



COVID-19 RIGHTS



Legal Guidance from FEA Office of General Counsel

July 10, 2020

The FEA Legal Department has compiled an overview from previously issued guidance that can help address many issues surrounding the return to work. Please take a moment to review the following information.

PRIVACY AND CONFIDENTIALITY

As with any medical scare that is highly publicized, parents, employers and colleagues often want to know who has been diagnosed with the disease. Despite public perceptions, some rational, some not, the medical condition of public school employees is private. Education employee medical records are confidential and are exempt from public disclosure. Parents don't have a right to know about an employee's medical history or current medical status. As a matter of fact, the release of this information is strictly prohibited. Section 112.313(8), Florida Statutes, states: "No public officer, employee of an agency, or local government attorney shall disclose or use information not available to members of the general public..." The plain language of the statute prohibits a public employee or officer from disclosing information that is unavailable to the general public and gained through his or her official position.

In general, medical records may not be furnished to and the medical condition of a person may not be discussed with any person other than the patient, the patient's legal representative, or the patient's health care practitioners or providers involved in the patient's care or treatment, except upon written authorization from the patient. See Section 456.057(7)(a), Florida Statutes, and HIPPA regulations. Be advised there are a few exceptions. One exception involves reporting specific conditions to the CDC.

FMLA (FAMILY MEDICAL LEAVE ACT)

According to the Department of Labor, an employee who is sick or whose family members are sick may be entitled to leave under certain circumstances. COVID-19 is very likely a serious health condition that makes the employee unable to perform the essential function of his or her job. The virus qualifying under FMLA would ensure continuing employment rights and insurance coverage. You shall be entitled to a total of 12 workweeks of leave during any 12-month period for personal treatment or to care for a qualifying family member. In order to leverage FMLA, you must submit a medical request form and certification issued by health care provider forms required by your district.

FFCRA

The **Families First Coronavirus Response Act (FFCRA)** requires certain employers to provide employees with paid sick leave or expanded family and medical leave for specified reasons related to COVID-19.

Generally, the Act provides that employees of covered employers are eligible for:

- Two weeks (up to 80 hours) of paid sick leave at the employee's regular rate of pay where the employee is

unable to work because the employee is quarantined (pursuant to Federal, State, or local government order or advice of a health care provider), and/or experiencing COVID-19 symptoms and seeking a medical diagnosis; or

- Two weeks (up to 80 hours) of **paid sick leave** at two-thirds the employee's regular rate of pay because the employee is unable to work because of a bona fide need to care for an individual subject to quarantine (pursuant to Federal, State, or local government order or advice of a health care provider), or to care for a child (under 18 years of age) whose school or child care provider is closed or unavailable for reasons related to COVID-19, and/or the employee is experiencing a substantially similar condition as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of the Treasury and Labor; and
- Up to an additional 10 weeks of **paid expanded family and medical leave** at two-thirds the employee's regular rate of pay where an employee, who has been employed for at least 30 calendar days, is unable to work due to a bona fide need for leave to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19.

MEDICAL INQUIRIES:

There is no doubt that an infected employee does present a direct threat to co-workers, vendors, customers, and others in the workplace. As a result, employers can ask medical questions that would otherwise be forbidden such as:

Are you experiencing symptoms of COVID-19 (fever, cough, shortness of breath, loss of taste or smell)?

Below are examples of measures that employers can take.

- The employer should keep the name of the person confidential BUT should inform employees of their possible exposure to the virus.
- The employer can send symptomatic employees' home.
- The employer can contact the local health department if one of their employees has been diagnosed with COVID-19.

In addition, employers can now take employees' temperatures when they arrive at work.

DO NOT SIGN WAIVERS

There are several reasons why no employer should be submitting waiver agreements directly to bargaining unit employees.

- **Employee health and safety is a mandatory subject of bargaining for the union.** New workplace safety terms and conditions cannot be unilaterally implemented by the employer.
- **Florida law requires your employer to maintain a safe workplace for all employees.** These waiver agreements could waive employees' statutory rights to a safe workplace and could even waive an injured or deceased employee's statutory right to worker's compensation arising out of COVID-19. To date, there is no Governor's order or Division of Emergency Management order suspending any of these Florida Statutes. All health and safety laws therefore remain in effect, despite the presence of COVID-19. Section 440.09(3), Fla. Stat, makes certain injured or deceased employees ineligible for worker's compensation benefits, when they knowingly put themselves in harm's way. The signing of the waiver agreement by the employee could unknowingly waive their right to worker's compensation.