

1. Are the CDC or [LDOE guidelines](#) mandates? Do they legally have to be followed?

The LDOE guidelines became mandates from BESE on July 14, 2020. They legally have to be followed and are, in summary, as follows:

- **Group sizes:** The maximum group size that may convene indoors in a single room or outdoors at any time are 10 individuals (phase 1), 25 individuals (phase 2), and 50 individuals (phase 3).
- **Group composition: those in grade or lower** unable to wear face coverings or maintain physical distancing should be assigned static groups, The composition of a group may change if students are able to maintain physical distancing.
- **COVID-19 symptoms monitoring:** Upon arriving at the school facility, each student and adult must be assessed for symptoms of COVID-19 as defined by the CDC, to include an initial temperature check. Each school must establish an isolation area for anyone showing signs of being sick, which must be cleaned after being occupied by a sick individual.
- **Face coverings:** While inside the school facility, all adults and students in grades 3 through 12 must wear a face covering to the greatest extent possible and practical within the local community context. individuals with breathing difficulties should not wear a face covering.
- **Personal hygiene:** Students must wash or sanitize hands upon arrival at the school, at least every two hours, before and after eating or using outdoor play equipment, and before exiting the school facility.
- **Hygienic supplies:** School employees must be provided adequate access to supplies such as soap, hand sanitizer, disinfectants, paper towels, tissues, and face coverings when needed.
- **Student transportation:** Buses must not exceed 25 percent capacity in phase 1, 50 percent in phase 2, and 75 percent in phase 3, spaced to the greatest extent possible according to the current reopening phase.

- **Exceptions:** LEAs will address medical or disability exceptions on an individual basis in accordance with local policies.

If you are concerned that your LEA or school is not following the mandates, or have other issues with the mandates, the LDOE has developed the following email address where issues can be reported while identifying yourself or keeping your submission anonymous: LDOECOVID19Support@la.gov.

If an executive order is made regarding guidelines, they can become mandatory. In fact, many local municipalities have issued mandates for their area. For example, the City of New Orleans, Jefferson Parish, the City of Kenner, East Baton Rouge Parish, and the City of Shreveport are all currently under a mask mandate.

2. What has the LDOE recommended about class size and contact during this pandemic?

- **Phase 1:** Classes will be broken into small groups of 10, including adults. Buses will run at 25% capacity with one passenger riding in each seat with every other seat empty. Members of the same household may sit in the same seat or adjacent seats.
- **Phase 2:** Classes will be broken into small groups of 25, including adults. Buses will be filled to 50% of the manufacturer's capacity.
- **Phase 3:** Classes will be broken into small groups of 50, including adults. Buses will be filled to 75% of the manufacturer's capacity.

3. Does the current pandemic automatically activate the ADA and/or FMLA?

The ADA is the Americans with Disabilities Act and prohibits discrimination on the basis of disability. An employee must be able to perform all essential functions of the job, with or without accommodation.

One of the purposes of the ADA is to allow employees to keep working with reasonable accommodations to perform essential functions of the job. The ADA attempts to strike a balance between the employee needs and the school district needs. The ADA allows employees to request accommodations from their employer. The employee's needs will be balanced against the district's ability to provide and if that request creates an undue hardship on the district. The CDC has identified a [list of conditions](#) that can result in an increased risk for COVID-19 complications. These conditions do not guarantee an accommodation.

Reasonable accommodations can include temporary job restructuring (teleworking), removal of nonessential job duties (duty, coaching, etc.), being allowed to wear additional PPE, modified shift schedule, changes to work environment (plexiglass barriers, disinfection of environment). To begin the process of seeking an accommodation, you must inform the district of the disability and request a specific accommodation under the ADA. The district is allowed to ask questions and request medical documentation. Ideally you will have given your doctor a copy of your job description and then you will make the request to the district with attached documentation from your treating physician regarding the condition, the recommendation for accommodation, and a statement that your doctor has reviewed a copy of your job description. The employee must continue to be able to perform the essential functions of the job.

It's important to note that ADA accommodations are available for conditions of the employee only. An employee is not entitled to ADA benefits for conditions of someone the employee is living with or caring for that is at higher risk of contracting or suffering from COVID-19.

FMLA is the Family Medical Leave Act and is designed to allow employees to leave from work to take care of themselves or someone in their family while maintaining an employment relationship. FMLA entitles job protected leave (unpaid) for specific family medical reasons. FMLA leave for educators in Louisiana overlaps with Extended Sick Leave, which is available at the rate of 90 days in each 6-year period with

pay at a rate of 66.6667%. The law allows districts to apply any Extended Sick Leave available for an employee prior to using FMLA.

Legal remedies for violation include filing an administrative charge with the Louisiana Workforce Commission or the EEOC (180 days for ADA), filing a lawsuit within 2 years for FMLA, or filing a grievance with your local school district within the local deadlines.

4. What's going on with sick leave? What am I entitled to? What if I am exposed to COVID at work and need to quarantine? What if I'm exposed to COVID outside of work and need to quarantine? What if my child/spouse/elderly parent is sick and needs to be cared for?

Normally, Louisiana law provides teachers with 10 days paid sick or emergency leave per year. <https://legis.la.gov/legis/Law.aspx?d=79780>

Additionally, the law provides for 90 days extended sick leave to be paid at a rate of 2/3 salary during each six-year period. That leave is subject to certain conditions and can be found here: <https://legis.la.gov/legis/Law.aspx?d=79781>

In response to the COVID-19 crisis, the federal government passed and implemented important laws and policies related to leave from work for public employees, including public school teachers and administrators. These are the Families First Coronavirus Response Act (FFCRA), the Emergency Paid Sick Leave Act (EPSLA), and the Emergency Family and Medical Leave Expansion Act (EFMLEA).

The Emergency Paid Sick Leave Act applies to employees of private businesses with fewer than 500 workers or any public agency, which includes a “political subdivision of the state,” which includes school districts. This Act provides leave in addition to any type of leave that Louisiana educators are entitled to (sick leave, etc.)

The EPSLA provides that:

An employer covered by the law “... shall provide to each employee ... paid sick time to the extent that the employee is unable to work (or telework)” because:

1. The employee is subject to a federal, state, or local quarantine order.
2. The employee has been advised to self-quarantine by a health care provider due to COVID-19.
3. The employee is experiencing COVID-19 symptoms and seeking medical diagnosis.
4. The employee is caring for an individual who is subject to (1) or (2).
5. The employee is caring for the son or daughter of such employee if the school or place of care of the son or daughter has been closed or the childcare provider “is unavailable due to COVID-19 precautions.”
6. The employee is experiencing another condition specified by the Secretary of Health and Human Services.

The amount of sick leave available under the EPSLA for full time teachers is 80 hours/10 days.

The amount of compensation is calculated based on the usual rate of pay and the number of hours the employee would otherwise be normally scheduled to work, except there is a maximum benefit of:

- \$511/day and \$5,110 in total for use under (1) – (3) above.
- \$200/day and \$2,000 aggregate for use under (4) – (6) above.
- For use under (4) – (6) above, the employee is compensated at two-thirds their normal rate of pay.

The EPSLA also provides:

- The employer may not require the employee to look for or find a replacement.

- Sick time under the EPSLA is available regardless of the amount of time the employee has been employed.
- **The employer may not require an employee to use other paid leave provided by the employer before the employee uses leave under the EPSLA.**
- It is unlawful for an employer to retaliate or discriminate against an employee for use of leave provided by the EPSLA.

It is important to note that this 80 hour or 10 day provision does not reset. Once it is depleted this type of leave is unavailable. If you are seeking to utilize this type of leave, make sure this request is made to your district in a form that includes documentation. If you have difficulty taking this leave make sure to contact A+PEL's Legal Team.

The Emergency Family Medical Leave Expansion Act under the FFCRA would only apply if the employee was ineligible for extended sick leave as described above. It may allow an employee to take FMLA leave that is partially paid. If you find yourself in this scenario or have more questions, contact A+PEL's Legal Team.

IT IS IMPORTANT TO NOTE THAT BOTH OF THESE TYPES OF LEAVE ARE ONLY MANDATED THROUGH DECEMBER 31, 2020.

5. Can I be required to wear a mask while at work? Can I be required to submit to temperature evaluations while at work? Can I be required to submit to a COVID-19 test?

An employer may require employees to wear protective gear (for example masks and gloves) and observe infection control practices (for example regular hand washing and social distancing protocols).

However, where an employee with a disability needs a related reasonable accommodation under the ADA (e.g., non-latex gloves, modified face

masks for interpreters or others who communicate with an employee who uses lip reading, or gowns designed for individuals who use wheelchairs), or a religious accommodation under Title VII (such as modified equipment due to religious garb), the employer should discuss the request and provide the modification or an alternative if feasible and not an undue hardship on the operation of the employer's business under the ADA or Title VII.

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.

The ADA requires that any mandatory medical test of employees be “job related and consistent with business necessity.” Applying this standard to the current circumstances of the COVID-19 pandemic, employers may take steps to determine if employees entering the workplace have COVID-19 because an individual with the virus will pose a direct threat to the health of others. Therefore, an employer may choose to administer COVID-19 testing to employees before they enter the workplace to determine if they have the virus.

6. Can I be required to appear for work if I am in a high-risk group or have other underlying conditions? What if someone in my immediate family belongs to a high-risk group or has underlying conditions?

As mentioned above, if you are in a high-risk group for COVID-19 as identified by the CDC you may be eligible for accommodations under the ADA. This means that you need to have a conversation with your employer to explain your limitations and determine whether there are any accommodations that will permit you to perform the essential functions of the job. There may be reasonable accommodations that could

offer protection to an individual whose disability puts him or her at greater risk from COVID-19 and who therefore requests such actions to eliminate possible exposure. Nevertheless, you must continue to be able to perform the essential functions of the job.

It is important to note that an employee is not entitled to an accommodation under the ADA in order to avoid exposing a family member who is at higher risk of severe illness from COVID-19 due to an underlying medical condition. 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 he or she is associated.

7. Must I inform my district if I test positive for COVID-19? Can my employer ask about illnesses if I call in sick?

During a pandemic, an employer can inquire if employees calling in sick are experiencing symptoms of the pandemic virus. For COVID-19, these include symptoms such as fever, chills, cough, shortness of breath, or sore throat and others identified by the CDC. Employers must maintain all information about employee illness as a confidential medical record in compliance with the ADA.

8. Are students required to wear masks? What if a student in my class is sick? What if a coworker is sick?

While the language in the Louisiana Department of Education's guidelines and recommendations point to the wearing of masks being vital to schools remaining open, a firm requirement for face coverings has been implemented as of July 14, 2020.

While inside the school facility, all adults and students in grades 3 through 12 must wear a face covering to the greatest extent possible and practical within the local community context. individuals with breathing difficulties should not wear a face covering.

Students who are sick should stay at home regardless of their illness, and those with COVID-19 ought to remain isolated at home until they have recovered and are determined to no longer be infectious.

Students or coworkers that are with COVID-19 symptoms (such as fever, cough, or shortness of breath) at school should immediately be separated and sent home. Individuals who are sick should not return to school until released to do so by a physician. Student and employee medical records are legally protected and private, and any information contained in them should not be divulged to others.

9. When I'm ready to return to work, can I be required to provide a doctor's note?

Yes, such inquiries are allowed under current EEOC and ADA Guidance.

10. What is HB 59 and how does it affect teachers?

House Bill 59 of the 2020 First Extraordinary Session was passed and is a ban on most civil lawsuits against public and private schools and colleges by students, teachers, and other school employees who claim they contracted the virus because of lax school procedures. Civil lawsuits (including those by teachers) would only be allowed if plaintiffs could show that school districts displayed gross negligence during the health emergency.

It also requires both BESE and college governing boards to spell out the minimum safety standards schools and colleges have to follow for the upcoming school year. The law states that these standards must be "informed" by guidelines spelled out by the Centers for Disease Control and Prevention, a softening of earlier Senate language that the rules in Louisiana would have to "conform" to CDC standards. A special meeting of BESE has been scheduled for 1:00 pm on July 14, 2020 to address this mandate.

11. What is A+PEL doing about all of this?

Since schools closed in mid-March, A+PEL state and local leaders have been working to protect the health and safety of Louisiana's educators and students. A+PEL has provided high quality digital training to support educators in the transition from the traditional classroom to the digital classroom including hybrid models. A+PEL remains committed to continuing to offer trainings and support across Louisiana.

In June, A+PEL provided a free virtual professional development conference, our annual Camp A+PEL, to educators across the state. Over seventeen live sessions lead by local Louisiana educators were held over a five-day period. A+PEL also gave away hundreds of dollars in door prizes during this fun week!

A+PEL continues to attend and participate in meetings of the Board of Elementary and Secondary Education (BESE), including meetings of the Resilient Louisiana Commission Education Workforce Taskforce K-12 Education Subgroup. In early July, the A+PEL Board of Directors and A+PEL staff met with Louisiana Superintendent Cade Brumley to discuss concerns and recommendations for the reopening of schools.

A+PEL also hosted a webinar with our General Counsel, Legal Director, and other staff to address many of these issues.

A+PEL fights to ensure that all legal protections are afforded to members. Where those legal protections end, A+PEL advocates for more protections like ensuring that PPE is available to teachers, adequate disinfection methods are being used in schools, and sufficient supplies for sanitation (soap, wipes, hand sanitizer) are provided.

As educators, you demonstrate your strength and resolve every school year through your dedication to providing students with the best education

possible under all circumstances. A+PEL is here to support and assist you through this unprecedented time.