(Almost) Paid to Strike: California Governor Rejects Striker Unemployment Benefits Bill

Insights
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California Governor Newsom just rejected a legislative proposal that would have granted striking employees the ability to receive unemployment insurance (UI) benefits. Recent labor activity and worker strikes — particularly in the entertainment and education industries — led labor groups to resurrect a controversial proposal that would have rendered striking employees eligible for unemployment payments if the strike lasted longer than two weeks. Although state lawmakers passed SB 799, Governor Newsom issued a statement on September 30 explaining that he would not be signing this bill into law. Here's some important things to know about this push for striker benefits and three ways it could have potentially impacted employers if it had passed.

Arguments For and Against SB 799

In opposition to SB 799, the California Chamber of Commerce submitted a letter on behalf of various associations and chambers stating why they believe SB 799 would have been a "job killer." The Chamber argued that a person who is unemployed faces fundamentally different circumstances compared to someone who decides to go on strike.

For example, workers who strike may have a federal right to return to work during the strike. In addition, federal labor law permits certain strikers to return to their positions at the conclusion of the labor dispute. Conversely, employees who have been terminated or laid off have no similar job waiting for them and face uncertainty about what their next job will be. These differences support the rationale for maintaining striking employees ineligible for unemployment compensation.

In support of SB 799, however, the California Labor Federation – which was a sponsor of the bill – stated that employers are given "a weapon against the interests of workers, their families, and communities" by prohibiting workers from receiving unemployment benefits while on strike.

Why is this issue significant? According to data from the Bureau of Labor Statistics (BLS), strikes are on the rise as we reported in an Insight earlier this year. This trend has only continued in 2023.

California is Not Alone

California is not the first state to attempt to offer this type of benefit to striking workers. In fact, **New York** has allowed UI benefits to those workers involved in two-week-long or longer strikes since

2020. Since 2018, **New Jersey** has offered unemployment benefits to workers who are engaged in certain labor disputes. Moreover, New Jersey's Governor signed legislation this year that also lowers the eligibility requirements so that workers may be entitled to UI benefits after only 14 days of a labor dispute.

Connecticut and **Massachusetts** have recently considered similar legislative efforts that would provide UI benefits to striking workers but have not yet passed any legislation.

Lawmakers in **Pennsylvania** are currently considering HB 1481, which would allow certain striking workers to collect UI compensation. Given the Democrats' slim majority in the legislature and the fact that the governor is generally a pro-business Democrat, this bill's fate remains uncertain.

Some other states offer unemployment benefits to striking workers under more limited circumstances. For example, striking workers in **Minnesota** may be eligible for UI benefits if the labor dispute is caused by an employer's failure to observe the terms of a safety and health section in a union contract. Many other states — like **Tennessee**, **New Mexico**, and **North Dakota** — may provide UI benefits to workers if certain requirements can be established, including that the worker is not participating in or directly interested in the labor dispute.

3 Potential Impacts on Employers

If SB 799 would have been signed into law, California employers would have seen similar impacts as the ones we see in states where UI benefits are paid to certain striking workers:

- **Strikes would last longer.** Employees and unions might not have had the same incentive to end the strike once unemployment compensation benefits kick in.
- **All employers would likely have had to pay higher taxes to support the UI fund.** Each states' UI program is financed by employers who pay unemployment taxes – in California, on the first $7,000 in wages paid to each worker. Currently, the state's unemployment fund has an $18 billion deficit, and all employers might have had to pay higher taxes until this enormous deficit is paid down.
- **Employers with workers who strike for longer than two weeks might have seen an increase to their unemployment insurance rates.** Employers may earn a lower tax rate when fewer claims are made on the employer's account by employees.

So What Will Happen Now?

Even though SB 799 was not signed by the Governor, strike activity is anticipated to continue to escalate in California as we head into 2024. Also, since the current outstanding debt that is owed by California to the federal government for UI loans was one of the main reasons cited by the Governor for not signing this bill, it is likely that this bill will be reintroduced in future legislative sessions once the existing debt has been paid off.

For now, employees are still generally not entitled to UI benefits if they are not working due to a strike. However, if employees are not working due to an employer-initiated *lock-out*, California's existing law states that employees may be entitled to UI benefits.

Conclusion

Fisher Phillips is monitoring the bills that have been passed by the California Legislature and placed on Governor Newsom's desk — and we will provide further analysis and compliance assistance for the top bills that are enacted. Make sure you are subscribed to Fisher Phillips' Insight System to get the most up-to-date information.

In the meantime, for more information about this legislation, feel free to contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our California offices or in our Labor Relations Practice Group. Please also stay tuned for our upcoming annual California Legislative and Case Law Update seminar dates.

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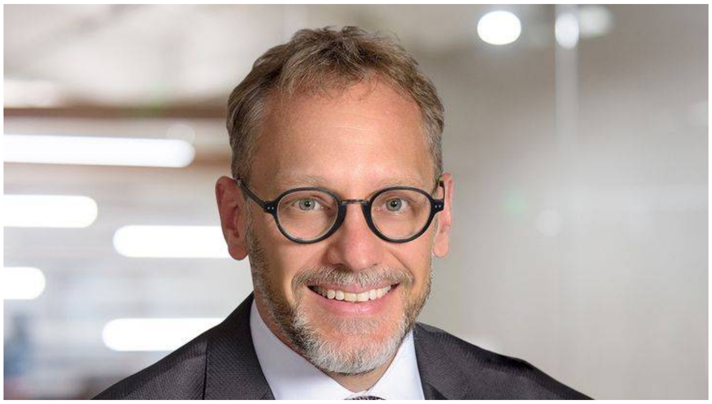

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