

# ***Unemployment Guide for Part Time Faculty: Troubleshooting, Interviews, and Appeals.***

Some people collect Unemployment benefits for years and never have a problem. But things happen. This guide will help address some of the most common issues. Please note: this troubleshooting guide is based upon information collected anecdotally from CCA leaders, CTA staff and Sierra College's HR Department. Institutions change and that includes the operations and judgments of EDD officials. This guide is intended to provide suggestions and should not be treated as a guarantee for any specific outcomes.

## Income Reporting Issues

Sometimes the information EDD gets from the College Payroll/Personnel doesn't match what you reported. That might trigger some red flags and a letter from EDD. It happens a lot because it isn't easy to calculate a part timer's pay exactly in a way that conforms to EDD's forms.

Computing the pay you get for Flex, substituting, and/or for office hours and other paid duties can complicate things, because some of the items are added onto future paychecks – sometimes deep in the semester, long after they were earned. If you report the income when it was earned, it won't match the pattern of when it was actually paid. Technically, EDD wants you to report income when it is earned, but Flex week occurs before classes begin, and you could attend flex and then have your class canceled. Or you can take flex classes in the middle of the semester. It gets confusing.

## Income Reporting for Online Classes

Computing your pay for online courses can be even more confusing. Unlike an onground class that meets rigidly on a Tuesday/Thursday schedule, you don't have a schedule for an online class. You might be paid for 3 hours of work a week, but you might do all of those hours on one day, or you might spread them over six half-hour work sessions over seven days. You might work at different times this week than last week or the week coming. The College has no idea when you actually did the work, and neither does the EDD. You might have no idea either unless you have a great memory or created a daily log of every email you answered and the exact times of the day you spent grading or reading DB postings. In the end, you'll have to put down on the EDD forms your work hours in a way that makes sense to you and know that no one is really going to be able to question or challenge you on it. If you say you finished all 3 hours by Tuesday, then you can honestly say your work week ended (contract ended) on Tuesday even if you did some additional grading on Friday and turned the grades in on the following Monday. That is because college teaching is typically paid based on when you are physically in the classroom. Technically, the hours instructors spend in their offices or at home grading, answering emails, and planning lectures is part of the job, but it's "on your own." This is especially true for part-timers and those who teach online classes.

## Mismatch with what the District reported

The District reports to the EDD show monthly gross earnings amounts based on your paystubs. The EDD may take that amount and divide it by 4.3 to arrive at a weekly amount. But the amount of earnings you report probably won't coincide with the EDD's calculations, if some of those four weeks had only one or two days in them. (That's most months on the calendar). You might even get a nasty computerized letter from EDD accusing you of providing false information. If you do, try not to panic.

We should always do our best to be honest in reporting our earnings. One way to do it is to add up all of your weekly earnings for every week and every employer, based on your hourly rate, even if you didn't get paid for that week until the tenth of the following month. If, despite all the effort you make, the EDD still tries to dispute your claim, it doesn't mean they're right and you're wrong. From what I hear, this kind of thing happens a lot. It's a good idea to contact your union rep and let the union help you decide whether to appeal. We aren't attorneys and cannot represent you legally, but we can offer useful suggestions to help you present your case. This is why you pay your dues. We are happy to help and share our experiences with you so you can decide the best action for you to take. It's a good idea to keep all your payment records and paystubs. You'll need them if you have to file an appeal.

When submitting a continuing claim you are given the option to check a box (or indicate on a separate note) that you DO wish to continue receiving the claim forms even if you have high earnings and are ineligible for a week or so. EDD will automatically discontinue your claim if you skip a reporting period. But you are entitled to keep a claim open if your income is irregular and erratic. This happens all the time in construction trades when weather, job demands and work hours can change from day-to-day or week-to-week. If your work is intermittent, keeping a claim active sometimes means you can avoid filling out those 12-page re-opening forms again.

### **Phone Interviews**

You may receive a notice of a telephone interview. Such interviews seem pretty standard, so don't feel singled out. The interviews tend to be short – usually only a few minutes long. **You should try hard to be available for the phone interview.** If you are not going to be available at the proposed time on the letter, there is a way to move it. But be careful of what excuse you give for moving it (see below). To be eligible for benefits, you need to be able to claim you are available for work, which means you are available to talk with EDD. If you ignore it or miss your appointment, there's a good chance your claim will be denied (or at least delayed). Most of the time, these interviews are cordial and routine.

Sometimes we hear "horror stories" from claimants who felt like the EDD worker was trying to trip them up or find an excuse to deny their claim, but we also hear stories from claimants who say the interviewer was friendly and professional and that everything went smoothly. You never know.

Before the scheduled interview, review again the suggested answers to certain likely questions in the Unemployment Guide so you can avoid ambiguity that could delay your application processing. Here are some specific suggestions:

- Just answer the questions asked. Don't elaborate unless you have to, and even then, try to keep it short. The more you talk, the greater the chance you might say something that could cause a delay or confusion.
- Don't get nervous and fill in silences with mindless chatter. Let the interviewer ask the questions and answer them plainly, honestly, and concisely. Let silences linger even if it feels uncomfortable.
- Be friendly and polite, but this is business, not a social call. Brief pleasantries are ok, but there's no reason to engage in a long friendly chit-chat about personal matters unrelated to the purpose of the call.
- Most of the interview questions are pretty standard and straight-forward. But write down notes if you get an unexpected line of questioning or sense any hostility. If you don't know or aren't sure of the correct response to a question, or if you need time to look up information, you could say you're not sure and offer to get back to him/her with an answer. It may be better to delay the application than give the wrong response that might get you improperly denied. You can look up information on the EDD website and/or call your union rep before you get back to them with an official response. Don't let yourself be pressured into giving an uncertain answer to a confusing question.

### In-person Meetings

It doesn't happen often, but it is also possible you could be asked to attend an in-person interview or a group job search workshop, some with strange sounding names. These in-person appointments can last one hour or longer. These might be inconvenient but should be complied with. **Do not expect the EDD to grant a request to reschedule any of these meetings based on your convenience or availability. Failure to attend could result in being denied benefits or having your benefit reduced because you said you had other personal things planned, or because you were too sick to attend.** Some excuses might work, for example, if you can document that you have a job interview scheduled for that time.

EDD assumes that if you are unemployed, you are willing and available to go to work at any time. If you say you can't attend because of other engagements, are on vacation, visiting your Mom out of state, or because you are too sick, etc. EDD will probably assume you are not available for work and are likely to deny you benefits. If you do have a doctor or dental appointment, it might be better to reschedule the doctor appointment than to change, cancel or no-show the EDD one. If you tell them you can't attend (or need to re-schedule things) because you started a training, enrolled in a course somewhere, or have a cold/flu. EDD might take those answers as proof you are unavailable to work and may deny benefits.

*It's a good idea to avoid the words "teach" and "teacher" because some EDD workers tend to think of all teachers as K-12 year-round tenured employees You are NOT one of those. Using terms like "part time professor" or "College Instructor," or "Lecturer" might avoid confusion.*

### Job Search Proofs

You are required to look for work and are required to register with Cal-Jobs and keep a current resume posted. But you do NOT need to answer the job search record page on the continued claim form UNLESS the EDD has checked the box saying you have to fill it out. If the box isn't checked, you can skip that page. A lot of

people don't know this and they fill out the job search record pages every time because the form is there and they think they have to complete it.

Personal interviews and group workshops *might* require you to submit written documentation of your job search efforts, so it's wise to keep a record of any such efforts. The term "job search" is quite broad. Looking at notices on a bulletin board in the faculty room qualifies. Reading classifieds in the newspaper qualifies. Checking job search websites qualifies. Even "hobnobbing" socially at a gathering where potential employers are in attendance can be considered "networking" and proof of job searching.

#### Answering Questions about Continued Employment

In any interview with an EDD representative, either by phone or in person, mentioning the Cervasi decision is likely to head off potential problems. Just mentioning Cervasi signals to EDD that you know your rights. By emphasizing that you are a part-time, contingent or temporary community college instructor, it helps the EDD interviewer understand you are not a K-12 tenured teacher. Even if I have been offered an assignment for the summer, fall, or spring semester, I always try to include mention that any offers or tentative assignments are contingent on adequate funding, enrollment, and not being "bumped" by a full-timer needing to make load. All of that means that as part timers, we have "**no reasonable assurance**" [those are key words] of employment in a subsequent semester. I often remind the EDD interviewer that my class might even be canceled after I have started teaching if enrollments before census day fall below a minimum.

When and if you do return to work the next semester, you don't have to notify EDD. You can check a box on your last claim form, or you can just stop returning the continued claim forms and you will get no more payments. Your claim remains "open" or "active" however for the balance of the 12-month claim period. You can reactivate the same claim if your teaching contract ends before the 12-month period is up.

#### Reduced Workload

If you work only a few hours or at a reduced load (e.g., lose one of your classes or labs), you may still want to turn in the continued claim form. You might get a partial (reduced) payment. If in doubt, it is probably best to mail the form, report the income earned and write "still working" in the appropriate space. If eligible, you will get a check for reduced benefits. Or, if you have earned too much, no harm no foul – you get a notice that "no benefits were paid" for that claim period due to excessive earnings. If you had a one-day "out-of-the-blue" windfall in the middle of a claim period, you can go ahead and file, report that income, knowing you probably earned too much to get an unemployment benefit payment that week. You'll get a letter saying no benefits were paid, but your claim remains open and you can file again during the subsequent periods when your income is back down again. You should probably only stop submitting the bi-weekly continued claim forms when you know for sure you are back to work and will be getting a regular paycheck for a while.

When you become unemployed again (at the end of the semester, for summer or winter break), then you can reopen your claim if it's within the 12-month period. Otherwise if it's been more than a calendar year, you'll probably have to start a new claim.

## Appeals

Most UIB beneficiaries never have a denial or any need for an appeal. But it does happen sometimes. It has happened to me twice in the past 12 years. Usually, for part time college instructors, the most common reason EDD denies a claim is on the grounds that they think you are a teacher who has a contract with assurance of reemployment. Such a denial is a lot less likely to happen if you use the wording recommended above and/or if you quote the *Cervisi* decision.

If you are ever denied benefits, the rules say you must file a timely notice of appeal. The notice from EDD will tell you the deadline. You can consult your union rep. You can appeal by letter or use the form provided with the notice. If it's a denial based on a misunderstanding that you're a full-time teacher, in your appeal, mentioning the *Cervisi decision* should ensure you win your case. You can choose your own words but our Statewide union recommends something like this:

*My future employment as a part-time, temporary, community college instructor is **contingent on funding, enrollment, bumping by a tenured faculty member, and District needs**. Therefore, under the decision of *Cervisi v. CUIAB (1989) 208 Cal. App. 3d 635*, I am entitled to unemployment benefits as I have **no reasonable assurance** of re-employment during the next term.*

If the issue was an EDD employee thinking you were a K-12 teacher, that will probably resolve it. After you submit your written appeal, EDD has the power to make a "re-determination" in your favor without the necessity of an in-person hearing.

### Other Issues:

- Failure to report all of your income: This one can be hard to defend if you intentionally omitted income. But if it was inadvertent, speak to your union rep. Don't ignore the paperwork EDD sends you.
- Unavailability for work: If you leave the state, go on vacation, go into the hospital, start taking a training class, or are otherwise unavailable for work, EDD can deny you. If you really weren't available, there may be little anyone can do other than issue an apology and let them take the money back. But as stated above, sometimes there are legitimate excuses, like a documented job interview.
- Typos and application entry errors: We're human and we can make mistakes.

### What you can do if you make an honest mistake:

Honest mistakes can often be handled with humility, a sincere apology, and a promise not to make the mistake again. A physical appearance at a hearing or a nicely-worded letter explaining your unintentional error and apology might be best. EDD will probably still take back the money it overpaid but in my own experience, I have found EDD may waive penalties, especially if it is your first mistake.

### Administrative Hearings

EDD might send you a notice of a hearing before an administrative law judge. The hearings can be a bit intimidating but they are less formal than going to court in front of a judge (even a Traffic Court). You may be

accompanied by a representative (it need not be an attorney) at the hearing. Don't let anyone deny you your right to have a representative attend the hearing with you. Contact the union for suggestions about filing your appeal.

If the situation is serious enough, you may need to consult with or hire an attorney, but this is pretty rare and usually only necessary in very serious cases. Most of the time, you can go to the hearing and speak directly to the hearing officer. Consider using the suggestions above for any honest mistakes. If you committed a deliberate illegal act, you may want to consider pleading guilty and add a sincere apology. The cost of hiring an attorney to defend you might be higher than letting EDD reclaim the overpayments. But as always, the decision about the best course of action is yours to make.

*Remember: you pay taxes and you are entitled to collect the benefits you deserve.*

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#### Disclaimer

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