

Current Trends in Public Sector Employment: Collective Bargaining Trends

NIU Financial Forecast Forum
January 21, 2021

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Police Reform Legislation House Bill 3653; P.A. _____

Key Labor and Employment Aspects HB 3653

1. **No change to discipline / arbitration provisions of the Public Labor Relations Act**
2. **Expanded police licensing requirements**
3. **Residency becomes a permissive subject of bargaining in police departments with pop. >100k**
4. **No changes to qualified immunity**
5. **Body cams required. Implementation date based on community size**
6. **Eliminates affidavit requirement from UPODA**
7. **New whistleblower protections for all public employees, not just police officers**

EMPLOYEE RIGHTS

PAID SICK LEAVE AND EXPANDED FAMILY AND MEDICAL LEAVE UNDER THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT

The Families First Coronavirus Response Act (FFCRA or Act) requires certain employers to provide their employees with paid sick leave and expanded family and medical leave for specified reasons related to COVID-19. These provisions will apply from April 1, 2020 through December 31, 2020.

PAID LEAVE ENTITLEMENTS

Generally, employers covered under the Act must provide employees:

Up to two weeks (80 hours, or a part-time employee's two-week equivalent) of paid sick leave based on the higher of their regular rate of pay, or the applicable state or Federal minimum wage, paid at:

- 100% for qualifying reasons #1-3 below, up to \$511 daily and \$5,110 total,
- ⅔ for qualifying reasons #4 and #5 below, up to \$200 daily and \$2,000 total, and
- Up to 10 weeks more of paid sick leave and expanded family and medical leave paid at ⅓ for qualifying reason #6 below for up to \$200 daily and \$12,000 total.

A part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

ELIGIBLE EMPLOYEES

In general, employees of private sector employers with fewer than 500 employees, and certain public sector employers, are eligible for up to two weeks of fully or partially paid sick leave for COVID-19 related reasons (see below). Employees who have been employed for at least 30 days prior to their leave request may be eligible for up to an additional 10 weeks of partially paid expanded family and medical leave for reason #6 below.

QUALIFYING REASONS FOR LEAVE RELATED TO COVID-19

An employee is entitled to take leave related to COVID-19 if the employee is unable to work, including unable to telework, because the employee:

- | | |
|---|---|
| <ol style="list-style-type: none">1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;2. has been advised by a health care provider to self-quarantine related to COVID-19;3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2); | <ol style="list-style-type: none">5. is caring for his or her child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons; or6. is experiencing any other substantially similar condition specified by the U.S. Department of Health and Human Services. |
|---|---|

ENFORCEMENT

The U.S. Department of Labor's Wage and Hour Division (WHD) has the authority to investigate and enforce compliance with the FFCRA. Employers may not discharge, discipline, or otherwise discriminate against any employee who lawfully takes paid sick leave or expanded family and medical leave under the FFCRA, files a complaint, or initiates a proceeding under or related to the Act. Employers in violation of the provisions of the FFCRA will be subject to penalties and enforcement by WHD.



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

For additional information
or to file a complaint,
1-866-487-5243
TTY: 1-877-889-6627
dol.gov/agencies/whd



WH000100000

Families First Coronavirus Response Act

FFCRA

- **Employer mandate expired December 31, 2020**
- **Some Unions have demanded to bargain over replacement benefits**
 - ***See Village of Bartlett and MAP, Case No. S-CA-20-224 (Exec. Dir., Dec. 2, 2020)***
- **Some employer approaches:**
 - **Grant FFCRA-style benefits**
 - **Grant reduced version of FFCRA-style benefits**
 - **Reject demand and apply status quo contract language**
 - **What about employees who are healthy but quarantined?**
 - **Keep in mind President Biden's American Rescue Plan**

FFCRA

- **“American Rescue Plan,” as currently outlined:**
 - **Would renew FFCRA and expand coverage to employers with 500+ employees**
 - **Would give leave rights to healthcare workers and first responders**
 - **Increase leave to 14 weeks**
 - **Increase benefits to \$1,400 per week**
 - **State and local governments would be reimbursed for leave costs**
 - **Would expire September 30, 2021**



Collective Bargaining Wage Trends

2020 Employer Responses To The Pandemic

- **Many employers took a “wait and see” approach**
 - **Some employers pursued:**
 - **Furlough days**
 - **Layoffs**
 - **Hiring freezes**
 - **Wage freezes**
 - **Other monetary concessions**
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2020 Employer Responses To The Pandemic

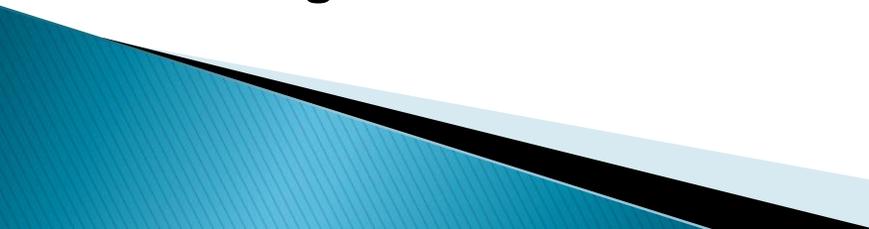
➤ One model:

- May 1, 2020 wage increase changed to 0.00%
- If revenue metrics on or after October 1, 2020 were within 10% of FY2021 budget, wage increases restored prospectively
- If revenue metrics on or after October 1, 2020 were within 5% of FY 2021, wage increases restored retroactively

➤ If you consider this approach

- Carefully identify revenue metrics that are right for your jurisdiction
- Be cautious about any seasonal fluctuations in your revenue streams

Mid-term Bargaining

- **Your ability to obtain mid-term cost concessions from your labor unions is closely tied to what leverage you do and do not have.**
 - **Be especially mindful of:**
 - **Emergency clauses**
 - **Layoff clauses**
 - **Restrictions on the right to use subcontractors/non-bargaining unit employees**
 - **Minimum staffing guarantees**
 - **Zipper clauses, including impact and effects bargaining obligations**
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National First Year Negotiated Wage Increases – State and Local Govt. Employees (w/o lump sums)

YEAR	WEIGHTED AVERAGE	AVERAGE	MEDIAN
2011	0.4%	0.9%	0.0%
2012	0.8%	1.1%	1.0%
2013	1.1%	1.6%	1.8%
2014	2.2%	1.8%	2.0%
2015	2.8%	2.2%	2.0%
2016	2.3%	2.4%	2.3%
2017	2.2%	2.1%	2.0%
2018	2.6%	2.8%	2.3%
2019	2.9%	2.8%	2.6%
2020	2.5%	2.6%	2.5%

Source: Bloomberg BNA

2020 National First Year Negotiated Wage Increases State and Local Govt. vs. All Employees Less Construction & Govt.

	Government	All Employees	Difference
Weighted Avg.	2.5%	3.0%	0.5%
Average	2.6%	3.1%	0.5%
Median	2.5%	2.8%	0.3%

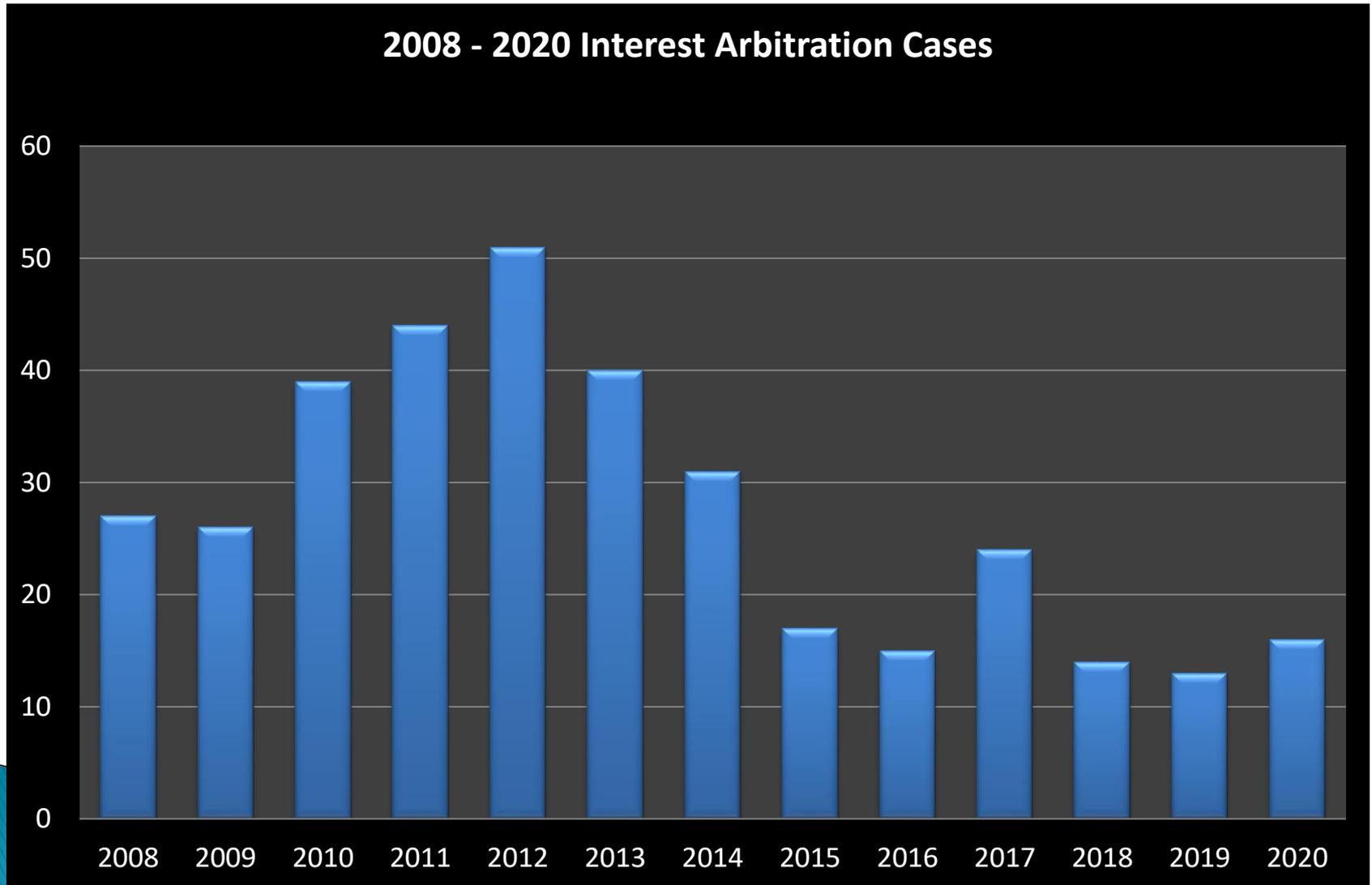
Source: Bloomberg BNA



Police / Fire / PW Wage Increases

	2019	2020	2021	2022
Police	2.44% (238)	2.50% (186)	2.58% (116)	2.57% (55)
Municipal Fire	2.27% (95)	2.40% (76)	2.37% (47)	2.35% (21)
F.P. Districts	2.51% (35)	2.41% (24)	2.38% (13)	2.50% (5)
P.W.	2.28% (94)	2.36% (79)	2.48% (50)	2.43% (18)

2008-19 Illinois Interest Arbitration TOTAL AWARDS





Illinois Interest Arbitration Awards Issued in 2020 (and 2019)

	2018	2019	2020	2021	2022
No. of Decisions	5 (12)	9 (13)	8 (8)	6 (2)	3
Avg. Award	2.10% (2.53%)	2.26% (2.58%)	2.22% (2.46%)	2.08% (2.50%)	2.25%
Highest Award	2.75% (3.00%)	2.85% (3.50%)	2.50% (3.00%)	*3.00% (2.75%)	2.50%
Lowest Award	1.50% (2.20%)	1.75% (2.00%)	1.75% (2.00%)	1.75% (2.25%)	2.00%

Notable Interest Arbitration Decisions

- ***Village of Skokie and FOP, S-MA-19-113 (Kossoff, Nov. 27, 2020)***
 - **Shorter contracts are preferred over longer contracts:**

“The present economic situation, however, is fraught with uncertainty. For example, unemployment, although improving, is still at high levels. The recovery that began is now slowing down. ... Another uncertainty is whether consumer habits have changed as a result of the pandemic.... We cannot begin to provide reliable answers to the foregoing questions at this time.”

Notable Interest Arbitration Decisions

➤ *Village of Skokie*, continued

■ On the use of external comparables:

“This arbitrator agrees with Arbitrator Reynolds’s opinion that external comparability is entitled to be given equal weight with the cost of living criterion even in poor economic times....”

“This arbitrator also agrees with Arbitrator Benn’s opinion... it is appropriate to distinguish between contractual terms negotiated during poor economic times and those agreed to in normal times.”

“This arbitrator would not consider any contract negotiated or agreed to prior to March 9, 2020, as having been influenced by the COVID-19 pandemic.”

Notable Interest Arbitration Decisions

➤ *Village of Skokie*, continued

■ On the interests and welfare of the public:

“Given that the Village has curtailed certain public services, continued its hiring freeze, and deferred necessary capital improvements, a portion of which is paid for from the General Fund, it would appear to this arbitrator that the Village’s final offer is more in the interests and welfare of the Skokie public than the Union’s in that it will allow for more funds to be available, or available sooner, for the resumption of normal public activities which are now on hold while at the same time providing a very fair wage package for the police force.”

Notable Interest Arbitration Decisions

➤ ***Shelby County Sheriff and FOP, S-MA-18-345 and 346***
(Szuter, May 11, 2020)

▪ **On the impact of COVID-19:**

“It would be remiss of the Arbitrator not to take ‘arbitral notice’ of the novel coronavirus pandemic which between the hearing date and the filing of briefs has resulted in protracted shutdown of the economy in every state.”

“Notwithstanding the admission of the Employer’s current ability to pay, the failure of some anticipated revenue sources to arrive is very likely but the amount is not currently measurable and the timing is not identifiable.... The only certainty is the uncertainty with bleak prospects.”

Notable Interest Arbitration Decisions

➤ *Shelby County Sheriff, cont.*

“The COVID 19 outbreak is the most significant changed circumstance. It impacts the employees on a day-to-day basis being first responders.... The impact the COVID 19 outbreak has on the Employer is as potentially significant but also has affects both on the Employer and the employees. With so much of its revenue dependent on tourism, it is likely the County’s revenue produced by that source will severely decline in 2020. On the generous assumption that a recession will NOT ensue, that nonetheless strains the revenue carryover to the following years.”

“...the factor of changed circumstances counsels a conservative instinct which is the final support for adopting the Employer’s final offer for the Deputy Unit base wage increase.”

Notable Interest Arbitration Decisions

➤ ***Shelby County Sheriff, cont.***

- **But, for the unit of non-sworn dispatchers...**

“....The Employer offer of merely the cost of living takes no account of the changed circumstance. Compensation should follow on that risk.”

➤ **Compare with Sangamon County Sheriff and FOP, No. S-MA-20-057 (Reynolds, Oct. 20, 2020)**

“While the Unit members have faced increasingly difficult working conditions, I don’t believe permanent extra wage increases are the warranted response. The pandemic, hopefully, won’t be permanent.”