

June 27, 2008

EMPLOYMENT DEVELOPMENT DEPARTMENT

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

VOLUNTARY PLAN REPORTING

Notice of Regulation Change

Notice is hereby given pursuant to section 11346.8(c) of the Government Code and section 44 of Title 1 of the California Code of Regulations, that the Department has made changes to the text of the proposed amendments since they were made available for 45 days for public comment on March 14, 2008. The enclosed package contains the original proposed amendments, with the changes shown in **bold type and underline** and **bold type and ~~strikeout~~**. This package contains all changes made to the proposed amendments since the regulations were originally noticed.

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 address, e-mail address, 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 5 p.m. on July 14, 2008, which is the close of the 15-day public comment period.** The Department may not include in the rulemaking file comments received after that date.

Please limit your comments to the changes shown in **bold type and underline** and **bold type and ~~strikeout~~** on the enclosed regulations. At this time the Department will not consider changes to any sections of the regulations other than those which have been modified since the original 45-day public notice.

Comments can be submitted to the Department as follows:

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This notice and the modified proposed amendments have been posted on the Department's Internet website "Proposed Regulations" at <http://www.edd.ca.gov>.

Please call Laura at (916) 654-7712 if you have any questions regarding this notice. If Laura is not available, call Penny Ayers at (916) 654-8410.

Enclosures

EMPLOYMENT DEVELOPMENT DEPARTMENT

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

VOLUNTARY PLAN REPORTING

Text of Proposed Regulatory Changes

NOTE: Changes made in the regulation text after the 45-day public comment period are noted as follows: Language added is shown in **bold type and underline**; language deleted is shown in **bold type and strikeout**.

AMEND SECTION 3258-1 TO READ:

§ 3258-1. Self-Insured Plans—Security.

(a) The security required of a self-insurer shall be in the form of a cash deposit, bearer bonds issued or guaranteed by the United States of America, or issued by this State or the bond of an admitted surety insurer. The amount of the security in excess of the minimum required by the code shall be determined by the department upon the basis of the number of employees involved, the size of the pay roll, the class of risks contemplated, the financial standing of the employer and any additional factors which the department may deem proper. The department may at any time re-evaluate the amount of security to ascertain whether the amount is adequate to meet the obligations of the self-insured plan.

(b) The security provided for in this section shall be applied by the department to the payment of any unpaid obligations under the plan. Upon withdrawal of a self-insured plan pursuant to Section 3254(g) or Section 3255(g) of the code, or upon termination of a plan pursuant to Section 3262-1 of these regulations, the department shall retain the security theretofore deposited. Upon the ~~expiration of all benefit claims outstanding after the lapse of six completed calendar quarters following the effective date of the withdrawal or termination of the plan, the department may collect the unpaid amount of any assessment against the employer out of the security on deposit, or may demand payment from the surety insurer.~~ withdrawal or termination of the self-insured plan, the department may retain the security for up to 36 months after termination/withdrawal of the plan, to ensure that all benefit claims have been paid in accordance with the code. During the retention period, the department may collect the unpaid amount of any assessment against the employer out of the security on deposit, or may demand payment from the surety insurer. Any security remaining after payment shall be returned to the employer or his or her legal representative or his or her

assignee. The surety insurer which pays the amount demanded shall thereupon be discharged of its obligation under the bond. The department may make a partial return of the security at an earlier date if it finds that the security is in excess of that required.

NOTE: Authority cited: Sections 305, and 306, and ~~2602~~, Unemployment Insurance Code. Reference: Sections ~~3258, 3254 and 3255~~, **3254, 3255 and 3258**, Unemployment Insurance Code.

AMEND SECTION 3267-1 TO READ:

§ 3267-1. Reports from Voluntary Plans.

(a) Employers whose employees are participating in approved voluntary plans or the insurer under an approved voluntary plan shall, within 15 days after the receipt of a first claim for disability or Family Temporary Disability Insurance benefits, **notify report to** the department on a form prescribed by the department of such claim, except where a claim has been made under an approved self-insured plan and the uninterrupted period of disability or family care leave of such claim does not exceed the waiting period prescribed for benefits from the Disability Fund under subdivision (b) of Section 2627 and subdivision (b) of Section 3303 of the code. The **notice initial report** shall include ~~the claimant's name, social security account number, and mailing address, and the date upon which the claimant's disability or family care leave began~~ **information specified in paragraphs (1) through (10) of this subdivision.** The employer or insurer under an approved voluntary plan shall, within 35 days after final payment for each period of disability or family care leave, give to the department a final report of the claim on a form prescribed by the department. ~~If the uninterrupted period of disability or family care leave does not exceed two weeks, the notice of a first claim and the final report may be combined in a single report.~~ The final report shall include, but not limited to, ~~the following: the information specified in paragraphs (1) through (15) of this subdivision. If the uninterrupted period of disability or family care leave does not exceed two weeks, the notice of a first claim and the final report may be combined in a single report. The information applicable to the initial report and final report is as follows:~~ the claimant's name, social security account number, mailing address, sex and year of birth, the date upon which the claimant's disability began, the diagnosis by the claimant's physician or practitioner, the period compensated for days of benefits, the total amount of basic and additional benefits paid for the disability, the last day for which payment was made, and the reason for ceasing payments.

(1) The claimant's name;

(2) The claimant's social security account number;

(3) The claimant's mailing address;

(4) The claimant's sex;

(5) The claimant's date of birth;

(6) The date upon which the claimant's disability or family care leave began;

(7) The diagnosis by the claimant's physician or practitioner only when the

claim is for the claimant's disability;

(8) When the claim is for family care leave, whether the claim is to:

(A) Provide care for a seriously ill family member; or

(B) Bond with a new child;

(9) The care recipient's name and date of birth when the claim is for family care

leave;

(10) The name and telephone number of the person completing the report.

~~(10) (11) The period compensated for days of disability or family care leave~~

benefits;

~~(11) (12)~~ The total amount of basic and additional benefits paid for the disability or family care leave;

~~(12) (13)~~ The last day for which payment was made;

~~(13) (14)~~ The reason for ceasing payments; and

~~(14) (15)~~ Such other information as the department may require for establishing appropriate benefit amounts for each claim for disability or family care leave benefits. If the uninterrupted period of disability does not exceed two weeks, the notice of a first claim and the final report may be combined in a single report.

(b) Each insurer of one or more voluntary plans shall, not later than the thirty-first day of May of each year, file with the department a statement on a form prescribed by the department showing, separately from other business, premiums, losses, and expenses pertaining to its voluntary plan insurance for the preceding calendar year. The requirement of this subdivision shall be satisfied by furnishing the department, within the required time, a copy of the report filed with the Insurance Commissioner which contains such information, separately from other business, pertaining to such voluntary plan insurance.

(c) Each insurer of one or more voluntary plans shall furnish to the department a notice of each premium dividend paid to a policyholder under an approved voluntary plan in every case in which employees covered by the plan are required to contribute any amount of the cost of the plan. The notices shall be filed with the department either within 30 days after the premium dividend is paid, or on or before the fifteenth day of the month next succeeding the month in which any such dividends are paid, whichever date is later. As used in this subdivision, "premium dividend" means any cash payment or credit to an employer or other policyholder under a voluntary plan which represents a premium refund and includes any experience refund, experience rate credit, retrospective rate adjustment based on experience, or other factor.

(d) Employers with approved voluntary plans in filing their quarterly contribution returns and wage reports shall, on such wage reports, list separately (1) employees covered by the voluntary plan, (2) employees not covered by the voluntary plan whose wages continue to be subject to contributions to the Disability Fund, with separate totals of the amount of wages of each group.

NOTE: Authority cited: Sections 305, and 306, and 2602, Unemployment Insurance Code. Reference: Sections 140.5, 2627, and 3267, 3301, 3302 and 3303, Unemployment Insurance Code.

AMEND SECTION 3267-2 TO READ:

§ 3267-2. Self-Insured Plans—Reports.

(a) On or before the ~~fifteenth~~ **thirtieth forty-fifth** day following the close of each calendar ~~quarter~~ **year** during which a self-insured plan is in effect for all or part of the year, and for the period of time during which the security deposit described in Section 3258-1 of these regulations is retained by the department, the employer or group of employees shall furnish the department with a statement showing information to include, but not limited to, the following:

- (1) The amount of plan funds on hand in the trust account allocated for the payment of disability benefits at the beginning and end of the calendar year;
- (2) The amount of disability and Family Temporary Disability Insurance benefits paid during the quarter **calendar year;**
- (3) ~~The amount of benefits accrued but not paid and a~~ All other proper charges as defined by subdivision (b) of this section during the quarter **calendar year;**
- (4) ~~The amount of benefits claimed during the quarter~~ The name and address of the financial institution where the plan funds are held, and
- (5) Such other information as the department may require with respect to the financial ability of the self-insurer to meet his or her obligations under the plan.

~~The 15-day period for filing the statement may be extended by the department upon a showing of good cause if request is made within the 15-day period. The 30 45-day period for filing the statement may be extended by the department for a period not to exceed an additional 15 30 days if good cause is demonstrated in a written request within the 30 45-day period.~~ Failure to comply with the requirements of this section will be cause for ~~withdrawing approval~~ termination of the voluntary plan.

(b) Funds expended for the payment of salaries, medical examination fees, guarantee bond premiums, office supplies, postage, taxes and insurance, and other reasonable expenses arising from the administration of the self-insured plan are proper charges against the plan funds.

(c) Whenever the Director of Employment Development withdraws approval of a voluntary plan at the employer's request or terminates a plan for good cause, the employer or group of employees shall, at the discretion of the director, continue to furnish the reports described in subdivision (a) of this section for the same period the department retains the security described in Section 3258-1 of these regulations.

NOTE: Authority cited: Sections 305, and 306, ~~and 2602~~, Unemployment Insurance Code. Reference: Sections 140.5 and 3267, Unemployment Insurance Code.
