

August 8, 2008

**TITLE 22. EMPLOYMENT DEVELOPMENT DEPARTMENT**

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

**FILING, DETERMINATION, AND PAYMENT  
OF DISABILITY INSURANCE CLAIMS**

**Notice of Proposed Rulemaking**

The Employment Development Department (Department) proposes to amend California Code of Regulations (CCR), title 22, section 2706-1 to establish the required elements and definitions of claims related to filing a first or continued claim for Disability Insurance (DI) benefits as well as utilize the existing relevant criteria of section 2706-2, relating to 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 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 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 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 CCR specifies the required elements for a completed first or continued claim for FTDI benefits. Although FTDI benefits are a subset of 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.

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.

The proposed amendments will address the above three bulleted items.

**Authority and Reference:**

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

Reference: Sections 2608, 2626, 2701.5 and 2706, 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 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 business 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 is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

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

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

**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.

**Local Mandate Determination:**

The Department has determined that these 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 September 22, 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:                                    Deanna Asuncion, 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 September 22, 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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