

EMPLOYMENT DEVELOPMENT DEPARTMENT

**Adoption of Title 22, California Code of Regulations
Section 2706-7**

**FAMILY TEMPORARY DISABILITY INSURANCE BENEFITS
PENDING APPEAL**

Text of Proposed Regulations

NOTE: Language to be added is shown in underline format.

ADOPT SECTION 2706-7 TO READ AS FOLLOWS:

§ 2706-7. Payment of Family Temporary Disability Insurance Benefits Pending Appeal by Claimant.

(a) Scope. This section interprets whether Family Temporary Disability Insurance (also known as Paid Family Leave) benefit payments continue in situations where the department initially determines a claimant is eligible for benefits, but subsequently determines the claimant is ineligible or disqualified from benefits, and the claimant files an appeal from the subsequent determination.

(b) General. If the department initially determines that a claimant is eligible for and has been paid Family Temporary Disability Insurance benefits, and then subsequently determines that the claimant is ineligible to receive or subject to a reduction of further benefits, and the claimant files a timely appeal from the subsequent determination, within 20 days pursuant to Unemployment Insurance Code Section 2707.2, and files a written election with the department on a prescribed form (“Notice of Right to Continue Paid Family Leave Benefits Pending Appeal”, DE 6315DF) to have benefits continued and files continued claims pending disposition of the appeal, the department shall continue to pay benefits until the appeal has been resolved by the decision of an administrative

law judge, except that benefit payments shall cease if the appeal is dismissed or if a criminal complaint for fraud is filed against the claimant under Section 2101 of the code (see subdivision (c) of Section 1263, Section 2602, and subdivision (a) of Section 2675 of the code).

(c) Claimant Initially Determined Eligible. The department has initially determined that a claimant is eligible for Family Temporary Disability Insurance benefits if, after the filing of a first claim, the department determines that all of the following conditions exist:

(1) The claimant is providing care for a seriously ill child, spouse, parent, registered domestic partner, or bonding with a new child.

(2) The claimant has received one or more Family Temporary Disability Insurance benefit payments.

(3) The claimant has filed a claim in accordance with authorized regulations, which appear in Title 22, California Code of Regulations, Division 1, Part 2, Chapter 2, Article 4.

(4) The claimant has a monetarily valid claim.

(5) The claimant has not exhausted the maximum benefit amount for the period of family care leave of the claim.

(6) The initial determination is not subject to reconsideration under subdivision (a) of Section 2707.5 of the code.

(7) The initial benefit amount has not been recomputed under subdivision (b) of Section 2707.5 of the code and determined to be monetarily invalid.

(8) The department has not determined that the claimant is ineligible for benefits based on a new set of facts or conditions unless the new determination of ineligibility meets all the other conditions of this subdivision.

(9) The claimant is otherwise eligible.

EXAMPLE 1. Claim Filing. Claimant A files a first claim for Family Temporary Disability Insurance benefits to provide care for a seriously ill family member which is received on September 20, 2007, and postmarked September 15, 2007. Claimant A indicates family care leave beginning June 30, 2007. The department determines Claimant A does not have good cause for exceeding the 41 day filing period and under Section 3301(e) of the code gives the claim an effective date of July 29, 2007. Claimant A is paid Family Temporary Disability Insurance benefits based on July 29, 2007. Claimant A appeals the department's denial of benefits for the days from June 30 through July 28, 2007. The department has not determined that Claimant A was initially eligible for those days. Therefore,

pending decision on the appeal, Claimant A is not entitled to receive benefits for any day prior to July 29, 2007. The days following July 29, 2007 are not affected by the back dating issue raised by Claimant A's appeal, and Claimant A is entitled to continued payment of Family Temporary Disability Insurance benefits for the days following July 29, 2007.

(Note: The received and postmark dates for Family Temporary Disability Insurance claims are established by utilizing a five day processing standard for the automated claim form. On the day that the Department receives a Family Temporary Disability Insurance claim, an automated procedure establishes the FTDI claim date as of the five days preceding receipt of the completed claim. For example, if the Department receives a completed FTDI claim on July 15, 2007 the automated procedure establishes an FTDI claim date as of July 10, 2007.)

EXAMPLE 2. Claim Filing. Claimant B files a first claim for Family Temporary Disability Insurance benefits to bond with a new child born on May 19, 2007. Claimant B previously received Disability Insurance benefits during her pregnancy with this child. Claimant B submits her application for Family Temporary Disability Insurance benefits which was received September 20, 2007 and postmarked September 15, 2007. Claimant B is requesting to begin her Family Temporary Disability Insurance claim on June 30, 2007. The department determines that Claimant B does not have good cause for exceeding the 41 day filing period and under Section 3301(e) of the code gives the claim an effective date of August 5, 2007. Claimant B is paid benefits based on August 5, 2007. Claimant B appeals the department's denial of benefits for the days between June 30, 2007 to August 4, 2007. The department has not determined that Claimant B was initially eligible for those days. Therefore, Claimant B is not entitled to receive benefits for any day prior to August 5, 2007, pending decision on the appeal. The days following August 5, 2007 are not affected by the backdating issue raised by Claimant B's appeal and she is entitled to receive continued benefits after August 5, 2007.

(Note: The received and postmark dates for Family Temporary Disability Insurance claims are established by utilizing a five day processing standard for the automated claim form. On the day that the Department receives a Family Temporary Disability Insurance claim, an automated procedure establishes the FTDI claim date as of the five days preceding receipt of the completed claim. For example, if the Department receives a completed FTDI claim on

July 15, 2007 the automated procedure establishes an FTDI claim date as of July 10, 2007.)

EXAMPLE 3. Claim Filing. The department determines Claimant D is initially eligible for Family Temporary Disability Insurance benefits. Claimant D receives benefits for 28 days, but does not return the continued claim for the next period of payment until after the 20-day filing period. The department determines that Claimant D does not have good cause for late filing and holds Claimant D ineligible because the claim was not filed timely in accordance with Section 2706-3 of these regulations. Claimant D files an appeal. Since the department has determined that Claimant D was initially eligible, Claimant D is entitled to receive benefits for the disallowed period pending decision on the appeal.

EXAMPLE 4. Late Medical Extension. The department determines Claimant E is initially eligible for Family Temporary Disability Insurance benefits to care for his ill father with chronic renal failure. Claimant E receives benefits for 25 days, however, Claimant E continues to provide care beyond the 25 days that were initially certified by the physician. Claimant E does not return his medical extension form until after the 20-days commenced from the date the medical extension form was issued. The department determines that Claimant E does not have good cause for late filing and holds Claimant E ineligible because the medical extension was not received timely in accordance with Section 2706-3 of these regulations. Claimant E files an appeal. Since the department has determined that Claimant E was initially eligible, Claimant E is entitled to receive Family Temporary Disability Insurance benefits for the disallowed period pending decision on the appeal.

EXAMPLE 5. Reconsideration of Determination. Claimant F files a first claim for Family Temporary Disability Insurance benefits to care for a seriously ill mother with cancer. The Department pays Family Temporary Disability Insurance benefits to Claimant F for 20 days and subsequently discovers that Claimant F is being paid temporary disability indemnity under workers' compensation for the same period and weekly rate as the Claimant's Family Temporary Disability Insurance benefits. The department reconsiders the determination and determines that Claimant F is ineligible under Section 3303.1 of the code for the period of family care leave because of the duplication of benefits. Claimant F appeals. Since under subdivision (a) of Section 2707.5 of the code the department may reconsider any benefit determination prior to filing an appeal,

the initial determination was not final and claimant F is not entitled to receive Family Temporary Disability Insurance benefits pending decision on the appeal.

EXAMPLE 6. Reconsideration of Computation. Claimant G files for and is paid Family Temporary Disability Insurance benefits. While Claimant G is in continued claim status, the department recomputes Claimant G's claim and determines under Section 2652 of the code that Claimant G does not have sufficient qualifying wages in the disability base period to have a valid claim. Claimant G appeals. Since, under subdivision (b) of Section 2707.5 of the code the department may re-compute a claim within one year from the beginning date of a disability benefit period, the initial computation was not final, and Claimant G is not entitled to receive Family Temporary Disability Insurance benefits pending decision on the appeal.

(d) The department shall not continue Family Temporary Disability Insurance benefits pending the decision of an administrative law judge if benefits are otherwise limited by operation of law, including but not limited to the following sections of the code:

(1) Section 3303.1(a)(1) (a claimant is not entitled to Family Temporary Disability Insurance benefits for any day for which he or she is entitled to unemployment compensation benefits under any state or federal unemployment compensation law).

(2) Section 3303.1(a)(2) (the claimant received or is entitled to receive an amount of "other benefits" as defined in Unemployment Insurance Code section 2629 under any state or federal workers' compensation or employer's liability law in an amount which equals or exceeds the amount of Family Temporary Disability Insurance benefits to which the claimant is entitled for the same day during the period of family care leave).

(3) Section 2656 (the amount of Family Temporary Disability Insurance benefits to which the claimant is entitled for any day is limited by the amount of wages or regular wages received for the same day). (See also, Sections 678, 926, 926.5, 1252.1, 1252.2, and 2657.)

(4) Section 2676 (a claimant shall be presumed ineligible for unemployment compensation benefits under Sections 1256, 1257, 1260, 1261, or 1263 of the code for the same period or periods if the claimant is disqualified from receiving those benefits unless the claimant establishes to the director's satisfaction that he or she is claiming a period of family care leave and the director finds there is good cause for paying the FTDI benefits).

(5) Section 2678 (a claimant confined pursuant to commitment or court order or certification as a dipsomaniac, drug addict, or sexual psychopath is not entitled to Family Temporary Disability Insurance benefits for any day of such confinement).

(6) Section 2680 (a claimant is not entitled to Family Temporary Disability Insurance benefits for any day during which he or she is in custody of law enforcement authorities in any federal, state, or municipal penal institution, jail, medical facility, public or private hospital, or in any other place upon adjudication or conviction of a criminal violation of a federal, state, or other municipal law or ordinance by a court of competent jurisdiction).

(7) Section 2708 (a claimant is not entitled to Family Temporary Disability Insurance benefits for any period after the period covered by the initial certificate or preceding continued claim unless his or her continued claim is supported by the certificate of a treating physician or practitioner authorized pursuant to sections 2708 and 2709 to certify State Disability Insurance claims).

(8) Section 3253 (a claimant is not entitled to Family Temporary Disability Insurance coverage under the state plan if an employer or combination of employers of the claimant is solely liable for such coverage under an approved voluntary plan or plans).

(9) Section 3303.1(a)(3) (a claimant is not entitled to Family Temporary Disability Insurance benefits for any day for which he or she is entitled to disability insurance benefits under any state disability insurance law).

(10) Section 3303.1(a)(4) (a claimant is not entitled to Family Temporary Disability Insurance benefits for any day that another family member is ready, willing, and able and available to provide care during the same period of time in a day that the claimant is providing care).

(11) Section 3303.1(c) (as a condition of an employee's initial receipt of Family Temporary Disability Insurance benefits during any 12-month period in which an employee is eligible for such benefits, an employer may require an employee to take up to two weeks of earned but unused vacation leave prior to the initial receipt of such benefits).

EXAMPLE 7. Receipt of Duplicate Benefits. Claimant H is found eligible for Family Temporary Disability Insurance benefits due to bonding with a new child. Prior to filing a claim for Family Temporary Disability Insurance benefits, Claimant H was scheduled for surgery due to carpal tunnel syndrome. The scheduled surgery is performed during the period that Claimant H filed for Family

Temporary Disability Insurance benefits. Beginning with the date of the surgery and for the following four weeks, Claimant H is paid temporary disability indemnity under workers' compensation at a rate in excess of Claimant H's weekly Family Temporary Disability Insurance benefit amount. The Department denies Claimant H for four weeks under Section 3303.1 of the code. Claimant H appeals. Since Claimant H is not eligible to receive Family Temporary Disability Insurance benefits during the four weeks of receiving temporary disability indemnity under workers' compensation, Claimant H is not entitled to receive Family Temporary Disability Insurance benefits for the four weeks pending decision on the appeal.

(e) Fraud, Misrepresentation or Willful Nondisclosure. A claimant does not have the right to receive benefits pending an appeal for any day the claimant is subject to disqualification for having willfully, for the purpose of obtaining benefits, either made a false statement or representation, with actual knowledge of the falsity thereof, or withheld a material fact concerning his or her initial eligibility and the false statement determination is final (see Section 2675 of the code).

(f) Fraud Conviction. If a claimant is convicted under Section 2101 of the code by any court of competent jurisdiction of willfully making a false statement or knowingly failing to disclose a material fact to obtain or increase benefits, the claimant forfeits any right to benefits for 52 weeks beginning with the week in which the criminal complaint is filed (see subdivision (a) of Section 1263 of the code).

(g) Benefit Overpayment Offsets. A claimant does not have the right to a cash refund of benefits previously offset, or payment of any portion of his or her continued benefits pending appeal which are subject to offset against an overpayment of benefits previously paid under the code if the overpayment determination is final (see Section 2739 of the code).

(h) Child Support Intercept. A claimant does not have the right to a cash refund of benefits previously intercepted, or payment of any portion of his or her continued benefits pending appeal which are subject to intercept in order to satisfy an unpaid, court-ordered child support obligation pursuant to Section 17518 of the Family Code (also see Section 2630 of the code).

(i) Participation Not Warranted or Return to Work. A claimant is not providing family care or bonding with a new minor child, and consequently does not have the right to continue to receive benefits pending appeal, for any day on which the

claimant has reported that the care recipient's serious health condition no longer warrants the participation of the claimant, the claimant is no longer bonding with a new minor child, or the claimant has returned to regular or customary work .

(j) Notice to Claimant Regarding Appeal. If the department determines that a claimant is initially eligible for benefits and subsequently determines that the claimant is ineligible or disqualified, the department shall notify the claimant of the right to appeal to an administrative law judge. Concurrent with the notification of the right to appeal, the department shall also notify potentially entitled claimants that they may be eligible for benefits pending the appeal and may elect to continue to receive benefits pending the appeal; and that they may be required to repay such benefits if the administrative law judge affirms the department's determination of ineligibility or disqualification.

(k) Appeal by Claimant. A claimant whom the department initially determines to be eligible but subsequently determines ineligible, and who files a timely appeal, is entitled to continue to receive benefits pending decision on the appeal. However, a claimant may not be entitled to continue to receive benefits pending decision on the appeal under the following circumstances:

(1) When the claimant's appeal is untimely because it was not filed within 20 days of service of notice of the department's determination.

(2) When an administrative law judge dismisses a claimant's appeal for nonappearance, benefit payments to the claimant cease immediately upon the department's receipt of that decision, since the claimant has had an opportunity for a fair hearing on the appeal.

(3) When the claimant appeals to the Board as a result of an adverse decision from an administrative law judge. The claimant has had a fair hearing before an administrative law judge and is not entitled to continue to receive benefits pending decision of the Board.

NOTE: Authority cited: Sections 305, 306, 2706 and 3300, Unemployment Insurance Code. Reference: Sections 1335, 1336 and 2706, Unemployment Insurance Code.
