

Background Information

Seniority Rights and Furloughs

Act 55 of 2017



Overview: What is Act 55?

HB 178 became law as Act 55 of 2017 on Nov. 6. It is an omnibus School Code amendment that contains a host of legal instructions on how to implement the state budget, allocate state funds to school districts, and enact several other education policy proposals. Some legislators insisted on inserting language that impacted seniority and furlough rules into this proposal, which passed the General Assembly on Oct. 25.

These new rules represent a significant change in furlough rules and how seniority is applied in furlough situations. PSEA opposed these changes, encouraged members to advocate against them, and made it clear to lawmakers and others that these changes would have a negative impact.

PSEA's strong opposition led pro-public education lawmakers and Gov. Tom Wolf to fight for protections to ensure that these new provisions are not abused and to ensure that, for the vast majority of educators, seniority is still a key factor in determining furloughs.

Gov. Wolf allowed this bill to become law without his signature on Nov. 6. He made it clear that he opposed the seniority and furlough rule changes but that other elements included in the bill – most importantly the authority to distribute state funding increases to school districts – made it necessary for the other provisions of the bill to become law.

Act 55 of 2017: How it became law

- **PSEA opposed HB 178.** PSEA's opposition to this bill was clearly stated in a position paper to the full state Senate and House of Representatives.
- **PSEA informed members.** PSEA sent critical alerts to members, included information on the seniority and furlough rule changes in member publications and on psea.org, posted information on Facebook, and held two webinars for local leaders.
- **PSEA members advocated against HB 178.** Members responded to social media posts and emails by communicating with their legislators and expressing opposition.
- **Gov. Wolf and pro-public education lawmakers fought to ensure that important protections were included in the bill before it became law.** As a result, Act 55:

- Relies on seniority as a key factor for the vast majority of educators.
 - Includes transparency measures for economic furloughs that are much stronger than current law.
 - Makes it illegal to target educators based on their salary and punishes administrators who do so.
- **The General Assembly forced this seniority and furlough language into a School Code bill** that is key to implementing the state budget, including driving out education funding to school districts.
 - **Gov. Wolf ultimately allowed it to become law without his signature** because it would have also meant vetoing changes that positively impact teaching and learning: the mechanism to allocate state funds to school districts, mandatory school board training, opioid abuse education, and a delay in the Keystone Exam graduation requirement. He also recognized that the vast majority of professional employees would be protected by seniority.
 - **PSEA opposed this bill** and remains steadfast in the belief that seniority is the only objective way to furlough professional employees.
 - **PSEA will support and defend members as they work under this new law and the new seniority and furlough rules it includes.**

When will Act 55 go into effect?

Immediately. However, if your collective bargaining agreement provides methods of furlough that are inconsistent with the new law, the new law begins to apply upon the expiration of the collective bargaining agreement.

Does Act 55 override current seniority protections in collective bargaining agreements?

No. The Pennsylvania Legislature cannot override current contracts. As a result, though these changes will go into effect immediately, they will be delayed in school districts that have specific language related to furlough order in their contracts. However, any specific language will be superseded by the provisions of Act 55 upon the expiration of a contract, even if other provisions remain enforceable under the concept of status quo.

What was PSEA's position on HB 178 when it was considered in the Legislature?

PSEA opposed this bill because PSEA believes that the only objective way to determine furlough order is by seniority. Seniority is important because experience in the classroom matters.

How will Act 55 change how furloughs occur?

Prior to the passage of Act 55, if a school district conducted furloughs it was first required to furlough temporary professional employees (those who do not have tenure) and all other professional employees in the reverse order of seniority, or “last in first out.”

Act 55 does not change the requirement that a school district must first furlough temporary professional employees, but the new law requires all other professional employees to be grouped into four categories based on their two most recent evaluations and furloughed within their certificated area of work in order of seniority and within these classes:

- Category 1. Two Unsatisfactory ratings
- Category 2. One Unsatisfactory and one Satisfactory rating
- Category 3. Two Satisfactory ratings that do not include a Distinguished rating unless the Distinguished rating is also coupled with a first Needs Improvement rating
- Category 4. Two Satisfactory ratings that include at least one Distinguished rating and do not include a rating lower than Proficient

Who keeps track of these categories?

Act 55 does not place responsibility for tracking employee categories with any specific entity or individual. In practice, it is expected that employers will determine the categories of their employees, and local associations will review the categories to verify compliance with the law.

Can associations bargain for a different furlough order based on seniority in future collective bargaining agreements?

No. Local associations will be prohibited from bargaining a furlough order that is inconsistent with Act 55 in new contracts.

Does seniority retain importance under Act 55?

Act 55 maintains seniority as a key determining factor for professional employees, but does so within groupings based on educator certification and performance. An overwhelming percentage of educators would currently be grouped into “Category 3,” making seniority a determining factor for the vast majority of professional employees.

How are employees recalled if they are furloughed?

Employees are recalled in the reverse order they were furloughed. Those who were furloughed last will be the first who are offered positions. Professional employees can use any certification for recall purposes.

How are experienced educators protected?

Act 55 includes important anti-targeting provisions to protect educators who are most experienced in the classroom. The new law **makes it illegal to intentionally target professional employees based on their positions on the salary scale.** Administrators who are found violating this law will be punished by PDE, and that punishment will remain on their permanent employment records.

What steps must a school district take to engage in economic furloughs?

Act 55 requires a school district to engage in greater transparency, and furlough an equal percentage of administrators if it intends to engage in economic furloughs.

Prior to enactment of Act 55, school boards were authorized to furlough professional employees with little transparency for four reasons related to enrollment, program curtailment, consolidation, or reorganization. Act 55 adds “economic reasons” as a fifth reason.

Most school districts effectively used program curtailment and enrollment in recent years to implement economic furloughs. Therefore, the authorization for specific “economic furloughs” isn’t new to districts or our members. Unlike the first four reasons, however, Act 55 includes significant transparency. A school board cannot furlough professional employees for economic reasons until it meets the following requirements:

- **Adopt a “Resolution of Intent” to suspend professional employees for the following fiscal year** at least two months prior to the adoption of the final budget for that following year. If a school board doesn’t approve a resolution in compliance with the timeline, it cannot implement economic furloughs. The resolution must include the following:

- Description of the economic conditions of the district making the suspensions necessary and how the suspensions will alleviate those conditions;
 - Total cost savings expected to result from the proposed suspensions;
 - Description of other cost-saving actions taken by the board, if any;
 - Projected expenditures of the district for the following fiscal year - with and without the proposed suspensions;
 - Projected total revenues for the following fiscal year;
 - Number and percent of professional educators to be suspended;
 - Number and percent of administrative staff to be suspended;
 - Impact of proposed suspensions on academic programs to students as compared to impact if no suspensions are enacted, and what actions will be taken to minimize impact on student achievement.
- **Furlough at least an equal percentage proportion of administrative staff if educators are to be furloughed.** The school board may seek a waiver from the Secretary of Education from this provision. If the Secretary grants a waiver, it must also be approved by a majority vote of the members of the State Board of Education. It won't be easy to waive this requirement.

How does this proposal impact employees with multiple certifications and realignment across certification areas?

Under the previous law, some professional employees who held more than one certificate could avoid furlough by “bumping” into any position held by a less senior employee and for which the more senior employee is properly certified.

Under the new law, employers must furlough professional employees within a particular category on the basis of their current certificated assignment. In practical terms, this means that the practice of bumping a less senior employee working in an individual's additional area of certification is no longer allowable under the law.

Also, unions will no longer be able to bargain for “checkerboarding” realignment, where professional employees who are more senior and hold dual certificates, but who themselves are not identified for furlough, are forced to move into those other areas of certification so that ultimately the least senior person in any program area is furloughed.

How does Act 55 compare to other furlough proposals that were considered by the General Assembly?

Gov. Wolf vetoed HB 805 in 2016 and has consistently fought off far worse attacks on educator seniority and furloughs without transparency. Sen. Eichelberger (R-Blair), Chairman of the Senate Education Committee, was pushing for legislation that would have allowed professional employees to be furloughed for virtually any reason, with no consideration of seniority whatsoever, and completely subject to the whims of a school board.

The governor's commitment to protecting seniority forced legislators to propose a far more moderate version of this proposal than they otherwise would have advanced. In addition, **Gov. Wolf and pro-public education lawmakers fought for the important protections that will end up ensuring that seniority remains a key factor in determining furlough decisions.**

Why did the Governor let Act 55 become law?

Legislators inserted language related to seniority into an omnibus School Code bill. **Had the governor vetoed the bill, he also would have vetoed the mechanism to allocate state funds to school districts** and several other important policy proposals, including a delay in the Keystone Exam graduation requirement, mandatory training for school board members, and opioid abuse education.

Gov. Wolf has displayed an overwhelming commitment to public education, and has fought relentlessly to fairly fund our schools in a manner that would prevent economic furloughs from occurring.