

**Introduced by Senators Jackson and DeSaulnier**February 22, 2013

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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

SB 770, as introduced, Jackson. 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 also 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~~ *if* 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  
33 the employee, the information shall be within the physician’s or  
34 practitioner’s knowledge and shall be based on a physical

1 examination and documented medical history of the family member  
2 and shall contain all of the following:

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

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

7 (3) The probable duration of the condition.

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

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

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

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

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  
29 or certified by the state or foreign country in which the claimant  
30 is 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:

4 (1) “Physician” has the same meaning as defined in Section  
5 3209.3 of the Labor Code.

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

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

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

30 (1) Identification of diagnoses.

31 (2) Identification of symptoms.

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

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

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

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

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

3 3300. The Legislature finds and declares all of the following:

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

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

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

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

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

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

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

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

13 3301. (a) (1) The purpose of this chapter is to establish, within  
14 the state disability insurance program, a family temporary disability  
15 insurance program. Family temporary disability insurance shall  
16 provide up to six weeks of wage replacement benefits to workers  
17 who take time off work to care for a seriously ill child, spouse,  
18 parent, *grandparent*, *grandchild*, *sibling*, or domestic partner, or  
19 to bond with a minor child within one year of the birth or placement  
20 of the child in connection with foster care or adoption.

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

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

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

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

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

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

13 3302. For purposes of this part:

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

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

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

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

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

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

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

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

36 (g) “*Grandchild*” means a child of the employee’s child.

37 (h) “*Grandparent*” means a parent of the employee’s parent.

38 ~~(g)~~

39 (i) “Parent” means a biological, foster, or adoptive parent, a  
40 *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 (j) “Parent-in-law” means the parent of a spouse or a domestic  
 4 partner.

5 ~~(h)~~

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

13 ~~(i)~~

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

15 ~~(j)~~

16 (n) “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 (o) “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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