

EMPLOYMENT DEVELOPMENT DEPARTMENT

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

COMPELLING FAMILY REASONS

Text of Proposed Amendments

NOTE: Language to be deleted is shown in ~~strikeout~~ format; language to be added is shown in underline format.

AMEND SECTION 1256-9 TO READ:

§ 1256-9. Voluntary Leaving -Good Cause -Domestic Circumstances, Generally.

(a) This section relates to whether good cause exists for leaving most recent work due to domestic circumstances. This section deals with general principles. Sections 1256-10, 1256-11, and 1256-12 of these regulations deal with particular factual situations involving domestic circumstances. Sections 1256-1, 1256-2, and 1256-3 of these regulations set forth general principles also applicable under this section.

(b) A claimant voluntarily leaves work with good cause based on domestic circumstances if the claimant's obligation is of a real, substantial, and compelling nature such as would cause a reasonable person genuinely desirous of retaining employment to take similar action, and the claimant's reason for leaving work is due to a legal or moral obligation relating to any of the following:

(1) The health, care, or welfare of the claimant's family.

(2) The exercise of parental control over the claimant who is an unemancipated minor.

(3) The existing or prospective marital status of the claimant.

(c) For purposes of this section and Sections 1256-10 to 1256-12, inclusive, of these regulations, "family," means the spouse or registered domestic partner of the claimant, or any parent, child, brother, sister, grandparent, grandchild, son-in-law, or daughter-in-law, of 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 of a parent-child, or a grandparent-grandchild relationship, whether or not the same live in a common household. Registered Domestic Partners as defined in Family Code Section 297 are considered "family" for the purposes of unemployment insurance.

COMMENTS. This section states general principles establishing "good cause" for voluntarily leaving work due to domestic reasons. It requires: (1) the existence of an obligation due to domestic circumstances; and (2) a "compelling reason" for leaving work.

Several major categories are domestic circumstances, such as care of a family member who is ill or disabled, joining a spouse or registered domestic partner in another locality, leaving work to be married and household duties. These are dealt with more specifically in Sections 1256-10 to 1256-12, inclusive, of these regulations. Such situations, however, usually are one of the following types: (1) the health, care, or welfare of the family; (2) the parent-child relationship; or (3) the marital or registered domestic partner status of the claimant. If a claimant's particular factual circumstance falls within any of these three major categories, causing the claimant to leave work out of a sense of duty to respond to the particular situation, a domestic circumstances issue is raised. The claimant has left work with good cause, if other conditions are met.

However, while the claimant's particular domestic circumstance is the basis for voluntarily leaving his or her job, the claimant must also demonstrate that his or her decision to leave work was reasonable in view of all the facts. Important considerations are that an obligation exists, that it is substantial, that ~~no reasonable alternative exists for meeting that obligation short of leaving work and that the claimant's actions are in good faith and consistent with a genuine desire of retaining employment.~~ the claimant took the necessary steps to preserve his or her employment, and that no reasonable alternative exists for meeting that obligation. The only exception to the requirement that no reasonable alternative exists for meeting the obligation is found in Section 1256-10.

"Family" includes any person with whom the claimant has had substantially the same relationship of parent-child or grandparent-grandchild. For example, the claimant may have been raised by an aunt or uncle rather than his or her actual parents. Yet, the relationship that develops as a result of such circumstances is equivalent to that of a parent-child relationship. As such, the claimant may feel just as obligated to his or her aunt or uncle where the facts raise a domestic circumstances issue. Thus, if the claimant in such a relationship leaves work to care for an aunt or uncle as a family member who is seriously ill, the claimant has left work for "good cause" due to domestic circumstances, if other conditions are met.

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

AMEND SECTION 1256-10 TO READ:

§ 1256-10. Voluntary Leaving -Good Cause -Domestic Circumstances Involving the Health, Care, or Welfare of Family.

(a) Scope. This section relates to whether good cause exists for leaving the most recent work if the claimant leaves work due to the health, care, or welfare of the claimant's family. Sections 1256-1, 1256-2, 1256-3, and 1256-9 of these regulations set forth general principles also applicable under this section.

(b) Good Cause. A claimant leaves the most recent work with good cause if the claimant left work due to circumstances relating to the health, care, or welfare of the claimant's family of such a compelling nature as to require the claimant's presence, and the claimant has taken reasonable steps to preserve the employment relationship.

(c) Compelling circumstances requiring the claimant's leaving of work and presence as described in subdivision (b) include, but are not limited to, the following:

(1) The claimant knows or reasonably believes that a member of the claimant's family is seriously ill or disabled, physically or mentally, ~~and there is no reasonable alternative to the claimant's presence~~, or a family member is in danger of death.

(2) The claimant knows or reasonably believes that a member of the claimant's family is seriously ill or disabled so as to require the claimant to make a change of residence for that person's care or welfare and making it impossible or impractical for the claimant to commute to work (see Section 1256-8 of these regulations for discussion of commuting problems).

(3) A member of the claimant's family has died and the claimant wishes to attend the funeral or is required to make the final arrangements or otherwise attend to the final affairs of the decedent.

(4) A member of the claimant's family is elderly and unable to care for himself or herself ~~and there is no reasonable alternative~~.

(5) The claimant's minor child requires care and supervision and there is no reasonable alternative.

(6) There is a need to preserve family unity.

EXAMPLE 1. A's spouse is an asthmatic. The spouse suddenly becomes ill with a lung infection. The asthma reaches a critical stage. A leaves work to care for the spouse.

A's leaving is with good cause to care for the seriously ill spouse.

COMMENTS. Generally, the claimant's presence must be necessary in order to care for the ill or disabled family member. The claimant may need to personally provide nursing care for the ill or disabled person, or the claimant's presence may be necessary in order to care for minor children belonging to the ill or disabled family member. For example, the claimant's mother may be critically ill ~~and no one else is available to care for the claimant's younger brothers and sisters, or~~ and the claimant's presence is necessary to care for his or her younger brothers and sisters, and/or the normal household duties, such as cooking and cleaning, require the claimant's attention.

If the illness of the family member is such as to make death seem likely to occur, the claimant's presence need not be necessary for purposes of providing care. Rather, good cause exists if the claimant at the time of leaving his or her job knew or reasonably believed that there existed a substantial likelihood that a member of his or her family was in danger of death and that the claimant's presence would provide emotional support and comfort. Under such circumstances, the claimant's presence is necessary and the leaving of work is with good cause.

EXAMPLE 2. B's mother becomes seriously ill with arthritis. A change to a warmer climate is prescribed by the doctor. B is primarily responsible for the mother's care. ~~No other alternative is available to B who is primarily responsible for the mother's care.~~ The change to a warmer climate makes commuting to work impossible or impractical for B. B leaves work.

B's leaving is for good cause to care for B's ill mother who must be relocated.

COMMENTS. In assessing impracticality of commuting under paragraph (2) of subdivision (c), such factors as time, distance, and expense are significant (see Section 1256-8 of these regulations).

An unreasonable delay by the claimant in changing his or her residence after voluntarily leaving work may negate good cause. If an obligation is so compelling as to require the claimant's presence, it is reasonable that the claimant should attend to that obligation as soon as possible. Thus, if the claimant delays unreasonably in changing his or her residence, the inference is that the circumstances were not compelling.

Paragraph (5) of subdivision (c) is concerned with a claimant's eligibility where the claimant has left work because of child care problems.

If the claimant has primary responsibility for the care and management of minor children and no other reasonable alternatives are available for satisfying that obligation, such as securing services of a baby-sitter or day nursery, changing work hours or location, or taking a temporary leave of absence, the claimant's voluntary leaving of work is with good cause, as his or her presence, under such circumstances, is necessary.

A claimant's choice of alternatives may vary depending on the particular facts. A child day-care center may, in many cases, resolve the problem. If exceptional circumstances exist, such as the claimant's child is seriously ill or disabled, the claimant may be acting reasonably in personally caring for the child as described in this Section.

The cost of providing child care services is a factor to consider if a claimant must expend an exceptional amount of money with no increase in wages to compensate for the considerable extra expenses. For example, where the claimant's work schedule is changed so as to require child care at odd hours and additional expense, as well as other accommodations at a substantial cost, such as additional commuting costs, the claimant has voluntarily left work for good cause.

Under paragraph (6) of subdivision (c), a claimant voluntarily leaves work with good cause if there is a need to preserve the family unit. The danger of disintegration of the family unit must be substantial so as to compel the claimant to voluntarily leave his or her work. For example, if the claimant's spouse indicates that the spouse intends to take their children and leave the locality where the claimant is working, thus forcing the claimant to make a choice between the job and the family, the claimant is justified in leaving work to join the spouse and family. The fact that a claimant's spouse's reason for forcing the claimant to make a choice may seem unreasonable is not controlling. Rather, the controlling factor is the actual jeopardy to the continued existence of the claimant's family unit. On the other hand, where the nature of the claimant's job is such that a minor inconvenience to the claimant's family life style is created, but there is no danger that the family unit will be substantially disrupted, the claimant does not have good cause for leaving work. The claimant must act as a reasonable person would in deciding to voluntarily leave his or her work.

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