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**MEMORANDUM**

TO: CSU-AAUP

FROM: GREGG D. ADLER, COUNSEL

RE: UNEMPLOYMENT COMPENSATION INSURANCE FOR  
PART-TIME FACULTY MEMBERS

DATE: DECEMBER 15, 2010

The purpose of this memorandum is to provide some clarity regarding the application of Connecticut's unemployment compensation laws to part-time faculty members. More particularly, it has come to our attention that there have been a number of situations recently where there has been inconsistent and, in some cases, incorrect applications of Conn. Gen. Stat. §31-227(d)(1) with respect to eligibility and repayment determinations for periods between academic years and between semesters.

The critical language in the statute states that institutional faculty members who teach during one semester are not eligible for benefits during the following semester or intercession "if there is a contract or reasonable assurance that such individual will perform such services for the educational institution during the following term." The controversy arises because of the absence of any definition of the term "reasonable assurance" in the statute, and the apparent conflict between that term and Article 4.6 of the CSU-AAUP Collective Bargaining Agreement which explicitly states that "part-time members have no guarantee of continuing employment." Accordingly, contracts offered part-time faculty in the CSU System are virtually always contingent upon factors such as adequate course enrollment and the unavailability of full-time faculty to teach particular course(s). Nonetheless, under the interpretation of the statute adopted by the Board of Review in 1986, and applied on numerous occasions since then, the contract language and the conditional nature of the offers do not necessarily entitle the member to benefits. What we are seeing now, however, is that the Administrator and Appeals

Referees have been denying benefits to any member who has a record of being regularly re-hired for multiple semesters without regard to the analytical framework that the Board of Review so carefully formulated twenty-four years ago. This memo is intended to assist CSU-AAUP members who have been denied benefits because of this disregard of the established guidelines.

Section 31-227(d)(1) was definitively interpreted by the Board of Review in Rinaldi v. Mattatuck Community College, Board Case No. 1176-BR-85 (4/10/86). The threshold issue of fact is whether the claimant "has been given at least some affirmative indication of rehire, either written or oral, by his former employer." If such a promise has been made, then, and only then, should the Administrator look at the claimant's prior employment history. The Board of Review made clear in Rinaldi that past employment is only to be considered "when there has been a threshold finding that a job offer has been communicated by the employer." (p.5) Accordingly, a part-time faculty member who has not received a contract or verbal promise for a course assignment for the following semester is entitled to receive benefits during the summer or between semesters without regard to how often he or she has been hired by the University in the past.

An important corollary to this rule is that the determination of "reasonable assurance can only be determined based on the factual situation at the time the claim is filed." (p.7) Accordingly, if a part-time faculty member has no letter of intent or promise at the time she applies for benefits on June 1, but then receives an offer letter on August 1 to teach during the fall semester, a new determination would have to be made as to whether she is entitled to benefits from August 1 forward. But this determination could not alter the fact that the claimant was entitled to benefits for the June 1 - July 31 period. As the Board of Review explained in Rinaldi, "where such a change in status takes place during a period of claim filing between academic years or terms, it would then be incumbent upon the Administrator to redetermine the claimant's eligibility for benefits in light of the change; the redetermination, however, would not affect the claimant's entitlement or non-entitlement prior to the change in status." (p.7) Therefore, any disqualification could only be from that point in time forward, and it would be improper for the Administrator to use an offer letter received on August 1 as a basis for denying benefits prior to that date or requesting a payback of benefits paid for the June 1 - July 31 time frame.

In summary, the critical piece of evidence is whether or not the member has received an offer letter or specific promise that she will be teaching during the following semester. If such a contract or promise has been received, even if conditional, the Administrator may look to the individual's past employment record to determine if a reasonable assurance of continued employment has been received. Until such time as a contract, letter of intent, or verbal promise has been communicated, the member is entitled to unemployment benefits regardless of her past employment as an adjunct. If a contract or letter of intent is received prior to the beginning of the next semester, the entitlement to benefits may be re-determined based upon the factual situation existing at that point in time, which may include a review of the individual's employment history.