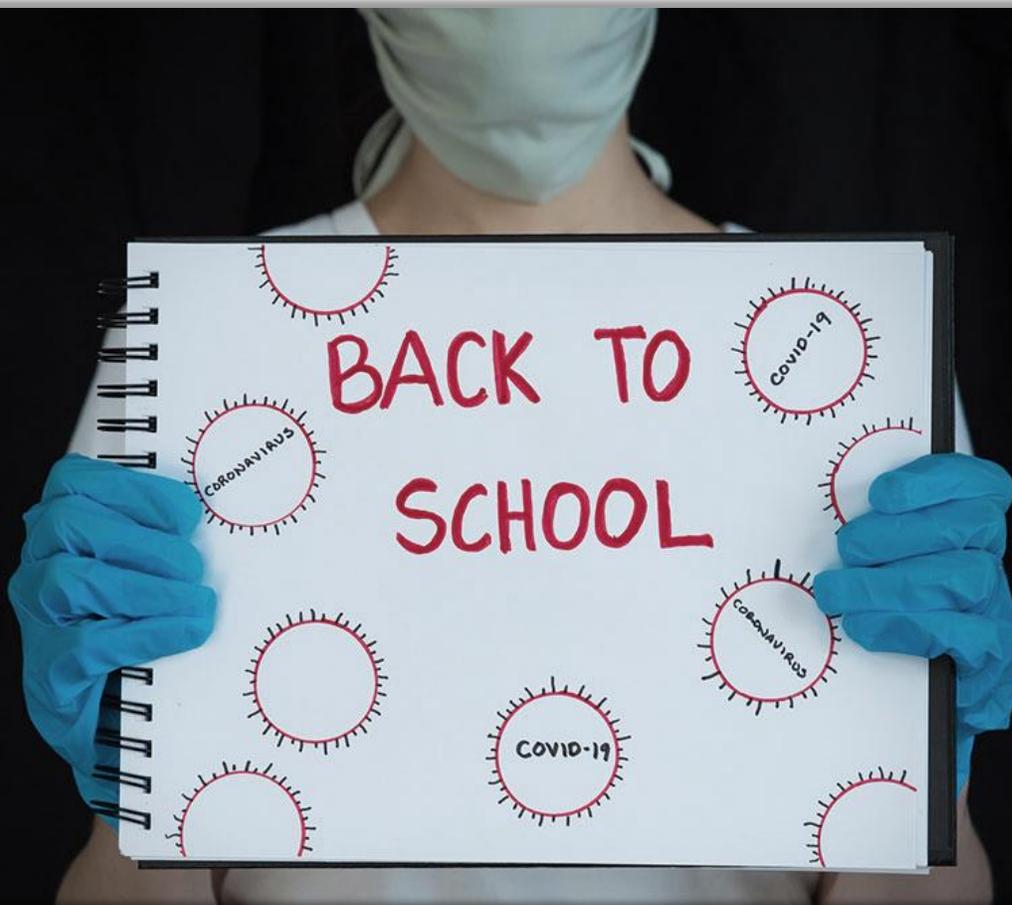




BACK TO SCHOOL DURING A PANDEMIC:
A ROADMAP FOR EMPLOYERS



BACK TO SCHOOL DURING THE COVID-19 PANDEMIC

Are you prepared for the upcoming school year? Do you have a plan in place? Employers are grappling with ambiguity as schools open across the nation and employees prepare for the uncertainties of educating their children during a pandemic.

With respect to school reopening plans, each state and district seems to be taking a different approach. To practice social distancing and minimize the risk of spreading the virus, many districts have chosen a hybrid approach, combining in-person and virtual classrooms, along with staggered schedules, allowing children to report to the classroom setting for only a portion of the school week. In some areas of the country, districts like [Los Angeles and San Diego](#), have chosen to err on the side of caution and remain closed, relying only on virtual options. [Chicago schools](#) are going online while [New Jersey](#) has called for some in-school instruction. New York has left decisions to individual school districts, requiring [detailed plans](#) to contain and monitor outbreaks.

We have also seen regrettable reopening disasters for some colleges and schools resulting from a lack of solid planning, causing a rise in COVID-19 related exposures, and forcing schools to backtrack on their reopening efforts. According to an [August report](#) from the American Academy of Pediatrics, more than 400,000 children tested positive for COVID-19 in the country. California, Florida, Illinois, Tennessee, and Georgia were among the states with the highest number of cases.

This landscape adds immense pressure on employers and their Human Resources departments. The reality? Some employees will need to stay home, at least part-time, to care for their children, and those who can work remotely or report to the worksite, might have to change plans at a moment's notice.

Given this fast-changing environment, employers should prepare themselves. Instead of throwing caution to the wind, it will serve you well to be proactive and ensure your reopening plans account for increased employee absenteeism and options to accommodate individual employee requests. These plans must be mindful of the following:

ELEMENTS OF AN EFFECTIVE PLAN

- Implementing **leave options**, including those required by federal, state, and local laws
- Making **reasonable accommodations**
- Allowing **telework arrangements**
- Offering **flexible scheduling**, where possible
- Anticipating creative ways to support **employee needs**

A detailed plan is imperative as you navigate these uncharted waters. Being an understanding employer while establishing clear policies and expectations will go a long way toward building a cohesive team to ride out the storm.

OPTIMIZING USE OF LEAVE POLICIES

Before COVID-19, paid leave policies did not anticipate a public health crisis. Lawmakers have taken steps to change that as it relates to the pandemic, but as you prepare for employees to continue to request time off for their own medical issues, to care for a loved one or to attend to a child when school or childcare is closed, it is important to review your organization's procedures and examine new regulations to confirm that your plan speaks to all. Considering when unpaid leave may be required is also key.

Reviewing paid leave policies

As you prepare your plan, evaluate your leave policies carefully. Be sure you are familiar with applicable federal, state, and local leave laws and reconcile paid leave, including a review employee leave balances and pending requests. Be prepared to address time-off requests from workers who have already exhausted the allotted amount. Start by understanding new leave obligations that have been implemented because of the pandemic.

On the federal level, if you are a private employer with fewer than 500 employees, as well as most public employers, the [Families First Coronavirus Response Act \(FFCRA\)](#) applies to you. FFCRA provides employees with up to 80 hours (two weeks) of emergency paid sick leave (EPSL) for those unable to work (or telework) because of a qualifying COVID-19 reason, including to care for a minor whose school or place of care is closed due to a COVID-19 reason. Under EPSL, employees who take leave to care for a child whose school or place of care is closed, is eligible to be paid at two-thirds the employee's regular rate of pay, up to a maximum of \$200/day or \$2,000 total during the period of leave. Additionally, the FFCRA provides for up to 12 weeks of Expanded Family and Medical Leave for this same reason. The first two weeks of Expanded Family and Medical Leave are unpaid, but the employee may substitute available paid leave, including EPSL, for during this time. The remaining 10 weeks of leave are paid at two-thirds the employee's regular rate of pay, up to a maximum of \$200/day or \$10,000 total.

Under both FFCRA leave options, employees may also elect to substitute available employer-provided paid leave to receive 100% of their wages, however, employers may not mandate the use of such time. More information about qualifying for paid leave under the FFCRA, as well as questions and answers related to the reopening of schools, can be found on the [Department of Labor \(DOL\) website](#).

Assessing paid sick leave

In addition to EPSL provided under the federal Families First Coronavirus Response Act, roughly 36 state and municipalities require paid sick and/or family leave requirements. For example, states like California, Colorado and New York, and cities like Los Angeles and San Francisco, to name just a few, have specific requirements for paid sick leave.

In New York, effective September 30, 2020, most employers will be required to offer [paid sick leave](#) in addition to the already existing [Paid Family Leave](#) requirement. While neither law is specific to COVID-19, both contain provisions that may apply if an employee needs to care for a family member who contracts the virus or in the case of Paid Family Leave, time to care for a minor child under a [mandatory or precautionary order of quarantine](#).

Using unpaid leave

In addition to paid sick and family leave options, employees may also be entitled to unpaid leave in some circumstances. The [FMLA](#) protects eligible employees who are incapacitated by a serious health condition, as may be the case with COVID-19 where complications arise, or who need to care for sick family members. However, leave taken by an employee to avoid exposure to COVID-19 is not protected under FMLA. Encourage staff who might be exposed to the disease to stay home and work remotely, if possible, or implement other flexible leave policies that they can use.



FREE RESOURCE DOWNLOAD:
[FEDERAL LEAVE LAW COMPARISON CHART](#)

REASONABLE ACCOMMODATIONS

Your leave policies must also comply with federal and state anti-discrimination laws such as the Americans with Disabilities Act (ADA) or state human rights laws. [ADA regulations](#) may apply to employees with disabilities that put them at high risk for complications of COVID-19. It is important to note that a general fear of contracting the virus is likely not an ADA covered disability. However, extreme anxiety could be covered (ADA covers both physical and mental disabilities).

Reasonable accommodations in such situations could include working from home, providing additional personal protective equipment, ensuring the employee is separated from others in the workplace, or granting a temporary leave of absence, to provide a few examples.

The key to compliance is to engage in an interactive process with the employee/employee's physician to determine:

- 1) What the **limitations** are
- 2) What **accommodation** may be made to allow the employee to perform the essential functions of the job
- 3) Whether or not such accommodation (or other option) would be **reasonable** and not create an undue hardship on the employer

It is very important to document this process and the outcome.

PERMITTING TELEWORK

While employees may be entitled to leave under FFCRA or other applicable laws or company policy, permitting telework may eliminate the need for leave and allow the employer to benefit from the employee's productivity while accommodating the employee's need to balance work and family obligations. The coronavirus outbreak has prompted employers to look more creatively at work arrangements that they historically had not considered. As you draft policies to incorporate such options, prepare and plan carefully.

Offering remote work

Which positions can be performed remotely? Is the employer required to contribute toward the cost of equipment and technology, or should you, even if not legally required? These are some questions that you face as you consider options to keep operations running smoothly. Assess every person's ability to work remotely and whether the appropriate technology and equipment are in place. Planning and making it easy for your workforce to perform their duties remotely requires attention to detail and awareness of applicable federal and state laws. Having remote work options laid out in advance will enable you to respond more quickly when requests arise.

If your teleworkers use their own computers, laptops and cell phones, check regulations to confirm that your organization is compliant. Some states may require the employer to cover applicable expenses associated with the employee's use of their own equipment. For example, in accordance with [California Labor Code Section 2802](#), an employee must be reimbursed by an employer "for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer." Thus, California employees have an explicit right to be reimbursed for business-related expenses, such as equipment, materials, training, business travel, and uniforms. Other states, however, might not have that requirement.

Offer flexible scheduling, where possible

All employees might not be able to work offsite. If your organization runs shifts, it might be prudent to stagger them, providing more options for employees that will allow them better flexibility with balancing work and home life. For example, if an employee has school-aged children at home, they may be able to pick up a shift later in the day when a spouse/partner or co-parent is home to care for the children.

Compressed work weeks are yet another way to approach shifts. In this type of arrangement, employees may work four, ten-hour days, for example. This could be a good option for employees whose children are in school districts with a hybrid approach, allowing the employee an extra weekday at home to help with childcare and virtual learning needs. Before implementing such programs, be cognizant of state-specific laws. For example, in [California](#), employees "shall not be employed more than eight hours in any workday or more than 40 hours in any workweek unless he or she receives one and one-half times his or her regular rate of pay for all hours worked over eight hours in any workday and over 40 hours in the workweek". In some instances, double time maybe a factor.

Flexibility could be as simple as changing an employee's starting and stopping time to allow an employee to come in later or leave earlier, if needed for childcare purposes.

WEIGHING OTHER FACTORS

As you support your employees in the best way possible, remember to keep other factors such as collective bargaining agreements or other employment contracts in mind. Carefully review each employee's request for leave or special consideration.

For example, your organization's policies on sick leave and collective bargaining agreements would define whether you can offer paid leave to employees who are not at work and need to be considered before you make any changes to an employee's working conditions.

If you offer health care benefits, they may need to be continued during periods of leave, based on the applicable law. Before continuing benefits during periods of unpaid leave, review your plan documents or check with your carrier or broker to verify benefits eligibility during leave.

As an employer, you try to say "yes" when you can. However, not all requests can be accommodated. All attempts to assist should be well supported and fully documented regardless if they are approved or not. When doing so, clearly identify the request being made, objectively evaluate how the request may impact the company, outline all other accommodation considerations, and conclude with the final determination. You may even consider reassigning jobs if an employee requires an extended leave of absence or is unable to perform the duties of the position, as required. It is helpful to know in advance who has been cross trained for various positions in the event you need to reassign work during an employee's absence.

As you manage your workforce to make sure employees are being treated equitably and their requests are being heard, keep the talent pipeline ready to roll. Employees might think of leaving your organization for a myriad of reasons. Assess which positions maybe a flight risk. There might be an employee who cannot work remotely or others who ask for more flexibility than your organization is able to offer at this point. Prepare for possible attrition by updating job descriptions, consider skills gap analyses, train, and cross train, begin recruiting stages, review filed unsolicited resumes, post necessary job ads, and keep tabs on available opportunities before they are needed.

MEETING EMPLOYEE NEEDS

The coronavirus crisis has urged many employers to review existing leave policies and work arrangements. As you find ways to keep your organization running with minimal interruptions, get creative about other employee perks. Are there extra benefits that you could offer your team?

Examine options that will improve work/life balance for your employees. Look into your ability to offer stipends for childcare or perhaps a membership fee for concierge services such as Cariloop, a caregiver platform, or childcare learning centers like KinderCare. State employees can make use of a Dependent Care Advantage Account, a negotiated employee benefit that helps state employee families pay for custodial childcare, elder care, or disabled dependent care while they are at work. The New York State Network Child Care Centers is another option for New York employers. These centers were established to enable parents to be engaged and productive at work. Enrollment priority, however, is given to children of state employees.

If your organization offers an Employee Assistance Program, remind your employees about it. An EAP aids employees and their family members, keeping the use of those benefits confidential. EAP benefits offer extend beyond traditional counseling services and offer support finding childcare, elder care, legal services, etc. These programs have been known to decrease absenteeism, improve morale and assist employees as they juggle responsibilities at work and at home.

THE BOTTOM LINE

Clear communication lies at the core of your preparedness plan. It is imperative as you steer your organization through unprecedented times. Be transparent about the organization's needs, available employee benefits and your willingness to be as flexible as possible. By communicating policies, benefits and plans often and clearly, you will establish trust with your workforce which will carry you through any crisis.

The factors outlined in this whitepaper can be overwhelming. Remember: You are not alone. Employers across the nation are dealing with similar issues as they resume operations and prepare for possible setbacks as employees get ready to send their children to school.

While there are several unknowns when it comes to a spike in infections or a resurgence in areas that have managed to curb the infection rate, a thoughtful, planned approach will hold you in good stead. Consider using a third-party administrator to guide you through compliance, ensuring your policies cover necessary ground and are equitable. A reputable provider will have a deep bench of expertise to draw on with personnel who continually track changes in regulations and monitor leave policies for clients.

Reopening schools does pose risks for infection and in turn could cause disruptions for employers as parents figure out options to homeschool and care for their children. If you have explored all the possibilities for flexible work schedules, nonpunitive paid family leave or emergency childcare, your organization will be able to meet these challenges.

The information provided in this whitepaper is general guidance and is intended to be used for informational purposes only. Additionally, the regulations and guidance on this topic can change over time; it is important to always refer to the latest DOL and other agency guidance for the most current rules and regulations. This information should not be construed as legal advice. Employers should also seek guidance from their legal counsel on how to navigate situations specific to their organization.



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