



School Law FYI

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The Latest Guidance on Reasonable Assurance Notices

Unemployment compensation issues continue to be tricky to navigate, and COVID-19 has thrown its own wrinkles into the mix. This article is intended to remind districts to issue notices of reasonable assurance at the end of this academic year.

Pursuant to Wis. Stat. § 108.04(17), school employees who work during the academic year but not during the summer are not eligible for unemployment insurance benefits during the summer if they have reasonable assurance of employment for the following school year. Therefore, notices of reasonable assurance should go out to all academic-year-only employees that are not under written contract for next school year, and to all substitute employees.

These notices should go out no later than the last workday of the current academic year, and these notices should expressly include the date of the last workday for the current academic year. These notices should specify that they are not a contract or a guarantee of future employment or a guarantee of employment in a specific position. Instead, the notice should state that the employee's position should be reasonably similar to the employee's current position concerning terms and conditions of employment.

The Department of Workforce Development (DWD) has generally been taking an employee-friendly approach to unemployment benefits during the pandemic. DWD granted unemployment benefits to some academic-year-only employees for last summer, notwithstanding the fact that those employees received notices of reasonable assurance. DWD reasoned, in part, that because schools were closed for in-person instruction by state order at the time the notices went out, districts could not give employees reasonable assurance that they would have employment in the fall because schools might still be closed for in-person instruction by state order.

To limit the potential risk that DWD will grant unemployment benefits to academic-year-only employees over this summer, districts' notices of reasonable assurance should specify the first day of work for the 2021-2022 school year. Even if the date might change between now and the start of school, saying "school will start on or about _____, 2021," might be a good idea. This is particularly important because unemployment benefit charging relief is not available to districts for this summer, unlike for last summer.

Schools are "direct payers" for unemployment benefits, meaning they normally have to reimburse the state dollar for dollar for their share of unemployment benefits. However, 2021 Wisconsin Law 4 created a presumption that all unemployment claims between March 15, 2020 and March 13, 2021 related to the COVID-19 pandemic (unless the employee's separation from employment was due to a voluntary quit, discharge for misconduct or substantial fault, or a labor dispute), therefore districts qualified for charging relief from DWD for the cost of these benefits. DWD should not charge districts for the cost of unemployment benefits for these employees during this period of time. However, 2021 Wisconsin Law 4 was passed in February 2021, which was generally after DWD initially approved claims for unemployment benefits from last summer. DWD has yet to indicate a process for districts to receive charging relief from DWD for these unemployment benefits, which in most cases will have to be retroactive. Although DWD has stated that charging relief will be applied automatically, it is possible that districts will still need to take some action to receive charging relief for these benefits, particularly districts that have already paid DWD for the cost of these

benefits. At a minimum, districts should keep careful records of claims paid between March 15, 2020 and March 13, 2021, to make sure they get fully reimbursed.

If you have questions about notices of reasonable assurance and unemployment benefits, please contact one of the authors of this article or a member of the Boardman Clark School Law Practice Group.

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