

RETURN-TO-WORK REGULATIONS	RULEMAKING COMMENTS 1 ST 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
Section 10002	<p>Commenter notes that there is no indication of allowance for work offered (and PD payments begun) prior to an employee being classified as P&S. In many situations the employee is returned to normal or modified work duties, and PD payments begun, prior to receiving a P&S rating. Based on the Division’s regulation wording, however, unless a written offer of what has already been in place occurs within 60 days of the P&S rating a 15% penalty will apply. Furthermore, the 15% credit is not allowed unless this notice is given within 60 days of the rating, no matter when they are actually offered the position or when the payments begin.</p> <p>A simple change to “no later than 60 days after being rated as P&S” would correct this situation. Otherwise the employer may well be punished for early offer of return to work. Commenter requests the Division consider this change or, in the alternative, how to deal with the early return to work offer. Does the employer get to take the 15% credit on the PD payments issued prior to a P&S rating? Commenter states that the revision seems to make this more cloudy than clear.</p>	<p>Jack Blyskal, CPCU, AIC, SCLA Chief Claims Officer CSAC-Excess Insurance Authority February 13, 2006 Written Comment</p>	<p>We disagree. The regular, modified or alternative work offered pursuant to Labor Code § 4658(d) must be such that “the employee has the ability to perform all the functions of the job” (Labor Code § 4658.1), and this cannot be determined until the employee’s condition has stabilized.</p> <p>The statute further provides that the offer must be made “within 60 days of a disability becoming permanent and stationary.” Therefore, the recommended language goes beyond the authority of the statute.</p> <p>Labor Code § 4658(d) is only applicable to the period beginning with a P&S determination. Labor Code § 4658.5 is applicable to the period beginning 60 days after termination of temporary disability, which may or may not coincide with the P&S determination. While it might be desirable to coordinate return-to-work incentives under Labor Code § 4658(d) with supplemental job displacement benefits under Labor Code § 4658.5 and with other formal and informal return-to-work scenarios, this is not within the scope of the AD’s regulatory authority under existing statutes.</p>	None.

			<p>The employer is in no way “penalized” for getting the employee back to work before a P&S determination. Even if the employee has returned to work in one capacity or another prior to P&S, and whether or not the employer accurately anticipated the work limitations that would be in effect at the point of P&S, nothing prevents the employer from making a new offer. Indeed, the employer is strongly incentivized to do so.</p>	
Section 10002(b)	<p>Commenter states that there are situations where the employee may return to regular work shortly after the injury but with obvious impairment (i.e. finger amputation). Claims administrators must balance their responsibility under LC 4650 to advance permanent disability as soon as it is reasonably known to exist and their inclination to take the 15% decrease in PPD whenever appropriate. If the administrator is unable to take the 15% decrease in PPD until after the Notice of Offer of Regular Work has been sent, then they should be able to send the notice as soon as the employee is released to regular work, even if that is before permanent and stationary status is reached. This complies with the Legislative intent that employees who return to regular work and therefore sustain lower earnings losses as a result of their injuries should receive less permanent disability.</p>	<p>Janet Selby Workers’ Compensation Manager Municipal Pooling Authority February 15, 2006 Written Comment</p>	<p>We disagree. See response to 2/13/06 comment of Jack Blyksal, above.</p>	<p>None.</p>

	<p>Suggestion: Amend subdivision (b) to say that when there is evidence of permanent partial disability, the Notice can be sent within 60 days of either the release to regular work or permanent and stationary, whichever is earlier.</p>			
Section 10002(b)(1)	<p>Commenter states that there is a fundamental problem with the fact that a mere failure to send a notice may result in a unintended windfall to an employee. It seems almost ridiculous that an employer is now mandated to offer the employee his/her regular job even if only a few days are missed from the job as a result of the injury. The fact that an employee is working his/her regular job and may have been doing so for quite some time should be considered a de facto "offer" of regular work. At the very least, it should be that in cases where the employee is working regular work but no notice was sent due to a mistake or oversight, the PPD is paid at the regular rate without 15% adjustment either up or down.</p> <p>The Legislature surely did not intend that an employee receive a 15% surplus on PPD benefits because of clerical error. The focus of legislative efforts and CHSWC/RAND studies have been on better compensating earnings losses. Increasing PD benefits to employees who are working their regular jobs is not at all in line with these efforts. The regulations must be drafted to comply with both the law and the legislative intent.</p> <p>Suggestion: Amend subdivision (b)(1) to say,</p>	<p>Janet Selby Workers' Compensation Manager Municipal Pooling Authority February 15, 2006 Written Comment</p>	<p>We disagree. See response to 2/13/06 comment of Jack Blyksal, above.</p> <p>The offer is required to be in writing on the mandatory form so as to reduce disputes. Use of the mandatory form will ensure that all required elements of the offer (including that the job will last 12 months) will be incorporated.</p> <p>Labor Code section 4658 requires "within 60 days of disability becoming permanent and stationary" that the offer be made in the form and manner prescribed by the administrative director. It does not provide authority for the increase to be reduced because of clerical error.</p>	<p>None.</p> <p>None.</p>

	<p>"If THE EMPLOYEE HAS NOT RETURNED TO REGULAR WORK and an employer does not serve the employee with a notice of offer of regular work, modified work or alternative work..."</p> <p>Suggestion: If the Division does not wish to recognize a return to regular work as a de facto "offer" of regular work with the corresponding 15% decrease in PPD payments, add subdivision (b)(5) to say, "If the employee has returned to regular work pursuant to a medical release by the treating physician or QME/AME physician, and the claims administrator fails to send the Notice of Offer of Regular Work within 60 calendar days from either release to regular work or the permanent and stationary date, each payment of permanent partial disability shall be made in accordance with Labor Code section 4658(d)(1), with no increase or decrease."</p>		<p>Labor Code § 4658(d) specifies that PD liability is increased by 15% if no offer is made. This requirement cannot be eliminated by regulation.</p>	None.
Section 10001(c)	<p>It may be that an early return to regular work later changes. If that happens, commenter suggests language in this subdivision be amended to say that "If the claims administrator relies upon a permanent and stationary OR RETURN TO REGULAR WORK date contained in a medical report...dispute as to an employee's permanent and stationary OR RETURN TO REGULAR WORK status..." And corresponding changes to subdivisions (1) and (2).</p>	<p>Janet Selby Workers' Compensation Manager Municipal Pooling Authority February 15, 2006 Written Comment</p>	<p>We disagree. Where Labor Code § 4658(d) specifies the P&S date, and only the P&S date, the AD has no authority to substitute a different date by regulation.</p>	None.
Section 10002 General Comments	<p>This proposed revision addresses only one potential fact pattern: where the employer discovers the immigration status of the worker <i>after</i> an offer is made. This revision also fails to specify the consequences of its statement</p>	<p>Tina Coakley Legislative & Regulatory Analyst Enterprise Safety, Health & Environmental Affairs</p>	<p>We disagree. Labor Code § 1171.5 guarantees that all employees are entitled to all rights under state law, except any reinstatement remedy prohibited by federal law, regardless</p>	None.

	<p>that "...the employer is not required to provide the regular, modified, or alternative work." As drafted, the regulation would compel the employer to pay the higher permanent disability award per Labor Code § 4658(d)(3)(B). The injured worker who is working in this country in violation of federal immigration law is not eligible to receive an adjustment of any kind to his or her permanent disability award not because the worker cannot accept the offer, but because the employer cannot legally make the offer if the employer discovers prior to calculating the permanent disability award that the worker is in this country illegally.</p> <p>If the offer of employment is made to the worker and then it's discovered that the worker is in this country illegally, then the offer is void; as is the worker's acceptance.</p> <p>Respectfully, there is no rational basis for giving the worker greater benefits simply because the worker is in this country illegally.</p> <p>In lieu of looking at benefits that are dependant upon the ability of an employer to offer a job, the Division should look at what benefits are available to the injured worker that are not dependent upon immigration status. Commenter recommends that in the case of PD that the Division look at applying an unadjusted permanent disability award calculated pursuant to paragraph (1) of subdivision (d) of Labor Code § 4658. This</p>	<p>The Boeing Company February 20, 2006 Written Comment</p>	<p>of immigration status.</p> <p>No benefit results "simply because the worker is in this country illegally." <u>Any</u> injured worker is entitled to a 15% increase of permanent disability payments when the employer is for <u>any</u> reason unwilling or unable to offer work.</p> <p>An employer who has illegally employed an undocumented worker in violation of federal immigration law is not entitled to a reduction in PD liability because the employer's prior unlawful activity makes it impossible to offer lawful reemployment.</p> <p>To favor employers with lower PD liability simply because they have illegally employed a worker who was injured would be unfair to employers who have been more diligent in complying with federal immigration law.</p> <p>Labor Code § 4658(d) specifies that PD liability is increased by 15% if no offer is made. This requirement cannot be eliminated by regulation.</p>	<p>None.</p>
--	--	---	--	--------------

	<p>would neither penalize an employer for not making an offer it cannot legally make nor penalize an injured worker for receiving an offer he or she cannot legally accept. This rule can be applied regardless of when the employer learns of immigration status</p> <p>Without further clarification from the Division, employers will be forced to pay higher permanent disability costs, which is fundamentally unfair and unconstitutional. We appreciate your consideration to clarify this regulation without the delays and inconsistencies that will occur if this issue is to be determined in the appeals courts.</p> <p>Respectfully, there is no rational basis for giving the worker greater benefits simply because the worker is in this country illegally.</p>			
Section 10002	<p>The Legislative intent was to encourage California employers to provide their injured employees with regular, modified or alternative work. While LC §4658 (d)(2) & (3) relies on the use of the word “offers”, we believe “offers” and “provides” are synonymous within the context and Legislative intent of this section.</p> <p>The proposed requirement should address situations where the employer provides and the employee returns to work as described in LC §4658.1 prior to or within 60 days of disability becoming permanent and stationary, but no notices were provided. In these situations the employer has met the Legislative intent; i.e., the employee has returned to gainful employment and will not</p>	<p>José Ruiz Assistant Claims – Rehabilitation Manager State Compensation Insurance Fund February 22, 2006 Written Comment</p>	<p>We disagree. In Labor Code § 4658(d) the word “offer” must be interpreted in its context, which includes the power of the employee to “accept” or “reject” it, with significant occupational and economic consequences. It also states “in the <i>form</i> and manner prescribed by the administrative director.” We interpret this to require a written offer as opposed to providing a job without a written offer. Also, a written offer will ensure all of the required elements of the offer have been met and will reduce disputes.</p> <p>See response to 2/13/06 comment of</p>	None.

<p>Section 10002(b)(1)</p>	<p>experience the future wage loss experienced by those employees who have not returned to work.</p> <p>The following are examples where an employer has complied with the Legislative intent even though no written notice was provided:</p> <ul style="list-style-type: none"> • An injured employee with <u>no lost time</u> from work, who was subsequently found to be P&S with permanent disability. • An injured employee <u>with lost time</u> from work, returned to work prior to reaching P&S status, and was subsequently found to be P&S with permanent disability. • An injured employee <u>with lost time</u> from work, and returned to work within 60 days after P&S with permanent disability. <p><u>Recommendation:</u> Commenter recommends the proposed regulations be amended to include an allowance for employers who provided work as described in LC §4658.1, even though the notice was late. Commenter offers the following language for your consideration:</p> <p>“(5) The employer has met the requirement to serve the employee with a notice of offer of work when an employee whose condition is permanent and stationary has returned to work as described in LC §4658.1 and the employer has</p>		<p>Jack Blyksal, above.</p> <p>See response to 2/15/06 comment of Janet Selby, above.</p>	<p>None.</p>
----------------------------	--	--	---	--------------

	not provided notice as required by LC §4658(d). However, the claims administrator must send employee a letter confirming employer's offer of work if a written offer was not made within 60 days of the disability becoming permanent and stationary."			
Section 10002(f)	Commenter states that the Division does not have the authority or the responsibility to address the totality of circumstances where an injured worker is ineligible to work in this country and how that ineligibility affects the amount of permanent disability paid to the worker due to the operation of subdivision (d) of Labor Code section 4658.	Mark E. Webb Vice President, Governmental Relations Employers Direct Insurance Company February 22, 2006 Written Comment	We disagree. Determining a worker's eligibility to work in the U.S. is within the exclusive jurisdiction of the federal Dept. of Homeland Security and the federal courts. With the single exception of reinstatement of employment as a remedy (which is not at issue under Labor Code § 4658(d) or these regulations), Labor Code § 1171.5 guarantees that all employees are entitled to all rights under state law regardless of immigration status. These regulations are consistent with federal immigration law and with Labor Code § 1171.5.	None.
Section 10002(b)(1)(2)	Commenter suggests following modification: (1) If an employer does <u>has</u> not served the employee with a notice of offer of regular work, modified work or alternative work for a period of at least 12 months, each payment of permanent partial disability remaining to be paid to the employee from the date of the end of the 60 day period shall be paid in	Brenda Ramirez Medical & Rehabilitation Director Michael McClain Vice President & General Counsel California Workers' Compensation Institute	We disagree. See response to 2/13/06 comment of Jack Blyksal, above.	None.

	<p>accordance with Labor Code section 4658(d)(1) and increased by 15 percent.</p> <p>(2) If an employer <u>has served</u> the employee with a notice of offer of regular work, modified work or alternative work for a period of at least 12 months, each payment of permanent partial disability remaining to be paid from the date the offer was served on the employee shall be paid in accordance with Labor Code section 4658(d)(1) and decreased by 15 percent, regardless of whether the employee accepts or rejects the offer.</p> <p>Discussion</p> <p>The recommended changes in (1) and (2) will clarify that a 15% PD adjustment will depend on whether or not a work offer was served by the 60th day following the permanent and stationary (P&S) date. This change will eliminate confusion and disputes over what should occur if a work offer is made at any time prior to the P&S date, and employers will not be penalized for making return to work offers as soon as feasible. This will also reduce the need to serve a duplicate work offer following an offer of modified/alternative work within 30 days after last payment of temporary disability, as required under the Supplemental Job Displacement Benefit regulations. Duplicate work offers are not necessary, will confuse injured employees, and will raise costs.</p>	<p>Written Comment February 22, 2006</p> <p>Corey Ingber, Senior Vice President</p> <p>Pearl Phoenix, Director The Zenith Insurance Company Written Comment February 22, 2006</p>	<p>As presently drafted, these regulations clarify that the adjustment depends on whether an offer is made within 60 days of the P&S determination, as required by Labor Code § 4658(d).</p> <p>It is reasonable to require that a written offer specifying the terms, conditions and duration of the regular, modified or alternative work be communicated to the employee within 60 days, and that the employee's acceptance also be communicated in writing. This is more likely to eliminate confusion than to cause it, and the cost of dealing with one mandatory form will be insignificant.</p>	<p>None.</p> <p>None.</p>
--	--	---	---	---------------------------

<p>Coordinating Offers of Work – General Comment</p>	<p>Labor Code section 4658.6(c) requires the employer to provide the injured employee within 10 days of last TD payment, a notice outlining the injured worker’s right to receive the supplemental job displacement benefit:</p> <p><i>“(c) Within 10 days of the last payment of temporary disability, the employer shall provide to the employee, in the form and manner prescribed by the administrative director, information that provides notice of rights under this section. This notice shall be sent by certified mail.”</i></p> <p>The purpose of the statute is to ensure that injured workers have adequate notice of their right to receive this benefit. In the implementing regulation (CCR section 10133.51(b)), the administrative director required the claims administrator to send the notice <u>within 10 days of the last payment of temporary disability, if not previously provided</u> (emphasis added):</p> <p><i>“(b) Within 10 days of the last payment of temporary disability, if not previously provided, the claims administrator shall send the employee, by certified mail, the mandatory form “Notice of Potential Right to Supplemental Job Displacement Benefit Form” that is set forth in Section 10133.52.”</i></p> <p>This regulatory solution reduced the number of notices, allowed employers to notify the injured worker as early as feasible, and fostered efficient and effective</p>	<p>Brenda Ramirez Medical & Rehabilitation Director</p> <p>Michael McClain Vice President & General Counsel California Workers’ Compensation Institute Written Comment February 22, 2006</p> <p>Corey Ingber, Senior Vice President</p> <p>Pearl Phoenix, Director The Zenith Insurance Company Written Comment February 22, 2006</p>	<p>We disagree. See response to 2/13/06 comment of Jack Blyksal, above.</p>	<p>None.</p>
--	--	---	---	--------------

	<p>communication, all of which supported the statutory goals and promoted the use of the benefit.</p> <p>Similarly, Labor Code section 4658(d) requires an employer to adjust permanent disability up or down depending on whether or not the employer has offered work <u>within 60 days of the P&S date</u>:</p> <p><i>“(2) If, within 60 days of a disability becoming permanent and stationary, an employer does not offer the injured employee regular work, modified work, or alternative work, in the form and manner prescribed by the administrative director, for a period of at least 12 months, each disability payment remaining to be paid to the injured employee from the date of the end of the 60-day period shall be paid in accordance with paragraph (1) and increased by 15 percent. This paragraph shall not apply to an employer that employs fewer than 50 employees.</i></p> <p><i>(3) (A) If, within 60 days of a disability becoming permanent and stationary, an employer offers the injured employee regular work, modified work, or alternative work, in the form and manner prescribed by the administrative director, for a period of at least 12 months, and regardless of whether the injured employee accepts or rejects the offer, each disability payment remaining to be paid to the injured employee from the date the offer was made shall be paid in accordance with paragraph (1) and decreased by 15 percent.”</i></p>			
--	--	--	--	--

	<p>For the same policy reasons, commenter recommends that the employer be permitted to make the offer of work at the earliest possible time to return the employee to suitable work as soon as practicable. This is a reasonable interpretation of the statutory scheme that will encourage prompt and effective communication between the employer and the injured employee, reduce the need for multiple notices, and harmonize the process for supplemental job displacement benefit and the work offer under section 4658(d), while accomplishing the statutory objectives more effectively.</p> <p>All of the significant legislative criteria underlying the return to work incentives would be met by coordinating these work offers. Precluding the application of the permanent disability rate adjustment would seem to impair the legislative incentives to return injured workers to their jobs. The employer will have done all that the statute requires to avail itself of the PD adjustment. The statute should not be interpreted to penalize those employers who can and do return their employees to work sooner.</p> <p>This recommended alternative is both more effective and less burdensome than what is currently proposed and we therefore urge its adoption.</p>		<p>See response to 2/13/06 comment of Jack Blyksal, above.</p> <p>See response to 2/13/06 comment of Jack Blyksal, above.</p>	<p>None.</p> <p>None.</p>
Section 10002(c)(1), (2), (3)	Commenter recommends the following language:	Brenda Ramirez Medical & Rehabilitation Director		

	<p>(1) <u>If the offer of work was served after 60 days have elapsed from the judicially determined permanent and stationary date.</u> Where there is a final judicial determination that the employee is permanent and stationary on a date later than the date relied on by the employer in making its offer of work, the employee shall be reimbursed any amount withheld up to the date a new notice of offer of work is served on the employee pursuant to subdivision (b).</p> <p>(2) Where there is a final judicial determination that the employee is not permanent and stationary, the employee shall be reimbursed any amount withheld up to the date of the determination.</p> <p>(3) The claims administrator is not required to reimburse permanent partial disability benefit payments that have been withheld pursuant to this subdivision during any period for which the employee is entitled to temporary disability benefit payments.</p> <p>Discussion</p> <p>In these proposed regulations it appears that the permanent and stationary date has been confused with the medically appropriate release to return to work date. These two dates, however, are often not identical. An injured employee can frequently return to work before his or her condition has reached maximum medical improvement. According to the statute*, the PD adjustments depend on whether or not work is offered by the time that 60 days elapse from the date that the</p>	<p>Michael McClain Vice President & General Counsel California Workers' Compensation Institute Written Comment February 22, 2006</p> <p>Corey Ingber, Senior Vice President</p> <p>Pearl Phoenix, Director The Zenith Insurance Company Written Comment February 22, 2006</p>	<p>We disagree. Labor Code § 4658(d) is not applicable to offers of work made more than 60 days after a P&S determination.</p> <p>This provision preserves the incentives to (a) make an offer of employment even where a P&S determination might be disputed and (b) promptly adjudicate P&S disputes, while limiting the employer's enhanced liability where a P&S determination is not upheld.</p> <p>Where Labor Code § 4658(d) specifies the P&S date, and only the P&S date, the AD has no authority to substitute a different date by regulation.</p>	<p>None.</p> <p>None.</p> <p>None.</p>
--	--	---	--	--

	<p>employee's condition is determined to be P&S (permanent and stationary). If the P&S date is re-determined, the PD adjustments should be re-assessed and adjusted accordingly by the claims administrator.</p> <p>* " 4658(d) (2) If, within 60 days of a disability becoming permanent and stationary, an employer does not offer the injured employee regular work, modified work, or alternative work, in the form and manner prescribed by the administrative director, for a period of at least 12 months, each disability payment remaining to be paid to the injured employee from the date of the end of the 60-day period shall be paid in accordance with paragraph (1) and increased by 15 percent. This paragraph shall not apply to an employer that employs fewer than 50 employees.</p> <p>(3)(A) If, within 60 days of a disability becoming permanent and stationary, an employer offers the injured employee regular work, modified work, or alternative work, in the form and manner prescribed by the administrative director, for a period of at least 12 months, and regardless of whether the injured employee accepts or rejects the offer, each disability payment remaining to be paid to the injured employee from the date the offer was made shall be paid in accordance with paragraph (1) and decreased by 15 percent."</p> <p>The Division has no authority to require reimbursement of a PD reduction that complies with the plain statutory language.</p> <p>Many injured employees are appropriately</p>			
--	---	--	--	--

	<p>released to return to work before their medical conditions become permanent and stationary. If the employer offers a job and the employee accepts it prior to the condition becoming permanent and stationary, then the significant statutory criteria underlying the legislative incentive have been met and the reimbursement called for in this section would not be appropriate. The statute bases the return to work incentive on an offer of work and the employee's return to work, not simply on the permanent and stationary date.</p> <p>When the employee has already returned to work, mailing yet another work offer only because the P&S date has changed will further confuse the employee and is unnecessary and burdensome.</p> <p>If the final judicial determination is that the employee is not able to return to the work offered, then the amount withheld should be reimbursed. Benefit payment corrections are routinely made based on medical evidence, factual circumstance, and judicial determinations. The regulation cannot narrow the scope of what is allowed under the statute. The employer should be entitled to take the appropriate permanent disability rate adjustment from the time the worker returns to work.</p>			
Section 10002(f)	<p>Commenter recommends the following language:</p> <p>(f) When the employer offers regular, modified or alternative work to the employee that meets the conditions of this section and</p>	<p>Brenda Ramirez Medical & Rehabilitation Director</p> <p>Michael McClain Vice President & General</p>	<p>We disagree. This subdivision is based on the factual situation that is</p>	<p>None.</p>

	<p>subsequently learns that but the employee cannot lawfully perform regular, modified or alternative work due to the employee's immigration status, the employer is not required to provide the regular, modified or alternative work.</p> <p>Discussion</p> <p>The employer may offer work to the employee on condition that the illegal work status is corrected. Commenter recommends this modification to clarify that regardless of when the employer learned that an employee cannot lawfully work, the employer may not appropriately provide work to that employee.</p> <p>If no such offer is made because the employee cannot legally work in the United States due to operation of federal law (illegal work status prohibits a job offer); then the issue becomes what benefit is the worker entitled to receive? The Division should look at what benefits are available to the injured worker that are not dependent upon immigration status. In the case of permanent disability, that would be an unadjusted permanent disability award payment calculated pursuant to paragraph (1) of subdivision (d) of Labor Code Section 4658. Such resolution would neither penalize an employer for not making an offer it cannot legally make nor penalize an injured worker for receiving an offer he or she cannot legally accept.</p>	<p>Counsel California Workers' Compensation Institute Written Comment February 22, 2006</p> <p>Corey Ingber, Senior Vice President</p> <p>Pearl Phoenix, Director The Zenith Insurance Company Written Comment February 22, 2006</p>	<p>discussed in the case of <i>Del Taco v. WCAB</i> (2000) 79 Cal. App. 4th 1437.</p> <p>The employer is required to follow federal law regarding making offers of employment to undocumented workers.</p>	
Section 10003 – Form DWC AD 10003 Notice of Offer to	Commenter recommends that the Division remove the proof of service by mail page from the form.	Brenda Ramirez Medical & Rehabilitation Director		

<p>Work</p>	<p>Discussion The statute places no limits on how the employee is to be served or the type of proof of that service. For example, if the employer serves the employee personally with the offer of regular work (often the case), the employer should be permitted to prove personal service. It is unnecessary and confusing to the employee for the employer to additionally serve the employee by mail in order to document proof of service by mail in the form.</p> <p>Section 10002(b)(3) requires the employer to use the existing Form DWC-AD 10133.53 to offer modified or alternative work. That form does not include a proof of service by mail page. The forms that offer modified/alternative and regular work should be consistent with one another in this regard, allowing the employer flexibility on the manner and proof of service.</p>	<p>Michael McClain Vice President & General Counsel California Workers' Compensation Institute Written Comment February 22, 2006</p> <p>Corey Ingber, Senior Vice President</p> <p>Pearl Phoenix, Director The Zenith Insurance Company Written Comment February 22, 2006</p>	<p>We disagree. Requiring a declaration of service by mail is a reasonable means to ensure that the notice has in fact been communicated, and to minimize litigation on the issue.</p>	<p>None.</p>
-------------	--	--	--	--------------