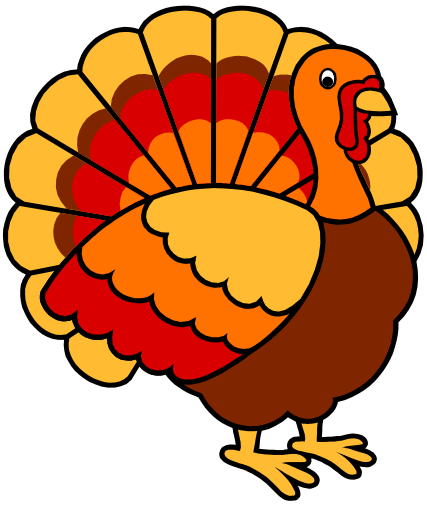


Regional Employees Association of Professionals November 2016 News

Unemployment Insurance: How Does It Work?

If you are laid off, terminated or in some other way forced to leave your job, you may be eligible for Unemployment Insurance. Initiated during the Roosevelt administration -- when 25% of the population was out of work -- the Unemployment System was designed not only to benefit the individual worker, *but the community in which s/he lived.* The mission statement of the 1935 law says that the intent of this program is to assist unemployed people until they can return to work, so they may avoid homelessness and hunger, and may continue to participate in their local economy.

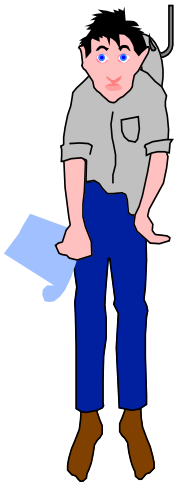
Because of this mission, the "UI system" has always been viewed as an "employee friendly" system. The rules lean strongly in the direction of making benefits available to most applicants. And, when unemployment is high, Congress may approve extensions of benefits, for up to 18 months. The goal of the Unemployment Insurance System was always to "keep the money moving' in the American economy.

Although Unemployment Insurance is established under federal law, it is administered by the states and supported by employer's tax contributions. Today, in California, the Unemployment System is undergoing the greatest stress of its 80-year lifespan. This is because HUGE numbers of people are unemployed, and often have been for many months. Employer costs are rising steadily, while the maximum weekly benefit for recipients (which is $450) hasn't gone up for years. Today, the "Unemployment Office" in your community may make it much more difficult for an individual to collect benefits than ever before.

WHO'S ELIGIBLE TO COLLECT UI BENEFITS?

People are eligible to "collect unemployment" only after they have spent a significant amount of time working. The amount that they collect is based on what they were earning during a pay period which ended several months before they

were terminated. Everyone who works is, theoretically, eligible for benefits. This includes "temps," part-timers and often, consultants. People who are not considered actual employees (i.e. independent contractors) must also pay unemployment benefits, as their *own* employers, on their own behalf.



Employees are eligible to receive benefits only while they are conducting an active search for work. This is NOT a program that benefits people who are injured, disabled or otherwise not able to work, *immediately.*

THE REASON FOR THE UNEMPLOYMENT MATTERS…

Today, the question of **why** someone is out of work can have a lot of bearing on whether or not they can collect UI benefits. In general, people can "collect unemployment" if they are laid off or, somehow, have become unemployed through no fault of their own. A **person who quits or is fired "for cause" will probably be denied unless he or she can show extenuating circumstances.** This usually means demonstrating that the job, somehow, was made intolerable. This leaves a lot of power of interpretation up to the leniency of an individual caseworker. Thus, the UI offices in some counties have become known for being "much more difficult" on applicants than others.

In order to determine eligibility, the Employment Development Department (EDD) will conduct actual interviews with applicants to get a complete understanding of how the job ended. For example, if someone has become unemployed because his job changed such that he could no longer perform it, OR because his workplace moved, such that the that he could not reach it within reasonable transit time, he might have quit, but would still be eligible for benefits. Similarly, if she can demonstrate that she was forced to leave the job because of harassment or discrimination OR because of an *unjustified* termination, she may be eligible for benefits.

Several years ago, the EDD began scrutinizing cases much more carefully than in the past, and routinely denying a much wider range of applications. People who are denied benefits have the right of appeal; a significant number of cases which were initially denied are granted on appeal.

HOW IS THE AMOUNT DETERMINED?

EDD uses the money and information sent by employers, to compensate employees who may be terminated or laid off, based upon the amount of money they may have earned in a "base period." A base period is a specific 12-month period, several months prior to the filing of the unemployment insurance claim. For example, if a claim is filed in April, May or June, the "base period" is the previous January 1st through December 31st.

Unemployment insurance benefits are issued every two weeks, and they are taxable. They must be reported as income on federal income tax forms, but not for state income tax purposes. You can elect to have the EDD deduct taxes from the benefit before the checks are issued.

OFTEN PART OF SETTLEMENT DISCUSSIONS

Finally, you should know that it is not usual for the question of an employee's "right" to collect unemployment insurance to come up in settlement discussions when an employee is being laid off or terminated.

Did You Know?

Employees On Disability Are Eligible for COBRA

If you are off the job with an illness or injury, the Family Medical Leave Act requires the County to continue your medical benefits (including the its contribution to those benefits) for at least twelve weeks. But what if the condition lasts LONGER than twelve weeks? *Can the County discontinue your benefits?*

The answer is NO. Under this circumstance, you have the right to continued benefits under COBRA… the same law that guarantees your access to the employer's medical plan after you retire or are terminated. COBRA enables you to purchase these continued benefits at no more than 102% of the actual cost.

Under most circumstances, COBRA benefits last for a maximum of 18 months. But under some conditions, such as disability, they may be continued for up to 29 months. This disability extension applies not only to the person who is disabled, but to the family members who are receiving COBRA benefits via the disabled person's plan. This benefit applies whether the disabled person lost his job permanently or is off the job temporarily awaiting return to work. It's just another element of the federal safety net.

New Law Expands CalPERS' Marketplace – A LOT!

Governor Brown has signed SB 1234, which makes a large change in the role of the Public Employment Retirement System. Starting next year PERS will become the state retirement program for private-sector employees. It will automatically enroll nearly 7 million people who do not have *other* retirement programs through their employer.

Specifically, SB 1234 requires all California companies with a minimum of five employees to either enroll workers in the new "Secure Choice Retirement Savings Program" or offer their own plan. It is targeted to lower-wage positions in companies that have no employer-based retirement, and requires employers to automatically enroll employees and deduct money from each paycheck. Employees can set their own savings rate, or opt out. The accounts can be carried from job to job.

Secure Choice is essentially a 401(k) program that will be overseen by the CalPERS Board, with authority to make decisions about investments, savings rates and benefit payouts. California will be the eighth state to establish such a program. It will operate at a deficit for the first several years, but will eventually fund itself with profits from employees' deposits.

Legislative analysts say it could reach up to $134 million in the first several years but it is expected to eventually fund itself with fees on workers' deposits. The bill's sponsor, Senate President Pro Tempore De León said,

> *"Nearly seven million of our workers, who help make California the 6th largest economy in the world, do not have access to a*

retirement savings plan at their place of employment. After a career of working tirelessly, they are often forced to retire into poverty when their bodies give out. With today's action, California is providing workers a new chance to achieve better retirement security. Secure Choice will empower younger generations, working families, and the women who lead them, and help provide the financial security they have earned for the later years of their life."

California Public Employees May File Claims for Back Wages Under Supreme Court "Donning & Doffing" Decision

In 2010, the Supreme Court made an important decision about employees' right to be paid for time spent changing in and out of uniforms and safety gear. The case, brought by butchers at a major chicken distributor in Texas, found that the employer was saving tens of thousands of dollars by forcing employees to "don and doff" their special clothing on their own time.

The chicken company argued that the time was "de minimus": too small to bother counting. But the Court reasoned that changing time, generally five to 15 minutes on each end of the shift, IS subject to the rules of the Fair Labor Standards Act (FLSA). The FLSA is the law that requires employers to pay their employees for all hours worked.

In the public sector, employees often spend time "donning and doffing" special uniforms. They get in and out of sewers, work with poisons, and high voltage lines, drive busses, work in jails, and protect the public. In some cases, they must literally be "de-sanitized" before retiring at the end of the workday.

In California the first public employees to bring suit under the new law were the Los Angeles Police Officers. Their successful claim resulted in more than $2,000 per person in back wages. The Long Beach Police Officers have now filed suit.

If YOU spend your time "doffing" a special uniform or protective gear for the job before clocking in AND you are not allowed to commute to the job already dressed in that uniform or gear, you, too, may have a claim. The pivotal question is whether you could be disciplined for NOT wearing all parts of a required uniform on the job. If the answer is yes, then the time you spend putting on the gear IS compensable (so long as you're not allowed to put on the gear at home before coming to work). You may be owed back pay or, at minimum, you may want to make sure that your "changing time" is PAID TIME in the future.

Your first step, if you're not currently paid for changing time, is to ask Management to allow people to clock in before changing into uniforms, rather than afterward. If you are reluctant to do this, you can ask your Board rep or Association staff at the CEA office. We believe that our members are just as deserving of full pay for time worked as the L.A. or Long Beach police officers

Phone Scam targets CalPERS members

If someone contacts you claiming to be a representative of CalPERS, BE CAREFUL!! Right now there is a scam going around where a fraudulent "CalPERS representative" calls to tell you that there is a problem with your retirement account, requiring immediate attention. The caller then asks you to confirm personal information to verify your account.

Here is what you should do if you receive a call like this: 1) DO NOT provide personal or financial information to anyone who solicits information over the phone. PERS would never call you for such information; 2) You can try to confirm the legitimacy of the PERS representative by calling CalPERS at 888-225-7377; and 3) Report the scam to your local law enforcement agency.

For more information on scams and how to report them, visit www.consumer.ftc.gov/ articles/0076-phone-scams, www.stopfraud.gov/report.html, or www.oag.ca.gov/report-crime

SOME THINGS SHOULDN'T BE PRIVATIZED…LIKE PRISONS!

FINALLY, the Federal Government has gone on record stating that it will **cease to conduct business** with an entire range of private companies: **PRISONS**. Why? Because the profit motive, it seems, runs counter to the goal of rehabilitation. The costs (*the real costs)* are too high, and the recidivism rate (rate of repeat offenses) has proven much higher than at publicly-funded facilities. Private companies have been found to understaff their prisons, pay their "front line" staff poorly, evade government regulations and cut corners on such vital services as medical and psychiatric care.

So, after years of investigation and hundreds of complaints, the feds are cutting their losses, literally. The Department of Justice says the goal is to reduce the 2.2 million prison population in federal prisons, 10% of whom are in private prisons. This is about 22,104 inmates in 12 facilities. Interestingly, the employees at the private prisons are almost never unionized; at public agencies, they are overwhelmingly unionized.

In a report on this subject, Deputy Attorney General Sally Yates, wrote,

> The fact of the matter is that private prisons do not compare favorably to Bureau of Prisons facilities in terms of safety, security or services, and simply do not provide the same level of correctional services, rehabilitation programs, and resources. They do not save substantially on costs, and… they do not maintain the same level of safety and security. The rehabilitative services that the Bureau provides, such as educational programs and job training, have proved difficult to replicate and outsource, and these services are essential to reducing recidivism and to improving public safety.

Yates goes on to explain that the privatization of prisons arose at "a time in our past when empathy and imagination to act proactively was at an all-time low." There now is a better understanding of the causes of incarceration, which include PTSD, mental illness, homelessness, and addiction – and that these are often better treated by "on the front end" with education, housing, and medical treatment.

What about LOCAL Prisons & Jails?

This decision on the federal level only applies to *federal facilities.* There are thousands of privately-operated state prisons and local jails. The extent to which this decision may affect them is unknown. But it's encouraging to note that the feds are discovering what public employee advocates have known all along: there is a VERY high price to the privatization of public services.

It's not only that private companies "low-ball" cities and counties in order to get the business, and then raise the cost later, it's that they inevitably cut corners in order to cut costs. They often evade safety and compliance rules and evade workers' compensation (and other forms of liability). They generally pay employees poorly, train them poorly, work them long hours, fail to provide decent benefits and rarely have retirement plans. For this reason, they have little employee loyalty and a lot of turnover – which further exacerbates poor service. Private jails, particularly, have fallen into disfavor at the local level because of the HUGE liability they pose.

Is the Tide Turning Back?

More and more people are now realizing that the great experiment with contracting out of public services has turned sour… and that selling public safety and service "to the lowest bidder" may not be to the benefit of community residents. Quality service and cheap service are inimical to one another. Certainly the fascination with private prisons is waning.

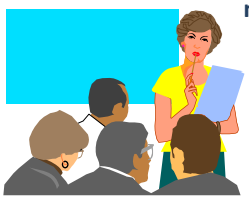
Questions & Answers: Your Rights on the Job

Each month we receive dozens of questions about your rights on the job. The following are some GENERAL answers. If you have a specific problem, feel free to talk to your Board Rep or Staff at (562) 433-6983 or cea@cityemployees.net.

Question: The County is hiring our Finance Manager's daughter to work in our department. Is this legal?

Answer: There are no laws governing personal relationships in the workplace; ***however, most employers DO have nepotism policies.*** The majority of these policies don't prohibit relatives from working for the same agencies, but do prohibit superior/ subordinate relationships amongst family members.

So, the question in your case is "Will the daughter be REPORTING TO her parent?" If yes, this would probably be a violation. On the other hand, if she will be working in an entirely different department, there is probably no violation. (We say "probably" because it might be worth your while to CHECK the nepotism policy or ask your Board rep to do this.) Also, keep in mind that, if the County circumvents the proper posting and testing procedures to hire this person, there is probably a violation.



Finally, you should know that nepotism policies are negotiable. If your employer doesn't have one, or if it doesn't really protect your members against unfair personal or political "appointments," your union CAN ask to negotiate improvements.

Question: My co-worker is retiring in a month and our supervisor has told me that they are not going to fill her job. Instead, they are training ME to do it – in addition to my own job. Can they just do this?

Answer: NO! You have the right to be paid for the job class that encompasses *the actual duties* you'll be performing. So… your MOU probably has a provision for "out of class" or "acting" pay. Your first step is to ask for this extra pay for the higher-class work. If the

County grants this, it will be recognition that you're performing the duties of another position. If they deny it, you might want to call your union rep for help; you've got a legitimate grievance.

Even if you ARE granted out-of-class pay, you should probably ask to be *properly* reclassified at some point. The County has the obligation to classify people in accordance with the work they perform. If necessary, your union rep can help you with an out-of- class grievance, in order to remedy the problem.

Question: My wife is an employee at the county hospital where they are scheduling employees to attend training on their days off. They will be paid for their time, but only while they are there: no call back time at all. Is this legal?

Answer: Probably yes. The hospital can require people to come to work, even for training, on their days off. They must pay overtime, if this causes them to go beyond a 40-hour week. But this extra work time doesn't really qualify as a "call-out" (unless it is identified as call-out in her MOU). Generally, "Call Out Pay" is provided for emergencies, and this is clearly a pre-scheduled meeting.

Question: Does the County have to pay someone who has accrued vacation above the cap? I'm asking because a co-worker recently told me he lost 16 hours because he was capped at 360, but had accrued 376. Did the County have an obligation to remind him to take the time or it could be lost? Would they owe him some type of compensation for this loss?

Answer: Employers do have the right to "cap" the amount of vacation pay that you earn, although the amount of time that may be accrued is completely negotiable. It's perfectly legal (and pretty standard) for the employer to impose a "use it or stop accruing it" policy. In other words, when you hit the cap, you stop accruing. (And, no, they have no obligation warn employees that they are about to "hit the cap.")

But it is NOT legal for the County to seize or refuse to provide payment for time that the employer may have already allowed employees to accumulate above the "cap." Under California law, vacation has a monetary value. Employees can't be penalized for accruing more vacation than their employers intended them to, and unused vacation must be paid off when an employee leaves.

Just as earned wages can't be forfeited by an employee, vacation can't be forfeited either – nor can it be waived by an employee for failing to use it.

Question: My husband was in a car accident and is going to need some help at home and getting to doctors' appointments. I understand that I have the right to use time off for this under the FMLA, but I just got the forms and this looks like quite an ordeal to become "qualified." I don't think I'll need to take more than a dozen days off altogether and I have plenty of sick leave. Should I bother with the FMLA?

Answer: *Yes,* you should probably take the trouble to fill out the forms. The process is not that complicated' you really only need to provide a note from your husband's doctor, saying that he has a serious medical condition, and identifying a rough time period during which you'll need to take time off.

The Family Medical Leave Act protects your job **-- and protects you from being bothered about the apparent use of excessive leave.** Even if you do have plenty of leave on the books, a dozen days (or possibly more) is a lot of time off! You don't need to provide details, but you DO want your employer to know what's going on, so that you can't later be accused of sick leave abuse.

Question: The County has stopped allowing us to bring trucks home at night. This means that when I get a call out (for emergency water repairs) I must drive my own car into the yard to pick up the County truck. Do I get mileage for this? Also, am I covered by workers' comp during the drive into work?

Answer: Unlike the regular workday, an employee "on call-out" is in paid status from the moment he begins the drive to the emergency. This is called "portal to portal pay" and it means that you ARE covered by workers' compensation while driving into work to pick up the truck.

The question about mileage is more complicated. Your MOU or local Personnel Rules MAY provide for mileage when you use your own car for a "call out" but the law says that you are provided mileage only if you must drive to a "non-regular workplace."

So, if you drive to the yard to pick up a truck, *and the yard is your regular workplace,* you don't have the right to insist on mileage. However, if you drive from your house to the actual location of the emergency, you SHOULD receive mileage.

Here's an important question, though: Did your Association agree to the loss of your right to take the truck home? If not, this may well have been a "change in the terms of your employment!" Unless your MOU clearly gives the County the right to take away the vehicle, the subject is negotiable. You might check with your Board see whether the County properly negotiated. If not, you might have grounds for insisting that they give the use of the trucks back to you until your MOU expires – or until the parties negotiate.