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RIFS and FURLOUGHS Staffing Options in the Time of COVID-19

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DIFFERENT
BY DESIGN

Uncertainty? What uncertainty?

Instruction: Virtual? In-person? Hybrid?

Funding: Some cuts? Deep cuts? Full funding? 😞

Students: More? Fewer? Big change mid-year?

Staff: Not enough? Too many? Just right?

Orders: Stay-at-home? Quarantine? Local? State?

Reductions-in-Force

- Too many teachers and/or administrators?
- Too many non-certified employees with contracts?
- Too many support staff in at-will positions?
- Employees with no work?
- Too few students? Not enough money?
- Need to reorganize the district in some manner?

Section 168.124 and Fast v. Sch. Dist. of Ladue guide the way

Section 168.124 – Teachers

Board may place on leave of absence as many teachers as may be necessary due to the following:

- Decrease in pupil enrollment
- School district reorganization
- Financial condition of the district

Section 168.124 – Teachers

Requirements:

- No permanent teacher shall be placed on leave of absence while probationary teachers are retained in positions for which a permanent teacher is qualified
- Qualified means certified, even if have not taught the subject for years – or may never have taught it

Section 168.124 – Teachers

Requirements:

- Permanent teachers shall be retained on basis of performance evaluations and seniority, within the field of specialization (but seniority shall not be controlling)
- Permanent teachers shall be reinstated to the positions from which they were placed in leave or, if not available, to other positions for which they are qualified by training and experience

Section 168.124 – Teachers

Requirements:

- No new teacher may be hired while there are available teachers on unrequested leave of absence who are properly qualified to fill such vacancies
- A teacher on leave under this statute may engage in teaching or another occupation while on leave

Section 168.124 – Teachers

Requirements:

- The leave does not impair tenure
- The leave continues for a maximum of three years unless extended by the Board of Education

Section 168.124 – Teachers

Requirements:

- If the Board places teachers on unrequested leave of absence due to financial conditions cause at least in part by withholding or or a decrease or less than expected increase in education appropriations, the district has to conform to the following requirements: (see next slide)

Section 168.124 – Teachers

- If school has unrestricted combined ending fund balance of more than 10% of current expenditures in the teacher and incidental funds, and in the subsequent fiscal year such district, because of state appropriations, places a contracted teacher on leave of absence after forty days subsequent to the governor signing the elementary and secondary education appropriation bill, the district shall pay the teacher the greater of his or her salary for any days worked under the contract or \$3,000

Section 168.124 – Teachers

****Note about probationary teachers:**

- Under § 168.126 RSMo., a board can nonrenew a probationary teacher and provide written notice on or before April 15
- Reason can be a decrease in pupil enrollment, school district reorganization, or the financial condition of the district
- Notice of nonrenewal must specify this reason
- RIF process can be used during term of the contract

Fast v. Sch. Dist. of Ladue

Due Process: If it becomes necessary for the Board to place a certificated employee on leave of absence without pay, the employee shall be afforded due process as required by law, which may include the following:

1. A written statement that is reasonably adequate in expressing the reason(s) for placing the employee on leave of absence without pay.
2. A reasonably adequate description of the manner in which the initial decision was reached.

Fast v. Sch. Dist. of Ladue

Due Process: If it becomes necessary for the Board to place a certificated employee on leave of absence without pay, the employee shall be afforded due process as required by law, which may include the following (con't):

3. Information and data relied upon by the decision makers.
4. An opportunity to respond before the Board of Education.

Other RIF Notes

- Broad discretion to the school board
 - “Whether a school district’s financial resources have been exhausted is a decision which has been entrusted by the Missouri Constitution and statutes to the reasonable discretion of the school board of a district” *Boner v. Eminence R-1 Sch. Dist.*, 55 F.3d 1339 (E.D.Mo. 1995)
 - School board has discretion to place teachers on leave if the school board “finds such action ‘necessary.’” *Frimel v. Humphrey*, 555 S.W.2d 350 (Mo. Ct. App. 1977)

Other Employees – Contracts

- Can use same process for other contracted employees

Elrod v. Harrisonville Cass R-IX Sch. Dist., 706 S.W.2d 465 (Mo. Ct. App. 1986)

- Look at contract language – financial condition of the district?

Other Employees – At-Will

- Can terminate at any time
- Can also use a RIF process
- Check Board policies
- Check Collective Bargaining Agreements

Furloughs

Essentially another name for an unrequested leave of absence – see § 168.124 and *Fast*

- May take various forms
- May be voluntary or involuntary
- May include payment of insurance, but not required
- Be clear in communications / set expectations

Furloughs

- May be extended or become “permanent”
- Consider classification of employee
- Consider contracts, Board policies, Collective Bargaining Agreements
- Follow same pattern as for a “traditional” RIF under the principles of Section 168 and Fast

Best Practices

- Look at categories of employment or specific positions/duties – not individuals
- Make comprehensive plan
- Document need for RIF/Leave
- Follow required procedures
- Remember the Sunshine Law
 - Personally identifiable personnel records are closed
 - Open session v. closed session discussions

Questions?