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SENATE BILL

No. 1661

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, Thomson, and Vargas)

February 21, 2002

An act to amend Sections 984, 2116, 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~~ 6 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.~~ *This bill would also authorize employers to require that employees utilize up to 2 weeks of earned but unused vacation leave prior to that employee's receipt of these additional benefits, as provided, and specify that these provisions may not be construed to relieve an employer of any collective bargaining duties.* 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.

Existing law provides that it is unlawful to falsely certify the medical condition of any person in order to obtain disability benefits, to knowingly present a false statement in support of a claim for benefits, to knowingly solicit or receive any payment for soliciting a claimant to apply for disability insurance benefits, or to assist any person who engages in fraudulent or prohibited actions, as specified.

This bill would include family temporary disability insurance benefits within the disability benefits subject to the above proscriptions.

Because a violation of these provisions is a criminal offense, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.



Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: yes. Fiscal committee: yes. State-mandated local program: yes.

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~~ .08 percent for the 2004 and 2005 calendar years to cover
22 the initial cost of family temporary disability insurance benefits
23 provided in Chapter 7 (commencing with Section 3300) of Part 2.
24 ~~This additional contribution rate shall be known as the employee's~~
25 ~~Family Temporary Disability Insurance (FTDI) premium, and~~
26 ~~shall fund benefits required by Chapter 7 (commencing with~~
27 ~~Section 3300) of Part 2. The director shall maintain a separate~~
28 ~~accounting of the cost of benefits paid pursuant to Chapter 7~~
29 ~~(commencing with Section 3300) of Part 2. Beginning in 2004, the~~
30 ~~director shall provide an annual accounting of this cost as part of~~
31 ~~the fund status report submitted to the Legislature each May and~~



1 ~~October pursuant to Section 995, and shall, on or before October~~
2 ~~31 of each calendar year, adjust the FTDI premium rate, if~~
3 ~~necessary, to replace the employee share of the disbursement costs~~
4 ~~for the previous 12 month period ending September 30, by~~
5 ~~increasing or decreasing the rate rounded to the nearest~~
6 ~~one-hundredth of 1 percent. An employer electing to meet its~~
7 ~~obligation under Chapter 7 (commencing with Section 3300) of~~
8 ~~Part 2 to provide 50 percent of FTDI benefits by contributing~~
9 ~~directly into the Disability Fund shall, under that election,~~
10 ~~contribute an amount equal to the FTDI premium paid by each~~
11 ~~employee into the Disability Fund.~~

12 (3) The rate of worker contributions shall not exceed 1.5
13 percent or be less than 0.1 percent. The rate of worker
14 contributions shall not decrease from the rate in the previous year
15 by more than two-tenths of 1 percent.

16 (b) Worker contributions required under Sections 708 and
17 708.5 shall be at a rate determined by the director to reimburse the
18 Disability Fund for unemployment compensation disability
19 benefits paid and estimated to be paid to all employers and
20 self-employed individuals covered by those sections. On or before
21 November 30th of each calendar year, the director shall prepare a
22 statement, which shall be a public record, declaring the rate of
23 contributions for the succeeding calendar year for all employers
24 and self-employed individuals covered under Sections 708 and
25 708.5 and shall notify promptly the employers and self-employed
26 individuals of the rate. The rate shall be determined by dividing the
27 estimated benefits and administrative costs paid in the prior year
28 by the product of the annual remuneration deemed to have been
29 received under Sections 708 and 708.5 and the estimated number
30 of persons who were covered at any time in the prior year. The
31 resulting rate shall be rounded to the next higher one-hundredth
32 percentage point. The rate may also be reduced or increased by a
33 factor estimated to maintain as nearly as practicable a cumulative
34 zero balance in the funds contributed pursuant to Sections 708 and
35 708.5. Estimates made pursuant to this subdivision may be made
36 on the basis of statistical sampling, or another method determined
37 by the director.

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



1 (d) Notwithstanding subdivision (a), the director may, at his or
2 her discretion, increase or decrease, by not to exceed 0.1 percent,
3 the rate of worker contributions determined pursuant to
4 subdivision (a), up to a maximum worker contribution rate of 1.5
5 percent, if he or she determines the adjustment is necessary to
6 reimburse the Disability Fund for disability benefits paid or
7 estimated to be paid to individuals covered by this section or to
8 prevent the accumulation of funds in excess of those needed to
9 maintain an adequate fund balance.

10 SEC. 1.5. Section 2116 of the Unemployment Insurance Code
11 is amended to read:

12 2116. It is unlawful to do any of the following:

13 (a) Falsely certify the medical condition of any person in order
14 to obtain disability insurance benefits, including family temporary
15 disability insurance benefits, whether for the maker or for any
16 other person.

17 (b) Knowingly present or cause to be presented any false or
18 fraudulent written or oral material statement in support of any
19 claim for disability insurance including family temporary
20 disability insurance benefits.

21 (c) Knowingly solicit, receive, offer, pay, or accept any rebate,
22 refund, commission, preference, patronage, dividend, discount, or
23 other consideration, whether in the form of money or otherwise,
24 as compensation or inducement for soliciting a claimant to apply
25 for disability insurance including family temporary disability
26 insurance benefits unless the payment is lawful pursuant to Section
27 650 of the Business and Professions Code.

28 (d) Knowingly assist, abet, solicit, or conspire with any person
29 who engages in an unlawful act under this section.

30 SEC. 2. Section 2601 of the Unemployment Insurance Code
31 is amended to read:

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



1 SEC. 3. Section 2613 of the Unemployment Insurance Code
2 is amended to read:

3 2613. (a) The Director of Employment Development shall
4 develop and maintain a program of education concerning
5 disability insurance rights and benefits.

6 (b) The director shall provide to each employer of employees
7 subject to this part a notice informing workers of their disability
8 insurance rights and benefits due to sickness, injury, or pregnancy.
9 The notice shall be given by every employer to each new employee
10 hired on or after June 1, 1988, and to each employee leaving work
11 due to pregnancy or nonoccupational sickness or injury on or after
12 July 1, 1989.

13 (c) Commencing January 1, 2004, the director shall provide to
14 each employer of employees subject to this part a notice informing
15 workers of their disability insurance rights and benefits due to the
16 employee's own sickness, injury, or pregnancy, or the employee's
17 need to provide care for any sick or injured family member or new
18 child who is unable to care for himself or herself. The notice shall
19 be given by every employer to each new employee hired on or after
20 January 1, 2004, and to each employee leaving work *on or after*
21 *July 1, 2004*, due to ~~pregnancy or nonoccupational sickness or~~
22 ~~injury on or after July 1, 2004.~~ *pregnancy, nonoccupational*
23 *sickness or injury, or the need to provide care for any sick or*
24 *injured family member or new child who is unable to care for*
25 *himself or herself.*

26 SEC. 4. Section 2708 of the Unemployment Insurance Code
27 is amended to read:

28 2708. (a) In accordance with the director's authorized
29 regulations, and except as provided in *subdivision (c) and* Sections
30 2708.1 and 2709, a claimant shall establish medical eligibility for
31 each uninterrupted period of disability by filing a first claim for
32 disability benefits supported by the certificate of a treating
33 physician or practitioner that establishes the sickness, injury, or
34 pregnancy of the employee, or the condition of the family member
35 that warrants the care of the employee. For subsequent periods of
36 uninterrupted disability after the period covered by the initial
37 certificate or any preceding continued claim, a claimant shall file
38 a continued claim for those benefits supported by the certificate of
39 a treating physician or practitioner. A certificate filed to establish
40 medical eligibility for the employee's own sickness, injury, or



1 pregnancy shall contain a diagnosis and diagnostic code
2 prescribed in the International Classification of Diseases, or,
3 where no diagnosis has yet been obtained, a detailed statement of
4 symptoms.

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

13 (b) A certificate filed to establish medical eligibility of the
14 serious health condition of the family member that warrants the
15 care of the employee shall contain:

16 (1) A diagnosis and diagnostic code prescribed in the
17 International Classification of Diseases, or, where no diagnosis
18 has yet been obtained, a detailed statement of symptoms.

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

20 (3) The probable duration of the condition.

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

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

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

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

38 (d) The first and any continuing claim of an individual who
39 obtains care and treatment outside this state, shall be supported by
40 a certificate of a treating physician or practitioner duly licensed or



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

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

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

32 (g) Nothing in this section shall be construed to preclude the
33 department from requesting additional medical evidence to
34 supplement the first or any continued claim if the additional
35 evidence can be procured without additional cost to the claimant.
36 The department may require that the additional evidence include
37 identification of diagnoses, symptoms, or a statement as to the
38 facts of the claimant’s disability by the physician or practitioner
39 treating the claimant, by the registrar, authorized medical officer,
40 or other duly authorized official of the hospital or health facility



1 treating the claimant, or by an examining physician or other
2 representative of the department.

3 SEC. 5. Section 3254 of the Unemployment Insurance Code
4 is amended to read:

5 3254. The Director of Employment Development shall
6 approve any voluntary plan, except one filed pursuant to Section
7 3255, as to which he or she finds that there is at least one employee
8 in employment and all of the following exist:

9 (a) The rights afforded to the covered employees are greater
10 than those provided for in Chapter 2 (commencing with Section
11 2625) and those provided for in Chapter 7 (commencing with
12 Section 3300).

13 (b) The plan has been made available to all of the employees of
14 the employer employed in this state or to all employees at any one
15 distinct, separate establishment maintained by the employer in this
16 state. "Employees" as used in this subdivision includes those
17 individuals in partial or other forms of short-time employment and
18 employees not in employment as the Director of Employment
19 Development shall prescribe by authorized regulations.

20 (c) A majority of the employees of the employer employed in
21 this state or a majority of the employees employed at any one
22 distinct, separate establishment maintained by the employer in this
23 state have consented to the plan.

24 (d) If the plan provides for insurance the form of the insurance
25 policies to be issued have been approved by the Insurance
26 Commissioner and are to be issued by an admitted disability
27 insurer.

28 (e) The employer has consented to the plan and has agreed to
29 make the payroll deductions required, if any, and transmit the
30 proceeds to the plan insurer, if any.

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

32 (g) The plan will be in effect for a period of not less than one
33 year and, thereafter, continuously unless the Director of
34 Employment Development finds that the employer or a majority
35 of its employees employed in this state covered by the plan have
36 given notice of the termination of the plan. The notice shall be filed
37 in writing with the Director of Employment Development and
38 shall be effective only on the anniversary of the effective date of
39 the plan next following the filing of the notice, but in any event not
40 less than 30 days from the time of the filing of the notice; except

1 that the plan may be terminated on the operative date of any law
 2 increasing the benefit amounts provided by Sections 2653 and
 3 2655 or the operative date of any change in the rate of worker
 4 contributions as determined by Section 984, if notice of the
 5 termination of the plan is transmitted to the Director of
 6 Employment Development not less than 30 days prior to the
 7 operative date of that law or change. If the plan is not terminated
 8 on the 30 days' notice because of the enactment of a law increasing
 9 benefits or because of a change in the rate of worker contributions
 10 as determined by Section 984, the plan shall be amended to
 11 conform to that increase or change on the operative date of the
 12 increase or change.

13 (h) The amount of deductions from the wages of an employee
 14 in effect for any plan shall not be increased on other than an
 15 anniversary of the effective date of the plan except to the extent
 16 that any increase in the deductions from the wages of an employee
 17 allowed by Section 3260 permits that amount to exceed the amount
 18 of deductions in effect.

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

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

24
 25 CHAPTER 7. PAID FAMILY CARE LEAVE
 26

27 3300. The Legislature finds and declares all of the following:

28 (a) It is in the public benefit to provide family temporary
 29 disability insurance benefits to workers to care for their family
 30 members. The need for family temporary disability insurance
 31 benefits has intensified as both parent's participation in the
 32 workforce has increased, and the number of single parents in the
 33 workforce has grown. The need for partial wage replacement for
 34 workers taking family care leave will be exacerbated as the
 35 population of those needing care, both children and parents of
 36 workers, increases in relation to the number of working age adults.

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



1 (c) The federal Family and Medical Leave Act (FMLA) and
2 California’s Family Rights Act (CFRA) entitle eligible employees
3 working for covered employers to take unpaid, job-protected leave
4 for up to 12 workweeks in a 12-month period. Under the FMLA
5 and the CFRA, unpaid leave may be taken for the birth, adoption,
6 or foster placement of a new child; to care for a seriously ill child,
7 parent, or spouse; or for the employee’s own serious health
8 condition.

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

15 (e) The majority of workers in this state are unable to take
16 family care leave because they are unable to afford leave without
17 pay. When workers do not receive some form of wage replacement
18 during family care leave, families suffer from the worker’s loss of
19 income, increasing the demand on the state unemployment
20 insurance system and dependence on the state’s welfare system.

21 (f) It is the intent of the Legislature to create a family temporary
22 disability insurance program to help reconcile the demands of
23 ~~work and family. In recognition of the shared benefit of this~~
24 ~~program, the family temporary disability insurance program shall~~
25 ~~be implemented through employee contributions and the~~
26 ~~provision of benefits by employers, and shall be administered in~~
27 *work and family. The family temporary disability insurance*
28 *program shall be a component of the state’s unemployment*
29 *compensation disability insurance program, shall be funded*
30 *through employee contributions, and shall be administered in*
31 accordance with the policies of the state disability insurance
32 program created pursuant to this part. Initial and ongoing
33 administrative costs associated with the family temporary
34 disability insurance program shall be payable from the Disability
35 Fund.

36 3301. (a) The purpose of this chapter is to establish, within
37 the state disability insurance program, a family temporary
38 disability insurance program to provide up to ~~12~~ six weeks of wage
39 replacement benefits to workers who take time off work to care for



1 a seriously ill child, spouse, parent, domestic partner, or to bond
2 with a new child.

3 Nothing in this chapter shall be construed to abridge the rights
4 and responsibilities conveyed under the CFRA or pregnancy
5 disability leave.

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

8 (c) The maximum amount payable to an individual during any
9 disability benefit period for family temporary disability insurance
10 shall be ~~12~~ *six* times his or her "weekly benefit amount," but in
11 no case shall the total amount of benefits payable be more than the
12 total wages paid to the individual during his or her disability base
13 period. If the benefit is not a multiple of one dollar (\$1), it shall be
14 computed to the next higher multiple of one dollar (\$1).

15 (d) No more than ~~12~~ *six* weeks of family temporary disability
16 insurance benefits shall be paid within any 12-month period.

17 3302. For purposes of this part:

18 (a) "Child" means a biological, adopted, or foster son or
19 daughter, a stepson or stepdaughter, a legal ward, a son or daughter
20 of a domestic partner, or a son or daughter of an employee who
21 stands in loco parentis to that child.

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

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

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

30 (c) "Parent" means a biological, foster, or adoptive parent, a
31 stepparent, a legal guardian, or other person who stood in loco
32 parentis to the employee ~~or domestic partner~~ when the employee
33 ~~or domestic partner~~ was a child.

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

36 (e) "Family member" means child, parent, spouse, or
37 domestic partner as defined in this section.

38 (f) "Serious health condition" means an illness, injury,
39 impairment, or physical or mental condition that involves
40 inpatient care in a hospital, hospice, or residential health care



1 facility, or continuing treatment or continuing supervision by a
2 health care provider, as defined in Section 12945.2 of the
3 Government Code.

4 3303. (a) An individual shall be deemed eligible for family
5 temporary disability insurance benefits on any day in which he or
6 she is unable to perform his or her regular or customary work
7 because he or she is caring for a new child during the first year after
8 the birth or placement of the child or a seriously ill child, parent,
9 spouse, or domestic partner, subject to a waiting period of seven
10 consecutive days during each family temporary disability benefit
11 period where no benefits are payable within that period.

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

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

22 (d) An individual is not eligible for family temporary disability
23 insurance benefits with respect to any day that he or she is entitled
24 to receive state disability insurance benefits under Part 2
25 (commencing with Section 2601) or under a disability insurance
26 act of any other state.

27 (e) An individual is not eligible for family temporary disability
28 ~~insurance benefits with respect to any day that another individual~~
29 ~~receives family temporary disability insurance benefits under this~~
30 ~~chapter for the care of the same family member.~~ *insurance benefits*
31 *with respect to any day that another family member is able and*
32 *available for the same period of time that the individual is*
33 *providing the required care.*

34 (f) An individual who is entitled to leave under the FMLA and
35 the CFRA must take Family Temporary Disability Insurance
36 (FTDI) leave concurrent with leave taken under the FMLA and the
37 CFRA.

38 (g) *As a condition of an employee’s initial receipt of family*
39 *temporary disability insurance benefits during any 12-month*
40 *period in which an employee is eligible for these benefits, an*



1 *employer may require an employee to take up to two weeks of*
2 *earned but unused vacation leave prior to the employee's initial*
3 *receipt of these benefits. If an employer so requires an employee*
4 *to take vacation leave, that portion of the vacation leave that does*
5 *not exceed one week shall be applied to the waiting period required*
6 *under subdivision (a). This subdivision may not be construed in a*
7 *manner that relieves an employer of any duty of collective*
8 *bargaining the employer may have with respect to the subject*
9 *matter of this subdivision.*

10 3304. Eligible workers shall receive benefits in accordance
11 with provisions established under this division. ~~Fifty percent of the~~
12 ~~benefits shall be provided from the Disability Fund into which the~~
13 ~~employee's FTDI premium shall be deposited. The balance of~~
14 ~~those benefits shall be provided by the employer to the employee~~
15 ~~by means of insurance procured by the employer, pursuant to~~
16 ~~regulations to be promulgated by the department, or from the~~
17 ~~Disability Fund pursuant to the employer's election to contribute~~
18 ~~an amount equal to the employee's FTDI premium into the~~
19 ~~Disability Fund.~~

20 3305. If the director finds that any individual falsely certifies
21 the medical condition of any person in order to obtain family
22 temporary disability insurance benefits, with the intent to defraud,
23 whether for the maker or for any other person, the director shall
24 assess a penalty against the individual in the amount of 25 percent
25 of the benefits paid as a result of the false certification. The
26 provisions of this article, the provisions of Article 9 (commencing
27 with Section 1176) with respect to refunds, and the provisions of
28 Chapter 7 (commencing with Section 1701) with respect to
29 collections shall apply to the assessments provided by this section.
30 Penalties collected under this section shall be deposited in the
31 contingent fund.

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

35 SEC. 8. No reimbursement is required by this act pursuant to
36 Section 6 of Article XIII B of the California Constitution because
37 the only costs that may be incurred by a local agency or school
38 district will be incurred because this act creates a new crime or
39 infraction, eliminates a crime or infraction, or changes the penalty
40 for a crime or infraction, within the meaning of Section 17556 of



1 the Government Code, or changes the definition of a crime within
2 the meaning of Section 6 of Article XIII B of the California
3 Constitution.

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