

# California Workers' Compensation Modified Work Requirements: A Legal and Procedural Analysis

## (PART-A INJURED WORKER ANALYSIS)

March 2, 2026

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# CALIFORNIA WORKERS' COMPENSATION: MODIFIED WORK REQUIREMENTS FOR INJURED WORKERS

If you were hurt at work in California and your doctor says you have lasting physical limitations, your employer may be required by law to offer you a modified job. This report explains what your employer must do, what forms and deadlines apply, and what benefits you may receive if your employer does not follow the rules.

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## Part 1: Overview and Risk Assessment

### What This Report Covers

This report explains the laws that require California employers to offer modified work to employees who were injured on the job. Modified work means your regular job changed in some way so you can still do it, even with your medical restrictions. These rules are found mainly in Cal. Lab. Code § 4658.1 (<https://law.justia.com/codes/california/code-lab/division-4/part-2/chapter-2/article-3/section-4658-1/>) and Cal. Lab. Code § 4658.7 (<https://law.justia.com/codes/california/code-lab/division-4/part-2/chapter-2/article-3/section-4658-5/>) (formerly § 4658.5, amended by Senate Bill 863).

Your employer must offer you modified work that meets all of these conditions:

- The job must last at least twelve months.
- You must be paid at least eighty-five percent (85%) of the wages you earned before your injury.
- The job must be within a reasonable commuting distance from the home address you had when you were injured.
- The employer must send you the offer using a specific official form called DWC-AD 10133.35 (<https://www.dir.ca.gov/dwc/forms/SJDB/10133.35.pdf>) within sixty days after the insurance company receives the doctor's report saying your condition is permanent and stationary (meaning your medical condition has stabilized and is not expected to improve significantly).

If your employer does not follow these rules, you may be entitled to a Supplemental Job Displacement Benefit (SJDB) voucher worth between six thousand dollars (\$6,000) and ten thousand dollars (\$10,000), depending on when your injury happened. This voucher helps you pay for retraining or skill enhancement so you can find new work. You can learn more about the SJDB program on the California Division of Workers' Compensation SJDB page (<https://www.dir.ca.gov/dwc/sjdb.html>).

### Risk Assessment

Your level of risk depends on several factors:

- Did your employer send the offer on time? The sixty-day deadline is strict. If your employer missed it, the SJDB voucher is triggered automatically.
- Was the wage calculation correct? Your employer must pay you at least 85% of your pre-injury wages. Errors in this calculation are common.
- Did the offer match your medical restrictions? The job offered must be work you can physically do based on your doctor's report.
- Did your employer engage in the interactive process? Under separate disability discrimination laws, your employer must also have a conversation with you about how to accommodate your disability. This is a different legal requirement from the workers' compensation rules.

***Important: Even if your employer follows all the workers' compensation rules, they may still be breaking the law if they did not have a good-faith conversation with you about accommodating your disability under the Fair Employment and Housing Act (FEHA) or the Americans with Disabilities Act (ADA).***

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## Part 2: Your Employer's Legal Obligations Under Workers' Compensation Law

### The Modified Work Offer: What the Law Requires

Under California law, when a worker is injured on the job and develops a lasting disability, the employer has a duty to offer that worker a modified or alternative position. The key statute is Cal. Lab. Code § 4658.1 (<https://law.justia.com/codes/california/code-lab/division-4/part-2/chapter-2/article-3/section-4658-1/>), which defines modified work as "regular work modified so that the employee has the ability to perform all the functions of the job." This law applies to all injuries occurring on or after January 1, 2004.

The offer must meet three main requirements:

- **Wages:** The modified job must pay at least 85% of the wages and compensation you received at the time of your injury. Under § 4658.1(d), any increase in working hours above what you averaged at the time of injury cannot be used to inflate this calculation. This prevents employers from offering you part-time work at a low rate and claiming they met the 85% threshold.
- **Duration:** The job must last at least twelve months.
- **Location:** The job must be within a reasonable commuting distance of your home at the time of injury. You can waive this requirement, but only voluntarily. If you accept the job without objecting in writing within twenty days after being told of your right to object, the law treats this as an automatic waiver.

### The Sixty-Day Deadline and Required Forms

Cal. Lab. Code § 4658.7(b) (<https://law.justia.com/codes/california/code-lab/division-4/part-2/chapter-2/article-3/section-4658-5/>) sets a strict sixty-day deadline. The clock starts when the claims administrator (the insurance company or person handling the workers' compensation claim) receives the first report from any of the following doctors finding that your condition is permanent and stationary with permanent partial disability:

- Your primary treating physician (the main doctor treating your work injury)
- An agreed medical evaluator (AME) (a doctor both sides agree on)
- A qualified medical evaluator (QME) (a doctor appointed by the state)

The doctor must complete a form called the Physician's Return-to-Work & Voucher Report (DWC-AD 10133.36) (<https://www.dir.ca.gov/dwc/forms/SJDB/10133.36.pdf>), which documents your work restrictions. The employer must then send you a formal written offer using Form DWC-AD 10133.35 (<https://www.dir.ca.gov/dwc/forms/SJDB/10133.35.pdf>) within sixty days. These procedural requirements are detailed in 8 Cal. Code Regs. § 10133.34 ([https://www.dir.ca.gov/t8/10133\\_34.html](https://www.dir.ca.gov/t8/10133_34.html)) and 8 Cal. Code Regs. § 10133.35 (<https://www.law.cornell.edu/regulations/california/8-CCR-10133.35>).

***Critical: If your employer does not send a compliant offer within sixty days, you automatically become entitled to the SJDB voucher. The deadline is not flexible.***

### What Happens to Your Permanent Disability Payments

Under Cal. Lab. Code § 4658 (<https://employeesfirstlaborlaw.com/labor-code-%C2%A74658-permanent-disability-ratings-and-payments/>), your permanent disability payments (regular payments for your lasting injury) are adjusted based on whether your employer offers you modified work:

- If your employer makes a timely, compliant offer, your remaining permanent disability payments are decreased by fifteen percent (15%), whether or not you accept the offer.
- If your employer fails to make a timely offer, your remaining permanent disability payments are increased by fifteen percent (15%).

This adjustment applies to injuries before January 1, 2013, for employers with fifty or more employees. For injuries on or after January 1, 2013, the SJDB voucher system under § 4658.7 is the primary mechanism.

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## Part 3: Important Court Decisions That Affect Your Rights

### When the Offer Obligation Is Triggered

The Workers' Compensation Appeals Board (WCAB) has ruled on when the employer's duty to offer modified work begins. In *Lopez v. D&J Packaging* (<https://calawyers.org/workers-compensation/an-overview-of-sjdb-vouchers-and-recent-case-law/>), the WCAB held that Cal. Lab. Code § 4658.7(b)(1) (<https://law.justia.com/codes/california/code-lab/division-4/part-2/chapter-2/article-3/section-4658-5/>) "requires sending such an offer no later than 60 days after receipt by the claims administrator of the first report ... from ... an agreed medical examiner of the MMI/P&S status." The Board emphasized that the triggering event is the permanent and stationary determination, not the end of temporary disability payments. Once any

qualifying doctor finds you are permanent and stationary with permanent partial disability, the sixty-day clock begins—and later reports disagreeing with that finding do not stop the clock.

### The Offer Must Be Real: The "Bona Fide Offer" Rule

Your employer cannot make a fake or impossible job offer just to avoid paying you SJDB benefits. In *Anthony Dennis v. State of California Department of Corrections and Rehabilitation* (<https://law.justia.com/cases/california/workers-compensation-appeals-board/2020/adj9346293.html>), the WCAB sat en banc (meaning all the judges decided together, making this a very strong ruling). In that case, the employer offered an incarcerated worker a position of "inmate labor" that the worker could not legally accept after release. The Board ruled that a bona fide offer means a real offer for work the employee is legally and physically able to do. An "illusion of a job offer" does not satisfy the law. The employer cannot escape the SJDB obligation by claiming it was impossible for the worker to return.

***Important: If your employer offered you a job that you cannot actually perform because of your medical restrictions, or a job that does not really exist, this may not count as a valid offer under the law.***

### Wage Calculations Must Be Fair

In *Alvarado v. Dart Container Corp.* (<https://www.callaborlaw.com/blog/california-supreme-court-instructs-on-how-california-employers-must-calculate-overtime-on-a-flat-non-production-bonus>), the California Supreme Court established that California law protects workers by requiring that wage calculations be done in a way that maximizes employee compensation. While this case dealt with overtime pay, the principle applies to the 85% wage threshold under Cal. Lab. Code § 4658.1(d) (<https://law.justia.com/codes/california/code-lab/division-4/part-2/chapter-2/article-3/section-4658-1/>): employers cannot manipulate the wage calculation to make it look like the modified job pays enough when it actually does not.

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## Part 4: Your Rights Under Disability Discrimination Laws

### Workers' Compensation Does Not Replace Disability Discrimination Protections

You have rights under two separate legal systems, and one does not cancel out the other. The California Supreme Court confirmed this in *City of Moorpark v. Superior Court* (<https://pasternaklaw.com/publications/where-workers-compensation-meets-the-feha/>), holding that "Labor Code section 132a does not provide an exclusive remedy precluding FEHA and common law wrongful discharge claims." This means your employer must follow both the workers' compensation rules and the disability discrimination rules at the same time.

### FEHA and ADA: What They Require

The Fair Employment and Housing Act (FEHA) is a California law that protects employees from disability discrimination. The Americans with Disabilities Act (ADA) is a federal law that does the same thing. Under both laws, your employer must:

- Engage in the interactive process—a good-faith, back-and-forth conversation with you to figure out how to accommodate your disability so you can keep working.
- Provide reasonable accommodations—changes to your job or workplace that allow you to perform your essential duties, unless doing so would cause the employer undue hardship (a significant difficulty or expense). The EEOC's Enforcement Guidance on Reasonable Accommodation (<https://www.eeoc.gov/laws/guidance/enforcement-guidance-reasonable-accommodation-and-undue-hardship-under-ada>) explains these concepts in detail.

### Key Difference: Duration of Modified Work

There is a critical difference between workers' compensation modified work and FEHA/ADA accommodations. Under workers' compensation law, modified work must last at least twelve months. Under FEHA, the accommodation must be permanent for as long as you need it and the employer can provide it without undue hardship. As legal experts have explained, "under workers' compensation the employer only has to offer modified duty for [a limited period] but under FEHA, it must be a permanent position, because of the very nature of the duty to provide accommodations" (Pasternak Law analysis (<https://pasternaklaw.com/publications/where-workers-compensation-meets-the-feha/>)).

***Important: If your employer offered you modified work for twelve months under workers' compensation but then fired you or refused to continue accommodating you, you may have a FEHA or ADA discrimination claim. These claims can result in damages far greater than the SJDB voucher amount.***

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## Part 5: Options and Strategies

### Option One: Compliance Audit and Late Offer

If you are an employer who may have missed the deadline or made errors, you should conduct an internal review of all modified work offers. Check whether each offer was timely, used the correct DWC form, met the 85% wage threshold, lasted at least twelve months, and matched the employee's documented medical restrictions. If problems are found, consider making a corrected or late offer. While a late offer may not eliminate SJDB liability entirely, it demonstrates good faith.

### Option Two: Start or Restart the Interactive Process

Regardless of your workers' compensation compliance, you should begin or resume a documented interactive process with the injured employee to explore reasonable accommodations under FEHA and the ADA. Document every step: what accommodations were discussed, what was offered, what was rejected, and why. If you determine that an accommodation would cause undue hardship, document the specific reasons. This significantly reduces your exposure to disability discrimination lawsuits, where damages can include emotional distress, lost wages, and attorney's fees. Guidance on reasonable accommodations is available from the ADA National Network (<https://adata.org/factsheet/reasonable-accommodations-workplace>).

### Option Three: Settlement

If a dispute has already been filed, consider resolving the workers' compensation claim through a Stipulated Award or Compromise and Release agreement. These are formal settlement methods available through the California Division of Workers' Compensation (<https://www.dir.ca.gov/dwc/CaseResolved.htm>). A settlement can resolve the SJDB voucher question and convert uncertain liability into a defined amount.

***Critical: Settlement of a workers' compensation claim does not automatically resolve FEHA or ADA claims. Make sure any settlement agreement is carefully drafted to address both areas of law, and understand that an employee's FEHA/ADA rights generally cannot be waived through a workers' compensation settlement alone.***

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## Part 6: Deadlines, New Laws, and Additional Resources

### Key Deadlines

You must be aware of these time-sensitive requirements:

- Sixty days from the claims administrator's receipt of the permanent and stationary report: deadline to offer modified work under Cal. Lab. Code § 4658.7(b) (<https://law.justia.com/codes/california/code-lab/division-4/part-2/chapter-2/article-3/section-4658-5/>).
- Thirty days for the employee to accept or reject a modified work offer after receiving Form DWC-AD 10133.35 (<https://www.dir.ca.gov/dwc/forms/SJDB/10133.35.pdf>).
- Twenty days for the employee to object to the job location; failure to object is treated as a waiver under Cal. Lab. Code § 4658.1 (<https://law.justia.com/codes/california/code-lab/division-4/part-2/chapter-2/article-3/section-4658-1/>).

### Recent and Upcoming Law Changes

Several California laws taking effect on January 1, 2026, and April 1, 2026, introduce new administrative requirements and utilization review standards. Utilization review is the process by which insurance companies evaluate whether a medical treatment is necessary. Updates to these rules, described by Enlyte's regulatory summary (<https://www.enlyte.com/insights/news-release/utilization-management/california-utilization-review-regulation-updates-effective-2026>), may affect how your doctor's medical restrictions are documented and reviewed. Additional information about new California employment laws for 2026 is available from the California Labor Commissioner's Office (<https://www.labor.ca.gov/2025/12/31/new-worker-protections-taking-effect-in-california-on-january-1-2026/>).

## Additional Resources

- DWC Supplemental Job Displacement Benefit FAQ ([https://www.dir.ca.gov/dwc/sjdb/sjdb\\_faq.html](https://www.dir.ca.gov/dwc/sjdb/sjdb_faq.html)) — answers common questions about the SJDB voucher program.
- Return-to-Work Supplement Program (RTWSP) (<https://www.dir.ca.gov/rtwsp/rtwsp.html>) — provides additional supplemental payments for certain injured workers who receive SJDB vouchers.
- DWC Medical Treatment Utilization Schedule (MTUS) (<https://www.dir.ca.gov/dwc/mtus/mtus.html>) — the state's evidence-based guidelines for medical treatment of work injuries.
- DWC General FAQ for Injured Workers (<https://www.dir.ca.gov/dwc/wcfaqiw.html>) — basic information about the workers' compensation system in California.
- Workers' Compensation Benefits Overview (<https://www.dir.ca.gov/dwc/workerscompensationbenefits.htm>) — summary of all benefit types available to injured workers.
- Commission on Health and Safety and Workers' Compensation: Return to Work page (<https://www.dir.ca.gov/chswc/returntoworkpage1.html>) — research and data on return-to-work outcomes.

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# **California Workers' Compensation Modified Work Requirements: A Legal and Procedural Analysis**

## **(PART-B LEGAL ANALYSIS)**

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# California Workers' Compensation Modified Work Requirements: A Comprehensive Legal and Procedural Analysis

## Executive Summary

California employers who employ workers with work-related injuries bear statutory obligations to offer modified work that accommodates documented medical restrictions once the injured worker reaches permanent and stationary status. These obligations, codified principally in [Labor Code Section 4658.1][17] and [Labor Code Section 4658.7][56], require employers to provide work lasting at least twelve months at wages equal to at least eighty-five percent of the employee's pre-injury compensation, located within reasonable commuting distance of the employee's residence at the time of injury. The offer must be documented using form [DWC-AD 10133.35][2] within sixty days of the claims administrator's receipt of the treating physician's permanent and stationary report. Failure to comply with these procedural, wage, and durational requirements triggers employer liability for Supplemental Job Displacement Benefit (SJDB) vouchers valued at six thousand to ten thousand dollars, depending on the injury date. Additionally, California courts have established that workers' compensation return-to-work obligations do not preempt or displace the employer's duties under the [Fair Employment and Housing Act (FEHA)][45] and the [Americans with Disabilities Act (ADA)][41] to engage in an interactive process and provide reasonable accommodations. The legal landscape governing modified work has remained largely stable, though recent California legislation effective January 1, 2026 and April 1, 2026 introduces new administrative requirements and utilization review standards that may indirectly affect how medical restrictions are documented and evaluated.

### Client Risk Assessment: High to Medium (Conditional)

The risk level depends critically on whether the employer has complied with all procedural requirements, calculated the eighty-five percent wage threshold correctly, offered work lasting at least twelve months, and documented the offer timely. Any deviation from these requirements creates significant exposure to SJDB voucher liability. Additionally, any failure to engage in the FEHA/ADA interactive process creates exposure to tort damages in civil court, which can substantially exceed workers' compensation remedies.

### Primary Strategic Options:

**Option One: Immediate Compliance Audit and Retroactive Offer (Medium-High Risk Mitigation).** Conduct a comprehensive internal audit to determine whether all modified work offers have complied with Labor Code Section 4658.1 requirements. If deficiencies are identified, consider making a belated compliant offer, timing the offer carefully, and documenting the rationale for the belated timing. This approach addresses the workers' compensation exposure but does not eliminate liability if the offer is deemed untimely or non-compliant. The risk-benefit profile is medium to high, with the primary advantage being potential mitigation of future SJDB obligations and demonstration of good faith compliance.

**Option Two: Proactive FEHA/ADA Interactive Process Documentation (Medium Risk).** Regardless of workers' compensation compliance, initiate or reinstate a documented interactive process with the employee to identify reasonable accommodations beyond workers' compensation modified work. This approach requires the employer to document good faith exploration of accommodations, assessment of undue hardship (burden is on the employer), and the reasons for any accommodations that were offered or rejected. This approach significantly reduces FEHA/ADA tort exposure while allowing the employer to separate the workers' compensation and employment law analyses. The risk profile is medium, with the primary advantage being reduction of employment discrimination liability.

**Option Three: Settlement and Documentation Protocol (Low-Medium Risk).** If the employee has already filed for SJDB or filed an administrative dispute, consider settling the workers' compensation dispute through a [Stipulated Award or Compromise and Release][67], which can resolve the SJDB voucher question if structured carefully. Simultaneously, ensure that any settlement language does not waive or foreclose the employee's potential FEHA/ADA claims, as California law prevents exclusive preemption of those claims. This approach converts ongoing exposure to a defined settlement obligation but requires careful drafting to preserve any defenses available under FEHA/ADA.

### Timeline and Deadline Considerations:

The sixty-day window for offering modified work after receipt of the permanent and stationary report is statutory and non-negotiable. Once this window closes without a compliant offer, the SJDB voucher obligation is triggered. For employees already in the system, immediate action is required to determine the status of permanent and stationary determinations and the claims administrator's receipt date. For future cases, implementation of internal procedures to track the physician report receipt and calendar the sixty-day deadline is essential.

#### Qualitative Assessment of Likelihood of Success:

Modified work compliance (within wages, duration, and location): Medium to Medium-High probability of defense. If the employer can produce documentation showing a timely, compliant offer using the correct DWC form, with wages of at least eighty-five percent of pre-injury compensation, for work lasting at least twelve months within reasonable commuting distance, and the employee's work restrictions align with the job duties offered, the likelihood of defending against an SJDB claim is medium to medium-high. The primary vulnerability is if the wage calculation is incorrect or if the offered work cannot accommodate all of the employee's documented restrictions.

FEHA/ADA defense (interactive process): Low to Medium probability of defense. California courts have held that FEHA and ADA claims are not preempted by the workers' compensation system, and that the employer's duty to engage in the interactive process is distinct from the workers' compensation offer of modified work. The likelihood of defending against a FEHA/ADA discrimination claim depends entirely on documented evidence of the interactive process. If the employer failed to engage in this process or if the failure to accommodate appears retaliatory, the likelihood of successful defense is low. If the employer can document a good faith interactive process and a reasoned determination of undue hardship, the likelihood increases to medium.

#### Legal Framework

##### Statutory Authority: Full Text and Pinpoint Citations

The statutory framework governing modified work in California workers' compensation derives from three primary Labor Code sections, each addressing different injury date cohorts and different procedural requirements.

[Labor Code Section 4658.1][17][17] establishes the definitions of regular work, modified work, and alternative work that apply to all injuries on or after January 1, 2004. Section 4658.1(b) provides the operative definition of modified work: "regular work modified so that the employee has the ability to perform all the functions of the job and that offers wages and compensation that are at least 85 percent of those paid to the employee at the time of injury, and located within a reasonable commuting distance of the employee's residence at the time of injury." [17][17] The statute further provides critical guidance on wage calculation in sections 4658.1(d) and (e), specifying that "wages and compensation for any increase in working hours over the average hours worked at the time of injury shall not be considered" and that "actual wages and compensation shall be determined without regard to the minimums and maximums" established elsewhere in the Labor Code. [17][17] The location requirement may be waived by the employee, either expressly or through deemed waiver by acceptance of the work without objection within twenty days of notification of the right to object. [17][17]

[Labor Code Section 4658.7][7][56], enacted as part of Senate Bill 863 effective January 1, 2013, establishes the Supplemental Job Displacement Benefit (SJDB) voucher system and the triggering conditions. Section 4658.7(b) provides that an injured employee with permanent partial disability is entitled to SJDB benefits "unless the employer makes an offer of regular, modified, or alternative work no later than 60 days after receipt by the claims administrator of the first report received from either the primary treating physician, an agreed medical evaluator, or a qualified medical evaluator" that finds the disability from all conditions for which compensation is claimed has become permanent and stationary and that the injury has caused permanent partial disability. [7][56] The statute does not require that the employee accept the offer; the offer itself, if compliant, defeats the SJDB entitlement. [7][56]

[Labor Code Section 4658][4][4], which applies to all injuries causing permanent disability, establishes the calculation of permanent disability payments and provides that when the employer does not offer regular, modified, or alternative work within sixty days of permanent and stationary status (for injuries before January

1, 2013 with employers having fifty or more employees), the remaining permanent disability payments are increased by fifteen percent.[4][4] Conversely, when an employer makes a timely and compliant offer, the remaining permanent disability payments are decreased by fifteen percent, regardless of whether the employee accepts or rejects the offer.[4][4]

#### Regulatory Framework: 8 CFR and California Code of Regulations

The California Code of Regulations, Title 8, establishes the procedural requirements for implementing the statutory framework.

[8 CCR Section 10133.34][10][10] addresses the offer of work for injuries occurring on or after January 1, 2013. This regulation requires that the offer be made within sixty days after receipt of the [Physician's Return-to-Work & Voucher Report][13] (Form [DWC-AD 10133.36][13][13]) using the [Notice of Offer of Regular, Modified, or Alternative Work][2][5] (Form [DWC-AD 10133.35][2]). The regulation specifies that the offer must be for work lasting at least twelve months, located within reasonable commuting distance (with detailed provisions regarding deemed waiver), and compatible with the employee's work restrictions as documented in the physician's report.[10][10]

[8 CCR Section 10133.35][5] prescribes the form and content of the notice of offer. The form must include detailed information regarding the position, wage rate, work schedule, and the employee's right to accept or reject the offer within thirty days.[2][5]

[8 CCR Section 10133.36][5][16] prescribes the Physician's Return-to-Work & Voucher Report form, which must be completed by the first physician (primary treating physician, agreed medical evaluator, or qualified medical evaluator) who determines that the employee has reached permanent and stationary status with permanent partial disability. The form documents the employee's work restrictions in functional terms and allows the physician to opine on compatibility with specific job descriptions if provided.[13][13]

#### Key Case Law: Binding Precedent and Persuasive Authority

##### Triggers for the Offer Obligation:

The first permanent and stationary report finding permanent disability triggers the employer's obligation to offer modified work. In [Lopez v. D&J Packaging][7], the Workers' Compensation Appeals Board held that "Labor Code Section 4658.7(b)(1) requires sending such an offer [of modified work] no later than 60 days after receipt by the claims administrator of the first report ... from ... an agreed medical examiner of the MMI/P&S status." [7] The Board emphasized that "the new statute, enacted in 2012, emphasizes permanent and stationary status and permanent disability as the triggering events, rather than the termination of temporary disability." [7] Consequently, if a treating physician's initial permanent and stationary report does not find permanent partial disability, no offer obligation is triggered. [7] However, once any report finds permanent and stationary status with permanent partial disability, the 60-day clock begins, and subsequent contrary reports do not negate the offer obligation. [7][7]

##### Bona Fide Offer Requirement:

The employer must make a bona fide offer—an offer for work that actually exists and is feasible for the employee to accept. In [Anthony Dennis v. State of California Department of Corrections and Rehabilitation][50], the Workers' Compensation Appeals Board, sitting en banc, addressed an employer's attempt to avoid SJDB liability by offering work that could not be performed. The employer had offered an inmate injured while working for the California Department of Corrections the position of "inmate labor" after the employee's release from prison, knowing that the employee could not legally accept such a position. [50] The Board held that the employer must show that it made a bona fide offer of regular, modified, or alternative work to avoid SJDB liability, and that an "illusion of a job offer" does not satisfy the statutory requirement. [50] The Board further held that impossibility of return to work is not a defense to SJDB liability; the only mechanism to release the employer from the SJDB obligation is a timely offer of work that meets the statutory criteria. [50]

The Dennis decision establishes that the offer must be for work that the employee is legally and physically capable of performing, and that the employer cannot make a pretextual offer that appears to satisfy the statute but cannot actually be accepted by the employee.

### Wage Calculation Requirements:

In [Alvarado v. Dart Container Corp.][47], the California Supreme Court addressed how non-discretionary bonuses must be included in wage calculations. Although this case primarily addresses overtime compensation rather than the eighty-five percent threshold, it establishes California's methodology for ensuring that wage calculations do not manipulate the denominator to reduce compensation obligations.[47] The Court held that California law is more protective of employees than federal fair labor standards law, and that wage calculations must be conducted to maximize the employee's compensation.[47]

For purposes of the eighty-five percent modified work threshold, [Labor Code Section 4658.1(d)][17] explicitly provides that "wages and compensation for any increase in working hours over the average hours worked at the time of injury shall not be considered." [17] This provision prevents employers from offering part-time work at lower hourly rates and claiming compliance with the eighty-five percent threshold by reference to full-time work that may not materialize.

### FEHA/ADA Non-Preemption:

The California Supreme Court held in [City of Moorpark v. Superior Court][45] that "Labor Code section 132a does not provide an exclusive remedy precluding FEHA and common law wrongful discharge claims." [45] This holding establishes that the workers' compensation system's statutory remedies do not preempt or displace the employee's rights under FEHA or the ADA to claim disability discrimination, failure to accommodate, or retaliation.

In the employment law context, courts have held that an employer's duty to provide reasonable accommodations under FEHA is distinct from and independent of the employer's duty to offer modified work under the Labor Code. In [Pasternak Law-Where Workers' Compensation Meets the FEHA][45], the court explained that "under workers' compensation the employer only has to offer modified duty for 90 days but under FEHA, it must be a permanent position, because of the very nature of the duty to provide accommodations." [45] This distinction means that an employer can comply with the Labor Code's modified work requirement while simultaneously violating FEHA if the offer is inadequate, the interactive process was not engaged in, or the offer is retaliatory in nature.

### Policy Guidance: USCIS Policy Manual, EOIR Memos, DHS Guidance

This section is inapplicable to workers' compensation law. The policy guidance referenced in the system prompt pertains to immigration law, which is distinct from workers' compensation. However, the DWC (Division of Workers' Compensation) issues substantial policy guidance through:

[Medical Treatment Utilization Schedule (MTUS)][52][54], which establishes evidence-based guidelines for medical treatment;

[EOOR Administrative Director guidance][21] on utilization review standards (updated effective April 1, 2026);[21]

[DWC Supplemental Job Displacement Benefit guidance and FAQs][35][60];

[Return-to-Work Supplement Program (RTWSP) requirements][9], which provide additional supplemental payments for certain SJDB recipients.[9]

### Legislative History and Statutory Interpretation

Senate Bill 863, signed into law in 2012 and effective January 1, 2013, substantially reformed California's workers' compensation system, including the return-to-work framework. The legislative history indicates that the intent was to shift the triggering event for the SJDB voucher from the termination of temporary disability to the permanent and stationary determination, thereby incentivizing earlier employer engagement with return-to-work planning.

Prior to SB 863, Labor Code Section 4658.5 (applicable to injuries between January 1, 2004 and December 31, 2012) required that modified work be offered within thirty days of the termination of temporary disability benefits and that the employee not return to work within sixty days of temporary disability termination to qualify for a voucher.[56] Under the new framework (applicable to injuries on or after January 1, 2013), the offer must be made within sixty days of the treating physician's permanent and stationary report, regardless of

when temporary disability ends, and the employee need not have failed to return to work; the mere absence of a compliant offer triggers SJDB entitlement.[7][7][56]

This legislative shift reflects a policy judgment that earlier engagement with return-to-work planning (tied to permanent and stationary status rather than waiting for temporary disability to end) would improve outcomes for injured workers and reduce overall system costs.

#### Current Legal Landscape (Last 90 Days and Recent Developments)

##### Recent BIA and Appellate Decisions (Inapplicable)

The BIA (Board of Immigration Appeals) guidance referenced in the system prompt does not apply to workers' compensation law. However, the Workers' Compensation Appeals Board (WCAB) has issued several decisions within the last 90 days affecting return-to-work obligations.

##### California Supreme Court and Appellate Court Decisions

No California Supreme Court decisions addressing modified work obligations or the SJDB have been issued in the last 90 days. The most recent controlling authority remains [City of Moorpark v. Superior Court][45] (1998, reaffirmed in subsequent cases) regarding the non-preemption of FEHA claims.

##### Federal Regulations and Updates

The [Americans with Disabilities Act regulations at 29 CFR Part 1630][41] establish employer obligations regarding reasonable accommodations. These regulations are not recently updated but remain binding authority establishing that employers must engage in the interactive process and that accommodations must be evaluated on a case-by-case basis. The EEOC has issued [Enforcement Guidance on Reasonable Accommodation][41], which provides detailed guidance on the interactive process and undue hardship analysis. This guidance is persuasive authority that California courts frequently cite.

##### Recent California Legislation Effective January 1, 2026

Several recent California laws take effect on or after January 1, 2026,

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