

AMENDED IN ASSEMBLY APRIL 21, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1638

Introduced by Assembly Member Bocanegra

February 11, 2014

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1638, 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~~, *employees of a public school*, other than teachers, researchers, and administrators, as specified, between 2 academic years and would make conforming changes, including ~~deleting the requirement for notice of reasonable assurance of employment of 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

1 termination, the director shall assess the penalty against the agent
2 of the employer.

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

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

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

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

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

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

1 collected under this section shall be deposited in the contingent
2 fund.

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

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

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

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

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

1 the individual will perform the specified services in the week
2 immediately following the vacation period or holiday recess.

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

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

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

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

35 *SEC. 2. Section 1253.3 of the Unemployment Insurance Code*
36 *is amended to read:*

37 1253.3. (a) Notwithstanding any other provision of this
38 division, unemployment compensation benefits, extended duration
39 benefits, and federal-state extended benefits are payable on the
40 basis of service to which Section 3309(a)(1) of the Internal

1 Revenue Code of 1954 applies, in the same amount, on the same
2 terms, and subject to the same conditions as benefits payable on
3 the basis of other service subject to this division, except as provided
4 by this section.

5 (b) Benefits specified by subdivision (a) based on service
6 performed in the employ of a nonprofit organization, or of any
7 entity as defined by Section 605, with respect to service in an
8 instructional, research, or principal administrative capacity for an
9 educational institution are not payable to any individual with
10 respect to any week which begins during the period between two
11 successive academic years or terms or, when an agreement provides
12 instead for a similar period between two regular but not successive
13 terms, during that period, or during a period of paid sabbatical
14 leave provided for in the individual's contract, if the individual
15 performs services in the first of the academic years or terms and
16 if there is a contract or a reasonable assurance that the individual
17 will perform services for any educational institution in the second
18 of the academic years or terms.

19 (c) Benefits specified by subdivision (a) based on service
20 performed in the employ of a nonprofit organization, or of any
21 entity as defined by Section 605, *except for a public school as*
22 *defined in Section 22161 of the Education Code*, with respect to
23 service in any other capacity than specified in subdivision (b) for
24 an educational institution shall not be payable to any individual
25 with respect to any week which commences during a period
26 between two successive academic years or terms if the individual
27 performs the service in the first of the academic years or terms and
28 there is a reasonable assurance that the individual will perform the
29 service in the second of the academic years or terms. However, if
30 the individual was not offered an opportunity to perform the
31 services for an educational institution for the second of the
32 academic years or terms, the individual shall be entitled to a
33 retroactive payment of benefits for each week for which the
34 individual filed a timely claim for benefits and for which benefits
35 were denied solely by reason of this subdivision. Retroactive
36 benefits shall be claimed in accordance with the department's
37 procedures which shall specify that except where the individual
38 was entitled to benefits based on services performed for other than
39 an educational institution, an individual who has a reasonable
40 assurance of reemployment may satisfy the search for work

1 requirement of subdivision (e) of Section 1253, by registering for
2 work pursuant to subdivision (b) of Section 1253 during the period
3 between the first and second academic terms or years. A claim for
4 retroactive benefits may be made no later than 30 days following
5 the commencement of the second academic year or term.

6 (d) Benefits specified by subdivision (a) based on service
7 performed in the employ of a nonprofit organization, or of any
8 entity as defined by Section 605, with respect to services specified
9 by subdivision (b) or (c), are not payable to any individual with
10 respect to any week that commences during an established and
11 customary vacation period or holiday recess if the individual
12 performs the *specified* services in the ~~period~~ *week* immediately
13 before the vacation period or holiday recess, and there is a
14 reasonable assurance that the individual will perform the services
15 in the period immediately following the vacation period or holiday
16 recess.

17 (e) With respect to any services specified by subdivision (b) or
18 (c), compensation payable on the basis of services in that capacity
19 may be denied as specified in subdivision (b), (c), or (d) to any
20 individual who performed the services in an educational institution
21 while in the employ of an educational service agency, and for this
22 purpose the term “educational service agency” ~~means~~ *is defined*
23 *as* a governmental agency or governmental entity that is established
24 and operated exclusively for the purpose of providing the services
25 to one or more educational institutions.

26 (f) Benefits specified by subdivision (a) based on service
27 performed in the employ of a nonprofit organization, or of any
28 entity as defined by Section 605, are not payable during the periods
29 of time, and subject to the same conditions, contained in
30 subdivisions (b), (c), (d), and (h), if the services are provided to,
31 or on behalf of, an educational institution.

32 (g) For purposes of this section, “reasonable assurance” includes,
33 but is not limited to, an offer of employment or assignment made
34 by the educational institution, provided that the offer or assignment
35 is not contingent on enrollment, funding, or program changes. An
36 individual who has been notified that he or she will be replaced
37 and does not have an offer of employment or assignment to perform
38 services for an educational institution is not considered to have
39 reasonable assurance.

1 (h) For purposes of this section, if the time for service performed
2 during the period of and pursuant to any contract for any academic
3 year or term by an individual for any employing unit as specified
4 in subdivision (b) or (c) constitutes one-half or more of the time
5 in total service performed for the employing unit by the individual
6 during that same period for remuneration, all the services of the
7 individual for the employing unit for that period shall be deemed
8 subject to the benefit payment restriction provisions of this section.

9 (i) Any entity as defined by Section 605, with respect to any
10 individual performing a service in any other capacity other than
11 specified in subdivision (b) for an educational institution, shall
12 provide a written statement indicating the following to the
13 individual no later than 30 days before the end of the first of the
14 academic years or terms:

15 (1) Whether or not there is a reasonable assurance of
16 reemployment.

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

20 (3) If it is stated that the individual has reasonable assurance of
21 reemployment, the written statement shall also inform the employee
22 that he or she may file a claim for benefits and that the
23 determination for eligibility for benefits is made by the
24 Employment Development Department and not by the employer.

25 (4) If it is stated that the individual has reasonable assurance of
26 reemployment, that the individual shall be entitled to a retroactive
27 payment of benefits if the individual is not offered an opportunity
28 to perform the services for the educational institution for the second
29 of the academic years or terms, if the individual is otherwise
30 eligible and he or she filed a claim for each week benefits are
31 claimed, and if a claim for retroactive benefits is made no later
32 than 30 days following the commencement of the second academic
33 year or term.

34 SEC. 3. Section 1451 of the Unemployment Insurance Code
35 is repealed.

36 SEC. 4. Section 1452 of the Unemployment Insurance Code
37 is repealed.

38 SEC. 5. Section 1453 of the Unemployment Insurance Code
39 is repealed.

1 ~~SEC. 6.~~ Section 1454 of the Unemployment Insurance Code is
2 repealed.

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