

AMENDED IN SENATE MAY 22, 2002

AMENDED IN SENATE MAY 6, 2002

AMENDED IN SENATE APRIL 29, 2002

SENATE BILL

No. 1661

Introduced by Senator Kuehl

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

***Perata*, *Romero*, and *Torlakson*)**

(Coauthors: Assembly Members *Alquist*, *Aroner*, *Chan*, *Corbett*, *Dutra*, *Goldberg*, *Jackson*, *Keeley*, *Kehoe*, *Koretz*, *Pavley*, *Strom-Martin*, and *Thomson*)

February 21, 2002

An act to amend Sections 984, 2601, 2613, and ~~2708~~ 2708, and 3254 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. *These benefits would be payable for leaves that begin on and after July 1, 2004.*

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.



1 (B) The director shall increase the rate of worker contributions
2 by .05 percent to cover the cost of family temporary disability
3 insurance benefits provided in Chapter 7 (commencing with
4 Section 3300) of Part 2. This additional contribution rate shall be
5 known as the employee's Family Temporary Disability Insurance
6 (FTDI) premium, and shall fund benefits required by Chapter 7
7 (commencing with Section 3300) of Part 2. The director shall
8 maintain a separate accounting of the cost of benefits paid pursuant
9 to Chapter 7 (commencing with Section 3300) of Part 2. Beginning
10 in 2004, the director shall provide an annual accounting of this cost
11 as part of the fund status report submitted to the Legislature each
12 May and October pursuant to Section 995, and shall annually
13 adjust the FTDI premium rate if a change is necessary to support
14 the cost incurred by FTDI benefit payments. An employer electing
15 to meet its obligation under Chapter 7 (commencing with Section
16 3300) of Part 2 to provide 50 percent of FTDI benefits by
17 contributing directly into the Disability Fund shall, under that
18 election, contribute an amount equal to the FTDI premium paid by
19 each employee into the Disability Fund.

20 (3) The rate of worker contributions shall not exceed ~~1.35~~ 1.5
21 percent or be less than 0.1 percent. The rate of worker
22 contributions shall not decrease from the rate in the previous year
23 by more than two-tenths of 1 percent.

24 (b) Worker contributions required under Sections 708 and
25 708.5 shall be at a rate determined by the director to reimburse the
26 Disability Fund for unemployment compensation disability
27 benefits paid and estimated to be paid to all employers and
28 self-employed individuals covered by those sections. On or before
29 November 30th of each calendar year, the director shall prepare a
30 statement, which shall be a public record, declaring the rate of
31 contributions for the succeeding calendar year for all employers
32 and self-employed individuals covered under Sections 708 and
33 708.5 and shall notify promptly the employers and self-employed
34 individuals of the rate. The rate shall be determined by dividing the
35 estimated benefits and administrative costs paid in the prior year
36 by the product of the annual remuneration deemed to have been
37 received under Sections 708 and 708.5 and the estimated number
38 of persons who were covered at any time in the prior year. The
39 resulting rate shall be rounded to the next higher one-hundredth
40 percentage point. The rate may also be reduced or increased by a



1 factor estimated to maintain as nearly as practicable a cumulative
2 zero balance in the funds contributed pursuant to Sections 708 and
3 708.5. Estimates made pursuant to this subdivision may be made
4 on the basis of statistical sampling, or another method determined
5 by the director.

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

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

17 SEC. 2. Section 2601 of the Unemployment Insurance Code
18 is amended to read:

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

28 SEC. 3. Section 2613 of the Unemployment Insurance Code
29 is amended to read:

30 2613. (a) The Director of Employment Development shall
31 develop and maintain a program of education concerning
32 disability insurance rights and benefits. ~~The~~

33 (b) *The director shall provide to each employer of employees*
34 *subject to this part a notice informing workers of their disability*
35 *insurance rights and benefits due to sickness, injury, or pregnancy.*
36 *The notice shall be given by every employer to each new employee*
37 *hired on or after June 1, 1988, and to each employee leaving work*
38 *due to pregnancy or nonoccupational sickness or injury on or after*
39 *July 1, 1989.*



1 (c) Commencing January 1, 2004, the director shall provide to
2 each employer of employees subject to this part a notice informing
3 workers of their disability insurance rights and benefits due to the
4 employee's own sickness, injury, or pregnancy, or the employee's
5 need to provide care for any sick or injured family member or new
6 child who is unable to care for himself or herself. The notice shall
7 be given by every employer to each new employee hired on or after
8 January 1, ~~2003-2004~~, and to each employee leaving work due to
9 pregnancy or nonoccupational sickness or injury on or after
10 ~~January 1, 2003- July 1, 2004~~.

11 SEC. 4. Section 2708 of the Unemployment Insurance Code
12 is amended to read:

13 2708. (a) In accordance with the director's authorized
14 regulations, and except as provided in Sections 2708.1 and 2709,
15 a claimant shall establish medical eligibility for each uninterrupted
16 period of disability by filing a first claim for disability benefits
17 supported by the certificate of a treating physician or practitioner
18 that establishes the sickness, injury, or pregnancy of the employee,
19 or the condition of the family member that warrants the care of the
20 employee. For subsequent periods of uninterrupted disability after
21 the period covered by the initial certificate or any preceding
22 continued claim, a claimant shall file a continued claim for those
23 benefits supported by the certificate of a treating physician or
24 practitioner. A certificate filed to establish medical eligibility for
25 the employee's own sickness, injury, or pregnancy shall contain a
26 diagnosis and diagnostic code prescribed in the International
27 Classification of Diseases, or, where no diagnosis has yet been
28 obtained, a detailed statement of symptoms.

29 A certificate filed to establish medical eligibility of the
30 employee's own sickness, injury, or pregnancy shall also contain
31 a statement of medical facts including secondary diagnoses when
32 applicable, within the physician's or practitioner's knowledge,
33 based on a physical examination and a documented medical
34 history of the claimant by the physician or practitioner, indicating
35 his or her conclusion as to the claimant's disability, and a statement
36 of his or her opinion as to the expected duration of the disability.

37 (b) A certificate filed to establish medical eligibility of the
38 serious health condition of the family member that warrants the
39 care of the employee need not identify the serious health condition
40 involved, but shall contain:



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

2 (2) The probable duration of the condition.

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

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

9 “Warrants the participation of the employee” includes, but is
10 not limited to, providing psychological comfort, and arranging
11 “third party” care for the child, parent, spouse, or domestic
12 partner, as well as directly providing, or participating in, the
13 medical care.

14 (c) The department shall develop a certification form for an
15 employee taking leave for reason of the birth of a child of the
16 employee or the employee’s domestic partner, or the placement of
17 a child who is unable to care for himself or herself with the
18 employee in connection with the adoption or foster care of the
19 child by the employee or domestic partner.

20 (d) The first and any continuing claim of an individual who
21 obtains care and treatment outside this state, shall be supported by
22 a certificate of a treating physician or practitioner duly licensed or
23 certified by the state or foreign country in which the claimant is
24 receiving the care and treatment. If a physician or practitioner
25 licensed by and practicing in a foreign country is under
26 investigation by the department for filing false claims and the
27 department does not have legal remedies to conduct a criminal
28 investigation or prosecution in that country, the department may
29 suspend the processing of all further certifications until the
30 physician or practitioner fully cooperates, and continues to
31 cooperate with the investigation. A physician or practitioner
32 licensed by and practicing in a foreign country who has been
33 convicted of filing false claims with the department may not file
34 a certificate in support of a claim for disability benefits for a period
35 of five years.

36 (e) For purposes of this part, the term “physician” has the same
37 meaning as it does in Section 3209.3 of the Labor Code. For
38 purposes of this part, “practitioner” means a person duly licensed
39 or certified in California acting within the scope of his or her
40 license or certification who is a dentist, podiatrist, or as to normal



1 pregnancy or childbirth, a midwife, nurse midwife, or nurse
2 practitioner.

3 (f) For a claimant who is hospitalized in or under the authority
4 of a county hospital in this state, a certificate of initial and
5 continuing medical disability, if any, shall satisfy the requirements
6 of this section if the disability is shown by the claimant's hospital
7 chart, and the certificate is signed by the hospital's registrar. For
8 a claimant hospitalized in or under the care of a medical facility of
9 the United States government, a certificate of initial and
10 continuing medical disability, if any, shall satisfy the requirements
11 of this section if the disability is shown by the claimant's hospital
12 chart, and the certificate is signed by a medical officer of the
13 facility duly authorized to do so.

14 (g) Nothing in this section shall be construed to preclude the
15 department from requesting additional medical evidence to
16 supplement the first or any continued claim if the additional
17 evidence can be procured without additional cost to the claimant.
18 The department may require that the additional evidence include
19 identification of diagnoses, symptoms, or a statement as to the
20 facts of the claimant's disability by the physician or practitioner
21 treating the claimant, by the registrar, authorized medical officer,
22 or other duly authorized official of the hospital or health facility
23 treating the claimant, or by an examining physician or other
24 representative of the department.

25 SEC. 5. *Section 3254 of the Unemployment Insurance Code*
26 *is amended to read:*

27 3254. The Director of Employment Development shall
28 approve any voluntary plan, except one filed pursuant to Section
29 3255, as to which he or she finds that there is at least one employee
30 in employment and all of the following exist:

31 (a) The rights afforded to the covered employees are greater
32 than those provided for in Chapter 2 (commencing with Section
33 2625) ~~of this part~~ *and those provided for in Chapter 7*
34 *(commencing with Section 3300).*

35 (b) The plan has been made available to all of the employees of
36 the employer employed in this state or to all employees at any one
37 distinct, separate establishment maintained by the employer in this
38 state. "Employees" as used in this subdivision includes ~~such~~ *those*
39 individuals in partial or other forms of short-time employment and



1 employees not in employment as the Director of Employment
2 Development shall prescribe by authorized regulations.

3 (c) A majority of the employees of the employer employed in
4 this state or a majority of the employees employed at any one
5 distinct, separate establishment maintained by the employer in this
6 state have consented to the plan.

7 (d) If the plan provides for insurance the form of the insurance
8 policies to be issued have been approved by the Insurance
9 Commissioner and are to be issued by an admitted disability
10 insurer.

11 (e) The employer has consented to the plan and has agreed to
12 make the payroll deductions required, if any, and transmit the
13 proceeds to the plan insurer, if any.

14 (f) The plan provides for the inclusion of future employees.

15 (g) The plan will be in effect for a period of not less than one
16 year and, thereafter, continuously unless the Director of
17 Employment Development finds that the employer or a majority
18 of its employees employed in this state covered by the plan have
19 given notice of the termination of the plan. The notice shall be filed
20 in writing with the Director of Employment Development and
21 shall be effective only on the anniversary of the effective date of
22 the plan next following the filing of the notice, but in any event not
23 less than 30 days from the time of the filing of the notice; except
24 that the plan may be terminated on the operative date of any law
25 increasing the benefit amounts provided by Sections 2653 and
26 2655 or the operative date of any change in the rate of worker
27 contributions as determined by Section 984, if notice of the
28 termination of the plan is transmitted to the Director of
29 Employment Development not less than 30 days prior to the
30 operative date of such law or change. If the plan is not terminated
31 on such 30 days' notice because of the enactment of a law
32 increasing benefits or because of a change in the rate of worker
33 contributions as determined by Section 984, the plan shall be
34 amended to conform to ~~such~~ that increase or change on the
35 operative date of the increase or change.

36 (h) The amount of deductions from the wages of an employee
37 in effect for any plan shall not be increased on other than an
38 anniversary of the effective date of the plan except to the extent
39 that any increase in the deductions from the wages of an employee



1 allowed by Section 3260 permits ~~such~~ *that* amount to exceed the
2 amount of deductions in effect.

3 (i) The approval of the plan or plans will not result in a
4 substantial selection of risks adverse to the Disability Fund.

5 *SEC. 6.* Chapter 7 (commencing with Section 3300) is added
6 to Part 2 of Division 1 of the Unemployment Insurance Code, to
7 read:

8

9

CHAPTER 7. PAID FAMILY CARE LEAVE

10

11 3300. The Legislature finds and declares all of the following:

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

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

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

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

39 (e) The majority of workers in this state are unable to take
40 family care leave because they are unable to afford leave without



1 pay. When workers do not receive some form of wage replacement
2 during family care leave, families suffer from the worker's loss of
3 income, increasing the demand on the state unemployment
4 insurance system and dependence on the state's welfare system.

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

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

22 (b) *An individual's "weekly benefit amount" shall be the*
23 *amount provided in Section 2655.*

24 (c) *The maximum amount payable to an individual during any*
25 *disability benefit period for family temporary disability insurance*
26 *shall be 12 times his or her "weekly benefit amount." If the benefit*
27 *is not a multiple of one dollar (\$1) it shall be computed to the next*
28 *higher multiple of one dollar (\$1).*

29 3302. For purposes of this part:

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

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

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



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

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

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

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

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

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

25 (b) *An individual is not eligible for family temporary disability*
26 *insurance benefits with respect to any day that he or she has*
27 *received unemployment compensation benefits under Part 1*
28 *(commencing with Section 100) or under an unemployment*
29 *compensation act of any other state or of the federal government.*

30 (c) *An individual is not eligible for family temporary disability*
31 *insurance benefits with respect to any day of unemployment and*
32 *disability for which he or she has received, or is entitled to receive,*
33 *“other benefits” in the form of cash benefits as defined in*
34 *subdivision (b) of Section 2629.*

35 (d) *An individual is not eligible for family temporary disability*
36 *insurance benefits with respect to any day that he or she is entitled*
37 *to receive state disability insurance benefits under Part 2*
38 *(commencing with Section 2601) or under a disability insurance*
39 *act of any other state.*



1 (e) An individual is not eligible for family temporary disability
2 insurance benefits with respect to any day that another individual
3 receives family temporary disability insurance benefits under this
4 chapter for the care of the same family member.

5 3304. Eligible workers shall receive benefits in accordance
6 with provisions established under this division. Fifty percent of the
7 benefits shall be provided from the Disability Fund into which the
8 employee's Family Temporary Disability Insurance (FTDI)
9 premium shall be deposited. The balance of those benefits shall be
10 provided by the employer to the employee, ~~either directly or by~~
11 ~~means of insurance procured by the employer, pursuant to~~
12 ~~regulations to be promulgated by the department, or from the~~
13 ~~Disability Fund pursuant to the employer's election to contribute~~
14 ~~an amount equal to the employee's FTDI premium into the~~
15 ~~Disability Fund.~~

16 ~~3305. (a) Employers, other than those electing to contribute~~
17 ~~into the Disability Fund an amount equal to the employee's Family~~
18 ~~Temporary Disability Insurance (FTDI) premium required by~~
19 ~~Section 984, shall, as applicable, provide for the assumption by an~~
20 ~~admitted disability insurer of the liability of the employer to pay~~
21 ~~benefits under this chapter, file with the director a bond of an~~
22 ~~admitted surety insurer conditioned on the payment by the~~
23 ~~employer of its obligations under this section, deposit with the~~
24 ~~director securities approved by the director to secure the payment~~
25 ~~of obligations, or deposit with the director an irrevocable letter of~~
26 ~~credit.~~

27 ~~(b) Each employer subject to subdivision (a) shall, for each~~
28 ~~calendar year, pay a regulatory fee to the department in an amount,~~
29 ~~as limited by this subdivision, that is necessary to fund the~~
30 ~~department's administrative costs incurred in administering and~~
31 ~~monitoring the compliance of those employers with that~~
32 ~~subdivision. In no event may the amount of the regulatory fee~~
33 ~~charged pursuant to this subdivision exceed 14 percent of the~~
34 ~~product of the rate of the FTDI premium, as determined in Section~~
35 ~~984, and the amount of the taxable wages paid by the employer~~
36 ~~during the calendar year to employees eligible under this chapter~~
37 ~~for temporary disability insurance benefits. Fee payments made~~
38 ~~pursuant to this subdivision shall be deposited in the FTDI Private~~
39 ~~Option Administration Account, which is hereby created in the~~
40 ~~Disability Fund. Notwithstanding Section 13340 of the~~



1 ~~Government Code, moneys in that account are hereby~~
2 ~~continuously appropriated, without regard to fiscal year, for the~~
3 ~~exclusive purpose of funding the department's administrative~~
4 ~~costs incurred in administering and monitoring the compliance of~~
5 ~~employers with subdivision (a). No fee paid pursuant to this~~
6 ~~subdivision constitutes payment of any part of an employer's~~
7 ~~FTDI benefit obligation.~~

8 *SEC. 7. This act shall become operative on January 1, 2004,*
9 *except that benefits shall be payable for periods of family*
10 *temporary disability leave commencing on or after July 1, 2004.*

