

# Frequently Asked Questions: Independent Business Owners, Contractors, and Workers in the "Gig" Economy

## I am a self-employed business owner.

### **Question: Am I eligible for benefits?**

Answer: No. If you own and control a business that has been your primary source of income, you will not be eligible for benefits. Unfortunately, even in dire situations like this, unemployment compensation does not serve as "business insurance."

### **Question: What if I only own a small portion of the business?**

Answer: If you have no control over policy making or operations (such as hiring and firing), then you may be eligible. You may need to appeal and attend an UC Referee Hearing to show you did not have control.

## I work for several different employers/businesses as an independent contractor.

### **Question: Am I eligible for benefits?**

Answer: Most likely not. If you have been doing that work for a while, then all of your income will have been reported in a 1099 form. This means it will not be counted for your financial eligibility and you do not have qualifying wages. If you believe you should have received some W-2 wages as an employee, see below.

## I think I have been misclassified as an independent contractor when I was actually an employee.

### **Question: What counts as working in "employment" for purposes of UC benefits?**

Answer: In order for wages/earnings to count towards your financial eligibility, they have to be earned in "employment." For someone to be working in "employment" they must be 1) free from control and direction and 2) customarily engaged in an independent business, trade, or profession. Pennsylvania law has a presumption that wages paid for work = employment.

## **Question: What will happen when I apply for benefits?**

Answer: If your only income came from employers who you believe misclassified you, then you will receive a "Notice of Financial Determination" denying you benefits. This is because there are no wages in the system for you. If you have some W-2 wages, you may see those on the Notice, but not the wages that were misclassified. You should appeal. There will be appeal instructions on the notice. You can find the form at

**<https://www.uc.pa.gov/appeals/Documents/UC-46b.pdf>**.

There is a 15 day appeal deadline from the date the Notice was mailed.

## **Question: What do I say when I appeal?**

Answer: You should say that you believe you were misclassified and your wages from your employer should be counted towards your unemployment. If you have any evidence you think will help your case, you can send it in with your appeal.

## **Question: What happens after I appeal?**

Answer: The Department may do a wage investigation and send you another "Notice of Financial Determination." If you are still found ineligible, appeal again. You will receive a copy of your appeal back in the mail. Then you will receive a Notice of Hearing with a date and time for a UC Referee Hearing. This hearing functions like a mini trial. Given the public health crisis, it will most likely be scheduled as a telephone hearing. The Employer who paid the wages will need to prove at the hearing that you were 1) Free from Control and Direction and 2) Customarily Engaged in an Independent Business, Trade, or Profession. You should be prepared with evidence and testimony that you were under the control of the employer or that you were not engaging in your own business. If you qualify for our services, Philadelphia Legal Assistance may be able to provide an advocate who will attend the hearing with you.

## I perform work in the "gig" economy.

### **Question: Will the earnings from my "gig" work show up in my "Notice of Financial Determination?"**

Answer: No. The Department of Labor and Industry does not consider those wages earned in "employment." If you only have earnings from "gig" work over the last 15 months, the "Notice of Financial Determination" will find you ineligible. If you want to contest that your earnings should count, see the above answers concerning misclassification.

### **Question: What if I have other W-2 earnings?**

Answer: If you have enough W-2 wages from other work done in the past 15 months, you may qualify for benefits based on that work.

### **Question: What if I started doing "gig" work after I lost my full time job/my workplace shut down?**

Answer: This is a different situation. When you report your earnings from the "gig" work during your biweekly filings (which you must do), the Department will then investigate you for "self-employment," and most likely will disqualify you based on the "gig" work. However, the Department is wrong and you SHOULD remain eligible for benefits.

### **Question: Wait, why is the Department disqualifying me then?**

Answer: Last year, PLA won a case in Pennsylvania called Lowman v. UCBR. The court found that PLA's client, an UberX driver, was not disqualified from benefits when he started driving for UberX after losing his full time job. The Court found that workers who begin short term work to help support themselves while looking (or in your case, waiting) for a job in their field, and who do not intend to start their own business, are not disqualified due to "self-employment." The government appealed that case to the Supreme Court of Pennsylvania and it was argued in September. However, the Department refuses to apply the law from Lowman while it is up on appeal.

**Question: Well, then what happens to me?**

Answer: You will need to appeal the "Notice of Determination" and go to a UC Referee hearing. The judges, known as "Referees," have been applying the law correctly and should grant benefits.

**Question: What if I already started doing "gig" work before my workplace closed/my hours were reduced?**

Answer: You are similarly not "self-employed" for the reason described above. However, if you started the "gig" work before you lost your job and you have not substantially increased your hours since losing your job, you may also qualify under the "sideline business" exception. Make sure you inform the Department of this when they investigate your "gig" work.

**Question: Can't I avoid all this by not reporting my earnings from the "gig" work?**

Answer: No. That could be considered fraud. If and when the Department learns you intentionally did not report those earnings, they can charge you with an overpayment. This overpayment has significant penalties and disqualifies you from benefits in the future. It is better to be honest.