

**STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
OFFICE OF THE DIRECTOR**

NOTICE OF PROPOSED RULEMAKING

**Subject Matter of Regulations: Return to Work Supplement Program
California Code of Regulations, Title 8, Chapter 8, Section 17304**

NOTICE IS HEREBY GIVEN that the Director (“Director”) of the Department of Industrial Relations (“Department”) proposes to amend section 17304 of Article 1, Subchapter 7, Chapter 8, Division 1, Title 8, California Code of Regulations to extend the Return-to-Work Supplement (“RTWS”) application deadline for individuals who became eligible for the benefit prior to December 1, 2015, as described below, after considering all comments, objections and recommendations regarding the proposed action.

PUBLIC HEARING

The Director will hold a public hearing at 10:00 a.m. on October 31, 2016, at 1515 Clay Street, Oakland, California. The hearing room is wheelchair accessible. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. The Director requests, but does not require, that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action by mail or personal delivery to Tess Gormley, 1515 Clay St., Oakland, CA 94612. Written comments may also be sent to Tess Gormley: (1) via electronic mail to LC139.48Comments@dir.ca.gov, or (2) via fax to (510) 286-6997. To be considered, written comments must be received by the Director no later than 5:00 p.m., October 31, 2016.

AUTHORITY AND REFERENCE

Labor Code section 55 authorizes the Director to make rules and regulations that are reasonably necessary to effectuate the purposes of the Department of Industrial Relations (Department). Labor Code section 139.48, subdivision (b) specifically authorizes the Director to adopt regulations determining eligibility for, and the amount of, benefit payments under the RTWS Program. The proposed amendment implements, interprets and makes specific the provisions of section 139.48 of the California Labor Code.

INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW

The RTWS Program was established by the Legislature in Labor Code section 139.48, part of Senate Bill 863, the landmark workers' compensation reform measure of 2012, to provide "supplemental payments to workers whose [Workers' Compensation] permanent disability benefits are disproportionately low in comparison to their earnings loss." After Labor Code section 139.48 took effect on January 1, 2013, the Department, in coordination with the Commission on Health and Safety and Workers' Compensation, commissioned a study from the Rand Corporation of injured workers whose permanent disability benefits are disproportionately low in comparison to their earnings loss. Guided by the Rand study, which was completed in February 2014, the Department developed and adopted California Code of Regulations, title 8, sections 17300 through 17310 to implement the RTWS Program. These regulations went into effect on April 6, 2015, and the Department began accepting applications for RTWS benefits on April 13, 2015.

The proposed amendment to section 17304 extends the RTWS application deadline for individuals who became eligible for the benefit prior to December 1, 2015, to address inadequate notice to some individuals within that group of their entitlement to the RTWS benefit.

The proposed amendment will benefit the health and welfare of California residents and workers who may be eligible for an RTWS benefit but have not applied because they did not receive notice of their eligibility and for whom the application deadline may have passed.

Inconsistency or Incompatibility with Existing State Regulations:

None. The only regulations governing the RTWS program are contained in California Code of Regulations, title 8, sections 17300 through 17310. The proposed regulatory action amends one of those regulations, section 17304, to extend the application deadline for RTWS benefits for certain individuals. This extension is not inconsistent or incompatible with any of the other regulations governing the RTWS Program. Therefore, the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

Comparable Federal Statutes and Regulations:

None.

Technical, Theoretical or Empirical Studies, Reports or Documents:

The Department did not rely on any technical, theoretical or empirical studies, reports or documents in proposing this regulatory action.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

Costs or Savings to State Agencies:

No costs or savings to state agencies will result as a consequence of the proposed action.

Determination of Mandate:

The Director has determined that the proposed amendment does not impose a mandate on local agencies or school districts or a mandate requiring reimbursement by the State pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed regulations will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, the proposed amendment does not constitute a "new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California constitution."

Cost or Savings to Local Agencies or School Districts Required to be Reimbursed:

No costs to local agencies or schools are required to be reimbursed in accordance with Government Code Sections 17500 through 17630.

Other Non-discretionary Costs or Savings Imposed on Local Agencies or School Districts:

This proposal does not impose non-discretionary costs or savings imposed on local agencies or school districts.

Costs or Savings in Federal Funding to the State:

This proposal will not result in costs or savings in federal funding to the state.

Impact on Housing Costs:

The Department has made an initial determination that the amendment of this regulation will not have a significant effect on housing costs.

Cost Impact on Representative Private Persons or Businesses:

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The proposed amendment to extend the application deadline for RTWS benefits would provide a representative eligible person additional time to learn of their eligibility and apply for an RTWS benefit.

Impact on Business:

The Department has made an initial determination that the proposed amendment will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California business to compete with businesses in other states.

Results of Economic Impact Assessment:

The Department has made an assessment that the proposed amendment will not (1) create or eliminate jobs within California, (2) create new businesses or eliminate existing businesses within California, or (3) affect the expansion of businesses currently doing business within California. The proposed amendment will benefit the health and welfare of California residents and workers who may be eligible for an RTWS benefit but have not applied because they did not receive notice of their eligibility and for whom the application deadline may have passed.

Business Reporting Requirement:

The proposed amendment does not impose any reporting requirements upon California businesses.

Small Business Impact:

The Department has determined that the proposed amendment will have no adverse impact on small business. The proposed amendment extending the application deadline for RTWS benefits would provide certain eligible persons with additional time to learn of their eligibility and apply for an RTWS benefit but would not impose any requirements or additional costs on business. As such the regulations do not have an adverse impact on small business.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Director must determine that no reasonable alternative that has been considered by the Department or that has otherwise been identified and brought to the Department's attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. To date, no reasonable alternative has been brought to the attention of the Director that would be as effective as and less burdensome to affected persons than the proposed action.

The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

**AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF
PROPOSED REGULATIONS, RULEMAKING FILE AND DOCUMENTS
SUPPORTING THE RULEMAKING FILE/INTERNET ACCESS**

An Initial Statement of Reasons and the text of the proposed regulations in plain English have been prepared and are available from the Regulations Coordinator named in this notice. The entire rulemaking file will be made available for inspection and copying at the address indicated below.

As of the date of this Notice, the rulemaking file consists of this Notice, the Initial Statement of Reasons, the Form 399 and the proposed text of the regulations.

Any interested person may inspect a copy or direct questions about the proposed regulations and any supplemental information contained in the rulemaking file. The rulemaking file will be available for inspection at the Department of Industrial Relations, Office of the Director, 1515 Clay Street, 17th Floor, Oakland, CA, 94612, between 8:00 A.M. and 5:00 P.M., Monday through Friday. Copies of the proposed regulations, Initial Statement of Reasons and any information contained in the rulemaking file may be requested in writing to the Contact Person identified in this Notice.

In addition, the Notice, Initial Statement of Reasons and proposed text of the regulations being proposed may be accessed and downloaded from the Department's website at <http://www.dir.ca.gov>.

CONTACT PERSON FOR GENERAL QUESTIONS

Non-substantive inquiries concerning this action, such as requests to be added to the mailing list for rulemaking notices, requests for copies of the text of the proposed regulations, the Initial Statement of Reasons, and any supplemental information contained in the rulemaking file may be requested in writing at the same address.

The contact person is:

Tess Gormley, Chief
Claims and Risk Management
Department of Industrial Relations
1515 Clay Street, 17th Floor
Oakland, CA 94612
E-mail: LC139.48Comments@dir.ca.gov

The telephone number of the contact person is (510) 286-0787.

CONTACT PERSON FOR SUBSTANTIVE QUESTIONS

In the event the contact person above is unavailable, or for questions regarding the substance of the proposed regulations, inquiries should be directed to:

Gayle Oshima, Counsel
Office of the Director – Legal Unit
Department of Industrial Relations
1515 Clay Street, Suite 701
Oakland, CA 94612
E-mail: LC139.48Comments@dir.ca.gov

The telephone number of this contact person is (510) 286-3800.

AUTOMATIC MAILING

A copy of this Notice, the Initial Statement of Reasons and the text of the regulations, will automatically be sent to those interested persons on the Director's mailing list. If adopted, the amendment with any final amendments will appear in Title 8 of the California Code of Regulations. The text of the final amendment will also be available through the website of the Office of Administrative Law at www.oal.ca.gov.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the close of the forty-five (45) day public comment period, the Director may adopt the proposed amendment. As a result of public comments, either oral or written, that are received by the Director regarding this proposal, the Director may determine that changes to the proposed amendment are appropriate. If the Director makes substantive modifications which are sufficiently related to the originally proposed text, the Department will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Director adopts the regulation as revised. Please send requests for copies of any modified regulations to the attention of Tess Gormley at the above address. The Department will accept further written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF FINAL STATEMENT OF REASONS

The Department is required to prepare a Final Statement of Reasons. Once the Department has prepared a Final Statement of Reasons, a copy will be made available to anyone who requests it. Requests for copies should be addressed to the Department Contact Person identified in this Notice.

DEPARTMENT INTERNET WEBSITE

The Department maintains an Internet website for the electronic publication and distribution of written material. Copies of this Notice of Proposed Rulemaking, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed through our website at <http://www.dir.ca.gov>.