

EMPLOYMENT DEVELOPMENT DEPARTMENT

**Adoption of Sections 2706-2, 2706-6, 2708(b)-1, and 2708(c)-1
and Adoption of Chapter 7. Family Temporary Disability Insurance,
Sections 3301(a)-1, 3301(d)-1, 3302-1, 3302-2, 3303-1,
3303(b)-1, 3303.1(a)-1, 3303.1(c)-1, and 3306(b)-1
of Division 1. Unemployment and Disability Compensation,
of Part 2. Disability Compensation,
of Title 22, California Code of Regulations**

FAMILY TEMPORARY DISABILITY INSURANCE

**[Approved by Office of Administrative Law on 6/23/04
Filed with Secretary of State on 6/23/04
Effective 7/1/04]**

§ 2706-2. Claim for Family Temporary Disability Insurance Benefits – Filing and Contents.

(a) “First claim” means the claim initially filed on a form prescribed by the department with respect to a 12-month period of family care leave. The claimant establishes his or her 12-month period and the department computes the weekly benefit amount and maximum benefits potentially payable.

(b) Any individual who has taken time off from his or her work for a period of eight days to care for a seriously ill child, spouse, parent, registered domestic partner, or to bond with a new child, as they are defined in section 3302, may file a claim for benefits.

(c) A “properly completed first or re-established claim” means a claim containing all the required items as prescribed in this section.

(d) The claimant shall file the first or re-established claim and shall provide his or her:

- (1) legal name, and any other last names by which the claimant is or was known.
- (2) social security account number.
- (3) date of birth.
- (4) gender.
- (5) mailing address.

- (6) last day worked at his or her last job.
 - (7) reason why he or she is no longer working at his or her last job.
 - (8) occupation.
 - (9) name(s) and address(es) of his or her most recent employer(s).
 - (10) date on which he or she requests benefits to begin.
 - (11) care or bonding recipient's legal name.
 - (12) relationship to the care recipient. The claimant may be required to provide evidence of the relationship to the family member to support the claim such as a birth or marriage certificate or proof of a registered domestic partnership.
 - (13) statement attesting whether any other family member is ready, willing, able and available to provide care for the same period of time in a day.
 - (14) signature.
 - (15) authorization for the department to disclose the claimant's information as listed herein from (d)(1) to (d)(14) to the care recipient's treating physician or practitioner and to the care recipient.
 - (16) such other information as the department may require.
- (e) The claimant shall complete the bonding certification if applying for benefits to bond with a new child and shall set forth the new child's:
- (1) social security account number, if issued. Absence of child's social security account number shall not disqualify the claimant.
 - (2) relationship to the claimant.
 - (3) date of foster care or adoption placement of the new child with the claimant or family member.
 - (4) legal name.
 - (5) date of birth.
 - (6) gender.
 - (7) residence address.
 - (8) documentary evidence, pursuant to section 2708(c)-1 of these regulations.
 - (9) claimant's signature.
 - (10) such other information as the department may require.
- (f) The claimant shall also provide the information as specified below about the following persons:
- (1) for a care recipient, the claimant shall provide the care recipient's:
 - (A) legal name.
 - (B) social security account number, if issued. Absence of care recipient's social security account number shall not disqualify the claimant.
 - (C) date of birth.
 - (D) gender.
 - (E) residence address.
 - (F) signature or authorized representative's signature authorizing the treating physician or practitioner to release the care recipient's protected health information to the department and the claimant.

(2) The claimant shall gather from the treating physician or practitioner on the department's designated form:

(A) the name of the care recipient.

(B) the date of birth of the care recipient.

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

(D) the date, if known, on which the serious health condition of the care recipient commenced.

(E) the probable duration of the care recipient's serious health condition.

(F) an estimate of the duration of time that the care provider is needed to care for the care recipient.

(G) the number of hours per day that the care provider is needed to care for the care recipient.

(H) a statement that the care recipient's serious health condition warrants the participation of the care provider to provide care for the care recipient.

(I) a statement regarding whether disclosure of the doctor's certification would be medically or psychologically detrimental to the care recipient.

(J) the treating doctor's or practitioner's name and address.

(K) the treating doctor's or practitioner's license number.

(L) the treating doctor's or practitioner's signature.

(M) such other information as the department may require.

NOTE: Authority cited: Sections 305 and 306, Unemployment Insurance Code.
Reference: Sections 2701.5, 2706, and 3303.1, Unemployment Insurance Code.

§ 2706-6. Filing and Timeliness of Continued and Re-established Claims for Family Temporary Disability Insurance Benefits.

(a) A separate continued claim must be filed, on the form prescribed and furnished to the claimant by the department, containing elements described in Section 2706-2, for each period subsequent to the period covered by the first or re-established claim. A claimant or his or her authorized representative may, within 20 days from either the last day covered by the most recent continued claim or from the day he or she receives the continued claim form from the department, whichever day is later, file a continued claim. The 20-day period will be extended by the department upon a showing of good cause.

(b) An individual must file a re-established claim form, containing elements described in Section 2706-2, 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. The time will be extended by the department upon a showing of good cause. If a re-established claim form is not complete, the claim form will be returned to the claimant for completion and it must be completed and returned not later than the 10th consecutive day after the date it was mailed by the department to the claimant. The time will be extended by the department upon a showing of good cause.

NOTE: Authority cited: Sections 305 and 306, Unemployment Insurance Code.
Reference: Sections 2706 and 3301(e), Unemployment Insurance Code.

§ 2708(b)-1. Warrants the Participation of the Employee.

(a) Section 2708(b) of the code requires a claimant to establish that the serious health condition “warrants the participation of the employee” and includes physical assistance and/or psychological comfort as acceptable types of care. When a serious health condition renders the care recipient unable to attend to his or her own basic medical, hygienic, or nutritional needs or safety, or to transport himself or herself to the doctor, then that serious health condition warrants the participation of the claimant to provide care for that care recipient by physically assisting him or her to accomplish these tasks. Providing reassurance and emotional support that is beneficial to a child, spouse, parent, or registered domestic partner with a serious health condition is another type of acceptable care.

EXAMPLE 1. Claimant A’s wife has a heart condition that requires her to take medication regularly and to avoid stress-inducing events. Her father lives in another country and dies there in a car accident. Claimant A takes a week off work and accompanies his wife to her father’s funeral in that country and claims Family Temporary Disability Insurance benefits. The medical certificate indicates the wife’s heart condition does not warrant Claimant A’s participation in her care.

Claimant A is not eligible for benefits because his participation was not warranted by his wife’s heart condition. Therefore, the time that he took off work was not for the purpose of caring for her pursuant to a treating physician or practitioner’s instruction.

EXAMPLE 2. Claimant B’s sister dies suddenly in Nevada. As a result of her death, Claimant B’s father becomes so severely depressed that he is incapacitated and cannot take care of his daily needs. He requires counseling and mental health services in order to cope with his grief. Claimant B establishes a claim for Family Temporary Disability Insurance benefits. The medical certificate indicates the father’s serious health condition warrants Claimant B’s participation in his care. Claimant B takes time off work to provide his father with psychological comfort by attending counseling sessions with him at a mental health clinic and comforting him in his home.

Claimant B may receive benefits, if otherwise eligible, because his father’s serious health condition warrants the psychological comfort of Claimant B.

EXAMPLE 3. Claimant C’s elderly mother decides to move into an apartment upstairs from the one where she currently lives. The mother has no serious health condition. Claimant C takes time off work to help her mother move into the new apartment. Claimant C establishes a claim for Family Temporary Disability Insurance benefits. The medical certificate indicates Claimant C’s mother does not have a serious health condition that warrants Claimant C’s participation in her care.

Claimant C is not eligible for benefits because her mother does not have a serious health condition that warranted Claimant C's care.

(b) A care recipient's serious health condition may also warrant the claimant's participation in situations where the claimant is needed to substitute for others who are caring for the care recipient, or to make arrangements for care, such as transfer to a nursing home.

(c) A care recipient's serious health condition may warrant the participation of the care provider intermittently, rather than in one single block of time.

EXAMPLE 1: Claimant A's registered domestic partner undergoes radiation for cancer one day every month over 500 miles from their home. Claimant A takes two days off work for each radiation appointment to accompany her registered domestic partner to and from the appointment. Claimant A establishes a claim for benefits supported by a medical certificate that indicates her care is warranted for two days every month due to her domestic partner's serious health condition.

Claimant A may receive Family Temporary Disability Insurance benefits for the days she takes leave from work, if otherwise eligible.

NOTE: Authority cited: Sections 305 and 306, Unemployment Insurance Code.
Reference: Section 2708, Unemployment Insurance Code.

§ 2708(c)-1. Acceptable Documentation for a Child’s Birth, Adoption, or Foster Care Placement.

(a) When filing a claim to bond with a new child after birth, adoption, or foster care placement, the claimant shall include a photocopy of a supporting document.

(1) A supporting document shall include the child’s:

(A) name.

(B) date of birth.

(C) gender.

(D) social security account number, if available. Absence of child’s social security account number shall not disqualify claimant.

(2) If applicable, a supporting document must also include:

(A) the date(s) of placement.

(B) names of the parent(s), custodial parent(s), and/or registered domestic partner.

(C) a dated signature.

(b) For maternal, paternal, and registered domestic partner bonding claims, any of the following documents is acceptable to verify the birth of a child:

(1) photocopy of the child’s certified birth certificate.

(2) photocopy of the completed hospital or birthing center documents attesting to the birth of the child.

(3) a letter from the birthing center’s or hospital’s Director of Medical Records or their designate containing all of the following information:

(A) child’s full name.

(B) child’s gender.

(C) child’s date of birth.

(D) full name of mother.

(E) full name of father, if known, or registered domestic partner.

(F) dated signature of the treating physician or midwife, or Director of Medical Records, or their designate as appropriate.

(4) For paternal non-spouse bonding claims where the individual is not named on a document listed in (b) above, proof of paternity is required. In California, the acceptable supporting document is a photocopy of California Department of Child Support Services form *Declaration of Paternity*, CS-909 revision 5/02, or its subsequent revision.

(c) To verify adoption, a photocopy of any of the following documents, or their subsequent revisions, is acceptable:

(1) Department of Social Services form *Notice of Placement*, AD-907 revision 6/01.

(2) Department of Social Services form *Independent Adoption Placement Agreement*, AD-924 revision 7/02.

(3) a photocopy of a conformed copy of a court order of placement for adoption issued within the United States.

(4) a photocopy of the child's passport clearly showing an Immigration and Naturalization Services (INS) stamp I-551.

(5) a photocopy of the child's adoption certificate from a foreign country's competent local authority with a notarized English translation.

(d) Any of the following documents is acceptable to verify foster care placement:

(1) photocopy of the Department of Social Services form *Approval of Family Caregiver Home*, SOC-815 revision 11/02, or its subsequent revision.

(2) a statement on letterhead from the County Department of Social Services, or equivalent government entity, stating all of the following:

(A) child's full name.

(B) child's gender.

(C) child's date of birth.

(D) child's social security account number if issued. Absence of child's social security account number shall not disqualify claimant.

(E) residence address where the child is placed.

(F) date of foster care placement including the length of time of the placement if a duration has been established.

(G) full name(s) of the person(s) with whom the foster care placement is made, including such person's:

(i) social security account number(s). Absence of social security account number of person(s) with whom the foster care placement is made shall not disqualify claimant.

(ii) residence address.

(iii) date of birth.

(H) the signature block for the social worker making the foster care placement shall include all of the following:

(i) dated signature of the social worker.

(ii) social worker's typewritten name.

(iii) social worker's direct telephone number.

NOTE: Authority cited: Sections 305 and 306, Unemployment Insurance Code.
Reference: Sections 2706 and 2708, Unemployment Insurance Code.

Chapter 7. Family Temporary Disability Insurance

§ 3301(a)-1. Family Temporary Disability Insurance—Right to Benefits

The right to benefits pursuant to Division 1, Part 2, Chapter 7 (commencing with Section 3300) of the code does not provide leave rights or any form of job protection.

EXAMPLE 1. Claimant A works for a small business with 15 employees. Claimant A notifies his employer that he will be unable to report to work due to the need to provide care for his seriously ill parent. He advises the employer that he will claim Family Temporary Disability Insurance benefits. The employer informs Claimant A that he cannot guarantee a position with the company will be available when Claimant A returns.

Claimant A establishes a claim for Family Temporary Disability Insurance benefits and receives three weeks of benefits. Claimant A returns to work and is informed by his employer that a position with the company is not available. Although Claimant A received Family Temporary Disability Insurance benefits, his employer was not obligated to retain him as an employee with the company.

NOTE: Authority cited: Sections 305 and 306, Unemployment Insurance Code.
Reference: Sections 3301, Unemployment Insurance Code.

§ 3301(d)-1. Twelve-Month Period Defined.

(a) Any “12-month period,” means the 365 consecutive days beginning with the first day from which the individual first establishes a valid claim for Family Temporary Disability Insurance benefits.

EXAMPLE 1. Claimant A establishes a claim for Family Temporary Disability Insurance benefits beginning November 17, 2004. Claimant A serves a seven-day waiting period November 17 through November 23 and receives six weeks of benefits through January 4, 2005. Claimant A returns to work through May 31, 2005. Claimant A establishes a claim for benefits requesting additional Family Temporary Disability Insurance benefits beginning June 1, 2005.

Claimant A is ineligible for additional benefits because the maximum amount of six weeks of benefits was paid in full during the 365 days beginning November 17, 2004. Claimant A is not eligible for any further benefits until a new 12-month period can be established-which could not be earlier than November 17, 2005.

EXAMPLE 2. Claimant B establishes a claim for Family Temporary Disability Insurance benefits beginning November 17, 2004 to provide care for her parent. Claimant B serves a seven-day waiting period November 17 through November 23 and receives three weeks of benefits through December 14, 2004. Claimant B returns to work through November 2, 2005. Claimant B requests an additional three weeks of benefits beginning November 3, 2005 to provide care for her spouse.

Claimant B serves a seven-day waiting period November 3 through November 9 because she is providing care for a different care recipient. Claimant B is only eligible for one week of benefits, November 10 through November 16, since the 12-month period terminates on November 16, 2005.

EXAMPLE 3. Claimant C establishes a claim for Family Temporary Disability Insurance benefits beginning November 17, 2004 to provide care for his parent. Claimant C serves a seven-day waiting period November 17 through November 23 and receives three weeks of benefits through December 14, 2004. Claimant C returns to work through November 2, 2005. Claimant C requests an additional six weeks of benefits beginning November 3, 2005 to provide care for his spouse.

Claimant C serves a seven-day waiting period November 3 through November 9 because he is providing care for a different care recipient. He is only eligible for one week of benefits, November 10 through November 16, since the 12-month period terminates on November 16, 2005. However, Claimant C may submit a new claim for Family Temporary Disability Insurance benefits to establish a new 12-month period beginning November 17, 2005. Claimant C

may receive additional benefits after serving a seven-day waiting period in the new 12-month period if his care is warranted and he is otherwise eligible.

NOTE: Authority cited: Sections 305 and 306, Unemployment Insurance Code.
Reference: Sections 3301 and 3302, Unemployment Insurance Code.

§ 3302-1. Family Temporary Disability Insurance Definitions.

Unless the context otherwise requires, the terms used in this part relative to Family Temporary Disability Insurance benefits shall have the following meaning:

(a) "Authorized representative" of a claimant or care recipient means one of the following individuals who:

(1) is the parent.

(2) is authorized by a power of attorney or other authorization satisfactory to the department to represent or act on behalf of a claimant or care recipient who is incapable of fulfilling the requirements of filing claims for Family Temporary Disability Insurance benefits.

(3) files with the department upon a prescribed form a duly sworn affidavit that the claimant, according to information received by the individual from the claimant's physician or practitioner, is incapable of making a claim for family temporary disability benefits, and that the authorized representative assumes the responsibility of acting on behalf of such claimant in accordance with the code and this part.

(4) files with the department upon a prescribed form a duly sworn affidavit that the care recipient, according to information received by the individual from the care recipient's physician or practitioner, is incapable of completing his or her portion of the claim for family temporary disability benefits, and that the authorized representative assumes the responsibility of acting on behalf of such care recipient in accordance with the code and this part.

(b) "Bond" or "bonding" with a new child means to develop a psychological and emotional attachment between a child and his or her primary care giver(s). This involves being in one another's physical presence.

(c) "Care provider" means the family member who is providing the required care. This term is used interchangeably with "claimant."

(d) "Care recipient" means either of the following:

(1) the family member as defined in section 3302 of the code who is receiving care for a serious health condition.

(2) the minor child with whom the claimant is bonding.

(e) "Certificate" means the signed statement of a physician, practitioner, or a registrar of a county hospital of this State, on a form prescribed by the department, containing elements described in Section 2706-2(f), except that a certificate signed by a physician licensed by and practicing in a state other than California or in a foreign country, or in a territory or possession of a country, except a duly authorized medical officer of any medical facility of the United

States Government, shall be accompanied by a further certification that such physician holds a valid license in the state or foreign country, or in the territory or possession of the country, in which he or she is practicing.

(f) "Child" means a biological, adopted, or foster child, a stepchild, a legal ward, a son or daughter of a domestic partner, or a child of a person standing in loco parentis. This definition of a child is applicable regardless of age or dependency status.

(g) "Claimant" means an individual who has filed a claim for Family Temporary Disability Insurance benefits. This term is used interchangeably with "care provider."

(h) "Continued claim" means the claim, for the same care recipient within the same 12-month period, subsequent to the first or re-established claim where there is no interruption of the period for which benefits are claimed. A continued claim does not require a waiting period.

(i) "Disability benefits" wherever used in the code means benefits payable under Part 2 of Division 1 of the code, including Family Temporary Disability Insurance benefits.

(j) "Domestic partner" means a registered domestic partner as defined in California Family Code section 297.

(k) "Family member" means those individuals described in section 3302 of the code.

(l) "Family Temporary Disability Insurance" means the program established to provide up to six weeks of wage replacement benefits to workers who take time off to care for a seriously ill child, spouse, parent, registered domestic partner, or to bond with a new child as of July 1, 2004. Claims for benefits cannot begin prior to this date.

(m) "First claim" means the claim initially filed on a form prescribed by the department, containing elements described in Section 2706-2, with respect to a 12-month period of family care leave. The claimant establishes his or her 12-month period and the Department computes the weekly benefit amount and maximum benefits potentially payable.

(n) "Foster care" means 24-hour care for children in substitution for, and away from, their parents or guardian. Such placement is made by or with the agreement of the State as a result of a voluntary agreement between the parent or guardian that the child be removed from the home, or pursuant to a judicial determination of the necessity for foster care, and involves agreement between the State and foster family that the foster family will take care of the child. Although foster care may be with relatives of the child, State action is involved in the removal of the child from parental custody.

(o) "In loco parentis" exists when a person undertakes care and control of a child in the absence of such supervision by the natural parents and in the absence of formal legal approval. This includes persons with day-to-day responsibilities to care for and financially support a child. It also includes the

person who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary.

(p) "New child" means a minor child for whom leave is taken for purposes of bonding within 12-months of the child's birth or placement with the claimant or the claimant's spouse or domestic partner.

(q) "Parent" means a biological, foster, or adoptive parent, a stepparent, a legal guardian, or other person who stood in loco parentis to the employee when the employee was a child. A biological or legal relationship is not necessary for a person to have stood in loco parentis to the employee as a child. This term does not include a parent-in-law.

(r) "Placement" means a change in physical custody of a child from a public agency or adoption agency into the custody of foster care or adoptive parents.

(s) "Re-established claim" means a claim filed subsequent to a first claim within the same 12-month period. A "re-established claim" occurs when there is one of the following:

- (1) an interruption of the period for which benefits are claimed for the same care recipient for which a new waiting period is not required; or
- (2) benefits are claimed for a new care recipient for which a new waiting period is required.

(t) "Regular wages" as used in section 2656 of the code means compensation paid entirely by an employer directly to his or her employee as a full or partial payment of his or her remuneration during a period of family care leave.

(u) "Stepparent" means a person who is a party to the marriage with respect to a minor child of the other party to the marriage.

(v) "Vacation leave" means vested vacation time which, upon termination of employment, must be paid to the employee as wages pursuant to Labor Code section 227.3 or the applicable collective bargaining agreement. An employer policy under which paid time off is vested under Labor Code section 227.3 is considered vacation leave pursuant to section 3303.1(c) of the code regardless of the name given the leave by the employer.

(w) "Week" means the seven consecutive day period beginning with the first day with respect to which a valid claim is filed for benefits and thereafter the seven consecutive day period commencing with the first day immediately following such week or subsequent continued weeks of family care leave.

(1) The term "week" for purposes of determining eligibility for Family Temporary Disability Insurance benefits when an individual's employer requires the use of earned, but unused vacation pay, shall consist of seven calendar days. If the pay period is not based on calendar days, a week shall consist of 168 consecutive hours. With respect to an individual whose wages are not paid on a weekly basis, a week shall consist of the seven-consecutive-day periods for an individual, as appropriate to the circumstances.

(x) "Weekly wage" as that term is used in section 2656 of the code means any remuneration earned, exclusive of wages paid for overtime work, during the last full week of work immediately preceding the claimant's first day of family care leave, except that for good cause the department may determine the "weekly wage" in any other equitable manner.

(y) For purposes of section 140.5 of the code no individual shall be deemed eligible for Family Temporary Disability Insurance benefits for any week of unemployment unless such unemployment is due to the need for family care leave.

(1) If an individual has been neither employed nor registered for work in any manner designated by the director for more than three months immediately preceding the beginning of a period of family care leave, he or she is not eligible for benefits unless the department finds that the unemployment for which he or she claims benefits is not due to his or her previous withdrawal from the labor market.

NOTE: Authority cited: Sections 305 and 306, Unemployment Insurance Code.
Reference: Sections 140.5, 1253, 2656, 3300, and 3302, Unemployment Insurance Code.

§ 3302-2. Serious Health Condition Defined.

(a) For purposes of Family Temporary Disability Insurance, “serious health condition” for which an employee may receive benefits means an illness, injury, impairment, or physical or mental condition of the care recipient that involves:

(1) Inpatient care (i.e. an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity (for purposes of this section, defined to mean inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefor, or recovery therefrom) or any subsequent treatment in connection with such inpatient care; or

(2) Continuing treatment by a physician or practitioner. A serious health condition involving continuing treatment by a physician or practitioner includes any one or more of the following:

(A) A period of incapacity (i.e. inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefor, or recovery therefrom) of more than three consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:

(i) Treatment two or more times by a physician or practitioner, or by a provider of health care services (e.g. physical therapist) under orders of, or on referral by, a physician or practitioner.

(ii) Treatment by a physician or practitioner on at least one occasion which results in a regimen of continuing treatment under the supervision of the physician or practitioner.

(B) Any period of incapacity due to pregnancy, or for prenatal care.

(C) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:

(i) requires periodic visits for treatment by a physician or practitioner;

(ii) continues over an extended period of time (including recurring episodes of a single underlying condition); and

(iii) may cause episodic rather than a continuing period of incapacity (e.g. asthma, diabetes, epilepsy, etc.).

(D) A period of incapacity which is permanent or long term due to a condition for which treatment may not be effective. The child, parent, spouse or registered domestic partner must be under the continuing supervision of, but need not be receiving active treatment by a physician or practitioner. Examples include, but are not limited to, Alzheimer’s, a severe stroke, or the terminal stages of a disease.

(E) Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a physician or practitioner or by a provider of health services under orders of, or on referral by, a physician or practitioner, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), or kidney disease (dialysis).

(b) Treatment for purposes of subdivision (a) of this section includes, but is not limited to, examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical, eye, or dental examinations. Under subdivision (a)(2)(A)(ii), a regimen of continuing treatment includes, for example, a course of prescription medication (e.g. an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition (e.g. oxygen). A regimen of continuing treatment that includes the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a physician or practitioner, is not, by itself, sufficient to constitute a regimen of continuing treatment for purposes of Family Temporary Disability Insurance.

(c) Conditions for which cosmetic treatments are administered (such as most treatments for acne or plastic surgery) are not “serious health conditions” unless inpatient hospital care is required or unless complications develop. Ordinarily, unless complications arise, the common cold, influenza, ear aches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems, periodontal disease, etc. are examples of conditions that do not meet the definition of a serious health condition and do not qualify for Family Temporary Disability Insurance benefits. Restorative dental or plastic surgery after an injury or removal of cancerous growths are serious health conditions provided all the other conditions of this regulation are met. Mental illness resulting from stress or allergies may be serious health conditions, but only if all the conditions of this section are met. However, in any instance where one of the above conditions satisfies the requirements of subdivision (a) above, that condition shall be deemed a serious health condition for which the claimant would be eligible to claim Family Temporary Disability Insurance benefits.

NOTE: Authority cited: Sections 305 and 306, Unemployment Insurance Code.
Reference: Sections 2708, 3301, and 3302, Unemployment Insurance Code.

§ 3303-1. Family Temporary Disability Insurance Benefits for Bonding with a New Child.

(a) An individual may be eligible for Family Temporary Disability Insurance benefits for bonding on any day in which he or she is unable to perform his or her regular or customary work because of one or more of the following:

(1) the birth of a child of the individual or the individual's registered domestic partner.

(2) the placement, through adoption or foster care, of a minor child with the individual or the individual's registered domestic partner.

(b) Eligibility for benefits under this section for the birth or placement of a minor child expires at the end of the 12-month period that begins on the child's date of birth or placement.

EXAMPLE 1. Claimant A gives birth on May 9, 2004, and does not establish a claim for either State Disability Insurance or Family Temporary Disability Insurance benefits before returning to work in January 2005. After working through March 20, 2005, Claimant A establishes a claim for Family Temporary Disability Insurance benefits beginning March 21, 2005 to bond with her new child.

Claimant A serves a seven-day waiting period from March 21 through March 27, 2005. Claimant A may receive six weeks of Family Temporary Disability Insurance benefits from March 28 through May 8, 2005, if otherwise eligible, because the period claimed is within the 12-month period from the new child's birth.

EXAMPLE 2. Claimant B gives birth on May 9, 2004, and receives State Disability Insurance benefits through June 19, 2004 for her pregnancy claim. She does not establish a Family Temporary Disability Insurance claim for bonding before returning to work in January 2005. After working through March 20, 2005, Claimant B establishes a claim for Family Temporary Disability Insurance benefits beginning March 21, 2005 to bond with her new child.

Claimant B may receive up to six weeks of Family Temporary Disability Insurance benefits from March 21, 2005 through May 1, 2005, if otherwise eligible. Because Claimant B served a waiting period on her State Disability Insurance pregnancy claim, she is not required to serve an additional waiting period.

EXAMPLE 3. Claimant C adopts a child on August 4, 2004. He serves a waiting period from August 4 through August 10, 2004, and receives five weeks of Family Temporary Disability Insurance benefits to bond with his new child from August 11 through September 14, 2004. Claimant C returns to work on

September 15, 2004. After working through July 31, 2005, Claimant C re-establishes a claim for Family Temporary Disability Insurance benefits to bond with his new child commencing August 1, 2005.

Claimant C receives benefits August 1, 2005 through August 3, 2005. A disqualification effective August 4, 2005 is issued because more than 12 months have elapsed since the child was adopted and therefore Claimant C is no longer eligible for benefits.

(c) Eligibility for benefits under this section for the birth or placement of a minor child requires being in the physical presence of the child.

EXAMPLE 1. Claimant A's wife gives birth to twins on August 29, 2004. The twins are seven weeks premature and remain in the neonatal care unit through October 9, 2004. Claimant A establishes a bonding claim on August 29, 2004, and claims benefits through October 9, 2004. Claimant A visits his children daily from six o'clock in the morning until eight o'clock in the evening and suffers a wage loss due to missing work.

Claimant A serves a seven-day waiting period from August 29 through September 4, 2004 and may receive six weeks of benefits from September 5 through October 9, 2004, if otherwise eligible. Claimant A is eligible for benefits to bond even though the bonding takes place in the hospital and not at the claimant's residence.

EXAMPLE 2. Claimant B establishes a claim to bond with his new child. Claimant B indicates that he bonds with his new child via live remote camera. However, he does not spend time in the physical presence of his new child.

Claimant B is not eligible for benefits because his remote video arrangement does not constitute bonding within the context of the Family Temporary Disability Insurance program.

NOTE: Authority cited: Sections 305 and 306, Unemployment Insurance Code.
Reference: Sections 3301, 3302.1, and 3303, Unemployment Insurance Code.

§ 3303(b)-1. Waiting Period.

(a) The first seven days of a first or re-established claim for Family Temporary Disability Insurance benefits constitute the non-payable waiting period, except as provided in sections 3302.1(b) and 3302.1(c) of the code. Waiting period days will be served during a period of family care leave even if the claimant is ineligible to receive benefits for the same days due to the receipt of:

- (1) other benefits under a workers' compensation law or any employer's liability law as defined in section 2629 of the code; or
- (2) wages, regular wages, or vacation leave from an employer as defined in sections 2656 and 3303.1 of the code.

EXAMPLE 1. Claimant A establishes a claim for Family Temporary Disability Insurance on March 10 to care for his stepfather. Claimant A will be off work for seven weeks.

Claimant A serves an uninterrupted waiting period from March 10 through March 16 and is eligible for benefit payments beginning March 17.

EXAMPLE 2. Claimant B's parent is hospitalized on April 3 for a heart attack. His parent is released on April 4 but needs follow-up treatment to monitor his condition about once a month consisting of daylong medical appointments over the next six months. Claimant B is absent from work on April 3 and 4 to provide care to his parent. The follow-up appointments are scheduled for May 15, June 17, July 16, August 20, September 17 and October 22. Claimant B's parent requires continuing treatment for another six months in the same periodic manner. Appointments are scheduled for December 10 and January 11 of the following year.

Claimant B establishes a claim on April 3 to care for his parent. Claimant B serves his seven-day waiting period for the days April 3, April 4, May 15, June 17, July 16, August 20, and September 17. Claimant B certifies to and is eligible to receive benefits for October 22, December 10, and January 11 because the waiting period was served.

EXAMPLE 3. Claimant C establishes a claim on January 10 to provide care for his wife. Claimant C normally works eight hours per day five days per week. Claimant C was unable to work on January 10 and January 11. Beginning January 12, Claimant C works four hours per day and spends the other four hours caring for his wife. Claimant C continues to work four hours per day through February 14 in order to provide care for his wife.

Claimant C serves an uninterrupted seven-day waiting period from January 10 through January 16 since partial days of family care leave fulfill the waiting period requirement. Claimant C is eligible for benefits based on his wage loss for January 17 through February 14.

EXAMPLE 4. Claimant D establishes a first claim for Family Temporary Disability Insurance on January 21 to care for her seriously ill spouse. The medical certificate indicates Claimant D's care is warranted through March 17. Claimant D requests two weeks of full sick leave pursuant to Section 233 of the Labor Code and under the terms of a union contract.

Claimant D serves the waiting period from January 21 through January 27 while she is in receipt of regular wages. Claimant D is disqualified from receiving benefits for the period beginning January 28 and ending February 3 under Section 2656 of the code because of the receipt of regular wages equal to Claimant D's weekly wage immediately prior to the commencement of her period of family care leave. She is eligible for benefits beginning February 4.

EXAMPLE 5. Claimant A establishes a claim for Family Temporary Disability Insurance benefits beginning June 5, 2006 to care for her seriously ill spouse for four weeks. Claimant A accrues 168 hours of sick leave annually. She normally works 40 hours per week, Monday through Friday. Claimant A requests 80 hours of sick leave from her employer pursuant to Section 233 of the Labor Code for the period June 5 through June 16, 2006.

Forty hours of sick leave is allocated to the seven-day waiting period June 5 through June 11, 2006. Claimant A is not eligible for benefits for the period June 12 through June 18, 2006 due to the receipt of regular wages pursuant to section 2656 of the code. Claimant A may receive Family Temporary Disability Insurance benefits beginning June 19, 2006, if otherwise eligible, because this is the first day for which she suffers a wage loss.

EXAMPLE 6. Claimant E establishes a claim on April 24 to care for her mother. The medical certificate indicates care is warranted through May 14. Claimant E serves a waiting period from April 24 through April 30 and receives benefits through May 14.

Claimant E re-establishes a claim on January 27 to care for her domestic partner. The medical certificate indicates care is warranted through February 16. Claimant E serves a separate waiting period from January 27 through February 2 because she is caring for a different care recipient within the same 12-month period. Claimant E may receive benefits commencing February 3, if otherwise eligible.

(b) If the waiting period required is only partially served during the first period of family care leave, any unserved portion of the waiting period shall be served at the beginning of the subsequent period of family care leave for the same care recipient during the 12-month benefit period.

EXAMPLE 1. Claimant A establishes a claim on November 28 to care for her mother. The medical certificate indicates care is warranted through November 30. Claimant A returns to work on December 1 after serving three waiting period days from November 28 through November 30.

Claimant A re-establishes a claim on January 1 to care for her mother. The medical certificate indicates care is warranted through January 31. Claimant A serves the subsequent four days of her waiting period from January 1 through

January 4. She may receive benefits from January 5 through January 31, if otherwise eligible.

NOTE: Authority cited: Sections 305 and 306, Unemployment Insurance Code.
Reference: Sections 2656, 3302.1, and 3303, Unemployment Insurance Code.

§ 3303.1(a)-1. Ready, Willing, Able and Available to Provide Care for the Same Period of Time.

An individual is not eligible for Family Temporary Disability Insurance benefits on any day that another family member is ready, willing, and able and available to provide care during the same period of time in a day that the individual is providing care.

(a) “Ready, Willing, Able and Available.”

(1) Another family member may be ready, willing, and able and available regardless of his or her attachment to the labor market.

EXAMPLE 1. Claimant A is employed full time. His brother is unemployed and looking for work. Claimant A’s mother requires care for her serious health condition. The brother is not willing to provide the required care.

Claimant A may receive Family Temporary Disability Insurance benefits, if otherwise eligible.

(2) Another family member may not be ready, willing, and able and available because of a physical or mental disability that substantially limits his or her ability to provide the required care.

EXAMPLE 2. Claimant B is employed full time. Her brother is an unemployed substance abuser. Their seriously ill parent does not want the brother to provide the required care due to his unreliability.

Claimant B may receive Family Temporary Disability Insurance benefits, if otherwise eligible.

(b) “Same period of time in a day.”

(1) No more than one care provider may claim benefits for providing care in any eight-hour period and no more than three in a 24-hour period. Determining whether another family member may be ready, willing, and able and available during the same period of time in a day depends on the care requirements of the care recipient as determined by the physician or practitioner treating the care recipient.

EXAMPLE 1. The doctor certifies that the care recipient requires care eight consecutive hours per day. The care recipient has three children who establish claims to receive Family Temporary Disability Insurance benefits to provide care for her.

Only one of the three claimants may receive benefits, if otherwise eligible, because only one is needed to provide the care recipient with eight consecutive hours of care per day.

EXAMPLE 2. The doctor certifies that the care recipient requires 24-hour care. The care recipient has three children who establish claims to receive Family Temporary Disability Insurance benefits to provide care for her.

All three of the claimants may receive Family Temporary Disability Insurance benefits, if otherwise eligible. A maximum of three claimants may receive benefits for providing care during eight-hour shifts within a 24-hour period, if otherwise eligible. Each of the children will provide eight hours of care to provide the required 24-hour care for their mother.

EXAMPLE 3. The doctor certifies that the care recipient requires 24-hour care. The care recipient has five children, Claimant A, Claimant B, Claimant C, Claimant D, and Claimant E, who establish claims to receive Family Temporary Disability Insurance benefits to provide care for her.

Only three of the five claimants may receive Family Temporary Disability Insurance benefits for the same care recipient for the same period of time, if otherwise eligible. Claims are processed, if all applicable eligibility criteria are met, in the order which they are received. Claimants A, C, and E establish claims with the department and are found eligible before Claimants B and D establish claims. Therefore, Claimants B and D are initially denied Family Temporary Disability Insurance benefits. If Claimants B and D are otherwise eligible, and the care recipient criteria are still met, they may establish a claim for benefits as A, C, and E are no longer ready, willing, able and available to provide care.

NOTE: Authority cited: Sections 305 and 306, Unemployment Insurance Code.
Reference: Section 3303.1, Unemployment Insurance Code.

§ 3303.1(c)-1. Vacation Leave.

An individual eligible to receive Family Temporary Disability Insurance benefits who receives full or partial vacation leave pursuant to section 3303.1(c) of the code shall not be paid benefits during the same period. An individual may serve a waiting period during receipt of full or partial vacation leave.

EXAMPLE 1. Claimant A establishes a claim for Family Temporary Disability Insurance benefits commencing July 1. Claimant A's employer requires the use of up to two weeks of earned but unused vacation leave prior to receipt of Family Temporary Disability Insurance benefits. Claimant A has one week of vacation leave available.

The vacation leave is allocated to the seven-day waiting period and Claimant A may receive full Family Temporary Disability Insurance benefits beginning on July 8, if otherwise eligible.

EXAMPLE 2. Claimant B establishes a claim for Family Temporary Disability Insurance benefits commencing July 1. Claimant B's employer requires the use of up to two weeks of earned but unused vacation leave prior to receipt of Family Temporary Disability Insurance benefits. Claimant B has two weeks of vacation leave available.

One week of vacation leave is allocated to Claimant B's seven-day waiting period July 1 through July 7. Claimant B is not eligible for Family Temporary Disability Insurance benefits for the period of July 8 through July 14 pursuant to section 3303.1(c) of the code. Claimant B may receive full Family Temporary Disability Insurance benefits beginning July 15, if otherwise eligible.

EXAMPLE 3. Claimant C establishes a claim for Family Temporary Disability Insurance benefits commencing July 1. Claimant C's employer requires the use of up to two weeks of earned but unused vacation leave prior to the receipt of Family Temporary Disability Insurance benefits. Claimant C has three weeks of vacation leave available.

One week of vacation leave is allocated to the seven-day waiting period July 1 through July 7. Claimant C is not eligible for Family Temporary Disability Insurance benefits for the period July 8 through July 14 pursuant to section 3303.1(c) of the code. Claimant C may receive full Family Temporary Disability Insurance benefits beginning July 15, if otherwise eligible, since the third week of vacation leave is not in conflict.

EXAMPLE 4. Claimant D establishes a claim for Family Temporary Disability Insurance benefits commencing July 1. Claimant D's employer does not require the use of up to two weeks of earned but unused vacation leave prior to the receipt of Family Temporary Disability Insurance benefits. Claimant D chooses to use three weeks of vacation leave available.

Claimant D may receive full Family Temporary Disability Insurance benefits, if otherwise eligible, beginning July 8, after serving a seven-day waiting period. Claimant D's vacation leave does not conflict with the receipt of Family Temporary Disability Insurance benefits since the employer did not require Claimant D to use the vacation leave.

EXAMPLE 5. Claimant E establishes a claim for Family Temporary Disability Insurance benefits commencing Thursday, July 1, 2004. Claimant E's employer requires the use of up to two weeks of earned but unused vacation leave prior to the receipt of Family Temporary Disability Insurance benefits. Claimant E normally works four ten-hour shifts, Monday through Thursday, and has 60 hours of vacation leave available.

Forty hours of vacation leave is allocated to the seven-day waiting period July 1 through July 7, 2004. The remaining 20 hours of vacation leave is allocated to July 8 and 12, his next scheduled workdays. Claimant E is not eligible for Family Temporary Disability Insurance benefits for the period July 8 through July 12, 2004, due to the receipt of vacation leave pursuant to section 3303.1(c) of the code. Claimant E may receive full Family Temporary Disability Insurance benefits beginning July 13, 2004, if otherwise eligible, because this is the first day for which he suffers a wage loss.

EXAMPLE 6. Claimant F establishes a claim for Family Temporary Disability Insurance benefits commencing July 18. Claimant F's employer grants paid leave, which is paid to the employee as wages pursuant to Labor Code section 227.3. Claimant F's employer requires the use of up to two weeks of this earned but unused leave prior to the receipt of Family Temporary Disability Insurance benefits. Claimant F, a part-time worker, normally works three eight-hour shifts per week and has 48 hours of this leave available.

Twenty-four hours are allocated to the seven-day waiting period July 18 through July 24. The remaining 24 hours are allocated to July 25 through July 31, his next scheduled workweek. Claimant F is not eligible for benefits July 25 through July 31 due to the receipt of leave pursuant to section 3303.1(c) of the code. Claimant F may receive full Family Temporary Disability Insurance benefits beginning August 1, if otherwise eligible, because this is the first day for which he suffers a wage loss.

NOTE: Authority cited: Sections 305 and 306, Unemployment Insurance Code.
Reference: Sections 2656 and 3303.1, Unemployment Insurance Code.

§ 3306(b)-1. Independent Medical Examination.

(a) The Department may request an independent medical examination to determine its liability for the payment of Family Temporary Disability Insurance benefits to a claimant. Any care recipient, except one who depends for healing entirely upon prayer or spiritual means, as provided in Section 2709 of the code, may be required to submit to independent medical examinations when one or more of the following circumstances is present:

(1) Medical information received from the care recipient's physician does not verify the serious health condition, the need for care, or provide any objective medical findings that support that the claimant's participation is warranted for the period of time claimed.

(2) Inconsistent information is received concerning the care recipient's serious health condition or the need for the claimant's care.

(b) Independent medical examinations requested by the director must meet all of the following conditions:

(1) The examining physician must provide an independent and impartial opinion. If the claimant or care recipient requests a different examining physician, the examination will be rescheduled with another physician designated by the director.

(2) The examination and any laboratory or x-ray procedures will be only extensive enough to determine whether the care recipient has a serious health condition, whether the claimant's participation is warranted, and the period of time that the claimant's participation is warranted. The examination is an evaluation and not a consultation.

(3) The fee for the examination and any laboratory or X-ray procedures will be paid by the department in accordance with a fee schedule determined by the director.

(c) A claimant who receives a request for the care recipient to submit to an independent medical examination must contact the designated physician not later than the seventh consecutive day after the date the request was mailed to the claimant to arrange an examination for the care recipient on the earliest date available. Such time will be extended by the department upon a showing of good cause. The request for an independent medical examination will be cancelled if, within the 7-day period, the claimant reports that he or she returned to work or that his or her care is no longer warranted.

(d) The claimant is subject to disqualification if:

(1) He or she fails to contact the designated physician within the time in subdivision (c). The claimant is disqualified on the eighth day after the date the request was mailed to the claimant.

(2) He or she makes an appointment but the care recipient fails to report for the examination, or cancels the appointment. The claimant is disqualified commencing on the date of the appointment, or the date of the cancellation, whichever is earlier.

(3) The claimant or care recipient fails to comply with the request for an independent medical examination but later agrees to submit to one. The disqualification ends the day before the examination date.

(e) Upon receipt of the independent medical examination report, the department determines a claimant's eligibility as follows:

(1) If the report confirms or extends the estimated duration of the care recipient's serious health condition and the need for care as certified by the care recipient's physician, the claimant is eligible for benefits.

(2) If the report states that the need for the claimant's care will end earlier than the date given by the care recipient's physician, the claimant is eligible for benefits through the date in the report.

(3) If the report states that the care recipient does not have a serious health condition or that the claimant's care is not warranted, the claimant is disqualified commencing on the examination date.

NOTE: Authority cited: Sections 305 and 306, Unemployment Insurance Code.
Reference: Sections 2709 and 3306 Unemployment Insurance Code.
