

Senate Bill No. 1211

CHAPTER 222

An act to amend Section 1379 of, and to add Section 1375.7 to, the Unemployment Insurance Code, relating to unemployment insurance.

[Filed with Secretary of State September 13, 2010.]

LEGISLATIVE COUNSEL'S DIGEST

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

Under existing law, any person who receives an overpayment of unemployment compensation benefits is liable for the amount overpaid. Existing law also permits the Director of Employment Development to take specified steps to recover overpayment of unemployment compensation benefits and unemployment compensation disability benefits, including filing a civil action against the liable person within one year after certain actions have been taken. Existing law also permits the director to initiate summary judgment proceedings against a liable person to recover overpayment of unemployment compensation benefits due to fraud, misrepresentation, or willful nondisclosure on the part of the recipient.

This bill would require the Director of Employment Development to find an overpayment of unemployment benefits where the individual who received them was an elected official whose claim was based solely on income received as an elected official. This bill would permit the director, in addition to filing a civil action against the liable person for the overpayment amount, to initiate summary judgment proceedings against such a person to recover these overpayment amounts, as provided.

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 require the Employment Development Department, by July 1, 2011, to adopt regulations to clarify that the above-described provision governing eligibility for unemployment compensation excludes elected officials from coverage under the unemployment insurance compensation system for purposes of benefit eligibility. The bill would also require the department to revise language in a specified California employment guide with regard to the exclusion of elected officials from unemployment insurance coverage and benefit eligibility, as specified.

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

SECTION 1. Section 1375.7 is added to the Unemployment Insurance Code, to read:

1375.7. The director shall find that an individual has been overpaid unemployment benefits where the individual was an elected official and the individual's unemployment insurance claim was based on income solely derived from his or her employment as an elected official. An individual who is liable pursuant to this section shall not be eligible for waiver of the overpayment pursuant to Section 1375. In the event of an unemployment insurance claim based on more than one source of income, if the base period of a new claim includes any wage credits earned as an elected official pursuant to Section 634.5, the individual shall be liable for any amount of unemployment insurance benefits overpaid as a result of a recomputation to remove the base period wage credits earned as an elected official. In that event, the provisions of Section 1375 shall not apply to this section with respect to the wage credits earned as an elected official.

SEC. 2. Section 1379 of the Unemployment Insurance Code is amended to read:

1379. The director, subject to this article, may do any or all of the following in the recovery of overpayments of unemployment compensation benefits:

(a) File a civil action against the liable person for the recovery of the amount of the overpayment within one year after any of the following, or, in cases where the individual has been overpaid benefits due to fraud, misrepresentation, or nondisclosure as described in Section 1375.1, or where the director has found an overpayment pursuant to Section 1375.7, within three years of any of the following:

(1) The mailing or personal service of the notice of overpayment determination if the person affected does not file an appeal to an administrative law judge.

(2) The mailing of the decision of the administrative law judge if the person affected does not initiate a further appeal to the appeals board.

(3) The date of the decision of the appeals board.

(b) Initiate proceedings for a summary judgment against the liable person. However, this subdivision applies only where the director has found, pursuant to Section 1375, that the overpayment may not be waived because it was due to fraud, misrepresentation, or willful nondisclosure on the part of the recipient or where the director has found an overpayment pursuant to Section 1375.7. The director may, not later than three years after the overpayment became final, file with the clerk of the proper court in the county from which the overpayment of benefits was paid or in the county in which the claimant resides, a certificate containing all of the following:

(1) The amount due, including any assessment made under Section 1375.1, plus interest from the date that the initial determination of overpayment was made pursuant to Section 1376.

(2) A statement that the director has complied with all the provisions of this article prior to the filing of the certificate.

(3) A request that judgment be entered against the liable person in the amount set forth in the certificate.

The clerk, immediately upon the filing of the certificate, shall enter a judgment for the State of California against the liable person in the amount set forth in the certificate.

For the purposes of this subdivision only, an overpayment is final and due and payable after any of the following:

(A) The liable person has not filed an appeal pursuant to Section 1377.

(B) The liable person has filed an appeal to the administrative law judge and a decision of an administrative law judge has become final.

(C) The liable person has filed an appeal to the appeals board and the decision of the appeals board has become final because the liable person has not sought judicial review within the six-month period provided by Section 410.

(c) Reduce or vacate a summary judgment by filing a certificate to that effect with the clerk of the proper court.

(d) Offset the amount of the overpayment received by the liable person against any amount of benefits to which he or she may become entitled under this division within six years of the date of the mailing or personal service of the notice of overpayment determination.

SEC. 3. Not later than July 1, 2011, the Employment Development Department shall adopt regulations to clarify that paragraph (1) of subdivision (c) of Section 634.5 of the Unemployment Insurance Code excludes elected officials from coverage under the unemployment insurance compensation system for purposes of benefit eligibility. The department shall also revise current language in the California Employer's Guide to make clear that an elected official is not eligible to collect unemployment insurance benefits based on income earned from his or her service as an elected official.