COVID-19 Frequently Asked Questions

Prepared by Missouri NEA Legal Department*

** Information and guidance drawn, with many thanks, from information created by the National Education Association – Office of General Counsel, Illinois Education Association, Pennsylvania State Education Association, Education Minnesota, and many others.*

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Employer Surveys and Health Questions

1. **Can the employer ask questions about issues that may impact an employee's ability to work next school year?**

Yes. An employer may ask non-disability related questions aimed at addressing potential staffing issues in the event of a pandemic. These questions may inquire about access to child care; access to transportation for work; lack of access to services needed for dependents in the household and whether the employee or someone in the household is at higher risk for contracting pandemic influenza. The EEOC advises the employer to ask about these issues in one question and ask the employee to answer "yes" or "no" without asking the employee to identify which issues apply.

2. **Does the survey need to be anonymous?**

No. An employer is not required to collect answers anonymously.

3. **May an employer specifically ask an employee whether they have a medical condition that makes them susceptible to the virus?**

No. An employer cannot explicitly ask an employee who is not displaying COVID-19 symptoms whether they have a medical condition that makes them more susceptible to the virus. That said, please note that an employer can ask that question in a bigger survey so long as it is not asking the employee to give a specific answer regarding a medical condition.

4. **May an employer require an employee to leave the premises if they are displaying COVID-19 type symptoms?**

Yes. The CDC states that employees who become ill at work with symptoms consistent with COVID-19 symptoms should leave the workplace.

5. **May an employer ask about the type of symptoms an employee is experiencing?**

Yes. An employer may ask if an employee is experiencing COVID-19 symptoms, such as fever, chills, cough, shortness of breath, or sore throat**.** Any information that an employer collects about an employee's symptoms needs to be maintained in a confidential medical file in compliance with the Americans with Disabilities Act (ADA).

6. **May an employer require employees to submit to a temperature screening?**

Yes. In times of a pandemic, an employer may require employees to submit to a temperature screening. Temperature screenings results are medical information and subject to ADA confidentiality requirements.

7. **May an employer ask about potential exposure to COVID-19 if that employee has traveled?**

Yes. If the CDC or state or local health departments indicate that individuals who traveled to certain locations should remain at home for a certain period of time, an employer may ask if employees have traveled to such locations. It does not matter if the travel was for personal reasons.

8. **May an employer impose conditions for an employee to return to work if they have traveled to a high-risk location as determined by the CDC, state or local health department?**

Yes. Employers may follow the advice of the CDC and state/local public health authorities regarding information needed to permit an employee's return to the workplace after visiting a specified location, whether for business or personal reasons.

9. **May the employer require employees to engage in certain routines or practices aimed at infection control such as handwashing, coughing and sneezing etiquette, tissue disposal, utensil disposal, etc.?**

Yes. An employer may require employees to engage in hygiene routines and practices for the purpose of infection control.

10. **Can the employer require employees to wear a face covering?**

Yes. During a pandemic, an employer may require an employee to wear personal protective equipment aimed at limiting the spread of a virus such as a face covering.

If an employee has a medical condition that prevents them from wearing a face covering, they may notify the employer to engage in the process of determining if there is a reasonable accommodation to wearing a face covering, please see the ADA Questions Section of this document

11. Can an employer discipline an employee who refuses to wear a face covering?

Absent a prior demonstration that an employee has a medical condition that prevents them from wearing a face covering safely and requires a reasonable accommodation, an employer may take an employment action if the employee refuses to wear a covering. A local should be mindful of any employer enacted policy that addresses face covering requirements and make sure that the employer communicates the policy to staff. A local should also take time to review any language it has in its collective bargaining agreement regarding discipline in the event that an employee is disciplined for allegedly violating any face covering policy.

12. May an employer send a general message encouraging employees to inform it of the need for a reasonable job accommodation if an employee has a medical condition that puts them at high risk for contracting COVID-19?

Yes. So long as the employer is not making these inquiries on an individual basis. Requests for reasonable job accommodations are done on an individualized basis. While there is no time limitation on when an employee can ask for a reasonable job accommodation, presenting the request in advance of the school year increases the chance the request will be assessed before the school year begins.

13. Can the employer require all of the employees to get the COVID-19 vaccine when it becomes available?

No. An employee may be entitled to an exemption from a mandatory vaccination requirement based on an ADA disability that prevents him from taking the influenza vaccine. This would be a reasonable accommodation barring undue hardship (significant difficulty or expense). Also, under Title VII of the Civil Rights Act of 1964, if an employer receives notice that an employee's sincerely held religious belief, practice, or observance prevents him from taking the influenza vaccine, the employer must provide a reasonable accommodation unless it would pose an undue hardship as defined by Title VII

14. Can my employer require that I get COVID-19 tested prior to returning to work?

Yes. Unless you have a religious or disability-related accommodation, your employer can require that you get tested before returning to work.

Disability and Accommodation Questions

15. Who is at "high risk" for complications related to COVID-19?

According to the CDC, individuals at high risk for severe illness from COVID-19 include people age 65+ and individuals of all ages with the following underlying medical conditions: chronic kidney disease; COPD; immunocompromised state from organ transplant; obesity (BMI 30+); serious heart conditions such as heart failure, coronary artery disease, or cardiomyopathies; sickle cell disease; and Type 2 diabetes. See: Coronavirus Disease 2019: Who Is at Increased Risk for Severe Illness? (updated June 25, 2020) at: https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-increased-risk.html.

16. Who is potentially at "high risk" for complications related to COVID-19?

The CDC explains that people with the following conditions may be at increased risk: moderate-to-severe asthma; cerebrovascular disease; cystic fibrosis; hypertension; liver disease; pregnancy; pulmonary fibrosis; smoking; thalassemia; and Type 1 diabetes. See: Coronavirus Disease 2019: Who Is at Increased Risk for Severe Illness? (updated June 25, 2020) at: https://www.cdc.gov/coronavirus/2019-ncov/need-extra- precautions/people-at-increased-risk.html.

The CDC has identified a recent study suggesting that pregnant women with COVID-19 are "more likely to be hospitalized and are at increased risk for intensive care unit (ICU) admission and receipt of mechanical ventilation." See: Coronavirus Disease 2019: Pregnancy Data (updated July 9, 2020) at: https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/special-populations/pregnancy-data-on-covid- 19.html.

17. What should I do if I am at high risk of complications due to COVID-19?

If your underlying medical condition qualifies as a disability under the Americans with Disability Act, you may request that your employer provide a reasonable accommodation so that you are able to perform the essential functions of your position. Employers are not required to provide accommodations if, even with the requested accommodation, the employee would still be unable to perform a job's essential functions.

18. What is the Americans with Disabilities Act (ADA)?

The ADA, enacted in 1990 and amended in 2008, is a federal law prohibiting discrimination based on disability (or the record or perception of a disability), and ensuring that people with disabilities "have the same opportunities as everyone else to participate in the mainstream of American life — to enjoy employment opportunities, to purchase goods and services, and to

participate in state and local government programs and services." See: Introduction to the ADA at: https://www.ada.gov/ada_intro.htm.

Under the ADA, a "qualified individual" with a "disability" is entitled to a "reasonable accommodation." Employers do not have to provide any accommodation that poses an "undue hardship." See: The ADA: Questions and Answers (issued May 1, 2002) at: https://www.eeoc.gov/laws/guidance/ada-questions-and-answers.

19. What is a qualifying disability under the ADA?

A qualifying disability is a "physical or mental impairment" that "substantially limits one or more major life activities." The impairment does not have to be permanent but may be transitory (lasting less than 6 months).

Physical or mental impairments include:

> Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine; or
>
> Any mental or psychological disorder, such as an intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

Major life activities include:

> Caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working.
>
> The operation of a major bodily function, including functions of the immune system, special sense organs and skin; normal cell growth; and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions. The operation of a major bodily function includes the operation of an individual organ within a body system.

20. Are there risk factors identified by the CDC that are <u>not</u> qualifying disabilities?

Yes. Please see below.

> <u>Age</u> – Age alone is not considered a disability under the ADA. Although employees over 40 years of age are protected under the Age Discrimination in Employment Act (ADEA), the ADEA does not include the right to reasonable accommodations. The EEOC has stated that "employers are free to provide flexibility to workers age 65 and older; the ADEA does not prohibit this, even if it results in younger workers ages 40-64 being treated less favorably based on age in comparison." If you are 65 or older, you should

speak with you doctor about any underlying medical conditions that could provide a basis for a reasonable accommodation.

Pregnancy – Although pregnancy itself is not a qualifying disability under the ADA, certain pregnancy- related medical conditions may be. If you are pregnant, you should speak to your doctor regarding any pregnancy-related medical conditions that could provide a basis for a reasonable accommodation.

Obesity – Generally, physical impairments under the ADA do not include features like eye color, height, or weight. Severe obesity in and of itself is likely not a disability. However, if an employee's severe obesity is caused by an underlying disorder or condition that qualifies as a disability under the ADA, then the employee would be able to seek accommodations for any limitations resulting from that disability, including limitations arising from the employee's severe obesity. If you have severe obesity (i.e., have a Body Mass Index of 30 or higher), you should speak to your doctor regarding any underlying medical conditions that could provide a basis for a reasonable accommodation.

Smoking – Tobacco usage is not protected under the ADA. However, certain conditions caused by smoking—e.g., lung cancer—may be considered disabilities. If you are a smoker, talk to your doctor about any underlying medical conditions that could provide a basis for a reasonable accommodation.

21. What if I have anxiety or another mental health condition that has been exacerbated by the COVID-19 pandemic?

Certain mental health conditions like anxiety disorders, obsessive-compulsive disorder, or PTSD are considered disabilities if they substantially limit one or more major life activities. You will need to have a diagnosed mental health impairment. General concern about COVID-19 or apprehension about returning to the workplace does not entitle an employee to reasonable accommodations under the ADA.

22. What is a reasonable accommodation?

A reasonable accommodation is any change in the work environment, or the way things are customarily done, that enables a qualified individual with a disability to enjoy equal employment opportunities. Reasonable accommodations to mitigate COVID-19 exposure might include installing a plexiglass shield, additional cleaning of surfaces, extra space for social distancing, moving a desk or workstation farther away from other workers, or staggering work hours or work breaks to reduce contact with other employees, or working remotely.

Temporary use of sick leave or other paid or unpaid leave might also be a reasonable accommodation. Examples include sick or sabbatical leave available under the School Code,

other leave including disability leaves available under your CBA or employer's policies, unpaid FMLA leave, or other approved unpaid leaves of absences.

23. How do I request a reasonable accommodation?

There are no magic words that need to be used, but the employer does need to be notified. MNEA members who believe they need a reasonable accommodation should request assistance from their UniServ Director.

24. Do I have to provide a letter from my doctor when I make the request?

You are not required to provide medical documentation at the time that you request the accommodation, but the employer may ask for it to determine if you have a qualifying disability. In addition to providing a diagnosis, your doctor should be specific as to your limitations and the possible accommodations that will allow you to perform the essential functions of your job. If multiple accommodations are likely, they should be identified. Prior to requesting an accommodation, you should work with your MNEA UniServ Director to ensure that you have proper documentation from your physician.

25. What happens after I request a reasonable accommodation?

Your employer must consider your request and engage with you in a flexible, interactive process to try to find a suitable accommodation. Employers and employees are to work together to identify possible accommodations. You should keep your local association and UniServ Director involved as you engage in the interactive process.

26. Can my employer refuse to accommodate my disability?

If, after going through the interactive process, the employer determines that the only reasonable accommodation available would cause an "undue hardship"—that is, if providing the accommodation would result in significant difficulty or expense, taking into account the nature and cost of the accommodation, the resources available, and the operations in place—the employer is not required to provide the accommodation. Your MNEA UniServ Director can assist you in asking for details as to the undue hardship and in proposing other alternatives.

Recent EEOC guidance seems to provide employers with greater leeway, due to the pandemic, in assessing whether or not a specific accommodation creates an undue hardship. Employers may now consider factors like: a sudden loss of income stream, difficulty conducting needs assessments, and difficulty removing marginal functions or providing temporary assignments.

27. Can I request leave as a reasonable accommodation?

Employers cannot immediately dismiss a period of leave as unreasonable. Instead, the interactive process must focus on the reasonableness of that request and whether it will enable the employee to perform their essential job functions in the near future. A request for indefinite and open-ended leave is never reasonable.

28. What if more than one accommodation exists?

If multiple accommodations work, employers may choose which one to apply. If an employer rejects the employee's preferred accommodation in lieu of an alternative—but still reasonable—accommodation, the employee is not required to accept it. However, if the employee rejects the employer's proffered accommodation and cannot, as a result of that rejection, perform the essential functions of the position, the employee will no longer be considered a qualified individual.

29. Can I request accommodations for a preexisting disability even if I have never previously requested accommodations?

Yes. Employees are not barred from seeking accommodations just because they declined to do so in the past; however, depending upon the facts and circumstances, the employer may be more likely to question the disability or the need for the accommodation.

30. What if my employer allowed me to telework during the COVID-19 pandemic, but is now refusing to allow me to work remotely as a reasonable accommodation?

Recent EEOC guidance explains that "[t]he fact that an employer temporarily excused performance of one or more essential functions during the COVID-19 crisis to enable employees to telework for the purpose of protecting their safety, or otherwise chose to permit telework, does not mean that the employer has permanently changed a job's essential functions, or that telework is a feasible accommodation, or that it does not pose an undue hardship."

31. What should I do if I think I have an underlying medical condition that places me at risk and qualifies as a disability?

Contact your MNEA UniServ Director for assistance. You will most likely be advised to obtain a medical diagnosis as to your underlying condition. The UniServ Director can also advise you as to what other information and recommendations may be helpful from your doctors.

32. What if a family member or someone I live with is considered high risk?

Although the ADA prohibits discrimination based on association with a disabled individual, it does not require that an employer accommodate a non-disabled employee based on the disability-related needs of a family member or other person they associate with. The EEOC has specifically stated that an "employee without a disability is not entitled under the ADA to telework as an accommodation in order to protect a family member with a disability from potential COVID-19 exposure."

You may be eligible for leave under the Family Medical Leave Act or the leaves created by the Families First Coronavirus Relief Act, please see that section below.

Coronavirus Leaves and Absences

33. What are an employee's potential leave options if they cannot demonstrate a legal basis for a job accommodation?

Under the Families First Coronavirus Response Act (FFCRA), through December 31, 2020, employees may be eligible for paid emergency sick leave. This leave is available for use in the event that an employee cannot work due to a number of COVID-19 related reasons including them or a family member is experiencing virus related symptoms or is under quarantine. The emergency paid leave is also available for use if the employee's daycare or school is closed.

Under the Family Medical Leave Act (FMLA), employees who have worked at least 1,250 hours in the preceding 12 months are eligible for up to 12 weeks of job protected leave for their own serious medical condition that prevents them from performing the essential functions of their job or to care for an immediate family member who has a serious medical condition.

Also, an existing collective bargaining agreement may have leave options which might apply. Or, the local may try and negotiate additional options.

34. What are the reasons that an employee may take leave under the Families First Coronavirus Response Act (FFCRA)?

The FFCRA created two new types of leave benefits: expanded FMLA and emergency paid sick leave.

The expanded FMLA can only be used to care for a "son or daughter" who is home because of a school/daycare closure or the unavailability of their normal childcare provider due to COVID-19. "Son or daughter" means your own child, including your biological, adopted, or foster child, your stepchild, a legal ward, or a child for whom you are standing *in loco parentis*—someone with day-to-day responsibilities to care for or financially support a child.

The emergency paid sick leave can be used for a variety of reasons:

If the employee is subject to a quarantine or isolation order;

If the employee has been directed to quarantine by a health professional;

If the employee has COVID-like symptoms and is seeking diagnosis;

If the employee is caring for "an individual" who is subject to a quarantine or isolation order;

If the individual qualifies for expanded FMLA leave.

Emergency paid sick leave can be used to care for an immediate family member, a person who regularly resides in your home, or a similar person with whom you have a "relationship that creates an expectation" that you would care for that person if they were quarantined or self-quarantined. Under this definition, the sick leave could be used to care for a parent,

grandchild, in-law, or even a roommate or close friend with whom you have a relationship that creates an expectation of such care.

35. How much leave does the FFCRA provide?

Expanded FMLA can be taken 12 weeks. The first two weeks of EFMLA are unpaid but the remaining 10 weeks are paid at 2/3 of the employee's daily rate, up to a maximum of $200 per day.

Emergency paid sick leave can be taken for 2 weeks. The amount of pay for the leave depends on the reason for the leave. If the employee is taking the leave because they are subject to a quarantine or isolation order, if they have been advised by a health care provider to quarantine, or if they are suffering from COVID-like symptoms and seeking diagnosis, then they are paid at their daily rate up to a maximum of $511 per day. If the employee is taking leave to care for another individual or for an expanded FMLA reason, then they are paid at 2/3 of their daily rate up to a maximum of $200 per day.

36. How long do the new leave benefits last for?

The FFCRA leave benefits (emergency paid sick leave and expanded FMLA) begin April 1 and end December 31, 2020. The benefits do not roll over to the next calendar year.

37. Are adjunct/contingent faculty, substitute teachers, and graduate student employees entitled to the paid sick leave and expanded FMLA under the FFCRA?

Yes, if you are currently working for the employer. All employees – including temporary employees — of a covered employer are entitled to the new paid sick leave. All employees (except federal employees) who have been on the employer's payroll for at least 30 days prior to requesting leave are entitled to the expanded FMLA.

If you are a W-2 employee of the employer (that is, not an independent contractor), you are entitled to use this leave for any of the qualifying reasons. Keep in mind, however, that if you are not currently employed by the employer or are not working for reasons other than these qualifying reasons for leave, you would not be entitled to the leave. So, if for example, you are a substitute teacher and you are not working because the school does not have work for you, you would not be able to take this leave to make up for hours you would ordinarily work if the school building were open and in regular session. In these situations where you are not working because the employer does not have work for you, you may be entitled to unemployment benefits. The Department of Labor (DOL) also takes the position that you are not entitled to these FFCRA benefits if you are on a mandatory leave of absence from employment because the leave is for a reason other than one of the COVID-related qualifying reasons.

38. Are part-time workers or 9-month employees who usually don't qualify for FMLA eligible for the expanded paid FMLA?

Yes. Even if you don't qualify for regular FMLA because you do not meet the 1,250 hours per year and 12 months of employment required, you still may qualify for the new expanded FMLA leave.

Note that benefits for part-time employees are paid at 2/3 your regular rate of pay based on the average number of hours you are scheduled to work each day; if daily hours vary, it would be based on the average number of daily hours over a 6-month period; or if you have not been with the employer for a full 6 months, the reasonable expectation of the number of hours at the time of hiring.

39. If I have no paid leave left, can I still receive sick leave through the FFCRA?

Yes. The emergency paid sick leave is additional paid leave public employers (and private employers with fewer than 500 employees, with some exceptions for small employers, as well as employers of healthcare providers and first responders) are required by federal law to provide over and above any existing leave you already have.

40. Can my employer require me to use my paid leave at the same time or before using the FFCRA paid sick leave?

No. If you are unable to work for the following qualifying 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. Your employer can't require you to use other leave first, and they can't reduce the amount of leave you are entitled to under an existing collective bargaining agreement or employer policy, or if you are entitled to paid sick leave under a state or local law. 29 CFR § 826.160.

41. If I've already used FMLA leave for the year, can I still receive leave through the FFCRA?

Probably not. If you have used all of your FMLA leave for the year, you will not have leave available to take advantage of the expanded paid FMLA leave, but you are still entitled to the emergency paid sick leave. The Department of Labor has interpreted the FFCRA to mean that the new expanded FMLA draws from the same 12-week total amount of FMLA to which an

employee is entitled under the regular federal FMLA law. If you have used all 12 weeks of FMLA, check when your employer's 12-month period for FMLA leave begins to determine when your new period of eligibility for FMLA leave begins. Also be sure to check for any other types of family leave you may be able to access under state law, a collective bargaining agreement, or other employer policy.

42. Can my employer require me to use my paid leave at the same time or before using the FFCRA paid sick leave?

No. Your employer cannot require you to use paid sick leave for a COVID-19 related qualifying reason before or while you are using emergency paid sick leave. However, this is not the case with the expanded FMLA leave. The law allows the employer to require "concurrent" use of other leave while you are using the expanded FMLA leave *if employer policies and any applicable agreements with the union allow for this*. The employer can only require concurrent use of leave that is ordinarily available to you to use to care for a child, such as vacation or personal leave, and only if there are no other agreements with the union or employer policies that prohibit requiring such "concurrent use." And if you exhaust any of your regular existing leave and still have some of the 12-weeks of expanded FMLA leave left, your employer must pay you at least 2/3 your regular rate (capped at $200 per day and $10,000 aggregate) for that remaining time.

43. If I want to, can I use my paid leave before or along with the FFCRA leave?

Yes, if your employer agrees. The emergency paid sick leave is in addition to your existing leave. It is only available through December 31, 2020, and does not roll over to next year. So, in almost all cases, it would make sense to use this leave first before using any other leave, if you have a qualifying reason to use it. If your employer agrees, however, you can use existing leave to supplement the amount you receive from this emergency paid sick leave benefit, up to your regular salary. For the expanded FMLA leave, the law provides that if there is no other prohibition in state law and the employer agrees, you can use other leave, such as vacation, to make up the remaining salary beyond the 2/3 pay (capped at $200 per day) you would receive while on this FMLA parenting leave.

44. Can I be fired if I run out of sick leave to cover my absence due to being sick with COVID-19?

Although it is illegal for an employer to retaliate against you for taking leave under this new law, there is nothing in the law itself that prohibits an employer from terminating your employment if you have run out of leave and are still unable to return to work.

However, there are other laws, such as the Americans with Disabilities Act (ADA) that may apply, depending on your circumstances. You may also be protected by a collective bargaining

agreement, state law, or employer policy, which requires that termination be for "just cause." If your employer terminates you or threatens to fire you because you are ill with COVID-19 and have run out of leave, you should contact your UniServ Director as soon as possible to discuss your situation.

45. Can I use FFCRA leave in half-day increments or some other flexible arrangement?

Yes, if your employer agrees. The law permits you to use both the paid sick leave if you are teleworking and the expanded FMLA leave "intermittently" as long as both you and your employer agree. You can agree to take it in any increment of time agreed upon. 29 CFR § 826.50(b)(1). Although the law does not require the employer to agree to such intermittent use of leave, the DOL encourages voluntary agreements between employers and employees that combine telework and intermittent leave.

46. Can I use FFCRA leave more than once?

If you use the full amount of expanded FMLA or emergency paid sick leave then you cannot use them again. You may still be able to use sick leave or other accrued leave depending on the reason for the need for leave.

Working Conditions

47. Are waivers that ask an employee to waive liability against an employer for catching COVID-19 legally enforceable?

Likely not. Employees cannot waive the right to pursue a workers compensation action against their employer which is the likely the only venue where an employee could request a legal remedy if they believe they contracted COVID-19 at work. Employees cannot waive rights vested by workplace protection laws.

48. What should an employee do if their employer presents them with a waiver asking them to waive any claims against the employer if they contract COVID-19?

They should not sign the document and notify their local leadership as soon as possible.

49. What can an employee do if a student is refusing to wear a face covering or engage in appropriate social distancing?

Educational institutions should be updating their policies to address the expectations for students to engage in appropriate practices needed to reduce the spread of COVID-19. Locals are encouraged to talk with the employer about what is the appropriate protocol if a student refuses or fails to follow that policy and will not follow direction from an educator or education support personnel.

50. Our school is planning to use video conferencing or other virtual learning software apps to hold classes virtually on remote learning days. Can a school or district use such apps under FERPA?

Yes under the school official exception to FERPA's general consent requirement, educational agencies and institutions may disclose students' education records, or personally identifying information in those records, to a provider of such a service or application as long as the provider meets certain conditions. This is why it is important that staff only utilize services or applications which are approved through the employer. Additionally, depending on an employer's plan, there may terms and conditions of employment that need to bargained regarding virtual instruction.

51. Will an instructor inadvertently be violating FERPA if a non-student observes virtual classroom interaction/instruction?

Especially in the case for younger students, caregivers are likely going to be nearby the student. Assuming that during the virtual lesson, personally identifying information from student

education records is not disclosed, FERPA would not prohibit a non-student from observing the lesson.

52. What if someone at my school has been diagnosed with COVID-19 and I have been in the building with them?

If you have been within 6 feet of the person for about fifteen minutes, you should immediately get in contact with your doctor and discuss getting a COVID-19 test. If a doctor orders you to stay home, you should be eligible for paid leave under the FFCRA.

53. If I am concerned about the status of the pandemic and decide that I do not want to return in the fall, can I resign?

Maybe. Most Education Support Professionals are "at-will" employees, which means that they can resign at any time for any reason. If you are not sure if you are at-will or not, contact your MNEA UniServ Director for guidance.

Teachers, on the other hand, are employed using annual contracts. Once the contract has been signed for the following year, the teacher is bound to follow through unless the district agrees to release them. Even if the district agrees to release the teacher, there may still be financial penalties applied based on the date of the resignation and you can check your board policies for more information. If you would like to explore resignation possibilities, you should contact your MNEA UniServ Director immediately.

If your district refuses to release you from your contract and you decide to break your contract, there are a few potential legal ramifications. First, the district could file a lawsuit to try and seek damages either for breach of contract or the costs of finding a replacement. Second, the district could notify the State Board of Education and they could penalize or even revoke your teaching certificate. In the past the SBoE has routinely revoked the certificate of any teacher who broke their contract and it is not clear if the COVID pandemic would change that approach.