

OPPOSE – SB 1116 (Portantino) – JOB KILLER



March 12, 2024

The Honorable Anthony Portantino
California State Senate
1021 O Street, Suite 7630
Sacramento, CA 95814

**SUBJECT: SB 1116 (PORTANTINO) UNEMPLOYMENT INSURANCE: TRADE DISPUTES:
ELIGIBILITY FOR BENEFITS
OPPOSE/JOB KILLER – AS INTRODUCED FEBRUARY 13, 2024**

Dear Senator Portantino:

The California Chamber of Commerce and the organizations listed respectfully **OPPOSE** your **SB 1116 (Portantino)**, which has been labeled a **JOB KILLER** because it would effectively require employers to subsidize striking workers, even if that employer is not presently (or has never) experienced any strikes. By forcing employers to pay unemployment insurance (UI) payments to striking workers, **SB 1116** would also raise unemployment insurance taxes on employers across California, overturn more than 70 years of precedent, and put California's UI program at risk of violating federal law. This bill is a repeat of last year's **SB 799**, which was vetoed by the Governor because of the debt it would add to California's UI Fund—which is an even more pressing concern given the state's long-term estimated budget concerns.

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 separated from 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. \$20 billion³) in large part due to the COVID-19 pandemic and the resulting state-wide shutdown. 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 2034.⁴

SB 1116 Would Worsen California's UI Fund Crisis – and Increase the State's Interest Payments.

SB 1116 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 \$10 billion in federal loans.⁵ Though the amount that such strikes would add to the UI Fund debt is hard to calculate specifically,⁶ it is undeniable that **SB 1116** would add more debt to the state's federal loans.

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 The LAO's February 15, 2022 budget analysis estimated 2033, presuming a “high cost” scenario, but no recession occurring in the interceding years. Text available here: <https://lao.ca.gov/Publications/Report/4543>. However, that estimate did not take into account the rising UI Debt heading into 2024, so we have revised this projection upward by one year.

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

⁶ To calculate the contribution of potential future strikes on the UI Fund would require assumptions about all of the following: number of strikes occurring in future years, duration of strikes, number of workers involved in such strikes, wages of involved workers, overall employment, and the potential severity and frequency of future recessions.

If **SB 1116** had been in effect in 2023, we estimate that it would have added approximately \$215 million to the UI Fund's debt. Additionally, it would have added approximately \$30 million per week during certain weeks. Moreover, **SB 1116** would change incentives around striking. Though striking workers presently may access union strike funds and other resources, **SB 1116** would add a new pool of income—unemployment insurance—and thereby change the financial calculus around a strike. In other words, we believe **SB 1116** is likely to encourage labor disputes, which in turn would add costs to the Fund and to California employers.

In addition to adding to employers' tax burden's, **SB 1116** 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. In the proposed 2024-2025 budget, it is estimated to rise to \$331 million. **SB 1116** will only add to those payments if passed—as correctly noted by Governor Newsom in his veto of last year's **SB 799**.

SB 1116 Would Force Uninvolved Employers to Pay Striking Workers.

SB 1116 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*. 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, all strikes 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.

This unfairness would not end when California's UI Fund returns to solvency. Employers who have a high volume of UI claims will see their experience rating (and related UI taxes) increase... *but only to a certain point*. Employers' experience ratings can "max out"—after which their taxes cannot rise any higher. This leads to socialization of fund costs among other employers. In other words—in dramatic and lengthy strikes, costs of that strike will *not* necessarily be limited to that employer because costs are socialized across the Fund if that employer maxes out.

SB 1116 Would Raise Compliance Issues with Federal Law – Putting Our UI Program at Risk.

Moreover, we are concerned that **SB 1116** may violate federal law. Federal law governs all states' UI programs—including California's. Most notably⁷, 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,⁸ 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

Proponents argue that two Democratic states (New York and New Jersey) have recently made similar changes, and emphasize that the Supreme Court reviewed New York's program in a 1979 case. Because those two programs have not been decertified, they assert that **SB 1116** must be acceptable under federal law. This argument is incorrect. Though New York's program was reviewed in 1979 by the Supreme Court, *that case did not consider today's federal law*. To the contrary, that case considered whether allowing

⁷ 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). Introduced in 2012, as part of the Middle Class Tax Relief and Job Creation Act (PL 112-96).

⁸ 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 ... 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]."

striking workers to collect unemployment violated the National Labor Relations Act because government was weighing in on a labor dispute—and held narrowly that NY’s program did not violate the NLRA.⁹

Since the applicable law was changed in 2012 to require claimants be “able to work, available to work, and actively seeking work,” there does not appear to be any judicial review or Department of Labor guidance approving New York or New Jersey’s program—meaning the matter remains unresolved and would be in the discretion of future Secretaries of Labor. Should an unfriendly federal administration take office, the Department of Labor could move to decertify California’s UI program, which 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.¹⁰ 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.¹¹

As California employers, we will be paying down the UI Fund’s \$20 billion debt—including the portion caused by fraudulent claims which were paid by EDD—for years to come.¹² 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 1116**, 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 1116 fundamentally alters the nature of UI by providing unemployment to workers *who still have a job and have voluntarily 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 *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 1116 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 1116** risks compounding UI’s insolvency—which will weigh heavily on the State, California’s employers, and California’s truly unemployed.

⁹ Department of Labor’s memorandum summarizing the decision available at https://oui.doleta.gov/dmstree/uipl/uipl79/uipl_2479.htm.

¹⁰ 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.

¹¹ Information related to the State Auditor’s determination available here: <https://www.auditor.ca.gov/reports/2023-601/index.html#contents0>.

¹² 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.

For these reasons, we respectfully **OPPOSE** your **SB 1116 (Portantino)** as a **JOB KILLER**.

Sincerely,



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

Acclamation Insurance Management Services
Agricultural Council of California
Allied Managed Care
American Council of Engineering Companies
Associated General Contractors
Associated General Contractors – San Diego
Association of Western Employers
Bay Area Council
BizFed Los Angeles County Business Federation
Brea Chamber of Commerce
Building Owners and Managers Association (BOMA California)
Calforests
California Apple Commission
California Association of Licensed Security Agencies, Guards & Associates - CALSAGA
California Association of Sheet Metal and Air Conditioning Contractors National Association
California Association of Winegrape Growers
California Attractions and Parks Association
California Bankers Association
California Blueberry Association
California Blueberry Commission
California Building Industry Association
California Business Properties Association
California Business Roundtable
California Chamber of Commerce
California Citrus Mutual
California Cotton Ginners and Growers Association
California Employment Law Council
California Farm Bureau
California Framing Contractors Association
California Fresh Fruit Association
California Fuels and Convenience Alliance
California Grocers Association
California Hospital Association
California Hotel & Lodging Association
California League of Food Producers
California Manufacturers & Technology Association
California Restaurant Association
California Retailers Association
California Self Storage Association
California Taxpayers Association
California Tomato Growers Association
California Travel Association
California Trucking Association
Can Manufacturers Institute
Coalition of Small and Disabled Veteran Businesses
Construction Employers' Association
Corona Chamber of Commerce

Dairy Institute of California
El Dorado County Chamber of Commerce
El Dorado Hills Chamber of Commerce
Elk Grove Chamber of Commerce
Family Business Association of California
Family Winemakers of California
Flasher Barricade Association
Folsom Chamber of Commerce
Fremont Chamber of Commerce
Gateway Chambers Alliance
Greater Coachella Valley Chamber of Commerce
Greater Conejo Valley Chamber of Commerce
Greater High Desert Chamber of Commerce
Hollywood Chamber of Commerce
Housing Contractors of California
Institute of Real Estate Management (IREM)
Laguna Niguel Chamber of Commerce
Lincoln Area Chamber of Commerce
Livermore Valley Chamber of Commerce
Lodi Chamber of Commerce
Los Angeles Area Chamber of Commerce
Murrieta/Wildomar Chamber of Commerce
NAIOP California
National Association of Theatre Owners of California
National Federation of Independent Business
Nisei Farmers League
Norwalk Chamber of Commerce
Olive Growers Council of California
Orange County Business Council
Palos Verdes Peninsula Chamber of Commerce
Paso Robles Templeton Chamber of Commerce
Plant California Alliance
Rancho Cordova Area Chamber of Commerce
Ridgecrest Chamber of Commerce
Rocklin Chamber of Commerce
Roseville Area Chamber of Commerce
Sacramento Metro Chamber of Commerce
San Gabriel Valley Economic Partnership
Santa Ana Chamber of Commerce
Santa Barbara South Coast Chamber of Commerce
Santa Maria Valley Chamber of Commerce
Shingle Springs/Cameron Park Chamber of Commerce
Silicon Valley Leadership Group
Simi Valley Chamber of Commerce
Southern California Leadership Council
Southwest California Legislative Council
TechNet
Torrance Area Chamber of Commerce
Tri County Chamber Alliance
Tulare Chamber of Commerce
Twenty First Century Alliance
United Ag
United Chamber Advocacy Network
Vacaville Chamber of Commerce
Vista Chamber of Commerce
Walnut Creek Chamber of Commerce
West Ventura County Business Alliance
Western Agricultural Processors Association
Western Carwash Association
Western Electrical Contractors Association

Western Growers Association
Western Plant Health Association
Yorba Linda Chamber of Commerce
Yuba-Sutter Chamber of Commerce

cc: Legislative Affairs, Office of the Governor