

As the Hingham Public Schools prepares for the start of the 2020-2021 school year, we recognize that there are many questions associated with the impact of the COVID-19 pandemic on our school system. When we are ready to welcome employees back to school, school settings will be appropriately modified to accommodate health and safety requirements. However, we recognize that some employees may be unable to return to work and that others may require some accommodations as a result of the COVID-19 pandemic.

The intent of this document is to provide an overview of the types of leaves or accommodations that might be available to employees based on the reasons for the request. At the conclusion of the document you will find instructions regarding next steps for employees who wish to request a leave or accommodation.

Overview of Leave Options Related to COVID-19

Prior to COVID-19, employees had several different options when seeking an extended leave based on their own or a family member's illness. In those situations, leave requests were considered in the context of a number of sources including contractual leave provisions contained in the applicable collective bargaining agreement, and state and federal law, including the Family & Medical Leave Act (FMLA), and the Americans with Disabilities Act (ADA), all of which may provide a basis for a job-protected leave. In addition to those potential sources of leave entitlements, which may apply to staff members seeking a leave for COVID-19 related purposes, the Families First Coronavirus Response Act (FFCRA) provides additional COVID-19-specific leaves.

Following are a few important details regarding eligibility for FFCRA leave:

- Unless extended by future legislation, the FFCRA leaves are available only through December 31, 2020.
- Employees only get one allotment of emergency paid sick leave under the FFCRA (i.e., the two weeks of fully or partially paid leave).
- The 12 weeks of expanded FMLA leave available under the FFCRA for childcare-related purposes are the same 12 weeks available under the FMLA. In essence, this portion of the FFCRA provides another basis for staff to access FMLA leave. As a result, if a staff member has already exhausted some or all of the 12 weeks of FMLA available to them in the relevant time period, the amount of expanded FMLA leave that an employee is entitled to under the FFCRA may be reduced accordingly. For example, if a staff member used eight weeks of FMLA leave in the last 12 months, they would be eligible for up to four weeks of FFCRA leave.
- As a general rule, the employer would continue to pay its portion of the cost of health insurance premiums for the duration of FMLA- or FFCRA-covered leave.

Examples of Types of Leave

Staff Sick with COVID-19 or Symptoms: A staff member who is unable to work due to her/his own COVID-19 related illness or COVID-like symptoms is eligible for up to two weeks of FFCRA

paid leave (up to a statutory cap), in addition to any contractual leave (e.g., accrued sick time). Therefore, a staff member would not need to use accrued sick time for the first two weeks of paid leave as a result of contracting COVID-19. If the staff member continued to be ill and unable to return to work after those initial two weeks, they could then use accrued sick time for additional leave.

Staff Under Quarantine Order: A staff member who is not ill or experiencing symptoms of COVID-19, but rather is subject to a federal, state, or local quarantine order related to COVID-19; or a staff member who has been advised by a healthcare provider to self-quarantine related to COVID-19, will be eligible for up to two weeks of FFCRA paid leave in addition to any contractual leave that may be available (e.g., accrued sick time). Therefore, a staff member would not need to use accrued sick time for the first two weeks of paid leave. In this scenario, the staff member would be required to provide the name of the government entity issuing the order or the name of the healthcare provider advising the staff member to self-quarantine.

Staff with Childcare Issues: A staff member who is unable to work because they need 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 may be eligible for up to 12 weeks of partially paid leave under the FFCRA. This leave is not available if another caregiver (e.g., another parent) is available to provide care, and payment would be at 2/3 of a staff member's regular rate, up to \$200 per day.

Staff with Underlying Medical Conditions: Some staff members may be concerned about returning to work because of underlying medical conditions that render them immunocompromised or otherwise make them more at risk from COVID-19. Unless the employee has been advised to self-quarantine, as noted above, these staff members would likely not qualify for any of the COVID-19-specific leaves because they do not have COVID-19 or its symptoms, but they may qualify for FMLA leave and/or ADA protection (please see the section below). These situations will require individual conversations to determine eligibility for a leave or other accommodations.

Staff Otherwise at Risk: Some staff members may be concerned about returning to work because of their own non-medical risk factors. The most likely of these factors is age, as the CDC classifies individuals 65 and older as being at higher risk of severe illness from COVID-19. Staff members in this category who do not have COVID-19 or its symptoms and do not have any underlying medical conditions or disabilities would not be eligible for leave under FMLA or FFCRA and would not be eligible for accommodations under the ADA. Staff members in this situation are encouraged to reach out to the Director of Human Resources to discuss their situations; in most cases, however, it is unlikely that staff members in this situation would be eligible for paid leave or accommodations. In these circumstances, non-paid leave could be a viable option (please see below).

Staff Who Have Concerns About Safety of Another: We recognize that some employees may have particular concerns about the safety of others in their household. This category may include, for example, staff members who live with elderly relatives, young children, or family members who may be immunocompromised. FFCRA options would be limited to situations wherein the

employee is unable to work due to the need to care for a family member subject to quarantine. In those cases, the employee would be entitled to up to two weeks' of partially paid leave. The FMLA does provide unpaid leave for care of an immediate family member (parent, child, or spouse) with a serious health condition, and care or bonding with a child within a year of birth or the child's placement in the home. Therefore, staff members who are concerned about very young children might use FMLA leave to remain home within the first year of the child's life or placement, assuming the staff member did not already exhaust their FMLA leave during the 12-month period. Additionally, an employee may be eligible for FMLA leave if a medical professional determines that their family member requires care for a serious health condition. Otherwise, neither the FMLA nor the FFCRA provides a basis for leave solely because of concerns for other family members. In these circumstances, non-paid leave could be a viable option (please see below).

Staff Who are Simply Uncomfortable: Some staff members may simply have a greater level of concern about returning to work due to COVID-19. Without other qualifying reasons (e.g., their own condition or disability), these staff members do not have a protected basis for leave. In these circumstances, unpaid leave could be a viable option (please see below).

Leave of Absence Without Pay: For staff members who are concerned about returning to work, but are not eligible for leave under the FMLA, ADA, and FFCRA or through contractual leave, an unpaid leave of absence may be a possibility. In general, staff members in this situation might be able to take a one year, unpaid leave of absence (staff members would not be eligible to use sick leave days during this absence and may be required to pay the full cost of group health insurance). Upon return from a leave of this type, a staff member would be credited with previously accumulated sick leave and seniority, if applicable. Because of the challenges involved with staffing for shorter periods of time, leaves shorter than one year would typically not be considered. Staff members who wish to learn more about the possibility of an unpaid leave of absence are encouraged to contact the Director of Human Resources as soon as possible.

Accommodations Because of an Underlying Medical Condition

Staff members who are concerned about returning to work because of underlying medical conditions that render them immunocompromised or otherwise make them more at risk from COVID-19 may qualify for protection under the Americans with Disabilities Act (ADA). Links to more detailed information from the U.S. Equal Employment Opportunity Commission are provided below. Please note that the expectation is that most staff members with underlying medical conditions, especially those identified by the Centers for Disease Control and Prevention (CDC) as placing individuals at greater risk for COVID-19, will be able to produce medical certifications.

To summarize briefly, the ADA "requires an employer to provide reasonable accommodation to qualified individuals with disabilities who are employees or applicants for employment, except when such accommodation would cause an undue hardship." Under the law, an employer and employee engage in an informal, interactive process and attempt to identify reasonable accommodations to permit the employee to perform the essential functions of their job, while not causing an undue hardship to the employer. As a result, evaluation of any requested accommodation will require an analysis of the essential functions of an employee's specific job.

An accommodation will not be considered reasonable if it does not allow the employee to perform all of these essential functions.

Any staff member wishing to discuss the possibility of accommodations related to underlying health conditions is encouraged to reach out as soon as possible to the Director of Human Resources.

Next Steps

Notify HR: To begin the process of requesting a leave or other accommodation related to COVID-19, or to discuss your specific situation, please reach out to the Director of Human Resources. If you have already contacted HR, you can expect a follow up in the near future.

Leave of Absence Without Pay: To request a one-year, unpaid leave of absence, please send a letter or an email to the Superintendent. Requests for a one-year, unpaid leave of absence should be received as soon as possible.

Links with More Information About Accommodations

[People Who Are at Increased Risk for Severe Illness](#)

[What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws](#)

[Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the ADA](#)

[Families First Coronavirus Response Act](#)