



JOB KILLER

August 23, 2023

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

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

Dear Senator Portantino:

The California Chamber of Commerce and the organizations listed below respectfully **OPPOSE** your **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.

Here is an example: if 150,000 workers struck for two months (eight weeks, with 6 weeks on UI), and we presume that their income was \$17/hour (just above LA minimum wage), that would add \$282.6 million in additional⁶ eventual taxes for California’s employers. Don’t forget that California’s businesses are already paying increased taxes due to the COVID-19 shutdown and are expected to keep paying increased taxes through 2032 – even without **SB 799**’s additional drain on the fund.

And as employers pay the principal on the UI debt via annual tax increases, the state would be forced to make annual interest payments on this debt. 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. As California goes through lean budget years, these interest payments will take money from other state priorities.

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.

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>.

⁶ Weekly benefit amount based on \$17/hour (\$314) x 6 weeks (initial 2 weeks are ineligible) x 150,000 strikers.

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 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

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.

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** your **SB 799** as a **JOB KILLER**.

Sincerely,



Robert Moutrie, 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

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).

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 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].”

Associated General Contractors
Associated General Contractors – San Diego
Association of Western Employers
Building Owners and Managers Association
(BOMA California)
Calforests
California Association of Licensed Security
Agents
California Attractions and Parks Association
California Bankers Association
California Building Industry Association
California Business Properties Association
California Business Roundtable
California Chamber of Commerce
California Employment Law Council
California Fuels and Convenience Alliance
California Grocers Association
California Hotel & Lodging Association
California League of Food Producers
California Manufacturers & Technology
Association
California Restaurant Association
California Retailers Association
California Staffing Professionals
California Trucking Association

Coalition of Small and Disabled Veteran
Businesses
Construction Employers' Association
Corona Chamber of Commerce
Family Business Association of California
Family Winemakers of California
Flasher Barricade Association
Folsom Chamber of Commerce
Hawthorne Cat
HOLT of California
Housing Contractors of California
Los Angeles Area Chamber of Commerce
NAIOP California
National Federation of Independent Business
Orange County Business Council
Orange County Taxpayers Association
Peterson CAT
Peterson Power Systems
Peterson Tractor
Peterson Trucks
TechNet
Twenty First Century Alliance
United Chamber Advocacy Network
Western Carwash Association
Western Growers Association
Western Electrical Contractors Association

cc: Legislative Affairs, Office of the Governor