


**STATE OF HAWAII**  
**DEPARTMENT OF EDUCATION**  
**KA 'OIHANA HO'ONA'AUAO**  
P.O. BOX 2360  
HONOLULU, HAWAII 96804

OFFICE OF THE SUPERINTENDENT

December 12, 2024

TO: The Honorable Roy Takumi  
Chairperson, Board of Education

FROM: Keith T. Hayashi  
Superintendent 

SUBJECT: Temporary hazard pay adjustments for Department of Education employees  
excluded from collective bargaining

1. EXECUTIVE SUMMARY

The State of Hawai'i, Hawai'i State Department of Education (Department), and the Hawai'i Government Employees Association (HGEA) have reached an agreement on a payout to eligible public employees included (included employees) in bargaining units (BUs) 2, 3, 4, 9, and 13 for Temporary Hazard Pay (THP), pursuant to their respective collective bargaining agreements (CBA).

In addition to the employees in these bargaining units, the Department also employs individuals not included in any applicable collective bargaining unit.

[§89C-2, Hawaii Revised Statutes \(HRS\)](#), requires the "appropriate authority" to adjust the wages and benefits of its employees who are excluded from collective bargaining. Such employees are entitled to adjustments that are "not less than" those provided to included counterparts under the collective bargaining agreements. The Hawai'i State Board of Education (Board) is the statutory "appropriate authority" for Department employees.

The Department recommends that the Board approve equivalent payouts to its eligible excluded employees in amounts equal to those of eligible included employees.

AN AFFIRMATIVE ACTION AND EQUAL OPPORTUNITY EMPLOYER

2. BACKGROUND

On September 23, 2020, HGEA filed a Step 2 Class Grievance (DOE #21-03-010) on behalf of all Affected Employees employed by the Department, alleging violations of CBA Articles on Conflict, Maintenance of Rights and Benefits, Rights of the Employer, and THP. The HGEA claimed that employees who were required to report to work were not awarded THP as entitled by their respective CBA.

On November 13, 2020, the Department issued its response denying the grievance.

On November 24, 2020, HGEA filed its notice of intent to proceed to arbitration.

On January 18, 2024, Arbitrator Thomas E. Crowley issued his Decision, Order, and Second Partial Final Arbitration Award.

Notwithstanding the January 18, 2024 Arbitration Award, the Parties mutually agreed to settle (Settlement Agreement) any and all matters, claims, and causes of action arising from or related to the subject grievance. The Settlement Agreement supplanted the arbitration award.

On November 13, 2024, the Department was notified by the HGEA that eligible Affected Employees ratified the Settlement Agreement.

Eligible Affected Employees were able to submit a request for THP from November 14, 2024 thru December 1, 2024 at 11:59:59 p.m. (HST).

3. DISCUSSION

The Department recommends the same payouts for THP accepted by the HGEA for included employees in BUs 2, 3, 4, 9, and 13 be approved by the Board for their respective excluded counterparts, subject to the same requirements as outlined below.

The Hawai'i State Legislature during the 2024 session, through [Act 49, Session Laws of Hawaii 2024 \(HB 2374 HD1 SD2 CD2\)](#), authorized and appropriated general funds and non-general fund expenditure ceilings to address these collective bargaining cost items. Qualified general funded employees will be paid via funds appropriated general funds to the Department of Budget and Finance that will be allocated to the Department once the actual cost is determined. Qualified non-general fund employees will be paid from the non-general fund source they are currently established in.

There are approximately 247 Department excluded counterpart employees for which this would be applicable.

Per the Settlement Agreement, the parties have mutually agreed to the following terms:

1. Tier 1  
\$20,000 THP lump sum paid in one installment to all Affected Employees who were physically at work; provided that:

For Affected Employees who worked a 12-month work schedule, the number of days required is 375 days or more on and/or between March 4, 2020, through March 25, 2022.

For the Affected Employees who worked a 10-month work schedule, the number of days required is 300 days or more on and/or between March 4, 2020, through March 25, 2022.

Tier 2  
\$10,000 THP lump sum paid in one installment to:

Affected Employees who worked a 12-month work schedule and were physically at work at least one day but less than 375 days on and/or between March 4, 2020, through March 25, 2022.

Affected Employees who worked a 10-month work schedule and were physically at work at least one day but less than 300 days on and/or between March 4, 2020, through March 25, 2022.

Affected Employees who did not physically report to work during the identified period would not be entitled to compensation.

2. For purposes of this Settlement Agreement, a "day" is counted if the Affected Employee physically reported to work on a scheduled work day during work hours, regardless of the duration at work.
3. The following shall not be counted toward the physically at work day requirement:
  - a. Vacation leave;
  - b. Sick leave;
  - c. Compensatory time off;
  - d. Workers' compensation;
  - e. Telework or work from home arrangements;
  - f. Administrative leave with or without pay;
  - g. Leave without pay;

- h. Families First Coronavirus Response Act leave;
  - i. Family and Medical Leave Act leave; and
  - j. Overtime hours and other salary considerations, etc.
- 4. All Affected Employees will be required to complete and submit a form to self-assess and document their tier placement by November 27, 2024, subject to approval by the supervisor. In the event of a disagreement between the Affected Employee and supervisor regarding tier placement, the Affected Employee will have 30 calendar days to present information/documentation to substantiate their tier placement to the Office of Talent Management Assistant Superintendent or designee. The Office of Talent Management Assistant Superintendent or designee shall thereafter provide a response to the Affected Employee. In the event that there still is disagreement, the Union will have 30 calendar days from the date of the Office of Talent Management Assistant Superintendent's or designee's response to present information/documentation to substantiate a different tier placement to a mutually agreed upon third party for review and final decision making.
- 5. Affected Employees who are no longer employed are also eligible for the lump sum payments, provided they complete and submit the form required by the Employer by November 27, 2024.
- 6. Affected Employees who were also employed by any State of Hawai'i executive branch department, the Hawai'i Health Systems Corporation, University of Hawai'i, and/or Judiciary, during the award period, may only receive a combined total of \$20,000 from the Department and any other employer listed in this paragraph. Affected Employees receiving disbursements by the Department and any of the other listed employers, will be subject to audit. If it is found that an Affected Employee received more than a combined total of \$20,000 from the Department and/or the above-mentioned employers, the employee shall reimburse the Department.
- 7. The Employer agrees to compensate Affected Employees in Tiers 1 and 2, subject to the Employer's ability to obtain funding in its entirety for this purpose from the legislature.
- 8. The THP will be paid as a lump sum in one (1) installment to each Affected Employee in Tiers 1 and Tier 2, processed as a separate payment from the Affected Employee's bi-monthly check, via the payroll system. The payment will be no later than March 20, 2025. The Parties are aware that the Employees' Retirement System (ERS) requires the Employer to report such payout broken down by pay period.

9. The Employer shall withhold all taxes and retirement contributions required by law for the Affected Employees. Union dues will also be deducted from this payment. Affected Employees are responsible for all tax liabilities incurred as a result of this Settlement Agreement.
10. The Union agrees that the Employer has no control over ERS calculations and will not hold the Employer responsible for any actions taken by the ERS regarding Affected Employees' ERS retirement benefits. The Union understands that the ERS has informed the Employer that the lump sum payment is creditable as "compensation" only for employees who became an ERS member before July 1, 2012.
11. This Settlement Agreement shall be restricted in scope and application to the parameters of this class grievance and shall not be construed in any manner or form used as precedent in any other case or situation.
12. The Parties shall endeavor to jointly resolve any unanticipated issues that may arise regarding this Settlement Agreement.
13. Nothing contained in this Settlement Agreement shall be construed as an admission of liability or wrongdoing by any of the Parties.
14. Neither the Union nor the Affected Employees shall institute any further actions, including grievances or actions at law or in equity against the Employer, its officers, employees, or agents concerning the actions taken by the Employer as it relates to THP pay incurred on and/or between March 4, 2020, and March 25, 2022.
15. Following the execution of the terms of this Settlement Agreement, the Union's class grievance filed on behalf of Affected Employees is considered fully resolved and there shall be no future claims for THP incurred on and/or between March 4, 2020 and March 25, 2022.

4. RECOMMENDATION

The Department recommends that the Board approve equivalent payouts to its eligible excluded counterpart employees in amounts equal to those of its eligible included employees covered by a CBA as allowable under HRS § 89C-3.

KTH:sb

c. Office of Talent Management