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COVID-19 Advisory



Making Sense of CDE's Framework for Labor-Management Collaboration

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On April 1, 2020, the California Department of Education, along with a dozen state-wide education labor and management organizations, published non-binding guidance entitled Framework for Labor-Management Collaboration (see www.cde.ca.gov/ls/he/hn/collaborationframework.asp). The framework addresses the COVID-19 emergency and sets forth “the basic principles for local agreements” and encourages both labor and management to “address additional local needs through open, ongoing, and frequent communication and collaboration.”

While these principles are commendable, the framework itself is not binding and does not have the force of law. Public school employers are still obligated to negotiate with local exclusive representatives regarding matters within the scope of bargaining. (Gov. Code, § 3543.2.) The framework does not replace that legal obligation and was not intended to disrupt the bargained-for agreements reached between local educational agencies and their bargaining units during this pandemic.

The April 1 framework states in part in subsection II:

- Subject to Executive Orders, current law, regulations and guidance, no employee should have accrued leave deducted for taking time needed to comply with a medical professional’s recommendations, including to self-quarantine, secure one’s own health, or secure the health of one’s household during the COVID-19 crisis. Employees with dependent-care needs, who are not absent for health reasons listed above, should not have accrued leave deducted for failing to report unless their employer has offered no-cost childcare for the duration of work hours and the employee has declined.

This paragraph generated a lot of confusion and questions as to whether public school employers may continue to deduct from employee leave banks during this crisis. The answer is yes. Public school employers must continue to follow federal and state law, the terms in their bargained-for agreements, and policies, all of which impact the use of employee leaves during this time.

Although the framework is not binding, it does reiterate that public school employers are “subject to current law.” Under current law, an employer must continue to grant legally recognized leaves. In addition to the leaves set forth in most collective bargaining agreements and state statute, Congress recently passed the Families First Coronavirus Response Act (H.R. 6201) (see www.dwkesq.com/wp-content/uploads/2020/03/2020_LEAP_Advisory032020_COVID19.pdf) which specifically addresses additional paid leave entitlements for employees personally impacted by COVID-19, as well as those with childcare challenges due to school and day care closures. Nothing in the April 1 framework modifies the legal obligations to apply these legally recognized leaves.

Finally, it must be acknowledged that each local educational agency faces unique challenges to fulfill its legal and educational obligations for the remainder of the 2019-2020 school year. One of these challenges is to ensure local educational agencies provide the critical essential services defined by the Governor’s Executive Orders. In preparation for bargaining over related topics, each public school employer should consider the legal standards for negotiations found in the Government Code, primarily Government Code section 3548.3. Section 3548.3 reminds us that the concepts of (1) comparability, (2) maintenance of effort, and (3) ability to pay should be considered during negotiations. While the April 1 framework itself contains admirable principles, it does not replace the legal obligations to bargain at the local level.

DWK will continue to provide guidance as information becomes available. For more information regarding the impact of COVID-19 on your district’s operations, please visit our COVID-19 Resources page at <https://www.dwkesq.com/covid-19-resources-page/>.

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