

LEGAL BULLETIN

FEBRUARY 2011

Eligibility for Unemployment Benefits Following a Reduction in Force

Standards for Eligibility

A school employee is not eligible to receive unemployment benefits if he/she has a “reasonable assurance” that he/she will perform comparable services for an educational institution in the upcoming academic year. See Cal. Unemployment Ins. Code § 1253.3(b).

A reasonable assurance exists only if the economic terms and conditions of the job offered in the second period are not substantially less than the terms and conditions of the job in the first period. Interpretation of “Reasonable Assurance” in § 3304(a)(6)(A), Federal Unemployment Tax Act, Unemployment Insurance Program Letter No. 4-87 (U.S. Dep’t of Labor Dec. 24, 1986).¹

A RIF’d permanent or probationary teacher who has priority for employment as a substitute does not have a “reasonable assurance” of re-employment. 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 he/she was laid off. Therefore, he/she is eligible for unemployment benefits. 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 re-employment, and is therefore eligible for unemployment benefits, where the 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 re-employment where she is offered and accepted employment as substitute for the following year, because that is reasonably the same capacity as her 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).

¹ This federal regulation expired in 1987 but may be used as guidance.

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

Filing an Appeal

Process for Application and Appeal

Unemployment benefits are administered by the California Employment Development Department (“EDD”). For information on how to apply for benefits, go to the EDD website: http://www.edd.ca.gov/Unemployment/Filing_a_Claim.htm.

If the EDD denies a claim for benefits, you may appeal the denial. The appeal letter should be submitted to the address on your Notice of Determination within 20 calendar days from the date of the decision. Cal. Unemployment Ins. Code § 1328. If you miss the 20-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 (2010). 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. If you are not able to obtain the file ahead of time, you are allowed to review the file immediately prior to the hearing in the EDD office.

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 Unemployment benefits, you may wish to refer to the guide published by the Legal Aid Society-Employment Law Center. It can be found at http://www.las-elc.org/docs/self-help/Unemployment_Benefits.pdf.

**** 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). ****