

ASSEMBLY BILL

No. 804

Introduced by Assembly Member Yamada

February 17, 2011

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

LEGISLATIVE COUNSEL'S DIGEST

AB 804, as introduced, Yamada. Unemployment compensation: disability benefits: paid family leave.

Under existing law, the family temporary disability insurance program provides up to 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 minor child within one year of the birth or placement of the child in connection with foster care or adoption. These benefits are payable for family temporary disability leaves that begin on and after July 1, 2004.

This bill would expand the scope of the family temporary disability program to include time off to care for a seriously ill grandparent, grandchild, sibling, or parent-in-law, as defined. The bill would make conforming and clarifying changes in provisions relating to family temporary disability compensation.

Under existing law, workers are required to pay contributions to the Unemployment Compensation Disability Fund, a special fund in the State Treasury, and those funds are continuously appropriated for the purpose of providing disability benefits and making payment of expenses in administering those provisions.

This bill, by authorizing expenditure of money in the Unemployment Compensation Disability Fund for a new purpose, 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 2708 of the Unemployment Insurance
2 Code is amended to read:

3 2708. (a) (1) In accordance with the director's authorized
4 regulations, and except as provided in subdivision (c) and Sections
5 2708.1 and 2709, a claimant shall establish medical eligibility for
6 each uninterrupted period of disability by filing a first claim for
7 disability benefits supported by the certificate of a treating
8 physician or practitioner that establishes the sickness, injury, or
9 pregnancy of the employee, or the condition of the family member
10 that warrants the care of the employee. For subsequent periods of
11 uninterrupted disability after the period covered by the initial
12 certificate or any preceding continued claim, a claimant shall file
13 a continued claim for those benefits supported by the certificate
14 of a treating physician or practitioner. A certificate filed to establish
15 medical eligibility for the employee's own sickness, injury, or
16 pregnancy shall contain a diagnosis and diagnostic code prescribed
17 in the International Classification of Diseases, or, where no
18 diagnosis has yet been obtained, a detailed statement of symptoms.

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

28 (b) An employee shall be required to file a certificate to establish
29 eligibility when taking leave to care for a family member with a
30 serious health condition. The certificate shall be developed by the
31 department. In order to establish medical eligibility of the serious
32 health condition of the family member that warrants the care of

1 the employee, the information shall be within the physician's or
2 practitioner's knowledge and shall be based on a physical
3 examination and documented medical history of the family member
4 and shall contain all of the following:

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

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

9 (3) The probable duration of the condition.

10 (4) An estimate of the amount of time that the physician or
11 practitioner believes the employee is needed to care for the child,
12 parent, *grandparent*, *grandchild*, *sibling*, spouse, or domestic
13 partner.

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

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

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

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

1 convicted of filing false claims with the department may not file
2 a certificate in support of a claim for disability benefits for a period
3 of five years.

4 (e) For purposes of this part:

5 (1) "Physician" has the same meaning as defined in Section
6 3209.3 of the Labor Code.

7 (2) "Practitioner" means a person duly licensed or certified in
8 California acting within the scope of his or her license or
9 certification who is a dentist, podiatrist, or a nurse practitioner,
10 and in the case of a nurse practitioner, after performance of a
11 physical examination by a nurse practitioner and collaboration
12 with a physician and surgeon, or as to normal pregnancy or
13 childbirth, a midwife or nurse midwife, or nurse practitioner.

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

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

31 (1) Identification of diagnoses.

32 (2) Identification of symptoms.

33 (3) A statement setting forth the facts of the claimant's disability.
34 The statement shall be completed by any of the following
35 individuals:

36 (A) The physician or practitioner treating the claimant.

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

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

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

5 3300. The Legislature finds and declares all of the following:

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

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

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

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

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

36 (f) The majority of workers in this state are unable to take family
37 care leave because they are unable to afford leave without pay.
38 When workers do not receive some form of wage replacement
39 during family care leave, families suffer from the worker's loss of

1 income, increasing the demand on the state unemployment
2 insurance system and dependence on the state's welfare system.

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

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

15 3301. (a) (1) The purpose of this chapter is to establish, within
16 the state disability insurance program, a family temporary disability
17 insurance program. Family temporary disability insurance shall
18 provide up to six weeks of wage replacement benefits to workers
19 who take time off work to care for a seriously ill child, spouse,
20 parent, *grandparent, grandchild, sibling, or* domestic partner, or
21 to bond with a minor child within one year of the birth or placement
22 of the child in connection with foster care or adoption.

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

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

34 (c) The maximum amount payable to an individual during any
35 disability benefit period for family temporary disability insurance
36 shall be six times his or her "weekly benefit amount," but in no
37 case shall the total amount of benefits payable be more than the
38 total wages paid to the individual during his or her disability base
39 period. If the benefit is not a multiple of one dollar (\$1), it shall
40 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

1 stood in loco parentis to the employee when the employee was a
2 child.

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

5 ~~(h)~~

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

11 (j) “Sibling” means person related to another person by blood,
12 adoption, or affinity through a common legal or biological parent.

13 ~~(j)~~

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

15 ~~(j)~~

16 (l) “Valid claim” means any claim for family temporary
17 disability insurance benefits made in accordance with the
18 provisions of this code, and any rules and regulations adopted
19 thereunder, if the individual claiming benefits is unemployed and
20 has been paid the necessary wages in employment for employers
21 to qualify for benefits under Section 2652 and is caring for a
22 seriously ill family member, or bonding with a minor child during
23 the first year after the birth or placement of the child in connection
24 with foster care or adoption.

25 ~~(k)~~

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

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

32 3303. An individual shall be deemed eligible for family
33 temporary disability insurance benefits equal to one-seventh of
34 his or her weekly benefit amount on any day in which he or she is
35 unable to perform his or her regular or customary work because
36 he or she is bonding with a minor child during the first year after
37 the birth or placement of the child in connection with foster care
38 or adoption or caring for a seriously ill child, parent, *grandparent*,
39 *grandchild*, *sibling*, spouse, or domestic partner, only if the director
40 finds all of the following:

- 1 (a) The individual has made a claim for temporary disability
- 2 benefits as required by authorized regulations.
- 3 (b) The individual has been unable to perform his or her regular
- 4 or customary work for a seven-day waiting period during each
- 5 disability benefit period, with respect to which waiting period no
- 6 family temporary disability insurance benefits are payable.
- 7 (c) The individual has filed a certificate, as required by Sections
- 8 2708 and 2709.

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