

LEGAL UPDATE
COSTELLO, COONEY & FEARON, PLLC

**Obligation to Provide Reasonable Assurance to Per Diem Substitute Teachers Prior to
Holiday Recess**

We are writing to make you aware of a recent decision of a State Appellate Court that is likely to impact school district practices across New York State. The decision involved the obligation of a school district to provide a per diem substitute teacher with “reasonable assurance” of future employment after a school recess in order to avoid liability for unemployment insurance benefits. This “assurance” often takes the form of a letter sent to the teacher at the end of the school year stating that the substitute is expected to perform similar services in the period following a recess.

In Matter of Papapietro, decided by the Appellate Division, Third Department, on December 7, 2017, Papapietro, a substitute teacher in the Rochester City School District during the 2015-16 school year, applied for unemployment benefits for the period of the December 2015 recess. The District fought the claim and prevailed initially, but lost before an Administrative Law Judge (“ALJ”), who found that the District had not given Papapietro reasonable assurance of work upon return from the December recess because it had not sent him a letter stating as much. The Unemployment Insurance Board (“UIB”) reversed the ALJ, stating that the Board had long held that written notice was unnecessary for recesses during the school year.

However, the Appellate Division reversed the UIB’s decision, rejecting its finding that the law does not require a reasonable assurance letter before recesses during the school year.

The holding in Matter of Papapietro suggests that school districts must provide written notice of reasonable assurances to per diem substitute teachers before every school recess, in order to protect against claims for unemployment insurance benefits during those recess periods. As the Third Department is the designated Court to hear all appeals from the UIB, its decision represents the law on the subject unless the Court of Appeals hears the case and reverses.

We wanted to alert Districts of this development in time for possible measures to be taken to provide notices of reasonable assurance to per diem substitutes for the coming holiday recess. If you have any questions, please do not hesitate to contact any member of our Education or Labor and Employment practice groups directly.

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