

# **Unemployment Insurance Benefits: You May Be Eligible and Don't Know It**

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## **I. Introduction**

***Note: Most temporary and probationary 10-month and AY employees are eligible for unemployment benefits during the summer! Please see Section V below.***

Unemployment insurance benefits can be as high as \$450.00 per week and the maximum benefit amount per claim is twenty-six (26) times the weekly benefits. You may be eligible for these benefits but not know about it, especially if your time base was reduced (see section III) or if you do not work during the summer (see section IV). This handout will introduce you to the basic requirements and procedures you need to know in order to determine whether you are eligible for unemployment insurance benefits and to apply for these benefits. Please refer to the resources in section VII for more information.

## **II. General Eligibility Requirements for Unemployment Insurance Benefits**

The California Employment Development Department (EDD) lists the following eligibility requirements for unemployment insurance benefits, all of which must be met:

- “Have received enough wages during the base period to establish a claim.”
- “Be totally or partially unemployed.”
- “Be unemployed through no fault of his/her own.”
- “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.”

A few comments:

- You can safely disregard the first (which you probably meet) and last (which is probably inapplicable to you) of the requirements above.
- For partial unemployment, please see section III below.

- You are “unemployed through no fault of [your] own” if (a) you were *laid off*, (b) your temporary appointment *expired*, or (c) you were “*separated from service*” or “*rejected*” during probation. You are *not* “unemployed through no fault of [your] own” if you (a) *voluntarily resigned* or (b) were *dismissed* or *discharged* for “*misconduct*.” See California Unemployment Insurance Code § 1256.

**Exercise Scenario: Harry Hothead<sup>1</sup>**

Harry Hothead was being trained for new and unfamiliar work; he became nervous and frustrated and either "blew up" or felt he was going to blow up. He left work without permission in midafternoon. The employer was aware of some emotional problems the claimant was having. The employer spoke to the claimant the next morning about his unauthorized departure. The claimant's reply was sarcastic and, when told if such action was repeated he would be discharged, he responded with a vulgar remark. He was told if that was the way he felt, he could leave, whereupon he left. He would have been discharged for his attitude and language that morning had he not left.

Did Harry engage in “misconduct” that disqualifies him from unemployment insurance benefits?

**III. Additional Eligibility Requirements Partial Unemployment Insurance Benefits**

If your time base is only reduced (partial unemployment), rather than completely eliminated (total unemployment), you may nevertheless be entitled to unemployment insurance benefits, provided that you lost a lot of work (more than 50%) and retained very little (less than 50%). The EDD lists the following *special* eligibility requirements for partial unemployment insurance benefits, all of which must be met *in addition to* the *general* eligibility requirements listed in section II above:

- “The employee works less than normal full-time hours because of lack of work; and”
- “The employee’s normal weekly earnings are reduced by lack of work; and”
- “The employee’s gross earnings, after deducting the first \$25 or 25 percent of the total earnings (whichever is greater), are less than his/her weekly Unemployment Insurance benefit amount.”

**Exercise Scenario: Peter Partime**

Peter Partime is a full-time 12-month SSP II with a monthly salary of \$4,000.00. Effective next week, his time base will be reduced to half-time, and as a result, his monthly salary will be reduced to \$2,000.00.

Is Peter eligible for unemployment insurance benefits, and if so, how much?

<sup>1</sup> Answers to all exercise scenarios can be found in section VI on page 9 below.

#### **IV. Application Procedures**

Use the first link in section VII.D below to apply online (recommended as getting the fastest response), by mail or fax, or by telephone.

- Apply *immediately* after your last (full) day of work.
- There is a one-week waiting period so you will not receive unemployment insurance benefits for your first week of unemployment.
- Don't *lie*: If you "*willfully*" make a "*false statement*" on your application, you can be "disqualified" from receiving unemployment insurance benefits for up to twenty-three (23) weeks during which you would be otherwise qualified.

#### **V. Temporary and Probationary Employees Who Do Not Work During the Summer or Between Terms Are Eligible for Unemployment Insurance Benefits**

*Summary: If you are a temporary or probationary employee, do not work during the summer or between terms, and have not been offered a permanent appointment for the next academic year or term, you are eligible for unemployment insurance benefits,(1) even if your temporary or probationary appointment has not yet expired or you have been offered a new temporary or probationary appointment for the next academic year or term, and (2) even if you receive salary during the summer or between terms for work performed during the previous academic year or term(s).*

***Note: This means that most temporary and probationary 10-month and AY employees are eligible for unemployment benefits during the summer.***

#### **A. If You Do Not Work During the Summer or Between Terms, You Are Not Disqualified from Unemployment Insurance Benefits Even If You Receive Salary for Work Performed During the Previous Academic Year or Term: What Matters Is When You Work, Not When You Are Paid**

*Summary: As a temporary or probationary employee, your salary is spread out over twelve months solely to ensure year-round eligibility for health benefits. This does not disqualify you from unemployment insurance benefits if you do not work during the summer or between terms: what matters is when you **work**, not when you are **paid**.*

#### **1. California Unemployment Insurance Code § 1252**

“(a) An individual is "unemployed" in any week in which he or she meets any of the following conditions:

(1) Any week during which he or she performs no services and with respect to which no wages are payable to him or her.”

2. *In the Matter of Michael Schutz and Cal State University Hayward, CUIAB Case No. 288713 (2000)*

a. Facts as Described in the Administrative Law Judge Decision

The claimant filed a claim for benefits effective June 11, 2000 and was found to be entitled to a maximum weekly benefit amount of \$230. The claimant worked as a lecturer in the Sociology department of a local state university until the conclusion of the most recent quarter on June 10, 2000. Since his last day of employment the claimant has not worked; however, he received his regular pay at the end of June and anticipated receiving the same amount at the end of August or the beginning of September.

The claimant explained that he previously received his salary over a 10-month period of time. He stated that as a "courtesy" to him he and his employer agreed that the employment relationship would be characterized as "not separated" and that he would receive his total salary over a 12-month period of time instead of 10 months.

b. Legal Analysis by the Unemployment Insurance Appeals Board

The evidence in this case indicates that the claimant had already "earned" the money. During the period in question, he was not earning money. In Precedent Decision P-B-4, the claimant was receiving wages which he did not earn, in a strict sense, before the separation of employment.

We believe a more analogous case is Precedent Decision P-B-357 regarding bonuses. Precedent Decision P-B-357 states that a bonus is payment for services rendered. It is earned when the work is performed. If a bonus is paid after the work is performed and while the claimant is unemployed, it is not wages for purposes of section 1252 of the code.

Accordingly, we conclude that the payments in this case, beginning June 11, 2000, were not wages and cannot be the basis for finding the claimant ineligible under section 1252 of the code.

**B. If You Do Not Work During the Summer or Between Terms, You Are Not Disqualified from Unemployment Benefits Even If Your Temporary or Probationary Appointment Has Not Expired or You Have Been Offered a New Temporary or Probationary Appointment for the Next Academic Year or Term: Your Contingent and Conditional Appointment Does Not Offer You "Reasonable Assurance" of Employment in the Next Year or Term**

*Summary: Temporary appointments can "expire" and probationary employees can be "separated" at any time pursuant to Articles 13.6 and 14.6(A) of the APC-CSU CBA. Temporary and probationary appointments are thus "contingent" and "conditional," do*

*not offer "reasonable assurance" of employment in future academic years or terms, and do not disqualify you from benefits if you do not work during the summer/between terms.*

**1. California Unemployment Insurance Code § 1253.3**

“(c) [Unemployment insurance] [b]enefits . . . with respect to service in any . . . capacity . . . for an educational institution [other than “an instructional, research, or principal administrative capacity”] shall not be payable to any individual with respect to any week which commences during a period between two successive academic years or terms if the individual performs the service in the first of the academic years or terms and there is a reasonable assurance that the individual will perform the service in the second of the academic years or terms. However, if the individual was not offered an opportunity to perform the services for an educational institution for the second of the academic years or terms, the individual shall be entitled to a retroactive payment of benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of this subdivision. . . .

(g) For purposes of this section, "reasonable assurance" includes, but is not limited to, an offer of employment or assignment made by the educational institution, provided that the offer or assignment is not contingent on enrollment, funding, or program changes. An individual who has been notified that he or she will be replaced and does not have an offer of employment or assignment to perform services for an educational institution is not considered to have reasonable assurance.”

**2. Cervisi v. Unemployment Ins. Appeals Bd., 208 Cal. App. 3d 635 (1989)**

“Under [California Unemployment Insurance Code § 1253.3], an assignment that is contingent on enrollment, funding, or program changes is not a "reasonable assurance" of employment. . . . The administrative record provides sufficient evidence that the assignments given to these hourly instructors depended on their ability to attract a sufficient number of students to justify offering the classes. In fact, the standard faculty assignment form states that "employment is contingent upon . . . adequate class enrollment." . . . A contingent assignment is not a "reasonable assurance" of continued employment within the meaning of section 1253.3; therefore, the trial court properly issued the writ requiring the respondents to be paid unemployment benefits for the period between the fall and spring semesters.”

**3. APC-CSU Collective Bargaining Agreement**

**a. Article 13.6**

“Temporary appointments shall be for periods of time determined by the President and may be extended by the President except as limited by this Article. Temporary appointments shall specify in writing the expiration date of the appointment and that the appointment may expire prior to that date. Such an early separation shall normally require a ten (10) day notification. Temporary appointments automatically expire at the end of

the period stated and do not establish consideration for subsequent appointments or any further appointment rights except as provided for in this Article. No other notice shall be provided.”

**b. Article 14.16(A)**

“A probationary employee may be separated from service at any time by the President upon written notice of rejection during probation. The employee should normally be given not less than three (3) weeks notice of rejection during probation.”

**4. CSU Technical Letter HR/Benefits 2005-10**

*Note: This Technical Letter is written for temporary employees in Unit 3. However, it is equally relevant for temporary and probationary employees in Unit 4, all of whom have “conditional” appointments within the meaning of this Technical Letter due to the fact that temporary appointments can “expire” and probationary employees can be “separated” at any time pursuant to Articles 13.6 and 14.6(A) of the APC-CSU CBA.*

“Article 12 [of the CFA-CSU CBA] permits conditional appointments for . . . temporary faculty employees.<sup>[2]</sup> . . . [T]emporary faculty with conditional appointments do not meet the definition of “reasonable assurance.” Therefore, these employees would be eligible for UI benefits [if they are not actually employed] between academic terms, even if they have multi-year contracts.”

**Exercise Scenario: Probationary Prudence**

Prudence was hired as a probationary half-time “Student Services Professional II – Academic Year” at the beginning of the most recent academic year. Now summer has come around and Priscilla has not been offered any work. She is glad, however, that her supervisor has told her that she will receive her regular salary during the summer and that, if he has any say in the matter, there will be work for her in the fall.

Is Prudence eligible for unemployment benefits during the summer?

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<sup>2</sup> Article 12.5 of the CFA-CSU CBA states: “An appointment for a less than full-time temporary employee may be on a conditional basis. . . . The conditions established at the time of appointment may relate to enrollment and budget considerations.”

### **Exercise Scenario: Temporary Teddy**

For the last fifteen years, Teddy has been a temporary full-time “Student Services Professional III - 10 month.” Every fall, Teddy has been reappointed to the same classification with the same time base. In fact, last fall he was for the first time given a two year appointment. Teddy was overjoyed and now believes that his job is safe.

Does Teddy have a reasonable assurance of employment in the upcoming fall?

#### **C. Applying for and Appealing from the Denial of Unemployment Benefits During the Summer or Between Terms**

##### **1. Applying for Unemployment Benefits During the Summer or Between Terms**

*Note: The following procedures apply **in addition** to those summarized in section IV above. Please see the second link in section VII.B below for helpful advice on how to fill out the online unemployment insurance application form under **similar** circumstances.*

Filling out the unemployment insurance application under these circumstances is not easy. Here are the “correct” answers to some of the questions on the online form:

- Question 28: Choose “Laid Off/Lack of Work” from the pull-down menu.
- Question 28a: Write “My temporary/probationary employment ended and I have no reasonable assurance of future work within the meaning of UIC § 1253.3(g).”
- Questions 29-30: Check “No.”

##### **2. Appealing from a Denial of Unemployment Benefits During the Summer or Between Terms**

*Note: Because of the complexity of the issue, applications for unemployment benefits during the summer or between terms are sometimes denied. However, if handled properly, such denials are usually reversed on appeal. Be persistent.*

###### **a. Submit an Effective Appeal**

When submitting your appeal, type “See Attachment” under “I Disagree with the Department’s decision dated \_\_\_\_\_ because:” and attach the following statement to the form, choosing the underlined text for either temporary (first underlined option) or probationary (second underlined option) employees as appropriate in your case:

I disagree with the Department's decision dated \_\_\_\_\_ because:

Temporary/Probationary California State University employees such as I are entitled to unemployment compensation for periods between academic years and terms. This principle was established in Unemployment Insurance Code 1253.3(g) and *Cervisi v. California Unemployment Insurance Appeals Board*, 208 Cal. App.3d 635 (1989). Under the statute and *Cervisi*, an assignment that is contingent on enrollment, funding, or program changes is not a "reasonable assurance" of employment. As a temporary/probationary CSU employee, any assignment for the next academic year or term is "contingent" within the meaning of *Cervisi* and therefore does not offer "reasonable assurance" of continued employment because, pursuant to Article 13.6/14.16(A) of the applicable collective bargaining agreement, it "may expire prior to th[e] [expiration]date."/I "may be separated from service at any time."

The Employment Development Department can verify this information by looking in its office manual under Field Directive 89-55UI, which explains the definition of "reasonable assurance" and how *Cervisi* is to be applied.

I hereby appeal the decision denying me benefits. The basis of my appeal is that the decision and its rationale misstates and misapplies the facts and misstates and misapplies the law. I believe that I am entitled to benefits because I am a temporary/probationary CSU Employee, and, at the conclusion of any given academic year or term, I have no assurance of continued employment because my future assignments are contingent upon, *e.g.*, funding and may be cancelled at any time, including before it begins. As such, I have no legal assurance of employment in accordance with the *Cervisi* decision.

Sincerely,

*Your name*

*Your social security number*

*Your address*

**b. Don't Go It Alone**

We strongly suggest that you do not go to any appeal hearing without first contacting APC. We can help you make sure that you cross every "t" and dot every "i."

**c. Bring the Right Documents to the Appeal Hearing:**

- A copy of your most recent appointment letter;
- A copy of Article 13 (if you are temporary) or 14 (if you are probationary) of the APC-CSU CBA, with special attention to sections 13.6 or 14.16(a), respectively (please see link in section VII.A below);
- Copies of previous appointment letters, which may be helpful if they demonstrate that they usually go out at a late date and thus aid in establishing the uncertainty of your reappointment;



- Any documents or letters from the department, the campus administration, or the press indicating the uncertainty of funding for the coming academic year or term; and
- Evidence that you have attempted to secure work during this period of unemployment such as letters or records of phone calls to other departments or campuses.

## **VI. Answers to Exercise Scenarios**

### **A. Harry Hothead (p. 2)**

No. These facts are taken from *Silva v. Nelson*, 31 Cal. App. 3d 136 (1973). The court held: “Given the tests of fault and wilful or wanton behavior as essential elements of ‘misconduct’, the single instance of an offensive remark . . . uttered in the circumstances disclosed falls within the category of a mere mistake or error in judgment, a ‘minor peccadillo’ and is not misconduct disqualifying appellant from unemployment insurance benefits.” Harry is not disqualified.

### **B. Peter Partime (p. 2)**

No. If Peter was totally unemployed, his weekly unemployment insurance benefits would be \$450.00 based on his “Amount of Wages in Highest Quarter” of \$12,000.00. See second link in section VI.D below at page 9. Because Peter is only partially unemployed at 50%, his weekly unemployment benefits would be \$231.00 based on his “Amount of [Lost] Wages in Highest Quarter” of \$6,000.00. See same link at page 8. His gross weekly salary is now \$462.00 (\$24,000.00 gross annual salary divided by 52 weeks). Subtracting 25% therefrom, the remaining \$347.00 are *more*, not—as required—*less*, than what his weekly unemployment benefit amount would be. Peter is not eligible.

### **C. Probationary Prudence (p. 6)**

Yes. The salary Prudence receives during the summer is for work performed during the academic year. Moreover, as a half-time employee, she is facing one more year of probation during which she can be “separated from service” at any time. Accordingly, she does not have “reasonable assurance” of employment in this fall and is eligible.

### **D. Temporary Teddy (p. 7)**

No. Teddy’s two-year temporary appointment can “expire” at any time before its “expiration date” next year. Accordingly, he does not have “reasonable assurance” of employment in this fall either and is also eligible for employment insurance benefits.

## **VII. Resources**

### **A. APC-CSU Contract**

<http://www.apc1002.org/contract.php>

### **B. CFA Unemployment Information for Lecturers**

Although written for temporary employees in Unit 3, most of the unemployment information on these web pages is equally relevant for temporary and probationary employees in Unit 4.

<http://www.calfac.org/resource/cfa-lecturers-handbook> (pages 21-24)

[http://www.calfac.org/sites/main/files/LecturerCrisisGuide\\_051410.pdf](http://www.calfac.org/sites/main/files/LecturerCrisisGuide_051410.pdf) (pages 12-15)

<http://www.calfac.org/post/information-lecturers-unemployment-benefits>

[http://www.calfac.org/sites/main/files/unemployquicknotes\\_generic\\_0409.pdf](http://www.calfac.org/sites/main/files/unemployquicknotes_generic_0409.pdf)

### **C. CSU Technical Letter HR/Benefits 2005-10**

Although also written for temporary employees in Unit 3, most of the information on this web page is again equally relevant for temporary and probationary employees in Unit 4.

<http://www.calstate.edu/HRAdm/pdf2005/TL-BEN2005-10.pdf>

### **D. California Employment Development Department**

<http://www.edd.ca.gov/unemployment/>

The official website with all forms for *applying* for unemployment insurance benefits.

[http://www.edd.ca.gov/pdf\\_pub\\_ctr/de1275a.pdf](http://www.edd.ca.gov/pdf_pub_ctr/de1275a.pdf) (a very helpful guide)

### **E. California Unemployment Appeals Board**

<http://www.cuiab.ca.gov/index.asp>

The official website with all forms for *appealing* from the denial of an application for unemployment insurance benefits. Includes precedential decisions of the Board.

### **F. California Unemployment Insurance Code § 1253.3**

<http://law.onecle.com/california/unemployment-insurance/1253.3.html>