

AMENDED IN ASSEMBLY MARCH 28, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2197**

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**Introduced by Assembly Member Cristina Garcia**

February 18, 2016

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~~An act to amend Section 3303.1 of the Unemployment Insurance Code, relating to paid family leave. An act to amend Section 1253.3 of, and to repeal Sections 1451, 1452, and 1453 of, the Unemployment Insurance Code, relating to unemployment insurance, and making an appropriation therefor.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2197, as amended, Cristina Garcia. ~~Disability compensation: paid family leave. 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 educational institution 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 educational institution 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 State 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 of a public school, other than teachers, researchers, and administrators, as specified, between 2 academic years. The bill would phase in up to 8 weeks of benefits available to those specified employees over a 4-year timeframe and would make conforming changes, including eliminating the provisions for payment of unemployment benefits to these employees at specified schools.*

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

~~Existing law establishes within the state disability insurance program, a family temporary disability insurance program, also known as the paid family leave program, for the provision of wage replacement benefits to workers who take time off work to care for a seriously ill family member or to bond with a minor child within one year of birth or placement, as specified. Existing law conditions eligibility for these benefits upon the individual’s inability to perform his or her regular or customary work for a 7-day waiting period during each disability benefit period.~~

~~Existing law authorizes an employer to require an employee to take up to 2 weeks of earned but unused vacation before, and as a condition of, the employee’s initial receipt of these benefits during any 12-month period in which the employee is eligible for them. Existing law requires that portion of the vacation leave that does not exceed one week to be applied to the 7-day waiting period.~~

~~This bill would delete the requirement that vacation leave be applied to the 7-day waiting period.~~

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

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

- 1 *SECTION 1. Section 1253.3 of the Unemployment Insurance*
- 2 *Code is amended to read:*

1 1253.3. (a) Notwithstanding any other provision of this  
2 division, unemployment compensation benefits, extended duration  
3 benefits, and federal-state extended benefits are payable on the  
4 basis of service to which Section 3309(a)(1) of the Internal  
5 Revenue Code of 1954 applies, in the same amount, on the same  
6 terms, and subject to the same conditions as benefits payable on  
7 the basis of other service subject to this division, except as provided  
8 by this section.

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

23 (c) ~~Benefits~~ *(1) Except as provided in paragraph (2), benefits*  
24 *specified by subdivision (a) based on service performed in the*  
25 *employ of a nonprofit organization, or of ~~any~~ ~~entity~~ *a public entity,*  
26 *as defined by Section 605, with respect to service in any other*  
27 *capacity than specified in subdivision (b) for an educational*  
28 *institution shall not be payable to any individual with respect to*  
29 *any week which commences during a period between two*  
30 *successive academic years or terms if the individual performs the*  
31 *service in the first of the academic years or terms and there is a*  
32 *reasonable assurance that the individual will perform the service*  
33 *in the second of the academic years or terms. However, if the*  
34 *individual was not offered an opportunity to perform the services*  
35 *for an educational institution for the second of the academic years*  
36 *or terms, the individual shall be entitled to a retroactive payment*  
37 *of benefits for each week for which the individual filed a timely*  
38 *claim for benefits and for which benefits were denied solely by*  
39 *reason of this subdivision. Retroactive benefits shall be claimed*  
40 *in accordance with the department's procedures which shall specify**

1 that except where the individual was entitled to benefits based on  
 2 services performed for other than an educational institution, an  
 3 individual who has a reasonable assurance of reemployment may  
 4 satisfy the search for work requirement of subdivision (e) of  
 5 Section 1253, by registering for work pursuant to subdivision (b)  
 6 of Section 1253 during the period between the first and second  
 7 academic terms or years. A claim for retroactive benefits may be  
 8 made no later than 30 days following the commencement of the  
 9 second academic year or term.

10 (2) *Benefits specified by subdivision (a) are authorized for an*  
 11 *employee of a public school, as defined in Section 22161 of the*  
 12 *Education Code, for the period between two successive academic*  
 13 *years or terms, as described in paragraph (1), as follows:*

- 14 (A) *Two weeks of benefits during 2016 beginning July 1.*
- 15 (B) *Four weeks of benefits during 2017 beginning July 1.*
- 16 (C) *Six weeks of benefits during 2018 beginning July 1.*
- 17 (D) *Eight weeks of benefits during 2019 and each year thereafter*  
 18 *beginning July 1.*

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

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

38 (f) Benefits specified by subdivision (a) based on service  
 39 performed in the employ of a nonprofit organization, or of any  
 40 entity as defined by Section 605, are not payable during the periods

1 of time, and subject to the same conditions, contained in  
2 subdivisions (b), (c), (d), and (h), if the services are provided to,  
3 or on behalf of, an educational institution.

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

12 (h) For purposes of this section, if the time for service performed  
13 during the period of and pursuant to any contract for any academic  
14 year or term by an individual for any employing unit as specified  
15 in subdivision (b) or (c) constitutes one-half or more of the time  
16 in total service performed for the employing unit by the individual  
17 during that same period for remuneration, all the services of the  
18 individual for the employing unit for that period shall be deemed  
19 subject to the benefit payment restriction provisions of this section.

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

26 (1) Whether or not there is a reasonable assurance of  
27 reemployment.

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

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

36 (4) If it is stated that the individual has reasonable assurance of  
37 reemployment, that the individual shall be entitled to a retroactive  
38 payment of benefits if the individual is not offered an opportunity  
39 to perform the services for the educational institution for the second  
40 of the academic years or terms, if the individual is otherwise

1 eligible and he or she filed a claim for each week benefits are  
2 claimed, and if a claim for retroactive benefits is made no later  
3 than 30 days following the commencement of the second academic  
4 year or term.

5 *SEC. 2. Section 1451 of the Unemployment Insurance Code is*  
6 *repealed.*

7 ~~1451. Nonprofessional employees of the Fremont and Riverside~~  
8 ~~campuses of the California School for the Deaf, the Fremont~~  
9 ~~campus of the California School for the Blind, and the diagnostic~~  
10 ~~schools for individuals with neurological disabilities located in~~  
11 ~~Los Angeles, San Francisco, and Fresno, shall be eligible for~~  
12 ~~benefits provided by this chapter, on the same terms and conditions~~  
13 ~~as are specified by this part, Part 3 (commencing with Section~~  
14 ~~3501), and Part 4 (commencing with Section 4001), for all other~~  
15 ~~individuals, except where inconsistent with the provisions of this~~  
16 ~~chapter. Except where inconsistent with the provisions of this~~  
17 ~~chapter, the provisions of this division and authorized regulations~~  
18 ~~shall apply to any matter arising pursuant to this chapter.~~

19 *SEC. 3. Section 1452 of the Unemployment Insurance Code is*  
20 *repealed.*

21 ~~1452. Notwithstanding Section 1253.3, between terms~~  
22 ~~unemployment compensation benefits are payable by the~~  
23 ~~Controller, from funds appropriated for support of the State~~  
24 ~~Department of Education and allocated to the state special schools,~~  
25 ~~upon authorization by the Employment Development Department~~  
26 ~~to individuals who are eligible to receive these benefits under this~~  
27 ~~chapter. These benefits shall only be paid for weeks of~~  
28 ~~unemployment occurring between school terms and during an~~  
29 ~~established and customary vacation period or holiday recess when~~  
30 ~~other benefits are denied solely by reason of Section 1253.3.~~

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

33 ~~1453. (a) There shall be transferred to the Employment~~  
34 ~~Development Department from funds appropriated for support of~~  
35 ~~the State Department of Education and allocated to the state special~~  
36 ~~schools, at the times and in the manner provided in subdivision~~  
37 ~~(b), an amount equal to the additional cost to the Employment~~  
38 ~~Development Department for added administrative work arising~~  
39 ~~out of this chapter.~~

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

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

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

20 ~~(e) The State Department of Education shall provide each~~  
21 ~~employee subject to this chapter, at the end of each school term,~~  
22 ~~with written information advising the employee of benefit rights~~  
23 ~~pursuant to this chapter.~~

24 ~~SECTION 1. Section 3303.1 of the Unemployment Insurance~~  
25 ~~Code is amended to read:~~

26 ~~3303.1. (a) An individual is not eligible for family temporary~~  
27 ~~disability insurance benefits with respect to any day that any of~~  
28 ~~the following apply:~~

29 ~~(1) The individual has received, or is entitled to receive,~~  
30 ~~unemployment compensation benefits under Part 1 (commencing~~  
31 ~~with Section 100) or under an unemployment compensation act~~  
32 ~~of any other state or of the federal government.~~

33 ~~(2) The individual has received, or is entitled to receive, "other~~  
34 ~~benefits" in the form of cash benefits as defined in Section 2629.~~

35 ~~(3) The individual has received, or is entitled to receive, state~~  
36 ~~disability insurance benefits under Part 2 (commencing with~~  
37 ~~Section 2601) or under a disability insurance act of any other state.~~

38 ~~(4) Another family member, as defined in Section 3302, is ready,~~  
39 ~~willing, and able and available for the same period of time in a~~  
40 ~~day that the individual is providing the required care.~~

1     ~~(b) An individual who is entitled to leave under the FMLA and~~  
2     ~~the CFRA must take Family Temporary Disability Insurance~~  
3     ~~(FTDI) leave concurrent with leave taken under the FMLA and~~  
4     ~~the CFRA.~~

5     ~~(c) As a condition of an employee's initial receipt of family~~  
6     ~~temporary disability insurance benefits during any 12-month period~~  
7     ~~in which an employee is eligible for these benefits, an employer~~  
8     ~~may require an employee to take up to two weeks of earned but~~  
9     ~~unused vacation leave prior to the employee's initial receipt of~~  
10    ~~these benefits. This subdivision may not be construed in a manner~~  
11    ~~that relieves an employer of any duty of collective bargaining the~~  
12    ~~employer may have with respect to the subject matter of this~~  
13    ~~subdivision.~~