

Legal *focus*

How Will Changes to Pennsylvania's Unemployment Compensation Law Affect School Bus Contractors?

As you know, Pennsylvania school bus drivers working for independent contractors are currently eligible to receive unemployment compensation benefits during the summer break while drivers employed by a school district are not. The reason is because Article IV, Section 402.1 of Pennsylvania's Unemployment Compensation Law (Pa UC Law) has exceptions that apply to employees of political subdivisions like a school district but that do not apply to employees of independent contractors. On October 14, 2011 six legislators introduced HB 128 that proposes to add additional language to Section 402 of the Pa UC Law that would specifically extend the exceptions to school bus drivers working for independent contractors. Other states have taken similar measures recently. While this proposed legislation has not progressed far, other recent changes to the Pa UC Law have created additional complications for independent school bus contractors and their employees.

New "Active Search for Work" Requirements Effective January 1, 2012

Under modified Section 401(b) of



the Pa UC Law, anyone who applies for unemployment compensation benefits on or after January 1, 2012 is now required to (1) register for employment search services with the Pennsylvania Careerlink® system within 30 days after filing an application for benefits, (2) Conduct an active search for work during each week UC benefits are sought, and (3) keep a record of work search activities using Form UC-304 that the employee must provide to the PA Dept. of Labor and Industry (Pa DLI) on demand. The weekly work search requirements state that the applicant for UC benefits must have applied for three to four jobs each week.

see, <http://www.portal.state.pa.us/portal/server.pt?open=514&objID=1062537&mode=2>

This is a particularly troublesome requirement since the employer/contractor is counting on the em-

ployee/driver's return to work as a school bus driver when the summer break is over. So, what can be done?

What Should Contractors and Drivers Do?

The new law must be read very carefully. It was enacted on June 17, 2011 when Senate Bill 1030 was signed into law. The new "active search for work" requirements became effective on January 1, 2012. However, section 401(b)(5) of the modified law states specifically that:

"[t]he requirements of this subsection [regarding the active search for work] shall not apply to a claimant [employee] who is laid off for lack of work and advised by the employer of the date on which the claimant [employee] will return to work".

While the new statute does not specify a time frame for the return to work, the instructions and guidance for employees found on the Pa Department of Labor and Industry website explaining the new law states that:

“[t]he active search for work requirement does not apply ... [i]f your employer reduced your hours of work or laid you off for economic reasons and your employer has advised you that you will return to work within 28 calendar days after the date when you last worked”.

see, <http://www.portal.state.pa.us/portal/server.pt?open=514&objID=1062537&mode=2>

The Pa Department of Labor and Industry does have the regulatory authority to interpret and enforce the new law. But the guidance found on the Pa DLI website has not, thus far, been codified as a regulation. While the 28 day “return to work” time frame works nicely with the 30 day “registration with Careerlink®” requirement noted above, it does not work well for contractors and their employees who are facing a summer break that is longer than 28 days. The regulations and guidance from the Pa DLI are still evolving but there does appear to be a reasonably workable solution.

At the end of the school year, independent school bus contractors should provide their employees with a formal written notice that advises the employee that they are being laid off for economic reasons, specifically, due to lack of work, and that the employee should be prepared to return to work in 28 days but no later than the date of the beginning of the new school year (include the specific date that the school year begins). As noted, the Pa Department of Labor and Industry guidance allows the employee to refrain from the active search for work requirements if they have been advised of a return to work within 28 days while the statute requires only a specific return to work date but does not specify a particular time frame. A letter as described above complies with the guidance provided by the Pa DLI and the text of the new statute to exempt the employee from the active search for work requirements.

You may elect to have a mid-summer drivers’ meeting every 28 days or you may require some other work activity on a 28 day schedule through the summer

break. But note that a strict reading of the Pa Department of Labor and Industry guidance as currently written *does not require that work be performed* within 28 days of being laid off. It states that an employee is excepted from the active search for work requirements if the employee *has been advised* that the employee will return to work within 28 days of being laid off. As with all matters, the representations you make to your employees should be truthful and accurate. Further, a mid-summer driver’s meeting every 28 days may be a good way to verify your drivers’ availability for work when the school year begins and may help shorten the back to work preparations that will take place in August. We will report on updates and changes to this new law as they occur and can provide answers and guidance for your particular situation as needed.

If you have questions about this article or any legal matters contact RC Kelly Law



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