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Title 22@ Social Security

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Division 1@ Employment Development Department

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Subdivision 1@ Director of Employment Development

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Division 1@ Unemployment and Disability Compensation

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Part 2@ Disability Compensation

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Chapter 2@ Disability Benefits

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Article 1@ Eligibility

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Section 2627(b)-1@ Waiting Period

2627(b)-1 Waiting Period

(a) Scope. This section deals with the conditions under which the waiting period required by subdivision (b) of Section 2627 of the code is served.

(b)

General. A claimant must be unemployed and disabled for a waiting period of seven consecutive days during each disability benefit period. Disability benefits are not payable during the waiting period.

(c)

Serving the Waiting Period.(1) Generally the waiting period will be served by the first seven days of the disability benefit period even if the claimant is ineligible to receive disability benefits for the same period, provided the claimant is unemployed and disabled during such period. The following examples outline conditions under which a claimant may be ineligible to receive disability benefits but may serve the waiting period: (A) During receipt of other benefits under a workers' compensation law or any employer's liability law as defined in Section 2629 of the code. (B) During receipt of wages or regular wages from an employer as defined in Section 2656 of the code. EXAMPLE 1. A receives eight weeks of workers' compensation temporary total disability through June 30 for an industrially caused injury to his foot. On June 15, before recovering, A injures an elbow at home and files a first claim for disability benefits for the elbow injury. A is

disqualified from receiving disability benefits for the period June 22 through June 30 under Section 2629 of the code based on receipt of temporary workers' compensation benefits in excess of A's disability benefit amount. A serves the waiting period during the period June 15 through June 21 while he is in receipt of temporary workers' compensation. A is eligible for disability benefits beginning July 1.

EXAMPLE 2. B files a first claim for disability benefits because of injuries suffered in an automobile accident on June 15 with a prognosis of 8 weeks. B receives two weeks of full pay as sick leave from her employer under the terms of a union contract. B serves the waiting period from June 15 through June 21 while she is in receipt of regular wages. B is disqualified from receiving disability benefits for the period June 22 through June 28 under Section 2656 of the code due to the receipt of regular wages equal to her weekly wage immediately prior to the commencement of her disability. B is eligible for disability benefits beginning June 29.

EXAMPLE 3. C's employment is terminated on June 14 due to his frequent absences from work because of a drinking problem. On June 15, C files a first claim for disability benefits for chronic alcoholism. C is not under the care and treatment of a doctor but on June 22 enters an alcohol recovery home at the recommendation of a physician. C is disqualified from receiving disability benefits for the period June 15 through June 21 because he is not disabled pursuant to subdivision (b)(3) of Section 2626 of the code. C will serve the waiting period beginning June 22 through June 28 because he is unemployed and disabled during this period. C is eligible for disability benefits beginning June 29 in accordance with Section 2626.1 of the code.

(2) In some instances no additional waiting period will be served even if disability benefits are interrupted, provided the initial waiting period required by subdivision (b) of Section 2627 of the code has been served. The following examples outline conditions under which disability benefits may be

interrupted during one disability benefit period but no additional waiting period is required for subsequent payment of disability benefits: (A) Performance of regular or customary work within a period of not more than 60 days before a consecutive period of disability due to the same or related cause or condition. (B) Performance of other than regular or customary work, or performance of regular or customary work on less than a full-time basis, because of a continuous uninterrupted period of disability. (C) Performance of work as defined by subparagraphs (A) or (B) of paragraph (2) of this subdivision which results in simultaneous coverage for the subsequent payment of disability benefits as provided in Section 3253-1 of these regulations.

EXAMPLE 1. A files a first claim for disability benefits for myalgia and traumatic tendonitis, serves a seven day waiting period, and receives six weeks of disability benefits. A ignores her physicians' recommendation and returns to work performing regular and customary duties for sixty days until the pain forces her to stop working. On the sixty-first day, A files a new first claim for the same medical conditions for which surgery is now planned. A is eligible for disability benefits beginning with the day for which the second claim is filed and is not required to serve an additional waiting period. A's second claim is for the same or related condition and she did not fully recover from tendonitis prior to returning to work for sixty days. Therefore, only one disability benefit period was established in accordance with Section 2608 of the code.

EXAMPLE 2. B, a janitor, files a first claim for disability benefits for a cerebral hemorrhage due to hypertension for an indefinite period of disability. B's physician advises that B will never be able to perform the heavy lifting or strenuous manual labor previously required by his work. B serves a seven-day waiting period and receives six months of disability benefits. B returns to work when his employer offers him a temporary position of light work as a general handyman at his usual weekly wage. B works six weeks

until this work is no longer available. B files a new first claim for his permanent disability. B is eligible for disability benefits beginning with the day for which the second claim is filed and is not required to serve an additional waiting period. Because B's disability and unemployment pursuant to Section 2626 of the code was not deemed interrupted by the performance of light work, his disability benefit period was continuous from the beginning date of the original claim. EXAMPLE 3. C, an estimator and general office worker, files a first claim for disability benefits for necrosis of the head of the femur. C serves a seven-day waiting period and receives six months of benefits. C returns to her regular job but, because of the disability, can work only on crutches for 6 hours each day for a 30-hour week. C formerly worked at least 40 hours per week. C works three months until her physician advises her to terminate this employment because of her medical condition. C files a new first claim for an operation to rebuild the hip joint. C is eligible for disability benefits beginning with the day for which the second claim is filed and she is not required to serve an additional waiting period. Performance of regular or customary work includes ability to work full-time and at a full production rate as well as ability to perform the type of work which the claimant customarily performs. C's disability and unemployment pursuant to Section 2626 of the code was not considered interrupted by her return to work on less than a full-time basis, thus C's disability benefit period was continuous from the beginning date of the original claim. (C may have been eligible for reduced disability benefits while employed but she chose not to claim benefits for this period.) EXAMPLE 4. D files a first claim for disability benefits with State Disability Insurance, serves a seven-day waiting period, and receives six weeks of benefits. D recovers from the disability and obtains employment with a new employer who has automatic coverage under an approved voluntary plan for the payment of disability benefits. D performs

regular and customary work for sixty days, suffers a recurrence of the same disability and on the sixty-first day files a new first claim with State Disability Insurance. The department refers the claim to the self-insured voluntary plan employer with a request that benefits be paid on a simultaneous coverage basis in accordance with Section 3253-1 of these regulations. D is eligible for disability benefits on a simultaneous coverage basis from both State Disability Insurance and the voluntary plan beginning with the day for which the second claim is filed. D's second claim is for the same or related condition and he was not able to perform his regular or customary work for a period in excess of sixty days. Having established but one disability benefit period in accordance with Section 2608 of the code and having already served the initial waiting period prescribed by subdivision (b) of Section 2627 of the code under State Disability Insurance, D is not required to serve another waiting period under the voluntary plan. (3) When any of the conditions described in paragraph (2) of this subdivision exist but the waiting period required by subdivision (b) of Section 2627 of the code is only partially served during the first period of disability, any unserved portion of the waiting period shall be served at the beginning of the subsequent period of disability during the one disability benefit period. EXAMPLE 1. A, a longshoreman, files a first claim for disability benefits beginning June 15 for a permanent disability. A serves six days of the waiting period. A's employer offers her temporary employment as a ship's clerk beginning June 21, doing light work full-time at her regular pay. A works one month until this work is no longer available. A files a new first claim beginning July 21 for her permanent disability. A previously served six days of her waiting period, June 15 through June 20, and must now serve the one day, July 21, for a total of seven days. A is eligible for disability benefits beginning July 22 because her disability and unemployment pursuant to Section 2626 of the

code was not interrupted by the performance of light work and she is required to serve only one seven-day waiting period in each disability benefit period. EXAMPLE 2. B, an assembler, files a first claim for disability benefits beginning June 15 for rheumatoid arthritis with a prognosis of 6 weeks. B reports on the first claim that he worked at regular or customary duties at full pay on June 18, 19, and 23, due to economic distress and an ability to endure pain, however his physician advised him to stop working entirely in order to effect a cure for his medical condition. B's waiting period is served for the three days, June 15 through June 17; the three days, June 20 through June 22; and the one day, June 24, for a total of seven days. B is eligible for disability benefits beginning June 25 because he was not able to perform his regular or customary work for a period in excess of sixty days and he is required to serve only one seven-day waiting period in each disability benefit period.

(1)

Generally the waiting period will be served by the first seven days of the disability benefit period even if the claimant is ineligible to receive disability benefits for the same period, provided the claimant is unemployed and disabled during such period. The following examples outline conditions under which a claimant may be ineligible to receive disability benefits but may serve the waiting period: (A) During receipt of other benefits under a workers' compensation law or any employer's liability law as defined in Section 2629 of the code. (B) During receipt of wages or regular wages from an employer as defined in Section 2656 of the code. EXAMPLE 1. A receives eight weeks of workers' compensation temporary total disability through June 30 for an industrially caused injury to his foot. On June 15, before recovering, A injures an elbow at home and files a first claim for disability benefits for the elbow injury. A is disqualified from receiving disability benefits for the period June 22 through June 30 under Section 2629

of the code based on receipt of temporary workers' compensation benefits in excess of A's disability benefit amount. A serves the waiting period during the period June 15 through June 21 while he is in receipt of temporary workers' compensation. A is eligible for disability benefits beginning July 1. EXAMPLE 2. B files a first claim for disability benefits because of injuries suffered in an automobile accident on June 15 with a prognosis of 8 weeks. B receives two weeks of full pay as sick leave from her employer under the terms of a union contract. B serves the waiting period from June 15 through June 21 while she is in receipt of regular wages. B is disqualified from receiving disability benefits for the period June 22 through June 28 under Section 2656 of the code due to the receipt of regular wages equal to her weekly wage immediately prior to the commencement of her disability. B is eligible for disability benefits beginning June 29. EXAMPLE 3. C's employment is terminated on June 14 due to his frequent absences from work because of a drinking problem. On June 15, C files a first claim for disability benefits for chronic alcoholism. C is not under the care and treatment of a doctor but on June 22 enters an alcohol recovery home at the recommendation of a physician. C is disqualified from receiving disability benefits for the period June 15 through June 21 because he is not disabled pursuant to subdivision (b)(3) of Section 2626 of the code. C will serve the waiting period beginning June 22 through June 28 because he is unemployed and disabled during this period. C is eligible for disability benefits beginning June 29 in accordance with Section 2626.1 of the code.

(A)

During receipt of other benefits under a workers' compensation law or any employer's liability law as defined in Section 2629 of the code.

(B)

During receipt of wages or regular wages from an employer as defined in Section 2656 of the code. EXAMPLE 1. A receives eight weeks of workers' compensation temporary total

disability through June 30 for an industrially caused injury to his foot. On June 15, before recovering, A injures an elbow at home and files a first claim for disability benefits for the elbow injury. A is disqualified from receiving disability benefits for the period June 22 through June 30 under Section 2629 of the code based on receipt of temporary workers' compensation benefits in excess of A's disability benefit amount. A serves the waiting period during the period June 15 through June 21 while he is in receipt of temporary workers' compensation. A is eligible for disability benefits beginning July 1.

EXAMPLE 2. B files a first claim for disability benefits because of injuries suffered in an automobile accident on June 15 with a prognosis of 8 weeks. B receives two weeks of full pay as sick leave from her employer under the terms of a union contract. B serves the waiting period from June 15 through June 21 while she is in receipt of regular wages. B is disqualified from receiving disability benefits for the period June 22 through June 28 under Section 2656 of the code due to the receipt of regular wages equal to her weekly wage immediately prior to the commencement of her disability. B is eligible for disability benefits beginning June 29.

EXAMPLE 3. C's employment is terminated on June 14 due to his frequent absences from work because of a drinking problem. On June 15, C files a first claim for disability benefits for chronic alcoholism. C is not under the care and treatment of a doctor but on June 22 enters an alcohol recovery home at the recommendation of a physician. C is disqualified from receiving disability benefits for the period June 15 through June 21 because he is not disabled pursuant to subdivision (b)(3) of Section 2626 of the code. C will serve the waiting period beginning June 22 through June 28 because he is unemployed and disabled during this period. C is eligible for disability benefits beginning June 29 in accordance with Section 2626.1 of the code.

(2)

In some instances no additional waiting period will be served even if disability benefits are interrupted, provided the initial waiting period required by subdivision (b) of Section 2627 of the code has been served. The following examples outline conditions

under which disability benefits may be interrupted during one disability benefit period but no additional waiting period is required for subsequent payment of disability benefits: (A) Performance of regular or customary work within a period of not more than 60 days before a consecutive period of disability due to the same or related cause or condition. (B) Performance of other than regular or customary work, or performance of regular or customary work on less than a full-time basis, because of a continuous uninterrupted period of disability. (C) Performance of work as defined by subparagraphs (A) or (B) of paragraph (2) of this subdivision which results in simultaneous coverage for the subsequent payment of disability benefits as provided in Section 3253-1 of these regulations.

EXAMPLE 1. A files a first claim for disability benefits for myalgia and traumatic tendonitis, serves a seven day waiting period, and receives six weeks of disability benefits. A ignores her physicians' recommendation and returns to work performing regular and customary duties for sixty days until the pain forces her to stop working. On the sixty-first day, A files a new first claim for the same medical conditions for which surgery is now planned. A is eligible for disability benefits beginning with the day for which the second claim is filed and is not required to serve an additional waiting period. A's second claim is for the same or related condition and she did not fully recover from tendonitis prior to returning to work for sixty days. Therefore, only one disability benefit period was established in accordance with Section 2608 of the code.

EXAMPLE 2. B, a janitor, files a first claim for disability benefits for a cerebral hemorrhage due to hypertension for an indefinite period of disability. B's physician advises that B will never be able to perform the heavy lifting or strenuous manual labor previously required by his work. B serves a seven-day waiting period and receives six months of disability benefits. B returns to work when his employer offers him a temporary position of light work as a general handyman at his usual weekly wage. B works six weeks until this work is no longer available. B files a new first claim

for his permanent disability. B is eligible for disability benefits beginning with the day for which the second claim is filed and is not required to serve an additional waiting period. Because B's disability and unemployment pursuant to Section 2626 of the code was not deemed interrupted by the performance of light work, his disability benefit period was continuous from the beginning date of the original claim.

EXAMPLE 3. C, an estimator and general office worker, files a first claim for disability benefits for necrosis of the head of the femur. C serves a seven-day waiting period and receives six months of benefits. C returns to her regular job but, because of the disability, can work only on crutches for 6 hours each day for a 30-hour week. C formerly worked at least 40 hours per week. C works three months until her physician advises her to terminate this employment because of her medical condition. C files a new first claim for an operation to rebuild the hip joint. C is eligible for disability benefits beginning with the day for which the second claim is filed and she is not required to serve an additional waiting period. Performance of regular or customary work includes ability to work full-time and at a full production rate as well as ability to perform the type of work which the claimant customarily performs. C's disability and unemployment pursuant to Section 2626 of the code was not considered interrupted by her return to work on less than a full-time basis, thus C's disability benefit period was continuous from the beginning date of the original claim. (C may have been eligible for reduced disability benefits while employed but she chose not to claim benefits for this period.)

EXAMPLE 4. D files a first claim for disability benefits with State Disability Insurance, serves a seven-day waiting period, and receives six weeks of benefits. D recovers from the disability and obtains employment with a new employer who has automatic coverage under an approved voluntary plan for the payment of disability benefits. D performs regular and customary work for sixty days, suffers a recurrence of the same disability and on the sixty-first day files a new first claim with State Disability Insurance. The department refers the claim to the

self-insured voluntary plan employer with a request that benefits be paid on a simultaneous coverage basis in accordance with Section 3253-1 of these regulations. D is eligible for disability benefits on a simultaneous coverage basis from both State Disability Insurance and the voluntary plan beginning with the day for which the second claim is filed. D's second claim is for the same or related condition and he was not able to perform his regular or customary work for a period in excess of sixty days. Having established but one disability benefit period in accordance with Section 2608 of the code and having already served the initial waiting period prescribed by subdivision (b) of Section 2627 of the code under State Disability Insurance, D is not required to serve another waiting period under the voluntary plan.

(A)

Performance of regular or customary work within a period of not more than 60 days before a consecutive period of disability due to the same or related cause or condition.

(B)

Performance of other than regular or customary work, or performance of regular or customary work on less than a full-time basis, because of a continuous uninterrupted period of disability.

(C)

Performance of work as defined by subparagraphs (A) or (B) of paragraph (2) of this subdivision which results in simultaneous coverage for the subsequent payment of disability benefits as provided in Section 3253-1 of these regulations. EXAMPLE 1. A files a first claim for disability benefits for myalgia and traumatic tendonitis, serves a seven day waiting period, and receives six weeks of disability benefits. A ignores her physicians' recommendation and returns to work performing regular and customary duties for sixty days until the pain forces her to stop working. On the sixty-first day, A files a new first claim for the same medical conditions for which surgery is now planned. A is eligible for disability benefits

beginning with the day for which the second claim is filed and is not required to serve an additional waiting period. A's second claim is for the same or related condition and she did not fully recover from tendonitis prior to returning to work for sixty days. Therefore, only one disability benefit period was established in accordance with Section 2608 of the code.

EXAMPLE 2. B, a janitor, files a first claim for disability benefits for a cerebral hemorrhage due to hypertension for an indefinite period of disability. B's physician advises that B will never be able to perform the heavy lifting or strenuous manual labor previously required by his work. B serves a seven-day waiting period and receives six months of disability benefits. B returns to work when his employer offers him a temporary position of light work as a general handyman at his usual weekly wage. B works six weeks until this work is no longer available. B files a new first claim for his permanent disability. B is eligible for disability benefits beginning with the day for which the second claim is filed and is not required to serve an additional waiting period. Because B's disability and unemployment pursuant to Section 2626 of the code was not deemed interrupted by the performance of light work, his disability benefit period was continuous from the beginning date of the original claim.

EXAMPLE 3. C, an estimator and general office worker, files a first claim for disability benefits for necrosis of the head of the femur. C serves a seven-day waiting period and receives six months of benefits. C returns to her regular job but, because of the disability, can work only on crutches for 6 hours each day for a 30-hour week. C formerly worked at least 40 hours per week. C works three months until her physician advises her to terminate this employment because of her medical condition. C files a new first claim for an operation to rebuild the hip joint. C is eligible for disability benefits beginning with the day for which the second claim is filed and she is not required to serve an additional waiting period. Performance of regular or customary work includes ability to work full-time and at a full production rate as well as ability to perform the type of work which the claimant customarily performs. C's disability and unemployment pursuant to Section 2626 of the code was not considered interrupted by her return to work on less than a

full-time basis, thus C's disability benefit period was continuous from the beginning date of the original claim. (C may have been eligible for reduced disability benefits while employed but she chose not to claim benefits for this period.)

EXAMPLE 4. D files a first claim for disability benefits with State Disability Insurance, serves a seven-day waiting period, and receives six weeks of benefits. D recovers from the disability and obtains employment with a new employer who has automatic coverage under an approved voluntary plan for the payment of disability benefits. D performs regular and customary work for sixty days, suffers a recurrence of the same disability and on the sixty-first day files a new first claim with State Disability Insurance. The department refers the claim to the self-insured voluntary plan employer with a request that benefits be paid on a simultaneous coverage basis in accordance with Section 3253-1 of these regulations. D is eligible for disability benefits on a simultaneous coverage basis from both State Disability Insurance and the voluntary plan beginning with the day for which the second claim is filed. D's second claim is for the same or related condition and he was not able to perform his regular or customary work for a period in excess of sixty days. Having established but one disability benefit period in accordance with Section 2608 of the code and having already served the initial waiting period prescribed by subdivision (b) of Section 2627 of the code under State Disability Insurance, D is not required to serve another waiting period under the voluntary plan.

(3)

When any of the conditions described in paragraph (2) of this subdivision exist but the waiting period required by subdivision (b) of Section 2627 of the code is only partially served during the first period of disability, any unserved portion of the waiting period shall be served at the beginning of the subsequent period of disability during the one disability benefit period.

EXAMPLE 1. A, a longshoreman, files a first claim for disability benefits beginning June 15 for a permanent disability. A serves six days of the waiting period. A's employer offers her temporary employment as a ship's clerk beginning June

21, doing light work full-time at her regular pay. A works one month until this work is no longer available. A files a new first claim beginning July 21 for her permanent disability. A previously served six days of her waiting period, June 15 through June 20, and must now serve the one day, July 21, for a total of seven days. A is eligible for disability benefits beginning July 22 because her disability and unemployment pursuant to Section 2626 of the code was not interrupted by the performance of light work and she is required to serve only one seven-day waiting period in each disability benefit period.

EXAMPLE 2. B, an assembler, files a first claim for disability benefits beginning June 15 for rheumatoid arthritis with a prognosis of 6 weeks. B reports on the first claim that he worked at regular or customary duties at full pay on June 18, 19, and 23, due to economic distress and an ability to endure pain, however his physician advised him to stop working entirely in order to effect a cure for his medical condition. B's waiting period is served for the three days, June 15 through June 17; the three days, June 20 through June 22; and the one day, June 24, for a total of seven days. B is eligible for disability benefits beginning June 25 because he was not able to perform his regular or customary work for a period in excess of sixty days and he is required to serve only one seven-day waiting period in each disability benefit period.