



# SCHOOL & COLLEGE LEGAL SERVICES OF CALIFORNIA

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## LEGAL UPDATE

March 19, 2021

**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 2021-2022**  
**Memo No. 10-2021**

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

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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.



## **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”**

Employees working at schools that operate on a year-round basis may be treated differently in terms of qualifying for benefits under Unemployment Insurance Code Section 1253.3. Substitute teachers and other qualifying school employees may be eligible for unemployment insurance benefits if they do not work during a district’s summer session, and the summer session constitutes a “regular term.” 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 California Supreme Court held 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 an employee files a claim for unemployment insurance benefits during the summer session, the district should be prepared to demonstrate that these factors differ between spring and summer terms.

If you question whether your district’s summer term meets the court’s description of a “regular term,” it is recommended that you issue the letter of reasonable assurance to qualified employees 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 should be prepared to produce a copy of the letter of reasonable assurance 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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(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 District)* (“District”) hereby notifies you that you have Reasonable Assurance of returning to our employ in the 2021-2022 school year. It is anticipated that the 2021-2022 school year will begin on or about *(date)*. You will be expected to return to work on *(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](http://www.edd.ca.gov). Please use the following District address if you submit a claim:

*(Name of 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 \_\_\_\_\_.

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\_\_\_\_\_ Yes, I will be returning in the 2021-2022 school year.

\_\_\_\_\_ No, I do not plan to return for the 2021-2022 school year and consider this my Notice of Resignation from employment with the District. If resigning, please indicate the 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 SCHOOL YEAR FUNDING/  
REASONABLE ASSURANCE

This is to notify you that as of *(indicate end of school year)* there will be *(no)* work *(until funds)* for the next school 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 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](http://www.edd.ca.gov). For the purpose of unemployment claim filing, the mailing address of record you should use is:

*(Name of 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 2019-2020

The *(name of school district)* (“District”) hereby notifies you that you have Reasonable Assurance of returning to work in this 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, this 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 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](http://www.edd.ca.gov). Please use the following District address if you submit a claim:

*(Name of 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 District personnel office no later than June \_\_\_\_.

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\_\_\_\_\_ Yes, I wish to accept this offer of continuing work as a substitute.

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

Reason: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

(4) **SAMPLE LETTER OF REASONABLE ASSURANCE FOR SUBSTITUTE TEACHERS.**

*(Letterhead)*

Date:

To: *(name of employee)*

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

Subject: NOTIFICATION OF REASONABLE ASSURANCE FOR 2021-2022

The *(name of school district)* (“District”) hereby notifies you that you have Reasonable Assurance of returning to work with the District as one of our Substitute Teachers for the 2021-2022 school year for a comparable or larger number of days as past years. The 2021-2022 school year is anticipated to begin on or about *(date)*. You can be assured that you will be called and offered substitute teaching 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 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](http://www.edd.ca.gov). Please use the following District address if you submit a claim:

*(Name of 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 District personnel office no later than June \_\_\_\_.

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\_\_\_\_\_ Yes, I wish to accept this offer of continuing work as a substitute teacher.

\_\_\_\_\_ No, I do not wish to accept this offer of continuing work as a substitute teacher.

Reason: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date