

# Returning to School: Know Your Rights



This guidance is intended to inform teachers about their rights and constraints during the COVID-19 health crisis. Key takeaways from the pandemic are that the normal rules do not apply and information around these areas is constantly changing.

## ADA QUESTIONS

### Whom does the CDC put “at high risk for severe illness due to COVID-19”?

The Centers for Disease Control issued revised guidelines on June 25, 2020, and removed the specific age threshold from the older adult classification. The CDC now warns that “among adults, risk increases steadily as you age, and it’s not just those over the age of 65 who **are at increased risk** for severe illness.”

People of any age with any of the following conditions are at increased risk of severe illness from COVID-19:

- Chronic kidney disease
- COPD (chronic obstructive pulmonary disease)
- Immunocompromised state (weakened immune system) from solid organ transplant
- Obesity (body mass index, or BMI, of 30 or higher)
- Serious heart conditions, such as heart failure, coronary artery disease, or cardiomyopathies
- Sickle cell disease
- Type 2 diabetes mellitus

People with the following conditions **might be at an increased risk** for severe illness from COVID-19:

- Asthma (moderate to severe)
- Cerebrovascular disease (affects blood vessels and blood supply to the brain)

- Cystic fibrosis
- Hypertension, or high blood pressure
- Immunocompromised state (weakened immune system) from blood or bone marrow transplant, immune deficiencies, HIV, use of corticosteroids, or use of other immune-weakening medicines
- Neurologic conditions, such as dementia
- Liver disease
- Pregnancy
- Pulmonary fibrosis (having damaged or scarred lung tissues)
- Smoking
- Thalassemia (a type of blood disorder)

- Type 1 diabetes mellitus

### What is the Americans with Disabilities Act (ADA)?

- Federal law prohibiting discrimination against people with disabilities
- Prohibits discrimination in employment based on employee’s disability
- Requires employers to provide reasonable accommodations
- Prohibits retaliation against employees for asserting their rights under the ADA
- Is enforced through complaints to the Equal Employment Opportunity



Commission (EEOC)/state agencies prior to private lawsuits

Because the ADA is not part of your collective bargaining agreement, it is outside the bargaining power of your local education association. Pursuing an ADA claim is an employee's individual right.

### What is a disability under the ADA?

A disability is a physical or mental impairment that substantially limits one or more major life activities. "Disability" is a legal term (not a medical term) and is interpreted broadly. It includes having a record of a disability or being regarded as having a disability.

Impairments need not be permanent. They may be transitory (less than six months) and minor.

Major life activities include performing manual tasks, breathing, learning, writing, sitting, and sleeping, as well as the operation of major bodily functions, such as the immune system, normal cell growth, circulatory, respiratory, and cardiovascular functions.

Impairments presumed to be disabilities include cancer, diabetes, a major depressive disorder, PTSD, and HIV infection. Many other conditions may be disabilities, depending on individual circumstances.

Even when an employee has a qualified disability per the ADA, that employee must still be able to do the essential functions of his or her position.

### What is a reasonable accommodation under the ADA?

A reasonable accommodation is a modification or adjustment to a job or work environment that enables an employee with a disability to continue performing the essential functions of her/his job and enjoy equal benefits and privileges of employment.

The ADA requires that employers provide reasonable accommodations to qualified individuals with disabilities unless doing so would pose an undue hardship for the employer.

### How do I request a reasonable accommodation?

Accommodations may be requested upon hiring or at any point during employment when a need arises.

No "magic words" are required. It doesn't have to be in writing, but it's a good idea to make a written record.

Employees bear the burden of requesting a reasonable accommodation. Once initiated by an employee, the employer must consider the request and engage in an interactive process to try to find a suitable reasonable accommodation.

Medical documentation: During this COVID-19 pandemic, employers may ask questions to determine whether an employee's condition is a disability (if it is not obvious or already known) and request medical documentation if needed. Employees should have their doctors detail what accommodations

they need, given their disability.

If an employer denies a requested accommodation, the employee should ask why it was denied and try to cure any documentation issue, if possible.

- "Undue hardship" – get details; discuss alternatives
- Insufficient information about medical condition or requested accommodations

### Does my school district have to provide me with an accommodation?

The district must engage in an interactive process to try to find a suitable reasonable accommodation, but an accommodation does not need to be provided if the district can prove it to be an undue hardship. Moreover, an employer is not required to "create" a position as an accommodation if that position did not exist.

Because teachers' circumstances will vary, they may request and receive different accommodations from those of their colleagues.

Similarly, each district and each school building within it may have different circumstances, leading to various possible accommodations.

### What is the interplay with the ADA and COVID?

The health conditions that may put someone at higher risk for serious complications from COVID as described above would likely also qualify as an ADA-covered disability.

There also **may** be ADA considerations for employees who had/have COVID or who live with someone who has (though it is not clear that COVID would be considered a disability).

### What types of accommodations may be available if I qualify?

The following accommodations may apply:

- PPE/distancing/other transmission-reduction measures
- Transfer to a vacant position with less contact with other people
- Telework/remote work
- Medical leave



### What if I have an ADA-covered mental health condition that is exacerbated by COVID?

Employees with certain mental health conditions may have more difficulty coping with the stress and disruption caused by the pandemic (e.g., anxiety disorders, obsessive-compulsive disorder, post-traumatic stress disorder).

Employees may be entitled to reasonable accommodations, just as with any other condition that qualifies as a disability.

### What if I live with someone who is considered high risk?

The ADA usually will not apply, as it *does not* require accommodations based on an employee's family member having a disability. The ADA, however, *does* prohibit "associational discrimination." Employees whose family members have a disability may not be treated less favorably than employees who request accommodations for other reasons.

### What if I consider myself to be in the "older adult classification" but have no other health conditions?

- **Age alone without any health conditions that qualify as a "disability" is not a basis for an accommodation under the ADA.**
- Laws prohibiting age discrimination (federal and state) may be triggered if younger employees are treated more favorably.

## PAID LEAVE

Teachers who feel uncomfortable about returning to work solely because of a generalized fear of exposure to COVID-19 or COVID-related fear based on living with a medically vulnerable family member are not entitled to paid or unpaid federal leave.

### I suspect I have (or am confirmed to have) COVID-19 and will need to self-quarantine. Must I use my sick time, or is other paid leave available to me?

The Families First Coronavirus Response Act has two important provisions for paid leave. These provisions expire December 31, 2020. The one that applies here is as follows:

#### **Paid Sick Leave, also known as**



#### **Emergency Paid Sick Leave Act (EPSLA): First part**

- Two weeks (up to 80 hours) of paid sick leave at the employee's regular rate of pay (up to \$511/day) where the employee is unable to work because the employee is quarantined (pursuant to federal, state, or local government order or advice of a health care provider), and/or experiencing COVID-19 symptoms and seeking a medical diagnosis.
- If your collective bargaining agreement has a sick leave provision, you may elect to use it in addition to EPSLA. You are not required to exhaust or use any of your personal sick leave prior to using EPSLA.

#### **I live with an individual who may have COVID and/or is quarantined. What are my rights?**

##### **Paid Sick Leave, also known as Emergency Paid Sick Leave Act (EPSLA): Second part**

- Two weeks (up to 80 hours) of paid sick leave at two-thirds the employee's regular rate of pay (up to \$200/day) because the employee is unable to work because of a bona fide need to care for an individual subject to quarantine (pursuant to federal, state, or local government order or advice of a health care provider), or care for a child under 18 years of age whose school or childcare provider is closed or unavailable for reasons related to COVID-19, and/or the employee is experiencing a substantially similar condition as

specified by the Secretary of Health and Human Services, in consultation with the secretaries of the Treasury.

- If your collective bargaining agreement has a family sick leave provision, you may elect your accrued paid leave to supplement the two-thirds paid leave provision in order to receive full pay.

#### **My child's daycare provider or school has been shut down, and I have no care for my child. What do I do?**

In addition to the paid leave available under the EPSLA above, the Extended FMLA Leave—also known as Emergency Family and Medical Leave Expansion Act (EFMLEA)—provides the following:

- You get 12 weeks to care for your children who are displaced from school or daycare. The first two weeks are unpaid, but you can use paid sick leave to cover those first two weeks. For the remaining 10 weeks, you are entitled to be paid up to two-thirds of your salary, capped at \$200 per day, for a maximum of \$10,000. Note that FMLA is still a total of 12 weeks over a 12-month period.

#### **Am I also eligible for paid leave under the Connecticut Paid Family Medical Leave (CPFML)?**

Connecticut employees are not able to avail themselves of CPFML until January 1, 2022.

I consider myself to be in the “older adult classification.” I am concerned about returning to school. May I be placed on paid leave or work remotely until there is a vaccine?

- The only paid leave option in this case is if the district agrees to the same due to generalized concern about returning. A doctor’s note may be required pursuant to your contract.
- Age alone is not an ADA disability warranting paid leave or any reasonable accommodation.

I have a serious illness and am concerned that with the COVID crisis, I am placed at risk. May I be placed on paid leave or work remotely until there is a vaccine?

You may be able to use accrued sick time or request an accommodation to work from home.

I live with an individual whom I consider to be in the “older adult classification” and/or with a non-COVID-related serious illness. I am concerned about returning to school. May I be placed on paid leave or work remotely until there is a vaccine?

- You may be able to use accrued sick time if you request paid leave.
- The ADA does not allow accommodations based on an employee’s family member having a disability.
- You may be entitled to unpaid FMLA leave or other leave to care for a disabled family member.

I was just diagnosed with COVID, and I think I got it at school. May I file for workers’ compensation?

Yes. Before filing a claim, a doctor should causally connect, in writing, the COVID contraction as arising out of and in the course of employment.

If the workers’ compensation claim is denied, liability against the school district for failure to make the working environment safe is possible. If any of the accepted guidelines for reopening schools in the fall are not followed, and an illness or other injury results from a failure to reasonably adhere to those guidelines, a civil lawsuit could be brought.

I have COVID and need additional paid leave beyond the federal acts and my sick leave. What else is there?

Other options for paid leave are short- and long-term disability as well as applying for a disability allowance from the Connecticut Teachers’ Retirement Board.

Am I eligible for short- and/or long-term disability or a disability allowance from the Connecticut Teachers’ Retirement Board if I am at risk of becoming sick?

Likely not. These disability programs typically require a doctor’s note that indicates that the teacher is disabled from working or performing essential parts of their job. The Connecticut Teachers’ Retirement Board continues to maintain this condition during the current pandemic.

## SCREENING AND TESTING

Are employers allowed to ask employees questions about their health to screen for symptomatic employees?

ADA-covered employers may ask employees if they are experiencing COVID-like symptoms.

Can anyone—even someone untrained in COVID screening—be designated to administer COVID-19 tests?

Current guidelines do not specify who may or may not administer COVID-19 tests.

Can my district force me to submit to a COVID test?

The CDC’s most recent guidance states, “Universal SARS-CoV-2 testing of all students and staff in school settings has not been systematically studied. It is not known if testing in school settings provides any additional reduction in person-to-person transmission of the virus beyond what would be expected with implementation of other infection preventive measures (e.g., social distancing, cloth face covering, hand washing, enhanced cleaning and disinfecting). **Therefore, CDC does not recommend universal testing of all students and staff.**”

However, the EEOC indicates that “an employer may take certain precautionary steps, such as testing for the virus, to prevent employees with COVID-19 from entering the workplace, because an individual with the virus will pose a direct threat to the health of other employees.” The ADA permits such testing as long as it is a medical test that is “job related and consistent with business necessity.”

What happens if a staff member or student tests positive for COVID-19?

Following regular public health practice, the local health department will initiate contact tracing to identify those who were in close contact to the individual (i.e., less than six feet apart for at least 15 minutes). Those who were in close contact will be asked to self-quarantine for up to 14 days after exposure.



### Will we know who tested positive? What are the privacy rights here?

As always, employers must maintain all information about both employee and student illnesses as confidential medical records. This would include attendance records and information that a teacher has COVID-19 symptoms and/or has tested positive for COVID-19.

Aside from reporting to a public health agency the name of an employee who has tested positive for COVID 19, federal and state privacy laws prohibit school staff and officials from disclosing student and staff health information, including whether a specific individual tested positive for COVID-19.

In addition, all medical information concerning an employee is to be stored separately from the employee's personnel file.

## GENERAL SCHOOL SAFETY

### Am I protected from liability?

State and district operations will define what is reasonable for returning and will provide operational guidelines. Teachers are protected from personal liability by the indemnity statute, Connecticut General Statutes 10-235, when they follow these operational guidelines and act in good faith.

### What if my students are not following safety guidelines?

The teacher should make administration and parents aware of student noncompliance.

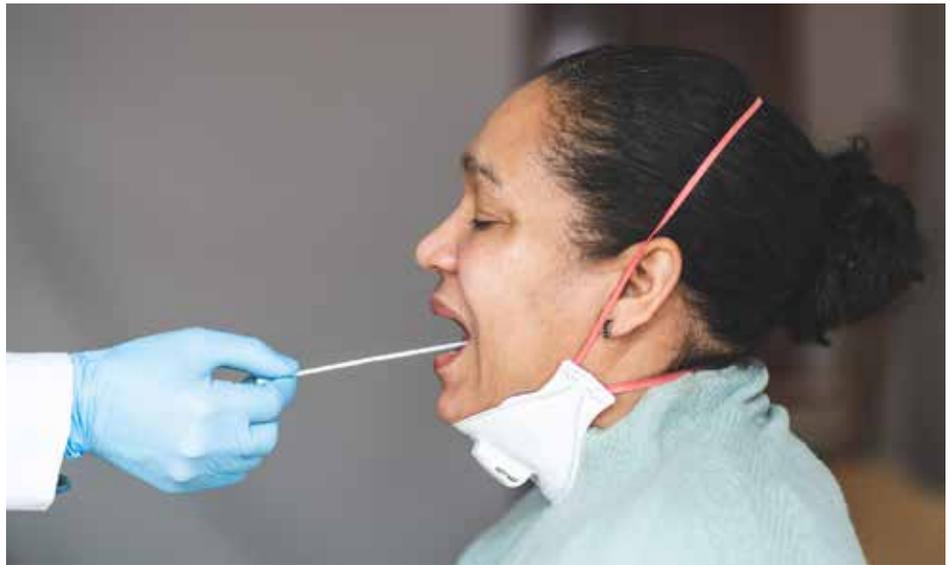
### What if my school is not following safety guidelines?

Absent a teacher's approved reasonable accommodation, a teacher cannot refuse an assignment due to inadequate PPE. If unsafe work conditions exist, there are three main potential sources of legal protections:

- Workplace safety laws
- Collective bargaining laws
- Unfair Labor Practice

### Whom do I complain to, and what will happen if I file a complaint?

You should begin with your local association and/or CEA UniServ Representative. They continue to negotiate safety issues, such as the



employer's duty to provide masks and face shields for those who may have close student contact and for those required to perform cleaning tasks; possible temperature checks, depending upon the input from local health officials; and a myriad of other safety concerns.

Connecticut is also covered by the Occupational Safety and Health Administration (OSHA), which has protections for whistleblowers. However, OSHA has not established any regulatory standards relating to COVID-19 as of yet, and there are no maximum temperatures for classrooms at present.

### Am I allowed to refuse to work?

If your school is following all guidelines and you are just what has been referred to as the "worried well," the answer is no. A teacher cannot refuse to report to work based on a generalized fear of being exposed to COVID-19 or exposing a family member who is particularly vulnerable to COVID-19.

OSHA regulations protect an employee where there is a dangerous condition and the employee "with no reasonable alternative, refuses in good faith to [be] exposed ... to the dangerous condition." The requirements are:

- The condition is one that a reasonable person, under the circumstances, would conclude poses a real danger of death or serious injury; and
- There is insufficient time to eliminate the danger through an OSHA

inspection; and

- The employee must seek a correction of the condition from the employer without avail.

### Can the district require remote teaching versus classroom teaching, or vice versa?

Absent an approved reasonable accommodation and absent a collective bargaining agreement provision, district operations and teacher assignment are a management right. Your local association, through a bargaining demand, may work to negotiate the impact of the district's operational decision.

## UNEMPLOYMENT INSURANCE AND COVID-19

### I am unable to work, as I contracted COVID-19 virus. I have no paid leave time remaining. Am I entitled to unemployment benefits?

- You are eligible to receive unemployment benefits only if you are totally or partially unemployed. More specifically, if you are working full-time, you will not be eligible to receive benefits.
- In order to qualify for unemployment benefits, you must be physically and mentally able for full-time work and ready to return to work. If you are unable to work, you are most likely ineligible for unemployment benefits until you are able to work.

**I am unable to work because I am caring for an ill family member at home. Am I entitled to unemployment benefits?**

- Same response as above.

**I am physically and mentally able to work but have young children at home. Am I entitled to unemployment benefits?**

- This situation is a little different from those described above, as you are physically and mentally able to work.
- You may file for unemployment benefits. A determination will be made concerning your eligibility. Determination will be made on a case-by-case basis.

- You may claim childcare as a compelling personal circumstance as long as you remain attached to the labor market and are ready to return to work after a brief adjustment period to make childcare arrangements so that you are available for work.

**My employer has not instituted teleworking and ordered I must report to work, but has now required me to quarantine, without pay, for 14 days even though I am not sick. Can I collect unemployment benefits?**

You may file for unemployment benefits. A determination will be made concerning your eligibility.

Determination will be made on a case-by-case basis.

**If I received paid sick leave, am I concurrently eligible for unemployment benefits?**

No, you would not be eligible for unemployment benefits during the time period in which you received paid sick leave.

**I am currently out of work due to COVID-related reasons (for example, I have a household member at a high risk for severe illness from COVID-19 under the CDC guidelines). Do I need to respond to weekly claim inquiries, such as stating I am looking for employment?**

Yes, during the COVID-19 pandemic, the state has waived the requirement to look for work. Nevertheless, you must still respond to the weekly claim inquiries and may simply state no to that inquiry.

**Important note:**

While COVID-19 related reasons may be considered good cause in a delay to file an unemployment claim, it is important to file through the Department of Labor website as soon as you become unemployed to avoid being denied benefits.



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