

February 4, 2011

**TITLE 22. EMPLOYMENT DEVELOPMENT DEPARTMENT**

**Amendment of Title 22, California Code of Regulations  
Sections 1256-9 and 1256-10**

**COMPELLING FAMILY REASONS**

**Notice of Proposed Rulemaking**

The Employment Development Department (hereinafter “the Department”) proposes to amend the California Code of Regulations (CCR), Title 22, Sections 1256-9 and 1256-10, by providing that individuals who voluntarily leave their employment to care for an ill or disabled family member shall have good cause for doing so, including instances when reasonable, alternative care is available. This action is taken in order for the Department to comply with Federal law in administration of the unemployment compensation (UC) program.

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

**Informative Digest/Policy Statement Overview:**

The UC program was established as part of the Social Security Act of 1935. Based on Federal and State law, the UC program is administered by the States, and financed by UC tax contributions from employers. The UC program is designed to stimulate local economies by providing temporary, partial wage replacement benefits to individuals who are unemployed through no fault of their own and who meet certain eligibility requirements. Eligibility partly involves the reason, or reasons as to why an individual left his or her most recent employer prior to the filing of the UC claim. The Department determines eligibility for UC benefits based upon Federal and State laws.

Article 1, Eligibility and Disqualifications (commencing with Section 1256) of Chapter 5 of Part 1 of the California Unemployment Insurance Code (hereinafter, the Code) states, “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.”

Sections 1256-9 and 1256-10 of the CCR, Title 22, currently provides that an individual who voluntarily leaves his or her employment due to a compelling need to attend to the health, care, or welfare of the individual’s family member, left work with good cause,

provided reasonable steps were taken to preserve his or her employment, and *no reasonable, alternative care is available*.

*The Assistance for Unemployed Workers and Struggling Families Act*, Title II of Division B of *The American Recovery and Reinvestment Act (ARRA)*, Public Law (Pub. L.) No. 111-5, Section 2003(a), was enacted February 17, 2009. A new subsection (f) was added to Section 903 of the Social Security Act (42 U.S.C. 1103) providing modernization incentive payments to a State's Unemployment Trust Fund account when the State revises eligibility requirements governing UC benefits.

Seven billion in ARRA incentive funds will be available to qualifying States. Allocation is based on the State's proportionate share of the Federal Unemployment Tax Act taxes paid annually by employers within each State. It is anticipated that California may receive approximately \$839 million in total incentive funds. The funds may be used to pay for UC benefits or to improve services for UC claimants and employers. States must apply for ARRA incentive funds on or before August 22, 2011.

Under ARRA, Section 2003(f)(1)(C), a State may qualify for one-third of its proportionate share if the State's UC law contains an Alternate Base Period (ABP) option. In order to qualify for this amount, California recently passed legislation establishing an ABP consistent with ARRA requirements. Due to this legislation, it is estimated that California's share of the one-third in incentive payments will approximate \$280 million.

California UC law must adopt two of four options as specified by ARRA in order to meet eligibility requirements for the remaining proportionate amount of incentive payments. California met the first requirement by the current law declaring part-time workers (who are available for, and who seek part-time work) eligible for UC benefits if their claims are based upon part-time work.

The second ARRA option elected for implementation is the provision that an individual is not disqualified from receiving UC if they leave work due to certain compelling family reasons. Currently California allows UC benefits for an individual who leaves work due to compelling family circumstances on the condition that reasonable steps were taken to preserve the employment relationship and the individual had *no other reasonable alternative* short of leaving work. However, in order to comply with ARRA and to qualify for the remaining incentive payments, California amended existing law regarding individuals who may leave work due to domestic violence abuse. California must amend its regulations relating to UC eligibility for individuals who leave work to care for an ill or disabled family member. By implementing these changes, California will earn eligibility for the remaining amount of incentive payments, estimated at \$559 million.

In September 2010, California amended Section 1256 of the Code, relating to an individual's voluntary quit of employment for domestic violence reasons. The amendment concerned an individual and/or his or her family in situations where continued employment would jeopardize the safety of the individual or a member of the individual's family. Previously, California law only covered the individual and/or his or her children.

The proposed regulatory amendments are the final requirements for California to qualify for ARRA incentive payments. Currently, Sections 1256-9 and 1256-10 set forth that an individual may show compelling reasons for quitting work due to the health, care, or welfare of a family member, provided reasonable steps are taken to preserve the employment relationship, and *no reasonable alternative existed* at the time the individual left work to care for an ill or disabled family member. In order to qualify for ARRA, California must eliminate the portion of 1256-9 and 1256-10 regarding “*no reasonable alternative care available*.” Individuals who leave work to care for an ill or disabled family member will be required to show the necessity to leave work due to care of an ill or disabled family member and that reasonable steps were taken to preserve their employment, such as requesting a leave of absence, etc. However, individuals will no longer be disqualified *if reasonable, alternative care was available*. As a result, California must amend Sections 1256-9 and 1256-10.

The amendments are necessary to ensure receipt of available ARRA funds for the continued administration of California's UC program. The changes proposed by the Department are minor in nature. Section 1253 (c) of the Code requires that claimants must be able and available to accept immediate work. Therefore, claimants who are found eligible under Section 1256 of the Code will be disqualified under Section 1253 (c) of the Code if they are not available to accept immediate employment.

In 2009, the Department conducted 2 million UC eligibility determination interview appointments. Approximately 24,000 (or one percent of the total determinations) involved claimants who voluntarily left work due to domestic circumstances. Leaving employment due to domestic reasons may involve a variety of situations; such as domestic violence abuse, to care for an ill or disabled family member, to follow or join a spouse or domestic partner to a new location, or to attend to childcare concerns.

Although the Department cannot estimate the precise number of individuals subject to eligibility as a result of the proposed amendment, only minimal UC costs are anticipated as a result. Furthermore, those potentially eligible claimants may be disqualified pursuant to Section 1253 (c) due to the “able and available” requirement.

Without implementation of the proposed regulatory amendments, the Department and the State of California will lose an estimated \$559 million in ARRA funding. For this reason, the Department must revise Sections 1256-9 and 1256-10 to secure eligibility for ARRA funding. The incentive payments provided through ARRA will greatly assist in California's modernization efforts. In addition, the incentive payments can be used to pay UC benefits, which would mitigate the need to borrow from the federal government given the insolvency of California's Unemployment Trust fund.

**Authority and Reference:**

Authority: Sections 305 and 306, Unemployment Insurance Code.  
Reference: Section 1256, Unemployment Insurance Code.

**Fiscal Impact:**

**Anticipated costs or savings in federal funding to the State:** None. While the Department cannot estimate the increase in the number of eligible individuals pursuant to the proposed regulatory action, a historically low percentage of claims involve separations due to compelling family reasons and an even smaller number leave to care for an ill or disabled family member. Even so, it is likely that individuals found eligible may later be determined ineligible for UC benefits under Section 1253(c) of the Code.

**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 that this regulatory action will result in significant costs to local county governments, or 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 amendments will not have an adverse economic impact that will affect businesses statewide, including the ability of California businesses to compete with businesses in other States because the amendments involve only a negligible increase in UC benefit eligibility.

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 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:** These proposed amendments will have no effect on housing costs.

**Anticipated non-discretionary costs or savings imposed upon local agencies:** None.

**Small Business Impact:**

These proposed amendments will have no effect on small businesses because it does not impose any new mandates on small businesses. It does 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 the proposed regulations 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 Estela Gallawa 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 commentator. Written comments submitted via U.S. mail, e-mail, or fax, must be received by the Department no later than March 21, 2011 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) Estela Gallawa, Staff Counsel  
Employment Development Department  
P. O. Box 826880  
Legal Office, MIC 53  
Sacramento, CA 94280-0001

(Hand delivery) Estela Gallawa, Staff Counsel  
Employment Development Department  
800 Capitol Mall, Room 5020  
Legal Office, MIC 53  
Sacramento, CA 95814

Telephone No.: (916) 654-8410  
Fax No.: (916) 654-9069  
E-Mail Address: [eddlegal@edd.ca.gov](mailto:eddlegal@edd.ca.gov)

**Note:** In the event Estela is unavailable, inquiries should be directed to the following backup contact persons at the same address as noted above:

Name: Debbie Kunitake, Legal Assistant  
Telephone No.: (916) 654-8410

Questions regarding the substance of the proposed regulatory action should be directed at this time 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 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 March 21, 2011.** 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.

\*\*\*\*\*