

# *Filing for Unemployment* **WORKSHOP**

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**SANTA MONICA COLLEGE**

**Friday, June 4, 2010**

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Associate Secretary*

*Foothill-DeAnza Faculty Association*



# WHO CAN APPLY?

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- All higher-ed part-time faculty with **contingent contracts** are legally entitled to unemployment benefits during every break between terms.

It does not cover any mid-term breaks or holidays.

# WHY?

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- Due to the contingent nature of their employment, non-tenured part-time community college instructors do not have ***reasonable assurance*** of being employed in the succeeding quarter or semester.
- California Superior Court has ruled that employment that is contingent on enrollment, funding or program changes lacks ***“reasonable assurance.”*** (Cervisi 1989)

# CALIFORNIA UNEMPLOYMENT INSURANCE CODE

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- 1253.3(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.

continued

1253.3(g) continued

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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.

# CERVISI

## *1989 California Superior Court Ruling*

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The provisions of Cervisi are applicable only to non-tenured, hourly instructors employed by an institution of higher education. *Such individuals are not subject to disqualification under the provisions of UIC Section 1253.3 if the offer of employment (whether made orally or in writing) contains the proviso that the employment is contingent on class enrollment or funding.*

# DETERMINE CONTINGENCY

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- Check your contract for any clauses that establish the contingent nature of part-time faculty appointments
- Check your notification of teaching assignment for start and end dates and any clauses specifying the contingent nature of course appointments.

# ELIGIBILITY

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- You're eligible even if you have been offered a class for the next term,
- You're eligible even if and your name appears in the schedule of classes,
- You're eligible even if you have signed next term's appointment letter

***BECAUSE.....***

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- As a part-time faculty employee with a contingent appointment, you can have your class cancelled due to lack of funding or low enrollment, or you can be bumped by a full-time faculty member who needs the class to make load.

# QUALIFICATIONS and RESPONSIBILITIES

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- You either have NO employment during the break, or employment pays less than \$310 a week.
- You may also qualify for being “under-employed” during the semester/quarter if your load and pay has significantly gone down from previous terms.
- You are not expected to look for employment outside of your line of work.
- You are only expected to look for full-time work in your field.

# FILING A CLAIM

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- Apply as soon as the semester/quarter ends.
- First time application (renewable each year) requires a one-week waiting period for which you will not receive benefits.
- It takes approximately 10 days to process a claim.
- EDD will mail you materials, including a guide to benefits and a Notice of UI Award. Be sure to read these materials carefully.
- EDD may require a phone interview.

# RE-OPENING A CLAIM

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- If you previously applied and received benefits within a one year period, when you apply, you are “re-opening an existing claim.”
- Re-opening does not require a one week waiting period.
- If your first claim is at the end of the fall term in December, then when you apply at the end of spring, that will be a re-open and an extension of your December claim (benefit amount does not change).

# APPLICATION

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- Telephone: 1-800-300-5616
- Online: <https://eapply4ui.edd.ca.gov/>
- Fax: 1-866-215-9159
- Mail: EDD  
PO Box 419000  
Sacramento, CA 95841-9000
- EDD requires that you register or list your resume on a CalJobs search site. You will be sent information on how to do this.

# FREQUENTLY ASKED QUESTIONS

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- When applying for benefits for the first time, some faculty may find several questions confusing.
- Most important message: *“I am a part-time, contingent, community college instructor, with no contract and no reasonable assurance of re-employment.”*

## QUESTION #22

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*Are you a member of a union?*

■ **NO**

Your union is a bargaining association, not a union as pertains to the EDD. This question is relevant only to “job shoppers” whose unions look for work for them. Faculty unions and associations do not provide job search services.

# QUESTION #27

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## *Last Date Worked*

- The last day of the semester/quarter, or the last day on which you give finals during finals week.
- **27a. Gross wages for last week of work:**
  - Monthly salary  $\div$  4 plus office hour and any other income from teaching activities (i.e., sub pay)
- Counselors/Librarians: actual hours X rate

# QUESTION #28

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## *Reason No Longer Working*

- Choose Laid Off/Lack of Work

## *28a: Provide a brief explanation*

- Community College instructor; end of assignment with no reasonable assurance of reemployment

## QUESTIONS #29, 30, and 31

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*Do you expect to return to work?*

- **NO** [You do not have a legally binding contract to return to work]

*Do you have a date to start work?*

- **NO** [You are without contract / no guarantee to return]

*Are you an employee of a school.....?*

- **NO** [You are a temporary employee employed per semester/quarter as contingent labor]

## QUESTION #40

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*Are you currently attending or are you planning to attend school or training?*

■ **NO**

Unless you are enrolled as a part-time or full-time student in an institution of higher education or advanced work training program that prevents you from working full-time, the EDD might conclude that you are not available for work and consequently deny you benefits.

# REQUIREMENTS

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*Are you available for immediate FULL TIME work in your usual occupation?*

- **YES!**

[Even if you aren't interested in full-time work, you must state you are looking for full-time work. You are not required to look for part-time work.]

- Be sure to register on CalJobs as “job seeker.”

# PHONE INTERVIEW

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- You may be sent a letter requiring a “phone interview.”
- Purpose: typically it is to clear up something on the application that might be considered a disqualifying factor.
- Don't get too verbal; just answer the questions simply and to the point. Reiterate: You are a PT faculty member with no reasonable assurance of reemployment and no contract. Contingent assignments are covered by the Cervisi Decision.

# DENIALS

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## ALWAYS APPEAL A DENIAL!

- First level is sending a letter of appeal addressing the EDD's reason for denial.
- Typically it could be:
  1. They think or have been told by a district that you have “reasonable assurance.” *You don't!*
  2. Reviewer of application has red-flagged one of your statements for clarification.
  3. Turning in forms late  
(Over 10 working days after due date).

# DENIAL RESOLUTIONS

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- Typically a letter explaining your temporary, contingent nature as a part-time Community College Instructor is all it takes.
- If an appeal is denied you can appeal again.
- Do so!

# SECOND LEVEL APPEAL

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- The final step of resolving an appeal is contesting a denial based upon a second phone interview or the letter submitted during the first level appeal.
- The second level requires that you appear in court before an Administrative Law judge.
- Though informal, you should be prepared to explain the reason that you were denied and why the judge should reverse the decision.

# REMIND THE JUDGE

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- **CALIFORNIA UNEMPLOYMENT INSURANCE CODE 1253.3, subd. (g)**

*"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.*

- **CERVISI v. CUIAB**

*Under the CERVISI statute, an assignment that is contingent on enrollment, funding, or program changes is NOT a "reasonable assurance" of employment.*

# HOW FACCC CAN HELP

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- If you feel like the EDD is not listening to you, you can ask FACCC (Faculty Association of California Community Colleges) to intercede for you. As a member FACCC, their help with EDD issues is invaluable.
- Go online to [www.faccc.org](http://www.faccc.org) and fill out the Part-time Unemployment Complaint Form. You can also send an email to the Faculty Advocate: Andrea York at [ayork@faccc.org](mailto:ayork@faccc.org)

# BENEFITS

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- Weekly benefits are available to a maximum of \$450 per week depending on your earning history. EDD includes all teaching work history from multiple districts. The rate established at the time your initial claim is filed will be applicable for one year and cannot change. Your benefit is based upon your Wages in Highest Quarter in an 18 month history.
- You may be qualified to continue limited benefits while working as “under-employed.” This occurs typically if your past terms have been at larger loads and you have suddenly dropped to a much lower load. EDD will make up some of the difference.

# BENEFITS ARE TAXABLE

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- Benefits are subject to Federal income tax, and you are required to claim UI benefits as income on your federal tax return.
- You may voluntarily request that EDD withhold 10% of your weekly benefits for federal taxation of UI benefits.
- You will receive a 1099G form at the end of the year for tax return purposes.

# FINAL THOUGHTS

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- Unemployment is NOT Welfare. Community College districts pay into unemployment benefits for you and you are entitled to them.
- Don't get discouraged, even if you must appeal, you will receive your benefits (even if late) if eligible.
- Be diligent in applying on time and returning your forms in a timely manner.

# The End

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*Patrick W. Keuning*  
DIRECTOR  
UNEMPLOYMENT INSURANCE ACCOUNT

THE BACK OF THIS DOCUMENT CONTAINS A SECURITY MARK. HOLD AT AN ANGLE TO VIEW.

*Good Luck*