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**SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT**

**Senator Dave Cortese, Chair**

**2021 - 2022 Regular**

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**Bill No:** AB 401 **Hearing Date:** June 28, 2021  
**Author:** Chiu  
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**Urgency:** No **Fiscal:** Yes  
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**SUBJECT:** Employment Development Department: language translations

**KEY ISSUE**

Should the Legislature expand access to programs administered by the Employment Development Department – such as the unemployment and disability insurance programs – by strengthening the requirements of documents, web content and oral translations?

**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) Establishes the State Disability Insurance (SDI) program as a partial wage-replacement plan funded through employee payroll deductions that is available (through the Disability Insurance and Paid Family Leave programs) to eligible individuals who are unable to work due to sickness or injury of the employee (including pregnancy), the sickness or injury of a family member, or the birth, adoption, or foster care placement of a new child. (Unemployment Insurance Code §2601-3308)
- 4) Requires all standard information employee pamphlets provided by EDD concerning unemployment and disability insurance programs to be printed in English and the seven other most commonly used languages among participants in each program. (Unemployment Insurance Code §316)
- 5) Requires the EDD to make the pages on its internet website that provide information regarding applying for, and receiving, unemployment insurance benefits available in the seven languages, other than English, most commonly used by unemployment insurance applicants and claimants. (Unemployment Insurance Code §316)

- 6) Establishes the Dymally-Alatorre Bilingual Services Act which requires state and local agencies serving a substantial number of non-English speaking people, to employ a sufficient number of qualified bilingual staff in public contact positions and to translate documents explaining available services into their clients' languages.  
(Government Code §7299)
- 7) For purposes of Medi-Cal, requires the Department of Health Care Services to determine when a limited English proficient (LEP) population meets the requirements for translation services using one of the following numeric thresholds:
  - a. A population group of at least 3,000 or 5 percent of the beneficiary population, whichever is fewer, mandatory managed care Medi-Cal beneficiaries, residing in the service area, who indicate their primary language as other than English.
  - b. A population group of mandatory managed care Medi-Cal beneficiaries, residing in the service area, who indicate their primary language as other than English, and that meet a concentration standard of 1,000 beneficiaries in a single ZIP Code or 1,500 beneficiaries in two contiguous ZIP Codes.  
(Welfare and Institutions Code §14029.91)

**This bill:**

- 1) Requires all standard information employee pamphlets concerning unemployment and disability insurance programs to be printed in English and any written language that is or becomes a Medi-Cal threshold language in any county, as defined.
- 2) Requires EDD commencing July 1, 2022, to provide translation by qualified human translators between English and each Medi-Cal threshold language for all of the following:
  - i) The active online interface and paper applications for all benefits programs administered by EDD, including any requests for identity verification, whether online or via paper. This shall include any and all online interfaces and paper applications operated or received by third-party vendors that are delegated to perform specific portions of processing, such as identity verification or other examination of claims.
  - ii) Documents containing vital information, including, but not limited to, any forms or notices granting or denying benefits, requiring an affirmative action by the claimant, or that gives the claimant the right to request an administrative due process hearing.
  - iii) Any other written communications to a claimant, including communication through email or text.
- 3) Requires EDD to transmit directly to the claimant and make available on EDD's internet website the items described above.
- 4) Provides that if a claimant's written language is not within the Medi-Cal threshold languages, upon the claimant's request, EDD shall provide the claimant with a translated document in their written language within two business days of the request.

- 5) Requires EDD, upon a claimant's request, to read the document aloud and orally explain it to the claimant in their preferred language and, when possible, the appropriate variant to the target language so that the language coincides with the claimant's preferred language variety.
- 6) Requires EDD, by July 1, 2022, to undertake the development of a community review process for translation of EDD's online application interface, forms and other documents and communications to ensure, among other purposes, plain language, readability, and cultural appropriateness.
- 7) Requires the community review process to be fully implemented by July 1, 2024. The community review process shall include, but not be limited to, user testing and input from members of the public, local government, and community-based organizations.
- 8) Requires EDD to identify a claimant's language needs at the earliest point of contact with the claimant. These efforts shall include, but are not limited to, all of the following:
  - a. Each written application for unemployment insurance, disability insurance, paid family leave, or other benefit provided by EDD shall contain a section asking claimants to identify their preferred written and spoken languages; and,
  - b. With respect to the online portals provided via EDD's internet website, EDD shall develop a mechanism to allow for the selection of spoken and written language options to be expanded on the portal by a claimant, with the option to indicate a language other than those already provided on the portal's list. The materials sent by the department to the claimant pursuant to the online portal shall be provided to the claimant in the language the claimant has indicated.
- 9) Requires oral and signed language services, by qualified interpreters or qualified bilingual staff, to be provided in all languages in real time, and if not possible, within 24 hours of the identified need or request. Specifically, the language services shall include, but are not limited to, the following:
  - a. Department staff who interact directly with a claimant, in person or remotely, shall have access to the claimant's identified preferred language.
  - b. Each telephone or video line operator shall offer the claimant telephone or video communication in their preferred signed or spoken language choice, to ensure the claimant has access to needed services. If the telephone or video line operator cannot obtain access to an interpreter in the claimant's language at the time of the call, the department shall ensure that the claimant receives a return telephone or video call in the claimant's language in a compatible linguistic variant within 24 hours of the original telephone call to EDD.
  - c. The department shall use best practices to identify appropriate interpreting services. These include confirming that the interpreter and claimant use a compatible linguistic variant and ensuring that there are no conflicts of interest or concerns about an interpreter's competency or impartiality. If a claimant rejects the use of a specific interpreter, the department shall find a suitable replacement.

- 10) Requires EDD, by July 1, 2022, to make the pages on its internet website that provide information regarding applying for, and receiving, unemployment insurance, disability insurance, and paid family leave benefits available in the Medi-Cal threshold languages.
- 11) Requires EDD to annually publish the total number of applications and claimants for each of the benefit programs including the preferred written and spoken language of the application or claimant. The report shall include information on the number and trend of applications for all of the benefit programs, and description of how applications have been resolved, including processing times, denial rates, and the basis for denials.
- 12) Specifies that the provision of language services shall not cause an undue delay in receipt of services or benefits.
- 13) Defines “claimant” as an applicant for or recipient of services provided by EDD.
- 14) Defines “interpreting” as using spoken or signed language to transmit a message from one language into another while preserving the meaning, register, and tone of the message.
- 15) Defines “qualified bilingual staff” as a member of EDD’s staff who has passed a formal linguistic proficiency assessment in both of their working languages.
- 16) Defines “qualified interpreter” as a person with advanced oral or signing proficiency in their working languages, knowledge of professional practices, and adherence to the interpreter’s code of ethics, who has been determined to be qualified by a formal certifying body such as the California Judicial Council or the Certification Commission for Healthcare Interpreters or based on experience, training, and references.
- 17) Defines “qualified translator” as a person with advanced written proficiency in their working languages, knowledge of professional practices, and adherence to the translator’s code of ethics, who has been determined to be qualified by a formal certifying body such as the American Translators Association or based on experience, training, and references.
- 18) Defines “translation” as using written language to transmit text from one language into another while preserving the meaning, register, and tone of the message.
- 19) The provisions, protections, and prohibitions contained in this section shall be in addition to existing state and federal civil rights mandates governing language access and unlawful discrimination based on national origin, ethnic group identification, and linguistic characteristics.
- 20) Makes finding and declarations regarding EDD and language accessibility.

## COMMENTS

### 1. Background: Access to EDD during the COVID-19 Pandemic

The COVID-19 pandemic and the shutdown orders to mitigate the spread of the virus lead to a dramatic increase in unemployment beginning in March 2020. Millions of Californians

were left unemployed and in critical need of assistance to replace some of the income on which they relied to pay for essentials such as housing and food. By April 2020, the unemployment rate had surpassed previous peaks observed during the Great Recession. In 2010, the worst full year of the Great Recession, EDD paid \$22.9 billion in benefits on 3.8 million processed claims. At its peak, the unemployment rate in California reached 16% in April 2020. According to the EDD, 22.5 million unemployment insurance claims have been filed since March 2020. EDD has paid more than \$147 billion in unemployment insurance benefits.

Supplemental benefits authorized by the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act, including Pandemic Unemployment Assistance (PUA) and Pandemic Emergency Unemployment Compensation (PEUC), have further increased the volume and dollar amount of payments. EDD has struggled to service this unprecedented volume of claims and because of new populations of unemployed eligible for UI, the EDD was exposed to a range of fraudulent activity.

In September 2020, the Joint Legislative Audit Committee directed the State Auditor to conduct an emergency audit of the EDD response to effects of the COVID-19 pandemic. According to a January 2021 report by the State Auditor:

“Although it would be unreasonable to have expected a flawless response to such an historic event, EDD’s inefficient processes and lack of advanced planning led to significant delays in its payment of UI claims. EDD was unable to automatically process nearly half of the claims submitted online between March and September 2020; instead, many of these claims required manual intervention from staff. As a result, hundreds of thousands of claimants waited longer than 21 days—EDD’s measure of how quickly it should process a claim—to receive their first benefit payments. EDD has begun to modify its practices and processes to increase the rate at which it automatically processes online claims, but the automation it has gained during the pandemic is not fully sustainable.

Moreover, EDD struggled to provide claimants assistance with their claims. At the beginning of the claim surge, EDD’s call center answered less than 1 percent of the calls it received. EDD quadrupled its available call center staff to more than 5,600 people in response to its call center problems, but these staff were often unable to assist callers and only marginally improved the percentage of calls it answered. Despite knowing for years that it had problems with call center performance, EDD has not yet adopted best practices for managing the call center, leaving it ill prepared to assist Californians effectively.”  
*(EDD’s Poor Planning and Ineffective Management Left It Unprepared to Assist Californians Unemployed by COVID-19 Shutdowns, State Auditor, January 2021)*

## 2. Language Access at EDD

California is home to one of the nation’s most diverse populations with more than 200 languages spoken, and more than seven million limited English proficient (LEP) individuals whose primary language for communication is not English. According to the Employment Development Departments 2018-2021 Language Access Plan, in 2016:

- the top languages spoken in California were: English, Spanish, Vietnamese, Cantonese/Yue, Mandarin, and Armenian
- EDD provided services to Californians in 56 languages
- 5,798 EDD employees were considered public contact employees, equal to 75% of total EDD employees
- 2,496,130 EDD customers were serviced in languages other than English from an estimated total of 16,644,798 annual contacts.

According to EDD's language access procedures:

- EDD currently translates all vital written and oral information available to the public in publications, the EDD website, and phone conversations. ***The threshold criteria for translating a vital document is that the language must be equal to at least five percent of languages requested with the EDD.***
- Currently 489 forms are translated within the EDD for the top seven languages spoken in California.
- Each public-facing branch within the EDD must designate certified bilingual employees to process translations using, among others, template letters.
- If EDD staff encounter LEP customers, they must use an in-person or telephone interpreter when delivering oral language access services. If needed, designated EDD bilingual staff can also be used as interpreters.
- With Spanish being the most commonly-used alternate language in California, the EDD offers 126 web pages in Spanish.
- EDD website provides a Google translation option with 103 language choices for its web page content.

COVID-19 has exacerbated the language barriers faced by many pre pandemic. As noted above, with the unemployment rate peaking at 16%, people have struggled in their search for assistance finding it nearly impossible to reach a human on the other line at EDD. On September 16, 2020, the EDD Strike Team Detailed Assessment and Recommendations found that individuals who are not fluent in English face unsurmountable barriers to receiving assistance. The report highlighted an August 21, 2021 letter to Governor Newsom from former Senator Holly Mitchell that stated:

“EDD is potentially in violation of the Dymally-Alatorre Bilingual Services Act, which requires every state agency “directly involved in the furnishing of information or the rendering of services to the public whereby contact is made with a substantial number of non-English speaking people, shall employ a sufficient number of qualified bilingual persons in public contact positions to ensure provision of information and services to the public, in the language of the non-English-speaking person.” Californians for who English is not their first language face tremendous barriers in the EDD process, and call center staff and applications for programs offered by EDD are not available in enough language. EDD should work with other agencies to leverage existing language resources and prioritize language accessibility.”

### 3. Need for this bill?

According to the author, “California has the nation’s largest LEP population; seven million Californians primarily speak a language aside from English. While a majority of that is Spanish speakers, 2.4 million of those people speak a language other than Spanish.

It is well documented that navigating EDD is unnecessarily challenging for English-speaking claimants, but it is next to impossible for those who are not proficient in English. As the Governor’s EDD Strike Team reported: “individuals who are not fluent in English face insurmountable barriers to receiving assistance.”

People of color and immigrants have been hit especially hard by the COVID-19 pandemic, and are more likely to work in sectors that have been shuttered by this pandemic - they desperately need EDD to be accessible. Yet 7 million LEP Californians find themselves effectively shut out from receiving the unemployment benefits they are entitled to during a pandemic and recession. We are failing to meet the needs of California’s LEP community, depriving them of their civil rights and, for many, their sole source of financial support to meet basic needs.

AB 401 takes the necessary steps to right these wrongs, and ensures that all Californians seeking services provided by EDD have the language support required to access the services that they are entitled to.”

### 4. Proponent Arguments:

According to the California Labor Federation, “Current EDD language access practices, policies, and protocols have resulted in catastrophic, deep, and long-term financial hardship and instability for countless Californians with LEP. As the recent EDD Strike Team reported, “individuals who are not fluent in English face insurmountable barriers to receiving assistance.” For example, the fastest way to process an application for EDD benefits, including unemployment insurance, is using the online portal on EDD’s website, which is only available in English and Spanish. Though telephonic applications are available through EDD, all dedicated multilingual phone lines are overburdened and nearly impossible to get through. Paper applications are the slowest processing method for application, and though multilingual forms are available online for reference, applications are only accepted for submission in English and Spanish.

Simply put, California is failing to meet the needs of California’s LEP community, depriving them of their civil rights and, for many, their sole source of financial support to meet basic needs. Now, as many Californians struggle with the financial hardship in the wake of the pandemic, the need to be able to access EDD services is greater than ever, and AB 401 offers meaningful progress towards improving flaws in our current system of distributing such critically important benefits.”

### 5. Opponent Arguments:

None received.

**SUPPORT**

AARP California  
Asian Americans Advancing Justice - California  
Association of California Caregiver Resource Centers  
Burma Refugee Families & Newcomers  
California Commission on Asian and Pacific Islander American Affairs  
California Conference Board of the Amalgamated Transit Union  
California Conference of Machinists  
California Immigrant Policy Center  
California Labor Federation, AFL-CIO  
California Pan - Ethnic Health Network  
California Teamsters Public Affairs Council  
California Work & Family Coalition  
Center for Workers' Rights  
Centro Binacional Para El Desarrollo Indígena Oaxaqueno  
Chinese for Affirmative Action/AACRE  
Chinese Progressive Association  
Coalition of California Welfare Rights Organizations  
Engineers and Scientists of California, IFPTE Local 20, AFL-CIO  
First 5 Association of California  
First 5 California  
Good Samaritan Family Resource Center  
LA Best Babies Network  
Legal Aid At Work  
Mixteco Indigena Community Organizing Project (MICOP)  
National Association of Social Workers, California Chapter  
Professional and Technical Engineers, IFPTE Local 21, AFL-CIO  
Public Counsel  
Refugee & Immigrant Transitions  
The Restaurant Opportunities Center of Los Angeles  
UNITE HERE International Union, AFL-CIO  
Utility Workers Union of America  
Working Partnerships USA  
Worksafe

**OPPOSITION**

None received

**-- END --**