

Introduced by Senator Kuehl

February 21, 2002

An act to amend Sections 984, 2601, 2613, and 2708 of, and to add Chapter 7 (commencing with Section 3300) to Part 2 of Division 1 of, the Unemployment Insurance Code, relating to disability compensation, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 1661, as introduced, Kuehl. Disability compensation: family temporary disability insurance.

Existing law provides for the payment of disability compensation for the wage loss sustained by an individual unemployed because of sickness or injury, and finances that compensation by means of employee contributions to the Disability Fund.

This bill instead would provide disability compensation for any individual who is unable to work due to the employee's own sickness or injury, the sickness or injury of a family member, or the birth, adoption, or foster care placement of a new child.

This bill would establish, within the state disability insurance program, a family temporary disability insurance program to provide up to 12 weeks of wage replacement benefits to workers who take time off work to care for a seriously ill child, spouse, parent, domestic partner, or to bond with a new child. This bill would provide the additional benefits through additional employee contributions, and by requiring employers to provide benefits either directly, through private insurance, or by an election to contribute to the Disability Fund. The bill would also make related, conforming changes in provisions relating to disability compensation.

By providing for the deposit of additional moneys in the Disability Fund, a continuously appropriated special fund, this bill would make an appropriation.

Vote: majority. Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 984 of the Unemployment Insurance
2 Code is amended to read:

3 984. (a) (1) Each worker shall pay worker contributions at
4 the rate determined by the director pursuant to this section with
5 respect to wages, as defined by Sections 926, 927, and 985. On or
6 before October 31 of each calendar year, the director shall prepare
7 a statement, which shall be a public record, declaring the rate of
8 worker contributions for the calendar year and shall notify
9 promptly all employers of employees covered for disability
10 insurance of the rate.

11 (2) (A) Except as provided in paragraph (3), the rate of worker
12 contributions for calendar year 1987 and for each subsequent
13 calendar year shall be 1.45 times the amount disbursed from the
14 Disability Fund during the 12-month period ending September 30
15 and immediately preceding the calendar year for which the rate is
16 to be effective, less the amount in the Disability Fund on that
17 September 30, with the resulting figure divided by total wages paid
18 pursuant to Sections 926, 927, and 985 during the same 12-month
19 period, and then rounded to the nearest one-tenth of 1 percent.

20 (B) *The director shall increase the rate of worker contributions*
21 *by one-half of 1 percent to cover the cost of family temporary*
22 *disability insurance benefits provided in Chapter 7 (commencing*
23 *with Section 3300) of Part 2. This additional contribution rate*
24 *shall be known as the employee's Family Temporary Disability*
25 *Insurance (FTDI) premium, and shall fund benefits required by*
26 *Chapter 7 (commencing with Section 3300) of Part 2. The director*
27 *shall maintain a separate accounting of the cost of benefits paid*
28 *pursuant to Chapter 7 (commencing with Section 3300) of Part 2.*
29 *Beginning in 2004, the director shall provide an annual*
30 *accounting of this cost as part of the fund status report submitted*
31 *to the Legislature each May pursuant to Section 995, and shall*
32 *annually adjust the FTDI premium rate if a change is necessary to*



1 *support the cost incurred by FTDI benefit payments. An employer*
2 *electing to meet its obligation under Chapter 7 (commencing with*
3 *Section 3300) of Part 2 to provide 50 percent of FTDI benefits by*
4 *contributing directly into the Disability Fund shall, under that*
5 *election, contribute an amount equal to the FTDI premium paid by*
6 *each employee into the Disability Fund.*

7 (3) The rate of worker contributions shall not exceed ~~1.3~~ 1.35
8 percent or be less than 0.1 percent. The rate of worker
9 contributions shall not decrease from the rate in the previous year
10 by more than two-tenths of 1 percent.

11 (b) Worker contributions required under Sections 708 and
12 708.5 shall be at a rate determined by the director to reimburse the
13 Disability Fund for unemployment compensation disability
14 benefits paid and estimated to be paid to all employers and
15 self-employed individuals covered by those sections. On or before
16 November 30th of each calendar year, the director shall prepare a
17 statement, which shall be a public record, declaring the rate of
18 contributions for the succeeding calendar year for all employers
19 and self-employed individuals covered under Sections 708 and
20 708.5 and shall notify promptly the employers and self-employed
21 individuals of the rate. The rate shall be determined by dividing the
22 estimated benefits and administrative costs paid in the prior year
23 by the product of the annual remuneration deemed to have been
24 received under Sections 708 and 708.5 and the estimated number
25 of persons who were covered at any time in the prior year. The
26 resulting rate shall be rounded to the next higher one-hundredth
27 percentage point. The rate may also be reduced or increased by a
28 factor estimated to maintain as nearly as practicable a cumulative
29 zero balance in the funds contributed pursuant to Sections 708 and
30 708.5. Estimates made pursuant to this subdivision may be made
31 on the basis of statistical sampling, or another method determined
32 by the director.

33 (c) The director's action in determining a rate under this section
34 shall not constitute an authorized regulation.

35 (d) Notwithstanding subdivision (a), the director may, at his or
36 her discretion, increase or decrease, by not to exceed 0.1 percent,
37 the rate of worker contributions determined pursuant to
38 subdivision (a), up to a maximum worker contribution rate of ~~1.3~~
39 1.35 percent, if he or she determines the adjustment is necessary
40 to reimburse the Disability Fund for disability benefits paid or



1 estimated to be paid to individuals covered by this section or to
2 prevent the accumulation of funds in excess of those needed to
3 maintain an adequate fund balance.

4 SEC. 2. Section 2601 of the Unemployment Insurance Code
5 is amended to read:

6 2601. The purpose of this part is to compensate in part for the
7 wage loss sustained by ~~individuals unemployed because of any~~
8 *individual who is unable to work due to the employee's own*
9 *sickness or injury, the sickness or injury of a family member, or the*
10 *birth, adoption, or foster care placement of a new child*, and to
11 reduce to a minimum the suffering caused by unemployment
12 resulting therefrom. This part shall be construed liberally in aid of
13 its declared purpose to mitigate the evils and burdens which fall on
14 the unemployed and disabled worker and his *or her* family.

15 SEC. 3. Section 2613 of the Unemployment Insurance Code
16 is amended to read:

17 2613. The Director of Employment Development shall
18 develop and maintain a program of education concerning
19 disability insurance rights and benefits. The director shall provide
20 to each employer of employees subject to this part a notice
21 informing workers of their disability insurance rights and benefits
22 due to *the employee's own* sickness, injury, or pregnancy, *or the*
23 *employee's need to provide care for any sick or injured family*
24 *member or new child who is unable to care for himself or herself*.
25 The notice shall be given by every employer to each new employee
26 hired on or after ~~July 1, 1988~~ *January 1, 2003*, and to each
27 employee leaving work due to pregnancy or nonoccupational
28 sickness or injury on or after ~~July 1, 1989~~ *January 1, 2003*.

29 SEC. 4. Section 2708 of the Unemployment Insurance Code
30 is amended to read:

31 2708. (a) In accordance with the director's authorized
32 regulations, and except as provided in Sections 2708.1 and 2709,
33 a claimant shall establish medical eligibility for each uninterrupted
34 period of disability by filing a first claim for disability benefits
35 supported by the certificate of a treating physician or practitioner
36 *that establishes the sickness, injury, or pregnancy of the employee,*
37 *or the condition of the family member that warrants the care of the*
38 *employee*. For subsequent periods of uninterrupted disability after
39 the period covered by the initial certificate or any preceding
40 continued claim, a claimant shall file a continued claim for those



1 benefits supported by the certificate of a treating physician or
2 practitioner. ~~The~~ A certificate *filed to establish medical eligibility*
3 *for the employee's own sickness, injury, or pregnancy* shall contain
4 a diagnosis and diagnostic code prescribed in the International
5 Classification of Diseases, or, where no diagnosis has yet been
6 obtained, a detailed statement of symptoms.

7 ~~The~~

8 A certificate *filed to establish medical eligibility of the*
9 *employee's own sickness, injury, or pregnancy* shall also contain a
10 statement of medical facts including secondary diagnoses when
11 applicable, within the physician's or practitioner's knowledge,
12 based on a physical examination and a documented medical
13 history of the claimant by the physician or practitioner, indicating
14 his or her conclusion as to the claimant's disability, and a statement
15 of his or her opinion as to the expected duration of the disability.

16 (b) A certificate *filed to establish medical eligibility of the*
17 *serious health condition of the family member that warrants the*
18 *care of the employee need not identify the serious health condition*
19 *involved, but shall contain:*

20 (1) *The date, if known, on which the condition commenced.*

21 (2) *The probable duration of the condition.*

22 (3) *An estimate of the amount of time that the physician or*
23 *practitioner believes the employee is needed to care for the child,*
24 *parent, spouse, or domestic partner.*

25 (4) *A statement that the serious health condition warrants the*
26 *participation of the employee to provide care for his or her child,*
27 *parent, spouse, or domestic partner.*

28 "Warrants the participation of the employee" includes, but is
29 not limited to, providing psychological comfort, and arranging
30 "third party" care for the child, parent, spouse, or domestic
31 partner, as well as directly providing, or participating in, the
32 medical care.

33 (c) *The department shall develop a certification form for an*
34 *employee taking leave for reason of the birth of a child of the*
35 *employee or the employee's domestic partner, or the placement of*
36 *a child who is unable to care for himself or herself with the*
37 *employee in connection with the adoption or foster care of the child*
38 *by the employee or domestic partner.*

39 (d) The first and any continuing claim of an individual who
40 obtains care and treatment outside this state, shall be supported by



1 a certificate of a treating physician or practitioner duly licensed or
2 certified by the state or foreign country in which the claimant is
3 receiving the care and treatment. If a physician or practitioner
4 licensed by and practicing in a foreign country is under
5 investigation by the department for filing false claims and the
6 department does not have legal remedies to conduct a criminal
7 investigation or prosecution in that country, the department may
8 suspend the processing of all further certifications until the
9 physician or practitioner fully cooperates, and continues to
10 cooperate with the investigation. A physician or practitioner
11 licensed by and practicing in a foreign country who has been
12 convicted of filing false claims with the department may not file
13 a certificate in support of a claim for disability benefits for a period
14 of five years.

15 ~~(e)~~

16 (e) For purposes of this part, the term “physician” has the same
17 meaning as it does in Section 3209.3 of the Labor Code. For
18 purposes of this part, “practitioner” means a person duly licensed
19 or certified in California acting within the scope of his or her
20 license or certification who is a dentist, podiatrist, or as to normal
21 pregnancy or childbirth, a midwife, nurse midwife, or nurse
22 practitioner.

23 ~~(d)~~

24 (f) For a claimant who is hospitalized in or under the authority
25 of a county hospital in this state, a certificate of initial and
26 continuing medical disability, if any, shall satisfy the requirements
27 of this section if the disability is shown by the claimant’s hospital
28 chart, and the certificate is signed by the hospital’s registrar. For
29 a claimant hospitalized in or under the care of a medical facility of
30 the United States government, a certificate of initial and
31 continuing medical disability, if any, shall satisfy the requirements
32 of this section if the disability is shown by the claimant’s hospital
33 chart, and the certificate is signed by a medical officer of the
34 facility duly authorized to do so.

35 ~~(e)~~

36 (g) Nothing in this section shall be construed to preclude the
37 department from requesting additional medical evidence to
38 supplement the first or any continued claim if the additional
39 evidence can be procured without additional cost to the claimant.
40 The department may require that the additional evidence include



1 identification of diagnoses, symptoms, or a statement as to the
2 facts of the claimant’s disability by the physician or practitioner
3 treating the claimant, by the registrar, authorized medical officer,
4 or other duly authorized official of the hospital or health facility
5 treating the claimant, or by an examining physician or other
6 representative of the department.

7 SEC. 5. Chapter 7 (commencing with Section 3300) is added
8 to Part 2 of Division 1 of the Unemployment Insurance Code, to
9 read:

10
11 CHAPTER 7. PAID FAMILY CARE LEAVE
12

13 3300. The Legislature finds and declares all of the following:

14 (a) It is in the public benefit to provide family temporary
15 disability insurance benefits to workers to care for their family
16 members. The need for family temporary disability insurance
17 benefits has intensified as both parent’s participation in the
18 workforce has increased, and the number of single parents in the
19 workforce has grown. The need for partial wage replacement for
20 workers taking family care leave will be exacerbated as the
21 population of those needing care, both children and parents of
22 workers, increases in relation to the number of working age adults.

23 (b) Developing systems that help families adapt to the
24 competing interests of work and home not only benefits workers,
25 but also benefits employers by increasing worker productivity and
26 reducing employee turnover.

27 (c) The federal Family and Medical Leave Act (FMLA) and
28 California’s Family Rights Act (CFRA) entitle eligible employees
29 working for covered employers to take unpaid, job-protected leave
30 for up to 12 work weeks in a 12-month period. Under the FMLA
31 and the CFRA, unpaid leave may be taken for the birth, adoption,
32 or foster placement of a new child; to care for a seriously ill child,
33 parent, or spouse; or for the employee’s own serious health
34 condition.

35 (d) State disability insurance benefits currently provide wage
36 replacement for workers who need time off due to their own
37 non-work-related injuries, illnesses, or conditions, including
38 pregnancy, that prevent them from working, but do not cover leave
39 to care for a sick or injured child, spouse, parent, domestic partner,
40 or leave to bond with a new child.

1 (e) The majority of workers in this state are unable to take
2 family care leave because they are unable to afford leave without
3 pay. When workers do not receive some form of wage replacement
4 during family care leave, families suffer from the worker's loss of
5 income, increasing the demand on the state unemployment
6 insurance system and dependence on the state's welfare system.

7 (f) It is the intent of the Legislature to create a family temporary
8 disability insurance program to help reconcile the demands of
9 work and family. In recognition of the shared benefit of this
10 program, the family temporary disability insurance program shall
11 be implemented through employee contributions and the
12 provision of benefits by employers, and shall be administered in
13 accordance with the policies of the state disability insurance
14 program created pursuant to this part.

15 3301. The purpose of this chapter is to establish, within the
16 state disability insurance program, a family temporary disability
17 insurance program to provide up to 12 weeks of wage replacement
18 benefits to workers who take time off work to care for a seriously
19 ill child, spouse, parent, domestic partner, or to bond with a new
20 child.

21 3302. For purposes of this section:

22 (a) "Child" means a biological, adopted, or foster son or
23 daughter, a stepson or stepdaughter, a legal ward, a son or daughter
24 of a domestic partner, or a son or daughter of an employee who
25 stands in loco parentis to that child.

26 (b) "Family care leave" means any of the following:

27 (1) Leave for reason of the birth of a child of the employee or
28 the employee's domestic partner, the placement of a child with an
29 employee in connection with the adoption or foster care of the
30 child by the employee or domestic partner, or the serious health
31 condition of a child of the employee, spouse or domestic partner.

32 (2) Leave to care for a parent, spouse, or domestic partner who
33 has a serious health condition.

34 (c) "Parent" means a biological, foster, or adoptive parent, a
35 stepparent, a legal guardian, or other person who stood in loco
36 parentis to the employee or domestic partner when the employee
37 or domestic partner was a child.

38 (d) "Domestic partner" has the same meaning as defined in
39 Section 297 of the Family Code.



1 (e) “Family member” means child, parent, spouse, or
2 domestic partner as defined in this section.

3 (f) “Serious health condition” means an illness, injury,
4 impairment, or physical or mental condition that involves
5 inpatient care in a hospital, hospice, or residential health care
6 facility, or continuing treatment or continuing supervision by a
7 health care provider, as defined in Section 12945.2 of the
8 Government Code.

9 3303. An individual shall be deemed eligible for family
10 temporary disability insurance benefits on any day in which he or
11 she is unable to perform his or her regular or customary work
12 because he or she is caring for a new child or a seriously ill child,
13 parent, spouse, or domestic partner.

14 3304. Eligible workers shall receive benefits in accordance
15 with provisions established under this division. Fifty percent of the
16 benefits shall be provided from the Disability Fund into which the
17 employee’s family temporary disability insurance (FTDI)
18 premium shall be deposited. The balance of those benefits shall be
19 provided by the employer to the employee, either directly or by
20 means of insurance procured by the employer, pursuant to
21 regulations to be promulgated by the department, or from the
22 Disability Fund pursuant to the employer’s election to contribute
23 an amount equal to the employee’s FTDI premium into the
24 Disability Fund.

25 3305. Employers, other than those electing to contribute into
26 the Disability Fund an amount equal to the employee’s FTDI
27 premium required by Section 984, shall, as applicable, provide for
28 the assumption by an admitted disability insurer of the liability of
29 the employer to pay benefits under this chapter, file with the
30 director a bond of an admitted surety insurer conditioned on the
31 payment by the employer of its obligations under this section,
32 deposit with the director securities approved by the director to
33 secure the payment of obligations, or deposit with the director an
34 irrevocable letter of credit.

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