

Questions from Discussion Panel

July 8, 2020

Masks

Q: Can a school corporation “require” all employees and students wear a mask while they are in the school buildings even if the county has not mandated masks in public locations?

A: *Yes.*

Q: Our corporation is not going to require face coverings. It is recommended to wear a mask when riding the bus, but not required. There are several teachers not comfortable with not having face coverings due to potential health risk to them or to elderly parents they help care for at this time. Is there any recourse for them?

A: *Take the issue to discussion and request that teachers be able to require masks in their individual classrooms even if masks are only recommended.*

Q: Can a teacher require masks when the school does not or is that up to the individual teacher?

A: *Teacher can only require masks with approval of the administration. Take the issue to discussion.*

CARES Act 80 Days/Sick Leave

Q: Is the 80 hours from the CARES Act really 80 hours?

A: *The intent is to cover a full-time employee for two weeks of work. If a teacher only works 37.5 hours/week pursuant to their teacher contract, the teacher would be entitled to 75 hours of leave. Part-time employees get a portion of the 80 hours based on how much they work compared to full-time.*

Q: After the 80 hours, if a person has a lengthy illness does that person have to use their own sick days or the sick leave bank?

A: *Yes. They may also be able to use FMLA.*

Q: If I am on quarantine but can teach remotely, would that burn up my 80 hours or is that just like working a normal day?

A: *If the school corporation approves remote teaching, a teacher should still get regular pay and would not use the 80 hours. If a teacher uses the 80 hours, the school corporation should not require the teacher to do any work during this time.*

Q: If I am exposed and must isolate for 14 days, does that burn my sick leave?

A: *No. You should be able to use the 80 hours of leave. However, once the 80 hours are used, a teacher does not get another 80 hours if quarantined again. This benefit expires on December 31, 2020.*



Q: If I am quarantined with no symptoms and can teach from home, do I need to use sick leave days?

A: *If the school corporation approves remote teaching, a teacher should still get regular pay and would not use the 80 hours. If a teacher uses the 80 hours, the school corporation should not require the teacher to do any work during this time.*

Q: Teachers who are expecting are being told by their doctor they need to quarantine for three weeks prior to their due date. Do those teachers have to use their sick days or maternity leave for those days?

A: *The Department of Labor has stated the following:*

When am I eligible for paid sick leave to self-quarantine?

You are eligible for paid sick leave if a health care provider directs or advises you to stay home or otherwise quarantine yourself because the health care provider believes that you may have COVID-19 or are particularly vulnerable to COVID-19, and quarantining yourself based upon that advice prevents you from working (or teleworking).

Q: Can a district impose limits on a teacher's ability to use saved sick days from previous years? For example, I use my 10 sick days for this year but have 70 saved from previous years. What are the limits they can impose on my ability to use the previously saved days?

A: *No, unless there is a provision in your collective bargaining agreement limiting the number of sick days that can be used each year.*

Q: If quarantine is needed, can a staff member be disciplined for attendance issues?

A: *No.*

Q: Teachers new to the profession who may get sick and have used the 80 hours, would not qualify for FMLA and could potentially be taking unpaid days?

A: *Correct.*

Q: Who determines whether the quarantine is valid or necessary?

A: *Usually a governmental official or health care provider.*

Q: If teachers are caring for elderly parents, spouse or child, can they be considered vulnerable?

A: *Not likely.*

Temperature Checks

Q: Could a teacher do a touchless temperature check on their respective students in class?

A: *Only if authorized by the school.*



Q: Can we check temperatures of each student each day?

A: *Yes, if authorized by the school.*

Q: Can teachers be required to help check temperatures of each student as they enter the building? If so, how would this fall under safe distancing practices?

A: *Pursuant to IC 34-30-14-1, teachers cannot be required to administer health care services to students. An argument can be made that taking a student's temperature is a health care service.*

Others

Q: Are teachers covered by OSHA?

A: *No, but they are covered by IOSHA which is very similar to OSHA.*

Q: If not covered by OSHA, are there similar guidelines covering public school employees?

A: *Yes, IOSHA.*

Q: What happens if in-school enrollment drops significantly and the corporation feels the need to RIF?

A: *RIF notices must be given between May 1 and July 1.*

Q: Legalities of live streaming?

A: *Possible violations of student privacy. Must follow school guidelines.*

Q: Can teachers be required to do double duty or e-learning and in-person learning?

A: *Yes, as long as they are given 30 minutes duty free between 10 a.m. – 2 p.m. and the double duty does not require them to work beyond the hours in their teacher contract.*

Q: Can a school corporation require parents to sign a waiver releasing them of any responsibility associated with their child getting or being exposed to COVID-19?

A: *Not likely if just for attending school, but waivers can be required for extracurricular activities.*

Q: What is considered “reasonable accommodations” under the Americans with Disabilities Act (ADA)?

A: *EEOC guidance:*

Title I of the Americans with Disabilities Act of 1990 requires an employer to provide reasonable accommodation to qualified individuals with disabilities who are employees or applicants for employment, unless to do so would cause undue hardship.



"In general, an accommodation is any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities."

There are three categories of "reasonable accommodations":

"(i) modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position such qualified applicant desires; or

(ii) modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position; or

(iii) modifications or adjustments that enable a covered entity's employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly situated employees without disabilities."

Q: Do teachers have a right to be informed if a student tests positive for COVID-19?

A: *A teacher would generally have a right to know that a person to whom they were exposed tested positive, but maybe not the name of the individual person.*

Q: At what level can teachers be directed to deep clean their room?

A: *Regular teacher contracts state that a, "Teacher shall teach in the schools of the Corporation." An argument can be made that this does not include doing deep cleaning.*