

Date of Hearing: April 17, 2024

ASSEMBLY COMMITTEE ON INSURANCE
Lisa Calderon, Chair
AB 2167 (Cervantes) – As Amended March 11, 2024

SUBJECT: Unemployment insurance: paid family leave

SUMMARY: Makes several changes to deadlines and the application process for California's Paid Family Leave (PFL) program. Specifically, **this bill:**

- 1) Extends the timeline for an individual to file a claim for PFL benefits to no later than the 60th consecutive day following the first compensable day.
- 2) Authorizes an individual to file a claim for PFL benefits up to 60 days before the first compensable day, as provided.
- 3) Requires the Employment Development Department (EDD) to make PFL application forms available on EDD's website for download and fillable in PDF format.
- 4) Permits an individual applying for PFL benefits on the EDD website to provide their social security number (SSN) or individual taxpayer identification number (ITIN).
- 5) Extends the deadline for an individual to appeal EDD's decision regarding their eligibility for PFL benefits to 120 days from the service of the notice of determination, as specified.

EXISTING LAW:

- 1) Establishes the EDD to, among other duties, administer the Unemployment Insurance (UI) and State Disability Insurance (SDI) programs. (Unemployment Insurance Code Section (UIC) 301)
- 2) Establishes the SDI program as a partial wage-replacement plan funded through employee payroll deductions that is available (through the SDI and PFL programs) to eligible individuals who are unable to work due to sickness or injury of the employee (including pregnancy), the sickness or injury of a family member, or the birth, adoption, or foster care placement of a new child. (UIC 2601-3308)
- 3) Establishes the PFL program within the SDI program for the provision of wage replacement benefits for up to eight weeks within a 12-month period to workers for the following reasons: (UIC 3301-3303)
 - a) To care for a seriously ill family member;
 - b) To bond with a new child entering the family by birth, adoption, or foster care placement; or,
 - c) To participate in a qualifying event because of a spouse, registered domestic partner, parent, or child's military deployment to a foreign country.

- 4) Requires an individual to file a claim for PFL benefits not later than the 41st consecutive day following the first compensable day, as provided. (UIC 3301(e))
- 5) Requires EDD to distribute the application for PFL in English and in all non-English languages spoken by a substantial number of non-English-speaking applicants. (UIC 3308)
- 6) Allows a claimant for SDI benefits to appeal an administrative law judge within 30 days, as provided. (UIC 2702.2)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) *Purpose.* According to the author:

California's Paid Family Leave (PFL) program provides working families with invaluable bonding time, and space to readjust to new life realities, after welcoming home a newborn or an adopted child. Despite recent enhancements and expansion to PFL benefits, the ability of Californians to actually apply and access those benefits remains impaired. For instance, individuals cannot even download the application forms from the Employment Development Department (EDD) website. The online application portal requires the provision of a Social Security number, even though PFL benefits are available to all Californians regardless of immigration status. The timelines to apply for PFL benefits or appeal a denial of benefits are too restrictive and do not reflect the realities of the pregnancy and postpartum periods, or the adoption process.

Assembly Bill 2167 will make applying for existing PFL benefits more accessible by extending the application period to 60 days after leave begins. It will also allow for early application of PFL benefits up to 60 days before an applicant's leave begins. It will extend the timeline to appeal a denial of benefits from 30 days to 120 days. AB 2167 will also require EDD to make application forms available online in fillable PDF format. Finally, the bill will also require allow individuals applying online to either provide a Social Security number or an Individual Taxpayer Identification Number (ITIN). The passage of AB 2167 will foster a more supportive and accessible application PFL process for Californians who are growing their families.

- 2) *Background.* PFL was enacted in 2002 as an expansion to the SDI program to extend disability compensation to individuals who take time off work to care for a seriously ill child, spouse, parent, domestic partner, or to bond with a new minor child. California was the first state in the nation to implement a PFL benefit, with benefit payments beginning on July 1, 2004. Effective January 1, 2021, the PFL scope was expanded to include employees taking time off work to assist a military family member under covered active duty or call to covered active duty.

PFL provides up to eight weeks of the 60-70% wage replacement. Starting January 1, 2025 workers will be eligible for 70-90% wage replacement. According to EDD's SDI Statistical Information, for the first six months of 2022 the average weekly benefit amount was \$821.

Many confuse the PFL program (which provides only wage replacement during leave) with the job protection guarantees in the federal Family & Medical Leave Act (FMLA) and the California Family Rights Act (CFRA). However, the changes to PFL benefits in this bill do not affect these job protection laws.

- 3) *Discussion.* This bill is intended to remove various constraints applicants may face when applying for PFL, including extending the window of time to apply to include both 60 days prior to and 60 days following the first day of leave.

EDD provides applicants two methods they can use to apply for PFL – online or mailing a paper application.

This bill also intends to make it easier for applicants without a SSN to apply for benefits by allowing the use of an ITIN and requiring the application for PFL benefits to be downloadable and fillable.

EDD does have a process in place that workers without a SSN (including those who are undocumented) can use to apply for PFL benefits. However, a mailed paper application is currently the only way an individual can apply for PFL benefits if they do not have a SSN. An applicant can obtain a paper form by ordering it online, getting the form from their licensed health professional or employer, visiting an SDI office, or by calling EDD to request a form be mailed to them.

This bill would also allow an applicant with an ITIN to apply online. An ITIN is issued by the Internal Revenue Service to individuals who are required to have a U.S. taxpayer identification number but who do not have, and are not eligible to obtain, a SSN. An applicant without a SSN or ITIN would still be required to file a paper application.

EDD directs individuals without a SSN to leave this question blank on the paper application. Additionally, several items are required to be attached to the application, including but not limited to, a letter providing specified background information, proof of wages in the form of a W-2 or pay stubs or proof of cash payment, and doctor's certification (where applicable).

- 4) *Related legislation.*
- a) AB 2123 (Papan), pending before the Assembly Insurance Committee, deletes the authorization for an employer to require an employee to take two weeks of vacation leave before accessing benefits under the state PFL program.
 - b) AB 518 (Wicks), held on the Senate Inactive File, expands the definition of “family member” for purposes of the PFL program to allow workers to take time off to care for a seriously ill individual related by blood or whose close association with the employee is the equivalent of a family relationship.
- 5) *Prior legislation.*
- a) AB 575 (Papan), of 2023, would have made several changes to how individuals can access PFL benefits including expanding the program to allow for bonding with a child for whom they are acting in loco parentis, removing the restriction that only one family

member at a time is allowed to access PFL, and deleting the provision allowing an employer to allow an employee to access vacation time prior to using PFL. This bill was vetoed by the Governor.

- b) AB 1041 (Wicks), Chapter 748, Statutes of 2022, expanded the list of individuals for which an employee can take leave under the California Family Rights Act (CFRA) and the Healthy Workplaces, Healthy Families Act of 2014.
- c) SB 951 (Durazo), Chapter 878, Statutes of 2022, revised the formula for the computation of SDI and PFL benefits.
- d) SB 1058 (Durazo), Chapter 317, Statutes of 2022, required EDD to collect demographic data, including race and ethnicity data and sexual orientation and gender identity data, for individuals who claim disability benefits under the SDI and PFL programs.
- e) SB 83 (Committee on Budget and Fiscal Review), Chapter 24, Statutes of 2019, beginning July 1, 2020, extended from six to eight weeks the maximum duration of PFL benefits individuals may receive.
- f) SB 1123 (Jackson), Chapter 849, Statutes of 2018 expanded the PFL program to include time off to participate in a qualifying exigency related to covered active duty, as defined, or call to covered active duty of the individual's spouse, domestic partner, child, or parent in the armed forces.
- g) SB 63 (Jackson), Chapter 686, Statutes of 2017 prohibits an employer from refusing to allow an employee with more than 12 months of service with the employer, who has at least 1,250 hours of service with the employer, and who works at a worksite in which the employer employs at least 20 employees within 75 miles, to take up to 12 weeks of parental leave to bond with a new child.
- h) SB 770 (Jackson), Chapter 350, Statutes of 2013 expanded the definition of family to include in-laws, siblings and grandparents.

REGISTERED SUPPORT / OPPOSITION:

Support

California Work & Family Coalition
Legal Aid At Work

Opposition

None on file

Analysis Prepared by: Claire Wendt / INS. / (916) 319-2086