

AMENDED IN SENATE MAY 6, 2002  
AMENDED IN SENATE APRIL 29, 2002

**SENATE BILL**

**No. 1661**

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**Introduced by Senator Kuehl**

**(Coauthors: Senators Escutia, Karnette, and Romero)**

(Coauthors: Assembly Members Alquist, Aroner, Goldberg, Jackson, Keeley, Pavley, Strom-Martin, and Thomson)

February 21, 2002

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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 amended, 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, and for the expenditure of regulatory fee revenues for the administration of certain of its provisions, 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 .05 percent to cover the cost of family temporary disability  
22 insurance benefits provided in Chapter 7 (commencing with  
23 Section 3300) of Part 2. This additional contribution rate shall be  
24 known as the employee's Family Temporary Disability Insurance  
25 (FTDI) premium, and shall fund benefits required by Chapter 7



1 (commencing with Section 3300) of Part 2. The director shall  
2 maintain a separate accounting of the cost of benefits paid pursuant  
3 to Chapter 7 (commencing with Section 3300) of Part 2. Beginning  
4 in 2004, the director shall provide an annual accounting of this cost  
5 as part of the fund status report submitted to the Legislature each  
6 May and October pursuant to Section 995, and shall annually  
7 adjust the FTDI premium rate if a change is necessary to support  
8 the cost incurred by FTDI benefit payments. An employer electing  
9 to meet its obligation under Chapter 7 (commencing with Section  
10 3300) of Part 2 to provide 50 percent of FTDI benefits by  
11 contributing directly into the Disability Fund shall, under that  
12 election, contribute an amount equal to the FTDI premium paid by  
13 each employee into the Disability Fund.

14 (3) The rate of worker contributions shall not exceed 1.35  
15 percent or be less than 0.1 percent. The rate of worker  
16 contributions shall not decrease from the rate in the previous year  
17 by more than two-tenths of 1 percent.

18 (b) Worker contributions required under Sections 708 and  
19 708.5 shall be at a rate determined by the director to reimburse the  
20 Disability Fund for unemployment compensation disability  
21 benefits paid and estimated to be paid to all employers and  
22 self-employed individuals covered by those sections. On or before  
23 November 30th of each calendar year, the director shall prepare a  
24 statement, which shall be a public record, declaring the rate of  
25 contributions for the succeeding calendar year for all employers  
26 and self-employed individuals covered under Sections 708 and  
27 708.5 and shall notify promptly the employers and self-employed  
28 individuals of the rate. The rate shall be determined by dividing the  
29 estimated benefits and administrative costs paid in the prior year  
30 by the product of the annual remuneration deemed to have been  
31 received under Sections 708 and 708.5 and the estimated number  
32 of persons who were covered at any time in the prior year. The  
33 resulting rate shall be rounded to the next higher one-hundredth  
34 percentage point. The rate may also be reduced or increased by a  
35 factor estimated to maintain as nearly as practicable a cumulative  
36 zero balance in the funds contributed pursuant to Sections 708 and  
37 708.5. Estimates made pursuant to this subdivision may be made  
38 on the basis of statistical sampling, or another method determined  
39 by the director.



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

3 (d) Notwithstanding subdivision (a), the director may, at his or  
4 her discretion, increase or decrease, by not to exceed 0.1 percent,  
5 the rate of worker contributions determined pursuant to  
6 subdivision (a), up to a maximum worker contribution rate of 1.35  
7 percent, if he or she determines the adjustment is necessary to  
8 reimburse the Disability Fund for disability benefits paid or  
9 estimated to be paid to individuals covered by this section or to  
10 prevent the accumulation of funds in excess of those needed to  
11 maintain an adequate fund balance.

12 SEC. 2. Section 2601 of the Unemployment Insurance Code  
13 is amended to read:

14 2601. The purpose of this part is to compensate in part for the  
15 wage loss sustained by any individual who is unable to work due  
16 to the employee's own sickness or injury, the sickness or injury of  
17 a family member, or the birth, adoption, or foster care placement  
18 of a new child, and to reduce to a minimum the suffering caused  
19 by unemployment resulting therefrom. This part shall be  
20 construed liberally in aid of its declared purpose to mitigate the  
21 evils and burdens which fall on the unemployed and disabled  
22 worker and his or her family.

23 SEC. 3. Section 2613 of the Unemployment Insurance Code  
24 is amended to read:

25 2613. The Director of Employment Development shall  
26 develop and maintain a program of education concerning  
27 disability insurance rights and benefits. The director shall provide  
28 to each employer of employees subject to this part a notice  
29 informing workers of their disability insurance rights and benefits  
30 due to the employee's own sickness, injury, or pregnancy, or the  
31 employee's need to provide care for any sick or injured family  
32 member or new child who is unable to care for himself or herself.  
33 The notice shall be given by every employer to each new employee  
34 hired on or after January 1, 2003, and to each employee leaving  
35 work due to pregnancy or nonoccupational sickness or injury on  
36 or after January 1, 2003.

37 SEC. 4. Section 2708 of the Unemployment Insurance Code  
38 is amended to read:

39 2708. (a) In accordance with the director's authorized  
40 regulations, and except as provided in Sections 2708.1 and 2709,



1 a claimant shall establish medical eligibility for each uninterrupted  
2 period of disability by filing a first claim for disability benefits  
3 supported by the certificate of a treating physician or practitioner  
4 that establishes the sickness, injury, or pregnancy of the employee,  
5 or the condition of the family member that warrants the care of the  
6 employee. For subsequent periods of uninterrupted disability after  
7 the period covered by the initial certificate or any preceding  
8 continued claim, a claimant shall file a continued claim for those  
9 benefits supported by the certificate of a treating physician or  
10 practitioner. A certificate filed to establish medical eligibility for  
11 the employee's own sickness, injury, or pregnancy shall contain a  
12 diagnosis and diagnostic code prescribed in the International  
13 Classification of Diseases, or, where no diagnosis has yet been  
14 obtained, a detailed statement of symptoms.

15 A certificate filed to establish medical eligibility of the  
16 employee's own sickness, injury, or pregnancy shall also contain  
17 a statement of medical facts including secondary diagnoses when  
18 applicable, within the physician's or practitioner's knowledge,  
19 based on a physical examination and a documented medical  
20 history of the claimant by the physician or practitioner, indicating  
21 his or her conclusion as to the claimant's disability, and a statement  
22 of his or her opinion as to the expected duration of the disability.

23 (b) A certificate filed to establish medical eligibility of the  
24 serious health condition of the family member that warrants the  
25 care of the employee need not identify the serious health condition  
26 involved, but shall contain:

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

28 (2) The probable duration of the condition.

29 (3) An estimate of the amount of time that the physician or  
30 practitioner believes the employee is needed to care for the child,  
31 parent, spouse, or domestic partner.

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

35 "Warrants the participation of the employee" includes, but is  
36 not limited to, providing psychological comfort, and arranging  
37 "third party" care for the child, parent, spouse, or domestic  
38 partner, as well as directly providing, or participating in, the  
39 medical care.



1 (c) The department shall develop a certification form for an  
2 employee taking leave for reason of the birth of a child of the  
3 employee or the employee's domestic partner, or the placement of  
4 a child who is unable to care for himself or herself with the  
5 employee in connection with the adoption or foster care of the  
6 child by the employee or domestic partner.

7 (d) The first and any continuing claim of an individual who  
8 obtains care and treatment outside this state, shall be supported by  
9 a certificate of a treating physician or practitioner duly licensed or  
10 certified by the state or foreign country in which the claimant is  
11 receiving the care and treatment. If a physician or practitioner  
12 licensed by and practicing in a foreign country is under  
13 investigation by the department for filing false claims and the  
14 department does not have legal remedies to conduct a criminal  
15 investigation or prosecution in that country, the department may  
16 suspend the processing of all further certifications until the  
17 physician or practitioner fully cooperates, and continues to  
18 cooperate with the investigation. A physician or practitioner  
19 licensed by and practicing in a foreign country who has been  
20 convicted of filing false claims with the department may not file  
21 a certificate in support of a claim for disability benefits for a period  
22 of five years.

23 (e) For purposes of this part, the term "physician" has the same  
24 meaning as it does in Section 3209.3 of the Labor Code. For  
25 purposes of this part, "practitioner" means a person duly licensed  
26 or certified in California acting within the scope of his or her  
27 license or certification who is a dentist, podiatrist, or as to normal  
28 pregnancy or childbirth, a midwife, nurse midwife, or nurse  
29 practitioner.

30 (f) For a claimant who is hospitalized in or under the authority  
31 of a county hospital in this state, a certificate of initial and  
32 continuing medical disability, if any, shall satisfy the requirements  
33 of this section if the disability is shown by the claimant's hospital  
34 chart, and the certificate is signed by the hospital's registrar. For  
35 a claimant hospitalized in or under the care of a medical facility of  
36 the United States government, a certificate of initial and  
37 continuing medical disability, if any, shall satisfy the requirements  
38 of this section if the disability is shown by the claimant's hospital  
39 chart, and the certificate is signed by a medical officer of the  
40 facility duly authorized to do so.



1 (g) Nothing in this section shall be construed to preclude the  
2 department from requesting additional medical evidence to  
3 supplement the first or any continued claim if the additional  
4 evidence can be procured without additional cost to the claimant.  
5 The department may require that the additional evidence include  
6 identification of diagnoses, symptoms, or a statement as to the  
7 facts of the claimant's disability by the physician or practitioner  
8 treating the claimant, by the registrar, authorized medical officer,  
9 or other duly authorized official of the hospital or health facility  
10 treating the claimant, or by an examining physician or other  
11 representative of the department.

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

15  
16 CHAPTER 7. PAID FAMILY CARE LEAVE  
17

18 3300. The Legislature finds and declares all of the following:

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

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

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

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

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

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

21 3301. The purpose of this chapter is to establish, within the  
22 state disability insurance program, a family temporary disability  
23 insurance program to provide up to 12 weeks of wage replacement  
24 benefits to workers who take time off work to care for a seriously  
25 ill child, spouse, parent, domestic partner, or to bond with a new  
26 child.

27 3302. For purposes of this ~~section~~ *part*:

28 (a) "Child" means a biological, adopted, or foster son or  
29 daughter, a stepson or stepdaughter, a legal ward, a son or daughter  
30 of a domestic partner, or a son or daughter of an employee who  
31 stands in loco parentis to that child.

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

33 (1) Leave for reason of the birth of a child of the employee or  
34 the employee's domestic partner, the placement of a child with an  
35 employee in connection with the adoption or foster care of the  
36 child by the employee or domestic partner, or the serious health  
37 condition of a child of the employee, spouse or domestic partner.

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



1 (c) “Parent” means a biological, foster, or adoptive parent, a  
2 stepparent, a legal guardian, or other person who stood in loco  
3 parentis to the employee or domestic partner when the employee  
4 or domestic partner was a child.

5 (d) “Domestic partner” has the same meaning as defined in  
6 Section 297 of the Family Code.

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

9 (f) “Serious health condition” means an illness, injury,  
10 impairment, or physical or mental condition that involves  
11 inpatient care in a hospital, hospice, or residential health care  
12 facility, or continuing treatment or continuing supervision by a  
13 health care provider, as defined in Section 12945.2 of the  
14 Government Code.

15 3303. An individual shall be deemed eligible for family  
16 temporary disability insurance benefits on any day in which he or  
17 she is unable to perform his or her regular or customary work  
18 because he or she is caring for a new child or a seriously ill child,  
19 parent, spouse, or domestic partner, *subject to a waiting period of*  
20 *seven consecutive days during each family temporary disability*  
21 *benefit period where no benefits are payable within that period.*

22 3304. Eligible workers shall receive benefits in accordance  
23 with provisions established under this division. Fifty percent of the  
24 benefits shall be provided from the Disability Fund into which the  
25 employee’s Family Temporary Disability Insurance (FTDI)  
26 premium shall be deposited. The balance of those benefits shall be  
27 provided by the employer to the employee, either directly or by  
28 means of insurance procured by the employer, pursuant to  
29 regulations to be promulgated by the department, or from the  
30 Disability Fund pursuant to the employer’s election to contribute  
31 an amount equal to the employee’s FTDI premium into the  
32 Disability Fund.

33 3305. (a) Employers, other than those electing to contribute  
34 into the Disability Fund an amount equal to the employee’s Family  
35 Temporary Disability Insurance (FTDI) premium required by  
36 Section 984, shall, as applicable, provide for the assumption by an  
37 admitted disability insurer of the liability of the employer to pay  
38 benefits under this chapter, file with the director a bond of an  
39 admitted surety insurer conditioned on the payment by the  
40 employer of its obligations under this section, deposit with the



1 director securities approved by the director to secure the payment  
2 of obligations, or deposit with the director an irrevocable letter of  
3 credit.  
4 (b) Each employer subject to subdivision (a) shall, for each  
5 calendar year, pay a regulatory fee to the department in an amount,  
6 as limited by this subdivision, that is necessary to fund the  
7 department’s administrative costs incurred in administering and  
8 monitoring the compliance of those employers with that  
9 subdivision. In no event may the amount of the regulatory fee  
10 charged pursuant to this subdivision exceed 14 percent of the  
11 product of the rate of the FTDI premium, as determined in Section  
12 984, and the amount of the taxable wages paid by the employer  
13 during the calendar year to employees eligible under this chapter  
14 for temporary disability insurance benefits. Fee payments made  
15 pursuant to this subdivision shall be deposited in the FTDI Private  
16 Option Administration Account, which is hereby created in the  
17 Disability Fund. Notwithstanding Section 13340 of the  
18 Government Code, moneys in that account are hereby  
19 continuously appropriated, without regard to fiscal year, for the  
20 exclusive purpose of funding the department’s administrative  
21 costs incurred in administering and monitoring the compliance of  
22 employers with subdivision (a). No fee paid pursuant to this  
23 subdivision constitutes payment of any part of an employer’s  
24 FTDI benefit obligation.

