

AMENDED IN ASSEMBLY MARCH 2, 2009

CALIFORNIA LEGISLATURE—2009—10 THIRD EXTRAORDINARY SESSION

ASSEMBLY BILL

No. 23

**Introduced by Assembly Members Coto and Arambula
(Principal coauthor: Assembly Member Swanson)**

January 15, 2009

An act to amend Sections ~~1252, 1275, and 1279~~ of 1275 and 1277.5 of, to add Sections 1277.1 and 1329.5 to, and to add and repeal Section 4003.5 of, the Unemployment Insurance Code, relating to unemployment insurance, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 23, as amended, Coto. Unemployment insurance.

~~(1) Existing law provides that an individual is considered "unemployed" for the purpose of eligibility for unemployment compensation benefits if, for any week of less than full-time work, the wages payable to the individual for that week, when reduced by \$25 or 25% of the wages payable, whichever is greater, do not equal or exceed the individual's unemployment weekly benefit amount. Existing law provides for the payment of unemployment compensation to an individual in a weekly amount equal to his or her weekly benefit amount, less the amount of wages in excess of the smaller of \$25 or 25% of the wages payable.~~

~~This bill would instead provide that an individual is unemployed in any week of less than full-time work only if the wages payable to him or her with respect to the week, when reduced by the greater of \$200 or 25% of wages payable, do not equal or exceed his or her weekly unemployment compensation benefit amount. This bill would also~~

~~provide the payment of unemployment compensation to an individual in a weekly amount equal to his or her weekly benefit amount, less the amount of wages in excess of the smaller of \$200 or 25% of the wages payable for that week.~~

~~(2)~~

~~(1) Under existing law, unemployment compensation benefits are based on wages paid in a base period that is calculated according to the month within which the benefit year begins.~~

~~This bill would, for new claims filed on or after January July 1, 2009, for which a valid claim or benefit year cannot be established under the currently defined base periods, establish alternative base periods, as provided. The bill also would provide that these provisions shall become operative only if the federal legislation, known and cited as the Unemployment Insurance Modernization Act, specified federal legislation is passed by Congress and signed by the President in the 2009 calendar year. This bill would also require a claimant to submit specified information regarding wages to the Employment Development Department via an affidavit, under specified conditions.~~

~~Because this measure would increase the amount of unemployment compensation paid, it would make an additional amount payable from the Unemployment Fund, a continuously appropriated special fund, and thereby would make an appropriation.~~

~~Because this measure would require specified information to be submitted to the Employment Development Department on an affidavit, the submission of which, if false, is a misdemeanor under existing law, it would impose a state-mandated program.~~

~~(2) Existing law provides that, for purposes of eligibility for federal-state extended benefits, an individual have earnings that exceed either 40 times his or her most recent weekly benefit amount or 1.5 times the highest quarter in the base period, and precludes the implementation of the alternative eligibility requirement for federal-state extended benefits unless the Director of the Employment Development Department determines that these provisions have been approved by the United States Department of Labor.~~

~~The federal Supplemental Appropriations Act of 2008, created the Emergency Unemployment Compensation (EUC) Program on June 30, 2008, which provides for the payment of up to 13 weeks of federally funded emergency unemployment compensation (EUC) benefits to eligible unemployed individuals nationwide who had already collected all regular state benefits for which they were eligible. The federal~~

Unemployment Compensation Extension Act of 2008, which was enacted on November 21, 2008, further expanded the EUC Program to provide for the payment of 20 weeks of benefits nationwide, and provides for the payment of 13 more weeks of benefits to eligible unemployed individuals in states with high unemployment rates, as determined by specified criteria. The federal American Recovery and Reinvestment Act of 2009, which was enacted on February 17, 2009, extends to June 30, 2010, the period of time during which claims for EUC benefits can be filed and paid.

This bill would provide, until June 30, 2010, for the payment of temporary federal-state EUC benefits authorized under the Supplemental Appropriations Act of 2008, the Unemployment Compensation Extension Act of 2008, and the American Recovery and Reinvestment Act of 2009 to eligible individuals in this state, during specified weeks that the state is experiencing periods of high unemployment, as determined in accordance with prescribed indicators that trigger the payment of those extended benefits, as provided.

(3) 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.

~~(3)~~

(4) The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. The Governor issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on December 19, 2008.

This bill would state that it addresses the fiscal emergency declared by the Governor by proclamation issued on December 19, 2008, pursuant to the California Constitution.

~~(4)~~

(5) This bill would declare that it is to take effect immediately as an urgency statute.

*Vote: 2/3. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: ~~no~~-yes.*

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

1 ~~SECTION 1. Section 1252 of the Unemployment Insurance~~
2 ~~Code is amended to read:~~
3 ~~1252. (a) An individual is “unemployed” in any week in which~~
4 ~~he or she meets any of the following conditions:~~
5 ~~(1) Any week during which he or she performs no services and~~
6 ~~with respect to which no wages are payable to him or her.~~
7 ~~(2) Any week of less than full-time work, if the wages payable~~
8 ~~to him or her with respect to the week, when reduced by two~~
9 ~~hundred dollars (\$200) or 25 percent of the wages payable,~~
10 ~~whichever is greater, do not equal or exceed his or her weekly~~
11 ~~benefit amount.~~
12 ~~(3) Any week for which, except for the requirements of~~
13 ~~subdivision (d) of Section 1253, he or she would be eligible for~~
14 ~~benefits under Section 1253.5.~~
15 ~~(4) Any week during which he or she performs full-time work~~
16 ~~for five days as a juror, or as a witness under subpoena.~~
17 ~~(b) Authorized regulations shall be prescribed making such~~
18 ~~distinctions as may be necessary in the procedures applicable to~~
19 ~~unemployed individuals as to total unemployment, part-total~~
20 ~~employment, partial unemployment of individuals attached to their~~
21 ~~regular jobs, and other forms of short-time work.~~
22 ~~(c) For the purpose of this section only “wages” includes any~~
23 ~~and all compensation for personal services whether performed as~~
24 ~~an employee or as an independent contractor or as a juror or as a~~
25 ~~witness, but does not include any payment received by a member~~
26 ~~of the National Guard or reserve component of the Armed Forces~~
27 ~~for inactive duty training, annual training, or emergency state active~~
28 ~~duty.~~
29 ~~SEC. 2.~~
30 ~~SECTION 1. Section 1275 of the Unemployment Insurance~~
31 ~~Code is amended to read:~~
32 ~~1275. (a) Unemployment compensation benefit award~~
33 ~~computations shall be based on wages paid in the base period.~~
34 ~~“Base period” means: for benefit years beginning in October,~~
35 ~~November, or December, the four calendar quarters ended in the~~
36 ~~next preceding month of June; for benefit years beginning in~~
37 ~~January, February, or March, the four calendar quarters ended in~~
38 ~~the next preceding month of September; for benefit years beginning~~

1 in April, May, or June, the four calendar quarters ended in the next
 2 preceding month of December; for benefit years beginning in July,
 3 August, or September, the four calendar quarters ended with the
 4 next preceding month of March. Wages used in the determination
 5 of benefits payable to an individual during any benefit year may
 6 not be used in determining that individual’s benefits in any
 7 subsequent benefit year.

8 (b) For any new claim filed with an effective date on or after
 9 ~~January 1, 2009, if an individual has not been paid sufficient wages~~
 10 ~~in the first four of the last five completed calendar quarters to~~
 11 ~~entitle the individual to establish a benefit year July 1, 2009, if an~~
 12 ~~individual cannot establish a claim under subdivision (a), then~~
 13 “base period” means: for benefit years beginning in October,
 14 November, or December, the four calendar quarters ended in the
 15 ~~prior~~ *next* preceding month of September; for benefit years
 16 beginning in January, February, or March, the four calendar
 17 quarters ended in the ~~prior~~ *next* preceding month of December;
 18 for benefit years beginning in April, May, or June, the four calendar
 19 quarters ended in the ~~prior~~ *next* preceding month of March; for
 20 benefit years beginning in July, August, or September, the four
 21 calendar quarters ended in the ~~prior~~ *next* preceding month of June.
 22 As provided in Section 1280, the quarter with the highest wages
 23 shall be used to determine the individual’s weekly benefit amount.
 24 *Wages used in the determination of benefits payable to an*
 25 *individual during any benefit year shall not be used in determining*
 26 *that individual’s benefits in any subsequent benefit year.*

27 (c) The amendments made to this section by the act adding this
 28 subdivision shall become operative only if ~~the federal legislation,~~
 29 ~~known and cited as the Unemployment Insurance Modernization~~
 30 ~~Act, federal legislation authorizing additional federal funding to~~
 31 ~~implement an alternative base period, as described in subdivision~~
 32 ~~(b), is passed by Congress and signed by the President in the 2009~~
 33 ~~calendar year.~~

34 ~~SEC. 3. Section 1279 of the Unemployment Insurance Code~~
 35 ~~is amended to read:~~

36 ~~1279. (a) Each individual eligible under this chapter who is~~
 37 ~~unemployed in any week shall be paid with respect to that week~~
 38 ~~an unemployment compensation benefit in an amount equal to his~~
 39 ~~or her weekly benefit amount less the smaller of the following:~~

1 ~~(1) The amount of wages in excess of two hundred dollars~~
 2 ~~(\$200) payable to him or her for services rendered during that~~
 3 ~~week.~~

4 ~~(2) The amount of wages in excess of 25 percent of the amount~~
 5 ~~of wages payable to him or her for services rendered during that~~
 6 ~~week.~~

7 ~~(b) The benefit payment, if not a multiple of one dollar (\$1);~~
 8 ~~shall be computed to the next higher multiple of one dollar (\$1).~~

9 ~~(c) For the purpose of this section only, “wages” includes any~~
 10 ~~and all compensation for personal services whether performed as~~
 11 ~~an employee or as an independent contractor or as a juror or as a~~
 12 ~~witness, but does not include any payments, regardless of their~~
 13 ~~designation, made by a city of this state to an elected official~~
 14 ~~thereof as an incident to public office, nor any payment received~~
 15 ~~by a member of the National Guard or reserve component of the~~
 16 ~~Armed Forces for inactive duty training, annual training, or~~
 17 ~~emergency state active duty.~~

18 *SEC. 2. Section 1277.1 is added to the Unemployment*
 19 *Insurance Code, to read:*

20 *1277.1. (a) Notwithstanding Section 1277, if an individual has*
 21 *a subsequent new claim and the previous valid claim was filed*
 22 *under subdivision (b) of Section 1275, the new claim shall only be*
 23 *valid if, during the 52-week period beginning with the effective*
 24 *date of the previous claim, either of the following applies:*

25 *(1) The individual earned or was paid sufficient wages to meet*
 26 *eligibility requirements of subdivision (a) of Section 1281 and*
 27 *performed some work.*

28 *(2) The individual did not receive benefits under this part and*
 29 *was disabled and was entitled to receive wage loss benefits under*
 30 *Part 2 (commencing with Section 2601) of this code or under*
 31 *Division 4 (commencing with Section 3201) of the Labor Code,*
 32 *under any workers’ compensation law, under employer’s liability*
 33 *law, or under any disability insurance law of any other state or*
 34 *the federal government.*

35 *(b) For purposes of this section, “wages” includes any and all*
 36 *compensation for personal services performed as an employee for*
 37 *the purpose of meeting the eligibility requirements of subdivision*
 38 *(a) of Section 1281. This subdivision is not applicable to the*
 39 *computation of an award for disability benefits.*

1 *SEC. 3. Section 1277.5 of the Unemployment Insurance Code*
2 *is amended to read:*

3 1277.5. In determining, under ~~Section 1277~~ *Sections 1277 and*
4 *1227.1*, whether a new claim is valid, twice the amount ~~which that~~
5 an individual was entitled to receive under Part 2 (commencing
6 with Section 2601) of this division or under Division 4
7 (commencing with Section 3201) of the Labor Code, or under any
8 workers' compensation law, employer's liability law, or disability
9 insurance law of any other state or of the federal government,
10 during the 52-week period beginning with the effective date of the
11 previous valid claim, shall be considered as wages earned or paid
12 to the individual during that 52-week period for purposes of
13 meeting the eligibility requirements of subdivision (a) of Section
14 1281. The amounts so included shall not be considered wages for
15 the purpose of computing the weekly benefit amount of the
16 individual under Section 1280 or the maximum amount payable
17 to the individual under Section 1281.

18 *SEC. 4. Section 1329.5 is added to the Unemployment*
19 *Insurance Code, to read:*

20 1329.5. *For purposes of a claim for unemployment benefits*
21 *under subdivision (b) of Section 1275, all of the following apply:*

22 (a) *Computation using the last four completed calendar quarters*
23 *shall be based on available wage information processed as of the*
24 *close of business on the day preceding the date of application.*

25 (b) *If the wage information is not already in the department's*
26 *system, the employer shall, within 10 days after the mailing of the*
27 *request from the department, transmit to the department*
28 *information on the employee's wages and any other information*
29 *relevant to the request. The 10-day period may be extended for*
30 *good cause.*

31 (c) *If the wage, and other relevant information, requested*
32 *pursuant to subdivision (b) are not received by the department,*
33 *the department shall accept an affidavit of wages and other*
34 *relevant information from the claimant in accordance with*
35 *authorized regulations. These regulations shall be adopted as*
36 *emergency regulations.*

37 (d) *A determination of benefits made pursuant to subdivision*
38 *(b) of Section 1275 shall be adjusted when the quarterly wage*
39 *report from the employer is received if that information causes a*
40 *change in the determination.*

1 (e) Except in the event of fraud, if it is determined that any
2 information provided by the claimant on an affidavit is erroneous,
3 no penalty or refund of benefits shall be imposed on the claimant
4 for the period prior to the calendar week in which an employer
5 provides subsequent wage information.

6 SEC. 5. Section 4003.5 is added to the Unemployment
7 Insurance Code, to read:

8 4003.5. (a) For purposes of this part, “federal-state extended
9 benefits” also includes the payment of emergency unemployment
10 compensation (EUC) benefits payable under the federal
11 Supplemental Appropriations Act of 2008 (Public Law 110-252),
12 the Unemployment Compensation Extension Act of 2008 (Public
13 Law 110-449) and the American Recovery and Reinvestment Act
14 of 2009 (H.R. 1) pursuant to this section.

15 (b) There is an “on” indicator for purposes of federal-state
16 extended benefits provided under this section for a week in which
17 any of the following apply:

18 (1) The rate of insured unemployment for the period consisting
19 of that week and the immediately preceding 12 weeks equaled or
20 exceeded 120 percent of the average of those rates for the
21 corresponding 13-week period in each of the preceding calendar
22 years, and equaled or exceeded 5 percent.

23 (2) The rate of insured unemployment consisting of that week
24 and the immediately preceding 12 weeks equaled or exceeded 6
25 percent, regardless of the rate of insured unemployment during
26 the previous two calendar years.

27 (3) With respect to benefits for weeks of unemployment
28 beginning on or after January 1, 2009, both of the following apply:

29 (A) The average rate of total unemployment that is seasonally
30 adjusted, as determined by the United States Secretary of Labor,
31 for the period consisting of the most recent three months for which
32 data for all states are published before the close of that week equals
33 or exceeds 6.5 percent.

34 (B) The average rate of total unemployment in the state that is
35 seasonally adjusted, as determined by the United States Secretary
36 of Labor, for the three-month period referred to in subparagraph
37 (A) equals or exceeds 110 percent of that average for either or
38 both of the corresponding three-month periods ending in the two
39 preceding calendar years.

1 (4) *The average rate of total unemployment in the state for any*
2 *period of a week, and the immediately preceding 12 weeks equals*
3 *or exceeds 8 percent.*

4 (c) *There is an “off” period indicator for a week if, for the*
5 *period consisting of that week and the immediately preceding 12*
6 *weeks, none of the criteria specified in subdivision (b) result in an*
7 *“on” indicator.*

8 (d) *This section shall remain in effect only until June 30, 2010,*
9 *and as of that date is repealed, unless a later enacted statute, that*
10 *is enacted before June 30, 2010, deletes or extends that date.*

11 *SEC. 6. No reimbursement is required by this act pursuant to*
12 *Section 6 of Article XIII B of the California Constitution because*
13 *the only costs that may be incurred by a local agency or school*
14 *district will be incurred because this act creates a new crime or*
15 *infraction, eliminates a crime or infraction, or changes the penalty*
16 *for a crime or infraction, within the meaning of Section 17556 of*
17 *the Government Code, or changes the definition of a crime within*
18 *the meaning of Section 6 of Article XIII B of the California*
19 *Constitution.*

20 ~~SEC. 4.~~

21 *SEC. 7. This act addresses the fiscal emergency declared by*
22 *the Governor by proclamation on December 19, 2008, pursuant*
23 *to subdivision (f) of Section 10 of Article IV of the California*
24 *Constitution.*

25 ~~SEC. 5.~~

26 *SEC. 8. This act is an urgency statute necessary for the*
27 *immediate preservation of the public peace, health, or safety within*
28 *the meaning of Article IV of the Constitution and shall go into*
29 *immediate effect. The facts constituting the necessity are:*

30 *In order to stimulate the state’s weakening economy as soon as*
31 *possible, it is necessary that this act take effect immediately.*

O