

# Unemployment Insurance Continued Eligibility Requirements AVAILABILITY FOR WORK

## YOUR LEGAL RIGHTS

To be, and stay, eligible for unemployment insurance (UI) benefits the Employment Development Department (EDD), the agency that handles UI, needs to know that you are:

- Able to work;
- Available for work** (the subject of this Fact Sheet);
- Actively searching for work;
- Accepting suitable work, **and**;
- Reporting any income you earn.

Each of these requirements is discussed in detail in a separate Fact Sheet. This Fact Sheet gives you general information about reporting to the EDD and discusses, specifically, what it means to be "available for work."

### 1. How does the EDD know whether I meet the requirements?

The EDD gathers information on whether or not you continue to be eligible for benefits through a form called the Continued Claim Form, which you should receive in the mail every 2 weeks. If you are not receiving your Continued Claim Forms you should contact the EDD immediately and request that the forms be sent. You must complete and return a Continued Claim Form for each week you want your unemployment claim to be active. You will only be paid unemployment benefits for each week that you meet all the above requirements **and** send a completed Continued Claim Form to the EDD (on or before the deadline) to show that you are eligible.

### 2. What does the Continued Claim Form ask?

The Continued Claim Form asks questions about your ability to work, your availability for work, your search for work and any income that you earn in the time period covered by the form. It also asks if you have begun attending any kind of school or training program, because school or training may affect your availability to work and your search for work. The back section of the form provides space to give details about your search for work, but most people are not required to complete this section for the EDD each week. You are required to complete this section for the EDD only if the box asking you to do so on the front of the form has been marked "X" in black ink.

The answers you give on the Continued Claim Form determine whether or not you qualify for any unemployment benefits each week. If you do not complete and return the Continued Claim Form every 2 weeks as required, the EDD will assume you are not eligible for any unemployment benefits and cancel your claim.

### 3. What does it mean to be “available for work”?

Generally speaking, being “available for work” means there is nothing to keep you from being able to immediately accept and begin a new full-time job. Here are some common examples of situations that may cause the EDD representative to think you do not meet the requirement of being available for work:

Illness, injury or medical condition

Current lack of childcare arrangements

Enrollment or participation in unapproved school or training program

Self-employment/independent contracting

Plans for travel/recreation

Restrictions on days and hours you are willing to work

Transportation restrictions that prevent you from getting to and from work

Search for part-time work only

Lack of jobs in labor market

Each of these situations is discussed further below.

### 4. What if I am only available for to work for a portion of a particular week?

If the restriction on your availability for work prevents you from working for only a portion of a particular week, you may still be eligible for a pro-rated percentage of your weekly unemployment benefits, meaning you still may be able to be paid benefits for the day or days you were actually available for work. If, however, you have an illness or injury that keeps you from working or searching for work for more than 8 days, you should consider filing a claim with the EDD for temporary (state) disability insurance instead.

### 5. What if I have an illness, injury or medical condition?

If you have an illness, injury or medical condition (including pregnancy) that prevents you from working in your usual field, the EDD may disqualify you for the payment of unemployment benefits for all or part of a week because you do not meet the requirements of being able to work and available for work. In these situations, the EDD may consider you *unavailable* for work only because you are physically or emotionally *unable* to work, meaning, once you are physically or emotionally

able to work again, you should be able to reopen your claim. You may be able to avoid a denial based on illness by convincing the EDD that you can accept work despite your illness or injury. (For more information about disqualification caused by physical or emotional inability to work, see our Fact Sheet titled “**Unemployment Insurance Continued Eligibility Requirements: Ability to Work.**”)

## 6. What if I do not have current childcare arrangements?

The EDD often thinks that workers without childcare arrangements will not be able to immediately accept and begin new full-time work. Therefore, the EDD considers most workers without firm childcare arrangements to be unavailable for work and ineligible for benefits. The EDD usually determines whether or not you have young children and adequate childcare arrangements during the initial telephone determination interview. During that interview, however, the EDD should explain that the question: "Do you have childcare?" is not limited to *paid* childcare arrangements. It does not matter whether childcare arrangements are with paid providers or with unpaid family or friends. For this reason, if you have childcare issues, it is important to give the EDD the name of someone -- whether paid or unpaid -- who is available to care for your child or children if you are offered a job or a job interview. The EDD will then know that you will not let your childcare responsibilities get in the way of accepting a new job or attending a job interview.

## 7. What if I am enrolled in or attending school or a training program?

There are two ways to be eligible for unemployment while you are in school. You can either be approved through the California Training Benefits Program (see below) or show that you can still work full-time while in school or training. This means you should enroll in classes offered at times and on days that are outside your normal work hours. For example, if you normally work in an office with normal business hours, going to school at night or on weekends should not affect your benefits. If you normally work at night (for example, people who work in bars and people who can work the graveyard shift), you should be able to attend school during the day and still be eligible.

You will also be eligible if your school or training school or training has been pre-approved through the California Training Benefits (CTB) program, operated by the EDD. Many workers who need additional job skills will qualify for free training through this CTB program, and also be allowed to receive unemployment benefits without being considered unavailable for work. For more information on how to qualify for the CTB program, contact the EDD directly.

## 8. What if I am currently working for myself or working as an independent contractor?

The EDD sees self-employment or independent contractor work as similar to attendance at school, described above. Generally, it is considered something that will prevent you from accepting and beginning a new full-time job. For this reason, you may be eligible for the payment of unemployment benefits only if you can show that your self-employment or independent contractor

work is something you perform during work days or hours that do not conflict with the typical hours worked in your field of employment. Also, the EDD requires you to report on your Continued Claim Form the amount of income you earn each week, including income from self-employment or independent contractor work, and will reduce your weekly benefit amount by subtracting 75% of the earnings you reported from that week's unemployment check.

## 9. What if I have plans to travel or take a vacation?

All activities that take you away from the search for work, or make it impossible for you to accept work that might be offered to you, will disqualify you for payment of unemployment benefits. Therefore, you normally will be disqualified for as long as you are on vacation and away from the labor market. However, if you continue to report to the EDD every two weeks through the Continued Claim Form, you should be able to reopen your claim as soon as your vacation/travels end. If you are traveling in search of work in a different labor market, you may still be eligible for the payment of unemployment benefits, but you will have to show the EDD that the main purpose of your travel is to look for work *and* that you have arranged your travel in such a way that you will not be missing any potential offers of work in your current area. For example, you should be ready to convince the EDD that someone is checking your mail and messages, and you have a way of returning immediately if necessary.

## 10. What if I am only looking for work on certain days of the week, or within certain hours of the day?

Many people assume that it doesn't matter what type or amount of work they are looking for, as long as they are looking for work. The EDD, however, expects all workers who are receiving unemployment benefits to be flexible about work days and work hours and expects most workers to look for full-time work (more information below). Any restrictions you place on the type or amount of work you are seeking will cause the EDD to look very closely at whether you still meet the requirement of being available for work and may cause a disqualification. The only restrictions that are generally allowed are restrictions based on physical or emotional disability or restrictions that fall outside the normal work hours in a particular field of work.

## 11. What if I am only looking for part-time work?

A part-time restriction will be allowed only under three circumstances:

- You have a history of working part-time during your "Base Period\*" **and** you would be willing to accept work under similar conditions to your "Base Period\*" **and** there are part-time jobs available in your occupation, or- your part-time restriction is based on a **physical or emotional disability**, but you can still work in your normal occupation, or- If you are a **College student** who can show that you have been enrolled in school and supporting yourself by way of only part-time work for at least 2 years.

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\* For more information about the "Base Period," see our Fact Sheet titled "**Unemployment Insurance Eligibility Requirements: Past Earnings Requirement / Weekly Benefit Amount.**"

## 12. What if I have transportation restrictions that prevent me from getting to and from work?

If the EDD thinks you cannot get to a job, you will be considered unavailable for work. If you are unwilling to drive a certain distance from your home (usually one hour or less) or if you cannot take public transportation, you may be ineligible for benefits. If you have transportation problems, you should be ready to tell the EDD how you will fix the problem, such as getting someone you know to give you a ride to work or to the bus stop. If you cannot take the bus because you don't know how, you should contact the bus companies to find out the best way to travel to the places you find work. If you explore different commuting options, you have a better chance of convincing the EDD that you will not have a problem getting to work if you are offered a job.

## 13. What if there really aren't any other jobs like my usual job in the area that I live?

To be considered available for work, there must be work (for which you are qualified) available in the area that you live. Some people have such unusual fields of work that not many job opportunities exist. If you have a very specialized field of work, you may be eligible to receive unemployment benefits only if you are living in an area where that type of work is in demand.

## 14. What should I do if I am disqualified for benefits based on “availability to work”?

A disqualification because of unavailability to work will last only as long the reason for your unavailability exists. For example, if you have been disqualified because of enrollment in school, you may become eligible at the end of the school term. Similarly, if you have been disqualified because you were willing to accept only part-time work, you may become eligible once you are willing to accept full-time work. For this reason, you may choose to handle the disqualification in either of two ways:

- 1) If you believe you have been wrongfully disqualified, you may appeal (see appeal information below) the disqualification, or
- 2) If you believe that you have been rightfully denied unemployment insurance benefits because you are temporarily unavailable to perform work, you may ignore the disqualification notice and simply contact the EDD to “reopen” the claim after your condition no longer prevents you from working.

Accepting the denial and reopening the claim at a later date will delay your benefits. However, it may not affect the total amount of benefits you can receive because the “cap” on benefits will remain the same (you can normally receive up to 26 weeks of benefits in one year)

## 15. What do I have to do to appeal?

If you intend to appeal the disqualification, you must send a brief letter to the EDD, stating that you disagree with the disqualifying decision. The “Notice of Determination” that EDD sends to tell you about the disqualification normally will include a form for filing the appeal. You must send this letter within 20 days of the notice of disqualification being mailed to you. There is a specific deadline for the appeal near the bottom of the notice from EDD. Any appeal sent more than 20 days after the EDD mailed your disqualification notice will be considered late. Late appeals will be allowed only if you can show you had “good cause” for being untimely, but good cause is very difficult to prove so it is very important to meet the deadline if at all possible.

**This fact sheet is intended to provide accurate, general information regarding legal rights relating to employment in California. Yet because laws and legal procedures are subject to frequent change and differing interpretations, the Legal Aid Society - Employment Law Center cannot ensure the information in this fact sheet is current nor be responsible for any use to which it is put. Do not rely on this information without consulting an attorney or the appropriate agency about your legal rights in your situation.**

For further information about your employment rights, please call:

### **The Workers’ Rights Clinic**

**415-864-8208 (SF Bay Area) or 866-864-8208 (Toll Free in CA)**

The Workers’ Rights Clinic is a project of The Legal Aid Society - Employment Law Center, a non-profit organization focusing on the employment-related legal rights of low-income workers and providing free legal information on a wide range of employment-related problems.

