

AMENDED IN ASSEMBLY JUNE 24, 2002

AMENDED IN SENATE MAY 22, 2002

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 Alarcon, Escutia, Karnette, Perata,  
Romero, and Torlakson**

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

February 21, 2002

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An act to amend Sections 984, 2601, 2613, 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 *at specified rates* 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, *for additional recipients of benefits from that 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



1 pursuant to Sections 926, 927, and 985 during the same 12-month  
2 period, and then rounded to the nearest one-tenth of 1 percent.

3 (B) The director shall increase the rate of worker contributions  
4 by .05 percent to cover the cost of family temporary disability  
5 insurance benefits provided in Chapter 7 (commencing with  
6 Section 3300) of Part 2. This additional contribution rate shall be  
7 known as the employee's Family Temporary Disability Insurance  
8 (FTDI) premium, and shall fund benefits required by Chapter 7  
9 (commencing with Section 3300) of Part 2. The director shall  
10 maintain a separate accounting of the cost of benefits paid pursuant  
11 to Chapter 7 (commencing with Section 3300) of Part 2. Beginning  
12 in 2004, the director shall provide an annual accounting of this cost  
13 as part of the fund status report submitted to the Legislature each  
14 May and October pursuant to Section 995, and shall ~~annually, on~~  
15 *or before October 31 of each calendar year*; adjust the FTDI  
16 premium rate ~~if a change is necessary to support the cost incurred~~  
17 *by FTDI benefit payments, if necessary, to replace the employee*  
18 *share of the disbursement costs for the previous 12-month period*  
19 *ending September 30, by increasing or decreasing the rate rounded*  
20 *to the nearest one-hundredth of 1 percent.* An employer electing  
21 to meet its obligation under Chapter 7 (commencing with Section  
22 3300) of Part 2 to provide 50 percent of FTDI benefits by  
23 contributing directly into the Disability Fund shall, under that  
24 election, contribute an amount equal to the FTDI premium paid by  
25 each employee into the Disability Fund.

26 (3) The rate of worker contributions shall not exceed 1.5  
27 percent or be less than 0.1 percent. The rate of worker  
28 contributions shall not decrease from the rate in the previous year  
29 by more than two-tenths of 1 percent.

30 (b) Worker contributions required under Sections 708 and  
31 708.5 shall be at a rate determined by the director to reimburse the  
32 Disability Fund for unemployment compensation disability  
33 benefits paid and estimated to be paid to all employers and  
34 self-employed individuals covered by those sections. On or before  
35 November 30th of each calendar year, the director shall prepare a  
36 statement, which shall be a public record, declaring the rate of  
37 contributions for the succeeding calendar year for all employers  
38 and self-employed individuals covered under Sections 708 and  
39 708.5 and shall notify promptly the employers and self-employed  
40 individuals of the rate. The rate shall be determined by dividing the



1 estimated benefits and administrative costs paid in the prior year  
2 by the product of the annual remuneration deemed to have been  
3 received under Sections 708 and 708.5 and the estimated number  
4 of persons who were covered at any time in the prior year. The  
5 resulting rate shall be rounded to the next higher one-hundredth  
6 percentage point. The rate may also be reduced or increased by a  
7 factor estimated to maintain as nearly as practicable a cumulative  
8 zero balance in the funds contributed pursuant to Sections 708 and  
9 708.5. Estimates made pursuant to this subdivision may be made  
10 on the basis of statistical sampling, or another method determined  
11 by the director.

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

14 (d) Notwithstanding subdivision (a), the director may, at his or  
15 her discretion, increase or decrease, by not to exceed 0.1 percent,  
16 the rate of worker contributions determined pursuant to  
17 subdivision (a), up to a maximum worker contribution rate of ~~4.35~~  
18 1.5 percent, if he or she determines the adjustment is necessary to  
19 reimburse the Disability Fund for disability benefits paid or  
20 estimated to be paid to individuals covered by this section or to  
21 prevent the accumulation of funds in excess of those needed to  
22 maintain an adequate fund balance.

23 SEC. 2. Section 2601 of the Unemployment Insurance Code  
24 is amended to read:

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

34 SEC. 3. Section 2613 of the Unemployment Insurance Code  
35 is amended to read:

36 2613. (a) The Director of Employment Development shall  
37 develop and maintain a program of education concerning  
38 disability insurance rights and benefits.

39 (b) The director shall provide to each employer of employees  
40 subject to this part a notice informing workers of their disability



1 insurance rights and benefits due to sickness, injury, or pregnancy.  
2 The notice shall be given by every employer to each new employee  
3 hired on or after June 1, 1988, and to each employee leaving work  
4 due to pregnancy or nonoccupational sickness or injury on or after  
5 July 1, 1989.

6 (c) Commencing January 1, 2004, the director shall provide to  
7 each employer of employees subject to this part a notice informing  
8 workers of their disability insurance rights and benefits due to the  
9 employee's own sickness, injury, or pregnancy, or the employee's  
10 need to provide care for any sick or injured family member or new  
11 child who is unable to care for himself or herself. The notice shall  
12 be given by every employer to each new employee hired on or after  
13 January 1, 2004, and to each employee leaving work due to  
14 pregnancy or nonoccupational sickness or injury on or after July  
15 1, 2004.

16 SEC. 4. Section 2708 of the Unemployment Insurance Code  
17 is amended to read:

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

34 A certificate filed to establish medical eligibility of the  
35 employee's own sickness, injury, or pregnancy shall also contain  
36 a statement of medical facts including secondary diagnoses when  
37 applicable, within the physician's or practitioner's knowledge,  
38 based on a physical examination and a documented medical  
39 history of the claimant by the physician or practitioner, indicating



1 his or her conclusion as to the claimant’s disability, and a statement  
2 of his or her opinion as to the expected duration of the disability.

3 (b) A certificate filed to establish medical eligibility of the  
4 serious health condition of the family member that warrants the  
5 care of the employee need not identify the serious health condition  
6 involved, but shall contain:

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

8 (2) The probable duration of the condition.

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

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

15 “Warrants the participation of the employee” includes, but is  
16 not limited to, providing psychological comfort, and arranging  
17 “third party” care for the child, parent, spouse, or domestic  
18 partner, as well as directly providing, or participating in, the  
19 medical care.

20 (c) The department shall develop a certification form for an  
21 employee taking leave for reason of the birth of a child of the  
22 employee or the employee’s domestic partner, or the placement of  
23 a child who is unable to care for himself or herself with the  
24 employee in connection with the adoption or foster care of the  
25 child by the employee or domestic partner.

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



1 a certificate in support of a claim for disability benefits for a period  
2 of five years.

3 (e) For purposes of this part, the term “physician” has the same  
4 meaning as it does in Section 3209.3 of the Labor Code. For  
5 purposes of this part, “practitioner” means a person duly licensed  
6 or certified in California acting within the scope of his or her  
7 license or certification who is a dentist, podiatrist, or as to normal  
8 pregnancy or childbirth, a midwife, nurse midwife, or nurse  
9 practitioner.

10 (f) For a claimant who is hospitalized in or under the authority  
11 of a county hospital in this state, a certificate of initial and  
12 continuing medical disability, if any, shall satisfy the requirements  
13 of this section if the disability is shown by the claimant’s hospital  
14 chart, and the certificate is signed by the hospital’s registrar. For  
15 a claimant hospitalized in or under the care of a medical facility of  
16 the United States government, a certificate of initial and  
17 continuing medical disability, if any, shall satisfy the requirements  
18 of this section if the disability is shown by the claimant’s hospital  
19 chart, and the certificate is signed by a medical officer of the  
20 facility duly authorized to do so.

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

32 SEC. 5. Section 3254 of the Unemployment Insurance Code  
33 is amended to read:

34 3254. The Director of Employment Development shall  
35 approve any voluntary plan, except one filed pursuant to Section  
36 3255, as to which he or she finds that there is at least one employee  
37 in employment and all of the following exist:

38 (a) The rights afforded to the covered employees are greater  
39 than those provided for in Chapter 2 (commencing with Section



1 2625) and those provided for in Chapter 7 (commencing with  
2 Section 3300).

3 (b) The plan has been made available to all of the employees of  
4 the employer employed in this state or to all employees at any one  
5 distinct, separate establishment maintained by the employer in this  
6 state. “Employees” as used in this subdivision includes those  
7 individuals in partial or other forms of short-time employment and  
8 employees not in employment as the Director of Employment  
9 Development shall prescribe by authorized regulations.

10 (c) A majority of the employees of the employer employed in  
11 this state or a majority of the employees employed at any one  
12 distinct, separate establishment maintained by the employer in this  
13 state have consented to the plan.

14 (d) If the plan provides for insurance the form of the insurance  
15 policies to be issued have been approved by the Insurance  
16 Commissioner and are to be issued by an admitted disability  
17 insurer.

18 (e) The employer has consented to the plan and has agreed to  
19 make the payroll deductions required, if any, and transmit the  
20 proceeds to the plan insurer, if any.

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

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



1 amended to conform to that increase or change on the operative  
2 date of the increase or change.

3 (h) The amount of deductions from the wages of an employee  
4 in effect for any plan shall not be increased on other than an  
5 anniversary of the effective date of the plan except to the extent  
6 that any increase in the deductions from the wages of an employee  
7 allowed by Section 3260 permits that amount to exceed the amount  
8 of deductions in effect.

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

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

14  
15 CHAPTER 7. PAID FAMILY CARE LEAVE

16  
17 3300. The Legislature finds and declares all of the following:

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

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

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

39 (d) State disability insurance benefits currently provide wage  
40 replacement for workers who need time off due to their own

1 non-work-related injuries, illnesses, or conditions, including  
2 pregnancy, that prevent them from working, but do not cover leave  
3 to care for a sick or injured child, spouse, parent, domestic partner,  
4 or leave to bond with a new child.

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

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

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

28 (b) An individual's "weekly benefit amount" shall be the  
29 amount provided in Section 2655.

30 (c) The maximum amount payable to an individual during any  
31 disability benefit period for family temporary disability insurance  
32 shall be 12 times his or her "~~weekly benefit amount.~~ amount,"  
33 *but in no case shall the total amount of benefits payable be more*  
34 *than the total wages paid to the individual during his or her*  
35 *disability base period.* If the benefit is not a multiple of one dollar  
36 (\$1) it shall be computed to the next higher multiple of one dollar  
37 (\$1).

38 3302. For purposes of this part:

39 (a) "Child" means a biological, adopted, or foster son or  
40 daughter, a stepson or stepdaughter, a legal ward, a son or daughter



1 of a domestic partner, or a son or daughter of an employee who  
2 stands in loco parentis to that child.

3 (b) “Family care leave” means any of the following:

4 (1) Leave for reason of the birth of a child of the employee or  
5 the employee’s domestic partner, the placement of a child with an  
6 employee in connection with the adoption or foster care of the  
7 child by the employee or domestic partner, or the serious health  
8 condition of a child of the employee, spouse or domestic partner.

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

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

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

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

19 (f) “Serious health condition” means an illness, injury,  
20 impairment, or physical or mental condition that involves  
21 inpatient care in a hospital, hospice, or residential health care  
22 facility, or continuing treatment or continuing supervision by a  
23 health care provider, as defined in Section 12945.2 of the  
24 Government Code.

25 3303. (a) An individual shall be deemed eligible for family  
26 temporary disability insurance benefits on any day in which he or  
27 she is unable to perform his or her regular or customary work  
28 because he or she is caring for a new child during the first year after  
29 the birth or placement of the child or a seriously ill child, parent,  
30 spouse, or domestic partner, subject to a waiting period of seven  
31 consecutive days during each family temporary disability benefit  
32 period where no benefits are payable within that period.

33 (b) An individual is not eligible for family temporary disability  
34 insurance benefits with respect to any day that he or she has  
35 received unemployment compensation benefits under Part 1  
36 (commencing with Section 100) or under an unemployment  
37 compensation act of any other state or of the federal government.

38 (c) An individual is not eligible for family temporary disability  
39 insurance benefits with respect to any day of unemployment and  
40 disability for which he or she has received, or is entitled to receive,



1 “other benefits” in the form of cash benefits as defined in  
2 subdivision (b) of Section 2629.

3 (d) An individual is not eligible for family temporary disability  
4 insurance benefits with respect to any day that he or she is entitled  
5 to receive state disability insurance benefits under Part 2  
6 (commencing with Section 2601) or under a disability insurance  
7 act of any other state.

8 (e) An individual is not eligible for family temporary disability  
9 insurance benefits with respect to any day that another individual  
10 receives family temporary disability insurance benefits under this  
11 chapter for the care of the same family member.

12 (f) *An individual who is entitled to leave under the FMLA and*  
13 *the CFRA must take Family Temporary Disability Insurance*  
14 *(FTDI) leave concurrent with leave taken under the FMLA and the*  
15 *CFRA.*

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

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

