



**FAQ:**  
**Education**  
**Support**  
**Professionals**  
**and**  
**Coronavirus**

**FREQUENTLY ASKED QUESTIONS**

**What about my pay?**

We are advocating that *all* employees, both certificated and non-certificated, remain in a paid status and that leave not be accounted for during this mandated shutdown.

This position is bolstered by the simple fact that the local boards' funding for 2019-2020 school year is protected and is not subject to reduction during this time.

It's important to be aware that the means by which we protect paid status is different for certificated and non-certificated employees. This is because certificated employees are exempt employees under the Fair Labor Standards Act (FLSA), while non-certificated employees are hourly, and therefore, covered by the Act. The FLSA is a federal law that establishes minimum wages, overtime eligibility, and record-keeping for most full- and part-time, hourly workers.

For non-certificated employees, which includes all education support professionals, the law does not require employers to pay covered employees during a shutdown that is not the fault of the employer. That said, where there is a collective bargaining agreement, there are credible arguments to be made that this agreement mandates local boards to continue pay. If there was a decision to not pay non-certificated employees, the local board would have to negotiate over that decision as salaries and wages are a mandatory subject of bargaining and clearly outlined in the agreement itself. In continuing pay, however, it is a reasonable and likely expectation of the employer that the time will be worked through a modified school day or extended work year, which is consistent with certain provisions of the FLSA. What that extended year looks like will largely depend on when or if schools re-open and the plan submitted by the local board of education.

Of all employees, it is typically the non-certificated employees who are designated through the collective bargaining agreement as "essential

employees." As essential employees, they are typically required to report to work in the school building and are not eligible for telework. In doing so, all time worked by any designated employee during the mandated closure should count as time worked under the collective bargaining agreement and, depending upon the language of the agreement, may qualify the employee for additional pay.

**How does the March 30 Executive Order impact my working conditions?**

Per the U.S. Department of Homeland Security's Cybersecurity and Infrastructure Security Agency, education facilities are a sub-sector of the government facilities sector, making schools an essential business. As such, Article II(b) (iv) of the Executive Order provides that "traveling to and from an educational institution for purposes of receiving meals or instructional materials for distance learning" or even facilitating telework or distance learning constitutes an exception to the stay at home order.

While public schools are deemed essential, Governor Hogan was very clear that even essential employers must do their part to scale back on the number of employees reporting to work, which creates unnecessary risks of exposure. Telework should be mandated in all possible instances. To the extent possible, there should be minimal operations conducted inside the school building.

Only those employees designated by the board of education or through the collective bargaining agreement as essential and ineligible for telework should be traveling to a physical work location on a daily or regular basis. All other employees that are capable of doing so should be teleworking, including teachers, certain support professionals, and administrators.

School buildings should be locked down to essential personnel ineligible for telework. If other employees need something from the building, it should be coordinated with the essential staff

(typically, custodial and maintenance employees) assigned to the building to reduce and minimize exposure. Administrators and teachers should not be permitted to freely walk in and out of the building without the knowledge of the essential employees assigned to the work location as social distancing must be enforced inside of the building. There also cannot be a gathering of more than 10 people outside of the school building without violating the executive orders.

The Stay at Home Executive Order is enforceable through criminal penalties (misdemeanor and on conviction is subject to imprisonment not exceeding one year or a fine not exceeding \$5,000 or both). Therefore, when traveling to/from a worksite, all employees should have in their possession their school identification badge in the event that they are stopped by the police.

### **As a classroom/student paraprofessional, what will my role be with the implementation of distance learning?**

It depends on your local school system. As a paraprofessional, you may be asked to virtually collaborate with the classroom teacher or special educator to modify instructional materials for your assigned students, you may be asked to perform tasks that may be outside of your normal job responsibilities, you may be asked to participate in some form of "virtual" professional development; or you may remain in a pending status until your school system works through implementation of the continuity of learning plan.

### **In the case that you are assigned tasks, virtually or in a worksite, we are attempting to negotiate provisions including:**

**(l) Work During Closure:** The board of education may require employees to perform work during a closure due to a pandemic or other health emergency provided that any such assignment meets the following conditions:

- (a) The work is reasonably related to the employee's job.
- (b) The employee is qualified to perform the work.
- (c) The employee is paid at their regular rate of pay for all time spent performing the work.
- (d) The work does not expose the employee to a health risk.
- (e) The work does not create unsafe or hazardous conditions or require the performance of tasks that unreasonably endanger their health or safety.
- (f) The employee is afforded flexibility in scheduling and performing their work.
- (g) The board of education provides the employee with any technological resources necessary to perform the assigned work.
- (h) Of the employee classifications called to work, said employees shall be permitted to use medical, family, annual, personal, or any other type of leave to which they are otherwise entitled under the Negotiated Agreement.
- (i) The employee shall be granted COVID-19-related paid leave in accordance with the following:
  - i. An employee may take such leave, without fear of retaliation or retribution, if the employee meets any of the following qualifying conditions:
    - The employee is too ill to work.
    - The employee has been diagnosed with COVID-19.
    - The employee is experiencing symptoms compatible with COVID-19 but has not yet been diagnosed.
  - ii. An employee unable to work for any of the qualifying conditions set

forth above shall be granted paid COVID-19-related medical leave until such time as the qualifying condition no longer applies. No employee shall be charged or docked with use of a sick day or days when they miss work for a qualifying condition.

(j) In accordance with guidance of the CDC, the board of education shall not require that an employee provide a healthcare provider's note validating their illness.

(k) In the event that the board of education requires certain employee classifications to work on site, as opposed to working remotely, any such assignment shall meet the following conditions:

i. No employee shall be required, asked, or permitted to perform work for which medical training or certification is necessary unless they have such training or certification.

ii. The board of education shall make available, at no cost to employees, appropriate protective gear and materials, including appropriate masks, gloves, disinfectants, soap, and hand sanitizer.

iii. An employee who returns to work on site shall be granted COVID-19-related paid leave if they meet any of the following qualifying conditions:

- The employee is too ill to work.
- The employee has been diagnosed with COVID-19.
- The employee is experiencing symptoms compatible with COVID-19 but has not yet been diagnosed.
- The employee has been exposed to someone who themselves has been diagnosed with COVID-19, has symptoms compatible with COVID-19, or was exposed to someone diagnosed with COVID-19.
- The employee is immunocompromised or is considered high risk according to the CDC or appropriate state or local authorities.
- The employee needs to care for a family member.

In all cases, we are advocating for all employees to remain in a paid status, regardless of whether or not the employee is reporting to a physical work site or has been actively assigned. The continuation of pay and benefits through the remainder of the 2019-2020 school year is a top priority. Thus far, we have been successful in obtaining commitments from all systems to maintain regular pay and benefits for non-certificated bargaining units through the period of the current mandated closure.

That said, not all employee classifications will be treated the same relative to work assignments. Some work is deemed essential in the collective bargaining agreement, such as food service (in certain locations) and custodial and maintenance. These employees will be required to continue to work and report to a site, as this work is not eligible for telework. Secretaries may be asked to report to the building to gather supplies and materials in order to telework. Computer techs are likely going to be tasked with reporting to the building to prepare and distribute electronic devices to staff and students.

All of this is permitted during this time, however, the time worked by the various classifications must be tracked and considered time worked under the work day/work hour requirements of the negotiated agreement. This tracking is very important in the event that the school year or school day is modified or extended. In returning to the school buildings, again, we anticipate that health and safety measures will be taken as well as adherence to social distancing protocols.

## **Am I eligible for unemployment benefits?**

Congress recently enacted the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). It contains sweeping emergency unemployment insurance benefits for individuals affected by the pandemic. So long as boards of education maintain employees on a paid status, however, individuals are not eligible for unemployment benefits.

Notably, there are provisions of the CARES Act that would provide funding to states that choose to implement a Short-Time Compensation program for employers that reduce their employees' hours in lieu of a lay-off and whereby the employees would receive a pro-rated unemployment benefit. While Maryland does provide for partial unemployment benefits, it does not appear that it qualifies currently as a Short-Time Compensation program as defined in the Internal Revenue Code.

Finally, unemployment is not a viable option for many of our members because it would result in a loss of health insurance. For that additional reason, we strongly advocate for continued pay and benefits.

*April 1, 2020*

**If you have questions about the information above or other concerns, please contact your local association UniServ director.**

