



Senate

General Assembly

File No. 265

February Session, 2022

Substitute Senate Bill No. 315

Senate, April 4, 2022

The Committee on Labor and Public Employees reported through SEN. KUSHNER of the 24th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING UNEMPLOYMENT BENEFITS FOR ADJUNCT HIGHER EDUCATION FACULTY.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (d) of section 31-227 of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective July 1,*
3 *2022*):

4 (d) (1) Benefits based on service in employment defined in
5 [subdivisions (1) (C) and (D)] subparagraphs (C) and (D) of subdivision
6 (1) of subsection (a) of section 31-222 shall be payable in the same
7 amount, on the same terms and subject to the same conditions as
8 compensation payable on the basis of other service subject to this
9 chapter; except that [(1)] (A) with respect to weeks of unemployment
10 beginning after December 31, 1977, benefits shall not be paid based on
11 service performed in an instructional, research or principal
12 administrative capacity for an educational institution for any week of
13 unemployment commencing during the period between two successive

14 academic years, or during a similar period between two regular terms,
15 whether or not successive, or during a period of paid sabbatical leave
16 provided for in the individual's contract, to any individual if such
17 individual performs such services in the first of such academic years [(or
18 terms)] or terms and if there is a contract or a reasonable assurance that
19 such individual will perform services in any such capacity for any
20 educational institution in the second of such academic years or terms
21 pursuant to the provisions of subdivisions (2) and (3) of this subsection;
22 [(2)] (B) with respect to weeks of unemployment beginning after
23 October 29, 1983, for service performed in any other capacity for an
24 educational institution, benefits shall not be paid on the basis of such
25 services to any individual for any week which commences during a
26 period between two successive academic years or terms if such
27 individual performs such services in the first of such academic years or
28 terms and there is a reasonable assurance that such individual will
29 perform such services in the second of such academic years or terms,
30 except that if benefits are denied to any individual under this
31 subdivision and such individual is not offered an opportunity to
32 perform such services for the educational institution for the second of
33 such academic years or terms, such individual shall be entitled to a
34 retroactive payment of benefits for each week for which the individual
35 filed a timely claim for benefits and for which benefits were denied
36 solely by reason of this subdivision; [(3)] (C) with respect to weeks of
37 unemployment beginning after March 31, 1984, for services described in
38 [subdivisions (1) and (2)] subparagraphs (A) and (B) of this subdivision,
39 benefits shall not be payable on the basis of such services to any
40 individual for any week which commences during an established and
41 customary vacation period or holiday recess if such individual performs
42 such services in the period immediately before such vacation period or
43 holiday recess and there is a reasonable assurance that such individual
44 will perform such services in the period immediately following such
45 vacation period or holiday recess; [(4)] and (D) with respect to weeks of
46 unemployment beginning after March 31, 1984, for services described in
47 [subdivisions (1) and (2)] subparagraphs (A) and (B) of this subdivision,
48 benefits shall not be payable on the basis of such services under the

49 circumstances prescribed in [subdivisions (1), (2) and (3)]
50 subparagraphs (A) to (C), inclusive, of this subdivision to any individual
51 who performed such services in an educational institution while in the
52 employ of an educational service agency. For purposes of this
53 subdivision the term "educational service agency" means a
54 governmental agency or governmental entity which is established and
55 operated exclusively for the purpose of providing such services to one
56 or more educational institutions.

57 (2) With respect to the services performed by an individual in an
58 instructional, research or principal administrative capacity, as set forth
59 in subparagraph (A) of subdivision (1) of this subsection, for an
60 institution of higher education in the state, as defined in section 3-22a,
61 the administrator, as defined in subsection (c) of section 31-222, shall
62 determine whether such individual has reasonable assurance of
63 performing such services in the second of two succeeding academic
64 years or terms pursuant to the circumstances described in subparagraph
65 (A) of subdivision (1) of this subsection or in the period immediately
66 following a customary vacation period or holiday recess pursuant to the
67 circumstances described in subparagraph (C) of subdivision (1) of this
68 subsection on a case-by-case basis. Reasonable assurance shall be
69 established when (A) the institution of higher education has made an
70 offer of employment to such individual for the second academic year or
71 term or for the period following a customary vacation period or holiday
72 recess, whether such offer is written, oral or implied, (B) such offer was
73 made by an employee of the institution of higher education with
74 authority to make such offer, (C) such offer is for services in the same
75 capacity as the services the individual provided in the first academic
76 year or term or in the period before a customary vacation period or
77 holiday recess, (D) the salary or wages in the offer of employment are in
78 an amount not less than ninety per cent of the amount paid to such
79 individual during the first academic year or term or during the period
80 before a customary vacation period or holiday recess, (E) such offer is
81 not contingent on factors within the control of the institution of higher
82 education, including, but not limited to, course programming,
83 allocation of available funding, program modifications or facility

84 availability, and (F) it is highly probable that such individual will
85 provide services in the same capacity during the second academic year
86 or term or during the period following a customary vacation period or
87 holiday recess based on the totality of circumstances of the case,
88 including, but not limited to, availability of funding, past enrollment
89 levels, the individual's level of seniority and the nature of the
90 contingencies on the offer.

91 (3) Not later than ten days before the last day of an academic year or
92 term, each institution of higher education in the state shall submit to the
93 Labor Department, in the form and manner prescribed by the
94 administrator, (A) a list of individuals who performed services in an
95 instructional, research or principal administrative capacity, as set forth
96 in subparagraph (A) of subdivision (1) of this subsection, for such
97 institution and who do not have a reasonable assurance of providing
98 such services in the same capacity during the second academic year or
99 term or during the period following a customary vacation period or
100 holiday recess, including such individual's name and Social Security
101 number, and (B) a list of individuals who performed such services
102 described in subparagraph (A) of subdivision (1) of this subsection for
103 such institution and who have a reasonable assurance of providing such
104 services in the same capacity during the second academic year or term
105 or during the period following a customary vacation period or holiday
106 recess. The list described in subparagraph (B) of this subdivision shall
107 include with it a description of the manner in which reasonable
108 assurance was provided to each individual, including, but not limited
109 to, (i) whether an offer was made in writing, orally or implied, (ii) the
110 nature of any contingencies in the offer, and (iii) the information
111 communicated to the individual about the offer. Such information may
112 be considered by the administrator, but shall not, on its own,
113 demonstrate conclusive evidence regarding reasonable assurance in any
114 case. The administrator shall consider the failure of any institution to
115 submit such information as establishing a rebuttable presumption of the
116 lack of reasonable assurance to an individual of performing the services
117 described in subparagraph (A) of subdivision (1) of this subsection
118 during the second academic year or term or during the period following

119 a customary vacation period or holiday recess. In the event an
 120 institution gives an individual reasonable assurance that is not honored
 121 in the subsequent academic term, unemployment benefits shall be
 122 retroactive to the date of the institution's attestation of reasonable
 123 assurance or the date that attestation of assurance is required.

This act shall take effect as follows and shall amend the following sections:		
Section 1	July 1, 2022	31-227(d)

Statement of Legislative Commissioners:

In Section 1(d)(3), "shall include with a description" was changed to "shall include with it a description" for clarity.

LAB *Joint Favorable Subst. -LCO*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 23 \$	FY 24 \$
UConn	Various - Cost	119,838	119,838
UConn	Various - Potential Cost	Potential Significant	Potential Significant
Board of Regents for Higher Education	Various - Cost	40,369	40,369
Board of Regents for Higher Education	Various - Potential Cost	Potential Significant	Potential Significant

Note: Various=Various

Municipal Impact: None

Explanation

The bill establishes a new process regarding potential eligibility for unemployment among all college and university adjunct instructors. The bill results in a potential significant cost to the constituent units, beginning in FY 23, associated with the possibility of increased unemployment claims. The significant cost is potential because the Connecticut Department of Labor ultimately determines whether to grant unemployment benefits. However, the bill is likely to result in unemployment benefits for at least some adjuncts, particularly for the Board of Regents.

The bill also results in annual costs, beginning in FY 23, of \$119,838 to UConn and \$40,369 to the Board of Regents, associated with the addition of personnel needed to comply with the bill's requirements to submit lists of adjuncts regarding potential eligibility for unemployment benefits.

Unemployment benefits. The potential significant cost related to

unemployment benefits is borne by the constituent units because as reimbursable employers, the units do not pay unemployment insurance taxes. Rather, they reimburse the state Unemployment Insurance Trust Fund dollar-for-dollar on all benefits paid for former employees.

The bill establishes that "reasonable assurance" of similar future employment for adjuncts and other higher education employees is met – and unemployment is less likely to be required – if, among other criteria: (1) the contract is not contingent on course programming, and (2) a contract for the next term is in place at least ten days before the end of the current term. Those who lack reasonable assurance may potentially be considered eligible for unemployment benefits, and those who are determined to have reasonable assurance but are not re-hired may seek unemployment benefits.

Due to the bill's reasonable assurance standards, the Board of Regents institutions anticipate potentially needing to pay unemployment costs for nearly all its adjuncts, for, at minimum, the periods between academic terms. Each semester, the Board of Regents institutions employ between approximately 3,400 and 4,350 adjuncts, based on semester information from fall 2019 through spring 2022. Between 76 and 84 percent of adjuncts (ranging from approximately 2,900 to 3,400 individuals) were returning after teaching the prior semester. Adjunct contracts offered by the Board of Regents typically are contingent and at least sometimes are not offered in the listed timeframe. Consequently, many Board of Regents adjuncts could be assessed by the labor department as lacking reasonable assurance, and therefore potentially eligible for unemployment.

The potential significant cost to the University of Connecticut (UConn) is also associated with the possibility of newly paying unemployment compensation to some adjuncts due to the bill. In FY 22, approximately 850 adjuncts are or have been employed by UConn; of these, approximately 670 do not have multi-year contracts and therefore could be assessed as lacking reasonable assurance.

The extent of the bill's potential costs to the constituent units will

depend on numerous factors regarding the adjuncts who are determined by the labor department to be eligible for unemployment. These factors include but are not limited to whether the persons file for unemployment, gross wages over the year from all sources, and family size. The pay rates of adjuncts are approximately \$1,050 biweekly on average for the Board of Regents in FY 22, with average semester earnings of \$8,546 for FY 20 through FY 22. At UConn in FY 22, on average adjuncts are teaching or have taught 4.2 credits in a semester at an average rate of \$2,078 per credit, for average semester earnings of \$8,750.

Personnel. The annual cost to UConn is associated with the hiring of two 0.5 FTE program managers at anticipated costs totaling \$119,838 in FY 23, consisting of \$60,000 in wages and \$59,838 in fringe benefits.¹ These staff will be responsible for working with department chairs and other personnel to gather and submit the required information on each adjunct employed by the university. The annual cost to the Board of Regents for personnel to carry out the bill's duties are estimated to total \$40,369, consisting of \$20,212 in wages for a 0.5 FTE Data Analyst I and fringe benefits of \$20,157. It is anticipated that accomplishing the bill's list duties will require more time for UConn than the Board of Regents, as it is expected that at least some UConn adjuncts may meet the reasonable assurance standard and therefore UConn will need to compile more-detailed information.

These increased personnel costs may be funded by either the General Fund or other constituent unit revenues (e.g., tuition). If the new positions are funded through the General Fund, then the fringe benefits costs will be incurred within the Office of the State Comptroller.

The Out Years

¹ The fringe benefit costs for employees funded out of other appropriated funds are budgeted within the fringe benefit account of those funds, as opposed to the fringe benefit accounts within the Office of the State Comptroller. The estimated active employee fringe benefit cost associated with most personnel changes for other appropriated fund employees is 99.73% of payroll in FY 23.

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation in adjunct pay rates, overall wage inflation, and the number of adjuncts employed by the constituent units.

OLR Bill Analysis**sSB 315*****AN ACT CONCERNING UNEMPLOYMENT BENEFITS FOR
ADJUNCT HIGHER EDUCATION FACULTY.*****SUMMARY**

By law, Connecticut higher education institutions' instructional, research, or principal administrative employees are ineligible to receive unemployment benefits if they are likely to be rehired after weeks of unemployment (1) between two successive academic years; (2) between two regular terms, regardless of whether they are successive; or (3) during a customary vacation period or holiday recess. The labor commissioner makes this ineligibility determination based on whether the employee has a contract or a "reasonable assurance" that he or she will work in any capacity for the educational institution in the subsequent academic year or term or period following the vacation or holiday recess (i.e., "once courses resume").

This bill requires the commissioner to determine on a case-by-case basis whether there is reasonable assurance for these higher education employees' rehiring. It establishes multiple factors that must collectively be present for the commissioner to find that reasonable assurance exists.

Lastly, the bill creates new reporting duties for higher education institutions, requiring them to submit two employee lists to the Department of Labor (DOL) at the end of an academic year or term to help inform the commissioner's reasonable assurance findings.

EFFECTIVE DATE: July 1, 2022

REASONABLE ASSURANCE DETERMINATION

Under the bill, the labor commissioner must determine that several factors are present when finding that a higher education employee has

reasonable assurance to be rehired and is ineligible to receive unemployment benefits. These factors are as follows:

1. the higher education institution has made a written, oral, or implied offer to employ the person once courses resume;
2. the offer was made by an employee of the institution who is authorized to make it;
3. the offer is for the same type of services that the person provided and for at least 90% of the wages or a salary that the institution paid to the person in the first academic year or term or in the period before the customary vacation or holiday recess;
4. the offer is not contingent on factors within the institution's control, including course programming, available funding allocation, program modifications, or facility availability; and
5. it is highly probable that the person will provide services in the same capacity once courses resume, based on the totality of the circumstances, including funding availability, past enrollment levels, the person's seniority level, and the nature of the contingencies on the offer.

HIGHER EDUCATION EMPLOYEE LISTS

Under the bill, Connecticut higher education institutions must submit two employee lists to DOL at least 10 days before the last day of an academic year or term. The first list must contain the names and social security numbers of people who (1) served in an instructional, research, or principal administrative capacity for the institution and (2) do not have reasonable assurance of providing the same services in the same capacity once courses resume.

The second list must contain employees who performed the same services and have reasonable assurance of providing these services in the same capacity once courses resume. However, the second list must also describe how the institution provided reasonable assurance to these

employees, including (1) whether an offer was made in writing, orally, or implied; (2) the nature of any offer contingencies; and (3) the information about the offer communicated to the employee.

The bill allows the labor commissioner to consider these two lists when making reasonable assurance determinations, but the lists cannot be the sole, conclusive evidence of reasonable assurance, or lack thereof, in any case. It also requires the commissioner to consider an institution’s failure to submit this information as establishing a rebuttable presumption of the lack of reasonable assurance of an employee’s rehiring.

If an institution gives a person a reasonable assurance but does not honor it once courses resume, the bill requires that the person’s unemployment benefits be retroactive to either (1) the date of the institution’s attestation of reasonable assurance or (2) the date the attestation of assurance is required (presumably, the deadline for submitting the lists required by the bill). (It is unclear how this provision would apply if the person was still employed by the institution for any time on and after either of these dates.)

BACKGROUND

Related Bill

sHB 5030 (File 12), favorably reported by the Higher Education and Employment Advancement Committee, contains substantially similar provisions to this bill.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable

Yea 10 Nay 3 (03/22/2022)