

AMENDED IN SENATE AUGUST 27, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1636**

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**Introduced by Assembly Member Mendoza**

February 23, 2007

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An act to amend ~~Section 4658.5~~ *Sections 4658.5 and 4658.6* of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1636, as amended, Mendoza. Workers' compensation: supplemental job displacement benefits.

**Existing**

*(1) Existing* law establishes a workers' compensation system, administered by the Administrative Director or the Division of Workers' Compensation, to compensate an employee for injuries sustained in the course of his or her employment. Existing law requires the payment of disability benefits to eligible individuals for injuries sustained in the course of employment that cause permanent disability, and specifies that the amount of those payments be computed in accordance with a prescribed formula.

Existing law, for injuries occurring on or after January 1, 2004, provides supplemental job displacement benefits in the form of a nontransferable voucher for education-related retraining or skill enhancement for an injured employee who does not return to work for the employer within 60 days of the termination of temporary disability, in accordance with a prescribed schedule based on the percentage of an injured employee's disability.

This bill would ~~prohibit~~ *require*, for injuries occurring on or after January 1, 2008, *if the employee has not returned to work within 60*

*days of a disability becoming permanent and stationary, the provision of such a voucher to an injured employee no later than 74 days after ~~termination of temporary disability~~ the date the disability has been determined to be permanent and stationary. The bill would require the employer, if the percentage of permanent disability ~~cannot be~~ has not been determined, to provide a voucher based on the reasonable estimate of the percentage of permanent disability, as specified, and would require the employer, if the percentage of permanent disability is later determined to be higher than that estimate, to provide the additional voucher amount immediately upon determining the correct percentage of permanent disability. The bill would require an employer, if the percentage of permanent disability is later determined to be lower than the estimate, to reissue the voucher in the correct amount, and to notify the employee that any unused portion of the original voucher in excess of the appropriate amount is no longer available. The bill would also require an employer to notify the employee, in a manner prescribed by the administrative director, of an employee's determination of permanent disability consistent with those provisions, and of any delay in determining the employee's correct percentage of permanent disability benefits.*

*(2) Existing law provides that the employer shall not be liable for a specified supplemental job displacement benefit if, within 30 days of the termination of temporary disability indemnity benefits, the employer offers, and the employee rejects, or fails to accept, modified or alternative work, as specified.*

*This bill would provide that an employer shall not be liable for supplemental job displacement benefits if, within 60 days of the disability becoming permanent and stationary, the employer offers the injured employee regular work or modified work. The bill would also make a technical, clarifying change.*

*(3) This bill would incorporate amendments to Section 4658.5 of the Labor Code contained in this bill and SB 942, with the amendment for each bill to become operative only if that section is amended by each bill, and if this bill is enacted after SB 942.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 4658.5 of the Labor Code is amended to  
2 read:

3 4658.5. (a) Except as provided in Section 4658.6, if the injury  
4 causes permanent partial disability and the injured employee does  
5 not return to work for the employer within 60 days of the  
6 termination of temporary disability, the injured employee shall be  
7 eligible for a supplemental job displacement benefit in the form  
8 of a nontransferable voucher for education-related retraining or  
9 skill enhancement, or both, at state-approved or accredited schools,  
10 as follows:

11 (1) Up to four thousand dollars (\$4,000) for permanent partial  
12 disability of less than 15 percent.

13 (2) Up to six thousand dollars (\$6,000) for permanent partial  
14 disability between 15 and 25 percent.

15 (3) Up to eight thousand dollars (\$8,000) for permanent partial  
16 disability between 26 and 49 percent.

17 (4) Up to ten thousand dollars (\$10,000) for permanent partial  
18 disability between 50 and 99 percent.

19 (b) The voucher may be used for payment of tuition, fees, books,  
20 and other expenses required by the school for retraining or skill  
21 enhancement. No more than 10 percent of the voucher moneys  
22 may be used for vocational or return to work counseling. The  
23 administrative director shall adopt regulations governing the form  
24 of payment, direct reimbursement to the injured employee upon  
25 presentation to the employer of appropriate documentation and  
26 receipts, and any other matters necessary to the proper  
27 administration of the supplemental job displacement benefit.

28 (c) Within 10 days of the last payment of temporary disability,  
29 the employer shall provide to the employee, in the form and manner  
30 prescribed by the administrative director, information that provides  
31 notice of rights under this section. This notice shall be sent by  
32 certified mail.

33 (d) (1) For injuries occurring on or after January 1, 2008, if the  
34 employee has not returned to work within 60 days of ~~the~~  
35 ~~termination of temporary disability benefits~~ *a disability becoming*  
36 *permanent and stationary*, except as provided in Section 4658.6,  
37 the voucher shall be provided no later than 74 days after ~~the~~  
38 ~~termination of temporary disability benefits~~ *the date the disability*

1 *has been determined to be permanent and stationary.* If the  
2 percentage of permanent disability ~~cannot be~~ *has not yet been*  
3 determined, the employer shall provide a voucher based on the  
4 reasonable estimate of the percentage of permanent disability, as  
5 required in paragraph (b) of Section 4650. If the percentage of  
6 permanent disability is later determined to be higher than the  
7 estimate, the employer shall provide the additional voucher amount  
8 immediately upon determining the correct percentage of permanent  
9 disability. *If the percentage of permanent disability is later*  
10 *determined to be lower than the estimate, the employer shall*  
11 *reissue the voucher in the correct amount and notify the employee*  
12 *that any unused portion of the original voucher in excess of the*  
13 *appropriate amount is no longer available.*

14 (2) The employer shall notify the employee, in a manner  
15 prescribed by the administrative director, of the determination of  
16 the percentage of permanent disability consistent with this section,  
17 and of any delay in determining the correct percentage of  
18 permanent disability benefits.

19 (e) This section shall apply to injuries occurring on or after  
20 January 1, 2004.

21 *SEC. 1.5. Section 4658.5 of the Labor Code is amended to*  
22 *read:*

23 4658.5. (a) Except as provided in Section 4658.6, if the injury  
24 causes permanent partial disability and the injured employee does  
25 not return to work for the employer within 60 days of the  
26 termination of temporary disability, the injured employee shall be  
27 eligible for a supplemental job displacement benefit in the form  
28 of a nontransferable voucher for education-related retraining or  
29 skill enhancement, or both, at state-approved or accredited schools,  
30 as follows:

31 (1) Up to four thousand dollars (\$4,000) for permanent partial  
32 disability ~~awards~~ of less than 15 percent.

33 (2) Up to six thousand dollars (\$6,000) for permanent partial  
34 disability ~~awards~~ between 15 and 25 percent.

35 (3) Up to eight thousand dollars (\$8,000) for permanent partial  
36 disability ~~awards~~ between 26 and 49 percent.

37 (4) Up to ten thousand dollars (\$10,000) for permanent partial  
38 disability ~~awards~~ between 50 and 99 percent.

39 (b) The voucher may be used for payment of tuition, fees, books,  
40 and other expenses required by the school for retraining or skill

1 enhancement. No more than 10 percent of the voucher moneys  
2 may be used for vocational or return to work counseling. The  
3 administrative director shall adopt regulations governing the form  
4 of payment, direct reimbursement to the injured employee upon  
5 presentation to the employer of appropriate documentation and  
6 receipts, and any other matters necessary to the proper  
7 administration of the supplemental job displacement benefit.

8 (c) Within 10 days of the last payment of temporary disability,  
9 the employer shall provide to the employee, in the form and manner  
10 prescribed by the administrative director, information that provides  
11 notice of rights under this section. This notice shall be sent by  
12 certified mail.

13 (d) (1) *For injuries occurring on or after January 1, 2008, if*  
14 *the employee has not returned to work within 60 days of a disability*  
15 *becoming permanent and stationary, except as provided in Section*  
16 *4658.6, the voucher shall be provided no later than 74 days after*  
17 *the date the disability has been determined to be permanent and*  
18 *stationary. If the percentage of permanent disability has not yet*  
19 *been determined, the employer shall provide a voucher based on*  
20 *the reasonable estimate of the percentage of permanent disability,*  
21 *as required in subdivision (b) of Section 4650. If the percentage*  
22 *of permanent disability is later determined to be higher than the*  
23 *estimate, the employer shall provide the additional voucher amount*  
24 *immediately upon determining the correct percentage of permanent*  
25 *disability. If the percentage of permanent disability is later*  
26 *determined to be lower than the estimate, the employer shall*  
27 *reissue the voucher in the correct amount and notify the employee*  
28 *that any unused portion of the original voucher in excess of the*  
29 *appropriate amount is no longer available.*

30 (2) *The employer shall notify the employee, in a manner*  
31 *prescribed by the administrative director, of the determination of*  
32 *the percentage of permanent disability consistent with this section,*  
33 *and of any delay in determining the correct percentage of*  
34 *permanent disability benefits.*

35 ~~(d) This~~

36 (e) *Except as provided in subdivision (d), this section shall apply*  
37 *to injuries occurring on or after January 1, 2004.*

38 *SEC. 2. Section 4658.6 of the Labor Code is amended to read:*

39 4658.6. The employer shall not be liable for the supplemental  
40 job displacement benefit ~~if the employer meets either of the~~

1 following conditions: within 60 days of the disability becoming  
2 permanent and stationary if the employer offers the injured  
3 employee regular work, modified work, or alternative work in the  
4 form and manner prescribed by the administrative director, lasting  
5 for a period of at least 12 months.

6 ~~(a) Within 30 days of the termination of temporary disability~~  
7 ~~indemnity payments, the employer offers, and the employee rejects,~~  
8 ~~or fails to accept, in the form and manner prescribed by the~~  
9 ~~administrative director, modified work, accommodating the~~  
10 ~~employee's work restrictions, lasting at least 12 months.~~

11 ~~(b) Within 30 days of the termination of temporary disability~~  
12 ~~indemnity payments, the employer offers, and the employee rejects,~~  
13 ~~or fails to accept, in the form and manner prescribed by the~~  
14 ~~administrative director, alternative work meeting all of the~~  
15 ~~following conditions:~~

16 ~~(1) The employee has the ability to perform the essential~~  
17 ~~functions of the job provided.~~

18 ~~(2) The job provided is in a regular position lasting at least 12~~  
19 ~~months.~~

20 ~~(3) The job provided offers wages and compensation that are~~  
21 ~~within 15 percent of those paid to the employee at the time of~~  
22 ~~injury.~~

23 ~~(4) The job is located within reasonable commuting distance of~~  
24 ~~the employee's residence at the time of injury.~~

25 *SEC. 3. Section 1.5 of this bill incorporates amendments to*  
26 *Section 4658.5 of the Labor Code proposed by both this bill and*  
27 *SB 942. It shall only become operative if (1) both bills are enacted*  
28 *and become effective on or before January 1, 2008, (2) each bill*  
29 *amends Section 4658.5 of the Labor Code, and (3) this bill is*  
30 *enacted after SB 942, in which case Section 1 of this bill shall not*  
31 *become operative.*