



COVID-19 Employment FAQ for Schools

On March 11, 2020, the World Health Organization (WHO) declared the coronavirus (COVID-19) a global pandemic. As COVID-19 spreads throughout the United States and Illinois, school districts must continue to plan for various contingencies that will result as the virus becomes more widespread.

This Frequently Asked Questions (FAQ) document is intended to address common questions posed by human resource professionals in Illinois' public school systems. As with all employment issues, the answers to these questions will depend on the unique circumstances of each situation as well as any specific language in collective bargaining agreements, employment manuals and the like. Be sure to refer to your specific board policies and collective bargaining agreements before acting on any issue below.

Moreover, please note that we will be distributing this in hyperlink format as it will be updated on our website as more information becomes available. Please feel free to refer back to the hyperlink for the most up to date information and to pose your own questions to incorporate in this FAQ document.

Q: The news frequently reports that China, Iran, South Korea, Italy and Japan are high risk travel locations. What if a staff member or a member of the staff's immediate family has recently traveled to one of these locations?

A: Travelers from [Level 3 countries](#) (currently China, Iran, Italy and South Korea) are subject to extensive restrictions on entry to the United States. The Centers for Disease Control (CDC) recommends that individuals who have been to Level 3 countries in the last 14 days be redirected to one of eleven airports where the CDC is conducting entry screenings of passengers, including O'Hare International Airport. Citizens of the U.S. will be screened and then informed of their level of restriction, which may include direct admission to a medical facility or placement at a federal, state or local quarantine location for a 14-day period. Some travelers will be directed to self-quarantine at home. If school employees have traveled from one of these regions, it is reasonable to expect that they must comply with the directives of the CDC and remain in quarantine at home or a facility for the entire 14-day restriction period.

The [Illinois Department of Public Health](#) (IDPH) has indicated that school staff and students who have traveled to any area with a Level 3 travel warning issued by the CDC should remain home for 14 days following their return. Level 3 countries have travel warnings that would result in associated quarantine by IDPH. These quarantines can be enforced by school districts to prevent the spread of the disease. School districts should watch the CDC and IDPH websites closely for additional information about travel warnings.

Q. Does a school district have the ability to exclude and/or ask staff and/or volunteers to not be present on school grounds?

A: The Illinois State Board of Education's (ISBE) [March 10, 2020 Guidance](#) provides information as to this question on pages 2-3, question 7. However, we take the position that each school district maintains the local control, in consultation with the IDPH, to ask employees to not be present in situations where they may have been exposed and/or contracted the virus. School districts are in the untenable position of balancing student and staff health and safety and potential or perceived violations of employees' rights. It is fine balance, however, in these times of crisis, and it is imperative that we err on the side of maintaining the health and safety of our students and staff.

ISBE is also deferring to local school districts to determine whether the school districts should allow volunteers to be present on school grounds in an effort to contain the spread of the virus. This is a matter of local control and we recommend that volunteers and visitors be generally restricted at this time.

In the end, we believe that school districts maintain the local control regarding their employees and students, however, we recommend the review of collective bargaining agreements, as well as consultation with the board's attorney, in the event your school district decides to isolate staff members to ensure you are complying with those obligations.

Q: Does a school district as an employer have a duty to protect its employees from COVID-19?

A: All employers, including school districts, have a general duty to provide a safe working environment. For most employers in the face of the spread of an infectious disease, this duty will involve the application of basic infection control practices, including encouraging good hygiene, suggesting employees stay home when they are sick, providing tissues and waste receptacles in convenient locations, cleaning facilities and discouraging employees from using other workers' phones, desks and equipment. For more information regarding creating a safe working environment while addressing COVID-19, the Occupational Safety and Health Administration (OSHA) has issued an extensive [planning guidance](#) on the subject.

Q: Are school staff required to report confirmed diagnoses of COVID-19 to public health officials?

A: Yes. The IDPH has classified COVID-19 as an "unusual case/cluster of cases that may indicate a public health hazard." As such, school personnel are required to report a COVID-19 diagnosis to the IDPH within 3 hours of receiving notice of the diagnosis. School officials must make the report to ensure monitoring and support for school officials and students. Note that reporting a diagnosis is not the same as conducting screenings for the virus. School districts should contact the local health department and IDPH regarding suspected cases as well, but they do not have an obligation to screen staff or students for the disease and should not undertake that responsibility.

[Reports](#) can be made to the Illinois Department of Public Health Division of Infectious Disease at 217-785-7165 or the Illinois Emergency Management Agency at 800-782-7860 (Illinois only) or 217-782-7860.

Q: Must public health officials notify schools if a staff member is diagnosed with COVID-19?

A: Yes. In situations where an illness is considered an outbreak or pandemic, the IDPH and the CDC are responsible for monitoring and notifying personnel in areas that the individual has frequented so as to alert the public. Public school officials typically receive the information directly from the family, physician and IDPH or some combination of the three. If a staff member is diagnosed with COVID-19, the school district should work directly with the IDPH and the CDC to notify staff, students and community members. If needed, the notification protocol will be similar to the 2009 H1N1 Influenza outbreak and 2018-2019 measles outbreaks.

Q: With Spring Break coming quickly, can we survey staff to determine if they are traveling over the break?

A: Yes, as long as the survey is voluntary. A school district cannot require a staff member to provide information regarding their activities during non-work hours, but can ask staff members to volunteer this information.

Q: In preparation for an outbreak of COVID-19, can we ask employees questions about their health in order to anticipate absenteeism?

A: No. You cannot ask an employee to disclose a disability in the absence of objective evidence that COVID-19 symptoms will cause a direct threat and such evidence is not present prior to this outbreak. You can, however, take other steps to plan for absenteeism, including asking employees to share non-disability related information regarding whether or not they will be able to work. These include questions about transportation, child or dependent care, and whether the employee or other members of their household fall in a high risk category. For further guidance on this issue, see the [EEOC fact sheet on pandemics](#). We expect further guidance on this to be released by the CDC.

Q: The School Code (105 ILCS 5/24-6) allows the use of sick leave for school employees who are quarantined at home. What does “quarantine” under this section mean?

A: Unfortunately, quarantine is not defined in the School Code, therefore, we must look to the plain meaning of the word. Based on the definitions of quarantine, defined generally as a “state of enforced isolation,” we believe sick leave is triggered when a person is instructed to stay home by a health care provider or State or local government, including the county health department, IDPH, ISBE, or a school district. Therefore, if a school district requires an employee to stay home, sick leave can be used.

Q: If an employee has been exposed to COVID-19 but shows no symptoms, should the school district require that the employee remain home?

A: Currently, the IDPH is not recommending that people exposed to the virus *automatically* be quarantined. If an employee is exposed to COVID-19, we recommend that the school district be in close communication with the IDPH and the local county health department to determine whether it is acceptable for the employee to report to work.

Q: Should an employee who stays home because of exposure or infection of COVID-19 be required to use sick leave for the period of quarantine or illness?

A: There are several different scenarios that may arise involving the use of sick leave and the answer to each scenario may be impacted by a collective bargaining agreement. Without reviewing collective bargaining language, we anticipate the following scenarios:

- An employee self-quarantines because of exposure to the virus or symptoms of COVID-19: If the self-quarantine is due to exposure of the virus, it would be up to the school district to allow or disallow the use of sick leave as self-quarantine does not fall within the statutory use of sick leave. An employee who shows symptoms of the virus can elect to use sick leave as they would for any illness and remain home for the duration of the illness.
- An employee is quarantined by the CDC, the IDPH, or the county health department for exposure to, symptoms of, or a diagnosis of COVID-19: The employee can use sick leave for the duration of the quarantine. Whether the school district requires the use of sick leave under this circumstance is a local decision currently. There is proposed legislation that may force employers to extend sick leave for quarantined individuals. This is an evolving issue.
- An employee is sick with typical respiratory symptoms and is awaiting medical testing for COVID-19: The employee can use sick leave for the duration of the illness.
- A school district requires the employee to remain out of school because of reported exposure to or symptoms of COVID-19: This question should be bargained with the employee’s local bargaining unit,

but one possibility is to treat this situation as a paid administrative leave instead of sick leave because the school district is requiring the leave. There is an argument to the contrary, particularly for non-certified staff employed on an hourly basis. We recommend speaking to the board's attorney about various options based on the type of employee involved and the district's collective bargaining agreement.

Please note we have been in contact with TRS and have been informed that they will be releasing an employer bulletin shortly that addresses the TRS implications related to COVID-19.

Q: Can an employee under quarantine because of exposure to COVID-19 use unpaid FMLA leave instead of sick leave?

A: No. The Family and Medical Leave Act (FMLA) does not include a provision for quarantine. Instead, employees have to demonstrate that they (or their immediate family members) have a qualifying condition requiring FMLA leave. If employees have a diagnosis of COVID-19 or need to care for a qualified family member who has a diagnosis, they may be eligible for FMLA leave, but the mere exposure to COVID-19 does not constitute a qualifying condition at this time.

Q: Can an employee choose to “self-quarantine” in order to avoid spreading or contracting COVID-19?

A: We have received questions from clients regarding self-quarantine that either involve an employee who has been exposed to COVID-19 or an employee who is at high risk of contracting the dangerous symptoms of the virus and want to stay home to avoid any potential exposure to COVID-19. This could be subject to change now that it has been declared a pandemic by the WHO. Again, this will be updated as more information becomes available. School districts should check their collective bargaining agreements to determine if self-quarantine would qualify for other leave(s). If no leave is available, school boards may grant the employee leave for self-quarantine at their discretion and/or allow the use of paid or unpaid leave.

Q: What if an employee chooses to “self-quarantine” without any legitimate cause to do so?

A: If an employee has not been exposed to COVID-19 or does not have legitimate concerns related to the virus, the school district can instruct the employee to return to work or face discipline. If the employee refuses to return to work without medical certification to the contrary, the school district may treat the employee as absent without cause and institute discipline accordingly, up to and including dismissal depending upon the category of employee and discipline provisions in the district's collective bargaining agreement.

Q: Can an employer require an employee who has symptoms of COVID-19 to get medical testing prior to reporting to work?

A: Under the Americans with Disabilities Act, in situations prior to a pandemic, an employer can ask a current employee to undergo a medical examination under two circumstances: (1) an employee's ability to perform the essential functions of their job will be impaired by a medical condition or (2) an employee will pose a direct threat due to a medical condition. For an employee to be considered a “direct threat,” there must be a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by a reasonable accommodation. The EEOC, which enforces the ADA, is clear in its [guidance](#) that the assessment of whether or not there is a direct threat in the workplace must be based on objective, factual information and not on subjective perceptions or irrational fears.

Before a school district requires that an employee seek a medical examination, we recommend that it make the determination of “direct threat” by communicating with the IDPH or the CDC. If state or federal government believe that COVID-19 is a direct threat, their assessment would provide the appropriate level of justification for demanding a medical examination. Without the information from IDPH or the CDC, the employer may still require a medical examination prior to an employee reporting to work, but the employer should be careful to document evidence of a direct threat that includes direct exposure to COVID-19.

Q: Can an employer require an employee who reports to work with a fever to go home?

A: If an employee reports to work with an illness and cannot perform the functions of his or her job, the school district can require an employee to return home until they can perform those functions. If an employee reports to

work with an illness that appears to be COVID-19, the school district should report the illness to the county health department or IDPH and follow their instructions for the treatment of the employee. School districts should remember that COVID-19 has the same or similar symptoms as the flu and many other respiratory illnesses. Therefore, a district should not presume the employee must report home or to IDPH without assessing the objective evidence related to the illness. However, this analysis is ever-changing at the moment and we will update this FAQ document as needed. Employers should consider whether an employee that is symptomatic has been exposed to the virus or has been in a location where transmission is more widespread. Notwithstanding, we are at the point where any flu-like symptoms should be treated with caution.

Q: What is a school district's obligation to negotiate with an employee group regarding COVID-19 preparations?

A: A school district is obligated to bargain over wages, hours and terms and conditions of employment. If any of the preparations for COVID-19 implicate or impact wages, hours, and terms and conditions of employment, the school district should confer with their local bargaining representatives. Whether these issues require a school district to bargain the decision or just the impact will depend upon local collective bargaining agreements.

Examples that would implicate bargaining include, but are not limited to:

- E-Learning, including the hours an employee is expected to work, the use of personal or district technology for e-learning, access to other materials necessary for e-learning, and the provision of training for staff to provide E-Learning opportunities. If the school district is in the process of preparing an e-learning plan, it should consult with the exclusive bargaining representative prior to the submission of the plan.
- Mandated Employer Fitness for Duty Exams, including situations to which employees are mandated, cost of said exams, discipline in case of refusal and sharing of information regarding fitness for duty.
- School closures, including the impact of closure on employee salaries and benefits, extension of school term, use of available leave, etc.

Remember that while you have an obligation to bargain, school districts can bargain and implement the decision simultaneously in the interest of the health and safety of students and staff.

Q: School districts have been inundated with resources from governmental agencies and vendors regarding COVID-19. Can you provide a list of the highest priority resources that we can review?

A: There are a number of websites that contain comprehensive information. The following list includes all of the websites we have cited above. School administrators should be following the CDC, IDPH, and ISBE guidance closely.

[CDC Guidance for Schools](#)

[IDPH Guidance for Schools](#)

[ISBE COVID-19 Guidance](#)

[Department of Education COVID-19 Guidance](#)

[OSHA Guidance](#)

[EEOC Fact Sheet on Pandemics](#)

[WHO COVID-19 General Guidance](#)

Q: What's Next?

A: Due to the recent cancellation and/or modifications of major state and national events, *i.e.*, St. Patrick's Day Parades, Seattle Public Schools, etc., school systems should expect and anticipate at the very least that extensive cleaning protocols must occur along with the cancellation of similar events in keeping with social proximity norms. Schools should proactively plan and expect that school events and potentially school itself may be subject to emergency closure. We expect statewide guidance to be forthcoming.



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