



THE ADVOCATE

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*Providing comprehensive
employment and personnel
relations services to local
school districts for over
40 years.*

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Clarification of Employer Penalties Under the Affordable Care Act

By now, most school district officials are aware that monetary penalties can be imposed on employers for failing to meet the requirements of the Patient Protection and Affordable Care Act (“ACA”). These employer penalties will not be implemented until January 1, 2015. Despite the delayed implementation of the employer penalties, it is important to fully understand when a penalty will be applied and how it can be avoided.

Failure to Offer Minimum Value Coverage

An employer who fails to offer minimum value coverage to any full-time employees will pay a penalty of \$2,000.00 for each employee in excess of 30 [(# of employees - 30) * \$2,000.00] if one employee receives a premium tax credit from the Exchange.

Health insurance plans provided by school districts will almost certainly meet the minimum value requirement (plan pays for 60% or more of covered claims costs). To avoid this penalty, a school district can simply offer access to its health insurance plan(s) to ALL employees, requiring the employee to pay 100% of the individual premium. Access to a family plan is not required under the ACA. This can be done by Board resolution. Please recognize that there may be an obligation to negotiate this issue with any union that represents employees who do not have access

to health insurance coverage through their collective bargaining agreement.

Failure to Offer Affordable Coverage

An employer will be subject to an annual penalty of \$3,000 for each full-time employee that receives a premium tax credit or cost-sharing reduction for coverage purchased through an exchange because the offered coverage is unaffordable or does not meet minimum value.

Since the ACA was passed this penalty has been commonly misinterpreted and misunderstood. There is a two-part test to determine if this penalty is applicable.

First, the school district’s plan must either fail to meet minimum value or, as it is applied to the employee, it is not affordable. As previously addressed, it is highly unlikely that a school district’s health insurance plan fails to meet minimum value. To be affordable, the employee’s premium share of the lowest cost individual health plan offered by the school district cannot exceed 9.5% of the employee’s total annual household income (the employee’s W-2 can be used to make this determination) or 9.5% of the Federal poverty line for a single individual (2013: 9.5% of \$11,490 or \$1,091).

The second part of the test effectively makes application of this penalty unlikely. Assuming the coverage offered is not affordable, this penalty will not be applicable unless the employee who was not provided with affordable coverage enrolls in a health insurance plan through the Exchange and receives a tax credit.

The application of this penalty is unlikely because the rates for health insurance coverage through the Exchange, which have recently come out, are generally higher than those offered by school districts, and for those plans that are cheaper, they come with a significant reduction in benefit coverage. Thus, in order for the penalty to apply, the employee would have to reject the school district’s plan, and enroll in a more costly plan, likely with a less beneficial benefit structure.



How Long Do I Have To Retain APPR Files?

With the passage of Education Law §3012-c comes an increase in the number of teacher observations and evaluations performed each year in school districts. This has resulted in a direct increase in the amount of paperwork attributed to each teacher. The Office of Personnel Relations has fielded some recurring questions related to this increase in documentation: What do I have to keep, and how long do I have to keep it?

What documents have to be maintained and for how long are governed by the Records Retention and Disposition Schedule for School Districts and BOCES (Schedule ED-1). The ED-1 provides that personnel case file materials, including evaluations, must be kept for each employee at least 6 years after the termination of employment. Thus, the final evaluative document, often called the summative in many school districts, must be kept for each teacher minimally 6 years after their employment with the school district ends.

The ED-1 does not require school districts to maintain the backup documentation that resulted in the final evaluative instrument. Such documents would typically include observation notes, the rubric or summary of the rubric, and any written feedback provided to a teacher during the evaluative process. These documents often contain the

evidence that is used to complete the final evaluation.

While there may be no requirement to keep these backup documents for any specified length of time, each school district must consider the potential necessity of these documents in the future. For instance, if tenure is denied or disciplinary action is taken against a teacher based on their performance, these documents will play a large role in the school district's defense or case in chief. The absence of this supporting documentation could result in the hearing officer, judge or arbitrator questioning the strength of the school district's evidence or credibility of its witnesses.

The backup documentation will also serve another role, to refresh the observer's recollection. A decision to initiate disciplinary action or to deny tenure likely will not occur immediately after an observation is conducted. A disciplinary hearing might not occur until several years after a completed observation. During that period of time the observer would have conducted hundreds of observations of dozens of teachers. It is unlikely that any administrator will recall with exact precision the contents of an observation conducted three or four years earlier. Thus, the backup documentation will serve a crucial function in allowing the observer/witness to recall what occurred during an observation.

The OPR recognizes that the amount of APPR documentation collected on an annual basis is vast. The ED-1 does not require the preservation of hard or paper copies. Therefore, backup documentation can be stored digitally. Generally, digital copies will be admissible in an administrative hearing as long as a witness can testify that the original document was scanned, stored and that the digital record is a true and accurate copy of the original.

Sick Leave Abuse: How To Prevent It, And What To Do If It's Already a Problem



Paid sick leave is a benefit that has come to be expected as part of work life for public school employees of all types. It is a benefit that most people, including administrators and Boards of Education, believe all employees should enjoy. However, a recurrent concern of school administrators is the abuse of sick time amongst school employees.

Unfortunately, it is not uncommon for employees to use sick leave the same way they use their vacation time. It is also not uncommon to hear employees say that they are entitled to use all of those days every year. Administrators may know that there is a problem, but they don't always know how to deal with sick leave abusers.

The first and most important part of preventing sick leave abuse is to make sure your school district has a policy in place that outlines in clear and detailed language the circumstances in which the leave can be used. Next, this information has to be communicated well to all employees. Employees should understand how to report absences, what to do if their supervisor is unavailable, and identify situations that require medical documentation.

This communication can happen in a variety of ways, whether through faculty meetings, staff development days, or memoranda. Districts should also take care to explain the policy and expectations to employees as they are hired. In most cases, you will be dealing with

a unionized group of employees, so speaking with union leadership about getting sick leave abuse under control and what steps will be taken may go a long way in getting all staff on the same page.

Next comes the management side of this equation. All school administrators need to be in understanding and agreement when it comes to sick leave. There should be a clear directive given from the top on how infractions should be handled. If administration is not a unified force on this issue, the problem will never cease. More importantly, districts may find themselves creating an even bigger labor relations issue if some employees are reprimanded for sick leave abuse, while others are not.

If you have employees that have excessive absences, consider bargaining language into contracts that would require that they bring in written verification from their doctor after a certain number of absences. Make sure that absenteeism is tracked and then take time to analyze the data to look for patterns of abuse.

The biggest and most important step towards solving this issue is to do something about it! If attendance has been an issue for an employee, that employee's evaluation needs to state that attendance needs to improve. If the employee has a pattern of using all of his or her sick time every year, then that individual should be given a counseling memorandum after a pattern can clearly be shown. Similarly, a counseling memorandum should be given if it can be shown that an employee has a pattern of taking sick time mainly on Mondays or Fridays.

Finally, several districts provide differing forms of economic incentive for employees who don't abuse their sick leave. However, this office is unaware of any studies indicating that such incentives are actually effective in reducing overall sick leave abuse among employees.

With all of these strategies in place, districts should gradually start to see positive changes and an overall reduction in the amount of sick leave abuse occurring per year.

AREA UNEMPLOYMENT RATES

New York State Rate

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Ann. Avg.
2013	9.3%	8.8%	8.0%	7.3%	7.4%	7.6%	7.6%	7.5%	7.4%	7.5%			
2012	9.1%	9.1%	8.7%	8.1%	8.4%	8.7%	8.9%	8.5%	8.1%	8.1%	7.9%	8.2%	8.5%

Syracuse, NY Metropolitan Statistical Area

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Ann. Avg.
2013	9.7%	9.3%	8.5%	7.6%	7.4%	7.5%	7.3%	7.2%	7.2%	7.0%			
2012	9.5%	9.5%	9.0%	8.2%	8.5%	8.8%	8.9%	8.3%	8.2%	8.0%	7.8%	8.5%	8.6%

Auburn, NY Micropolitan Statistical Area

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Ann. Avg.
2013	9.8%	9.7%	8.7%	7.6%	6.9%	6.9%	6.8%	6.7%	6.5%	6.5%			
2012	9.4%	9.5%	8.8%	7.9%	7.9%	8.1%	8.1%	7.6%	7.3%	7.4%	7.4%	8.3%	8.1%

Cayuga County Statistical Area

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Ann. Avg.
2013	9.8%	9.7%	8.7%	7.6%	6.9%	6.9%	6.8%	6.7%	6.5%	6.5%			
2012	9.4%	9.5%	8.8%	7.9%	7.9%	8.1%	8.1%	7.6%	7.3%	7.4%	7.4%	8.3%	8.1%

Broome County Statistical Area

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Ann. Avg.
2013	10.1%	9.5%	8.7%	7.8%	7.5%	7.8%	7.7%	7.6%	7.6%	7.4%			
2012	9.8%	9.6%	9.1%	8.3%	8.6%	9.0%	9.3%	8.7%	8.4%	8.3%	8.1%	8.9%	8.8%

Ithaca, NY Metropolitan Statistical Area

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Ann. Avg.
2013	6.7%	5.8%	5.3%	4.8%	5.1%	5.6%	5.6%	5.6%	4.9%	4.8%			
2012	6.6%	6.2%	5.7%	5.4%	6.0%	7.0%	6.9%	6.4%	5.6%	5.5%	5.3%	5.5%	6.0%

Ontario/Seneca/Wayne/Yates Statistical Area

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Ann. Avg.
2013	9.6%	9.4%	8.5%	7.5%	6.7%	6.5%	6.2%	6.0%	6.0%	5.8%			
2012	9.2%	9.3%	8.9%	7.6%	7.9%	7.9%	7.7%	7.2%	7.0%	7.0%	7.1%	8.0%	7.9%

Rochester, NY Metropolitan Statistical Area

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Ann. Avg.
2013	9.1%	8.7%	7.9%	7.3%	7.0%	7.0%	7.1%	6.9%	6.9%	6.7%			
2012	9.5%	9.5%	9.0%	8.2%	8.5%	8.8%	8.9%	8.3%	8.2%	8.0%	7.8%	8.5%	8.6%

*Source: New York State Department of Labor
Labor Statistics
www.labor.state.ny.us*

CONSUMER PRICE INDICES

September 2013

	INDEX 1982-84 BASE YEAR=100	% INCREASE FROM 2012	% INCREASE FROM PRIOR MONTH
NY-Northeastern New Jersey Area			
1. All Urban Consumers	258.504	1.6	0.3
2. Urban Wage Earners & Clerical Workers	254.434	1.4	0.3
U.S. City Average			
1. All Urban Consumers	234.149	1.2	0.1
2. Urban Wage Earners & Clerical Workers	230.537	1.0	0.1

October 2013

	INDEX 1982-84 BASE YEAR=100	% INCREASE FROM 2011	% INCREASE FROM PRIOR MONTH
NY-Northeastern New Jersey Area			
1. All Urban Consumers	257.069	1.1	-0.6
2. Urban Wage Earners & Clerical Workers	248.706	2.5	0.2
U.S. City Average			
1. All Urban Consumers	233.546	1.0	-0.3
2. Urban Wage Earners & Clerical Workers	229.735	0.8	-0.3

COST OF LIVING UPDATE

ALL CITIES

NY - NORTHEASTERN NEW JERSEY

Month	Revised Wage Earner Index	%	All Urban Consumers Index	%	Revised Wage Earner Index	%	All Urban Consumers Index	%
Jan-11	216.4	1.8	220.2	1.6	238.4	1.8	242.6	1.5
Feb-11	217.5	2.3	221.3	2.1	239.8	2.4	243.8	2.1
Mar-11	220.0	3.0	223.5	2.7	241.7	2.7	245.6	2.3
Apr-11	221.7	3.6	224.9	3.2	242.7	2.9	246.5	2.5
May-11	223.0	4.1	226.0	3.6	244.3	3.5	248.1	2.9
Jun-11	222.5	4.1	225.7	3.6	244.6	3.7	248.5	3.2
Jul-11	222.7	4.1	225.9	3.6	245.3	3.8	249.2	3.3
Aug-11	223.3	4.3	226.5	3.8	246.0	3.9	250.1	3.5
Sep-11	223.7	4.4	226.9	3.9	246.9	4.3	250.6	3.8
Oct-11	223.0	3.9	226.4	3.5	246.3	3.7	250.1	3.3
Nov-11	222.8	3.8	226.2	3.4	245.5	3.3	249.3	3.0
Dec-11	222.2	3.2	225.7	3.0	244.6	3.0	248.3	2.7
Jan-12	223.2	3.1	226.7	2.9	245.5	3.0	249.3	2.8
Feb-12	224.3	3.1	227.7	2.9	246.5	2.8	250.3	2.6
Mar-12	226.3	2.9	229.4	2.7	248.2	2.7	245.1	2.5
Apr-12	227.0	2.4	230.1	2.3	248.7	2.5	245.9	2.3
May-12	226.6	1.6	229.8	1.7	249.0	1.9	252.7	1.8
Jun-12	226.0	1.6	229.5	1.7	248.5	1.6	252.4	1.6
Jul-12	225.6	1.3	229.1	1.4	248.2	1.2	252.0	1.1
Aug-12	227.1	1.7	230.4	1.7	249.7	1.5	253.5	1.4
Sep-12	228.2	2.0	231.4	2.0	251.0	1.7	254.6	1.6
Oct-12	228.0	2.2	231.3	2.2	250.5	1.7	254.3	1.7
Nov-12	226.6	1.7	230.2	1.8	250.6	2.1	254.3	2.0
Dec-12	225.9	1.7	229.6	1.7	249.5	2.0	253.6	2.1
Jan-13	226.5	1.5	230.3	1.6	250.8	2.2	254.8	2.2
Feb-13	228.7	1.9	232.2	2.0	252.3	2.3	256.2	2.4
Mar-13	229.3	1.3	232.8	1.5	252.7	1.8	256.6	1.9
Apr-13	228.9	0.9	232.5	1.1	252.0	1.3	256.0	1.4
May-13	229.4	1.2	232.9	1.4	252.3	1.3	256.3	1.4
Jun-13	230.0	1.8	233.5	1.8	252.9	1.8	256.9	1.8
Jul-13	230.1	2.0	233.6	2.0	253.3	2.1	257.3	2.1
Aug-13	230.4	1.5	233.9	1.5	253.6	1.6	257.7	1.7
Sep-13	230.5	1.0	234.1	1.2	254.4	1.4	258.5	1.6
Oct-13	229.7	0.8	233.5	1.0	252.9	0.9	257.1	1.1
Nov-13								
Dec-13								

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