

AMENDED IN SENATE APRIL 20, 2023

**SENATE BILL**

**No. 227**

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**Introduced by Senator Durazo**

(Principal coauthor: Assembly Member Santiago)

(Coauthor: Assembly Member Wendy Carrillo)

January 19, 2023

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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 amended, 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~~ *Employment Development Department* to submit, on or before June 15, 2026, a report to the Legislature on the total number of ~~claims for the exclusion~~ *benefits paid* and the *average amount claimed for each exclusion, allowed*, 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

1 the Unemployment Insurance Code provides that unemployment  
2 insurance benefits, extended duration benefits, and federal-state  
3 extended benefits shall not be payable to a noncitizen unless the  
4 individual “was lawfully admitted for permanent residence at the  
5 time the services were performed, was lawfully present for  
6 purposes of performing the services, or was permanently residing  
7 in the United States under color of law at the time the services  
8 were performed[.]” During the COVID-19 pandemic,  
9 undocumented immigrant workers were also unable to access  
10 programs such as Pandemic Unemployment Assistance, Federal  
11 Pandemic Unemployment Compensation, and Pandemic  
12 Emergency Unemployment Compensation. These programs were  
13 a crucial lifeline for the one in six adults that received these benefits  
14 at the height of the crisis. Studies have shown that beyond  
15 curtailing poverty, these benefits substantially reduced hardship  
16 and improved the well-being of households, including recipients’  
17 financial stability and mental health. Yet, some of California’s  
18 most vulnerable workers have been and remain completely  
19 excluded from these programs.

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

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

1 impact. Similarly, UI benefits help employers and the labor market  
2 by supporting workers to find the best matched positions.

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

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

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

20

21 CHAPTER 2. EXCLUDED WORKERS PROGRAM

22

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

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

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

39 2021. For purposes of this chapter, the following definitions  
40 apply:

1 (a) “Department” means the Employment Development  
2 Department of the Labor and Workforce Development Agency.

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

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

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

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

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

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

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

20 2022. (a) An individual shall be eligible to receive program  
21 benefits with respect to any week that falls between January 1,  
22 2025, and December 31, 2025, inclusive, if the director finds all  
23 of the following:

24 (1) The individual resides in California at the time of the  
25 application.

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

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

35 (3) The individual experienced a week of unemployment during  
36 that week.

37 (4) The individual is ineligible to receive unemployment  
38 insurance benefits under subdivision (a) of Section 1264 of the  
39 Unemployment Insurance Code or under subsection (a) of Section

1 604.3 of Title 20 of the Code of Federal Regulations for reasons  
2 related to the individual’s authorization to work.

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (4) Recording an individual’s immigration or citizenship status.

38 (c) The department and any entity acting as an agent for the  
39 department shall not retain the documents or copies of documents

1 submitted by applicants for this program for any longer than  
2 necessary to administer benefits.

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

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

12 (A) The following documentation each has a value of four  
13 points:

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

20 (ii) A federal tax return for the taxable year immediately  
21 preceding the date of application for benefits, with proof of filing  
22 with the Internal Revenue Service using a social security number  
23 or valid federal individual taxpayer identification number  
24 demonstrating at least five thousand two hundred dollars (\$5,200)  
25 in gross wages. Five thousand two hundred dollars (\$5,200) in  
26 gross wages demonstrates at least one thousand three hundred  
27 dollars (\$1,300) in gross wages during the individual’s highest  
28 earning quarter in accordance with the requirement set forth in  
29 subparagraph (A) of paragraph (2) of subdivision (a) of Section  
30 2022.

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

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

1 (v) A Form 1099, a state tax return, or a federal tax form from  
2 the prior year demonstrating at least five thousand two hundred  
3 dollars (\$5,200) in gross income, coupled with evidence sufficient  
4 to demonstrate that the individual earned that income as an  
5 employee.

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

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

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

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

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

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

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

32 (i) An employer-issued identification badge or identification  
33 card.

34 (ii) Emails, text messages, social media messages, or other  
35 written communications relating to delivery order sheets, work  
36 invoices, work schedules, sign-in sheets, timesheets, directions or  
37 instructions from employers, or other written work-related  
38 communications between an applicant and an employer establishing  
39 the existence of a work relationship. Communications described

1 in this clause shall only count for a total of one point, regardless  
2 of the quantity or volume of documentation submitted.

3 (2) The department may, by regulation, establish alternative  
4 documents that sufficiently demonstrate an applicant's qualification  
5 for the program, provided that those documents demonstrate that  
6 the applicant meets the eligibility requirement set forth in paragraph  
7 (2) of subdivision (a) of Section 2022.

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

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

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

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

36 2025. (a) Any individual found eligible for the program shall  
37 receive a payment in the amount of three hundred dollars (\$300)  
38 for each week of unemployment occurring between January 1,  
39 2025, and December 31, 2025, inclusive.

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

4 2026. (a) (1) On or before April 1, 2025, the department shall  
5 release quarterly reports on the progress of the program, including,  
6 but not limited to:

7 (A) Total benefits paid.

8 (B) The number of individuals who applied for benefits.

9 (C) The number of individuals who received benefits.

10 (2) The quarterly reporting shall continue until all funds have  
11 been exhausted, or until January 1, 2027, whichever comes first.

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

15 (A) Program participation.

16 (B) Benefit amounts paid.

17 (C) Weeks of benefits paid per participant.

18 (D) Demographic information on program participants, including  
19 income, gender, race, ethnicity, language, geographic distribution  
20 by county and legislative district, and employment sector.

21 (E) Outreach efforts.

22 (F) Administrative costs.

23 (2) A report to the Legislature pursuant to this subdivision shall  
24 be submitted in compliance with Section 9795 of the Government  
25 Code.

26 2027. This chapter shall remain in effect only until January 1,  
27 2027, and as of that date is repealed.

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

30 17140.6. For the taxable year beginning on or after January 1,  
31 2025, and before January 1, 2027, gross income does not include  
32 benefits or payments received under Chapter 2 (commencing with  
33 Section 2020) of Part 8 of Division 2 of the Labor Code.

34 SEC. 4. For purposes of complying with Section 41 of the  
35 Revenue and Taxation Code, the Legislature finds and declares as  
36 follows:

37 (a) The goals, purposes, and objectives of this exclusion are to  
38 ensure that, as much as is reasonably possible, the benefits received  
39 under the Excluded Workers Program (Chapter 2 (commencing  
40 with Section 2020) of Part 8 of Division 2 of the Labor Code) are

1 spent in the communities in which the individuals receiving the  
2 benefits live.

3 (b) The Legislature shall use income reporting for ~~the exclusion~~  
4 *the benefits* provided by the ~~Franchise Tax Board~~ *Employment*  
5 *Development Department* as the performance indicator to measure  
6 whether the exclusion meets the goals, purposes, and objectives  
7 stated in subdivision (a).

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

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

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

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

O