

**STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF WORKERS' COMPENSATION**

INITIAL STATEMENT OF REASONS

**Subject Matter of Regulations: Workers' Compensation –
Supplemental Job Displacement Benefit**

**TITLE 8, CALIFORNIA CODE OF REGULATIONS
SECTIONS 10133.50 – 10133.59**

Section 10133.50	Definitions
Section 10133.51	Notice of Potential Right to Supplemental Job Displacement Benefit
Section 10133.52	“Notice of Potential Right to Supplemental Job Displacement Benefit” Form
Section 10133.53	Form DWC-AD 10133.53 “Notice of Modified or Alternative Work for Injuries Occurring on or after 1/1/04”
Section 10133.54	Form DWC-AD 10133.54 “Request for Dispute Resolution before the Administrative Director”
Section 10133.55	Requirement to Issue Supplemental Job Displacement Nontransferable Training Voucher
Section 10133.56	Form DWC-AD 10133.56 “Supplemental Job Displacement Nontransferable Training Voucher”
Section 10133.57	State Approved or Accredited Schools
Section 10133.58	The Administrative Director’s List of Vocational Return to Work Counselors
Section 10133.59	Termination of Employer’s Liability for the Supplemental Job Displacement Benefit

BACKGROUND TO REGULATORY PROCEEDING:

The Legislature has added Sections 4658.5 and 4658.6 to the Labor Code (Assembly Bill 227, effective January 1, 2004) to provide for a Supplemental Job Displacement Benefit for injuries occurring on or after January 1, 2004. Vocational rehabilitation is no longer available for injuries occurring on or after January 1, 2004.

Section 4658.5 of the Labor Code requires the Administrative Director to adopt regulations necessary to properly administrate the Supplemental Job Displacement Benefit. The supplemental job displacement benefit is available to an injured worker if the injury causes permanent partial disability and the injured employee does not return to work for the employer within 60 days of the termination of temporary disability. The statute requires that a voucher for education-related retraining or skill enhancement or both be provided to the eligible employee. The amount of the benefit is determined by the percent of the permanent partial disability award.

Section 4658.6 of the Labor Code provides that the employer shall not be liable for the supplemental job displacement benefit if the employer timely offers, and the employee rejects, modified or alternative work, which must meet certain criteria. The form and manner of the offer and acceptance or rejection is to be prescribed by the Administrative Director.

Section 10133.50 Definitions

Specific Purpose of Section 10133.50:

Section 10133.50 lists the terms used in the regulations concerning the Supplemental Job Displacement Benefit regulations and defines the terms as they are used in the regulations. The purpose of the definitions is to implement, interpret, and make specific Labor Code §§4568.5 and 4558.6 and to ensure that the meaning of the terms is clearly understood by the regulated community.

Necessity:

It is necessary to define the key terms used in the Supplemental Disability Benefit Regulations to ensure that the content and meaning of the regulations are clearly understood by the regulated community.

Technical, Theoretical, and/or Empirical Study, Reports or Documents:

The Division of Workers' Compensation posted drafts of the proposed section on its website to allow for pre-notice public comment.

Business Impact:

This regulation implements Labor Code §4658.5, which provides for a Supplemental Job Disability Benefit for education and training. The benefit will be a voucher in the amount of \$4000, \$6000, \$8000, or \$10,000 depending upon the injured worker's percentage of permanent disability. Previously, the cap on vocational rehabilitation was \$16,000. Therefore, businesses may save as much as \$6,000 to \$12,000 on each case where the injured worker previously was entitled to vocational rehabilitation benefits, but now is entitled to SJDB.

Specific Technologies or Equipment:

The regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives:

No more effective alternative, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time. The purpose of the present rulemaking is to solicit and consider alternatives.

Section 10133.51 Notice of Potential Right to Supplemental Job Displacement Benefit

Specific Purpose of Section 10133.51:

The purpose of Section 10133.51 is to set forth the requirements regarding the employee's eligibility for the Supplemental Job Displacement Benefit, the requirement to use the form set forth in Section 10133.52, and the timeliness requirements for the employer providing notice of the employee's potential right to the Supplemental Job Disability Benefit.

Necessity:

The statute requires that the employee be provided information that provides notice of rights concerning the Supplemental Job Disability Benefit within 10 days of the last payment of temporary disability. The statute further provides that the Administrative Director shall prescribe the form and manner of the notice. This section is necessary in order to comply with the statute's requirement to prescribe the form of manner of the notice.

Technical, Theoretical, and/or Empirical Study, Reports or Documents:

The Division of Workers' Compensation posted drafts of the proposed section on its website to allow for pre-notice public comment.

Business Impact:

This regulation implements Labor Code §4658.5, which provides for a Supplemental Job Disability Benefit for education and training. The benefit will be a voucher in the amount of \$4000, \$6000, \$8000, or \$10,000 depending upon the injured worker's percentage of permanent disability. Previously, the cap on vocational rehabilitation was \$16,000. Therefore, businesses may save as much as \$6,000 to \$12,000 on each case where the injured worker previously was entitled to vocational rehabilitation benefits, but now is entitled to SJDB.

Specific Technologies or Equipment:

The regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives:

No more effective alternative, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time. The purpose of the present rulemaking is to solicit and consider alternatives.

**Section 10133.52 “Notice of Potential Right to Supplemental Job Displacement Benefit”
Form**

Specific Purpose of Section 10133.52:

Section 10133.52 is a mandatory form that the employer must send to the injured employee within 10 days of the last payment of disability. The notice complies with the statute by informing the employee of his or her potential right to the Supplemental Job Displacement Benefit and explaining how the amount of the voucher is determined and what it can be used for. It also informs the employee that if there is a dispute, the employee or claims administrator may file a “Request for Dispute Resolution before the Administrative Director.”

Necessity:

The statute requires that the employee be provided information that provides notice of rights concerning the Supplemental Job Disability Benefit within 10 days of the last payment of temporary disability. The statute further provides that the Administrative Director shall prescribe the form and manner of the notice. This section is necessary in order to comply with the statute’s requirement to prescribe the form of manner of the notice.

Technical, Theoretical, and/or Empirical Study, Reports or Documents:

The Division of Workers’ Compensation posted drafts of the proposed section on its website to allow for pre-notice public comment.

Business Impact:

This regulation implements Labor Code §4658.5, which provides for a Supplemental Job Disability Benefit for education and training. The benefit will be a voucher in the amount of \$4000, \$6000, \$8000, or \$10,000 depending upon the injured worker’s percentage of permanent disability. Previously, the cap on vocational rehabilitation was \$16,000. Therefore, businesses may save as much as \$6,000 to \$12,000 on each case where the injured worker previously was entitled to vocational rehabilitation benefits, but now is entitled to SJDB.

Specific Technologies or Equipment:

The regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives:

No more effective alternative, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time. The purpose of the present rulemaking is to solicit and consider alternatives.

Section 10133.53 Form DWC-AD 10133.53 “Notice of Modified or Alternative Work for Injuries Occurring on or after 1/1/04”

Specific Purpose of Section 10133.53:

Section 10133.53 is a mandatory two-page form that the employer must send to the injured employee if the employer has modified or alternative work available. Labor Code §4658.6 provides that the employer shall not be liable for the supplemental job displacement benefit if the employer offers modified or alternative work that meet the specified conditions and the employee rejects the offer. The section 10133.53 form constitutes the Notice of Modified or Alternative Work for Injuries Occurring on or after 1/1/04 and requires the employer to provide the information necessary to determine if the offer of modified or alternative work meets the conditions set forth in Labor Code §4658.6.

Necessity:

Because Labor Code §4658.6 provides that the employer shall not be liable for the Supplemental Job Displacement Benefit if the employer offers, and the employee rejects, modified or alternative work that meet the specified conditions, it is necessary for the regulations to provide a form that complies with the statute requirements for the employer to use when modified or alternative work is available. The required information also will allow the employee (and the Administrative Director if there is a dispute) to determine if the specific offer complies with the requirements of the statute.

Technical, Theoretical, and/or Empirical Study, Reports or Documents:

The Division of Workers’ Compensation posted drafts of the proposed section on its website to allow for pre-notice public comment.

Business Impact:

This regulation implements Labor Code §4658.6, provides that the employer shall not be liable for the Supplemental Job Displacement Benefit if the employer offers modified or alternative work that meet the specified conditions and the employee rejects the offer. Therefore, if an employer is able to offer modified or alternative work, it will not be required to provide the supplemental job disability benefit.

Specific Technologies or Equipment:

The regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives:

No more effective alternative, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time. The purpose of the present rulemaking is to solicit and consider alternatives.

Section 10133.54 Form DWC-AD 10133.54 “Request for Dispute Resolution before the Administrative Director”

Specific Purpose of Section 10133.54:

Section 10133.54 is a mandatory one-page form that can be submitted by either the employee or the claims administrator to be used if the party requests the Administrator Director to resolve a dispute concerning the Supplemental Job Displacement Benefit.

Necessity:

Labor Code §4658.5 provides that Administrative Director with the authority to prescribe the form and manner for the employer to provide the employee with the notice of rights pertaining to the Supplemental Job Disability Benefit. Labor Codes §133, 4658.5, and 5307.5 provide the administrative director with the authority to adopt regulations to enforce the Supplemental Job Disability Benefit. Because there may be disputes concerning the employee’s right to the Supplemental Job Disability Benefit or the employer’s offer of modified or alternative work, this form will allow the parties to present the dispute to the Administrative Director, who can then resolve the dispute.

Technical, Theoretical, and/or Empirical Study, Reports or Documents:

The Division of Workers’ Compensation posted drafts of the proposed section on its website to allow for pre-notice public comment.

Business Impact:

This regulation implements Labor Code §4658.5, which provides for a Supplemental Job Disability Benefit for education and training. The benefit will be a voucher in the amount of \$4000, \$6000, \$8000, or \$10,000 depending upon the injured worker’s percentage of permanent disability. Previously, the cap on vocational rehabilitation was \$16,000. Therefore, businesses may save as much as \$6,000 to \$12,000 on each case where the injured worker previously was entitled to vocational rehabilitation benefits, but now is entitled to Supplemental Job Disability Benefit. This regulation also implements Labor Code §4658.6, which provides that the employer shall not be liable for the supplemental job displacement benefit if the employer offers modified or alternative work that meet the specified conditions and the employee rejects the offer. Therefore, if an employer is able to offer modified or alternative work, it will not be required to provide the Supplemental Job Disability Benefit.

Specific Technologies or Equipment:

The regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives:

No more effective alternative, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time. The purpose of the present rulemaking is to solicit and consider alternatives.

Section 10133.55 Requirement to Issue Supplemental Job Displacement Nontransferable Training Voucher

Specific Purpose of Section 10133.55:

The purpose of Section 10133.55 is to set forth the requirements regarding the issuance of the Supplemental Job Displacement Nontransferable Training Voucher, the requirement to use the form set forth in Section 10133.56, the timeliness requirements for the employer to issue the voucher, and other instructions regarding the use of the voucher.

Necessity:

Labor Code §4658.5 provides that (except as provided in Section 4658.6) if the injury causes permanent partial disability and the injured worker does not return to work within 60 days of the termination of temporary disability, the injured worker shall be eligible for a Supplemental Job Disability Benefit in the form of a voucher. This regulation is necessary to instruct the regulated public regarding the timing of the issuance of the voucher and the form of the voucher, so that the regulated public is able to comply with the statute.

Technical, Theoretical, and/or Empirical Study, Reports or Documents:

The Division of Workers' Compensation posted drafts of the proposed section on its website to allow for pre-notice public comment.

Business Impact:

This regulation implements Labor Code §4658.5, which provides for a Supplemental Job Disability Benefit for education and training. The benefit will be a voucher in the amount of \$4000, \$6000, \$8000, or \$10,000 depending upon the injured worker's percentage of permanent disability. Previously, the cap on vocational rehabilitation was \$16,000. Therefore, businesses may save as much as \$6,000 to \$12,000 on each case where the injured worker previously was entitled to vocational rehabilitation benefits, but now is entitled to SJDB.

Specific Technologies or Equipment:

The regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives:

No more effective alternative, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time. The purpose of the present rulemaking is to solicit and consider alternatives.

Section 10133.56 Form DWC-AD 10133.56 “Supplemental Job Displacement Nontransferable Training Voucher”

Specific Purpose of Section 10133.56:

Section 10133.56 is the mandatory form for the Supplemental Job Displacement Nontransferable Training Voucher. It provides instructions to the employee regarding the purpose of the voucher and informs the employee that he or she must complete the voucher and return the form with receipts and documentation to the claims administrator for reimbursement. The form contains lines to be filled out by the injured worker and the claims administrator. It also advises the claims administrator that reimbursement payments to the employee or direct payments to the Vocational Return to Work Counselor (if any) and the training providers must be made with 45 calendar days.

Necessity:

Labor Code §4658.5 provides that (except as provided in Section 4658.6) if the injury causes permanent partial disability and the injured worker does not return to work within 60 days of the termination of temporary disability, the injured worker shall be eligible for a Supplemental Job Disability Benefit in the form of a voucher. This regulation is necessary to provide the mandatory voucher form to be used by the regulated public so that the regulated public is able to comply with the statute.

Technical, Theoretical, and/or Empirical Study, Reports or Documents:

The Division of Workers’ Compensation posted drafts of the proposed section on its website to allow for pre-notice public comment.

Business Impact:

This regulation implements Labor Code §4658.5, which provides for a Supplemental Job Disability Benefit for education and training. The benefit will be a voucher in the amount of \$4000, \$6000, \$8000, or \$10,000 depending upon the injured worker’s percentage of permanent disability. Previously, the cap on vocational rehabilitation was \$16,000. Therefore, businesses may save as much as \$6,000 to \$12,000 on each case where the injured worker previously was entitled to vocational rehabilitation benefits, but now is entitled to SJDB.

Specific Technologies or Equipment:

The regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives:

No more effective alternative, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time. The purpose of the present rulemaking is to solicit and consider alternatives.

Section 10133.57 State Approved or Accredited Schools

Specific Purpose of Section 10133.57:

Section 10133.57 sets forth the approval criteria for private providers of education-related retraining or skill enhancement selected to provide training as part of the Supplemental Job Disability Benefit. The section requires approval from specific agencies for providers located either in California or outside California.

Necessity:

Labor Code §4658.5 provides that the Supplemental Job Disability Benefit shall be in the form of a voucher for education-related retraining or skill enhancement at “state approved or accredited schools.” This regulation is necessary clarify the approval criteria for the schools.

Technical, Theoretical, and/or Empirical Study, Reports or Documents:

The Division of Workers’ Compensation posted drafts of the proposed section on its website to allow for pre-notice public comment.

Business Impact:

This regulation implements Labor Code §4658.5, which provides for a Supplemental Job Disability Benefit for education and training. The benefit will be a voucher in the amount of \$4000, \$6000, \$8000, or \$10,000 depending upon the injured worker’s percentage of permanent disability. Previously, the cap on vocational rehabilitation was \$16,000. Therefore, businesses may save as much as \$6,000 to \$12,000 on each case where the injured worker previously was entitled to vocational rehabilitation benefits, but now is entitled to SJDB.

Specific Technologies or Equipment:

The regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives:

No more effective alternative, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time. The purpose of the present rulemaking is to solicit and consider alternatives.

Section 10133.58 The Administrative Director's List of Vocational Return to Work Counselors

Specific Purpose of Section 10133.58:

The purpose of Section 10133.58 is to set forth that the Administrative Director shall maintain a list of Vocational Return to Work Counselors (VRTWC), who perform the work of assisting the injured employees as set forth in Labor Code §4658.5. The regulation informs the VRTWC that he or she must meet the qualifications specified in Section 10133.5(a)(15) and must apply to the Administrative Director in order to be included on the list. The regulation also states that the employee is responsible for proving necessary medical reports to the VRTWC.

Necessity:

Labor Code §4658.5 provides that no more than 10 percent of the voucher moneys may be used for vocational or return to work counseling. The Administrative Director will maintain a list of VRTWC to assist the injured employees who may wish to select a VRTWC. This regulation is necessary so that the regulated public, especially the injured workers and VRTWCs, are advised that the Administrative Director will maintain a list of VRTWCs and how the list is maintained. It is also necessary to advise the injured worker that he or she must provide the VRTWC with any necessary medical reports.

Technical, Theoretical, and/or Empirical Study, Reports or Documents:

The Division of Workers' Compensation posted drafts of the proposed section on its website to allow for pre-notice public comment.

Business Impact:

This regulation implements Labor Code §4658.5, which provides for a Supplemental Job Disability Benefit for education and training. The benefit will be a voucher in the amount of \$4000, \$6000, \$8000, or \$10,000 depending upon the injured worker's percentage of permanent disability. Previously, the cap on vocational rehabilitation was \$16,000. Therefore, businesses may save as much as \$6,000 to \$12,000 on each case where the injured worker previously was entitled to vocational rehabilitation benefits, but now is entitled to SJDB.

Specific Technologies or Equipment:

The regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives:

No more effective alternative, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time. The purpose of the present rulemaking is to solicit and consider alternatives.

Section 10133.59 Termination of Employer's Liability for the Supplemental Job Displacement Benefit

Specific Purpose of Section 10133.59:

Section 10133.59 lists the circumstances will terminate the employer's liability to provide a supplemental job displacement voucher.

Necessity:

It is necessary to list the circumstances that terminate the employer's liability to provide a supplemental job displacement voucher in order to prevent disputes regarding the benefit.

Technical, Theoretical, and/or Empirical Study, Reports or Documents:

The Division of Workers' Compensation posted drafts of the proposed section on its website to allow for pre-notice public comment.

Business Impact:

This regulation sets forth the circumstances that terminate the employer's liability for the Supplemental Job Disability Benefit. Once the liability for the benefit terminates, the employer will not be required to pay any additional Supplemental Job Disability Benefit to the employee.

Specific Technologies or Equipment:

The regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives:

No more effective alternative, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time. The purpose of the present rulemaking is to solicit and consider alternatives.