

# COVID-19 Considerations for Reopening Schools

July 21, 2020

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## **Guidance for School District Personnel Leave Options, 2020-2021 School Year**

The Kentucky Department of Education (KDE) received numerous requests from school districts for guidance on school district employee leave options in light of the COVID-19 pandemic. The following information is designed to provide an overview of leave options for school district personnel for the 2020-2021 school year.

KDE is providing this guidance as technical assistance to school districts in an effort to answer questions surrounding leave options. This guidance is not legal advice. School districts should consult board counsel for legal advice and when making individual personnel decisions.

## **Families First Coronavirus Response Act (FFCRA), effective until Dec. 31, 2020**

The FFCRA includes the Federal Emergency Paid Sick Leave provision and the Federal Emergency FMLA Expansion provision, both of which apply to local school districts and are addressed below. Of note, this legislation is effective until Dec. 31, 2020, unless Congress takes further action.

### **1) Federal Emergency Paid Sick Leave**

Generally, 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 when 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 childcare 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 U.S. Secretary of Health and Human Services, in consultation with the U.S. secretaries of the Treasury and Labor.*

See <https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave> for additional information.

**Note:** The Federal Emergency Paid Sick Leave provision does not specify that the paid leave availability is per occurrence. As such, this paid leave option would end after 80 hours is utilized by a district employee in any of the scenarios above. The leave cannot be used intermittently when required to report to a work site (as opposed to teleworking), except for leave necessitated



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---

by the lack of childcare. Concerning the provision that indicates an employee is experiencing other substantially-similar conditions as specified by the U.S. Secretary of Health and Human Services in consultation with the U.S. Secretaries of Labor and Treasury, as of this date, the available federal guidance does not elaborate on what circumstances would qualify as “substantially similar” to those described in the Emergency Paid Sick Leave provision. Additional guidance will be provided as it is available.

### 2) Federal Emergency FMLA Expansion

- *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 childcare provider is closed or unavailable for reasons related to COVID-19.*

**Note:** Once leave options are exhausted under the FFCRA or otherwise are not applicable, districts must rely on other employee leave options, such as emergency, personal and sick leave and unpaid FMLA leave.

For your convenience and reference, two charts are attached to this guidance document which are designed to easily assist in answering questions regarding leave under the FFCRA. See the [Leave Comparison Chart](#) and [Leave Flow Chart](#).

### **School District Emergency Leave During the 2020-2021 School Year Memorandum Issued by Kentucky Commissioner of Education**

On July 21, 2020, Kentucky Department of Education (KDE) Interim Commissioner Kevin C. Brown issued a Memorandum indicating that he will recommend an emergency administrative regulation to the Kentucky Board of Education (KBE) that will provide school districts the discretion to grant additional emergency leave for use as necessary in response to the COVID-19 emergency, similar to the flexibility set forth by the Kentucky General Assembly in SB 177 (2020).

In short, if adopted by the KBE, an emergency administrative regulation will permit school districts to grant additional paid leave options through the use of paid emergency days. How a district utilizes this option in conjunction with personal leave and sick leave will be a local decision. In the event a school district elects to provide additional emergency leave pursuant to emergency regulation of the KBE, districts should communicate the availability, eligibility and allowable use of such leave to employees. Employees also may qualify for unpaid FMLA leave once paid leave options are exhausted.



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---

### **School District Sick Leave Pursuant to KRS 161.155 and District Policy**

KRS 161.155 requires that each school district must provide no less than ten (10) days of sick leave to employees during each school year. School districts may provide more than ten (10) days of sick leave to employees pursuant to KRS 161.155.

*“Sick leave shall be granted to a teacher or employee if he or she presents a personal affidavit or a certificate of a physician stating that the teacher or employee was ill, that the teacher or employee was absent for the purpose of attending to a family member of his or her immediate family who was ill, or for the purpose of mourning a member of his or her immediate family.”*  
(KRS 161.155(2))

School districts also must establish sick leave donation programs pursuant to KRS 161.155(8) which allows employees to donate sick leave to other school district staff. Use of sick leave is subject to local board policies, which should be clearly communicated to staff in the event they need to utilize district-provided sick leave during the upcoming school year.

### **School District Personal Leave Pursuant to KRS 161.154**

School districts may, but are not required to, provide up to three (3) personal leave days per school year to school district employees. Personal leave, if provided by a school district, is subject to local board policy, which may cap the number of teachers who take personal leave on any one day. If personal leave is provided by a school district, it shall be supported by a personal affidavit of the school employee stating that the leave taken is personal in nature.

*“No other reason for or verification of the leave shall be required.”* (KRS 161.154)

### **Leave of Absence for Certified Staff Pursuant to KRS 161.770**

Upon written request, a local school district shall grant a leave of absence not to exceed two consecutive school years to a certified employee for illness, maternity, adoption of a child or children, or other disability. If such a leave of absence is not otherwise covered by another form of paid leave, a school district is not required to pay the certified employee during the leave of absence. Leave of absence of a certified employee is subject to school district policies.

If you have questions, please contact KDE Assistant General Counsel Ashley Lant in the Office of Legal Services at [Ashley.Lant@education.ky.gov](mailto:Ashley.Lant@education.ky.gov).

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