

REASONABLE ASSURANCE

What it is and how it applies to Unemployment Benefits

Reasonable assurance as defined by RCW 50.44.050 & 50.44.053 means that there is a written, verbal or implied agreement that the employee will perform services in the same or similar capacity immediately following a break or recess period as he/she did prior to the break or recess period. A person shall not be deemed to be performing services “in the same capacity” unless those services are rendered under the same terms or conditions of employment in the ensuing year as in the first academic year or term.

For example, a bus driver in your district begins the school year and performs his/her job duties as required by the school district. The district closes for specific break periods (i.e. winter, spring, summer). The Federal Unemployment Tax Act and Washington State recognize these educational institutions breaks as common occurrences and assume the stance of “reasonable assurance” that the bus driver will return to his/her exact working conditions after the break period that he/she held before the break occurred. A specific contract is not required. The school district, in good faith, maintains an expectation with the employee to return to their same position after the scheduled academic break period ceases.

In further example of this same bus driver, reasonable assurance would not exist if employment conditions were altered by means of hours, pay, position or other terms as determined by law. Since reasonable assurance maintains the assumption of returning to work in the same capacity pre and post breaks, such changes to the job duties may negate this assurance. To offer further clarity the bus driver starts the year as a full time regular driver, but after the break returns as an on-call substitute driver. The job he/she held before the break has changed and therefore the reasonable assurance of returning to his/her same job may not apply. Consequently, an unemployment claim by the bus driver may be upheld by Washington State Employment Security Department.

Reasonable assurance and unemployment benefit eligibility are unique in the educational institution realm as the established break periods held by school districts present special circumstances for which there are specific rules defined by the statute. The Federal Tax Act states that individuals working for educational institutions are ineligible for unemployment benefits during traditional break periods where a **reasonable assurance** exists. If a reasonable assurance does not exist for an employee of the educational institution, then the employee may be eligible to receive unemployment benefits should they apply.

Per RCW 50.44.050 “it is the intent of the legislature that the employment security department continue to make determinations of educational employees' eligibility for unemployment compensation for the period between academic years or terms based on a finding of reasonable assurance that the

employee will have employment for the ensuing academic year or term and that the determination in each employee's case is made on an individual basis, consistent with federal guidelines. This determination must take into consideration contingencies that may exist in fact in an individual case. The 1998, chapter 233 amendment to RCW [50.44.053](#) is not intended to change the practice used by the employment security department when determining reasonable assurance. If, during fact-finding, there is a disagreement about whether an individual has reasonable assurance, the educational institution must provide documentation that reasonable assurance exists for that individual." [1998 c 233 § 1.]

Reasonable assurance can be proven at an unemployment hearing when the educational institution or school district gives the employee notification of the expectation to return to the same position held prior to a scheduled academic break period. This notification can be established via an employee work history, an email(s) between a hiring authority and an employee or documentation of a meeting in which the expectations of the coming year are discussed. Additionally, reasonable assurance can be established through the use of a reasonable assurance letter. Though not required this documented confirmation of reasonable assurance between the employer and the employee can help to reduce the number of unemployment claims filed.

A reasonable assurance letter may be used by an educational institution to document with an employee their job held prior to a stated break period and that it will be available to them after the break period in the same or similar capacity. The terms and conditions of employment might include wages, contract duration, number of hours of work and general work conditions. Though details such as specific work location or assignment can be different, to be considered for reasonable assurance the same work type and conditions must be established.

Reasonable assurance cannot be upheld if an employee position is altered in such a fashion that it changes the original terms and conditions.

In situations where educational employees have multiple employers, they cannot use wages from employers from whom they do have reasonable assurance for their unemployment claim. However, they can use wages from employers from whom they do not have reasonable assurance.

Another classification of employees that may be involved in your District is employees involved in coaching sports. These employees have a special disqualification that is a bit broader. Like the rest of educational institution's employees, to be disqualified they must have had reasonable assurance; however, the period of disqualification is for any week that begins during a period between sports seasons. If your football coach only works during football season, wages you paid him/her will not be able to be used for him/her to establish an unemployment claim for the period directly following the end of the season until the next season begins. The same type of proof of reasonable assurance will be required as is required for the basic employee.

Educational institutions employ a variety of job classification types and reasonable assurance can be established with the various employee types assuming the factors for pre and post break employment are upheld in the same capacity. This applies to both regular and substitute employees as well as coaches. For more information on reasonable assurance, you may also visit the Employment Security Department at <https://esd.wa.gov/unemployment/educational-employees> .