



## **Employment-Related Reopening Issues - Riverview Gardens School District**

**Question 1:** Can an employee who has an increased risk for severe illness if exposed to the COVID-19 virus take paid sick leave if they are not ill and have not contracted the virus?

**Answer:** Not under current district policy. Policy GCBDA, Professional Staff Short-Term Leaves, and Policy GDBDA, Support Staff Leaves, both state that "sick leave" is available for "illness, injury or incapacity" of the employee, the employee's immediate family, "other relatives" with permission granted by the superintendent, and "pregnancy, childbirth and adoption leave in accordance with this policy." All definitions of "sick leave" require actual illness, injury, or incapacity. Having a greater risk for severe illness if exposed to COVID-19 does not make one eligible for sick leave under current district policies.

**Question 1a:** Can the employee take unpaid sick leave under the circumstances described above?

**Answer:** "Sick leave" is not available under these circumstances. Employees may be eligible to take personal leave or vacation under Policies GCBDA or GDBDA. The district reserves the right to make deductions from employees' pay for unpaid absences. See Policy DLB, Salary Deductions. However, Policy GBCBC, Staff Absences and Tardiness, states that employees may be disciplined for absences that are "not granted as paid or protected leave under Board policy or law."

**Question 2:** Can an employee who shares a household with a person who has an increased risk for severe illness if exposed to the COVID-19 virus take paid sick leave if the employee is not ill and has not contracted the virus and the household member is not ill and has not contracted the virus?

**Answer:** No. See answer to Question 1.

**Question 2a:** Can the employee take unpaid sick leave under the circumstances described above?

**Answer:** No. See answer to Question 1a.

**Question 3:** Can teachers opt-out of in-person instruction and choose to teach virtually when school resumes in the fall?

**Answer:** It depends. If some teachers will be doing virtual instruction (teaching via phone or videoconference from home or other off-site location), then the district may allow teachers to choose to teach virtually. Which teachers are assigned virtual instruction should be determined based on the needs of the district and the district's obligation under the Americans with Disabilities Act ("ADA") and state and local laws

to accommodate employees who have disabilities that place them at increased risk for severe illness if exposed to the COVID-19 virus.

If all teachers will be returning to their classrooms and no one will be providing virtual instruction, then teachers have no right to teach remotely unless a. they have a disability that places them at increased risk for severe illness if exposed to the COVID-19 virus, b. virtual instruction is a reasonable accommodation for the teacher's disability, and c. allowing the teacher to provide virtual instruction does not create an undue hardship for the district.

If some teachers will be providing virtual instruction, then virtual instruction would likely be a reasonable accommodation for a teacher with a disability that places them at increased risk for severe illness if exposed to COVID-19. The district should consider assigning virtual instruction positions to teachers who require this accommodation.

If the district will only be providing in-person instruction, then permitting teachers to teach virtually would most likely cause undue hardship (defined as "significant difficulty or expense") to the district. The EEOC has identified the following as possible accommodations for employees who must be physically present at the workplace: changes to the work environment such as designating one-way aisles; using plexiglass, tables, or other barriers to ensure minimum distances between students and coworkers per CDC guidance; temporary job restructuring of marginal job duties; temporary transfers to a different position; or modifying a work schedule or assignment to permit an individual with a disability to perform safely the essential functions of the job while reducing exposure to others in the workplace. These could be provided to employees with disabilities if all instruction will occur in schools.

Source: <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws> (updated June 17, 2020)

**Question 4:** Is the district required to allow non-instructional personnel to work remotely?

**Answer:** Not unless the employee has a disability that puts them at greater risk for serious illness if exposed to the COVID-19 virus. Employees who have such disabilities may request telework as a reasonable accommodation to reduce their chances of infection. The district will need to analyze whether remote work is a reasonable accommodation for the employee and, if so, whether providing the accommodation will cause undue hardship for the district.

See 29 C.F.R. § 1630.2(o)(1)(ii), (2)(ii) (1997) (modifications or adjustments to the manner or circumstances under which the position held or desired is customarily performed that enable a qualified individual with a disability to perform the essential functions).

**Question 5:** Is the district required to accommodate employees who do not want to leave their home because a member of their household has an increased risk for severe illness if exposed to the COVID-19 virus?

**Answer:** No. Under the ADA and applicable state and local disability laws, an employer's obligation to reasonably accommodate an employee is limited to accommodating an employee whose own health condition limits their ability to perform the essential functions of their job.

*Source: <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>*

**Question 6:** Can the district require an employee who claims to have an increased risk for severe illness if exposed to the COVID-19 to be examined by a doctor of the district's choosing to confirm the existence of risk factors? If so, must the district pay for this examination?

**Answer:** An employer may not make disability related inquiries or require a medical examination unless such examination or inquiry is shown to be job-related and consistent with business necessity. Generally, a disability-related inquiry or medical examination of an employee may be "job-related and consistent with business necessity" when an employer "has a reasonable belief, based on objective evidence, that: (1) an employee's ability to perform essential job functions will be impaired by a medical condition; or (2) an employee will pose a direct threat due to a medical condition." Disability-related inquiries and medical examinations that follow up on a request for reasonable accommodation when the disability or need for accommodation is not known or obvious also may be job-related and consistent with business necessity.

Therefore, if an employee requests an accommodation for a disability that is not obvious and that may place the employee at increased risk for COVID-19, the district may request documentation from the employee's physician and may require a medical examination if the employee provides insufficient documentation.

The ADA does not prevent an employer from requiring an employee to go to an appropriate health care professional of the employer's choice if the employee provides insufficient documentation from his/her treating physician (or other health care professional) to substantiate that the employee has an ADA disability and needs a reasonable accommodation. However, if an employee provides insufficient documentation in response to the employer's initial request, the employer should explain why the documentation is insufficient and allow the employee an opportunity to provide the missing information in a timely manner. The employer also should consider consulting with the employee's doctor (with the employee's consent) before requiring the employee to go to a health care professional of its choice.

Documentation is insufficient if it does not specify the existence of an ADA disability and explain the need for reasonable accommodation. Documentation also might be insufficient where, for example: (1) the health care professional does not have the expertise to give an opinion about the employee's medical condition and the limitations imposed by it; (2) the information does not specify the functional limitations due to the disability; or, (3) other factors indicate that the information provided is not credible or is fraudulent. If an employee provides insufficient documentation, an employer does not have to provide reasonable accommodation until sufficient documentation is provided.

Any medical examination conducted by the employer's health care professional must be job-related and consistent with business necessity. This means that the examination must be limited to determining the existence of an ADA disability and the functional limitations that require reasonable accommodation. If an employer requires an employee to go to a health care professional of the employer's choice, the employer must pay all costs associated with the visit(s).

*Source: <https://www.eeoc.gov/laws/guidance/enforcement-guidance-disability-related-inquiries-and-medical-examinations-employees> (Issued July 26, 2000)*

**Question 7:** Can the district require that employees wear masks while on-duty?

**Answer:** Yes. Current guidelines from the St. Louis County Department Public Health department states that staff must wear face masks at all times when interacting with other employees and children.

*Source: <https://stlcorona.com/sites/default/assets/pdfs/dph-orders/st-louis-county-child-care-program-guidelines-06252020-0.pdf>*

If an employee with a disability needs a related reasonable accommodation under the ADA (e.g., non-latex gloves, modified face masks for interpreters or others who communicate with an employee who uses lip reading), the employer should discuss the request and provide the modification or an alternative if feasible and not an undue hardship on the operation of the employer's business.

*Source: <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws> (Updated: June 17, 2020)*