

## WORKLOAD NARRATIVE

### FIELD OPERATIONS

#### August 2014

**Workload:** In August, intake for all cases [23,655] fell for the fourth straight month and represented the fewest new appeals since February **2008**. While output [25,897] was the smallest this year, but “only” 5% below the average for 2014. This was the fourth consecutive month, and the sixth time in seven months, in which the number of dispositions exceeded the number of verifications. The open balance [33,331] fell by more than 2,200 cases and hit a five month low.

**UI.** In July, the number of new UI cases [22,177 cases; 12,663 appellants] was the smallest since February **2008** and 15% below the average for 2014. The number of closed cases [24,541 cases; 14,013 appellants] was 5% below the norm and exceeded the number of verifications for the fourth straight month and for the sixth time in seven months. The open balance [22,670 cases, 12,945 appellants] is at its lowest level since November 2013. This is 14% lower than the same time last year and 52% below the level in 2011. Within these numbers are both the time lapse and the extension cases in the UI program. The extension cases continued to evaporate. Intake in August 2014 was 1,989 cases. This represented a drop of 19% from July and 55% from April. Dispositions of extension cases [3,061] exceeded intake by 54%. The inventory of open appeals [3,273] fell by more than 1000 cases.

**DI.** In July, intake [1,352] was the greatest since June 2012. In August, the number of new appeals [1,027] was the lowest it has been since April. Meanwhile, dispositions [1,101] hit a ten month high. As a result, August for the first time since last October in which the open inventory [2,176] decreased. However, because of the long period of rising intake, the caseload remains 20% greater than the average for 2014.

**Tax, Rulings, Other.** As the office concentrated on UI and DI, the number of ruling dispositions [99] was 45% below average levels for the year and trailed verifications [207] for the sixth straight month. The open balance [4,992] is the largest since September 2010. For the last five months, intake of tax cases has been relatively consistent while dispositions much more erratic. In August, however, intake [234] was at the high end of the recent plateau [4% below 2014 monthly average], while

dispositions [99] fell below 100 for the first time since 2010. The open inventory [3,463] hit a four month high.

**Case Aging and Time Lapse.** Field operations met all of the DOL timeliness standards once again. This was the 18<sup>th</sup> consecutive month in which 30-day time lapse [65.9%] was achieved. 45-day time lapse [83.6%] surpassed its standard for the 29<sup>th</sup> straight month. Average case age [28.9 days] was below the 30 day threshold for the 31<sup>st</sup> consecutive time. The percentage of extension cases resolved in 30 days [16.5%] and 45 days [34.0%] both improved from July as did the average case age [43 days] of these cases.

**Cycle Time.** The UI time lapse cycle time in August [39 days] was the same as in July. The time to process extension appeals [65 days] and disability appeals [77] increased from the previous month.

### UI TRENDS - FO

Program Codes 1, 2, 3, 4, 5, 6, 8, 23, 24, 28, 29, 30, 31, 33, 34, 35, 36, 37, 38, 41, 42

#### NEW OPENED CASES

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2011	38,676	34,399	39,494	35,519	36,159	35,785	32,527	38,079	39,828	36,161	30,799	31,448	428,874	<b>35,740</b>		
2012	33,339	30,233	36,391	33,590	34,531	31,871	32,132	37,791	33,363	36,746	31,266	26,393	397,646	<b>33,137</b>	93%	-2,602
2013	33,691	31,654	33,967	32,876	33,258	28,418	29,941	30,154	24,997	28,576	23,320	25,020	355,872	<b>29,656</b>	89%	-3,481
2014	29,259	24,091	26,279	30,284	26,654	24,702	24,330	22,177					207,776	<b>25,972</b>	88%	-3,684

Multi 391 4 4

UI registrations Aug to date are down 18% from 2013, down 23% from 2012, and down 29% from 2011

UI registrations monthly average is down 12% from 2013, down 22% from 2012, and down 27% from 2011

#### CLOSED CASES

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2011	34,029	37,998	50,124	35,054	32,103	38,117	33,797	36,979	41,802	33,663	33,076	34,301	441,043	<b>36,754</b>		
2012	33,604	37,167	44,615	28,383	34,802	31,915	30,672	35,346	30,299	38,963	32,844	32,269	410,879	<b>34,240</b>	93%	-2,514
2013	33,153	33,375	37,440	29,390	29,752	26,058	35,658	33,322	29,065	27,591	24,375	22,868	362,047	<b>30,171</b>	88%	-4,069
2014	26,057	25,250	26,573	26,957	27,140	25,221	25,688	24,541					207,427	<b>25,928</b>	86%	-4,242

Multi 12 5/498

UI dispositions Aug to date are down 20% from 2013, down 25% from 2012, and down 30% from 2011

UI dispositions monthly average is down 14% from 2013, down 24% from 2012, and down 29% from 2011

#### BALANCE OPEN CASES

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2011	63,632	59,909	49,088	49,435	53,389	50,926	49,805	50,755	48,650	51,057	48,653	45,715		<b>51,751</b>		
2012	45,315	38,225	29,603	34,674	34,327	34,188	35,578	37,843	40,820	38,495	36,792	30,853		<b>36,393</b>	70%	-15,358
2013	31,303	29,396	25,859	29,169	32,572	34,851	29,038	25,729	21,580	22,445	21,288	23,364		<b>27,216</b>	75%	-9,177
2014	25,994	24,779	24,421	27,670	27,131	26,548	25,113	22,670						<b>25,541</b>	94%	-1,675

Multi 502 502 498 502 4

UI balance Aug to date is down 14% from 2013, down 29% from 2012, and down 52% from 2011

UI balance monthly average is down 6% from 2013, down 30% from 2012, and down 51% from 2011

2013	94%	86%
2012	70%	71%
2011	49%	48%
	chg to '14 avg	chg to '14 YTD

**DI TRENDS - FO**  
**Program Codes 7, 10, 11, 12, 16 & 20**

**NEW OPENED CASES**

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2011	1,537	1,651	1,411	1,691	1,360	1,428	1,405	1,575	1,489	1,392	1,094	1,268	17,301	<b>1,442</b>		
2012	1,395	1,490	1,611	1,256	1,362	1,382	1,206	1,122	1,233	1,069	845	754	14,725	<b>1,227</b>	85%	-215
2013	982	811	995	971	970	884	1,043	991	1,046	1,086	941	945	11,665	<b>972</b>	79%	-255
2014	1,004	958	979	1,158	1,088	1,131	1,352	1,027					8,697	<b>1,087</b>	112%	115
DI registrations Aug to date are up 14% from 2013, down 20% from 2012, and down 28% from 2011 DI registrations monthly average is up 12% from 2013, down 11% from 2012, and down 25% from 2011													2013	112%	114%	
													2012	89%	80%	
													2011	75%	72%	
													chg to '14 avg		chg to '14 YTD	

**CLOSED CASES**

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2011	1,295	1,576	1,925	1,512	1,441	1,567	1,365	1,462	1,426	1,579	1,266	1,270	17,684	<b>1,474</b>		
2012	1,334	1,547	1,456	1,424	1,460	1,140	1,079	1,220	999	1,452	938	1,039	15,088	<b>1,257</b>	85%	-216
2013	1,083	906	1,186	734	758	860	1,026	1,098	1,223	1,298	749	822	11,743	<b>979</b>	78%	-279
2014	835	891	958	927	1,047	1,038	1,024	1,101					7,821	<b>978</b>	100%	-1
DI dispositions Aug to date are up 2% from 2013, down 27% from 2012, and down 36% from 2011 DI dispositions monthly average is even with 2013, down 22% from 2012, and down 34% from 2011													2013	100%	102%	
													2012	78%	73%	
													2011	66%	64%	
													chg to '14 avg		chg to '14 YTD	

**BALANCE OPEN CASES**

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2011	2,390	2,465	1,951	2,126	2,046	1,905	1,943	2,054	2,117	1,930	1,757	1,755		<b>2,037</b>		
2012	1,815	1,757	1,905	1,734	1,636	1,877	2,005	1,906	2,139	1,755	1,663	1,379		<b>1,798</b>	88%	-239
2013	1,277	1,182	991	1,227	1,437	1,462	1,481	1,374	1,198	986	1,177	1,300		<b>1,258</b>	70%	-540
2014	1,469	1,536	1,557	1,788	1,830	1,922	2,250	2,176						<b>1,816</b>	144%	558
DI balance Aug to date is up 39% from 2013, down 1% from 2012, and down 14% from 2011 DI balance monthly average is up 44% from 2013, up 1% from 2012, and down 11% from 2011													2013	144%	139%	
													2012	101%	99%	
													2011	89%	86%	
													chg to '14 avg		chg to '14 YTD	

**TAX TRENDS - FO**  
 Program Codes 15, 17, 18, 32, 45, 46, 47, 48

**NEW OPENED CASES**

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2011	134	168	144	261	140	180	112	266	364	147	248	402	2,566	<b>214</b>		
2012	346	141	196	117	78	335	253	229	254	200	215	214	2,578	<b>215</b>	100%	1
2013	223	245	299	199	243	321	233	264	247	242	307	411	3,234	<b>270</b>	125%	55
2014	232	320	285	230	222	217	217	234					1,957	<b>245</b>	91%	-25
													2013	91%	97%	
													2012	114%	115%	
													2011	114%	139%	
														chg to '14 avg	chg to '14 YTD	

Tax registrations Aug to date are down 3% from 2013, up 15% from 2012, and up 39% from 2011  
 Tax registrations monthly average is down 9% from 2013, up 14% from 2012, and up 14% from 2011

**CLOSED CASES**

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2011	139	173	193	252	176	277	168	278	325	293	323	247	2,844	<b>237</b>		
2012	227	352	322	492	267	217	236	290	284	357	234	195	3,473	<b>289</b>	122%	52
2013	299	222	475	590	375	301	214	263	352	231	151	185	3,658	<b>305</b>	105%	15
2014	208	265	232	129	257	300	200	149					1,740	<b>218</b>	71%	-87
													2013	71%	64%	
													2012	75%	72%	
													2011	92%	105%	
														chg to '14 avg	chg to '14 YTD	

Tax dispositions Aug to date are down 36% from 2013, down 28% from 2012, and up 5% from 2011  
 Tax dispositions monthly average is down 29% from 2013, down 25% from 2012, and down 8% from 2011

**BALANCE OPEN CASES**

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg	
2011	4,880	4,874	4,824	4,833	4,797	4,700	4,643	4,630	4,666	4,520	4,445	4,593		<b>4,700</b>			
2012	4,711	4,498	4,371	3,995	3,803	3,918	3,931	3,871	3,841	3,683	3,664	3,683		<b>3,997</b>	85%	-703	
2013	3,606	3,629	3,453	3,062	2,930	2,949	2,967	2,965	2,861	2,872	3,028	3,253		<b>3,131</b>	78%	-866	
2014	3,276	3,328	3,381	3,482	3,447	3,363	3,379	3,463						<b>3,390</b>	108%	259	
														2013	108%	106%	
														2012	85%	82%	
														2011	72%	71%	
															chg to '14 avg	chg to '14 YTD	

Tax balance Aug to date is up 6% from 2013, down 18% from 2012, and down 29% from 2011  
 Tax balance monthly average is up 8% from 2013, down 15% from 2012, and down 28% from 2011

**RULING - OTHER TRENDS - FO**  
 Program Codes 9, 13, 14, 19, 21, 22, 40, 44

**NEW OPENED CASES**

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2011	64	97	92	739	526	510	426	454	207	982	247	251	4,595	<b>383</b>		
2012	182	245	746	576	605	424	229	418	209	315	51	108	4,108	<b>342</b>	89%	-41
2013	292	280	201	234	589	585	432	380	219	89	135	112	3,548	<b>296</b>	86%	-47
2014	156	223	402	791	601	228	231	217					2,849	<b>356</b>	120%	60
													2013	120%	95%	
													2012	104%	83%	
													2011	93%	98%	

Ruling/Other registrations Aug to date are down 5% from 2013, down 17% from 2012, and down 2% from 2011  
 Ruling/Other registrations monthly average is up 20% from 2013, up 4% from 2012, and down 7% from 2011

**CLOSED CASES**

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2011	442	399	728	390	424	631	384	397	530	593	389	351	5,658	<b>472</b>		
2012	500	455	299	255	214	165	239	323	170	334	434	171	3,559	<b>297</b>	63%	-175
2013	242	250	424	278	254	248	329	322	574	598	162	223	3,904	<b>325</b>	110%	29
2014	204	383	288	130	156	113	174	106					1,554	<b>194</b>	60%	-131
													2013	60%	66%	
													2012	65%	63%	
													2011	41%	41%	

Ruling/Other dispositions Aug to date are down 34% from 2013, down 37% from 2012, and down 59% from 2011  
 Ruling/Other dispositions monthly average is down 40% from 2013, down 35% from 2012, and down 59% from 2011

**BALANCE OPEN CASES**

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2011	4,281	3,977	3,340	3,692	3,792	3,672	3,716	3,772	3,453	3,842	3,698	3,590		<b>3,735</b>		
2012	3,272	3,060	3,509	3,825	4,216	4,475	4,466	4,563	4,602	4,582	4,199	4,133		<b>4,075</b>	109%	340
2013	4,182	4,212	3,988	3,943	4,275	4,613	4,716	4,776	4,423	3,914	3,887	3,776		<b>4,225</b>	104%	150
2014	3,724	3,566	3,667	4,329	4,775	4,892	4,914	5,022						<b>4,361</b>	103%	136
													2013	103%	101%	
													2012	107%	111%	
													2011	117%	115%	

Ruling/Other balance Aug to date is up 1% from 2013, up 11% from 2012, and up 15% from 2011  
 Ruling/Other balance monthly average is up 3% from 2013, up 7% from 2012, and up 7% from 2011

	2013	2012	2011
chg to '14 avg			
chg to '14 YTD			

**ALL PROGRAM TRENDS - FO**

**NEW OPENED CASES**

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	TOTAL	Avg.	% Chg of Avg	Yr-Yr AvgChg
2011	40,411	36,315	41,141	38,210	38,185	37,903	34,470	40,374	41,888	38,682	32,388	33,369	453,336	<b>37,778</b>		
2012	35,262	32,109	38,944	35,539	36,576	34,012	33,820	39,560	35,059	38,330	32,377	27,469	419,057	<b>34,921</b>	92%	-2,857
2013	35,188	32,990	35,462	34,280	35,060	30,208	31,649	31,789	26,509	29,993	24,703	26,488	374,319	<b>31,193</b>	89%	-3,728
2014	30,651	25,592	27,945	32,463	28,565	26,278	26,130	23,655					221,279	<b>27,660</b>	89%	-3,533
Multi	391	4	4	4												
All Programs registrations Aug to date are down 17% from 2013, down 23% from 2012, and down 28% from 2011																
All Programs registrations monthly average is down 11% from 2013, down 21% from 2012, and down 27% from 2011																

**CLOSED CASES**

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	TOTAL	Avg.	% Chg of Avg	Yr-Yr AvgChg
2011	35,905	40,146	52,970	37,208	34,144	40,592	35,714	39,116	44,083	36,128	35,054	36,169	467,229	<b>38,936</b>		
2012	35,665	39,521	46,692	30,554	36,743	33,437	32,226	37,179	31,752	41,106	34,450	33,674	432,999	<b>36,083</b>	93%	-2,853
2013	34,777	34,753	39,525	30,992	31,139	27,467	37,227	35,005	31,214	29,718	25,437	24,098	381,352	<b>31,779</b>	88%	-4,304
2014	27,304	26,789	28,051	28,143	28,600	26,672	27,086	25,897					218,542	<b>27,318</b>	86%	-4,462
Multi	1/2				5/498											
All Programs dispositions Aug to date are down 19% from 2013, down 25% from 2012, and down 31% from 2011																
All Programs dispositions average is down 14% from 2013, down 24% from 2012, and down 30% from 2011																

**BALANCE OPEN CASES**

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	TOTAL	Avg.	% Chg of Avg	Yr-Yr AvgChg
2011	75,183	71,225	59,203	60,086	64,024	61,203	60,107	61,211	58,886	61,349	58,553	55,653		<b>62,224</b>		
2012	55,113	47,540	39,388	44,228	43,982	44,458	45,980	48,183	51,402	48,515	46,318	40,048		<b>46,263</b>	74%	-15,961
2013	40,368	38,419	34,291	37,401	41,214	43,875	38,202	34,844	30,062	30,217	29,380	31,701		<b>35,831</b>	77%	-10,432
2014	34,463	33,209	33,026	37,269	37,183	36,725	35,656	33,331						<b>35,108</b>	98%	-723
Multi	502	502	498	502	4											
All Programs balance Aug to date is down 9% from 2013, down 24% from 2012, and down 45% from 2011																
All Programs balance monthly average is down 2% from 2013, down 24% from 2012, and down 44% from 2011																

AO REPORT TO BOARD -- MONTH OF AUGUST 2014

	# Cases	Calendar Yr Avg	Last Yr Avg	2011
REGISTRATIONS	1729	1742	2405	3318
DISPOSITIONS	1813	1672	2414	2994
OPEN BALANCE	2459	2249	2306	5814

CASE AGING (40days) 35.9

TIME LAPSE  
 45 Days (50%) 49.00%  
 75 Days (80%) 91.00%  
 150 Days (95%) 100.00%

OTHER INFORMATION  
 FO to AO Transfer Rate 1.66 days  
 FO ALJs working in AO 1  
 Appeal Rate FO to AO 6.40%

**California Unemployment Insurance Appeals Board**  
**Board Appeal Summary Report**  
**Average Days in Transfer from FO Received Date to Date Received at AO**

	August, 2014		July, 2014		June, 2014		May, 2014	
	Average Days in Transfer	Case Count						
Fr	0.32	62	2.16	154	0.47	97	1.93	102
Ing	2.14	111	3.42	224	2.19	155	2.63	227
Inl	1.09	117	1.26	184	1.35	230	1.66	194
LA	1.46	107	1.81	149	2.97	160	1.62	143
Oak	2.22	85	1.27	107	1.60	106	2.52	106
OC	0.19	137	1.24	159	0.43	215	0.43	179
Ox	0.06	179	2.34	105	1.75	121	0.35	109
Pas	5.85	71	5.15	139	10.20	114	7.08	145
Sac	1.71	190	3.08	189	2.71	150	1.62	288
SD	5.85	65	4.05	162	3.27	166	3.44	245
SF	2.39	56	3.05	84	0.99	85	1.02	124
SJ	0.57	47	2.41	80	1.90	98	0.82	90
Tax	0.63	8	0.00	3	0.00	2	2.00	3
<b>Total</b>	1.66	1235	2.63	1739	2.37	1699	2.18	1955





**California Unemployment Insurance Appeals Board**  
**Board Appeal Summary Report**  
**Average Days in Transfer from Date Received at AO to Board Appeal Event Date**

	August, 2014	July, 2014	June, 2014	May, 2014
	Average Days in Transfer			
	Case Count	Case Count	Case Count	Case Count
Fr	2.58	5.26	5.05	3.62
Ing	3.31	4.95	4.27	3.86
Inl	3.18	5.76	3.91	6.12
LA	2.94	5.94	5.56	4.03
Oak	2.51	5.01	4.51	4.18
OC	3.38	4.19	4.19	4.02
Ox	3.01	5.05	4.66	4.82
Pas	2.23	5.05	4.68	4.03
Sac	3.77	7.04	6.18	7.87
SD	2.89	5.99	5.17	4.78
SF	3.77	6.19	5.22	3.87
SJ	3.23	4.28	5.30	3.32
Tax	7.00	4.00	21.00	5.00
<b>Total</b>	3.17	5.45	4.83	4.87

**APPELLATE OPERATIONS TL & Case Aging TRENDS**

	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Avg.
Standard	50%	50%	50%	50%	50%	50%	50%	50%	50%	50%	50%	50%	50%
Standard	80%	80%	80%	80%	80%	80%	80%	80%	80%	80%	80%	80%	80%
Standard	95%	95%	95%	95%	95%	95%	95%	95%	95%	95%	95%	95%	95%
<b>08/09 45-Day</b>	52.2%	37.8%	38.4%	33.2%	16.1%	4.7%	13.8%	20.6%	38.7%	30.8%	43.2%	60.0%	32.4%
<b>08/09 75-Day</b>	93.2%	94.9%	92.3%	90.4%	91.2%	87.3%	88.2%	90.6%	93.9%	75.3%	86.7%	92.7%	89.7%
<b>08/09 150-Day</b>	99.6%	99.7%	98.9%	99.0%	99.1%	99.6%	99.1%	99.8%	100.0%	99.4%	99.8%	97.6%	99.3%
<b>Case Aging</b>	30	34	34	32	38	37	33	39	39	37	44	59	38
<b>09/10 45-Day</b>	42.4%	41.8%	39.5%	28.6%	35.6%	28.8%	29.2%	37.3%	40.6%	43.3%	59.4%	80.5%	42.2%
<b>09/10 75-Day</b>	76.2%	85.2%	69.7%	75.9%	78.5%	74.2%	83.2%	88.0%	92.9%	93.3%	91.3%	94.7%	83.6%
<b>09/10 150-Day</b>	82.6%	98.8%	96.7%	99.1%	99.3%	99.3%	99.0%	99.5%	99.6%	99.7%	99.8%	99.4%	97.7%
<b>Case Aging</b>	42	45	41	39	39	39	37	38	34	35	29	26	37
<b>10/11 45-Day</b>	83.1%	80.3%	80.9%	81.5%	83.4%	86.7%	85.9%	77.0%	48.1%	28.8%	11.4%	12.9%	63.3%
<b>10/11 75-Day</b>	97.5%	98.2%	97.5%	98.0%	96.9%	97.2%	98.4%	97.7%	95.6%	89.3%	88.1%	90.1%	95.4%
<b>10/11 150-Day</b>	99.8%	99.9%	99.9%	100.0%	99.4%	99.9%	99.7%	99.8%	99.7%	99.9%	99.6%	99.8%	99.8%
<b>Case Aging</b>	26	28	27	27	25	28	28	33	38	38	36	34	31
<b>11/12 45-Day</b>	5.2%	6.9%	4.6%	10.1%	10.6%	10.5%	11.6%	11.7%	17.2%	16.6%	47.9%	70.0%	18.6%
<b>11/12 75-Day</b>	89.2%	87.9%	60.8%	43.9%	40.0%	43.1%	72.7%	86.4%	89.5%	85.5%	91.0%	90.8%	73.4%
<b>11/12 150-Day</b>	99.7%	99.4%	99.4%	97.3%	98.9%	99.0%	98.9%	99.2%	99.5%	99.3%	99.3%	99.1%	99.1%
<b>Case Aging</b>	39	45	43	47	48	44	39	38	39	37	32	30	40
<b>12/13 45-Day</b>	66.4%	57.4%	20.5%	12.8%	28.7%	40.7%	25.5%	22.1%	14.3%	13.1%	24.0%	53.3%	31.6%
<b>12/13 75-Day</b>	94.0%	91.8%	81.7%	80.9%	80.6%	76.4%	75.4%	83.2%	75.3%	82.7%	76.6%	90.6%	82.4%
<b>12/13 150-Day</b>	99.3%	99.5%	99.4%	99.7%	99.2%	99.0%	99.0%	99.6%	98.3%	99.7%	99.8%	99.7%	99.4%
<b>Case Aging</b>	31	38	44	48	44	49	45	45	41	41	35	29.1	41
<b>13/14 45-Day</b>	62.3%	76.0%	72.4%	56.6%	77.4%	80.5%	74.5%	52.4%	52.5%	51.0%	59.1%	77.1%	66.0%
<b>13/14 75-Day</b>	92.1%	94.4%	90.7%	90.3%	94.8%	96.3%	97.3%	93.1%	92.3%	91.6%	93.3%	96.3%	93.5%
<b>13/14 150-Day</b>	99.7%	99.7%	99.8%	99.8%	99.6%	99.9%	99.9%	99.5%	99.6%	99.4%	99.6%	99.9%	99.7%
<b>Case Aging</b>	30.1	31.0	32.2	30.1	28.4	24.0	31.1	35.0	33.8	31.8	27.8	29.3	30.4
<b>14/15 45-Day</b>	77.9%	79.7%	69.8%	42.1%	48.6%								63.6%
<b>14/15 75-Day</b>	96.9%	96.4%	95.7%	96.1%	90.6%								95.1%
<b>14/15 150-Day</b>	99.2%	99.8%	99.8%	99.8%	99.7%								99.7%
<b>Case Aging</b>	28.3	30.3	32.3	35.1	35.9								32.4

**ALL PROGRAM TRENDS-AO**

**REGISTRATIONS**

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2011	2,506	2,625	3,779	3,046	3,318	2,971	3,021	3,267	3,259	3,298	2,341	2,561	35,992	2,999		
2012	2,789	2,316	3,555	2,608	2,418	1,958	2,407	2,932	2,430	2,728	2,376	2,156	30,673	2,556	85%	-443
2013	2,789	2,721	3,003	3,403	2,735	2,082	2,057	2,055	2,359	2,377	1,612	1,665	28,858	2,405	94%	-151
2014	1,681	1,666	1,620	1,959	1,623	1,812	1,847	1,729					13,937	1,742	72%	-663
													2013	72%	67%	
													2012	68%	66%	
													2011	58%	57%	

Registrations Jan to date down 33% from 2013, down 34% from 2012, and down 43% from 2011.

Registration monthly average down 28% from 2013, down 32% from 2012, and down 42% from 2011.

**DISPOSITIONS**

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2011	2,601	2,626	2,583	2,546	2,994	3,447	2,361	2,860	4,116	3,804	3,130	3,022	36,090	3,008		
2012	2,917	3,106	3,407	2,747	2,310	1,816	2,653	3,087	2,709	2,341	2,327	2,608	32,028	2,669	89%	-339
2013	2,921	2,314	3,498	2,810	2,605	1,999	2,258	2,716	2,120	1,853	1,660	2,208	28,962	2,414	90%	-256
2014	1,517	1,549	1,743	1,877	1,661	1,634	1,583	1,813					13,377	1,672	69%	-741
													2013	69%	63%	
													2012	63%	61%	
													2011	56%	61%	

Dispositions Jan to date down 37% from 2013, down 39% from 2012, and down 39% from 2011.

Disposition monthly average down 31% from 2013, down 37% from 2012, and down 44% from 2011.

**BALANCE OPEN CASES**

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	End of yr Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2011	3,872	3,870	4,984	5,543	5,814	5,356	6,020	6,423	5,566	5,057	4,265	3,792	3,792	5,047		
2012	3,663	2,902	3,018	2,906	3,014	3,141	2,948	2,758	2,509	2,863	2,894	2,340	2,340	2,913	58%	-2,134
2013	2,057	2,452	1,910	2,509	2,625	2,671	2,484	1,804	2,049	2,575	2,562	1,970	1,970	2,306	79%	-607
2014	2,123	2,235	2,074	2,138	2,120	2,290	2,549	2,459						2,249	98%	-57
													2013	98%	97%	
													2012	77%	74%	
													2011	45%	43%	

Open Balance Jan to date is down 3% from 2013, down 26% from 2012, and down 57% from 2011.

Open Balance monthly average down 2% from 2013, down 33% from 2012, and down 55% from 2011.

**OTHER TRENDS-AO**  
Program Codes 9,13, 14, 19, 21,22, 40, 44

**REGISTRATIONS**

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2011	1	4	7	17	16	7	9	10	14	16	6	7	114	10		
2012	7	9	13	2	3	0	1	3	3	2	7	2	52	4	46%	-5
2013	2	4	6	9	13	5	11	4	4	14	7	4	83	7	160%	3
2014	2	2	8	7	2	4	2	9					36	5	65%	-2

Other registrations Jan to date are down 33% from 2013, down 5% from 2012, and down 49% from 2011  
Other registration monthly average down 35% from 2013, up 4% from 2012, and down 53% from 2011

**DISPOSITIONS**

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2011	10	5	5	1	6	20	7	7	13	14	17	10	115	10		
2012	9	7	9	9	9	1	1	0	5	3	1	7	61	5	53%	-5
2013	4	3	3	2	15	4	4	7	10	2	9	8	71	6	116%	1
2014	7	2	4	3	4	8	6	1					35	4	74%	-2

Other dispositions Jan to date are down 17% from 2013, down 22% from 2012, and down 43% from 2011  
Other disposition monthly average down 26% from 2013, down 14% from 2012, and down 54% from 2011

**BALANCE OPEN CASES**

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2011	4	3	5	21	31	19	20	23	24	26	15	12	12	17		
2012	10	12	16	9	3	2	2	5	3	2	8	1	1	6	36%	-11
2013	0	2	2	5	2	11	18	13	7	19	19	13	13	9	152%	3
2014	1	1	9	13	11	7	3	11						7	76%	-2

Other balance of open cases Jan to date up 6% from 2013, down 5% from 2012, and down 56% from 2011  
Other balance monthly average down 34% from 2013, up 15% from 2012, and down 69% from 2011

	2013	2012	2011
End of yr Total	12	1	13
Avg.	76%	115%	41%
% Chg of Avg	106%	95%	44%
Yr-Yr AvgChg			

chg to '14 avg

chg to '14 YTD

**UI TRENDS-AO**  
**Program Codes 1, 2, 3, 4, 5, 6, 8, 23, 24, 28, 29, 30, 31, 33, 34, 35, 36, 37, 38, 41, 42**

**REGISTRATIONS**

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2011	2,389	2,509	3,616	2,882	3,165	2,850	2,858	3,104	3,115	3,121	2,223	2,405	34,237	2,853		
2012	2,661	2,205	3,383	2,517	2,307	1,875	2,319	2,824	2,338	2,632	2,260	2,091	29,412	2,451	86%	-402
2013	2,708	2,596	2,942	3,223	2,614	2,014	1,997	1,978	2,276	2,233	1,541	1,591	27,713	2,309	94%	-142
2014	1,620	1,608	1,558	1,883	1,572	1,743	1,790	1,676					13,450	1,681	73%	-628
													2013	73%	67%	
													2012	69%	67%	
													2011	59%	58%	

UI registrations Jan to date are down 33% from 2013, down 33% from 2012, and down 42% from 2011  
 UI registration monthly average is down 27% from 2013, down 31% from 2012, and down 41% from 2011

**DISPOSITIONS**

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2011	2,476	2,459	2,464	2,442	2,859	3,265	2,252	2,722	3,951	3,595	2,976	2,884	34,345	2,862		
2012	2,780	2,960	3,237	2,626	2,211	1,747	2,538	2,958	2,582	2,235	2,247	2,512	30,633	2,553	89%	-309
2013	2,823	2,240	3,363	2,704	2,504	1,920	2,173	2,602	2,040	1,787	1,582	2,083	27,821	2,318	91%	-234
2014	1,443	1,490	1,689	1,817	1,599	1,548	1,518	1,752					12,856	1,607	69%	-711
													2013	69%	63%	
													2012	63%	61%	
													2011	56%	61%	

UI dispositions Jan to date are down 37% from 2013, down 39% from 2012, and down 39% from 2011  
 UI disposition monthly average is down 31% from 2013, down 37% from 2012, and down 44% from 2011

**BALANCE OPEN CASES**

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	End of yr Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2011	3,619	3,668	4,738	5,237	5,489	5,090	5,700	6,077	5,243	4,766	4,009	3,518	3,518	4,763		
2012	3,398	2,671	2,785	2,703	2,784	2,910	2,744	2,578	2,363	2,727	2,722	2,199	2,199	2,715	57%	-2,048
2013	1,933	2,279	1,809	2,336	2,432	2,491	2,329	1,684	1,923	2,373	2,360	1,827	1,827	2,148	79%	-567
2014	1,994	2,106	1,936	1,986	1,979	2,166	2,432	2,349						2,119	99%	-30
													2013	99%	98%	
													2012	78%	75%	
													2011	44%	43%	

UI balance of open cases Jan to date are down 2% from 2013, down 25% from 2012, and down 57% from 2011  
 UI balance monthly average is down 1% from 2013, down 22% from 2012, and down 56% from 2011

**DI TRENDS-AO**  
Program Codes 7, 10, 11, 12, 16 & 20

**REGISTRATIONS**

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2011	91	94	135	114	105	112	131	130	124	118	87	108	1,349	112		
2012	99	82	120	66	74	62	85	92	78	85	65	57	965	80	72%	-32
2013	52	121	55	118	84	46	37	61	74	88	55	43	834	70	86%	-11
2014	35	45	36	60	48	57	55	39					375	47	67%	-23
													2013	67%	65%	
													2012	58%	55%	
													2011	42%	41%	

DI registrations Jan to date down 35% from 2013, down 45% from 2012, down 59% from 2011.  
DI registration monthly average down 33% from 2013, down 42% from 2012, and down 58% from 2011.

**DISPOSITIONS**

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2011	100	128	93	91	95	132	86	100	133	162	118	111	1,349	112		
2012	113	116	140	88	73	55	79	95	79	87	77	71	1,073	89	80%	-23
2013	69	60	117	88	71	65	53	69	52	44	56	78	822	69	77%	-21
2014	59	37	38	50	45	46	45	50					370	46	68%	-22
													2013	68%	63%	
													2012	52%	49%	
													2011	41%	45%	

DI dispositions Jan to date down 37% from 2013, down 51% from 2012, down 55% from 2011.  
DI disposition monthly average down 32% from 2013, down 48% from 2012, and down 59% from 2011.

**BALANCE OPEN CASES**

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	End of yr Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2011	167	133	175	198	208	188	234	265	254	210	180	177	177	199		
2012	163	130	109	87	89	97	102	97	97	95	82	68	68	101	51%	-98
2013	51	110	50	78	91	72	55	49	71	116	115	79	79	78	77%	-23
2014	52	61	60	68	71	82	92	81						71	91%	-7
													2013	91%	102%	
													2012	70%	65%	
													2011	36%	36%	

Open Balance of DI Jan to date up 2% from 2013, down 35% from 2012, and down 64% from 2011.

Open Balance monthly average down 9% from 2013, down 30% from 2012, and down 64% from 2011.

**TAX TRENDS-AO**  
 Program Codes 15, 17, 18, 32, 45, 46, 47, 48

**REGISTRATIONS**

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2011	25	18	21	33	32	2	23	23	6	43	25	41	292	24		
2012	22	20	39	23	34	21	2	13	11	9	44	6	244	20	84%	-4
2013	27	0	0	53	24	17	12	12	5	42	9	27	228	19	93%	-1
2014	24	11	18	9	1	8	0	5					76	10	50%	-10

Tax registrations Jan to date are down 48% from 2013, down 56% from 2012, and down 57% from 2011  
 Tax registration monthly average down 50% from 2013, down 53% from 2012, and down 61% from 2011

**DISPOSITIONS**

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2011	15	34	21	12	34	30	16	31	19	33	19	17	281	23		
2012	15	23	21	24	17	13	35	34	43	16	2	18	261	22	93%	-2
2013	25	11	15	16	15	10	28	38	18	20	13	39	248	21	95%	-1
2014	8	16	12	7	13	32	6	10					104	13	63%	-8

Tax dispositions Jan to date are down 34% from 2013, down 43% from 2012 and down 46% from 2011  
 Tax disposition monthly average down 37% from 2013, down 40% from 2012, and down 44% from 2011

**BALANCE OPEN CASES**

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	End of yr Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2011	82	66	66	87	86	59	66	58	45	55	61	85	85	68		
2012	92	89	108	107	124	132	100	78	46	39	82	70	70	89	131%	21
2013	72	61	46	83	92	97	82	58	48	67	68	51	51	69	77%	-20
2014	74	63	69	71	59	35	22	18						51	75%	-17

Tax balance of open cases Jan to date is down 30% from 2013, down 50% from 2012, and down 28% from 2011  
 Tax balance monthly average is down 25% from 2013, down 42% from 2012, and down 24% from 2011

2013	75%	70%	
2012	58%	50%	
2011	76%	72%	
	chg to '14 avg	chg to '14 YTD	

# Monthly Board Meeting Litigation Report - August 2014

AGENDA ITEM 9

<u>LITIGATION CASES PENDING</u>	TOTAL = 317
<b>SUPERIOR COURT:</b> Claimant Petitions.....	258
Employer Petitions.....	38
EDD Petitions.....	2
Non-benefit Court Cases .....	4
<b>APPELLATE COURT:</b> Claimant Appeals.....	8
Employer Appeals.....	4
EDD Appeals.....	0
Non-benefit Court Cases .....	1
<b>ISSUES:</b> UI.....	274
DI.....	22
Tax.....	14
Non-benefit Court Cases .....	7

## 2014 CALENDAR YEAR ACTIVITY - Benefit & Tax Cases

<u>LITIGATION CASES FILED</u>	<u>YTD</u>	<u>August</u>
<b>SUPERIOR COURT:</b> Claimant Petitions.....	28	3
Employer Petitions.....	6	0
EDD Petitions.....	0	0
<b>APPELLATE COURT:</b> Claimant Appeals.....	2	1
Employer Appeals.....	0	0
EDD Appeals.....	0	0
<u>LITIGATION CASES CLOSED</u>	<u>YTD</u>	<u>August</u>
<b>SUPERIOR COURT:</b> Claimant Petitions.....	56	3
Employer Petitions.....	7	1
EDD Petitions.....	1	0
<b>APPELLATE COURT:</b> Claimant Appeals.....	7	1
Employer Appeals.....	3	0
EDD Appeals.....	0	0

## 2014 Decision Summary

<u>Claimant Appeals</u>	<u>Employer Appeals</u>	<u>CUIAB Decisions</u>
Win: 5      Loss: 55	Win: 2      Loss: 6	Affirmed: 61    Reversed: 6    Remanded: 1

# CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

## AUGUST 2014 PERFORMANCE INDICATORS

### FIELD OPERATIONS

#### MEETING DOL STANDARDS

##### UI TIMELAPSE CASES

	<u>Closed</u>	<u>DOL Standard</u>
<b>Closed Cases</b>		
% Closed in <= 30 Days	65.9%	≥60%
% Closed in <= 45 Days	83.6%	≥80%

	<u>Avg. Days</u>	<u>DOL Standard</u>
<b>Pending Cases</b>		
Case Aging	28.9	≤30

<b>WORKLOAD</b>	<u>UI</u>	<u>ALL</u>
Opened	22,177	23,655
Closed	24,541	25,897
Balance of Open Cases	22,670	33,331

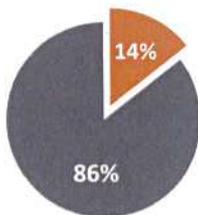
#### CYCLE TIME: AVERAGE DAYS TO CLOSE APPEALS

UI Timelapse Appeals	39 days
DI Appeals (including PFL)	77 days
All Programs	47 days

#### UI WORKLOAD COMPOSITION AT INTAKE (OPENED)

Regular UI Appeals as % of All UI	91%
UI Extensions as % of All UI	9%

#### UI WORKLOAD COMPOSITION AT END OF MONTH OPEN BALANCE:



UI Extensions made up 14% of UI Open Balance, and Regular UI cases made up 86%.

FED-ED UI Extensions made up 0.2% of the FO open balance. These are the extensions that ended in late May 2012. In 2011, they were 3% of the workload.

### APPELLATE OPERATIONS

#### MEETING DOL GUIDELINES & STANDARDS

##### UI TIMELAPSE CASES

	<u>Closed</u>	<u>DOL Guideline</u>
<b>Closed Cases</b>		
% Closed in <= 45 Days	48.6%	≥50%
% Closed in <= 75 Days	90.6%	≥80%

	<u>Avg. Days</u>	<u>DOL Standard</u>
<b>Pending Cases</b>		
Case Aging	35.9	≤40

<b>WORKLOAD</b>	<u>UI</u>	<u>ALL</u>
Opened	1,676	1,729
Closed	1,752	1,813
Balance of Open Cases	2,351	2,461

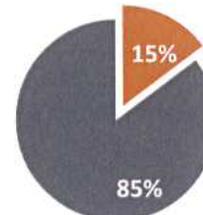
#### CYCLE TIME: AVERAGE DAYS TO CLOSE APPEALS

UI Timelapse Appeals	52 days
DI Appeals (including PFL)	67 days
All Programs	52 days

#### UI WORKLOAD COMPOSITION AT INTAKE (OPENED)

Regular UI Appeals as % of All UI	82%
UI Extensions as % of All UI	18%

#### UI WORKLOAD COMPOSITION AT END OF MONTH OPEN BALANCE:



UI Extensions made up 17% of UI Open Balance, and Regular UI cases made up 83%.

FED-ED UI Extensions made up 0.1% of the AO open balance.

**California Unemployment Insurance Appeals Board**  
**FO Cycle Time Summary Report**  
**For Cases Closed in August 2014**

<b>UI Timelapse CASES</b>	<b>Average Days to Process an Appeal</b>	<b>Case Creation</b>	<b>Verified Date</b>	<b>Scheduled</b>	<b>Hearing Date</b>
		<b>Date to Verified Date</b>	<b>to Scheduled Date</b>	<b>Date to Hearing Date</b>	<b>Date to Decision Mailed Date</b>
<b>Jurisdiction</b>	<b>Average</b>	<b>Average</b>	<b>Average</b>	<b>Average</b>	<b>Average</b>
Fresno	39	5	14	14	1
Inglewood	35	6	9	12	2
Inland	36	3	10	15	1
Los Angeles	38	3	12	13	4
Oakland	42	5	16	12	2
Orange County	36	4	10	13	3
Oxnard	35	4	10	14	0
Pasadena	38	3	11	14	3
Sacramento	46	6	16	16	3
San Diego	39	6	14	12	2
San Francisco	44	4	19	13	2
San Jose	41	3	19	12	1
Tax Office	N/A	N/A	N/A	N/A	N/A
<b>Statewide</b>	<b>39</b>	<b>4</b>	<b>13</b>	<b>13</b>	<b>2</b>

<b>ALL CASES</b>	<b>Average Days to Process an Appeal</b>	<b>Case Creation</b>	<b>Verified Date</b>	<b>Scheduled</b>	<b>Hearing Date</b>
		<b>Date to Verified Date</b>	<b>to Scheduled Date</b>	<b>Date to Hearing Date</b>	<b>Date to Decision Mailed Date</b>
<b>Jurisdiction</b>	<b>Average</b>	<b>Average</b>	<b>Average</b>	<b>Average</b>	<b>Average</b>
Fresno	45	5	19	14	1
Inglewood	43	6	12	14	4
Inland	46	4	17	15	2
Los Angeles	42	3	14	14	5
Oakland	49	5	20	12	3
Orange County	42	4	15	14	3
Oxnard	41	4	15	14	1
Pasadena	42	3	14	14	4
Sacramento	49	6	17	16	3
San Diego	41	6	14	12	3
San Francisco	51	4	23	14	2
San Jose	44	3	22	12	1
Tax Office	382	N/A	N/A	38	111
<b>Statewide</b>	<b>47</b>	<b>5</b>	<b>17</b>	<b>14</b>	<b>3</b>

**California Unemployment Insurance Appeals Board  
FO Cycle Time Summary Report  
For Cases Closed in August 2014**

<b>PFL CASES</b>	<b>Average Days to Process an Appeal</b>	<b>Case Creation Date to Verified Date</b>	<b>Verified Date to Scheduled Date</b>	<b>Scheduled Date to Hearing Date</b>	<b>Hearing Date to Decision Mailed Date</b>
<b>Jurisdiction</b>	<b>Average</b>	<b>Average</b>	<b>Average</b>	<b>Average</b>	<b>Average</b>
Fresno	49	9	50	16	0
Inglewood	82	9	42	11	19
Inland	87	9	34	17	3
Los Angeles	68	5	46	15	8
Oakland	73	7	40	12	6
Orange County	76	6	38	14	2
Oxnard	64	5	41	14	1
Pasadena	87	6	43	14	1
Sacramento	59	6	15	17	8
San Diego	47	10	7	10	6
San Francisco	70	5	33	13	3
San Jose	74	6	39	13	2
<b>Statewide</b>	<b>69</b>	<b>7</b>	<b>31</b>	<b>14</b>	<b>5</b>

<b>DI CASES (No PFL)</b>	<b>Average Days to Process an Appeal</b>	<b>Case Creation Date to Verified Date</b>	<b>Verified Date to Scheduled Date</b>	<b>Scheduled Date to Hearing Date</b>	<b>Hearing Date to Decision Mailed Date</b>
<b>Jurisdiction</b>	<b>Average</b>	<b>Average</b>	<b>Average</b>	<b>Average</b>	<b>Average</b>
Fresno	83	8	58	15	3
Inglewood	88	11	40	13	14
Inland	86	7	48	15	7
Los Angeles	85	6	43	18	11
Oakland	81	8	45	12	9
Orange County	78	8	33	14	7
Oxnard	75	7	39	14	2
Pasadena	83	7	43	13	7
Sacramento	57	6	20	17	5
San Diego	55	10	18	12	7
San Francisco	76	7	39	14	5
San Jose	73	6	42	13	2
<b>Statewide</b>	<b>78</b>	<b>7</b>	<b>39</b>	<b>14</b>	<b>7</b>

CUIAB 14/15 Fiscal Year Paid Overtime/Lump Sum Payout - SCO Report  
July 2014 through July 2014

Branch	FY Y-T-D Decision Typing		FY Y-T-D CTU Typing		FY Y-T-D Registration		FY Y-T-D Other	
	Hours	Pay	Hours	Pay	Hours	Pay	Hours	Pay
Appellate	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00
Admin	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00
IT	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	0.00	\$4,635.02
Exec	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00
Field	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00
<b>Total</b>	<b>0.00</b>	<b>\$0.00</b>	<b>0.00</b>	<b>\$0.00</b>	<b>0.00</b>	<b>\$0.00</b>	<b>0.00</b>	<b>\$4,635.02</b>

14/15 Fiscal Year-to-Date Total Overtime Expenditures					FY 14/15 FY Projections	
Branch	14/15 FY Allocation	Year-to-Date Hours	Year-to-Date Position Equivalent	Year-to-Date Pay	Allocation Balance	Estimated Expenditures Over-/Under
Appellate	\$0.00	0.00	0.00	\$0.00	\$0.00	#DIV/0!
Admin	\$0.00	0.00	0.00	\$0.00	\$0.00	#DIV/0!
IT	\$0.00	0.00	0.00	\$4,635.02	-\$4,635.02	-\$55,620.24
Exec	\$0.00	0.00	0.00	\$0.00	\$0.00	#DIV/0!
Field Operations	\$0.00	0.00	0.00	\$0.00	\$0.00	#DIV/0!
<b>Total</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>\$4,635.02</b>	<b>-\$4,635.02</b>	<b>#DIV/0!</b>
Actual Monthly Average Personnel Year						

14/15 Fiscal Year-to-Date Lump Sum Payout July 2014 through July 2014						
Branch	Year-to-Date Hours	Year-to-Date Position Equivalent	Year-to-Date Pay	14/15 Allocation	Estimated Over-/Under	
Appellate	94.00	0.05	\$5,046.21	\$0.00	-\$5,046.21	
Admin	0.00	0.00	\$0.00	\$0.00	\$0.00	
IT	107.70	0.05	\$3,506.16	\$0.00	-\$3,506.16	
Exec	0.00	0.00	\$0.00	\$0.00	\$0.00	
Field Operations	145.80	0.07	\$3,060.36	\$0.00	-\$3,060.36	
<b>Total</b>	<b>347.50</b>	<b>0.17</b>	<b>\$11,612.73</b>	<b>\$0.00</b>	<b>-\$11,612.73</b>	

**AO Annual Evaluation of the Telework Policy**

Presentation to the Board  
2014

1

**State of California Encourages Telecommuting (Telework)**

**“It is the policy of the State of California to encourage the use of telecommuting as a management work option.”**

-California Government Code 14200-14203, authorizing state agencies, boards and commissions to establish telecommuting programs.

**“The results showed significant improvements in employee effectiveness and morale and significant reductions in transportation systems use.”**

-Telecommuting Work Option Report, p. 1.

2

## **The Telework Program is part of ALJ's Collective Bargaining Agreement (CBA)**

Section 6.4 of Unit 2 MOU(CASE) states:

**"The State and CASE recognize that telework has been proven to improve employee morale, reduce traffic congestion and improve productivity."**

**"Employee request to telework shall not be denied except for operational needs."**

**If denied, employees may file a grievance that can be appealed to the 4<sup>th</sup> level of the grievance procedure**

3

## **Participation in the Telework Program**

- **17 teleworking ALJs (4 for 13-25 years, 4 for 5-12 years, and 9 for 1-4 years)**
- **ALJs required to be accessible during work hours**
- **Each ALJ has backups in the office**
- **Each ALJ must use technology when teleworking**
- **ALJs required to come for meetings/projects**

4

## Results: Productivity and Efficiencies

Fiscal Yr.	Assignments	# ALJs	# Teleworking ALJs	Aging Cases	45 Day Time Lapse Cases
08-09*	15758	15	14	40 days**	32%
09-10	25262	23	16	33 days	52%
10-11	32234	22	18	35 days	44%
11-12	35,604	23	21	39 days ***	29%
12-13	31,878	23	21	39 Days	37%
13-14	22,794	18	17	30 Days	66%

\*Caseload increased from 22 to 24 appellants weekly

\*\*Affected by 2 months of older, missed 5068 cases

\*\*\* Affected by the implementation of Filebound and ACSS  
-Mass calendaring started in November of 2009

5

## 2013/2014 Fiscal Year Leave Usage

- 5 ALJ's averaged 3.6 sick days for the year;
- 12 ALJ's did not use any sick time

6

## ALJ Commute Trips

- 3 telework ALJ's live within 5 to 10 mile radius
- 5 telework ALJ's live within 11-20 mile radius
- 3 telework ALJ's live within 21-50 mile radius
- 6 telework ALJ's live over the 50 mile radius
- Teleworking ALJs save between 116,000 and 125,600 miles annually of driving, fuel consumption and car maintenance, traffic congestion, air pollution effects, and related health issues; also increases safety
- By teleworking ALJs save between 2246 and 2434 hours of commuting time annually

7

## Office Space

- Reasonable Effort Required To Provide Private, Enclosed Offices For ALJs (confidentiality, listen to audio recordings, drafting decisions)
- Consultation with Union (CASE) Required If Not Available. Unit 2 CBA, section 13.3

8

## USE OF TECHNOLOGY FOR TELEWORK

All ALJs are technologically capable of preparing and moving cases to Decision Typing and Board when teleworking:

- All 18 Telework ALJs use e-dec to upload their decisions to the typists
- All 18 Telework ALJs use Filebound
- Some telework ALJs work in the office on close due dates
- Some telework ALJs use Dragon Naturally Speaking on a regular basis

9

## SURVEY RESULTS

- **BENEFICIAL ASPECTS:**
- Better productivity (fewer distractions; work in lieu of commute time)
- Better quality work (focus; pace; optimal hours)
- Better flexibility (health/personal issues)
- Retention of experience/skills (8 ALJs have 11 to 26 years)
- Less commuting (less car wear, fuel, pollution, road fatigue; more safety)
- Better recruitment (6 ALJs live over 50 miles away)
- Positive effect on morale: 9 or 10 (scale of 10)

10

## **SURVEY RESULTS**

### **LESS BENEFICIAL:**

- **Isolation (Use of email & phone to communicate)**
- **Slower network connection**

11

## **Benefits of Using Electronic Files**

- **No longer need to remove and transport files outside the office.**
- **All electronic files are available to staff, ALJs and board members whenever they are needed and can be accessed from anywhere via secure internet connection.**
- **Less chance of the file being lost**
- **Higher security of confidential information.**

12

## **The CUIAB Telework Program Works**

- **Improves Productivity & Efficiency (less time off)**
- **Best Utilization Of Office Space (for more staff)**
- **Increases Employee Morale (more job satisfaction/flexibility)**
- **Improves Retention of Experienced ALJs**
- **Assists In Recruitment Of New ALJs**
- **Saves On Commute Trips**

13

## **Changes in FY 13/14**

- **Integrated New Technology To Maximize Efficiencies:**
  - **Filebound 7**
  - **E-File Board/ALJ Communication Tool**
- **Trained ALJs to utilize new technology to improve efficiency in work remotely and improve communication with the Board.**

14

## Recommendations

- **Update Telework Policy:**
  - **To Clarify Chief ALJ/AO Authority and Discretion**
  - **To reflect changes necessary as a result of implementation of Filebound**
  - **To document discretion of Chief ALJ of AO to adjust selection requirements based on performance recognizing selection is subject to collective bargaining.**

15

As Peter Drucker summed up telecommuting, "Commuting to office work is obsolete. It is now infinitely easier, cheaper, and faster to ... move information ... to where the people are" (Drucker, 1993, p. 340).

16

Drucker, Peter F. (1993). *The ecological vision: Reflections on the American condition*. New Brunswick, NJ: Transaction.



## FAX TRANSMITTAL

Date: 09-05-14

Number of pages, including transmittal: 02

TO:	FROM:
Name: <u>ROBERT DRESSER, CHAIRMAN</u>	Name: <u>Willard Vaughan</u>
Company: <u>SACRAMENTO OFFICE OF APPEALS</u>	EDD Office: <u>Petition Review Group</u>
Phone #: <u>(916) 263-6706</u>	Phone #: <u>(916) 654-2365</u>
Fax #: <u>(916) 263-6836</u>	Fax #: <u>(916) 319-4182</u>

This transmission contains confidential information intended only for the use of the individual or entity named above. If you are not the intended recipient, any disclosure, distribution, copying or unauthorized use of this confidential information is prohibited, and may subject you to criminal and/or civil penalties. If you receive this transmission in error, please notify the sender immediately by telephone, and destroy all transmitted documents.

**MESSAGE:**

The attached document is being faxed to you in regards to the following case number:

Case No.: AO-336919

Claimant: Nelly Ostapenko

The original document will also be hand delivered on Monday 09/08/14 to the following address:

2400 Venture Oaks Way, Suite 100  
Sacramento, California 95833

Thank you, and if you have any questions, please feel free to contact me.

Willard Vaughan  
Tax Administrator I  
EDD, Tax Branch  
FACD Audit Section  
Training, Technical Assistance, and Petition Review Group  
(916) 654-2365

Received in the  
Office of the Chief Counsel

SEP 05 2014

California Labor and Workforce Development Agency

Edmund G. Brown Jr.  
Governor

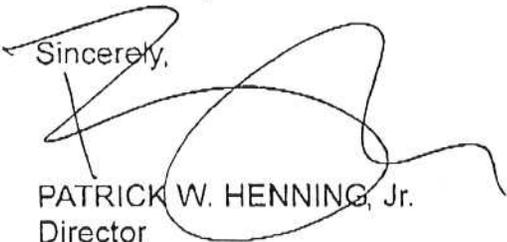
September 5, 2014

Robert Dresser, Chairman  
California Unemployment Insurance Appeals Board  
2400 Venture Oaks Way  
Sacramento, CA 95833

Dear Mr. Dresser:

The Board is scheduled to consider whether to designate Case No. AO-336919, Nelly Ostapenko, as a Precedent Benefit Decision at its meeting on September 9, 2014. The EDD respectfully requests that the Board postpone its consideration of this matter for 90 days. This will allow the EDD to contact other interested parties, such as the Department of Social Services (DSS) and the Sacramento County Public Authority, so that they are aware of this decision and can evaluate the impact it may have on their programs. The EDD also needs time to evaluate the impact this decision may have on its Unemployment Insurance and Tax programs. Thank you for your consideration.

Sincerely,



PATRICK W. HENNING, Jr.  
Director



CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD  
P O Box 944275  
SACRAMENTO CA 94244-2750

NELLYA OSTAPENKO  
LEGAL SERVICES OF NORTHERN CALIFORNIA  
Claimant-Appellant

Case No.: **AO-336919**

OA Decision No.: 4893615

EDD: 0190 BYB: 01/13/2013

## DECISION

Attached is the Appeals Board decision in the above-captioned case issued by Board Panel members:

**ROBERT DRESSER**

**MICHAEL ALLEN**

**JOHN ADKISSON**

**ROY ASHBURN, Written Dissent**

This is the final decision by the Appeals Board. The Appeals Board has no authority to reconsider this decision. If you disagree with the decision, please refer to the information attachment which outlines your rights.

Date Mailed: 08/27/2014

**Case No.:** AO-336919  
**Claimant:** NELLYA OSTAPENKO

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The claimant appealed from the decision of the administrative law judge that held the wages earned by the claimant for providing caregiver services for her son through the In-Home Supportive Services (IHSS) program were insufficient to establish a claim under sections 1275 and 1281 of the Unemployment Insurance Code (UIC)<sup>1</sup>, given that the claimant's services were exempt from employment under code section 631.

### ISSUE STATEMENT

The issue before us is whether the wages the claimant earned through the IHSS program for providing care to her disabled son constitute wages in covered employment under code sections 1275 and 1281, or whether the wages were for services exempt from the definition of employment based on familial relationship under code section 631.

### FINDINGS OF FACT

The In-Home Supportive Services Program is a state social welfare program established in 1973 and designed to avoid institutionalization of incapacitated persons. The program is funded by a combination of federal, state and county dollars. It provides supportive services to aged, blind or disabled persons who cannot perform the services themselves and who cannot safely remain in their homes unless the services are provided to them. The program compensates persons who provide the services to a qualifying incapacitated person.<sup>2</sup> IHSS workers are eligible for unemployment insurance (UI) benefits if their wages are not statutorily exempt and they are otherwise eligible for benefits under the UIC.

In 1992, the California Legislature enacted a series of statutes providing for the use of public authorities by counties providing IHSS services.<sup>3</sup> In 1998, in a letter to all counties, the Department of Social Services (DSS) mandated that all counties using a public authority to provide IHSS services enter into an interagency agreement specifying the services to be provided. In 2000, Sacramento County established the Sacramento County In-Home Supportive Services Public Authority (Public Authority) to assist in the delivery of IHSS

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<sup>1</sup> Unless otherwise noted, all statutory references are to the Unemployment Insurance Code.

<sup>2</sup> *Basden v. Wagner* (2010) 181 Cal.App.4<sup>th</sup>, 929, 931.

<sup>3</sup> Welfare and Institutions Code, section 12301.6

services<sup>4</sup> and entered into an interagency agreement (the contract) with the Public Authority to provide those services. The agreement provides that the Public Authority acts as the "employer of record" for individual providers serving IHSS recipients, providing assistance to recipients in finding IHSS personnel through a registry, establishing a referral system to refer IHSS personnel to recipients, investigating qualifications and background of potential IHSS providers, providing recipient input through the IHSS Advisory Committee, and providing for training for IHSS providers and recipients. The Public Authority also agreed to provide Sacramento County with the information and materials needed for billing services to the DSS and for approval of DSS and the California Department of Health Services of the reimbursement rate for the Public Authority and any rate adjustment. In addition, the Public Authority agreed to use county administrative, legal, financial, labor relations and clerk services, as well as accounting and clerical support and other county services as deemed necessary.

The claimant worked as an IHSS personal caregiver for her disabled son from the time he was four years old until he died at age 23. There was no evidence that the county hired the claimant, or any of its IHSS workers as county employees pursuant to civil service laws and rules. The claimant was paid directly through direct deposit by the state of California, with deductions for union dues and health insurance. The state did not withhold personal income taxes and the record does not establish whether or not the state made contributions for unemployment insurance for this or other claimants.

After her son died, the claimant filed a claim for unemployment insurance benefits which was effective January 13, 2013. Based on the claim effective date, the Employment Development Department (EDD) determined a base period of October 1, 2011 through September 30, 2012. The base period is prescribed by statute<sup>5</sup> and used to determine if the claimant has sufficient wages to establish a claim and the amount of the claim. The only wages during the base period of October 1, 2011 through September 30, 2012 were paid to her through the IHSS program for caring for her son. Her wages totaled more than \$1,000 in each quarter of 2012.

The Employment Development Department issued a Notice of Determination finding that the claimant had insufficient wages in her base period to establish a

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<sup>4</sup> The parties having been noticed and having expressed no objection, we take official notice of All County Letter 98-20, issued by the Department of Social Services on March 17, 1998, requiring counties using public authorities to enter into interagency agreements with the public authorities pursuant to Social Services Standards, section 30-767, subdivision .214. We also take judicial notice of the interagency agreement entered into between Sacramento County and the Public Authority on September 12, 2000. Both documents are added as exhibits to the record of this case. Evidence Code, section 452, subdivisions (b), (c) and (h); California Code of Regulations, title 22, section 5009.

<sup>5</sup> Unemployment Insurance Code, section 1275.

claim. The decision of the administrative law judge affirmed the Notice of Determination and at least implicitly found the claimant's son was her sole employer, and therefore her IHSS wages were excluded from employment under code section 631.

### REASONS FOR DECISION

Because we find the claimant's son was not her sole employer, and for other reasons discussed below, we will reverse the conclusion of the administrative law judge that the claimant's wages should be excluded.

The UIC contains several definitions of "employer" and specifies the circumstances under which wages earned from a particular employer can be used to establish an unemployment insurance claim. The UIC also defines wages from some employment as exempt and not available to establish a claim for unemployment benefits.

The primary issue before us is whether the wages the claimant earned through the IHSS program for providing care to her disabled son were for services excluded from the definition of employment under section 631.

Code Section 631 provides:

Employment for purposes of unemployment benefits does not include service performed by a child under the age of 18 in the employ of his father or mother, or services performed by an individual in the employ of his son, daughter, or spouse, except for disability benefits to the extent that the employer and the employee have, pursuant to section 702.5 elected to make contributions to the Unemployment Compensation Disability Fund.

The result in this case depends on whether or not the language "in the employ of" in section 631 applies to service performed by an individual "in the employ of" her son, while also jointly employed for the same work by another employer or employers.

Employer contributions to the Unemployment Fund accrue and become payable by employers "with respect to wages paid for employment." (Unemployment Insurance Code, section 976). Thus, if the claimant's IHSS earnings are not wages paid for "employment," no employer contributions are payable and her earnings are not useable to establish a claim.

Under the IHSS scheme, this premise is obviously tinged with absurdity since, even though these welfare recipients may technically be designated as “employers,” the elderly and indigent recipients of the program could hardly be expected to pay employer contributions into the unemployment insurance system. As far as this Board is aware, none do.

Nevertheless, the statutes governing IHSS and even a statute defining “employment” under the Unemployment Insurance Code state that the welfare recipient himself may be considered, under specified circumstances, to be at least one of several possible entities considered to be the “employer” of the IHSS worker. (Welfare and Institutions Code, sections 12301.6, subd. (c)(1), 12302.2 and 12302.25; Unemployment Insurance Code, section 683).<sup>6</sup>

We begin by examining the history, significance and wording of section 631. Section 631 was originally enacted in 1953, twenty (20) years before establishment of IHSS and almost forty (40) years before the statutory creation of public authorities for purposes of delivery of IHSS services. The statute was later amended in 1971, still years before public authorities were in existence. According to the Enrolled Bill Report, one of the purposes of the statute was to protect against unemployment fraud that could arise because of collusion between specific family members with control over the employment relationship.<sup>7</sup> Such collusion, while not impossible in an IHSS recipient/provider relationship, is hardly likely given the fact that it is the responsible government authorities which are financially liable for unemployment insurance benefits which serve in the role of employer with respect to interaction with EDD. This concern is also minimized by the extensive governmental oversight and control of the employment relationship, including the termination of the relationship.

Section 631 does not define the term “in the employ of.” The plain language of the statute gives no indication as to whether or not the Legislature intended to exempt wages based solely on the familial relationship between caregiver and

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<sup>6</sup> The Board is also cognizant of the recent decision of the United Supreme Court in *Harris v. Quinn*, 573 U.S.\_\_\_\_\_, 2014 U.S. Lexis 4504 (decided June 30, 2014). In *Harris*, the Court examined the employment relationship between a worker providing services under the same federal program as described in this decision but under a statutory scheme unique to the State of Illinois. The Court concluded, among other things, that workers such as the claimant in Illinois were not what it called full-fledged public employees, but were merely deemed to be public employees solely for the purpose of unionization and collective bargaining (Id. at p. 38) Nevertheless, nothing in the majority opinion contradicted Justice Kagen’s dissenting opinion that, regardless of the full-fledged or partial character of the home care worker’s status as a public employee, there was, even under the Illinois statutes, a “joint” employment relationship. (Id. at p. 82). For this reason, and because California’s statutory scheme described in this decision is materially distinguishable from the Illinois law, nothing in *Harris* is relevant to the outcome of this Board’s adjudication of the matter before it.

<sup>7</sup> Enrolled Bill Report, Governor’s Office, Chapter No. 1447, 1971, California State Archives, Office of the Secretary of State, Sacramento.

care recipient, or whether the exemption would apply even if the claimant had joint employers, one or more of which was not a family member.<sup>8</sup>

One UIC provision, Section 683, sets forth an express statutory definition of “employer” that applies to caregivers working through the IHSS program. The statute provides three alternative ways that “any employing unit” can meet the definition of “employer”. It specifically provides:

“Employer” also means any employing unit<sup>9</sup> which employs individuals to perform domestic service comprising in-home supportive services under Article 7 (commencing with Section 12300), Chapter 3, Part 3, Division 9 of the Welfare and Institutions Code and pays wages in cash of one thousand dollars (\$1,000) or more for such service during any calendar quarter in the calendar year or the preceding calendar year, and is one of the following:

- (a) The recipient of such services, if the state or county makes or provides for direct payment to a provider chosen by the recipient or to the recipient of such services for the purchase of such services, subject to the provisions of Section 12302.2 of the Welfare and Institutions Code.
- (b) The individual or entity with whom a county contracts to provide in-home supportive services.
- (c) Any county which hires and directs in-home supportive personnel in accordance with established county civil service requirements or merit system requirements for those counties not having civil service systems.

The statute does not, on its face, preclude the possibility of multiple or joint employers. In fact, the statute clearly allows for the possibility of multiple or joint employers under the definition by emphasizing that “employer also means any employing unit [which would include a public authority] which employs” IHSS workers with sufficient earnings, “and is one of the following.” By defining the employer as “any employing unit,” the plain language of the statute can only be read as being inclusive of “any” employing unit falling within the three listed categories.<sup>10</sup>

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<sup>8</sup> As explained in more detail below, the impact of employment by more than one individual on the applicability of the 631 exemption is addressed in Title 22, section 631-1 and was analyzed by this Board in Precedent Benefit Decision (P-B-111).

<sup>9</sup> “Employing unit” includes “any public authority.” (Unemployment Insurance Code, section 135 (a)(3)).

<sup>10</sup> Nothing in this decision shall be construed to mean that the definitions in section 683 are the exclusive definitions relevant in construing the meaning of “in the employ of” in section 631. Indeed, section 631 was enacted long before section 683 existed and IHSS workers “related” to recipients within the meaning of 631 may actually be “in the employ of” other employing units not listed in section 683, including counties, public authorities, and the State of California. As discussed in this decision, economic reality

Thus, as a threshold matter, we must determine whether the claimant was employed by one or more than one “employing unit.”

### Care Recipient as Employer

Code section 683, subd. (a) provides, in pertinent part, that the care recipient is the employer only if the caregiver is paid directly by the government and was “chosen by the recipient.” As noted above, the claimant was paid directly for her services by the state through a check from the State of California with deductions for union dues and health care.<sup>11</sup>

Whether or not the claimant was “chosen by the recipient” is a more difficult question. The claimant’s son was only four when the claimant became his caregiver under the IHSS program. Given the age of her son at the beginning of claimant’s IHSS employment, it is possible that the claimant initially became her son’s caregiver as a matter of parental rights.<sup>12</sup> We have no evidence of record, however, as to how the claimant initially became her son’s caregiver, nor do we know whether the recipient had input in choosing to continue the employment relationship prior to the recipient’s death decades later. We do know that the claimant remained her son’s caregiver during the base period of the claim, through the time he attained the age of majority, and until his death at age 23. The son’s death was the occasion for claimant’s separation from employment.

Nevertheless, it is unnecessary to remand for a more complete record on whether claimant was “chosen by the recipient” within the mean of Section 683(a) for reasons explained below.

For purposes of this analysis we shall assume that the son as the recipient of IHSS services was one employer of the claimant within the meaning of Section

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dictates that even if benefit recipients who do not pay for the services rendered are considered employers as a statutory construct, IHSS workers are in the employ of at least two and possibly multiple entities which share employer obligations and functions

<sup>11</sup> The State, in fact, is the entity that assumes responsibility for UI contributions for eligible IHSS workers. Welfare and Institutions Code, section 12302.2

<sup>12</sup> The right of parents to the companionship, care, custody, and management of their minor children is an important interest that warrants deference and protection. *Lassiter v. Department of Social Services of Durham County, N.C.*, (1981) 452 U.S.18. The right will not be disturbed except in extreme cases where a parent acts in a manner incompatible with parenthood. *In re Isayah C.* (2004) 118 Cal.App.4<sup>th</sup> 684. The choice of a caregiver to provide IHSS services for her son is within the claimant’s right of care, custody and management. The phrase “chosen by the recipient” could reasonably be construed to mean chosen by the recipient or an individual who had the legal authority to act on behalf of the recipient, such as a parent of a minor child, legal guardian or conservator. The claimant’s son was not a minor during the last five years she cared for him, which period includes the base period of the claimant’s unemployment claim. Upon reaching the age of 18, the son continued with the claimant as his caregiver.

683(a). There are, indeed, numerous reasons for assuming that the statutory framework for the IHSS program intended, even if as a fiction, to regard recipients as employers.<sup>13</sup>

The facts that Sacramento County has established and contracted with the Public Authority to deliver IHSS services, and that a specific employer's role is set forth in statute for the Public Authority in the delivery of those services, however, raise the issue of whether, under section 683, subdivision (b) or (c), the Public Authority or the County are also employers of the claimant within the definition set forth in section 683.

### Public Authority as Employer

As noted above, in 1992 the California Legislature enacted section 12301.6 of the Welfare and Institutions Code. That section allowed the counties to create, by ordinance, public authorities, and to contract with them to provide IHSS services on behalf of the county. These contracts resulted in a sharing of responsibilities delineated in the statutes between a number entities and individuals.

Under the statute, a public authority is a corporate public entity, separate from the county, exercising a number of public and essential governmental functions. It has all powers necessary or convenient to carry out the delivery of in-home supportive services, including the power to contract to provide IHSS services in accordance with a county plan. The public authority is charged with making or providing for direct payment to a provider chosen by the recipient for the purchase of services pursuant to Sections 12302 and 12302.2. The statute further specifies that "employees of the public authority are not employees of the county for any purpose." (Welfare and Institutions Code, section 12301.6(b)(2)(B).)

The law provides that any public authority established pursuant to the law shall perform, but not be limited to, the following functions:

- (1) Establishing a registry to assist care recipients to find caregivers.
- (2) Investigating the qualifications and background of potential personnel.
- (3) Establishing a referral system to refer caregivers to care recipients.
- (4) Providing for training for providers and recipients.
- (5) Performing any other functions related to the delivery of in-home supportive services.

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<sup>13</sup> For example, subject to the public authorities' rights to assist in the finding of caregivers, to investigate qualifications and background, and to establish referral systems and training, recipients purportedly retain the right to hire, fire and supervise the work of any in-home supportive services personnel providing services to them. (Welfare and Institutions Code, section 12301.6, subds. (c)(1) and (h).)

(6) Ensuring that the requirements of the personal care option pursuant to Federal law is met.

(Welfare and Institutions Code, section 12301.6(e), Sacramento County Code, section 297.060(a).)

The above statute specifically sets forth the functions of the public authority for which it is deemed to be the employer of IHSS personnel, and also the employer functions reserved to other entities or individuals.

Section 12301.6 establishes that a public authority has substantial control over the training, referral, background investigation of qualifications, pay and benefits of an IHSS worker. The public authority is specifically “deemed to be the employer” of IHSS personnel for the purpose of collective bargaining regarding wages and other terms and conditions of employment.<sup>14</sup> As noted, the claimant had union dues deducted from her paycheck for collective bargaining purposes.

The statute also states that recipients shall retain the right to hire, fire and supervise the work of any in-home supportive services personnel providing services to them. (Welfare and Institutions Code, section 12301.6, subs. (c)(1) and (h).)<sup>15</sup>

Under section 12301.6(b) (2) (B) of the Welfare and Institutions Code, the purpose for the creation of a public authority is “to provide for the delivery of in-home supportive services.” The public authority has the power to contract with the county to provide such services and the law sets forth the specific employer functions to be performed by the public authority.

Since, as described more fully above, the County in this case did establish a Public Authority and did enter into a contract (the interagency agreement) under which the Public Authority provides IHSS services, we find that the Public Authority is an “entity with whom a county contracts to provide in-home

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<sup>14</sup> Government Code, section 3500 *et seq.* Although a care recipient by statute retains the right to hire a provider who has not been referred by the public authority, that provider must be referred to the public authority “for the purposes of wages, benefits, and other terms and conditions of employment.” (Welfare and Institutions Code, section 12301.6, subd. (h).)

<sup>15</sup> This scheme and other statutory provisions raise the serious question not addressed in this decision regarding whether or not a recipient, in fact, actually “chooses” his provider (as is required under section 683) or, on the other hand, merely “recommends” a provider who is normally approved by the State, the County, or the Public Authority. In some instances, the recipient may not have the mental facility or inclination to participate at all in this decision. The answer to this question does not alter the interpretation of UIC Section 631 in this case, and we therefore do not address it.

supportive services” under UIC section 683(b) and is therefore an employer of the claimant.

### The County’s Role; the County is not the Employer under Section 683.

The county does have a significant role in performing a number of functions related to operation of the IHSS program, including, but not limited to, authorizing services for an IHSS recipient, determining the level and quality of services required, conducting any subsequent assessment of need for services, collecting timesheets and worksheets from the caregiver, and terminating the recipient’s participation in the IHSS program. (Title 2, chapter 2.97, section 297.060 of the Sacramento County Code).<sup>16</sup> Indeed, for purposes of the granting or denial of Unemployment Insurance benefits it could be suggested that the most important function of an employer is the counties’ function in “terminating the recipient’s participation” which is likely to lead directly to the unemployment of the caregiver.

Nonetheless, the record contains no evidence that the county hired the claimant in accordance with county civil service requirements or merit system requirements. Therefore, based on the information of record, and having found the claimant an employee of the Public Authority, we find that Sacramento County is not the claimant’s employer within the meaning of Section 683, subdivision (c).

### Joint Employers In Other Contexts

Whether a claimant providing IHSS services can have more than one employer, or “ joint” employers under section 683 for purposes of unemployment law has not been specifically addressed by the courts.<sup>17</sup> The courts have, however, issued decisions regarding whether there can be joint employers of IHSS workers for purposes of workers’ compensation benefits and for purposes of employee rights and benefits under the Fair Labor Standards Act (FLSA) and California’s wage and hour laws. While those cases are not necessarily binding in an unemployment law context, they are instructive in our analysis under UIC Section 631.

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<sup>16</sup> Thus, our finding that the County does not meet the definition in Section 683, subdivision (c) should be construed narrowly as it does not affect the County’s potential status as employer under different statutes or the common law of employment relationships.

<sup>17</sup> However, as we have noted, the plain language of 683 allows for no other interpretation. Not only is the sentence construction susceptible to no other interpretation other than the possibility that more than one employing entity might qualify, but the statute provides no indication of which qualifying employer would be designated as “the” employer in the situation, where, as here, more than one entity might qualify under the three subdivisions.

In the worker's compensation area, Labor Code section 3351.5 addresses the issue of who is an "employee" for purposes of determining whether IHSS workers are entitled to worker's compensation benefits. That section defined "employee", in pertinent part, to be:

... (b) Any person defined in subdivision (d) of Section 3351<sup>18</sup> who performs domestic service comprising in-home supportive services [citation omitted]. For purposes of Section 3352, such person shall be deemed an employee of the recipient of such services for workers' compensation purposes if the state or county makes or provides for direct payment to such person or to the recipient of in-home supportive services for the purchase of services, subject to the provisions of Section 12302.2 of the Welfare and Institutions Code.

In *IHSS v. WCAB* (1984) 152 Cal.App.3d 720, a case that arose before the statutory creation of public authorities, the IHSS worker was paid directly and worked for three care recipients over the relevant time period. She was injured helping one of the recipients for whom she had not worked enough hours and by whom she had been paid insufficient wages to qualify for worker's compensation.

The court held that for purposes of workers' compensation, IHSS workers are deemed to be employees of the care recipient if the state or county pays the care recipient or the care provider directly. (Id. at p. 732) The court further found that although, by statute, the care provider in that case was an employee of the recipient and did not earn sufficient wages to be eligible for benefits based on the earnings from that one employer, there was nothing in the law that precluded a finding of dual employment. In fact, the court noted, simultaneous employment was not a novelty in the law of worker's compensation.<sup>19</sup> Moreover, the court noted the legislative directive to construe worker's compensation law in favor of coverage where there was ambiguity. (Id. at p.740). The court concluded that the state was also an employer, and the county, in overseeing the program, acted as an agent of the state. The state was found to be a joint employer along with the care recipient, and benefits were payable.

In *Bonnette v. Health and Welfare Agency*, (704 F.2d 1465 (9<sup>th</sup> Cir.1983)) the Ninth Circuit Court of Appeals found that, given their roles in the county's IHSS

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<sup>18</sup> Section 3351, subdivision (d) includes as one definition of "employee" the following: Except as provided in subdivision (h) of Section 3352, any person employed by the owner or occupant of a residential dwelling whose duties are incidental to the ownership, maintenance, or use of the dwelling, including the care and supervision of children, or whose duties are personal and not in the course of the trade, business, profession, or occupation of the owner or occupant.

<sup>19</sup> Neither is the concept of "joint employers" foreign to unemployment law. See P-B-111, discussed p. 12.

program, the state and county were joint employers along with the recipient under the FLSA.

In *Guerrero v. Sonoma County* (213 Cal.App.4<sup>th</sup> 912; 153 Cal Rptr. 3d 315, decided in February of 2013, and modified on March 11, 2013 (2013), review denied June 12, 2013, S210134), the court held that the trial court erred in determining, as a matter of law, that the County and the Public Authority were not joint employers of IHSS workers under the FLSA and California wage law. As to the FLSA claims, the court relied on specific expansive FLSA language regarding who can be an employer.

### Joint or Multiple Employers in the Unemployment Context

Assuming for purposes of argument that the claimant's son, as the care recipient, is an "employer" of the claimant and that the Public Authority is also the claimant's employer, the issue next to be resolved is whether Section 631 still exempts claimant's wages, even given the fact that claimant was in the employ of, at minimum, two employers, one of which was her son and one of which was a separate governmental entity with very significant control of the actual employment relationship.

Despite the statutory differences, we recognize a judicial trend in the *Bonnette*, *IHSS v. WCAB* and *Guerrero* decisions to find that the state, county and public authority function, in economic reality, as joint employers with the care recipient to effectuate the purposes of those laws. Consequently, while these cases found joint employment under their respective statutory provisions, we must turn to section 631 of the UIC, to determine in this case whether or not the purposes of the unemployment laws support a construction under which the claimant is entitled to benefits.

The UIC was adopted to provide benefits for persons unemployed through no fault of their own, and to reduce involuntary unemployment and the suffering caused thereby to a minimum. ((Unemployment Insurance Code, section 100).

The Unemployment Insurance Act . . . is a remedial statute, and the provisions as to benefits must be liberally construed for the purpose of accomplishing the objects of the Act. (*Empire Star Mines v. California Employment Commission* (1946) 28 Cal.2d 33).

The purposes of the unemployment insurance system are best served by recognizing the reality of joint employers within the IHSS context. Therefore, we find the claimant had joint employers under section 683, subdivisions (a) and (b),

including the Sacramento Public Authority and, arguably, her son, the care recipient.

Having concluded that the Public Authority was an employer of the claimant under subdivision (b), and assuming that the claimant's son was an employer under subdivision (a), we next consider whether the claimant can rely on having joint employers under section 683 to defeat an argument that her IHSS earnings were earned "in the employ of" her son under section 631.

The Claimant's Wages From Joint Employers Are Not Exempt Under Code Section 631.

The familial relationship exemption has been in the Unemployment Insurance Code for more than six decades and has never been interpreted by any court, by the Employment Development Department, or by this Board to prohibit a claimant from collecting unemployment insurance benefits unless the claimant's sole employer was a "son, daughter, or spouse." As discussed below, the exemption has been persistently found to be inapplicable where a claimant is employed by an entity controlled by such a family member, but also by a person who is not a "son, daughter, or spouse." Nevertheless, it is a question for the Board's first impression whether the existence of multiple employers will defeat application of the exemption, just as the existence of, for example, an unrelated partner in a partnership would defeat the exemption when a claimant's "son, daughter, or spouse" is one of the other partners. Because we can see no principled reason, consistent with our duty to interpret the code liberally for claimants, to distinguish these types of cases, we will find section 631 inapplicable here.

In another context, the California Unemployment Insurance Appeals Board found the section 631 exemption based on a familial relationship inapplicable where the earnings were attributable not only to the parent of the claimant, but to a third party. In Precedent Decision P-B-111 the Board held that earnings by a minor from a partnership comprised of his father and his uncle's corporation were not exempt and could be used to establish a claim. The Board considered whether, based upon section 631-1(e), title 22, California Code of Regulations,<sup>20</sup> the earnings from each partner would be exempt if earned outside of the partnership.

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<sup>20</sup> The regulation which defines "Family Employment" for purposes of code section 631 provides, in pertinent part:

**(e) Services performed in the employ of a partnership by a spouse, father, mother, or child under the age of 18 are excluded when such services would be excluded if performed for each partner individually.** (emphasis added). For example:

- (1) The services of either spouse employed by a partnership composed of the other spouse and one or more of their children are excluded;
- (2) The services of either parent employed by a partnership composed of their children are excluded.

We find the reasoning in P-B-111 and section 631-1(e) to be helpful in the case before us.<sup>21</sup> Although that case and the regulation involve single legal entities, it seems even more appropriate to apply the test where, as here, the claimant was arguably jointly employed by her son and the Public Authority, whose interests were less closely aligned than those of the partners in P-B-111.<sup>22</sup>

Section 631 excludes from employment “service by an individual in the employ of his son, daughter or spouse . . . .” If the son was the claimant’s sole employer, the claimant’s services would be exempt, so the wages from those services would not be in covered employment and would not be useable to establish a claim. However, we have found that, at minimum, the Public Authority was also an employer of the claimant.<sup>23</sup>

Using the rationale in P-B-111 and the regulatory interpretation, if the claimant was employed by both her son and the Public Authority, her base period wages while in the employ of the Public Authority would not be exempt under section 631, and her total wages would be useable to establish a claim. If the claimant

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(3)The services of a child under the age of 18 employed by a partnership composed of his or her parents are excluded.

(4)The services of a married child under the age of 18 in the employ of a partnership composed of his or her father and his or her spouse are excluded.

(f) Services performed by an individual in the employ of relatives other than those referred to in Section 631 of the code are not excluded. For example, services performed by an individual in the employ of his or her brother, sister, niece or nephew are not excluded.

(California Code of Regulations, title 22, section 631-1)

<sup>21</sup> It is axiomatic that “[w]hen faced with a problem of statutory construction, [courts show] great deference to the interpretation given the statute by the officers or agency charged with its administration.” *Udall v. Tallman*, 380 U.S. 1, 16 (1965).] In P-B-111, earnings paid by the claimant’s father would be exempt under UIC section 631 if the claimant worked only for his father because they were earned “in the employ of his father.” However, earnings paid by the corporation would not be exempt because earnings from an uncle or an uncle’s corporation are not exempt under section 631. This Board found that because the claimant’s wages paid by the uncle and the corporation were not exempt, they could be used to establish his claim, notwithstanding the father’s involvement in the entity. Similarly, we find today that the claimant’s non-familial employer, the public authority, may be used to establish the claimant’s claim.

<sup>22</sup> It is also noteworthy that the EDD on-line instructions appurtenant to its regulations regarding familial employers provide additional examples in which multiple employer influences do not fall within the meaning of section 631. Employment Development Department Family Employment Information Sheet, DE231FAM. The information sheet states earnings from corporations and limited liability companies are not excluded, and it specifies the type of partnerships whose paid earnings are excluded. While not addressing joint employers specifically, the information sheet states the principle clearly: “If any partner does not meet the family criteria, the family member would not be excluded.” Despite this sweeping interpretation by EDD, a party to this case, the Department has made no attempt to distinguish the facts in the instant matter. It appears that EDD has presumed that the claimant’s sole employer was her son.

<sup>23</sup> Even were it not for our analysis under code section 683, given the obligations imposed by economic reality and other statutes, the State and County might arguably be regarded as third and fourth joint employers.

was employed solely by the Public Authority, her wages would, of course, also not be exempt.<sup>24</sup>

For 19 years the claimant acted as caregiver for her disabled son in her home. This benefitted society at large in that her son did not need to enter a care facility, a much costlier option. Moreover, even if the disabled son was an employer under a statutory construct, the reality of the situation is that neither the son nor any other IHSS benefit recipient is a payer into the Unemployment Insurance System or an actual source of income to the provider. They are, by definition, indigent, needy recipients of public assistance.

Since the claimant was not in the sole employ of her son, and at least one of her employers does not meet the family criteria, the claimant's wages are not excluded. To hold otherwise would contradict decades of understanding and interpretation of section 631, under essentially identical circumstances.

In conclusion, considering the plain language of Section 683, subdivision (b), the liberal construction applied to provisions of the UIC, our prior precedents and Title 22, California Code of Regulations, section 631-1, the remedial purpose of the code and its regulations, the public authority's role as a joint employer, and the minimal risk of collusion that existed here at the time of death of claimant's son, we conclude that the claimant's IHSS earnings during the relevant period are not exempt, her services during that time were in covered employment, and those earnings are useable to establish a claim for unemployment insurance benefits.

## DECISION

The decision of the administrative law judge is reversed. The Notice of Determination is reversed. The claimant's IHSS base period earnings are wages in covered employment under code sections 1275 and 1281. Her services as a caregiver are not exempt under section 631 and can be used to establish a claim. The matter is referred to the Employment Development Department to establish the claim.

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<sup>24</sup> This is possible under Section 683 since we have not expressly found that claimant's child initially chose his caregiver within the meaning of Section 683, subdivision (a).

## DISSENTING OPINION

*The Board majority, by approving the decision in this case, disregards an unambiguous legislative decision to deny benefits to those IHSS caregivers who are providing care to their children. In so doing, the Board effectively amends a section of the Unemployment Insurance Code and commits the State of California to paying potentially massive amounts of money in benefits that it can ill afford. Since the Board has provided no legitimate legal argument to support a decision that essentially usurps the legislature's prerogative to decide who is a potential beneficiary of unemployment benefits, I respectfully dissent.*

This precedent assumes that a lengthy analysis of existing law is necessary to unravel a dense statutory and regulatory thicket that obscures the correct resolution of this case. In fact, most of the analysis in the majority opinion is devoted to issues that are either undisputed or irrelevant. The analysis itself unnecessarily complicates the very simple resolution of the only issues that are presented by the facts before us.

Only two statutes actually *apply to* this case; sections 631 and 683 of the Unemployment Insurance Code. Neither statute is complicated or ambiguous. In fact, the relevant part of section 631 is enough to decide this case. It simply states that employment "does not include...service performed by an individual in the employ of [her] son." As the precedent admits, the claimant's son is, if not her only employer, at least one of two employers. The claimant is therefore performing services in the employ of her son and her wages from that service cannot be counted toward the amount needed to be eligible for benefits.

Section 683, as it *applies* to this case, is no more complex than section 631. The relevant part states that, for claimants who perform work under the IHSS program, the term 'employer' "also means...[t]he recipient of such services." In other words, section 683 confirms what is already explicit in section 631: the claimant's son is at least one of her employers.

Taken together, sections 631 and 683 express a simple and straightforward rule. For IHSS caregivers who are taking care of their own children, the child recipient is an employer of the caregiver. As a result, the caregiver is "in the employ" of that child and the wages earned in that work cannot be used to qualify for unemployment insurance benefits. We need go no farther than that to decide this case.

Much of the precedent is devoted to an argument that the Sacramento County Public Authority was also the claimant's employer. That proposition *may* be true, but it is simply irrelevant here. The fact that some entity other than the claimant's son might also be her employer does not change the fact that the claimant was working for her son. No matter how many other employers the claimant might have, her son is still one of them. The term 'employment' therefore does not apply to her work and the wages she receives do not count for unemployment purposes.

The precedent takes two giant leaps to avoid this straightforward result. First, the precedent relies on case law that does not apply in the unemployment context to establish that employment by the son and the public authority constitutes "joint employment." Then, the precedent relies on an earlier precedent in a factually dissimilar case to equate the *fabricated* "joint employment" with the partnership that, through application of a specific regulation, provided the claimant in that case relief from the section 631 exemption.

The first giant leap made by the precedent is its reliance on three cases that it uses to establish its theory that the claimant had "joint employers": *Guerrero v. Sonoma County* (2013) 213 Cal.App.4th 912, *In-Home Supportive Services v. Workers' Compensation Appeals Board* (1984) 152 Cal.App.3d 720 ("*IHSS v. WCAB*"), and *Bonnette v. California Health and Welfare Agency*, 704 F.2d 1465 (9th Cir. 1983). None of these cases support the decision.

Two of these cases consider whether it is possible to have joint employers in the context of the Fair Labor Standards Act and the third considers the same question in the context of the workers' compensation statutes. These cases also raise an issue of who is the employer for purposes of applying the statute under consideration. Each of them, however, discusses a statutory scheme quite different from our unemployment insurance statutes and uses a definition of "employer" that is not the one *used* for unemployment cases. In *Bonnette* and *Guerrero*, the courts *use* the definition of employer in the Fair Labor Standards Act. (704 F.2d at 1469; 213 Cal. App 4th at 928.) In *IHSS v. WCAB*, the court uses the definition of employer for workers' compensation cases. (152 Cal.App.3d at 727.) These definitions are all broader than ours and are therefore unhelpful in resolving the issues before us in this case.

The cases themselves recognize this difference and explicitly warn against using their analysis in other contexts. Footnote 12 in *IHSS v. WCAB*, for example, states that "we emphasize this conclusion is grounded on the definition of employee for workers' compensation coverage and has no necessary application to dissimilar contexts." (152 Cal.App.3d at 733 n.12.) *Bonnette* and *Guerrero* are

even less helpful than *IHSS v. WCAB* in establishing the concept of joint employers since the federal FLSA regulations specifically allow for joint employers, (29 C.F.R. § 791.2(a).) There is no similar regulation addressing any type of joint employment in the unemployment insurance context.

The precedent's second giant leap is that *it* equates the factual scenario in Precedent Decision P-B-111 with the facts of this case. In fact, P-B-111 says little or nothing about any of the issues in this case. The claimant in P-B-111 did not work for multiple or joint employers. He worked for a single employer, a partnership between the claimant's father and a corporation owned by his uncle. The partnership operated the laundry that employed the claimant. In P-B-111, we relied on the specific language of section 631-1(e) of Title 22, California Code of Regulations, that states:

...[s]ervices performed in the employ of a partnership by a spouse, father, mother, or child under the age of 21 of a partner are excluded when such services would be excluded if performed for each partner individually. (*Emphasis added*).

*The* entire analysis in that precedent consists of four sentences that do no more than state the obvious: since one of the partners was a corporation, and not one of the claimant's relatives, the claimant's wages were not excluded under section 631. This precedent is inadequate to support the overbroad interpretation relied on by the majority in this case to reach the conclusion desired.

The precedent uses P-B-111 to claim that we have "persistently" found the section 631 exemption "to be inapplicable where a claimant is employed by an entity controlled by such a family member, but also by a person who is not a son, daughter, or spouse." It goes *on* to state that it can see "no principled reason" to distinguish this case from those. These statements are both overbroad and incorrect.

While we have undoubtedly applied P-B-111 to cases involving partnerships, *there is* no evidence, and the precedent supplies none, that we have ever applied it outside of that context. There is certainly no evidence that we have ever used P-B-111 in our IHSS cases. The statement that there is no principled basis for distinguishing P-B-111 from this case is simply false. There are, as explained above, several such reasons, not least among which are the lack of a regulation addressing the situation of IHSS caregivers and the explicit statutory language of section 631 which allows for the result in P-B-111 and does not allow for the result reached here.

The logic behind the precedent's reliance on P-B-111 seems to be as follows. In P-B-111, we looked to see if the claimant had an employer who was not excluded by section 631. If one employer was not excluded, the wages were not excluded. Like the claimant in P-B-111, the claimant here has more than one employer and one of them is not excluded. Therefore, the claimant's wages are not excluded.

This line of analysis ignores the fact that the claimant in P-B-111 did not have more than one employer. His only employer was the partnership and the regulations provide a specific rule for dealing with partnerships. The rationale in P-B-111 is inapplicable to the facts before us if only because the relationship between the claimant's son and the Sacramento Public Authority is not a partnership.

The precedent consistently uses the phrase "joint employers" to refer to the relationship between the claimant's son and the Sacramento Public Authority. The reason for this is not obvious from the decision unless this language simply repeats that found in *Bonnette, Guerrero, and IHSS v. WCAB*. Use of this phrase confuses our issue, however, since it implies that the claimant's son and the public authority together form a single legal entity akin to a partnership that can be considered an employer of the claimant. If that were so, the analogy to P-B-111 might hold water.

Section 683, however, specifically limits the use of the term "employer" to three possibilities; the care recipient, a county, and some entities with which counties contract. It does not allow for the possibility that some combination or hybrid of the three listed possibilities can be an employer. On the contrary, it states that an employer must be "one of the following," and implies that the options are mutually exclusive. Notably, the legislature did not state that the employer could be "one or more of the following," nor did it use any other language that implies that anything other than one of the three possibilities listed could be considered the employer of the IHSS caregiver.

In addition to the problems with its legal argument, the precedent also fails to find support in the record for some of its factual assertions. Foremost among them is the assertion that any contrary conclusion "would contradict decades of understanding and interpretation of section 631, under essentially identical circumstances." There are certainly no court cases interpreting this aspect of section 631 and there is absolutely no evidence that our own decisions fit the bill. An equally unjustified assertion is the precedent's statement that the collusion between parents and their children that formed the Legislature's rationale for adopting section 631 "while not impossible" is now "hardly likely" to occur because government authorities are now financially liable for the benefits paid

and because there is now "extensive governmental oversight and control of the employment relationship." There is no evidence in the record to support this overly optimistic assertion. Moreover, decisions as to the best way to prevent fraud are, in any event, ones for the Legislature to make, not this Board.

For the same reasons, even a good faith effort to advance social policy cannot serve as a basis for extending benefits to those specifically excluded by the legislature. In 1971, the legislature amended section 631 to allow disability insurance coverage for family employment. The original version of the bill also allowed elective coverage for unemployment insurance for family member employees but that coverage was opposed by EDD's predecessor agency because of what was deemed a "collusion hazard." The department withdrew its opposition to the bill once the amendment was limited to disability coverage only; the possibility of collusion in disability benefits cases was considered to be minimal because of the requirement of a physician's certification of the disability claim.<sup>25</sup> At that time, the Legislature decided that concerns about collusion and fraud had more force than arguments for providing benefits. The legislature has revised the code many times since the enactment of those statutes and has never seen fit eliminate the exemption. Whether present conditions call for a different rule is a suitable topic of debate by our Legislature, but our job is to interpret the existing Unemployment Insurance Code, not to re-write it to suit our vision of what the law should be. As our Supreme Court has warned, courts "may not, under the guise of construction, rewrite the law or give the words an effect different from the plain and direct import of the terms used." (California Federal Savings & Loan Assn. v. City of Los Angeles (1995) 11 Cal.4th 342, 349.)

All but a handful of California's smallest counties have public authorities. Under the rationale of this decision, parents who provide IHSS services for their children will virtually always have enough wages to qualify for benefits, exactly the opposite of what the legislature intended when it adopted section 631. The precedent not only ignores the Supreme Court's warning not to "rewrite the law or give [ ] words an effect different from the plain and direct import of the terms used" but gives the words of section 631 a meaning that is the exact opposite of what the section's drafters intended. (11 Cal. 4th at 349.) Decisions like this have

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<sup>25</sup> Cal. Human Res. Dept., Enrolled Bill Rep. on Assem. Bill No. 1420 (1971 Reg. Sess.) November 2, 1971, p.1.

tremendous financial and public policy implications. If the section is in some way unfair or unjust, it is up to the legislature to change it. I therefore dissent from the precedent's attempt to usurp the Legislature's prerogatives.<sup>26</sup>

ROY ASHBURN

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<sup>26</sup> The extent to which the majority asserts an ability to overturn decisions made by the people's elected representatives can be found in many places . One particularly striking example of this can be found in the first sentence on page four of the precedent. This describes the legislature's decision to exempt the wages of familial caregivers as "obviously tinged with absurdity." Whatever powers this Board possesses, they do not extend to vetoing legislative decisions that the Board finds distasteful.

## REFERRAL INFORMATION

The Board's decision refers the case to the Employment Development Department for appropriate action as set forth in the decision.

The matter is being sent to the Office of the Director at:

**EMPLOYMENT DEVELOPMENT DEPARTMENT  
P O BOX 826880  
SACRAMENTO CA 94280-0001  
1-800-300-5616**

**Any future correspondence should be addressed to that office. It is important that you notify the above office of any change in your address.**



CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

SACRAMENTO OFFICE OF APPEALS  
2400 Venture Oaks Way, Ste 100  
SACRAMENTO CA 95833

(916) 263-6706

NELLYA OSTAPENKO  
LEGAL SERVICES OF NORTHERN CALIFORNIA  
Claimant-Appellant

Case No. **4893615**

Issue(s): 1275(a)

Date Appeal Filed: 05/31/2013

EDD: 0190 BYB: 01/13/2013

**Date and Place of Hearing(s):**  
(1) 07/25/2013 SACRAMENTO

**Parties Appearing:**  
Claimant

## DECISION

The decision in the above-captioned case appears on the following page(s).

The decision is final unless appealed within 20 calendar days from the date of mailing shown below. See the attached "Notice to Parties" for further information on how to file an appeal. If you are entitled to benefits and have a question regarding the payment of benefits, call EDD at 1-800-300-5616.

Richard S. Nishite, Administrative Law Judge

**FILE COPY**

Date Mailed: **AUG 13 2013**

**Case No.: 4893615**

CLT/PET: Nellya Ostapenko

Parties Appearing: Claimant

Parties Appearing by Written Statement: None

**Sacramento Office of Appeals**

ALJ: Richard S. Nishite

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**ISSUE STATEMENT**

The claimant appealed a determination that held the claimant not eligible for benefits under code section 1275, subdivision (a). The issue in this case is whether the claimant had sufficient wages during the base period of the claim for the unemployment insurance claim with a benefit year beginning January 13, 2013.

**FINDINGS OF FACT**

The claimant worked for approximately 19 years as a County of Sacramento In-Home Supportive Services (IHSS) care provider for her son, last earning \$10.40 per hour. The claimant was one of two care providers. She last contracted for 170 hours of service per month. The claimant's employment ended when her son passed away in November 2012 at age 24.

The claimant submitted a claim for unemployment insurance benefits establishing a benefit year beginning date of January 13, 2013. The claimant's claim was deemed invalid. Her wages as an IHSS provider was not allowed because the claimant was employed by her son.

The claimant's 2012 Form W-2 Wage and Tax Statement identifies Victor Ostapenko as the employer. She earned wages of \$19,848.40 in calendar year 2012.

**REASONS FOR DECISION**

Unemployment insurance benefits are based on wages paid in the base period of a claim. The standard base period of a claim with a benefit year beginning in January, February, or March is the four consecutive quarters which ended the preceding September. (Unemployment Insurance Code, section 1275, subd. (a).)

A new claim is invalid unless the claimant (1) has been paid wages for employment of at least \$1,300 during the base period quarter in which his or her wages were the highest; or (2) has been paid wages of at least \$900 during the base period quarter in which his or her wages were the highest and has been paid total base period wages for employment of not less than 1.25 times the

amount of the high quarter wages. (Unemployment Insurance Code, section 1281, subd. (a).)

"Employment" does not include service performed by a child under the age of 18 years in the employ of his father or mother, or service performed by an individual in the employ of his son, daughter, or spouse, except to the extent that the employer and the employee have, pursuant to Section 702.5, elected to make contributions to the Unemployment Compensation Disability Fund. (Unemployment Insurance Code, section 631.)

As the above section excludes from employment services performed by an individual in the employ of his or her son, the claimant's wages cannot serve as base period wages for her claim under code section 631.

Unemployment Insurance Code section 683 provides:

"Employer" also means any employing unit which employs individuals to perform domestic service comprising in-home supportive services under Article 7 (commencing with Section 12300), Chapter 3, Part 3, Division 9 of the Welfare and Institutions Code and pays wages in cash of one thousand dollars (\$1,000) or more for such service during any calendar quarter in the calendar year or the preceding calendar year, and is one of the following:

- (a) The recipient of such services, if the state or county makes or provides for direct payment to a provider chosen by the recipient or to the recipient of such services for the purchase of services, subject to the provisions of Section 12302.2 of the Welfare and Institutions Code.
- (b) The individual or entity with whom a county contracts to provide in-home supportive services.
- (c) Any county which hires and directs in-home supportive personnel in accordance with established county civil service requirements or merit system requirements for those counties not having civil service systems.

Section 683 defines employer as an employing unit which employs individuals to perform in-home support services and pays wages of \$1,000 or more during any calendar quarter in the current or previous calendar year. If the county makes a direct payment to a care provider chosen by the recipient of services or to the recipient for the purchase of such services, the recipient of the services is the employer. As the claimant's son ostensibly had the power to hire and fire his provider, and as the claimant was paid more than \$1,000 during the calendar quarter in the previous calendar year by the County of Sacramento IHSS program, the claimant's son is considered the employer for UI purposes.

Claimant contends that Unemployment Insurance Code section 683, subdivision (c) confers county civil service status upon IHSS care providers. The County of Sacramento therefore is an employer of the claimant. Claimant, however, cites no persuasive authority for this proposition. It is not disputed that the County of Sacramento "hires and directs in-home supportive personnel"; however, claimant cites no authority that her hiring is accomplished through "established county civil service requirements or merit system requirements." In general, civil service requirements include testing and appointments based on merit. By contrast, IHSS care providers are not tested and not appointed based on merit. Instead, IHSS care providers must complete and sign an enrollment form, be fingerprinted and go through a criminal background check, participate in an orientation, and sign a IHSS Program Provider Enrollment Agreement. This process does not include competitive testing and appointments are not based on one's ranking on a test.

Claimant cites *Guerrero v. Superior Court of Sonoma County (Weber)* (February 11, 2013, A133202) \_\_\_ Cal.App.4<sup>th</sup> \_\_\_ in support of her position that the County of Sacramento is an employer. The holding in *Guerrero*, however, is not dispositive in deciding this matter. In *Guerrero* the Court of Appeal concluded that for purposes of petitioner's federal and state wage and hour claims, the County of Sonoma was an employer. However, *Guerrero* did not address the issue of specified family members providing care under the IHSS program. Moreover, petitioner Guerrero was not seeking UI benefits; rather, she was litigating federal and state wage and hour claims.

It is not disputed that the claimant devoted her life to her son's care. Denying her wage credit for the care she provided in this regard appears unfair; however, the legislature in enacting the above statutory provisions has deemed care provided and wages earned in this specific circumstance not employment for purposes of calculating UI benefits.

#### DECISION

The department determination is affirmed. The claimant is not entitled to base period wage credit under code sections 631 and 683 for the IHSS wages she earned while providing care for her son.

The claimant's claim for unemployment insurance benefits with a benefit year beginning January 13, 2013 is not valid under code sections 1275, subdivision (a) and 1281, subdivision (a).

SAC:rsn/rsn

Case No. **AO-336919**

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**DECISIONS SENT TO**

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NELLYA OSTAPENKO  
PO BOX 277566  
SACRAMENTO, CA 95827-7566

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LEGAL SERVICES OF NORTHERN CALIFORNIA  
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