
NORTHWEST SUBURBAN TEACHERS' UNION
LOCAL 1211, IFT-AFT, AFL-CIO

GUIDANCE ON RETURN TO WORK

CURRENT GUIDANCE FROM OUTSIDE ORGANIZATIONS:

- AFT Plan to Safely Reopen Schools and Communities
- The State of Illinois Coronavirus Website and the *Restore Illinois Plan*
- The Department of Commerce and Economic Opportunity
- CDC Guidance
- State Educational Agency Guidance: ISBE, ICCB, IBHE
- IASB Guidance for Boards Regarding Reopening of Schools
- “Triple A” Guidance
- The American College Health Association
- The American Council on Education

SCREENING EMPLOYEES FOR COVID-19

- Can employers screen for COVID-19 or ask questions about symptom? **YES. Confidentiality must be maintained** (p. 3)
- Can employers take an employee's temperature? **YES. Confidentiality must be maintained** (p. 3)
- Can an employer require a doctor's note before allowing a sick employee to return to work? **YES. As long as the practice is applied consistently** (p. 3)
- What is return to work protocol for people who have COVID-19? **CDC guidance includes quarantines of 72 hours since the fever resolves and/or 10 days since appeared** (p. 3)
- Does it violate Health Insurance Portability and Accountability Act of 1996 (HIPAA) for an employer to ask about my health? **NO employers are not subject to HIPAA** (p.3)
- Can an employer tell employees if a co-worker has tested positive for the coronavirus or other communicable disease? **NO. ADA rules prohibits.** (p.3)

HOW TO SUPPORT WORKERS WHO MAY HAVE HEALTH ISSUES

- Can an employee refuse to work if there are not appropriate safeguards as defined by the local public health department? **Possibly, if the school is unsafe by Health department standards. (p.4)**
- Can employees refuse to return to work for fear of getting sick if an employer has met the requirements of the state and local public health departments? **No. Unless the employee the employee has a health issue covered by the ADA and that is not accommodated by the district. (p. 4)**
- What about older/immunocompromised employees who can return with ADA Reasonable Accommodations? **The employer needs to work with the member/Union to create a reasonable accommodation. (p. 4 and 5)**

HOW TO SUPPORT WORKERS WHO MAY HAVE HEALTH ISSUES

What about older/immunocompromised employees who cannot return with ADA Reasonable Accommodations? **Employees may use contractual benefits (i.e., sick leave, extended sick leave, retirement, etc.) or disability benefits through TRS or IMRF) (p.5)**

What about employees who want to return to work, but the employer wants them to stay home/telework because they are perceived to be older or immunocompromised? **The ADA does NOT allow employees to be barred from returning to work because of age or medical conditions (i.e., diabetes, asthma, obesity, etc.) that have been identified by the CDC as placing people at greater risk. (p. 5)**

HEALTH AND SAFETY IN THE PHYSICAL WORKSPACE/PPE

- Can an employer require an employee to wear a mask and discipline them if they don't? What about a student or client? **Yes. If the employee does not follow the rule they can be disciplined. (p. 5)**
- Does an employer have to provide face shields, masks or gloves to staff or students? **Not fully defined. Face coverings (PPE) are required by CDC/IDPH guidelines; PPE must be provided by employers according to Executive Order (2020-32) may not be in place in the Fall. (p, 5)**
- What are the legal issues for schools that do not strictly enforce the requirements around masks, social distancing, and cleaning? **Districts could be liable and/or lose their immunity under the law and School Code. (p. 6). The Union could file for an injunction to get the District to comply. (p, 6)**
- What other PPE/protective measures may be necessary for staff/students? **Gloves, plexiglass barriers, hand washing stations, hand sanitizer (p. 6)**

WAGES/BENEFITS ISSUES

- Are there any issues with pay to be concerned about? **Yes. Starting earlier, additional days, etc. (p.7)**
- What about stipends in the fall if there are not sports/clubs? **Districts do not necessarily have to adhere to the rules for activities/athletics stipends used in the Spring (2020). (p. 7)**
- Could we negotiate additional leave time for employees who get sick or must quarantine because they are exposed by a student/constituent/client? **Yes. The Union will need to discuss the process regarding Leave fFFCRA or staff who get sick and/or who are required to quarantine (Ex. FMLA,). (p. 7)**
- Are there any issues with insurance to be concerned about? **Yes. (p. 7)**
 - **Other healthcare options available (i.e., clinics, telehealth, etc.)**
 - **alternative healthcare options, immunizations covered and locations**
 - **increase district communications about healthcare provisions**

WAGE/BENEFITS ISSUES

What about employee expenses related to return to work or remote learning?

Illinois Law requires that Districts provide reasonable reimbursement for expenses(i.e., remote learning, PPE, etc.) required of the employee in the discharge of their employment duties. (p. 7)

What about the CARES Act “Maintenance of Effort” clause, does this protect employees from layoff? **No clear definitive answer yet (p.7)**

NEGOTIATING WORKING CONDITIONS

- What are some of the options being discussed about school schedules for next year?
All Remote, Hybrid, Blended, or In-Person. ALL ARE SUBJECT TO BARGAINING! (p. 8)
- How and when should local unions begin discussing return to work plans? **NOW!**
(p. 8)
- Could teachers be required to record or livestream classes? **Probably, but consent from staff and students is required (p. 8)**
- What issues should local unions consider when bargaining a return to work plan?
 - **Any changes to the workyear, workday, class periods, etc. (p. 9)**
 - **Record number of outbreaks shifting the school option being used (p. 9)**
 - **Space, space, sanitizer, PPE, etc. (p.9)**
 - **Screening procedures for staff and students (p. 9)**
 - **Professional Development on health, safety protocols, instruction (p. 9)**

NEGOTIATING WORKING CONDITIONS

- **Use of employee sick time for quarantine (p. 9)**
 - **Student and staff movement around the building (bathrooms, lockers social areas, etc. (p. 9)**
 - **Protocol for Staff absences (p. 9)**
 - **Procedures to train, retrain, reassign PSRP employees (p. 9)**
 - **Procedures to determine class sizes, classroom layouts, gymnasium, cafeteria, theater, etc. (p. 9)**
- Regarding employee working conditions, is there anything that the guides from ISBE, IBHE, and ICCB are missing?
- **Local unions should ensure members who cannot return to work have options to work and are not forced to take FMLA or sick time or be forced to resign. (p. 9)**
 - **If a union has not surveyed staff about their ability to return to work, they should. (p. 9)**

FFCRA, ADA, FMLA, DISCRIMINATION & MEMBER LIABILITY

- What are our members rights under Families First Coronavirus Response Act (FFCRA)?
Provides employees with paid sick leave or expanded FMLA leave for COVID related reasons. (effective until December 31, 2020) (p. 10)
 - **Caring for yourself (2 weeks/80 hours at regular rate of pay- Max \$511.00/day)**
 - **Caring for others (2 weeks/80 hours at regular rate of pay- Max \$200.00/day)**
 - **Additional leave for caring for a child (10 weeks paid expanded FMLA at 2/3 of regular rate of pay (Max \$200.00)**
 - **Can be combined with employees accrued leave**

FFCRA, ADA, FMLA, DISCRIMINATION & MEMBER LIABILITY

- How does the ADA and FMLA come into play?

ADA

- **“Perception of disability” liability and “high risk” populations overlap within the ADA (p. 10)**
- **Districts must provide reasonable accommodations under ADA (p. 10)**

FMLA

- **Employee must be employed for months (p. 10)**
 - **Employee must have worked 1250 hours**
 - **Employee must prove self-isolation was due to a serious health condition (p. 10)**
- **What about discrimination claims? Use Title VII, Civil Rights Act applies in the event an employee feels they are being treated differently (p. 10)**

FFCRA, ADA, FMLA, DISCRIMINATION & MEMBER LIABILITY

- Should our members worry about liability issues if they unintentionally transmit COVID-19 to other employees or to students?
 - **Assuming our members are not intentionally transmitting the virus (which is battery), there is no need to be concerned about personal liability or waivers. (p. 11)**
 - **An infected person would have to show that an employee was negligent (breached a duty of care) and that the breach was the cause of their injury. (p. 11)**
 - **Because COVID-19 is so transmittable, it would be almost impossible to prove this. (p. 11)**
 - **School District employees have tort immunity under the school code 10/1-101 (p. 11)**

Q & A