

3302-1 Family Temporary Disability Insurance Definitions

Section 3302-1@ Family Temporary Disability Insurance Definitions

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

(a)

"Affidavit" means a written statement under oath made in compliance with Code of Civil Procedure sections 2012 through 2015.6 including a declaration under penalty of perjury made in compliance with Code of Civil Procedure section 2015.5.

(b)

"Authorized representative" of a claimant or care recipient means one of the following individuals who: (1) is the parent. (2) is authorized by a power of attorney or other authorization satisfactory to the department to represent or act on behalf of a claimant or care recipient who is incapable of fulfilling the requirements of filing claims for Family Temporary Disability Insurance benefits. (3) files with the department upon a prescribed form a duly sworn affidavit that the claimant, according to information received by the individual from the claimant's physician or practitioner, is incapable of making a claim for family temporary disability benefits, and that the authorized representative assumes the responsibility of acting on behalf of such claimant in accordance with the code and this part. (4) files with the department upon a prescribed form a duly sworn affidavit that the care recipient, according to information received by the individual from the care recipient's physician or practitioner, is incapable of completing his or her portion of the claim

for family temporary disability benefits, and that the authorized representative assumes the responsibility of acting on behalf of such care recipient in accordance with the code and this part.

(1)

is the parent.

(2)

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

(3)

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

(4)

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

(c)

"Bond" or "bonding" with a new child means to develop a psychological and emotional attachment between a child and his or her primary care giver(s). This

involves being in one another's physical presence.

(d)

"Care provider" means an individual as defined in section 3302(b) of the code. This term is used interchangeably with "claimant."

(e)

"Care recipient" means an individual as defined in section 3302(a) of the code.

(f)

"Certificate" means the signed statement of a physician, practitioner, or a registrar of a county hospital of this State, on a form prescribed by the department, containing elements described in Section 2706-2(f), except that a certificate signed by a physician licensed by and practicing in a state other than California or in a foreign country, or in a territory or possession of a country, except a duly authorized medical officer of any medical facility of the United States Government, shall be accompanied by a further certification that such physician holds a valid license in the state or foreign country, or in the territory or possession of the country, in which he or she is practicing.

(g)

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

(h)

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

(i)

"Continued claim" means the claim, for the same care recipient within the same

12-month period, subsequent to the first or re-established claim where there is no interruption of the period for which benefits are claimed. A continued claim does not require a waiting period.

(j)

"Copy" means any written or printed material, duplicated by electronic means or photographic reproduction, which may be submitted or received by the department, claimants or other entities for purposes of collecting or transmitting information relating to a first or continued claim.

(k)

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

(l)

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

(m)

"Electronic means" includes facsimile, electronic mail, Internet, or any other acceptable electronic method as determined by the department.

(n)

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

(o)

"Family Temporary Disability Insurance" means the program established to provide up to eight weeks of wage replacement benefits to workers who take time off work to care for a seriously ill child, spouse, parent, grandparent, grandchild, sibling, registered domestic partner, or to bond with a minor child within the first year of the child's birth or placement in connection with foster care or adoption, or to

participate in a qualifying exigency related to the covered active duty or call to covered active duty of the individual's spouse, domestic partner, child, or parent in the Armed Forces of the United States.

(p)

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

(q)

"Form" means a hardcopy or electronic form used by the department to collect or to solicit information from and communicate information to claimants, care recipients, authorized representatives, medical providers, employers, insurance companies, and third party administrators.

(r)

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

(s)

"Grandchild" means a child of the employee's child.

(t)

"Grandparent" means a parent of the employee's parent.

(u)

"In loco parentis" exists when a person undertakes care and control of a child in the absence of such supervision by the natural parents and in the absence of formal legal approval. This includes persons with day-to-day responsibilities to care for and financially support a child. It also includes the person who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary.

(v)

"Mail" means deposit with the United States Postal Service or any other shipping/mailing service, addressed to the recipient's mailing address last known to the sender, with express, priority, first class or equivalent postage.

(w)

"Military assist claim" means a Family Temporary Disability Insurance claim filed by a claimant to participate in a qualifying exigency related to the covered active duty or call to covered active duty of the claimant's spouse, domestic partner, child, or parent in the Armed Forces of the United States as specified in section 3301(a)(1) of the code.

(x)

"Military member" means an individual as defined in section 3302(i) of the code.

(y)

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

(z)

"Parent" means a biological, foster, or adoptive parent, a parent-in-law, a

stepparent, a legal guardian, or other person who stood in loco parentis to the employee when the employee was a child. A biological or legal relationship is not necessary for a person to have stood in loco parentis to the employee as a child.

(aa)

"Parent-in-law" means the parent of a spouse or a domestic partner.

(bb)

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

(cc)

"Qualifying event" means the same as qualifying exigency as specified in section 3302.2 of the code.

(dd)

"Re-established claim" means a claim filed subsequent to a first claim within the same 12-month period. A "re-established claim" occurs when there is one of the following: (1) an interruption of the period for which benefits are claimed for the same care recipient; or (2) benefits are claimed for a new care recipient.

(1)

an interruption of the period for which benefits are claimed for the same care recipient;
or

(2)

benefits are claimed for a new care recipient.

(ee)

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

(ff)

"Sibling" means a person related to another person by blood, adoption, or affinity through a common legal or biological parent.

(gg)

"Signature" includes a mark made in compliance with Section 14 of the Civil Code, or a digital signature affixed by any means used by the sender, accepted by the recipient, and acceptable under Section 16.5 of the Government Code and Chapter 10 of Division 7 of Title 2 of the California Code of Regulations.

(hh)

"Statement on letterhead" means any document that is provided by electronic means or in printed format that officially identifies the issuing entity, which may be a county, state, or equivalent government or private entity for purposes of providing the information described in Section 2708(c)-1 of these regulations.

(ii)

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

(jj)

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

(kk)

"Week" means the seven consecutive day period beginning with the first day with respect to which a valid claim is filed for benefits and thereafter the seven consecutive day period commencing with the first day immediately following such

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

(1)

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

(II)

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

(mm)

"Writing" means the original or a copy of any form of recorded message, provided by electronic means or printed format, capable of comprehension by ordinary visual means.

(nn)

For purposes of section 140.5 of the code no individual shall be deemed eligible for Family Temporary Disability Insurance benefits for any week of unemployment unless such unemployment is due to the need for family care leave. (1) If an individual has been neither employed nor registered for work in any manner designated by the director for more than three months immediately preceding the beginning of a period of family care leave, he or she is not eligible for benefits unless the department finds that the unemployment for which he or she claims benefits is not due to his or her previous withdrawal from the labor market.

(1)

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