



SUPPORTS



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S-4123-a	Onorato	Finance Committee
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PROVISIONS OF BILL:

This legislation amends the Labor Law to provide that an offer of employment or assignment made to a part-time faculty employee by a higher education institution that is contingent on enrollment, funding, or programmatic changes shall not constitute reasonable assurance of continued employment under the Labor Law.

STATEMENT OF SUPPORT:

Unemployment insurance is a benefit that is supposed to cover workers during times of unemployment when they have no income. Under current law however, many part-time faculty working in colleges and universities in New York state are unable to receive unemployment insurance when they become unemployed between semesters because the college or university holds that they have a "reasonable assurance" of continuous employment under the provisions of subdivision 10 of section 590 of the Labor Law. Yet, in reality, these employees have no "reasonable assurance" that they will have a job when the next semester starts as that decision rests entirely with the employer and is often based on contingent factors such as enrollment, funding and programmatic changes. In many cases, these employees are not notified by the college or university that there is no position for them until very close to the start of the next semester. In fact, current law provides an incentive to colleges and universities to wait as long as possible to officially disclose to part-time faculty that they will not be employed for the upcoming semester to avoid paying unemployment insurance costs for those employees between semesters.

The exclusion for educational employees from unemployment insurance for "reasonable assurance" reasons was included in reforms to the Social Security Act in 1970 that extended unemployment benefits to public sector workers generally. The "reasonable assurance" language was added to prevent full-time employees at educational institutions who received their annual salary in 10 months, instead of 12 months, from "double dipping" by collecting UI benefits in the summer. Since the law changed in 1970, the higher education workforce has been radically transformed from one where the majority was full-time faculty with tenure to one where the majority is part-time and non-tenure track faculty.

Part-time faculty now provide half the instruction at SUNY and CUNY four-year institutions and teach approximately 68% of the courses in the community colleges. Nationally, part-time and non-tenure track full-time faculty – who similarly lack job security – now account for 70% of the college workforce.

Adjunct faculty who work only as adjuncts typically earn \$25,000 to \$30,000 per year from teaching, and frequently must patch together courses at multiple colleges and universities in order to make ends meet. They are like workers in the construction, theater arts or seasonal resort industries that have periodic and irregular work. The unemployment insurance system was designed to serve these workers. It is only fair that adjunct faculty have similar access to unemployment benefits when they have no reasonable assurance of continued employment, are not working and are otherwise eligible.

This legislation levels the playing field for employees by changing the current practice of allowing letters of “intent to hire” that are conditioned on enrollment, funding, or program changes to be offered as evidence of the federal “reasonable assurance” standard. The employer would have the burden of proof and would have to provide sufficient documentation, on a case-by-case basis, to overcome the presumption of contingency established in these letters of “intent to hire.”

It is important to note that the enactment of this legislation will not guarantee unemployment insurance benefits for part-time higher education employees. That determination will still be made on a case-by-case basis as are all unemployment insurance claims. In fact, only a small fraction of adjuncts will be eligible for unemployment insurance. The vast majority of adjunct faculty are either employed full-time elsewhere or work year-round as adjuncts or part-time at other jobs and therefore are ineligible for benefits.

Opponents of this legislation claim that if the state changes the definition of “reasonable assurance” for adjunct faculty, the cost would be prohibitive. We respectfully disagree and believe that opponent cost arguments are based on the inflated assumption that all or a majority of part-time employees would be eligible for unemployment insurance benefits at the maximum rate which is simply not the case. The reality is that most adjuncts teach just one course, have other primary employment or teach at several colleges (in which case, if there are costs, they would be shared among the colleges). Many adjuncts teach courses during the summer or during intercessions and their eligibility will be extremely limited. All of these conditions either make individuals ineligible or reduce their benefits and thus, lower the employers’ costs.

Based on membership surveys and a thorough review of our membership records, we estimate that no more than 10% to 20% of all adjunct faculty would be in the pool of adjuncts who might make an unemployment insurance claim. For CUNY, Only 25 percent, or approximately 2,042 part-time adjunct faculty, rely on CUNY as their primary source of income and teach two or more courses at CUNY in both the fall and spring semesters. These adjunct faculty earn between \$21,000 and \$25,000 annually from their CUNY employment. Based on a pool of 2,042 eligible adjunct faculty the maximum number of CUNY adjunct faculty filing for unemployment insurance will fall in the range of 408 at the low end and 1,021 at the high end. Even if you assume the payment of a full benefit (which would not be the case), this would put CUNY’s maximum liability at \$1,621,800 to \$4,058,475.

For SUNY, the maximum total cost to is estimated at the low end of \$572,024 to the extreme high end of \$7,219,600. A more accurate measurement of SUNY’s liability is \$572,024. This number excludes all individuals who worked over the summer at SUNY and are therefore categorically ineligible for UI benefits.

Realistically, both SUNY’s and CUNY’s financial liability would be much less than the maximum. Their liability would be *zero* if the university would guarantee continuing employment, and thereby provide part-time adjunct faculty a measure of job stability where now they have none.

States, such as California and Washington, have begun to update the federal law by clarifying what constitutes “reasonable assurance.” It is only fair that New York do the same.

NYSUT AND ITS HIGHER EDUCATION AFFILIATES, UNITED UNIVERSITY PROFESSIONS (UUP) AND THE PROFESSIONAL STAFF CONGRESS (PSC), STRONGLY URGE THE ENACTMENT OF THIS LEGISLATION