

Date of Hearing: June 26, 2024

ASSEMBLY COMMITTEE ON INSURANCE  
Lisa Calderon, Chair  
SB 1116 (Portantino) – As Introduced February 13, 2024

**SENATE VOTE:** 22-12

**SUBJECT:** Unemployment insurance: trade disputes: eligibility for benefits

**SUMMARY:** Allows individuals involved in a trade dispute to collect unemployment insurance (UI) benefits. Specifically, **this bill:**

- 1) Permits individuals involved in a trade dispute to be eligible to collect UI benefits after a two-week waiting period.
- 2) Codifies a California Supreme Court Decision (*Coast Packing Co. v. California Unemployment Insurance Appeals Board* (1966) 64 Cal. 2d 76) that found individuals subject to a lockout eligible for UI benefits.

**EXISTING LAW:**

- 1) Creates a comprehensive UI system, administered by the Employment Development Department (EDD), where employers pay an experienced-based tax on total payroll that are used to fund unemployment benefits to unemployed individuals. (Unemployment Insurance Code Sections (UIC) 301, 602, 675, 926, 970, 977 & 1251)
- 2) Defines an individual as “unemployed” in any week in which they meet any of the following conditions:
  - a) Any week during which they perform no services and with respect to which no wages are payable to them;
  - b) Any week of less than full-time work, if the wages payable to them with respect to the week, when reduced by \$25 or 25% of the wages payable, whichever is greater, do not equal or exceed the individual’s weekly benefit;
  - c) Any week for which, an individual is unable to work due to mental or physical health illness or injury, as specified; or,
  - d) Any week during which an individual performs full-time work for five days as a juror, or as a witness under subpoena. (UIC 1252)
- 3) Provides that an individual is disqualified for unemployment compensation benefits if the individual left their most recent work voluntarily without good cause or that they have been discharged for misconduct connected with their most recent work. (UIC 1256)

- 4) Provides that an individual is not eligible for unemployment compensation benefits if the individual left their work because of a trade dispute. The individual shall remain ineligible for the period during which they remain out of work because of the fact that the trade dispute is still in active progress. (UIC 1262)
- 5) Provides that, when EDD learns that a trade dispute is in progress, EDD must promptly conduct an investigation and make investigation findings as to the nature, location, labor organizations and employers involved, and other relevant facts concerning the trade dispute as it deems necessary. EDD shall provide its findings to its field offices in locations affected by the trade dispute, and must, upon request, make its findings available to any employer, employers' association or labor organization involved in the trade dispute. (UIC 1262.5)

**FISCAL EFFECT:** Unknown.

**COMMENTS:**

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

Workers do not go on strike because they want to – they do so as a last resort: to convince employers to come to the negotiation table for fair terms. SB 1116 provides a crucial lifeline for California's workforce, preserving the right to advocate for better working conditions and preserving local economies.

- 2) *Background.* This bill (SB 1116) is an identical re-introduction of SB 799 from last year. Governor Newsom vetoed SB 799 and stated, in part, the following:

California employers fund UI benefits through contributions to the state's UI Trust Fund on behalf of each employee. The UI financing structure has not been updated since 1984, which has made the UI Trust Fund vulnerable to insolvency. Any expansion of eligibility for UI benefits could increase California's outstanding federal UI debt projected to be nearly \$20 billion by the end of the year and could jeopardize California's Benefit Cost Ratio add-on waiver application, significantly increasing taxes on employers. Furthermore, the state is responsible for the interest payments on the federal UI loan and to date has paid \$362.7 million in interest with another \$302 million due this month. Now is not the time to increase costs or incur this sizable debt.

I have deep appreciation and respect for workers who fight for their rights and come together in collective action. I look forward to building on the progress we have made over the past five years to improve conditions for all workers in California.

For these reasons, I cannot sign this bill.

Both SB 799 and this measure are substantially similar to the April 22, 2019 version of AB 1066 (Gonzalez). It should be noted that AB 1066 passed out of the Assembly Insurance Committee with amendments on April 24, 2019 with a vote of 8-2 with four members absent, abstaining, or not-voting. The amendments accepted in the Assembly Insurance Committee at that hearing extended the waiting period from 2-weeks to 4-weeks.

It must be emphasized that since the Assembly Insurance Committee passed AB 1066 with amendments in 2019 that California has gone through a (COVID-19) pandemic and continues to recover. As presented at several informational hearings conducted by the Assembly Insurance Committee, EDD went through a number of challenges and obstacles during and following the pandemic. The Legislature responded by introducing, passing, and the Governor signing almost two dozen pieces of legislation that addressed the weaknesses of EDD. Additionally, EDD is going through a massive, multi-year over haul to the EDD user experience and IT system, EDDNext.

- 3) *Background on the UI program.* Created in 1935 as part of the Social Security Act of 1935, the UI program is a unique federal-state program, created by federal law and administered under state and federal laws by EDD. UI provides weekly benefits, for up to a maximum of 26 weeks, unless extended by law, to workers who are unemployed (or underemployed) through no fault of their own and who are able to, available for, and actively seeking work.

A claimant's eligibility for benefits depends on their attachment to the labor force determined by computing a minimum earnings test. This requirement denies benefits to claimants whose earnings in a 12-month "base period" are below a specified minimum. The quarter in which the highest wages were received determines the weekly benefit amount. UI benefits range from \$40 to a maximum of \$450 per week. In 2023, the California average UI benefit amount was \$368 per week. The United States total for the 12-month average of weekly benefit amount ending on February 29, 2024 was \$443.85.<sup>1</sup>

The UI program is financed by employers who pay unemployment taxes on the first \$7,000 in wages paid to each worker. The tax rates are set based on schedules laid out in state law, which require higher rates, up to a maximum of 6.2%, when the condition of the UI trust fund is poor.<sup>2</sup> Working much like other insurance programs, the actual tax rate varies for each employer, depending in part on the amount of UI benefits paid to former employees. Referred to as being "experience rated," this method of taxing ensures that employers who lay off or otherwise discharge more workers bear more of the costs of paying for the UI system. An employer may earn a lower tax rate when fewer claims are made on the employer's account by former employees.

- 4) *Issues Related to UI Trust Fund.* As previously mentioned, California employers fund UI benefits through contributions to the state's UI Trust Fund on behalf of each employee. Employers also pay Federal Unemployment Tax Act (FUTA) taxes to the federal government to help pay for administration of the UI program, UI loans to insolvent states, and federal extension benefits.

Due to the impact of the pandemic, California began borrowing from the federal government starting June 3, 2020 in order to maintain solvency of the UI fund. According to the U.S. Department of Labor, as of June 18, 2024, California's federal loan balance was more than \$19 billion.<sup>3</sup> The loan balance is estimated to be \$21 billion by the end of 2025.<sup>4</sup>

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<sup>1</sup> <https://oui.doleta.gov/unemploy/DataDashboard.asp>

<sup>2</sup> Alamo, Chas. "Repaying the State's Federal Unemployment Insurance Loan," Legislative Analyst's Office, May 26, 2021. <https://lao.ca.gov/Publications/Report/4442>

<sup>3</sup> <https://oui.doleta.gov/unemploy/budget.asp>

<sup>4</sup> EDD January 2024 UI Fund Forecast. <https://edd.ca.gov/siteassets/files/unemployment/pdf/edduiforecastjan24.pdf>

Generally, federal law provides employers with a 5.4% FUTA tax credit toward the 6.0% regular tax when they file their Employer's Annual FUTA Return (Form 940). However, when a state UI Fund is in deficit for two consecutive years federal law imposes a tax increase on employers to repay the principal on the federal UI loan. This actually occurs as a reduction of the 5.4% FUTA tax credit. The state loses 0.3% of the FUTA tax credit each year, which is the equivalent of an increase in federal taxes of \$21 per worker per year.

Despite a loan balance at the end of 2020, the FUTA tax credit reduction was not assessed in that year, as California had not been in deficit for two consecutive years. The FUTA credit reductions started occurring for tax year 2022, with the higher federal taxes due in January 2023. In 2023, employers began paying higher FUTA taxes, as required by federal law, in order to repay the loan. Therefore, in 2024 instead of paying \$21 per worker in federal taxes, California employers will pay \$84 per worker in federal UI taxes.<sup>5</sup> In 2023, this generated \$397 million and \$858 million is projected to be collected in 2024.<sup>6</sup>

States can request waivers (for example, a Benefit Cost Ratio (BCR) add-on waiver) for these credit reductions if they meet certain criteria. *One criteria requires states to take no legislative or other action to decrease the net solvency of their UI Fund within a specified time period.* Therefore, any new actions or legislation, such as this bill, that impact the solvency of the fund could jeopardize California's eligibility for the BCR waiver.

The Legislative Analyst's Office (LAO) estimates that the federal loan could be paid-off by 2032. However, that does not capture the possibility of any actions that could impact the solvency of the fund or another recession. Should that occur, the LAO estimates that payoff of the federal loan would extend well beyond 2032.<sup>7</sup>

In 2022, the Legislature passed and signed AB 178 (Chapter 45, Statutes of 2022) which, among other things, included a \$342.4 million one-time General Fund UI loan interest payment. The 2023-24 state budget included a \$306 million General Fund allocation to pay the annual interest on the loan. The 2024-25 budget proposed by the Governor contains a \$331 million dollar UI loan interest payment.<sup>8</sup>

- 5) *Other issues related to EDD.* As mentioned above, EDD is currently in the middle of a multi-year project called "EDDNext." EDDNext is a full system modernization of EDD that is expected to take at least five years to fully implement. The project is currently in its second year. The purpose of EDDNext is to create a user-centric and secure technology environment to support timely and quality service to California's workers. EDDNext includes updates to online applications, call centers, the claims process, policies, procedures, and forms.

It is unclear if any changes to UI eligibility requirements, such as the ones sought by this bill, would impact the rollout of EDDNext and how long it would take EDD to make system changes to add new classifications (i.e. striking workers).

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<sup>5</sup> <https://caltax.org/new-year-brings-higher-taxes-on-california-employees-and-employers>.

<sup>6</sup> Employment Development Department: May 2023 Unemployment Insurance (UI) Fund Forecast. <https://edd.ca.gov/siteassets/files/pdf/edduiforecastmay23.pdf>

<sup>7</sup> <https://lao.ca.gov/Publications/Report/4543>

<sup>8</sup> <https://ebudget.ca.gov/2023-24/pdf/Enacted/BudgetSummary/LaborandWorkforceDevelopment.pdf>

Additionally, on August 24, 2023, the California State Auditor released its list of “high risk” agencies and EDD was added to that list. The Auditor notes:

EDD is a high-risk agency because of its mismanagement of the UI program. Specifically, EDD is unable to reliably estimate improper payments under the UI program, thus adversely affecting the State’s financial statements as well as impairing efforts to independently evaluate the efficacy of EDD’s own fraud prevention activities. Further, EDD needs to improve customer service to unemployment insurance claimants, while also taking steps to ensure its eligibility decisions are not frequently overturned on appeal. EDD’s mismanagement of the UI program has resulted in a substantial risk of serious detriment to the State and its residents.<sup>9</sup>

- 6) *Existing EDD authority related to trade disputes.* EDD already has mechanisms in place to investigate whether an applicant is involved in a trade dispute and how this impacts the individual’s eligibility for UI benefits. UIC 1262.5 specifically provides that when EDD “learns that a trade dispute is in progress, the department shall promptly conduct an investigation and make investigation findings as to the nature, location, labor organizations and employers involved, and other relevant facts concerning the trade dispute as it deems necessary.”

The UI Benefits Determination Guide (BDG) is used by EDD personnel to make proper decisions about eligibility for unemployment insurance benefits. The BDG contains an entire volume specifically related to trade disputes.<sup>10</sup> The BDG is based on state and federal law, state and federal regulations, case law from the United States Supreme Court, the California Supreme Court, lower federal and state courts and Precedent Benefit Decisions issued by the California Unemployment Insurance Appeals Board.

- 7) *Similar Laws in New York & New Jersey.* New York and New Jersey are currently the only two states that allow individuals on strike to collect UI benefits. In 2020, New York reduced the amount of time a worker has to be on strike before they can begin collecting unemployment, from seven weeks to 14 days. In 2018, New Jersey enacted a law allowing striking workers to collect UI benefits. Recently, that law was amended to decrease the waiting period from 30 days to 14 days.
- 8) *Recent Strikes in California.* According to data from the Bureau of Labor Statistics (BLS), from 2012-2022, there were at least 56 strikes in California with only two that lasted over two weeks. BLS records strikes where at least 1,000 workers participated. The two strikes that lasted over two weeks both occurred in 2022, with one lasting 64 days total and the other lasting 39 days total. According to data from the Bureau of Labor Statistics (BLS), in 2023, there were at least 15 strikes in California with work stoppages involving *1,000 or more* workers. Below are the strikes lasting longer than two weeks<sup>11</sup>:

- Alliance of Motion Picture and Television Producers (Writers Guild of America West) - 5/2/23 to 9/24/23

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<sup>9</sup> <http://auditor.ca.gov/reports/2023-601/index.html#section2>

<sup>10</sup> [https://edd.ca.gov/en/uibdg/Trade\\_Dispute\\_-\\_Table\\_of\\_Contents/](https://edd.ca.gov/en/uibdg/Trade_Dispute_-_Table_of_Contents/)

<sup>11</sup> <https://www.bls.gov/web/wkstp/monthly-listing.htm>

- Alliance of Motion Picture and Television Producers (Screen Actors Guild, American Federation of Television and Radio Artists) - 7/14/23 to 11/8/23
- Ford Motor Co., General Motors Co., and Stellantis (United Auto Workers) - 9/15/23 to 10/30/23

The above referenced data tracks strikes with work stoppages involving 1,000 or more workers. This bill, however, would extend access to UI benefits to employees participating in a labor dispute with an employer of any size.

9) *Related legislation.*

- a) SB 227 (Durazo) of 2023 would, upon an appropriation by the Legislature, establish the Excluded Workers Program within EDD to provide income assistance to unemployed excluded workers who are not eligible for regular state or federal unemployment insurance benefits due to their immigration status. *In Assembly Appropriations Committee on suspense.*
- b) SB 799 (Portantino) of 2023, was identical to this measure, would have authorized workers involved in a trade dispute to collect UI benefits, after a two-week wait period, while they are on strike. This bill was vetoed by Governor Newsom.
- c) AB 1066 (Gonzalez) of 2019, would have permitted individuals in a trade dispute to collect UI compensation after a three-week waiting period. AB 1066 failed on the Senate Floor and was later amended to address another issue in the UI Code. That subsequent version of AB 1066 was then vetoed by Governor Newsom.

10) *Arguments in Support.* The California Labor Federation, the sponsor of this bill, write in support on behalf of a coalition of labor groups, saying the bill is needed because:

The right to strike to improve working conditions, wages, and address other issues in collective bargaining is a fundamental worker right that is codified in law for employees in the public and private sector. The decision to go on strike is not one that union members take lightly. Striking workers lose all income for the duration of their job action. Workers deplete their savings as bills pile up, rent and mortgages go unpaid, and debt accumulates. Corporations rely on the expectation that striking workers will have few resources, and their strategy is often to starve workers until they give up their demands for better wages, fair compensation, and job security. To prevent striking workers from being driven into debt, bankruptcy, and homelessness, SB 1116 will make striking workers eligible to receive UI benefits.

11) *Arguments in Opposition.* A coalition of employer groups, including the California Chamber of Commerce oppose this bill. Cal Chamber has labeled this bill a job killer because:

It would effectively require employers to subsidize striking workers, even if that employer is not presently (or has never) experienced any strikes. By forcing employers to pay unemployment insurance (UI) payments to striking workers, SB 1116 would also raise unemployment insurance taxes on employers across California, overturn more than 70 years of precedent, and put California's UI program at risk of violating federal law. This bill is a repeat of last year's SB 799, which was vetoed by the Governor because of

the debt it would add to California's UI Fund—which is an even more pressing concern given the state's long-term estimated budget concerns.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

American Federation of State, County and Municipal Employees (AFSCME) California  
 California Alliance for Retired Americans (CARA)  
 California Conference Board of the Amalgamated Transit Union  
 California Conference of Machinists  
 California Democratic Party  
 California Faculty Association  
 California Federation of Teachers Afl-cio  
 California Labor Federation, Afl-cio  
 California Nurses Association  
 California Professional Firefighters  
 California Rural Legal Assistance Foundation (crla Foundation)  
 California School Employees Association  
 California State Treasurer  
 California State University Employees Union (CSUEU)  
 California Teachers Association  
 California Teamsters Public Affairs Council  
 Communications Workers of America, District 9  
 Culver City Democratic Club  
 Department of Insurance  
 Engineers & Scientists of California, Local 20, Ifpte, Afl-cio  
 National Union of Healthcare Workers (NUHW)  
 Northern California District Council of The International Longshore and Warehouse Union (ILWU)  
 Orange County Employees Association  
 Sag-aftra, Afl-cio  
 Smart - Transportation Division (SMART-TD)  
 The San Fernando Valley Young Democrats  
 Unite-here, Afl-cio  
 United Auto Workers  
 United Food and Commercial Workers, Western States Council  
 United Steelworkers District 12  
 Utility Workers Union of America, Afl-cio  
 Writers Guild of America West  
 Writers Guild of America, West, INC.

### **Opposition**

21st Century Alliance  
 Acclamation Insurance Management Services  
 Agricultural Council of California  
 Airlines for America (A4A).  
 Allied Managed Care

American Council of Engineering Companies  
Association of California School Administrators  
Associated General Contractors  
Associated General Contractors San Diego  
Association of California Healthcare Districts (ACHD)  
Association of Western Employers  
Bay Area Council  
Beverly Hills Chamber of Commerce  
Brea Chamber of Commerce  
Building Owners and Managers Association  
Calforests  
California Alliance of Family Owned Businesses  
California Apple Commission  
California Asian Pacific Chamber of Commerce  
California Association of Joint Powers Authorities (CAJPA)  
California Association of Licensed Security Agencies, Guards & Associates  
California Association of Recreation & Park Districts  
California Association of School Business Officials (CASBO)  
California Association of Sheet Metal & Air Conditioning Contractors National Association  
California Association of Winegrape Growers  
California Attractions and Parks Association  
California Bankers Association  
California Blueberry Association  
California Blueberry Commission  
California Building Industry Association  
California Business Properties Association  
California Business Roundtable  
California Chamber of Commerce  
California Citrus Mutual  
California Cotton Ginners and Growers Association  
California Employment Law Council  
California Farm Bureau  
California Framing Contractors Association  
California Fresh Fruit Association  
California Fuels and Convenience Alliance  
California Grocers Association  
California Hospital Association  
California Hotel & Lodging Association  
California Landscape Contractors Association  
California League of Food Producers  
California Manufacturers and Technology Association  
California Restaurant Association  
California Retailers Association  
California Self Storage Association  
California Special Districts Association  
California State Association of Counties (CSAC)  
California State University, Office of The Chancellor  
California Taxpayers Association  
California Tomato Growers Association



California Transit Association  
California Travel Association  
California Trucking Association  
Can Manufacturers Institute  
City of Carlsbad  
City of Norwalk  
City of Rancho Cucamonga  
City of Sunnyvale  
City of Thousand Oaks  
Coalition of Small and Disabled Veteran Businesses  
Construction Employers' Association  
Corona Chamber of Commerce  
County of Kern  
Dairy Institute of California  
El Dorado County Chamber of Commerce  
El Dorado Hills Chamber of Commerce  
Elk Grove Chamber of Commerce  
Family Business Association of California  
Family Winemakers of California  
Flasher Barricade Association  
Folsom Chamber of Commerce  
Fremont Chamber of Commerce  
Garden Grove Chamber of Commerce  
Gateway Chambers Alliance  
Greater Coachella Valley Chamber of Commerce  
Greater Conejo Valley Chamber of Commerce  
Greater High Desert Chamber of Commerce  
Greater Riverside Chambers of Commerce  
Greater San Fernando Valley Chamber of Commerce  
Hollywood Chamber of Commerce  
Housing Contractors of California  
Institute of Real Estate Management (IREM)  
Laguna Niguel Chamber of Commerce  
League of California Cities  
Lincoln Area Chamber of Commerce  
Livermore Valley Chamber of Commerce  
Lodi District Chamber of Commerce  
Long Beach Area Chamber of Commerce  
Los Angeles Area Chamber of Commerce  
Los Angeles County Business Federation  
Murrieta Wildomar Chamber of Commerce  
Naiop California  
National Association of Theatre Owners of California  
National Federation of Independent Business  
Nisei Farmers League  
Norwalk Chamber of Commerce  
Norwalk; City of  
Olive Growers Council of California  
Orange County Business Council

Orange County Taxpayers Association  
Palos Verdes Peninsula Chamber of Commerce  
Paso Robles Templeton Chamber of Commerce  
Plant California Alliance  
Public Risk Innovation, Solutions, and Management (PRISM)  
Rancho Cordova Area Chamber of Commerce  
Redondo Beach Chamber of Commerce  
Ridgecrest Chamber of Commerce  
Rocklin Area Chamber of Commerce  
Roseville Area Chamber of Commerce  
Rural County Representatives of California (RCRC)  
Sacramento Metropolitan Chamber of Commerce  
San Gabriel Valley Economic Partnership  
San Pedro Chamber of Commerce  
Santa Ana Chamber of Commerce  
Santa Barbara South Coast Chamber of Commerce  
Santa Maria Valley Chamber of Commerce  
Shingle Springs/Cameron Park Chamber of Commerce  
Silicon Valley Leadership Group  
Simi Valley Chamber of Commerce  
Solvang Chamber of Commerce  
South Bay Association of Chambers of Commerce  
Southern California Leadership Council  
Southwest California Legislative Council  
Technet  
Torrance Area Chamber of Commerce  
Tri County Chamber Alliance  
Tulare Chamber of Commerce  
Twenty First Century Alliance  
United Ag  
United Chamber Advocacy Network  
University of California  
Urban Counties of California (UCC)  
Vacaville Chamber of Commerce  
Vista Chamber of Commerce  
Walnut Creek Chamber of Commerce  
West Ventura County Business Alliance  
Western Agricultural Processors Association  
Western Car Wash Association  
Western Electrical Contractors Association  
Western Growers Association  
Western Plant Health Association  
Yorba Linda Chamber of Commerce  
Yuba Sutter Chamber of Commerce

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