California State Senate

LABOR, PUBLIC EMPLOYMENT AND RETIREMENT

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AGENDA

Wednesday, June 14, 2023
9:30 a.m. -- 1021 O Street, Room 2200

MEASURES HEARD IN FILE ORDER

1.	AB 96	Kalra	Public employment: local public transit agencies: autonomous transit vehicle technology.
2.	AB 489 **(CONSENT)**	Calderon	Workers' compensation: disability payments.
3.	AB 521	Bauer-Kahan	Occupational safety and health standards: construction jobsites: restrooms.
4.	AB 587	Robert Rivas	Public works: payroll records.
5.	AB 658	Mike Fong	Public Employees' Medical and Hospital Care Act: postemployment health benefits: the City of San Gabriel.
6.	AB 699	Weber	Workers' compensation: presumed injuries.
7.	AB 1020	Grayson	County Employees Retirement Law of 1937: disability retirement: medical conditions: employment-related presumption.
8.	AB 1355 **(CONSENT)**	Valencia	Employment: benefits: electronic notice and documents.
9.	AB 1389 **(CONSENT)**	Wendy Carrillo	Notice of levy.
10.	SJR 5	Durazo	Office of Management and Budget: Uniform Guidance.

SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Dave Cortese, Chair
2023 - 2024 Regular

Bill No:	AB 96	**Hearing Date:**	June 14, 2023
Author:	Kalra		
Version:	May 1, 2023		
Urgency:	No	**Fiscal:**	No
Consultant:	Glenn Miles		

SUBJECT: Public employment: local public transit agencies: autonomous transit vehicle technology

KEY ISSUE

Should the Legislature require public transit districts to notify, in writing, their employees' unions of the district's intention to begin any procurement process to acquire or deploy any autonomous transit vehicle technology for public transit services that would eliminate job functions or jobs of the workforce at least 10 months before beginning that procurement process?

ANALYSIS

Existing law:

1) Establishes transit districts pursuant to various sections of the Public Utilities Code (PUC) for the purposes of providing public transportation services. However, cities, counties, and other local governmental entities may also establish transit agencies pursuant to their local authority under the Government Code or local charter. (PUC §§ 24501 through §§ 107025).

2) Governs collective bargaining in the private sector under the federal National Labor Relations Act (NLRA) but leaves to the states the regulation of collective bargaining in their respective public sectors. While the NLRA and the decisions of its National Labor Relations Board (NLRB) often provide persuasive precedent in interpreting state collective bargaining law, public employees generally have no collective bargaining rights absent specific statutory authority establishing those rights. (29 United State Code § 151 et seq.)

3) Provides several statutory frameworks under California law to provide public employees collective bargaining rights, govern public employer-employee relations, and limit labor strife and economic disruption in the public sector through a reasonable method of resolving disputes regarding wages, hours and other terms and conditions of employment between public employers and recognized public employee organizations or their exclusive representatives. These include the Meyers-Milias-Brown Act (MMBA) which provides for public employer-employee relations between local government employers and their employees, including some, but not all public transit districts. (Government Code § 3500 et seq.)

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

5) Does not cover California's public transit districts by a common collective bargaining statute. Instead, while some transit agencies are subject to the MMBA, many transit agencies are instead still subject to labor relations provisions found in each district's specific PUC enabling statute, in joint powers agreements, or in articles of incorporation and bylaws. (e.g., Public Utilities Code § 28500)

6) Provides transit employees not under the MMBA with basic rights to organization and representation, but does not define or prohibit unfair labor practices. Unlike other California public agencies and employees, these transit agencies and their employees generally rely upon the courts to remedy alleged violations unless otherwise provided in their enabling statute. Additionally, they may be subject to provisions of the federal Labor Management Relations Act of 1947 (Taft-Hartley) and the 1964 Urban Mass Transit Act, now known as the Federal Transit Act. (PUC § 24501 et seq.; 49 United State Code § 5333 (b))

7) Provides that the following provisions shall govern disputes between exclusive bargaining representatives of public transit employees and local agencies not covered by the MMBA:

   (a) The disputes shall not be subject to any fact-finding procedure otherwise provided by law.

   (b) Each party shall exchange contract proposals not less than 90 days before the expiration of a contract, and shall be in formal collective bargaining not less than 60 days before that expiration.

   (c) Each party shall supply to the other party all reasonable data as requested by the other party.

   (d) At the request of either party to a dispute, a conciliator from the California State Mediation and Conciliation Service shall be assigned to mediate the dispute and shall have access to all formal negotiations. (GC § 3611).

This bill:

1) Requires public transit districts to notify, in writing, their employees' unions of the district's intention to begin any procurement process to acquire or deploy any autonomous transit vehicle technology for public transit services that would eliminate job functions or jobs of the workforce at least 10 months before beginning that procurement process.

2) Provides that the bill's notification requirement does not supersede the union's right to disclosure of information by the public transit employer pursuant to the California Public Records Act (Division 10 (commencing with Section 7920.000)).

3) Requires, upon a written request by the union, that the public transit employer and the union commence collective bargaining within 30 days of the union's receipt of the notice by the employer of its intention to begin the procurement process.

4) Requires the union and the public transit employer to only bargain over the following subjects, or related mandatory subjects of bargaining:

   - Developing the new autonomous transit vehicle technology.
   - Implementing the new autonomous transit vehicle technology.
   - Creating a transition plan for affected workers.
   - Creating plans to train and prepare the affected workforce to fill new positions created by a new autonomous transit vehicle technology.

5) Makes the following definitions:

   - "Autonomous transit vehicle technology" means technology that has the capability to drive a vehicle without the active physical control by a human operator.
   - "Plan to acquire or deploy" includes any public notification that initiates acquisition or deployment of autonomous transit vehicle technology.
   - "Procurement process" means the issuance of a request for proposals, a solicitation of proposals, or a request for quotations.
   - "Public transit employer" means any local governmental agency, including any city, county, city and county, special district, transit district, or joint powers authority, that provides public transit services within the state.
   - "Public transit services" means the provision of passenger transportation services by the public transit employer to the general public, including paratransit service.

6) Specifies that the bill's provisions shall not be construed as creating any labor requirements that are less protective of employees than any labor requirements created pursuant to statute or a collective bargaining agreement.

7) Makes the bill's provisions severable and provides that if any provision or its application is held invalid, the invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

COMMENTS

1. Need for this bill?

According to the author,

"There are no existing protections for transit workers who face displacement with the implementation of autonomous driving technology. Autonomous technologies that may

displace workers are enticing to transit agencies as it would allow them to save money on labor costs. Transit employees play a critical role in facilitating a safe and smooth passenger experience for commuters and passengers across the state. In fulfilling non-driving responsibilities, workers can increase accessibility for riders with disabilities, elderly riders, riders who speak other languages, and even younger riders."

"As technology continues to advance, we do not need to leave workers behind. Workers deserve a seat at the table when it comes to major changes in their workplace. AB 96 will put workers and riders' safety at the forefront of transitions to the future of work with autonomous technology in public transit."

2. Committee Recommended Amendments

The bill language creates confusion regarding the timing between when the union can request bargaining over the employer's intent to begin a procurement process and when the bargaining must commence. The committee recommends the following amendment:

3127. (a) Upon a written request by the exclusive employee representative, the public transit employer and exclusive employee representative shall commence collective bargaining within 30 days of the exclusive employee representative receiving the notification required by subdivision (a) of Section 3126 ***or within 10 days of the public transit employer receiving the written request, whichever occurs later***.

3. Proponent Arguments

According to the California Teamsters Public Affairs Council,

"AB 96 is a comprehensive measure meant to restore and protect transit workers' voice in the implementation of new transit service, including automated vehicles. Regrettably, public transit employers have already begun to earmark dollars or show interest in the implementation of services that displace career-sustaining jobs across the industry. These new technologies may cut labor costs in the short term but fail to recognize the importance transit employees play in facilitating a safe and smooth passenger experience for commuters and passengers across the state."

4. Opponent Arguments:

According the Automated Vehicle Industry Association,

"As recognized by the Newsom Administration in vetoing this exact bill last year, the bill would impose onerous requirements on transit agencies that would delay the rollout of autonomous vehicles ("AV") for use in public transit, and by doing so, would deny Californians the substantial transit-related benefits offered by AVs. In addition, we believe enactment of his bill will threaten California transit agencies' ability to compete for federal and state funding that value innovative solutions, particularly in serving vulnerable and/or underserved populations. For these reasons, we encourage the Committee to vote against the bill."

5. Prior Legislation:

AB 2441 (Kalra) would have required a public transit district to provide notice 12 months before "any plan to acquire or deploy" new autonomous transit vehicle technology and negotiate with employee representatives before deploying such technology. The Governor vetoed the bill.

SUPPORT

California Conference Board of the Amalgamated Transit Union (Co-sponsor)
California Labor Federation, AFL-CIO (Co-sponsor)
California Teamsters Public Affairs Council (Co-sponsor)
The California State Legislative Board of the Sheet Metal, Air, Rail and Transportation Workers – Transportation Division (SMART-TD) (Co-Sponsor)
American Federation of State, County and Municipal Employees, AFL-CIO
California Nurses Association
California School Employees Association

OPPOSITION

Autonomous Vehicle Industry Association

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SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Dave Cortese, Chair
2023 - 2024 Regular

Bill No:	AB 489	**Hearing Date:**	June 14, 2023
Author:	Calderon		
Version:	February 7, 2023		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Dawn Clover		

SUBJECT: Workers' compensation: disability payments

KEY ISSUE

Should the Legislature extend an existing pilot program by one year to allow workers' compensation temporary and permanent disability indemnity payments to continue to be made using prepaid cards?

ANALYSIS

Existing law:

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

2) Requires that, if an injury causes temporary disability, the first payment of temporary disability indemnity must be made not later than 14 days after knowledge of the injury and disability. Each additional payment of temporary disability indemnity benefits must be made as due every two weeks on the day designated with the first payment. (Labor Code §4650)

3) Authorizes employers to begin a program where disability indemnity benefits may be deposited on a prepaid card account if the injured worker has provided written consent to receive his or her benefits on a prepaid card and prohibits account fees being charged to an injured worker, except for an expedited replacement prepaid card, out-of-network ATM fees on the third and subsequent withdrawal per deposit, and fees associated with foreign transactions. This provision sunsets on January 1, 2024. (Labor Code §4651)

4) Requires the Commission on Health and Safety and Workers Compensation (CHSWC), on or before December 1, 2022, to issue a report to the Legislature on payments made to prepaid card accounts. (Labor Code §4651)

This bill: Extends by one year, to January 1, 2025, the sunset date for a pilot program that allows employers to transmit workers' compensation disability indemnity benefits by a prepaid card, rather than a paper check.

COMMENTS

1. Background

Senate Bill 880 (Pan, Chapter 730, Statutes of 2018), modelled after the Employment Development Department's program that utilizes prepaid cards to issue unemployment insurance and disability insurance payments, authorized employers to conduct a pilot program to transmit workers' compensation disability indemnity benefits via prepaid card, rather than a paper check. The bill also required CHSWC to report the following data to the Legislature by December 1, 2022:

- Number of employees who elected to receive their benefits via prepaid card;
- Cash value of benefits sent via prepaid card, and;
- Number of employees who opted to change their method of payment from prepaid card to either a written instrument or electronic deposit.

The pilot program authorized by SB 880 was due to sunset on January 1, 2023. Last year, AB 2148 (Calderon - Chapter 120, Statutes of 2022) extended the sunset date to January 1, 2024. The report required by SB 880 has not yet been submitted to the Legislature. The committee has requested an update from CHSWC regarding an estimated release date for the report, but has not received a response.

Unbanked individuals do not have a checking or savings account with a Federal Deposit Insurance Corporation (FDIC) insured financial institution. Underbanked means the household had an account with an FDIC insured financial institution, but regularly used alternative financial services. Communities of color have the highest unbanked and underbanked rates in the nation, largely attributable to racist policies in US institutions and subsequent lingering mistrust. Additionally, those with less education and those who earn lower incomes struggle with obtaining services offered by financial institutions. According to the Federal Reserve[1], 17 percent of households earning less than $25,000 per year were unbanked between 2021 and 2022, and 34 percent with a high school degree or less were unbanked during that same time span. Of those numbers, 13 percent were categorized as Black and 11 percent as Hispanic.

2. Need for this bill?

According to the author, "AB 489 simply extends the sunset of an existing pilot program by one year, while the legislature awaits a report relating to the program. In 2018, the legislature passed a bill to establish a pilot program that allowed employers to transmit certain workers' compensation payments by a prepaid card, rather than a paper check or direct deposit. This program is particularly helpful for unbanked workers that do not have access to a checking account. This bill would extend the sunset by one year, to give stakeholders sufficient time to review the report, before any interruptions to the existing program take place."

2. Proponent Arguments

[1] https://www.federalreserve.gov/publications/2022-economic-well-being-of-us-households-in-2021-banking-and-credit.htm Retrieved May 15, 2023.

According to the American Property Casualty Insurance Association, California Association of Joint Powers Authorities, California Coalition on Workers' Compensation, and Public Risk Innovation, Solutions, and Management, "SB 880, adopted as Labor Code 4651, went into effect in 2019. The law, until January 1, 2023, authorized an employer, with the written consent of the employee, to deposit disability indemnity payments for the employee in a prepaid card account that meets specified requirements, including allowing the employee reasonable access to in-network automatic teller machines. The sunset was extended one year by AB 2148 (Calderon, 2022).

The bill was addressing a challenge for many injured workers because temporary disability could only be transmitted to injured workers by either a paper check or direct deposit, which presented unique challenges for "unbanked" households -- households where no one in the household has a bank account. For unbanked workers, direct deposit would generally not be available. Without a relationship with a financial institution, cashing a check without significant fees would also prove challenging. The bill was designed to assist these households by starting the process of regularizing the use of prepaid card accounts for TD payment, similar to one of the authorized methods for delivering unemployment insurance benefits."

3. Opponent Arguments:

None received.

4. Prior Legislation:

AB 2148 (Calderon - Chapter 120, Statutes of 2022), extended the sunset date for the pilot program that allows employers to transmit workers' compensation disability indemnity benefits by a prepaid card, rather than a paper check from January 1, 2023, to January 1, 2024.

SB 880 (Pan - Chapter 730, Statutes of 2018) created the pilot program to allow employers to transmit workers' compensation disability indemnity benefits by a prepaid card, rather than a paper check.

SUPPORT

American Property Casualty Insurance Association
California Association of Joint Powers Authorities
California Coalition on Workers' Compensation
Housing Contractors of California
Public Risk Innovation, Solutions, and Management

OPPOSITION

None received

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SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Dave Cortese, Chair
2023 - 2024 Regular

Bill No:	AB 521	**Hearing Date:**	June 14, 2023
Author:	Bauer-Kahan		
Version:	May 15, 2023		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Dawn Clover		

SUBJECT: Occupational safety and health standards: construction jobsites: restrooms

KEY ISSUE

Should the Legislature require the California Division of Occupational Safety and Health (CalOSHA) to submit a rulemaking proposal and consider requiring at least one women's restroom at jobsites that already have two or more required restrooms by December 31, 2025?

ANALYSIS

Existing law:

1) Establishes CalOSHA within the Department of Industrial Relations (DIR) to maintain and enforce employee safety. (Labor Code §§6300)

2) Creates the Occupational Safety and Health Standards Board (Board) within DIR, consisting of seven members appointed by the Governor: two from the field of management, two from the field of labor, one from the field of occupational health, one from the field of occupational safety, and one member of the public. (Labor Code §140)

3) Requires a minimum of one separate toilet facility to be provided for each 20 employees or a fraction thereof of each gender. Such facilities may include both toilets and urinals provided that the number of toilets shall not be less than one half of the minimum required number of facilities. Where there are less than five employees, one single-user toilet facility designated for all-gender use is sufficient. Each single-user toilet facility designated for all-gender use counts as one of the required separate toilet facilities if all of the following conditions are met:

    a) The total number of facilities provided is in accordance with the requirement that one separate facility be provided for every 20 employees or a fraction thereof of each gender.

    b) All single-user toilet facilities are designated for all-gender use. (8 CCR §1526)

4) Requires all multi-user separate toilet facilities be provided in equal number to each gender. (8 CCR §1526)

5) Requires apprenticeship programs to make all bathroom facilities available without regard to protected characteristics, including gender and gender identity, except that if the apprenticeship program provides restrooms or changing facilities, the apprenticeship programs may provide separate or all-gender toilets and changing facilities, provided that all

individuals have equal access to facilities consistent with their gender identity. (Labor Code §3073.9)

6) Requires every foundry or metal shop to maintain employee wash bowls, sinks, or other appliances and a water closet connected to running water. (Labor Code §2330)

7) Requires every factory, workshop, mercantile or other establishment with one or more employee to provide a sufficient number of clean operational toilet facilities for employee use. When there are five or more employees who are not of the same gender, a sufficient number of separate designated toilet facilities shall be provided for the use of each gender. (Labor Code §2350)

8) Obliges the Board to require all agricultural field toilets are serviced and maintained in a clean, sanitary condition and kept in good repair at all times. (Labor Code §6712)

This bill:

1) Requires CalOSHA, before December 1, 2025, to submit to the Board a rulemaking proposal to consider revising regulations regarding construction jobsite restrooms to require at least one women's designated restroom for jobsites with 2 or more required water closets.

2) Requires the Board to review the proposed changes and consider adopting revised standards for the standards described above on or before December 31, 2025.

3) Makes the following Legislative findings and declarations:

   a) Women are underrepresented in the trades and also face numerous barriers on jobsites.

   b) One of these many barriers is access to a clean and secure restroom.

   c) Shared restrooms often pose sanitary as well as safety concerns for women on jobsites.

   d) In order to ensure the safety and security of women on jobsites, the Legislature further finds and declares that it is necessary to take action to ensure that women have access to at least one separate women's designated restroom at jobsites when other restroom facilities are also available for others at the jobsite.

COMMENTS

1. Background

As of 2020, construction industry employment totaled 10.8 million nationwide. Those identifying as women represent just one-tenth of construction employees, according to the U.S. Bureau of Labor Statistics. Another source shows women's representation at 3 percent of skilled building trade jobs in the nation.[1] A 2022 report derived from three focus groups of tradeswomen revealed the participants identified many physical and psychosocial hazards,

[1] Curtis HM, Meischke HW, Simcox NJ, Laslett S, Monsey LM, Baker M, Seixas NS. Working Safely in the Trades as Women: A Qualitative Exploration and Call for Women-Supportive Interventions. Front Public Health. 2022 Jan 26;9:781572. doi: 10.3389/fpubh.2021.781572. PMID: 35155345; PMCID: PMC8833840.

which included dangerous work environments, inadequate personal protective equipment, discrimination, and fear of reprisal. Inadequate bathrooms, gender discrimination, harassment, and fear of layoff for reporting concerns were listed as top psychosocial threats. All participant groups shared dissatisfaction with the cleanliness of jobsite water closets and the scarcity of women only bathrooms.[2]

Existing California regulations require a minimum of one single user toilet on jobsites for every 20 employees or fraction thereof of each gender. For jobsites requiring two facilities, this bill would require one of those facilities be dedicated to women only.

2. Need for this bill?

According to the author, "On construction sites, women habitually share restrooms with their male coworkers, who don't necessarily have the same issues with using the facilities. Consequently, women will opt out of using these shared facilities, resulting in health impacts such as infections and, in severe cases, permanent kidney damage. Women in the trades already face so many barriers, bathroom access should not be one of them. AB 521 is a simple bill to ensure women on jobsites have access to the clean, private restrooms they deserve."

3. Committee Discussion

Applicable to Jobsites Without Employees Who Identify as Female
As this bill is currently drafted, it would require one women's restroom on jobsites that require two or more. Operationally, it would make little sense to require a dedicated restroom if there are no employees who identify as women. The committee and author should consider clarifying that this provision should be in place only if there is at least one employee that identifies as female.

Employees Who Are Non-Binary and Identify as Female
In 2016, this Legislature passed first of its kind state legislation that required all single-user restroom facilities in businesses, places of public accommodation, and state and local government agencies to be identified as all-gender facilities to protect transgender and gender non-conforming individuals from harassment and violence. Recent apprenticeship registration numbers indicate that out of 92,437 total active registered apprentices, 83,898 identify as male, 8,453 identify as female, and 53 identify as non-binary. Taking into consideration the existing and future needs of *all* employees, the author may wish to provide CalOSHA with additional guidance to authorize employees who identify as female and non binary the use of the proposed dedicated restroom on jobsites.

Could Create Unsanitary Conditions
Existing regulations require one restroom per 20 employees. For jobsites requiring two facilities, there would need to be 40 employees. If two of those 40 employees identify as female, that would leave one restroom to share among the remaining 38 employees. Existing regulations require the employer to maintain clean facilities in good working order with an adequate supply of toilet paper. The committee may wish to consider whether this will be

[2] Curtis HM, Meischke HW, Simcox NJ, Laslett S, Monsey LM, Baker M, Seixas NS. Working Safely in the Trades as Women: A Qualitative Exploration and Call for Women-Supportive Interventions. Front Public Health. 2022 Jan 26;9:781572. doi: 10.3389/fpubh.2021.781572. PMID: 35155345; PMCID: PMC8833840.

feasible with such a large number of employees using one facility.

4. Proponent Arguments

According to the State Building and Construction Trades Council of California, "A daily challenge for women in the building trades is restroom access. When women first entered the profession, restrooms were oftentimes used to exclude and bully the women on site. Now, though not as frequently used as a tool of intimidation, restrooms are still a barrier for women, who may face serious sanitary issues when using facilities.

On jobsites, women habitually share restrooms with their male coworkers who don't necessarily have the same issues with using the facilities. Consequently, women will opt out of using these shared facilities, resulting in health impacts such as infections and, in severe cases, permanent kidney damage.

AB 521 resolves these issues by requiring OSHA to submit standards and consider requiring at least one women's restroom at jobsites that already have two or more required water closets by 2025.

This is a simple and straightforward measure that creates a secure and comfortable workplace for everyone by paying attention to the needs of women in the trades."

5. Opponent Arguments:

None received.

6. Prior Legislation:

AB 1732 (Ting, Chapter 818, Statutes of 2016) required businesses, places of public accommodation, or state or local government agencies that offer a single-user toilet facility to be designated as an all-gender toilet facility and authorized an inspector to inspect for compliance.

SUPPORT

State Building and Construction Trades Council of California (Sponsor)
California Builders Alliance
California Labor Federation, AFL-CIO
Sacramento Regional Builders Exchange
Vulcan Materials Company

OPPOSITION

None received

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SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Dave Cortese, Chair
2023 - 2024 Regular

Bill No:	AB 587	**Hearing Date:**	June 14, 2023
Author:	Robert Rivas		
Version:	May 17, 2023		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Alma Perez-Schwab		

SUBJECT: Public works: payroll records

KEY ISSUE

Should the Legislature direct contractors and subcontractors, when fulfilling a request for payroll records access by authorized entities, to provide such records on forms provided by the Division of Labor Standards Enforcement or on forms that contain the same information as would be found in such forms in order to provide clarity and transparency in public works contracts?

ANALYSIS

Existing federal law:

1) Permits, pursuant to the Labor-Management Relations Act of 1947, the creation of trust funds, managed and governed by both labor unions and employers, to provide various benefits to employees of multiple employers in the same industry or geographic area. (29 U.S.C. § 186)

Existing state law:

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

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

4) Requires contractors and subcontractors, while performing public works, to keep accurate payroll records showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the contractor or subcontractor in connection with the public work. (Labor Code, § 1776 (a))

5) Requires contractors and subcontractors, while performing public works, to furnish specified payroll records at least once a month directly to the Labor Commissioner (LC), in an electronic format, in the manner prescribed by the LC, on the department's internet website. (Labor Code, §1771.4 (a)(3))

6) Requires the Department of Industrial Relations (DIR), by July 1, 2024, to develop and implement an online database, accessible only to multiemployer Taft-Hartley trust funds and joint-labor management committees, of electronic certified payroll records submitted in compliance with public works requirements. (Labor Code, §1771.4 (e))

7) Requires certified payroll records, submitted in compliance with public works requirements, to be on forms provided by the Division of Labor Standards Enforcement (DLSE) or to contain the same information as the forms provided by DLSE and provides that payroll records may consist of printouts of payroll data that are maintained as computer records if the printouts contain the same specified information as the forms provided by DLSE. (Labor Code, § 1776 (c))

8) Specifies that any records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body or the DLSE shall be marked or obliterated to prevent disclosure of an individual's name, address, and social security number. The name and address of the contractor awarded the contract or the subcontractor performing the contract shall not be marked or obliterated. (Labor Code, §1776 (e))

9) Specifies that any copy of records made available for inspection by, or furnished to, a multiemployer Taft-Hartley trust fund that requests the records for the purposes of allocating contributions to participants shall be marked or obliterated only to prevent disclosure of an individual's full social security number, but shall provide the last four digits of the social security number. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee shall be marked or obliterated only to prevent disclosure of an individual's social security number. (Labor Code, §1776 (e))

10) Requires, upon request, agencies included in the Joint Enforcement Strike Force on the Underground Economy (JESF) and other law enforcement agencies investigating violations of law, to be provided nonredacted copies of certified payroll records, as specified. (Lab. Code, §1776 (f)(1))

This bill:

1) Provides that copies of electronic certified payroll records shall not satisfy payroll records request made by Taft-Hartley trust funds and join labor-management committees and instead specifies that any requests by these entities shall be made available on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division.

COMMENTS

1. Background: Prevailing Wages and Payroll Records

In general, "public works" is defined to include construction, alteration, demolition, installation or repair work done under contract and "paid for in whole or in part out of public

funds." The determination of whether a project is deemed to constitute a "public work" is important because the Labor Code requires (except for projects of $1,000 or less) that the "prevailing wage," as determined by the Department of Industrial Relations (DIR), be paid to all workers employed on public works projects. The prevailing wage rate is the basic hourly rate paid on public works projects to a majority of workers engaged in a particular craft, classification or type of work within the locality and in the nearest labor market area.

California's prevailing wage laws ensure that the ability to get a public works contract is not based on paying lower wage rates than a competitor. All bidders are required to use the same wage rates when bidding on a public works project, creating a level playing field for all. Current law requires that contractors and subcontractors on public works projects keep accurate payroll records, including employees' names, addresses, social security numbers, work classifications, and straight time and overtime hours worked each day.

An important component of prevailing wage policy is the requirement that contractors and subcontractors submit their payroll records to the Labor Commissioner (DIR), to ensure compliance with various pay and records keeping requirements. Contractors and subcontractors are required to submit the payroll records at least monthly and in an electronic format, in the manner prescribed by the Labor Commissioner, on the department's website. Contractors are also required to make employee payroll records available for inspection at reasonable hours at their principal office when requested by an employee or their authorized representative or a member of the public.

As noted under existing law, copy of records made available for inspection must be marked or obliterated to prevent disclosure of certain identifiable information, with the exception of copy of records made available for inspection by, or furnished to, a multiemployer Taft-Hartley trust fund or joint labor-management committees that need certain information from these records to fulfill their purposes. Taft-Hartley trust funds provide group health insurance plans for employees covered under a collective bargaining agreement between a union and employers. Taft-Hartley trust funds request records for purposes of allocating contributions to participants.

In 2022, SB 954 (Archuleta, Chapter 824, Statutes of 2022) was passed requiring the Department of Industrial Relations to establish an online database, no later than July 1, 2024, of electronic certified payroll records, which are required to be accessible only to multiemployer Taft-Hartley trust funds and joint labor-management committees. The bill also specified that the database contain only non-redacted information that may be legally provided to multiemployer Taft-Hartley trust funds and joint labor-management committees.

2. Need for this bill?

According to the author, "Current law requires that contractors and subcontractors on public works projects keep accurate payroll records (CPR), including employees' names, addresses, social security numbers, work classifications, and straight time and overtime hours worked each day. Contractors are required to make these records available for inspection by labor compliance entities such as Joint Labor-Management Committees and Taft-Hartley Trusts as well as the Division of Labor Standards Enforcement.

While electronic submission of these records has streamlined and improved the way in which labor representatives access payroll records, these entities will often notice inconsistencies on

an e-CPR and still need to request the traditional paper records (the source material for the e-CPR) to ensure the inaccuracy they have spotted isn't a violation of labor law. Specifically, the issue occurs when labor representatives see an error or omission on an e-CPR and make a request to the awarding agency to verify the record (by checking the paper copy), only to be provided a copy of the e-CPR that they already have access to. This misunderstanding of law leads to labor compliance entities not receiving vital information that they are entitled to under existing law.

AB 587 ensures accurate reporting of earned prevailing wages and benefits to public works employees by clarifying that labor compliance entities are entitled to review the source material when they detect an inconsistency in an e-CPR. By doing so, AB 587 provides greater efficiency and a verifiable method to ensure labor compliance on public works projects moving forward."

3. Proponent Arguments:

According to the sponsors of the measure, the California-Nevada Conference of Operating Engineers, "Outside of the traditional requirements contractors must abide by related to maintaining payroll records and allowing access to those records, existing law additionally provides a separate requirement that mandates contractors and subcontractors must also *electronically* submit Certified Payroll records (e-CPR) directly to the Labor Commissioner at least once every 30 days while work is being performed on the project, and within 30 days after the final day of work performed on a project. Further, SB 954 (Archuleta), which was signed into law in 2022, required that the Department of Industrial Relations establish a database of these payroll records that are accessible to both Joint Labor Management Committee and Taft-Hartley Trust Funds.

While the electronic submission of these records has streamlined and improved the way in which Joint-Labor Management Committees and Taft-Hartley Trusts access payroll records, these entities will often notice inconsistencies on an e-CPR and still need to request the traditional records of a public works contractor to ensure the inaccuracy they have spotted isn't a violation of labor law.

Recently, JLMC's and Taft-Hartley Trusts have noticed an issue whereby they see an error or omission on an e-CPR and make a request to the awarding agency to verify the record, only to be provided a copy of the e-CPR that they already have access to. This misunderstanding of law leads to compliance entities missing out on vital information that they have historically been entitled to under existing law.

In effort to remedy this issue, AB 587 (Rivas) would clarify that any copies of records made available to a Taft-Hartley Trust Fund or a federally approved Joint Labor-Management Committee be provided in the manner specified in Labor Code Section 1776 (c). The bill would provide further clarity by specifying that copies of electronic certified payroll records shall not satisfy a payroll records request made by either a multi-employer Taft-Hartley trust fund (29 U.S.C. Sec. 186(c)(5)) or a joint labor-management committee."

4. Opponent Arguments:

None received.

5. Prior Legislation:

SB 954 (Archuleta, Chapter 824, Statutes of 2022) requires the Department of Industrial Relations to develop and implement an online database of certified payroll records submitted to comply with public works requirements.

AB 1023 (Flora, Chapter 326, Statutes of 2021) revised the requirement to furnish payroll records monthly to require that the contractor or subcontractor furnish those records at least once every 30 days while work is being performed on the project and within 30 days after the final day of work performed on the project. The bill also requires that the contractor or subcontractor furnish these records in an electronic format, in the manner prescribed by the Labor Commissioner, on the department's internet website.

SUPPORT

International Union of Operating Engineers, California-Nevada Conference (Sponsor)
American Federation of State, County and Municipal Employees – AFSCME
California Conference Board of the Amalgamated Transit Union
California Conference of Machinists
California Labor Federation, AFL-CIO
California State Council of Laborers
California Teamsters Public Affairs Council
District Council 16, Painters and Allied Trades
District Council of Iron Workers of the State of California and Vicinity
Engineers and Scientists of CA, IFPTE Local 20, AFL-CIO
Southern California Contractors Association
State Building and Construction Trades Council of California
UNITE-HERE, AFL-CIO
Utility Workers Union of America

OPPOSITION

None received

-- END --

SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Dave Cortese, Chair
2023 - 2024 Regular

Bill No:	AB 658	**Hearing Date:**	June 14, 2023
Author:	Mike Fong		
Version:	June 5, 2023		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Glenn Miles		

SUBJECT: Public Employees' Medical and Hospital Care Act: postemployment health benefits: the City of San Gabriel

KEY ISSUE

Should the state permit the City of San Gabriel, pursuant to a memorandum of understanding (MOU), to provide different post-retirement health care employer contributions for CalPERS health plan coverage to new employees who begin employment after the adoption of the MOU than that offered to current employees?

ANALYSIS

Existing law:

1) Establishes the Public Employees' Medical and Hospital Care Act (PEMHCA) administered by the California Public Employees' Retirement Board (CalPERS) for the purposes of promoting increased economy and efficiency in state service; enabling the state to attract and retain qualified employees by providing health benefit plans similar to those commonly provided in private industry; and recognizing and protecting the state's investment in each permanent employee by promoting and preserving good health among state employees. (Government Code (GC) §§ 22750, 22751, and 22790)

2) Authorizes CalPERS to contract with insurance carriers for health benefit plans that may include hospital and other health care benefits, as specified. (GC§ 22850)

3) Authorizes specified public entities, including contracting agencies such as cities and local agencies to obtain a health benefit plan for their employees and retired annuitants through PEMHCA subject to CalPERS' approval. (GC § 20022 and § 22920)

4) Provides that PEMHCA's provisions shall be controlling over any MOU, as specified. (GC § 22753)

5) Requires a contracting agency seeking PEMHCA coverage for its employees to submit a resolution by its governing board, as specified. (GC § 22922)

6) Prohibits a contracting agency electing to be subject to PEMHCA from maintaining any other health benefit plan or program offering hospital and medical care for its employees. (GC § 22934)

7) Requires the contracting agency and each employee or annuitant to contribute a portion of the cost of providing the benefit coverage afforded under the health benefit plan approved or maintained by the board in which the employee or annuitant may be enrolled. (GC § 22890)

8) Requires the contracting agency to fix from time to time the amount of its employer contribution by resolution of its governing body. (GC § 22892 (a))

9) Requires the employer contribution to be an equal amount for both employees and annuitants, but may not be less than a specified amount as adjusted annually by CalPERS for health care inflation. (GC § 22892 (b))

10) Permits contracting agencies flexibility to provide lesser monthly contributions for annuitants than employees, notwithstanding the general requirement to provide equal contribution amounts to employees and annuitants, if the employer increases the annuitant rate over time to match the employee rate, as specified. (GC § 22892 (c))

11) Allows a contracting agency to adopt by resolution of its governing body, a vesting schedule that bases its postretirement health benefit employer contribution for annuitants on their completed years of credited service, as specified. (GC § 22893)

12) Provides school employers and a few specified public agencies customized contract options similar to the one proposed in this bill. (GC §§ 22893.1 et seq.)

This bill:

1) Authorizes the City of San Gabriel, its employees' exclusive representative, and unrepresented employees to agree that the employer contribution for postretirement health coverage shall be subject to the following conditions:
   - Credited years of service that the employee worked with the City of San Gabriel.
   - A memorandum of understanding regarding postretirement health coverage mutually agreed upon through collective bargaining, in which the postretirement health contribution shall not be subject to the impasse procedures.
   - The employer contribution shall not be less than the adjusted employer contribution required by subdivision (b) of Section 22892, which sets a minimum dollar amount per month, adjusted annually for health care inflation, as specified, by CalPERS.

2) Prohibits the proposed MOU's employer health benefit contribution from applying to any employee who retired before the MOU's effective date. It further provides that if the MOU establishes a retroactive effective date, the provisions on the proposed employer contribution shall apply only prospectively and any employee who retires before the MOU is signed shall not be affected by it.

3) Makes invalid any agreement that would provide a postretirement health employer contribution for employees with less than five years of credited service with the City of San Gabriel.

4) Requires the City of San Gabriel to provide, in the manner prescribed by the board, notice of the agreement authorized by this bill and any additional information necessary to implement this section.

5) Makes the bill's provisions applicable only to the City of San Gabriel and only with regard to employees who are first hired on or after January 1, 2023, and elected officials who first served as elected officials on or after January 1, 2023.

6) Finds and declares 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 circumstances of postretirement health coverage with regard to employees of the City of San Gabriel.

COMMENTS

1. Need for this bill?

According to the author,

"As a city on the State Auditor's list of high risk cities, the Auditor has recommended that the city develop a financial recovery plan with short- and long-term goals, strategies to build general fund reserves, and an analysis of factors affecting its finances. As part of its long-term recovery plan, the city adopted memorandum of understandings with four employee representatives and one unrepresented employee group to provide a different level of retiree health benefits to employees hired beginning January 1, 2023, while providing higher salaries. Current employees and retirees will maintain the same level of retiree health benefits. AB 658 authorizes the City of San Gabriel to implement these changes through CalPERS. Allowing the city to make these changes will help in the city's long-term financial stability plan and better serve its residents."

2. Proponent Arguments

According to the author,

"AB 658 provides authorization for the City of San Gabriel to make changes to the health benefits provided to their employees upon retirement through CalPERS for new employees hired beginning January 1, 2023. These changes are outlined in memorandum of understandings with four bargaining units and one unrepresented employee group. Current employees and retirees will maintain the same level of health benefits in effect on December 31, 2022. Health benefits for retirees hired beginning January 1, 2023 will be based on the Public Employees' Medical and Hospital Care Act (PEMHCA). CalPERS has indicated that legislation is necessary for the city to implement these changes."

"Allowing the city to make changes to the benefits provided to newly-hired employees will help the city achieve financial stability and better serve its residents."

According to Peace Officers Research Association of California,

"AB 658 would authorize the City of San Gabriel to enter into an agreement with specified employees hired on or after January 1, 2023, to provide employer contributions for postretirement health care coverage to employees with at least 5 years of credited service with the City of San Gabriel. The bill would provide that its provisions for postretirement health benefits apply to employees who retire on or after the date that a memorandum of understanding that authorizes this benefit becomes effective. The bill also requires the City of San Gabriel to provide notice of the agreement and any additional information necessary to implement these benefits."

3. Opponent Arguments:

None received.

4. Prior Legislation:

AB 2582 (Bonta), Chapter 216, Statutes of 2014, authorized BART to establish a vesting requirement for post-retirement health benefits coverage that is different than what is allowed under current law for contracting agencies.

AB 1144 (Hall), Chapter 244, Statutes of 2013, established, for the City of Carson, a specific vesting schedule and employer contribution amount for annuitant health care premiums under PEMHCA.

SB 1294 (Berryhill), Chapter 836, Statutes of 2012, authorized the County of Mariposa and their employees' exclusive representative to enter into an agreement providing that the employer's health benefit coverage contribution is subject to an MOU if agreed upon through collective bargaining, or by a resolution adopted by a majority of the board of supervisors for employees not represented by a bargaining unit.

AB 2510 (Fletcher), Chapter 600, Statutes of 2010, authorized the City of San Diego to establish a vesting requirement for post-retirement health benefits coverage that is different than what is allowed under current law for contracting agencies.

SUPPORT

City of San Gabriel
Peace Officers Research Association of California

OPPOSITION

None received

-- END --

SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Dave Cortese, Chair
2023 - 2024 Regular

Bill No:	AB 699	**Hearing Date:**	June 14, 2023
Author:	Weber		
Version:	February 13, 2023		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Dawn Clover		

SUBJECT: Workers' compensation: presumed injuries

KEY ISSUE

Should the Legislature expand workers' compensation presumptions for hernia, pneumonia, heart maladies, cancer, tuberculosis, bloodborne infectious disease, methicillin-resistant Staphylococcus aureus skin infection, and meningitis-related illnesses and injuries to a lifeguard employed on a year-round full-time basis in the City of San Diego Fire-Rescue Department Boating Safety Unit?

Should the Legislature increase the amount of time after termination of employment with the City of San Diego Fire-Rescue Department Boating Safety Unit that a lifeguard could file a workers' compensation claim for skin cancer?

Should the Legislature expand the workers' compensation presumptions for illness or injury related to post-traumatic stress injury (PTSI) and exposure to biochemical substances to a lifeguard employed in the Boating Safety Unit by the City of San Diego Fire-Rescue Department?

ANALYSIS

Existing law:

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

2) Creates a series of presumptions of an occupational injury for peace and safety officers for the purposes of the workers' compensation system, which include heart disease, hernias, pneumonia, cancer, meningitis, tuberculosis, and bio-chemical illness. The compensation awarded for these injuries must include full hospital, surgical, medical treatment, disability indemnity, and death benefits, as provided by workers' compensation law. Peace officers whose principal duties are clerical, such as stenographers, telephone operators, and other office workers are excluded. (Labor Code §3212 - 3213.2)

3) Establishes a presumption that the development or manifestation of skin cancer is work related for active lifeguards employed by a city, county, city and county, district, or other public or municipal corporation or political subdivision and active state lifeguards employed

by the Department of Parks and Recreation. (Labor Code §3212.11)

4) Creates, until January 1, 2025, a rebuttable presumption that a mental health condition or mental disability that results in a diagnosis of post-traumatic stress or mental health disorder is an occupational injury for the following peace officers who are primarily engaged in active law enforcement activities:
    a. Active firefighting members, whether volunteers, partly paid, or fully paid, of a local government or county, University of California, California State University, or the Department of Forestry and Fire Protection.
    b. Active firefighting members of a fire department that serves a United States Department of Defense installation and who are certified by the Department of Defense as meeting its standards for firefighters.
    c. Active firefighting members of a fire department that serves a National Aeronautics and Space Administration installation.
    d. Sheriffs, undersheriffs, deputy sheriffs, police chiefs, police officers, and municipal law enforcement inspectors.
    e. Attorney General and special agents and investigators of the Department of Justice.
    f. Members of the California Highway Patrol, University of California Police Department, and California State University Police Department.
    g. Members of a community college police department and school district police departments.
    h. Members of an arson investigation unit.
    i. Parole officers and correctional officers.
    j. Fire and rescue services coordinators who work for the Office of Emergency Services. (Labor Code §3212.15)

5) Provides that a psychiatric injury can be considered compensable within the workers' compensation system if:
    a. The mental disorder causes disability or need for medical treatment, and it is diagnosed using the terminology and criteria of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Third Edition-Revised, or the terminology and diagnostic criteria of other psychiatric diagnostic manuals generally approved and accepted nationally by practitioners in the field of psychiatric medicine.
    b. The employee can demonstrate by a preponderance of the evidence that actual events of employment were predominant as to all causes combined of the psychiatric injury.
    c. In the case of employees whose injuries resulted from being a victim of a violent act or from direct exposure to a significant violent act, the employee shall be required to demonstrate by a preponderance of the evidence that actual events of employment were a substantial cause of the injury. "Substantial cause" is defined as 35-40 percent of the causation from all sources combined.
    d. The employee worked for the employer for at least a total of six months unless the employee's psychiatric injury is caused by a sudden and extraordinary employment condition. (Labor Code §3208.3)

6) Entitles specified peace officers, including lifeguards employed year-round on a regular full-time basis by a county of the first class or by the City of San Diego, to permanent or temporary disability leave, which consists of up to one year of fully paid leave if they are disabled by an injury or illness arising out of and in the course of their duties, paid for out of

the Workers' Compensation Fund. (Labor Code §4850)

This bill:

1) Expands workers' compensation presumptions for hernia, pneumonia, heart maladies, cancer, tuberculosis, bloodborne infectious disease, methicillin-resistant Staphylococcus aureus skin infection, and meningitis-related illnesses and injuries to a lifeguard employed on a year-round full-time basis in the City of San Diego Fire-Rescue Department Boating Safety Unit.

2) Increases the amount of time after termination of employment with the City of San Diego Fire-Rescue Department Boating Safety Unit that a lifeguard could file a workers' compensation claim for skin cancer.

3) Expands the PTSI workers' compensation presumption to include lifeguards employed in the Boating Safety Unit by the City of San Diego Fire-Rescue Department.

4) Expand the workers' compensation presumptions for illness or injury related to exposure to biochemical substances for lifeguards employed in the Boating Safety Unit by the City of San Diego Fire-Rescue Department.

COMMENTS

1. Background

Workers' Compensation Presumptions
The purpose of a workers' compensation presumption is to simplify the process of determining which claims are work-related by authorizing conditions that are prone to occur as a result of the occupation. Presumptions, passed by the Legislature, shift the burden of proof in an injury claim from the employee to the employer to require the employer to assume liability for certain occupational injuries. If the employee's claim is not controverted, the injury or illness is deemed to have arisen out of and in the course of employment, thus making it compensable. While public employers have the opportunity to rebut the presumption, and establish that the injury or condition was not the result of employment, they are rarely rebutted.

Boating and Safety Unit Occupational Exposure
Existing law authorizes specified public safety personnel, including firefighters and lifeguards, that suffer from certain injuries or illnesses that are presumed to be acquired during the course of employment, to have those injuries or illnesses compensable within the workers' compensation framework. San Diego Fire Department Boating and Safety Unit personnel are the first responders for vessels and buildings on Mission Bay. In addition to the danger of putting out the fires, they are at an increased risk for different types of cancer due to smoke and hazardous chemicals they are exposed to, as multiple studies have shown.[1]

Each year, around 15 million people visit San Diego's beaches and lifeguards perform thousands of water rescues, medical aides, technical cliff rescues, boat rescues, boat assists, and other duties. Thus, they spend a significant portion of their employment hours outside.

[1] https://www.lls.org/managing-your-cancer/firefighters-and-cancer-risk
Accessed May 22, 2023.

Conclusive data on occupational sun exposure for lifeguards and its effect on the propensity of skin cancer is scarce; however, both the Canadian and Australian governments have found a correlation between outdoor occupations and skin cancer.

2. Need for this bill?

According to the author, "San Diego lifeguards in the Boating Safety Unit deserve the same presumptive workers' compensation protections already afforded to San Diego firefighters and all other safety service personnel currently receiving the benefit of these presumptions. These highly specialized safety personnel willingly subject themselves to the same hazardous conditions as firefighters to protect others, and we should not expect to battle administrative denials of medical claims when those same conditions cause them harm. This is a matter of equity and respect for those who put themselves in harm's way every day to protect us."

3. Code Sections in Conflict

This bill may require chaptering out amendments due to code section conflicts with SB 391 (Blakespear, 2023) and SB 623 (Laird, 2023).

4. Proponent Arguments

According to the California Teamsters Public Affairs Council, "AB 699 would extend several statutory workers' compensation rebuttable presumptions to the firefighting personnel of the Boating Safety Unit within the San Diego City Fire Department. These 50 or so safety employees perform both water rescue and firefighting functions on the waterways and ocean in and around San Diego. There is no other unit like it in California or the world. They are all members of the Teamsters.

Our members in the Boating Safety Unit are basically firefighters on the water. They are the fire department's first responders for burning vessels and structures on Mission Bay, the harbor, and adjacent areas. They also perform every other kind of rescue and paramedic response necessary. They are exposed to the same hazards and traumas that their brother and sister firefighters are exposed to. Yet, they are treated differently in statute.

For example, when a firefighter is exposed to toxic chemicals and gets cancer, they get the benefit of a cancer workers' compensation presumption. However, a fire department employee in the Boating Safety Unit exposed to the very same toxic substances fighting marine fires gets no such benefit. This inequity is wrong and needs to be corrected."

3. Opponent Arguments:

None received

4. Prior Legislation:

AB 489 (Calderon, 2023) would extend an existing pilot program by one year to allow workers' compensation temporary and permanent disability indemnity payments to continue to be made using prepaid cards. *This bill is scheduled to be heard in the Senate Committee on Labor, Public Employment and Retirement on June 14, 2023.*

AB 597 (Rodriguez, 2023) would, for injuries occurring on or after January 1, 2024, create a rebuttable presumption for emergency medical technicians and paramedics that PTSI is an occupational injury and covered under workers' compensation. *This bill is in the Assembly Committee on Insurance.*

AB 1020 (Grayson, 2023) would make changes to the County Employees Retirement Law of 1937 to expand the scope of medical conditions and presumptions relating to a service-connected disability for purposes of disability retirement, among other provisions. *This bill is scheduled to be heard in the Senate Committee on Labor, Public Employment and Retirement on June 14, 2023.*

AB 1107 (Mathis, 2023) would require specified workers' compensation presumptive injury compensation to be applicable to additional members and employees of the Department of Corrections and Rehabilitation. *This bill is in the Assembly Committee on Insurance.*

AB 1145 (Maienschein, 2023) would extend a workers' compensation rebuttable presumption for a diagnosis of a post-traumatic stress injury to certain state nurses, psychiatric technicians, and various medical social services specialists. *This bill was referred to the Senate Committee on Labor, Public Employment and Retirement.*

AB 1213 (Ortega, 2023) would extend the duration of temporary disability payments in the event an injured worker prevails at an independent medical review. *This bill was referred to the Senate Committee on Labor, Public Employment and Retirement.*

SB 391 (Blakespear, 2023) would expand the existing workers' compensation presumption for skin cancer to include peace officers of the Department of Fish and Wildlife and the Department of Parks and Recreation whose primary duties are law enforcement. *This bill was referred to the Assembly Committee on Insurance.*

SB 623 (Laird, 2023) would extend the existing rebuttable presumption for specified peace officers that a diagnosis of PTSI is occupational, and therefore covered by workers' compensation and extend the PTSI rebuttable presumption to additional categories of peace officers, investigators, security officers, and dispatchers. *This bill has been referred to the Assembly Committee on Insurance.*

SB 284 (Stern, 2022) would have expanded the existing PTSI rebuttable presumption to specified public first responders. SB 284 did not include a sunset extension. The bill was vetoed by the Governor, stating "*Current law, applicable for injuries occurring on or after 2020 and to be repealed on 1/1/2025, allows a rebuttable presumption of PTSD injury to apply for specified classes of active firefighting members, peace officers, and fire and rescue service coordinators who work for the Office of Emergency Services. This presumption is a careful step acknowledging the increasingly hazardous conditions to which the subject class members are exposed, balanced against the principles of workers' compensation law that dictates conservatism with respect to presumptions and psychiatric injuries. As such, it was intended to allow for the study of the benefits and effectiveness of the PTSD presumption. Expanding coverage of the PTSD injury presumption to significant classes of employees before any studies have been conducted on the existing class for whom the presumption is temporarily in place could set a dangerous precedent that has the potential to destabilize the workers' compensation system going forward, as stakeholders push for similarly unsubstantiated presumptions."*

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 temporary disability benefits from 104 weeks to 240 weeks for cancer presumption statute.

AB 334 (Mullin, 2021) would have expanded the existing workers' compensation presumption pertaining to skin cancer by including peace officers of the Department of Fish and Game and the Department of Parks and Recreation whose primary duties are law enforcement. In his veto message, Governor Newsom stated "*A presumption is not required for an occupational disease to be compensable. Such presumptions should be provided sparingly and should be based on the unique hazards or proven difficulty of establishing a direct relationship between a disease or injury and the employee's work. Although well intentioned, the need for the presumption envisioned by this bill is not supported by clear and compelling evidence.*"

AB 991 (Ward, 2021) would have granted full-time lifeguards employed by the City of San Diego in the Boating Safety Unit the same workers' compensation presumptive coverages afforded to firefighters and public safety officers. *This bill was not heard in the Assembly Committee on Insurance.*

AB 2665 (Mullin, 2020) was substantively similar to AB 334. *This bill was held in the Assembly Committee on Insurance.*

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

SB 527 (Block - Chapter 66, Statutes of 2013) added full-time lifeguards employed by the City of San Diego to the class of public safety employees who receive enhanced temporary disability benefits when they are unable to work due to illness or injury that arose out of the course of employment.

AB 663 (Vargas - Chapter 846, Statutes of 2001) established a compensable injury presumption under workers' compensation for lifeguards employed by specified state and local government agencies.

SUPPORT

California Teamsters Public Affairs Council (Sponsor)
California Labor Federation, AFL-CIO
California Nurses Association
City of San Diego, District 1 Councilmember Joe LaCava
Office of San Diego City Councilmember Raul Campillo
San Diego City Councilmember Marni Von Wilpert

OPPOSITION

None received

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SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Dave Cortese, Chair
2023 - 2024 Regular

Bill No:	AB 1020	**Hearing Date:**	June 14, 2023
Author:	Grayson		
Version:	May 30, 2023		
Urgency:	No	**Fiscal:**	No
Consultant:	Glenn Miles		

SUBJECT: County Employees Retirement Law of 1937: disability retirement: medical conditions: employment-related presumption

KEY ISSUE

Should the state add post-traumatic stress, tuberculosis, meningitis, skin cancer, Lyme disease, lower back impairments, and hernia or pneumonia to the ailments for which there is a rebuttable presumption for specified '37 Act county retirement system members that the condition arose out the member's employment for purposes of qualifying for a county retirement system disability retirement?

ANALYSIS

Existing law:

1) Establishes the CERL, commonly referred to the "1937 Act," or "37 Act," administered by 20 independent County Public Employee Retirement Associations, in which its statutory purpose is to recognize a public obligation to county and district employees who become incapacitated by age or long service in public employment and its accompanying physical disabilities by making provision for retirement compensation and death benefits as additional elements of compensation for future services, and to provide a means by which public employees who become incapacitated may be replaced by more capable employees to the betterment of public service without prejudice and without inflicting a hardship upon the employees removed. (Government Code (GC) § 31450 et seq.)

2) Provides a system of industrial death and disability benefits for safety officers and firefighters who are injured, die, or develop an illness directly related to the performance of their duties. (GC § 31720 et seq.)

3) Requires that when a safety member, firefighter, or member in active law enforcement who has been employed for five or more years develops heart trouble, the heart trouble will be presumed to have arisen out of, and in the course of, the member's employment, therefore making the illness industrial and qualifying the member for related industrial benefits. (GC § 31720.5 et seq.)

4) Establishes that any safety member, firefighter member, or member active in law enforcement who is permanently incapacitated for the performance of duty as a result of cancer must receive a service-connected disability retirement, if the member demonstrates that they were exposed to a known carcinogen as a result of performing job duties; and, unless controverted, the board must find in accordance with the presumption. (GC § 31720.6)

5) Establishes industrial causation presumptions for cancer, blood-borne infectious diseases, and illness due to exposure to biochemical substances for safety officers, and states that these presumptions may be rebutted by presenting evidence to the contrary, but unless rebutted, the retirement board must find that the illness was industrial. (GC § 31720.6 - 31720.9)

6) Establishes a similar presumption for members of a public retirement system relating to COVID-19, as provided. (GC § 7523)

7) Provides for workers' compensation which provides benefits to employees for purposes of medical treatment and lost wages that arise from a work-related injury or illness. (Labor Code § 3200 et seq.)

This bill:

1) Expands existing rebuttable presumptions in the 37 Act Law related to when a county retirement system member qualifies for a disability retirement pension to: 1) include specified members who terminate service up to five years after termination based on the member's years of service; and 2) include presumptions for additional specified ailments by which the ailment is presumed to be a disability caused by an injury that arose out of or in the course of the member's employment.

    a. The bill expands coverage of the existing "heart trouble" presumption to cover injuries that manifest for specified members for up to five years after termination based on their years of service.

    b. The newly added ailments that would generate a presumption (and which under the Labor Code are presumed to have been work related injuries for purposes of Workers' Compensation) are the following: post-traumatic stress, tuberculosis, meningitis, skin cancer, Lyme disease, lower back impairments, and hernia or pneumonia and cover injuries that manifest for specified members for up to five years after termination based on their years of service.

COMMENTS

1. Need for this bill?

According to the author,

"Industrial disability retirement (IDR) is a type of retirement benefit available to employees who are unable to perform their usual job duties as a result of work-related injury or illness. In particular, firefighters facing retirement because of an IDR fall under one of two retirement systems. CalPERS or County Employees Retirement Law of 1937 (CERL). Due to the difference in presumptions between the two retirement systems, firefighters are faced with a difficult and burdensome process when simply seeking retirement benefits they deserve. AB 1020 will bring uniformity and fix inconsistencies with the presumptions that govern workers comp disability retirement for firefighters. No public servant who has dedicated their livelihood to the protection of our state should be forced to repeatedly fight

for the retirement that they have earned. This bill will create a streamlined process and grant equal protection to all retirees."

2. Proponent Arguments

According to the sponsor, firefighters diagnosed with career-ending illnesses or injuries face inconsistent standards as they move through the Workers' Compensation system, CalPERS, and individual county retirement systems on the path to their disability retirement.

"By establishing parity across retirement systems, AB 1020 will ensure that all public safety employees who have sustained career-ending injuries in the course of their work are able to retire with care and dignity. No public servant who has dedicated their livelihood to the protection of our state should be forced to repeatedly fight for the retirement they have earned, and this bill will create a streamlined process and grant equal protection to all retirees."

3. Opponent Arguments:

According to the California State Association of Counties, Rural County Representatives of California, and the Urban Counties of California,

"We believe these employees are currently provided with fair access to the workers' compensation system for injuries, and therefore, AB 1020 is unnecessary. We reject the unproven assertion that a presumption is needed for these workers to fairly access benefits. In addition, we are not aware of any objective analysis that substantiates a need for the massive expansion of applicability of presumptions, as proposed by AB 1020."

4. Prior/ Related Legislation:

SB 623 (Laird) bill would extend the Workers' Compensation Post Traumatic Stress Injury (PTSI) rebuttable presumption for peace officers to additional categories of peace officers, investigators, security officers, and dispatchers. The bill is in the Assembly Committee on Insurance.

AB 1145 (Maienschein) would extend an industrial injury rebuttable presumption for a diagnosis of a post-traumatic stress disorder (PTSD) to certain state nurses, psychiatric technicians, and various medical social services specialists. The bill is in the Senate Labor, Public Employment and Retirement Committee.

SUPPORT

California Professional Firefighters (Sponsor)
Association of Orange County Deputy Sheriffs
California Fraternal Order of Police
California Statewide Law Enforcement Association
Contra Costa County Professional Firefighters, Local 1230
Kern County Firefighters, Local 1301 Union
Long Beach Police Officers Association
Los Angeles County Firefighters, Local 1014

Marin Professional Firefighters, Local 1775
Orange County Professional Firefighters Association, Local 3631
Peace Officers Research Association of California (PORAC)
Sacramento Area Firefighters, Local 522
Sacramento County Deputy Sheriffs' Association
San Bernardino County Firefighters, Local 935
San Bernardino County Sheriff's Employees' Benefit Association
Ventura County Professional Firefighters Association, Local 1364

OPPOSITION

California State Association of Counties
Rural County Representatives of California (RCRC)
Urban Counties of California (UCC)

-- END --

SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Dave Cortese, Chair
2023 - 2024 Regular

Bill No:	AB 1355	**Hearing Date:**	June 14, 2023
Author:	Valencia		
Version:	May 1, 2023		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Alma Perez-Schwab		

SUBJECT: Employment: benefits: electronic notice and documents

KEY ISSUES

Should employers be authorized to provide information regarding the Earned Income Tax Credit and the Unemployment Insurance Program benefits (currently required to be provided in paper form) via email if the employee opts-in to receipt of these electronic materials?

Should employers be prohibited from discharging or taking other adverse action against an employee who does not opt into receipt of electronic statements or materials?

ANALYSIS

Existing law:

1) Establishes the California Earned Income Tax Credit (EITC) in order to alleviate the tax burden on working poor persons and families, to enhance the wages and income of working poor persons and families, to ensure that California receives its share of the federal money available in the federal Earned Income Tax Credit program, to ensure that the poorest working Californians access the additional state EITC, and to inject additional federal money into the California economy. (Revenue and Taxation Code §19851)

2) Requires the state shall facilitate the furnishing of information to working poor persons and families regarding the availability of the federal and state earned income tax credit so that they may claim those credits on their federal and state income tax returns. (Revenue and Taxation Code §19851)

3) Requires employers to notify employees that they may be eligible for the federal and the California Earned Income Tax Credit (EITC) by handing the information directly to the employee or mailing the information to the employee's last known address. (Revenue and Taxation Code §19853)

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

5) Requires employers to post and maintain in places readily accessible to individuals printed statements concerning benefit rights and other matters as may be prescribed by authorized regulations. (Unemployment Insurance Code §1089)

6) Requires employers to supply individuals when they become unemployed with copies of printed statements or materials related to the Unemployment Insurance program and claims for benefits. (Unemployment Insurance Code §1089)

This bill:

1) Until January 1, 2029, authorizes employers to provide information to their employees regarding the Earned Income Tax Credit and the Unemployment Insurance Program via email to an email account of the employee's choosing in PDF, JPEG, or other digital image file type format, if an employee affirmatively, and in writing or by electronic acknowledgment, opts into receipt of electronic statements or materials.

2) Prohibits an employer from discharging an employee or in any manner discriminate, retaliate, or take any adverse action against an employee who does not affirmatively, in writing or by electronic acknowledgment, opt into receipt of electronic statements or materials.

3) Makes other technical non-substantive changes.

COMMENTS

1. Need for this bill?

According to the author, "Thanks to the advancements in technology, there are various ways in which we can share documents. Currently, informative documents related to flexible spending, loan forgiveness programs, I-9 employment eligibility verification, pregnancy disability leave, and COVID-19 supplemental sick leave may be shared via electronic means such as email. However, current statutes do not provide the flexibility to provide notices pertaining to the California Earned Income Tax Credit, or the claim of benefits for individuals that become unemployed, by email. AB 1355 will amend the current law to allow employees to affirmatively consent, in writing or by electronic acknowledgment, to "opt-in" to receive electronic statements or materials for the California Earned Income Tax Credit, and For Your Benefit, via email from their employers. This bill will not require employees to opt into electronic receipt, and provides safeguards for employees who choose not to receive these documents electronically. By providing flexibility for the distribution of these documents, we are providing employees with expanded access to these critical documents and allowing our state to be more environmentally conscious by reducing paper waste."

2. Proponent Arguments:

According to the sponsors of the measure, Fidelity Investments, "employers are required to provide their employees with numerous notices at different times of the year when specific events occur in the employment relationship. Employers are currently able to provide many notices electronically, including information on an employee's rights regarding pregnancy

disability and family medical leave. However, there are still two documents that California law requires employers to provide in paper form. AB 1355 will provide California employees the choice to receive these forms electronically. This bill does not create a mandate on either the employee or the employer, the bill simply provides a more sustainable option if the employer chooses to offer it, and the employee opts-in to the electronic delivery of these materials."

3. Opponent Arguments:

None received.

4. Prior Legislation:

SB 657 (Ochoa Bogh, Chapter 109, Statutes of 2021) allows employers, in any instance the employer is required to physically post information, to additionally distribute that information to employees by email with the document or documents attached.

SUPPORT

Fidelity Investments (Sponsor)
Acclamation Insurance Management Services
Allied Managed Care
Anaheim Chamber of Commerce
California Apartment Association
California Association for Health Services at Home
California Attractions and Parks Association
California Beer and Beverage Distributors
California Chamber of Commerce
California Hispanic Chamber of Commerce
California League of Food Producers
California New Car Dealers Association
California Restaurant Association
California Trucking Association
Coalition of Small and Disabled Veteran Businesses
Family Business Association of California
Flasher Barricade Association
Los Angeles Area Chamber of Commerce
National Federation of Independent Business
National Payroll Reporting Consortium
Orange County Business Council
Orange County Hispanic Chamber of Commerce

OPPOSITION

None received

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SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Dave Cortese, Chair
2023 - 2024 Regular

Bill No:	AB 1389	**Hearing Date:**	June 14, 2023
Author:	Wendy Carrillo		
Version:	June 5, 2023		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Alma Perez-Schwab		

SUBJECT: Notice of levy

KEY ISSUE

Should the Legislature extend the current timeframe to remit levied property/funds to the Employment Development Department from 5 days to between 10, but not more than 14 business days, to give all parties involved sufficient time to review and remit owed funds?

ANALYSIS

Existing law:

1) Establishes the Employment Development Department (EDD) within the Labor and Workforce Development Agency. EDD is responsible for, among other duties, the administration of the Unemployment Insurance and Disability Insurance programs. (Unemployment Insurance Code §301)

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

3) Provides UI weekly benefits that range from $40-$450 based on the employee's prior earnings and are available for a maximum of 26 weeks, as specified. (Unemployment Insurance Code §1275-1282)

4) Requires employers to pay for the UI program. Tax-rated employers pay a percentage on the first $7,000 in wages paid to each employee in a calendar year. The UI rate schedule and amount of taxable wages are determined annually. New employers pay 3.4 percent (.034) for a period of two to three years. The maximum tax is $434 per employee per year (calculated at the highest UI tax rate of 6.2 percent x $7,000.) (Unemployment Insurance Code §901-1243)

5) Provides for penalties and interest if any person or employing unit is delinquent in the payment of any contributions for unemployment insurance, and authorizes the Director of Employment Development to collect the delinquency or enforce any state tax liens by levy against a delinquent account receivable or account held by a financial institution if proper notice is given. (Unemployment Insurance Code §1755)

6) Requires the person receiving a notice of levy, if the levy is made on an account receivable, to remit any credits or personal property owing to the delinquent person or employing unit to EDD within 5 days of receipt of the notice of levy. (Unemployment Insurance Code §1755)

7) Requires a person that comes into possession of credits or property owing to a delinquent person or employing unit within one year of receipt of the notice of an accounts receivable levy to remit the credits or property to the department within 5 days of coming into possession of the credits or property. (Unemployment Insurance Code §1755)

8) Provides that if the levy is made on a deposit or credits or personal property in the possession or control of a financial institution, the notice of levy shall be served on that financial institution and the institution must remit the property to EDD within 5 days of receiving the notice of levy, but does not require the financial institution to remit property that is not in their possession at the time the notice of levy is served. (Unemployment Insurance Code §1755)

This bill:

1) Extends the levy remittance time limit in the above mentioned provisions from five days to ten, but no later than 14 business days after service of a levy.

2) Defines "business day" as any day other than a Saturday, Sunday, legal holiday as recognized by the Internal Revenue Service, statewide legal holiday as recognized by the State of California, or a day in which the Employment Development Department (EDD) is closed.

3) Makes other technical and non-substantive changes.

COMMENTS

1. Background:

As noted above, the Employment Development Department (EDD) is responsible for, among other duties, the administration of the Unemployment Insurance and Disability Insurance programs. EDD is also responsible for the collection and administration of California's payroll taxes, which include employer contributions for Unemployment Insurance and Employment Training Tax, as well as employee withholdings for State Disability Insurance and California Personal Income Tax. The collection of these payroll taxes ensure that workers receive benefits that they are entitled to, and that all employers comply with the payroll reporting and tax payment requirements under California's Unemployment Insurance Code.

Existing law authorizes EDD, if any person or employing unit is delinquent in the payment of any contributions, penalties or interest, to pursue voluntary and involuntary collection measures, including levies, as appropriate. Any person or financial institution (if the financial institution is in possession of a deposit or credit or personal property for which a levy is

made) having been served a levy must remit the funds owed to EDD within five days. This means that once a levy is served upon a financial institution, the institution must remit the levied funds to the EDD "within five days of service of the levy" to avoid being deemed liable for the tax.

As noted in the Assembly Insurance Committee analysis of this bill, "Other areas of the law including, California Revenue & Taxation Code and 26 United States Code provide significant guidance regarding how and when banks must surrender deposits that are subject to levy from other taxing agencies. Pursuant to the Revenue & Taxation Code, the bank remits the levied funds "not less than 10 business days from receipt" of the levy notice. Pursuant to the California Department of Tax and Fee Administration Collection (CDTFA) Publication 54, the bank must hold the funds subject to levy for 10 days prior to releasing the levied funds to the CDTFA. Finally, 26 U.S.C. § 6332(c), provides that the financial institution must turn over levied funds "only after 21 days after service of the levy." Ultimately, the other taxing agencies demonstrate at least a 10 day minimum holding period after receipt of a levy before remitting the designated funds, which is very different from the language found in UI Code Section 1755, which requires funds to be remitted to the EDD "within five days."

The limited response time – "within five days" – required under existing law does not provide the taxpayer a sufficient opportunity to determine the validity of the levy, whether funds are exempt from levy, or whether the proposed levy would create undue financial hardship. Modifying the statute could reduce financial hardship to taxpayers and, administrative costs for EDD."

2. Need for this bill?

According to the author, "The Employment Development Department (EDD) is responsible for collecting and administering California's payroll taxes which include employer contributions for Unemployment Insurance and Employment Training Tax purposes, as well as employee withholdings for Disability Insurance and California Personal Income Tax. The collection of these payroll taxes ensure that workers receive benefits that they deserve. This bill would improve customer service for taxpayers and claimants by providing them with more time to resolve their outstanding tax liabilities or fraudulent overpayments before a levy is remitted to EDD."

3. Proponent Arguments:

The CA Society of Enrolled Agents is in support and writes, "banks that receive levies are required to notify the account holder that a levy has been served, the amount of funds being held, and any fees assessed relative to this action. However, banks usually give this notification via regular postal service. If the response time to the levy is 5 days (calendar) and the bank receives the levy on a Friday, mails the notice on that same day, the taxpayer is likely to receive it on Monday or Tuesday. Tuesday is day five, leaving little to no time to contact the EDD before the bank releases the funds.

In practice, the taxpayer usually finds out about the levy when the funds are withdrawn from the account. When this happens, the taxpayer is effectively denied due process rights to challenge the levy, or find an alternate resolution, before funds are remitted to the EDD. The EDD is reluctant to return levied funds unless the levy is proved erroneous, but this is

after any financial damage is already done.

Timing is critical. The EDD can serve a levy by fax or electronic means to a financial institution, reducing the time it takes to acknowledge the levy. The taxpayer is not afforded the same prompt notice from EDD, but instead waits for notification by regular mail. This creates another time disadvantage to the taxpayer. Practitioners who represent taxpayers in matters involving EDD bank levies know that time is the main hurdle in trying to resolve such levies. Banks are incentivized to remit funds as soon as possible as the penalty for failing to do so makes them culpable for the entire amount owed to the EDD."

In conclusion, they argue that, "This bill would provide a realistic time-period for taxpayers to receive bank notification and take steps to resolve the EDD matter before financial harm or hardship due to the levy."

4. Opponent Arguments:

None received.

SUPPORT

CA Society of Enrolled Agents

OPPOSITION

None received

-- END --

SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Dave Cortese, Chair
2023 - 2024 Regular

Bill No:	SJR 5	**Hearing Date:**	June 14, 2023
Author:	Durazo		
Version:	May 4, 2023		
Urgency:		**Fiscal:**	No
Consultant:	Dawn Clover		

SUBJECT: Office of Management and Budget: Uniform Guidance

KEY ISSUE

Should the Legislature urge the federal Office of Management and Budget to update its Uniform Guidance in order to improve job creation, quality, and equity?

ANALYSIS

Existing federal law:

1) Requires the Office of Management and Budget (OMB) to establish requirements for the administration of federal awards and fixed-price contracts and subcontracts, except unless otherwise specified. (2 C.F.R. §§200)

2) Prescribes instructions and other pre-award matters to be used by federal awarding agencies in the program planning, announcement, application, and award process. (2 C.F.R. §200.201-200.216)

3) Requires a federal awarding agency to manage and administer the Federal award in a manner so as to ensure that Federal funding is expended and associated programs are implemented in full accordance with the U.S. Constitution, Federal Law, and public policy requirements: Including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination. (2 C.F.R. §200.300)

4) Provides a recipient non-federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable federal statutes expressly mandate or encourage geographic preference. When contracting for architectural and engineering services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract. (2 C.F.R. §200.319(c))

5) Provides a recipient non-federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. (2 C.F.R. §200.321)

Existing state law:

1) Provides the state shall not grant preferential treatment to any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting. (Article 1 §31 of the California Constitution)

This resolution:

1) Urges the OMB to update its Uniform Guidance to improve job creation, quality, and equity.

2) Finds the following:

    a. Since 1988, OMB established federal grant rules, now known as the Uniform Guidance that have severely limited state and local governments from implementing substantive procurement standards that promote good jobs and equity.

    b. State and local governments are prohibited from using local hire (hiring people from a specific geographic region) in federally funded procurements.

    c. The Uniform Guidance has impeded the implementation of policies, including targeted hire provisions and project labor agreements.

    d. The Uniform Guidance has hindered state and local government efforts to put local or disadvantaged residents to work rebuilding infrastructure in their own communities.

    e. No empirical evidence has been cited that shows local hire has an adverse impact on bid competition or cost.

    f. The United States Congress itself has never prohibited local hire or targeted hire.

    g. The 2015 Obama-Biden Administration's Local Labor Hiring Pilot Program allowed grant recipients to use local hire programs to successfully increase social, economic, and racial equity in their communities.

    h. The Infrastructure Investment and Jobs Act allowed for local hire to be used in transportation construction projects.

    i. Local hire programs address the fundamental goal of having residents participate in infrastructure investments in their own towns and cities.

    j. Targeted hire programs can also increase opportunities for workers of color, women, veterans, returning community members, and others historically excluded from meaningful employment.

3) Resolves that the Legislature urges OMB to update its Uniform Guidance to explicitly allow states and localities to implement strong procurement standards that advance high quality jobs and equitable hiring, including lifting the local hire prohibition on federally funded projects, and in so doing empower California lawmakers and agencies to create equitable infrastructure jobs that can strengthen our cities, counties, and state.

4) Resolves that the Secretary of the Senate shall transmit copies of this resolution to the President and the Vice President of the United States, OMB, and to the author for appropriate distribution.

COMMENTS

1. Need for this bill?

Following the passage of transparency measures in the American Recovery and Reinvestment Act of 2009, President Obama issued Executive Order 13576 – Delivering an Efficient, Effective, and Accountable Government, which outlined the creation of the Government Accountability and Transparency Board. The board was charged with developing a strategic direction for enhancing the transparency of federal spending, including the awarding and use of federal grants. This work ultimately informed OMBs Uniform Guidance. Since December 2014, the Uniform Guidance has regulated the federal grant process by consolidating eight sets of federal regulations into one to streamline the proposal submission and award management process.

In March 2023, the author's budget subcommittee and this committee held a joint oversight hearing to examine recent federal investments and how California can maximize those investments by creating high quality jobs and assess how jobs can be created within communities and regions in need. A recurring theme was the necessity to strengthen procurement and contracting to empower disadvantaged communities to obtain equity goals while building a green economy. One challenge to this is Proposition 209, which not only ended race-conscious programs, but also ended the collection of procurement data related to race, ethnicity, and gender in most jurisdictions of California.[1]

According to the author, "In my city of Los Angeles, we've seen huge successes from projects that require contractors to hire their workers from local communities and from targeted groups, like those returning from incarceration, veterans, and other systems-impacted individuals. But many of these programs were only possible with local and federal pilot funding. The unclear and prohibitive federal grant rules have hampered cities and states from leveraging the opportunity to use federal dollars to support workers in local communities. Now, we have the opportunity to change these restrictive grant rules and bring proven, successful workforce programs to federally funded projects. By acting now, we can not only bring needed infrastructure funding to our districts, but also make enormous inroads in amplifying financial security and equity in our communities.

I believe that a few minor changes to the Uniform Guidance will allow the Biden Administration to achieve its stated goals of using federally funded procurement as a tool to address historic inequities, lift millions of struggling Americans - particularly people of color - out of the current economic crisis, and ensure the historic investments from the American Rescue Plan, the Infrastructure Investment and Jobs Act, the Inflation Reduction Act, and the CHIPS and Science Act create transformative change in hundreds of industries across the United States.

[1] https://equaljusticesociety.org/2015/02/24/one-billion-in-potential-contract-dollars-lost-annually-by-businesses-owned-by-women-and-people-of-color-due-to-proposition-209/#:~:text=Proposition%20209%20not%20only%20ended,previously%20been%20collecting%20that%20data. Accessed May 25, 2023.

Moreover, modernizing federal grant rules will enhance my efforts for enforceable job commitments in our state contracting, procurement, and subsidy programs. Through our state budget process I have successfully championed high road labor standards for $1.5 billion zero-emission school bus contracts. Last year my Senate Bill 674 (Chapter 875, Statutes of 2022) was signed and will apply a high road jobs framework on zero-emission transit and charging stations through a High Road Jobs in Transportation-Related Public Contracts and Grants Pilot Program. Focused on non-construction jobs, such as manufacturing, maintenance, services and operations, this new law will require our California Department of General Services and Department of Transportation to apply standards for good jobs in contracts for zero-emission transit vehicles or electric vehicle supply equipment valued at $10 million or more. Removing the federal prohibition on local hire and providing clarity on targeted hire will allow us to apply these community benefits to projects and programs that have a mix of federal, state, and local funds to maximize our success.

By modernizing these federal grant rules, we can create programs that create more good, middle class jobs for Californians. Enforceable job standards and community benefits in the green economy has been a priority for me in my state legislation and the California State Budget. It is not enough to finance and incentivize green transportation and other major climate projects; we have to ensure that the people building these projects have access to quality jobs and that California is not subsidizing low-road companies. We have a legal and moral responsibility to protect taxpayer investments. The research is clear that absent state policy these green jobs will not be the well-paid career quality jobs that currently exist in fossil fuel industries. The conflict with the new economy is that fossil fuel jobs pay approximately 40% higher than green economy jobs. This rule change will generate safe, family-supporting career-track jobs in our communities."

2. Proponent Arguments

According to Jobs to Move America, "Current federal grant rules hinder the ability of city and state officials to incorporate policies that create good jobs for their communities, promote greater racial and gender equity in their spending, and protect workers through workforce transition plans when using federal funds. For example, local hire programs can help connect local residents to meaningful career opportunities for projects happening in their communities. However, under current regulations, cities and states are prohibited from using local hire programs in most federally-funded projects.

Federal investments in California's infrastructure, such as broadband expansion, water infrastructure, and public transit, are vital to helping the state recover from the pandemic and create a more resilient future. Right now, the federal Office of Management and Budget (OMB) is considering updates to the Uniform Guidance. This is a critical opportunity to change these grant rules for the better, allowing governing bodies like the California State Legislature to enact policies that amplify the benefits of these infrastructure projects for communities across the state.

We encourage the Legislature to send a strong message to the OMB that California's leaders support updating the Uniform Guidance so that state and local leaders can utilize policies that create fulfilling, safe, high-road jobs for workers in their communities–especially for people of color, women, returning citizens, veterans, and other workers facing barriers to employment."

3. Opponent Arguments:

None received

4. Prior Legislation:

SB 822 (Durazo, 2023) would create the California Workforce Innovation and Opportunity Act to assist state agencies in advancing high quality jobs with investments in the energy, resources, and transportation sectors and expand access to those jobs through education and training and requires state agencies receiving climate investments to enter into a memorandum of understanding with the California Workforce Development Board to coordinate economic and workforce development planning, analysis, and implementation activities.

SUPPORT

Jobs to Move America (Sponsor)
Center on Race, Poverty & the Environment
Courage California
Dream.org
Emerald Cities Collaborative
In the Public Interest
International Association of Sheet Metal, Air, Rail, and Transportation Workers (SMART)
International Union of Painters & Allied Trades (IUPAT)
Jobs With Justice
Los Angeles Alliance for a New Economy (LAANE)
Move LA
National Employment Law Project
PolicyLink
SEIU California State Council
Service Employees International Union
Workers Defense Project
Workplace Justice Lab at Rutgers University

OPPOSITION

None received

-- END --