



Coronavirus (COVID-19) Legal FAQ for Educators

Educator Rights under Plan A reopening

On September 17, 2020, Governor Cooper announced that beginning October 5, 2020, North Carolina public school districts may elect to implement Plan A, in-person instruction with minimal Coronavirus Disease 2019 (COVID-19) safety protocols, for elementary schools (grades K-5). The reopening plans for middle and high schools (grades 6-12) remain limited to implementation of Plans B and C. As a result of the announcement, educators contacted the Advocacy Center and inquired about their rights as schools reopen under Plan A. Below are the most frequently asked questions and concerns.

1. What are my rights if my district decides to reopen schools under Plan A?

You have the right to a place of employment free from recognized hazards that are causing, or are likely to cause death, serious injury, or serious physical harm.

You also have the right to notify administrators about hazards without fear of retaliation. If your workplace is unsafe and you have notified the district of your concerns, without significant changes, you may contact the Advocacy Center about reporting these violations to the N.C. Department of Labor, Occupational Safety and Health Division.

2. Is reporting to school under Plan A, during the COVID-19 pandemic, a “recognized hazard”?

Generally, no. The Center for Disease Control and Prevention and the N.C. Department of Health and Human Services have provided guidance to safely conduct in-person instruction and learning. However, if there are cases of COVID-19 in your building, or widespread exposure to COVID-19, and/or an outbreak in your district that is not handled appropriately by administrators, the district may have failed to provide a place of employment free from a recognized hazard causing death or serious injury, in violation of the law.

3. My district has decided to reopen K-5 schools under Plan A, and I am afraid to return to work. Can I be fired if I refuse to return to work?

It depends on your reason for refusal to return to work. If you have a valid health or family concern, it is unlikely that you will be dismissed. To maintain your employment, you will need to request leave under the Family Medical Leave Act (FMLA), and if applicable, request a reasonable accommodation pursuant to the Americans with Disabilities Act (ADA). You may also be eligible for leave under the Families First Coronavirus Response Act, see question #7 below for more details. If you have a general fear of contracting COVID-19 and refuse to return to work in person, your employment may be at risk.

4. I am fearful of exposure to COVID-19, do I have to return to the school building to provide instruction or services if students are at home under Plan B?

It depends on your reason for refusal to return to the building. If you have a valid health or family concern, you may request a reasonable accommodation under the ADA, to allow you to perform your

duties from home, if possible, while students are not reporting to the building. For further details, see below response in question #5.

If you have a general fear of contracting COVID-19, you will likely have to return to the school building.

5. My request for a reasonable accommodation to work from home has been denied. What are my rights?

Your rights depend on the circumstances. If an essential part of your duties requires you to supervise students, or can only be performed at the employer's place of business or specified location(s), it is likely that your request to work from home will be denied. The denial is not a violation of the law if you cannot perform the essential functions of your job from home. You have a right to request another accommodation that does not prevent you from performing the essential functions of your job, or you may request leave under FMLA, if you meet the requirements.

6. If my doctor has recommended that I not report to work, can the district require that I report to work because I am an essential worker?

No. The district may not mandate that you report to work if your doctor has recommended otherwise. You may request a reasonable accommodation to work from home if applicable. If your request is denied or you are unable to work due to your illness, you may request sick and FMLA leave. In your request, provide the district with documentation from your doctor, containing sufficient information about your condition and the recommendation that you work from home. This information will allow the district to make an informed decision about your request. Failure to do so may result in a denial or delay, as the district may request additional information from your doctor.

7. Do I have a right to paid leave if I am unable to work because I was exposed to or contracted COVID-19 at work, or I am considered at higher risk of severe illness from COVID-19?

Yes. Under the Families First Coronavirus Response Act (FFCRA) employees may be eligible for paid emergency sick leave for up to 80 hours, and up to an additional 10 weeks of paid expanded family and medical leave through December 31, 2020. 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. An employee is entitled to use paid emergency leave prior to using any accrued benefit leave that may be applicable. You may find further information about leave under the FFCRA on the NCAE website at: <https://www.ncae.org/whats-new/ncae-covid-19-resources-page/>.

You may contact the Advocacy Center with questions, concerns, or if you believe your rights have been violated by the district.