



Home	Bill Information	California Law	Publications	Other Resources	My Subscriptions	My Favorites
------	------------------	----------------	--------------	-----------------	------------------	--------------

AB-1695 Unemployment insurance. (2017-2018)

SHARE THIS:  

Date Published: 07/25/2017 09:00 PM

Assembly Bill No. 1695

CHAPTER 117

An act to amend Sections 329, 687.2, 802, 823, 1145, 2101.6, 13002, 13009, 13052.5 of, and to repeal Sections 938.1 and 1118 of, the Unemployment Insurance Code, relating to unemployment insurance.

[Approved by Governor July 24, 2017. Filed with Secretary of State July 24, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1695, Committee on Insurance. Unemployment insurance.

(1) Existing law establishes the Joint Enforcement Strike Force on the Underground Economy to combat tax violations and cash-pay employment, and requires the membership of the Strike Force to be composed of representatives of specified state agencies, including representatives from the Office of Criminal Justice Planning. Existing law abolishes the Office of Criminal Justice Planning as of January 1, 2004, and transfers all powers of the former Office of Criminal Justice Planning to the Office of Emergency Services.

This bill would remove the Office of Emergency Services from the membership of the Strike Force.

(2) Existing law establishes the Employment Development Department, within the Labor and Workforce Development Agency, and requires the department to be administered by the Director of Employment Development. Existing law requires an employer to file with the Director of Employment Development a report of unemployment contributions and a report of wages paid to his or her workers within a specified time. Existing law authorizes employers who employ individuals to perform domestic service to file reports of wages by telephone.

Existing law provides it is a violation of the unemployment insurance law for any person to, among other things, procure counsel advice, or coerce anyone to willfully make a false statement or representation, or to knowingly fail to disclose a material fact in order to lower or avoid any contribution or to avoid being or remaining subject to specified provisions of law.

This bill would repeal the authorization for an employer to file reports of wages by telephone. This bill would additionally provide it is a violation for any business entity, as defined, to, among other things, procure counsel advice, or coerce anyone to willfully make a false statement or representation, or to knowingly fail to disclose a material fact in order to lower or avoid any contribution or to avoid being or remaining subject to specified provisions of law. By expanding the application of an existing crime, this bill would impose a state-mandated local program.

(3) Existing law authorizes an additional penalty to be assessed if any person or entity fails to report amounts of paid remuneration for personal services and exempts assessments imposed under specified sections of law from this provision.

This bill would delete that exemption.

(4) This bill would make nonsubstantive changes to various provisions of law relating to unemployment insurance.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 329 of the Unemployment Insurance Code is amended to read:

329. (a) The director, or his or her designee, shall serve as Chairperson of the Joint Enforcement Strike Force on the Underground Economy provided for in Executive Order W-66-93. The strike force shall include, but not be limited to, representatives of the Employment Development Department, the Department of Consumer Affairs, the Department of Industrial Relations, and the Department of Insurance. Other agencies that are not part of the administration, such as the Franchise Tax Board, the State Board of Equalization, and the Department of Justice, are encouraged to participate in the strike force.

(b) The strike force shall have the following duties:

- (1) To facilitate and encourage the development and sharing of information by the participating agencies necessary to combat the underground economy.
- (2) To improve the coordination of activities among the participating agencies.
- (3) To develop methods to pool, focus, and target the enforcement resources of the participating agencies in order to deter tax evasion and maximize recoveries from blatant tax evaders and violators of cash-pay reporting laws.
- (4) To reduce enforcement costs wherever possible by eliminating duplicative audits and investigations.

(c) In addition, the strike force shall be empowered to:

- (1) Form joint enforcement teams when appropriate to utilize the collective investigative and enforcement capabilities of the participating members.
- (2) Establish committees and rules of procedure to carry out the activities of the strike force.
- (3) To solicit the cooperation and participation of district attorneys and other state and local agencies in carrying out the objectives of the strike force.
- (4) Establish procedures for soliciting referrals from the public, including, but not limited to, an advertised telephone hotline.
- (5) Develop procedures for improved information sharing among the participating agencies, such as shared automated information database systems, the use of a common business identification number, and a centralized debt collection system.
- (6) Develop procedures to permit the participating agencies to use more efficient and effective civil sanctions in lieu of criminal actions wherever possible.
- (7) Evaluate, based on its activities, the need for any statutory change to do any of the following:
 - (A) Eliminate barriers to interagency information sharing.
 - (B) Improve the ability of the participating agencies to audit, investigate, and prosecute tax and cash-pay violations.
 - (C) Deter violations and improve voluntary compliance.
 - (D) Eliminate duplication and improve cooperation among the participating agencies.
 - (E) Establish shareable information databases.
 - (F) Establish a common business identification number for use by participating agencies.
 - (G) Establish centralized, automated debt collection services for the participating agencies.
 - (H) Strengthen civil penalty procedures to allow the strike force to emphasize civil rather than criminal penalties wherever possible.

(d) The strike force shall report to the Governor and the Legislature annually during the period of its existence, by June 30, of each year, regarding its activities.

The report shall include, but not be limited to, all of the following:

- (1) The number of cases of blatant violations and noncompliance with tax and cash-pay laws identified, audited, investigated, or prosecuted through civil action or referred for criminal prosecution.
- (2) Actions taken by the strike force to publicize its activities.
- (3) Efforts made by the strike force to establish an advertised telephone hotline for receiving referrals from the public.
- (4) Procedures for improving information sharing among the agencies represented on the strike force.
- (5) Steps taken by the strike force to improve cooperation among participating agencies, reduce duplication of effort, and improve voluntary compliance.
- (6) Recommendations for any statutory changes needed to accomplish the goals described in paragraph (7) of subdivision (c).

SEC. 2. Section 687.2 of the Unemployment Insurance Code is amended to read:

687.2. Notwithstanding any other law, an employment agency, as defined in subparagraph (C) of paragraph (1) of subdivision (a) or subdivision (h) of Section 1812.501 of the Civil Code, shall not be deemed to be the employer of the domestic workers for whom it procures, offers, refers, provides, or attempts to provide work if all of the following factors exist:

(a) There is a signed contract or agreement between the employment agency and the domestic worker that contains, at a minimum, provisions that specify all of the following:

- (1) That the employment agency shall assist the domestic worker in securing work.
- (2) How the employment agency's referral fee shall be paid.
- (3) That the domestic worker is free to sign an agreement with other employment agencies and to perform domestic work for persons not referred by the employment agency.

(b) The domestic worker informs the employment agency of any restrictions on hours, location, conditions, or type of work he or she will accept and the domestic worker is free to select or reject any work opportunity procured, offered, referred, or provided by the employment agency.

(c) The domestic worker is free to renegotiate with the person hiring him or her the amount proposed to be paid for the work.

(d) The domestic worker does not receive any training from the employment agency with respect to the performance of domestic work. However, an employment agency may provide a voluntary orientation session in which the relationship between the employment agency and the domestic worker, including the employment agency's administrative and operating procedures, and the provisions of the contract or agreement between the employment agency and the domestic worker are explained.

(e) The domestic worker performs domestic work without any direction, control, or supervision exercised by the employment agency with respect to the manner and means of performing the domestic work.

The following actions exercised by an employment agency shall not be considered to be the exercise of direction, control, or supervision:

- (1) Informing the domestic worker about the services to be provided and the conditions of work specified by the person seeking to hire a domestic worker.
- (2) Contacting the person who has hired the domestic worker to determine whether that person is satisfied with the agency's referral service. This contact shall not be used to identify improvements needed in a worker's performance and to then discipline or train the worker regarding the performance of domestic work.
- (3) Informing the domestic worker of the time during which new referrals are available.
- (4) Requesting the domestic worker to inform the employment agency if the domestic worker is unable to perform the work accepted.

(f) The employment agency does not provide tools, supplies, or equipment necessary to perform the domestic work.

(g) The domestic worker is not obligated to pay the employment agency's referral fee, and the employment agency is not obligated to pay the domestic worker if the person for whom the services were performed fails or refuses to pay for the domestic work.

(h) Payments for domestic services are made directly to either the domestic worker or to the employment agency. Payments made directly to the employment agency shall be deposited into a trust account until payment can be made to the domestic worker. Payments made to the domestic worker by the employment agency shall not be paid from any of the employment agency's business accounts.

(i) The relationship between a domestic worker and the person for whom the domestic worker performs services may only be terminated by either of those parties and not by the employment agency that referred the domestic worker. However, an employment agency may decline to make additional referrals to a particular domestic worker, and the domestic worker may decline to accept a particular referral.

SEC. 3. Section 802 of the Unemployment Insurance Code is amended to read:

802. (a) The State of California, any other public entity (as defined by Section 605), or any Indian tribe as described by Section 3306(u) of Title 26 of the United States Code, or any subdivision, subsidiary, or business enterprise wholly owned by that Indian tribe, for which services are performed that do constitute employment under Section 605 may, in lieu of the contributions required of employers, elect to finance its liability for unemployment compensation benefits, extended duration benefits, and federal-state extended benefits with respect to those services by any method of financing coverage that is permitted under Section 803.

(b) An election under Section 803 for financing coverage under this section shall take effect with respect to services performed from and after the first day of the calendar quarter in which the election is filed with the director, and shall continue in effect for not less than two full calendar years, unless the election is canceled by the director pursuant to paragraph (2) of subdivision (h) of Section 803. Thereafter the election under Section 803 may be terminated as of January 1 of any calendar year only if the state or other public entity or Indian tribe, on or before the 31st day of January of that year, has filed with the director a written application for termination. The director may for good cause waive the requirement that a written application for termination shall be filed on or before the 31st day of January. Financing coverage by an election under Section 803 is not valid if it would establish any different method of financing coverage for any calendar quarter where an election for coverage has also been made by the state or other public entity or Indian tribe under any provision of Article 4 (commencing with Section 701) of this chapter.

(c) The director may require from the state and other public entity and Indian tribe, including an agent thereof, employment, financial, statistical, or other information and reports, properly verified, as may be deemed necessary by the director to carry out his or her duties under this division, which shall be filed with the director at the time and in the manner prescribed by him or her.

(d) The director may tabulate and publish information obtained pursuant to this section in statistical form and may divulge the name of the state or other public entity or Indian tribe.

(e) The state and other public entity and Indian tribe, including an agent thereof, shall keep any work records as may be prescribed by the director for the proper administration of this division.

(f) Except as inconsistent with the provisions of this section, the provisions of this division and authorized regulations apply to any matter arising pursuant to this section.

SEC. 4. Section 823 of the Unemployment Insurance Code is amended to read:

823. (a) For the purpose of payment by each school employer of all or part of the charges for unemployment compensation benefits, fees, assessments, interest, penalties, billings, notices, and other expenses of unemployment insurance for school employees pursuant to this part, moneys budgeted pursuant to subdivisions (b) and (c) of this section shall be remitted by the school employer or on the school employer's behalf by the county auditor to the Treasurer pursuant to this article, and shall be deposited in the School Employees Fund.

(b) (1) For each fiscal year, except as provided in subdivision (c), each school employer shall budget and remit on or before the last day of the calendar month following the close of each calendar quarter to the Treasurer for deposit in the School Employees Fund in the State Treasury an amount determined by multiplying the contribution rate for the fiscal year by the total wages, including taxable wages as well as wages which would be taxable except for the limitation on taxable wages provided under Section 930, but excluding, to the extent permitted by federal law, wages paid to any individual to the extent that federal law provides for reimbursement to the State of California for all benefits paid from the Unemployment Fund to the individual based on the wages.

The administrator shall, not later than March 31 each year, notify all school employers participating in the School Employees Fund of the contribution rate for the succeeding fiscal year.

(2) The contribution rate for the fiscal year beginning July 1, 1988, and for each subsequent fiscal year shall be two times the amount disbursed for claims management fees, unemployment insurance benefit charges, and School Employees Fund administrative expenditures from the School Employees Fund during the 12-month period ending December 31 and

immediately preceding the fiscal year for which the rate is to be effective, less the amount in the School Employees Fund on that December 31, with the resulting figure divided by total wages as described in paragraph (1) for the 12-month period ending June 30 and immediately preceding that December 31, and then rounded to the nearest one-hundredth of 1 percent. In no event shall the contribution rate be less than five one-hundredths of 1 percent.

(c) If the administrator finds that the ability of the School Employees Fund to meet its estimated obligations promptly when due will become endangered, he or she shall increase the contribution rate otherwise provided by this section to a level estimated to be needed to protect the solvency of the fund, except that the rate shall not be increased to more than three-tenths of 1 percent. If the administrator finds that the School Employees Fund balance is in excess of an adequate reserve to meet its estimated obligations promptly when due, he or she shall, after consultation with the fund's School Advisory Committee, decrease the contribution rate otherwise provided by this section, except that the rate shall not be decreased to less than one-tenth of 1 percent. The administrator shall notify all school employers participating in the fund of any increased or decreased contribution rate under this authority.

SEC. 5. Section 938.1 of the Unemployment Insurance Code is repealed.

SEC. 6. Section 1118 of the Unemployment Insurance Code is repealed.

SEC. 7. Section 1145 of the Unemployment Insurance Code is amended to read:

1145. (a) If the director finds that a person or business entity knowingly advises another person or business entity to violate any provision of this chapter, the director may assess the greater of:

(1) A penalty of five thousand dollars (\$5,000).

(2) Ten percent of the combined amount of any resulting underreporting of contribution, penalties, and interest required by law.

(b) For purposes of this section, "business entity" means a partnership, corporation, association, limited liability company, or Indian tribe, as described in Section 3306(u) of Title 26 of the United States Code, or any other legal entity.

SEC. 8. Section 2101.6 of the Unemployment Insurance Code is amended to read:

2101.6. (a) It is a violation of this chapter for any person or business entity to procure, counsel, advise, or coerce anyone to willfully make a false statement or representation, or to knowingly fail to disclose a material fact in order to lower or avoid any contribution or to avoid being or remaining subject to this division.

(b) It is a violation of this chapter for any person or business entity to willfully aid or assist anyone in making a false statement or representation, or in knowingly failing to disclose a material fact, in order to lower or avoid any contribution, or to avoid being or remaining subject to this division.

(c) For purposes of this section, "business entity" means a partnership, corporation, association, limited liability company, or Indian tribe, as described in Section 3306(u) of Title 26 of the United States Code, or any other legal entity.

SEC. 9. Section 13002 of the Unemployment Insurance Code is amended to read:

13002. The following provisions of this code shall apply to any amount required to be deducted, reported, and paid to the department under this division:

(a) Sections 301, 305, 306, 310, 311, 317, and 318, relating to general administrative powers of the department.

(b) Sections 403 to 413, inclusive, Section 1336, and Chapter 8 (commencing with Section 1951) of Part 1 of Division 1, relating to appeals and hearing procedures.

(c) Sections 1110.6, 1111, 1111.5, 1112, 1112.1, 1112.5, 1113, 1113.1, 1114, 1115, 1116, and 1117, relating to the making of returns or the payment of reported contributions.

(d) Article 8 (commencing with Section 1126) of Chapter 4 of Part 1 of Division 1, relating to assessments.

(e) Article 9 (commencing with Section 1176), except Section 1176, of Chapter 4 of Part 1 of Division 1, relating to refunds and overpayments.

(f) Article 10 (commencing with Section 1206) of Chapter 4 of Part 1 of Division 1, relating to notice.

(g) Article 11 (commencing with Section 1221) of Chapter 4 of Part 1 of Division 1, relating to administrative appellate review.

(h) Article 12 (commencing with Section 1241) of Chapter 4 of Part 1 of Division 1, relating to judicial review.

(i) Chapter 7 (commencing with Section 1701) of Part 1 of Division 1, relating to collections.

(j) Chapter 10 (commencing with Section 2101) of Part 1 of Division 1, relating to violations.

SEC. 10. Section 13009 of the Unemployment Insurance Code is amended to read:

13009. "Wages" means all remuneration, other than fees paid to a public official, for services performed by an employee for his or her employer, including all remuneration paid to a nonresident employee for services performed in this state, and the cash value of all remuneration paid in any medium other than cash, except as provided by this section. "Wages" includes tips received by an employee in the course of his or her employment. The wages shall be deemed to be paid at the time a written statement including tips is furnished to the employer pursuant to Section 13055 or, if no statement including those tips is so furnished, at the time received. "Wages" includes compensation, that is deductible under Section 162 of the Internal Revenue Code, paid to a member of a limited liability company filing a federal corporate income tax return.

"Wages" shall not include remuneration paid under any of the following conditions:

(a) For agricultural labor, as defined in subdivision (g) of Section 3121 of the Internal Revenue Code.

(b) For domestic service in a private home, local college club, or local chapter of a college fraternity or sorority.

(c) For service not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for that service is fifty dollars (\$50) or more and the service is performed by an individual who is regularly employed by the employer to perform the service. For purposes of this subdivision, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if either of the following conditions is met:

(1) On each of some 24 days during the quarter, the individual performs for the employer for some portion of the day service not in the course of the employer's trade or business.

(2) The individual was regularly employed, as determined under paragraph (1), by the employer in the performance of the service during the preceding calendar quarter.

(d) For services by a citizen or resident of the United States for a foreign government or an international organization.

(e) For services performed by a nonresident alien individual as designated by regulations prescribed by the department.

(f) For services performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his or her ministry or by a member of a religious order in the exercise of duties required by the order.

(g) (1) For services performed by an individual under the age of 18 years in delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution.

(2) For services performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by him or her at a fixed price, his or her compensation being based on the retention of the excess of the price over the amount at which the newspapers or magazines are charged to him or her whether or not he or she is guaranteed a minimum amount of compensation for the services, or is entitled to be credited with the unsold newspapers or magazines turned back.

(h) For services not in the course of the employer's trade or business, to the extent paid in any medium other than cash.

(i) To, or on behalf of, an employee or his or her beneficiary under any of the following situations:

(1) From or to a trust which is exempt from tax under Section 17631 of the Revenue and Taxation Code at the time of payment, unless the payment is made to an employee of the trust as remuneration for services rendered as an employee and not as a beneficiary of the trust.

(2) Under or to an annuity plan which, at the time of payment, is a plan qualified pursuant to Chapter 5 (commencing with Section 17501) of Part 10 of Division 2 of the Revenue and Taxation Code.

(3) Under or to a bond purchase plan which, at the time of payment, is a bond purchase plan qualified pursuant to Chapter 5 (commencing with Section 17501) of Part 10 of Division 2 of the Revenue and Taxation Code.

(4) For a payment which qualifies for deduction by an employee pursuant to Section 219 of the Internal Revenue Code if, at the time of payment, it is reasonable to believe that the employee will be entitled to a deduction under that section for payment.

(5) Under a cafeteria plan (within the meaning of Section 125 of the Internal Revenue Code).

(j) To a master, officer, or any other seaman who is a member of a crew on a vessel engaged in foreign, coastwise, intercoastal, interstate, or noncontiguous trade.

(k) Pursuant to any provision of law other than Section 5(c) of the Peace Corps Act (22 U.S.C. Sec. 2504(c)) or 6(1) of the Peace Corps Act (22 U.S.C. Sec. 2505(1)), for service performed as a volunteer or volunteer leader within the meaning of that act.

(l) In the form of group-term life insurance on the life of an employee.

(m) To or on behalf of an employee, and to the extent that, at the time of the payment of remuneration it is reasonable to believe that a corresponding deduction is allowable for moving expenses pursuant to Article 6 (commencing with Section 17201) of Chapter 3 of Part 10 of Division 2 of the Revenue and Taxation Code.

(n) (1) As tips in any medium other than cash.

(2) As cash tips to an employee in any calendar month in the course of his or her employment by an employer, unless the amount of the cash tips is twenty dollars (\$20) or more.

(o) For service performed by an individual on a boat engaged in catching fish or other forms of aquatic animal life under an arrangement with the owner or operator of the boat pursuant to which all of the following apply:

(1) The individual does not receive any cash remuneration, other than as provided in paragraph (2).

(2) The individual receives a share of the boat's (or the boats' in the case of a fishing operation involving more than one boat) catch of fish or other forms of aquatic animal life or a share of the proceeds from the sale of the catch.

(3) The amount of the individual's share depends on the amount of the boat's (or the boats' in the case of a fishing operation involving more than one boat) catch of fish or other forms of aquatic animal life.

This subdivision shall apply only where the operating crew of the boat (or each boat from which the individual receives a share in the case of a fishing operation involving more than one boat) is normally made up of fewer than 10 individuals.

(p) For any medical care reimbursement made to, or for the benefit of, an employee under a self-insured medical reimbursement plan pursuant to Section 105(h)(6) of the Internal Revenue Code.

(q) To, or on behalf of, an employee to the extent not includable in gross income pursuant to Section 13006.

(r) For services to which Section 633 applies.

SEC. 11. Section 13052.5 of the Unemployment Insurance Code is amended to read:

13052.5. (a) In addition to the penalty imposed by Section 19183 of the Revenue and Taxation Code (relating to failure to file information returns), if any person, or entity fails to report amounts paid as remuneration for personal services as required under Section 13050 of this code or Section 6041A of the Internal Revenue Code on the date prescribed thereof (determined with regard to any extension of time for filing), that person or entity may be liable for a penalty determined under subdivision (b).

(b) For purposes of subdivision (a), the amount determined under this subdivision is the maximum rate under Section 17041 of the Revenue and Taxation Code multiplied by the unreported amounts paid as remuneration for personal services.

(c) The penalty imposed by subdivision (a) shall be assessed against that person or entity required to file a return under Section 13050 of this code or Section 6041A of the Internal Revenue Code.

(d) The penalty imposed under this section shall be in lieu of the penalty imposed under Section 19175 of the Revenue and Taxation Code. In the event that a penalty is imposed under both this section and Section 19175 of the Revenue and Taxation Code, only the penalty imposed under this section shall apply.

(e) The penalty imposed by this section may be assessed in lieu of, or in addition to, the penalty imposed by Section 13052 with respect to the failure to furnish a withholding statement to an employee.

SEC. 12. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.