

## You Are Important



### MEMORANDUM

**TO:** Faculty and Staff  
**FROM:** Bonnie Donohue, Director of Human Resources  
**RE:** Return to Work Issues and Regulations: COVID-19  
**DATE:** August 2020

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As we are preparing for our return to school, this memo will address the process for how the district will respond if an employee requests a leave of absence in regards to COVID-19. Leaves may be requested based on the guidelines of the following federal acts. (FFCRA, FMLA or ADA).

#### **FAMILIES FIRST CORONAVIRUS RESPONSE ACT (FFCRA)**

The district will require any employee to complete the FFCRA Request Form if you are eligible for the following qualifying reasons:

- If you are subject to Federal, State or local quarantine or isolation order related to COVID-19.
- If you have been advised by a health care provider to self-quarantine related to COVID19
- If you are experiencing COVID-19 symptoms and seeking a medical diagnosis.
- If you are caring for an individual subject to an order described in (1) or (2).
- If you are caring for your child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons
- If you are experiencing any other substantially similar condition specified by the U.S. Department of Health and Human Services.

The District will require any employee infected with COVID-19, experiencing symptoms of COVID-19, or is otherwise required to stay home and self-isolate/self-quarantine, to stay home. A determination will be made regarding eligibility for pay during the period of leave under the Families First Coronavirus Relief Act ("[FFCRA](#)") or other applicable leave entitlements. Employee requests for a leave of absence should be directed to me and include completion of [FFCRA Leave Request Form](#).

## **FAMILY AND MEDICAL LEAVE ACT (FMLA)**

Any concerns regarding a leave or accommodation under the federal Family and Medical Leave Act ("[FMLA](#)") should be directed to me and include completion of the [FMLA Leave Request Form](#). Upon notification, a determination regarding eligibility for pay during a leave will be made pursuant to the FMLA or other applicable leave entitlements.

## **AMERICANS WITH DISABILITIES ACT (ADA)**

If an employee is not eligible for leave pursuant to the FFCRA, FMLA or other entitlement, the inquiry may be handled as a request for reasonable accommodation under the Americans with Disabilities Act ("[ADA](#)"). The employee will be asked questions about the specific reason why he/she/ze believes he/she/ze cannot return to work. If the request is related to the employee's own health condition/disability, documentation will be requested from the employee's health care provider. Additional information may be viewed at [U.S. Equal Employment Opportunity Commission](#). Requests for accommodations should be directed to me and include completion of the [ADA Form](#).

Following are examples of leave requests that will not be approved based upon state and federal law:

[EEOC FAQ #D.13](#) Is an employee entitled to an accommodation under the ADA in order to avoid exposing a family member who is at higher risk of severe illness from COVID-19 due to an underlying medical condition?

No. Although the ADA prohibits discrimination based on association with an individual with a disability, that protection is limited to disparate treatment or harassment. The ADA does not require that an employer accommodate an employee without a disability based on the disability-related needs of a family member or other person with whom she is associated.

For example, an employee without a disability is not entitled under the ADA to telework as an accommodation in order to protect a family member with a disability from potential COVID-19 exposure.

[EEOC FAQ #H.1](#) The CDC has explained that individuals age 65 and over are at higher risk for a severe case of COVID-19 if they contract the virus and therefore has encouraged employers to offer maximum flexibilities to this group. Do employees age 65 and over have protections under the federal employment discrimination laws?

The Age Discrimination in Employment Act (ADEA) prohibits employment discrimination against individuals age 40 and older. The ADEA would prohibit a covered employer from involuntarily excluding an individual from the workplace based on his or her being 65 or older, even if the employer acted for benevolent reasons such as protecting the employee due to higher risk of severe illness from COVID-19.

Unlike the ADA, the ADEA does not include a right to reasonable accommodation for older workers due to age. However, employers are free to provide flexibility to workers age 65 and older; the ADEA does not prohibit this, even if it results in younger workers ages 40-64 being treated less favorably based on age in comparison.

If the employee has general concerns about potential exposure to COVID-19, but does not have a specific or individualized reason why he/she/ze needs to remain home, the district will not accommodate the request.

Please feel free to contact me with any questions. Thank you.

*Bonnie*