



SCHOOL & COLLEGE LEGAL SERVICES OF CALIFORNIA

*A Joint Powers Authority
serving school and college
districts throughout the
state.*

5350 Skylane Boulevard
Santa Rosa, CA 95403

Tel: (707) 524-2690
Fax: (707) 578-0517
santarosa@sclscal.org
www.sclscal.org

General Counsel
Carl D. Corbin

Attorneys
Jennifer Henry
Nancy L. Klein
Damara L. Moore
Jennifer E. Nix
Steven P. Reiner
Kaitlyn A. Schwendeman
Leah M. Smith
Loren W. Soukup
Erin E. Stagg

Of Counsel
Robert J. Henry
Frank Zotter, Jr.

LEGAL UPDATE

March 2, 2022

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 2022-2023**
Memo No. 09-2022

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.



School & College Legal Services of California
Tel: (707) 524-2690 Fax: (707) 578-0517
www.sclscal.org

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.

© 2022 School and College Legal Services of California

All rights reserved. However, SCLS grants permission to any current SCLS client to use, reproduce, and distribute this Legal Update in its entirety for the client's own non-commercial purposes.