



SCHOOL & COLLEGE LEGAL SERVICES OF CALIFORNIA

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LEGAL UPDATE

March 14, 2023

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 2023-2024**
Memo No. 04-2023

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”) § 1253.3 requires that districts send those 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 district has a classified substitute list.

Certificated Employees

It is 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.

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.



Substitute Teachers

Substitute teachers, particularly if they are on a list maintained by the district, do not have contracts and we recommend they 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 unemployment benefits during the summer. Substitute teachers and other qualifying school employees may be eligible for unemployment insurance benefits if they are not employed during a district’s summer session, and the summer session resembles a “regular term.” A summer session is deemed a “regular term” if it as a whole resembles the other academic terms of the school year in which it maintains consistent enrollment, staffing, budget, instructional programs, or other objective characteristics.²

The California Supreme Court held, “*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.*) In response to this type of claim, districts should be prepared to demonstrate that these factors differ between fall/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

Some employees will file for unemployment benefits with the Employment Development Department (“EDD”) after receiving a letter of reasonable assurance. The Code requires they be told that filing for benefits is an option. In response to such a claim, the district should be prepared to produce a copy of the letter of reasonable assurance issued to the employee. For this reason it is important to scan or save a copy of each letter of reasonable assurance given to each employee so it can be produced to EDD.

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



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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 2023-2024

The *(Name of the District)* (“District”) hereby notifies you that you have Reasonable Assurance of returning to our employ in the 2023-2024 school year. It is anticipated that the 2023-2024 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 or 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 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 2023-2024 school year.

_____ No, I do not plan to return for the 2023-2024 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 work for the next school year. 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 or term.

You may file a claim for unemployment insurance online at 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 2023-2024

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 2023-2024 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 2023-2024 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 or 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 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 ____.

_____ 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 2023-2024

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 2023-2024 school year for a comparable or larger number of days as past years. The 2023-2024 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 2023-2024 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 or 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 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 ____.

_____ 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