

Lost Your Job? Your Rights & Benefits

YOUR LEGAL RIGHTS

If you lost your job in the recent economic downturn, you should know your rights. The following questions and answers address many of the concerns faced by newly unemployed workers.

1. Do I qualify for Unemployment Insurance?

Unemployment Insurance (“UI”) benefits provide income to workers who are temporarily unemployed or whose work hours have been reduced to a very low level. To be eligible, you must have lost work or wages through no fault of your own. You are almost always eligible for benefits if you were laid off due to lack of work, and you may even be eligible if you were fired or if you quit. You must also meet certain criteria, such as a requirement that you must be looking for another job. The California Employment Development Department (EDD) administers California’s UI program. For more detailed information on Unemployment Insurance, please see our Fact Sheets entitled “Overview of Unemployment Benefits,” “Ability to Work,” “Availability to Work,” “Eligibility After Being Fired from a Job,” “Eligibility After Quitting a Job,” “Overpayments,” “Partial Employment and Reporting Earnings,” “Past Earnings Requirements/Weekly Benefit Amount,” “Temp Workers,” “Work Search and Suitable Work.” Also contact the EDD at: www.edd.ca.gov, or call 1-800-300-5616.

New in 2009: The recent federal “stimulus” package and a new California law combine to provide extended benefits to individuals who are still unemployed after getting the usual maximum of 26 weeks of benefits. The new laws also increased the maximum weekly benefit amount from \$450 to \$475, and exempted some of the benefits from federal income tax.

2. How do I apply for Unemployment Insurance Benefits?

You can apply for benefits by phone, but the lines are often busy and you may be on hold for hours before reaching an operator. If you have internet access, we recommend that you apply online via the EDD’s website at <https://eapply4ui.edd.ca.gov>. Applying online is much faster, and provides you with written confirmation of your application. Most libraries and many community centers provide computers with free internet access.

To make the process smoother, we recommend that you gather all the necessary information before starting your application. See the EDD’s checklist – “Before You Start: Information you need to file a UI claim” at http://www.edd.ca.gov/Unemployment/Before_you_Start.htm.

After submitting your application, the EDD may schedule you for a phone interview. This is a standard part of the process, so don’t be intimidated. You should be prepared to clearly explain how you left your most recent job and why it wasn’t your fault. You should also be prepared to verify that you have been actively seeking work. It’s a good idea to keep a record of your efforts to find a job, and a list of all the jobs you have applied for.



If the EDD ultimately denies your claim for benefits, you'll have 20 days to appeal the denial. Don't be intimidated about appealing; denials by the EDD are reversed nearly half the time. Keep your written appeal short and concise, and don't miss the appeal deadline.

3. Can I continue the health insurance I had while employed?

If you had health insurance through your job, you are probably able to continue that coverage under the federal "Consolidated Omnibus Budget Reconciliation Act," also known as "COBRA" (for employers with 20 or more employees) or Cal-COBRA (for employers with 2 to 20 employees). Under COBRA and Cal-COBRA, if you lost your job or if your hours were reduced you likely can buy that same group health coverage for yourself and your family for a limited period of time (usually 18 months) if you pay your employer's cost of providing the benefits. If you are entitled to COBRA or Cal-COBRA coverage, your employer must notify the health plan administrator, which will then notify you of your eligibility and provide instructions for signing up for continued coverage. Please see our Fact Sheet titled "Health Insurance after Employment: COBRA," for more information on whether you and your family members, dependants, spouses, or domestic partners are covered under COBRA or Cal-COBRA.

New in 2009: The recent federal "stimulus" package reduces the cost employees pay for COBRA coverage by 65%. (That 65% is now paid for by the employer or insurer, which then receives a tax credit.) The premium reduction applies to coverage beginning on or after February 17, 2009 (it is not retroactive) and continues for up to nine months.

To be eligible for the premium reduction, you:

- must be eligible for COBRA continuation at any time between September 1, 2008 and December 31, 2009;
- must elect COBRA coverage; AND
- must be eligible for COBRA as a result of your involuntary termination between September 1, 2008 and December 31, 2009.

If you are eligible, your premium reduction may last up to 9 months. A period of coverage is a month or shorter period for which the plan charges a COBRA premium. Your premium reduction period will end earlier than nine months if you become eligible for Medicare or another group health plan (such as a plan sponsored by a new employer or a spouse's employer), or if you reach the end of your maximum COBRA coverage.

Although the premium reduction is not retroactive, if you were laid off between September 1, 2008 and February 16, 2009, but *did not elect* COBRA at that time, or elected it but later dropped coverage, you will get *another* opportunity to elect the coverage. You should have been notified of the second election period by April 18, 2009, after which you have 60 days to enroll in the premium-reduced COBRA coverage.

For more information you can also call the Employee Benefits Security Administration (EBSA): 866-444-3272.

4. How do I know if I was wrongfully terminated?

In California, employees are usually employed “at will,” meaning that they may be fired at any time by their employers, for any reason or for no reason at all. (See our Fact Sheet titled “Wrongful Termination.”) Layoffs due to lack of work are legal, although in some circumstances the employer must follow certain procedures in giving employees notice (See our Fact Sheet titled “W.A.R.N. Act.” Additional information on the W.A.R.N. Act is provided below.) On the other hand, it is illegal to terminate a worker, including an “at will” worker, if the termination was in violation of a specific law or policy. For example, your employer can’t fire you based on your race, age, gender, sexual orientation or some other discriminatory reason. (See our Fact Sheet titled “Employment Discrimination” for more information.)

5. Can my employer fire me because of my age?

The Age Discrimination in Employment Act (ADEA) and the California Fair Employment and Housing Act forbid employers from discriminating based on an employee's age. If you are at least 40 years old, you are protected by these laws.

During a time of layoffs, your employer cannot intentionally single you (or a group of people) out for unequal treatment because you 40 years of age or older. However, even a supposedly “neutral” layoff policy can still be illegal if it disproportionately *affects* persons over 40. See our Fact Sheet titled “Employment Discrimination” for additional information on age discrimination, including how to file a claim of age discrimination against your employer.

6. Can my employer ask me to sign a “release” in exchange for a severance payment?

Sometimes employers ask employees to sign a release giving up their claims, including discrimination claims, under federal or state laws in exchange for a severance payment. Such releases are normally enforceable, and it is up to you to decide whether it’s better for you to pursue a claim (if you think you have one) or accept the severance payment. If you are 40 years old or older and your employer asks you to release your age discrimination claim in exchange for a severance payment, you may have special protections under the Older Worker's Benefit Protect Act (OWBPA) that ensure that older workers are not unduly pressured into waiving their age discrimination rights. (See our Fact Sheet entitled, “Severance Pay: Release of Legal Claims” for more information).

7. Can my employer lay me off without any advance notice?

The Worker Adjustment and Retraining Notification Act (the “WARN Act”) requires businesses that employ over 100 workers to either give their employees 60 days’ notice in writing of a “mass layoff” or plant closing. A mass layoff occurs under the WARN Act when either:

- at least 50 employees are laid off during a 30-day period, if the laid-off employees made up at least one third of the workforce; or
- 500 employees are laid off during a 30-day period, no matter how large the workforce; or an entire work site is closed down and at least 50 employees are laid off during a 30-day period.

If your employer fails to provide sufficient WARN Act notice, you may be owed the back pay and benefits that you would have earned during that 60 days as if the layoff had not occurred. There are many rules and exceptions under the WARN Act, so please see our Fact Sheet titled “W.A.R.N. Act—Mass Layoffs or Business/Plant Closings” for additional information.

8. What are my rights if my employer declares bankruptcy?

If your employer has filed for bankruptcy, it means the company has asked the court to help it either plan a repayment schedule (“Chapter 11” bankruptcy) or sell off all its property and use the money to pay off the creditors (“Chapter 7” bankruptcy). Each individual employee of a bankrupt business is given a priority as a creditor of up to \$10,000. However, secured creditors, such as banks for commercial lenders who are entitled to repossess property if payments are missed, have higher priority. To protect your rights as a creditor of your bankrupt employer, you should find out the county where the company filed the bankruptcy petition and call the clerk of the United States Bankruptcy Court for that county. Ask the clerk how to submit a “Proof of Claim” form, which is the form that the court uses to determine how much money to give you. For more information on your rights in company bankruptcy or sale information, see our Fact Sheet entitled, “Employer Bankruptcy, Sale, or Abandonment.”

RESOURCES:

Tenant and Rental Housing Preservation Advice, see Bay Area Legal Aid’s Website at: <http://www.baylegal.org/client-services> or call their advice line at (800) 551-5554.

Avoiding Home Foreclosures: <http://www.hud.gov/foreclosure/> or call 800-225-5342.
Foreclosure Avoidance Counseling: <http://www.hud.gov/offices/hsg/sfh/hcc/fc/>.

Healthcare for the Uninsured or Unemployed:

Medi-Cal: California’s Medicaid Program, call (800) 952-5253 or www.medi-cal.ca.gov.

For information on the U.S. Medicare program for people over age 65 or with disabilities, see www.medicare.gov. For public and private health care options: www.coverageforall.org or call (800) 234-1317.

Credit Counseling/Bankruptcy Advice: For a complete list of Consumer Credit Counseling Service non-profit organizations, see National Foundation for Credit Counseling’s website at: www.nfcc.org, or call (800) 388-2227. For Spanish speakers: (800) 682-9832.

Also the Department of Justice has an approved list of credit counselors online at: http://www.usdoj.gov/ust/eo/bapcpa/ccde/cc_approved.htm

Subsidized or Supplemental Income for Individuals with Disabilities: See www.ssa.gov/ssi/ or call 1-800-772-1213. For early retirement due to disability, see <http://www.ssa.gov/dibplan/index.htm>.

Help with Paying PG & E and Utility Bills:

- PG&E’s California Alternative Energy Rates (CARE) program: For more information see: <http://www.pge.com/care/>; call 1-866-743-2273; or email: CAREandFERA@pge.com

- Relief for Energy Assistance through Community Help (REACH), sponsored by PG&E, offers one-time help & is facilitated by the Salvation Army. To apply for REACH assistance in your area, contact the Salvation Army at 1 (800) 933-9677.

- Low-Income Home Energy Assistance Program: LIHEAP is a federally funded assistance program administered by the California Department of Community Services and Development (CSD). LIHEAP offers one-time assistance. Appointed community-based agencies process LIHEAP applications. To find the agency in your area, call 1-866-675-6623, or <http://www.csd.ca.gov/Programs/Energy%20Service%20Providers.aspx>.



Loan Deferments: Some loans, such as educational loans, qualify for Economic Hardship or Unemployment Deferments. A deferment can only apply if your loans are in repayment and in good standing. Contact your lender for more information.

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.

