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## FURLOUGH OF NON-TENURED PROFESSIONAL EMPLOYEES

Given the financial burdens besetting school districts, there is a natural inclination to try to reduce costs by reducing staff, and in particular, by furloughing professional staff. As you are no doubt aware, in order to furlough professional employees, school districts must adhere to the provisions of Sections 11-1124 and 11-1125.1, including the procedures outlined therein. In particular, the furlough of such employees can only be predicated upon the reduction in positions based upon one of four specific causes outlined in Section 11-1124 and only in accordance with the procedures outlined in Section 11-1124 and Section 11-1125.1. Under the School Code, the term "professional employee" as used in Section 11-1124 and Section 11-1125.1 refers to tenured professional employees as opposed to "temporary professional employee" which is used to refer to non-tenured professional employees.

Nowhere in Section 11-1124 does the statute refer to temporary professional employees. As expressly stated in both Sections 11-1124 and 11-1125.1, the causes, requirements, procedures, and protections stated therein exist only in relation to the suspension (furlough) of Professional Employees. Neither code section expressly grants any procedural or substantive protections or rights to temporary professional employees in any instances covered by either section. Therefore, on their face, Sections 11-1124 and 1125.1 do not apply to the furlough of non-tenured professional employees. Thus, the natural conclusion may be drawn that non-tenured professional employees may be "furloughed" for any reasons and under any process. Based upon a recent arbitration decision, that may not be so.

As a result of case law dating back to 1978, if a school district chooses to non-renew non-tenured professionals, at minimum, the school district cannot do so unless one of the reasons specified in §1124 exists. However, it was commonly understood, based upon the case law, that the procedures outlined in sections 11-1124 and 11-1125.1 still did not apply to those non-tenured employees facing elimination unless specifically incorporated into a collective bargaining agreement or unless such rights were otherwise expressly granted.

However, in a relatively recent arbitration decision related to the non-renewal of temporary professional employees, the arbitrator ruled that the district was required to cite one of the reasons approved in 11-1124. However, in response to the district's defense, the arbitrator further held that because the reason stated for the non-renewals was the curtailment or alteration of programming permitted under Section 11-1124(2), in order to be valid, the employer was required to comply with the procedural requirements stated in Section 11-1124.

Read on its face and in the context of prior case law, it is our belief that there is no basis for ruling that the substantive or procedural requirements of Sections 11-1124 and 11-1125.1 apply to the non-renewal of temporary professional employees. However, this arbitration award now calls this information into question. School districts will have to decide whether and to what extent it is prudent to adhere to the procedural requirements prior to asserting curtailment/alteration as the basis for terminating non-tenured professional employees.

Clients who have questions regarding issues discussed in this article, or any education law matter, should feel free to call us at 215-345-9111.