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THIRD READING

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Bill No: AB 1066  
Author: Gonzalez (D)  
Amended: 8/20/20 in Senate  
Vote: 21

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**PRIOR VOTES NOT RELEVANT**

SENATE LABOR, PUB. EMP. & RET. COMMITTEE: 4-1, 8/5/20 (Pursuant to Senate Rule 29.10)

AYES: Hill, Jackson, Mitchell, Pan

NOES: Morrell

SENATE APPROPRIATIONS COMMITTEE: 5-2, 8/20/20

AYES: Portantino, Bradford, Hill, Leyva, Wieckowski

NOES: Bates, Jones

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**SUBJECT:** Unemployment compensation: benefits payable: collection

**SOURCE:** Author

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**DIGEST:** This bill permits the Director of the Employment Development Department to delegate their authority to collect and recover funds from a business or employer to the Attorney General when the business or employer has 500 or more employees, including misclassified independent contractors.

**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 in the event any employer fails to keep and furnish to the director of EDD, upon notice, any required records or reports necessary for a full determination, decision on appeal, or other proper disposition of any claim for benefits in any proceeding under this division, within such reasonable time as the director may by rule, regulation, or procedure prescribe, it shall be conclusively presumed that the claimant is entitled to the maximum total amount of benefits payable under this division unless it is established by other evidence which the director deems sufficient that a lesser total amount of benefits is properly due and owing to the claimant. (Unemployment Insurance Code §1093)

This bill:

- 1) Provides 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.
  
- 2) Provides that, if the claimant has earned wages in employment for more than one employer, the accounts of the employer or employers who have properly kept and furnished the required records or reports shall not be charged with

benefits in an amount exceeding that which the accounts would have been charged.

- 3) Provides that director may extend the 10-day deadline described above on a determination of good cause for a delay in the furnishing of required records or reports for a full determination of any claim for benefits under this division.
- 4) Provides 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.
- 5) Provides 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.
- 6) Defines “employing unit” means a business or employer that has more than 500 employees, including employees who have been misclassified as independent contractors.

## **Comments**

*Need for this bill?* Broadly speaking, AB 1066 seeks to address two distinct issues. The first is to fix the train wreck that is Unemployment Insurance Code Section 1093. Untouched since 1953, the statute creates a conclusive presumption for situations where the employer fails to provide necessary records or reports for a benefit determination, but is uniquely vague and poorly structured. While this likely reflects the difficulty of processing and transporting paper records and funds in 1953, it does not reflect the state of technology and law in 2020.

Second, AB 1066 permits the director of EDD to delegate to the Attorney General EDD’s authority to recover and collect unpaid unemployment insurance and disability insurance contributions to the relevant trust funds for “employing units” with 5 or more claimants. This delegated authority, however, only applies to employing units for 500 or more employees, including misclassified independent contractors. AB 1066 also requires the director of EDD to reimburse the Attorney General, as specified.

**Related/Prior Legislation**

AB 5 (Gonzalez, Chapter 296, Statutes of 2019) codified 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.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: No

According to the Senate Appropriations Committee, “fiscal impacts of the bill to EDD have yet to be determined. Under the bill’s provisions, DOJ’s costs would be reimbursed by EDD. DOJ estimates annual costs to be about \$3 million.”

**SUPPORT:** (Verified 8/21/20)

Alliance of Californians for Community Empowerment Action  
American Federation of State, County and Municipal Employees, AFL-CIO  
Bet Tzedek  
California Conference Board of the Amalgamated Transit Union  
California Conference of Machinists  
California Labor Federation, AFL-CIO  
California Rural Legal Assistance Foundation, INC.  
California School Employees Association  
California State Association of Electrical Workers  
California State Council of Service Employees International Union - California  
California State Pipe Trades Council  
California Teamsters Public Affairs Council  
Communication Workers of America, District 9  
Engineers & Scientists of California, Local 20, IFPTE, AFL-CIO  
Inlandboatman's Union of the Pacific, Marine Division of the International  
Longshore & Warehouse Union  
Los Angeles Worker Center Network  
National Employment Law Project  
Professional & Technical Engineers, Local 21, IFPTE, AFL-CIO  
SEIU California  
Unite Here International Union, AFL-CIO  
United Auto Workers  
United Auto Workers Local 2865  
United Auto Workers Local 5810  
United Food and Commercial Workers, Western States Council  
United Steelworkers District 12  
University Professional & Technical Employees-CWA Local 9119

Utility Workers of America  
Utility Workers Union of America, Local 132  
Western States Council Sheet Metal, Air, Rail and Transportation

**OPPOSITION:** (Verified 8/21/20)

Acclamation Insurance Management Services  
African American Farmers of California  
Allied Managed Care  
American Pistachio Growers  
Associated Builders and Contractors - Southern California Chapter  
California Association of School Business Officials  
California Association of Winegrape Growers  
California Beer and Beverage Distributors  
California Chamber of Commerce  
California Citrus Mutual  
California Cotton Ginners & Growers Association  
California Farm Bureau Federation  
California Fresh Fruit Association  
California Hotel & Lodging Association  
California Landscape Contractor's Association  
California League of Food Producers  
California Professional Association of Specialty Contractors  
California Restaurant Association  
California Retailers Association  
California Staffing Professionals  
California Travel Association  
City Of Fountain Valley  
Far West Equipment Dealers Association  
Flasher Barricade Association  
Nisei Farmers League  
Orange County Business Council  
Plumbing-heating-cooling Contractors Association of California  
Valley Industry and Commerce Association  
Western Agricultural Processors Association  
Western Electrical Contractors Association

**ARGUMENTS IN SUPPORT:** The California Labor Federation, AFL-CIO, writing in support of this bill, argues the following:

The failure to provide records is not a new problem since employers have failed to furnish wage data in the past. However, the scope of the problem and the length of the delays involved threaten the economic security of tens of thousands of workers who are waiting months to access benefits. Existing law states if an employer fails to provide wage records “within a reasonable time” for EDD to determine a workers’ UI benefit amount that it is conclusively presumed that the worker is entitled to the maximum benefit amount, unless the Director determines otherwise.

Despite this, many employers still have not provided EDD this information in a timely manner, or in other cases, provided any records at all. Without a clearly defined timeline for this presumption to be applicable, many workers without wage records in the system are left waiting indefinitely for the UI benefits they are entitled to under the law. Some have been waiting for their claims to be resolved as early as March and April of this year.

In addition, EDD requests wage records and determine UI benefit amounts for each individual worker. While this may have worked when there were one or two cases, this process is time-consuming when millions of workers are flooding EDD and when gig companies have misclassified tens of thousands of Californians who are now unemployed. Mass misclassification also threatens the solvency of the UI fund since those employers do not pay taxes into the fund though their workers are eligible for benefits. It is estimated that misclassifying employers shift \$831.4 million in unemployment insurance taxes to law-abiding employers.

AB 1066 addresses these issues by making the process more efficient for EDD and misclassified workers. It requires employers to turn over any necessary wage records to the EDD within 10 days after receiving notice from the department. Consistent with existing law, if the necessary wage records are not provided to EDD in the allotted time frame, it is presumed that the worker is entitled to the maximum benefit amount, unless determined otherwise by EDD....

Finally, AB 1066 ensures that employers who evade their obligation to pay into the UI Fund are held accountable. If a large business has failed

to contribute to the UI Fund, while at least five of their workers have received UI benefits, then AB 1066 states EDD has the authority to delegate to the Attorney General the ability to recover UI contributions, including interest and penalties.

**ARGUMENTS IN OPPOSITION:** The California Chamber of Commerce, writing in opposition, argues the following:

Though the author has asserted that **AB 1066** is intended to address misclassification, that justification is nonsensical as AB 5 was enacted to address misclassification for all purposes, including unemployment benefits. **AB 1066**, potentially eliminates the opportunity for an employer to present evidence of independent contractor status by imposing an arbitrary 10-day statutory deadline for a business to produce records, or face a “conclusive presumption” that the individual is entitled to benefits, i.e. an employee....

In addition, AB 1066 adds a new punishment - if an employer with more than five claimants fails to respond to any individual request, then all claimants are presumed to be due the maximum benefits. This punishment is absolutely unjustified at a time when businesses are struggling to survive and many locations (where mail arrives) are not functioning. And this penalty will certainly catch a large segment of the business community, as nearly every employer who is subject to the Governor’s shutdown will have five employees on unemployment.

Compounding the above concerns about even good-faith businesses facing penalties and losing their appellate opportunities, AB 1066 adds enforcement by the Attorney General against any businesses which have failed to make contributions in the past. But this enforcement itself is problematic. For example, if a worker incorrectly asserts that they were misclassified, and the employer is not quick enough in responding, the employer will now face the potential of the Attorney General pursuing them for allegedly missed contributions – all based on an understandable mistake by a worker seeking benefits. Given the likelihood of confusion around classification under AB 5, adding enforcement isn’t appropriate at this time. After the dust settles, and both legislation and initiatives have been resolved, then adding enforcement makes sense. But now,

with businesses struggling to survive and ambiguity around classification still being resolved, we do not believe this additional enforcement will serve any benefit.

Prepared by: Gideon L. Baum / L., P.E. & R. / (916) 651-1556  
8/25/20 14:28:24

**\*\*\*\* END \*\*\*\***