



Help Wanted: Jobless benefits during school breaks

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August 12, 2013 by BYCARRIE MASON-DRAFFEN / carrie.mason-draffen@newsday.com



DEAR CARRIE: I've been working part-time as a lunch lady in a school district for more than 20 years. Every year my co-workers and I wonder whether we can refuse to sign a letter the district gives us and apply for unemployment benefits during the summer break. Before the school year ends, we each receive a letter called a "Notice of reasonable assurance of continued employment." If we don't sign this letter, human resources may consider the decision as a voluntary refusal of the district's offer of continued employment. We were told that by signing the letter we waive our rights to unemployment benefits since we have a "reasonable assurance" of getting our jobs back in the fall. About a week before we are due to go back, we get a letter from the board of education stating whether we have been approved to return. So my question is, why can't we collect unemployment benefits in the meantime?

-- Lunch Ladies

DEAR LUNCH: It's not the signing of the letter that makes you and your colleagues ineligible for unemployment. The letter simply reflects what New York State labor laws say about your unemployment-benefits eligibility during school breaks when you have a shot at returning to work. You wouldn't be eligible.

Here is what the state Labor Department's website says about school employees and summer and holiday breaks: "Employees of educational institutions who have a contract or believe they have work in the next academic year or term, cannot receive unemployment benefits if they file between academic years or terms; during customary vacation or holiday recesses; immediately following the vacation or holiday recesses."

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So the letter you receive each year merely affirms what's in state regulations. What the district does if you don't sign is a matter of school policy, not law.

DEAR CARRIE: Someone I know applied for a position in a school district. The school says she must participate in six hours of training without being paid for that time. Is this legal?

-- Training Daze

DEAR TRAINING: It depends on the circumstances of the training.

"Whether an employee must be paid for time spent during training comes down to whether the individual is acting under the direction or control of his/her employer or for the benefit of the employer during this training time," said Howard M. Wexler, an employment attorney at Seyfarth Shaw in Manhattan.

Generally, employees aren't acting under the control of an employer or for its benefit if the training meets four criteria under federal labor laws: It is outside the employee's regular work hours; attendance is voluntary; the class is not directly related to the employee's current job (as in necessary for a promotion); and lastly, the employee does not perform any productive work for the benefit of the employer during the class.

For example, if an employer has a unique computer system and requires all employees to receive training on how to use it, the time spent in such training would be for the benefit of the employer, Wexler said, "and employees would have to be paid for the time."

But if the training isn't unique to the employer and has to be obtained by the individuals whether or not they worked for the employer -- for example, to obtain state-mandated certification -- the training is considered for the benefit of the employees. "The employee does not have to be paid for that time," he said.

That's because that training enables the employees to obtain a job through any employer, not just their current one.

Wexler suggests that you check the company handbook or your union contract to verify what the policy is.

For more on school breaks and unemployment-benefits eligibility, go to <http://bit.ly/16567pv>

For more on when training has to be paid, go to:
<http://www.dol.gov/whd/regs/compliance/whdfs22.pdf>

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