
SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT

Senator Dave Cortese, Chair

2021 - 2022 Regular

Bill No: SB 232

Hearing Date: April 26, 2021

Author: Nielsen

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Urgency: No

Fiscal: Yes

Consultant: Daniel Rounds

SUBJECT: Employment Development Department: policies and practices

KEY ISSUE

Should the Legislature require the Employment Development Department to meet specified timelines for troubleshooting and improving its claims processing and fraud prevention processes so as to ensure efficient customer service and timely unemployment insurance benefits payment?

ANALYSIS

Existing State law:

- 1) 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 Fund and Unemployment Insurance. (Unemployment Insurance Code §301)
- 2) Establishes the Unemployment Fund as a special fund under EDD, consisting of employer contributions, interest earned upon any money in the fund, any property or securities acquired through the use of money belonging to the fund, all earnings of such property or securities and all other money received for the fund from any other source. This fund is to be used for the payment of benefits and for the payment of expenses incurred for the administration of the fund. (Unemployment Insurance Code §1521)
- 3) Establishes the Unemployment Insurance (UI) Program as a joint state/federal program, administered by the Employment Development Department 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)
- 4) 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, as specified. (Unemployment Insurance Code §1275-1282)
- 5) Defines a worker as "unemployed" in any week in which he or she meets any of the following conditions:
 - a) Any week during which he or she performs no services and with respect to which no wages are payable to him or her.

- b) Any week of less than full-time work, if the wages payable to him or her with respect to the week, when reduced by twenty-five dollars (\$25) or 25 percent of the wages payable, whichever is greater, do not equal or exceed the worker's weekly benefit.
- c) Any week for which, a worker is unable to work due to mental or physical health illness or injury, as specified.
- d) Any week during which he or she performs full-time work for five days as a juror, or as a witness under subpoena.
(Unemployment Insurance Code §1252)

- 6) Requires employers to finance the UI program by paying unemployment taxes on up to \$7,000 in wages paid to each worker. The actual tax rate varies for each employer, depending in part on the amount of UI benefits paid to former employees.
(Unemployment Insurance Code §901-1243)

This bill:

- 1) Requires that, on or before May 31, 2022, EDD identify the elements of the Benefit Modernization System IT project, commonly referred to as "BSM," that will assist in making payments timely and that may be implemented incrementally. Requires that the department prioritize implementing these elements of the BSM that it identifies.
- 2) Requires 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.
- 3) Requires 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.
- 4) Requires 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 requires that the department review first-call resolution data at least monthly and evaluate whether the department is providing effective assistance to callers.
- 5) Requires 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. Requires the department to have a contingency plan for less likely scenarios that may have a significant impact on the department's workload.
- 6) Requires 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 the department 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 requires that the report required by this subdivision shall be provided consistently with the requirements of Section 9795 of the Government Code.

- 7) Requires 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.
- 8) Requires 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.

COMMENTS

1. Context and Considerations

Context

Over the past year, the Employment Development Department has faced operational challenges related to the unprecedented demand for unemployment benefits arising as a consequence of the COVID-19 pandemic and associated measures to contain the spread of the virus. Legislation passed by the federal government in March 2020 expanded and extended traditional UI benefit programs. Subsequent federal relief bills extended the time lines for these benefits while the American Rescue Plan Act provides further extensions of benefits until September 6, 2021.

Customer service and timely processing of surging UI claims have proved challenging for EDD. As a consequence millions of UI beneficiaries have faced delays in the processing of their benefits. Additionally, the Pandemic Unemployment Assistance Program newly created by Congress has experienced significant fraudulent activity. Governor Newsom's EDD strike team¹ and the Bureau of State Audits (BSA)² have both issued assessments of the underlying issues and recommendations for operational improvements.

Recommendations from the strike team report include the following:

- Use data to monitor and improve the claimant experience

¹ Secretary Yolanda Richardson and J. Pahlka, "Employment Development Department Strike Team Detailed Assessment and Recommendations," September 16, 2020, <https://www.govops.ca.gov/wp-content/uploads/sites/11/2020/09/Assessment.pdf>.

² Bureau of State Audits, "Employment Development Department: EDD's Poor Planning and Ineffective Management Left It Unprepared to Assist Californian's Unemployed by COVID-19 Shutdowns, Report 2020-128/628.1," January 2021, <https://www.auditor.ca.gov/pdfs/reports/2020-128and628.1.pdf>; Bureau of State Audits, "Employment Development Department: Significant Weaknesses in EDD's Approach to Fraud Prevention Have Led to Billions of Dollars in Improper Payments," Report 2020-128/628.2, January 2021.

- Use data to locate and remedy claims processing bottlenecks
- Develop a means to allow claimants to track their claims through the process
- Use data to improve fraud detection processes
- Improve tracking of legislative requests

The BSA reports also include the following recommendations:

- Assess lessons learned from recent difficulties with claims surges
- Use data on claimants' calls to improve call center staff training
- Improve workload forecasting efforts
- Develop a plan for rapid operations ramp-up during economic downturns
- Determine which fraud prevention efforts can be adjusted during high demand periods
- Provide a means to resolve identity theft matters
- Provide a means to "unfreeze" the claims of legitimate claims makers caught up in fraud prevention efforts
- Centralize fraud prevention efforts under a common leadership structure to improve coordination
- Develop a means of evaluating the effectiveness of fraud prevention efforts

It is important to note that concerns about EDD's administration of the UI program antedate the pandemic. Concerns highlighted in past legislative hearings include issues related to difficulties hiring staff, outdated computer systems, and cuts to federal funding for administration of the UI program.

Considerations

This is a government accountability bill designed to ensure that EDD implement recommendations made by the auditor, better prepare for economic downturns, and improve its fraud prevention efforts. Committee members may want to note that efforts to ramp up hiring and rapidly train workers may be challenging given timelines associated with the civil service hiring processes and the complexity of both the Unemployment Insurance Code and the case law on benefits eligibility. Committee members may also want to note that EDD's budget is countercyclical and that the department has fewer resources when the economy is healthy. This necessarily impacts EDD's capacity to prepare for downturns and quickly ramp-up capacity in the event of a recession.

2. Author's Statement

According to the author, *"Millions of Californians lost their jobs and the California Unemployment Development Department (EDD) caused them more grief. "Computer glitch" caused delays in payments. An estimated \$11 to \$31 billion went to international crime rings. An estimated million Californians are still waiting to receive their benefits. The independent State Auditor created a thorough review of EDD, and provided specific recommendations to the Legislature to implement. By implementing the State Auditor's specific recommendations, SB 232 seeks to fix EDD so that unemployed Californians will receive benefits without extraordinary delay especially during an economic crisis. SB 232 would implement changes in policies and procedures, as recommended by the State Auditor, to ensure the timely issuance of unemployment benefits and prevent fraud to protect precious tax dollars for Californians in their time of need. SB 232 will require EDD to be more accountable to the Legislature so they will be more responsive to millions of Californians who depend on them in time of need."*

3. Proponent Arguments:

None received.

4. Opponent Arguments:

None received.

5. Recent and Prior Legislation

SB 390 (Laird, 2021): would require the Employment Development Department (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.

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.

SUPPORT

None on file.

OPPOSITION

None on file.

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