



Frequently Asked Questions Regarding Teachers' Rights Related to the Reopening of Schools

MPE has received numerous questions from our members regarding safety protocols and various other issues related to the reopening of schools. The following information addresses some of the most frequently asked questions. The following reflects guidance and information available as of July 17, 2020.

Why aren't all school districts in Mississippi implementing the same policies and practices regarding the reopening of schools? State law (MISS. CODE ANN. Section 37-7-301 (1972)) grants each school district in Mississippi the authority to govern itself. This is referred to as "home rule." State law provides that a local school board may adopt orders, resolutions or ordinances with respect to school district affairs, property and finances, as long as such orders, resolutions or ordinances are not inconsistent with the Mississippi Constitution of 1890, the Mississippi Code of 1972, or any other state statute or law. While each district will develop its own policies, procedures and practices in response to COVID-19, they should refer to guidance offered by the Centers for Disease Control (CDC), the Mississippi State Department of Health (MSDH), and the Mississippi Department of Education (MDE).

Can my district require me to sign a waiver certifying that I won't sue the district if I should contract COVID-19 during the course of my professional duties? While your district may request that you sign such a waiver, you are not required to do so. If you are presented with such a waiver, you should ask if you are being directed to sign or being requested to sign the waiver. If you are directed to sign the waiver in order to keep your job, you should add "My signature is not voluntary, as I was directed to sign this document." If you are requested to sign the waiver, you may decline to do so.

May a parent sue my district, school, or me if their child is exposed to COVID-19 in my classroom? Recent legislation provides immunity to entities who have adhered to public health guidance. SB 3049, the Mississippi Back-to-Business Liability Assurance and Health Care Emergency Response Liability Act, was passed by the Mississippi Legislature during the 2020 legislative session to address concerns that businesses could be sued if an employee or a customer claimed they got sick at a business. SB 3049 protects businesses, healthcare providers, and political subdivisions of the state – including school districts – from such action if they were following government guidelines during the COVID-19 emergency. SB 3049 provides that entities are immune from civil action, from March 14, 2020, to one year after the state of emergency ends, if such civil action alleges an injury from actual or potential exposure to COVID-19 when the entity attempted in good faith to follow applicable public health guidance from state or federal agencies. SB 3049 does not provide immunity if a plaintiff shows an entity acted with actual malice or in cases involving willful, intentional misconduct. Members should be aware that the protections provided in the Back to Business Act are very new and there are no reported Court cases interpreting this new law, so we cannot provide any firm guidance on the amount of protection this new law will provide.

What type of health protocols can my district require of me? Can my district require me to be tested for COVID-19? School districts may require certain health protocols or assessments as a means of ensuring a healthy learning environment that complies with public health guidance. Any procedures that are implemented should be consistent and uniform for all staff. The Americans with Disabilities Act considers taking an employee's temperature a medical examination, so doing so cannot normally be done without proof of business necessity. The Equal Employment Opportunity Commission (EEOC) issued guidance this past March that provides employers may do so during the COVID-19 pandemic. The EEOC

also classified COVID-19 as a “direct threat” to the health and safety of employees for purposes of the ADA; thus, employers may ask employees who report being sick if they have COVID-19 symptoms (i.e., cough, shortness of breath, fever, chills) and employers may send or keep employees home from work (See subsequent question regarding leave.) Your district may administer COVID-19 testing before you return to the workplace, as a person with the virus poses a risk to the health of others. The ADA prohibits the identity of any employee that has tested positive from being shared with others. Most importantly, district and school leaders should require students, educators, staff and campus visitors to adhere to public health guidance such as handwashing and social distancing to prevent the spread of COVID-19.

Will I be covered by Workers’ Comp if I am exposed to COVID-19 at school and test positive? As with any insurance, a claim must go through underwriting before eligibility may be determined. While MPE cannot provide a definitive answer to this question, we can advise that in order to be eligible for workers’ compensation, you must get sick on the job or while acting within the scope of your employment. Your district does not have to be at fault for you being diagnosed with COVID-19; thus, you may file for workers’ compensation if your district has taken all precautions and you get sick at work. It is important to remember that your illness must be work-related and that, as more and more persons are infected and claims increase, workers’ compensation insurance companies will be looking for definitive evidence that you got sick at school and not somewhere else. Your district’s Personnel/Human Resources Office can provide you with the information and documents related to your workers’ comp policy.

Will educators have to use their own leave if they are exposed to COVID-19 in the classroom and must quarantine/self-isolate or be hospitalized OR will educators be granted administrative leave by their district? While state law (MISS. CODE ANN. Section 37-07-307) authorizes each local school board to establish policies governing the leave of the district’s employees, as well as rules and regulations to implement such leave policies, Congress has passed legislation which provides eligible educators who are unable to work or telework with a period of two weeks (80 hours) of paid leave. The provisions of H.R. 6201, the Families First Coronavirus Response Act (FFCRA), went into effect April 1, 2020 and expire December 31, 2020. The FFCRA applies to local school boards, as well as to federal, state and local government, as well as private employers with less than 500 employees.

All full-time and part-time school employees are covered by the FFCRA and are eligible for the two weeks of emergency paid sick leave (EPSL) if they meet one of six qualifying reasons:

1. The employee is subject to a federal, state or local quarantine or isolation order related to COVID-19.
2. The employee has been advised by a health care provider to self-quarantine.
3. The employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis from a health care provider.
4. The employee is caring for an individual who is subject to a federal, state or local quarantine order related to COVID-19; or has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
5. The employee is caring for his or her son or daughter whose school or place of care has been closed for a period of time, whether by order of a state or local official or authority or at the decision of the individual school or place of care, or the child care provider of such son or daughter is unavailable for reasons related to COVID-19.
6. The employee has a substantially similar condition as specified by the Secretary of Health and Human Services, in consultation with the Secretary of the Treasury and the Secretary of Labor. The substantially similar condition may be defined at any point during the effective period, but the U.S. Department of Health and Human Services has not yet identified such a condition that would allow an employee to take EPSL. If any such condition is identified, the U.S. Department of Labor will issue guidance explaining when EPSL is available for this reason.

An employee/educator is deemed an eligible employee if that employee is unable to work or telework, and if they fall into one of the categories of Qualifying Reasons listed above. Teleworking employees are not eligible for this leave unless they are ill or caring for someone impacted by COVID-19 and are unable to work from home. An educator can use up to two weeks (80 hours, pro-rated for part-time employees) of paid leave (EPSL). The 80 hours is available to be used for any combination of the qualifying reasons, but the total number of EPSL is capped at 80 hours. This sick leave is in addition to any other paid leave already available to educators and they may choose to use this “emergency” paid sick leave before using their other available paid leave.

The paid leave entitlement amounts are based on the reason for the leave. If the qualifying reason falls under #1-3, the employee is entitled to receive their regular rate of pay, subject to a maximum of \$511.00 per day, or \$5,110.00 over the entire two (2) week period. If the qualifying reason falls under #4-6, the employee is entitled to receive 2/3 of the regular rate of pay subject to a maximum of \$200 per day, or \$2,000.00 over the two-week period. Employers are required to post notices in conspicuous places that advise employees of their rights under the FFCRA. You may contact your district’s Personnel/Human Resources Office for additional information and specifics.

After exhausting FFCRA leave, an educator may use any other leave they are entitled to, including personal, medical, and FMLA. All leave must be used in accordance with their respective district’s leave policies. A district does have the discretion to grant employees administrative leave for purposes decided by the district.

Do I have to report to work if I have a medical condition which puts me at greater risk of COVID-19? You may request to teach virtually if your district is offering virtual or hybrid classes. If this is not possible, you may request accommodations. While you may informally request accommodations, if your request is denied you should then follow district policy for formally requesting accommodations. This process will involve documentation from your physician regarding your need for accommodations. You ultimately must fulfill your contract, or your district will have grounds to terminate you. Information is presented below regarding requesting to be released from your contract should that become necessary.

Do I have to report to work if I live with a family member who is at risk of COVID-19 due to their age or medical condition? Please see the information above regarding the Families First Coronavirus Response Act (FFCRA). In addition, if an educator’s family member has a serious health condition, leave protections under the Family Medical Leave Act (FMLA) may also apply. You should consult your district’s leave policies and/or Personnel Office for additional information. An educator has the right to exercise all leave rights afforded to them. If an educator does not report after exhausting all leave rights, their district does have grounds to terminate their contract.

Will students’ temperature be taken when they get on the bus or will I have to take it in my classroom? Will a student who has been exposed to COVID-19 be allowed in my classroom? While best practices would suggest that any policy adhere to public health guidance issued by the CDC, MSDH, or MDE, a district’s home rule authority allows the district to decide how these and other scenarios will be handled. MDE’s *Considerations for Reopening Mississippi Schools*, released this past June, addressed daily screenings, and suggested each district develop a plan for when a student or adult becomes ill that includes identifying an isolation room to separate anyone who shows symptoms.

May I contact MDE if my district is not adhering to CDC, MSDH, or MDE guidance? While Process Standard 30 of the *Mississippi Public School Accountability Standards* provides that, “The school district provides clean and sanitary facilities in a safe and secure environment,” this standard addresses several specific statutory requirements (i.e., utilities, fire and active shooter drills, protective eye devices in

vocational classes). If a district is not complying with Process Standard 30, a formal complaint may be submitted to MDE's Office of Accreditation. All formal complaints made against schools or districts must be submitted to the Office of Accreditation in writing and include the name and contact information (valid phone number or valid e-mail address) of the individual(s) filing the complaint. The written complaint shall contain specific details concerning alleged violations. The Office of Accreditation may receive anonymous complaints, but these complaints are not considered formal. While you may submit COVID-19 concerns in writing to the Office of Accreditation, be advised that such concerns are not specifically addressed in Process Standard 30.

May I automatically be released from my contract if my district does not follow proper health guidance or protocols? No. State law (MISS. CODE ANN. Section 37-9-55) requires any educator wishing to be released from his/her contract to submit a written request to their local district and this request must include the reason for the request. Districts have total discretion as to if they release an educator from a contract. If the district denies an educator's request and the educator then abandons (i.e. breaks) his/her contract, state law (MISS. CODE ANN. Section 37-9-57) provides that the educator's license may be suspended for one school year. The same is true if an educator does not follow this process, but simply submits a letter of resignation rather than submitting the written request to be released. The Licensure Commission has not adopted any special provisions for educators who break their contracts due to COVID-19.

MPE is here to support you throughout the school year. Please feel free to contact MPE Executive Director Kelly Riley (800-523-0269; kelly@mpe.org) with any additional questions you may have.