

AMENDATORY SECTION (Amending WSR 10-11-046, filed 5/12/10, effective 6/12/10)

WAC 192-210-001 Which ~~((educational employees are))~~ employment is subject to RCW 50.44.050? (1) ~~((Except as provided in subsection (2) of this section,))~~ The provisions of RCW 50.44.050 apply only to ~~((services performed in the employ of an))~~ educational institutions or ~~((institution of higher education))~~ educational service districts operated by:

- (a) The state;
- (b) A political subdivision of the state;
- (c) A nonprofit organization or unit; or
- (d) An Indian tribe.

(2) The provisions of RCW 50.44.050 apply to services performed either:

- (a) In the employ of an educational institution; or
- (b) In any educational institution while in the employ of an educational service district established pursuant to chapter 28A.310 RCW.

~~(3)~~(a) The provisions of RCW 50.44.050 do not apply if you are employed by a subsidiary business or organization owned or operated by an educational institution when:

- (i) The primary purpose of the subsidiary business or organization is other than educational;
- (ii) You are not employed in the role of ~~((faculty))~~ instructional, research or principal administrative staff; and
- (iii) Your regular employment does not depend on the ~~((school's))~~ educational institution's academic calendar.

(b) All three criteria must be met in order for your services to be exempt from the provisions of RCW 50.44.050. For example:

(i) You work for Pack Forest (operated by the University of Washington, College of Forest Resources) or one of the extension programs operated by Washington State University. You are not employed in the role of ~~((faculty))~~ instructional, research or principal administrative staff and your regular employment does not depend on the ~~((school's))~~ educational institution's academic calendar. However, the primary purpose of each of these entities is educational. Employment for these entities is subject to the provisions of RCW 50.44.050 regardless of the nature of your employment.

(ii) You work for a radio station that is wholly owned and operated by a college. The primary purpose of the business is other than educational, you are not employed in the role of ~~((faculty))~~ instructional, research, or principal administrative staff, and your regular employment does not depend on the ~~((school's))~~ educational institution's academic calendar. You are not subject to the restrictions of RCW 50.44.050.

AMENDATORY SECTION (Amending WSR 07-22-055, filed 11/1/07, effective 12/2/07)

WAC 192-210-005 Definitions—Educational employees. ~~((1) Contract. An agreement that is binding on an educational institution to provide work and on an individual to perform services.~~

~~(2) **Faculty.** A teacher, counselor, librarian, or other position with similar training, experience and level of responsibility.~~

~~(3) **Full-time employment.** Employment designated as full time for or at the educational institution under a collective bargaining agreement, individual hiring contract, or other agreement (including institutional policies), as provided in RCW 50.04.310(2). For faculty at public institutions, the hiring contract, agreement or institutional policy must be consistent with the provisions of RCW 28A.405.210 (kindergarten through twelfth grade), RCW 28B.50.851 (community and technical colleges), RCW 28B.35.120 (regional universities), or RCW 28B.20.130 (other colleges and universities).~~

~~(4) **Under the same terms and conditions of employment.** This includes economic conditions of employment such as wages, duration of contract, hours of work, and general nature of the work. It does not include other conditions and details such as the specific work location, duties, or assignment. The position need not be identical to the previous position to meet this test. A position would be considered to be under the same terms and conditions of employment if it is of similar type or classification, with similar pay, fringe benefits, hours of work, general type of work, and duration of employment.) (1) **Considerably less.** The economic conditions of an offer of employment are considerably less if the individual will not earn at least ninety percent of the total wages earned in the prior academic year or term.~~

~~(2) **Educational institution.** Includes any public or private pre-school, elementary school, secondary school, technical or vocational school, community or technical college, college, and university.~~

~~(3) **Educational service district** means an educational service district established pursuant to chapter 28A.310 RCW.~~

~~(4) **Highly probable** means very likely.~~

~~(5) **Nonprofessional capacity.** Includes all other services not performed in a professional capacity, regardless of the legal or educational requirements to perform such services.~~

~~(6) **Professional capacity.** Includes services performed in an instructional, research, or principal administrative capacity.~~

~~(7) **Same capacity.** In order for services to be performed in the same capacity, both the current work and the future work must both be in a professional capacity or both be in a nonprofessional capacity, even if the job titles or duties are different. In addition, both the current work and the future work must both be for an educational institution or both be for an educational services district, even if the employers or districts are different. For example:~~

~~(a) An assistant principal for the ABC school district has a contract to be a teacher for the XYZ school district the following academic year. These two positions are in the same capacity.~~

~~(b) A counselor who performed services in an educational institution for an educational services district is given reasonable assurance to work as a counselor directly for an educational institution the following academic year. These two positions are not in the same capacity.~~

~~(8) **Totality of the circumstances.** Analyzing the totality of the circumstances requires considering factors such as funding (including appropriations), enrollment, the nature of the course (required or optional, taught regularly or only sporadically), the claimant's seniority, budgeting and assignment practices of the school, the number of offers made in relation to the number of potential teaching assignments, the period of student registration, and any other contingencies.~~

AMENDATORY SECTION (Amending WSR 99-18-066, filed 8/31/99, effective 10/1/99)

WAC 192-210-010 What are the objective criteria used to define "academic year"?—See RCW 50.44.050((+5)) (6). Summer term will be considered part of the academic year for an educational institution unless:

(1) Total enrollment of full-time equivalent students during the previous summer term is less than one third of the average academic year enrollment of full-time equivalent students for the fall, winter, and spring terms of the preceding two years; or

(2) Total full-time equivalent staff during the previous summer term is less than fifty percent of the academic year average of the full-time equivalent staff during the fall, winter, and spring terms during the preceding two years.

AMENDATORY SECTION (Amending WSR 02-19-009, filed 9/5/02, effective 10/6/02)

WAC 192-210-015 How will the department decide if an individual has a contract or reasonable assurance ((exists)) of future work?—See RCW 50.44.053. ~~((Reasonable assurance is a bona fide offer from an educational institution to assign an individual future work at that institution under the same terms and conditions as the individual's previous employment. It is less than a contract or written agreement, but more than a mere possibility of future employment. The department must find that continued employment for that individual is likely or probable. For instructional, research, or principal administrative staff at a community or technical college, the additional provisions of WAC 192-210-020 will be considered in determining whether the individual has reasonable assurance.))~~ (1)(a) For individuals who perform services in a professional capacity, wages and hours from an educational institution or educational services district will count towards the individual's base year and benefit year unless the educational institution or educational services district shows it is highly probable that the individual meets the three prerequisites in subsection (2) of this section and the educational institution or educational services district shows it is highly probable that the individual either has a contract for future work under subsection (3) of this section or reasonable assurance of future work under subsection (4) of this section.

(b) For individuals who perform services in a nonprofessional capacity, wages and hours from an educational institution or educational services district will count towards the individual's base year and benefit year unless the educational institution or educational services district shows it is highly probable that the individual meets the three prerequisites in subsection (2) of this section and the educational institution or educational services district shows it is highly probable that the individual has reasonable assurance of future work under subsection (4) of this section.

(c) When determining if an individual has a contract or reasonable assurance of future work, the department will use the facts as

they are known at the time the individual filed his or her weekly claim.

(2) In order for there to be a contract or reasonable assurance of future work, the following three prerequisites must be met:

(a) There is a written, verbal or implied offer of employment 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).

(3) A contract for future work is an agreement that is:

(a) Enforceable by both the employer and employee;

(b) Noncontingent; and

(c) Provides for compensation for either:

(i) An entire academic year; or

(ii) On an annual basis.

(4) Reasonable assurance for future work exists if either:

(a)(i) There are no contingencies in the offer of employment that are within the employer's control; and

(ii) After giving primary weight to contingent nature of an offer of employment and considering the totality of the circumstances, it is highly probable that the contingencies contained in the offer of employment will be met and there will be a job available for the claimant in the following academic year or term; or

(b) The individual is tenured or holds tenure track status, unless advised otherwise by the institution of higher education. An individual holds tenure track status if he or she is a probationary faculty employee having an opportunity to be reviewed for tenure.

(5) For the purposes of determining whether reasonable assurance of future work exists under subsection (4) of this section, contingencies considered to be in the employer's control include, but are not limited to, course programming, funding allocation decisions, final course offerings, and facility availability. Contingencies considered to be outside of the employer's control include, but are not limited to, enrollment and the availability of funding from an outside source, such as a grant.

AMENDATORY SECTION (Amending WSR 10-11-046, filed 5/12/10, effective 6/12/10)

WAC 192-210-045 When does ((reasonable assurance)) RCW 50.44.050 apply if ((=)) an individual works for more than one ((school)) employer? ((1) RCW 50.44.050 prevents the payment of benefits when "any and all" school wages for "any and all" schools for **any week of unemployment fall between two successive academic terms or during holiday or vacation break periods.**

~~(2) If you receive reasonable assurance for the following academic term from any school, the wages from all schools for whom you worked during the preceding academic term or break will be restricted.~~

~~Example: You worked for ABC and XYZ schools during spring 2009. You received reasonable assurance of returning to work during the fall~~

2009 term from ABC School but not from XYZ School. The wages from both schools must be restricted during the period between academic terms or breaks.

(3) The period during which wages will be restricted begins during the first full week in which any school for which you worked during the preceding academic term is on break and continues through the last full week in which all schools for which you worked during the preceding academic term have resumed a term of instruction.

Example: You worked for ABC and XYZ schools during the 2008-2009 academic year. Summer is not part of the academic year for either school. ABC School's summer break begins June 15, 2009, and ends September 2, 2009. XYZ School's break begins June 22, 2009, and ends September 9, 2009. Your school wages must be restricted from June 14, 2009, through September 5, 2009.) An educational institution or educational services district that offers a contract or reasonable assurance of future work will not have its hours or wages count towards a claimant's base year and benefit year. The wages and hours from all other base year employers may count towards a claimant's base year and benefit year, unless another provision applies to exclude the wages and hours. If the claimant does qualify for benefits, the educational institutions or educational services districts that offered a contract or reasonable assurance of future work will not be charged for benefits paid or be required to reimburse the department for benefits paid. For example:

(1) An individual works for both the ABC elementary school and the XYZ elementary school during the base year. The ABC elementary school offers reasonable assurance of future work, while the XYZ elementary school does not. Only the wages and hours from the XYZ elementary school may count towards the individual's base year and benefit year.

(2) An individual works full time as a computer programmer for a software company during the day. At night, the individual also teaches a programming class at a technical college. At the end of the spring term, the individual is laid off from the software company and receives a contract or reasonable assurance of future work from the technical college. Only the wages and hours from the software company may count towards the individual's base year and benefit year.

NEW SECTION

WAC 192-210-055 What is the impact of voluntary quits on the between and within terms denial provisions of RCW 50.44.050? An employee of an educational institution, or an employee of an educational services district that performs services in an educational institution, who voluntarily leaves work for reasons that constitute good cause under RCW 50.20.050 may have the hours and wages from the educational institution or educational services district count towards the base year or benefit year, even if the employee has a contract or reasonable assurance of future work.

NEW SECTION

WAC 192-210-060 Under what circumstances is an educational employee entitled to retroactive payments of unemployment benefits? (1) A nonprofessional employee who is denied unemployment benefits pursuant to RCW 50.44.050 can receive a retroactive payment of unemployment benefits if:

(a) The employee filed a timely claim for benefits for each week claimed;

(b) Benefits were originally denied for that week solely pursuant to RCW 50.44.050 because the employee received a reasonable assurance of future work; and

(c) Despite the reasonable assurance of future work, work was not actually available in the ensuing academic year or term.

(2) A professional employee who is denied benefits pursuant to RCW 50.44.050 because the employee received a contract or reasonable assurance of future work cannot receive a retroactive payment of unemployment benefits, even if work is not actually available in the ensuing academic year or term.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 192-210-020 Reasonable assurance for instructional, research, or principal administrative staff at a community or technical college—RCW 50.44.053(3).