

Information on NTT Unemployment Benefits Eligibility Criteria

Provided by WEA & UFWW – Spring 2019

Background: The faculty unions were responsible for positive changes in the law governing unemployment benefits for academic employees as of April 19, 2001, with changes approved in June 2018. This intent language in RCW 50.44.055 was a hard fought and invaluable addition. It is important to know that college administrations are not the people who determine whether a faculty member is or is not eligible for unemployment benefits. The laws of this state are very clear—employees at educational institutions who are not tenured or on tenure track contracts (i.e. NTT) are eligible for unemployment benefits during quarters when they are unemployed (or underemployed, e.g. work is reduced at one or more institutions) under certain conditions—referenced below (RCW 50.44.053). The intent is to clarify the issue of “reasonable assurance” of continued employment for NTT faculty. The law provides a presumption of NO reasonable assurance for those with contingent contracts—but it does not give a blanket guarantee to all NTT or an automatic right to unemployment benefits. Such blanket guarantees would not have been allowed by the Department of Labor. NTT should be knowledgeable about their rights regarding their eligibility for unemployment benefits.

Pertinent laws: RCW 50.44.050, 50.44.055, 50.44.053

[RCW 50.44.050](#) Benefits payable, terms and conditions—“Academic year” defined.

[RCW 50.44.055](#) Finding—Intent—Reasonable assurance, application to employees of educational institutions.

The legislature finds the interests of the state and its citizens are best served by a strong education system. Paramount to that system's success is the attraction and retention of qualified instructors. In order to attract and retain instructors, those who are subject to uncertainties of employment must be provided assurance that their economic needs are addressed. Contingent assurances of future employment are often speculative and do not rise to the level of other forms of assurance. As such, the factors presented in RCW 50.44.053 must be used to determine if reasonable assurance of employment exists.

It is the intent of the legislature that reasonable assurance continue to apply to all employees of educational institutions as required by federal provisions and RCW 50.44.080.

[RCW 50.44.053](#) Education employees—Determination of “contract” or “reasonable assurance.”

(1) The following prerequisite requirements must be met before making a determination about whether there is a “contract,” under RCW 50.44.050, or “reasonable assurance,” under RCW 50.44.050 and 50.44.055:

(a) The offer of employment may be written, verbal, or implied, and must be made by an individual with actual authority to offer employment;

(b) The offer of employment provides that the employee will perform services in the same capacity during the ensuing academic year or term (or remainder of the current academic year or term) as in the first academic year or term; and

(c) The economic conditions of the offer of employment may not be considerably less in the following academic year or term (or portion thereof) than in the first academic year or term (or portion thereof). "Considerably less" includes the condition that the individual will not earn at least ninety percent of the wages earned in the prior academic year or term.

(2) If all prerequisite requirements in subsection (1) of this section are satisfied, the department must determine if a contract exists. If any prerequisite in subsection (1) of this section is not satisfied, the department may not deny the claimant unemployment compensation based on the between and within term denial provisions. The term "contract," as that term is used in this section and RCW 50.44.050, means an enforceable, noncontingent agreement that provides for compensation for an entire academic year or on an annual basis. If a contract exists, the claimant may be subject to a denial of benefits.

(3) If no contract exists, the department must determine if the claimant has "reasonable assurance." The following factors will be considered in determining if an individual has "reasonable assurance," as that term is used in this section, RCW 50.44.050, and 50.44.055. For reasonable assurance to exist, each factor must be satisfied.

(a) If any contingencies in the employment offer are within the employer's control the claimant will not be considered to have reasonable assurance of employment. Contingencies within the employer's control include, but are not limited to:

- (i) Course programming;
- (ii) Funding allocation decisions;
- (iii) Final course offerings; and
- (iv) Facility availability.

(b) If contingencies are not within the employer's control, the department must determine whether it is highly probable the contingencies contained within the offer will be satisfied. Primary weight will be given to the contingent nature of an offer of employment.

(c) Reasonable assurance must be determined on a case-by-case basis considering the totality of circumstances rather than on the existence of any one factor. For an individual to have reasonable assurance of employment, the totality of the circumstances must show that it is highly probable that employment will be available in the next academic year or term, and that the contingencies of that employment will be satisfied.

(4) An individual who is tenured or holds tenure track status is considered to have reasonable assurance, unless advised otherwise by the college. For the purposes of this section, tenure track status means a probationary faculty employee having an opportunity to be reviewed for tenure.

Unemployment Insurance for Educational Employees:

These are the general eligibility [criteria](#) for anyone applying for UI benefits and how they apply to NTT faculty:

1. Have 680 hours working in your "base year." Your pay stub reports the hours for which you are compensated. In addition, you can also self-document hours. You can do that up front or, if you are denied on the basis of not enough hours, you can appeal the denial using self-documented hours.
2. Be unemployed for no cause of your own.
3. Be actively seeking work, able and willing to work, and available for work during the time you are on unemployment. In most cases, you must make a minimum of three job search contacts each week you claim benefits.
4. *Specifically for education employees*-- Have NO contract or "reasonable assurance" of continued employment in the next successive quarter.

NTT faculty are eligible for unemployment benefits in 2 basic ways:

1) You are assigned no classes during a quarter such as winter, fall, or spring, and in some circumstances, summer.

2) You are teaching fewer hours in one quarter than you usually do (in the preceding quarter at least). You may be eligible for what are typically called "partial unemployment" benefits.

Now that the law clearly states that conditioned offers of employment are presumed not to be reasonable assurance, part-time faculty--unless under a more binding form of multi-quarter agreement (e.g. as is the case for Senior Instructors)--should assume that they do not have reasonable assurance.

In the case of a college appeal to a claim for such benefits, it is the Employment Security Department and the attendant legal entities who are then the arbiters of whether the conditions apply for individual NTT to receive these benefits. Our laws are subject to the federal guidelines from the Department of Labor which apply to all employees in the U.S.

Summer health care settlement:

A recent settlement gives certain part-time faculty employer-paid health benefits over the summer, whether they are working or not. Those part-timers working half time or more of a full-time load in each of three quarters are eligible for these benefits. There is no necessary connection or mutual exclusion between receiving the newly won summer health benefits and receiving unemployment insurance benefits. No presumption of reasonable assurance will exist by virtue of receiving the summer health benefits. And, as the law clearly states, "Primary weight will be given to the contingent nature of an offer of employment based on enrollment, funding, and program changes."

How to get help: If your claim is denied by the Employment Security Department or if the college challenges a claim, call your faculty union representative. At the state level, Wendy Rader-Konofalski (wrader-konofalski@washingtonea.org) can provide assistance as well.