SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Dave Cortese, Chair
2021 - 2022 Regular

Bill No:	SB 951	**Hearing Date:**	March 21, 2022
Author:	Durazo		
Version:	February 9, 2022		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Alma Perez-Schwab		

SUBJECT: Unemployment insurance: contribution rates: disability insurance: paid family leave: weekly benefit amount

KEY ISSUES

Should the wage replacement benefits provided under the State Disability Insurance and Paid Family Leave programs be increased from the current 60-70% to a phased-in increase based on a worker's individual earnings up to a 90% wage replacement?

Should the wage replacement benefit be tied to an individual's earnings, with lower wage workers getting a higher wage replacement rate?

Should the Legislature eliminate provisions creating a taxable wage ceiling – dictating the maximum amount of wages earned by a worker that are subject to SDI contributions – thereby ensuring that all wages earned by workers are subject to the SDI tax rate contributions?

ANALYSIS

Existing law:

1) Establishes the Employment Development Department (EDD) to, among other duties, administer the Unemployment Insurance and Disability Insurance programs. (Unemployment Insurance Code §301)

2) 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)

3) Paid Family Leave (PFL) provides eligible employees up to eight weeks of wage replacement benefits to workers who take time off work to care for a seriously ill child, spouse, parent, grandparent, grandchild, sibling, or domestic partner, to bond with a minor child within one year of the birth or placement of the child in connection with foster care or adoption, or to participate in a qualifying event because of a family member's military deployment. (Unemployment Insurance Code §3301)

4) Specifies that an individual's SDI or PFL "weekly benefit amount" shall be as follows:

    a. Provides a 70% wage replacement for a claimant with income below 33% of the statewide average quarterly wage level until January 1, 2023.

    b. Provides 60% wage replacement for a claimant with income at or above 33% of the statewide average wage level until January 1, 2023.

    c. Provides that the wage replacement rate for benefits will revert to 55% for all employees, regardless of income, starting on January 1, 2023.

    d. Limits the amount of benefit payments to the maximum payment for workers compensation temporary disability as established by the Department of Industrial Relations (currently $1,540 per week).
    (Unemployment Insurance Code §2655)

5) Requires each worker to pay worker contributions at a rate determined by the director of the EDD. The rate of worker contributions shall not exceed 1.5 percent or be less than 0.1 percent. However, these provisions do not apply to that part of the remuneration which, with respect to employment equal to four times the maximum weekly benefit for each calendar year, as specified, is paid to the individual by the employer – creating a wage ceiling subject to the tax. (Unemployment Insurance Code §984 & §985)

This bill:

1) Revises the formula for the computation of Disability Insurance and Paid Family Leave benefits to implement a phased-in increase as follows:

    a. For periods of disability commencing *on or after January 1, 2023, but before January 1, 2025*, the full eight weeks of PFL and the ***first 12 weeks*** of DI shall receive a weekly benefit that:

        i. Provides a 65% wage replacement for a claimant with income above 70% of the state average weekly wage, as specified.

        ii. Provides an 80% wage replacement for a claimant with income at or below 70% of the state average weekly wage, as specified.

    b. For periods of disability commencing *on or after January 1, 2025*, the full eight weeks of PFL and the ***first 16 weeks*** of DI shall receive a weekly benefit that:

        i. Provides a 70% wage replacement for a claimant with income above 70% of the state average weekly wage, as specified.

        ii. Provides a 90% wage replacement for a claimant with income at or below 70% of the state average weekly wage, as specified.

c. For Disability Insurance, the weekly benefit amount following the 12-week or 16-week periods described above shall provide a 60 % wage replacement for all following weeks (up to the maximum of 52 weeks).

2) Specifies that the wage replacement shall not exceed the maximum workers' compensation temporary disability indemnity weekly benefit amount established by the Department of Industrial Relations, per existing law.

3) Strikes Unemployment Insurance Code Section 985 which sets the taxable wage ceiling, thereby making all wages taxable for purposes of computing worker contributions.

4) Strikes an obsolete operative date on the PFL provisions.

COMMENTS

1. Background: State Disability Insurance and Paid Family Leave Programs

Disability Insurance

The State Disability Insurance program, administered by the EDD, was created in 1946 to provide monetary benefits to workers unable to work due to non-work-related illness, injury, or pregnancy. Benefits are payable for a maximum of 52 weeks and provide a wage replacement of about 60-70 percent. SDI covers approximately 18 million individuals. According to EDD's SDI Statistical Information, for fiscal year 2020-21, there were a total of 639,744 claims paid with a total of $7,146,258,131 in benefits paid. The average weekly benefit amount was $697 for approximately 16.50 average weeks.

Paid Family Leave

In 2004, California was the first state in the nation to implement a Paid Family Leave program (administered as part of SDI) that provides benefits to workers who need to take time off to care for a seriously ill family member, or to bond with a new child either from birth, adoption, or foster care placement. Effective January 1, 2021, the PFL scope was expanded to include employees taking time off work to assist a military family member under covered active duty or call to covered active duty. PFL provides up to eight weeks of the 60-70 percent wage replacement. According to EDD's SDI Statistical Information, for fiscal year 2020-21, there were a total of 266,607 claims paid with a total of $1,354,822,581 in benefits paid. The average weekly benefit amount was $774 for approximately 6.67 weeks.

Funding Structure

The SDI program is financed solely by worker contributions. The amount withheld from a worker's paycheck is determined annually using the SDI taxable wage ceiling and contribution rate. The taxable wage ceiling is the maximum amount of wages earned by a worker that are subject to SDI contributions. Unemployment Insurance Code Section 985 requires the taxable wage ceiling to be four times the maximum weekly benefit amount multiplied by 13 and divided by 55 percent ((4 x MWBA x 13) / .55). In 2020, the maximum weekly benefit amount was $1,300 and all wages earned up to $122,909 were subject to SDI contributions. The maximum weekly benefit amount for 2021 is $1,357 and the taxable wage

ceiling is $128,298. The taxable wage ceiling in 2022 is $145,600 and is projected to be $146,262 in 2023.

A second component of the financing structure is the contribution rate, which is also determined by a statutory formula, and is applied to all wages up to the taxable wage ceiling to determine the required contribution amount. The contribution rate cannot be less than 0.1 percent and cannot exceed 1.5 percent. Depending on the condition of the DI Fund, the EDD director has the authority to raise or lower the contribution rate by 0.1 percent. For 2022, the contribution rate is currently at 1.10 percent. With the taxable wage ceiling at $145,600 for each employee, in 2022 the maximum to withhold for each employee is $1,601.60.

Benefit Calculations

The EDD uses workers' wages earned in the prior 5 to 18 months, also known as the base period, to determine their weekly benefit amount (WBA). Depending on the workers' highest quarterly earnings, benefits are distributed as follows:

- Less than $929, the WBA is $50.
- Earnings between $929 and $6,803.34, WBA is approximately 70 percent of earnings.
- More than $6,803.34, WBA is approximately 60 percent of earnings.

The last major changes to the PFL program were made by AB 908 (Gomez) in 2016. That bill increased the 55% wage replacement rate across the board to what is currently available, 60-70 percent as discussed above. These changes first took effect in 2018 and were due to sunset on January 1, 2022 but were extended to January 1, 2023 as part of last year's budget under AB 138 (Committee on Budget, 2021).

Also of note, the DI and PFL programs do not provide job protection, only monetary benefits; however, the claimants job may be protected through other federal or state laws such as the Family and Medical Leave Act (FMLA, applicable to employers of 50 or more employees and all public agencies) or the California Family Rights Act (CFRA, applicable to employers of five or more employees and all public agencies).

2. EDD Report to the Legislature: Impact of Increasing the State Disability Insurance Wage Replacement Rate Effective January 1, 2018 – March 2021

In 2016, AB 908 (Gomez) was adopted to, among other things, increase from 55% to 60-70% the wage replacement rate of benefits available through the SDI and PFL programs with a sunset date of January 1, 2022. AB 908 also directed the EDD to report to the Assembly Committee on Insurance and the Senate Committee on Labor and Industrial Relations, data on levels and trends of utilization of the SDI programs as well as projections for utilization and costs of the increased wage replacement rates remaining in effect past the 2022 sunset date.

On March 1, 2021, EDD released this report. Among its findings, the report noted that:

"After increasing the SDI wage replacement rate from 55 percent to 60 and 70 percent, the utilization of the program increased from 2017 to 2019, and it is forecasted to continue increasing through 2024. *Overall, high-income workers used the DI and PFL programs at*

greater rates than lower-income workers. Although the original intent of AB908 sought to increase benefits and utilization among low-wage earners and was successful in doing so, the lowest threshold of low-wage earners (less than $20,000 annually) actually saw a reduction in utilization rates of the program during the period under review. It should be acknowledged that it is not possible to definitively tie utilization trends to the higher wage replacement rate alone. Utilization is impacted by many factors, including marketing and outreach, economic conditions, the state's minimum wage, and demographic trends, to name a few.

If the AB 908 wage replacement rate sunsets in 2022, the DI Fund will remain solvent through 2025 with the employee contribution rate decreasing from 1.5 percent in 2022 to 1 percent in 2025. However, should the AB 908 wage replacement rate remain in effect indefinitely, forecasted data shows the contribution rate will increase to the maximum rate of 1.5 percent for two consecutive years (2022 and 2023) and remain above 1.0 percent through 2025. Additionally, even with a contribution rate of 1.2 percent in 2025, which brings the net worker contributions to approximately $11.4billion, the DI Fund adequacy rate of 27.8 percent is only slightly above the recommended adequacy rate of 25 percent."

3. Master Plan for Early Learning and Care: California for All Kids

In December 2020, Governor Newsom released the *Master Plan for Early Learning and Care: California for All Kids*. Among other things, the report notes, "Despite this progress (expanding CFRA to those working for employers with five or more employees), parents experiencing poverty and parents of color who need the leave continue to have the most trouble accessing it. By increasing the level of wage replacement, and continuing to provide supports for small businesses, we can ensure that these families can utilize PFL to care for their children from the very beginning." The recommendations outlined in the report notes that increasing wage replacement rates to at least 90 percent would effectively give low wage earners 100 percent of take-home pay.

4. Need for this bill?

According to the author, "State Disability Insurance and Paid Family Leave wage replacement rates both provide too low of a reimbursement rate and too strictly limit who can receive the relative higher rate. Currently, only workers earning less than about $27,000 annually receive the higher wage replacement rate of 70%; all other workers receive 60% of their income up to a cap. This means that a worker who normally earns $27,000 annually will only receive about $365 per week from PFL or SDI, not nearly enough for a family to live on. Those who cannot afford to live on so little income are forced to either sink further into debt or to not be there for critical moments – bonding with a new baby or caring for a seriously ill loved one. Others choose to go back to work while they themselves are still seriously ill or injured, further endangering their health. Additionally, because workers with low incomes pay for these programs out of their own paychecks, but cannot afford to use them, they end up subsidizing higher-wage workers' leaves.

SB 951 addresses existing systemic inequities by phasing in an increased wage replacement rate of 90% for lower income workers and defining lower income workers more broadly to include workers earning less than 70% of the State Average Weekly Wage. Under SB 951, a worker earning minimum wage would receive about $540 per week instead of $360. These rates would apply to all of PFL and the first 16 weeks of SDI. To help fund these necessary

fixes, the rule currently exempting part of high-income workers' wages from DI Fund contributions would be struck, resulting in all workers paying the same percentage of their income into the DI Fund (a change that would only impact the most highly paid 9% of the workforce)."

5. Proponent Arguments:

According to proponents and the sponsors of this bill, "PFL and SDI are important interventions to address social determinants of health, designed to allow workers to take leave to care for their health or their family's health without sacrificing their full income. Both programs are fully funded by worker contributions. However, because SDI and PFL only provide 60% of most workers' wages, many Californians remain out of reach. At the same time, if the legislature takes no action this year, the wage replacement rate for both SDI and PFL will decrease to 55%, placing these programs out of reach for even more working Californians.

Without an adequate wage replacement rate, workers with low incomes, who already face health disparities due to systemic racism, sexism, and xenophobia, cannot access the benefits that they pay for. While California is the fifth-largest economy in the world, it also has the highest rate of childhood poverty. California's PFL offers workers earning $14 per hour the lowest wage replacement rate of any paid family leave program in the United States. As Governor Newsom's Taskforce on Paid Family Leave concluded, one of the leading reasons Californians forego taking PFL is that current benefit levels replace too little of a worker's wages.

California led the way in instituting Paid Family Leave. Now it is time for us to catch up by making our SDI and PFL programs accessible to California's most marginalized families. The ability to bond with a new baby, recover from a health condition, or care for a seriously ill family member should not depend on your income."

6. Opponent Arguments:

The California Alliance for Retired Americans is opposed to the measure and writes, "SB 951 when it is finally implemented would give higher wage replacement rates to both the SDI and PFL beneficiaries: 90%for low wage workers and 70% for higher paid workers, but would limit the higher replacement rates for all SDI beneficiaries to 16 weeks after which they would drop to 60% for both low and high wage beneficiaries. This benefit reduction would be extremely harmful to the thousands upon thousands of SDI beneficiaries who because of their injuries or illnesses are unable to return to work within 16 weeks, (the maximum duration for SDI claims is 52 weeks). The reduction would come at a time when any beneficiary who did not have savings would need the higher benefit amount more than ever.

SDI beneficiaries make up about 70% of the combined number of beneficiaries of both the SDL and PFL programs. Unlike PFL beneficiaries, SDI beneficiaries are, by definition, unable to work. We view this feature of the bill as a grave injustice to disabled workers whom the SDI program, now in its 75th year of delivering benefits, was designed to support. While we strongly support the PFL program (many of our members have benefitted from the care it enabled their sons, daughters and other close relatives to give them) and would

support an increase in the current maximum duration (8 weeks) of PFL benefits, we cannot support the bifurcation of benefit amounts."

7. Prior and Related Legislation:

SB 1058 (Durazo, 2022), pending before this Committee, would require the EDD to collect data regarding the race and ethnicity of individuals who claim SDI and PFL benefits.

AB 123 (Gonzalez, 2021, Vetoed) would have revised the formulas for determining benefits available through SDI and PFL for a phased-in approach beginning with a 65-75% wage replacement for claims after January 1, 2023; after January 1, 2025, a wage replacement of either 70% or 90% depending on earned wages. Governor Newsom vetoed the bill stating, among other things, *"This bill would create significant new costs not included in the 2021 Budget Act and would result in higher disability contributions paid by employees. I look forward to continued partnership with the Legislature to ensure that workers have true access to programs providing family leave."*

AB 138 (Committee on the Budget, Chapter 78, Statutes of 2021), among other things, extended the sunset date on the SDI and PFL wage replacement rate of 60 or 70 percent of a claimant's weekly salary, depending on income, from January 1, 2022 to January 1, 2023.

SB 1383 (Jackson, Chapter 86, Statutes of 2020) provided job-protected leave under CFRA to employees working for employers with five or more employees.

SB 83 (Committee on Budget and Fiscal Review, Chapter 24, Statutes of 2019), beginning July 1, 2020, extended from six to eight weeks the maximum duration of PFL benefits individuals may receive. SB 83 also included legislative intent language for the Governor to establish a task force to develop a proposal by November 2019, to among other items, address the goal of providing a 90 percent wage replacement rate for low-wage workers.

AB 196 (Gonzalez, 2019) would have increased the PFL wage replacement rate for all workers to 100 percent. This bill was later gut and amended to address workers' compensation and COVID-19 for essential occupations.

SB 1123 (Jackson, Chapter 849, Statutes of 2018) expanded the PFL program beginning January 1, 2021 to include time off to participate in a qualifying exigency related to covered active duty, as defined, or call to covered active of the individual's specified family member.

AB 908 (Gomez, Chapter 5, Statutes of 2016) increased the SDI wage replacement rate from 55 percent to the current 60-70 percent and eliminated the waiting period for PFL benefits.

SUPPORT

California Work & Family Coalition (Co-Sponsor)
Legal Aid at Work (Co-Sponsor)
UNITE-LA (Co-Sponsor)
A Better Balance
ACCESS Reproductive Justice
American Medical Women's Association

Association of California Caregiver Resource Centers
Bet Tzedek Legal Services
Breastfeed LA
Buen Vecino
California Breastfeeding Coalition
California Catholic Conference
California Child Care Resource & Referral Network
California Employment Lawyers Association
California Health Professional Student Alliance
California Latinas for Reproductive Justice
California Nurse-Midwives Association
California Partnership to End Domestic Violence
California Physicians Alliance
California WIC Association
California Women's Law Center
Campbell High School Teachers Association
Caring Across Generations
Center for Community Action & Environmental Justice
Center for Workers' Rights
Central Coast Early Childhood Advocacy Network
Centro Legal de la Raza
Children Now
Clergy and Laity United for Economic Justice
Electric Universe
Equal Rights Advocates
Families in Transition of Santa Cruz County, Inc.
Family Values @ Work
First 5 Alameda County
First 5 Association of CA
First 5 California
First 5 Humboldt
First 5 Sonoma County
First 5 Ventura County
Food Empowerment Project
Friends Committee on Legislation of California
Healthy Kids Happy Faces
Human Impact Partners
Inland Empire Breastfeeding Coalition
Inland Equity Partnership
Jewish Center for Justice
Justice At Last
LA Best Babies Network
Maternal and Child Health Access
Mixteco Indigena Community Organizing Project (MICOP)
NARAL Pro-Choice California
National Association of Social Workers – CA Chapter
National Council of Jewish Women California
National Council of Jewish Women Los Angeles
National Partnership for Women & Families
National Women's Political Caucus of California

Nevada County Citizens for Choice
Nursing Mothers Council
Orange County Equality Coalition
Our Family Coalition
Parent Voices CA
Pilipino Workers Center
Positive Discipline Community Resources
Prevention Institute
Public Counsel
Public Health Alliance of Southern California
ROC California
San Diego County Breastfeeding Coalition
San Francisco Senior and Disability Action
Santa Clara County Wage Theft Coalition
Small Business Majority
Street Level Health Project
Thai Community Development Center
United Ways of California
Walnut Avenue Family & Women's Center
Warehouse Worker Resource Center
Women For: Orange County
Working Partnerships USA
Worksafe

OPPOSITION

California Alliance for Retired Americans

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