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## PERMANENT ADMINISTRATIVE ORDER

### ED 56-2018

CHAPTER 471  
EMPLOYMENT DEPARTMENT

**FILED**

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ARCHIVES DIVISION  
SECRETARY OF STATE  
& LEGISLATIVE COUNSEL

FILING CAPTION: Aligning Unemployment Insurance Eligibility Requirements for School Employees with Federal Guidance

EFFECTIVE DATE: 04/29/2018

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#### RULES:

471-030-0074, 471-030-0075

AMEND: 471-030-0074

RULE TITLE: School Employees

NOTICE FILED DATE: 11/17/2017

RULE SUMMARY: This change in rule clarifies how the following circumstances impact whether or not school employees have reasonable assurance:

- 1) Contracts;
- 2) Academic terms whether or not successive;
- 3) Economic conditions;
- 4) Employment contingencies;
- 5) The totality of circumstances;
- 6) Employees that cross over from, using the federal definitions, "professional" to "nonprofessional" positions and vice versa;
- 7) Academic year; and
- 8) Employees who work for multiple institutions.

#### RULE TEXT:

(1) An "academic year" is the time frame within 12 months and separated by break periods in which an educational institution, program(s) within an educational institution, or location(s) of an educational institution ordinarily operates to provide courses of study.

(2) ORS 657.167 and 657.221 apply when the individual claiming benefits was not unemployed, as defined by ORS 657.100, during the relevant period in the preceding academic year or term. The relevant period is:

(a) The week prior to the holiday or vacation period when the week(s) claimed commenced during a holiday or vacation period.

(b) The prior academic year or term when the week(s) claimed commenced during a customary recess period between academic terms or years, unless there is a specific agreement providing for services between regular, but not successive

terms.

(c) The last academic year or term when the week(s) claimed commenced during a recess between non-consecutive academic terms or years when there is a specific agreement providing for services between regular, but not successive terms.

(3) The provisions of ORS 657.167 and 657.221 apply regardless of whether or not the individual performed services only during an academic year or in a year-round position.

(4) When an individual performs services for more than one educational institution, any wages earned by the individual working for an institution for which there is a contract or reasonable assurance are excluded from the determination of the individual's weekly and maximum benefit amount during the period between academic year, term or remainder of a term.

(5) In accordance with ORS 657.660, each educational institution shall provide the Employment Department, annually, the time frames for their break, vacation, or holiday periods. Failure to do so will result in a determination based on the shortest established time frames for similar institutions.

STATUTORY/OTHER AUTHORITY: ORS 657.610

STATUTES/OTHER IMPLEMENTED: ORS 657.167, 657.221

AMEND: 471-030-0075

RULE TITLE: Contract or reasonable assurance defined

NOTICE FILED DATE: 11/17/2017

RULE SUMMARY: This change in rule clarifies how the following circumstances impact whether or not school employees have reasonable assurance:

- 1) Contracts;
- 2) Academic terms whether or not successive;
- 3) Economic conditions;
- 4) Employment contingencies;
- 5) The totality of circumstances;
- 6) Employees that cross over from, using the federal definitions, "professional" to "nonprofessional" positions and vice versa;
- 7) Academic year; and
- 8) Employees who work for multiple institutions.

RULE TEXT:

(1) The following must be present before determining whether an individual has a contract or reasonable assurance:

(a) There must be an offer of employment, which can be written, oral, or implied. The offer must be made by an individual with authority to offer employment.

(b) The offer of employment during the ensuing academic year or term must be in the same or similar capacity as the service performed during the prior academic year or term. The term 'same or similar capacity' refers to the type of services provided: i.e., a 'professional' capacity as provided by ORS 657.167 or a 'nonprofessional' capacity as provided by ORS 657.221.

(c) The economic conditions of the offer may not be considerably less in the following academic year, term or remainder of a term than the employment in the first year or term. The term 'considerably less' means the employee will not earn at least 90% of the amount, excluding employer paid benefits, than the employee earned in the first academic year or term, or in a corresponding term if the employee does not regularly work successive terms (i.e. the employee works spring term each year).

(2) An individual has a contract to perform services during the ensuing academic year, term, or remainder of a term when there is an enforceable, non-contingent agreement that provides for compensation for an entire academic year or on an annual basis.

(3) An individual has reasonable assurance to perform services during the ensuing academic year, term, or remainder of a term when:

(a) The agreement contains no contingencies within the employer's control. Contingencies within the employer's control include, but are not limited to, the following:

- (A) Course Programming;
- (B) Decisions on how to allocate available funding;
- (C) Final course offerings;
- (D) Program changes;
- (E) Facility availability; and
- (F) Offers that allow an employer to retract at their discretion.

(b) The totality of circumstances shows it is highly probable there is a job available for the individual in the following academic year or term. Factors to determine the totality of the circumstances include, but are not limited to:

- (A) Funding, including appropriations;
- (B) Enrollment;
- (C) The nature of the course (required or options, taught regularly or sporadically);
- (D) The employee's seniority;

(E) Budgeting and assignment practices of the school;

(F) The number of offers made in relation to the number of potential teaching assignments; and

(G) The period of student registration.

(c) It is highly probable any contingencies not within the employer's control in the offer of employment will be met.

(4) An individual who voluntarily leaves work for good cause, as defined under OAR 471-030-0038, does not have reasonable assurance with the employer from whom the person left work.

STATUTORY/OTHER AUTHORITY: ORS 657.610

STATUTES/OTHER IMPLEMENTED: ORS 657.167, 657.221