

Article 7.5
Supplemental Job Displacement Benefit

§10133.50 Definitions

(a) The following definitions apply for injuries occurring on or after January 1, 2004:

(1) **Alternative Work.** A job or occupation, other than modified work, with the same employer which is compatible with the injured employee's work restrictions. Alternative work for injuries occurring on or after 1/1/04 shall also meet the criteria of Labor Code Section 4658.6.

(2) **Approved Training Facility.** A training or skills enhancement facility or institution that meets the requirements of Section §10133.57.

(3) **Claims Administrator.** The person or entity responsible for the payment of compensation for a self-administered insurer providing security for the payment of compensation required by Divisions 4 and 4.5 of the Labor Code, a self-administered self-insured employer, or a third-party claims administrator for a self-insured employer, insurer, legally uninsured employer, or joint powers authority.

(4) **Employer.** The person or entity that employed the injured employee at the time of injury.

(5) **Employer Offer.** An offer of medically appropriate employment to the injured employee by the date of injury employer in a form and manner prescribed by the administrative director.

(6) **Essential Functions.** Job duties considered crucial to the employment position held or desired by the employee. Functions may considered essential because the position exists to perform the function, the function requires specialized expertise, serious results may occur if the function is not performed, other employees are not available to perform the function or the function occurs at peak periods and the employer cannot reorganize the work flow.

(7) **Insurer.** Has the same meaning as in Labor Code Section 3211.

(8) **Modified Work.** An injured employee's usual and customary job or occupation with the same employer after modification to accommodate required work restrictions. Modification includes, but is not limited to, changing or excluding certain tasks, reducing the time devoted to certain tasks, modifying the work station, changing the work location, and providing helpful equipment or tools. Modified work for injuries occurring on or after 1/1/04, shall meet the criteria of Labor Code Section 4658.6.

(9) Nontransferable Training Voucher. A document provided to an employee that allows the employee to enroll in education-related training or skills enhancement. The document shall include identifying information for the employee and claims administrator, specific information regarding the value of the voucher pursuant to Labor Code § 4658.5.

(10) Notice. A required letter or form generated by the claims administrator and/or the employer and directed to the injured employee.

(11) Parties. The employee, claims administrator and their designated representatives, if any.

(12) Regular Position. A position arising from the ongoing business needs of the employer which consists of defined activities that can be reasonably viewed as required or prudent in view of the company's business objectives and is expected to last at least 12 months.

(13) Supplemental Job Displacement Benefit. An educational retraining or skills enhancement allowance for injured employees whose employers are unable to provide work consistent with the requirements of Labor Code § 4658.6.

(14) Vocational & Return to Work Counselor (VRTWC). A person or entity providing vocational or return to work services for a fee.

(15) Work Restrictions. Permanent medical limitations on employment activity established by the treating physician, Qualified Medical Examiner or Agreed Medical Examiner.

Authority: Sections 133, 139.5, 4658.5, 5307.3, Labor Code.

Reference: Sections 124, 139.5, 4658.5, 4658.6 Labor Code.

§10133.51 Notice of Right to Supplemental Job Displacement Benefits and Voucher.

- (a) This section shall only apply to injuries occurring on or after 1/1/04.
- (b) If the injury causes partial permanent disability, within 10 days of the last payment of temporary disability, the employer shall provide notice of the employee's right to the supplemental job displacement benefit to the employee. The employer shall use the "Notice of Right to Supplemental Job Displacement Benefit" form (Form DWC-AD 10 1 33.52). The notice shall be sent to the employee by certified mail.
- (c) If the employer does not offer modified or alternative work that complies with Labor Code §4658.6 and the injured employee does not return to work for the employer within 60 days of the termination of temporary disability benefits, the employee may accept the Supplemental Job Displacement Benefit. If the employee accepts the Supplemental Job Displacement Benefit, the employee shall notify the employer of the acceptance by completing the "Notice of Right to Supplemental Job Displacement Benefit" form and returning it to the employer.
- (d) Within 30 days of receipt of the employee's acceptance of the supplemental job displacement benefit, the employer shall provide the employee with a voucher for education-related retraining or skill enhancement or both as set forth in Sections 10133.55 and 10133.56.

Authority: Sections 133, 139.5, 4658.5, and 5307.3, Labor Code.

Reference: Sections 139.5 and 4658.5, Labor Code.

§10133.52 "Notice of Right to Supplemental Job Displacement Form"

If your injury causes permanent partial disability and you do not return to work within 60 days of the termination of temporary disability, you are eligible for a supplemental job displacement benefit in the form of a nontransferable voucher for education-related retraining or skill enhancement, or both, at state approved or accredited schools.

The amount of the voucher for the supplemental job displacement benefit will be as follows:

Up to four thousand dollars (\$4,000) for a permanent partial disability award of less than 15%.

Up to six thousand dollars (\$6,000) for a permanent partial disability award between 15 and 25 %.

Up to eight thousand dollars (\$8,000) for a permanent partial disability award between 26 and 49 %.

Up to ten thousand dollars (\$10,000) for a permanent partial disability award between 50 and 99 %.

The voucher may be used for payment of tuition, fees, books, and other expenses required by the school for retraining or skill enhancement. Nor more than 10 percent of the voucher moneys may be used for vocational or return to work counseling.

If the Workers' Compensation Appeals Board has made an award determining the amount of the permanent partial disability, then the voucher amount shall be based on the award. If no order has issued, the employee shall receive an informal rating, and the voucher amount shall be based on the informal rating award.

If you want a nontransferable job displacement voucher, return the reply card to the claims administrator.

If modified or alternative work is available, you will receive a Notice of Offer of Modified or Alternative Work (Form DWC-AD 10133.53) from your employer within 30 days of the termination of temporary disability indemnity payments. Your employer will not be required to pay for supplemental job displacement benefits if the employer meets either of the following conditions:

If the offer is for modified work which accommodates your work restrictions and lasts at least 12 months; or

The offer is for alternative work meeting all of the following conditions:
(1) You have the ability to perform the essential functions of the job provided; (2) the job provided is in a regular position lasting at least 12 months; (3) the job provided offers wages and compensation that are

within 15 percent of those paid to you at the time of the injury; and (4) the job is located within reasonable commuting distance of your residence at the time of injury.

If there is a dispute regarding the Supplemental Job Displacement Benefit, the employee or claims administrator may file a "Request for Dispute Resolution before the Administrative Director" (8 C.C.R. § 10133.54).

Date: _____
Name of Claims Administrator: _____
Address of Claims Administrator: _____

REPLY CARD

Claim #

Employee Name

_____ Yes, I want a nontransferable job displacement voucher.

_____ Yes, I want a nontransferable job displacement voucher, but not right now. I know that I can request it within 5 years from the date of my injury.

_____ I do not want a nontransferable job displacement voucher. I realize that if I change my mind I must inform the claims administrator.

Authority: Sections 133, 139.5, 4658.5, and 5307.3, Labor Code.
Reference: Sections 139.5 and 4658.5, Labor Code.

§10133.53 Form DWC-AD 10133.53 "Notice of Modified or Alternative Work for Injuries Occurring on or After 1/1/04"

[See attached.]

Authority: Sections 133, 139.5, 4658.5, and 5307.3, Labor Code.
Reference: Sections 139.5 and 4658.5, Labor Code.

§10133.54 Form DWC-AD 10133.54 "Request for Dispute Resolution before the Administrative Director"

[See attached.]

Authority: Sections 133, 139.5, 4658.5, and 5307.3, Labor Code.

Reference: Sections 139.5 and 4658.5, Labor Code.

§10133.55 Requirement to Issue Supplemental Job Displacement Nontransferable Training Voucher

Within 30 days of receipt of the employee's acceptance of the employer's offer of Supplemental Job Displacement Benefit, the employer's claims administrator shall issue a non transferable voucher for education-related retraining or skill enhancement, or both. The voucher shall be issued to the employee as a direct reimbursement to the employee upon the employee's presentation to the employer or the employer's claims administrator of documentation and receipts or as a direct payment to the provider of the education related training or skill enhancement. The voucher must indicate the appropriate level of benefits available to the employee in compliance with Labor Code § 139.5 and §4658.5. The mandatory voucher form is set forth in Section 10133.56.

Authority: Sections 133, 139.5, 4658.5, and 5307.3, Labor Code.

Reference: Sections 139.5 and 4658.5, Labor Code.

**§10133.56 Form DWC-AD 10133.56 "Supplemental Job Displacement
Nontransferable Training Voucher Form"**

[See attached.]

Authority: Sections 133, 139.5, 4658.5, and 5307.3, Labor Code.
Reference: Sections 139.5 and 4658.5, Labor Code.

**Supplemental Job Displacement
Nontransferable Training Voucher Form**
(8CCR § 10133.56 - Mandatory Form)

Labor Code § 139.5 (a) states that to be eligible for a supplemental job displacement training voucher, the injured employee's date of injury must occur on or after January 1, 2004. 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 injured employee shall be eligible for a supplemental job displacement benefit in the form of a non transferable voucher for education related retraining or skill enhancement, or both, at state approved or accredited schools.

Within 30 days of the injured employee's acceptance of the employer's offer of Supplemental Job Displacement Benefit, the claims administrator shall issue a non transferable voucher for education related retraining or skill enhancement, or both. The voucher shall be issued to the employee as a direct reimbursement to the injured employee upon the injured employee's presentation to the claims administrator of documentation and receipts or as a direct payment to the provider of the education related training or skill enhancement. The voucher must indicate the appropriate level of benefits available to the employee in compliance with Labor Code § 139.5 and §4658.5.

This voucher may be used for payment of tuition, fees, books, and other expenses required by the school for retraining or skill enhancement. No more than 10 percent of the voucher monies can be used for vocational or return to work counseling.

Injured Employee Information: Upon completing the voucher form the injured employee must return the form with receipts and documentation to the claims administrator immediately for reimbursement. (The claims administrator must complete Nos. 1 - 8 of this voucher form prior to sending it to the injured employee.)

1. Injured Employee Name _____

2. Address _____

City _____ State _____ Zip Code _____

3. Claim Number _____ Phone Number _____

Insurance Company, or Self-Insured, or Certificate Name, or Adjusting Agency

4. Name _____

5. Claims Mailing Address _____

6. City _____ State ____ Zip Code _____

7. Claims Rep _____ Phone Number _____

8. Amount of \$ available to the injured employee based on % of PD _____
List % of Permanent Disability _____

The injured employee must complete #'s 9 - 18 and sign and date this voucher form.

(VRTWC) Vocational Return To Work Counselor, (if any)

9. Name _____ Phone Number _____

10. Address _____

11. City _____ State _____ Phone Number _____

12. Amount of funds used for education related training or skills enhancement _____

Training Provider Details

13. Provider Name _____

14. Provider Address _____ Phone Number _____

15. City _____ State _____ Zip Code _____

16. Provider BPPVE approval number _____

17. Provider Contact Name _____

18. Training Cost _____

Injured Employee Signature _____ **Date** _____

§10133.57 State Approved or Accredited Schools

Private providers of education-related retraining or skill enhancement selected to provide training as part of a supplemental job displacement benefit shall have either approval from the Bureau for Private Post secondary and Vocational Education, approval from a California state agency that has an agreement with the Bureau for the regulation and oversight of non-degree-granting private post secondary institutions, accreditation from the Western Association of Schools and Colleges, or certification from the Federal Aviation Administration.

Authority: Sections 133, 139.5, 4658.5, and 5307.3, Labor Code.

Reference: Sections 139.5 and 4658.5, Labor Code.

§10133.58 The Administrative Director's List of Vocational Return To Work Counselors

For injuries occurring on or after 1/1/04.

(a) The Administrative Director shall maintain a list of Vocational & Return to Work Counselors (VRTWC) who perform the work of assisting injured employees as discussed in Labor Code section 4658.5 (b). A Counselor who meets the qualifications specified in this regulation must apply to the Administrative Director (AD) to be included on the list throughout the year. The list shall be reviewed and revised on a yearly basis, and shall be made available upon request.

(b) The injured employee may select a Vocational & Return To Work Counselor whenever he/she might require the assistance of a Vocational & Return To Work Counselor. If there is a dispute regarding the selection of a VRTWC, either party may request the Administrative Director to intervene. The requesting party must file a Request for Dispute Resolution before the Administrative Director, (Form DWC- AD 10133.54).

(c) Within fifteen (15) days of receipt of the request, the Administrative Director shall appoint a VRTWC with notice served simultaneously on the VRTWC and parties. The assignment shall be made in rotation from a panel of all Vocational & Return To Work Counselors in the injured employee's geographic area of their residence and who meet the language and specialty requirements, if any, of the employee.

(d) Upon receipt of notification of the VRTWC appointment, the claims administrator shall forward all pertinent medical reports to the VRTWC within ten (10) days. If the VRTWC is unable to meet with the injured employee within ten (10) days of receipt of the medical reports or upon notification from the injured employee, the AD may appoint another VRTWC.

(e) The VRTWC shall communicate with the injured employee throughout the time frame agreed to with the injured employee. The VRTWC shall communicate with the injured employee regarding the evaluation unless otherwise directed by the AD or except for communications initiated by the VRTWC. All such communications shall be confirmed in writing by the VRTWC.

(f) The Administrative Director may direct that reimbursement be provided to the injured employee and VRTWC at the expense of the employer, when the injured employee has provided appropriate documentation (receipts) to the employer/claims administrator of receipts and when it is clear the monies should have been distributed.

NOTE: Authority cited: Sections 133, 139.5 and 5307.3, Labor Code. Reference: Sections 4658.5.

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

(a) For injuries occurring on or after January 1, 2004, the employer's liability to provide a supplemental job displacement voucher shall end when:

- (1) the employer has offered work meeting the requirements of Labor Code §4658.6;
- (2) the eligible employee fails to enroll for retraining pursuant to Labor Code §4658.5 within the time allowed by Labor Code §5410; or
- (3) the maximum funds allowed by the voucher have been exhausted.

Authority: Sections 133, 139.5 and 5307.3, Labor Code.

Reference: Sections 139.5, 4644, 4658.5, 4658.6, and 5410 Labor Code.