

Return-to-Learn and COVID-19 FAQ

Disclaimer: CSEA is fielding many questions and concerns about the Return-to-Learn announcement from D-11 and COVID-19. Below, we attempt to answer generally what we know at the moment, and will update as needed. These are not legal guidance. These questions and answers are assembled from what we have heard from members, what the Legal Department at CEA has provided, and what we understand from NEA legal. There may be some changes (which we will update as we learn of them), additions and clarifications. We will add as we have more questions. Do not hesitate to call CSEA if you would like specific answers to your specific questions.

SECTION 1. RETURN TO IN-PERSON INSTRUCTION FAQ

Question. Can a D-11 employee refuse to return to in-person instruction because of COVID-19?

Answer: In general, there is no express legal right for an employee (either a teacher or an ESP) to refuse to return to in-person instruction/work because of COVID-19. What this means is that, if an employee who is directed to return refuses to do so because of a general fear of COVID-19 exposure, that could be considered insubordination or job abandonment. In such a case, D-11 would have the option to terminate you (with any applicable due process). However, D-11 is not legally required to terminate the employee.

Q. If I were to refuse out of general fear, would D-11 give me an option to work remotely since those jobs will likely be available?

A. D-11 is not required to offer a remote work option for a general fear reason. See above.

Q. If I am a vulnerable employee and I refuse to return, would the District be required to offer me an alternative placement like work from home or some other remote option?

A. An employee who has a medical condition that places him/her at greater risk of serious illness from COVID-19 has the right, under the Americans with Disabilities Act, to request reasonable accommodation, which could include assignment to an on-line position if one exists. The ADA does not require D-11 to create an on-line position that does not already exist, but the district is not prohibited from doing so. .

Q. I have worked for D-11 for more than four years yet am not vulnerable nor disabled. I am contemplating retirement/quitting because of the risk. Are there other options?

A. The Master Agreement has several options for employees with four or more years of full time service. Although extended leaves are to be filed by July 15, the lack of clarity around the return-to-learn expectations combined with the disaster declaration by the Governor may constitute an emergency under Article 9.E. Consequently there may be several options at your disposal. The District may assert the timeline to deny these requests and we will examine any denial on a case-by-case level. For example, subsection E.8.e allows for full year of unpaid general leave. If you are caring for a vulnerable/ailing family member that qualifies under the Family Medical Leave Act, you may be able to gain extended leave under E.8.h.

Q. Are there resources or leaves available because I have been quarantined and not able to return to work?

The Families First Coronavirus Response Act (FFCRA) grants that an employee is entitled, under the FFCRA, for up to 2 weeks (i.e., 10 days) of paid sick leave, in addition to whatever paid sick leave he/she may already be entitled to, for the following COVID-19 related reasons:

- a. the employee is under a federal, state or local quarantine order,*
- b. the employee has been advised by a health care provider to self-quarantine,*
- c. the employee is experiencing coronavirus symptoms & seeking a medical diagnosis,*
- d. the employee is caring for a person who is under a quarantine order or has been advised to self-quarantine, or*
- e. the employee is caring for a son/daughter whose school or daycare is closed/unavailable.*

Employees taking leave for reasons a, b, & c are entitled to their full pay up to \$511/day. Employees taking leave for reasons d & e are entitled to 2/3 of their pay up to \$200/day. Part-time employees are entitled to appropriate pro rata portions of their pay. These benefits went into effect on April 1, 2020 and will expire on December 31, 2020.

SECTION 2. CLASSROOMS: HEALTH, SAFETY AND ILLNESS

Q. Can D-11 require all employees to wear facemasks & what consequences can be imposed on an employee who fails to do so?

A: A directive to wear face masks to employees who come in contact or have interactions with other people on the job would likely be considered a reasonable directive; if an employee fails to follow it, he/she could be accused of insubordination, disciplined & potentially terminated (with whatever due process the employee is entitled to). However, there are two possible exceptions:

- (i) It is possible that a directive to wear a face mask at all times could be found to be unreasonable in certain, exceptional situations. In such circumstances, the employee should follow the directive while discussing with CSEA about whether it is an unreasonable directive.*
- (ii) D-11 has some legal obligations under the Americans with Disabilities Act (ADA) to an employee who has a disability that prevents him/her from wearing, or makes it medically inadvisable for him/her to wear a mask while working. A district would be required to engage in interactive discussions with the employee to try to come up with reasonable accommodation(s) that would enable the employee to perform his/her job safely and consistently with COVID-19 health requirements in spite of his/her disability.*

Q. How can D-11 recommend masks for students but require them of staff?

A. The Governor and various health department orders guide the practices and standards. At this point, the Governor has indicated that this standard is the minimum. Thus, D-11 is consistent with the expectations of the state.

Q. I contracted COVID-19 after school resumed. Does this qualify for Workers Compensation coverage?

A. If you can provide a preponderance of evidence that the likelihood of your diagnosis is because of your work, it would be a workers compensation claim. The burden rests with the employee (unfortunately a law was killed this June that would have assumed the transmission was from work), so maintaining steadfast protocols to prevent transmission while not at work would likely be required of the employee.

SECTION 3: LEAVE QUESTIONS

Q. Do I need to use my leave if I have COVID-19 symptoms?

A. It depends. The 10 days of Emergency Paid Sick Leave under FFCRA is in addition to the days contained in the Master Agreement. Consequently, there will likely be a COVID-19 code in the absence system (see FFCRA). However, the 11 days you are granted in the Master Agreement may also be used to either extend or cover as needed.

Q. If I use all of my leave for COVID-19, will I have to take unpaid time for other scheduled life events?

A. We must assume that there is no guarantee of additional leave.

Q. If I contract COVID-19, or a family member does, and I have no accrued leave, what are my other options?

A. First, join (or confirm your enrollment in) the Sick Leave Bank as this may offer up to an additional 30 days of paid leave. After the use of accrued leave and sick leave bank awards, the donated hardship leave process can provide up to another 30 days if others donate to your need.