

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

AB 2847 (Eduardo Garcia)
Version: June 23, 2022
Hearing Date: June 28, 2022
Fiscal: Yes
Urgency: No
TSG

SUBJECT

Unemployment: Excluded Workers Pilot Program

DIGEST

This bill would establish a pilot program designed to provide the functional equivalent of unemployment insurance benefits, at slightly lower rates, to workers who are not eligible for regular state or federal unemployment insurance benefits due to their immigration status.

EXECUTIVE SUMMARY

Unemployment insurance is a lifeline for workers and their families when an unexpected job occurs through no fault of the worker. For example, unemployment insurance was vital in helping many Californians get by economically during the COVID-19 pandemic, when many businesses closed and had to lay off staff. Yet, though many of them pay into the unemployment insurance pool, undocumented Californians are currently excluded from taking any benefits out of it. As a result, California families that depend on the earnings of an undocumented member are especially hard hit when that family member loses a job. This bill would take a major step toward rectifying this injustice by establishing a pilot program in which undocumented immigrant workers could, upon establishing eligibility through proof of work, obtain income support payments much like unemployment insurance, though at moderately lower levels.

The bill is sponsored by Bet Tzedek Legal Services, California Immigrant Policy Center, Centro Binacional Para El Desarrollo Indígena Oaxaqueño, CLEAN Carwash Worker Center, Community and Labor Center at UC Merced, Legal Aid at Work, PowerSwitch Action, Trabajadores Unidos/Workers United, and the Warehouse Workers Resource Center. Support comes from immigrant and civil rights groups. There is no opposition on file. The bill passed out of the Senate Labor, Public Employment and Retirement Committee by a vote of 4-0. If the bill passes out of this Committee, it will next be heard in the Senate Appropriations Committee.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Under the Immigration and Nationality Act, requires an employer to verify, through examination of specified documents, whether or not an individual is authorized to work in the United States. Specifies that if the document is presented and reasonably appears on its face to be genuine, then the employer has complied with this requirement and is not required to solicit or demand any other document. (8 U.S.C. § 1324a(b).)
- 2) Makes it an unfair immigration-related employment practice for any person or entity to do any of the following:
 - a) discriminate against any individual, except as provided, with respect to the hiring, recruitment, or referral of the individual for employment or the discharging of the individual from employment because of the individual's origin or citizenship; or
 - b) request, with the intent of discriminating against an individual, more or different documents than are required under law or refuse to honor documents tendered which, on their face, reasonably appear to be genuine. (8 U.S.C. § 1324b(a)(1)-(6).)
- 3) The Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020, established the Pandemic Unemployment Assistance Program (PUA), which created a new temporary federal program to provide unemployment benefits for up to 39 weeks to individuals who are not eligible for regular UI (such as individuals who are self-employed or who have limited recent work history) and provided funding to states for the administration of the program. (CARES Act of 2020 § 2102; Public Law (Pub. L.) 116-136.)
- 4) Provides that all protections, rights, and remedies available under state law, except any reinstatement remedy prohibited by federal law, are available to all individuals regardless of immigration status who have applied for employment, or who are or who have been employed, in this state. For purposes of enforcing state labor and employment laws, existing law provides that a person's immigration status is irrelevant to the issue of liability, and in proceedings or discovery undertaken to enforce those state laws, no inquiry shall be permitted into a person's immigration status except where the person seeking to make this inquiry has shown by clear and convincing evidence that the inquiry is necessary in order to comply with federal immigration law. (Lab. Code §1171.5; Civil Code §3339; Gov. Code §7285; Health & Safety Code §24000.)
- 5) Establishes the Employment Development Department (EDD) within the Labor and Workforce Development Agency. EDD is responsible for, among other duties, the

administration of the Unemployment Insurance and Disability Insurance programs. (Unemployment Insurance Code §301.)

- 6) Establishes the Unemployment Insurance (UI) Program as a joint state/federal program, administered by EDD that provides weekly unemployment insurance payments for workers who lose their job through no fault of their own. Eligibility for benefits requires that the claimant be able to work, available for work, be seeking work, and be willing to accept a suitable job. (Unemployment Insurance Code §100-144 & §301-456.)
- 7) Requires employers to finance the UI program by paying unemployment taxes on up to \$7,000 in wages paid to each worker. The tax rate varies for each employer and is based, in part, on the amount of UI benefits paid to former employees. (Unemployment Insurance Code §901-1243)
- 8) Provides UI weekly benefits that range from \$40-\$450 based on the employee's prior earnings and are available for a maximum of 26 weeks with possible extensions for certain emergency situations, as specified. (Unemployment Insurance Code §1275-1282)

This bill:

- 1) Establishes, until January 1, 2026, the Excluded Workers Pilot Program (EWPP), administered by the Employment Development Department and upon appropriation by the Legislature of sufficient funds to carry out the program, for the purpose of providing income assistance to excluded workers who are not eligible for the state or federal benefits administered by EDD and who are unemployed.
- 2) Specifies the intent of the Legislature to allow persons who are not lawfully present in the United States, as members of the class of workers excluded from unemployment insurance benefits, to participate in and receive disbursements from the EWPP.
- 3) Provides that an individual shall be eligible to receive benefits if the director finds all of the following:
 - a. The individual resides in California at the time of the application.
 - b. The individual performed at least 93 hours of work or earned at least one thousand three hundred dollars (\$1,300) in gross wages over the course of three calendar months, which do not need to be consecutive, for work performed as an employee within the 12 months preceding their application for benefits.
 - c. The individual was unemployed during that week.

- d. The individual is ineligible to receive regular unemployment insurance benefits, as defined, for reasons related to the individual's authorization to work.
- 4) Entitles any individual eligible for the program to receive a payment in the amount of three hundred dollars (\$300) for each week of unemployment occurring between January 1, 2024 and December 31, 2024, inclusive, and for a maximum of 20 weeks.
- 5) Specifies that an individual is not eligible for the program any week in which the individual received paid family leave or disability insurance, as defined.
- 6) Requires the EDD, on or before January 1, 2024, to promulgate regulations to administer the EWPP that includes, at a minimum:
 - a. A process by which individuals may apply for the benefits.
 - b. A process for notifying individuals of the acceptance or denial of their application.
 - c. A process for individuals to request a review of the denial.
- 7) Prohibits EDD, in administering the program, from taking any of the following actions:
 - a. Requesting, orally or in writing, an individual's nationality, place of birth, or eligibility or ineligibility for a social security number.
 - b. Compelling or requesting an individual to admit in writing whether they have proof of lawful presence in the United States.
 - c. Contacting an individual's current, former, or prospective employer for any purpose, including to verify employment status. However, does not prohibit the department from using other means to verify past employment.
 - d. Recording an individual's immigration or citizenship status.
- 8) Provides that personal information and documents collected are confidential, exempt from disclosure under the California Public Records Act, and may be used or disclosed only for purposes of administering the program, except where necessary to comply with an order, warrant, or subpoena, each if issued by a court.
- 9) Defines "personal information" to mean any type of information that identifies or describes an individual, including, but not limited to, the individual's name, social security number, taxpayer identification number, physical description, home address, home telephone number, education, financial matters, and medical or employment history. It includes statements made by, or attributed to, the individual.
- 10) Requires EDD to establish procedures and safeguards against unauthorized access to, and use of, personal information collected by the department, as specified.

- 11) Requires EDD, on or before January 1, 2025, to submit a report to the Governor and the Legislature making recommendations for establishing a permanent UI benefit program for excluded workers based on an evaluation of the program, research on the target population, options for how to fund and administer the program, and stakeholder input.
- 12) Includes a January 1, 2026 sunset date on the provisions for this program.
- 13) Provides several findings and declarations regarding the contributions of undocumented immigrants and the need for a program to rectify the unjust exclusion of immigrant workers from an essential social safety net program.

COMMENTS

1. Background on unemployment insurance

The Senate Labor, Public Employment and Retirement analysis of this bill offers the following brief description of the unemployment insurance program:

Created in 1935 as part of the Social Security Act of 1935, the Unemployment Insurance (UI) program offered for the first time, an economic line of defense against the effects of unemployment. The UI program is a unique federal-state program, created by federal law and administered under state and federal laws by state employees. UI provides weekly benefits to workers who are unemployed (or underemployed) through no fault of their own and who are able to, available for and actively seeking work. Eligibility for UI benefits is set by law and administered by the Employment Development Department (EDD). To collect UI benefits, workers must show that they were in satisfactory immigration status and authorized to work in the United States when earning the wages used to establish a claim. Workers must also give proof that they are in satisfactory immigration status and are authorized to work each week they claim benefits.

Financing Structure

The UI program is financed by employers who pay unemployment taxes on the first \$7,000 in wages paid to each worker. Working much like other insurance programs, the actual tax rate varies for each employer, depending in part on the amount of UI benefits paid to former employees. An employer may earn a lower tax rate when fewer claims are made on the employer's account by former employees. Part of the employer's tax goes directly to the federal

government to pay for the administration of the system. The greater portion goes into a special UI Trust Fund from which benefit payments are made to unemployed workers.

Claimant Benefit Calculations

A claimant's eligibility for benefits depends on having a substantial attachment to the labor force determined by computing a minimum earnings test. This requirement denies benefits to claimants whose earnings in a 12-month "base period" are below a specified minimum -indicating a short or temporary attachment to the labor force. The "base period" is 12 months long, 4 quarters of 3 months each. The quarter in which the highest wages were received determines the weekly benefit amount.

The amount of benefits available is based on the claimant's earnings in the base period. To qualify for benefits a claimant must have (1) earned at least \$1,300 in the highest quarter of the base period, or (2) have earned at least \$900 in the highest quarter and earned total base period earnings of at least 1.25 times the high quarter earnings. For example, if the claimant has \$900 earnings in the highest quarter, they are also required to have earned a total of \$1,125 in the base period ($\$900 \times 1.25 = \$1,125$). The maximum amount of a regular UI claim is either 26 times the claimant's weekly benefit amount or one-half of the claimant's base period wages, whichever is less.

2. Undocumented workers pay into the system but are excluded from benefits

As the name implies, unemployment insurance is not welfare or a handout. While they are working, employees and their employers both contribute to the pool of money that is then available should they lose their job. Undocumented workers also pay into this system, usually in the form of a payroll deduction sometimes denominated as an unemployment insurance "tax." (It is perhaps better described as an insurance premium.) According to a May 2020 Fiscal Policy Institute brief, over the past decade, undocumented immigrants paid \$4.4 billion in Unemployment Insurance taxes in California. For the United States as a whole, that figure was \$13 billion in Unemployment Insurance taxes.¹

¹ Dyssegaard Kallick, David. Fiscal Policy Institute, "Unemployment Insurance Taxes Paid for Undocumented Workers in NYS" (May 14, 2020). www.fiscalpolicy.org.

3. The pilot program proposed by this bill

This bill establishes a pilot program that is, effectively, an unemployment insurance program for undocumented Californians. However, though similar in concept to unemployment insurance, the pilot program would not operate in exactly the same way. To be eligible for benefits from the program, applicants would have to have worked at least 93 hours or earned at least one thousand three hundred dollars (\$1,300) in gross wages over the course of the prior three calendar months. Qualifying applicants would receive \$300 a week in income support payments while they were out of work, up to a maximum of 20 weeks. In many cases, this benefit amount will be lower than what the worker could obtain through the regular unemployment insurance program, if they were eligible. Of course, it is also significantly better than receiving nothing at all.

The pilot program is set to last for all of 2024. The bill includes provisions for study and reporting on the program, enabling future policy makers to assess what changes might be necessary to the program and whether to continue it on beyond the currently scheduled expiration date.

4. Establishing eligibility

A significant challenge for this policy proposal is figuring out how applicants should establish eligibility for the benefits involved. Under federal law, employers are not supposed to hire undocumented individuals. Many do anyway, either because the worker presents documents that appear to show that the worker is eligible to work, or because the employer simply chooses to flout the law in this regard. In either case, because this employment is not regularized, providing evidence for it could be problematic. On the one hand, proof of eligibility should not be so difficult that the benefits are, for all practical purposes, inaccessible. On the other hand, the requirements for proving eligibility need to be strict enough to mitigate against the possibility of fraud.

Recent amendments to the bill offer an elegant, though necessarily imperfect solution to this challenge. Under those amendments, applicants for the program would establish the identity, residency, and work history required for eligibility through a point system. To establish eligibility the applicant would need to accumulate four points.

Documentation that is highly probative of eligibility would garner all four points at once. Less probative, but still highly credible documents and evidence would get two points. Only moderately probative documents would get just one point. Thus, for example, wage stubs and tax returns would be worth four points; copies of regularly cashed checks from an employer or a letter from a boss would be worth two; and things like emails, texts, and other communications about work would be worth just one.

As a backstop, an applicant who could not accumulate four points would be able to request a credibility interview at which the applicant would have the opportunity to demonstrate eligibility through credible testimony about the work performed and the wages earned.

5. Arguments in support of the bill

According to the author:

The COVID-19 pandemic highlighted an issue that has existed for decades, undocumented immigrants can't receive unemployment benefits even though they pay billions in state and local taxes each year. AB 2847 will rightfully provide unemployment benefits to workers who have earned them but are ineligible due to their documentation status. The state of New York has successfully implemented a similar program for their undocumented workers. It is time for California to take the lead on this issue.

As one of the sponsors of the bill, the California Immigrant Policy Center writes:

When the COVID-19 pandemic began and millions lost their jobs, unemployment insurance benefits served as an essential lifeline for Californians. However, based on outdated and racist policies, undocumented immigrant workers, who comprise one in sixteen workers in California, were entirely excluded from unemployment benefits, despite being some of the most severely impacted by the COVID-19 pandemic. California employers contribute an estimated \$459M to the Unemployment Insurance system on behalf of undocumented workers every year. However, these workers and their families have been unable to reap any of the benefits at a time when they needed them most. The Excluded Workers Pilot Program will provide unemployed workers who are ineligible for regular unemployment insurance due to their immigration status with \$300 per week for up to 20 weeks. This program builds on similar successful programs in other states, including New York, Washington, and Colorado, which have shown that an Excluded Workers program can be done efficiently and effectively, while successfully addressing issues of fraud and privacy and achieving meaningful impact. The COVID-19 pandemic was not the first crisis that California faced and it will not be the last. Global environmental challenges such as climate change and catastrophic wildfires also place excluded workers at risk of facing a disaster without a safety net. This bill is key to modernizing our state's safety net and creating a strong and resilient economy.

SUPPORT

Bet Tzedek Legal Services (sponsor)
California Immigrant Policy Center (sponsor)
Centro Binacional Para El Desarrollo Indígena Oaxaqueño (sponsor)
CLEAN Carwash Worker Center (sponsor)
Community and Labor Center at UC Merced (sponsor)
Legal Aid at Work (sponsor)
PowerSwitch Action (sponsor)
Trabajadores Unidos/Workers United (sponsor)
Warehouse Workers Resource Center (sponsor)
ALMAS/Graton Day Labor Center
Asian Americans Advancing Justice - California
Buen Vecino
California Asset Building Coalition
California Association of Food Banks
California Domestic Workers Coalition
California Edge Coalition
California Farmworker Advocacy Working Group
California Food and Farming Network
California Institute for Rural Studies
California Labor Federation
California Latinas for Reproductive Justice
California Partnership for Working Families
California Rural Legal Assistance Foundation
CAUSE
Center for Workers' Rights
Central California Environmental Justice Network
Central Coast Alliance United for a Sustainable Economy
Central Valley Immigrant Integration Collaborative
Centro Laboral de Graton
Chinese for Affirmative Action
Council on American-Islamic Relations, California Chapter
Courage California
Employee Rights Center
End Poverty in California (EPIC)
Equal Rights Advocates
Fibershed
Friends Committee on Legislation of California
GRACE - End Child Poverty in California
Graton Day Labor Center
Golden State Opportunity
Inland Coalition for Immigrant Justice
Inland Empire Immigrant Youth Collective

Jakara Movement
Jewish Public Affairs Committee of California
Korean Immigrant Workers Alliance
La Raza Centro Legal
LBIRC
Lideres Campesinas
Long Beach Immigrant Rights Coalition
Los Angeles Alliance for a New Economy
Los Angeles County Federation of Labor
Maintenance Cooperation Trust Fund
Marin Food Policy Council
Martin Luther King Jr Freedom Center
Mayor Eric Garcetti, City of Los Angeles
Mixteco Indigena Community Organizing Project (MICOP)
National Association of Social Workers, California Chapter
National Employment Law Project
NILC
NorCal Resist
North Bay Jobs with Justice
OCCORD
One Step A La Vez
Orange County Communities Organized for Responsible Development
Parent Voices CA
People's Budget Orange County
Pesticide Action Network
Pomona Economic Opportunity Center
Restaurant Opportunities Centers of California
San Bernardino Community Service Center, Inc
San Francisco Women's Political Committee
Santa Clara County Wage Theft Coalition
Santa Cruz Community Ventures
SEIU California
SB County Immigrant Legal Defense Center
SBCS Strengthening Communities
SCCV
SHIELDS for Families
South Bay People Power
Southern California Coalition for Occupational Safety & Health
Tenayuca Labor Project
The Unity Council
TODEC Legal Center
Trabajadores Unidos Workers United
UCLA Labor Center
Unemployed Workers United

United Food & Commercial Workers, Western States Council
United Way Bay Area
United Ways of California
The Unity Council
Vision y Compromiso
Western Center on Law and Poverty
Western States Regional Joint Board, Workers United-SEIU (WSRJB)
Working Partnerships USA
Worksafe
805 UndocuFund

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation: None known.

PRIOR VOTES:

Senate Labor, Public Employment and Retirement Committee (Ayes 4, Noes 0)
Assembly Floor (Ayes 56, Noes 18)
Assembly Appropriations Committee (Ayes 12, Noes 4)
Assembly Insurance Committee (Ayes 11, Noes 2)
