

Assembly Bill No. 318

CHAPTER 636

An act to amend Section 1236 of, and to add Section 1237 to, the Unemployment Insurance Code, relating to unemployment.

[Approved by Governor October 3, 1997. Filed
with Secretary of State October 6, 1997.]

LEGISLATIVE COUNSEL'S DIGEST

AB 318, Takasugi. Unemployment.

(1) Existing law authorizes the Director of Employment Development, or the chief counsel, if authorized by the director, to recommend to the Unemployment Insurance Appeals Board a settlement of certain civil employment tax matter disputes.

This bill would, instead, provide that the director may approve a settlement involving a reduction of tax in settlement of \$7,500 or less, and would impose specified procedures for settlements, including approval by the Attorney General, the administrative law judge, or the appeals board under certain conditions.

(2) Existing law provides that those settlements arising out of a disagreement on the status of a worker as an employee or independent contractor may include an agreement on the prospective classification of that worker and similar workers.

This bill would specify that the agreement is for employment tax purposes, and does not operate to deprive workers of their eligibility for unemployment, workers' compensation, or disability insurance benefits, and is subject to additional limits.

(3) Existing law provides that no person shall discharge or discriminate against any employee because the employee has filed a bona fide complaint or claim or exercised rights under the jurisdiction of the Labor Commissioner, and provides for investigation by the Labor Commissioner and a remedy of reinstatement and reimbursement of lost wages and benefits.

This bill would provide that no business entity shall discharge or otherwise discriminate against any person because he or she has sought information from the department concerning his or her rights under the Unemployment Insurance Code or the Labor Code, cooperated with any investigation undertaken by the Employment Development Department, or has testified or is about to testify in any proceeding brought pursuant to the Unemployment Insurance Code or the Labor Code. This bill would provide for the same remedies as set forth above with respect to rights under the jurisdiction of the Labor Commissioner.

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

SECTION 1. Section 1236 of the Unemployment Insurance Code is amended to read:

1236. Any civil employment tax matter dispute arising under Article 8 (commencing with Section 1126), Article 9 (commencing with Section 1176), or Article 11 (commencing with Section 1221), may be settled under the following conditions:

(a) (1) The director may approve a settlement of a civil employment tax matter in dispute involving a reduction of tax in settlement of seven thousand five hundred dollars (\$7,500) or less. However, once an appeal of an employment tax matter dispute has been filed with the appeals board, the appeal has been assigned to an administrative law judge, and a notice of hearing has been issued, approval of the settlement by the assigned administrative law judge shall be obtained. If the decision of the administrative law judge has been appealed, approval of the appeals board shall be obtained. A proposed settlement shall be grounds for continuance of the scheduled hearing until the Attorney General has completed a review of the proposed settlement. "Civil employment tax matters in dispute" means those matters that are the subject of protests, appeals, or refund claims.

(2) Except as provided by paragraph (3), each proposed settlement shall be submitted to the Attorney General. Within 30 days of receiving that proposed settlement, the Attorney General shall review the recommendation and advise, in writing, of his or her conclusions as to whether the recommendation is reasonable from an overall perspective. If the Attorney General determines that the settlement is reasonable from an overall perspective, the director, and the administrative law judge or the appeals board, as applicable, may then determine if a settlement will be approved.

(3) A settlement of any civil employment tax matter dispute involving a reduction of tax or penalties in settlement, the total of which reduction of tax and penalties in settlement does not exceed five thousand dollars (\$5,000), may be approved by the director, and the administrative law judge or the appeals board, as applicable, without prior submission to the Attorney General.

(b) The director may recommend to the appeals board a settlement of a civil employment tax matter dispute involving a reduction in tax and exceeding seven thousand five hundred dollars (\$7,500) and arising under Article 8 (commencing with Section 1126), Article 9 (commencing with Section 1176), or Article 11 (commencing with Section 1221). Each proposed settlement shall be submitted to the Attorney General in the same manner as described in subdivision (a).

(c) Whenever a reduction of tax or penalties or total tax and penalties in excess of five hundred dollars (\$500) is approved



pursuant to this section, there shall be placed on file in the office of the director a public record with respect to that settlement. The public record shall include, but need not be limited to, all of the following information:

- (1) The name or names of the taxpayers who are parties to the settlement.
- (2) The total amount involved.
- (3) The amount payable or refundable pursuant to the settlement.
- (4) A summary of the reasons why the settlement is in the best interests of the state.
- (5) The Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

The public record shall not include any information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or organizational structure that, if disclosed, would adversely affect the taxpayer or the national defense.

(d) All settlements entered into pursuant to this section shall be final and nonappealable, except upon a showing of fraud or misrepresentation with respect to a material fact.

(e) Any proceedings undertaken by the appeals board relating to a settlement as described in this section shall be conducted in a closed session or sessions. Except as provided in subdivision (c), any settlement entered into pursuant to this section shall constitute confidential tax information.

(f) Any settlement of a civil employment tax matter arising out of a disagreement between the department and the employing unit on the status of a worker as an employee or an independent contractor may also include an agreement on the prospective classification of that worker and any worker similarly situated for employment tax purposes, except as provided in subdivision (g).

(g) If a settlement includes a commitment on the prospective status of workers or reporting responsibilities of the employer, then the following shall apply:

(1) The settlement shall not operate to deprive workers of their eligibility for unemployment, workers' compensation, or disability insurance benefits.

(2) The commitment concerning the status of workers or reporting responsibilities of the employer will terminate if there is a change in material facts, a change in an applicable statute, or a ruling by the appeals board on the workers or employer subject to the settlement that is contrary to the commitment.

(h) For purposes of this section, settlement is defined as a compromise on the amount of the tax liability, consistent with the reasonable evaluation of the costs and risks associated with litigation of these matters.



(i) The amendments to this section made in the 1997 portion of the 1997-98 Regular Session shall become operative January 1, 1998.

SEC. 2. Section 1237 is added to the Unemployment Insurance Code, to read:

1237. (a) No business entity shall discharge or otherwise discriminate against any person because he or she has sought information from the department concerning his or her rights under this code or the Labor Code, cooperated with any investigation undertaken by the department, or has testified or is about to testify in any proceeding brought pursuant to this code or the Labor Code.

(b) Any employee who believes that his or her rights under subdivision (a) have been violated may file a complaint with the Labor Commissioner, and with respect to that complaint shall be entitled to the same rights, remedies, and procedures as are applicable for a violation of Section 98.6 of the Labor Code.

