State Unemployment Insurance versus PUA for Gig Workers in California

Many people are trying to understand how to access unemployment insurance in California. Starting April 28th, workers will be able to apply for Pandemic Unemployment Assistance (PUA). This is different from state unemployment insurance (UI) & is in many ways a weaker form of protection.

Understanding why is complicated, but important: Unemployment Insurance is an employer-funded program. Businesses pay insurance premiums into a state and federal fund to cover a portion of workers’ wages when they lose their job through no fault of their own (like with this COVID-19 pandemic). On Jan 1, 2020 AB5 went into effect. This law requires many gig companies to treat their workers like employees for the purpose of state Unemployment Insurance. Workers fought tirelessly to get this bill passed.

This means that companies like Uber & Lyft should be paying into the Unemployment Insurance fund AND gig workers who are out of work because of COVID-19 should have access to benefits like any other worker.

However, these companies have (1) failed to pay their required insurance premiums (thus cheating the system to save money), (2) failed to report wage data to the state of California (making it hard for a worker to establish their wages), and, like they have in other states, (3) resisted reimbursing California for the hundreds of millions of dollars they owe in unemployment insurance premiums.

If workers were to collect benefits now, law-abiding businesses will be picking up the tab, since the state pays workers from a single fund that all employers contribute into. California also knows that companies like Uber & Lyft will fight paying into the system in the short-term.

So, when the federal Pandemic Unemployment Assistance (PUA) program was created that could (possibly) offer similar benefits to workers, it would seem reasonable to make sure workers are paid from that program - especially when state officials know that Uber & Lyft have refused to live up to their obligations under the law.

But, PUA can be worse for some workers and less protective compared to state law.

Here are concerns we have about those weaknesses that we will be tracking and working to get in front of the administration:
When the state’s shelter-in-place orders are lifted, some workers may not continue to be eligible for PUA, when they would *still* be eligible for state unemployment insurance. In fact, the U.S. Department of Labor’s own guidance suggests that qualifying unemployment for PUA is “likely to be of short term duration.” In no uncertain terms, California should clarify that if a gig worker loses PUA benefits before they received 39 weeks of benefits that they should be able to access traditional state unemployment benefits (and any extension of benefits). This includes clarifying the Governor’s recent executive order regarding a worker’s ability to use base period wages to establish a claim for traditional unemployment benefits.

If the state relies on a driver’s tax return information, PUA benefits may be based on *net* earnings, not gross earnings. This means many workers who have filed their most recent tax return and deducted expenses could receive a lower benefit. The EDD should demand wage information up-front from companies like Uber & Lyft or rely on gross earnings where possible when administering the PUA, as they would under traditional unemployment insurance.

Workers may be on the hook to pay back the federal government if there is a mistake in their application and they accidentally get paid too much. This is why the state should ensure that they collect records from the companies, rather than rely on self-reported income from workers alone.

In addition, federal law states that workers may access PUA only if they are deemed *ineligible* for state unemployment benefits. While both Secretary Su and Governor Newsom have clarified that gig workers in CA are employees, that AB5 must be enforced (something courts have been saying repeatedly), and that accessing PUA won’t impact CA workers’ classification as employees, it is unclear how the state will treat a worker’s eligibility for traditional unemployment benefits if they approve them for PUA.

So, what does all of this mean for gig workers in California?

If you haven’t yet, go to the EDD site and apply for traditional Unemployment Insurance. If you get a letter saying you have $0 in reported wages, follow these directions. You are eligible for these state benefits.

If you get a denial, appeal it.

Once the PUA funds are available, likely on April 28th, workers can apply through the same website they submitted their unemployment application. However, they should be aware of
some of the drawbacks and should work with GWR to demand that worker's claims be treated fairly.

EDD is saying that funds from PUA will be available between 24-48 hours after a worker applies.

Gig workers should monitor this situation and we will continue to check back on what the state is planning to do to protect gig workers.