

The Department of Labor, Region 6, previously expressed concerns that California Unemployment Insurance Code Section 1256 pertaining to separations for compelling family reasons only applies when claimants leave his or her employment, and may not include claimants who are terminated by the employer when the claimant cannot work for compelling family reasons. To clarify, claimants who are terminated by employers for compelling family reasons are eligible for benefits and will not be disqualified for misconduct pursuant to California Unemployment Insurance Code Section 1256, Title 22, California Code of Regulations, Section 1256-31, and Benefit Determination Guide MC 15, Section A.

Section 1256 of the California Unemployment Insurance Code states claimants who quit without good cause or are terminated for misconduct are not eligible for unemployment compensation. The California Unemployment Insurance Code, Section 1256, states:

“An individual is disqualified for unemployment compensation if the director finds he or she left his or her most recent work voluntarily without good cause or that he or she has been discharged for misconduct connected with his or her most recent work.”

Title 22, California Code of Regulations, Section 1256-31(b), states in determining whether a discharge is for misconduct when a claimant is absent from work, it must first be determined if there was a compelling reason for the absence, and whether the claimant notified the employer in order to protect his or her job, or if not, had compelling reasons for failure to give notice. The Title 22, California Code of Regulations, Section 1256-31(b), states:

“This employee is discharged for misconduct unless there are compelling reasons for the continued absence and the failure to give notice.”

For the sake of easy reference, the following is an excerpt from the Benefit Determination Guide, MC 15, Section A, verbatim that provides the policy and interpretation of state laws pertaining to separations due absences and when they are for good cause. The benefit Determination Guide MC 15, Section A, further clarifies, and states:

“If the absence is unexcused and the reason for the absence is noncompelling, the discharge would be for misconduct.

On the other hand, if there is a compelling reason for the absence, there is no willful disregard of the employer's interests. It is understandable that an employer would want to have more dependable employees; however, if the absence is due to a compelling reason, the absence cannot constitute misconduct, provided that the employee properly notifies the employer of

the intended absence, or has a compelling reason for failure to notify the employer.

"Compelling reasons" as used here means substantially the same as good cause in a voluntary leaving context, i.e., did the claimant have a real, substantial and compelling reason of such nature that a reasonably prudent person, genuinely desirous of retaining employment would have acted in a like manner?"

In summary, claimants who are unemployed as a result of quitting or being discharged to care for an ill or disabled family member are considered eligible for unemployment insurance benefits as long as they meet all other eligibility criteria (i.e., being able and available for work, etc.)

Domestic Violence

In California, claimants are determined eligible for benefits if they have been separated from their employment to protect themselves or their family members from domestic violence, pursuant to California Unemployment Insurance Code, Section 1256.

The Department of Labor, Region 6, previously expressed concerns that Section 1256 of the California Unemployment Insurance Code was too restrictive because it was only extended to the claimant and his or her children and at a minimum the law must include the claimant's spouse, parents, or minor children under the age of 18 to qualify for the Unemployment Compensation Modernization incentive funds.

As a result, on September 30, 2010, Section 1256 of the California Unemployment Insurance Code was amended by Assembly Bill 2364 (AB 2364), Chapter 678, Statutes of 2010, (see attached) to cover the entire family and not just the claimant and his or her children. This amendment went into effect January 1, 2011.

Refer to next few pages for the text of AB 2364.

Assembly Bill No. 2364

CHAPTER 678

An act to amend Sections 1030, 1032, 1256, 1329, 1329.1, 1537, and 3011 of, and to repeal Division 5 (commencing with Section 12100) of, the Unemployment Insurance Code, relating to unemployment insurance, and making an appropriation therefor.

[Approved by Governor September 30, 2010. Filed with
Secretary of State September 30, 2010.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2364, Nava. Unemployment insurance: benefits: good cause to leave work.

Existing law provides for unemployment compensation benefits to eligible individuals who are unemployed through no fault of their own. Existing law authorizes any employer who is entitled to receive specified notice of an unemployment claim, to, within 10 days after mailing of the notice, submit to the Employment Development Department specified facts disclosing whether the claimant for benefits left the employer's employ voluntarily and with good cause under certain circumstances, including, among other things, that the claimant left the employer's employ to protect his or her children or himself or herself from domestic violence abuse.

This bill would revise various provisions governing eligibility for unemployment compensation benefits to specify that a claimant is eligible for benefits where he or she left an employer's employ to protect his or her family from domestic violence abuse. By increasing the number of persons who may be eligible to receive unemployment compensation benefits, thereby providing for increased amounts payable from the Unemployment Insurance Fund, the bill would make an appropriation.

Existing law requires the department, upon the filing of a new claim for benefits, to promptly make a computation regarding the maximum amount of benefits payable, and to promptly notify the claimant of the computation.

This bill would also require the department to promptly notify the claimant of the method of computation.

Existing law requires, whenever any warrant drawn on an account in the Unemployment Fund, the Unemployment Administration Fund, the Contingent Fund, or the Disability Fund by the Controller remains unclaimed after 3 years, that amount reverts to the account and the fund from which the amount was payable.

This bill would reduce that time period for reversion of those amounts to one year.

Existing law requires the department to administer specified provisions related to leisure sharing, to become operative upon the date that any federal

or other funds are received, and specifies that those provisions shall remain in effect for a period of 3 years after that date.

This bill would repeal those laws related to leisure sharing.

This bill would incorporate additional changes in Sections 1030, 1032, and 1256 of the Unemployment Insurance Code, proposed by AB 2055, to be operative only if AB 2055 and this bill are both chaptered and become effective on or before January 1, 2011, and this bill is chaptered last.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 1030 of the Unemployment Insurance Code is amended to read:

1030. (a) Any employer who is entitled under Section 1327 to receive notice of the filing of a new or additional claim may, within 10 days after mailing of the notice, submit to the department any facts within its possession disclosing whether the claimant left the employer's employ voluntarily and without good cause or left under one of the following circumstances:

(1) The claimant was discharged from the employment for misconduct connected with his or her work.

(2) The claimant's discharge or quitting from his or her most recent employer was the result of an irresistible compulsion to use or consume intoxicants including alcoholic beverages.

(3) The claimant was a student employed on a temporary basis and whose employment began within, and ended with his or her leaving to return to school at the close of, his or her vacation period.

(4) The claimant left the employer's employ to accompany his or her spouse or domestic partner to or join her or him at a place from which it is impractical to commute to the employment, to which a transfer of the claimant by the employer is not available.

(5) The claimant left the employer's employ to protect his or her family or himself or herself from domestic violence abuse.

The period during which the employer may submit these facts may be extended by the director for good cause.

(b) Any base period employer that is not entitled under Section 1327 to receive notice of the filing of a new or additional claim and is entitled under Section 1329 to receive notice of computation may, within 15 days after mailing of the notice of computation, submit to the department any facts within its possession disclosing whether the claimant left the employer's employ voluntarily and without good cause or left under one of the following circumstances:

(1) The claimant was discharged from the employment for misconduct connected with his or her work.

(2) The claimant was a student employed on a temporary basis and whose employment began within, and ended with his or her leaving to return to school at the close of, his or her vacation period.

(3) The claimant left the employer's employ to accompany his or her spouse or domestic partner to or join her or him at a place from which it is impractical to commute to the employment, to which a transfer of the claimant by the employer is not available.

(4) The claimant left the employer's employ to protect his or her family or himself or herself from domestic violence abuse.

The period during which the employer may submit these facts may be extended by the director for good cause.

(c) The department shall consider these facts together with any information in its possession. If the employer is entitled to a ruling under subdivision (b) or to a determination under Section 1328, the department shall promptly notify the employer of its ruling as to the cause of the termination of the claimant's employment. The employer may appeal from a ruling or reconsidered ruling to an administrative law judge within 20 days after mailing or personal service of notice of the ruling or reconsidered ruling. The 20-day period may be extended for good cause, which includes, but is not limited to, mistake, inadvertence, surprise, or excusable neglect. The director is an interested party to any appeal. The department may for good cause reconsider any ruling or reconsidered ruling within either five days after the date an appeal to an administrative law judge is filed or, if no appeal is filed, within 20 days after mailing or personal service of notice of the ruling or reconsidered ruling. However, a ruling or reconsidered ruling that relates to a determination that is reconsidered pursuant to subdivision (a) of Section 1332 may also be reconsidered by the department within the time provided for reconsideration of that determination.

(d) For purposes of this section only, if the claimant voluntarily leaves the employer's employ without notification to the employer of the reasons for the leaving, and if the employer submits all of the facts within its possession concerning the leaving within the applicable time period referred to in this section, the leaving is presumed to be without good cause.

(e) An individual whose employment is terminated under the compulsory retirement provisions of a collective bargaining agreement to which the employer is a party shall not be deemed to have voluntarily left his or her employment without good cause.

SEC. 1.5. Section 1030 of the Unemployment Insurance Code is amended to read:

1030. (a) Any employer who is entitled under Section 1327 to receive notice of the filing of a new or additional claim may, within 10 days after mailing of the notice, submit to the department any facts within its possession disclosing whether the claimant left the employer's employ voluntarily and without good cause or left under one of the following circumstances:

(1) The claimant was discharged from the employment for misconduct connected with his or her work.

(2) The claimant's discharge or quitting from his or her most recent employer was the result of an irresistible compulsion to use or consume intoxicants including alcoholic beverages.

(3) The claimant was a student employed on a temporary basis and whose employment began within, and ended with his or her leaving to return to school at the close of, his or her vacation period.

(4) The claimant left the employer's employ to accompany his or her spouse or domestic partner to a place or to join him or her at a place from which it is impractical to commute to the employment, and to which a transfer of the claimant by the employer is not available.

(5) The claimant left the employer's employ to protect his or her family or himself or herself from domestic violence abuse.

The period during which the employer may submit these facts may be extended by the director for good cause.

(b) Any base period employer that is not entitled under Section 1327 to receive notice of the filing of a new or additional claim and is entitled under Section 1329 to receive notice of computation may, within 15 days after mailing of the notice of computation, submit to the department any facts within its possession disclosing whether the claimant left the employer's employ voluntarily and without good cause or left under one of the following circumstances:

(1) The claimant was discharged from the employment for misconduct connected with his or her work.

(2) The claimant was a student employed on a temporary basis and whose employment began within, and ended with his or her leaving to return to school at the close of, his or her vacation period.

(3) The claimant left the employer's employ to accompany his or her spouse or domestic partner to a place or join him or her at a place from which it is impractical to commute to the employment, and to which a transfer of the claimant by the employer is not available.

(4) The claimant left the employer's employ to protect his or her family or himself or herself from domestic violence abuse.

The period during which the employer may submit these facts may be extended by the director for good cause.

(c) The department shall consider these facts together with any information in its possession. If the employer is entitled to a ruling under subdivision (b) or to a determination under Section 1328, the department shall promptly notify the employer of its ruling as to the cause of the termination of the claimant's employment. The employer may appeal from a ruling or reconsidered ruling to an administrative law judge within 20 days after mailing or personal service of notice of the ruling or reconsidered ruling. The 20-day period may be extended for good cause, which includes, but is not limited to, mistake, inadvertence, surprise, or excusable neglect. The director is an interested party to any appeal. The department may for good cause reconsider any ruling or reconsidered ruling within either five days after the date an appeal to an administrative law judge is filed or, if no appeal is filed, within 20 days after mailing or personal service of notice of the ruling or reconsidered ruling. However, a ruling or reconsidered ruling that relates to a determination that is reconsidered pursuant to subdivision

(a) of Section 1332 may also be reconsidered by the department within the time provided for reconsideration of that determination.

(d) For purposes of this section only, if the claimant voluntarily leaves the employer's employ without notification to the employer of the reasons for the leaving, and if the employer submits all of the facts within its possession concerning the leaving within the applicable time period referred to in this section, the leaving is presumed to be without good cause.

(e) An individual whose employment is terminated under the compulsory retirement provisions of a collective bargaining agreement to which the employer is a party shall not be deemed to have voluntarily left his or her employment without good cause.

(f) For purposes of this section "spouse" includes a person to whom marriage is imminent, and "domestic partner" includes a person to whom a domestic partnership, as described in Section 297 of the Family Code, is imminent.

SEC. 2. Section 1032 of the Unemployment Insurance Code is amended to read:

1032. If it is ruled under Section 1030 or 1328 that the claimant left the employer's employ voluntarily and without good cause, or left under one of the following circumstances, benefits paid to the claimant subsequent to the termination of employment that are based upon wages earned from the employer prior to the date of the termination of employment shall not be charged to the account of the employer, except as provided by Section 1026, unless the employer failed to furnish the information specified in Section 1030 within the time limit prescribed in that section or unless that ruling is reversed by a reconsidered ruling:

(a) The claimant was discharged by reason of misconduct connected with his or her work.

(b) The claimant was a student employed on a temporary basis and whose employment began within, and ended with his or her leaving to return to school at the close of, his or her vacation period.

(c) The claimant left the employer's employ to accompany his or her spouse or domestic partner to or join her or him at a place from which it is impractical to commute to the employment, to which a transfer of the claimant by the employer is not available.

(d) The claimant left the employer's employ to protect his or her family or himself or herself from domestic violence abuse.

(e) The claimant left the employer's employ to take a substantially better job.

(f) The claimant's discharge or quitting from his or her most recent employer was the result of an irresistible compulsion to use or consume intoxicants including alcoholic beverages.

For purposes of this section and Section 1030 "spouse" includes a person to whom marriage is imminent.

SEC. 2.5. Section 1032 of the Unemployment Insurance Code is amended to read:

1032. If it is ruled under Section 1030 or 1328 that the claimant left the employer's employ voluntarily and without good cause, or left under one of the following circumstances, benefits paid to the claimant subsequent to the termination of employment that are based upon wages earned from the employer prior to the date of the termination of employment shall not be charged to the account of the employer, except as provided by Section 1026, unless the employer failed to furnish the information specified in Section 1030 within the time limit prescribed in that section or unless that ruling is reversed by a reconsidered ruling:

(a) The claimant was discharged by reason of misconduct connected with his or her work.

(b) The claimant was a student employed on a temporary basis and whose employment began within, and ended with his or her leaving to return to school at the close of, his or her vacation period.

(c) The claimant left the employer's employ to accompany his or her spouse or domestic partner to a place or to join him or her at a place from which it is impractical to commute to the employment, and to which a transfer of the claimant by the employer is not available.

(d) The claimant left the employer's employ to protect his or her family or himself or herself from domestic violence abuse.

(e) The claimant left the employer's employ to take a substantially better job.

(f) The claimant's discharge or quitting from his or her most recent employer was the result of an irresistible compulsion to use or consume intoxicants including alcoholic beverages.

(g) For purposes of this section "spouse" includes a person to whom marriage is imminent, and "domestic partner" includes a person to whom a domestic partnership, as described in Section 297 of the Family Code, is imminent.

SEC. 3. Section 1256 of the Unemployment Insurance Code is amended to read:

1256. An individual is disqualified for unemployment compensation benefits if the director finds that he or she left his or her most recent work voluntarily without good cause or that he or she has been discharged for misconduct connected with his or her most recent work.

An individual is presumed to have been discharged for reasons other than misconduct in connection with his or her work and not to have voluntarily left his or her work without good cause unless his or her employer has given written notice to the contrary to the department as provided in Section 1327, setting forth facts sufficient to overcome the presumption. The presumption provided by this section is rebuttable.

An individual whose employment is terminated under the compulsory retirement provisions of a collective bargaining agreement to which the employer is a party, shall not be deemed to have left his or her work without good cause.

An individual may be deemed to have left his or her most recent work with good cause if he or she leaves employment to accompany his or her

spouse or domestic partner to a place from which it is impractical to commute to the employment. For purposes of this section “spouse” includes a person to whom marriage is imminent.

An individual may be deemed to have left his or her most recent work with good cause if he or she leaves employment to protect his or her family, or himself or herself, from domestic violence abuse.

An individual shall be deemed to have left his or her most recent work with good cause if he or she elects to be laid off in place of an employee with less seniority pursuant to a provision in a collective bargaining agreement that provides that an employee with more seniority may elect to be laid off in place of an employee with less seniority when the employer has decided to lay off employees.

SEC. 3.5. Section 1256 of the Unemployment Insurance Code is amended to read:

1256. An individual is disqualified for unemployment compensation benefits if the director finds that he or she left his or her most recent work voluntarily without good cause or that he or she has been discharged for misconduct connected with his or her most recent work.

An individual is presumed to have been discharged for reasons other than misconduct in connection with his or her work and not to have voluntarily left his or her work without good cause unless his or her employer has given written notice to the contrary to the department as provided in Section 1327, setting forth facts sufficient to overcome the presumption. The presumption provided by this section is rebuttable.

An individual whose employment is terminated under the compulsory retirement provisions of a collective bargaining agreement to which the employer is a party, shall not be deemed to have left his or her work without good cause.

An individual may be deemed to have left his or her most recent work with good cause if he or she leaves employment to accompany his or her spouse or domestic partner to a place or to join him or her at a place from which it is impractical to commute to the employment. For purposes of this section “spouse” includes a person to whom marriage is imminent, and “domestic partner” includes a person to whom a domestic partnership, as described in Section 297 of the Family Code, is imminent.

An individual may be deemed to have left his or her most recent work with good cause if he or she leaves employment to protect his or her family, or himself or herself, from domestic violence abuse.

An individual shall be deemed to have left his or her most recent work with good cause if he or she elects to be laid off in place of an employee with less seniority pursuant to a provision in a collective bargaining agreement that provides that an employee with more seniority may elect to be laid off in place of an employee with less seniority when the employer has decided to lay off employees.

SEC. 4. Section 1329 of the Unemployment Insurance Code is amended to read:

1329. (a) Upon the filing of a new claim for benefits, the department shall promptly make a computation on the claim that shall set forth the maximum amount of benefits potentially payable during the benefit year, and the weekly benefit amount. The department shall promptly notify the claimant of the computation and the method of computation. The department shall promptly notify each of the claimant's base period employers of the computation after the payment of the first weekly benefit.

(b) The department shall promptly notify each of the claimant's base period employers of the computation on the claim that shall set forth the number of weeks that the claimant will be eligible for benefits in the benefit year, the weekly benefit amount, and the maximum amount of benefits potentially payable during the benefit year, based on a determination of eligibility under Article 1.5 (commencing with Section 1266).

SEC. 5. Section 1329.1 is added to the Unemployment Insurance Code, to read:

1329.1. A claim for unemployment compensation benefits may be canceled if all of the following apply:

(a) The individual has not been deemed ineligible for unemployment compensation benefits.

(b) The individual has not been overpaid unemployment compensation benefits.

(c) The individual has not collected unemployment compensation benefits.

SEC. 6. Section 1537 of the Unemployment Insurance Code is amended to read:

1537. Whenever any warrant drawn on an account in the Unemployment Fund or on the Unemployment Administration Fund or the Contingent Fund by the Controller remains unclaimed after one year the amount thereof shall revert to the account and the fund from which the amount was payable.

SEC. 7. Section 3011 of the Unemployment Insurance Code is amended to read:

3011. Whenever any warrant is drawn on an account in the Disability fund by the Controller, and the same remains unclaimed after one year, the amount thereof shall revert to that account in the Disability Fund from which the amount was payable.

SEC. 8. Division 5 (commencing with Section 12100) of the Unemployment Insurance Code is repealed.

SEC. 9. Section 1.5 of this bill incorporates amendments to Section 1030 of the Unemployment Insurance Code proposed by both this bill and AB 2055. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2011, (2) each bill amends Section 1030 of the Unemployment Insurance Code, and (3) this bill is enacted after AB 2055, in which case Section 1 of this bill shall not become operative.

SEC. 10. Section 2.5 of this bill incorporates amendments to Section 1032 of the Unemployment Insurance Code proposed by both this bill and AB 2055. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2011, (2) each bill amends Section

1032 of the Unemployment Insurance Code, and (3) this bill is enacted after AB 2055, in which case Section 2 of this bill shall not become operative.

SEC. 11. Section 3.5 of this bill incorporates amendments to Section 1256 of the Unemployment Insurance Code proposed by both this bill and AB 2055. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2011, (2) each bill amends Section 1256 of the Unemployment Insurance Code, and (3) this bill is enacted after AB 2055, in which case Section 3 of this bill shall not become operative.

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In regards to domestic violence, Section 1256 of the California Unemployment Insurance Code currently reads as of January 1, 2011:

“An individual may be deemed to have left his or her most recent work with good cause if he or she leaves employment to protect *his or her family*, or himself or herself, from domestic violence abuse.”

Title 22, California Code of Regulations, Section 1256-9 defines “family” as:

“the spouse or registered domestic partner of the claimant, any parent, child, brother, sister, grandparent, grandchild, son-in-law, or daughter-in-law, or the claimant or of the claimant’s spouse or registered domestic partner, including step, foster, and adoptive relationships, or any guardian or person with whom the claimant has assumed reciprocal rights, duties, and liabilities or a parent-child, or grandparent-grandchild relationship.

On December 23, 2010, EDD issued Unemployment Insurance Program Notice 10-091 informing staff that Section 1256 of the California Unemployment Insurance Code was amended and the domestic violence provision was broadened to apply to the claimant’s family and that the amendment was effective January 1, 2011. Additionally, Unemployment Insurance Program Notice 10-091 advised staff to refer to Title 22, Section 1256-9 for the definition of “family.”

Refer to next few pages for the text of the Unemployment Insurance Program Notice 10-091.

UNEMPLOYMENT INSURANCE PROGRAM NOTICE (UIPN) 10 – 091

Subject: DOMESTIC CIRCUMSTANCES AND EMPLOYER RESERVE ACCOUNTS
Issue Date: December 23, 2010
Effective Date: January 1, 2011
Expiration Date: December 23, 2011

I. PURPOSE / BACKGROUND

The purpose of this Unemployment Insurance Program Notice (UIPN) is to inform staff that on January 1, 2011, amendments made to Section 1256 of the California Unemployment Insurance Code (CUIC) regarding claimants who leave work under certain domestic circumstances will take effect. With the passage of Assembly Bill (AB) 2055 and AB 2364, the Legislature amended CUIC Sections 1030, 1032, and 1256 of the UI Code. AB 2055 concerns domestic partnerships and AB 2364 concerns domestic violence abuse; both bills will affect employer reserve accounts.

Changes to CUIC Section 1256 extend the “good cause” provisions in cases where claimants leave work to follow their “imminent domestic partner” and in situations where claimants leave work due to domestic violence affecting their family members or themselves. Changes to CUIC Sections 1030 and 1032 allow the Department to relieve employer reserve accounts when claimants are found eligible for leaving work due to either of these two domestic circumstances, as provided by CUIC Section 1256.

Staff are reminded that the procedures for establishing good cause have not changed.

II. GENERAL PROCEDURES AND INFORMATION

IMMINENT DOMESTIC PARTNERSHIP

Section 1256 of the UI Code holds, in part, that “an individual may be deemed to have left his or her most recent work with good cause if he or she leaves employment to accompany his or her spouse or domestic partner to a place or to join him or her at a place from which it is impractical to commute to the employment. For purposes of this section ‘spouse’ includes a person to whom marriage is imminent.”

Effective January 1, 2011, this section of the UI Code was amended to extend the “good cause” provision to claimants who leave work to accompany or join an imminent domestic partner to a location where the commute to work is impractical and a transfer is not available. Section 1256 of the UI Code was amended to include the following statement, ***“For purposes of this section ‘spouse’ includes a person to whom marriage is imminent, and ‘domestic partner’ includes a person to whom a domestic partnership, as described in Section 297 of the Family Code, is imminent.”***

Staff are advised that claimants are considered to have good cause for leaving employment if they are moving to join a domestic partner and where the domestic partnership is imminent. The good cause consideration that applies to imminent marriages is extended to include consideration to imminent domestic partnerships.

Staff will continue to follow established procedures for determining the reason for the quit. The only significant change made as a result of this legislation is that staff shall give consideration to an imminent domestic partnership when establishing good cause for the quit.

Staff should refer to VQ 155 in the Benefit Determination Guide (BDG) for additional discussion on spousal moves as well as domestic partnership situations.

DOMESTIC VIOLENCE

Section 1256 of the UI Code holds, in part, that, “an individual may be deemed to have left his or her most recent work with good cause if he or she leaves employment to protect his or her children, or himself or herself, from domestic violence abuse.”

Effective January 1, 2011, this section of the UI Code was amended to extend the “good cause” provision to claimants who quit their jobs to protect themselves or members of their family from domestic violence abuse. Section 1256 of the UI Code was amended to change the wording as follows, “an individual may be deemed to have left his or her most recent work with good cause if he or she leaves employment to protect his or her **family**, or himself or herself, from domestic violence abuse.”

Staff will continue to follow established procedures for determining the reason for the quit. The only significant change made as a result of this legislation is that good cause for leaving work due to domestic violence is no longer restricted to claimants and their children but rather claimants and their family members.

Staff should refer to Title 22, Section 1256-9(c) in the California Code of Regulations for a description of “family.” Staff should also refer to VQ 155 in the BDG for additional discussion on domestic violence abuse.

EMPLOYER RESERVE ACCOUNTS

Effective January 1, 2011, Sections 1030 and 1032 of the UI Code were amended to allow for special rulings and relief from UI benefit charges to employer reserve accounts. Staff are reminded that claimants who leave work in order to join or accompany their imminent domestic partner or when leaving work to protect themselves or their families from domestic violence abuse would be doing so with good cause. Employer reserve accounts may be relieved if good cause is established for either of these two domestic circumstances. Section 1030 of the UI Code discusses the

employers entitlement to rulings, Section 1032 of the UI Code discusses the relieving of reserve accounts.

The reserve account of an employer is not subject to charges, if the employer furnishes timely and sufficient information, in response to a Notice of UI Claim Filed (DE 1101) or Notice of Wages Used for UI Claim (DE 1545), showing that the claimant quit to accompany a domestic partner or imminent domestic partner to a new location or quit work to protect his or her family or himself or herself from domestic violence abuse.

Staff should refer to MI 40 in the BDG for additional discussion on special rulings.

III. CLAIM FILING PROCEDURES

NONE

IV. INFORMATION CALL PROCEDURES

NONE

V. DETERMINATION/RULING PROCEDURES

Adjudication staff are advised that the only significant changes in procedures is that consideration can now be given to an imminent domestic partnership, domestic violence includes claimants and their family members, and employers can receive a special ruling that will relieve their reserve accounts in these types of domestic circumstances.

To issue the employer a favorable ruling enter an "X" in the R/A field of the DETERMINATION ENTRY screen. This entry allows a favorable ruling to be issued, even when the claimant is found Voluntary Quit (VQ) eligible in a determination/ruling. Do not make an entry in the R/A field for ruling only cases.

Staff should continue to use the existing Reason for Decision (RD) found in VQ 155. Any new or updated RD will be discussed in a future UIPN.

VI. PAYMENT PROCEDURES

NONE

VII. APPEAL PROCEDURES

NONE

VIII. OVERPAYMENT PROCEDURES

NONE

IX. OTHER DIVISION PROCEDURES

NONE

X. REFERENCES

AB 2055, Chapter 590, Statutes of 2010
 AB 2364, Chapter 678, Statutes of 2010

XI. LINKS

http://www.edd.ca.gov/UIBDG/Voluntary_Quit_VQ_155.htm
http://www.edd.ca.gov/UIBDG/Miscellaneous_MI_40.htm

XII. ATTACHMENTS

NONE

/S/ TALBOTT A. SMITH
 Deputy Director
 Unemployment Insurance Branch

Contact Information	Keywords	Author
E-mail: "Contact UIPCD" link on UIII	Imminent Domestic Partnership, Domestic Violence Abuse, Relieving Employer Reserve Accounts	40:122

Illness or Disability of an Immediate Family Member

California Regulations and procedures provide that a separation to take care of an ill or disabled immediate family member is deemed to be for "good cause" according to Title 22, California Code of Regulations, Sections 1256-9 and 1256-10, and Unemployment Insurance Program Notice 11-022.

The Department of Labor, Region 6, previously expressed concern over California's requirement that for a separation to be deemed "good cause" when a claimant leaves work to care for an ill or disabled family member that the claimant's presence must be required and there was "no reasonable alternative." This is because Title 22, California Code of Regulations, Sections 1256-9 and 1256-10, and Benefit Determination Guide VQ 155, Section C, specifically state that a claimant is not eligible if there were alternatives available; in other words, if someone else could care for the ill or disabled family member, and the claimant quit to care for the family member, there would be no good cause for quitting.

As a result, the Department is in the process of finalizing the regulatory changes and changes to the Benefit Determination Guides to remove the reference that states "no reasonable alternative existed" to ensure that claimants will not be ineligible for UI benefits if this situation occurs. The Regulations are expected to be finalized in May 2011. In the interim, the EDD issued the Unemployment Insurance Program Notice 11-022, on April 6, 2011, (see attached) providing staff with policy direction to ensure that claimants will not be ineligible for UI benefits if a separation occurs because the claimants' presence was required to care for the ill or disabled family member, regardless if a reasonable alternative existed for the care of the family member.

Refer to next few pages for the text of the Unemployment Insurance Program Notice 11-022.

UNEMPLOYMENT INSURANCE PROGRAM NOTICE (UIPN) 11 – 022

Subject: CLARIFICATION REGARDING COMPELLING FAMILY CIRCUMSTANCES TO LEAVE WORK

Issue Date: April 06, 2011

Effective Date: April 06, 2011

Expiration Date: April 06, 2012

I. PURPOSE / BACKGROUND

The purpose of this Unemployment Insurance Program Notice (UIPN) is to clarify certain criteria for determining eligibility for Unemployment Insurance (UI) benefits when a claimant leaves work to care for an ill or disabled family member.

II. GENERAL PROCEDURES AND INFORMATION

OVERVIEW

The Assistance for Unemployed Workers and Struggling Families Act, Title II of Division B of *The American Recovery and Reinvestment Act (ARRA)*, Public Law No. 111-5 (Section 2003), enacted February 17, 2009, encourages States not to penalize individuals who separate from employment to care for an ill or disabled family member. In light of these ARRA provisions, the Department reviewed its laws and policies and determined that some clarification was needed regarding the eligibility of claimants who leave work to care for an ill or disabled family member pursuant to the California Unemployment Insurance Code (CUIC) Section 1256. The Department is in the process of making these clarifications and finalizing them in the California Code of Regulations, Title 22, Sections 1256-9 and 1256-10. The Department is also in the process of revising the Benefit Determination Guide (BDG) VQ-155 to incorporate these clarifications.

ADJUDICATING ISSUES INVOLVING LEAVING WORK TO CARE FOR ILL OR DISABLED FAMILY MEMBERS

The clarifications being made to the Regulations and the BDG are to ensure that, in cases where a claimant leaves work to care for an ill or disabled family member, the claimant is not disqualified from receiving UI benefits under CUIC Section 1256, if:

1. He or she can demonstrate that he or she had a compelling reason to leave work, such as a family member required constant medical attention, and
2. He or she took reasonable steps to preserve the employer-employee relationship, such as requesting a leave of absence; and
3. The claimant's presence was required to care for the ill or disabled family member, regardless if a reasonable alternative existed for the care of the family member, (e.g., another family member could have provided the care).

If the claimant can demonstrate a compelling reason to leave work and the claimant took reasonable steps to preserve employment, the claimant can be found eligible for UI

benefits even if there was a reasonable alternative to the claimant's presence to care for the ill or disabled family member. This means that if a claimant left work to care for an ill or disabled family member, good cause can be found for the claimant leaving employment, even if there was someone else who could care for the family member, such as a parent, sibling, or nursing agency.

To further clarify, the fact that the claimant may have had a reasonable alternative to the claimant's presence to care for the ill or disabled family member does not mean that the claimant does not need to continue to take all other reasonable steps to preserve his/her employer-employee relationship, such as by asking for a leave of absence. Therefore, staff still need to continue to conduct sufficient fact finding to ensure that the claimant had a compelling reason to leave employment and that the claimant took reasonable steps to preserve employment. However, if staff find that a compelling reason for leaving work exists and the claimant took all reasonable steps to preserve employment, staff should not disqualify claimants under CUIC Section 1256 even *if reasonable alternative care for the ill/disabled family member was available.*

Following established procedures, staff should continue to address any Able and Available (AA) and Efforts to Seek Work (ESW) issues that may stem from the claimant's leaving of work to care for an ill or disabled family member.

The clarification outlined in this UIPN only applies to situations when a claimant leaves work to care for an ill or disabled family member. It **does not apply** to any other domestic or family circumstance, such as if the claimant left work because no childcare was available. Staff should continue to follow established procedures for adjudicating all other domestic circumstances.

EXAMPLES

The following are examples to demonstrate when a claimant would or would not be disqualified under CUIC Section 1256 for leaving work to take care of an ill or disabled family member. These are only some examples and do not cover all possible scenarios in which a claimant would be found eligible to receive UI benefits or would be disqualified from receiving UI benefits.

Example 1:

The claimant left work to care for her seriously ill sister. She asked the employer about a leave of absence and was granted a six-month bona fide leave. The claimant's mother was taking care of her sister but the claimant also needed to be there to assist with the full-time care of her ill sister.

Although the claimant's mother was available to care for her sister, the claimant would be found eligible under CUIC Section 1256 because she left work for compelling reasons (to care for her seriously ill sister) and she made an attempt to preserve her job by asking for a leave of absence.