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MEMORANDUM

TO: Senate Committee on Economic Development, Housing, and General Affairs
CC: Senate Finance Committee Chair Ann Cummings
Senate Education Committee Chair Seth Bongartz
House Education Committee Chair Peter Conlon
FROM: Commissioner Michael Harrington, Vermont Department of Labor
DATE: February 21, 2025
SUBJECT: Impacts of Section 2, S.37, *An act relating to unemployment insurance eligibility and benefits*

Thank you for inviting the Vermont Department of Labor (VDOL) to give feedback on the impacts of section two (2) of S.37, *an act relating to unemployment insurance eligibility and benefits* as introduced. Specifically, making school support staff, such as paraeducators (also referred to as instructional aids and instructional assistants in different states), school bus drivers, cafeteria workers, and other staff employed by the school district, eligible to receive unemployment insurance benefits during known breaks in employment (i.e., holidays and semester breaks).

Part of the Governor's framework presented by the Agency of Education and the Department of Taxes includes considerations for strengthening the education workforce, balanced with what Vermont taxpayers can afford. Given the significant cost to school districts associated with making certain school support staff eligible for unemployment insurance (UI) benefits, we would encourage the Committee to have this conversation in tandem with the larger pre-K–12 education sustainability and transformation discussion.

As shared with the Committee, there are a few areas we would encourage you to discuss further as you contemplate this policy change:

Applicable Provisions Under Federal & State Law

Federal and State law prohibit individuals performing instructional, research, or principal administrative work for an educational institution from collecting UI during a break when they



have a reasonable assurance of continued work after the break.^{1,2} Paraeducators are generally considered to be performing “instructional” work, making them ineligible for UI under both Federal and State law.

Riddel v. Department of Employment Security, 140 Vt. 82 (1981) affirmed the Department’s interpretation that paraeducators are not eligible for UI under Vermont law. Per the case, teachers’ aides are “persons serving in an instructional capacity for an education institution with a reasonable assurance that they will perform a similar service for the same education institution in the next academic year.”³ In addition, the case states that “[t]he phrase ‘instructional capacity’ is not an ambiguous one. It means, ‘in the role of a teacher.’”⁴

Cost Impacts to the UI Trust Fund & School Districts

Most school districts are currently “reimbursable employers,” meaning they need to pay back the UI Trust Fund dollar-for-dollar for any UI benefits paid out.⁵ The existing bill language should include greater specificity on which professions would become newly eligible in the pre-K–12 system to best estimate the potential cost impact on the Trust Fund and, ultimately, school budgets.

Based on anecdotal modeling from the Department and the Joint Fiscal Office, if UI eligibility is applied to support staff and paraeducators in the pre-K–12 system (although continue to note eligibility info cited above), the impact on the Trust Fund and thus on school budgets would be between \$5.5M and \$16M annually, borne by the school districts. Including paraeducators as eligible for UI would account for the largest portion of the cost.

Workforce Retention

The UI program is designed to provide partial wage replacement for individuals who lose their employment through no fault of their own. In Vermont, as well as many other states, UI also serves as a workforce retention tool for certain seasonal industries. If an individual can demonstrate they have a return-to-work date within 10 weeks from the time they are temporarily laid off, they can collect UI without performing a work search. Vermont law allows the Commissioner of Labor to set the work search and return-to-work requirements.

Should S. 37 become law, school support staff employed by the school district would need to demonstrate a return-to-work date within this 10-week timeframe to waive the work search requirement. However, if their return-to-work date is outside the 10-week window, they would be required to conduct a work search beginning when they file for their first week of benefits.

¹ 21 V.S.A. § 1343(c)(1).

² 26 U.S.C.A. § 3304(6)(A).

³ Riddel v. Department of Employment Security, 140 Vt. 82, ¶ 5, 436 A.2d 1086 (1981).

⁴ Riddel, 140 Vt. at 82. ¶ 2.

⁵ 21 V.S.A. § 1321(c)(2).



Minnesota & Oregon

Minnesota and Oregon have recently enacted provisions making school support staff eligible for UI, but their larger resident and business populations create a scale to reasonably socialize costs that is currently not available to Vermont.

Minnesota's statute requires the Commissioner of Education to reimburse schools for costs associated with providing UI to school employees. In 2023, \$135M was appropriated for unemployment aid for school hourly workers over the summer term. It was a one-time appropriation aimed at covering the cost of the first three years of the program.⁶ Minnesota is the first state in the U.S. to make this change to unemployment compensation law.

To be eligible in Minnesota, you must have worked directly for an educational institution in a non-instructional capacity and apply for UI between terms, the period between two school years. Paraeducators, teacher aids, bus drivers, and office support workers are included in the definition of non-instructional capacity and are, therefore, eligible.⁷ In addition, per Minnesota's UI policy, individuals claiming unemployment must show proof of work search. However, this is defined broadly, including activities such as networking, and is non-quantified, unlike in Vermont.⁸

Oregon created similar legislation shortly after Minnesota passed its law. Oregon allows individuals who perform "services...in other than an instruction, research or principal administrative capacity for an education institution or institution of higher education" to be eligible for UI as of January 1, 2024.⁹ In Oregon, school employees eligible for benefits are the following:

- Custodial, maintenance, and facilities staff
- Food preparation and food service staff or others who provide support exclusively for nutrition services
- Early intervention staff (or staff who provide support for early intervention services)
- Pre-kindergarten staff (or staff who provide support for early childhood education)
- Employees of private companies (due to the fact they are not subject to reasonable assurance)
- Employees who work more than one job and are laid off from a non-school employer (they may be eligible for benefits based on the income from that employer¹⁰)

⁶ 2023 Minn. Laws, chapter 55, article 1, § 30, subdivision 7.

⁷ Minnesota Department of Employment and Economic Development, *School Employees Eligibility for UI Benefits During Summer Months*, <https://mn.gov/uimn/applicants/needtoknow/news-updates/school-employee-between-terms.jsp> (last visited Feb. 14, 2025).

⁸ Minnesota Department of Employment and Economic Development, *Seeking suitable employment*, <https://uimn.org/applicants/getpaid/stay-eligible/seeking.jsp> (last visited Feb. 14, 2025).

⁹ OR. Rev. Stat. § 657.221 (2023).

¹⁰ Oregon School Employees Association, *2023 OSEA Guide to Unemployment Insurance for School Employees*, <https://www.osea.org/news-releases/2023-osea-guide-to-unemployment-insurance-for-school-employees/> (last visited Feb. 14, 2025).



Other school employees who do not receive reasonable assurance of returning to their job after a break and who are not included in the list above are also eligible for UI. Per Oregon’s statute § 657.10 (10), “instructional assistants” are eligible for UI because their work doesn’t count as serving in an instructional capacity.¹¹

The following table is from a presentation by the Oregon Employment Department to the Oregon Interim Committee on Education on December 10, 2024.¹² It represents the initial statistics from the Oregon Employment Department on the number of school employees eligible for UI, the number of individuals who applied for and received benefits, and the amount paid out.

	2023*	2024*
Initial Claims (School Employees)	3,782	7,431
School Employees Paid at Least One Week	1,503	4,846
Total Benefits Paid to School Employees	\$8.9 M	\$24.8 M
Average Weekly Benefit Amount	\$495	\$440

*Data for customers who filed an initial claim between March 1 – October 31 who have school employee wages in their base year.

OR UI Claims and Expenditures

As mentioned above, Minnesota Statutes 2023, § 124D.995, established the “School Unemployment Aid special revenue account,” which included a one-time appropriation of \$135 million.¹³ These funds reimburse eligible local educational agencies (LEAs) for the costs associated with providing unemployment assistance to eligible school employees. The costs were assessed via a voluntary survey and are estimates only; regardless, they provide a reasonable estimation of the cost of this benefit.

The following chart covers claims from July 1, 2024, forecasted through June 30, 2025. The numbers represent 90% of Minnesota’s reported costs.

	Paraprofessionals Expenditures	Food Services Expenditures	Transportation Expenditures	Clerical Expenditures	Operating & Maintenance Expenditures	All Other Expenditures	Statewide Total
Total Costs	38,459,299	7,261,769	3,617,103	4,332,063	133,070	3,719,302	57,522,606
% of Total	66.86%	12.62%	6.29%	7.53%	0.23%	6.47%	

MN UI Expenditures for 2024-2025, unvalidated

¹¹ OR. Rev. Stat. § 657.010(10) (2021).

¹² Lindsy Leahy, “Oregon Employment Department December 2024 Legislative Days” (PowerPoint presentation, presented to the Oregon House Interim Committee on Education, Salem, OR, December 10, 2024).

¹³ 2023 Minn. Laws, chapter 55, article 1, § 30, subdivision 7.



There are a few things to note in reviewing this table:

- These estimated costs are a result of a survey in which participation is voluntary, so finalized costs will be available after June 30, 2025, with all final payments and adjustments to LEAs to be determined “after final FY 2025 data submissions are received by MDE in December 2025 and subsequently validated in January 2026.”
- An estimated \$33 million is left in the fund after the first two years. Given the survey data and anticipated additional costs through June 30, 2025, the majority of the remaining funds after FY2024 will likely be used up, and there will not be enough left in the original \$135M fund to cover a full summer’s term of unemployment costs for the LEAs.
- The report notes: “Of the various expenditure types in the survey, over two-thirds of the costs of benefits were reported in the paraprofessional employment category.”¹⁴

These reports evidence the significant costs of providing UI benefits to school support staff, including paraeducators. The Department respectfully requests that the Committee review this information and the financial impact this bill would have on Vermont schools in the context of the broader education discussion about how to stabilize costs. Should the Committee have more questions, the Department will be ready to continue discussing S.37.

¹⁴ Minn. Dep’t of Educ., Unemployment Ins. Reimbursement Aid Rep., [FY25 Unemployment Insurance Reimbursement Aid Report.pdf](#).

