

October 9, 2009

TITLE 22. EMPLOYMENT DEVELOPMENT DEPARTMENT

**Amendment of Title 22, California Code of Regulations
Sections 455.5-6, 455.5-7, and 455.5-8**

**COMBINING WAGES FROM TWO OR MORE STATES FOR
UNEMPLOYMENT INSURANCE CLAIMS**

Notice of Proposed Rulemaking

The Employment Development Department (Department) proposes to amend California Code of Regulations (CCR), title 22, sections 455.5-6, 455.5-7, and 455.5-8 in order to comply with Federal law in administration of the unemployment compensation (UC) 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 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 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).

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 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.

Authority and Reference:

Authority: Sections 305 and 306, Unemployment Insurance Code.

Reference: Section 455.5, 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 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.

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 action.

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

Anticipated non-discretionary costs or savings imposed upon local agencies:
None

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 11346.5(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 November 23, 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 November 23, 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.
