SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Lola Smallwood-Cuevas, Chair
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Consultant:	Alma Perez-Schwab		

SUBJECT: Employment: automated decision systems

KEY ISSUES

This bill 1) requires an employer, or a vendor engaged by the employer, to provide a written notice that an automated decision system (ADS) is in use at the workplace to all workers that will be directly or indirectly affected by the ADS, as specified; 2) prohibits an employer or vendor from using an ADS that does certain functions and would limit the purposes and manner in which an ADS may be used to make employment-related decisions; 3) grants a worker access to data collected or used by an ADS and to correct errors; 4) requires an employer or vendor to provide a written notice to a worker that has been affected by an employment-related decision made by an ADS, and grants the worker the right to appeal the decision; 5) requires an employer or vendor to respond to an appeal, and to review and rectify the decision if found necessary; 6) includes worker anti-retaliation provisions for exercising these rights; 7) requires the Labor Commissioner (LC) to enforce these provisions; 8) authorizes the LC, a public prosecutor, or any worker who has suffered a violation, or their representative, to bring a civil action; and 9) includes specified penalties and relief for violations.

ANALYSIS

Existing law:

1) Establishes the Department of Technology, within the Government Operations Agency, and tasks it with, among other things, advising the Governor on the strategic management and direction of the state's information technology resources. (Government Code §11545 et seq.)

2) Requires the Department of Technology to conduct, in coordination with other interagency bodies, as it deems appropriate, a comprehensive inventory of all high-risk automated decision systems (ADS) that have been proposed for use, development, or procurement by, or are being used, developed, or procured by, any state agency. As part of this review, requires the analysis to include descriptions of any alternatives to its use, the categories of data and personal information the ADS uses to make decisions, and measures that are in place to mitigate the risks of its use, including cybersecurity risk and the risk of inaccurate, unfairly discriminatory, or biased decisions of the ADS. (Government Code §11546.45.5)

3) Defines the following terms:

    a. "Artificial intelligence" means an engineered or machine-based system that varies in its level of autonomy and that can, for explicit or implicit objectives, infer from the input it receives how to generate outputs that can influence physical or virtual environments.

b. "Automated decision system" means a computational process derived from machine learning, statistical modeling, data analytics, or artificial intelligence that issues simplified output, including a score, classification, or recommendation, that is used to assist or replace human discretionary decisionmaking and materially impacts natural persons. "Automated decision system" does not include a spam email filter, firewall, antivirus software, identity and access management tools, calculator, database, dataset, or other compilation of data.
(Government Code §11546.45.5)

4) Establishes the California Consumer Privacy Act (CCPA), which grants consumers certain rights with regard to their personal information, including enhanced notice, access, and disclosure; the right to deletion; the right to restrict the sale of information; and protection from discrimination for exercising these rights. It places attendant obligations on businesses to respect those rights. (Civil Code §1798.100 et seq.)

5) Establishes the Consumer Privacy Rights Act (CPRA), which amends the CCPA and creates the California Privacy Protection Agency (PPA), which is charged with implementing these privacy laws, promulgating regulations, and carrying out enforcement actions. (Civil Code §1798.100 et seq.; Proposition 24 (2020))

6) Requires the Attorney General to adopt regulations governing access and opt-out rights with respect to businesses' use of automated decisionmaking technology, including profiling and requiring businesses' response to access requests to include meaningful information about the logic involved in those decisionmaking processes, as well as a description of the likely outcome of the process with respect to the consumer. (Civil Code §1798.185)

7) 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)

8) 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. (Labor Code §79-107)

9) Requires employers to provide to each employee, upon hire, a written description of each quota to which the employee is subject, including the quantified number of tasks to be performed or materials to be produced or handled, within the defined time period, and any potential adverse employment action that could result from failure to meet the quota. (Labor Code §2101)

10) Prohibits an employer from requiring an employee to meet a quota that prevents compliance with meal or rest periods, use of bathroom facilities, including reasonable travel time to and from bathroom facilities, or occupational health and safety laws in the Labor Code or division standards. Additionally, prohibits an employer from taking adverse employment actions against an employee for failure to meet a quota that does not allow a worker to comply with meal and rest periods, or occupational health and safety laws in the Labor Code

or division standards, or for failure to meet a quota that has not been disclosed to the employee pursuant to Labor Code Section 2101. (Labor Code §2101)

This bill:

1) Defines, among others, the following terms:

   a. "Automated decision system" or "ADS" means any computational process derived from machine learning, statistical modeling, data analytics, or artificial intelligence that issues simplified output, including a score, classification, or recommendation, that is used to assist or replace human discretionary decisionmaking and materially impacts natural persons. An automated decision system does not include a spam email filter, firewall, antivirus software, identity and access management tools, calculator, database, dataset, or other compilation of data.
   b. "ADS output" means any information, data, assumptions, predictions, scoring, recommendations, decisions, or conclusions generated by an ADS.
   c. "Employer" means any person who directly or indirectly, or through an agent or any other person, employs or exercises control over the wages, benefits, other compensation, hours, working conditions, access to work or job opportunities, or other terms or conditions of employment, of any worker. This shall include all branches of state government, or the several counties, cities and counties, and municipalities thereof, or any other political subdivision of the state, or a school district, or any special district, or any authority, commission, or board or any other agency or instrumentality thereof. "Employer" includes a labor contractor of a person defined as an employer.
   d. "Employment-related decision" means any decision by an employer that impacts wages, wage setting, benefits, compensation, work hours, work schedule, performance evaluation, hiring, discipline, promotion, termination, job tasks, skill requirements, work responsibilities, assignment of work, access to work and training opportunities, productivity requirements, workplace health and safety, and any other terms or conditions of employment.
   e. "Predictive behavior analysis" means any system or tool that predicts or infers a worker's behavior, beliefs, intentions, personality, emotional state, or other characteristics or behavior.
   f. "Vendor" means a third party, subcontractor, or entity engaged by an employer or an employer's labor contractors to provide software, technology, or a related service that is used to collect, store, analyze, or interpret worker data or worker information.
   g. "Worker" means any natural person who is a job applicant to, an employee of, or an independent contractor providing service to, or through, a business or a state or local governmental entity in any workplace.
   h. "Worker data" means any information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with, a worker, regardless of how the information is collected, inferred, or obtained.

ADS Pre-Use Worker Notification

2) Requires an employer, or a vendor engaged by the employer, to provide a written notice that an ADS, for the purpose of making employment-related decisions, is in use at the workplace to a worker who will be directly or indirectly affected by the ADS, or their authorized representative, according to the following:

a. At least 30 days before the introduction of the ADS.
b. No later than February 1, 2026 (if an ADS is already in use at the time these provisions take effect).
c. To a new worker within 30 days of hiring if an existing ADS is in place.
d. Within 30 days of any significant updates or changes to the ADS, or a significant change in how the employer is using ADS.

3) Requires the written notice to be all of the following:

a. In plain language as a separate, stand-alone communication.
b. In the language in which routine communications and other information are provided.
c. Provided via a simple and easy-to-use method, as specified.

4) Requires the written notice to contain the following information:

a. An explanation of the nature, purpose, and scope of the decisions for which the ADS will be used, including the specific employment-related decisions potentially affected.
b. The specific category and sources of worker input data that the ADS will use and how that data will be collected.
c. The logic used in the ADS, including the key parameters that affect the output of the ADS, and the type of outputs the ADS will produce.
d. The individuals, vendors, and entities that created the ADS and the individuals, vendors, and entities that will run, manage, or interpret the results of the ADS output.
e. For each performance metric, quota, or other related measure, a description of how the performance standard is measured, how data is collected, and any adverse consequences or incentives associated with the performance standard.
f. A description of the worker's right to access information about the employer's use of ADS to make an employment-related decision.
g. A description of the worker's rights to appeal a decision for which the ADS was used and to correct data used by the ADS.
h. That the employer is prohibited from retaliating against workers for exercising these rights.
i. An updated list of all ADS currently in use by the employer, as specified.

Prohibitions and Requirements

5) Prohibits an employer, or a vendor engaged by the employer, from using an ADS that does any of the following:

a. Prevents compliance with or results in a violation of any federal, state, or local labor, occupational health and safety, employment, or civil rights laws or regulations.
b. Obtains or infers a worker's immigration status, veteran status, ancestral, history, religious or political beliefs, health or reproductive status, history, or plan, emotional or psychological state, neural data, sexual or gender orientation, disability, criminal record, credit history, or statuses protected under Section 12940 of the Government Code.
c. Conducts predictive behavior analysis.
d. Identifies, profiles, predicts, or takes adverse action against a worker for exercising their legal rights, including, but not limited to, rights guaranteed by state and federal employment and labor law.

e. Uses or relies on individualized worker data as inputs or outputs to inform compensation, unless the employer can clearly demonstrate that any differences in compensation for substantially similar or comparable work assignments are based on cost differentials in performing the tasks involved, or that the data was directly related to the tasks the worker was hired to perform.

6) Prohibits an employer, or a vendor engaged by the employer, from using an ADS to collect data for a purpose not previously disclosed in the required written notice specified above.

7) Prohibits an employer, or a vendor engaged by the employer, from relying primarily on an ADS when making hiring, promotion, discipline, or termination decisions and instead requires a human reviewer to conduct its own investigation and compile corroborating or supporting information for the decision. This information may include, but is not limited to, any of the following:

a. Supervisory or managerial evaluations.
b. Personnel files.
c. Employee work products.
d. Peer reviews.

8) Prohibits an employer or vendor from using customer ratings as the only or primary input data for an ADS to make employment-related decisions.

9) Requires an employer to allow a worker to access worker data collected or used by an ADS and correct errors in any input or output data used by or produced by the ADS or used as corroborating evidence by a human reviewer.

10) Requires an employer to allow a worker to appeal an employment-related decision for which the ADS was used, as specified below.

ADS Post-Use Notification

11) Requires an employer or vendor that has used an ADS to make an employment-related decision to provide the affected worker with a written notice, as specified, at the time the employer informs the worker of the decision.

12) Requires the notice to contain the following information:

a. The human to contact for more information, including corroborating evidence found by a human reviewer, for access to data used to make the decision, or to appeal the decision.
b. That the employer or vendor used an ADS to make one or more employment-related decisions with respect to the worker.
c. That the worker has the right to appeal the decision pursuant to Chapter 5 (commencing with Section 1532).
d. That the worker has the right to correct errors in any input or output data used by or produced by the ADS or used as corroborating evidence by the human reviewer.
e. A form or a link to an electronic form for the worker to file an appeal or request more information on the data used in the decision.
f. That the employer is prohibited from retaliating against the worker for exercising their rights under this part.

Right to Appeal ADS Assisted Employment-Related Decisions

13) Requires an employer or vendor, that uses an ADS to make an employment-related decision, to provide affected workers with the right to appeal that decision within 30 days from the date that the worker was given written notice, per the above requirements.

14) Requires the employer to provide workers with an appeal form, or a link to an electronic form, that includes all of the following:

    a. The option to request access to the data used as input to or as output from the ADS.
    b. The option to request access to any corroborating or supporting evidence provided by a human reviewer to verify output from the ADS.
    c. The worker's reason or justification for an appeal and any supporting evidence.
    d. Designation of an authorized representative that can also access the data.

15) Requires the employer or vendor to respond to an appeal within 14 business days and specifies the following:

    a. Requires the employer or vendor to designate a human reviewer who is required to objectively evaluate all evidence, has sufficient authority, discretion, and resources to evaluate the decision, and has the authority to overturn the decision.
        i. The employer or vendor shall not designate a person who was involved in the decision that the worker is appealing.
    b. The response provided to the worker shall be a clear, written document describing the result of the appeal and the reasons for that result.
    c. If the human reviewer determines that the employment-related decision should be overturned, the employer or vendor shall rectify the decision within 21 business days.

Enforcement Provisions

16) Prohibits an employer from discharging, threatening to discharge, demoting, suspending, or in any manner discriminating or retaliating against any worker for using or attempting to use their rights under these provisions, filing a complaint with the Labor Commissioner, alleging a violation of these rights, cooperating in an investigation or prosecution of an alleged violation, or any action taken by the worker to invoke or assist in any manner the enforcement of this part, or for exercising or attempting to exercise any right protected under this part.

17) Requires the Labor Commissioner to enforce these provisions, including investigating an alleged violation, and ordering appropriate temporary relief to mitigate a violation or maintain the status quo pending the completion of a full investigation or hearing, pursuant to existing Labor Code provisions, including issuing a citation against an employer who violates these provisions and filing a civil action.

18) Specifies that if a citation is issued, the procedures for issuing, contesting, and enforcing judgments for citations and civil penalties issued by the LC shall be the same as those set out in Section 98.74 or 1197.1, as applicable.

19) Authorizes any worker, or their exclusive representative, who has suffered a violation of these provisions to, alternatively to enforcement by the LC, bring a civil action in a court of competent jurisdiction for damages caused by that adverse action, including punitive damages.

20) Alternatively, to enforcement by the LC or bringing a civil action, authorizes public prosecutors to enforce these provisions pursuant to existing Labor Code Chapter 8 (commencing with Section 180) of Division 1.

21) Specifies that in any action brought to enforce these provisions in superior court in any county wherein the violation in question is alleged to have occurred, or wherein the person resides or transacts business, the petitioner may seek appropriate temporary or preliminary injunctive relief, including punitive damages, and reasonable attorney's fees and costs as part of the costs of any such action for damages.

22) Subjects an employer who violates these provisions to a civil penalty of five hundred dollars ($500) per violation.

23) Provides that these provisions do not preempt any city, county, or city and county ordinance that provides equal or greater protection to workers who are covered by this part.

24) Provides that these provisions are severable and if any provision or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

COMMENTS

1. Background:

Artificial Intelligence and Automated Decision Systems

With technological advancements happening faster than humans can react, we often miss opportunities to pause and evaluate its impact. Until recently, advancements in technology often automated physical tasks, such as those performed on factory floors or self-checkouts, but artificial intelligence (AI) functions more like human brainpower. AI can use algorithms to accomplish tasks faster and sometimes at a lower cost than human workers can. As this technology develops, so do fears of worker displacement in more areas and industries.

According to the Pew Research Center, in 2022, 19 percent of American workers were in jobs in which the most important activities may be either replaced or assisted by AI.[1] Because technology can be used to either replace or complement the work of employees, it is difficult to identify which industries or occupations will be most impacted. What's worse, recent trends on the use of AI in employment has been reminiscent of a Hollywood movie – both fantastical and horrifying.

[1] "Which U.S. Workers Are More Exposed to AI on Their Jobs?" Pew Research Center, Washington, D.C. (July 26, 2023) https://www.pewresearch.org/social-trends/2023/07/26/which-u-s-workers-are-more-exposed-to-ai-on-their-jobs/

Bill Gates himself has warned that over the next decade, advances in artificial intelligence will mean that humans will no longer be needed "for most things" in the world.[2] Given these realities, what does the future of AI and its capabilities mean for workers? As we speak, employers are deploying AI-powered tools that monitor and manage workers, including by tracking their locations, activities, and productivity. Even more alarmingly, we are seeing employers use AI powered systems to make decisions on workers' schedules, tasks, compensation, promotions, and even disciplinary actions.

In February of 2019, Data & Society, an independent non-profit research institute, published a study evaluating the impact of algorithmic management on the workforce. The study highlights several examples where algorithmic management is becoming more common. In the delivery industry, companies from UPS to Amazon to grocery chains are using automated systems to optimize delivery workers' daily routes. In other industries, trends show an increase in remote tracking and managing using AI software. In retail and service jobs, automated scheduling is replacing managers' discretion over employee schedules, while the work of evaluating employees is being transferred to consumer-sourced rating systems.[3]

At least, these examples appear to complement the tasks of workers. Below are several other examples highlighted in a 2021 UC Berkeley study that should make us pause[4]:

- Hiring software by the company HireVue generates scores of job applicants based on their tone of voice and word choices captured during video interviews.
- Algorithms are being used to predict whether workers will quit, become pregnant, or try to organize a union, which influence employers' decisions about job assignment and promotion.
- Call center technologies are analyzing customer calls and nudging workers in real time to adjust their behavior, like coaching them to express more empathy, pace the call more efficiently, or exude more confidence and professionalism.
- Grocery platforms like Instacart are monitoring workers and calculating metrics on their speed as they fill shopping lists.
- Robots, like, for example, "smart cart" service robots in health care, are being used to transport materials (e.g., linens, meals, lab specimens) to other workers. Meanwhile, floor cleaning robots vacuum or scrub floors along a preset route programmed by workers, who also monitor and support their operation.
- In remote workers' homes, AI software is being used to track computer keystrokes.

The growing use of these AI tools raises several questions:

- Can AI tools ensure worker safety or do they push workers to work at a dangerous pace?
- Should workers know about AI powered tools monitoring their work?
- Do these AI tools protect against bias and discrimination?
- Should these AI tools be allowed to manage and fire a worker?

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[2] Huddleston, T. Jr. "Bill Gates: Within 10 years, AI will replace many doctors and teachers – humans won't be needed 'for most things.''(March 26, 2025) https://www.cnbc.com/2025/03/26/bill-gates-on-ai-humans-wont-be-needed-for-most-things.html

[3] Alexandra Mateescu, Aiha Nguyen, 2019. Data & Society. "Explainer: Algorithmic Management in the Workplace." https://datasociety.net/wp-content/uploads/2019/02/DS_Algorithmic_Management_Explainer.pdf

[4] Annette Bernhardt, Lisa Kresge, Reem Suleiman, 2021. UC Berkeley Labor Center. "Data and Algorithms at Work: The Case for Worker Technology Rights." https://laborcenter.berkeley.edu/data-algorithms-at-work/

- Who or how are AI decisions monitored and evaluated?
- Do our current regulatory and legal structures protect workers exposed to decisions made by AI tools?
- How much should government regulate the use of these tools?

Now is the time to ensure that as AI enters our workforce, it is used to complement the tasks of a worker – rather than replacing them – without sacrificing worker safety, living wages, and protections against discrimination and abuse.

As noted in the UC Berkeley report, "technology is not inherently bad, but neither is it neutral: the role of workplace regulation is to ensure that technologies serve and respond to workers' interests and to prevent negative impacts. Regulation is all the more important because employers themselves often do not understand the systems they are using. What we need, then, is a new set of 21st century labor standards establishing worker rights and employer responsibilities for the data-driven workplace."[5]

Recent Efforts to Regulate AI and ADSs

Over the last several years, the Legislature has considered a multitude of bills aimed at regulating AI and its use to ensure that the privacy rights of Californians continue to be protected. AB 2885 (Bauer-Kahan, Chapter 843, Statutes of 2024) was a crucial first step in regulating this technology. AB 2885 established key definitions, including a uniform definition for "artificial intelligence," "automated decision system," and "high-risk automated decision system."

Other efforts attempted to regulate the industry by establishing requirements on the use of AI. AB 2930 (Bauer-Kahan, 2024), which died on the Senate inactive file, for example, would have established the right of individuals to know when an ADS is being used, the right to opt out of its use, and an explanation of how it is used. Specifically, the bill would have:

- Required a developer and deployer of such a system that makes or uses these tools to make "consequential decisions" to conduct impact assessments before the system is first deployed and annually thereafter.
- Required the impact assessment to include, among other things, a statement of the purpose of the ADS and its intended benefits, uses, and deployment contexts.
- Required a deployer, prior to an ADS making a consequential decision or being a substantial factor in making a consequential decision, to notify any natural person that is subject to the consequential decision that an ADS is being used and to provide that person with specified information.
- Required a deployer of an ADS used to make a consequential decision concerning a natural person, to provide that person, among other things, with an opportunity to correct any incorrect personal data.

There were several other attempts to regulate the use of AI in 2024, although the focus has mostly been on consumers and their technology rights, whether it be the data social media companies collect and sell or the manipulation of elections news via fake postings. In the area of private sector labor and employment specifically, only one bill has attempted to regulate the use of AI.

[5] Ibid.

SB 1446 (Smallwood-Cuevas, 2024) attempted to address the issue by requiring, among other things, that a grocery retail store or retail drug establishment that intended to implement a consequential workplace technology, as defined, notify workers, their collective bargaining representatives, and the public at least 60 days in advance of the implementation of the technology with a general description of the technology and the intended purpose of the technology, as specified. SB 1446 was held in the Assembly Rules Committee.

This bill [SB 7] would be the first attempt at regulating the use of ADS in the workplace in such a comprehensive way. Several other bills regulating AI are pending this year, including AB 1018 (Bauer-Kahan, 2025) which would, among other things, regulate the development and deployment of an ADS used to make consequential decisions, as defined. Similar to this bill, AB 1018 would require certain notifications to a subject of a consequential decision made or facilitated by a covered ADS, as well as provide the subject with an opportunity to opt out of its use and ability to appeal its outcome.

AB 1221 (Bryan, 2025) would require an employer, at least 30 days before introducing a workplace surveillance tool, as defined, to provide a worker who will be affected with a written notice that includes, among other things, a description of the worker data to be collected, the intended purpose of the workplace surveillance tool, and how this form of worker surveillance is necessary to meet that purpose. Additionally, the bill would prohibit an employer from using certain workplace surveillance tools, including a workplace surveillance tool that incorporates facial, gait, or emotion recognition technology.

Finally, AB 1331 (Elhawary, 2025) would limit the use of workplace surveillance tools, as defined, by employers, including by prohibiting an employer from monitoring or surveilling workers in private, off-duty areas, as specified, and requiring workplace surveillance tools to be disabled during off-duty hours, as specified.

2. Need for this bill?

According to the author:

"Employers are increasingly using automated decision-making systems to surveil, manage, and replace workers in pursuit of maximizing productivity and reducing costs. While the passage of AB 701 (Chapter 197, Statutes of 2021) has prohibited employers from setting productivity demands at the expense of health and safety, "robo-bosses" continue to pose a threat to workers. Unregulated employer use of ADS leaves workers vulnerable to discrimination, lower pay, dangerous working conditions, and high risk of unjust termination.

SB 7 ensures human oversight of automated decision-making systems when making decisions that impact workers' working conditions and livelihoods and increases transparency for workers of the automated systems that are managing their work and making decisions about their employment. SB 7 will prevent the outsourcing of decisions that impact workers' lives to machines. It allows for the use of technology and tools to make workplaces more productive and efficient but ensures human oversight to prevent abuse and mistakes."

3. Proponent Arguments:

According to the sponsors of the measure, the California Federation of Labor Unions:

"Employer use of ADS in the workplace is widespread. One report from a national survey in 2024 found that 40 percent of workers experience some form of automated task management. However, Black and Latino workers report higher rates of automated management technologies in their workplace, with 63 percent of Black and 52 percent of Latino workers versus only 35 percent of White workers subject to automated management.

The pursuit of efficiency by a machine can do serious harm to workers. Eliminating routine tasks and increasing work speeds can lead to fatigue, burn-out, excessive injuries, and other harm, as seen in Amazon warehouses. Amazon uses surveillance and algorithmic management to push workers to work harder, faster, and longer—often automatically firing them if they violate set rules.

In addition to swiftly firing a worker, ADS can also include bias and potentially discriminate based on the pre-set rules that are deemed proprietary to conduct predictive behavior analysis to prevent 'undesirable worker outcomes.' For example, Teramind offers employers with advisory service algorithms to detect potential employee fraud by analyzing information such as a worker's debt history or their spending habits in order to flag a worker as being susceptible to committing fraud and stealing from the company.

In order to protect workers from automated discrimination, SB 7, the No Robot Bosses Act, will ensure human oversight of automated decision-making systems when making decisions affecting a worker's livelihood. SB 7 puts in place pre- and post-use notification to workers of the use of ADS to increase transparency. When an ADS is used to make an employment related decision, the bill establishes a process for workers to appeal the decision and to correct any erroneous data used as input. The bill also prohibits employers from uses of ADS that are potentially discriminatory, invasive, or unproven.

Lastly, SB 7 requires human oversight of decisions made by an ADS to prevent the emergence of Robo-bosses. It requires employers to provide independent, corroborating evidence when employers use an ADS for hiring, firing, promotions, or discipline decisions––those decisions that most impact a worker's life and livelihood.

Technology can be a powerful tool to support and assist workers and managers when proper guardrails are in place. This bill balances innovation with human oversight to identify potential bias, errors, and to prevent management that requires workers to perform like machines."

4. Opponent Arguments:

A coalition of employer organization, including the California Chamber of Commerce, are opposed to the measure arguing:

"The bill broadly targets businesses of all sizes, across every industry, and regulates even low-risk applications of automated decision systems (ADS) or where there is human involvement in a decision in addition to the ADS. Many of the bill's requirements are onerous and impractical, especially when it comes to the use of ADS in hiring. SB 7 would impose significant compliance burdens and any misstep would lead to costly litigation for even the smallest of employers. While we appreciate concerns over employees being disciplined or terminated solely based on automated tools, SB 7 is not tailored to those

scenarios and does not consider the benefits of ADS technology. Unfortunately, we believe SB 7 will have an undesired chilling effect on the technology and make it that much harder to develop the very tools that can help combat bias in decision making."

Below is a summary of the oppositions specific arguments to various provisions of the bill:

- Proposed Section 1527(c)(1) effectively bans any sort of resume filtering software. They argue that these tools increase efficiency, allows them to reduce the time it takes to fill open positions, reduces potential bias and allows them to identify more diverse, underrepresented candidates.
- Under SB 7, a "job applicant" would have the same rights and receive the same notices as current employees. This raises significant concerns including:
  - *Notices:* SB 7 would require employers to send disclosures to every job seeker. A 30-day pre-use notice would be impractical because that effectively creates a one-month waiting period before the company can even run a resume through an ADS, plus it captures every single applicant, of which there may be thousands…. Regarding the post-use notices, that means the employer would be required to send every applicant who did not receive the job a notice which is impractical.
  - *Appeals:* Allowing a right to appeal in the hiring context obviates the usefulness. For example, medium-sized company receives 100 resumes for one position. It is likely that company has only one, maybe two human resources professionals. That person would have to issue individualized notices to all 100 applicants. After the position is filled, they would be required to issue 99 more notices including a 30-day right to appeal a decision about a job *that is now being performed by another person*.
- Proposed Section 1526(a) provides that ADS cannot be used to obtain or infer a variety of information about employees, such as religious or political beliefs, veteran status, health status, and more. Practically speaking, this is not possible. For example, job applicants will have volunteer work, military service, or prior jobs on their resume that will include information about these topics…The Fair Employment and Housing Act (FEHA) very clearly outlines which classes of people are protected from discrimination. If the use of ADS results in unlawful discrimination, employees already have the right to bring a claim under FEHA.
- As a general matter, they do not object to the concept of disclosing information about the use of ADS when that ADS can result in employee discipline or termination. However, they argue that the "indirectly" language implies that the bill also applies to secondary or downstream impacts.
  - They argue that the required notices should be limited to consequential, high-risk decisions such as termination or discipline that directly impact the employee.
- Regarding the information on who developed the ADS, they argue that an employer may not know all of the information required, for example, they may not know what logic is used in the ADS or the names of all individuals, vendors, or entities that created the ADS unless that information is provided by the developer.
- Proposed Section 1527(c)(1) provides that an employer cannot make hiring, promotion, discipline, or termination decisions that rely "primarily" on ADS.
  - They argue that unless a supervisor is micro-managing every one of their employees, many workplaces will rely "primarily" on productivity-type tracking that may fall under the definition of ADS. There are scenarios where a manager is not always present with an employee and therefore must primarily rely on data like consumer ratings or reviews. Relying "primarily" on such data does not mean

there is no human review component to that decision and it should not be treated as such.

- Further, there is concern about a complete ban of the use of ADS to predict behaviors. For example, financial institutions sometimes use ADS for predictive purposes for assessing risk of fraud or other unlawful activities.
- Regarding the use of data for compensation, they want to ensure, for example, that it would not prohibit situations like rewarding top performers based on productivity (although (c)(1) does appear to prohibit this). To the extent this is related to paying workers less based on ADS outputs unrelated to their job performance, existing laws already cover discrimination of this type, such as FEHA or the Equal Pay Act.
- Regarding SB 7's right of access, they argue that given the breadth of the definitions in the bill, the access requirement could result in a high volume of documents and may include information about other employees and/or confidential, proprietary, or privileged information. It is also unclear what it means to "correct" information...the CCPA and accompanying regulations include exceptions as well as make clear that data should only be provided "upon receipt of a verifiable consumer request from the consumer" to prevent bad actors from obtaining private data. They argue that this is also a reason why an "authorized representative" should not be in the definition of "worker" and given this right to access other people's information.
- Regarding SB 7's right of appeal, they argue it just does not make sense given the breadth of circumstances to which SB 7 applies. Every single scheduling decision, for example, would require a post-use notice and could be appealed under this 65-day appeals process. This would grind workplaces to a halt and create unnecessary hurdles to everyday decisions.
    - Even in scenarios where a right for the worker to challenge the decision may be appropriate, it is unrealistic that small businesses can have someone who was not involved at all in the original decision evaluate the appeal. Under SB 7, they would have to contract out with someone to review the appeal, which would be a significant cost.
- The bill's definition of "worker" includes independent contractors, which should be removed from the bill. Contractors are often limited-term workers who are performing a specific job for a company. Their contract will dictate the terms of that job, under what circumstances the relationship may be terminated, and more. They do not need to receive disclosures or have a lengthy appeals process as outlined in SB 7.
- Proposed section 1536(d) describes where a civil action under SB 7 may be brought. It includes a provision that states the civil action may be filed "wherein the *person* resides or transacts business." It is unclear who a "person" is under this subdivision and appears to be more broad than existing California Code of Civil Procedure Section 395 regarding proper venue. We want to ensure that this provision does not broaden the scope of where civil actions can be filed beyond existing venue rules so as not to encourage forum shopping.

5. Staff Comments:

As noted above, AI is being used in new ways not previously contemplated in current law. This bill attempts to curve that use by imposing various requirements and prohibitions on employers' use of an ADS to make employment-related decisions. As previously mentioned, this bill is the first attempt at regulating the use of AI in the workplace. Although this bill includes many provisions, some posing more challenges than others, the reality is that it

starts a conversation around an issue in desperate need of regulation. It is imperative, for the sake of our workers and their livelihoods, that the Legislature take a proactive and measured approach to address the issue.

As conversations on this bill continue, the author and sponsors may wish to consider the following:

- The opposition points out that the use of ADS in hiring can help human resources professionals filter through hundreds or thousands of applications at much faster rates than human workers may be able to. Opposition notes that it would be impractical to require notification of the use of an ADS to all job applicants prior to use and then after use if they were not selected for the position. Furthermore, they argue that the appeal process would also pose a challenge as an applicant would have the opportunity to appeal a decision, correct errors, enlist another individual to review and potentially overturn a decision, in which case the solution may be displacing the person already hired for that position.

  Should the provisions of this bill apply to both current employees and job applicants? Should there be a different process specific to job applicants that takes into account these challenges, specifically around the appeals process?
  Should the notification requirements be limited to only certain employment-related activities, like discipline or termination?

- If the appeal finds that a hiring decision made by an ADS was discriminatory, the bill requires the employer or vendor to rescind the decision, but it does not direct the employer or vendor to stop use of the ADS, or switch to a different ADS.

  Should the bill include direction for employers to stop the use of ADS software if its algorithm is found to be discriminatory?

- With regards to the appeals process, the bill requires the employer or vendor to designate a human reviewer who is required to objectively evaluate all evidence, has sufficient authority, discretion, and resources to evaluate the decision, and has the authority to overturn the decision. The employer cannot designate a person who was involved in the decision that the worker is appealing.

  Should there be an exemption from these requirements for small businesses who may not have multiple HR specialists to do these reviews and would be forced to contract this out to a third party evaluator?

  Regarding the information that a worker can ask to see in order to correct mistakes, should there be special considerations for confidential, proprietary, or privileged information that could be released?

- Regarding the information required to be included in the notices, the bill requires it include the logic used in the ADS, including key parameters that affect the output of the ADS, as well as the names of the individuals, vendors, and entities that created the ADS and the individuals, vendors, and entities that will run, manage, or interpret the results of the ADS.

Should employers be required to include this kind of detail – especially when they may simply be buying a program or contracting for a service, but they may not know which individuals specifically created the ADS?

6. 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.

7. Prior/Related Legislation:

SB 53 (Wiener, 2025) establishes a consortium tasked with developing a framework for a public cloud computing cluster that advances the ethical development and deployment of AI that is safe, ethical, equitable, and sustainable. This bill creates protections for whistleblowers working with specified AI models when reporting on "critical risks" and requires developers to provide processes for anonymous reporting of activities posing such risks. *SB 53 is pending in the Senate Judiciary Committee.*

SB 503 (Weber Pierson, 2025) would require the Department of Health Care Access and Information and the Department of Technology to establish an advisory board related to the use of AI in health care services. Specifically, the bill would require the advisory board to perform specified duties, including, but not limited to, developing a standardized testing system with criteria for developers to test AI models or AI systems for biased impacts. *SB 503 is pending in the Senate Health Committee.*

AB 1018 (Bauer-Kahan, 2025) would, among other things, regulate the development and deployment of an ADS used to make consequential decisions, as defined. Among other things, this bill would require a developer of a covered ADS to conduct performance evaluations of the ADS, require a deployer to provide certain disclosures to a subject of a consequential decision made or facilitated by the ADS, provide the subject an opportunity to opt out of the use of the ADS, provide the subject with an opportunity to appeal the outcome of the consequential decision, and submit the covered ADS to third-party audits, as prescribed. *AB 1018 is pending in the Assembly Privacy and Consumer Protection Committee.*

AB 1221 (Bryan, 2025) would require an employer, at least 30 days before introducing a workplace surveillance tool, as defined, to provide a worker who will be affected with a written notice that includes, among other things, a description of the data to be collected, the intended purpose, and how this form of worker surveillance is necessary to meet that purpose. The bill would prohibit an employer from using certain workplace surveillance tools, including one that incorporates facial, gait, or emotion recognition technology. The bill would require the Labor Commissioner to enforce these provisions, authorize an employee to bring a civil action for violations, and authorize a public prosecutor to enforce the provisions. *AB 1221 is pending in the Assembly Privacy and Consumer Protection Committee.*

AB 1331 (Elhawary, 2025) would limit the use of workplace surveillance tools, as defined, by employers, including by prohibiting an employer from monitoring or surveilling workers in private, off-duty areas, as specified, and requiring workplace surveillance tools to be

disabled during off-duty hours, as specified, and subjects violators to specified penalties. *AB 1331 is pending in the Assembly Privacy and Consumer Protection Committee.*

SB 442 (Smallwood-Cuevas, 2025) would prohibit a grocery retail store or retail drug establishment from providing a self-service checkout option for customers unless specified conditions are met, including that at least one manual checkout station be staffed by an employee. This bill includes specified civil penalties for violations of these provisions and authorizes enforcement by the Division of Labor Standards Enforcement and public prosecutors. *SB 442 is pending in the Senate Judiciary Committee.*

AB 2885 (Bauer-Kahan, Chapter 843, Statutes of 2024) established a uniform definition for "artificial intelligence," "automated decision system," and "high-risk automated decision system" in California law.

AB 2930 (Bauer-Kahan, 2024) would have regulated the use of ADSs in order to prevent "algorithmic discrimination." This includes requirements on developers and deployers that make and use these tools to make "consequential decisions" to perform impact assessments on ADSs. This bill establishes the right of individuals to know when an ADS is being used, the right to opt out of its use, and an explanation of how it is used. *AB 2930 died on the Senate inactive file.*

SB 1446 (Smallwood-Cuevas, 2024) would have prohibited a grocery or retail drug establishment from providing a self-service checkout option for customers unless specified conditions are met. SB 1446 also included a requirement that a grocery retail store or retail drug establishment that intended to implement a consequential workplace technology, as defined, must notify workers, their collective bargaining representatives, and the public at least 60 days in advance of the implementation of the technology with a general description of the technology and the intended purpose of the technology, as specified. SB 1446 also included remedies and penalties for a violation of the bill's provisions, including a civil penalty of $100 for each day in violation, not to exceed an aggregate penalty of $10,000. *SB 1446 was held in the Assembly Rules Committee*.

Several other bills in 2024 addressed related AI issues including: SB 892 (Padilla), SB 893 (Padilla), SB 896 (Dodd), SB 942 (Becker), SB 1047 (Wiener), and AB 2013 (Irwin).

AB 331 (Bauer-Kahan, 2023) would have prohibit "algorithmic discrimination," that is, use of an automated decision tool to contribute to unjustified differential treatment or outcomes that may have a significant effect on a person's life. AB 331 was held under submission in Assembly Appropriations Committee. *AB 331 was held under submission in the Assembly Appropriations Committee.*

AB 302 (Ward, Ch. 800, Stats. 2023) required the California Department of Technology (CDT), in coordination with other interagency bodies, to conduct a comprehensive inventory of all high-risk automated decision systems (ADS) used by state agencies on or before September 1, 2024, and report the findings to the Legislature by January 1, 2025, and annually thereafter, as specified.

AB 701 (Gonzalez, Chapter 197, Statutes of 2021) proposed a series of provisions designed to ensure that the use of job performance quotas at large warehouse facilities do not penalize workers for complying with health and safety standards or taking meal and rest breaks.

Among other things, this bill (1) required warehouse employers to disclose quotas and pace-of-work standards to workers, (2) prohibited employers from counting time that workers spend complying with health and safety laws as "time off task," and (3) required the Labor Commissioner to enforce these provisions.

AB 13 (Chau, 2021) would have established the Automated Decision Systems Accountability Act, which would have promoted oversight over ADS that pose a high risk of adverse impacts on individual rights. *This bill was eventually gutted and amended to address a different topic.*

AB 1576 (Calderon, 2019) would have required the Secretary of Government Operations to appoint participants to an AI working group to evaluate the uses, risks, benefits, and legal implications associated with the development and deployment of AI by California-based businesses. *The bill was held under submission in the Senate Appropriations Committee.*

SUPPORT

California Federation of Labor Unions, AFL-CIO (Sponsor)
American Federation of State, County, & Municipal Employees California
California Alliance for Retired Americans
California Coalition for Worker Power
California Conference Board of The Amalgamated Transit Union
California Conference of Machinists
California Employment Lawyers Association
California Federation of Teachers
California Immigrant Policy Center
California Nurses Association/National Nurses United
California Professional Firefighters
California School Employees Association
California State Legislative Board of The Sheet Metal, Air, Rail and Transportation Workers - Transportation Division (SMART-TD)
California Teamsters Public Affairs Council
Coalition for Humane Immigrant Rights (CHIRLA)
Communications Workers of America, District 9
Engineers and Scientists of California, IFPTE Local 20, AFL-CIO
National Union of Healthcare Workers
Northern CA District Council of the International Longshore and Warehouse Union
Service Employees International Union, California State Council
Surveillance Resistance Lab
TechEquity Action
UNITE HERE, AFL-CIO
UNITE HERE, Local 11
United Food and Commercial Workers, Western States Council
Utility Workers Union of America
Worksafe

OPPOSITION

Acclamation Insurance Management Services
Allied Managed Care
Associated General Contractors of California
Associated General Contractors - San Diego Chapter
California Apartment Association
California Association of Winegrape Growers
California Chamber of Commerce
California Credit Union League
California Grocers Association
California Hospital Association
California League of Food Producers
California Retailers Association
Carlsbad Chamber of Commerce
Coalition of Small and Disabled Veteran Businesses
Corona Chamber of Commerce
Flasher Barricade Association
Gilroy Chamber of Commerce
Greater Conejo Valley Chamber of Commerce
Greater High Desert Chamber of Commerce
Insights Association
Lake Elsinore Valley Chamber of Commerce
Long Beach Area Chamber of Commerce
Mission Viejo Chamber of Commerce
Oceanside Chamber of Commerce
Public Risk Innovation, Solutions, and Management (PRISM)
Roseville Area Chamber of Commerce
San Diego Regional Chamber of Commerce
Santa Clarita Valley Chamber of Commerce
Santee Chamber of Commerce
Security Industry Association
TechNet
Valley Industry and Commerce Association

-- END --

SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Lola Smallwood-Cuevas, Chair
2025 - 2026 Regular

Bill No:	SB 310	**Hearing Date:**	April 9, 2025
Author:	Wiener		
Version:	February 10, 2025		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Emma Bruce		

SUBJECT: Failure to pay wages: penalties

KEY ISSUE

This bill authorizes an employee to recover penalties owed by an employer for late wages through an independent civil action and limits an employee to either pursuing a statutory penalty, as specified, or enforcing a civil penalty through the Private Attorneys General Act (PAGA), but not both.

ANALYSIS

Existing law:

1) 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)

2) Establishes within 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 promoting economic justice through robust enforcement of labor laws. (Labor Code §79-107)

3) Authorizes the LC to prosecute all actions for the collection of wages, penalties, and demands of persons who in the judgment of the LC are financially unable to employ counsel and the LC believes have claims which are valid and enforceable. This includes an action for the collection of wages and other moneys payable to employees or to the state arising out of an employment relationship or order of the Industrial Welfare Commission and actions for wages or other monetary benefits that are due the Industrial Relations Unpaid Wage Fund. (Labor Code §98.3)

4) Authorizes the LC to investigate employee complaints and provide for a hearing in any action to recover wages, penalties, and other demands for compensation, including liquidated damages if the complaint alleges payment of a wage less than the minimum wage fixed by an order of the Industrial Welfare Commission or statute, as specified. (Labor Code §98)

5) Provides that within 30 days of the filing of a complaint, the LC shall notify the parties as to whether a hearing will be held, whether action will be taken in accordance with Section 98.3 or whether no further action will be taken. If the determination is made by the LC to hold a hearing, the hearing shall be held within 90 days of that determination. However, the LC may postpone or grant additional time before setting a hearing, as specified. (Labor Code §98)

6) Establishes a citation process for the LC to enforce violations of the minimum wage, as specified. (Labor Code §1197.1 et seq.)

7) Authorizes employees, under PAGA, to enforce labor laws by suing their employers on behalf of the state for violations of the Labor Code to recover civil penalties, as specified. (Labor Code §2699-2699.8)

8) Provides that for PAGA notices filed on or after June 19, 2024, 65 percent of the recovered penalties goes to the State and 35 percent to the aggrieved employees. (Labor code §2699)

9) Provides that in any action brought for the nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions, the court shall award reasonable attorney's fees and costs to the prevailing party if any party to the action requests attorney's fees and costs upon the initiation of the action. However, if the prevailing party in the court action is not an employee, attorney's fees and costs shall be awarded only if the court finds that the employee brought the court action in bad faith. This does not apply to an action brought by the LC. (Labor Code §218.5)

10) Specifies when wages must be paid for work performed in various positions and industries. (Labor Code §§201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5)

11) Prohibits, under the California Equal Pay Act, an employer from paying an employee wage rates less than the rates paid to employees of the opposite sex or to employees of a different race or ethnicity for substantially similar work requiring the same skills, effort, and responsibility when performed under similar working conditions. Establishes exceptions to this prohibition, as specified. (Labor Code §1197.5)

12) Imposes a civil penalty, in addition to any penalties that normally apply, to any employer who fails to pay the wages of their employees by the required time, as follows:

    a. $100 dollars for each failure to pay each employee for any initial violation;
    b. $200 dollars for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld, for any subsequent or intentional violation.

    (Labor Code § 210(a))

13) Provides that the penalty referenced in 12), above, can be recovered by an employee as a statutory penalty, pursuant to Section 98 (DLSE wage hearing), or by the LC as a civil penalty through the issuance of a citation or pursuant to Section 98.3. (Labor Code §210(b))

14) Provides that an employee is only entitled to recover the penalty in 12), above, through either the statutory penalty pursuant to Section 98 (DLSE wage hearing) or to enforce a civil penalty through PAGA, but not both for the same violation. (Labor Code §210(c))

This bill:

1) Authorizes an employee to recover penalties owed by an employer for late wages through an independent civil action.

2) Specifies that an employee is only entitled to either recover the penalties in 1), above, through a statutory penalty, pursuant to section 98 (DLSE wage hearing) or through an independent civil action, *or* to enforce a civil penalty through PAGA, but not both for the same violation.

COMMENTS

1. Background:

What constitutes a late payment violation?

Generally, Labor Code Section 204 governs regular payment of wages and requires that wages earned are due twice during each calendar month, on days designated in advance by an employer as the regular paydays. Work performed between the 1st and 15th days, inclusive, of any calendar month must be paid for between the 16th and the 26th day of that same month. Work performed between the 16th and the last day of any calendar month, must be paid for between the 1st and 10th day of the following month. Additionally, overtime wages earned in one payroll period must be paid no later than the payday for the next regular payroll period. Late payment of wages includes when an employer pays wages late, fails to pay them at all, or insufficiently pays them.

This is just the general rule. The Labor Code also provides different pay schedules for temporary service employees (Labor Code §201.3), employees of a motor vehicle dealer (Labor Code §204.1), hairstylists (Labor Code §204.11), and live-in domestic workers (Labor Code §205), among others.

By themselves, none of the above code sections specify penalties for late payments. Instead, Labor Code Section 210 identifies applicable penalties and authorizes the LC or an employee to recover them, as specified. The penalties are as follows: for any initial violation, $100 for each failure to pay each employee or for each subsequent violation, or any willful or intentional violation, $200 for each failure to pay each employee, plus 25% of the amount unlawfully withheld.

Recovering Penalties for Late Payment Violations

Labor Code Section 210 authorizes the LC or an employee to recover penalties for late payment violations. The LC can do so by pursuing civil penalties. An employee can do so by pursuing either civil *or* statutory penalties. The percentage of penalties an employee recovers depends on their choice of penalty.

Civil Penalties
The LC can recover civil penalties for late payment violations through the issuance of a citation or through an informal conference. In these instances, recovered penalties are paid to the State.

PAGA allows employees to assist in enforcing labor laws by suing their employers on behalf of the State for violations of the Labor Code to recover civil penalties. Any employee who has received their wages late can file a PAGA lawsuit. For PAGA cases filed on or after June 19, 2024, 65 percent of the recovered penalties are paid to the State and 35 percent to the aggrieved employee.

Statutory Penalties
Beginning in 2020, employees were authorized to recover statutory penalties for late payment violations through the LC's wage claim process (AB 673, Carrillo, 2019). Statutory penalties are paid entirely to the employee, as opposed to civil penalties pursued through PAGA. An employee is only entitled to either recover the statutory penalties or civil penalties, but not both for the same violation.

This Bill
SB 310 would add a third avenue for employees to recover penalties for late payment violations. The bill would authorize an employee to file an independent civil action, through which they can recover 100 percent of the owed penalties and avoid the LC's wage claim process.

Wage Theft

Although California leads the nation with some of the strongest workplace protections, wage theft remains rampant. In the 2022-23 fiscal year alone, the LC received about 39,000 wage claims.[1] The majority of these claims are filed by the State's lowest earners and most vulnerable workers. Wage theft encompasses many different violations of the Labor Code, including late payment violations addressed in this bill. Filing a wage claim is the start of a long process that can take years. On average, the LC needed 890 days to issue a decision in response to the abovementioned 39,000 wage claims.[2] This far exceeds the maximum 135 days the LC has to resolve a claim. Even when a decision is issued, recovering wages can be difficult. In the meantime, victims of wage theft must find ways to survive amidst rising costs for groceries and housing. Without robust implementation and enforcement, the State's workplace protections are hollow.

A 2024 Rutgers School of Management and Labor Relations report assessed minimum wage violations across four metropolitan statistical areas of interest – Los Angeles/Long Beach/Anaheim, San Jose/Sunnyvale/Santa Clara, San Diego/Carlsbad/San Marcos, and San Francisco/Oakland/Fremont.[3] Among other things, the report found the following:

- An average of $2.3 to $4.6 billion in earned wages were lost by workers each year from 2014 to 2023 due to minimum wage violations across these four metro areas.
- The majority of lost wages were in the Los Angeles area, where an estimated average of $1.6 to $2.5 billion was lost per year during the study period.
- The most impactful violations occurred in the San Francisco area, where workers lost an average of $4,300 to $4,900 annually to minimum wage violations.
- The number of workers paid below both the state and primary metro minimum wages has more than doubled since 2014, growing particularly dramatically over the most recent year of the study (2023).

[1] Auditor of the State of California, "The California Labor Commissioner's Office: Inadequate Staffing and Poor Oversight Have Weakened Protections for Workers," Report 2023-104 , May 2024, https://www.auditor.ca.gov/wp-content/uploads/2024/05/2023-104-Report.pdf
[2] Ibid.
[3] Daniel J. Galvin, Jake Barnes, Janice Fine, and Jenn Round. Wage Theft in California: Minimum Wage Violations, 2014-2023. (Rutgers School of Management and Labor Relations, May 2024)

State Auditor Report on the Division of Labor Standards Enforcement (DLSE):

On May 29, 2024, the California State Auditor released a report summarizing the findings of an audit of DLSE. The State Auditor reviewed the backlog of wage claims submitted by workers from fiscal years 2017-18 through 2022-23, and determined that the LC is not providing timely adjudication of wage claims primarily because of insufficient staffing.[4] The backlog of cases grew from 22,000 at the end of fiscal year 2017-18 to 47,000 at the end of fiscal year 2022-23.[5] Among other things, the audit found that between January 2018 and November 2023, 28 percent of employers did not make LC-ordered payments.[6]

The author and sponsors argue that the LC's extensive backlog of wage claim cases, as well as PAGA's 35 percent recovery limit, discourage workers from recovering penalties for late payment violations. SB 310 would establish a new avenue for employees to recover 100 percent of the owed penalties, by authorizing an employee to file an independent civil action. The bill would also limit an employee to pursuing statutory penalties through the LC's wage claim process or through an independent civil action, *or* to pursuing civil penalties through PAGA, but not both for the same violation.

Opponents of the bill assert that SB 310 would undermine the Legislature's recent PAGA reforms intended to curb litigation abuse. Additionally, they argue that although the bill prohibits an employee's independent civil action from being stacked with PAGA for the same violation, it does not prohibit violations of Labor Code Section 210 and PAGA from being claimed in the same complaint.

**Please reference support and opposition letters for more information on proponent and opponent arguments.*

2. Need for this bill?

According to the author:

"Wage theft is a widespread problem in California, with the State Labor Commissioner receiving tens of thousands of complaints each year. When employers do not pay wages on time, they cause extreme financial hardship for the many employees living paycheck to paycheck, who rely on their wages to pay for food, rent, and other daily necessities. This delay in payment essentially amounts to an interest-free loan from the employee to the employer.

Currently, the law allows workers to seek penalties from their employer when they do not receive their full wages on time. However, workers can only recover these penalties through a Labor Commissioner Office (LCO) wage claim hearing in which workers have to wait years to even get a hearing due to the extensive backlog of wage claims, or through a Private Attorneys General Act (PAGA) lawsuit in which workers can only recover a fraction (35%) of the entire penalty amount. Although workers may recover penalties via an LCO or PAGA

[4] Auditor of the State of California, "The California Labor Commissioner's Office: Inadequate Staffing and Poor Oversight Have Weakened Protections for Workers," Report 2023-104 , May 2024, https://www.auditor.ca.gov/wp-content/uploads/2024/05/2023-104-Report.pdf
[5] Ibid.
[6] Ibid.

action, both of these avenues have significant drawbacks that, in practice, make it very difficult for workers to recover the full penalties they are entitled to for late payment.

This bill creates a better path for workers to recover **all** of the penalties: through a civil action. A civil action would not change the amount of penalties for which employers are liable, but it would allow affected workers to recover 100% of the available penalties, and would avoid the delays of the Labor Commissioner process. Everyone deserves to be paid their full wages in a timely manner for the work they do. Senate Bill 310 creates a straightforward new path for workers to recover the full penalties when they are paid late."

4. Proponent Arguments:

The sponsors of the measure, the California Rural Legal Assistance Foundation and Legal Aid at Work, argue:

"Under current law, all wages are generally due and payable twice during each calendar month on days designated in advance by the employer as the regular paydays. When wages are not paid on time, this can cause extreme financial hardship for the many employees living paycheck to paycheck, who rely on a timely paycheck to pay for food, rent, and other daily necessities. Moreover, this delay in payment essentially amounts to an interest-free loan from the employee to the employer.

Prior to 2019, there was no explicit remedy for employees who were not paid on their designated payday. AB 673 (Carrillo, 2019) amended Labor Code section 210 to allow workers to recover penalties for such violations through a Labor Commissioner Office (LCO) wage claim hearing or through a PAGA civil action. However, in a PAGA action, aggrieved workers recover only 35% of the assessed penalty amount – the remaining 65% goes to the state. If a worker chooses instead to pursue her claim with the LCO, she will have to wait two to five years to even get a hearing date because of the extensive backlog of wage claims.

SB 310 would amend Labor Code section 210 so that an employee can recover 100% of the penalties due to her for late payment of wages through an independent civil action. Enactment of this bill would positively affect a worker who might be discouraged from pursuing her claim for 100% of penalties because of the inordinate delays at the LCO, and discouraged from pursuing PAGA litigation because she would only receive 35% of the penalty intended to compensate her for the negative consequences of late payment. Importantly, the amount of penalties the employer must pay in a civil action would remain the same as what the employer would pay in a PAGA action or in an LCO wage claim hearing."

5. Opponent Arguments:

A coalition of opponents, including the California Chamber of Commerce, argue:

"SB 310 undermines the recent PAGA reform by gifting trial attorneys a new means of leveraging wage and hour cases against employers of every size for high settlements…

SB 310 is problematic because it introduces a new pathway for trial attorneys to exploit penalties as leverage in meritless wage-and-hour cases – precisely the type of conduct that the PAGA reforms were designed to curb. SB 310 creates a private right of action to seek

penalties under Labor Code section 210. Labor Code section 210 authorizes penalties of $100 or $200 per violation of multiple Labor Code provisions, including section 204. Presently, those penalties are recoverable by the Labor Commissioner or through PAGA. In fact, PAGA was created to serve as the private right of action for a plaintiff to seek penalties that had historically only been collectable by the Labor Commissioner, like section 210. Now, some attorneys are arguing that PAGA is insufficient, advocating for the creation of additional private rights of action.

There are several key concerns with SB 310. First, Labor Code section 204 violations are among the most common 'derivative claims' in wage-and-hour lawsuits. Under the derivative claim theory, if an employee asserts they are owed even a single dollar, it can be argued that their wages are late and that section 204 has therefore been violated. This strategy is often employed to increase leverage in class action cases and is typically coupled with claims that are difficult for employers to disprove, such as off-the-clock work or missed rest breaks. A violation of section 204 triggers penalties under section 210. By allowing these penalties to be pursued through a new private right of action, SB 310 effectively legitimizes the practice of pleading these derivative claims, even when there is no merit.

Second, SB 310 does not protect against stacking of penalties. While section 210 provides that the penalty cannot be stacked with PAGA for the 'same violation,' it does not prohibit both 210 and PAGA from being claimed in the same complaint. This is precisely what trial attorneys aim to do: claim section 210 penalties for one derivative violation of section 204, while pursuing PAGA penalties for all other alleged violations. The practical consequence of SB 310 is that it becomes a procedural tool to inflate the overall settlement value of a case.

Granting trial attorneys a new mechanism to further inflate settlement values on the heels of PAGA reforms undermines this Legislature's efforts to curb litigation abuse."

6. 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.

7. Prior Legislation:

SB 261 (Wahab, 2025) would attempt to recover unpaid wages owed to workers by, among other things, requiring the LC to post a copy of an order, decision, or award (ODA) on a claim for unpaid wages on the division's internet website, prescribing when a posting can be removed, and subjecting, for final judgments unsatisfied after a period of 180 days, the employer to a civil penalty not to exceed three times the outstanding judgment amount. *SB 261 is set for hearing in the Senate Judiciary Committee.*

SB 355 (Perez, 2025) would, 1) require employers with unsatisfied judgments for owed wages to provide, within specified timelines, documentation to the LC that the judgment is fully satisfied or the judgment debtor entered into an agreement for the judgment to be paid in installments, as prescribed; 2) subject the judgment debtor employer to a civil penalty for violations; and 3) require the LC to notify the Tax Support Division of the Employment Development Department of unsatisfied judgments as a notice of potential tax fraud. *SB 355 is scheduled to be heard in this Committee on April 9, 2025.*

AB 485 (Ortega, 2025) would require state agencies to deny a new license or permit, or the renewal of an existing license or permit, for employers that have outstanding wage theft judgments and have not obtained a surety bond or reached an accord with the affected employee to satisfy the judgment. *AB 485 is pending hearing in the Assembly Appropriations Committee.*

AB 1234 (Ortega, 2025) would, among other things, revise and recast the provisions relating to the process for the LC investigate, hold a hearing, and make determinations relating to an employee's complaint of wage theft. Among other things, the bill would impose an administrative fee payable in the amount of 30 percent of the ODA to be deposited into the Wage Recovery Fund, created by the bill, and appropriated to compensate the LC for the staffing required to investigate and recover wages and penalties owed to aggrieved employees. *AB 1234 is pending hearing in the Assembly Judiciary Committee.*

SB 92 (Umberg, Chapter 45, Statutes of 2024) codified negotiated reforms to PAGA to further the purpose and intent of PAGA to protect workers from labor code violations. Among other things, the bill expanded the right to cure violations for businesses with fewer than one hundred employees and offered businesses with more than one hundred employees the ability to seek an early resolution of claims pending in court.

SB 2288 (Kalra, Chapter 44, Statutes of 2024) codified negotiated reforms to PAGA to further the purpose and intent of PAGA to protect workers from labor code violations. Among other things, the bill limited standing for PAGA plaintiffs to where the employee personally suffered a violation of the same code section as those alleged for other employees. This bill also preserved standing for an employee represented by a non-profit legal aid, as specified.

AB 673 (Carrillo, Chapter 716, Statutes of 2019) authorized penalties for failure to pay wages on time to be recovered by an employee as a statutory penalty through an administrative hearing. This bill also specified that an employee is only entitled to recover the statutory penalty or to enforce a civil penalty through PAGA, but not both.

AB 2613 (Reyes, 2018) would have provided that an employer or other person acting on behalf of an employer who fails to pay specified wages to each employee is subject to a penalty of $200, payable to each affected employee, per pay period where the wages due are not paid on time, as specified. *AB 2613 died on the Assembly Floor.*

SUPPORT

California Rural Legal Assistance Foundation (Co-sponsor)
Legal Aid at Work (Co-sponsor)
Asian Americans Advancing Justice Southern California
Asian Americans and Pacific Islanders for Civic Empowerment
Asian Law Caucus
California Coalition for Worker Power
California Domestic Workers Coalition
California Employment Lawyers Association
California Federation of Labor Unions
California State Association of Electrical Workers
California State Pipe Trades Council

Center for Workers' Rights
Chinese Progressive Association
Clean Carwash Worker Center
Inland Empire Labor Council
LA Raza Centro Legal
Legal Link
Loyola Law School, the Sunita Jain Anti-trafficking Initiative
Mexican-American Legal Defense and Ed Fund
National Employment Law Project
Pilipino Workers Center
Public Counsel
Santa Clara County Wage Theft Coalition
Trabajadores Unidos Workers United
UC Hastings Community Justice Clinics
United Food and Commercial Workers Western States Council
Wage Justice Center
Western States Council Sheet Metal, Air, Rail and Transportation
Worksafe
Individual Support Letters: 2

OPPOSITION

Agricultural Council of California
American Petroleum and Convenience Store Association
American Staffing Association
Anaheim Chamber of Commerce
Associated Equipment Distributors
Associated General Contractors California
Associated General Contractors San Diego
Brea Chamber of Commerce
California Association of Sheet Metal & Air Conditioning Contractors National Association
California Attractions and Parks Association
California Building Industry Association
California Chamber of Commerce
California Construction and Industrial Materials Association
California Farm Bureau
California Financial Services Association
California Hispanic Chambers of Commerce
California Hospital Association
California Hotel & Lodging Association
California League of Food Producers
California New Car Dealers Association
California Pest Management Association
California Restaurant Association
California Retailers Association
California Staffing Professionals
California Trucking Association
Carlsbad Chamber of Commerce
Carson Chamber of Commerce
Chino Valley Chamber of Commerce

Civil Justice Association of California
Construction Employers' Association
Corona Chamber of Commerce
Family Business Association
Folsom Chamber of Commerce
Fontana Chamber of Commerce
Gateway Chambers Alliance
Greater Coachella Valley Chamber of Commerce
Greater High Desert Chamber of Commerce
Hayward Chamber of Commerce
Imperial Valley Regional Chamber of Commerce
LA Canada Flintridge Chamber of Commerce
Leading Age California
Livermore Valley Chamber of Commerce
Long Beach Chamber of Commerce
Murrieta/Wildomar Chamber of Commerce
National Federation of Independent Business
Newport Beach Chamber of Commerce
Norwalk Chamber of Commerce
Oceanside Chamber of Commerce
Orange County Business Council
Paso Robles Templeton Chamber of Commerce
Plumbing-Heating-Cooling Contractors Association
Rancho Cordova Area Chamber of Commerce
Roseville Area Chamber of Commerce
San Diego Regional Chamber of Commerce
Santa Ana Chamber of Commerce
Santa Barbara South Coast Chamber of Commerce
Santa Clarita Valley Chamber of Commerce
Santee Chamber of Commerce
Southwest California Legislative Council
Torrance Area Chamber of Commerce
Tri County Chamber Alliance
Western Electrical Contractors Association
Western Growers Association

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SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Lola Smallwood-Cuevas, Chair
2025 - 2026 Regular

Bill No:	SB 355	**Hearing Date:**	April 9, 2025
Author:	Pérez		
Version:	April 2, 2025		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Alma Perez-Schwab		

SUBJECT: Judgment debtor employers: Employment Development Department

KEY ISSUES

This bill 1) requires employers with unsatisfied judgments for owed wages to provide, within specified timelines, documentation to the Labor Commissioner (LC) that the judgment is fully satisfied or the judgment debtor entered into an agreement for the judgment to be paid in installments, as prescribed; 2) subjects the judgment debtor employer to a civil penalty for violations; and 3) requires the LC to notify the Tax Support Division of the Employment Development Department of unsatisfied judgments as a notice of potential tax fraud.

ANALYSIS

Existing law:

1) Establishes within the Department of Industrial Relations (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. (Labor Code §79-107)

2) Requires the LC and authorized deputies and representatives, upon the filing of a claim by an employee as specified, to, among other things, take assignments of wage claims including claims for loss of wages, as specified. (Labor Code §96)

3) Establishes a citation process for the LC to enforce violations of the minimum wage that includes, among others, the following procedural requirements:

    a. A citation issued to an employer must be in writing and shall describe the nature of the violation, including reference to the statutory provision alleged to have been violated, if contract wages are unpaid, or both.
    b. The LC shall promptly take all appropriate action to enforce the citation and to recover the civil penalty assessed, wages, liquidated damages, and any applicable penalties.
    c. To contest a citation, a person shall, within 15 business days after service of the citation, notify the office of the LC that appears on the citation of their appeal by a request for an informal hearing. The LC or their deputy or agent shall, within 30 days, hold a hearing.
    d. Any amount found due by the LC as a result of a hearing shall become due and payable 45 days after notice of the findings, written findings, and order have been mailed to the party assessed.

e. A person to whom a citation has been issued shall, in lieu of contesting a citation pursuant to this section, transmit to the office of the LC designated on the citation the amount specified for the violation within 15 business days after issuance of the citation. (Labor Code §1197.1 et seq.)

4) Requires the LC, within 15 days after the hearing is concluded, to file in the office of the division a copy of the order, decision, or award (ODA). The ODA shall include a summary of the hearing and the reasons for the decision. Additionally, the ODA includes any sums found owing, damages proved, and any penalties awarded pursuant to the Labor Code, including interest on all due and unpaid wages, as specified. (Labor Code §98.1)

5) Upon filing of the ODA, requires the LC to:

   a. Serve a copy of the decision personally, by first-class mail, or in the manner specified in Section 415.20 of the Code of Civil Procedure on the parties.
   b. Advise the parties of their right to appeal the decision or award and further advise the parties that failure to do so within 10 days shall result in the decision or award becoming *final and enforceable as a judgment* by the superior court.
   (Labor Code §98.1 and §98.2)

6) Provides that if a final judgment against an employer arising from the employer's nonpayment of wages for work performed in this state remains unsatisfied after a period of 30 days after the time to appeal therefrom has expired and no appeal therefrom is pending, the employer shall not continue to conduct business in this state, as specified, *unless the employer has obtained a bond from a surety company* and has filed a copy of that bond with the Labor Commissioner. The bond shall be effective and maintained until satisfaction of all judgments for nonpayment of wages. The principal sum of the bond shall not be less than the following:

   a. Fifty thousand dollars ($50,000) if the unsatisfied portion of the judgment is no more than five thousand dollars ($5,000).
   b. One hundred thousand dollars ($100,000) if the unsatisfied portion of the judgment is more than five thousand dollars ($5,000) and no more than ten thousand dollars ($10,000).
   c. One hundred fifty thousand dollars ($150,000) if the unsatisfied portion of the judgment is more than ten thousand dollars ($10,000).
   (Labor Code §238)

7) Specifies that if no appeal of the ODA is filed within the period specified, the ODA shall, in the absence of fraud, be deemed the final order. Existing law then requires the LC to file, within 10 days of the ODA becoming final, a certified copy of the final order with the clerk of the superior court of the appropriate county unless a settlement has been reached by the parties and approved by the LC. *Judgment shall be entered immediately* by the court clerk in conformity therewith. (Labor Code §98.2)

8) In order to ensure that judgments are satisfied, authorizes the LC to serve upon the judgment debtor, personally or by first-class mail at the last known address of the judgment debtor listed with the division, a form, as specified, to assist in identifying the nature and location of any assets of the judgment debtor. Requires the judgment debtor to complete the form and

cause it to be delivered to the division within 35 days, unless the judgment has been satisfied. (Labor Code §98.2)

9) Provides that in case of willful failure by the judgment debtor to comply with a final judgment, the division or the judgment creditor may request the court to apply the sanctions provided in Section 708.170 of the Code of Civil Procedure including an order requiring a person to appear before the court. Failure to appear can result in a warrant to have the person brought before the court to answer for the failure to appear. (Labor Code §98.2)

10) Requires the LC to make every reasonable effort to ensure that judgments are satisfied, including taking all appropriate legal action. (Labor Code §98.2)

11) Authorizes, until January 1, 2029, a public prosecutor to prosecute an action, either civil or criminal, for a violation of certain provisions of the labor code or to enforce those provisions independently. (Lab. Code §181)

12) Establishes the Employment Development Department (EDD) within the Labor and Workforce Development Agency. EDD is responsible for, among other duties, the collection of payroll taxes from employers in the following four categories: Unemployment Insurance Tax; Employment Training Tax; State Disability Insurance Tax; and California Personal Income Tax. EDD's Tax Branch works with employers to ensure that necessary payroll taxes and information are reported promptly and accurately to the department. (Unemployment Insurance Code §301 et seq.)

This bill:

1) Requires the judgment debtor employer, within 60 days of a final judgment being entered against an employer requiring payment to an employee or the state pursuant to existing law, to provide documentation to the Labor Commissioner that any of the following are true:

    a. The judgment is fully satisfied.
    b. The bond required by subdivision (a) of Section 238 has been posted.
    c. The judgment debtor has entered into an agreement for the judgment to be paid in installments pursuant to subdivision (b) of Section 238 and is in compliance with that agreement.

2) Subjects a judgment debtor employer who fails to comply with the above provisions liable for a civil penalty of two thousand five hundred dollars ($2,500).

3) Requires the LC, if a judgment debtor employer does not comply with the provisions specified in (1) above within the stipulated timeline, to, no later than 30 days from the passage of the 60 days, provide written notice to the judgment debtor employer that the LC will submit the unsatisfied judgment to the Tax Support Division of the EDD as a notice of potential tax fraud.

4) If the judgment debtor employer does not comply with the provisions specified in (1) above and pay the civil penalty prescribed by (2) within 90 days from the date of the written notice required by (3), then requires the Labor Commissioner to, within 30 days, provide to the EDD a notice that includes both of the following:

a. A summary of the final judgment.
b. The names and identifying information of the persons or entities liable for payment of the judgment, including social security numbers, taxpayer identification numbers, and addresses.

COMMENTS

1. Background

Data on Wage Theft:
California leads the nation with some of the strongest workplace protections for workers. Unfortunately, those laws are meaningless if they are not implemented or enforced, leaving workers struggling to recoup owed wages. Wage theft in California, which impacts low-wage workers disproportionately, is well documented. Wage theft captures many labor law violations including violations of the minimum wage, overtime, denied meal periods, or misclassification of employees as independent contractors, among others.

A 2022 report to the Legislature on the state's wage claim adjudication process reveals that there were nearly 19,000 wage claims filed in 2021 with a total of $335 million being owed to workers.[1] Due to challenges in staffing, resources, and a growing case backlog, only approximately $40 million has been in paid in awards or settlements through the wage claim adjudication unit of the LC.[2] In 2022, the Labor Commissioner's office recovered through the wage claim process an average of 63 percent of wages owed, totaling more than $47 million paid to workers.

A 2024 Rutgers School of Management and Labor Relations report assessed minimum wage violations across four metropolitan statistical areas of interest – Los Angeles/Long Beach/Anaheim, San Jose/Sunnyvale/Santa Clara, San Diego/Carlsbad/San Marcos, and San Francisco/Oakland/Fremont.[3] Among the key findings of the report are the following:

- An average of $2.3 to $4.6 billion in earned wages were lost by workers each year from 2014 to 2023 due to minimum wage violations across these four metro areas.
- The majority of lost wages were in the Los Angeles area, where we estimate an average of $1.6 to $2.5 billion was lost a year during the study period.
- Those that were paid below the minimum wage lost roughly 20 percent of their total paycheck on average, or nearly $4,000 in earned wages a year if working full-time.
- The most impactful violations occurred in the San Francisco area, where workers lost an average of $4,300 to $4,900 annually to minimum wage violations.
- The number of workers paid below both the state and primary metro minimum wages has more than doubled since 2014, growing particularly dramatically over the most recent year of the study (2023).

Wage theft does not only affect workers, but also creates unfair competition for responsible employers who follow the law. The State of California is also harmed when labor laws are

[1] Wage Claims Adjudication Unit Annual Report Pursuant to Labor Code Section 96.1, Calendar Year 2021, California Labor Commissioner's Office, p. 15.
[2] *Ibid.*
[3] Daniel J. Galvin, Jake Barnes, Janice Fine, and Jenn Round. *Wage Theft in California: Minimum Wage Violations, 2014-2023*. (Rutgers School of Management and Labor Relations, May 2024)

not enforced because more workers fall into poverty, the safety net is eroded, and payroll taxes are not paid.

Existing Wage Theft Adjudication Process:
As noted under existing law, a worker may file a wage theft claim with the DLSE. The DLSE, also known as the LC's office, is then tasked with resolving wage theft claims by investigating, facilitating a resolution with the worker and employee, and holding a hearing when necessary. In some cases, claims may go directly to civil litigation, skipping the settlement conference and hearing steps.

Once the LC issues an order, decision, or award (ODA), the employer has a limited time after service of the LC decision to file an appeal. If no appeal is filed within the specified period, the LC must file a certified copy of the decision with the appropriate Superior Court and obtain a judgment against the employer for the amount owed. When the LC requests that the court enter the judgment against the employer, the worker can choose the option of referring the judgment to the LC's Enforcement Unit for collection or pursue collection on their own or through the use of an external partner, such as a private attorney or advocacy groups.

The DLSE Enforcement Unit can use a variety of means to collect judgment amounts, including levies against employers' bank accounts and liens on properties. Additionally, DLSE calculates interest accrued on any outstanding judgment amounts for collection purposes.

Existing law prescribes specified number of days for each step in the wage theft adjudication process, with 135 days being the maximum number of days under which it is to be resolved. Below is the timeline under which the DLSE is required to respond to a wage theft claim:

- 30 days from claim submission to gather information and determine if a hearing is necessary OR takes no further action and notifies parties.
- Hold a hearing within 90 days of determination that a hearing is necessary.
- Within 15 days after the hearing is concluded, file an order, decision, or award.
- Within 10 days of service of an ODA, parties can appeal OR the LC files the ODA with the appropriate Superior Court and the court issues a judgment against the employer.

State Auditor Report on the Labor Commissioner's Office:
In May 29, 2024, the California State Auditor released a report summarizing the findings of an audit of the Division of Labor Standards Enforcement. The State Auditor reviewed the backlog of wage claims submitted by workers from fiscal years 2017-18 through 2022-23, and determined that the LC is not providing timely adjudication of wage claims for workers primarily because of insufficient staffing to process those claims.[4] The backlog grew from 22,000 cases at the end of fiscal year 2017–18 to 47,000 cases at the end of fiscal year 2022–23. As of November 1, 2023, more than 2,800 claims had been open for five years or more; these claims equated to more than $63.9 million in unpaid wages.

Among other things, the report found:

[4] Auditor of the State of California (May 2024). *The California Labor Commissioner's Office: Inadequate Staffing and Poor Oversight Have Weakened Protections for Workers*. (Report 2023-104) https://www.auditor.ca.gov/wp-content/uploads/2024/05/2023-104-Report.pdf

- The LC's office often takes two years or longer to process wage claims, with a median of 854 days to issue a decision (more than six times longer than the law allows).
- Field offices have insufficient staffing to process wage claims with vacancy rates equal to or greater than 10 percent, and 13 field offices with vacancy rates greater than 30 percent. The Auditor estimates that the LC's office needs hundreds of additional positions to resolve its backlog. Contributing to the high vacancy rate is an ineffective and lengthy hiring process and non-competitive salaries.
- The DLSE's Enforcement Unit's work results in only a small percentage of successful payment to workers. *Between January 2018 and November 2023, about 28 percent of employers did not make LC-ordered payments. The LC consequently obtained judgments against those employers. In roughly 24 percent of judgments during that time, or about 5,000 cases, the workers referred their judgments to the Enforcement Unit.* ***The unit successfully collected the entire judgment amount in only 12 percent of those judgments, or in about 600 cases.***

Employment Development Department Payroll Tax Collection:
California's Employment Development Department administers the State's payroll tax programs and is one of the largest tax collection agencies in the nation. EDD's Tax Branch administers the following payroll tax programs and works with employers to ensure that payroll taxes are reported promptly and accurately:

- Unemployment Insurance (UI)
- Employment Training Tax (ETT)
- State Disability Insurance (SDI)
- Personal Income Tax (PIT) Withholding

According to EDD, in State Fiscal Year 2018-19, the Tax Branch collected more than $81.4 billion in payroll taxes, including $67.7 billion in PIT withholdings.[5] EDD is also tasked with maintaining wage records for more than 18.5 million workers, including verifying the reporting of wages and ensuring accurate reporting of taxes. The adequacy of tax reporting is especially crucial given that these funds support the UI, SDI, and employment training programs of the State, as well as the State General Fund.

Failure by employers to pay their workers and their state tax responsibilities contributes to the underground economy. The underground economy is a term that refers to people and businesses that deal in cash or use other schemes to hide their activities and their true tax liability from government licensing, regulatory, and taxing agencies. The underground economy is also known as tax evasion, tax fraud, cash pay, tax gap, payments under-the-table, and off-the-books.

As noted by the EDD, the actual size of the underground economy is difficult to measure. In September of 2019, the IRS released a new set of tax gap estimates for tax year 2011-2013. The tax gap is defined as the amount of tax liability faced by taxpayers that is not paid on time. After adjusting for audit and collection activities, the IRS estimates that in 2011-2013 the net national tax gap was approximately $381 billion.[6]

[5] Employment Development Department, Payroll Taxes Fact Sheet https://edd.ca.gov/siteassets/files/pdf_pub_ctr/de8714e.pdf
[6] Employment Development Department, Underground Economy Operations. https://edd.ca.gov/en/payroll_taxes/underground_economy_operations

As noted by EDD, when businesses operate in the underground economy, they illegally reduce the amount of money used for insurance, payroll taxes, licenses, employee benefits, safety equipment, and safety conditions. These types of employers then gain an unfair competitive advantage over businesses that comply with the various business laws. This causes unfair competition in the marketplace and forces law-abiding businesses to pay higher taxes and expenses.[7]

California has taken aggressive efforts to target the underground economy, including with the creation of the Joint Enforcement Strike Force, with membership from various state departments including, among others, the Franchise Tax Board and DIR, with the mission of reducing unfair business competition and protecting the rights of workers. Among other things, the Strike Force is tasked with coordinating the joint enforcement of tax, labor, and licensing laws as well as finding and deterring payroll tax violations, including unreported or unpaid payroll tax deductions.

2. Need for this bill?

According to the author:

"Despite the best efforts of the Labor Commissioner and other enforcement agencies, state-level enforcement of labor law violations remains inadequate. There are numerous barriers to effective enforcement, even if agencies were well-funded, but in reality, these agencies are underfunded and understaffed – both Cal OSHA[8] and the Labor Commissioner's Office[9] have vacancy rates above 30%.

One of the most frustrating situations for workers occurs when the LCO issues an order, decision or award (ODA) for a worker, but the employer fails to pay. Employers may deliberately delay the process or refuse to communicate with the LCO, making it nearly impossible to collect stolen wages. As a result, claims can take over 850 days to process – six times the statutory limit of 135 days.[10] In 2017, workers filed $320 million in wage theft claims, but only $40 million were recovered, with less than half of workers receiving any wages at all.[11] Additional statewide impacts of unpaid wage theft claims include California losing payroll and income tax revenue, as well as sales tax revenue that would have been generated from workers' earnings. Overall, this weakens consumer demand, harms local businesses, and slows economic growth for the state.[12]

Current enforcement mechanisms lack sufficient deterrents, allowing employers to treat wage theft as a calculated risk. They face very few tangible or immediate consequences for noncompliance, enabling them to deny claims, delay payments, or refuse payments altogether.

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[7] Ibid
[8] 2023-104 The California Labor Commissioner's office Audit
[9] Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities
[10] California State Auditor, Inadequate Staffing and Poor Oversight Have Weakened Protections for Workers (Report 2023-104), May 2024, p. 12.
[11] 2020-21 Budget: Improving the State's Unpaid Wage Claim Process
[12] https://www.epi.org/publication/employers-steal-billions-from-workers-paychecks-each-year/

SB 355 supports California workers who have been victims of wage theft by providing the Labor Commissioner's Office (LCO) with a new enforcement tool by authorizing the LCO to submit a notice of an unpaid wage theft claim to the Tax Support Division of the Employment Development Department (EDD) as potential tax fraud."

3. Proponent Arguments:

According to the sponsors, the California Federation of Labor Unions and the Sheet Metal, Air, Rail and Transportation Workers Local 105:

"Current enforcement mechanisms lack sufficient deterrents, enabling employers to treat wage theft as a calculated risk, knowing that they face very few tangible or immediate consequences for noncompliance when the status quo allows them to deny claims, delay payments, or refuse payments altogether.

SB 355 provides the LCO with new enforcement tools to address the failure to pay wage judgments. First, it requires employers who have an outstanding ODA to notify the LCO if they have already paid the judgment, have posted bond, or have entered into an agreement to pay, after 60 days of an ODA becoming final. This simple requirement will clear up many cases that are already closed and are creating backlogs at the LCO, saving the agency valuable resources.

Secondly, when an employer fails to pay an order, decision, or award for wage theft to a worker, it authorizes the LCO to provide written notice to the judgment debtor employer that the Labor Commissioner will submit the ODA to the Tax Support Division of the Employment Development Department (EDD), which collects payroll tax, as a notice of potential tax fraud. The notice to the EDD is an important flag that there may be tax issues with the employer, either from failure to pay wages or misclassification of workers. This bill gives the LCO a powerful deterrent for employers who fail to pay outstanding wage theft judgments in a timely fashion, ensuring that the state does not continue to lose out on expected revenue and workers no longer have to continue waiting for the pay they have earned."

4. Opponent Arguments:

None received.

5. Double Referral:

As originally introduced, this bill included provisions requiring the Department of Motor Vehicles (DMV) to suspend the driver license and car registration of employers with unsatisfied judgments requiring the double referral of the bill to this Committee and Senate Transportation Committee. Amendments taken on March 28, 2025 removed all provisions related to the DMV and added the provisions related to the referral of employers with potential tax fraud to EDD. If passed out of this Committee today, the bill will be sent to the Committee on Rules for re-referral.

6. Prior/Related Legislation:

SB 261 (Wahab, 2025) attempts to recover unpaid wages owed to workers by: 1) requiring the Labor Commissioner (LC) to post a copy of an order, decision, or award (ODA) on a claim for unpaid wages on the division's internet website; 2) prescribing when a posting can be removed; 3) requiring notification by certified mail to employers prior to the posting of an ODA; 4) subjecting, for final judgments unsatisfied after a period of 180 days, the employer to a civil penalty not to exceed three times the outstanding judgment amount; and 5) authorizing the LC to adopt regulations and rules of practice and procedures to enforce these provisions. *SB 261 was heard and passed by this Committee on March 26, 2025 and is pending hearing in Senate Judiciary Committee.*

SB 310 (Wiener, 2025) would permit the penalty for failure to pay wages owed to employees to be recovered through an independent civil action, as specified. *SB 310 is being heard by this Committee April 9, 2025.*

AB 485 (Ortega, 2025) would require state agencies to deny a new license or permit, or the renewal of an existing license or permit, for employers that have outstanding wage theft judgments and have not obtained a surety bond or reached an accord with the affected employee to satisfy the judgment. *AB 485 is pending in Assembly Appropriations Committee.*

AB 1234 (Ortega, 2025) would, among other things, revise and recast the provisions relating to the process for the LC to investigate, hold a hearing, and make determinations relating to an employee's complaint of wage theft. Among other things, the bill would impose an administrative fee payable in the amount of 30 percent of the ODA to be deposited into the Wage Recovery Fund, created by the bill, and appropriated to compensate the LC for the staffing required to investigate and recover wages and penalties owed to aggrieved employees. *AB 1234 is pending in Assembly Judiciary Committee.*

AB 594 (Maienschein, Chapter 659, Statutes of 2023), until January 1, 2029, clarified and expanded public prosecutors' authority to enforce the violation of specified labor laws through civil or criminal actions without specific authorization from the DLSE.

SUPPORT

California Federation of Labor Unions, AFL-CIO (Co-Sponsor)
Sheet Metal, Air, Rail, and Transportation Workers Local 105 (Co-Sponsor)

OPPOSITION

None received

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SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Lola Smallwood-Cuevas, Chair
2025 - 2026 Regular

Bill No:	SB 555	**Hearing Date:**	April 9, 2025
Author:	Caballero		
Version:	April 1, 2025		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Jazmin Marroquin		

SUBJECT: Workers' compensation: average annual earnings

KEY ISSUE

This bill requires, beginning on January 1, 2026, the permanent partial disability average weekly earnings to be adjusted by an amount equal to the cost of living adjustment (COLA) for social security benefits for that year, as specified.

ANALYSIS

Existing law:

1) Establishes a comprehensive system of workers' compensation that provides a range of benefits for an employee who suffers from an injury or illness that arises out of and in the course of employment, regardless of fault. This system requires all employers to insure payment of benefits by either securing the consent of the Department of Industrial Relations to self-insure or by obtaining insurance from a company authorized by the state. (Labor Code §§3200-6002)

2) Establishes within the workers' compensation system temporary disability indemnity, permanent disability indemnity, and permanent partial disability indemnity, which offer wage replacement of a specified injured employee's average weekly earnings while an employee is unable to work due to a workplace illness or injury. The current minimum benefit for temporary disability indemnity and permanent total disability indemnity is $252.03 per week and the maximum is $1,680.29 per week.[1] The current minimum benefit for permanent partial disability indemnity is $240 per week and the maximum is $435 per week for injuries occurring on or after January 1, 2014. (Labor Code §4653)

This bill:

1) Requires, beginning on January 1, 2026, the permanent partial disability average weekly earnings to be adjusted by an amount equal to the cost of living adjustment (COLA) for social security benefits for that year, as published by the Social Security Administration based on changes in the United States Consumer Price Index (CPI), and applied to the previous year's amount in the same manner as social security adjustments are applied.

COMMENTS

[1] DWC Announces Temporary Total Disability Rates for 2025, State of California Department of Industrial Relations, October 16, 2024, https://www.dir.ca.gov/DIRNews/2024/2024-90.html

1. Background:

Workers' compensation permanent partial disability benefits
Most workers recover from their job injuries, although some may continue to have problems. If a treating doctor tells a worker they will never recover completely or will always be limited in the work they can do, they may have a permanent disability. This means that the worker may be eligible for permanent disability (PD) benefits. Workers do not have to lose their job to be eligible for PD benefits. However, if someone loses income because of a permanent disability, PD benefits may not cover all the income lost.

PD benefits are set by law and are based on the following:

- the date of the worker's industrial injury, and
- the worker's impairment level, which means how the injury has affected the individual's ability to work, as determined by the primary treating physician or doctor who is a qualified medical evaluation (QME)
    - the impairment level will be expressed as a percentage, and is then used in a formula which also includes your age and occupation.
        - For injuries on or after April 19, 2004, and prior to Jan. 1, 2013, the formula also includes diminished future earning capacity
        - For dates of injury on or after Jan. 1, 2013, PD ratings will no longer take into account an injured employee's future earnings capacity.

A disability evaluator or the judge will calculate this formula and determine how much PD the worker is entitled to receive and their rating. A rating is a percentage that estimates how much the worker's disability limits the kinds of work they can do or ability to earn a living, and determines the amount of their PD benefits. A rating of 100 percent means a *permanent total disability*. Ratings of 100 percent are very rare. A rating between 1 percent and 99 percent means a *permanent partial disability (PPD).*

In 2012, SB 863 (De Leon, Chapter 363) was enacted as a major, bipartisan reform backed by business and labor groups. This bill made wide-ranging changes to the state's workers' compensation system, including increased benefits to injured workers and cost-saving efficiencies. SB 863 also revised the method for determining benefits for PPD for injuries occurring on or after January 1, 2014. The current minimum benefit for PPD indemnity is $240 per week and the maximum is $435 per week for injuries occurring on or after January 1, 2014. Individuals who have a PPD are eligible to receive the total amount of PPD benefits spread over a fixed number of weeks.

Federal social security benefits cost-of-living adjustments (COLA)
As a response to the challenges of the Great Depression, social security insurance was created in order address the permanent problem of economic security for the elderly by creating a work-related, contributory system in which workers would provide for their own future economic security through taxes paid while employed. On August 14, 1935, President Roosevelt signed the federal Social Security Act (Act). In addition to several provisions for general welfare, the Act created a social insurance program designed to pay retired workers age 65 or older a continuing income after retirement.

Social Security benefits also have annual increases designed to offset the effects of inflation on fixed incomes. These increases are now known as Cost of Living Allowances or Cost-of-Living Adjustments (COLAs). It was not until 1950 that Congress passed amendments to the SSA and first legislated an increase in benefits. Later, in 1972, the law was changed again to provide, beginning in 1975, automatic annual COLAs based on the annual increase in consumer prices. With this change, beneficiaries do not have to wait for congressional action to increase their benefits and inflation does not drain value from Social Security benefits. The Act specifies a formula for determining each COLA. According to the formula, COLAs are based on increases in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). CPI-Ws are calculated on a monthly basis by the Bureau of Labor Statistics.

The Social Security Administration (SSA) announced a 2.5 percent increase in Social Security and Supplemental Security Income (SSI) benefits for more than 72.5 million Americans for 2025.[2] There has been a COLA for social security benefits during the last ten years, with the exception of in 2015:[3]

Year	COLA
2015	0.0%
2016	0.3%
2017	2.0%
2018	2.8%
2019	1.6%
2020	1.3%
2021	5.9%
2022	8.7%
2023	3.2%
2024	2.5%
2025	2.5%

This bill, SB 555, proposes to increase the PPD average weekly earnings by an amount equal to the COLA for social security benefits for that year, as published by the SSA, based on changes in the United States CPI beginning on January 1, 2026. This bill would also require the increase to be applied to the previous year's amount in the same manner as social security adjustments are applied. If this bill becomes law, PPD average weekly earnings would increase by the same amounts equal to the COLA for social security benefits for that year (i.e. 2.5% in 2025).

2. Need for this bill?

According to the author:

"Permanent Partial Disability Benefits have not seen a cost of living adjustment in over 12 years. The rise of inflation has resulted in injured employees who receive these benefits being unable to pay for basic necessities."

[2]Social Security Administration, "Cost-of-Living Adjustment (COLA) Information for 2025," https://www.ssa.gov/cola/

[3] Social Security Administration, "Cost-of-Living Adjustment," https://www.ssa.gov/OACT/COLA/colaseries.html

3. Proponent Arguments:

According to the California Federation of Labor Unions:

"Workers' compensation insurance is intended to provide a safety net for workers who sustain a debilitating injury on the jobsite, and to ensure that those workers receive some minimum benefits as they deal with the economic, physical, and emotional toll from the injury.

Currently, workers' compensation PPD benefits are based on outdated wage ranges set in 2014, despite California's average weekly wage increasing by nearly 60% since then. In 2014, the last time PPD benefits were adjusted, the average Social Security monthly benefit was $1,294, and as of 2023, those benefits have increased to an average of $1,825. Social Security recipients receive modest yearly cost-of-living adjustments (COLAs), while PPD benefits have remained stagnant over the same period.

There are an estimated 21,000 PPD claims. Tying these benefits to the Social Security COLA will result in a prospective average increase of $45 per month per recipient, which will be more than offset by the average reduction of $13,356 in workers' compensation premiums for California employers in the past 10 years. By tying wage calculations to the Social Security Administration's annual COLA, SB 555 will ensure that injured workers' benefits keep pace with inflation so workers do not continue experiencing undue hardships while struggling to pay for necessities."

4. Opponent Arguments:

According to the opposition, which includes a coalition of business and insurer groups, including the California Chamber of Commerce:

"SB 555 misidentifies permanent disability as wage replacement when a closer look at the complexities of the Workers' Compensation system in California clarifies that permanent disability is not intended to replace wages and therefore annual increases as proposed are not appropriate. Moreover, instead of streamlining incentives in the Workers' Compensation system, SB 555's mandatory cost of living adjustment for permanent disability would substantially increase frictional costs and would result in delays in the resolution and settlement of claims without any showing that a fix was needed. Any discussion of increased benefits is better suited for a larger discussion about system reform as was done in prior legislation. […]

As a vital element of the Grand Bargain, a reconsideration of the purpose of any individual indemnity benefit or any increase should be part of a larger discussion about broader reform of the Workers' Compensation System. Substantive changes to the nature of PD benefits must be balanced by efforts to reduce costs elsewhere within the system. The last major reform (SB 863 in 2012) increased PD benefits and paid for them by reducing frictional costs elsewhere. […]

Utilizing data on PD payments during 2015-2022, it is estimated that if the PD Ratings Schedule was tied to the CPI, the increased cost of permanent partial disability benefits would be approximately $570 million to $907 million over an 8-year period. Of that, about $193 million to $258 million is the cost to public employers (state plus local). Please note

that the data used does not include life pensions or permanent total disability payments – only permanent partial disability payments. […]

This estimate does not incorporate all the costs resulting from SB 555 which as described above could include costs like increased med-legal costs, increased administrative costs, possible delays in settlements due to the incentive to push claims to the following year, and increased use of WCAB and potential increases to salary continuations for public employers."

5. Prior Legislation:

SB 863 (De Leon, Chapter 363, Statutes of 2012) enacted major reforms to the workers' compensation system, including revising the method for determining benefits for purposes of permanent partial disability for injuries occurring on or after January 1, 2013, and on or after January 1, 2014.

SB 773 (Florez, 2009) would have, effective on January 1, 2010, increased the maximum average weekly wage that is allowed to be used for the purpose of calculating weekly disability benefit payments. Also, for injuries occurring on or after January 1, 2010, increased the number of weeks of benefit payments to permanently disabled workers for specified percentages of permanent disability. *This bill was held in Senate Appropriations Committee.*

SB 1717 (Perata, 2008, Vetoed) would have 1) eliminated the provisions requiring an employer to pay an injured employee a decreased amount of permanent disability benefits if, within 60 days of a disability becoming permanent and stationary, the employer offers the injured employee regular work, modified work, or alternative work, within those specified time periods, regardless of whether the injured employee accepts or rejects the offer, and 2) would also revised the formula for computing those benefits for injuries causing permanent disability, which occur on or after January 1, 2009. *Governor Schwarzenegger vetoed the bill. In his veto, he stated:*

> "The workers' compensation reforms I enacted in 2004 have worked. Costs to employers have decreased and return-to-work rates for injured workers have increased. Our work, however, is not done.
>
> Medical costs in the workers' compensation system are climbing, leading the Workers' Compensation Insurance Rating Bureau to recommend a 16 percent increase in premiums starting next year. Given this fact, we must proceed cautiously before adding any other costs to the system. As such, the billion dollar benefit increase proposed by this bill cannot be justified at this time."

SB 936 (Perata, 2007, Vetoed) would have revised the formula for computing payments for injuries causing permanent disability, which occur on or after January 1, 2008, as specified. *Governor Schwarzenegger vetoed the bill. In his veto, he stated:*

> "In 2004, we enacted historic reforms that replaced a workers' compensation system fraught with inefficiencies and plagued by litigation with a system centered on objective medical findings and helping injured workers return to work. As a result, rates have

dropped over 60 percent, employers have saved billions of dollars, and return-to-work rates have increased.

One of the reasons the reforms have succeeded is the change made to the way we determine a worker's permanent disability. A highly subjective system that encouraged litigation has been replaced by one that uses objective American Medical Association guidelines as the basis for determining the severity of a worker's injury.

Some have expressed concerns that this change has reduced benefits too severely. To that end, my Administration has conducted an extensive review of the data from both the new and old disability rating schedules to determine what, if any, changes need to be made to the new system so that injured workers receive appropriate benefits. This bill, on the contrary, arbitrarily doubles the number of weeks a person may be eligible to receive permanent disability benefits. It substantially increase costs for all permanent disability awards regardless of severity and without relying on empirical data to validate the increase. I cannot support making such arbitrary changes to the system we worked so hard to reform."

SB 815 (Perata, 2006, Vetoed) would have revised the formula for computing payments for injuries causing permanent disability, which occur on or after January 1, 2007, as specified. *Governor Schwarzenegger vetoed the bill.*

SB 899 (Poochigian, Chapter 34, Statutes of 2004) among other workers' compensation reforms, established the schedule for the computation of permanent disability benefits, as specified, and provided that this schedule for permanent disability payments also would apply to compensable claims arising before April 30, 2004, under certain circumstances.

SUPPORT

California Applicants' Attorneys Association (Sponsors)
California Federation of Labor Unions
California Professional Firefighters

OPPOSITION

Acclamation Insurance Management Services
Allied Managed Care
American Property Casualty Insurance Association
California Chamber of Commerce
California Coalition on Workers Compensation
California Grocers Association
California League of Food Producers
Carlsbad Chamber of Commerce
Coalition of Small and Disabled Veteran Businesses
Corona Chamber of Commerce
Flasher Barricade Association
Gilroy Chamber of Commerce
Greater Conejo Valley Chamber of Commerce
Lake Elsinore Valley Chamber of Commerce
National Federation of Independent Business

Public Risk Innovation, Solutions, and Management (PRISM)
Rural County Representatives of California
Santee Chamber of Commerce
Valley Industry and Commerce Association

-- END --

SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Lola Smallwood-Cuevas, Chair
2025 - 2026 Regular

Bill No:	SB 632	**Hearing Date:**	April 9, 2025
Author:	Arreguín		
Version:	February 20, 2025		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Jazmin Marroquin		

SUBJECT: Workers' compensation: hospital employees

KEY ISSUE

This bill establishes a series of rebuttable presumptions that infectious diseases, cancer, musculoskeletal injuries, post-traumatic stress injuries, and respiratory diseases, including COVID-19, are occupational injuries for a hospital employee who provides direct patient care in an acute care hospital and are therefore eligible for workers' compensation benefits.

ANALYSIS

Existing law:

1) Establishes a comprehensive system of workers' compensation that provides a range of benefits for an employee who suffers from an injury or illness that arises out of and in the course of employment, regardless of fault. This system requires all employers to insure payment of benefits by either securing the consent of the Department of Industrial Relations to self-insure or by obtaining insurance from a company authorized by the state. (Labor Code §§3200-6002)

2) Creates a series of rebuttable presumptions of an occupational injury for peace and safety officers for the purpose of the workers' compensation system. These presumptions include: heart disease, hernias, pneumonia, cancer, tuberculosis, blood-borne infectious disease or methicillin-resistant Staphylococcus aureus skin infection (MRSA), bio-chemical illness, and meningitis. The compensation awarded for these injuries must include full hospital, surgical, medical treatment, disability indemnity, and death benefits, as provided by workers' compensation law. (Labor Code §§3212-3213.2)

3) Provides, until January 1, 2029, a rebuttable presumption that a diagnosis of Post-Traumatic Stress Disorder (PTSD) injuries for specified peace officers and firefighters is an occupational injury. The benefit includes full hospital, surgical, medical treatment, disability indemnity, and death benefits, but only applies to peace officers who have served at least six months. (Labor Code §3212.15)

This bill:

1) Establishes a series of rebuttable presumptions that the following injuries that develop or manifest in a hospital employee who provides direct patient care in an acute care hospital arose of an in the course of employment:

a. Infectious disease
b. Cancer
c. Musculoskeletal injury
d. Post-traumatic stress injury
e. Respiratory disease

2) Defines "infectious disease" as any of the following: Methicillin-resistant Staphylococcus aureus skin infection, bloodborne infectious diseases, tuberculosis, meningitis, the 2019 novel coronavirus disease (COVID-19) from SARS-CoV-2 and its variants.

    a. Defines "bloodborne infectious disease" as a disease caused by exposure to pathogenic microorganisms that are present in human blood that can cause disease in humans, including those pathogenic microorganisms defined as bloodborne pathogens by the Department of Industrial Relations.
    b. This presumption is extended following termination of employment for a period of 3 months for each full year of employment, not to exceed 60 months.
    c. If the infectious disease is attributed to methicillin-resistant Staphylococcus aureus skin infection, the presumption is extended 90 days from the termination of employment.

3) Specifies that cancer includes liver cancer, myeloid leukemia, kidney cancer, multiple myeloma, ovarian cancer, breast cancer, nasopharyngeal cancer, thyroid cancer, cancers of the brain and nervous system, HPV-positive tonsillar cancer, and those cancers that develop or manifest as a result of exposure to antineoplastic drugs, anesthetic gases, or surgical smoke.

    a. The employee is required to demonstrate exposure to a known or suspected carcinogen, as defined by the International Agency for Research on Cancer or by the director, while employed by the hospital.
    b. This presumption is extended following termination of employment for a period of 3 months for each full year of employment, not to exceed 120 months.

4) Defines "musculoskeletal injury" as injury to the muscles, tendons, ligaments, bursas, peripheral nerves, joints, bones, or blood vessels.

    a. This presumption is extended following termination of employment for a period of 3 months for each full year of employment, not to exceed 60 months.

5) Specifies that post-traumatic stress injury has to be diagnosed by a mental health professional.

    a. Defines "mental health professional" as a person with professional training, experience, and demonstrated competence in the treatment and diagnosis of mental conditions, who is certified or licensed to provide mental health care services and for whom diagnoses of mental conditions are within the professional's scope of practice, including a physician and surgeon, nurse with recognized psychiatric specialties, psychologist, clinical social worker, mental health counselor, or alcohol or drug abuse counselor.
    b. This presumption is extended following termination of employment for a period of 3 months for each full year of employment, not to exceed 36 months.

6) Specifies "respiratory disease" includes asthma or the 2019 novel coronavirus disease (COVID-19) from SARS-CoV-2 and its variants.

    a. This presumption is extended following termination of employment for a period of 3 months for each full year of employment, not to exceed 120 months.

7) Defines "acute care hospital" as a health facility as defined in subdivision (a) or (b) of Section 1250 of the Health and Safety Code.

8) Makes a series of legislative findings and declarations related to registered nurses and work-related injuries and illness.

COMMENTS

1. Background:

Workers' Compensation Presumptions

Under the California workers' compensation system, if a worker is injured on a job, the employer must pay for the worker's medical treatment, and provide monetary benefits if the injury is permanent. In return for receiving free medical treatment, the worker surrenders the right to sue the employer for monetary damages in civil court. This simple premise is sometimes referred to as the "grand bargain."

The Legislature has created disputable or rebuttable presumptions within the workers' compensation system, which shifts the burden of proof in an injury claim from the employee to the employer. If an injury is covered by a presumption, the employer carries the burden to prove the injury is not related to work. For certain occupations, such as firefighters and peace officers, where workers can be exposed to more types of injuries than in other occupations, the law presume certain injury and illness more likely to be caused by work-related exposure. These workers have rebuttable presumptions that the following diagnoses are occupational injuries for purposes of workers' compensation coverage:

- Heart disease, hernias, pneumonia,
- Cancer,
- Post-traumatic stress disorder injuries (PTSI)[1]
- Tuberculosis,
- Blood-borne infectious disease or methicillin-resistant Staphylococcus aureus skin infection (MRSA),
- Bio-chemical illness, and
- Meningitis.

Expanding workers' compensation presumptions to private sector employees

There is a long history of workers' compensation presumptions for public safety employees, such as peace offices and firefighters, who have unique occupational hazards including fires, accidents, and exposure to carcinogens and other toxic or hazardous material. However, there has not been a presumption applied to private sector employees besides a temporary

[1] For purposes of this analysis, post-traumatic stress disorder injuries and PTSI will be used interchangeably.

presumption granted during the COVID-19 pandemic. In 2020, SB 1159 (Hill, Chapter 85), established a rebuttable presumption that specified employees who contracted COVID-19 in their workplace were covered under workers' compensation. The COVID-19 presumption was limited in scope and only in effect from late 2020 until January 1, 2024.

This bill, SB 632, attempts to make this COVID-19 presumption permanent for hospital employees that provides direct patient care for up to 10 years after an employee has stopped working. Presumably, this is intended to capture long-COVID impacts that employees might suffer if they contract COVID-19 while working in a hospital and in the years after leaving their place of employment. Opponents argue that the workers' compensation system is designed to apply a consistent, objective set of rules to determine eligibility, medical needs, and disability payment for injured workers in the state and that the Legislature should not take on the role of trying to identify likely injuries for every occupation in this state.

Statute of limitations for workers' compensation claims

Generally, there is a one-year statute of limitations for worker's compensation claims from the date the injury occurred. For cumulative trauma injuries, where the exact date of injury is unclear, the statute of limitations begins when the worker knew or should have known that their condition was work-related.

Under existing law, the statute of limitations for the rebuttable presumptions afforded to firefighters and peace officers extend beyond the employee's termination. As shown in the table below, some presumptions (including bloodborne infectious diseases, tuberculosis, and meningitis) have a statute of limitations of up to 5 years after employment. A PTSI presumption is in effect until January 1, 2029 and applies up to 5 years after employment. The cancer presumption is the longest and applies up to 10 years after employment. Firefighters and peace officers do not have a musculoskeletal injury presumption.

Existing law for firefighter/peace officer presumptions:	**SB 632 proposed presumptions for hospital employees:**
Bloodborne infectious diseases, tuberculosis, meningitis: Up to 5 years after employment	Infectious diseases (**bloodborne infectious diseases, tuberculosis, meningitis,** COVID-19): Up to 5 years after employment
MRSA: Up to 90 days after employment	**MRSA**: Up to 90 days after employment
Cancer: Up to 10 years after employment	**Cancer:** Up to 10 years after employment
Musculoskeletal injury: N/A	**Musculoskeletal injury**: Up to 5 years after employment
PTSI: Up to 5 years after employment	**PTSI:** Up to 3 years after employment
Expired COVID-19 presumption: Up to *14 days* after employment	Respiratory disease (asthma or **COVID-19**): Up to *10 years* after employment

This bill, SB 632, would require the presumptions' statutes of limitations to be extended to the employees following their termination for up to 3, 5, or 10 years, depending on the injury. Most of the proposed presumptions, such as for tuberculosis, meningitis, MRSA, and cancer, align with existing law for the firefighter and peace office presumptions. This bill, SB 632, however, proposes a permanent PTSI presumption for hospital employees for up to 3 years after employment, while existing law affords firefighters a PTSI presumption for up to 5 years after employment but only until January 1, 2029. As previously described, the COVID-19 presumption is expired but it only applied to employees for up to ***14 weeks*** after employment. SB 632's proposed 10-year statute of limitations for the respiratory disease presumption, including COVID-19, differs greatly from what the Legislature previously approved on a limited basis. ***Should hospital employees be entitled to a presumption that a respiratory disease, such as asthma or COVID-19, was work-related and is therefore covered by workers' compensation for up to 10 years after employment?***

The sponsors claim that many occupational injuries, such as musculoskeletal disorders, develop over time rather than from a single incident, making it difficult to establish a direct causal link to the workplace. Opponents, however, argue that this length of time allows a former employee to come back and file a claim based on this presumption for up to 10 years after employment has ended and the employer would be virtually powerless to question that claim.

Prior attempts to create rebuttable presumptions' for hospital workers providing direct patient care

Historically, the Legislature has been hesitant to create new workers' compensation presumptions outside of limited exceptions for law enforcement and firefighters, as previously noted. The Legislature has traditionally focused on the following key points when considering expansions to rebuttable presumptions: 1) high incidence of injury, and 2) high rate of claim denials. There have been several attempts to create rebuttable presumptions for hospital workers providing direct patient care, as this bill proposes to do.

In fact, similar or nearly identical bills have been introduced in recent years. Most recently, AB 1156 (Bonta, 2023) was not set for a hearing in the Assembly Insurance Committee, SB 213 (Cortese, 2021) did not receive a motion in the Assembly Insurance Committee, and both SB 893 (Caballero, 2020) and SB 567 (Caballero, 2019) failed passage in the Senate Labor, Public Employment and Retirement Committee.

Frequency of injuries or illnesses of hospital worker providing direct patient care and workers' compensation claims

As noted previously, data on the high frequency of injuries and high rate of claim denials is essential to consider the creation of a workers' compensation presumption. It is important to remember that presumptions shift the dynamic of a claim from a worker having the burden to prove the injury is not work related to the employer. Presumptions were not intended only for occupations that have a high risk of injury, but rather they are useful for occupational injuries where the cause could be difficult to precisely pinpoint.

Opponents claim that no statistical evidence indicates, in any way, that workers' compensation claims by hospital employees are being inappropriately delayed or denied by employers or insurers for exposure to the illness and injuries specified in this bill.

The sponsors, the California Nurses Association (CNA), throughout March 2023, surveyed registered nurses (RNs) across California on their experiences with the workers' compensation system. In total, they received responses from 2,003 hospital RNs (1,688 respondents were members of CNA and 315 respondents were not CNA RNs and not members of any other RN union in the state). From their survey, the sponsors note that that 79.4 percent of all respondents reported experiencing at least one injury on the job in health care and 68.4 percent reported experiencing at least one illness because of the job in health care. Their survey results note that of the hospital RNs who responded that they were injured at work or became ill from an occupation exposure, 58.8 percent filed a workers' compensation claim. Of the respondents who answered that they did *not* file a worker's compensation claim (34.7 percent of all respondents), 16.5 percent responded that they had trouble proving that their injury or illness was work-related. **Of all hospital RNs who filed claims, 17.3 percent had their claims denied or partly denied (7.9 percent denied and 9.4 percent partly denied), according to the CNA survey.**

Overall, CNA's own data shows that:

- The majority (81.3 percent) of hospital RNs' workers' compensation claims for COVID-19 were *accepted*.
- The majority (69.7 percent) of hospital RNs' workers' compensation claims for musculoskeletal disorder or injury were *accepted*.
- *Less than half* (44.4 percent) of hospital RNs' workers' compensation claims for infectious diseases (MRSA, bloodborne infectious diseases, and tuberculosis) were *accepted*.
- *Less than two-thirds* (21.6 percent) of hospital RNs' workers' compensation claims for post-traumatic stress disorder were *accepted*.
- *None* (0 percent) of hospital RNs' workers' compensation claims for cancer were *accepted*. [2]

The State Compensation Insurance Fund (State Fund) administers workers' compensation claims for the state, including for the Department of State Hospitals (DHS). According to the State Fund, there were 2,782 DHS claims for injuries of infectious diseases, bloodborne infectious diseases, cancer and musculoskeletal injuries from 2020-2024 and liability for approximately 90 percent of these claims has been accepted. There were 5,793 DHS claims for COVID from 2020-2024 and liability for approximately 86 percent of these COVID claims has been accepted. The State Fund does not insure many health facilities, but of the ten claims the State Fund did insure from 2020-2024, only one claim was denied.

2. Committee Amendments:

In order to address concerns about the length of time that a rebuttable presumption applies to an injured worker after they have left that job, the author has agreed to take an amendment in this committee. The amendment will shorten the 10-year statute of limitations for respiratory diseases covered by workers' compensation, such as asthma or COVID-19, to 5 years after employment.

[2] California Nurses Association survey responses indicate that there was one total claim for hospital RNs for cancer, which was reportedly denied or partly denied.

The amendment, as outlined below, changes the statute of limitations for the respiratory disease presumption in Section 3212.28 from 120 months to 60 months:

> **3212.28.** (a) In the case of a hospital employee who provides direct patient care in an acute care hospital, the term "injury" as used in this division includes respiratory disease that develops or manifests itself during a period of the person's employment with the hospital.
> (b) The compensation that is awarded for respiratory disease shall include, but not be limited to, full hospital, surgical, medical treatment, disability indemnity, and death benefits, as provided by this division.
> (c) The respiratory disease that develops or manifests in a hospital employee who provides direct patient care in an acute care hospital shall be presumed to arise out of and in the course of the employment. This presumption is rebuttable by other evidence, but, unless rebutted, the appeals board shall presume the respiratory disease arose out of and in the course of the employment. This presumption shall be extended to a hospital employee following termination of employment for a period of 3 calendar months for each full year of employment, but not to exceed ~~**120**~~ **60** months, beginning with the last date actually worked in the specified capacity. The respiratory disease that develops or manifests in a hospital employee who provides direct patient care in an acute care hospital shall not be attributed to a disease existing prior to that development or manifestation.
> (d) As used in this section:
> (1) "Acute care hospital" means a health facility as defined in subdivision (a) or (b) of Section 1250 of the Health and Safety Code.
> (2) "Respiratory disease" includes asthma or the 2019 novel coronavirus disease (COVID-19) from SARS-CoV-2 and its variants.

3. Need for this bill?

According to the author:

"Nurses and other hospital workers face similar risks of exposure to diseases, injuries, and trauma as other first responder professions but are not granted the same presumptive eligibility protections. This discrepancy creates an unequal system where some male-dominated first responder professions receive automatic protections, while other women-dominated frontline professions who perform equally essential, high-risk jobs face barriers to accessing timely benefits and medical care.

Without presumptive eligibility, nurses and other hospital workers must prove that their illnesses or injuries were directly caused by their job, which can be challenging for conditions like infectious diseases, back injuries, or post-traumatic stress injury (PTSI) that may be difficult to trace to a specific workplace incident.

Nurses report that they often face delays or denials in workers' compensation claims, leading to postponed treatment. These delays can worsen their health conditions, increase medical costs, and prolong time away from work – ultimately exacerbating the staffing crisis in hospitals. Many nurses must hire lawyers to appeal claims, adding financial and emotional strain, while others forgo filing claims altogether, shouldering the costs themselves. […]

Establishing a rebuttable presumption for workers' compensation claims is a crucial step in protecting our frontline health care workers. Presumptive eligibility for workers' compensation claims ensures that nurses and other hospital workers receive the care and compensation they deserve when they get injured or sick on the job. By shifting the burden of proof to the employer, this presumption will eliminate unnecessary delays and administrative hurdles when nurses file workers' compensation claims. Most importantly, SB 632 will support the retention of health care workers, by allowing nurses and hospital staff to focus on healing and returning to their vital work without the added stress of fighting for their rights in the workers' compensation process."

4. Proponent Arguments:

According to the sponsors, the California Nurses Association:

"Many occupational injuries, such as musculoskeletal disorders, develop over time rather than from a single incident, making it difficult to establish a direct causal link to the workplace. Similarly, infectious diseases and exposure to harmful substances can lack a clear point of origin, often as a result of employers' failure to appropriately track them in the workplace, leaving workers vulnerable to claim denials due to the inability to pinpoint the exact moment of exposure.

Registered Nurse's Experience High Rates of Workplace Injury and Illness:
• RNs experience 95% more work-related injuries and illnesses of all kinds than U.S. workers overall.
• RNs experience 72% more musculoskeletal disorders than workers overall.
• Workplace violence injuries for nurses occur at nearly four times the rate of workers overall.
• RNs experience nearly four times the rate of injuries and illnesses than workers overall due to exposure to harmful substances or environments, including infectious diseases like MRSA and Covid-19. […]

Granting presumptive eligibility to registered nurses and other hospital workers is not just a matter of workplace fairness – it is a matter of gender equity. For decades, California has recognized the unique risks faced by male-dominated first responder professions such as firefighters and peace officers, granting them workers' compensation presumptions for certain illnesses and injuries. However, despite facing similar hazards, nurses and other hospital workers have not been afforded these same protections. This discrepancy disproportionately impacts women, as nursing is a profession where over 90% of registered nurses are female.

By aligning protections for hospital workers with those already provided to first responders, this bill will remove unnecessary barriers in the workers' compensation system and ensure that those who dedicate their lives to patient care receive the support they need to heal and return to work."

5. Opponent Arguments:

According to a coalition of hospitals, businesses, including the California Chamber of Commerce:

"The California Chamber of Commerce and the organizations listed below respectfully OPPOSE SB 632 (Arreguín), which has been labelled a COST DRIVER. SB 632 will impose an astronomical financial burden on employers in the healthcare industry, especially at a time when there is uncertainty about federal funding and general concerns about affordability. The Legislature has consistently rejected all nine versions of this bill, including narrower versions, over the last sixteen years.

SB 632 creates a troubling precedent for the workers' compensation system in general by creating a legal presumption that blood-borne infectious disease, tuberculosis, meningitis, methicillin-resistant Staphylococcus aureus (MRSA), COVID-19, cancer, musculoskeletal injury, post-traumatic stress disorder, or respiratory disease are presumptively workplace injuries for up to 10 years for all hospital employees that provide direct care. Injuries occurring within the course and scope of employment are automatically covered by workers' compensation insurance, regardless of fault. SB 632 would require that hospital employees do not need to demonstrate work causation for specified injuries or illnesses in any circumstance. Instead, these injuries and illnesses are presumed under the law to be work related. Presumptions of industrial causation for specific employees and injury types are imply not needed and create a tiered system of benefits that treats employees differently based on occupation and undermines the credibility and consistency of our workers' compensation system. […]

California's no-fault system of workers' compensation insurance that must be "liberally construed" with the purpose of extending benefits to injured workers does not create many obstacles for employees who believe that they have been injured at work. The creation of a presumption for employees, absent some significant justification, serves only to make it nearly impossible for an employer to contest any claim for benefits, which will unnecessarily increase costs for employers. […]

There is no evidence that hospital workers should be entitled to a separate legal standard for certain injuries and illnesses. In fact, it logically follows that the most obvious types of occupational injuries and illnesses for any given occupation would be far more likely to be accepted as industrial by employers and less in need of a legal presumption to obtain benefits."

6. Prior Legislation:

SB 623 (Laird, Chapter 621, Statutes of 2023) extended the sunset until January 1, 2029 for a rebuttable presumption that a diagnosis of post-traumatic stress disorder injuries for specified peace officers and firefighters is an occupational injury, and required the Commission on Health and Safety and Workers' Compensation to submit both reports to the Legislature analyzing the effectiveness of the presumption and a review of claims filed by specified types of employees not included in the presumption, such as public safety dispatchers, as defined.

AB 1156 (Bonta, 2023) was essentially identical to this bill, and would have established workers' compensation rebuttable presumptions that specified diagnoses are occupational for a hospital employee who provides direct patient care in an acute care hospital. These diagnoses included infectious diseases, cancer, musculoskeletal injuries, post-traumatic stress disorder, and respiratory diseases. The bill would also have included the 2019 novel coronavirus disease (COVID-19) from SARS-CoV-2 and its variants, among other conditions, in the definitions of infectious and respiratory diseases. The bill would have

further extended these presumptions for specified time periods after the hospital employee's termination of employment. *This bill was held in the Assembly Committee on Insurance.*

AB 1145 (Maienschein, 2023, Vetoed) would have provided, until January 1, 2030, that for specified state nurses, psychiatric technicians, and various medical and social services specialists, the term "injury" also included post-traumatic stress that develops or manifests itself during a period in which the injured person is in the service of the department or unit. The bill would have applied to injuries occurring on or after January 1, 2024. The bill would have prohibited compensation from being paid for a claim of injury unless the member performed services for the department or unit for at least 6 months, unless the injury is caused by a sudden and extraordinary employment condition. *This bill was vetoed. In his veto, Governor Newsom stated:*

> "PTSD is compensable under the workers compensation system. However, altering the burden of proof through a presumption should be provided sparingly and based upon the unique hazards or proven difficulty of establishing a direct relationship between a disease or injury and the employee's work. Although well-intentioned, the need for the presumption envisioned by this bill must be supported by clear and compelling evidence. For this reason, I cannot sign this bill."

AB 597 (Rodriguez, 2023) would have, for injuries occurring on or after January 1, 2025, created a rebuttable presumption for emergency medical technicians and paramedics that PTSI is an occupational injury and covered under workers' compensation. *This bill was held in the Assembly Committee on Insurance.*

AB 699 (Weber, 2023, Vetoed) would have extended rebuttable presumptions for hernia, pneumonia, heart trouble, cancer, tuberculosis, blood-borne infectious disease, methicillin-resistant Staphylococcus aureus skin infection, and meningitis-related illnesses and injuries to a lifeguard employed on a year-round, full-time basis in the Boating Safety Unit by the City of San Diego Fire-Rescue Department, as specified. It would also have expanded the presumptions for post-traumatic stress disorder or exposure to biochemical substances, as defined, to a lifeguard employed in the Boating Safety Unit by the City of San Diego Fire-Rescue Department. *This bill was vetoed. In his veto, Governor Newsom stated:*

> "A presumption is not required for an occupational disease to be compensable. Although lifeguards engage in hazardous responsibilities, a presumption should be provided sparingly and based upon the unique hazards or proven difficulty of establishing a direct relationship between a disease or injury and the employee's work. Although well-intentioned, the need for the presumption envisioned by this bill must be supported by clear and compelling evidence."

SB 213 (Cortese, 2021) was essentially identical to this bill, and would have created a series of rebuttable presumptions that infectious disease, COVID-19, cancer, musculoskeletal injury, post-traumatic stress disorder, or respiratory disease are occupational injuries for a direct patient care worker employed in an acute care hospital, as defined. *This bill was held in the Assembly Committee on Insurance.*

SB 1159 (Hill, Chapter 85, Statutes of 2020) created a rebuttable presumption for specified employees, including active firefighting members of a fire department that provides fire protection to a commercial airport, as defined, that illness or death resulting from COVID-19

under specified circumstances, and until January 1, 2023, is an occupational injury and therefore covered by workers' compensation.

SB 893 (Caballero, 2020) was essentially identical to this bill, and would have created a series of specified industrial injury presumptions for acute hospital employees that provide direct patient care. *This bill failed passage in the Senate Labor, Public Employment and Retirement Committee.*

SB 542 (Stern, Chapter 390, Statutes of 2019) created the rebuttable presumption for specified peace officers that a diagnosis of PTSI is occupational and therefore covered by workers' compensation.

SB 567 (Caballero, 2019) was essentially identical to this bill, and would have created a series of specified industrial injury presumptions for acute hospital employees that provide direct patient care. *This bill failed passage in the Senate Labor, Public Employment and Retirement Committee.*

AB 2616 (Skinner, 2014, Vetoed) would have only created a rebuttable presumption for MRSA for certain hospital employees that provide direct patient care. *This bill was vetoed.*

SUPPORT

California Nurses Association (Sponsor)
California Federation of Labor Unions
United Nurses Associations of California/union of Health Care Professionals

OPPOSITION

Acclamation Insurance Management Services
Alameda Chamber & Economic Alliance
Alameda Chamber of Commerce
Alhambra Chamber of Commerce
Alliance of Catholic Health Care, INC.
Allied Managed Care
American Property Casualty Insurance Association
Anaheim Chamber of Commerce
Antelope Valley Chambers of Commerce
Associated Equipment Distributors
Association of California Healthcare Districts
Association of California Healthcare Districts; the
Association of Claims Professionals
Beverly Hills Chamber of Commerce
Brea Chamber of Commerce
California Association of Joint Powers Authorities
California Association of Public Hospitals & Health Systems
California Business Properties Association
California Chamber of Commerce
California Children's Hospital Assn
California Coalition on Workers Compensation
California Hispanic Chambers of Commerce

California Hospital Association
California League of Food Producers
California Retailers Association
California Special Districts Association
California State Association of Counties
Carlsbad Chamber of Commerce
Cedars-Sinai Medical Center
Central Valley Doctors Health System
Chino Valley Chamber of Commerce
Citrus Heights Chamber of Commerce
Coalition of California Chambers – Orange County
Corona Chamber of Commerce
Cottage Health
Desert Care Network
Dignity Health
Escondido Chamber of Commerce
Folsom Chamber of Commerce
Fontana Chamber of Commerce
Fountain Valley Chamber of Commerce
Fremont Chamber of Commerce
Fresno Chamber of Commerce
Garden Grove Chamber of Commerce
Gateway Chambers Alliance
Gilroy Chamber of Commerce
Glendora Chamber of Commerce
Greater Arden Chamber of Commerce
Greater Coachella Valley Chamber of Commerce
Greater High Desert Chamber of Commerce
Greater Riverside Chambers of Commerce
Greater San Fernando Valley Chamber of Commerce
Hayward Chamber of Commerce
Henry Mayo Newhall Hospital
Hollywood Chamber of Commerce
Huntington Health
Imperial Valley Regional Chamber of Commerce
Industry Business Council
John Muir Health
Kindred Hospitals
LA Canada Flintridge Chamber of Commerce
LA Verne Chamber of Commerce
Lake Elsinore Valley Chamber of Commerce
Livermore Valley Chamber of Commerce
Lodi Chamber of Commerce
Loma Linda University Adventist Health Sciences Center and Its Affiliated Entities
Lomita Chamber of Commerce
Lompoc Valley Chamber of Commerce & Visitors Bureau
Long Beach Area Chamber of Commerce
Los Angeles Area Chamber of Commerce
Mammoth Lakes Chamber of Commerce
Marshall Medical Center

Memorialcare Health System
Mission Viejo Chamber of Commerce
Modesto Chamber of Commerce
Morgan Hill Chamber of Commerce
Murrieta Wildomar Chamber of Commerce
National Federation of Independent Business
Newport Beach Chamber of Commerce
North Orange County Chamber
North San Diego Business Chamber
Northbay Healthcare
Norwalk Chamber of Commerce
Oceanside Chamber of Commerce
Orange County Business Council
Palos Verdes Peninsula Chamber of Commerce
Paso Robles Templeton Chamber of Commerce
Pih Health
Pleasanton Chamber of Commerce
Porterville Chamber of Commerce
Public Risk Innovation, Solutions, and Management (PRISM)
Rady Children's Health
Rancho Cordova Area Chamber of Commerce
Rancho Mirage Chamber of Commerce
Redondo Beach Chamber of Commerce
Roseville Area Chamber of Commerce
Rural County Representatives of California
Saint Agnes Medical Center
San Antonio Regional Hospital
San Diego Regional Chamber of Commerce
San Gabriel Valley Economic Partnership
San Juan Capistrano Chamber of Commerce
San Marcos Chamber of Commerce
San Ramon Regional Medical Center
Santa Ana Chamber of Commerce
Santa Barbara South Coast Chamber of Commerce
Santa Clarita Valley Chamber of Commerce
Santa Maria Valley Chamber of Commerce
Santa Rosa Behavioral Healthcare Hospital
Santee Chamber of Commerce
Scripps Health
Sharp Healthcare
Silicon Valley Leadership Group
Simi Valley Chamber of Commerce
Sohum Health
Sonoma Valley Hospital
South Bay Association of Chambers of Commerce
South Bay Chambers of Commerce
South Orange County Economic Coalition
Southern California Black Chamber of Commerce
Southwest California Legislative Council
Special District Risk Management Authority

Stanford Health Care
Tahoe Forest Health System
Templeton Chamber of Commerce
Torrance Area Chamber of Commerce
Tri County Chamber Alliance
Tulare Chamber of Commerce
United Chambers of Commerce
United Hospital Association
Urban Counties of California (UCC)
Vacaville Chamber of Commerce
Valley Industry and Commerce Association
Vista Chamber of Commerce
Walnut Creek Chamber of Commerce
West Ventura County Business Alliance
Whittier Area Chamber of Commerce
Yorba Linda Chamber of Commerce

-- END --

SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Lola Smallwood-Cuevas, Chair
2025 - 2026 Regular

Bill No:	SB 847	**Hearing Date:**	April 9, 2025
Author:	Reyes		
Version:	February 21, 2025		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Jazmin Marroquin		

SUBJECT: Workers' compensation: uninsured employer: transfer of real property

KEY ISSUE

This bill 1) authorizes the Director of DIR to determine whether a transfer of real property by an uninsured employer or a substantial shareholder, after a date of injury in a claim and prior to the recording of a certificate of lien, resulted in a trust for the benefit of the uninsured employer, 2) authorizes the Director to make a prima facie finding that the transaction resulted in a beneficial trust for the uninsured employer, under specified circumstances, and 3) requires that when the Director determines that such a trust exists, a certificate of lien shall be attached to the resulting trust and would require the director to mail written notices of that determination to the transferor and transferee, as specified.

ANALYSIS

Existing law:

1) Establishes a comprehensive system of workers' compensation that provides a range of benefits for an employee who suffers from an injury or illness that arises out of and in the course of employment, regardless of fault. This system requires all employers to insure payment of benefits by either securing the consent of the Department of Industrial Relations (DIR) to self-insure or by obtaining insurance from a company authorized by the state. (Labor Code §§3200-6002)

2) Provides that if the employer has failed to pay workers' compensation, the Director of the Department of Industrial Relations (Director) shall determine, based on the evidence available, whether the employer was illegally uninsured. If the employer fails to provide a written statement within 10 days, if there a written denial by the insurer, or if there is no existing record of the employer's insurance with the Workers' Compensation Insurance Rating Bureau, it shall constitute sufficient evidence for a prima facie case that the employer failed to secure the payment of compensation. (Labor Code §3715(c))

3) Requires, when the Director determines that an employer was prima facie illegally uninsured, the Director to mail a written notice of the determination to the employer at their address on record. The notice must advise the employer of their right to appeal the finding, and that a lien may be placed against the employer's and any parent corporation's property, or the property of substantial shareholders of a corporate employer, as defined. Any employer aggrieved by a finding of the Director may appeal the finding by filing a petition before the appeals board, as specified. (Labor Code §3715(d))

4) Provides that if an employer fails to pay workers' compensation to a person entitled to it or fails to furnish a bond, then an award shall be paid to the injured employee or his or her dependents by the Director from the Uninsured Employers Benefits Trust Fund, which is continuously appropriated. (Labor Code §3716)

5) Provides that in the event the appeals board finds that a corporation is the employer of an injured employee, and that the corporation has failed to pay workers' compensation, the following persons are jointly and severally liable with the corporation: 1) all persons who are a parent, as defined in Section 175 of the Corporations Code, of the corporation, and 2) all persons who are substantial shareholders, as defined in subdivision (b), of the corporation or its parent. (Labor Code §3717)

6) Defines "substantial shareholder" as a shareholder who owns at least 15 percent of the total value of all classes of stock, or, if no stock has been issued, who owns at least 15 percent of the beneficial interests in the corporation.

    a. Specifies that in determining the ownership of stock or beneficial interest in the corporation, in the determination of whether a person is a substantial shareholder of the corporation, the rules of attribution of ownership of Section 17384 of the Revenue and Taxation Code shall be applied.
    b. Provides that "corporation" *does not* include:
        i. Any corporation that is the issuer of any security that is exempted by Section 25101 of the Corporations Code from Section 25130 of the Corporations Code.
        ii. Any corporation that is the issuer of any security exempted by subdivision (c), (d), or (i) of Section 25100 of the Corporations Code from Sections 25110, 25120, and 25130 of the Corporations Code.
        iii. Any corporation that is the issuer of any security which has qualified either by coordination, as provided by Section 25111 of the Corporations Code, or by notification, as provided by Section 25112 of the Corporations Code. (Labor Code §3717)

7) Provides that when the appeals board or Director determines that an employer has failed to pay workers' compensation, or when the Director has determined that an employer is prima facie illegally uninsured, the Director may file a certificate of lien showing the date that the employer was determined to be illegally uninsured, or the date that the Director has determined that the employer was prima facie illegally uninsured, and the name and address of the employer against whom it was filed, as specified, in the office of the county recorder in the counties where the employer's property is possibly located. (Labor Code §3720)

8) Provides that in any claim in which the alleged uninsured employer is a corporation, for purposes of filing certificates of lien, the Director may determine, according to the evidence available, whether a person is prima facie a parent or substantial shareholder, as defined. Any person aggrieved by a finding of the Director that they were prima facie a parent or substantial shareholder may request a hearing on the finding by filing a written request for hearing with the Director, as specified. A party aggrieved by the findings of the hearing officer may within 20 days apply for a writ of mandate to the superior court, as specified. (Labor Code §3720.1)

This bill:

1) Authorizes the Director of the DIR to determine, according to the evidence available to them, whether a transfer of real property by the uninsured employer or a substantial shareholder intended to retain a beneficial interest in the real property and created a resulting trust for the benefit of such transferor.

    a. This applies to a claim in which the uninsured employer or a substantial shareholder has a recorded vesting deed conveying ownership interest in real property, after the date of the employee's injury and prior to the recording of a certificate of lien in the county by the director as specified, and provided that such property has not subsequently been transferred to a bona fide purchaser.

2) Authorizes the Director to make a prima facie finding that the transaction created a resulting trust for the benefit of the uninsured employer or substantial shareholder when there is sufficient evidence to show either of the following circumstances are present:

    a. The recorded vesting deed indicates thereon that the transfer was made as a gift or that no transfer tax to the county was paid.
    b. The transferor made the transfer with actual intent to hinder, delay, or defraud collection of reimbursement for funds paid by the Uninsured Employers Benefits Trust Fund to or on behalf of an injured worker.
        i. A finding may be made when at least three or more of the following circumstances are present:
            1. The transfer was to a personal or business associate or a relative by blood, affinity, or marriage of the transferor.
            2. The transferor maintains the real property as a place of residence or business after the transfer.
            3. The transferring parties did not employ an escrow or title company to close the transaction transferring the real property.
            4. The value of the consideration received by the transferor was not reasonably equivalent to the value of the real property transferred.
            5. The transferor failed to attend scheduled hearings and trials of the appeals board after the transfer.
            6. The transferor owns legal title to no other real property in the county.

3) Requires the Director to record a certificate of lien attached to that resulting trust in the property, when the Director determines that a transfer of real property by the uninsured employer or a substantial shareholder created a resulting trust for the benefit of such transferor. This constitutes a valid lien against the property in the same manner as if the transfer had not occurred.

4) Requires the Director to mail written notices of the prima facie determination of that resulting trust of the transferor and transferee a their address as shown on the recorded vesting deed, the official address record of the appeals board, and to any other more recent addresses the director may have, when the Director determines that a transfer of real property by the uninsured employer or a substantial shareholder created a resulting trust for the benefit of such transferor.

a. The notice shall advise the transferring parties of their right to appeal the finding, and that a lien may record and attach against the subject real property stating therein that, "THE DIRECTOR HAS MADE A PRIMA FACIE DETERMINATION PURSUANT TO LABOR CODE SECTION 3720.2 THAT THE TRANSFEREE, [FIRST AND LAST NAME], HOLDS TITLE TO THE REAL PROPERTY AT [STREET ADDRESS, CITY AND PARCEL NUMBERS] ON BEHALF OF THE TRANSFEROR, [FIRST AND LAST NAME], IN A RESULTING TRUST", in bold and uppercase letters on the certificate of lien.

5) Provides that a person aggrieved by a prima facie finding of the Director that the transferor of the property intended to retain a beneficial interest, such that a resulting trust was created, may request a hearing on the finding by filing a written request for hearing with the Director.

   a. The director, through a hearing officer appointed by the director, shall hold a hearing on the matter within 20 days of the receipt of the request for hearing and shall mail a notice of time and place of hearing to the person requesting the hearing at least 10 days prior to the hearing.
   b. The hearing officer shall hear and receive evidence, and within 10 days of the hearing, file findings on whether there is sufficient evidence to constitute a prima facie case that the transfer of real property is subject to a resulting trust.
   c. The hearing officer shall serve with the findings a summary of evidence received and relied upon and the reasons for the findings.
   d. A party may at their own expense require that the hearing proceedings be recorded and transcribed.

6) Provides that a party aggrieved by the findings of the hearing officer may within 20 days apply for a writ of mandate to the superior court.

   a. The venue shall be in the county in which the real property is located.

7) Provides that this section does not affect the interests, priorities, and ownership rights of bona fide encumbrancers and purchasers.

COMMENTS

1. Background:

Uninsured Employers Benefits Trust Fund

California law requires all employers to have workers' compensation insurance. Employers can either get insurance from an insurance company or they can become self-insured through a state program. Even if an employer does not have a valid workers' compensation insurance at the time of an employee's work-related injury, the injured employee is still entitled to medical treatment and other benefits. When illegally uninsured employers fail to pay workers' compensation benefits awarded to their injured employees by the Workers' Compensation Appeals Board, a claim is paid from the Uninsured Employers Benefits Trust Fund (UEBTF).

The UEBTF is a special fund used to pay the claims of employees who are injured or become ill while working for an illegally uninsured employer, including medical treatment. The UEBTF is not the employer's insurance carrier or self-insured employer's third party

administrator. The Director of DIR has the right to recover all benefits paid from the fund to cover the injured worker's claim, including by recording a certificate of lien against the uninsured employers' real property. Once the lien is attached to the real property, the Director can collect the amount the UEBTF is owed when the employer sells or refinances their property.

While a recorded certificate of lien has proven to be a successful method for the UEBTF to recoup what it expended, the author and sponsors note that some of the worst offending uninsured employers transfer their residential and rental properties for little to no compensation to relatives and friends before the UEBTF is able to record its lien. This bill, SB 847, is intended to discourage and prevent the transfer of property by illegally uninsured employers to avoid paying what they owe to the UEBTF.

Prima facie determinations in the UEBTF process
As part of this UEBTF collection process, the Director currently has the authority to make prima facie determinations[1] on two issues: 1) whether the employer was illegally operating without workers' compensation insurance, and 2) if an individual who holds a 15 percent interest in the employer entity qualifies as a "substantial shareholder" of the entity (i.e., a corporation or limited liability company).

SB 847 would provide a similar framework to use the same prima facie determination when the illegally uninsured employer or substantial shareholder transfers real property to a relative or friend for no or little compensation. The prima facie determinations may also be made under other specified circumstances such as that the deed indicates that the transfer was made as a gift or that no transfer tax to the county was paid.

Transfer of real properties and workers' compensation fraud
According to the author and sponsors, there has been an increase in the transfer of real properties after a worker is injured and a workers' compensation case is filed in recent years. They claim that these transfers often reflect an intent by the illegally uninsured employer to avoid a certificate of lien's attachment to their real property, and as such, an attempt to evade the UEBTF's lawful efforts to collect reimbursement.

These types of real property transfers impede the ability of the Director to obtain lawful reimbursement of funds paid out by UEBTF, which negatively impact the UEBTF, law abiding employers who obtain insurance, and California taxpayers who are impacted by these costs.

2. Need for this bill?

According to the author:

"Nurses and other hospital workers face similar risks of exposure to diseases, injuries, and trauma as other first responder professions but are not granted the same presumptive eligibility protections. This discrepancy creates an unequal system where some male-dominated first responder professions receive automatic protections, while other women-dominated frontline professions who perform equally essential, high-risk jobs face barriers to accessing timely benefits and medical care.

[1] Prima facie means "at first sight" or "based on first impression."

Without presumptive eligibility, nurses and other hospital workers must prove that their illnesses or injuries were directly caused by their job, which can be challenging for conditions like infectious diseases, back injuries, or post-traumatic stress injury (PTSI) that may be difficult to trace to a specific workplace incident.

Nurses report that they often face delays or denials in workers' compensation claims, leading to postponed treatment. These delays can worsen their health conditions, increase medical costs, and prolong time away from work – ultimately exacerbating the staffing crisis in hospitals. Many nurses must hire lawyers to appeal claims, adding financial and emotional strain, while others forgo filing claims altogether, shouldering the costs themselves."

3. Proponent Arguments:

According to the California Applicants Attorneys' Association (CAAA):

"In 2017, the State Auditor, at the direction of the Legislature, investigated the many forms of fraud in the Workers' Compensation System. That Audit found that fraud committed by employers resulted in 700% more costs than all employee fraud combined. The Audit also found the State's failure to effectively enforce the law resulted in 8,500 fraud cases being closed without any investigation. One enforcement bright spot was the Uninsured Employers Benefits Trust Fund (UEBTF), which operates under the Director of the Department of Industrial Relations (DIR).

SB 847 takes another important step forward in battling fraud in the Workers' Compensation system. Dishonest employers commit fraud when they stop paying for Workers' Compensation Insurance or refuse to pay legitimate claims if they operate as self-insured businesses. Honest employers pay annual assessments totaling $142 million into both the Fraud Assessment Fund to assist local District Attorneys combat fraud and the UEBTF.

[…]

SB 847 would stop this 'fraud-on-fraud' scheme by adding a section to the Labor Code authorizing the Director of the Department of Industrial Relations to attach a lien to property that has been fraudulently transferred by an illegally uninsured employer."

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 Legislation:

AB 3758 (Conroy, Chapter 1226, Statutes of 1992) provided that in any case in which the findings and order, decision, or award of the appeals board is against an employer that has failed to secure the payment of compensation, the State of California on behalf of the

Uninsured Employers Fund shall be entitled to have judgment entered not only against the employer, but also against any person found to be parents or substantial shareholders of the employer.

SUPPORT

California Applicant Attorneys' Association (Sponsor)
California Chamber of Commerce

OPPOSITION

None received.

-- END --

SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Lola Smallwood-Cuevas, Chair
2025 - 2026 Regular

Bill No:	SB 590	**Hearing Date:**	April 9, 2025
Author:	Durazo		
Version:	April 03, 2025		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Alma Perez-Schwab		

SUBJECT: Paid family leave: eligibility: care for designated persons

KEY ISSUE

This bill expands, commencing on July 1, 2027, eligibility for benefits under the Paid Family Leave program to include individuals who take time off work to care for a seriously ill designated person, as defined.

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 worker 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)

This bill:

1) Commencing July 1, 2027, expands eligibility for benefits under the Paid Family Leave program to include individuals who take time off work to care for a seriously ill designated person.

2) Defines "designated person" to mean any individual related by blood or whose association with the employee is the equivalent of a family relationship.

3) Authorizes employees to identify the designated person when they file a claim for benefits.

4) Makes conforming changes to incorporate the designated person eligibility and makes other technical gender non-conforming changes to existing provisions.

COMMENTS

1. Background

Paid Family Leave Program

The State Disability Insurance 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. The SDI program is financed solely by worker contributions and covers approximately 18 million individuals across the state.

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 wage replacement benefits.

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.

According to EDD's PFL Statistical Information, for fiscal year 2023-24, there were a total of 293,203 claims paid with a total of $1,907,149,815 in benefits paid. The average weekly benefit amount was $924 for approximately 7.23 weeks. Of these, 49,496 were claims for family care and 269,739 were for bonding.[1]

The importance of the "designated person"

Existing PFL provisions define "family member" to mean a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner. This definition does not reflect the changing structure of households in California and the realities of caring for each other. According to U.S. Census Bureau data, the number of households in the United States that follow the traditional nuclear family structure with two married parents are declining, while the number of other types of households are increasing.[2]

[1] Paid Family Leave Program Statistics, California Employment Development Department, 2024. https://edd.ca.gov/siteassets/files/about_edd/quick-stats/qspfl_pfl_program_statistics.pdf

[2] https://www.census.gov/topics/families.html

The U.S. Census Bureau data shows that California has a higher percentage of multigenerational households than average. Therefore, it is not uncommon for individuals in California to be living with other relatives. According to the Pew Research Center financial issues are the top reason people live in multigenerational households with another major reason being able to give and receive care for an adult or child family member.[3] According to Pew, "Americans who are Asian, Black or Hispanic are more likely than those who are White to live in a multigenerational family household."[4] Immigrant populations are also more likely to live in multigenerational households.

Additionally, California's LGBTQ+ community is more likely to be impacted by current PFL definitions. Many LGBTQ+ adults, especially older adults, do not have any relationship with biological relatives. According to data from a study by the Center for American Progress, fewer than 1 in 3 respondents over age 55 reported that they would be likely to turn to biological or legally recognized family members for support when sick and would instead call upon a partner they were not married to, chosen family, or friends.[5] The study noted that 72 percent of respondents over age 55 reported that they had already been called upon to support friends or chosen family due to a health-related need.[6] Additionally, according to a survey by AARP, two-thirds of LGBTQ+ adults age 45 and over believe they will need someone to provide caregiving for them in the future and eight in ten say they are not sure they will have adequate family or social supports in their later years.[7]

In recognition of the uniqueness of California households, the Legislature has taken action in recent years to expand access to other protected leaves to "designated persons" identified by employees. Most recently, AB 1041 (Wicks, Chapter 748, Statutes of 2022) added a "designated person" to the list of individuals for whom an employee may take leave to care for under the California Family Rights Act (CFRA) and the Healthy Workplaces, Healthy Families Act of 2014 (Paid Sick Days). Similarly, AB 1041 authorized the employee to identify the "designated person" at the time of the request for leave. AB 1041 additionally authorized employers to limit the employee to one designated person per 12-month period.

According to information shared by the author, it appears that Colorado, Connecticut, Oregon, Maine, Minnesota, New Jersey, and Washington all have paid family and medical leave laws that allow workers to care for chosen family.

2. Need for this bill?

According to the author:

"California's Paid Family Leave program fails to meet the needs of California's diverse families. Immigrant, LGBTQ+, older and disabled Californians often rely upon chosen and

[3] *Financial Issues Top the List of Reasons U.S. Adults Live in Multigenerational Homes*, Pew Research Center (March 24, 2022) https://www.pewresearch.org/social-trends/2022/03/24/financial-issues-top-the-list-of-reasons-u-s-adults-live-in-multigenerational-homes/
[4] Pew Research Center (March 24, 2022)
[5] "*Making the Case for Chosen Family in Paid Family Leave and Medical Policies,"* Lindsey Mahowald and Diana Boesch, Center for American Progress (February 16, 2021) https://www.americanprogress.org/article/making-case-chosen-family-paid-family-medical-leave-policies/
[6] Mahowald & Boesch, Center for American Progress (February 16, 2021)
[7] "*LGBTQ Adults 45+ Are Worried About Discrimination and Support as They Age,"* Cassandra Cantave, AARP (June 2022) https://www.aarp.org/research/topics/life/info-2022/lgbtq-community-dignity-2022.html

extended family for care. Yet workers are frequently excluded from using their paid family leave insurance benefits to care for a seriously ill member of their extended or chosen family.

Low wage and immigrant workers are more likely to live in multigenerational households with extended family members than other workers. Researchers have found substantial complexity in the living arrangements of undocumented migrants, who are less likely than other groups to live in simple arrangements with partners and children and much more likely to co-reside with extended family and non-biological family members.[8]

Many LGBTQ+ adults, especially older adults, do not have accessible relationships with biological relatives. In one study, 42 percent of LGBTQ+ adults said they would depend on close friends in an emergency, compared to 25 percent of the general population.[9]

A 2021 analysis from the Census Bureau found that, 'Of the 92.2 million adults ages 55 and older in 2018, 15.2 million (16.5%) are childless.'[10] Aging adults also rely on a wide network of relationships for caregiving. Many caregivers are partners, neighbors or friends. Among Americans who provide care to an adult age 65 or older, more than 23% provide care for a friend, neighbor, or other unrelated person.[11] Among people with disabilities, 42 percent reported taking time off to care for chosen family, compared with 30 percent of people without disabilities.[12]

Most Californians cannot afford to take time off from work to care for others without paid family leave. The lack of paid family leave benefits can lead to stress, debt, and financial hardship. SB 590 will amend California's Paid Family Leave Insurance Program to allow workers to use the benefit while caring for a seriously ill member of their chosen or extended family. SB 590 will make our PFL program more equitable for LGBTQ+, immigrant and older Californians—all of whom disproportionately rely on chosen or extended family."

3. Proponent Arguments:

According to the sponsors, the CA Employment Lawyers Association, Equal Rights Advocates, Equality CA, Legal Aid at Work, the CA Work & Family Coalition, and AARP:

"Restrictive family definitions exclude members of the LGBTQ+ and immigrant communities, as well as older adults and people with disabilities. LGBTQ+ people and people with disabilities disproportionately rely on and care for chosen family. California has higher percentages of people living in multigenerational households; immigrants, people of color, and those families with financial concerns are more likely to live in multigenerational homes. In addition to trying to manage financial pressures, adults living in multigenerational homes are providing care. More than 25% of adults in multigenerational homes are providing care for another adult or for a minor child who is not theirs. There is also a significant percentage (16.5%) of older Americans who do not have children, a number that has

[8] Matthew Hall, Kelly Musick, Youngmin Yi, Living Arrangements and Household Complexity among Undocumented Immigrants, 2019.
[9] Katherine Gallagher Robins, Laura E. Durso, Frank J. Bewkes, People Need Paid Leave Policies That Cover Chosen Family - Center for American Progress, 2017.
[10] Tayelor Valerio, Rose M. Kreider and Wan He, No Kids, No Care? Childlessness Among Older Americans, United States Census Bureau, 2021.
[11] AARP & National Alliance for Caregiving, Caregiving in the United States 2020, AARP, 2020.
[12] Kali Grant, T.J. Sutcliffe, Indivar Dutta-Gupta, and Casey Goldvale, Security & Stability: Paid Family and Medical Leave and its Importance to People with Disabilities and their Families, Georgetown Center on Poverty and Inequality's Economic Security and Opportunity Initiative, 2017.

increased over the decades. It is imperative to update our definition of family to reflect the reality of working Californians.

An inclusive definition of family is also important for survivors of domestic violence. A frequent tactic in abusive relationships is to isolate the victim from family. In order to recover from and prevent future violence, survivors may need to look outside narrowly defined family relationships to chosen family members for care.

This change is not only important for workers, but small business owners in California overwhelmingly believe it is important to have access to health and family leave benefits in order to obtain financial security. According to a poll by Small Business Majority, small business owners in California support new policies to expand Paid Family Leave, including allowing an employee to take leave to care for someone who is considered family but not related by blood or marriage."

Additionally, they argue:

"SB 590 will have a miniscule impact on the Disability Insurance Fund ("Fund"). First, 75% of claims filed in 2021 were because of the claimant's own health condition, meaning that only 25% of total claims are for Paid Family Leave. Of that 25%, already a fraction of total claims, only 13.4% were to care for a seriously ill family member rather than for bonding. This means that over 86% of all Paid Family Leave claims are for bonding – which is not impacted in any way by SB 590."

4. Opponent Arguments:

None received.

5. Prior Legislation:

SB 1090 (Durazo, Chapter 876, Statutes of 2024) authorized 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. This change becomes operative when they are incorporated in EDD's integrated claims management system as part of the EDDNext Project.

AB 518 (Wicks, 2023) was nearly identical to this bill [SB 590]. That measure became a two-year bill and was gutted and amended to address another topic related to the CalFresh program in 2024.

AB 575 (Papan, 2023, Vetoed) would have made changes to the PFL program to extend eligibility to workers who need to take time off work to bond with a minor child within one year of assuming responsibilities of a child in loco parentis and delete restrictions relating to how individuals use their PFL benefits, as specified. *AB 575 was vetoed by the Governor who stated, among other things, that this bill "would create pressure on the DI Trust Fund's solvency and adequacy resulting in higher disability contributions paid by employees. In addition, it contains implementation costs not accounted for in the annual budget process."*

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

AARP (Co-Sponsor)
California Employment Lawyers Association (Co-Sponsor)
California Work & Family Coalition (Co-Sponsor)
Equality California (Co-Sponsor)
Equal Rights Advocates (Co-Sponsor)
Legal Aid at Work (Co-Sponsor)
A Better Balance
AAUW California
Access Reproductive Justice
ACLU California Action
Alzheimer's Association California
Alzheimer's Los Angeles
Alzheimer's Orange County
Alzheimer's San Diego
American College of Obstetricians & Gynecologists - District IX
Asian Americans Advancing Justice - Asian Law Caucus
Asian Americans Advancing Justice Southern California
Asian Law Alliance
Association of California Caregiver Resource Centers
Black Women for Wellness Action Project
BreastfeedLA
California Black Chamber of Commerce
California Breastfeeding Coalition
California Child Care Resource and Referral Network
California Coalition on Family Caregiving

California Commission on the Status of Women and Girls
California Domestic Workers Coalition
California Federation Business and Professional Women
California Immigrant Policy Center
California LGBTQ Health and Human Services Network
California Pan-Ethnic Health Network
California Partnership to End Domestic Violence
California Rural Legal Assistance Foundation
California WIC Association
California Women Lawyers
California Women's Law Center
Californians for Safety and Justice
CAMEO Network
Caring Across Generations
Center for Community Action and Environmental Justice
Center for Law and Social Policy (CLASP)
Central Valley Gender Health & Wellness
Centro Legal De La Raza
Child Care Law Center
Citizens for Choice
COLAGE
Consumer Attorneys of California
Courage California
Evolve California
Family Caregiver Alliance
Family Values @ Work
Family Violence Appellate Project
First 5 Association of California
First 5 California
Food Empowerment Project
Friends Committee on Legislation of California
Futures Without Violence
GRACE - End Child Poverty in California
Human Impact Partners
Instituto De Educacion Popular Del Sur De California (IDEPSCA)
Insure the Uninsured Project
Jewish Center for Justice
JTMW LLC
Justice in Aging
LA Best Babies Network
Leeza's Care Connection
Los Angeles Alliance for A New Economy
Lutheran Office of Public Policy - California
Microenterprise Collaborative of Inland Southern California
Mujeres Unidas Y Activas
National Association of Social Workers, California Chapter
National Council of Jewish Women CA
National Council of Jewish Women Los Angeles
National Domestic Workers Alliance
National Women's Political Caucus of California

Orange County Equality Coalition
Our Family Coalition
Pacific Community Ventures
Parent Voices California
Poder Latinx
Prevention Institute
Public Counsel
Reproductive Freedom for All California
Rising Communities (formerly Community Health Councils)
Sacramento LGBT Community Center
San Diego County Breastfeeding Coalition
Santa Clara County Wage Theft Coalition
Senior Services Coalition of Alameda County
Small Business Majority
Somos Familia Valle
TechEquity Action
Thai Community Development Center
The Center for Sexuality & Gender Diversity
The Gala Pride & Diversity Center
The LGBTQ Community Center of The Desert
The Restaurant Opportunity Center of The Bay
The Women's Employment Rights Clinic (WERC) At GGU
UFCW Western States Council
Warehouse Worker Resource Center
Watsonville Law Center
Women Organized to Make Abuse Nonexistent (WOMAN Inc.)
Women's Foundation California
Working Partnerships USA
Worksafe

OPPOSITION

None received.

-- END --

SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Lola Smallwood-Cuevas, Chair
2025 - 2026 Regular

Bill No:	SB 809	**Hearing Date:**	April 9, 2025
Author:	Durazo		
Version:	March 28, 2025		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Emma Bruce		

SUBJECT: Employees and independent contractors: construction trucking

KEY ISSUE

This bill promotes compliance with the ABC test in the construction trucking industry by 1) creating the Construction Trucking Employee Amnesty Program to relieve eligible construction contractors of liability for statutory or civil penalties associated with misclassification, as specified and 2) establishing the use of a "two-check" system to compensate construction drivers.

ANALYSIS

Existing law:

1) Establishes within the Department of Industrial Relations (DIR) the Division of Labor Standards Enforcement 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) 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)

3) Establishes a comprehensive set of protections for employees, including a time-sure minimum wage, meal and rest periods, workers' compensation coverage in the event of an industrial injury, sick leave, disability insurance in the event of a non-industrial disability, paid family leave, and unemployment insurance. (Labor Code §§201, 226.7, 246, 512, 1182.12, and 3600 and UI Code §§1251 and 2601)

4) Provides that for purposes of the Labor Code and the Unemployment Insurance Code, where another definition of "employee" is not otherwise specified, and for the wage orders of the Industrial Welfare Commission, a person providing labor or services for remuneration shall be considered an employee unless the hiring entity satisfies the 3-part ABC test (per *Dynamex Operations West, Inc. v. Superior Court (2018) 4 Cal.5th 903*):

    a. The person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.
    b. The person performs work that is outside the usual course of the hiring entity's business.

c. The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

(Labor Code §2775)

5) Exempts, until January 1, 2025, subcontractors providing construction trucking services for which a contractor's license is not required from the ABC test provided the following criteria are satisfied:

a. The subcontractor is a business entity formed as a sole proprietorship, partnership, limited liability company, limited liability partnership, or corporation.
b. For work performed after January 1, 2020, the subcontractor is registered with DIR as a public works contractor pursuant to Section 1725.5, regardless of whether the subcontract involves public work.
c. The subcontractor utilizes its own employees to perform the construction trucking services, unless the subcontractor is a sole proprietor who operates their own truck to perform the entire subcontract and holds a valid motor carrier permit issued by the Department of Motor Vehicles.
d. The subcontractor negotiates and contracts with, and is compensated directly by, the licensed contractor.

(Labor Code §2781)

6) Provides that until January 1, 2025, the definition of an employee as set forth in *S. G. Borello & Sons, Inc. v. Department of Industrial Relations (1989) (Borello)* shall apply to subcontractors providing construction trucking services, as long as they satisfy the requirements in 5), above. (Labor Code §2781)

7) Establishes the Motor Carrier Employer Amnesty Program to relieve a motor carrier performing drayage services from liability for statutory or civil penalties associated with the misclassification of commercial drivers if the carrier enters into a settlement agreement. Authorized, until January 1, 2017, the LC to execute a settlement agreement pursuant to the program.

This bill:

Construction Trucking Employer Amnesty Program

1) Directs the LC and EDD to administer the Construction Trucking Employer Amnesty Program (Program) pursuant to which, notwithstanding any other law, an eligible construction contractor shall be relieved of liability for statutory or civil penalties associated with the misclassification of construction drivers as independent contractors, if said contractor executes a settlement agreement with the LC where they agree to, among other things, properly classify all drivers performing construction work on their behalf as employees.

2) Authorizes the LC and EDD to share any information necessary to carry out the Program, as specified.

Definitions

3) Defines "construction contract" as a contract, whether on a lump sum, time and material, cost plus, or other basis, to do any of the following:

    a. Erect, construct, alter, or repair any building or other structure, project, development, or other improvement on or to real property.
    b. Erect, construct, alter, or repair any fixed works, including, but not limited to waterways and hydroelectric plants.
    c. Pave surfaces separately or in connection with any of the above works or projects.
    d. Furnish and install the property becoming a part of a central heating, air-conditioning, or electrical system of a building or other structure, and furnish and install wires, ducts, pipes, vents, and other conduit imbedded in or securely affixed to the land or a structure on the land.

4) Provides that a construction contract does not include either of the following:

    a. A contract for the sale, or for the sale and installation, of tangible personal property, including machinery and equipment.
    b. The furnishing of tangible personal property under what is otherwise a construction contract if the person furnishing the property is not responsible under the construction contract for the final affixation or installation of the property furnished.

5) Defines "construction contractor" as a person who agrees to perform and does perform a construction contract. This includes subcontractors and specialty contractors and those engaged in building trades. This also includes any person required to be licensed under the Contractors' State License Law and any person contracting with the federal government to perform a construction contract.

6) Defines "construction driver" as a person who operates a motor vehicle to perform construction work on behalf of a construction contractor, utilizing a vehicle owned by the driver or a vehicle supplied by the construction contractor.

7) Defines "eligible construction driver" as a construction contractor that *does not have* either of the following on the date they apply to participate in the Program:

    a. A civil lawsuit that was filed on or before December 31, 2025, pending against it in a state or federal court that alleges or involves a misclassification of a construction driver.
    b. A penalty assessed by EDD pursuant to Section 1128 of the Unemployment Insurance Code that is final imposition of that penalty.

Program Application

8) Requires a construction contractor to apply to participate in the Program by doing either of the following:

    a. Submitting an application to the LC, on a form provided by the LC. At minimum, the application must require the construction contractor to establish they qualify as an eligible construction contractor.
    b. Reporting on the results of a self-audit in accordance with the guidelines provided by the LC.

9) Requires a construction contractor that voluntarily or as a result of a final disposition in a civil proceeding reclassified its construction drivers as employees on or before January 1, 2026 to, in addition to other information requested by the LC, also submit with their application all of the following:

    a. Documentation demonstrating that the construction contractor reclassified their construction drivers as employees, including the commencement period applicable to the reclassification.
    b. The identification of each construction driver reclassified in the documents provided above, the amounts paid to each construction driver to compensate for the previous misclassification, and the time period applicable to the amount paid to each construction driver prior to reclassification.
    c. A report of a self-audit for all construction drivers reclassified by the construction contractor, identified above, and a separate self-audit report for any construction driver who is subject to reclassification, but is not identified in the documents above.

10) Requires the LC to analyze the information provided in 9), above, to evaluate the scope of a prior reclassification of an eligible construction contractor's construction drivers to employees and to determine whether the scope was sufficient to afford relief to the misclassified construction drivers.

11) Provides that a proceeding or action against a construction contractor pursuant to the Private Attorneys General Act shall not be initiated after the construction contractor has submitted an application, but may be initiated if the application is denied.

12) Provides that if the LC denies a construction contractor's application, the application or its submission is not considered an acknowledgment or admission by the construction contractor that they misclassified their construction drivers and the application or its submission shall not be construed in any way to support an evidentiary inference that the construction contractor failed to properly classify their construction drivers.

Program Settlement Agreements

13) Authorizes, before January 1, 2027, the LC, with the cooperation and consent of EDD, to negotiate and execute a settlement agreement with an eligible construction contractor that applied to participate in the Program. The Labor Commissioner shall not execute a settlement agreement on or after January 1, 2026.

14) Requires, prior to the LC executing an agreement, an eligible construction contractor to file their contribution returns and report unreported wages and taxes for the time period the construction contractor seeks relief under the settlement agreement.

15) Provides that a settlement agreement executed by the LC and an eligible construction contractor shall require an eligible construction contractor to do all of the following:

    a. Pay all wages, benefits, and taxes owed, if any, to or in relation to all of their construction drivers reclassified from independent contractors to employees for the period of time from the first date of misclassification to the date the settlement agreement is executed, but not exceeding the applicable statute of limitations.
    b. Maintain any converted construction driver positions as employee positions.

c. Consent that any future construction drivers hired to perform the same or similar duties as those employees converted pursuant to the settlement agreement shall be presumed to have employee status and that the eligible construction contractor shall have the burden to prove by clear and convincing evidence that they are not employees in any administrative or judicial proceeding in which their employment status is an issue.
d. Immediately after the execution of the settlement agreement, secure the workers' compensation coverage that is legally required for the construction drivers who were reclassified as employees, effective on or before the date the settlement agreement is executed.
e. Provide the LC and EDD with proof of workers' compensation insurance coverage within five days of securing the coverage.
f. Pay authorized costs, if required.
g. Perform any other requirements or provisions the LC and EDD deem necessary to carry out the intent of these provisions, the Program, or to enforce the settlement agreement.

16) Provides that a settlement agreement may require an eligible construction contractor to pay the reasonable, actual costs of the LC and EDD for their respective review, approval, and compliance monitoring of the settlement agreement. The costs shall be deposited into the Labor Enforcement and Compliance Fund. The portion of the costs attributable to EDD shall be transferred to EDD upon appropriation by the Legislature.

17) Provides that a settlement agreement may include provisions for an eligible construction contractor to make installment payments in lieu of a full payment. An installment payment agreement shall be included within the settlement agreement and charge interest on the outstanding amounts due, as specified. If a construction contractor fails, without good cause, to fully comply with the installment payments, the settlement agreement shall be null and void and the total amount of tax, interest, and penalties for the time period covered by the settlement agreement shall be immediately due and payable.

18) Provides that notwithstanding any other law and pursuant to the Program, an eligible construction contractor that executed and performed their obligations pursuant to a settlement agreement shall not be liable, and the LC or EDD shall not enforce, any civil or statutory penalties, as specified, that might have become due and payable for the time period covered by the settlement agreement, except for the following penalties:

a. A penalty charged under Section 1128 of the Unemployment Insurance Code that is final on the date of the settlement agreement is executed, unless the penalty is reversed by the California Unemployment Insurance Appeals Board.
b. A penalty for an amount an eligible construction contractor admitted was based on fraud or made with the intent to evade the reporting requirements set forth in Division 3 of the Labor Code or authorized regulations.
c. A penalty based on a violation of Division 3 of the Labor Code or Division 6 of the Unemployment Insurance Code and either of the following:
    i. The eligible construction contractor was on notice of a criminal investigation due to a complaint having been filed or by written notice having been mailed to the eligible construction contractor informing the construction contractor that they are under criminal investigation.
    ii. A criminal court proceeding has already been initiated against the eligible construction contractor.

19) Provides that, notwithstanding any other law and pursuant to the Program, an eligible construction contractor that executed and performed their obligations pursuant to a settlement agreement shall not be liable, and the LC or EDD shall not enforce, any unpaid penalties, and interest owed on unpaid penalties, on or before the date the settlement agreement was executed, pursuant to Sections 1112.5, 1126, and 1127 of the Unemployment Insurance Code for the tax reporting periods for which the settlement agreement is applicable, except as specified.

20) Prohibits a refund or credit for any penalty or interest paid prior to the date an eligible construction contractor applied to participate in the Program.

21) Provides that except for violations described in Section 2119 of the Unemployment Insurance Code, EDD shall not bring a criminal action for failing to report tax liabilities against an eligible construction contractor that executed and performed their obligations pursuant to a settlement agreement.

22) Provides that the statute of limitations on any claim or liability that might have been asserted against a construction contractor based on having misclassified a construction driver shall be tolled from the date a construction contractor applies for participation in the Program through the date the LC either denies the application or the construction contractor fails to perform an obligation under the settlement agreement, whichever is later.

23) Provides that the recovery obtained by the LC on behalf of a reclassified construction driver pursuant to a settlement agreement shall be tendered to the construction driver on the condition that they execute a release of all claims they may have against the eligible construction contractor based on misclassification.

24) Provides that a construction driver is not under any obligation to accept the terms of a settlement agreement. If a construction driver declines to accept the terms, they shall not be bound by the settlement agreement, except that the eligible construction contractor shall still reclassify the driver and that construction driver shall be precluded from pursuing a claim for civil penalties or statutory penalties, as specified. If a construction driver does not accept the terms of a settlement agreement, the construction contractor is excused from performing their requirement under the settlement agreement to pay the amount acknowledged to be due to that construction driver.

25) Authorizes the LC to file a civil action to enforce a settlement agreement, as specified.

Two-Check System

26) Provides that mere ownership of a vehicle, including a personal vehicle or a commercial vehicle, used by a person in providing labor or services for remuneration does not make that person an independent contractor. A person who owns a vehicle they use to provide labor or services either as an individual or through a business entity they own, may be either an employee or an independent contractor depending on whether they satisfy the ABC test.

27) Provides that if the ABC test is not satisfied the owner of the vehicle is an employee and shall be reimbursed for use of the vehicle, as specified.

28) Provides that with respect to construction trucking, a commercial motor vehicle driver who owns the truck, tractor, trailer, or other commercial vehicle that they use in the discharge of their duties as an employee working for an employer is entitled to reimbursement for the use, upkeep, and depreciation of that truck, tractor, trailer, or other commercial vehicle.

29) Provides that the amount to be reimbursed shall be negotiated either by the driver and the employer, or by a labor union representing that driver and the employer. The amount negotiated shall be either a flat rate reimbursement or a per-mile reimbursement, but in no case shall the amount negotiated be less than the actual amount expended by the driver or less than the standard mileage reimbursement rate set by Internal Revenue Service for the time the services were provided.

30) Provides that an amount owed to a driver may be paid directly to the driver in their name, or may be paid to a corporate entity owned and controlled by the driver if the truck, tractor, or trailer is owned by the corporate entity rather than by the driver directly.

COMMENTS

1. Background:

Dynamex and AB 5

Within the Labor Code, the employer-employee relationship is essential when determining which rights and obligations are applicable in a given situation. California's wage and hour laws (e.g., minimum wage, overtime, and meal and rest breaks), workplace safety laws, and retaliation laws protect employees, but not independent contractors. Additionally, employees can go to state agencies such as the LC's Office to seek enforcement of these laws, whereas independent contractors must resolve their conflicts or enforce their contract through other means.

Employers lawfully using the independent contractor model trade control over working conditions, like worker supervision and availability, in exchange for being released from many of the primary obligations of being an employer. This includes paying overtime, remitting payroll taxes, securing workers' compensation coverage, and ensuring a healthy and safe work environment. Unfortunately, this model creates incentives for employers to misclassify employees as independent contractors. On average, the state and federal government lose at least $3,000 in annual revenues for every misclassified employee.[1] Misclassification deprives workers of their rights and livelihoods, reduces state revenue, and disadvantages law-abiding employers who have to compete with bad actors.

Disputes over worker misclassification culminated in a 2018 California Supreme Court decision, *Dynamex Operations West, Inc. v. Superior Court (2018) 4 Cal.5th 903*. Under *Dynamex*, a worker is considered an employee and not an independent contractor, unless the hiring entity satisfies all three of the following conditions (ABC test):

[1] Sara Hinkley, Annette Bernhardt, and Sarah Thomason, "Race to the Bottom: How Low-Road Subcontracting Affects Working Conditions in California's Property Services Industry" (Center for Labor Research and Education, University of California, Berkeley, March 8, 2016), http://irle.berkeley.edu/race-to-the-bottom-how-low-road-subcontracting-affects-working-conditions-in-californias-property-services-industry/.

(A) The worker is free from the control and direction of the hirer in connection with the performance of the work, both under the contract for the performance of such work and in fact;
(B) The worker performs work that is outside the usual course of the hiring entity's business; and
(C) The worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed for the hiring entity.

In 2019, AB 5 (Gonzalez, 2019) codified the *Dynamex* decision, by requiring the application of the ABC test to determine if workers in California are employees or independent contractors for purposes of the Labor Code, the Unemployment Insurance Code, and the Industrial Welfare Commission wage orders. AB 5 also provided specified industrial categories where the long-standing *Borello* test would remain the standard for determining who is an employee. Under *Borello,* the California Supreme Court created an 11 point "economic realities" test to determine whether someone could lawfully be considered an independent contractor.

Despite numerous legal challenges, including two opportunities for the Supreme Court to weigh in, AB 5 remains state law.

Construction Trucking

Construction truckers drive a large variety of construction equipment including tractor-trailers, flatbeds, mixer-trucks, dump trucks, fuel trucks, and water trucks. Many of these workers own the vehicle they use for their job. Up until January 1, 2025, subcontractors providing construction trucking services for which a contractor's license is not required were exempt from the ABC test. That exemption has since expired, requiring the entire construction industry to comply with AB 5 and classify their drivers appropriately.

SB 809 would create the Program to relieve an eligible construction contractor of liability for statutory or civil penalties associated with the misclassification of construction drivers, if the contractor executes a settlement agreement with the LC where among other things, they agree to:

- Pay all wages, benefits, and taxes owed in relation to the reclassification of drivers for the period of time from the first date of misclassification to the date the settlement agreement is executed.
- Maintain any converted driver positions as employee positions.
- Secure workers' compensation coverage.

Construction contractors that apply for the Program would have an opportunity to reclassify their drivers, without having to worry about statutory and civil penalties.

The Program proposed by SB 809 is nearly identical to the Motor Carrier Employer Amnesty Program established to address the misclassification of commercial drivers in the port drayage industry. The Motor Carrier Amnesty Program was authorized to execute settlement agreements from January 1, 2016 until January 1, 2017.

SB 809 would also establish a "two-check" system to pay newly reclassified construction truckers who own their own vehicle.

Two-Check System

Owning a vehicle used to provide labor or services, does not make a person an independent contractor. Legitimate independent contractors have to satisfy the ABC test, regardless of whether they own the vehicle or the tools they use in the course of employment. As mentioned above, SB 809 would establish the use of a "two-check" system to pay construction drivers who own the vehicle they use in the discharge of their duties. Under this system, construction contractors pay construction drivers with two separate checks. One check is to employ the driver and the other is for the use, upkeep, and depreciation of the driver's vehicle. SB 809 would require either the driver and the employer, or a labor union representing that driver and the employer, to negotiate the reimbursement amount, as specified. Finally, the bill would also require reimbursement whether the vehicle is owned by the driver as an individual or whether the vehicle is owned by the driver through a corporate entity.

2. Committee Comment:

The bill in print contains a drafting error that prohibits the LC from executing a settlement agreement. Specifically, the bill directs the LC to execute agreements before January 1, 2027, but it also prohibits the LC from executing an agreement on or after January 1, 2026 (§2750.9(e)). Due to the double referral and tight timeline, the author will address this issue in Senate Judiciary Committee.

3. Need for this bill?

According to the author:

"SB 809 provides legal amnesty to construction industry employers who have misclassified truck-owner drivers as independent contractors. The bill encourages these employers to reclassify drivers as employees and properly compensate them for their labor and the use of their equipment under the "two-check" system. This system ensures that drivers are paid for their work and reimbursed for expenses related to their trucks, such as fuel, maintenance, and insurance."

4. Proponent Arguments:

According to the sponsors of the measure, the California Teamsters:

"SB 809 would provide legal amnesty to construction industry employers who use misclassified drivers-provided the employers opt into using a 'two-check' system for compensation of construction drivers.

The two-check system is a payment model in the trucking industry that ensures truck drivers are properly classified as employees rather than independent contractors. Under this system, trucking companies pay drivers with two separate checks: one check for their labor and one check for use of their commercial vehicle-this compensates drivers for their time, ensuring

they receive at least minimum wage, overtime pay, and benefits, as well as expenses related to the truck, such as fuel, maintenance, and insurance.

Trucking companies, trucking brokers, and contractors often misclassify drivers as independent contractors, forcing them to cover all operating expenses while depriving them of employee protections like overtime pay, workers' compensation, unemployment benefits, and the right to unionize. The two-check system corrects this by clearly separating wages from expenses, making it easier to establish that drivers are employees. At the same time, these drivers, who have often made enormous personal investments in purchasing their vehicles, are separately compensated for the use of their equipment.

The two-check system challenges the exploitative 'lease-to-own' or 'owner-operator' models that leave many truckers in financial hardship. By making the distinction between wages and expenses transparent, it strengthens enforcement of labor laws, preventing companies from disguising employment relationships to cut costs at workers' expense. Put simply-this important bill will help eliminate the misclassification of drivers in the construction industry."

5. Opponent Arguments:

The Western States Trucking Association opposes the measure, arguing that SB 809 will erode the ability for owner-operator trucking businesses to operate in California.

"Independent contractor owner-operators have been the backbone of the trucking industry for more than 75 years and have dutifully served a critical role in the transportation of goods that Americans continue to utilize on a daily basis throughout the country. WSTA's owner-operators are fiercely protective of their independent contractor status, as the independent contractor model provides many unique advantages to them in the workforce, including increased entrepreneurial opportunities and earnings, as well as a more flexible work schedule. For a hiring entity, the ability to hire an owner-operator to provide specialized skills or fulfill an urgent demand on a short-term or emergency project that simply exceeds the abilities of its employee workforce, is critical. And for customers – both government or private – legitimate independent contractors play an invaluable role in delivering projects safely, on time, and on budget.

Unfortunately, California continues to enact laws and regulations that thwart the ability for independent contractor owner-operators to be utilized, including with AB 5 (2019) and now with SB 809. Recognizing that the rigid ABC test was ill-fitting for much of today's workforce, in particular owner-operator trucking companies working in the construction industry, the Legislature included within AB 5 a provision allowing subcontractors providing construction trucking services to instead continue to utilize the multi-factor approach found in the Borello test. While sensible in theory, this carveout proved too narrow and unworkable in practice, and was ultimately allowed to sunset on December 31, 2024…

Instead of creating further obstacles to cost-effective construction, like with SB 809, the Legislature should focus its efforts on crafting a workable construction trucking carveout to the ABC test, which actually facilitates the use of legitimate owner-operators instead of abolishing them."

6. 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.

7. Prior Legislation:

AB 1561 (Committee on Labor and Employment, Chapter 422, Statutes of 2021) extended the sunset dates on the exemptions granted to licensed manicurists and construction trucking subcontractors under AB 5 (Gonzalez, Chapter 296, Statutes of 2019) to January 1, 2025, providing each industry three more years to determine compliance.

AB 2257 (Gonzalez, Chapter 38, Statutes of 2020) recast and clarified the business-to-business referral agency, and professional services exemption to the 3-part ABC test for employment status and exempted additional occupations and business relationships.

AB 5 (Gonzalez, Chapter 296, Statutes of 2019) codified the decision of the California Supreme Court in *Dynamex Operations West, Inc. v. Superior Court of Los Angeles* (2018) requiring that employers prove that their workers can meet a 3 part (ABC) test in order to be lawfully classified as independent contractors, and exempted from the test certain professions and business-to-business relationships.

AB 621 (Hernández, Chapter 741, Statutes of 2015) created the Motor Carrier Employer Amnesty Program for port drayage companies that voluntarily execute a settlement agreement with the LC related to misclassification of employees. *The Program created through this bill is nearly identical to the one proposed in SB 809.*

SUPPORT

California Teamsters (Sponsor)
California Federation of Labor Unions
State Building and Construction Trades Council

OPPOSITION

Western States Trucking Association

-- END --

SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Lola Smallwood-Cuevas, Chair
2025 - 2026 Regular

Bill No:	SB 597	**Hearing Date:**	April 9, 2025
Author:	Cortese		
Version:	March 28, 2025		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Emma Bruce		

SUBJECT: Labor-related liabilities: direct contractor and subcontractor

KEY ISSUE

This bill provides a labor trust fund standing to enforce a mechanics lien against a direct contractor for unpaid contributions owed to workers where a subcontractor did not fulfill their obligations.

ANALYSIS

Existing federal law:

1) Establishes, under the Employee Retirement Income Security Act of 1974 (ERISA), minimum standards for most voluntarily established retirement and health plans offered by private-sector employers to protect the rights of plan participants and beneficiaries. (29 U.S.C. §1001-1461)

2) Provides that every employer who is obligated to make contributions to a multiemployer plan under the terms of the plan or under the terms of a collectively bargained agreement shall, to the extent not inconsistent with law, make such contributions in accordance with the terms and conditions of such plan or such agreement. (29 U.S.C. §1145)

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, for contracts entered into on or after January 1, 2022, a direct contractor making or taking a contract in the state for the erection, construction, alteration, or repair of a building, structure, or other private work, to assume, and be liable for, any debt owed to a wage claimant or third party on the wage claimant's behalf, incurred by a subcontractor at any tier acting under, by, or for the direct contractor for the wage claimant's performance of labor included in the subject of the contract between the direct contractor and the owner. (Labor Code §218(a)(1))

3) Extends the direct contractor's liability to penalties, liquidated damages, and interest owed by the subcontractor on account of the performance of the labor covered by the contract, unless specified requirements are met. (Labor Code §218.8(a)(2))

4) Provides that, if a worker employed by a subcontractor on a private construction project is not paid the wage, fringe or other benefit payment or contribution owed by the subcontractor, the direct contractor of the project is not liable for any associated penalties or liquidated damages unless 1) the direct contractor had knowledge of the subcontractor's failure to pay the specified wage, fringe or other benefit payment or contribution, or 2) the direct contractor fails to comply with all of the following requirements:

   a. The contractor must monitor the payment by the subcontractor of wage, fringe or other benefit payment or contribution to the employees or the labor trust fund, by periodic review of the subcontractor's payroll records, as specified.
   b. Upon becoming aware of the failure of the subcontractor to pay wages, the contractor must diligently take corrective action to halt or rectify the failure.
   c. Prior to making final payment to the subcontractor, the contractor must obtain an affidavit from the subcontractor affirming that all workers have been properly paid. (Labor Code §218.8(a)(3))

5) Provides that 2) through 4), above, do not prohibit a direct contractor or subcontractor at any tier from establishing by contract or enforcing any otherwise lawful remedies against a subcontractor it hires for liability created by the nonpayment of wages, fringe or other benefit payments, or contributions by that subcontractor or by a subcontractor at any tier working under that subcontractor, including liability for associated penalties and liquidated damages. (Labor Code §218.8(a)(5))

6) Authorizes the LC to enforce against a direct contractor the liability for unpaid wages, liquidated damages, interest, and penalties created by 2) through 4), above, as specified. (Labor Code §218.8(b)(1))

7) Authorizes a third party owed fringe or other benefit payments or contributions on a wage claimant's behalf to bring a civil action against a direct contractor to enforce the liability for any unpaid wage, fringe or other benefit payment or contribution, penalties or liquidated damages, and interest owed by the subcontractor on account of the performance of the labor pursuant to 2) through 4), above. (Labor Code §218.8(b)(2))

8) Authorizes a Joint Labor-Management Committee (JLMC) established pursuant to the federal Labor Management Cooperation Act of 1978 to bring an action in any court of competent jurisdiction against a direct contractor or subcontractor at any tier to enforce liability for any unpaid wage, fringe or other benefit payment or contribution, penalties or liquidated damages, and interest owed by the subcontractor on account of the performance of the labor on a private work pursuant to 2) through 4), above. (Labor Code §218.8(b)(3))

9) Provides that, for purposes of Division 4, Part 6 of the Civil Code (commencing with Section 8000), "laborer" includes a person or entity to which a portion of a laborer's compensation for a work of improvement, including, but not limited to, employer payments described in Section 1773.1 of the Labor Code and implementing regulations, is paid by agreement with that laborer or the collective bargaining agent of that laborer. (Civil Code §8024(b))

10) Provides that a person or entity described in 9), above, that has standing under applicable law to maintain a direct legal action, in its own name or as an assignee, to collect any portion of compensation owed for a laborer for a work of improvement, shall have standing to enforce any rights or claims of the laborer under Part 6 of the Civil Code, to the extent of the

compensation agreed to be paid to the person or entity for labor on that improvement. (Civil Code §8024(c))

11) Defines "per diem wages," for purposes of any statute applicable to public works, as employer payments for, among other things:

    a. Health and welfare.
    b. Pension.
    c. Subsistence.
    d. Industry advancement and collective bargaining agreements administrative fees, provided that these payments are made pursuant to a collective bargaining agreement to which the employer is obligated.

    Specifies that employer payments include the rate of contribution irrevocably made by the employer to a trustee or third person pursuant to a plan, fund, or program. (Labor Code §1773.1)

12) Authorizes a direct contractor, subcontractor, or laborer to file a mechanic's lien to enforce a claim of wages, including fringe benefits, as specified. (Civil Code §§8400, 8416, and 8430)

This bill:

1) Except as specified below, maintains the language used to establish and enforce direct contractor liability in Section 218.8 of the Labor Code.

2) Requires for contracts entered into on or after January 1, 2026, a direct contractor making or taking a contract in the state for the erection, construction, alteration, or repair of a building, structure, or other private work, to assume, and be liable for, any indebtedness for the performance of labor described in subdivision (b) of Section 8024 of the Civil Code, incurred by a subcontractor at any tier acting under, by, or for the direct contractor included in the subject of the contract between the direct contractor and the owner.

3) Provides that the direct contractor's liability under these provisions is limited to payments for labor required by the subcontractor's agreement with the laborer or the subcontractor's collective bargaining agreement with the labor organization representing the laborer.

4) Provides that these provisions do not prohibit a direct contractor or subcontractor at any tier from establishing by contract or enforcing any otherwise lawful remedies against a subcontractor it hires for liability created by any indebtedness for labor by that subcontractor or by a subcontractor at any tier working under that subcontractor, including liability for associated penalties and liquidated damages.

5) Authorizes a person or entity described in subdivision (c) of Section 8024 of the Civil Code to bring a civil action against a direct contractor to enforce the liability for any unpaid wage, fringe or other benefit payment or contribution, penalties or liquidated damages, and interest owed by the subcontractor on account of the performance of the labor pursuant to 2), above.

6) Provides that an action pursuant to these provisions shall not be based on the employer's misclassification of the craft of a worker.

7) Provides that the remedies created by these provisions are cumulative of any other available remedies.

8) Provides that a direct contractor shall not be held liable to the extent that the direct contractor has made a payment in compliance with all of the following:

   a. The direct contractor makes a payment using a joint check made payable to the subcontractor and the trust, plan, fund, or program for any fringe or other benefit payment or contribution.
   b. The subcontractor provides the name, type, number, and address of the trust, plan, fund, or program to the direct contractor.
   c. The direct contractor notifies the trust, plan, fund, or program that it has paid the subcontractor with a joint check.

9) Defines, for purposes of these provisions, "direct contractor" as a contractor that has a direct contractual relationship with an owner or any other person or entity engaging contractors or subcontractors for the erection, construction, alteration, or repair of a building, structure, or other private work on behalf of the owner.

COMMENTS

1. Background:

Joint Liability: AB 1701 (Thurmond, 2017) and SB 727 (Levya, 2021)

Although California leads the nation with some of the strongest workplace protections, wage theft remains rampant. Every year, tens of thousands of workers lose millions of dollars in stolen wages.[1] California consistently struggles with enforcement. Wage theft is particularly rampant in the construction industry. In 2021, the Wage Claim Adjudication Unit of the LCO found that the construction industry was one of the top three industries with the highest number of wage claims.[2] To address this issue, the Legislature approved several bills aimed at increasing the enforcement of labor laws.

In 2017, the Legislature approved AB 1701 (Thurmond) establishing that a direct contractor on a private construction project is jointly liable with a subcontractor for any wages, fringe benefits, and labor trust fund contributions owed to any worker on its project. The bill also authorized the LCO, a JLMC, or a third party owed fringe or other benefit payments or contributions on a wage claimant's behalf to bring an action to enforce this liability. The passage of AB 1701 created a clear financial incentive for direct contractors to work with reputable subcontractors.

In 2021, the Legislature extended the liability created by AB 1701 to include statutory penalties and liquidated damages associated with wages, fringe benefits, and contributions that go unpaid by subcontractors (SB 727, Leyva). SB 727 also established a mechanism for

[1] Auditor of the State of California, "The California Labor Commissioner's Office: Inadequate Staffing and Poor Oversight Have Weakened Protections for Workers," Report 2023-104 , May 2024, https://www.auditor.ca.gov/wp-content/uploads/2024/05/2023-104-Report.pdf

[2] Wage Claims Adjudication Unit, "Annual Report Pursuant to Labor Code Section 96.1, Calendar Year 2021," California Labor Commissioner's Office, https://www.dir.ca.gov/DLSE/Labor-Code-Section-96.1-2021.pdf

direct contractors to avoid liability for penalties and liquidated damages if they comply with specified requirements.

Labor Trust Funds/ Multiemployer Plans

A labor trust fund, also referred to as a multiemployer plan or a Taft-Hartley plan, is a collectively bargained pension, health, or welfare benefit plan maintained by a labor union and more than one employer, usually within the same or related industries. Across the country, there are about 1400 multiemployer pension plans, covering about 10 million people.[3] Multiemployer plans are particularly popular in the construction industry, because they offer flexibility, allowing participants to switch employment from one contributing employer to another within the same plan. Federal law, under ERISA, sets minimum standards for multiemployer plans, to protect plan participants and beneficiaries. Most multiemployer plans are jointly administered and governed by a board of trustees, with labor and management equally represented. In multiemployer plans, the employer's contribution is typically set by a collective bargaining agreement that specifies a contribution formula. If an employer fails to contribute to the plan as required, ERISA permits the plan to sue and obtain the contribution plus interest, liquidated damages, court costs, and reasonable attorney fees.

AB 1701 and SB 727 authorized a labor trust fund to bring an action against a direct contractor to recover unpaid fringe benefit contributions owed by a subcontractor (Labor Code §218.8(b)(2)).

2024 Santa Clara Superior Court Ruling

A 2024 ruling by the Santa Clara Superior Court found that portions of Section 218.8 of the Labor Code, established by AB 1701 and SB 727, are preempted by ERISA. Specifically, the ruling limits the ability of a labor trust fund to bring an action against a direct contractor for unpaid fringe benefits owed by a subcontractor. The Superior Court found that the trust fund sought to enforce provisions of an ERISA-based benefit plan against non-signatory, non-employer third parties, via state law, thereby expanding liability to additional parties who would not be required to contribute under ERISA.

The ruling has limited the ability for labor trust funds to recover unpaid benefit contributions, as originally intended in Section 218.8 of the Labor Code.

What is a mechanics lien?

A mechanics lien is a legal claim against, or security interest in, a property filed by an unpaid contractor, subcontractor, laborer, or material supplier. The California Constitution and Civil Code specify the procedure for filing a mechanics lien. If a direct contractor fails to pay subcontractors, laborers, or material suppliers, the homeowner is ultimately responsible for the payment, even if they already paid the direct contractor. A lien can result in a range of problems, including foreclosure, double payment for the same job, and an unresolved issue on a property's title, which can affect a homeowner's ability to borrow against, refinance, or sell the property.

[3] Introduction to Multiemployer Plans, Pension Benefit Guarantee Corporation, A U.S. Government Agency, Introduction to Multiemployer Plans | Pension Benefit Guaranty Corporation

2. Comments:

In response to the above-mentioned Santa Clara Superior Court decision, SB 597 would amend provisions of the Labor Code that authorize a third party owed fringe or other benefit payments or contributions on a wage claimant's behalf (in this case a labor trust fund) so that the statute's language conforms to mechanics lien law. Thus far, courts have ruled that mechanics lien law is not preempted by ERISA. This change in language would provide a labor trust fund standing to enforce a mechanics lien against a direct contractor to recover unpaid benefit contributions owed by a subcontractor.

SB 597 would also create a "safe harbor" provision by which a direct contractor can avoid liability for any indebtedness for the performance of labor described in subdivision (b) of Section 8024 of the Civil Code, incurred by a subcontractor at any tier acting under, by, or for the direct contractor, as specified. Specifically, SB 597 would provide that a direct contractor shall not be held liable to the extent that the direct contractor has made a payment in compliance with all of the following:

a. The direct contractor makes a payment using a joint check made payable to the subcontractor and the trust, plan, fund, or program for any fringe or other benefit payment or contribution.
b. The subcontractor provides the name, type, number, and address of the trust, plan, fund, or program to the direct contractor.
c. The direct contractor notifies the trust, plan, fund, or program that it has paid the subcontractor with a joint check.

This committee's remit is to protect and improve the health, safety, and economic well-being of workers. Generally, the committee supports efforts to ensure that workers receive the wages owed to them. Any commentary on the exact legal processes proposed by SB 597 to prevent preemption by ERISA and enable labor trust funds to recover unpaid benefit contributions is best discussed in Judiciary Committee.

3. Need for this bill?

According to the author:

"This bill clarifies the statutory remedy against general contractors to eliminate any ERISA preemption concerns that were raised as a result of the Santa Clara Superior Court ruling in 2024. This clarification is needed to maintain this remedy as an effective tool to recover amounts owed for work performed on construction projects and incentivize general contractors to monitor their subcontractors' compliance with their legal and contractual payment obligations. The bill uses language from the mechanics lien law that courts have ruled is not preempted by ERISA.

In addition, this bill clarifies that the remedy is available against direct contractors, i.e., prime contractors retained by a property owner to engage other contractors or subcontractors for a project, as well as any other person or entity that engages contractors or subcontractors for a project. This provision is intended to ensure that property owners, developers, and general contractors do not engage in subterfuge to avoid liability for amounts owed in connection with work performed on private construction projects.

The bill also clarifies that the remedy against general contractors is not available in actions based on the misclassification of construction workers, using the same language that applies to certain remedies under the Prevailing Wage Law. This provision is intended to limit the remedy to the enforcement of preexisting contractual rights to payment for labor on construction projects."

4. Proponent Arguments:

According to the sponsors of the measure, The Western States Council of Sheet Metal Workers:

"Under current law, direct contractors are liable for unpaid wages and benefits owed by subcontractors on private construction projects. However, a 2024 ruling by the Santa Clara Superior Court found that portions of existing law were preempted by the Employee Retirement Income Security Act (ERISA), undermining the ability of trust funds to recover unpaid benefit contributions. This decision has created uncertainty and weakened protections for workers in the construction industry.

SB 597 addresses this issue by modifying the statutory remedy against general contractors to ensure it remains enforceable and effective. The bill conforms its language to California's existing mechanics lien law, which courts have ruled is not preempted by ERISA, thereby preserving the ability of workers and trust funds to recover compensation owed for work performed. Additionally, the bill clarifies that direct contractor liability applies to any entity engaging contractors or subcontractors for a project, preventing efforts to evade accountability.

By reinforcing the responsibility of general contractors, SB 597 incentivizes greater oversight of subcontractors' compliance with wage and benefit obligations, reducing the risk of wage theft and ensuring that workers receive the compensation they have rightfully earned. Furthermore, this bill will help maintain a level playing field for responsible contractors who adhere to fair labor standards, promoting integrity and accountability within the construction industry."

5. Opponent Arguments:

None received.

6. 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.

7. Prior Legislation:

AB 2696 (Rendon, Chapter 734, Statutes of 2024) authorized a JLMC to bring an action in court against a direct contractor for any unpaid wage, fringe or other benefit payment or contribution, penalties or liquidated damages, and interest owed to a wage claimant by the direct contractor for the performance of private work.

SB 727 (Leyva, Chapter 338, Statutes of 2021) extended direct contractor liability to penalties, liquidated damages, and interest owed to a subcontractor's employees for the performance of a private work and established specified safe harbor provisions.

AB 1701 (Thurmond, Chapter 804, Statutes of 2017) established direct contractor liability for the wages, fringe benefits, or contributions of all workers on a private construction project, in the event that the subcontractor directly employing the workers fails to pay them.

AB 1897 (Hernández, Ch. 728, Statutes of 2014) required a client employer, defined as "a business entity that obtains or is provided workers to perform labor within the usual course of business from a labor contractor" to share with a labor contractor all civil legal responsibility and civil liability for all workers supplied by that labor contractor for the payment of wages and the failure to obtain valid workers' compensation coverage.

AB 2288 (Cedillo, 2012) would have extended liability for unpaid wages, fringe benefits, and contributions to direct contractors, similar to SB 727 (Leyva, 2021). *This bill died in the Assembly Labor and Employment Committee.*

SUPPORT

Western States Council of Sheet Metal Workers (Sponsor)
California Federation of Labor Unions
California State Association of Electrical Workers
California State Pipe Trades Council
District Council of Iron Workers of the State of California and Vicinity
International Union of Painters and Allied Trades, District Council 16
International Union of Painters and Allied Trades, District Council 36

OPPOSITION

None received.

-- END --

SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Lola Smallwood-Cuevas, Chair
2025 - 2026 Regular

Bill No:	SB 600	**Hearing Date:**	April 9, 2025
Author:	Cortese		
Version:	February 20, 2025		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Glenn Miles		

SUBJECT: Public Employment Relations Board: powers and duties

KEY ISSUE

This bill authorizes the Public Employment Relations Board (PERB) to conduct employer-employee relations studies concerning the impact on public employees of net-zero carbon emissions initiatives, including collecting, analyzing, and making available related data.

ANALYSIS

Existing law:

1) Establishes the Public Employment Relations Board (PERB) to administer several statutory frameworks that provide collective bargaining rights to public employees and to adjudicate disputes between public employers and public employee unions regarding the terms and enforcement of their collective bargaining agreements. (Government Code §3541 et seq.)

2) Authorizes PERB, within its discretion, to conduct studies relating to employer-employee relations, including the collection, analysis, and making available of data relating to wages, benefits, and employment practices in public and private employment, and, when it appears necessary in its judgment to the accomplishment of the purposes of this chapter, recommend legislation. (Government Code §3541.3 (f))

3) Requires PERB to report to the Legislature by October 15 of each year on its activities during the immediately preceding fiscal year. (Government Code §3541.3 (f))

4) Authorizes PERB to enter into contracts to develop and maintain research and training programs designed to assist public employers and employee organizations in the discharge of their mutual responsibilities under this chapter. (Government Code §3541.3 (f))

This bill:

1) Authorizes the Public Employment Relations Board (PERB) to conduct employer-employee relations studies concerning the impact on public employees of net-zero carbon emissions initiatives, including collecting, analyzing, and making available related data.

COMMENTS

1. Need for this bill?

According to the author:

"The state's focus on critical climate first policies to move California to a green, carbon free economy also creates challenges to traditional public employer operations and potentially disrupts their long-standing labor relations with their public employees.

In order to ensure that public sector climate adaption occurs in coordination with the state's existing public labor relations framework, and to avoid unproductive conflict, it is necessary to understand how new climate initiatives will affect public sector work."

2. Proponent Arguments

According to the author,

"Clarifying that PERB's authority encompasses issues related to public sector climate adaption will help ensure that climate first initiatives prove successful."

3. Opponent Arguments:

None received.

4. Prior Legislation:

SB 334 (Cortese, 2023) was identical to this bill. *The bill died in Senate Appropriations Committee.*

SUPPORT

None received.

OPPOSITION

None received.

-- END --

SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Lola Smallwood-Cuevas, Chair
2025 - 2026 Regular

Bill No:	SB 648	**Hearing Date:**	April 9, 2025
Author:	Smallwood-Cuevas		
Version:	February 20, 2025		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Alma Perez-Schwab		

SUBJECT: Employment: gratuities: enforcement

KEY ISSUE

This bill authorizes the Labor Commissioner to investigate and issue a citation or file a civil action to recover gratuities taken or withheld from workers in violation of existing law.

ANALYSIS

Existing law:

1) 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)

2) Establishes within 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. (Labor Code §79-107)

3) Requires the LC and authorized deputies and representatives, upon the filing of a claim by an employee as specified, to, among other things, take assignments of wage claims including claims for loss of wages, as specified, and establishes a citation process for violations. (Labor Code §96 & §1197.1 et seq.)

4) 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 deduct any amount from wages due an employee on account of a gratuity, or require an employee to credit the amount, or any part thereof, of a gratuity against and as a part of the wages due the employee from the employer. (Labor Code §351)

5) Defines "gratuity" to include any tip, gratuity, money, or part thereof that has been paid or given to or left for an employee by a patron of a business over and above the actual amount due the business for services rendered or for goods, food, drink, or articles sold or served to the patron. Any amounts paid directly by a patron to a dancer employed by an employer subject to Industrial Welfare Commission Order No. 5 or 10 shall be deemed a gratuity. (Labor Code §350)

6) Declares every gratuity to be the sole property of the employee or employees to whom it was paid, given, or left for. (Labor Code §351)

7) Requires an employer that permits patrons to pay gratuities by credit card to pay the employees the full amount of the gratuity that the patron 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. (Labor Code §351)

8) Requires payment of gratuities made by patrons using credit cards to be made to the employees no later than the next regular payday following the date the patron authorized the credit card payment. (Labor Code §351)

9) Makes any employer who violates these gratuities provisions guilty of a misdemeanor, punishable by a fine not to exceed one thousand dollars ($1,000) or by imprisonment for not exceeding 60 days, or both. (Labor Code §354)

10) Requires DIR to enforce these provisions and directs all fines collected to be paid into the State treasury and credited to the general fund. (Labor Code §355)

This bill:

1) Authorizes the Labor Commissioner to investigate and issue a citation or file a civil action for gratuities taken or withheld in violation of existing gratuities provisions.

2) Specifies that if a citation is issued, the procedures for issuing, contesting, and enforcing judgments for citations and civil penalties issued by the Labor Commissioner shall be the same as those set out in existing Labor Code Section 1197.1, as appropriate.

COMMENTS

1. Background

Tips and Gratuities:

As noted above, "gratuity" includes any tip, gratuity, money, or part thereof that has been paid, given to, or left for an employee by a patron of a business over and above the actual amount due to the business for services rendered or for goods, food, drink, or articles sold or served to patrons. Employers are prohibited from taking the tips (or any part thereof) or deducting money from wages because of tips earned. It is also illegal for employers to credit tips against wages owed by the employer. Unlike under federal regulations, in California an employer 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.

Existing informational resources on the Division of Labor Standards Enforcement website directs employees whose employer has kept or credited tips against wages to either file a wage claim with the DLSE or file a lawsuit in court against the employer to recover lost wages. Existing law prohibits an employer from discriminating or retaliating against an employee for exercising these rights and protections.

Although existing law directs the Department of Industrial Relations to enforce the provisions of existing law regarding gratuities, the Labor Commissioner lacks citation authority to recover gratuities taken or withheld from workers. The only option available to the Labor Commissioner to recover stolen gratuities is through filing of an action in court.

Given the limited resources available at the Labor Commissioner's office, granting the LC the ability to issue citations to recover owed gratuities would go a long way in helping workers. *This bill would do just that by authorizing the Labor Commissioner to investigate and issue a citation or file a civil action for gratuities taken or withheld in violation of existing law.*

Impact of Stolen Gratuities:
California's current minimum wage is $16.50 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 employees should be making the minimum wage plus, for employers that allow tipping, any additional amount in tips.

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]

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.

Unfortunately, some of the lowest paid workers are at risk of having their livelihoods stolen by unscrupulous employers through various violations of law including by taking their tips. According to a 2008 study which surveyed 4,387 workers in low-wage industries in the three largest U.S. cities—Chicago, Los Angeles, and New York City, 12 percent of tipped workers in the sample experienced "tip stealing" during the previous work week.[3]

In acknowledgement of this threat, 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.

2. Need for this bill?

According to the author:

"Under current law, the Labor Commissioner's Office or LCO, can issue citations for most workplace-wide violations of labor law including wages, overtime, meal periods and rest

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[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/

[3] Annette Bernhardt et al., *Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities*, 2009, Center for Urban Economic Development, National Employment Law Project, and UCLA Institute for Research on Labor and Employment, 2009.

periods. However, the Labor Commissioner lacks citation authority to recover gratuities taken or withheld from employees. This bill provides the Labor Commissioner the authority to issue citations to recover gratuities taken or withheld from employees.

When the LCO investigates and issues citations for wages, overtime, meal periods and rest periods, the citation cannot include gratuities that are taken or withheld from workers. In order for the LCO to recover these gratuities the LCO must bring a lawsuit under Labor Code section 98.3. Because tip claims cannot be brought in an administrative proceeding, the LCO is forced to bring both an administrative and civil action to address the full range of violations, which is not practically feasible given the LCO's scarce resources.

This bill provides the Labor Commissioner authority to issue citations to recover employees' gratuities taken or withheld in violation of Labor Code Section 351. This bill increases the efficiency and impact of LCO investigations where minimum-wage and low-wage service workers have their gratuities withheld."

3. Proponent Arguments:

The California Federation of Labor Unions is in support of the measure arguing:

"Low-wage workers often depend on tips to make ends meet, especially if they are making at or close to minimum wage.

The Labor Commissioner can issue citations for most violations of labor law including wages, overtime, meal periods, and rest periods, which allows for efficient enforcement of the law. However, the Labor Commissioner lacks citation authority to recover gratuities taken or withheld from employees. Currently, the only procedure for the Labor Commissioner to recover stolen gratuities is through filing an action in court.

Tipped workers have difficulty bringing forward individual claims for unpaid gratuities because the amounts are too small. Because the claims for gratuities cannot be brought in an administrative proceeding, the Labor Commissioner must bring both an administrative and civil action to address the full range of violations in its workplace-wide cases. In most cases, it is impractical to bring a civil lawsuit for such small amounts. Since it is also impractical for workers to bring a separate claim or lawsuit for such small amounts, scofflaw employers have little deterrent to taking workers' tips.

Administrative citation is the most direct and efficient way of recovering taken or withheld gratuities for the workers who depend on tips for their livelihood."

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 3143 (Lowenthal, 2024) would have prohibited 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. *AB 3143 was held under submission in Senate Appropriations Committee.*

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

California Federation of Labor Unions, AFL-CIO

OPPOSITION

None received.

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SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Lola Smallwood-Cuevas, Chair
2025 - 2026 Regular

Bill No:	SB 853	**Hearing Date:**	April 9, 2025
Author:	Committee on Labor, Public Employment and Retirement		
Version:	March 4, 2025		
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 §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 § 20000 et seq.)
    c. Twenty county retirement systems organized under the 37 Act and represented by the State Association of County Retirement Systems (SACRS) (Government Code §31450 et seq.).

This bill:

CalSTRS

1) Clarifies that CalSTRS members' "annual pay rate" is salary, as defined, that the member could earn from *each* position the member holds during the school term, not from only one position the member holds during the term.

2) States explicitly in statute the existing law under the constitution that the CalSTRS board has final authority for determining who is an employer for purposes of CalSTRS programs and whom the board may admit into CalSTRS membership.

3) Makes technical changes to a program that allows CalSTRS members who have reduced workloads to earn full year service credit by measuring earnings of annualized pay rates instead of days or hours worked.

4) Clarifies that specified transfers or payments from the General Fund to the Teachers' Retirement Fund that fall on a weekend or holiday shall be transferred the next business day.

CalPERS

5) Adds clarifying language referencing pensionable compensation in various sections to conform to the Public Employees' Pension Reform Act (PEPRA).

6) Makes a technical drafting amendment to create a separate subsection in PEPRA for existing safe harbor exemptions for trial court classic members currently lumped in with the safe harbor subsection for Joint Power Authority (JPA) classic members.

SACRS

7) Clarifies that for members subject to PEPRA, the retirement association shall compute absences using the member's pensionable compensation at the beginning of the member's absence.

8) Clarifies that where a member's service through reclassification, has been converted from general to safety member service, service converted after PEPRA's effective date is subject to PEPRA's prohibition of retroactive benefits. Thus, clarifies that conversion shall apply only to service after the operative date of the reclassification and not to all prior service.

9) Clarifies how CERL employers should report retired annuitants to their retirement association.

COMMENTS

1. Need for this bill?

According to the author:

"This bill is necessary to make various technical, conforming, and minor changes to the Education and Government codes necessary for the efficient administration of the state's public retirement systems."

2. Author Amendments

Pursuant to concerns raised by the Senate Judiciary Committee, these amendments delete Section 8 of the bill (ED Section 24616.2) which would have clarified that CalSTRS can bring subrogation actions to recover payments it makes to beneficiaries from liable third parties in California courts even if the third party is in another state or country.

The amendments make a technical drafting change to current statute to create a separate subsection in PEPRA for existing safe harbor exemptions for trial court classic members currently lumped in with the safe harbor subsection for JPA classic members.

The amendments also add Senator Strickland to the Committee Bill pursuant to the Rules Committee naming him to the SLPER committee after this bill was introduced.

3. Proponent Arguments

According to CalSTRS:

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

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:

"This CalPERS co-sponsored bill makes minor policy and technical changes to the Public Employees' Retirement Law (PERL), the Teachers' Retirement Law, and to the County Employees Retirement Law of 1937.

As it pertains to CalPERS, SB 853 clarifies that several final compensation-related provisions in the PERL apply to both classic members and members subject to the Public Employees' Pension Reform Act of 2013 to provide consistency in the administration of benefits and streamline processes."

According to SACRS:

"This bill is necessary to make various technical, conforming, and minor changes to the Education and Government codes necessary for the efficient administration of the state's public retirement systems."

4. Opponent Arguments:

None received.

5. Dual Referral:

The Senate Rules Committee referred this bill to both the Senate Labor, Public Employment and Retirement Committee and the Senate Judiciary Committee.

6. Prior Legislation:

AB 2770 (Committee on Public Employment and Retirement, Chapter 117, Statutes of 2024) 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.

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)
State Association of County Retirement Systems (Co-sponsor)

OPPOSITION

None received.

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SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Lola Smallwood-Cuevas, Chair
2025 - 2026 Regular

Bill No:	SB 854	**Hearing Date:**	April 9, 2025
Author:	Committee on Labor, Public Employment and Retirement		
Version:	March 4, 2025		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Emma Bruce		

SUBJECT: Unemployment insurance

KEY ISSUE

This bill clarifies that, for purposes of the Unemployment Insurance Code, references to "mail," "mailed," or "mailing" include a writing transmitted by the United States Postal Service or other common mail carrier or by electronic transmission.

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 Unemployment Insurance (UI) Program as a joint state/federal program, administered by EDD that provides weekly unemployment insurance payments for workers who lose their job through no fault of their own. Eligibility for benefits requires that the claimant be able to work, available for work, be seeking work, and be willing to accept a suitable job. (Unemployment Insurance Code §100-144 and §301-456)

3) 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 (DI) and Paid Family Leave (PFL) programs to eligible individuals. (Unemployment Insurance Code §2601- 3308)

4) Provides, through DI, short-term wage replacement benefits to eligible workers who are unable to work due to a non-work-related illness or injury. DI benefits can be used for an illness or injury, either physical or mental, which prevents an employee from performing their regular and customary work and includes elective surgery, pregnancy, childbirth, or other medical conditions. (Unemployment Insurance Code §2601-3308)

5) Provides, through PFL, 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 child, spouse, parent, grandparent, grandchild, sibling, or domestic partner;

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)

This bill:

1) Provides that except as otherwise specified, for purposes of the Unemployment Insurance Code, "mail," "mailed," or "mailing" include a writing transmitted by the United States Postal Service or other common mail carrier or by electronic transmission.

2) Specifies that for purposes of an electronic transmission, "postmark date" means the date on which the writing was sent.

COMMENTS

1. EDDNext:

EDD administers multibillion-dollar benefit programs, including UI, DI, and PFL, that provide financial stability to workers across the state. Each year, around 1 million California workers access about $7 billion in UI benefits.[1] Similarly, around 1 million California workers receive a total of about $13 billion in SDI and PFL insurance benefits.[2] The technology EDD uses to administer these programs is outdated and can be difficult to navigate.

In response to EDD's difficulties processing UI claims during the Covid-19 pandemic, the Governor formed a strike team in July 2020 to recommend reforms. One recommendation was to resume existing IT modernization efforts using an incremental approach. This modernization effort is known as EDDNext. EDDNext received funding for its first set of projects in the 2022-2023 Budget Act. Over the course of five years, EDDNext projects aim to transform the way the public interacts with EDD.

Thus far, EDDNext has implemented myEDD, an easier and more secure login process for all benefit programs, switched debit card service providers, simplified the online UI application, and expanded language access options. Future EDDNext projects include offering direct deposit, upgrading identity verification to improve speed and maintain security, and modernizing the contact center.

SB 854 would support EDDNext modernization efforts by providing clear authority for EDD to communicate electronically with customers.

2. Committee Amendments:

On March 17, 2025, Senator Strickland was appointed Vice-Chair of the Senate Committee on Labor, Public Employment and Retirement. Pursuant to Senate Rule 23, amendments to SB 854 add Senator Strickland to the Committee's membership at the top of the bill.

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[1] "The 2025-26 Budget, EDDNext," Legislative Analyst's Office, February 25, 2025, The 2025-26 Budget: EDDNext
[2] Ibid.

3. Need for this bill?

According to the author:

"SB 854 supports the modernization of the Employment Development Department (EDD) by providing clear authority for the Department to communicate electronically with customers who prefer that method.

EDD administers three major benefit programs: Unemployment Insurance, Disability Insurance, and Paid Family Leave. EDD's benefit programs rely on an aging information technology infrastructure where numerous forms and correspondence are sent to customers via paper mail due to technical limitations. However, EDD is implementing a significant modernization project known as EDDNext, which will include new benefit and document management systems, among other improvements. A key component of EDDNext will be the capability to send notices and correspondence electronically to those customers who prefer electronic communications.

SB 854 provides clear authority for EDD to modernize communication methods with its customers. Specifically, the bill defines 'mail' to include writings transmitted by both the United States Postal Service (paper mail) and communications transmitted electronically.

The bill aligns with the public's expectation and desire to have government services available online, while retaining paper mail or both paper mail and electronic communications for those who prefer those options."

4. Proponent Arguments:

None received.

5. Opponent Arguments:

None received.

6. Prior Legislation:

AB 107 (Gabriel, Chapter 22, Statutes of 2024) provided $326.8 million in one-time funding to continue the development and planning of EDDNext.

SB 101 (Skinner, Chapter 12, Statutes of 2023) provided $198 million in one-time funding to continue the planning and development of EDDNext.

SB 154 (Skinner, Chapter 43, Statutes of 2022) provided $136 million in one-time resources for work related to the first year of the EDDNext modernization effort.

AB 128 (Ting, Chapter 21, Statutes of 2021) provided $11.8 million in one-time funding to reengage the planning and modernization of EDD's information technology systems.

SUPPORT

None received.

OPPOSITION

None received.

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