

***UNEMPLOYMENT
INSURANCE
FOR
EDUCATIONAL
EMPLOYEES***

2011

(Updated March 2011)

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This booklet is intended to provide a general overview of unemployment insurance law. Please contact your UniServ office for advice on specific problems.

I. GENERAL INFORMATION

- A. **Information and Assistance:** The Department of Workforce Development provides telephone assistance and information. The phone numbers are:

Madison Area: 608-232-0824
Milwaukee Area: 414-438-7713
Toll Free Number: 800-494-4944

An automated inquiry system is available at these numbers during the following hours:

Sunday: 9:00 a.m. until midnight
Monday-Friday: 1:00 a.m. until midnight
Saturday: 1:00 a.m. until 3:00 p.m.

Claims specialists are available at these numbers during the following hours:

Monday-Friday: 7:45 a.m. - 4:30 p.m.

The claimant's handbook explaining unemployment insurance is available on-line at: <http://dwd.wisconsin.gov/uiben/handbook/default.htm>

- B. The unemployment insurance law is found in Chapter 108 of the Wisconsin Statutes. Administrative rules interpreting the statutes are found at Wis. Admin. chapters ILHR 100-150. The unemployment insurance law is administered by the Unemployment Insurance Division of the Department of Workforce Development ("Department"). The Job Center is separate and does not administer the unemployment insurance law; it posts employment opportunities and offers job search services. Its website is: <http://wisconsinjobcenter.org>
- C. Educational employees must meet the same general requirements as other workers.
- D. A claimant must file a claim for unemployment insurance for each week that benefits are claimed. A claimant who was denied benefits and has appealed must continue to file claims. If the denial is subsequently reversed, but the claimant has not continued to file claims, the claimant will not receive benefits.
- E. Unemployment insurance benefits are taxable income. Claimants may choose to have money withheld from benefits for federal and state income tax purposes.
- F. Failure to act within the various required time limits can cost claimants money in terms of lost benefits. This is particularly important when extended federal benefits are available.

II. PROCEDURES FOR FILING AND RECEIVING BENEFITS

A. Initiating A Claim.

Filing for benefits may be done by telephone or on the internet. A claim does not start until the week the claimant applies. An initial claim application must be filed in the first week the claimant wants to receive benefits or within 7 days of the end of that calendar week.

The numbers to call to file an initial claim are:

Madison Area:	608-232-0678
Milwaukee Area:	414-438-7700
Toll-Free Number:	800-822-5246
TTY (Toll-Free):	888-393-8914

The hours to call are:

Monday - Friday:	6:00 a.m. - 7:00 p.m.
Saturday:	9:00 a.m. - 5:00 p.m.
Sunday:	9:00 a.m. - 2:30 p.m.

Claimants may apply on line at: <http://www.ucclaim-wi.org>

In order to file an initial claim, a claimant must provide the following information:

- social security number;
- a four-digit Personal Identification Number (PIN) which a claimant makes up before placing the call;
- Wisconsin driver's license number if the claimant has one; and
- a list of all employers worked for in the last 18 months (or since the claimant last claimed benefits) including their complete addresses, telephone numbers, and dates the claimant worked for them and the reason for no longer working for them.

The claimant will be given instructions and asked questions. At the end of the call, a Claims Specialist may need to come on the line to complete the application.

The Department's system will save an incomplete initial claim application for seven days if the claimant has entered a PIN number and social security number. Thus, a claimant who doesn't have all the necessary information can call back to complete the application.

A claimant will be sent an information booklet (UCB-10-P) which provides important information. If the office does not have the claimant's wage information, the employer will be asked to provide it on a Request for Wages form (UCB-719).

If a claimant skips a week, the claimant must reapply to reactivate the claim in the week the claimant wants to receive benefits or within 7 days of the end of that calendar week.

- B. **Employer's response:** An employer will then be notified of a benefit claim. The employer will be asked if there is any objection to the claimant receiving benefits.
- C. **The Department has the authority to challenge a claimant's eligibility, even if the employer doesn't challenge it.** Educational employees who are unemployed for any reason other than being laid-off should consult with their UniServ Directors before filing a claim.
- D. **Benefit computation:** Regardless of the existence of any eligibility issues, a Benefit Computation Form will be issued detailing a claimant's wage and benefit information. See Section IV, A. Claimants should check the information carefully; inaccurate information can cost a claimant money due to a lower benefit rate or fewer benefits weeks. A claimant should follow the objection procedure described on the form to correct any errors.
- E. **Claims:** Claimants must phone in a weekly claim certification for each week they want to receive an unemployment check. The numbers to call are:

Madison Area: 608-261-9990
Milwaukee Area: 414-438-5395
Toll Free Number: 800-978-7887

Claimants must file the weekly claim certification within 14 days of the end of the calendar week they are claiming. However, a claimant cannot call in a claim until after the week has ended. A calendar week starts on Sunday and ends on Saturday. The hours for calling in claims are:

Sunday: 9:00 a.m. until midnight
Monday-Friday: 1:00 a.m. until midnight.
Saturday: 1:00 a.m. until 3:00 p.m.

A weekly claim can also be filed on-line at: <http://www.ucclaim-wi.org>

Claimants will be asked a series of questions which apply to the specific calendar week for which they are claiming. If they don't phone in claims or don't phone on time, they will need to reactivate their claims. If the Department rejects a telephone

claim due to incomplete information, it will mail the claimant a claim card. The card must be returned within 14 days after the Department mails it.

Claimants must file a claim even if they have been denied benefits and have appealed. If they win on appeal, they will only be able to collect benefits for those weeks for which claim certifications were filed.

A claimant who hasn't received a check or an information card explaining why benefits are not being paid within seven days from the date a weekly claim was filed should first call the Automated Inquiry System. If the system does not say that a check was paid, then a claims specialist should be called.

- F. **Work Search:** Claimants must search for work every week for which benefits are claimed. The Department may waive this requirement. For example, the work search requirements are waived for claimants on temporary layoffs who are returning to work with their employers.

If the work search is not waived, a claimant will need to fill out a Work Search Notice (Form UCB-12). The Department periodically reviews work searches to make sure claimants' efforts are sufficient. Claimants should not stop making a work search unless the Department advises the claimant that the requirement is waived. Teachers should not restrict their search to teaching jobs, particularly after the six weeks canvassing period expires. The Department has a computer system called JobNet which allows claimants to conduct a computer review of jobs statewide and is available online at: <http://dwd.wisconsin.gov/jobnet/>

Claimants must continue to fulfill work search requirements, even if they have been denied benefits and have appealed. Claimants must contact two employers every week. Merely registering for work with the Department is not sufficient. Claimants will not receive benefits for any week in which they do not make an acceptable job search.

The Department has developed a profiling system by which it determines whether a claimant is likely to exhaust benefits and need reemployment services. If a claimant fails without justifiable cause to attend reemployment services, benefits are denied for that week. The work search requirements may be waived depending on the requirements of the reemployment services.

- G. **Fact-Finding Interview:** If an employer objects to a claimant's receipt of benefits or the Department has questions about a claimant's eligibility, the claimant will be scheduled for a telephone interview with a Department employee. Educational employees should contact their UniServ Director for advice *before* participating in such an interview. The Department may also contact the employer and take a statement.

H. **Initial Determination:** After the telephone interview, an “Initial Determination” (often called an “I.D.” or a “LID”) will be issued, stating whether and why a claimant is, or is not, eligible for benefits.

I. **Request for Hearing:** Claimants who are ineligible for benefits may request a hearing. Their request must be received or postmarked within 14 days from the date of the Initial Determination. The Initial Determination will direct where the hearing request should be sent. The appeal must be in writing and must:

- state that it is an appeal to the determination;
- indicate that it is a claimant appeal;
- include the claimant’s name and social security number;
- identify the determination by its 9-digit ID number;
- include a copy of the determination;
- identify the name of the employer and where the work was performed;
- if the claimant is represented, provide the name of the UniServ Director or attorney’s name and address and include dates when the claimant, representative or witnesses are not available for hearing;
- indicate any special needs; and
- be signed and dated by the claimant or the claimant’s representative.

Educational employees should contact their UniServ Director immediately upon receiving the Initial Determination for advice and assistance.

J. **The Hearing:** If requested by either the claimant or the employer, a hearing will be held before a Hearing Examiner employed by the Department. The hearing may be conducted by telephone if both parties agree. Sworn testimony will be received and recorded and relevant documents will be received. The testimony and documents are the only basis on which a claim is decided at this stage or later on appeal. Claimants have access to the documents in their unemployment insurance file. Because it is crucial that the necessary witnesses and documents be present at the hearing, it is recommended that UniServ Directors represent educational employees at the hearing. They should contact their UniServ Director before they appeal or when they receive the employer’s appeal. Claimants may obtain subpoenas from the hearing office. Several days to several weeks after the hearing, an “Appeal Tribunal Decision” (ATD) will be issued, deciding eligibility. If a claimant was unable to attend the hearing, an adverse ATD ruling will be set aside if the claimant submits an explanation within 21 days and the claimant’s explanation establishes probable good cause for having missed the hearing.

K. **LIRC Review.** The Department or the losing party can file a written petition for review by the three-member Labor and Industry Review Commission (LIRC) in Madison. The petition for review should be sent to the local hearing office or LIRC office and must be *postmarked or received* within 21 days from the date of the

Appeal Tribunal Decision. Petitions LIRC review may also be filed on-line by using a form available at the LIRC website: <http://www.dwd.state.wi.us/lirc/petition.htm>

The petition for review should include a request for a copy of the synopsis of testimony and for a briefing schedule. It is also a good idea to request the tape recording of the hearing, which can be obtained for a small fee. LIRC usually limits itself to a review of the documents received as evidence at the hearing, the synopsis, and briefs. Generally, either the UniServ Director or an attorney from WEAC's Legal Division will submit the brief. A written decision will be issued. Judicial review of LIRC decisions is possible, but limited.

- L. **Overpayments:** Except when due only to an employer's failure to timely file an accurate, required report or Department error, a claimant is required to repay improperly paid benefits. Improper payment usually occurs when a favorable Initial Determination is issued but subsequently reversed. Educational employees who are appealing an unfavorable decision should contact their UniServ Director to arrange for a delay in repayment until a "final decision" has been rendered. Sometimes the Department will withhold checks to satisfy an outstanding overpayment. Since school districts are on a direct reimbursement system, the district may put pressure on the Department to collect the overpayment, as their account is not credited unless and until the repayment is made. The State is becoming increasingly aggressive in its efforts to collect overpayments, including seizure of property. However, payment schedules can be arranged.

III. DISQUALIFYING FACTORS

A. **Discharge for Misconduct. Wis. Stat. § 108.04(5).**

1. Claimants are ineligible for benefits if they are nonrenewed or discharged for misconduct connected with their employment.
2. "Misconduct" includes willful disregard of an employer's legitimate interests, such as absences without authorization or significant job-related insubordination.
3. "Misconduct" does not include inefficiency, unsatisfactory conduct, failure to perform as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion. Thus, claimants who are nonrenewed or discharged for any of these reasons are eligible for benefits.
4. "Misconduct" usually includes only work-related reasons. Generally, off-hours conduct is irrelevant unless the conduct has an effect on the employee's job. Off-duty drug use may be "misconduct."

5. If a claimant is nonrenewed or discharged for misconduct connected with employment, the law bars all benefits based on work for that employer. Claimants can requalify based on work for other employers if seven weeks have passed since the end of the week in which the discharge occurred, they have returned to work in employment covered by federal or state unemployment insurance law, and they have earned wages of at least 14 times their weekly benefit rate.
6. Where misconduct is a possible ground for nonrenewal or discharge, it may be possible to obtain a severance agreement with the employer whereby the employer promises not to challenge the employee's eligibility for unemployment benefits. These agreements are not binding on the Department, and the Department may still question the employee's eligibility. When negotiating these agreements, it is important that the severance agreement contain the underlying factual stipulation, such as, the employer agrees that the employee's resignation was solicited and that the employee was not terminated for misconduct. It also is important that the employee be counseled before any interview with the Department because the employee's statement may "incriminate" the employee whether or not the employer challenges. Educational employees should consult with their UniServ Director *before* they sign any severance agreement and *before* filing their claim. (See pages 26 and 27, for sample agreements.)

B. Disqualification for Absenteeism. Wis. Stat. § 108.04(5g).

1. There is a new disqualification for excessive absences and tardiness without notice to the employer.
2. Employers seeking this disqualification must have a written policy of absences and tardiness. The policy must define what constitutes tardiness and absenteeism, describe the process for providing adequate notice of tardiness or absence and notify the employee that failure to provide adequate notice may lead to discharge. The employer must also provide evidence that the employee received a copy of the policy and, provide the employee with at least one warning for absenteeism or tardiness prior to discharge. Employers must apply their policy uniformly to all employees.
3. Excessive absenteeism is defined as five absences or six tardies within a 12-month period without adequate notice to the employer.
4. If an employee is discharged for excessive absenteeism, benefits are denied until six weeks have elapsed and the employee has earned six times his or her weekly benefit rate. An employee may still be ineligible for benefits due to misconduct even if the absenteeism disqualification does not apply.

C. **Voluntary Quit. Wis. Stat. §§ 108.04(7)(a)-(t).**

1. With certain exceptions, claimants are ineligible for benefits if they voluntarily quit their employment. However, a teacher's inadvertent failure to return a contract by April 15 is not a voluntary quit.
2. If the Department determines that the suspension or termination of the claimant's work was in lieu of a suspension or termination of another employee's work, the claimant is not considered to have voluntarily quit.
3. Claimants who are ineligible for benefits because they quit can requalify for benefits if four weeks have passed since the quit, they have returned to work in employment covered by federal or state unemployment insurance law, and they have earned wages of at least four times their benefit rate. However, if educational employees turn down a contract that would have constituted "reasonable assurance" and then requalify for benefits, they are not eligible for benefits until the start of the next academic year. (See section IV, A for an explanation of reasonable assurance.)
4. Forced resignation or a resignation prompted by an employer's inducement is not a voluntary quit, but is considered instead a constructive discharge. If the constructive discharge is for "misconduct connected with employment," benefits are denied. If the constructive discharge is not for misconduct connected with employment, benefits are allowed.

If an educational employee is likely to be nonrenewed or discharged and wishes to resign in order not to have a nonrenewal or discharge on record, it is difficult, though possible, to prove that a constructive discharge occurred. The employee should be accompanied by a representative during all interviews with the employer. The employee will need to show that nonrenewal or discharge was certain or very probable and that the resignation was given in lieu of termination. Employees should work with their UniServ Director to appeal for a Board hearing on the discharge and prepare to attend the Board hearing. A letter of resignation written solely to preserve future employment opportunities may not make the employee ineligible for benefits. In these situations, an express severance agreement protecting the employee's unemployment insurance eligibility may be necessary. See the discussion on severance agreements contained in Section III, A, 6.

5. A claimant who quit is nevertheless eligible for benefits if the claimant quit "with good cause attributable to the employing unit." Wis. Stat. § 108.04(7)(b). "Good cause" means some action taken by the employer which reasonably induces a claimant to quit. Examples of "good cause" would be sexual harassment or a dangerous working situation. Good cause

may also be shown by a substantial pay cut and other unilateral material changes in the terms of employment. However, a reclassification or demotion for disciplinary reasons or to improve work performance would not constitute good cause.

The Department's procedure manual provides that if an educational employee refuses a new contract that would constitute "reasonable assurance" but is found to have quit for good cause, benefits would not be paid over the summer but would start at the beginning of the next academic year. There do not appear to be any cases on this issue, and WEAC would probably challenge the Department's position.

6. A claimant may also be eligible for benefits if the health of the claimant or a family member prevents the claimant from working. The claimant must show that there was no other reasonable alternative but for the claimant to quit. However, the claimant will be considered unable to work and thus, ineligible for benefits, until the claimant is able and available to work.
7. A claimant who quit to take another job and was subsequently laid off from the new job is eligible for benefits if the new job is covered by federal or state unemployment insurance law, the claimant earned at least four times the claimant's weekly benefit rate in the new job and the job meets any of the following criteria: (a) equal or greater pay than the "quit" job, (b) same or more hours, (c) opportunity for significantly longer term of employment, or (d) closer to the claimant's home.
8. In some circumstances, claimants who have two jobs are eligible for benefits if they quit one job and are subsequently laid off from the other job, if the other job is full time.

In a related situation, claimants are eligible for benefits if they quit a part-time job because the prior loss of a full-time job makes the part-time job economically unfeasible. Whether the part-time job is economically unfeasible is determined by a formula. The claimant's part-time weekly gross wages for the week prior to termination are added to UI benefits payable for that week. The claimant's work expenses are then subtracted from that sum. If the remainder is less than the claimant's full weekly benefit rate, the part-time work is considered economically unfeasible.

9. If a claimant was hired to work on a particular shift, the claimant is eligible for benefits if the claimant quit by refusing to accept a transfer to another shift due to a lack of childcare.

D. Refusal of New Work Without Good Cause. Wis. Stat. § 108.04(8).

1. There is a “canvassing period” of *up to* six weeks during which a claimant may turn down job offers that are not commensurate with the claimant’s prior job skill or pay level. Wis. Stat. § 108.04(8)(d). The Department can decide that a period of time less than six weeks is sufficient.
2. Claimants who accept a job which involves a lower grade of skill or a significantly lower rate of pay during their canvassing period and then quit the job within the first ten weeks after starting the work will still be eligible for benefits. In those circumstances, they will have good cause to quit the job within the first ten weeks of starting the work, if they would not have been required to accept the job in the first place.
3. After the “canvassing period,” claimants will be disqualified from receiving benefits if they turn down a job without good cause, even if it pays less or requires fewer skills than their previous job.
4. After the “canvassing period,” an unemployed teacher or other professional will be disqualified from receiving benefits if the claimant turns down a job because it is not a teaching job or other professional work. For example, a teacher will probably be denied benefits for refusing an aide job or even a substitute teaching position. However, a teacher can refuse to be put on the substitute list because that does not constitute an offer of employment.
5. If, without good cause, a claimant refuses work, benefits are stopped until at least four weeks have passed since the refusal, the claimant has worked in employment covered by federal or state unemployment insurance law and has earned wages of at least four times the claimant’s benefit rate.
6. If a claimant refuses, without good cause, to return to a former employer when recalled in the year following a layoff, the claimant is ineligible for benefits until at least four weeks have passed since the refusal, the claimant has worked in employment covered by federal or state unemployment insurance law, and has earned wages of at least four times the claimant’s benefit rate.
7. Teachers should not unconditionally refuse jobs because of a belief that they are not certifiable. Instead, a teacher should accept the job conditioned on the District determining in a timely manner that certification can be obtained.
8. New work can be refused without losing benefits, if:
 - a. The position offered is vacant due directly to a strike, lockout or other labor dispute, or

- b. The wages, hours (including arrangement and number) or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; (see Section IV, B, 1).

E. Able and Available. Wis. Admin. Code § DWD 128.

1. A claimant must be able and available for work. A claimant is considered able for work if the claimant has the physical or psychological ability to perform suitable work.
2. The claimant is considered available for work if the claimant maintains an attachment to the labor market and is ready to perform full-time suitable work. Full-time is work performed for 32 hours or more a week. In determining whether a claimant has withdrawn from the labor market, the Department considers a number of factors:
 - If a claimant is not available for work at a wage reasonably comparable to the usual wage paid the claimant while working in his or her usual occupation.
 - The claimant's shift and time restrictions.
 - A claimant must have transportation to and from available jobs; if not, the claimant is unavailable for work. However, "unreasonable mileage or time" may be good cause for a claimant to refuse work. The department will consider the wage, available transportation, commuting costs and claimant's commuting history.
 - If the claimant is incarcerated for more than 48 hours unless the claimant has work release privileges.
 - If the claimant is absent from the area for more than 48 hours unless the claimant shows an ability to receive and respond to work offers and return within 24 hours.
 - A claimant must broaden the types of work sought as the period of unemployment lengthens.
3. Workers with disabilities who are able to work less than full-time may establish availability for work provided "the individual is available for suitable work for the number of hours the individual is able to work."
4. Generally, claimants who attend school during daytime hours will not be eligible for benefits. An exception is if they are in an approved training course. Claimants will be disqualified even if they say they will quit school. They should take evening classes instead. Claimants who refuse work because they have major child-care responsibilities will not be eligible for benefits.

5. Claimants remain eligible for benefits if going out of state to look for work. Claimants who are gone for an extended period should consult a Department claims specialist about filing an interstate claim.

IV. REDUCED CONTRACTS OR POSITIONS

A. Summer Benefits.

1. Educational employees' eligibility for unemployment insurance benefits over the summer is different than eligibility once the school year begins in the fall. It is possible for educational employees to be eligible for benefits during the summer but not during the school year.
2. Summer and between-terms eligibility for school year employees is governed by Wis. Stat. § 108.04(17). If a school-year employee has reasonable assurance of employment for the period after the summer, the employee is ineligible for benefits. The reasonable assurance denial also applies during established and customary vacations and holiday.
3. An "assurance" of continuing employment means a fairly certain job offer. A superintendent's statement that the teacher will be recommended to the school board for hire is presumptively a sufficient assurance and will cut off benefits. This statement can be verbal or implied.

If a promised job fails to materialize for a professional employee, that employee gets benefits prospectively only. Such employees get benefits from the date they learn the promised job no longer exists.

If a promised job fails to materialize for a support person, that employee is eligible for retroactive payments and should apply for benefits immediately upon learning that the promised job no longer exists.

4. "Reasonable assurance" of continuing employment includes the requirement that the terms and conditions of employment for the following year be *reasonably similar* to those of the claimant's employment in the preceding year. Under the Department's regulations, offered work is *reasonably similar* if the gross weekly wage offered is more than 80 percent of the gross weekly wage earned in the academic year or term which preceded the week of unemployment. Additionally, the work is reasonably similar if the number of hours per week is more than 80 percent of the average number of hours worked per week in the year or term preceding unemployment. Finally, work is reasonably similar if it will involve substantially the same skill level and knowledge as the employment preceding the unemployment.

Thus, a claimant who is partially laid off may still be able to receive summer unemployment insurance benefits. Educational employees should compare their new hours and wages with their old ones. An educational employee may also be eligible if switched to a different type of employment.

5. "Such services" means that the employment which initially qualified the employee for benefits is to be compared with the services to be performed immediately after the period of unemployment. Furthermore, an employee only has reasonable assurance if the work in both periods is for the same type of educational employer.
6. A school year employee is an employee who performs services under an employment contract which does not require the performance of services on a year-round basis.
7. Unemployment insurance eligibility over the summer months is not affected by the fact that an employee has elected a 12-month pay schedule. A school year employee who does not have reasonable assurance should apply for benefit when the school year ends.
8. Per diem substitute work
 - a. A teacher who is laid off and placed on a per diem substitute list for the next school year does not have reasonable assurance and is eligible for summer benefits. Priority or preference status is irrelevant.
 - b. A teacher who previously worked as a long-term substitute may be eligible for summer benefits if only placed on a substitute teaching list for the following year, term or period as opposed to actually receiving a position.
9. Reduced positions or contracts
 - a. An educational employee may accept a reduced contract or position for the next school year and still receive summer benefits. The severity of the wage and/or hour reduction is critical. The wages of the preceding academic year are compared to the wages of the following year. The same standard applies to support personnel.
 - i. With respect to extracurricular activities, including coaching, it is not clear whether or not they would be factored into the equation.

- ii. Health insurance benefits are irrelevant to the equation. For example, if a part-time employee were to get the same health insurance benefits as a full-time employee, the health insurance benefits would be irrelevant to the equation.
- b. If an educational employee refuses a reduced contract or position, the Department will consider whether the employee had good cause for quitting. The quit is considered as of the end of the academic year. Whether a quit is for good cause is analyzed differently than whether an employee has reasonable assurance. Thus, an employee might receive a reduced contract that would not be reasonable assurance but the quit would still not constitute good cause and the employee would be ineligible for benefits. (This seems harsh in view of the fact employees receive benefits if they accept a contract that does not provide reasonable assurance.)
- c. Summer benefits are stopped as of the week an educational employee obtains reasonable assurance of similar work. Reasonable assurance exists as of the week in which an educational employee receives notice of such employment.
- d. Employees who have received summer benefits due to a reduced contract are only eligible for benefits the next summer if they are again reduced and do not have reasonable assurance.

B. School Year Benefits.

- 1. Per diem substitute work
 - a. Wages for substitute teaching can supplement unemployment insurance benefits. See Section V, B, for a further discussion of partial unemployment.
 - b. After the canvassing period, a refusal of a per diem substitute teaching job is analyzed with respect to whether the teacher had good cause for refusing or whether the wages are substandard. Section 108.04(9)(b) states that benefits will not be denied for refusing to accept new work "if the wages, hours, including arrangement and number, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality." The prevailing conditions analyzed would be those of substitute teachers, not full-time teachers. The testimony of a Department Labor Analyst might be needed to establish the prevailing conditions.

- c. Laid-off teachers who voluntarily put their names on substitute lists and then voluntarily withdraw their names have not refused offers of work and remain eligible for school-year benefits. However, if a teacher is offered a substitute position and refuses work, that refusal will be analyzed as to whether the teacher refused an offer of suitable work. See, Section III, C.
- d. Claimants who refuse work, which is for less than full-time, from their *current employing unit* receive reduced benefits for that particular week. Benefits are calculated as if the claimant were partially employed and had actually earned the amount foregone. This situation would arise if the claimant were on a partial layoff or a layoff for a limited period of time. However, a teacher does not become regularly employed by a school district when the teacher accepts a per diem substitute assignment.

2. Reduced contracts or positions

- a. A teacher who accepts a reduced contract or a support staff employee who accepts a reduced assignment may be able to collect partial benefits, depending on the employee's average weekly wage. See Section V, B.
- b. Individuals who are offered reduced contracts or positions should consult with their UniServ Director before deciding whether to accept or reject a reduced contract or position. A claimant who refuses a contract where the reduction in rate of pay is greater than one-third may be eligible for benefits after four weeks have elapsed. The claimant's rate of pay, not average weekly wage, is the determinative factor. Wis. Stat. § 108.04(7)(f). A claimant offered a reduced contract may be considered to have refused work with good cause if the reduction in hours and weekly wages is substantial and thus be eligible for benefits. Wis. Stat. § 108.04(8)(a)
- c. Acceptance of a reduced contract and subsequent acceptance of a full-time contract elsewhere might result in a suit for damages by the first employer unless the teacher was released by the first employer or the liquidated damages provision in the first contract required the teacher to be released.
- d. Claimants who accept a reduced contract and are entitled to summer benefits will not necessarily be entitled to receive school year benefits should their wages exceed the allowable amount for collecting benefits when partially unemployed.

C. Suspensions, Leaves of Absence and Loss of License.

1. An employee on a disciplinary suspension for good cause connected with the employee's work is ineligible to receive benefits until three weeks have elapsed since the end of the week in which the suspension occurs. When an unpaid suspension follows a paid suspension, the three week ineligibility period begins when the claimant is first suspended regardless of the fact that the suspension is with pay.
2. If on a voluntary leave of absence for a definite period, an employee is not eligible for benefits. This includes leave under the Family and Medical Leave Act.
3. Teachers or other employees who must be licensed to work are not eligible for benefits if their jobs were lost because their licenses were revoked or not renewed due to the employee's own fault until 5 weeks have elapsed from the end of the week in which the termination occurred. However, wages earned from the terminating employer are excluded from the employee's base period wages. In the situation where an employee was terminated prior to a license revocation for immoral conduct, the employee would probably be ineligible for benefits due to a discharge for misconduct.

V. AMOUNT AND DURATION OF BENEFITS

A. Base Period, Benefit Year and Benefit Rate.

To qualify to receive unemployment benefits in the benefit year, a claimant must have earned sufficient wages in the base period.

1. The "benefit year" begins with the first week of the claim and lasts for 52 weeks. Unused benefits are not carried over to a later benefit year.
2. The "base period" is the first four calendar quarters of the previous five completed calendar quarters. The base period begins on the date that claimants file their first claim, not on the date they become unemployed. The calendar quarters are: January, February, and March; April, May, and June; July, August, and September; and October, November, and December.

(If a claimant does not qualify for benefits using this base period, the Department will use an alternate base period consisting of the four most recently completed quarters to determine eligibility.)

Base periods are shown by the shaded months:

OCT. NOV. DEC.	JAN. FEB. MAR.	APR. MAY JUNE	JULY AUG. SEPT.		JAN. FEB. MAR.	← If You File Your Claim In:		
	JAN. FEB. MAR.	APR. MAY JUNE	JULY AUG. SEPT.	OCT. NOV. DEC.		APR. MAY JUNE	↙ ↓	
		APR. MAY JUNE	JULY AUG. SEPT.	OCT. NOV. DEC.	JAN. FEB. MAR.		JULY AUG. SEP.	↓
			JULY AUG. SEPT.	OCT. NOV. DEC.	JAN. FEB. MAR.	APR. MAY JUNE		OCT. NOV. DEC.
Prev. Calen dar Year	Last Calendar Year				This Calendar Year			

If a claimant initiates a claim, for instance, in June 2011, the base period will be January 2010 through December 2010.

3. The “high quarter” is the quarter within the base period during which the claimant received the most wages.
4. The weekly benefit rate is equal to four percent of the entire amount the claimant earned in the high quarter.

As explained above, the fifth quarter is usually not included in the base period and thus cannot be considered a “high quarter.” Therefore, claimants who received a raise in their fifth quarter could find it to their advantage to wait to file for benefits until their sixth quarter in order to ensure that the quarter in which they received the raise is included in their base period. However, as claimants cannot file for retroactive benefits, there is a trade off in waiting, as they will not receive benefits for their initial weeks of unemployment. A Department claims specialist can help claimants determine their best option.

5. In order to be eligible for benefits, claimants must have earned base period wages of at least 35 times their weekly benefit rate and must have earned wages of at least four times their weekly benefit rate not including wages earned in their high quarter.

To requalify for another benefit year, claimants must earn these wages in their new base period and must also have earned at least eight times their weekly benefit rate in work covered by the unemployment laws of any state or federal government subsequent to the start of the benefit year.

6. Claimants must have been paid at least \$1,890 in their base period and \$1,350 in their high quarter to qualify for benefits.
7. A claimant's base period wages will not automatically include wages the claimant authorized withheld as part of a cafeteria or other similar plan. A claimant may call a claims specialist to request that the withheld amount be added to base period wages.
8. The maximum weekly benefit rate is \$363 if high quarter earnings were equal to or greater than \$9,075. A chart listing earnings and benefit rates is included as Section VI.
9. The maximum amount of benefits is equal to the lesser of 26 times the weekly benefit rate or 40% of base period wages.

B. Partial Unemployment.

1. It is possible for claimants who are partially laid off or who have obtained a part-time job to receive unemployment benefits. The claimants may be eligible even if their gross wages exceed their weekly benefit rate. However, the claimants are ineligible for benefits if they will be paid for at least 32 hours of work a week by an employer who paid at least 80% of their base period wages and they receive at least their prior rate of pay. A claimant who works 40 or more hours per week is also ineligible for benefits regardless of the identity or number of employers.
2. To calculate the amount of benefits for which a claimant is eligible (1) subtract \$30.00 from wages, (2) multiply the remainder by 67%, and (3) subtract this answer from the full benefit rate. The claimant's payment is this amount. For example, if the full benefit rate is \$120.00 a week, and part-time wages are \$90.00 a week, the calculation is as follows:

\$ 90.00	part-time wages
<u>-30.00</u>	disregard
\$ 60.00	remaining wages
<u>x .67</u>	reduction rate
\$ 40.20	

\$120.00	weekly benefit rate
<u>- 40.20</u>	reduction
\$ 79.80	partial benefit rate
\$ 79.00	rounded to \$79.00 per Wis. Stat. § 108.05(9).

3. Partial unemployment benefits of less than \$5 will not be paid. The benefit of claiming nominal benefits for partial unemployment is that it keeps the claiming process active. If weekly claims are interrupted, the claim must be reactivated.
4. With certain exceptions, a claimant must report all work and wages regardless of the amount of or the effect on benefits. However, a claimant need not report income from self-employment, jury duty or weekend national guard duty. The Department may impose a forfeiture if a claimant fails to report or fraudulently conceals wages or other material facts.
5. A claimant must also report pension benefits. If a claimant receives a pension from a base-period employer which was fully funded by the employer, benefits are reduced by the amount of the pension. If the pension was partially funded by employee contributions, benefits are reduced by that amount of the pension benefits which were funded by the employer. (For example, if the employer funded 50% of the pension, then UI benefits are reduced by an amount equal to 50% of the pension benefits). UI Benefits are no longer reduced by social security benefits.
6. If a claimant is unable or unavailable to perform all scheduled work, the claimant will not be eligible for any benefits that week if more than 16 hours of scheduled work is missed. If 16 or fewer hours are missed, the additional wages that could have been earned are included when calculating partial benefits.

C. Temporary Extended Unemployment Compensation.

1. Temporary extended unemployment insurance benefits may be available from the Federal Unemployment Compensation Program. Federal regulations apply to the payment of temporary extended unemployment compensation as well as the resolution of eligibility issues. Work search requirements are also different for federal benefits.

2. These benefits are available during periods of moderate unemployment when a claimant has exhausted all regular state unemployment insurance benefits.
3. Wisconsin also has an extended benefits program which is triggered by high rates of unemployment.

VI. WEEKLY BENEFIT RATES

Benefit rates for unemployment that commences on or after January 4, 2009 are as follows:

Highest Quarterly Wages Paid		Weekly Benefit Rate
Under	\$1,350	\$ 0
1,350.00	to 1,374.99	54
1,375.00	to 1,399.99	55
1,400.00	to 1,424.99	56
1,425.00	to 1,449.99	57
1,450.00	to 1,474.99	58
1,475.00	to 1,499.99	59
1,500.00	to 1,524.99	60
1,525.00	to 1,549.99	61
1,550.00	to 1,574.99	62
1,575.00	to 1,599.99	63
1,600.00	to 1,624.99	64
1,625.00	to 1,649.99	65
1,650.00	to 1,674.99	66
1,675.00	to 1,699.99	67
1,700.00	to 1,724.99	68
1,725.00	to 1,749.99	69
1,750.00	to 1,774.99	70
1,775.00	to 1,799.99	71
1,800.00	to 1,824.99	72
1,825.00	to 1,849.99	73
1,850.00	to 1,874.99	74
1,875.00	to 1,899.99	75
1,900.00	to 1,924.99	76
1,925.00	to 1,949.99	77
1,950.00	to 1,974.99	78
1,975.00	to 1,999.99	79
2,000.00	to 2,024.99	80
2,025.00	to 2,049.99	81
2,050.00	to 2,074.99	82
2,075.00	to 2,099.99	83

Highest Quarterly Wages Paid		Weekly Benefit Rate
2,100.00	to 2,124.99	84
2,125.00	to 2,149.99	85
2,150.00	to 2,174.99	86
2,175.00	to 2,199.99	87
2,200.00	to 2,224.99	88
2,225.00	to 2,249.99	89
2,250.00	to 2,274.99	90
2,275.00	to 2,299.99	91
2,300.00	to 2,324.99	92
2,325.00	to 2,349.99	93
2,350.00	to 2,374.99	94
2,375.00	to 2,399.99	95
2,400.00	to 2,424.99	96
2,425.00	to 2,449.99	97
2,450.00	to 2,474.99	98
2,475.00	to 2,499.99	99
2,500.00	to 2,524.99	100
2,525.00	to 2,549.99	101
2,550.00	to 2,574.99	102
2,575.00	to 2,599.99	103
2,600.00	to 2,624.99	104
2,625.00	to 2,649.99	105
2,650.00	to 2,674.99	106
2,675.00	to 2,699.99	107
2,700.00	to 2,724.99	108
2,725.00	to 2,749.99	109
2,750.00	to 2,774.99	110
2,775.00	to 2,799.99	111
2,800.00	to 2,824.99	112
2,825.00	to 2,849.99	113
2,850.00	to 2,874.99	114

Highest Quarterly Wages Paid	Weekly Benefit Rate
2,875.00 to 2,899.99	115
2,900.00 to 2,924.99	116
2,925.00 to 2,949.99	117
2,950.00 to 2,974.99	118
2,975.00 to 2,999.99	119
3,000.00 to 3,024.99	120
3,025.00 to 3,049.99	121
3,050.00 to 3,074.99	122
3,075.00 to 3,099.99	123
3,100.00 to 3,124.99	124
3,125.00 to 3,149.99	125
3,150.00 to 3,174.99	126
3,175.00 to 3,199.99	127
3,200.00 to 3,224.99	128
3,225.00 to 3,249.99	129
3,250.00 to 3,274.99	130
3,275.00 to 3,299.99	131
3,300.00 to 3,324.99	132
3,325.00 to 3,349.99	133
3,350.00 to 3,374.99	134
3,375.00 to 3,399.99	135
3,400.00 to 3,424.99	136
3,425.00 to 3,449.99	137
3,450.00 to 3,474.99	138
3,475.00 to 3,499.99	139
3,500.00 to 3,524.99	140
3,525.00 to 3,549.99	141
3,550.00 to 3,574.99	142
3,575.00 to 3,599.99	143
3,600.00 to 3,624.99	144
3,625.00 to 3,649.99	145
3,650.00 to 3,674.99	146
3,675.00 to 3,699.99	147
3,700.00 to 3,724.99	148

Highest Quarterly Wages Paid	Weekly Benefit Rate
3,725.00 to 3,749.99	149
3,750.00 to 3,774.99	150
3,775.00 to 3,799.99	151
3,800.00 to 3,824.99	152
3,825.00 to 3,849.99	153
3,850.00 to 3,874.99	154
3,875.00 to 3,899.99	155
3,900.00 to 3,924.99	156
3,925.00 to 3,949.99	157
3,950.00 to 3,974.99	158
3,975.00 to 3,999.99	159
4,000.00 to 4,024.99	160
4,025.00 to 4,049.99	161
4,050.00 to 4,074.99	162
4,075.00 to 4,099.99	163
4,100.00 to 4,124.99	164
4,125.00 to 4,149.99	165
4,150.00 to 4,174.99	166
4,175.00 to 4,199.99	167
4,200.00 to 4,224.99	168
4,225.00 to 4,249.99	169
4,250.00 to 4,274.99	170
4,275.00 to 4,299.99	171
4,300.00 to 4,324.99	172
4,325.00 to 4,349.99	173
4,350.00 to 4,374.99	174
4,375.00 to 4,399.99	175
4,400.00 to 4,424.99	176
4,425.00 to 4,449.99	177
4,450.00 to 4,474.99	178
4,475.00 to 4,499.99	179
4,500.00 to 4,524.99	180
4,525.00 to 4,549.99	181
4,550.00 to 4,574.99	182

Highest Quarterly Wages Paid	Weekly Benefit Rate
4,575.00 to 4,599.99	183
4,600.00 to 4,624.99	184
4,625.00 to 4,649.99	185
4,650.00 to 4,674.99	186
4,675.00 to 4,699.99	187
4,700.00 to 4,724.99	188
4,725.00 to 4,749.99	189
4,750.00 to 4,774.99	190
4,775.00 to 4,799.99	191
4,800.00 to 4,824.99	192
4,825.00 to 4,849.99	193
4,850.00 to 4,874.99	194
4,875.00 to 4,899.99	195
4,900.00 to 4,924.99	196
4,925.00 to 4,949.99	197
4,950.00 to 4,974.99	198
4,975.00 to 4,999.99	199
5,000.00 to 5,024.99	200
5,025.00 to 5,049.99	201
5,050.00 to 5,074.99	202
5,075.00 to 5,099.99	203
5,100.00 to 5,124.99	204
5,125.00 to 5,149.99	205
5,150.00 to 5,174.99	206
5,175.00 to 5,199.99	207
5,200.00 to 5,224.99	208
5,225.00 to 5,249.99	209
5,250.00 to 5,274.99	210
5,275.00 to 5,299.99	211
5,300.00 to 5,324.99	212
5,325.00 to 5,349.99	213
5,350.00 to 5,374.99	214
5,375.00 to 5,399.99	215
5,400.00 to 5,424.99	216

Highest Quarterly Wages Paid	Weekly Benefit Rate
5,425.00 to 5,449.99	217
5,450.00 to 5,474.99	218
5,475.00 to 5,499.99	219
5,500.00 to 5,524.99	220
5,525.00 to 5,549.99	221
5,550.00 to 5,574.99	222
5,575.00 to 5,599.99	223
5,600.00 to 5,624.99	224
5,625.00 to 5,649.99	225
5,650.00 to 5,674.99	226
5,675.00 to 5,699.99	227
5,700.00 to 5,724.99	228
5,725.00 to 5,749.99	229
5,750.00 to 5,774.99	230
5,775.00 to 5,799.99	231
5,800.00 to 5,824.99	232
5,825.00 to 5,849.99	233
5,850.00 to 5,874.99	234
5,875.00 to 5,899.99	235
5,900.00 to 5,924.99	236
5,925.00 to 5,949.99	237
5,950.00 to 5,974.99	238
5,975.00 to 5,999.99	239
6,000.00 to 6,024.99	240
6,025.00 to 6,049.99	241
6,050.00 to 6,074.99	242
6,075.00 to 6,099.99	243
6,100.00 to 6,124.99	244
6,125.00 to 6,149.99	245
6,150.00 to 6,174.99	246
6,175.00 to 6,199.99	247
6,200.00 to 6,224.99	248
6,225.00 to 6,249.99	249
6,250.00 to 6,274.99	250

Highest Quarterly Wages Paid	Weekly Benefit Rate
6,275.00 to 6,299.99	251
6,300.00 to 6,324.99	252
6,325.00 to 6,349.99	253
6,350.00 to 6,374.99	254
6,375.00 to 6,399.99	255
6,400.00 to 6,424.99	256
6,425.00 to 6,449.99	257
6,450.00 to 6,474.99	258
6,475.00 to 6,499.99	259
6,500.00 to 6,524.99	260
6,525.00 to 6,549.99	261
6,550.00 to 6,574.99	262
6,575.00 to 6,599.99	263
6,600.00 to 6,624.99	264
6,625.00 to 6,649.99	265
6,650.00 to 6,674.99	266
6,675.00 to 6,699.99	267
6,700.00 to 6,724.99	268
6,725.00 to 6,749.99	269
6,750.00 to 6,774.99	270
6,775.00 to 6,799.99	271
6,800.00 to 6,824.99	272
6,825.00 to 6,849.99	273
6,850.00 to 6,874.99	274
6,875.00 to 6,899.99	275
6,900.00 to 6,924.99	276
6,925.00 to 6,949.99	277
6,950.00 to 6,974.99	278
6,975.00 to 6,999.99	279
7,000.00 to 7,024.99	280
7,025.00 to 7,049.99	281
7,050.00 to 7,074.99	282
7,075.00 to 7,099.99	283
7,100.00 to 7,124.99	284

Highest Quarterly Wages Paid	Weekly Benefit Rate
7,125.00 to 7,149.99	285
7,150.00 to 7,174.99	286
7,175.00 to 7,199.99	287
7,200.00 to 7,224.99	288
7,225.00 to 7,249.99	289
7,250.00 to 7,274.99	290
7,275.00 to 7,299.99	291
7,300.00 to 7,324.99	292
7,325.00 to 7,349.99	293
7,350.00 to 7,374.99	294
7,375.00 to 7,399.99	295
7,400.00 to 7,424.99	296
7,425.00 to 7,449.99	297
7,450.00 to 7,474.99	298
7,475.00 to 7,499.99	299
7,500.00 to 7,524.99	300
7,525.00 to 7,549.99	301
7,550.00 to 7,574.99	302
7,575.00 to 7,599.99	303
7,600.00 to 7,624.99	304
7,625.00 to 7,649.99	305
7,650.00 to 7,674.99	306
7,675.00 to 7,699.99	307
7,700.00 to 7,724.99	308
7,725.00 to 7,749.99	309
7,750.00 To 7,774.99	310
7,775.00 To 7,799.99	311
7,800.00 To 7,824.99	312
7,825.00 To 7,849.99	313
7,850.00 To 7,874.99	314
7,875.00 To 7,899.99	315
7,900.00 To 7,924.99	316
7,925.00 To 7,949.99	317
7,950.00 To 7,974.99	318

VII. SAMPLE SETTLEMENT AGREEMENTS

(Nonrenewal)

RESIGNATION AGREEMENT

This Agreement is entered into by and between _____ (hereinafter referred to as "the employee"), the Teacher Association (hereinafter referred to as "the Association"), and the Board of Education, Noname School District (hereinafter referred to as "the District"). The parties to this Agreement desire to reach a final and binding resolution regarding _____'s employment with the District. The parties have reached certain understandings concerning the separation of _____ from her employment with the District which they now wish to reduce to writing and which include the following terms and conditions:

1. _____ agrees to resign her employment with the District effective at the end of the school year and the District hereby accepts her resignation. _____'s resignation is attached to this Agreement as Appendix A.

2. The District agrees that it solicited the resignation from _____ in lieu of nonrenewal and that her resignation was not voluntary within the meaning of Wis. Stat. § 108.04(7).

3. Given the authority of the District Administrator to effectively recommend nonrenewal to the School Board in this case, the parties stipulate that the Board of Education would affirm the District Administrator's recommendation. Therefore, the parties agree that the District terminated _____'s employment with the District due to administrative considerations but not for misconduct connected with her work within the meaning of Wis. Stat. § 108.04(5).

4. The District agrees that it will not contest _____'s application for unemployment insurance benefits based upon either a voluntary quit or a termination for misconduct. Accordingly, the District agrees that all written and oral responses to inquiries from the Department of Workforce Development ("DWD") regarding the employee's employment will be consistent with the District's agreement that it terminated _____'s employment for administrative considerations.

5. This agreement does not modify or amend the collective bargaining agreement.

(OPTIONAL): [Should the employee be denied unemployment insurance benefits based upon an eligibility issue related to a voluntary quit or a termination for misconduct, the District agrees to pay the employee an amount of money equivalent to the weekly benefit the employee would have been eligible to receive up to the maximum number of weeks of benefits allowed, or until the employee finds a full-time equivalent position, whichever occurs first.]

(Layoff in Lieu of Nonrenewal)

MEMORANDUM OF UNDERSTANDING

The _____ District and _____ Education Association, and the Employee, hereby agree to the following understandings:

1. The Employee will be laid off effective at the end of the 2006-07 school year. (Letter notifying the Employee of his layoff status is attached as Appendix A.)
2. The Employee shall not be entitled now, or hereafter, to any employment, reemployment, or recall to any positions with the District.
3. The District agrees that it will not contest the Employee's application for unemployment insurance benefits based upon either voluntary quit or a termination for misconduct. Accordingly, the District agrees that should officials from the Department of Workforce Development ("DWD") contact District officials, such officials shall confirm that the Employee was laid off from his teaching position.
4. This agreement does not modify or amend the collective bargaining agreement.

(OPTIONAL): [Should the Employee be denied unemployment insurance benefits based upon an eligibility issue related to a voluntary quit or a termination for misconduct, the District agrees to pay the Employee an amount of money equivalent to the weekly benefit the Employee would have been eligible to receive up to the maximum number of weeks of benefits allowed, or until the Employee finds a full-time equivalent position, whichever occurs first.]