

**STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
OFFICE OF THE DIRECTOR**

INITIAL STATEMENT OF REASONS

**Subject Matter of Regulations: Return to Work Supplement Program
California Code of Regulations, Title 8, Chapter 8, Section 17304**

1. Introduction.

This Initial Statement of Reasons (“ISOR”) describes the purpose, rationale, and necessity of the Department of Industrial Relations’ (“DIR”) proposed amendment of California Code of Regulations, title 8, section 17304 to extend the Return-to-Work Supplement (“RTWS”) application deadline for individuals who became eligible for the benefit prior to December 1, 2015.

The RTWS Program was established by the Legislature in Labor Code section 139.48, part of Senate Bill 863, the landmark workers’ compensation reform measure of 2012, to provide “supplemental payments to workers whose [Workers’ Compensation] permanent disability benefits are disproportionately low in comparison to their earnings loss.” After Labor Code section 139.48 took effect on January 1, 2013, the Department, in coordination with the Commission on Health and Safety and Workers’ Compensation, commissioned a study from the Rand Corporation of injured workers whose permanent disability benefits are disproportionately low in comparison to their earnings loss. Guided by the Rand study, which was completed in February 2014, the Department developed and adopted California Code of Regulations, title 8, sections 17300 through 17310 to implement the RTWS Program. These regulations went into effect on April 6, 2015, and the Department began accepting applications for RTWS benefits on April 13, 2015.

The proposed amendment to section 17304 extends the RTWS application deadline for individuals who became eligible for the benefit prior to December 1, 2015, to address inadequate notice to some individuals within that group of their entitlement to the RTWS benefit.

DIR welcomes comments on the ISOR and on the proposed amendment that the ISOR describes. Please see the accompanying Notice of Rulemaking for instructions on how to submit comments electronically, on paper, and orally at the DIR hearing on the proposed amendment.

2. Technical, Theoretical, or Empirical Studies, Reports, or Documents.

The Department did not rely on any technical, theoretical or empirical studies, reports or documents in proposing this regulatory action.

3. Problem Addressed with this Rulemaking.

California Code of Regulations, title 8, section 17302 establishes receipt of a Supplemental Job Displacement Benefit Voucher (Voucher) for an injury occurring on or after January 1, 2013, as the sole basis of eligibility for the RTWS benefit. Existing section 17304 requires an application for the RTWS benefit to be submitted “within one year from the date the Voucher was served on the individual or within one year from the effective date of these regulations, whichever is later.” To protect the ability of individuals whose entitlement to receive an RTWS benefit is based on receipt of a voucher after January 1, 2013, the effective date of Labor Code section 139.48, but before the April 6, 2013 effective date of the regulations implementing the RTWS Program, section 17304 gave individuals who received vouchers in that time period one year after the effective date of the regulations to apply for the benefit.

Because Vouchers are issued directly to eligible workers by Workers’ Compensation claims administrators on a form adopted by the Division of Workers’ Compensation (DWC), California Code of Regulations, title 8, section 17303 established the following interim notice procedure pending amendment of the Voucher form:

Commencing 30 days after the effective date of these regulations, and continuing until the Administrative Director of the Division of Workers’ Compensation amends Form DWC-AD 10133.32 to include notice of the Return-to-Work Supplement application process, all Vouchers issued shall be accompanied by a cover sheet, prepared by the claims administrator, containing the following notice: “Because you have received this Voucher and are unable to return to your usual employment you may be eligible for a Return-to-Work Supplement. You must apply within one year from the date this Voucher was served on you. You should make a copy of the Voucher which you will need to apply for the Return-to-Work Supplement. Details about the Return-to-Work supplement program are available from the Department of Industrial Relations on its web site, www.dir.ca.gov, or by calling 510-286-0787.” The Director will arrange for publication on the Department web site of a notice targeted at eligible persons who received vouchers before the notice was included with the voucher.

By letter dated February 12, 2016, the California Applicants’ Attorneys Association (“CAAA”) petitioned the Director of Industrial Relations (Director) in accordance with Government Code section 11340.6. The petition requested that the Director amend California Code of Regulations, title 8, section 17304 as follows:

An application for the Return-to-Work Supplement must be received by the Return-to-Work Supplement Program within one year from the date the updated Voucher form containing notice was served on the individual ~~or within one year from the effective date of these regulations, or one year from the effective date of this amendment to the regulations for those individuals who received vouchers before December 1, 2015, whichever is later.~~

CAAA's petition stated that the requested extension to the application deadline was necessary, because injured workers who received a voucher on or before the April 13, 2015 implementation date of the RTWS application process would no longer be able to apply for an RTWS benefit after April 13, 2016. This was despite the fact that those individuals had not received notice of their eligibility to apply for an RTWS benefit when they received their Vouchers. CAAA's petition also notes that the Voucher form, which is supposed to provide notice of eligibility to apply an RTWS benefit, was not updated to include that notice until approximately December 1, 2015. Moreover, while section 17303 required claims administrators to provide notice of eligibility via a cover sheet accompanying all Vouchers issued until the Voucher form was amended by DWC, the Department has been informed that at least some vouchers issued prior to December 1, 2015 were not accompanied by the required notice.

CAAA believes that the lower than expected number of applicants to the RTWS Program in 2015 (less than 12,000 when at least 24,000 were projected by the Rand study which the Department relied on when developing the Program) was largely due to this lack of notice of eligibility.

The Department conducted a public hearing on CAAA's petition on April 15, 2016, and determined to proceed with rulemaking to amend section 17304.

4. Specific Technologies or Equipment.

While existing California Code of Regulations, title 8, section 17305, established an electronic application system for RTWS benefit, the proposed amendment does not in itself require the use of any specific technology or equipment.

5. Reasonable Alternative to the Proposed Regulations and Reasons for Rejecting Those Alternatives.

The Director has not identified any equally effective and less burdensome alternative to the proposed amendment at this time. The public is invited to submit such alternatives during the public comment process.

6. Duplication or Conflicts with Federal Regulations (Gov. Code section 11346.2(b)(7)).

The proposed amendment does not duplicate or conflict with any federal regulations. There are no federal regulations that prescribe rules for a Return-to-Work Supplement.

7. Facts, Evidence, Documents, Testimony, or Other Evidence on Which the Agency Relies to Support an Initial Determination That the Action Will Not Have a Significant Adverse Economic Impact on Business. (Gov. Code section 11346.2(b)(6)(A)).

The Director has determined that the proposed amendment will not have a significant adverse economic impact on business. The proposed amendment simply extends the application deadline for certain individuals who are already eligible for the RTWS benefit without expanding

eligibility or allocating additional funds for the program. As such the regulations do not have a significant impact on business.

8. Economic Impact Analysis (Gov. Code § 11346, subd. (b)(1)(A)-(D)).

Purpose

The proposed amendment extends the application deadline for certain individuals who are already eligible for the RTWS benefit without expanding eligibility or allocating additional funds for the RTWS Program. (A more detailed explanation of the amendment is stated in the introduction and problem addressed sections above.)

The Creation or Elimination of Jobs within the State of California

The Director has determined that the proposed amendment will not have a significant impact on jobs within the State of California. The proposed amendment simply extends the application deadline for certain individuals who are already eligible for the RTWS benefit without expanding eligibility or allocating additional funds for the program.

This should not result in the elimination of jobs in California. To the contrary, jobs within the State of California may be created as a result of this program as it may support workers who have lost employment due to an industrial injury by ensuring their continued eligibility to apply for an RTWS benefit.

Creation of New Businesses or the Elimination of Existing Businesses within the State of California

The Director has determined that the proposed amendment will not significantly create or eliminate businesses within the State of California. The proposed amendment only extends the application deadline for certain already eligible individuals without imposing any new requirements or allocating any additional funds. Hence, there will be no additional costs to businesses, no impact on existing business practices, and no likelihood of business elimination as a result of the proposed amendment.

The Expansion of Businesses Currently Doing Business within the State of California

The Director has determined that the proposed amendment will not significantly expand businesses within the State of California.

Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety, and the State's Environment

The proposed amendment will extend the application deadline for certain individuals who may not have received notice of their eligibility for an RTWS benefit. These payments are intended to assist injured workers who cannot return to the job they had at the time of their industrial injury.

9. The Specific Purpose, Rationale, and Necessity of the Proposed Amendment (Gov. Code section 11346.2(b)(1)).

The specific purpose, rationale, and necessity of the proposed amendment, in accordance with Government Code section 11346.2, subdivision (b)(1), is provided below.

Section 17304. Deadline for Application.

Specific Purpose:

Existing section 17304 requires an application for the RTWS benefit to be submitted “within one year from the date the Voucher was served on the individual or within one year from the effective date of these regulations, whichever is later.” The proposed amendment extends the application deadline for an additional year for individuals who received vouchers prior to December 1, 2015.

Necessity:

An extension to the application deadline is necessary, because injured workers who received a Voucher on or before the April 13, 2015 implementation date of the RTWS application process lost their ability to apply for an RTWS benefit after April 13, 2016, under the existing regulation, despite the fact that those individuals had not received notice of their eligibility to apply for an RTWS benefit when they received their Vouchers. This amendment will give those individuals additional time to learn of their eligibility and apply for an RTWS benefit. The amendment is also necessary to insure that individuals who received Vouchers between April 13, 2015, and December 1, 2015, and were supposed to, but may not have, received notice of their eligibility via a cover sheet accompanying their Voucher also have additional time to learn of their eligibility and apply for an RTWS benefit.