



A Union of Professionals

Federal Unemployment Tax Act: Fact Sheet for Adjuncts

As an adjunct, am I eligible for unemployment compensation if I am not teaching during the current term?

Beginning in January 2017, it's more likely than ever that the answer is yes.

Eligibility depends on 1) whether you have “reasonable assurance” of an “offer for employment” in the upcoming term, and 2) what the elements of that offer are.

To determine whether you are eligible for unemployment compensation, answer these three questions:

- 1) Do you have a genuine offer of employment—written, oral or implied—for the upcoming academic year or term, or for the remainder of the current year or term? A genuine offer is one that is made by a person with actual authority to offer the employment.
- 2) Is the employment offered the same sort of employment you had from this employer before?
- 3) Is the compensation for the employment offered substantially the same as what this employer gave you before?

If the answer to *any* of these three questions is no, the state must grant you unemployment compensation between and within academic terms during which you are not working.

If the answer to *all three* questions is yes, you may still be eligible for unemployment compensation. To qualify in this case, the state must determine:

- 1) Whether you have a contract. (If you do, you will not qualify for unemployment.) Determining whether you have a contract may take several steps, as shown below.
OR
- 2) Whether you have “reasonable assurance” of work. (If you do, you will not qualify for unemployment.)

To determine whether you have a contract:

A contract in this case means an enforceable agreement that is free of contingencies—that is, the agreement is not contingent upon or does not depend on whether this or that happens. For example, an agreement that you will teach next term might depend on—or be contingent upon—whether enough students are enrolled in the section you usually teach, or whether the course is scheduled for that term. The contract may not have any contingencies, and it must provide compensation for an entire academic year or on an annual basis.

If there is no contract, the state must determine whether there is “reasonable assurance” of work without one.

To determine whether you have reasonable assurance:

To determine whether you have reasonable assurance of work in the next term, the state considers who is in control of any contingencies attached to whatever agreement you have been offered. If the contingencies are within the employer's control—which would be the case with things like course programming, funding allocation and facility availability—the state must rule that you do not have reasonable assurance, and you would therefore be eligible for unemployment compensation. Contingencies that are not controllable by the employer include enrollment and seniority.

The state must analyze all circumstances to decide whether it is highly probable there will be a job available for you in the upcoming term. To determine this, it considers funding, enrollment, the nature of the course, seniority, budgeting and assignment practices, the number of offers related to the number of potential teaching assignments, the period of student registration and other contingencies.

The state must give primary consideration to contingencies. If, after considering contingencies, it is not highly probable that you will have reasonable assurance of a job, there is no reasonable assurance.

Have there been recent changes to the rules that determine unemployment eligibility? What are the changes?

Yes. On Dec. 22, 2016, the Employment and Training Administration of the U.S. Department of Labor issued Unemployment Insurance Program Letter No. 5-17, which concerns the interpretation of the terms “contract” and “reasonable assurance” in section 3304(a)(6)(A) of the Federal Unemployment Tax Act and, specifically, addresses the question of how contingencies of various kinds bear on whether reasonable assurance exists. In short, the letter updates federal guidance to better reflect the realities of today's predominantly adjunct academic workforce.

What impact will the changes have on me?

In the past, states were inconsistent in their determination of whether adjuncts had reasonable assurance of future employment. Two states—California and Washington—regularly granted unemployment benefits to adjuncts based on state court rulings and state legislation, respectively. Those standards remain intact in those states; the guidance letter does not and cannot overturn them. In states other than California and Washington, however, unemployment benefits have sometimes been denied.

If you've received unemployment benefits between terms in the past, the program letter will not change that. But adjuncts and other nontenure-track higher education employees who have been denied unemployment compensation—or who haven't filed for it—should re-examine their circumstances to see whether they might now qualify.

Does this mean that if I was denied unemployment before, I might be approved now?

Yes!