



COVID-19 AND TENNESSEE EDUCATION

The following is for informational purposes only and is not intended to be legal advice. Each situation is unique and most districts will make a good faith attempt to assist you. Your particular situation may require discussion with a member of our legal team.

Please send additional questions that you would like to see here, or questions specific to your situation, to legal@proedtn.org.

As you know, there is a vast amount of information concerning the impact of Covid-19 on our schools. The information is generated by many sources, including the media, government, and science. Much of this information is very new and still developing, created by the changes and adjustments to laws and regulations that occur when a pandemic and its impact fluctuates day to day. Our lives as American Citizens have drastically changed due to this whiplash of change and no area has been more affected than in the education of our children.

We have received many questions which, although reasonable and understandable, have no “right or wrong” answers. Levels of reason and discretion must then prevail. Other questions are difficult to answer as the medical community, legislators, and administrators are in the process of developing policies and regulations to diagnose, treat, and control exposure to the Covid-19 virus.

In short, some issues and solutions are still in development; therefore, regular and frequent progress reports in this format will be provided by Professional Educators of Tennessee. We will do our best to be responsive and keep you informed of all questions, comments, and observations made by our members.

We have received the following questions and valid observations from our members. Some of the responses to questions or observations will be marked “Further research is required and we will respond in the next revised edition”. Some questions and observations will receive commentary where appropriate.

We will indicate a date of revision on all future updates and intend on sharing this with the respective school districts. We encourage you to participate, to the extent possible, in all processes focused on the design and operation of a safe school environment. This may include committee participation or may be thoughtful feedback to the administration.

RESOURCES

TN Dept. of Health Recommendations for the Management of COVID-19 in Schools:

https://www.proedtn.org/resource/resmgr/docs/COVID_School_Recommendations.pdf

FFCRA Poster: https://www.proedtn.org/resource/resmgr/docs/ffcra_poster_wh1422_non-fede.pdf

TN Dept. of Health COVID-19 Case Response Rubric:

<https://www.proedtn.org/resource/resmgr/docs/tdhccovid19caseresponserubric.pdf>

TNDOE School Reopening Toolkit - Special Populations:

<https://www.proedtn.org/resource/resmgr/docs/covid-reopeningtoolkit-specp.pdf>



COVID-19 ISOLATION ROOMS

CDC School Isolation Protocols from <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/symptom-screening.html>

Professional Educators of Tennessee is receiving many calls on isolation of students with COVID symptoms. Each district, and in many cases, each school is doing it differently.

The Tennessee Department of Health states:

Every school should have an identified location where a student or staff member who is exhibiting symptoms of COVID-19 may be taken to isolate them from others until the individual can be picked up from school.

[The CDC, on the other hand, emphasizes isolation from students AND staff](#), with the isolated student being in the "line of sight" of adults and "for a very brief period of time". Sanitization of holding area is also important.

More guidance in this area is needed and many of the needed changes are coming from our teachers.

EDUCATORS BEING DESIGNATED AS "CRITICAL INFRASTRUCTURE" OR "ESSENTIAL EMPLOYEES"

Information in this section provided by TN Dept. of Education and TN Dept. of Health

"To be clear, any critical infrastructure designation by a school district is not being adopted pursuant to any State-endorsed framework or authority, and the State makes no representation as to the legality or permissibility of such self-designation...

Because a critical infrastructure designation may present a greater opportunity for COVID-19 transmission within schools, there are certain minimum precautions necessary for the Tennessee Department of Health to acknowledge a self-designation made by a school district."

The Tennessee Department of Health (TDH) has developed requirements for schools modeled on Centers for Disease Control and Prevention (CDC) guidance involving isolation and quarantine of staff and students to reduce risks from COVID-19, https://www.tn.gov/content/dam/tn/health/documents/cedep/novel-coronavirus/School_Recommendations.pdf.

General Requirements

Anyone who has tested positive for COVID-19 must isolate for ten (10) days and may not return to work until the end of the isolation period and feeling well/symptom free for at least 24 hours (without fever-reducing medication).



In all schools in which a COVID-19 case is identified:

- The local health department will conduct a thorough investigation, per TDH guidelines.
- All positive COVID-19 cases among staff and students must isolate for a minimum of 10 days, per TDH/CDC guidelines.
- All persons who are identified as close contacts (using standard criteria identified below) will be notified and a 14-day quarantine will be required, per TDH/CDC guidelines.
- All close contacts will be monitored for 14 days by the health department.

In accordance with CDC guidance, all close contacts (defined as being within 6 feet for 10 or more minutes) of individuals diagnosed with COVID-19 should self-quarantine for 14-days from the last exposure to that individual.

Critical Infrastructure

It is imperative that any school district that decides to use a “Critical Infrastructure” (CI) approach for the management of COVID-19 implement appropriate precautions. Under this approach, districts may adopt policies and choose to exempt certain staff as designated by the district who are close contacts to COVID-19 cases (i.e., no COVID positive or symptomatic persons) from TDH quarantine requirements and instead strictly follow the CDC’s modified protocol for CI workers. Districts that opt to implement the CI approach for staff must implement additional measures to mitigate COVID-19 risk, as described below, and notify TDH and the Tennessee Department of Education of such CI designation.

School districts implementing a CI approach must demonstrate adherence to mandatory, school-wide preventive measures, including:

- Require all staff, visitors, and students third grade and above to wear cloth face covering (masks) per CDC guidance, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover-guidance.html>, subject to appropriate accommodations and exemptions for medical and health conditions.
- Require students, staff, and visitors to maintain 3-6 feet between themselves and others while on school grounds or at a school sponsored event, including within classrooms, during extracurricular activities other than sports, and during any transportation queuing or before a school period.
- Prohibit staff, students, visitors from congregating in lounge areas, hallways, or other common spaces where social distancing cannot be maintained.
- Prohibit school-sponsored mass gatherings (e.g., assemblies and pep rallies), other than athletic competition conducted in accordance with TSSAA Regulations.
- If appropriate physical distancing cannot be achieved within the lunch area, stagger usage or structure lunchtime to allow students to eat lunch in their classrooms or outdoor spaces, continuing to be spaced 3-6 feet apart.

Staff who are formally identified by the health department to be close contacts (e.g., exposed to positive COVID-19 case, but are not symptomatic or positive) in schools within a district following a CI approach



who continue working in-person during their 14-day quarantine period must adhere to the following measures:

- Staff who are close contacts must continuously wear a face covering while on-site, with no exemptions.
- Staff who are close contacts must remain at least 6 feet from other persons at all times. In particular, eating and drinking within 6 feet of others is prohibited, as a face covering may be removed during that time only.
- Staff who are close contacts must be monitored for COVID-19 symptoms daily and may not work in-person if symptoms develop.
- Staff who are close contacts must self-quarantine when not at school in accordance with TDH/CDC requirements, and they should not attend athletic or extracurricular activities.
- Staff who are close contacts must be tested for COVID-19. Antibody tests are not acceptable.
 - Staff member should be tested on or by day 4 (or as soon as possible) after they were last in close contact to a COVID-19 case.
 - If positive, staff member must be isolated and close contacts identified.
 - If negative, staff member should retest 3 days later.
 - Testing may be done at any medical institution, or by going to the local health department (preferred) during standard testing times.
- **Staff with ongoing COVID-19 exposures (e.g., household with a positive COVID-19 case and cannot avoid continued close contact, as opposed to a nonrecurring close contact) are at high risk and must quarantine according to TDH requirements regardless of district's CI designation.**
- **All students must adhere to TDH isolation and quarantine requirements without exception regardless of district's CI designation.**
- Staff and students who have previously been diagnosed with COVID-19 are exempted from quarantine and re-testing for a three month time period. They should continue to wear cloth face coverings and maintain social distancing.

Districts, particularly those that self-designate workers as critical infrastructure, should also examine their leave policies in consideration of employee isolation or quarantine necessitated by COVID-19.

Failure to either adopt or enforce adequate precautions will result in the TDH not recognizing the critical infrastructure self-designation in subsequent quarantine actions applicable to that district.

Information in the above section provided by TN Dept. of Education and TN Dept. of Health

FURTHER GUIDANCE - FFCRA BENEFITS FOR QUARANTINE & ISOLATION

Individual teachers and staff who are ordered by their district to remain home for 14 days after being exposed to Covid-19 should qualify for Emergency Paid Sick Leave (EPSL) of 80 hours under number one and/or number two of the [Families First Coronavirus Response Act](#):



An employee is entitled to take leave related to COVID-19 if the employee is unable to work, including unable to telework, because the employee

- 1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;**
- 2. has been advised by a health care provider to self-quarantine related to COVID-19;**
3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);
5. is caring for his or her child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons; or
6. is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services.

Please refer to the July 27, 2020 [Tennessee Department of Health quarantine response](#) which supports the position that individual quarantines required by schools due to COVID exposure is a state ordered quarantine.

Can the administration require me to use my paid leave before using the FFCRA paid sick leave?

ANSWER: No. That is if, you are unable to work for the following reasons related to COVID-19, you can take the emergency paid sick leave under the FFCRA first before using any other type of leave: (1) you are subject to a federal, state, or local quarantine or isolation order related to COVID-19; (2) you have been advised by a health care provider to self-quarantine due to concerns related to COVID-19; (3) you are experiencing symptoms of COVID-19 and are seeking a medical diagnosis; (4) you are caring for an individual who is subject to an order as described in (1), or who has been advised as described in (2); or (5) you are caring for your son or daughter whose school or place of care has been closed or whose child care provider is unavailable due to COVID-19 related reasons.

Do 9-month teachers qualify for the expanded paid FMLA?

Yes. Regardless of prior law, you still may qualify for the new expanded FMLA leave

I have exhausted all FMLA leave for the year. Can I obtain leave under the FFCRA?

No, but you are still entitled to emergency paid sick leave benefits.

When a vaccine is developed, will there be required inoculation?



Scientists and medical researchers are hopeful that we will have a Covid-19 vaccine by the end of this year. Regulations requiring certain vaccinations before entering school are mandated by the State of Tennessee. The State of Tennessee recognizes medical and religious exemptions but not during an outbreak.

May I take 80 hours of paid sick leave for my self-quarantine and then another amount of paid sick leave for another reason provided under the Emergency Paid Sick Leave Act?

No. You may take up to two weeks—or ten days—(80 hours for a full-time employee, or for a part-time employee, the number of hours equal to the average number of hours that the employee works over a typical two-week period) of paid sick leave for any combination of qualifying reasons. However, the total number of hours for which you receive paid sick leave is capped at 80 hours under the Emergency Paid Sick Leave Act.

If I am home with my child because his or her school or place of care is closed, or child care provider is unavailable, do I get paid sick leave, expanded family and medical leave, or both—how do they interact?

You may be eligible for both types of leave, but only for a total of twelve weeks of paid leave. You may take both paid sick leave and expanded family and medical leave to care for your child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons. The Emergency Paid Sick Leave Act provides for an initial two weeks of paid leave. This period thus covers the first ten workdays of expanded family and medical leave, which are otherwise unpaid under the Emergency and Family Medical Leave Expansion Act unless you elect to use existing vacation, personal, or medical or sick leave under your employer's policy. After the first ten workdays have elapsed, you will receive 2/3 of your regular rate of pay for the hours you would have been scheduled to work in the subsequent ten weeks under the Emergency and Family Medical Leave Expansion Act.

Please note that you can only receive the additional ten weeks of expanded family and medical leave under the Emergency Family and Medical Leave Expansion Act for leave to care for your child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons.

Can my employer deny me paid sick leave if my employer gave me paid leave for a reason identified in the Emergency Paid Sick Leave Act prior to the Act going into effect?

No. The Emergency Paid Sick Leave Act imposes a new leave requirement on employers that is effective beginning on April 1, 2020.

Is all leave under the FMLA now paid leave?



No. The only type of family and medical leave that is paid leave is expanded family and medical leave under the Emergency Family and Medical Leave Expansion Act when such leave exceeds ten days. This includes only leave taken because the employee must care for a child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons.

Are the paid sick leave and expanded family and medical leave requirements retroactive?

No.

Under what circumstances may an employer require an employee to use his or her existing leave under a company policy and when does the choice belong to the employee under the Department’s regulations, specifically 29 CFR 826.23(c), 826.24(d), 826.60(b) and 826.160(c)?

Paid sick leave under the Emergency Paid Sick Leave Act is in addition to any form of paid or unpaid leave provided by an employer, law, or an applicable collective bargaining agreement. An employer may not require employer-provided paid leave to run concurrently with—that is, cover the same hours as—paid sick leave under the Emergency Paid Sick Leave Act.

In contrast, an employer may require that any paid leave available to an employee under the employer’s policies to allow an employee to care for his or her child or children because their school or place of care is closed (or child care provider is unavailable) due to a COVID-19 related reason run concurrently with paid expanded family and medical leave under the Emergency Family and Medical Leave Expansion Act. In this situation, the employer must pay the employee’s full pay during the leave until the employee has exhausted available paid leave under the employer’s plan—including vacation and/or personal leave (typically not sick or medical leave). However, the employer may only obtain tax credits for wages paid at 2/3 of the employee’s regular rate of pay, up to the daily and aggregate limits in the Emergency Family and Medical Leave Expansion Act (\$200 per day or \$10,000 in total). If the employee exhausts available paid leave under the employer’s plan, but has more paid expanded and medical family leave available, the employee will receive any remaining paid expanded and medical family in the amounts and subject to the daily and aggregate limits in the Emergency Family and Medical Leave Expansion Act. Additionally, provided both an employer and employee agree, and subject to federal or state law, paid leave provided by an employer may supplement 2/3 pay under the Emergency Family and Medical Leave Expansion Act so that the employee may receive the full amount of the employee’s normal compensation.

Finally, an employee may elect—but may not be required by the employer—to take paid sick leave under the Emergency Paid Sick Leave Act or paid leave under the employer’s plan for the first two weeks of unpaid expanded family and medical leave, but not both. If, however, an employee has used some or all paid sick leave under the Emergency Paid



Sick Leave Act, any remaining portion of that employee’s first two weeks of expanded family and medical leave may be unpaid. During this period of unpaid leave under the Emergency Family and Medical Leave Expansion Act, the employee may choose—but the employer may not require the employee—to use paid leave under the employer’s policies that would be available to the employee to take in order to care for the employee’s child or children because their school or place of care is closed or the child care provider is unavailable due to a COVID-19 related reason concurrently with the unpaid leave.

Are stay-at-home and shelter-in-place orders the same as quarantine or isolation orders? If so, when can I take leave under the FFCRA for reasons relating to one of those orders?

Yes, for purposes of the FFCRA, a Federal, State, or local quarantine or isolation order includes shelter-in-place or stay-at-home orders, issued by any Federal, State, or local government authority. However, in order for such an order to qualify you for leave, being subject to the order must be the reason you are unable to perform work (or telework) that your employer has for you. You may not take paid leave due to such an order if your employer does not have work for you to perform as a result of the order or for other reasons.

For example, if you are prohibited from leaving a containment zone and your employer remains open outside the containment zone and has work you cannot perform because you cannot leave the containment zone, you may take paid leave under the FFCRA. Similarly, if you are ordered to stay at home by a government official for fourteen days because you were on a cruise ship where other passengers tested positive for COVID-19, and your employer has work for you to do, you are also entitled to paid sick leave if you cannot work (or telework) because of the order. If, however, your employer closed one or more locations because of a quarantine or isolation order and, as a result of that closure, there was no work for you to perform, you are not entitled to leave under the FFCRA and should seek unemployment compensation through your State Unemployment Insurance Office.

What if I have COVID-19 symptoms and take time to seek medical diagnosis? What documentation can the administration require?

You should identify your symptoms and a date for a test or doctor’s appointment. The administrator may not, however, require you to provide further documentation or similar certification that you sought a diagnosis or treatment from a health care provider in order for the employee to use paid sick leave for COVID-19 related symptoms. The minimal documentation required to take this leave is intentional so that if you have COVID-19 symptoms you may take leave and slow the spread of COVID-19.

Please note, however, that if you were to take unpaid leave under the FMLA, the FMLA’s documentation requirements are different and apply. Further, if you is concurrently take another type of paid leave, any documentation requirements relevant to that leave still apply.



I took paid sick leave and am now taking expanded family and medical leave to care for my children whose school is closed for a COVID-19 related reason. After completing distance learning, the children’s school closed for summer vacation. May I take paid sick leave or expanded family and medical leave to care for my children because their school is closed for summer vacation?

No. Paid sick leave and emergency family and medical leave are not available for this qualifying reason if the school or child care provider is closed for summer vacation, or any other reason that is not related to COVID-19. However, the employee may be able to take leave if his or her child’s care provider during the summer—a camp or other programs in which the employee’s child is enrolled—is closed or unavailable for a COVID-19 related reason.

What do I do when I receive a form asking whether I am coming back and if not “please comment”.

We recommend that you consider answering that you are in fact returning. A further consideration is to share any disability that makes you a risk for the virus and request an accommodation such as working remotely. Make sure that any medical information is maintained in the strictest confidence and meets HIPAA privacy guidelines. You will be asked to provide supporting medical documentation of your disability and how it relates to your job responsibilities.

Children, especially young children, cannot be expected to stay six feet away from everyone else during an entire school day.

We agree, and the level of supervision and other resources needed is challenging. Staggered and smaller classes would help. We think masks, while largely beneficial, should be opt-in by districts, and teachers cannot be expected to discipline children for wearing them.

Children cannot be expected to wear masks of any kind for the duration of a school day.

This is a challenge and outside “breaks” for mask removal may be needed. Areas of seclusion may permit removal of masks for a period of time. Educators cannot be expected to discipline children for masks.

The typical American school cannot accommodate social distancing of their student population for the duration of the school day.

Without precise measures to enforce these rules, we agree. Smaller groups is the key.

What happens when a teacher becomes infected with Covid-19? Do the students in their class have to quarantine? What about other colleagues?

Our opinion is that yes, all exposed teachers and students would need to be quarantined.



Does the teacher have to use their limited sick days on a mandatory 2 week quarantine so when they get the Flu in February they have to take unpaid days?

We believe this falls under the FFCRA paid sick pay provision and possibly Tennessee Code Annotated § 49-5-716: *A teacher, including a teacher on preapproved leave or other type of leave, shall not be charged with a day of leave for any day on which the teacher's school or the school district is closed due to natural disaster, inclement weather, serious outbreak of contagious illness, other unexpected events.* This should be clarified before reopening.

If a teacher becomes infected and contact tracers determine they contracted it at school, is that a worker's compensation claim?

Possibly, but in Tennessee, worker's compensation provides a statutory, exclusive remedy for injuries that are work-related. Injury or infection solely emanating from the workplace is challenging.

Without concurrent supervision of adolescents outside of the school, how can we prevent further, ultimate spread of the infection in the school?

Very difficult in our opinion and risky. This should be addressed and school-student family communication and accountability are essential.

How often will teachers be tested? Cafeteria workers? Custodians? Front office types?

No state or federal direction has been provided, but we feel this should be included in the return to school plan.

Are teachers/employees going to be receiving hazard pay for working in a dangerous environment? What about a bonus for the LOADS of extra cleaning and administrative work they're going to have to do?

We are unaware of any such plan by any district.

What about teachers/employees that are high risk? Will they be penalized for choosing their safety over their jobs? What if they're not high risk, but someone in their household is? Who determines the threshold for "at-risk" that qualifies for exemptions?

Further research is required and we will respond in the next revised edition.



What happens when students get it? Will schools be shut down? For how long? Will they wait to open until everyone gets tested and you need a negative result to return to school? Who pays for the tests? What if a student's family can't afford a test?

Further research is required and we will respond in the next revised edition.