

**STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS  
Division of Workers' Compensation**

**FINAL STATEMENT OF REASONS**

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

**CALIFORNIA CODE OF REGULATIONS,  
TITLE 8, ARTICLES 6, 6.5, 7.5, and 8  
SUPPLEMENTAL JOB DISPLACEMENT BENEFIT**

The Acting Administrative Director of the Division of Workers' Compensation (hereinafter "Acting Administrative Director") pursuant to the authority vested in her by Labor Code Sections 133, 4658.5, 4658.6, 4658.7 and 5307.3 has adopted, amended and repealed regulations within Articles 6 through 8, Chapter 4.5 of title 8, California Code of Regulations, commencing with section 9813.1, relating to the Supplemental Job Displacement Benefit. The list of amended regulations appears below:

- |                  |  |
|------------------|--|
| Section 9813.1   | Notice of Offer of Modified or Alternative Work. For Injuries Between January 1, 2004 and December 31, 2012, Inclusive               |
| Section 10116.9  | Definitions for Articles 6.5 and 7.5   |
| Section 10117    | Offer of Work; Adjustment of Permanent Disability Payments   |
| Section 10118    | Form [DWC-AD 10118 "Notice of Offer of Work for Injuries Occurring Between 1/1/04 -12/31/12, Inclusive."]                            |
| Section 10133.31 | Supplemental Job Displacement Nontransferable Voucher for Injuries Occurring on or After January 1, 2013                             |
| Section 10133.32 | Form [DWC-AD 10133.32 "Supplemental Job Displacement Nontransferable Voucher for Injuries Occurring on or After 1/1/13"]             |
| Section 10133.33 | Form [DWC-AD 10133.33 "Description of Employee's Job Duties"]  |
| Section 10133.34 | Offer of Work for Injuries Occurring on or After January 1, 2013   |
| Section 10133.35 | Form [DWC-AD 10133.35 "Notice of Offer of Work for Injuries Occurring on or After 1/1/13"]   |
| Section 10133.36 | Form [DWC-AD 10133.36 "Physician's Return-to-Work & Voucher Report"]   |
| 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 Offer of Modified or Alternative Work for Injuries Occurring Between 1/1/04 – 12/31/12, Inclusive"] |
| Section 10133.55 | Form [DWC-AD 10133.55 "Request for Dispute Resolution Before the Administrative Director"]   |
| Section 10133.56 | Requirement to Issue Supplemental Job Displacement Nontransferable Training Voucher  |

- Section 10133.57 Form [DWC-AD 10133.57 “Supplemental Job Displacement Nontransferable Training Voucher Form for Injuries Occurring Between 1/1/04 – 12/31/12, Inclusive.”
- Section 10133.58 State Approved or Accredited Schools
- Section 10133.60 Termination of Claims Administrator’s Liability for the Supplemental Job Displacement Voucher

## **UPDATE OF INITIAL STATEMENT OF REASONS AND INFORMATIVE DIGEST**

As authorized by Government Code §11346.9(d), the Administrative Director hereby incorporates by reference the entire Initial Statement of Reasons prepared in this matter. Unless a specific basis is stated below for any modification to the regulations as initially proposed, the necessity for the amendments to existing regulations and for the adoption of new regulations as set forth in the Initial Statement of Reasons continues to apply to the regulations as now adopted. All modifications from the initially proposed text of the regulations are summarized below.

## **REQUEST FOR EFFECTIVE DATE OF JANUARY 1, 2014**

The Division of Workers’ Compensation is submitting this certificate of compliance action and specifically requests that those portions of the regulation text and incorporated by reference forms that were modified from the emergency-adopted regulation text and forms be made effective January 1, 2014 pursuant to Government Code section 11343.4(a). The proposed regulations modify the text and forms to the emergency-adopted text and forms. This will allow adjusting agencies time to update the modified forms in their computer systems. Allowing the modifications to the text and forms to be effective January 1, 2014 will allow the regulated public to change its processes to conform to the regulations.

SB 863 has created substantial changes in procedure regarding injured worker’s entitlement to the supplemental job displacement benefit voucher. These regulations will implement the changes to processes covered by Section 4658.5 and 4658.7, among others, that are necessary to implement the provisions of SB 863.

A permanently partially disabled worker is entitled to a voucher unless the employer makes an offer of regular, modified, or alternative work that meets certain criteria. Instead of requiring the offer within 30 days of the termination of temporary disability, Labor Code section 4658.7 allows the employer to offer regular, modified, or alternative work within 60 days of receipt of a report finding that all conditions have become permanent and stationary and that the injury has caused permanent partial disability. The medical report must be from a primary treating physician, Agreed Medical Evaluator, or a Qualified Medical Evaluator.

The statute requires that the medical report that precipitates the offer must be made on a specific form created by the Administrative Director. Labor Code section 4658.7(h)(2) requires that the employer be fully informed of the work capacities and of activity restrictions resulting from the injury that are relevant to potential regular work, modified work, or alternative work. This is intended to make it easier for an employer to perform the return-to-work analysis and understand the injured worker's work capacities so that it can make an informed decision regarding a return to work offer. Under SB 863, injured workers will be provided voucher benefits sooner in the life of their claim.

**THE FOLLOWING SECTIONS WERE AMENDED FOLLOWING THE PUBLIC HEARING AND CIRCULATED FOR A FIRST 15-DAY COMMENT PERIOD (May 17, 2013 – May 31, 2013)**

**1. Section 9813.1. Notice of Offer of Modified or Alternative Work. For Injuries Between January 1, 2004 and December 31, 2012, Inclusive.**

The word "Inclusive" was added to the title to clarify the exact time period.

**2. Section 10116.9. Definitions for Articles 6.5 and 7.5**

The word "Inclusive" was added to subdivision (k), referring to the name of Form DWC-AD 10133.53.

**3. Section 10117. Offer of Work; Adjustment of Permanent Disability Payments.**

The word "Inclusive" was added to subdivision (a) to clarify the exact time period. The claims administrator and employer may not become aware of the finally determined permanent and stationary date until the 60-day period to act has expired. To avoid ambiguity, the phrase "employer has knowledge" of permanent and stationary status has been added.

**4. Section 10118. Form [DWC-AD 10118 "Notice of Offer of Work for Injuries Occurring Between 1/1/04 – 12/31/12."]**

The word "Inclusive" was added to the title to clarify the exact time period. "Retraining and Return to Work Unit" was deleted from the heading as that Unit no longer exists within the Division of Workers' Compensation (DWC). DWC's address was added for filing a Request for Dispute Resolution. On page 3, the case number field was deleted because case numbers may not be assigned at the time offers are made. Page 4 was edited for clarification. "I accept the offer and waive ~~my~~ any right to object to the job location."

**5. Section 10133.31. Supplemental Job Displacement Nontransferable Voucher for Injuries Occurring on or After 1/1/13.**

3

Subdivisions (b)(1) and (b)(2) were deleted so as not to be duplicative with Section 10133.34. The subdivisions were renumbered to accommodate the change in the order. Subdivision (c) was added to clarify that if an injured worker loses no time from work or returns to his or her regular job no return-to-work offer need be made.

**6. Section 10133.32. Form [DWC-AD 10133.32 “Supplemental Job Displacement Non-Transferable Voucher for Injuries Occurring on or After 1/1/13”]**

The form has been stricken out in its entirety and a new version of the form will take its place.

The content on the first two pages of the form were moved to allow for all fillable parts of the form to be on the second page so that the injured worker does not have to photocopy the first page with submission of the second page to the claims administrator.

The Training Provider’s Name blank was amended.

The proof of service was amended.

DWC’s address was added for filing a Request for Dispute Resolution.

**7. Section 10133.33. Form [DWC-AD 10133.33 “Description of Employee’s Job Duties”]**

“Retraining and Return to Work Unit” was deleted from the heading as the unit no longer exists within the DWC.

**8. Section 10133.34. Offer of Work for Injuries Occurring on or After 1/1/13**

Subdivision (b) was deleted so as not to be duplicative with Section 10133.31.

**9. Section 10133.35. Form [DWC-AD 10133.35 “Notice of Offer of Work for Injuries Occurring on or After 1/1/13.”]**

“Retraining and Return to Work Unit” was deleted from the heading as the unit no longer exists within DWC.

Descriptions for filling in blanks were clarified. Duplicative “Name” fields were deleted.

Explanations that the injured worker has the right to object if the offer of work is for a different location or shift, and that seasonal work may be cumulative was added to the form.

DWC’s address was added for filing a Request for Dispute Resolution.

The format of the proof of service was amended.

**10. Section 10133.36. Form [DWC-AD 10133.36 “Physician’s Return-to-Work & Voucher Report.”]**

The form was amended to conform to the functional capacity assessment of the DWC Form PR-4 which primary treating physicians complete when declaring an injured worker permanent and stationary. A box was added to allow the physician to describe in what ways the impaired activities are limited.

The instructions were amended to indicate that only primary treating physicians, Agreed Medical Evaluators, or Qualified Medical Evaluators are responsible for filling out the form.

**11. Section 10133.53. Form [DWC-AD 10133.53 "Notice of Offer of Modified or Alternative Work for Injuries Occurring Between 1/1/04 – 12/31/12.”]**

“Retraining and Return to Work Unit” was deleted from the heading as that Unit no longer exists within DWC.

The word “Inclusive” was added to the title to clarify the exact time period.

Descriptions for filling in blanks were clarified.

DWC’s address was added for filing a Request for Dispute Resolution.

**12. Section 10133.55 Form [DWC-AD 10133.55 “DWC-AD 10133.55 “Request for Dispute Resolution Before the Administrative Director.”]**

“Retraining and Return to Work Unit” was deleted from the heading as that Unit no longer exists within DWC.

A reason for filing for dispute resolution on page 3 was clarified to encompass objections to job offers and a reason was deleted as the reimbursement program is no longer in existence.

Instructions and a proof of service were added to the form.

**13. Section 10133.57. Supplemental Job Displacement Nontransferable Training Voucher Form for Injuries Occurring between 1/1/04 and 12/31/12, Inclusive.**

“Retraining and Return to Work Unit” was deleted from the heading as that Unit no longer exists within DWC.

The word “Inclusive” was added to the title to clarify the exact time period.

An instruction was corrected on page 2 because not all Training Providers have approval numbers and expiration dates.

DWC's address was added for filing a Request for Dispute Resolution.

Information about Information and Assistance was added to the form.

**14. Section 10133.58. State Approved or Accredited Schools.**

The word "Inclusive" was added to the title to clarify the exact time period.

This section was amended to reflect changes to approval of eligible providers.

**15. Section 10133.60. Termination of Claims Administrator's Liability for the Supplemental Job Displacement Voucher.**

Subdivision (a)(1) was amended to correctly state the requirements for offers of work set forth in section 10133.34.

**THE FOLLOWING SECTIONS WERE AMENDED FOLLOWING THE FIRST 15-DAY COMMENT PERIOD (May 17, 2013 – May 31, 2013) AND CIRCULATED FOR A SECOND 15-DAY COMMENT PERIOD (June 7, 2013 - June 21, 2013)**

**1. Section 10117. Offer of Work; Adjustment of Permanent Disability Payments.**

The proposed phrase "employer has knowledge that" has been deleted from subdivision (b) as it is inconsistent with the Labor Code section 4658.

**2. Section 10133.31. Supplemental Job Displacement Nontransferable Voucher for Injuries Occurring on or After 1/1/13.**

Subdivision (b) is amended to include that the employer must make the offer of work no later than 60 days after receipt of the Physician's Return to Work & Voucher Report that indicates the work capacities and activity restrictions that are relevant to regular work, modified work, or alternative work. The 60 day time frame was inadvertently taken out of the proposed regulations during the 1<sup>st</sup> 15-day comment period.

Subdivision (c) is amended to reference Labor Code section 4658.7(b).

**3. Section 10133.32. Form [DWC-AD 10133.32 "Supplemental Job Displacement Non-Transferable Voucher for Injuries Occurring on or After 1/1/13"]**

The activity restrictions have been clarified to include "standing, walking, sitting, climbing, forward bending, kneeling, crawling, twisting, and keyboarding."

The form is also revised to clarify that if a job description is provided, the physician would discuss physical requirements rather than activity restrictions.

The instructions on the second page of the form have been clarified to explain that work restrictions should indicate how many hours a particular activity is restricted rather than performed. A sentence discussing the use of the other restrictions box has been

deleted because explanations of checked restrictions can now be described in a separate box.

#### **4. Section 10133.34. Offer of Work for Injuries Occurring on or After 1/1/13**

Subdivision (b) is added to clarify that the offer of work is to be made no later than 60 days after receipt of the Physician's Return-to-Work & Voucher Report that indicates the work capacities and activity restrictions that are relevant to regular work, modified work, or alternative work.

**THE FOLLOWING SECTIONS WERE AMENDED FOLLOWING THE SECOND 15-DAY COMMENT PERIOD (June 7, 2013 - June 21, 2013) AND CIRCULATED FOR A THIRD 15-DAY COMMENT PERIOD (July 3, 2013 - July 18, 2013)**

#### **1. Section 10117. Offer of Work; Adjustment of Permanent Disability**

Subdivision (f) is deleted and the subdivisions were re-lettered to accommodate the change in order.

#### **2. Section 10133.31. Supplemental Job Displacement Nontransferable Voucher for Injuries Occurring on or After 1/1/13.**

Subdivision (f)(5) is amended to allow injured workers to submit written bids from a computer retailer to obtain payment for the purchase of computer equipment because they may not have the funds to purchase the equipment up-front. If the injured worker receives funds based upon submission of a written bid, the injured worker will be required to submit receipts. Failure to submit receipts will result in a \$1,000 deduction from the total amount allowable by the voucher.

#### **3. Section 10133.32. Form DWC-AD 10133.32 "Supplemental Job Displacement Nontransferable Voucher for Injuries Occurring on or After 1/1/13"**

A separate Request for Purchase of Computer Equipment was added to the form. Injured workers can submit either a written bid from a computer retailer or receipts of purchase. Following the purchase, receipts for the computer equipment must be submitted to the claims administrator.

#### **4. Section 10133.34. Offer of Work for Injuries Occurring on or After 1/1/13**

Subdivision (b)(4) was deleted and the subdivisions were renumbered to accommodate the change in order.

**THE FOLLOWING SECTIONS WERE AMENDED FOLLOWING THE THIRD 15-DAY COMMENT PERIOD (July 3, 2013 - July 18, 2013) AND CIRCULATED FOR A FOURTH 15-DAY COMMENT PERIOD (August 23, 2013 - September 6, 2013)**

**1. Section 10133.31. Supplemental Job Displacement Nontransferable Voucher for Injuries Occurring on or After 1/1/13.**

Subdivision (f)(5) is amended to allow injured workers to submit a written invoice for computer equipment to be paid directly to the retailer. The claims administrator may also offer to provide the computer equipment directly to the employee.

Subdivision (j) is amended to indicate that computer equipment must be provided to the employee within 45 days of receipt of the Request for Purchase of Computer Equipment.

**2. Section 10133.32. Form DWC-AD 10133.32 “Supplemental Job Displacement Nontransferable Voucher for Injuries Occurring on or After 1/1/13”**

The form is amended to conform with the proposed changes to Section 10133.31. The form is amended to include a separate box that the employee can select if the employer or claims administrator offers to provide the computer directly to the employee.

**THE FOLLOWING ADDITIONAL NON-SUBSTANTIVE/CORRECTIONS WITHOUT REGULATORY EFFECT WERE MADE TO THE TEXT OF THE REGULATIONS AFTER THE CLOSE OF THE FINAL COMMENT PERIOD**

**1. Section 10133.31 Supplemental Job Displacement Nontransferable Vouchers for Injuries Occurring on or After January 1, 2013.**

Subdivision (f)(5) and subdivision (j) were corrected to delete the term “employer” because it is redundant and may cause confusion. “Claims administrator” is defined in the definitions to include self-insured employers.

**2. Section 10133.32. Form [DWC-AD 10133.32 “Supplemental Job Displacement Nontransferable Voucher For Injuries Occurring on or After 1/1/13.”]**

On the fourth page of the form, the term “employer” is deleted to conform with Section 10133.31. On page four of the form, third paragraph from the bottom of the page is amended to read that “the claims administrator will” provide the computer equipment rather than “your employer must” provide the computer equipment.

The effective date has been changed from 10/13 to 1/1/14 in the footers of each page.

**3. Sections 10118, 10133.33, 10133.35, 10133.36, 10133.53, 10133.55, 10133.57 (all forms).**

The effective and revision dates have been changed from 10/13 to 1/1/14 in the footers of each page.

## **LOCAL MANDATES DETERMINATION**

- Local Mandate: None. The proposed regulations will not impose any new mandated programs or increased service levels on any local agency or school district. The proposed amendments do not apply to any local agency or school district.
- Cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: None. The proposed amendments do not apply to any local agency or school district.
- Other nondiscretionary costs/savings imposed upon local agencies: None. The proposed amendments do not apply to any local agency or school district.

## **CONSIDERATION OF ALTERNATIVES**

The Division considered all comments submitted during the public comment periods, and made modifications based on those comments to the regulations as initially proposed. The Acting Administrative Director has now determined that no alternatives proposed by the regulated public or otherwise considered by the Division of Workers' Compensation would be more effective in carrying out the purpose for which these regulations were proposed, nor would they be as effective and less burdensome to affected private persons and businesses than the regulations that were adopted.

## **SUMMARY OF COMMENTS RECEIVED AND RESPONSES THERETO CONCERNING THE REGULATIONS ADOPTED**

The comments of each organization or individual are addressed in the following charts.

The public comment period was as follows:

### **Initial 45-day comment period on proposed regulations:**

February 1, 2013 through March 19, 2013

### **First 15-day comment period on modifications to proposed text:**

May 17, 2013 through May 31, 2013

### **Second 15-day comment period on modifications to proposed text:**

June 7, 2013 through June 17, 2013

**Third 15-day comment period on modifications to proposed text:**

July 3, 2013 through July 18, 2013

**Fourth 15-day comment period on modifications to proposed text:**

August 23, 2013 through September 6, 2013