

Worker's Rights and Unemployment

This chapter tells you where to get assistance if you lose your job: how to get help if you have problems on the job: and where to get aid if you are temporarily disabled and cannot work.

CAN YOU GET UNEMPLOYMENT BENEFITS?

1. How to Apply

When you are unemployed, or working less than full time, and ready, willing, and able to work, you may be eligible to receive unemployment insurance benefits. If you are attending an approved training course you are not required to look for work, be available for work or accept work while in training. You can apply on line at: www.edd.cahwnet.gov/edd.home/htm.

Or call: (800) 300-5616 for unemployment insurance services in English. There are separate telephone numbers for Spanish, Chinese and Vietnamese speaking customers or teletypewriter for deaf or hard of hearing people. At that number there is recorded general unemployment insurance benefit information twenty-four hours a day, seven days a week, including holidays. You can file claims at the same number Monday through Friday: 8:00 a.m. to 5:00 p.m., but not state holidays.

An individual who files for unemployment insurance benefits must meet specific eligibility requirements before benefits can be paid. Individuals must:

- Have received enough wages during the base period to establish a claim
- Be totally or partially unemployed
- Be unemployed through no fault of their own (Laid off, not fired for "misconduct" or having quit without a good reason)
- Be physically able to work
- Be available for work which means to be ready and willing to immediately accept work
- Be actively looking for work
- Meet eligibility requirements each week benefits are claimed

- Be approved for training before training benefits can be paid

The minimum weekly benefit amount is **\$40** and the maximum weekly benefit amount is **\$370**. The normal maximum benefit period is **26 weeks**.

Employers report wages to the state for each employee. The state uses this information to decide if you earned enough wages in a base period to establish a UI claim, and how much will be paid.

A base period is a specific 12-month period. For example, if you file a claim which begins in April, May or June, the claim is calculated based on wages paid between January 1 and December 31 of the prior year. The minimum is **\$1300** in the highest quarter of the base period, or **\$900** in the highest quarter and certain spread-out earnings in other quarters.

After the initial application, payments are made using a Continued Claim Certification, DE 4581. You complete this form and mail it to EDD every two weeks. (Note: If you appeal keep filing your forms with EDD every week!) If you meet the eligibility requirements, a check is mailed to you.

Attached to the check is a form for the next two weeks. If the state thinks you did not meet eligibility requirements, they will schedule a telephone interview. Then they can reduce or deny the check. If you disagree you may ask for a hearing. Also the past employer sometimes has a right to disagree with whether you are eligible and to ask for a hearing to oppose you getting a check.

At the hearing, an impartial administrative law judge will listen to the evidence and decide whether you should get a check. About half of the people who go to a hearing win in the hearing.

2. Appeal Your Denial

Just because you are fired, even for a good reason, does not mean that you should not get UI benefits. If EDD says that you were fired for misconduct or that you quit without a good reason, you can appeal it. To show that your actions were not misconduct, you can argue that you made a mistake, simply could not do the job, or that the action was an isolated occurrence. Also if you can show you had a good reason to quit a job you can get UIB. Call legal services for help. If you appeal keep filing your forms with EDD every week!

Besides unemployment benefits, the EDD (State Employment Development Department) offers the following:

California Training Benefits (CTB) allows qualified persons to receive unemployment benefits while in approved training. You can receive training through the Workforce Investment Board (WIB) agencies. (see page 17 Workforce Investment Boards)

Certain federal benefits if workers and their industry demonstrate damage because of imports and trade agreements.

ARE YOU EMPLOYED ?

1. Dealing with Problems

If you have a problem at work and are a member of a union, contact your union representative. He or she can advise you about dealing with your employer or about contacting the right government office. To find out about unions, or to get in touch with an organizer, call the L.A. County Federation of Labor (AFL-CIO) (213) 381-5611. www.launionaflcio.org

Wage Claims: You can file a wage claim with the Labor Commissioner for any amount (or in Small Claims Court for up to \$5,000) if your employer does any of the following:

- Pays less than the minimum wage, which is \$6.75 per hour. There are exceptions, including minors
- Does not pay overtime. Overtime means time-and-a-half if you work more than 40 hours in a week OR more than 8 hours a day OR on the 7th day in a row. Overtime means double-time if you work more than 12 hours in a day OR more than 8 hours, the 7th day of a work in a row.
- Takes improper deductions from your pay
- Does not give you your last paycheck immediately upon discharge or within 72 hours if you quit and don't give 3 days notice.
- After you lose your job, does not pay vacation time you were promised and have earned.
- Does not pay wages owed or pays you with a check that bounces
- Does not give you at least 10 minutes rest break for every 4 hours work and/or a meal break of at least a half hour, which can be unpaid, if you work at least a 5 hour shift. You can get penalty money if you don't get the breaks.

The law also gives you **waiting time penalties**. These penalties can be up to 30 days' pay for each day after termination you have to wait to receive all wages owed to you. Wages include regular pay, overtime, vacation pay, and penalties for not getting rest or meal breaks.

Legal Aid Foundation of Los Angeles (213) 640-3954 and Neighborhood Legal Services (800) 433-6251 both offer free Wage Claim Clinics.

To reach the Labor Commissioner's office, contact the State Industrial Relations Department, Labor Standards Enforcement, 320 W. 4th Street, Suite 450 Los Angeles, 90012. (213) 897-4037. Or in Van Nuys, 6150 Van Nuys Blvd., Suite 206, Van Nuys, 91401. (818) 901-5312.

The federal Department of Labor has an office that also helps people with similar problems. Its services are more limited. However, you can file an anonymous complaint with them to avoid retaliation by your employer. Contact the Department of Labor, 300 S. Glendale Ave., Suite 250, Glendale, CA 91205. (323) 894-2685.

It is illegal to discriminate against workers because of their race, sex, religion, national origin, citizenship, age, disability, political affiliation, or sexual orientation. It is also illegal to require sexual favors from an employee (sexual harassment). If you believe you have been discriminated against, you can file a complaint at the Federal Equal Employment Opportunity Commission 255 E. Temple, Fourth Floor, Los Angeles, CA 90012. (213) 894-1000.

They will investigate your complaint and may be able to help solve your problem. If your case requires court action, you will be given a letter authorizing you to file a lawsuit. You can also call the California Fair Employment and Housing Department (800) 884-1684 for discrimination and sexual harassment claims.

Employers are required to provide safe, healthy work areas. If you are asked to work under unsafe or unhealthy conditions, a state agency will investigate your complaint, and your employer may be fined for violating the law. Contact the California Occupational Health and Safety Administration (Cal/OSHA) office nearest your work. The offices are listed in the state government section in the front of the phone book white pages.

ARE YOU DISABLED?

► 1. State Disability Insurance

If you cannot work for a temporary period because of an illness or injury that is not work related, or pregnancy, you may be able to get state disability insurance benefits (SDI). These benefits range from **\$50 to \$602** per week depending on your earnings in a prior quarter, and can last up to one year. (39 weeks for employers and self-employed people who elected SDI coverage)

You must be unable to do your regular or customary work for at least eight consecutive days. You must have lost wages because of your disability or, if unemployed, have been actively looking for work. You must have earned at least **\$300** from which SDI deductions were withheld during a previous period. You must be under the care and treatment of a doctor during the first eight days of your disability. (The beginning date of a claim can be adjusted to meet this requirement.) You must remain under care and treatment to continue receiving benefits.

You must complete and mail a "Claim Statement of Employee" within 49 days of the date you became disabled or you may lose benefits. You do not need to apply in person to receive benefits.

If your disability prevents you from completing the claim form, or you are filing for benefits on behalf of a disabled or dead claimant, call (800) 480-3287 for required forms and instructions.

You must also ask your doctor to complete and sign the "Doctor's Certificate." If your doctor will mail your completed claim to SDI, provide him/her with an envelope addressed to the SDI office listed below. Mail your claim no earlier than 9 days - but no later than 49 days -after the first day you became disabled. Mail the completed, signed "Claim Statement of Employee" together with the completed, signed "Doctor's Certificate" to:

State Disability Insurance
P.O. Box 10402
Van Nuys, CA 91410-0402
or
State Disability Insurance
P. O. Box 513096
Los Angeles, CA 90051-1096

You may not be eligible for SDI benefits if you:

- Are claiming or receiving Unemployment Insurance.
- Became disabled while committing a crime resulting in a felony conviction.
- Are receiving workers' compensation benefits at a weekly rate equal to or greater than the SDI rate.

- Are in jail, prison, or recovery home because you were convicted of a crime.
- Fail to have an independent medical examination when requested to do so.

If you do not have sufficient base period wages and you remain disabled, you may be able to establish a valid claim by using a later beginning date.

If you do not have enough base period wages and you were actively seeking work for 60 days or more in any quarter of the base period, you may be able to substitute wages paid in prior quarters.

Additionally, you may be entitled to substitute wages paid in prior quarters either to make your claim valid or to increase your benefit amount if during your base period you were in the military service, received workers' compensation benefits, or did not work because of a labor dispute.

You have the right to appeal any disqualification, overpayment, or penalty. Specific instructions on how to appeal will be provided on the state forms you receive. If you file an appeal and you remain disabled, you must continue to complete and return continued claim certifications.

For residents in a state-approved alcoholic recovery home or drug-free residential facility, the maximum payable period is 90 days. (However, disabilities related to or caused by acute or chronic alcoholism or drug abuse which are being medically treated do not have this limitation).

When your claim is received, the SDI office will notify you of your weekly benefit amount and request any additional information needed to determine your eligibility. If you meet all requirements, a check will be mailed to you from a central payment center. Most claims are processed and payments issued within 14 days of receipt of both the claimant's and the doctor's portions of the claim. The first seven days of your claim is a waiting period for which no benefits are paid.

If you are eligible for further benefits, either additional payments will be sent automatically or a continued claim certification form for the next two weeks

will be sent with the check. You must report income you receive, even though sometimes it does not reduce your SDI check.

Coordination with Worker's Comp

If you also have a worker comp. claim and the insurance carrier delays or refuses payments, SDI may pay you benefits while your case is pending. However, SDI will pay benefits only for the period you are disabled and will file a lien to recover benefits paid. SDI and Workers' Compensation are two separate programs. You cannot legally be paid full benefits from both programs for the same period.

However, if your workers' comp benefit rate is less than your SDI rate, SDI may pay you the difference between the two rates.

Long-term or Permanent Disability: If you expect your disability to be long-term or permanent, apply for SSDI from Social Security well before your year of SDI is over. (see page 25 Social Security:).

2. Workers' Compensation

If you are disabled because of a work injury or as a result of unhealthy, unsafe, or stressful conditions at work, you should apply for workers' compensation. Workers' compensation is a no-fault system, meaning that injured employees need not prove the injury was someone else's fault. There are **five basic types of workers' compensation benefits:**

1. Temporary Disability Benefits: These are paid every two weeks if you are unable to return to work within three days, to partially replace wages lost as a result of the injury. The benefits are generally designed to replace two-thirds of the lost wages, up to a maximum of **\$490** per week. They are paid until you are able to return to work or until the disability becomes permanent and stationary.

2. Permanent Total Disability: If you have a permanent total disability you receive up to **\$490** per week for life.

3. Permanent Partial Disability: You receive weekly benefits for a period that increases with the percentage of disability, from 4 weeks for a 1% permanent disability up to 694 weeks

for a 99% disability. Those with a permanent partial disability of 70% or more also receive a small life pension - a maximum of **\$153** per week - following the final payment of permanent partial disability benefits.

4. Vocational rehabilitation services:

If after on the job injury you are unable to return to your former type of work you are entitled to vocational rehabilitation services if these services can reasonably be expected to return you to suitable gainful employment. This includes the development of a plan, the cost of any training, and a maintenance allowance while participating in rehabilitation. The maximum weekly amount is lower than Temporary Worker Comp. - **\$246** per week.

5. Death benefits

Filing a workers' comp claim: If you need help filing a claim or if your employer does not have this insurance, contact: Industrial Accidents Division, 107 S. Broadway Los Angeles, CA 90012-4578, (213) 897-1446, 1-800-736-7401. For problems with worker comp claims, The Division office in Los Angeles is at 320 W. 4th St., 9th floor, (213) 576-7389. There are several other offices in the County. www.dir.ca.gov/dwc/dwc_home_page You may also want to hire a private attorney to help you with your claim. Many lawyers will handle this type of case even if you cannot afford to pay in advance because their fees for workers' compensation cases are set by law and are paid by the insurance company. If you are permanently disabled and do not expect to return to work, you may also qualify for Social Security or SSI.

