

Unemployment Insurance and the Contingent Academic

Friday, May 1st
3pm EST/noon PST

Disclaimers

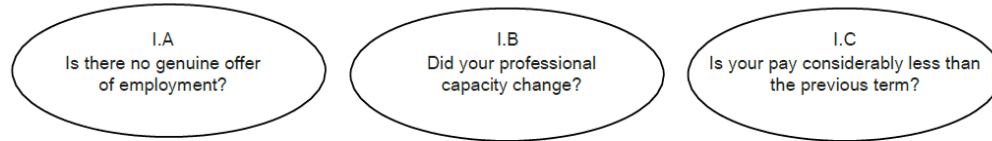
- This presentation and handout is meant as guidance and information, not legal advice
- Federal guidelines are issued by the DOL. Benefit programs are implemented by each state, and there are differences from state to state on eligibility and benefits
- Eligibility determinations can be very fact intensive and are done on a case-by-case basis.
- Changes to UI programs are happening quickly, and states are experiencing an unprecedented volume of applications.
- Some states have yet to issue guidance regarding eligibility and the application process for some of the new federally funded unemployment insurance programs

UI Pre-CARES and Adjuncts

- Some, but not all states, denied UI benefit to adjuncts because of a determination that an adjunct has a contract for classes or “reasonable assurances” of employment between semester breaks
 - This is a federal requirement, although states have latitude in how they interpret
 - 2016 DOL Guidance

HOW TO DETERMINE IF YOU DO NOT HAVE REASONABLE ASSURANCE

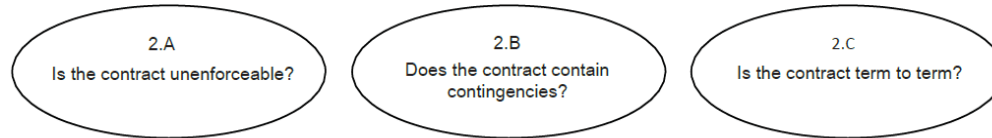
I. PREREQUISITES



If yes to any, you do not have reasonable assurance and are eligible for UC. If no to all, continue analysis.



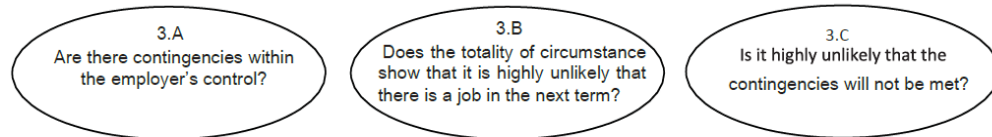
2. CONTRACT TEST



If no to all, it is considered a contract and you are not eligible for UC. If yes to any, continue for further determination of eligibility.



3. REASONABLE ASSURANCE TEST



If no to all, BTWD (Between or Within Terms Denial) applies and you are not eligible.

If yes to any, there is not reasonable assurance and you are eligible for UC.

“Reasonable Assurance”

- If any contingencies in the offer are within the employer’s control, no reasonable assurances
- Course programming, allocation of funds, final course offerings, program changes and facility availability are deemed by the DOL to be within the control of the employer.
- **Enrollment, funding, and seniority** are deemed to be **out of the control** of the employer. In each of these variables, whether a class is offered is not at the discretion of the employer, and thus the employer does not assume the responsibility for whether you are employed.

“Reasonable Assurance” Cont.

- The “totality of circumstances” is analyzed to determine whether it is “highly probable” that there is a job available for the claimant in the following academic term. Factors include:
 - Funding
 - Enrollment
 - Course type
 - Patterns of Cancellation
 - Seniority
 - Budget and Assignment Practices of the School
 - Ratio of offers made to potential teaching assignments
 - Period of Student Registration
- For a state to find it highly probable that a job will be available does not require it to find that there is a certainty of a job.
- States have a lot of latitude in determining this

CARES Act UI

- Incentivizes states to change regular UI like waiving one week waiting periods and changing work search requirements
- Funds \$600 weekly UI enhancement until July 31, 2020 as well as extended weeks of UI
- Creates Pandemic Unemployment Assistance (PUA) Program until end of this year, retroactive to beginning of this year
- No waiver or incentive to repeal “reasonable assurance” requirement for educational employees for regular UI between semesters
 - But still a factual determination state agencies make

Pandemic Unemployment Assistance

- Created for those not otherwise eligible for UI because of lack of eligible work/wage history such as independent contractors, gig workers, and self employed
- Allows for a benefit to workers fully or partially unemployed, or unable to work because of COVID-19 circumstances

PUA COVID-19 circumstances

- The individual has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and is seeking a medical diagnosis;
- A member of the individual's household has been diagnosed with COVID-19;
- The individual is providing care for a family member or household member who has been diagnosed with COVID-19;
- The individual is the primary caregiver for a child or other person in the household who is unable to attend school or another facility that has been closed as a direct result of COVID-19 and such school or facility care is required for the individual to work;
- The individual is unable to reach the place of employment because of a quarantine imposed as a direct result of COVID-19;
- The individual is unable to reach the place of employment because a health care provider has advised the individual to self-quarantine due to COVID-19 concerns;
- The individual was scheduled to begin employment and does not have a job or is unable to reach the job as a direct result of COVID-19;
- The individual has become the breadwinner or major support for a household because the head of household has died as a direct result of COVID-19;
- The individual has been forced to quit a job as a direct result of COVID-19;
- The individual's place of employment is closed as a direct result of COVID-19.
- Any additional criteria established by the Secretary of Labor.

Pandemic Unemployment Assistance

- Unclear if states will apply contract and reasonable assurances determinations to Pandemic Unemployment Assistance

Applying

- Use this link to find your state agency that handles UI
- <https://www.careeronestop.org/LocalHelp/UnemploymentBenefits/find-unemployment-benefits.aspx>

Applying

- Apply if experiencing full or partial unemployment for non-academic jobs between or during semesters, or full or partial unemployment for academic jobs
- Although eligibility for benefits cannot be guaranteed, nothing prohibits people from filing a claim for regular benefits, as long as they truthfully complete the application.
- Apply for benefits on the first day that you are no longer working for an employer.
 - For adjuncts, that is usually the end date stated on your contract/last day of the semester.

Applying

Members should check with their states for information that is required to file, but generally members should collect the following information prior to applying:

- Personal Identification (SSN, drivers license, other ID) and Banking Information
- Name, address, telephone number, and email address of employer(s)
- Name of separating employer or for whom you are working reduced hours
- Dates of employment and reasons for separation or reduction in hours/courses
- The terms of your contract/appointment or the date of recall, if applicable
- Other states where you have worked and the dates, names and addresses of all out-of-state employers where you worked
- Any evidence of an assignment or appointment being tentative, or any evidence from the employer that fall semester classes are not assured.
 - Contingencies in appointment letters
 - Oral or written representations from the employer about the next semester
 - Previous or current patterns of cancelations, changes to course offerings, and budget allocations
 - Ratio of final course offerings vs. the faculty availability pool.
 - Course load increases for full time faculty that could impact adjuncts
 - Any COVID 19 circumstances

UI Benefits

- Benefit levels are determined by state, and most states have a benefit estimator on their website
- The maximum benefit length is also state determined, although the federal government has incentivized extended benefits

UI v. PUA

- The Department of Labor has instructed states that if an individual's eligibility for regular UI is questionable, then the state must first require the individual to file a regular UI initial claim. If the individual is subsequently disqualified, then the state may consider the individual for PUA eligibility.
- An individual CANNOT receive both a regular UI and PUA benefit

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American Federation of Teachers, AFL-CIO

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