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

Bill No:	SB 943	**Hearing Date:**	April 10, 2024
Author:	Ochoa Bogh		
Version:	March 14, 2024		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Glenn Miles		

SUBJECT: Civil service: veterans' preference

KEY ISSUE

This bill would require the California Department of Human Resources (CalHR), on or before January 1, 2026, to review the State Personnel Classification Plan to identify which state position classes are compatible with creating a waiver for a bachelor's degree requirement for a veteran who served at the level of E-6 or higher for more than two years. The bill also requires CalHR to waive the bachelor's degree requirement beginning July 1, 2026, for identified position classifications for a veteran applicant who meets the waiver requirements.

ANALYSIS

Existing law:

1) Creates the state civil service that includes every officer and employee of the state except a limited number of specified, exempted officers and employees. Existing law also requires that the state make "permanent appointment and promotion in the civil service under a general system based on merit ascertained by competitive examination." Case law and custom refer to this provision as the merit principle and it governs the administration of the state's civil service system. (CA CONST. art. VII, §1 and §4)

2) Creates the State Personnel Board (SPB) to enforce the civil service statutes and prescribe probationary periods and classifications, adopt other rules authorized by statute, and review disciplinary actions. (CA CONST. art. VII, § 2 and §3)

3) Establishes the State Civil Service Act to facilitate the operation of the Constitution's merit principle for the state civil service. (Government Code (GC) § 18500).

4) Creates the California Department of Human Resources (CalHR) and vests it with the powers, duties, and authorities necessary to operate the state civil service system pursuant to Article VII of the California Constitution, the Government Code, the merit principle, and applicable rules duly adopted by the State Personnel Board. (GC § 18502)

5) Requires SPB to establish minimum qualifications for determining the fitness and qualifications of employees for each class of position, including education, experience, knowledge, and abilities that each applicant is required to have to be considered eligible for a classification. The department may require applicants for examination or appointment to provide documentation as it deems necessary to establish the applicants' qualifications. (GC § 18931)

6) Defines "veteran" to mean any person who has served full time in the armed forces in time of national emergency or state military emergency or during any expedition of the armed forces and who has been discharged or released under conditions other than dishonorable. (Government Code §18540.4)

7) Requires that whenever any veteran, widow or widower of a veteran, or spouse of a 100 percent disabled veteran achieves a passing score on an entrance examination, the department shall rank him in the top rank of the resulting eligibility list. This section does not apply to any veteran who was dishonorably discharged or released. (GC §18973.1)

8) States that where experience is required as a minimum qualification for any civil service examination, a person, who is or has been on military leave from a state civil service or exempt position or from a position in any federal or other public agency the functions of which, as they relate to the position, have been transferred to the state shall be granted full credit for time spent on that military leave, as if he or she had remained in the position he held at the time he or she entered the military service. (GC §18977)

9) Requires appointments to positions performing the duties of disabled veterans' outreach program representatives in the disabled veterans' outreach program or successor program of the Employment Development Department, to be made in the following order of preference:
   a) Any disabled veteran.
   b) Any veteran.
   (GC §18979)

10) Requires CalHR to update its existing policies, as well as training materials, to require, as part of the regular job classification review process for any position for which a bachelor's degree remains a job-related educational requirement, explicit analysis of whether a bachelor's degree is necessary for successful performance in the position and, if it is determined necessary, supporting data that demonstrates the necessity. (Governor's Executive Order N-11-23, paragraph 5)

This bill:

1. Requires CalHR, on or before January 1, 2026, to review the State Personnel Classification Plan to identify which state position classes are compatible with creating a waiver for a bachelor's degree requirement for a veteran who served at the level of E-6 or higher for more than two years.

2. Requires CalHR, where it identifies a position class compatible for the E-6 or higher waiver, to waive the bachelor's degree requirement commencing July 1, 2026, for a veteran who meets the waiver requirements.

COMMENTS

1. Need for this bill?

According to the author:

"The California civil service is losing a significant share of its veteran workforce, given both the aging veteran population and the exodus of veterans from California. According to CalHR, the number of veterans who retired from state civil service in 2021 was more than three times higher than the number of veterans hired the same year."

"SB 943 will incentivize more veterans to remain in California and fill vacant civil service positions."

2. Proponent Arguments

According to a coalition of veterans associations, including the California Association of County Veterans Service Officers, California State Commanders Veterans Council, and the Military Officers Association of America-California Council of Chapters:

"The existing law already recognizes veterans' contributions by ranking them high in eligibility lists for state civil service positions. However, the educational requirement remains a barrier. By waiving these requirements for qualified veterans, SB 943 will open new opportunities for them and help fill the growing vacancies in our civil service sector."

3. Opponent Arguments:

None received.

4. Dual Referral:

The Senate Rules Committee referred this bill to the Senate Labor, Public Employment and Retirement Committee and to the Senate Military and Veterans Affairs Committee.

5. Prior Legislation:

SB 73 (Seyarto, 2023) would establish the Voluntary Veterans' Preference Employment Policy Act, which would authorize a private employer to establish and maintain a written veterans' preference employment policy, to apply uniformly to hiring decisions. The bill is in the Assembly Judiciary Committee.

SUPPORT

California Association of County Veterans Service Officers
California State Commanders Veterans Council
Menifee VFW Post 1956
Military Officers Association of America, California Council of Chapters

OPPOSITION

None received.

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

Bill No:	SB 988	**Hearing Date:**	April 10, 2024
Author:	Wiener		
Version:	April 1, 2024		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Alma Perez-Schwab		

SUBJECT: Freelance Worker Protection Act

KEY ISSUES

This bill establishes the Freelance Worker Protection Act to, beginning on January 1, 2025, impose minimum requirements relating to contracts between a hiring party and a freelance worker, as defined. Among other things, the Act requires a hiring entity to 1) provide a written contract to the freelance worker; 2) pay a freelance worker the compensation specified by such contract, as provided, 3) not discriminate or take adverse actions against a freelance worker for exerting these rights; and 4) authorizes an aggrieved freelance worker, the Labor Commissioner, or a public prosecutor to bring a civil action to enforce these provisions.

ANALYSIS

Existing law:

1) 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 (DI) in the event of a non-industrial disability, paid family leave, and unemployment insurance (UI). (Labor Code §§201, 226.7, 246, 512, 1182.12, & 3600 and UI Code §§1251 & 2601)

2) Addresses the "employment status" of workers when the hiring entity classifies a worker as an "independent contractor" and not an employee, as specified. (Labor Code §2775-2787)

3) 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 (IWC), a person providing labor or services for remuneration shall be considered an employee (and not an independent contractor) unless the hiring entity satisfies the three-part ABC test:

    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)

4) Exempts from the application of the ABC test, and instead, applies the definition of an employee as set forth in *S. G. Borello & Sons, Inc. v. Department of Industrial Relations*

(1989) (*Borello*), to specified occupations and business relationships, including newspaper distributors working under contract with a newspaper publisher, as defined, or newspaper carriers. This newspaper distributor exemption expires on January 1, 2022. (Labor Code §2783)

5) Prohibits the willful misclassification of individuals as independent contractors and establishes penalties for violations. Willful misclassification is defined as voluntarily and knowingly misclassifying an employee as an independent contractor. (Labor Code §226.8)

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

7) Defines, for purposes of independent contractor provisions (AB 5), "professional services" to mean specified services including marketing, human resources, travel agents, graphic design, grant writer, fine artist, IRS enrolled agents, photographer, photojournalist, videographer, photo editor, freelance writers, editors, licensed estheticians, electrologist, barber, licensed cosmetologist, and others, all as specified. (Labor Code §2778)

This bill:

1) Establishes the Freelance Worker Protection Act to, beginning on January 1, 2025, impose minimum requirements relating to contracts between a hiring party and a freelance worker.

2) Provides the following definitions:

   a. "Freelance worker" means a person or organization composed of no more than one person, whether or not incorporated or employing a trade name, that is hired or retained as an independent contractor by a hiring party to provide professional services in exchange for an amount equal to or greater than $250, either by itself or when aggregated with all contracts for services between the same hiring party and independent contractor during the immediately preceding 120 days.

   b. "Hiring party" to mean a person or organization in the State of California that retains a freelance worker to provide professional services, except any of the following:
      i. The United States government.
      ii. The State of California or any subdivision thereof.
      iii. A foreign government.
      iv. An individual hiring services for the personal benefit of themselves, their family members, or their homestead.

   c. "Professional services" has the same meaning as Labor Code Section 2778.

3) Except as otherwise provided by law, requires a hiring party to pay a freelance worker the compensation specified by a contract for professional services as follows:

   a. On or before the date compensation is due pursuant to the contract.

b. If the contract does not specify when the hiring party shall pay, no later than 30 days after the completion of the freelance worker's services under the contract.

4) Specifies that once a freelance worker has commenced performance of services under a contract, a hiring party shall not require as a condition of timely payment that the freelance worker do either of the following:
   a. Accept less compensation than the amount of compensation specified by the contract.
   b. Provide more goods or services or grant more intellectual property rights than agreed to in the contract.

5) Requires a hiring party to furnish a signed copy of the written contract, either physically or electronically, to the freelance worker and requires the hiring party to retain the contract for no less than four years.

6) Requires the written contract to include, at a minimum, all of the following information:

   a. The name and mailing address of each party.
   b. An itemized list of all services to be provided, including the value of those services and the rate and method of compensation.
   c. The date on which the hiring party shall pay the contracted compensation or the mechanism by which the date shall be determined.
   d. The date by which a freelance worker shall submit a list of services rendered under the contract to the hiring party to meet the hiring party's internal processing deadlines for purposes of timely payment of compensation.

7) Provides that these provisions do not limit existing contract law, as specified, and does not prevent a freelance worker from enforcing an oral contract or recovering under the doctrine of promissory estoppel.

8) Specifies that, notwithstanding a refusal by the hiring party to provide a written contract as required by this bill, there shall be sufficient evidence that a contract exists for purposes of enforcement by the freelance worker if all of the following are met:

   a. The hiring party made representations to the freelance worker regarding the rate for services to be performed.
   b. The freelance worker provided in writing any document to the hiring party, including email, text message, or other electronic communication, a summary of the rate and work to be performed prior to performing the work.
   c. The freelance worker performed the work that the freelance worker understood was to be performed.

9) Provides that a waiver of any of these provisions shall be deemed contrary to public policy and is void and unenforceable.

10) Prohibits a hiring entity from discriminating or taking any adverse action against a freelance worker that penalizes, or is reasonably likely to deter, a freelance worker from taking any of the following actions:

   a. Opposing any practice prohibited by these provisions.
   b. Participating in proceedings related to the enforcement of these provisions.

c. Seeking to enforce rights provided by these provisions.
d. Otherwise asserting or attempting to assert rights provided by these provisions.

11) Authorizes an aggrieved freelance worker, the Labor Commissioner, or a public prosecutor to bring a civil action to enforce these provisions and specifies that a prevailing plaintiff is entitled to reasonable attorney's fees and costs, injunctive relief, and any other remedies deemed appropriate by the court.

12) Provides that damages shall be awarded to an aggrieved freelance worker as follows:

a. If the freelance worker requested a written contact prior to commencing work and the hiring entity refused in violation, the freelance worker shall be awarded an additional $1,000.
b. If the hiring entity failed to pay the freelance worker the contracted compensation by the time required, the freelance worker shall be awarded damages up to twice the amount that remained unpaid at the time payment was due.
    i. If the freelance worker requested a written contract prior to commencing work and the hiring entity refused in violation, the amount unpaid shall be determined by the rate the freelance worker reasonably understood to apply to the work.
c. If the hiring entity violates any other provision in this bill, the freelance worker shall be awarded damages equal to the value of the contract or the work performed, whichever is greater.

COMMENTS

1. Background: *Dynamex* and AB 5

The employer-employee relationship is at the core of the rights and obligations found within Labor Code. Being classified as an employee is essential to trigger most of the employer mandates and worker protections found within existing law. California's wage and hour laws (e.g., minimum wage, overtime, meal periods and rest breaks, workers' compensation etc.), workplace safety laws, and retaliation laws protect employees, but not independent contractors. Additionally, employees can go to state agencies such as the Labor Commissioner's office to seek enforcement of these laws, whereas independent contractors must resolve their disputes or enforce their rights under their contracts through other means.

For several decades, the employer-employee relationship was put under pressure due to the increased use of independent contractors and the misclassification of employees. The issue culminated with a 2018 Supreme Court decision, *Dynamex Operations West, Inc. v. Superior Court (2018) 4 Cal.5th 903.* Under *Dynamex*, the test for whether a worker is an independent contractor or an employee was simplified to a three-prong test:

(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
(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, Chapter 296, Statutes of 2019) codified the *Dynamex* decision requiring that employers prove that their workers can meet the ABC test in order to be lawfully classified as independent contractors, and exempted from the test certain professions and business-to-business relationships. 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*, in *S. G. Borello & Sons, Inc. v Dept. of Industrial Relations* (1989) 48 Cal.3d 341, the California Supreme Court created an 11 point "economic realities" test on whether someone could lawfully be considered an independent contractor.

AB 5 addressed the classification of individuals as employees versus independent contractors to provide clarity and ensure that legitimate employees are provided the rights and protections that the law requires. While using independent contractors can relieve employers of labor law requirements, because these independent contractors are not covered by workers' compensation, an independent contractor or their employee can sue the hiring entity for personal injuries sustained on the worksite. Additionally, all businesses and government entities who hire independent contractors must file reports, as specified, with the Employment Development Department designed to assist in locating parents who are delinquent in their child support obligations (Unemployment Insurance Code Section 1088.8). Unfortunately, without a contract, not much exists to protect independent contractors from wage theft, including delayed payment, less than full payment or non-payment.

2. Freelance Worker Protections across the Country and California

Freelance workers contribute essential services to our homes and businesses and are one of the fastest growing sectors of the workforce. As noted above, because freelance workers are not employees but independent contractors, they typically do not receive the same protections against wage theft. Efforts to enact laws protecting freelance workers have begun to pass in several states and localities.

Examples from other States:

In 2017, New York City was the first to pass a law, the "Freelance Isn't Free Act," which made significant changes to entities utilizing independent contractors for projects costing $800 or more. Specifically, the law requires a written contract, timely and full payment, and protection from retaliation. The law also establishes penalties for violations of these rights, including statutory damages, double damages, injunctive relief, and attorney's fees.

In 2023, Illinois enacted similar protections by adopting the "Freelance Worker Protection Act," to take effect July 1, 2024. This law requires entities contracting with freelance workers to provide written contracts and timely compensation and also authorizes administrative and civil actions for violations. These new laws will apply to products or services costing at least $500 in a single contract or in the aggregate of all contracts within a 120-day period. Once the freelance worker begins performing the contracted services, the law prohibits a hiring party from conditioning timely payment on the freelance worker's acceptance of less compensation than contracted. The Illinois law further prohibits a hiring party from taking any action to penalize a freelance worker for exercising their rights under the Act.

Los Angeles City Freelance Worker Protections Ordinance

In February 2023, the City of Los Angeles' adopted the Freelance Worker Protections Ordinance requiring that certain contracts between a hiring entity and a freelance worker be in writing and meet specified criteria. Among other things, the ordinance applies to work performed in the City of Los Angeles valued at $600 or more in a calendar year, by either an individual job or cumulative jobs. The ordinance requires that the contracts be in writing and that it contain basic information such as contact information, itemization of services, value of services, rate of compensation and the date that the hiring entity must pay the freelance worker. The ordinance also requires that the hiring entities timely pay for completed work, that they retain records for four years and contains anti-retaliation provisions that protect freelance workers who assert their rights. Additionally, failure to timely provide information to the City during an investigation will create a rebuttable presumption that the hiring entity violated the ordinance. These requirements do not apply to hiring entities that hire app-based transportation or delivery drivers for prearranged services.

3. Need for this bill?

According to the author, "Senate Bill 988 will protect freelancers from exploitation by providing them with the basic protections and ensuring prompt payment. Freelance workers frequently report experiencing months of late or non-payment, which is a significant financial hardship. Most freelance workers don't have a written contract and are often living paycheck-to-paycheck. Just like any other type of worker, they deserve to be compensated fairly for their work and to have recourse if they're mistreated.

Senate Bill 988 provides basic protections for freelance workers by requiring mandatory contracts, 30-day payment terms, payment agreement protections, anti-retaliation measures and damages protections. SB 988 gives the State Labor Commissioner the authority to enforce these protections; and gives the Attorney General the ability to investigate and initiate civil action against hiring entities which have violated the law. Otherwise, the contracts can be enforced by freelancers in civil court."

4. Proponent Arguments:

According to the sponsors, the California Teamsters Public Affairs Council, "In 2022, 60 million Americans freelanced, making up 39% of the total workforce and contributing $1.35 trillion to the national economy. Unfortunately, most freelancers lack basic worker protections, most notably, the right to be paid for their work on time. According to the Freelancers Union, 71% of workers experienced late or non-payment. 59% report living paycheck to paycheck, and most do not have written contracts.

In 2017, New York City passed the first 'Freelance Isn't Free Act' in the U.S., creating a pathway for freelancers to recoup wages due to non-payment. Since then, freelance workers have recovered over $2.5 million in unpaid invoices. While impressive, this is just a fraction of the total amount owed to freelance workers. Since that time, both Illinois and the City of Los Angeles have passed similar legislation. While this is great, much more needs to be done to prevent exploitation. We believe the next step is having statewide protections for these workers and SB 988 does just that."

5. Opponent Arguments:

The California Chamber of Commerce is opposed to the measure arguing, "Our concern is limited to bill's proposed enforcement provisions, specifically section 10506(b)(3). That section provides that damages equal to the value of the contract or work performed are due if a hiring entity violates any provision of the law. That provision applies regardless of whether there was any harm. For example, if the freelance worker does not request a written contract, they are paid in full and on time for their work, and there is no dispute, the freelance worker can still sue the hiring entity and recover those damages if there was no written contract or if the contract does not perfectly conform to the law. If there is no harm, there should not be liability or, at the very least, there should not be an automatic award of damages equivalent to the price of the work performed. Otherwise, this incentivizes litigation where there is no injury."

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:

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 three-part 'ABC' test in order to be lawfully classified as independent contractors, and exempted from the test certain professions and business-to-business relationships.

SUPPORT

California Teamsters Public Affairs Council – Sponsor
American Photographic Artists of San Francisco
American Photographic Artists, Inc.
American Photographic Artists, Inc. Los Angeles Chapter
American Photographic Artists, Inc. San Diego
California Association for Micro Enterprise Opportunity (CAMEO)
National Press Photographers Association
National Writers Union
The Authors Guild

OPPOSITION

California Chamber of Commerce

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

Bill No:	SB 1049	**Hearing Date:**	April 10, 2024
Author:	Padilla		
Version:	February 7, 2024		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Alma Perez-Schwab		

SUBJECT: Department of Industrial Relations: living wage: report and employer certification program

KEY ISSUES

This bill 1) requires the Department of Industrial Relations (DIR), in conjunction with the Secretary of Labor and Workforce Development and the Director of Housing and Community Development, to examine housing costs in the state and create a formula to ascertain the living wage that allows full-time wage earners to afford a decent standard of living, as specified; 2) requires DIR and these entities to develop a certification program for employers that pay a living wage; and 3) requires annual reporting to the Legislature of the living wage in each county, region, and state and requires that they develop a method to annually adjust these figures to account for inflation.

ANALYSIS

Existing federal law:

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

Existing state law:

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

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

4) 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)

5) Establishes the Department of Housing and Community Development, within the Business, Consumer Services and Housing Agency, to help provide stable, safe and affordable homes to disadvantaged communities. The department is the principal state department responsible for coordinating federal-state relationships in housing and community development, except for housing finance. The department is responsible for implementation of the California Statewide Housing Plan and is responsible for continually evaluating the impact upon the state of federal policies and programs affecting housing and community development. (Health and Safety Code §50400-50409)

This bill:

1) Makes several findings and declarations regarding the cost of living in California including:

    a. That a household with at least one full-time minimum wage earner would have to work more than two full-time jobs to afford a one-bedroom apartment in most major markets in California.
    b. Nearly all households with at least one full-time minimum wage earner fall below the poverty line and that number of low-wagers earners is growing.
    c. Households of all races struggle, but the percentages of families living in poverty are highest for Latino and Black families.
    d. It is the intent of the Legislature that full-time workers earn a living wage that enables them to afford appropriate housing and basic expenses for themselves and their minor dependents.

2) Defines the following terms:

    a. "Living wage" means the lowest wage that allows full-time and part-time wage earners to afford a decent standard of living, which includes appropriate housing and basic expenses, including nonhousing necessities.
    b. "Nonhousing necessities" means childcare for an average household with minor dependents, food, transportation, health care, and allowance for basic miscellaneous expenses such as clothing, mobile telephone service, broadband access, and taxes.

3) Requires the Department of Industrial Relations to, in conjunction with the Secretary of Labor and Workforce Development Agency and the Director of Housing and Community Development, develop a certification program for employers that pay a living wage.

4) Requires DIR, in order to determine a decent standard of living, to examine housing costs by county, region, and in the state and create a formula to ascertain the living wage in each.

5) In developing this formula, requires DIR, the Secretary of LWDA and Director of Housing and Community Development to do all of the following:

    a. Take into account relevant housing cost data, such as Fair Market Rent estimates from the United States Department of Housing and Urban Development, and the cost of other basic expenses, including nonhousing necessities.

b. Develop a framework for determining an adequate number of bedrooms for different household configurations to use in factoring housing costs, such as one bedroom for one worker, or two bedrooms for two or more workers. For these purposes, requires the entities to consult with relevant state departments, agencies, and bona fide research institutions regarding relevant data to determine costs.
c. Ensure that relevant housing costs do not exceed 30 percent of the monthly-earned income of the living wage earner.
d. Assess whether a household with at least one full-time wage earner has sufficient income to cover appropriate housing and basic expenses, including nonhousing necessities.

6) Commencing in 2025, requires DIR, in conjunction and cooperation with the Secretary of LWDA and the Director of Housing and Community Development, to annually report to the Legislature the living wage in each county, each region, and the state and develop a method to annually adjust figures to account for housing cost inflation and inflation broadly.

COMMENTS

1. Background: Cost of Living in California

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

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

According to the California Department of Housing and Community Development, they create policies to respond to California's current housing challenges, which include[3]:

- **Not enough housing being built:** During the last ten years, housing production averaged fewer than 80,000 new homes each year and ongoing production continues to fall far below the projected need of 180,000 additional homes annually.
- **Increased inequality and lack of opportunities:** Lack of supply and rising costs are compounding growing inequality and limiting advancement opportunities for younger Californians. Without intervention, much of the new housing growth is expected to be focused in areas where fewer jobs are available to the families that live there.
- **Too much of people's incomes going toward rent:** The majority of Californian renters — more than 3 million households — pay more than 30 percent of their income toward rent, and nearly one-third — more than 1.5 million households — pay more than 50 percent of their income toward rent.

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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] https://www.hcd.ca.gov/policy-and-research/addressing-variety-housing-challenges

- **Fewer people becoming homeowners:** Overall homeownership rates are at their lowest since the 1940s.
- **Disproportionate number of Californians experiencing homelessness:** California is home to 12 percent of the nation's population, but a disproportionate 22 percent of the nation's homeless population.
- **Many people facing multiple, seemingly insurmountable barriers — beyond just cost — in trying to find an affordable place to live:** For California's vulnerable populations, discrimination and inadequate accommodations for people with disabilities are worsening housing cost and affordability challenges.

2. Need for this bill?

According to the author, "A growing percentage of California's overall workforce are economically stranded. Unlike previous decades, entry-level minimum wage and low-wage earners are not moving into higher earning segments of the workforce. [4] These workers are not progressing, they are not gaining, saving, building wealth, or securing their housing and basic needs. These workers are working more – many working 80-90 hours per week and yet they cannot afford basic housing and necessities.[5]

California has one of the nation's highest minimum wages at $16 per hour, but suffers some of the nation's highest poverty rates due to high living expenses, primarily driven by housing and childcare costs. Yet, no state methodology exists to determine a wage that accounts for an individual's cost of housing in addition to basic necessities. The explosion of homelessness in California, while influenced by many factors, is clearly impacted by the high cost of living. One of the factors driving homelessness rates throughout the state is insufficient wages."

SB 1049 would require the Department of Industrial Relations, in conjunction with the Secretary of Labor and Workforce Development and the Director of Housing and Community Development, to develop a certification program for employers that pay a living wage, which the bill would define as the lowest wage that allows full-time and part-time wage earners to afford a decent standard of living, as specified. In order to determine a decent standard of living, the bill would require the department to examine county, regional, and state housing costs and create a formula to ascertain the living wage for each.

3. Proponent Arguments:

The sponsors of the measure, United Ways of California, write that, "according to the 'Real Cost Measure' - our study on what it takes households to meet basic needs in California - 1 in 3 households in California (over 3.5 million families) do not earn enough to make ends meet. SB 1049 (Padilla) would identify significant gaps between what it costs for families and their children to live with dignity and what they earn. Furthermore, because the Living Wage Formula would be reviewed and updated yearly, lawmakers could better determine what supports and budget investments they make annually. This could include setting the minimum wage, reviewing tax credits, helping households with low incomes, and streamlining public benefits."

[4] Abel, Jaison R., Richard Florida, and Todd M. Gabe. "Can Low-Wage Workers Find Better Jobs?" *SSRN Electronic Journal*, 2018. https://doi.org/10.2139/ssrn.3164963.
[5] National Low Income Housing Coalition. "Out of Reach:" Accessed February 27, 2023. https://nlihc.org/oor/state/ca.

Proponents additionally state that, "California has never established a baseline formula or method for determining how a living, housing based wage standard should be established. At the same time, California employers who currently pay a living wage lack the means to communicate this information to consumers and potential employees seeking to work for them. Paying a living wage is achievable but information and support is critical. A certification program would allow companies to easily communicate to potential future employees they pay a living wage and could be the foundation for how California supports employers efforts to reach a living wage."

They conclude that, "SB 1049 (Padilla) would provide a vital and accurate tool to ensure that the cost of housing and goods is considered with adjusting policies related to wages, social service supports, etc. Utilizing this formula, we can ensure California is addressing long-standing inequities and breaking the cycle of poverty."

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 Housing Committee for a hearing.

6. Prior/Related Legislation:

SB 352 (Padilla, 2023, Held Under Submission in Senate Appropriations), similar to this bill, would have required the California Workforce Development Board, in conjunction with the Labor and Workforce Development Agency and the Department of Housing and Community Development, to examine housing costs by county and create a formula to ascertain how much the local minimum wage would have to be for a full-time worker to reasonably afford housing and basic expenses. SB 352 also included a requirement that the CWDB provide annual recommendations to the Legislature on what the minimum wage for a household with at least one full-time minimum wage earner would have to be to afford a decent standard of living, as specified, and recommend a method to annually adjust these figures. SB 352 did not include a certification program for employers that pay a living wage.

SB 3 (Leno, Chapter 4, Statutes of 2016) increased the state minimum wage, ultimately to $15 per hour, indexed the minimum wage thereafter, and provided paid sick days to providers of in-home supportive services (IHSS), as specified. SB 3 specified that following the implementation of the $15 per hour minimum wage for all employers, on or before August 1 of that year (and each year thereafter), the Director of Finance shall calculate an adjusted minimum wage (indexing). This calculation shall increase the minimum wage by the lesser of: a) 3.5 %, or b) the rate of change in the United States Consumer Price Index for Urban Wage Earners and Clerical Workers (US CPI-W), as specified. The result shall be rounded to the nearest $0.10. Each adjusted minimum wage calculated shall take effect on the following January 1.

SUPPORT

United Ways of California (UWCA) – Sponsor
California Immigrant Policy Center
California School Employees Association
Coachella Valley Rescue Mission
Grace Institute - End Child Poverty in Ca
Lift to Rise
Monarch School
Orange County United Way
San Diego for Every Child
United Way of Stanislaus County
United Way of Ventura County

OPPOSITION

None received

-- END --

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

Bill No:	SB 1105	**Hearing Date:**	April 10, 2024
Author:	Padilla		
Version:	April 4, 2024		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Alma Perez-Schwab		

SUBJECT: Paid sick leave: agricultural employees: emergencies

KEY ISSUE

This bill expands existing paid sick leave provisions to allow agricultural employees who work outside to use their currently entitled paid sick days to avoid smoke, heat, or flooding conditions created by a local or state emergency.

ANALYSIS

Existing law:

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

2) Establishes the Division of Occupational Safety and Health (Cal/OSHA) within the Department of Industrial Relations (DIR) to, among other things, propose, administer, and enforce occupational safety and health standards. (Labor Code §6300 et seq.)

3) Under the Healthy Workplaces, Healthy Families Act of 2014, entitles employees who work in California to paid sick days, provided they have worked for the same employer for 30 or more days within a year from the commencement of employment, with limited exemption, as specified in the Act. (Labor Code §246)

4) Defines "full amount of leave" to mean five days or 40 hours of paid sick leave, to be accrued and carried over as specified. (Labor Code §246(d))

5) Upon the oral or written request of an employee, requires an employer to provide paid sick days for the following purposes:
   a. Diagnosis, care, or treatment of an existing health condition or the provision of preventive care for an employee or an employee's family member.
   b. For an employee who is a victim of domestic violence, sexual assault, or stalking, among others. (Labor Code §246.5)

6) Prohibits an employer from denying an employee the right to use accrued sick days, discharging, threatening to discharge, demoting, suspending, or in any manner discriminating

against an employee for using or attempting to use accrued sick days, filing a complaint with the Department or alleging a violation, cooperating in an investigation or prosecution of an alleged violation, or opposing any policy or practice that is prohibited by the Act. (Labor Code §246.5)

7) Prohibits an employer from requiring that the employee search for or find a replacement worker to cover the days during which the employee uses paid sick days, as specified. (Labor Code §246.5)

8) Establishes a rebuttable presumption of unlawful retaliation if an employer denies an employee the right to use accrued sick days, discharges, threatens to discharge, demotes, suspends, or in any manner discriminates against an employee within 30 days of any of the following:

   a. The filing of a complaint with the Labor Commissioner or alleging a violation.
   b. The cooperation with an investigation or prosecution of an alleged violation.
   c. Opposition by the employee to a policy, practice, or act that is prohibited by these provisions.
   (Labor Code §246.5)

9) Authorizes a local emergency to be proclaimed by the governing body of a city, county, or city and county, or by an official designated by ordinance adopted by that governing body, as specified, and requires review for continuing the local emergency at least once every 60 days until the governing body terminates the local emergency. (Government Code §8630)

10) Authorizes the Governor to proclaim a state of emergency in an area affected or likely to be affected, as specified, and defines "state of emergency" to mean the duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and property within the state including, among others, flooding or fire. (Government Code §8625 and §8558)

11) Prohibits an employer, in the event of an emergency condition, as defined, from taking or threatening an adverse action against any employee (except for specified emergency response workers, among others) for refusing to report to, or leaving, a workplace within the affected area because the employee has a reasonable belief that the workplace is unsafe. (Labor Code §1139)

This bill:

1) Requires that paid sick days be provided to an employee who is an agricultural employee, as defined, who works outside, and who is entitled to paid sick days under existing law, for the purpose of avoiding smoke, heat, or flooding conditions created by a local or state emergency.

2) Defines "agricultural employee" as currently defined in Labor Code Section 9110, to mean a person employed in any of the following:

   a. An agricultural occupation, as defined in Wage Order No. 14 of the Industrial Welfare Commission.

b. An industry preparing agricultural products for the market, on the farm, as defined in Wage Order No. 13 of the Industrial Welfare Commission.
c. An industry handling products after harvest, as defined in Wage Order No. 8 of the Industrial Welfare Commission.

3) Provides that there are smoke, heat, or flood conditions created by a local or state emergency if the Governor proclaims a state of emergency pursuant to Section 8625 of the Government Code, or a local emergency is proclaimed pursuant to Section 8630 of the Government Code, due to smoke, heat, or flooding conditions that prevent agricultural employees from working.

COMMENTS

1. Background: Paid Sick Leave

Federal law does not require employers to provide sick leave and until 2014, California authorized employers to offer it but didn't require it. AB 1522 (Gonzalez, Chapter 317, Statutes of 2014) enacted the Healthy Workplaces, Healthy Families Act of 2014 to provide employees with paid sick days for prescribed purposes, to be accrued at a rate of no less than one hour for every 30 hours worked. An employee is entitled to use accrued sick days beginning on the 90th day of employment and employers are authorized to limit an employee's use of paid sick days to 24 hours or 3 days in each year of employment. The bill additionally prohibits an employer from discriminating or retaliating against an employee who requests paid sick days. Last year, SB 616 (Gonzalez, Chapter 309, Statutes of 2023), among other things, increased the paid sick leave currently required to be afforded to eligible employees from three days to *five days*.

2. Benefits of Paid Sick Days:

Studies have identified low-wage workers as particularly susceptible to having little to no access to paid sick time. As pointed out by the Economic Policy Institute, "while approximately 64 percent of private-sector American workers currently have access to paid sick days, this topline number masks the fact that higher-wage workers have much greater access to paid sick days than lower-wage workers do: for example, 87 percent of private-sector workers in the top 10 percent of wages have the ability to earn paid sick days, compared with only 27 percent of private-sector workers in the bottom 10 percent."[1] This means that workers with very little disposable income are likely to go to work sick.

These findings are especially troubling considering the impact of untreated illnesses. Access to paid sick leave encourages workers to take time off when they or their family members are ill and need to seek medical care. According to the Institute for Women's Policy Research, "adults and children who have the time and care they need to recover from health problems may use fewer health care resources in the long run. Active parental involvement in children's hospital care, for instance, can head off future health care needs because of

[1] "Work sick or lose pay? The high cost of being sick when you don't get paid sick days," Economic Policy Institute, June 28, 2017.

increased parental education and awareness…Conversely, the failure to provide adequate recuperative time and requisite parental care may tend to exacerbate future health needs." [2]

3. Employees' Rights to Work in a Safe and Healthful Workplace:

In California, every employer has a legal obligation to provide and maintain a safe and healthful workplace for their employees. Among other things, employers are required to have a written Injury and Illness Prevention Program (IIPP) with specific elements set forth in the Labor Code and the California Occupational Safety and Health Act. Existing law directs employers to be proactive in the identification of hazards with a focus on corrective actions for addressing these. Regarding emergencies that arise in the course of employment, existing law provides that a person who, after receiving notice to evacuate or leave, willfully and knowingly directs an employee to remain in, or enter, an area closed due to a menace to the public health or safety shall be guilty of a misdemeanor.

Additionally, SB 1044 (Durazo, Chapter 829, Statutes of 2022) prohibits an employer, in the event of an emergency condition, as defined, from taking or threatening an adverse action against any employee (except for specified emergency response workers, among others) for refusing to report to, or leaving, a workplace within the affected area because the employee has a reasonable belief that the workplace is unsafe. This bill also prohibits an employer from preventing an employee, with some exceptions, from accessing the employee's mobile device or other communications device to seek emergency assistance, assessing the safety of the situation, or communicating with a person to verify their safety.

4. Need for this bill?

According to the author, "As the nation's leading farm state and one of the world's largest producers of food, farmworkers have been foundational to California's standing as the fourth largest economy in the world. Despite the vital role that farmworkers play to California, they continue to face several disadvantages as compared to other populations. Many lack access to health care and other critical safety net services and farmworkers do not enjoy the same protections workers as workers in other industries."

Additionally, the author notes, "In an analysis conducted by Mother Jones of the 168-farmworker deaths in California between 2018 and 2022, 83 of the 168 tragically lost their lives when temperatures in the surrounding area exceeded 80 degrees Fahrenheit, the temperature that trigger's California's heat safety requirements. As average temperatures increase and heat waves, wildfires, and extreme rain events increase, farmworkers will be at continued risk of losing their lives." SB 1105 would require that paid sick leave granted to agricultural employees can also be utilized to avoid smoke, heat, or flooding conditions created by a local or state emergency.

5. Proponent Arguments:

According to a coalition of proponents, including the California Food & Farming Network, "workplace conditions often expose farmworkers to several adverse environmental hazards resulting from extreme weather events that endanger their health, safety, and economic

[2] "No Time to be Sick: Why Everyone Suffers When Workers Don't Have Paid Sick Leave," Institute for Women's Policy Research, Publication # B242p, May 2004.

livelihoods, including working under extremely high temperatures, exposure to smoke from wildfires, and torrential rain and flooding. By allowing farmworkers to utilize their paid sick leave during climate emergencies, California can treat farmworkers as essential workers, instead of sacrificial ones, by ensuring they do not have to choose between their safety or their livelihood.

Agricultural workers are 35 times more likely to die from heat-related stress than workers in any other industry in the United States. Agriculture is one of the most hazardous industries in the United States and the rapidly changing climate will only make matters worse. Last year during a series of severe atmospheric river storms that struck California, many farmworkers lost work hours, decreasing their income due to the non-stop rain. One farmworker working in the Ventura strawberry fields recounted that he and his wife lost about $3,000 in income from reduced work, pushing them to make more trips to food distributions. Since the majority of farmworkers are undocumented, or low income they do not qualify for any unemployment benefits, leaving them vulnerable during disasters.

While the state of California has taken some of the nation's most proactive steps to adopt occupational safety standards related to heat and smoke, farmworkers need to know that during a climate emergency they are not risking personal financial disaster by choosing their safety."

6. Opponent Arguments:

None received.

7. Prior/Related Legislation:

SB 616 (Gonzalez, Chapter 309, Statutes of 2023), among other things, increased from three days to five days the paid sick leave afforded to eligible employees.

SB 1044 (Durazo, Chapter 829, Statutes of 2022) prohibited an employer, in the event of an emergency condition, as defined, from taking or threatening an adverse action against any employee for refusing to report to, or leaving, a workplace within the affected area because the employee has a reasonable belief that the workplace is unsafe.

AB 2658 (Burke, Chapter 288, Statues of 2020) extended existing employee rights and anti-retaliation protections regarding the reporting of unsafe working conditions, or refusing to work in hazardous conditions, to domestic work employees. This bill also made it a crime for a person, after receiving notice to evacuate or leave, to willfully and knowingly direct an employee to remain in, or enter, an area closed due to a menace to the public health or safety, including domestic work employees.

SUPPORT

California Food and Farming Network
California Rural Legal Assistance Foundation (CRLA)
Central California Environmental Justice Network
Central Coast Alliance United for A Sustainable Economy

Centro Binacional Para El Desarrollo Indígena Oaxaqueno
City of El Centro
City of Imperial
Lideres Campesinas
Pesticide Action Network North America
Roots of Change

OPPOSITION

None received

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

Bill No:	SB 1240	**Hearing Date:**	April 10, 2024
Author:	Alvarado-Gil		
Version:	March 21, 2024		
Urgency:	Yes	**Fiscal:**	Yes
Consultant:	Glenn Miles		

SUBJECT: Public Employees' Retirement System: contracting agencies: consolidation

KEY ISSUE

This bill allows a successor agency for the El Dorado County Fire Protection District and the Diamond Springs Fire Protection District to provide employees the defined benefit plan or formula that those employees received from their respective employer prior to the annexation.

ANALYSIS

Existing law:

1. Allows a public agency to participate in the California Public Employees' Retirement System (CalPERS) by contract to provide retirement benefits to its employees as specified (Government Code (GC § 20460).

2. Permits a successor agency that assumes the functions of the public agency to assume the contract of the public agency, as specified. The former agency's contract is merged into the successor agency's contract and the former agency's contract ceases to exist. The successor agency takes on the obligations and receives credit for the contributions to CalPERS from the former agency's contract as specified (GC § 20508).

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

4. Prohibits a public agency from providing CalPERS retirement benefits for some but not all members of specified member classifications (e.g., local firefighters) or providing a different benefit for subgroups (e.g., bargaining units) within the member classification (GC § 20479).

This bill:

1. Authorizes a successor agency for the Diamond Springs – El Dorado Fire Protection District and the El Dorado County Fire Protection District to provide employees the

defined benefit plan or formula that those employees received from their respective employer prior to the districts' merger.

2. Makes legislative findings and declarations that a special statute is necessary and that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique need to consolidate fire protection districts in the County of El Dorado to remove redundancies while continuing fire and emergency response services.

3. Declares that an urgency statute is necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect.

COMMENTS

1. Need for this bill?

This bill is necessary to implement a proposed annexation/merger of two fire districts in El Dorado County. After December 31, 2012, PEPRA requires a public employer to offer less generous "PEPRA" pension formulas to new employees rather than previously available "classic" pension formulas. Because the annexed employees would technically be new employees of the new successor employer, the successor agency could not provide them their current classic formula under existing law.

This bill would protect the annexed district employees' existing benefit formula, thereby facilitating the annexation/merger of the two fire districts. Proponents argue that the annexation will provide better, more efficient fire protection for the El Dorado county region, which is increasingly prone to fire hazards.

2. Proponent Arguments

According to the El Dorado Fire Protection District:

"SB1240 will allow for our specific annexation of Diamond Springs – El Dorado Fire District into El Dorado County Fire Protection District to occur without causing a negative impact to employees carried over, allowing them to maintain their current pension accrual formulas. Both our fire districts currently have a similar mix of legacy and Public Employees' Pension Reform Act (PEPRA) CalPERS employees, therefore, SB1240 would not cause any disparity for the successor agency."

According to the El Dorado County Professional Firefighters Association:

"To gain efficiencies and strengthen sustainability, rural fire protection districts often look to annexation and consolidation (similar to mergers) to cooperate regionally to provide a better vehicle for essential fire, rescue and emergency medical services within our communities. An unintended consequence of annexation can be the reclassification of loyal employees into lesser Public Employee Retirement accruals and benefits — even though their work remains the same as it was when wearing the shoulder patch of the agency that originally hired them.

SB 1240 will allow this specific instance of an annexation of fire protection districts to occur without causing disparate impact to the employees who are carried over — allowing them to maintain their existing pension accrual rates."

3. Opponent Arguments:

None received.

4. Prior Legislation:

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

SUPPORT

California Professional Firefighters
City of Placerville
Diamond Springs-El Dorado Fire Protection District
El Dorado County Fire Protection District
El Dorado County Professional Firefighters Association

OPPOSITION

None received.

-- END --

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

Bill No:	SB 1379	**Hearing Date:**	April 10, 2024
Author:	Dodd		
Version:	February 16, 2024		
Urgency:	Yes	**Fiscal:**	Yes
Consultant:	Glenn Miles		

SUBJECT: Public Employees' Retirement Law: reinstatement: County of Solano

KEY ISSUE

This bill exempts certain California Public Employees' Retirement System (CalPERS) retirees hired by Vallejo and Solano County in specified positions from the Public Employees' Pension Reform Act (PEPRA)'s post-retirement earnings limits.

ANALYSIS

Existing law:

1. Establishes PEPRA, a comprehensive reform of public pension law designed to stabilize California public pension systems that suffered existential and long-term damage during the 2008 financial crisis and to preserve the objective of ensuring that public employees who dedicate a lifetime of service to California receive retirement security in their old age. (Government Code (GC) § 7522 et seq.)

2. Prohibits a person retired from a public retirement system from working for a public employer in the same public retirement system from which the retiree receives the retirement benefit without reinstatement.[1] (GC § 7522.56 (b))

3. Authorizes a retiree to serve without reinstatement from retirement or loss or interruption of pension benefits during an emergency to prevent stoppage of public business or because the retired person has skills needed to perform work of limited duration, as specified. (GC § 7522.56 (c))

4. Limits the time a retiree can work under the emergency or limited duration exception to not more than 960 hours per year. (GC §7522.56 (d))

5. Limits the pay rate that a retiree can receive for work under the emergency or limited duration exception to not more than the maximum, paid by the employer to other employees

[1] Reinstatement means reinstating the retiree into active membership status in the retirement system. Active members, as opposed to retired annuitants, are by definition not retired. Thus, the pension system essentially, "un-retires" the retiree. This action stops the retiree's pension allowance; requires the retiree to reimburse the system for any pension benefits received; requires the retiree's employer to reemploy the retiree; and requires both the retiree and the employer to pay to the system pension contributions that would have been due during the period that the retiree would have been in active employment, with specified limitations. Reinstatement can have harsh financial consequences for both the retiree and the employer, especially if the retiree has been retired for a long period prior to CalPERS' discovery of violations of the post-retirement work rules. Recent legislation has given CalPERS greater discretion to opt not to impose reinstatement to mitigate some of the harsher consequences on retirees.

performing comparable duties, divided by 173.333 to equal an hourly rate. (GC §7522.56 (d))

6. Prohibits a retiree working under the emergency or limited duration exception from acquiring any service credit or retirement rights with respect to the employment unless the retiree reinstates from retirement. (GC §7522.56 (d))

7. Prohibits a person retired under CalPERS from working in any capacity, except as specified, for the state, university, a school employer, or a contracting agency unless the person first reinstates from retirement. (GC § 21220)

8. Requires that a CalPERS retiree in violation of the post-retirement employment (or working after retirement) rules to do the following if CalPERS reinstates them:

   (a) Reimburse CalPERS for any retirement allowance received during the period or periods of employment that are in violation of the law.

   (b) Pay to CalPERS the employee contributions they would have otherwise paid during the period, plus interest.

   (c) Reimburse CalPERS for related administrative expenses, as specified. (GC § 21220(b))

9. Requires that a CalPERS employer in violation of the post-retirement employment rules pay to CalPERS the employer contributions they would have otherwise paid during the period, plus interest, and reimburse CalPERS for related administrative expenses, if CalPERS elects to reinstate the retired annuitant. (GC § 21220(c))

10. Authorizes CalPERS to charge the employer a fee of $200 per retired member per month that the employer fails to enroll a retired annuitant employed in any capacity for CalPERS' administrative recordkeeping purposes, as specified, or fails to report the retired annuitant's pay rate and hours worked, as specified. The employer may not pass these fees onto the employee. (GC § 21220(d)-(f))

11. Allows CalPERS discretion in determining whether to reinstate into membership a person employed in violation of the post-retirement employment rules, as specified. (GC § 21202)

This bill:

1. Creates an exception to the PEPRA working after retirement rules to completely exempt a retiree hired by the City of Vallejo or the County of Solano "to perform a function or functions regularly performed by a peace officer, any evidence or dispatch personnel, or any administrative or records personnel" from the following:

   a. The 960-hour limitation;
   b. The pay rate limitation; and
   c. The service credit accrual limitation.

2. Includes a sunset date for the exception of January 1, 2029.

3. Makes technical changes to revise and update gendered terms.

COMMENTS

1. Need for this bill?

According to the author:

"The Vallejo City Council recently declared a state of emergency last year due to a major police officer staffing shortage. On average, it can take anywhere from 18-24 months to fully train a new recruit. Given the staffing shortage in the city of Vallejo, and the public safety problems it presents, the city can ill afford to wait for more officers to be trained. Without this immediate assistance, Vallejo will be unable to reach appropriate staffing levels as compared to surrounding cities. Despite being authorized to have 132 officers, Vallejo PD currently only has 31 patrol officers, 4 detectives, and no traffic officers. In light of dire staffing levels, the Vallejo Police Department is in a unique situation which requires immediate attention."

Background

Vallejo filed for bankruptcy during the 2008 Financial Crisis when the city lost around one-quarter of its revenues as local sales taxes and real estate development fees collapsed.[2] Even before the Financial Crisis, Vallejo suffered from the 1996 military base realignment closures that shut the Mare Island Naval Shipyard.[3]

The city recovered from both events due in part to its proximity to the rest of the Bay Area's highly charged economies, its relative value compared to neighboring jurisdictions that attracted new development and residents, and its ongoing redevelopment of Mare Island. [4] The city apparently demonstrated to the bond market that its economic house was quickly getting back in order. [5]

However, the pandemic brought the city more recent economic challenges (even though unprecedented federal government programs provided temporary funding that mitigated some of those challenges).[6] On top of that, the city has one of the highest crime rates in the country and some cite it as one of the 100 most dangerous cities in the United States.[7]

Vallejo also faces substantial state oversight and public criticism over its law enforcement policies that have resulted in several confrontations, deaths, and lawsuits.[8] The California Attorney General sued the city for its policing practices and recently entered into a stipulated judgement and executed a consent decree with the city to reform its police department and city

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[2] https://www.pbs.org/newshour/economy/analysis-cities-hit-hard-by-the-covid-19-pandemic-face-bankruptcy
[3] https://www.bondbuyer.com/news/ten-years-after-bankruptcy-filing-vallejo-looks-ahead
[4] Ibid.
[5] Ibid.
[6] https://openvallejo.org/2023/11/24/vallejo-to-use-1-5-million-in-covid-relief-for-staff-bonuses/
[7] https://www.neighborhoodscout.com/ca/vallejo/crime#description
[8] https://www.sfchronicle.com/bayarea/otisrtaylorjr/article/Litany-of-complaints-describes-how-police-15559987.php

administration, after a three-year collaborative review and reform period failed to achieve the changes sought by the California Department of Justice (DOJ).[9]

Vallejo's whipsawing economic conditions, budgetary limitations, challenging crime statistics, and the state and public criticism of its policing function which have all created substantial challenges to its ability to recruit and retain police officers and related support staff.

Because of its inability to fill police staffing levels, Vallejo city leaders have appealed to county and state officials for assistance in providing police services to its community while simultaneously endeavoring to implement reforms to its police department. It is in this context that the present bill seeks to create an exemption in PEPRA for both Vallejo police officers and related support staff as well as Solano County Sheriff's deputies and related support staff.

Committee Concerns

Although well intentioned, this bill erodes the critical pension reform policies that California put in place precisely to stabilize and strengthen the states' public retirement systems after the Financial Crisis. Specifically, the bill seeks to allow certain Vallejo and Solano County employees to double dip.

Double Dipping

Double dipping, in the public pension context, refers to the practice of allowing a public employee to receive concurrently both a publicly funded salary and a public retirement benefit while retaining their position. The practice significantly erodes public support for public pension funds. Non-public employees who may have no pension plan and little if any retirement savings in a 401k-type defined contribution plan seethe when faced with rising costs, increased taxes and governmental fees, and the probability that the federal government will soon extend the age to claim Social Security. That resentment grows when encountering fellow residents who have a secure and meaningful public pension. It absolutely erupts when they discover a public employee who receives a pension and salary for the same position from which the employee is supposedly retired. This "pension envy" makes average residents highly susceptible to policy proposals to eliminate public pension benefits and impose defined contribution plans. While 401K-style investment accounts can certainly help supplement a higher level of retirement security, they historically have failed to do so for lower- and middle-income employees many of whom find it necessary to empty those same accounts prematurely during recessionary times. In contrast, defined benefit pension plans have historically provided substantive retirement security to those who are fortunate to have them. Ignoring or belittling the public's pension envy sentiment and authorizing double dipping, especially in challenging economic times, likely will undermine support for the state's several retirement systems in the future and is ultimately detrimental to the long-term sustainability of our public pension plans.

Negative Incentives Adverse to Healthy Pension Funds
Both public employers and their employees' representatives have strong economic incentives adverse to healthy pension funds to obtain double dipping exemptions. Once an employee retires,

[9] *State of California v. City of Vallejo and the Vallejo Police Department*, Solano County Superior Court (2023), Case No: CU23-04676; see also https://www.kqed.org/news/11964674/trust-has-been-broken-california-demands-vallejo-police-reforms-citing-major-rights-violations

neither they nor their employer have to pay pension contributions, health benefits contributions, nor (for miscellaneous employees) social security contributions. This can result in significant savings to the employer, which employee representatives can then target at the bargaining table. The negative aspect is that as the rate of retirement accelerates artificially because of the double dipping, pension fund outflows occur sooner than otherwise anticipated. The resulting earlier outflows lead to less time and opportunity for the fund to generate investment return, which can create pressure to raise contribution rates to compensate for the lost investment potential depending on the fund's condition.

Cement Ceilings

Double dipping also can result in limited opportunities for newer, younger public employees because older employees have no incentive to leave their positions. Indeed, they have a significant incentive to stay longer than they otherwise would. Doing so blocks or reduces younger staff from receiving promotional opportunities to gain experience that allows them to rise in the civil service ranks. Such career sclerosis dramatically affects staff morale and creates its own recruitment and retention problems. Moreover, it can reduce how quickly a workforce adapts to societal and generational change, thereby creating a less representative workforce than the community writ large.

Not Just a District Bill

Providing Vallejo and Solano County the ability to offer double dipping to their employees gives them significant employee benefit advantages that other jurisdictions do not have and allows them to poach, even if unintentionally, from those jurisdictions. Other jurisdictions will seek similar exemptions and raise similarly compelling reasons why the Legislature should grant them those exemptions, until no meaningful rule against double dipping will apply to any jurisdiction. Each new exemption will increase pressure on jurisdictions without the exemption to request it or lose personnel to competing employers.

Increased Pressure to Eliminate Other PEPRA Reforms

As the state and federal governments reduce pandemic era support to local governments and also simultaneously begin addressing systemic budget deficits, public employer and employee representatives will apply ever greater pressure on the Legislature to weaken PEPRA reforms and allow practices that lower their short-term costs, satisfy active employee compensation demands, but drive up long-term unfunded pension liabilities. Already during the pandemic era, the governor's executive orders and legislative initiatives have neutralized many PEPRA reform statutes. Creating exemptions for double dipping will only inspire other initiatives to return to irresponsible pension policies.

Alternative Approaches

Given the inherent problem that this bill poses to the state's long-term commitment to healthy public pension policy, and the state's substantial interest in reforming Vallejo police practices, the committee suggests that a better approach to addressing Vallejo's problem come from direct state funding through the budget process and/or a special Solano County assessment to support law enforcement, perhaps on the proposed new California Forever city development near Fairfield that has attracted substantial investor interest.

2. Proponent Arguments

According to the City of Vallejo:

"SB 1379, a crucial district bill aimed at addressing the acute staffing shortage within the Vallejo Police Department, would allow retired annuitants working for the Vallejo Police Department, and sheriff deputies from Solano County to exceed the 960-hour work limit. The city is currently facing a state of emergency due to a severe lack of police officers, leading to public safety concerns that demand immediate attention."

According to the Solano County Sheriff's Office:

"Despite an authorized force of 132 officers, the Vallejo Police Department is currently operating with only 31 patrol officers, 4 detectives, and no traffic officers. This dire situation necessitates urgent action to ensure the safety of the community. Because of this staffing shortage, the Solano County Sheriff's Office is pressured with responding to calls for service in Vallejo. Therefore, the 960 hour limit should also be waived for the Solano County Sheriff's Office, as it will almost certainly be tasked with responding to calls in Vallejo."

3. Opponent Arguments:

None received.

4. Prior Legislation:

SB 411 (Cortese, Chapter 411, Statutes of 2021), amended PEPRA to grant CalPERS discretionary authority, rather than to require CalPERS, to reinstate a retiree if they work more than the 960-hour-per-fiscal-year limit, thereby allowing CalPERS discretion in addressing violations of the rule in a manner that does not impose unnecessarily harsh financial penalties on retirees.

SUPPORT

California State Sheriffs' Association
Solano County Deputy Sheriff's Association
Solano County Sheriff's Office
Vallejo Chamber of Commerce
Vallejo Mayor Robert Mcconnell

OPPOSITION

None received.

-- END --

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

Bill No:	SB 1205	**Hearing Date:**	April 10, 2024
Author:	Laird		
Version:	February 15, 2024		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Dawn Clover		

SUBJECT: Workers' compensation: medical benefits

KEY ISSUE

This bill entitles specified injured employees, who are still able to work, temporary disability indemnity payment for wages lost as a result of medical treatment and all reasonable expenses of transportation, meals, and lodging associated with that treatment.

ANALYSIS

Existing law:

1) Establishes a compensation system, administered by the Division of Workers' Compensation (DWC), which provides benefits to an employee who suffers from an injury 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 against liability from an insurance company duly authorized by the state. (Labor Code §§3200 et seq.)

2) Provides that medical care and services that are reasonably required to cure or relieve the injured worker from the effects of the injury shall be provided by the employer. (Labor Code §4600(a))

3) Specifies that when at the request of the employer, the employer's insurer, the administrative director, the appeals board, or a workers' compensation administrative law judge, the employee submits to examination by a qualified medical evaluator (physician), the employee is entitled to receive, in addition to all other benefits herein provided, all reasonable expenses of transportation, meals, and lodging incident to reporting for the examination, together with one day of temporary disability indemnity (TDI) for each day of wages lost in submitting to the examination. Regardless of the date of injury, "reasonable expenses of transportation" shall include mileage fees from the employee's home to the place of the examination and back at the rate of twenty-one cents ($0.21) a mile or the mileage rate adopted by the Director of Human Resources pursuant to Government Code §19820, whichever is higher, plus any bridge tolls. The mileage and tolls shall be paid to the employee at the time the employee is given notification of the time and place of the examination. (Labor Code §4600(e))

4) Establishes within the workers' compensation system temporary and permanent benefits, referred to as disability indemnity, which offer wage replacement equal to two-thirds of a

specified injured employee's average weekly earnings for up to 240 weeks while an employee is unable to work due to a workplace illness or injury. (Labor Code §§4653-4656)

5) Establishes procedures for the payment of TDI and permanent disability indemnity. This includes a requirement that a Qualified Medical Evaluator make a determination about the degree of disability experienced by the injured worker. (Labor Code §4650)

6) Provides that any employer who discharges or threatens to discharge or in any manner discriminate against an injured employee is guilty of a misdemeanor, and the employee's compensation shall be increased by one-half but to more than $10,000, together with costs and expenses up to $250. The employee shall also be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer. (Labor Code §132a)

7) Requires the Director of the Department of Human Resources to, among other things, adopt general rules and regulations that provide for reasonable reimbursement for expenses incurred by an agent of the state. The current personal vehicle mileage reimbursement rate, effective January 1, 2024, is 67 cents per mile. (Government Code §19820)

This bill:

1) Provides that an injured employee who is working is additionally entitled to receive all reasonable expenses of transportation, meals, and lodging incident to receiving medical treatment for the injury.

    a) Defines "reasonable expenses of transportation" to include mileage fees from the employee's home to the place of the treatment and back at the rate adopted by the director of Human Resources pursuant to Government Code §19820, plus bridge tolls.

2) Provides that an injured employee who is working is entitled to receive one day of TDI, or a percentage of one day of TDI representative of the percentage of the wages lost as a result of attending a medical appointment.

3) Specifies that the employer may not discharge or in any way discriminate against the employee for receiving treatment during normal business hours or during the hours of the day when the employee is customarily at work.

COMMENTS

1. Background

Workers' Compensation

California's workers' compensation system was enacted in the early 1900s during the Progressive Era and predates social security and unemployment compensation. Prior to its passage, injured employees who had the means to attempt to recuperate lost wages and medical expenses navigated a lengthy judicial process. Employers, concerned with injury liability and potentially unpredictable costs as a result, were drawn to the concept of ensuring a no-fault system in exchange for providing medical attention and benefits. The overall

societal benefit of workers' compensation ensures the cost of work-related injuries is not borne by the taxpayers.

Disability Indemnity

Indemnity benefits are the benefits an injured worker receives to make up for wages lost due to injury or illness acquired on the job or during the course of their work. In California, these payments are two-thirds of the workers' weekly earnings. Calculation of indemnity benefits is outlined in statute based upon the employee's type of injury and subsequent disability.

Temporary disability (TD) is the incapacity to work. Employees with TD can reasonably expect to be cured or relieved (materially improved) with medical treatment. Total TD applies to injured employees unable to work at all due to the injury. Partial TD indicates the injured employee is capable of performing work.

Temporary partial disability indemnity is paid to workers who are cleared by their medical provider to return to work while they are being treated and/or recovering. Generally, TDI is provided during the employee's healing period until they have recovered sufficiently to return to work or until the condition has reached a permanent and stationary status. Following a diagnosis from the injured worker's medical provider that the condition is not improving but not worsening, the condition is considered permanent and stationary.

Workers' Compensation Appeals Board

The Workers' Compensation Appeals Board (WCAB) is a seven member judicial body appointed by the Governor and confirmed by the Senate. It exercises all judicial powers pursuant to the Labor Code. Its major functions include issuing judicial opinions in response to decisions by workers' compensation administrative law judges, representing WCAB in appellate proceedings, and regulating the adjudication process by adopting rules of practice and procedure. In exercising its authority, WCAB provides guidance to the workers' compensation community.

Relevant Court Cases

Department of Rehabilitation v. WCAB (Lauher), 30 Cal. 4th 1281, 1295 (2003)
This case determined an employee returning to work following a permanent and stationary determination by the physician is not entitled to TDI to compensate them for time off from work while continuing to receive medical treatment for the injury. The question of whether an employee is entitled to TDI for missing work to attend medical appointments before permanent and stationary status was not addressed.

The employee submitted a workers' compensation claim based on work-related stress and depression, and discrimination for requiring the use of accrued leave to attend medical appointments. His doctor submitted a report stating the employee suffered from a medical condition that was responding to treatment and the injury had become permanent and stationary, meaning not improving or worsening. Based on this, the employee entered into a stipulation with his employer that stated there was a need for medical treatment to cure or relieve the effects of the injury.

The workers' compensation judge accepted the stipulation and denied the employee's claims based on allegations that his supervisor had made harassing phone calls to him and his family and that the employer, before agreeing to the stipulation, had discriminated against the

employee by requiring that he use accrued leave for absences to attend medical appointments. The judge denied a petition for reconsideration as did WCAB.

The employee returned to work and continued medical treatment, which was only available during business hours. The round trip journey for the employee was approximately 60 miles. The employer informed the employee he would not be paid full wages unless he used accrued leave. The employee used nearly 200 hours of leave to do so. He then filed a petition seeking reimbursement for the leave he used, as well as penalties. The workers' compensation judge ruled that the employee established a nexus between his industrial injury and his employer's conduct of requiring him to use accrued leave (earned sick and/or vacation time) and ruled that he was entitled to workers' compensation benefits in the form of medical treatment under Labor Code §4600. Further, the judge held that the employer had not established a good faith necessity justifying the use of accrued leave and concluded the employer had also unlawfully discriminated against the employee.

The Court of Appeal subsequently annulled WCAB's decision and the California Supreme Court then granted the employee's petition for review. The Supreme Court held that when the employee returned to work following the determination that the injury had become permanent and stationary, he was not entitled to TDI to compensate him for time off from work while continuing medical treatment for that injury, and that he failed to establish a claim of discrimination within the meaning of Labor Code §132(a). The Supreme Court, however, did not specifically address whether an employee was entitled to TD benefits for missing work to attend medical appointments before permanent and stationary status.

Skelton v. Workers Compensation Appeals Board, 39 CalApp.5th 1098 (2019)
This case limited the type of medical-legal appointments an injured employee may be reimbursed for. The workers' compensation claimant sought benefits for time lost from work due to injuries to her ankle and shoulder, which were separately sustained in 2012 and 2014. She continued to work after each injury and missed work to attend appointments with her treating physicians and to attend two qualified medical evaluator appointments, which are considered medical-legal evaluations. Her work hours were fixed, not flexible, and she could not see the treating physicians on the weekends. After having exhausted all leave, her paycheck was reduced for missed time at work. She then missed doctor appointments because she could no longer afford to miss work.

A workers' compensation judge determined she was not entitled to TDI for lost time from work to attend medical appointments, based on *Department of Rehabilitation*. She petitioned WCAB for reconsideration, which affirmed she was only entitled to TDI for missed work to attend a qualified medical evaluator appointment.

In *Skelton,* the court stated "The purpose of TDI is to provide interim wage replacement assistance to an injured worker during the period of time he or she is healing and incapable of working…the employer's obligation to pay TD benefits is tied to the employee's actual incapacity to perform the tasks usually encountered in one's employment and the wage loss resulting therefrom."

2. Need for this bill?

The author states the California Federation of Teachers "has seen instances where classified employees of theirs have effectively been denied access to workers' compensation medical

treatment. There have been instances of employers barring workers from pursuing treatment for their on-the-job injuries as the only time they are able to receive treatment is during workers' comp office hours which overlaps with their work shifts, and employers have not allowed injured workers to take off work for treatment. With no opportunities left to pursue treatment outside their shift, they are effectively being denied treatment by their employers for work-related injuries. In researching this issue further, we have discovered cases confirming the existence of a serious problem in this area, such as Skelton v. WCAB (2019), DOR v. WCAB (2003), and in a number of discussions with different applicant's attorneys who practice in this area we have confirmed the widespread existence and persistence of a problem. They will attest to the widely known problem of employers refusing to pay workers for time lost, refusing to give additional paid leave, and refusing to allow workers to use earned sick leave to seek care for occupational injuries and illnesses. CFT members have been plainly told that they are not to see the doctor during their shift.

Under current law and given the 2003 Supreme Court case decision (link here: https://caselaw.findlaw.com/court/ca-supreme-court/1190309.html), employers are allowed to tell workers that any medical care for an occupational injury must happen outside of the worker's regular shift hours, and employers can deny wage loss benefits to injured workers who, following a return to their job, must miss work to receive medical care necessary to treat an occupational injury. In such cases, this decision even allows employers to deny injured workers the right to use their earned sick leave. Additionally, neither this decision nor current law clearly protects workers willing to forgo all wages, temporary disability (TD) benefits, or sick leave while missing work to seek medical care for occupational injury or illness.

The end result is workers being forced to forego essential medical care, which can worsen their condition and potentially turn a temporary injury into a permanent one, or face losing wages, benefits, or employment simply for seeing a doctor during work hours."

3. Proponent Arguments

The California Federation of Teachers states "SB 1205 will extend the same workers' compensation protections currently received by those seeking employer-requested medical care to any medical care needed by an injured employee who has returned to work. In so doing, this bill guarantees [TD] benefits to workers during the time in which they must receive medical care for their injury. This bill also prohibits employers from retaliating in any way against workers who must receive care during normal business hours.

Given that TD does not replace all wages, simply a portion of them, workers will still face a strong incentive to schedule medical care outside of customary shift hours when possible. Further, given that this bill simply applies existing TD requirements around employer-requested care to other forms of workers' compensation medical treatment, employers and insurers should already be familiar with how to implement the new protections, minimizing any compliance issues for the payer community.

The bill does not in any way affect non-occupational injuries and illnesses, absolving employers of any additional responsibility to pay workers for time receiving medical care for these injuries. Given that non-occupational injuries constitute roughly 98% of the healthcare system, and that most workers' comp claims never trigger TD payments from the employer,

and finally, that most workers are likely already able to arrange appointments to not conflict with their work schedule, the number of employers affected should be relatively small.

We strongly believe that this bill will significantly improve injury and illness outcomes for those workers in need of its protections, and as a result, employers and insurers should often see reduced long-term exposure to unnecessary workers' compensation costs."

California School Employees Association states "SB 1205 protects injured workers by ensuring they can access timely medical care, without retaliation, for their occupational injuries. Additionally, this bill allows workers to receive reimbursement for reasonable costs associated with transportation, meals, and lodging. By alleviating this financial burden, SB 1205 will help injured workers focus on recovery and get back to work sooner."

4. Opponent Arguments:

According to a coalition of opponents, this bill "would increase costs and administrative friction in California's workers' compensation system by broadly expanding the payment of temporary disability benefits in a way that fundamentally undermines its purpose, which is to be available as wage replacement in situations where the worker is temporarily disabled and unable to work while recovering from an industrial injury. Once the employee's condition stabilizes or reaches maximal medical improvement, they are no longer entitled to temporary disability. While the author and sponsors contend that the bill is needed to allow injured workers to effectively access medical treatment, they have provided no objective information indicating that injured workers are struggling to access care for this reason, or that SB 1205 appropriate solution. SB 1205 would be a costly expansion of temporary disability benefits that would lead to extraordinary frictional costs to employers while providing no significant new benefit to employees."

5. Prior Legislation:

SB 1002 (Portantino, Chapter 609, Statutes of 2022) allowed an employer's workers' compensation insurer, or self-insured employer, to provide employees with access to the services of a licensed clinical social worker.

SB 1127 (Atkins, Chapter 835, Statutes of 2022), among other things, reduced the time period a public safety employer has between the filing of a workers' compensation claim and when the employer must accept liability for a non-rebutted claim and extended the duration of TD benefits from 104 weeks to 240 weeks for cancer presumption statutes.

SB 863 (De León, Chapter 363, Statutes of 2012) enacted workers' compensation system reform, which, among other things, revised the method for determining TD benefits.

SUPPORT

California Federation of Teachers (Sponsor)
American Federation of State, County and Municipal Employees
California Labor Federation
California School Employees Association

Disability Rights California
SMART - Transportation Division, California State Legislative Board

OPPOSITION

American Property Casualty Insurance Association
Association of California Health Care Districts
California Association of Joint Powers Authorities
California Chamber of Commerce California Coalition on Workers' Compensation
California Grocers Association
California Joint Powers Insurance Authority
California Manufacturers & Technology Association
California State Association of Counties (CSAC)
Public Risk, Innovation, Solutions, and Management (PRISM)

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

Bill No:	SB 1299	**Hearing Date:**	April 10, 2024
Author:	Cortese		
Version:	March 21, 2024		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Dawn Clover		

SUBJECT: Farmworkers: benefits

KEY ISSUE

This bill creates a workers' compensation presumption, disputable by an agricultural employer, that an outdoor agricultural worker's injury is heat-related if the employer fails to comply with heat illness standards.

ANALYSIS

Existing law:

1) Defines an "employer" as:
   a) The State and every State agency;
   b) Each county, city, district, and all public and quasi-public corporations and public agencies therein;
   c) Every person including any public service corporation, which has any natural person in service; or
   d) The legal representative of any deceased employer. (Labor Code §3300)

2) Establishes the Division of Workers' Compensation (Division) and Workers' Compensation Appeals Board (WCAB) within the Department of Industrial Relations and charges it with monitoring the administration of workers' compensation claims and providing administrative and judicial services to assist in resolving disputes that arise in connection with claims for workers' compensation benefits. (Labor Code §§3200)

3) Creates the Workers' Compensation Administration Revolving Fund (Fund) for the administration of the workers' compensation program, the Return-to-Work Program, and the enforcement of the insurance coverage program established by the Labor Commissioner. (Labor Code §62.5)

4) Requires every employer to carry workers' compensation insurance through an insurer or by self-insuring with the consent of the Department of Industrial Relations. (Labor Code §3700)

5) Charges WCAB with determining whether an employer has violated a Division of Occupational Safety and Health (CalOSHA) safety order and making specified findings regarding the manner in which it was violated, the cause of injury or death, and that the safety order was known to, and violated by the employer or their representative. (Labor Code

§4551-4553.1)

6) Specifies that upon knowledge of an injury, the employer or their agent shall provide a workers' compensation claim to the injured employee and within one working day of the claim filing, shall authorize medical treatment up to $10,000 for 90 days or until the claim is rejected. (Labor Code §5402)

7) Creates various disputable presumptions for specified public safety employees. (Labor Code §§3212, 3212.1, 3212.5, 3212.6, 3212.7, 3212.85, 3212.9, 3212.10, 3212.12, 3213, 3213.3)

8) Establishes CalOSHA within the Department of Industrial Relations to, among other things, propose, administer, and enforce occupational safety and health standards. (Labor Code §§6300 et seq.)

9) Requires CalOSHA to investigate the employment or place of employment, with or without notice or hearings if it learns or has reason to believe that an employment or place of employment is unsafe or injurious to the welfare of an employee. If CalOSHA receives a complaint from an employee or an employee's representative that their employment or place of employment is not safe, it shall, with or without notice or hearing, summarily investigate the complaint of serious violation within three working days. (Labor Code §6309)

10) Establishes heat illness prevention standards applicable to agriculture and the transportation or delivery of agricultural products, as specified. Standards include:
    a) Provision of cool potable water as close as practicable to areas where employees work;
    b) Access to shade, with ventilation of cooling when temperatures exceed 80 degrees Fahrenheit (F);
    c) Implementation of high heat procedures when temperatures equal or exceed 95 F;
    d) Assurance of a ten minute per two hour cool down break when temperatures exceed 95 F, which may be taken with a meal break or rest period;
    e) Implementation of emergency response procedures and effective communication by voice, observation, or electronic means is maintained;
    f) Observation of employees during temperatures of 80 F and above to monitor acclimatization;
    g) Employee and supervisor training on heat illness detection, prevention, and occurrence; and
    h) Establishment, implementation, and maintenance of a heat illness prevention plan, either as part of the employer's written Injury and Illness Program or maintained in a separate document. (8 CCR §3395, Labor Code §6721)

11) Requires the Labor and Workforce Development Agency, on or before July 1, 2023, to establish an advisory committee to study and evaluate the effects of heat on California's workers, businesses, and the economy. The advisory committee shall submit a report of its findings to the Legislature by January 1, 2026. (Government Code §15562.5)

12) Requires, as part of the California Youth Football Act, each youth tackle football administrator, coach, and referee to annually complete training in the basic understanding of the signs, symptoms, and appropriate responses to heat-related illness. (Health and Safety Code §124241)

13) Requires the California High School Coaching Education and Training Program to include training on the signs and symptoms of, and appropriate responses to, heat illness. (Education Code §35179.1)

This bill:

1. Provides that an agricultural employee's heat-related injury, illness, or death shall be presumed to arise out of and in the course of employment should the agricultural employer fail to comply with heat illness prevention standards set forth in Labor Code §6721 and §3395 of Title 8 of the California Code of Regulations.

2. Defines "injury" to include any heat-related injury, illness, or death that develops or manifests after the employee was working outdoors during or within the pay period in which an employee suffers any heat-related illness, injury, or death.

3. Establishes, for administrative costs, the Farmworker Climate Change Heat Injury and Death Fund (Fund) consisting of a one-time transfer of five million dollars derived from the Fund for administrative costs relative to the provisions of this bill.

4. Makes the following findings and recommendations:

    a. The intent and purpose of this act is to prevent increasing farmworker heat-related injury, illness, and death, as climate change raises temperatures. It is the intent of the Legislature that all agricultural employers consider the climate change heat-related needs of farmworkers and do whatever is necessary to prevent injury, illness, and death, consistent with existing laws and regulations. It is not the intent of this act to change any existing heat-related regulation.
    b. Farmworkers are facing climate change in a climate of fear as heat-related injury, illness, and death increases.
    c. The largest agricultural counties in California are experiencing record-breaking heat waves. In 2022, the City of King City in the County of Monterey broke its hottest temperature ever recorded at 116 degrees Fahrenheit (F). The City of Fresno recorded an all-time high at 114 F. The City of Stockton in the County of San Joaquin shattered its 1988 record of 106 degrees by reaching 112 F. The City of Napa set a record at 114 F. The City of Modesto in the County of Stanislaus topped its prior record at 106 F. In 2023, the City of Paso Robles reached an all-time high of 112 F, breaking the old record of 108 F set in 2010.
    d. According to the United States Department of Labor, approximately 77 percent of farmworkers were born outside the United States and many do not speak English. Fear of retaliation and being fired for work-related injuries strongly discourages farmworkers from reporting heat-related injuries or violations by their employers.
    e. From 2018 to 2019, the number of suspected and confirmed farmworker heat-related deaths increased by approximately 130 percent. In 2022, the Office of the Governor noted that "Extreme heat ranks amongst the deadliest of all climate change hazards, with structural inequities playing a significant role in the capacity of individuals, workers, and communities to protect and adapt to its effects."

COMMENTS

1. Background

Workers' Compensation
Article XIV of the California Constitution rests the duty upon the Legislature to create and enforce workers' compensation and to create and enforce a liability on the part of any or all persons to compensate workers for injury or disability, and their dependents, for the death of the worker during the course of their employment.

When a non-public sector employee acquires a work-related injury or illness (injury), the employer or their agent must offer medical treatment as soon as they have knowledge of the injury and provide a claim form to the employee for them to fill out and file. Upon filing, the employer or their workers' compensation insurer has 90 days to deny the claim, at which time the injury is presumed to be compensable. Additionally, within one working day of the employee filing the claim, the employer must authorize up to $10,000 in medical treatment until the claim is accepted or rejected.

Climate Change
With climate change, increasing exposure to elevated summertime heat is expected, with the number of unsafe outdoor work days estimated to increase each year.[1] While this does not prohibit work on hot days, it would necessitate an awareness by employers in order to modify work schedules accordingly. The state has already seen a steady increase in average summer temperatures since 1985. The projected increases in temperature will severely impact the inland valleys – some of the major agricultural areas where the vast majority of California's farm workers are employed.[2]

Seasonal and Migratory Employment
Farm workers provide permanent or seasonal agricultural labor and are essential to the industry and public. The very nature of farm work is highly unstable due to the seasonality of agriculture and the migratory need to work where there is a demand for labor. Ninety-two percent of farm workers in California identify as Latino, and only 14 percent were born in the United States. The number of farm workers in California is hard to establish because of many factors including immigration status, migration between growing areas, seasonal or part time work and language barriers.[3] Farm worker households tend to have high rates of poverty and live disproportionately in the poorest housing conditions.[4]

On February 7, 2024, the Assembly Committee on Labor and Employment held an informational hearing entitled "Lack of Labor Law Enforcement for California's Farmworkers," which included discussion on retaliation faced by farm workers, barriers to

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[1] Your Area WorkHeat, Climate CHIP, https://www.climatechip.org/your-area-heat-effects
[2] Mitchell, Diane C. PhD; Castro, Javier BS; Armitage, Tracey L. MS; Vega-Arroyo, Alondra J. BS; Moyce, Sally C. PhDc; Tancredi, Daniel J. PhD; Bennett, Deborah H. PhD; Jones, James H. PhD, DVM; Kjellstrom, Tord PhD; Schenker, Marc B. MD, MPH. Recruitment, Methods, and Descriptive Results of a Physiologic Assessment of Latino Farmworkers: The California Heat Illness Prevention Study. Journal of Occupational and Environmental Medicine 59(7):p 649-658, July 2017.
[3] Ibid.
[4] Farmworkers, Department of Housing and Community Development, April 3, 2024, https://www.hcd.ca.gov/planning-and-community-development/housing-elements/building-blocks/farmworkers

reporting legal violations, and lack of enforcement in the field. Farm workers and advocates testified, among other things, that:

- The language barrier continues to prevent incident reporting to CalOSHA.
- Employers are tipped off prior to inspection of premises.
- Workers do not report because of fear of retaliation, among other things.

Heat Fatalities and Reporting

Between 2002 and 2004, two heat-related fatalities were reported in the agricultural industry. In 2005, heat illness prevention and response legislation was introduced. Assembly Bill 805 (Chu, 2005) would have required CalOSHA to adopt a standard for heat illness prevention and response for the agricultural industry by December 1, 2006, and for employees in other at-risk outdoor occupations by December 1, 2007.

In July 2005, four farm workers - Salud Zamudio Rodriguez, Ramon Hernandez, Augstine Gudino, and Constantino Cruz Hernandez - died of heat illness. At the time, the National Weather Service recorded that month the third and fourth hottest on record with consistent highs at and above 100 F for the regions where the deaths occurred. In August 2005, CalOSHA issued an emergency regulation modeled after AB 805, which applies to outdoor places of employment such as agriculture, construction, landscaping, oil and gas extraction, and the transportation and delivery of agricultural products, construction materials, and other heavy items.

In May 2008, 17 year old Maria Isabel Vasquez Jimenez was pregnant while working in a San Joaquin County vineyard and collapsed. She was admitted to the hospital already in a coma with a body temperature of 108 F. She and her fetus later succumbed to heat illness. A subsequent investigation concluded temperatures had peaked at 95 F and adequate water, shade, and training standards were not provided. Two supervisors found guilty of violating standards were sentenced to community service. In 2012, two bills were introduced to address continued heat illness injury and fatalities among farm workers, which were vetoed by Governor Brown.

In 2014, 13 farm workers died after working in the fields.[5] Between 2008 and 2014, CalOSHA investigated 55 farm worker deaths.[6] Since then, CalOSHA has acknowledged heat illness incidents are underreported. The United States Bureau of Labor Statistics estimates were approximately seven times higher than what has been reported by the state. Of the 209 farm worker *illnesses* investigated during this timeframe, CalOSHA confirmed 97 as heat related.

On May 1, 2015, revised heat illness prevention standards took effect. The revised standard established additional requirements for the provision of and access to water and shade and created additional obligations during periods that high-heat procedures are required. The revised standard also included new language regarding emergency response procedures, acclimatization, and training.

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[5] Postcard from California: In climate crisis, farmworkers need more protection from heat, The New Lede, July 26, 2023, Postcard from California: In climate crisis, farmworkers need more protection from heat - The New Lede

[6] Death in the Fields, Desert Sun, April 4, 2024, https://www.desertsun.com/story/news/2015/11/19/death-fields/74058984/

In 2019, there was a marked increase in suspected heat fatalities compared to 2018. Forty three percent of the fatalities resulted in citations for the employer failing to follow heat illness prevention guidelines. The official fatality rate does not reflect how the heat affects farm workers because California does not record the number of serious injuries involving overnight hospital stays due to heat illness.[7]

Farm workers reported, and continue to report, that they are intimidated into not exercising their rights. The University of California, Merced's Community and Labor Center analysis of "Farmworker Health Survey 2021-2022" reported 15 percent of 1200 surveyed farm workers did not receive their entitled breaks, 43 percent were never provided a Heat Illness Prevention Plan, 22 percent were not monitored when the temperature exceeded 95 F, 20 percent were not monitored on hot days, and 15 percent were not provided enough shade during breaks. One in three farm workers would be unwilling to report employer non-compliance and nearly two in three (64%) are unwilling to report due to fear of retaliation.

California's Extreme Heat Action Plan, released in April 2022, notes increasingly higher temperatures pose "profoundly disproportionate consequences for the most vulnerable among us." The report recommends, among other things, a near-term focus on protecting vulnerable populations through codes, standards, and regulations and by increasing awareness to reduce risks posed by extreme heat. Further, according to an August 2023 California Department of Public Health report entitled "Excess Mortality During the September 2022 Heat Wave in California," heat waves are becoming longer, more frequent, and more intense, further jeopardizing certain populations, such as outdoor workers.

Agency Roles
Existing law authorizes CalOSHA to investigate violations of heat illness and prevention standards. This bill would not modify how the existing heat illness and prevention standards are administered and enforced by CalOSHA. Current law also authorizes the Division and Workers' Compensation Appeals Board (WCAB) to administer California's workers' compensation program, and during the course of that, investigate whether an employer has violated a CalOSHA safety order, pursuant to Labor Code §4551-4553.1. This bill would not impact each agency's ability to perform their mandated duties.

As of March 2024, the CalOSHA Bureau of Investigation's vacancy rate was 85 percent, with one investigator remaining for the entire state.[8] According to recent state budget data, the overall vacancy rate for CalOSHA is approximately 35 percent.

2. Need for this bill

The author states "The bill would establish a Farm Worker Climate Change Heat Injury and Death administrative fund and promote agricultural employer compliance with the existing state outdoor heat illness prevention regulation by creating a rebuttable presumption – if a farm worker heat-related injury or death occurs and their agricultural employer is found to be

[7] Brian Edwards and Jacob Margolis, *Why California Workers Are Still Dying From Heat Despite Protections*, CAPRADIO (Aug. 25, 2012), https://www.capradio.org/articles/2021/08/25/why-california-workers-are-still-dying-from-heat-despite-protections

[8] Norcal Lost its Only BOI Investigator, Cal-OSHA Reporter, March 15, 2024, https://www.cal-osha.com/flash-report/norcal-lost-its-only-boi-investigator/

noncompliant with the existing state outdoor heat illness prevention regulation, the injury or death is presumed to have occurred in the course of employment."

3. Double Referral

This bill has been double referred to the Senate Committee on Judiciary.

4. Proponent Arguments

According to the sponsor, United Farm Workers, "There is an increasing number of farm worker heat-related injuries, illnesses, and deaths, as climate change raises temperatures. From 2018 to 2019, the number of suspected and confirmed farm worker heat-related deaths increased approximately 130 percent… Additionally, farm workers face a climate of fear. According to the United States Department of Labor, approximately 77 percent of farm workers were born outside the United States and many do not speak English. Fear of retaliation and being fired for work-related injuries strongly discourage farm workers from reporting heat-related injuries or violations by their employers. SB 1299 will promote agricultural employer consideration of the climate change heat-related needs of farm workers and do whatever is necessary to prevent injury, illness, and death. It would also ensure farm workers and their families receive appropriate and timely benefits authorized by existing law. The bill does not change any existing heat-related regulation or workers' compensation benefit."

California Rural Legal Assistance Foundation states "Excessive heat warnings are becoming more and more common with heat waves lasting longer. In July of 2023, 241 high maximum temperature records were broken and an additional 117 records were tied across California. Farmworker face especially high risk of heat related injury and illness because they perform strenuous work at fast pace often in direct sun. Agricultural workers had the highest rate of heat illness cases in a study of California work heat related illness claims between 2000-2017. The outdoor heat illness prevention regulation mandates ready availability of ample supply of cool drinking water and work practices that encourage frequent water consumption, enough shade to accommodate all workers taking breaks at the same time, training before work in the heat and a written heat illness prevention and response plan available at the worksite. Unfortunately, we hear often from farmworkers that these requirements are not being met. In a recent survey of farmworkers conducted by UC Merced 43% of workers reported never seeing a work heat injury prevention plan and 31% had not received heat illness prevention training within the past year. Due to severe understaffing, Cal-OSHA doesn't have the capacity to conduct enough inspections or respond to complaints in a timely manner."

5. Opponent Arguments

According to Nisei Farmers League, "Should SB 1299 become law, the unintended consequence would be that it would create a two-tier system. [CalOSHAs] investigatory dictate set out in Labor Code §3395 would remain in place where the issue is not spurned by industrial injury or death. But, where an industrial injury or death occurs and the question is whether the employer has in place an adequate heat illness prevention plan, the WCAB would be forced to conduct its own proceedings. Such a two-track process would be ripe for confusion and duplication…

SB 1299 would act to create a new presumption class that applies solely to farm worker employees… The unintended consequence of SB 1299 is to use [WCAB] to enforce implementation and maintenance of heat illness programs that has, to this point, been the exclusive responsibility of [CalOSHA]. But, under the plan proposed by SB 1299, the WCAB would only have the right where there is a claim for industrial injury or death and an allegation that no heat illness prevention plan was in place. Otherwise, [CalOSHA] would remain responsible for enforcement of heat illness prevention plan implementation…the California Workers' Compensation program already addresses and provides for an injured worker's immediate medical care – even while the employer or carrier is investigating the claims and has not yet accepted or denied the claims."

An opponent coalition letter states "Preliminary internal audits demonstrate that almost no heat-related claims are filed in the agriculture industry. One large entity that covers the agriculture industry only had 13 heat-related claims over the last five years. That is less than three heat-related claims per year. There is no evidence that the system is failing to function regarding these claims. If proponents of SB 1299 have other data, we are happy to review it. But currently, we are unaware of any data supporting this bill."

6. Prior Legislation

AB 2264 (Arambula, 2024) would require an employee to obtain and maintain a heat illness prevention training certification from CalOSHA within 30 days after the date of hire and require an employer to reimburse the employee for training time.

SB 623 (Laird, Chapter 621, Statutes of 2023) extended the workers' compensation PTSI presumption for specified public safety personnel and required the Commission on Health and Safety and Workers' Compensation to submit two reports to the legislature regarding PTSI.

AB 1643 (Rivas, Chapter 263, Statutes of 2022) required, on or before July 1, 2023, the Labor and Workforce Development Agency to establish an advisory committee of specified representatives to evaluate and recommend the scope of a study on the effects of heat on California's workers, businesses, and the economy.

SB 1159 (Hill, Chapter 85, Statutes of 2020) created a rebuttable presumption that illness or death related to COVID-19 is an occupational injury and therefore eligible for workers' compensation benefits.

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

AB 2676 (Calderon, 2012) would have made it a clear misdemeanor, punishable by jail time and fines, for failure to provide water and shade, as specified, to employees. *This bill was vetoed by Governor Brown, who stated "In recent years, California has enhanced its existing safety regulations to protect workers in all outdoor industries - - implementing the most stringent standards in the nation. Since these standards were adopted, enforcement has improved and compliance has increased…While I believe enforcement of our heat standards can be improved, I am not convinced that creating a new crime -- and a crime that applies only to one group of employers -- is the answer."*

AB 2346 (Butler, 2012) would have, among other things, made growers and the farm labor contractors they hire jointly liable for failure to supply farm workers with shade and water. *In his veto message, Governor Brown stated "I am convinced that these standards should be improved, but this bill is flawed: it would create through legislation a new enforcement structure that would single out agricultural employers and burden the courts with private lawsuits. I believe the regulatory process is more flexible and the better way to improve standards for farm workers."*

AB 805 (Chu, 2005) would have required CalOSHA to adopt heat illness standards. *This bill was held in the Senate Committee on Appropriations.*

SUPPORT

United Farm Workers (Sponsor)
California Labor Federation
California Rural Legal Assistance Foundation

OPPOSITION

Agricultural Council of California
American Property Casualty Insurance Association
Association of California Egg Farmers
Brea Chamber of Commerce
Building Owners and Managers Association
California Association of Joint Powers Authorities
California Association of Wheat Growers
California Association of Winegrape Growers
California Bean Shippers Association
California Business Properties Association
California Chamber of Commerce
California Coalition on Workers' Compensation
California Cotton Ginners and Growers Association
California Farm Bureau
California Fresh Fruit Association
California Grain and Feed Association
California League of Food Producers
California Pear Growers Association
California Seed Association
California State Floral Association
California Strawberry Commission
Carlsbad Chamber of Commerce
Corona Chamber of Commerce
Cupertino Chamber of Commerce
Family Business Association of California
Family Winemakers of California
Fontana Chamber of Commerce
Greater Conejo Valley Chamber of Commerce
Greater High Desert Chamber of Commerce
Imperial Valley Regional Chamber of Commerce

La Cañada Flintridge Chamber of Commerce
Long Beach Area Chamber of Commerce
Modesto Chamber of Commerce
NAIOP California
National Federation of Independent Business
Nisei Farmers League
Newport Beach Chamber of Commerce
Pacific Egg and Poultry Association
Rancho Mirage Chamber of Commerce
Santa Maria Valley Chamber of Commerce
Santee Chamber of Commerce
Simi Valley Chamber of Commerce
Tulare Chamber of Commerce
West Ventura County Business Alliance
Western Agricultural Processors Association
Western Growers Association

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

Bill No:	SB 1346	**Hearing Date:**	April 10, 2024
Author:	Durazo		
Version:	February 16, 2024		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Dawn Clover		

SUBJECT: Workers' compensation: aggregate disability payments

KEY ISSUE

This bill allows the Workers' Compensation Appeals Board the discretion to extend the potential duration of temporary disability payments for up to 90 days if an injured employee prevails at a workers' compensation independent medical review.

ANALYSIS

Existing law:

1) Establishes a workers' compensation system, administered by the Division of Workers' Compensation (Division) within the Department of Industrial Relations and requires employers to secure payment of workers' compensation for injuries incurred by employees that arise out of, and in the course of, employment. (Labor Code §§3200 et seq.)

2) Requires every employer to establish a medical treatment utilization review (UR) process directly or through an insurer or an entity with which the employer or insurer contracts for these services and establishes penalties for failure to establish and comply with UR. Utilization review is a system whereby physicians with comparable expertise to the treating provider apply medical guidelines to determine whether the recommended treatment is appropriate. (Labor Code §4610)

3) Provides that an employer or the employer's insurer can challenge the appropriateness of medical treatment recommended by a treating physician through UR. This is the only means by which an employer can deny medical treatment recommended for an injured worker. (Labor Code §4610)

4) Establishes the independent medical review (IMR) system that operates as the employee's appeal of a UR denial. The IMR system is operated by a vendor selected and regulated by the Division and its review is conducted by qualified medical professionals. In most circumstances, a determination by IMR is final and binding. (Labor Code §4610.5)

5) Provides, for the purpose of workers' compensation temporary disability (TD) payments, two-thirds of the weekly loss of wages during the disability for up to 104 weeks within a period of two years. (Labor Code §§4650 et seq.)

This bill: provides that, on or after January 1, 2025, if a UR denial of treatment recommended by a treating physician for an injured worker is overturned by IMR or the Workers' Compensation Appeals Board (WCAB), any TD benefits paid or owing to the injured worker from the date of

the UR denial until the date of the IMR decision may be credited as time lost by WCAB in the calculation of the aggregate disability payments.

COMMENTS

1. Background

All employers, or their workers' compensation claims administrators, are required to have a UR program. The UR process is used by employers or claims administrators to have a doctor review a medical treatment plan to determine if the proposed treatment is medically necessary after consulting a schedule of uniform treatment guidelines. These guidelines, referred to as the Medical Treatment Utilization Schedule, are adopted by the Division and in most cases are consistent with treatment guidelines adopted by the American College of Occupational and Environmental Medicine.

If the UR reviewer concludes a recommended treatment is not medically necessary, they may modify or deny the treatment request. If the treatment request is modified or denied, the IMR process can be initiated by the injured worker, or their physician or attorney, within 30 days. Once IMR is initiated, the claims administrator has 14 days to provide records to the IMR provider, who then has 30 days to submit a decision.

According to the Department of Industrial Relations, 124,345 new TD claims were filed in 2021. Recent data estimates 92.5 percent of all medical treatment requests are approved without objection and 1.6 percent are approved with modifications. Therefore, 94.1 percent are approved by claims or by UR. Of the remaining 5.9 percent, 29 percent are appealed to IMR, which accounts for 1.7 percent of initial medical treatment requests.

Anecdotal evidence provided by the sponsor describes several cases where UR was denied to the injured worker, only to be overturned by IMR, causing weeks to months of delay in care. Types of denials ranged from cortisone shots to major surgery. While waiting for the IMR determination, injured employees reached and exceeded their 104-week temporary disability cap, leaving them vulnerable to financial loss on top of injury.

The California Workers' Compensation Institute (CWCI) finds this bill would result in additional expenses for claims administrators to develop new systems to track the dates of UR denials, IMR determinations, and subsequent treatment authorizations to calculate the number of days to exclude from the TD cap. CWCI estimates claims administrators would need to track 31.7 percent of all TD claims in order to identify and monitor claims that could be covered under this bill.

2. Need for this bill?

According to the author, "California's workers' compensation law requires an employer to provide all medical treatment necessary to cure or relieve an employee from a work-related injury. In return, the employee cannot sue their employer. As a result, California's workers' compensation system is a no-fault system. However, there is a 104-week time limit on temporary disability payments. The 104-week cap is applied even in instances when the employee's medical treatment has been wrongfully denied and later authorized by either IMR or the [Workers' Compensation Appeals Board (WCAB)].

In limited instances when a UR denial is overturned by IMR on medical necessity grounds, or by the WCAB because it was untimely and unreasonable SB 1346 would allow the WCAB, in its sole discretion, to replace lost TD benefits beyond the 2-year statutory maximum. This will ensure that workers are not unjustly penalized due to a delay in their treatment through no fault of their own."

3. Proponent Arguments

The sponsor, California Applicants' Attorneys Association, states "Notwithstanding the 'no-fault' nature of the system, injured workers are often forced to financially shoulder the burdens of a bureaucratic system dominated by the insurance adjusters and medical providers that are selected and compensated by the insurance industry or employers. One such example is manifested by the 104-week time limit on temporary disability payments… According to industry data relied on by the Division of Workers' Compensation, less than 10% of UR denials are overturned by IMR when a denial is untimely and delays necessary treatment. It is wrong for TD benefits for 10% of injured workers to end simply because necessary treatment was erroneously or unreasonably denied, and the denial delayed the injured worker's recovery and return to work… We believe SB 1346 adequately addresses Governor Newsom's veto of AB 1213 last year by vesting the authority to bridge the benefit gap only with the WCAB."

3. Opponent Arguments:

According to a coalition of opponents, "IMR is [over utilized] and that is where the delay occurs for injured workers. If the legislature wants to meaningfully reduce delays, then they should focus on the overuse of IMR by attorneys and physicians. If mitigating unreasonable delay is the issue, then the data clearly shows that ten times as many injured workers are experiencing delays because of an overuse of IMR. The Utilization Review process is not perfect, but it is consistently providing strong results for the system and the data shows clearly that UR is not the cause of delays.

Data continues to suggest that it's a small number of physicians driving this high volume of IMR requests and therefore causing delays for injured workers. A 2021 Research Update from the California Workers' Compensation Institute found that 1% of requesting physicians (89 doctors) account for 39.9% of disputed treatment requests. Just ten individual providers account for 11% of the disputed treatment requests. The report also notes that the same providers continue to be a problem year after year…. we believe that SB 1346 will cause injured workers and their attorneys to trigger unnecessary IMR more frequently in hopes of preserving their potential legal right to the additional temporary disability benefits allowed by the bill, with absolutely no downside for the provider or the applicant attorney, as the expenses of the IMR are carried entirely by the claims administrator even if an attorney submits an IMR for a course of treatment that has been denied by IMR as outside the legal standard dozens of times in the same year. The increase in IMR volume will have a direct impact on the turnaround time for these reviews and decisions, thus impacting the injured workers further. The IMR process takes a substantial amount of time, and employers prevail at a rate of roughly 90% over the past decade. If the result of SB 1346 is more IMR that ultimately upholds the UR determination, then it will undermine the intent of the bill by causing even more delay for workers and more frictional cost for employers… the requirements of SB 1346 would further complicate the claims administration process and result in additional system friction and litigation."

4. Prior Legislation:

AB 1213 (Ortega, 2023) was substantially similar to this bill. In his veto message, Governor Newsom stated "While I understand the goal of the author and sponsor, there is a lack of data to support such a change. Under the existing workers' compensation system, employers are required to establish a UR process to evaluate the necessity and appropriateness of requested medical treatments. This process is in place to ensure that employees receive the appropriate evidence-based medical care."

AB 1295 (Chu, 2017) was substantially similar to this bill. *This bill was held in the Assembly Committee on Insurance.*

SB 1160 (Mendoza, Chapter 868, Statutes of 2016) expedited medical care at the beginning of the injured worker's claim, modernized data collection in the workers' compensation system, and implemented anti-fraud measures in the filing and collection of liens.

SB 863 (De Leon, Chapter 363, Statutes of 2012) allowed, among other things, an employee to appeal a UR decision by requesting an independent medical review either immediately after the UR decision or after getting a second UR with additional information.

SUPPORT

California Applicants' Attorneys Association - Sponsor

OPPOSITION

Acclamation Insurance Management Services
Allied Managed Care
American Property Casualty Insurance Association
California Chamber of Commerce
California Coalition on Workers Compensation
California Joint Powers Insurance Authority
California League of Food Producers
California Restaurant Association
California State Association of Counties
Coalition of Small and Disabled Veteran Businesses
Flasher Barricade Association
Landscape Contractors Insurance Services, Inc.
League of California Cities
Monterey County
Protected Insurance Program for Schools & Community Colleges Joint Powers Authority
Public Risk Innovation, Solutions, and Management: PRISM
Schools Insurance Authority
Self-Insured Schools of California

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

Bill No:	SB 1030	**Hearing Date:**	April 10, 2024
Author:	Smallwood-Cuevas		
Version:	April 1, 2024		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Emma Bruce		

SUBJECT: California Workplace Outreach Project

KEY ISSUE

This bill directs the Department of Industrial Relations (DIR), upon appropriation of funds for this purpose, to establish the California Workplace Outreach Project (Project) to promote awareness of, and compliance with, labor protections by contracting out with qualified organizations for worker outreach and the creation of educational materials.

ANALYSIS

Existing law:

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

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

3. Requires all California employers to conspicuously display specified posters informing workers of their rights as they relate to pay days, paid sick leave, whistleblower protections, workers' compensation coverage, and safety and health protections on the job, among others. (Labor Code §§207, 247, 1102.8, 3550, 6328)

4. Directs the Division of Labor Standards Enforcement (DLSE), upon appropriation of funds for this purpose, to establish and maintain an outreach and education program in conjunction with community-based organizations to promote awareness of, and compliance with, labor protections that affect the domestic work industry. (Labor Code §1455)

5. Directs DIR, upon appropriation, to establish and maintain a Garment Worker Wage Claim Pilot Program and to contract with qualified organizations to educate garment workers on, and provide legal assistance for, filing wage claims. (Labor Code §2693.1)

This bill:

1. Adds a new division to the Labor Code, commencing with Section 11000, that directs DIR, upon appropriation of funds for this purpose, to establish and administer the California Workplace Outreach Project (Project).

2. States the purpose of the Project shall be to promote awareness of, and compliance with, labor protections that affect California workers, with a focus on low-wage and high-violation industries.

3. Directs DIR to issue a competitive request for proposal to qualified organizations to provide education and outreach services to workers, including by creating educational materials, and to assist workers who have experienced violations of labor standards.

4. Defines "qualified organization" as a nonprofit organization with demonstrated experience in carrying out in-person outreach and education directed at workers in industries and demographic groups deemed by the department or its divisions to be vulnerable to violations of labor standards.

5. Directs qualified organizations to consult with DIR on priority topics for outreach and education and to create materials for workers and organizations.

6. Specifies the materials shall be translated into non-English languages, to be determined by each qualified organization in consultation with DIR, as appropriate for the geographic region they serve.

7. Authorizes DIR to require qualified organizations to participate in training and gives DIR final approval over the education and outreach materials.

8. Directs DIR and qualified organizations to meet at least twice a year to coordinate efforts around outreach, education, and enforcement, including sharing information, in accordance with applicable privacy and confidentiality laws, that will shape and inform the overall enforcement strategy of DIR.

COMMENTS

1. Background: Covid-19 Outreach

Although Covid-19 touched the lives of every Californian as it swept across the state, those unable to work from home were disproportionately vulnerable to the virus. Often, these workers were employed in high-risk industries such as warehousing, agriculture, food and grocery services, food processing, and nursing[1]. In an effort to slow the spread of Covid-19 and protect workers the state allocated $32.5 million from the General Fund in 2020 to the LWDA for employer and worker education, engagement, and enforcement in high-risk industries.

[1] Flores, Juan. "Analysis Shows Pandemic's Toll on California Workers in High-Risk Industries." May 2021. UC Merced Labor Center. https://news.ucmerced.edu/news/2021/analysis-shows-pandemics-toll-california-workers-high-risk-industries

With the above funding, LWDA established the California Covid-19 Workplace Outreach Program (CWOP) to reach and empower high-risk workers through trusted organizations and community leaders. CWOP began as a six-month program, but was extended several times over, with the last appropriation of funds coming in the 2023-2024 budget. The most recent budget allocation also renamed the program the California Workplace Outreach Program and expanded its purview outside of Covid-19. SB 1030 codifies this renamed, temporary program in the Labor Code.

CWOP, over the course of 2020-2023, distributed funds to over 60 community-based organizations (CBOs) across the state. CBOs that received funding produced instructional videos, held events and trainings, distributed informational flyers, canvassed communities, and held phone and text banking sessions. The goal was to encourage workers to learn about and better understand their rights related to workplace health and safety, retaliation, and worker pay benefits. Through CWOP, the LWDA strengthened its relationship with workers in high-risk industries, ensuring that in the future they receive vital information about workplace protections.

2. Need for this Bill?

According to the author, SB 1030 "would build on the highly successful California Workplace Outreach Project (CWOP), which has provided linguistically and culturally appropriate information to millions of California workers through a partnership between the Department of Industrial Relations (DIR) and over sixty community-based organizations."

Additionally, the author argues, "There is no more effective way for workers to learn their rights on the job than meaningful conversations in their neighborhoods, in their primary languages, with community leaders who possess first-hand knowledge of the unique challenges they face. CWOP extends the reach of California's labor agency via the 'trusted messenger' model, relying on locally-rooted organizations' 'culture of trust, longevity and regular contact' with marginalized workers."

3. Proponent Arguments

According to the sponsor of the measure, the California Coalition for Worker Power, "An estimated 3.4 million California workers speak limited English, but the state has nowhere near enough bilingual worksite inspectors to reach these workers. Without access to linguistically appropriate information, these Californians–who are most likely to work in low-wage industries rife with labor violations–are vulnerable to wage theft and abuse. Community organizations can bridge this gap.

The pandemic illustrated the importance of maintaining flexible worker-outreach infrastructure capable of rapidly disseminating life-saving information in a changing world. CWOP accomplished remarkable results by quickly building a well-informed and integrated network of organizations adept at connecting with the State's most vulnerable communities. Twelve regional leads coordinated activities in six priority regions, enabling labor agencies to rapidly disseminate crucial information in 38 counties, accounting for 96% of the state's population. Codifying and expanding CWOP will ensure that our labor agencies are able to quickly respond when new threats emerge (extreme heat, wildfires, and potentially other communicable diseases)."

3. Opponent Arguments:

None received.

4. Staff Comment:

The intent of the program is to reach workers in low-wage and high-violation industries, ensuring that they are aware of their protections and work in a safe environment. Without an accounting of where the funding goes, workers visiting the department's website seeking assistance from trusted community organizations will not know who to contact. As this bill moves forward, the author may wish to consider requiring DIR to keep, and make available to the public, a list of the qualified organizations receiving funds through the program.

Maintaining a list of these organizations allows workers visiting DIR's website to find and connect with organizations that can provide them with culturally and linguistically appropriate workplace education materials. Requiring all materials produced through the program to be posted online has the potential to slow down DIR's approval of materials, this solution keeps the program moving while reaching an even wider audience of workers.

5. Prior and Related Legislation:

AB 130 (Committee on Budget, Chapter 39, Statutes of 2023) deleted the June 30, 2024 inoperative date for the domestic worker outreach and education program within DLSE and provided $35 million in one-time funds for grants to community based organizations for domestic worker education and outreach.

AB 138 (Committee on Budget, Chapter 78, Statutes of 2021) established the Garment Worker Wage Claim Pilot Program within DIR to contract with qualified organizations for the purpose of providing educational services to garment workers regarding wage violations.

SB 115 (Committee on Budget and Fiscal Review, Chapter 40, Statutes of 2020), among other things, provided $32.5 million from the General Fund to the Labor Agency to slow the spread of COVID-19 through employer and worker education and engagement, and enforcement.

SB 83 (Committee on Budget and Fiscal Review, Chapter 24, Statutes of 2019), among other things, established the domestic worker outreach and education program within DLSE to promote awareness of, and compliance with, labor protections that affect the domestic work industry and to promote fair and dignified labor standards in this industry.

SUPPORT

California Coalition for Worker Power (Sponsor)
Asian Americans Advancing Justice
AFSCME
California Immigrant Policy Center
California Domestic Workers Coalition
California Labor Federation, AFL-CIO
California Healthy Nail Salon Collaborative
California Nurses Association

California Work & Family Coalition
Central Coast Alliance United for a Sustainable Economy
Central California Environmental Justice Network
Central Valley Empowerment Alliance
Center on Policy Initiatives
Center on Workers' Rights
Centro Binacional para el Desarrollo Indigena Oaxaqueño
Chinese Progressive Association
Consumer Attorneys of California
CLEAN Carwash Worker Center
Community Legal Service East Los Palos
East Bay Alliance for a Sustainable Economy
Equal Rights Advocate
Fresno-Madera-Tulare-Kings Central Labor Council
Inland Coalition for Immigrant Justice
Inland Empire Labor Council AFL-CIO
Jakara Movement
Jobs with Justice San Francisco
Koreatown Immigrant Worker Alliance
Lideres Campesinas
Legal Aid at Work
Legal for California Rural Assistance Foundation
Los Angeles Worker Center Network
Los Angeles Alliance for a New Economy
Maintenance Cooperation Trust Fund
Mixteco Indigena Community Organizing Project (MICOP)
Mujeres en Acción
National Domestic Workers Alliance
National Employment Law Project
North Bay Jobs with Justice
Parent Voices of California
Pilipino Worker Center
Pomona Economic Opportunity Center
Powerswitch Action
Restaurant Opportunities Center of Los Angeles
SEIU California
Southern California Black Worker Hub
Southern California Coalition for Occupational Safety and Health
Trabajadores Unidos Workers United
TechEquity Action
The Cambodian Family
UCLA Labor Center
United for Respect
United Farm Workers
Universidad Popular
Valley Forward
Valley Voices
Warehouse Workers Resource Center
Worksafe

OPPOSITION

None received

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