

**State of California
Office of Administrative Law**

In re:
Employment Development Department

Regulatory Action:

Title 22, California Code of Regulations

Adopt sections:

Amend sections: 2706-1, 2706-2, 3302-1,
3303.1(a)-1

Repeal sections:

NOTICE OF APPROVAL OF REGULATORY
ACTION

Government Code Section 11349.3

OAL Matter Number: 2024-0814-04

OAL Matter Type: Regular (S)

This rulemaking action by the Employment Development Department adds a new eligibility component to the Paid Family Leave Program to include time off work to participate in a qualifying exigency related to covered active duty or call to covered active duty. This action also clarifies the claimant identification and wage verification process for claimants applying for State Disability Insurance benefits.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 1/1/2025.

Date: September 26, 2024



Lindsey S. McNeill
Senior Attorney

For: Kenneth J. Pogue
Director

Original: Nancy Faris, Director
Copy: Taran Kaler

REGULAR

STATE OF CALIFORNIA--OFFICE OF
NOTICE PUBLIC

by Secretary of State only

STD. 400 (REV. 10/2019)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2024-0305-03	REGULATORY ACTION NUMBER 2024-0814-045	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

OFFICE OF ADMINISTRATIVE LAW	
Electronic Submission	
RECEIVED DATE 3/05/2024	PUBLICATION DATE 4/26/2024
NOTICE	REGULATIONS

OFFICE OF ADMIN. LAW
2024 AUG 14 PM 4:52

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

SEP 26 2024

1:50 pm

cm

AGENCY WITH RULEMAKING AUTHORITY
Employment Development Department

AGENCY FILE NUMBER (If any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE FTDI - Qualifying Exigency		TITLE(S) 22	FIRST SECTION AFFECTED 2706-1	2. REQUESTED PUBLICATION DATE 4/26/2024	
3. NOTICE TYPE <input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON Taran Kaler		TELEPHONE NUMBER 916-654-8410	FAX NUMBER (Optional)
OAL USE ONLY		ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) FTDI - Qualifying Exigency	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2022-0728-03S
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.) 22	ADOPT AMEND 2706-1, 2706-2, 3302-1, and 3303.1(a)-1 REPEAL

3. TYPE OF FILING			
<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Other (Specify) _____		

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input checked="" type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input checked="" type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal	
<input type="checkbox"/> Other (Specify) _____			

7. CONTACT PERSON TARAN KALER	TELEPHONE NUMBER 916-654-8410	FAX NUMBER (Optional) 916-654-9069	E-MAIL ADDRESS (Optional) TARAN.KALER@EDD.CA.GOV
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Nancy Farias</i>	DATE 8/10/2024
TYPE, NAME AND TITLE OF SIGNATORY NANCY FARIAS, DIRECTOR	

For use by Office of Administrative Law (OAL) only	
ENDORSED APPROVED	
SEP 26 2024	
Office of Administrative Law	

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

Final Text of Amendments

NOTE: Language to be repealed is shown in ~~strikeout~~ format; language to be added is shown in underline format.

AMEND SECTION 2706-1 TO READ AS FOLLOWS:

§ 2706-1. Filing a First Claim for Disability Benefits.

(a) Any person or his or her authorized representative may file a first claim for disability benefits who has been continuously unemployed and disabled for a period of eight consecutive days, provided that a claimant has been examined by or under the care of a physician or practitioner during some portion of such period.

(b) "First claim" means the claim initially filed on a form prescribed by the department with respect to a period of disability. By filing the first claim, the claimant establishes his or her disability period and the department computes the weekly benefit amount and maximum benefits potentially payable for the disability period.

(c) Any individual who is unable to work and has a wage loss due to any of the causes specified in Section 2626 of the code for a period of eight days, may file a claim for benefits.

(d) A "properly completed first or continued claim" means a claim containing all the required items as prescribed in subdivisions (e) and (f).

(e) The claimant shall file the first or continued claim and shall provide his or her:

(1) legal name, and any other last name(s) used by the claimant.

(2) social security account number, and any other names and social security account numbers by which the claimant is or was known.

~~(A) The department may require the claimant to verify the social security account number as being the one issued to the claimant by the Social Security Administration if the information available to the department indicates that the social security account number presented by the claimant may belong to another individual, is not a valid social security account number, or was never issued by the Social Security Administration, or that the wages in the base period of the claim may belong to another individual.~~

~~(B) If the department requires a verification of the social security account number which the claimant has provided to the department during the claim application, the claimant must submit verification of his or her social security account number directly~~

~~from the Social Security Administration, or submit to the department a copy of his or her annual statement issued by the Social Security Administration.~~

- (3) date of birth.
- (4) gender.
- (5) mailing address and residence address if different from mailing address.
- (6) driver license number or identification card number, provided that the driver license or identification card was issued by a local, state, or federal agency, or a foreign government.
- (7) date disability began.
- (8) last day worked at his or her last job and date returned to work, if any.
- (9) reason why he or she is no longer working at his or her last job.
- (10) name(s) and address(es) of his or her most recent employer(s).
- (11) name and location of each facility where he or she has been incarcerated or otherwise in custody of law enforcement authorities upon adjudication or conviction at any time during his or her disability.
- (12) facility name, address and phone number if he or she is residing in an alcoholic recovery home or a drug-free residential facility.
- (13) Workers' Compensation claim information as follows, if he or she has filed or intends to file for Workers' Compensation benefits:
 - (A) dates of injury on the job as shown on his/her Workers' Compensation claim.
 - (B) Workers' Compensation carrier name and address.
 - (C) Workers' Compensation claim number.
 - (D) adjuster's name and telephone number.
 - (E) employer's name and telephone number identified on the Workers' Compensation claim.
 - (F) if the claimant is represented by counsel or other legal representative, provide the name, address and telephone number of such representative; and
 - (G) Workers' Compensation Appeals Board case number, if applicable.
- (14) authorization for the claimant's treating physician, practitioner, hospital, or workers' compensation insurance carrier to furnish and disclose to the department all facts concerning the claimant's disability.
- (15) signature certifying to his/her disability.
- (16) authorization for the department to disclose the claimant's information as listed herein from subdivisions (e)(1) to (e)(10) to the claimant's treating physician, practitioner, hospital, vocational rehabilitation counselor, or workers' compensation insurance carrier.
- (17) such other information within the scope of eligibility requirements as the department may require.
 - (f) The claimant's physician or practitioner shall provide the following information on the department's designated form:
 - (1) claimant's name.
 - (2) treating doctor's or practitioner's name, address and telephone number.
 - (3) treating doctor's or practitioner's license number.
 - (4) date(s) medical care was provided to the claimant.
 - (5) date the claimant has been incapable of performing his or her regular or customary work.

(6) date claimant was released or is anticipated to be released to return to claimant's regular or customary work.

(7) diagnosis and diagnostic code(s) or procedure code prescribed in the International Classification of Diseases, or where no diagnosis has yet been obtained, a detailed statement of symptoms.

(8) determination regarding whether disclosure of the claimant's disability would be medically or psychologically detrimental to the claimant.

(9) determination regarding whether the completion of the doctor's certification is for the sole purpose of referral/recommendation to an alcoholic recovery home or drug-free residential facility.

(10) the treating doctor's or practitioner's certification and signature.

(11) such other information within the scope of eligibility requirements as the department may require.

NOTE: Authority cited: Sections 305, ~~and 306 and 2602~~, Unemployment Insurance Code. Reference: Sections 2602, 2608, 2626, 2701.5 and 2706, Unemployment Insurance Code.

AMEND SECTION 2706-2 TO READ AS FOLLOWS:

§2706-2. Claim for Family Temporary Disability Insurance Benefits - Filing and Contents.

(a) "First claim" means the claim initially filed on a form prescribed by the department with respect to a 12-month period of family care leave. By filing the first claim, the claimant establishes his or her 12-month period and the department computes the weekly benefit amount and maximum benefits potentially payable for the 12-month period.

(b) Any individual who has taken time off from his or her work ~~to~~ for purposes of family care leave ~~for a seriously ill child, spouse, parent, grandparent, grandchild, sibling, registered domestic partner, or to bond with a new child, as they are defined in section 3302 of the code, may file a claim for benefits.~~

(c) A "properly completed first or re-established claim" means a claim containing all the required items as prescribed in subdivisions (d), (e), ~~and (f), and (g)~~ of this section.

(d) The claimant shall file the first or re-established claim and shall provide his or her:

(1) legal name, and any other last name(s) used by the claimant.

(2) social security account number, and any other names and social security account numbers by which the claimant is or was known.

~~(A) The department may require the claimant to verify the social security account number as being the one issued to the claimant by the Social Security Administration if the information available to the department indicates that the social security account number presented by the claimant may belong to another individual, is not a valid social security account number, or was never issued by the Social Security Administration, or that the wages in the base period of the claim may belong to another individual.~~

~~(B) If the department requires verification of the social security account number which the claimant has provided to the department during the claim application, the claimant must submit verification of his or her social security account number directly from the Social Security Administration, or submit to the department a copy of his or her annual statement issued by the Social Security Administration.~~

(3) date of birth.

(4) gender.

(5) mailing address.

(6) driver license number or identification card number, provided that the driver license or identification card was issued by a local, state, or federal agency, or a foreign government.

(7) last day worked at his or her last job.

(8) reason why he or she is no longer working at his or her last job.

(9) occupation.

(10) name(s) and address(es) of his or her most recent employer(s).

(11) date on which he or she requests benefits to begin.

(12) ~~care or bonding~~ recipient's legal name.

(13) relationship to the care recipient. The claimant may be required to provide evidence of the relationship to the family member to support the claim such as a birth or marriage certificate or proof of a registered domestic partnership.

(14) statement attesting whether any other family member is ready, willing, and 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.

(15) signature.

(16) where the claimant is applying for benefits to care for a seriously ill child, spouse, parent, grandparent, grandchild, sibling, or domestic partner, authorization for the department to disclose the claimant's information as listed herein from (d)(1) to (d)(15) to the care recipient's treating physician or practitioner and to the care recipient.

(17) such other information within the scope of eligibility requirements as the department may require.

(e) The claimant shall complete the bonding certification if applying for benefits to bond with a new child and shall set forth the new child's:

(1) social security account number, if issued. Absence of child's social security account number shall not disqualify the claimant.

(2) relationship to the claimant.

(3) date of foster care, guardianship, or adoption placement of the new child with the claimant or family member.

(4) legal name.

(5) date of birth.

(6) gender.

(7) residence address.

(8) documentary evidence, pursuant to section 2708(c)-1 of these regulations.

(9) claimant's signature.

(10) such other information as the department may require.

(f) The claimant shall also provide the information as specified below about the following persons: if applying for benefits to care for a seriously ill child, spouse, parent, grandparent, grandchild, sibling, or domestic partner:

(1) for a care recipient, the claimant shall provide the care recipient's:

(A) legal name.

(B) social security account number, if issued. Absence of care recipient's social security account number shall not disqualify the claimant.

(C) date of birth.

(D) gender.

(E) residence address.

(F) signature or authorized representative's signature authorizing the treating physician or practitioner to release the care recipient's protected health information to the department and the claimant.

(2) The claimant shall gather from the treating physician or practitioner on the department's designated form:

(A) the name of the care recipient.

(B) the date of birth of the care recipient.

(C) a diagnosis and diagnostic code(s) prescribed in the International Classification of Diseases, or where no diagnosis has yet been obtained, a detailed statement of symptoms.

(D) the date, if known, on which the serious health condition of the care recipient commenced.

(E) the probable duration of the care recipient's serious health condition.

(F) an estimate of the duration of time that the care provider is needed to care for the care recipient.

(G) the number of hours per day that the care provider is needed to care for the care recipient.

(H) a statement that the care recipient's serious health condition warrants the participation of the care provider to provide care for the care recipient.

(I) a statement regarding whether disclosure of the doctor's certification would be medically or psychologically detrimental to the care recipient.

(J) the treating doctor's or practitioner's name and address.

(K) the treating doctor's or practitioner's license number.

(L) the treating doctor's or practitioner's signature.

(M) such other information within the scope of eligibility requirements as the department may require.

(g) If applying for benefits to participate in a qualifying exigency as provided in section 3302.2 of the code, the claimant shall complete the military assist certification, which includes the following information:

(1) social security account number of the claimant.

(2) legal name (first name, middle initial, last name) used by the claimant.

(3) name of the military member on covered active duty or impending call to covered active duty status.

(4) date of birth and gender of the military member.

(5) mailing address of the military member.

(6) the last four digits of the military member's social security account number.

(7) the beginning and ending dates of the military member's covered active duty.

(8) the date on which the military member was notified of the impending call or order to covered active duty.

(9) a copy of the military member's covered active duty order, a copy of the letter notifying the military member of the impending call or order to covered active duty, or documentation of the military leave signed by the approving authority for the military member's rest and recuperation.

(10) the qualifying event for which the claimant is requesting Paid Family Leave benefits.

(11) written documentation supporting the request for leave. If leave is requested to meet with a third party, the claimant must provide written documentation of the meeting that includes the name, address, and contact information of the individual or entity with whom the claimant is meeting.

(12) claimant's signature, date of signature, and attestation to the following statement: "By my signature on this military assist certification, I understand that willfully making a false statement or knowingly failing to disclose a material fact in order to obtain payment of benefits is a violation of California law punishable by imprisonment or fine or both. I declare under penalty of perjury that the foregoing statement, including

any accompanying statements or documents, is to the best of my knowledge and belief true, correct, and complete. I agree that photocopies of this authorization shall be as valid as the original, and I understand that authorizations contained in this claim statement are granted for a period of fifteen years from the date of my signature or the effective date of the claim, whichever is later."

(13) such other information within the scope of eligibility requirements as the department may require.

NOTE: Authority cited: Sections 305 and 306, Unemployment Insurance Code.
Reference: Sections 2701.5, 2706 and 3303.1, Unemployment Insurance Code.

AMEND SECTION 3302-1 TO READ AS FOLLOWS:

§ 3302-1. Family Temporary Disability Insurance Definitions.

Unless the context otherwise requires, the terms used in this part relative to Family Temporary Disability Insurance benefits shall have the following meaning:

(a) "Affidavit" means a written statement under oath made in compliance with Code of Civil Procedure sections 2012 through 2015.6 including a declaration under penalty of perjury made in compliance with Code of Civil Procedure section 2015.5.

(b) "Authorized representative" of a claimant or care recipient means one of the following individuals who:

(1) is the parent.

(2) is authorized by a power of attorney or other authorization satisfactory to the department to represent or act on behalf of a claimant or care recipient who is incapable of fulfilling the requirements of filing claims for Family Temporary Disability Insurance benefits.

(3) files with the department upon a prescribed form a duly sworn affidavit that the claimant, according to information received by the individual from the claimant's physician or practitioner, is incapable of making a claim for family temporary disability benefits, and that the authorized representative assumes the responsibility of acting on behalf of such claimant in accordance with the code and this part.

(4) files with the department upon a prescribed form a duly sworn affidavit that the care recipient, according to information received by the individual from the care recipient's physician or practitioner, is incapable of completing his or her portion of the claim for family temporary disability benefits, and that the authorized representative assumes the responsibility of acting on behalf of such care recipient in accordance with the code and this part.

(c) "Bond" or "bonding" with a new child means to develop a psychological and emotional attachment between a child and his or her primary care giver(s). This involves being in one another's physical presence.

(d) "Care provider" means an individual as defined in section 3302(b) of the code. ~~the family member who is providing the required care.~~ This term is used interchangeably with "claimant."

(e) "Care recipient" means an individual as defined in section 3302(a) of the code. ~~either of the following:~~

~~(1) the family member as defined in section 3302 of the code who is receiving care for a serious health condition.~~

~~(2) the minor child with whom the claimant is bonding.~~

(f) "Certificate" means the signed statement of a physician, practitioner, or a registrar of a county hospital of this State, on a form prescribed by the department, containing elements described in Section 2706-2(f), except that a certificate signed by a physician licensed by and practicing in a state other than California or in a foreign country, or in a territory or possession of a country, except a duly authorized medical officer of any medical facility of the United States Government, shall be accompanied by a further certification that such physician holds a valid license in the state or foreign country, or in the territory or possession of the country, in which he or she is practicing.

(g) "Child" means a biological, adopted, or foster child, a stepchild, a legal ward, a

son or daughter of a domestic partner, or a child of a person standing in loco parentis. This definition of a child is applicable regardless of age or dependency status.

(h) "Claimant" means an individual who has filed a claim for Family Temporary Disability Insurance benefits. This term is used interchangeably with "care provider."

(i) "Continued claim" means the claim, for the same care recipient within the same 12-month period, subsequent to the first or re-established claim where there is no interruption of the period for which benefits are claimed. A continued claim does not require a waiting period.

(j) "Copy" means any written or printed material, duplicated by electronic means or photographic reproduction, which may be submitted or received by the department, claimants or other entities for purposes of collecting or transmitting information relating to a first or continued claim.

(k) "Disability benefits" wherever used in the code means benefits payable under Part 2 of Division 1 of the code, including Family Temporary Disability Insurance benefits.

(l) "Domestic partner" means a registered domestic partner as defined in California Family Code section 297.

(m) "Electronic means" includes facsimile, electronic mail, Internet, or any other acceptable electronic method as determined by the department.

(n) "Family member" means those individuals described in section 3302 of the code.

(o) "Family Temporary Disability Insurance" means the program established to provide up to eight weeks of wage replacement benefits to workers who take time off work to care for a seriously ill child, spouse, parent, grandparent, grandchild, sibling, registered domestic partner, or to bond with a new minor child within the first year of the child's birth or placement in connection with foster care or adoption, or 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 Armed Forces of the United States.

(p) "First claim" means the claim initially filed on a form prescribed by the department, containing elements described in Section 2706-2, with respect to a 12-month period of family care leave. The claimant establishes his or her 12-month period and the Department computes the weekly benefit amount and maximum benefits potentially payable.

(q) "Form" means a hardcopy or electronic form used by the department to collect or to solicit information from and communicate information to claimants, care recipients, authorized representatives, medical providers, employers, insurance companies, and third party administrators.

(r) "Foster care" means 24-hour care for children in substitution for, and away from, their parents or guardian. Such placement is made by or with the agreement of the State as a result of a voluntary agreement between the parent or guardian that the child be removed from the home, or pursuant to a judicial determination of the necessity for foster care, and involves agreement between the State and foster family that the foster family will take care of the child. Although foster care may be with relatives of the child, State action is involved in the removal of the child from parental custody.

(s) "Grandchild" means a child of the employee's child.

(t) "Grandparent" means a parent of the employee's parent.

(u) "In loco parentis" exists when a person undertakes care and control of a child in the absence of such supervision by the natural parents and in the absence of formal legal approval. This includes persons with day-to-day responsibilities to care for and financially support a child. It also includes the person who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary.

(v) "Mail" means deposit with the United States Postal Service or any other shipping/mailling service, addressed to the recipient's mailing address last known to the sender, with express, priority, first class or equivalent postage.

(w) "Military assist claim" means a Family Temporary Disability Insurance claim filed by a claimant to participate in a qualifying exigency related to the covered active duty or call to covered active duty of the claimant's spouse, domestic partner, child, or parent in the Armed Forces of the United States as specified in section 3301(a)(1) of the code.

(x) "Military member" means an individual as defined in section 3302(i) of the code.

~~(w)~~(y) "New child" means a minor child for whom leave is taken for purposes of bonding within 12-months of the child's birth or placement with the claimant or the claimant's spouse or domestic partner.

~~(x)~~(z) "Parent" means a biological, foster, or adoptive parent, a parent-in-law, a stepparent, a legal guardian, or other person who stood in loco parentis to the employee when the employee was a child. A biological or legal relationship is not necessary for a person to have stood in loco parentis to the employee as a child.

~~(y)~~(aa) "Parent-in-law" means the parent of a spouse or a domestic partner.

~~(z)~~(bb) "Placement" means a change in physical custody of a child from a public agency or adoption agency into the custody of foster care or adoptive parents.

(cc) "Qualifying event" means the same as qualifying exigency as specified in section 3302.2 of the code.

~~(aa)~~(dd) "Re-established claim" means a claim filed subsequent to a first claim within the same 12-month period. A "re-established claim" occurs when there is one of the following:

(1) an interruption of the period for which benefits are claimed for the same care recipient; or

(2) benefits are claimed for a new care recipient.

~~(bb)~~(ee) "Regular wages" as used in section 2656 of the code means compensation paid entirely by an employer directly to his or her employee as a full or partial payment of his or her remuneration during a period of family care leave.

~~(ee)~~(ff) "Sibling" means a person related to another person by blood, adoption, or affinity through a common legal or biological parent.

~~(dd)~~(gg) "Signature" includes a mark made in compliance with Section 14 of the Civil Code, or a digital signature affixed by any means used by the sender, accepted by the recipient, and acceptable under Section 16.5 of the Government Code and Chapter 10 of Division 7 of Title 2 of the California Code of Regulations.

~~(ee)~~(hh) "Statement on letterhead" means any document that is provided by electronic means or in printed format that officially identifies the issuing entity, which may be a county, state, or equivalent government or private entity for purposes of providing the information described in Section 2708(c)-1 of these regulations.

~~(ff)~~(ii) "Stepparent" means a person who is a party to the marriage with respect to a child of the other party to the marriage.

~~(gg)~~(jj) "Vacation leave" means vested vacation time which, upon termination of employment, must be paid to the employee as wages pursuant to Labor Code section 227.3 or the applicable collective bargaining agreement. An employer policy under which paid time off is vested under Labor Code section 227.3 is considered vacation leave pursuant to section 3303.1(c) of the code regardless of the name given the leave by the employer.

~~(hh)~~(kk) "Week" means the seven consecutive day period beginning with the first day with respect to which a valid claim is filed for benefits and thereafter the seven consecutive day period commencing with the first day immediately following such week or subsequent continued weeks of family care leave.

(1) The term "week" for purposes of determining eligibility for Family Temporary Disability Insurance benefits when an individual's employer requires the use of earned, but unused vacation pay, shall consist of seven calendar days. If the pay period is not based on calendar days, a week shall consist of 168 consecutive hours. With respect to an individual whose wages are not paid on a weekly basis, a week shall consist of the seven-consecutive-day periods for an individual, as appropriate to the circumstances.

~~(ii)~~(ll) "Weekly wage" as that term is used in section 2656 of the code means any remuneration earned, exclusive of wages paid for overtime work, during the last full week of work immediately preceding the claimant's first day of family care leave, except that for good cause the department may determine the "weekly wage" in any other equitable manner.

~~(jj)~~(mm) "Writing" means the original or a copy of any form of recorded message, provided by electronic means or printed format, capable of comprehension by ordinary visual means.

~~(kk)~~(nn) For purposes of section 140.5 of the code no individual shall be deemed eligible for Family Temporary Disability Insurance benefits for any week of unemployment unless such unemployment is due to the need for family care leave.

(1) If an individual has been neither employed nor registered for work in any manner designated by the director for more than three months immediately preceding the beginning of a period of family care leave, he or she is not eligible for benefits unless the department finds that the unemployment for which he or she claims benefits is not due to his or her previous withdrawal from the labor market.

NOTE: Authority cited: Sections 305 and 306, Unemployment Insurance Code.
Reference: Sections 140.5, 1253, 2656, 3300, 3301 and 3302, Unemployment Insurance Code.

AMEND SECTION 3303.1(a)-1 TO READ AS FOLLOWS:

§ 3303.1(a)-1. Ready, Willing, and Able and Available to Provide Care or Participate in a Qualifying Exigency for the Same Period of Time.

An individual is not eligible for Family Temporary Disability Insurance benefits on any day that another family member is ready, willing, and able and available to provide care or participate in a qualifying exigency as defined in section 3302.2 of the code during the same period of time in a day that the individual is providing care- or participating in the qualifying exigency.

(a) "Ready, Willing, and Able and Available."

(1) Another family member may be ready, willing, and able and available regardless of his or her attachment to the labor market.

EXAMPLE 1. Claimant A is employed full time. His brother is unemployed and looking for work. Claimant A's mother requires care for her serious health condition. The brother is not willing to provide the required care.

Claimant A may receive Family Temporary Disability Insurance benefits, if otherwise eligible.

(2) Another family member may not be ready, willing, and able and available because of a physical or mental disability that substantially limits his or her ability to provide the required care.

EXAMPLE 2. Claimant B is employed full time. Her brother is ~~an unemployed substance abuser~~ due to a physical disability. Their seriously ill parent does not want the brother to provide the required care due to his ~~unreliability~~ physical limitation.

Claimant B may receive Family Temporary Disability Insurance benefits, if otherwise eligible.

(3) Another family member may not be ready, willing, and able and available because of other obligations.

EXAMPLE 3. A military member needs to arrange alternative childcare for his daughter. The military member has a mother and a father who are employed full time. The military member's father agrees to arrange alternative childcare for the military member since the mother is taking care of her elderly mother and therefore, is not available.

The military member's father may receive Family Temporary Disability Insurance benefits, if otherwise eligible.

(b) "Same period of time in a day."

(1) No more than one care provider may claim benefits for providing care in any eight-hour period and no more than three in a 24-hour period. Determining whether another family member may be ready, willing, and able and available during the same period of time in a day depends on the care requirements of the care recipient as determined by the physician or practitioner treating the care recipient.

EXAMPLE 1. The doctor certifies that the care recipient requires care eight consecutive hours per day. The care recipient has three children who establish claims to receive Family Temporary Disability Insurance benefits to provide care for her.

Only one of the three claimants may receive benefits, if otherwise eligible, because only one is needed to provide the care recipient with eight consecutive hours of care per day.

EXAMPLE 2. The doctor certifies that the care recipient requires 24-hour care. The care recipient has three children who establish claims to receive Family Temporary Disability Insurance benefits to provide care for her.

All three of the claimants may receive Family Temporary Disability Insurance benefits, if otherwise eligible. A maximum of three claimants may receive benefits for providing care during eight-hour shifts within a 24-hour period, if otherwise eligible. Each of the children will provide eight hours of care to provide the required 24-hour care for their mother.

EXAMPLE 3. The doctor certifies that the care recipient requires 24-hour care. The care recipient has five children, Claimant A, Claimant B, Claimant C, Claimant D, and Claimant E, who establish claims to receive Family Temporary Disability Insurance benefits to provide care for her.

Only three of the five claimants may receive Family Temporary Disability Insurance benefits for the same care recipient for the same period of time, if otherwise eligible.

Claims are processed, if all applicable eligibility criteria are met, in the order which they are received. Claimants A, C, and E establish claims with the department and are found eligible before Claimants B and D establish claims. Therefore, Claimants B and D are initially denied Family Temporary Disability Insurance benefits. If Claimants B and D are otherwise eligible, and the care recipient criteria are still met, they may establish a claim for benefits as A, C, and E are no longer ready, willing, and able and available to provide care.

(2) No more than one care provider may claim benefits for participating in a qualifying exigency related to a military member in any eight-hour period and no more than three care providers in a 24-hour period may claim benefits for participating in a qualifying exigency related to a military member. Determining whether another family member may be ready, willing, and able and available during the same period of time in a day depends on the qualifying exigency, as specified by the claimant.

EXAMPLE 4. A military member needs to make legal arrangements. Both his domestic partner and mother are willing to make such arrangements. Only one family member may receive Family Temporary Disability Insurance benefits for the same care recipient for the same period of time.

EXAMPLE 5. A military member has a father who is incapable of self-care and requires supervision on a 24-hour basis. The military member has a wife, daughter, son, and a mother who are willing to provide care on an urgent basis. The four family members establish claims to receive Family Temporary Disability Insurance benefits to provide care for the military member's father.

Three of the four claimants may receive Family Temporary Disability Insurance benefits for the same care recipient for the same period of time, if otherwise eligible. Claims are processed in the order they are received. The wife, daughter, and mother of the care recipient are found eligible before the son establishes his claim. Therefore, the son is initially denied Family Temporary Disability Insurance benefits. The son may

establish a claim for benefits only if one of the first three eligible family members is no longer ready, willing, and able and available to provide the required care.

Only three claimants may receive Family Temporary Disability Insurance benefits to provide care for the military member's father during eight-hour shifts each within a 24-hour period, if otherwise eligible.

NOTE: Authority cited: Sections 305 and 306, Unemployment Insurance Code.
Reference: Section 3303.1, Unemployment Insurance Code.