

## **EMPLOYMENT DEVELOPMENT DEPARTMENT**

### **Amendment of Title 22, California Code of Regulations Sections 2706-1, 2706-2, 3302-1, and 3303.1(a)-1**

#### **FAMILY TEMPORARY DISABILITY INSURANCE – QUALIFYING EXIGENCY**

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

##### **INTRODUCTION**

The Employment Development Department (EDD) is requesting regulatory action to amend Title 22, California Code of Regulations (CCR), Sections 2706-1, 2706-2, 3302-1, and 3303.1(a)-1.

##### **BACKGROUND:**

The EDD administers the State Disability Insurance (SDI) program. The SDI program was established in 1946 to provide a partial wage replacement benefit to eligible workers in California who are unable to work due to a non-work related illness or injury.

Senate Bill (SB) 1661 (Chapter 901, Statutes 2002) added the Family Temporary Disability Insurance (FTDI) benefit to the California Unemployment Insurance Code (CUIC). The FTDI benefit, otherwise known as Paid Family Leave (PFL), expanded the scope of the SDI program to provide a partial wage replacement benefit to eligible workers who take time off of work to care for a seriously ill eligible family member or to bond with a new child.

SB 1123 (Chapter 849, Statutes of 2018) added a new eligibility component to the PFL program. SB 1123 allows employees to take time off work to participate in a qualifying exigency related to the covered active duty or call to covered active duty of the employee's child, spouse, domestic partner, or parent in the Armed Forces of the United States (AFUS). SB 1123 addresses the military member on covered active duty or call to covered active duty with a unique need for assistance or participation from an eligible family member in California's workforce. This new law became effective January 1, 2021. Assembly Bill (AB) 2399 (Chapter 348, Statutes of 2020) clarified definitions in the CUIC that are relevant to administering the military exigency leave pursuant to SB 1123.

## **PROBLEM STATED AND NECESSITY:**

On January 1, 2021, SB 1123 expands the scope of the PFL program to include time off work to participate in a qualifying exigency related to the covered active duty or call to covered active duty of the individual's spouse, domestic partner, child, or parent in the AFUS. When an employee for the first time requests leave because of a qualifying exigency arising out of the covered active duty or call to covered active duty, or notification of an impending call or order to covered active duty, of the employee's spouse, domestic partner, child, or parent in the AFUS, SB 1123 provides that the EDD may require the employee to provide documentation, such as a copy of the covered active duty orders or other documentation issued by the military that indicates that the employee's spouse, domestic partner, child, or parent is in the AFUS, is on covered active duty or call to covered active duty, and the dates of the covered active duty service.

This regulatory package would, in part, solve the problem of incorporating and implementing the new eligibility component and administrative requirements of SB 1123 into the EDD's regulatory provisions.

The proposed regulatory amendments to Title 22, Sections 2706-2, 3302-1, and 3303.1(a)-1 of the CCR would, in part:

- Update existing and identify new elements for a properly completed initial or continued claim for PFL benefits due to participation in a qualifying exigency
- Update relevant definitions of terms for consistency pursuant to AB 2399 and SB 1123
- Add definitions of the terms "military assist claim", "military member", and "qualifying event" that are necessary to determine claimant's eligibility for PFL benefits due to participation in a qualifying exigency
- Provide examples of claimant's eligibility for PFL benefits due to participation in a qualifying exigency for clarity purposes

In addition, the proposed regulatory amendments to Title 22, Sections 2706-1 and 2706-2 would remove the social security number verification language from Sections 2706-1 and 2706-2, which is enumerated in an identical manner in both sections. The social security number verification language provides the EDD the discretion to verify social security numbers as those belonging to claimants. The claimant identity and wage verification process is more comprehensively explained in existing Title 22, Section 2706-8, which currently applies to, and will continue to apply to, both Sections 2706-1 and 2706-2.

The proposed regulatory amendments are necessary to comply with, and for the EDD to implement the new obligations pursuant to SB 1123. The amendments would ensure the EDD's proper administration of the SDI program, which includes the proper administration of claimant identity and wage verification, and achieve SB 1123's goal of providing benefits to claimants who participate in a qualifying exigency related to the covered active duty or call to covered active duty of the claimant's family member.

The proposed regulations are authorized under CUIA sections 305 and 306, which authorizes the EDD to adopt, amend, or repeal regulations for the administration of the functions of the EDD. Under CUIA Sections 3300, 3301, 3302, 3303, and 3304, PFL 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.

### **PROPOSED REGULATIONS – PURPOSE, NECESSITY, ANTICIPATED BENEFITS:**

The anticipated benefits from this proposed regulatory action would support the EDD's administration of PFL by codifying the new eligibility element and the related definitions into existing regulations, providing consistency with the statutory authority for determining eligibility for benefits as established by SB 1123, and strengthening the EDD's regulatory authority when making eligibility determinations, including claimant identity and wage verification.

This regulatory action would clarify existing definitions to include reference to military member on covered active duty or call to covered active duty in the AFUS and add definitions of terms related to participation in a qualifying exigency to align with SB 1123. Lastly, the proposed regulatory action would make clear the identity and wage verification process for claimants applying for SDI benefits by removing the discretionary social security number verification language in order to align with the existing claimant identity and wage verification process that is delineated in the regulations.

The proposed regulation amendments to CCR, Title 22, Sections 2706-1, 2706-2, 3302-1 and 3303.1(a)-1 are as follows:

#### **Section 2706-1. Filing a First Claim for Disability Benefits.**

The provisions of Title 22, Section 2706-1 of the CCR delineate the requirements for a properly completed first or re-established claim filed on a form prescribed by the EDD for the purposes of disability insurance benefits. The proposed amendment to Title 22, Section 2706-1 of the CCR would remove the provisions related to verification of social security numbers from this section.

**Subdivisions (a) through (d)** – The existing language in these subdivisions would be retained with no change.

**Subdivision (e)** – The purpose of this subdivision is to delineate the required information for a claimant to provide the EDD in the first or continued claim for applying for disability insurance benefits. The proposed regulation amendment of subdivision (e) would remove the social security number verification language, which provides EDD the discretion to verify social security numbers as those belonging to claimants. This amendment is necessary to align with the proposed regulation amendment to Title 22 CCR section 2706-2, which also removes the identical language from the section. In addition, this amendment is necessary to update and align with existing Title 22 CCR Section 2706-8. Section 2706-8, which currently applies and will continue to apply to Section 2706-1, more comprehensively explains the claimant identity and wage verification process than the social security number verification language of subdivision (e) that is proposed to be removed by this regulatory action.

**Subdivision (f)** – The existing language in the subdivision would be retained with no change.

### **Section 2706-2. Claim for Family Temporary Disability Insurance Benefits – Filing and Contents.**

The provisions of Title 22, Section 2706-2 of the CCR delineate the requirements for a properly completed first or re-established claim filed on a form prescribed by the EDD for the purposes of PFL. The proposed amendment to Title 22, Section 2706-2 of the CCR would provide required elements for an individual to complete a PFL claim when participating in a qualifying exigency related to a military member.

**Subdivision (a)** – The existing language in this subdivision would be retained with no change.

**Subdivision (b)** – The purpose of this subdivision is to delineate the eligible relationships for filing claim for a PFL benefit. The purpose of the proposed regulation amendment of subdivision (b) is to replace the list of eligible relationships for care and bonding claims with a more generic term of family care leave in order to include all types of eligible relationships for PFL benefits. This amendment is necessary to properly address all relationships eligible for PFL benefits including the new requirements enumerated in SB 1123 of family members eligible to participate in a qualifying exigency. This amendment would also provide consistency with the revised

meaning of “family care leave” as defined in CUIC section 3302(e) pursuant to AB 2399.

**Subdivision (c)** – The purpose of this subdivision is to provide the definition of a “properly completed first or re-established claim” for benefits. The purpose of the proposed regulation amendment of subdivision (c) is to include the required items enumerated in subdivision (g) within the definition of “properly completed first or re-established claim”. This amendment is necessary to align with proposed subdivision (g), which establishes the requirements of what is required in the military assist claim form for the new qualifying exigency pursuant to SB 1123.

**Subdivision (d)** – The purpose of this subdivision is to delineate the information a claimant must provide the EDD in a claimant’s first or re-established claim for benefits. One such requirement is a claimant’s statement attesting to readiness, willingness, ability and availability of another family member to provide care for the same period of time in a day. The purpose of the proposed regulation amendment of subdivision (d) is to add the words “or participate in a qualifying exigency as defined in section 3302.2 of the code” to read “statement attesting whether any other family member is ready, willing, able and available to provide care or participate in a qualifying exigency as defined in section 3302.2 of the code for the same period of time in a day”. This amendment is necessary to align with the provisions of CUIC section 3303.1 and 3302.2 as well as clarify that the requirement applies to both a care claim and military assist claim as now required by SB 1123.

In addition, the purpose of proposed regulation amendment of subdivision (d) is to remove the social security number verification language, which provides the EDD the discretion to verify social security numbers as those belonging to claimants. This amendment is necessary to align with the proposed regulation amendment to Title 22 CCR section 2706-1, which also removes the identical language from the section. In addition, this amendment is necessary to update and align with existing Title 22 CCR Section 2706-8. Section 2706-8, which currently applies and will continue to apply to Section 2706-2, more comprehensively explains the claimant identity and wage verification process than the social security number verification language of subdivision (d) that is proposed to be removed by this regulatory action.

**Subdivision (e)** – The existing language in these subdivisions would be retained with no change.

**Subdivision (f)** – The purpose of this subdivision is to delineate what information claimants must provide the EDD regarding the seriously ill person that they will be providing care to in order to be eligible for benefits. The purpose of the proposed regulation amendment of subdivision (f) is to add the words “if applying for benefits to

care for a seriously ill child, spouse, parent, grandparent, grandchild, sibling, or domestic partner” before the existing subdivision (f) text of “The claimant shall also provide the information as specified below about the following persons”. This amendment is necessary to further specify the familial relationships that claimants can provide care to in order to be eligible for benefits.

**Subdivision (g)** – The purpose of adding subdivision (g) is to establish the information required from a claimant to file a first and continued claim for PFL benefits that are now required by SB 1123. This subdivision (g) is necessary to ensure that claimants provide the EDD with the requisite information related to their participation in a qualifying exigency in order for the EDD to issue their initial benefit payment within the statutorily required 14-day time frame.

### **Section 3302-1. Family Temporary Disability Insurance Definitions.**

The provisions of Title 22, Section 3302-1 of the CCR provide definitions for various terms utilized by the EDD for the purpose of administering PFL benefits. The proposed regulation amendment to CCR Section 3302-1 would revise the definition of care recipient, and establish the definitions for military assist claim, military member, and qualifying event. In order to incorporate the proposed definitions into the current regulations in alphabetical order, each subdivision is renumbered accordingly.

**Subdivisions (a) through (c)** – The existing language in these subdivisions would be retained with no change.

**Subdivision (d)** - The purpose of this subdivision is to define “Care provider”. The proposed regulation amendment of subdivision (d) would add the words “to a care recipient as defined in subdivision (e).” This amendment is necessary to update and align the definition of “care provider” as defined in subdivision (e) of the regulation as well as defined in CUIC section 3302(b) pursuant to AB 2399.

**Subdivision (e)** – The purpose of this subdivision is to define “Care recipient”. The proposed regulation amendment of subdivision (e) would add military member as defined in section 3302 of the code, or child or parent of the military member, who is receiving assistance from the claimant, or the employee who is participating in a qualifying exigency. This amendment is necessary to properly identify the eligible care recipient when determining eligibility for PFL benefits and provide consistency with the revised meaning of “care recipient” as defined in CUIC section 3302(a) pursuant to AB 2399.

**Subdivisions (f) through (n)** – The existing language in these subdivisions would be retained with no change.

**Subdivision (o)** – The purpose of this subdivision is to define “Family Temporary Disability Insurance”. The proposed regulation amendment of subdivision (o) would revise the definition to include the participation in a qualifying exigency related to the covered active duty or call to covered active duty of the individual’s spouse, domestic partner, child, or parent in the Armed Forces of the United States to the Family Temporary Disability Insurance program. This amendment is necessary to properly update the definition to address the expansion of the Family Temporary Disability Insurance program enumerated in SB 1123.

**Subdivisions (p) through (v)** – The existing language in these subdivisions would be retained with no change.

**Subdivision (w)** – The purpose of subdivision (w) is to define the term “Military assist claim”. This amendment would identify the military assist claim as a PFL claim type filed by a claimant, who is taking time off work to assist a military member who is on covered active duty or call to covered active duty in the AFUS. This amendment is necessary to properly identify the claim type for determining eligibility for PFL benefits and ensure proper administration of PFL benefits pursuant to the new eligibility obligations of SB 1123.

**Subdivision (x)** - The purpose of subdivision (x) is to define the term “Military member”. This amendment would define “military member” to align with the meaning enumerated in CUI section 3302(i) pursuant to AB 2399. This amendment is necessary define military member for the purpose of determining eligibility for PFL benefits and ensure proper administration of PFL benefits pursuant to the new eligibility obligations of SB 1123.

**Subdivision (y)** – The existing language in subdivision (w) that defines “New child” is now subdivision (y) and would be retained with no change.

**Subdivision (z)** – The existing language in subdivision (x) that defines “Parent” is now subdivision (z) and would be retained with no change.

**Subdivision (aa)** – The existing language in subdivision (y) that defines “Parent-in-law” is now subdivision (aa) and would be retained with no change.

**Subdivision (bb)** – The existing language in subdivision (z) that defines “Placement” is now subdivision (bb) and would be retained with no change.

**Subdivision (cc)** – The purpose of subdivision (cc) is to add and define the term “Qualifying event”. This amendment would establish the definition for “Qualifying event” to mean qualifying exigency as specified in CUI section 3302.2. This amendment is necessary to clarify the meaning of qualifying event, which is terminology used by the EDD for the purpose of determining eligibility for PFL benefits due to a qualifying

exigency and ensure proper administration of PFL benefits pursuant to the new eligibility obligations of SB 1123.

**Subdivision (dd)** – The existing language in subdivision (aa) that defines “Re-established claim” is now subdivision (dd) and would be retained with no change.

**Subdivision (ee)** – The existing language in subdivision (bb) that defines “Regular wages” is now subdivision (ee) and would be retained with no change.

**Subdivision (ff)** – The existing language in subdivision (cc) that defines “Sibling” is now subdivision (ff) and would be retained with no change.

**Subdivision (gg)** – The existing language in subdivision (dd) that defines “Signature” is now subdivision (gg) and would be retained with no change.

**Subdivision (hh)** – The existing language in subdivision (ee) that defines “Statement on letterhead” is now subdivision (hh) and would be retained with no change.

**Subdivision (ii)** – The existing language in subdivision (ff) that defines “Stepparent” is now subdivision (ii) and would be retained with no change.

**Subdivision (jj)** – The existing language in subdivision (gg) that defines “Vacation leave” is now subdivision (jj) and would be retained with no change.

**Subdivision (kk)** – The existing language in subdivision (hh) that defines “Week” is now subdivision (kk) and would be retained with no change.

**Subdivision (ll)** – The existing language in subdivision (ii) that defines “Weekly wage” is now subdivision (ll) and would be retained with no change.

**Subdivision (mm)** – The existing language in subdivision (jj) that defines “Writing” is now subdivision (mm) and would be retained with no change.

**Subdivision (nn)** – The existing language in subdivision (kk) that provides eligibility criteria for PFL benefits with respect to family care leave or withdrawal from the labor market is now subdivision (nn) and would be retained with no change.

### **Section 3303.1(a)-1. Ready, Willing, Able and Available to Provide Family Care Leave for the Same Period of Time.**

The provisions of Title 22, Section 3303.1(a)-1 of the CCR prohibit an individual from claiming PFL benefits to care for an ill family member during the same period of time in a day that another family member is ready, willing, able and available to care for that same ill family member. This proposed amendment to CCR Section 3303.1(a)-1 would



also prohibit an individual from claiming PFL benefits to provide assistance to a military member during the same period of time in a day that another family member is ready, willing, able and available to participate in a qualifying exigency for that same military member. This amendment is necessary to align with the provisions of CUI Section 3303.1 and ensure proper administration of PFL benefits.

**Subdivisions (a)** – The purpose of this subdivision is to provide examples of another family member ready, willing, able and available to provide care or participate in a qualifying exigency for the same care recipient. The proposed regulation amendment of subdivision (a) would add an example of another family member ready, willing, able and available to participate in a qualifying exigency related to a military member as well as update the fact pattern of Example Two. This amendment is necessary to illustrate eligibility for benefits when another family member is willing, able and available to participate in a qualifying exigency for the same military member, which is a new eligibility component that SB 1123 added to the PFL program.

**Subdivisions (b)** – The purpose of this subdivision is to provide examples of another family member ready, willing, able and available to provide care or participate in a qualifying exigency for the same care recipient for the same period of time in a day. The proposed regulation amendment of subdivision (b) would add examples of another family member ready, willing, able and available to participate in a qualifying exigency related to a military member for the same period of time in a day. This amendment is necessary to illustrate eligibility for benefits when another family member is willing, able and available to participate in a qualifying exigency related to the same military member for the same period of time, which is a new eligibility component that SB 1123 added to the PFL program.

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

The 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 Government Code section 11346.2(b)(4)(A), there are no reasonable alternatives to be considered by the EDD. In accordance with Government Code section 11346.2(b)(4)(B), there are no reasonable alternatives that would lessen any adverse impact on small business.

The proposed regulatory action updates definitions pursuant to AB 2399 and includes additional definitions and information that the EDD will require from claimants in order to administer its obligations pursuant to SB 1123.

### **ECONOMIC IMPACT ANALYSIS:**

The EDD 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. In addition, the EDD has made the determination that the proposed regulatory action will not significantly 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. This is because businesses do not pay for the SDI benefits of their employees. The SDI program is funded through a payroll deduction from employees' wages. Businesses will continue to withhold and send SDI contributions of their employee(s) to the EDD. The SDI contributions are deposited into a dedicated fund that is used to pay benefits to eligible employees and finance the program's operating costs.

The EDD does not anticipate this regulatory action will result in significant costs to the federal government, to State government, to local county governments, housing costs, or to private individuals. Unlike Unemployment Insurance, which is based on a federal-state partnership, SDI is operated on state law with no involvement by the federal government. While Unemployment Insurance is financed by payroll taxes paid by employers, SDI is financed by covered employees through payroll deductions.

The EDD is the state agency responsible for administering SDI and, therefore, the new exigency leave component of PFL pursuant to SB 1123. The EDD anticipates \$1.3 million in costs in order to implement its obligations pursuant to SB 1123. The Disability Branch of the EDD estimates \$111,784.91 of that amount to implement its obligations pursuant to SB 1123, which includes costs to develop business requirements for the programming efforts; update forms and publications; update information on the EDD website; update manuals and procedures for staff; and provide training to staff regarding SB 1123 requirements. The remaining anticipated costs to the EDD derive from the necessary technological programming changes to the EDD's databases and systems that will be carried out by the Information Technology Branch of the EDD in order to implement its obligations pursuant to SB 1123, which includes project management, development, testing, implementation, and stabilization. The EDD estimates a cost of \$600,000 per year for the subsequent years. This is the cost of time that will be required by six Disability Insurance Program Representative positions to process the increased workload pursuant to SB 1123. Essentially, the anticipated costs

are not associated specifically to the proposed regulatory action, but rather, the law - SB 1123 - itself.

In addition, there will be no significant impact on local government because some government workers, like school employees who are eligible for SDI benefits because of their collective bargaining contract pursuant to CUC section 710.4, will continue to have the SDI contribution deducted from their paychecks.

The proposed regulatory action benefits the health and welfare of California residents by supporting the new eligibility component pursuant to SB 1123 and would offer members of the military and their families relief from the challenges of deployment by permitting employees to participate in a qualifying exigency. For example, military assist benefits can be used by an eligible California worker to make legal, childcare, and parental care arrangements and to attend military-sponsored events while their family member is deployed or getting ready to deploy. The proposed regulatory action will assist in the administration of PFL by providing required elements when filing a PFL claim to participate in qualifying exigency, defining related terms and providing consistency with existing regulations and the provisions of SB 1123.

#### **EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS:**

As mentioned above, the EDD has made the determination that the proposed regulatory action will not have a significant statewide adverse impact on business. Businesses may have a minor, initial implementation cost to comply with SB 1123, and, in turn, comply with the proposed regulatory action that administers SB 1123. The cost includes the time a business allocates to: review SB 1123 in order to become aware of the expansion of the PFL program; communicate with an employee who has filed for the leave; review and respond to EDD correspondence if needed; and update the employee's personnel forms, if any.

For a business, the cost would likely be \$74.58 to comply. This is calculated as follows: a Human Resource Specialist in California makes \$37.29/hour according to the Occupational Employment Statistics (OES) survey, 2020 1st Quarter. This position would likely be responsible for understanding the expansion of the PFL program. It would likely take approximately two hours to communicate with an employee who has filed for the leave, review and respond to EDD correspondence if needed, and update the employee's personnel forms, if any ( $\$37.29 \times 2 \text{ hours} = \$74.58$ ).

The EDD has determined that the proposed regulatory action will not have a significant impact on small businesses, as the exigency leave pursuant to SB 1123 is paid for by employee contributions to the SDI program. A small business will continue to withhold

and send SDI contributions of its employee(s) to the EDD. For a small business, the cost would likely be \$40.30 to comply. This is calculated as follows: an Office and Administrative Support Worker in California makes approximately \$20.15/hour according to the OES survey, 2020 1st Quarter. This position would likely be responsible for understanding the expansion of the PFL program. It would likely take approximately two hours to communicate with an employee who has filed for the leave, review and respond to EDD correspondence if needed, and update the employee's personnel forms, if any ( $\$20.15 \times 2 \text{ hours} = \$40.30$ ).

#### **LOCAL MANDATE DETERMINATION:**

The EDD has determined that this proposed regulatory action 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 Government Code.