

EMPLOYMENT DEVELOPMENT DEPARTMENT

Amendment of Title 22, California Code of Regulations Section 2706-1

FILING, DETERMINATION, AND PAYMENT OF DISABILITY INSURANCE CLAIMS

Initial Statement of Reasons

BACKGROUND:

The State Disability Insurance (SDI) program was established in 1946 to provide a partial wage replacement benefit to eligible workers in California who were unable to work due to a non-work related illness or injury. Senate Bill 1661 (Chapter 901, Statutes 2002) added the Family Temporary Disability Insurance (FTDI) benefit to the California Unemployment Insurance Code (Code). The FTDI benefit, otherwise known as Paid Family Leave (PFL), expanded the scope of SDI to provide a partial wage replacement benefit to eligible workers who take time off work to care for a seriously ill child, spouse, parent, registered domestic partner, or to bond with a new minor child.

Section 2701.5 of the Code requires the Employment Development Department (Department) to issue the initial payment for SDI benefits (including FTDI benefits) to an eligible claimant within 14 days of receipt of his or her properly completed first claim. Section 2706-2 of the California Code of Regulations (CCR) specifies the required elements for a completed first or continued claim for FTDI benefits. Although FTDI benefits are a subset of Disability Insurance (DI) benefits, section 2706-1 of the CCR does not include a similar listing of the required elements for a properly completed claim for DI benefits related to a claimant's own illness or injury.

NECESSITY:

Code sections 305 and 306 allow the Department to adopt, amend, or repeal regulations for the administration of functions of the Department. Under Code sections 2625, 2706, 2627, 2701.5 and 2708, SDI benefits are payable from the Disability Fund to individuals who file claims for benefits in accordance with authorized regulations and who are eligible to receive such benefit payments. However, the Code and the Department's existing regulations do not specify what constitute a properly completed claim form for DI benefits. Furthermore, any required elements and definitions of claims for DI benefits should be

consistent with the existing relevant criteria of section 2706-2, relating to FTDI benefits, which is a subset of DI benefits.

Section 2706-1 of the CCR specifies that an individual who has been unemployed, continuously disabled for eight consecutive days and examined or under a care of a physician or practitioner, may file for DI benefits.

The proposed regulation amendment is necessary to establish the required elements and definitions of claims related to filing a first or continued claim for DI benefits as well as utilize the existing relevant criteria of section 2706-2, relating to FTDI benefits, which is a subset of DI benefits. Specifically, this section would be amended to:

- Define the terms “first claim” and “properly completed first or continued claim”.
- Provide that an individual meeting certain conditions (e.g., suffer from a qualifying disability, unable to perform regular and customary work, suffer a wage loss) would satisfy basic claim filing requirements for DI benefits.
- Delineate all of the elements required for a properly completed first or continued claim form necessary for the Department to determine a claimant’s eligibility for DI benefits.

2706-1 subdivision (b):

This subdivision was added to define the term “first claim” and to clarify the requirement for a completed first claim. This provision would provide that filing a completed first claim establishes a disability benefit period beginning with the first day the individual files a valid claim for DI benefits, which allows the Department to compute the weekly and maximum benefit amounts. This subdivision is necessary to establish the definition and purpose of the term “first claim” for the purposes of the section as well as to be consistent with the existing relevant language of section 2706-2(a), relating to FTDI benefits, which is a subset of DI benefits.

2706-1 subdivision (c):

This subdivision was added to provide that an individual who is disabled and unemployed for at least eight consecutive days may file a claim for DI benefits. This provision would be consistent with the requisite seven day waiting period before benefits can be paid, as specified in section 2627(b) of the Code. This subdivision is necessary to establish basic claim filing requirements for DI benefits based on an individual meeting certain conditions, as specified in section 2626 of the Code, as well as to be consistent with the existing relevant language of section 2706-2(b), relating to FTDI benefits, which is a subset of DI benefits.

2706-1 subdivision (d):

This subdivision was added to establish the definition of a “properly completed first or continued claim” as a claim containing all of the elements delineated in subdivisions (e) and (f) of this section. This subdivision is necessary to establish a definition for the term “properly completed first or continued claim” for the purposes of the section.

2706-1 subdivision (e):

This subdivision was added to delineate all of the information required from a claimant for a first and continued claim. The information required is necessary for the Department to determine a claimant’s eligibility for benefits and to issue the initial benefit payment to eligible claimants within the statutorily required 14-day time frame. This amendment is necessary to ensure that claimants provide the Department with the requisite information to make a timely determination on a claimant’s eligibility for DI benefits.

Additionally, this subdivision is necessary to incorporate the existing relevant criteria of section 2706-2(d), relating to FTDI benefits, which is a subset of DI benefits, in order to promote consistency in the requirements of the two regulations. Only the relevant criteria applicable to claims for DI benefits, separate from claims for FTDI benefits, are incorporated.

Furthermore, certain other information specific only to DI benefit claim determinations will be added to the list of required information. The following three subdivisions are being added to ensure compliance with statutory criteria:

(A) Subdivision (e)(10) requires a claimant to provide the name of each facility where he or she has been incarcerated at any time during his or her disability. This information is required to ensure compliance with Code section 2680, which renders an individual ineligible for benefits on any day he or she is incarcerated.

(B) Subdivision (e)(11) requires a claimant to provide the facility name, address and phone number if he or she is residing in an alcoholic recovery home or a drug-free residential facility. This information is required to ensure compliance with Code sections 2626.1 and 2626.2, which specify that such a claimant will be eligible for disability benefits for a certain time period while receiving resident services.

(C) Subdivision (e)(12) requires a claimant to provide Workers’ Compensation claim information, if the claimant has filed or intends to file a claim for Workers’ Compensation benefits. This information is required to ensure compliance with Code section 2629, which renders an individual ineligible for benefits for any day

of unemployment and disability for which he or she has received, or is entitled to receive, other benefits in the form of cash payments, including Workers' Compensation benefits.

2706-1 subdivision (f):

This subdivision was added to delineate the information required from the claimant's treating physician for a first or continued claim. The information required is necessary for the Department to determine a claimant's eligibility for benefits and to issue the initial benefit payment to eligible claimants within the statutorily required 14-day time frame. This amendment is necessary to ensure that a claimant's physician provides the Department with the requisite information to make a timely determination on a claimant's eligibility for DI benefits. Furthermore, this subdivision is necessary to ensure compliance with Code section 2708, which specifies that a claimant establish medical eligibility for each uninterrupted period of disability by filing a first claim for disability benefits supported by the certificate of a treating physician that establishes the sickness or injury of the employee.

PLAIN ENGLISH CONFORMING STATEMENT:

The Department has drafted the proposed regulatory action 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 are intended to establish eligibility requirements for individuals and do not impose any new mandates on small businesses. They 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 regulatory action 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 proposed amendments are intended to clarify existing statute and establish criteria for individuals filing a claim for DI benefits. The Department has determined that the proposed regulatory action 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.
