

COVID-19 EMPLOYMENT UPDATE

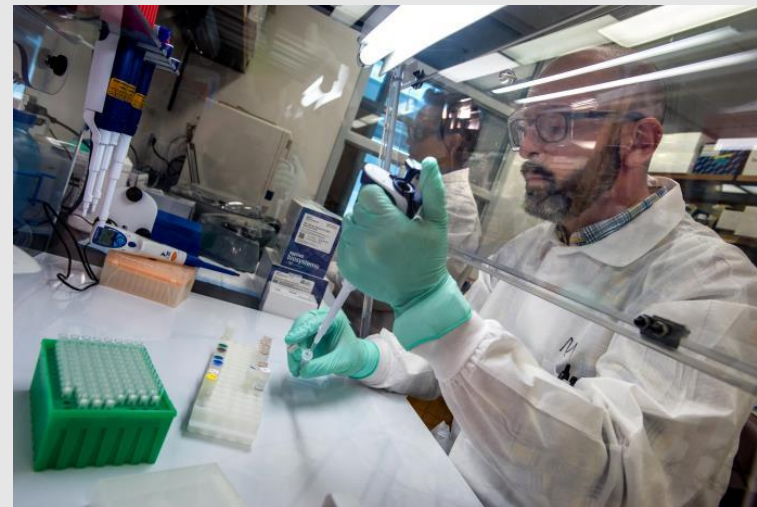
Back to School Edition

**SOUTH CAROLINA ASSOCIATION OF
SCHOOL BUSINESS OFFICIALS**

November 4, 2020

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Scope of Presentation

- Families First Coronavirus Farewell Tour?
- FFCRA Leave Issues/Interaction with Other Laws
- Managing On-Site Work, Return to Work, Telework, and “Don’t Tell Me To Work” Issues

Election Week Observations

- Districts Still Going Above and Beyond Legal Requirements
- Back to Work Issues for Employees With Underlying Health Issues Present Challenges
- Continued Virtual Work is the Accommodation Employees With Health Issues Demand and Expect

Families First Coronavirus Response Act Basics

- Emergency Paid Sick Leave Act (EPSLA)
 - 80 hours of paid sick leave for COVID-19 related or required absence
 - Paid at normal rate of pay, 2/3 rate for absence to care for others
 - Capped at \$511 per day, \$5,110 total
 - Can't require substitution or prior exhaustion of accumulated leave
- Emergency Family and Medical Leave Expansion Act
 - 12 weeks of leave for leave to care for child under 18 whose school or daycare is closed or unavailable due to coronavirus
 - Paid at 2/3 of normal pay rate (some exceptions)
 - Capped at \$200 per day, \$10,000 total
 - Can't require substitution or prior exhaustion of accumulated leave

EMPLOYEE RIGHTS

PAID SICK LEAVE AND EXPANDED FAMILY AND MEDICAL LEAVE UNDER THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT

The Families First Coronavirus Response Act (FFCRA or Act) requires certain employers to provide their employees with paid sick leave and expanded family and medical leave for specified reasons related to COVID-19. These provisions will apply from April 1, 2020 through December 31, 2020.

► PAID LEAVE ENTITLEMENTS

Generally, employers covered under the Act must provide employees:

Up to two weeks (80 hours, or a part-time employee's two-week equivalent) of paid sick leave based on the higher of their regular rate of pay, or the applicable state or Federal minimum wage, paid at:

- 100% for qualifying reasons #1-3 below, up to \$511 daily and \$5,110 total;
- $\frac{2}{3}$ for qualifying reasons #4 and 6 below, up to \$200 daily and \$2,000 total; and
- Up to 12 weeks of paid sick leave and expanded family and medical leave paid at $\frac{2}{3}$ for qualifying reason #5 below for up to \$200 daily and \$12,000 total.

A part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

► ELIGIBLE EMPLOYEES

In general, employees of private sector employers with fewer than 500 employees, and certain public sector employers, are eligible for up to two weeks of fully or partially paid sick leave for COVID-19 related reasons (see below). Employees who have been employed for at least 30 days prior to their leave request may be eligible for up to an additional 10 weeks of partially paid expanded family and medical leave for reason #5 below.

► QUALIFYING REASONS FOR LEAVE RELATED TO COVID-19

An employee is entitled to take leave related to COVID-19 if the employee is unable to work, including unable to telework, because the employee:

- | | |
|---|---|
| <ol style="list-style-type: none">1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;2. has been advised by a health care provider to self-quarantine related to COVID-19;3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2); | <ol style="list-style-type: none">5. is caring for his or her child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons; or6. is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services. |
|---|---|

► ENFORCEMENT

The U.S. Department of Labor's Wage and Hour Division (WHD) has the authority to investigate and enforce compliance with the FFCRA. Employers may not discharge, discipline, or otherwise discriminate against any employee who lawfully takes paid sick leave or expanded family and medical leave under the FFCRA, files a complaint, or institutes a proceeding under or related to this Act. Employers in violation of the provisions of the FFCRA will be subject to penalties and enforcement by WHD.



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

For additional information
or to file a complaint:
1-866-487-9243
TTY: 1-877-889-5627
dol.gov/agencies/whd



WH1422 REV 03/20

DUE TO COVID-19

SWEET CAROLINE

IS BANNED

THERE WILL BE NO:
TOUCHING HANDS
REACHING OUT
TOUCHING ME
TOUCHING YOU



FAQ 1

Q: An employee needs EFMLEA leave to take care of a child with no daycare. Do they get a full 12 weeks at 2/3 if they start now?

A: No. Any paid leave ends December 31, 2020, when FFCRA “sunsets.”

FAQ 2

Q: Should we designate paid COVID-related leave as FFCRA leave?

A: Yes. Employees who are teleworking or otherwise still providing services to earn their pay are not on “leave,” so you would not designate for them, only the employees who have been *totally relieved of duty*. This will help prevent “no good deed goes unpunished” claims for more leave than the law requires later on this year.

FAQ 3


Q: Is all FMLA paid leave now?

A: No, only the narrow exception for COVID-19 related childcare leave.

FAQ 4

- Q: A teacher has 4 elementary-age children. Our district is returning to school on A-B schedule with a virtual day on Friday. The teacher has no one available to take care of her kids on “B” or virtual days. Can she elect EFMLEA for just the “B” days?
- A: Intermittent leave is up to the employer under the EFMLEA, so that leave could be denied. Options may be to allow a 12-week block of EFMLEA or provide childcare for the “B” days.

MOONSHINE? HELL NAW OFFICER..

A photograph of two men with long beards and blue overalls sitting in a wooded area next to a large, rustic metal still. The still has a large horizontal barrel at the base and a vertical pipe extending upwards. A wooden barrel is also visible in the background. The men are looking towards the camera.

WE MAKING HAND SANITIZER!

FAQ 5

Q: Teacher in FAQ 4 already took 10 weeks of FMLA this year for the birth of her fifth child. Is she entitled to an additional 12 weeks of paid leave to take care of her kids?

A: No, the EFMLEA does not increase the 12-week annual entitlement, she would get 2 additional weeks of leave (paid at 2/3).

FAQ 6

Q: Our teacher in FAQ 4 with all the kids wants to use her accrued leave to “gross up” the 2/3 pay, max \$200 per day she would get for EFMLEA. Do we have to allow that?

A: Yes, the regulations allow the teacher to use accrued leave for full pay.

FAQ 7

Q: Do school districts get any payroll tax relief or is it just the private sector?

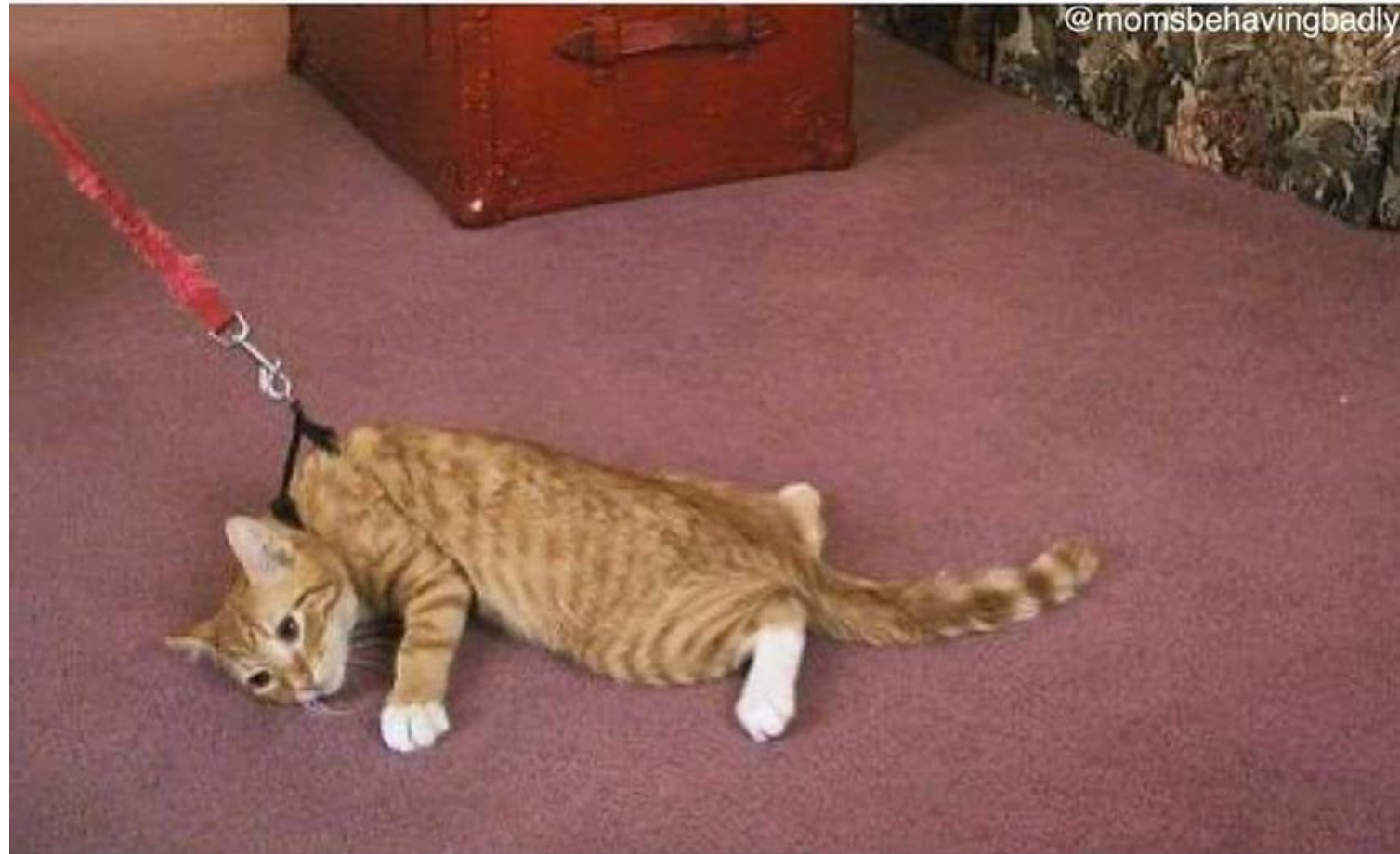
A: No tax or employee retention credits for school districts or other governmental employers.

FAQ 8

Q: Is there any potential financial incentive to designating leave pay as EPSLA or EFMLEA?

A: Employers, including public sector, do not pay or match Social Security up to maximum of \$5,110 per employee for EPSLA or up to \$10,000 for EFMLEA.

People being asked to go back to the office after working from home for months



FAQ 9

Q: An employee does not want to come to work for fear of contracting coronavirus. He has no medical conditions of which we are aware or a doctor's excuse. Can we require him to use accrued leave to cover his absence or make leave unpaid?

A: Yes, but first give the employee an opportunity to provide a medical excuse. If a COVID-19 related excuse is provided, this triggers the 80 hours of paid EPSLA leave entitlement. Can't require prior use of accrued leave.

FAQ 10

Q: How much medical information can we require of the employee in FAQ 2?

A: Something from a medical professional that says the employee needs to be out for a COVID-19 related reason that looks legitimate.

FAQ 11

Q: What qualifies as a disability under the ADA?

A: A physical or mental impairment that substantially limits a major life activity, including the major life activity of working.

FAQ 12

Q: Does an employee with a disability get to choose the reasonable accommodation he or she wants?

A: No. The employer is required to offer a reasonable accommodation, not the employee's choice of accommodation.

FAQ 13

Q: We are reopening school on November 4. A teacher with a disability has requested to continue to teach virtually from home as a reasonable accommodation. Do we have to allow that?

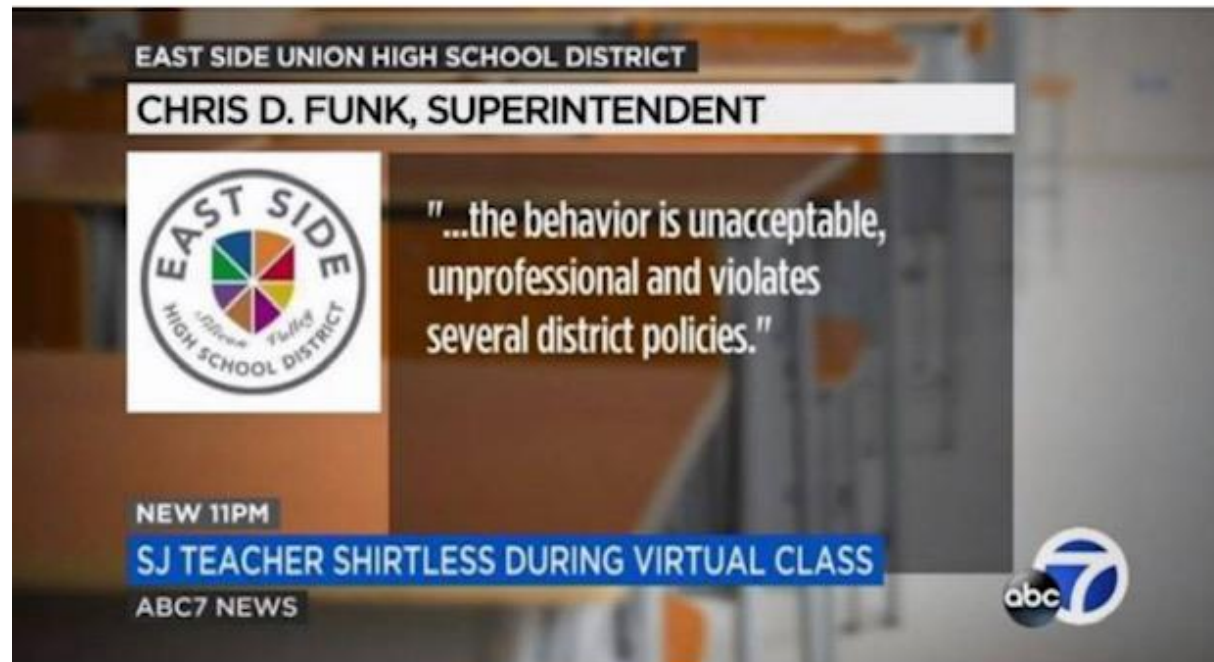
A: Likely not for most teaching jobs. Will depend upon whether/how much virtual education is continuing and your potential ability to accommodate it.

Miami Herald

Teacher with no shirt in online class prompts investigation, California district says

Don Sweeney

August 16, 2020, 5:39 PM EDT



FAQ 14

Q: What factors make an accommodation “unreasonable?”

A: Elimination of essential job functions, forcing employer to hire an aide or monitor, costs too much or supply chain makes it unavailable, puts too much work on other employees, displaces another employee, otherwise causes an undue hardship on employer

FAQ 15

Q: What are some other reasonable accommodations we may be required to consider for employees with underlying health conditions other than telework?

A: Work schedule modification, reassignment of non-essential functions that might increase exposure, additional PPE, additional distancing or barriers, additional leave.



20-21 PE CLASS COVID UNIFORMS

FAQ 16

- Q: Does the law require us to provide a reasonable accommodation to an employee who needs to take care of a child or parent with underlying health conditions?
- A: Only in the form of leave, if available and eligible. Of course, discrimination against someone based on a relationship with an individual with a disability is prohibited.

FAQ 17

Q: Are we allowed to take temperatures and make other medical inquiries of employees we are bringing back to work?

A: Yes. EEOC rules against medical inquiries have been relaxed due to COVID-19. Err on the side of safety for employees vs. privacy.

FAQ 18

Q: Can employees who contract coronavirus qualify for worker's compensation?

A: In theory, likely not in reality. But they must be allowed to file claims.



FAQ 19

Q: Are we supposed to stop garnishing wages now?

A: Only for defaulted federal student loans so far. You are supposed to be getting a notice from the U.S. Department of Education. IRS and SCDOR tax garnishments should continue.

FAQ 20

Q: Are waivers enforceable and should we be asking for waivers from students?

A: Not usually enforceable in the normal school context, SCHSL requires for sports and they may be useful for volunteers and extracurricular activities.

FAQ 21

Q: Do we have to grant an employee's request for modification of the face covering requirement?

A: Not under most circumstances. Exceptions might be to accommodate a disability (such as asthma or COPD). Unclear if any legitimate religious exemption would apply.

HANNIBAL DIDN'T WEAR A MASK FOR HIS SAFETY

HE WORE IT FOR YOURS

FAQ 22

Q: Do we have to grant a student's request for modification of the face covering requirement for medical reasons?

A: Yes, for documented health-related reasons.

FAQ 23

Q: How should we deal with face coverings that contain messages or could possibly cause disruption?

A: Apply dress code/code of conduct analysis as you would with other clothing or accessories, keeping in mind that employees have some First Amendment rights that we have to balance.

FAQ 24

Q: How do we know when to isolate or quarantine students and employees?

A: Follow DHEC guidelines and call DHEC. This is a medical, rather legal question.



QUESTIONS?