EMPLOYMENT DEVELOPMENT DEPARTMENT

Amendment of Title 22, California Code of Regulations, Section 3271-1

DISABILITY COMPENSATION VOLUNTARY PLANS ADJUSTMENTS IN PROVISIONS OF VOLUNTARY PLAN DUE DATE

Initial Statement of Reasons

BACKGROUND:

The Employment Development Department (EDD) administers the State Disability Insurance (SDI) program, which includes coverage for both Disability Insurance (DI) and Paid Family Leave (PFL). The SDI program is funded through employee payroll deductions which provide affordable, short-term benefits to eligible workers who have a loss of wages. DI provides benefits to eligible workers who are unable to work due to a non-work-related illness or injury, or a medically disabling condition from pregnancy or childbirth. PFL provides benefits to eligible workers who need to take time off work to care for a seriously ill child, spouse, parent, parent-in-law, grandchild, grandparent, sibling or registered domestic partner, to bond with a new child, or due to a qualifying military exigency.

A Voluntary Plan (VP) is private short-term disability insurance that an employer may offer to its California employees as a legal alternative to the mandatory SDI coverage. The employer's VP also provides DI and PFL coverage to its covered employees. Employers who choose to pursue the VP option instead of mandatory SDI must submit an application, a plan text provisions document, and a security deposit to EDD. An employer may administer a self-insured VP or obtain coverage from an admitted insurer.

The third-party administrator (TPA) is a private company that consults and assists an employer in administering their EDD-approved VP. VP employers must provide the same level of benefits as the SDI program and at least one benefit that is better.

PROBLEM STATEMENT AND NECESSITY:

EDD notifies VP employers when legislation affecting their VPs is enacted. Generally, legislative changes take effect on January 1st unless otherwise stipulated.

VP employers are required to submit a plan that meets the requirements outlined in California Unemployment Insurance Code (CUIC), Section 3254. In accordance with Title 22 of the California Code of Regulations (CCR), Section 3251-1, VP applications must be submitted to EDD in a manner and on such forms as prescribed by EDD. As part of the application, the Department requires submission of the Voluntary Plan Text Provisions form (Plan Text Provisions).Existing law requires VP employers to update their VP annually to include mandates required by new legislation (which typically take effect on January 1st), and to conform to annual state changes to contribution rates or benefit amounts. (See CUIC § 3254(g).) Updates must be submitted to EDD, in the prescribed form, for review and approval.

Before 2022, EDD asked VP employers to submit their updated VP annually by February 15th, a due date that mirrored that of another VP form (Annual Report of Self-Insured Voluntary Plan Transactions). For 2023 and 2024, EDD requested VP employers and/or their designated third-party administrators to submit their updated VP by December 2, 2022 and December 4, 2023, respectively. The EDD Voluntary Plan Administration Unit reviews each updated VP and recommends approval or denial. Any denied VP would be returned to the VP employer and/or their third-party administrator for correction and resubmission. Additionally, the statutes and regulations do not currently identify a deadline for the VP employer or third-party administrators to submit updated Plan Text Provisions, resulting in VPs operating out of compliance past the effective date of new legislation. There are instances where the VP employer has not received approval of their updated VP beyond sixty (60) days from January 1st, when most statutes take effect. Thus, the February 15th due date inadvertently allowed VPs to operate out of compliance until EDD approved their updated VP. As a result of VPs operating out of compliance, employees may be charged the incorrect contribution rate, be underpaid benefits, or not receive other legislatively mandated benefits. The EDD requires these VPs to provide retroactive coverage to the effective date of any state mandate.

The proposed regulatory amendment to Title 22, Section 3271-1 of the CCR would specify that VP employers or their designated TPAs must submit an updated VP to EDD for review and approval not less than 30 days prior to the effective date of any change in contribution rates or operative date of any new provisions required by statute or regulation; provided, however, that if a statute or regulation requiring such a change becomes effective less than 30 days after its enactment or filing with the Secretary of State, as applicable, the submission due date will be 30 days from the effective date of the statute or regulation. It would also specify that the submission due date may be extended for up to 30 days for good cause, and failure to comply may result in termination of the VP. This amendment is necessary to ensure that the VP employers comply with current laws and regulations in the administration of their VPs for covered employees. In 2020, out of the 346 total updated VPs received, 120 were received after the February 15th due date. This proposed regulation will give EDD adequate time to review and approve updated Plan Text Provisions prior to the effective date of changes in contribution rates, benefit amounts, and new provisions as mandated by law and/or regulations.

The proposed regulation is authorized under CUIC Sections 305 and 306, which authorize EDD to adopt, amend, or repeal regulations for the administration of the functions of the department. CUIC Sections 3251 through 3272 outline the requirements for employers to administer their approved VPs.

ANTICIPATED BENEFITS FROM THE PROPOSED REGULATIONS:

The anticipated benefit from this proposed regulation amendment is that VP employers timely comply with new mandates. As a result, the proposed amendment will benefit VP-covered employees by providing transparency on changes to the VP in a timely manner and enabling them to timely receive all benefits to which they are entitled. Additionally, the proposed due date will give EDD adequate time to review and approve the updated VPs before the effective date of the proposed amendments, which ensures that legislative changes are timely implemented.

The proposed regulation will also benefit the State of California by reducing the need for EDD to take enforcement actions against non-compliant VP employers. Reducing this additional administrative work arising out of non-compliant VPs will save staff time and resources and thus state costs.

The proposed regulation amendments to Sections 3271-1 of the CCR are as follows:

Section 3271-1 – **Adjustments in Provisions of Voluntary Plans.**

Subdivisions (a) through (b) - The existing language within these subdivisions will be retained with no change.

Subdivision (c) – The proposed regulation amendment specifies the due date of not less than 30 days prior to the effective date of any change in contribution rates or benefit amounts or operative date of any new provisions required by statute or regulation for VP employers or its designated TPA to submit their updated plan text provisions to EDD. It also specifies that if a statute or regulation requiring such a change becomes effective less than 30 days after its enactment or filing with the Secretary of State, as applicable, the submission due date will be 30 days from the effective date of the statute or regulation. The submission due date may also be extended for up to 30 days for good cause. The email and mailing address for the written request for extension are provided in the amendment and failure to comply with the requirements of this section may be cause for termination of the VP.

PLAIN ENGLISH CONFORMING STATEMENT:

EDD drafted the proposed amendments in plain English pursuant to Government Code (GC) Section 11346.2(a)(1).

TECHNICAL, THEORETICAL, AND EMPIRICAL STUDY, REPORT OR SIMILAR DOCUMENT RELIED UPON:

EDD did not rely upon any technical, theoretical, and/or empirical study, report, or similar document in proposing this regulatory action.

CONSIDERATION OF ALTERNATIVES:

In accordance with GC Section 11346.2(b)(4)(A), there are no reasonable alternatives to be considered by the department. No reasonable alternatives were identified or brought to EDD's attention that would lessen the impact of the proposed amendments on small businesses.

SMALL BUSINESS IMPACT:

The Department has determined that small businesses with VPs will not incur additional costs to comply with the proposed regulatory action (see Economic Impact for specific details).

FISCAL IMPACT:

Anticipated costs or savings in federal funding to the State: None.

Anticipated costs or savings to any State Agency: EDD anticipates costs of $22,840.00 to implement this regulatory action. This one-time implementation cost is to develop the regulatory proposal and updates to EDD website, VP forms, and announcements to the VP community (see addendum for specific details).

Anticipated costs or savings to any local agency or school district: None.

Significant statewide adverse economic impact: EDD does not anticipate that this regulatory action will result in any significant costs to the federal government, to State government, to local county governments, to private individuals, or to businesses and small businesses. EDD had made an initial determination that the proposed regulations 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. The proposed regulation 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 proposed amendment to the regulations provides the due date for VP employers to submit their updated plan text revisions to EDD for review and approval. It does not impose any new substantive requirements.

Anticipated impact on housing costs: The proposed regulations will have no effect on housing costs.

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

LOCAL MANDATE DETERMINATION:

EDD has determined that this proposed amendment will not impose any new mandates on school districts or other local governmental agencies or any new mandates which must be reimbursed by the State pursuant to Part 7 (commencing with section 17500), Division 4 of the GC.

ECONOMIC IMPACT:

EDD has determined that the proposed regulatory action will not have a significant statewide adverse impact on business. Typical and small businesses that have active VPs will not incur any additional costs to comply with the proposed regulations. VP employers and/or designated TPAs are currently already required to review and update their plan text as a result of new laws/regulations.

EDD 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. The proposed amendment to the regulations specifies the due date for VP employers to submit their updated plan text revisions to EDD for review and approval.

ECONOMIC IMPACT ASSESSMENT PREPARED PURSUANT TO GOVERNMENT CODE SECTION 11346.3(b):

The Disability Insurance Branch does not anticipate VP employers will make more frequent changes to the plan text as a result of the proposed amendment. Typically, plan text provisions are updated at the beginning of the year due to legislation or changes in contribution rates and benefit amounts. The proposed amendment establishes a due date by which updated plan text provisions must be submitted. As the regulation does not increase workload for businesses, EDD determined 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 proposed regulation will benefit the health and welfare of California residents, specifically VP-covered employees, by providing timely access to all benefits to which they are entitled under their VPs.

The proposed regulation will not affect worker safety and the State's environment.