

TITLE 22. 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

Notice of Proposed Rulemaking

The Employment Development Department (Department) proposes to amend California Code of Regulations (CCR), Title 22, Sections 2706-1, 2706-2, 3302-1, and 3303.1(a)-1. The amendments would assist in the Department's administration and implementation of Senate Bill 1123 (Chapter 849, Statutes of 2018), which adds a new eligibility component to the Paid Family Leave program, as well as clarify the claimant identification and wage verification process for claimants applying for State Disability Insurance benefits.

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

Informative Digest/Policy Statement Overview:

The Department 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 a 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.

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 Department 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 solve the problem of implementing SB 1123 by providing amendments to the regulations in order for the Department to administer SB 1123's new eligibility component.

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 Department'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 Department the discretion to verify social security numbers as those belonging to claimants. The claimant identity and wage verification process are 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 Department to implement the new obligations pursuant to SB 1123. The amendments would ensure the Department'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.

Anticipated Benefits from the Proposed Regulation:

The anticipated benefits from this proposed regulatory action would support the Department'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 Department'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. Also, 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 existing claimant identity and wage verification process that is delineated in the regulations.

Furthermore, 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 them 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.

Determination of Inconsistency/Incompatibility with Existing State Regulations:

The Department has determined that this proposed regulatory action is not inconsistent or 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 Family Temporary Disability Insurance – Qualifying exigency.

Authority and Reference:

Sections 305 and 306, Unemployment Insurance Code.
Sections 2701.5, 2706 and 3303.1, Unemployment Insurance Code.
Sections 140.5, 1253, 2656, 3300, 3301 and 3302, Unemployment Insurance Code.
Section 3303.1, Unemployment Insurance Code.
Sections 2602, 2608, 2626, 2701.5, and 2706, Unemployment Insurance Code.

Economic and Fiscal Impact:

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

Anticipated costs or savings to any State Agency: The Department is the state agency responsible for administering SDI and, therefore, the new exigency leave component of PFL pursuant to SB 1123. The Department anticipates \$1.3 million in costs in order to implement its obligations pursuant to SB 1123. The Disability Branch of the Department estimates \$111,784.91 of that amount to implement its obligations pursuant to SB 1123, which includes the cost to develop business requirements for the programming efforts; update forms and publications; update information on the Department 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 Department's databases and systems that will be carried out by the Information Technology Branch of the Department in order to implement its obligations pursuant to SB 1123, which includes project management, development, testing, implementation, and stabilization. The Department anticipates 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.

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

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

Anticipated impact on 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 assessment: The Department 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 Department. 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. Businesses may likely have cost of approximately \$74.58 to comply with SB 1123, and, in turn, comply with the proposed regulatory action that administers SB 1123.

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 them 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.

The cost impact on representative private persons or businesses: As stated above, the Department has determined a cost of approximately \$74.58 for businesses 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 communicating with an employee who has filed for the leave, reviewing and responding to EDD correspondence if needed, and updating the employee's personnel forms, if any.

Small business Impact: The Department 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 Department. A small businesses may have a cost of approximately \$40.30 to comply with SB 1123, and, in turn, comply with the proposed regulatory action that administers SB 1123. The cost includes the time a small business allocates to communicating with an employee who has filed for the leave, reviewing and responding to EDD correspondence if needed, and updating the employee's personnel forms, if any.

Local Mandate Determination:

The Department has determined that the proposed regulatory action 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 by the agency or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Written Comment Period:

Any interested person, or his or her authorized representative, may submit written comments on the proposed action to Taran Kaler via U.S. mail, email, or fax (see U.S. mail and email addresses and fax number indicated below). **Email comments should include true name and mailing address of the commentor. Written comments submitted via U.S. mail, email, or fax, must be received by the Department no later than May 9, 2022.** 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) Taran Kaler, Attorney
Employment Development Department
P. O. Box 826880
Legal Office, MIC 53
Sacramento, CA 94280-0001

(Hand delivery) Taran Kaler, 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 Mr. Kaler is unavailable, inquiries should be directed to the following backup contact person 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: Taran Kaler, Attorney
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 on May 9, 2022.** 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; 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 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.
