

**EMPLOYMENT DEVELOPMENT DEPARTMENT**

**Amendment of Title 22, California Code of Regulations  
Section 3254(i)-2**

**VOLUNTARY PLANS - RISKS ADVERSE TO THE DISABILITY FUND**

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**§ 3254(i)-2. Risks Adverse to the Disability Fund.**

(a) Approval of a voluntary plan or a group of voluntary plans underwritten by an admitted disability insurer shall not be given if the approval would result in a substantial selection of risks adverse to the Disability Fund.

(b) For the purposes of this section the following apply:

(1) The age of the employees or claimants may be either the age in years regardless of the nearest birthday or the age in years to the nearest birthday.

(2) "Wages" includes all wages as defined in Section 940 of the code.

(3) "State average annual wage" means the wage based on multiplying by 52, the current state average weekly wage amount determined by the United States Department of Labor for the State of California.

(4) "Calendar year" means any 12-month period from January 1 through the succeeding December 31.

(c) The director shall not later than October 31 preceding each calendar year establish standards for approval with respect to gender, age and wage distribution for that calendar year. Standards for approval with respect to gender, age and wage distribution shall be established as follows:

(1) The "standard for approval" with respect to gender shall be ninety-five percent (95%) of the annual average percentage of females in employment, as determined by the director, based on the most recent Current Population Survey developed by the Bureau of Labor Statistics of the United States Department of Labor.

(2) The "standard for approval" with respect to age shall be ninety percent (90%) of the annual average percentage of employees age 50 and older in employment, as determined by the director, based on the most recent Current Population Survey developed by the Bureau of Labor Statistics of the United States Department of Labor.

(3) To establish the standard for approval with respect to wage distribution the director shall determine for each calendar year the percentage of employees in employment with wages paid during the most recent completed calendar year who were paid less than seventy percent (70%) of the state average annual wage, as prescribed in subdivision (b)(3) of this section. The "standard for approval" with respect to wage distribution shall be ninety-three percent (93%) of the average percentages as determined by the director for the most recent completed calendar year immediately preceding the calendar year for which the standard for approval is determined.

(d) The director shall not later than October 31 preceding each calendar year give notice to each admitted disability insurer of voluntary plans of and publish the standards for approval with respect to gender, age and wage distribution determined by the director for that calendar year.

(e) The employer or a group of employees shall file an application for approval of a plan on a form prescribed by the department and shall provide enrollment information as follows:

- (1) The total number of employees eligible to be covered by the voluntary plan,
- (2) The total number of employees who have consented, in writing or by electronic mail, or by vote in a secret ballot or other free election, to be covered by the voluntary plan,
- (3) The number of eligible female employees,
- (4) The number of eligible male employees,
- (5) The number of eligible employees aged 50 and older,
- (6) The number of eligible employees paid less than 70% of the state average annual wage, as prescribed in subdivision (b)(3) of this section, during the most recent completed calendar year,
- (7) The dates the enrollment was conducted.

(f)(1) The employer shall attach to each application for approval of a plan a schedule, on a form prescribed by the department, which contains the following information for each individual in employment and consenting to the plan:

- (A) The signature.
- (B) The date of such consent.
- (C) The gender.
- (D) The age.
- (E) The printed or typed name and social security account number.

(2) The employer shall attach to each application for approval of blanketing-in under Section 3257-1 a schedule, on a form prescribed by the department, which in addition to the information required by subdivision (f)(1) of this section contains, with respect to eligible employees who have not rejected the plan in writing and are deemed to have consented to the plan, the information specified by paragraphs (C), (D), and (E) of subdivision (f)(1) of this section.

(3) Each application for approval of a plan for an employer who is engaged in a seasonal enterprise where there is considerable fluctuation in the number of employees in employment during the calendar year may contain, in addition to the information required by subdivision (f)(1) and (2) of this section, a schedule for all employees, excluding those ineligible for coverage. The schedule shall contain the following:

- (A) The number of employees,
- (B) The number of female employees,
- (C) The number of employees age 50 and older, and

(D) The printed or typed name and social security account number of each employee, in employment on any same day of each of the 12 months immediately preceding the filing of the application or such lesser period as the employer has been in business. The printed or typed name and social security account number of any employee who is in employment on two or more such days shall be stated only once in the schedule.

(E) Based on information required under paragraphs (A), (B), (C) and (D) of this subdivision, rather than information under subdivision (f)(1) or (2) of this section, the department shall determine the average percentage of females and of employees age 50 and older in employment during such period and the percentage of employees paid wages of less than seventy percent (70%) of the state average annual wage, as prescribed in subdivision (b)(3) of this section.

(4) The department shall return the schedules to the employer with the certificate of approval.

(g) (1) The director shall approve a plan which conforms, or a group of plans with the same effective date which together conform, or a plan or group of plans and any related plans for which information is included in the current tabulation which together conform, to each of the following requirements:

(A) The percentage of eligible females computed from the information contained in the schedule or schedules submitted under subdivisions (f), (h), (i) and (l) of this section shall be no less than the "standard for approval" for a calendar year with respect to gender.

(B) The percentage of eligible employees age 50 and older computed from the information contained in the schedule or schedules submitted under subdivisions (f), (h), (i) and (l) of this section shall be no less than the "standard for approval" for a calendar year with respect to age.

(C) The percentage of eligible employees computed from the information contained in the schedule or schedules submitted under subdivisions (f), (h), (i) and (l) of this section who are paid less than seventy percent (70%) of the state average annual wage, as prescribed in subdivision (b)(3) of this section shall be no less than the "standard for approval" for a calendar year with respect to wage distribution.

(2) The standards for approval in effect on the day of receipt by the department of an application for approval of a plan or those in effect on the effective date of the plan, whichever is later, shall apply to the plan.

(3) For the purposes of determining whether approval of a plan is to be terminated the standards for approval for gender, age and wage distribution for each calendar year shall apply to plans which continue in effect on January 1 of that calendar year.

EXAMPLES. The three tables at the end of this regulation demonstrate the process of determining approval of a Voluntary Plan. The Department utilizes California employment annual average data that is either published by the Bureau of Labor Statistics of the United States Department of Labor or based on its internal records to determine whether an application for approval of a voluntary plan meets the minimum requirements established for the Standards for Approval with respect to gender, age and wage distribution. In addition to the California employment annual average data, the Department also factors the employee information required pursuant to subdivisions (e), (f) and (h) of Section 3254(i)-2.

Table 1- This example illustrates the general methodology and requirements for determining the Annual Wage Threshold and, the Minimum Percentage for Employment Below the Annual Wage Threshold, the Minimum Percentage of Females in Employment and the Minimum Percentage of Employees Aged 50 Years and Older, which are used to establish the wage distribution, gender and age criteria, respectively.

Table 2 – This example illustrates the methodology and requirements to determine whether hypothetical Insurer Application #1's voluntary plan meets the minimum requirements of the standards for approval, based on employees eligible to be covered by the plan as reported by the employer. Under this scenario the voluntary plan meets the minimum requirements for wage distribution, gender and age to be approved by the Department.

Table 3 – This example illustrates the methodology and requirements to determine whether hypothetical Insurer Application #2's voluntary plan meets the minimum requirements of the standards for approval, based on employees eligible to be covered by the plan as reported by the employer. Under this scenario the voluntary plan meets the minimum requirements for wage distribution and gender; however, it fails to meet the minimum requirements for age. As a result, the Department would not approve this application for a voluntary plan.

(h)(1) Based upon the information furnished under this subdivision, subdivisions (e), (f), (i) or (l) of this section, or any one or more of such subdivisions, the department shall make a tabulation for each admitted disability insurer, with respect to each plan insured by the admitted disability insurer and for all of the plans of the admitted disability insurer taken together, subject to this subdivision and subdivisions (i) and (l) of this section, setting forth the applicable gender, age, and wage distribution factor information. There shall be no recanvass of information by an employer or admitted disability insurer to present current information, except as provided by this subdivision and subdivision (l) of this section.

(2) If a new plan is added, the department shall add to the tabulation the gender, age, and wage distribution factor information applicable to the plan. If there is a termination of approval of a plan, the department shall remove from the tabulation the gender, age, and wage distribution factor information applicable to the plan and not previously removed as of January 1 of a year. As of January 1 of each year the department shall remove from the tabulation the gender, age, and wage distribution factor information for plans in effect which were approved prior to the preceding January 1 and not recanvassed or which were recanvassed and the date of adjustment of the tabulation was prior to the preceding January 1.

(3) An admitted disability insurer may submit the information required in paragraphs (C), (D) and (E) of subdivision (f)(1) of this section for any payroll period ending on or after the preceding calendar year, or information as permitted by and for a period comparable to that provided by subdivision (f)(3) of this section, not later than:

(A) December 1 of any calendar year, if the admitted disability insurer presents the required information on a form prescribed by the department, or

(B) December 1 of any calendar year, submit to the department for all plans which will continue in effect on January 1 of the succeeding calendar year and for which information is not included in the current tabulation or will as of that January 1 be removed from the tabulation.

(4) The department shall adjust its current tabulation as of January 1 of the succeeding calendar year based upon the information submitted in accordance with paragraphs (A) and (B) of this subdivision.

(5) If a plan or a group of plans is not approved under subdivision (g) of this section and the admitted disability insurer has plans for which information is not included in the current tabulation, the admitted disability insurer may submit for all plans for which information is not included in the current tabulation, the information required in paragraphs (C), (D), and (E) of subdivision (f)(1) of this section for any payroll period ending in the month in which information is submitted or in the immediately preceding three calendar months, or information as permitted by and for a period comparable to that provided by subdivision (f)(3) of this section. The department shall, if a new application for approval of the plan or group of plans is submitted, adjust the admitted disability insurer's current tabulation based on the information submitted and determine whether the plan or group of plans qualifies for approval.

(i) If information for all of the plans of an admitted disability insurer which continue in effect on January 1 of any calendar year is included as of January 2 of that calendar year in the current tabulation, such plans shall conform to each of the requirements of subdivision (g)(1) of this section in accordance with subdivision (g) (3) of this section, considering such plans only individually or together as a group of plans. If such plans considered together as a group of plans do not conform to each of such requirements, good cause shall exist for the director to terminate approval of all such plans of such admitted disability insurer which do not conform individually to each of such requirements. The director shall, not later than 65 days prior to the effective date of a termination of

approval, give to the admitted disability insurer and to the employer or the employer and employee group a notice of termination of approval of all such plans of such admitted disability insurer, or a prompt notice to the admitted disability insurer that approval is not terminated. The employer or employee group with the consent of and through the admitted disability insurer or the admitted disability insurer may, within 30 days of the mailing of the notice of termination of approval, request reconsideration for a plan or a group of plans on the basis of the applicable information removed from the tabulation as a result of the termination of approval. The director shall promptly after the receipt of such request cancel any termination of approval of a plan or a group of plans reconsidered if such plan or plans conform to each of the requirements of subdivision (g)(1) of this section in accordance with subdivision (g)(3) of this section, considering such plans only together as a group or such plan or plans together with plans for which information is included in the current tabulation and adjust the insurer's tabulation by adding the applicable information, or shall promptly confirm his or her termination of approval. The director shall, not later than 25 days prior to the effective date of a termination of approval, give a notice of cancellation or confirmation of the termination of approval to the admitted disability insurer and to the employer or the employer and employee group. The director may for good cause extend the time within which reconsideration may be requested. The director may change or stay the effective date of his or her termination of approval.

(j) (1) The director shall not later than December 1 preceding each calendar year establish a "standard risk" for that calendar year.

(2) For each calendar year, the standard risk shall be established from the data obtained from twenty percent (20%) of the state plan closed claims expanded to represent one hundred percent (100%) of all state plan closed claims, and all insured voluntary plan closed claims, for which the last day compensated by a final payment is in the second or third calendar quarter of the calendar year preceding the calendar year in which the standard risk is established and for which reports are due under Section 3267-1 of these regulations not later than October 31 following such third calendar quarter. The standard risk shall be determined from the amount of disability benefits paid by the state plan to employed claimants and by admitted disability insurers to insured voluntary plan claimants based on the data obtained from such closed claims as follows:

(A) The percentage paid to female claimants.

(B) The percentage paid to claimants age 50 and older.

(C) The percentage paid to claimants earning less than seventy percent (70%) of the state average annual wage, as prescribed in subdivision (b)(3) of this section, paid by all employers in the calendar year preceding the first day of the calendar year in which the standard risk is established.

(k) The department shall determine for each calendar year the "risk experience rating" for each admitted disability insurer, on the basis of the data used under subdivision (j) of this section with respect to those voluntary plans of that admitted disability insurer which continue in effect on January 1 of any calendar year for which the rating is made, setting forth the percentage of disability benefits paid to females, to claimants age 50 and older, and to claimants earning less than seventy percent (70%) of the state average annual wage, as prescribed in subdivision (b)(3) of this section, paid by all employers in the calendar year preceding the first day of the calendar year in which the standard risk is established.

(l) (1) If information for any plan of an admitted disability insurer which continues in effect on January 1 of any calendar year is not included as of January 2 of that calendar year in the current tabulation, the following shall apply:

(A) If the percentage for the insurer's risk experience rating factor for gender is not more than five percent (5%) below and for age is not more than ten percent (10%) below

and for wage distribution is not more than seven percent (7%) below the percentage for that corresponding factor in the standard risk for a calendar year, the director shall not terminate approval under this section of any plan of such admitted disability insurer which continues on January 1 of a subsequent calendar year. For example, if the standard risk for gender for a calendar year were 38.61 percent the admitted disability insurer's risk experience rating for gender shall be at least 36.68 percent, which is 5 percent below the standard risk.

(B) If the percentage for the admitted disability insurer's risk experience rating factor for gender is more than five percent (5%) below or for age is more than ten percent (10%) below or for wage distribution is more than seven percent (7%) below the percentage for that corresponding factor in the standard risk for a calendar year, good cause shall exist for the director to terminate approval of all plans of such admitted disability insurer which continue in effect on January 1 of that calendar year and for which information is not included as of January 2 of that calendar year in the current tabulation. For example, if the standard risk for gender for a calendar year were 38.61 percent the insurer's risk experience rating for gender shall be at least 36.68 percent, which is 5 percent below the standard risk and a rating of 36.67 percent or lower for gender would result in termination of approval under this subdivision.

(C) If an admitted disability insurer has a plan which is subject to termination of approval under paragraph (B) of subdivision (l)(1) of this section, and also has additional plans which continue in effect on January 1 of any calendar year for which information is included as of January 2 of that calendar year in the current tabulation, such additional plans shall conform to each of the requirements of subdivision (g)(1) of this section in accordance with subdivision (g)(3) of this section, considering such additional plans only individually or together as a group of plans. If such additional plans considered together as a group of plans do not conform to each of such requirements, good cause shall exist for the director to terminate approval of all of such additional plans of such admitted disability insurer which do not conform individually to each of such requirements.

(2) The director shall, not later than 65 days prior to the effective date of a termination of approval, give to the admitted disability insurer and to the employer or the employer and employee group a notice of termination of approval of all plans of such admitted disability insurer for which approval is terminated under paragraphs (B) and (C) of subdivision (l)(1) of this section, or a prompt notice to the admitted disability insurer that approval is not terminated.

(3) The employer or employee group with the consent of and through the admitted disability insurer or the admitted disability insurer may, within 30 days of the mailing of a notice of termination of approval under paragraph (B) of subdivision (l)(1) of this section, submit for a plan or a group of plans for which approval is terminated, the information required in paragraphs (C), (D), and (E) of subdivision (f)(1) of this section for any payroll period ending in the month in which information is submitted or in the immediately preceding three calendar months, or information as permitted by and for a period comparable to that provided by subdivision (f)(3) of this section.

(4) The employer or employee group with the consent of and through the admitted disability insurer or the insurer may, within 30 days of the mailing of a notice of termination of approval under paragraph (C) of subdivision (l)(1) of this section, request reconsideration for a plan or a group of plans on the basis of the applicable information removed from the tabulation as a result of the termination of approval.

(5) The director shall promptly after the receipt of information submitted under subdivision (l)(3) of this section or of a request for reconsideration under subdivision (l)(4) of this section, or both, cancel any termination of approval of a plan or a group of plans reconsidered, or resubmitted, if such plan or plans conform to each of the requirements of

subdivision (g)(1) of this section in accordance with subdivision (g)(3) of this section, considering such plan or plans only individually or together as a group or together with plans for which information is included in the current tabulation and adjust the admitted disability insurer's tabulation by adding the applicable information, or shall promptly confirm his or her termination of approval. The director shall, not later than 25 days prior to the effective date of a termination of approval, give a notice of cancellation or confirmation of the termination of approval to the admitted disability insurer and to the employer or the employer and employee group.

(6) The director may for good cause extend the time within which current information may be submitted under subdivision (l)(3) of this section or within which reconsideration may be requested under subdivision (l)(4) of this section. The director may change or stay the effective date of any termination of approval under this section.

NOTE: Authority cited: Sections 305, 306, and 2602, Unemployment Insurance Code.  
Reference: Sections 3254 and 3262, Unemployment Insurance Code.

Examples Related to Standards for Approval – Admitted Disability Insurer

TABLE 1

<u>Item</u>	<u>Wages</u>	<u>Qualifier</u>	<u>Source</u>
(1)	State Average Weekly Wage	\$830.88	U.S. Dept. of Labor for the State of CA <sup>1</sup>
(2)	Multiplier to Annualize Weekly Wages	52	Number of weeks in a year
(3)	Annualized State Average Wage	\$43,205.76	Item (1) multiplied by Item (2)
(4)	Multiplier for Annualized State Average Wage	70%	California Code of Regulations (CCR), Title 22 <sup>2</sup> , Section 3254(i)-2 (c)(3)
<b>(5)</b>	<b>Annual Wage Threshold (Standard for Approval)</b>	<b>\$30,244.03</b>	<b>Item (3) multiplied by Item (4)</b>

(6)	Annual Percentage of California Employees Earning Below the Annual Wage Threshold	55.0%	Employment Development Department
(7)	Multiplier for Employment Below the Annual Wage Threshold	93.0%	CCR Section 3254(i)-2 (c)(3)
<b>(8)</b>	<b>Minimum Percentage for Employment Below the Annual Wage Threshold (Standard for Approval)</b>	<b>51.2%</b>	<b>Item (6) multiplied by Item (7)</b>

<u>Item</u>	<u>Gender</u>	<u>Qualifier</u>	<u>Source</u>
(9)	Annual Average Percentage of California Female Employees	47.0%	U.S. Dept. of Labor for the State of CA <sup>1</sup>
(10)	Multiplier for Minimum Employment Percentage of Female Employees	95.0%	CCR Section 3254(i)-2 (c)(1)
<b>(11)</b>	<b>Minimum Percentage of Employment - Female Employees (Standard for Approval)</b>	<b>44.7%</b>	<b>Item (9) multiplied by Item (10)</b>

<u>Item</u>	<u>Age</u>	<u>Qualifier</u>	<u>Source</u>
(12)	Annual Average Percentage of California Employees Aged 50 Years and Older	23.0%	U.S. Dept. of Labor for the State of CA <sup>1</sup>
(13)	Multiplier for Minimum Employment Percentage of Employees Aged 50 Years and Older	90.0%	CCR Section 3254(i)-2 (c)(2)
<b>(14)</b>	<b>Minimum Percentage of Employment - Employees Aged 50 Years and Older (Standard for Approval)</b>	<b>20.7%</b>	<b>Item (12) multiplied by Item (13)</b>

<sup>1</sup> Figures are for illustrative purposes and do not necessarily conform to actual statistics for California employment.

<sup>2</sup> All further references in these three tables are to Title 22 of the California Code of Regulations.

**Example: Insurer Application #1**

**TABLE 2**

<u>Item</u>	<u>Employer Statistics - As Required by CCR Section 3254(i)-2(e)</u>	
(15)	Total number of employees eligible to be covered	100,000
(16)	Total number of consenting employees eligible to be covered	80,000
(17)	Number of female employees eligible to be covered	55,000
(18)	Number of male employees eligible to be covered	45,000
(19)	Number of employees aged 50 and older eligible to be covered	22,000
(20)	Number of employees paid less than the Annual Wage Threshold eligible to be covered	60,000

<u>Item</u>	<u>Wage Test</u>	<u>Qualifier</u>	<u>Source</u>
(21)	Percentage of Employees Earning Below the Annual Wage Threshold	60.0%	Item (20) divided by Item (15)
(22)	Minimum Percentage for Employment Below the Annual Wage Threshold	51.2%	Determined by Item (8), Table 1
(23)	<b>Pass/Fail (Standard for Approval)</b>	<b>PASS</b>	<b>If Item (21) is equal to or more than Item (22) then PASS</b>

<u>Item</u>	<u>Gender</u>	<u>Qualifier</u>	<u>Source</u>
(24)	Percentage of Female Employees	55.0%	Item (17) divided by Item (15)
(25)	Minimum Percentage of Employment - Female Employees	44.7%	Determined by Item (11), Table 1
(26)	<b>Pass/Fail (Standard for Approval)</b>	<b>PASS</b>	<b>If Item (24) is equal to or more than Item (25) then PASS</b>

<u>Item</u>	<u>Age</u>	<u>Qualifier</u>	<u>Source</u>
(27)	Percentage of Employment - Employees Aged 50 Years and Older	22.0%	Item (19) divided by Item (15)
(28)	Minimum Percentage of Employment - Employees Aged 50 Years and Older	20.7%	Determined by Item (14), Table 1
(29)	<b>Pass/Fail (Standard for Approval)</b>	<b>PASS</b>	<b>If Item (27) is equal to or more than Item (28) then PASS</b>
<b><u>Overall Qualification</u></b>		<b>PASS</b>	<b>Based on passing Items (23), (26) &amp; (29)</b>

**Example: Insurer Application #2**

**TABLE 3**

<u>Item</u>	<u>Employer Statistics - As Required by CCR Section 3254(i)-2(e)</u>	
(15)	Total number of employees eligible to be covered	500,000
(16)	Total number of consenting employees eligible to be covered	300,000
(17)	Number of female employees eligible to be covered	240,000
(18)	Number of male employees eligible to be covered	260,000
(19)	Number of employees aged 50 and older eligible to be covered	95,000
(20)	Number of employees paid less than the Annual Wage Threshold eligible to be covered	300,000

<u>Item</u>	<u>Wage Test</u>	<u>Qualifier</u>	<u>Source</u>
(21)	Percentage of Employees Earning Below the Annual Wage Threshold	60.0%	Item (20) divided by Item (15)
(22)	Minimum Percentage for Employment Below the Annual Wage Threshold	51.2%	Determined by Item (8), Table 1
(23)	<b>Pass/Fail (Standard for Approval)</b>	<b>PASS</b>	<b>If Item (21) is equal to or more than Item (22) then PASS</b>

<u>Item</u>	<u>Gender</u>	<u>Qualifier</u>	<u>Source</u>
(24)	Percentage of Female Employees	48.0%	Item (17) divided by Item (15)
(25)	Minimum Percentage of Employment - Female Employees	44.7%	Determined by Item (11), Table 1
(26)	<b>Pass/Fail (Standard for Approval)</b>	<b>PASS</b>	<b>If Item (24) is equal to or more than Item (25) then PASS</b>

<u>Item</u>	<u>Age</u>	<u>Qualifier</u>	<u>Source</u>
(27)	Percentage of Employment - Employees Aged 50 Years and Older	19.0%	Item (19) divided by Item (15)
(28)	Minimum Percentage of Employment - Employees Aged 50 Years and Older	20.7%	Determined by Item (14), Table 1
(29)	<b>Pass/Fail (Standard for Approval)</b>	<b>FAIL</b>	<b>If Item (27) is equal to or more than Item (28) then PASS</b>
<b>Overall Qualification</b>		<b>FAIL</b>	<b>Based on failing Age Criteria Item (29)</b>

