

State of California
DEPARTMENT OF INDUSTRIAL RELATIONS
Division of Workers' Compensation

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

Subject Matter of Regulations: Return to Work

TITLE 8, CALIFORNIA CODE OF REGULATIONS
SECTIONS 10002, 10003

NOTICE IS HEREBY GIVEN that the Acting Administrative Director of the Division of Workers' Compensation, pursuant to the authority vested in her by Labor Code sections 59, 133, and 4603.5, proposes to modify the text of the following proposed amendments to Title 8, California Code of Regulations:

Section 10002	Offer of Work; Adjustment of Permanent Disability Payments;
Section 10003	Form DWC AD 10003 Notice of Offer of Work;

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

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

Written comments should be addressed to:

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

The Division's contact person must receive all written comments concerning the proposed modifications to the regulations no later than **5:00 p.m. on Monday August 7, 2006**. Written comments may be submitted by facsimile transmission (FAX), addressed to the contact person at (510) 286-0687. Written comments may also be sent electronically (via e-mail), using the following e-mail address: dwcrules@hq.dir.ca.gov.

AVAILABILITY OF TEXT OF REGULATIONS AND RULEMAKING FILE

Copies of the original text and modified text with modifications clearly indicated, and the entire rulemaking file, are currently available for public review during normal business hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays, at the offices of the Division of Workers' Compensation. The Division is located at 1515 Clay Street, 17th Floor, Oakland, California.

Please contact the Division's regulations coordinator, Ms. Maureen Gray, at (510) 286-7100 to arrange to inspect the rulemaking file.

The specific modifications proposed include changes to the text of the proposed amendments Title 8, California Code of Regulations:

Section 10002	Offer of Work; Adjustment of Permanent Disability Payments;
Section 10003	Form DWC AD 10003 Notice of Offer of Work;

DOCUMENTS SUPPORTING THE RULEMAKING FILE

- Comments from various interested parties concerning the regulations have been added to the rulemaking file.

FORMAT OF PROPOSED MODIFICATIONS

Proposed Text Noticed for the 45-Day Comment Period:

The text is indicated by underlining, thus: underlined language.

Proposed Text Noticed for the First 15-Day Comment Period on Modified Text:

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

Additions to the regulatory text, as proposed in October 2005, are indicated by a double underline, thus: added language.

Proposed Text Noticed for the Second 15-Day Comment Period on Modified Text:

Deletions from the regulatory text, as proposed in February 2006, are indicated by double strike-through in italics, thus: ~~*deleted language*~~.

Additions to the regulatory text, as proposed in February 2006, are indicated by double underline in italics, thus: *added language*.

Proposed Text Noticed for the Third 15-Day Comment Period on Modified Text:

Deletions from the regulatory text, as proposed on April 2006, are indicated by double underline double strikethrough italics, thus: ~~*deleted language*~~.

Additions to the regulatory text, as proposed in April 2006, are indicated by double underline in the Arial font, thus: added language.

Deletions from Form 10003, as proposed in April 2006, are indicated by double underline double strikethrough 12 point Arial font (larger than the 10 point font), thus: ~~*deleted language*~~.

Additions to Form 10003, as proposed in April 2006, are indicated by double underline 12 point Arial font (larger than the 10 point font), thus: deleted language.

Proposed Text Noticed for This Fourth 15-Day Comment Period on Modified Text:

Deletions from the regulatory text, as proposed on May 2006, are indicated by double underline double strikethrough bold, larger font size, thus: ~~**deleted language**~~.

Additions to Form 10003, as proposed in May 2006, are indicated by double underline bold italic larger Arial font (larger than the 10 point font), thus: ***added language***.

SUMMARY OF PROPOSED CHANGES

Modifications to Section 10002

Offer of Work; Adjustment of Permanent Disability Payments subdivision (g) (2)

Changes were made to Section 10002 (g)(2) in order to remove redundant language: “where the previous employment was for seasonal work”.

The proposed text states:

(g)(1) the employee was hired for ~~on a~~ seasonal work ~~basis, as a daily hire, or as a project hire~~ prior to injury;

(2) the offer of regular, modified or alternative *seasonal* work is ~~on a similar seasonal basis of reasonably similar wages, hours and working conditions~~ to the employee's previous employment, and ~~where the previous employment was for seasonal work~~ **work** ~~on a seasonal basis, as a daily hire, or as a project hire, the one year requirement may be satisfied by cumulative periods of seasonal work;~~

At page 1 of DWC-AD Form 10003, “your” and “the” were added to the following sentence to improve the syntax: “...you are able to return to your usual occupation or the position you held at the time of your injury...”

Additionally, the sentence: “You must return the completed form to the employer or claims administrator listed here: _____” was added to advise the employee what to do with the form and to ensure the employee has the mailing address.

Also, language was changed in order to account for the situation where between the injury and the time Form 10003 is completed and sent, there has been a change in the employee’s pay, such as cost of living increase or merit increase, but still comply with the statutory requirement of “equivalent wages and compensation.” The proposed text states:

This position is expected to last ~~for a total of~~ for at least 12 months of work. If this position does not last ~~for a total of at least~~ 12 months of work, you may be entitled to an increase in your permanent disability benefit payments.

This position provides wages and compensation of \$ _____, that are ~~no less than equivalent to~~ equivalent to or more than the wages and compensation paid to you at the time of your injury.

At page 2 of DWC-AD Form 10003, an explanation was added advising the employee when the form must be returned and the consequences of failing to return to form. The new section is as follows:

The employee must accept, reject, or object to this offer for regular work and return this form to the employer or claims administrator listed on page one within 20 calendar days of receipt of the offer or it will be deemed that the employee has waived the right to object to the location or shift. The employee should keep a copy of this form for his or her records.

The sentence advising the employee that the permanent disability payments may be decrease by 15% was revised. It now states:

I understand that if my disability is permanent and stationary and the employer has fulfilled its legal obligations related to this offer, ~~whether I accept or reject this offer,~~ my remaining permanent disability payments ~~may~~ will be decreased by 15% ~~whether I accept or reject this offer.~~

The advisement that either party may file a Declaration of Readiness with the WCAB if there is a dispute was revised and moved to two locations on the page. It now states:

Note: If either party has a dispute or objection regarding the offer of regular work, or if the employee rejects the offer of regular work, that party may file a Declaration of Readiness with the local district office of the Workers' Compensation Appeals Board (WCAB).

Under the section entitled "Offer of Regular Work at a Different Location and/or Shift," a line allowing the employee to reject the offer was added. The line allowing the employee to object was divided into two parts as follows:

I reject this offer of work. Reason:

___ I object to this offer because the ~~job shift or~~ job location that has been offered is different than the ~~job shift or~~ job location I held at the time of my injury, and I do not believe this job allows a reasonable commute from my residence. I understand if the claims administrator does not agree with this objection, my remaining permanent disability weekly benefit payment may be decreased by 15%.

I object to this offer because the job shift that has been offered is different than the job shift I held at the time of my injury. I understand if the claims administrator does not agree with this objection, my remaining permanent disability weekly benefit payment may be decreased by 15%.

The date on the form was changed from July 2006 to September 2006.

At page 3 of DWC-AD Form 10003, the proof of service was modified to also allow for hand delivery. The wording was also clarified:

(Check one)

_____ placing a true copy ~~thereof enclosed~~ **of the Notice of Offer of Regular Work** in a sealed envelope with postage fully **prepaid addressed to each person whose name and address is given below by depositing the envelope in the United States mail**, and thereafter deposited in the U. S. Mail at the place so addressed.

Or

_____ **by personally serving a true copy of the Notice of Offer of Regular Work on each person whose name and address is given below.**