



**COVID-19 Emergency
Frequently Asked Questions
Current as of April 3, 2020**

**PSEA is committed to supporting members as we confront the COVID-19 emergency together.
This Critical Alert includes answers to many questions PSEA members have.**

Act 13 of 2020

Q: When does Act 13, the COVID-19 Emergency Law, go into effect?

A: Senate Bill 751 was signed into law and became Act 13 of 2020 on March 27, 2020. However, provisions related to employee pay were retroactive to March 13, 2020, which was the date the governor issued an order to close all of the commonwealth's public schools.

Q: What employees and schools are covered by the new law?

A: Act 13 provides relief from School Code mandates to public school employees and to public, nonpublic, and home school education entities serving students in pre-kindergarten through grade 12. Act 13 covers all public school entities, defined as school districts, intermediate units, area career and technical schools, and charter schools, including regional and cyber charter schools.

Q: Will public school employees lose pay due to the closure?

A: No. No employee of any public school entity who was employed as of March 13, 2020 will receive more or less compensation than he or she otherwise would have been entitled to receive from the school entity had the COVID-19 pandemic not occurred, had the minimum instructional day requirement not been waived, or had the Secretary of Education not taken one of the actions he was authorized to take under Act 13.

Q: Will public school employees lose any retirement benefits due to the closure?

A: No. No employee of any public school entity who was employed as of March 13, 2020 will receive more or less credit, or contribute more or less, than he or she would otherwise have contributed pursuant to the Public School Employees' Retirement Code had the COVID-19 pandemic not occurred, had the minimum instructional day requirement not

been waived, or had the Secretary not taken one of the actions he was authorized to take under Act 13.

Q: Will I continue to receive health care benefits?

A: Yes. Act 13 requires school entities to provide no more or less compensation to employees than they otherwise would have received if the COVID-19 pandemic had not occurred. We believe that compensation includes more than salary and expands to benefits provided to employees. In addition, school employers are obligated to provide insurance coverage to employees as required by collective bargaining agreements. At this time, we are not aware of any districts seeking to end benefits for employees. If you become aware that your school entity is considering this, please make your local association president and UniServ representative aware immediately.

Q: Will a public school lose any state or other funding for the period of the closure?

A: No. A public school entity that was closed as a result of the COVID-19 pandemic will not receive less subsidy payments, reimbursements, allocations, tuition, or other payments from PDE or another school entity than the school entity would otherwise be entitled to receive for the 2019-20 school year had the COVID-19 pandemic not occurred, had the minimum instructional day requirement not been waived, or had the Secretary not taken one of the actions he was authorized to take under Act 13. For the time period a charter school, regional charter school, or cyber charter school is closed due to the COVID-19 pandemic, the charter school, regional charter school, or cyber charter school will receive tuition payments based upon its enrollment as of March 13, 2020.

Health and Safety

Q: Am I required to report to work?

A: The governor's directives and PDE guidance permit school entities to direct "essential" staff to report for work. Each school entity determines what staff is deemed to be essential based on the needs of its schools and communities. If members are called back to engage in work they believe is not "essential," they should immediately contact their UniServ representative. School superintendents are making different decisions district by district or even building by building. While school employers have latitude in determining who is essential, many districts have been willing to revise their directives when we object for good reason.

Even if you are called to work as an essential employee, we believe the safety of PSEA members is of the utmost importance, and no employee can be forced to work in an unsafe environment. Currently, school entities should be following the directives of Gov. Wolf as well as guidelines set forth by the Centers for Disease Control (CDC). This means

following routine cleaning and disinfecting recommendations, social distancing practices, and, where appropriate or necessary, providing proper personal protective equipment.

Additionally, some members may be at increased risk due to underlying health conditions. If you or someone in your local believes they are at increased risk due to an underlying health issue they should immediately contact their local association president and UniServ representative.

Q: Does Act 13 provide any protections for employees who are asked to clean buildings during the COVID-19 outbreak?

A: Yes. Act 13 requires each public school entity to provide any employee who is responsible for cleaning school facilities as a result of or during the threat to health and safety caused by the COVID-19 pandemic with appropriate cleaning materials and protective clothing and equipment as recommended by the CDC. Those recommendations are available on:

<https://www.cdc.gov/coronavirus/2019-ncov/prepare/disinfecting-building-facility.html>

<https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/cleaning-disinfection.html>

Q: What if my building or work assignment is unsafe?

A: This is an issue that has been raised in numerous places across the commonwealth. While school employers have latitude in determining who is an essential employee, this does nothing to diminish your right to work in a safe environment – an environment where there is compliance with CDC guidelines.

If you believe your work environment is unsafe, contact your UniServ representative who will assist with documenting your concerns, requesting that the employer make any necessary changes, documenting whether those changes have been made, and advising you as to next steps and options if they have not. In limited, unique circumstances where locals and members may need to refuse to work due to an unacceptable risk, PSEA will assist the local to work through a certain process to best protect the employee against any adverse employment action.

Q: What is the appropriate personal protective equipment?

A: CDC guidelines for proper cleaning are available on www.psea.org/covid19 and at <https://www.cdc.gov/coronavirus/2019-ncov/prepare/disinfecting-building-facility.html> and <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/cleaning-disinfection.html>. The guidance specifically addresses cleaning and disinfection of a building after persons suspected or confirmed to have COVID-19 have been on location. It includes a recommendation that cleaning staff wear disposable gowns and gloves.

Employment, Contracts, Leave, and Unemployment Compensation

Q: Will we have to work until June 30 or days beyond the end of the school year?

A: Act 13 requires that members be paid as if the pandemic has not occurred, even if school entities provide less than 180 days of student instruction or less than the instruction planned for that year. PDE cannot impose any penalty on school entities for not completing 180 days.

At the same time, locals have contracts – collective bargaining agreements – setting forth contractual obligations. Most of them set forth a minimum number of days or hours which you must work. Due to this fact, your employer may wish to keep you beyond the originally scheduled school year calendar. Also, some members have indicated that districts are exceeding the number of in-service days currently set forth in your contracts. We know this can be frustrating.

We strongly advise cooperation and continual contact with your administration relative to rescheduling of any school calendar days or in-service days. Working with your administration to talk about the real-world consequences and implications of commitments made based on the original school calendar set by your district can go a long way. We do not believe at this time that there are administrations looking to be punitive simply to make members work until June 30. CBA language regarding instructional year or work year will vary as will past practice, and the needs and approach of each district. Contact your UniServ representative for assistance in addressing these issues with your employer.

Members in our EA locals will be paid their full annual salary. It may be more difficult to determine what wages our ESP members are due, since they might be paid on a 10-month basis, either by hours or days, or on an hourly basis throughout 10 or 12 months. In addition to looking at contract language, we will need to look at any other policies, past practices, or standards that will help establish the intended work days or work hours. There are questions related to both how time is rescheduled, if it is at all, and how any rescheduling may impact pay. This will need to be worked out by each local and school entity, and locals should contact their UniServ representatives for assistance.

Q: What if I was on unpaid FMLA leave? Do I get paid now?

A: Pursuant to Act 13, employees are to be treated as if the pandemic had not occurred. This means that employees who were on an unpaid leave prior to March 13, 2020 will remain on unpaid leave until such time as they were scheduled to return to work. If an individual's unpaid leave was scheduled to end during the remainder of this school year, then they should return as scheduled.

If an employee believes that there are unusual facts that may allow that employee to return to work earlier, then he or she should contact a UniServ representative.

Q: Does Act 13 cover supplemental contracts like coaching and extracurricular activities?

A: We believe that this is the most likely outcome of Act 13. PSERS guidance indicates that it will accept retirement contributions on those payments. Some employers may hold such payments until the end of the scheduled school year. If for some reason your employer makes a determination that it will not pay for these types of contracts, contact your UniServ representative.

Q: What should I do if I was furloughed after March 13 and filed an unemployment compensation claim?

A: Unfortunately, a small number of school entities acted prematurely and furloughed some staff who are now required to be paid pursuant to Act 13. Many of these individuals applied for unemployment compensation benefits. If you applied for unemployment compensation, but have not received any payments, we advise that you NOT file any biweekly claims and your claim will expire in one year. If you have already received a payment of unemployment compensation benefits, please contact your UniServ representative for guidance.

Q: If I am an essential employee who is working, but my colleagues are not, will I be paid more?

A: No. You will not be paid more. Pursuant to Act 13, no school employee will be paid less – or more - than they otherwise would have without the pandemic. Some employees have been required to stay home. This helps keep the buildings safe and allows for social distancing.

Continuity of Instruction

Q: Does Act 13 waive the 180-instructional day requirement?

A: Yes. Act 13 waives this requirement immediately.

Q: Must schools continue to offer instruction during the closure?

A: Yes. Act 13 requires each public school entity to make a good faith effort to plan to offer continuity of education to students using alternative means during the period of closure. PDE must provide guidance to school entities, and intermediate units may provide technical assistance. Public school entities must submit their plans to PDE and must post their plans on their websites.

Q: Can schools use flexible instructional days to educate students during the closure?

A: Possibly. Section 1506 of the School Code already allowed school entities to use a maximum of five flexible instructional days per school year, but only if the school entity applied to PDE to do so by September 1, 2019. However, Act 13 allows the Secretary to increase the number of flexible instructional days that school entities may institute for the 2019-20 school year to a maximum number of days determined by the Secretary. In addition, Act 13 allows the Secretary to waive the September 1, 2019 application deadline for flexible instructional days. This will allow school entities that did not previously intend to use flexible instructional days to apply to use them now, due to the long-term closure.

Q: Will students still be required to take standardized tests in the 2019-20 school year, including the PSSA tests and the Keystone Exams?

A: No. On March 19, 2020, the Secretary announced that all PSSA testing and Keystone exams would be cancelled for the 2019-20 school year due to the school closures made necessary by the COVID-19 pandemic.

Q: How does Act 13 affect career and technical education (CTE) programs?

A: Act 13 allows the Secretary to waive the minimum total number of hours required for a CTE program.

Second, CTE students may not be required to take the NIMS (National Institute for Metalworking Skills) assessment or the NOCTI (National Occupational Competency Testing Institute) exam for the 2019-20 school year. Act 13 allows the Secretary to waive these requirements.

Q: Can schools require face-to-face instruction via online platforms like Zoom? Does PSEA have recommendations on this?

A: A school entity can require synchronous learning through an online platform. We advise that districts should not record online instruction for a number of reasons. However, if the school entity insists on recording, then employees will need to comply and the local association can bargain certain protections for employees.

We also advise that members adjust the settings on their online platforms to the greatest extent possible to prohibit recording by others of online instruction. However, to protect yourself to the greatest extent possible, we advise that you act like you are always being recorded.

PSEA advises that if employees are asked to do one-on-one virtual instruction with individual students, the school entity should require parental supervision during that time.

Your UniServ representative is equipped to provide locals with specific guidance on addressing issues related to online instruction.

Q: What are the best practices for delivery of instruction? How can we administer FAPE, IEPs, etc.?

A: All employees should follow their employer's directives concerning appropriate delivery of online instruction. In terms of special education, both the federal and state governments are encouraging all school entities to make "good faith efforts" to deliver a Free and Appropriate Public Education (FAPE) under the current circumstances. The reality is that in some circumstances, students may be owed compensatory education or, if feasible, an extended school year. Best efforts should be made to follow timelines and collaborate within the school to hold IEP meetings via telephone or virtual meetings to design instruction during this period of distance learning. IEPs may address supplemental aids or services so that students may access online learning, provide assistive technology, and provide related services to the greatest extent possible consistent with CDC guidelines.

Do your best. Ultimately, the provision of FAPE is the school entity's responsibility.

Q: Will Act 13 affect pre-kindergarten?

A: Possibly. Regulations of the State Board of Education require a pre-kindergarten program to offer at least 180 days of instruction in order to satisfy "Pre-K Counts" requirements. However, Act 13 allows the Secretary to waive this requirement.

Professional Certification, Evaluation, and Tenure

Q: How will educator evaluations be handled this year?

A: Act 13 allows the PA Secretary of Education to waive the requirement that any student performance data be included as part of an educator's evaluation. The student performance data accounts for 50 percent of an evaluation, so this means that evaluations will then be based 100 percent on observation. The School Code does not specify when observations must be conducted and does not prohibit observations of remote instruction. Locals will need to refer to their CBAs, past practices, and policies regarding observation protocols (for example, notice, pre and post-conference meetings).

In some cases, employers may have sufficient evidence to issue a summative rating to a professional or temporary professional employee. If a member believes their employer is issuing a rating without sufficient evidence as required by the educator effectiveness law and modified by Act 13, they should contact their local president and UniServ representative.

If an employer is unable to complete an evaluation for a professional or temporary professional employee during the 2019-20 school year, we believe, based on case law, that the absence of an evaluation is determined to be a satisfactory rating.

If a temporary professional employee in the third year of employment works through the last day (whatever that may now be) of the school calendar work year, then he or she will achieve tenure as long as the employee is rated satisfactory or not rated at all, which in our opinion is the equivalent of a satisfactory rating.

Q: Will background clearance guidelines change?

A: PSEA as well as organizations representing school administrators and others involved in public education are all aware of the issues surrounding the process for securing required clearances during the pandemic. We are currently talking to the Departments of Education and Human Services along with legislators in an effort to seek temporary relief from background clearance deadlines for school employees.

Currently, there are three clearances that individuals must obtain: a child abuse clearance, a criminal background check from the PA state police, and an FBI fingerprint background check. Two of these can simply be obtained online: the child abuse clearance and the State Police background check. PSEA recommends that you take action to complete these two requirements.

At the current time there are only a few Identigo sites open across the commonwealth, and most of them have limited hours. This means it is difficult, if not impossible, for many individuals to obtain their FBI background checks. If your FBI clearance is going to expire before the end of the school year and you cannot access an Identigo site, contact your local president and your UniServ representative.

We know that the commonwealth is working with the federal government on a daily basis to seek some type of resolution to this issue. PSEA, too, will be working with NEA to pressure the federal government for temporary relief.

Q: Will deadlines for moving from a Level I to Level II certification change?

A: We believe that moving from Level I to Level II will not be a serious issue for most members. There is a one-year extension for Act 48 requirements, if the Secretary waives the requirement, which we expect he will do. We believe that continuity of instruction will count as service time toward a member's Level II. It is our understanding that most college coursework is still available through online instruction. If you have a concern about converting your certificate from Level I to Level II, contact your local president and UniServ representative.

Q: Will student teachers still be required to satisfy a 12-week student teaching requirement?

A: Possibly not. Act 13 allows the Secretary to waive the 12-week student teacher requirement under the regulations of the State Board of Education for educator preparation programs that are unable to meet the regulatory requirement due to the COVID-19 pandemic.

Q: What will happen if an educator is unable to satisfy continuing education requirements?

A: For each professional educator with an active certification as of March 27, 2020 (the effective date of Act 13), Act 13 extends the current continuing professional education compliance period by one year.

Q: Will Chapter 14 training hour requirements for paraprofessionals be waived?

A: At this point, Chapter 14 requirements are still in place. While Chapter 14 is a state law, the requirements are also tied to ESSA at the federal level. This issue is on PSEA's radar and we are exploring options to address it at the state level. If a waiver is not achievable, PSEA is gearing up to provide expanded online options for members to earn the Chapter 14 hours, provided employers will accept PSEA hours. Please keep in touch with your local president and UniServ representative regarding more information.

Governance Issues

Q: Why was the House of Delegates cancelled? When will it be held?

A: Given all of the uncertainty with time frames and when social distancing can wind down, we knew that it was highly unlikely we would be able to convene the House of Delegates in mid-May. The PSEA Board of Directors has voted to repurpose the December House of Delegates as the annual House of Delegates, and we will conduct all business, including elections, that would have been conducted in May at that time.

Q. What if my local association is not able to hold membership meetings required under its constitution and bylaws?

A. A local association can, in this emergency situation, postpone its spring membership meeting. It should reschedule the meeting as soon as reasonably possible. If the local was expected to elect officers at the meeting, it will need to follow the procedures in its constitution and bylaws for filling vacancies, which may require the appointment of officers until an election can be conducted.

Q: Who should I contact if I have a question that is not covered in this FAQ document?

A: Your local president and PSEA UniServ representative are the best people to contact with any questions you have about your work or professional situation. Also, be sure to check out the resources available to members on www.psea.org/covid19.