

TEXT OF PROPOSED RULEMAKING

TITLE 8. INDUSTRIAL RELATIONS

Division 1. DEPARTMENT OF INDUSTRIAL RELATIONS

CHAPTER 8. OFFICE OF THE DIRECTOR

SUBCHAPTER 8. RETURN-TO-WORK SUPPLEMENT

ARTICLE 1.

25101. General, Scope and Application of Article

(a) This article governs the return-to-work program established by Labor Code section 139.48. This program shall be called the Return-to-Work Supplement Program. The Return-to-Work Supplement Program is located at 1515 Clay Street, 17<sup>th</sup> Floor, Oakland, California, 94612.

(b) This program is intended to provide supplemental payments to workers whose permanent disability benefits are disproportionately low in comparison to their earnings loss. This program is based on findings of studies done by RAND concerning permanent disability and in particular the study entitled Identifying Permanently Disabled Workers with Disproportionate Earnings Losses for Supplemental Payments, RAND, February 2014. [http://www.dir.ca.gov/chswc/Reports/2014/Earnings\\_Losses\\_2014.pdf](http://www.dir.ca.gov/chswc/Reports/2014/Earnings_Losses_2014.pdf)

25102. Definitions

For the purpose of these rules:

- (a) "Supplemental Job Displacement Benefit" means the benefit provided under Labor Code 4658.7.
- (b) "Voucher" means the document evidencing the redeemable promise of payment provided under Labor Code section 4658, form DWC-AD 10133.32

#### 25103. Eligibility

- (a) To be eligible for the Return-to-Work Supplement, the individual must have received the Supplemental Job Displacement Benefit (SJDB) for an injury occurring on or after January 1, 2013.
- (b) An individual who has received a Return-to-Work Supplement may not receive a second or subsequent Return-to Work-Supplement, except where the individual receives a Voucher for an injury which occurs subsequent to receipt of every previous Return to Work Supplement.

#### 25104. Notice

Any Voucher issued more than 30 days after the effective date of these regulations shall contain the following notice on page 6, proof of service, of form DWC-AD 10133.32, 2/5/14, or as an attachment to that form: "Because you have received this Voucher and are unable to return to your usual employment you may be eligible for a Return-to-Work Supplement. You must apply within one year from the date this Voucher was served on you. You should make a copy of the Voucher which you will need to apply for the Return-to-Work Supplement. Details about the Return-to-Work supplement program are available from the Department of Industrial Relations on its web site, [www.dir.ca.gov](http://www.dir.ca.gov), or

by calling 510-286-0787.” The Director will arrange for publication on the Department web site of a notice targeted at eligible persons who received vouchers before the notice was included on the voucher.

#### 25105. Deadline for Application

An application for the Return-to-Work Supplement must be received by the Return-to-Work Supplement Program within one year from the date the Voucher was served on the individual or within one year from the effective date of these regulations, whichever is later.

#### 25106. Method of Application

An application must be submitted by electronic means through the Department of Industrial Relations web site. The Department will make access to this web site available at each Division of Workers' Compensation Information and Assistance Office location in the state. Any application that is filed electronically after 5:00 P.M. or on a Saturday, Sunday or Holiday shall be deemed filed the next business day.

#### 25107. Application Contents

The application shall be made on the electronic form on the Department of Industrial Relations web site and shall include a declaration under penalty of perjury that the information provided is true and correct. The application shall contain the individual's first name, last name and middle name, social security number or tax ID number, address, telephone number and email address, if available, and the ADJ number of any workers' compensation cases filed by the individual, and the individual shall submit a .pdf or .tiff

of the Voucher as an attachment to the application. The individual shall indicate whether the individual is a California resident or a non-resident.

#### 25108. Processing of Applications and Decision on Applications

All completed and timely filed applications will be reviewed and a decision will be made on whether the individual is entitled to the supplement within 60 days of the receipt of the completed application. The individual will be notified by mail or, where available, email, of the decision. The decision is a final decision of the Director.

#### 25109. Supplement Payment

The Return- to-Work Supplement Program will provide a supplement of \$5,000.00 to each eligible individual who submits a complete application by the deadline. The payment will be made within 25 days of the date the decision of the Director on the application and will be paid in one lump sum. Payment shall be made directly to the individual and is not assignable before payment. The amount of this supplement may be adjusted by the Director from time to time based on further studies conducted by the Director in accordance with Labor Code section 139.48 and or based on consideration of the number of anticipated recipients.

#### 25110. Appeal to the WCAB

An individual dissatisfied with any final decision of the Director on his or her application for the Return-to-Work Supplement may, file an appeal at the Workers' Compensation Appeals Board (WCAB) District Office. The appeal must contain the name of the individual, the ADJ number of the case in which a voucher was provided, and a clear and

concise statement of the facts constituting the basis for the appeal. A copy of the appeal shall be served on the Return-to-Work Program located at 1515 Clay Street, 17<sup>th</sup> Floor, Oakland, California, 94612. Any appeal must be filed with the WCAB within 20 days of the service of the decision. After an appeal has been timely filed, the Return-to-Work Program may, within the period of fifteen (15) days following the date of filing of that appeal, amend or modify the decision or rescind the decision and take further action. Further action shall be initiated within 30 days from the order of rescission. The time for filing an appeal will run from the filing date of the new, amended or modified decision. Any such appeal will be subject to review at the trial level of the WCAB upon the same grounds as prescribed for petitions for reconsideration.

#### 25111. False Claims

An application for benefits from the Return-to-Work Supplement Program is a claim for benefits from the state.

The application shall contain the following notice:

“WARNING: any person who knowingly makes or uses a false record or statement material to the claim is liable for treble damages plus a civil penalty of not less than \$5,500 and not more than \$11,000 plus the cost of the action pursuant to the False Claims Act, Government Code sections 12650-12656.”

This warning does not constitute a limitation on any penalties that may attach to any action in violation of the law.