

# Part-Time Faculty Unemployment

## A Step-By-Step Guide

As a result of the 1989 Cervisi decision, most part-time community college faculty are eligible to receive unemployment compensation benefits during breaks in their employment. Examples are winter and summer breaks (or a semester during which you are not offered employment), if you are not employed elsewhere, and if you do not have "reasonable assurance of returning to work with an education institution following the period without employment." (Education Code Section 1253.3) Virtually all appointment offers to part-time faculty are contingent upon meeting minimum enrollment, funding levels, or program continuation. Such contingent offers do not constitute "reasonable assurance" or reemployment as defined in the state unemployment code. Thus, most part-time faculty are eligible for unemployment. The fact that some individuals have a history of being reemployed at the end of a summer or holiday recess between terms is irrelevant in this regard. Applying for unemployment benefits is your legal right! When you, as a part-time instructor, request these benefits, you are simply asking your employer to acknowledge your lack of job security.

### **All About The Cervisi Decision**

Part-time, temporary faculty of California's community colleges are entitled to unemployment compensation for periods between semesters, including summer breaks.

This principle was established in *Cervisi v. California Unemployment Insurance Appeals Board* (1989) 208 Cal.App.3ed 635, and is a permanent part of the California Unemployment Insurance Code Sec.1253.3. Under the Cervisi ruling, an assignment that is contingent on enrollment, funding, or program changes is not a "reasonable assurance" of continued employment.

Cervisi covers all part-time faculty: instructors, nurses, librarians, counselors, and other academic employees. Faculty are entitled to benefits even if their district has provided them with a written offer to teach the following semester. Your district may call this a "contract," but in the eyes of the law it is NOT. Further, even if your district insists that this "contract" represents reasonable assurance of continued employment, again, in the eye of the law it is NOT.

The only measure of reasonable assurance is whether the assignment is contingent upon enrollment, funding, bumping, or program changes...and because part-time assignments are always contingent on these conditions, part-time faculty have NO reasonable assurance of continued employment. Even if you have a history of being re-employed at the end of a summer or holiday recess between terms, the law considers this irrelevant. Remember: unemployment benefits aren't a handout--they're your legal right!

### **How to Apply for Unemployment Benefits**

On your first day of unemployment, or as soon as possible thereafter, contact the Employment Development Department (EDD). NOTE: you are no longer allowed to file in person at an EDD Office!

- File your claim online. You can access eApply4UI at any time, at your convenience, in English or Spanish. The major advantage for doing this is that you can save your application and reuse again for the next year when applying.
- File by Telephone Telephone EDD between 8 a.m. and 5 p.m. Monday through Friday. Be sure you have in front of you a copy of your current appointment letter or load sheet which specifies the beginning and ending date of employment, plus information on your employer's address, phone number, and your wages.
- File by Mail or Fax Use the paper application. Read the information, then print out the application, hand write your answers and mail or fax to EDD for processing.

You do not have to wait for your paychecks to stop to file your application. Don't delay, because eligibility for payments begins with the first day of application, regardless of how long you may have been unemployed prior to applying. There is also a one-week period for each benefit year. You will be given forms to determine if you are eligible (actually unemployed, paid qualifying wages during the required base period, etc.).

Upon receiving your claim, EDD will contact the college to confirm your employment status and to ask if you have "reasonable assurance" of returning to work. In some cases, Human Resources Directors or other staff assume that part-time instructors will be rehired, even if an offer was conditional or there is no written appointment as yet, and they will tell EDD that you will be returning.

If the campus informs EDD that a person is returning or still employed, then EDD is likely to deny benefits. If this happens, it's very important that you file an appeal. (See below)

EDD may mail you the form that you must complete to demonstrate that you are actively seeking work appropriate to your skills and training. Note: You are NOT required to seek employment outside of your regular line of work.

### **The Appeals Process**

If you are denied unemployment benefits, you have the right to appeal; first to an administrative law judge, then to the Unemployment Insurance Appeals Board and finally through the State Courts. The appeals process is not difficult, and we encourage part-time faculty to pursue their claims. Most cases can be won at the first stage of appeal.

If you are denied benefits, you will be notified in writing. The notification will explain your right to appeal and give instructions on how to appeal, including the timelines. It is important that you follow these timelines precisely. To aid in gaining a favorable decision, CCA recommends that you bring the following information to be introduced into record at the hearing:

- A copy of your appointment letter or load sheet for the present semester
- Copies of offers of prior employment, which are useful because they demonstrate that appointment letters or load sheets usually go out at a late date and aid in establishing the uncertainty of your reappointment
- Any documents or letters you might get from the department chair, other faculty, or the campus administration indicating the uncertainty of funding and/or enrollment levels for the coming semester

- Evidence that you have attempted to secure teaching work during this period of employment such as letters or records of phone calls to other departments or colleges

Again, when you testify, point out to the administrative law judge the relevant conditional provisions in your appointment letter or load sheet to help demonstrate the uncertainty of your reappointment. Also, point out the uncertainties of funding for the college and uncertainties about enrollment.

Statistics about the number of classes taught by part-time instructors that have been cancelled over the past two years may also be helpful. If you are denied unemployment benefits and you need more information than what is provided here, before filing your appeal consult with a local association officer or CCA Staff Consultant for advice.

### **If You're Denied...**

Introduce copies of assignment forms or other district documents (exhibits) containing the contingencies discussed above. In other words, produce documentary evidence that your assignment is contingent upon enrollment, program changes, budget or funding, or bumping. The evidence could be an assignment form (look on both front and back), a board policy, a district regulation, or similar written evidence. Introduce your own testimony that your assignment was contingent upon program changes (i.e., being bumped by a permanent or probationary faculty member), or meeting minimal enrollment. You may ordinarily testify by way of a narrative statement. Introduce the department directive showing how Cervisi is to be applied. Introduce a copy of Cervisi. Introduce any other facts that would support your case. Here are some examples:

- Is your district experiencing financial problems, or are part-timers being laid off? Be sure to testify about this.
- Do you have a history of being bumped from a class either because of enrollment didn't meet the minimum or because a full-timer needed the class to fill his or her load? Be sure you testify about this.
- Do you know of others who currently or in the recent past had similar experiences? Be sure to testify about this as well.