

**ATTORNEY CLIENT PRIVILEGED COMMUNICATION
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**NJEA LEGAL SERVICES
RETURNING TO WORK
FREQUENTLY ASKED QUESTIONS**

This piece is intended to be read together with Legal Services’ frequently asked questions on “Accommodations for Return to School during COVID-19” and the guidance on “COVID-19 Related Use of Family and Sick Leave.”

Question: Who is considered “high risk” if they contract COVID-19?

Answer: The Center for Disease Control (CDC) considers individuals over the age of 65 and individuals with the following conditions to be at an increased risk for serious complications should they contract Covid-19:

- Chronic kidney disease
- COPD
- Weakened immune system from solid organ transplant
- Obesity
- Serious heart conditions
- Sickle cell illness
- Type 2 diabetes

According to the CDC, the following conditions may cause an increased risk:

- Moderate to severe asthma
- Cerebrovascular disease
- Cystic fibrosis
- Hypertension
- Compromised state from blood or bone marrow transplant, HIV and other blood conditions.
- Neurologic conditions
- Liver disease
- Pregnancy
- Pulmonary fibrosis
- Smoking
- Thalassemia
- Type 1 diabetes

It is important to note that both of these lists will be updated as more information about Covid-19 becomes available. For the most updated information on high risk categories, check here: <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html>

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Question: I am considered a “high risk” person with regard to COVID-19. Can I be directed to return to work?

Answer: Having one of the identified high risk conditions, or a condition that presents a possible increased risk, does not automatically entitle an employee to a work from home arrangement, nor does it entitle an employee to time off from work. An employee who suffers from one of these conditions must still submit to the employer appropriate documentation from a medical professional in order to request a workplace accommodation. Employees with any of these conditions should speak with their health care professionals about obtaining such documentation. Thereafter, once a medical report has been obtained, the employee should immediately seek advice from local union leaders or their Uniserv Representative as to how to request an accommodation; also, review Legal Services’ “Accommodations for Return to School during COVID-19” for more information regarding requesting an accommodation.

Additionally, if an employee is advised by their health care provider to self-quarantine due to their “high risk” status, that individual may be entitled to up to 80 hours of partially paid sick leave under the Families First Coronavirus Response Act (FFCRA). As of the time of this writing the hours available under this Act have not been extended; therefore this is only a temporary solution.

Question: Can my district determine which employees are “high risk”?

Answer: No. As noted above, the CDC, based on currently available medical information, determines what is considered high risk. Some employees suffer from more than one medical condition, none of which themselves are high risk conditions, but taken together may be considered high risk. If you are one of these employees, you should speak to your medical professional about whether you require a workplace accommodation due to your multiple medical conditions. In addition, you should reach out to your local leadership and your Uniserv Representative to discuss how you may apply for a workplace accommodation.

Question: Can an employee who feels uncomfortable returning to school choose to stay home and still be paid?

Answer: Not necessarily. Employees who are unable to work may be entitled to use their paid time off or unpaid leave time in certain circumstances. However, those entitlements are of limited duration. If an employee suffers from a documented mental health condition that may require a workplace accommodation, that employee should obtain medical documentation of the condition and speak with local leadership and/or a Uniserv Representative to discuss a work from home accommodation.

Question: Will employees have to prove that they have medical issues to be permitted to stay home in September?

Answer: As set forth in “Accommodations for Return to School during COVID-19,” there is a protocol through which employees may seek assistance with applying for a leave or an

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accommodation. If an employee wishes an accommodation for the start of the school year, he/she must notify the employer as soon as possible. Further, the employee must begin the process of obtaining a detailed medical report as soon as the employee becomes aware of the need for an accommodation.

Question: If a family member or member of an employee’s household gets sick but the employee is not, can the district make them stay home? If so, do they have to use sick days or would this be considered an administrative leave?

Answer: Yes, a school district can make an employee stay home if they have been exposed to Covid-19 through a sick family member or household member. In fact, that is what the current CDC guidelines advocates. Assuming the employee is available to work, the district can direct them, or the employee may request, to work remotely if that is possible. If they are not able to work remotely, the employee would be eligible for two weeks of emergency paid leave under the Families First Coronavirus Response Act (FFCRA). After that leave is exhausted, the employee may use accrued sick time under N.J.S.A. 18A:30-1 (“Sick leave is hereby defined to mean the absence from his or her post of duty, of any person . . . because he or she has been excluded from school by the school district’s medical authorities on account of a contagious disease or of being quarantined for such a disease in his or her immediate household.”).

This is certainly negotiable, and field representatives should seek answers from districts regarding this issue.

Question: If an employee is directed to stay home because a student or coworker contracted the illness and the employee was exposed as a result, what type of leave would be available to the employee?

Answer: The employee should first request to work remotely if they work in a position that can be performed remotely during this time, so that they can continue to work and avoid exhausting leave options. If remote or virtual work is not available, the employee would be eligible to use emergency paid sick leave under the FFCRA initially, and after that is exhausted, to use accrued sick leave under N.J.S.A. 18A:30-1. FFCRA leave should be used first since it expires on December 31, 2020. As the FFCRA and Title 18A sick leave seemingly cover this situation, an employer would not be required to consider this type of absence as paid administrative leave.

Again, this is negotiable, and field representatives should seek answers from districts regarding this issue.