
SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair
2019 - 2020 Regular Session

AB 1066 (Gonzalez) - Unemployment compensation: benefits payable: collection

Version: August 7, 2020

Urgency: No

Hearing Date: August 17, 2020

Policy Vote: L., P.E. & R. 4 - 1

Mandate: No

Consultant: Robert Ingenito

Bill Summary: AB 1066 would (1) codify a 10-day deadline for employers to respond to the Employment Development Department's (EDD's) requests to furnish required records, as specified, with an extension for a good cause delay, and (2) allow EDD to delegate to the Attorney General (AG) the power to recover contributions large corporations owe to the Unemployment Insurance (UI) fund if they have at least five or more workers receiving UI benefits.

Fiscal Impact: The fiscal impacts of the bill to EDD and the Department of Justice (DOJ) have yet to be determined. However, the bill's costs are likely to exceed the Committee's threshold for referral to its Suspense File. Under the bill's provisions, DOJ's costs would be reimbursed by EDD.

Background: New business models and communications technologies have led many workers to supply their labor outside of the traditional employment relationship in recent years. An incentive exists for employers to misclassify their employees as independent contractors and illegally avoid paying the cost of benefits. Misclassified employees often are denied access to critical benefits and protections they are entitled to by law, such as the minimum wage, overtime compensation, family and medical leave, unemployment insurance, and safe workplaces. Employee misclassification generates substantial losses to the federal government and state governments in the form of lower tax revenues, as well as to state unemployment insurance and workers' compensation funds. Thus, the misclassification of employees represents a cost-shift from an employer to the employee and state taxpayers. Empirical evidence suggests the use of independent contractors has become more pervasive; one study concluded that the number of workers classified as independent contractors rose 30 percent during the years 2005 to 2015.

Proposed Law: This bill would do the following:

- Provide that, if an employer fails, within 10 days, to provide the requested records or reports to the director of EDD necessary to make a unemployment insurance (UI) or disability insurance (DI) benefit determination, it must be conclusively presumed that the claimant is entitled to maximum total benefits permitted under the unemployment insurance system, unless the director determines, based on the evidence, that the claimant is entitled to a lesser amount. The Director of EDD may, with good cause, extend the 10-day requirement for records, as specified.

- Provide that, if an employer employing 5 or more claimants, fails to furnish any required records or reports within 10 days after receiving notice from the director of the need to furnish records for the purposes of an UI or DI benefit determination, then it shall be conclusively presumed that all claimants of that employer are entitled to the maximum total amount of benefits payable under the unemployment insurance system, unless the director determines, based on the evidence, that the claimants are entitled to a lesser amount. The Director of EDD may, with good cause, extend the 10 day requirement for records, as specified.
- Provide that the director may delegate its authority to recover and collect contributions from an “employing unit” that has five or more persons claiming benefits through the UI or disability insurance system to the Attorney General. If this authority is delegated to the Attorney General, the Attorney General shall collect the entire required contribution from the employing unit, including interest and penalties, and this amount shall be deposited into the Unemployment Fund.
- Provide that the Director of EDD must reimburse the Attorney General for its reasonable regulatory costs in recovering and collecting contributions pursuant to subdivision (a) from the Unemployment Administration Fund, in accordance with existing law.
- Define “employing unit” to mean a business or employer responsible for issuing a total of more than 500 Internal Revenue Service Form W-2s or Internal Revenue Service Form 1099-NECs.

Related Legislation: AB 5 (Gonzalez, Chapter 296, Statutes of 2019) codifies the recent Dynamex decision, requiring that employers prove that their workers can meet a 3 part (ABC) test in order to be lawfully classified as independent contractors.

Staff Comments: This bill would clarify when an employer needs to provide records to EDD (within 10 days), the circumstances under which the Director may reduce the presumed benefits, and provide that, for employers with five or more claimants, if the employer fails to provide records for a single claimant, then the presumption applies to all claimants. Additionally, the bill would permit the EDD to delegate to the AG its authority to recover and collect unpaid unemployment insurance and disability insurance contributions to the relevant trust funds for “employing units” with five or more claimants. This delegated authority, however, only applies to employing units for 500 or more employees, including misclassified independent contractors. AB 1066 also would require EDD to reimburse the Attorney General, as specified.

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