



LEGAL SERVICES

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LEGAL BULLETIN

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Eligibility for Unemployment Benefits Following a Reduction in Force

Standards for Eligibility

A school employee is not eligible to receive unemployment benefits if they have a “reasonable assurance” that they will perform comparable services for an educational institution in the upcoming academic year or term. See Cal. Unemployment Ins. Code §1253.3(b). The term “school employee” includes all school employees, including education support professionals (ESPs) and other classified staff, and the rules for school employees described in this advisory apply to all Pre-K-12 and community college staff, including ESPs and other classified staff.

A “reasonable assurance” exists only if the economic terms and conditions of the job offered in the second academic period are not substantially less than the terms and conditions of the job in the first academic period. See Interpretation of “Reasonable Assurance” in §3304(a)(6)(A), Federal Unemployment Tax Act, Unemployment Insurance Program Letter No. 5-17 (U.S. Dep’t of Labor Dec. 22, 2016).

A RIF’d permanent or probationary teacher who has priority for employment as a substitute does not have a “reasonable assurance” of reemployment. Because an assignment as a substitute is at a reduced pay rate and reduced frequency, it is “not reasonably in the same capacity” as the regular teaching assignment from which the individual was laid off. Therefore, the individual is eligible for unemployment benefits starting in the summer immediately after the layoff. See *Carter v. Beverly Hills USD*, Cal. Unemployment Ins. Appeals Bd. No. P-B-461 (April 12, 1988) (precedent benefit decision).

In addition, a part-time, hourly community college instructor has no “reasonable assurance” of reemployment and is therefore *eligible* for unemployment benefits where the person’s position is “contingent on enrollment, funding, or program changes.” *Cervisi v. Unemployment Ins. Appeals Bd.*, 208 Cal.App.3d 635 (Ct. App. 1989).

However, a substitute teacher does have a “reasonable assurance” of reemployment where the substitute is offered and has accepted employment as a substitute for the following year, because that is reasonably the same capacity as their former position. A substitute who applies for benefits over the summer in this circumstance is therefore not eligible for unemployment benefits. *Long Beach Unified Sch. Dist. v. Unemployment Ins. Appeals Bd.*, 160 Cal.App.3d 674 (Ct. App. 1984).

A school employee in a categorically funded position has a “reasonable assurance” of reemployment when the employee is given notice that the school district expects to rehire him/her/them when funds are approved, and for several years, the employee had been released and reemployed when funds became available. *Russ v. Unemployment Ins. Appeals Bd.*, 125 Cal.App.3d 834 (Ct. App. 1981).

For districts that effectively operate year-round, an “academic term” may include a summer school session if, based on objective criteria, that summer session is a “regular” term comparable to other academic terms that comprise the school year – that is, 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. *United Educators of San Francisco v. California Unemployment Ins. Appeals Bd.*, 8 Cal.5th 805 (Cal. 2020). Thus, in the unusual case where a summer term constitutes a full and regular academic term, a school employee may be eligible for unemployment benefits in the summer if they did not receive a reasonable assurance of employment for that regular summer term, and if other eligibility criteria are met.

Completing the Unemployment Insurance Application

Unemployment Insurance (“UI”) benefits are administered by the California Employment Development Department (“EDD”). A terminated employee should apply for UI benefits as soon as they stop working (e.g., immediately at the end of the school year). The application can be completed online. For information on how to apply for benefits, go to the EDD website: http://www.edd.ca.gov/Unemployment/Filing_a_Claim.htm.

Frequently asked questions and answers regarding the application include the following:

- Question 25(g) asks for a brief explanation why “you are no longer working for your very last employer.” If you were part of a RIF, the answer is “layoff” or “reduction in force.” If you were non-reelected or denied regular status, the answer is “let go at the end of academic year, denied permanent status”, or words to that effect. If you resigned after being told you would be non-reelected, the answer is, “Resigned, after being told I would be fired if I did not resign. No misconduct involved.”
- Question No. 26 asks if the applicant is out of work because of a “trade dispute.” The answer is “no” unless you are out of work due to a strike (note that voluntary strikers are generally disqualified from receiving UI benefits).

- Question 27 is specifically for school employees and the first question is confusing: “Are you currently working for or do you expect to work for any school...or perform[] school-related work?” If you have been laid off and the school year has ended, the answer is “no.”
- Question 28 asks if you expect to return to work for any former employer. If you are on a recall list after having been RIF’d and you intend to return to that district if and when recalled, the answer is “yes, but only if recalled from layoff.” If you answer “yes” you should write in, “on a recall list from layoff, but no guarantee of employment” or words to that effect.
- Question 30(a) and (b) ask for your union name and local number. The answer is the name of the *local chapter*, not CTA. As you know, there is no “local number” for CTA chapters, so either write “N/A” in response to Question 30(b) or leave it blank. When completing your application online, you may be unable to leave this answer blank or use alphabetical characters. In that case, you can type “0000.”
- Question 30(d) asks if “your union finds work for you.” The answer is “no.”
- Question 30(e) asks if “your union controls your hiring.” The answer is “no.”
- Question 30(f) asks, “are you registered with your union as out of work?” The answer is “no.”

Information regarding how EDD calculates your benefit amount can be found using the following links:

UI benefit calculator - <https://edd.ca.gov/Unemployment/UI-Calculator.htm>

UI benefit table - https://edd.ca.gov/pdf/pub_ctr/de1101bt5.pdf

How UI benefits are calculated - https://edd.ca.gov/pdf/pub_ctr/de8714ab.pdf

Filing an Appeal

If the EDD denies a claim for benefits, you may appeal the denial. For information on how to appeal a denial of benefits, go to the EDD Appeals website: <https://cuiab.ca.gov/wp-content/uploads/sites/13/documents/cuiabAppealsProcedureManual.pdf>. The appeal letter should be submitted to the address on your Notice of Determination within 30 calendar days from the date of the decision. Cal. Unemployment Ins. Code §1328. If you miss the 30-day deadline, file your appeal anyway and explain why your appeal is filed late. You must show good cause for filing a late appeal or your appeal may be dismissed. Cal. Unemployment Ins. Code §1328.

The California Office of Appeals will notify you of the date, time and place of your appeal hearing. Cal. Code Regs. tit. 22, §5056. You have the right to review all records affecting the appeal before your hearing begins. *Id.* §5062(d)(i). You may obtain copies of EDD’s file on your case ahead of time by requesting it via letter, which will help you prepare for the hearing.

An Administrative Law Judge (“ALJ”) will conduct the hearing. Cal. Code Regs. §5062. All witnesses testify under oath and testimony is recorded and subject to cross-examination. *Id.* §5062(c)-(d). If you disagree with the decision of the ALJ you may appeal to the California Unemployment Insurance Appeals Board. No testimony or new evidence is taken at this stage unless permitted by the Board. Cal. Code Regs. tit. 22, §5102(b). While any appeal is pending, you must continue to submit your claim forms to EDD. If the ALJ decides you are eligible, you will only be paid for the weeks that you sent in claim forms and met all other eligibility requirements.

For a more detailed overview of UI benefits, you may wish to refer to information published by Legal Aid At Work, which can be found at the following links:

<https://legalaidatwork.org/factsheet/unemployment-insurance-overview/>

<https://legalaidatwork.org/factsheet/unemployment-insurance-are-you-eligible/>

<https://legalaidatwork.org/factsheet/how-to-appeal-an-administrative-law-judges-decision-to-the-cuiab-board/>

**** Please note that this Bulletin does not create an attorney-client relationship, nor constitute legal advice on which you should rely. Unemployment benefits are not administered by your school district or CTA chapter, and CTA does not provide representation in unemployment proceedings. Any questions about unemployment benefits should be directed to EDD (tel. 800-300-5616, or online at <https://www.edd.ca.gov>). ****