



**FREQUENTLY ASKED QUESTIONS:**

**PERSONNEL CONCERNS FOR SCHOOL RE-OPENING DURING COVID-19**

**June 28, 2020**

This document compiles answers to some common questions regarding school system personnel as the district plans for the eventual re-opening of schools and/or offices. These answers are current as of the date cited above, but as always please consult with Chief Human Resources Officer, Teresa Cunningham-Brown for assistance as you handle tricky personnel matters during this unprecedented transition.

**SECTION 1: HEALTH SCREENINGS, WORKPLACE REQUIREMENTS, AND MEDICAL PRIVACY**

- 1. Can employees be required to submit to health screenings, including temperature checks and questionnaires, prior to entering a worksite?** Yes. The ADA permits medical inquiries and/or examinations in order to assess whether an employee has a medical condition that may pose a direct threat to health or safety. The EEOC has confirmed that COVID-19 constitutes a direct threat to health and safety of others, and therefore employers may make medical inquiries designed to determine whether an employee has symptoms consistent with COVID-19 infection.
- 2. Are the results of the health screening confidential?** Yes, the information gained from a health screening (temperature check and responses to questions) are confidential records. Each worksite should have a private, secure location where daily health screening records are kept.
- 3. May we require employees to wear face coverings or other PPE at work?** Yes, you may mandate personal protective equipment, including face coverings. However, if an employee needs a reasonable accommodation for a disability (such as non-latex gloves) this should be accommodated, unless doing so would pose an undue hardship.

Recently, there has been press coverage discussing whether existing laws ban the wearing of masks in public and whether such laws would prohibit the wearing of masks after August 1. The existing “anti-mask” law, however, would not prevent an employer from

requiring employees to wear a face covering because of health concerns posed in the work environment. The anti-mask law already has a permanent exception, permitting the wearing of masks for persons engaged in employment “where a mask is worn for the purpose of ensuring the physical safety of the wearer, or because of the nature of the occupation, trade or profession.” G.S. 14-12.11(a)(2). Additionally, even where an exception to the anti-mask law does not apply, the ban only prohibits masks “so as to conceal the identity of the wearer.” G.S. 14-12.8. As a result, even where an exception to the anti-mask rule does not apply, an individual would be able to comply with an employer’s face-covering rule and the anti-mask law so long as the face-covering only covered one’s mouth and nose and did not otherwise conceal the wearer’s identity.

**4. Can employees be required to disclose if they have tested positive for COVID-19 or had contact with someone who has tested positive?** Yes. Because COVID-19 poses a direct threat to the health and safety of others, employers can require employees to provide this information.

**5. If an employee has a fever or otherwise fails a health check required for entry into work:**

- **Can the employee be sent home?** Yes. The employee should not be permitted to enter the facility or have direct contact with students or staff.
- **Can the employee be required to work remotely?** Yes, if the employee feels well enough to work and his or her job can be done remotely.
- **What if the employee cannot work remotely?** The employee may be placed on appropriate leave. If the employee is advised to self-quarantine by the health department or a healthcare provider or is showing symptoms and is seeking a diagnosis, the employee may be eligible for FFCRA federal emergency paid sick leave, up to 80 hours of leave.
- **Can we require the employee to be tested for COVID before returning to work?** Yes, if the employee shows symptoms of COVID but asserts they are fit for work, the employer can require the employee to produce a negative COVID-19 test or note/email from a doctor. We recommend you develop objective, evidence-based criteria for when employees will be required to get tested, given that in some areas of the state COVID-19 tests may not be easily available and results can take several days. Like all screening procedures, any return-to-work testing requirement for employees exhibiting symptoms should be consistently applied. If the employer has a testing requirement and the employee refuses to get tested, the procedures should address the period of time the employee must remain off District premises before being permitted to return (e.g., 14 calendar days

following the last demonstration of symptoms). During such time, the employee could take eligible paid leave or unpaid leave.

**6. If an employee tests positive:**

- **What information can be shared with coworkers? With the public or students who may have had contact?** An employee's medical information, including a diagnosis of COVID-19, is confidential under the ADA and state law. Co-workers and others who may have had direct contact with the employee may be told that there has been a confirmed case of COVID-19 within the workplace and given other general information to help them assess the risk of infection, but the infected employee's identity should not be disclosed.
- **What information should be shared with public health authorities?** Under state law (G.S. 130A-136), school principals and operators of childcare facilities are required to report to the local health director if they have reason to suspect that a person within the school or childcare facility has a reportable communicable disease. The novel coronavirus (COVID-19) has been added to the list of diseases subject to required reporting. When contacting the health director to make a report, the principal is permitted to disclose information required by the health director in order to make the report (e.g., name, address).

**7. If an employee discloses that he/she has had direct contact with someone who tested positive for COVID-19:**

- **Can I send the employee home?** Yes. You should instruct the employee to leave the worksite and encourage them to consult with a healthcare provider regarding appropriate precautions. The employer may also wish to have a confidential consultation with local health officials to assess the potential risk. Please notify HR immediately.
- **Can the employee work remotely?** Yes, if the employee feels well enough to work and his or her job duties can be accomplished remotely.
- **What if the employee cannot work remotely?** The employee may be placed on appropriate leave. If the employee is advised to self-quarantine by the health department or a healthcare provider or is showing symptoms and is seeking a diagnosis, the employee may be eligible for FFCRA federal emergency paid sick leave, up to 80 hours of leave.
- **Can we require the employee to be tested for COVID before returning to work?** Yes. As noted above, this requirement should be imposed only when there is an objective, reliable basis for suspecting exposure and any requirement should be imposed consistently.

- 8. What if someone else reports information suggesting that an employee has been exposed to COVID-19?** You may question the employee to determine whether he or she has had direct contact with someone who had COVID-19. The information you receive from these inquiries is confidential as outlined above.
- 9. If an employee requests sick leave, can I inquire whether he or she is showing symptoms of COVID-19?** Yes, you may ask questions to determine whether the employee is showing symptoms consistent with COVID-19 (for example, fever, chills, cough, shortness of breath, or sore throat). We recommend employing a standard questionnaire.
- 10. Can I ask a prospective hire whether they have been tested for COVID-19?** No, you may not make medical inquiries prior to issuing a job offer.
- 11. Can we screen new hires for COVID-symptoms?** Yes, the district (HR) may screen new hires for symptoms, recent travel to pandemic hotspots, and other risk factors, and delay start dates if symptoms or certain risk factors are present.

## **SECTION 2: HIGH-RISK EMPLOYEES AND REQUESTS FOR ACCOMMODATIONS**

- 12. If an employee self-identifies as “high risk” and requests an accommodation, can I require medical documentation?** Yes, please consult HR, if the condition is not known or obvious. In most cases, it will not be obvious to the employer whether an employee has a condition that makes them high risk for COVID-19 (e.g., compromised immune system, heart disease). We have developed a sample form for employees who self-identify as “high risk,” along with a medical certification form. If the employee identifies as “high risk” because they have an underlying medical condition that is on the CDC’s high risk list, the certification form only requires the employee’s physician for confirmation (yes or no); the employee is not required to provide his or her specific diagnosis. If the employee identifies as “high risk” and selects “Other” as the reason for requesting an accommodation, the employer may need to request additional information from the employee or provider to evaluate the request depending on the information received. Note that medical documentation would not be necessary if the employee self-identifies as “high risk” solely because the employee is age 65 or older.
- 13. If an employee self-identifies as “high risk” and requests an accommodation is the district required to allow the employee to work remotely?** Not necessarily. The ADA requires that the employer and employee engage in an interactive process to determine what accommodations are reasonable for certain positions and which requested accommodations may pose an undue burden to the employer. This will require identifying the essential functions of the employee’s particular job and discussing various options for accommodating their health issues while still accomplishing those essential functions. For employees whose essential job functions can be accomplished remotely, remote work is likely to be considered a reasonable accommodation.

Not all jobs can be accomplished remotely. If the essential job functions cannot be accomplished through remote work, the employer is required to consider whether other accommodations may be possible. If you have questions regarding whether an employee will still be able to perform the essential functions of his/her position with an accommodation or whether a requested accommodation will impose an undue burden, please contact us to discuss. If an accommodation is not possible, then the employer should also advise the employee on what types of leave may be available, including pandemic-related leave under the FFCRA. Please consult with HR.

- 14. If an employee self-identifies as “high risk” solely because they are age 65 or older (and does not have an underlying medical condition or other disability), is the district required to allow the employee to work remotely?** The ADA does not apply to individuals solely on the basis of age. However, the Age Discrimination in Employment Act does protect older employees from age-related workplace discrimination. Since the district will engage in an interactive process with other “high risk” employees to identify and provide reasonable accommodations, we recommend that employers engage in a similar ADA-like process with employees who are “high risk” due to age. Note again that not all jobs can be accomplished remotely. If the essential job functions of the employee cannot be accomplished through remote work, the district may consider other accommodations and provide the employee with information about available leave. Please consult with HR.
- 15. Is the district required to allow an employee to work remotely or otherwise provide job accommodations if the employee is not “high risk”, but lives with or cares for someone who is “high risk” (e.g., spouse, child, parent, grandparent)?** No. The ADA does not require accommodations for employees without disabilities to protect a family member or other individual from potential COVID-19 exposure. The employer should advise the employee on what types of leave may be available, including pandemic-related leave under the FFCRA.
- 16. What if an employee is requesting an accommodation due to pregnancy?** The CDC does not currently include individuals who are pregnant on its list of those who are at “high risk”, but it does recommend that they take “extra precautions” to protect themselves from potential COVID-19 exposure. The ADA and Pregnancy Discrimination Act may also apply.

Under the ADA some pregnancy-related medical conditions are considered disabilities even if pregnancy itself is not a disability. The Pregnancy Discrimination Act also protects pregnant employees from discrimination. According to the EEOC, this means that pregnant employees may be entitled to reasonable job accommodations that are provided to other employees who are similar in their ability or inability to work. Due to the overlapping ADA and PDA protections for employees who are pregnant and/or who have pregnancy-related medical conditions, as well as the significant public health

concerns, we recommend engaging with these employees to determine reasonable accommodations using the interactive process as described in Question 13 above. While pregnancy is not listed as “high risk” on the sample request form, the employee could use the “other” condition for which they are requesting an accommodation. Please consult with HR.

- 17. What if an employee requests accommodations for another medical condition?** An employer should still engage in the ADA interactive process if an employee requests an accommodation because of another medical condition. The employee may use the “other” section of the form to explain their condition and why they need an accommodation, and the health care provider can explain the condition and risk posed by COVID-19 in the medical certification. Depending on the information received, the employer may need to request additional information from the employee or provider to evaluate the request. If the request indicates that the employee’s condition makes them high risk for an acute respiratory illness or prolonged infection, they may be eligible for a reasonable accommodation. Please contact us if you have questions regarding how to respond to an accommodation request for another condition. Please consult with HR.