



Pennsylvania School Boards Association

CORONAVIRUS
GUIDANCE ON FURLOUGHS

CONSIDERATIONS FOR SCHOOL BOARDS CONTEMPLATING FURLOUGHS OF NON-TEACHING STAFF

School boards continue to grapple with the question of whether to continue regular pay during the coronavirus/COVID 19 closures for non-teaching employees not expressly entitled to continuation of pay under Section 1153 of the School Code. PSBA guidance in responses to frequently asked questions (see link) initially cautions that the authority for that is uncertain due to lack of an express basis in statute, but goes on to point out that from time to time school districts place employees on paid administrative leave for various reasons and that has not generally been questioned, despite lack of express statutory authority for such actions. In addition, it appears to be generally accepted that school boards have considerable discretion about what kinds of paid and unpaid leave may be included in the overall compensation and benefit structures they negotiate or otherwise establish for their various classes of employees. If a school board chooses to establish an additional category of temporary paid emergency leave limited to these circumstances, it probably has the inherent authority to do so.

At the same time, some school boards are considering whether to furlough non-essential non-teaching staff, and to cease paying them. The benefit of taking such action at this time before more information is available is unclear, and it could greatly complicate things. It is not necessary to make employees eligible for unemployment compensation benefits. The Department of Labor already has made clear that employees who are out of work and not being paid due to shutdowns will be eligible, regardless of whether formally furloughed or simply not being given any compensable hours to work. DOL has waived the usual waiting week, although DOL says it will be at least four weeks before the first benefit checks arrive. Furloughs likely will not produce cost savings equal to the usual payrolls, since it is believed that the majority of school districts are self-insured in some manner, and even those that have UC insurance in most cases still bear a significant portion of the cost immediately or in the future.

It appears increasingly likely from statements made by legislative leaders that emergency legislation will be acted upon in the next week. Such legislation as currently proposed would include among other things provisions that would require school employees to be paid no more or less compensation than they otherwise would have been had the pandemic shutdowns not occurred, provisions assuring that school entities will not receive any less subsidy and reimbursements than was scheduled to be paid, and provisions assuring that no employee will receive more or less service credit under the Public School Employees Retirement Code than they would have earned.

For this reason, implementing furloughs now before this emergency legislation is enacted could unnecessarily introduce new complications related to recalling employees and unwinding any UC benefits applied or received, not mention greatly adding to the stress already being experienced by district staff and the broader school community. These likely far outweigh any uncertainty about the propriety of continuing to execute district payrolls as normal, even for those non-teaching staff idled

due to the closure of schools. It also is useful to consider that continuing to pay district staff as normal would not involve the expenditure of funds not already budgeted for payroll. Since the 180-day school year minimum appears to have been waived by emergency administrative action, without requiring lost days to be made up (something the emergency legislation is likely to reaffirm), districts that continue to pay their staff as normal for now need not end up exceeding budgeted amounts for the fiscal year.

However, before school boards adopt resolutions directing that all district staff be paid as normal for now, we strongly recommend obtaining memoranda of agreement from any unions representing affected employees that this will not be considered to set any precedent or be evidence of any past practice, nor be regarded as interfering with the union's status as exclusive representative of such employees.

PSBA hopes that school boards will take these considerations into account as they determine how to navigate these unprecedented challenges and continuing uncertainty. We stand ready to support you in any way we can.



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PSBA

