

TITLE 8. INDUSTRIAL RELATIONS
DIVISION 1. DEPARTMENT OF INDUSTRIAL RELATIONS
CHAPTER 4.5. DIVISION OF WORKERS' COMPENSATION
SUBCHAPTER 1.5. INJURIES ON OR AFTER JANUARY 1, 1990
ARTICLE 6.5. RETURN TO WORK

8 CCR 10117

§ 10117. Offer of Work; Adjustment of Permanent Disability Payments.

(a) This section shall apply to all injuries occurring ~~on or after~~ between January 1, 2005 and December 31, 2012, **inclusive** and to the following employers:

(1) Insured employers who employed 50 or more employees at the time of the most recent policy inception or renewal date for the insurance policy that was in effect at the time of the employee's injury;

(2) Self-insured employers who employed 50 or more employees at the time of the most recent filing by the employer of the Self-Insurer's Annual Report that was in effect at the time of the employee's injury; and

(3) Legally uninsured employers who employed 50 or more employees at the time of injury.

(b) Within 60 calendar days from the date that the ~~employer has knowledge that the~~ condition of an injured employee with permanent partial disability becomes permanent and stationary:

(1) If an employer does not serve 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 accordance with Labor Code section 4658(d)(1) and increased by 15 percent.

(2) If an employer serves the employee with a notice of offer of regular work, modified work or alternative work for a period of at least 12 months, and in accordance with the requirements set forth in paragraphs (3) and (4), 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.

(3) The employer shall use form DWC-AD 10133.53 (Section 10133.53) to offer modified or alternative work, or form DWC-AD 10118 (Section 10118) to offer regular work. The claims administrator may serve the offer of work on behalf of the employer.

(4) The regular, alternative, or modified work that is offered by the employer pursuant to paragraph (2) shall be located within a reasonable commuting distance of the employee's

residence at the time of the injury, unless the employee waives this condition. This condition shall be deemed to be waived if the employee accepts the regular, modified, or alternative work, and does not object to the location within 20 calendar days of being informed of the right to object. The condition shall be conclusively deemed to be satisfied if the offered work is at the same location and the same shift as the employment at the time of injury.

(c) If the claims administrator relies upon a permanent and stationary date contained in a medical report prepared by the employee's treating physician, QME, or AME, but there is subsequently a dispute as to an employee's permanent and stationary status, and there has been a notice of offer of work served on the employee in accordance with subdivision (b), the claims administrator may withhold 15% from each payment of permanent partial disability remaining to be paid from the date the notice of offer was served on the employee until there has been a final judicial determination of the date that the employee is permanent and stationary pursuant to Labor Code section 4062.

(1) 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).

(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.

(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.

(d) If the employee's regular work, modified work, or alternative work that has been offered by the employer pursuant to paragraph (1) of subdivision (b) and has been accepted by the employee, is terminated prior to the end of the period for which permanent partial disability benefits are due, the amount of each remaining permanent partial disability payment from the date of the termination shall be paid in accordance with Labor Code section 4658 (d) (1), as though no decrease in payments had been imposed, and increased by 15 percent. An employee who voluntarily terminates his or her regular work, modified work, or alternative work shall not be eligible for the 15 percent increase in permanent partial disability payments pursuant to this subdivision.

(e) Nothing in this section shall prevent the parties from settling or agreeing to commute the permanent disability benefits to which an employee may be entitled. However, if the permanent disability benefits are commuted by a workers' compensation administrative law judge or the appeals board pursuant to Labor Code section 5100, the commuted sum shall account for any adjustment that would have been required by this section if payment had been made pursuant to Labor Code section 4658.

~~(f) When the employer offers regular, modified or alternative work to the employee that meets the conditions of this section and subsequently learns that the employee cannot lawfully perform regular, modified or alternative work, the employer is not required to provide the regular, modified or alternative work.~~

~~(f)~~(g) If the employer offers regular, modified, or alternative seasonal work to the employee, the offer shall meet the following requirements:

- (1) the employee was hired for seasonal work prior to injury;
- (2) the offer of regular, modified or alternative seasonal work is of reasonably similar hours and working conditions to the employee's previous employment, and the one year requirement may be satisfied by cumulative periods of seasonal work;
- (3) the work must commence within 12 months of the date of the offer; and
- (4) The offer meets the conditions set forth in this section.

Authority: Sections 133, ~~139.48~~ and 5307.3, Labor Code.

Reference: Sections ~~139.48~~ and 4658, Labor Code; Del Taco v. WCAB (2000) 79 Cal.App.4th 1437; Anzelde v. WCAB (1996) 61 Cal. Comp. Cases 1458 (writ denied); and Henry v. WCAB (1998) 68 Cal.App.4th 981.

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ARTICLE 7.5. SUPPLEMENTAL JOB DISPLACEMENT BENEFIT

8 CCR 10133.31

§ 10133.31. ~~Requirement to Issue~~ Supplemental Job Displacement Nontransferable Vouchers for Injuries Occurring on or After January 1, 2013.

(a) This section shall apply to all injuries occurring on or after January 1, 2013.

(b) If the injury causes partial permanent disability, the employee shall be entitled to a Supplemental Job Displacement Benefit unless the employer makes an offer of regular, modified, or alternative work ~~that meets both the following criteria: pursuant to section 10133.34 no later than 60 days after receipt by the claims administrator of the Physician's Return to Work & Voucher Report (Form DWC-AD 10133.36) that indicates the work capacities and activity restrictions that are relevant to regular work, modified work, or alternative work.~~

~~(1) The offer is made within 60 days after receipt by the claims administrator of the Physician's Return to Work & Voucher Report (Form DWC-AD 10133.36).~~

~~(A)~~ (1) Upon receipt of the ~~first~~ Physician's Return-to-Work & Voucher Report (Form DWC-AD 10133.36), the claims administrator shall forward the form to the employer.

~~(B)~~ (2) If the claims administrator provides the physician with a job description of the employee's regular work, proposed modified work, or proposed alternative work, the physician shall complete the bottom portion of the Physician's Return-to-Work & Voucher Report (Form DWC-AD10133.36.)

~~(2) The offer is for regular work, modified work, or alternative work lasting at least 12 months.~~

~~(c) An employee who has lost no time from work or has returned to the same job for the same employer, is deemed to have been offered and accepted regular work in accordance with the criteria set forth in Labor Code section 4658(b)-4658.7(b).~~

~~(ed)~~ If no offer for regular, modified, or alternative work is made, pursuant to subdivision (b), the claims administrator shall furnish a "Supplemental Job Displacement Nontransferable

Voucher For Injuries Occurring on or After 1/1/13” (Form DWC-AD 10133.32) within 20 calendar days from expiration of time for making an offer of regular, modified, or alternative work pursuant to paragraph (1) of subdivision (b).

(de) The voucher shall be redeemable up to an aggregate of six thousand dollars (\$6,000)

(ef) The voucher may be applied to any of the following expenses at the choice of the injured worker:

(1) Payment for education-related training or skill enhancement, or both, at a California public school or with a provider that is certified on the state’s Eligible Training Provider List at <http://etpl.edd.ca.gov>, including payment of tuition, fees, books, and other expenses required by the school for retraining and skill enhancement.

(2) Payment for occupational licensing or professional certification fees, related examination fees, and examination preparation course fees.

(3) Payment for services of licensed placement agencies, vocational or return-to-work counseling, and resume preparation, all up to a combined limit of six hundred dollars (\$600).

(4) Purchase of tools required by a training or educational program in which the employee is enrolled.

(5) Purchase of computer equipment including, but not limited to monitors, software, networking devices, input devices (such as keyboard and mouse), peripherals (such as printers), and tablet computers of up to one thousand dollars (\$1,000) ~~reimbursable after cost is incurred~~ payable upon submission of a Request for Purchase of Computer Equipment (page 4 of the DWC-AD Form 10133.32) and submitted with appropriate documentation of either a written bid from a computer retailer or itemized receipts showing the purchase(s) of computer equipment. If the employee receives funds based upon submission of a written bid, the employee shall submit itemized receipt(s) demonstrating the actual purchase to the claims administrator. If the employee fails to submit the itemized receipt(s) of the purchase(s) of computer equipment, \$1,000 will be deducted from the \$6,000 total allowable by the voucher. The employee shall not be entitled to reimbursement for purchase of games or any entertainment media.

(6) Up to five hundred dollars (\$500) as a miscellaneous expense reimbursement or advance, payable upon submission of a Request for Miscellaneous Expenses (page 3 of the DWC-AD Form 10133.32) ~~written request with a copy of the voucher~~ and without need for itemized documentation or accounting. The claims examiner may provide an email

address on Form [DWC-AD 10133.32 “Supplemental Job Displacement Nontransferable Voucher for Injuries Occurring on or After 1/1/13]; if an email address is provided, the employee can submit the request via email or regular mail. The employee shall not be entitled to any other voucher payment for transportation, travel expenses, telephone or internet access, clothing or uniforms or incidental expenses.

(fg) The voucher will expire two years after the date it is furnished to the employee, or five years after the date of injury, whichever is later. The employee ~~shall may not receive be entitled to~~ payment or reimbursement of any expenses that have not been incurred and submitted with appropriate documentation to the claims administrator prior to the expiration date.

(gh) Settlement or commutation of a claim for the supplemental job displacement voucher is not permitted.

(hi) An employer shall not be liable for compensation for injuries incurred by the employee while utilizing the voucher.

(ij) The claims administrator shall issue the ~~reimbursement voucher~~ payments to the employee or direct payments to the VRTWC and the training providers within 45 calendar days from receipt of the completed voucher, receipts, and documentation.

Authority: Sections 133, 4658.1, 4658.7 and 5307.3, Labor Code.
Reference: Sections 4658.6 and 4658.7, Labor Code.

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8 CCR 10133.34

§ 10133.34. Offer of Work for Injuries Occurring on or After January 1, 2013.

(a) This section shall apply to all injuries occurring on or after January 1, 2013.

~~(b) The injured employee shall be entitled to a supplemental job displacement benefit unless the employer makes an offer of regular, modified, or alternative work on Form [DWC-AD10133.35 "Notice of Offer of Regular, Modified, or Alternative Work For injuries occurring on or after 1/1/13" within 60 days after receipt of Form [DWC-AD 10133.36 "Physician's Return-to-Work & Voucher Report."]~~

(b) The injured employee shall be entitled to a supplemental job displacement benefit unless the employer makes an offer of regular, modified, or alternative work on Form [DWC-AD10133.35 "Notice of Offer of Regular, Modified, or Alternative Work For injuries occurring on or after 1/1/13" no later than 60 days after receipt of Form [DWC-AD 10133.36 "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.

(1) The claims administrator may serve the offer of work on behalf of the employer.

(2) The regular, alternative, or modified work that is offered by the employer pursuant to paragraph (1) shall be located within a reasonable commuting distance of the employee's residence at the time of the injury, unless the employee waives this condition. This condition shall be deemed to be waived if the employee accepts the regular, modified, or alternative work, and does not object to the location within 20 calendar days of being informed of the right to object. The condition shall be conclusively deemed to be satisfied if the offered work is at the same location and the same shift as the employment at the time of injury.

(3) The offer of regular, modified, or alternative work must be for work lasting at least 12 months.

~~(4) When the employer offers regular, modified or alternative work to the employee that meets the conditions of this section and subsequently learns that the employee cannot lawfully perform regular, modified or alternative work, the employer is not required to provide the regular, modified or~~

alternative work.

(4) (5) If the employer offers regular, modified, or alternative seasonal work to the employee, the offer shall meet the following requirements:

(A) the employee was hired for seasonal work prior to injury;

(B) the offer of regular, modified or alternative seasonal work is of reasonably similar hours and working conditions to the employee's previous employment, and the one year requirement may be satisfied by cumulative periods of seasonal work;

(C) the work must commence within 12 months of the date of the offer; and

(D) The offer meets the conditions set forth in this section.

Authority: Sections 133, 4658.7 and 5307.3, Labor Code.

Reference: Sections 4658 and 4658.7, Labor Code.