

**SB 799 (PORTANTINO) UNEMPLOYMENT INSURANCE:
 TRADE DISPUTES: ELIGIBILITY FOR BENEFITS
 OPPOSE/JOB KILLER - AS AMENDED AUGUST 22, 2023
 UPDATED**



UPDATED JOB KILLER

August 30, 2023

TO: Members, Assembly Insurance Committee

**SUBJECT: SB 799 (PORTANTINO) UNEMPLOYMENT INSURANCE: TRADE DISPUTES:
ELIGIBILITY FOR BENEFITS
OPPOSE/JOB KILLER - AS AMENDED AUGUST 22, 2023
SCHEDULED FOR HEARING – AUGUST 31, 2023**

The California Chamber of Commerce and the organizations listed respectfully **OPPOSE SB 799 (Portantino)**, as amended August 22, 2023 as a **JOB KILLER** because it would effectively require employers to subsidize striking workers, even if those workers or labor strikes had nothing to do with the employer.

By forcing employers to pay unemployment insurance (UI) payments to striking workers, **SB 799** would also raise taxes on employers across California, overturn more than 70 years of precedent, and put California's UI program at risk of violating federal law.

Background on Unemployment Insurance: Eligibility, Who Pays, and Where Are We Now?

Unemployment insurance (UI) payments are intended to assist employees who, through no fault of their own, are forced to leave their employment. Federal law sets out the basic requirements for individuals to qualify, including being “ready and willing to immediately accept work” and “totally or partially unemployed,” and “actively looking for work.”¹ These claimants are paid from their particular former employer's reserve account in the UI Fund.² In other words, each employer is incentivized to minimize turnover in their workforce because they pay for any individuals who they terminate that end up seeking UI benefits – and employees who lose employment through no fault of their own are assisted in their transition to other work. If the fund becomes insolvent, all employers face steadily increasing UI taxes. These taxes increase by \$21 per employee per year, until they reach a maximum of \$434 dollars per employee.

Presently, California is in historic debt (approx. \$18 billion³) due to the COVID-19 pandemic and state-wide shutdown that it caused. As a result, California employers are already paying increased UI taxes pursuant to federal law, and are likely to face ongoing tax increases until approximately 2032.⁴

SB 799 Would Worsen California's UI Fund Crisis – and Increase the State's Interest Payments.

SB 799 would give striking workers the ability to claim unemployment after two weeks of striking – and thereby add the cost of those benefits to California's outstanding \$18 billion in federal loans.⁵ Though the amount that such strikes would add to the UI Fund debt is hard to calculate specifically – due to uncertainty as to how many strikes occur, how long they last, and how many workers take part – it is undeniable that **SB 799** would add more debt to the state's federal loans.

We estimate that, if **SB 799** had been in effect during the previous twelve months, it would have added approximately \$215 million to the UI Fund's debt. Additionally, we would expect it to add approximately \$30 million per week if it were in effect now.

¹ See 42 USC 503(a)(12); <https://www.edd.ca.gov/unemployment/eligibility.html>; CA Unemployment Insurance Code § 1251 *et seq.*

² Employers are required to pay into their UI Account annually based on their Experience Rating, which changes if more or less claims have been filed recently against the employer. For more information regarding the mechanics of UI payments, see https://www.edd.ca.gov/pdf/pub_ctr/de231z.pdf.

³ Up-to-date information on California's UI Fund debt is available here: <https://oui.doleta.gov/unemploy/budget.asp>.

⁴ This 2032 estimate is taken from LAO's February 15, 2022 budget analysis, presuming a “high cost” scenario, but no recession occurring in the interceding years. Text available here: <https://lao.ca.gov/Publications/Report/4543>.

⁵ Most recent data on California's UI Fund debt available here: <https://oui.doleta.gov/unemploy/budget.asp>.

In addition to adding to employers' tax burden's, **SB 799** will also add to the state's general fund obligation regarding the UI Fund. For example, in 2023-2024, the interest payment is expected to cost the state approximately \$300 million – and similar payments will continue until the UI Fund returns to solvency. **SB 799** will only add to those payments if passed.

SB 799 Would Force Uninvolved Employers to Pay Striking Workers.

SB 799 creates a fundamental unfairness by forcing employers with *absolutely no involvement in any* strikes to pay for labor disputes that *they have no involvement in*. As noted above, UI Fund loans from the federal government are paid off via tax increases on all employers across the state – not just employers who have striking workers.

Though individual strikes will have different facts – some caused by unreasonableness on one side of a negotiation, some caused by new technology or new conditions – they are part of a negotiation between two parties. Taking money from every other employer in the state (small employers included) and forcing those uninvolved parties to pay the costs of one side of a labor dispute is profoundly unfair.

SB 799 Would Raise Compliance Issues with Federal Law – Putting Our UI Program at Risk.

Moreover, we are concerned that **SB 799** may cause federal policymakers to balk at bailing out California in the future. Federal law governs all states' UI programs – including California's. Most notably⁶, federal law requires that workers be “able to work, available to work, and actively seek work.” We are concerned because this basic tenet of federal UI eligibility appears in conflict with the situation of a strike - where workers *have a job*, but are *choosing not to work to create economic leverage*.

The potential consequences of the Federal Department of Labor determining that California's program is non-compliant are devastating. California could lose all of the benefits that the federal benefits assist with our UI program,⁷ including:

- Funds to help administer the UI program via the Employment Development Department
- Loans in the event a state fund is insolvent but still needs to pay UI benefits

Notably, two democratic states (New York and New Jersey) have recently made similar changes, and have not had their programs decertified. However, there does not appear to be any judicial review or federal guidance approving this change – meaning the matter remains unresolved and would be in the discretion of future Secretaries of Labor. The possibility of California's UI program being decertified by an unfriendly federal administration would be cataclysmic for California's budget and California's truly unemployed claimants.

Re-writing Benefit Eligibility Would Slow EDD's Present Post-COVID Overhaul

Presently, California's Employment Development Department (EDD) is in the process of overhauling their benefits eligibility determination process. This significant overhaul (termed “EDDNext”) is a response to the inadequacies revealed during the COVID-19 pandemic, when many unemployed Californians struggled to get their well-deserved benefits and fraudsters successfully siphoned off billions of dollars in benefits.⁸ Notably, the State Auditor recently identified EDD as a “high-risk” agency due to its failings during the COVID-19 pandemic and ongoing struggles since.⁹

⁶ 42 USC 503(a)(12) - state programs must include “[a] requirement that, as a condition of eligibility for regular compensation for any week, a claimant must be able to work, available to work, and actively seeking work.” (emphasis added).

⁷ 42 USC 503(b) - “(b) Failure to Comply; Payments Stopped: When the Secretary of Labor finds that [there is] a failure to comply substantially with any provisions specified in subsection (a) ... the Secretary of Labor shall notify such State agency that further payments will not be made ... until the Secretary of Labor is satisfied that [the program is in compliance].”

⁸ Though the majority of the approximately \$20 billion in fraudulent unemployment insurance claims drew from the federal Pandemic Unemployment Assistance program (PUA), the administration of that program's eligibility was still handled by EDD, making those benefits determinations a reflection on EDD's then-existing claims process.

⁹ Information related to the State Auditor's determination available here: <https://www.auditor.ca.gov/reports/2023-601/index.html#contents0>.

As California employers, we will be paying down the UI Fund's \$18 billion debt – including the portion caused by fraudulent claims which were paid by EDD – for years to come.¹⁰ As a result, we believe it is critical that EDD's much-needed overhaul move forward swiftly so that claims can be paid accurately and quickly in the coming years. However, we are concerned that the EDDNext overhaul will be slowed by **SB 799**, which will add an entirely new category of UI claimant (a person on strike). In order to verify this new claimant is properly qualified, EDD will need to develop new processes to investigate what strikes are ongoing, how long those strikes have been ongoing, whether the covered individual is engaged in such a strike, and potentially also monitor when those strikes end. We believe EDD has enough work on its plate with improving its process to ensure truly unemployed claimants get benefits – and that process should not be slowed by introducing an entirely new class of claimants who are employed but choosing not to work.

Being Unemployed is Fundamentally Different Than Being on Strike.

SB 799 fundamentally alters the nature of UI by providing unemployment to workers who still have a job and have chosen to temporarily refuse to work as a negotiating tactic. Striking is obviously a federally protected right and has historically been a key strategy in labor disputes. But – to put it simply – being on strike is not the same as being terminated.

Striking workers generally have the right to return to their position at the conclusion of the labor dispute, under both federal law and union contracts. In contrast, an employee who has been terminated has no similar job waiting for them and is truly facing an uncertain future – which UI helps by providing some support while they look for new work. Striking workers have a job – they are just choosing not to work in order to create economic pressure and negotiate. That is not the same as having no idea where your next paycheck comes from.

SB 799 is a profound departure from UI's history, and a significant tax increase on California's employers, including those who have no involvement in any labor disputes. Moreover, with a recession potentially in our future, **SB 799** risks compounding UI's insolvency – which will weigh heavily on the State, California's employers, and California's truly unemployed.

For these reasons, we **OPPOSE SB 799** as a **JOB KILLER**.

Sincerely,



Robert Moutrie, Policy Advocate
California Chamber of Commerce
on behalf of

Acclamation Insurance Management Services – Philip Vermeulen
Agricultural Council of California – Tricia Geringer
Alameda Chamber of Commerce – Madlen Saddik
Allied Managed Care – Philip Vermeulen
American Council of Engineering Companies – Tyler Munzing
Anaheim Chamber of Commerce – Chris Nguyen
Associated General Contractors – Felipe Fuentes
Associated General Contractors – San Diego – Bret Gladfelty
Association of Western Employers – Beau Biller
Auto Care Association – Gary Conover
Bay Area Council – Alex Torres
BizFed Los Angeles County Business Federation - Sarah Wiltfong
Brea Chamber of Commerce – Lacy Schoen
Building Owners and Managers Association (BOMA California) – Matthew Hargrove
Calforests – Matt Dias

¹⁰ Though the 2022-2023 budget proposed paying a small portion of the UI Fund debt down (\$750 million), and a small tax credit to help cover tax increases (\$500 million) for smaller employers, both aids were removed in the 2023-2024 budget. With no state aid, it is anticipated this debt will take ten years to pay off, assuming no recession occurs during that time.

California Asian Pacific Chamber of Commerce – Pat Fong
California Association of Licensed Security Agencies, Guards & Associates – Jack Yanos
California Association of Sheet Metal and Air Conditioning Contractors National Association – Emily Mills
California Association of Winegrape Growers – Michael Miller
California Attractions and Parks Association – Sabrina Demayo Lockhart
California Bankers Association – Melanie Cuevas
California Building Industry Association – P. Anthony Thomas
California Business Properties Association – Matthew Hargrove
California Business Roundtable – Natalie Boust
California Chamber of Commerce – Robert Moutrie
California Employment Law Council – Mike Belote
California Farm Bureau – Bryan Little
California Fuels and Convenience Alliance – Alessandra Magnasco
California Golf Course Owners Association – Marc Connerly
California Grocers Association – Carlos Gutierrez
California Hospital Association – Rony Berdugo
California Hotel & Lodging Association – Alexander Rossitto
California League of Food Producers – Ben Ebbink
California Manufacturers & Technology Association – Lawrence Gayden
California Restaurant Association – Katie Davey
California Retailers Association – Ryan Allain
California Staffing Professionals – Mike Robson
California Taxpayers Association – Peter Blocker
California Tire Dealers Association – Marc Connerly
California Travel Association – Emellia Zamani
California Trucking Association – Chris Shimoda
CAWA – Representing the Automotive Parts Industry – Gary Conover
Coalition of Small and Disabled Veteran Businesses – Philip Vermeulen
Construction Employers' Association – Traci Stevens
Corona Chamber of Commerce – Jeff Gibson
Dixon District Chamber of Commerce – Shauna Manina
El Dorado County Chamber of Commerce – Mark Smith
El Dorado Hills Chamber of Commerce – Mark Smith
Family Business Association of California – Faith Borges
Family Winemakers of California – Melissa Werner
Flasher Barricade Association – Philip Vermeulen
Folsom Chamber of Commerce – Bill Romanelli
Fremont Chamber of Commerce – Matt Senekeremian
Fresno Chamber of Commerce – Scott Miller
Gateway Chambers Alliance – Caren Spilsbury
Greater Coachella Valley Chamber of Commerce – Chris Collier
Greater Conejo Valley Chamber of Commerce – Josh Gray
Greater High Desert Chamber of Commerce – Mark Creffield
Hawthorne Cat – Paul Gladfelty
HOLT of California – Paul Gladfelty
Housing Contractors of California – Bruce Wick
Huntington Beach Chamber of Commerce – Tina Figarsky
Laguna Niguel Chamber of Commerce – Scott Alevy
Livermore Valley Chamber of Commerce – Sherri Souza
Lodi Chamber of Commerce – JP Doucette
Lomita Chamber of Commerce – Heidi Butzine
Los Angeles Area Chamber of Commerce – Chris Micheli
Manteca Chamber of Commerce – Taylor Hasal
Murrieta/Wildomar Chamber of Commerce – Chris Collier
NAIOP California – Matthew Hargrove
National Electrical Contractors Association – Eddie Bernacchi
National Federation of Independent Business – Tim Taylor
Northern California Allied Trades – Eddie Bernacchi
Norwalk Chamber of Commerce – Caren Spilsbury
Orange County Business Council – Jennifer Bullard

Orange County Taxpayers Association – Sara Catalán
Palos Verdes Peninsula Chamber of Commerce – Marilyn Lyon
Paso Robles Templeton Chamber of Commerce – Amy Russell
Peterson CAT – Paul Gladfelty
 Peterson Power Systems – Paul Gladfelty
 Peterson Tractor – Paul Gladfelty
Peterson Trucks – Paul Gladfelty
Rancho Cordova Area Chamber of Commerce – Mark Smith
Resource Recovery Coalition of California -Laura Ferrante
Ridgecrest Chamber of Commerce – Rebecca McCourt
Roofing Contractors Association of California – Marc Connerly
Roseville Area Chamber of Commerce – Marlo Bourland
Sacramento Metro Chamber of Commerce – Jack Blattner
Santa Ana Chamber of Commerce – Timothy Jemal
Santa Barbara South Coast Chamber of Commerce – Dustin Hoiseth
Santa Clarita Valley Chamber of Commerce – Ivan Volschenk
Santa Maria Valley Chamber of Commerce – Glenn Morris
Silicon Valley Leadership Group – Dan Kostenbauder
Simi Valley Chamber of Commerce – Jim Vigdor
Southwest California Legislative Council – Chris Collier
TechNet – Dylan Hoffman
Torrance Area Chamber of Commerce – Donna Duperron
Tri County Chamber Alliance – Chris Collier
Tulare Chamber of Commerce – Donnette Silva Carter
Twenty First Century Alliance – Brian Brennan
United Chamber Advocacy Network – Mark Smith
Vacaville Chamber of Commerce – Debbie Egidio
Vista Chamber of Commerce – Rachel Beld
Walnut Creek Chamber of Commerce – Bob Linscheid
West Ventura County Business Alliance – Nancy Lindholm
Western Carwash Association – Melissa Werner
Western Electrical Contractors Association – Richard Markuson
Western Growers Association - Matthew Allen
Yorba Linda Chamber of Commerce – Alex Hernandez
Yuba-Sutter Chamber of Commerce – Kristen Perry

cc: Legislative Affairs, Office of the Governor
Tara McGee, Office of Senator Portantino
Kathleen O'Malley, Assembly Insurance Committee
Bill Lewis, Assembly Republican Caucus