

EMPLOYMENT DEVELOPMENT DEPARTMENT

**Amendment of Title 22, California Code of Regulations,
Sections 2706-2, 3302-1, and 3303.1(c)-1**

FAMILY TEMPORARY DISABILITY INSURANCE BENEFITS

Initial Statement of Reasons

BACKGROUND:

The enactment of Senate Bill (SB) 1661 (Chapter 901, Statutes 2002) and SB 727 (Chapter 797, Statutes 2003) established Family Temporary Disability Insurance (FTDI), known as Paid Family Leave (PFL), within the State Disability Insurance (SDI) program. The FTDI benefit provides partial wage replacement to workers taking family care leave and is administered by the Employment Development Department (Department) in accordance with the provisions of Part 2 (commencing with section 2601) of the California Unemployment Insurance Code (code). FTDI benefits are provided to workers unable to perform their regular or customary work when they provide care for a seriously ill child, spouse, parent, registered domestic partner or bond with a new minor child. Eligibility for FTDI benefits commenced on July 1, 2004.

The Department promulgated regulations in 2004 to interpret and ensure compliance with relevant statutes. Included in the regulations are definitions for terms and examples specific to FTDI. Since the implementation of the FTDI program, the Department has diligently provided benefits to workers taking family care leave. However, the Department has identified the need to make clarifying changes and minor enhancements to existing regulatory language to articulate the intent of the specified provisions and ensure proper administration of the program.

NECESSITY:

Under the 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 code sections 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 proposed amendments to California Code of Regulations (CCR), title 22, sections 2706-2, 3302-1, and 3303.1(c)-1, are necessary to articulate the regulatory intent of each provision and provide consistency with statutes.

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

Section 2706-2 – Claim for Family Temporary Disability Insurance Benefits - Filing and Contents

Section 2706-2 of the CCR defines the terms and sets forth the requirements for filing a first or re-established claim for FTDI benefits. The proposed amendment to section 2706-2, subdivision (a) of the CCR will clarify that filing a first claim establishes a 12-month benefit period and the attendant FTDI benefit factors. By amending this regulation, the public will gain a better understanding of how the Department administers FTDI benefits.

In addition, the word “minor” is added to subdivisions (b) and (e) of section 2706-2. The proposed amendment will clarify that the specified provisions apply to a new minor child and ensure consistency with the definitions prescribed in section 3302 of the code.

Section 3302-1 – Family Temporary Disability Insurance Definitions

Section 3302-1 of the CCR defines the terms used in the administration of FTDI benefits. Subdivision (u) of section 3302-1 includes the term “minor” and only allows a stepparent caring for a minor child to meet the eligibility requirements for FTDI benefits. The existing language of section 3302-1 conflicts with the legislative intent of the FTDI program pursuant to section 3300 of the code. The proposed amendment would delete “minor” from the regulation thereby allowing a stepparent to become eligible for benefits when caring for a child, regardless of the age of the child, and ensure consistency with the statute and its legislative intent.

Section 3303.1(c)-1 – Vacation Leave

Section 3303.1(c)-1 of the CCR provides that an individual eligible for FTDI benefits shall not be paid benefits during the same period an employer requires the employee to initially take up to two weeks earned but unused vacation leave. Current examples demonstrate how employers allocate vacation leave. Additional examples are necessary to clarify the regulation’s intent. The proposed amendment would illustrate how employers may allocate vacation leave during the FTDI benefit period. The proposed amendment will also illustrate the proper allocation of employer required vacation leave during intermittent family care leave.

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.

CONSIDERATION OF ALTERNATIVES:

In accordance with section 11346.2(b)(3)(B) of the Government Code, there were no reasonable alternatives to be considered by the Department.

SMALL BUSINESS IMPACT:

The proposed amendments in and of themselves 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.

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 because these proposals clarify existing regulations regarding SDI and PFL benefits without imposing any new requirements on businesses. 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.
