

## LEGAL BULLETIN

March 2021

### Eligibility for Unemployment Benefits Following a Reduction in Force

#### Standards for Eligibility

A school employee is not eligible to receive unemployment benefits if they have a “reasonable assurance” that they will perform comparable services for an educational institution in the upcoming academic year or term. See Cal. Unemployment Ins. Code §1253.3(b). The term “school employee” includes all school employees, including education support professionals (ESPs) and other classified staff, and the rules for school employees described in this advisory apply to all Pre-K-12 and community college staff, including ESPs and other classified staff.

A “reasonable assurance” exists only if the economic terms and conditions of the job offered in the second academic period are not substantially less than the terms and conditions of the job in the first academic period. See Interpretation of “Reasonable Assurance” in §3304(a)(6)(A), Federal Unemployment Tax Act, Unemployment Insurance Program Letter No. 5-17 (U.S. Dep’t of Labor Dec. 22, 2016).

A RIF’d permanent or probationary teacher who has priority for employment as a substitute does not have a “reasonable assurance” of reemployment. Because an assignment as a substitute is at a reduced pay rate and reduced frequency, it is “not reasonably in the same capacity” as the regular teaching assignment from which the individual was laid off. Therefore, the individual is eligible for unemployment benefits starting in the summer immediately after the layoff. See *Carter v. Beverly Hills USD*, Cal. Unemployment Ins. Appeals Bd. No. P-B-461 (April 12, 1988) (precedent benefit decision).

In addition, a part-time, hourly community college instructor has no “reasonable assurance” of reemployment and is therefore *eligible* for unemployment benefits where the person’s position is “contingent on enrollment, funding, or program changes.” *Cervisi v. Unemployment Ins. Appeals Bd.*, 208 Cal.App.3d 635 (Ct. App. 1989).

However, a substitute teacher does have a “reasonable assurance” of reemployment where the substitute is offered and has accepted employment as a substitute for the following year, because that is reasonably the same capacity as their former position. A substitute who applies for benefits over the summer in this circumstance is therefore not eligible for unemployment benefits. *Long Beach Unified Sch. Dist. v. Unemployment Ins. Appeals Bd.*, 160 Cal.App.3d 674 (Ct. App. 1984).

A school employee in a categorically funded position has a “reasonable assurance” of reemployment when the employee is given notice that the school district expects to rehire him/her/them when funds are approved, and for several years, the employee had been released and reemployed when funds became available. *Russ v. Unemployment Ins. Appeals Bd.*, 125 Cal.App.3d 834 (Ct. App. 1981).

For districts that effectively operate year-round, an “academic term” may include a summer school session if, based on objective criteria, that summer session is a “regular” term comparable to other academic terms that comprise the school year – that is, if the summer session, as a whole, resembles the other academic terms of the school year in terms of enrollment, staffing, budget, instructional program, or other objective characteristics. *United Educators of San Francisco v. California Unemployment Ins. Appeals Bd.*, 8 Cal.5th 805 (Cal. 2020). Thus, in the unusual case where a summer term constitutes a full and regular academic term, a school employee may be eligible for unemployment benefits in the summer if they did not receive a reasonable assurance of employment for that regular summer term, and if other eligibility criteria are met.

### **Completing the Unemployment Insurance Application**

Unemployment Insurance (“UI”) benefits are administered by the California Employment Development Department (“EDD”). A terminated employee should apply for UI benefits as soon as they stop working (e.g., immediately at the end of the school year). The application can be completed online. For information on how to apply for benefits, go to the EDD website: [http://www.edd.ca.gov/Unemployment/Filing\\_a\\_Claim.htm](http://www.edd.ca.gov/Unemployment/Filing_a_Claim.htm).

Frequently asked questions and answers regarding the application include the following:

- Question 25(g) asks for a brief explanation why “you are no longer working for your very last employer.” If you were part of a RIF, the answer is “layoff” or “reduction in force.” If you were non-reelected or denied regular status, the answer is “let go at the end of academic year, denied permanent status”, or words to that effect. If you resigned after being told you would be non-reelected, the answer is, “Resigned, after being told I would be fired if I did not resign. No misconduct involved.”
- Question No. 26 asks if the applicant is out of work because of a “trade dispute.” The answer is “no” unless you are out of work due to a strike (note that voluntary strikers are generally disqualified from receiving UI benefits).

- Question 27 is specifically for school employees and the first question is confusing: “Are you currently working for or do you expect to work for any school...or perform[] school-related work?” If you have been laid off and the school year has ended, the answer is “no.”
- Question 28 asks if you expect to return to work for any former employer. If you are on a recall list after having been RIF’d and you intend to return to that district if and when recalled, the answer is “yes, but only if recalled from layoff.” If you answer “yes” you should write in, “on a recall list from layoff, but no guarantee of employment” or words to that effect.
- Question 30(a) and (b) ask for your union name and local number. The answer is the name of the *local chapter*, not CTA. As you know, there is no “local number” for CTA chapters, so either write “N/A” in response to Question 30(b) or leave it blank. When completing your application online, you may be unable to leave this answer blank or use alphabetical characters. In that case, you can type “0000.”
- Question 30(d) asks if “your union finds work for you.” The answer is “no.”
- Question 30(e) asks if “your union controls your hiring.” The answer is “no.”
- Question 30(f) asks, “are you registered with your union as out of work?” The answer is “no.”

Information regarding how EDD calculates your benefit amount can be found using the following links:

UI benefit calculator - <https://edd.ca.gov/Unemployment/UI-Calculator.htm>

UI benefit table - [https://edd.ca.gov/pdf\\_pub\\_ctr/de1101bt5.pdf](https://edd.ca.gov/pdf_pub_ctr/de1101bt5.pdf)

How UI benefits are calculated - [https://edd.ca.gov/pdf\\_pub\\_ctr/de8714ab.pdf](https://edd.ca.gov/pdf_pub_ctr/de8714ab.pdf)

### **Pandemic Emergency Unemployment Compensation**

California’s traditional UI program (discussed above) normally provides up to 26 weeks of UI benefits to eligible claimants within a 12-month benefit year. However, due to the coronavirus pandemic, the federal government passed various legislation that helps states expand UI benefits. Pandemic Emergency Unemployment Compensation (“PEUC”) provides a total of up to 79 weeks of UI benefit payments for those who have used all their available UI benefits. In California, these extended benefits are available until September 4, 2021. To qualify for a PEUC extension, you must:

- Be fully or partially unemployed on or after March 29, 2020.
- Have used all UI benefits on your claim that started on or after July 8, 2018, and, therefore, no longer qualify for traditional UI benefits in California or any other state.
- Meet all UI benefits eligibility requirements.

## **Pandemic Unemployment Assistance**

Pandemic Unemployment Assistance (“PUA”) is one of the federal provisions created by the CARES Act that helps unemployed Californians who are not usually eligible for traditional UI benefits. This includes business owners, self-employed workers, independent contractors, and those with a limited work history who are out of business or have significantly reduced their services as a direct result of the pandemic. The program includes up to 13 additional weeks of benefits from February 2, 2020 through December 26, 2020, up to 11 additional weeks of benefits from December 27, 2020 until March 13, 2021, depending on when you were directly affected by COVID-19, and up to 29 additional weeks of benefits from March 14, 2021 until September 4, 2021.

If you are eligible for benefits under PUA, you will also receive additional funds per week provided by PAC (see below) until September 4, 2021.

## **Pandemic Additional Compensation**

If you had a UI claim, a PEUC extension (see above), or a PUA claim (see above) between **March 29 and July 25, 2020**, the EDD is paying an additional \$600 in federal stimulus funds on top of your current weekly benefit amount. If you have a UI claim, a PEUC extension, or a PUA claim between **December 27, 2020 and September 4, 2021**, the EDD is paying an additional \$300 in federal stimulus funds on top of your current weekly benefit amount. This is called Pandemic Additional Compensation (“PAC”).

- You do not need to do anything extra to receive these additional weekly amounts. EDD will automatically add the additional funds to each week of benefits that you are eligible to receive.
- The additional funds are for **all** approved claims and extensions with weeks available for benefits between March 29 and July 25, 2020, and between December 27, 2020 and September 4, 2021.

## **Federal-State Extended Duration Benefits**

If you have used all available UI benefits, including those available under the PEUC, you may be eligible for Federal-State Extended Duration Benefits (FED-ED). FED-ED provides up to an additional 20 weeks of benefits and can only be paid during the extended benefit period, which is based on the state’s unemployment rate, and is paid only after a person has collected all regular UI benefits as well as any PEUC extension benefits they were eligible for.

The FED-ED program is currently scheduled to expire on September 4, 2021.

## FAQ's

### **Q. How does federal legislation cover employees who are not eligible for traditional unemployment benefits (UI)?**

PUA extends the benefits of traditional unemployment insurance to those who are seeking part-time employment, are self-employed, or who otherwise would not qualify for regular unemployment compensation. For example, as explained above, substitute teachers and other school employees are ineligible for traditional unemployment benefits *if* they have a reasonable assurance of reemployment in the next academic term. *Long Beach Unified Sch. Dist. v. Unemployment Ins. Appeals Bd.*, 160 Cal.App.3d 674 (Ct. App. 1984). To be eligible for PUA benefits, you must be ineligible for traditional unemployment benefits **and** you must have become unemployed or partially unemployed for one of the following COVID-19 related reasons:

- You had a definite date to begin work, but the job is no longer available, or you could not start the job as a direct result of COVID-19.
- You are unable to travel to your job as a direct result of COVID-19.
- You had to quit your job as a direct result of COVID-19.
- Your workplace is closed as a direct result of COVID-19.
- You are unemployed, partially employed, or unable to work because COVID-19 has forced you to stop working.
- You have been diagnosed with COVID-19 or are experiencing symptoms and are seeking a medical diagnosis.
- A member of your household has been diagnosed with COVID-19.
- You are caring for a family member or a member of your household who has been diagnosed with COVID-19.
- You are caring for a dependent during the workday because their school or another care facility has closed due to COVID-19.
- Your healthcare provider has told you to self-quarantine because of COVID-19.
- You have become the main income provider due to a COVID-19 death in your household.
- You refuse to return to a worksite that is unsafe because it is not in compliance with local, state, or national health and safety standards directly related to COVID-19.
- You are a school employee who is not guaranteed continuing pay or employment due to COVID-19.
- You are experiencing a reduction of hours or a temporary or permanent layoff due to COVID-19.

If you have been RIF'd as a direct result of COVID-19, under the first dropdown menu in the **Additional Information** section of the Application, select **Laid Off/Lack of Work** as your reason for separation. Then select **Out of Work Due to COVID-19**.

On your application, list the first date you were affected by COVID-19, and EDD should provide backpay for the weeks you are eligible to receive benefits. PUA supports claims between February 2 and September 4, 2021. As mentioned above, claims between March 29 and July 25, 2020 are eligible for an additional, taxable \$600 every week through PAC, and claims between December 27, 2020 and September 4, 2021 are eligible for an additional, taxable \$300 every week. If your claim is approved, EDD will automatically add the appropriate amount for every week certified to eligible claimants during the relevant periods.

**Q. What should I do if I do not know whether I am eligible for unemployment benefits or PUA?**

Both traditional UI benefits and pandemic-related benefits programs are administered by the EDD. All applicants are asked the same basic questions, including questions about employment history and earnings information, along with some new questions needed to determine PUA eligibility. Based on your responses as well as wage information reported to the EDD, the EDD will determine if your claim is processed as a traditional UI claim or a PUA claim.

**Q. If I have been ordered back to work and do not feel safe returning, can I refuse and still get unemployment? If I voluntarily stop working for fear of bringing home the virus to immunocompromised family (or because I am immunocompromised) can I get unemployment?**

It will depend on the specific circumstances. The Department of Labor has made clear that voluntarily deciding to quit your job out of a general concern about exposure to COVID-19 does not make you eligible for unemployment benefits. At the same time, the Department has stated that if your worksite is unsafe because it is not in compliance with local, state, or national health and safety standards directly related to COVID-19, you may be eligible for PUA benefits. [DOL UIPL # 16-20, Change 5.] The Department has also acknowledged that you are likely eligible for benefits if you are out of work based on advice from a medical professional to self-quarantine because an auto-immune condition puts you at greater-than-average health risks from a COVID infection. [DOL UIPL # 16-20.] (Note that leave benefits should be fully utilized before employment terminates). Further, EDD has a certain amount of flexibility in administering its traditional UI benefits program to allow individuals to claim benefits when they separate from work due to a “reasonable risk of exposure” or need to care for a family member. [DOL UIPL # 10-20.] You will be in the strongest position to claim benefits if you have documentation demonstrating that your worksite is out of compliance with COVID-19 related health and safety standards, or an order from a medical professional directing you to self-quarantine based on the greater-than-average health risks to you or a household family member.

## **Filing an Appeal**

If the EDD denies a claim for benefits, you may appeal the denial. For information on how to appeal a denial of benefits, go to the EDD Appeals website: <https://cuiab.ca.gov/Documents/cuiabAppealsProcedureManual.pdf>. The appeal letter should be submitted to the address on your Notice of Determination within 30 calendar days from the date of the decision. Cal. Unemployment Ins. Code §1328. If you miss the 30-day deadline, file your appeal anyway and explain why your appeal is filed late. You must show good cause for filing a late appeal or your appeal may be dismissed. Cal. Unemployment Ins. Code §1328.

The California Office of Appeals will notify you of the date, time and place of your appeal hearing. Cal. Code Regs. tit. 22, §5056. You have the right to review all records affecting the appeal before your hearing begins. *Id.* §5062(d)(i). You may obtain copies of EDD's file on your case ahead of time by requesting it via letter, which will help you prepare for the hearing.

An Administrative Law Judge (“ALJ”) will conduct the hearing. Cal. Code Regs. §5062. All witnesses testify under oath and testimony is recorded and subject to cross-examination. *Id.* §5062(c)-(d). If you disagree with the decision of the ALJ you may appeal to the California Unemployment Insurance Appeals Board. No testimony or new evidence is taken at this stage unless permitted by the Board. Cal. Code Regs. tit. 22, §5102(b). While any appeal is pending, you must continue to submit your claim forms to EDD. If the ALJ decides you are eligible, you will only be paid for the weeks that you sent in claim forms and met all other eligibility requirements.

For a more detailed overview of UI benefits, you may wish to refer to information published by Legal Aid At Work, which can be found at the following links:

<https://legalaidatwork.org/factsheet/how-to-navigate-unemployment-benefits-during-covid-19/>  
[http://legalaidatwork.org/wp-content/uploads/2017/01/UI\\_Advocates\\_Guide.pdf](http://legalaidatwork.org/wp-content/uploads/2017/01/UI_Advocates_Guide.pdf).

*\*\*\* Please note that this Bulletin does not create an attorney-client relationship, nor constitute legal advice on which you should rely. Unemployment benefits are not administered by your school district or CTA chapter, and CTA does not provide representation in unemployment proceedings. Any questions about unemployment benefits should be directed to EDD (tel. 800-300-5616, or online at <https://www.edd.ca.gov>). \*\*\**