Publication Date:
March 7, 2025

TITLE 22. 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

Notice of Proposed Rulemaking

The Employment Development Department (EDD or Department) proposes to amend California Code of Regulations (CCR), Title 22, Section 3271-1.

The proposed regulatory amendment to Section 3271-1 of the CCR would specify that Voluntary Plan (VP) employers or their designated third-party administrators (TPAs) must submit an updated VP's text provisions (Plan Text Provisions), to EDD on a form prescribed by the Department 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 could 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 Plan Text Provisions received, 120 were received after the due date of February 15th. This proposed regulation will provide EDD adequate time to review and approve updated VPs prior to the effective date of changes in contribution rates, benefit amounts, and new provisions as mandated by law and/or regulations.

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

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:

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 instead of mandatory SDI must submit an application, a Plan Text Provisions document, and a security deposit to EDD. An employer can 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.

EDD notifies VP employers when legislation affecting their VPs is enacted. Legislative changes usually take effect on January 1st unless otherwise stipulated.
VPs contain the rights and benefits specific to each VP in accordance with the California Unemployment Insurance Code and Title 22 of the CCR. VP employers must update their Plan Text Provisions annually to include mandates required by new legislation affecting VPs, contribution rates, benefit amounts, or wage ceilings. The updated VPs must be submitted to EDD for review and approval.

Prior to 2022, EDD asked VP employers to submit their updated VPs 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 VPs by December 2, 2022 and December 4, 2023, respectively. The EDD Voluntary Plan Administration Unit reviews each 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 received approval of their updated VP in excess of sixty (60) days from when most statutes take effect on January 1st. 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. 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 a updated Plan Text Provisions to EDD for review and approval 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; 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 could 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 due date of February 15th. This proposed regulation will provide 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.

Anticipated Benefits from the Proposed Regulation:

The anticipated benefit from this proposed regulation amendment is that the 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 of their entitled benefits. Additionally, the proposed due date will give EDD adequate time to review and approve updated VPs prior to 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 terminate non-compliant VPs and take assessment and collection action 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.

DETERMINATION OF INCONSISTENCY/INCOMPATIBILITY WITH EXISTING STATE REGULATIONS:

The Department has determined that this proposed regulatory action is not inconsistent nor incompatible with existing state regulations. After conducting a review for any regulations that would relate to or affect this area, the Department has concluded that these are the only regulations that concern the VP adjustments to plan due date.

AUTHORITY AND REFERENCE:

Sections 305, 306 and 2602, Unemployment Insurance Code.
Sections 984, 2653, 2655, 3254, 3254.1, 3254.5, 3254, 3255 and 3271, Unemployment Insurance Code. Section 3251-1, California Code of Regulations.

FISCAL IMPACT:

Anticipated costs or savings to any local agency or school district: The proposed regulations will not have significant anticipated costs or savings to any local agency or school district.

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 non-discretionary costs or savings imposed upon local agencies: The proposed regulations will not have significant anticipated non-discretionary costs or savings imposed upon local agencies.

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

HOUSING COSTS: The proposed regulations will have no effect on housing costs.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESSES, INCLUDING THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE WITH BUSINESSES IN OTHER STATES:

The Department has made the determination that the proposed regulatory action 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.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS/ASSESSMENT:

The Department has determined that the proposed regulation 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 anticipated benefit of the regulation to the health and welfare of California residents is that the VP employers timely comply with new mandates. As a result, the proposed amendment will benefit VP-covered employees by enabling them to timely receive all of their entitled benefits. Additionally, the proposed due date will allow EDD adequate time to review and approve the updated VPs prior to the effective date of the proposed amendments.

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

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES:

Typical and small businesses that have active VPs will not incur 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.

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.

SMALL BUSINESS IMPACT:

The Department has determined that small businesses with VPs will not incur additional costs to comply with the proposed regulatory action.

VP employers and/or designated TPAs are currently already required to review and update their plan text as a result of new laws/regulations.

<u>LOCAL MANDATE DETERMINATION</u>:

The Department has determined that the proposed regulation 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.

<u>CONSIDERATION OF ALTERNATIVES</u>:

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, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

<u>WRITTEN COMMENT PERIOD</u>:

Any interested person, or their authorized representative, may submit written comments on the proposed action to Susana Naranjo via U.S. mail, email, or fax (see U.S. mail and email address and fax number indicated below). **<u>To assist the Department with tracking and responding to your written comments and providing you a copy of any modification to the proposed regulation text, please include your name, company name (if applicable), your mailing address and email address. Written comments submitted via U.S. mail, email, or fax, must be received by the Department no later than April 21, 2025.</u>** Please submit any written comments before that time. The Department cannot accept written comments after the close of the public comment period.

<u>CONTACT PERSONS</u>:

Inquiries or comments should be directed to:

(Mailing address)	Susana Naranjo, Attorney Employment Development Department P. O. Box 826880 Legal Office, MIC 53 Sacramento, CA 94280-0001
(Hand delivery)	Susana Naranjo, Attorney Employment Development Department 800 Capitol Mall, Room 5040 Legal Office, MIC 53 Sacramento, CA 95814
Telephone No.:	(916) 654-8410
Fax No.:	(916) 654-9069
Email Address:	ProposedRegulations@edd.ca.gov

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

Name:	Linda Saeturn-Rodriguez, Senior Legal Analyst
Telephone No.:	(916) 654-8410

Questions regarding the substance of the proposed regulatory action should be directed at this time to:

Name:	Susana Naranjo, Attorney
Telephone No.:	(916) 654-8410

INTERNET WEBSITE ACCESS:

The Department has posted on its internet website https://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 on April 21, 2025.** 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 https://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; the initial 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 initial statement of reasons were enclosed.) To obtain a copy, contact the persons noted above, or access the Department's Internet website at https://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.

*****