

## Best Practices Tip Reasonable Assurance

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As an Educational Institution employer, the greatest opportunity for reducing the payment of unemployment insurance benefits is when “reasonable assurance” is understood and properly utilized.

### What is Reasonable Assurance?

- It is not an absolute guarantee of employment. The different State Agencies administering claims for unemployment compensation generally define “reasonable assurance” as a *bona fide* offer of employment for the next academic term or year.
- Although jurisdictions might vary on the definition of *bona fide*, “reasonable assurance” exists when an employer has expressed its intention to employ a claimant in the same or similar capacity and will make a good faith effort to do so.
- “Reasonable assurance” applies to any employee of an Educational Institution, both professional and non-professional.
- The proper utilization of reasonable assurance requires an affirmative act on behalf of the Educational Institution employer signifying its intent to employ/rehire the claimant. Although some jurisdictions will recognize verbal, as well as written assurance of its intent, it is strongly recommended that any assurance of employment be given in writing and whenever possible be able to probe the “offer” by certification and/or written acknowledgment by the claimant.
- If properly utilized, employees of an Educational Institution who apply for unemployment benefits during the period between academic terms or years, and during customary and established vacation or holiday recess periods, will be ineligible to receive benefits.
- It’s important to note that, even in jurisdictions known to liberally interpret its statute in favor of employees, the statutory provisions involving “reasonable assurance” are generally interpreted in favor of Educational Institution employers.

### What are the cost savings?

In most jurisdictions, an Educational Institution employee that is earning an average weekly wage of \$600 would, if otherwise eligible, collect \$300 per week in unemployment benefits.

Realizing that the customary summer recess period is at least ten weeks, the potential cost of unemployment compensation would be \$3000. Multiply this figure by the number of employees for whom you can’t sustain “reasonable assurance” and you will realize the true financial impact.



## What should employers do?

Employers should be able to support and document that offers of reasonable assurance were based on sound judgment and reasonable in light of historical patterns, customary trends, and current statistical data involving:

- Overall employment
- Student enrollment
- Mandated programs
- Attrition
- Expansion or reduction of programs
- Active collective bargaining agreements
- Budgetary data
- Availability of funding



It's important to remember that offers of employment contingent upon fulfillment of certain preconditions may jeopardize an offer of reasonable assurance of employment unless it can be shown that the conditions are not likely to affect the claimant.

- With the exception of educational institution employees already protected by contract or tenure, employers should provide reasonable assurance to employees, both professional and non-professional, who can be given a “*bona fide*” offer of re-employment to the same or similar capacity for the ensuing academic term or year.
- Employers should provide written notice to each individual chosen to receive reasonable assurance. It is best to give reasonable assurance notices, in person, and as early as possible, preferably prior to the end of the school year.
- The opportunity to offer reasonable assurance of re-employment, however, does not end on the last day of school. Reasonable assurance can be provided at any time up to the commencement of classes in the new academic year.
- In the event that the reasonable assurance letters cannot be given in person, but must be mailed, it is advised that you mail the letters certified return receipt requested. The expense of mailing will be far less than the potential cost of unemployment benefits if notification of reasonable assurance cannot otherwise be proven.
- The date of notification is important. If at all possible, employers should have the employee receiving the reasonable assurance, receive it in person, sign for it and date the written notification of reasonable assurance. If the employee refuses to sign the letter of reasonable assurance, the individual giving the notice should acknowledge the refusal, as “employee refused to sign,” and then sign and date the letter personally.

Remember that the burden of proof rests with the employer to show that reasonable assurance was given. If a challenge is made to an offer of reasonable assurance and you are unable to establish that the offer is *bona fide*, the potential cost for unemployment compensation can be considerable.

In addition, if the employee is not employed at the commencement of the next academic term or year, most jurisdictions provide by statute the remedy of retroactive benefits for that period of disqualification served as a result of the initial offer of reasonable assurance.

## Adjunct Personnel

Reasonable assurance laws are generally applied to adjunct personnel (part times employees hired on a contractual basis) when determining eligibility or ineligibility for unemployment benefits since they operate in an instructional capacity.

The Workforce Solutions claims staff should be able to protest a claim for adjunct personnel just like that of a regular professor, if the person has reasonable assurance of employment between terms. Supporting documentation will be necessary, both at the claim level and the hearing level, in establishing reasonable assurance. This can be provided in the form of a letter, contract, or evidence of past work history that demonstrates the person continued to be employed each successive term in a similar manner in the past.



Adjunct personnel are often times able to collect partial benefits during the school year, if they are not teaching a full class load, since their wages do not equal full time work. States have different regulations regarding adjunct personnel:

- some can be protested under reasonable assurance for the summer months
- some can be protested only if there is a valid contract in place *before* the end of the school year or semester
- some are considered laid off at the end of their contract period (no exceptions)

Any situation that could be protested under reasonable assurance, such as adjunct personnel, requires that the employer be considered a school employer or a nonprofit, such as a city, acting in conjunction with a school board. Very few states have regulations that will disqualify employees during the reasonable assurance period if the employer is a for-profit corporation.

## Employer Best Practices

In order to safeguard against being charged unemployment compensation benefits for individuals who have been given reasonable assurance or are in adjunct status, it is important to provide the following information to Workforce Solutions:

- A copy of the completed Reasonable Assurance List Format Spreadsheet
- A copy of all Reasonable Assurance letters (notice of intent to employ/rehire)
- A copy of the School Calendar for the upcoming school year/term
- Class enrollment dates and times
- A copy of the Adjunct Personnel's contract (when available)

Workforce Solutions will notify and offer the letter of reasonable assurance to the State Agency on your behalf and will audit your account to ensure that you are not charged for unemployment compensation beyond the date of notification of reasonable assurance of re-employment.

If you have questions or would like sample letters of reasonable assurance and the List Format Spreadsheet, please contact your Workforce Solutions Unemployment Insurance Consultant.