

Date of Hearing: June 28, 2023

ASSEMBLY COMMITTEE ON INSURANCE
Lisa Calderon, Chair
SB 227 (Durazo) – As Amended April 20, 2023

SENATE VOTE: 30-7

SUBJECT: Unemployment: Excluded Workers Program

SUMMARY: Establishes, upon appropriation, the Excluded Workers Program (EWP), administered by the Employment Development Department (EDD), to provide income assistance to excluded workers who are ineligible for state or federal unemployment insurance (UI) benefits. Specifically, **this bill:**

- 1) Establishes the EWP until January 1, 2027.
- 2) Provides that an individual shall be eligible to receive benefits if the EDD finds all of the following:
 - a) The individual resides in California at the time of the application;
 - b) The individual performed at least 93 hours of work or earned at least one thousand three hundred dollars (\$1,300) in gross wages over the course of three calendar months, as specified;
 - c) The individual experienced a week of unemployment; and,
 - d) The individual is ineligible to receive regular UI benefits, as defined, for reasons related to the individual's legal authorization to work.
- 3) Allows an eligible recipient to receive a payment in the amount \$300 for each week of unemployment occurring between January 1, 2025, and December 31, 2025 for up to 20 weeks.
- 4) Requires EDD to create regulations to administer EWP on, or before, January 1, 2025.
- 5) Authorizes EDD to conduct a credibility interview to determine whether the applicant's submission reasonably demonstrates that they meet the eligibility requirements of the EWP, if an applicant cannot provide sufficient documentation of their work hours, wages, or other employment records to meet the minimum documentation "value of four points" as required by this subdivision.
- 6) Prohibits personal information and documents collected from being shared with other government agencies except as necessary to administer the EWP, notwithstanding the existence of data sharing agreements to which EDD is a party.
- 7) For the taxable year beginning on or after January 1, 2025, and before January 1, 2027, provides an exclusion from gross income for benefits received under the EWP and requires EDD to submit, on or before June 15, 2026, a report to the Legislature on the total benefits paid and the average amount allowed.

- 8) Specifies that an individual is not eligible for the program any week in which the individual received any of the following: paid family leave; disability benefits; temporary or permanent disability benefits through the workers' compensation system.
- 9) Requires EDD, on or before January 1, 2025, to promulgate regulations to administer the EWP that includes, at a minimum 1) a process by which individuals may apply for the benefits; 2) a process for notifying individuals of the acceptance or denial of their application; and 3) a process for individuals to request a review of the denial.
- 10) Prohibits EDD, in administering the EWP, from any of the following:
 - a) Requesting, orally or in writing, an individual's nationality, place of birth, or eligibility or ineligibility for a social security number;
 - b) Compelling or requesting an individual to admit in writing whether they have proof of lawful presence in the United States;
 - c) Contacting an individual's current, former, or prospective employer for any purpose, including to verify employment status. However, does not prohibit EDD from using other means to verify past employment; and,
 - d) Recording an individual's immigration or citizenship status.
- 11) Authorizes an applicant to self-attest to being eligible for the program and requires them to submit documentation with a value equal to *at least four points* to establish proof of work history. The value system provides the following:
 - a) Documents with a *value of four points*:
 - i. Wage statements, as specified, or nonpayroll checks paid by the employer or other records showing payments from an employer.
 - ii. A federal tax return, as specified, with proof of filing with the Internal Revenue Service using a social security number or valid federal individual taxpayer identification number demonstrating at least \$5,200 in gross wages.
 - iii. A state tax return, as specified, filed with the Franchise Tax Board using a social security number or valid federal individual taxpayer identification number demonstrating at least \$5,200 in gross wages.
 - iv. An IRS form W-2 demonstrating at least \$5,200 in gross wages for the taxable year immediately preceding the date of application for benefits.
 - v. A Form 1099, a state tax return, or a federal tax form from the prior year demonstrating at least \$5,200 in gross income, coupled with evidence sufficient to demonstrate that the income was earned as an employee.
 - vi. Time records showing when the employee begins and ends work each work period sufficient to demonstrate at least 93 hours worked within a 3-month period from the 12-month period prior to the application.
 - b) Documents with a *value of two points*:
 - i. Evidence, such as statements issued by a financial institution, showing regular direct deposits made by an employer, or regular deposits of cash earnings or checks made by the applicant to their bank account.

- ii. Receipts from a check-cashing establishment or transaction logs from a payment app showing regular deposits, or transfers from an employer.
- iii. Receipts or records showing a consecutive pattern of commuting to and from a work location, such as toll records, parking receipts, or public transportation records, as specified.
- iv. A letter attesting to the applicant's employment history issued by a charitable organization registered with the Department of Justice or other entity designated by the EDD director and based on knowledge that the applicant meets the requirements of the program, as specified. Prohibits EDD from contacting the charitable organization for any reason other than to authenticate the letter.

c) Documents with a *value of one point*:

- i. An employer-issued identification badge or identification card.
- ii. Emails, text messages, social media messages, or other written communications relating to delivery order sheets, work invoices, work schedules, sign-in sheets, timesheets, directions or instructions from employers, or other written work-related communications between an applicant and an employer establishing the existence of a work relationship. Specifies that this communication only counts for one point, regardless of the quantity or volume of documentation.

- 12) Authorizes EDD, by regulation and consistent with the eligibility requirements for the EWP to establish alternative documents that sufficiently demonstrate an applicant's qualification for the program.
- 13) Provides that personal information, as specified, is confidential and exempt from disclosure under the CA Public Records Act, and may be used or disclosed only for purposes of administering the program, except where necessary to comply with an order, warrant, or subpoena, if issued by a court.
- 14) Requires EDD to establish procedures and safeguards against unauthorized access to, and use of, personal information collected, as specified.
- 15) Requires EDD, on or before April 1, 2025, to release quarterly reports on the progress of the EWP, including, but not limited to, 1) total benefits paid; 2) the number of individuals who applied for and received benefits; and 3) the quarterly reporting shall continue until all funds have been exhausted, or until January 1, 2027, whichever comes first.
- 16) Requires EDD, on or before March 1, 2026, to submit a report to the Legislature on the EWP, including, but not limited to:
 - a) EWP participation.
 - b) Benefit amounts paid.
 - c) Weeks of benefits paid per participant.
 - d) Demographic information on program participants, including income, gender, race, ethnicity, language, geographic distribution by county and legislative district, and employment sector.

- e) Outreach efforts.
- f) Administrative costs.

17) Makes findings and declarations.

EXISTING FEDERAL LAW:

- 1) Defines “State or local public benefit” to mean any grant, contract, loan, professional license, or commercial license provided by an agency of a State or local government or by appropriated funds of a State or local government. (8 United States Code (USC) Section 1621 (C)(1)(a))
- 2) Establishes that state or local public benefits cannot apply to any contract, professional license, or commercial license for a nonimmigrant whose visa for entry is related to such employment in the United States. (8 USC Section 1621 (C)(2)(a))
- 3) Declares that a state may provide that an individual who is not lawfully present in the United States is eligible for any State or local public benefit for which such alien would otherwise be ineligible only through the enactment of a State law, which affirmatively provides for such eligibility. (8 USC Section 1621 (d))

EXISTING STATE LAW:

- 1) Establishes EDD within the Labor and Workforce Development Agency with the task of engaging in job creation activities while administering UI and Disability Insurance Programs. ((UI) Code § 301)
- 2) Creates UI, funded by the state and the federal government and administered by EDD, to provide unemployment insurance benefits to persons unemployed through no fault of their own, and to reduce involuntary unemployment and the suffering causing by it. (UI Code § 100)
- 3) Defines “unemployed” as an individual unemployed in any week if the individual works less than his or her normal weekly hours of work for the individual’s regular employer, and the director finds that the regular employer has reduced or restricted the individual’s normal hours of work, or has rehired an individual previously laid off and reduced that individual’s normal hours of work. (UI Code § 1279.5)
- 4) Establishes the duration of UI to be 26 weeks, with the possibility of extensions based on requests, where eligible UI individuals receive \$40 to \$450 per week. (UI Code § 1276 – 1282).
- 5) Declares the intent of the Legislature that unemployed persons claiming UI benefits to be required to make all reasonable efforts to secure employment on their own behalf. (UI Code § 100)
- 6) Grants the possession of all the documents received by EDD for UI to perform their duties in vetting and administering the Benefit Payments to eligible individuals. (UI Code § 301.6)

- 7) Establishes that unemployment compensation benefits, extended duration benefits, and federal-state extended benefits shall not be payable on the basis of services performed by a person who is not a citizen or national of the United States. (UI Code § 1264 (a) (1))

FISCAL EFFECT: Unknown

COMMENTS

Purpose. According to the author:

Federal law excludes over one million Californians from unemployment insurance benefits when they temporarily lose work. Yet, employer taxes on the labor of undocumented workers contribute an estimated \$302 million each year to our Unemployment Insurance system, even though those same workers never see a cent of the benefits. This disparity hurts employers as well as workers. That money is supposed to help sustain industries and help workers get back to work when jobs become available. And without unemployment benefits, our economy suffers. Missed paychecks spiral into missed rent checks, missed car payments and the inability to provide food for families.”

The author continues,” Modeled on successful programs in New York and Colorado, SB 227 creates a program to provide unemployed workers who are excluded from Unemployment Insurance due to immigration status with a \$300 per week benefit for up to 20 weeks. These programs have provided us with a proven and tested model that can work right here in California.

UI Program: California’s UI program is a partnership between the state and federal government that provides temporary wage replacement to eligible unemployed workers. The program helps alleviate economic hardships for Californians who are unemployed, or whose hours have been reduced, through no fault of their own. The UI program is intended to replace half of workers’ wages for up to 26 weeks where state law sets the maximum benefit at \$450 per week. According to the Legislative Analyst’s Office (LAO), the average benefit is about \$330 per week for eligible Californians. Businesses typically pay state and federal UI payroll taxes that go to the UI trust fund to pay future eligible Californians and cover a portion of the costs for administering the program.

States must operate their UI programs within broad federal guidelines that determine eligibility for benefits. To be eligible for UI benefits, an unemployed worker must be: totally or partially unemployed, unemployed through no fault of your own, physically able to work, available for work, ready and willing to accept work immediately, and actively looking for work. UI covers traditional employees, excluding independent contractors, self-employed individuals, informal workers, and undocumented workers.

Role of Undocumented Workers in California’s Economy. Undocumented workers are an integral part of California’s economy filling thousands of jobs and contributing billions of dollars in state taxes. These workers typically pay sales, property, and income taxes. In 2019, undocumented workers contributed more than \$3.6 billion in state and local taxes and \$7 billion in federal taxes. Filling one in sixteen jobs, the state’s undocumented workers are more than half of the workforce for many industries such as manufacturing, restaurants and food services, and agriculture.

Although undocumented workers heavily contribute to California's economy, they face severe challenges in times of uncertainty without safety net programs or benefits, including UI benefits. Nearly four in ten noncitizen workers, and over six in ten undocumented workers with children, are below the standard of living, facing chronic and severe housing and food insecurity. California has one of the nation's highest costs of living, creating disparities even for working undocumented individuals. Although Los Angeles and the Bay Area are typically associated with high rent costs and standards of living, undocumented workers in the Central Valley and other inland communities face similar challenges in the burdens imposed by high rates of rent and cost of living.

This legislation establishes the EWP as a method to provide temporary benefits to excluded workers. As a temporary remedy, the EWP aims to create a safety net for working undocumented individuals who lost their previous employment at no fault of their own and are actively looking for employment.

The Expansion of UI Benefits during the COVID-19 Pandemic. Thousands of undocumented workers were deemed essential workers during the COVID-19 pandemic, yet did not receive various state or federal stimulus dollars. As a response, in 2020, many states enacted one-time UI funding specifically for undocumented workers. States that authorized these one-time funds were California, New York, Colorado, Illinois, Massachusetts, New Jersey, Oregon, and Washington. California's \$125 million program, the Disaster Relief Assistance for Immigrants (DRAI), provided one-time, \$500 debit cards to undocumented workers who were ineligible for federal assistance. The California Department of Social Services (CDSS) administered the program, distributing 150,000 debit cards to undocumented workers.

Under the Golden State Stimulus, where two rounds of payments were made to assist Californians, the state provided cash assistance to low- and middle-income taxpayers, including undocumented workers who file their taxes using an Individual Taxpayer Identification Number (ITIN). With over half of the undocumented workers in the state filing taxes using an ITIN, the governor's administration reported that the state distributed \$955 million in total to undocumented taxpayers via state stimulus payments.

Expansion of UI in Other States. In 2022, Colorado enacted SB 22-234 (Senator Chris Hansen, Statutes of 2022), creating the Benefit Recovery Fund, a UI benefit program with an ongoing funding source that extended eligibility to undocumented workers. With funds being limited to a \$30 million threshold, Colorado State officials estimated that 2,500 undocumented workers could receive benefits every year.

The Institute on Taxation and Economic Policy (ITEP) found that over the past 10 years, as of 2020, \$1.4 billion was paid in Unemployment Insurance taxes in New York based on the work of undocumented immigrants. While on the other hand, undocumented workers paid \$13 billion in UI taxes in the United States as a whole. In response to the pandemic, New York lawmakers created the Excluded Workers Fund to assist excluded workers who were not able to receive pandemic-related assistance from the federal government. In the 2021-22 fiscal year, \$2.1 billion were allocated to the fund, to assist excluded workers, especially undocumented workers, who were not eligible for UI benefits. This legislation aims to create a separate UI program for undocumented workers with ongoing funding, similar to efforts made by other states, such as Colorado.

Previous Legislation: AB 2847 (Garcia) (2021-2022 Legislative Session) would have established the EWP Program to provide UI benefits, to workers who are not eligible for regular state or federal UI benefits due to their immigration status.

The Governor's Veto Message: "I am returning Assembly Bill 2847 without my signature. California has taken critical actions to support inclusion and opportunity for undocumented immigrants and mixed status families. Just this year, California made historic investments to ensure more undocumented Californians have access to health care, food assistance, and to provide inflation relief regardless of immigration status. As we continue forward, this bill needs further work to address the operational issues and fiscal concerns, including a dedicated funding source for benefits."

REGISTERED SUPPORT / OPPOSITION:

Support

Afscme

County of Los Angeles Board of Supervisors

County of Marin

County of Monterey

Los Angeles Homeless Services Authority

Udw/afscme Local 3930

Vision Y Compromiso (UNREG)

Opposition

None on file.

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