

AMENDED IN ASSEMBLY APRIL 25, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 615

Introduced by Assembly Member Bocanegra

February 20, 2013

An act to amend ~~Section~~ *Sections 1142 and 1253.3 of, and to repeal Sections 1451, 1452, 1453, and 1454 of,* the Unemployment Insurance Code, relating to unemployment insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 615, as amended, Bocanegra. Unemployment insurance: classified employees.

Existing law provides for the payment of unemployment compensation benefits and extended duration benefits to eligible persons who meet specified requirements. Existing law prohibits the payment of unemployment benefits to education employees of a public entity, as defined, including teachers, researchers, and administrators for the period between 2 academic years when there is a reasonable assurance that the employee will perform his or her regular services in the subsequent academic year, except as specified. Existing law similarly prohibits the payment of unemployment benefits to specified education employees of a public entity, other than teachers, researchers, or administrators between 2 academic years, except as specified, but provides a procedure for this 2nd category of educational employees, under certain conditions, to seek payment of retroactive unemployment benefits for the period between 2 academic years. *Existing law requires specified notice regarding reasonable assurance of employment in the following academic term be sent to employees before the end of the current academic term. Existing law also authorizes payment of*

unemployment insurance benefits, using funds from the Department of Education, to the 2nd category of educational employees at specified schools between academic terms in circumstances where benefits would otherwise be denied.

This bill would delete the prohibition on the payment of unemployment benefits to education employees, other than teachers, researchers, and administrators, as specified, between 2 academic years and would make conforming changes, *including deleting the notice of reasonable assurance of employment requirements regarding these employees and eliminating the provisions for payment of unemployment benefits to these employees at the specified schools.*

Because this bill would expand the categories of people who could receive benefits from the Unemployment Insurance Fund, a continuously-appropriated fund, it would make an appropriation.

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

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

1 SECTION 1. Section 1142 of the Unemployment Insurance
2 Code is amended to read:

3 1142. (a) If the director finds that any employer or any
4 employee, officer, or agent of any employer, in submitting facts
5 concerning the termination of a claimant’s employment pursuant
6 to Section 1030, 1327, 3654, 3701, 4654, or 4701, willfully makes
7 a false statement or representation or willfully fails to report a
8 material fact concerning that termination, the director shall assess
9 a penalty of an amount not less than 2 nor more than 10 times the
10 weekly benefit amount of that claimant. The director shall assess
11 this penalty in the following manner:

12 (1) If the director finds that the employer was at fault for
13 willfully making a false statement or representation or willfully
14 failing to report a material fact concerning that termination, the
15 director shall assess the penalty against the employer.

16 (2) If the director finds that the agent of the employer was at
17 fault for willfully making a false statement or representation or
18 willfully failing to report a material fact concerning that
19 termination, the director shall assess the penalty against the agent
20 of the employer.

1 (3) If the director finds that the employer and the agent of the
2 employer were both at fault for willfully making a false statement
3 or representation or willfully failing to report a material fact
4 concerning that termination, the director shall assess the penalty
5 against the employer and also shall assess another penalty against
6 the agent of the employer.

7 (b) If the director finds that any employer or any employee,
8 officer, or agent of any employer, in submitting a written statement
9 concerning the reasonable assurance, as defined in subdivision ~~(g)~~
10 *(f)* of Section 1253.3, of a claimant's reemployment, as required
11 by subdivisions ~~(b)~~, ~~(c)~~, and ~~(i)~~ *subdivision (b)* of Section 1253.3,
12 willfully makes a false statement or representation or willfully
13 fails to report a material fact concerning the reasonable assurance
14 of that reemployment, the director shall assess a penalty of an
15 amount not less than 2 nor more than 10 times the weekly benefit
16 amount of that claimant. The director shall assess this penalty in
17 the following manner:

18 (1) If the director finds that the employer was at fault for
19 willfully making a false statement or representation or willfully
20 failing to report a material fact concerning the reasonable assurance
21 of that reemployment, the director shall assess the penalty against
22 the employer.

23 (2) If the director finds that the agent of the employer was at
24 fault for willfully making a false statement or representation or
25 willfully failing to report a material fact concerning the reasonable
26 assurance of that reemployment, the director shall assess the
27 penalty against the agent of the employer.

28 (3) If the director finds that the employer and the agent of the
29 employer were both at fault for willfully making a false statement
30 or representation or willfully failing to report a material fact
31 concerning the reasonable assurance of that reemployment, the
32 director shall assess the penalty against the employer and also shall
33 assess another penalty against the agent of the employer.

34 (c) (1) This article, Article 9 (commencing with Section 1176)
35 of this chapter with respect to refunds, and Chapter 7 (commencing
36 with Section 1701) of this part with respect to collections shall
37 apply to the assessments provided by this section. Penalties
38 collected under this section shall be deposited in the contingent
39 fund.

1 (2) Notwithstanding Section 1586, additional penalties that are
2 assessed against an agent of the employer and collected pursuant
3 to paragraph (3) of subdivision (a) and paragraph (3) of subdivision
4 (b) shall be available for the purposes specified in Section 1586
5 upon appropriation by the Legislature for those purposes.

6 SECTION 1.

7 SEC. 2. Section 1253.3 of the Unemployment Insurance Code
8 is amended to read:

9 1253.3. (a) Notwithstanding any other provision of this
10 division, unemployment compensation benefits, extended duration
11 benefits, and federal-state extended benefits are payable on the
12 basis of service to which Section 3309(a)(1) of the Internal
13 Revenue Code of 1954 applies, in the same amount, on the same
14 terms, and subject to the same conditions as benefits payable on
15 the basis of other service subject to this division, except as provided
16 by this section.

17 (b) Benefits specified by subdivision (a) based on service
18 performed in the employ of a nonprofit organization, or of any
19 entity as defined by Section 605, with respect to service in an
20 instructional, research, or principal administrative capacity for an
21 educational institution are not payable to any individual with
22 respect to any week which begins during the period between two
23 successive academic years or terms or, when an agreement provides
24 instead for a similar period between two regular but not successive
25 terms, during that period, or during a period of paid sabbatical
26 leave provided for in the individual’s contract, if the individual
27 performs services in the first of the academic years or terms and
28 if there is a contract or a reasonable assurance that the individual
29 will perform services for any educational institution in the second
30 of the academic years or terms.

31 (c) Benefits specified by subdivision (a) based on service
32 performed in the employ of a nonprofit organization, or of any
33 entity as defined by Section 605, with respect to services specified
34 by subdivision (b), are not payable to any individual with respect
35 to any week that commences during an established and customary
36 vacation period or holiday recess if the individual performs the
37 services in the period immediately before the vacation period or
38 holiday recess, and there is a reasonable assurance that the
39 individual will perform the services in the period immediately
40 following the vacation period or holiday recess.

1 (d) With respect to any services specified by subdivision ~~(b)~~;
2 ~~(b)~~, compensation payable on the basis of services in that capacity
3 may be denied as specified in subdivision (b) or (c) to any
4 individual who performed the services in an educational institution
5 while in the employ of an educational service agency, and for this
6 purpose the term “educational service agency” means a
7 governmental agency or governmental entity that is established
8 and operated exclusively for the purpose of providing the services
9 to one or more educational institutions.

10 (e) Benefits specified by subdivision (a) based on service
11 performed in the employ of a nonprofit organization, or of any
12 entity as defined by Section 605, are not payable during the periods
13 of time, and subject to the same conditions, contained in
14 subdivisions (b), (c), and (g), if the services are provided to, or on
15 behalf of, an educational institution.

16 (f) For purposes of this section, “reasonable assurance” includes,
17 but is not limited to, an offer of employment or assignment made
18 by the educational institution, provided that the offer or assignment
19 is not contingent on enrollment, funding, or program changes. An
20 individual who has been notified that he or she will be replaced
21 and does not have an offer of employment or assignment to perform
22 services for an educational institution is not considered to have
23 reasonable assurance.

24 (g) For purposes of this section, if the time for service performed
25 during the period of and pursuant to any contract for any academic
26 year or term by an individual for any employing unit as specified
27 in subdivision (b) constitutes one-half or more of the time in total
28 service performed for the employing unit by the individual during
29 that same period for remuneration, all the services of the individual
30 for the employing unit for that period shall be deemed subject to
31 the benefit payment restriction provisions of this section.

32 ~~(h) Any entity as defined by Section 605, with respect to any~~
33 ~~individual performing a service in any other capacity other than~~
34 ~~specified in subdivision (b) for an educational institution, shall~~
35 ~~provide a written statement indicating the following to the~~
36 ~~individual no later than 30 days before the end of the first of the~~
37 ~~academic years or terms:~~

38 ~~(1) Whether or not there is a reasonable assurance of~~
39 ~~reemployment.~~

1 ~~(2) Whether or not it is stated that the individual has no~~
2 ~~reasonable assurance of reemployment, that the individual should~~
3 ~~file a claim for benefits at the close of the academic year or term.~~

4 ~~(3) If it is stated that the individual has reasonable assurance of~~
5 ~~reemployment, the written statement shall also inform the employee~~
6 ~~that he or she may file a claim for benefits and that the~~
7 ~~determination for eligibility for benefits is made by the~~
8 ~~Employment Development Department and not by the employer.~~

9 ~~(4) If it is stated that the individual has reasonable assurance of~~
10 ~~reemployment, that the individual shall be entitled to a retroactive~~
11 ~~payment of benefits if the individual is not offered an opportunity~~
12 ~~to perform the services for the educational institution for the second~~
13 ~~of the academic years or terms, if the individual is otherwise~~
14 ~~eligible and he or she filed a claim for each week benefits are~~
15 ~~claimed, and if a claim for retroactive benefits is made no later~~
16 ~~than 30 days following the commencement of the second academic~~
17 ~~year or term.~~

18 *SEC. 3. Section 1451 of the Unemployment Insurance Code is*
19 *repealed.*

20 ~~1451. Nonprofessional employees of the Fremont and Riverside~~
21 ~~campuses of the California School for the Deaf, the Fremont~~
22 ~~campus of the California School for the Blind, and the diagnostic~~
23 ~~schools for individuals with neurological disabilities located in~~
24 ~~Los Angeles, San Francisco, and Fresno, shall be eligible for~~
25 ~~benefits provided by this chapter, on the same terms and conditions~~
26 ~~as are specified by this part, Part 3 (commencing with Section~~
27 ~~3501), and Part 4 (commencing with Section 4001), for all other~~
28 ~~individuals, except where inconsistent with the provisions of this~~
29 ~~chapter. Except where inconsistent with the provisions of this~~
30 ~~chapter, the provisions of this division and authorized regulations~~
31 ~~shall apply to any matter arising pursuant to this chapter.~~

32 *SEC. 4. Section 1452 of the Unemployment Insurance Code is*
33 *repealed.*

34 ~~1452. Notwithstanding Section 1253.3, between terms~~
35 ~~unemployment compensation benefits are payable by the~~
36 ~~Controller, from funds appropriated for support of the State~~
37 ~~Department of Education and allocated to the state special schools,~~
38 ~~upon authorization by the Employment Development Department~~
39 ~~to individuals who are eligible to receive these benefits under this~~
40 ~~chapter. These benefits shall only be paid for weeks of~~

1 ~~unemployment occurring between school terms and during an~~
2 ~~established and customary vacation period or holiday recess when~~
3 ~~other benefits are denied solely by reason of Section 1253.3.~~

4 *SEC. 5. Section 1453 of the Unemployment Insurance Code is*
5 *repealed.*

6 ~~1453.—(a) There shall be transferred to the Employment~~
7 ~~Development Department from funds appropriated for support of~~
8 ~~the State Department of Education and allocated to the state special~~
9 ~~schools, at the times and in the manner provided in subdivision~~
10 ~~(b), an amount equal to the additional cost to the Employment~~
11 ~~Development Department for added administrative work arising~~
12 ~~out of this chapter.~~

13 ~~(b) The director shall determine the sums he or she estimates~~
14 ~~the department will be entitled to receive from the State Department~~
15 ~~of Education under this section for each fiscal year, reduced or~~
16 ~~increased by any sum by which he or she finds that his or her~~
17 ~~estimates for any prior fiscal year were greater or less than the~~
18 ~~amounts which were actually required. The sum of the amounts~~
19 ~~transferred or expended pursuant to Section 1452, subdivision (a),~~
20 ~~and this subdivision in any one fiscal year shall not exceed the~~
21 ~~amount appropriated in the then current fiscal year to the State~~
22 ~~Department of Education for the purposes of this chapter.~~

23 ~~(c) The director may require from the State Department of~~
24 ~~Education such employment, wage, financial, statistical, or other~~
25 ~~information and reports, properly verified, as may be deemed~~
26 ~~necessary by the director to carry out his or her duties under this~~
27 ~~division, which shall be filed with the director at the time and in~~
28 ~~the manner prescribed by him or her.~~

29 ~~(d) The director may tabulate and publish information obtained~~
30 ~~pursuant to this chapter in statistical form and may divulge the~~
31 ~~name of the employing unit.~~

32 ~~(e) The State Department of Education shall provide each~~
33 ~~employee subject to this chapter, at the end of each school term,~~
34 ~~with written information advising the employee of benefit rights~~
35 ~~pursuant to this chapter.~~

36 *SEC. 6. Section 1454 of the Unemployment Insurance Code is*
37 *repealed.*

38 ~~1454.— An individual who receives any unemployment~~
39 ~~compensation benefits otherwise payable irrespective of this~~
40 ~~chapter, including retroactive unemployment compensation benefits~~

1 ~~paid pursuant to subdivision (c) of Section 1253.3, who has~~
2 ~~received benefits under this chapter for the same period, shall be~~
3 ~~liable for repayment to the state of the amount of benefits paid~~
4 ~~under this chapter for that period.~~

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