

Notices of Reasonable Assurance and Unemployment Benefits

NOTICES OF REASONABLE ASSURANCE FOR ACADEMIC YEAR EMPLOYEES

Each year, school districts should provide their 9 and 10-month employees (“academic year employees”) with a notice of reasonable assurance of continued employment for the next academic year on or before those employees’ last working day for the current academic year. Providing this notice complies with Wis. Stat. § 108.04(17) which provides that a school district employee who performs services for an educational institution is ineligible for unemployment benefits during the period between two successive academic years so long as there is “reasonable assurance” that the employee will perform such services in the next academic year.

Teachers and administrators who have individual contracts for next school year generally have reasonable assurance of employment for the next school year through their contracts and do not need to receive separate notices of reasonable assurance. However, academic year support staff employees, including paraprofessionals, custodians, bus drivers, secretaries, coaches, and substitute staff, including substitute teachers and substitute support staff, should receive notices of reasonable assurance each year.

In order for a notice of reasonable assurance to be effective, the notice must state that the employee is reasonably assured of a reasonably similar position next year, and should cite specifically to Wis. Stat. § 108.04(17). However, the notice should also expressly state that it is not a contract, and that positions, wages, and other terms and conditions of employment are subject to change by the district.

The notice should contain the employee’s final date of employment for this academic year. For employees that are currently on temporary layoff or otherwise not performing services for the district (even if such employees are receiving full or partial pay from the district during this period of time), the notice should provide the final date of the current academic year. Due to continued uncertainty arising from the current state public health emergency’s impact upon the start date for employment next school year, the notice should not include a specific date on which the employee is expected to start work for the next academic year.

If an employee applies for unemployment benefits after receiving a notice of reasonable assurance, the Department of Workforce Development (DWD), the state agency that administers unemployment benefits, will send the district a copy of the DWD Wage Verification/Eligibility Report to complete. When completing that report, the district should inform DWD that the employee is a school-year employee and also provide DWD with a copy of the notice of reasonable assurance that was sent to that employee. Ordinarily, this will be sufficient for DWD to determine that an employee is ineligible for unemployment benefits over the summer.

RECENT CHANGES TO UNEMPLOYMENT BENEFITS

Recently there have been several changes to federal and state law regarding unemployment benefits. See our article on that subject [here](#). Among the legal changes, through December 31, 2020, unemployment claims will generally not be attributed to an employer, and thus will not be “charged back” to a school district employer, so long as DWD determines that these claims are related to the state public health emergency. Right now, it is uncertain how DWD

will determine if a claim is related to the state public health emergency, beyond statements made by districts and individual claimants. Also, employees who are deemed eligible for benefits will get an additional \$600 per week through the week ending July, 25, 2020. So, some employees might be more interested in applying for benefits..

LINGERING ISSUES REGARDING UNEMPLOYMENT BENEFITS

Because districts do not make unemployment benefit eligibility determinations, districts should refrain from telling employees whether they will either receive or not receive unemployment benefits, or that they will receive a certain amount of unemployment benefits. Districts should also refrain from relying too strongly on the belief that certain individuals will be ineligible for such benefits.

There are still some lingering issues that DWD will likely need to decide:

- Does an academic year employee who is currently on layoff status due to the state public health emergency lose eligibility for unemployment benefits over the summer due to his/her receipt of a notice of reasonable assurance?
 - If such an employee is eligible, will the district be “charged back” for the cost of such benefits, or will DWD determine that such benefits were due to the public health emergency and thus not “charge back” the cost of such benefits to the district?
- Will an academic year employee be eligible for unemployment benefits in the fall if he/she is not hired back because the district starts school next year with virtual-only instruction?
 - Will such an employee’s unemployment benefits be retroactive back to the end of the current academic year?
 - Will such benefits be “charged back” to the district?

BEST PRACTICES FOR THE CURRENT SCHOOL YEAR

Notwithstanding these legal changes and questions, districts should continue to issue notices of reasonable assurance to their academic year employees this year, including to such employees who are on temporary layoff status or are not currently scheduled to work (regardless of whether such employees are currently receiving unemployment benefits), so long as districts reasonably anticipate hiring these employees back into a reasonably similar position for next academic year.

If an employee is receiving unemployment benefits at the time a district issues a notice of reasonable assurance, the district should strongly consider notifying DWD of such issuance. There is not a form for this, so that district should contact the DWD Employer Assistance Line for instructions on how to report this potential change in eligibility.

Districts are obligated to provide truthful information to DWD and should avoid changing their practices in an effort to maximize unemployment benefits for individuals while minimizing their own expenses for such benefits. DWD makes the initial determination as to whether an individual claimant is eligible for unemployment benefits based on the information it receives from the district and the individual claimant. Districts and individual claimants should be aware that DWD might investigate either party if either party provides DWD with inaccurate information, particularly if DWD believes such information to be potentially fraudulent. Additionally, the state could make further law changes to stop practices that appear to “take advantage of the system.”

A district likely can, in good faith, take the position that the individual claimant is out of work for reasons related to the public health emergency while also taking the position that the individual claimant is an academic year employee that received a notice of reasonable assurance. DWD will have to make an eligibility determination in light of these positions taken by the district and in light of other relevant information that DWD receives.

In the face of such uncertainty regarding how DWD will administer unemployment benefits for this summer, districts should generally follow their regular practice of issuing notices of reasonable assurance and apprise DWD of such issuance through the Wage Verification/Eligibility Report if academic year employees apply for

unemployment benefits. Districts should also review DWD’s eligibility determinations and, after consulting with legal counsel, determine whether to appeal any of those determinations.

The Boardman Clark School Law Practice Group is available to answer questions regarding notices of reasonable assurance, unemployment benefit eligibility, and any other issue related to this COVID-19 pandemic.

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