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AB-1355 Employment: benefits: electronic notice and documents. (2023-2024)

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Assembly Bill No. 1355

CHAPTER 277

An act to amend, repeal, and add Section 19853 of the Revenue and Taxation Code, and to amend, repeal, and add Section 1089 of the Unemployment Insurance Code, relating to employment.

[Approved by Governor September 30, 2023. Filed with Secretary of State September 30, 2023.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1355, Valencia. Employment: benefits: electronic notice and documents.

(1) The Personal Income Tax Law allows various credits against the taxes imposed by that law, including certain credits that are allowed in modified conformity to credits allowed by federal income tax laws. Federal income tax laws allow a refundable earned income tax credit for certain low-income individuals who have earned income and who meet certain other requirements.

The Personal Income Tax Law, in modified conformity with federal income tax laws, allows an earned income credit against personal income tax, and a payment in excess of that credit amount, to an eligible individual that is equal to that portion of the earned income tax credit allowed by federal law as determined by the earned income tax credit adjustment factor as set forth in the annual Budget Act.

Existing law, the Earned Income Tax Credit Information Act, requires an employer, as defined, to notify all employees that they may be eligible for specified income tax filing assistance programs and state and federal antipoverty tax credits, including the federal and California earned income tax credits by handing specified documents directly to the employee or mailing the specified documents to the employee's last known address twice annually, as provided. Existing law authorizes the 2nd notification to be sent electronically.

This bill, until January 1, 2029, would authorize the employer to provide the first above-described notification via email to an employee's email account instead of directly handing or mailing the document to the employee if the employee affirmatively, and in writing or by electronic acknowledgment, opts into receipt of electronic statements or materials. The bill would prohibit the employer from discharging or taking other adverse action against an employee who does not opt into receipt of electronic statements or materials.

(2) Existing law prescribes a system for the payment of benefits to unemployed individuals who meet specified eligibility criteria. Existing law requires an employer to supply, pursuant to authorized regulations, each individual at the time they become unemployed with copies of printed statements or materials relating to claims for benefits. Existing law provides that the failure of an employer to comply with these provisions is a misdemeanor.

This bill, until January 1, 2029, would authorize the employer to provide the above-described notification concerning statements and materials for benefits via email to an employee's email account, if the employee affirmatively, and in writing, by email, or by some form of electronic acknowledgment, opts into receipt of electronic statements or materials, as prescribed. The bill would

prohibit the employer from discharging or taking other adverse action against an employee who does not opt into receipt of electronic statements or materials. By expanding the scope of a crime, the bill would impose a state-mandated local program.

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 19853 of the Revenue and Taxation Code is amended to read:

19853. (a) (1) An employer shall notify all employees that they may be eligible for VITA, CalFile, and state and federal antipoverty tax credits, including the federal and the California EITC, within one week before or after, or at the same time, that the employer provides an annual wage summary, including, but not limited to, a Form W-2 or a Form 1099, to any employee.

(2) An employer shall send a second notification to all employees during the month of March of the same year in which the employer notified employees pursuant to paragraph (1).

(b) (1) The state departments and agencies that serve those who may qualify for VITA or state and federal antipoverty tax credits, including the federal and the California EITC, as defined in subdivision (e) of Section 19852, shall notify their program recipients that they may be eligible for VITA, CalFile, and state and federal antipoverty tax credits, including the federal and the California EITC, at least once per year during the months of January through March, or, alternatively, shall provide both notifications during a regularly scheduled contact with a recipient by telephone, mail, or electronic communication, or by an in-person communication.

(2) State departments or agencies that serve those who may qualify for VITA or state and federal antipoverty tax credits, including the federal and the California EITC, as defined in subdivision (e) of Section 19852, and that do not directly communicate with persons or households with persons who may qualify for VITA, CalFile, and state and federal antipoverty tax credits, including the federal and the California EITC, may communicate indirectly through agencies, districts, or regulated entities that serve eligible persons or households with eligible persons.

(3) State departments or agencies that serve those who may qualify for VITA or state and federal antipoverty tax credits, including the federal EITC and the California EITC, as defined in subdivision (e) of Section 19852, are encouraged to develop the most effective method to provide notice to recipients of eligibility for VITA, CalFile, and state and federal antipoverty tax credits, including the federal and the California EITC, as long as the notice contains substantially the same language as the notice described in Section 19854.

(c) (1) The employer shall provide the notifications required by subdivision (a) by handing them directly to the employee or mailing them to the employee's last known address.

(2) Any notice created by the employer shall include substantially the same language as the notice described in Section 19854.

(3) The notification required by paragraph (2) of subdivision (a) may be sent electronically.

(d) The employer shall not satisfy the notification required by subdivision (a) by posting a notice on an employee bulletin board or sending it through office mail. However, these methods of notification are encouraged to help inform all employees of VITA, CalFile, and state and federal antipoverty tax credit eligibility, including the federal and the California EITC.

(e) (1) Notwithstanding subdivisions (c) and (d), the employer may provide the notification required by paragraph (1) of subdivision (a) via email to an email account of the employee's choosing in PDF, JPEG, or other digital image file type format, if an employee affirmatively, and in writing or by electronic acknowledgment, opts into receipt of electronic statements or materials.

(2) An employer may not discharge an employee or in any manner discriminate, retaliate, or take any adverse action against an employee who does not affirmatively, in writing or by electronic acknowledgment, opt into receipt of electronic statements or materials.

(f) The amendments made to this section by Section 3 of Chapter 294 of the Statutes of 2016 shall apply to notices furnished on or after January 1, 2017.

(g) The amendments made to this section by Section 10 of Chapter 55 of the Statutes of 2023 shall apply to notices furnished on or after January 1, 2024.

(h) The amendments made to this section by the act adding this subdivision shall apply to notices furnished on or after January 1, 2024.

(i) This section shall remain in effect only until January 1, 2029, and as of that date is repealed.

SEC. 2. Section 19853 is added to the Revenue and Taxation Code, to read:

19853. (a) (1) An employer shall notify all employees that they may be eligible for VITA, CalFile, and state and federal antipoverty tax credits, including the federal and the California EITC, within one week before or after, or at the same time, that the employer provides an annual wage summary, including, but not limited to, a Form W-2 or a Form 1099, to any employee.

(2) An employer shall send a second notification to all employees during the month of March of the same year in which the employer notified employees pursuant to paragraph (1).

(b) (1) The state departments and agencies that serve those who may qualify for VITA or state and federal antipoverty tax credits, including the federal and the California EITC, as defined in subdivision (e) of Section 19852, shall notify their program recipients that they may be eligible for VITA, CalFile, and state and federal antipoverty tax credits, including the federal and the California EITC, at least once per year during the months of January through March, or, alternatively, shall provide both notifications during a regularly scheduled contact with a recipient by telephone, mail, or electronic communication, or by an in-person communication.

(2) State departments or agencies that serve those who may qualify for VITA or state and federal antipoverty tax credits, including the federal and the California EITC, as defined in subdivision (e) of Section 19852, and that do not directly communicate with persons or households with persons who may qualify for VITA, CalFile, and state and federal antipoverty tax credits, including the federal and the California EITC, may communicate indirectly through agencies, districts, or regulated entities that serve eligible persons or households with eligible persons.

(3) State departments or agencies that serve those who may qualify for VITA or state and federal antipoverty tax credits, including the federal EITC and the California EITC, as defined in subdivision (e) of Section 19852, are encouraged to develop the most effective method to provide notice to recipients of eligibility for VITA, CalFile, and state and federal antipoverty tax credits, including the federal and the California EITC, as long as the notice contains substantially the same language as the notice described in Section 19854.

(c) (1) The employer shall provide the notifications required by subdivision (a) by handing them directly to the employee or mailing them to the employee's last known address.

(2) Any notice created by the employer shall include substantially the same language as the notice described in Section 19854.

(3) The notification required by paragraph (2) of subdivision (a) may be sent electronically.

(d) The employer shall not satisfy the notification required by subdivision (a) by posting a notice on an employee bulletin board or sending it through office mail. However, these methods of notification are encouraged to help inform all employees of VITA, CalFile, and state and federal antipoverty tax credit eligibility, including the federal and the California EITC.

(e) The amendments made to this section by Section 3 of Chapter 294 of the Statutes of 2016 shall apply to notices furnished on or after January 1, 2017.

(f) The amendments made to this section by Section 10 of Chapter 55 of the Statutes of 2023 shall apply to notices furnished on or after January 1, 2024.

(g) This section shall become operative on January 1, 2029.

SEC. 3. Section 1089 of the Unemployment Insurance Code is amended to read:

1089. (a) Each employer shall post and maintain, in places readily accessible to individuals in the employer's service, printed statements concerning benefit rights and other matters as may be prescribed by authorized regulations.

(b) Each employer shall, pursuant to authorized regulations, supply each individual at the time they become unemployed with copies of printed statements or materials relating to claims for benefits, or if the individual opts into receipt of electronic statements or materials, electronic statements or materials relating to claims for benefits.

(c) Each employer shall immediately notify each employee of any change in the employee's relationship with that employer.

(d) Printed statements shall be supplied by the director to each employer without cost to them.

(e) (1) The employer may provide the notification required by subdivision (a) or (b) via email to an email account of the employee's choosing in PDF, JPEG, or other digital image file type format, if an employee affirmatively, and in writing, by email, or by some form of electronic acknowledgment, opts into receipt of electronic statements or materials.

(2) (A) In the case of electronic acknowledgment, the acknowledgment form shall do all of the following:

(i) Fully explain that the employee is agreeing to electronic delivery of the notification required by this section.

(ii) Provide the employee with information about how they can revoke consent to electronic receipt.

(iii) Create a record of the employee's agreement to electronic delivery of the notification required by this section.

(B) The employee may revoke the agreement at any time in writing, by email, or by some form of electronic acknowledgment.

(f) An employer may not discharge an employee or in any manner discriminate, retaliate, or take any adverse action against an employee who does not affirmatively, in writing or by electronic acknowledgment, opt into receipt of electronic statements or materials.

(g) Failure to comply with this section by an employer shall constitute a misdemeanor.

(h) This section shall remain in effect only until January 1, 2029, and as of that date is repealed.

SEC. 4. Section 1089 is added to the Unemployment Insurance Code, to read:

1089. (a) Each employer shall post and maintain in places readily accessible to individuals in their service such printed statements concerning benefit rights and other matters as may be prescribed by authorized regulations. Each employer shall, pursuant to authorized regulations, supply each individual at the time they become unemployed with copies of printed statements or materials relating to claims for benefits. Each employer shall immediately notify each employee of any change in their relationship with the employer. Failure to comply with this section by an employer shall constitute a misdemeanor. Such printed statements shall be supplied by the director to each employer without cost to them.

(b) This section shall become operative on January 1, 2029.

SEC. 5. 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.