NOTES

An Act to Increase Potential by Providing Innovative Instruction and Tutoring Program Grants

Ch. 632, L.D. 1962
Effective: August 8, 2022

What the Law Says:

The law creates the Innovative Instruction and Tutoring Grant Program Fund, codified at 20-A M.R.S.A. §§ 9101 and 9102, to facilitate innovative instruction and tutoring programs, including so-called "high-impact tutoring" to address learning loss or unfinished learning.

To be eligible for grant funding, a school must submit an innovative instruction and tutoring program plan to the Maine DOE. The plan must include a program that details how the tutoring will be provided. The plan must include a number of elements. Programs that address educational disparities due to race or income, serve students from low-income households or underserved students will be prioritized. Programs that involve partnerships with community-based programs will also receive priority.

Why It Matters:

The law was passed to address and improve student learning affected by COVID-19. The law directs the Maine DOE to use federal funds for the program in order to support educators, improve academic outcomes, and help teachers reach students that have fallen behind and get them back on track.

The grants may be used for hiring or contracting program staff; providing stipends or other incentives to teachers, paraprofessionals, retired teachers and community organizations; developing curricula and related supplies, covering costs associated with renting or purchasing physical space for programming, and paying administrative expenses.

What Needs to Be Done:

School units should consider whether their students could benefit from high impact tutoring. Schools interested in applying for a grant must submit an "innovative instruction and tutoring program" plan to the Maine DOE.

NOTES

An Act Regarding Expanding Access to Free School Meals

Ch. 719, L.D. 1679
Effective: August 8, 2022

What the Law Says:

The law requires the Maine DOE to develop a web-based application for free or reduced-price meals. The application must be in an understandable and uniform format and, to the extent practicable, in a language parents and legal guardians can understand.

Schools may make the state's web-based application available through their website, but must still distribute school meal applications in paper to all students. Schools must accept data submitted through the web-based application and process it accordingly.

Why It Matters:

Although students will be receiving meals at no charge, application and reporting requirements are still in place because of the funding source from which the reimbursement will come.

What Needs to Be Done:

In October, as usual, all participating schools will complete the survey and submit it to the state. The school then must submit monthly tallies of student meals and whether the meals were taken by students who qualify for free, reduced or paid meals. Schools submit that information to the state for reimbursement. The federal government covers part of the reimbursement and Maine funds the difference. Some students may still need to pay for a la carte items or for "seconds" (e.g., second milk carton) if schools charge for such items.

NOTES

Resolve, Regarding Legislative Review of Portions of Chapter 40: Rule for Medication Administration in Maine Schools, a Major Substantive Rule of the Department of Education

Chapter 139, L.D. 1931
Effective: March 31, 2022

What the Resolve Says:

This resolve approves amendments to Chapter 40: Rule for Medication Administration in Maine Schools.

The rule aims to assist school administrative units in implementing the provision of the medication statute [20-M.R.S.A. §254(5)(A-D)] that provides direction for training of unlicensed school personnel in the administration of medication. The rule requires that students be allowed to carry and self-administer prescribed emergency medications, specifically, asthma inhalers, epinephrine auto-injectors, or prescribed medications or devices for the management of diabetes with health care provider approval and school nurse assessment. It also provides direction for application of topical sunscreen on students in school, and provides guidelines for schools intending to make naloxone available for use in the case of suspected opioid overdose.

NOTES

Resolve, Regarding MaineCare Funding for Maine Schools

Chapter 167, L.D. 1775
Effective: August 8, 2022

What the Resolve Says:

This resolve directs the MDOE to develop a comprehensive system to support school units in seeking reimbursement for MaineCare-eligible services for all children from birth to grade 12. The MDOE shall submit a report, including suggested legislation, by November 2, 2022.

NOTES

An Act to Amend the Enforcement Provisions of the Law Governing Earned Paid Leave

Chapter 569, L.D. 1823
Effective: August 8, 2022

What the Law Says:

This law permits (but does not require) the parties to a collective bargaining agreement to agree that alleged violations of the new Earned Paid Leave law may be processed through the grievance procedure of a collective bargaining contract, including arbitration. Prior to this statutory change, alleged violations of the EPL law could only be processed through complaints filed with the Department of Labor, which, according to the statute, had "sole and exclusive" jurisdiction over such claims.

Why It Matters:

This law is significant because it expressly permits the parties to a contract to agree to have labor arbitrators, instead of the Department of Labor, enforce the new EPL law. While the EPL law requires employers to provide 40 hours of annual leave for any reason, the law allows employers to place restrictions on leave for non-emergency leave purposes when the employer determines it would cause a "hardship" to the operations. If school boards agree to permit EPL issues to run through the contractual grievance process, this would empower arbitrators to determine for the school unit what constitutes an "emergency" and/or non-emergency" for the purpose of determining whether restrictions can apply, arguably second-guessing the employer's determination that an employee's leave would cause a "hardship" to the school's operations. Additionally, grievances can take considerable time to process and the cost of an arbitration is often in excess of $5,000.

What Needs to Be Done:

School boards need to exercise caution when negotiating Earned Paid Leave issues. In considering whether to agree to allow employees to grieve violations of the EPL law, school boards should carefully consider the extra costs and delays associated with the grievance process and the impact of having an arbitrator control school operations. If school boards are inclined to create a second avenue for EPL matters to be addressed, it is essential that they carefully consider what authority they are giving and not giving to an arbitrator. Labor proposals in this area need to be crafted carefully.

NOTES

An Act to Clarify COVID-19 Paid Leave for School Employees

Chapter 614, L.D. 1874
Effective: April 15, 2022

What the Law Says:

Chapter 614 provides up to 15 paid leave days to school employees for specified reasons related to COVID-19.

The paid leave days are available for employees who are unable to work because:

1. they are subject to a federal, state or local quarantine order due to COVID-19;
2. they have been advised by a health care provider to self-quarantine due to COVID-19;
3. they are experiencing symptoms of COVID-19 and are seeking a medical diagnosis;
4. they are caring for an individual subject to a federal, state or local quarantine order due to COVID-19; or
5. they are a parent or guardian and are providing care for a child whose school or place of child care is closed due to COVID-19.

The paid leave days are available from January 1, 2021 until they have been used (for one of the reasons set forth above). However, individuals who have more than 60 days of accrued paid leave on or after April 15, 2022 are not entitled to take any of the paid leave days. School units may seek to use federal funds to provide the leave contemplated by the law so that such costs do not draw from the local school budget.

The law also contains a restoration provision. This provision states that school units shall restore sick leave if an employee used their own sick leave for one of the five reasons set forth above between October 19, 2021 and April 15, 2022.

Why It Matters:

Chapter 614 clarifies the statutory COVID-19 leave provisions. The impact of this law differs from school unit to school unit because many school units negotiated COVID-19 leave benefits with their local unions well before the law was passed.

NOTES

What Needs to Be Done:

Ensure that all individual paid leave utilized for one of the specified reasons between October 19 and April 15, 2022 has been restored. Assess whether this statutory leave may be applicable when an employee states that they need to be absent for reasons due to COVID-19.

NOTES

An Act to Ensure Full Payment of the State's Salary Supplement Obligation to Teachers with National Board Certification

Chapter 649, L.D. 1716
Effective: July 1, 2023

What the Law Says:

This new law provides that, commencing next fiscal year, school units will not be responsible for funding the salary supplements for teachers who have obtained their National Board Certification.

Why It Matters:

A number of school units have collective bargaining agreements providing that if the State payments are not sufficient to pay the entire salary supplement for teachers who have obtained their National Board Certification, then the school unit will be responsible for the difference between the amount paid by the State and the total amount owed to the teacher. Beginning next fiscal year, school units will not be responsible for this cost.

What Needs to Be Done:

Nothing at this time.

NOTES

An Act to Extend Family Medical Leave to Hourly School Employees

Chapter 690, L.D. 912
Effective: August 8, 2022

What the Law Says:

This law allows hourly school employees who have worked at least 900 hours in the previous 12-month period to be eligible for a medical leave under the same terms and conditions as leave provided under the federal Family and Medical Leave Act.

Why It Matters:

This law will add some complications to the existing administration of Family and Medical Leave ("FML") benefits. Hourly school employees will now have access to 12 weeks of FML annually rather than the 10 weeks in two years that is available under Maine FML. Previously, we encouraged whoever was administering FML benefits try to determine whether leaves should run concurrently, but now, it will be essential to designate leaves to run concurrently if more than one FML benefit is available to an employee. Failure to do so could result in employees' "stacking" benefits and extending their leaves.

What Needs to Be Done:

Drummond Woodsum has developed updated FML forms for schools that are available upon request. Schools should use these updated forms, which will help ensure that multiple leaves are designated if more than one type of FML leave is available. In addition, schools should review their FML policies (typically GBN) to determine whether the policy includes any now-out-of-date language. Schools should also be aware that FML language in collective bargaining agreements or handbooks may be non-compliant with the law and should not rely on that language alone when evaluating leave requests.

NOTES

An Act Concerning Nondisclosure Agreements in Employment

Chapter 760, L.D. 965
Effective: August 8, 2022

What the Law Says:

This new law prohibits employers in Maine from entering into certain "nondisclosure agreements."

More specifically:

1. Employers may not require an employee, intern or applicant to sign any contract or agreement that limits the right of the individual to report or discuss unlawful employment discrimination in the workplace.

2. Settlement agreements, severance agreements, and separation agreements may not (a) limit an individual's right to report, testify or provide evidence to a federal or state agency that enforces employment or discrimination laws; (b) prevent an individual from testifying or providing evidence in federal and state court proceedings in response to legal process; or (c) prohibit an individual from reporting conduct to a law enforcement agency.

3. Settlement agreements, severance agreements and separation agreements may provide that factual information relating to a claim of unlawful employment discrimination cannot be shared, but only if (a) the agreement provides some monetary consideration for the provision in addition to anything of value to which the employee, intern or applicant is already entitled; (b) the provision applies to all parties to the agreement; (c) the agreement expressly provides that the individual retains the right to report, testify and provide evidence to federal and state agencies that enforce employment and discrimination laws; and (d) the employer retains a copy of the agreement for 6 years following the date of execution of the agreement or the end of employment, whichever is later.

The law states that it is enforceable by the Department of Labor and the Maine Attorney General. Violations of this law can result in a fine of up to $1,000.

Why It Matters:

On occasion, school units and employees need to part ways and enter into an agreement on the terms of separation. Going forward, school units need to be aware that such agreements must be drafted with this new law in mind.

NOTES

What Needs to Be Done:

School units should be aware that form settlement agreements and severance agreements which have been utilized previously may not contain the necessary language. Please do not cut and paste language from a prior agreement without confirming with legal counsel that the agreement complies with the new law and is appropriate for your current situation.

NOTES

An Act to Include within the Definitions of "Public Employee" and "Judicial Employee" Those Who Have Been Employed for Less Than 6 Months

Chapter 601, L.D. 775
Effective: August 8, 2022

What the Law Says:

This law eliminates from the list of employees who are excluded from the definition of "public employees" those employees who have been employed for less than six months under 26 M.R.S.A. § 962.

The effect of this amendment on Maine's public sector bargaining law is that employees who are employed for less than six months and are otherwise eligible to be covered by an existing bargaining contract are now covered by the contract from their initial date of hire. Thus, bus drivers, custodians, ed techs, and teachers may now be immediately covered by a collective bargaining agreement as members of the bargaining unit represented by the bargaining agent upon initial employment and no longer excluded from such privileges during the first six months of employment.

Why It Matters:

The significance of this amendment is that, unless the collective bargaining agreement provides otherwise, new employees are now legally entitled to all the rights, benefits, and privileges in the collective bargaining agreement. Prior to the amendment, new employees could not be covered by an existing contract and consequently could not file grievances when they were not afforded the benefits of the contract.

As a practical matter, nearly all public employers make no distinction in terms of pay and benefits between employees who have been employed for more than six months and those who have been employed for less than six months, However, under prior law, employees who had been employed for less than six months could not have claimed those terms and benefits as a contractual right. Now, unless the contract provides otherwise, those employees are entitled to these terms as a contractual right and could file a grievance to enforce that right. Previously, public employers could offer hiring incentives to attract new employees without consultation from a bargaining agent or interview an employee within their first six months without affording them union representation. This will no longer be the case.

What Needs to Be Done:

Superintendents and school boards are advised to review all their contracts to make sure that appropriate adjustments are made to the contract in light of this

NOTES

statutory change. While many contracts expressly exclude employees who have been employed for less than six months in the Recognition Article, it is unclear whether this new law will override such a contractual exclusion. Regardless, unions will likely seek the deletion of such language from the Recognition Article during the next round of negotiations, and employers will need to make sure that their contracts are modified to address the rights of newly hired employees. For example, all contracts should be reviewed to ensure that there is a meaningful probationary period to allow the employer sufficient time to assess new employees before they have just-cause protection. Schools should also look at evaluation language to ensure that it applies to this new group of employees.

NOTES

An Act to Strengthen the Ability of Public Employers and Teachers' Unions to Negotiate

Chapter 752, L.D. 449
Effective: August 8, 2022

What the Law Says:

This amendment changes the definition of the obligation to collectively bargain that is contained in Title 26 M.R.S.A. § 965 and now requires a party to meet with the other for the purpose of negotiations, even when the contract contains a so-called "zipper" clause.

Why It Matters:

Under Maine's public sector collective bargaining law, either party can serve a demand on the other party to meet for the purpose of collective bargaining. Under Maine Labor Relations Board case law, a party was relieved from the obligation to meet during the term of the collective bargaining agreement if the agreement contained a zipper clause. This new law now requires a party to meet upon a bargaining demand, even if the contract contains a zipper clause.

What Needs to Be Done:

Given that zipper clauses are not contained in many school contracts, this law will have limited significance to most schools. However, for those schools that do have contracts containing such clauses, the new law could be a source of trouble. While the law purports to blunt the effect of zipper clauses, it is not entirely clear that it actually does. Consequently, the exact scope and impact of this amendment will likely lead to disputes and litigation before the Maine Labor Relations Board. It is therefore advisable that school boards seek legal advice when a union requests to meet for purposes of collective bargaining during the term of a contract and the effect of a zipper clause is in play. School boards need to be careful not to surrender contractual rights over an incorrect interpretation of the intended impact of this new law.

NOTES

An Act to Amend the Requirements of the Reorganization Plan for the Formation of Regional School Units

Chapter 537, L.D. 1802
Effective: August 8, 2022

What the Law Says:

Chapter 537 adds an exception to the general rule that the reorganization plans for RSUs must provide comprehensive programming for all students from kindergarten to grade 12 and must include at least one public secondary school. Under the new exception, a school unit's education plan will be approved if it provides comprehensive programming:

(a) For all grade 9-12 students within the RSU, with programming for K-8 students provided by other school administrative units;
(b) For all K-8 students within the RSU, with programming for grade 9-12 students provided either by operating a school or contracting for school privileges; or
(c) For all students in a grade configuration that meets the needs of students from the towns that make up the RSU, with programming for all other students provided either by operating a school or contracting for school privileges.

Why It Matters:

When the RSU formation law was passed in 2008, the intent of the law was to encourage school units to combine in order to efficiently and effectively utilize taxpayer resources to provide more opportunities for students. The statute required the formation of a regional school unit to include not fewer than 2,500 students, or in some exceptions, the RSU may serve fewer than 1,200 students. However, the law also required the RSU to include programming for all students from kindergarten to grade 12.

This new law affords some flexibility to school leaders to find innovative ways to balance educational and fiscal responsibilities in their communities. By removing the requirement that RSUs be a specific size and provide an expansive grade configuration, the law now allows for RSU configurations of various grade spans. This will permit school units to collaborate in ways that can better serve their students and taxpayers.

What Needs to Be Done:

Analyze your school unit's present configuration and determine if any adjustments could be made to better serve the needs of students.

NOTES

Resolve, Directing the Department of Education to Study the Regional Adjustment

Chapter 155, L.D. 270
Effective: August 8, 2022

What the Resolve Says:

This resolve directs the MDOE to study the impacts of the regional adjustment component of the school funding formula and report its findings on or before January 15, 2023.

NOTES

An Act to Implement the Recommendations of the Right to Know Advisory Committee Concerning Remote Participation

Chapter 611, L.D. 1971
Effective: August 8, 2022

What the Law Says:

This new law provides a mechanism for public entities to enact a policy authorizing remote methods of participation even in circumstances when the public entity is not able to meet in person.

The chair of the public entity must determine that an emergency or "urgent issue" exists which prevents the public body from meeting in person. If the chair so determines, the members of the governing body may participate by remote methods. The notice for the meeting must specify how the public can participate in the meeting and must also detail how one can obtain a copy of the proposed remote meeting policy.

Once the body convenes, it must vote on whether it agrees with the Chair's determination that an emergency or "urgent issue" prevents the body from meeting in person. If 2/3 of the members vote to support the Chair's determination, then they may vote on whether to adopt a policy authorizing remote methods of participation.

Why It Matters:

This law authorizes school units to adopt remote meeting policies even if the school board is not able to meet in person due to an emergency or "urgent issue."

What Needs to Be Done:

Nothing at this time.

NOTES

An Act to Amend the Remote Meeting Law in Maine's Freedom of Access Act

Chapter 666, L.D. 1772
Effective: August 8, 2022

What the Law Says:

This new law authorizes public entities to limit public attendance solely to remote methods if there is an emergency or "urgent situation" that requires the body to meet only by remote methods.

The law also provides that a remote meeting policy adopted pursuant to the provisions of the FOAA applies to subcommittees of the Board unless the subcommittee desires to adopt its own policy.

Why It Matters:

Chapter 666 provides some flexibility to school units and enables them to limit public participation to remote-only methods if the school board or school committee will be meeting by remote-only methods.

What Needs to Be Done:

Consider whether you want a single remote meeting policy or whether your committees may need a separate policy.

NOTES

An Act to Achieve Carbon Neutrality in Maine by the Year 2045

Chapter 517, L.D. 1429
Effective: August 8, 2022

What the Law Says:

The entirety of the new law reads:

> Beginning January 1, 2045, net annual greenhouse gas emissions may not exceed zero metric tons.

38 M.R.S.A. § 576-A(2-A).

Why It Matters:

The adoption of this law signals that the State will begin taking steps toward reducing greenhouse gas emissions. The State is likely to begin approaching this goal by using incentives, but it may also begin introducing penalties for those who are not quick to adopt greener technologies.

What Needs to Be Done:

Schools should start to think about how they can begin to reduce their emissions. Consider appointing a person to monitor what incentives (or penalties) the State has or will adopt so that your school can take advantage of those incentives (or avoid the penalties) where possible.

NOTES

An Act to Maintain Consistency Among Maine's Nondiscrimination Statutes

Chapter 553, L.D. 1786
Effective: August 8, 2022

What the Law Says:

This law updates the language in various statutes to ensure that it is clear that the following protected classes are recognized: race, color, sex, sexual orientation, gender identity, physical or mental disability, religion, ancestry or national origin, age and familial status.

Why It Matters:

The law does not actually modify the provisions of the Maine Human Rights Act governing employment discrimination and education discrimination. The updates are to the provisions governing state employment, contracting with the state, exclusion from jury service, cable company operations, and establishing insurance rates. Consequently, we do not believe that the amendments will impact school operations. The amendments nevertheless serve as a reminder to ensure that your school unit's nondiscrimination policies include reference to all protected classes.

What Needs to Be Done:

Review your nondiscrimination policies and ensure that they are updated.

NOTES

An Act Allowing Electric-Powered School Buses to Have Distinctively Colored Bumpers, Wheels, and Rub Rails and Allowing Public Service Vehicles to Be Equipped with a Flashing Green Auxiliary Light

Chapter 582, L.D. 1990
Effective: August 8, 2022

What the Law Says:

This law permits schools to retain the coloring from the original manufacturer for wheels, rub rails, and bumpers on electric-powered school buses. If the bus is not electric, those items must be black. Schools are also permitted to keep original lettering from the manufacturer on electric school buses, whereas, previously, there could be no lettering on the front or rear of the bus other than those indicating an emergency exit and bus number.

Why It Matters:

Schools planning to acquire electric school buses will not need to worry about repainting or acquiring new pieces for the bus if the manufacturer makes wheels, rub rails, and bumpers some color other than black, and will not need to remove extra lettering provided by the manufacturer.

What Needs to Be Done:

Refreshingly, this law actually gives school units one less thing to do! There is no need to repaint or acquire new wheels, rub rails, or bumpers on electric school buses if those items are not black when they arrive from the original manufacturer.

NOTES

An Act to Transition State and Local Motor Vehicle Fleets to Plug-in Hybrid Vehicles and Zero-Emission Vehicles

Chapter 693, L.D. 1579
Effective: August 8, 2022

What the Law Says:

The law says that, "to the extent practicable," the State will endeavor to approve school bus purchases, contracts, and leases "in a manner designed" to result in 75% of school bus acquisitions in 2035 being "zero-emission" school buses.

This law also modifies the amount of time that a school can enter into a short-term loan or lease purchase agreement. Although the general rule is that the term of lease purchases may not exceed 5 years, the term may be up to 15 years for lease purchase agreements involving "zero-emission" school buses.

The law also sets the goal of having 100% of newly acquired "light-duty" motor vehicles (defined as those weighing less than 10,000 pounds) be hybrid electric or zero-emission by 2035.

Why It Matters:

This law signals that the Legislature is interested in moving toward zero-emission vehicles.

What Needs to Be Done:

Schools looking to acquire new buses or smaller vehicles, or enter into new leases for buses or smaller vehicles, should consider whether they want to move toward hybrid electric or zero-emission vehicles now, knowing that these goals are on the horizon.