

FREQUENTLY ASKED QUESTIONS
REGARDING EMPLOYMENT ISSUES
May 27, 2020

1. Should reasonable assurance of continued employment letters still be sent to those employees who do not normally work during the summer even when a school board is not certain it will re-hire the employee in the Fall?

Yes, at this point it should be assumed school will be in session in some form for Fall 2020, and therefore there will be a need for the majority, if not all, of the noncertified employees to return. The reasonable assurance of continued employment letter does not guarantee employment to the individual; it merely means the employee cannot receive unemployment benefits during the school break if the individual may be re-hired in the fall.

2. May non-certificated employees be required to work during the summer or before the 2020-21 school year begins?

Yes, if a school corporation has continued to pay employees or has not yet terminated the employment of such employees, these employees may be asked to return to work in preparation for a return to school activities later in the summer and/or a return to school in the fall.

3. If school facilities remain closed for the summer and/or at the beginning of the 2020-21 school year, can school employees still be paid?

Indiana law states that when school is closed by appropriate authorities or when school cannot be conducted through no fault of the teacher, the teacher shall continue to be paid. The teacher must, however, work on any rescheduled student instructional day without additional compensation. See IC 20-28-9-15.

The law is silent with respect to noncertified employees. A school board is not required to pay noncertified employees for those days when school is closed. However, a school board could elect to pay noncertified employees for any day(s) that school is closed as long as the school board approves this payment at a board meeting and the approval is recorded in the minutes of the board meeting. The school board must approve of the payment so that no school official is guilty of ghost employment.

School boards that adopted resolutions in the Spring approving continuation of payment of employees, should review the resolution to determine when the resolution terminates. A school board may extend the period of the resolution to cover the Fall semester if necessary. A school board also has the option to adopt another resolution or pass another motion to address the continuation of payment of salary to employees.

4. Does the school corporation have a duty to discuss with the teachers' exclusive representative the re-entry plan?

School corporations are required to discuss with the teacher's exclusive representative several items that may be addressed in a re-entry plan such as workplace safety, hours, teaching methods, and/ or assignments among other issues. See, IC 20-29-6-7. This law requires these elements of the re-entry plan must be discussed with the teachers' exclusive representative. Discussion does not require the exclusive representative to agree with the provisions of the re-entry plan relating to the matters set out in the plan but only requires the exclusive representative to be given an opportunity for meaningful input. Given many of the required discussion topics may be in the re-entry plan, it may be best practice to discuss the entire re-entry plan with the teachers' exclusive representative.

5. If a school corporation is anticipating a reduction in state funding, may it reduce its teaching staff (RIF) whether within the RIF notice period or outside of it?

Per state law, a reduction in force notice must be given between May 1 and July 1 and a RIF is generally due to lower enrollment in a specific area or grade level or a known reduction in funding. A RIF may take place outside of the May 1 to July 1 statutory notice period by following the statutory process for cancellation of a regular teacher's contract. As a "justifiable decrease in the number of teaching positions" is no longer a statutory reason for the cancellation of a regular teacher's contract, the statutory reason cited for a RIF would be "other good or just cause." A RIF outside of the statutory timeline would need to be supported by an extreme situation such as a known immediate significant reduction in state funding.

6. What are the responsibilities of the school corporation if an employee refuses to return to work due to a general fear of contracting COVID-19?

An employee does not have the right to refuse to return to work due to a general fear of contracting COVID-19 if the employee does not have a sufficient medical reason for the refusal.

7. What are the obligations of the school corporation if an employee wants to self-quarantine when not under a medical order or state or local health order to self-quarantine?

There is no federal or state law that requires a school corporation to provide a leave of absence to an employee for a self-imposed self-quarantine. The school corporation's leave policies may provide for such leave or use of sick days.

The federal Emergency Paid Sick Leave Act requires a school board to pay an employee who is unable to work or to work from home and who has been ordered by a health care provider or a government order to quarantine or be in isolation due to COVID-19 concerns for up to two weeks. The compensation paid under this Act is limited to \$511 per day and \$5110 total for the two-week period of the leave. An employee cannot be required to use accumulated paid leave for this leave period.

The two-week leave period provided for under this Act is a one time use and cannot be used multiple times by the same employee.

For additional information on the requirements of this law, please see the ISBA coronavirus resources page at <https://www.isba-ind.org/coronavirus-resources.html>.

8. If an employee is subject to a self-quarantine per a medical order or by order of a state or local official, what is the obligation of the school corporation to pay the employee or to provide leave??

The federal Emergency Paid Sick Leave Act requires a school board to pay an employee who is unable to work or to work from home and who has been ordered by a health care provider or a government order to quarantine or be in isolation due to COVID-19 concerns for up to two weeks. The compensation paid under this Act is limited to \$511 per day and \$5110 total for the two-week period of the leave. An employee cannot be required to use accumulated paid leave for this leave period. The two-week leave period provided for under this Act is a one-time use and cannot be used multiple times.

For additional information on the requirements of this law, please see the ISBA coronavirus resources page at <https://www.isba-ind.org/coronavirus-resources.html>.

9. What accommodations are required concerning teachers or instructional aides who are high-risk and their duties and assignments?

If the teacher or instructional aide has a disability or an underlying health condition that qualifies as a disability, the school corporation is required by federal disability law to address the issues of whether or not the employee can perform the essential functions of the job, the reasonable accommodations for the job, and provide the accommodation.

If the employee has an underlying medical condition making the employee a high risk for contracting COVID-19, the school corporation is responsible for determining if the medical condition is a disability and if the employee can perform the essential functions of their job with or without a reasonable accommodation, and engaging in a discussion with the employee as to any accommodations the school corporation can make for the employee to perform the essential functions of the job. An accommodation may include but is not limited to teleworking or reassignment.

The process for determining a reasonable accommodation for an employee is complex and fact-sensitive in nature. An employee's individual medical professional needs to be consulted. Additional information on this process and the employer's role and responsibility may be found at <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>.

Section G in this document addresses return to work issues concerning an employee who has a disability.

10. Can the school corporation take the temperature of employees before allowing them to work in the school facilities or at school events?

The school corporation may require employees' temperature to be taken as part of its re-entry order or school safety or health plans. This requirement may be a reasonable requirement under the school corporation's duty of care for its students and employees. Given the current public health emergency, it can be argued this is a reasonable requirement for the health and safety of all employees, students, and visitors to the school corporation. CDC, state, and local health department protocols and guidance should be consulted and followed by the school corporation to show the reasonableness of the requirements.

11. Can the school corporation require employees to wear face coverings/masks?

If there is a public health emergency order from the state or local health department or an Executive Order that requires wearing a face mask or face covering when inside a public place, the answer is YES, as the school corporation is required to follow the health department orders or the executive order.

If there are no such orders, the school corporation may require wearing face masks as part of its re-entry order or school safety or health plans. This requirement may be a reasonable requirement under the school corporation's duty of care for its students and employees. Given the public health emergency (if declared) or the health situation, it can be argued this is a reasonable requirement for the health and safety of all employees, students, and visitors to the school corporation. CDC, state, and local health department protocols and guidance should be consulted and followed by the school corporation to show the reasonableness of the requirements.

12. Can a school corporation require an employee to go home if the employee has symptoms of COVID-19 or the flu?

State and local health departments' guidance may require employers to remove an employee from the workplace in an effort to control the spread of COVID-19. The guidance may also provide the length of time the employee should stay home or the conditions for an employee to return to work (no temperature, feeling better, etc.). Such guidance should be consulted and followed.

This issue may also be addressed in a school corporation's local policy or re-entry plan, or its health plan. The policy or plan should address whether paid sick days may be used. As a general rule, employees should be allowed to use or be given the option to use paid sick days when required by the school corporation to go home.

13. What are the obligations of the school corporation to pay coaches who are also teachers and lay coaches if fall sports and other fall extracurricular activities are canceled?

An employer is not required to pay an employee if the employee does not perform any work for the employer. If a school corporation pays an employee for work not done in relation to its business without approval, it may be committing ghost employment.

A school corporation may choose to pay employees for work not performed with respect to extracurricular activities. In order to avoid ghost employment issues or audit exceptions by the State Board of Accounts, the school board must act in a public meeting to pay the employees if their extracurricular activity is canceled. This action can be done by a resolution or by a board motion and vote recorded in the board meeting minutes.

14. Can payment, partial payment, or non-payment of coaches be addressed in the collective bargaining agreement?

The stipends to be paid to teachers for coaching positions, sponsorships, and other extracurricular activities are required to be bargained in the collective bargaining agreement. The payment of the stipend by the school corporation may be determined by the school corporation through an ECA contract wherein the payment schedule is set out in the contract or the ECA positions could be at-will positions. Both of these options give the school corporation the flexibility to address full, partial, and no payment in situations where the employee did not fully perform the duties of the ECA position due to the activity being canceled or partial completion of scheduled season or activities.

15. What if any accommodations must be made if a teacher has been exposed to COVID-19? Lives with someone who has been exposed to COVID-19? Lives with or has close contact with someone who is COVID-19 positive?

The federal Emergency Paid Sick Leave Act addresses employee leaves for most of these situations. ISBA has previously provided information on the details of this law. For additional information on the requirements of this law, please see the ISBA coronavirus resources page at <https://www.isba-ind.org/coronavirus-resources.html>.

Federal disability laws may apply, and the school corporation should follow federal law requirements if applicable as explained above in previous answers to questions number 8 and 9.

If the federal leave and disability laws do not apply, the school corporation's policy on employee sick leave may apply. The school corporation may also adopt sick leave policies to address COVID-19 related issues.