

INTRODUCTION

This Rule provides guidance on whether an individual has a contract or reasonable assurance during an established and customary vacation period or holiday recess to work for an educational institution when school resumes for purposes of determining whether the individual is eligible for unemployment benefits.

1. Definitions.

For purposes of subsection 7 of section 1192 of the Employment Security Law (26 M.R.S. § 1192(7)), the following terms shall have the following meanings:

- A. "Written reasonable assurance" means a written communication in which an educational institution or educational service agency assures an individual employee that they will perform services for the educational institution or educational service agency during a subsequent term or school period after an established and customary vacation period or holiday recess ends as set forth in section 2 below.
- B. "Any other capacity for an educational institution" means employees employed in a non-professional capacity. Employees in this category perform services in other than instructional including adjunct faculty, research, or principal administrative capacity services.
- C. "Benefits based on services" means the benefits for which eligibility was determined pursuant to subsection 5 of section 1192 of the Employment Security Law (26 M.R.S. § 1192(7)) on the basis of wages paid in a claimant's base period by educational institutions or educational service agencies.
- D. "Contract" means a written agreement that an individual will perform services in an instructional, research or principal administrative capacity for any educational institution, as defined in subsection 29 of section 1043 of the Employment Security Law (26 M.R.S. § 1043(29)), or for any educational service agency, as defined in paragraph D of subsection 7 of section 1192 of the Employment Security Law (26 M.R.S. § 1192(7)(D)).
- E. "Educational institution" means any school, including nursery schools and schools of higher education, which is licensed by the State and which provides an organized course of study designed to transfer knowledge, skills, attitudes or abilities under the guidance of a teacher. A "nursery school" has the same meaning as in 22 M.R.S. § 8301-A(1-A)(D) and provides a curriculum of educational instruction provided by appropriately licensed teachers.

- F. "Established and customary vacation periods or holiday recesses" means those vacation periods or recesses which the local authority having control of the school system has customarily included in the school system schedule.
- G. "Instructional, research or principal administrative capacity for an educational institution" are employees employed in a professional or professional capacity. This means instructional including adjunct faculty, research, or principal administrative capacity employees.

2. Written reasonable assurance.

In the absence of a contract described in Section 3 below, reasonable assurance must be in writing and must have all of the following:

1. No contingencies within the employer's control. Enrollment, funding, and seniority are not considered to be within the employer's control. Decisions as to allocation of funding are considered to be within the employer's control;
2. Totality of the circumstances must show it is highly probable a job is available in the next term or year;
3. Highly probable that any contingencies will be met based on prior history;
4. A genuine written offer from an individual with actual authority to offer employment;
5. Employment in the same capacity as defined in the definitions; and
6. Pay and benefits in the following year are not considerably less when compared to the prior year. If pay and benefits for the following year or term are less than 90% of pay and benefits for the current year, the Department will presume that the requirement for reasonable assurance has not been met. When making determinations involving a written reasonable assurance, the bureau shall take into consideration the claimant's prior employment history and pattern of employment.

3. Contract.

A contract must be enforceable, non-contingent, and for an academic year or term or on an annual basis.

Furthermore a contract must be:

1. A genuine written offer from an individual with actual authority to offer employment;
2. Employment in the same capacity (either professional or non-professional, see definitions in section 1(B) and 1(G)) and;
3. Pay and benefits in the following year are not considerably less when compared to the prior year. When making determinations involving written reasonable

assurance, the bureau shall take into consideration the claimant's prior employment history and pattern of employment.

Individuals under contract with an educational institution will not be considered unemployed for the duration of the contract and will be denied benefits until the agreed-upon contract period ends.

Note: A contract is not required. If there is a contract that meets Section 3, that contract is deemed to fulfill the requirements of reasonable written assurance.

4. Eligibility for Benefits during the customary vacation period or holiday recess period or between terms.

An individual is not eligible for unemployment benefits for established and customary vacation period or holiday recess periods if such individual performs services immediately before and has written reasonable assurances or a contract and will perform such services immediately following the end of the customary vacation period or holiday recess period. The agency will consider the totality of the circumstances to determine whether reasonable assurance or a contract exists.

If an educational employee is separated from employment with an educational institution during the term, normal unemployment compensation eligibility guidelines apply.

1. Wages from educational institutions and educational service agencies.

For purposes of subsection 7 of section 1192 of the Employment Security Law (26 M.R.S. § 1192(7)), if an individual has base period wages from more than one educational institution or educational service agency, the agency shall review whether the individual has a contract or written reasonable assurance with all employers in the base period. If a contract or written reasonable assurance exists with individual educational employers, the wages earned on the basis of that employment may not be used to establish monetary eligibility during an established and customary vacation period or holiday recess. Any wages earned from an educational employer that are not subject to contract or written reasonable assurance, or wages from non- educational employers in the base period may be used to establish eligibility for benefits.

2. Change in capacity of employment.

If an individual performs services for an educational institution in one capacity, in either a) an instructional, research or principal administrative capacity, or b) any other capacity, in one academic year or term, and is given a contract or written reasonable assurance in the opposite capacity for any educational institution in the next or a subsequent academic year or term, the provisions of subsection 7 of section 1192 of the Employment Security Law (26 M.R.S. § 1192(7)) shall not apply between such academic years or terms.

3. Effective date of contract or written reasonable assurance.

A contract or written reasonable assurance shall be deemed to be effective on the date on which it is offered. If the contract or written reasonable assurance is offered during a period between academic years or terms, benefits shall not be denied under the provisions of subsection 7 of section 1192 of the Employment Security Law (26 M.R.S. § 1192(7)) for any weeks prior to the week in which the contract or written reasonable assurance was offered.

If an individual working in an instructional, adjunct, research or principal administrative capacity (professional capacity) is denied benefits due to written reasonable assurance or a contract and is later not offered the opportunity to perform such work, benefits may be allowed going forward only. Benefits are allowed going forward from the date that the employer reasonably knew that the work would not be available, not the date that revocation of reasonable assurance or revocation of contract was provided to the claimant. If an individual working in any other capacity (non-professional capacity) is denied benefits due to written reasonable assurance or a contract and is later not offered the opportunity to perform such work, benefits may be allowed going forward, as well as retroactively to the point of denial as long as the claimant filed timely weekly claims for benefits during the period of denial.

4. Applicability to adjunct faculty.

The agency will consider the totality of the circumstances to determine whether written reasonable assurance or a contract applies to adjunct faculty. When reviewing the offer of employment after the end of a established and customary vacation period or holiday recess, the department shall consider the following factors to determine whether benefits are payable which include, but are not limited to:

- Employment history and patterns for the course or courses offered to determine the probability of the reasonable assurance materializing;
- The structure of the terms across the academic year established by the educational institution to determine if or when an established and customary vacation period or recess exists;
- Any contingencies attached to the offer of written reasonable assurance and to what extent they are within the control of the employer as such terms are defined herein; and
- Whether the adjunct faculty has other (full-time) employment, such that they are not unemployed as set forth in subsection 17 of section 1043 of the Employment Security Law (26 M.R.S. § 1043(17)).

5. Substitute teachers.

An individual who is employed in an instructional capacity by an educational institution for the purpose of replacing a teacher in that same capacity who is temporarily absent shall be termed to be a “substitute teacher.” If such an individual has a contract or written reasonable assurance that he will serve as a “substitute teacher” for one or more educational institutions for an academic year or term, or two successive years or terms, he shall be deemed to be subject to the provisions of subsection 7(A) of section 1192 of the Employment Security Law (26 M.R.S. § 1192(7)(A)) and section 4 of this rule and the analysis set forth herein.

6. Other substitute employees.

For purposes of subsection 7 (B) of section 1192 of the Employment Security Law (26

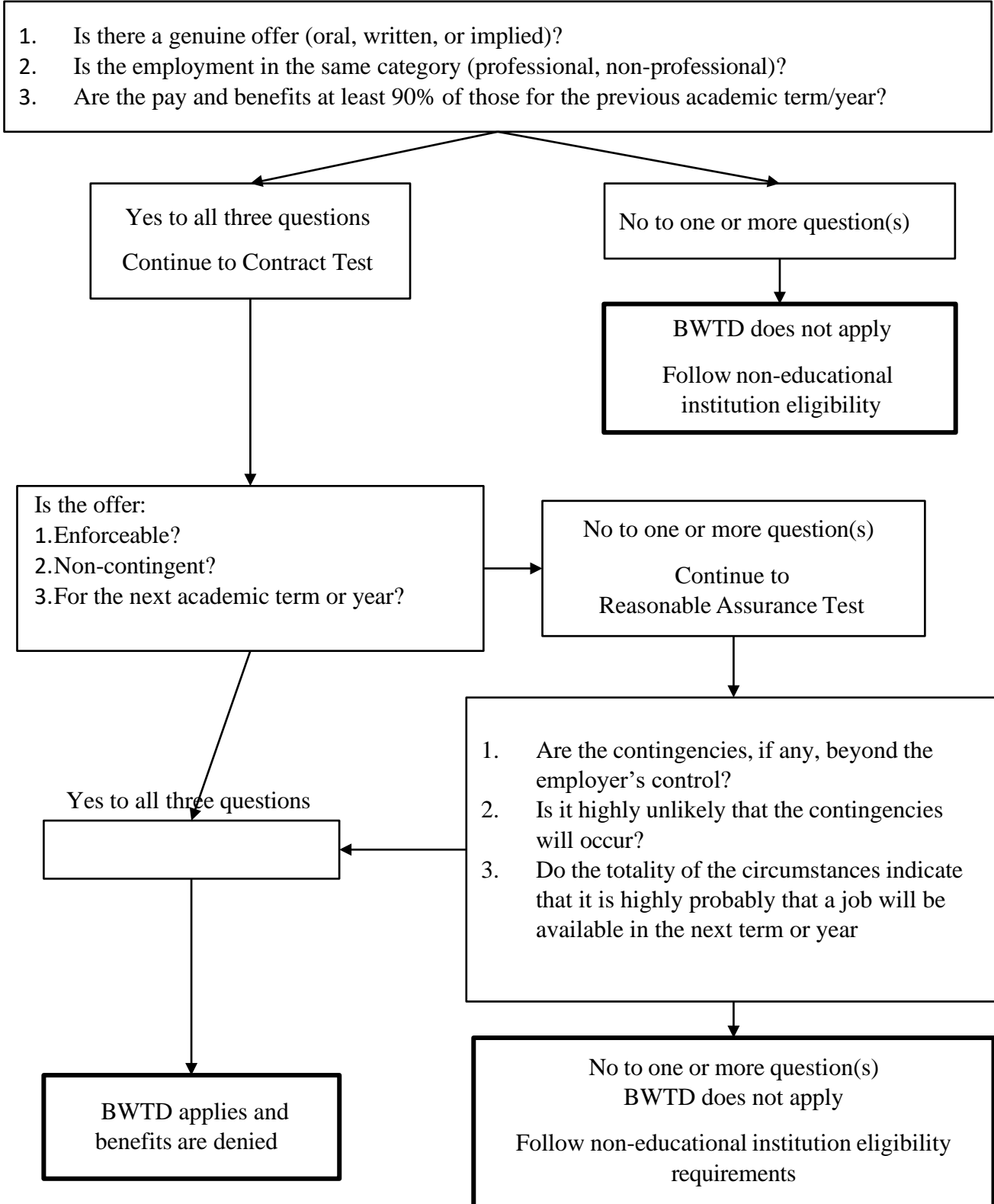
M.R.S. § 1192(7)), an individual who is employed in a substitute capacity in a non-professional position shall be deemed to be "not offered an opportunity to perform the services for the educational institution for the 2nd of those academic years or terms" when one of the following occurs and benefits may be payable under section 4, subsection 3 of this rule:

- A. Whenever, during the academic year or term, the claimant is notified, or evidence is presented that the individual has not worked and will not be offered an opportunity to perform services for the educational institution during the remainder of that academic year or term; or
- B. The 2nd of those academic years or terms is completed and the individual did not perform any services for the educational institution during that 2nd academic year or term.

Appendix I to Bureau of Unemployment Compensation Rule Chapter 14

Educational Institution Employees

Determining if the Between and Within Terms Denial (BWTD) Applies



STATUTORY AUTHORITY: 26 M.R.S.A., Section 1082, Subsection 2.

EFFECTIVE DATE:

October 2, 1989

AMENDED:

May 30, 2000

NON-SUBSTANTIVE CORRECTION:

August 29, 2001 - heading for Sec. 2