

**ASSEMBLY BILL**

**No. 1638**

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**Introduced by Assembly Member Bocanegra**

February 11, 2014

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1638, as introduced, 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 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  
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 SEC. 2. Section 1253.3 of the Unemployment Insurance Code  
7 is amended to read:

8 1253.3. (a) Notwithstanding any other provision of this  
9 division, unemployment compensation benefits, extended duration  
10 benefits, and federal-state extended benefits are payable on the  
11 basis of service to which Section 3309(a)(1) of the Internal  
12 Revenue Code of 1954 applies, in the same amount, on the same  
13 terms, and subject to the same conditions as benefits payable on  
14 the basis of other service subject to this division, except as provided  
15 by this section.

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

30 ~~(c) Benefits specified by subdivision (a) based on service~~  
31 ~~performed in the employ of a nonprofit organization, or of any~~  
32 ~~entity as defined by Section 605, with respect to service in any~~  
33 ~~other capacity than specified in subdivision (b) for an educational~~  
34 ~~institution shall not be payable to any individual with respect to~~  
35 ~~any week which commences during a period between two~~  
36 ~~successive academic years or terms if the individual performs the~~  
37 ~~service in the first of the academic years or terms and there is a~~  
38 ~~reasonable assurance that the individual will perform the service~~  
39 ~~in the second of the academic years or terms. However, if the~~  
40 ~~individual was not offered an opportunity to perform the services~~

1 for an educational institution for the second of the academic years  
2 or terms, the individual shall be entitled to a retroactive payment  
3 of benefits for each week for which the individual filed a timely  
4 claim for benefits and for which benefits were denied solely by  
5 reason of this subdivision. Retroactive benefits shall be claimed  
6 in accordance with the department's procedures which shall specify  
7 that except where the individual was entitled to benefits based on  
8 services performed for other than an educational institution, an  
9 individual who has a reasonable assurance of reemployment may  
10 satisfy the search for work requirement of subdivision (e) of  
11 Section 1253, by registering for work pursuant to subdivision (b)  
12 of Section 1253 during the period between the first and second  
13 academic terms or years. A claim for retroactive benefits may be  
14 made no later than 30 days following the commencement of the  
15 second academic year or term.

16 (d)

17 (c) 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 services specified  
20 by subdivision (b) or (e); (b) are not payable to any individual with  
21 respect to any week that commences during an established and  
22 customary vacation period or holiday recess if the individual  
23 performs the *specified* services in the ~~period~~ *week* immediately  
24 before the vacation period or holiday recess, and there is a  
25 reasonable assurance that the individual will perform the *specified*  
26 services in the ~~period~~ *week* immediately following the vacation  
27 period or holiday recess.

28 (e)

29 (d) With respect to any services specified by subdivision (b) or  
30 (e); (b) compensation payable on the basis of services in that  
31 capacity may be denied as specified in subdivision (b), (e), or (d)  
32 (b) or (c) to any individual who performed the services in an  
33 educational institution while in the employ of an educational  
34 service agency, and for this purpose the term "educational service  
35 agency"—*means is defined as* a governmental agency or  
36 governmental entity that is established and operated exclusively  
37 for the purpose of providing the services to one or more educational  
38 institutions.

39 (f)

1 (e) Benefits specified by subdivision (a) based on service  
 2 performed in the employ of a nonprofit organization, or of any  
 3 entity as defined by Section 605, *with respect to services specified*  
 4 *by subdivision (b)*, are not payable during the periods of time, and  
 5 subject to the same conditions, contained in subdivisions (b), (c),  
 6 ~~(d), and (h)~~, and (g), if the services are provided to, or on behalf  
 7 of, an educational institution.

8 ~~(g)~~  
 9 (f) For purposes of this section, “reasonable assurance” includes,  
 10 but is not limited to, an offer of employment or assignment made  
 11 by the educational institution, provided that the offer or assignment  
 12 is not contingent on enrollment, funding, or program changes. An  
 13 individual who ~~has been notified~~ *received notice* that he or she  
 14 will be replaced and *who* does not have an offer of employment  
 15 or assignment to perform services for an educational institution is  
 16 not considered to have reasonable assurance.

17 ~~(h)~~  
 18 (g) For purposes of this section, if the time for service performed  
 19 during the period of and pursuant to any contract for any academic  
 20 year or term by an individual for any employing unit as specified  
 21 in subdivision (b) ~~or (e)~~ constitutes one-half or more of the time  
 22 in total service performed for the employing unit by the individual  
 23 during that same period for remuneration, all the services of the  
 24 individual for the employing unit for that period shall be deemed  
 25 subject to the benefit payment restriction provisions of this section.

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

32 ~~(1) Whether or not there is a reasonable assurance of~~  
 33 ~~reemployment.~~

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

37 ~~(3) If it is stated that the individual has reasonable assurance of~~  
 38 ~~reemployment, the written statement shall also inform the employee~~  
 39 ~~that he or she may file a claim for benefits and that the~~

1 ~~determination for eligibility for benefits is made by the~~  
2 ~~Employment Development Department and not by the employer.~~

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

12 ~~SEC. 3. Section 1451 of the Unemployment Insurance Code~~  
13 ~~is repealed.~~

14 ~~1451. Nonprofessional employees of the Fremont and Riverside~~  
15 ~~campuses of the California School for the Deaf, the Fremont~~  
16 ~~campus of the California School for the Blind, and the diagnostic~~  
17 ~~schools for individuals with neurological disabilities located in~~  
18 ~~Los Angeles, San Francisco, and Fresno, shall be eligible for~~  
19 ~~benefits provided by this chapter, on the same terms and conditions~~  
20 ~~as are specified by this part, Part 3 (commencing with Section~~  
21 ~~3501), and Part 4 (commencing with Section 4001), for all other~~  
22 ~~individuals, except where inconsistent with the provisions of this~~  
23 ~~chapter. Except where inconsistent with the provisions of this~~  
24 ~~chapter, the provisions of this division and authorized regulations~~  
25 ~~shall apply to any matter arising pursuant to this chapter.~~

26 ~~SEC. 4. Section 1452 of the Unemployment Insurance Code~~  
27 ~~is repealed.~~

28 ~~1452. Notwithstanding Section 1253.3, between terms~~  
29 ~~unemployment compensation benefits are payable by the~~  
30 ~~Controller, from funds appropriated for support of the State~~  
31 ~~Department of Education and allocated to the state special schools,~~  
32 ~~upon authorization by the Employment Development Department~~  
33 ~~to individuals who are eligible to receive these benefits under this~~  
34 ~~chapter. These benefits shall only be paid for weeks of~~  
35 ~~unemployment occurring between school terms and during an~~  
36 ~~established and customary vacation period or holiday recess when~~  
37 ~~other benefits are denied solely by reason of Section 1253.3.~~

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

1     ~~1453.—(a) There shall be transferred to the Employment~~  
2     ~~Development Department from funds appropriated for support of~~  
3     ~~the State Department of Education and allocated to the state special~~  
4     ~~schools, at the times and in the manner provided in subdivision~~  
5     ~~(b), an amount equal to the additional cost to the Employment~~  
6     ~~Development Department for added administrative work arising~~  
7     ~~out of this chapter.~~

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

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

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

27    ~~(e) The State Department of Education shall provide each~~  
28    ~~employee subject to this chapter, at the end of each school term,~~  
29    ~~with written information advising the employee of benefit rights~~  
30    ~~pursuant to this chapter.~~

31    ~~SEC. 6. Section 1454 of the Unemployment Insurance Code~~  
32    ~~is repealed.~~

33    ~~1454. An individual who receives any unemployment~~  
34    ~~compensation benefits otherwise payable irrespective of this~~  
35    ~~chapter, including retroactive unemployment compensation benefits~~  
36    ~~paid pursuant to subdivision (e) of Section 1253.3, who has~~  
37    ~~received benefits under this chapter for the same period, shall be~~  
38    ~~liable for repayment to the state of the amount of benefits paid~~  
39    ~~under this chapter for that period.~~

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