UI Questions and Answers
Entertainment Industry workers and small businesses

Public Counsel responds to questions asked by HELP webinar viewers.
(Updated 4.17.2020)

Public Counsel received numerous questions last week from industry workers regarding the CARES expanded UI benefits and how UI might apply to their particular situation. Below are answers to some of the questions we received. We hope these will help answer your questions as well! For general questions about how to apply for Unemployment Insurance, see “UI Basics.”

Q: Can I get UI benefits as a small business or independent contractor?

A: Yes. Prior to the COVID-19 crisis, freelance workers, independent contractors, sole proprietors and small business owners were NOT eligible for unemployment insurance between jobs unless they had W2 earnings or bought elective coverage. Under the CARES legislation, however, federal lawmakers have temporarily expanded unemployment benefits to independent contractors and sole proprietors who have lost work or income because of COVID-19. This program is called Pandemic Unemployment Assistance/PUA.

If you work as an independent contractor, sole proprietor or small business, you may qualify for up to 39 weeks of PUA benefits “if you are unemployed, partially employed, or unable or unavailable to work because the COVID-19 public health emergency has severely limited your ability to continue performing your customary work activities, and has thereby forced you to stop working.” This definition includes those who are unable to work because of COVID-related illness or caregiving responsibilities, as well as those who have lost jobs or work because of industry shutdowns, stay at home orders, postponed or cancelled events, etc.

Independent contractors and sole proprietors who are eligible for PUA will also receive the extra “stimulus” amount of $600 per week— in addition to regular benefits.

For detailed information, see the EDD website’s updated page on Pandemic Unemployment Assistance:
Q: If I apply for PUA as a self-employed/independent contractor, how will benefit amounts be determined?

A: We do not yet have a complete answer to this question. The EDD has announced that it will initially pay a flat rate of $167 per week, plus the $600 in PAC/PUC (through July 25 only.) It appears that this amount is a minimum, which may be adjusted upwards later, after the EDD has verified prior income/earnings. Upward adjustments are generally retroactive to your date of eligibility.

Benefits will be retroactive to the date you lost work or became unable to work due to COVID-19.

Note that income earned during the period of employment normally must be reported to the EDD, and may be deducted from the weekly benefit amount. The EDD has not yet announced how certification will work in the PUA program or whether benefits will be adjusted. As long as you remain eligible for PUA, you should continue to get the extra $600 per week in full.

Q: How do I apply for PUA?

We do not have all the information yet. We understand from the EDD that they will begin accepting online applications for PUA beginning Tuesday, April 28. It appears that in California this will be a separate process than regular UI.

If you haven’t already, go to the EDD website and sign up for a Benefits Program Online (BPO) account. You will need this to apply for PUA. See instructions below.
Create a Benefit Programs Online Login
If you already have a Benefit Programs Online login, you may skip this step.

- Visit www.edd.ca.gov/BPO and select Register.
- Accept the terms and conditions to continue.
- Provide a personal email address used only by you and create a password.
- Choose a personal image and caption. Select and answer four security questions.
- Check your email. Select the unique link within 48 hours of receiving the email to complete the process or you’ll need to start over.

Important: Check your junk/spam folder if you don’t see this message in your inbox.

This page will be updated with tips for filing a claim for PUA benefits when details become available.

Q: What if I have both 1099 and W2 income? I applied [for UI] 2 weeks ago and was issued a benefit amount based on the $5k of W2 I had done and not the $80k of 1099 work. How do I change it?

A: If you earned enough income from W2 earnings to qualify for regular unemployment insurance (UI), and met the other requirements for UI eligibility, you will not be able to change over to PUA. PUA is by law, only available to workers who are NOT otherwise eligible for regular unemployment insurance. Unemployed workers are not allowed to pick based on which program provides the higher benefit.

The EDD will not consider 1099 income you earned as a sole proprietor/independent contractor in your determination of UI benefits -- even if it was a lot more than what you earned as a W2 employee – unless that income was misclassified.**

However, you will still get the extra $600 per week on top of your regular UI benefit amount (as long as you remain unemployed or unable to work due to COVID-19. If you are already receiving UI, that $600 should kick in automatically.

If the EDD determines that you are NOT eligible for UI based on your W2 earnings, then you can apply as an independent contractor/sole proprietor for PUA. (We’re not sure, but the EDD may do this automatically).
The EDD will begin accepting online applications for PUA on April 28. Remember you must have lost work due to the COVID crisis to be eligible for PUA.

**Exception for misclassified earnings:**

- The EDD will count 1099/freelance earnings in determining your UI weekly benefit amount if those earnings were likely misclassified. “Misclassified” means that you were paid as an independent contractor for work when you should have been treated as a regular (FT, PT, temp or even one-day) employee. (See info below on AB5 and the ABC test).
- If you think that some or all of your base period 1099 earnings should have been counted toward your benefit amount (because those gigs were or might have been misclassified), you can supplement your earnings information and request a redetermination. (The base period for UI filed in Feb-March would be Oct 2018-Sept 2019; if filing now, Jan-Dec 2019)
- For each “misclassified” gig in your base period, include the name and contact details of the company or individual you worked for, instead of writing in your name/company name as the “employer.” Be prepared to provide additional information and proof of earnings (i.e. 1099s, check stubs, bank statements, etc.) because the EDD will not have a record of 1099 earnings. The EDD will contact you and/or the employer, and make a determination.
- If the EDD determines that some or all 1099 earnings in your base period were misclassified, it will count these earnings and adjust your benefit accordingly. Normally, the adjustment is retroactive to the date you originally filed your UI claim.
- NOTE: Including “misclassified” or potentially misclassified 1099 earnings in a UI application can slow down the process and you may have to wait longer to receive benefits while they investigate your claim. If you will get the max benefit ($450) or close to that based on W2 earnings alone, don’t bother including 1099.

Q: I am a sole proprietor of a video production company with 1099 income and I also have W2 income from several part-time jobs. How do I report my income to qualify for the aid I am eligible for? I already applied for UI using my W2 income, but that's only a small fraction of what I actually make.

A: See answer above. Unfortunately, if you are eligible for regular UI benefits based on your W2 income you will not be eligible for PUA as a sole proprietor. If you are denied UI benefits, apply for PUA as soon as the application comes online.

We do not know yet what income information the EDD will require to determine eligibility for PUA. We expect that applicants will have to provide some kind of income information or documentation to establish that they were earning income prior to COVID-19 and/or lost work opportunities because of COVID-19.
Q: I have both W-2/union work and 1099. Do you recommend using both to file? And will there be AB5 repercussions?

A: If you haven’t already submitted an application, it may be helpful to first take a quick look at whether you meet the eligibility requirements for regular UI. (See “UI Basics” for more detailed info).

To be eligible for regular UI benefits, you must meet these three basic requirements:

- You must have earned enough wages during your “base period” to establish a claim; ($1,300 in the highest quarter of your Base Period OR $900 in your highest quarter and total base period earnings of 1.25 times your high quarter earnings. The base period for April 2020 is Jan-Dec 2019).
- You must be fully or partially unemployed through “no fault of your own;” and
- You must be able to work (not sick or disabled), available to work, and actively seeking work (although this requirement is relaxed now because of Covid-19).

If you think you qualify for UI based on your W2/union work alone, you do not need to include any 1099 income (unless you think you may have been misclassified, see above). If you’re not sure, include all income (W2 and 1099) earned in the past 18 months.

The EDD website advises that, “If you are unsure if you are an independent contractor or an employee who could be eligible for benefits, file for regular Unemployment Insurance benefits and we will determine your eligibility.” If you are found to be ineligible for regular UI, you will have an opportunity to apply instead for PUA.

Regarding AB5 repercussions: AB5 codified the broad “ABC” test for determining whether a worker in California is legally classified as an “employee” (W2 wage earner) or “independent contractor.” Some, if not many, of the non-union jobs performed by freelance/gig workers in the entertainment industry may have been misclassified. If you were misclassified – intentionally or unintentionally – you may have lost wages and benefits owed to you, including overtime, paid sick days, rest and meal breaks, workers compensation, and paid more than your fair share of payroll taxes. If you think you were misclassified in the past 4 years, seek legal advice, but do NOT delay filing for UI benefits. Instead, include potentially misclassified work in your list of employers (provide the name and contact details of the person or company you worked for, not yourself as “employer.”)

If the EDD determines that you were misclassified, they may require your employer (whether a company or an individual) to pay UI into the system and may audit the employer for payroll tax purposes. They may also require the employer to change its classifications and pay payroll taxes going forward. However, this will not generally have other legal repercussions for the employer unless you file a wage claim or civil lawsuit for unpaid wages. (A determination by the EDD that you were misclassified may be used as evidence to support a subsequent wage claim or lawsuit). We are not aware of any negative AB5 repercussion for you, as the employee/applicant. It is the
employer's responsibility to classify workers correctly, not yours. You will not be penalized for including 1099 income and asking the EDD to make a determination.

Q: I was laid off in August last year and was on unemployment. I got a new job March 3, but because of the pandemic I got laid off after only six weeks of working. Am I still eligible to apply for unemployment even though I used up my unemployment?

A: Yes. PUA covers workers who would not otherwise be eligible for UI because they have already exhausted their UI benefits. If you were laid off because of COVID-19, and are authorized to work, you will be eligible for expanded PUA benefits.

If you did not use your full amount of benefits (less than 26 weeks), you may be able to go to UI Online and “renew” your prior UI claim with extended benefits, rather than apply anew for PUA.

Q: My unemployment benefits were exhausted on 3/30. According to the NYT, I’m able to reapply to receive the $600/wk. But when I log into my EDD account, it says I’m unable to file another claim. How do I go about getting the $600/wk?

A: If you already exhausted your benefits, you won’t be able to “reopen” your previous UI -- you will have to apply for PUA. The PUA process is not online yet, but will be soon. The most recent information from the California EDD is that they will begin accepting online applications for PUA on Tuesday April 28. Check the EDD website for further information.

Q: If I can’t work because I am sick or caring for a child or other family member, should I apply for PFL/SDI or expanded unemployment insurance (PUA)? Which one will pay the higher benefit?

A: If you are eligible for SDI or PFL in California, you will not be able to apply for PUA. Check the eligibility requirements on the EDD website. SDI/PFL is available to wage earners (W2 employees) who have a job, and are taking temporary leave due to their own illness or to care for a sick family member. It does not cover leave to care for a child who is out of school or daycare due to COVID related closures. SDI/PFL does not have to be COVID-19 related, nor is work authorization required, as long as the employee has paid SDI payroll taxes. 1099 earners are not eligible for disability unless they have voluntarily paid into the system.

PFL is generally limited to 6 weeks; SDI for a maximum of 52. Both require certification from a health provider. Both pay between 60-70% of wages to a maximum of $1300 per week (compared to $450 max for UI). However, SDI/PFL recipients will not receive the extra $600 per week in stimulus. Employers may “top up” SDI/PFL. If your leave is
COVID-related, you may also be eligible for extended paid family leave under the FFRC.

If you are an independent contractor, sole proprietor or small business owner and cannot work for COVID-related reasons – including your own illness or because you must care for a family member - you may be eligible for PUA. Check the EDD website for additional information.

Q: Who do I list as my “last employer” on the UI application if I was working as an independent contractor when I lost work due to COVID-19?

The UI application is not designed for workers with both W2 and 1099 income, or multiple jobs at one time. If you earned W2 income in 2019 and are applying for regular UI, we recommend listing the last job you actually worked before losing work due to COVID-19 (whether W2 or 1099). If you think you may have been misclassified, list the name and contact details for the company or individual you worked for; if you were self-employed, list yourself as the “last employer.” Under “reason for separation,” select COVID-19. Make sure you include your last W2 employer in the list of previous employers – that is most likely the company the EDD will contact to verify employment for UI purposes.

Don’t worry if you get this wrong – you will have an opportunity to make corrections or clarify with the EDD after you receive your benefit statement in the mail.

NOTE: If you had only 1099 income in 2019 and lost work due to COVID-19, do not apply for UI – apply for PUA. We expect that this question will be asked differently on the PUA application.

Q: I was offered a job, but before I was officially hired, Covid-19 shut down the studios. What do I put down as my “last employer/last day worked?”

It depends whether you are eligible for regular UI or only PUA. If you are eligible for regular UI based on W2 income in the last 18 months, and are completing the regular UI application, list the last job you actually worked for wages. If you only worked as an independent contractor or were “self-employed,” apply for PUA. We expect the PUA application to ask this question differently.

Q: I am still working, but my hours were reduced. Who do I list as my “last employer?”

Workers may receive unemployment insurance if they become partially unemployed due to no fault of their own. On the UI application, list your current employer as your “last employer” if that employer substantially reduced your hours due to COVID-19. If you had more than one job and lost one of them, list the job you lost as your “last employer” even though you are still working part time for someone else.
Workers who have lost income due to reduced hours may need to complete an additional form - see “reduced earnings” DE form 2063.

Q. As freelancers, we often receive payment for days worked long after the work day itself (30+ days): if we have applied for and qualify for UI benefits but a check comes in for work that was completed prior to the COVID-19 shutdown (i.e., prior to our UI start date), is that something that we should report because it would affect our UI benefits?

We do not know yet how the EDD will treat income or earnings for purposes of PUA.

For regular UI, the EDD counts wages based on when they were earned (when the work was done) not when you receive the check. For regular UI you have to provide employment information for every job worked during the past 18 months, to determine your eligibility for benefits, whether or not you received payment. This base period earnings are also used to calculate the amount of weekly benefit you receive. Once you start receiving regular UI, you will need to certify benefits every two weeks. This includes reporting any wages earned during your period of unemployment (based on work actually performed during that two week period), as well as “other income” such as residuals received. Non-wage income (such as work performed as an IC) is normally reported when you get paid as “other income.” (See the pull down menu on the application.) Part of that income may be deducted from your weekly benefit amount, however it should not impact the $600 stimulus payment.