

COVID-19 EMPLOYMENT QUESTIONS

- 1. A BOE staff member is at an increased risk for severe illness from the coronavirus disease 2019 (“COVID-19”), as identified by the U.S. Centers for Disease Control and Prevention (“CDC”),¹ and they have been advised by a health care provider to self-quarantine indefinitely.**
- a. Is the district under any obligation to allow the staff member to work remotely/virtually during the period of indefinite self-quarantine recommended by the health care provider?**

Yes, under the Americans with Disabilities Act of 1990 (the “ADA”) and the New Jersey Law Against Discrimination (the “LAD”), employers who fail to provide reasonable accommodations to people with disabilities may be found liable for discrimination. See Faila v. Passaic, 146 F.3d 149, 154 (3d Cir. 1998). Under the ADA, when an employee notifies an employer of their disability and requests an accommodation, employers are obligated to engage in a good faith interactive process with them to identify reasonable accommodations. See Taylor v. Phoenixville Sch. Dist., 184 F.3d 296, 319 (3d Cir. 1999). In fact, an employer must consider in good faith the employee’s input prior to arriving at an accommodation for the employee’s disability. Lewis v. Univ. of Pa., 779 Fed. Appx. 920, 923 (3d Cir. 2019). Employees with underlying and serious health conditions may request leave and/or accommodations during the COVID-19 pandemic.

If an employee is identified as being “particularly vulnerable to COVID-19” by their health care provider, then the employee may be considered to have a “disability” or “handicap” under the ADA and LAD, respectively. As such, the employee may request leave or a reasonable accommodation for that reason. Once the School District is notified of an employee’s request or once the School District becomes aware that an employee may need an accommodation, then the School District must begin to engage with the employee in good faith to identify a reasonable accommodation for the employee. To engage in the interactive process, we recommend requiring employees who request leave and/or an accommodation to fill out a form describing their needs and specific request.

- b. What State or federal benefits is the staff member entitled to?**

Under the Families First Coronavirus Response Act (the “FFCRA”), if an employee cannot work (or telework) because s/he is advised by a health care provider to self-quarantine because the employee is “particularly vulnerable to COVID-19,” then the employee is eligible to receive Emergency Paid Sick Leave Act (“EPSLA”) benefits. Under the EPSLA, such an employee would be entitled to fully paid time off at the employee’s regular rate of

¹ The CDC advises that older adults (<https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html>) and people with certain underlying medical conditions (https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fneed-extra-precautions%2Fgroups-at-higher-risk.html) are at increased risk for severe illness from COVID-19.

pay (up to \$511 per day and \$5,110 in the aggregate) for the typical number of hours the employee would work in a typical two-week period (up to 80 hours).

To receive FFCRA leave, an employee must provide documentation of the following: (1) the employee's name; (2) date(s) for which leave is requested; (3) qualifying reason for the leave; and (4) an oral or written statement that the Employee cannot work (or telework) because of the qualified reason for leave.

For employees requesting EPSLA leave on the basis that a health care provider has advised the employee to self-quarantine because the employee is “particularly vulnerable to COVID-19,” the employee must also provide the School District with the name of that health care provider. Employees seeking leave because they are “particularly vulnerable to COVID-19” must also submit a certification from their healthcare provider explaining how an employee is “particularly vulnerable to COVID-19” and how long the employee will remain vulnerable.

If an employee is subject to self-quarantine or isolation and is able to telework, then the employee is not eligible to receive EPSLA benefits.

In addition, the employee may be eligible to receive New Jersey Temporary Disability Insurance (“NJTDI”) benefits and Family and Medical Leave Act (“FMLA”) for absences related to being “particularly vulnerable to COVID-19.” If the employee exhausts all of these benefits, the employee may be eligible to receive unemployment assistance.

c. Does the staff member need to use school-provided sick time during the period of self-quarantine recommended by the health care provider?

If an employee has utilized all of his/her EPSLA leave, as described above, the employee may utilize his/her personal and vacation leave to cover absences related to being “particularly vulnerable to COVID-19.” The employee may also utilize earned sick leave in accordance with N.J.S.A. 18A:30-1.

d. What job protections is the staff member entitled to?

An employee who utilizes EPSLA leave, upon return to work, has a right to be restored to the same or an equivalent position in accordance with FMLA rights to reinstatement. See 29 C.F.R. §§ 826.130(a); 825.214; 825.215. However, “[a]n Employee is not protected from employment actions, such as layoffs, that would have affected the Employee regardless of whether he or she took leave. In order to deny restoration to employment, an Employer must be able to show that an Employee would not otherwise have been employed at the time reinstatement is requested in order to deny restoration to employment.” 29 C.F.R. § 826.130(b)(1).

If an employee whose healthcare provider has certified the employee is “particularly vulnerable to COVID-19” requests to return to work after taking leave, the employee

should provide an updated certification from the employee's doctor, which indicates that the employee is no longer "particularly vulnerable to COVID-19." If the employee does not provide the necessary clearance from his/her doctor, needed to ensure there is no direct threat to the employee's health by returning to work, the Board of Education may require the employee to undergo an examination by the Board's designated physician.

On March 20, 2020, the State of New Jersey enacted N.J.S.A. 34:11D-12, which states that an employer cannot terminate or refuse to reinstate an employee if the employee has, or is suspected to have, an infectious disease (i.e. COVID-19) as documented by a licensed medical professional, which requires the employee to miss time at work.

2. A BOE staff member's spouse (or qualifying family member) is at an increased risk for severe illness from the coronavirus disease 2019 ("COVID-19"), as identified by the U.S. Centers for Disease Control and Prevention ("CDC"),² and the staff member has been advised by a health care provider to self-quarantine indefinitely.

a. Is the district under any obligation to allow the staff member to work remotely/virtually during the period of indefinite self-quarantine recommended by the health care provider because a spouse (or qualifying family member) is high-risk?

Generally, an employee is not entitled to accommodations if s/he is not ill or disabled.

An employee is not entitled to a reasonable accommodation under the ADA in order to avoid exposing a qualifying family member (e.g. spouse, child, parent, etc.) who is at higher risk of severe illness from COVID-19 due to an underlying medical condition. Although the ADA prohibits discrimination based on association with an individual with a disability, that protection is limited to disparate treatment or harassment. The ADA does not require that an employer accommodate an employee without a disability based on the disability-related needs of a family member or other person with whom she is associated.

However, in accordance with Executive Order No. 107, if an employee is deemed to be non-essential (i.e. tasks may be performed remotely), the employee should be permitted to work remotely. See Executive Order No. 107 ¶ 10 (March 21, 2020), 42 N.J.R. 554(a) (April 6, 2020).³

Exceptions to this mandate exists for essential employees. An essential employee is one whose duties must be physically performed at the work site and cannot be performed or modified to be performed remotely. An essential employee who is absent from work

² The CDC advises that older adults (<https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html>) and people with certain underlying medical conditions (https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fneed-extra-precautions%2Fgroups-at-higher-risk.html) are at increased risk for severe illness from COVID-19.

³ <https://nj.gov/infobank/eo/056murphy/pdf/EO-107.pdf>.

because s/he refuses to perform his/her duties during the COVID-19 outbreak may not be eligible for benefits under the FFCRA, FMLA or NJFLA. If the School District has assignments and tasks for an essential employee to perform during the COVID-19 pandemic at the worksite, but the employee refuses to perform those tasks; then that employee may be subject to adverse employment action. It is recommended that, prior to any adverse action taken against an essential employee for this reason, the district seeks legal advice to address the specific situation.

An employer is free to provide additional flexibilities (e.g. telework, non-business hours, etc.) to accommodate an employee whose spouse is “particularly vulnerable to COVID-19,” but the employer is not required to do so. If an employer chooses to offer flexibilities beyond what the law requires, the flexibilities should be provided uniformly so the employer does not engage in disparate treatment on a protected EEO basis.

b. What State or federal benefits is the staff member entitled to?

In this scenario, where an employee’s spouse (or qualifying family member) is “particularly vulnerable to COVID-19” and the employee has been advised by a health-care provider to self-quarantine, the employee would not be eligible for FFCRA benefits.

Under the FFCRA Regulations, “advised by a health care provider to self-quarantine” means that a health care provider has advised the employee to self-quarantine based on a belief that the employee: (i) has COVID-19; (ii) is suspected to have COVID-19; or (iii) is particularly vulnerable to COVID-19. See 29 C.F.R. § 826.20(a)(3).

An employee may be entitled to NJTDI, New Jersey Family Leave Insurance (“NJFLI”), FMLA or New Jersey Family Leave Act (“NJFLA”) for such absences where a qualifying family member is “particularly vulnerable to COVID-19” and the employee is advised to self-quarantine. If an employee exhausts all of these benefits, the employee may be eligible to receive unemployment assistance.

c. Does the staff member need to use school-provided sick time during the period of indefinite self-quarantine recommended by the health care provider?

If a staff member is not ill or disabled and not eligible for state or federal leave, the staff member may utilize accrued personal or vacation time for such leave. School District employees subject to N.J.S.A. 18A:30-1 may not utilize their earned sick leave to cover absences that are unrelated to their own illness.

d. What job protections is the staff member entitled to?

Under the FMLA and NJFLA, an employee is entitled to take leave without losing his/her job to care for a qualifying family member with a serious medical condition. Under FMLA, the employee has a right to be restored to the same or an equivalent position. See 29 C.F.R. §§ 825.214; 825.215. Under NJFLA, the employee has a right to be reinstated to the same position the employee held immediately prior to taking the NJFLA leave or, if the position

has been filled, an equivalent position of like seniority, status, employment benefits, pay and other terms and conditions of employment. See N.J.S.A. 34:11B-7.

- 3. A BOE staff member has a sick child or spouse (or household member) who has been diagnosed with COVID-19 or advised to self-quarantine due to COVID-19 concerns, and the employee cannot work (or telework) because they are caring for the sick child or spouse (or household) as directed by a health care provider.**

- a. What State or federal benefits is the staff member entitled to?**

Under the FFCRA, if an employee cannot work (or telework) because the employee is caring for an individual who has been advised by a health care provider to self-quarantine due to concerns related to COVID-19, then the employee is eligible to receive EPSLA benefits. Under the EPSLA, such an employee would be entitled to partially paid time off at two-thirds of the employee's regular rate of pay (up to \$200 per day and \$2,000 in the aggregate) for the typical number of hours the employee would work in a typical two-week period (up to 80 hours).

The individual who the employee is caring for must have been advised by a health care provider to self-quarantine due to concerns that the individual: (i) has COVID-19; (ii) is suspected to have COVID-19; or (iii) is particularly vulnerable to COVID-19. See 29 C.F.R. § 826.20(a)(7).

To receive FFCRA leave, an employee must provide documentation of the following: (1) the employee's name; (2) date(s) for which leave is requested; (3) qualifying reason for the leave; and (4) an oral or written statement that the Employee cannot work (or telework) because of the qualified reason for leave.

In addition, for employees requesting EPSLA leave on the basis that they cannot work (or telework) because they are caring for an individual who has been advised to self-quarantine due to COVID-19 concerns, the employee must also provide the School District with the name of that health care provider who advised the individual being cared for to self-quarantine.

Employees caring for an individual who has been has been advised to self-quarantine due to COVID-19 concerns may also be eligible for leave under the FMLA, NJFLA and NJFLI, among other things. If the employee exhausts all of these benefits, the employee may be eligible to receive unemployment assistance.

- b. Does the staff member need to use school-provided sick time during the time they are providing care as directed by a health care provider?**

If an employee has utilized all of his/her EPSLA leave, as described above, the employee may utilize his/her personal and vacation leave to cover absences related to caring for an individual who has been has been advised to self-quarantine due to COVID-19 concerns. Pursuant to N.J.S.A. 18A:30-1, School District employees who have a household member

diagnosed with COVID-19 may utilize sick leave to cover absences related to quarantine. However, pursuant to N.J.S.A. 18A:30-1, School District employees may not utilize sick leave to cover absences to care for an individual who is self-quarantined because the individual is “particularly vulnerable to COVID-19.”

c. What job protections is the staff member entitled to?

An employee who utilizes EPSLA leave, upon return to work, has a right to be restored to the same or an equivalent position in accordance with FMLA rights to reinstatement. See 29 C.F.R. §§ 826.130(a); 825.214; 825.215. However, “[a]n Employee is not protected from employment actions, such as layoffs, that would have affected the Employee regardless of whether he or she took leave. In order to deny restoration to employment, an Employer must be able to show that an Employee would not otherwise have been employed at the time reinstatement is requested in order to deny restoration to employment.” 29 C.F.R. § 826.130(b)(1).

4. A BOE staff member’s spouse (or qualifying family member) has an underlying medical condition documented by a health care provider that makes the staff member fearful that they will expose their spouse to an increased risk for severe illness from COVID-19 if they return to work in the school building. However, no health care provider has recommended that the staff member self-quarantine. The staff member refuses to return to the school building to work for an indefinite amount of time.

a. Is the district under any obligation to allow the staff member to work remotely/virtually during the time they refuse to return to the building?

As noted in the response to Question 2(a), above, generally, an employee is not entitled to accommodations if s/he is not ill or disabled.

An employee is not entitled to a reasonable accommodation under the ADA in order to avoid exposing a family member (e.g. spouse, child, parent, etc.) who is at higher risk of severe illness from COVID-19 due to an underlying medical condition. Although the ADA prohibits discrimination based on association with an individual with a disability, that protection is limited to disparate treatment or harassment. The ADA does not require that an employer accommodate an employee without a disability based on the disability-related needs of a family member or other person with whom she is associated.

However, in accordance with Executive Order No. 107, if an employee is deemed to be non-essential (i.e. tasks may be performed remotely), the employee should be permitted to work remotely. See Executive Order No. 107 ¶ 10 (March 21, 2020), 42 N.J.R. 554(a) (April 6, 2020).⁴

Exceptions to this mandate exists for essential employees. An essential employee is one whose duties must be physically performed at the work site and cannot be performed or modified to be performed remotely. An essential employee who is absent from work

⁴ <https://nj.gov/infobank/eo/056murphy/pdf/EO-107.pdf>.

because s/he refuses to perform his/her duties during the COVID-19 outbreak may not be eligible for benefits under the FFCRA, FMLA or NJFLA. If the School District has assignments and tasks for an essential employee to perform during the COVID-19 pandemic at the worksite, but the employee refuses to perform those tasks; then that employee may be subject to adverse employment action. It is recommended that, prior to any adverse action taken against an essential employee for this reason, the district seeks legal advice to address the specific situation.

An employer is free to provide additional flexibilities (e.g. telework, non-business hours, etc.) to accommodate an employee whose spouse is “particularly vulnerable to COVID-19,” but the employer is not required to do so. If an employer chooses to offer flexibilities beyond what the law requires, the flexibilities should be provided uniformly so the employer does not engage in disparate treatment on a protected EEO basis.

b. What State or federal benefits is the staff member entitled to?

In this scenario, where an employee’s spouse is “particularly vulnerable to COVID-19” and the employee has been advised by a health-care provider to self-quarantine, the employee would not be eligible for federal FFCRA benefits, as discussed in response to Question 2(b), above.

If an employee has not been advised by a health care provider to self-quarantine, the employee is likely ineligible for Federal or State benefits for absences to avoid exposing a spouse.

c. Can the staff member use school-provided sick, vacation, or personal time during the time they refuse to return to the building?

If a staff member is not ill or disabled and not eligible for state or federal leave, the staff member may utilize accrued personal or vacation time for such leave. School District employees subject to N.J.S.A. 18A:30-1 may not utilize their earned sick leave to cover absences that are unrelated to their own illness.

d. What job protections is the staff member entitled to?

An employee may return to his/her position after utilizing personal and vacation leave.

If the employee is deemed to be non-essential (i.e. tasks may be performed remotely), the employee should be permitted to work remotely.

If the employee is deemed to be essential (i.e. tasks must be performed at the workplace) and the employee refuses to come in to work, the employee may be subject to adverse employment action. It is recommended that, prior to any adverse action taken against an essential employee for this reason, the district seeks legal advice to address the specific situation.

5. A BOE staff member has no underlying medical condition documented by a health care provider that the CDC has stated increases the risk for severe illness from COVID-19, but the staff member is afraid of gathering in a group. The staff member is willing to work remotely/virtually, but they refuse to return to the school building to work for an indefinite amount of time.

a. Is the district under any obligation to allow the staff member to work remotely/virtually during the time they refuse to return to the building?

There is no requirement for a School District to provide an accommodation to an employee with undocumented fears or anxiety related to COVID-19. The School District should remain flexible in permitting work from home opportunities for its employees, where practicable.

Pursuant to Executive Order No. 107, employers must provide work from home opportunities to non-essential workers if their tasks can be performed remotely. Executive Order No. 107 ¶ 10 (March 21, 2020), 42 N.J.R. 554(a) (April 6, 2020).⁵ If an employee is deemed to be non-essential (i.e. tasks may be performed remotely), the employee should be permitted to work remotely.

Exceptions to this mandate exists for essential employees. An essential employee is one whose duties must be physically performed at the work site and cannot be performed or modified to be performed remotely. An essential employee who is absent from work because s/he refuses to perform his/her duties during the COVID-19 outbreak may not be eligible for benefits under the FFCRA, FMLA or NJFLA. If the School District has assignments and tasks for an essential employee to perform during the COVID-19 pandemic at the worksite, but the employee refuses to perform those tasks; then that employee may be subject to adverse employment action. It is recommended that, prior to any adverse action taken against an essential employee for this reason, the district seeks legal advice to address the specific situation.

If an employee notifies the School District that s/he has diagnosed anxiety or related condition and requests an accommodation to return to work at the school building, the School District should follow the procedures described in response to Question 1, above, for engaging in the interactive process to identify a reasonable accommodation.

b. What State or federal benefits is the staff member entitled to?

The FFCRA does not permit leave to be taken on the basis of a generalized fear of contracting COVID 19. In addition, leave taken by an employee for the purpose of avoiding exposure to COVID-19 is not protected under the FMLA. Unlike the FMLA, the NJFLA does not entitle employees to take leave for their own serious medical condition.

⁵ <https://nj.gov/infobank/eo/056murphy/pdf/EO-107.pdf>.

c. Can the staff member use school-provided sick, vacation, or personal time during the time they refuse to return to the building?

An employee may utilize his/her personal and vacation leave for absences related to a generalized fear of COVID-19. School District employees subject to N.J.S.A. 18A:30-1 may not utilize their earned sick leave to cover absences related to fears of COVID-19, unless same is specifically supported by a medical certification that the employee is disabled.

d. What job protections is the staff member entitled to?

An employee may return to his/her position after utilizing personal and vacation leave.

If the employee is deemed to be non-essential (i.e. tasks may be performed remotely), the employee should be permitted to work remotely.

If the employee is deemed to be essential (i.e. tasks must be performed at the workplace) and the employee refuses to come in to work, the employee may be subject to adverse employment action. It is recommended that, prior to any adverse action taken against an essential employee for this reason, the district seeks legal advice to address the specific situation.

6. A BOE staff member has been diagnosed with COVID-19, which they caught from a family member over the weekend, and they have been recommended to self-quarantine by a health care provider.

a. What State or federal benefits is the staff member entitled to?

If an employee cannot work (or telework) because s/he is experiencing symptoms of COVID-19 and is seeking testing and/or if s/he has been advised by a health care provider to self-quarantine because the employee has or is suspected to have COVID-19, then the employee is entitled to EPSLA benefits. Under the EPSLA, such an employee would be entitled to fully paid time off at the employee's regular rate of pay (up to \$511 per day and \$5,110 in the aggregate) for the typical number of hours the employee would work in a typical two-week period (up to 80 hours).

To receive FFCRA leave, an employee must provide documentation of the following: (1) the employee's name; (2) date(s) for which leave is requested; (3) qualifying reason for the leave; and (4) an oral or written statement that the Employee cannot work (or telework) because of the qualified reason for leave.

For employees requesting EPSLA leave on the basis that a health care provider has advised the employee to self-quarantine due to COVID-19 concerns, the employee must also provide the School District with the name of that health care provider.

In addition, the employee may be eligible to receive NJTDI benefits and FMLA for illnesses and absences related to COVID-19. If the employee exhausts all of these benefits, the employee may be eligible to receive unemployment assistance.

b. Does the staff member need to use school-provided sick time while they are experiencing symptoms?

If an employee has utilized all of his/her EPSLA leave, as described above, the employee may utilize his/her earned sick leave, in accordance with N.J.S.A. 18A:30-1, personal and vacation leave to cover absences related to experiencing symptoms of COVID-19.

c. Does the staff member need to use school-provided sick time during the period of self-quarantine recommended by the health care provider?

If an employee has utilized all of his/her EPSLA leave, as described above, the employee may utilize his/her earned sick leave, personal and vacation leave to cover absences related to being advised by a health care provider to self-quarantine due to COVID-19 concerns.

d. Is the district under any obligation to allow the staff member to work remotely/virtually during the period of self-quarantine recommended by the health care provider?

If an employee is experiencing symptoms of COVID-19, has tested positive for COVID-19 or has been advised by a health care provider to self-quarantine, the employee should be permitted to telework if s/he is able. In such an instance, the employee would not be eligible to use EPSLA benefits if s/he can telework.

e. What job protections is the staff member entitled to?

An employee who utilizes EPSLA leave, upon return to work, has a right to be restored to the same or an equivalent position in accordance with FMLA rights to reinstatement. See 29 C.F.R. §§ 826.130(a); 825.214; 825.215. However, “[a]n Employee is not protected from employment actions, such as layoffs, that would have affected the Employee regardless of whether he or she took leave. In order to deny restoration to employment, an Employer must be able to show that an Employee would not otherwise have been employed at the time reinstatement is requested in order to deny restoration to employment.” 29 C.F.R. § 826.130(b)(1).

On March 20, 2020, the State of New Jersey enacted N.J.S.A. 34:11D-12, which states that an employer cannot terminate or refuse to reinstate an employee if the employee has, or is suspected to have, an infectious disease (i.e. COVID-19) as documented by a licensed medical professional, which requires the employee to miss time at work.

An employee may return to his/her position after utilizing sick, personal and/or vacation leave.

7. **A BOE staff member was exposed to a family member over the weekend who had an active COVID-19 infection, and the staff member has been advised to self-quarantine by a health care provider or public health authority.**

The employee would be entitled to Federal and State benefits, remote work accommodations and job protections as discussed in response to Question 6, above.

8. **A BOE staff member has recently voluntarily traveled to a “hot spot” State that is experiencing a surge of COVID-19 cases, as defined by the State of New Jersey Department of Health, and the staff member has been advised to self-quarantine by a health care provider or public health authority upon their return to the State of New Jersey.**

The travel advisory, which became effective on June 25, 2020, advises all individuals entering New Jersey from states with a significant spread of COVID-19 to quarantine for fourteen (14) days after leaving that state. The quarantine period is not mandatory and there are several exemptions and exceptions. Governor Murphy clarified that the advisory is voluntary, but compliance is expected.

Employers should issue specific policies regarding the New Jersey Travel Advisory to encourage and ensure that employees comply with the advisory.

- a. Does the staff member need to use school-provided sick time during the period of self-quarantine?**

If a staff member voluntarily travels to a “hot spot” State *after* the state was listed on the New Jersey COVID-19 Information Hub,⁶ then the staff member will be required to quarantine for fourteen (14) days after leaving the state. These employees may be required to work from home during the quarantine period. If the nature and duties of the employee’s job cannot be performed from home, the employee may be required to use accumulated personal or vacation leave time during the quarantine period. School District employees subject to N.J.S.A. 18A:30-1 may not utilize their earned sick leave to cover absences related to the travel advisory quarantine. If the employee has no accumulated sick, vacation or other leave time, their leave will be unpaid.

- b. What State or federal benefits is the staff member entitled to?**

If a staff member was in a “hot spot” State *on the date* the state was listed on the New Jersey COVID-19 Information Hub or the staff member made pre-paid arrangements to travel to a “hot spot” State *before* the state was listed on the New Jersey COVID-19

⁶ <https://covid19.nj.gov/faqs/nj-information/travel-information/which-states-are-on-the-travel-advisory-list-are-there-travel-restrictions-to-or-from-new-jersey#direct-link>.

Information Hub, then the staff member will be required to quarantine for fourteen (14) days after leaving the state. These employees will be required to work from home during the quarantine period. If the nature and duties of the employee's job cannot be performed from home, the employee will be eligible for paid leave pursuant to the FFCRA, which grants two (2) weeks (up to 80 hours) of paid leave at the employee's regular rate of pay (up to \$511 per day and \$5,110 in the aggregate). If a returning employee has already exhausted her FFCRA benefits, then the employee will be required to utilize her accrued personal or vacation time. School District employees subject to N.J.S.A. 18A:30-1 may utilize their earned sick leave to cover absences related to the travel advisory quarantine.

c. What job protections is the staff member entitled to?

An employee who utilizes FFCRA leave, upon return to work, has a right to be restored to the same or an equivalent position in accordance with FMLA rights to reinstatement. See 29 C.F.R. §§ 826.130(a); 825.214; 825.215. However, “[a]n Employee is not protected from employment actions, such as layoffs, that would have affected the Employee regardless of whether he or she took leave. In order to deny restoration to employment, an Employer must be able to show that an Employee would not otherwise have been employed at the time reinstatement is requested in order to deny restoration to employment.” 29 C.F.R. § 826.130(b)(1).

An employee may return to his/her position after utilizing sick, personal and/or vacation leave.

9. If a parent/student/staff member is exhibiting symptoms of COVID-19 as delineated by the CDC (i.e., fever or chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, diarrhea), can a district prohibit such person from entering a school building, based on the concern that such person is a direct threat to other parents/students/staff members?

Yes, if a student, staff member or visitor has symptoms of COVID-19, s/he may not be permitted in the school building and should be instructed to seek appropriate medical attention and possible testing. The student would be excused from school in accordance with existing school illness management policy (e.g., until symptom-free for 24 hours without fever reducing medications).⁷ The staff member would be excused from work and may be eligible to use FFCRA benefits, earned sick leave and other benefits for absences relating to COVID-19 symptoms and diagnosis.

The CDC does not currently recommend universal symptom screenings (screening all students grades K-12) be conducted by schools. Rather, CDC strongly encourages parents or caregivers

⁷ <https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/end-home-isolation.html> (determining when to end home isolation).

to monitor their children for signs of infectious illness every day. Students who are sick should not attend school in-person.

The CDC list of symptoms is available here: <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>

10. For a parent/student/staff member who thinks or knows they had COVID-19, and had symptoms of COVID-19, can a district require medical documentation/clearance before letting such person enter a school building if, consistent with the CDC guidelines: (1) it has been at least 10 days since their symptoms first appeared, and (2) they have had no fever, without fever-reducing medication, for at least 24 hours, and (3) their symptoms have improved?

During a pandemic health crisis, under the ADA, an employer would be allowed to require a doctor's note, a medical examination, or a time period during which the employee has been symptom free, before it allows the employee to return to work. Specifically, an employer may require the above actions of an employee where it has a reasonable belief – based on objective evidence – that the employee's present medical condition would:

- impair his ability to perform essential job functions (i.e., fundamental job duties) with or without reasonable accommodation, or
- pose a direct threat (i.e., significant risk of substantial harm that cannot be reduced or eliminated by reasonable accommodation) to safety in the workplace.

Employers are required to notify employees in advance if the employer will require a fitness-for-duty certification to return to work. Similar to FMLA leave, the employer may have a uniformly applied policy or practice that requires all similarly situated employees who take leave for COVID-19 to submit a certification from the employee's health care provider that the employee is COVID-19 free and is able to resume work. If the terms of a collective bargaining agreement govern an employee's return to work, those provisions shall be applied.

Visitors to school buildings should be limited or prohibited, with limited exceptions. Visitors may be required to answer screening questions to determine symptoms and exposure and have their temperature checked prior to entering school buildings.

The CDC guidance on when an individual may end home isolation available here: <https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/end-home-isolation.html>.

11. For a parent/student/staff member who has tested positive for COVID-19, but had no symptoms of COVID-19, can a district require medical documentation/clearance before letting such person enter a school building if, consistent with the CDC guidelines, 10 days have passed since their COVID-19 test?

Yes, a district may require medical documentation/clearance or screening before letting a person into the school building, as noted in response to Question 10, above.

- 12. For a parent/student/staff member who has tested positive for COVID-19, but had no symptoms of COVID-19, can a district require medical documentation/clearance before letting such person enter a school building if, consistent with the CDC guidelines: (1) they have no fever, (2) their respiratory symptoms have improved, and (3) they have received two negative test results in a row, at least 24 hours apart?**

Yes, a district may require medical documentation/clearance or screening before letting a person into the school building, as noted in response to Question 10, above. However, the CDC is no longer recommending a test-based strategy to determine when to discontinue home isolation, except in circumstances where an individual is severely immunocompromised.

- 13. Can a district impose its own policies or procedures (for example: use of cloth face coverings) that are more restrictive than state health directives, such as an executive order?**

Yes, a district may require additional protective policies and procedures that go beyond requirements in executive orders. At no time may a district implement policies and procedures that are less restrictive than required by law, include executive orders.

With respect to requiring face coverings and masks, limited exceptions should be provided when wearing a face covering would inhibit the individual's health (e.g. the individual cannot remove the mask on their own) or where the individual is under two (2) years of age. The district must consider Federal, State and local health authority guidelines on safety and health policies and procedures. As of July 30, 2020, face coverings or masks are required at all times for indoor gatherings, with limited exceptions. See Executive Order No. 152 ¶ 1 (June 9, 2020), 52 N.J.R. 1301(a) (July 6, 2020) (establishing requirements for indoor gatherings).⁸

⁸ <https://nj.gov/infobank/eo/056murphy/pdf/EO-152.pdf>.