SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Lola Smallwood-Cuevas, Chair
2023 - 2024 Regular

Bill No:	AB 1516	**Hearing Date:**	June 5, 2024
Author:	Kalra		
Version:	January 25, 2024		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Alma Perez-Schwab		

SUBJECT: Labor and Workforce Development Agency: working group: minimum wage

KEY ISSUE

This bill requires the Labor and Workforce Development Agency (LWDA) to convene a working group on the state minimum wage to evaluate specified topics including raising the minimum wage and ending the sub-minimum wage for incarcerated workers.

ANALYSIS

Existing federal law:

1) Sets the federal minimum wage at $7.25 an hour. (Fair Labor Standards Act of 1938, 29 U.S.C. Chapter 8)

Existing state law:

2) Sets California's minimum wage at $16/hour for all employers and specifies that after January 1, 2023, the minimum wage rate will be adjusted annually for inflation based on the national consumer price index for urban wage earners and clerical workers (CPI-W). However, the minimum wage cannot be lowered, even if there is a negative CPI, and the highest raise allowed in any one year is 3.5 percent. Each minimum wage increase must be rounded to the nearest ten cents ($0.10) and calculated (by the Director of Finance) on August 1st to take effect on January 1st of the following year. (Labor Code §1182.12)

3) Effective April 1, 2024, requires fast food restaurants, as defined, to pay their employees a minimum wage of $20.00 per hour. (Labor Code §1474-1477)

4) Effective July 1, 2024, requires specified health care facility employers to pay a health care worker minimum wage based on a multi-tiered schedule reaching up to $25 an hour by 2028, as specified. (Labor Code §1182.14, §1182.15)

5) For purposes of the minimum wage, defines "employer" to mean any person who directly or indirectly, or through an agent or any other person, employs or exercises control over the wages, hours, or working conditions of any person and includes the state, political subdivisions of the state, and municipalities. (Labor Code §1182.14)

6) Establishes the Department of Industrial Relations (DIR) in the Labor and Workforce Development Agency (LWDA), and vests it with various powers and duties to foster,

promote, and develop the welfare of the wage earners of California, to improve their working conditions, and to advance their opportunities for profitable employment. (Labor Code §50.5)

7) Establishes the Division of Labor Standards Enforcement (also known as the Office of the Labor Commissioner (LC)) within the DIR, and requires the LC, among other things, to ascertain the wages paid to all employees in this state and to ascertain the hours and conditions of labor and employment in the various occupations, trades, and industries in which employees are employed in this state. (Labor Code §56, §61)

8) Establishes the Employment Development Department (EDD) to, among other duties, administer the Unemployment Insurance, Disability Insurance programs as well as managing other job creation activities. (Unemployment Insurance Code §301)

This bill:

1) Requires the Labor and Workforce Development Agency to convene, until July 1, 2025, a working group consisting of representatives from the Labor Commissioner's office, the Employment Development Department, organizations representing low-wage or immigrant workers, organizations advocating for the rights of incarcerated persons, and an organization representing employers to study and evaluate, at a minimum, the following topics related to the minimum wage in California:

   a. Raising the state minimum wage.
   b. Utilization rates of the state social safety net by minimum wage workers.
   c. The role of the California Strategic Enforcement Partnership in state minimum wage enforcement efforts.
   d. The socioeconomic benefits of ending the subminimum wage for incarcerated workers.

2) Requires the working group to submit to the Legislature, on or before July 1, 2025, a report that outlines recommendations for raising the minimum wage for all workers in California.

COMMENTS

1. Background:

Cost of Living in California:
According to a University of California, Berkeley Labor Center report, which provides an analysis of living wages in California "based on the MIT living wage calculator[1], which measures income adequacy by accounting for both family composition and geography, the 2022 self-sufficiency wage in California for

- A single adult is $21.24
- A family with two working adults and two children is $30.06
- A family with one working adult and one child is $43.33"[2]

[1] Glasmeier, Amy K. Living Wage Calculator. 2023. Massachusetts Institute of Technology. Livingwage.mit.edu
[2] Farmand, Aida; Challenor, Tynan; Hunter,Savannah; Lopezlira, Enrique; and Jacobs, Ken. *State workers struggle to make ends meet throughout California; Women, Black, and Latino workers are disproportionately affected*. March 15, 2023. https://laborcenter.berkeley.edu/state-workers-struggle-to-make-ends-meet-throughout-california/

Future of Work Commission:
In 2019, Governor Newsom established the Future of Work Commission, comprised of 21 prominent leaders from technology, labor, business, education, and other critical sectors. The Commission's charge was to "study, understand, analyze, and make recommendations regarding the kinds of jobs Californians could have in the decades to come; …modernizing worker safety net protections; and the best way to preserve good jobs, ready the workforce for the jobs of the future throughout lifelong learning, and ensure shared prosperity for all." The Commission worked over an 18-month period to assess the challenges related to the present and future work in California.

In its final report, the Commission made several key findings, specifically about the challenges of inequity, and recommendations on how to address them. One of the key findings highlighted that "inequality is worsened by the growth of low-wage jobs, decline of middle-wage jobs, and wage stagnation experienced by a large share of workers, particularly when there are limited pathways to move from low-wage to higher-wage work. Thirty-one percent of California workers make less than $15 per hour."[3]

One of the recommendations of the Commission was to eliminate working poverty. The Commission suggested that an important policy response to the prevalence of low-wage work is to raise wages for the lowest paid workers to a living wage. One of the initiatives recommended by the Commission to achieve this is the use of tools like a living wage calculator that can help determine regional living wages with the use of "geographically specific data related to the likely costs of a family's basic necessities, such as food, childcare, and housing, to determine a living wage that an individual in a household must earn.[4]"

This bill is an important step towards achieving these goals by requiring the LWDA to convene a working group to study and evaluate these issues including the raising of the state minimum wage.

2. California Strategic Enforcement Partnership:

The California Strategic Enforcement Partnership ("partnership") was formed in late 2016 by the California Labor Commissioner's Office to bolster anti-wage theft enforcement efforts in California and create a culture of labor law compliance by collaborating with worker organizations. The goals of the partnership are to:

- Collect unpaid wages and improve the use of agency and legal tools to collect wages
- Develop industry-specific enforcement strategies
- Identify high impact cases that influence industry practices and support law-abiding employers through effective enforcement
- Build a sustainable strategic enforcement system in California
- Increase worker engagement in advocating for better working conditions

The partnership is a collaboration between the Labor Commissioner's Office, the National Employment Law Project, and 14 workers' rights and legal advocacy organizations (referred to as "the cohort"). The partnership focuses on six low-wage, high-violation industries, and

[3] California Future of Work Commission, "A New Social Compact for Work and Workers," March 2021, p. 42.
[4] *Ibid.*

works with organizations based in the San Francisco Bay Area, Southern California, and Central Coast and Central Valley. The sick low-wage industries of focus are agriculture, janitorial, carwash, residential home care, construction, and restaurant.[5]

This bill directs the LWDA, in convening the working group, to also study and evaluate the role of the California Strategic Enforcement Partnership in state minimum wage enforcement efforts.

3. Need for this bill?

According to the author, using "MIT's living wage calculator, in Modoc County, the cheapest county to live in California, one working adult in a two-parent, one-child household would require $18.53 an hour, well above our current statewide minimum wage. This calculation includes basic costs of living such as rent, childcare, transportation, and health care. Some local cities and counties have established a higher minimum wage. For example, cities such as San Jose, Santa Clara, El Cerrito, Emeryville, and Palo Alto have a minimum wage above $17.00 an hour, with the city of West Hollywood at the highest of $19.08 an hour." Additionally, the author notes, "there have been calls to end the remaining subminimum wages. In California, incarcerated workers earn between $0.08 to $1 per hour…These subminimum wages make it difficult to pay child support, contribute to victim support funds, or pay any other court-related debt both during and after incarceration."

The author also argues that "as the cost of living continues to rise and wages remain stagnant, it is crucial for California to lay the foundation for raising the statewide minimum wage and ending subminimum wages. This bill will fill that information gap and require a study of what constitutes a living wage."

4. Proponent Arguments:

According to proponents:

> "California has prided itself as a national leader on working people's issues; the Governor convened a 'Future of Work' Commission specifically to examine how California could lead on low-wage workers' issues. Legislators in New York, Rhode Island, and Ohio have introduced legislation to raise the minimum wage to $21 an hour and end various subminimum wages, and in New York, a large coalition of labor unions and community organizations are advancing the $21 legislation with championship from the chairs of the labor caucuses in both the NY Assembly and Senate. With all of these states advancing $21 bills, and with the minimum needed for a working adult in a 2-parent, 2-child household in the cheapest county in California being $23.74, the minimum wage in California cannot be lower than $21 per hour.
>
> Additionally, there is incredible momentum nationwide to end all subminimum wages in the United States. The subminimum wage for incarcerated workers is a direct legacy of slavery, originating from the exemption to the 13th Amendment that allows for slavery in the case of incarceration. Incarcerated workers conduct labor both for the public and private sectors that in any other context would be mandatorily paid at least a full

[5] https://s27147.pcdn.co/app/uploads/2018/11/CA-Enforcement-Document-Letter-11-27-18-1.pdf

minimum wage. In many cases these workers perform essential work - producing hand sanitation liquid and license plates, and fighting California's ever-increasing wildfires. Many states have already voted to end forced labor and other states are advancing legislation to require incarcerated workers to be paid a full minimum wage. California should lead the way and require all incarcerated workers to be paid a full minimum wage, paving the pathway for Congress to require the same, rather than following other states that are currently moving in this direction."

5. Opponent Arguments:

None received.

6. Prior/Related Legislation:

SB 1049 (Padilla, 2024) would require the Department of Industrial Relations, in conjunction with the Secretary of LWDA and the Director of Housing and Community Development, to (1) examine housing costs in the state and create a formula to ascertain the living wage that allows full-time wage earners to afford a decent standard of living, as specified; (2) develop a certification program for employers that pay a living wage; and (3) annually report the living wage to the Legislature, as specified. *SB 1049 was held under submission in the Senate Appropriations Committee.*

SB 525 (Durazo, Chapter 890, Statutes of 2023) enacted the phased in multi-tiered statewide minimum wage increase schedule for health care workers employed by covered healthcare facilities, as specified above under existing law.

AB 610 (Holden, Chapter 4, Statutes of 2024) amended existing fast food worker provisions requiring a $20 an hour minimum wage for fast food workers to exempt specified restaurants from the definition of "fast food restaurant," including restaurants in airports, hotels, event centers, theme parks, museums, and other locations, as prescribed.

AB 1228 (Holden, Chapter 262, Statutes of 2023) requires, among other things, the hourly minimum wage for fast food restaurant employees to be twenty dollars ($20) per hour, effective April 1, 2024. AB 1228 repealed, revised and recast provisions of the Fast Food Accountability and Standards Recovery Act (FAST Act) to codify changes that were negotiated and agreed to by both proponents and opponents (seeking a referendum) of AB 257 (Holden, 2022) but only if the referendum was withdrawn by January 1, 2024.

SB 3 (Leno, Chapter 4, Statutes of 2016), among other things, increased the state minimum wage to $15 per hour, in an incremental timeline from $10 to $15, and indexed the minimum wage to inflation thereafter, as specified.

SUPPORT

One Fair Wage (Sponsor)
A New Way of Life
All of Us or None
Anti Recidivism Coalition
Arming Minorities Against Addiction & Disease (AMAAD)

Black Women's Roundtable
California Native Vote Project
California Rural Legal Assistance Foundation
California Working Families Party
Communities United for Restorative Youth Justice (CURYJ)
CURE California
Dee Hill Foundation Inc.
Felony Murder Elimination Project
GRACE - End Child Poverty in California
Homies Unidos
Legal Services for Prisoners With Children
National Coalition on Black Civic Participation
Roberts Enterprise Development Fund (REDF)
Sister Warriors Freedom Coalition
Starting Over Inc.

OPPOSITION

None received.

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SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Lola Smallwood-Cuevas, Chair
2023 - 2024 Regular

Bill No:	AB 1870	**Hearing Date:**	June 5, 2024
Author:	Ortega		
Version:	April 1, 2024		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Emma Bruce		

SUBJECT: Notice to employees: legal services

KEY ISSUE

This bill requires employers to include information concerning an employee's right to consult a licensed attorney in their workers' compensation employee rights notice.

ANALYSIS

Existing law:

1) Establishes a workers' compensation system that provides benefits to an employee who suffers from an injury or illness that arises out of and in the course of employment, irrespective of fault. This system requires all employers to secure payment of benefits by either securing the consent of the Department of Industrial Relations to self-insure or by securing insurance against liability from an insurance company duly authorized by the state. (California Constitution Article XIV, §4, Labor Code §3200-6002)

2) Establishes the Division of Workers' Compensation (DWC), within the Department of Industrial Relations (DIR), to monitor the administration of workers' compensation claims, and provides administrative and judicial services to assist in resolving disputes that arise in connection with claims for workers' compensation benefits. (Labor Code §110-139.6)

3) Requires every employer, except the state, to provide workers' compensation benefits to their employees, as specified. (Labor Code §3700)

4) Establishes the Commission on Health and Safety and Workers' Compensation (CHSWC) to conduct a continuing examination of the workers' compensation system and of the state's activities to prevent industrial injuries and occupational illnesses. (Labor Code §77)

5) Directs the administrative director of DWC, in consultation with the CHSWC, to prescribe the form and content of the required employee notices, as specified. (Labor Code §3350(d))

6) Requires the administrative director of DWC, in consultation with the CHSWC, to prescribe reasonable rules and regulations, including notice of the right to consult with an attorney, when serving employees the following notices:

a. Notices dealing with the payment, nonpayment, or delay in payment of temporary disability, permanent disability, supplemental job displacement, and death benefits.
b. Notices of any change in the amount or type of benefits being provided, the termination of benefits, the rejection of any liability for compensation, and an accounting of benefits paid.
c. Notices of rights to select the primary treating physician, written continuity of care policies, requests for a comprehensive medical evaluation, and offers of regular, modified, or alternative work. (Labor Code §138.4(c))

7) Requires employers to post, in a conspicuous location frequented by employees, a notice that states the name of the employer's current workers' compensation insurance carrier, or when such is the fact, that the employer is self-insured, and who is responsible for claims adjustment. The notice shall be easily understandable and posted in both English and Spanish. The following information shall be included:

a. How to get emergency medical treatment, if needed.
b. The kinds of events, injuries, and illnesses covered by workers' compensation.
c. The injured employee's right to receive medical care.
d. The rights of the employee to select and change the treating physician pursuant to the provisions of Section 4600 of the Labor Code.
e. The rights of the employee to receive temporary disability indemnity, permanent disability indemnity, supplemental job displacement, and death benefits, as appropriate.
f. To whom injuries should be reported.
g. The existence of time limits for the employer to be notified of an occupational injury.
h. The protections against discrimination provided pursuant to Section 132a of the Labor Code.
i. The Internet Web site address and contact information that employees may use to obtain further information about the workers' compensation claims process and an injured employee's rights and obligations, including the location and telephone number of the nearest information and assistance officer. (Labor Code §3550)

8) Provides that the failure of an employer to provide the notice of workers' compensation insurance shall automatically permit the employee to be treated by their personal physician with respect to an injury occurring during that failure. (Labor Code §3350(e))

This bill:

1) Requires employers to include information concerning an employee's right to consult a licensed attorney in their workers' compensation employee rights notice.

2) Specifies that in most instances, attorney's fees will be paid from an injured employee's recovery.

COMMENTS

1. Background:

Workers' Compensation

Workers' compensation is the nation's oldest social insurance program. It developed in response to increased employee injuries in an age of widespread industrialization. California adopted its first workers' compensation laws in the 1910s. Progressive Era political reformers created a no-fault system, meaning that an injured employee does not need to prove that the injury or illness was someone else's fault in order to receive benefits for an on-the-job injury or illness. In exchange for receiving immediate medical attention, workers traded away their right to sue an employer for damages.

When workers are injured on the job, they should notify their employer as soon as possible. Once notified, employers must provide workers with a claim form within one working day. After both parties complete the form, the employer's insurance company has fourteen days to mail workers a letter with an update on the status of their claim and 90 days to accept or deny a claim. Workers have one year from their injury date or denial notice receipt to appeal a denied claim to a workers' compensation administrative law judge (WCJ). Should someone wish to appeal a WCJ's decision they have 20 days to file a petition for reconsideration with the Workers' Compensation Appeals Board (WCAB).

Workers are not required to use an attorney to navigate the claims process. However, they can be useful if someone has a particularly complex case or needs to appeal a decision. Attorneys who represent injured workers in workers' compensation cases do not receive payment immediately. Instead, the WCAB sets attorneys' fees, which are typically payable out of a client's award.

Existing Notice Requirements
A 2010 study conducted by the CHSWC, "Report on Benefit Notices and Recommendations," found that workers' compensation benefit notices were too voluminous, complex, and overwhelming. In response, the Legislature passed AB 335 (Solorio, Chapter 544, Statutes of 2011) which, among other things, directed the administrative director of the DWC to prescribe reasonable rules and regulations, including notice of the right to consult with an attorney, where appropriate when serving specified claims notices on an employee. Existing law 6) lists the individual notices that carry this requirement.

AB 1870 would build on AB 335, by requiring employers to include an employee's right to consult an attorney in their workers' compensation employee rights notice.

2. Need for this bill?

According to the author, "AB 1870 will inform injured workers of their right to consult an attorney during the Workers' Compensation process by including a notice on the Employees' Rights poster that employees have the choice to consult an attorney during the Worker's Compensation process."

3. Proponent Arguments

The sponsors of the measure, the California Applicants' Attorneys Association, write that:

"There is an extremely large disparity in the success of Workers' Compensation cases between applicants who had access to a lawyer and those who did not. In the last six years, an average of 145,799 represented injured workers (workers who had a lawyer) per year asked to have their denial of benefits adjudicated. During the same period, an average of

only 1,810 unrepresented injured workers per year asked to have their denial of benefits adjudicated.

In cases in which workers do NOT have an attorney, it is extremely unlikely that they will receive either treatment or workers' compensation benefits for their workplace injuries. Unrepresented workers simply live with the pain because they are unaware of the resources available to them.

By simply adding a notice to the Employees' Rights poster advising employees that they have the right to consult with an attorney throughout the Workers' Compensation process, AB 1870 will embolden workers to fight for the benefits that they are owed."

4. Opponent Arguments:

None received.

5. Prior Legislation:

AB 335 (Solorio, Chapter 544, Statutes of 2011) directed the administrative director of the DWC, in consultation with the CHSWC to prescribe reasonable rules and regulations including notice of the right to consult with an attorney, where appropriate, for serving workers' compensation claims notices on an employee. Required the creation of informational material written in plain language that describes the overall workers' compensation claims system.

SUPPORT

California Applicants' Attorneys Association (Sponsor)
American Federation of State, County, and Municipal Employees
California Labor Federation
California Nurses Association

OPPOSITION

None received.

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SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Lola Smallwood-Cuevas, Chair
2023 - 2024 Regular

Bill No:	AB 3234	**Hearing Date:**	June 5, 2024
Author:	Ortega		
Version:	May 28, 2024		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Emma Bruce		

SUBJECT: Employers: social compliance audit

KEY ISSUE

This bill requires an employer that voluntarily subjects itself to a social compliance audit, to post on its business website a report detailing the findings of that audit, including specific findings regarding child labor.

ANALYSIS

Existing law:

1) Establishes within the Department of Industrial Relations (DIR) the Division of Labor Standards Enforcement (DLSE) under the direction of the Labor Commissioner (LC), and empowers the LC to ensure a just day's pay in every work place and to promote justice through robust enforcement of labor laws. (Labor Code §79-107)

2) Under the California Occupational Safety and Health Act assures safe and healthful working conditions for all California workers by authorizing the enforcement of effective standards, assisting and encouraging employers to maintain safe and healthful working conditions, and by providing for research, information, education, training, and enforcement in the field of occupational safety and health. (Labor Code §6300)

3) Provides that specified school district, charter school, and private school officials may issue a minor a work permit if requested by the minor's parent, guardian, foster parent, or caregiver. Any principal issuing a work permit must provide a self-certification that he or she understands the requirements in existing law for issuing a work permit and submit a copy of each work permit he or she issues along with a copy of the application for each work permit to the superintendent of the school district in which the school is located. (Education Code §49110)

4) Prohibits any employer employing a minor 15 years of age or younger for more than 8 hours in one day or more than 40 hours in one week, or before 7 am or after 7 pm. Prohibits an employer from employing a minor 16 or 17 years of age for more than 8 hours in one day or more than 48 hours in one week or before 5 am or after 10 pm on any day preceding a school day. (Labor Code §1391)

5) Prohibits minors under the age of 16 years from working in or in connection with any manufacturing establishment or other place of labor or employment, except as specified. (Labor Code §1290)

6) Prohibits minors under the age of 16 from working in any capacity in operating or assisting in operating certain types of machines, including circular or band saws, wood shapers, picker machines, printing presses, corner-staying machines in paper-box factories, dough brakes or cracker machinery, wire or iron straightening machinery. (Labor Code §1293)

7) Prohibits minors under the age of 16 from working in certain occupations including, among others, upon any railroad, upon any vessel or boat engaged in commerce within California's jurisdiction, in occupations causing dust in injurious quantities, on scaffolding, or in any occupation dangerous to the life or limb, or injurious to the health or morals of the minor. (Labor Code §1294)

8) Provides that DLSE may, after a hearing, determine whether any particular trade, process of manufacture, or occupation, in which employment of minors is not already forbidden by law, or whether any particular method of carrying on the trade, process of manufacture, or occupation is sufficiently dangerous to the lives or limbs or injurious to the health or morals of minors to justify their exclusion therefrom. (Labor Code §1296)

9) Provides that any person, including a parent or guardian, employing either directly or indirectly through third persons, or who employs, or permits any minor to be employed in violation of the law, is guilty of a misdemeanor, punishable by a fine of not less than one thousand dollars ($1,000) nor more than five thousand dollars ($5,000) or imprisonment in the county jail for not more than six months, or both. (Labor Code §1303)

This bill:

1) Defines "child" as a natural person under 18 years of age.

2) Defines "child labor" as any work performed in violation of state or federal law.

3) Defines "clear and conspicuous" as larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from the surrounding text of the same size by symbols or other marks that call attention to the language.

4) Defines "social compliance audit" as an inspection or assessment of an employer's operations or practices to determine whether the operations or practices comply with state and federal labor laws.

5) Requires an employer who has voluntarily subjected itself to a social compliance audit, whether the audit is conducted in part, or in whole, to determine if child labor is involved in the employer's operations or practices, to post a clear and conspicuous link on its internet website to a report detailing the findings of the employer's compliance with child labor laws.

6) Provides that the posted report shall contain all of the following:

   a. The year, month, day, and time the audit was conducted, and whether the audit was conducted during a day shift or night shift.

b. Whether the employer did or did not engage in, or support the use of, child labor.
c. A copy of any written policies and procedures the employer has and had regarding child employees.
d. Whether the employer exposed children to any workplace situations that were hazardous or unsafe to their physical and mental health and development.
e. Whether children worked within or outside regular school hours, or during night hours, for the employer.

COMMENTS

1. Background:

Social Compliance Audits
The US Department of Labor (DOL) defines a social compliance audit as an inspection done by an internal, external, or independent auditor who gathers data at the worker, supplier, and supply chain levels to identify compliance patterns across the supply chain and risk trends among workers. A thorough audit should recommend specific changes to strengthen compliance and assign accountability for addressing any identified issues. The DOL identifies several skills auditors should be trained in, including, but not limited to how to interact with children, how to provide victims of child labor and forced labor immediate services, and how to identify the time when code violations are most likely to occur. Trade or professional organizations, like the Association of Professional Compliance Auditors (APSCA), accredit auditors. For the most part, social auditing is a useful tool to assess compliance at a particular point in time.

In the past two decades, social compliance auditing has expanded dramatically, growing into a nearly $80 billion industry. This expansion is largely in response to staffing shortages at the DOL. Staffing levels are so low that it would take "more than 100 years for inspectors to visit every workplace in the department's jurisdiction once."[1] Therefore, it is common for businesses to turn to private compliance audits when confronted with public relations scandals. Rather than wait for the DOL to intervene, private auditors are hired to attest that any reported abuses have been eliminated.

Social compliance audits are meaningless if the businesses that employ them as a tool disregard their findings. When businesses rush auditors through facilities or censor reports, they use audits to preserve their reputation and not to address real concerns.

New York Times Reporting
Recent investigative reporting by the New York Times found that private audits performed at 20 production facilities used by some of the nation's most recognizable brands missed the use of child labor[2]. Auditors schedule plant inspections weeks in advance, giving factories plenty of time to conceal any blatant labor law violations. When plants are inspected, auditors often arrive early in the morning and stay for around seven hours, leaving well before the night shift workers arrive. This inspection schedule is not representative of

[1] Hannah Drier, "They're Paid Billions to Root Out Child Labor in the U.S. Why Do They Fail?," New York Times, December 28, 2023, https://www.nytimes.com/2023/12/28/us/migrant-child-labor-audits.html?smid=url-share
[2] Hannah Drier, "They're Paid Billions to Root Out Child Labor in the U.S. Why Do They Fail?," New York Times, December 28, 2023, https://www.nytimes.com/2023/12/28/us/migrant-child-labor-audits.html?smid=url-share

facilities that operate 24/7. It is during these night shifts when children, many of whom are migrants, report to work. Auditors face competing pressures from their independent employers, the corporations they work with, and the suppliers that pay for their inspections. This can make it difficult for auditors to do anything other than complete a cursory review that misses labor violations. Despite this, corporations claim auditors thoroughly review their supply chain and tout an audit's findings.

2. Committee Comments:

This bill requires employers to post a report on a commissioned social compliance audit to their internet website, as specified. Nothing in the current language details when the report must be posted or if employers face consequences for noncompliance. The author may wish to consider amending the bill to include some sort of tracking and compliance mechanism.

3. Need for this bill?

According to the author:

"Many companies voluntarily hire private firms to conduct "social compliance audits" at their facilities. A social compliance audit is a nongovernmental audit that reviews an employer's operations to ensure that the employer is compliant with laws or social standards, including but not limited to social and ethical responsibilities, health and safety regulations, and labor laws.

Social compliance audits have ballooned into a nearly $80 billion industry in recent years. Oftentimes employers will conduct these audits in response to negative press or to otherwise help the public gain confidence in their business. Given historic staffing shortages at the U.S. Department of Labor and Cal/OSHA, these private audits may be the only audit many companies ever receive.

In 2023, New York Times reporting exposed flaws in these audits, including auditors sometimes certifying a business as being compliant with labor laws, despite not investigating all parts of the supply chain or all shifts of work. The New York Times reporting describes situations of audits missing instances of child labor because auditors often conduct inspections during regular business hours and not during the night shifts, as one example.

AB 3234 requires that employers post a clear and conspicuous link to a report detailing the findings of its most recent social compliance audit pertaining to compliance with child labor laws."

2. Proponent Arguments

None received.

3. Opponent Arguments:

None received.

4. Prior Legislation:

AB 800 (Ortega, Chapter 271, Statutes of 2023) among other things, designated the week of each year that includes April 28 as "Workplace Readiness Week" and required schools to provide students seeking a work permit with a document that clearly explains basic labor rights, as specified.

SUPPORT

None received

OPPOSITION

None received

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SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Lola Smallwood-Cuevas, Chair
2023 - 2024 Regular

Bill No:	AB 1890	**Hearing Date:**	June 5, 2024
Author:	Joe Patterson		
Version:	January 22, 2024		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Emma Bruce		

SUBJECT: Public works: prevailing wage

KEY ISSUE

This bill requires a body awarding a public works contract to notify the Department of Industrial Relations (DIR), within 30 days, of any changes or additions regarding the project registration that involve either a change in the identity of a contractor or subcontractor performing the work or a change in the total amount of the contract if the change exceeds ten thousand dollars ($10,000).

ANALYSIS

Existing law:

1) Establishes DIR, within the Labor and Workforce Development Agency (LWDA), to foster, promote, and develop the welfare of the wage earners of California, to improve their working conditions, and to advance their opportunities for profitable employment. (Labor Code §50-50.9)

2) Requires that not less than the general prevailing rate of per diem wages be paid to all workers employed on a "public works" project costing over $1,000 dollars and imposes misdemeanor penalties for violation of this requirement. (Labor Code §1771)

3) Defines "public work" to include, among other things, construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds, except work done directly by a public utility company pursuant to order of the Public Utilities Commission or other public authority. (Labor Code §1720(a))

4) Requires contractors and subcontractors to register with DIR, as specified, to be qualified to bid on, be listed in a bid proposal, or engage in the performance for any public work contract. (Labor Code §1725.5)

5) Requires an awarding body to provide notice to DIR of any public works contract, within 30 days of the award, but in no event later than the first day in which a contractor has workers employed upon the public work. (Labor Code §1773.3(a))

6) Specifies that awarding bodies for public works contracts awarded pursuant to Section 10122, 20113, 22050, or 22050 of the Public Contract Code can notify DIR *within 30 days after the award, but in no event later than the last day* in which a contractor has workers employed upon the public work. (Labor Code §1773.3(a))

7) Provides that the awarding body's notice of a public works contract be transmitted electronically in a format specified by DIR and shall include the name and registration number issued by DIR of the contractor and any subcontractor listed on the successful bid, the bid and contract award dates, the contract amount, the estimated start and completion dates, jobsite location, and any additional information the department specifies. (Labor Code §1773.3(a)).

8) Requires that DIR make the contract award information provided by awarding bodies available for public review on the department's website. (Labor Code §1773.3(b))

9) Provides that an awarding body that fails to notify DIR of a public works project or that enters into a contract with or permits an unregistered contractor or subcontractor to engage in the performance of any public work shall, in addition to any other sanction or penalty authorized by law, be subject to a civil penalty of $100 for each day in violation, not to exceed an aggregate penalty of 10,000 for each project. (Labor Code §1773.3(c)(1))

10) Specifies the Labor Commissioner (LC) when determining the severity of a violation of the requirements stated above, under 9), may waive the penalty for a first time violation that was unintentional and did not hinder the LC's ability to monitor and enforce compliance or that was made in good faith. (Labor Code §§1773.3(c), 1775)

11) Provides that whenever the LC determines that an awarding body has willfully violated public works law with respect to two or more public works contracts or projects in any 12-month period, the awarding body shall be ineligible to receive state funding or financial assistance for any construction project it undertakes for one year. (Labor Code §1773.3(g))

This bill:

1) Requires an awarding body to provide notice to DIR of any changes or additions regarding the project registration that involve either of the following:

    a. A change in the identity of a contractor or subcontractor performing work on the project.
    b. A change in the total amount of the contract if the change exceeds ten thousand dollars ($10,000).

2) Requires the updated notification be provided to DIR within 30 days of the change.

COMMENTS

1. Background:

Public Works Registration Requirements

All awarding bodies and contractors working on "public works" projects are required to abide by a set of laws that ensure public funds are used responsibly. Among other things,

these laws require awarding bodies to notify DIR of public works contracts, as specified, and require contractors and subcontractors to register with DIR before they can bid or work on a public works project. Awarding bodies use the PWC-100 form on DIR's website to fulfill this notification requirement. The form contains the name and registration number issued by DIR of the contractor and any subcontractor listed on the successful bid, the bid and contract award dates, the contract amount, the estimated start and completion dates, and the jobsite location. Once a PWC-100 form is on file, awarding bodies are able to submit their monthly electronic certified payroll records online, another requirement of public works law. Failure to register a project with DIR can result in civil penalties and potential debarment.

Before contractors and subcontractors can register with DIR online, they must have workers' compensation insurance, not have any delinquent unpaid wage or penalty assessments, and not be under federal investigation or state debarment. Bidding or working on a public works project without being registered will result in a $2,000 penalty. Contractors and subcontractors who repeatedly violate this requirement may be disqualified from working in public works for up to 12 months at a time. Additionally, awarding bodies caught using unregistered contractors are subject to civil penalties.

The registration requirements above help prevent unlicensed contractors with a history of labor violations from participating in public works projects and receiving public funds. The LC's Office also uses the information to track and monitor projects. AB 1890 would build on existing law by requiring awarding bodies to update their registration when there are significant project changes.

Public Works Contract Thresholds

Awarding bodies and contractors have different obligations depending on the value of the public works project. For example, the registration requirements described above only apply to construction, alteration, demolition, installation, or repair work valued at $25,000 or more. For maintenance work, registration is required for projects valued at $15,000 or more. Public works law mandates the use of apprentices on projects that cost upwards of $30,000. Occasionally, the prevailing wage rates paid to workers change depending on the value of the project. This variation in law can make it difficult for the LC's office to identify all applicable public works requirements when reviewing an outdated project PWC-100 registration form.

2. Need for this bill?

According to the author:

"[AB 1890] is trying to protect taxpayer dollars and ensure that law abiding contractors are participating in public works projects. It would require [the] State's Public Works Project Registration requirements to mandate that awarding agencies update their project registration when there are significant changes to their projects.

The lack of transparency opens the door for unlicensed contractors who could have a history of egregious labor violations to participate in public works projects while hampering the ability of the Division of Labor Standards Enforcement."

3. Proponent Arguments:

According to the sponsors of the measure, the California-Nevada Conference of Operating Engineers:

"While the State has strong public works notification requirements for projects that are set to begin, existing law is silent on situations in which details of an existing public works project change while the project is occurring. In situations in which a contractor or subcontractor is changed during a project, or in situations in which the total cost of public works contract changes, existing law provides no requirement to update the project registration with the Department of Industrial Relations.

This lack of transparency opens the door for unlicensed contractors who could have a history of egregious labor violations to participate in public works projects while hampering the ability of the Division of Labor Standards Enforcement, labor compliance entities, and the public to monitor these projects as they have no knowledge of there being a change.

In an effort to protect taxpayer dollars and ensure that law abiding contractors are participating in public works projects, AB 1890 (Patterson) would update the States Public Works Project Registration requirements to clarify that awarding agencies are expected to update their project registration when there are significant changes to their projects."

4. Opponent Arguments:

The California Special Districts Association and the California State Association of Counties are opposed unless amended to the measure arguing:

"Under AB 1890, local agencies would be required to provide a new notification to the state to reflect any changes of subcontractors. The awarding body may not be the appropriate reporting party for this type of notification as it does not contract directly with these entities. We suggest that this be removed from the measure and short of that, that the current process of reporting on subcontractor changes be re-evaluated to achieve the aims of the measure without burdening local agencies and subjecting them to liability.

Additionally, AB 1890 would require a local agency to notify the DIR if there is a change order resulting in $10,000 or more in the project. This threshold amount is low enough to generate scores or hundreds of new reports for local agency staff to log the already public records that are generated for eventualities often beyond the control of the awarding agency. We remain committed to working with the sponsors and author to address ways to continue to provide transparency and essential services without adding additional burdens or costs."

5. Prior Legislation:

SB 1162 (Cortese, 2024) would require contractors and subcontractors to include a worker's date of birth in existing public works payroll records and in existing monthly compliance reports made to the public entity or other awarding body for projects with a skilled and trained workforce requirement. *SB 1162 is pending referral in the Assembly*.

SB 96 (Committee on Budget and Fiscal Review, Chapter 28, Statutes of 2017), among other things, required registration for new public works projects valued at $25,000 or more and for maintenance projects valued at $15,000 more.

SB 854 (Committee on Budget and Fiscal Review, Chapter 28, Statutes of 2014), among other things, established the requirement for contractors and subcontractors to register with DIR before becoming eligible to bid or work on public works projects.

SUPPORT

California-Nevada Conference of Operating Engineers (Sponsor)
Air Conditioning Sheet Metal Association
California Association of Sheet Metal & Air Conditioning Contractors National Association
California Construction & Industrial Materials Association
California Labor Federation
California Legislative Conference of Plumbing, Heating & Piping Industry
California State Association of Electrical Workers
California State Council of Laborers
California State Pipe Trades Council
California Teamsters Public Affairs Council
Construction Employers' Association
Construction Industry Force Account Council
District Council of Iron Workers of the State of California and Vicinity
Finishing Contractors Association of Southern California
National Electrical Contractors Association (NECA)
Northern California Allied Trades
Northern California Floor Covering Association
Southern California Contractors Association
Southern California Glass Management Association (SCGMA)
State Building & Construction Trades Council of California
United Contractors (UCON)
Wall and Ceiling Alliance
Western Line Constructors Chapter, Inc., Neca, INC.
Western Painting and Coating Contractors Association
Western States Council Sheet Metal, Air, Rail and Transportation
Western Wall and Ceiling Contractors Association (WWCCA)

OPPOSITION

California Special Districts Association
California State Association of Counties
League of California Cities

-- END --

SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Lola Smallwood-Cuevas, Chair
2023 - 2024 Regular

Bill No:	AB 1941	**Hearing Date:**	June 5, 2024
Author:	Quirk-Silva		
Version:	January 29, 2024		
Urgency:	No	**Fiscal:**	No
Consultant:	Glenn Miles		

SUBJECT: Local public employee organizations

KEY ISSUE

This bill authorizes peace officer unions to charge a non-union member peace officer, as specified, for the reasonable costs of the union's representation in a discipline, grievance, arbitration, or administration hearing.

ANALYSIS

Existing law:

1) Governs collective bargaining in the private sector under the federal National Relations Labor Relations Act (NLRA) but leaves it to the states to regulate collective bargaining in their respective public sectors. (29 United State Code § 151 et seq.)

   While the NLRA and the decisions of its National Labor Relations Board often provide persuasive precedent in interpreting state collective bargaining law, public employees have no collective bargaining rights absent specific statutory authority establishing those rights.

2) Provides several statutory frameworks under California law to provide public employees collective bargaining rights, govern public employer-employee relations, and limit labor strife and economic disruption in the public sector through a reasonable method of resolving disputes regarding wages, hours, and other terms and conditions of employment between public employers and recognized public employee organizations or their exclusive representatives. These include the *Meyers-Milias-Brown Act* (MMBA) which governs the employer-employee relationship between local public agencies and their employees. (Government Code (GC) § 3500 et seq.)

3) Provides a timeframe of not earlier than 15 days in which a local public agency employer may implement its Last Best Final Offer (LBFO), after all mediation and factfinding procedures have been exhausted, but excludes charter cities and counties from the factfinding process when binding interest arbitration applies. (GC § 3505.7)

4) Establishes the Public Employment Relations Board (PERB), a quasi-judicial administrative agency charged with resolving disputes and enforcing the statutory duties and rights of public agency employers and employee organizations, but provides the City and County of Los Angeles a local alternative to PERB oversight. (GC § 3541)

5) Prohibits anyone from requiring an employee who is a member of a bona fide religion, body, or sect that has historically held conscientious objections to joining or financially supporting

public employee organizations from joining or financially supporting a public employee organization as a condition of employment. (GC § 3502.5 (c))

6) Establishes the Public Safety Officers Procedural Bill of Rights Act (PSOPBRA), which provides public safety officers special procedural protections from public agency disciplinary actions, as specified. (GC § 3300)

7) Defines "public safety officer" as all peace officers specified in Sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.38, 830.4, and 830.5 of the Penal Code. (GC § 3301)

This bill:

1) Authorizes a recognized employee organization to charge an employee covered by the Public Safety Officers Procedural Bill of Rights Act (PSOPBRA) for the reasonable costs of representation, if the employee holds a conscientious objection or declines membership in the organization and requests individual representation in a discipline, grievance, arbitration, or administration hearing from the employee organization.

2) Applies this authorization only to proceedings in which the recognized employee organization does not exclusively control the process.

COMMENTS

1. Need for this bill?

According to the California State Fraternal Order of the Police:

> "Currently, if a peace officer requests union representation, but is not themselves a member of the union, the union is required to cover the costs of this peace officer's representation, regardless of the peace officer's lack of monetary contribution to the union in the form of dues. This requirement forces union members, who pay monetary dues, to subsidize those who do not contribute to the union's funds.
>
> In 2022, AB 2556 (O'Donnell) was passed, which addressed a similar issue existing within the Firefighters Procedural Bill of Rights Act. AB 2556 amended the Act, allowing the union to charge a local public employee firefighter reasonable representation costs, if that firefighter was not a member of the union, but requested union representation. AB 1941 (Quirk-Silva) would provide a solution which is necessary to close a similar gap in the reimbursement of expenses incurred by unions who represent employees covered by the Public Safety Officers Procedural Bill of Rights Act.
>
> The solution presented by AB 1941 (Quirk-Silva) will align the Public Safety Officers Procedural Bill of Rights Act with the Firefighters Procedural Bill of Rights Act and allow for the recovery of costs incurred by unions in representing peace officers who are not themselves members of the union, thus taking the burden of covering such costs off of paying union members."

2. Proponent Arguments

According to a coalition of peace officer employee organizations, including the Riverside Sheriffs' Association:

> "Current union members pay monetary dues to their union, and they should not be obligated to subsidize those who do not contribute towards the representation provided by the union. AB 1941 aligns the Public Safety Officers Bill of Rights Act with the Firefighters Bill of Rights Act, authorizing a union to charge conscientious objectors reasonable representation costs upon request for union representation by the public safety officer in question."

3. Opponent Arguments:

None received.

4. Prior Legislation:

AB 2556 (O'Donnell, Chapter 412, Statutes of 2022) authorized a recognized employee organization to charge a public agency firefighter covered under the Firefighters Procedural Bill of Rights Act (FPBRA) who holds a conscientious objection, as specified, or who declines membership in the recognized employee organization, for the reasonable cost of representation if the firefighter requests individual representation from the recognized employee organization in a discipline, grievance, arbitration, or administrative hearing.

SUPPORT

California Fraternal Order of Police (Sponsor)
Arcadia Police Officers' Association
Association of Orange County Deputy Sheriffs
Burbank Police Officers' Association
California Coalition of School Safety Professionals
California Statewide Law Enforcement Association
Claremont Police Officers Association
Corona Police Officers Association
Culver City Police Officers' Association
Deputy Sheriffs' Association of Monterey County
Fullerton Police Officers' Association
Long Beach Police Officers Association
Los Angeles School Police Management Association
Los Angeles School Police Officers Association
Murrieta Police Officers' Association
Newport Beach Police Association
Novato Police Officers Association
Palos Verdes Police Officers Association
Placer County Deputy Sheriffs' Association
Pomona Police Officers' Association
Riverside Police Officers Association
Riverside Sheriffs' Association
Sacramento County Deputy Sheriffs' Association

San Bernardino County Sheriff's Employees' Benefit Association
Santa Ana Police Officers Association
Upland Police Officers Association

OPPOSITION

None received.

-- END --

SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Lola Smallwood-Cuevas, Chair
2023 - 2024 Regular

Bill No:	AB 2123	**Hearing Date:**	June 5, 2024
Author:	Papan		
Version:	February 6, 2024		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Alma Perez-Schwab		

SUBJECT: Disability compensation: paid family leave

KEY ISSUE

This bill strikes a provision in law that would no longer allow an employer to require their employee to take two weeks of vacation leave before accessing benefits under California's Paid Family Leave (PFL) program.

ANALYSIS

Existing law:

1) Establishes the Employment Development Department (EDD) to, among other duties, administer the Unemployment Insurance and Disability Insurance programs. (Unemployment Insurance Code §301)

2) Establishes the State Disability Insurance (SDI) program as a partial wage-replacement plan funded through employee payroll deductions that is available (through the Disability Insurance and Paid Family Leave programs) to eligible individuals who are unable to work due to sickness or injury of the employee (including pregnancy), the sickness or injury of a family member, or the birth, adoption, or foster care placement of a new child. (Unemployment Insurance Code §2601-3308)

3) Paid Family Leave (PFL) provides eligible employees up to eight weeks of wage replacement benefits within a 12-month period to workers who need to take time off work for the following reasons:
    a. To care for a seriously ill family member, as defined;
    b. To bond with a minor child within one year of the birth or placement of the child in connection with foster care or adoption;
    c. To participate in a qualifying event because of a family member's military deployment. (Unemployment Insurance Code §3301)

4) PFL defines "family member" to mean a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner. (Unemployment Insurance Code §3302)

5) Provides that an individual is not eligible for PFL benefits if another family member is ready, willing, able, and available for the same period of time in a day to provide the required care. (Unemployment Insurance Code §3303.1)

6) Allows an employer, as a condition of an employee's initial claim for PFL benefits during any 12-month period, to require an employee to take up to two weeks of earned but unused vacation leave prior to the employee accessing PFL benefits. (Unemployment Insurance Code §3303.1)

This bill:

1) Removes the authorization for an employer to require an employee to take two weeks of vacation leave before accessing their benefits under the PFL program.

COMMENTS

1. Background: Paid Family Leave Program

The State Disability Insurance (SDI) program, administered by the EDD, was created in 1946 to provide monetary benefits to workers unable to work due to non-work-related illness, injury, or pregnancy. Benefits are payable for a maximum of 52 weeks and provide a wage replacement of about 60-70 percent. The SDI program is financed solely by worker contributions and covers approximately 18 million individuals.

In 2004, California was the first state in the nation to implement a Paid Family Leave program (administered as part of SDI) that provides benefits to workers who need to take time off to care for a seriously ill family member, or to bond with a new child either from birth, adoption, or foster care placement. Effective January 1, 2021, the PFL scope was expanded to include employees taking time off work to assist a military family member under covered active duty or call to covered active duty. PFL provides up to eight weeks of the 60-70 percent wage replacement. According to EDD's SDI Statistical Information, for fiscal year 2022-23, there were a total of 288,756 claims paid with a total of $1,688,294,154 in benefits paid. The average weekly benefit amount was $874 for approximately 7.18 weeks.[1]

In 2022, SB 951 (Durazo, Chapter 878, Statutes of 2022) was adopted to, among other things, for claims commencing on or after January 1, 2025, revise the formula for determining benefits under both the SDI and PFL programs to provide an increased wage replacement rate ranging from 70-90 percent based on the individual's wages.

AB 575 (Papan) from 2023 would have made several changes to how individuals can access PFL benefits including expanding the program to allow for bonding with a child for whom the employee is acting in loco parentis, removing the restriction that only one family member at a time is allowed to access PFL, and *deleting the provision allowing an employer to require an employee to access vacation time prior to using PFL*. AB 575 was vetoed by the Governor who stated, among other things, "with our state facing continuing economic risk and revenue uncertainty, it is important to remain disciplined in considering bills with significant fiscal implications, such as this measure."

This bill (AB 2123) reintroduces one of the issues addressed in AB 575. Deleting the authorization for an employer to require an employee to take two weeks of vacation leave

[1] Paid Family Leave Program Statistics. https://edd.ca.gov/siteassets/files/about_edd/quick-stats/qspfl_pfl_program_statistics.pdf

before accessing their benefits under the PFL program will give employees the choice of when and how they want to use any available vacation time in conjunction with their PFL time.

2. Need for this bill?

According to the author:

> "Under current law, employers can require an employee to use up to two weeks of accrued vacation leave before they can access PFL benefits. This requirement contradicts the purpose of the program and impedes workers from obtaining the benefits that they are entitled to. Vacation time is intended for personal time off and accrual policies vary across industries and employers, while PFL is intended to support workers unable to work because they are bonding or caregiving. Moreover, workers who have already paid for PFL should be able to receive the benefit as soon as they become eligible, not when their employer allows them to. Assembly Bill (AB) 2123 will remove an unnecessary barrier for individuals seeking to access their paid family benefits. This will allow individuals to take care of their loved ones without fear of losing their vacation time."

3. Proponent Arguments:

According to the sponsors of the measure, Legal Aid at Work:

> "Under current law, employers can prevent a worker from accessing PFL by requiring them to use up to two weeks of accrued vacation leave before accessing their PFL benefits. This requirement contradicts the purpose of the program and impedes workers from obtaining the PFL benefits that they are entitled to and fund through their paychecks.
>
> Further, removing the ability of employers to require employees to use up to 2 weeks of accrued vacation will clarify and simplify the PFL application process. Workers who have already paid for PFL should be able to receive their benefits when they become eligible. Paid Family Leave is an important benefit that has been linked to improved maternal and child health outcomes, decreased enrollment in nursing homes for older adults, and improved economic security for women and families."

4. Opponent Arguments:

None received.

5. Prior/Related Legislation:

SB 1090 (Durazo, 2024) would authorize workers to file a claim for SDI or PFL benefits up to 30 days in advance of the first compensable day of disability and requires EDD to issue payment on those claims within 14 days of receipt (per existing law) or as soon as eligibility begins for the claimant, whichever is later. *SB 1090 is pending referral in the Assembly.*

AB 2167 (Cervantes, 2024) would make several changes to deadlines and the application process for the state PFL program including extending the deadline to apply to both 60 days prior and 60 days after the first compensable day, requiring fillable PDF forms for PFL

benefits on the EDD website, allowing individuals to use a social security number or individual taxpayer identification number to apply for PFL benefits online, and extending the appeal timeline. *AB 2167 is pending referral in the Senate.*

AB 518 (Wicks, 2023) would expand eligibility for benefits under the PFL program to include individuals who take time off work to care for a seriously ill designated person. This bill would define "designated person" to mean any individual related by blood or whose association with the employee is the equivalent of a family relationship. *AB 518 is pending on the Senate Inactive File.*

AB 575 (Papan, 2023, Vetoed) would have made several changes to how individuals can access PFL benefits including expanding the program to allow for bonding with a child for whom they are acting in loco parentis, removing the restriction that only one family member at a time is allowed to access PFL, and deleting the provision allowing an employer to require an employee to access vacation time prior to using PFL.

AB 1041 (Wicks, Chapter 748, Statutes of 2022) expanded the list of individuals for which an employee can take leave under the California Family Rights Act and the Healthy Workplaces, Healthy Families Act of 2014 to include a designated person.

SB 951 (Durazo, Chapter 878, Statutes of 2022) revised the formula for the computation of SDI and PFL benefits to increase the wage replacement available to claimants.

SB 1058 (Durazo, Chapter 317, Statutes of 2022) required EDD to collect demographic data, including race and ethnicity data and sexual orientation and gender identity data, for individuals who claim disability benefits under the SDI and PFL programs.

SB 83 (Committee on Budget and Fiscal Review, Chapter 24, Statutes of 2019) beginning July 1, 2020, extended from six to eight weeks the maximum duration of PFL benefits individuals may receive.

SB 1123 (Jackson, Chapter 849, Statutes of 2018) expanded the PFL program to include time off to participate in a qualifying exigency related to covered active duty, as defined, or call to covered active duty of the individual's spouse, domestic partner, child, or parent in the armed forces.

SB 770 (Jackson, Chapter 350, Statutes of 2013) expanded the definition of family to include in-laws, siblings and grandparents.

SUPPORT

Legal Aid at Work (Sponsor)
AARP California
Alzheimer's Greater Los Angeles
Alzheimer's Orange County
Alzheimer's San Diego
American Association of University Women California
American College of Obstetricians and Gynecologists District IX
Asian Law Alliance

BreastfeedLA
California Breastfeeding Coalition
California Child Care Resource and Referral Network
California Coalition on Family Caregiving
California Domestic Workers Coalition
California Employment Law Council
California Employment Lawyers Association
California Federation Business and Professional Women
California Federation of Teachers
California Partnership to End Domestic Violence
California Strategies & Advocacy, LLC
California Teachers Association
California WIC Association
California Women's Law Center
California Work & Family Coalition
Californians for Safety and Justice
Caring Across Generations
Center for Community Action and Environmental Justice
Center for Workers' Rights
Child Care Law Center
Citizens for Choice
Electric Universe
Evolve California
Family Caregiver Alliance
First 5 Association of California
First 5 California
Food Empowerment Project
Friends Committee on Legislation of California
Health Officers Association of California
Human Impact Partners
Jewish Center for Justice
Justice in Aging
LA Alliance for A New Economy
LA Best Babies Network
National Health Law Program
National Partnership for Women & Families
Nursing Mothers Counsel
Orange County Equality Coalition
Our Family Coalition
Parent Voices California
Poder Latinx
Public Counsel
Reproductive Freedom for All California
San Diego County Breastfeeding Coalition
San Mateo County Central Labor Council
Small Business Majority
The Women's Employment Rights Clinic (WERC) At GGU
UAW Region 6
UFCW Western States Council
Women Lawyers of Sacramento

Working Partnerships USA
Worksafe

OPPOSITION

None received.

-- END --

SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Lola Smallwood-Cuevas, Chair
2023 - 2024 Regular

Bill No:	AB 2227	**Hearing Date:**	June 5, 2024
Author:	Hoover		
Version:	February 7, 2024		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Alma Perez-Schwab		

SUBJECT: Unemployment insurance: violations

KEY ISSUE

This bill expands on existing Unemployment Insurance (UI) provisions regarding the place of trial for violations to allow fraud cases to be prosecuted in the county where any money or property from the alleged offence was obtained.

ANALYSIS

Existing law:

1) Creates a comprehensive Unemployment Insurance (UI) system, administered by the Employment Development Department (EDD), where employers pay an experienced-based tax on total payroll that are used to fund UI benefits to unemployed workers. (UI Code §§ 301, 602, 675, 926, 970, 977 & 1251)

2) Defines a worker as "unemployed" in any week in which they meet any of the following:

    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 percent of the wages payable, whichever is greater, do not equal or exceed the worker's weekly benefit amount;
    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 §1252)

3) Provides that an individual is disqualified for UI 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 §1256)

4) Specifies that it is a violation of UI provisions to willfully make a false statement or representation, to knowingly fail to disclose a material fact, or to use a false name, false social security number, or other false identification to obtain, increase, reduce, or defeat any benefit or payment, whether for the maker or for any other person, under any of the following statutes administered by the department:

    a. The provisions of UI benefits under California law.
    b. The provisions of any unemployment insurance law of the federal government.

c. The provisions of any training allowance law of the federal government.
d. The provisions of any trade readjustment allowance law of the federal government.
e. The provisions of any other allowance law of the federal government. (UI Code §2101)

5) Except as specified, a violation of UI provisions is punishable by imprisonment in the county jail not to exceed one year, or in the state prison, or by a fine of not more than twenty thousand dollars ($20,000), or by both the fine and imprisonment, at the discretion of the court. (UI Code §2122)

6) Specifies that the place of trial for UI offenses shall be in the county of residence or principal place of business of the defendant or defendants, or in any county where the defendant or defendants were transacting business that resulted in the alleged offenses, except that if the defendant has no residence or principal place of business in this state, the trial shall be held in the County of Sacramento. (UI Code §2124)

7) Requires EDD to report to the Assembly Committee on Insurance, Assembly Committee on Labor and Employment, and the Senate Committee on Labor, Public Employment and Retirement by June 30 of each year on EDD's fraud deterrence and detection activities. (UI Code §2614)

This bill:

1) Expands on existing Unemployment Insurance (UI) provisions regarding the place of trial for violations to allow fraud cases to be prosecuted in the county where any money or property from the alleged offence was obtained.

2) Deletes a provision specifying that defendants that have no residence or principal place of business in this state must be tried in the County of Sacramento, thereby allowing prosecutors to take on cases with defendants outside of California in their jurisdictions.

COMMENTS

1. Background: Unemployment Insurance Program

Created 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.

Claimant Benefit Calculations
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.[1]

[1] https://oui.doleta.gov/unemploy/DataDashboard.asp

Financing Structure
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 percent, when the condition of the UI trust fund is poor.[2] 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.

2. COVID-19 Pandemic and EDD Fraud:

The COVID-19 pandemic and the shutdown orders to mitigate the spread of the virus led to a dramatic increase in unemployment beginning in March 2020. Millions of Californians were left unemployed and in critical need of assistance to replace some of the income in which they relied to pay for essentials. Supplemental benefits authorized by the federal CARES Act, including Pandemic Unemployment Assistance and Pandemic Emergency Unemployment Compensation, further increased the volume and dollar amount of payments. By April 2020, the unemployment rate had surpassed previous peaks observed during the Great Recession. At its peak, the unemployment rate in California reached 16 percent in April 2020. According to EDD, since March 2020, 31.5 million UI claims have been filed and EDD has paid more than $194 billion in UI benefits.[3]

EDD struggled to service this unprecedented volume of claims and because of the new populations of unemployed individuals eligible for UI under the Pandemic Unemployment Assistance program (the self-employed), EDD was exposed to a range of fraudulent activity. According to EDD, from March 2020 to January 2021, of California's confirmed fraudulent payments, 95 percent was associated with the federal Pandemic Unemployment Assistance (PUA) program, which the U.S. Department of Labor stated was particularly susceptible to fraud. The remaining 5 percent was associated with California's UI program. By comparison, in 2019 fraud accounted for about 6 percent of the state's total UI payments. According to EDD, since 2020, EDD has opened over 2,000 investigations of UI fraud, hundreds of suspects have been arrested, and many more have been criminally charged and convicted. As of May 2024, EDD reports a total of 2,075 investigations, 731 arrests, and 432 convictions.[4] Many of these fraud cases involve fraud schemes perpetrated by sophisticated organized crime groups in and outside of the country.

Under scrutiny for its handling of claims and ensuing fraudulent activity, EDD has been the subject of several State Auditor reports, Legislative Analyst's Office reports and a Governor-directed EDD Strike Team to set a path for needed reforms at EDD. In addition, the Legislature held several oversight hearings on the department and passed into law numerous bills that addressed the various issues facing EDD. EDD has begun implementing many of the recommendations put forth by the various reports and teams.

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[2] Alamo, Chas. "Repaying the State's Federal Unemployment Insurance Loan," Legislative Analyst's Office, May 26, 2021. https://lao.ca.gov/Publications/Report/4442
[3] https://edd.ca.gov/en/newsroom/facts-and-stats/dashboard/
[4] https://edd.ca.gov/en/about_edd/fraud-response/

3. UI Trust Fund Status:

California's unemployment rate increased to 5.3 percent in February 2024, up from 5.2 percent in January, and compared to January 2023 where it stood at 4.5 percent.
Due to the sudden and immense impact of COVID-19, the UI Fund became temporarily insolvent on April 29, 2020, and fluctuated in and out of solvency until maintaining a deficit starting June 3, 2020. As a result, in 2020, California began borrowing from the federal government to pay regular UI benefits, and ended the year with a federal loan balance of $17.8 billion. The loan balance is estimated to be $21 billion by the end of 2025.[5]

4. Need for this bill?

According to the author:

> "Existing law limits the venue for Unemployment Insurance fraud prosecutions to the County of Sacramento, if the defendant does not reside in or have a principal place of business in California. Meaning, a non-resident individual who traveled to California to commit unemployment insurance fraud can only be on trial in Sacramento. Thus, requiring local law enforcement to travel to Sacramento to present a case rather than prosecuting in the county where the crime was committed. AB 2227 would amend Section 2124 of the Unemployment Insurance Code to allow Unemployment Insurance fraud to be prosecuted in the county where the defendant was transacting business that resulted in the alleged offense or where any money or property from the alleged offenses was obtained."

5. Proponent Arguments:

According to the sponsors of the measure, the Conference of California Bar Associations:

> "Out-of-state fraudsters have stolen millions of dollars via fraudulent unemployment insurance claims, which depletes state coffers and impedes legitimate claims by unemployed Californians. AB 2226 would remedy the logistical quagmire that arises when out-of-state fraudsters are apprehended outside of Sacramento County but can only be tried there due to a quirk in existing law. Like every other criminal case, judicial venue should be based on where the crime occurred, including where any criminal proceeds were obtained."

6. Opponent Arguments:

None received.

7. Prior/Related Legislation:

SB 1116 (Portantino, 2024) would authorize workers involved in a trade dispute to collect unemployment insurance (UI) benefits, after a two-week wait period, while they are on strike. *SB 1116 is pending referral in the Assembly.*

[5] EDD January 2024 UI Fund Forecast. https://edd.ca.gov/siteassets/files/unemployment/pdf/edduiforecastjan24.pdf

SB 227 (Durazo, 2023) would, upon an appropriation by the Legislature, establish the Excluded Workers Program within the Employment Development Department (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. *Pending in Assembly Appropriations Committee.*

SB 232 (Nielsen, 2021) would have required the EDD to meet specified timelines for troubleshooting and improving its claims processing and fraud prevention processes to ensure efficient customer service and timely unemployment insurance benefits payment. *SB 232 was held under submission in Assembly Appropriations Committee.*

SB 390 (Laird, Chapter 543, Statutes of 2021) requires the EDD to develop and implement a comprehensive plan to prepare for an increase in unemployment insurance compensation benefits due to an economic recession.

AB 56 (Salas, Chapter 510, Statutes of 2021) codified various recommendations from the State Auditor reports related to the Employment Development Department practices pertaining to personal information on outgoing mail, cross-matching against incarcerated individuals' information, overpayments and backlogged claims.

AB 400 (Petrie-Norris, 2021) would have established the Unemployment Insurance Oversight Advisory Board within the Labor and Workforce Development Agency. *AB 400 was held under submission in Assembly Appropriations Committee.*

AB 402 (Wicks and Petrie-Norris, 2021) would have (1) created the Office of the Claimant Advocate (OCA) within EDD for the purpose of protecting Californians' rights in seeking benefits administered by EDD, including unemployment and disability insurance, and (2) created a Stakeholder Advisory Group within EDD, as specified. *AB 402 died on the Senate inactive file.*

SUPPORT

Conference of California Bar Associations (Sponsor)
Western Electrical Contractors Association

OPPOSITION

None received

-- END --

SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Lola Smallwood-Cuevas, Chair
2023 - 2024 Regular

Bill No:	AB 2299	**Hearing Date:**	June 5, 2024
Author:	Flora		
Version:	February 12, 2024		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Alma Perez-Schwab		

SUBJECT: Labor Commissioner: whistleblower protections: model list of rights and responsibilities

KEY ISSUE

This bill requires the Labor Commissioner to develop a model list of employees' rights and responsibilities under existing whistleblower laws for employer use to meet existing posting requirements.

ANALYSIS

Existing law:

1) Establishes the Department of Industrial Relations (DIR) within the Labor and Workforce Development Agency (LWDA), and vests it with various powers and duties to foster, promote, and develop the welfare of the wage earners of California, to improve their working conditions, and to advance their opportunities for profitable employment. (Labor Code §50.5)

2) Establishes within the DIR, various entities including the Division of Labor Standards Enforcement (DLSE) under the direction of the Labor Commissioner (LC), and empowers the LC with ensuring a just day's pay in every workplace and promotes economic justice through robust enforcement of labor laws including wage and hour, anti-retaliation and enforcing employer notice requirements. (Labor Code §79-107)

3) Requires the LC to develop a model notice pertaining to workplace rights and wage and hour laws that uses plain language, is available in Spanish, Vietnamese and Korean, and is accessible on the LC's internet website. Among other things, requires the model notice to include information on how to report violations of the law and protections from retaliation. (Labor Code §98.10)

4) Specifies that the following employer practices in regards to whistleblowing are unlawful:

    a. Preventing an employee from, or retaliating against an employee for, disclosing information to, among others, a government or law enforcement agency, to a person with authority over the employees, or to another employee who has authority to investigate, discover, or correct the violation or noncompliance.

    b. Retaliating against an employee for refusing to participate in an activity that would result in the violation of state or federal statute, or a violation of noncompliance with a local, state, or federal rule or regulation.

c. Retaliating against an employee for exercising their rights under (a) or (b) above in any former employment.
(Labor Code §1102.5)

5) Requires the office of the Attorney General (AG) to maintain a whistleblower hotline to receive calls from persons who have information regarding possible violations of state or federal statutes, rules, or regulations, or violations of fiduciary responsibility by a corporation or limited liability company to its shareholders, investors, or employees. The AG is required to refer calls received to the appropriate government authority for review and investigation. (Labor Code §1102.7)

6) Requires employers to prominently display in lettering larger than size 14-point type a list of employees' rights and responsibilities under the whistleblower laws, including the telephone number of the whistleblower hotline. (Labor Code §1102.8(a))

This bill:

1) Requires the Labor Commissioner to develop a model list of employees' rights and responsibilities under the whistleblower laws that complies with the requirements of existing Labor Code Section 1102.8, subdivision (a) (noted under bullet (6) above).

2) Requires the model notice to be accessible on the LC's internet website so that it is reasonably accessible to an employer.

3) Provides that an employer shall be deemed in compliance with the whistleblower posting requirements of Labor Code Section 1102.8 if they post the model list developed by the LC.

COMMENTS

1. Background:

Whistleblower Protections:
A "whistleblower" is an employee who discloses information to a government agency, law enforcement agency, or person with authority to investigate and/or correct the violation or noncompliance, or who provides information to or testifies before a public body conducting an investigation regarding the alleged violation of law. California's whistleblower protections have been in place since the 1980s and encourage reporting of wrongdoing while ensuring employees are protected for reporting violations. Under California Labor Code Section 1102.5, if an employer retaliates against a whistleblower, the employer may be required to reinstate the employee's employment and work benefits, pay lost wages, and take other steps necessary to comply with the law.

As noted in the Division of Labor Standards Enforcement's sample posting on existing whistleblower laws, the following are protections afforded to whistleblowers[1]:

1) An employer may not make, adopt, or enforce any rule, regulation, or policy preventing an employee from being a whistleblower.

[1] https://www.dir.ca.gov/dlse/WhistleblowersNotice.pdf

2) An employer may not retaliate against an employee who is a whistleblower.
3) An employer may not retaliate against an employee for refusing to participate in an activity that would result in a violation of a state or federal statute, or a violation or noncompliance with a state or federal rule or regulation.
4) An employer may not retaliate against an employee for having exercised his or her rights as a whistleblower in any former employment.

Workplace Postings:
In California, all employers must meet workplace-posting obligations. Workplace postings are usually available at no cost from the requiring agency. The Department of Industrial Relations requires employers to post information related to wages, hours and working conditions in an area frequented by employees where it may be easily read during the workday. Additional posting requirements apply to some workplaces.

As noted under existing law above, among these posting obligations is a requirement that employers display a list of employees' rights and protections under whistleblower laws. Current law, however, does not require the LC to develop a model posting that employers may utilize to comply with this requirement as it does with other workplace posting requirements. Other provisions of law do require the department or enforcing entities to draft sample postings for employer use. Paid sick leave provisions, for example, require employers to satisfy specified posting and notice requirements but requires the LC to create, and make available to employers, a poster containing the specified information.

The DLSE has developed a sample notice on whistleblower protections and makes it available on its internet website for employer and employee use. This notice, however, includes the following disclaimer:

> The Division of Labor Standards Enforcement *believes that the sample posting below meets the requirements of Labor Code Section 1102.8(a)*. This document must be printed to 8.5 x 14 inch paper with margins no larger than one-half inch in order to conform to the statutory requirement that the lettering be larger than size 14-point type.

2. Need for this bill?

According to the author, "While the Division of Labor Standards Enforcement (DLSE) has voluntarily made available a sample notice on their workplace postings webpage, neither DLSE nor existing law guarantee that an employer who posts this sample notice is in compliance." The author argues that this "theoretically puts employers, including small businesses, in the position of analyzing and constantly monitoring the state's complex whistleblower laws to ensure that their posted notice is accurate and up to date." The author cites as an example, that "disagreement might arise over whether DLSE's list of rights and responsibilities is accurate and complete, or DLSE may fail to update the sample notice when whistleblower laws change." In such cases, the author argues, "employers would ultimately be held liable for violating the posting requirement, even though they believed they were compliant, and may inadvertently provide incomplete or outdated information to their employees."

According to the author, "AB 2299 simply codifies a requirement for the Labor Commissioner to develop a model poster that lists employees' rights and responsibilities under whistleblower laws in compliance with existing posting requirements, while also

clarifying that employers who display that model poster have fulfilled the existing posting mandate. This facilitates employer compliance, benefitting businesses and workers alike."

3. Proponent Arguments:

None received.

4. Opponent Arguments:

None received.

5. Prior/Related Legislation:

SB 526 (Limon, 2023) would have required the Department of Industrial Relations (DIR) to develop and prepare a poster on domestic violence prevention that employers may download from the department's website and display in their workplace. *SB 526 was held under submission in Senate Appropriations Committee.*

AB 1522 (Gonzalez, Chapter 317, Statutes of 2014) required employers to provide paid sick days, as specified, as well as establishing anti-retaliation provisions for its use. The law further required employers to satisfy specified posting and notice requirements and required the LC to create and make available to employers a poster containing this information.

SB 1193 (Steinberg, Chapter 515, Statutes of 2012) required specified businesses and other establishments to post a notice informing the public and victims of human trafficking of telephone hotline numbers to seek help or report unlawful activity.

AB 1127 (Horton, Chapter 820, Statutes of 2004) required the lettering of the list of employees' rights and responsibilities under the whistleblower laws to be larger than size 14 point type.

SB 777 (Escutia, Chapter 484, Statutes of 2003) provided additional whistleblower protections, established a "whistleblower hotline" within the office of the AG, and required the AG to refer calls received on this hotline to the appropriate government authority, as specified. The law also required an employer to display, as specified, a list of an employee's rights under whistleblower laws, including the telephone number of the hotline.

SUPPORT

None received.

OPPOSITION

None received.

-- END --

SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Lola Smallwood-Cuevas, Chair
2023 - 2024 Regular

Bill No:	AB 3105	**Hearing Date:**	June 5, 2024
Author:	Flora		
Version:	May 28, 2024		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Emma Bruce		

SUBJECT: Employment: wages and hours: exemption for faculty at private institutions of higher education

KEY ISSUE

This bill clarifies that instructors employed at independent institutions of higher learning incorporated out of state prior to January 1, 2023 are included in an existing professional wage and hour law exemption.

ANALYSIS

Existing federal law:

1) Provides that being paid on a "salary basis" means the employee regularly receives each pay period on a weekly, or less frequent basis, a predetermined amount constituting all or part of the employee's compensation, which is not subject to reduction because of variations in the quality or quantity of the work performed. (29 Code of Federal Regulations 541.602)

Existing state law:

1) Establishes within the Department of Industrial Relations (DIR) the Division of Labor Standards Enforcement (DLSE) under the direction of the Labor Commissioner (LC), and empowers the LC to ensure a just day's pay in every work place and to promote justice through robust enforcement of labor laws. (Labor Code §79-107)

2) Requires an employer, semimonthly or at the time of payment of wages, to furnish to their employee an accurate, itemized, written statement generally containing specified information regarding the amounts earned, hours worked, and the employee's identity, among other things. An itemized wage statement furnished by an employer is not required to show total hours worked by the employee if, among other things, the employee is exempt from the payment of minimum wage and overtime. (Labor Code §226)

3) Provides that eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. (Labor Code §510)

4) Prohibits, with limited exceptions, an employer from employing an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived. (Labor Code §512)

5) Creates the Industrial Welfare Commission (IWC), which promulgates industry-specific wage orders that set the wages, hours, and working conditions of employees. The IWC wage orders have the force of regulation and are enforced by DLSE. (Labor Code §§70, 1173, 1177, 1195 & 1197)

6) Provides that an instructor at an independent institution of higher learning, as defined in subdivision (b) of Section 66010 of the Education Code, is an exempt professional, under Wage Order No. 4-2001 or under Wage Order No. 5-2001 of the IWC, if that person meets specified criteria. (Labor Code §515.7)

7) Defines "independent institutions of higher education" as nonpublic higher education institutions that grant undergraduate degrees, graduate degrees, or both, and that are formed as nonprofit corporations in this state and are accredited by an agency recognized by the United States Department of Education. (Education Code §66010)

8) Creates a specific professional duties' test, which permits certain employees to be exempt from overtime and minimum wage requirements. The duties' test requires the following:

    a. Work requiring knowledge of an advanced type in a field or science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study; or
    b. Work that is original and creative in character in a recognized field of artistic endeavor, and the result of which depends primarily on the invention, imagination, or talent of the employee or work that is an essential part of or necessarily incident to any of the above work; and
    c. Whose work is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time. (IWC Wage Order 4-2001)

9) Requires, in addition to meeting the duties' test in 8) above, an exempt professional to earn a monthly salary of no less than twice the minimum wage for full time employment, or 40 hours in a workweek. (IWC Wage Order 4-2001)

10) Provides that under Wage Order No. 5-2001 the "Public Housekeeping Industry" means any industry, business, or establishment which provides meals, housing, or maintenance services whether operated as a primary business or when incidental to other operations in an establishment not covered by an industry order of the Commission. (IWC Wage Order 5-2001)

This bill:

1) Defines, for purposes of the exemption referenced under existing law 6), an "independent institution of higher education" as a nonpublic, higher education institution that grants undergraduate degrees, graduate degrees, or both, and that is formed as a nonprofit corporation before January 1, 2023, and is accredited by an agency recognized by the United States Department of Education.

2) Declares that the changes made by these provisions do not constitute a change in, but are declaratory of, existing law.

COMMENTS

1. Background:

Industrial Welfare Commission (IWC)
DIR established the IWC in 1913 to develop wage orders for various industries. These wage orders set the wages, hours of work, and working conditions of California employees. To date, 17 wage orders have been issued covering, among others, the manufacturing, canning, laundry, transportation, and broadcasting industries. The IWC wage orders generally exempt three main categories of employees: administrative, executive, and professional. To qualify for a professional exemption, an employee must meet a "duties' test" that looks at the nature of the work they perform. Generally, the work involves advanced study and is original, creative, or intellectual in nature. An employee must also earn a monthly salary equivalent to no less than two times the state minimum wage for full-time employment. Together, these requirements ensure only employees with responsibilities not easily captured in a traditional 8-hour workday are included in the exemption and removed from overtime and meal and rest break protections. Although the IWC was defunded in 2004, its wage orders remain enforceable.

Professional Exemptions, Private Adjunct Faculty, and AB 736
AB 736 (Irwin, Chapter 44, Statutes of 2020) clarified that the professional exemption applies to adjunct faculty at private, nonprofit universities and colleges that satisfy the duties' test and meet certain hourly or monthly salary requirements. Adjunct faculty must earn a monthly salary equivalent to twice the minimum wage, or when employed per course or laboratory a salary calculated on the basis of classroom hours, as specified, or when employed under a collective bargaining agreement, a salary pursuant to that collective bargaining agreement. The definition of "independent institution of higher education" included in AB 736 excluded nonprofits registered outside of the state.

AB 3105 would update the definition of "independent institution of higher education" to include nonprofits formed both inside and outside of the state before January 1, 2023. The author's stated reason for including this date is to prevent any independent institution of higher education from changing from for-profit to non-profit status to benefit from the exemption. The committee does note, however that the inclusion of this date may force future independent institutions of higher education, incorporated after 2023, to seek clarifying legislation to qualify for the professional exemption.

2. Need for this bill?

The author's office writes,

"This bill would modify the current wage and hour exemption for faculty at private institutions of higher education by making a minor modification to the definition of an institute of higher education.

This bill would modify the definition of an independent institution of higher education for purposes of this exemption by excluding those institutions formed as a nonprofit corporation on or after January 1, 2023, and would require the institution to be accredited by the U.S. Department of Education."

3. Proponent Arguments

According to Antioch University, the sponsors of the measure,

"AB 736, which was signed in 2020 and codified at Labor Code §515.7, allows higher education institutions to treat adjuncts as exempt as long as certain conditions are met in terms of how much they are paid, how pay is calculated, etc. The problem is that it only applies to entities as defined by Education Code § 66010(b) which defines independent institutions of higher learning as 'those nonpublic higher education institutions that grant undergraduate degrees, graduate degrees, or both, and that are formed as nonprofit corporations **in this state** and are accredited by an agency recognized by the United States Department of Education.' (emphasis added.)

There is no justification for a requirement that the entity be incorporated in California as opposed to in another state. It, therefore, seems to us to be a purely protectionist measure. This bill would amend Section §515.7 to include institutions like Antioch that are (1) non-profit, (2) provide substantial access to higher education to low-income persons, non-traditional households (e.g., single-parent homes), and working individuals, (3) accredited by the state of California, and (4) are treated as in state for purposes of financial aid."

4. Opponent Arguments:

None received.

5. Prior Legislation:

AB 102 (Ting, Chapter 38, Statutes of 2023), among other things, allocated money to the IWC to convene industry-specific wage boards and adopt orders specific to wages, hours, and working conditions in such industries. The commission shall prioritize for consideration industries in which more than 10 percent of workers are at or below the federal poverty level.

AB 736 (Irwin, Chapter 44, Statutes of 2020) clarified that an adjunct instructor at an independent institution of higher learning qualifies as an exempt professional if that person meets specified criteria.

AB 1466 (Irwin, 2019, Vetoed) of 2019 was similar to this bill and would have clarified when an adjunct instructor at an independent institution of higher learning qualifies as an exempt professional.

SUPPORT

Antioch University (Sponsor)
Association of Independent California Colleges & Universities

OPPOSITION

None received.

-- END --

SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Lola Smallwood-Cuevas, Chair
2023 - 2024 Regular

Bill No:	AB 2301	**Hearing Date:**	June 5, 2024
Author:	Stephanie Nguyen		
Version:	March 21, 2024		
Urgency:	Yes	**Fiscal:**	No
Consultant:	Glenn Miles		

SUBJECT: Sacramento Area Sewer District Pension Protection Act of 2024

KEY ISSUE

This bill authorizes the transfer of specified pension-related obligations and responsibilities from the County of Sacramento (County) to the Sacramento Area Sewer District (SacSewer) to conform to a merger of two Sacramento County sewer service districts and to enable the employees of the successor entity to retain their pension rights under the Sacramento County Employees' Retirement System (SCERS) derived from their previous status as Sacramento County employees.

ANALYSIS

Existing law:

1) Establishes the County Sanitation District Act that provides, among other things, for the formation, maintaining, and governance of county sanitation districts. (Health & Safety Code (HSC) § 4700 et seq.)

2) Renames the Sacramento Regional County Sanitation District as the Sacramento Area Sewer District, and provides for, among other things, the composition of its governing body. (HSC § 4730.12)

3) Establishes the County Employees Retirement Law Act of 1937 (CERL or '37 Act) which governs 20 independent county retirement associations to administer retirement for county and district employees in those counties adopting its provisions. (Government Code (GC) § 31450 et seq.)

4) Establishes the Sacramento County Employees' Retirement System (SCERS) to provide retirement benefits to employees of the County of Sacramento and to employees of local public agency districts within the County of Sacramento. (GC § 31450 et seq., Sacramento County Ordinance No. 283 passed April 30, 1941.)

5) Prohibits public employers from offering "classic" or "legacy" public pension formulas to new employees after December 31, 2012, and instead requires public employers provide only pension formulas as defined in the Public Employees' Pension Reform Act (PEPRA). However, existing members of a public pension system who move to a new employer, as specified, remain eligible for the legacy/classic pension formula that was offered by the new employer on December 31, 2012 (GC § 7522 et seq.)

This bill:

1) Establishes the Sacramento Area Sewer District Pension Protection Act of 2024.

2) Declares that it is the intent of the Legislature to authorize SacSewer to assume all of the County's revenues, debts, obligations, and liabilities with regard to the portion of the County's SCERS defined benefit plan attributed to SacSewer's SCERS members, as specified.

3) Defines the following terms:

   a. "County" means the County of Sacramento.
   b. "County sanitation plan" means the portion of the County's defined benefit plan, administered by SCERS, attributed to SacSewer's SCERS members and beneficiaries, whether the member is actively employed, deferred, or retired, as determined by the retirement system, as of a date to be agreed upon by the County and SacSewer.
   c. "Legacy benefit formulae" means the formulas available to county employees before January 1, 2013.
   d. "Successor entity" means the Sacramento Area Sewer District, an entity organized and established pursuant to and operating under the authority of the County Sanitation District Act (Chapter 3 (commencing with Section 4700) of Part 3 of Division 5 of the Health and Safety Code).

4) Deems county employees exclusively allocated to SacSewer to be SacSewer employees.

5) Requires SacSewer to assume all such deemed employees as its employees and to assume the corresponding employment duties and obligations as of a date to be agreed upon by the County and SacSewer.

6) Provides that county employees that become SacSewer employees pursuant to this bill remain members of SCERS without any break in service or change of employer.

7) Deems SacSewer to be a "district" under CERL for purposes of providing retirement benefits to its employees through SCERS and requires SacSewer, in all respects, to assume all of the rights, obligations, and status previously occupied by the County, with regard to the County sanitation plan, as a SCERS participating district, including, but not limited, to all of the following:

   a. The payment of employer contributions;
   b. The payment of unfunded actuarial liability, including unfunded actuarial liability accrued as a result of all service rendered before separation from county employment as determined by SCERS;
   c. The withholding of employee contributions;
   d. The reporting of compensation earnable and pensionable compensation;
   e. Record retention and audit compliance;
   f. The enrollment of eligible employees in membership;
   g. Compliance with restrictions on the employment of retired persons; and

h. The pickup of employee contributions pursuant to Section 414(h) (2) of the Internal Revenue Code and any agreement or resolution implementing that section.

8) Requires SacSewer to assume all rights, duties, obligations, and liabilities related to the county sanitation plan with respect to all legacy benefit formulae provided to county employees deemed to be SacSewer employees and makes SacSewer eligible to continue all available benefits, including all default and optional benefit provisions provided to county employees and in effect at the time of the transfer of rights, duties, and obligations to SacSewer, as specified.

9) Requires SacSewer to assume the prior obligations of the county sanitation plan for the payment of unfunded actuarial liability, which shall continue to be included in contribution rates as specified.

10) Requires SacSewer to succeed to the rights, duties, and obligations of the county sanitation plan with respect to the following:

    a. The continuation of a Replacement Benefits Program (RPB), as specified, to replace retirement benefits otherwise capped by federal tax law. The bill inoculates the RPB for existing employees and retirees from PEPRA provisions that would otherwise prevent SacSewer from offering a RPB by recognizing that the change in employer is, with respect to PEPRA, pro forma and not an actual new employer.
    b. Responsibility for all benefits, including optional benefits, provided respectively and as specified by the CERL or PEPRA plans to the sanitation employees prior to the transfer of responsibility from the County to SacSewer, as if no change in employer occurred.

11) Transfers to SacSewer the receipt of the benefits for excess contributions, including proceeds of pension obligation bonds that the County paid to SCERS, as specified.

12) Transfers responsibility to SacSewer for the debt payment obligations and any previous agreements related to the pension obligation bonds between the County and SacSewer, to be resolved by SacSewer, independent of SCERS.

13) Contains a severability clause.

14) Declares legislative findings for a special statute and determination that a general statute is inapplicable.

15) Contains an urgency clause.

COMMENTS

1. Need for this bill?

This bill is necessary to do the following: 1) finalize a merger of two Sacramento area sanitation districts, the Sacramento Regional County Sanitation District (Regional San) and the Sacramento Area Sewer District (SacSewer); 2) protect the pension rights of county sanitation employees whose employer is changing from the County to the successor sanitation district, SacSewer; and 3) ensure that the Sacramento County Employees'

Retirement System (SCERS) transfers the corresponding assets, liabilities, and obligations associated with the affected employees from the County to SacSewer.

Under existing law, SacSewer employees are county employees allocated exclusively to the sanitation district. This bill would make SacSewer an independent district employer within the county in SCERS.

However, PEPRA requires a public employer to offer less generous "PEPRA" pension formulas to new employees rather than previously available "classic" (or in the vernacular of CERL pension associations, "legacy") pension formulas. Because SacSewer would technically be a new employer and the sanitation employees would technically be new employees of the new employer, SCERS could not permit SacSewer to provide their employees their current legacy pension formula under existing law. In addition, new SacSewer employees with pre-PEPRA status from other public employers would not be able to access legacy formulas pursuant to PEPRA's grandfathering clause as they would prior to the merger.

This bill would protect the merged district employees' existing vested retirement benefits by authorizing SCERS to treat the affected employees as if no change in the employer had occurred notwithstanding PEPRA.

2. Proponent Arguments

According to SacSewer:

> "Currently, staff working for SacSewer are County of Sacramento employees, allocated exclusively to an agency within the County. In December 2024, District staff will transition from being county employees to employees of SacSewer. Employees currently participate in the Sacramento County Employee Retirement System (SCERS) and SacSewer wants to ensure that our over 780 employees retain their current SCERS benefits and tier status under the Public Employees' Pension Reform Act (PEPRA)."

According to SCERS:

> "SacSewer is in the process of formally separating from Sacramento County in December 2024, with the intent to transfer all current county employees to the new district. SCERS has taken an active role in the transition to ensure that the pension liabilities of current and former SacSewer employees are adequately addressed and accounted for, and to facilitate the transfer of accrued and future retirement benefits for more than 700 current employees so they are held harmless.
>
> AB 2301 reflects the intent to apportion more than $560 million in pension liabilities and assets between the County and SacSewer, based on the recommendation of SCERS' actuary, in a fair manner that will protect the pension fund and its members in the long run and avoid potential disputes in the future over payment obligations.
>
> The legislation also ensures that current 'legacy' employees will retain their retirement benefit tier. Otherwise, the Public Employees' Pension Reform Act (PEPRA) would require that employees who transfer to the new employer would be placed in the PEPRA benefit structure. These provisions are similar to other enacted legislation

regarding consolidations or reorganizations of governmental entities in the post-PEPRA era."

3. Opponent Arguments:

None received.

4. Prior Legislation:

SB 1240 (Alvarado-Gill, 2024) proposes to authorize a successor agency to the El Dorado Fire Protection District and the Diamond Springs Fire Protection District to provide employees the defined benefit plan or formula that those employees received from their respective employer prior to annexation. *This bill is currently pending in the Senate Committee on Labor, Public Employment and Retirement.*

AB 1140 (Stone, Chapter 65, Statutes of 2020) authorized on or after June 30, 2020, a successor agency for the Central Fire Protection District and the Aptos/La Selva Fire Protection District to provide employees the defined benefit plan or formula that those employees received from the respective employer prior to the consolidation, and includes legislative findings and declarations for these purposes.

AB 2004 (Obernolte, Chapter 72, Statutes 2018) enacted enacted the Big Bear Fire Agencies Pension Consolidation Act of 2018, which required all safety employees employed by the Big Bear Lake Fire Protection District to become employees of the Big Bear Fire Authority (BBFA), as specified, and required the BBFA to assume all associated retirement liabilities.

SUPPORT

Sacramento Area Sewer District (Sponsor)
Sacramento County Employees Retirement System

OPPOSITION

None received.

-- END --

SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Lola Smallwood-Cuevas, Chair
2023 - 2024 Regular

Bill No:	AB 2337	**Hearing Date:**	June 5, 2024
Author:	Dixon		
Version:	February 12, 2024		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Alma Perez-Schwab		

SUBJECT: Workers' compensation: electronic signatures

KEY ISSUE

This bill authorizes the use of electronic signatures in proceedings before the Workers' Compensation Appeals Board (WCAB).

ANALYSIS

Existing law:

1) Establishes a workers' compensation system that provides benefits to an employee who suffers from an injury or illness that arises out of, and in the course of, employment, irrespective of fault. This system requires all employers to secure payment of benefits by either securing the consent of the Department of Industrial Relations (DIR) to self-insure or by securing insurance against liability from an insurance company duly authorized by the state. (California Constitution Article XIV §4, Labor Code §3200-6002)

2) Establishes the Division of Workers' Compensation (DWC), within the Department of Industrial Relations (DIR), to monitor the administration of workers' compensation claims, and provides administrative and judicial services to assist in resolving disputes that arise in connection with claims for workers' compensation benefits. (Labor Code §110-139.6)

3) Establishes the Workers' Compensation Appeals Board (WCAB) within the DWC and grants the board all judicial power functions, as provided. (Labor Code §111, §133 & §3200)

4) Authorizes parties interested in compromising on any liability that is claimed to exist under workers' compensation provisions, to do so through a release or compromise agreement signed by both parties and filed with the WCAB. (Labor Code §5000-5006)

5) Requires every compromise and release filed with the WCAB to be in writing and include the signature of the employee or other beneficiary that must be attested by two witnesses or acknowledged before a notary public, as specified. (Labor Code §5003)

6) Provides that "signature" or "subscription" includes a mark when the signer or subscriber cannot write, such signer's or subscriber's name being written near the mark by a witness who writes their own name near the signer's or subscriber's name; but a signature or subscription by mark can be acknowledged or can serve as a signature or subscription to a sworn statement only when two witnesses so sign their own names thereto. (Labor Code §17)

7) Defines "electronic signature" for purposes of brokerage agreements, Uniform Electronic Transfer Act, Levying Officer Transfer Act, California Franchise Investment Law, Corporate Securities Law, and various purposes under the Financial Code and Code of Civil Procedure, to mean an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record. (Civil Code §1633(f), §1633.2(h); Code of Civil Procedure §17(b)(3), §263.1(c); Corporations Code §31158, §25620; Financial Code §12201, §17201, §22101)

8) Provides for the electronic filing of documents in civil actions, including the use of electronic signatures. (Code of Civil Procedure §1010.6)

9) Provides that if by law a signature is required to be notarized, the requirement is satisfied with respect to an electronic signature if an electronic record includes, in addition to the electronic signature to be notarized, the electronic signature of a notary public, as provided. (Civil Code §1633.11)

This bill:

1) Authorizes the use of electronic signatures in proceedings before the Workers' Compensation Appeals Board.

2) Defines "signature," for purposes of proceedings before the WCAB, to include an electronic record or electronic signature attributable to a person if it was the act of the person, as specified.

3) Provides that for every compromise and release agreement, filed with the WCAB, the signature requirements may be satisfied by an electronic signature, as provided.

4) Specifies that the requirement of acknowledgment by a notary public may be satisfied by an electronic signature provided an electronic record includes the electronic signature of a notary public together with all other information required to be included in a notarization by other applicable law.

COMMENTS

1. Background:

Workers' compensation benefits provide employees with the medical treatment needed to recover from work related injury or illnesses, partially replace the wages lost while they recover, and help them return to work. Workers' compensation benefits do not include damages for pain and suffering or punitive damages. The Division of Workers' Compensation (DWC) monitors the administration of workers' compensation claims, and provides administrative and judicial services to assist in resolving disputes that arise in connection with claims for workers' compensation benefits.

The Workers' Compensation Appeals Board (WCAB) is the judicial body of the DWC whose major functions include:

- Issuing judicial opinions in response to petitions for removal and reconsideration of decisions by workers' compensation administrative law judges,

- representing the WCAB in appellate proceedings, and
- regulation of the adjudication process by adopting rules of practice and procedure

Through its published opinions and regulations, the WCAB provides guidance and leadership to the workers' compensation community.

WCAB authorized the use of electronic signatures during the COVID-19 pandemic:
As noted by the Assembly Insurance Committee analysis:

"On March 18, 2020, shortly after Governor Newsom declared a state of emergency in response to the spread of COVID-19, WCAB issued an en banc decision, Case No. MISC. NO. 260, with several orders, including authorization to use electronic signatures on compromise and release agreements. When the state of emergency was terminated by the Governor on February 28, 2023, WCAB issued another en banc decision, Case No. MISC. NO. 268, rescinding provisions of en banc orders made during the state of emergency, including those relating to the authorized use of electronic signatures, as contained in Case No. MISC. NO. 260.

With the rescission of that order, electronic signatures are no longer being allowed in workers' compensation proceedings as they are not explicitly authorized under the Labor Code. This bill would codify the authorized use of electronic signatures on a compromise and release and additional documents filed in proceedings before the WCAB."

Modernizing Transactions:
California has made efforts to modernize signature requirements in various areas of law and legal proceedings. In 1999, California enacted the Uniform Electronic Transaction Act (UETA) establishing uniform standards for conducting electronic transactions in the state. Specifically, the UETA established rules and procedures for the sending and receiving of electronic records and signatures, the formation of contracts using electronic records, the making and retention of electronic records and signatures, and the procedures governing changes and errors in electronically transmitted records. UETA additionally established the validity of transactions formed, transmitted and recorded electronically, and established the admissibility of electronic records in a legal proceeding.

Since then, California has continued to modernize signature requirements, including in some unemployment insurance code provisions. In 2022, AB 1854 (Boerner Horvath, Chapter 112, Statutes of 2022), among other things, required the Employment Development Department (EDD) to accept electronic signatures on all work sharing plan documents. This bill continues these efforts by authorizing the use of electronic signatures within the workers' compensation system.

2. Need for this bill?

According to the author:

> "AB 2337 is a commonsense measure that will authorize the use of electronic signatures in proceedings before the Workers' Compensation Appeals Board (WCAB). During the COVID-19 state of emergency, WCAB authorized electronic signatures on a compromise and release. When the COVID-19 state of emergency was terminated, WCAB rescinded the authorization to use electronic signatures, reverting back to the requirement of a

"wet" signature. Electronic signatures were used effectively in workers' compensation proceedings for three years during the state of emergency. California explicitly authorizes electronic signatures in civil proceedings, where they are widely used. AB 2337 will authorize the use of electronic signatures on a compromise and release as well as other documents and filings in proceedings before WCAB, modernizing those proceedings for the benefit of all participants."

3. Proponent Arguments:

According to the sponsors, the California Lawyers Association, Workers' Compensation Section:

"During the COVID-19 state of emergency, WCAB authorized electronic signatures on a compromise and release form. When the COVID-19 state of emergency was terminated, WCAB rescinded the authorization to use electronic signatures, reverting back to "wet" signatures. Electronic signatures were used effectively in workers' compensation proceedings for three years during the state of emergency. California explicitly authorizes electronic signatures in civil proceedings, where they are widely and effectively used. AB 2337 follows a long line of legislation in California permitting electronic signatures in various areas. By authorizing the use of electronic signatures on a compromise and release as well as other documents and filings in proceedings before WCAB, AB 2337 will modernize those proceedings for the benefit of all participants. This is a commonsense measure that will ensure efficiency and consistency in WCAB proceedings, removing unnecessary barriers in the process."

4. Opponent Arguments:

None received.

5. Double Referral:

This bill has been double referred and if approved by this Committee today, will be sent to Senate Judiciary Committee for a hearing.

6. Prior/Related Legislation:

AB 1879 (Gipson, 2024) would allow electronic signatures on property tax documents, as specified. *This bill is pending in Senate Judiciary Committee*.

AB 1854 (Boerner Horvath, Chapter 112, Statutes of 2022), among other things, required EDD to accept electronic signatures on all work sharing plan documents.

AB 1926 (Evans, Chapter 167, Statutes of 2010) provided trial courts with the ability to create, maintain, and preserve trial court records electronically under procedures and guidelines to be provided for by the Judicial Council.

AB 2394 (Brownley, Chapter 428, Statutes of 2010) established the Levying Officer Electronic Transactions Act, whereby a levying officer could use electronic methods to create, generate, send, receive, store, display, retrieve, or process information, electronic records, and documents, as specified.

AB 578 (Leno, Chapter 621, Statutes of 2004) enacted the Electronic Recording Delivery Act of 2004 regulating the electronic delivery, recording, and return of instruments affecting rights, title, or interest in real property.

SB 820 (Sher, Chapter 428, Statutes of 1999) created the Uniform Electronic Transaction Act, which authorized electronic signatures for contracting purposes.

SB 367 (Dunn, Chapter 514, Statutes of 1999) authorized courts to adopt local rules of court permitting electronic filing and service of documents, as specified.

SUPPORT

California Lawyers Association, Workers' Compensation Section (Sponsor)
Acclamation Insurance Management Services
Allied Managed Care
American Property Casualty Insurance Association
Association of California Healthcare Districts
California Applicants' Attorneys Association
California Association of Joint Powers Authorities
California Chamber of Commerce
California Coalition on Workers' Compensation
California Joint Powers Insurance Authority
California Special Districts Association
California State Association of Counties
Housing Contractors of California
League of California Cities
Public Risk Innovation, Solutions, and Management
Urban Counties of California

OPPOSITION

None received.

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SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Lola Smallwood-Cuevas, Chair
2023 - 2024 Regular

Bill No:	AB 2770	**Hearing Date:**	June 5, 2024
Author:	Committee on Public Employment and Retirement		
Version:	March 11, 2024		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Glenn Miles		

SUBJECT: Public employees' retirement

KEY ISSUE

This bill makes technical, non-substantive amendments to clean up and clarify specified portions of the Education and Government Codes regulating the California State Teachers' Retirement System (CalSTRS), the California Public Employees' Retirement System (CalPERS), and the County Employees Retirement Law of 1937 (37 Act or CERL) retirement systems.

ANALYSIS

Existing law:

1) Establishes the following public retirement system segments:

    a. CalSTRS, which provides a defined benefit pension plan, a defined benefit supplement program, and a cash balance benefit program to certificated school employees. (Education Code (ED) § 26000 et seq.)
    b. CalPERS, which provides a defined benefit pension to state employees, classified school employees, and employees of contracting public agencies. (Government Code (GC) § 20000 et seq.) CalPERS also administers the Judges' Retirement Systems (JRS) I and JRS II which provides retirement benefits for California judges. (GC § 75000 et seq. and GC § 75500 et seq.)
    c. Twenty county retirement systems organized under the 37 Act and represented by the State Association of County Retirement Systems (GC § 31450 et seq.).

This bill:

CalSTRS

1) Makes changes to provisions relating to the purchase of additional service credits by clarifying that a member must sign and return the completed statement of contributions and interest required from the system to purchase service credit at a specific cost no later than 35 calendar days from the date of the offer.

2) Makes changes to provisions relating to the redeposit of accumulated contributions that CalSTRS refunded to the member by clarifying that the member may redeposit all or a portion of those contributions from the date CalSTRS receives the request to redeposit.

3) Makes changes to provisions relating to the time of election to redeposit accumulated contributions refunded to the member by requiring the member to sign and return the completed election to repay accumulated retirement contributions from the system to redeposit at a specific cost no later than 35 calendar days from the date of the offer.

4) Makes changes to provisions relating to procedures concerning payment, and more specifically, accrual and termination dates of allowances and payments, and compliance to federal law in the case of distributions by clarifying that member must complete payments in accordance with federal law, as prescribed.

5) Makes other technical changes.

CERL / 37 ACT

1) Extends the sunset date from January 1, 2025, to January 1, 2029, regarding the disability retirement presumption of post-traumatic stress disorder (PTSD) following enactment of Chapter 554, Statutes of 2023 (Assembly Bill 1020, Grayson) for purposes of aligning the sunset date of the post-traumatic stress injury (PTSI) established in the Workers' Compensation body of law applicable to certain state and local firefighters following enactment of Chapter 621, Statutes of 2023 (Senate Bill 623, Laird).

2) Makes other technical or clarifying changes.

CalPERS / JRS

1) Makes technical and clarifying changes to the Judges' Retirement System II (JRS II).

COMMENTS

1. Need for this bill?

According to the author:

> "CalSTRS administers retirement benefits for California's public school educators and retirees pursuant to various sections of the Education Code, otherwise commonly referred to as the Teachers' Retirement Law (TRL). The 20 separate and independent County Employees Retirement Law (CERL) systems administer retirement benefits for county and district employees in counties that have adopted the provisions of the CERL. CalPERS administers retirement and other benefits to state, local, school, and contracting agency employees pursuant to various sections of the Government Code, otherwise commonly referred to as the Public Employees' Retirement Law (PERL).
>
> Annually, each system segment may seek, or has sought, to make technical, clarifying, conforming, or noncontroversial changes to various sections of the law that it administers to ensure appropriate and effective administration. This bill is another example of those efforts among a historical line of bills for similar purposes."

2. Proponent Arguments

According to CalSTRS:

"This measure contains the annual provisions that makes various minor, technical and conforming changes to the Teachers' Retirement Law for the California State Teachers' Retirement System (CalSTRS), alongside minor, technical and conforming changes in the County Employees Retirement Law and the law related to the Judges' Retirement System II.

This bill is necessary to permit continued effective administration of CalSTRS. Any administrative costs associated with these provisions are minor and absorbable, and there are no program costs resulting from them."

According to CalPERS:

"As it pertains to CalPERS, AB 2770 further aligns statutes related to the deferred retirement for Judges' Retirement System II judges with existing law and business practices to ensure the proper implementation of Chapter 531, Statutes of 2022 (AB 2443)."

According to the California Professional Firefighters:

"AB 1020 (Grayson, 2023), as passed by the Legislature and signed by the Governor, modified the provisions in the Government Code to conform the injuries that are eligible for a presumptive industrial disability retirement in 1937 Act Retirement Systems with those that are listed as presumptive injuries for the workers' compensation system in the Labor Code. SB 623 (Laird, 2023) extended the sunset for the post-traumatic stress injury for certain classes of public safety employees in Labor Code 3212.15 from January 1, 2025 to January 1, 2029.

Government Code Section 31720.91 (e) states that 'This section shall remain in effect only until January 1, 2025, and as of that date is repealed.' This sunset date was included to align with the sunset that had been contained in the post-traumatic stress workers' compensation presumption in the Labor Code, with the recognition that legislation to push back that sunset was moving concurrently and should SB 623 be passed into law this code section would need to be amended.

AB 2770 is a narrowly targeted piece of cleanup legislation that will ensure alignment between the Government Code and Labor Code and protect the ability of employees in 1937 Act Retirement Systems who are injured in the course of their work to retire with care and dignity."

3. Opponent Arguments:

None received.

4. Prior Legislation:

SB 432 (Cortese, Chapter 215, Statutes of 2023) clarified certain provisions of AB 1667 (Cooper, Chapter 754, Statutes of 2022) related to the recovery of pension overpayments from the California State Teachers Retirement System (CalSTRS) to retired teachers due to errors in reported compensation.

AB 1667 (Cooper, Chapter 754, Statutes of 2022) protected CalSTRS retirees from system or employer errors in reporting compensation to CalSTRS that result in pension overpayments to retired teachers by requiring the state or the employer or both to pay to CalSTRS amounts necessary to recover the pension overpayments.

SB 885 (Committee on Labor, Public Employment and Retirement, Chapter 885, Statutes of 2023) made technical, conforming, clarifying, and noncontroversial changes to TRL, CERL, and PERL, for purposes of continued efficient and effective administration by the respective public employee retirement systems.

AB 1824 (Committee on Public Employment and Retirement, Chapter 231, Statutes of 2022) made technical, conforming, and noncontroversial changes to the TRL and CERL for continued appropriate and effective administration of these laws by the applicable retirement systems.

SB 634 (Committee on Labor, Public Employment and Retirement, Chapter 186, Statutes of 2021) made technical, conforming, and noncontroversial changes to the TRL, PERL, and CERL.

AB 2101 (Committee on Public Employment and Retirement, Chapter 275, Statutes of 2020) made various technical, conforming, and noncontroversial changes to the TRL, PERL, and CERL to improve administration of these laws by the respective public employee retirement systems.

SUPPORT

California Public Employees' Retirement System (Co-sponsor)
California State Teachers' Retirement System (Co-sponsor)
California Professional Firefighters
State Association of County Retirement Systems

OPPOSITION

None received.

-- END --

SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Lola Smallwood-Cuevas, Chair
2023 - 2024 Regular

Bill No:	AB 3143	**Hearing Date:**	June 5, 2024
Author:	Lowenthal		
Version:	February 16, 2024		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Alma Perez-Schwab		

SUBJECT: Compensation: gratuities

KEY ISSUE

This bill prohibits an employer or agent from prohibiting, or implementing a policy to prohibit, an employee of a restaurant from receiving any gratuity that is paid, given to, or left for an employee by a patron.

ANALYSIS

Existing law:

1) Sets California's minimum wage at $16/hour and specifies that after January 1, 2023, the minimum wage rate be adjusted annually for inflation, as specified. (Labor Code §1182.12)

2) Effective April 1, 2024, requires fast food restaurants, as defined, to pay their employees a minimum wage of $20.00 per hour. (Labor Code §§1474-1477)

3) Effective July 1, 2024, requires specified health care facility employers to pay a health care worker minimum wage based on a multi-tiered schedule reaching up to $25 an hour by 2028, as specified. (Labor Code §1182.14, §1182.15)

4) For purposes of the minimum wage, defines "employer" to mean any person who directly or indirectly, or through an agent or any other person, employs or exercises control over the wages, hours, or working conditions of any person and includes the state, political subdivisions of the state, and municipalities. (Labor Code §1182.14)

5) Prohibits an employer or agent from collecting, taking, or receiving any gratuity or a part thereof that is paid, given to, or left for an employee by a patron, or from deducting from wages due any gratuity paid to an employee by a patron, or require an employee to credit any amount of a gratuity against wages due to the employee. (Labor Code §351)

6) Specifies that employers that permit patrons to pay gratuities by credit card shall pay the employees the full amount of the gratuity indicated on the credit card slip, without any deductions for any credit card payment processing fees or costs that may be charged to the employer by the credit card company. Employers are required to transmit such payment of gratuities to the employees not later than the next regular payday following the date the patron authorized the credit card payment. (Labor Code §351)

7) Requires employers to keep accurate records of all gratuities received by the employer, and make those records available to the Department of Industrial Relations for inspection. (Labor Code §353)

8) Provides that any employer that violates these requirements is guilty of a misdemeanor, punishable by a fine not exceeding one thousand dollars ($1,000) or by imprisonment for not exceeding 60 days, or both. (Labor Code §354)

This bill:

1) Prohibits an employer or agent from prohibiting, or implementing a policy to prohibit, an employee of a restaurant from receiving any gratuity that is paid, given to, or left for an employee by a patron.

COMMENTS

1. Background:

As noted above, the law is very clear about the rights of employees when it comes to gratuities. Gratuities are the sole property of the employee or employees to whom they are given. Unlike on the federal level and in other states, where there is a subminimum wage for tipped employees, California employers cannot use an employee's tips as a credit towards its obligation to pay the minimum wage. California law requires that employees receive the minimum wage plus any tips left for them by patrons of the employer's business. Since tips are voluntarily left for an employee by the customer of the business and are not being provided by the employer, they are not considered as part of the regular rate of pay when calculating overtime.

California's current minimum wage is $16 per hour with two industries, fast food and health care, having a higher minimum wage requirement. Fast food restaurants must pay their employees a minimum wage of $20.00 per hour while specified health care facility employers must pay based on a multi-tiered schedule reaching up to $25 an hour by 2028, as specified. This means that restaurant employees should be making the minimum wage plus, for restaurants that allow tipping, any additional amount in tips.

It appears, however, that some establishments only allow tipping when it involves "table service." A quick online search reveals that several fast food chains have implemented policies prohibiting tipping of employees. This bill appears to target these fast food establishments.

Cost of Living in California:
According to a University of California, Berkeley Labor Center report, which provides an analysis of living wages in California "based on the MIT living wage calculator[1], which measures income adequacy by accounting for both family composition and geography, the 2022 self-sufficiency wage in California for

[1] Glasmeier, Amy K. Living Wage Calculator. 2023. Massachusetts Institute of Technology. Livingwage.mit.edu

- A single adult is $21.24
- A family with two working adults and two children is $30.06
- A family with one working adult and one child is $43.33"[2]

Considering California's cost of living, for workers in fields that allow for gratuities, these extra tip amounts can make a big difference in their ability to keep up with rising costs.

2. Need for this bill?

According to the author:

"Tipping has become commonplace throughout much of the food service industry, but there are still some restaurants that maintain policies to prevent their employees from accepting gratuities. Tips are an important source of supplemental income for food service employees, especially for employees earning minimum wage, and policies to prevent tipping are excluding these employees from earing this valuable supplemental income. Food prep and service workers are most likely to earn the minimum wage. Nearly 9% of hourly food preparation and service workers make the minimum wage or less, the highest of any occupation type.

AB 3143 prevents an employer from prohibiting or implementing a policy to prohibit an employee of a restaurant from receiving any gratuity that is paid, given to, or left for an employee by a patron. By allowing for tipping in all restaurants, AB 3143 allows food service employees to earn supplemental income and takes an important step toward closing the wage gap experienced by underserved and marginalized communities, who are disproportionately represented in these low-wage jobs in the food service industry."

3. Proponent Arguments:

None received.

4. Opponent Arguments:

None received.

5. Prior/Related Legislation:

AB 610 (Holden, Chapter 4, Statutes of 2024) amended existing fast food worker provisions requiring a $20 an hour minimum wage for fast food workers to exempt specified restaurants from the definition of "fast food restaurant," including restaurants in airports, hotels, event centers, theme parks, museums, and other locations, as prescribed.

AB 1228 (Holden, Chapter 262, Statutes of 2023) requires, among other things, the hourly minimum wage for fast food restaurant employees to be twenty dollars ($20) per hour, effective April 1, 2024. AB 1228 repealed, revised, and recast provisions of the Fast Food Accountability and Standards Recovery Act (FAST Act) to codify changes that were

[2] Farmand, Aida; Challenor, Tynan; Hunter,Savannah; Lopezlira, Enrique; and Jacobs, Ken. *State workers struggle to make ends meet throughout California; Women, Black, and Latino workers are disproportionately affected*. March 15, 2023. https://laborcenter.berkeley.edu/state-workers-struggle-to-make-ends-meet-throughout-california/

negotiated and agreed to by both proponents and opponents (seeking a referendum) of AB 257 (Holden, 2022) but only if the referendum was withdrawn by January 1, 2024.

AB 1003 (Gonzalez, Chapter 325, Statutes of 2021) made the intentional theft of wages, including gratuities, in an amount greater than $950 from any one employee, or $2,350 in the aggregate from two or more employees, by an employer in any consecutive 12-month period, punishable as grand theft.

AB 1099 (Gonzalez, 2017) would have required entities, as specified, which permit a patron to pay for services performed by a worker by debit or credit card, to also accept a debit or credit card for payment of gratuity. *This bill was pulled from hearing by the author and died without further action.*

SB 896 (Nguyen, 2016, Vetoed) would have required an establishment offering nail care services, if it accepts a debit or credit card as payment for nail care services, to also accept a debit or credit card for payment of a tip or gratuity. *This bill was vetoed by Governor Brown.*

AB 2509 (Steinberg, Chapter 876, Statutes of 2000) removed an exception that allowed employers to receive or deduct gratuities intended for employees from wages otherwise payable, if those employees had a guaranteed wage or salary that is at least the higher of the federal or state minimum wage. The law also required employers to remit to their employees gratuities paid by credit card, without deduction for credit card fees, not later than the next regular payday following the date the credit card payment is authorized by the patron.

SUPPORT

None received.

OPPOSITION

None received.

-- END --