



Participant Questions & Answers

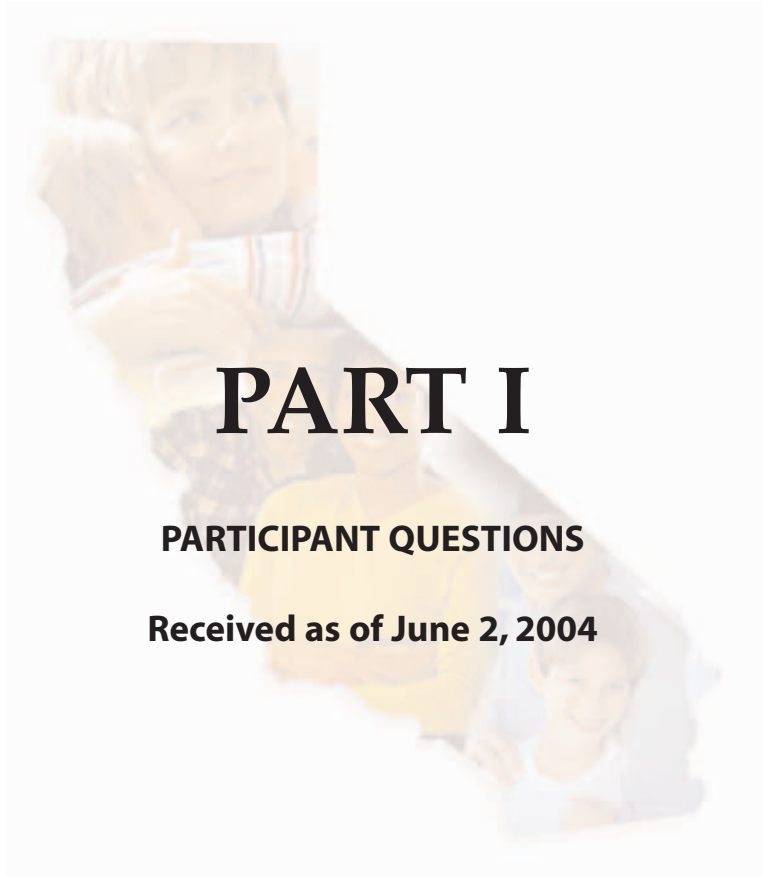
FOREWORD

This document is a summary of the questions and answers that were received in connection with the June 3, 2004 conference discussion that was led by Craig Hanson of the Employment Development Department (EDD) and hosted by Universal Life Resources (ULR).

Benefit managers representing the country's largest organizations were given an opportunity to provide first-hand insight into the questions and challenges they confront in implementing the new California Paid Family Leave (PFL) program. ULR and the EDD would like to express our appreciation to all the conference participants who openly shared their company's concerns and questions. In doing so, the EDD was able to share information that directly responded to the unique needs of major employers. It was an interesting and educational employer event.

As of June 29, 2004, the EDD is awaiting taxation information from the Franchise Tax Board and Internal Revenue Service. When it is received, the EDD will prepare additional tax information relating to PFL benefits. ULR will disseminate the information as provided by the EDD.

Ed June 29, 2004



CLARIFICATIONS

- 1. All Voluntary Plan employers must provide a hard copy of the EDD brochure (DE 2511) to each California employee.**
- 2. California Paid Family Leave (PFL) claims must be submitted no later than 41 days from the first day for which benefits may be paid due to the need to provide care for parents, children, spouse and domestic partners or to bond with a new child.**
- 3. The EDD will prepare additional tax information relating to PFL benefits. When it is received, ULR will disseminate the information as provided by the EDD. ULR is not a tax advisor.**

GENERAL

- 1. Can the employee contact the EDD prior to July 1 to file a PFL claim?**

An employee cannot file a claim until approximately one week before July 1, 2004. The first payable day would be July 8, 2004, unless it is a transitional claim from disability pregnancy to PFL bonding, in which case the first payable day would be July 1, 2004.

- 2. What additional staff has the EDD added in order to administer the new program?**

The EDD has authorization for 172 additional staff members and has hired approximately 80 to date.

- 3. In which office will the PFL claims be paid?**

PFL claims will be paid by the office in Fresno, California.

- 4. How will an employer be notified when a PFL claim is approved?**

EDD will send a notice (DE 2503F) that tells the employer that their employee has filed, but it will not specify if the claim has been approved nor how much they will receive in benefits. Due to confidentiality, the employer would have to obtain information about the claim approval and award from the employee.

- 5. Does PFL apply to employees who work in California that are employed by a corporation that is based in a different state?**

Yes.

- 6. How does the Family Medical Leave Act (FMLA) coordinate with PFL? What are the main differences between the two programs?**

The enacting statutes (Section 3303f, California Unemployment Insurance Code (CUIC)) require the claimant to take PFL concurrent with FMLA. Although there are no penalty provisions for not doing so, the PFL claimant would not have any FMLA job protection rights beyond the 12-week period of leave.

The main differences are as follows:

- FMLA is unpaid leave for 12 weeks; PFL provides paid leave for six weeks.
- Unlike FMLA, PFL does not require an employer to employ 50 or more individuals within a 75 mile radius of the worksite of the individual requesting leave, nor does it require them to work at least 1,250 hours during the 12-month period prior to the period for which the individual is requesting PFL.
- PFL does not provide job protection rights. Any employee who is eligible for State Disability Insurance is

eligible for PFL. The EDD does not have the authority to deny a PFL claim if no FMLA time is available. However, if the employee is eligible for PFL and has no FMLA time available, the employee would be without job protection rights. Therefore, the EDD encourages employees to take PFL concurrent with FMLA.

7. Does California Family Rights Act (CFRA) and PFL run concurrently?

Yes, same as FMLA.

8. Does Kin Care (A. B. 109) run concurrent with PFL?

There is no statutory requirement. PFL benefits cannot be collected while the employee receives full sick leave. However, the PFL benefit can be supplemented with partial sick leave or the partial sick leave benefit can be supplemented with PFL as long as it does not exceed the normal weekly wage.

9. Describe how Kin Care (A. B. 109) interacts with PFL?

See answer above.

10. If an employee files for PFL and wants to use two weeks of sick time, does the two weeks of sick time count towards the six week PFL leave or do they receive six weeks of PFL after the sick leave is exhausted?

The two weeks of sick time does not count towards PFL benefits. The employee would still receive six weeks of benefits if supported by medical certification. The employee may use one week of sick leave to satisfy the waiting period.

11. Describe how PFL coordinates with other paid leave programs that an employer may have in place (i.e., paternity leave).

PFL benefits cannot be paid during periods when the employer is paying full wages (i.e., sick leave). PFL benefits cannot be paid during the first two weeks of the claim if the employer invokes their right to require the use of two weeks of vacation or PTO. Employers can pay partial vacation or sick leave to an employee and the employee can receive PFL benefits for the balance as long as it does not exceed the employee's weekly wages or weekly benefit amount for PFL, whichever is less.

12. Should employers be using the proposed California EDD regulations to resolve different questions or issues that arise?

Yes.

13. When will the final regulations be released?

The final regulations will be released on June 23, 2004.

14. How can PFL claim forms be ordered?

Employers may order PFL claim forms by calling 1-877 BE THERE or via the website www.edd.ca.gov.

15. What are the employer's responsibilities with regard to the PFL program?

Employers are required to provide a copy of the PFL brochure to any California employee who is leaving work for pregnancy, bonding or the need to provide family care. The brochure should also be provided to California new hires.

16. Is it the employer's responsibility to get the claim forms from the EDD and distribute to the employee?

No.

17. Future payroll tax implications – why does the EDD feel the current tax rate will cover the cost of the new PFL program? How was the cost determined? How will the cost be determined going forward?

The EDD made their estimate of costs based on a federal survey of FMLA clients that provided rates for the people most likely to use the PFL program. From these numbers, the EDD has estimated 310,000 PFL claims at a cost of \$378 million in the first fiscal year, which begins July 1, 2004. The EDD has no other data to indicate the claim load will be greater. The EDD has set up systems to track the claim activity and construct a more predictive model for impact on the disability fund. The current rate appears to be sufficient to pay the expected claims. The .08 % increase in the rate will generate approximately the amounts needed to pay the PFL claims.

18. Per the EDD website, PFL is available for up to one year from the date of birth for baby bonding. Is this one year requirement also for other types of PFL leaves? For example, if an employee's mother requires home medical care, does the employee have to file for PFL within one year of when the mom needed assistance? Or is it within one year of when the employee lost wages due to taking time off to care for mom?

No, it only applies to baby bonding.

REESTABLISHED AND CONTINUED CLAIMS

19. Please explain the difference between reestablished and continued claims?

A reestablished claim is when a person files a claim for a new care recipient within the 12-month period of the originally-filed claim. A new waiting period is required in this circumstance.

A continued claim is when a claimant files a new medical report for the same care recipient which extends the original claim without interruption.

20. When will a new claim form be required?

Reestablished claims and new claims require a new claim form. A continued claim will not require a new claim form.

CLAIM CALCULATIONS

21. Will benefits for a partial week be paid based on 1/7th of a week or 1/5th of a week?

Benefits for a partial week will be paid based on 1/7th of a week.

22. Should garnishments be withheld from the benefit? If no, what about IRS levied garnishments (since the benefit is taxable it would seem reasonable that the IRS-levied garnishments would be deductible).

The EDD will confirm the procedure. ULR will distribute the information as soon as it is available.

23. Explain how the state will handle intermittent leave situations?

Intermittent claims for PFL will be handled in the same manner as disability claims are handled today. The state will pay wage loss, down to one-hour increments. The EDD will send a form to the employer to request verification (DE 2503F) of time-off. The employer's feedback on DE 2503F will be used by the EDD to track time-off.

CLAIM PROCESS

24. Describe the claim process for a pregnancy claim that turns into a bonding claim. Will the employee have to file a separate claim for bonding or will it be a continuous claim?

The employee will have to file a separate claim for bonding, but it is a shortened claim form requesting only a minimum amount of information. Each disability pregnancy claimant will receive a special claim form (DE 2501FP) with her last disability payment. If the claimant returns the form, the EDD will continue her payments for an additional six weeks. There is no additional waiting period required per statute.

25. Will the state require proof of relationship prior to processing a PFL claim?

Proof of relationship will only be required for bonding claims, not for care claims. However, there will be random audits of care claims where claimants will be asked to provide proof of relationship. Also, the EDD will track all relationships from the claim forms and compare them with future claim forms when received. If any anomalies are noted the EDD may request more information.

DURATION

26. What is the maximum leave a husband and wife would be eligible for to bond with their baby under the program – six weeks each for a total of six weeks between both?

Six weeks of benefits for each parent, 12 weeks total.

27. Is the seven-day waiting period counted as part of the six week leave? Or will the employee actually be out for seven weeks?

The waiting period does not count as one week of benefits. The claimant is entitled to six weeks of paid benefits if otherwise eligible.

MEDICAL

28. What are the requirements to qualify for PFL regarding medical conditions?

The regulations provide a definition for serious health conditions. Generally, it means illness, injury impairment or mental condition that involves inpatient care or continued treatment by a physician.

VACATION REQUIREMENT

29. Is there any indication of what percentage of employers will require employees to use two weeks of vacation prior to PFL?

There is no indication at this time.

30. What are the pros and cons of an employer requiring employees to use up to two weeks of earned vacation time prior to taking California PFL?

The biggest advantage is that it removes accrued vacation from the employer's books and prevents more time off in the future. The biggest disadvantage is that it will extend the time off for an employee by at least one week.

31. If employers do not institute a vacation requirement on July 1, 2004, can it be done at a later date?

Yes.

32. If an employer requires two weeks of vacation, and a claim is moving from pregnancy (SDI) to bonding (PFL), will the employee need to use two weeks of vacation between the SDI claim and the PFL claim?

Yes.

33. Can an employer supplement the PFL benefit with unused vacation time or sick time?

Yes, as long as it does not exceed the weekly wage.

34. Once an employee is on PFL, can an employer require them to integrate vacation pay?

No.

35. If an employer requires an employee to use two weeks of vacation, does that count toward the six week total or do they still have six weeks of PFL benefits available after the two weeks of vacation?

The claimant would still receive six weeks of PFL benefits after the two weeks of vacation.

36. Is it true that if the employer chooses to require the employee to use vacation during the seven day waiting period, and the employee has the vacation time available to do so, then the first week is subtracted from the six week total of PFL availability, leaving the employee five weeks of available PFL? If so, and the employer chooses to require the employee to use the maximum of two weeks of vacation time, are those two weeks subtracted from the six week total PFL?

No, if vacation time is used during the first week waiting period, the claimant would still have six weeks of PFL benefits.

37. Can the employer require that "vacation time" (i.e., PTO) be integrated with PFL or can that only be done at the employee's request? Is such integrated time incorporated into the two-week limit of PTO that the employer is allowed to require?

Generally, the employer should (a) impose the two weeks before PFL benefits are payable or (b) not impose the requirement and allow the employee to integrate vacation with PFL.

WAITING PERIOD

38. Explain the waiting period for maternity, non-maternity and subsequent California PFL leaves within one calendar year.

Benefits are payable within a 12-month period, which begins on the date of leave. If a woman is on pregnancy disability and she wants to extend benefits through PFL for bonding, there is no additional waiting period required since she served her waiting period for her pregnancy claim.

All other PFL claims require a one-week waiting period with the following exception. If a person files a PFL claim to care for a specific person for a period of time and then files another PFL claim later in the same 12-month period for the same care recipient, this is considered a "continued" claim and no additional waiting period is required. Benefits are limited to six weeks in a 12-month period.

39. Since partial work days can satisfy the waiting period requirement, how many hours are considered a partial day?

One hour is considered a partial day.

COMMUNICATIONS

40. Is the required brochure for PFL supposed to be given to all employees regardless of the reason for the leave?

The statute requires a brochure to be given to California employees who are on leave for disability, bonding or family care.

41. Does the brochure need to be provided in hard copy?

Yes.

TAXES

42. Will the PFL benefit be subject to California taxes? If so, will these be at supplemental tax rates? The EDD has confirmed Federal taxability but not State taxability.

The State and Federal taxability of benefits have not been finalized. These questions need to be answered by the IRS and Franchise Tax Board. Additional information will be forwarded when it is available.

43. If PFL benefits are taxable, are employers required to withhold mandatory and/or elective deductions from the pay (i.e., 401(k) deductions and child support garnishments)?

This question needs to be answered by the IRS. Additional information will be forwarded when it is available.

PFL THROUGH A CALIFORNIA VOLUNTARY PLAN

44. Can the Voluntary Plan administrator send out the required employee communications or must the communications come directly from the employer?

The Voluntary Plan administrator may send out the required employee communication on behalf of the employer.

45. Can the Voluntary Plan use a 1/5th partial week calculation for PFL?

Yes, if this is the current practice in your plan as approved by the EDD.

46. Please address the process for reporting PFL as taxable income if an employer uses their VDI administrator to run the program. Who will be responsible for providing the 1099-G?

This question needs to be answered by the IRS. Additional information will be forwarded when it is available. It is suspected that the payer of benefits will be responsible for providing the 1099-G.

47. If a VDI plan assumes the maximum state benefit of \$728 for all employees, even if their salary is less than \$68,829, and the employee leaves the company with the VDI plan and moves to an employer who uses the state program and the employee files a claim for bonding with their new employer after their pregnancy leave, will the state pay the bonding claim at the \$728 level or will the state pay the claim based on their calculation from base period wages?

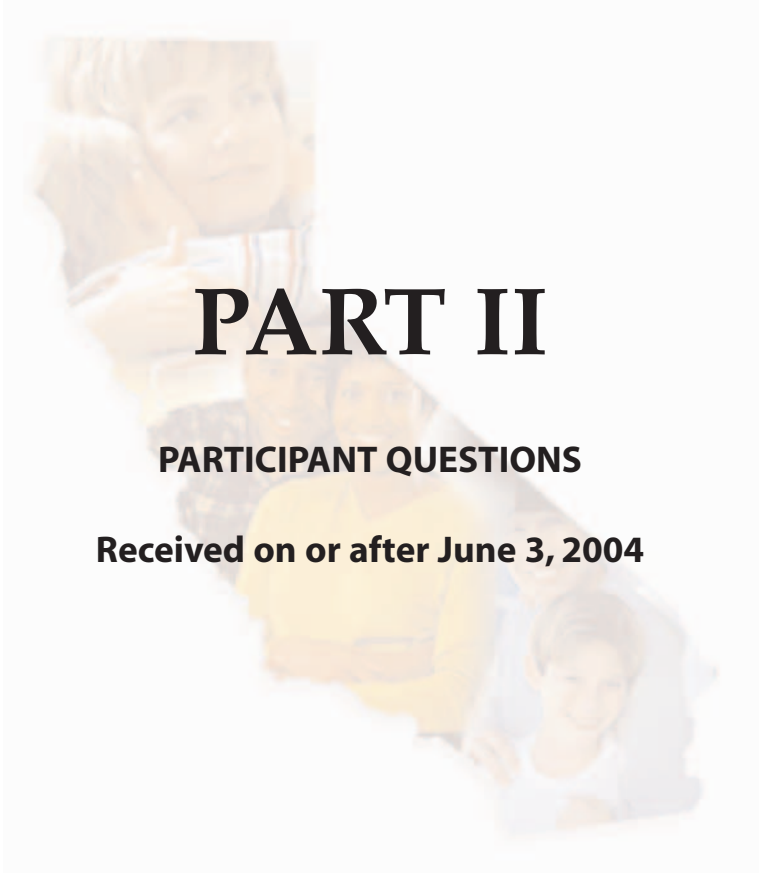
The state would pay the claim based on the calculation from base period wages.

48. If an employee is newly relocated to California from another state, is he/she immediately eligible? In this case, would the base wages earned in the previous state be the wages used to determine the statutory benefit rate calculation (VDI administered by the employer)?

No, the employee must have wages in California that contributed to the disability fund before they are eligible.

49. Assume an employee is new to a company, which has a VDI plan administered internally. What if he/she had greater base wages stemming from previous employment without a VDI plan? Can the employee seek payment from the state rather than the current employer? Or can the employee seek payment from both the state and the current employer?

No, the current employer would pay benefits.



PART II

PARTICIPANT QUESTIONS

Received on or after June 3, 2004

GENERAL

1. Canada has a very prevalent program. Considering many of the employers participating in our conference call today have employees throughout the U.S. and Canada, I am thinking it may be advantageous to discuss the Canadian program. Can you describe how it is administered? Also, would you comment on the worker's utilization of the plan and implications on the Canadian employee population?

The PFL program in the State of California is quite a bit different from the Canadian model. In Canada, the employers pay for the plan.

In California, we have limited the plan and think of it as an experiment. If you look at the way the bill was originally written it was going to be twelve weeks, just like FMLA, and there was going to be an employer contribution as well as an employee contribution. There may have been a compromise and California decided to make it an employee contribution so that the employer would not have to feel the brunt of it. There are some very interesting scenarios about how this claim load could get much bigger than you can imagine and could become a real burden on the employer to try and carry it.

In California, we tried to approach this from an employee perspective and build it that way because it is really a disability benefit for an employee and the benefits are much better than what is often available. The Canadian plan has a lower benefit with a longer benefit duration.

Canada has about thirteen million workers, which is about the same population as the State of California. Unfortunately, we have been unsuccessful in our attempts to attain utilization statistics, average duration of claims, etc. from Canada.

2. California is the first state to adopt this program. What is your sense as to what will happen nationwide? Will other states pursue this?

I have already received inquiries from a half dozen states. The biggest issue for most of the other states is that they do not have a disability insurance program that is the basis for the revenue that you need to support this program. We were fortunate that California had an existing tax system that we can add to. Furthermore, since we already had a tax system in place, the employees were accustomed to seeing that withholding tax.

Other states that do not have a disability insurance program are going to have to create that whole tax structure first, begin collecting those revenues and then go from there. California was able to really jump-start that.

There are other states (New Jersey for example) that have existing state disability plans and are looking very closely at our PFL program. They will probably try to incorporate it once they see what happens in California. They may be worried about what it would do to their tax rates, their fund, and related matters. Once they are able to predict the claim volume, claim duration and other statistics, I believe you will see them move forward.

As I already mentioned, the other states have to grapple with creating a new tax, which may be difficult for them. As you can see, there is some interest.

3. What is the EDD's website address?

www.edd.ca.gov

4. Assume an employee is already out on leave but we did not give them a brochure because they were not a new hire:

a. Do we have to mail them a brochure to be received by July 1st?

The brochure is required to be given to new hires and employees who request a leave of absence on or after January 1, 2004. The employee must be aware of the program. If the employee has not been previously informed of the program, notification is required.

b. I do not plan on seeing them before July 1st. Is there a requirement for me to mail it?

There is no requirement in the statute for you to mail it.

5. Our company's computer system does not allow our offices to download information that has pictures on it. So we took the PFL brochure and just made it basically text. Is this acceptable?

Yes, that is acceptable.

6. Have you had any complaints that when printing the EDD's PFL brochure from the internet, the text is overlapping?

No, not yet.

7. What will the EDD require for proof of domestic partnership (for audited claims)? Will the California Certificate of Registered Domestic Partnership be sufficient proof?

The EDD will require proof by means of the Secretary of State filing. The California Certificate of Registered Domestic Partnership will be sufficient proof.

8. If an employee has not filed for domestic partnership, would they have to register to show this to the EDD? If yes, how can they attain proof of domestic partnership?

When filing a claim, the claimant must attest under penalty of perjury that the information is true. Documentation of proof of relationship will not be required when the claim is submitted. However, the EDD will conduct random audits and audited claims will be required to prove domestic partnership.

To attain a California Certificate of Registered Domestic Partnership from the State of California, the employee may contact the Secretary of State's office, (916) 653-3984 or visit their domestic partners registry website at <http://www.ss.ca.gov/dpreistry>.

9. Please confirm that PFL is not a guaranteed leave and that the employee's job is not protected if they exhausted their FMLA time?

That is correct. PFL does not provide job protection rights. Any employee who is eligible for State Disability Insurance (SDI) is eligible for PFL. FMLA provides job protection rights. Therefore, the EDD encourages employees to take PFL concurrent with FMLA. If the employee is eligible for PFL yet has no FMLA time available, their job is not protected while they are on leave.

10. Can an employer deny a leave?

An employer can deny an employee's leave for PFL. However, if the employee chooses to concurrently take California Family Rights Act (CFRA) and/or FMLA that will protect their job rights and benefit status.

The state, if you participate in the state plan, or your Voluntary Disability Insurance (VDI) administrator can deny a claim. The employer cannot approve or deny a claim unless the employer self-administers the plan.

11. How do you define key employees?

It is defined in FMLA, but not PFL because the term is not used in the program. Please refer to your FMLA resources for further information.

I understand that if the employee fails to notify the employer that they are taking leave, this would not result in EDD's denial of the PFL claim. However, if the employee fails to follow the employer's company policy for notification of absence or leave, does PFL prevent the employer from dismissing the employee?

The statute states that the employee should notify the employer based on the employer's normal practices and policies. Failing to do so does not affect their PFL eligibility, but it does place them at great risk for employment termination, and rightfully so. The EDD encourages employees to cooperate with the employer and to not take leave without informing their employer.

12. If an employee knows he/she is going to be laid off and immediately obtains a doctor's note to care for a qualified family member or now decides to bond, can we go ahead and terminate him/her?

The EDD cannot answer this question. PFL benefits have nothing to do with the hiring or firing of employees. That authority rests with the employers and they can take any lawful action available to them. The employee can still apply for and receive PFL benefits regardless of the employer's action.

13. Are there any retaliation clauses for terminating an employee?

There are no retaliation clauses in the PFL statute.

CLAIM COMMUNICATION FOR EMPLOYERS

14. In regards to integrated payments during PFL, will the claimant receive a benefit statement prior to the first benefit payment that he/she could share with the employer? The employer needs to know the actual gross amount that will be paid during the PFL claim period. Under the SDI plan, the employer typically requests a copy of that type of statement from the employee so they do not overpay the employee and put the benefit amount in jeopardy.

The claimant will receive a statement showing the weekly benefit amount. The claimant has the option to share that information with their employer.

15. The EDD has stated that the employer would not be notified if the leave was approved. If the employer is not notified if the leave is approved, how is the employer supposed to know that this is an acceptable leave?

The employer should ask their employee for information regarding the status of the PFL claim. Due to confidentiality, the EDD cannot share information regarding the benefit amount nor whether the PFL claim has been approved.

Employers are often concerned as to what they should do if the employee takes the leave and then subsequently finds out that the PFL claim has not been approved. For that reason, we feel the employee should share as much as they can with the employer as the situation unfolds so they can plan accordingly. But the employer must rely on obtaining the information from the employee since the EDD cannot provide it directly.

16. How will EDD coordinate with the employer for coding the vacation requirement before the PFL payments for SDI Program members? How and when will the EDD know if the vacation requirement has been satisfied? If the employee has no available vacation to use before PFL, how will this be communicated to the EDD to commence payment of PFL?

The claimant will let the EDD know if the employer is paying vacation on the claim form. The employer will also be asked to confirm with the EDD's normal notification. If there are conflicts in the information, the EDD will investigate.

17. When will the employer know when to stop the employee's pay? Will it be when the employee submits a form to the employer informing them when they want to begin their leave?

This will vary according to employer policy and whether or not the employer imposes the two week vacation requirement or the employee chooses to use sick time prior to receiving PFL benefits. The EDD encourages the employee to keep the employer informed.

18. Assume an employee requests six weeks of PFL leave but returns to work early. How can the employer determine if the claimant is still receiving PFL benefits?

The employer should ask their employee for information regarding the status of the PFL claim. We also encourage the employee to keep the employer informed.

Additionally, the EDD will audit the wage information that is submitted by the employer. If the EDD identifies an overlap in wages, it will be investigated. The EDD will address any fraud that is committed. This is similar to how the EDD administers the State Disability Insurance program.

19. What is the actual liability or responsibility for the employer when they receive a notice from the EDD that a PFL claim has been filed? Is the employer under any liability to respond back?

None, but the EDD encourages the employer to respond promptly if information is requested regarding the claim.

20. If when responding to the EDD's claim notifications, the employer alerts the EDD to the possibility that the employee is filing false information, is the employer exempted from any liability for disclosure? Can the employee sue the employer if PFL benefits are subsequently denied?

No, the EDD is not aware of any exemptions of liability. Generally, the EDD asks employers to help as best they can. If the employer provided the EDD with that type of information, the EDD would pursue it. The EDD does not know if that would relieve the employer of the liability if the information was provided to the EDD.

We ask employers to help us as best they can if they know information and we follow-up on it.

CLAIM CALCULATIONS

21. Is it true that PFL and SDI are paid at the same exact rate?

Correct. PFL and SDI are calculated in the same manner.

CLAIM FORMS

22. The EDD said that claim forms will not be available for download from the internet. Is it the employer's responsibility to maintain a supply of the claim forms? Or is it the intent of the PFL program that the employee will be required to contact the EDD to request a copy of the form when they go out on leave?

It is the employee's responsibility to acquire a copy of the claim form. They can get them from any EDD office or they can order them by phone. Additionally, many large medical facilities intend to stock the forms so that their physicians can conveniently complete the form at the medical office. This is similar to how the California State Disability Insurance plan operates.

23. The claim form does not request the social security number for the care recipient. Is that intentional?

That is correct. When the regulations were originally written California was under a different state administration and the EDD was not permitted to request the social security number. The forms were drafted and printed accordingly. Subsequently, the new California administration has indicated the EDD can request the social security number. When the EDD updates the PFL forms in eight to nine months, this change will be incorporated.

24. How will you address situations where the employee and/or their care recipient do not have social security numbers? For example, if someone is in the country on an H1B and their family members are on H4's.

The PFL regulations indicated the social security number should be provided, if available. If not available, then the EDD will have to go on the basis of matching the name, address, and date of birth. The EDD will attempt to regulate this within reason.

25. The patient's date of birth on the illustrative claim form is confusing. On the fourth page, at the top of the page it is listed as July 26, 1930 and then in Section D3 it is listed as February 9, 1928. Is there any explanation?

At the top of page four, the claim form provides an instructional sample of how the claimant and physician should enter the patient's date of birth on the form if using a typewriter/printer or hand printing, assuming the birth date is 07/26/1930.

The field in Section D3 is where the physician will fill in the patient's actual date of birth.

26. The PFL claim form requires the care recipient's authorization for disclosure. What if the care recipient is unable to sign that form? What if there is an issue where they are physically unable to sign?

The care recipient's power of attorney or guardian may sign it. There is a provision that allows the claimant to sign it in many instances.

CLAIM PROCESS

27. EDD's June 2004 update indicates that a claim must be filed "no later than 42 days from the first day for which you may be paid due to the need to provide care or bond." This same rule has been also noted as 41 days and 49 days. Please confirm the correct number of days.

A claim must be filed no later than the 41st consecutive day following the first compensable day with respect to which the claim is made for benefits.

28. Confirm that a mother and father may take PFL bonding leave at the same time.

Yes, the mother and father may take PFL bonding leave at the same time.

29. If husband and wife who work for the same employer want to take leave for baby bonding, are there any special provisions or restrictions?

No, the husband and wife who work for the same employer may take PFL simultaneously for bonding.

30. If husband and wife work for the same employer and file a claim to concurrently care for a seriously ill family member, are there any special provisions or restrictions?

No, the husband and wife may take PFL simultaneously to care for a seriously ill family member if the care is necessary based on the medical condition of the care recipient. Of course, they must meet all other PFL requirements and there can be no more than three care providers for one care recipient. This limitation applies to all care claims. It is assumed that when providing 24-hour care, there are three 8-hour shifts each day. Therefore, the care recipient is allowed only three care providers simultaneously.

31. How many care providers are allowed per care recipient?

If the physician certifies that the care recipient only needs eight hours of care, then one care provider would be permitted.

If the physician certifies that the care recipient needs 24-hour care, PFL permits up to three care providers concurrently. Each care provider is assumed to work a different 8-hour shift.

32. Assume an employee starts a PFL claim on August 1, 2004 and uses three weeks of PFL benefits and then on July 25, 2005 qualifies for additional time for the same care recipient that crosses over the 12-month benefit year.

a. Describe the timing of benefits.

The initial 12-month benefit year commenced on August 1, 2004 and would be scheduled to expire on July 31, 2005.

The claimant would receive one week of PFL benefits for the period July 25, 2005 through July 31, 2005. As of August 1, 2005, a new claim year would begin and a new claim would be established for the next 12-month period.

b. Is the employee required to satisfy a new waiting period for the new benefit year?

Yes.

c. Would the employee be required to complete a new claim form if in the State's PFL plan?

The claim form filed on July 25th could be used to establish the new claim in the new 12-month period.

33. Regarding PFL claims that are filed in one year and PFL benefits paid in the next calendar year - what wage base period is used? The "look back" quarters could be different if claim effective date is used versus claim payment date. Example: claim submitted December 30, 2004 and PFL benefit begins on January 7, 2005.

Once a claim is established, the PFL 12-month benefit year commences. The wage base period and weekly benefit will remain constant and will not change during the 12-month period.

34. Assume a new child is ten months old as of July 1, 2004. Can they request bonding leave?

Yes, but the employee would only receive six weeks. If the employee had a child by July 15, 2003, they are only going to receive approximately two weeks of benefits.

As of June 3, 2004, the EDD has received about a dozen claims from women who had children between January 2004 and as recently as June 2004. They are all filing their claims to take bonding starting July 1st.

35. I would like to confirm the timing of payment for bonding for a new child. What is available to a claimant whose child is born prior to the July 1, 2004 PFL effective date? For example, if a child was born on 7/16/2003, would the claimant be eligible for coverage from 7/1/2004 through 7/16/2004 (including the elimination period)?

PFL benefits for bonding can only be made during the 12-months, beginning with the child's date of birth or placement. If the bonding leave begins at week 49 after the birth/adoption, the PFL coverage is as follows:

- If the claimant is the mother, PFL is paid for three weeks assuming the mother had completed the elimination period while covered by SDI or VDI and assuming the employer did not require the claimant to use two weeks of vacation before PFL.
- If the claimant is not the mother, PFL is paid for only two weeks unless the employer requires the claimant to use two weeks of vacation, in which case only one week of PFL benefits would be payable.

REESTABLISHED AND CONTINUED CLAIMS

36. You mentioned that if a claimant filed claims for two care recipients in the same 12-month PFL benefit period that they would be considered as part of the same claim. Would the EDD use the same base period wages or would you recalculate the weekly benefit amount based on the date the claimant started care for the second care recipient?

Once a claim is established, the PFL 12-month benefit year commences. The wage base period and weekly benefit amount will remain constant and will not change during the 12-month period.

37. A “reestablished claim” is one that is for a new care recipient within the same 12-month period. It requires a new waiting period.

a. Should the base period wages and benefit calculation be the same for both claims?

Yes, during the 12-month benefit period the weekly benefit amount remains constant. The weekly benefit amount will not change until a new claim is established.

b. It does not seem practical to use the same base period for both claims as they could have significantly different base period wages. More importantly, if the first leave began in October 2004, and the employee took leave for a different care recipient in February 2005 is the maximum benefit still the 2004 benefit of \$728 per week or would the new 2005 benefit amount be used for the second claim?

As noted above, there will be no changes during the 12-month benefit period. The new calendar year does not have an impact, therefore, the maximum benefit would remain at \$728.

INTERMITTENT CLAIMS

38. For intermittent claims of one day per week, is the period of time limited to 6 weeks or to 42 days? In other words, if an employee receives PFL for one day does that count as one week of PFL?

The period of time is limited to six weeks of their weekly benefit award or the dollar equivalent. If the employee receives PFL for one day, it counts as one day of benefits. It does not count as one week of PFL.

39. For an intermittent claim, would daily benefits be paid based on 1/7th of a week even if the claimant works a five day week?

Under the State-administered plan, benefits for a partial week will always be paid based on 1/7th of a week.

Under a Voluntary Plan, if the employer’s current practice uses a 1/5th week calculation as approved by the EDD, then this would be allowed.

40. Can a bonding leave be taken on an intermittent basis? For example, can the parent take three weeks now and three weeks in two months?

Yes. They can even take one day a week.

41. Assume a full-time employee wants to take leave in increments of four hours per day. If an employer does not have a policy for part-time employees, do we need to permit an employee to take intermittent leave?

It is up to the employer to determine how they want to permit the leave. The employer does not need to permit the part-time schedule. However, an intermittent, part-time leave would be eligible for PFL benefits. If they have sufficient earnings and are otherwise eligible, the employee could collect six weeks of benefits.

42. Assume a full-time employee takes PFL on a part-time basis, say four hours per day, please respond to the following questions.

a) Given that PFL provides six weeks of benefits, how many weeks of PFL benefits would the employee receive?

The employee is entitled to six full weeks of paid benefits. If they only use a partial week of leave, then it could extend the duration of benefits. For example, if the PFL weekly benefit amount is \$400, then the employee is entitled to \$2,400 of benefits. If the employee collects only \$200 per week of PFL benefits, then the benefits would be exhausted in twelve weeks.

b) Assuming this employee's regular weekly wage is \$800, please elaborate on how the benefits would be determined.

When the first claim is filed, the EDD determines the weekly benefit amount (WBA) and maximum benefits potentially payable during the twelve month period. Calculation of the WBA: The EDD utilizes the employee's base period earnings (the previous five quarter's earnings) to determine the WBA.

When leave is taken, the lost wages reported to the EDD are used to calculate the PFL payment.

If an employee has a partial wage loss, the PFL payment will be calculated as the lesser of the weekly benefit amount or the wage loss.

If the employee in the example has consistently earned \$800 or \$3,200 per month (\$9,600 per quarter) for the past five quarters, this would be the basis for their WBA calculation. The WBA would be \$409 (per the DI benefit table). For example:

PFL Weekly Benefit Amount = \$409

Regular weekly wage = \$800

Employer pay received during leave = \$400 (working 50% of normal schedule)

Wage loss (\$800 - \$400) = \$400

PFL maximum payment = \$400*

*\$409 WBA plus \$400 of employer pay equals \$809. This exceeds the normal weekly pay. The PFL payment is therefore reduced to \$400.

43. Assume the employer's company policy permits leave in increments of four hours, but the employee actually takes leave in increments of two hours. How will this affect the EDD's PFL payment?

When leave is taken, the lost wages reported to the EDD are used to calculate the PFL payment. The number of hours worked (or not worked) are irrelevant. If the employer has a policy that will deduct four hour increments of pay for two hours of missed work, PFL will calculate the payment based on the lost wages that are reported to the EDD.

VACATION REQUIREMENT

44. Assume an employer has a policy in place that requires claimants to use up two weeks of vacation. Given that California does not necessarily deem vacation as wages, would the claimant be able to collect PFL benefits while simultaneously receiving vacation pay?

No, not in this case. PFL benefits cannot be paid during the first two weeks of the claim if the employer invokes their right to require the use of two weeks of vacation.

45. If the employee has accrued more than two weeks of vacation time, can they receive vacation pay while concurrently receiving PFL payment?

Yes, they can receive vacation pay concurrent with PFL, but not sick leave pay.

46. Can the employee use sick pay, say at 45% of wages, to supplement the 55% PFL benefit (similar to the State Disability Insurance program)?

Yes.

47. Please elaborate on when the employer can pay sick leave. You mentioned we can require employees to use two weeks of vacation, but is it the employees' option as to whether or not they want to use sick leave if it qualifies under the employer's policy?

By statute, the employer cannot require the employee to use sick leave. They are only able to invoke a requirement to use vacation and/or PTO. If the employee desires, they can elect to use sick leave during the first two weeks of the leave. The first week would count toward the waiting period. If the second week is paid in full wages, the employee would not be eligible for PFL benefits because they cannot receive PFL benefits if they are receiving full sick pay. If the second week is paid at half wages, the employee would be eligible for PFL benefits for the difference up to 100% of the employee's weekly pay.

48. We currently provide up to ten days of company-paid family illness benefits. If we require the use of this benefit during the first and second week of the employee's requested PFL, can we then require the employee to use two weeks of accrued vacation (third and fourth week)? If yes, what is the total number of weeks the employee would be out, and during what weeks would the employee receive PFL benefits?

The PFL statute only allows an employer to require two weeks of vacation/PTO. Under the example, the employee would be out ten weeks. This is determined as follows: two weeks of voluntary sick leave; two weeks of required vacation; six weeks of PFL benefits, assuming all eligibility requirements are met.

49. Regarding the two week vacation period, our company policy stipulates that when someone goes out on leave we just pay out their vacation to them so they are assured of receiving all the vacation they have earned. Do the first two weeks of this vacation count as their two week vacation?

Yes, assuming that correlates to two weeks of their regular wages.

50. Our company requires the claimant to use two weeks of vacation and our vacation plan accrues on a calendar year, commencing on January 1st of each year. Assume a claim is filed on December 15 and the company invokes the two week vacation requirement. Under our company program, on January 1st, the employee would begin accruing a new year of vacation. Can we require the employee to take another two weeks of vacation when the new calendar year vacation accrual commences?

Yes, you can require them to take the additional accrued vacation if that is an employer policy, but it would not affect their PFL claim. They would continue to receive PFL payments in addition to the vacation pay.

51. Can PTO be required during the waiting period (whether one or two weeks) if PTO is used for both sick and vacation?

Yes, PTO can be used. If PTO is used only for sick leave, then there would be issues. If PTO is used for both vacation and sick time, then it is acceptable.

52. Instead of separating the vacation and sick leave plan, our company uses a paid time-off (PTO) bank. The PTO bank combines vacation and sick leave. If the employee has accrued more than two weeks of PTO time, can they receive PTO pay while concurrently receiving PFL payment?

An employer that uses PTO is permitted to impose the two week PTO requirement, just like other employers are able to impose a two week vacation requirement. The PFL regulations currently use the same definition for vacation as the Labor Code's definition, which is the same for PTO.

Claimants who continue to collect PTO beyond the first two weeks may be subject to review. The EDD would probably ask the employer if the employee has a history of using the PTO for sick leave or vacation. If it tends to be for vacation, then the EDD would probably allow them to receive PTO pay concurrent with PFL. If it is typically for sick leave, the EDD may deny the claim. It will be reviewed on a case-by-case basis.

53. Can PTO be used during PFL as a buy-up option (receive 100% of salary with the combined PTO and PFL) if PTO is used for both sick time and vacation?

Yes.

54. Our company has both a paid time off (PTO) and a vacation bank for employees. Our PTO bank is used to take time for illness or personal time to care for a sick family member. Can we impose the two week requirement and have employees use PTO and/or vacation to satisfy this requirement?

The regulations state that vacation is defined under the Labor Code as being paid time off so under this situation, you could require them to take two weeks of PTO or two weeks of vacation, whichever you choose.

55. Assume a claimant is moving from pregnancy SDI (or VDI) to bonding PFL. If the employer has a policy in place that requires her to use up to two weeks of vacation time, can we actually require that new mother to use two weeks vacation between the SDI claim and the PFL claim?

Yes, that is correct.

56. Our employees will be required to use one week of vacation before PFL payments begin. In the case of a retroactive claim, can the vacation requirement be applied currently so we can avoid reversing an employee's prior pay simply to code the vacation in sequential order? This will allow us to avoid higher administrative cost and prevent greater risk of manual error.

For example, assume an employee uses Kin Care full pay for one week followed by Kin Care half-pay for one week and then applies for PFL. The PFL payments could be paid for the period of time the employee received Kin Care half-pay (i.e. retro-active), however, the required one week of vacation must also be coded. The two alternatives for coding this retroactively would be:

Preferred

7 days Kin Care Full Pay = Waiting Period

7 days Kin Care Half Pay + PFL (pay both, not to exceed 100%)

7 days Vacation – required (no PFL paid)

PFL (paid for remainder of approved period)

Alternative (higher admin. cost and greater risk of manual error)

7 days Kin Care Full Pay = Waiting Period

7 days Kin Care Half Pay (reverse prior pay coded)

7 days vacation – required before PFL

7 days Kin Care Half Pay + PFL (pay both, not to exceed 100%)

PFL (paid for remainder of approved period)

Please advise whether the “preferred” approach is acceptable.

Either option is acceptable.

WAITING PERIOD

57. If an employee takes time off from work to care for a seriously ill family member in June, 2004 and files a claim for benefits as of July 1, 2004 will the EDD allow the employee to count the time away from work before July 1, 2004 towards the waiting period?

No, the leave must begin after July 1, 2004. The only exception will be women who filed a disability pregnancy claim prior to July 1, 2004. Since she served a waiting period for that claim previously, it is allowed by statute to count towards the PFL claim filed for bonding.

58. What is the waiting period for claims? Is it different for intermittent claims? Would it include weekends, or only workdays?

There is a seven-day waiting period. For continuous (non-intermittent) claims, the claimant’s waiting period is seven continuous days (five workdays plus the weekend). Intermittent claims require seven work days to satisfy the waiting period.

Example of continuous claim: Assume an employee files a PFL claim to take six weeks of leave to care for a serious ill family member. The first seven days would satisfy the waiting period. The claimant is entitled to paid benefits for the remaining five weeks, if otherwise eligible.

Example of intermittent claim: Assume an employee files a PFL claim to take their parent to chemotherapy one day per week for nine weeks. The waiting period would be satisfied after seven workdays. In this instance, it will take seven weeks to fulfill the PFL waiting period. The claimant is entitled to paid benefits for the two remaining intermittent days, if otherwise eligible.

59. How do you calculate the waiting period for intermittent claims when the employee is gone for a partial day? For example, if an employee leaves for two hours to chauffeur their parent for medical care, how much time is deducted from the waiting period?

A partial day of leave counts as one full day for purposes of satisfying the waiting period. If the employee is gone for two hours, it counts as a full day. However, the employee still needs to document that it was due to a serious illness and meet all other eligibility requirements.

PFL THROUGH A CALIFORNIA VOLUNTARY PLAN

60. The EDD has stated they will not require the employee to provide proof of relationship. We have a third party administrator for our benefits and we were planning on requiring that the employee submit proof of relationship. Does this create a problem given that the EDD is not requiring proof?

No, the employer can require proof of relationship if they desire. It is a tricky thing. The EDD has evaluated it quite a bit and determined the administration would be significant since some of those documents are difficult to attain, particularly old marriage certificates.

61. Confirm that employers with VDI plans can create their own brochures and distribute in lieu of the EDD PFL brochure. Would the VDI PFL brochure require the EDD's approval? Would the EDD require a copy to be submitted?

The employers with VDI plans cannot provide a different brochure. The statute requires that the approved EDD brochure must be given to all California employees.

62. We have a Voluntary Plan. Are we allowed to automatically continue deductions for our 401(k) plan and Employee Stock Plan when employees go out on PFL? We do continue deductions under our paid short-term disability Voluntary Plan, but employees are paid at 75/100% versus 55%.

Yes, you may take deductions for the 401(k) plan and Employee Stock Plan, but it must be authorized by the employee.