



## COVID-19: Additional considerations for school district labor and employment issues

March 23, 2020

As school districts settle into remote instruction, meal deliveries and the provision of other services that are vital to our students' well-beings, they should continue reviewing their plans to determine what still needs to be done in the district and how many staff members or work hours will be required to do it. New legislation and health directions are affecting employers' responses to this pandemic on an almost-daily basis. Districts will want to continue engaging in discussions with unions about who should report and the nature of the work to be performed, as good relations now seem more important than ever. Districts may also need to make certain decisions without agreement from the union to protect the health and safety of students and/or staff or to meet legal requirements for the provision of instruction and services to students, including special education students. To that end, school districts should be clear, fair and realistic in their expectations and provide employees as much notice as possible. Districts should also try to equalize work load and comply with collective bargaining agreements to the greatest extent possible.

### Staff absence and leave issues

*May we require teaching and nonteaching employees to work?*

Yes, but districts will want to practically consider which employees should be required to come into the school buildings to work. Any requirement for employees to report to school buildings should be consistent with the March 22 Order issued by the Director of the Ohio Department of Health. That is, districts should only require employees to report on-site when they are needed to perform duties necessary to carrying out Essential Governmental Functions and/or activities referenced in the Essential Business

and Operations of the order (see Order Paragraphs 10, 12(m) & 12(o)), such as providing meal services and facilitating distance learning.

In his announcement on March 12, 2020, Governor DeWine indicated that staff members should continue to work as directed by school administrators. This direction was reiterated in the Ohio Department of Health's (ODH) March 14 Order and also in the Ohio Department of Education's (ODE) March 14 FAQ and has been referenced in each of its updates. At this time, schools are closed only to students, and employees can be required to continue to work as assigned by district administration.

On March 19, the Ohio Department of Health expressed its expectation that employees who are able to work from home are, indeed, working from home. On March 22, the state ordered that, with limited exceptions, Ohioans should shelter in place from March 24 to April 6, 2020. The order states that it "is consistent with and does not amend or supersede prior Orders regarding the closure of schools." It also states that employers should allow as many employees to work from home as possible. School districts may continue to require employees to report to work to ensure the continued delivery of services to students, consistent with ODH's March 22 Order. To that end, negotiated agreements should be reviewed for any particular restrictions or provisions regarding the topic of who must work and when they must work, and those provisions may need to be discussed with your union representatives.

Since the orders of the Ohio Department of Health and ODE currently allow district administration to assign work to all employees and determine who must report to work in the buildings to perform essential functions, those employees who refuse to work as assigned without an excused absence are subject to discipline.

*Can a school take the temperatures of employees who are reporting to work during school closure due to COVID-19?*

Yes, although it is not the only available measure for detecting possible infection with the virus. Measuring an employee's temperature is generally considered a medical examination under the Americans with Disabilities Act (ADA) and cannot normally be done without proof of business necessity. The March 21, 2020, guidance issued by the Equal Employment Opportunity Commission (EEOC) states that employers may do so during the COVID-19 pandemic because of the acknowledged community spread of the virus and related precautions issued by the CDC and state and local health authorities. The EEOC has further declared COVID-19 to be a "direct threat" to the health and safety of employees for purposes of the ADA. Pursuant to this guidance, employers are permitted to ask employees who report feeling ill at work or who call in sick about whether they are experiencing COVID-19 symptoms, such as fever, chills, cough, shortness of breath or sore throat, and send or keep them home from work.

The State of Ohio has issued information about screening employees who are coming to work, strongly recommending that employers take the temperature of each employee every day prior to beginning their work and send home employees who are exhibiting symptoms of the coronavirus, such as fever, cough or shortness of breath. Districts can also ask employees to do this at home prior to coming to work and, when no thermometers are available, privately inquire of employees whether they are experiencing an onset of symptoms or have been exposed to COVID-19 through contact or travel to an impacted geographic area.

Schools that measure employee temperatures will need to establish protocols and procedures to ensure that (1) the person taking temperatures has the requisite knowledge to take the temperature and assess the results; (2) the thermometers being used are forehead or temporal artery thermometers, when possible, and properly disinfected between uses; (3) there is a clear understanding of what will be deemed an elevated temperature, which the Ohio Department of Health has now defined as 100.4 degrees Fahrenheit; and (4) what procedures must be followed if an employee's temperature is elevated, which requires, in part, that they be immediately sent home. Districts should avoid acting on inaccurate or unreliable information while ensuring the health and safety of others in the workplace. Further, temperatures should be taken and health-related questions should be asked in a manner that is consistent with social distancing policies and does not reveal the thermometer reading and other confidential medical information to other employees (*i.e.*, one at a time in a private space, with any employees waiting in line spaced six feet apart). Any information obtained from an employee should be regarded as confidential and maintained securely.

Regardless of whether a temperature is taken at home or at work, the Ohio Department of Health has recommended that

employees with a temperature of 100.4 degrees Fahrenheit be sent home to monitor their symptoms and contact their doctor if their symptoms concern them. According to ODH, an employee should not be permitted to return to work until (1) they have had no fever for at least three days without taking medicine to reduce a fever; (2) there is improvement in any respiratory symptoms they may be experiencing, such as cough or shortness of breath; and (3) at least seven days have passed since their COVID-19 symptoms began. If an employee has a fever and has recently traveled to a geographic area with confirmed cases of COVID-19 through community spread, ODH requires that employee to stay home from work for at least 14 days from the time of their last exposure and until items 1, 2 and 3 (immediately above) are satisfied. Similarly, when thermometers are simply not available, employees who answer employers' questions and acknowledge that they either have symptoms or have been exposed to COVID-19 through contact with someone confirmed to have COVID-19 or through travel to an impacted geographic area are subject to these same standards, including the 14-day quarantine. In each of these instances, an employee with symptoms can return to the workplace prior to the stated time if a doctor confirms that the cause of their fever or other symptoms is not COVID-19. ODH's March 22 Order instructs that employers should not require a health care provider's note to validate an employee's acute respiratory illness.

ODH's recommendations are consistent with the precept that, just as having a fever does not necessarily mean an employee has COVID-19, the absence of a fever does not guarantee that an employee does not have COVID-19. Health officials have reported that people can carry and spread the disease while being asymptomatic. As a best practice, school districts should comply with ODH's recommendation that employers monitor employees coming to work for other symptoms of COVID-19 and encourage compliance with CDC recommendations.

#### *What other health measures should school districts take?*

School districts should remind employees coming to work to maintain appropriate social distancing and frequently wash their hands, along with directing them to stay home when they are sick. Districts should also make tissues, hand sanitizers and sanitizing products and no-touch disposal receptacles available to employees for use in the workplace and ensure that commonly-touched surfaces are regularly cleaned, consistent with ODH's March 22 Order. The ODH Order also instructs employers to send home employees who appear to have symptoms of acute respiratory illness and not allow them to return to work until they have recovered.

#### *How do we handle sick leave for employees during the period of time that school is closed to students?*

School districts should assess which classifications or types of employees will be expected to continue to work during the COVID-19 school closures. If a sick employee falls within a classification of employees expected to continue working, either remotely or in person, then those days will count against an employee's sick leave accrual so long as the employee is unable to perform their work duties. Any such employees who have exhausted their sick leave accruals and any advanced days may request an unpaid leave of absence. On the other hand, if the employee falls within a classification of employees whose work has stopped due to the school closures, such days would not count against the employee's sick leave entitlement.

Some employees, such as teachers, who are currently using sick leave or other medical leave, may claim that they are able to perform their job duties where those duties are now performed remotely. Whether they actually can depends on their specific circumstances. A description of the employee's remote duties and hours requirements should be compiled for review by their treating medical care provider, and the employee should be permitted to return to work if the practitioner provides written documentation that they are able to perform their assigned duties. Districts are encouraged to monitor the performance of all district employees to ensure student and district needs are being met.

#### *How do we handle FMLA leave for employees during the period of time that school is closed?*

Regulations governing FMLA leave indicate that if an employer's business activity has temporarily ceased and employees generally are not expected to report to work for one or more weeks, the days the employer's activities have ceased do not count against the employee's FMLA leave entitlement. See 29 C.F.R. § 825.200(h). School districts should assess which classifications or types of

employees will be expected to continue to work during the COVID-19 school closures. If an employee falls within a classification of employees expected to continue working and the employee cannot work, then those days will count against an employee's FMLA leave entitlement. On the other hand, if the employee falls within a classification of employees whose work has stopped due to the school closures, such days would not count against the employee's FMLA leave entitlement.

*How do we address employees who must stay home (and cannot report to work or telework) to take care of young, healthy kids who are now home from school or daycare?*

Districts should currently take the same approach as any other day when teachers or classified employees are expected to report. However, districts may want to permit employees to trade shifts or responsibilities when feasible to ease the burden of family responsibilities, consistent with the state's request that employers maintain flexibility. The recently-enacted Families First Coronavirus Response Act provides paid leave to employees when alternative employment arrangements cannot be provided, beginning April 1, 2020 (see below).

*What is the Families First Act and what does it mean for school districts?*

#### Emergency FMLA leave due to school and childcare closure

The Families First Coronavirus Response Act (FFCRA), effective April 1, 2020, applies to all public school districts. This act supplements the existing leaves available under the FMLA by providing paid "emergency" FMLA leave to full- and part-time school district employees who are unable to work or telework because they need to care for their son or daughter under age 18 whose school or paid childcare provider is closed due to COVID-19 or another public emergency. The first two weeks of this emergency leave are unpaid, allowing employees to use the emergency paid sick leave that is additionally provided by the act (see below) during that period, but the final 10 weeks of this FMLA leave are to be paid at two-thirds of the employee's regular pay, to a maximum daily rate of \$200. A 30 calendar day eligibility period replaces the one-year eligibility period that is normally required to qualify for FMLA leave, and the legislation provides no minimum hours requirement an employee must satisfy to be eligible to use this leave. Otherwise, this paid child care leave is expected to function like other FMLA leave, including insurance continuation and job restoration requirements, and be counted as part of an eligible employee's total annual FMLA leave entitlement.

Notably, quarantine will not trigger this new emergency FMLA leave provision. However, the other provisions of the FMLA continue as they always have, with their eligibility and certification requirements intact, to provide employees unpaid leave to care for the serious health condition of themselves or their spouse, parent or child, for the birth of a child or placement of a child for adoption or foster care, for qualifying military exigencies and to care for a covered service member.

#### Emergency paid sick leave

The FFCRA also provides every full- and part-time employee up to 80 additional hours of paid sick leave to be applied toward COVID-19 purposes, namely (1) to comply with a governmental quarantine or isolation order related to the pandemic; (2) to comply with a health care provider's recommendation to self-isolate because the employee has been exposed to COVID-19; (3) to obtain a medical diagnosis when an employee is experiencing COVID-19 symptoms; (4) to care for or assist a family member who is subject to quarantine or has been advised to self-quarantine; (5) to care for a child when the child's school or daycare is closed due to the virus; and (6) if the employee is experiencing any other substantially similar condition specified by the federal Department of Health and Human Services in consultation with the Department of the Treasury and the Department of Labor. Business closures or shutdowns are not qualifying reasons to use this leave. There is no minimum length of employment required for an employee to receive this sick leave. The amount of pay to which an employee is entitled depends on the reason the employee is using it. Employees using this emergency sick leave for reasons 1, 2 or 3 in this paragraph should be paid at their regular daily rate, to a maximum of \$511 per day. Employees using this sick leave for reasons 4, 5 or 6 should be paid two-thirds of their daily rate, to a maximum of \$200 per day. This sick leave is in addition to any other paid leave already available to employees, and employees can choose to use this "emergency" paid sick leave before using their other available paid leave. This particular sick leave does not carry over from one calendar year to the next, and there is no statutory requirement to pay employees for any of these emergency sick days that they do not use.

## Reminders for both types of emergency leave

The FFCRA provides some form of additional paid leave to every employee in the district. Employers of health care providers and emergency responders may elect to exclude those categories of employees from these leaves, consistent with forthcoming regulatory guidance from the federal Department of Labor. However, all employees are protected from discipline and retaliation for exercising their rights under the FFCRA.

Available days and pay for both types of leave under the FFCRA are prorated for variable hour and part-time employees. Also, employees' other paid time off can be applied to supplement any partial pay an employee receives under the act. The school district is responsible for funding these leaves from its general fund, and there is currently no plan for governmental reimbursement to public school districts.

Employers are required to post notices in conspicuous places that advise employees of their rights to these leaves. The Secretary of Labor has been charged with preparing notices for posting by March 25, 2020.

Finally, employees' entitlements to these emergency leaves will expire on December 31, 2020, unless they are renewed by Congress. The FFCRA does not supersede or exempt compliance with any other law. As a result, school district employers must continue to comply with other federal and state laws, board policies and collective bargaining agreement provisions pertaining to employee leaves. The applications of these provisions and their interaction with other statutory leaves can become complicated, and school districts are encouraged to consult with legal counsel to determine their responsibilities under the FFCRA.

### *What about leave accruals, health insurance and workers compensation?*

Any employee who is in a paid leave status and available to work continues to be eligible for district-provided insurance and will continue to accrue paid leave days on the same basis as if they were actively at work.

On March 20, 2020, the Ohio Department of Insurance released Bulletin 2020-03, titled "Health Insurance Coverage Flexibility for Ohio Employers." The bulletin automatically expires with the State of Emergency declared by Governor DeWine back on March 9. Through this bulletin, the Superintendent of Insurance ordered insurers to permit employers to continue covering employees under their group health plans when the employees would otherwise become ineligible due to an employee's reduction in hours or failure to actively work. Districts are encouraged to confirm that their insurer is aware of their position on these issues. The bulletin also prohibits insurers from increasing premium rates due to an insured's decreased enrollment that is the result of the pandemic. It further requires insurers to give employers the option of deferring upcoming premium payments, interest-free, for up to 60 calendar days after their due date.

Also, the FFCRA (above) prohibits group health plans from charging plan participants for COVID-19 testing or testing-related costs, including co-pays and deductibles. Many insurers have already made these changes on their own.

School districts are reminded that those employees who have either been sent home due to a lack of work or told to stay home and self-isolate or quarantine, and are not otherwise being paid by the district, are eligible to apply for unemployment compensation benefits.

Workers' compensation laws also remain in effect. An employee who is injured in the course of performing their job duties and while serving the interests of their employer can be eligible to receive workers' compensation benefits, even if that injury occurs while they are working from home. The compensability of an injury that is sustained at home will depend on the circumstances underlying the injury and the instructions the district has provided the employee about their remote work duties, all on a case-by-case basis. Districts are also reminded that workers' compensation benefits are available to cover communicable diseases when an employee's job is one of the few regarded as posing a special hazard or risk of contracting a communicable disease and they actually contract COVID-19 in the performance of their job duties. Employers should evaluate employee claims requesting workers' compensation coverage for a communicable disease under the laws and administrative code provisions specifically pertaining to occupational diseases.

Finally, on March 21, 2020, it was announced that the Bureau of Workers' Compensation is allowing insurance premium installment payments due for March, April and May of the current policy year to be deferred to June 1, 2020. This move, directed to helping employers deal with the financial exigencies of the COVID-19 pandemic, will not affect coverages or result in the imposition of penalties for amounts that are not presently paid owing to the pandemic.

## Labor issues

*Who are "essential employees" required to report to school buildings?*

On March 14, 2020, the Ohio Department of Health issued the following order:

*"All school buildings that provide any kindergarten through grade twelve instruction in the State of Ohio are to be closed to students beginning at 12:01 a.m. on March 17 and ending at 11:59 p.m. on April 3, 2020...this closure does not include administrators, teachers, staff, vendors or contractors of a school. The administration of each school shall determine the appropriate level of access to the school during the closure."*

Governor DeWine stated in his March 12 press release that *local education administrators may identify needed personnel during this three-week closure period who are required to report to the building.*

In the Ohio Department of Health's March 22, 2020, Stay at Home Order, "Essential Government Functions" are defined as "all services provided by the State or any...political subdivision...needed to ensure the continuing operation of the government agencies or to provide for or support the health, safety and welfare of the public, and including contractors performing Essential Government Functions. Each government body shall determine its Essential Government Functions and identify employees and/or contractors necessary to the performance of those functions."

Section 12.m. of the March 22 Stay at Home Order expressly allows educational institutions to engage in activities to facilitate distance learning, performing critical research or performing essential functions provided that social distancing of six feet per person is maintained to the greatest extent possible. Further, section 12.o. of the order provides that schools that typically provide food services to students or members of the public may continue to do so on the condition that the food is provided on a pickup and takeaway basis only.

Based on these directives, districts should identify "essential government functions" that are consistent with the aforementioned definition given by the Ohio Department of Health. Those employees needed to perform these essential government functions should be identified. In making this determination, Section 16 of the Stay at Home Order provides that "the intent of this Order is to ensure that the maximum number of people self-isolate in their places of residence to the maximum extent feasible, while enabling essential services to continue, to slow the spread of COVID-19 to the greatest extent possible."

Districts may determine that "essential government functions" may vary on a day-to-day basis. For example, a facility issue may unexpectedly arise that requires the response of certain non-teaching staff. As such, districts may consider maintaining flexibility when communicating to staff that may be considered essential employees required to report to a school building.

Finally, when determining essential school personnel who are required to report during this Stay at Home Order, districts should cross-reference any board policy or collective bargaining agreement provisions that may identify essential school personnel required to report during an epidemic or public calamity. Any potential conflicts between such language and the current reporting needs of a district should be discussed with union leadership.

*What are our management rights in responding to this crisis?*

Unless restricted through bargaining, R.C. § 4117.08(C) gives school boards the right to:

- Determine matters of inherent managerial policy
- Direct, supervise, evaluate or hire employees
- Maintain and improve the efficiency and effectiveness of government operations

- Determine the overall methods, process, means or personnel by which government operations are to be conducted
- Suspend, discipline, demote, discharge, lay-off, transfer, reassign, schedule, promote or retain employees
- Determine the adequacy of the workforce
- Determine the overall mission of the employer
- Effectively manage the workforce
- Take action to carry out the mission of the public employer

Districts should review their collective bargaining agreements to assess whether these rights have been modified.

### **Labor issues pertaining to teaching staff**

*If teachers are not required to work during this closure, do they have to be paid?*

Under R.C. 3319.08, teachers must be paid for all time lost when their schools are closed due to epidemic or other public calamity and for time lost due to illness for not less than five days annually, as authorized by board policy. Whether teachers are paid for more than five days or have to make the days up is determined at the local level through board regulation and collective bargaining agreements. State-level orders, legislation or guidance may address this in the future.

*What about teacher evaluations?*

There are statutory requirements and collective bargaining agreement provisions specific to the teacher evaluation process that outline specific timelines and deadlines. ODE recommends that superintendents and union leaders work through the collective bargaining agreement language at the local level and develop a Memorandum of Understanding to address local teacher evaluation process questions. It is also possible that the legislature will consider statutory relief.

*What might a possible teacher evaluation MOU address?*

Depending on the parameters for teacher evaluation in the district's collective bargaining agreement, the district might consider including the following in an MOU:

- Procedures for completing the "final evaluation" for each teacher subject to evaluation in the 2019-2020 school year
  - Use of formal observations and informal walkthroughs completed prior to school closure
  - No requirement that further observations or walkthroughs be completed during the 2019-2020 school year
  - Waiver of contractual timelines
- Transmission of final evaluation report via electronic means and acknowledgment by electronic signature
- Observations occur remotely, using electronic means to observe the teacher
  - Requirement that students are participating at the time of the observation
- Contingency for teacher who is unable to teach due to extended illness or quarantine
- Contingency for assigned evaluator who can no longer evaluate due to extended illness or quarantine
- Contingency clause for possible changes to evaluation procedure by the state legislature
- Union agreement to not grieve or otherwise challenge an evaluation or teacher non-renewal if MOU procedures followed
- How to account for the absence of student growth measures

*Do spring supplemental contracts (for example, spring sports coaches) have to be paid?*

Districts may want to consider entering into an MOU with their union to pro-rate compensation for work performed, as continued performance of supplemental contracts is legally impossible at this time. Pupil activity contracts awarded to non-licensed employees, such as community members, should also continue and can reasonably be treated the same way. Ohio law provides that compensation paid to those individuals can only be reduced as part of a uniform plan affecting the entire district, so district-wide board action on the issue should be considered for all groups.

*Should I be concerned about approaching employment and evaluation deadlines?*

Potentially. At this time, neither the legislature nor the governor has announced any relief from the statutory deadlines for evaluations and nonrenewal for staff and administrators. In the near term, districts should examine any applicable collective bargaining agreement and/or board policy that has an evaluation or employment notice deadline and determine if there is an alternative way to meet that deadline/requirement without a staff member being physically present in the school building. Should the district seek to meet a deadline in a collective bargaining agreement or board policy by alternative means, the district should consult with legal counsel.

### **Labor issues pertaining to non-teaching staff**

*If regular non-teachers are not required to work during closure, do they have to be paid?*

Ohio Revised Code § 3319.081(G) mandates that nonteaching employees must be paid for all time lost when their school is closed due to an epidemic or other public calamity. The number of paid calamity days that do not need to be made up are determined through board policy and collective bargaining agreements. Consistent with any relief or guidance from ODE or the legislature, districts will need to make a decision about whether and how many days to make up.

*Are we required to provide premium pay to non-teaching employees directed to report to a school building to work?*

Many collective bargaining agreements contain language creating a premium rate of pay for employees who are required to work when their school is closed due to epidemic or other public calamity. However, in his March 12 declaration, Governor DeWine clarified that schools are closed to students and this closure does not include administrators, teachers and staff. Following this announcement, Governor DeWine met with leadership of the major unions representing non-teaching school employees to express his expectation that their membership would be paid their regular rate of pay while continuing to work.

On March 16, OAPSE's executive director voiced this perceived understanding in statewide correspondence to its membership that read, in relevant part:

"This is not to be considered a typical calamity closing. The governor has declared that our members will be paid their regular rate of pay through April 3, when this initial closing period expires, regardless of whether they are required to work. This is to the obvious benefit of our members, who will not be required to use any other form of leave for that period of time."

Districts wishing to obtain certainty on this issue might consider executing a memorandum of understanding with their non-teaching unions addressing pay rates for employees who are directed to work during the periods their assigned school buildings are closed to students.

*If a district executes an MOU with its non-teaching employees' union, what issues should the district consider?*

Execution of an MOU will be a local decision made by each district. If a district is approached by a union and/or if the board deems it advisable, the district may consider the following issues:

- Payment of non-teaching employees directed to work (either remotely or at the school building) at regular rate of pay versus premium pay for calamity days
- How grievances will be processed during this period of school closure (also applicable to teacher unions)
- Whether employees working second or third shift will be temporarily reassigned to first shift
  - Whether the district retained its management rights to reassign and schedule employees under R.C. § 4117.08(C)
  - Whether extra shift-differential will be paid to second and third shift employees. If so, whether this extra pay will continue if temporarily reassigned to first shift. Unless otherwise agreed, in non-civil service districts, R.C. § 3319.082 prevents the reduction in hourly wages for non-teaching employees unless such reductions are made in accordance with a uniform plan affecting the non-teaching personnel of the entire district.
- Whether the district will require mandatory testing if an employee shows COVID-19 symptoms. If yes, who pays for the testing?

- Modification of a collective bargaining agreement to exclude employee absence due to illness or quarantine caused by COVID-19 from any occurrence-based employee attendance policies. The Ohio Department of Health's March 22, 2020, Stay at Home Order emphasized that employers should ensure their "sick leave policies are ... non-punitive to allow sick employees to stay home to care for themselves, children, or other family members."
- Commitment that employees will report to school buildings and work as directed
  - Whether SERB would consider employees joining together in refusing to report to work because of concern about COVID-19 danger in the workplace to be protected and concerted activity for the purpose of mutual aid or protection?
  - Whether such concerted activity would affect a district's ability to discipline an employee for his/her refusal to report to work?
  - The district's ability to replace employees who refuse to report to work in the interest of continuing district operations?
- It is anticipated that unions may demand protective equipment such as gloves, masks and eye shields.
- Modification of sick leave bank language in collective bargaining agreements to allow days to be used for COVID-19 illness or quarantine.
- If discipline or non-renewal hearings are required, how the district will conduct due process hearings.
- Procedures to address employees being directed to perform job duties that fall outside his/her classification or job description.

Capturing these and other agreements in an MOU now may avoid the time, expense and uncertainty of potential grievances, unfair labor practices and other labor unrest in the future.

### **Pending labor negotiations**

*What do we do about contract negotiations?*

The Ohio Department of Health's March 22, 2020, Stay at Home Order identified "Essential Business and Operations" to include "critical labor union functions," which is defined as "labor union essential activities including the administration of health and welfare funds and personnel checking on the well-being and safety of members providing services in Essential Businesses and Operations – provided that these checks should be done by telephone or remotely where possible." It is anticipated that labor relations consultants may deem face-to-face labor negotiations to not be a "critical labor union function." Given these potential restrictions, districts may consider (1) rescheduling face-to-face labor negotiations until after the Stay at Home Order expires on April 6; or (2) exploring telephonic or virtual labor negotiations during this time period.

Also, given the unexpected potential downturn in the economy, district bargaining teams might consider whether the monetary authority previously given to them by their boards of education should be revisited.

*The district has mediation scheduled with a mediator from Federal Mediation and Conciliation Service (FMCS). Will mediation proceed?*

FMCS has directed field mediators to suspend all non-significant case activity until further notice. However, it is our understanding FMCS mediators have been trained on conducting mediations, Interest Based Bargaining facilitations and other meetings through virtual and/or telephonic means. You may wish to contact FMCS to discuss their capabilities to hold virtual meetings during this period of school closure.

### **Substitutes and contractors**

*Do other types of employees have to be paid, for example, third-party service providers and as-needed employees?*

It depends. Districts will want to review the term of any contracts with third-party providers in order to determine the district's payment obligations. Third-party service providers, and not the local school district, are responsible for payments made directly to their employees. Local board policies and employment contracts should be reviewed to determine payments made to a school

district's casual employees.

*What should we be doing with our substitute employees?*

Long-term substitutes who work every day in the same assignment should continue to be paid for time lost due to the pandemic, unless the employee the substitute was replacing is now able to work and provides medical clearance to return to work. In such a case, the long-term substitute can be released as they ordinarily would be when the regular employee returned to work. Districts may also choose to continue paying those substitutes in anticipation of needing their services in some capacity during the remainder of the school year. Such need may arise, specifically, after the Families First Coronavirus Response Act goes into effect on April 1, 2020.

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