
SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT

Senator Jerry Hill, Chair

2019 - 2020 Regular

Bill No: AB 1066 **Hearing Date:** July 10, 2019
Author: Gonzalez
Version: April 30, 2019
Urgency: No **Fiscal:** Yes
Consultant: Gideon L. Baum

SUBJECT: Unemployment insurance: trade disputes: eligibility for benefits

KEY ISSUE

Should the Legislature permit workers involved in a trade dispute to collect unemployment insurance (UI) benefits?

ANALYSIS

Existing law:

- 1) Creates a comprehensive unemployment insurance system, administered by the Employment Development Department (EDD), where employers pay an experienced-based tax on total payroll that are used to fund unemployment benefits to unemployed workers. (Unemployment Insurance Code §§ 301, 602, 675, 926, 970, 977 & 1251)
- 2) Defines a worker as “unemployed” in any week in which he or she meets any of the following conditions:
 - a) Any week during which he or she performs no services and with respect to which no wages are payable to him or her.
 - b) Any week of less than full-time work, if the wages payable to him or her with respect to the week, when reduced by twenty-five dollars (\$25) or 25 percent of the wages payable, whichever is greater, do not equal or exceed the worker’s weekly benefit.
 - c) Any week for which, a worker is unable to work due to mental or physical health illness or injury, as specified.
 - d) Any week during which he or she performs full-time work for five days as a juror, or as a witness under subpoena.
(Unemployment Insurance Code §1252)
- 3) Provides that an individual is not eligible for unemployment compensation benefits if the individual left his or her work because of a trade dispute. The individual shall remain ineligible for the period during which he or she continues out of work because of the fact that the trade dispute is still in active progress. (Unemployment Insurance Code §1262)
- 4) Provides that, when EDD learns that a trade dispute is in progress, EDD must promptly conduct an investigation and make investigation findings as to the nature, location, labor organizations and employers involved, and other relevant facts concerning the trade dispute as it deems necessary. The department shall provide its findings to its field offices in locations affected by the trade dispute, and must, upon request, make its findings available to any employer, employers’ association or labor organization involved in the trade dispute. (Unemployment Insurance Code §1262.5)

This bill:

- 1) Permits workers involved in a trade dispute to collect unemployment insurance after a four-week waiting period.
- 2) Codifies a California Supreme Court Decision (*Coast Packing Co. v. California Unemployment Insurance Appeals Board* (1966) 64 Cal. 2d 76) that found workers subject to a lockout eligible for UI benefits.

COMMENTS**1. Need for this bill?**

The author states the following:

“Strikes can sometimes be the only impactful way working people can come together to influence terms and conditions of their employment. Employees can legally strike for economic reasons or to protest an unfair labor practice by their employer, such as an employer’s failure to address harassment and discrimination in the workplace, failure to follow wage and hour laws, or refusal to bargain in good-faith with employees’ union representatives. Union members vote on whether or not to strike, but because of the personal and collective sacrifices striking requires, many unions require a two-thirds majority vote in order to strike. Strikes can be undertaken as a last resort by employees wanting to resolve a significant labor dispute with their employer or when matters are at an impasse and workers have exhausted all other options. The risks are even greater considering that working people engaged in an economic strike can lose their jobs if their employer decides to hire permanent replacements. Even if striking workers receive a modest level of financial assistance through their union’s strike fund – typically an average of \$150 to \$300 a week – it doesn’t come close to a full-time, minimum-wage salary and it certainly isn’t enough to live on. Furthermore, there’s no guarantee that an employee’s sacrifices will amount to any gain or the strike will be successful in compelling an employer to meet the demands of striking employees.

....

When workers are unemployed, entire families suffer and struggle to meet even the most basic needs like food and shelter. Communities suffer as well, as local economies lose out due to the slump in consumer activity. Public programs like food pantries and local community services are stressed.... This legislation provides workers with a basic safety net to ensure they are not starved back to work by their employer, that they have the means to stand up for fair treatment on the job and can have a basic level of income to provide for their families during a labor dispute. When workers’ rights are undermined, employees shouldn’t have to sacrifice their livelihoods to stand up for the justice they deserve.

*Finally, the practice of allowing workers to collect unemployment benefits while on strike is already permitted in other states such as New York and New Jersey... New York has long had a similar law which was held up by the U.S. Supreme Court in *New York Telephone Co. v. New York Dept. of Labor*, 440 U.S. 519 (1979), in which the Court ruled against New York Telephone’s contention that paying unemployment benefits to workers amounted to state interference in a long and costly strike. It found instead that unemployment laws were*

of general applicability and were for the purpose of minimizing economic insecurity, and therefore should be accessible to workers engaged in a strike following a labor dispute.”

2. A Brief Word on Recent Strikes in California:

According to data from the Bureau of Labor Statistics, the number of U.S. workers involved in work stoppages in 2018 (485,000), including both strikes and lockouts, was the highest of any year since 1986 (533,000). Last year saw 20 work stoppages, which is the highest since 2007 that saw 21 major strikes and lockouts.

Data on trade disputes collected by EDD show upward movement in the number of California workers involved in trade disputes in recent years. In 2014, 472 employees were engaged in a trade dispute and 12,478 were in 2018. The numbers will continue to rise in 2019 with over 34,000 workers involved in trade disputes to date. That notable increase is driven by the Los Angeles Unified School District strike. The following are examples of recent trade disputes involving a large number of California workers:

- Pacific Maritime Association Dispute (2002)
- Grocery Dispute involving Ralphs Grocery Company, Albertson's, Inc., and Vons Companies, Inc. (2003)
- San Francisco Hotels Multi-Employer Group Dispute (2004)
- Writers Guild of America Dispute (2007)
- Tesoro Refineries Dispute (2011)

3. Trades Disputes and Other States:

Some other states currently allow workers to collect unemployment benefits while on strike, most notably New York and New Jersey. In 2018, New Jersey enacted a law that allows workers on strike to collect unemployment benefits. This law allows workers to be able to file for unemployment insurance in labor disputes after 30 days when an employer violates the terms of an employment contract or collective bargaining agreement, or engages in an unfair labor practice that violates state or federal law. New York has long had a similar law with a 49-day waiting period.

4. Proponent Arguments:

The California Labor Federation, the sponsor of AB 1066, argues the following in support:

“No right is more fundamental to the Labor Movement than the right to strike. Since the first documented strike in America, which took place in 1619, workers have treasured their right to withhold labor when circumstances call for such drastic action. While not all workers enjoy legal access to this right, those that do will fight hard when anyone tries to weaken or eliminate it.

Recent years have seen an inspiring resurgence of workers' willingness to take advantage of this effective tool, from teachers to hotel workers to communications workers and everyone in between. Across California, workers have had enough of the mistreatment, disrespect, and low wages and are fighting back. With often stunning success, the recent wave of strikes has

brought this time-honored tool back to the forefront of Labor's efforts to create the workplaces—and the state—we deserve.

However, going out on strike remains a major sacrifice, no matter how necessary. Workers lose all wages, usually leaving families unable to meet basic needs. This temporary crisis can lead to permanent consequences such as poor credit, repossessed vehicles, and even foreclosed homes. Strike benefits are sometimes available but rarely enough to avoid major financial difficulties. Striking is an extreme last resort that no worker wants, but all too often, employer malfeasance and attacks leave no other option....

AB 1066 (Gonzalez) will allow striking or locked out workers to receive UI benefits for the duration of the dispute, up to currently allowed. The bill will be modeled on New York state statute upheld by the U.S. Supreme Court and found to not be preempted by the National Labor Relations Act (NLRA)....

Under AB 1066, all locked out workers will receive benefits immediately following the one-week waiting period required by state law. For striking workers, a two-week delay created by the bill will mean only workers on strike for over three weeks would receive benefits. Given that a tiny minority of contract disputes end in strike, and only a fraction of those strikes last longer than a day or two, very few striking workers will ever qualify. But for those that do, this modest lifeline will directly and substantially benefit both them and their surrounding communities....

We urge the legislature to honor workers, their unions, and their communities by approving this legislation to give striking and locked out workers a hand up when disputes arise.”

5. Opponent Arguments:

A coalition of employer organizations, including the California Chamber of Commerce, argues the following in opposition:

“In brief, the Coalition is opposed because:

- 1) **AB 1066 will provide unemployment benefits to striking workers even though they are not looking for work and have a job waiting for them once the labor dispute is resolved.** This is a sharp departure from more than 70 years of precedent in California, wherein unemployment insurance (UI) was a compromise – employers were incentivized not to terminate without cause, and employees were compelled to be looking for work.
- 2) **AB 1066 politicizes unemployment benefits.** Whereas unemployment had previously been neutral in labor disputes, **AB 1066** will penalize employers for strikes, regardless of the facts of the labor dispute.
- 3) **AB 1066 would create additional solvency issues for California's UI system.** After 2008, California's UI fund became insolvent and was forced to take out federal loans. Those loans added costs in the hundreds of millions of dollars to the general fund, per year, and were only repaid in 2018. By potentially adding entire unions to unemployment, **AB 1066** will push California's UI fund toward insolvency once again.

- 4) **AB 1066 will burden even non-striking workplaces.** Because **AB 1066** burdens the entire UI fund, even workplaces which do not strike will be forced to pay increased UI premiums, increasing costs for even model employers.”

6. Prior Legislation:

AB 2197 (C. Garcia) of 2016 would have permitted classified school employees to be eligible to collect unemployment insurance (UI) benefits between school years with or without a reasonable assurance of being employed in the next academic year. AB 2197 was vetoed by Governor Brown.

SUPPORT

California Labor Federation (Co-Sponsor)
Communications Workers of America, District 9 (Co-Sponsor)
United Food and Commercial Workers Western States Council (Co-Sponsor)
Alliance of Californians for Community Empowerment
American Federation of State, County and Municipal Employees
California Conference Board of Amalgamated Transit Union
California Conference of Machinists
California Employment Lawyers Association
California School Employees Association
California State Association of Electrical Workers
California State Pipe Trades Council
California Teamsters Public Affairs Council
Coalition for Humane Immigrant Rights
Communication Workers of America District 9
Consumer Attorneys of California
Courage Campaign
Engineers and Scientists of CA, IFPTE Local 20
Inland Boatmen’s Union
Professional and Technical Engineers of CA, IFPTE Local 21
SEIU California
UNITE HERE
United Auto Workers
United Auto Workers, Local 2865
United Auto Workers, Local 5810
United Steelworkers District 12
University Professional and Technical Employees, CWA Local 9119
Utility Workers Union of America
Utility Workers Union of America, Local 132
Western States Council Sheet Metal, Air, Rail and Transportation

OPPOSITION

Associated General Contractors
Auburn Chamber of Commerce
Brawley Chamber of Commerce
Brea Chamber of Commerce
Building Owners and Managers Association
Burbank Chamber of Commerce
California Association of Realtors
California Association of Sheet Metal and Air Conditioning Contracts National Association
California Building Industry Association
California Business Properties Association
California Chamber of Commerce
California Farm Bureau Federation
California Grocers Association
California Hospital Association
California League of Food Producers
California Manufacturers & Technology Association
California Professional Association
Camarillo Chamber of Commerce
City of Fountain Valley
Coalinga Area Chamber of Commerce
Commercial Real Estate Development Association
Dana Point Chamber of Commerce
El Centro Chamber of Commerce
El Dorado County Chamber of Commerce
Elk Grove Chamber of Commerce
Flasher Barricade Association
Folsom Chamber of Commerce
Fontana Chamber of Commerce
Fresno Chamber of Commerce
Greater Bakersfield Chamber of Commerce
Greater Irvine Chamber of Commerce
Greater Riverside Chamber of Commerce
Hesperia Chamber of Commerce
International Council of Shopping Centers
Kern County Hispanic Chamber of Commerce
Lodi District Chamber of Commerce
Long Beach Chamber of Commerce
Los Angeles Area Chamber of Commerce
Murrieta/Wildomar Chamber of Commerce
National Federation of Independent Business
North of the River Chamber of Commerce
North Orange County Chamber
Oceanside Chamber of Commerce
Official Police Garages of Los Angeles
Orange County Business Council
Oxnard Chamber of Commerce
Palm Desert Area Chamber of Commerce
Pleasanton Chamber of Commerce

Rancho Cordova Chamber of Commerce
Rancho Cucamonga Chamber of Commerce
San Gabriel Valley Economic Partnership
Santa Ana Chamber of Commerce
Santa Maria Chamber of Commerce
Simi Valley Chamber of Commerce
Southwest California Legislative Council
The Silicon Valley Organization
Torrance Chamber of Commerce
Tulare Chamber of Commerce
Valley Industry and Commerce Association
Victor Valley Chamber of Commerce

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