

EMPLOYMENT DEVELOPMENT DEPARTMENT

**Amendment of Title 22, California Code of Regulations
Section 2708(c)-1**

PAID FAMILY LEAVE ACCEPTABLE DOCUMENTATION

Final Statement of Reasons

BACKGROUND:

The enactment of Senate Bills (SB) 1661 (Chapter 901, Statutes 2002) and SB 727 (Chapter 797, Statutes 2003) established the Family Temporary Disability Insurance (FTDI) program, known as the Paid Family Leave (PFL) program, within the existing 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 who are unable to perform their regular or customary work when they are either providing care for a seriously ill child, spouse, parent, registered domestic partner or bonding with a new minor child and are determined to be eligible for such benefits. The FTDI benefit became payable for claims beginning on and after July 1, 2004. Regulations and procedures for determining eligibility for FTDI benefits became operative on July 1, 2004. The intent of the regulations is to ensure that proper documentation is provided to support a PFL claim for bonding with a new minor child.

NECESSITY:

Under 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, section 2708(c)-1, are necessary to clarify the documentation requirements for determining eligibility for FTDI benefits in response to claims for taking family care leave to bond with a new minor child.

The following proposed amendments to CCR, title 22, section 2708(c)-1, will:

- More clearly articulate what constitutes acceptable documentation,
- Provide the Department with the flexibility to use discretion when determining a claimant's eligibility for FTDI benefits, and
- Allow the Department to continue to maintain the integrity of the program.

Section 2708(c)-1. Acceptable Documentation for a Child's Birth, Adoption, or Foster Care Placement.

Subdivision (c) of section 2708 of the code requires that the Department develop a certification form for an employee taking leave to bond with a new minor child within the first year of the child's birth or placement in connection with adoption or foster care.

The provisions of CCR, title 22, section 2708(c)-1, ensure that benefits are properly paid to eligible individuals claiming FTDI benefits pursuant to Chapter 7, Part 2, of Division 1 of the code. Established requirements for documentary evidence support eligibility determinations and provide uniform standards by which to administer subdivision (c) of section 2708 of the code.

Subdivision (a) of section 2708(c)-1 of the CCR provides that a supporting document is required to substantiate a claim for FTDI benefits to bond with a new minor child for reasons of birth, adoption or foster care placement. The proposed regulation amendment is needed to clarify the requirements for an acceptable supporting document and provide the Department with some flexibility in making eligibility determinations.

Subdivision (b) of section 2708(c)-1 of the CCR delineates the requirements for a supporting document when verifying eligibility for benefits in connection with the birth of a child. The proposed regulation amendment provides an example to illustrate the need for additional documentation (to properly identify a claimant as a parent of a new born child) when establishing a claim for FTDI benefits.

Subdivision (c) of section 2708(c)-1 of the CCR delineates the requirements for a supporting document when verifying eligibility for benefits in connection with the adoption of a child. The proposed regulation amendment is needed to further clarify the acceptable documentation requirements and provide consistency with the provisions of subdivision (d) of this section. The amendment deletes the requirement for a photocopy of the child's passport as an acceptable document to support a claim for benefits. While the passport may establish the identity of the child, it fails to properly identify the claimant as a parent or the connection between the child and the claimant. The Department has determined that the passport alone does not provide sufficient information to determine eligibility for benefits. The amendment also provides an example to illustrate the need to provide the Department discretionary authority when determining the validity of a

supporting document submitted to support a claim for FTDI benefits and to obtain required information via other means.

Subdivision (d) of section 2708(c)-1 of the CCR delineates the requirements for a supporting document when verifying eligibility for benefits in connection with the foster care placement of a child. The proposed regulation amendment is needed to further clarify the acceptable documentation requirements and provide consistency with the provisions of subdivision (c) of this section. The amendment also provides examples to illustrate the need to provide the Department discretionary authority when determining the validity of a document submitted to support a claim for FTDI benefits and to obtain required information via other means. The examples demonstrate the Department's ability to make sound judgments in determining eligibility for benefits when certain information is not provided on a supporting document.

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 AND WRITTEN COMMENT PERIOD:

On November 2, 2007, 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 regulation, and the initial statement of reasons to everyone known to be interested in the Department's regulation.

During the 45-day written public comment period which was held from November 2, 2007 through December 17, 2007, no one requested a public hearing and no one presented written comments regarding the proposed regulation.

ECONOMIC IMPACT STATEMENT:

The Department does not anticipate the proposed amendments will result in any costs to the federal government, to State government, to local county governments, to private individuals, or businesses or 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 the amendments make only clarifying changes to current regulations and provide necessary examples to support those changes. 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 Department has determined that the proposed amendments will have no effect on small businesses because they do not impose any new mandates on small businesses.

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.
