



# SCHOOL & COLLEGE LEGAL SERVICES OF CALIFORNIA

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## LEGAL UPDATE

March 19, 2020

**To:** Superintendents, Member School Districts (K-12)  
**From:** Steven P. Reiner, Associate General Counsel *SPR*  
**Subject:** **Classified and Certificated Employees – Notification of Reasonable Assurance of Employment for 2019-2020**  
**Memo No. 17-2020**

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\*THIS IS AN IMPORTANT LEGAL UPDATE BUT IS NOT RELATED TO COVID-19

### **Classified Employees**

In order for classified employees who do not work during the summer to be held ineligible for unemployment benefits, Unemployment Insurance Code Section 1253.3 requires that districts send these employees a “letter of reasonable assurance” no later than 30 days prior to the last day of the academic year or term.<sup>1</sup> The Code requires very specific language. The attached sample letters comply with Code requirements.

**Letter No. 1** is a sample letter for classified employees who work less than 12 months.

**Letter No. 2** is a sample letter for categorical, special, or federally-funded classified employees who work less than 12 months.

**Letter No. 3** is a sample letter for classified substitutes to be used if the district has a classified substitute list.

### **Certificated Employees**

It is generally not necessary to send letters of reasonable assurance to regular certificated or administrative employees because they are defined as

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<sup>1</sup> Unemployment Insurance Code Sec. 1253.3, subd. (h) refers to the “end of the academic year or term” not the last day of service for the employee.



“professional” employees with either explicit or implied contracts that serve as a reasonable assurance of re-employment.

### **Substitute Teachers**

Substitute teachers, particularly if they are on a list maintained by the district, do not have contracts and we recommend that they also be sent a letter of reasonable assurance no later than 30 days prior to the last day of school. Each district should send letters to the substitutes on their substitute list and not rely on the county office of education to produce letters of reasonable assurance on its behalf. If a county office of education also employs certificated substitutes for its own programs, those county offices of education should also send a notice of reasonable assurance to those substitutes.

**Letter No. 4** is a sample letter to be used for substitute teachers who are on a substitute list.

### **Schools Operating “Year-Round”**

A recent California Supreme Court decision may impact districts with full-time year-round schools. The Court held that under Unemployment Insurance Code Section 1253.3, substitute teachers and other qualifying school employees may be eligible for unemployment benefits if they do not work during a district’s summer session, and, the summer session constitutes a “regular term.” As defined by the Court, a regular term occurs “if the summer session, as a whole, resembles the other academic terms of the school year in terms of enrollment, staffing, budget, instructional program, or other objective characteristics.”<sup>2</sup>

The Court clarified that “if a school district with conventional fall and spring semesters also offers a two-week summer session with limited offerings and limited enrollment, the summer session would not be a ‘regular’ term. By contrast, if a school district offers a summer session that resembles the fall and spring semesters in terms of enrollment, staffing, budget, and the instructional program offered, then the summer session would qualify as a ‘regular’ term.” *Id.* If challenged on these grounds, a district should be prepared to demonstrate that these factors differ for its spring vs. summer session.

If you question whether your district’s summer session meets the Court’s description of a “regular term,” it is recommended that you issue the letter of reasonable assurance as a precaution.

### **General**

If an employee receives a letter of reasonable assurance and later files a claim for unemployment insurance with the Employment Development Department (“EDD”), the district will have to produce a copy of the letter of reasonable assurance that was given to that employee. We recommend scanning or saving a copy of every letter of reasonable assurance given to each employee so it can later be produced to EDD if necessary.

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<sup>2</sup> *United Educators of San Francisco etc. v. California Unemployment Ins. Appeals Bd.* (2020) 8 Cal.5th 805.



Districts should also be aware that if the economic terms and conditions of an employee's work change significantly (more than 20% reduction in income) after the recess between school terms, the notice of reasonable assurance does not bar the employee from collecting unemployment insurance. For instance, if a summer layoff results in a reduction to a part-time position, the individual may be eligible for unemployment benefits.

Please contact our office with questions regarding this Legal Update or any other legal matter.

*The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.*

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