

WPTA COVID-19 ADA/LEAVE INFO SESSION

JULY 23, 2020

WHEN AM I ENTITLED TO A REASONABLE ACCOMMODATION UNDER THE ADA?

The Americans with Disabilities Act requires an employer to provide reasonable accommodations to employees with disabilities so long as the accommodation does not place an undue hardship on the employer. The ADA requires an “interactive process” between the employer and employee once an accommodation is requested. Some underlying health issues that place an individual at high risk during the pandemic may qualify as a disability necessitating reasonable accommodations by the employer.

ADA QUALIFYING CONDITIONS

- Chronic kidney disease
- COPD (chronic obstructive pulmonary disease)
- Immunocompromised state (weakened immune system) from solid organ transplant
- Obesity (body mass index [BMI] of 30 or higher)
- Serious heart conditions, such as heart failure, coronary artery disease, or cardiomyopathies
- Sickle cell disease
- Type 2 diabetes mellitus

POSSIBLE ADA QUALIFYING CONDITIONS

- **Asthma (moderate-to-severe)**
- **Cerebrovascular disease (affects blood vessels and blood supply to the brain)**
- **Cystic fibrosis**
- **Hypertension or high blood pressure**
- **Immunocompromised state (weakened immune system) from blood or bone marrow transplant, immune deficiencies, HIV, use of corticosteroids, or use of other immune weakening medicines**
- **Neurologic conditions, such as dementia**
- **Liver disease**
- **Pregnancy**
- **Pulmonary fibrosis (having damaged or scarred lung tissues)**
- **Thalassemia (a type of blood disorder)**
- **Type I diabetes mellitus**

WHAT ARE SOME EXAMPLES OF REASONABLE ACCOMMODATIONS?

Some examples of reasonable accommodations include: permitting telework; modified work schedules; some limited changes to working conditions; permitting the use of paid or unpaid leave; providing additional protective gear such as mask or respirator, or alternative protective gear such as non-latex gloves to employees with latex allergies.

WHAT IF MY EMPLOYER SAYS WORKING REMOTELY WILL BE A “REASONABLE ACCOMMODATION” ONLY AS A LAST RESORT?

- Under the ADA, an employee’s preferred accommodation should be given primary consideration but is not necessarily controlling. The employer may choose among reasonable accommodations as long as the chosen accommodation is effective. Thus, as part of the interactive process, the employer may offer alternative suggestions for reasonable accommodations and discuss their effectiveness in removing the workplace barrier that is impeding the individual with a disability. An employer is permitted to require the less expensive, easier or less burdensome of two equally effective accommodations.

I'M NOT IN A HIGH RISK GROUP BUT SOMEONE ELSE IN MY HOME IS.AM I ENTITLED TO A REASONABLE ACCOMMODATION?

Employers would not be required to provide a reasonable accommodation for an employee because someone in the employee's home is in a high-risk group nor would an employee be legally protected from refusing work under the ADA because of concerns of putting someone in their home at risk. Depending on your collective bargaining agreement, any applicable state executive orders, and the flexibility of your employer, you may have the option of taking paid or unpaid leave in this situation.

AM I ENTITLED TO A
REASONABLE
ACCOMMODATION
BASED ON MY AGE
BECAUSE THE CDC
SAYS THE RISK OF
SEVERE ILLNESS
INCREASES WITH AGE?

Although the CDC says the risk of severe illness due to COVID-19 increases with age, age is not a protected category under the ADA. The Age Discrimination in Employment Act protects an employee against discrimination based on age, but does not itself have an accommodation provision like the Americans with Disabilities Act. However, if an employer is allowing other comparable workers to telework, or any other accommodations, it should make sure it is not treating older workers differently based on their age.

AM I ENTITLED TO A REASONABLE ACCOMMODATION BECAUSE OF COVID-19'S STRAIN ON MY MENTAL HEALTH?

- The ADA treats certain mental health conditions as disabilities. The EEOC recognizes that stresses associated with the COVID-19 pandemic may exacerbate pre-existing mental health conditions. As a result, employees may be entitled to accommodations, subject to the same analysis and process applicable to other requests for accommodations in the workplace.

IF AN EMPLOYEE HAS A PREEXISTING MENTAL ILLNESS OR DISORDER THAT HAS BEEN EXACERBATED BY THE COVID-19 PANDEMIC, CAN THEY NOW BE ENTITLED TO A REASONABLE ACCOMMODATION (ABSENT UNDUE HARDSHIP)?

- Although many people feel significant stress due to the COVID-19 pandemic, employees with certain preexisting mental health conditions, for example, anxiety disorder, obsessive-compulsive disorder, or post-traumatic stress disorder, may have more difficulty handling the disruption to daily life that has accompanied the COVID-19 pandemic.
- As with any accommodation request, employers may: ask questions to determine whether the condition is a disability; discuss with the employee how the requested accommodation would assist them and enable them to keep working; explore alternative accommodations that may effectively meet their needs; and request medical documentation if needed.

IS THERE A RIGHT TO ACCOMMODATION BASED ON PREGNANCY DURING THE PANDEMIC?

- Pregnant workers are potentially entitled to reasonable accommodation under two federal laws. First, some pregnancy-related conditions could be considered a “disability” under the ADA requiring employers to engage in the reasonable accommodation process under the ADA.
- Second, Title VII of the Civil Rights Act prohibits pregnancy discrimination. This means that a pregnant worker might be entitled to job modifications, including telework, changes to work schedule or assignments, and leave to the extent provided for other employees who are similar in their ability or inability to work.

ADA

Vulnerable Populations:

- Policies regarding vulnerable populations, including students, faculty and staff who are at increased risk for severe COVID-19 illness, and individuals who may not feel comfortable returning to an in-person educational environment, to allow them to safely participate in educational activities and, where appropriate, accommodate their specific circumstances. These accommodations may include but are not limited to remote learning or telework, modified educational or work settings, or providing additional PPE to individuals with underlying health conditions. Responsible Parties must also identify and describe any modifications to social distancing or PPE that may be necessary for certain student or staff populations, including individuals who have hearing impairment or loss, students receiving language services, and young students in early education programs, ensuring that any modifications minimize COVID-19 exposure risk for students, faculty, and staff, to the greatest extent possible;

HOW DO I APPLY FOR ADA ACCOMMODATIONS?

*THIS PROTOCOL IS SUBJECT TO CHANGE ONCE HR SENDS OUT ITS PROCEDURE.

Get	Get detailed medical documentation from your healthcare provider describing your condition. Make a request for an accommodation. The district will have a form for this.
Email	Email Human Resources: Scott Pepper
Copy	wpta1@aol.com , your direct supervisor

QUESTIONS?

FFCRA: FEDERAL FAMILIES FIRST CORONAVIRUS RESPONSE ACT

- 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 medical diagnosis.

FFCRA *CONTINUED

- 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 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.

FFCRA

*CONTINUED

- 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 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.

QUALIFICATIONS FOR FFCRA

EMPLOYEE:

- is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
- has been advised by a health care provider to self-quarantine related to COVID-19;
- is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
- is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);
- is caring for a child whose school or place of care is closed (or childcare provider is unavailable) for reasons related to COVID- 19; or
- is experiencing any other substantially-similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

NYS Exception:

Employee foregoes eligibility for paid leave upon return from an identified high-risk location. Affected employees may utilize personal sick leave accruals during this quarantine.

FMLA RUNS CONCURRENTLY WITH FFCRA



12 Weeks leave



No loss of
insurance

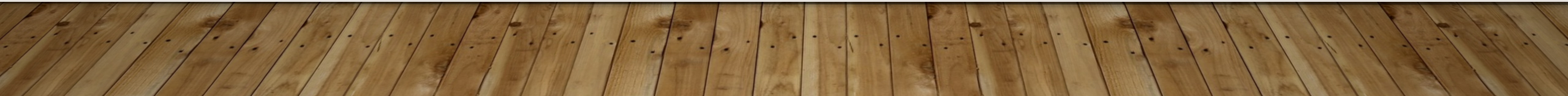


After 12 weeks
eligible for COBRA



Once a year

QUESTIONS?



CONTRACTUAL LEAVES

PERSONAL ILLNESS LEAVE

ANY TENURED TEACHER WHOSE PERSONAL ILLNESS EXTENDS BEYOND THE PERIOD OF ACCUMULATED SICK LEAVE PROVIDED IN ARTICLE XIX, PARAGRAPH A, AND/OR GRANTED BY THE BOARD UNDER ARTICLE XIX, B, WILL, UPON REQUEST, BE GRANTED A LEAVE OF ABSENCE WITHOUT PAY FOR SUCH TIME AS IS NECESSARY FOR COMPLETE RECOVERY FROM SUCH ILLNESS UP TO A MAXIMUM OF TWO (2) YEARS.

CONTRACTUAL SICK

ARTICLE XX B

- In addition to the absences permitted under Paragraph A, teachers shall be entitled to the following absences with pay each school year which shall be deducted from leave:
- Thirteen (13) school days in the event of serious illness requiring bedside or household attention by the teacher of his/her spouse, child, parent, father-in-law, mother-in-law, or sibling.
- Five (5) school days in addition to the days provided in Paragraph A (4) in the event that those days have been used up, for the same purpose as specified in Paragraph A (4).

LEAVE OF ABSENCE

A LEAVE OF ABSENCE
WITHOUT PAY OR
INCREMENT OF UP TO
ONE (1) YEAR MAY BE
GRANTED TO TENURED
TEACHERS BY THE
BOARD FOR PERSONAL
REASONS.

REQUESTS FOR LEAVE AND RETURN TO SERVICE

- ALL REQUESTS FOR LEAVES OR EXTENSIONS OR RENEWALS OF LEAVES WILL BE APPLIED FOR AND RESPONDED TO IN WRITING.
- NOTICE OF AT LEAST SIXTY (60) DAYS WILL BE GIVEN STATING THE EXACT DATE OF THE COMMENCEMENT OF LEAVE EXCEPT IN EMERGENCIES OR WHEN A TEACHER IS OTHERWISE UNABLE TO GIVE SUCH NOTICE.
- AN EMPLOYEE ON LEAVE FOR A YEAR OR MORE SHALL NOTIFY THE SUPERINTENDENT OF HIS/HER INTENT TO RETURN TO SERVICE AT LEAST FIVE (5) MONTHS BEFORE THE END OF THE LEAVE PERIOD. IN CASE NOTICE IS NOT RECEIVED, THE SUPERINTENDENT SHALL SEND A LETTER OF INQUIRY TO THE EMPLOYEE AT HIS/HER PERMANENT MAILING ADDRESS. FAILURE TO NOTIFY THE SUPERINTENDENT WITHIN ONE (1) MONTH OF INQUIRY SHALL CONSTITUTE A RESIGNATION. AN EMPLOYEE ON HALF-YEAR LEAVE OF ABSENCE SHALL NOTIFY THE SUPERINTENDENT OF HIS/HER INTENT TO RETURN SIXTY (60) DAYS BEFORE THE END OF THE LEAVE PERIOD. FAILURE TO SO NOTIFY THE SUPERINTENDENT SHALL CONSTITUTE A RESIGNATION.

HOW DO I APPLY FOR A LEAVE?

*THIS PROTOCOL IS SUBJECT TO CHANGE ONCE HR SENDS OUT ITS PROCEDURE.

Compose

Compose an email requesting a leave. Explain why you are requesting the leave. There should be a form from HR.

Email

Email Human Resources: Scott Pepper and Tina Manorqui

Copy

wpta1@aol.com, your direct supervisor

Q & A