

Reasonable Assurance

Managing Unemployment Insurance Claims During School Recess Breaks

**Presented
by
Unemployment Insurance Technical Subcommittee**

REASONABLE ASSURANCE

OBJECTIVE

Present a general overview of the concept of reasonable assurance (RA) in Unemployment Insurance (UI). At the end of the session, participants will be familiar with reasonable assurance, the legal notices that are required, and guidelines that districts should follow.

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Reasonable Assurance – Concept and Definition

Section 1253.3 of the California Unemployment Insurance Code (CUIC) provides for a special disqualification for school employees during school recess breaks, commonly known as reasonable assurance (RA).

Concept: When school is closed for recess periods, such as winter, spring, and/or summer recesses, school employees may file Unemployment Insurance (UI) claims; however, if they have RA of returning to work in the next school term, they should be deemed ineligible (school employees may qualify for UI from non-school employers, if such wages exist in their base period).

Definition of Reasonable Assurance: Reasonable assurance means a written, verbal, or implied agreement that the employee will perform services during the ensuing year or term. To find that there is RA, there must be a *commitment by the school employer to reemploy the individual in the next term or in the resumed term, which is communicated in an explicit manner* to the individual.

Reasonable Assurance becomes an issue when:

1. A claim is filed during a recess period, **and**
2. The base period of the claim includes **school wages**.

Recess Period is defined as:

1. Any week between two successive academic years or terms, or
2. Any holiday or recess period within a term (of at least one week duration), such as winter or spring break.

General Instructions for Letters of Reasonable Assurance (RA)

Attached you will find samples of suggested letters of RA to send to:

- Classified employees who have RA to return to work.
- Classified employees who do **not** have RA to return to work.
- Certificated substitutes who have RA to return to work.
- Newly-hired classified/certificated employees (hired after RA mailed in spring).

Section 1253.3 of the CUIIC requires notification of RA to return to work is sent to **classified school employees**:

1. A written notice must be sent to all regular, hourly, **and substitute** non-instructional, non-research, and non-principal administrative employees. This includes, but is not limited to, most classified employees including instructional assistants, food service, clerical, yard duty, maintenance, and bus drivers.
2. The notice should be sent to all 10-month and 11-month classified employees. You do not need to send it to 12-month employees unless they have at least a one-week unpaid scheduled break during a recess period.
3. Notification of RA **must** be made 30 days prior to the end of the school term.
4. Section 1253.3 of the CUIIC requires specific wording, which you will find identified in bold letters in the attached sample letters.

Although the CUIIC does not require notification of RA for certificated school employees, it is necessary to send notification to substitute teachers so that RA can be established.

Classified Employees With Reasonable Assurance

Issue to **all** classified employees who will return to the same/similar job in the next school term. This includes, but is not limited to, instructional assistants, food service, clerical, yard duty, maintenance, bus drivers, all classified substitutes, and non-instructional employees, such as librarians and counselors.

***Does not need to be sent to 12-month classified employees **unless** they have at least a one-week unpaid scheduled break during a recess period.

Legally required per Section 1253.3 of the CUIC and must be issued **30 days prior** to the end of the school year/term.

- **Bolded words** are required language by the CUIC.

TO: (Name of Employee)

FROM: (Name of Personnel/Business Official)

SUBJECT: Notification of Reasonable Assurance for the 2014/15 School Year

DATE ISSUED: (Date notice is delivered or mailed)

You are hereby notified that you have reasonable assurance of returning to work in your usual capacity in the 2014/15 school year, after the summer recess period. You also have reasonable assurance of returning to work at the close of all holiday and recess periods during that year. Your services will not be needed during the 2014 summer, unless you are notified in writing by (last day of school).

We are required by law to inform you that **you may file an Unemployment Insurance (UI) claim.** If you choose to file a claim, **your entitlement to benefits will be determined by the Employment Development Department (EDD) and not by this school district.** **If you are not rehired after the recess period, you may be entitled to UI benefits retroactive to the date you filed an initial UI claim, if you are otherwise eligible and you filed a claim for each week, and if a claim for retroactive benefits is made within 30 days of the start of the next school year/term.**

The UI claims are filed online at **www.edd.ca.gov** or by phone at 800-300-5616. You will need to provide your Social Security number and your last day worked. The address provided below should be given to the EDD if you choose to file a claim:

(Name of School District)

(Insert address where you wish UI claims mailed)

Classified Employees Without Reasonable Assurance

Issue to **all** classified employees including classified substitutes, hourly classified, and non-instructional employees, such as librarians and counselors, who **do not have reasonable assurance** to return to the same or similar job in the next school term.

Legally required per Section 1253.3 of the CUIIC and must be issued **30 days prior** to the end of the school year/term.

- Bolded words are language required by the CUIIC.

The notice may be incorporated in their lay-off notification.

TO: (Name of Employee)
FROM: (Name of Personnel/Business Official)
SUBJECT: Notification of Reasonable Assurance for the 2014/15 School Year
DATE ISSUED: (Date notice is delivered or mailed)

You are hereby notified that you do not have reasonable assurance of returning to work for us in the 2014/15 school year. You should file an Unemployment Insurance (UI) claim with the Employment Development Department (EDD) at the close of this school year/term.

The UI claims are filed online at **www.edd.ca.gov** or by phone at 800-300-5616. You will need to provide your Social Security number and your last day worked. The address provided below should be given to the EDD when you file your claim:

(Name of School District)
(Insert address where you want UI claims mailed)

Certificated Substitutes With Reasonable Assurance

Issue to all substitute teachers you plan to use in the same capacity during the next school term. Issue **30 days prior** to the end of the school year term

TO: (Name of Employee)
FROM: (Name of Personnel/Business Official)
SUBJECT: Notification of Reasonable Assurance for the 2014/15 School Year
DATE ISSUED: (Date notice is mailed)

You are hereby notified that you have reasonable assurance of returning to work for us in the 2014/15 school year as an on-call substitute. You also have reasonable assurance of returning to work in a substitute capacity at the close of all holiday and recess periods during that year. **Your services will not be needed during the 2015 summer, unless you are notified in writing by (last day of school).**

So that we can our files, please complete the survey below and check the appropriate box. Be sure to sign, date, and return the sheet to the Personnel Office by (same date used above). If we do **not** hear from you by (date), we will assume that you are willing to work without any restrictions.

Please complete and return the entire sheet to Human Resources.

- I am **not** interested in being called to substitute for the 2014/15 school year.
- I am interested in being called to substitute for the 2014/15 school year **without restrictions.**
- I am interested in being called to substitute with the following restrictions (indicate actual restrictions and not mere preferences):

I am **not** available for:

Grade level(s): _____
Subject(s): _____
Additional Restrictions: _____
(Days, time, work site) _____

Signature

Date

Current Street Address, City, State, and ZIP Code

Phone

Newly-Hired Classified or Certificated Substitutes

Issue to **all newly or rehired classified employees and certificated substitute** employees who did not receive the letter of reasonable assurance mailed in the spring. Notice can be incorporated in your district's new hire packet.

This notice should also be sent to laid-off teachers who sign up to substitute. This will help control your UI costs and protect the School Employees Fund if the employee files a UI claim during the winter and/or spring recess breaks.

- **Bolded words** are language required by Section 1253.3 of the CUIC.

Have employee sign to show receipt of this notice.

TO: (Name of Employee)
FROM: (Name of Personnel/Business Official)
SUBJECT: Notification of Reasonable Assurance for _____ School Year
DATE ISSUED: (Date notice is delivered)

Newly Hired Certificated Substitute Employees

You are hereby notified that you have reasonable assurance of returning to work in a substitute capacity at the close of all holiday and recess periods during the current school year.

Newly Hired Classified Employees

You are hereby notified that you have reasonable assurance of returning to work in your usual capacity at the close of all holiday and recess periods during the current school year. Your services will not be needed during the recess periods.

We are required by law to inform you that **you may file an Unemployment Insurance (UI) claim during school recess periods. If you choose to file a claim, your entitlement to benefits will be determined by the Employment Development Department (EDD) and not by this school district. If you are not rehired after the recess period, you may be entitled to UI benefits retroactive to the date you filed an initial UI claim, if you are otherwise eligible and you filed a claim for each week, and if a claim for retroactive benefits is made within 30 days of the start of the next school year/term.**

Signature

Date

Issues That Arise During the Summer Recess Breaks

OFFERS OF WORK

Document the date of any offers extended during the summer:

If, during the summer, you offer work to an employee who was not given reasonable assurance, be sure to document the date the offer was made (verbal or written) and advise the Employment Development Department (EDD). When the offer is to a classified employee, we recommend you also send a letter of reasonable assurance. The employee should have reasonable assurance effective the date he/she is offered work. This can be a **monetary savings** to your UI fund, **if the EDD is informed of the offer.**

ELIGIBILITY OF SUBSTITUTES

Limit your substitute summer school list:

Substitutes who are on-call during the summer school session are potentially eligible for UI benefits. If they are on-call, the EDD considers them not to be in a recess period. To control your liability, limit your **summer school** substitute list to only those employees for whom you actually anticipate a need. Your district should set criteria for selecting substitutes to be placed on the summer school substitute list.

SUMMER SCHOOL PLANNING

Be aware of the effect your scheduling may have on UI:

If an individual is **offered** a summer school assignment, **and that assignment is subsequently canceled**, the individual may be eligible to draw UI benefits during the period of the canceled summer school assignment. The following suggestions are a means of providing control of job offers for summer school.

- **Advise** principals, lead teachers, and others to make it clear to applicants that discussions held regarding summer school planning are entirely tentative, and do not constitute an offer to work in the summer session.
- **Designate one** district official to make **offers of work** to employees for summer school assignments.
- **Notify** summer school candidates who have **not** been selected to work.
- **If** an employee **declines** an offer of summer school, have them sign an acknowledgment that they have declined the offer.

Year-Round Schools

Reasonable Assurance for Year-Round Schools

The principles of reasonable assurance apply to “off track” recess periods. If a school employee applies for benefits during an off-track recess, they will be denied benefits if they have reasonable assurance to return to work at the end of the recess break.

Reasonable Assurance Notification

The same notifications sent to traditional school employees may be sent to year-round employees at the end of the school year. However, the notification should advise the employee they will have reasonable assurance to return to work at the end of **each** scheduled recess break.

Year-Round Eligibility Issues:

- **All Tracks in Recess:** If all tracks are “off track” for the same period, such as the two-week period ending December 31, then the year-round employees would be considered in a recess break and subject to denial under Section 1253.3 of the CUIA.
- **Other Tracks in Session:** An “off track” year-round school employee is considered in a recess despite the fact that the school may have other tracks in session.
- **On the Substitute List for "On Track" Sessions:** If a full-time employee or a substitute is on the substitute list for other tracks that are in session, then the employee is **not** considered in a recess and would then be entitled to receive benefits during the recess. Therefore, districts should limit the number of employees they keep on the substitute list during recess breaks to the number they actually anticipate using.
- **Substitutes On-Call With Other Districts in Session:** If an “off track” employee is on a substitute list for another district that is in session, then the employee is not considered in a recess. In addition, a traditional school employee who is on-call with a year-round school district during the summer is not considered in a recess.

Eligibility During a Recess Period

During a scheduled recess break, a school employee should be **ineligible** for UI if:

They have reasonable assurance to return to the **same or similar** position at the end of the scheduled recess.

During a scheduled recess break, a school employee should be **eligible** for UI if:

1. They **do not** have reasonable assurance to return to the **same or similar** position at the end of the recess.
2. This is the **first** year of a reduction in the number of days worked.
3. Their hours or pay are substantially reduced (greater than 20 percent).
4. They were offered employment for summer school session and then it was canceled (only eligible for period of summer school session).
5. Their services may be utilized during the recess period (e.g., substitute maintenance, clerical workers, teachers, or aides who are on-call during the recess period).
6. They did not receive proper notification of reasonable assurance.

What to Report (Protest) on the EDD Claim Forms

If an employee has RA to return to the same or similar work at the end of a school recess period, the district should report that information to the EDD when a UI claim form is received. You will be entitled to a copy of the EDD's decision or determination **if you respond timely**. (If the employee does not have RA to return to work, you do not have to respond to the EDD claim.)

- Respond to the *Notice of Unemployment Insurance Claim Filed* (DE 1101C/Z) within 10 days of the mailing date.
- Respond to the *Notice of Wages Used for Unemployment Insurance (UI) Claim* (DE 1545) by the date given on the form.

State the following in your protest statement:

- The employee has RA to return to work.
- The dates of the recess period.
- The employee's job title.
- The employee's job statuses, e.g., permanent employee, substitute, etc.
- The date the employee was sent the notice of RA.
- The employee is not on-call during the recess. If the employee remains on-call during the recess, provide the dates the employee remains on-call (the employee would be potentially eligible for UI during the period the employee remains on-call).
- The dates of the next recess break.

Sample RA protest statements:

The following are sample protest statements to be entered on the notices of UI claims for employees who have RA to return to work:

- If the employee **will not** be working during the recess break:

The claimant has RA to return to work after the summer recess break, 6/14/13-8/15/13. He/she was sent a letter of RA on 5/1/13. He/she is not on-call during the recess period. Flag claim for next recess break: 12/19/13-1/2/14.

- If the employee **will** be working or on-call during the summer school session:

The claimant has RA to return to work after the summer recess break, 6/14/13-8/15/13. He/she was sent a letter of RA on 5/1/13. He/she is on-call during the summer session, 7/1/13-7/29/13, but is not on-call during the recess periods before and after summer school. Please address RA during the recess periods, 6/14/13-6/30/13 and 7/30/13-8/14/13. Flag claim for next recess break: 12/19/13-1/2/14.

Reviewing Decisions and Filing Appeals

When the RA determination is received from the EDD, check that the dates of the disqualification are correct:

- The disqualification should begin the first week, which **begins** during the recess.
- If the claim is filed after the first week of the recess, the disqualification will begin the Sunday the claim was filed.
- The disqualification should end the first week that no longer **begins** in a recess.
- If the employee is on-call or works during summer school, the disqualification should be during the recess periods *before and after* the summer school session.

If the EDD finds the claimant does not have RA to return to work, the decision will state the reason. Common reasons for holding the claimant eligible for UI benefits during a recess include:

- The claimant has suffered a loss of customary work.
- The claimant will not be returning to the same or similar work.
- The claimant's work year has been reduced.
- The claimant is available for work with a school employer that is not in a recess period.

If you disagree with the dates of the disqualification or the reason the EDD held the claimant eligible, you should send a letter of appeal. The EDD will review the decision and may send you a corrected re-determination. If not, they will file your appeal.

Prior to the appeal, you can review the documents at the California Unemployment Insurance Appeals Board (CUIAB) office to determine the EDD's rationale. At that point, you can either withdraw the appeal if you agree with the findings, or go forward with the appeal.

At the hearing, be prepared to provide the following:

- Claimant's work history: hire date, title, pay rate, hours worked, and last day worked.
- Copy of the claimant's RA notice.
- Dates of the recess period.
- Dates the claimant is working or on-call during the recess.
- Whether the employee will be returning to same or similar work.

After the hearing, you will receive a written decision. If the decision is unfavorable, you may appeal one more level by sending written argument to the CUIAB, explaining why you believe the claimant has RA to return to work or why the dates of the disqualification are incorrect.

UI Code, Section 1253.3

1253.3.

(a) Notwithstanding any other provision of this division, unemployment compensation benefits, extended duration benefits, and federal-state extended benefits are payable on the basis of service to which Section 3309(a)(1) of the Internal Revenue Code of 1954 applies, in the same amount, on the same terms, and subject to the same conditions as benefits payable on the basis of other service subject to this division, except as provided by this section.

(b) Benefits specified by subdivision (a) based on service performed in the employ of a nonprofit organization, or of any public entity as defined by Section 605, with respect to service in an instructional, research, or principal administrative capacity for an educational institution are not payable to any individual with respect to any week which begins during the period between two successive academic years or terms or, when an agreement provides instead for a similar period between two regular but not successive terms, during that period, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual performs services in the first of the academic years or terms and if there is a contract or a reasonable assurance that the individual will perform services for any educational institution in the second of the academic years or terms.

(c) Benefits specified by subdivision (a) based on service performed in the employ of a nonprofit organization, or of any public entity as defined by Section 605, with respect to service in any other capacity than specified in subdivision (b) for an educational institution shall not be payable to any individual with respect to any week which commences during a period between two successive academic years or terms if the individual performs the service in the first of the academic years or terms and there is a reasonable assurance that the individual will perform the service in the second of the academic years or terms. However, if the individual was not offered an opportunity to perform the services for an educational institution for the second of the academic years or terms, the individual shall be entitled to a retroactive payment of benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of this subdivision. Retroactive benefits shall be claimed in accordance with the department's procedures which shall specify that except where the individual was entitled to benefits based on services performed for other than an educational institution, an individual who has a reasonable assurance of reemployment may satisfy the search for work requirement of subdivision (e) of Section 1253, by registering for work pursuant to subdivision (b) of Section 1253 during the period between the first and second academic terms or years. A claim for retroactive benefits may be made no later than 30 days following the commencement of the second academic year or term.

(d) Benefits specified by subdivision (a) based on service performed in the employ of a nonprofit organization, or of any public entity as defined by Section 605, with respect to services specified by subdivision (b) or (c), are not payable to any individual with respect to any week which commences during an established and customary vacation period or holiday recess if the individual performs the services in the period immediately before the vacation period or holiday recess, and there is a reasonable assurance that the individual will perform the services in the period immediately following the vacation period or holiday recess.

(e) With respect to any services specified by subdivision (b) or (c), compensation payable on the basis of services in any such capacity may be denied as specified in subdivision (b), (c), or (d) to any individual who performed the services in an educational institution while in the employ of an educational service agency, and for this purpose the term "educational service agency" means a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing the services to one or more educational institutions.

(f) Benefits specified by subdivision (a) based on service performed in the employ of a nonprofit organization, or of any public entity as defined by Section 605, are not payable during the periods of time, and subject to the same conditions, contained in subdivisions (b), (c), (d), and (h), if the services are provided to, or on behalf of, an educational institution.

(g) For purposes of this section, "reasonable assurance" includes, but is not limited to, an offer of employment or assignment made by the educational institution, provided that the offer or assignment is not contingent on enrollment, funding, or program changes. An individual who has been notified that he or she will be replaced and does not have an offer of employment or assignment to perform services for an educational institution is not considered to have reasonable assurance.

(h) For purposes of this section, if the time for service performed during the period of and pursuant to any contract for any academic year or term by an individual for any employing unit as specified in subdivision (b) or (c) constitutes one-half or more of the time in total service performed for the employing unit by the individual during that same period for remuneration, all the services of the individual for the employing unit for that period shall be deemed subject to the benefit payment restriction provisions of this section.

(i) Any public entity as defined by Section 605, with respect to any individual performing a service in any other capacity other than specified in subdivision (b) for an educational institution, shall provide a written statement indicating the following to the individual no later than 30 days before the end of the first of the academic years or terms:

(1) Whether or not there is a reasonable assurance of reemployment.

(2) Whether or not it is stated that the individual has no reasonable assurance of reemployment, that the individual should file a claim for benefits at the close of the academic year or term.

(3) If it is stated that the individual has reasonable assurance of reemployment, the written statement shall also inform the employee that he or she may file a claim for benefits and that the determination for eligibility for benefits is made by the Employment Development Department and not by the employer.

(4) If it is stated that the individual has reasonable assurance of reemployment, that the individual shall be entitled to a retroactive payment of benefits if the individual is not offered an opportunity to perform the services for the educational institution for the second of the academic years or terms, if the individual is otherwise eligible and he or she filed a claim for each week benefits are claimed, and if a claim for retroactive benefits is made no later than 30 days following the commencement of the second academic year or term.

UI Precedent Benefit Decisions and Court Cases

Reduction of School Year

Precedent Benefit Decision (PB) 417: The CUIAB held that a reduction of school year from a 12-month to a 10-month employee is a loss of customary summer work; therefore, the employee is eligible for benefits during the summer recess.

Precedent Benefit Decision (PB) 431: Limits PB 417 to be applicable only during the year in which the employment condition changed.

Reasonable Assurance Definition

Russ v. CUIAB (1981) 178 Cal. Rptr. 421: The Court of Appeal defined reasonable assurance as being “an agreement which contemplated the re-employment of the affected school employee but which he or she could not enforce.” The court also made a distinction between an agreement of re-employment and a new offer of work. If there is an *agreement* and not an offer of work, then the contingencies of enrollment, funding, or program changes cited in sub-section 1253.3(f) do not apply.

Substitute Employees

Board of Education of the Long Beach Unified School District et al. v. CUIAB: The CUIAB held that despite the tenuous nature of substitute work, if the claimant worked in the prior term and has a reasonable assurance to return to the same or similar conditions in the post-recess term, then the substitute has reasonable assurance to return to work.

Precedent Benefit Decision (PB) 505: Held that an employee with reasonable assurance to return to work is not subject to disqualification in a recess period if they remain on call for work during the recess. It is the burden of the employer to establish if an employee is not on call during the summer school or recess break.

Community College Part-time Instructors

Cervisi v. CUIAB: Held Community College part-time instructors did not have reasonable assurance because their work is contingent on enrollment, funding, and/or program changes.

Economic Terms and Conditions

Precedent Benefit Decision (PB) 461: The CUIAB held that the claimant did not have reasonable assurance because the economic terms and conditions of the employment offered to the claimant in the new school year were not reasonably the same as those conditions in the previous school year and, in fact, were substantially less.

Required Notification of Reasonable Assurance

Precedent Benefit Decision (PB) 501: Held that lack of providing timely notice precludes a finding of reasonable assurance. Non-instructional employees must be provided written notice of reasonable assurance **30 days prior** to the end of the school year or term, as specified in Section 1253.3(i) of the CUIC.

Offers of Work During the Recess

Precedent Benefit Decision (PB) 504: Held an Instructional employee's eligibility for benefits in regards to reasonable assurance will be determined on a week-by-week basis. An instructor who did not have reasonable assurance to return to work when the summer recess commenced was held eligible for benefits until they received an offer of similar work during the summer. The instructor was subject to disqualification the first full week in which he/she had reasonable assurance.