

## **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 pre-kindergarten through 12th grade students must follow ISBE's guidelines.

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

A. Yes, it is 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.

---

*\*Note that no additional questions and answers have been added, but this document was modified on 7/28/20 to reflect supplemental information.*

**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 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) How to make remote instruction accessible 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) How students can 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; 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. As of DATE, the State Superintendent has determined

---

\*Note that no additional questions and answers have been added, but this document was modified on 7/28/20 to reflect supplemental information.

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. According to EEOC guidance, 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:

---

\*Note that no additional questions and answers have been added, but this document was modified on 7/28/20 to reflect supplemental information.

**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, however, you should not be asked to disclose your answers publicly. The employer is still required to maintain the confidentiality of any medical information it acquires about employees.

**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 among a list of others so long as the employer is not requesting a specific answer about a medical condition. (See example survey above)

---

\*Note that no additional questions and answers have been added, but this document was modified on 7/28/20 to reflect supplemental information.

**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. It is our position that, if employees are asked by the employer to leave the workplace in order to obtain a medical diagnosis, that time should be counted as administrative absence pending a fitness for duty examination.

**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.

---

*\*Note that no additional questions and answers have been added, but this document was modified on 7/28/20 to reflect supplemental information.*

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/alternative 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 notification 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 union 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 higher risk for life-threatening COVID-19 complications?**

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 and implemented before the school year begins.

**Q. Can the employer require all employees to get a 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 or sincerely held religious belief or practice under Title VII of the Civil Rights Act of 1964 that prevents them from receiving the vaccine. This would be

---

\*Note that no additional questions and answers have been added, but this document was modified on 7/28/20 to reflect supplemental information.

a reasonable accommodation barring undue hardship (significant difficulty or expense) to the employer.

**Q. Do employees with a medical condition that increases their risk factors for COVID-19 complications 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 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 to request accommodation.

**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, 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 an accommodation.

**Q. What happens after an employee requests an 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 may notify their local union 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 an 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.

---

*\*Note that no additional questions and answers have been added, but this document was modified on 7/28/20 to reflect supplemental information.*

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

A. No. 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 should notify their local union 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 life-threatening COVID-19 complications. 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 constitute a disability under the ADA or Illinois Human Rights Act (IHRA). The Pregnancy Discrimination Act (PDA) 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 pregnant employees. Similar to the ADA, the IPAA requires the employer to engage in a meaningful conversation with the employee to determine if there is a reasonable accommodation that will allow the pregnant employee to perform the essential functions of the job. IPAA permits an employer to deny a request for a pregnancy-related accommodation only where granting the request presents an undue hardship.

**Q. May an employee qualify for an accommodation on the basis that someone in their household has a medical condition that puts them at higher risk for lif-threatening COVID-19 complications?**

A. 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 than other employees or harassed because of their association with someone who is disabled.

---

*\*Note that no additional questions and answers have been added, but this document was modified on 7/28/20 to reflect supplemental information.*



**Q. What are an employee's potential leave options if they cannot demonstrate a legal basis for an 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. These include the employee or a family member experiencing symptoms of COVID-19 or the employee is under quarantine or caring for someone under quarantine.

FFCRA leave 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 fully paid emergency leave (up to the higher of \$511 per day or the applicable minimum wage). 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 FFCRA paid emergency leave prior to using any accrued benefit leave that may be applicable.**

Two weeks of emergency paid leave under the FFCRA is also available for use if the employee's child's/children's (under the age of 18) childcare provider is unavailable or school is closed. This leave is paid at 2/3 of the regular rate of pay (up to the higher of \$200 per day or 2/3 of the applicable minimum wage). This leave is also available for immediate use, regardless of how long an employee has been employed.

Under the Family and Medical Leave Act of 1993 (FMLA), employees who have worked at least 1,250 hours in the preceding 12 months are eligible for up to 12 weeks of unpaid, 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. The FFCRA extends an additional 10 weeks of leave, paid at the 2/3 limitations in the previous paragraph, to employees who have worked at an employer for at least 30 days, for use if the employee's child's/children's (under the age of 18) childcare provider is available or school is closed.

Also, an existing collective bargaining agreement may have leave options which might apply (i.e. parental leave, leaves of absence, sick leave bank leave, personal leave, etc.). Local unions may try to negotiate additional options including use of partial sick days to reach 100% pay during emergency leave, use of a sick leave bank or other donated days, etc.

**WORKING CONDITIONS**

**Q. Are waivers that ask an employee to waive liability against an employer for contracting 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

---

*\*Note that no additional questions and answers have been added, but this document was modified on 7/28/20 to reflect supplemental information.*

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 applications to hold classes virtually on remote learning days. Is this allowed under the Family Educational Rights and Privacy Act (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 a service or application as long as the provider meets certain conditions. Therefore, it is important that staff only utilize services or applications which are approved by 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. Generally, no. 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. Especially in the case of younger students, caregivers are likely going to be nearby the student and/or need to provide in-person support for the lesson to be successful.

---

*\*Note that no additional questions and answers have been added, but this document was modified on 7/28/20 to reflect supplemental information.*