

Senate Bill No. 727

Passed the Senate June 7, 2007

Secretary of the Senate

Passed the Assembly September 5, 2007

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2007, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 2708, 3300, 3301, 3302, 3303, and 3303.1 of the Unemployment Insurance Code, relating to family temporary disability insurance, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 727, Kuehl. Unemployment and disability compensation benefits: family temporary disability insurance: grandparents, grandchildren, and siblings.

Under existing law, the family temporary disability insurance (FTDI) program provides up to 6 weeks of wage replacement benefits to workers who take time off work to care for a seriously ill family member, as defined, or to bond with a new child. These benefits are payable for family temporary disability leaves that begin on and after July 1, 2004.

This bill, on or after July 1, 2008, would expand the scope of the family temporary disability insurance program to include grandparents, grandchildren, parents-in-law, and siblings within the definition of "family member," and would make conforming and clarifying changes in provisions relating to family temporary disability compensation. This bill would also clarify that an individual, who is entitled to a leave under the FMLA and the CFRA, must take the FTDI leave concurrent with the leave taken under the FMLA and CFRA if the FTDI leave is a qualifying leave under the FMLA or CFRA.

By increasing the pool of potential recipients of payments from the Disability Fund, a continuously appropriated special fund, this bill would result in an appropriation.

Appropriation: yes.

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

SECTION 1. Section 2708 of the Unemployment Insurance Code is amended to read:

2708. (a) (1) In accordance with the director's authorized regulations, and except as provided in subdivision (c) and Sections

2708.1 and 2709, a claimant shall establish medical eligibility for each uninterrupted period of disability by filing a first claim for disability benefits supported by the certificate of a treating physician or practitioner that establishes the sickness, injury, or pregnancy of the employee, or the condition of the family member that warrants the care of the employee. For subsequent periods of uninterrupted disability after the period covered by the initial certificate or any preceding continued claim, a claimant shall file a continued claim for those benefits supported by the certificate of a treating physician or practitioner. A certificate filed to establish medical eligibility for the employee's own sickness, injury, or pregnancy shall contain a diagnosis and diagnostic code prescribed in the International Classification of Diseases, or, where no diagnosis has yet been obtained, a detailed statement of symptoms.

(2) A certificate filed to establish medical eligibility of the employee's own sickness, injury, or pregnancy shall also contain a statement of medical facts including secondary diagnoses when applicable, within the physician's or practitioner's knowledge, based on a physical examination and a documented medical history of the claimant by the physician or practitioner, indicating the physician's or practitioner's conclusion as to the claimant's disability, and a statement of the physician's or practitioner's opinion as to the expected duration of the disability.

(b) An employee shall be required to file a certificate to establish eligibility when taking leave to care for a family member with a serious health condition. The certificate shall be developed by the department. In order to establish medical eligibility of the serious health condition of the family member that warrants the care of the employee, the information shall be within the physician's or practitioner's knowledge and shall be based on a physical examination and documented medical history of the family member and shall contain all of the following:

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

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

(3) The probable duration of the condition.

(4) An estimate of the amount of time that the physician or practitioner believes the employee is needed to care for the child,

parent, grandparent, grandchild, sibling, spouse, or domestic partner.

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

(B) “Warrants the participation of the employee” includes, but is not limited to, providing psychological comfort, and arranging “third party” care for the child, parent, grandparent, grandchild, sibling, spouse, or domestic partner, as well as directly providing, or participating in, the medical care.

(c) The department shall develop a certification form for bonding that is separate and distinct from the certificate required in subdivision (a) for an employee taking leave to bond with a minor child within the first year of the child’s birth or placement in connection with foster care or adoption.

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

(e) For purposes of this part:

(1) “Physician” has the same meaning as defined in Section 3209.3 of the Labor Code.

(2) “Practitioner” means a person duly licensed or certified in California acting within the scope of his or her license or certification who is a dentist, podiatrist, or as to normal pregnancy or childbirth, a midwife, nurse midwife, or nurse practitioner.

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

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

- (1) Identification of diagnoses.
- (2) Identification of symptoms.
- (3) A statement setting forth the facts of the claimant's disability.

The statement shall be completed by any of the following individuals:

(A) The physician or practitioner treating the claimant.

(B) The registrar, authorized medical officer, or other duly authorized official of the hospital or health facility treating the claimant.

(C) An examining physician or other representative of the department.

SEC. 2. Section 3300 of the Unemployment Insurance Code is amended to read:

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

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

(b) Family Temporary Disability Insurance shall be known as Paid Family Leave.

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

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

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

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

(g) It is the intent of the Legislature to create a family temporary disability insurance program to help reconcile the demands of work and family. The family temporary disability insurance program shall be a component of the state's unemployment compensation disability insurance program, shall be funded through employee contributions, and shall be administered in accordance with the policies of the state disability insurance program created pursuant to this part. Initial and ongoing administrative costs associated with the family temporary disability insurance program shall be payable from the Disability Fund.

SEC. 3. Section 3301 of the Unemployment Insurance Code is amended to read:

3301. (a) (1) The purpose of this chapter is to establish, within the state disability insurance program, a family temporary disability insurance program. Family temporary disability insurance shall provide up to six weeks of wage replacement benefits to workers who take time off work to care for a seriously ill child, spouse, parent, grandparent, grandchild, sibling, or domestic partner, or to bond with a minor child within one year of the birth or placement of the child in connection with foster care or adoption.

(2) Nothing in this chapter shall be construed to abridge the rights and responsibilities conveyed under the CFRA or pregnancy disability leave.

(b) An individual's "weekly benefit amount" shall be the amount provided in Section 2655. An individual is eligible to receive family temporary disability insurance benefits equal to one-seventh of his or her weekly benefit amount for each full day during which he or she is unable to work due to caring for a seriously ill or injured family member or bonding with a minor child within one year of the birth or placement of the child in connection with foster care or adoption.

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

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

(e) An individual shall file a claim for family temporary disability insurance benefits not later than the 41st consecutive day following the first compensable day with respect to which the claim is made for benefits, which time shall be extended by the department upon a showing of good cause. If a first claim is not complete, the claim form shall be returned to the claimant for completion and it shall be completed and returned not later than the 10th consecutive day after the date it was mailed by the department to the claimant, except that such time shall be extended by the department upon a showing of good cause.

SEC. 4. Section 3302 of the Unemployment Insurance Code is amended to read:

3302. For purposes of this part:

(a) “Care recipient” means the family member who is receiving care for a serious health condition or the new child with whom the care provider is bonding.

(b) “Care provider” means the family member who is providing the required care for a serious health condition or the family member who is bonding with the new child.

(c) “Child” means a biological, adopted, or foster son or daughter, a stepson or stepdaughter, a legal ward, a son or daughter of a domestic partner, or the person to whom the employee stands in loco parentis.

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

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

(1) Leave to bond with a minor child within the first year of the child’s birth or placement in connection with foster care or adoption.

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

(f) “Family member” means child, parent, grandparent, grandchild, sibling, spouse, or domestic partner as defined in this section.

(g) “Parent” means a biological, foster, or adoptive parent, a parent-in-law, a stepparent, a legal guardian, or other person who stood in loco parentis to the employee when the employee was a child.

(h) “Parent-in-law” means the parent of a spouse or a domestic partner.

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

(j) “Sibling” means a sibling as defined in subdivision (c) of Section 362.1 of the Welfare and Institutions Code.

(k) “Spouse” means a partner to a lawful marriage.

(l) “Valid claim” means any claim for family temporary disability insurance benefits made in accordance with the provisions of this code, and any rules and regulations adopted

thereunder, if the individual claiming benefits is unemployed and has been paid the necessary wages in employment for employers to qualify for benefits under Section 2652 and is caring for a seriously ill family member, or bonding with a minor child during the first year after the birth or placement of the child in connection with foster care or adoption.

(m) “Twelve-month period,” with respect to any individual, means the 365 consecutive days that begin with the first day the individual first establishes a valid claim for family temporary disability benefits.

SEC. 5. Section 3303 of the Unemployment Insurance Code is amended to read:

3303. An individual shall be deemed eligible for family temporary disability insurance benefits equal to one-seventh of his or her weekly benefit amount on any day in which he or she is unable to perform his or her regular or customary work because he or she is bonding with a minor child during the first year after the birth or placement of the child in connection with foster care or adoption or caring for a seriously ill child, parent, grandparent, grandchild, sibling, spouse, or domestic partner, only if the director finds all of the following:

(a) The individual has made a claim for temporary disability benefits as required by authorized regulations.

(b) The individual has been unable to perform his or her regular or customary work for a seven-day waiting period during each disability benefit period, with respect to which waiting period no family temporary disability insurance benefits are payable.

(c) The individual has filed a certificate, as required by Sections 2708 and 2709.

SEC. 6. Section 3303.1 of the Unemployment Insurance Code is amended to read:

3303.1. (a) An individual is not eligible for family temporary disability insurance benefits with respect to any day that any of the following apply:

(1) The individual has received, or is entitled to receive, unemployment compensation benefits under Part 1 (commencing with Section 100) or under an unemployment compensation act of any other state or of the federal government.

(2) The individual has received, or is entitled to receive, “other benefits” in the form of cash benefits as defined in Section 2629.

(3) The individual has received, or is entitled to receive, state disability insurance benefits under Part 2 (commencing with Section 2601) or under a disability insurance act of any other state.

(4) Another family member, as defined in Section 3302, is ready, willing, and able and available for the same period of time in a day that the individual is providing the required care.

(b) An individual who is entitled to leave under the FMLA and the CFRA must take Family Temporary Disability Insurance (FTDI) leave concurrent with leave taken under the FMLA and the CFRA, if the FTDI leave is a qualifying leave under the FMLA or CFRA.

(c) As a condition of an employee's initial receipt of family temporary disability insurance benefits during any 12-month period in which an employee is eligible for these benefits, an employer may require an employee to take up to two weeks of earned but unused vacation leave prior to the employee's initial receipt of these benefits. If an employer so requires an employee to take vacation leave, that portion of the vacation leave that does not exceed one week shall be applied to the waiting period required under subdivision (b) of Section 3303. This subdivision may not be construed in a manner that relieves an employer of any duty of collective bargaining the employer may have with respect to the subject matter of this subdivision.

SEC. 7. The amendments made by this act shall not become operative until July 1, 2008.

Approved _____, 2007

Governor