



Pennsylvania School Boards Association

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Teacher Unemployment

THE COMPLEX EQUATION OF EARNINGS AND COMPENSATION UNEMPLOYMENT

- In this timely episode of Keystone Education Radio, Geoffrey D. Moomaw, President of Interstate Tax Service, Inc., provides guidance on how schools should proceed with unemployment compensation during the COVID-19 outbreak. He discusses the newly passed Act 13; how it impacts teachers, school contractors and coaches; and the further guidance that PDE is expected to provide. This episode is sponsored by the PSBA Insurance Trust, Kades-Margolis Corporation and Piper Sandler LLP.

Annette Stevenson: Let's jump into some of the questions that we've been receiving and I'm sure you've been fielding them. Are school entities supposed to be paying full wages to all employees?

Geoffrey Moomaw: Yes, that is correct. That's one of the provisions of Senate Bill 751. I want to let everyone know why my expertise is unemployment compensation. I did some research and preparation and got some feedback from the executive director of the Pennsylvania House of Representatives' Education Committee, which is the committee that worked on Senate Bill 751 as it dealt with the Pennsylvania school code. So, I have some backup for the answers you will hear today from that executive director. Let's go ahead and continue.

Annette Stevenson: Thank you for that context. That's hugely important since there's so much information out there to wade through. So as far as paying full wages, does this include the IUs and the CTCs and community colleges as well?

Geoffrey Moomaw: It does include the intermediate units. It does include the career and technology centers. It does not include community colleges. I did confirm that with the executive director. Didn't clarify, but I believe that community colleges may not fall under the Pennsylvania school code. I can't clarify that, but I did clarify that they're

not covered by the provisions of Senate Bill 751.

Annette Stevenson: Would this include sports coaches that are not full or part-time teachers, such as those utilized during the spring season? And then that spring season's been canceled, how does that group of employees fall into the picture?

Geoffrey Moomaw: That isn't exactly clear. My initial reaction is I would assume no, the reason being such an employee signed a supplemental contract with the school. Now, those wages they receive as a coach are covered by the Pennsylvania UC law. That's unemployment compensation law. When I did though check with the executive director of the Education Committee, the response I got was that the Pennsylvania Department of ED, PDE, is going to issue guidance on this. So, at this point I would suggest that you hold still on that issue and wait for PDE's guidance because I cannot clarify for you that you definitely should pay them or that you definitely should not. I think it would be better to have the official guidance from PDE, so then you have some legal basis for your action or inaction.

Annette Stevenson: Okay, that makes sense. And I know some of these questions are definitely on a wait-and-see kind of basis as many of the questions are that the school leaders are facing. So, in Senate Bill 751 it states that

all school employees should receive no less or no more compensation for the fiscal year had the pandemic not happened. What constitutes, in that language, a school employee?

Geoffrey Moomaw: A school employee would be any individual that you pay wages to that are wages that can be covered under the unemployment compensation law. Each calendar quarter, your payroll office uploads a file to the Pennsylvania Department of Labor and Industry that has the wages for all employees for the past calendar quarter. As an example, in April, they'll do that for the first quarter of 2020. If somebody was on that report, then they are considered an employee of the school district and as such they would be required to be paid no more, no less per SB 751.

Annette Stevenson: Okay, and would this include subcontractors?

Geoffrey Moomaw: No. No's the short and simple answer. The reason being, what you pay them is not wages as far as the unemployment compensation law's concerned. So that company and the individuals employed under that company are not considered employees of the school, the intermediate unit, the technical center.

I'm going to read what I did get back from the Education Committee. They say, "No, it does not include subcontractors. This would be left as a local decision. Pursuant to Act 13, school districts may renegotiate with their school bus contractors to continue paying them during school closure for employees' costs and other fixed costs such as administration and equipment. School bus contractors must submit proof that they are continuing to pay their personnel at the complement levels of March 13, 2020 in order to receive payment. State reimbursement is available to school districts at the same level they would have received if the schools had not shut down. Obviously, schools can already renegotiate contracts, but this provides that they will still get reimbursements if they do." I would add if somebody is really looking for clarification on that matter to contact their folks at PDE. It doesn't say that there's further guidance forthcoming, but that is definitely a question that would be governed by PDE.

Annette Stevenson: Okay. Can you provide a little bit of context around the no more or less compensation verbiage, the use of that language? Some schools think that they can have employees apply for unemployment compensation benefits and then the schools will make them whole for the remainder, but this would appear to be a contradiction to eligibility under unemployment

compensation law. Can you clarify around that?

Geoffrey Moomaw: Certainly I'll break it down there. Senate Bill 751 indicates that the employees are to get no more or no less. I asked a question to the Education Committee, "Would you agree that a school employee whose normal, biweekly payroll is \$800 gross, should continue to receive that \$800 through the end of the student year?" The answer I got back is what I expected. It said, "Yes, but PDE will be issuing additional guidance." I apologize. I can't indicate what that additional guidance will be, but the short and sweet answer as you heard was yes. Now the sub-question about, "Okay, let's make up the difference from unemployment," that is not the intent of Senate Bill 751. And if you actually did that, it would mess up unemployment further.

Not to get too technical, but the unemployment law allows somebody to earn a percentage of their weekly unemployment benefit. If they earn that percentage, their unemployment benefits are reduced. So if the district tries to then make up the difference between unemployment and what they used to get, it's just going to reduce or eliminate their unemployment benefits. I strongly advise any educational institution not to try that. It's not what the intent was, and they're only going to make things more difficult.

Annette Stevenson: Thank you for that clarification. Now, you touched on the subcontracted services such as for bus drivers, but I'm going to ask this question just to make sure we covered everything. If schools choose not to pay some subcontracted service professionals such as bus drivers, cafeteria workers, their full wages, how would this, or does it, affect future funding?

Geoffrey Moomaw: When I read that question the first time, I'm like, "That's definitely outside of my expertise." But the Education Committee agreed to me, what I said to them. I'm like, "This is a question that must be addressed by PDE." And I got back the short answer, "Agreed." Again, PDE is going to have to give the educational institutions some guidance that, okay, if I don't pay ABC transportation company through the remainder of this year, how will it affect my reimbursement for 2021 fiscal year? I understand the question. I understand the concern. But I definitely recommend that your superintendent, your solicitor, whoever, get guidance from PDE on that.

Annette Stevenson: Okay, that's good to know. So, for many of the part-time and hourly employees that submitted their unemployment compensation claims prior to Senate Bill 751 and the updated legislative guidance that

was received, how do schools address these claims?

Geoffrey Moomaw: Okay. First of all, you had employees file for benefits during the calendar week ending on Saturday, March 21st. A lot of them may have filed at that time because of course there was no Senate Bill 751 yet and also your local school board board of directors had not made a decision as to whether or not you would pay employees through that initial two-week closure. So, don't get upset if they filed because their initial reaction is they know they're hourly and if they don't work, they usually don't get paid. If they filed a claim, it's a two-step process. You open the unemployment claim, then you're notified to file your biweekly claim 10 to 14 days later. When someone files their biweekly claim, they must verify to Labor and Industry that they did not work and that they did not get paid. If your employees have filed their biweekly claim and reported that they got paid, the unemployment benefits should not be released.

I know that benefits are going to be released to individuals, I'm going to say, improperly. Again, not always by fraud. As an example, in talking to schools, you may send out notice that everyone's getting paid. You do that electronically. Are you telling me 100% of your employees read every email they get from the administration? I politely think that's not the case.

But for educational institutions, a quarterly statement of account is issued summarizing all the benefits that were paid for the past calendar quarter. So, for Pennsylvania schools here in mid-April, that statement of account will be issued. If you're part of PSBA's program or if I happen to represent you outside of PSBA's program, we receive that information. If you're handling unemployment by yourself, you will receive that. If you're doing it by yourself, you will receive a report detailing the benefits for January, February and March. My company will receive it if you're with PSBA or with us directly.

If John or Jane Doe appear on that statement and you check your record and can see that was somebody that was a paraprofessional who got their normal paycheck, and I'm emphasizing gross pay, then they should not have gotten that benefits, but it occurred. There is something we refer to as a protest mechanism, where via the unemployment office you can protest those benefits that were paid. Technically, an investigation would commence. A determination which is a written decision should be issued finding that John or Jane Doe was not unemployed as their earnings were X, and therefore they are ineligible. That would trigger the process where credits would be issued to your account on a future statement. I've advised

many of the schools that I've talked to that's going to be our best method to watch, to contest, because there is no way that an individual employer can get online and to see what benefits are released.

Pennsylvania is just not that modern yet. We're working on it though. So, we deal with the notices that are sent out. When we receive them, we react. For all Pennsylvania schools, as I mentioned, there is a quarterly unemployment statement that comes out mid-April. One will come out mid-July. But there is also a monthly notice that lists the individuals that collected benefits. So, in mid-May a notice will come out showing who got benefits in the month of April. For those schools I'm working with, I'm going to be sending that to all of them with the polite suggestion, "Review this closely. Let me know if you see any issues." If you're handling unemployment on your own, I would strongly suggest you do the same. If you feel somebody got benefits improperly, you are able to again protest it with the unemployment office. And basically, when you initiate that protest it starts the investigation and hopefully a written determination will be issued.

Annette Stevenson: Yeah, that is clearly some pretty complex matter that you're working your way through and that our business managers at the school districts are working their way through. So, I sure do appreciate the clarification around these frequently asked questions. And I think that concludes what we were interested in knowing today, but I'd sure love to come back to you with more questions if our members have them.

Geoffrey Moomaw: I certainly would welcome that opportunity. In kind of wrapping up, this is a complex issue, one of great concern. I understand it's a whole new ballgame for all of us. Feel free folks, if you have questions, to address them to Annette, to the PSBA. If I work with you, you can contact me directly. I'm here to assist you in any way possible to keep your unemployment costs as low as possible. So, don't be bashful. You have resources such as PSBA and my firm. Use us. That's what we're there for. I hope everyone's doing well and please take care.

Annette Stevenson: Thank you so much Geoff, and thanks for spending time with us on this episode of Keystone Education Radio.