
SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair
2021 - 2022 Regular Session

SB 232 (Nielsen) - Employment Development Department: policies and practices

Version: April 15, 2021

Urgency: No

Hearing Date: May 10, 2021

Policy Vote: L., P.E. & R. 5 - 0

Mandate: No

Consultant: Robert Ingenito

Bill Summary: SB 232 would require the Employment Development Department (EDD) to meet specified timelines for troubleshooting and improving its claims processing and fraud prevention processes to ensure efficient customer service and timely unemployment insurance benefits payment.

Fiscal Impact: EDD's administrative costs resulting from the bill have yet to be identified. However, the bill's workload would likely require new staff to implement its provisions; consequently, the bill's costs to EDD would minimally be in the hundreds of thousands of dollars annually.

Background: Current law establishes EDD within the Labor and Workforce Development Agency. EDD is responsible for administering the Unemployment Insurance (UI) and Disability Insurance (DI) programs. The department collects from employers their UI contributions and the Employment Training Tax, as well as employee contributions for DI. It also (1) pays UI and DI benefits to eligible claimants, (2) audits and collects payroll taxes and maintains employment records for millions of California workers, (3) connects job seekers with employers and administers federally funded workforce development programs, and (4) gathers, analyzes, and publishes labor market information.

The 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.

In early 2020, the first widespread lockdowns were declared in response to the nationwide outbreak of COVID-19, resulting in months of record-setting levels of new UI claims. New supplemental federal unemployment programs were established to help states stabilize their economies and provide life-saving assistance to workers who suddenly could not pay their bills or rent due to the loss of their jobs. These programs relied on massive expansions to California's unemployment insurance coverage, to include self-employed and independent contractor workers, which previously were not covered. These steps were necessary to avoid cascading economic losses, but they opened the door to astronomic levels of fraud that were the subject of several joint legislative audits.

These problems created a situation where many unemployed Californians had great difficulty navigating the unemployment application system, more had their claims delayed for weeks and more still had their benefits suspended due to mistakenly being identified as fraud. Unfortunately, these problems were not new. The State Auditor

released a report in January 2021, which noted, “Key problems related to the EDD’s management of the unemployment insurance program in 2020 were also present during the Great Recession of 2008 and 2009... Nonetheless, EDD did not take adequate steps to address these deficiencies.”

On July 29, 2020, the Governor Newsom announced the formation of a “strike team” to immediately modernize EDD’s UI technology and improve customer services. The strike team was overseen by the state’s Government Operations Agency

On September 19, 2020, the EDD Strike Team released a report that detailed recommendations for changes within EDD to allow more effective and efficient responses to future recessions. They identified the following key issues and challenges (1) EDD is routing more claims for manual processing than it has capacity to process, (2) current Identity Verification Processes intended to block fraud are slowing service delivery without catching fraud, (3) EDD culture must shift from reactivity to rationality as it relates to fraud, (4) organized fraud represents a serious risk to the state, and EDD must develop capabilities to understand and combat it, (5) staffing realignment must resource the bottlenecks in the system first, and free experienced claims processors to process claims, and (6) EDD call centers are overwhelmed.

Proposed Law: This bill would do the following:

- Require that, on or before May 31, 2022, EDD identify the elements of the Benefit Modernization System IT project (BSM), that will assist in making payments timely and that may be implemented incrementally. Require that the department prioritize implementing these elements of the BSM that it identifies.
- Require that, on or before May 31, 2022, EDD implement a formal policy that establishes a process for tracking and periodically analyzing the reasons why unemployment insurance claimants call for assistance.
- Require that, on or before October 31, 2022, and every six months thereafter, EDD analyze the data to improve its call center performance by identifying and resolving weaknesses or problems with the ways in which its call center provides assistance to unemployment insurance claimants through self-service and non-call center options and developing specialized training modules to quickly train its call center staff on the most commonly requested items with which callers need assistance.
- Require that EDD assess the effectiveness of its call center operations. Further requires that, on or before May 31, 2022, EDD implement a policy for tracking and monitoring its rate of first-call resolution. Further require that EDD review first-call resolution data at least monthly and evaluate whether the department is providing effective assistance to callers.
- Require that EDD create model workload projections that account for possible scenarios that may cause a sudden increase in unemployment insurance claims. Further requires that these workload projection assessments occur quarterly in order for the department to plan staffing adjustments in accordance with the likelihood of those scenarios. Require the department to have a contingency plan

for less likely scenarios that may have a significant impact on the department's workload.

- Require EDD to develop a recession plan that accounts for the lessons learned from previous economic downturns, including the COVID-19 pandemic. The plan shall include indicators for the department to monitor to assess workload increases that are likely to occur and shall include steps that EDD shall take in response in order to address increases in workload. The initial plan shall be reported to the Legislature on or before January 1, 2023, and shall be updated every three years thereafter. Further require that the report required by this subdivision shall be provided consistently with the requirements of Section 9795 of the Government Code.
- Require that EDD provide the Legislature with a plan for assessing the effectiveness of its fraud prevention and detection tools by May 1, 2022, and further requires that EDD provide a report to the Legislature with an update on its progress on performing the assessment that the plan identifies by July 1, 2022. Further requires that on or before January 1, 2023, and annually thereafter, the department shall analyze and assess the effectiveness of its fraud prevention and detection tools and shall submit this analysis and assessment to the Legislature. The plan, assessments, and reports shall be provided consistently with the requirements of Section 9795 of the Government Code.
- Require that EDD designate an exclusive unit that is responsible for coordinating all unemployment insurance fraud prevention and detection. Requires that the unit have sufficient independent authority to carry out its duties, which shall be consistent with the best practices that are applicable to fraud detection and prevention.

Related Legislation:

- SB 390 (Laird) would require EDD to develop and, upon appropriation from the Legislature, implement a comprehensive plan to prepare for an increase in unemployment insurance compensation benefits due to an economic recession. The plan must detail how to respond to economic downturns with a predetermined strategy that has considered the full effect on the department's operations. Would require EDD to provide a copy of the comprehensive plan to the Joint Legislative Budget Committee and the Department of Finance by March, 1, 2022 and update the comprehensive plan and provide a copy to both of those entities every second year thereafter. The bill is currently pending in this Committee.
- SB 107 (Committee on Budget, Chapter 264, Statutes of 2020) required that the director of EDD make more specified information about unique unemployment insurance claims publicly available on the department's website.

Staff Comments: The Auditor indicates that EDD's fraud detection systems were overwhelmed by the sheer volume of applicants during the early months of the pandemic, resulting in losses from fraudulent claims estimated to be \$10.4 billion. To the extent that additional fraudulent claims are confirmed, this amount will grow.

According to the Auditor, as of December 10, 2020, EDD's Investigations Division had opened 250 investigations into an estimated \$30 million in fraudulent claims—0.3 percent of the \$10.4 billion in fraudulent claims the Auditor estimates were made during the first nine months of the pandemic. Based on the number of potentially fraudulent claims made during the pandemic and the difficulty in identifying those responsible for the claims, the Auditor concluded that it was highly unlikely that EDD would be able to investigate more than a small fraction of the claims or to recover a significant portion of the lost funds.

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