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Reductions Involving State Employee Compensation and Work Schedules

What is the authority of the Legislative Branch to require employee furloughs, freeze employee pay, lay off employees, reduce employee work days, or reduce employee pay?

The Constitution does not prohibit the Legislature from passing statutes that could require these actions; however, the Legislature cannot enact any statute that interferes with the obligations of any employment agreement or requirements of federal law.

Of the approximately 46,000 state employees, there are currently approximately 6,800 management, unclassified, and unrepresented employees in the Executive Branch, excluding Higher Education. On a statewide basis, approximately 40% of all positions are supported by General Fund.

The Legislature has established statutes that establish minimum wage and work conditions and has delegated other responsibilities related to such issues to the Bureau of Labor and Industries and the Executive Branch.

The commonly used legislative authority has been to establish or eliminate position authority and increase or decrease expenditures, with the understanding that these decisions directly affect how public services are provided (i.e., work schedules, compensation rates, and hiring/lay off decisions).

Is it possible to "furlough" state employees to avoid payment of payroll expenses? (The term "furlough" could involve a shortened work week or a day off without pay.)

It is possible for laws to be passed that require state employees to be furloughed; however, the laws could not interfere with any existing employment agreement that addresses this issue.

It is possible to furlough management, unrepresented, and some represented employees for up to 15 days as a temporary interruption of employment (beyond 15 days it is considered a lay off), but these employees would be eligible to use accrued vacation (up to 250 hours) before going on leave without pay. Additionally, all of the furloughed employees that would otherwise be overtime-exempt would become eligible for overtime for any hours worked over 40 during the work week in which a furlough occurred. Additional weekly recordkeeping requirements would need to be met. In 24-hour/7-day per week state operations (i.e., state hospitals, state police, and prisons) staff coverage requirements may prompt significant reliance on employees working overtime (paid at time and one-half), offsetting furlough-related savings.

Employees represented by the Service Employees International Union (SEIU) cannot be furloughed. SEIU represents approximately 18,000 of 34,000 represented state employees, or 53%. The SEIU contract would require the employees to be laid off and, when laid off, the state would have to pay them for accrued leave balances. This would create an immediate major outlay of cash from the Treasury.

Is it possible to lay off employees due to insufficient funds?

This can be done; however, employees would be eligible to be paid for their accumulated vacation balance (up to 250 hours) and would also, after a one-week waiting period, be eligible for unemployment compensation. This would immediately increase short-term costs. The Employment Department makes the unemployment compensation payments and then charges state agencies for costs incurred. Agency budgets only include funds to reimburse the Employment Department for usual and customary unemployment expenditures. Additional agency spending cuts would be necessary for extraordinary unemployment expenditures.

To realize General Fund savings, it would be necessary to identify specific positions by fund type and target those positions. This would be difficult since many of the positions are in multi-funded agencies. Upon issuance of lay off notices, a bumping process would begin.

Is it possible to freeze employee pay increases (step increases and cost-of-living adjustments)?

It is possible for laws to be passed that freeze pay increases for management and unrepresented employees. The new laws would need to supercede existing ones, which give the Department of Administrative Services authority to set these compensation rates.

In the 2002 third special session, the Legislature under funded salary/benefit changes by $22.7 million and expected state agencies to freeze cost-of-living increases for management and unrepresented employees. Thus, a portion of savings from a freeze of employee pay action has already been utilized.

To freeze pay increases for represented employees, it would be necessary for the Executive Branch and involved unions to mutually agree to reopen and re-negotiate existing employment agreements. Currently, there are approximately 12 unions and 30 employment agreements covering about 34,000 employees.

What are the potentially adverse affects of taking any of these actions?

If these types of reductions are implemented based on whether or not employees are represented or supported by the General Fund, they are likely to create pay inequities for staff performing similar duties around the state. These types of actions may also affect the ability to recruit new employees, attract qualified line staff to management positions, retain existing staff, and may prompt unionization of additional employees.

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