

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. [2018 c 97 s 2; 2001 c 99 s 2; 1998 c 233 s 3; 1995 c 296 s 3; 1985 ex.s. c 5 s 9.]

Conflict with federal requirements—Application—2018 c 97: See notes following RCW 50.44.050.

Conflict with federal requirements—2001 c 99: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2001 c 99 s 4.]

Severability—2001 c 99: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2001 c 99 s 5.]

Applicability—2001 c 99: "This act applies to weeks that begin after March 31, 2001." [2001 c 99 s 6.]

Effective date—2001 c 99: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 19, 2001]." [2001 c 99 s 7.]

Intent—Findings—Conflict with federal requirements—Effective date—1998 c 233: See notes following RCW 50.44.050.

Severability—Conflict with federal requirements—Effective date—1995 c 296: See notes following RCW 50.04.320.

Conflict with federal requirements—Severability—1985 ex.s. c 5: See notes following RCW 50.62.010.