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Insurance

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Insurance

Insurance; assignment of health insurance benefits

Health and Safety Code § 1371.3 (new); Insurance Code § 11512.186 (new); §§ 10133, 10133.7, 10350.9 (amended); Welfare and Institutions Code § 22012 (repealed); §§ 22001, 22003, 22005, 22006, 22011, 22013 (amended).
AB 2309 (Woodruff); 1993 STAT. Ch. 744

Existing law authorizes disability insurers¹ to directly reimburse persons² providing hospitalization or medical care upon written consent of the insured.³ Chapter 744 requires that disability insurers allow the insured to assign⁴ benefits to persons having paid for the hospitalization or medical care.⁵ In particular, if the insured is a Medi-Cal⁶ beneficiary,⁷

1. See CAL. INS. CODE § 23 (West 1993) (defining insurer and insured); see also *id.* § 22 (West 1993) (defining insurance as a contract whereby a person undertakes to indemnify another against loss, damage, or liability arising from an unknown event); *id.* § 106 (West 1993) (defining disability insurance as insurance pertaining to injury, disablement or death resulting from accidents, and to disablements resulting from sickness).

2. See *id.* § 19 (West 1993) (defining person).

3. *Id.* § 10133(a) (amended by Chapter 744).

4. See generally 1 B.E. WITKIN, SUMMARY OF CALIFORNIA LAW, *Contracts* §§ 921-953 (9th ed. 1987 & Supp. 1993) (explaining the California law on assignments of contracts).

5. CAL. INS. CODE § 10133(a) (amended by Chapter 744); see *id.* § 10350.9 (amended by Chapter 744) (requiring disability policies to state that insurance benefits may be paid directly to persons having paid for the hospitalization or medical care); SENATE FLOOR ANALYSIS OF AB 2309, at 2-3 (Aug. 31, 1993) (reporting that when a Medi-Cal beneficiary becomes unemployed due to a life-threatening disease and retains additional private health insurance coverage, the Department of Health Services (DHS) continues to pay the beneficiary's insurance premium while still providing benefits, but a limited number of private health providers reimburse the insured and refuse to assign payment directly to the DHS, making reimbursement procedures time consuming and more expensive); *id.* at 3 (stating that when a non-custodial parent provides insurance coverage for a child and does not provide for assignment to the DHS, it is difficult for the DHS to get reimbursement since the payment was made directly to the parent); see also *id.* at 3 (reporting that the California Medical Association supports these measures because it would ensure timely payments and reduce administrative problems). Chapter 744 requires persons who seek reimbursement for medical services to submit proof of payment of medical services and the health care provider's itemized bill. CAL. INS. CODE § 10133.7(b)(1) (enacted by Chapter 744). In cases where the insured does not reside with the person seeking medical care, Chapter 744 requires the person seeking reimbursement to submit annually a copy of the judicial order requiring the insured to provide dependent coverage, or a state approved form verifying the existence of such a judicial order. *Id.* § 10133.7(b)(2) (enacted by Chapter 744). In such cases, if the provider is seeking direct reimbursement, the provider must additionally submit an itemized bill signed by the custodial parent or guardian certifying that the services being billed for have been provided. *Id.* § 10133.7(b)(3) (enacted by Chapter 744).

6. See CAL. WELF. & INST. CODE § 14063 (West 1991) (defining Medi-Cal as the California Medical Assistance Program); *id.* §§ 14000-14196 (West 1991 & Supp. 1993) (providing for health care benefits and services under the Medi-Cal Act).

7. See *id.* § 14252 (West 1991) (defining Medi-Cal beneficiary as a person eligible to receive benefits under the Medi-Cal Act); see also *id.* § 14005 (West 1991) (designating who is eligible for health care benefits and services under the Medi-Cal Act).

Chapter 744 requires the insurer to directly reimburse the State Department of Health Services (DHS).⁸

Chapter 744 similarly mandates that group nonprofit hospital plans⁹ allow their insured to assign benefits to the person who paid for the insured's hospitalization or medical care.¹⁰ Under Chapter 744, group health care service plans¹¹ are also required to permit Medi-Cal beneficiaries to assign their right to reimbursement to the DHS when the health care services were not provided pursuant to a contract with the DHS under the Medi-Cal Act or the Waxman-Duffy Prepaid Health Plan Act.¹² A health care service plan's refusal to allow such assignments is a misdemeanor.¹³

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Insurance; Health Insurance Access and Equity Act

Health and Safety Code §§ 1389.1, 1389.2, 1389.3 (new);
Insurance Code §§ 10112.5, 10384 (new); §§ 799.03, 10291.5,
10350.2, 12683, 12684 (amended); Labor Code § 2808 (new).
AB 1100 (Brown); 1993 STAT. Ch. 1210

Existing law provides limited access to health insurance to people who are unable to obtain it.¹ Chapter 1210 enacts the Health Insurance Access and Equity Act in an effort to increase access to insurance for those

8. CAL. INS. CODE § 10133.7(d) (enacted by Chapter 744); *see* CAL. HEALTH & SAFETY CODE § 103 (West 1990) (describing the jurisdiction of the State Department of Health Services).

9. *See* CAL. INS. CODE §§ 11493-11517 (West 1990 & Supp. 1993) (governing nonprofit hospital service plans).

10. *Id.* § 11512.186(a) (enacted by Chapter 744).

11. *See* CAL. HEALTH & SAFETY CODE § 1345(f) (West Supp. 1993) (defining health care service plan as a person who undertakes to arrange to provide for health care services to subscribers, or to pay for or reimburse the cost of such services, in return for a periodic charge).

12. *Id.* § 1371.3 (enacted by Chapter 744); *see* CAL. WELF. & INST. CODE §§ 14200-14499.77 (West 1991 & West Supp. 1993) (establishing the Waxman-Duffy Prepaid Health Plan Act).

13. CAL. HEALTH & SAFETY CODE § 1390 (West 1990); *see* CAL. PENAL CODE § 17(b) (West Supp. 1993) (defining misdemeanor).

1. CAL. INS. CODE § 12711(a)-(g) (West Supp. 1993) (authorizing the major risk medical insurance board to assess the insurability of high risk clients, and to place them in plans that provide coverage adequate to meet their needs); *see id.* § 12710 (West Supp. 1993) (creating the major risk medical insurance program, and setting forth guidelines for establishing the board and executive director).

Californians who have the HIV virus.² This act subjects every disability insurance contract entered into by a resident of California, except as specified, to the provisions of the California Insurance Code, regardless of where the contracting insurance company is located.³

Existing law permits an insurance company to test life and disability insurance applicants for the HIV antibody to determine insurability, provided that the insurance company follows the informed consent requirements.⁴ Chapter 1210 requires that a standardized informed consent disclosure form be developed by the Insurance Commissioner to be used when life and disability applicants are required to take HIV-related tests.⁵

Chapter 1210 forbids the practice of postclaim underwriting⁶ by a health care service plan, or any insurer who issues a disability insurance policy covering medical, surgical, or hospital benefits, except as provided by the Act.⁷ Existing law provides that insurance companies may not deny

2. 1993 Cal. Legis. Serv. ch. 1210, sec. 1, at 5585; *see id.* sec. 2, at (declaring that the increase in medical costs and the strict underwriting practices of insurance companies have left many people without health insurance). The Legislature focuses on the inability of Californians with the HIV virus to obtain insurance coverage or payment for the medical costs involved in fighting the disease. *Id.* *See generally* TASK FORCE ON HIV/AIDS INSURANCE ISSUES, REPORT TO THE COMMISSIONER (Jacques Chambers ed. 1992) [hereinafter *HIV Report*] (copy on file with the *Pacific Law Journal*) (discussing the need for reform in the health insurance industry, and providing recommendations to implement such change).

3. CAL. INS. CODE § 10112.5 (enacted by Chapter 1210); *see id.* (providing that the Code does not regulate policies that are issued outside of California to an employer whose principal place of business and majority of employees are located outside of California); *HIV Report, supra* note 2, at 14-16 (advocating adoption of extra-territorial jurisdiction over all insurance plans within California to prevent insurance carriers from selling coverage through a trust to avoid being regulated by the California Insurance Code).

4. CAL. INS. CODE § 799.03(a) (amended by Chapter 1210); *see id.* (requiring that a written informed consent form include a description of the test, its purpose, its potential uses and limitations, the meaning of its results, the notification process, and the right to confidential treatment).

5. *Id.* § 799.03(c) (amended by Chapter 1210); *see HIV Report, supra* note 2, at 32-33 (discussing the need for standardized informed consent forms to discourage insurance companies from using forms which do not adequately inform insureds of the limitation on HIV testing in California).

6. *See* CAL. HEALTH AND SAFETY § 1389.3 (enacted by Chapter 1210) (defining postclaim underwriting as the practice of "rescinding, canceling, or limiting a plan contract because the plan fails to complete medical underwriting and resolve all reasonable questions arising from written information submitted on or with an application before issuing the plan contract"). The provision does not seek to limit the ability of an insurance company to cancel a policy for willful misrepresentation. *Id.*

7. *Id.*; *see id.* § 10384 (enacted by Chapter 1210) (prohibiting the practice of postclaim underwriting by any insurer who issues disability insurance policies that cover hospital, medical, or surgical expenses); *Barrera v. State Farm Mut. Auto. Ins. Co.*, 71 Cal. 2d 659, 670-74, 456 P.2d 674, 682-85, 79 Cal. Rptr. 106, 114-17 (1968) (holding that an insurance company is under a duty to conduct a reasonable investigation of insurability within a reasonable time after the policy is issued to avoid the practice of engaging in postclaim underwriting in an attempt to avoid liability); *HIV Report, supra* note 2, at 26 (recommending that an insurance carrier be given full access to the medical records from all physicians named by the insured at the time the application is received, but that the insurer be prohibited from waiting for the insured to make a claim before scrutinizing the records). This regulation will prevent insurance carriers from issuing policies quickly to avoid the cost of investigation because they know if a large claim is filed, they can investigate further to avoid liability. *Id.*; SENATE FLOOR ANALYSIS, COMMITTEE ANALYSIS OF SB 590, at 3 (September 8, 1993) (expressing the

or reduce coverage for a disability claim for a medical condition that pre-existed the date the policy was issued, but is not specifically excluded from coverage.⁸ Chapter 1210 limits the time in which an insurance company can contest a claim to two years from the date the policy was issued.⁹

Existing law regulates the language used in insurance policies with respect to disability coverage.¹⁰ Chapter 1210 requires that all health insurance applications contain language that is clear and unambiguous and is designed for the purpose of obtaining information that is both reasonable and necessary for medical underwriting.¹¹ Chapter 1210 authorizes the Commissioner to request that an insurance company provide actuarial justification for any medical underwriting decision.¹²

Chapter 1210 mandates that all employers provide employees with an outline of the employer-sponsored health coverage to which the employees are currently entitled, as well as notification of any health insurance benefits that will continue to be available upon termination.¹³

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importance of eliminating the practice of accepting applicants and then denying coverage or canceling the policy after a claim has been made); *cf.* *Reserve Life Ins. Co. v. McGee*, 444 So. 2d 803, 811 (Miss. 1983) (authorizing an award of punitive damages to prevent insurance companies from engaging in extensive underwriting practices only after a claim has been filed).

8. CAL. INS. CODE § 10350.2(b) (amended by Chapter 1210).

9. *Id.*

10. *Id.* § 10291.5 (amended by Chapter 1210); *see id.* § 10291.5(a)(1)-(2) (amended by Chapter 1210) (stating that the purpose of the provision is to prevent unfair trade practices, fraud, and insurance that is economically unsound to the insured, as well as to ensure that the language used in the policies is easy to understand).

11. *Id.* § 10291.5(c)(1)-(2) (amended by Chapter 1210); *see id.* § 10291.5(c)(2) (amended by Chapter 1210) (requiring that all applications shall contain a notice which explains that testing for the HIV virus to determine insurability is prohibited by California law); *HIV Report, supra* note 2, at 24-25 (recognizing the practice by insurance companies of using vague and ambiguous language in medical history questions in order to avoid confusion, and discussing the need for regulation in this area to protect innocent applicants from inadvertently answering questions incorrectly).

12. CAL. HEALTH & SAFETY CODE § 1389.2 (enacted by Chapter 1210); *see HIV Report, supra* note 2, at 24-25 (requiring insurance carriers to justify their underwriting decisions to ensure fairness in underwriting decisions).

13. CAL. LAB. CODE § 2808 (enacted by Chapter 1210); *see HIV Report, supra* note 2, at 28-29 (providing that employers should be required to advise employees of their current benefits to avoid misunderstandings about what is covered under the employee's plan). Notification of continuing coverage upon termination is necessary to educate employees as to the types of benefits still available after termination, and the time period permitted to apply for the coverage. *Id.*

Insurance; unemployment compensation—domestic workers

Civil Code § 1812.5095 (new); Unemployment Insurance Code §§ 687.2, 13005.7 (new); § 629 (amended).
AB 1370 (Ferguson); 1993 STAT. Ch. 1275

Under existing law, an employer¹ of workers performing domestic

1. See CAL. UNEMP. INS. CODE § 606.5(a) (West Supp. 1993) (stating that determination of employer status in regard to a specific employee is to be governed by common law rules unless otherwise provided by statute); *id.* § 606.5(b) (West Supp. 1993) (defining a temporary services employer as an employing unit that contracts with customers to supply workers to perform services and performs all the following functions: (1) Negotiates with customers regarding time, place, type of work, working conditions, quality and price; (2) determines work assignments, even if workers retain a right of refusal; (3) sets the rate of pay for workers; (4) pays workers from its own accounts; and (5) retains the right to hire and terminate workers); *id.* § 606.5(c) (West Supp. 1993) (stating that temporary services employers as defined in California Unemployment Insurance Code § 606.5(b) are the employer of the workers they provide); *id.* (stating that, where an individual or entity contracts to provide workers to a customer but is not a temporary services employer, as defined in California Unemployment Insurance Code § 606.5(b), then the customer is the employer of the worker provided); *id.* § 675 (West 1986) (defining employer as any employing unit which, for some portion of the day, has within the current or previous calendar year had in employment one or more employees and pays wages for employment in excess of \$100 dollars during any calendar quarter); *id.* § 682 (West 1986) (modifying the definition of employer to encompass any employing unit which employs individuals to perform domestic service in a private home and pays wages of \$1000 or more in a calendar quarter during the current or previous year); *Empire Star Mines Co. v. California Employment Comm'n*, 28 Cal. 2d 33, 43, 168 P.2d 686, 692 (1946) (holding that the relationship contemplated as the basis for requiring unemployment insurance contributions is that of employer and employee), *overruled on other grounds* by *People v. Sims*, 32 Cal. 3d 468, 480, 651 P.2d 321, 328, 186 Cal. Rptr. 77, 84 (1982); *id.* (holding that, in determining whether one who performs services for another is an employee or an independent contractor, the most important factor is the right to control the manner and means of accomplishing the result desired); *id.* (holding that if the employer has authority to exercise complete control, whether or not that right is exercised with respect to all details, an employer-employee relationship exists); *id.* (holding that the right to discharge at will, without cause, is strong evidence in support of an employment relationship); *id.* at 43-44, 168 P.2d at 692 (holding that other factors to be considered in determining if an employer-employee relationship exists are: (1) Whether the services performed constitute a distinct occupation or business; (2) whether the work is usually done under direction of the principal or by a specialist without supervision; (3) the skill required; (4) whether the principal or the worker provides the instrumentalities, tools, and place of work; (5) the length of time services are to be rendered; (6) the method of payment, whether by time or by the job; (7) whether the work is part of the regular business of the principal; (8) whether the parties believe they are creating an employer-employee relationship); see also *Isenberg v. California Employment Stabilization Comm'n*, 30 Cal. 2d 34, 38-39, 180 P.2d 11, 15 (1947) (applying the *Empire Star Mines* factors to decide that free-lance jockies are employees of the horse owners for whom they ride, at least for unemployment insurance purposes); *Santa Cruz Transp., Inc. v. Unemployment Ins. Appeals Bd.*, 235 Cal. App. 3d 1363, 1372-74, 1 Cal. Rptr. 2d 64, 68-69 (1991) (holding that a cab driver who leased his vehicle and considered himself an independent contractor was in fact an employee of the vehicle lessor, at least for unemployment insurance purposes, because the leasor retained effective operational control and the taxi driver's freedom was illusory); *Smith v. California Dep't of Employment*, 62 Cal. App. 3d 206, 211-13, 132 Cal. Rptr. 874, 876-78 (1976) (applying the *Empire Star Mines* factors to decide that free-lance telephone solicitors are employees of the principal for whom they solicit, at least for unemployment insurance purposes); *Bevan v. California Employment Stabilization Comm'n*, 139 Cal. App. 2d 668, 680, 294 P.2d 524, 532 (1956) (noting it is well established that employment, for unemployment insurance purposes, means employer-employee relationship and does not include an independent contractor); *id.* at 682-83, 294 P.2d at 533-34 (applying the *Empire Star Mines* factors to decide that commission-paid vacuum cleaner salesmen are employees of the

services in a private home² must pay unemployment insurance premiums³ if the total value of domestic services is \$1000 or more in a recent⁴ calendar quarter.⁵ Under Chapter 1275, domestic service in a private home is deemed not to be “employment” for unemployment insurance purposes if the domestic workers are referred by an employment agency,⁶ and the agency’s relationship with the domestic workers is narrowly defined by contract and devoid of the indicia which traditionally signify an employer-employee relationship, such as one party’s direction, control, or supervision over the means and manner of the other’s performance.⁷ Chapter 1275

distributor for whom they sell, at least for unemployment insurance purposes); *cf.* *Borello & Sons, Inc. v. Department of Indus. Relations*, 48 Cal. 3d 341, 353-54, 769 P.2d 399, 406, 256 Cal. Rptr. 543, 550 (1989) (holding that for workers compensation purposes, the “control-of-work-details” test used to determine whether a person rendering service is an employee or independent contractor must be applied with deference to the intent of the protective legislation); *id.* at 355, 769 P.2d at 407, 256 Cal. Rptr. at 551 (holding that, despite farmowners’ attempts to portray migrant labor cucumber harvesters as independent contractors, the indicia of their employment and consequent employee status for worker compensation purposes were compelling); *id.* at 359 n.16, 769 P.2d at 410 n.16, 256 Cal. Rptr. at 554 n.16 (distinguishing the determination of employee or independent contractor status for unemployment insurance as opposed to workers compensation purposes, and noting at least one precedent tax decision of the Unemployment Insurance Appeals Board has found cucumber harvesters to be independent contractors under similar facts).

2. See CAL. CODE REGS. tit. 22, § 629-1(a) (1993) (defining “domestic service in a private home” to include service of a household nature performed by an employee in or about a private home in connection with the maintenance of a private home or premises, or for the comfort or care of the individual or family, as distinguished from service which is directly related to the business or career of the employer); *id.* § 629-1(b) (defining service of a household nature to include services customarily rendered by cooks, waiters, butlers, housekeepers, governesses, maids, valets, babysitters, janitors, laundresses, furnacemen, caretakers, handymen, gardeners, chauffeurs, yacht crews, and pilots of private airplanes for family use, but excluding service performed by private secretaries, tutors, librarians, musicians, carpenters, plumbers, electricians, painters, or other skilled craftsmen); *id.* § 629-1(c) (defining private home as the social unit formed by an individual or family residing in a private household, to include the fixed place of abode in a private house, apartment, hotel, or similar establishment, as well as a summer or winter home).

3. See CAL. UNEMP. INS. CODE § 976 (West 1986) (requiring that unemployment insurance contributions be accrued and become payable by every employer based on wages paid for employment); *cf.* 26 U.S.C. § 3301 (1993) (imposing a federal unemployment tax on every employer based on wages paid for employment).

4. See CAL. UNEMP. INS. CODE § 629 (amended by Chapter 1275) (stating the period as any calendar quarter in the calendar year or the preceding calendar year).

5. *Id.* § 629(a) (amended by Chapter 1275); *id.* § 682(a) (West 1986); *cf.* 26 U.S.C. § 3306(3) (1993) (defining employer for federal unemployment insurance purposes to include employers of domestic workers in a private home only if the total value of domestic services was \$1000 or more in a recent calendar quarter).

6. See CAL. CIV. CODE § 1812.501(a)(3) (West Supp. 1993) (defining employment agency to include, among other things, any person who for a fee or other valuable consideration procures, offers, promises, provides or attempts to procure babysitting or domestic employment for others or domestics or babysitters for others); *id.* § 1812.501(h) (West Supp. 1993) (defining domestic agency as any agency which provides or attempts to provide employment by placement of domestic help in private homes).

7. CAL. UNEMP. INS. CODE § 629 (amended by Chapter 1275); *see id.* § 629(b) (enacted by Chapter 1275) (providing that domestic work in a private home is not employment for unemployment insurance purposes if an employment agency is used and the relationship between the employment agency and the domestic worker being referred or placed is characterized by factors specified in California Unemployment Insurance Code § 687.2); *id.* § 687.2(a)(1)-(9) (providing that an employment agency is not the employer of a domestic worker if it refers or places if the relationship between employment agency and worker is characterized by all the

further provides that for unemployment insurance purposes, an employment agency is deemed not to be the employer of the domestic workers it refers if the agency's relationship with its domestic workers meets the same enumerated criteria.⁸

Under Chapter 1275, an employment agency referring or placing domestic workers must inform the workers in writing regarding necessary business permits or licenses, self-employment tax obligations, and ineligibility for worker benefits under various state programs.⁹ An employment agency referring or placing a domestic worker must also inform the person seeking domestic service that the employment agency is not the worker's employer, and that the person seeking domestic service may incur employer responsibilities.¹⁰

following factors: (1) There is a signed contract specifying that the agency will assist the domestic worker to secure employment, how the agency's referral fee will be paid, and that the worker is free to sign with other agencies and perform work for persons not referred; (2) the domestic worker informs the agency of any restrictions on hours, locations, conditions, or type of work, and the worker is free to accept or reject any employment opportunity offered; (3) the worker is free to renegotiate with the hiring person the amount of pay; (4) the domestic worker does not receive any training from the agency with respect to the performance of domestic services; (5) the domestic worker performs domestic services without any direction, control, or supervision exercised by the employment agency regarding the means and manner of performance; (6) the agency does not provide tools, supplies, or equipment necessary to perform the service; (7) the domestic worker is not obligated to pay the referral fee, nor must the agency pay the worker, if the hiring person fails or refuses to pay for work performed; (8) payments for the domestic services may be made directly to either the worker or the agency, but payments to the agency must be held in trust for the worker; (9) the relationship between domestic worker and hiring person may be terminated only by those parties and not by the referring employment agency).

8. CAL. CIV. CODE § 1812.5095(a) (enacted by Chapter 1275); CAL. UNEMP. INS. CODE §§ 629(b), 687.2, 13005.7 (enacted by Chapter 1275); see *Avchen v. Kiddoo*, 200 Cal. App. 3d 532, 536-37, 246 Cal. Rptr. 152, 536-37 (1988) (noting that nurses' registries are agents and not employers, that it is "nonsensical" to characterize what is patently an agency relationship as an employment relationship, and that the Legislature does not intend nurses' registries and similar agencies as an employer for unemployment insurance and tax withholding purposes); ASSEMBLY COMMITTEE ON FINANCE, COMMITTEE ANALYSIS OF AB 1370, at 2 (Apr. 20, 1993) (noting an intent that the enactments be declaratory of existing case law as decided in *Avchen*); see also CAL. CIV. CODE §§ 1812.500-1812.509 (West Supp. 1993); *id.* § 1812.5095 (enacted by Chapter 1275) (defining and regulating employment agencies); CAL. UNEMP. INS. CODE § 976 (West 1986) (specifying requirements for accrual and payment of unemployment insurance premiums); *id.* § 13020 (West 1986) (specifying requirements for withholding of taxes from wages); *id.* § 13009(b) (West Supp. 1993) (providing that, for tax withholding purposes, wages do not include remuneration for domestic service in a private home); CAL. CODE REGS. tit. 22, § 4309-2(c)(1)(A) (1993) (providing that remuneration for domestic services in a private home is excepted from wages and not subject to withholding); *cf.* *Mississippi Employment Security Comm'n v. PDN*, 586 So. 2d 838, 843 (Miss. 1991) (citing *Avchen* in holding that an employer-employee relationship does not exist between a nursing referral service and the nurses); *County of Henrico v. Management Rec., Inc.*, 277 S.E.2d 163, 167 (Va. 1981) (holding that two employment agencies are furnishers of domestic or clerical help, labor, or employment for the purposes of a local business tax).

9. CAL. CIV. CODE § 1812.5095(c) (enacted by Chapter 1275).

10. *Id.* § 1812.5095(d) (enacted by Chapter 1275).

Under Chapter 1275, an employment agency's fee must be reasonable, negotiable, and based on a fixed percentage of job cost.¹¹

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Insurance; unemployment compensation—elective coverage and disability insurance

Labor Code § 4904 (amended); Unemployment Insurance Code §§ 2627.3, 2627.5, 2627.7 (repealed); §§ 984, 2626, 2627, 2629, 2655, 2708 (amended).

SB 4 (Johnston); 1993 STAT. Ch. 748

Unemployment Insurance Code §§ 704.2, 984.5 (new); §§ 704, 704.1, 705, 708, 708.5, 1088, 1088.5, 1110, 2653, 13021 (amended).

AB 1738 (Horcher); 1993 STAT. Ch. 747

Existing law requires state disability insurance coverage for many employees,¹ and benefits under such insurance becomes payable when the employee is unable to work because of illness or injury.² Under existing

11. *Id.* § 1812.5095(b) (enacted by Chapter 1275).

1. *See* CAL. UNEMP. INS. CODE §§ 621, 621.5 (West 1986 & Supp. 1993) (defining employee).

2. *Id.* §§ 1251-1265.9 (West 1986 & Supp. 1993) (establishing the requirements, guidelines and criteria for unemployment compensation); *see* SENATE FLOOR ANALYSIS OF AB 1738, at 1 (Aug. 27, 1993) (analyzing the existing law regarding unemployment compensation); *see also* CAL. UNEMP. INS. CODE § 100 (West 1986) (setting forth the purpose and public policy behind unemployment insurance compensation); *California Comp. Ins. Co. v. Indus. Accident Comm'n*, 128 Cal. App. 2d 797, 805, 276 P.2d 148, 151 (1954) (stating that the purpose of unemployment insurance laws is to provide benefits for the unemployed and to reduce involuntary unemployment); 2 B.E. WITKIN, SUMMARY OF CALIFORNIA LAW, *Agency & Employment* § 347 (9th ed. 1987) (explaining the purpose of the California unemployment compensation program). *See generally* Department of Human Resources v. Java, 402 U.S. 121, 125-29 (1971) (providing a description of California's unemployment compensation program); *Gibson v. Unemployment Ins. Appeals Bd.*, 9 Cal. 3d 494, 499, 509 P.2d 945, 948, 108 Cal. Rptr. 1, 4 (1973); *Garcia v. Industrial Accident Comm'n*, 41 Cal. 2d 689, 693, 263 P.2d 8, 10 (1953) (stating that statutes regarding unemployment insurance are to be construed liberally in favor of the claimant); Phillip C. Nychay, *Special Project on Workers' Compensation in the District of Columbia Court of Appeals: Determining Claimant Eligibility for Unemployment Compensation Benefits*, 30 HOW. L.J. 615, 616 (1987) (stating that unemployment insurance statutes are to be construed liberally); Stephen Green, *State Disability Pay to Drop 15% to 20%*, SACRAMENTO BEE, Feb. 9, 1993, at A1 (discussing SB 4, relating to mandatory unemployment and disability insurance); *Keep SDI Afloat*, SACRAMENTO BEE, Jan. 27, 1993, at B6 (explaining SB 4 and the State Disability Insurance provisions); Jon Matthews, *Senate OKs Disability Fee Hike, Benefit Cut*,

law, an employing unit³ not subject to the mandatory coverage may file a written election with the Director of Employment Development (Director)⁴ to be covered by unemployment or disability⁵ compensation provisions.⁶ Under existing law, the Director will not approve the election in certain circumstances.⁷ Chapter 747 adds conditions for which the Director will deny approval of the coverage election.⁸

Existing law allows the Director to terminate an elective coverage agreement under certain circumstances, such as if the individual is not normally and continuously engaged in a regular trade, business or occupation, or the individual has discontinued his or her regular trade, business, or occupation, or the regular trade is seasonal.⁹ Chapter 747 also adds conditions under which the Director may terminate an elective coverage agreement, including a provision that the agreement will be terminated if the individual is found to have made a false statement in order to obtain elective coverage.¹⁰

SACRAMENTO BEE, Jan. 8, 1993, at A3 (discussing the initial stages of SB 4, relating to mandatory coverage); *SDI Ignores Own Staffers, Pays \$300,000 in Scam*, SAN DIEGO UNION-TRIB., Sept. 30, 1993, at A6 (discussing fraudulent claims within the California Disability Insurance office).

3. See CAL. UNEMP. INS. CODE § 135 (West 1986) (defining employing unit); see also State of Cal. Dep't of Employment Dev. v. Renault & Co., 179 F.2d 605, 609 (1st Cir. 1950) (stating that every employer is an employing unit).

4. See CAL. UNEMP. INS. CODE § 301 (West 1986) (creating the Employment Development Department).

5. See *id.* § 2626 (West 1986) (defining disability or disabled); see also 2 B.E. WITKIN, SUMMARY OF CALIFORNIA LAW, *Agency & Employment* § 358 (9th ed. 1987) (explaining provisions of California law relating to disability compensation).

6. CAL. UNEMP. INS. CODE §§ 701-714 (West 1986 & Supp. 1993); see also SENATE FLOOR ANALYSIS OF AB 1738, at 4 (Aug. 27, 1993) (citing figures reflective of the increase of the annual premium for elective coverage from \$261 in 1989, to \$959 in 1993).

7. CAL. UNEMP. INS. CODE § 704(b)-(d), (g), (i) (amended by Chapter 747). The Director will not approve the election for reasons such as, the employing unit or the self-employed individual is not normally and continuously engaged in a regular trade, business or occupation, or if the business or occupation is seasonal in its operations. *Id.*; see *id.* § 704.2(a)(1)-(2) (enacted by Chapter 747) (defining normally and continuously engaged in a regular trade, business, or occupation to mean an uninterrupted pattern, or if a license is required, it means that the individual has been issued the license); *id.* § 704.2(b)(1)-(3) (enacted by Chapter 747) (defining seasonal).

8. *Id.* § 704(a)-(h) (amended by Chapter 747). In addition to existing law, the Director will also not approve the election if any of the following conditions exist: (1) The self-employed individual is unable to work due to injury or illness at the time the request is filed; (2) the major portion of the self-employed individual's compensation is not derived from his or her trade, business or occupation; (3) the individual is unable to provide proof of a \$4,600 net profit from the preceding year, or show that the average net profit per quarter is at least \$1,150 for the preceding four quarters; and (4) a prior agreement for elective coverage has been terminated by the department or the individual, and the required waiting period of 18 months has not elapsed, unless the waiting period has been waived. *Id.* § 704(a), (e), (f), (h)(1)-(2) (amended by Chapter 747).

9. *Id.* § 704.1(a)(1)-(3), (6), (8) (amended by Chapter 747). The Director is to provide written notice of such termination. *Id.* § 704.1(b) (amended by Chapter 747).

10. *Id.* § 704.1(a)(4)-(5), (7) (amended by Chapter 747).

Existing law provides that individuals who have an elective coverage agreement are deemed to have received specified remuneration, regardless of their actual earnings.¹¹ Chapter 747 provides a new formula for computing the specified remuneration in order to determine the required contributions for disability insurance.¹² In order to be entitled to the maximum benefit amount of unemployment insurance, the individual must earn the highest amount of wages¹³ listed in section 1280 of the Unemployment Insurance Code.¹⁴ For purposes of disability insurance, the individual must earn the highest amount of wages in order to receive the maximum benefit listed in section 2655 of the Unemployment Insurance Code.¹⁵

Prior law established a waiting period of seven consecutive days during each disability period¹⁶ in which no benefits were payable, however, it could be waived under certain circumstances.¹⁷ Under Chapter 748, this waiting period may not be waived.¹⁸ Chapter 747 also establishes a non-waivable seven-day waiting period for all claims under an elective coverage agreement.¹⁹

11. *Id.* § 708(a) (amended by Chapter 747).

12. *Id.* § 708(a)(1)-(2) (amended by Chapter 747).

13. *See* CAL. LAB. CODE § 200(a) (West 1989) (defining wages).

14. CAL. UNEMP. INS. CODE § 708(a)(1) (amended by Chapter 747). Other requirements under § 708 include: (1) Each individual applying for coverage must sign an annual statement authorizing the department to verify profit information with the Internal Revenue Service; (2) each individual must submit a copy of his or her Internal Revenue Service Schedule SE of the preceding year in order to determine the first-year contributions and benefits. *Id.* § 708(c)-(d) (amended by Chapter 747); *See also id.* § 1280 (West Supp. 1993) (providing the table of wages and corresponding benefit allowances for unemployment insurance).

15. *Id.* § 708(a)(2) (amended by Chapter 747); *see id.* § 708.5(a) (amended by Chapter 747) (establishing the same criteria for disability insurance for any individual who is self-employed, and not an employer, but who has filed a written election for coverage); *id.* § 2655 (amended by Chapter 748) (providing the table of wages and corresponding benefit allowances for disability insurance). The other requirements under this section are similar to those under § 708. *Id.*

16. *See id.* § 2608 (West 1986) (defining disability period as the continuous period of unemployment and disability starting with the first day on which an individual files a valid claim for benefits).

17. 1982 Cal. Stat. ch. 717, sec. 4, at 2885 (amending CAL. UNEMP. INS. CODE § 2627); *cf.* Simon v. Unemployment Ins. Appeals Bd., 193 Cal. App. 3d 1076, 1079, 238 Cal. Rptr. 589, 591 (1987) (holding that an injured self-employed individual was not eligible for unemployment compensation because she chose not to contribute to the system during her period of self-employment, although she had contributed while she was earning wages). *See generally* 2 B.E. WITKIN, SUMMARY OF CALIFORNIA LAW, Agency & Employment § 357 (9th ed. 1987) (explaining the provisions of California law relating to the Disability Fund and payment of benefits).

18. CAL. UNEMP. INS. CODE § 2627 (amended by Chapter 748). *See id.* (stating that there is a seven-day waiting period, without providing any means for waiver). Chapter 748 repealed the sections of the code that provided for a waiver of the seven day waiting period. 1993 Cal. Legis. Serv. ch. 748, secs. 5-7, at 3399 (repealing CAL. UNEMP. INS. CODE §§ 2627.3, 2627.5, 2627.7).

19. CAL. UNEMP. INS. CODE §§ 708(i), 708.5(h) (amended by Chapter 747); *see id.* § 708(a) (amended by Chapter 747) (stating that § 708 applies to individuals classified as employers); *id.* § 708.5(a) (amended by Chapter 747) (stating that § 708.5 applies to self-employed individuals).

Prior law provided that the maximum amount of benefits payable to an individual for one period of disability was fifty-two times that individual's weekly benefit amount.²⁰ Chapter 747 reduces the maximum amount of benefits payable to thirty-nine times the weekly benefit amount.²¹

Prior law established a contribution rate that would generate sufficient revenue to reimburse the Disability Fund for benefits paid and estimated to be paid under elective coverage agreements.²² Chapter 747 sets the contribution rate for calendar years 1994 through 1996 based on estimated costs.²³ Additionally, Chapter 747 establishes a formula to determine the rate beginning in 1997.²⁴

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20. 1989 Cal. Stat. ch. 1371, sec. 1, at 5934 (amending CAL. UNEMP. INS. CODE § 708); *see* CAL. UNEMP. INS. CODE § 2653 (amended by Chapter 747) (providing that the maximum amount of benefits payable is 52 times the weekly benefit amount, except as provided for in §§ 708 and 708.5); *cf.* ME. REV. STAT. ANN. tit. 39-A, § 213 (West 1992) (providing that an individual will not be eligible to receive disability compensation after that individual has received 260 weeks of compensation, but this period may be extended in cases involving extreme financial hardship); MINN. STAT. § 268.073 (1992) (stating that the maximum benefit amount in the individual's benefit year is six times the individual's weekly benefit amount); *Martin v. California Dep't of Employment*, 28 Cal. App. 3d 804, 806, 105 Cal. Rptr. 111, 112 (1972) (discussing the maximum benefit amount in 1969 which was only 26 times the weekly benefit amount).

21. CAL. UNEMP. INS. CODE § 708(j) (amended by Chapter 747); *see* SENATE FLOOR ANALYSIS OF AB 1738, at 5 (Aug. 27, 1993) (stating that the main concern of opponents of Chapter 747 is the reduction in benefit duration).

22. 1991 Cal. Legis. Serv. ch. 793, sec. 1(b), at 3112 (amending CAL. UNEMP. INS. CODE § 984).

23. CAL. UNEMP. INS. CODE § 984.5(a) (enacted by Chapter 747).

24. *Id.* The rate of contribution is to be determined by multiplying the current year's rate by the ratio of 1.10 times the current year's disbursements divided by contributions for this period. *Id.*

