

EMPLOYMENT DEVELOPMENT DEPARTMENT

Amendment of Title 22, California Code of Regulations (CCR) Sections 455.5-6, 455.5-7, and 455.5-8

COMBINING WAGES FROM TWO OR MORE STATES FOR UNEMPLOYMENT INSURANCE CLAIMS

Final Statement of Reasons

BACKGROUND:

The Social Security Act of 1935 (42 United States Code (U.S.C.) section 501 et seq) created the Federal-State partnership responsible for administering the unemployment compensation (UC) program. States must conform to these Federal laws or face possible loss of federal administrative funding and federal tax credits to employers doing business in that state. 42 U.S.C. section 503(a)(1) specifies that the Secretary of the U.S. Department of Labor (DOL) shall make no certification for payment to states unless he/she finds that the state laws have provisions requiring methods of administration reasonably calculated to insure full payment of UC benefits "when due".

Thus, all States must comply with Federal law in administration of the UC program. Specifically, the Federal law requires all State UC agencies to operate in accordance with such rules, regulations, and procedures prescribed by the Secretary in consultation with the State UC agencies. Failure of a state's UC laws and regulations to conform to, and substantially comply with, Federal law can result in the state's UC administrative grant funds being withheld. In State Fiscal Year 2008-2009, the budget authority funding for California's Unemployment Insurance administration is \$488,626,000 (this amount includes funding for the California Unemployment Insurance Appeals Board).

As part of the UC program, all fifty states, plus the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands, are required to participate in the Interstate Arrangement for Combining Employment and Wages (Interstate Arrangement), as specified in 26 U.S.C. section 3304(a)(9)(B). The Interstate Arrangement is approved by the Secretary of the DOL under 26 U.S.C. section 3304(a)(9)(B). This arrangement requires each state, as a condition of participation in the Federal-State UC program, to participate in any arrangement specified by the Secretary for payment of UC on the basis of combining employment and wages of two or more States.

This requirement is also codified in California law under California Unemployment Insurance Code (CUIC) section 455.5, which provides: "This state shall participate

in any arrangements for the payment of compensation on the basis of combining an individual's wages and employment covered under this division with his wages and employment covered under the unemployment compensation law of other states which are approved by the Secretary of Labor in consultation with the state unemployment compensation agencies as reasonably calculated to assure the prompt and full payment of compensation in such situations. Any such arrangement shall include provisions for both of the following: (a) Applying the base period of a single state law to a claim involving the combining of an individual's wages and employment covered under two or more state laws. (b) Avoiding duplicate use of wages and employment by reason of such combining.”

The Combined Wage Claim (CWC) program allows an unemployed individual with employment and wages in more than one State to combine his or her wages to establish a CWC under the law of a single State called the “Paying State” in order to qualify for benefits or to receive additional benefits (i.e. an increased weekly benefit amount).

NECESSITY:

On October 23, 2008, the DOL published a final rule in the Federal Register (FR), (73 FR 63068) , which revised the definition of the term “Paying State” contained in Title 20, Code of Federal Regulations (CFR) section 616.6. The DOL made the following statement at 73 FR 63071: “All States must convert to the new definition of “Paying State” at the same time; failure to achieve this would be confusing and unfair to claimants and the employers who bear the benefit costs and would create additional implementation issues. To assure that all States have adequate time to address operational issues, including training new staff, the final rule will be effective January 6, 2009.” Thus, all CWCs filed under the Interstate Arrangement must be filed under this new definition specified in the amended Federal regulation, which became effective January 6, 2009.

Due to the amended definition of the term “Paying State”, the individual must have wages and employment in the paying State’s base period to potentially qualify for a CWC under that State’s law. Prior to this change, a claimant residing in a State in which no work and wages were earned could file a CWC against that State. This practice is no longer allowed pursuant to the new Federal regulation.

These amendments to the California regulations are necessary to ensure the continuation of Federal administrative funding for the administration of the UC program that provides UC benefits to unemployed Californians. If this regulatory action is not adopted, the Employment Development Department (Department) and the State of California will be out of conformity with Federal law, specifically, the Federal regulations at 20 CFR 616.6, 616.7, and 616.8, as revised in 73 FR 63068. For this reason, the Department must revise its regulations to conform to these Federal regulations or risk the possible loss of Federal administrative

funding. Without the Federal administrative funds, California will not have the necessary funding to continue administering and operating the UC program. Without such administrative funding, the processing of claims for UC benefits will be substantially delayed and thousands of unemployed Californians will experience lengthy delays in receiving UC benefits. Without administrative funding, the Department would not have necessary funding to administer the program to provide direct services to claimants. Claimants would not be able to receive critical financial income to assist them in purchasing basic necessities such as food, shelter, etc. The Department services over one million UC claimants annually who would be directly impacted by the Department's inability to process their UC claims and payments.

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

Section 455.5-6. Definitions.

20 CFR section 616.6(e) amended the definition of the term "Paying State" to mean a single State against which the claimant files a CWC, only if the claimant has employment and wages in that State's base period, and the claimant qualifies for UC in that State using the combined employment and wages.

The proposed amendment to CCR, title 22, section 455.5-6(f) is needed to revise the definition of the term "Paying State" to conform with Federal law for the State's participation in the arrangement of combining wages and employment for a CWC. The amended definition of the "Paying State" in 20 CFR 616.6(e) revised the criteria to include requiring wages from two or more States in the base period of the Paying State as well as requiring wages in the Paying State's base period. Therefore, in order for a claimant to file a CWC with California as the Paying State, the claimant must have work and wages in covered employment in California during the base period, and qualify for UC benefits using combined wages.

Additionally, the proposed amendment is necessary to make a non-substantive revision to subdivision (a) to delete the phrase "effective on January 1, 1978" to make the regulation consistent with Federal regulation 20 CFR 616.6, which no longer references an effective date.

Section 455.5-7. Election to File a Combined-Wage Claim.

20 CFR section 616.7 added a new paragraph to require that, if a State denies a CWC, it must inform the claimant of the option to file in another State in which the claimant has wages and employment during that State's base period(s).

The proposed amendment to CCR, title 22, section 455.5-7 is necessary to add the requirement specified under 20 CFR 616.7, which requires each State that

denies a CWC to inform the claimant of the option to file in another State in which the claimant has wages and employment during that State's base period.

The proposed amendment also makes non-substantive revisions by adding the phrases "or she" and "or her" throughout the regulation to clarify that all of the gender references in the regulation apply to both male and female individuals.

Section 455.5-8. Responsibilities of the Paying State- Transfer of Employment and Wages – Payment of Benefits.

20 CFR section 616.8 deleted the phrases in subdivision (a) of "if any" and "even if the Combined-Wage Claimant has no earnings in covered employment in that State".

The proposed amendment to CCR, title 22, section 455.5-8(a) is necessary to conform to Federal law by deleting the phrases "if any" and "even if the combined-wage claimant has no earnings in covered employment in that state".

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, 45 DAY WRITTEN PUBLIC COMMENT PERIOD:

On October 9, 2009, 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 regulations, 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 October 9 through November 23, 2009, no one requested a public hearing and no one presented written comments regarding the proposed amendments.

ECONOMIC IMPACT STATEMENT:

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 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. There will be no adverse impact on

businesses because this regulatory action will prevent claimants who have not worked in California from collecting benefits under California laws. This regulatory action also reduces the State's cost of processing these claims associated with workload activities. 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:

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 11346.9(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 than the proposed regulatory action.
