

# Unemployment Insurance: Temporary Work

## YOUR LEGAL RIGHTS

Many individuals who work in temporary employment collect unemployment benefits between job assignments. The basic eligibility requirements are the same for temporary workers as they are for permanent workers. However, because of the way temporary workers move into and out of jobs, it is especially important that those workers understand the rules for eligibility and reporting requirements.

### 1. What are the basic requirements for eligibility?

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:

- Unemployed (fully or partially) due to no fault of your own
- Able to work
- Available for work
- Actively searching for work
- Accepting suitable work, and
- Reporting any income you earn

### 2. How does the EDD keep track of whether I meet the requirements?

The EDD gathers information on your continued eligibility through a form called the Continued Claim Form. You should be receiving 2 of these forms in the mail every 2 weeks. If you filed for UI and you are not receiving your Continued Claim Forms you should contact the EDD immediately and request that they be sent.

The Continued Claim Form asks a series of questions about your ability to work, availability for work, work search and any income earned from partial employment. It also asks whether you have begun to attend any school or training program, because school or training may impact your availability to work and your work search. The back section of the Continued Claim Form provides space for detailing your work search, but most people are not required to complete this section for the EDD each week. You are required to complete this section only if the box asking you to do so on the front of the form has been marked "X" in black ink.

You must complete and return a Continued Claim Form to the EDD for each week you would like your claim for unemployment insurance to remain active. The answers you give on the Continued Claim Form determine whether or not you qualify for any unemployment benefits.

If you are performing temporary work during your claim, there may be some weeks in which you qualify for all or part of your benefits, and some weeks in which you qualify for none, depending on the amount of money you earned in temporary employment. If you do not complete and return the Continued Claim Form on or before the deadline printed on the form, the EDD may assume you are not eligible for any unemployment benefits and cancel your claim.

### 3. How is my UI claim treated differently because I am a temporary worker?

Even though the basic eligibility requirements outlined above must be met by any individual who wishes to claim unemployment benefits, the EDD treats temporary workers slightly differently when considering whether certain of these requirements have been met.

In analyzing how the employment ended, generally the EDD will assume temporary work ended through no fault on the part of the worker. This assumption can be helpful in keeping a temporary worker's claim for unemployment benefits running smoothly, but it can cause serious problems if a former employer reports to the EDD that there was continuing work available or describes that there were reasons the employment ended other than the ending of the temporary work assignment. Also, once an individual has performed temporary work, the EDD expects that individual to be searching for and accepting suitable temporary work in the future. This can create a number of problems for temporary workers who wish to transition into permanent work in future employment. It can also create problems for individuals who wish to be selective about the temporary work they accept.

### 4. What if a former employer gives the EDD different information than I do about the ending of the employment?

As mentioned above, the EDD often will assume that temporary employment ended through no fault of the temporary worker. This means the EDD may begin payment of unemployment benefits without consulting the former employer or temporary employment agency. If the former employer or temporary employment agency later reports to the EDD that the employment ended for reasons other than the ending of the temporary work assignment (for example, the worker was fired for misconduct), the EDD will schedule a determination interview to decide whether or not the temporary worker was at fault in the ending of the employment.

If the EDD decides the temporary worker was at fault in the ending of the employment, and that s/he made false statements about how the employment ended, the EDD will issue a **Notice of Overpayment** that will include a 30% penalty and a 2-10 week disqualification from future unemployment benefits. (See our Fact Sheet titled “**Unemployment Insurance: Overpayment**” for more information on overpayments.) Even if the EDD ultimately determines the temporary worker to be eligible for benefits, the EDD may issue a 2-10 week disqualification from future unemployment benefits, if the EDD believes the temporary worker made false statements about how the employment ended.

Information about how a temporary worker's most recent employment ended usually is given to the EDD by a temporary employment agency, but this information often comes from private communications between the temporary employment agency and the management at the most recent worksite. This can make it difficult for a temporary worker to know all the reasons there might have been for the ending of the employment. The best way to prevent this from becoming a problem is for the temporary worker to make sure and ask both the temporary employment agency and the management at the worksite if there are any reasons the job is ending other than the end of the temporary work assignment.

If you are denied unemployment benefits or issued an overpayment notice, because the employer tells the EDD something different than you did during the claim-filing process, you may appeal this decision.

## 5. What if I want to transition from temporary work to permanent work?

Temporary workers who wish to transition into permanent work in future employment often have difficulty convincing the EDD that they are making themselves available for, and accepting, suitable work as required. This is because internal EDD regulations say that individuals who have been performing temporary work must make themselves available for more temporary work once an assignment ends. These internal regulations of the EDD do not have the force of law but, because the EDD makes the initial decision about whether or not an individual is eligible for unemployment benefits, these regulations can be used to deny immediate payment of benefits. In other words, you may legally be eligible for unemployment benefits but be forced to prove your eligibility through the appeal process. The law says, in order to be considered available for work, an individual must be open to a "**substantial field of employment**" without placing unreasonable restrictions on the type of work or hours of work s/he is willing to perform. If you can show the EDD there is a field of employment you are qualified to perform and there are no unreasonable restrictions to prevent you from immediately accepting a suitable job offer, you should be considered available for work.

Many individuals have difficulty proving they are available for work because of restrictions like lack of childcare, self-employment, plans for travel, lack of transportation, or a lack of jobs in the labor market. These may also be concerns for temporary workers, but the main problem of availability experienced by temporary workers is the one described above. Namely, the EDD applies its internal regulations and decides that individuals who have performed temporary work must make themselves available to perform more temporary work, if they are to be considered open to substantial field of employment.

One of the reasons the EDD has this policy also relates to the requirement that individuals be open to, and willing to accept, all "**suitable work.**" Suitable work is defined as work in an individual's "**usual occupation**" that s/he is reasonably qualified to perform. The EDD considers temporary work to be the usual occupation of individuals who have been performing temporary work in the past. Therefore, the EDD considers a refusal to be open to more

temporary work a refusal to be open to suitable work. Again, if you can show the EDD there is a field of employment you are qualified to perform and there is nothing to prevent you from immediately accepting a suitable job offer, you should be considered available for suitable work. The question of exactly what is suitable work or a suitable job offer will be discussed more fully in the section below.

If it happens that you are denied unemployment benefits because the EDD does not consider you to be available for work, you may appeal this decision.

## 6. What if I want to be selective about the temporary work I accept?

Temporary workers often expect to have a good amount of flexibility in deciding whether or not to accept a particular temporary assignment. However, in order to be eligible for unemployment benefits, an individual must be willing to accept any offer of **"suitable work"** if s/he otherwise has no good reason to refuse it. As mentioned above, suitable work is defined as work in an individual's usual occupation that s/he is reasonably qualified to perform. For temporary workers, the field of suitable work tends to be very broad. As a result, temporary workers often have claims for unemployment benefits denied when the EDD receives information from a temporary employment agency that an offer of suitable work has been refused.

When the EDD receives information suggesting a suitable job offer has been refused, the EDD will schedule a determination interview to discuss the details of the offer and the reason(s) it may have been refused. The EDD will ask how much information was given about the job -- i.e., location, pay, hours, start/end dates, and responsibilities. If much of this information was never given to you, it is possible to argue that there was no job actually offered. The EDD will also ask why you refused the job, if you did. Reasons such as distant location, low pay, long/weekend hours and short duration will not be considered good reasons to refuse a job if these things fall within the normal range in your geographical area and field of employment.

For example, in the Bay Area many people commute to work over an hour each way using public transportation, so in this area anything under a 1.5 hour commute each way would generally be considered suitable. If, however, you could show you would have to board or deboard public transportation at an unsafe hour or in an unsafe neighborhood, this might change the analysis. As another example, if executive secretaries earn \$15-\$25 per hour in your area, and you are an executive secretary who receives an offer for a job that pays \$15, that job generally would be considered suitable. If, however, you have 20 years experience and your last 8 jobs all paid more than \$20 per hour, this might change the analysis. Similarly, if a job offered involves responsibilities generally within your skills and experience, it would be considered suitable. If, however, 60% of the job responsibilities were extremely above or beneath your skills and experience, this might change the analysis.

Unfortunately, there is no way to escape the tension between having flexibility in accepting temporary work assignments and having access to unemployment benefits. Understanding the way the EDD analyzes suitable work and refusals of suitable work, however, may prevent a denial of benefits from happening. If you are denied unemployment benefits for refusing an offer of suitable work, though, you may appeal this decision.

**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.

