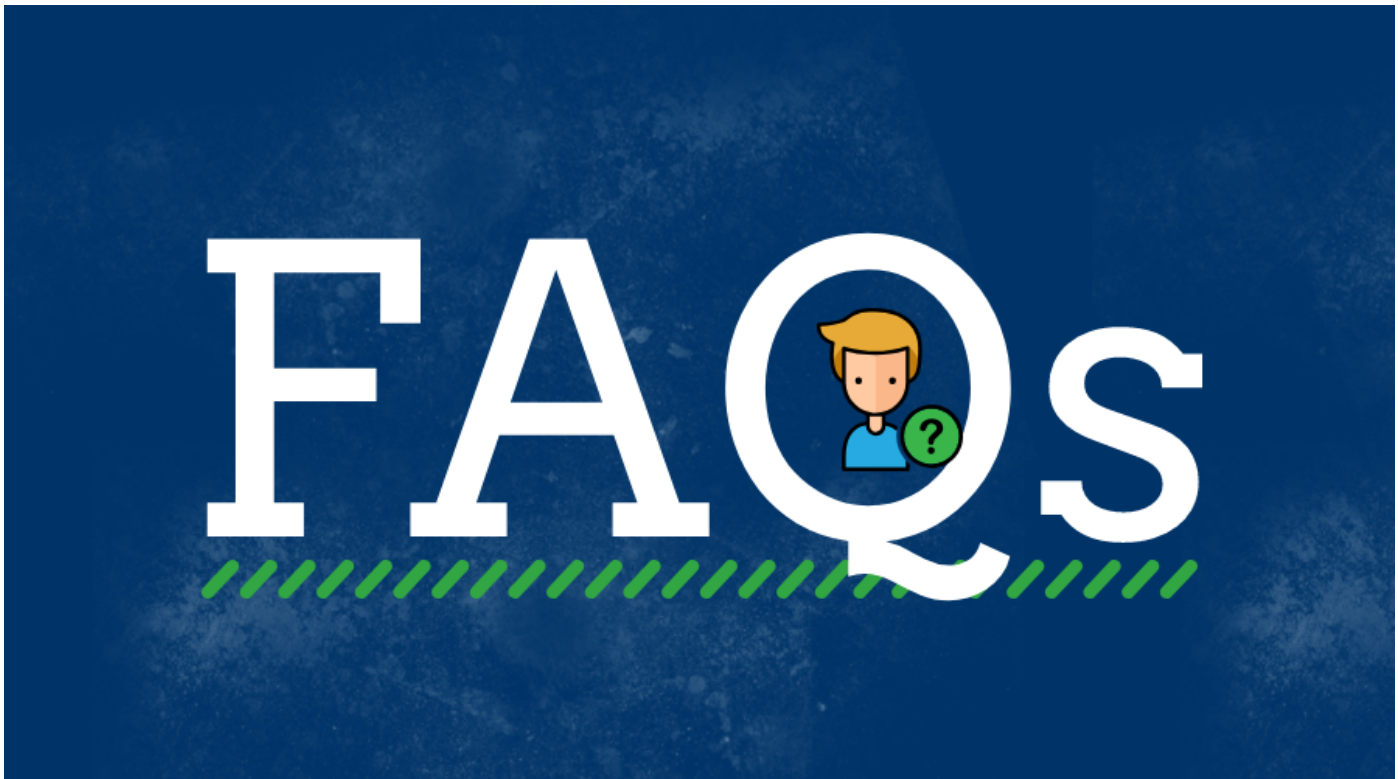


TASB buildings are temporarily closed. Staff members are working remotely and are available by email or phone.



COVID-19 Frequently Asked Questions

MARCH 18, 2020 • Amy Campbell



As district operations continue to be impacted by COVID-19, TASB Legal, Policy, and HR Services continue to receive questions about how to handle various issues related to compensation, leave, meetings, and more. Following are the most common questions we've received so far. We'll continue to post new guidance as questions arise.

Before diving into the FAQs, please first read the guidance provided by TASB Legal, [Personnel Issues During Epidemics and School Closings](#), to get answers to basic questions. The following FAQs dive into deeper, more detailed questions.

Compensation questions

Q: We want to pay employees while we're closed but don't have language in our DEA (LOCAL) policy describing "Pay During Closing." What can we do?

A: Your first step should be to check your current policy language. Districts may have local policy language authorizing pay during closing, but they must still adopt a resolution establishing the parameters for such wage payment during closure (found on TASB Legal Services eSource along with the TASB Legal document referenced above).

If your DEA (LOCAL) policy does not currently have such language, payment can still be authorized by adoption of a resolution. The district would need to work with their attorney to revise the resolution language.

But, remember, if the district intends to seek reimbursement from the [Federal Emergency Management Agency \(FEMA\)](#) for extraordinary costs for employees who are required to perform disaster-related emergency work, a written policy providing for payment of those labor costs must have been in place prior to the disaster.

Q: We have DEA (LOCAL) policy language that says we'll pay any nonexempt employee who is required to work during an emergency closure at a premium pay rate (e.g., time-and-one-half, double time). How does that work?

A: Premium pay is attached only to the hours physically worked by a nonexempt employee. For example, if a custodian normally works 40 hours per week at \$10 per hour, he would receive 40 hours of regular pay (\$400) during closure if authorized by

policy and/or resolution. However, if policy and/or resolution call for premium pay at time and one-half, and the employee physically works 10 hours, the employee's pay would be calculated as follows:

$$30 \text{ hours} \times \$10 = \$300$$

$$\underline{10 \text{ hours} \times \$15 = \$150}$$

$$40 \text{ hours} = \$450$$

Be careful of these staff working more than 40 hours in a closure week because the overtime rate would be calculated based on the premium pay rate, which can escalate costs quickly. In a week where the district is closed for only part of the week, overtime work by nonexempt staff with premium pay rates could result in the need for blended rate overtime calculations.

Some districts have mistakenly calculated the premium pay rate as pay **in addition to** the regular weekly pay. This is not the intent of premium pay and results in the employee's work being paid at significantly higher rates (e.g., 2.5 times the regular rate of pay).

Q: What if we don't want to pay a premium rate or can't afford it, given the extended closure?

A: If your district has local policy provisions on premium pay during disasters, these Board policy provisions can be suspended or amended through a board resolution. So, a district wishing to reduce their financial burden during an extended district closure could adopt a resolution that grants premium pay only for a portion of the closure. Or, if current board policy indicates double time pay for work during an emergency closure, a resolution could change the premium pay rate to time-and-a-half instead.

Q: What about premium pay for exempt staff required to work during a closure?

A: Exempt staff are already receiving a salary that covers for all time worked, so granting premium pay is unnecessary. Also, most exempt staff in a district are contract employees, so increasing pay during the school year without requiring additional work

is not advisable.

Q: What about premium pay for an employee who has two different work assignments? How should that be calculated?

A: Nonexempt employees should receive pay for their regular work schedule, even if the employee's regular work schedule includes two different positions (e.g., bus driver and food service worker). However, supplemental duties are not necessary to be paid during closure because those are not part of the employee's typical work schedule.

Some districts have asked about exempt employees who also do a nonexempt job on a part-time basis, such as a teacher who drives a bus route. Because the premium pay is intended for nonexempt staff, these employees would not be eligible for premium pay rates. However, if the bus route is part of the employee's regular work assignment, the district could elect to continue paying the standard pay including both work assignments.

Q: Some of our coaches are receiving stipends for sports where the UIL season was canceled or ended early. Can we cut those coaches' stipends?

A: First, do those coaches have a dual assignment contract? If so, you cannot reduce or cut a stipend payment because the employee is entitled to pay for both assignments for the remainder of the school year.

If not on a dual assignment contract, reducing a stipend without notification before the penalty-free resignation date (45 days before the first day of instruction) can be risky. While most stipends for coaching are paid out over the entire school year, the actual season is much shorter. You may owe the coach the full stipend amount for seasons that have already ended.

In most cases, it's safest to continue paying the stipend to avoid costly grievances related to discontinuing stipend payments.

Q: Who should be eligible for pay during a closure? Temporary employees?**Substitutes?**

A: The resolution templates provided by TASB Legal reference “all regular employees – contractual and noncontractual, salaried and non-salaried.” Most districts have interpreted this to mean any employee with a regular work schedule, even if the district has categorized the employee as something other than “regular,” including long-term substitutes and temporary workers on a long-term assignment. Districts should be consistent in how this definition is applied.

Q: Will substitutes and others who don't receive pay during a closure be eligible to file for unemployment compensation?

A: Likely, yes. If the district is not providing pay to the employee and is not providing them an option to continue working, they likely will be able to file for unemployment compensation. During a normal scheduled break, such as summer or winter break, providing these employees with a letter of reasonable assurance protects the district against unemployment compensation claims filed during the regular break. However, an emergency closure is not “an established and customary vacation period or holiday recess” as indicated in the Texas Labor Code, so a reasonable assurance letter would not protect the district from claims filed during the emergency closure.

As unemployment compensation claim amounts are based on an employee's earnings over the past 18 months and given that substitutes have irregular work schedules and many are held to working fewer than 30 hours per week, the financial burden on the district may be limited. However, The Texas Workforce Commission recently waived the required ‘waiting week’ and job search requirements in light of the current disaster so seeking unemployment compensation will be easier than usual. Members of the TASB Risk Management Fund's Unemployment Compensation program can contact Attorney James Ezell at james.ezell@tasb.org.

Resolution questions

Q: What's the right amount of time to fill in on the resolution?

A: Remember that a resolution regarding pay is designed to grant pay to employees during a closure, so the time written into the resolution may track with the district closure. A district could adopt another resolution at a later date to extend pay if the district remains closed longer than expected. Once the district is "open for business," the resolution would end.

Q: What if the board of trustees can't meet to pass a resolution until after a closure but want to compensate employees for all days the district is closed?

A: As long as a board makes a concerted effort to meet as soon as possible, which should be easier than usual given the suspension of open meetings act requirements, approval of the resolution can happen after district closure. To avoid gift of public funds issues, the resolution must be passed indicating the public purpose served before payment is made to employees.

Leave questions

Q: What about an employee on leave? Do they get pay during closure without having to use their leave?

A: Districts have some discretion as to how pay during closure is handled for employees on leave. If an employee had taken time off for a vacation that was canceled and is able and willing to work, the district may consider granting this employee pay during the closure and allowing them to keep their time off to use at a future date.

An employee on medical leave who is unable to work presents a more complicated situation. The district could determine the employee is unable to work and therefore isn't eligible for pay during closure. Or, the district could determine that employees on medical leave are equally as idle as other employees in the district and should be

entitled to the same pay during closure as other employees. As long as the district treats all employees on medical leave similarly and makes consistent determinations, both options are viable.

Q: How does a district closure impact Family Medical Leave (FML) entitlement? What about Temporary Disability Leave (TDL)?

A: A full week in which the district is closed will not count against an employee's FML entitlement. However, TDL is the only leave measured in calendar days, so all days—even during a district closure—will count against an employee's TDL entitlement.

Q: A teacher on FML wants to return to work because the district is moving to distance/virtual learning. Can she return to work?

A: If the employee's expected date for return to work was based on a standard teacher job description, the district could provide the employee with a new job description that reflects changes in duties for the distance learning teaching work and request a new authorization from the employee's physician.

Other questions

Q: What if our district cannot complete T-TESS evaluations during the school year due to closure?

A: A recent law change resulting from House Bill 3 allows for a teacher appraisal to occur *for* a school year rather than *during* a school year, which grants more flexibility in timing. The appraisal could occur after the instructional year has ended.

Q: What about contract renewals and nonrenewals during a district closure?

A: The board of trustees can vote to delegate contract renewals to the superintendent but cannot delegate nonrenewals. The last day of instruction may change as the situation changes, but districts should be prepared to act quickly to adopt a new instructional calendar if the last day of school needs to be adjusted.

Going forward

We will continue to post new FAQs and notify HRX subscribers as more questions arise. Please feel free to forward and share guidance. Click the “subscribe” button below to receive future updates.

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