

Supplemental Job Displacement Benefit	COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
§10133.55(b) Requirement to Issue Supplemental Job Displacement Nontransferable Training Voucher	The commenter states that the proposed language and Labor Code §4658.5(a), which indicates that "...if the injury causes permanent partial disability and the injured workers does not return to work within 60 days of the termination of temporary disability, the injured employee shall be eligible for a supplemental job displacement benefit..." seem to be in conflict. Under the proposed rule the voucher is due 30 days from the commencement of Permanent Disability, yet the Labor Code has it due 60 from the end of Temporary Disability.	Larry Scott, Workers' Compensation Supervisor County of Sacramento E-mail dated May 25, 2004	We agree.	The section is revised to state that the employee will receive the voucher 25 calendar days from the permanent partial disability award.
§10133.57 State Approved or Accredited Schools	The commenter states that there is already an Eligible Training Provider List (aka I-TRAIN) established, and hopes that this list would be utilized as the resource/referral source for individuals needing training. The providers (accredited schools/colleges) on this list also provide data on placement, assisting individuals in finding jobs after they receive the training.	Judy L. Gilleland-Rasheed, MPA E-mail dated May 27, 2004	We disagree. The division used the Bureau for Private Postsecondary and Vocational Education for the vocational rehabilitation regulations.	None.
§10133.58 The	The commenter is worried about the qualifications for the "Vocational Return	Judy L. Gilleland-Rasheed, MPA	We disagree. The VRTWC will be paid by the employee	None. However, section 10133.55 will

Supplemental Job Displacement Benefit	COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
Administrative Director's List of Vocational Return to Work Counselors	<p>to Work Counselors," and the fee schedule. The commenter asks how these Counselors are to be reimbursed, whom they are working for, the employer, the insurance companies, the schools, or the Dept. of Industrial Relations?</p> <p>The commenter states again that currently in place in most accredited schools and in most Workforce Investment Act (WIA) funded agencies, are counselors who are qualified to provide the guidance needed to assist individuals who need the training to get back to work.</p>	E-mail dated May 27, 2004	or may receive direct reimbursement from the employer per section 10133.55. The statute allows the VRTWC to receive up to 10% of the voucher amount.	be changed to add the words "and/or to the VRTWC.
§10133.50(a)(8) Definitions	The commenter states that this definition is in conflict with Labor Code §4658.1(b), which includes an 85% wage requirement. §4658.1(b) is wrong, but there is a conflict.	Allan Leno Leno & Associates Written comment dated June 11, 2004	We agree.	The definition of modified work will be changed to comply with the definition in Labor Code §4658.1.
§10133.52 "Notice of Potential Right to Supplemental Job Displacement Benefit Form"	The commenter states that tying the voucher to the start of Permanent Disability Awards (PDA) doesn't work for the following reasons: 1) Temporary Total Disability (TTD) and PDA's start and stop multiple times on many cases, 2) 30 days from the start of PDA's may not allow sufficient time for an offer of	Allan Leno Leno & Associates Written comment dated June 11, 2004	We agree.	The section is revised to state that the employee will receive the voucher 25 calendar days from the permanent partial disability award.

Supplemental Job Displacement Benefit	COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>modified work, the employee response, and agreeing on a Return-to-Work (RTW) date, and 3) the parties may need to submit a Job Analysis for review by the treating doctor to insure a safe RTW.</p> <p>The commenter suggests the following language:</p> <p>“If you are eligible, you will receive the voucher from the claims administrator within 60 days from the date that the employee becomes permanent and stationary. If the permanent disability award is greater than the permanent disability percentage estimated by the claims administrator, a revised voucher for any additional amount shall be issued by the claims administrator within 30 days of the issuance of the permanent disability award.</p> <p>Note: You must use the voucher...”</p>			
<p>§10133.53 Form DWC-AD 10133.53 “Notice of Modified or Alternative Work for Injuries</p>	<p>The commenter makes the following suggestions:</p> <ul style="list-style-type: none"> • Delete the word alternative from the question, “Is salary of modified/alternative work the same as pre-injury job?” 	<p>Allan Leno Leno & Associates</p> <p>Written comment dated June 11, 2004</p>	<p>We disagree. Per Labor Code §4658.1 (b) and (c), the salary for both alternative and modified work must be 85% of the pre-injury salary.</p>	<p>None.</p>

Supplemental Job Displacement Benefit	COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
Occurring on or after 1/1/04"	<ul style="list-style-type: none"> Regarding the third question, it should say "Will job last at least 12 months?" 		We agree.	The words "at least" will precede "12 months."
§10133.55(a) Requirement to Issue Supplemental Job Displacement Nontransferable Training Voucher	The commenter states that there needs to be clarification for the injured worker that the 60 days for a RTW relates to a requirement for the employer to specify a RTW date. The worker does not get a voucher if the employer provides a RTW date that falls within the 60-day window, but the employee fails to report for work.	Allan Leno Leno & Associates Written comment dated June 11, 2004	We disagree. The Return to Work regulations will address the return-to-work offers.	None.
§10133.55(b) Requirement to Issue Supplemental Job Displacement Nontransferable Training Voucher	<p>The comment states that making the voucher available to the injured employee proximate to the Permanent & Stationary date is a good idea, but asks if the Administrative Director has the requisite authority. §4658.5 seems to tie the voucher to the PD award.</p> <p>The commenter suggests the following language:</p> <p>"The employer shall provide a voucher for education-related retraining or skill enhancement or both to the employee within 60 days from the date that the employee becomes permanent and</p>	Allan Leno Leno & Associates Written comment dated June 11, 2004	We agree.	<p>The regulations will be revised to tie the voucher to the permanent partial disability award.</p> <p>The section is revised to state that the employee will receive the voucher 25 calendar days from the permanent partial disability award.</p>

Supplemental Job Displacement Benefit	COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	stationary.”			
§10133.55(c) Requirement to Issue Supplemental Job Displacement Nontransferable Training Voucher	The commenter suggests the following language: “If the permanent disability award is greater than the permanent disability percent estimated by the employer at the commencement of permanent disability payments, a revised voucher...”	Allan Leno Leno & Associates Written comment dated June 11, 2004	We disagree.	The regulations will be revised to tie the voucher to the permanent partial disability award.
§10133.55(g) Requirement to Issue Supplemental Job Displacement Nontransferable Training Voucher	The commenter asks: “Where can the injured employee find this information?”	Allan Leno Leno & Associates Written comment dated June 11, 2004	We agree that the website address should be provided.	The website address will be added to §10133.57.
§10133.57 State Approved or Accredited Schools	The commenter suggests that the Division provide information on websites to find approved schools, and asks if there will be a Division of Workers’ Compensation pamphlet to provide some additional guidance for injured employees.	Allan Leno Leno & Associates Written comment dated June 11, 2004	We agree that the website address should be provided.	The website address will be added to §10133.57.
§10133.58(a) The Administrative	The commenter suggests that the proposed language include DWC website address and the 800-number for	Allan Leno Leno & Associates	We agree that the website address should be provided.	The website address will be added

Supplemental Job Displacement Benefit	COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
Director's List of Vocational Return to Work Counselors	the Information and Assistance (I&A) office.	Written comment dated June 11, 2004		
§10133.50(a)(9) Definitions	CARRP states that this definition should make it clear that the voucher is not allowed to be converted to cash. The non-transferability must include that not only is the voucher designated for one person, but it is also designated for training or skill enhancement.	Thomas H. Gilmore, President California Association of Rehabilitation & Reemployment Professionals (CARRP) Written comment dated June 29, 2004	We disagree. We believe that the language is clear.	None.
§10133.51 Notice of Potential Right to Supplemental Job Displacement Benefits	CARRP has the following suggestions: <ul style="list-style-type: none"> • Immediately upon notice from the treating physician that the employee will not be able to return to usual and customary position, the employer should be required to start the search for modified/alternative work. 	Thomas H. Gilmore, President California Association of Rehabilitation & Reemployment Professionals (CARRP) Written comment dated June 29, 2004	We disagree. This goes beyond the authority of the statute.	None.
§10133.52 "Notice of Potential Right to Supplemental Job Displacement	<ul style="list-style-type: none"> • If no modified/alternative work can be offered, the voucher should be immediately available, even if the employee is still TTD. Nothing in the proposed regulations prohibits this action. 	Written comment dated June 29, 2004	We disagree. This goes beyond the authority of the statute.	None.

Supplemental Job Displacement Benefit	COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
Benefit Form”	<ul style="list-style-type: none"> • Should the employer have an alternate position for which the employee would qualify with some skill enhancement or specific training, consideration should be given to the use of the voucher for this purpose. • The employer/insurer should consider the use of a return-to-work specialist after 30 days of off work time for the employee, to expedite this process. • While the final PD rating may not be known when the voucher is to be issued, CARRP recommends using the \$6K figure for the minimum voucher payment (also applies to §10133.55). This would allow the employee to attend most private vocational schools, and the use of the VRTWC. Should the final rating be less than 15%, the insurer may take credit for the overpayment from the award. • To reinforce better outcomes, consideration should be given to 		<p>We disagree. This goes beyond the authority of the statute.</p> <p>We disagree. This goes beyond the authority of the statute.</p> <p>We disagree. This goes beyond the authority of the statute.</p> <p>We disagree. This goes beyond the authority of the</p>	<p>None.</p> <p>None.</p> <p>None.</p> <p>None.</p>

Supplemental Job Displacement Benefit	COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	the use of the voucher to document a business venture in which the employee would invest and work.		statute.	
<p>§10133.58 The Administrative Director's List of Vocational Return to Work Counselors</p>	<p>CARRP states that the injured employee will need to have access to such a list, and having it available in electronic form on a website will not allow many injured workers to use it. CARRP asks the Division how this will be accomplished, and if there will need to be agreement between the insurer/ employer and attorney/employee.</p> <p>CARRP suggests that the Division use the current Independent Vocational Evaluator (IVE) list as the starting point, and add to it, or delete those not interested. There is also the CARRP professional member directory, which has verified degrees via original transcripts and has experience requirement also consistent with VRTWC criteria. Once the list is established, it should be published by county, so it can be distributed more easily by the claims administrator.</p>	<p>Thomas H. Gilmore, President California Association of Rehabilitation & Reemployment Professionals (CARRP)</p> <p>Written comment dated June 29, 2004</p>	<p>We agree that the list should be available upon request and that the website address should be listed.</p> <p>There will not need to be an agreement between the insurer/employer and the attorney/employee.</p> <p>The current IVE list will be used. The list will be on the DWC's website and the VRTWC's will be listed by zip code.</p>	<p>The regulations will stated that the list is available upon request and the DWC's website address will be listed.</p> <p>None.</p> <p>The regulations will stated that the list is available upon request and the DWC's website address will be listed.</p>
<p>The proposed regulations in</p>	<p>The commenter has concerns about the efficacy, especially from the standpoint</p>	<p>Thomas H. Gilmore, President</p>	<p>This goes beyond the authority of the statute.</p>	<p>None.</p>

Supplemental Job Displacement Benefit	COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
general	<p>of the injured worker. Previous to SB 899, the injured workers had the right to \$16,000 total rehabilitation benefits. That amount is spread amongst child care payments, as well as tuition, vocational counseling and several other things. The money that is provided to them now is anywhere between \$6,000 and \$10,000 that can only be used for vocational training, and it may also be used for some type of counseling up to ten percent. The challenge is that people are going to be no longer receiving any type of support as far as subsistence living; therefore, they are not going to be able to go to school unless they are upper middle class and have some savings. If there was any way to move earlier the payment of the voucher, that would be a much better improvement.</p> <p>The commenter thinks it will be a paper voucher that will not be cashed, and insurance companies and businesses will probably save some money in the short-term, but society in general and injured workers and their families are going to be at a severe disadvantage.</p>	<p>California Association of Rehabilitation & Reemployment Professionals (CARRP)</p> <p>Oral comment at the public hearing on July 8, 2004</p>	<p>This goes beyond the authority of the statute.</p>	<p>None.</p>
§10133.50(a)(1)	CAAA indicates that this section	Arthur Azevedo,	We agree that the definition	The definition of

Supplemental Job Displacement Benefit	COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
Definitions	provides a definition of alternative work that includes a reference to Labor Code §4658.6. Because the characteristics of “alternate work” are listed specifically in Labor Code §4658.6(b), and because there is a separate but similar definition of “alternate work” in Labor Code §4658.1(c), CAAA believes that it would be less confusing to specify the exact definition by referencing §4658.6(b).	President California Applicants’ Attorneys Association (CAAA) Written comment dated July 6, 2004	needs to be clarified.	alternative work (§10133.50(a)(1)) will be changed to reflect the definition in Labor Code §4658.1.
§10133.50(a)(8) Definitions	CAAA indicates that this section provides a definition of “modified work” that includes a reference to Labor Code §4658.6, whereas the specific reference should be to §4658.6(a).	Arthur Azevedo, President California Applicants’ Attorneys Association (CAAA) Written comment dated July 6, 2004	We agree that the definition needs to be clarified.	The definition of modified work (§10133.50(a)(8)) will be changed to reflect the definition in Labor Code §4658.1.
§10133.51 Notice of Potential Right to Supplemental Job Displacement Benefits	This section requires the employer to send a notice of potential eligibility to the worker within 10 days of the last payment of temporary disability. This is consistent with the requirement under §4658.5(c). However, it is awkward given that §4061 requires a notice of potential eligibility for permanent partial disability benefits be provided “together with the last payment of temporary	Arthur Azevedo, President California Applicants’ Attorneys Association (CAAA) Written comment dated July 6, 2004	We disagree. The claims administrator may send the Notice with the last payment of TD as the regulation is written.	None.

Supplemental Job Displacement Benefit	COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>disability.” In order to insure that the worker is notified of this benefit, CAAA suggests that the Division allow a claims administrator the option to send this notice together with the last payment of TTD, as required under §4061(a). This would be simpler and would increase the likelihood that the worker would receive the required notice.</p>			
<p>§10133.52 “Notice of Potential Right to Supplemental Job Displacement Benefit Form”</p>	<p>CAAA states that the statutory provisions defining this benefit contain conflicting language regarding the workers’ eligibility for this benefit. Labor Code §4658.6 states that the worker is not eligible for a voucher if the employer offers appropriate alternate or modified work within 30 days of the termination of temporary disability payments. But Labor Code §4658.5 provides that if the employee does not return to work within 60 days of the termination of TTD payments, the employee is eligible for the voucher. Consequently, the worker may be entitled to the voucher either on the 31st day from the termination of the last payment of temporary disability benefits, or on the 61st day, depending upon which section is relied upon. In either case, however, the triggering date</p>	<p>Arthur Azevedo, President California Applicants’ Attorneys Association (CAAA)</p> <p>Written comment dated July 6, 2004</p>	<p>We agree.</p>	<p>The section is revised to state that the employee will receive the voucher 25 calendar days from the permanent partial disability award.</p>

Supplemental Job Displacement Benefit	COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	is the date of termination of TTD payments, not the first payment of permanent disability benefits, and the regulation should reflect that fact.			
<p>§10133.53 Form DWC-AD 10133.53 “Notice of Modified or Alternative Work for Injuries Occurring on or after 1/1/04”</p>	<p>CAAA objects to the sentence “I understand that if I voluntarily quit prior to working in this position for 12 months...” A worker may have no choice but to quit a job that ends up exceeding his/her physical limitations. That worker would then have the right to request the benefit or have the dispute resolved through the Division. This situation could be considered a termination that would entitle the worker to a 15% increase in the remaining PPD payments under §4658. CAAA urges that this sentence be stricken from the form.</p> <p>CAAA believes it would be more appropriate to include the consequences of quitting the job without good cause in the Notice to Employee section with the appropriate remedies, such as contacting the Information & Assistance Unit, or his/her attorney, if there are questions. The notice should also contain information about the employee’s rights if the employer terminates the</p>	<p>Arthur Azevedo, President California Applicants’ Attorneys Association (CAAA)</p> <p>Written comment dated July 6, 2004</p>	<p>We agree to change the language on the form.</p> <p>See above.</p>	<p>The form will now state, “I understand that if I voluntarily quit prior to working in this position for 12 months, I may not be entitled to the Supplemental Job Displacement Benefit.”</p> <p>See above.</p>

Supplemental Job Displacement Benefit	COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	employment within 12 months, including the increase in PPD payments, as required under §4658.			
§10133.55 Requirement to Issue Supplemental Job Displacement Nontransferable Training Voucher	CAAA states that the regulation should provide that the claims administrator is required to make a good faith estimate to determine the correct level of the voucher upon initial issuance. The offer of a low dollar figure voucher, when the employer knows that the eventual PD will be a higher figure, can have a major impact on the worker. If a worker receives \$4,000 initially, this will limit his/her ability to get certain training. Supplementing the voucher with eligibility for up to \$6,000 later may not help the worker.	Arthur Azevedo, President California Applicants’ Attorneys Association (CAAA) Written comment dated July 6, 2004	This goes beyond the statutory authority.	None.
§10133.56 Form DWC-AD 10133.56 “Supplemental Job Displacement Nontransferable Training Voucher Form”	CAAA states that the form requires that the worker pay the tuition and expenses and wait for reimbursement. Most workers will not be able to do this and thus will prevent workers from taking advantage of this benefit. Labor Code §4658.5(b) provides ample authority to allow direct payment to the school, in addition to reimbursement to the worker for appropriate out-of-pocket expenses. The regulations should be amended to provide that the voucher provide for	Arthur Azevedo, President California Applicants’ Attorneys Association (CAAA) Written comment dated July 6, 2004	We disagree. Labor Code §4658.5(b) specifically refers to “direct reimbursement to the injured employee upon presentation to the employer of appropriate documentation and receipts.” However, the proposed regulations do also allow for direct payment by the claims administrator to the training providers.	None.

Supplemental Job Displacement Benefit	COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	either direct payment to the school, or provide reimbursement to the worker, at the worker's option.			
§10133.59(a)(4) Termination of Employer's Liability for the Supplemental Job Displacement Benefit	CAAA objects to this section, because it would terminate the employer's obligation to provide the supplemental job displacement benefit to a seasonal employee after 12 months under certain conditions that are unrelated to the statutory provisions in §§4658.5 and 4658.6. The Legislature could have carved out an exception for seasonal workers in creating this new benefit, but it did not. CAAA states that it is beyond the Division's statutory authority to arbitrarily limit a benefit to which seasonal workers may be lawfully entitled.	Arthur Azevedo, President California Applicants' Attorneys Association (CAAA) Written comment dated July 6, 2004	We disagree. Pursuant to <i>Henry v. WCAB</i> (1998) 63 CCC 1481, seasonal employees are entitled to 12 months of alternative work, not 12 months of continuous work.	None.
§10133.59(6) Termination of Employer's Liability for the Supplemental Job Displacement Benefit	Given that the amount on the voucher may represent only an estimate of the amount of the Permanent Disability Award, CAAA suggests the following language: "the maximum funds allowed by the voucher <u>applicable law</u> have been exhausted."	Arthur Azevedo, President California Applicants' Attorneys Association (CAAA) Written comment dated July 6, 2004	We agree.	The words, "applicable law" will be added to the regulation.
The proposed	The commenters request that under new	Olivia Perez,	We disagree. This goes	None.

Supplemental Job Displacement Benefit	COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
regulations in general	Labor Code §4658.5, the following language be added: “Fees paid to a qualified VRTWC for providing job seeking skills training and or direct job placement assistance services will be restricted to 50 percent of the SJDB.”	Vocational Consultant Cathie Moran, Job Placement Specialist C.M. Perez Co. Written comment dated July 7, 2004	beyond the authority of the statute which says “no more than 10% of the voucher moneys may be used for vocational or return to work counseling.”	
§10133.50(a)(14) Definitions	The commenters request that language be added to include job-seeking skills training and/or job placement assistance to be provided by a qualified VRTWC.	Olivia Perez, Vocational Consultant Cathie Moran, Job Placement Specialist C.M. Perez Co. Written comment dated July 7, 2004 and oral comment at public hearing on July 8, 2004	We disagree. This goes beyond the scope of the statute which states the voucher is for “education-related retraining or skill enhancement, or both, at state approved or accredited schools...”	None.
§10133.50(a)(15) Definitions	The commenters request that additional qualifying criteria be added, as follows: Persons with 10 or more years	Olivia Perez, Vocational Consultant	We disagree. Ten years experience is too restrictive. If a counselor meets the proposed	None.

Supplemental Job Displacement Benefit	COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>experience in vocational rehabilitation conducting evaluations, counseling and or job placement assistance of disabled adults may grandfather in as a qualified VRTWC.</p>	<p>Cathie Moran, Job Placement Specialist</p> <p>C.M. Perez Co.</p> <p>Written comment dated July 7, 2004 and oral comment at public hearing on July 8, 2004</p>	<p>definition, he or she only needs three years experience.</p>	
<p>§10133.51(b) Notice of Potential Right to Supplemental Job Displacement Benefits</p>	<p>CMTA is concerned that the proposed language would create a notice obligation problem for employers who may not know it is due, because doctors may not respond timely, and by requiring repeated notices as a result of injured workers going on and off TD several times. In addition to potential penalties, this procedure will increase administrative costs significantly since notices must be sent by registered mail.</p> <p>CMTA recommends that this section be amended to clarify that once the original notice has been provided to the injured employee, a subsequent notice would not be required. This would reduce potential errors and reduce</p>	<p>Willie Washington, Director, Human Resources California Manufacturers & Technology Association (CMTA)</p> <p>Written comment dated July 7, 2004</p>	<p>We agree to state that the notice only needs to be sent once.</p>	<p>The words, “if not previously provided” will be inserted.</p>

Supplemental Job Displacement Benefit	COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>must be contained in the offer of alternative work should contain a note to indicate an employee may waive the requirement in condition (4) by accepting the offer without regard to the distance.</p> <p>3) CMTA recommends that the end of the form be modified to include the standard statement “if you have questions, please contact the Claims Administrator” and add the Claims Administrator phone #.</p>		<p>to make an offer that complies with the four conditions.</p> <p>We agree.</p>	<p>The recommended language will be added to the Notice.</p>
<p>§10133.53 Form DWC-AD 10133.53 “Notice of Modified or Alternative Work for Injuries Occurring on or after 1/1/04”</p>	<p>CMTA makes the following suggestions:</p> <p>1) CMTA is concerned that this is not a legitimate form that is clear on what is being offered and is binding on the employer or claims administrator. There is no place in the first section to indicate that the job offered is either modified or alternative work, and no confirming signature is required. Since an employer may initiate the form, employer should be added following the Claims</p>	<p>Willie Washington, Director, Human Resources California Manufacturers & Technology Association (CMTA)</p> <p>Written comment dated July 7, 2004</p>	<p>We agree to provide a box to check to clarify if the offer is modified or alternative work. We disagree with the comment regarding the employer, as the employer’s name will appear on the top line on the form.</p>	<p>We will modify the form so that the claims administrator or employer can check which is being offered: modified work or alternative work.</p>

Supplemental Job Displacement Benefit	COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>Administrator in the first section along with a signature line and type of job offer.</p> <p>2) In the Notice to Employee section numerous changes are recommended: a) change the two sentences advising the employee of the 30 days in which to respond to bold print to indicate its importance. Also, modify the sentence to include (circle one) following modified or alternative work. This will add greater clarity for the injured employee to focus only on the appropriate condition when considering accepting or rejecting the offer and reduce the potential for mistakes and misunderstanding; b) under Modified Work A., add “attached” between The and proposed, so the injured employee will know what and where to find and read the modifications. Under B., change “will not” to “fail to” since the employee has no clue if the job will last 12 months or not at this time; c) under Alternative Work C., change “were” to “are” that</p>		<p>We agree to put the bold the requested text.</p> <p>We agree. A box to check will be provided to indicate modified or alternative work.</p> <p>We agree.</p> <p>We disagree. The statute uses the words “at least 12 months.”</p>	<p>The specified text will be put into bold print.</p> <p>A box to check will be provided to indicate modified or alternative work.</p> <p>The word “attached” has been added.</p> <p>This section is changed based on other comments. The line referred to is stricken.</p>

Supplemental Job Displacement Benefit	COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>the employee is more likely to understand.</p> <p>3) In the section to be completed by the employee, the following changes are recommended: a) after “I accept this offer of Modified or Alternative work, add (circle one). This will confirm that the employee fully understands the offer that he/she is agreeing to; b) recommend the rejection sentence be removed and added as a separate section below the existing signature line followed by the existing line indicating why the offer is rejected. Also, following Modified or Alternative work, add (circle one). Add a new signature line and date. This will add clarity and help reduce potential mistakes and misunderstandings.</p> <p>4) On page two under Position Requirements, the following changes are recommended: a) add to Actual job title “Modified or Alternative work (circle</p>		<p>We agree.</p> <p>We disagree. The employee can only accept whichever is offered.</p> <p>We disagree. The same information does not need to be repeated on both pages. The job title line will inform the employee of the job being</p>	<p>We will replace the word “were” with “are.”</p> <p>None.</p> <p>None.</p>

Supplemental Job Displacement Benefit	COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>one).” This will provide clarity for the injured employee and if the second page should get separated from page one, you would still know what job was offered; b) recommend that the “Duties required of the position” be amended to add “Essential functions.” This is important because the employee who is trying to make a decision on accepting or rejecting the offer of modified or alternative work has no way of knowing what the essential functions of the job are unless they are provided on the form; c) recommend adding the Preparer’s title and phone # at the bottom of the form in case there are questions.</p>		<p>offered.</p> <p>We disagree. The form requires the employer to describe the duties, activities and physical requirements.</p> <p>We disagree. The contact information is on the first page of the form</p>	<p>None.</p> <p>None.</p>
<p>§10133.55(a) Requirement to Issue Supplemental Job Displacement Nontransferable Training Voucher</p>	<p>CMTA states that the proposed language substantially changes Labor Code §4658.5 with respect to an employee’s eligibility for a voucher. §4658.6 states that the employer can avoid liability for the voucher if within 30 days of the termination of “temporary disability indemnity payment” employer offers the injured employee modified or alternative work.</p>	<p>Willie Washington, Director, Human Resources California Manufacturers & Technology Association (CMTA)</p> <p>Written comment</p>	<p>We disagree. Labor Code section 4658.5 requires that the injury cause permanent partial disability.</p>	<p>The section will be amended to state “when the injury causes permanent partial disability and if...”</p>

Supplemental Job Displacement Benefit	COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	However, §4658.5 states that the employee is eligible for a voucher if the employee does not return to work for the employer within 60 days of the termination of “temporary disability.” CMTA believes that §4658.6 refers to temporary disability indemnity and §4658.5 refers to temporary disability status. The proposed regulation takes the language from §4658.6 and inserts it in §4658.5 erroneously.	dated July 7, 2004		
§10133.55(b) Requirement to Issue Supplemental Job Displacement Nontransferable Training Voucher	CMTA states that the proposed language is in conflict with §4658.5(a) that states that an employee is not even eligible for a voucher until 60 days after the termination of temporary disability. However, the first payment of PD could be prior to 60 days from the termination of TD payments. Moreover, there is no 30-day provision in §4658.5 and the 30-day provision in §4658.6 relates only to an employer’s ability to eliminate its liability for a voucher. This should be corrected to comply with the statute.	Willie Washington, Director, Human Resources California Manufacturers & Technology Association (CMTA) Written comment dated July 7, 2004	We agree.	The section is revised to state that the employee will receive the voucher 25 calendar days from the permanent partial disability award.
§10133.55(d) Requirement to Issue Supplemental Job	The proposed language should be amended to include direct payment to VRTWC. This will reduce payment delays and administrative time.	Willie Washington, Director, Human Resources California Manufacturers &	We agree.	The section will include language that the direct payment may be made to the VRTWC.

Supplemental Job Displacement Benefit	COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
Displacement Nontransferable Training Voucher		Technology Association (CMTA) Written comment dated July 7, 2004		
§10133.56 Form DWC-AD 10133.56 “Supplemental Job Displacement Nontransferable Training Voucher Form”	In section 8. remove “claims administrator’s estimation” and replace with “Stipulation.” In the note to Claims Administrator, change “45 calendar days” to “45 working days.” This would conform to the 45 working days for payment of medical bills and would help reduce errors due to confusing of dates.	Willie Washington, Director, Human Resources California Manufacturers & Technology Association (CMTA) Written comment dated July 7, 2004	We disagree.	None.
§10133.58(a) The Administrative Director’s List of Vocational Return to Work Counselors	The proposed language should be amended to add after request “or may be accessed on the DWC website.” CMTA believes that this would make the list more readily available to users and would reduce the demand on DWC staff.	Willie Washington, Director, Human Resources California Manufacturers & Technology Association (CMTA) Written comment dated July 7, 2004	We agree.	Reference to the DIR website will be added.
§10133.58(c) The Administrative	In this section delete “with a signed release waiver” and add after writing “over the employee’s signature.” An	Willie Washington, Director, Human Resources	We agree.	The requirement for a written waiver will be stricken.

Supplemental Job Displacement Benefit	COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
Director's List of Vocational Return to Work Counselors	employee does not need a waiver to obtain his/her own medical records, and we don't want to set a precedent. However, the recommended procedure would still provide the claims administrator with protection for releasing medical records.	California Manufacturers & Technology Association (CMTA) Written comment dated July 7, 2004		
§10133.59(a)(2)(3)(4) Termination of Employer's Liability for the Supplemental Job Displacement Benefit	<p>In section (a)(2) after voluntarily quits add "or is terminated for cause". This is necessary to avoid having to provide the benefit to an employee who through his/her own fault fails to meet minimum work standards.</p> <p>In section (a)(3) after perform add "modified or".</p> <p>In section (a)(4) after provide add "modified or".</p> <p>These changes are necessary for correctness.</p>	Willie Washington, Director, Human Resources California Manufacturers & Technology Association (CMTA) Written comment dated July 7, 2004	<p>We disagree. This recommendation goes beyond the authority of the statute.</p> <p>We agree.</p> <p>We agree.</p>	<p>None.</p> <p>"Modified or" will be added.</p> <p>"Modified or" will be added.</p>
The proposed regulations in general	CWCI states that there is conflict with the clear language of the law that requires the voucher amount be based on the award and that the division does not have authority to change the voucher requirement to an earlier period.	Rea B. Crane, RN, CDMS, CCM Medical/Rehabilitation Director California Workers' Compensation	We agree.	The regulations will be revised to tie the voucher to the permanent partial disability award.

Supplemental Job Displacement Benefit	COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>Permanent disability must begin within 14 days at the end of PD. As written, the regulations require the voucher payments to begin before the end of TD.</p> <p>CWCI indicates that the law says that the voucher is based on an award, and there are a lot of comments in the community that a Compromise and Release (C&R) is not an award. If the Division is going to go forward with the idea of not basing it on the award, that would take care of the C&R people. If that is not correct and the Board finds it's correct that a C&R isn't an award, there would certainly be many fewer people that would be entitled to the voucher.</p> <p>Section 10133.56 requires reimbursement payments to be made in 45 calendar days. CWCI requests this be changed to working days to be consistent with the requirement to pay medical bills.</p>	<p>Institute (CWCI)</p> <p>Oral comment at the public hearing</p>	<p>We agree.</p> <p>We agree.</p> <p>We disagree. 45 calendar days is enough time and calendar days are easier to compute.</p>	<p>The section is revised to state that the employee will receive the voucher 25 calendar days from the permanent partial disability award.</p> <p>The reference to a "C&R" will be removed.</p> <p>None.</p>
§10133.51(b)	CWCI states that the requirement for the	Rea B. Crane, RN,	We agree.	Section 10133.51

Supplemental Job Displacement Benefit	COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
<p>Notice of Potential Right to Supplemental Job Displacement Benefits</p>	<p>employer to send the Notice of Potential Right to Supplemental Job Displacement Benefit within 10 days of the last payment of temporary disability will require repeated submissions for broken periods of temporary disability. This is a fairly common occurrence. In addition to the additional clerical support needed for this repetitious activity, there is the added expense of multiple Certified Mail charges. CWCI believes that sending the notice once is sufficient and meet the intent of the law.</p> <p>CWCI suggests the following language:</p> <p>(b) Within 10 days of the last payment of temporary disability, <i>if not previously provided</i>, the employer shall provide notice of the employee’s potential right to the supplemental job displacement benefit to the employee. The employer shall use the mandatory form “Notice of Potential Right to Supplemental Job Displacement Benefit” that is set forth in Section 10133.52. The notice</p>	<p>CDMS, CCM Medical/Rehabilitation Director California Workers’ Compensation Institute (CWCI)</p> <p>Written comment dated July 8, 2004 and oral comment at public hearing</p>		<p>will be changed to state “if not previously provided” so that only one notice will need to be sent.</p>

Supplemental Job Displacement Benefit	COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	shall be sent to the employee by certified mail.			
<p>§10133.52 “Notice of Potential Right to Supplemental Job Displacement Benefit Form”</p>	<p>CWCI states that this is the most significant problem with the proposed regulations. Providing the voucher within 30 days of the commencement of permanent disability advance payments rather than upon receipt of a permanent disability award is problematic for a number of reasons:</p> <ol style="list-style-type: none"> 1) Statutorily, the payments are based on "permanent partial disability <u>awards</u>" not the initiation of permanent disability advance payments based on estimated amounts of permanent disability. CWCI believes that the proposed language was created in an effort to get the voucher to needy injured employees more rapidly, and agrees that transmission upon the award will be protracted and is undesirable; however, that is what the law specifies. 2) If the employee is in a transitional work program, the temporary disability has 	<p>Rea B. Crane, RN, CDMS, CCM Medical/Rehabilitation Director California Workers’ Compensation Institute (CWCI)</p> <p>Written comment dated July 8, 2004, and oral comment at public hearing</p>	<p>We agree.</p>	<p>The regulations will be revised to tie the voucher to the permanent disability award.</p> <p>The section is revised to state that the employee will receive the voucher 25 calendar days from the permanent partial disability award.</p>

Supplemental Job Displacement Benefit	COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>terminated but he/she is not permanent and stationary and there is no way to know if there will be permanent disability, let alone, what the level will be. CWCI members say that there are a growing number of these transitional job situations. This is a good sign as far as return to work statistics go but will create problems for implementation of the voucher program as proposed.</p> <p>3) LC 4650(b) now requires that permanent disability advance payments be commenced within 14 days of the end of temporary disability payments "...regardless of whether the extent of permanent disability can be determined..." To base another benefit on the requirement of this unsubstantiated assumption is inequitable.</p> <p>4) From a practical standpoint, requiring the voucher within 30 days of the initiation of the permanent disability advance payments (44 days from the</p>			

Supplemental Job Displacement Benefit	COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>termination of temporary disability) is in conflict with the 60 days from the termination of temporary disability allowed for the return to work effort. It may not allow sufficient time for the offer of modified/alternative work, the employee's response and agreement on the return to work date. If the parties need to obtain/submit a Job Description/Analysis to the treating physician, even more time is necessitated. This would have all been more workable if the law had set the time frames from a Permanent and Stationary date.</p> <p>5) Basing the time that the voucher needs to be provided and the amount on an estimation rather than the finite nature of a PD award, coupled with the horrendous penalties that are being proposed, just seems unfair.</p> <p>CWCI suggests the following language: <u>If you are eligible, you will receive the</u></p>			

Supplemental Job Displacement Benefit	COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p><i>may not receive a larger award, but, unless you are determined to be ineligible for an award, the attorney's fee will be deducted from any award you might receive for disability benefits. The decision to be represented by an attorney is yours to make, but it is voluntary and may not be necessary for you to receive benefits.</i></p> <p><i>With or without an attorney, you may ask to have your case heard at the Workers' Compensation Appeals Board</i></p> <p><u>Date:</u> _____</p> <p><u>Name of Claims Administrator:</u> _____ <i>Phone</i> _____</p> <p><u>Address of Claims Administrator:</u> _____</p> <p><u><i>E-Mail (optional)</i></u> _____</p>			
<p>§10133.53 Form DWC-AD 10133.53 "Notice of Modified or Alternative Work for Injuries Occurring on or</p>	<p>CWCI makes the following suggestions:</p> <ul style="list-style-type: none"> Put the two sentences in the Notice to Employee section referring to the need to respond in 30 days, in bold. 	<p>Rea B. Crane, RN, CDMS, CCM Medical/Rehabilitation Director California Workers' Compensation Institute</p>	<p>We agree.</p> <p>We disagree. Whether or not</p>	<p>The language will be put into bold.</p> <p>None.</p>

Supplemental Job Displacement Benefit	COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
after 1/1/04”	<ul style="list-style-type: none"> In the Section to be Completed by Employee, amend to read: I understand that if I voluntarily quit <u>or am terminated for cause</u> prior to working in this position for 12 months, I am not entitled to the Supplemental Job Displacement Benefit. On page 2 add a place on the top line to identify if the job is Modified or Alternative and then modify the next 2 questions to relate individually to Modified and Alternate Work situations. Regarding the third question, in order to be more in concert with the law, CWCI believes it should say, “Will job last at least 12 months?” 	<p>(CWCI)</p> <p>Written comment dated July 8, 2004</p>	<p>an employee was terminated for cause may be a factual question.</p> <p>We disagree. Labor Code section 4658.1 has the same requirements for both.</p> <p>We agree.</p>	<p>None.</p> <p>The words will be changed to say “at least.”</p>
<p>§10133.54 Form DWC-AD 10133.54 “Request for Dispute Resolution before the Administrative Director</p>	<p>Next to Vocational & Return to Work Counselor box, CWCI suggests adding <i>(If applicable)</i></p>	<p>Rea B. Crane, RN, CDMS, CCM Medical/Rehabilitation Director California Workers’ Compensation Institute (CWCI)</p>	<p>We agree.</p>	<p>The words, “if applicable” will be added.</p>

Supplemental Job Displacement Benefit	COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
		Written comment dated July 8, 2004		
<p>§10133.55(a), (b), (c), (d), and (g) Requirement to Issue Supplemental Job Displacement Nontransferable Training Voucher</p>	<p>CWCI asks to review their comments under §10133.52, regarding the provision of the voucher prior to the award.</p> <p>CWCI also suggests that (a) be revised to clarify that the employer must offer a starting date within 60 days of the termination of temporary disability payments. As proposed, the regulation could mean that if the employee delayed the return to work, he/she would be entitled to the voucher.</p> <p>CWCI suggests the following language:</p> <p>(a) <i>If the employer does not offer modified or alternative work within 30 days of the termination of temporary disability indemnity payments that complies with Labor Code §4658.6, and/or the proposed starting date for the employment is not within 60 days of the last payment of temporary disability</i></p>	<p>Rea B. Crane, RN, CDMS, CCM Medical/Rehabilitation Director California Workers' Compensation Institute (CWCI)</p> <p>Written comment dated July 8, 2004</p>	<p>We agree.</p>	<p>The regulation s will be revised to tie the voucher to the permanent disability award.</p> <p>The section is revised to state that the employee will receive the voucher 25 calendar days from the permanent partial disability award.</p>

Supplemental Job Displacement Benefit	COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>benefits, the employee shall become eligible for the Supplemental Job Displacement Benefit <i>upon the Claims Administrator's receipt of an approved permanent disability award.</i></p> <p>(b) The employer shall provide a voucher for education-related retraining or skill enhancement or both to the employee within 30 days from the date <i>of the issuance of the approved permanent disability award.</i></p> <p>(c) would be deleted in its entirety if CWCI's suggestions regarding reverting to the voucher being due when the award is made, and the remainder of the sub-sections would need to be renumbered.</p> <p>In (d)(c), direct payment to the VRTWC should be added.</p> <p>CWCI suggests the following language: (d)(c) <u>The voucher shall be issued to the employee allowing direct</u></p>		<p>We agree.</p>	<p>We will change the section so that direct payment may be</p>

Supplemental Job Displacement Benefit	COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p><u>reimbursement to the employee upon the employee's presentation to the employer's claims administrator of documentation and receipts or as a direct payment to the Vocational Return to Work Counselor or provider of the education related training or skill enhancement.</u></p> <p>CWCI also recommends that (g) be added requiring the VRTWC to attest to the fact that he/she was on the Administrative Director's list at the time services were rendered.</p> <p>CWCI suggests the following language:</p> <p><i>(g) The voucher shall certify that the Vocational Return to Work Counselor was on the Administrative Director's list at the time the services were provided.</i></p>		<p>We disagree. This language does not need to be here. It is part of the definition and the list will be posted on the DIR website.</p>	<p>made to the VRTWC.</p> <p>None.</p>
<p>§10133.56 Form DWC-AD 10133.56 "Supplemental Job Displacement</p>	<p>CWCI indicates that in keeping with their suggestion to revise the regulation to require the voucher upon the issuance of an award, they would delete all of the check boxes in #8.</p>	<p>Rea B. Crane, RN, CDMS, CCM Medical/Rehabilita tion Director California Workers'</p>	<p>We agree.</p>	<p>The boxes will be deleted.</p>

Supplemental Job Displacement Benefit	COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
Nontransferable Training Voucher Form”	CWCI also recommends changing the period for payment to 45 working days to make it consistent with the period for paying medical bills. This is a small simplification step, but a start toward aligning payment periods in an effort to reduce error.	Compensation Institute (CWCI) Written comment dated July 8, 2004 and oral comment at public hearing	We disagree. 45 calendar days is enough time and calendar days are easier to compute.	None.
§10133.57 State Approved or Accredited Schools	CWCI suggests that the following paragraph be added: <i>The Administrative Director shall provide electronic links to the various school approval and accreditation sites on the Division of Workers' Compensation's website.</i>	Rea B. Crane, RN, CDMS, CCM Medical/Rehabilitation Director California Workers' Compensation Institute (CWCI) Written comment dated July 8, 2004	We agree.	The website for Bureau for Private Post secondary and Vocational Education will be listed in the regulation/
§10133.58(a) The Administrative Director's List of Vocational Return to Work Counselors	In order to reduce requests to the Division for the VRTWC list, CWCI suggests it be placed on the Division of Workers' Compensation website. Previous year lists should be archived. CWCI suggests the following language: (a) The Administrative Director shall	Rea B. Crane, RN, CDMS, CCM Medical/Rehabilitation Director California Workers' Compensation Institute (CWCI)	We agree.	The regulations will be revised to state the counselors will be on the DWC website.

Supplemental Job Displacement Benefit	COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>maintain a list of Vocational & Return to Work Counselors (VRTWC) who perform the work of assisting injured employees. A VRTWC who meets the qualifications specified in §10133.5(a)(15) must apply to the Administrative Director 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 <i>on the Division of Workers' Compensation's website</i></p>	<p>Written comment dated July 8, 2004</p>		
<p>§10133.58(b) The Administrative Director's List of Vocational Return to Work Counselors</p>	<p>It is CWCI's understanding that the Division intends that only vocational counselors who meet the stated qualifications and appear on the Administrative Director's list shall provide services for this benefit. To clarify this, CWCI suggests alluding to the list in this sub-section.</p> <p>CWCI suggests the following language:</p> <p>(b) The injured employee may select a Vocational & Return To Work Counselor <i>chosen from the list in paragraph (a)</i> whenever the assistance of a Vocational & Return To Work Counselor is needed.</p>	<p>Rea B. Crane, RN, CDMS, CCM Medical/Rehabilita tion Director California Workers' Compensation Institute (CWCI)</p> <p>Written comment dated July 8, 2004</p>	<p>We disagree. The VRTWC must meet the qualifications set forth in the definition. The list is for convenience only. It is not mandatory for the VRTWC to be on the list.</p>	<p>None.</p>

Supplemental Job Displacement Benefit	COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
<p>§10133.58(c) The Administrative Director’s List of Vocational Return to Work Counselors</p>	<p>CWCI recommends striking "...with signed release waiver." There is no requirement to get a release to give someone his/her own medical information.</p> <p>CWCI suggests the following language:</p> <p>(c) The injured employee shall be responsible for providing the VRTWC with any necessary medical reports. If, for any reason, it is necessary for the employee to request permanent and stationary medical reports, the request shall be made in writing to the claims administrator.</p>	<p>Rea B. Crane, RN, CDMS, CCM Medical/Rehabilitation Director California Workers’ Compensation Institute (CWCI)</p> <p>Written comment dated July 8, 2004</p>	<p>We agree.</p>	<p>The words, “with a signed release” will be stricken.</p>
<p>§10133.58(d) The Administrative Director’s List of Vocational Return to Work Counselors</p>	<p>CWCI suggests the following language:</p> <p>(d) The VRTWC shall communicate with the injured <i>employee</i> regarding the evaluation.</p>	<p>Rea B. Crane, RN, CDMS, CCM Medical/Rehabilitation Director California Workers’ Compensation Institute (CWCI)</p>	<p>We agree.</p>	<p>“Employee” will replace “worker.”</p>

Supplemental Job Displacement Benefit	COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
		Written comment dated July 8, 2004		
<p>§10133.59(a)(2) Termination of Employer’s Liability for the Supplemental Job Displacement Benefit</p>	<p>CWCI suggests the following language: "the employer offers the employee modified or alternative work in compliance with LC 4658.6 and the employee voluntarily quits <u>or is terminated for cause</u> prior to working..."</p>	<p>Rea B. Crane, RN, CDMS, CCM Medical/Rehabilitation Director California Workers’ Compensation Institute (CWCI)</p> <p>Written comment dated July 8, 2004</p>	<p>We disagree. Whether or not an employee was terminated for cause may be a factual question.</p>	<p>None.</p>
<p>§10133.59(a)(3&4) Termination of Employer’s Liability for the Supplemental Job Displacement Benefit</p>	<p>These should read <u>modified or</u> alternative work.</p> <p>CWCI suggests removing “after 12 months”. This language could be interpreted to require the employer to wait 12 months to resolve this issue.</p> <p>CWCI suggests the following language: (3) the employer offers modified or alternative work to the employee on the DWC-AD Form 10133.53 that meets the conditions of Labor Code §4658.6 and subsequently learns that the employee</p>	<p>Rea B. Crane, RN, CDMS, CCM Medical/Rehabilitation Director California Workers’ Compensation Institute (CWCI)</p> <p>Written comment dated July 8, 2004</p>	<p>We agree.</p> <p>We disagree. We disagree. Twelve months must elapse before the obligation is terminated per Labor Code section 4658.6.</p>	<p>The word "modified" will be added.</p> <p>None.</p>

Supplemental Job Displacement Benefit	COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	cannot lawfully perform <i>modified or alternative work</i> due to the employee's immigration status; (4) the employer's obligation to provide <i>modified or alternative work</i> to a seasonal employee is terminated after 12 months if the following conditions apply:			
§10133.50(a)(1), (8) Definitions	To meet the criteria of Government Code §12926(n) et seq., EGUSD recommends including for alternate and modified duty. This consideration is important since employers have a mandate under the Government Code to engage in the Interactive Process to prevent discrimination on the basis of a disability.	Marlon E. Robbins, ARM Risk Manager Elk Grove Unified School District (EGUSD) Written comment dated July 8, 2004	We disagree. The definitions are controlled by Labor Code section 4658.1.	None.
§10133.50(6) Definitions	To meet the criteria of Government Code §12926(f) et seq., EGUSD recommends including for essential functions. This consideration is important since employers have a mandate under the Government Code to engage in the Interactive Process to prevent discrimination on the basis of a disability. Also, EGUSD recommends using	Marlon E. Robbins, ARM Risk Manager Elk Grove Unified School District (EGUSD) Written comment dated July 8, 2004	We disagree. The suggested language is inconsistent with the Labor Code requirements.	None.

Supplemental Job Displacement Benefit	COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	language in the rule consistent with Government Code's definitions/descriptions. EGUSD asks the Division to delete "peak periods", since this phrase is inconsistent with the Government Code.			
§10133.51(b) Notice of Potential Right to Supplemental Job Displacement Benefits	EGUSD recommends that the Administrative Director clarify "termination" of temporary disability (TD) payments. The proposed syntax implies that TD termination includes when an employee has returned to work, before a permanent & stationary determination has been made.	Marlon E. Robbins, ARM Risk Manager Elk Grove Unified School District (EGUSD) Written comment dated July 8, 2004	We agree in part.	This section will be changed to state "if not previously provided" so that only one notice will need to be sent.
§10133.52 "Notice of Potential Right to Supplemental Job Displacement Benefit Form"	EGUSD states that the proposed language reiterates the statute which stipulates eligibility by meeting two conditions: 1) "If the injury causes permanent partial disability," and 2) "...does not return to work within 60 days of the termination of temporary disability." Also, §10133.50(12) defines permanent partial disability as the Permanent Partial Disability Award. EGUSD indicates that often the PD Award is determined after the "60 days" have elapsed. Therefore, EGUSD requests that the proposed regulation consider a distinction between eligibility and issuance of the PD payments and	Marlon E. Robbins, ARM Risk Manager Elk Grove Unified School District (EGUSD) Written comment dated July 8, 2004	We agree.	The regulations will be revised to tie the voucher to the permanent partial disability award. The section is revised to state that the employee will receive the voucher 25 calendar days from the permanent partial disability award.

Supplemental Job Displacement Benefit	COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>voucher subsequent to that eligibility. Given the above eligibility requirement, and the definition of the PD Award, then the proposed rule is asserting that the voucher is to be issued subsequent to the PD Award, within 30 days of commencement of the PD payments based upon that award, not an estimate of the award. EGUSD requests that the Administrative Director clarify and require issuance of the voucher subsequent to the commencement of payments based upon the PD award, not PD advances.</p>			
<p>§10133.55(b) Requirement to Issue Supplemental Job Displacement Nontransferable Training Voucher</p>	<p>EGUSD states that there are two conflicting elements within this section, and within §10133.52. Those elements are: Permanent Disability Advances and Permanent Disability Award.</p> <p>The Administrative Director proposes the voucher to be issued within 30 days from the commencement of PD payments, i.e. PD Advances. However, PD Advances are not defined in §10133.50.</p> <p>EGUSD recommends for the Administrative Director to adhere to the language of the statute, Labor Code</p>	<p>Marlon E. Robbins, ARM Risk Manager Elk Grove Unified School District (EGUSD)</p> <p>Written comment dated July 8, 2004</p>	<p>We agree.</p>	<p>The regulations will be revised to tie the voucher to the permanent partial disability award.</p> <p>The section is revised to state that the employee will receive the voucher 25 calendar days from the permanent partial disability award.</p>

Supplemental Job Displacement Benefit	COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>§4658.5, which reads in part, "... the employee shall be eligible..." The statute does not stipulate when the voucher is to be issued, only when eligibility is determined.</p> <p>EGUSD requests that consideration be given to distinguishing between a permanent benefit, and an estimated benefit. The voucher is a permanent benefit. It is a benefit based upon a permanent medical condition, with a permanent rating. PD Advances however are not permanent. They are based upon an estimate of the medical condition's rating. PD Advances are conditional upon final determination of the PD Award. Therefore, it would be inconsistent with the statute, to issue a permanent benefit based upon an estimated medical condition rating. The voucher should be issued subsequent to the PD Award.</p> <p>EGUSD recommends that the voucher be issued within 60 days from the determination of the PD Award. If the Administrative Director insists on the proposed 30 day issuance, then it is recommended to include a delay provision, with appropriate notice, to</p>			

Supplemental Job Displacement Benefit	COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	allow the employer adequate and reasonable time to make the accommodation determination. This delay provision would not conflict with LC §4685.6, because the employer may be able to offer accommodation within 30 days. However, this does not necessitate issuance of the voucher within that same time frame because most often, more time is needed to make the accommodation determination.			
§10133.55(c) Requirement to Issue Supplemental Job Displacement Nontransferable Training Voucher	EGUSD recommends that the Administrative Director include a provision for an adjustment to the voucher when there is an over-estimation. The adjustment can be in the form of an adjustment to the voucher outstanding balance or total value, and/or to the PD payments based upon the PD Award as defined.	Marlon E. Robbins, ARM Risk Manager Elk Grove Unified School District (EGUSD) Written comment dated July 8, 2004	We disagree. This goes beyond the statute's authority.	None.
§10133.50 Definitions	SCIF states that the proposed language defines "regular position" but not "regular work". SCIF recommends adding "regular work" as a definition with the definition as provided in Labor Code §4658.1. SCIF also recommends amending the definitions for "Alternative Work",	Valerie S. Lampson, Assistant Claims Rehabilitation Manager State Compensation Insurance Fund (SCIF)	We agree.	We will strike "regular position" from the definitions and add "regular work" as defined by Labor Code section 4658.1.

Supplemental Job Displacement Benefit	COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>“Modified Work” and “Regular Position” by replacing with the exact language provided in Labor Code §4658.1.</p>	<p>Written comment dated July 8, 2004</p>		
<p>§10133.51 Notice of Potential Right to Supplemental Job Displacement Benefits</p>	<p>SCIF recommends that the Division amend the proposed language to clarify legislative intent, improve efficiency and alleviate duplicative and costly issuance of notices.</p> <p>The language in the first line of (b) should be amended to read: “Within 10 days of the last payment of temporary disability when an ending temporary disability benefit notice is required, the employer shall provide notice (if not previously provided) of the employee’s potential right to the supplemental job displacement benefit to the employee.</p> <p>Amending the proposed regulation to include this language would coincide with existing regulations regarding notices due with final indemnity payments.</p>	<p>Valerie S. Lampson, Assistant Claims Rehabilitation Manager State Compensation Insurance Fund (SCIF)</p> <p>Written comment dated July 8, 2004</p>	<p>We agree.</p>	<p>The words, “if not previously provided” will be added to the regulation.</p>
<p>§10133.52 “Notice of Potential Right to Supplemental Job</p>	<p>To maintain consistency with Labor Code §4658.5, SCIF recommends the following:</p> <ul style="list-style-type: none"> • Amend the language in the first 	<p>Valerie S. Lampson, Assistant Claims Rehabilitation Manager</p>	<p>We disagree. The words, “last payment” are clearer to an injured worker.</p>	<p>None.</p>

Supplemental Job Displacement Benefit	COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
---------------------------------------	-----------------------------------	--------------------------------	----------	--------

Displacement Benefit Form”	<p>paragraph, first line from “...within 60 days of the last payment of temporary disability...” to “...within 60 days of the termination of temporary disability...”</p> <ul style="list-style-type: none"> • Only if the above is adopted, include in §10133.50 a definition for “termination” as “termination of indemnity as the date the last payment of disability indemnity is issued”. • Amend language in the 5th paragraph to read “If you are eligible, you will receive the voucher from the claims administrator within 30 days of the claims administrator’s receipt of an award approved by the Workers’ Compensation Appeals Board”. The statute specifically refers to an award of the Appeals Board. The inclusion of a mandatory requirement to provide the voucher upon the commencement of PD payments institutes into the system additional time, administrative costs, potential for delays, and increased litigation, not 	<p>State Compensation Insurance Fund (SCIF)</p> <p>Written comment dated July 8, 2004</p>	<p>N/A.</p> <p>We agree.</p>	<p>None.</p> <p>The regulations will be revised to tie the voucher to the permanent partial disability award.</p> <p>The section is revised to state that the employee will receive the voucher 25 calendar days from the permanent partial disability award...</p>
-----------------------------------	--	---	------------------------------	---

Supplemental Job Displacement Benefit	COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	supported by statute.			
<p>§10133.53 Form DWC-AD 10133.53 “Notice of Modified or Alternative Work for Injuries Occurring on or after 1/1/04”</p>	<p>SCIF recommends the following changes:</p> <p>1) Page 1, 2nd box, Notice To Employee, delete the following:</p> <p>Modified Work A. The proposed modification(s) to accommodate required work restrictions are inadequate. B. The modified job will not last 12 months.</p> <p>Alternative Work</p> <p>2) Page 2, 1st box, Position requirements, amend the following:</p> <p>Will job last at least 12 months?</p>	<p>Valerie S. Lampson, Assistant Claims Rehabilitation Manager State Compensation Insurance Fund (SCIF)</p> <p>Written comment dated July 8, 2004</p>	<p>We agree, but are revising the section in a different manner.</p> <p>We agree.</p>	<p>The form will be revised to show a box for modified and alternative work so that the injured worker will know which is being offered. The requirements for modified and alternative work are shown as the same.</p> <p>We will revise to say “at least.”</p>
<p>§10133.54 Form DWC-AD 10133.54 “Request for Dispute Resolution before the Administrative Director</p>	<p>SCIF recommends one revision, the addition of (if applicable) to the section pertaining to the Vocational & Return to Work Counselor:</p> <p>Vocational & Return to Work Counselor (if applicable)</p>	<p>Valerie S. Lampson, Assistant Claims Rehabilitation Manager State Compensation Insurance Fund (SCIF)</p>	<p>We agree.</p>	<p>The regulations will be revised with the words, “if applicable” added.</p>

Supplemental Job Displacement Benefit	COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
		Written comment dated July 8, 2004		
§10133.55(a) Requirement to Issue Supplemental Job Displacement Nontransferable Training Voucher	<p>Amend proposed language to include “When the injury causes permanent partial disability and the employer does not offer...”</p> <p>The amendment would place the regulation in accord with Labor Code §4658.5(a).</p>	<p>Valerie S. Lampson, Assistant Claims Rehabilitation Manager State Compensation Insurance Fund (SCIF)</p> <p>Written comment dated July 8, 2004</p>	We agree.	The regulations will be revised per the comment.
§10133.55(b)	<p>Amend proposed language to read “The employer shall provide a nontransferable voucher for education-related retraining or skill enhancement or both to the employee within 30 days from the date of receipt by claims administrator of the issuance of the award of permanent disability.”</p> <p>The amendment would place the regulation in accord with Labor Code §4658.5, and provides a base upon which to establish timeliness of this provision.</p>	<p>Valerie S. Lampson, Assistant Claims Rehabilitation Manager State Compensation Insurance Fund (SCIF)</p> <p>Written comment dated July 8, 2004</p>	We agree.	<p>The regulations will be revised to include the word “nontransferable.”</p> <p>The regulations will be revised to tie the voucher to the permanent disability award.</p> <p>The section is revised to state that the employee will receive the voucher 25 calendar days</p>

Supplemental Job Displacement Benefit	COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
				from the permanent partial disability award.
§10133.55(c)	Delete this section entirely. The statute only references awards. There is no reference to estimate permanent disability payments. Removal would place the regulation in accord with Labor Code §4658.5.	Valerie S. Lampson, Assistant Claims Rehabilitation Manager State Compensation Insurance Fund (SCIF) Written comment dated July 8, 2004	We agree.	The regulations will be revised to tie the voucher to the permanent partial disability award. The section is revised to state that the employee will receive the voucher 25 calendar days from the permanent partial disability award.
§10133.55(d), (e), (f)	The following are amendments due to clerical adjustment based upon deletion of (c) mentioned prior: Amend (d) to read as (c), “The voucher shall be issued...” Amend (e) to read as (d), “The voucher must indicate...” Amend (f) to read as (e), “The mandatory voucher...”	Valerie S. Lampson, Assistant Claims Rehabilitation Manager State Compensation Insurance Fund (SCIF) Written comment dated July 8, 2004	We agree to correct the order.	The order of the subdivisions will be corrected.

Supplemental Job Displacement Benefit	COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
§10133.55(g)	<p>Amend (g) to read as (f) and amend to read as “No payment of voucher for education-related retraining or skill enhancement shall be made to vendor or reimbursed to injured employee without providing documentation to support ‘state approved or accredited school’ status to payor.”</p> <p>Amending the language will place the regulation in line with Labor Code §4658.5(a), protect both the injured worker and claims administrator, and avoid unnecessary litigation.</p>	<p>Valerie S. Lampson, Assistant Claims Rehabilitation Manager State Compensation Insurance Fund (SCIF)</p> <p>Written comment dated July 8, 2004</p>	<p>We disagree. The current subdivision (d) requires the employee to present documentation and receipts.</p>	<p>None.</p>
§10133.56 Form DWC-AD 10133.56 “Supplemental Job Displacement Nontransferable Training Voucher Form”	<p>SCIF states that the voucher is excellent as proposed with one recommended revision:</p> <p>Amend form by deleting reference to the selection of [] claims administrator’s estimate of permanent disability or [] C & R or [] Award. Deletion would place form in compliance with the existing statute.</p>	<p>Valerie S. Lampson, Assistant Claims Rehabilitation Manager State Compensation Insurance Fund (SCIF)</p> <p>Written comment dated July 8, 2004</p>	<p>We agree.</p>	<p>We will delete reference to “C& R.”</p>
§10133.57 State Approved or Accredited Schools	<p>SCIF recommends the following revision:</p> <p>Amend the proposed language to</p>	<p>Valerie S. Lampson, Assistant Claims Rehabilitation</p>	<p>We disagree. The recommended language would prohibit out-of-state vocational trade schools.</p>	<p>None.</p>

Supplemental Job Displacement Benefit	COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	include the following as a means to further define approved or accredited schools: "...Out of state training is not prohibited so any training outside of California must be provided by a provider who has been approved by an approval agency in that state similar to the Bureau for Private Postsecondary and Vocational Education (BPPVE), or accreditation from one of the Regional Associations of Schools and Colleges authorized by the United States Department of Education."	Manager State Compensation Insurance Fund (SCIF) Written comment dated July 8, 2004		
§10133.58 The Administrative Director's List of Vocational Return to Work Counselors	SCIF supports the Administrative Director's plan to develop a list of qualified Vocational Return To Work Counselors to provide those services beneficial to help an eligible employee return to work. SCIF recommends the inclusion of the language below in order to assure the use of qualified counselors. In addition, SCIF recommends one typographical change to be consistent with language used throughout the labor code and regulations. Amend section (b) to include "The injured employee may select a Vocational & Return To Work Counselor chosen from the list in	Valerie S. Lampson, Assistant Claims Rehabilitation Manager State Compensation Insurance Fund (SCIF) Written comment dated July 8, 2004	We disagree. The employee is not required to pick from the counselors on the list. They may choose any counselor who	None.

Supplemental Job Displacement Benefit	COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>paragraph (a) whenever the assistance of a Vocational & Return to Work Counselor is needed.”</p> <p>Amend section (d) to include “The VRTWC shall communicate with the injured employee regarding the evaluation...”</p>		<p>has the qualifications set forth in the definitions.</p> <p>We agree.</p>	<p>The word “employee” will be substituted for “worker.”</p>
<p>§10133.59 Termination of Employer’s Liability for the Supplemental Job Displacement Benefit</p>	<p>SCIF recommends the following revisions:</p> <p>Add the following language as (4), and adjust the subsequent numbers to reflect the addition:</p> <p>“the employer offers modified or alternative work to the employee on the DWC-AD Form 10133.53 that meets the conditions of Labor Code Section 4658.6 and subsequently the employment is terminated for cause, the employer is not required to provide supplemental job displacement benefit.”</p> <p>Amend (5) by deleting “after 12 months” to read as follows, “the employer’s obligation to provide alternative work to a seasonal employee is terminated if the following...”</p>	<p>Valerie S. Lampson, Assistant Claims Rehabilitation Manager State Compensation Insurance Fund (SCIF)</p> <p>Written comment dated July 8, 2004</p>	<p>We disagree. Whether or not an employee was terminated for cause is a factual question that must be determined by the WCAB.</p> <p>We disagree. Pursuant to <i>Henry v. WCAB</i> (1998) 63 CCC 1481, seasonal employees are entitled to 12 months of alternative work, not 12 months of continuous work</p>	<p>None.</p> <p>None.</p>

Supplemental Job Displacement Benefit	COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
§10133.52 “Notice of Potential Right to Supplemental Job Displacement Benefit Form”	The commenter asks the Division if a regulatory agency or oversight committee has been established to ensure that all schools are engaging in fair business practices by policing and penalizing those schools that offer cash incentives or non-educational related bonuses as a way of attracting new business.	Wil Cuadros, Admissions Representative Allied Schools Written comment dated July 8, 2004	The Bureau for Private Postsecondary and Vocational Education has oversight	None.
§10133.55(e) Requirement to Issue Supplemental Job Displacement Nontransferable Training Voucher	The commenter asks: “if there is an available balance on a voucher after an injured worker enrolls, is the injured worker issued a voucher for the balance or do they lose the amount? In other words, an injured worker with a \$6,000 voucher enrolls in a \$4,500 program, do they have access to the remaining \$1,500 and in what format is that issued?”	Wil Cuadros, Admissions Representative Allied Schools Written comment dated July 8, 2004	This is a question, not a comment. The employer’s liability for the SJDB is not terminated until the maximum funds of the voucher and applicable law have been exhausted (see section 10133.59.)	None.
§10133.56 Form DWC-AD 10133.56 “Supplemental Job Displacement Nontransferable Training Voucher Form”	The commenter asks the following questions: What provisions have been established for students that wish to enroll in multiple training programs with more than one training program? As an example, how are schools reimbursed if a student chooses to participate in voice-activated computer training (as a result of carpal tunnel	Wil Cuadros, Admissions Representative Allied Schools Written comment dated July 8, 2004	We agree.	The sentence “(Attach additional pages for each provider if necessary)” will be added to this section.

Supplemental Job Displacement Benefit	COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>restrictions) but also wishes to apply those skills by working as an Appraiser? The form, as it listed here, makes no provisions for multiple vocational schools.</p> <p>What constitutes required expenses? If a computer enhances a students ability to learn, but is not required to complete a course, can the school still provide that computer? What about those materials that would be utilized in the performance of the occupation once the training has been completed?</p> <p>If a student begins training and decides to discontinue training before payment has been issued by the carrier, is the school entitled to reimbursement of expenses incurred as a result of an enrollment based on the implied good-faith that is inherent in the voucher? What about Distance Education programs who are unable to recover materials, software, shipping costs, once a student discontinues a program? There needs to be clarification in the language of this form, so that a student</p>		<p>We disagree that any further details need to be added to the regulation regarding what is a required expense. The statute and regulations provides that the voucher may be used for payment of tuition, fees, books, and <i>other expenses required by the school</i> for retraining or skill enhancement.</p> <p>We agree.</p>	<p>None.</p> <p>The following sentence will be added to the section: "If you decide to voluntarily withdraw from a program, you may not be entitled to a full refund of the voucher amount utilized."</p>

Supplemental Job Displacement Benefit	COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>who decides to voluntarily withdraw from a program is made aware that they are not necessarily entitled to a full refund of the voucher amount utilized. If this is not included in the voucher, then there is a potential for an exponential increase in disputes brought to the WCAB by those students who believe they should have the full amount of the voucher available upon withdrawal.</p> <p>Is there any legitimate reason to deny payment to a training institution once a student enrolls? The good faith created by this voucher leads training institutions to believe that they can recover costs that are incurred upon enrollment, even if a student withdraws.</p>		This is a question, not a comment. In response, no.	None.
§10133.57 State Approved or Accredited Schools	The commenter asks again if there is an oversight committee that will be appointed to ensure adherence to these practices.	Wil Cuadros, Admissions Representative Allied Schools Written comment dated July 8, 2004	The Bureau for Private Postsecondary and Vocational Education has oversight.	None.
§10133.58(c) The Administrative Director's List of	The commenter asks the following questions:	Wil Cuadros, Admissions Representative Allied Schools	These comments do not address the proposed regulations, but instead are questions. The questions also	None.

Supplemental Job Displacement Benefit	COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
Vocational Return to Work Counselors	<p>If an injured worker decides to forgo rehabilitation assistance, does the school have the right to request permanent and stationary medical reports?</p> <p>How are we to ensure that students don't enroll in training programs for careers that may negatively impact their physical and mental health?</p> <p>What liability do schools have when an injured worker participates in a program that results in deterioration of his/her health, or is a direct violation of the work restrictions implemented by the Treating Physician, AME or QME?</p>	Written comment dated July 8, 2004	go beyond the scope of the regulations.	
§10133.51(b) Notice of Potential Right to Supplemental Job Displacement Benefits	Zenith states that as proposed, the requirement for the employer to send the Notice of Potential Right to Supplemental Job Displacement Benefit within 10 days of the last payment of temporary disability will require repeated submissions for broken periods of temporary disability and is likely to create confusion on the part of the injured employee. Zenith believes that sending the notice once should be sufficient and will comply with the intent of the law.	Pearl Phoenix, Director California RTW/Vocational Rehabilitation Programs Zenith Insurance Company Written comment dated July 8, 2004	We agree.	The section will be revised to state "if not previously provided" so that only one notice will need to be sent.

Supplemental Job Displacement Benefit	COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
---------------------------------------	-----------------------------------	--------------------------------	----------	--------

<p>§10133.52 “Notice of Potential Right to Supplemental Job Displacement Benefit Form”</p>	<p>Zenith states that this section of the proposed regulations presents significant problems and contradictions.</p> <p>According to Labor Code §4658.5, the employer’s obligation to provide the voucher emanates under compulsion of an award of permanent partial disability and not from any obligation or decision to provide permanent disability advances or payments. Zenith believes that the proposed language is inconsistent with the law and that there is no authority for this departure from the clear language of the law.</p> <p>The worker’s entitlement to the voucher seems to stem from the point in time that TD terminates and is predicated upon the offer of modified or alternative work within very specific time frames. However, to require that the voucher be issued to the worker within 30 days from the commencement of permanent disability advance payments is inconsistent with the language of the statute and, in fact, during this period we might not even know if there will be permanent disability and/or work</p>	<p>Pearl Phoenix, Director California RTW/Vocational Rehabilitation Programs Zenith Insurance Company</p> <p>Written comment dated July 8, 2004</p>	<p>We agree.</p>	<p>The regulations will be revised to tie the voucher to the permanent partial disability award.</p> <p>The section is revised to state that the employee will receive the voucher 25 calendar days from the permanent partial disability award.</p>

Supplemental Job Displacement Benefit	COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
---------------------------------------	-----------------------------------	--------------------------------	----------	--------

	<p>restrictions. The proposed definition of Work Restrictions (16) states that Work Restrictions, which are required in order to document and offer modified or alternative work, are “permanent medical limitations on employment activity established by the doctor(s)”. For an individual who is still in medical treatment, although working transitional duties, it is premature to make an offer of permanent modified or alternative (or regular) work. There will need to be a method to delay the offer of permanent modified or alternative work until the doctor has provided sufficient medical information for the employer to make a reasonable decision.</p> <p>Finally, from a practical standpoint, requiring the voucher within 30 days of the initiation of the permanent disability advance payments (44 days from the termination of temporary disability) is in conflict with the 60 days from the termination of temporary disability allowed for the return to work effort. It may not allow sufficient time for the offer of modified/alternative work, the employee’s response and agreement on the return to work date.</p>			
--	--	--	--	--

Supplemental Job Displacement Benefit	COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	Zenith recommends that all sections of the regulations pertaining to the award of permanent partial disability should be amended to read “final, approved permanent disability award.”		We agree.	The reference to the Compromise and Release will be removed from the voucher.
§10133.55(a, b & c) Requirement to Issue Supplemental Job Displacement Nontransferable Training Voucher	<ul style="list-style-type: none"> • Please see comments under 10133.52 regarding the provision of the voucher prior to the award. • Zenith also suggests that (a) be revised to clarify that the employer must offer a starting date within 60 days of the termination of temporary disability payments. As proposed, the regulation could mean that if the employee delayed the return to work, he/she would be entitled to the voucher. • (c) would be deleted in its entirety if Zenith’s suggestions regarding reverting to the voucher being due when the award is made are accepted, and the remainder of the sub-sections would need to be renumbered. 	Pearl Phoenix, Director California RTW/Vocational Rehabilitation Programs Zenith Insurance Company Written comment dated July 8, 2004	<p>We agree. See above.</p> <p>We disagree. The regulations mirrors the language of Labor Code section 4658.6.</p> <p>We agree.</p>	<p>See above.</p> <p>None.</p> <p>The subdivisions will be renumbered.</p>

Supplemental Job Displacement Benefit	COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
<p>§10133.56 Form DWC-AD 10133.56 “Supplemental Job Displacement Nontransferable Training Voucher Form”</p>	<ul style="list-style-type: none"> In keeping with the suggestion to revise the regulation to require the voucher upon the issuance of an award, Zenith would delete all of the check boxes in #8. Zenith also recommends changing the period for payment to 45 working days to make it consistent with the period for paying medical bills. This is a small simplification step, but a start toward aligning payment periods in an effort to reduce error. 	<p>Pearl Phoenix, Director California RTW/Vocational Rehabilitation Programs Zenith Insurance Company</p> <p>Written comment dated July 8, 2004</p>	<p>We agree.</p> <p>We disagree. 45 calendar days is enough time and calendar days are easier to compute than working days.</p>	<p>The boxes will be removed.</p> <p>None.</p>
<p>§10133.59(a)(2) Termination of Employer’s Liability for the Supplemental Job Displacement Benefit</p>	<p>Zenith suggests the following language:</p> <p>" the employer offers the employee modified or alternative work in compliance with LC 4658.6 and the employee voluntarily quits or is terminated for cause prior to working..."</p>	<p>Pearl Phoenix, Director California RTW/Vocational Rehabilitation Programs Zenith Insurance Company</p> <p>Written comment dated July 8, 2004</p>	<p>We disagree. There is no statutory authority for adding “the employee voluntarily quits or is terminated for cause.” Also, there may be factual questions regarding the cause.</p>	<p>None.</p>
<p>§10133.59(a)(3 & 4)</p>	<p>These should read <u>modified</u> or alternative work.</p>	<p>Pearl Phoenix, Director</p>	<p>We agree.</p>	<p>The word “modified” will be added to these</p>

Supplemental Job Displacement Benefit	COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
		California RTW/Vocational Rehabilitation Programs Zenith Insurance Company Written comment dated July 8, 2004		subdivisions.
§10133.59(a)(4)	Zenith suggests removing “after 12 months”. This language could be interpreted to require the employer to wait 12 months to resolve this issue.	Pearl Phoenix, Director California RTW/Vocational Rehabilitation Programs Zenith Insurance Company Written comment dated July 8, 2004	We disagree. Twelve months must elapse before the obligation is terminated.	None.
§10133.51 Notice of Potential Right to Supplemental Job Displacement Benefits	CAAA suggests that the Division allow a claims administrator the option of sending the notice with the last payment of TD as required by Labor Code §4061(a). This is simpler and increases the likelihood that the worker will actually receive the required notice in a timely fashion.	Susan Borg, Esq California Applicants’ Attorneys Association (CAAA) Oral comment at the public hearing	We disagree. The regulations says “within 10 days of the last payment of TD...” which allows the claims administrator to send the notice with the last payment of TD.	None.
§10133.52	The commenter indicates that the	Susan Borg, Esq.	We agree.	The regulations will

Supplemental Job Displacement Benefit	COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
“Notice of Potential Right to Supplemental Job Displacement Benefit Form”	<p>proposed language requires that the voucher be given within 30 days from the date permanent disability has commenced. However, statutory provisions defining this benefit contain conflicting language regarding the workers eligibility for this benefit. Labor Code §4658.6 states that the worker is not eligible for a voucher if offered appropriate alternate or modified work within 30 days of termination of TD, but Labor Code §4658.5 states that if the employee does not return to work within 60 days of the termination of TD, the employee is eligible for a voucher.</p> <p>Consequently, the worker may be entitled to the voucher either on the 31st day from the termination of TD payments or the 61st day depending upon which statute you rely upon. In either event, CAAA's position is that the triggering date is the termination of TD not the first payment of PD, and the regulation should reflect that fact.</p>	<p>California Applicants’ Attorneys Association (CAAA)</p> <p>Oral comment at the public hearing</p>		<p>be revised to tie the voucher to the permanent partial disability award.</p> <p>The section is revised to state that the employee will receive the voucher 25 calendar days from the permanent partial disability award.</p>
§10133.53 Form DWC-AD 10133.53 “Notice of Modified or Alternative	CAAA objects to the sentence in the section of the form for completion by the employee that states "I understand that if I voluntarily quit prior to working in this position for 12 months, I'm not	Susan Borg, Esq. California Applicants’ Attorneys Association	We agree.	We will change section 10133.53 to state ‘I <u>may</u> not <u>be</u> entitled to the SJDB.’”

Supplemental Job Displacement Benefit	COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
Work for Injuries Occurring on or after 1/1/04"	entitled to the supplemental job displacement benefit." Where a worker has no choice but to quit a job that exceeds his physical limitations, the situation could be considered a termination entitling a worker to a 15 percent increase in the remaining PD payments under Labor Code §4658. CAAA urges that this sentence be stricken, and feels that it would be more appropriate to include the consequences of quitting the proper job without good cause with the recommendation that the workers contact the I&A Officer or their attorney if they are represented. Also, the notice should contain information about the employee's rights if the employer terminates the employment prematurely.	(CAAA) Oral comment at the public hearing		
§10133.55 Requirement to Issue Supplemental Job Displacement Nontransferable Training Voucher	CAAA recommends that the requirement to issue the voucher be based on the discontinuation of TD not the first payment of PD. The regulation should also provide that the claims administrator make a good faith estimate to determine the correct level of the voucher, because minimizing the dollar amount of the voucher when the eventual PD is higher will limit the worker's ability to get training. A later	Susan Borg, Esq. California Applicants' Attorneys Association (CAAA) Oral comment at the public hearing	We disagree. This would go beyond the authority of the statute.	None.

Supplemental Job Displacement Benefit	COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	supplement to the voucher may be of little use to the injured worker who is limited early on in his efforts to get back to work using the voucher system.			
<p>§10133.56 Form DWC-AD 10133.56 “Supplemental Job Displacement Nontransferable Training Voucher Form”</p>	<p>The proposed language instructs the worker to return the form with receipts and documentation for reimbursement. This would require a worker to pay these expenses up front, which is beyond the ability of most disabled workers. Labor Code §4658.5(b) gives ample authority to allow direct payment in addition to reimbursement of expenses, and the regulations should be amended to reflect this at the worker's option.</p>	<p>Susan Borg, Esq. California Applicants’ Attorneys Association (CAAA)</p> <p>Oral comment at the public hearing</p>	<p>We disagree. Labor Code §4658.5(b) specifically refers to “direct reimbursement to the injured employee upon presentation to the employer of appropriate documentation and receipts.” However, the proposed regulations do also allow for direct payment by the claims administrator to the training providers.</p>	<p>None.</p>
<p>§10133.59(a)(4) Termination of Employer’s Liability for the Supplemental Job Displacement Benefit</p>	<p>CAAA objects to the proposed language, which would terminate the employer's obligation to provide the supplemental benefit to a seasonal worker after 12 months under conditions that are unrelated to Labor Code §§4658.5 and 4658.6. The Legislature could have carved out an exception for seasonal workers but did not do so, and it is therefore beyond the Division’s authority to limit a benefit to which a seasonal worker may be entitled.</p>	<p>Susan Borg, Esq. California Applicants’ Attorneys Association (CAAA)</p> <p>Oral comment at the public hearing</p>	<p>We disagree. Pursuant to <i>Henry v. WCAB</i> (1998) 63 CCC 1481, seasonal employees are entitled to 12 months of alternative work, not 12 months of continuous work</p>	<p>None.</p>

Supplemental Job Displacement Benefit	COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
§10133.59(a)(6)	CAAA suggests that the proposed language be rewritten to reflect the termination of the employer's obligation when the maximum funds allowed by applicable law have been exhausted.	Susan Borg, Esq. California Applicants' Attorneys Association (CAAA) Oral comment at the public hearing	We agree.	The subdivision will be changed to "the maximum funds of the voucher and applicable law have been exhausted."
The proposed regulations in general	The commenter states that the real concern is the statistical analysis that will take place of the voucher and its utilization and success in the next few years. He thinks that while people recognize it may be beyond the scope of what the Division can do based on how the law is written, they are concerned that it will affect the statistical impact and create a concern that somehow the voucher wasn't as effective as intended, and they won't provide the kind of support for a voucher or some successor program in the future. The commenter hopes that this is something the Division takes a look at and continues to make recommendations if possible.	Jim Lites Organization of Bilingual Rehabilitation Associates Oral comment at the public hearing	This comment goes beyond the scope of these regulations.	None.
§10133.50 Definitions	There's discussion in the industry that this voucher is going to be able to be settled for cash, and CARRP would like language to make it very clear that this	JoAnne Ruchinskas, M.Ed., CRC Vocation	We disagree. The regulations state that the money is for training and is non – transferable. Prohibiting	None.

Supplemental Job Displacement Benefit	COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	is a non-transferable voucher to be used for training only.	Exploration Services, Inc. CARRP Legislative Committee Oral comment at the public hearing	settlement by regulation goes beyond the authority provided by the statute.	
§10133.52 “Notice of Potential Right to Supplemental Job Displacement Benefit Form”	CARRP believes that the voucher should be available earlier in the process rather than later to afford the individual the opportunity to go back to work or at least get his/her training to go look at a different opportunity.	JoAnne Ruchinskas, M.Ed., CRC Vocation Exploration Services, Inc. CARRP Legislative Committee Oral comment at the public hearing	We disagree. This comment goes beyond the authority of the statute.	None.
§10133.58 The Administrative Director’s List of Vocational Return to Work Counselors	CARRP is concerned with how the information about the counseling availability will get to the injured worker, and suggests that the list be written up and designated by county in the state to be available to the injured workers.	JoAnne Ruchinskas, M.Ed., CRC Vocation Exploration Services, Inc. CARRP Legislative Committee Oral comment at	We agree. The counselors will be listed on the website by zip code.	The DIR website address where the list will be available will be added to the regulations.

Supplemental Job Displacement Benefit	COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
--	---	--	-----------------	---------------

		the public hearing		
--	--	---------------------------	--	--