

Section 2. School employees (reasonable assurance)

A. Statute

G. L. c. 151A, § 28A

Benefits based on service in employment as defined in subsections (a) and (d) of section four A shall be payable 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 chapter, except that:

(a) with respect to service performed in an instructional, research, or principal administrative capacity for an educational institution, benefits shall not be paid on the basis of such services for any week commencing 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, or during a period of paid sabbatical leave provided for in the individual's contract, to any individual if such individual performs such services in the first of such academic years or terms and if there is a contract or a reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms;

(b) with respect to services performed in any other capacity for an educational institution, benefits shall not be paid on the basis of such services to any individual for any week commencing during a period between two successive academic years or terms if such individual performs such services in the first of such academic years or terms and there is a reasonable assurance that such individual will perform such services in the second of such academic years or terms; provided that, if such individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, such 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 because of a finding that such individual had reasonable assurance of performing services in the second of such academic years or terms;

(c) with respect to services described in subsections (a) and (b), benefits shall not be paid to any individual on the basis of such services for any week commencing during an established and customary vacation period or holiday recess if such individual performs such services in the period immediately before such

vacation period or holiday recess, and there is a reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess;

(d) with respect to any services described in subsections (a) and (b) benefits shall not be paid as specified in subsections (a), (b), and (c) to any individual who performed such services in an educational institution while in the employ of an educational service agency, and for the purpose of this clause the term “educational service agency” means a governmental agency or governmental entity, including an educational collaborative board established by section four E of chapter forty, which is established and operated exclusively for the purpose of providing such services to one or more educational institutions.

See also § 28A regulations : 430 Code Mass. Regs. §§ 4.91–4.98.

B. Educational institution

An educational institution offers students, participants, or trainees, guided by an instructor or teacher, an organized course of study to obtain knowledge, skills, information, doctrines, attitudes, or abilities. The curriculum may be academic, technical, trade, or other preparation for gainful employment in a recognized occupation. Other indicators of educational institutions may include operation of a course of study on a 180-day basis, teacher contracts that are substantially similar to public school teacher contracts, and recognition by other state or federal agencies that the institution is in fact “educational.” Because § 28A only applies to services performed for governmental entities and nonprofit organizations, private schools operated for a profit are not educational institutions for purposes of § 28A.

According to this definition, the term “educational institution” includes private, religious nonprofit schools. Accordingly, such schools may give a reasonable assurance. But if such a school is “operated primarily for religious purposes” and “is operated, supervised, controlled, or principally supported by a church or convention or association of churches,” then service performed in the school’s employ is not included in “employment.”⁵ (Note that “support” “is not limited to financial support.”⁶) Wages paid for such service, therefore, may not be used to establish monetary eligibility, regardless of whether the claimant has received a reasonable assurance.

⁵ G. L. c. 151A, § 6(r).

⁶ *Bleich v. Maimonides School*, 447 Mass. 38, 47 (2006).

Educational institutions include educational service agencies (ESAs),⁷ but the only employees of an ESA that are covered are those that provide the types of services identified in § 28A(a) and (b) in an educational institution.

Educational institutions falling within the meaning of § 28A include:

- The Division of Inmate Training and Education within the Department of Corrections.
- A nursery school or preschool that admits children within a limited age range, is in session only during regular school hours, and provides some type of instruction to the children.
- A Head Start program operated by a municipal school committee, not by a Community Action Program.
- Specialized Title 1 programs funded by the federal government.
- Charter schools authorized by the Massachusetts 1993 Education Reform Act.

Some workers who may have training or educational functions are not considered to be employed by educational institutions and are therefore not subject to the provisions of § 28A. For example:

- Instructors at institutions that primarily provide custodial care rather than educational services (such as state hospitals).
- Researchers who are employed by private corporations owned by a university.
- Workers at a day care center providing custodial care rather than educational services.
- UCFE and UCX teachers employed at schools operated by the federal government in the United States or overseas (such as military post schools, Bureau of Indian Affairs schools, etc.).
- School crossing guards, if they are not on the school's payroll.

⁷ Educational Service Agencies are defined in G. L. c. 151A, § 28A(d) as "A governmental agency or governmental entity, including an educational collaborative board established by G. L. c. 40, § 4E, which is established and operated exclusively for the purpose of providing such services to one or more educational institutions."

- Head Start workers in facilities operated by a Community Action Program, because it is not an educational institution.
- Secretaries and other clerical workers who are employed by, and provide services for, educational collaboratives established under G. L. c. 40 and do not perform any educational services for educational institutions.
- Bus drivers, if not employed by an educational institution, educational service agency or school committee.

C. Principles

1. General

In certain circumstances, base period wages for services by employees of educational institutions (school employees), who have received a reasonable assurance of reemployment (discussed below), may not be used to establish eligibility for benefits for weeks commencing during a period between academic years or terms,⁸ or during a vacation period. Note that individuals employed by a private for-profit employer are **not** covered by § 28A, even if they perform services in an educational institution.

Base period wages are excluded in the following three instances:

- school employees who provide services for an educational institution in a professional capacity—that is, as an instructor, researcher, or in a principal administrative capacity— if the claimant performed services in the first academic year or term and has a reasonable assurance of performing services in a professional capacity the following academic year or term. This wage exclusion also applies when an agreement provides for a similar break between two regular but not successive terms or during a paid sabbatical.⁹ Services by principals, teachers, substitute teachers, and coaches are considered professional.
- school employees who provide services for an educational institution in a non-professional capacity, if the claimant performed services in the first academic year or term and has a reasonable assurance of performing such services in the following academic year or term.¹⁰ If, however, the claimant is

⁸ “Academic year or term” means “the date that the majority of students begin academic classes, and such academic year or term shall end when the majority of students are no longer attending academic classes, taking examinations or engaged in other curricular activities required by the school.” 430 Code Mass. Regs. § 4.93.

⁹ G. L. c. 151A, § 28A(a); U.S. Department of Labor, Unemployment Insurance Program Letter No. 04–87 (Interpretation of “Reasonable Assurance”), p. 2, ¶ 4.

¹⁰ G. L. c. 151A, § 28A(b).

not offered an opportunity to perform such services in the following academic year or term, then the claimant, if otherwise eligible, is entitled to a retroactive payment of benefits for each timely-claimed week. Services by cafeteria workers, teacher's aides, bus drivers, and crossing guards who are employees of educational institutions are considered non-professional.

- school employees who provide services for an educational institution, in either a professional or non-professional capacity, for any week commencing during an established and customary vacation period or holiday recess, if the claimant performed such services in the period immediately before the break and has a reasonable assurance of performing such services in the period immediately after the break.¹¹

A claimant employed by an educational collaborative¹² who performs services in a professional or non-professional capacity in an educational institution is subject to the corresponding reasonable assurance provision. This includes school bus and van drivers. Other employees of an educational collaborative are not subject to § 28A.¹³

The provisions of § 28A only apply to services performed for educational institutions that are governmental entities or nonprofit organizations.

The provisions apply equally to both professionals and non-professionals, except that a non-professional who is denied benefits between two successive academic years or terms due to reasonable assurance, and then not given an opportunity to perform services in the second year or term, is eligible for retroactive benefits for the weeks denied.

Because § 28A only applies to weeks claimed during a period between two academic years or terms, and during vacation periods or holiday recesses, § 28A is never an issue when school is in session or for any week that does not commence

¹¹ G. L. c. 151A, § 28A(c).

¹² Educational Collaboratives are defined in G. L. c. 40, § 4E(b):

“Two or more school committees of cities, towns and regional school districts and boards of trustees of charter schools may enter into a written agreement to provide shared programs and services, including instructional, administrative, facility, community, or any other services; provided that a primary purpose of such programs and services shall be to complement the educational programs of member school committees and charter schools in a cost-effective manner. The association of school committees and charter school boards which is formed to deliver the programs and services shall be known as an education collaborative.”

¹³ G. L. c. 151A, § 28A(d).

during a vacation or holiday recess (see, below- *Reasonable Assurance Period; Notice Date*).

Generally, if the following questions are answered “Yes,” the wage exclusion provisions of § 28A will apply:

- was the employer an “educational institution”? If so,
- did the week(s) claimed occur between two successive academic years or terms, or during a school vacation or holiday recess? If so,
- did the claimant receive a “reasonable assurance” of re-employment for the next academic year, term, or period? If so,
- were the economic conditions of the offered job not considerably less¹⁴ than the economic conditions of the job performed during the pre-break period? If so,
- if the claimant is a non-professional employee of the educational institution, was the claimant given an actual “opportunity to perform service” during the second period?

2. Reasonable assurance

A reasonable assurance is a written, oral, or implied agreement that, in the second period, the employee will perform services in the same or similar capacity as in the first academic period, with economic conditions that are not considerably less as compared to the first academic period. “Academic period” refers to an academic year or term. The “second academic period” refers to the academic year or term immediately following the first academic period. The “same or similar capacity” refers to the type of services provided.

An individual working under an agreement has a reasonable assurance of reemployment for any vacation or other break during the term of the agreement.

Some school employees—usually teachers—are granted tenure, which promises them automatic reemployment. Tenure for public school employees is called “professional teacher status.” School employees with tenure or professional teacher status automatically have reasonable assurance of re-employment in the following academic year unless they are officially notified

¹⁴ The economic conditions of the job will be “considerably less” if the claimant will not earn at least 90% of the amount that the claimant earned in the first academic year or term. See U.S. Department of Labor, Unemployment Insurance Program Letter Number 05–17.

by the school system on or before June 15th of the academic year that they will not be returning to their position in the following September semester.¹⁵

The reasonable assurance need not come from the most recent school system or educational institution employer for which the claimant worked, or, indeed, from any educational institution for which the claimant worked. For example, a teacher who leaves a teaching job at the end of the academic term to take a new teaching position at another school district when the new academic term begins will have reasonable assurance, as long as the economic terms and conditions of the new position are not considerably less than those of the prior position.

If a claimant who has been initially determined to not have a reasonable assurance later receives a reasonable assurance, then the wage exclusion provisions of § 28A will apply from the date the reasonable assurance is given.

A disqualification under § 28A generally may not be removed because the disqualification ends when the next academic year or term begins or the vacation period ends. But a subsequent written notice from the educational institution rescinding a reasonable assurance ends the disqualification.

3. Bona fide offer

There must be a bona fide offer of employment to perform services in the second period for a reasonable assurance to exist. Although the offer need not be in writing, it must be made by an individual authorized to do so. A tentative offer or an offer made by an unauthorized individual is not a bona fide offer. Although the offer may have contingencies, if only a possibility of employment exists it is not bona fide. There is only a possibility of employment if the circumstances under which the claimant will be employed are not under the control of the educational institution (for example, funding or enrollment), *and* the educational institution cannot establish that similarly placed individuals normally perform services the following year or term.¹⁶

4. Economic terms and conditions

A reasonable assurance exists only if the economic terms and conditions of the job offered in the second period are not considerably less than the terms and conditions of the job in the first period. In most cases, a reduction in wages and/or fringe benefits of more than 10% would make the economic conditions of the job considerably less. The Department of Labor issued guidance that interprets “considerably less” to mean that the economic

¹⁵ See UIPP Interoffice Memorandum dated May 25, 2017.

¹⁶ U.S. Department of Labor, Unemployment Insurance Program Letters No. 04-87, 05-17.

conditions of the job will be considerably less if the claimant will not earn at least 90% of the amount that the claimant earned in the first academic year or term (a reduction of 10% or less), or in a corresponding term, if the claimant does not regularly work successive terms (for example, the claimant works the spring term each year).

D. Fact-finding

The following information should be considered to determine whether a reasonable assurance exists:

- Is this a break between academic terms or years, or a customarily established holiday break? If so, when did the year or term end and when will the next academic period begin?
- Does the employer meet the definition of an educational institution for purposes of § 28A?
- Is the claimant a professional, or a non-professional? What services did the claimant perform for all educational institutions listed in the base period?
- Has the claimant received a bona fide offer of re-employment for the next academic year or term from any educational institution?
 - Who made the offer? Does this individual have the authority to make an offer of employment? When was the offer extended?
- If the claimant is an adjunct instructor or professor, is the offer contingent upon factors outside the school's control? If so, has the school provided evidence establishing that individuals in the claimant's position normally perform services in the following academic year or term such that the claimant is likely to be reemployed? Does the position offered provide economic conditions not considerably less than those provided in the prior position?

E. Procedures

1. Exclusion of base-period wages

A claimant who has a reasonable assurance may not establish eligibility for benefits based on the services to which the reasonable assurance applies. Accordingly, the wages paid for such services are not used when determining monetary eligibility or calculating a weekly benefit amount. A claimant nevertheless may be eligible for benefits based either on educational services to which no reasonable assurance applies or other, non-educational covered employment during the base period, or a combination of both.

Note: Although it is possible that a claimant's wage distribution in the four base-period quarters may increase rather than reduce the weekly benefit amount, the total benefit credit is always lower.

Example: Claimant, who was laid off in June from a full-time teaching position, filed a claim and was approved for benefits. The following October, the employer placed the claimant on its substitute teacher list. The claimant worked as a substitute teacher for the remainder of the school year. At the end of the school year, the claimant received a reasonable assurance of reemployment as a substitute teacher for the following school year. After summer recess began, the claimant filed a new claim for benefits. Although the reasonable assurance barred the use of the claimant's wages as a substitute teacher to establish eligibility, the claimant's base period included wages earned as a full-time teacher between April and June of the prior school year. That service and those wages should be considered because they were unaffected by the later reasonable assurance regarding the claimant's service as a substitute teacher.

2. Employer's requirement to provide notice to DUA

Unless the claimant acknowledges receipt of a reasonable assurance, the educational institution must inform DUA, either in writing or by telephone, that the claimant has been given a bona fide offer of a specified job, for example, a teaching job, in the second academic period, including how the offer was conveyed and whether the person who made the offer was authorized to make it.

3. Method of notice to claimant

The claimant must receive notice (either orally or in writing) of the offer of re-employment. When the employer says that notice was given orally, the claimant may or may not agree. Notice of reasonable assurance is sometimes provided orally at a group meeting, after which members of the group are generally asked to sign a form or list verifying attendance and notification. In some smaller communities, local newspapers publish lists of the employees with reasonable assurance of school re-employment. All of these methods of notification are acceptable, as long as the employer establishes that the claimant received the notification.

4. Reasonable assurance period; notice date

The provisions of § 28A regarding reasonable assurance apply only to the weeks commencing between two academic years or terms, and holiday or vacation recesses during an academic term. A week is defined as seven consecutive days beginning on a Sunday. Therefore the time period for a reasonable assurance must be in whole weeks. For example, if the school year

ended on a Wednesday, the reasonable assurance period would begin on the following Sunday.

If written or oral notice of reasonable assurance is given directly or sent electronically to the claimant, the date this takes place is also the date of notification. If, however, the employer mails the notice, the date of receipt (not to exceed three days later) becomes the date of notification.

If a claimant who has been initially determined to not have a reasonable assurance of rehire is later given a bona fide offer of reasonable assurance, the date of the offer must be established. If the day of notification is a Monday, Tuesday, or Wednesday, disqualify the claimant effective that week. If the notification is received on a Thursday or Friday, apply a lost-time disqualification under § 29(b) and 1(r) for one or two days, whichever is appropriate.

Note: When the new academic year or term begins, the reasonable assurance provisions are no longer applicable because § 28A does not apply when school is in session. If otherwise eligible the claimant would be entitled to benefits for succeeding weeks.

5. Opportunity to perform service; retroactive pay for non-professionals

Section 28A(b) provides that an otherwise eligible **non-professional** school employee who has been denied unemployment benefits solely because of a reasonable assurance shall be entitled to retroactive payment of benefits if, in fact, the educational institution does not provide the claimant an opportunity to perform such services in the second academic year or term. This retroactive payment is limited to weeks for which the claimant filed a timely claim for benefits.

The employer that gave the reasonable assurance must make an offer in writing by the end of the second full week from the beginning of the academic year or term, unless the claimant already has returned to work for the educational institution. The offer must give the claimant the opportunity to start performing services before the end of the fourth full week from the beginning of the academic year or term.¹⁷

An offer of short-term employment — less than 20 working days — does not constitute an opportunity to perform services, unless the individual is a non-professional substitute employee, such as a substitute cafeteria worker. In this case, an opportunity to perform service is considered bona fide as long as the

¹⁷ See 430 Code Mass. Regs. § 4.96(1).

offered economic conditions of employment are not considerably less than those in the most recent period.

To request retroactive payment of benefits, a claimant must apply for benefits no later than the sixth full week from the beginning of the academic year or term. When such a request is filed, the original wage-exclusion determination (the reasonable assurance issue) must be set to pending at the redetermination level in UI Online, and custom fact-finding should be sent to both parties regarding the opportunity to perform services. Also, the adjudicator should make requestable all the weeks that were subject to the reasonable assurance wage exclusion. The claimant's certification of these weeks constitutes the filing of a timely claim for the retroactive payment of benefits.

The effective week of the reopened claim may be pre-dated to the effective date of the period in issue, which is usually the effective date of the initial claim. After all the facts have been obtained, make a non-monetary determination on the claimant's eligibility for retroactive payment of benefits.

Do not disqualify the claimant under § 24(b) for being unavailable for work or not actively seeking work during the period to which the retroactive benefits apply.

If the adjudicator establishes before the next academic year or term starts that the claimant will not be offered an opportunity to perform service, the payment of retroactive benefits can begin at that point.

6. Other employment during summer recess

A claimant who finds other work during the summer recess is still subject to § 28A. If a claimant was employed by an educational institution during the most recent academic year, that educational institution is an interested-party employer, regardless of the claimant's subsequent summer employment.

F. Circumstances and policies

1. Separation from work during academic year or term

If a claimant is separated under § 25(e)(1) or (e)(2) from an educational institution during the academic year or term and any educational institution offers the claimant employment, § 28A does not apply, because the relationship with the first educational institution was completely severed. But if the claimant refuses the offer and at that time is otherwise eligible, the issue should be analyzed under § 25(c). See Chapter 5- Suitable work.

2. Refusal of offer

If during the period between academic years a claimant decides not to return in the next academic year or term, unless it is established that the claimant notified the employer, the claimant has not—for adjudication purposes—actually left work.

3. Failure to seek work

The availability and worksearch requirements apply to school employees. See Chapter 4- Able, available, and actively seeking work. If a claimant does not have a reasonable assurance under § 28A during the period between an academic year or terms and fails to look for another job, the claimant will be subject to disqualification under § 24(b). A claimant who has a reasonable assurance (and who has base period wages from other employment sufficient to establish monetary eligibility) is subject to the worksearch and availability requirements for the period between academic years or terms until four weeks prior to the recall date.

4. During school vacation

Vacation periods occurring within an academic term are treated like the period between successive academic years or terms. If an individual performed services in the same academic term within which the vacation falls and has a reasonable assurance of performing services within that term after the vacation, reasonable assurance principles apply. For purposes of an on-call substitute teacher, for example, “performing services” may mean as little as one day’s service during the term within which the vacation falls. The § 28A(c) wage exclusion applies, however, only to a week that begins during a vacation. Since some vacation periods, such as the Thanksgiving break, start on a Tuesday or Wednesday, a § 28A wage exclusion for such periods does not apply.¹⁸

5. Beginning of next school year or term

If a claimant has been disqualified under § 28A, the wage exclusion ends when the next academic year or term begins.

Note: School vacation breaks for private, non-profit schools and institutions of higher education often differ from the more common February and April vacations of public schools. If the issue comes to the adjudicator as Still Employed, and if fact finding establishes school was not in session, the possibility of a § 28A issue must be considered.

¹⁸ *Cape Cod Collective v. Director of Dep’t of Unemployment Assistance*, 91 Mass. App. Ct. 436 (2017).

6. Adjunct instructors

The employer has the burden of proving that an adjunct professor had reasonable assurance.

Frequently, adjunct instructors teaching in one academic year or term are offered a similar position in the succeeding period conditioned on factors beyond the control of the educational institution, such as enrollment or program funding. In such circumstances, the adjudicator must determine whether there was a bona fide offer or only the possibility of employment. (See above-*Bona Fide Offer*.) Two key indicators are whether (1) the institution provides evidence that individuals in the claimant's position normally provide services in the following academic year or term and (2) the economic terms and conditions of the job offered in the second period are not considerably less than the terms and conditions of the job in the first period.

Adjudicators should document the number of courses and wages paid per course in the previous semester, term, or year, and compare it to the terms and conditions of the work offered in the second period.

Note: The reasonable assurance does not have to be from the most recent employer.

Example 1: An adjunct instructor is offered the same job in the second academic year in a special program funded from an outside source. This program has been funded for the past four years. At the beginning of summer recess, however, no notification of the following year's funding has been received. Other than this lack of notification, which usually arrives late in the summer, no reason exists to indicate that the program will be suspended or abolished. While the circumstances under which the instructor is employed are not within the school's control, the school can still establish a pattern showing that the program is likely to be funded in the second academic year. Therefore, the offer of work is bona fide and a reasonable assurance exists.

Example 2: The claimant works as an adjunct college instructor teaching a total of four courses, one at each of four different colleges. At the end of the academic year, or term, the claimant receives a reasonable assurance from only one of those colleges, the assurance being for only the one course the claimant had taught at that college (for the same salary as that college had paid). The wages from the other three colleges, but not from the college that gave the reasonable assurance, may be used to establish monetary eligibility.

7. Coaches (sports)

To have a reasonable assurance, a coach must be offered a similar position for the next academic year or term with conditions and benefits that are not less favorable.

- **Example:** The claimant was employed as a tennis coach from April through the end of the school year in June. The claimant received a bona fide offer of the same position on not considerably less favorable economic conditions for the next tennis season beginning April of the next academic year. Although the claimant may have a reasonable assurance of reemployment, § 28A does not bar use of the coach's wages because the offer was not for the immediately following academic term. Note, however, that the position may have been certified as seasonal. (See discussion of *Certified Seasonal Employment*, below.) The adjudicator should check FileNet Workplace XT to see whether a seasonal determination was made.

8. Substitute teachers

To have a reasonable assurance, substitute teachers must be offered a position for the next academic year or term with not considerably less favorable economic conditions and benefits. Consider the employment history of the claimant during the last academic period of the school year, normally either a term or semester. If a substitute teacher files a claim for partial benefits, see Chapter 9- Total and partial unemployment.

- **Example 1:** The claimant begins the school year in employment as a full-time public school teacher. During the second half of the school year, more than eight weeks before the end of the school year, the claimant's position changes to that of an on-call substitute teacher. Just before the end of the academic year, the claimant receives a reasonable assurance for the substitute teacher position. The reasonable assurance given excludes only the wages as a substitute teacher. The claimant's wages as a full-time teacher may be used.
- **Example 2:** The same facts as in Example 1, except that the claimant's position changes to that of an on-call substitute teacher within the last eight weeks of the school year. An offer of reemployment as an on-call substitute teacher would not be a reasonable assurance. Therefore, all of the claimant's wages should be used.

G. Examples

Example 1: Refusal of a contract for the upcoming academic year

A principal refuses a contract for the upcoming academic year as a teacher, not as a principal. If it is determined that the economic terms and conditions are not considerably less than in the first academic year, a reasonable assurance exists. But if the economic terms and conditions will be considerably less in the second academic year, then a reasonable assurance does not exist. Note that if the position offered was not in a

professional capacity (and the first position was), no reasonable assurance exists, regardless of the economic terms and conditions.

Example 2: Offers of reduced employment

A teacher employed full-time in an academic year is offered a position teaching 3/5 of the week or less in the next academic year. Since the economic terms and conditions would be considerably less than the terms and conditions in the prior academic year, no reasonable assurance exists.

Example 3: Full-time teacher offered long-term substitute contract

A non-tenured teacher employed on a full-time basis during an academic year is offered a one-year contract as a “long-term” substitute. Unless the rate of pay is the same as that for a full-time teacher, daily employment is guaranteed for the length of the contract, and the long-term substitute position includes similar benefits, then the economic terms and conditions will be considerably less, and reasonable assurance does not exist.

Example 4: Full-time teacher or long-term substitute teacher placed on an on-call list

A non-tenured full-time teacher (or a long-term substitute teacher) during the first academic year is placed on the on-call substitute list for the next academic year. An on-call employee has a varying schedule of hours and works on an as-needed basis. Even if the educational institution indicates that former full-time teachers (or long-term substitute teachers) are placed on the top of the substitute list and are called to work before other substitute teachers and that those on the top of the list usually work four or five days each week, the economic terms and conditions are likely considerably less than those of the former position.

On-call substitute positions typically offer:

- No guarantee of full-time work
- No benefits (health insurance, retirement, etc.)
- No option to spread one’s pay out over a 12-month period

Example 5: On-call substitute teacher retained on an on-call list

An on-call substitute is retained on the on-call list. If the educational institution establishes that the circumstances under which the teacher will be called are unchanged, then reasonable assurance exists. If for any

reason, the teacher will be called significantly less frequently than during the prior academic year (prior full-time teachers or long-term substitutes will be placed on top of the daily substitute list, non-certified teachers will be called last, etc.) then the economic conditions would be considerably less and reasonable assurance does not exist.

Example 6: Funding contingency

A claimant is offered reemployment contingent on funding being obtained for the program in which the claimant teaches. The employer establishes that in the last few years funding for the program has been confirmed in the late summer. The claimant provides one or more newspaper articles suggesting that the program will not be funded. If the adjudicator finds the newspaper article(s) to be sufficiently credible to expect a different result this year, then a reasonable assurance does not exist. The adjudicator must weigh all the evidence and the credibility of its sources.

Example 7: Enrollment contingency

During the past two academic years, a claimant has been employed by an educational institution as an untenured art teacher along with four more senior teachers. The employer states that the claimant has a reasonable assurance to perform service in the third academic year. The claimant responds that there were persistent rumors that reduced enrollment will lead to a reduction in the number of positions in the art department. The employer then states that, although current enrollment levels require only four art teachers for the coming year, the claimant will be the next art teacher hired (based on seniority) if the enrollment level increases. At this time, the claimant has been offered a possibility of work, rather than a reasonable assurance of work. The claimant's wages as an art teacher during the prior academic year should be used to determine monetary eligibility and the weekly benefit amount from the filing date of the claim until the employer removes the contingency.