

Unemployment Insurance: Eligibility After Quitting a Job

YOUR LEGAL RIGHTS

1. Can I quit my job yet still be eligible for unemployment insurance?

Under California law, a worker is eligible for unemployment insurance benefits only if the California Employment Development Department (EDD) decides that he or she quit his or her most recent employment with **“good cause.”** The California Unemployment Insurance Appeals Board has defined “good cause” for quitting a job as: “a real, substantial, and compelling reason of such nature as would cause a reasonable person genuinely desirous of retaining employment to take similar action.” This definition means that a worker must show a very good reason for quitting and convince EDD that any normal person would quit under those conditions. Sections 5-10, below, describe the most common reasons people quit their jobs and whether those reasons are normally good cause.

Most cases in which an employee has voluntarily left employment and has been found to have “good cause” to leave the job involve:

- a reasonable fear for health or safety
- a compelling family necessity; or
- abusive and oppressive working conditions.

Many typical reasons for quitting a job do not meet the definition of “good cause” and therefore will disqualify a worker from getting unemployment benefits. Reasons that usually are not considered good cause for quitting include:

- ordinary job dissatisfaction or stress;
- personality conflicts with management;
- disagreement over a disciplinary action;
- failure to receive a raise or promotion (unless based on illegal discrimination);
- a lack of opportunity for advancement (unless based on illegal discrimination);
- a reduction in hours or pay (unless the employer breaks an earlier agreement);
- fear of imminent discharge or layoff;
- returning to school;
- leaving to become self-employed.

2. Can I get unemployment benefits if I don't give my employer an opportunity to fix the problem?

Normally not. The law requires that you be “genuinely desirous of retaining employment.” So, you may be disqualified from receiving unemployment benefits—even where you can show you had good cause for quitting—if you did not make any effort to keep your job. If you have a problem with your job that might make you decide to quit, you normally must give your employer a chance to fix whatever is wrong. If, for example, you do not complain to your employer about the problem before quitting the job, or do not request a leave of absence or a transfer to deal with a health condition or childcare situation (if a leave would address the problem), you may be disqualified from receiving unemployment benefits.

3. What if my employer says I quit my job when I think I was fired or laid off?

When applying for unemployment insurance, you will be asked to describe how you left your last employment. Your last employer will then be contacted and asked for his or her description of how the job ended. Employees and employers often disagree about whether the end was a quit or firing. How the job ended, however, is extremely important in deciding eligibility for unemployment insurance.

When claiming unemployment insurance, there are only three ways to describe how the last job ended: “discharge,” “quit,” or “lay-off.” These terms have specific meanings that identify whether it was the claimant or the employer who caused the employment to end.

- **Discharge** ("Fired" or "Terminated") A “discharge” is any situation in which the employer refused to allow a worker to continue working while there was still work available. A worker who has been discharged will be eligible for unemployment insurance unless the employer can show the discharge was for misconduct. See our Fact Sheet titled “**Unemployment Insurance: Eligibility after Being Fired**” for more information about misconduct.
- **Quit** ("Resignation") A “quit” is any situation in which a worker refused to continue working although there was still work to be done. EDD calls every quit a “voluntary quit” even though some employees do not think it was voluntary because their employers forced them to quit by treating them badly. The word “voluntary” is not really important, but is important to show you had “good cause” for making the decision to quit.
- **Lay-Off** ("Lack of Work") A “lay-off” is any situation in which a worker is unable to continue working because the position or work has been eliminated and no further work has been offered by the employer. A worker who has been laid-off

automatically will be considered eligible for unemployment insurance unless, or until, the employer protests.

Sometimes, what seems to be a quit is really a “discharge,” and what seems to be a discharge is really a “quit.” For example, if you are told you will be fired or laid-off but you leave the job before the date the job is supposed to end, you may be disqualified from unemployment insurance because you “quit” your job. (There were still a few days or weeks left for you to work.) On the other hand, if you tell your employer you intend to quit your job on a certain date, but your employer makes you leave the job before that date and doesn’t pay you for all the days you planned to work, you may be eligible for unemployment insurance because you will be considered to have been “fired” even though you had intended to quit.

Using the wrong term to describe how the last job ended when filing an unemployment insurance claim can result in serious penalties. Saying you were “laid-off” if you actually quit or were discharged can be considered a “**false statement**” and may result in a denial of benefits, a determination that benefits you already received must be returned and, in some cases, additional penalties. In extreme cases the EDD may also seek criminal prosecution.

4. What if I have more than one reason for quitting my job?

If a worker has several reasons for quitting a job, that worker is eligible for unemployment benefits if only one of the reasons is determined to be “good cause” **and** if that “good cause” reason was a major reason for quitting not just something the employee brought up to try and get benefits.

5. What if I quit because of health or safety problems?

Workers who quit because of genuine safety concerns usually have good cause and will be eligible for unemployment insurance benefits. It is normally good cause to quit a job that is unsafe, for example if employees are required to use unreasonably dangerous machines or are not given protective equipment. However, unless the situation is an *emergency*, the worker must normally give the employer a chance to fix the problem (for example, by complaining and asking the employer to fix the dangerous equipment) before quitting.

If the problem is health related, the worker must show a legitimate health concern that forced him to quit. Some health concerns are work related, for example a recurring injury caused by work. (This type of injury may also be covered by workers’ compensation.) Some health concerns are not directly connected with work, for example if a worker is diagnosed with an illness and needs time to recover or get medical treatment. In most health situations, the worker must ask the employer for a leave of absence rather than just quit. Requesting the leave is not required if the worker has a good reason to think it will not be granted (for example, if he asked for medical leaves before and they were always denied) or if a leave will



not fix the problem (for example, if the treatment will be ongoing for a very long time and a short leave will not really do anything to help). If at all possible, a worker quitting for health reasons should be able to show EDD that he quit because of advice from his doctor (preferably in writing before the worker quits) or be able to show medical records that prove the diagnosis.

6. What if I quit because my boss is hostile?

This is a tough one. If a supervisor is very abusive, for example if he swears and curses a lot or yells and screams in front of customers or employees, then there probably is good cause to leave. There also will be good cause if the boss is sexually harassing employees, for example by making several unwanted sexual jokes and comments or making sexual advances on employees. However, an employee must usually try to fix the problem by reporting the problem to higher management.

An employee normally does not have good cause to quit because of a personal conflict with a manager or because she is not happy with the way she is treated. The EDD thinks that employees have to put up with some bad behavior from supervisors and it is not good cause unless it becomes abusive or hostile. It is not always easy to tell the difference between ordinary job dissatisfaction and an abusive supervisor. The best way for an employee to protect herself is to be prepared to tell the EDD about specific bad behavior by a supervisor and any attempts to fix the situation before quitting.

7. What if I quit because of a problem at home, such as a child without childcare or a sick parent?

An employee who is forced to quit to take care of a child or a sick spouse, registered domestic partner or parent will normally have good cause and be eligible for benefits. However, the employee should look at other options before quitting and be ready to explain what he did to try and keep his job. For example, most employees with a sick parent or spouse or registered domestic partner should try to find someone else to care for that person (such as a sister or brother) and ask for a leave of absence rather than quit. (See our Fact Sheet titled “**Leave From Work to Care for a Family Member**” for information on when an employer is required to give an employee a leave under state and federal law.)

An employee normally has good cause to quit to provide childcare if, for example, the employer changes the employee’s hours and the employee cannot work the new hours because he does not have someone to care for his children. Again, the employee normally must try to find someone else to take care of his child (either a friend, relative or an affordable paid childcare provider) before quitting.

Caution: If an employee has good cause for quitting to take care of a child or other family member, the EDD may then decide that employee is not eligible for benefits because he is “unavailable” to accept a new job. See our Fact Sheet titled “**Unemployment Insurance Continued Eligibility Requirements: Availability for Work**” for more information. In some cases, the worker may be eligible for California Paid Family Leave from the EDD to care for a sick child, spouse, registered domestic partner or parent. See our Fact Sheet titled “**Paid Family Leave**” for more information.

8. What if I quit because my boss gave me a warning and I did not agree with it?

An employee who quits because she receives a warning **does not** have good cause to quit, even if she disagrees with the warning. Even if she thinks she will be fired, the employee must show another good cause reason for quitting to get benefits. If, however, the employee is told she will definitely be fired if she does not quit her job, then the law says she is technically “fired” even if she says that she quits because her employer is the “moving party.” See number 3, above, for more information on the moving party.

9. What if I quit because the company lowered my pay or reduced my hours?

If an employer *substantially* lowers an employee’s rate of pay, that employee will normally have good cause to quit and collect benefits *so long as she tried to convince her employer not to reduce her wage*. A “substantial reduction” in pay is normally a reduction of 20% or more, which means an employee who sees her wage go from \$12 an hour to \$9 an hour or sees her salary go from \$1500 a month to \$1200 a month will have good cause to quit. It is difficult to show good cause with a smaller reduction in pay, for example if an employer lowers a wage from \$10 an hour to \$9.50 an hour, but it is possible if there are other major changes, such as an employer taking away health care benefits.

An employee normally cannot show good cause if she wants to quit because her employer reduces her hours. If, for example, an employer tells an employee she will drop from 40 hours a week to 25 hours a week, she cannot just quit if she hopes to get unemployment. Even though less hours would cause a reduction in total weekly pay, the “rate of pay” (for example \$12 an hour) did not change. The EDD prefers that the employee use the extra 15 free hours a week to try and find a second job or a new full-time job rather than just quit and be left with no work.

10. What if I quit because I can no longer get to work?

Some, but not all, employees with transportation problems can quit and get unemployment. It depends on many things. First, if an employee took a job knowing about the commute, she cannot get benefits if she decides to quit because the commute causes her problems. If,

however, something changes in an employee’s job, for example if an employer moves or the employee loses her normal transportation, she may be able to show good cause. When the EDD reviews these cases, it will look at several things to decide if a worker has good cause to quit because of transportation problems, including:

- The **length of time** and the **cost** of the commute compared with the employee’s pay. An employee will normally have good cause to quit her job if she suddenly has to commute more than an hour to get to work, unless she is very highly paid. Similarly, a worker making minimum wage will not be expected to pay \$7 each way for commuting costs, but this expense is probably reasonable for someone making \$30,000 a year;
- **Other available alternatives.** If, for example, the employer offered a carpool or the employee could find a reasonable way to get to work, the employee will have difficulty showing good cause if she quits.
- **The commuting habits of similar workers in the community.** In places like the San Francisco Bay Area and Los Angeles, many workers commute long distances to get to work. If you live in a place where long commutes are fairly normal, you will have to show you have special circumstances why you cannot do what others do.
- **Individual problems.** If an employee has a disability or other health condition that makes the new commute extremely difficult, she is more likely to have good cause if she decides to quit.

Again, the employee normally will need to show she tried to fix the situation by looking into alternatives to improve her chance of getting benefits. Alternatives are things like carpools with co-workers (or the casual carpool), less expensive transportation (buses instead of BART) or sometimes even buying an affordable car.

11. Example cases involving voluntary quits:

The following are three examples of voluntary quit cases which illustrate (A) a voluntary quit based on “good cause,” (B) a voluntary quit not based on “good cause,” and (C) the importance of figuring out the “moving party” in unemployment insurance:

Example A — a “good cause” quit: Joe was hired by a company to share the work of appliance service and repair for 615 apartment units with one other maintenance worker. A new owner took over the building and terminated the other maintenance worker, leaving only Joe responsible for appliance service and repair in the 615 units. Joe was unable to keep up with the work and was harassed by angry tenants. He repeatedly requested assistance from the employer but was never given any. One month before deciding to quit, Joe injured himself when attempting to move a heavy appliance by himself. The employer still refused to provide permanent assistance. Joe began having trouble sleeping and eating, as well as serious headaches throughout the workday. After having a series of talks with family members and a church counselor, Joe decided to quit.

Because of a genuine fear for both mental and physical health, Joe had good cause to quit and was eligible for unemployment insurance.

Example B — not a “good cause” quit: Shauna was an electromagnetic technician who worked for a large science museum designing exhibits. During a slump in sales, the museum reduced the work hours of Shauna and some of her co-workers, indefinitely, by 40% while many others were laid off. Shauna was then asked to perform tasks outside the normal job description for which she was not paid or properly supervised. Shauna had great trouble in communicating her dissatisfaction to the general manager because the manager was rarely around. Shauna had some discussion with the general manager about these extra duties, and also spoke to a union representative and filed a grievance. The general manager responded to the grievance by sending Shauna a letter saying she should first try to resolve the problem informally. Shauna, believing the general manager to be untrustworthy and resistant to complaints, decided to quit instead.

Because of her failure to complete the grievance process, Shauna did not have good cause to quit and was ineligible for unemployment benefits.

Example C — the moving party: Louis had worked as a counselor at a residential drug rehabilitation center for the past three years. During those three years, he had had lots of disagreements with his supervisor and the executive director over the management of the organization. Louis grew increasingly uncomfortable with the management style of his supervisor and the executive director. Louis decided he could no longer work for an organization he considered to be so badly managed. He submitted a resignation letter to his supervisor describing his reasons for leaving and giving notice that the last work day of the month would be his final day. His supervisor became very angry at the contents of the letter. At the end of the workday, Louis' supervisor arrived at Louis' desk along with a security guard. Louis' supervisor handed Louis a final paycheck, including wages through the end of the month, and asked him to clear his desk, turn in his keys and not return to the work site again. Louis, believing he had been terminated without any good reason, went and filed for unemployment insurance.

Because Louis was paid the full amount he would have earned if he had worked through to his resignation at the end of the month, he remains the moving party in the separation from employment even though the employer refused to allow him to continue working, as he was willing to do. Since Louis was the moving party, he was found to have voluntarily quit. Louis' disagreements with the management were not compelling enough to give him “good cause” to quit, so he was ineligible to receive unemployment insurance benefits.

12. How do I show proof of a "good cause" quit?

Under the law, the employee is presumed to have had “good cause” to quit unless, or until, the employer proves otherwise. It is likely, however, that you will be expected to show “good cause” for your decision to quit and to describe your efforts to preserve your employment.

To make the best presentation regarding a quit when claiming unemployment insurance, start by writing a detailed account of all the circumstances that led to your decision to quit. In this written account, indicate all of the ways you attempted to resolve the problems that led to your decision to quit, such as requests for meetings with management, leaves of absence, transfer, use of a grievance procedure, etc. Describe, in detail, any complaints you made to management. If possible, include the number of times you complained, the approximate dates of your complaints, to whom the complaints were made, and what, if anything, happened as a result. You do not have to provide this written document to the EDD or a judge, but it should help you organize your thoughts. If your decision to quit arose out of a fear for your mental or physical health or safety, statements from treating professionals, such as a doctor or psychologist, are not necessary, but can be very helpful in proving that your concerns were genuine and well-founded.

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.

