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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 6@ VOLUNTARY PLANS

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3254-2 General Provisions for a Voluntary Plan

Section 3254-2@ General Provisions for a Voluntary Plan

(a)

(1) A voluntary plan shall be made available to all California employees employed by the employer or all such employees employed in the separate establishment of the employer without restrictions or exclusions, except that the plan need not be made available to: (A) Any employee in partial or short-time employment if(i) he or she is customarily employed less than half of the time during the workweek or (ii) he or she has been hired for a period not expected to exceed two weeks. (B) Any employee not in employment, including any employee performing a kind of service excluded from subject "employment" under Part 2 (commencing with Section 2601) of Division 1 of the code. (2) Evidence shall be submitted, before final approval, that a majority of the employees of the employer or of the separate establishment of the employer have consented to the plan. The evidence may be in the form of a statement showing the total number of current employees in employment by the employer (or in the separate establishment) and the number of current employees who consented in writing or by electronic mail, at the employee's option, if electronic means are available, to join the plan, or if such consent was given by vote in a secret ballot or other free election, the number who voted to join the plan. The records of the employer with respect to such consent or vote shall be available to the department.

(1)

A voluntary plan shall be made available to all California employees employed by the employer or all such employees employed in the separate establishment of the employer without restrictions or exclusions, except that the plan need not be made available to: (A) Any employee in partial or short-time employment if(i) he or she is customarily employed less than half of the time during the workweek or (ii) he or she has been hired for a period not expected to exceed two weeks. (B) Any employee not in employment, including any employee performing a kind of service excluded from subject "employment" under Part 2 (commencing with Section 2601) of Division 1 of the code.

(A)

Any employee in partial or short-time employment if(i) he or she is customarily employed less than half of the time during the workweek or (ii) he or she has been hired for a period not expected to exceed two weeks.

(i)

he or she is customarily employed less than half of the time during the workweek or

(ii)

he or she has been hired for a period not expected to exceed two weeks.

(B)

Any employee not in employment, including any employee performing a kind of service excluded from subject "employment" under Part 2 (commencing with Section 2601) of Division 1 of the code.

(2)

Evidence shall be submitted, before final approval, that a majority of the employees of the employer or of the separate establishment of the employer have consented to the plan. The evidence may be in the form of a statement showing the total number of current employees in employment by the employer (or in the separate establishment) and the number of current employees who consented in writing or by electronic mail, at

the employee's option, if electronic means are available, to join the plan, or if such consent was given by vote in a secret ballot or other free election, the number who voted to join the plan. The records of the employer with respect to such consent or vote shall be available to the department.

(b)

A plan which is applicable to fewer than all the establishments of the employer in this State shall demonstrate:(1) That the "distinct separate establishment" to which the plan relates is definitely separated from other operating units of the same employer by reason of geographical location. (2) That confinement of the plan to fewer than all of the employees of the employer employed in this State will not result in a substantial selection of risks adverse to the Disability Fund.

(1)

That the "distinct separate establishment" to which the plan relates is definitely separated from other operating units of the same employer by reason of geographical location.

(2)

That confinement of the plan to fewer than all of the employees of the employer employed in this State will not result in a substantial selection of risks adverse to the Disability Fund.

(c)

A voluntary plan shall not be approved unless it contains a provision that it will be in effect for not less than one year and that no reduction in disability benefits or increase in employee contributions for disability benefits will be made while the plan is in effect without the approval of the department. Approval shall be given only if the department finds that, except as provided in Section 3271-1 of these regulations, a majority of the employees covered by the plan have consented in

writing to the modification and that the plan after such modification will continue to meet the requirements of the code and of these regulations.

(d)

A voluntary plan shall provide that every employee covered by the plan is eligible for benefits under the plan regardless of his or her physical or mental condition at the time he or she becomes covered. A voluntary plan shall not impose any exclusions from eligibility for benefits with respect to any employee covered on account of any pre-existing physical or mental condition of the employee or his or her family member, as defined in Section 3302(f) of the code. An employee covered by a voluntary plan shall be eligible for benefits under the plan with respect to any uninterrupted period of disability or care recipient period, as defined in section 3254-4, which commences while he or she is covered. For the purpose of this subdivision: (1) A period of disability shall be deemed to commence while an employee is covered by a voluntary plan if such employee is, or thereafter becomes, unable to perform the regular or customary duties of his or her employment under the voluntary plan because of his or her physical or mental condition notwithstanding the fact that benefits may not be immediately payable under the voluntary plan. (2) A care recipient period shall be deemed to commence while an employee is covered by a voluntary plan if such employee is, or thereafter becomes, unable to perform the regular or customary duties of his or her employment under the voluntary plan due to the need to provide care for a seriously ill family member, as defined in Section 3302(f) of the code, or bond with a new child notwithstanding the fact that benefits may not be immediately payable under the voluntary plan.

(1)

A period of disability shall be deemed to commence while an employee is covered by a

voluntary plan if such employee is, or thereafter becomes, unable to perform the regular or customary duties of his or her employment under the voluntary plan because of his or her physical or mental condition notwithstanding the fact that benefits may not be immediately payable under the voluntary plan.

(2)

A care recipient period shall be deemed to commence while an employee is covered by a voluntary plan if such employee is, or thereafter becomes, unable to perform the regular or customary duties of his or her employment under the voluntary plan due to the need to provide care for a seriously ill family member, as defined in Section 3302(f) of the code, or bond with a new child notwithstanding the fact that benefits may not be immediately payable under the voluntary plan.

(e)

The plan shall be made available to all future employees of the employer or of the separate establishment without restrictions or exclusion except as to employees in partial or short-time employment or employees not in employment as described in subdivision (a) of this section. All other new employees shall be admissible to coverage under one of the following provisions: (1) Immediately upon employment. (2) Upon the first day of the calendar quarter immediately after the employee has completed a period of employment of three months or less. (3) At some determinable date not later than the date specified in paragraph (2) of this subdivision.

(1)

Immediately upon employment.

(2)

Upon the first day of the calendar quarter immediately after the employee has completed a period of employment of three months or less.

(3)

At some determinable date not later than the date specified in paragraph (2) of this subdivision.

(f)

The plan shall provide under such provisions as the department finds reasonable, and not such as to result in a substantial selection of risks adverse to the Disability Fund, that any employee who at such time is not receiving disability benefits and who did not elect to be covered by the plan when first admissible to coverage, may elect coverage under the plan and such coverage shall commence in accordance with one of the following provisions: (1) Immediately upon such election. (2) Upon the first day of the calendar quarter immediately after the employee has so elected and thereafter completed a period of employment of three months or less. (3) At some determinable date not later than the date specified in paragraph (2) of this subdivision.

(1)

Immediately upon such election.

(2)

Upon the first day of the calendar quarter immediately after the employee has so elected and thereafter completed a period of employment of three months or less.

(3)

At some determinable date not later than the date specified in paragraph (2) of this subdivision.

(g)

Except as provided in Section 3271-1 of these regulations, the plan shall permit any covered employee to withdraw from the plan at the beginning of any calendar quarter upon the giving of reasonable notice in writing to the employer as provided

in the plan.

(h)

A voluntary plan may provide for the proration of benefits on account of simultaneous coverage. Simultaneous coverage is deemed to exist when an individual is covered by and entitled to benefits from more than one plan (including voluntary plans and/or the Disability Fund). When a voluntary plan provides for proration of disability benefits because an individual is simultaneously covered by more than one plan such disability benefits shall be not less than the quotient obtained by dividing the sum of the disability benefits to which the individual would be entitled if he or she were covered only by the Disability Fund by the number of plans under which the individual is simultaneously covered.