



Legal FAQ for Coming Back to School Safely
July 16, 2020

OEA General Counsel Richard Wilkinson answers the questions we are hearing from our members.

Can a district mandate masks? Yes, they can.

Can a district prohibit masks? Probably not, particularly if you are in a high risk group.

Can the SDE/SBE mandate masks for schools? Yes, the SBE has the authority to pass an emergency rule, much like what happened in March when schools were shut down, requiring that school districts require the wearing of masks by students, teachers and other staff, and visitors to school sites. Currently there is no such mandate in the SDE *Return To Learn Oklahoma* framework for reopening schools; but the SDE/SBE does have the ability to make masks mandatory and/or make certain CDC provisions mandatory for school districts. Currently the SDE guidance speaks to a variety of recommendations, the implementation of which are to be guided by feasibility, practicality, and acceptance in the local community.

Does a school district have to follow the CDC guidelines? No, the CDC guidelines are recommendations only and not mandates that have to be followed. The SDE/SBE could issue an emergency order, much like the March school shutdown order, requiring that specific CDC recommendations be followed by school districts, but that has not occurred to date.

What if I can't wear a mask, or what if I need to wear a mask? You can request an accommodation under the ADA. There needs to be some medical evidence of the condition supporting the request, and what is "reasonable" and what is an "accommodation" will vary district by district.

What leave is available if I need to self-isolate or become ill due to COVID-19? The leave benefits will vary by district. You should be able to take sick leave, including any leave from a sick leave bank or sharing program: some districts are providing additional COVID-19 leave; some are expanding emergency and personal leave; and some are allowing the use of paid administrative leave for COVID-19 related self-isolation periods.

Also remember that the Families First Coronavirus Relief Act (FFRCA) passed by Congress on March 29 provides 80 hours of paid leave for COVID-19 related self-isolation or illness and that leave **is in addition to** any existing leave benefits. The FFRCA also provides for expanded FMLA leave benefits, particularly for the care of a child where schools or day care centers are closed due to COVID-19. The expanded FMLA benefits do not include additional days beyond the current 12 weeks, but may provide for some reduced pay when taken for the child care issues. You should be aware that the FFRCA leave benefits currently expire on December 31, 2020, unless Congress extends those benefits.

Are the leave benefits under FFRCA available each time I may have to self-isolate if I have multiple exposures in my classroom? No. The leave benefits under the FFRCA are not per occurrence, rather a finite amount of leave available for COVID-19 related illness or self-isolation periods, regardless of the number of times you may be required to self-isolate.

Are the school reopening plans adopted by school district subject to negotiations? The school negotiations act requires districts to bargain wages, hours, fringe benefits, and other terms and conditions of employment with a designated bargaining agent, if any. To the extent that a reopening plan impacts a mandatory subject of bargaining, yes the district should have discussions with the bargaining agent about those issues. In many instances those issues have been discussed in the context of an existing collective bargaining agreement (CBA) and in other instances a Memorandum of Understanding (MOU) is entered into to specify what COVID-19 related issues have been agreed upon (i.e., COVID-19 leave, expansion of emergency leave days, work schedules under alternate plans, etc.).

If there is no designated bargaining agent in my district, can we still have input into the reopening plan? Yes, the lack of a bargaining agent does not prohibit the local association or representatives from asking the district to discuss and accept input into any reopening plan. However, absent a designated bargaining agent, the district has discretion as to whether or not such discussions or input will occur. The SDE's *Return To Learn Oklahoma* guidance also recommends teacher/staff input into any reopening plan where feasible.

Can I file a lawsuit against my district if I am exposed to, or contract COVID-19 at school? No. The Oklahoma legislature passed a blanket immunity bill last session for all COVID-19 related litigation – and proving causation (showing that the proximate cause of the exposure or illness was directly related to the school district, rather than some other source) would be very difficult even if litigation was possible.

Can I file a workers compensation claim if I become infected or ill because of COVID-19? No. The workers comp system is designed to compensate injuries sustained in the workplace, not illnesses. There are some specific and limited exceptions (asbestos exposure, etc.), but illness is generally not considered an injury and you would have the same problems proving that the illness was directly attributed to the workplace, rather than from a member of your household, a restaurant or grocery store, etc.

Also remember there is a significant difference in the quality of care available under the comp system, versus the regular health care providers covered by health insurance. If you check the box indicating a work related injury, your health insurance will not later cover the claims. We strongly recommend against the filing of comp claims in these circumstances.

Can I be held liable for any student injuries while having to supervise multiple areas during lunch periods? No, the Oklahoma Governmental Tort Claims Act (OGTCA) provides that a school district is liable for any negligent acts of its employees that occur during the course and scope of employment. You should not be liable under these circumstances as long as you were acting in your capacity as a teacher.

Can I be held liable if a student becomes ill while wearing a mask I provided? No. There is now blanket immunity in Oklahoma for COVID-19 related liability and you would not be liable in any event under the Oklahoma Governmental Tort Claims Act (OGTCA), which requires school districts to defend and pay any judgements arising out of the negligent acts of its employees while acting in the course and scope of their employment.

Can a school district require that I sign a Release or Waiver of Liability for all COVID-19 related risks before returning to work? No. Blanket releases and waivers that attempt to waive any and all liability are generally disfavored under Oklahoma law as against public policy, as well contrary to the Oklahoma Constitution. School districts cannot, as a general rule, require such blanket releases and waivers from school employees as a condition of employment.

Can a school district require me to clean my own room? Generally, no. The Oklahoma Supreme Court has ruled that routine custodial duties are not part of a teacher's contract and cannot be a condition of employment for a teacher. That particular case was a case from the early 1900's where the teacher was required to tend the fire and sweep the floors in a one-room schoolhouse. Requirements such as wiping down your personal workspace and similar preventative measures may be deemed reasonable in view of the health emergency caused by the COVID-19 pandemic. However, performing what would commonly be characterized as custodial duties are not part of a teaching contract.