

2018 OESC Administrative Rule Amendments
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240:1-3-9. Release of confidential information to specific government agencies

(a) Pursuant to 40 O.S. § 4-508(C), the government agencies, public entities and political subdivisions specified in part (b) of this rule may obtain confidential information maintained by the Oklahoma Employment Security Commission after entering into an agreement with the Oklahoma Employment Security Commission that sets out the purpose the information will be used for, how the information will be transmitted, and how the information will be safe guarded. All costs involved in providing information to government agencies, public entities, or political subdivisions will be set out in the agreement. The information shall be held confidential by the receiving government agency, public entity or political subdivision at all times and shall not be disclosed or open to public inspection. It shall be allowable for the receiving government agency, public entity or political subdivision to release aggregated data.

(b) Government agencies authorized to obtain confidential information from the Oklahoma Employment Security are:

- (1) The Oklahoma Department of Commerce, to accomplish specific goals, missions or tasks of the agency as determined by the Oklahoma Legislature;
- (2) The Oklahoma Department of Transportation for use in federally mandated regional transportation planning, which is performed as a part of its official duties;
- (3) The Oklahoma State Treasurer's office to verify or evaluate the effectiveness of the Oklahoma Small Business Linked Deposit Program on job creation;
- (4) The Oklahoma Attorney General for use in investigation of workers' compensation fraud, insurance fraud and health care fraud;
- (5) The Oklahoma Department of Labor for use in investigation of workers' compensation fraud;
- (6) The Oklahoma Workers' Compensation Commission for use in investigation of workers' compensation fraud;
- (7) The Oklahoma Insurance Department for use in investigation of workers' compensation fraud, insurance fraud and health care fraud;
- (8) The Oklahoma State Bureau of Investigation for use in the investigation of insurance fraud and health care fraud;
- (9) Any Oklahoma state, Oklahoma county or Oklahoma municipal law enforcement agency for use in criminal investigations and the location of missing persons or fugitives from justice;
- (10) The Center of International Trade of Oklahoma State University for the development of international trade for employers doing business in the State of Oklahoma;
- (11) The Oklahoma State Regents for Higher Education for use in the default prevention efforts and/or collection of defaulted student loans guaranteed by the Oklahoma Guaranteed Student Loan Program;
- (12) The Center for Economic and Management Research of the University of Oklahoma to identify economic trends;

- (13) The Center for Economic and Business Development at Southwestern Oklahoma State University to identify economic trends;
- (14) The Office of Management and Enterprise Services to identify economic trends;
- (15) The Department of Mental Health and Substance Abuse Services to evaluate the effectiveness of mental health and substance abuse treatment and state or local programs utilized to divert persons from inpatient treatment;
- (16) Public housing agencies for purposes of determining eligibility pursuant to 42 U.S.C., Section 503(l);
- (17) An agency of this state or its political subdivisions that operates a program or activity designated as a required partner in the Workforce Innovation and Opportunity Act One-Stop delivery system pursuant to 29 U.S.C.A., Section 3151(b)(1), based on a showing of need made to the Commission;
- (18) The national Wage Record Interchange System, at the discretion of the Commission;
- (19) The Bureau of the Census of the U.S. Department of Commerce for the purpose of economic and statistical research;
- (20) The Oklahoma Health Care Authority for use in determining eligibility for subsidies for health insurance premiums for qualified employers, employees, self-employed persons, and unemployed persons; or
- (21) The Oklahoma State Department of Rehabilitation Services for use in assessing results and outcomes of clients served.
- (22) The Office of Juvenile Affairs for use in assessing results and outcomes of clients served as well as the effectiveness of state and local juvenile and justice programs including prevention and treatment programs.
- (23) Any county Public Defender's office in the state of Oklahoma and the Oklahoma Indigent Defense System for the purpose of determining financial eligibility for the services provided by these entities.

240:10-3-21. ~~Reasonable assurance~~ Educational institutions--between academic terms

~~A "reasonable assurance" means a written, verbal, or implied agreement that the employee will perform such service during the ensuing academic year or term or tenure status. A written agreement is preferable.~~

Pursuant to 40 O.S. §2-209 and 26 U.S.C.A. §3304(a)(6)(A) or 40 O.S. §2-209.1, benefits based on service and employment defined in 40 O.S. §1-210(3) or (4) or for an education service contractor shall be payable on the same terms and conditions as benefits payable on the basis of other service subject to the Employment Security Act of 1980, except that individuals providing services to an educational institution shall not be paid benefits based on services to the educational institution for any week of unemployment commencing during the period between two successive academic years or terms, if the individual performs services in the first academic year or term and there is a contract or a reasonable assurance that the individual will perform services for the educational institution in the second academic year or term. A determination of the denial of benefits between an academic year or term shall be made based on the following subsections of this rule:

(a) Prerequisites. Before making a determination concerning the existence of a contract or reasonable assurance of employment in the following academic year or term, the Commission

representative must find that three prerequisites exist. If any one of the three prerequisites is not met, unemployment benefits must be allowed. The three prerequisites are:

1. An offer of employment. The offer may be written, oral or implied. The offer must be genuine and made by an individual with authority to offer the employment.

2. The employment offered in the following academic year or term must be in the same capacity as that of the previous academic year or term.

3. The economic conditions of the job offered in the following academic year or term may not be considerably less than the conditions present in the previous academic year or term. If the claimant is offered a salary or wage for the following academic year or term that is less than 90% of the salary or wage paid in the previous academic year or term, this shall be considered economic conditions that are considerably less from the previous to the following academic year or term.

(b) The term "contract" means an enforceable, non-contingent agreement that provides for compensation: (i) for an entire academic year; or (ii) on an annual basis, though the contract terms describing compensation are not expressed as an annual salary.

(c) The term "reasonable assurance" means that there is a high probability that employment will be available based on the totality of circumstances and contingent nature of the offer made to the claimant. The following rules apply in making the determination:

1. If the offer of employment contains a contingency, the Commission representative must determine if the contingency is within the employer's control or not in the employer's control. If the offer of employment is contingent upon a factor within the employer's control, such as course programming, allocation of funding, final course offerings, program changes, and faculty availability, the claimant does not have reasonable assurance and benefits shall be allowed. If the offer of employment is contingent on factors outside of the employer's control such as enrollment levels, legislative funding, or seniority, this would be considered to not be in the employer's control and further examination of the facts is required.

2. If the employer's offer to a claimant contains a contingency that is not in the employer's control, the Commission representative must examine the contingent nature of the offer. The Commission representative must give primary weight to the contingency when making the determination on the claim. If the Commission representative finds that it is highly probable that the contingency will be met, that is, the issue upon which the contingency is based will probably be concluded in a way that will allow employment to occur in the next academic year or term, then reasonable assurance can be found. If it is not highly probable that the contingency will be met, that is, there is a good probability the contingency will be resolved in a way that will prevent employment from occurring in the next academic year or term, then reasonable assurance cannot be found.

3. The Commission representative must analyze the totality of circumstances for each offer of employment to determine whether it is highly probable that there will be a job available for the claimant in the following academic year or term. This element requires considering factors such as legislative appropriations, funding levels, enrollment, the nature of the course of study to be taught, the claimant's seniority, budgeting and assignment practices of the school, the number of offers made in relation to the number of potential teaching assignments, the period of student registration, and any other contingencies. In order to find that there is reasonable assurance, the Commission representative is required to find, through

evidence presented by the employer and the claimant, that it is highly probable that a job is available in the next academic year or term. In making a determination of reasonable assurance, the Commission representative is not required to find that there is a certainty of a job.

(d) Employer requirements.

1. If the educational institution employer or educational service contractor did not enter into a formal employment contract with the claimant, the employer shall submit a written statement to the Commission representative explaining the manner in which the employee was given a reasonable assurance of employment in the following academic period or term. The employer shall state whether the assurance was given in writing, orally, or implied through other means. The employer shall state the information that was given to the claimant about the offer of employment in the next academic year or term, including contingencies.

2. If the educational institution employer or educational service contractor entered into a formal employment contract with the claimant, the employer shall provide a copy of the contract to the Commission representative.

3. The educational institution employer or educational service contractor will be responsible to provide any other information necessary to make the determination of a contract of employment or reasonable assurance and any other information requested by the Commission representative.

(e) Claimant requirements.

The claimant will be responsible to provide sufficient information for the Commission representative to make a determination of reasonable assurance of employment or a contract of employment in the next academic year or term, and the claimant shall provide any information or documents requested by the Commission representative.

240:10-5-10. Payment of contributions

(a) Date payment due. Contributions shall become due and be paid on or before the last day of the month following the calendar quarter to which they relate, provided that:

(1) If, under the provisions of 40 O.S. Section 3-306, the Commission shall declare the period for which any contribution may become due to have terminated for an employer, and assesses the contributions for such period, such contributions shall immediately become due and be paid by such employer; and

(2) If an employing unit has not previously qualified as an employer under the Employment Security Act of 1980 and first qualifies as an employer during a calendar year, the employing unit shall pay contributions for all past periods of that year for which said employer is liable for the payment of contributions, on or before the due date for that quarter in which such employing unit becomes an employer subject to the Employment Security Act of 1980.

(b) Date of receipt defined.

(1) Payments of contributions received through the mail shall be deemed to have been received as of the date shown by the postmark on the envelope properly addressed to the Commission's office and containing such payment. If there is no proof from the Post Office of the date of mailing, the date of receipt by the Commission shall constitute the date of payment.

(2) Payments of contributions received from a private delivery service shall be deemed to have been received as of the date the private delivery service received the item according to

the receipt or delivery document of the private delivery service. If there is no documentation of the date on which the private delivery service received the item, the date of receipt by the Commission shall constitute the date of payment.

(3) Payment of contributions received through an electronic fund transfer system shall be deemed to have been received by the Commission on the date on which the electronic payment was authorized for immediate payment to the Oklahoma Employment Security Commission.

~~(3)~~(4) All other payments of contributions shall be deemed to have been received on the date on which payments are received by a representative of the Commission.