

AMENDED IN ASSEMBLY APRIL 6, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1245

Introduced by Assembly Member Cooley

February 27, 2015

An act to amend Sections 1088, 1110, 1112, 1114, and 13021 of the Unemployment Insurance Code, relating to unemployment insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 1245, as amended, Cooley. Unemployment insurance: electronic reporting and funds transfers.

(1) Existing law provides for unemployment compensation benefits for eligible individuals in the state who are unemployed through no fault of their own. Existing law requires an employer, as defined, to file a report of contributions, a quarterly return, a report of wages paid, and an annual reconciliation return, as specified, to the Director of Employment Development and to make contributions for unemployment insurance premiums. Existing law provides that an electronic funds transfer of contributions satisfies the report of contributions filing requirements.

~~This bill would, bill, would~~ beginning on January 1, ~~2016, and except as provided, 2017, would~~ require an employer with 10 or more employees to file all reports and returns electronically and remit all contributions for unemployment insurance premiums by electronic funds transfer, *except as provided*. The bill, *beginning on January 1, 2018*, would extend the application of these electronic filing and transfer requirements to all employers ~~beginning on January 1, 2017: employers~~. The bill would authorize the granting of a waiver from these requirements, as specified.

(2) Existing law imposes a 15% penalty on an employer who fails to timely pay ~~its~~ *the* contributions and imposes a \$20 penalty for each unreported wage item.

This bill would extend those penalties to an employer, subject to the above-described electronic filing requirements, who fails to file the required reports ~~electronically or contributions by electronic funds transfer.~~ *electronically.*

(3) Existing law requires employers to withhold income taxes each calendar quarter, file a withholding report, a quarterly return, a report of wages, and pay over the taxes required to be withheld.

This bill, beginning on January 1, ~~2016,~~ *2017*, would require an employer ~~who is~~ subject to the above-described electronic filing requirements to remit the withheld taxes by electronic funds transfer. The bill would authorize a waiver from these requirements, as specified. ~~The bill would require the Department of Employment Development to notify certain employers of these requirements, as specified.~~

The bill would also make related conforming changes.

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

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

1 SECTION 1. Section 1088 of the Unemployment Insurance
2 Code is amended to read:
3 1088. (a) (1) Each employer shall file with the director within
4 the time required by subdivision (a) or (d) of Section 1110 for
5 payment of employer contributions, a report of contributions, a
6 quarterly return, and a report of wages paid to ~~his or her~~ *the*
7 ~~employee's~~ workers in the form and containing any information
8 as the director prescribes. An electronic funds transfer of
9 contributions pursuant to subdivision (f) of Section 1110 shall
10 satisfy the requirement for a report of contributions. The quarterly
11 return shall include the total amount of wages, employer
12 contributions required under Sections 976 and 976.6, worker
13 contributions required under Section 984, the amounts required to
14 be withheld under Section 13020, or withheld under Section 13028,
15 and any other information as the director shall prescribe. The report
16 of wages shall include individual amounts required to be withheld
17 under Section 13020 or withheld under Section 13028.

1 (2) (A) In order to enhance efforts to reduce tax fraud and to
2 reduce the personal income tax reporting burden, effective January
3 1, 1997, the report of wages shall also include the full first name
4 of the employee and total wages, as defined in Section 13009, paid
5 to each employee. This paragraph shall apply to reports of wages
6 for all periods ending on or before December 31, 1999.

7 (B) For all periods beginning on or after January 1, 2000, the
8 report of wages shall also include total wages subject to personal
9 income tax, as defined in Section 13009.5, paid to each employee.

10 (b) Each employer shall file with the director within the time
11 required by subdivision (b) or (d) of Section 1110 for payment of
12 worker contributions, a report of contributions containing the
13 employer's business name, address, and account number, the total
14 amount of worker contributions due, and any other information as
15 the director shall prescribe. The director shall prescribe the form
16 for the report of contributions. An electronic funds transfer of
17 contributions pursuant to subdivision (f) of Section 1110 shall
18 satisfy the requirement for a report of contributions.

19 (c) In addition to the report of contributions, quarterly return,
20 and report of wages required by employers under subdivision (a),
21 an individual who has elected coverage under subdivision (a) of
22 Section 708 is also required to file a separate report of
23 contributions, and quarterly return, subject to Part 2 (commencing
24 with Section 2601).

25 (d) Any employer making an election under subdivision (d) of
26 Section 1110 shall submit the report of wages described in
27 subdivision (a), within the time required for submitting employer
28 contributions under subdivision (a) of Section 1110.

29 (e) (1) In addition to the report of contributions, quarterly return,
30 and report of wages described in subdivision (a), each employer
31 shall file with the director an annual reconciliation return showing
32 the total amount of wages, employer contributions required under
33 Sections 976 and 976.6, worker contributions required under
34 Section 984, the amounts required to be withheld under Section
35 13020 or withheld under Section 13028, and any other information
36 as the director shall prescribe. This annual reconciliation return
37 shall be due on the first day of January following the close of the
38 prior calendar year and shall become delinquent if not filed on or
39 before the last day of that month.

(2) This subdivision shall not apply to individuals electing coverage under Section 708 or 708.5 or employers electing financing under Section 821.

(3) The requirement to file the annual reconciliation return for the prior calendar year under this subdivision shall not apply to the 2012 calendar year and thereafter.

(f) (1) Except as provided in paragraph (2), for purposes of making a report of wages under subdivision (a), employers ~~who~~ *that* are required under Section 6011 of the Internal Revenue Code and authorized regulations thereunder to file magnetic media returns, shall, within 90 days of becoming subject to this requirement, do one of the following:

(A) File any subsequent reports of wages electronically.

(B) Establish to the satisfaction of the director that there is a lack of automation, a severe economic hardship, a current exemption from submitting magnetic media or electronic information returns for federal purposes, or other good cause for not complying with this subdivision. Approved waivers shall be valid for six months or longer, at the discretion of the director.

(2) The requirement to file the report of wages pursuant to this subdivision shall not apply to an employer ~~who~~ *that* is required to file electronically pursuant to subdivision (i).

(g) The Franchise Tax Board shall be allowed access to the information filed with the department pursuant to this section.

(h) The requirement in subdivision (a) to file a quarterly return shall begin with the first calendar quarter of the 2011 calendar year.

(i) (1) Effective January 1, ~~2016~~, 2017, except as provided in subdivision (f), an employer with 10 or more employees shall file *the report of contributions*, ~~the~~ quarterly return, *and* report of wages ~~paid, and annual reconciliation return~~ electronically.

(2) Effective January 1, ~~2017~~, 2018, except as provided in subdivision (f), all employers shall file *the report of contributions*, quarterly return, *and* report of wages ~~paid, and annual reconciliation return~~ electronically.

~~(4)~~

(3) Notwithstanding paragraphs (1) and (2), an employer may request a waiver from the electronic filing requirements of this subdivision. The department may grant the waiver when the employer has established to the satisfaction of the director that ~~the~~

1 there is a lack of automation, a severe economic hardship, a current
2 exemption from filing electronically for federal purposes, or ~~for~~
3 *other* good cause. An approved waiver shall be valid for six months
4 or longer, at the discretion of the director.

5 SEC. 2. Section 1110 of the Unemployment Insurance Code
6 is amended to read:

7 1110. (a) Employer contributions required under Sections 976
8 and 976.6, the amount of benefits received by any individual
9 pursuant to this part that is deducted from an award or settlement
10 made by the employer under the provisions of Section 1382, and,
11 except as provided by subdivision (b) of this section, worker
12 contributions required under Section 984 are due and payable on
13 the first day of the calendar month following the close of each
14 calendar quarter and shall become delinquent if not paid on or
15 before the last day of that month.

16 (b) Worker contributions required under Section 984 are due
17 and payable at the same time and by the same method as amounts
18 required to be withheld under Section 13020 are paid to the
19 department pursuant to Section 13021, regardless of the amount
20 of accumulated unpaid liability for worker contributions.

21 (c) Employer contributions submitted pursuant to Section 976.5
22 shall be paid on or before the last working day of March of the
23 calendar year to which the reduced contribution rate would be
24 applicable. Any employer whose eligibility for an unemployment
25 insurance contribution rate determination is redetermined to make
26 that employer eligible to submit voluntary unemployment insurance
27 contributions in accordance with Section 976.5, may submit a
28 voluntary unemployment insurance contribution within 30 days
29 of the date of notification of the redetermination.

30 (d) Except as provided in subdivision (e), any employer
31 described in Sections 682 and 684 may elect to report and pay
32 employer contributions required under Sections 976 and 976.6,
33 and worker contributions required under Section 984, annually.
34 All contributions are due and payable on the first day of January
35 following the close of the prior calendar year and shall become
36 delinquent if not paid on or before the last day of that month. An
37 election under this subdivision shall be effective the first day of
38 the calendar year in which it is approved by the department. An
39 election under this subdivision shall not be approved if the
40 employer has an outstanding return or report delinquency on the

1 records of the department, or an unpaid amount owed to the
2 department, that is not the subject of a timely petition for
3 reassessment pending before the appeals board at the time the
4 election is filed.

5 (e) An employer described in Sections 682 and 684 who pays
6 more than twenty thousand dollars (\$20,000) in wages annually,
7 shall not be entitled to the election allowed in subdivision (d). If
8 at any time during the year the total wages paid by an employer
9 electing to file under subdivision (d) exceeds twenty thousand
10 dollars (\$20,000), the election shall be terminated at the close of
11 that calendar quarter. In addition to the report of wages due for
12 that quarter, the employer shall file a return and pay any
13 contributions due for that portion of the year during which the
14 election was in effect, and shall pay contributions in accordance
15 with subdivisions (a), (b), and (c) for the remainder of that year.

16 (f) Except as required in subdivision (g), contributions due
17 pursuant to this section may be submitted by electronic funds
18 transfer. Contributions submitted by electronic funds transfer shall
19 be deemed complete in accordance with paragraph (4) of
20 subdivision (e) of Section 13021.

21 (g) (1) Effective January 1, ~~2016~~, 2017, an employer with 10
22 or more employees shall remit the contributions and ~~benefit~~
23 ~~amounts~~ *withholdings* by electronic funds transfer.

24 (2) Beginning on January 1, ~~2017~~, 2018, all employers shall
25 remit the contributions and ~~benefit amounts~~ *withholdings* by
26 electronic funds transfer.

27 (3) Notwithstanding paragraphs (1) and (2), an employer may
28 request a ~~temporary~~ waiver from the electronic funds transfer
29 requirement of this subdivision. The department may grant the
30 waiver when the employer has established to the satisfaction of
31 the director that ~~there~~ there is a lack of automation, a severe economic
32 hardship, a current exemption from filing electronically for federal
33 purposes, or ~~for~~ *other* good cause. An approved waiver shall be
34 valid for six months or longer, at the discretion of the director.

35 (h) For purposes of this section, “electronic funds transfer” shall
36 have the same meaning as in Section 13021.5.

37 SEC. 3. Section 1112 of the Unemployment Insurance Code
38 is amended to read:

39 1112. (a) Any employer who without good cause fails to pay
40 any contributions required of him or her or of his or her workers,

1 except amounts assessed under Article 8 (commencing with Section
2 1126), within the time required shall pay a penalty of 15 percent
3 of the amount of those contributions.

4 (b) Any employer required to remit payments electronically
5 ~~pursuant to paragraph (2) of subdivision (d) of Section 13021 or~~
6 ~~by electronic funds transfer pursuant to paragraph (1) of~~
7 ~~subdivision (d) of Section 13021~~, who without good cause remits
8 those amounts by means other than electronic funds transfer shall
9 pay a penalty of 15 percent of the amount of those contributions.

10 (c) The changes made to this section by Chapter 28 of the
11 Statutes of 2014 shall apply on and after July 1, 2014.

12 SEC. 4. Section 1114 of the Unemployment Insurance Code
13 is amended to read:

14 1114. (a) Any employer who, without good cause, fails to file
15 within 15 days after service by the director of notice pursuant to
16 Section 1206 of a specific written demand therefor, a report of
17 wages of each of his or her workers required by this division, shall
18 pay in addition to other amounts required, for each unreported
19 wage item a penalty of twenty dollars (\$20).

20 (b) Any employer required by this division to file a report of
21 wages of each of his or her workers on magnetic media or other
22 electronic means as prescribed by subdivision (f) or ~~(g)~~ (i) of
23 Section 1088, who, without good cause, instead files a report of
24 wages by means ~~that are not~~ *other than* electronic, shall ~~pay~~ pay,
25 in addition to other amounts required, for each wage item a penalty
26 of twenty dollars (\$20).

27 (c) The changes made to this section by Chapter 28 of the
28 Statutes of 2014 shall apply on and after July 1, 2014.

29 SEC. 5. Section 13021 of the Unemployment Insurance Code
30 is amended to read:

31 13021. (a) Every employer required to withhold any tax under
32 Section 13020 shall for each calendar quarter, whether or not wages
33 or payments are paid in the quarter, file a withholding report, a
34 quarterly return, as described in subdivision (a) of Section 1088,
35 and a report of wages in a form prescribed by the department, and
36 pay over the taxes so required to be withheld. The report of wages
37 shall include individual amounts required to be withheld under
38 Section 13020 or withheld under Section 13028. Except as provided
39 in subdivisions (c) and (d), the employer shall file a withholding
40 report, a quarterly return, as described in subdivision (a) of Section

1 1088, and a report of wages, and remit the total amount of income
 2 taxes withheld during the calendar quarter on or before the last
 3 day of the month following the close of the calendar quarter.

4 (b) Every employer electing to file a single annual return under
 5 subdivision (d) of Section 1110 shall report and pay any taxes
 6 withheld under Section 13020 on an annual basis within the time
 7 specified in subdivision (d) of Section 1110.

8 (c) (1) Effective January 1, 1995, whenever an employer is
 9 required, for federal income tax purposes, to remit the total amount
 10 of withheld federal income tax in accordance with Section 6302
 11 of the Internal Revenue Code and regulations thereunder, and the
 12 accumulated amount of state income tax withheld is more than
 13 five hundred dollars (\$500), the employer shall remit the total
 14 amount of income tax withheld for state income tax purposes within
 15 the number of business days as specified for withheld federal
 16 income taxes by Section 6302 of the Internal Revenue Code, and
 17 regulations thereunder.

18 (2) Effective January 1, 1996, the five hundred dollar (\$500)
 19 amount referred to in paragraph (1) shall be adjusted annually as
 20 follows, based on the annual average rate of interest earned on the
 21 Pooled Money Investment Account as of June 30 in the prior fiscal
 22 year:

23	Average Rate of Interest	
24	Greater than or equal to 9 percent:	\$ 75
25	Less than 9 percent, but greater than or equal to	
26	7 percent:	250
27	Less than 7 percent, but greater than or equal to	
28	4 percent:	400
29	Less than 4 percent:	500
30		

31
 32 (d) (1) Notwithstanding subdivisions (a) and (c), for calendar
 33 years beginning on or after January 1, 1995, if in the 12-month
 34 period ending June 30 of the prior year, the cumulative average
 35 payment made pursuant to this division or Section 1110 for any
 36 deposit periods, as described under Section 6302 of the Internal
 37 Revenue Code and regulations thereunder, was twenty thousand
 38 dollars (\$20,000) or more, the employer shall remit the total amount
 39 of income tax withheld within the number of business days as
 40 specified for federal income taxes by Section 6302 of the Internal

1 Revenue Code and regulations thereunder. For purposes of this
2 subdivision, payment shall be made by electronic funds transfer
3 in accordance with Section 13021.5, for one calendar year
4 beginning on January 1. Payment is deemed complete on the date
5 the electronic funds transfer is initiated if settlement to the state's
6 demand account occurs on or before the business day following
7 the date the transfer is initiated. If settlement to the state's demand
8 account does not occur on or before the business day following
9 the date the transfer is initiated, payment is deemed complete on
10 the date settlement occurs. The department shall, on or before
11 October 31 of the prior year, notify all employers required by this
12 paragraph to make payments by electronic funds transfer of these
13 requirements.

14 (2) Effective January 1, ~~2016~~, 2017, paragraph (1) shall not
15 apply to an employer ~~who is~~ subject to the electronic filing
16 requirements of Section 1088. Effective January 1, ~~2016~~, 2017,
17 an employer ~~who is~~ subject to the electronic filing requirements
18 of Section 1088 shall remit the total amount of income tax withheld
19 within the number of business days specified in Section 6302 of
20 the Internal Revenue Code and the regulations adopted thereunder
21 for filing federal income taxes. Payment shall be deemed complete
22 on the date the electronic funds transfer is initiated if settlement
23 to the state's demand account occurs on or before the business day
24 following the date the transfer is initiated. If settlement to the
25 state's demand account does not occur on or before the business
26 day following the date the transfer is initiated, payment is deemed
27 complete on the date settlement occurs. ~~The department shall, on~~
28 ~~or before each October 31, beginning October 31, 2016, notify~~
29 ~~employers who will be subject to the requirements of this~~
30 ~~paragraph.~~

31 (3) Notwithstanding paragraphs (1) and (2), effective January
32 1, 1995, electronic funds transfer payments that are subject to the
33 one-day deposit rule, as described by Section 6302 of the Internal
34 Revenue Code and regulations thereunder, shall be deemed timely
35 if the payment settles to the state's demand account within three
36 business days after the date the employer meets the threshold for
37 the one-day deposit rule.

38 (4) Any taxpayer required to remit payments pursuant to
39 paragraphs (1) and (2) may request from the department a waiver
40 of those requirements. The department may grant a waiver only if

1 it determines that the particular amount paid in excess of twenty
2 thousand dollars (\$20,000), as stated in paragraph (1) was the result
3 of an unprecedented occurrence for that employer, and was not
4 representative of the employer's cumulative average payment in
5 prior years.

6 (5) A state agency required to remit payments pursuant to
7 paragraphs (1) and (2) may request a waiver of those requirements
8 from the department. The department may grant a waiver if it
9 determines that there will not be a negative impact on the interest
10 earnings of the General Fund. If there is a negative impact to the
11 General Fund, the department may grant a waiver if the requesting
12 state agency follows procedures designated by the department to
13 mitigate the impact to the General Fund.

14 (e) An employer not required to make payment pursuant to
15 subdivision (d) may elect to make payment by electronic funds
16 transfer in accordance with Section 13021.5 under the following
17 conditions:

18 (1) The election shall be made in a form, and shall contain
19 information, as prescribed by the director, and shall be subject to
20 approval by the department.

21 (2) If approved, the election shall be effective on the date
22 specified in the notification to the employer of approval.

23 (3) The election shall be operative from the date specified in
24 the notification of approval, and shall continue in effect until
25 terminated by the employer or the department.

26 (4) Funds remitted by electronic funds transfer pursuant to this
27 subdivision shall be deemed complete in accordance with
28 subdivision (d) or as deemed appropriate by the director to
29 encourage use of this payment method.

30 (f) Notwithstanding Section 1112, interest and penalties shall
31 not be assessed against an employer that remits at least 95 percent
32 of the amount required by subdivision (c) or (d) if the failure to
33 remit the full amount is not willful and any remaining amount due
34 is paid with the next payment. The director may allow any
35 employer to submit the amounts due from multiple locations upon
36 a showing that those submissions are necessary to comply with
37 subdivision (c) or (d).

38 (g) The department may, if it believes that action is necessary,
39 require any employer to make the report or return required by this
40 section and pay to it the tax deducted and withheld at any time, or

1 from time to time but no less frequently than provided for in
2 subdivision (a).

3 (h) An employer required to withhold any tax and that is not
4 required to make payment under subdivision (c) shall remit the
5 total amount of income tax withheld during each month of each
6 calendar quarter, on or before the 15th day of the subsequent month
7 if the income tax withheld for any of the three months or,
8 cumulatively for two or more months, is three hundred fifty dollars
9 (\$350) or more.

10 (i) For purposes of subdivisions (a), (c), and (h), payment that
11 is not required to be made by electronic funds transfer is deemed
12 complete when it is placed in a properly addressed envelope,
13 bearing the correct postage, and it is deposited in the United States
14 mail.

15 (j) (1) In addition to the withholding report, quarterly return,
16 and report of wages described in subdivision (a), each employer
17 shall file with the director an annual reconciliation return showing
18 the amount required to be withheld under Section 13020, and any
19 other information the director shall prescribe. This annual
20 reconciliation return shall be due on the first day of January
21 following the close of the prior calendar year and shall become
22 delinquent if not filed on or before the last day of that month.

23 (2) The requirement to file the annual reconciliation return for
24 the prior calendar year under this subdivision shall not apply to
25 the 2012 calendar year and thereafter.

26 (k) The requirement in subdivision (a) to file a quarterly return
27 shall begin with the first calendar quarter of the 2011 calendar
28 year.

29 (l) The changes made to this section by Chapter 783 of the
30 Statutes of 2012 shall apply on and after January 1, 2013.