

Unemployment Compensation Benefits In the Event of School Closings

Prepared by the PSEA Legal Division

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Overview

Due to public health concerns associated with COVID-19, some school districts in the Commonwealth will close for various lengths of time. This situation raises many issues related to the legal obligations of the school entities of the Commonwealth and the rights of students and employees. This document addresses the narrow question of whether and how school employees who are not properly classified as “teachers” in Section 1153 of the School Code can obtain unemployment compensation for any lengths of time they are unpaid due to school closures. Local associations and members should contact their PSEA UniServ Representatives and Region Attorneys for discussion of other issues related to the current public health concerns.

What is Unemployment Compensation?

Unemployment compensation is a form of state and employer-provided insurance protecting certain employees against total income loss if they lose their jobs. Because public school entities participate in the state unemployment fund, public school employees are insured in this way. Employees who meet certain eligibility and financial criteria will be entitled to collect unemployment compensation.

Comprehensive information about unemployment compensation benefits is available at <http://www.uc.pa.gov>.

The Unemployment Compensation Law defines “unemployed,” in pertinent part, as follows:

An individual shall be deemed unemployed (I) with respect to any week (i) during which he performs no services for which remuneration is paid *or payable* to him and (ii) with respect to which no remuneration is paid *or payable* to him . . .

43 P.S. § 753(u) (emphasis added).

Financial Eligibility for Unemployment Compensation

Prior to determining eligibility, employees will have to meet financial qualifications, meaning they must have earned sufficient wages and credit weeks in employment covered by the Unemployment Compensation Law. The UC Service Center will use wages received and credit weeks earned during the “base year” (the first four of the last five completed calendar quarters prior to the quarter in which the claim is filed) to determine if a claimant meets the earnings requirements of the Law.

The UC Service Center will provide a financial determination, which reflects all base-year employers, base-year wages paid, and the amount of benefits the claimant may be entitled to receive. If the claimant qualifies, the UC Service Center then issues a determination as to eligibility, that is, whether the nature of separation from employment qualifies the individual for benefits.

When is Someone Eligible for Unemployment Compensation in a School Closure Situation?

A school closure due to public health concerns clearly meets the key legal requirement that an individual must be unemployed through no fault of his or her own to receive unemployment compensation.

Further, the availability of unemployment compensation benefits in the event of a school closing may depend upon the definite or indefinite nature of the suspension of employment. If school districts shut their doors to employees for significant lengths of time due to public health concerns, PSEA believes this is an indefinite suspension and that employees should be eligible for unemployment compensation even though they may ultimately be returned to work. There is no case directly on point, but benefits have been granted in other cases of indefinite suspension. *See United Steel Corporation v. Unemployment Compensation Board of Review*, 303 A.2d 852, 855 (Pa. Cmwlt. Ct. 1973), wherein the Commonwealth Court held that the term “employment”:

does not include the situation where an employee is laid off from his job for an indefinite period, even though retaining certain rights such as seniority, and even though there is a probability of his being recalled for work. We believe that Section 753(u) of the Unemployment Compensation Law was intended to cover this situation just as well as the situation where the employee is laid off with no definite likelihood at all of being recalled.

See also, United Steel Corporation v. Commonwealth, 389 A.2d 249 (Pa. Cmwlt. Ct. 1978) (the possibility of recall during an indefinite layoff should not preclude the receipt of benefits); *Roadway Express Inc. v. Commonwealth*, 477 A.2d 914 (Pa. Cmwlt. Ct. 1984).

If employees are still receiving employee benefits during a workplace closure, courts generally seem to hold that receiving health care or other employee benefits is not enough to conclude that the claimant is “employed” and therefore ineligible for benefits. The determination of whether an individual is eligible for unemployment compensation will depend on factors in addition to, or other than, whether the employee is receiving employee benefits. *See Kandala v. Unemployment Compensation Bd. of Review*, 489 A.2d 293 (Pa. Cmwlt. Ct. 1985).

Therefore, in the event any school district closes and has not assured its employees that it will continue to be paid, school employees may apply for unemployment compensation benefits. They should consult with their PSEA UniServ Representatives and Region Attorneys as to the specific wording in their applications but generally should indicate that work is not available and that they would expect to be recalled at some point in the future if work becomes available.

When Do I File a Claim?

The Pennsylvania Office of Unemployment Compensation advises:

- If you have worked your full, regular hours for your work week, then file on Sunday.
- If your separation from your employer caused a change to your normal working hours for the week, then file right away.

<https://www.uc.pa.gov/unemployment-benefits/file/Pages/File%20an%20Initial%20Claim.aspx>.

Therefore, once you confirm that no payment will be made and decide in coordination with your PSEA UniServ Representative and Region Attorney that a claim should be filed, the filing can generally occur as soon as regularly scheduled work is missed.

How Do I File a Claim?

In filing an unemployment compensation claim for work missed due to a school closure, here are a list of steps that should be taken.

- Contact your local association president and UniServ Representative prior to filing.
- Contact your local Unemployment Compensation Service Center with any questions about the application process.
- Complete a formal application for benefits either online or over the telephone through the local Unemployment Compensation Service Center. In preparing an application for benefits, you will need your:
 1. Social Security number
 2. PA Driver's License number
 3. Alien registration number (if applicable)
 4. Name and address of employer
 5. Employer information form (if the applicant has one)
 6. Mailing address
 7. Dates of employment and reasons for leaving
 8. Statement showing most recent wage payment
 9. Personal Identification Number (PIN) (if the applicant had a prior claim)
- You will receive a Notice of Financial Determination, a PIN, and an initial date for filing a biweekly claim for benefits. If your wages make you financially eligible for benefits, then a determination of eligibility for benefits will be made based on the information provided when you file for benefits, as well as information obtained from your employer.
- You must file for and serve one "waiting week" in which you do not receive UC benefits. After the waiting week, the claimant must file biweekly claims for UC benefits. Technically, benefits should begin as soon as your work separation occurs (with the exception of the required waiting week).

Remember that You Will Not Be Compensated for One Week

The first week in which you are eligible and have filed a claim for benefits is called the “waiting week.” While you must file a claim for this initial week, unemployment compensation benefits are not payable to a claimant for this week. Due to the nature of the biweekly filings used by the Pennsylvania Office of Unemployment Compensation, this usually means that your first benefits payment is only for one week (i.e., is half the size of the remainder of your benefit payments).

What If I Am Eventually Paid or Able to Make Up for My Missed Work?

School districts may ultimately find themselves able and willing to pay employees for missed wages or to allow employees to recoup missed wages by making up the missed work. If this scenario comes to pass and an individual has already applied for and received unemployment compensation benefits, it is conceivable that the Pennsylvania Office of Unemployment Compensation and Benefits will consider this a non-fault overpayment and deduct the overpayment from any future unemployment compensation benefits that individual receives in the future.

Appealing Denied Claims

If a claim is denied, the claimant has the right to appeal that decision within 15 days. If the denial is appealed, a hearing officer (referee) will be appointed and a hearing scheduled. If any claims are denied, members should be in immediate contact with their PSEA UniServ Representatives and Region Attorneys. PSEA will work with the Department and Service Center to consolidate any claims for appeal.

If claims are granted and employees are not yet back to work, employees must show availability for work in order to continue to be eligible for benefits, even though they expect to be recalled at some point in the future. Employees should be able to show that they are actively seeking employment and be able to supply evidence that they have applied for another job of similar status.

Before Filing Claims for Unemployment Compensation, PSEA Members Should:

- **Follow any advice from their local association regarding the completion of claim forms, or contact the local association or UniServ Representative for advice as to completing claim forms.**

- **Gather the following information necessary to complete a formal application for benefits:**
 1. Social Security number
 2. PA Driver’s License number
 3. Alien registration number (if applicable)
 4. Name and address of employer
 5. Employer information form (if the applicant has one)
 6. Mailing address
 7. Dates of employment and reasons for leaving
 8. Statement showing most recent wage payment
 9. Personal Identification Number (PIN) (if the applicant had a prior claim)

Employees who are out of work due to school closings should be sure to maintain appropriate membership in PSEA so that they remain eligible to receive legal services in all matters related to claims for unemployment compensation benefits.

Conclusion

In conclusion, even though PSEA believes that claims should be approved in the event of a school closing, there is no guarantee that this will be the case. Members need to work with their PSEA UniServ Representatives and Region Attorneys to ensure that all of their rights are secured, and their benefits protected.