

VETO REQUEST – SB 799 (Portantino) – JOB KILLER



September 14, 2023

The Honorable Gavin Newsom
Governor, State of California
State Capitol
Sacramento, CA 95814

**SUBJECT: SB 799 (PORTANTINO) UNEMPLOYMENT INSURANCE: TRADE DISPUTES:
ELIGIBILITY FOR BENEFITS**

The California Chamber of Commerce and the organizations listed respectfully urge you to **VETO SB 799 (Portantino)**, which has been labeled as a **JOB KILLER**. This bill 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.

We estimate that, if **SB 799** had been in effect during the previous twelve months, it would have added approximately \$215 million to the UI Fund's debt. Additionally, we would expect it to add approximately \$30 million per week if it were in effect now. Notably, these estimates are based on present striking – but present labor dispute levels do not reflect the changes to incentives that **SB 799** will create. In other words – we believe **SB 799** is likely to encourage labor disputes, and its costs must be considered with that possibility in mind.

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>.

In addition to adding to employers' tax burden's, **SB 799** 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. **SB 799** will only add to those payments if passed.

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. 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.

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 rating can "max out" – after which their taxes cannot rise any higher. This leads to socialization of fund costs amongst other employers. In other words – in dramatic and lengthy strikes, costs of that strike will not necessarily be limited to that employer, depending on if their experience rating is already at its maximum value.

SB 799 Would Raise Compliance Issues with Federal Law – Putting Our UI Program at Risk.

Moreover, we are concerned that **SB 799** may violate federal law. Federal law governs all states' UI programs – including California's. Most notably⁶, 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,⁷ 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 799 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 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.⁸

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

⁶ 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).

⁷ 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]."

⁸ Department of Labor's memorandum summarizing the decision available at https://oui.doleta.gov/dmstree/uipl/uipl79/uipl_2479.htm.

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.⁹ 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.¹⁰

As California employers, we will be paying down the UI Fund's \$18 billion debt – including the portion caused by fraudulent claims which were paid by EDD – for years to come.¹¹ 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 799**, 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 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 respectfully urge your **VETO** of **SB 799 (Portantino)** as a **JOB KILLER**.

Sincerely,



Ben Golombek
Executive Vice President and Chief of Staff for Policy

⁹ 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.

¹⁰ Information related to the State Auditor's determination available here: <https://www.auditor.ca.gov/reports/2023-601/index.html#contents0>.

¹¹ 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.

California Chamber of Commerce
on behalf of

Acclamation Insurance Management Services
Agricultural Council of California
Alameda Chamber of Commerce
Allied Managed Care
American Council of Engineering Companies
Anaheim Chamber of Commerce
Associated General Contractors
Associated General Contractors – San Diego
Association of Western Employers
Auto Care Association
Bay Area Council
BizFed Los Angeles County Business Federation
Brea Chamber of Commerce
Building Owners and Managers Association (BOMA California)
Calforests
California Asian Pacific Chamber of Commerce
California Association of Licensed Security Agencies, Guards & Associates
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 Building Industry Association
California Business Properties Association
California Business Roundtable
California Chamber of Commerce
California Employment Law Council
California Farm Bureau
California Fuels and Convenience Alliance
California Golf Course Owners Association
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 Staffing Professionals
California Taxpayers Association
California Tire Dealers Association
California Travel Association
California Trucking Association
Can Manufacturers Institute
CAWA – Representing the Automotive Parts Industry
Coalition of Small and Disabled Veteran Businesses
Construction Employers' Association
Corona Chamber of Commerce
Dixon District Chamber of Commerce
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
Fresno Chamber of Commerce
Gateway Chambers Alliance

Greater Coachella Valley Chamber of Commerce
Greater Conejo Valley Chamber of Commerce
Greater High Desert Chamber of Commerce
Hawthorne Cat
HOLT of California
Housing Contractors of California
Huntington Beach Chamber of Commerce
Laguna Niguel Chamber of Commerce
Livermore Valley Chamber of Commerce
Lodi Chamber of Commerce
Lomita Chamber of Commerce
Los Angeles Area Chamber of Commerce
Manteca Chamber of Commerce
Murrieta/Wildomar Chamber of Commerce
NAIOP California
National Electrical Contractors Association
National Federation of Independent Business
Northern California Allied Trades
Norwalk Chamber of Commerce
Orange County Business Council
Orange County Taxpayers Association
Palos Verdes Peninsula Chamber of Commerce
Paso Robles Templeton Chamber of Commerce
Peterson CAT
 Peterson Power Systems
 Peterson Tractor
Peterson Trucks
Rancho Cordova Area Chamber of Commerce
Resource Recovery Coalition of California
Ridgecrest Chamber of Commerce
Roofing Contractors Association of California
Roseville Area Chamber of Commerce
Sacramento Metro Chamber of Commerce
Santa Ana Chamber of Commerce
Santa Barbara South Coast Chamber of Commerce
Santa Clarita Valley Chamber of Commerce
Santa Maria Valley Chamber of Commerce
Silicon Valley Leadership Group
Simi Valley Chamber of Commerce
Southwest California Legislative Council
TechNet
Torrance Area Chamber of Commerce
Tri County Chamber Alliance
Tulare Chamber of Commerce
Twenty First Century Alliance
United Chamber Advocacy Network
Vacaville Chamber of Commerce
Vista Chamber of Commerce
Walnut Creek Chamber of Commerce
West Ventura County Business Alliance
Western Carwash Association
Western Electrical Contractors Association
Western Growers Association
Yorba Linda Chamber of Commerce
Yuba-Sutter Chamber of Commerce