

December 3, 2010

TITLE 22. EMPLOYMENT DEVELOPMENT DEPARTMENT

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

PAID FAMILY LEAVE ACCEPTABLE DOCUMENTATION

Notice of Proposed Rulemaking

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

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

Informative Digest/Policy Statement Overview:

The enactment of Senate Bills (SB) 1661 (Chapter 901, Statutes 2002) and SB 727 (Chapter 797, Statutes 2003) established the 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 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.

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 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.

The proposed amendments will address the above three bulleted items.

Authority and Reference:

Authority: Sections 305 and 306, Unemployment Insurance Code.

Reference: Sections 2706 and 2708, 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 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.

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 amendments will have no effect on housing costs.

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

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.

Local Mandate Determination:

The Department has determined that the 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 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 commentor. Written comments submitted via U.S. mail, e-mail, or fax, must be received by the Department no later than January 17, 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

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: Kelly Nordli, 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 January 17, 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.
