



The Worker's Guide:

Your Rights During the Coronavirus (COVID-19)

(Last Revised March 20, 2020)*

**LEGAL
AID AT
WORK**

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*This guide is intended to provide accurate, general information regarding legal rights relating to employment in California, as of the date listed above. Yet because laws and legal procedures are subject to frequent change and differing interpretations, Legal Aid at Work, Centro Legal de la Raza, and Bet Tzedek Legal Services cannot ensure the information in this guide is current nor be responsible for any use to which it is put. Do not rely on this information without consulting an attorney or the appropriate agency about your rights in your particular situation. Please note that Coronavirus and COVID-19 are used interchangeably in this document.

1. What if I lost my job or was forced to take leave?

- **You may qualify for Unemployment Insurance Benefits:** If you have lost your job or your employer forced you to take unpaid leave, you may qualify for Unemployment Insurance benefits (UI) through the California Employment Development Department (EDD).

What are the requirements to get unemployment benefits?

- You must be “able and available to work.” That means you must be authorized to work in the U.S. AND you must be healthy.
- Usually, you need to be looking for work to receive the benefits. BUT if you are temporarily out of work because of COVID-19, and expect to go back to the same employer, you are not required to seek work.

When can I get unemployment benefits?

- The usual 1-week waiting period has been waived by the governor’s executive order. You may start getting benefits as soon as EDD can process your application.

How much are unemployment benefits?

- It depends on what your income was when you were working. It can be anywhere between \$40 and \$450 per week.
- To estimate how much your benefits will be, try this online calculator by EDD: <https://www.edd.ca.gov/Unemployment/UI-Calculator.htm>
- For more on how benefits are calculated, check out this guidance from EDD: https://www.edd.ca.gov/pdf_pub_ctr/de8714ab.pdf

Where do I apply? For instructions on how to apply, please see our [section below](#).

- **If you lost your job, you may be entitled to Waiting Time Penalties:** When your employment is terminated, your employer is required by law to pay you all your wages at the time of layoff/termination, including any vacation pay.
 - If you are not paid all of your wages when they are due, you are entitled to one day of wages for every day you wait to get paid up to a maximum of thirty days.
 - To claim your waiting time penalties, you need to file a claim with the California Labor Commissioner’s office.

2. What if my hours were cut?

➤ You may qualify for Unemployment Insurance Benefits.

What are the requirements for getting unemployment when my hours are cut?

- In addition to the requirements in the previous section, you must meet the EDD's definition of someone who is "partially employed." This means:
 - You are still employed by your employer;
 - You worked less than your normal full-time hours because of lack work;
 - Your normal pay is reduced because of the lack of work; and
 - Your gross pay, after deducting \$25 or 25% (whichever is greater) of your total earnings, is less than your weekly benefit.

- You also need to submit an extra form: Your employer must provide you a "Notice of Reduced Earnings" ("DE 2063"). Once you receive it, you have 28 days to submit it to EDD.

- Usually, you also need to be looking for work to receive the benefits. However, workers who have a temporarily reduced schedule due to COVID-19 and expected to return to their previous schedule with the same employer are not required to actively seek work each week.

Where do I apply? For instructions on how to apply, please see our [section below](#).

➤ You may also be entitled to Reporting Time Pay.

If you report to work as normally scheduled, but your employer sends you home before you work half of your usual or scheduled hours:

- Your employer must pay you for half of your usual or scheduled hours at your regular rate of pay, with a minimum of two hours and a maximum of four hours.
- However, an employer is not liable for reporting time pay if work is unavailable because of interruptions caused by an act of God or other cause not within the employer's control. COVID-19 is likely to be considered something outside your employer's control.

3. What if my pay was reduced?

- **If your employer reduces your pay without notice (i.e., without telling you ahead of time that your pay would be reduced) :**
 - Your employer must pay you at your previous rate for any hours already worked;
 - If you choose to continue working, it will be considered as if you have accepted this new reduced rate of pay;
 - You can try to negotiate for a different rate.

- **If your employer reduces your pay with notice:**
 - Your options are limited to: accepting, negotiating for a different rate, or quitting your job.

4. What if my child's school or child care is closed and I have to miss work to care for them?

- **You may be eligible for Unemployment Insurance benefits**

EDD is advising people to apply for unemployment insurance if they have lost income because they miss work to care for a child and have exhausted all other care options.

 - Please see the [sections above](#) for the requirements to receive UI.
 - You may need to provide documentation to EDD that you have exhausted your child care options.
 - For instructions on how to apply, please see our [section below](#).

- **Your job may be protected under the Family School Partnership Act**

This protects you from losing your job. If your employer has at least 25 employees, you may be eligible to receive up to 40 hours of job protection per year. (see Labor Code [section 230.8](#)).

5. What if I am a gig worker, self-employed, or an independent contractor? Am I eligible for unemployment insurance?

- **Even if you are a gig worker, self-employed, or believe you are an independent contractor, you may still qualify for unemployment insurance benefits.**

Generally, only employees are eligible to receive unemployment insurance, not independent contractors. However, many workers are misclassified as independent contractors when they are, in fact, employees under California law and entitled to employee protections and benefits such as unemployment insurance.

If you think you may have been misclassified as an independent contractor you should apply for Unemployment Insurance Benefits.

The EDD will decide whether you were misclassified by applying a recent California law, widely referred to as AB 5. For more information about whether you are misclassified, go to the EDD website here: <https://www.labor.ca.gov/employmentstatus/workers/>

When you apply as a misclassified independent contractor, make sure to provide proof of all income from your work: wages, tips, commission, bonuses, etc. You can still apply for unemployment benefits even if you were paid in cash.

Even if EDD determines you are not an employee, you may still be eligible for benefits if:

- You chose to contribute to UI Elective Coverage and paid the required contributions to be considered potentially eligible for benefits.
 - Your past employer made contributions on your behalf over the past 5 to 18 months.
- **Make sure to also check the other requirements for unemployment benefits in our [previous section](#).**
 - **You may also be eligible for other benefits:**
 - CalFresh (food stamps): Apply here: <https://www.getcalfresh.org/>
 - General Assistance: More here: <https://www.cdss.ca.gov/county-offices>

6. How can I get money if I am sick or am quarantined?

You may be eligible for several forms of monetary relief if you get sick or are quarantined, including Paid Sick Days, State Disability Insurance, and Workers Compensation.

➤ Paid Sick Days

What are paid sick days?

- In California, all employees have a right to at least 3 paid sick days. An employee starts accruing paid sick days when the employee starts work, and the employee can use the sick days after they have worked for the employer for 90 days.

When can I use paid sick days?

- Employees are entitled to use accrued sick days for absences due to:
 - Their own illness;
 - Diagnosis, care, or treatment of an existing health condition; or
 - Preventative care (includes self-quarantine if recommended by civil authorities and time off due to potential exposure or travel to high risk areas).
 - You may also use paid sick days when your job shuts down because of COVID-19. However, your employer cannot force you to take paid sick days, it is your choice as a worker to take those days.

How many sick days do I get?

- Employers may limit sick days an employee can use to 3 days, unless the employer is operating in a city that provides additional sick days, for example:
 - In the City of Los Angeles, employees are entitled to 6 paid sick days.
 - Places like [Berkeley](#), [Emeryville](#), [Oakland](#), [San Diego](#), [San Francisco](#) and [Santa Monica](#) require employers to provide more than 3 sick days.

How do I use my paid sick days?

- Provide notice to your employer as soon as you can once you know you need to miss work. You do not need to provide a doctor's note.
- Your employer CANNOT *retaliate* against you for using your paid sick days.
- Your employer CANNOT *force* you to take paid sick days.

➤ **State Disability Insurance (SDI)**

What is Disability Insurance (SDI)?

- SDI pays you up to 60% or 70% of your wages, up to \$1,300 per month depending on your former income, for up to 52 weeks.

What are the requirements to get Disability Insurance?

- You must have medical certification of illness, disability, or required quarantine.
- You must have paid into SDI during the base period. How do you know if you paid into SDI? Take a look at your paycheck. If there is a deduction for “CA SDI,” you paid into SDI.
- **Workers that are undocumented MAY QUALIFY.** Undocumented workers can apply using paper application and leave the box requesting your social security number blank. You may need to provide your W2s.

When can I get Disability Insurance benefits?

The usual 1-week waiting period has been waived by the governor’s executive order. You may start getting benefits as soon as EDD can process your application.

Where do I apply?

Apply with EDD online here: https://www.edd.ca.gov/Disability/SDI_Online.htm

➤ **Workers’ Compensation**

If you contract coronavirus on the job during the regular course of your work, you may be eligible for workers’ compensation benefits, including:

- Disability payments
 - Payments are generally 2/3 of the gross wages you lose while you are recovering from a work-related illness or injury, up to a maximum weekly amount set by law.
- Medical treatment

To file a workers’ compensation claim an employee must file a DWC-1 claim form with their employer.

Learn more about your eligibility for workers’ compensation here:

<https://www.dir.ca.gov/InjuredWorkerGuidebook/InjuredWorkerGuidebook.ht>

7. If I can't work because I need to take care of a family member who is sick, how can I get money?

There are more than one way to get income replacement when taking care of a sick family member, including Paid Sick Days and Paid Family Leave.

➤ **Paid Sick Days**

You can take paid sick days for 1) taking care of family members (including a parent, child, spouse, registered domestic partner, grandparent, grandchild, or sibling), 2) school closure, 3) quarantine and 4) self isolation. Please see our [previous section](#) above for more details.

➤ **Paid Family Leave**

What is Paid Family Leave?

- Paid Family Leave is income replacement if you need to care for a close family relative who has a serious health condition. This includes caring for a child, parent, parent-in-law, grandparent, grandchild child, sibling, spouse, or domestic partner.

How much is Paid Family Leave?

- Paid Family Leave can give you 60% or 70% of your income, up to \$1,300 per week, for up to 6 weeks.
- Applicants who file after July 1, 2020 will be eligible up to 8 weeks of Paid Family Leave.

Who is eligible for Paid Family Leave?

- The serious health condition must be certified by a healthcare provider or a public health officer.
- For a complete list of requirements, go to the EDD website: https://edd.ca.gov/Disability/Am_I_Eligible_for_PFL_Benefits.htm
- **Citizenship and immigration status do not affect eligibility**

Where do I apply?

Apply online with EDD:

https://edd.ca.gov/Disability/How_to_File_a_PFL_Claim_in_SDI_Online.htm

8. Is my job protected if I get sick or am quarantined?

There are several laws that may protect your job.

➤ **California Family Rights Act (CFRA) & Family Medical Leave Act (FMLA)**

What is the CFRA / FMLA?

- The CFRA and FMLA can each provide unpaid leave for up to 12 weeks to care for a serious health condition. This protects your job while you are on leave, which means that you cannot be fired & at the conclusion of your leave you have the right to be reinstated to the same or comparable position (regardless of layoffs). The 12 weeks do not have to be taken all at once.
- During your leave, your employer must continue your health benefits.

Who is eligible for CFRA / FMLA leave?

- A worker that has a serious health condition that requires time off from work.
 - Coronavirus is a serious medical condition, but FMLA / CFRA leave is not available for people who are quarantined or complying with shelter-in-place orders who do not have any symptoms.
- The worker must have worked for the employer for at least 1 year (but the year of service doesn't need to be consecutive)
- The worker worked at least 1250 hours for the employer in the previous year;
- The worker's employer must have more than 50 employees within a 75 mile radius of the worker's job location.

How do I request CFRA / FMLA leave?

- Contact your employer in writing (for example, by text or email) and communicate your desire for leave under the FMLA / CFRA.

➤ **Fair Employment and Housing Act (FEHA) & Americans with Disabilities Act (ADA)**

What is the FEHA / ADA?

- Under the FEHA / ADA, your employer may be required to provide you with unpaid leave from work as an accommodation for your medical condition.
- There is no requirement that your employer continue your health benefits.

Who is protected under the FEHA / ADA?

- The worker's employer must have at least 5 employees (under the FEHA) and 15 employees (under the ADA)
- The worker must have an "actual disability," which may include having a compromised immune system, or if you are experiencing severe complications from coronavirus, such as pneumonia.

How do I get protection under the FEHA / ADA?

- Contact your employer in writing (for example, by text or email) and explain that you have a disability under the ADA and FEHA definition and that you are requesting an accommodation of unpaid leave. You need to state when you expect to return to work (e.g., 8 weeks).

9. Is my job protected if I need to take care of a sick family member?

There are state and federal laws that protect your right to take care of sick family members.

➤ **California Family Rights Act (CFRA) & Family Medical Leave Act (FMLA)**

- Up to 12 weeks of unpaid leave is available under the CFRA / FMLA for workers that need to take time off work to care for a parent, spouse, domestic partner, minor child, adult dependent child with a serious health condition. This protects your job while you are on leave. It also requires that employers continue your health benefits.
- For requirements and eligibility, see the [section above](#).

10. What if my employer discriminates or retaliates against me for being sick?

If your employer discriminates or retaliates against you because you are sick, there are several laws that may protect you.

➤ **Fair Employment and Housing Act (FEHA) / American with Disabilities Act (ADA)**

What is protected under the FEHA and ADA?

- Under the FEHA and ADA, an employer may not discriminate or retaliate against an employee because of the employee's disability. This includes discriminating against an employee for being associated with someone with a disability.
 - For example, an employer may not:
 - Fire an employee because they have or have been exposed to coronavirus.
 - Fire an employee because they have a family member who has been exposed to coronavirus.

- If you have a disability (as defined by the FEHA / ADA), you have the right to reasonable accommodation, such as telecommuting.
- Your employer must keep employee medical information confidential and private.
- Employers may not ask employees who do not have coronavirus symptoms if they have medical conditions that put them at increased risk of coronavirus.

Who is protected under the FEHA and ADA?

- The FEHA and ADA only apply to employers of a certain size. The FEHA applies to employers with 5 or more employees, and the ADA applies to employers with 15 or more employees
- The employee must have a “disability” as defined by the law, be “regarded as” having a disability, or be associated with a person with a disability.

11. What benefits can I receive if I am undocumented?

- If you otherwise meet the requirements, you may be eligible to receive:
 - State Disability Insurance
 - Paid Sick Days
 - Paid Family Leave
 - Workers’ Compensation
- You are NOT eligible for unemployment insurance unless you have some form of work authorization.
- **Public Charge Rule:** United States Citizenship and Immigration Services (USCIS) has stated that it will not consider treatment or preventative care related to COVID-19 as part of the public charge inadmissibility determination. State benefits that are not funded by federal dollars will not be considered under the Public Charge rule.
 - For more information on how obtaining benefits may impact your application for adjustment of status, consult an immigration attorney.
- **GENERAL RESOURCES FOR UNDOCUMENTED CALIFORNIANS**
California Immigrant Youth Justice Alliance: <https://ciyja.org/covid19/>

12. What if I am pregnant and I need to take leave?

If you are pregnant and need to take leave, you may be eligible for job protection and income replacement.

➤ **Job Protection: Pregnancy Disability Leave (PDL)**

What is pregnancy disability leave?

- Pregnancy Disability Leave provides a worker up to 4 months of unpaid leave if they are “disabled by pregnancy.” A worker can be “disabled by pregnancy” if there is a risk to the pregnancy or after successful completion of pregnancy.
 - You may qualify if your pregnancy is at risk due to possible exposure to the coronavirus.
- During your leave, your employer must continue your health benefits.
- If you need more than 4 months of leave, the California Family Rights Act may provide additional job protection. See more information in the [section above](#).

Who does it protect?

- California’s Disability Leave law applies to most employers with 5 or more employees.

➤ **Income: State Disability Insurance (SDI) and Paid Family Leave (PFL)**

- During your pregnancy and after birth, you may be eligible for income replacement through State Disability Insurance. [See sections above for details.](#)
- After your baby’s birth, you may be eligible for Paid Family Leave while you are bonding with your baby. See [sections above](#) for details on requirements.

13. How do I apply for unemployment?

You can apply for unemployment benefits online, by fax, by mail, or by phone.

- Online: https://www.edd.ca.gov/Unemployment/UI_Online.htm
- Phone: English 1-800-300-5616
Spanish 1-800-326-8937
- By Mail or Fax: You can find the forms online here:
https://www.edd.ca.gov/Unemployment/Forms_and_Publications.htm#FillInForms

For instructions please see the following videos provided by EDD:

- English:
 - Benefit Programs Online Overview and Registration for New Users
<https://www.youtube.com/watch?v=l0O37hyLU5Y&feature=youtu.be>
 - UI Online Overview and Registration
<https://www.youtube.com/watch?v=-00AJsrLjw&feature=youtu.be>
- Spanish:
 - Benefit Programs Online Overview and Registration for New Users
<https://www.youtube.com/watch?v=kkdtgavMjgl&feature=youtu.be>
 - UI Online Overview and Registration
https://www.youtube.com/watch?v=FnZF_dOcRIY&feature=youtu.be

14. What information will I need to start a claim for Unemployment Insurance?

- Personal Information: Social Security Number, drivers license or State ID card number, work authorization documents (if not an a United States Citizen).
- Work History Information: Employer information including legal company name, supervisor's name, address (mailing and physical location) and phone number.
 - Try to use the official name of the business on your paycheck or W-2.
 - Information on all the employers you worked for during the past 18 months, including name, address (mailing and physical location), the dates of employment, gross wages earned, hours worked per week, hourly rate of pay, and the reason you are no longer working.
- Helpful employment related documents to have on hand:
 - Last paystub and W-2 from last employer (or 1099 if you believe you were improperly paid as an independent contractor)

- Also see the EDD checklist at this link: https://www.edd.ca.gov/pdf_pub_ctr/de2326.pdf

15. How do State Disability Insurance, Paid Family Leave, and Paid Sick Leave work together?

A worker can use the benefits consecutively, but not at the same time. For example, if you are sick and unable to work, you can first use any accrued paid sick leave you have, then when you run out, you can start using State Disability Insurance benefits to replace part of your income. Or, if you need to stay home to care for a family member, you can take your paid sick days, then use Paid Family Leave.

Sometimes employers will integrate the benefits, so that the benefits will work together to provide 100% of lost wages. Because all waiting periods have been waived at this time, if you are eligible for both benefits, you may want to ask your employer to integrate the benefits so you can have full income replacement for longer.

16. What if I am required to work but I do not think that it is safe to do so?

Under Labor Code Section 6311, a worker may refuse to perform unsafe work as long as it is hazardous enough that any reasonable person would think that their health and safety would be in danger.

Steps to take:

- First, offer to do the work only if the employer is willing to make work safe. Under the current circumstances, that may be only to offer to work from home. Alternatively, the employer should provide proper equipment to make the work safe.
- If the employer refuses, and the worker refuses to do work because they reasonably find it to be unsafe, the worker should offer to do other work that they considered to be safe.

17. Can my employer force me to take Paid Time Off, Vacation Time, or Paid Sick Time?

If a worker is quarantined due to the virus, an employer cannot require that the worker use paid sick leave; that is the worker's choice.

If the worker decides to use paid sick leave, the employer can require they take a minimum of two hour of paid sick leave. The determination of how much paid sick leave will be used is up to the employee.

HOWEVER, employers may require employees to use their vacation or PTO before they are allowed to take unpaid leave.

18. What if I still need to pay my taxes?

Deadline to File: In response to COVID-19, the IRS has moved "Tax Day" (the deadline to file your taxes) from April 15, 2020 to July 15, 2020.

- If you cannot file by July 15th, request an extension so you do not get a penalty. If the extension is granted, you will likely need to file by October 15, 2020.
- If you OWE any taxes, you still need to pay by July 15, 2020.

Deadline to Pay: The April 15, 2020 deadline to pay any taxes you may owe with your return has also been extended to July 15, 2020.

- The IRS will begin to assess penalties and interest on taxes you may owe, on July 15, 2020 if they go unpaid.
- **If you are expecting a refund, file your return as soon as possible.**

MORE RESOURCES ON TAX ISSUES:

IRS: <https://www.irs.gov/coronavirus>

California Franchise Tax Board:

<https://www.ftb.ca.gov/file/when-to-file/due-dates-personal.html>

19. Other Resources

GENERAL RESOURCES

Benefits Summary for Workers Impacted by COVID-19:

<https://www.labor.ca.gov/coronavirus2019/#chart>

Legal Aid at Work FAQs about coronavirus: <https://bit.ly/2IJOd5F>

Labor & Workforce Development Agency: <https://www.labor.ca.gov/Coronavirus2019/>

Labor Commissioner: <https://www.dir.ca.gov/dlse/Spanish/2019-Novel-Coronavirus.htm>

EDD: https://edd.ca.gov/about_edd/coronavirus-2019-espanol.htm

Cal-OSHA: https://edd.ca.gov/about_edd/coronavirus-2019-espanol.htm

FOR GIG WORKERS / MISCLASSIFIED WORKERS

Gig Workers Rising: <https://gigworkersrising.org/get-informed/covid19-resources/>

GENERAL RESOURCES FOR UNDOCUMENTED CALIFORNIANS

California Immigrant Youth Justice Alliance: <https://ciyja.org/covid19/>

OTHER GENERAL RESOURCES

Western Center on Law and Poverty:

<https://wclp.org/covid-19-coronavirus-information-response-and-considerations/>