

Updates on Reasonable Assurance

As mentioned in our April 2019 edition of *Sound Advice*, there were changes to reasonable assurance that impacted the 2019-2020 school year. Below is a truncated recitation of what was noted in the aforementioned edition, including our suggested language for reasonable assurance letters at the time considering the murky guidelines promulgated by the Employment Security Department (ESD). ***We are pleased to report back that in every instance where our suggested language was used, both ESD and The Office of Administrative Hearings (OAH) found that the District had complied with the new requirements.***

We now face a new uncertainty with the impact of the coronavirus/COVID-19 on reasonable assurance. As of right now, the Unemployment Pool is advising its member districts to proceed as usual with the reasonable assurance letters for the 2020-2021 school year. The big unknown at this time is whether the 2019-2020 reasonable assurance letters that cover the summer 2020 break will end COVID-19 related unemployment benefits already granted come summer. We will process claims for workers who have reasonable assurance over the summer 2020 school break as any other year. Currently, there is no federal, state, or city level restriction on schools for September 2020 onward.

A virtual roundtable is scheduled for May 12, 2020 to discuss this in greater detail that will offer a question and answer session. [Click here to RSVP and register for the event.](#)

Overview of Changes in Reasonable Assurance as of April 2019

The key changes impacting school districts were a three-part test to determine whether school employees are eligible for unemployment compensation during school breaks:

- Are there prerequisites to employment?
- Does the employee have a contract?
- Does the employee have reasonable assurance?

The tests are complex. The overall goal, though, remains one of determining whether it is likely the school will employ the person after the break and, if so, whether the work is similar to the work the person performed before the break. If the answer is “no” to any of the tests or if the requirement is not met, the next requirement must be addressed. Following is an explanation of the tests:

Test One Requirements

1. Offer is made by somebody with actual authority.
 - a. “There is a written, verbal, or implied offer of employment made by an individual with actual authority to offer employment.” [WAC 192-210-015\(2\)\(a\)](#).
2. Both the old (current term) job and new (next year term) job are in the same capacity.



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3. The employer must pay at least 90% of the wages it paid in the previous academic term. According to WASBO, the “employer cannot reduce employee’s wages by more than 10%.”

Test Two Requirement

1. Does the employee have a contract?

Test Three Requirement

1. Does the employee have reasonable assurance?

If the final answer is “no” to these tests/requirements, the employee can use the wages from educational employment to establish unemployment eligibility. Remember, it is the employer’s burden to show requirements are met.

Unemployment Pool’s Suggested Language

The below language be added to your reasonable assurance letters. Please consider this in conjunction with guidance from your own district when creating your reasonable assurance letters for the 2019-2020 school year and beyond.

We are pleased to notify you of reasonable assurance of continued employment with _____ for the 2019-2020 school year. It is highly probable that this employment will be in the same capacity as your current employment as a _____ with the same rate of pay and the same pattern of employment, including wages equaling at least 90%.

Questions

If you have questions about reasonable assurance, please contact the Puget Sound Unemployment Pool at (425) 917-7667.

Resources

We have compiled some resources if you are interested in more detailed information.

- U.S. Department of Labor: [Interpretation of “Contract” and “Reasonable Assurance” Section 3304\(a\)\(6\)\(A\) of the Federal Unemployment Tax Act](#)
- Washington State Employment Security Department: [Reasonable Assurance](#)