

## **EMPLOYMENT DEVELOPMENT DEPARTMENT**

### **Amendment of Title 22, California Code of Regulations Section 2708(c)-1**

#### **PAID FAMILY LEAVE ACCEPTABLE DOCUMENTATION**

##### **Initial Statement of Reasons**

##### **BACKGROUND:**

The enactment of Senate Bills (SB) 1661 (Chapter 901, Statutes 2002) and SB 727 (Chapter 797, Statutes 2003) established the Family Temporary Disability Insurance (FTDI) program, also known as the Paid Family Leave (PFL) program, within the existing State Disability Insurance (SDI) program. The FTDI benefit provides partial wage replacement to workers taking family care leave and is administered by the Employment Development Department (Department) in accordance with the provisions of Part 2 (commencing with section 2601) of the California Unemployment Insurance Code (code).

FTDI benefits are provided to workers who are unable to perform their regular or customary work when they are either providing care for a seriously ill child, spouse, parent, registered domestic partner or bonding with a new child and are determined to be eligible for such benefits. The FTDI benefit became payable for claims beginning on and after July 1, 2004. Regulations and procedures for determining eligibility for FTDI benefits became operative on July 1, 2004.

The intent of the proposed regulation is to identify proper documentation to support a PFL claim for bonding between a legal guardian and a new child. The need for the proposed regulation has arisen because the California Unemployment Insurance Appeals Board (CUIAB) has overturned several department determinations denying bonding benefits to legal guardians. The Department had denied these claims because legal guardians are not explicitly provided eligibility for PFL bonding benefits in the code, as is the case with adoptive and foster parents. However, the CUIAB found that the code provided eligibility to legal guardians for bonding benefits because it is commonly understood that a legal guardian is materially the same as a foster parent. Additionally, legal guardians are included in the definition of parent provided in Section 3302 (g) of the code and legal wards are included in the definition of child in Section 3302 (c) of the code.

The decisions of the CUIAB regarding this legal guardian issue are binding on the Department. If the CUIAB decides to issue a precedential decision based on its interpretation of legal guardian eligibility for PFL benefits, the Department would be

unable to overturn that interpretation by adopting a regulation. Therefore, the Department needs to adopt the proposed regulation to clarify acceptable documentation requirements for legal guardianship to ensure consistency with the provisions established for adoption and foster care placement.

The Department anticipates that more claims will be paid as a result of this regulation change. However, it is difficult to estimate how many new legal guardian bonding claims the Department may receive on an annual basis considering the PFL program has been in effect for only 5 years. According to Departmental data, in the 2008/2009 fiscal year, a total of 169,648 bonding claims were paid. Also during that period, a total of 13 claims that were disqualified for non-qualifying relationships may have been legal guardians. This represents less than one percent of the total paid claims over that period.

### **NECESSITY:**

Under code sections 305 and 306, the Department is authorized to adopt, amend, or repeal regulations for the administration of the functions of the Department. Under code sections 2625, 2706, and 2708, SDI benefits are payable from the Disability Fund to individuals who file a claim for benefits in accordance with authorized regulations and are eligible to receive such benefit payments.

The proposed amendments to California Code of Regulations (CCR), title 22, section 2708(c)-1, are necessary to clarify the documentation requirements for determining eligibility for FTDI benefits in response to claims for legal guardians taking family care leave to bond with a new child.

The following proposed amendments to CCR, title 22, section 2708(c)-1, will:

- More clearly articulate what constitutes acceptable documentation for legal guardians,
- Provide the Department with the flexibility to use discretion when determining a legal guardian's eligibility for FTDI bonding benefits, and
- Allow the Department to continue to maintain the integrity of the program.

### **Section 2708(c)-1. Acceptable Documentation for a Child's Birth, Adoption, Foster Care Placement, or Legal Guardianship Placement.**

Subdivision (c) of section 2708 of the code requires that the Department develop a certification form for an employee taking leave to bond with a new child within the first year of the child's birth or placement in connection with adoption or foster care.

The provisions of CCR, title 22, section 2708(c)-1, ensure that benefits are properly paid to eligible individuals claiming FTDI benefits pursuant to Division 1, Part 2, Chapter 7 of the code. Established requirements for documentary

evidence support eligibility determinations and provide uniform standards by which to administer subdivision (c) of section 2708 of the code.

Subdivision (a) of section 2708(c)-1 of the CCR is being amended to add “legal guardianship placement” to the list that delineates the types of individuals who are eligible for bonding benefits. Accordingly, the title for section 2708(c)-1 was also amended to include “legal guardianship placement.”

Additionally, the word “minor” is being deleted from subdivision (a) so that the term appropriately reads as “new child”. This amendment would provide consistency with the definition of “new child” currently established under subdivision (p) of section 3302-1 of the CCR. Also, the phrase “an original or copy” will replace the word “photocopy” in order to clarify that an original or copy of a supporting document is acceptable proof of relationship. The definition of “copy” that is currently established under subdivision (f) of section 2601-1 of the CCR includes a “photocopy.”

Subdivision (b), (c), and (d) of section 2708(c)-1 of the CCR are being amended to delete the word “photocopy” and provide that “an original or copy” of a supporting document would be acceptable for verifying eligibility for bonding benefits. The proposed regulation amendments are needed to clarify that an original or copy of a supporting document is acceptable proof of relationship. This will provide consistency throughout section 2708(c)-1 of the CCR. This amendment will also provide consistency with the definition of “copy” currently established under subdivision (f) of section 2601-1 of the CCR.

Subdivision (e) of section 2708(c)-1 of the CCR delineates the requirements for a supporting document when verifying eligibility for benefits in connection with the legal guardianship of a child. The proposed regulation amendment is needed to further clarify the acceptable documentation requirements and provide consistency with the provisions of subdivisions (c) and (d) of this section. The amendment also provides an example to illustrate the need to provide the Department discretionary authority when determining the validity of a document submitted to support a claim for FTDI benefits and to obtain required information via other means. The example demonstrates the Department’s ability to make sound judgments in determining eligibility for benefits when certain information is not provided on a supporting document.

**PLAIN ENGLISH CONFORMING STATEMENT:**

The Department has drafted the proposed amendments in plain English pursuant to section 11346.2(a)(1) of the Government Code.

**CONSIDERATION OF ALTERNATIVES:**

In accordance with section 11346.2(b)(3)(B) of the Government Code, there were no reasonable alternatives to be considered by the Department.

**SMALL BUSINESS IMPACT:**

The Department has determined that the proposed amendments in and of themselves will have no effect on small businesses because they do not impose any new mandates on small businesses. The proposed amendments do not require that small businesses take any action or refrain from taking any action in regards to conducting business.

**ECONOMIC IMPACT STATEMENT:**

The Department does not anticipate the proposed amendments 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 amendments 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 only intended to establish eligibility requirements for legal guardians without posing any negative impact on individuals or businesses. 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.

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