

January 30, 2009

TITLE 22. EMPLOYMENT DEVELOPMENT DEPARTMENT

Amendment of Title 22, California Code of Regulations Section 2601-1

DISABILITY INSURANCE DEFINITIONS

Notice of Proposed Rulemaking

The Employment Development Department (Department) proposes to amend California Code of Regulations (CCR), title 22, section 2601-1 to establish definitions to clarify terms utilized in the Department's State Disability Insurance (SDI) regulations, mitigate any potential misinterpretations of various terms, and to provide consistency with title 22, section 5000 of the CCR, as well as relevant Unemployment Insurance Codes, as the Disability Insurance (DI) Branch implements new technologies to enhance and improve the administration of the SDI program.

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

Informative Digest/Policy Statement Overview:

The 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. Senate Bill 1661 (Chapter 901, Statutes 2002) added the Family Temporary Disability Insurance (FTDI) benefit to the Unemployment Insurance (UI) Code. The FTDI benefit, otherwise known as Paid Family Leave (PFL), expanded the scope of the SDI program to provide a partial wage replacement benefit to eligible workers who take time off to care for a seriously ill child, spouse, parent, registered domestic partner, or to bond with a new child.

The DI Branch is developing and adopting new business automation processes and protocol through the efforts of the Disability Insurance Automation (DIA) project to simplify and improve various manual claim processes that exist under current business practices. The goal of the DIA project is to improve access to services, improve service delivery, enhance the DI Branch's ability to detect and prevent fraud and abuse, align with Department information technology standards, and reduce costs.

The DIA project will develop a method to allow claimants, medical providers, employers, and voluntary plans to submit claim information through a secure electronic environment

over the Internet. It will implement scanning/optical character recognition to convert any paper claims to electronic format. The DIA project will also adopt new technologies that will provide the DI Branch staff with more efficient tools to perform their duties and supplement current processes related to the administration of SDI benefits.

Under UI Code sections 305 and 306, the Department is authorized to adopt, amend, or repeal regulations for the administration of the functions of the Department. Under UI Code sections 2601, 2625, 2706 and 2708, SDI benefits are payable from the Disability Fund to individuals who file a claim for benefits in accordance with authorized regulations and are eligible to receive such benefit payments.

The DIA project will change the DI Branch's business practices and allow DI and PFL claimants, medical providers, employers, and voluntary plans to submit claims and claim information over the Internet. As a result of this anticipated change, certain terms such as "affidavit", "copy", "electronic means", "form", "mail", "signature", "statement on letterhead" and "writing" currently utilized in the Department's regulations relating to DI benefits, contained in title 22 (commencing with section 2601-1) of the CCR, may create confusion in a new business environment that will include both hard-copy and electronic media. Thus, these terms must be properly defined.

The DIA project will also utilize technology to transmit SDI claim appeals electronically to the California Unemployment Insurance Appeals Board (CUIAB), the state body with the authority to consider appeals of determinations and assessments made by the Department. The terms "affidavit", "mail", "signature" and "writing" are currently defined in the regulations of the CUIAB, contained in title 22, section 5000 of the CCR. To provide consistency with the current protocol between the Department and the CUIAB for transmitting information related to appeals, petitions and board appeals, the Department proposes to adopt the substance of these specific CUIAB definitions for the SDI program.

Authority and Reference:

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

Reference: Sections 140.5, 2601, 2626, 2627, 2656, 2706.1, 2707.2 and 2708, 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 the proposed amendments 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 amendments 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 amendments will clarify existing regulatory language by including definitions that properly address the technological enhancements to the SDI program business practices with no adverse impact to individuals, medical providers, employers, or voluntary plans. 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.

The costs 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 action.

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

Anticipated nondiscretionary costs or savings imposed upon local agencies:
None

Small Business Impact:

The Department has determined that the proposed amendments will have no effect on small businesses because they do not impose any new mandates on small businesses. The proposed amendments do 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 11346.5(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 Laura Colozzi 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 March 16, 2009, 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) Laura Colozzi, Legal Analyst
Employment Development Department
P. O. Box 826880
Legal Office, MIC 53
Sacramento, CA 94280-0001

(Hand delivery) Laura Colozzi, Legal Analyst
Employment Development Department
800 Capitol Mall, Room 5020
Legal Office, MIC 53
Sacramento, CA 95814

Telephone No.: (916) 654-7712
Fax No.: (916) 654-9069
E-Mail Address: eddlegal@edd.ca.gov

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

Name: Penny Ayers, Legal Analyst
Telephone No.: (916) 654-8410

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

Name: Deanna Asuncion, Senior 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 March 16, 2009.** 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.
