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EMPLOYMENT DEVELOPMENT DEPARTMENT

Amendment of Sections 2706-1, 2706-2, 2708(c)-1, and 3267-1
Title 22, California Code of Regulations

FOSTER CHILD BONDING

Notice of Proposed Action

The Employment Development Department (EDD or Department) proposes to amend California Code of Regulations (CCR), title 22, sections 2706-1, 2706-2, 2708(c)-1, and 3267-1.

The amendments would remove some of the requirements that claimants need to complete on EDD's Family Temporary Disability Insurance (FTDI) claim form when taking time off to bond with a foster child. The current regulations require EDD to collect the foster child's Personally Identifying Information (PII) in the FTDI claim, which may not align with the provisions of the California Welfare and Institutions Code (WIC) and federal law.

The amendments also will clarify the information a claimant must provide in the first or continued claim for disability insurance or FTDI benefits, as well as change outdated gender pronouns.

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

Informative Digest/Policy Statement Overview:

This rulemaking action clarifies and makes specific the requirements to file FTDI and disability insurance claims.

Summary of Existing Laws and Effect of Proposed Action:

EDD administers the State Disability Insurance (SDI) program. The SDI program provides partial wage replacement for eligible California workers who have loss of wages when they are unable to perform their regular or customary work due to their own illness, injury, or pregnancy. FTDI, also known as Paid Family Leave, provides benefits to California workers who need time off work to care for a seriously ill family member; to bond with a newborn child, adopted child, or foster child; or to participate in a qualifying exigency related to a military member.

When filing an FTDI claim to bond with a new child after birth, adoption, or foster care placement, the claimant is required to provide certain information, including but not

limited to the new child's legal name, date of birth, gender, and residence address. (CCR, tit. 22, § 2706-2, subd. (e).) The claimant is also required to provide supporting documentation to establish the relationship between the claimant and the new child. (CCR, tit. 22, § 2708(c)-1.) The current requirements may not align with a number of state and federal protections for foster youth, and this rulemaking action will make changes to the requirements for foster child bonding claims to eliminate these conflicts and better protect foster youth privacy.

Various state and federal laws protect the personal information of children in the foster care system; federal and state child welfare and juvenile court laws generally protect the confidentiality of child welfare files. Title IV-E of the Social Security Act requires states that receive federal child welfare funds to have a state plan, approved by the Secretary of Health and Human Services, that "provides safeguards which restrict the use of or disclosure of information concerning individuals assisted under the State plan..." (42 U.S.C. § 671(a)(8).) The Child Abuse Prevention and Treatment Act (CAPTA) requires states to include in their state plan assurances that their state program will preserve the confidentiality of reports and records made and maintained under CAPTA to protect the rights of children and their parents, and it specifies a limited list of individuals and agencies to which these records may be made available. (42 U.S.C. § 5106a(b)(2)(B)(viii).)

California WIC section 827 limits access to the "juvenile case file," which courts have interpreted broadly. (*T.N.G. v. Superior Court* (1971) 4 Cal.3d 767, 780–781; *In re Elijah S.* (2005) 125 Cal. App.4th 1532. See 87 Ops.Cal.Atty.Gen. 72, 75 (2004).) WIC section 10850 protects the confidentiality of certain records kept by a public agency, including all applications and records kept in connection with the administration of child welfare that identifies the applicant or recipient by name or address. (WIC, § 10850(a).)

EDD is not among the list of agencies or persons who are entitled to receipt of a juvenile case file, per WIC section 827. As such, foster parents are limited from disclosing the foster child's PII to the Department. This rulemaking action addresses the inconsistency between these provisions and existing Departmental regulations by implementing the following changes:

CCR, title 22, section 2706-2 outlines the information a claimant must complete on the bonding certification when applying for FTDI benefits to bond with a new child. Federal and state laws limit what information foster parents can provide to the Department to verify the foster child's placement for purposes of a bonding claim. Therefore, the proposed regulations would separate the bonding certification requirements into two separate categories: non-foster bonding, where the child's PII will continue to be collected, and includes "new child after birth, adoption, or legal guardianship placement;" and "a new child after foster care placement," where the child's PII will no longer be collected, including the child's name, social security number, date of birth, gender, and residence address.

CCR, title 22, section 2708(c)-1 outlines the supporting documents a claimant is required to provide to the Department when filing an FTDI claim to bond with a new child after birth, adoption, foster care placement, or legal guardianship placement. For foster child bonding claims, a claimant must provide information to verify foster care placement. The proposed regulation amendments would replace the outdated *Approval of Family Caregiver Home* form (SOC 815) with the new version of the California Department of Social Services form *Foster Parents Agreement* (SOC 156), which does not collect any of the foster child's PII on the portion that is provided to EDD. Similarly, if a claimant provides a statement on letterhead rather than providing the SOC 156, the proposed amendments would remove the requirement to include foster child PII on that statement. Lastly, the amendments would add an email address to the signature block for the social worker, director or designate making the foster care placement.

CCR, title 22, sections 2706-1 and 2706-2 delineate the information a claimant must provide to EDD in the first or continued claim for Disability Insurance or FTDI benefits. The proposed regulations would clarify two of those requirements. One such clarification is to require a claimant to provide their social security number (SSN) "and/or" any other names and SSNs by which the claimant is or was known, consistent with existing law. Eligibility for benefits may be based on wages earned by an individual under the SSN under which they have worked, provided they submit sufficient information to prove they were paid those wages along with meeting all other eligibility requirements. The proposed regulations would also clarify that an individual may file a disability insurance claim if they have met the specified conditions for "at least" eight days, which is the minimum duration for a qualifying disability.

CCR, title 22, section 3267-1 relates to reporting requirements for employers who operate their own disability insurance plans, known as "voluntary plans," instead of using the state SDI program. Employers wishing to set up voluntary plans must first apply and be approved by EDD. Once approved, the employers must meet reporting and other requirements. Amendments to this section add FTDI claims for a qualifying military exigency as defined in section 3302.2 of the CUIC, which was added to the FTDI program in 2018.

The amendments in CCR, title 22, sections 2706-1, 2706-2, and 2708(c)-1 would align with modern legal standards, replacing "his or her" with "their" as the standard inclusive pronoun. This would be consistent with recent efforts to update gendered language to gender neutral pronouns in California statutes, including amendments to the Vehicle Code to define gender categories as female, male, or nonbinary (Vehicle Code § 12800) and updates to multiple state laws to remove gendered language under Assembly Bill 378 (Chapter 50, Statutes of 2021).

Anticipated Benefits from the Proposed Regulation:

The primary anticipated benefit of the proposed regulatory actions is to ensure better alignment with federal and state laws intended to safeguard the PII and privacy of foster children. The proposed amendments would also inherently reduce data risks, including unauthorized access and data breaches, since EDD will be collecting and storing less

PII. The amendments would also mitigate the risk of potential fraudulent claims being filed in light of the requirement for third party verification from the placement worker or agency.

Determination of Inconsistency/Incompatibility with Existing State Regulations:

The Department has determined that this proposed regulatory action is neither inconsistent nor incompatible with existing state regulations. The Department has concluded that these are the only regulations that concern foster child PII in the SDI claim process. As the Department amends or creates new regulations, it will continue to update gendered language to use gender neutral pronouns.

Authority and Reference:

Sections 305 and 306, Unemployment Insurance Code.
Sections 2602, 2608, 2626, 2701.5, and 2706, Unemployment Insurance Code.
Sections 2701.5, 2706, and 3303.1, Unemployment Insurance Code.
Sections 2706, 2708, and 3303, Unemployment Insurance Code.
Sections 140.5, 2627, and 3267, Unemployment Insurance Code.

Economic and Fiscal Impact:

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

Anticipated costs or savings to any State Agency: The Department estimates a total one-time cost of \$898,000 to implement the proposed regulations, which falls within the Department's normal business practices and will be absorbed with existing staffing. Most of this one-time cost is to remove foster child PII questions from the online application for FTDI benefits, which requires programming and testing, as well as to revise the paper application and other related forms. The one-time cost also includes developing business requirements for the programming efforts, making updates to the EDD website, and communicating the changes to staff and stakeholders.

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

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

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

Significant statewide adverse economic impact: The Department does not anticipate this regulatory action will result in any costs to the federal government, local county governments, private individuals, or businesses and small businesses. The Department has made an initial determination that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability to compete with businesses in other states.

Local Mandate Determination:

The Department has determined that the proposed regulations 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.

Results of the Economic Impact Assessment/Analysis:

EDD has determined that the proposed regulatory action will not have a significant impact on the creation or elimination of jobs, the creation of new businesses, the elimination of existing businesses, or the expansion of businesses in California. SDI contributions are paid by employees through payroll deductions, not by employers. Contributions will continue to be withheld and remitted to EDD for deposit into the SDI Fund, which finances program benefits and administrative costs. Accordingly, business operations and responsibilities will remain unchanged.

This regulatory action is not anticipated to impose significant costs on federal, state, or local governments, private individuals, or housing. Unlike Unemployment Insurance, which is administered under a federal–state partnership and funded by employer payroll taxes, SDI is administered under state law and solely funded by covered employees. Therefore, no substantial change in workload or responsibilities is expected.

The proposed amendments will provide significant benefits to the health and welfare of California residents by strengthening privacy protections for foster children and their caregivers. By reducing the collection and storage of PII, the amendments will inherently lower the risk of identity theft, fraud, unauthorized disclosure, and data breaches. Enhanced privacy safeguards will protect foster youth and support their access to financial and caregiving benefits, thereby promoting family stability and overall wellbeing.

The proposed regulations will not affect worker safety or the State’s environment.

The cost impact on representative persons or businesses: 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 the proposed regulatory action will not impact small businesses as it does not impose any new mandates on small businesses. The proposed amendments do not require small businesses to take any specific action or to refrain from any activity when conducting business.

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 Department or that has otherwise been identified and brought to the attention of the Department would be

Internet Website Access:

The Department has posted materials related to the proposed regulatory action on its website at https://edd.ca.gov/en/about_edd/proposed_regulations.

Public Hearing:

A public hearing is not scheduled. Any interested person or their duly authorized representative may request one no later than 15 days prior to the close of the written comment period in accordance with Government Code section 11346.8.

Modification of Proposed Action:

If the Department makes any changes based on public testimony, those changes (other than non-substantial or solely grammatical modifications) will be made available for public comment at least 15 days before adoption. Copies of any changes will be mailed to all persons whom: testified or submitted written comments at the public hearing (if one is scheduled), submitted comments to the agency during the public comment period, or 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 website at <https://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 initial statement of reasons were enclosed.)

To obtain a copy, contact the persons noted above, or access the Department's website at https://edd.ca.gov/en/about_edd/proposed_regulations.

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.