

Things to know about Unemployment Insurance

For higher education part-time faculty, unemployment eligibility is fundamentally based on a “reasonable assurance” of employment standard. It is not the only standard that is used, which complicates eligibility. Read on to better understand your rights and the process for applying.

Who is eligible for unemployment benefits?

Anyone in the U.S. who:

1. Lacks reasonable assurance
2. Has been employed 680 hours in a “base year”
3. Is actively seeking, able, willing, and available for work
4. Has become unemployed for no cause of his/her own

Why are part-time community and technical college faculty eligible?

Specific statutes stipulate that community or technical college education employees who have NO contract or “reasonable assurance” of continued employment in subsequent quarters or semesters are eligible to receive benefits—if all other conditions apply.

This does not apply to full-time or tenure-track faculty or for part-time faculty with guaranteed multi-quarter contracts, but does apply to faculty hired on a quarter-to-quarter basis.

Part-time faculty are eligible for UI for:

- Quarters when you receive no classes (summer quarter, special case—discussed later)
- Breaks between quarters—subject to reasonable assurance in upcoming quarter.
- When you receive fewer hours or courses than you normally do in the preceding quarter at least—called “partial unemployment”.

Washington State statute

RCW 50.44.055 section (3) states: reasonable assurance must be determined on a case-by-case basis by the total weight of evidence rather than the existence of any one factor. Primary weight must be given to the contingent nature of an offer of employment based on enrollment, funding, and program changes.

Reasonable assurance standard

A person is presumed not to have reasonable assurance if an offer of work is conditioned on enrollment, funding, or program changes. It is the college’s burden to provide sufficient documentation to overcome this presumption. (This standard applies to community and technical colleges assigned the standard industrial classification [SIC] code 8222.)

Determination of Reasonable Assurance is usually based on a preponderance of “evidence.” Any of the factors below, alone, would not be enough to establish or refute reasonable assurance. Several factors combined may.

- Having been told verbally you will come back

- Having been given a form saying you will come back (that doesn't say clearly that this is NOT a conditioned or contingent offer)
- Having chosen your books for your classes
- Having your name appear on a schedule
- The fact that you have taught repeatedly over a number of years
- Having the college stamp your form with "No Reasonable Assurance"

How can the college overcome the presumption of no Reasonable Assurance?

Only by the "preponderance of evidence"—that is, multiple conditions and not just one by itself. In other words, just because you have worked for several years consistently should not overcome that presumption. Yet that is often what is used to deny benefits.

How do I calculate hours and base year?

Base year means the first four quarters of the last five completed calendar quarters:

First calendar quarter is: Jan. Feb. March

Second quarter: April May June

Third quarter: July August Sept

Fourth quarter: Oct Nov Dec

"Hours worked" is calculated as follows:

Hours worked includes: Class hours (contact hours), preparation time, student consultation time, etc.

In general, you will divide the number of your class hours by the number of full-time class hours that constitutes a full-time load (often 15 but varies by discipline, campus or by the collective bargaining agreement for your campus), and translate class hours into clock hours based on a 35-hour week and on the number of weeks in each quarter.

The following illustrates how to calculate hours worked:

Let's assume:

15 hours equals a full time load

10 hours equals the number of hours Mary (a part-time faculty member) teaches

Divide 10 by 15 to get the portion of a full time load. In this case, $10 = 2/3$ of a full time load.

$2/3$ needs to be converted to clock hours based on a 35-hour week.

$2/3$ of 35 equals 23 hours/week

Multiply the hours per week by the number of weeks in a quarter (this number may vary quarter to quarter or campus to campus)

Example: 23 hours x 10 weeks in the quarter equals 230 hours/quarter

Add the number of hours spent on class preparation, consultations etc. to get a total number of reportable hours.

Once Mary has the number of reportable hours per quarter, she will add the number of hours she has worked in the first four quarters of the previous five quarters. If that total is 680/hours or more, Mary has met the first hurdle in applying for unemployment.

It's good to know . . .

- The college is required to report your hours based on that formula—but it is good to know, so you can do your own calculations.
- In addition, should your hours not add up to 680, you can self-document hours and you can appeal a denial based on insufficient hours using self-documented hours.

What qualifies as a job search?

- Usually, individuals are not required to look for work outside of their normal occupation or geographic area. But if that work is not available, they are required to look for other work they have the physical and mental ability to perform. To be specific, if work as an instructor is not available during the summer, the individual needs to widen his or her job search to other occupations for which he or she is reasonably suited.
- It is also not acceptable for individuals to limit themselves to applying for work that begins in the next academic year (normally fall term).

If the individual attends a workshop administered by the WorkSource Office that qualifies as a “documented in-person job search activity” it can be counted toward the required three weekly activities.

There are additional services and resources available at the WorkSource Offices. Staff can tell individuals which ones qualify towards meeting the weekly job search requirements.

Places to Look for Work

<http://www.sbctc.ctc.edu/JobOpp/default.asp>

This is a job bank website that gives part-timers and others a look at job availabilities in the college system. You can make contact about any of the openings for which you think you qualify and use that as one of your required three weekly job search contacts.

<https://fortress.wa.gov/esd/worksource/Employment.aspx>

WorkSource employment link. Another source to apply for jobs on-line and use as documentation for your job search.

<http://fortress.wa.gov/esd/portal> has links to information and services for job seekers, including a link to WorkSource

What does it mean to be a “9-month college?”

If you apply at the end of spring quarter, there will be a question about whether summer quarter is an academic quarter or considered a break between two successive quarters. That will be answered by whether your college is considered a 12-month or a 9-month college.

The Employment Security Department determines that at the end of every school year and it can change from year to year. Contacting Employment Security is the best source for this information.

How does the distinction affect my ability to get benefits?

If you are at a 9-month college, then the question will be whether you have reasonable assurance for the upcoming fall quarter.

If you are at a 12-month college, and you have no classes in summer, you should get benefits without regard to fall quarter.

Some college administrators may provide inaccurate or confusing information, indicating you are not eligible for benefits in the summer if they are a 9-month college. This is NOT TRUE. It is just a different path.

Will I automatically get benefits?

No. You have to apply first and each case will be adjudicated on a case-by-case basis.

It can be frustrating because the college can challenge your claim, rightly or wrongly, and this can result in the Employment Security Department (ESD) reversing its original decision to award benefits. Expect to be frustrated at some point along the way.

Please Note: If you receive benefits for the summer quarter, you should receive them all the way up to when you begin work again. There have been cases where benefits have been cut off when the employee received a letter from the college assuring he/she would get classes in the fall. This is not correct.

Will I be breaking the bank of the College?

No. Colleges are “reimbursable employers” which means the ESD pays out the claims and the college reimburses that payment. Colleges are not experience rated so that they pay the same regardless of the number of claims they have to pay.

The Legislature gives more than adequate funding to all the colleges to defray UI costs (divided up among the 34 colleges) and what colleges don’t spend on UI, they can keep.

And another thing...

The other thing to know is that the state used to hire one “third party” company that oversaw all the colleges’ UI claims called “Employers’ Unity.” Somewhere in the mid 1990’s, they stopped hiring at the state level and allotted money to each college and allowed them to hire their own such company.

These third party companies have lawyers and legal professionals who are very slick and don’t know you, care about you, or have any motivation beyond “stopping fraud.”

Is it worth the trouble?

Over long periods of no work, it is worth it. Over the shorter breaks, you would have to gauge that for yourself. As long as you keep filing your claims on a weekly basis; conduct a proper job search; don’t let the first challenge cow you into submission and you persist and stick with it, **the law is on your side and you have a good chance of winning.**

What do I do now that I want to apply?

At the end of the quarter (or maybe a week before) contact your job service center. You can do that on-line now by going to the Employment Security Department website. <https://www.esd.wa.gov/>

You will have a “waiting week” before you begin receiving benefits but be prepared to wait several weeks before the payments kick in. You will get retroactive checks back to when you applied.

What can I expect? Best case/worst case scenario

Best Case Scenario: You could be allowed benefits by ESD and start receiving them and if you keep filing weekly claims, you may never have any bad news.

A very possible scenario: You could be allowed benefits by ESD and start receiving them and at some point you get a letter saying the college has challenged—you can challenge back.

Another possible scenario: ESD does NOT allow benefits. Then you will want to know why and you can appeal that decision.

Not all colleges challenge unemployment claims, but be prepared for the possibility that your college will appeal or challenge. The rules have changed to force colleges to be timelier in their responses to the ESD but anticipate that they will wait until the last minute to respond. You can also expect them to have a third-party company hired to represent them at any hearings held.

Worst Case Scenario: You receive benefits and after you have exhausted all your appeal avenues, eventually the college prevails in getting your benefits overturned. If that happens, you may be facing a repayment.

There is a way to get a repayment waived, but you have to prove grave hardship and reveal financial holdings, and it doesn't happen often.

It's always a good idea to be conservative and keep your UI money in a special account, if you can—just in case your unemployment is challenged.

What should I expect if I have to go to a hearing?

Your college or their representatives will try to prove that you **DO** have reasonable assurance.

You will try to prove you **DO NOT** have reasonable assurance.

Below are some examples supporting lack of reasonable assurance that might be helpful to focus on in the hearing:

- You have a contract or job offer conditioned on funding, program changes or enrollment
- you have lost a class or classes due to enrollment
- you have been “bumped” by a full-time faculty
- you have been threatened with loss of a class

Provide any specific information about your department that might show there is some question about your job security will be helpful, such as if there have been new full-time hires recently in your department.

You can also find a recent court case on our website <http://wa.aft.org/> that may be beneficial for you to cite with the adjudicator of your case.

Please note: This document is a compilation of a documents and resources including: Q&A written by Annette Stofer, Part-time instructor at Seattle Colleges; power point presentation by Wendy Rader-Konofalski, WEA; resources and information through Unemployment Law Project and Employment Security Department.