

1 192-210-001

2 Which ~~educational employees~~ employment areis subject to RCW
3 50.44.050?

4 (1) ~~Except as provided in subsection (2) of this section, t~~The
5 provisions of RCW 50.44.050 apply only to ~~services performed in~~
6 ~~the employ of an educational institutions~~ or institutions of
7 higher education operated by:

8 (a) The state;

9 (b) A political subdivision of the state;

10 (c) A nonprofit organization or unit; or

11 (d) An Indian tribe.

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

14 (a) In the employ of an educational institution

15 (b) In any educational institution while in the employ of an
16 educational service district established pursuant to Chapter
17 28A.310 RCW.

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

21 (i) The primary purpose of the subsidiary business or
22 organization is other than educational;

23 (ii) You are not employed in the role of ~~faculty~~ instructional,
24 research or principal administrative staff; and

25 (iii) Your regular employment does not depend on the school's
26 academic calendar.

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

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

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

19 **192-210-005**

20 **Definitions—Educational employees.**

21 (1) **Considerably less.** The economic conditions of an offer of
22 employment are considerably less if the individual will not earn
23 at least ninety percent of the total wages earned in the prior
24 academic year or term. ~~**Contract.** An agreement that is binding~~
25 ~~on an educational institution to provide work and on an~~
26 ~~individual to perform services.~~

27 (2) **Classified capacity.** Includes all other services not
28 performed in a certified capacity. ~~**Faculty.** A teacher,~~
29 ~~counselor, librarian, or other position with similar training,~~
30 ~~experience and level of responsibility.~~

1 (3) Certified capacity. Includes services performed in an
2 instructional, research, or principal administrative capacity.
3 ~~Full-time employment.~~ Employment designated as full time for or
4 at the educational institution under a collective bargaining
5 agreement, individual hiring contract, or other agreement
6 (including institutional policies), as provided in RCW
7 50.04.310(2). For faculty at public institutions, the hiring
8 contract, agreement or institutional policy must be consistent
9 with the provisions of RCW 28A.405.210 (kindergarten through
10 twelfth grade), RCW 28B.50.851 (community and technical
11 colleges), RCW 28B.35.120 (regional universities), or RCW
12 28B.20.130 (other colleges and universities).

13 (4) Same capacity. In order for services to be performed in the
14 same capacity, both the current work and the future work must
15 both be in a certified capacity or both be in a classified
16 capacity, even if the job titles or duties are different. In
17 addition, both the current work and the future work must both be
18 for an educational institution or both be for an educational
19 services district, even if the employers or districts are
20 different.

21 (a) Example A: An assistant principal for the ABC school
22 district has a contract to be a teacher for the XYZ school
23 district the following academic year. These two positions are
24 in the same capacity

25 (b) Example B: A psychologist who performed services in an
26 educational institution for an educational services district is
27 given reasonable assurance to work as a psychologist directly
28 for an educational institution the following academic year.
29 These two positions are not in the same capacity.

1 ~~Under the same terms and conditions of employment.~~ This includes
2 economic conditions of employment such as wages, duration of
3 contract, hours of work, and general nature of the work. It does
4 not include other conditions and details such as the specific
5 work location, duties, or assignment. The position need not be
6 identical to the previous position to meet this test. A position
7 would be considered to be under the same terms and conditions of
8 employment if it is of similar type or classification, with
9 similar pay, fringe benefits, hours of work, general type of
10 work, and duration of employment.

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

19 **192-210-010**

20 **What are the objective criteria used to define "academic year"?-**
21 **RCW [50.44.050](#)(56).**

22 Summer term will be considered part of the academic year for an
23 educational institution unless:

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

29 (2) Total full-time equivalent staff during the previous summer
30 term is less than fifty percent of the academic year average of

1 the full-time equivalent staff during the fall, winter, and
2 spring terms during the preceding two years.

3 **192-210-015**

4 **How will the department decide if an individual has a contract**
5 **or reasonable assurance of future work—exists?—RCW 50.44.053.**

6 ~~Reasonable assurance is a bona fide offer from an educational~~
7 ~~institution to assign an individual future work at that~~
8 ~~institution under the same terms and conditions as the~~
9 ~~individual's previous employment. It is less than a contract or~~
10 ~~written agreement, but more than a mere possibility of future~~
11 ~~employment. The department must find that continued employment~~
12 ~~for that individual is likely or probable. For instructional,~~
13 ~~research, or principal administrative staff at a community or~~
14 ~~technical college, the additional provisions of WAC 192 210 020~~
15 ~~will be considered in determining whether the individual has~~
16 ~~reasonable assurance.~~

17 (1)(a) For individuals who perform services in a certified
18 capacity, wages and hours from an educational institution or
19 educational services district will count towards the
20 individual's base year and benefit year unless it is highly
21 probable that the individual meets the three prerequisites in
22 subsection (2) and has either a contract for future work under
23 subsection (3) or reasonable assurance of future work under
24 subsection (4).

25 (b) For individuals who perform services in a classified
26 capacity, wages and hours from an educational institution or
27 educational services district will count towards the
28 individual's base year and benefit year unless it is highly
29 probable that the individual meets the three prerequisites in

1 subsection (2) and has reasonable assurance of future work under
2 subsection (4).

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

5 (a) There is a written, verbal or implied offer of employment
6 made by an individual with actual authority to offer employment.

7 (b) The offer of employment provides that the employee will
8 perform services in the same capacity during the ensuing
9 academic year or term (or remainder of the current academic year
10 or term) as in the first academic year or term; and

11 (c) The economic conditions of the offer of employment may not
12 be considerably less in the following academic year or term (or
13 portion thereof) than in the first academic year or term (or
14 portion thereof).

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

16 (a) Enforceable by both the employer and employee

17 (b) Non-contingent; and

18 (c) Provides for compensation for either:

19 (i) An entire academic year; or

20 (ii) On an annual basis

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

22 (a)(i) There are no contingencies in the offer of employment
23 that are within the employer's control, such as course
24 programming, funding allocation decisions, final course
25 offerings, and facility availability.

26 (ii) It is highly probable that the contingencies contained in
27 the offer of employment will be met; and

1 (iii) Under the totality of the circumstances, it is highly
2 probable that there will be a job available for the claimant in
3 the following academic year or term; or

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

9 ~~192-210-020~~

10 ~~Reasonable assurance for instructional, research, or principal~~
11 ~~administrative staff at a community or technical college RCW~~
12 ~~50.44.053(3).~~

13 ~~(1) A person who performs services in an instructional,~~
14 ~~research, or principal administrative capacity at a community or~~
15 ~~technical college is presumed not to have reasonable assurance~~
16 ~~when an offer is conditioned on enrollment, funding, or program~~
17 ~~changes.~~

18 ~~(2) A conditional or contingent offer of employment is any offer~~
19 ~~other than an agreement that is binding on the college to~~
20 ~~provide work and on the individual to perform services.~~

21 ~~(3) The assertion by the college that an individual has~~
22 ~~reasonable assurance of continued employment is insufficient to~~
23 ~~overcome the presumption that a conditional or contingent offer~~
24 ~~of employment does not constitute reasonable assurance unless~~
25 ~~supported by documentation explaining why reasonable assurance~~
26 ~~exists. The college bears the burden of providing the department~~
27 ~~with this documentation. Primary weight will be given to the~~
28 ~~contingent nature of the offer of employment.~~

1 ~~(4) Whether an individual has reasonable assurance from the~~
2 ~~college will be determined on a case by case basis by the total~~
3 ~~weight of evidence, rather than the existence of any single~~
4 ~~factor.~~

5 ~~(5) Examples of the types of evidence the department will~~
6 ~~consider in deciding whether the college has overcome the~~
7 ~~presumption that a conditional or contingent offer is not~~
8 ~~reasonable assurance include, but are not limited to, the~~
9 ~~following:~~

10 ~~(a) The terms of the offer of employment between the individual~~
11 ~~and the college, with consideration given to any provisions~~
12 ~~related to length, contingencies, or reasons for cancellation;~~

13 ~~(b) The number of comparable positions at the college;~~

14 ~~(c) Any hiring priorities used by the college;~~

15 ~~(d) The college's past practices, including the individual's~~
16 ~~previous experience with similar offers of employment from that~~
17 ~~college, and whether any classes have been canceled due to lack~~
18 ~~of enrollment, lack of funding, or program changes.~~

19 **192-210-045**

20 **When does ~~reasonable assurance~~ RCW 50.44.050 apply if ~~an~~**
21 **individual works for more than one ~~school~~employer?**

22 (1) An educational institution or educational services district
23 that offers a contract or reasonable assurance of future work
24 will not have its hours or wages count towards a claimant's base
25 year and benefit year. The wages and hours from all other base
26 year employers may count towards a claimant's base year and
27 benefit year, unless another provision applies to exclude the
28 wages and hours. If the claimant does qualify for benefits, the
29 educational institutions or educational services districts that

1 offered a contract or reasonable assurance of future work will
2 not be charged for benefits paid or be required to reimburse the
3 department for benefits paid.

4 (a) Example A. An individual works for both the ABC school and
5 the XYZ school during the base year. The ABC school offers a
6 contract or reasonable assurance of future work, while the XYZ
7 school does not. Only the wages and hours from the XYZ school
8 may count towards the individual's base year and benefit year.

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

17 ~~RCW 50.44.050 prevents the payment of benefits when "any and~~
18 ~~all" school wages for "any and all" schools for **any** week of~~
19 ~~unemployment fall between two successive academic terms or~~
20 ~~during holiday or vacation break periods.~~

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

25 ~~Example: You worked for ABC and XYZ schools during spring 2009.~~
26 ~~You received reasonable assurance of returning to work during~~
27 ~~the fall 2009 term from ABC School but not from XYZ School. The~~
28 ~~wages from both schools must be restricted during the period~~
29 ~~between academic terms or breaks.~~

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

7 ~~Example: You worked for ABC and XYZ schools during the 2008-2009~~
8 ~~academic year. Summer is not part of the academic year for~~
9 ~~either school. ABC School's summer break begins June 15, 2009,~~
10 ~~and ends September 2, 2009. XYZ School's break begins June 22,~~
11 ~~2009, and ends September 9, 2009. Your school wages must be~~
12 ~~restricted from June 14, 2009, through September 5, 2009.~~

13 **New Section**

14 **Impact of voluntary quits on between and within terms denial**
15 **provisions of RCW 50.44.050**

16 An employee of an educational institution or an employee of an
17 educational services district that performs services in an
18 educational institution who voluntarily leaves work for reasons
19 that constitute good cause under RCW 50.20.050 may have the
20 hours and wages from the educational institution or educational
21 services district count towards the base year or benefit year,
22 even if the employee has a contract or reasonable assurance of
23 future work.

24

25 **New Section**

26 **Retroactive payment of unemployment benefits to claimants who**
27 **cannot return to work after receiving reasonable assurance of**
28 **future work**

29

1 (1) A classified employee who is denied unemployment benefits
2 pursuant to RCW 50.44.050 can receive a retroactive payment of
3 unemployment benefits if:

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

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

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

11 (2) A certified employee who is denied benefits pursuant to RCW
12 50.44.050 because the employee received a contract or reasonable
13 assurance of future work cannot receive a retroactive payment of
14 unemployment benefits, even if work is not actually available in
15 the ensuing academic year or term.

16