

March 25, 2011

TITLE 22. EMPLOYMENT DEVELOPMENT DEPARTMENT

**Amendment of Sections 2706-1, 2706-2,
and Adoption of Section 2706-8 of
Title 22, California Code of Regulations**

**IDENTITY AND WAGE VERIFICATION FOR STATE DISABILITY
INSURANCE BENEFITS**

Notice of Proposed Rulemaking

The Employment Development Department (Department) proposes to amend sections 2706-1, 2706-2 and to adopt section 2706-8 of Title 22, California Code of Regulations (CCR). The proposed regulations would provide the Department the authority to request additional documentation pertaining to an employee's wages if the Department suspects the wages may have been earned by someone other than the claimant. This provides the means for the Department to be able to verify that base period wages were in fact earned by the claimant requesting the benefits.

The Department will adopt these regulations after considering all comments, objections, or recommendations regarding the proposed regulatory action.

Informative Digest/Policy Statement Overview:

The State Disability Insurance (SDI) program was established in 1946 to provide a partial wage replacement benefit to eligible workers in California who were unable to work due to a non-work related illness or injury. In addition, the SDI program provides for Family Temporary Disability Insurance (FTDI), which is a benefit that provides partial wage replacement to eligible workers who take time off work to care for a seriously ill child, spouse, parent, registered domestic partner, or to bond with a new child.

Currently, the CCR stipulates that fraudulent claims shall be denied payment for both SDI and FTDI claims. Section 2675 (a) of the California Unemployment Insurance Code (CUIC) provides the Director of the Department the authority to stop payment on any SDI claim in which a false statement was made. Section 2675-1 (b) of the CCR clarifies this provision by stating that payments may be discontinued when a fraudulent claim is suspected in order to maintain the solvency of the Disability Fund. However, there is no authority for the Department to require additional identity and wage information from a claimant whose identity is in question for purposes of determining eligibility for SDI benefits. Establishing authority to verify a claimant's identity and wages would assist the Department in determining the true base wage earner when the

identity of the claimant is in question. This is necessary in cases where identity theft has occurred or when multiple people are using the same Social Security Number (SSN) for employment purposes.

In recent years, the Department experienced a significant increase in claims being flagged with identification alerts due to having SSN discrepancies and/or reflecting use by more than one person.

Based on SDI Branch data

- In 2005, 5,260 claims were flagged.
- In 2006, 10,276 claims were flagged.
- In 2007, 23,303 claims were flagged.
- In 2008, 11,030 claims were flagged.

Regulations currently provide the Department with the authority to verify claimant identity, relating to any Unemployment Insurance (UI) claim, by requiring claimants to submit verifying documents. The UI Branch also has a process for verifying wages and employers on questionable UI claims. The UI Branch requires individuals who file UI claims and have multiple employers, to have a minimum number of those employers listed on the claim form, otherwise the claim may be investigated. The SDI program does not have similar regulations to provide authority to verify a claimant's identity/wages.

The proposed regulations would provide the Department the authority to request additional documentation of an employee's wages if the Department suspects the wages may have been earned by someone other than the claimant. This provides the means for the Department to verify that base period wages were earned by the claimant requesting the benefits.

CUIC sections 305 and 306 provide the Director of the Department authority to adopt, amend, or repeal regulations for the administration of the functions of the Department. Under CUIC sections 2625, 2706, and 2708, SDI benefits are payable from the Disability Fund to individuals who file claims for benefits in accordance with authorized regulations and who are eligible to receive such benefit payments.

The addition of CCR section 2706-8 and amendments to CCR sections 2706-1 and 2706-2 will allow the Department to verify a claimant's identity on a claim where the identity of the claimant/base wage earner is not certain. It will allow the Department to notify the claimant that the information available to the Department indicates that the SSN may not belong to the claimant, is not a valid number, was never issued by the Social Security Administration, or that wages shown in the base period of the claim may not belong to the claimant. The proposed amendments would add "proof of wages earned," and "driver license" to the list of items the Department may require for verification of identity and wages.

Current regulatory language limits instances by which the Department can require a claimant to provide additional information needed to establish his/her identity. Establishing the identity of the person collecting or attempting to collect SDI or FTDI benefits is crucial to detecting and preventing fraud. New regulatory language is needed to authorize the Department to act on credible information from a variety of sources in order to investigate potential fraud and stop benefit payments to individuals involved in the fraud.

CCR sections 2706-1 and 2706-2 are amended to provide the Department the authority to:

- Require additional information to verify a claimant's identity if there is a discrepancy as to whether the true base wage earner is the person filing the claim.
- Verify a claimant's annual statement from the Social Security Administration.

The proposed amendments will address the above two bulleted items.

CCR section 2706-8 is added to provide the Department the authority to:

- Verify the identity of the claimant by requiring the claimant submit additional proof to verify wages earned.
- Grant or deny benefits based on additional information required by claimants attempting to verify wages and identity.
- Allow SDI representatives to competently defend the Department at California Unemployment Insurance Appeals Board hearings.

The proposed regulations will address the above three bulleted items.

Authority and Reference:

Authority: Sections 305, 306, and 2602, Unemployment Insurance Code.

Reference: Sections 1085, 1092, 2675, 2608, 2626, 2701.5, 2706, and 3303.1, Unemployment Insurance Code.

Fiscal Impact:

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

Anticipated costs or savings to any State Agency: None

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

Significant statewide adverse economic impact: The Department does not anticipate this regulatory action will result in any costs to the federal government, to state government, to local county governments, to private individuals, or to businesses and small businesses. Thus, no costs were shown on the Economic and Fiscal Impact Statement.

The Department has made an initial determination that the proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The proposed regulations would clarify existing statute; make conforming regulatory changes that are consistent with UI benefit requirements; and facilitate the processing of a claim for SDI benefits with no adverse impact on individuals filing a claim for SDI benefits. The Department has determined that the proposed regulatory action will not effect 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 cost impact on representative 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 regulatory action.

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

Small Business Impact:

The proposed amendments in and of themselves will have no effect on small businesses because they do not impose any new mandates on small businesses. The amendments do not require that small businesses take any action or refrain from taking any action in regard to conducting business.

Local Mandate Determination:

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

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.

Written Comment Period:

Any interested person, or his or her authorized representative, may submit written comments on the proposed action to Estela Gallawa via U.S. mail, e-mail, or fax (see U.S. mail and e-mail addresses and fax number indicated below). **E-mail comments should include true name and mailing address of the commentor. Written comments submitted via U.S. mail, e-mail, or fax, must be received by the Department no later than May 9, 2011 at 5 p.m.** 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) Estela Gallawa, Staff Counsel
Employment Development Department
P. O. Box 826880
Legal Office, MIC 53
Sacramento, CA 94280-0001

(Hand delivery) Estela Gallawa, Staff Counsel
Employment Development Department
800 Capitol Mall, Room 5020
Legal Office, MIC 53
Sacramento, CA 95814

Telephone No.: (916) 654-8410
Fax No.: (916) 654-9069
E-Mail Address: eddlegal@edd.ca.gov

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

Name: Debbie Kunitake, Legal Analyst
Telephone No.: (916) 654-8410

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

Name: Estela Gallawa, Staff Counsel
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 5 p.m. on May 9, 2011.** 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; a 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 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.
