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Orange County  
Public Schools



# Moving Past Exigent Circumstances: How to Bargain Your Employees Back to Work

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# Do you need to bargain?

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If you are changing the terms and conditions of employment when school reopens, then yes! Exigent circumstances are over.



# Handling Employee Issues



Chapter 1

# Frightened Employees Refusing to Return

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- Identify employee's particular issue; offer a solution.
- Explain in great detail, upfront, all the safety measures the district is affording employees.
- Invite employee to take unpaid leave.
  - According to Board Policy
  - According to CBA language
  - According to FMLA

# Employees with Age or Health Concerns

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- Identify employee's particular issue; offer a solution.
- Invite employee to take paid leave.
  - According to Board policy
  - According to CBA language
  - According to new federal laws
- Offer a transfer that allows remote work, if available.

# Issues Related to Employees Not Qualified for Leave



- Employees who are able to perform the essential functions of their jobs but who are unwilling to return to work must be dealt with on a case by case basis.
- Consistency is the key.



# Summary of FMLA Expansion

- Review Board Policies and CBA language on regular FMLA.
- Emergency FMLA is only for those who need leave to care for their child.
- First ten days of leave is unpaid.
- Next ten weeks are at 2/3rds pay for 10 weeks.
- Provides for 12 weeks of leave in total.



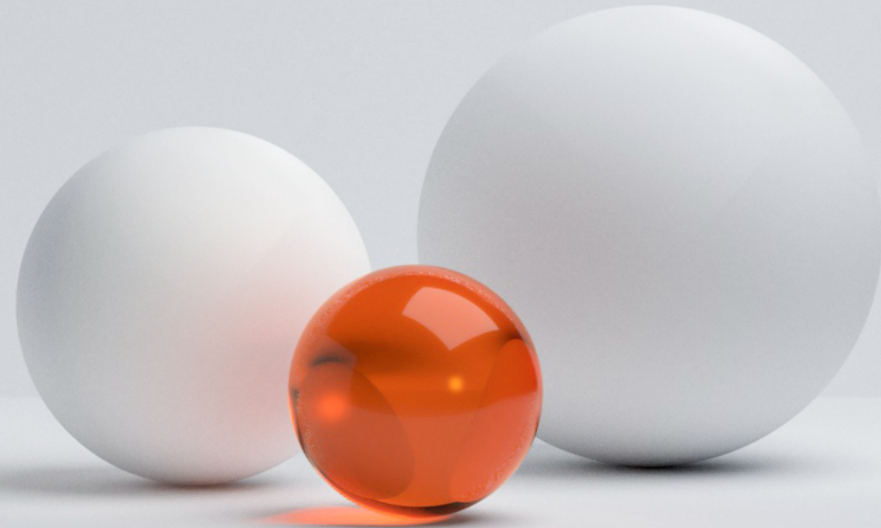


# Summary of Paid Sick Leave Act

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- Subject to federal, state or local quarantine; full pay up to \$511/day
- Advised by health care provider to self-quarantine; full pay up to \$511/day
- Experiencing COVID-19 symptoms and seeking a medical diagnosis; full pay up to \$511/day
- Caring for an individual who is quarantined; 2/3 pay
- Caring for child due to COVID-19 child care closure; 2/3 pay
- Experiencing similar condition to above; 2/3 pay
- Only get 10 days total for entire year and expires Dec 31, 2020

# Assigning New Job Duties



Chapter 2

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# Working Out of Class

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- Review current management rights in CBAs and restrictions.
- Review job description for each position.
- “Other duties as assigned”
- Be cognizant of special training and weight restrictions when changing duties.



# Potential Workers' Compensation Issues

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Employees performing jobs or tasks for which they have no official, documented training may object.

- Be sure to offer training for use of chemicals or equipment needed in new position.
- Adjust job descriptions as needed.
- Put in writing specific restrictions and have employee sign and date this document.

# Planning Employees' Return to Work



Chapter 3

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# Re-entry Planning

- Use “Reopening Florida’s Schools and the CARES Act” as the guide.
- Reopening is a locally driven decision.
- Create a framework for local planning by creating a Crisis Response Team.
- Define union’s role on the local team.





# Create a Crisis Response Team

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- See DOE’s ‘Reopening Florida Schools and the CARES Act’ plan for creating a crisis response team.
- Don’t delegate any decision-making or veto power.

# Face Masks

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- While cloth face coverings are not mandated, schools should explore strategies to utilize them, to the extent feasible.
  - At a minimum, schools should be supportive of students, teachers and staff who voluntarily wear cloth face coverings.
- Department of Education “Reopening Florida’s Schools and the CARES Act”

# Bargaining Issues



Chapter 4

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# Revisit Size of Bargaining Teams

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- Be mindful of CDC restrictions on number of persons allowed to gather.
- Consider virtual bargaining.
- Need Notice of Bargaining.
  - List the time, place and the name of the unit that is negotiating.
  - List how the public can attend (in another room via video or via zoom).
  - Public has no right to comment during negotiations but has the right to attend or view.
- Need minutes.

# Pros and Cons of Virtual Bargaining

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## Pros

- Saves time on small talk
- Easier to get more dates on calendars if no travel involved for FEA area representative or chief negotiator
- Promotes social distancing

## Cons

- Sometimes in person allows team to assess the mood or the reaction to proposals.
- Initial session probably better in person

# Open Book Solutions

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You don't want to bargain the whole contract right now.

- Discuss restricting bargaining to essential issues.
- Money and safety concerns





# Hold Discussions until Budget Is Signed

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We can't make too many decisions until we know how much money we'll have.

- How to handle other non-monetary reopeners?
- How to handle lunch room duty if cafeterias are closed?

# The Budget

Teacher Salary Enhancement  
Allocation Proviso Language



# Proviso Language in the FEFP

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- Teacher Salary Enhancement Allocation - \$500 million in recurring General Revenue
- Proviso language stipulates that 80% of the total allocation is provided to increase the minimum base salary for full-time classroom teachers as defined in s. 10 12.0 1(2)(a), plus certified prekindergarten teachers funded in the FEFP, but not including substitute teachers, to at least \$47,500, or to the maximum amount achievable based on the school district's allocation.

# Proviso Language in the FEFP

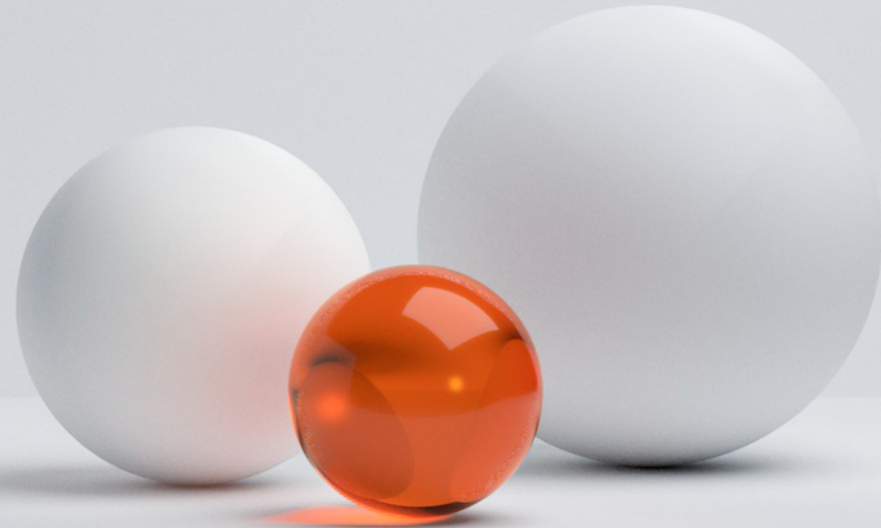
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- No eligible full-time classroom teacher shall receive a base salary less than the minimum base salary as adjusted by the school district's allocation.
- 20% of the total allocation, plus any remaining funds from the district's share of the 80% allocation, shall be used by school districts as specified in s. 10 11.62, F.S.



# Teacher Compensation

## HB 641–Teacher Salary Increase Allocation



# Teacher Salary Increase Allocation

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HB 641 amends the FEFP and creates a new categorical as follows:

1. Each school district and charter school shall use its share of the allocation to increase the minimum base salary for full-time classroom teachers, as defined in Section 10 12.0 1(2)(a), F.S., plus certified prekindergarten teachers funded in the FEFP, to at least \$47,500, or to the maximum amount achievable based on the allocation and as specified in the General Appropriations Act.

# Definition of Minimum Base Salary

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The term "minimum base salary" means the lowest annual base salary reported on the salary schedule for a full-time classroom teacher. No full-time classroom teacher shall receive a salary less than the minimum base salary as adjusted by this subparagraph.

This does not apply to substitute teachers.

# Statutory Definitions – Instructional Personnel

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**1012.01 Definitions.**—As used in this chapter, the following terms have the following meanings:

(2) **INSTRUCTIONAL PERSONNEL.**—“Instructional personnel” means any K-12 staff member whose function includes the provision of direct instructional services to students. Instructional personnel also includes K-12 personnel whose functions provide direct support in the learning process of students. Included in the classification of instructional personnel are the following K-12 personnel:



# Definition – Classroom Teachers

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**1012.01 Definitions.**—As used in this chapter, the following terms have the following meanings:

(a) *Classroom teachers.*—Classroom teachers are staff members assigned the professional activity of instructing students in courses in classroom situations, including basic instruction, exceptional student education, career education, and adult education, including substitute teachers.

# Definition – Student Personnel Services

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(b) *Student personnel services.* Student personnel services include staff members responsible for: advising students with regard to their abilities and aptitudes, educational and occupational opportunities, and personal and social adjustments; providing placement services; performing educational evaluations; and similar functions. Included in this classification are certified school counselors, social workers, career specialists, and school psychologists.

# Definition – Librarians/Media Specialists

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(c) *Librarians/media specialists.*—Librarians/media specialists are staff members responsible for providing school library media services. These employees are responsible for evaluating, selecting, organizing, and managing media and technology resources, equipment, and related systems; facilitating access to information resources beyond the school; working with teachers to make resources available in the instructional programs; assisting teachers and students in media productions; and instructing students in the location and use of information resources.

# Definition – Other Instructional Staff

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(d) *Other instructional staff.*—Other instructional staff are staff members who are part of the instructional staff but are not classified in one of the categories specified in paragraphs (a)-(c). Included in this classification are primary specialists, learning resource specialists, instructional trainers, adjunct educators certified pursuant to s. 10 12.57, and similar positions.



# Teacher Salary Increase Allocation

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2. In addition, each district shall use the allocation to provide salary increase, as funding permits, for the following personnel:

a. Full-time classroom teachers, as defined in Section 10 12.0 1(2)(a), F.S., plus certified pre-k teachers funded in the FEFP, who did not receive an increase or who received an increase of less than two percent under 1 or as specified in the General Appropriations Act. This does not apply to substitute teachers.

b. Other full-time instructional personnel as defined in Section 10 12.0 1(2)(b)-(d), F.S.

# Teacher Salary Increase Allocation

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3. A school district or charter school may use funds available after requirements of 1 are met to provide salary increases pursuant to 2.

4. A school district or charter school shall maintain the minimum base salary achieved for classroom teachers provided under 1 and may not reduce the salary increases provided under 2 in any subsequent fiscal year, unless specifically authorized in the General Appropriations Act.

# Teacher Salary Increase Allocation

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Before distributing the funds, each school district and each charter school must develop a salary distribution plan that clearly delineates the planned distribution of funds in accordance with modified salary schedules, as necessary, for the implementation of this provision.

# Important Dates

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- Each school district must submit the approved district salary distribution plan, along with the approved salary distribution plan for each charter school in the district, to the department by October 1 of each fiscal year.
- By December 1, each school district must provide a preliminary report to DOE that includes a detailed summary explaining the school district's planned expenditure of the entire allocation received by the district.



# Important Dates

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- By August 1, each school district must provide a final report to the department with the information relating to the increase in the minimum base salary for full-time classroom teachers for the prior fiscal year.

# Questions and Answers



Chapter 7

# Your Questions

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- Can we ask employees to sign a release or waiver to come back to work? Do we have to bargain this issue?
- Can we ask students and parents to sign a release or waiver to attend school? To attend extracurricular activities?
- Can we require staff to wear masks? Is this negotiable? Who pays for masks? Will this be a new mask every day or will employees bring in masks or face cloths?

# Your Questions

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- How do we address supplements for sports or clubs that may not be allowed to start in the Fall?
- Do we have to negotiate how the upcoming CARES Act funds are spent?
- Can we end telework for all even if employees are effective?
- Do we have to bargain blended virtual and brick and mortar classroom instruction schedules?

The information provided during this presentation is not intended for legal advice. The presentation, and any handouts which may accompany it, provide general information on this topic and answers to common questions about this issue. Please consult an attorney to assure that this information, and your interpretation of it, are appropriate to your particular situation.



Thank you!



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