

Unemployment Benefits Eligibility for DACE Teachers

Ernest Kettenring

N.B.: The following is provided for information purposes only, intended to provide guidance in applying for unemployment benefits. Neither UTLA nor the author is responsible for any errors or omissions.

It is apparent that unemployment, either long-term or short-term, will be an on-going fixture in the lives of DACE teachers. With some exceptions, DACE teachers are eligible for unemployment benefits during any period in which they do not earn money. The following applies to all DACE teachers who do not have Permanent Status (tenure).

If you lose your assignment (low attendance), are not offered an assignment for a given term (including summer), or have reduced earnings (hours reduced), you should file online (www.edd.ca.gov) after the last day on which you work and earn money.

The following circumstances should result in eligibility for unemployment benefits:

- 1) Periods between terms (June, August, December) when you are not working.
- 2) Holidays and vacations. If you do not receive holiday pay, you should be eligible. If you receive holiday pay for the week of less than \$450, you should be eligible for the difference between your pay and the \$450 benefit.
- 3) Summer, during times you are not actively working, such as the interim between terms of June-July and August-September.
- 4) Any time your assignment is eliminated or reduced, such as having your class closed for low numbers.

It is important in the application process that you make it clear that you are not a K-12 teacher, that your employment is contingent upon sufficient enrollment and adequate funding, and that, even when you work, you can be terminated at any time. You are an “at will” contingent worker with no “reasonable assurance” of future employment. You should cite the “Cervisi” court decision and state that your employment conditions are identical to part-time community college faculty (The Cervisi decision ruled that part-time college faculty are eligible for unemployment benefits. Although you are not a college instructor, you want to emphasize that your employment conditions are identical to those of part-time adjunct college instructors).

The California Employment Development Department (EDD) website states the following under “school employees:”

If the offer of work I received from a school employer for the next year or term is contingent on sufficient enrollment, adequate funding or changes in the program, will I be eligible to receive benefits during the recess period regardless of my classification?

Yes, regardless of whether you are a professional, nonprofessional or school supportive employee (of a public or nonprofit school), if the offer of work is contingent on there being sufficient funding or enrollment, you would not be considered to have reasonable assurance for the next school year or term. You would be eligible for benefits provided you meet all other eligibility requirements. (For more information about school employee claims review the School Employee Claims section on the EDD website.)

You are eligible for unemployment benefits even if you have an offer of future employment from DACE. For example, you may have an offer of a fall assignment, beginning the second week of September. You should still be eligible for benefits for either the entire summer period (if you are not working during summer school), for reduced benefits during summer (if your assignment grosses less than \$450/week), or during the periods before and after summer school. Even if you have an offer of fall employment, that offer is not guaranteed; it is contingent upon anticipated enrollment and funding, and can be withdrawn by the district at any time. You do not have a “reasonable assurance” that you will actually be employed. You are thus eligible for benefits.

If you are initially denied, you should file an appeal, in which you again need to emphasize the information contained in the above-quoted EDD description: that you are an at will employee whose future employment is contingent upon adequate enrollment and funding, and that any offer of future employment you have can be withdrawn by the employer at any time.