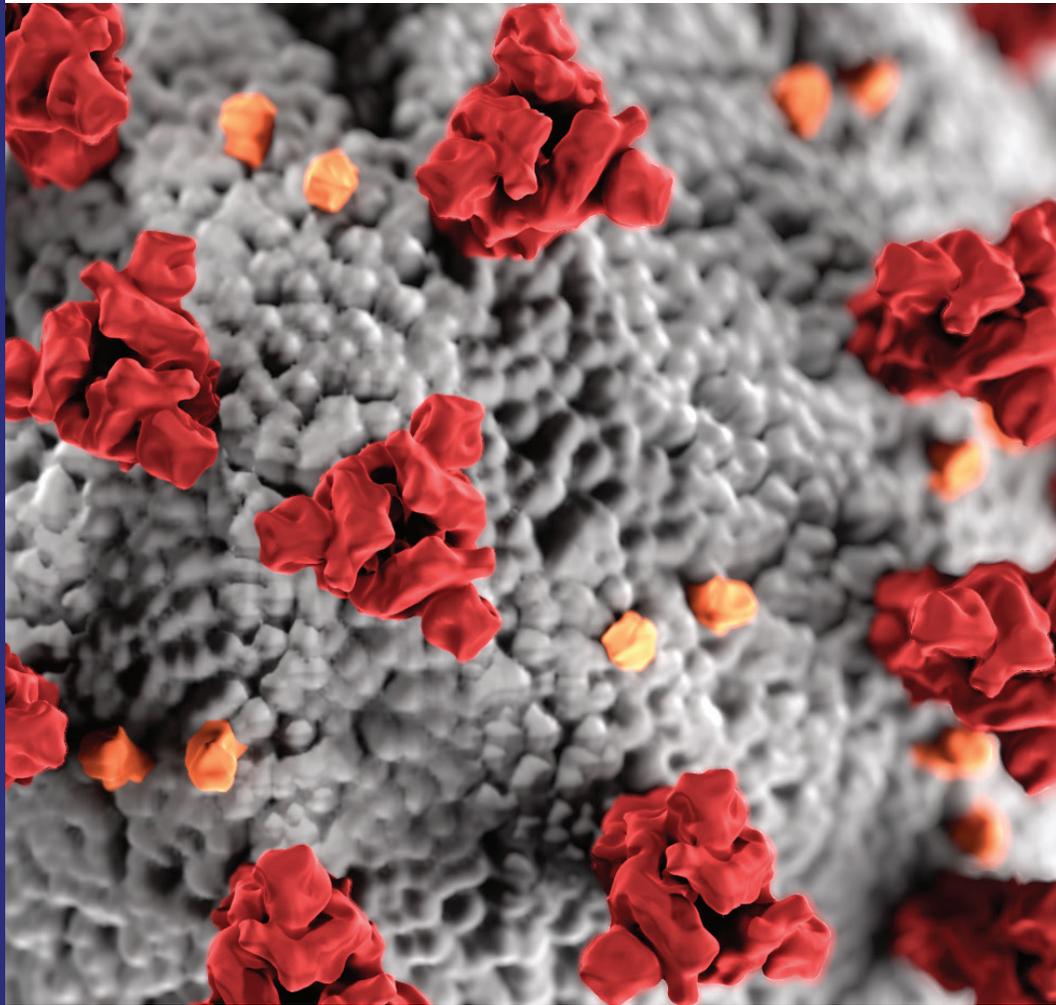


COVID-19 FAQs



What You Should Know About Returning Back to School

July 2020

POE COVID-19 FAQs:



The legal team at Professional Oklahoma Educators has received numerous calls and emails from teachers and support staff about returning to work when schools reopen in the fall. Your concerns are real and valid. Please know at POE that we want a safe and healthy environment for when you return to the classroom. To help with your concerns, POE has compiled COVID-19 FAQs that address paid sick leave under the Families First Coronavirus Response Act, screening, testing, exposure, support staff and travel.

Does the Families First Coronavirus Response Act (FFCRA) apply to school employees?

Yes. The FFCRA is a new law to provide additional relief as a result of the COVID-19 pandemic. The FFCRA went into effect on April 1, 2020, and applies to all public-school employees, including teachers, administrators, and support staff. The FFCRA will apply to leave taken from April 1, 2020 through December 31, 2020. The FFCRA requires school districts to provide employees with paid sick leave or expanded family and medical leave for specified reasons related to COVID-19.

What kind of leave is provided by the FFCRA?

Generally, the FFCRA provides school employees with the following leave related to COVID-19:

- **Emergency Paid Sick Leave** - Two weeks (up to 80 hours) of **paid sick leave** at the employee's regular rate of pay 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; or
- **Caregiver Leave** - Two weeks (up to 80 hours) of **paid sick leave** at two-thirds the employee's regular rate of pay 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 to care for a child (under 18 years of age) whose school or child care 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 and Labor; and
- **Expanded Family Medical Leave** - Up to an additional 10 weeks of **paid expanded family and medical leave** at two-thirds the employee's regular rate of pay where an employee, who has been employed for at least 30 calendar days, is unable to work due to a bona fide need for leave to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19.

This is a new law and remains untested. For further guidance on the FFCRA, view the Department of Labor's website: <https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave>

Can my District require COVID-19 testing? Screening?

There is no specific requirement for how a school should complete COVID-19 screenings. Schools generally have the right to control and restrict access to campuses as specified in school and local school board policies. Those with COVID-19 symptoms should not be allowed on campus until they have met the district's criteria on reentry.



Can the district make me stay home if they suspect I am infected or have been exposed?

If a school district has a reasonable belief, based on objective evidence, that an employee poses a direct threat to the health and safety of others, a district can likely make the employee stay home. Again, to be reasonable, the belief must be based on actual evidence, not mere concern, even if it is in good faith. Evidence that an individual traveled to an area of quarantine or had actual contact with an infected individual or individuals could be the basis for a reasonable belief of a direct threat.

What does the Oklahoma State Department of Education (SDE) say about making employees stay home?

Employees who test positive for the virus or have a member of their household test positive for the virus will be required to be isolated and prohibited from returning to school until meeting the U.S. Centers for Disease Control and Prevention (CDC) requirements for being around others.

According to the SDE, individuals who believe or know they had COVID-19, and have had symptoms, may not be around others until all the following conditions have been met: 3 days with no fever, symptoms improved, and 10 days since symptoms first appeared.

According to the SDE, individuals who have tested positive for COVID-19, but have had no symptoms, may not be around others until 10 days have passed since being tested.

According to the SDE, individuals who have had close contact with someone who has tested positive for COVID-19 may not be around others until 14 days after exposure.

Can a staff member stay home if they are afraid of becoming infected?

Generally, a district is not required to allow a staff member to be absent simply due to that staff member's concern regarding an illness. However, if a staff member has a condition that would make an illness such as the coronavirus particularly dangerous, such as a person with a compromised respiratory system, that employee should seek medical advice. A medical care provider could require the employee to stay home due to concerns relating to COVID-19, which may trigger the leave provisions of the FFCRA and applicable sick leave. Under some circumstances, the district may be obligated to consider a long-term leave of absence as a reasonable accommodation under the Americans with Disabilities Act. In all cases, a staff member would be required to have a medical care provider to attest to being absent from school due to health reasons and/or concerns related to COVID-19. Personal concerns will not be sufficient.

What happens if I get COVID-19 or am symptomatic?

If a teacher is exhibiting symptoms, they should be isolated, sent home, and encouraged to get tested. If the teacher has had known close contact with someone who has tested positive for COVID-19, they should stay home, monitor for symptoms, get tested, and not return to school until a negative test or a 14-day quarantine. According to the SDE, employees who test positive for the virus or have a member of their household test positive for the virus will be required to be isolated and prohibited from returning to school until meeting CDC requirements.



If I am required to quarantine, can I use sick leave?

If an employee is required to be isolated, the employee's available sick leave may be used during the isolation and recovery period in addition to all available federal paid leave. Current Oklahoma laws on sick leave would apply during a quarantine. An employee would also be covered under the FFCRA and the leave requirements outlined therein at least until December 31, 2020.

What should I expect when I return to school if I am high risk or vulnerable?

According to the SDE, "Anyone who is considered high risk or vulnerable should discuss when re-entry is recommended with their healthcare provider." Districts should identify staff members vulnerable to complications from COVID-19 and consider options and policies to allow them to remotely perform tasks to support distance learning instructional needs. This might include the opportunity for the teacher to teach remotely or in a larger classroom that better accommodates social distancing. The SDE recommends that Districts create a staffing plan to implement flexibilities to "employees who need childcare or have other individuals under their care, and those who are exposed to the virus, are at risk, or otherwise should not come on-site for performance." These flexibilities could include providing the ability to work remotely or under flexible work conditions and hours. The SDE goes on to state: "While districts have broad authority over employee work schedules and employees are obligated to fulfill their contracts, districts are encouraged to accommodate staff members in this category to the extent practicable."

These issues should be dealt with on a case-by-case basis, but Districts are encouraged to be flexible with use of sick and other available leave. Also, some of these cases may include issues covered under the Americans with Disabilities Act (ADA).

Does the ADA provide any additional protections during this time?

A high risk or vulnerable employee may be entitled to a reasonable accommodation under the ADA depending on the facts specific to their situation. In some instances, this reasonable accommodation may include a leave of absence from the school.

Taking Teachers' Temperatures: Generally, measuring an employee's body temperature is a medical examination. Because the CDC and state/local health authorities have acknowledged community spread of COVID-19 and issued attendant precautions, employers may measure employees' body temperature. However, employers should be aware that some people with COVID-19 do not have a fever.

It is not against ADA compliance to require employees to go home who have tested positive with COVID-19. Additionally, employers may require employees to produce a doctor's note stating that they are fit to return.

An employer may choose to administer COVID-19 testing to employees before they enter the workplace to determine if they have the virus, but not the antibody test.



I am a support employee. Is my pay protected in the event of another shutdown or quarantine?

At the end of last school year Gov. Kevin Stitt issued an executive order allowing payment of support employees despite school closures. The Governor may do so again for the 2020-2021 school year but has not yet issued a similar order. If you are a 10-month employee paid on a 12 month payroll schedule, your district may be able to continue to pay you for amounts you have already earned but not yet been paid during times you are not allowed to work. As many districts have already done, your district could also adopt new leave policies that provide additional leave (sick, emergency or personal) for potential school closures or mandatory quarantine periods.

What is a district required to do to disinfect or sanitize schools and vehicles, and what can a teacher or other staff member do on their own?

What a district is required to do depends to a great extent on whether the actions are preventive (prior to a confirmed exposure) or remedial (after a confirmed coronavirus exposure). What is required will depend on the district's emergency operation plan and any guidance from other entities, such as the local health department. The Centers for Disease Control and Prevention (CDC) has provided guidance to school districts on cleaning and disinfecting classrooms and vehicles, such as school buses.

You can find guidance at: <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/schools.html>

Individual staff considering cleaning or sanitizing on their own should recognize that many factors need to be considered, such as possible sensitivities or allergies students or co-workers could have to cleaners, particularly those containing strong chemicals. A good rule of thumb would be to seek guidance from a supervisor or administrator before taking any steps regarding cleaning or sanitizing that would be out of the ordinary.

Can a district prohibit personal travel of students or staff?

A district is limited in prohibiting personal travel, but teachers and other staff should be aware that travel restrictions have and will continue to evolve as the economy reopens. Mandatory quarantines for visitors to some locations have already been in place, and these may be expanded or continued. Potential travelers need to be aware restrictions may change rapidly, and travel to certain regions or contact with a known outbreak or an individual who has tested positive for COVID-19 may affect an individual's ability to return to work.

I am a teacher and being directed to attend virtual team meetings and also provide group instruction via Zoom. I am not comfortable with this. Can I be required to use Zoom?

In most cases, a district can require a teacher or other employee to use Zoom or a similar platform. These are local decisions based on the SDE's guidelines for this school year. Teachers should not use Zoom or any other platform without first receiving authorization from the appropriate administrator, usually their principal.



I have a special education student in my class, and I am worried that I am not able to provide them the services called for in his Individualized Educational Plan (IEP) through distance learning. Do I have reason to be worried?

There are few examples of the challenges of distance learning that compare to continuing the services provided for in a student's IEP. Many districts have tried to address the issue by convening admission, review and dismissal (ARD) meetings to modify IEPs to reflect what is now possible in this new learning environment.

The law provides no pandemic-related exception for a district's requirement to provide a free and appropriate public education (FAPE) to its student population. But teachers with special education and 504 students need not panic. The law is clear that it is the district's legal responsibility to provide services. Teachers must do the best that they can and should certainly ensure that the administration is aware of any problems that exist. Teachers also need to try and be flexible with the district's efforts to fulfill their legal obligation—such as by being available for ARD meetings, even if held virtually.

What should an educator do if they suspect a student may have the coronavirus?

It is likely individual districts will adopt local procedures prior to the return to the classroom. If a teacher or other staff member suspects a student is exhibiting symptoms consistent with exposure to the coronavirus, the individual should follow whatever protocol or procedure has been established locally. This will likely involve sending the student to the nurse's office and isolating the student, but the decision is a local one.

Teachers and other staff members should always be careful in their communications so as not to unnecessarily embarrass, stigmatize, or frighten a student suspected of being ill or the other students.