p>
Form DWC AD 10133.36	<p>Commenter opines that this form must provide an accurate assessment of actual work restrictions, as opposed to ‘work preclusions’ as outlined in the 1997 permanent disability rating schedule. The form should be revised to be consistent with the other physician reporting forms. It should be an optional form, available, if necessary, and not simply a redundant review of previous medical reports. The form can be used only if the reporting physician has not provided the necessary information in the PR-3 or PR-4 or other permanent and stationary report.</p>	<p>Michael McClain General Counsel CWCI Written Comments March 19, 2013</p>	<p>Agree in part. The form will include information from the functional capacity assessment contained in the PR-4.</p>	<p>The form now includes a field to “Describe in what way the impaired activities are limited”, and several activities have been added to the form.</p>

Supplemental Job Displacement Benefit	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>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. There is considerable overlapping information with this form and the PR-3 and PR-4, yet the required information in these reports is inconsistent. Requiring the treating physician or the evaluating physician to reiterate this information on a different form may be unnecessary and redundant. It is likely, as well, that the reporting physician will seek payment for this redundant activity, which will needlessly add cost to the system.</p> <p>Until all physicians use the form, employers must rely on the PR-3 or PR-4 to establish the permanent work restrictions at the earliest date. The evaluation of permanent work restrictions must, therefore, be consistent. Even when the form is in general use, the employer will have to address MMI reports from the PQME or AME that may include permanent work restrictions. It is also important</p>			

Supplemental Job Displacement Benefit	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	to clarify that the use of Form 10133.36 is optional. The process should be allowed to begin whenever the employer has adequate information to make these 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. The audit unit should not be allowed to penalize the claims administrator for failing to use the RTW Report.			
General Comment	Commenter is in general agreement with these proposed regulations. His only serious concern is the absence of language to stop the clock should a dispute arise during the time periods allowed for making the Offer of Work or sending the Voucher.	Steven Suchil Assistant Vice President/Counsel American Insurance Group March 19, 2013 Written Comment	Disagree. Labor Code section 4658.7 provides that vouchers should be provided unless the employer makes an offer no later than 60 days after "receipt" of the Physician's Return-to-Work & Voucher Report.	No change.
10133.31	Commenter recommends adding subdivision (c) to state that if an employee has lost no time and has continued at or returned to the same job for the same employer, the employee should be deemed to have been offered regular work in accordance with Labor Code Sec. 4658 (b). Commenter does not believe the Legislature intended that the	Steven Suchil Assistant Vice President/Counsel American Insurance Group March 19, 2013 Written Comment	Agree.	10133.31 (c) <u>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</u>

Supplemental Job Displacement Benefit	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>voucher for re-training should be offered in this scenario.</p> <p>Commenter recommends the following change to subdivision (e) (5):</p> <p><u>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 necessary for training, job search, or actual job duties of up to one thousand dollars (\$1 ,000) reimbursable after cost is incurred and submitted with appropriate documentation. The employee shall not be entitled to reimbursement for purchase of games, smartphones or any entertainment media.</u></p> <p>Commenter also believes that provision needs to be made in the regulation for disputes that may arise regarding the job offer. Commenter suggests that should a dispute arise, the 20 day period to issue the Voucher be stopped and restarted upon resolution of the dispute, if</p>		<p>Disagree. Labor Code section 4658.7 provides that the voucher may be applied to the purchase of computer equipment while the purchase of tools must be required by a program in which the employee is enrolled.</p> <p>Disagree. Labor Code section 4658.7 provides that vouchers should be provided unless the employer makes an offer no later than 60 days after “receipt” of the Physician’s Return-to-Work & Voucher Report.</p>	<p><u>criteria set forth in Labor Code section 4658(b).</u></p> <p>will be added.</p> <p>No change.</p> <p>No change.</p>

Supplemental Job Displacement Benefit	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>appropriate.</p> <p>Commenter also suggests adding the need for the voucher recipient to identify their training goal so that the need for computers and tools can be validated as job or training related. Should the Division accept this suggestion "Training Goal" would need to be added to the Voucher Form.</p>		<p>Disagree. Labor Code section 4658.7 provides that the voucher may be applied to the purchase of computer equipment while the purchase of tools must be required by a program in which the employee is enrolled.</p>	<p>No change.</p>
<p>Form DWC AD 10133.33</p>	<p>Commenter opines that this form should include a notice to the employee that if the Job Description is not completed and returned in a reasonable period of time, 10 to 14 days from receipt, the return to work process cannot proceed. Commenter recommends that language be consistent with that found in the proposed Notice of Work Offer for Injuries Occurring on or after January 1, 2013</p>	<p>Steven Suchil Assistant Vice President/Counsel American Insurance Group March 19, 2013 Written Comment</p>	<p>Disagree. The form is optional.</p>	<p>No change.</p>
<p>Form DWC AD 10133.35</p>	<p>Commenter opines that the regulation needs to provide direction regarding disputes that may arise over the Permanent and Stationary Status and Work Capacity determination identified by the Primary Treating Physician or later by the QME and or AME. If a dispute occurs, the time for</p>	<p>Steven Suchil Assistant Vice President/Counsel American Insurance Group March 19, 2013 Written Comment</p>	<p>Disagree. Labor Code section 4658.7 provides that vouchers should be provided unless the employer makes an offer no later than 60 days after "receipt" of the Physician's Return-to-Work & Voucher Report.</p>	<p>No change.</p>

Supplemental Job Displacement Benefit	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	the job offer should not start. If the form has already been forwarded to the employer the time to offer work should stop and be restarted at day one when the disputes are resolved.			
Form DWC AD 10133.36	<p>Commenter opines that the Functional Capacity Assessment on the PR 4 is more comprehensive and would give more information to an employer in determining whether to offer work. Using the PR 4 document would have an added advantage for physicians in that they would not have an additional form to fill out.</p> <p>Commenter requests that if the decision is made to continue with the proposed form , that on page one, just above the Physician's name, they are asked to opine on the following: "Are the Work Duties compatible with the activity restrictions set forth in the provided job description?"</p> <p>Activity <u>restrictions</u> (emphasis added) are not set forth in the Job Description only. Commenter suggests that alternative language may be appropriate, such as, "Are the Work Duties compatible with the activity restrictions you have imposed?"</p>	<p>Steven Suchil Assistant Vice President/Counsel American Insurance Group March 19, 2013 Written Comment</p>	<p>Disagree. Labor Code section 4658.7 provides that the form is mandatory.</p> <p>Disagree. Labor Code section 4658.7(b)(1)(A) provides that If the employer or claims administrator has provided the physician with a job description of the employee's regular work, proposed modified work, or proposed alternative work, the physician shall evaluate and describe in the form whether the work capacities and activity restrictions are compatible with the physical requirements set forth in that job description.</p>	<p>No change.</p> <p>No change.</p>

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	<u>(o) “Physician” means the injured employee’s primary treating physician, an agreed medical evaluator, or a qualified medical evaluator.</u>			
10133.31	<p>Commenter states that this section provides that if an employer does not offer regular, modified, or alternative work and the injury causes partial permanent disability, the employee is entitled to the SJDB voucher. The proposed regulations do not address whether the employer is required to send a regular job offer to an employee whose injury has caused partial permanent disability but who has not lost any time from work. In addition, they do not address whether a regular job offer is required if the employee has returned to work for the employer performing the same job he/she had at the time of injury prior to the claims administrator’s receipt of the Physician’s Return-to-Work & Voucher Report (Form DWC-AD 10133.36). Commenter opines that failure to address these specific situations may cause unnecessary litigation and may increase the claims administrator’s liability.</p>	<p>Peggy Thill Claims Operations Manager SCIF March 19, 2013 Written Comment</p>	<p>Agree.</p>	<p>10133.31 <u>(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(b).</u></p> <p>will be added.</p>

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	<p>Commenter recommends that the DWC specifically address whether a job offer is required on no lost time claims or on claims where the employee has returned to work for the employer performing the same job he/she had at the time of injury prior to the claims administrator's receipt of the Physician's Return-to-Work & Voucher Report.</p> <p>If the DWC determines that a regular job offer is not required on no lost time claims, commenter recommends that the regulations address what employers and claims administrators are required to do if they cannot continue to offer work to the employee for a 12-month period.</p>			
Form DWC AD 10133.35	<p>Commenter states that section 10133.34(b)(2) provides that regular, alternative, or modified work offered by the employer must be located within a "reasonable commuting distance of the employee's residence at the time of the injury, unless the employee waives this condition." It further provides that the condition will be deemed waived if the employee accepts the job offer and does not object to the location within "20</p>	<p>Peggy Thill Claims Operations Manager SCIF March 19, 2013 Written Comment</p>	<p>Agree.</p>	<p>The form has been edited.</p>

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	<p>calendar days of being informed of the right to object.”</p> <p>While DWC-AD 10133.35 advises the employee he/she has 30 calendar days from receipt of a regular, modified, or alternative job offer to accept or reject it, the form does not advise the employee of his/her right to object to the job location if it is different from his/her pre-injury work location.</p> <p>Commenter recommends adding language similar to the language currently found in DWC-AD 10118 “Notice of Regular Work” to DWC-AD 10133.35:</p> <p><u>The location of the job being offered must be within a reasonable commuting distance from your residence at the time of injury. If the job offered is at a different location than the location of your pre-injury job and you believe the commuting distance between your residence at the time of injury and the new job location is not reasonable, you have 20 days to object to the job offer as not being within a reasonable commuting distance.</u></p>			

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	<p><u>You may also waive this commuting distance requirement. You will be considered to have waived this requirement if you accept the above offer of work or you do not object to the location within twenty calendar days of receipt of this notice. You should keep a copy of this form for your records.</u></p>			
Form DWC AD 10133.35	<p>Commenter states that this form advises the employee that if he/she accepts a regular, modified, or alternative job offer but voluntarily quits prior to working in the position for 12 months, he/she may not be entitled to SJDB. The proposed form does not advise the injured employee of his/her potential eligibility for the benefit if the employer is unable to offer the position for 12 months.</p> <p>Commenter recommends adding the following language to page 4 of DWC-AD 10133.35:</p> <p><u>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</u></p>	Peggy Thill Claims Operations Manager SCIF March 19, 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 the offered work lasts 12 months.	No change.

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	<p><u>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></p>			
10133.31 and 10133.34	<p>These two sections, titled <i>"Requirement to Issue Supplemental Job Displacement Nontransferable Voucher for Injuries Occurring on or After January 1, 2013"</i> and <i>"Offer of Work for Injuries Occurring on or After January 1, 2013"</i> contain duplicative requirements regarding the timeframes to act upon receipt of the Physician's Return-to-Work & Voucher Report, the qualifying requirements for a job offer, and the employee's entitlement to a voucher if a qualifying offer cannot be made. Such duplication is confusing and unnecessary. Commenter opines that these provisions should be merged to outline a clear process for action upon receipt of the physician's report.</p>	<p>Peggy Sugarman Workers' Compensation Director CCSF Department of Human Resources March 19, 2013 Written Comment</p>	<p>Agree in part. 10133.31 deals with vouchers and 10133.34 deals with offers, they will be amended so as not to be duplicative.</p>	<p>10133.31 and 10133.34 have been amended to avoid duplication.</p>
10133.31 and 10133.34	<p>Commenter states that labor code §4658.7 specifies that injured employees with permanent partial disability are entitled to a supplemental job displacement benefit where the employer is not able to</p>	<p>Peggy Sugarman Workers' Compensation Director CCSF Department of Human Resources</p>	<p>Agree.</p>	<p>The regulations will be amended to "first report."</p>

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	<p>make a qualified offer of employment within 60 days of receipt of the first report received from either the primary treating physician, the AME, or the QME finding that the disability from all conditions for which compensation is claimed has become permanent and stationary. Commenter opines that the implementing regulations should also specify that the triggering event is the receipt of the first Physician's Return-to-Work & Voucher Report. This will provide clarification in such instances where there are multiple opinions about the employee's medical status, and/or where the employee disagrees and decides to select a new treating physician.</p> <p>Commenter is confident that there will be multiple avenues of dispute over the injured employee's medical status, but the statutory language is clear on this point.</p>	<p>March 19, 2013 Written and Oral Comment</p>		
<p>Form DWC AD 10133.55</p>	<p>Commenter opines that this form should be eliminated.</p> <p>Commenter states that the proposed regulations retain a process for the parties to resolve a dispute where</p>	<p>Peggy Sugarman Workers' Compensation Director CCSF Department of Human Resources</p>	<p>Disagree. The Return-to-Work unit can handle Dispute Resolutions more efficiently than WCJs. If a hearing is needed, a WCJ can hear the matter.</p>	<p>No change.</p>

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	<p>parties disagree on the following: the employee's entitlement to a voucher; the amount of the voucher; the failure to pay a training provider; the employee's objection to the new job duties provided by the employer; and the employer's objection to the amount of reimbursement approved or denied.</p> <p>For the supplemental job displacement benefit, Labor code §4658.7(h) sets forth the authority of the administrative director for the administration of this section which governs vouchers for dates of injury on or after 1/1/2013. This language requires the administrative director to adopt regulations for the administration of this section <u>"including but not limited to"</u> the adoption of regulations governing the time, manner and content of notices of rights, and the mandatory attachment to a medical report to inform the employer of the employee's work capacity.</p> <p>Commenter opines there is arguably some leeway for the administrator to include a dispute resolution process as part of the "not limited to" language,</p>	<p>March 19, 2013 Written & Oral Comment</p>		

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	<p>there is no specific support for the creation of an administrative dispute resolution process nor is there any clarity on the legal effect of these decisions on the WCAB. Commenter states that the proposed process appears to be an artifact of the administrative system formerly used to resolve disputes under the mandatory vocational rehabilitation program, now eliminated. In that system, the "rehabilitation unit" was a creation of former labor code §139.5, and the administrative processes were statutorily authorized. That is not the case here.</p> <p>Given that there has been a large increase in employer assessments to cover other administrative processes, commenter believes that this process is burdensome and unnecessary. Disputes regarding supplemental job displacement vouchers are more properly handled as part of the overall settlement process overseen by a workers' compensation judge. As a practical matter, they are often resolved in this exact manner.</p>			