

# Unemployment Insurance Continued Eligibility Requirements ABILITY TO 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** (the subject of this Fact Sheet);
- Available for work;
- 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 "**able to 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 “able to work?”

Generally speaking, being “able to work” means being physically and mentally capable of working in your “usual occupation.” Your usual occupation refers to the type of work in which you have the most recent skills and experience. Some unemployed workers are unemployed or unable to seek work in their usual occupation because of a temporary illness, injury or medical condition. In these situations, workers *may* be ineligible for unemployment benefits, depending on the impact of the specific illness, injury or medical condition. (Some illnesses or injuries may not actually prevent a worker from performing work, but simply require certain “accommodations,” for example, weight-lifting restrictions, special equipment, limits on the number of hours spent sitting, standing, or typing). If you can perform work with certain accommodations, you may still meet the requirement of being “able to work.” (For more information on “accommodations” and when employers are required to provide them, see our Fact Sheet titled “**Disabilities in the Workplace: Reasonable Accommodations on the Job.**”).

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

If your physical or emotional condition prevents you from working or searching for work for only a portion of a week, you may still be eligible for a pro-rated percentage of your weekly unemployment benefits, meaning that you may still be paid benefits for the day or days you were actually able to work. For example, if you are sick in bed for two out of seven days of a week, you should still receive the remaining five sevenths (5/7) of your weekly check. If, however, your illness or injury 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 (SDI) instead.

## 5. What if I am able to perform some type of work but not my “usual occupation?”

Generally, the EDD will first ask if you can work in a job similar to your last job. If you are no longer able to perform work in your usual occupation because of your current physical or emotional condition, you may still be eligible to receive unemployment benefits if you have skills or experience in another type of work that you *can* currently perform.

## 6. What if I am pregnant?

The EDD treats pregnancy-related medical conditions the same as any other medical condition. If your pregnancy prevents you from performing any work, it will also make you ineligible for unemployment benefits. If your pregnancy only requires temporary absences from a search for work or certain limitations on the type or timing of potential work, you will still be eligible for payment of unemployment benefits. As with other medical conditions, if your pregnancy keeps you from potentially working or searching for work for more than 8 days, you should consider filing a claim with the EDD for temporary state disability insurance (SDI) instead.

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

A disqualification because of an inability to work will last only as long as the illness, injury or medical condition that prevents you from working. 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 the disqualification (see below for appeal information), or
- 2) If you believe that you have been rightfully denied unemployment insurance benefits (because you are, in fact, temporarily unable to perform work), you may ignore the disqualification notice and simply contact the EDD to “reopen” the claim as soon as you recover and become able to work again. Accepting the denial and reopening the claim later will definitely delay your benefits, but it may not affect the total amount of benefits you receive overall; the maximum amount of benefits is always the same (you can receive up to 26 weeks of benefits in one year).

## 8. How do I 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 after the 20 day deadline will be considered late. Late appeals will be allowed only if you can show you had “good cause” for being untimely. “Good cause” means things like hospitalization, accident, or family emergency. It can be very difficult to convince a judge that you had good cause for a delay, so it is very important to meet the deadline if 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.