

March 14, 2008

## **TITLE 22. EMPLOYMENT DEVELOPMENT DEPARTMENT**

### **Amendment of Title 22, California Code of Regulations Sections 3258-1, 3267-1, and 3267-2**

#### **VOLUNTARY PLAN REPORTING**

##### **Notice of Proposed Rulemaking**

The Employment Development Department (Department) proposes to amend California Code of Regulations (CCR), title 22, sections 3258-1, 3267-1, and 3267-2 to ensure proper voluntary plan reporting, and that voluntary plans properly administer disability and Family Temporary Disability Insurance (FTDI) benefits.

The Department will adopt these regulations after considering all comments, objections, or recommendations regarding the proposed regulatory action.

##### **Informative Digest/Policy Statement Overview:**

The Department extends approval to employers to operate voluntary plans (VP) for short-term disability insurance coverage, in lieu of State Disability Insurance (SDI) coverage, as set forth in Division 1, Part 2, Chapter 6, of the California Unemployment Insurance Code (code) and CCR, title 22.

In order to secure the approval of the Director of Employment Development, self-insured voluntary plan employers must file a bond issued by an admitted surety insurer guaranteeing the obligations of the employer under the plan with the Department. In lieu of a surety bond, the voluntary plan employer may deposit cash, bearer bond, or an irrevocable letter of credit.

Once approved, a voluntary plan must remain in effect for at least one year. Thereafter, the employer may request withdrawal on the plan anniversary date or the date that a change in the State contribution rate or benefit schedule is enacted. The voluntary plan remains responsible for payment of all claims filed prior to the date of withdrawal. The Department may terminate a voluntary plan when terms or conditions of the plan have been violated.

Upon the employer's withdrawal or the Department's termination of a voluntary plan, the Department shall retain custody of the deposit of security to ensure that all remaining obligations of the voluntary plan are met. During this period, the employer or insurer must continue to provide any records, reports, or other information needed by the Department to properly perform its voluntary plan oversight duties.

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 3251, 3253, 3254, 3255, a qualified employer is able to provide the benefits to employees electing coverage under the employer's voluntary plan.

The following proposed amendments to CCR, title 22, sections 3258-1, 3267-1, and 3267-2 will:

- Allow for a longer retention period of security deposits to ensure complete resolution of all outstanding plan liabilities.
- Include language within the voluntary plan reporting requirements to reflect the 2004 legislative addition of FTDI benefits.
- Allow voluntary plans to submit reports to the Department annually, instead of quarterly.
- Ensure that voluntary plans properly administer disability and FTDI benefits.

The proposed amendments will address the above four bulleted items.

**Authority and Reference:**

Authority: Sections 305, 306, and 2602, Unemployment Insurance Code.

Reference: Sections 140.5, 2627, 3254, 3255, 3267, 3301, 3302, and 3303, 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 the proposed amendments will result in any new costs to the federal government, State government, local county governments, private individuals, 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, nor will the proposed amendments hamper the ability of California businesses to compete with businesses in other states.

Recent departmental statistics reveal that 86 voluntary plan employers or, 16 percent of all employers that participate in a voluntary plan on behalf of their employees, submitted cash as the form of security. Fifty out of eighty-six voluntary plan employers have less than \$10,000.00 on deposit. Thus, the majority of voluntary plan employers have a nominal amount of cash on deposit. However, as a means to mitigate the cost to the voluntary plan employers, they also maintain the option of having the voluntary plan

absorb the cost for the security on deposit. This option would completely eliminate any out-of-pocket expenses for the employer that may occur as a result of the increased retention period for the security deposit under the proposed regulation.

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 determined that any cost impact on representative persons or businesses would be insignificant and possibly absorbed by the voluntary plan funds.

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

**Anticipated nondiscretionary costs or savings imposed upon local agencies:**  
None

**Small Business Impact:**

The Department has determined that the proposed amendments will have minimal effect on small businesses which may be offset by the use of voluntary plan funds to cover all administrative costs.

**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 April 28, 2008, 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](mailto: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 to:

Name: Estela Gallawa, 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 EDD 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 April 28, 2008.** 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.

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