

# Employers' Guide to **VOLUNTARY PLAN PROCEDURES**



**STATE DISABILITY INSURANCE PROGRAM**

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**ACRONYMS**

ALJ	Administrative Law Judge
CA	California
CCR	California Code of Regulations
CUIAB	California Unemployment Insurance Appeals Board
CUIC	California Unemployment Insurance Code
DI	Disability Insurance
EDD	Employment Development Department
FMLA	Family Medical Leave Act
GR	General Release
ICD	International Classification of Diseases
IME	Independent Medical Examination
MBA	Maximum Benefit Amount
PFL	Paid Family Leave
SDI	State Disability Insurance
TPA	Third-Party Administrator
VP	Voluntary Plan
VPDI	Voluntary Plan Disability Insurance
VPFL	Voluntary Plan Family Leave
WBA	Weekly Benefit Amount
WC	Workers' Compensation

The *Employers' Guide to Voluntary Plan Procedures* is designed to assist employers and their agents in the administration of approved voluntary plans (VPs). Comments, questions, or suggestions are welcome. Information regarding VPs may be obtained at:

State Disability Insurance Customer Service  
916-654-0453

Voluntary Plan Group  
916-653-6839 (Phone)  
916-653-6209 (Fax)

By mail  
Employment Development Department  
Disability Insurance Branch  
Voluntary Plan Group  
P.O. Box 826880, MIC 29VP  
Sacramento, CA 94280

Employment Development Department website  
[www.edd.ca.gov](http://www.edd.ca.gov)

The Employment Development Department (EDD) actively participates in the Voluntary Plan Advisory Group (VPAG). This group consists of VP employers, third-party administrators, and Disability Insurance (DI) Branch staff. The VPAG meets twice yearly to discuss VP issues and legislation, share common concerns, clarify VP claim procedures, and exchange ideas to improve the VP program. For information about joining the VPAG, contact the Voluntary Plan Group (VPG) at 916-653-6839.

In addition, the VPG mails a yearly General Release Letter in the fall to all VP employers. The letter provides information and instructions regarding critical changes for the following year. Copies of the General Release Letter may be obtained from: [http://www.edd.ca.gov/Disability/VP\\_Forms\\_and\\_Publications.htm](http://www.edd.ca.gov/Disability/VP_Forms_and_Publications.htm).

Copies of this publication may be requested by contacting the VPG at 916-653-6839.

## **OVERVIEW**

California State Disability Insurance (SDI) is a partial wage replacement insurance plan for California workers. The SDI program is state-mandated and funded through employee payroll deductions. SDI provides two affordable, short term benefits to eligible workers:

- Disability Insurance (DI)
- Paid Family Leave (PFL)

DI provides a maximum of 52 weeks of short-term benefits to eligible workers who suffer a loss of wages when they are unable to work due to a non-work-related illness or injury, or due to pregnancy or childbirth.

PFL provides up to six weeks of benefits in a 12-month period for individuals who must take time off of work to care for a seriously ill family member or to bond with a new child.

## **VOLUNTARY PLAN PROGRAM OVERVIEW**

### **Purpose of the Voluntary Plan Program**

A Voluntary Plan (VP) is a private short-term disability insurance coverage that an employer may offer to its California employees as a legal alternative to the mandatory state plan coverage. The purpose of the SDI and VP programs is to compensate an individual, in part, for a wage loss due to sickness or an injury that is not work-related. Both criteria (wage loss and sickness/injury) must be met in order to establish entitlement to benefits. An individual is deemed disabled on any day in which, because of a physical or mental condition, he/she is unable to perform his/her regular or customary work. Completion of a vocational rehabilitation plan establishes new regular or customary work in that occupation.

Employers and employee groups may establish a VP with mutual consent of the employer and a majority of the employees. An employee may choose SDI coverage even though a VP is available where he/she works.

**Reference: California Unemployment Insurance Code (CUIC) Sections 2601, 2626, and 3254.**

An employer can administer a self-insured VP or obtain coverage from an admitted insurer. If a VP employer provides company DI coverage in lieu of the state plan, then it must also provide PFL coverage as well. Provisions for PFL are contained in the CUIC. Requirements for PFL are consistent with DI provisions except where specific guidelines exist for PFL. Refer to the EDD website for specific PFL guidelines.

### **VP Legal Requirements**

The VP program is governed by the laws outlined in Sections 3254-3272 of the CUIC. The CUIC requires the following:

- An individual covered by a VP will be afforded the same rights as if he/she were covered under SDI.
- Each claimant must receive at least the same weekly benefit amount (WBA), maximum benefit amount (MBA), and duration of benefits as if covered by SDI.
- The VP will provide at least one right or benefit that is greater than the rights provided by SDI.
- The VP will amend its provisions to match any increase in rights or benefits that SDI implements as a result of legislation or approved regulation.
- The cost to the employee will not be greater than the cost for SDI.

### **VP Administrative Authority**

A VP may be more liberal in its provisions than SDI, but in no way may it be more restrictive. A VP cannot impose restrictions on eligibility that are not imposed by SDI. The CUIC contains the laws that govern the SDI program and grants the Director of the EDD the right to issue regulations interpreting the law. These regulations are contained in the California Code of Regulations (CCR), Title 22.

### **Third-Party Administrator**

A Third-Party Administrator (TPA) is a private company that consults and assists an employer in administering their EDD-approved VP. The roles and responsibilities depend on the contract negotiated with the employer.

The CUIC does not contain requirements for becoming a TPA and the state does not require TPAs to be licensed. An individual or corporation, such as an insurance company, can become a TPA by contracting with a VP employer.

## **SMALL BUSINESS THIRD-PARTY ADMINISTRATOR**

A Small Business Third-Party Administrator (SBTPA) is a business that has been approved by the EDD to establish and administer a VP for payment of DI and PFL benefits on behalf of its clients. A prospective SBTPA applicant must submit a *Small-Business Third-Party Administrator Voluntary Plan Application Pursuant to AB 2778, DE 2778* form to the EDD for approval to operate and administer a VP on behalf of other employers. The SBTPA applicant must meet all of the following criteria at the time of submitting the application:

- Administer VPs on behalf of its clients pursuant to a written agreement in a manner approved by the EDD Director.
- Have at least 1,000 California domiciled clients, 80 percent of whom have fewer than 20 employees.
- Process payroll for its California domiciled clients.
- Offer workers' compensation insurance to its California domiciled clients through an affiliated California domiciled insurance company.

**Reference: CUIC Section 3254.1.**

### **SBTPA Application Procedures**

An applicant who has met the requirements in Section 3254.1 of the CUIC may submit the DE 2778 to the EDD along with the following:

- A written summary of the SBTPA plan provisions that includes a Statement of Coverage.
- All enrollment literatures that will be used to solicit employee consent.
- All supporting documentation that will help determine the minimum qualification for SBTPA approval, such as a workers' compensation insurance policy that covers the SBTPA clients.

The required SBTPA application and all required documentation should be mailed to the EDD (see address on page v).

### **Notice of SBTPA Voluntary Plan Application Approval**

The EDD will notify the SBTPA applicant of their application status within 30 days from the date the application was received. Upon approval, the SBTPA applicant will be authorized to establish a VP and solicit enrollment into the plan by existing and future clients.

Existing and future client employers of the SBTPA who want to participate in the SBTPA VP must follow the procedures and submit an *Application to Participate in a Small-Business Third-Party Administrator (SBTPA) Administered Voluntary Plan for Unemployment Compensation Disability (UCD) Benefits, DE 2520AU*.

## **Procedures to Participate in SBTPA VP**

The SBTPA must provide all enrollment literature with a copy of the EDD-approved Statement of Coverage to client employers who express an interest in participating in the SBTPA VP. Prospective employers and the SBTPA must follow the procedures outlined below:

- Prior to submitting the application DE 2520AU to the SBTPA, the employer must conduct employee elections to obtain consent of a majority (50 percent) of its eligible employees.
- The SBTPA must examine the completed DE 2520AU for accuracy and resolve any deficiencies with the client.
- Once the application is acceptable, the SBTPA and employer must sign the application as acceptance of the responsibilities indicated in the application.
- The SBTPA is required to make copies of the signed DE 2520AU and distribute the copies accordingly:
  - Send the original signed document and related plan documents to the EDD VPG.
  - Provide copies to the SBTPA client employer.
  - Retain copies of the DE 2520AU and election documents for a minimum of five years.

For more information on SBTPA VP, please contact the VPG at 916-653-6839.

## **VOLUNTARY PLAN APPROVAL**

### **VP Application**

To provide coverage under a VP, an employer must submit an *Application for Approval of Self-Insured Voluntary Plan of Disability Benefits*, DE 2520BV and a proposed plan text to the EDD for approval to operate a VP. The DE 2520BV must be submitted prior to the requested effective date of the implementation.

Any employer who operates a VP without EDD approval will be responsible for all SDI contributions withheld from the wages of employees. The EDD will not reimburse the employer for any benefits paid while operating under an unapproved VP.

The DE 2520BV application may be obtained by contacting the VPG at 916-653-6839.

### **VP Approval Requirements**

In order for approval of a VP, all of the following conditions must be met:

- There must be at least one employee in employment.
- At least one right or benefit afforded to the covered employees must be equal to or greater than the benefits provided by SDI.
- A security deposit must be posted with the EDD to guarantee that it meets all obligations.
- The employer must guarantee that the VP will meet all obligations.
- The VP coverage must be made available to all California employees or to employees in a separate establishment maintained by the employer in California. The following are allowed exclusions:
  - Part-time employees who work less than half of the employer's standard workweek.
  - Short-term employees who are hired for a period not expected to exceed two weeks.
  - All employees are in one or more geographic employment location.
- A majority (50 percent) of the employees eligible for coverage have consented in writing to the plan.
- Employees who are eligible for coverage must be given the right to reject the VP and instead be covered by SDI.
- All covered employees must be given a written document that states their rights and benefits under the VP.
- The employer has consented to the plan and has agreed to make the payroll deductions required.
- The plan provides for the inclusion of future employees.
- If the plan provides for insurance, the forms of the policy are to be issued by an admitted disability insurer.
- The plan is in effect for a period of not less than one year and, thereafter, continuously unless withdrawn by employer or terminated by the EDD.

## **AMENDMENTS TO APPROVED VP PROVISIONS**

### **Amendments Mandated By Law**

The EDD will notify VP employers when legislation is enacted that affects VPs. The EDD will notify employers of the required changes and will establish a deadline by which the employer must submit a revised plan text or an amendment to their current plan text. Legislative changes usually take effect on January 1.

Note: When the employer is required to submit a revised plan text to the EDD for review, the revised items must be clearly noted in the text or referenced in a cover letter.

If legislation provides a change in the contribution rate or wage ceiling and an employer subsequently makes an employee contribution rate or ceiling change, an amendment to the plan text and/or statement of coverage is necessary.

**Reference: CUIC Section 3271.**

### **Amendments Initiated by the Employer**

When an employer chooses to amend any already approved VP provisions, they must first notify the employees and provide the EDD with the following:

- A copy of the amendment to the plan text.
- A copy of the Statement of Coverage (if one is used).
- A copy of the notice which was distributed to the employees to inform them of the changes.

Note: The notice to employees should specify the provisions of the amendment and inform them of their right to withdraw from the plan as of the effective date of the amendment. An employee may withdraw from the plan by giving written notice within 10 days of the effective date of the amendment.

### **Approval of VP Amendments**

The EDD will approve the amendment if the amended VP continues to meet the standards for VPs that are outlined in the CUIC and the CCR, and one of the following is satisfied:

- Written verification by the employer that a notice of the amendment has been distributed to the covered employees prior to the effective date. Employees must be given the right to withdraw from the plan on the effective date of the amendment by giving written notice to the employer within 10 days of the effective date.
- Written verification by the employer that a majority (50 percent) of the employees covered by the plan have consented to the amendment. The amendment cannot be effective prior to the date on which the majority of the covered employees gave their written consent.
- Written verification by the employer that all employees adversely affected by the amendment consented to the amendment. The amendment cannot be effective prior to the date on which all adversely affected employees gave their written consent.

Any amendments to a VP must be submitted to the EDD for approval no later than 45 days after the effective date of the amendment, along with the necessary certification as explained above. The VPG is available to review any proposed amendment or materials prior to distribution to the employees to ensure compliance with the requirements.

If an amendment is applicable only to new or future employees, notification of such change should be transmitted to the EDD on or before the effective date of the amendment. The consent of the covered employees is not required in this case since the reduction in rights does not affect current employees.

**Reference: CUIC Section 3271; CCR, Title 22 Section 3271-1(b).**

### **Successorship of VP**

When all or part of a business covered by a VP is acquired or sold, the rules of successorship, contained in Section 3254.5 of the CUIC, apply. It is the responsibility of the predecessor and successor to notify the EDD of acquisition within 30 days of the transaction and whether or not the VP will be continued or discontinued. The successor will be deemed to consent with the VP if they fail to notify the EDD of determination to withdraw the VP. The CUIC allows for continuation of the VP with an abbreviated application process.

To maintain approval of the plan, the successor employer must submit:

- *An Application for Approval of Voluntary Plan for Successor*, DE 2041.
- A current copy of the plan document.
- Upon request, an adequate security deposit.

The surviving plan may be entitled to the predecessor's plan assets and will be responsible for payment of claims in progress as well as all new claims.

The terms of the plan coverage remain as they were under the predecessor. However, the plan may be subsequently amended by following the amendment process. The application form and information about security deposits should be requested from the VPG.

The successor may choose to withdraw the VP as of the date of the acquisition. The new owner has the responsibility of notifying the EDD of that decision. When a VP is withdrawn as the result of a successorship, the predecessor retains any plan funds, pays claims in progress, and pays any claims submitted with an effective date prior to VP withdrawal.

## **VP TRUST FUND**

Employee contributions withheld for VP coverage, and any income derived from this fund, are trust funds. The funds must accurately be accounted for by employers. When an employer requires contributions from the covered employees, the employer must set up a separate ledger account, which is credited with plan revenue. The ledger account must only be charged with benefits and costs incurred in the operation of the plan. In addition, it must show all income to the plan (including loans to fund the VP), the payment of benefits, and allowable costs, separate and apart from all other operations of the employer.

Interest and dividend income earned by the VP trust fund must be credited to the fund and reported on the *Annual Report of Self-Insured Voluntary Plan Transactions*, DE 2568V form.

Any accumulated excess of the VP fund above the amount needed to pay benefits and including a reasonable reserve for future claims, assessments, and administration costs, must be used for the benefit of the employees covered by the plan.

**Reference: CCR, Title 22 Section 3260-1(a).**

VP trust funds must be maintained in a separate, specifically identifiable account in a financial institution, or they may be transmitted, including any interest or income, directly to the admitted disability insurer.

**Reference: CCR, Title 22 Section 3261-1.**

## **Employee Contribution Amount**

An employer is authorized to deduct from a VP employee's wages an amount which does not exceed the current SDI plan rate. The SDI rate is established each year by the Director of the EDD.

**Reference: CUIC Sections 984, 985, and 3260.**

The amounts deducted may be used only for the following purposes:

- Payment of benefits as provided by the plan.
- Reasonable expenses arising in the administration of self-insured plans.
- Assessments levied by the EDD as provided for under the CUIC.

The VP may provide that:

- A lesser contribution amount than the SDI rate will be withheld.
- The employer will make specified contributions on behalf of all or some covered employees.
- The employer will assume all operating expenses of the VP.

## **VP Employee Contribution Adjustments**

The VP employer is prohibited from increasing the amount of deductions, except:

- On an anniversary of the effective date of the plan.
- On the effective date of an increase in the taxable rate under Section 984 of the CUIC.
- On the effective date of an increase in the limitation on taxable wages under Section 985 of the CUIC.

**Reference: CUIC Sections 984, 985, and 3254(h).**

## **Approved Voluntary Plan Disability Insurance (VPDI) Administrative Expenses**

The EDD will approve the following expenses:

- Medical examination fees that are paid to determine whether a claimant continues to be disabled.
- Security deposit costs and premiums.
- Fees paid to a TPA.
- Stationery, postage, and other office supplies and equipment expenses required to administer the VP.
- Salary expenses for staff time devoted to VP activities.
- Pro rata share of office space, equipment, and operating expenses as they are incurred for VP operation.
- Other expenses as approved by the EDD.

**Reference: CCR, Title 22 Section 3267-2(b).**

## **Use of Excess Employee Contributions to Provide Other Benefits**

The amounts deducted by an employer from the wages of his/her employees as their contributions under a VP, are trust funds. They may be used only for the purpose of providing benefits to the employee group covered by the VP and paying any assessments made by the department under the CUIC in connection with the VP. No part of such employee contributions or income resulting therefrom may be diverted for the employer's own use or profit.

The CUIC allows the employer to use accumulated excess trust funds to provide additional benefits if approved by the EDD.

In the case of a plan insured by an admitted disability insurer, any accumulated excess of employee contributions over and above the net cost of premiums, after premium dividends or experience rate credits, and assessments made by the department in connection with the plan, must inure to the benefit of the employee group covered by the plan commensurate with their contributions or in an otherwise fair and equitable manner.

In the case of a self-insured plan, any accumulated excess of such employee contributions over and above the amount needed to provide benefits, including a reasonable reserve for future claims, assessments made by the department in connection with the plan, and direct costs of administration of the VP, must inure to the benefit of the employee group covered by the plan commensurate with their contributions or in an otherwise fair and equitable manner.

Methods of using excess VP funds which are commensurate with contributions, or fair and equitable, would include but are not limited to the following examples, including percentages and amounts contained therein.

**Example 1:** All employees contribute at a rate of 1.0 percent. The excess VP funds are used to reduce that rate to 0.7 percent for all employees.

**Example 2:** Two classes of employees are distinguished. Class A contributes at a rate of 1.0 percent. Class B contributes at a rate of 0.8 percent. A rate reduction of 25 percent for each class would be allowable, resulting in Class A contributing at 0.75 percent and Class B at 0.6 percent.

**Reference: CCR, Title 22 Section 3260-1.**

## **VP REQUIRED REPORTS**

### ***Annual Report of Self-Insured Voluntary Plan Transactions, DE 2568V***

The VP employer or authorized plan administrator is required to submit an *Annual Report of Self-Insured Voluntary Plan Transactions, DE 2568V*, to the EDD. The DE 2568V must be submitted by February 15 of the following year. Failure to comply with this requirement may result in termination of the VP. Where an employer has multiple related plans, they must complete a separate DE 2568V to report each plans' individual transactions. In completing the DE 2568V, the employer cannot use funds from one plan to cover the deficit in another plan. However, VP deficits covered by the employer may be in the form of a non-refundable contribution or a loan to the plan fund. The deficits must be reported as income to the plan receiving the fund and as expenses to the plan loaning the funds.

#### **Reference: CCR, Title 22 Section 3267-2(a).**

The DE 2568V is available in an electronic PDF form or Microsoft Word document. An employer or plan administrator may obtain the DE 2568V several ways:

- Request a mailed or faxed copy.
- Obtain the PDF version from the EDD website at [http://edd.ca.gov/pdf\\_pub\\_ctr/de2568v.pdf](http://edd.ca.gov/pdf_pub_ctr/de2568v.pdf).

The completed DE 2568V should be submitted to the EDD in one of three ways:

- E-mail to [vp68v@edd.ca.gov](mailto:vp68v@edd.ca.gov).
- Postal mail (see address on page v).
- Fax to 916-653-6209.

### **Amended DE 2568V Reports**

After the original DE 2568V has been submitted, some or all of the information may require a change or correction. This change must be reported to the EDD by submitting an amended report. Any entry that is changed from the original report must be clearly noted as an amendment. Place a check mark in the "Amended" box located at the top of the form.

### **Tax Reporting Under a VP**

Employers who have EDD approval to operate a VP are exempt from remitting SDI contributions for those employees who have elected VP coverage. However, the employer must remit SDI contributions for those employees who choose SDI coverage. VP employers are required to complete a *Quarterly Contribution Return, DE 3D*, to report VP-covered wages and SDI-covered wages, and for the computation of the VP assessment. This is a different process from the one used by employers who have only SDI coverage for DI.

Most EDD taxes can be filed online by accessing the Payroll Tax online system, under "**e-Services for Business**" on the EDD website.

## Commonly Used VP Tax Forms

Form Name	Purpose
<i>Quarterly Contribution Return, DE 3D</i>	<ul style="list-style-type: none"> <li>Report of VP quarterly wages and withholdings.</li> </ul>
<i>Quarterly Adjustment Form for Voluntary Plan Disability Insurance Employers, DE 938</i>	<ul style="list-style-type: none"> <li>Adjustment of wages and/or Personal Income Tax (PIT) withholding by individual.</li> <li>Reporting additional wages and/or PIT.</li> <li>Filing a claim for refund.</li> <li>Adjusting incorrectly reported wages, withholdings, or contributions.</li> </ul>

Please direct any questions regarding tax-related forms or services to the EDD Employer Tax Information Center at 888-745-3886.

## VP SECURITY DEPOSIT

### VP Security Deposit Requirements

The VP employer must submit a security deposit as part of the VP approval process. The deposit is used to cover the potential liability of the VP, and will be used to reimburse the EDD if the employer fails to pay any assessments established in connection with the VP.

The formula used to determine the minimum required deposit amount is as follows:

$$\begin{aligned}
 & \text{Employers estimated taxable wages from previous year} \\
 & \times 0.5 \times \text{Current SDI Contribution Rate} \\
 & = \text{VP Security Deposit}
 \end{aligned}$$

The amount of security in excess of the minimum \$1,000 required by the CUIC is determined by the number of employees covered, the size of the payroll, the class of risks, the financial standing of the employer, and any other relevant factors as determined by the EDD.

### Reference: CUIC Section 3258.

The security deposit must be made in one of the following forms:

- Cash, in the form of a check, may be sent to the EDD to secure the employer's VP obligations (see page 14).
- Irrevocable Letter of Credit from a United States financial institution (see page 14).
- Guarantee bond issued by an admitted surety insurer (see page 14).

## Cash Deposit

When the security deposit is made by cash, an *Agreement Regarding Deposit of Cash*, DE 2545V, must be completed and submitted with the cash deposit. This form must include:

- VP name.
- Cash deposit amount.
- Signature, printed name, and title of the authorized representative.
- Corporate seal and be notarized.

The cash deposit should be in the form of a check made payable to “EDD-Voluntary Plan Security Deposit,” clearly indicated on the check:

- The identification of its purpose.
- The principal or corporate VP employer name and the VP number.

When the cash deposit is received by the EDD, it is sent to the Fiscal Programs Division (FPD) for deposit into an interest bearing account, the Special Deposit Fund. A receipt is subsequently issued to the employer once the funds have been deposited by the FPD.

The rates for the quarterly earnings on cash deposits are based on the State Controller’s Office Surplus Money Investment Fund Yield Rates, which can be accessed at the following web address:

<http://www.sco.ca.gov/ard/surplus/smifrate.pdf>.

## Letter of Credit

For security deposits using a Letter of Credit (LOC), the employer is responsible for providing a form the same as, or similar to, the sample LOC provided by the EDD to an issuing bank or savings institution. The LOC must be issued by and payable at any branch of the issuing bank or savings institution in the continental U.S., Alaska, or Hawaii. The bank submits the LOC directly to the EDD, and upon EDD approval, letters of credit are transmitted to the State Treasurer’s Office (STO) for deposit. The EDD will issue a receipt to the employer.

## Guarantee Bond

When the security deposit is to be made by guarantee bond, a *Guarantee Bond*, DE 2544V form must be executed by the employer and an admitted surety company, and then submitted directly to the EDD in duplicate. Upon EDD approval, the EDD will forward the guarantee bond to the STO for custody. The DE 2544V should be completed as follows:

- Verify the employer name, address, and VP number in the upper left box of the form.
- Ensure that the effective date of the bond corresponds with the required effective date.
  - For a new plan, this will be the plan effective date.
  - A bond submitted to replace a canceled bond must be dated to coincide with the cancellation date.
  - A replacement bond, at the employer’s discretion, may carry any effective date, presuming the current bond has been in effect for at least one year.

- Verify that the amount of the bond is the amount that is required.
- An officer of the corporation must sign the bond for principal. The officer's name and title should be clearly indicated.
- If the principal is a corporation, the corporate seal must be affixed.
- A representative must sign for the surety company. If this representative is a designated Attorney-in-Fact, a Power of Attorney must be attached. If an officer of the surety signs, that person's title should appear under his/her name.
- The surety must affix its corporate seal.
- The original and one copy of the guarantee bond must be mailed to the EDD for processing.

### **Changes to Security Deposits**

Employers must adjust their security deposits when the difference between the existing security and the required amount is greater than five percent.

Security deposits should be reviewed when the following changes occur:

- SDI contribution rate.
- Estimated total wages.
- Size of the employer's labor force.

### **Submitting Riders to Guarantee Bond**

A new guarantee bond is not needed to adjust the amount of a guarantee bond or to change a name. Changes can be accomplished by completing a rider to the guarantee bond in the following manner:

- The rider must correctly reference the guarantee bond by bond number, effective date, and amount. This information may describe either the first-issued bond or the current status of the bond that resulted from one or more prior riders.
- If the rider affects the amount of the bond, clearly state the new penal sum.
- The beginning date of the requested change determines the effective date of the rider.  
**Example:** If the employer's name changed on February 1, 2014, the effective date of the rider is February 1, 2014.
- The rider must be signed by an officer of the principal or sent to the EDD directly by the principal to verify knowledge of the change effected by the rider.
- The rider must be signed on behalf of the surety company. A corporate officer or an Attorney-in-Fact may sign the rider. If it is signed by an Attorney-in-Fact, a Power of Attorney must be attached.
- The original and one copy of the rider must be submitted to the EDD for processing.

## **Joint Principal Bonds**

A guarantee bond may be issued for the purpose of securing a group of related plans. The proper format is to have the bond issued in a single principal name with the total amount required by all plans. A rider should name each of the joint principals and allocate the specific amount of liability for each.

Note: The cost of joint principal bonds should be allocated proportionately to all plans covered by the bond and should not be charged to one specific plan.

## **Replacement of Security Deposit**

The employer is required to replace the original security deposit if:

- The surety cancels a guarantee bond.
- A letter of credit (LOC) is not renewed by the financial institution.

Note: Failure to maintain an adequate security deposit may be grounds for the EDD to terminate the VP.

## **Substitution of Security**

With prior approval from the EDD, an employer may make substitutions in the type of security deposit or the surety company writing a guarantee bond. The general procedures for deposit of each type of security will apply. When substitution is made with a guarantee bond, the prior deposit remains with the EDD to secure the potential VP liabilities beginning prior to the effective date of the substitution. The prior deposit could be held up to 36 months from the effective date of the guarantee bond that was placed as substitute security.

The premium for canceled or replaced bonds usually ceases with the cancellation of the guarantee bond. It is the employer's responsibility to check with the surety to ensure that premiums for canceled bonds are no longer being charged to the VP.

## **Security Deposit Review**

The employer is responsible for providing the EDD with an annual review of the amount of security deposit in relation to the current work force, state contribution rate, and projected wages, and make necessary adjustments to increase or decrease the amount of deposit. The employer should submit the calculations and rationale for the proposed adjustment. The EDD reviews the adequacy of the security deposited with the STO and notifies the employer if adjustments must be made.

Note: Failure to maintain an adequate security deposit could be cause to terminate the VP.

## **Release of Security Deposit**

The security deposit is held by the STO for the duration of the VP and is released when all liability against the plan has been resolved, following withdrawal or termination of the VP. This will usually extend for a period of 12 calendar quarters (36 months) from the withdrawal or termination date. Earlier release may be requested for good cause and must be approved by the EDD. A security deposit may be released if a substitute is submitted for deposit.

**Reference: CCR, Title 22 Section 3258-1(b).**

## **COMPLIANCE REVIEW OF VP**

The CUIC authorizes the EDD to review the records of all approved VPs to ensure that they are being properly administered by the employer. Employers are required to make records available to the EDD for the review.

The EDD conducts annual reviews and has established criteria used to identify employers eligible for review each year. If selected for an audit review, the EDD will contact the employer to determine the location and dates of the audit. The audit usually takes place where the claim and/or financial records are located. If the employer's records (claims or financial) are out of state, the EDD may audit the records in that state or request that the employer provide copies of the records at a California location.

The EDD provides the employer with the audit findings at the conclusion of each audit. The employer is required to implement any corrective action recommendations. Failure to implement corrective action recommendations could be cause for termination of the VP.

For any questions regarding the VP compliance audit, please contact the VPG at 916-653-6839.

**Reference: CUIC Section 3267.**

## **VP WITHDRAW AND TERMINATION**

### **Request for the Withdrawal of the VP**

Once a VP has been approved, the plan must remain in effect for at least one year. After one year, the employer may request withdrawal on the plan anniversary date or the date that there has been a change in the state contribution rate or when the benefit schedule is enacted. The EDD must receive written notice no less than 30 days prior to the requested withdrawal date.

The VP employer remains responsible for payment of all claims filed prior to the date of withdrawal. The VP employer is also responsible for claims that were submitted after the VP withdrawal where the disability began prior to the effective date of the withdrawal.

An employer who withdraws from the VP program should notify employees about the withdrawal of the VP once they receive the *Notice of Voluntary Plan Withdrawal Approval* letter from the EDD. The employer should inform the employees that they are no longer a VP employer and advise them to contact the EDD to file DI and PFL claims.

Unpaid liabilities of the VP will be recovered from the VP employer through an assessment and the security deposit.

**Reference: CUIC Sections 3254(g) and 3254.1.**

### **Termination of VP by the EDD**

The EDD may terminate a VP when terms or conditions of the plan have been violated. Some, but not all, causes for plan termination are:

- Failure to pay benefits.
- Failure to pay benefits promptly.
- Failure to maintain an adequate security deposit.
- Misuse of VP trust funds.
- Failure to submit reports as required by EDD regulations.
- Failure to comply with CUIC and CCR provisions.
- Participation level falls below 50 percent of employees.

If the EDD identifies a cause for terminating a VP, the EDD will send a *Notice of Intent to Terminate the Voluntary Plan* letter to the employer. The notice will specify an effective date of termination generally coinciding with the initiating event. The termination notice will inform the employer of the right to appeal the decision to the California Unemployment Insurance Appeals Board (CUIAB) within 10 days of the date of the notice. On the effective date of termination of the VP, all trust fund money in the plan must be remitted to the EDD for deposit into the Disability Fund. Wages become subject to SDI contributions withholding, effective on the date of termination. The payment of benefits and the transfer of the VP trust fund to the EDD may not be delayed during an employer's appeal of the termination.

**Reference: CUIC Sections 1126 1136, and 3262.**

Any employer who is terminated from the VP program should notify employees about the termination of the VP once they receive the *Notice of Intent to Terminate the Voluntary Plan* letter from the EDD. The employer should inform the employees that they are no longer a VP employer and advise them to contact the EDD to file DI and PFL claims.

## **Disposition of Excess Employee Contributions Following Withdrawal**

Prior to the expiration of 12 calendar quarters after withdrawal or termination of a plan, the employer must submit a proposal for disbursement of any remaining excess trust funds in its custody to the EDD. Employers may remit excess trust funds to the EDD for deposit into the Disability Fund or disburse the funds in a fair and equitable manner to the employees who contributed to the excess, once the proposal has been approved by the EDD.

Please refer to CCR, Title 22, Section 3260-1 for guidelines on how to disburse excess funds or contact the VPG at 916-653-3869.

The CCR, Title 22 can be accessed at <http://ccr.oal.ca.gov/>.

## **COVERAGE DETERMINATION PROCEDURES**

### **Determining Liability: VP or SDI**

The initial determination that must be made is whether the VP or SDI is liable to insure the employee. Company records should indicate which coverage the employee has selected.

VP coverage may begin on the date that the employee elects to be covered by the VP rather than SDI. On the other hand, the employee may be required to work for the company for a specific period of time before coverage becomes effective. In these situations, SDI will cover the employee.

When the VP automatically covers all employees, a signed rejection slip must be on file for any employee who chooses to be covered by SDI. If automatic coverage is not in effect, a sign up sheet or other documentation must confirm each employee's coverage choice.

Determination of liability must be based on the date that the:

- Disability began.
- Condition reached a point where the employee was unable to perform regular or customary work.

This date may be different from the stated claim date or the first day that the employee is entitled to receive benefits. While accidents establish a clear beginning of the disability, chronic conditions may require investigation. Personnel records, attendance information, and discussion with the supervisor may be necessary to determine when the condition became disabling. A medical condition may exist for some time and not prevent an employee from doing regular or customary work. That same condition may then worsen to a degree that constitutes "disability" under the law and entitles the employee to disability benefits.

Liability for coverage must be determined before a decision can be made regarding eligibility for benefits.

**Reference: CUIC Section 3257; CCR, Title 22 Section 3254-3(a)(6).**

### **VP Liability After Job Termination**

Generally, VP coverage ends at midnight on the day of employment termination.

**Example:** An employee is fired and is injured in an automobile accident before midnight that day on the way home. This employee is covered under the VP.

The VP is also liable in the following situations:

- When a disabling condition precedes the termination or begins before the end of coverage.
- When an employee continues working in order to finish a job or train a replacement, even though a disabling condition has commenced.
- When an employee resigns a position because of a disability rather than request a medical leave, even if the actual reason for the resignation is not disclosed to the employer.

**Reference: CCR, Title 22 Section 3254-3(a)(5).**

## **Disputed Coverage Process**

When there is a dispute, whether benefits are payable from the state plan or from one or another VP(s), benefits must be paid from the plan against which the claim was first filed.

Two levels of arbitration exist to settle any disagreement:

1. A hearing before the ALJ.
2. Review by the CUIAB.

The dispute of coverage is unrelated to the question of the employee's eligibility for benefits. "Disputed coverage" determines only whether SDI or the VP is liable to insure the individual. It does not presume that benefits must be paid. The plan that accepts liability, either directly or by default, then determines whether or not the employee meets eligibility criteria for disability benefits.

**Reference: CUIC Section 2712.**

## **Disputed Coverage Referral to SDI**

If a VP believes that SDI is liable for a claim originally filed with the VP, a copy of that claim should be mailed to the EDD (see address on page v).

The referral should include the following information:

- Medical certification, which consists of:
  - The diagnosis. If no diagnosis has yet been established, provide a detailed statement of symptoms.
  - The diagnostic code prescribed in the International Classification of Diseases (ICD).
  - The certifying physician/practitioner's original signature and license number.
- The employee's occupation.
- Whether or not VP benefits were paid, and if so, the dollar amount and the period that was paid.
- A clear explanation of why SDI should accept liability for the claim.
- Any other pertinent information that would assist in determining liability of coverage.
- The name and direct telephone number of the employer representative handling the claim.

Claims referred to SDI must contain an original signature for medical certification. A stamped signature is not acceptable. Before sending a copy of the claim to SDI, the VP employer must secure an original signature either on the initial claim form, on a new claim form, or on a separate statement from the physician/practitioner.

The VP should allow the SDI office 25 days from the date of referral to respond. A copy of the referral letter must be sent to the claimant.

**Reference: CCR, Title 22 Section 2712-2.**

## Action After the EDD Referral Response

If SDI accepts coverage, the EDD will respond in writing and begin payment on the claim, provided the claimant is otherwise eligible. If SDI does not accept coverage or does not respond within the specified time, the employer must make a determination of eligibility and, if appropriate, begin immediate payment of the claim at no less than the state award rate. Review the claim to determine if a disputed coverage appeal will be filed. The VP has 30 days from the date of SDI denial or 30 days from the deadline for EDD's response to file an appeal.

## Filing a Disputed Coverage Appeal

To file a disputed coverage appeal, complete an *Appeal for Determination of Coverage*, DE 1000DC. The DE 1000DC may be obtained from any SDI office. For a current list of contacts in EDD offices, see the most recent *General Release Letter*, visit the EDD website, or call the EDD. Include a brief factual statement of why the EDD should accept coverage, attach a copy of the SDI denial letter, and send the appeal to the appropriate Office of Appeals and a copy to the EDD office. For information on the appropriate Office of Appeals for your area, call SDI Customer Service at 916-654-0453.

## Receipt of a Disputed Coverage Referral

When the EDD receives a claim that is determined to be the responsibility of a VP, a *Full Coverage Referral to Voluntary Plan*, DE 5022 form, will be sent to the VP, in duplicate. Unless prohibited by confidentiality laws, a copy of the SDI claim form, SDI benefit rate information, and other pertinent information will be attached. If SDI paid benefits on the claim, the payment period and total amount paid will also be provided on the referral form. The VP is allowed 25 days from the date of mailing to respond to the referral. The investigation needed to determine coverage liability should be conducted promptly to ensure a response is provided to the EDD within the 25-day period.

A response, either accepting or denying liability must be returned to the EDD office that referred the claim. Failure to respond by the deadline constitutes a denial and will result in SDI paying the claim and possibly filing an appeal.

If the VP accepts liability, it should respond to the EDD on the DE 5022. Payments to the claimant should begin immediately, if otherwise eligible. The VP must promptly reimburse SDI if benefits were paid on the claim.

If the VP denies liability, a clear explanation of the reason must be provided. Communication with the SDI representative who sent the referral notice may provide clarity and avert an appeal. If coverage is denied, a copy of the denial letter must be sent to the claimant and must contain a statement of appeal rights. The claimant has 20 days and SDI has 30 days, from the date of denial to appeal the decision.

### Reference: CCR, Title 22 Sections 2712-2 and 5021.

Note: Employers with an SDI Online account can receive the DE 5022 electronically and respond to the EDD online.

## **Simultaneous Coverage**

An individual with more than one employer may be simultaneously covered by more than one plan. This may be a combination of SDI and VP coverage. For SDI to be a party to “simultaneous coverage,” the claimant must have a valid SDI award and be otherwise eligible for disability benefits.

Note: SDI counts as only one plan regardless of the number of SDI employers for which the claimant works.

### **Examples:**

1. The claimant has three employers at the time of disability, two SDI and one VP. SDI would pay half of the SDI rate; the VP would pay half of the SDI rate, plus the difference (if any) between the SDI and the VP rates.
2. The claimant works for two VP employers and one SDI employer. SDI would pay one-third of the SDI rate; each VP would pay one-third of the SDI rate, plus the difference (if any) between the SDI and the VP rates.
3. The claimant works for one VP and one SDI employer. The claimant has only worked for the VP employer for four months and for the SDI employer for one month. The claimant has no prior California earnings, and therefore has an invalid award with SDI and will not receive SDI benefits. However, if the provisions of the VP allow immediate coverage based upon current earnings and not the typical base period earnings, the VP would be liable for the entire payment of benefits.
4. If the claimant works for a VP employer and an exempt employer, such as the federal government, SDI is liable for one half of the SDI rate.

A disability may prevent the claimant from performing his/her regular or customary work for one or all of the employers. Conversely, the disabling condition may not necessarily affect all jobs. Only the coverage of the employment affected by the disability is liable for payment of benefits.

When SDI receives a claim and suspects that simultaneous coverage may exist with a VP, a referral similar to a disputed coverage referral is forwarded to the VP. The referral will note that the issue is simultaneous coverage, but in all other respects, the procedure is the same as a disputed coverage referral. The VP may also gain knowledge of potential simultaneous coverage from information supplied by the claimant. The VP claim form, therefore, should ask the claimant the following:

- If he/she was working for another employer at the time of disability.
- If he/she is disabled from this other job.
- If that employer has a VP.

If the other employment involves SDI coverage, a referral procedure similar to the disputed coverage referral should be used and should request acceptance of simultaneous coverage. If the other employer has a VP, the simultaneous coverage referral must be sent directly to that plan.

If it is agreed that more than one plan is liable for payment, each liable plan must pay an equal share of the SDI benefit rate. Each VP that is liable for payment must also pay the difference between the full SDI weekly award rate and their full VP weekly rate, as described in the plan text.

If the claimant is able to return to one, but not all jobs, it changes the payment liability. Only the coverage for the employment from which the claimant continues to be disabled remains liable for payment. Liability increases in proportion to the number of remaining plan(s). If only one plan remains liable, it must pay 100 percent of the benefit rate.

**Reference: CUIC Section 3253, CCR, Title 22 Section 3253-1.**

### Calculating Simultaneous Coverage Benefits

In Table 1, the claimant has two employers; one employer has a VP, the other has SDI. The claimant is disabled from both jobs and simultaneous coverage is agreed upon by both the VP and SDI:

- Employer “A” is covered by a VP that pays 70 percent of net salary, which equals \$400 per week.
- Employer “B” is covered by SDI, which pays \$224 per week.

Table 1

	<b>Weekly Benefit Award (WBA)</b>	<b>Simultaneous Coverage Liability</b>	<b>Amount Claimant Receives</b>
<b>Employer “A”</b>	70% of net salary = \$400	$\frac{1}{2}$ of SDI WBA (\$224 ÷ 2) = \$112 <b>PLUS</b> VP Rate SDI WBA (\$400 \$224) = \$176	\$288 from VP
<b>Employer “B”</b>	SDI WBA = \$224	$\frac{1}{2}$ of SDI WBA (\$224 ÷ 2) = \$112	\$112 from SDI
		<b>Claimant’s Total WBA</b>	<b>\$400</b>

### Child Support Interception Deductions

The VP is required to make deductions from benefits that are payable to individuals identified by the State of California Department of Child Support Services (DCSS) as having unmet spousal and/or child support obligations. The DCSS notifies SDI of individuals who have delinquent support obligations and/or subsequent changes in the obligation. This information is matched against VP claims for which SDI has received a *Report of Voluntary Plan Disability Claim*, DE 2523. Using the disputed coverage referral address, SDI notifies the VP of the action that must be taken beginning with the next benefit check issued to the claimant.

The notification may provide information regarding:

- An initial support obligation.
- A change in the county responsible for enforcing a support obligation.
- A change in the withholding percentage.
- A cessation of the support obligation.

The notification will provide the name, address, and phone number of the county responsible for enforcing the support obligation. The amount withheld is a specified percentage up to 25 percent, and is calculated on the net entitlement including any benefits redirected, rounded down to the next whole dollar. The VP employer may retain up to \$2 for actual administration costs from the amount withheld. The amount withheld is mailed directly to the district attorney's office in the county responsible for the support obligation.

Before or with the first reduced benefit payment, the claimant must be notified of the reason for the reduction, the right to appeal the benefit reduction, and the name, address, and phone number of the county DCSS office where the withheld amount will be sent. The claimant should address questions concerning the support obligation to the county DCSS office.

The claimant may file a timely appeal within 20 days of the date of the employer notice by contacting SDI. Pending the appeal decision, the support intercept process continues. If the appeal decision rules in favor of the claimant, the county is responsible for refunding money to the claimant, if appropriate.

Deductions made per an order assigning salary or wages to satisfy judgments for child support must cease when notification of support obligation is received from SDI. In addition, once withholdings have begun as the result of notification from the EDD, any new orders assigning salary or wages received must be returned to the judgment creditor.

In each case, an explanation should be provided to the judgment creditor as follows:

*“As a result of changes in the law, Disability Insurance benefits are no longer subject to withholding in satisfaction of orders assigning salary or wages. Section 704.120 of the California Code of Civil Procedure now permits benefits to be intercepted only when requested by a county support enforcement agency in accordance with California Unemployment Insurance Code Section 2630 and Welfare and Institutions Code Section 11350.5.”*

The employer must total the intercepted amount and report it on the close out copy of the DE 2523 form in box 14. Any amount withheld to satisfy support obligations is treated as if it were paid directly to the individual as VP benefits.

**Reference: CUIC Section 2630.**

## **PROVISION AND LIMITATIONS**

The provisions and exclusions of SDI are contained in the CUIC and CCR, Title 22. Except where clearly provided otherwise, the rights of individuals who receive SDI benefits are equally applicable to those who receive VP benefits. A VP may not be more restrictive than SDI; however, it may be more liberal. The provisions by which a VP will provide more liberal eligibility requirements must be clearly stated in the plan text.

**Reference: CUIC Section 3254; CCR Title 22 Section 3254-1(c).**

The following standards for SDI claims represent the minimum requirements that must be met by a VP. Except for benefit redirection, these standards also apply to SDI claims. Where the VP has more liberal provisions, the specific provisions of the VP text apply and must be followed.

### **Definition of Wages**

“Wages” include the following types of payments, and may conflict with DI and PFL benefits when allocated to a period of disability:

- Earnings for part-time or light-duty work.
- Sick pay (see wage exceptions below).
- Holiday pay (see wage exceptions below).
- Back pay.
- Bonus.
- Commission payments.
- “In lieu of” notices.
- Military compensation.
- Money awarded by the Fair Employment Practices Commission in lieu of wages for a specific period.
- Return payments.
- Retroactive wages.

**Reference: CUIC Section 2656.**

Wage exceptions:

- Sick pay and/or holiday pay is not considered to be “wages” for benefit purposes when payment is made because of a termination of employment.
- Holiday pay is not considered to be “wages” when paid after the commencement of a disability.
- The Supreme Court has ruled that dismissal and severance payments of any kind, by whatever name, are not wages for any purpose relating to disability benefits.
- Vacation pay is never considered wages for benefit purposes.

**Reference: CUIC Sections 1265.5, 1265.6, 1265.7, and 1265.9.**

### **Release of Information**

The SDI claim form advises claimants that SDI records are available to other governmental entities. Similarly, the reported information required on VP claims becomes part of state records and are subject to release. Employers should inform their employees of this policy.

## ELIGIBILITY DETERMINATION PROCEDURES

### Eligibility Criteria

VPDI benefits may be paid after the claimant has met the plan requirements, which may not be more restrictive than the following:

- Must be unable to do regular or customary work for at least eight consecutive days.
- Must be employed or actively looking for work at the time they become disabled.
- Must have lost wages because of disability or, if unemployed, have been actively looking for work.
- Must have earned at least \$300 from which VP deductions were withheld during a previous period.
- Must be under the care and treatment of a licensed physician/practitioner or accredited religious practitioner during the first eight days of the disability.

The beginning date of a claim can be adjusted to meet the plan requirements. The following must occur:

- Claimant must remain under care and treatment to continue receiving benefits.
- The claimant must complete and mail a DI claim form within 49 days from the date they became disabled or they may lose benefits.
- The physician/practitioner must complete the medical certification verifying the claimant's disability. A licensed midwife, nurse-midwife, or a practitioner (as defined by CUI Section 2708), may complete the medical certification for disabilities related to normal pregnancy or childbirth.

Effective January 1, 2010, Assembly Bill 2188 (Chapter 378, Statutes 2010) amended Section 2708(e)(2) of the CUI to allow a nurse practitioner to certify to a disability, other than normal pregnancy or childbirth, after performance of a physical examination and collaboration with a physician and surgeon.

Note: If the claimant is under the care of a religious practitioner, request a *Claim for Disability Insurance Benefits Religious Practitioners Certificate*, DE 2502, from SDI. Certification by a religious practitioner is acceptable only if the practitioner has been accredited by the EDD.

The EDD may request an independent medical examination (IME) to determine the initial or continuing eligibility may be required.

### Ineligibility of VPDI Benefits

Employees should be encouraged to apply for benefits even if they are not sure of eligibility. If employees are found to be ineligible for all or part of a period claimed, the employer is required to notify the employee of the ineligible period and the reason. The claimant may not be eligible for VPDI benefits if:

- They are not suffering a loss of wages.
- They are claiming or receiving Unemployment Insurance (UI) or PFL benefits.
- They became disabled while committing a crime resulting in a felony conviction.
- They are in jail, prison, recovery home, or any other place because they were convicted of a crime.
- They are receiving workers' compensation benefits at a weekly rate equal to or greater than the DI rate.
- They fail to have an IME when requested to do so.

## **Claim Form Intake**

The CUIIC requires that a claim for DI benefits be submitted on a specified form, however, the VP employer has the flexibility in how a claim for benefits can be established. Some employers choose to fashion a form after the DI claim form. The *Claim for Disability Insurance (DI) Benefits*, DE 2501 form, may be obtained by calling the VPG at 916-653-6839 or accessing the form online at [www.edd.ca.gov/forms/](http://www.edd.ca.gov/forms/).

An actual claim form may not be required, but the reporting information required by the EDD and medical certification must be obtained.

**Reference: CUIIC Section 2706.**

## **SDI Online**

SDI Online is an electronic claim filing system that allows claimants to file claims and access claim information. It also allows VP administrators to access and submit forms through an online account. The system provides automated options that are simple to use and available 24 hours a day, 7 days a week.

Please see page 42 for more information about SDI Online.

## ***Report of Voluntary Plan Disability Claim, DE 2523***

VP employers use the *Report of Voluntary Plan Disability Claim*, DE 2523 form or the *Report of Voluntary Plan Family Leave (VPFL) Claim*, DE 2523F to report the initial filing and close out of a VPDI or VPFL claim. These forms are also used to request award information from SDI for any claimant whose VP benefit is calculated at less than the SDI maximum.

Employers are required to notify the EDD within 15 days after receipt of a claim for DI benefits using a DE 2523 or for PFL benefits using the DE 2523F. A final DE 2523 must be submitted within 35 days after final payment is made for each period of disability or PFL. Both the initial and final report must be submitted to the EDD via fax or US postal mail.

The DE 2523 must be filed for each claim received by the VP, including accepted disputed coverage referrals. In addition, when a claim is disallowed for any reason, a denial letter that includes appeal rights must be mailed to the claimant. A copy of the denial letter must be attached to the DE 2523. The only circumstance in which a DE 2523 is not required is when the period of disability is less than eight days.

The DE 2523 and DE 2523F forms are available at  
[http://edd.ca.gov/Disability/VP\\_Forms\\_and\\_Publications.htm](http://edd.ca.gov/Disability/VP_Forms_and_Publications.htm).

Submit the completed DE 2523 as follows:

<b>SDI Online (recommended)</b>	<ul style="list-style-type: none"> <li>Register to submit forms through EDD's online system.</li> </ul>
<b>Fax:</b> 916-653-6209 <b>Attn:</b> VP Claims Analyst	<ul style="list-style-type: none"> <li>DE 2568V</li> <li>Electronic PDF</li> <li>Hard copy</li> </ul>
<b>Postal mail:</b> Employment Development Department Disability Insurance Branch Voluntary Plan Group P.O. Box 826880, MIC 29VP Sacramento, CA 94280	<ul style="list-style-type: none"> <li>Electronic PDF</li> <li>Hard copy</li> </ul>
<b>E-mail:</b> <a href="mailto:vp2523@edd.ca.gov">vp2523@edd.ca.gov</a>	<ul style="list-style-type: none"> <li>Word document</li> </ul>

### Request for State Plan Award

By law, each VP claimant must be paid a weekly rate at least equal to what he/she would have received if covered by SDI. Since SDI uses all wages in this calculation, the SDI award may exceed the VP benefit calculation. A VP must request SDI award information for any claimant whose VP benefit is calculated at less than the SDI maximum.

To request SDI award information, complete question 10 on the DE 2523 or DE 2523F. This procedure should be only used as a guide to determine adequate VP payments, not as a calculation of the VP benefit. If the SDI award is not received within 10 days, contact the VPG at 916-653-6839.

**Reference: CCR, Title 22 Section 3268-1.**

### Report of Payment Adjustment on the DE 2523 or DE 2523F

If a close out DE 2523 or DE 2523F has been submitted, and the period of disability is extended and/or supplemental benefits are paid, prepare a new DE 2523 or DE 2523F as follows:

DE 2523:

- Complete items 1-10.
- Complete items 11-14, entering the total of all days and amounts paid, including those previously reported.
- Check the "adjustment" box in item 15.
- Check any other applicable boxes.
- Send the DE 2523 to the EDD (see address above).

DE 2523F:

- Complete items 1-13.
- Complete items 14-25, entering the total of all days and amounts paid, including those previously reported.
- Check the “adjustment” box in item 22.
- Check any other applicable boxes.
- Send the DE 2523F to the EDD (see address on page 30).

### **Correction of the DE 2523 or DE 2523F**

To correct any erroneous information submitted on the DE 2523 or DE 2523F, such as Social Security number, year of birth, or mailing address; write a letter to the EDD and report the error and correction of each item that is to be changed from the initial report. Do not prepare a new DE 2523 or DE 2523F to show corrections.

### **How to Submit a DE 2523 or DE 2523F using SDI Online**

1. Go to [www.edd.ca.gov](http://www.edd.ca.gov).
2. Select the “Disability” tab and select the “SDI Online Login” link.
3. Log into your SDI Online account with your username and password. If you do not have a SDI Online account, select the “Register for a new online account” link.
4. On the “Voluntary Plan Forms and Publications” page, select “Report of Voluntary Plan Claim-SDI DE 2523” or “Report of Voluntary Plan Claim-PFL DE 2523F”.
5. Complete the required fields on the “Voluntary Plan Options” page and select “Next”.
6. On the “Submit Claim Information and Final Report” page, enter the rest of the information from the DE 2523 or DE 2523F and select “Submit”.
7. The confirmation page will display the Claim ID and receipt number. Please record both numbers because you will need them later to access and view SDI Online and related award information.

### **How to Submit a DE 2523 or DE 2523F Final Report using SDI Online**

1. Follow the above steps 1-3.
2. On the “Voluntary Plan” page, in the “Claim Search” section, choose “Claim ID” from the “Search By” drop-down list.
3. Enter the Claim ID number.
4. Enter the claimant’s last name in the “Claimant Last Name” field and select “Search”.
5. Select the appropriate claim by selecting “Claim ID”.

6. In the “Forms Available to Submit” section, select “Submit Final Report”.
7. Enter the closeout information in the “Final Report Information” section and select the “Submit” button.
8. The confirmation page will display the Claim ID and receipt number. Please record both numbers for future reference.

### **How to Respond to a Disputed Coverage Referral Using SDI Online**

1. Follow the above steps 1-3.
2. On the “Voluntary Plan” page under the Message Center, select “Items Requiring Attention and Notices”.
3. Select “Subject” in the inbox screen to access the *Full Coverage Referral to Voluntary Plan, DE 5022*.
4. Complete the required fields in the “VP/TPA Responds Online to a DE 5022” section and select the “Submit” button.
5. The confirmation page will display the receipt number. Please record the receipt number for future reference.

### **Claim Effective Date (CED)**

A claim begins on the date the claimant’s disability began. SDI calculates the weekly benefit amount using the claimant’s base period. The date the disability began determines the base period unless the claim effective date is adjusted by SDI.

### **Claimant Certification**

The claimant must sign and file the claim form for it to be accepted.

### **Medical Certification**

Except as described below, California law states that DI and PFL benefits will be paid with medical certification from a treating medical or osteopathic physician, surgeon, optometrist, dentist, osteopath, chiropractor, podiatrist, psychologist, or practitioner (as defined by CUIC Section 2708) acting within the scope of his/her practice.

Effective January 1, 2010, Assembly Bill 2188 (Chapter 378, Statutes 2010) amended Section 2708(e)(2) of the CUIC to allow a nurse practitioner to certify to a disability, other than normal pregnancy or childbirth, after performance of a physical examination and collaboration with a physician and surgeon.

Note: This notice does not apply to or change any current procedures for certification by licensed midwives or certified nurse midwives. These two categories of providers may continue to certify claims for normal pregnancy or childbirth only.

**Reference: CUIC Section 2708.**

## **Other Options for Certification**

A claimant who is hospitalized or under the care of any U.S. government medical facility may submit a certificate signed by an authorized medical officer of that facility, provided that the disability is shown on the claimant's hospital chart. A claimant who is hospitalized in or by authority of a California county hospital may submit a certificate signed by the registrar of that facility, provided that the disability is shown on the claimant's hospital chart. A religious practitioner who is duly authorized and accredited by a bona fide church, sect, denomination, or organization may certify to a disability and provide an estimated duration. SDI maintains a list of accredited religious practitioners. If medical verification is needed, the VP or TPA may contact the EDD.

## **Verification of License**

At times, it may be necessary for the EDD to verify the medical certifier's credentials. When verification is needed, send a written request to:

**Employment Development Department  
Disability Insurance Branch  
Attn: Physician/Practitioner Verification  
P.O. Box 826880, MIC 29  
Sacramento, CA 94280-0001**

The verification request must contain the complete name, address, license number, and phone number of the individual in question. If the information is on file, a response will be sent within two weeks. If the individual has not been previously verified and placed on the approved list, an investigation will be necessary. The length of this process varies, depending on the nature of the investigation. Information from foreign countries may take up to a year. The VP may suggest that the claimant obtain medical certification from an accredited physician/practitioner in order to expedite benefit payments.

SDI is authorized to suspend processing claims from foreign physicians/practitioners who are under investigation for filing false claims when SDI does not have legal remedies to conduct a criminal investigation or prosecution in the foreign country. A foreign physician/practitioner who has been convicted of filing false claims with SDI may not file a certificate in support of a new or existing claim for disability benefits for a period of five years from the date of conviction.

**Reference: CUIC Section 2708(d).**

## **Medical Clarification on New Claims**

An initial claim for benefits must be supported by medical certification which includes:

- A diagnosis or, where no diagnosis has yet been obtained, a detailed statement of symptoms.
- A diagnostic code prescribed in the International Classification of Diseases.
- A statement of medical facts including secondary diagnoses, when applicable.

When initially completing the claim form, the physician/practitioner must provide a return-to-work date, even if it is only an estimate. The claimant must inform the VP if he/she is able to return to work at an earlier date in order to prevent an overpayment of benefits.

**Reference: CUIC Section 2708(a).**

## **Extended Medical Information**

The recovery/return-to-work date presented in the initial medical certification may be extended. The VP must include a notice with the final benefit check, identifying it as the last payment unless further medical certification of disability is furnished. The claimant, by law, has 20 days to submit an extension. The requirements for a medical extension are the same as for a new claim in terms of who may certify and the information required. If the continued medical information is postmarked beyond 20 days from the request date or notice of final payment, a disqualification may be issued for those days affected by the lateness. The disqualification may be waived for good cause.

**Reference: CUIC Section 2708.**

## **Approved Treatment Facilities**

If the claimant has been referred by certified medical authority and participates as a resident either in an approved alcoholic recovery home or drug-free residential facility, it is not necessary that he/she be certified as disabled. However, certification of referral to the residential facility is necessary. The State of California Department of Health Care Services (DHCS) must approve the alcoholic recovery home or drug-free residential facility. In these cases, the duration of benefit payments is limited.

Thirty days of initial benefits are allowed for treatment in an approved alcoholic recovery home, and may be extended up to 60 additional days, for a total of 90 payable days.

Forty-five days of initial benefits are allowed in a drug-free residential facility, and may be extended up to 45 additional days, for a total of 90 payable days. SDI maintains a list of approved facilities. All approved facilities must be licensed and certified. Verification of approved alcoholic recovery homes or drug-free residential facilities may be requested in writing by providing the facility name and address to the EDD.

**Reference: CUIC Sections 2626.1 and 2626.2.**

SDI may return information that a facility is not currently approved. In this case, the VP may request SDI to notify the facility that the DHCS states that the facility is not licensed and certified. SDI will inform the facility how to request approval from the DHCS.

Claims submitted from unapproved facilities are not payable. However, if other medical information indicates that the claimant is following a prescribed course of treatment, the claimant may be eligible for benefits. A prescribed course of treatment may include therapy under the direct medical supervision of a physician, whether in or out of a hospital setting. Visits with a physician for purposes of evaluation alone do not constitute medical treatment.

## **Independent Medical Examination**

The EDD has the right to require additional medical information to verify medical eligibility for continued benefits, including requiring an Independent Medical Examination (IME). The EDD is responsible for the cost of the exam and any related tests. IME requests are governed by the following general principles:

- The request for an examination must be reasonable.
- The IME physician must be directed to submit an independent and impartial opinion.
- The IME and any lab work or x-ray should only be extensive enough to determine the claimant's ability or inability to perform regular or customary work.
- The IME physician must provide an estimated date of return to work, if applicable.

Any claimant who fails to submit to a reasonable IME is subject to disqualification.

Exception: Residents of alcohol recovery homes or drug-free residential facilities and individuals who depend entirely upon prayer or spiritual means for healing are not required to submit to an IME.

**Reference: CUIC Section 2627(c).**

The claimant's failure to do the following can result in disqualification from receiving benefits:

- Failure to contact the IME physician within the time prescribed. The claimant will be disqualified from receiving disability benefits beginning on the eighth day after the date the IME request was mailed to the claimant.
- Failure to report for the examination or cancellation of the appointment. The claimant will be disqualified from receiving benefits beginning with the date of the IME, or the date of the cancellation, whichever is earlier.
- Failure to comply with the request for an IME but later agrees to submit to one. The disqualification ends on the day before the examination was performed.

Upon receipt of the IME report, the EDD must determine a claimant's eligibility for disability using the following criteria:

- If the IME physician confirms or extends the treating physician/practitioner's original estimated recovery date, the EDD may use the treating physician/practitioner's original recovery date.
- If the IME physician confirms disability on the date of the IME but states the claimant may be able to return to work sooner than the claimant's physician/practitioner stated, the EDD must pay at least to the IME physician's estimated recovery date (additional medical evidence may be requested from the claimant's physician/practitioner to support payment of benefits beyond that date).
- If the IME physician states the claimant is able to perform his/her regular or customary work on the date of the IME, the EDD must review all available medical information and determine the claimant's eligibility for DI benefits. If the department determines the claimant is able to perform his/her regular or customary work on the date of the IME, disqualification of benefits begins on that date.

**Reference: CUIC Section 2627(c); CCR, Title 22 Section 2627(c)-1.**

## **Pregnancy**

Claims due to or related to pregnancy, before and/or after delivery, are subject to the same laws and regulations as other disability claims. There is no required or prescribed duration for such claims. All of the requirements previously stated for medical certification, disability from regular or customary employment, and wage loss are applicable.

**Reference: CUIC Section 2626.**

## **Late Claims**

The CUIC considers a claim timely if it is filed within 41 days from the first compensable day. Therefore, by including the seven-day waiting period, SDI allows 49 days from the date of disability for a timely claim, using the postmark date as the reference point. If the VP allows a longer time for filing a timely claim, the plan text must contain information on the criteria for timeliness.

If a claim is postmarked beyond the allowable time, the claim date is adjusted and benefits are denied or suspended for the duration of lateness. Benefits are then payable from the adjusted claim date.

**Example:** The disability began on March 1 and the claim form is postmarked June 1. Since the timely filing period is 49 days, this claim is timely through April 18. Late filing is calculated for the period April 19 through June 1, which is 44 days. The claim date is adjusted by disallowing 44 days from March 1 to April 13. The adjusted claim date is April 14. The waiting period is April 14 through April 20, and benefits are paid beginning April 21.

**Reference: CUIC Section 2706.1.**

## **Overlapping Disabilities**

Benefits payable to an employee covered by a VP are the continuing liability of the VP regardless of any subsequent disabling condition occurring during the same disability benefit period. Once a valid claim is established, the benefit period is extended by any additional disabling conditions that occur before the employee is released to return to work for the initial condition.

## BENEFIT DETERMINATION PROCEDURES

### Calculation of State Award

The SDI weekly benefit amount (WBA) and maximum benefit amount (MBA) are based on wages paid to the claimant during a 12-month base period. Only wages subject to the SDI tax can be considered, and those wages must total at least \$300 during the 12 consecutive months under consideration.

Exceptions:

- If a claimant earned less than \$300 in the base period, and the claim begins during a UI benefit year, the UI base period may be substituted.
- If the claimant served in the military, received workers' compensation benefits, or did not work because of a trade dispute during the base period, prior wages may be substituted to increase the benefit.
- A person who is determined ineligible for any benefit amount because of extended unemployment may also be able to substitute prior wages to establish a benefit amount.

**Reference: CUIC Sections 2611(b), 2612, 2652, 2658, 2776, and 2777.**

Qualifying wages from all employers during the base period are considered in the calculation of the WBA. Base period wages do not need to include wages from the current employer in order to qualify for benefits (i.e., wages do not need to be strictly VP employer wages to be qualifying wages for VP disability benefits).

The MBA is 52 times the WBA, but not more than the total wages earned during the base period. The base period is determined by the effective date of the claim as follows:

If claim begins:	The base period is the 12 months ending the previous:
January, February, March	September 30
April, May, June	December 31
July, August, September	March 31
October, November, December	June 30

**Reference: CUIC Sections 2610, 2655(c), and 2655(d).**

Contact SDI by phone at 800-480-3287 or visit [www.edd.ca.gov](http://www.edd.ca.gov) for the current WBAs.

### Calculation of Benefits When Receiving Wages

Receipt of wages, earned or not earned, may not always preclude payment of benefits. Benefits are paid to compensate for a wage loss due to a disability. When a wage loss is identified, and all other eligibility requirements are met, the individual is eligible for benefits. However, the benefit amount will be reduced if the amount of wages paid plus the benefit exceed the claimant's regular wage immediately prior to the commencement of the disability, exclusive of wages paid for overtime work. Vacation pay is disregarded when calculating benefit entitlement.

**Scenario:** The claimant's regular wage prior to disability was \$450 per week. The maximum weekly benefit entitlement under the VP is \$250 per week.

**Example 1:** The claimant is unable to work and is not paid any wages by the employer. The claimant is eligible for \$250 per week in VP benefits, the maximum entitlement.

**Example 2:** The claimant is released by the treating physician/practitioner to return to work half time, earning \$225 in wages per week. The claimant suffers a \$225 per week wage loss, and is eligible for \$225 per week in VP benefits, the amount equal to the wage loss.

**Example 3:** The claimant is released by the treating physician/practitioner to return to work 15 hours per week, earning \$169 in wages per week. The claimant suffers a \$281 per week wage loss and is eligible for \$250 per week in VP benefits, the maximum entitlement.

	<b>Example 1</b>	<b>Example 2</b>	<b>Example 3</b>
<b>Regular Wages</b>	\$450	\$450	\$450
<b>Partial Wages</b>	\$0	-\$225	-\$169
<b>Wage Loss</b>	\$450	\$225	\$281
<b>VP Benefit Amount</b>	\$250	\$225	\$250

The claimant is paid the calculated maximum VP benefit amount, or the amount of the wage loss, whichever is less. This calculation uses the weekly wage loss and weekly benefit entitlement to integrate benefits with wages. Benefits calculated for partial weeks must use one-seventh or one-fifth the wage and benefit amount as specified in the VP text.

The wages may be paid by the VP employer paying DI or by a different employer. Claimants may be released by the physician/practitioner to return to light work, part-time work, or less than “regular or customary work.” The claimant may also seek work with another employer doing less than regular or customary work and still suffer a wage loss from the regular or customary work. In this case, the claimant must submit a record of wages to the VP paying benefits so that benefit entitlement may be calculated.

**Reference: CUIC Sections 140.5 and 2656.**

### **Calculation of Partial Benefits**

When benefits are paid for a partial week, the calculation must conform to the statement in the VP text. SDI pays one-seventh of the WBA for each day of disability. This means that the claimant may be paid for days of the week not usually worked (e.g., weekends and holidays). The claim and benefits may begin on a day that the claimant would not have been scheduled to work (e.g., Saturday or Sunday). If a VP calculates benefits on a five-day week, a comparison to the SDI computation must be done to insure the adequacy of benefit amounts.

**Reference: CUIC Section 2656.**

## Claimant's Right to Recalculation of Benefits

When the EDD receives a *Report of Voluntary Plan Disability Claim*, DE 2523, the basic information is entered into SDI Online. A *Notice of Computation*, DE 429D, is mailed to the claimant. The claimant should review and verify the wages used to calculate the SDI award. If one of the exceptions is listed under the Calculation of State Award, the claimant has the right to request a recalculation of benefits from SDI. Since the VP benefit must meet or exceed the SDI award in all cases, this recalculation may affect the VP benefit.

There may also be wage errors or omissions on the DE 429D. Wages may have been reported but credited to an incorrect Social Security number. It is the claimant's responsibility to contact the nearest EDD office to submit wage verification and to request a recalculation.

**Reference: CUIC Sections 2707.3 and 2707.4; CCR, Title 22 Section 3254-1(a).**

## Benefit Redirection

VP claimants may choose to have a portion of their VP benefits redirected to pay or reimburse all or a part of the cost of their employee-paid benefits. Claimants are not required to have benefits redirected. The redirection of VP benefits may be made at the time the individual applies for VP benefits or at any time the individual is receiving benefits.

The claimant may terminate or change the redirection of benefits at any time. Benefit payments may not be delayed because the claimant elects to redirect a portion of his/her benefits.

The request must be in writing and must specify the weekly amount of VP benefits to be directed to the employee-paid benefit(s).

The authorization form must allow the claimant to:

- Authorize in writing the weekly amount of VP benefits to be redirected for the payment of the employee paid benefit.
- Terminate or change the terms of the voluntary redirection of benefits at any time. If the claimant is legally declared incompetent, the spouse of the claimant, in the absence of any other legally authorized representative, has the right to continue or cancel the authorization.

**Reference: CUIC Section 1345.**

## Payment or Denial of Benefits

If a claimant is determined eligible for benefits, he/she should be paid within 14 days of receipt of a properly completed claim. If an employer denies benefits in whole or in part on a claim, a notice must be provided to the claimant. A copy of the required notice must also be promptly provided to the EDD.

The notice to the claimant must include information on appeal rights and a copy of the disqualification must be attached to the follow-up copy of the *Report of Voluntary Plan Disability Claim*, DE 2523, when it is submitted to the EDD. A claimant may assume that unreasonable delay in payment is a denial of benefits and may request a hearing before an Administrative Law Judge.

**Reference: CUIC Sections 2701.5 and 3264; CCR, Title 22 Section 3267-1.**

## **Denial of Benefits**

Although a claimant may have a disabling condition that prevents him/her from doing regular or customary work, he/she may not be eligible for benefits for some or all days of the disability period. The allowable reasons and the legal references for benefit disqualification include, but are not limited to the following:

- Late filing of the initial or continued claim.

**Reference: CUIC Sections 2706.1 and 2706.2; CCR, Title 22 Section 2706-3.**

- Not being under the care and treatment of a physician/practitioner during some days which benefits are claimed, although regulations allow payment of benefits for up to seven days prior to the first day of care and treatment.

**Reference: CUIC Section 2708; CCR, Title 22 Section 2706-1.**

- Receiving full wages.

**Reference: CUIC Section 2656.**

- Receiving workers' compensation benefits in an amount greater than the DI benefit entitlement.

**Reference: CUIC Section 2629.**

- Incarceration as the result of a criminal conviction or being disabled as a result of the commission of arrest, investigation, or prosecution of a crime that results in a felony conviction.

**Reference: CUIC Sections 2680 and 2681.**

A claimant may not be eligible for a portion of benefits if the wage loss incurred is less than the benefit amount. In these situations, the employee is entitled to benefits equal to the wage loss. Allowable reasons for partial benefit disqualification include:

- Light or limited work, at less than the regular weekly wage.
- Part-time return to work, at less than the regular weekly wage.
- Sick leave pay at less than the regular weekly wage.
- Receipt of temporary or permanent workers' compensation benefits at less than the disability benefit entitlement.

When VP benefits are disallowed in whole or in part, a written notice of disqualification must be sent to the claimant. The written notice must include:

- The dates for which benefits were disqualified.
- An explanation of why benefits were disqualified for those dates.
- Information advising the claimant of the right to appeal the disqualification.

If and when the period and reason for disqualification ends, benefit payments must be continued at the weekly and maximum benefit amount allowed by the plan, provided all other eligibility criteria are met.

**Reference: CUIC Section 2656.**

## **Claimant's Right to Appeal Denial of Benefits**

When a claimant is denied any or all benefits, he/she must be informed of the right to appeal in the manner prescribed by the CUIC. To appeal a denial of benefits, the claimant must send a letter to any EDD office postmarked no more than 20 days from the date of the notice of denial of benefits. The letter should include the following:

- Claimant's name.
- Claimant's signature.
- Claimant's Social Security number.
- The reason for appealing the decision.

The EDD office will complete the required forms and forward them to the appropriate Office of Appeals.

**Reference: CUIC Section 2707.2.**

## **Administrative Law Judge or CUIAB Decisions**

When an Administrative Law Judge (ALJ) or the CUIAB decides that a claimant is entitled to benefits, the VP must pay benefits within 15 days of the mailing of the notice of decision.

The VP's right to appeal an ALJ decision to the CUIAB does not override the effect of the ALJ decision. Benefits must be paid timely pending the decision of the CUIAB.

**Reference: CUIC Section 3265(a).**

## **Payment of Benefits Pending Appeal Decision**

In some circumstances, payment of benefits is required pending the outcome of an ALJ appeal. If a claimant is initially determined eligible for and is paid benefits and is subsequently disqualified or has benefits reduced, he/she may elect to continue receiving full benefits pending the outcome of the appeal if he/she:

- Files a timely appeal.
- Submits a signed promise to the VP to repay benefits if an ALJ rules the claimant was not entitled.
- Files continued claims pending the ALJ decision.
- Is otherwise eligible to receive benefits.

**Reference: CCR, Title 22 Section 2706-5.**

## SDI ONLINE REGISTRATION

SDI Online is an electronic claim filing system for claimants, physicians/practitioners, VPs, and employers. The EDD encourages VP employers and TPAs to register for SDI Online and use the system to submit VP forms to the EDD online.

Once registered, it is very easy to use SDI Online to submit the *Report of Voluntary Plan Disability Claim*, DE 2523, or *Report of Voluntary Plan Family Leave (VPFL) Claim*, DE 2523F. If a VP employer or TPA submits the DE 2523 online to request claimant award information, the system will process the request and within 48 hours post the award information in the SDI Online Inbox of the VP or TPA. The DE 2523F can be submitted online; however, the SDI Online system is not able to provide PFL award information. Once the DE 2523F has been received, PFL award information will be mailed to the claimant.

In addition to using SDI Online to notify VP employers and TPA of awards, the EDD also uses SDI Online to send Disputed Coverage Claim referrals, *Full Coverage Referral to Voluntary Plan*, DE 5022, to VP employers or the TPA. The EDD sends the referral to the SDI Online Inbox of the VP employer or TPA. The VP employer or TPA has the option of developing the procedures for accessing the SDI Online Inbox to complete the DE 5022 and submit a response to the EDD to accept or deny liability.

### Obtaining SDI Online Usernames and Temporary Passwords

Prior to using SDI Online, VP employers and/or authorized TPAs must request a username and temporary password from the EDD.

To obtain a copy of the EDD SDI Online Username Tracking Matrix, VP employers and/or authorized TPA can request a copy by contacting the VPG at 916-653-6839 or e-mailing the request to [VPSDIOOnlineRegistration@edd.ca.gov](mailto:VPSDIOOnlineRegistration@edd.ca.gov).

Completed copies of the *EDD SDI Online Username Tracking Matrix* can be sent to the EDD by:

- E-mail at [VPSDIOOnlineRegistration@edd.ca.gov](mailto:VPSDIOOnlineRegistration@edd.ca.gov).
- U.S. mail (see address on page v).
- Fax to 916-653-6209.

The definitions below are provided to assist with completing the *EDD SDI Online Username Tracking Matrix*:

- Username: A unique identifier that meets the following criteria:
  - Minimum length of 8 characters.
  - Maximum length of 15 characters.
  - Can contain both letters (alpha) and digits.
  - Cannot contain special characters such as (! @ # \$ % ^).
  - Example which meets username criteria: **JaneDoe10**.

- E-mail address: Business e-mail address.
- First and last name: Owner, partner, or officer.
- VP employer: Company name.
- VP account number: Employer's six-digit VP number.
- Employer account number: California employer's account number.

After the EDD receives the completed *EDD SDI Online Username Tracking Matrix*, the VP employer and/or authorized TPA will receive an e-mail response from the EDD. If the username is approved, the VP employer will receive the username along with a temporary password. If the username is not approved, the VP employer will be instructed to resubmit a new username to the EDD for approval.

### **Creating an SDI Online User Account**

Once the username and temporary password have been issued, the VP employer and/or TPA may create an SDI Online user account. Please visit [www.edd.ca.gov/disability](http://www.edd.ca.gov/disability) for further instructions on how to create a SDI Online user account, and refer to the annual GR Letter for more information.

Once the user account has been successfully created, you will receive a notification message indicating successful account creation. Please keep a copy of the notification for your own record.

## **PFL ELIGIBILITY**

### **Eligibility for Voluntary Plan Family Leave**

Employees covered by an employer's VP are also covered for Voluntary Plan Family Leave (VPFL). If a VP insurer provides your company's DI coverage, then it must also provide PFL coverage.

An employee may submit a claim for VPFL benefits for the following reasons:

- To care for a seriously ill child, spouse, parent, registered domestic partner, or any eligible family member as defined by the CUIC.
- To bond with the employee's new child or the new child of the employee's spouse or registered domestic partner.
- To bond with a child in connection with the adoption or foster care placement of the child with the employee or the employee's spouse or registered domestic partner.

Effective July 1, 2014, Senate Bill 770 (Chapter 350, Statutes 2013) amended CUIC Sections 2708, 3301, 3302, and 3303 to expand the scope of the Family Temporary Disability Insurance (FTDI) program to include grandparents, grandchildren, siblings, and parents-in-law as potentially eligible family members when filing a family care claim for FTDI benefits.

A serious health condition means an illness, injury, impairment, or physical or mental condition of a patient that involves inpatient care in a hospital, hospice, or residential medical care facility or continuing treatment or supervision by a physician/practitioner as defined in the California Government Code.

### **Ineligibility for Voluntary Plan Family Leave**

The claimant may not be eligible for VPFL benefits if:

- They are not suffering a loss of wages.
- They are receiving DI, UI, or workers' compensation.
- They are not working or looking for work at the time they begin PFL.
- The need for care is not supported by the certificate of a treating physician/practitioner.
- They are in jail, prison, recovery home, or any other place because they were convicted of a crime.

## **VPFL WAGES AND BENEFIT PAYMENT**

### **Provisions**

For California workers covered by SDI, PFL provides up to six weeks of benefits for employees who must take time off of work to care for a seriously ill child, parent, parent-in-law, grandparent, grandchild, sibling, spouse, or registered domestic partner (any eligible family member as defined by the CUIC), or to bond with a new child.

### **Calculation of State Award**

An individual's PFL claim begins on the date he/she first began to care for a seriously ill family member or bond with a new child. PFL calculates the WBA using his/her base period. The date the PFL claim begins determines an individual's base period.

An individual who wants his/her PFL claim to begin later so that there is a different base period should call PFL at 877-238-4373 before filing a claim.

Note: An individual may not change the beginning date of his/her claim or adjust a base period after establishing a valid claim.

The WBA for VPFL claims is calculated using the SDI benefit schedule, based on wages paid to the claimant during a 12-month base period. Similarly, the minimum earnings of \$300 in the base period are required to establish a claim, and the 55 percent wage replacement ceiling for the WBA also applies.

Each VP claimant must be paid a VPFL benefit at least equal to what he/she would have been paid if covered under SDI. A claimant's state award might exceed the VP benefit calculation since the state uses all subject wages in its calculation. Therefore, a VP must obtain the state award information for any claimant whose VDI or VPFL benefit is calculated at less than the state maximum.

VP employers may request state award information for VPFL claims on the required *Report of Voluntary Plan Family Leave (VPFL) Claim*, DE 2523F.

### **Benefits**

VPFL benefits must be paid at a rate equal to or greater than the SDI rate, just as is required for VPDI benefits. VPFL weekly benefits are set at the same rate as SDI benefits.

### **Appeal of Denial of VPFL Benefits**

The appeals process for VPFL claims is the same as for SDI and VPDI claims. When a claimant is denied any or all benefits, he/she must be informed in writing of the right to appeal. To appeal a denial of VPFL benefits, the claimant must send a letter to the following address:

**Employment Development Department  
Disability Insurance Branch  
Paid Family Leave  
P.O. Box 997017  
Sacramento, CA 95799-7017**

The letter must be postmarked no later than 20 days from the date of the notice of denial of benefits. The letter should include the claimant's name, signature, Social Security number, and the reason for appealing the decision. Upon receipt of a PFL appeal, the EDD will complete the required forms and forward them to the appropriate Office of Appeals.

**Reference: CUIC Section 2707.2; CCR, Title 22 Section 5007(c).**

## **Claimant’s Right to Benefits Pending Appeal**

An employee may elect to continue to receive further benefits pending the outcome of a timely appeal to an Administrative Law Judge (ALJ) when the VP had determined the employee initially eligible and subsequently found the employee to be ineligible.

**Reference: CCR, Title 22 Section 2706-5.**

## **VPFL Disputed Coverage Appeals**

An employee, the EDD, or the VP may appeal a denial of VPFL coverage within 30 days of the date the notice of denial was mailed.

In disputed coverage cases in which a denial of coverage is not furnished, an appeal shall be filed after 25 days and within 55 days from the date the appellant sends a request for payment of benefits to the EDD or VP.

If eligible, the employee shall be paid benefits by the plan that initially received the claim, pending disposition of the disputed coverage appeal. See Appeal of Denial of VPFL Benefits for additional information on page 45.

**Reference: CCR, Title 22 Section 5007(b); CUIC Section 2712.**

## **Waiting Period**

As with SDI, VPFL claimants serve a seven-day, non-payable waiting period. VP employers have the option to waive this waiting period as part of the “greater right” provided by the plan, but this must be specified in the plan text. The waiting period may not constitute part of the six weeks of VPFL payments.

## **VPFL Claims for the Same Care Recipient**

Periods of family care leave for the same care recipient within a 12-month period shall be considered one disability benefit period.

**Reference: CUIC Section 3302.1(b).**

**Example 1:** A claimant establishes a VPFL claim to care for his seriously ill mother. He is off work for three weeks during which time he serves a one-week waiting period and paid two weeks of VPFL benefits. Later, during that same 12-month period, he is off work again for a week to care for his mother. The claimant does not serve a separate waiting period because he is caring for the same care recipient (his mother) within the same 12-month period.

**Example 2:** This same claimant establishes another VPFL claim during the same 12-month period to care for his seriously ill child. The claimant serves a separate seven-day waiting period because he is caring for a different care recipient (his child) within the same 12-month period.

Note: The claimant cannot receive more than six weeks of PFL benefits in the 12-month period.

## **VPDI Pregnancy Claims Transitioning to VPFL Bonding Claims**

Periods of disability for pregnancy and periods of family care leave for bonding associated with the birth of that child shall be considered one disability benefit period.

**Reference: CUIC Section 3302.1(c).**

**Example:** A woman establishes a disability claim for pregnancy, serves a seven-day waiting period, and receives VPDI benefits. Upon the expiration of her disability, she establishes a VPFL claim to bond with her new minor child. The 12-month period begins on the first day of the bonding claim. The claimant is not required to serve a second seven-day waiting period because her VPDI claim for pregnancy and her VPFL claim for bonding are considered one disability benefit period.

Note: VPFL claimants filing transition claims from pregnancy to bonding are entitled to at least six times the VPFL weekly benefit amount (WBA), regardless of the amount or duration paid on the VPDI pregnancy claim or the amount of wages in the base period used to calculate the VPDI WBA.

## **Continued and Re-established Claims**

A VPFL continued claim is a claim for the same care recipient within the same 12-month period, subsequent to a 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.

### **VPFL Re-established Claims**

A VPFL re-established claim is 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:

- An interruption of the period for which benefits are claimed for the same care recipient for which a new waiting period is not required.
- Benefits are claimed for a new care recipient for whom a new waiting period is required.

### **Shift in Liability Due to Re-established Claims**

Liability for PFL claims may rest with more than one plan (VP or SDI) during the 12-month period that begins when a claimant establishes a valid VPFL claim. When more than one plan is liable for coverage within the 12-month period, correct calculation of a claimant's benefit amount requires factoring in benefits from all plans to ensure the claimant receives the proper payment.

When a claimant files a VPFL claim, the VP employer must send a *Report of Voluntary Plan Family Leave (VPFL) Claim*, DE 2523F to the EDD. If the EDD or a different VP employer has paid PFL benefits during the same 12-month period, the EDD will alert the VP of the existence of the prior claim.

If the prior claim was paid by the EDD, the EDD will forward a copy of the PFL claim payment history to the VP employer, along with the name and date of birth of the care recipient. No other information will be shared unless written authorization from the care recipient is first obtained by the EDD. The VP will be advised to contact the claimant for additional information.

Conversely, when the EDD receives a PFL claim, the EDD will have record of any prior VPFL claims during the 12-month period, provided the VP employer has sent the required opening and/or closing DE 2523F.

## **Disputed Coverage (or Disputed Liability) Claims**

When a dispute arises over whether benefits are payable from the state plan or from one or another VP, benefits must be paid from the plan that received a claim first, pending determination of the dispute.

**Reference: CUIC Section 2712.**

Two levels of administrative proceedings will resolve disputes regarding liability for DI or PFL claims. The first is a hearing before an ALJ. The second is review of the ALJ's decision (if appealed) by the CUIAB.

“Disputed coverage” is unrelated to the question of a claimant's eligibility for benefits. A disputed coverage proceeding is held only to determine whether SDI or the VP is liable to insure the claimant. There is no presumption in a disputed coverage proceeding that the claimant is eligible. It is the plan that accepts liability that determines whether the claimant meets eligibility criteria for benefits.

The EDD uses a *Full Coverage Referral to Voluntary Paid Family Leave (PFL) Plan*, DE 5022F, to refer claims to the VP employer. VPs must send their disputed coverage VPFL claims to:

**Employment Development Department  
Disability Insurance Branch  
Paid Family Leave  
P.O. Box 997017  
Sacramento, CA 95799-7017**

## **Simultaneous Coverage Claims**

A claimant who works for more than one employer at the same time may be simultaneously covered by more than one plan. A VPFL claimant who is employed by both an SDI and a VP employer may be eligible for simultaneous coverage benefits provided the claimant suffers a wage loss from both employers.

## **Conflicting Wages**

Similar to SDI, receipt of other wages or benefits may be in conflict with VPFL benefits. Sick leave pay and paid time off (or any non-specific leave provided by the employer if it is used for disability or family care leave) are considered wages and are in conflict with PFL and VPFL. As with SDI, employers may coordinate any type of wage continuation pay with VPFL.

The law provides that employers have the option to require employees to use up to two weeks of earned vacation pay prior to receiving VPFL. Unlike VPDI, those two weeks of vacation pay are in conflict with VPFL, and VPFL benefits will not be payable during the same period. However, one week of vacation pay may be used to satisfy the one-week waiting period. After the initial two weeks, vacation pay will no longer be in conflict with VPFL.

## **MEDICAL CERTIFICATION**

### **Medical Determinations and Independent Medical Examinations**

When VPFL benefits are provided for wage loss due to care of a child, parent, parent-in-law, grandparent, grandchild, sibling, spouse, or registered domestic partner (any eligible family member as defined by the CUIIC) with a serious health condition, the following information is required:

- Diagnosis.
- ICD code (or where not yet obtained, a detailed statement of symptoms).
- Date, if known, when the condition commenced.
- Statement that the care recipient's serious health condition warrants the participation of the employee to provide care.
- An estimate of the amount of time that the physician/practitioner believes that employee is needed to care for the care recipient.
- Probable duration of the condition.
- A physician/practitioner must certify the need for full- or part-time care by the employee. This may include, but is not limited to, providing psychological comfort and arranging third-party care.

**Reference: CUIIC Section 2708.**

The VP employer may require the care recipient to submit to an IME to determine the following:

- Whether a serious health condition exists.
- Whether a care provider's participation is warranted.
- The period of time that the care provider's participation is warranted.

**Reference: CUIIC Section 3306(b).**

## **Workers' Compensation Benefit Reduction**

Although a VP pays compensation for injury or illness which is not work-related, in some cases benefits are payable along with cash payments for industrial injury or illness. The CUIIC allows for payment of SDI or VP benefits reduced by "other benefits." "Other benefits" are defined as temporary disability (TD) and permanent disability (PD) under a workers' compensation (WC) or employer's liability law.

### **Reference: CUIIC Section 2629.**

If an individual is receiving WC benefits in an amount less than the calculated VP benefit, the VP must pay the difference between the WC and the VP benefit.

Employees who sustain an injury on the job should be instructed to file both a WC and a VP claim. If the amount of TD or PD equals or exceeds the VP benefit, the VP claim is disqualified (not eligible for payment) until the claimant returns to work and/or the "other benefits" cease.

## **Conflicting Medical Information**

WC benefits may cease when the insurance carrier or self-insured employer has medical documentation indicating that the claimant has recovered or is able to return to his/her regular or customary work. However, the claimant's treating physician/practitioner may continue to certify that the claimant remains disabled. In the case of conflicting medical opinion, the VP may pay benefits at the rate described in the VP text or may deny benefits. If VP benefits are denied, a denial letter must be sent to the claimant advising of the right and method to appeal the decision.

## **Payment of VP Benefits Under Lien**

When information indicates that the disability resulted from a work related illness or injury, a valid VP claim must be paid if one of the following exists:

- Current proof from the WC insurance carrier or self-insured employer that TD benefits are not being paid.
- Current proof showing the claimant is not entitled to TD for the period in question (i.e., *A Notice of Final Check* letter stopping TD or denying those benefits).
- A current *Application for Adjudication* obtained from the State of California Division of Workers' Compensation, substantiating the above, containing either a date-received stamp or a Workers' Compensation Appeals Board (WCAB) case number.

The VP should file a lien against the WC insurance carrier/self insurer when benefits are paid on an undecided, work-related disability claim. If the WC insurer later concedes liability or is ruled liable for a period that was paid by the VP, the plan is entitled to reimbursement up to the WC rate. The required form for filing a lien may be obtained by contacting the WCAB at:

**Workers' Compensation Appeals Board**  
**455 Golden Gate Avenue**  
**San Francisco, CA 94102**  
**Phone 415-703-1870**

### **Limitation of Delay in Payment**

VP benefits may not be delayed except where the claimant is receiving or the employer or insurer has agreed to commence payment of "other benefits" (i.e., WC).

The VP is required to make an initial determination of the claimant's entitlement to WC benefits upon filing of the DI claim. If the claim is deemed to be industrial, the employee must be informed that benefits will be paid pending receipt of WC benefits if the employer or insurer fails to agree to pay or allow WC benefits within 14 days of notification of industrial injury.

**Reference: CUI Section 2629.1.**



## **STATE OF CALIFORNIA**

### **LABOR AND WORKFORCE DEVELOPMENT AGENCY**

### **EMPLOYMENT DEVELOPMENT DEPARTMENT**

The EDD is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Requests for services, aids, and/or alternate formats need to be made by calling 800-745-3886 (voice). TTY users, please call the California Relay Service at 711.