



October 7, 2020

Assembly Budget Subcommittee on State Administration  
State Capitol  
Room 6026

**RE: Center for Workers' Rights and Legal Aid at Work's Statement for the Record for the Hearing on Employment Development Department Strike Team Report, October 7, 2020**

Supported by: Legal Aid of Marin

La Raza Centro Legal  
California Rural Legal Assistance Foundation  
Centro Legal de La Raza  
Bet Tzedek Legal Services  
Chinese for Affirmative Action

Dear Budget Subcommittee on State Administration:

The Center for Workers' Rights and Legal Aid at Work are pleased to offer the following letter regarding the Employment Development Department (EDD) in response to the ongoing COVID-19 pandemic and the Strike Team's report.

The Center for Workers' Rights and Legal Aid at Work are California-based nonprofit legal services organizations. Through our free clinics and helplines, direct representation, and policy advocacy, we enforce compliance with, and seek to expand, existing workplace protections. Our organizations have engaged in advocacy efforts to reform the EDD for many years, in collaboration with other statewide organizations. Since the pandemic began, we have coordinated communications between advocates and EDD to improve access to benefits for low-wage workers throughout California.

As workers' rights organizations, we have seen first-hand the impact EDD's decisions in administering benefits has for low-wage workers. We have spoken to thousands of workers

during the pandemic and attempted to determine what procedural barriers at EDD were causing the failure to pay prompt benefits. Our clients reported fear of eviction, food insecurity, and inability to pay other necessities, while their applications for benefits sat with EDD for months without response.

EDD's Strike Team report released on September 16, 2020 corroborated what we have said about EDD's need to change. We believe the Strike Team's findings were thorough and if implemented appropriately could result in faster processing of claims for unemployment insurance benefits. However, we remain concerned over EDD's implementation of the Strike Team's recommendations and its overall willingness to change.

#### **A. In Response to the Strike Team's Recommendation for Acceleration Plan for Identification**

The Strike Team report found that identity verification caused 78% of claims to require manual processing, which slows delivery of benefits without catching fraud. (Strike Team Report ("Report"), pg. 9). It also found that EDD needed to limit its manual processing of claims to clear the backlog of cases and prevent additional delays for new cases. (Report, pg. 8). As a result, the Strike Team recommended the "Acceleration Plan for Identity Verification." (Report, Appendix B.) EDD responded to this recommendation by shutting down its UI Online system for new applicants in order to begin to verify identities through a third-party vendor, ID.me.

EDD's haste in rolling out this new system further increases the gap for prompt payment of benefits for high wage earners and our low-income clients. Worker advocates were not consulted about the efficacy of the new identity verification process, nor provided the opportunity to weigh in on how it can be implemented to improve claimant experience.<sup>1</sup> ID.me's rollout is shrouded in mystery and, though we were initially hopeful about this new system, we are concerned as to how this process will work for low-income immigrant workers, and workers who have literacy, language, and technological barriers to accessing benefits. Detailed below is a comprehensive list of our concerns:

- (1) Claimants who are not able to use the ID.me system because of language barriers, lack of technological capacity, or fear of the third-party platform will be forced to apply via paper or phone and will not have access to UI Online to learn about the status of their claim or to certify for ongoing eligibility. EDD has not made claimants aware of the massive change in EDD protocols. Certification for benefits online on a bi-weekly basis allows claimants to receive payments

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<sup>1</sup> National Employment Law Project's report on modernization explains the need for claimant input. <https://www.nelp.org/publication/centering-workers-how-to-modernize-unemployment-insurance-technology/>

promptly. Forcing all these claimants to complete all on-going communications with EDD via paper simply because they lacked access to the internet at the time they initially filed will grossly disrupt the prompt payment of benefits.

- (2) ID.me's level of authentication will be used to establish the digital identity of a potential online claimant and the claimant's existence in the real world, but claimants may still be required to submit additional identity verification to EDD and show proof of earnings to establish their eligibility for benefits. If a claimant establishes their identity through ID.me with a last name on their drivers license and the claimant's pay stubs have their former last name, it appears that EDD will still need to manually review the claimant's application in order to establish minimum base period earnings for eligibility. Again, this will not fix the delays that have occurred during the pandemic.
- (3) UI Online and ID.me are only available in English and Spanish. This leaves the millions of Californians who do not speak these two languages completely blocked from applying and accessing benefits online, essentially ensuring that they will face delays in their benefits. Indeed, it is our experience that EDD has failed to acknowledge the many barriers our clients face in trying to apply online, forcing them to apply via the paper application. Rather than updating and improving both systems, the focus tends to be to only update the online system, neglecting to address the needs of the communities we serve. (See below regarding Call Center Language Capacity).
- (4) In the list of databases that the ID.me verification tool uses, it says sources "such as" government databases, financial records, and utility records. EDD has not specified the specific databases that it will search or whether these databases will be notified of an applicant's attempt to access unemployment benefits. Many low-wage workers struggle with consumer debt and EDD should make it clear whether or not credit reporting agencies will be informed of the application for benefits and/or whether an application for unemployment insurance benefits will impact their credit rating.

In addition, since claimants for unemployment insurance benefits must be authorized to work in the United States, EDD has historically checked eligibility through the U.S. Citizenship and Immigration Services for some claimants. EDD has given no indication as to how the verification of work authorization will occur with the new system, potentially creating a new barrier for unemployment insurance for immigrant workers.

- (5) Though there are multiple ways identity can be verified with ID.me, most of the verification systems for identity require submission of photographic evidence of identity. Claimants who rely on public access to computers or internet, even if able to navigate the website, may not have the digital files needed to submit this proof over the ID.me application. Worker advocates previously were able to talk a claimant through all of the online questions in order to assist with an application for benefits, but this new need for digital files to be uploaded<sup>2</sup> may pose an insurmountable barrier for many claimants.
- (6) EDD plans to backdate new claims filed with the new ID.me system to the last date worked and not use the date of filing to begin the claim period. While some workers will benefit from this system, this has the potential to harm many low-wage earners who have minimal earnings. When applying for UI benefits, an employee's eligibility and benefit amount is determined by their "base period" earnings, which is a one-year period roughly 15 to 18 months in the past. So, for many of our clients it is important that they apply in the right "quarter" in order to ensure they are eligible and can maximize their benefit amount. By rolling out this new system between quarters and automatically backdating to the last date worked, EDD has now created a situation where many of our clients will now have to affirmatively request that their claim dates be changed to the date of their application, something that was already the default setting. This of course will continue to cause delays in their benefits. Other claimants that will be impacted by this decision to automatically backdate claims are those who were not previously eligible for unemployment benefits because of injury or illness. EDD's advice to correct this error is to call to correct the date of the claim. However, given the Strike Team report's recognition of the lack of functionality of the call centers, this recommendation will not resolve claimant issues in a timely manner and will further delay the payment of benefits.
- (7) At this point, ID.me has only been implemented for unemployment insurance benefits. However, EDD also administers State Disability Insurance (SDI) and Paid Family Leave (PFL). Yet, neither the Strike Team report nor EDD's communication regarding the rollout of ID.me confirms whether this vendor will be able to process applications for SDI and/or PFL, programs that undocumented workers are able to access.

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<sup>2</sup> <https://help.id.me/hc/en-us/articles/360017833054-What-is-a-Primary-or-Secondary-Identification-Document->

## **B. In Response to the Strike Team's Recommendation for Changes to Its Fraud Prevention Approach**

We fully agree with the Strike Team's finding that "[t]here has developed a culture at EDD of allowing fear for fraud to trump all other considerations." (Report, pg. 11). The Strike Team recommended that "fraud prevention and detection must be supported by data and evidence" (Report, pg 12), yet the pervasiveness of EDD's culture around fraud needs additional oversight and measurable changes. Even since the report was released, EDD has continued to *increase* its focus on fraud, in lieu of dedicating resources to the payment of eligible claimants.

### **1. EDD Indiscriminately Freezing Bank of America EDD Debit Cards for Suspected Fraud without Notice.**

EDD's Strike Team report was released on September 16, 2020. Despite the recommendations to revisit how it approaches fraud investigations and the need for evidence and data to support allegations of fraud, on Monday, September 28, 2020, advocates began receiving reports from eligible claimants that their Bank of America EDD Debit Cards had been frozen. No notice was provided to the claimants. Nor did EDD inform the public or advocates that it was instituting a new fraud prevention protocol. The only explanation was found on the EDD website indicating that claimants with frozen accounts may need to verify identity and will receive information by email, text, or mail requesting documents.

The freezing of accounts of claimants who already navigated through the difficult process of accessing benefits is unnecessary in EDD's combating actual fraud. EDD already has a process in place to inform claimants of potential overpayments of benefits and did not need to confiscate benefits already paid to claimants through this new process. Claimants do not know why their accounts were frozen or how EDD made the determination that the identity verification information provided at the time of application needed to be re-verified. Many of our clients live paycheck to paycheck and depend on these benefits to pay for essentials like food and housing. Being unable to access benefits for even a day can mean the difference between eating or continuing to have a place to live. Taking away access to these benefits they were depending on, without even a warning or notice, is unconscionable.

EDD's implementation of this new protocol is antithetical to the recommendations of the Strike Team report and should be stopped immediately.

### **2. Informing Other State Agencies of Suspected Fraud Before Confirmation**

Advocates have received reports from community members that other state social service benefits have been terminated without notice because EDD suspects fraud. It is unknown how EDD is determining suspected fraud in these circumstances since no notice is provided to the benefit recipients. No termination of unemployment insurance benefits or any other state benefits should occur for suspected fraud by EDD without actual evidence of such fraud on the account that is being frozen.

### 3. EDD's Overuse of the False Statement Penalty

The Strike Team report did not cover an important issue that EDD has failed to make a permanent change to despite its impact on accessing benefits during the pandemic: EDD's overuse of the false statement penalty.

EDD overzealous application of false statement penalties leads to the ineligibility of claimants to receive critical unemployment insurance benefits for two to fifteen weeks. Although the law requires false statements be made willfully and with actual knowledge of the falsity of the statement in order to obtain unemployment insurance, EDD often applies this penalty for inadvertent errors, lack of understanding of EDD procedures, or any inconsistent testimony between the employer and the worker, whether or not it was done to intentionally deceive.

Early in the pandemic, thousands of workers learned, many for the first time, that they were not receiving unemployment insurance benefits because of prior false statement penalties assessed on their accounts. After pressure from these claimants, EDD determined that these claimants could access Pandemic Unemployment Assistance benefits in lieu of the regular benefits, in order to avoid serving their penalty weeks during what was believed at the time to be the height of the pandemic.

However, this fix is temporary. Pandemic Unemployment Assistance benefits will expire starting the first week of November and concluding when the program ends on December 31, 2020. These claimants will then need to serve their false statement penalty weeks in order to access the additional extended benefits available for those on regular unemployment insurance benefits. EDD's need to develop a special workaround for these claimants for an error caused by the department exacerbated the backlog early on in the pandemic and will lead to a second wave of new claims from these eligible claimants soon. EDD must develop a permanent plan for dealing with this potential gap in critical unemployment benefits for all prior recipients of inappropriate false statement penalties prior to January 1, 2021.

### **C. Call Center Support for Non-English Speakers**

Language access remains an afterthought for both the Strike Team report and EDD. The Strike Team report discusses the issues with the call center's on page 20 of the report, but issues regarding the use of the call center for non-English speakers does not even get a vague mention until page 54. Not including language capabilities in the core discussions of how claimants interact with EDD leaves millions of Californians without no access to these vital services. With the focus of the Strike Team report on improvements to the online experience for unemployment insurance benefit claimants, even greater attention must be paid to those who are left out by the these improvements.

EDD must develop metrics for determining the number of calls it is able to complete with non-English speaking claimants. From our experience on the ground, there is virtually no response from EDD to claimant inquiries in languages other than English and Spanish. New call center staffing should be hired with particular attention to language capabilities.

Without incorporating language access to *at least* the phone operations at EDD, non-English speakers will continue to be left behind by future changes.

### **D. Need for Accountability to Claimants and Advocates**

The Strike Team's final report rarely mentions collaboration with worker advocates in its report, which allows EDD to continue to ignore the issues we raise regarding the claimant experience. The Strike Team only includes one specific recommendation related to working closely with advocates to understand user needs related to formation of questions (Report, pg. 54). Yes, advocates (like the authors of this letter) are uniquely qualified to assist in developing equity-centered implementation plans for change at the EDD. We should also be consulted when choosing which changes to prioritize and how those priorities are implemented.

Advocates have long met with EDD on issues related to unemployment insurance benefits, however, changes were slow and EDD frequently told us that our recommendations were simply not possible.

We believe it is vital and urgent that EDD formalize its commitment to including claimants in its decision making processes and not only seeks the advice of advocates, but is accountable to our critiques surrounding equity and transparency for claimants. The Sub-Committee should discuss the formation of a claimant oversight committee charged with guiding EDD to formulate its processes from a claimant perspective. The authors of this letter are prepared to make recommendations on how to best execute this collaboration.

We look forward to working with the sub-committee and EDD on make these needed changes to the unemployment insurance benefits programs.

Yours very truly,



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