

## Conformity Requirements for State UC Laws

### *Educational Employees: The Between and Within Terms Denial Provisions*

#### Overview

The Federal Unemployment Tax Act ([FUTA](#)) generally requires equal treatment for the payment of unemployment compensation on the basis of service to certain nonprofit organizations, federally recognized Indian tribes, and state and local government workers in the same amount, on the same terms, and subject to the same conditions, as other service subject to state law.

An exception to this requirement of equal treatment in FUTA Section [3304\(a\)\(6\)\(A\)\(i-iv\)](#) involves the treatment of professional and nonprofessional employees of educational institutions, educational service agencies, and other entities pertaining to the denial of unemployment compensation during periods between or within academic years or terms when there is a contract or reasonable assurance that such individual will perform such service in the same or similar capacity in the ensuing academic year or term.

The treatment of employees of educational institutions, educational service agencies, and other entities under FUTA depends on their status as professional or nonprofessional workers. State law must deny benefits to professional employees between and within the academic years or terms when a contract or reasonable assurance exists. State law may deny benefits to nonprofessional employees between and within the academic years or terms when a contract or reasonable assurance exists.

#### Federal Law Provisions Relating to School Employees

§[3304\(a\)\(6\)\(A\)\(i\)](#), FUTA provides that benefits shall be denied when a claim is based on services for an educational institution in *an instructional, research, or principal administrative capacity* if the individual performs services in the first academic year or term and there is a contract or reasonable assurance that the individual will perform services in any such capacity for any educational institution in the second such academic year or term.

§[3304\(a\)\(6\)\(A\)\(ii\)\(I\)](#), FUTA provides that benefits may be denied when a claim is based on services for an educational institution *in any other capacity* if the individual performs services in the first academic year or term and there is a contract or reasonable assurance that the individual will perform services in any such capacity for any educational institution in the second such academic year or term. In this context, “any other

capacity” means a capacity which is not an instructional, research, or principal administrative capacity.

§3304(a)(6)(A)(ii)(II), FUTA provides that if a claim is denied to an individual based on service in *any other capacity*, and such individual is not reemployed in the second such academic year or term, then such individual is entitled to retroactive payment of UC.

§3304(a)(6)(A)(iii), FUTA provides that benefits shall be denied when a claim is based on services for an educational institution in any capacity, the claim is for any week during an established and customary vacation period or holiday recess, and there is a contract or reasonable assurance of being rehired following the established and customary vacation period or holiday recess.

§3304(a)(6)(A)(iv), FUTA provides that benefits shall be denied if the claim is based on services in *an instructional or principal administrative capacity* and the claim is for weeks between or within academic years or terms for an *educational service agency* in an educational institution when there is a contract or reasonable assurance of being rehired.

§3304(a)(6)(A)(v), FUTA provides that benefits may be denied for any week between or within academic years or terms if the claim is based on services in a capacity *other than an instructional or principal administrative capacity* to, for, or on behalf of an educational institution, and there is a contract or reasonable assurance that such individual will be rehired in the second of such academic year or term academic year or term.

### **Frequently Asked Questions:**

#### 1. What does the phrase “reasonable assurance” mean?

Reasonable assurance means that the individual has a written, oral or implied agreement that s/he will perform services in the same or similar capacity during the ensuing academic year, term, or remainder of the term. In order for there to be a reasonable assurance, there must be a bona fide offer of employment, not just a possibility that employment will exist. In addition, reasonable assurance exists only if the economic terms and conditions of the job offered in the second period are not substantially less (as determined by state law) than the terms and conditions for the job in the first period.

#### 2. What does the phrase “same or similar capacity” mean?

The phrase “same or similar capacity” refers to the category of service performed, either in a professional capacity (instructional, research, or principal administrative capacity) as indicated in §3304(a)(6)(A)(i), or in a nonprofessional capacity (any other capacity) as indicated in §3304(a)(6)(A)(ii). Thus, services in an instructional, research or principal administrative capacity are in the “same or similar capacity” even though the offer for

employment is in an instructional capacity in the first term and a principal administrative capacity the second term.

3. What is an academic year?

An academic year is the period of time characteristic of a school year. It most usually means a fall and spring semester.

4. What is an academic term?

An academic term is that period of time within an academic year when classes are held. Examples include semesters and trimesters. Terms can also be other nontraditional periods of time when classes are held, such as summer sessions.

5. What is a vacation period?

A vacation period is that time within an academic year or term during which school is not in session due to a holiday or school break. Examples include winter and spring break, Christmas vacation, etc.

6. Must there be a guarantee of work in the ensuing academic year for the denial to apply?

In order for the claimant to be denied benefits, there must be a contract or reasonable assurance of being rehired. For “professional employees” there is usually (but not always) a contract of employment for the following academic year or term. For nonprofessionals, there may not be a contract of employment. However, for the between term provision to apply, there must be a bona fide offer of employment. A bona fide offer of employment means more than the mere possibility that employment will exist.

A mere possibility of employment, rather than reasonable assurance, may be found if:

- the circumstances under which the claimant would be employed are not within the educational institution’s control, and
- the educational institution can not provide evidence that the claimant normally would perform services during the following academic year or term.

7. What does “educational services agency” mean?

An educational services agency is a governmental agency or governmental entity established or operated exclusively for the purpose of providing services to one or more educational institutions. For example, such agencies may provide driver education and audiovisual services to all schools in the state and employees of these agencies may travel from school to school providing these services.

**References:**

[UIPL 18-78](#). State Option to Deny Benefits “Between Terms” and/or “Within Terms” to employees of an Educational Services Agency.

[UIPL 34-80](#). Determination of Amounts of Benefits Payable Between Terms When There are Both School and Non-School Wage Credits.

[UIPL 30-85](#). Denial of Benefits to Educational Employees in Crossover Situations.

[UIPL 11-86](#). UCFE-UCX Application of “Between and Within Terms” Denial Provisions of State Laws to Employees of Federally-Operated Schools.

[UIPL 4-87](#). Interpretation of “Reasonable Assurance” in Section 3304(a)(6)(A) Federal Unemployment Tax Act.

[UIPL 43-93](#). Optional Between and Within Terms Denial Provisions.

[UIPL 41-97](#). Application of Between and Within Terms Denial to Head Start Program Personnel