

Introduced by Senators Romero and Dutton

February 18, 2010

An act to amend Section 634.5 of the Unemployment Insurance Code, relating to unemployment insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 1211, as introduced, Romero. Unemployment insurance: benefits: eligibility: elected officials.

Existing law requires every employer, with specified exceptions, to pay contributions to the Unemployment Fund at specified rates, for the purpose of funding unemployment insurance benefits for eligible unemployed workers. Existing law defines "employment" for those purposes and, with respect to certain public entities, exempts from that definition certain services performed by an individual in the exercise of his or her duties as an elected official.

This bill would specify that a state or local government elected official is prohibited from receiving unemployment compensation benefits under those provisions based on his or her income derived from employment as an elected official.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 634.5 of the Unemployment Insurance
- 2 Code is amended to read:
- 3 634.5. Notwithstanding any other provision of law, no provision
- 4 excluding service from "employment" shall apply to any entity
- 5 defined by Section 605 or to any nonprofit organization described

1 by Section 608, except as provided by this section. With respect
2 to any entity defined by Section 605 or any nonprofit organization
3 described by Section 608, “employment” does not include service
4 excluded under Sections 629, 631, 635, and 639 to 648, inclusive,
5 or service performed in any of the following:

6 (a) In the employ of either of the following:

7 (1) A church or convention or association of churches.

8 (2) An organization which is operated primarily for religious
9 purposes and which is operated, supervised, controlled, or
10 principally supported by a church or convention or association of
11 churches.

12 (b) By a duly ordained, commissioned, or licensed minister of
13 a church in the exercise of his or her ministry or by a member of
14 a religious order in the exercise of duties required by the order.

15 (c) In the employ of any entity defined by Section 605, if the
16 service is performed by an individual in the exercise of his or her
17 duties as any of the following:

18 (1) An elected official. *A state or local government elected*
19 *official is prohibited from receiving unemployment compensation*
20 *benefits under this chapter based on his or her, income derived*
21 *from employment as an elected official.*

22 (2) A member of a legislative body or a member of the judiciary
23 of a state or a political subdivision of a state.

24 (3) A member of the tribal council of an Indian tribe as described
25 by subsection (u) of Section 3306 of Title 26 of the United States
26 Code.

27 (4) A member of a State National Guard or Air National Guard.

28 (5) An employee serving on a temporary basis in case of fire,
29 storm, snow, earthquake, flood, or other similar emergency.

30 (6) An employee in a position that, under or pursuant to state
31 or tribal law, is designated as either of the following:

32 (A) A major nontenured policymaking or advisory position.

33 (B) A policymaking or advisory position, the performance of
34 the duties of which ordinarily does not require more than eight
35 hours per week.

36 (7) (A) Except as otherwise provided in subparagraph (B), an
37 election official or election worker if the amount of remuneration
38 reasonably expected to be received by the individual during the
39 calendar year for services as an election official or election worker
40 is less than one thousand dollars (\$1,000).

1 (B) This paragraph shall not take effect unless and until the
2 service is excluded from service to which paragraph (1) of
3 subdivision (a) of Section 3309 of Title 26 of the United States
4 Code applies by reason of exemption under subdivision (b) of
5 Section 3309 of that act.

6 (d) By an individual receiving rehabilitation or remunerative
7 work in a facility conducted for the purpose of carrying out a
8 program of either:

9 (1) Rehabilitation for individuals whose earning capacity is
10 impaired by age or physical or mental deficiency or injury.

11 (2) Providing remunerative work for individuals who because
12 of their impaired physical or mental capacity cannot be readily
13 absorbed in the competitive labor market.

14 (e) By an individual receiving work relief or work training as
15 part of an unemployment work relief or work training program
16 assisted or financed in whole or in part by any of the following:

17 (1) A federal agency.

18 (2) An agency of a state or a political subdivision thereof.

19 (3) An Indian tribe, as described by subsection (u) of Section
20 3306 of Title 26 of the United States Code.

21 (f) By a ward or an inmate of a custodial or penal institution
22 pursuant to Article 1 (commencing with Section 2700), Article 4
23 (commencing with Section 2760), and Article 5 (commencing with
24 Section 2780) of Chapter 5 of, and Article 1 (commencing with
25 Section 2800) of Chapter 6 of, Title 1 of Part 3 of the Penal Code,
26 Section 4649 and Chapter 1 (commencing with Section 4951) of
27 Part 4 of Division 4 of the Public Resources Code, and Sections
28 883, 884, and 1768 of the Welfare and Institutions Code.

29 (g) By an individual under the age of 18 years in the delivery
30 or distribution of newspapers or shopping news, not including
31 delivery or distribution to any point for subsequent delivery or
32 distribution.

33 (h) By an individual in the sale of newspapers or magazines to
34 ultimate consumers, under an arrangement that includes the
35 following conditions:

36 (1) The newspapers or magazines are to be sold by the individual
37 at a fixed price.

38 (2) The individual's compensation is based on retention of the
39 excess of the price over the amount at which the newspapers or
40 magazines are charged to the individual, whether or not he or she

1 is guaranteed a minimum amount of compensation for the service
2 or is entitled to be credited with the unsold newspapers or
3 magazines that he or she returns.

4 (i) (1) Except as otherwise provided in paragraph (2), as a
5 substitute employee whose employment does not increase the size
6 of the employer's normal workforce, whose employment is
7 required by law, and whose employment as a substitute employee
8 does not occur on more than 60 days during the base period.

9 (2) This subdivision shall not take effect unless and until the
10 United States Secretary of Labor, or his or her designee, finds that
11 this subdivision is in conformity with federal requirements.

12 (j) As a participant in a national service program carried out
13 using assistance provided under Section 12571 of Title 42 of the
14 United States Code.