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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

3254-3 Termination of Coverage Under a Voluntary Plan

Section 3254-3@ Termination of Coverage Under a Voluntary Plan

(a)

Coverage under a voluntary plan may be terminated prior to commencement of a period of disability by any one of the following conditions: (1) Termination of the voluntary plan by the director in accordance with the provisions of Section 3262 of the code and Section 3262-1 of these regulations. (2) Withdrawal of the voluntary plan by the employer or a majority of its employees in accordance with the provisions of subdivision (g) of Section 3254 or subdivision (g) of Section 3255 of the code. (3) Cancellation of the voluntary plan by an admitted disability insurer in accordance with the provisions of Section 3262-2 of these regulations. (4)

Withdrawal from the voluntary plan by a covered employee in accordance with the provisions of subdivision (g) of Section 3254-2 of these regulations or subdivision (a) of Section 3271 of the code and subdivision (b) of Section 3271-1 of these regulations. (5) Termination of the employer-employee relationship. Except when subdivision (b) of this section applies, "termination of the employer-employee relationship" means that employment ceases with no mutual expectation or intention to continue the working relationship. Reasons for termination of the employer-employee relationship include, but are not limited to, separation, dismissal, resignation, and retirement. **EXAMPLE 1. Separation.** A, an operating engineer, leaves work at the close of the shift on Friday when A and other members of A's crew are informed by the employer that their services are no

longer needed because the job is in the course of being completed. For any new projects the employer will request a general union dispatch of union members. A is paid in full on that day. On Sunday A is in an automobile accident. A files a disability claim with the voluntary plan. A's disability and inability to perform regular or customary work is not in dispute. However, the employer had terminated the employment relationship with A prior to commencement of the period of disability, and disability benefits are payable from the Disability Fund rather than under the voluntary plan.

EXAMPLE 2. Dismissal. Given a written notice of dismissal in the middle of B's shift, effective immediately, because B objected to performing a "rush job" and because B had consistently taken too much time to perform assignments. B's request to retain B's job is rejected. On the next day B files a disability claim with the voluntary plan for indefinite complaints and nervous instability. The employer terminated the employment relationship with B on a day when B would have continued to perform regular or customary work had B not been dismissed. If B establishes a disability and inability to perform regular or customary work, disability benefits are payable from the Disability Fund rather than under the voluntary plan.

EXAMPLE 3. Resignation. C is employed full time and also enrolled in several courses at a local university. C voluntarily resigns C's employment to concentrate on C's education with a full program of study. During the period of employment C was under frequent medical treatment for infectious eczematoid dermatitis but lost no time from work. Within two weeks of terminating employment C's condition worsens and C withdraws from school for intensive treatment in a hospital. C files a disability claim with the voluntary plan. C's disability and inability to perform regular or customary work is not in dispute. However, C voluntarily terminated the employment relationship with the voluntary plan employer prior to

commencement of the period of disability. If C can establish an attachment to the labor market, disability benefits are payable from the Disability Fund rather than under the voluntary plan. EXAMPLE 4. Retirement. D, a janitor, seventy years of age, retires because D wishes to take a well-earned rest and because D feels the job is getting too heavy for D's age. D has not seen a doctor for approximately one year prior to the termination of employment. D plans to seek lighter work. Within two weeks of terminating employment D contracts pneumonia and files a disability claim with the voluntary plan. D's disability and inability to perform regular or customary work is not in dispute. However, D voluntarily retired and terminated the employment relationship prior to commencement of the period of disability. If D can establish that D remains attached to the labor market, disability benefits are payable from the Disability Fund rather than under the voluntary plan. (6) Leave of absence without pay or a layoff without pay if the leave or layoff extends for a period of fifteen (15) full days before the period of disability commences. Except when subdivision (b) of this section applies, "leave of absence" and "layoff" mean that something other than a permanent termination of the employment relationship is indicated at the time an individual's work comes to an end, or the employment ceases because of factors beyond the employee's or the employer's control. A leave of absence from work is granted by the employer for many reasons. Reasons for a layoff include the following: (A) Temporary disciplinary action. (B) Lack of work. The term "lack of work" indicates termination of employment because the commodity or activity provided by the business is no longer in sufficient demand to require the services of the individual, however the individual would be subject to recall if more work developed; or because an on-call employee who accepts temporary assignments is laid off at the completion of an assignment with the expectation that another assignment will be provided in the

future. (C) Material shortage. The term "material shortage" indicates the lack of some component necessary to make a final product, i.e., in a steel mill--lack of coal, ore, etc.; in a cannery--lack of the products being canned, cans, etc.; in the automotive industry--lack of steel, parts, etc. (D) Season of activity ends. The term "season of activity ends" indicates termination of employment because of the seasonal nature of the work, i.e., lumbering ceases because of weather; canning stops because crop not in season; fishing stops because the fish run ends; track closes because racing seasons ends.

EXAMPLE 1. Leave of Absence. A is granted an indeterminate leave of absence without pay in order to assist in the care of a sick daughter and because A is "worn out" caring for the daughter while also working. On the fifteenth day following the last day of work A is severely injured in an automobile accident and files a disability claim with the voluntary plan. A day is defined in Section 125-1 of these regulations as the 24-hour period beginning at midnight and ending the following midnight. Therefore, a disability which occurs on the 15th day after leaving work is not one that occurred 15 full days after the last day worked. Disability benefits are payable under the voluntary plan.

EXAMPLE 2. Layoff Due to Lack of Work. B, an out-of-doors pipe tester, is laid off without pay because work was slow on account of the weather. B checks with the employer several times in the following week but no work was available. Subsequently B is terminated as of the last day worked when B does not contact the employer for thirty days. B files a disability claim with the voluntary plan because B was admitted to a hospital, suffering from acute alcoholism, on the fifteenth day following the last day of work. A day is defined in Section 125-1 of these regulations as the 24-hour period beginning at midnight and ending the following midnight. Therefore, a disability which occurs on the 15th day after leaving work is not one that occurred 15 full days after the last day worked.

Disability benefits are payable under the voluntary plan. EXAMPLE 3. Layoff on On-Call Employee. C works through a temporary employment agency. For the past two years C has been working "pretty steady" on assignments provided by this agency. There have been periods of employment and indefinite periods of unemployment. C completes an assignment and is laid off without pay until such time as another assignment may be available. On the fifteenth day following the last day of work C is severely injured in a motorcycle accident and files a disability claim with the voluntary plan. A day is defined in Section 125-1 of these regulations as the 24-hour period beginning at midnight and ending the following midnight. Therefore, a disability which occurs on the 15th day after leaving work is not one that occurred 15 full days after the last day worked. Disability benefits are payable under the voluntary plan. EXAMPLE 4. Layoff Due to Material Shortage. D, a fish cannery worker, is laid off without pay because fishing has been poor. D is subject to recall to work at any time until the fish packing season officially ends. On the fifteenth day following the last day of work D has a congestive heart failure and files a disability claim with the voluntary plan. A day is defined in Section 125-1 of these regulations as the 24-hour period beginning at midnight and ending the following midnight. Therefore, a disability which occurs on the 15th day after leaving work is not one that occurred 15 full days after the last day worked. Disability benefits are payable under the voluntary plan. EXAMPLE 5. Layoff Due to End of Season. E, a laborer for a fruit packing company, is laid off without pay at the close of the season, and there will be no more work for E until the commencement of the next season in nine months. Under the collective bargaining agreement in force between E's union and the employer, E has employment rights based upon seniority. E immediately seeks other work as a laborer although employment opportunities are scarce in the small community.

On the fifteenth day following the last day of work E fractures a femur and files a disability claim with the voluntary plan. A day is defined in Section 125-1 of these regulations as the 24-hour period beginning at midnight and ending the following midnight. Therefore, a disability which occurs on the 15th day after leaving work is not one that occurred 15 full days after the last day worked. The employer-employee relationship had been merely suspended rather than terminated. Benefits are payable under the voluntary plan.

(1)

Termination of the voluntary plan by the director in accordance with the provisions of Section 3262 of the code and Section 3262-1 of these regulations.

(2)

Withdrawal of the voluntary plan by the employer or a majority of its employees in accordance with the provisions of subdivision (g) of Section 3254 or subdivision (g) of Section 3255 of the code.

(3)

Cancellation of the voluntary plan by an admitted disability insurer in accordance with the provisions of Section 3262-2 of these regulations.

(4)

Withdrawal from the voluntary plan by a covered employee in accordance with the provisions of subdivision (g) of Section 3254-2 of these regulations or subdivision (a) of Section 3271 of the code and subdivision (b) of Section 3271-1 of these regulations.

(5)

Termination of the employer-employee relationship. Except when subdivision (b) of this section applies, "termination of the employer-employee relationship" means that employment ceases with no mutual expectation or intention to continue the working relationship. Reasons for termination of the employer-employee relationship include, but

are not limited to, separation, dismissal, resignation, and retirement. EXAMPLE 1.

Separation. A, an operating engineer, leaves work at the close of the shift on Friday when A and other members of A's crew are informed by the employer that their services are no longer needed because the job is in the course of being completed. For any new projects the employer will request a general union dispatch of union members. A is paid in full on that day. On Sunday A is in an automobile accident. A files a disability claim with the voluntary plan. A's disability and inability to perform regular or customary work is not in dispute. However, the employer had terminated the employment relationship with A prior to commencement of the period of disability, and disability benefits are payable from the Disability Fund rather than under the voluntary plan. EXAMPLE 2. Dismissal. Given a written notice of dismissal in the middle of B's

shift, effective immediately, because B objected to performing a "rush job" and because B had consistently taken too much time to perform assignments. B's request to retain B's job is rejected. On the next day B files a disability claim with the voluntary plan for indefinite complaints and nervous instability. The employer terminated the employment relationship with B on a day when B would have continued to perform regular or customary work had B not been dismissed. If B establishes a disability and inability to perform regular or customary work, disability benefits are payable from the Disability Fund rather than under the voluntary plan. EXAMPLE 3. Resignation. C is

employed full time and also enrolled in several courses at a local university. C voluntarily resigns C's employment to concentrate on C's education with a full program of study. During the period of employment C was under frequent medical treatment for infectious eczematoid dermatitis but lost no time from work. Within two weeks of terminating employment C's condition worsens and C withdraws from school for intensive treatment in a hospital. C files a disability claim with the voluntary plan. C's disability and inability to perform regular or customary work is not in dispute. However,

C voluntarily terminated the employment relationship with the voluntary plan employer prior to commencement of the period of disability. If C can establish an attachment to the labor market, disability benefits are payable from the Disability Fund rather than under the voluntary plan. EXAMPLE 4. Retirement. D, a janitor, seventy years of age, retires because D wishes to take a well-earned rest and because D feels the job is getting too heavy for D's age. D has not seen a doctor for approximately one year prior to the termination of employment. D plans to seek lighter work. Within two weeks of terminating employment D contracts pneumonia and files a disability claim with the voluntary plan. D's disability and inability to perform regular or customary work is not in dispute. However, D voluntarily retired and terminated the employment relationship prior to commencement of the period of disability. If D can establish that D remains attached to the labor market, disability benefits are payable from the Disability Fund rather than under the voluntary plan.

(6)

Leave of absence without pay or a layoff without pay if the leave or layoff extends for a period of fifteen (15) full days before the period of disability commences. Except when subdivision (b) of this section applies, "leave of absence" and "layoff" mean that something other than a permanent termination of the employment relationship is indicated at the time an individual's work comes to an end, or the employment ceases because of factors beyond the employee's or the employer's control. A leave of absence from work is granted by the employer for many reasons. Reasons for a layoff include the following: (A) Temporary disciplinary action. (B) Lack of work. The term "lack of work" indicates termination of employment because the commodity or activity provided by the business is no longer in sufficient demand to require the services of the individual, however the individual would be subject to recall if more work developed; or because an on-call employee who accepts temporary assignments is laid off at the completion of an

assignment with the expectation that another assignment will be provided in the future.

(C) Material shortage. The term "material shortage" indicates the lack of some component necessary to make a final product, i.e., in a steel mill--lack of coal, ore, etc.; in a cannery--lack of the products being canned, cans, etc.; in the automotive industry--lack of steel, parts, etc. (D) Season of activity ends. The term "season of activity ends" indicates termination of employment because of the seasonal nature of the work, i.e., lumbering ceases because of weather; canning stops because crop not in season; fishing stops because the fish run ends; track closes because racing seasons ends.

EXAMPLE 1. Leave of Absence. A is granted an indeterminate leave of absence without pay in order to assist in the care of a sick daughter and because A is "worn out" caring for the daughter while also working. On the fifteenth day following the last day of work A is severely injured in an automobile accident and files a disability claim with the voluntary plan. A day is defined in Section 125-1 of these regulations as the 24-hour period beginning at midnight and ending the following midnight. Therefore, a disability which occurs on the 15th day after leaving work is not one that occurred 15 full days after the last day worked. Disability benefits are payable under the voluntary plan. EXAMPLE 2. Layoff Due to Lack of Work. B, an out-of-doors pipe tester, is laid off without pay because work was slow on account of the weather. B checks with the employer several times in the following week but no work was available. Subsequently B is terminated as of the last day worked when B does not contact the employer for thirty days. B files a disability claim with the voluntary plan because B was admitted to a hospital, suffering from acute alcoholism, on the fifteenth day following the last day of work. A day is defined in Section 125-1 of these regulations as the 24-hour period beginning at midnight and ending the following midnight. Therefore, a disability which occurs on the 15th day after leaving work is not one that occurred 15 full days after the last day worked. Disability benefits are payable under the voluntary plan. EXAMPLE 3.

Layoff on On-Call Employee. C works through a temporary employment agency. For the past two years C has been working "pretty steady" on assignments provided by this agency. There have been periods of employment and indefinite periods of unemployment. C completes an assignment and is laid off without pay until such time as another assignment may be available. On the fifteenth day following the last day of work C is severely injured in a motorcycle accident and files a disability claim with the voluntary plan. A day is defined in Section 125-1 of these regulations as the 24-hour period beginning at midnight and ending the following midnight. Therefore, a disability which occurs on the 15th day after leaving work is not one that occurred 15 full days after the last day worked. Disability benefits are payable under the voluntary plan.

EXAMPLE 4. Layoff Due to Material Shortage. D, a fish cannery worker, is laid off without pay because fishing has been poor. D is subject to recall to work at any time until the fish packing season officially ends. On the fifteenth day following the last day of work D has a congestive heart failure and files a disability claim with the voluntary plan. A day is defined in Section 125-1 of these regulations as the 24-hour period beginning at midnight and ending the following midnight. Therefore, a disability which occurs on the 15th day after leaving work is not one that occurred 15 full days after the last day worked. Disability benefits are payable under the voluntary plan. EXAMPLE 5.

Layoff Due to End of Season. E, a laborer for a fruit packing company, is laid off without pay at the close of the season, and there will be no more work for E until the commencement of the next season in nine months. Under the collective bargaining agreement in force between E's union and the employer, E has employment rights based upon seniority. E immediately seeks other work as a laborer although employment opportunities are scarce in the small community. On the fifteenth day following the last day of work E fractures a femur and files a disability claim with the voluntary plan. A day is defined in Section 125-1 of these regulations as the 24-hour

period beginning at midnight and ending the following midnight. Therefore, a disability which occurs on the 15th day after leaving work is not one that occurred 15 full days after the last day worked. The employer-employee relationship had been merely suspended rather than terminated. Benefits are payable under the voluntary plan.

(A)

Temporary disciplinary action.

(B)

Lack of work. The term "lack of work" indicates termination of employment because the commodity or activity provided by the business is no longer in sufficient demand to require the services of the individual, however the individual would be subject to recall if more work developed; or because an on-call employee who accepts temporary assignments is laid off at the completion of an assignment with the expectation that another assignment will be provided in the future.

(C)

Material shortage. The term "material shortage" indicates the lack of some component necessary to make a final product, i.e., in a steel mill--lack of coal, ore, etc.; in a cannery--lack of the products being canned, cans, etc.; in the automotive industry--lack of steel, parts, etc.

(D)

Season of activity ends. The term "season of activity ends" indicates termination of employment because of the seasonal nature of the work, i.e., lumbering ceases because of weather; canning stops because crop not in season; fishing stops because the fish run ends; track closes because racing seasons ends. **EXAMPLE 1. Leave of Absence.** A is granted an indeterminate leave of absence without pay in order to assist in the care of a sick daughter and because A is "worn out" caring for the daughter while also working. On the fifteenth day following the last day of work A is severely injured in an automobile accident and files a disability claim with the voluntary plan. A day is defined in Section 125-1 of these

regulations as the 24-hour period beginning at midnight and ending the following midnight. Therefore, a disability which occurs on the 15th day after leaving work is not one that occurred 15 full days after the last day worked. Disability benefits are payable under the voluntary plan.

EXAMPLE 2. Layoff Due to Lack of Work. B, an out-of-doors pipe tester, is laid off without pay because work was slow on account of the weather. B checks with the employer several times in the following week but no work was available. Subsequently B is terminated as of the last day worked when B does not contact the employer for thirty days. B files a disability claim with the voluntary plan because B was admitted to a hospital, suffering from acute alcoholism, on the fifteenth day following the last day of work. A day is defined in Section 125-1 of these regulations as the 24-hour period beginning at midnight and ending the following midnight. Therefore, a disability which occurs on the 15th day after leaving work is not one that occurred 15 full days after the last day worked. Disability benefits are payable under the voluntary plan.

EXAMPLE 3. Layoff on On-Call Employee. C works through a temporary employment agency. For the past two years C has been working "pretty steady" on assignments provided by this agency. There have been periods of employment and indefinite periods of unemployment. C completes an assignment and is laid off without pay until such time as another assignment may be available. On the fifteenth day following the last day of work C is severely injured in a motorcycle accident and files a disability claim with the voluntary plan. A day is defined in Section 125-1 of these regulations as the 24-hour period beginning at midnight and ending the following midnight. Therefore, a disability which occurs on the 15th day after leaving work is not one that occurred 15 full days after the last day worked. Disability benefits are payable under the voluntary plan.

EXAMPLE 4. Layoff Due to Material Shortage. D, a fish cannery worker, is laid off without pay because fishing has been poor. D is subject to recall to work at any time until the fish packing season officially ends. On the fifteenth day following the last day of work D has a congestive heart failure and files a disability claim with the voluntary plan. A day is

defined in Section 125-1 of these regulations as the 24-hour period beginning at midnight and ending the following midnight. Therefore, a disability which occurs on the 15th day after leaving work is not one that occurred 15 full days after the last day worked. Disability benefits are payable under the voluntary plan. EXAMPLE 5. Layoff Due to End of Season. E, a laborer for a fruit packing company, is laid off without pay at the close of the season, and there will be no more work for E until the commencement of the next season in nine months. Under the collective bargaining agreement in force between E's union and the employer, E has employment rights based upon seniority. E immediately seeks other work as a laborer although employment opportunities are scarce in the small community. On the fifteenth day following the last day of work E fractures a femur and files a disability claim with the voluntary plan. A day is defined in Section 125-1 of these regulations as the 24-hour period beginning at midnight and ending the following midnight. Therefore, a disability which occurs on the 15th day after leaving work is not one that occurred 15 full days after the last day worked. The employer-employee relationship had been merely suspended rather than terminated. Benefits are payable under the voluntary plan.

(b)

Notwithstanding the provisions of subdivision (a) of this section, coverage under a voluntary plan shall not be terminated during the extended period where the employer-employee relationship is considered to be continued under any one of the following conditions: (1) When a voluntary plan elects to extend its benefits for a specified longer period than required by subdivision (a) of this section. (2) When a voluntary plan covered employee becomes disabled on the date coverage under the voluntary plan would otherwise be terminated. For the purposes of this subdivision, "date" means year, month and day, ending at midnight of that day. This is consistent with the definition of "day" as defined in Section 125-1 of these regulations as the 24-hour period beginning at midnight and ending the following

midnight. Coverage shall not be deemed terminated at the time (hour and minute) the cessation of work occurs. EXAMPLE 1. Disability on Voluntary Plan Termination Date. A normally works from 6:00 a.m. to 3:00 p.m. A is discharged at 9:00 a.m. because A is intoxicated. On that same day A severely injures A's back at 5:00 p.m. at home while lifting work tools from the car. A files a disability claim with the voluntary plan. Disability benefits are payable under the voluntary plan because A became disabled before midnight on the day that the employer-employee relationship was terminated. (3) When a covered employee is on a leave of absence or a layoff and receives wages from the voluntary plan employer allocable to days of the period of leave of absence or layoff. Coverage shall not be deemed terminated until the leave of absence without pay or the layoff without pay extends for a period of 15 full days following the last day for which wages were paid before the period of disability commences. EXAMPLE 1. Disability Within 15 Full Days of Layoff. A is laid off when A's plant closes for the annual vacation period of two weeks, and A receives vacation pay for that fourteen-day period. On the fifteenth day following the last day of work, A is advised by the employer that there is no work available for A but that A will be called back whenever work is available. A has been under medical treatment that did not prevent A from performing A's regular and customary work. A is advised by A's physician that surgery will now be necessary, and A enters a hospital for the surgery on the twenty-ninth day following the last day of work. A files a disability claim with the voluntary plan. A day is defined in Section 125-1 of these regulations as the 24-hour period beginning at midnight and ending the following midnight. Therefore, a disability which occurs on the 15th day after leaving work is not one that occurred 15 full days after the last day worked. Disability benefits are payable under the voluntary plan. COMMENTS. If the employer-employee

relationship has been terminated, the receipt of severance payments, earned but unpaid vacation pay or holiday pay, and earned but unpaid sick pay, paid because of termination of employment, does not extend coverage under a voluntary plan after the date of the termination (see Sections 1265, 1265.5, and 1265.7 of the code.) (4) When a covered employee is on a leave of absence without pay or a layoff without pay and becomes disabled from one medical condition within 15 full days following the last day of work and then suffers a second or more unrelated disabling condition before a recovery from the disability for which a disability claim is initially filed with the voluntary plan. Coverage shall not be deemed terminated at any time during the uninterrupted period of disability due to overlapping disabling conditions. EXAMPLE 1. Leave of Absence without Pay. A is granted an indeterminate leave of absence without pay because of pregnancy and A's plans for motherhood. At that time A is able to perform A's regular or customary work but on the fifteenth day following the last day of work the baby is born. A files a disability claim with the voluntary plan with a physician's certificate for a six-week postpartum period of disability. In the fifth week following the birth of the baby A suffers a gallbladder problem requiring a cholecystectomy. A's physician extends the period of disability for another six weeks. A day is defined in Section 125-1 of these regulations as the 24-hour period beginning at midnight and ending the following midnight. Therefore, a disability which occurs on the 15th day after leaving work is not one that occurred 15 full days after the last day worked. A is eligible for disability benefits from the voluntary plan for approximately twelve weeks or until the continuous period of unemployment and disability ends (see subdivision (c) of Section 2608-1 and subdivision (d) of Section 3254-2 of these regulations). (5) When a covered employee is terminated or laid off without pay or given a leave of absence without pay while receiving "other benefits" as that term

is used in Section 2629 of the code and then suffers a second or more unrelated disabling condition for days such "other benefits" are received. Coverage shall not be deemed terminated at any time during the uninterrupted period of disability due to overlapping disabling conditions notwithstanding the fact that disability benefits may not be immediately payable under the voluntary plan. EXAMPLE 1. Leave of Absence While Receiving Other Benefits. A receives temporary workers' compensation benefits for an industrial injury arising out of and in the course of A's employment. While still disabled, the voluntary plan employer advises A that the plant is closing immediately in the city where A resides, and there will be no more work available for A. A continues to receive workers' compensation benefits for a total of six months of benefits. Two weeks before A receives a final examination and discharge by the workers' compensation insurer's physician, A is informed by A's private physician that A should not attempt to work again because of chronic rheumatoid arthritis and heart disease. A files a disability claim with the voluntary plan. Disability benefits are payable to A under the voluntary plan for days immediately following termination of payments of temporary workers' compensation. The voluntary plan is liable for the maximum period payable under the voluntary plan for a continuous period of unemployment and disability, although from overlapping industrial and non-industrial disabling conditions, which commenced while the voluntary plan was in effect (see subdivision (c) of Section 2608-1 and subdivision (d) of Section 3254-2 of these regulations). (6) When a covered employee becomes disabled after leaving work due to a trade dispute. Coverage shall not be deemed terminated as long as the trade dispute is in active progress. EXAMPLE 1. Trade Dispute. A leaves work because of a trade dispute and becomes disabled sixty days later while the trade dispute remained in active progress. A has not resigned from A's employment. A

files a disability claim with the voluntary plan. Disability benefits are payable under the voluntary plan because A became disabled while the trade dispute was in active progress. A strike or trade dispute simply suspends the employer-employee relationship and does not terminate it. The circumstances under which A left work do not constitute a leave of absence without pay or a layoff without pay.

(1)

When a voluntary plan elects to extend its benefits for a specified longer period than required by subdivision (a) of this section.

(2)

When a voluntary plan covered employee becomes disabled on the date coverage under the voluntary plan would otherwise be terminated. For the purposes of this subdivision, "date" means year, month and day, ending at midnight of that day. This is consistent with the definition of "day" as defined in Section 125-1 of these regulations as the 24-hour period beginning at midnight and ending the following midnight. Coverage shall not be deemed terminated at the time (hour and minute) the cessation of work occurs.

EXAMPLE 1. Disability on Voluntary Plan Termination Date. A normally works from 6:00 a.m. to 3:00 p.m. A is discharged at 9:00 a.m. because A is intoxicated. On that same day A severely injures A's back at 5:00 p.m. at home while lifting work tools from the car. A files a disability claim with the voluntary plan. Disability benefits are payable under the voluntary plan because A became disabled before midnight on the day that the employer-employee relationship was terminated.

(3)

When a covered employee is on a leave of absence or a layoff and receives wages from the voluntary plan employer allocable to days of the period of leave of absence or layoff. Coverage shall not be deemed terminated until the leave of absence without pay or the

layoff without pay extends for a period of 15 full days following the last day for which wages were paid before the period of disability commences. **EXAMPLE 1. Disability Within 15 Full Days of Layoff.** A is laid off when A's plant closes for the annual vacation period of two weeks, and A receives vacation pay for that fourteen-day period. On the fifteenth day following the last day of work, A is advised by the employer that there is no work available for A but that A will be called back whenever work is available. A has been under medical treatment that did not prevent A from performing A's regular and customary work. A is advised by A's physician that surgery will now be necessary, and A enters a hospital for the surgery on the twenty-ninth day following the last day of work. A files a disability claim with the voluntary plan. A day is defined in Section 125-1 of these regulations as the 24-hour period beginning at midnight and ending the following midnight. Therefore, a disability which occurs on the 15th day after leaving work is not one that occurred 15 full days after the last day worked. Disability benefits are payable under the voluntary plan. **COMMENTS.** If the employer-employee relationship has been terminated, the receipt of severance payments, earned but unpaid vacation pay or holiday pay, and earned but unpaid sick pay, paid because of termination of employment, does not extend coverage under a voluntary plan after the date of the termination (see Sections 1265, 1265.5, and 1265.7 of the code.)

(4)

When a covered employee is on a leave of absence without pay or a layoff without pay and becomes disabled from one medical condition within 15 full days following the last day of work and then suffers a second or more unrelated disabling condition before a recovery from the disability for which a disability claim is initially filed with the voluntary plan. Coverage shall not be deemed terminated at any time during the uninterrupted period of disability due to overlapping disabling conditions. **EXAMPLE 1. Leave of Absence without Pay.** A is granted an indeterminate leave of absence without pay

because of pregnancy and A's plans for motherhood. At that time A is able to perform A's regular or customary work but on the fifteenth day following the last day of work the baby is born. A files a disability claim with the voluntary plan with a physician's certificate for a six-week postpartum period of disability. In the fifth week following the birth of the baby A suffers a gallbladder problem requiring a cholecystectomy. A's physician extends the period of disability for another six weeks. A day is defined in Section 125-1 of these regulations as the 24-hour period beginning at midnight and ending the following midnight. Therefore, a disability which occurs on the 15th day after leaving work is not one that occurred 15 full days after the last day worked. A is eligible for disability benefits from the voluntary plan for approximately twelve weeks or until the continuous period of unemployment and disability ends (see subdivision (c) of Section 2608-1 and subdivision (d) of Section 3254-2 of these regulations).

(5)

When a covered employee is terminated or laid off without pay or given a leave of absence without pay while receiving "other benefits" as that term is used in Section 2629 of the code and then suffers a second or more unrelated disabling condition for days such "other benefits" are received. Coverage shall not be deemed terminated at any time during the uninterrupted period of disability due to overlapping disabling conditions notwithstanding the fact that disability benefits may not be immediately payable under the voluntary plan. **EXAMPLE 1. Leave of Absence While Receiving Other Benefits.** A receives temporary workers' compensation benefits for an industrial injury arising out of and in the course of A's employment. While still disabled, the voluntary plan employer advises A that the plant is closing immediately in the city where A resides, and there will be no more work available for A. A continues to receive workers' compensation benefits for a total of six months of benefits. Two weeks before A receives a final examination and discharge by the workers' compensation insurer's

physician, A is informed by A's private physician that A should not attempt to work again because of chronic rheumatoid arthritis and heart disease. A files a disability claim with the voluntary plan. Disability benefits are payable to A under the voluntary plan for days immediately following termination of payments of temporary workers' compensation. The voluntary plan is liable for the maximum period payable under the voluntary plan for a continuous period of unemployment and disability, although from overlapping industrial and non-industrial disabling conditions, which commenced while the voluntary plan was in effect (see subdivision (c) of Section 2608-1 and subdivision (d) of Section 3254-2 of these regulations).

(6)

When a covered employee becomes disabled after leaving work due to a trade dispute. Coverage shall not be deemed terminated as long as the trade dispute is in active progress. EXAMPLE 1. Trade Dispute. A leaves work because of a trade dispute and becomes disabled sixty days later while the trade dispute remained in active progress. A has not resigned from A's employment. A files a disability claim with the voluntary plan. Disability benefits are payable under the voluntary plan because A became disabled while the trade dispute was in active progress. A strike or trade dispute simply suspends the employer-employee relationship and does not terminate it. The circumstances under which A left work do not constitute a leave of absence without pay or a layoff without pay.