

**RETURN TO WORK SUPPLEMENT PROGRAM  
WRITTEN COMMENTS ON THE PROPOSED REGULATIONS**

<b>Speaker</b>	<b>Entity</b>	<b>Issues Raised</b>	<b>Comment received date</b>	<b>Method</b>
Hazel Ortega	Ortega Counseling Center	1/ Is The Return To Work Supplement Fund a retroactive benefit?	3/17/2015	email
Douglas Gorman	Workers' Compensation Return to Work Counselor	<p>1/ How retroactive eligibility for the RTW Supplement will be handled? For example, employees with early 2013 DOI who long ago received Training Vouchers, in some cases over a year ago: will they still be eligible to receive the RTW Supplement even though the one-year limit for claiming this benefit post-receipt of voucher has passed (see Section 17302 Eligibility)?</p> <p>2/ As an Administrator for the SJDB Voucher process, am I responsible for sending out the Notice (Section 17303) to those who previously received the SJDB Training Voucher?</p> <p>3/ I do see the language in 17303 regarding this Notice requirement commencing 30 days after effective date of new regulations; but again, how do we handle cases of early recipients (with DOI 1/1/13 and later) of the Training Voucher relative to our responsibility for notification of RTW Supp right?</p>	3/18/2015	email

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Diane Worley	California Applicants' Attorneys Association (CAAA)	<p>1/ <b>17308. Supplement Payment:</b> CAAA strongly objects to the modification in this section deleting the phrase "...and or based on consideration of the number of anticipated recipients." Delete this language for adjusting future payment amounts which is contrary to the findings of the RAND study. Further, it contradicts the Initial Statement of Reasons which states "Specific Purpose: This section establishes the amount of the Return-to-Work Supplement and sets out the time frame for payment. This section further allows the Director to adjust the amount of the payment based on further studies of wage loss and permanent disability and also based on consideration of the number of anticipated recipients." CAAA recommended to include the below phrase:</p> <p>"The Return- to-Work Supplement Program will provide a supplement of \$5,000.00 to each eligible individual who submits a complete and timely application by the deadline. The payment will be made within 25 days of the date the decision of the Director on the application becomes final and will be paid in one lump sum. Payment shall be made directly to the individual and is not assignable before payment. The amount of this supplement may be adjusted by the Director based on further studies conducted by the Director in accordance with Labor Code section 139.48 <u>and with consideration of the number of anticipated recipients in order to ensure that the aggregate annual payments under this Return-To-Work Supplemental Program equal, but do not exceed, the annual funding for this program as provided under Labor Code §139.48.</u>"</p> <p>2/ <b>17300. General, Scope and Application of Article:</b> As this section lays the foundation for the implementation of the Return to Work Supplement Program, it is imperative that it incorporate the statutory language set forth in Labor Code §139.48. Therefore, we continue to recommend that the following subdivision be added to this section. <u>(c) This program shall be funded by one hundred twenty million dollars (\$120,000,000) annually derived from non-General Funds of the Workers' Compensation Revolving Fund and it is the intent that all funds appropriated for this program be paid out each year to eligible applicants as defined in Section 17302. Moneys shall remain available for use by the return-to-work program without respect to the fiscal year.</u></p>	4/1/2015	email

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		<p><b>3/ 17302. Eligibility</b>            Subdivision (b) as currently drafted, would bar otherwise eligible individuals from obtaining a second Return to Work Supplement payment, despite being unable to return to their pre-injury job before the adoption of these regulations. The number of injured workers who will be in this situation will obviously be very limited, but these regulations must account for payments to be made to all eligible injured workers. Therefore, we recommend that subdivision (b) be amended to restrict payment of a second or subsequent Return to Work Supplement, to receipt of a Voucher, and not receipt of a payment from the Return to Work Supplement Fund, as follows:            (b) An individual who has received a Return-to-Work Supplement may not receive a second or subsequent Return-to-Work-Supplement, except where the individual receives a Voucher for an injury which occurs during employment obtained subsequent to receipt of a previous Voucher.</p> <p><b>4/ 17303. Notice</b>            -To simplify the application process, we further recommend that this section be amended to provide that an application for the Return to Work Supplement be attached to the voucher received by the worker(just as the IMR application is attached to a UR denial). This will insure access to the Return to Work Supplement Program for those injured workers who do not have easy access to a computer.            -Spanish version of the Department's website. This will insure equal access for the large population in California of Spanish speaking injured workers. Additionally, a Spanish language version of the Notice must be provided to comply with the statute.            -We recommend that the regulations require that a copy of the Voucher shall be provided to the Director by the claims administrator at the time it is issued, including the name and social security number of the injured worker. This will avoid any dispute with regard to eligibility in the application process.            Here is suggested language:  <u>A copy of the Voucher shall be provided to the Director by the claims administrator at the time it is issued, including the name and social security number of the injured worker. 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 on the voucher. Notice will also include a copy of the application to apply for payments from the fund, which can be submitted by mail or electronically. Instructions on how to submit the form electronically or by mail shall be included on the application.</u></p>		

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		<p><b>5/ 17305. Method of Application:</b>            Recommend to have an option for injured workers to apply online or by mail. Allowing only electronic submission would be a hardship for workers with lower income, severe disabilities, and/or limited English-language skill. Having an alternative to file an application by mail would be consistent with what is offered by other state agencies, and is not a burden or additional cost to the Department or claims departments for the reasons stated above.</p> <p>Recommend the following revision:            An application <u>may</u> be submitted by electronic means through the Department of Industrial Relations web site or <u>by mail</u>. The Department will make access to this web site available at each Division of Workers' Compensation Information and Assistance Office location in the state.</p>		

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		<p><b>6/ 17306. Application Contents:</b></p> <ul style="list-style-type: none"> <li>-It would be more efficient to have the employer or claims administrator, upon issuance of the voucher, to either provide the Department a copy of the voucher or identify the worker to whom the voucher was provided.</li> <li>-There is no requirement in Labor Code section 139.48, that an injured worker be a resident of California at the time they apply for the return to work supplement. Therefore, the application should not request this information. Further, the application will include the injured worker’s address so this information is not necessary. The statement of reasons asserts that “only the information absolutely necessary to establish eligibility for the benefit will be required” in the application. The language of this regulation is not consistent with this.</li> <li>-The requirement that the injured worker provide their social security number or Tax ID number on the Application is also a violation of Labor Code section 1171.5 wherein “For purposes of enforcing state labor and employment laws, a person’s immigration status is irrelevant to the issue of liability, and...no inquiry shall be permitted into a person’s immigration status...”</li> <li>-Requiring an injured worker to sign the application under penalty of perjury will also keep many, if not most, undocumented workers from applying for this benefit as it requires answers to questions which they are not required to provide under the Laws of the State of California. This constitutes discrimination under Labor Code section 1171.5</li> <li>-The only information needed on the application is evidence of receipt of the Voucher and the address so the payment is sent to the correct address.</li> <li>-It is also unnecessary for injured workers to have to include the ADJ number of any workers’ compensation claim they have filed as required by this section. They should only be required to provide the ADJ number on the case in which they got the voucher.</li> </ul>		

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		<p><b>7/ 17307. Processing of Applications and Decision on Applications:</b>            We recommend that if an incomplete application is received that the worker be notified that the incomplete application will not be processed and informed that he or she will lose their right to receive this Supplemental Payment unless the application is corrected and timely submitted within a reasonable time period, such as 30 days. Additionally, the Appeals Process should be explained in the final decision. Suggested revisions to section 17307 are below.</p> <p>All completed and timely filed applications will be reviewed and a decision will be made on whether the individual is entitled to the supplement within 60 days of the receipt of the completed application. The individual will be notified by mail and or, where available, email, of the decision. The decision is a final decision of the Director . <u>The Appeals Process will be explained in the final decision. If an application is received that is timely but incomplete, the applicant will be notified of the required information needed by mail, and, where available, email , and the application will be held for 30 days. If the required information is received within that time, the 60 day period for issuing a decision will relate back to the date the complete application was received. The notice that the application is incomplete shall inform the injured worker that he or she will lose their right to receive this Supplemental Payment unless the application is corrected.</u></p>		

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