

Introduced by Senator Durazo

(Principal coauthor: Assembly Member Santiago)

(Coauthor: Assembly Member Wendy Carrillo)

January 19, 2023

An act to add and repeal Chapter 2 (commencing with Section 2020) of Part 8 of Division 2 of the Labor Code, and to add Section 17140.6 to the Revenue and Taxation Code, relating to unemployment.

LEGISLATIVE COUNSEL'S DIGEST

SB 227, as introduced, Durazo. Unemployment: Excluded Workers Program.

(1) Existing law authorizes the payment of unemployment compensation benefits and requires that they be made in accordance with regulations of the Director of Employment Development. Existing law generally requires the Employment Development Department to promptly pay benefits if claimants are eligible or to promptly deny benefits if they are ineligible. Existing law prohibits payment of unemployment compensation benefits for services performed by a person who is not a citizen or national of the United States, unless that person is an individual who was lawfully admitted for permanent residence at the time the services were performed, was lawfully present for purposes of performing the services, or was permanently residing in the United States under color of law at the time the services were performed, as specified.

This bill would establish, until January 1, 2027, the Excluded Workers Program, to be administered by the Employment Development Department upon appropriation by the Legislature, for the purpose of providing income assistance to excluded workers who are ineligible for the existing state or federal benefits administered by the department

and who are unemployed. The bill would make individuals eligible to receive \$300 per week for each week of unemployment, if the Director of Employment Development makes certain findings, as defined and specified. The bill would require the department to promulgate regulations to implement the program, including regulations providing for an application process, as specified.

The bill would prohibit the department from requesting or compelling certain information from individuals in connection with administering the program and would prohibit the department from retaining specified documents for longer than necessary to administer benefits. The bill would also prohibit, except as specified, disclosures of personal information, as defined.

The bill would require the department, on or before April 1, 2025, and until all funds have been exhausted, or January 1, 2027, whichever comes first, to release quarterly reports on the progress of the program. The bill would also require the department, on or before March 1, 2026, to submit a report to the Legislature that includes specified information about the program, including, program participation, benefit amounts paid, weeks of benefits paid per participant, specified demographic information on program participants, outreach efforts, and administrative costs.

(2) The Personal Income Tax Law, in modified conformity with federal law, generally defines “gross income” as income from whatever source derived, except as specifically excluded, and provides various exclusions from gross income for purposes of computing tax liability. Existing law requires any bill authorizing a new tax expenditure to contain, among other things, specific goals, purposes, and objectives that the tax expenditure will achieve, detailed performance indicators, and data collection requirements.

This bill, for the taxable year beginning on or after January 1, 2025, and before January 1, 2027, would provide an exclusion from gross income for benefits received under the program. The bill would require the Franchise Tax Board to submit, on or before June 15, 2026, a report to the Legislature on the total number of claims for the exclusion and the amount claimed for each exclusion, and would provide findings and declarations relating to the goals, purposes, and objectives of this exclusion.

(3) Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating

the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

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. The Legislature finds and declares the following:

2 (a) In setting up a system of unemployment insurance benefits,
3 the Legislature recognized that private charity and local relief
4 cannot alone prevent the effects of unemployment. Created in
5 1935, the unemployment insurance system serves two interlaced
6 purposes: providing income support to workers so they can meet
7 the basic needs of their family if they lose their jobs, and helping
8 to sustain consumer demand during economic downturns by
9 providing a continuing stream of dollars for families to spend in
10 their local economies. Most workers who have become unemployed
11 or underemployed through no fault of their own are eligible to
12 receive unemployment insurance benefits and they, their families,
13 and the California economy reap the benefits of this lifesaving
14 program. However, due to historically racial exclusions, many of
15 California's most vulnerable workers are entirely excluded from
16 the program.

17 (b) The COVID-19 pandemic and the subsequent economic
18 downturn caused millions of workers in California to lose their
19 jobs and source of livelihood. Estimates from the Legislative
20 Analyst's Office show that 6 in 10 California workers worked jobs
21 that could not be done remotely, increasing their chances of
22 contracting COVID-19. Most of these workers were women, people
23 of color, and immigrants who worked in some of the most
24 hazardous and low-paid jobs, including fast food, grocery, garment,
25 manufacturing, construction, and others.

26 (c) Despite paying millions of dollars in state and local taxes
27 and making up one-sixteenth of the California workforce,
28 undocumented immigrants are categorically excluded from
29 unemployment insurance. As of January 1, 2022, Section 1264 of
30 the Unemployment Insurance Code provides that unemployment
31 insurance benefits, extended duration benefits, and federal-state
32 extended benefits shall not be payable to a noncitizen unless the

1 individual “was lawfully admitted for permanent residence at the
2 time the services were performed, was lawfully present for
3 purposes of performing the services, or was permanently residing
4 in the United States under color of law at the time the services
5 were performed[.]” During the COVID-19 pandemic,
6 undocumented immigrant workers were also unable to access
7 programs such as Pandemic Unemployment Assistance, Federal
8 Pandemic Unemployment Compensation, and Pandemic
9 Emergency Unemployment Compensation. These programs were
10 a crucial lifeline for the one in six adults that received these benefits
11 at the height of the crisis. Studies have shown that beyond
12 curtailing poverty, these benefits substantially reduced hardship
13 and improved the well-being of households, including recipients’
14 financial stability and mental health. Yet, some of California’s
15 most vulnerable workers have been and remain completely
16 excluded from these programs.

17 (d) Immigrant workers make up a significant percentage of
18 workers in many of the industries that experienced the highest
19 rates of joblessness and low wages predating the COVID-19
20 pandemic. The impact of this job loss threatens the livelihoods of
21 millions of Californians, in addition to the unemployed workers
22 themselves. An estimated one in three undocumented residents is
23 a parent and more than one in eight schoolaged children in
24 California have a parent who is an undocumented immigrant.
25 Without the support of essential safety net programs like
26 unemployment insurance, many immigrant families are forced to
27 exhaust their life savings, accumulate debt, and compromise their
28 health to simply afford basic necessities like rent and food.

29 (e) California’s economy also suffers by excluding
30 undocumented workers from this program. By partially replacing
31 unemployed workers’ earnings, unemployment insurance (UI)
32 benefits help alleviate the inherent reduction in consumption and
33 economic activity that results when there is a drastic increase in
34 unemployment. Economists maintain that UI benefits produce at
35 least \$1.61 of economic stimulus for every \$1 of benefits paid.
36 Indeed, one economist found that during the Great Recession,
37 every \$1 of UI benefits produced about \$2 dollars of economic
38 impact. Similarly, UI benefits help employers and the labor market
39 by supporting workers to find the best matched positions.

1 (f) While the COVID-19 pandemic has highlighted the extreme
2 consequences of undocumented workers' exclusion from
3 unemployment insurance, this problem has existed for decades
4 and it will only become more urgent. Wildfires, severe weather
5 events, economic fluctuations, seasonal changes in workforce
6 needs—all of these factors will continue to cause unemployment.
7 And for most low-income individuals, unemployment without a
8 safety net is a crisis no matter when it occurs.

9 (g) To rectify the unjust exclusion of immigrant workers from
10 an essential social safety net program and build a safer and more
11 resilient economy, this bill would require the Employment
12 Development Department to establish an Excluded Workers
13 Program to provide weekly monetary assistance to unemployed
14 workers who are ineligible for state or federal unemployment
15 insurance benefits due to their immigration status.

16 SEC. 2. Chapter 2 (commencing with Section 2020) is added
17 to Part 8 of Division 2 of the Labor Code, to read:

18

19

CHAPTER 2. EXCLUDED WORKERS PROGRAM

20

21 2020. (a) This chapter establishes the Excluded Workers
22 Program, which shall be administered by the Employment
23 Development Department, upon appropriation by the Legislature
24 of sufficient funds to carry out the program.

25 (b) The purpose of the Excluded Workers Program is to provide
26 income assistance to excluded workers who are ineligible for the
27 state or federal unemployment insurance benefits administered by
28 the Employment Development Department and who are
29 unemployed.

30 (c) It is the intent of the Legislature to authorize persons who
31 are not lawfully present in the United States, as members of the
32 class of workers excluded from unemployment insurance benefits,
33 to participate in and receive disbursements from the Excluded
34 Workers Program, and this chapter is therefore enacted pursuant
35 to subsection (d) of Section 1621 of Title 8 of the United States
36 Code.

37 2021. For purposes of this chapter, the following definitions
38 apply:

39 (a) "Department" means the Employment Development
40 Department of the Labor and Workforce Development Agency.

1 (b) “Director” means the Director of Employment Development.

2 (c) “Employee” has the same meaning as defined in paragraph
3 (1) of subdivision (b) of Section 2775.

4 (d) “Individual” means a person who is applying for or receiving
5 disbursements from the program.

6 (e) “Personal information” means any type of information that
7 identifies or describes an individual, including, but not limited to,
8 the individual’s name, social security number, taxpayer
9 identification number, physical description, home address, home
10 telephone number, education, financial matters, and medical or
11 employment history. It includes statements made by, or attributed
12 to, the individual.

13 (f) “Program” means the Excluded Workers Program.

14 (g) “Wages” has the same meaning as defined in Section 926
15 of the Unemployment Insurance Code.

16 (h) “Week of unemployment” means a week during which the
17 individual performs no work and earns no wages.

18 2022. (a) An individual shall be eligible to receive program
19 benefits with respect to any week that falls between January 1,
20 2025, and December 31, 2025, inclusive, if the director finds all
21 of the following:

22 (1) The individual resides in California at the time of the
23 application.

24 (2) (A) The individual performed at least 93 hours of work or
25 earned at least one thousand three hundred dollars (\$1,300) in
26 gross wages over the course of 3 calendar months, which do not
27 need to be consecutive, for work performed in California as an
28 employee within either the 12 months preceding their application
29 for benefits or the calendar year preceding their application for
30 benefits.

31 (B) The individual’s eligibility under this paragraph shall be
32 determined as provided in subdivision (e) of Section 2023.

33 (3) The individual experienced a week of unemployment during
34 that week.

35 (4) The individual is ineligible to receive unemployment
36 insurance benefits under subdivision (a) of Section 1264 of the
37 Unemployment Insurance Code or under subsection (a) of Section
38 604.3 of Title 20 of the Code of Federal Regulations for reasons
39 related to the individual’s authorization to work.

1 (b) Notwithstanding any other law, an individual shall be eligible
2 to receive benefits from the program regardless of their
3 immigration status provided they meet the eligibility requirements
4 set forth in subdivision (a).

5 (c) Notwithstanding subdivision (a), an individual shall be
6 ineligible to receive payments from the program for any week in
7 which the individual received any of the following:

8 (1) Paid family leave pursuant to Chapter 7 (commencing with
9 Section 3300) of Part 2 of Division 1 of the Unemployment
10 Insurance Code.

11 (2) Disability benefits pursuant to Part 2 (commencing with
12 Section 2601) of Division 1 of the Unemployment Insurance Code.

13 (3) Temporary or permanent disability benefits pursuant to
14 Article 3 (commencing with Section 4650) of Chapter 2 of Part 2
15 of Division 4.

16 2023. (a) On or before January 1, 2025, the department shall
17 promulgate regulations to administer the program. The regulations
18 shall set forth all of the following processes, at a minimum:

19 (1) A process by which individuals may apply for the benefits
20 under this chapter.

21 (2) A process for notifying individuals of the acceptance or
22 denial of their application in a timely manner.

23 (3) A process for individuals to request a review of the denial.

24 (b) In administering the program established by this chapter,
25 the department shall not take any of the following actions:

26 (1) Requesting, orally or in writing, an individual's nationality,
27 place of birth, or eligibility or ineligibility for a social security
28 number.

29 (2) Compelling or requesting an individual to admit in writing
30 whether they have proof of lawful presence in the United States.

31 (3) Contacting an individual's current, former, or prospective
32 employer for any purpose, including to verify employment status.
33 This paragraph does not prohibit the department from using other
34 means to verify past employment.

35 (4) Recording an individual's immigration or citizenship status.

36 (c) The department and any entity acting as an agent for the
37 department shall not retain the documents or copies of documents
38 submitted by applicants for this program for any longer than
39 necessary to administer benefits.

1 (d) The department shall begin accepting applications as soon
2 as practicable following the issuance of final regulations to
3 administer the program.

4 (e) (1) For purposes of demonstrating eligibility under
5 paragraph (2) of subdivision (a) of Section 2022, an applicant shall
6 self-attest to meeting that requirement and shall submit
7 documentation with a value equal to at least four points to establish
8 proof of work history, except as provided in paragraph (3). The
9 following documentation has the following values:

10 (A) The following documentation each has a value of four
11 points:

12 (i) Wage statements, as set forth in subdivision (a) of Section
13 226 or, if the employer has failed to provide the applicant with
14 accurate wage statements meeting the requirements of subdivision
15 (a) of Section 226, nonpayroll checks paid by the employer or
16 employer's agent to the applicant or other records showing
17 payments from an employer to the applicant.

18 (ii) A federal tax return for the taxable year immediately
19 preceding the date of application for benefits, with proof of filing
20 with the Internal Revenue Service using a social security number
21 or valid federal individual taxpayer identification number
22 demonstrating at least five thousand two hundred dollars (\$5,200)
23 in gross wages. Five thousand two hundred dollars (\$5,200) in
24 gross wages demonstrates at least one thousand three hundred
25 dollars (\$1,300) in gross wages during the individual's highest
26 earning quarter in accordance with the requirement set forth in
27 subparagraph (A) of paragraph (2) of subdivision (a) of Section
28 2022.

29 (iii) A state tax return for the taxable year immediately preceding
30 the date of application for benefits, filed with the Franchise Tax
31 Board using a social security number or valid federal individual
32 taxpayer identification number demonstrating at least five thousand
33 two hundred dollars (\$5,200) in gross wages.

34 (iv) An Internal Revenue Service Form W-2 demonstrating at
35 least five thousand two hundred dollars (\$5,200) in gross wages
36 for the taxable year immediately preceding the date of application
37 for benefits.

38 (v) A Form 1099, a state tax return, or a federal tax form from
39 the prior year demonstrating at least five thousand two hundred
40 dollars (\$5,200) in gross income, coupled with evidence sufficient

1 to demonstrate that the individual earned that income as an
2 employee.

3 (vi) Time records showing when the employee begins and ends
4 work each work period sufficient to demonstrate at least 93 hours
5 worked within a 3-month period from the 12-month period prior
6 to the application.

7 (B) The following documentation each has a value of two points:

8 (i) Evidence, such as statements issued by a financial institution,
9 showing regular direct deposits made by an employer to the
10 applicant, or regular deposits of cash earnings or checks made by
11 the applicant to the applicant's bank account.

12 (ii) Receipts from a check-cashing establishment or transaction
13 logs from a payment app showing regular direct deposits, deposits,
14 or transfers from an employer.

15 (iii) Receipts or records showing a consecutive pattern of
16 commuting to and from a work location, such as toll records,
17 parking receipts, or public transportation records that demonstrate
18 at least 93 hours of work performed within a three-month period.

19 (iv) A letter attesting to the applicant's employment history
20 issued by a charitable organization registered with the Department
21 of Justice or other entity designated by the director and based on
22 knowledge that the applicant meets the requirements of paragraph
23 (2) of subdivision (a) of Section 2022, acquired in the course of
24 conducting intake, interviews, or other standard processes related
25 to the provision of job-related direct services to the applicant. The
26 department shall not contact the charitable organization for any
27 reason other than to authenticate the letter.

28 (C) The following documentation has a value of one point:

29 (i) An employer-issued identification badge or identification
30 card.

31 (ii) Emails, text messages, social media messages, or other
32 written communications relating to delivery order sheets, work
33 invoices, work schedules, sign-in sheets, timesheets, directions or
34 instructions from employers, or other written work-related
35 communications between an applicant and an employer establishing
36 the existence of a work relationship. Communications described
37 in this clause shall only count for a total of one point, regardless
38 of the quantity or volume of documentation submitted.

39 (2) The department may, by regulation, establish alternative
40 documents that sufficiently demonstrate an applicant's qualification

1 for the program, provided that those documents demonstrate that
2 the applicant meets the eligibility requirement set forth in paragraph
3 (2) of subdivision (a) of Section 2022.

4 (3) If an applicant cannot provide sufficient documentation of
5 their work hours, wages, or other employment records in order to
6 meet the minimum documentation value of four points as required
7 by this subdivision, the department may conduct a credibility
8 interview to determine whether the applicant's submission
9 reasonably demonstrates that they meet the eligibility requirements
10 of this program set forth in paragraph (2) of subdivision (a) of
11 Section 2022. The department may establish procedures for
12 credibility interviews.

13 2024. (a) Personal information and documents collected under
14 this chapter are confidential and exempt from disclosure under the
15 California Public Records Act (Division 10 (commencing with
16 Section 7920.000) of Title 1 of the Government Code), and may
17 be used or disclosed only for purposes of administering the
18 program, except as necessary to comply with an order, warrant,
19 or subpoena, as issued by a court.

20 (b) In carrying out the services and programs created by this
21 chapter, the department shall establish procedures and safeguards
22 against unauthorized access to, and use of, personal information
23 collected by the department pursuant to this chapter by any person
24 or entity, public or private, other than an employee of the
25 department or a person or entity acting as an agent for the
26 department for the purpose of administering the program.

27 (c) Personal information and documents collected under this
28 chapter shall not be shared with other government agencies except
29 as necessary to administer the program, notwithstanding the
30 existence of data sharing agreements to which the department is
31 a party.

32 2025. (a) Any individual found eligible for the program shall
33 receive a payment in the amount of three hundred dollars (\$300)
34 for each week of unemployment occurring between January 1,
35 2025, and December 31, 2025, inclusive.

36 (b) The total number of weeks of unemployment for which a
37 covered individual may receive assistance under this chapter shall
38 not exceed 20 weeks.

1 2026. (a) (1) On or before April 1, 2025, the department shall
2 release quarterly reports on the progress of the program, including,
3 but not limited to:

- 4 (A) Total benefits paid.
- 5 (B) The number of individuals who applied for benefits.
- 6 (C) The number of individuals who received benefits.
- 7 (2) The quarterly reporting shall continue until all funds have
8 been exhausted, or until January 1, 2027, whichever comes first.

9 (b) (1) On or before March 1, 2026, the department shall submit
10 a report to the Legislature on the program, including, but not
11 limited to:

- 12 (A) Program participation.
- 13 (B) Benefit amounts paid.
- 14 (C) Weeks of benefits paid per participant.
- 15 (D) Demographic information on program participants, including
16 income, gender, race, ethnicity, language, geographic distribution
17 by county and legislative district, and employment sector.
- 18 (E) Outreach efforts.
- 19 (F) Administrative costs.

20 (2) A report to the Legislature pursuant to this subdivision shall
21 be submitted in compliance with Section 9795 of the Government
22 Code.

23 2027. This chapter shall remain in effect only until January 1,
24 2027, and as of that date is repealed.

25 SEC. 3. Section 17140.6 is added to the Revenue and Taxation
26 Code, to read:

27 17140.6. For the taxable year beginning on or after January 1,
28 2025, and before January 1, 2027, gross income does not include
29 benefits or payments received under Chapter 2 (commencing with
30 Section 2020) of Part 8 of Division 2 of the Labor Code.

31 SEC. 4. For purposes of complying with Section 41 of the
32 Revenue and Taxation Code, the Legislature finds and declares as
33 follows:

34 (a) The goals, purposes, and objectives of this exclusion are to
35 ensure that, as much as is reasonably possible, the benefits received
36 under the Excluded Workers Program (Chapter 2 (commencing
37 with Section 2020) of Part 8 of Division 2 of the Labor Code) are
38 spent in the communities in which the individuals receiving the
39 benefits live.

1 (b) The Legislature shall use income reporting for the exclusion
2 provided by the Franchise Tax Board as the performance indicator
3 to measure whether the exclusion meets the goals, purposes, and
4 objectives stated in subdivision (a).

5 (c) The Franchise Tax Board shall submit to the Legislature, no
6 later than June 15, 2026, a report that complies with Section 9795
7 of the Government Code on the total number of claims for the
8 exclusion and the amount claimed for each exclusion. Any
9 individually identifiable information collected pursuant to this
10 subdivision that is used in the report shall be compiled in an
11 aggregate or anonymized manner to preserve confidentiality.

12 (d) The disclosure provisions of this section shall be treated as
13 an exception to Section 19542 under Article 2 (commencing with
14 Section 19542) of Chapter 7 of Part 10.2 of Division 2 of the
15 Revenue and Taxation Code.

16 SEC. 5. The Legislature finds and declares that Section 2 of
17 this act, which adds Section 2024 to the Labor Code, imposes a
18 limitation on the public’s right of access to the meetings of public
19 bodies or the writings of public officials and agencies within the
20 meaning of Section 3 of Article I of the California Constitution.
21 Pursuant to that constitutional provision, the Legislature makes
22 the following findings to demonstrate the interest protected by this
23 limitation and the need for protecting that interest:

24 The act strikes a balance between furthering the public interest
25 in rectifying the unjust exclusion of immigrant workers from
26 essential social safety net programs like unemployment insurance
27 and protecting the privacy of individuals receiving or applying for
28 the benefits outlined in this act.