

How to Collect Unemployment Benefits in California

This guide provides useful information to individuals seeking unemployment benefits. This guide is meant to provide general legal information and should not be considered legal advice. You should contact an attorney for more specific information, based on the facts of your case. It's never a bad idea to have a lawyer help you prepare either.

I. WHAT ARE UNEMPLOYMENT BENEFITS?

a. What Are Unemployment Benefits?

Unemployment insurance is a nationwide program that provides partial wage replacement to workers, who are unemployed, through no fault of their own, while they look for a new job. In California, the Employment Development Department administers the UI program. The Unemployment Insurance system is funded by employers, through tax payments.

b. How Much Unemployment Will I Get?

The EDD calculates your weekly benefits based on your highest quarterly earnings. To determine your exact benefit amount, you can look here:

http://www.edd.ca.gov/pdf_pub_ctr/de1275a.pdf

c. How Long Can I Get Unemployment For?

Most claimants can collect up to 26 weeks of benefits in a year. But, you are only allowed to receive benefits equal to one-half of your Base Period earnings. While claimants are normally limited to 26 weeks, three extensions are currently in place provided up to another 53 weeks of benefits because of the economy. So you can get up to 79 weeks. However, you should contact the EDD to verify.

d. When Can I Get Unemployment?

Your claim for benefits remains open for one year. After you file your claim, there is a seven day waiting period during which you will not receive benefits...Also, keep in mind that it might take longer to process given the state's budget woes.

II. HOW DO I APPLY FOR UNEMPLOYMENT BENEFITS?

a. Should I Apply For Unemployment?

You should apply for unemployment benefits. There are three initial requirements that must be met to get unemployment benefits. Even if you're unsure if you meet the initial requirements you should apply and let the EDD sort it out. The requirements are: 1) satisfactory immigration status-lawfully residing and authorized to work in the U.S. when you file; 2) have enough past earnings- at least \$1,300 during one of the four quarters of your base period, or at least \$900 during one of the four quarters of your base period and have gross earnings for the entire base period of at least 1.25 times the earnings for the highest quarter; and 3) unable to work through no fault of your own.

b. When Should I Apply For Unemployment?

You can file for unemployment at any time after becoming unemployed. Most people should apply as soon as possible. But, it may be better to wait if you think you can establish a Base Period with higher earnings if you wait. But, you should weight this against the downside of applying later.

c. What Do I Need to Apply for Unemployment?

To apply for unemployment you'll need:

- Your name, social security number, mailing and residence address, phone number, and Government issued driver's license or ID.
- The last date you worked for any employer. If you are working part-time then be sure to tell EDD that you are still working and give them the number of hours you are working each week.
- Last employer information including: name, address (mailing and physical) and phone number. Make sure the information is accurate. You should check your paystub or a W-2. Inaccurate information will delay your benefits payments.
- The reason you are no longer working for your last employer.
- Whether you are getting, or expect to get, any unemployment, from any former employers.
- Whether you are able and available to accept work.
- Whether you have a legal right to work in the United States.

You might not be able to come up with all that. But, don't let that stop you from filing a claim.

d. How Do I Submit an Application for Unemployment?

Here's a nifty video on how to apply: <http://www.youtube.com/watch?v=QSuy5qXcLV8>

If you like reading, the individual files a claim for enemployment benefits using one of the following methods:

- Access [eApply4UI](#):
The eApply4UI application is available on the Main menu of this Web site. Answers to questions are entered online. After the application is completed the individual submits it online to the Department. **Note:** This is the fastest way to file your claim.
- [Contact EDD](#) by telephone:
Individuals will speak to a Department representative who will ask a series of questions and record the responses.
- Complete a paper UI Application, [DE 1101I](#):
The application can be completed online and printed, or it can be printed and completed by hand. The application can then be faxed, 1(866) 215-9159 or mailed to an EDD office at EDD, P.O. Box 419000, Sacramento, CA 95841, for processing.

Note: The above options may also be used to reactivate an existing claim or file for extended benefits.

e. What Happens After I Submit an Unemployment Application?

The EDD will probably conduct a phone interview with you and your former employer to determine if you are eligible for unemployment benefits. The EDD will mail you a notice (usually within 2-3 weeks). The notice will give the date and time of the interview. Make sure you are available. If you are not available for some good reason, i.e. your daughter is having a life-saving surgery at the time and you are one of the necessary organ donors, then you should contact the EDD immediately to reschedule. The EDD is usually very accommodating and willing to reschedule to a more convenient time if you have a good reason. But, not getting up before 9:00AM is not a good reason. Keep the following points in mind during the phone interview: 1) ask what the employer told the EDD so that you can rebut information that is inaccurate or misleading, if necessary, 2) tell your story in a way that relies on the law and not just what seems logical- i.e. if you

quit because of the working conditions, then be sure to detail what you did to improve the situation and why you had to quit, 3) be clear on what is being asked of you- if you don't understand a question, ask to clarify, and 4) do not give more information than necessary to answer the question- this is especially true if you are filing a wrongful termination lawsuit since employers frequently subpoena EDD files and use them to impeach plaintiffs in lawsuits.

The EDD will make its decision on eligibility within 1-10 days of the phone interview. If eligible, the EDD will start sending you checks. If you are found ineligible, the EDD will send a "Notice of Determination/Ruling," which describes the EDD's basis for denial and provides information on how to appeal.

III. HOW DO I APPEAL FOR UNEMPLOYMENT BENEFITS?

a. What is the First Thing I Need to do to Appeal an Unemployment Decision?

The first thing you need to do when appealing is file your appeal. The appeal must be filed within 20 calendar days of the mailing date of the "Notice of Determination and/or Ruling." The EDD usually sends an appeal form. If you didn't get one then you can find one here: http://edd.ca.gov/pdf_pub_ctr/de1000m.pdf. Or, you can write a letter. You don't need to provide some lengthy statement. In fact, it's best to just say, "I respectfully disagree with the decision because the EDD made a mistake and I am entitled to benefits under the law." The EDD will send you a letter acknowledging that your appeal was received. The letter will provide you with the location and phone number of the Office of Appeals where your hearing will take place. About 4-6 weeks later, you will receive a Notice of Hearing with the Hearing date and time, the name of the Administrative Law Judge who will oversee the hearing, and the legal issues that will be considered. You should definitely attend the hearing. If you cannot attend the hearing, you can show "good cause" which is a reason, beyond your control, that effectively prevents you from attending the hearing on the scheduled date...like the surgery above.

b. How Do I Prepare for an Unemployment Hearing?

Good preparation is essential to making you feel calm, confident, and with a clear plan. You should:

- Review the appeal file. You should go in and review the entire appeal file as soon as possible. You'll probably see: claim notes; the employer's response; a record of the phone interviews; the Notice of Determination; and the Appeal you filed.
- Learn the law. You have to figure out what legal standards fit the facts of your case. You can learn a lot about the law here: <http://edd.ca.gov/UIBDG/>. That site is particularly good because it has the various issues that could come up and explanations about those issues.
- Gather documents that support or hurt your position like performance reviews, personnel manuals, employee commendations or reprimands, and written correspondence between you and the employer. You have the right to review your personnel file and to make copies of any documents that you have signed.
- Gather witnesses and/or affidavits from witnesses who can personally confirm important parts of your story.
- Think about questions to ask and questions you'll be asked and think about how you'd make a short argument about the case (in three minutes or less).

c. Do I Need to Attend the Unemployment Hearing?

You have to attend the hearing. The hearings are normally in small conference rooms. The ALJ (administrative law judge) sits at the head of a conference table. He or she doesn't wear a robe or wig. You normally sit on one side of the table. The employer normally sits on the other side. If you have a witness, the witness should sit on your side of the table, but further from the ALJ than you are. The ALJ decides who attends, what evidence to consider, who is telling the truth, whether someone is talking too much, and when the hearing will end. In general ALJ's are helpful and will answer questions and try to assist you. Hearings are usually about 45 minutes. You should attend. Your employer will probably attend. Your witnesses can attend. You can bring supportive friends or family members, but you should probably leave them in the hall or in the waiting room during the hearing. You should arrive at least 30 minutes early. You should dress neatly and do not wear anything that might disrupt the hearing or that might indicate a lack of respect for the judge or the process.

The ALJ will open the hearing by turning on a recording device and making a record of the proceedings, and then asking if anyone has any questions and then briefly explain the issues and the applicable law. Next, the ALJ will number the documents in the appeal file and admit them into evidence. The ALJ will swear in you, your employer and any witnesses before asking the witnesses to leave the room. The ALJ usually asks the questions. The ALJ usually asks the employer the questions first in a misconduct case and you the questions in a "voluntary quit" case.

After the ALJ asks you questions, the employer is entitled to ask questions. Remember to: 1) directly answer the specific question asked-pause to think; 2) ask for clarification if you need to; 3) respond in a respectful and honest way; 4) avoid talking too much- it's probably better to say too little than too much; 5) don't get angry or frustrated at your employer.

If you're going to bring documents to submit then you should bring three copies, one for the ALJ, one for your employer and one for you. Try to get witnesses to come instead of just having them sign declarations or affidavits. Remember that you'll have the chance to ask the employer some follow-up questions. You should think about those before you go. After you and your employer have given your sides of the story, the ALJ will probably give you and the employer a chance to provide a closing statement. You should give one. The closing statement should be short, no more than 2-3 minutes and it should hit the key points and the law. The ALJ will then ask if there are any questions and conclude the proceeding. The ALJ usually supplies their decision, by mail, within 2 days – 3 weeks of the decision.

d. Can I Appeal an Unemployment Hearing Decision?

If you disagree with the decision you can appeal to the California Unemployment Insurance Appeals Board. You must do so within 20 days of the date of the ALJ decision. You should contact a lawyer ASAP to help you with that.

e. What Are Some Common Unemployment Appeals?

Employees only get benefits if they're separated from employment through "no fault of their own." There are only three ways to describe how your last job ended, "lay-off", "discharge," or "quit." A "lay-off" is when you can't work because your position or work was eliminated and there was no further work offered by the employer. Lay-offs typically lead to eligibility. You "quit" when you refuse to continue working although

there was still work to be done. A “discharge” or being “fired” or “terminated” is when your employer refuses to allow you to work even though there is still work available. If you are discharged, you’re eligible for benefits as long as the employer cannot show that your discharge was the result of your “misconduct.”

If you quit then you can only get benefits if you can show that you quit for “good cause” and that you took reasonable steps to solve the problem. Good cause is real and compelling reason that caused you to leave your job even though you genuinely wanted to keep working. It can include things ranging from relocating, caring for family members, reasonable and good faith fear for your health, unsafe working conditions, abusive supervisors, illegal discrimination or harassment, illegal or unethical orders and fraud or misrepresentation. Good cause doesn’t include, job dissatisfaction, disagreements with management, changes in work schedule, searching for work, or transitioning to self-employment or school. You also have to show that you discussed the problem at least once with your employer and gave your employer an opportunity to fix the problem.

If you were terminated, then the employer must prove misconduct by proving: 1) You owed the employer a material duty- one that is inherent and properly part of the job. For example, a waiter has to take orders, but doesn’t usually have to wash cars. 2) You substantially breached that duty meaning the incident is more than a small deviation from the usual practice. Think of it as showing up a minute late vs. 3 hours late. 3) The breach demonstrates a willful or wanton disregard for the duty (in other words you committed the act of misconduct knowingly, intentionally, or in reckless disregard for any potential consequences). 4) The breach tends to harm the business interests of the employer. This can be anything from making the business look bad in front of customers to sabotaging products.

Remember that the employer has to prove all four of these things. So you only need to convince the ALJ that one or more elements is missing. You can argue that you did not owe the duty in question, argue the breach was trivial, argue the breach was neither will, nor wanton, or argue that no harm could have followed from the behavior. You can also try to avoid disqualification by arguing: 1) It was just poor performance, which is not intentional. 2) It was a single isolated incident. 3) That there is no causal connection. In other words you were actually fired for something else. 4) The employer generally condones the behavior you engaged in.

However, the following usually qualify as misconduct: insubordination, repeated and unexcused absenteeism or tardiness, dishonest acts or statements, discourtesy toward customers or the public, an inability to get along with co-workers, or violence on the job, sleeping on the job, or controlled substance use on the job.

IV. HOW DO I REMAIN ELIGIBLE FOR UNEMPLOYMENT BENEFITS?

Once you’re deemed eligible, in order to stay eligible, you must 1) remain unemployed or underemployed, 2) be physically and mentally able to work in your customary occupation, 3) be immediately available for suitable work in a substantial field of employment, 4) be actively seeking work, and 5) comply with the EDD’s reporting requirements by submitting biweekly Continued Claim Forms. Failure to meet any of these requirements could lead to disqualification, penalties, and/or the repayment of benefits.

V. WHERE CAN I FIND MORE INFORMATION ABOUT UNEMPLOYMENT BENEFITS?

You can find more information on unemployment benefits at <http://www.edd.ca.gov/>. Of course, if you're looking into unemployment benefits, it's entirely possible you've suffered a wrongful termination. To learn more about wrongful termination you should check out: <http://www.californiaemploymentlawfirm.com/wrongful-termination>. We offer free consultations, contingency and/or fixed rates. You can find out more about us at <http://www.californiaemploymentlawfirm.com/>.