

Date of Hearing: August 31, 2023

ASSEMBLY COMMITTEE ON INSURANCE
Lisa Calderon, Chair
SB 799 (Portantino) – As Amended August 22, 2023

SENATE VOTE: Vote not relevant

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 unemployment insurance 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 workers. (UI Code Sections 301, 602, 675, 926, 970, 977 & 1251)
- 2) Defines a worker 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 worker’s weekly benefit;
 - c) Any week for which, a worker is unable to work due to mental or physical health illness or injury, as specified; or,
 - d) Any week during which they perform full-time work for five days as a juror, or as a witness under subpoena. (UI Code Section 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. (UI Code Section 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 he or she continues out of work because of the fact that the trade dispute is still in active progress. (UI Code Section 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. (UI Code Section 1262.5)

FISCAL EFFECT: Unknown

COMMENTS:

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

There is tremendous concern within our workforce across California. Currently, we see writers, hotel workers, nurses, city and county workers all striking and it is deeply concerning. It's better for the worker and the economy to have job security and a seat at the table as we negotiate the future of the workforce, while business and economic models change. Even coming out of a strike, when folks eventually get a contract that they agree on, their families have suffered during this time. SB 799 will help workers put food on their table when they need it most, in the middle of a labor negotiation.

- 2) *Background.* This measure is 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 the bill 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 in the last three years, EDD went through, to say it nicely, a number of challenges and obstacles. The Legislature responded by introducing, passing, and the Governor signing almost two dozen pieces of legislation in the last two years 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) *Issues Related to EDD*

UI Trust Fund. 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 August 23, 2023, California's federal loan balance was more than \$18 billion.¹

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.

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 and the state could be assessed the FUTA tax credit reduction.

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 2032.²

EDDNext System Modernization

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).

EDD Recently Labeled a "High Risk" Agency by the State Auditor

On August 24, 2023, the California State Auditor released its list of "high risk" agencies. This year, 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.

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

² <https://lao.ca.gov/Publications/Report/4543>

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.³

- 4) *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 an employee 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.
- 5) *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. Currently, Writers Guild of America members have been on strike since May 2023 and members of SAG-AFTRA have been on strike since July 2023. BLS data also shows members of Unite Here that work at Los Angeles and Orange County hotels have had several work stoppages since July 2023, however the longest single duration appears to have been eight days.
- 6) *Previous Legislation.* 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 the Governor.
- 7) *Arguments in Support.* The California Labor Federation, the sponsor of this bill, writes in support on behalf of a coalition of labor groups: "As long as striking workers are ineligible for UI benefits, the State is giving employers a weapon against the interests of workers, their families, and communities. The prohibition on striking workers receiving UI enables employers to wait out a strike, hoping that the precarious financial situation of their workers, many of whom will face inability to stay in their homes, loss of health care, and strangling debt, will lead to a swifter end to the strike."
- 8) *Arguments in Opposition.* The California Chamber of Commerce has labeled this bill a "job killer." In opposition the Cal Chamber and other employer organizations write: "Striking workers have a job – they are just choosing not to work in order to create economic pressure and negotiate. That is not the same as having no idea where your next paycheck comes from. SB 799 is a profound departure from UI's history, and a significant tax increase on California's employers, including those who have no involvement in any labor disputes. Moreover, with a recession potentially in our future, SB 799 risks compounding UI's insolvency – which will weigh heavily on the State, California's employers, and California's truly unemployed."

³ <http://auditor.ca.gov/reports/2023-601/index.html#section2>

- 9) *Suggested Amendments.* Should this measure move forward, the author may wish to consider a delayed implementation date until the UI Trust Fund is no longer suffering a deficit or, at the very least, until the new IT system EDDNext is complete in Fiscal Year 2026-27.

REGISTERED SUPPORT / OPPOSITION:

Support

Actors Equity Association
AFSCME California
Attorney General Rob Bonta
California-Nevada Conference of Operating Engineers
California Alliance for Retired Americans (CARA)
California Conference Board of the Amalgamated Transit Union
California Conference of Machinists
California Faculty Association
California Federation of Teachers Afl-cio
California IATSE Council
California Labor Federation, Afl-cio
California Nurses Association
California Rural Legal Assistance Foundation (CRLA Foundation)
California School Employees Association
California State Legislative Board of the Sheet Metal, Air, Rail and Transportation Workers -
Transportation Division (SMART-TD)
California State Pipe Trades Council
California State University Employees Union (CSUEU)
California Teachers Association
California Teamsters Public Affairs Council
Communication Workers of America, District 9
Directors Guild of America, INC.
Engineers and Scientists of California, IFPTE Local 20, Afl-cio
Entertainment Union Coalition
IBEW Local 18
Insurance Commissioner Ricardo Lara / California Department of Insurance
National Union of Healthcare Workers (NUHW)
Northern California District Council of the International Longshore and Warehouse Union
(ILWU)
Sag-AFTRA, AFL-CIO
Service Employees International Union, California State Council
Service Employees International Union, Local 1000
State Building and Construction Trades Council of California, Afl-cio
State Superintendent of Public Instruction Tony Thurmond
Transport Workers Union of America, AFL-CIO
UAW Region 6
UDW/AFSCME Local 3930
Union of American Physicians and Dentists
Unite-Here, AFL-CIO
United Farm Workers

United Food and Commercial Workers, Western States Council
United Nurses Associations of California/Union of Health Care Professionals
United Steelworkers District 12
Utility Workers Union of America, AFL-CIO
Western States Council of Sheet Metal, Air, Rail, & Transportation
Writers Guild of America West

Opposition

Acclamation Insurance Management Services
Agricultural Council of California
Air Conditioning Sheet Metal Association
Alameda Chamber of Commerce
Allied Managed Care
American Council of Engineering Companies
Anaheim Chamber of Commerce
Association of California School Administrators
Associated General Contractors
Associated General Contractors-san Diego Chapter
Association of California Healthcare Districts (ACHD)
Association of Western Employers
Auto Care Association
Bay Area Council
Bizfed - Los Angeles County
Brea Chamber of Commerce
Building Owners and Managers Association
Calforests
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 Sheet Metal & Air Conditioning Contractors National Association
California Association of Winegrape Growers
California Attractions and Parks Association
California Bankers Association
California Building Industry Association
California Business Properties Association
California Business Roundtable
California Chamber of Commerce
California Employment Law Council
California Farm Bureau
California Fuels and Convenience Alliance
California Golf Course Owners Association
California Grocers Association
California Hospital Association
California Hotel & Lodging Association
California League of Food Producers
California Manufacturers & Technology Association
California Restaurant Association

California Retailers Association
California Special Districts Association
California Staffing Professionals (CSP)
California State Association of Counties (CSAC)
California Taxpayers Association
California Tire Dealers Association
California Travel Association
California Trucking Association
CAWA - Representing the Automotive Parts Industry
Coalition of Small and Disabled Veteran Businesses
Construction Employers' Association
Corona Chamber of Commerce
Dixon District Chamber of Commerce
El Dorado County Chamber of Commerce
El Dorado Hills Chamber of Commerce
Family Business Association of California
Family Winemakers of California
Finishing Contractors Association of Southern California
Flasher Barricade Association
Folsom Chamber of Commerce
Fremont Chamber of Commerce
Fresno Chamber of Commerce
Gateway Chambers Alliance
Greater Coachella Valley Chamber of Commerce
Greater Conejo Valley Chamber of Commerce
Greater High Desert Chamber of Commerce
Hawthorne Cat
Holt of California
Housing Contractors of California
Huntington Beach Chamber of Commerce
Laguna Niguel Chamber of Commerce
League of California Cities
Livermore Valley Chamber of Commerce
Lodi Chamber of Commerce
Lomita Chamber of Commerce
Los Angeles Area Chamber of Commerce
Manteca Chamber of Commerce
Murrieta Wildomar Chamber of Commerce
Naiop California
National Electrical Contractors Association (NECA)
National Federation of Independent Business
Northern California Allied Trades
Norwalk Chamber of Commerce
Orange County Business Council
Orange County Taxpayers Association
Palos Verdes Peninsula Chamber of Commerce
Paso Robles & Templeton Chamber of Commerce & Visitor Centers
Peterson Cat
Peterson Power Systems

Peterson Tractor
Peterson Trucks
Rancho Cordova Area Chamber of Commerce
Resource Recovery Coalition of California
Ridgecrest Chamber of Commerce
Roofing Contractors Association of California
Roseville Area Chamber of Commerce
Rural County Representatives of California (RCRC)
Sacramento Metropolitan Chamber of Commerce
Santa Ana Chamber of Commerce
Santa Barbara South Coast Chamber of Commerce
Santa Clarita Valley Chamber of Commerce
Santa Maria Valley Chamber of Commerce
Silicon Valley Leadership Group
Simi Valley Chamber of Commerce
Southern California Contractors Association
Southern California Glass Management Association (SCGMA)
Southwest California Legislative Council
Technet
Torrance Area Chamber of Commerce
Tri County Chamber Alliance
Tulare Chamber of Commerce
Twenty First Century Alliance
United Chamber Advocacy Network
United Contractors (UCON)
Urban Counties of California (UCC)
Vacaville Chamber of Commerce
Vista Chamber of Commerce
Wall and Ceiling Alliance
Walnut Creek Chamber of Commerce
West Ventura County Business Alliance
Western Car Wash Association
Western Electrical Contractors Association
Western Growers Association
Western Line Constructors Chapter, Inc., Neca, INC.
Western Painting and Coating Contractors Association
Western Wall and Ceiling Contractors Association (WWCCA)
Yorba Linda Chamber of Commerce
Yuba Sutter Chamber of Commerce

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