SENATE COMMITTEE ON APPROPRIATIONS
Senator Anthony Portantino, Chair
2021 - 2022 Regular Session

SB 951 (Durazo) - Unemployment insurance: contribution rates: disability insurance: paid family leave: weekly benefit amount

Version: February 9, 2022
Urgency: No
Hearing Date: April 4, 2022

Policy Vote: L., P.E. & R. 4 - 1
Mandate: No
Consultant: Robert Ingenito

Bill Summary: SB 951 would (1) increase the wage replacement benefits provided under the State Disability Insurance (SDI) and Paid Family Leave (PFL) programs from the current 60 to 70 percent level, as specified, (2) link wage replacement benefits to an individual's earnings (with lower-wage workers getting a higher wage replacement rate), and (3) eliminate provisions creating a taxable wage ceiling, thus subjecting all wages earned by workers to the SDI tax.

Fiscal Impact: EDD's fiscal estimate of (1) costs to implement this bill, and (2) the bill's impacts to the SDI and PFL programs have yet to be determined. Relative to current law (such that the benefit levels return to 55 percent in 2023), EDD estimates of similar, previous bills suggest that this bill would result in additional benefits paid in the hundreds of millions of dollars annually (Unemployment Compensation Disability Fund. To the extent that the bill's higher benefit levels result in increased PFL utilization, these increases would be higher.

In 2021, participating workers paid 1.2 percent of wages, up to the first $128,298 of wages, to fund SDI/PFL benefits. For previous bills, to support the increased payments, EDD has estimated a need to increase worker contributions by 0.1 to 0.2 percentage points annually, depending on total reserve levels. EDD is authorized to adjust worker contributions to ensure benefits are adequately funded, up to a maximum level of 1.5 percent. Because this bill eliminates the taxable wage ceiling, it will be unclear (until EDD's analysis is available) whether such as increase would be necessary.

Previous correspondence with EDD suggests that, because of the complexity of its legacy information technology (IT) systems, this bill's January 2023 start date might not be operationally feasible. For similar legislation, the department has estimated an implementation timeframe of 16 months for a total one-time administrative and IT cost of approximately $3.3 million.

Background: The SDI program was created in 1946 to provide monetary benefits to workers experiencing wage loss due to a non-work related injury or illness, or due to pregnancy or childbirth. Benefits are payable for a maximum of 52 weeks, and provide a wage replacement of about 60 to 70 percent. SDI covers approximately 18 million individuals. EDD data indicate that, in 2020-21 a total of 639,744 claims were paid with total benefits of $7,146,258,131. The average weekly benefit amount was $697 for approximately 16.50 average weeks.

In 2004, California was the first state to implement a PFL 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 2021, PFL's 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 to 70 percent wage replacement. EDD data indicate that, in 2020-21, a total of 266,607 claims were paid with total benefits of $1,354,822,581. The average weekly benefit amount was $774 for approximately 6.67 weeks.

The SDI program is financed solely by worker contributions; all private-sector employees, and public-sector employees who have opted in, participate in the program. The financing structure was designed to ensure the Disability Insurance (DI) Fund's year-end fund balance meets a specified adequacy rate. 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 (MWBA) 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 (1) also determined by a statutory formula, and (2) 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 Disability Insurance (DI) Fund, EDD has the authority to raise or lower the contribution rate by 0.1 percent. For 2022, the contribution rate is currently at 1.1 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.

To determine benefits, 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: (1) For earnings less than $929, the WBA is $50; (2) for earnings between $929 and $6,803.34, WBA is approximately 70 percent of earnings; (3) for earnings greater than $6,803.34, WBA is approximately 60 percent of earnings. The maximum weekly benefit is adjusted every year based on the statewide average weekly wage.

The last major changes to the PFL program occurred in 2016 (AB 908 (Gomez). That bill increased the 55 percent wage replacement rate across the board to what is currently available, the 60 to 70 percent 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 the 2020-21 budget (AB 138, Committee on Budget). Absent any legislative changes, wage replacement will revert to 55 percent at that time.

Proposed Law: This bill would, among other things, do the following:

- Revise the formula for the computation of SDI and PFL benefits to implement a phased-in increase as follows:
    - 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 (1) provides a 65 percent wage replacement for a claimant with income above 70 percent of the state average weekly wage, as specified, and (2) provides an 80 percent wage replacement for a claimant with income at or below 70 percent of the state average weekly wage, as specified.
    - 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 (1) provides a 70 percent wage replacement for a claimant with income above 70 percent of the state average weekly wage, as specified, and (2) provides a 90 percent wage replacement for a claimant with income at or below 70% of the state average weekly wage, as specified.
    - For Disability Insurance, the weekly benefit amount following the 12-week or 16-week periods described above shall provide a 60 percent wage replacement for all following weeks (up to the maximum of 52 weeks).
- Specify 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.
- Strike Unemployment Insurance Code Section 985, which sets the taxable wage ceiling, thereby making all wages taxable for purposes of computing worker contributions.

Related Legislation:

- SB 1058 (Durazo) would require EDD to collect data regarding the race and ethnicity of individuals who claim SDI and PFL benefits. The bill currently pending in this Committee.
- AB 123 (Gonzalez) 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. The bill was vetoed by the Governor.
- 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.

- 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.

Staff Comments: As noted above, EDD was not able to provide the Committee with (1) information regarding the state operations costs it would incur to implement the provisions of this bill, and (2) estimates of the bill's impact on PFL/SDI benefits paid, the resulting impact on the Disability Insurance Fund, and potential tax rate changes needed to keep the Fund solvent.

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