




STATE OF CALIFORNIA
Labor & Workforce Development Agency

GOVERNOR Gavin Newsom • SECRETARY Julie A. Su

Agricultural Labor Relations Board • California Unemployment Insurance Appeals Board
California Workforce Development Board • Department of Industrial Relations
Employment Development Department • Employment Training Panel • Public Employment Relations Board

MEMORANDUM

TO: Sharon Hilliard – Director, Employment Development Department
FR: Julie A. Su  Secretary, Labor and Workforce Development Agency
DATE: April 23, 2020
RE: UI Online and Certification of Claimants' Continued Claims

The COVID-19 pandemic continues to cause significant physical, emotional, and financial stress to Californians and the ongoing historic levels of unemployment insurance (UI) claims are just one measure of this. I have appreciated working with you and the entire EDD team in partnership during this difficult time to get UI benefits out as quickly as possible as well as to provide additional benefits as they become available. At no time has the work of EDD been more critical to the well-being of more Californians.

When this public health crisis began, we were in the midst of the Benefits System Modernization project and building an entirely new, integrated, modernized benefits system. However, that project is not complete nor is it available at this time, leaving us reliant on several outdated technology systems (such as COBOL) to support UI processes, which have proven to be difficult even in the best of times. Despite this, we have been able to put more than \$2 billion in unemployment insurance benefits into the hands of Californians last week alone, and nearly \$4 billion since mid-March, including the \$600 per week federal emergency increase in unemployment compensation benefits.

Over the last two days, the benefits system has slowed significantly due to the strain of so many claims, keeping Californians from accessing UI Online to file new claims and to certify for payments. This has threatened the ability of people to apply for benefits and our ability to pay benefits, not to mention our ability to stand up the Pandemic Unemployment Assistance (PUA) program, implement Pandemic Emergency Unemployment Compensation (PEUC), and make other critical programs available.

In order to preserve our ability to provide timely UI benefits and additional federal pandemic-related benefits to Californians suffering financial hardship during this emergency, we need to take additional temporary emergency action. In light of the persistent inability of many claimants to access UI Online to submit benefit certifications because of the historically high volume of claims causing unprecedented pressure on the UI Online platform, I am directing EDD not to disqualify a claimant for continued UI benefits on the ground that the claimant has not submitted a continued claim under Unemployment Insurance Code (UIC) section 1326.5 (also known as

“certification” or “re-certification”) for the weeks ending March 14, 2020 through May 9, 2020. Exercising temporary emergency flexibility, for these subject weeks, EDD must use other methods to assess a claimant’s eligibility for continued benefits, including through review of any data reported by employers or communications received from the claimant. This temporary emergency action is needed to ensure that claimants continue to be paid timely, even as the total number of new incoming claims continues to rapidly increase.

This temporary emergency flexibility is consistent with state law. UIC section 1326.5 provides that EDD can excuse a claimant’s failure to strictly comply with the statute’s requirements for “good cause.” Given the unexpected impacts of COVID-19, the State’s state of emergency and the ongoing stay-at-home order, the historically high unemployment rates, the strain on UI Online caused by the large number of users, and the persistent inability of claimants to access the system to certify for continued claims in order to comply with UIC section 1326.5, there is “good cause” to excuse claimants’ inability to fulfill their obligations under the statute.

This action is also consistent with the purposes of the UI program and recent federal legislation, all of which seek to get critical lifeline benefits to individuals as quickly as possible. *See, e.g.*, 42 U.S.C. § 1103(h)(3), Families First Coronavirus Recovery Act § 4102(b) (providing emergency flexibility in applying policies pertaining to unemployment compensation).

Notwithstanding this temporary emergency action, EDD must continue to fulfill its obligations under federal law. To do so, EDD must set up a communications channel for claimants through which claimants are required to inform EDD if they find employment for the subject weeks. Moreover, EDD must continue to garnish benefit payments as legally required, including for prior overpayments and any child support payments. Finally, EDD must establish and recover any later-discovered overpayments, including based on a claimant’s failure to report employment or qualifying wages to the Department. However, EDD shall not assess any monetary or fraud penalties for any overpayments related to the subject weeks.

I know you and your staff have been working seven days a week with shifts that begin at 6 a.m. and end at 8 p.m. As the Governor and I both noted, over 500 staff chose to work on Easter Sunday rather than take the day off to keep on processing claims. We cannot risk failing to get payments out if UI Online is unavailable. This is one critical step in making sure that does not happen.