

Loan-Out Corporations and Unemployment Insurance Benefits In California

Loan-Out Corporations

A loan-out corporation is formed by an actor or recording artist or other talent in the entertainment industry who wants to do business for their personal services under a corporate entity's protection. The loan-out corporation becomes the employer of the artist and enters into contracts with producers, production companies, etc. on behalf of the artist. The individual who operates through a loan-out corporation is the sole shareholder and employee of the corporation.

When working, and depending on the contract that is negotiated, the employee is either an employee of the production company or the loan-out corporation. In the latter instance, the loan-out corporation contracts out the employee's services to the production company.

Can a Person File for Unemployment Insurance Benefits if Working Through a Loan-Out Corporation?

Individuals who are unemployed or working less than full-time may file for unemployment insurance (UI) benefits, including individuals who worked through a loan-out corporation.

What Information Must Be Provided When Filing For a UI Claim When Working Through a Loan-Out Corporation?

- Your social security number is always needed when filing a UI Claim.
 - It is not necessary to provide the tax identification number of the loan-out corporation.
- The Name and Address of the Last Employer and the Last Day of Work is required.
 - If your last work was performed through the loan-out corporation, the loan-out corporation would be the last employer. List the name and address of the loan-out corporation, **not** the production company or payroll agency.
- Individuals will be asked for the names of all employers for whom they worked during the last 18 months, including employment through the loan-out corporation, and provide the approximate period of employment, approximate wages, and employers' names.
 - Failure to provide the information regarding the correct employers for the last 18 months, including any employment performed through the loan-out corporation may result in delays in processing the claim and receiving UI benefits.

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- Individuals will be asked if they are currently self-employed. An individual who works through a loan-out corporation is not considered self-employed for UI purposes; he or she is considered to be an employee of the corporation.

Reference: Section 621(a) of the California Unemployment Insurance Code.
<http://www.leginfo.ca.gov/calaw.html>

- Individuals will be asked if they are now, or if they have been in the last 18 months an officer of a corporation, a union, or the sole or major stockholder of a corporation.
 - Individuals who work through a loan-out corporation should answer “yes” to this question. They will also be asked to provide the name of the organization (the loan-out corporation) and their title or position.
 - Individuals will be scheduled for an eligibility interview as the law requires the Employment Development Department (EDD) to conduct a determination to establish whether the individual is unemployed within the meaning of Section 1252 of the California Unemployment Insurance Code when an employee is an officer of a corporation, union, or the sole or major stockholder of a corporation.

Reference: California Benefit Determination Guide.
http://www.edd.ca.gov/UIBDG/Total_and_Partial_Unemployment_TPU_110.htm

What Wages Should Be Reported on the Continued Claim Form?

- Individuals should report **all** gross earnings for services performed on their bi-weekly continued claim form, whether they worked directly for a production company or through the loan-out corporation. Unlike residual payments and holding fees, regular wages must be reported in the week in which the work is performed, not when received.

Should Residuals and Holding Fees Be Reported on the Continued Claim Form?

- Payments received for residuals and holding fees are considered wages for UI purposes and are deductible from the UI claim. Please refer to the link below for information about how to report these payments when filing for UI benefits.

Reference: Instructions to Claimants for Reporting Residual Payments and Holding Fees, DE 4005.
<http://eddi/C9/EDDMainLibrary/UI%20Branch%20Document%20Library/UI%20Training/Training%20Materials/Modules/WgsDed/WG-HO-02.pdf>

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Do I Have to Pay UI Taxes On Payments Received Through a Loan-Out Corporation?

- Individuals who work through a loan-out corporation should consult with their attorney or tax adviser for questions regarding their obligations and procedures for reporting unemployment taxes and other reporting requirements for the work performed through the loan-out corporation.
- Individuals may also refer to the California Employer's Guide, DE 44, to obtain information about complying with California payroll tax laws. The guide includes information about employment as an officer of a corporation or a sole shareholder/corporate officer.

Reference: California Employer's Guide, DE 44.

www.edd.ca.gov/pdf_pub_ctr/de44.pdf - 2010-02-09

- For additional information, individuals may refer to the Sole Shareholder/Corporate Officer Exclusion Statement, DE 459. The form includes a phone number to the EDD's Taxpayer Assistance Centers.

Reference: Sole Shareholder/Corporate Officer Exclusion Statement, DE 459.

www.edd.ca.gov/pdf_pub_ctr/de459.pdf - 2009-08-19