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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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3254-4 Termination of Family Temporary Disability

Section 3254-4@ Termination of Family Temporary Disability Insurance Coverage Under a Voluntary Plan

Insurance Coverage Under a Voluntary Plan

Once a 12-month period is established, liability for Family Temporary Disability Insurance benefits may change during the 12-month period by virtue of new employment and/or new plan coverage. Liability for coverage during a single 12-month period may involve multiple plan liabilities.

Liability for Family Temporary Disability Insurance benefits remains with the plan or plans that covered the employee when the care recipient period was established.

"Care recipient period" means all periods of family care leave that an employee takes within a 12-month period, as defined in Section 3301(d) - 1, to care for the same care recipient.

(a)

Coverage under a voluntary plan may be terminated prior to commencement of a period of family care leave 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) 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. (4) 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 employment relationship. Reasons for termination of the employer-employee relationship include, but are not limited to, separation, dismissal, resignation, and retirement. EXAMPLE 1. Separation.

Claimant A, an operating engineer, leaves work at the close of the shift on Friday when Claimant A and other members of Claimant A's crew are informed by the employer that their services are no longer needed because the job is being completed. For any new projects the employer will request a general union dispatch of union members. Claimant A is paid in full on that day. On Sunday, Claimant A's father suffers a severe stroke that warrants Claimant A's immediate participation to provide care. Claimant A establishes a Family Temporary Disability Insurance claim with the voluntary plan. The medical certificate confirms that Claimant A's care is warranted beginning Sunday due to his father's serious health condition. Claimant A's inability to perform regular or customary work due to the need to provide care is not in dispute. However, the employer had terminated the employment relationship with Claimant A prior to the commencement of the period of family care leave, and, therefore Family Temporary Disability Insurance benefits are payable from the Disability Fund rather than the voluntary plan.

EXAMPLE 2. Liability During a Twelve-Month Period. Claimant B establishes a claim for Family Temporary Disability Insurance benefits under the voluntary plan beginning January 3 to care for her seriously ill daughter. The medical certificate confirms that Claimant B's care is warranted beginning January 3 due to her daughter's serious health condition. Claimant B serves a seven-day waiting period January 3 through January 9 and receives two weeks of benefits under the

voluntary plan through January 23. Claimant B returns to work for the voluntary plan employer on January 24. She leaves work at the close of the shift on January 28 when the employer informs her that her services are no longer needed because the job is completed. Claimant B is paid in full on January 28. On January 30, her daughter's serious health condition warrants further care. Claimant B establishes a Family Temporary Disability Insurance claim with the voluntary plan to provide care for her daughter. The medical certificate confirms that Claimant B's care is warranted beginning January 30 due to her daughter's serious health condition. The voluntary plan is liable for benefits commencing January 30 because liability for Family Temporary Disability Insurance benefits remains with the plan that covered the employee when the care recipient period was established.

(5) 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 family care leave 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. Claimant A is granted an indeterminate leave of absence without pay. On the 15th day following the last day of work Claimant A's mother suffers a severe stroke that warrants Claimant A's participation to provide care. The medical certificate confirms that Claimant A's care is warranted due to her mother's serious health condition. 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 period of family care leave which occurs on the 15th day after leaving work is not one that occurred 15 full days after the last day worked. Family Temporary Disability Insurance 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)

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.

(4)

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 employment relationship. Reasons for termination of the employer-employee relationship include, but are not limited to, separation, dismissal, resignation, and retirement. EXAMPLE 1. Separation. Claimant A, an operating engineer, leaves work at the close of the shift on Friday when Claimant A and other members of Claimant A's crew are informed by the employer that their services are no longer needed because the job is being completed. For any new projects the employer will request a general union dispatch of union members. Claimant A is paid in full on that day. On Sunday, Claimant A's father suffers a severe stroke that warrants Claimant A's immediate participation to provide care. Claimant A establishes a Family Temporary Disability Insurance claim with the voluntary plan. The medical certificate confirms that Claimant A's care is warranted beginning Sunday due to his father's serious health condition. Claimant A's inability to perform regular or customary work due to the need to provide care is not in dispute. However, the employer had terminated the employment relationship with Claimant A prior to the commencement of the period of family care leave, and, therefore Family Temporary Disability Insurance benefits are payable from the Disability Fund rather than the voluntary plan. EXAMPLE 2. Liability During a Twelve-Month Period. Claimant B establishes a claim for Family Temporary Disability Insurance benefits under the voluntary plan beginning January 3 to care for her seriously ill daughter. The medical certificate confirms that Claimant B's care is warranted beginning January 3 due to her daughter's serious health condition. Claimant B serves a seven-day waiting period January 3 through January 9 and receives two

weeks of benefits under the voluntary plan through January 23. Claimant B returns to work for the voluntary plan employer on January 24. She leaves work at the close of the shift on January 28 when the employer informs her that her services are no longer needed because the job is completed. Claimant B is paid in full on January 28. On January 30, her daughter's serious health condition warrants further care. Claimant B establishes a Family Temporary Disability Insurance claim with the voluntary plan to provide care for her daughter. The medical certificate confirms that Claimant B's care is warranted beginning January 30 due to her daughter's serious health condition. The voluntary plan is liable for benefits commencing January 30 because liability for Family Temporary Disability Insurance benefits remains with the plan that covered the employee when the care recipient period was established.

(5)

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 family care leave 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. Claimant A is granted an indeterminate leave of absence without pay. On the 15th day following the last day of work Claimant A's mother suffers a severe stroke that warrants Claimant A's participation to provide care. The medical certificate confirms that Claimant A's care is warranted due to her mother's serious health condition. 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 period of family care leave which occurs on the 15th day after leaving work is not one that occurred 15 full days after the last day worked. Family Temporary Disability Insurance 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. Claimant A is granted an indeterminate leave of absence without pay. On the 15th day following the last day of work Claimant A's mother suffers a severe stroke that warrants Claimant A's participation to provide care. The medical certificate confirms that Claimant A's care is warranted due to her mother's serious health condition. 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 period of family care leave which occurs on the 15th day after leaving work is not one that occurred 15 full days after the last day worked. Family Temporary Disability Insurance 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 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 begins a period of family care leave 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. (A) Claims for Family Temporary Disability Insurance benefits for the same care recipient that are established with the plan prior to termination of the employer-employee relationship remain the liability of that plan through the end of the 12-month period regardless of whether the need for family care is continuous or intermittent. (B) Claims for Family Temporary Disability Insurance benefits care recipients for whom no Family Temporary Disability Insurance claim was established before the termination of the employer-employee relationship are not the liability of the voluntary plan that covered the employee prior to the termination. (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 family care leave commences. (A) The plan under which the employee was covered beginning with the last day worked and for 15 full days after a leave of absence without pay or layoff without pay remains liable for all periods of family care leave claimed for the same care recipient through the end of the 12-month period regardless of whether the need for family care leave is consecutive or intermittent. (B) Claims for care recipients for whom no Family Temporary Disability Insurance claim was established before the 15th full day after the last day worked after a leave of absence without pay or layoff without pay are not the liability of the voluntary plan that covered the employer prior to the 15th full day. (4) When a covered employee begins a period of family care leave after leaving work due to a trade dispute. Coverage shall not be deemed terminated as long as the trade dispute is in active progress. (5) When a covered employee becomes disabled due to pregnancy and begins a period of family care leave to bond with that child.

Coverage shall not be deemed terminated at any time during the disability benefit period as defined in Section 3302.1(c) of the code. EXAMPLE 1. Pregnancy and Bonding. Claimant A is unable to work due to a pregnancy-related disability. Her last day of work is October 20, 2005. She applies for and receives disability benefits from the voluntary plan for the period from October 21, 2005 through December 31, 2005. Claimant A establishes a Family Temporary Disability Insurance claim with the voluntary plan to bond with her new child who was born on November 20, 2005. Claimant A claims benefits for the six-week period beginning January 1, 2006. Section 3302.1(c) of the code provides that periods of disability for pregnancy, and periods of family care leave for bonding associated with the birth of that child are considered to be one disability benefit period. Therefore, Family Temporary Disability Insurance benefits are payable under the voluntary plan beginning January 1, 2006, if otherwise eligible. EXAMPLE 2. Pregnancy and Bonding. Claimant B is unable to work due to a pregnancy-related disability. Her last day of work is October 20, 2005. She applies for and receives disability benefits from the voluntary plan for the period from October 21, 2005 through December 31, 2005. Claimant B does not return to work before establishing a Family Temporary Disability Insurance claim with the voluntary plan to bond with her new child who was born on November 20, 2005. Claimant B claims benefits for the six-week period beginning March 1, 2006. Section 3302.1(c) of the code provides that periods of disability for pregnancy, and periods of family care leave for bonding associated with the birth of that child are considered to be one disability benefit period. Therefore, Family Temporary Disability Insurance benefits are payable under the voluntary plan beginning March 1, 2006, if otherwise eligible. The fact that Claimant B did not return to work does not affect waiting period waiver as provided in Section 3302.1(c) of the

code. EXAMPLE 3. Pregnancy and Bonding. Claimant C is unable to work due to a pregnancy-related disability. Her last day of work is October 20, 2005. She applies for and receives disability benefits from the Disability Fund for the period from October 21, 2005 through December 31, 2005. Claimant C terminates that employment and begins work for a voluntary plan employer January 1, 2006 through February 28, 2006. Claimant C is covered under the voluntary plan beginning January 1, 2006. Claimant C establishes a Family Temporary Disability Insurance claim with the voluntary plan to bond with her new child who was born on November 20, 2005. Claimant C claims benefits for the six-week period beginning March 1, 2006. Section 3302.1(c) of the code provides that periods of disability for pregnancy, and periods of family care leave for bonding associated with the birth of that child are considered to be one disability benefit period. Therefore, because the Disability Fund paid disability benefits for the pregnancy-related disability, Family Temporary Disability Insurance benefits for bonding are payable under the Disability Fund. The Family Temporary Disability Insurance benefits are payable beginning March 1, 2006, if otherwise eligible, without requiring a second waiting period. The fact that Claimant C returned to work does not affect waiting period waiver as provided in Section 3302.1(c) of the code.

(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 begins a period of family care leave 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. (A) Claims for Family Temporary Disability Insurance benefits for the same care recipient that are established with the plan prior to termination of the employer-employee relationship remain the liability of that plan through the end of the 12-month period regardless of whether the need for family care is continuous or intermittent. (B) Claims for Family Temporary Disability Insurance benefits care recipients for whom no Family Temporary Disability Insurance claim was established before the termination of the employer-employee relationship are not the liability of the voluntary plan that covered the employee prior to the termination.

(A)

Claims for Family Temporary Disability Insurance benefits for the same care recipient that are established with the plan prior to termination of the employer-employee relationship remain the liability of that plan through the end of the 12-month period regardless of whether the need for family care is continuous or intermittent.

(B)

Claims for Family Temporary Disability Insurance benefits care recipients for whom no Family Temporary Disability Insurance claim was established before the termination of the employer-employee relationship are not the liability of the voluntary plan that covered the employee prior to the termination.

(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 family care leave commences. (A) The plan under which the employee was covered beginning with the last day worked and for 15 full days after a leave of absence without pay or layoff without pay remains liable for all periods of family care leave claimed for the same care recipient through the end of the 12-month period regardless of whether the need for family care leave is consecutive or intermittent. (B) Claims for care recipients for whom no Family Temporary Disability Insurance claim was established before the 15th full day after the last day worked after a leave of absence without pay or layoff without pay are not the liability of the voluntary plan that covered the employer prior to the 15th full day.

(A)

The plan under which the employee was covered beginning with the last day worked and for 15 full days after a leave of absence without pay or layoff without pay remains liable for all periods of family care leave claimed for the same care recipient through the end of the 12-month period regardless of whether the need for family care leave is consecutive or intermittent.

(B)

Claims for care recipients for whom no Family Temporary Disability Insurance claim was established before the 15th full day after the last day worked after a leave of absence without pay or layoff without pay are not the liability of the voluntary plan that covered the employer prior to the 15th full day.

(4)

When a covered employee begins a period of family care leave after leaving work due to a trade dispute. Coverage shall not be deemed terminated as long as the trade dispute is in active progress.

(5)

When a covered employee becomes disabled due to pregnancy and begins a period of

family care leave to bond with that child. Coverage shall not be deemed terminated at any time during the disability benefit period as defined in Section 3302.1(c) of the code.

EXAMPLE 1. Pregnancy and Bonding. Claimant A is unable to work due to a pregnancy-related disability. Her last day of work is October 20, 2005. She applies for and receives disability benefits from the voluntary plan for the period from October 21, 2005 through December 31, 2005. Claimant A establishes a Family Temporary Disability Insurance claim with the voluntary plan to bond with her new child who was born on November 20, 2005. Claimant A claims benefits for the six-week period beginning January 1, 2006.