



SCHOOL & COLLEGE LEGAL SERVICES OF CALIFORNIA

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LEGAL UPDATE

March 19, 2021

**To: Superintendents/Presidents/Chancellors, Member Community
College Districts**

From: Steven P. Reiner, Assistant General Counsel *SPR*

**Subject: Classified Employees – Notification of Reasonable Assurance
of Employment for 2021-2022
Memo No. 07-2021(CC)**

Classified Employees

In order for classified employees who do not work during the summer to be held ineligible for unemployment benefits, Unemployment Insurance Code (“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.¹ 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 college district has a classified substitute list.

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 should produce a copy of the letter of reasonable assurance that was given to that employee. For this reason 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.

¹ 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.



Community College 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 academic terms, the notice of reasonable assurance does not bar the employee from collecting unemployment insurance. For instance, if the likely number of days a regular substitute is likely to work decreases by more than 20%, that substitute may be eligible for unemployment benefits for the summer.

Schools Operating "Year-Round"

The California Supreme Court held that under Unemployment Insurance Code Section 1253.3, K-12 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.*"²

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 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.* While this ruling was directed at K-12 school districts, if a classified community college employee is not employed during the summer and files a claim for unemployment benefits with EDD, the district should be prepared to provide EDD with data related to the difference in enrollment, staffing, budget, and instructional programs offered between spring and summer sessions to demonstrate that the summer session is not a "regular term" as outlined by the Court.

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.

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

(1) **SAMPLE LETTER OF REASONABLE ASSURANCE FOR CLASSIFIED EMPLOYEES WHO WORK LESS THAN TWELVE MONTHS.**

(Letterhead)

Date:

To: *(name of employee)*

Job Title: *(job title of employee)*

From: *(name and title of personnel official)*

Subject: NOTIFICATION OF REASONABLE ASSURANCE FOR 2021-2022

The *(name of the community college district)* (“District”) hereby notifies you that you have Reasonable Assurance of returning to our employ in the 2021-2022 academic year. It is anticipated that the 2021-2022 academic year will begin on or about *(date)*. Your expected start date is *(enter date)*.

You may, nevertheless, file a claim for unemployment insurance benefits at the end of the academic year or term. Your entitlement to benefits will be determined by the Employment Development Department and not the District. If you are not offered an opportunity to perform services in the next academic year or term, you may be entitled to retroactive unemployment benefits if you are otherwise eligible and you file a claim for each week benefits are claimed, and if you file a claim for the benefits within 30 days after the start of the next academic year/term.

You may file a claim for unemployment insurance online at www.edd.ca.gov. Please use the following District address if you submit a claim:

(Name of Community College District)

(District Office Address)

This letter is the only official and authorized notification on which you should rely when determining your employment status for the next year. Please complete the attachment below and return that portion of this letter to the District personnel office no later than June _____.

_____ Yes, I will be returning in the 2021-2022 academic year.

_____ No, I do not plan to return for the 2021-2022 academic year and consider this my Notice of Resignation from employment with the District. If resigning, please indicate reason:

Signature

Date

(2) **SAMPLE LETTER OF REASONABLE ASSURANCE FOR CATEGORICAL, SPECIAL OR FEDERALLY-FUNDED CLASSIFIED EMPLOYEES WHO WORK LESS THAN TWELVE MONTHS.**

(Letterhead)

Date:

To: *(name of employee)*

Job Title: *(job title of employee)*

From: *(name and title of personnel official)*

Subject: NOTICE OF END OF ACADEMIC YEAR FUNDING/
REASONABLE ASSURANCE

This is to notify you that as of *(indicate end of academic year)* there will be *(no)* work *(until funds)* for the next academic year *(have been approved)*. At this time we expect to rehire you when school opens next fall. Notice of recall to work shall be by seniority and as available funds become verified.

(Optional - only include if correct) Please note that your medical insurance premiums will continue to be paid by the District through the summer months.

You may, nevertheless, file a claim for unemployment insurance benefits. Your entitlement to benefits will be determined by the Employment Development Department and not the District. If you are not offered an opportunity to perform services in the next academic year or term, you may be entitled to retroactive unemployment benefits if you are otherwise eligible and you file a claim for each week benefits are claimed, and if you file a claim for the benefits within 30 days after the start of the next academic year/term.

You may file a claim for unemployment insurance online at www.edd.ca.gov. Please use the following District address if you submit a claim:

(Name of Community College District)

(District Office Address)

This letter is the only official and authorized notification on which you should rely when determining your employment status for the next academic year or term.

(3) SAMPLE LETTER OF REASONABLE ASSURANCE FOR CLASSIFIED SUBSTITUTES.

(Letterhead)

Date:

To: *(name of employee)*

From: *(name and title of personnel official)*

Subject: NOTIFICATION OF REASONABLE ASSURANCE FOR 2021-2022

The *(name of community college district)* ("District") hereby notifies you that you have Reasonable Assurance of returning to work with the District as one of our Classified Substitutes for the 2021-2022 school year, which is anticipated to begin on or about *(date)*. You can be assured that you will be called and offered substitute assignments after the start of the new school year when needed, if you choose to remain on our substitute list. As in the past, the District will experience a Thanksgiving recess, winter recess, and a spring recess during the 2021-2022 school year. Again, following each of these recesses you will be called and offered assignments as needed.

You may, nevertheless, file a claim for unemployment insurance benefits. Your entitlement to benefits will be determined by the Employment Development Department and not by the District. If you are not offered an opportunity to perform services in the next academic year or term, you may be entitled to retroactive unemployment benefits if you are otherwise eligible and you file a claim for each week benefits are claimed, and if you file a claim for the benefits within 30 days after the start of the next academic year/term.

You may file a claim for unemployment insurance online at www.edd.ca.gov. Please use the following District address if you submit a claim:

(Name of Community College District)

(District Office Address)

This letter is the only official notification and authorized notification on which you should rely when determining your employment status for the next year. Please complete the attachment below and return that portion of this letter to the college's personnel office no later than June ____.

_____ Yes, I wish to accept this offer of continuing work as a classified substitute.

_____ No, I do not wish to accept this offer of continuing work as a classified substitute.

Reason: _____

Signature

Date