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| The Great Seal of Massachusetts  **DEPARTMENT OF UNEMPLOYMENT ASSISTANCE**  **UI POLICY & PERFORMANCE**  **INTEROFFICE MEMORANDUM** |
| Date: April 25, 2014 |
| Classification: Adjunct Professors |
| Recission(s): UIPP Memo Re: Adjunct Professors May 23, 2006 |
| Reference No.: UIPP 2014-04 |

TO: All DUA Managers, Job Service Representatives, Compliance Officers and

Call Center Staff

FROM: Jennifer Lavin, Acting Director

SUBJECT: Reasonable Assurance for Adjunct Professors

1. **PURPOSE.**

To communicate DUA’s revised policy regarding adjudication of reasonable assurance issues for adjunct professors.

1. **REFERENCES.**

US DOL, Unemployment Insurance Program Letter No. 04-87 (Dec. 24, 1986).

1. **BACKGROUND.**

Federal law prohibits the use of base period wages to establish monetary eligibility for UI benefits based on services performed in an instructional, research, or principal administrative capacity for educational employers when a contract or a reasonable assurance exists for performing services in the next academic period on economic terms and conditions not substantially less than the terms and conditions for the work in the first academic period. To determine UI benefit entitlement, it is necessary to review the concept of reasonable assurance as it applies to claims based on services performed for, and wages earned from, an educational institution as set forth in G.L. c. 151A, § 28A.

Reasonable assurance is a written, oral, or implied agreement that the employee

will perform services in the same or similar capacity during the next ensuing academic year or term. The reference to “same or similar capacity” refers to the type of services provided: professional or non-professional. For a reasonable assurance to exist, the educational institution must establish that the claimant has been given a bona fide offer of employment in the next academic period. An offer of employment will not be considered bona fide if only the possibility of work exists. A possibility of work, as opposed to a reasonable assurance, exists if the conditions under which the individual would be employed are not within the educational institution’s control **and** the educational institution cannot provide evidence that such claimants normally perform services in the following academic year. But if the educational institution can establish a pattern showing that the individual is likely to be reemployed in the second academic period, a reasonable assurance exists. If, however, the claimant is not, in fact, reemployed in the same or a similar position, then the issue is subject to redetermination.

**Example**: a teacher is offered the same job in the second academic year in a special program which is funded from an outside source. This program has been funded for the past four years. However, at the beginning of summer recess, 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 teacher 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. If the program is not funded and the claimant is not employed in accordance with the assurance given earlier, the State must consider whether there was a bona fide offer of employment.

For many years DUA policy has been to approve benefits for adjunct professors when their continued employment in the next ensuing academic year or term is contingent upon enrollment or financing, without regard to the actual likelihood of the claimant’s being reemployed. DUA has recently become aware that this position is contrary to established guidance from the United States Department of Labor. DUA is obliged to follow this federal guidance because conformity with US DOL’s interpretation of federal law is a condition of federal financing of the Massachusetts unemployment insurance system.

1. **ACTION.**

When making a determination on whether a reasonable assurance exists for adjunct professors, it must be decided whether:

* the employer is an educational institution. It does not matter whether the institution is public or private; but a private educational institution must have § 501(c) (3) status under the Internal Revenue Code and be exempt from taxation under § 501(a) of the Code; and
* the claim is for a period of time between two successive academic years or terms; and
* the claimant has received a “reasonable assurance,” either in the form of a written contract or otherwise, of reemployment in the same or similar position for the next academic year or term; and
* the economic terms and conditions of the job offered in the second period are not substantially less than the terms and conditions for the job in the first period; and
* if the proposed reasonable assurance is contingent on circumstances not within the educational institution’s control, whether the institution can still establish a pattern showing the claimant is likely to be reemployed in the second academic period.

If each of these factors is established, then the claimant has a reasonable assurance of re-employment within the meaning of G.L. c. 151A, §28A and the base period wages earned while in the employ of any educational institution must be excluded from the benefit claim.

5**. QUESTIONS.**

Any questions regarding adjunct professors should be directed to the UI Policy and Performance Department at (617) 626-6422.