

**Published Date:
May 12, 2023**

TITLE 22. EMPLOYMENT DEVELOPMENT DEPARTMENT

Amendment of Title 22, California Code of Regulations Section 2706-4

ELECTRONIC FILING OF DOCUMENTS BY PHYSICIANS, PRACTITIONERS and REGISTRARS OF COUNTY HOSPITALS

Notice of Proposed Rulemaking

The Employment Development Department proposes to amend California Code of Regulations (CCR), title 22, section 2706-4. The amendment will require physicians, practitioners, and registrars of county hospitals to file disability insurance certifications electronically.

The Department will amend this regulation after considering all comments, objections, or recommendations regarding the proposed regulatory action.

Informative Digest/Policy Statement Overview:

The Employment Development Department (EDD) administers the State Disability Insurance (SDI) program. The SDI program was established in 1946 to provide a partial wage replacement insurance plan for eligible California workers who suffer wage loss from being unable to perform their regular or customary work due to non-work related illness or injury.

Senate Bill (SB) 1661 (Chapter 901, Statutes 2002) and SB 727 (Chapter 797, Statutes 2003) added the Family Temporary Disability Insurance (FTDI) benefit, also known as Paid Family Leave (PFL), to the California Unemployment Insurance Code (UIC). PFL provides benefits to eligible workers who have loss of wages when they take time off work to care for a seriously ill child, spouse, parent, parent-in-law, grandchild, grandparent, sibling or registered domestic partner, or to bond with a new child.

Under UIC section 2708, a claimant must establish medical eligibility for each period of disability benefits by filing an initial or continued claim supported by the certificate of a treating physician or practitioner that establishes the sickness, injury, or pregnancy of the employee, or the condition of the family member that warrants the care of the employee. It is the treating physician or practitioner who completes and files the medical certificate with the EDD. Currently, certificates are filed either electronically or by paper. Paper certifications are mailed or hand delivered to the EDD.

The EDD is in the process of modernizing its systems. The Department has the nation's largest public benefit system with over 21 million claimants and 63 million claims being filed for Unemployment Insurance (UI), Disability Insurance (DI), and Paid Family Leave (PFL) over the past decade. The EDD delivered unprecedented levels of benefits to Californians during the pandemic, paying over \$180 billion in unemployment insurance benefits. The pandemic tested every benefit system in the country and pushed capabilities to their limits, exposing the need to engage customers directly to design better systems and modernize operations.

To ensure the EDD can continue to deliver benefits to Californians in the most efficient way possible, the EDD is looking to modernize all UI, DI, and PFL business program operations and their related systems. The EDD has established a 5-year incremental implementation roadmap for a new EDD benefit system. This modernization effort is called EDDNext. The goal of the EDDNext modernization is to promote responsible service, implement sustainable business operations, and advance technical innovation. At the core of this modernization plan is the creation of an online integrated claims management system that will enable EDD customers to quickly file claims and claim related documents, check claim status, receive important notices and information from the EDD, and communicate with the Department. The project will improve customer service across EDD's UI, DI, and PFL benefit programs.

The EDD has been working to make legislative and regulatory changes needed for automation and modernization. As an example, Senate Bill 191 was recently passed to authorize the EDD to serve notices, including notices of determination of eligibility for benefits, personally, electronically, by mail, or in any other manner the Department elects. Previously, the law only permitted the EDD to serve certain notices either personally or by mail. Changes such as these are intended to speed up the claims process for claimants and to allow the Department to use technology to work more efficiently.

Under UIC sections 305 and 306, the Department is authorized to adopt, amend, or repeal regulations for the administration of the functions of the Department. UIC section 2708(a) mandates that, except as provided in UIC section 2708(c) and sections 2708.1 and 2709, medical eligibility for an SDI or PFL claim must be supported by the certificate of a treating physician or practitioner that establishes the sickness, injury, or pregnancy of the employee, or the condition of the family member that warrants the care of the employee. Under UIC section 2706.1, the first claim, accompanied by the certificate, shall be filed no later than the forty-first consecutive day following the first compensable day of unemployment and disability. If the first claim is incomplete, the form is returned to the claimant and, absent good cause, the claimant must return the completed form within ten days of when the Department mailed it. Pursuant to UIC section 2706.2, any continued medical certification shall be submitted to the Department

within twenty days of the date the claimant is issued a notice of final payment or departmental request for additional medical certification.

Title 22, section 2706-4 of the California Code of Regulations (CCR) currently requires the EDD to accept disability claims and other related documents by mail except in cases when the Department requires a personal appearance or examination. These amendments to Title 22, section 2706-4 of the CCR would make a distinction between who must file documents electronically and who may file documents by mail or electronically. The proposed changes would require vetted physicians, practitioners, and registrars of county hospitals to file medical documents electronically through their verified EDD online accounts. The proposed changes would reaffirm that required claim documents completed by the claimant may continue to be filed by mail or electronically.

The amendments are necessary to give the Department clear authority to require physician and practitioner accountholders, most of whom already keep electronic health records, to file documents electronically. Electronic filing by physician and practitioner accountholders is necessary to allow the Department to more quickly and efficiently process claims.

Anticipated Benefits from the Proposed Regulation:

The anticipated benefit from the proposed regulation amendments is that the EDD will be able to process SDI and PFL claims faster and more efficiently. The amendments would require treating physicians and practitioners to file medical certifications electronically unless they have been granted a waiver. The EDD's online claims system can quickly and efficiently review and process the certificates through automation, reducing the amount of time and resources needed for a claimant to receive benefits.

Determination of Inconsistency/Incompatibility with Existing State Regulations:

The Department has determined that this proposed regulatory action is not inconsistent or incompatible with existing state regulations. After conducting a review for any regulations that would relate to or affect this area, the Department has concluded that these are the only regulations that concern physicians, practitioners, and registrars of county hospitals to file disability insurance certifications electronically.

Authority and Reference:

Sections 305, 306, and 2602 Unemployment Insurance Code.
Section 2706, Unemployment Insurance Code.

Fiscal Impact:

Anticipated costs or savings in federal funding to the State: None.

Anticipated costs or savings to any State Agency: The DI Branch of the EDD estimates a total cost of \$144,642 to implement the regulation by updating existing processes. The one-time implementation cost is to develop business requirements for the programming efforts, update information on the EDD website, communicate updates for staff, and educate customers.

Anticipated costs or savings to any local agency or school district: None.

Significant statewide adverse economic impact directly affecting business, including ability to compete: The Department does not anticipate this regulatory action will result in any costs to the federal government, to State government, to local county governments, or to private individuals.

The cost impacts on representative persons or businesses:

For a business (including a **small business or private practice**) that does not currently have the capabilities to submit documents electronically to the EDD, the EDD estimates an initial one-time cost of up to \$1,000 with potential additional costs of up to \$1,000 annually, as described in greater detail below.

The initial one-time cost of \$1,000 represents the cost to purchase and install necessary equipment, specifically a personal computer and establish internet connectivity. According to Internet Service Providers,¹ annual internet service (pre-tax and fees) can cost up to \$600. Factoring in additional potential costs for equipment and software service and upkeep, the EDD estimates ongoing cost for compliance with the proposed regulations to be up to \$1,000 annually.

Small business impact: The Department has determined that the proposed regulatory action does affect small businesses.

Anticipated impact on housing costs: The proposed regulations will have no effect on housing costs.

Anticipated non-discretionary costs or savings imposed upon local agencies: None.

¹ <https://www.isp.com/near-me/ca/>, accessed 4/27/2022.

LOCAL MANDATE DETERMINATION:

The Department determined these proposed amendments will not impose any new mandates on school districts or other local governmental agencies or any new mandates which must be reimbursed by the State pursuant to Part 7 (commencing with section 17500), Division 4 of the Government Code.

RESULTS OF ECONOMIC IMPACT ASSESSMENT PREPARED PURSUANT TO GOVERNMENT CODE SECTION 11346.3(b):

The Department determines the proposed amendments will not affect the creation or elimination of jobs within the State of California, the creation of new businesses or the elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California.

The anticipated benefit from the proposed regulation amendments is that the EDD will be able to process SDI and PFL claims faster and more efficiently. The amendments would require treating physicians and practitioners to file medical certifications electronically unless they have been granted a waiver. The EDD's online claims system can quickly and efficiently review and process the certificates through automation, reducing the amount of time and resources needed for a claimant to receive benefits, therefore providing a positive benefit to the health and welfare of California residents. There are no anticipated benefits to worker safety or to the state's environment.

Consideration of Alternatives:

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

Written Comment Period:

Any interested person, or his or her authorized representative, may submit written comments on the proposed action to **Kim Van Nguyen** via U.S. mail, email, or fax (see U.S. mail and email addresses and fax number indicated below). **Email comments should include true name and mailing address of the commentor. Written comments submitted via U.S. mail, email, or fax, must be received by the Department no later than June 26, 2023.** Please submit any written comments before that time. The Department cannot accept written comments after the close of the public comment period.

Contact Persons

Inquiries or comments should be directed to:

(Mailing address) Kim Van Nguyen, Attorney
Employment Development Department
P. O. Box 826880
Legal Office, MIC 53
Sacramento, CA 94280-0001

(Hand delivery) Kim Van Nguyen, Attorney
Employment Development Department
800 Capitol Mall, Room 5040
Legal Office, MIC 53
Sacramento, CA 95814

Telephone No.: (916) 654-8410
Fax No.: (916) 654-9069
Email Address: ProposedRegulations@edd.ca.gov

Note: In the event Ms. Nguyen is unavailable, inquiries should be directed to the following backup contact persons at the same address as noted above:

Name: Linda Saeturn-Rodriguez, Senior Legal Analyst
Telephone No.: (916) 654-8410

Questions regarding the substance of the proposed regulatory action should be directed at this time to:

Name: Kim Van Nguyen, Attorney
Telephone No.: (916) 654-8410

Internet Website Access

The Department has posted on its internet website <http://www.edd.ca.gov> materials regarding the proposed regulatory action. Select "Proposed Regulations."

Public Hearing:

No public hearing has been scheduled on the proposed action. However, if any person desires to submit oral comments, the Department will schedule a public hearing upon that person's written request. **Such request must be received no later than 15 days prior to the close of the written comment period which is on June 26, 2023.** A request for hearing can be made by contacting the persons noted above.

Modification of Proposed Action:

If the Department makes any additional changes based on public testimony, those changes (other than nonsubstantial or solely grammatical modifications) will be made available for public comment for at least 15 days before they are adopted. Copies of any additional changes regarding the proposed regulatory action will be mailed to all persons who testified or submitted written comments at the public hearing (if one is scheduled); whose comments were received by the agency during the public comment period; and who requested notification from the agency of the availability of such changes.

Final Statement of Reasons:

After the close of the 45-day public comment period, the Department will summarize and respond to all public comments in a written final statement of reasons. To obtain a copy of the final statement of reasons, contact the persons noted above, or access the Department's Internet website at <http://www.edd.ca.gov>.

Further Information:

The Department has prepared and has available for review, upon request, the text of the proposed regulations discussed in this notice, written in plain English; the initial statement of reasons setting forth the purpose of the proposed regulations; and the information upon which the Department relied in proposing the regulations. (If you received this notice by mail, a copy of the text of the proposed regulations and the initial statement of reasons were enclosed.) To obtain a copy, contact the persons noted above, or access the Department's Internet website at <http://www.edd.ca.gov>.

All the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public review. For inquiries regarding the rulemaking file or the regulations' process, contact the persons noted above.
