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Pennsylvania Court Rules Head Start Program Staff Not Eligible for Unemployment over Summer Break

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Head Start employees in Pennsylvania who are filing for unemployment compensation during summer recess this year may be in for a disappointment. In *Montgomery County Head Start v. Unemployment Compensation Board of Review,*[1] a recent decision by the Pennsylvania Commonwealth Court, a Head Start program run by a nonprofit "direct-grantee" was held to qualify as an "educational institution" for the purposes of the state's unemployment compensation (UC) statue. Because employees of "educational institutions" are not entitled to UC benefits during regularly scheduled school breaks, this recent ruling by Pennsylvania's appellate court has the potential to significantly impact the unemployment compensation benefits available to Head Start employees in Pennsylvania during summer recess and could influence decisions in other states as well.

Like most other states, Pennsylvania's UC Law contains a provision taken from the Federal Unemployment Tax Act (FUTA) which generally prohibits employees of an "educational institution" from collecting unemployment compensation benefits if they are unemployed during their summer vacation, so long as they have a reasonable assurance of return to work in the next academic year after the break.[2] This mandatory denial of unemployment compensation benefits to school employees during recess has been referred to as the "between the terms denial provisions" of the UC law.[3] However, because neither the state law, nor the federal law from which it was modeled, define the term "educational institution," the issue of exactly which employees fall within these mandatory denial provisions has always been open to interpretation.

In years past, the Pennsylvania UC Board has taken the position that only local board of education-run Head Start programs qualify as "educational institutions" under the UC law. This position was based almost exclusively on an Unemployment Insurance Program Letter (UIPL) issued by the U.S. Department of Labor in 1997 which addressed, in general terms, the applicability of the between the terms denial provisions of FUTA to "Community Action Group"-run and "local board of education"-run Head Start programs.[4] According to the UIPL, "local board of education"-run Head Start programs qualify as "educational institutions," while "Community Action Group"-run programs do not. As a result, the Pennsylvania UC Board historically denied benefits to employees laid off for summer recess from local board of education-run Head Start programs and awarded such benefits to employees at all other Head Start programs.

In December of 2007 however, the Pennsylvania Commonwealth Court rejected the use of this overly simplified method of determining whether a Head Start program qualifies as an "educational institution."[5] In its ruling, the court first pointed out that a UIPL is merely an "administrative interpretation of federal law" which is "simply not binding authority upon the court." It also found that the UIPL, which addressed Head Start programs run by local boards of education and by "Community Action Groups," simply did not address the type of program at issue, namely programs run by nonprofit "direct grantees" that are not "Community Action Groups." The court further noted that the UIPL relied upon by the Board is too conclusory to provide direction on whether a "direct grantee"[6] Head Start program can be an "educational institution."

Instead, the court in *Montgomery County* relied upon prior case law in order to determine criteria to be applied in evaluating whether an entity qualifies as an "educational institution."[7] In so doing, the Commonwealth Court held that a "direct grantee" Head Start program may qualify as an "educational institution" for the purposes of the UC law. Some of the factors the court found relevant in determining whether an entity qualifies as an educational institution include: (1) various official documents, including the IRS tax-exempt determination letter, refer to the entity as an "educational organization"; (2) all parties including the employee claimants, refer to the facility as a school; (3) the grantee's instructional staff refer to themselves as "teachers"; (4) the majority of the grantee entity's employees are either teachers or teacher assistants; (5) the grantee's teachers are required to meet specific minimum educational requirements in the field of early child education; (6) an educational curriculum is followed; (7) the program is required to meet federal educational standards; (8) program participants are regularly tested to assure these standards are met; and (9) the grantee falls within the "common understanding" of what is an "educational institution." Finally, the court held that the fact that an entity does not operate a school exclusively, but provides other services that are not academic, does not, in itself, exclude that entity from being considered an educational institution. Compared to the approach utilized by the UC Board in years past, the criteria established in *Montgomery County* will allow for a greater number of Head Start programs to qualify as "educational institutions."

Other state courts that have considered this issue have reached mixed results. In Texas[8] and Colorado[9], Head Start programs have been held ***not*** to qualify as educational institutions, while the courts in North Carolina[10] and Iowa[11] have held the opposite under their respective states' UC laws. One common factor which has had a bearing on the ultimate determination reached in each of the cases, however, was the degree of education provided by the Head Start program at issue. Those whose educational components have been determined by the court to be "incidental" to the broader social services offered by the program have not qualified as "educational institutions," while those programs whose educational elements were found to be the primary function of the program have qualified.

As mentioned earlier, the issue of whether Head Start qualifies as an "educational institution" is significant because it directly affects the availability of UC benefits for employees during regularly scheduled breaks. It therefore goes without saying that the *Montgomery County* holding will have less than a warm reception by those Head Start employees who, after a number of years of consistently receiving unemployment compensation during summer recess, have come to rely on the availability of those benefits to supplement their income. On the other hand, because an employer's UC insurance premiums are linked to the number of UC claims filed

against that employer, a Head Starts program's "educational institution" status may save the program a substantial sum of money. These savings may, in turn, be applied directly towards the services provided to Head Start children and families, or may be utilized to increase salaries of its school-year employees.

In any event, following the *Montgomery County* decision it seems clear that a significant number of Pennsylvania Head Start programs which were formerly not considered to be "educational institutions" by the UC board will now fit into the new definition of educational institution articulated by the court.[12] As a result, the employees of those Head Start programs, who have formerly been able to collect UC benefits during breaks, should expect to find themselves ineligible for benefits when they file this summer. Those Head Start programs most likely to fit within this new definition of "educational institution" include "direct-grantee" or "stand-alone" agencies whose primary focus involves providing educational services. Although not directly addressed in the *Montgomery County* holding, Community Action Agencies (CAAs) offering Head Start may also be affected by this decision. A key issue will be the nature and degree of the CAA's overall focus on education. While the *Montgomery County* case opens the door for the argument that a Community Action Group-run Head Start program focusing primarily on academic instruction may qualify as an "educational institution," those Community Action Groups whose focus as a whole is primarily related to non-academic social services may be able to distinguish themselves from the employer in the *Montgomery County* case and thereby avoid the "educational institution" designation.[13]

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1 *Montgomery County Head Start v. Unemployment Compensation Board of Review*, 938 A.2d 1137 (Pa. Cmwlth. 2007) *(Montgomery County)*.

2 43 P.S. §802.1 (2007).

3 Unemployment Insurance Program Letter (UIPL) #40-79 (August 13, 1979).

4 Unemployment Insurance Program Letter (UIPL) #41-97, 62 Fed. Reg. 60, 104-01 (November 6, 1997).

5 *Montgomery County*.

6 A "Community Action Group" is typically an umbrella corporation which runs a number of social service programs which may include a Head Start program. On the other hand, the term "direct grantee" is used by the court in *Montgomery County* to refer to a corporation whose primary function is the operation of a Head Start program. These agencies are also referred to in the Head Start community as "stand-alone" Head Start programs.

7 Specifically, the court cited *Easter Seal Society for Handicapped Children and Adults of Philadelphia, Bucks, Chester, Delaware and Montgomery Counties v. Unemployment Compensation Board of Review*, 720 A.2d 217 (Pa. Cmwlth. 1998).

8 *Employment Comm'n v. Child, Inc.*, 738 S.W.2d 56 (TX 1987).

9 *Industrial Comm'n v. Board of County Commissioners*, 690 P.2d 839 (CO 1984).

10 *In re Huntley*, 255 S.E.2d 574 (NC 1979).

11 *Simpson v. Iowa Department of Job Service*, 327 N.W.2d 775 (Iowa 1982).

12 This is especially evident since many of the factors articulated by the *Montgomery County* court as relevant in reaching the conclusion that the employer *does* qualify as an "educational institution" are present in all federally-funded Head Start programs.

13 The Pennsylvania UC Board recently issued a decision distinguishing a Community Action Group-run Head Start from the facts in the *Montgomery County* case and holding that the Community Action Group at issue did not qualify as an "educational institution." Appeal No. B-08-09-H-1078 (Issued April 17, 2008). The Board relied on the facts that in that case, unlike in *Montgomery County*, the employer did not wish to be considered an "educational institution" and therefore did not object to the teachers receiving unemployment compensation over the summer, and that because the employer conceded that it was a Community Action Agency, the UIPL's guidance on not classifying "Community Action Groups" as "educational institutions" would be followed.