

EDUCATIONAL EMPLOYEE HEALTH CARE WORKER BONUS PAYMENTS

Hodgson Russ Education Alert
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As authorized in the 2022-2023 enacted state budget by Part ZZ of Chapter 56 of the Laws of 2022, the Health Care Worker Bonus Program (the “Program”) allows for the payment of bonuses to “recruit, retain, and reward health care and mental hygiene workers” meeting specified eligibility requirements. See N.Y. Soc. Serv. §367-w(1). Those employees with qualifying titles and specified annual earnings and/or hours worked are eligible to receive bonuses in installments, up to \$3,000, based on hours worked during five consecutive six-month vesting periods starting October 1, 2021, and ending March 31, 2024. Thus, school district employers will be required to measure employee hours worked dating back to 2021.

The definition of “health care and mental hygiene workers” includes certain employees of school districts, boards of cooperative educational services (BOCES), charter schools, nonpublic schools and approved preschool programs for students with disabilities. Those educational entities should, if they have not already done so, register for the Program Portal utilizing a Statewide Financial System ID.

While the New York State Department of Health (“NYSDOH”) initially published an FAQ explaining the Program, there remained significant ambiguity and unanswered questions for schools, such as: (1) does the definition of “Other Direct Care Staff” eligible for the bonus payments include aides or behavioral specialists?; (2) what is the deadline for schools to submit claims for the first vesting period and is the October 31, 2022, deadline firm?; (3) are 10-month employees considered continuously employed?; and, (4) will “continuous hours worked” be calculated in the same manner that they are calculated for FMLA eligibility?

Today, those questions have largely been answered in the NYSDOH’s updated [FAQ](#) relative to Education Sector Employers as follows:

1. Does the definition of “Other Direct Care Staff” eligible for the bonus payments include aides or behavioral specialists?

- No, “Other Direct Care Staff” does not include aides and assistants in schools as they are not titles included within the definitional terms set forth in Section 367-w(2).

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2. What is the deadline for schools to submit claims for the first vesting period and is the October 31, 2022, deadline firm?

- In recognition of the fact that schools may not be able to complete Vesting Period 1 claims by October 31, 2022, there will be “administrative” flexibility for purposes of submitting employee claims for Vesting Periods 1 and 2.

3. Are 10-month employees considered continuously employed?

- Yes, qualified salaried school employees will be considered continuously employed for 12 months regardless of how salary is paid (i.e. over 10 months or over 12 months). The NYSDOH’s response to this question appears to indicate that “continuous hours worked” will be calculated in the same manner that they are calculated for FMLA eligibility.

There undoubtedly remain questions for schools as they continue to navigate this new system of determining employee eligibility for bonus payments and tracking and submitting claims for such bonuses. We are hopeful that additional guidance is forthcoming upon the completion of the first vesting period. Such guidance is particularly critical in light of the fact that the Medicaid Inspector General is authorized, along with the NYSDOH, to conduct audits and investigations of all eligible employers. And those schools that fail to accurately identify, claim and/or pay any bonus for more than 10% of bonus eligible employees may be subject to penalties of up to \$1,000 *per violation* of the Program.

As you begin, or continue, submitting claims for bonuses for your “healthcare and mental hygiene workers” through the [Program Portal](#) we urge you to document and retain all information justifying your determination that the employee qualified (i.e. title, job duties, number of hours worked during the vesting period, etc.) to receive the bonus payment.

We are continuing to closely monitor all developments related to the Program and will issue additional guidance as information becomes available and is conveyed to our team. Please contact one of our [Education Law](#) attorneys if you have any questions or concerns about the Program or any other issue on which we can assist.