

Date of Hearing: April 26, 2023

ASSEMBLY COMMITTEE ON INSURANCE  
Lisa Calderon, Chair  
AB 1355 (Valencia) – As Amended April 4, 2023

**SUBJECT:** Employment: benefits: electronic notice and documents

**SUMMARY:** Authorizes specified documents to be provided electronically if the individual opts-in. Specifically, **this bill:**

- 1) Allows employers to provide information about the federal and California earned income tax credit (EITC) by email if the employee opts into receipt of electronic notification.
- 2) Allows employers to provide individuals with electronic statements or materials relating to claims for benefits if the individual opts into receipt of electronic statements or materials.
- 3) Makes other technical and non-substantive changes.

**EXISTING LAW:**

- 1) Requires employers to notify employees that they may be eligible for the federal and the EITC by handing the information directly to the employee or mailing to the employee's last known address. (Revenue and Taxation Code, Section 19853)
- 2) Requires employers to supply individuals when they become unemployed with copies of information related to claims for benefits. (Unemployment Insurance Code, Section 1089)
- 3) Requires an employer, semimonthly or at the time of each payment of wages, to furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing. (Labor Code, Section 226)

**FISCAL EFFECT:** Unknown

**COMMENTS:**

*Purpose:* According to the author, "Thanks to the advancements in technology, there are various ways in which we can share documents. Currently, informative documents related to retirement plans, medical leave, health coverage, dental coverage, pregnancy disability, and workers compensation may be shared via electronic means such as email. However, current statutes do not provide the flexibility to provide notices pertaining to California Earned Income Tax Credit, or the claim of benefits for individuals that become unemployed, by email. AB 1355 will amend the current law to allow employees to "opt-in" to receive electronic notifications related to the California Earned Income Tax Credit, and electronic statements or materials related to the claim of benefits for individuals that become unemployed, from their employers. This bill will not require employers to provide these materials electronically and will still allow employers the ability to distribute notices related to the California Earned Income Tax Credit and the claim of benefits via hardcopy paper. AB 1355 will provide eligible employees with expanded access to these critical documents, and allow our state to be more environmentally conscious by reducing paper waste."

*Background:* This measure would allow employees to opt into receipt of, among other things, electronic statements or materials relating to claims for benefits. In particular, the Employment Development Department (EDD) makes available online a document titled “For Your Benefit: California’s Programs for the Unemployed” which is provided to an employee by their employer when they are terminated, laid off, or take a leave of absence. This bill allows this document to be provided electronically if that individual opts into receipt of those specific documents electronically. The same would apply to information related to the EITC.

Nothing in this bill changes what materials must be provided; it only gives employers and employees an additional option in regards to whether they receive hard or electronic copies of already mandated materials. As California continues to go “green,” it seems reasonable to allow individuals with the ability to determine if paperless is the method they’d like to receive important information.

In 2006, Boise Cascade LLC requested an opinion from the Division of Labor Standards Enforcement within the Department of Industrial Relations, as to whether under certain circumstances an employer’s obligation to provide an employee with a “wage statement” may be met by providing an employee with such a record in electronic form, as an alternative to a “hard copy” paper document. The opinion letter conditionally allowed for electronic distribution of wage statements in specific circumstances. Please note, that this measure does not impact wage statements but this opinion letter is discussed since the opposition is in disagreement with the conclusion of this specific opinion, which allows for electronic distribution.

*Arguments in support:* According to the sponsor, Fidelity Investments, “AB 1355 allows California employees and employers to be more environmentally conscious by providing for the electronic delivery of two additional state required notices. Fidelity has worked diligently for years to eliminate paper in a variety of ways while complying with regulatory requirements. These include enhancing our technology to digitize transactions, encouraging customer adoption of eDelivery methods, advocating for regulatory changes that eliminate paper, and reducing our own employees’ use of paper. These sustainability efforts have been thoughtfully integrated into our business units, performance metrics, and technology investments. Paper elimination is also supported by growing customer preferences for paperless options.”

*Arguments in opposition:* According to the California Labor Federation, “AB 1355 would jeopardize workers’ ability to reliably receive accurate employment documents. AB 1355 would explicitly allow employers to exclusively supply electronic access to unemployment insurance-related documents given at the time of job separation, as well as other documents addressing eligibility for the Earned Income Tax Credit (EITC). The bill would codify that employers can do away with hard copies of employment documents for workers. The proponents argue that this bill simply extends existing law that allows for employers to provide electronic employment documents to workers in place of paper, but that interpretation is based on a decades-old opinion letter, not existing law.”

*Related Legislation:* AB 1554 (Lorena Gonzalez) Chapter 195, Statutes of 2019: This measure required an employer to notify an employee who participates in a flexible spending account (FSA), and required the notice to be by two different forms, one of which may be electronic.

*Recommended Amendments:* These amendments clarify that an employer will not retaliate against an employee or individual if they do not opt-in to receive documents by electronic means. Additionally, the amendments will add a 5-year sunset date to both code sections.

## Revenue and Taxation Code, Section 19853

(c) The employer shall provide the notification required by subdivision (a) by handing directly to the employee or, mailing to the employee's last known address- address, or, if the employee opts into receipt of electronic notification, emailing the employee either of the following:

(e) The employer may provide the notification required by subdivision (a) via email to an email account of the employee's choosing in PDF, JPEG, or other digital image file type format, if an employee affirmatively and in writing opts or by electronic acknowledgement into electronic statements or materials.

(f) An employer may not discharge an employee or in any manner discriminate, retaliate, or take any adverse action against an employee who does not affirmatively and, in writing or by electronic acknowledgement, opt into electronic statements or materials.

Provisions of AB 1355 will sunset on January 1, 2029.

## Unemployment Insurance Code, Section 1089

(e) The employer may provide the notification required by subdivision (a & b) via email to an email account of the employee's choosing in PDF, JPEG, or other digital image file type format, if an employee affirmatively and in writing or by electronic acknowledgment opts into electronic statements or materials.

(f) An employer may not discharge an employee or in any manner discriminate, retaliate, or take any adverse action against an employee who does not affirmatively and, in writing or by electronic acknowledgement, opt into electronic statements or materials.

Provisions of AB 1355 will sunset on January 1, 2029.

**REGISTERED SUPPORT / OPPOSITION:****Support**

Acclamation Insurance Management Services  
Allied Managed Care  
Anaheim Chamber of Commerce  
Calchamber  
California Apartment Association  
California Association for Health Services At Home  
California Attractions and Parks Association  
California Beer and Beverage Distributors  
California Chamber of Commerce  
California Hispanic Chamber of Commerce  
California League of Food Producers  
California New Car Dealers Association  
California Restaurant Association  
California Trucking Association

Coalition of Small and Disabled Veteran Businesses  
Family Business Association of California  
Fidelity Investments  
Flasher Barricade Association  
National Federation of Independent Business  
National Payroll Reporting Consortium  
Orange County Business Council  
Orange County Hispanic Chamber of Commerce

**Opposition**

California Labor Federation, Afl-cio

**Analysis Prepared by:** Kathleen O'Malley / INS. / (916) 319-2086