

EMPLOYMENT DEVELOPMENT DEPARTMENT

Amendment of Title 22, California Code of Regulations Sections 1256-9 and 1256-10

COMPELLING FAMILY REASONS

Final Statement of Reasons

BACKGROUND:

The Unemployment Compensation (UC) program was established as part of the Social Security Act of 1935. Based on Federal and State law, the UC program is administered by the States, and financed by UC tax contributions from employers. The UC program is designed to stimulate local economies by providing temporary, partial wage replacement benefits to individuals who are unemployed through no fault of their own and who meet certain eligibility requirements. Eligibility partly involves the reason, or reasons as to why an individual left his or her most recent employer prior to the filing of the UC claim. The Employment Development Department (Department) determines eligibility for UC benefits based upon Federal and State laws.

Article 1, Eligibility and Disqualifications (commencing with Section 1256) of Chapter 5 of Part 1 of the California Unemployment Insurance Code (Code) states, "An individual is disqualified for unemployment compensation benefits if the director finds that he or she left his or her most recent work voluntarily without good cause or that he or she has been discharged for misconduct connected with his or her most recent work."

Sections 1256-9 and 1256-10 of the California Code of Regulations (CCR), Title 22, currently provides that an individual who voluntarily leaves his or her employment due to a compelling need to attend to the health, care, or welfare of the individual's family member, left work with good cause, provided reasonable steps were taken to preserve his or her employment, and *no reasonable, alternative care is available*.

NECESSITY:

The Assistance for Unemployed Workers and Struggling Families Act, Title II of Division B of *The American Recovery and Reinvestment Act (ARRA)*, Public Law (Pub. L.) No. 111-5, Section 2003(a), was enacted February 17, 2009. A new subsection (f) was added to Section 903 of the Social Security Act (42 U.S.C. 1103) providing modernization incentive payments to a State's Unemployment Trust Fund account when the State revises eligibility requirements governing UC benefits.

Seven billion in ARRA incentive funds will be available to qualifying States. Allocation is based on the State's proportionate share of the Federal Unemployment Tax Act taxes paid annually by employers within each State. It is anticipated that California may receive approximately \$839 million in total incentive funds. The funds may be used to pay for UC benefits or to improve services for UC claimants and employers. States must apply for ARRA incentive funds on or before August 22, 2011.

Under ARRA, Section 2003(f)(1)(C), a State may qualify for one-third of its proportionate share if the State's UC law contains an Alternate Base Period (ABP) option. In order to qualify for this amount, California recently passed legislation establishing an ABP consistent with ARRA requirements. Due to this legislation, it is estimated that California's share of the one-third in incentive payments will approximate \$280 million.

In order to meet eligibility requirements for the remaining proportionate amount of incentive payments California must adopt two of four options as specified by ARRA. California met the first requirement by declaring part-time workers (who are available and seeking part-time work) eligible for UC benefits if their claims are based upon part-time work.

The second ARRA option elected for implementation is the provision that an individual is not disqualified from receiving UC if they leave work due to certain compelling family reasons. Currently, California allows UC benefits for an individual who leaves work due to compelling family circumstances on the condition that reasonable steps were taken to preserve the employment relationship and the individual had *no other reasonable alternative* short of leaving work. However, in order to comply with ARRA and to qualify for the remaining incentive payments, California amended existing law regarding individuals who may leave work due to domestic violence abuse. California must amend its regulations relating to UC eligibility for individuals who leave work to care for an ill or disabled family member. By implementing these changes, California will earn eligibility for the remaining amount of incentive payments, estimated at \$559 million.

In September 2010, California amended Section 1256 of the Code relating to an individual's voluntary quit of employment for domestic violence reasons. The amendment addressed the situation where continued employment would jeopardize the safety of the individual or a member of the individual's family. Previously, California law only covered the individual and/or his or her children.

The proposed regulatory amendments are the final requirements for California to qualify for ARRA incentive payments. Currently, Sections 1256-9 and 1256-10 set forth that an individual may show compelling reasons for quitting work due to the health, care, or welfare of a family member, provided reasonable steps are taken to preserve the employment relationship, and *no reasonable alternative existed* at the time the individual left work to care for an ill or disabled family member. In order to qualify for ARRA, California must eliminate language from 1256-9 and 1256-10 regarding "*no*

reasonable alternative care available.” Individuals who leave work to care for an ill or disabled family member will be required to show the necessity to leave work due to care of an ill or disabled family member and that reasonable steps were taken to preserve their employment, such as requesting a leave of absence, etc. However, individuals will no longer be disqualified *if reasonable, alternative care* was available. As a result, California must amend Sections 1256-9 and 1256-10.

The amendments are necessary to ensure receipt of available ARRA funds for the continued administration of California's UC program. The changes proposed by the Department are minor in nature. Section 1253 (c) of the Code requires that claimants must be able and available to accept immediate work. Therefore, claimants who are found eligible under Section 1256 of the Code will be disqualified under Section 1253 (c) of the Code if they are not available to accept immediate employment.

In 2009, the Department conducted 2 million UC eligibility determination interview appointments. Approximately 24,000 (or one percent of the total determinations) involved claimants who voluntarily left work due to domestic circumstances. Leaving employment due to domestic reasons may involve a variety of situations; such as domestic violence abuse, to care for an ill or disabled family member, to follow or join a spouse or domestic partner to a new location, or to attend to childcare concerns.

Although the Department cannot estimate the precise number of individuals subject to eligibility as a result of the proposed amendment, only minimal UC costs are anticipated as a result. Furthermore, those potentially eligible claimants may be disqualified pursuant to Section 1253 (c) due to the “able and available” requirement.

Without implementation of the proposed regulatory amendments, the Department and the State of California will lose an estimated \$559 million in ARRA funding. For this reason, the Department must revise Sections 1256-9 and 1256-10 to secure eligibility for ARRA funding. The incentive payments provided through ARRA will greatly assist in California's modernization efforts. In addition, the incentive payments can be used to pay UC benefits, which would mitigate the need to borrow from the federal government given the insolvency of California's Unemployment Trust fund.

The proposed regulatory action to CCR, Title 22, is as follows:

Section 1256-9

The proposed amendment to Section 1256-9, under COMMENTS, must include the words “*or disabled*” in the sentence describing good cause for leaving work to care for a family member who is ill. ARRA specifically states that a claimant may have good cause to leave work to care for an ill or disabled family member. This addition is necessary to clarify that there may be good cause for leaving work to care for an ill family member or *a disabled family member*.

Additional proposed amendments to Section 1256-9, under COMMENTS, are necessary as the Department must delete all references to the requirement “*no reasonable alternative*” for claimants who leave work to care for an ill or disabled family member. By revising Section 1256-9, it makes it clear that all claimants who leave work for domestic reasons must demonstrate a compelling reason to leave work, and that they took reasonable steps to preserve their employment.

Section 1256-10

The proposed amendments to Section 1256-10, subdivision (a)(1) and to subdivision (a)(2) will include the phrase “*or disabled*” in sentences describing good cause for leaving work to care for an ill family member. ARRA specifically states that a claimant may have good cause to leave work to care for an ill or disabled family member. This addition is necessary to clarify that there may be good cause for leaving work to care for an ill family member or *a disabled family member*.

The proposed amendment to Section 1256-10, subdivision (c)(1) is necessary because the Department must delete all references to the requirement “*no reasonable alternative to the claimant’s presence,*” and in subdivision (c)(4) “*no reasonable alternative.*” The proposed amendment will clarify that claimants who leave work to care for an ill or disabled family member would not be disqualified for UC based solely on the condition that there were others available to provide the necessary care.

The proposed amendment to Section 1256-10, COMMENTS must include the words “*or disabled*” in the sentences describing good cause for leaving work to care for an ill family member. ARRA specifically states that a claimant may have good cause to leave work to care for an ill or disabled family member. This addition is necessary to clarify that there may be good cause for leaving work to care for an ill family member or *a disabled family member*.

The proposed amendment to Section 1256-10, COMMENTS will remove the phrase “*and no one else is available to care for the claimant’s younger brothers and sisters,*” adding instead “and the claimant’s presence is necessary to care for his or her younger brothers and sisters.” This amendment is needed to clarify that the claimant would not be disqualified solely on the condition that there were others who could provide care for the claimant’s younger brothers and sisters.

The proposed amendment to Section 1256-10, COMMENTS will make the regulation consistent with ARRA, Section 2003(f)(3)(B)(ii). The amendment would make it clear that a claimant, primarily responsible for his mother’s care, who left work to move to a warmer climate due to the mother’s health would not be disqualified based solely on availability of alternative care.

The proposed amendment to Section 1256-10, COMMENTS will add the phrase “as described in this Section” to clarify that claimants who leave work to care for their ill or disabled child may have good cause for leaving work even if alternative care was available. By adding “as described in this Section” it distinguishes between the situation when a claimant leaves work to care for an ill or disabled child and the claimant who leaves work because of child care problems. Claimants who leave work due to childcare problems must demonstrate there was no reasonable alternative short of leaving work. However, claimants who leave work to care for an ill or disabled child are not required to demonstrate that alternative care was available.

PLAIN ENGLISH CONFORMING STATEMENT:

The Department has drafted the proposed amendments in plain English pursuant to Section 11346.2(a)(1) of the Government Code.

PUBLIC NOTICE AND 45-DAY WRITTEN PUBLIC COMMENT PERIOD:

On February 4, 2011, the Office of Administrative Law printed a public notice for this regulatory action in the California Regulatory Notice Register, and the Department mailed a copy of the public notice, the text of the proposed amendments, and the initial statement of reasons to everyone known to be interested in the Department’s regulations.

During the 45-day written public comment period which was held from February 4, 2011 through March 21, 2011, no one requested a public hearing and no one presented written comments regarding the proposed amendments.

ECONOMIC IMPACT STATEMENT:

The Department does not anticipate that this regulatory action will result in significant costs to local county governments, or 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 amendments will not have an adverse economic impact that will affect businesses statewide, including the ability of California businesses to compete with businesses in other States because the amendments involve only a negligible increase in UC benefit eligibility.

The Department has determined that 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.

SMALL BUSINESS IMPACT:

These proposed amendments will have no effect on small businesses because it does not impose any new mandates on small businesses. It does not require that small businesses take any action or refrain from taking any action in regards to conducting business.

LOCAL MANDATE DETERMINATION:

The Department has determined that the 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 11346.9(a)(4) of the Government Code, the Department has determined that no alternative considered would be more effective in carrying out the purpose for which this action was intended than the proposed regulatory action. The Department has also determined that no alternative would be as effective and less burdensome to affected private persons as the proposed regulatory changes.

The proposed regulatory changes will have minimal cost impact on the Unemployment Trust Fund, however without such changes the Department will lose eligibility for \$559 million in ARRA incentive funding. Given the August 22, 2011 application deadline for those funds, the Department must proceed with the proposed regulatory action, as it is the most expeditious in securing the Department's eligibility.
