

## **Frequently Asked Questions: Returning for the 2020-2021 School Year**

As the upcoming school year approaches, Locals and Members have raised a variety of questions about how COVID-19 may impact the 2020-2021 school year. This document compiles a series of frequently asked questions and answers (FAQ). This FAQ is non-exhaustive and will be supplemented as additional questions are raised and as the situation in the state evolves. IEA will send out communications as the document is updated.

### **General FAQs about ISBE's Return to Instruction Guidance**

**Q. What schools are covered by ISBE's guidance for the 2020-2021 school year?**

A. All public and nonpublic schools in Illinois serving prekindergarten through 12th grade students must follow ISBE's guidelines.

**Q. Is it possible that ISBE will change its guidance?**

A. Yes, it's anticipated that the guidance is subject to change pursuant to updated public health guidance and changing public health conditions.

**Q. Must all schools return to in-person instruction in the fall?**

A. No. However, ISBE strongly encourages schools and districts to provide in-person instruction in Phase 4, provided that the school is able to comply with capacity limits and implement social distancing measures.

**Q. May a school use a blend of in-person and remote instruction?**

A. Yes. PA 101-0643 requires that school districts "adopt a Remote and Blended Remote Learning Day Plan approved by the district superintendent."

**Q. Must a district's remote learning or blended remote learning plan differ from its e-learning plan?**

A. No. Remote Learning Day or Blended Remote Learning Day may be met through a district's implementation of an e-learning program under Section 10-20.56 of the Illinois School Code.

**Q. Does ISBE have guidance in the event that the virus resurges?**

A. Yes. ISBE advises that schools and districts should prepare for a return to remote instruction in the event of a resurgence of the virus or a second wave of it in the fall.

**Q. Does ISBE have any recommendations about how districts should undertake planning for the 2020-2021 School Year?**

A. Yes. ISBE recommends that Districts form a diverse Planning Team to prepare for a return to in-person instruction in compliance with IDPH guidelines.

**Q. Does ISBE have recommendations about who should be on a District's Planning Team?**

A. Yes. ISBE recommends that Planning Teams include key stakeholders and staff that, at a minimum, may represent the following categories, where applicable: administrators; educators; school support personnel, including nurses, counselors, social workers, psychologists, and speech-language pathologists; paraprofessionals; non-licensed staff; students; and families.

**Q. What does ISBE recommend that the Planning Team Do?**

A. Planning Teams may develop a Remote and Blended Remote Learning Day Plan that is articulated, clear, and accessible to all stakeholders. ISBE also advises that the Planning Team regularly consult with local public health officials.

**Q. What is required in a District's Remote and Blended Remote Learning Day Plan?**

A. PA 101-0643 requires each Remote and Blended Remote Learning Day Plan to address the following:

- a) Accessibility of the remote instruction to all students enrolled in the district;
- b) When applicable, a requirement that the Remote Learning Day and Blended Remote Learning Day activities reflect the Illinois Learning Standards;
- c) Means for students to confer with an educator, as necessary;
- d) The unique needs of students in special populations, including, but not limited to, students eligible for special education under Article 14; students who are English Learners, as defined in Section 14C-2; students experiencing homelessness under the Education for Homeless Children Act [105 ILCS 45]; or vulnerable student populations;
- e) How the district will take attendance and monitor and verify each student's remote participation; and
- f) Transitions from remote learning to on-site learning upon the State Superintendent's declaration that Remote Learning Days and Blended Remote Learning Days are no longer deemed necessary.

**Q. Is there a clock hour requirement for a Remote or Blended Remote Learning Day?**

A. PA 101-0643 waives the clock hour requirement when the Governor has declared a disaster due to a public health emergency. However, the law allows the State Superintendent to institute a clock hour requirement. The State Superintendent has determined that Remote and Blended Remote Learning Plans must ensure that at least 5 clock hours of a combination of

instruction and school work for each student participating in Remote or Blended Remote Learning Days occurs.

**Q. What kinds of activities can count towards clock hours for a Remote or Blended Remote Learning Day?**

A. Learning activities may include, but are not limited to, in-person instruction, the teacher delivering instruction via recorded video or synchronous platform, remote small group work via breakout room or conference call, independent/flexible student work time, and virtual/telephone teacher-student check-ins.

**Q. Are educational employers expected to maintain social distancing (6 feet between individuals) at all times?**

A. ISBE advises that social distancing maintained as much as possible. However, the guidance does not require educational employers to guarantee at 6 foot distance between individuals at all times.

**EMPLOYEE SPECIFIC ISSUES**

**Q. Can the employer ask questions about issues that may impact an employee's ability to work next school year?**

A. Yes. An employer may ask non-disability related questions aimed at addressing potential staffing issues in the event of a pandemic. These questions may inquire about access to child care; access to transportation for work; lack of access to services needed for dependents in the household and whether the employee or someone in the household is at higher risk for contracting pandemic influenza. The EEOC advises the employer to ask about these issues in one question and ask the employee to answer "yes" or "no" without asking the employee to identify which issues apply. An example of such a survey follows:

**Directions:** Answer "yes" to the whole question *without specifying the factor that applies to you*. Simply check "yes" or "no" at the **bottom of the page**.

**In the event of a pandemic, would you be unable to come to work because of any one of the following reasons:**

- If schools or day-care centers were closed, you would need to care for a child;
- If other services were unavailable, you would need to care for other dependents;
- If public transport were sporadic or unavailable, you would be unable to travel to work; and/or;
- If you or a member of your household fall into one of the categories identified by the CDC as being at high risk for serious complications from the pandemic influenza virus, you would be advised by public health authorities not to come to work (e.g., pregnant women; persons with compromised immune systems due to cancer, HIV, history of organ transplant or other medical conditions; persons less than 65 years of age with underlying chronic conditions; or persons over 65).

**Answer: YES\_\_\_\_\_ , NO\_\_\_\_\_**

**Q. Does the survey need to be anonymous?**

A. No. An employer is not required to collect answers anonymously.

**Q. May an employer specifically ask an employee whether they have a medical condition that makes them susceptible to the virus?**

A. No. An employer cannot explicitly ask an employee who is not displaying COVID-19 symptoms whether they have a medical condition that makes them more susceptible to the virus. That said, please note that an employer can ask that question in a bigger survey so long as it is not asking the employee to give a specific answer regarding a medical condition.

**Q. May an employer require an employee to leave the premises if they are displaying COVID-19 type symptoms?**

A. Yes. The CDC states that employees who become ill at work with symptoms consistent with COVID-19 symptoms should leave the workplace.

**Q. May an employer ask about the type of symptoms an employee is experiencing?**

A. Yes. An employer may ask if an employee is experiencing COVID-19 symptoms, such as fever, chills, cough, shortness of breath, or sore throat. Any information that an employer collects about an employee's symptoms needs to be maintained in a confidential medical file in compliance with the Americans with Disabilities Act (ADA).

**Q. May an employer require employees to submit to a temperature screening?**

A. Yes. In times of a pandemic, an employer may require employees to submit to a temperature screening. Temperature screenings results are medical information and subject to ADA confidentiality requirements.

**Q. May an employer ask about potential exposure to COVID-19 if that employee has traveled?**

A. Yes. If the CDC or state or local health departments indicate that individuals who traveled to certain locations should remain at home for a certain period of time, an employer may ask if employees have traveled to such locations. It does not matter if the travel was for personal reasons.

**Q. May an employer impose conditions for an employee to return to work if they have traveled to a high-risk location as determined by the CDC, state or local health department?**

A. Yes. Employers may follow the advice of the CDC and state/local public health authorities regarding information needed to permit an employee's return to the workplace after visiting a specified location, whether for business or personal reasons.

**Q. May the employer require employees to engage in certain routines or practices aimed at infection control such as handwashing, coughing and sneezing etiquette, tissue disposal, utensil disposal, etc.?**

A. Yes. An employer may require employees to engage in hygiene routines and practices for the purpose of infection control.

**Q. Can the employer require employees to wear a face covering?**

A. Yes. During a pandemic, an employer may require an employee to wear personal protective equipment aimed at limiting the spread of a virus such as a face covering.

If an employee has a medical condition that prevents them from wearing a face covering, they may notify the employer to engage in the process of determining if there is a reasonable accommodation to wearing a face covering.

For Pre-K through 12, except when eating or during band, ISBE requires all individuals to wear face coverings in school buildings even where social distancing can be maintained.

For Higher Education, employees are expected to wear face coverings when on campus except when working in their personal office space, if available.

**Q. Can an employer discipline an employee who refuses to wear a face covering?**

A. Absent a prior demonstration that an employee has a medical condition that prevents them from wearing a face covering safely and requires a reasonable accommodation, an employer may take an employment action if the employee refuses to wear a covering. A local should be mindful of any employer enacted policy that addresses face covering requirements and make sure that the employer communicates the policy to staff. A local should also take time to review any language it has in its collective bargaining agreement regarding discipline in the event that an employee is disciplined for allegedly violating any face covering policy.

**Q. What should be done if a supervisor tells employees that they are not allowed to wear a face covering?**

A. Face coverings are required by state mandate and pursuant to guidance issues by ISBE, IHBE, and ICCB. If an employee is medically able to sustain use of a facial covering, a supervisor should not be preventing the employee from wearing one. ISBE has stated there *might* be very narrow circumstances where seeing an instructor's mouth might be necessary for instruction and that instruction cannot happen via remote means.

**Q. May an employer send a general message encouraging employees to inform it of the need for a reasonable job accommodation if an employee has a medical condition that puts them at high risk for contracting COVID-19?**

A. Yes. So long as the employer is not making these inquiries on an individual basis. Requests for reasonable job accommodations are done on an individualized basis. While there is no time limitation on when an employee can ask for a reasonable job accommodation, presenting the request in advance of the school year increases the chance the request will be assessed before the school year begins.

**Q. Can the employer require all of the employees to get the COVID-19 vaccine when it becomes available?**

A. No. An employee may be entitled to an exemption from a mandatory vaccination requirement based on an ADA disability that prevents him from taking the influenza vaccine. This would be a reasonable accommodation barring undue hardship (significant difficulty or expense). Also, under Title VII of the Civil Rights Act of 1964, if an employer receives notice that an employee's sincerely held religious belief, practice, or observance prevents him from taking the influenza vaccine, the employer must provide a reasonable accommodation unless it would pose an undue hardship as defined by Title VII.

**Q. Do employees with a medical condition that increases their chances for catching COVID-19 have the right to receive a job modification?**

A. Possibly. Many individuals with medical conditions that never impacted their ability to work in schools now find that doing so poses a significant health risk. The Americans with

Disabilities Act (ADA), requires employers to provide reasonable accommodations to qualified individuals with a disability *unless* doing so would provide an undue hardship. A reasonable accommodation is a modification to the job or work environment that enables an individual with a disability to perform the essential functions of the job. An employee with a medical condition which they believe requires a reasonable accommodation may contact their employer and make a request.

**Q. How do I know if my employer is subject to the ADA?**

A. All employers, including State and local government employers, with 15 or more employees, are subject to the ADA.

**Q. What does it mean to be disabled under the ADA?**

A. It means that the individual has a substantial impairment, is one that significantly limits or restricts a major life activity such as hearing, seeing, speaking, walking, breathing, performing manual tasks, caring for oneself, learning or working. Such impairments may be permanent or temporary. To be covered by the ADA, an employee must have a qualifying disability and be qualified to perform the essential functions or duties of a job, with or without reasonable accommodation.

**Q. What happens after an employee requests a reasonable accommodation under the ADA?**

A. Under the ADA, the employer must consider the request and engage in an interactive process with the employee to try and find a suitable accommodation. An employee making a request for a reasonable accommodation is encouraged to notify their local and seek any assistance necessary navigating the process with the employer. Requests for accommodations are assessed on a case-by-case basis.

**Q. What kind of information may an employer request to support a request for a reasonable accommodation?**

A. While the ADA does not require an employee to present medical information at the time the employee requests the accommodation, it allows the employer to ask for medical documentation to support the request. The information requested should be relevant to determining whether the employee has a qualifying disability. An employee's medical provider should be able to assist the employee in providing that information along with possible accommodation options.

**Q. If the employee demonstrates a need for a reasonable accommodation under the ADA, does the employee have a right to the specific accommodation requested?**

A. Employers can, but are not required to, provide the specifically requested accommodation. Engaging in the interactive process may identify alternative accommodations that may be appropriate for the situation. If the interactive process determines that providing

an accommodation places an undue hardship upon the employer, the accommodation is not required. An employee is encouraged to notify their local if they believe the employer improperly denied a request for a reasonable accommodation. An employee who is denied an accommodation should ask the employer for an explanation as to the basis for the denial.

**Q. Individuals over 65 are considered to be at higher risk for contracting COVID-19. Can an employee's age alone be enough to qualify them for an accommodation under the ADA?**

A. Probably not. Age, as a sole factor, does not constitute a disability. An employer is not required to provide an employee an accommodation because they are older but it may do so voluntarily.

**Q. Does pregnancy qualify as having a disability?**

A. Pregnancy is not a disability. However, having a pregnancy related medical condition might qualify an employee as having a disability under the ADA. The Pregnancy Discrimination Act requires that employees affected by childbirth, pregnancy or a related medical condition be treated the same as other employees with similar limitations.

That said, Illinois' Pregnancy Accommodation Act (IPAA) can provide employees access to a reasonable accommodation even if their pregnancy condition does not constitute a disability under the ADA. The IPAA provides an expansive list of possible accommodations for pregnancy employees. Similar to the ADA, the IPAA requires the employer to engage in a meaningful conversation with the employee to determine if here a reasonable accommodation. IPAA permits an employer to deny a request for a pregnancy related accommodation but only where granting the request presents an undue hardship.

**Q. May an employee qualify for a reasonable accommodation on the basis that someone in their household has a medical condition that deems them at high risk for contracting COVID-19?**

A. Unfortunately, no. The ADA does not require an employer to grant an accommodation for the purpose of protecting someone in an employee's household or family. The ADA does protect employees from being treated differently or harassed because of their association with someone who is disabled.

**Q. What are an employee's potential leave options if they cannot demonstrate a legal basis for a job accommodation?**

A. Under the Families First Coronavirus Response Act (FFCRA), through December 31, 2020, employees may be eligible for paid emergency sick leave. This leave is available for use in the event that an employee cannot work due to a number of COVID-19 related reasons including them or a family member is experiencing virus related symptoms or is under quarantine. The emergency paid leave is also available for use if the employee's daycare or school is closed.



It is available for immediate use regardless of how long an employee has been employed. Full-time employees are eligible for up to 80 hours (or 10 eight hour days) of paid emergency leave. Regular part-time employees are entitled to paid emergency sick leave equivalent to the number of hours regularly worked in a two-week period. There is also a formula for determining paid emergency sick leave for part-time employees with a variable schedule. An employee is entitled to use paid emergency leave prior to using any accrued benefit leave that may be applicable.

Under the Family Medical Leave Act (FMLA), employees who have worked at least 1,250 hours in the preceding 12 months are eligible for up to 12 weeks of job protected leave for their own serious medical condition that prevents them from performing the essential functions of their job or to care for an immediate family member who has a serious medical condition.

Also, an existing collective bargaining agreement may have leave options which might apply. Or, the local may try and negotiate additional options.

### **WORKING CONDITIONS**

**Q. Are waivers that ask an employee to waive liability against an employer for catching COVID-19 legally enforceable?**

A. Likely not. Employees cannot waive the right to pursue a workers compensation action against their employer which is the likely the only venue where an employee could request a legal remedy if they believe they contracted COVID-19 at work. Employees cannot waive rights vested by workplace protection laws.

**Q. What should an employee do if their employer presents them with a waiver asking them to waive any claims against the employer if they contract COVID-19?**

A. They should not sign the document and notify their local leadership as soon as possible.

**Q. Is my employer required to keep six feet of distance between everyone at all times?**

A. No. ISBE, ICCB or IBHE recommend appropriate social distancing whenever possible.

**Q. What can an employee do if a student is refusing to wear a face covering or engage in appropriate social distancing?**

A. Educational institutions should be updating their policies to address the expectations for students to engage in appropriate practices needed to reduce the spread of COVID-19. Locals are encouraged to talk with the employer about what is the appropriate protocol if a student refuses or fails to follow that policy and will not follow direction from an educator or education support personnel.

**Q. Our school is planning to use video conferencing or other virtual learning software apps to hold classes virtually on remote learning days. Can a school or district use such apps under FERPA?**

A. Yes under the school official exception to FERPA's general consent requirement, educational agencies and institutions may disclose students' education records, or personally identifying information in those records, to a provider of such a service or application as long as the provider meets certain conditions. This is why it is important that staff only utilize services or applications which are approved through the employer. Additionally, depending on an employer's plan, there may terms and conditions of employment that need to be bargained regarding virtual instruction.

**Q. Will an instructor inadvertently be violating FERPA if a non-student observes virtual classroom interaction/instruction?**

A. Especially in the case for younger students, caregivers are likely going to be nearby the student. Assuming that during the virtual lesson, personally identifying information from student education records is not disclosed, FERPA would not prohibit a non-student from observing the lesson.