

Unemployment Insurance Continued Eligibility Requirements REPORTING WAGES EARNED

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

Actively searching for work

Accepting suitable work, **and;**

Reporting any wages and certain other income you earn while receiving unemployment benefits

These first four requirements are discussed in detail in separate Fact Sheets. This Fact Sheet will give you general information about reporting to the EDD and discuss, specifically, what it means to be **reporting any income you earn while receiving unemployment benefits.**

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

The EDD gathers information on your continued eligibility through a form called the **Continued Claim Form** and through information reported by employers. You should be receiving a Continued Claim Form in the mail every 2 weeks. If you are not receiving your Continued Claim Forms, you should contact the EDD immediately and request that they be sent.

You must complete and return a Continued Claim Form to the EDD for every week you would like your claim for unemployment claim to be active. If you do not complete and return the Continued Claim Form on or before the deadline printed on the form, you will not be paid benefits for those weeks (unless you can show a very good reason for missing the deadline).

It is a good idea to keep a copy of every continued claim form you file in case questions come up later and you cannot remember what you reported.

2. What does the continued claim form ask?

The Continued Claim Form asks questions about your ability to work, your availability for work, your work search and any income earned over the two-week period covered by the form. The form also asks if you worked or earned any money, regardless of whether you were paid. This question means that the EDD wants to know the gross amount of earnings you will ultimately receive for work performed that week, even if you were not actually paid those wages during that week. (“Gross wages” is the amount you are paid before taxes.) You also should list the number of hours you worked each week, the name and address of the employer and, if applicable, the reason you are no longer working for that employer.

3. What kinds of income do I have to report?

a. “Wages”

You must report any income considered "wages" that you earn during the same weeks that you receive unemployment benefits. Wages are payments made for performing work, including temporary jobs and money earned through self-employment or independent contracting. Accrued vacation, holiday or personal time off (P.T.O) pay that you receive when your job ends does not have to be reported because you did not earn it while collecting unemployment benefits. However, if you receive holiday, vacation or sick pay as a part-time employee while also receiving unemployment benefits, you should report this as wages.

Similarly, you do not have to report severance pay in most cases because you did not earn the wages during the same weeks that you were collecting unemployment benefits. However, the EDD may view a severance payment as in-lieu-of-notice pay or wage continuation pay. If your wages continue after a layoff because the federal Worker Adjustment Renotification and Training (WARN) Act requires your employer to make these payments, you do not have to report this income. If the WARN Act does not apply, you do have to report in-lieu-of notice pay or wage continuation pay. A payment looks more like severance when paid in a lump sum at the time of termination and when provided to you for reasons other than a failure to give you advance warning that your job would be ending. In contrast, if you are receiving in-lieu-of-notice pay, you may be kept on the employer’s payroll after your job ends, receiving paychecks on the employer’s normal paydays, and the employer intends these payments to compensate you for not giving you advance notice of your layoff or discharge. Because this distinction can be difficult to figure out, you should consult an attorney or the Workers’ Rights Clinic on your particular situation (see the contact information on the last page of this Fact Sheet).

b. Other Income (Pensions and Workers’ Compensation)

In addition to wages, you also may need to report other types of income. For example, you must report **pension benefits** but only if you did not make contributions to the pension plan *and* your base-period employer maintained or contributed to the plan. See our Fact Sheet titled “**Unemployment Insurance Eligibility Requirements: Past Earnings and Weekly Benefits**” for information on determining which employer or employers you worked for during your base period. One type of **workers’ compensation benefits**, called

temporary total disability or TTD, also must be reported. These two types of income have complicated rules that are beyond the scope of this Fact Sheet; you should consult an attorney or the Workers' Rights Clinic for more information on your specific situation.

4. How will reported earnings affect my unemployment benefits?

If you report income that causes a reduction in benefits, the amount of the reduction depends on the type of income you receive. The most common types of income that affect your benefits are discussed below.

Any benefits you do not receive because of other income you earn remain in your total claim account. This means you do not permanently lose the benefits just because you do not collect them in a certain week. The amount remaining in your unemployment account is listed on your benefit check stubs. You still will be able to collect these benefits if you remain unemployed and otherwise eligible during your benefit year. However, you will not be able to collect any benefits that are still in your account one year after filing your original claim.

a. Wages

Wages (described in section 3(a), above) will reduce your weekly benefit amount. The exact amount of the reduction depends on the amount of gross wages that you earned. **If the total gross (pre-tax) wages you earn in any week is less than \$100**, the EDD will reduce your benefit amount for that week by the amount of wages over \$25. For example, if you earned \$40 before taxes in a particular week and properly reported it, \$15 ($\$40 - \$25 = \15) would be deducted from your benefit check for that week. **If you earn \$100 or more in total gross (pre-tax) wages in a particular week**, the EDD will deduct 75 percent of your wages for that week from your benefits for that same week. For example, if you earned \$160 in a week through a temporary job, 75% of that, or \$120, would be deducted from your unemployment benefit check for that week. If the 75% of your earnings for the week is equal to or more than your weekly benefit amount, you will not receive any benefits for that week. This would be the case if your weekly benefit amount was \$230 and you earned \$305.90 or more in a particular week because 75% of \$305.90 is \$230. Any benefits that you do not receive because you report earnings will stay in your unemployment benefits account and you can collect those benefits later if you need them.

b. Pensions and Workers' Compensation

If a pension or workers' compensation Temporary Total Disability payment must be reported (described in section 3(b), above), the payments also may reduce your weekly benefit amount during the weeks in which you receive those benefits. To determine the reduction, the EDD uses methods different than the one described above for wages. Because those calculations can be complex and are beyond the scope of this Fact Sheet, consult an attorney or the Workers' Rights Clinic if you would like more information on how these calculations are done.

5. How do I figure out how much I earned if I haven't been paid yet?

If you know how much you make per hour, you can usually calculate the wages you earned each week by multiplying this hourly wage rate by the number of hours you worked that week. You also may be able to ask your employer what your weekly salary is or how much you will be paid for a particular project. However, if you receive commissions or bonuses, knowing the exact amount of wages you are due may be difficult. You should do your best to estimate your wages on the Continued Claim Form, and then, as soon as you receive information about the actual wages earned, immediately notify the EDD. You also should immediately notify the EDD if your paycheck stub shows you were paid a different amount than what you initially reported to the EDD. Keep a written record of your communications with the EDD, and maintain a list of the wage estimates you initially reported to the EDD compared with the amount of actual wages later reported. This way you will be prepared to show the EDD that you have been doing your best to report all wages as required, in case the EDD ever suspects you of lying to receive more in unemployment benefits than you are due.

6. What happens if I don't report my wages correctly?

The EDD is likely to find out if you fail to report your wages accurately because employers are required to report to the EDD all of the income they pay to employees. The EDD can compare the wage information you report with what your employer says. In addition, the EDD may compare the wage information you and your employer provide with wage information reported in filing your federal and state taxes. The EDD often makes these comparisons long after you have submitted the Continued Claim Form and received benefits.

The EDD will investigate any discrepancies. If you were overpaid because of the misreporting, the EDD will issue a **Notice of Overpayment**, requiring you to repay the benefits. Additionally, the EDD may find that you lied by misreporting your wages, and it may impose a penalty equal to 30 percent of the overpaid benefits and disqualify you from receiving future unemployment benefits for 5 to 10 weeks. Even if the EDD determines you were paid the correct amount of benefits, it may still disqualify you from receiving benefits for 5 to 10 weeks if it believes you lied on the Continued Claim Form or to the EDD. You have a right to appeal the EDD's decision (see below for more information).

7. What can I do if I am issued an overpayment notice or disqualified from receiving benefits?

If you believe you have been wrongfully issued an overpayment notice and/or wrongfully found to have lied, you may appeal the EDD's decision(s), by sending an **appeal letter or appeal form** to the EDD **within 20 days** of the mailing date on the Notice of Overpayment. Any appeal sent more than 20 days after the mailing date will be considered late. If you are late, you will have to show "good cause" for not appealing on time before the judge will decide whether the EDD's decision was wrong. Because good cause can be very difficult to prove and presents another obstacle to you winning your case, you should meet the deadline if at all possible.

U I C O N T I N U E D E L I G I B I L I T Y R E Q U I R E M E N T S
R E P O R T I N G W A G E S E A R N E D

If you believe you have been rightfully denied unemployment benefits -- because you did misreport wages earned -- you will have to repay the benefits and any penalty, and satisfy the disqualification period by continuing to submit Continued Claim Forms to the EDD for the number of weeks that you were disqualified, even though you will not receive benefits for those weeks. This is known as “**purging the disqualification**” and you will not be eligible again until you satisfy all of the requirements (although you will not have to wait out the disqualification period if you do not apply for unemployment benefits again for three years).

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 rights in your particular 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.

