



Coronavirus (COVID-19) Legal FAQ for Educators Reopening Rules Updated

On March 10, 2021, Governor Cooper and General Assembly leaders announced that North Carolina Public Schools will reopen for full time, in-person instruction for elementary schools (K-5), with minimal Coronavirus Disease 2019 (COVID-19) safety protocols. The announcement also stated that discretion is provided to local boards of education to determine reopening of middle and high schools (grades 6-12), to either full time, in-person instruction, or implementation of Plan B, with limited in-person instruction and social distancing protocols.

Furthermore, the governor and other leaders announced that all public schools are still required to provide virtual instruction, if elected by parents. As a result of the announcement, educators contacted the Advocacy Center and inquired about accommodations and reopening concerns. Below are the most frequently asked questions and concerns.

1. Will I be forced to return to school as a result of the announcement?

You will likely have to return to school if the students are returning to the building, and your duties require you to provide in-person services to students. However, 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 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 for in-person instruction, 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 Contagious Disease Policy, see question #7 below for more details.

If you have 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, if students are not reporting to the building. For further details, see below response in question #5.

If you have 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?

Yes. You may request paid leave under the Contagious Disease Policy if the director of the county health department (likely through your physician) has ordered you to leave work to control the spread of a contagious disease or protect your health. You may also request leave if you are reassigned to a safe work environment, such as your home, while awaiting results of testing and/or under an order to quarantine. Request leave from Human Resources under this policy and contact the Advocacy Center if you need assistance.

8. What leave is available if I was exposed to or contracted COVID-19 outside of work?

You may qualify for leave under the Contagious Disease Policy, see question #7.

The Families First Coronavirus Response Act (FFCRA) that provided for emergency sick leave ended on December 31, 2020. However, some districts elected to expand leave under this section. You may inquire with Human Resources if leave is available. If available, the same conditions for qualification still exist. This leave is available for use in the event that an employee cannot work due to a number of COVID-19 related reasons that the employee, 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 child(ren) 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/>.

9. Can the district require educators to be vaccinated?

Not yet. The vaccine is currently under emergency use authorization and mandates are typically not issued. However, when the vaccines receive full approval from the Food and Drug Administration, employers could mandate that employees be vaccinated.

10. Can the district ask educators whether they have been vaccinated and to provide proof?

Yes. The district may ask if you have been vaccinated and request proof of such. The district may not ask questions that will require you to disclose any disability-related information unless the questions fall under the Americans with Disabilities Act's standard of being "job-related and consistent with business necessity."

These questions are allowed when the district has credible reason to believe that the educator will pose a direct threat to others, or cannot perform their duties, as a result of the medical condition.

11. Can the district tell parents or the community which educators have been vaccinated?

No. Medical information for state employees is protected under state laws from disclosure.

12. What if I am unable to be vaccinated, can I lose my job?

It depends. Assuming the district can mandate vaccination, educators who are not vaccinated due to a physician's recommendation or religious beliefs, will likely receive an exemption from the district's mandate. Other reasons may not be considered sufficient grounds to provide an exemption.

The information provided is the most up-to-date information available at this time. The Advocacy Center will update this document as more information is available.