



COVID-19 VACCINE & MASK MANDATE

Frequently Asked Questions for Pennsylvania Educators

KEYSTONE TEACHERS ASSOCIATION

WWW.KEYTA.ORG

717-763-1168

AUGUST 2021

(UPDATED 9/8/21)



COVID-19 VACCINE AND MASK MANDATE FAQs

AUGUST 2021

(Updated 9/8/21)

As you know, there is a vast amount of information concerning the impact of COVID-19 on our schools. The information is generated by many sources including the media, government, and science. Much of this information is very new and still developing, created by the changes and adjustments to laws and regulations that occur when the pandemic and its impact fluctuates day to day.

We have received many questions which, although reasonable and understandable, have no “right or wrong” answers. Other questions are difficult to answer as the medical community, legislators, and administrators are in the process of developing policies and regulations regarding the diagnoses, treatments, and control of the exposure of the COVID-19 virus.

In short, some issues and solutions are still in development; therefore, regular and frequent progress reports will be provided by the Keystone Teachers Association. We will do our best to be responsive and keep you informed of all changes as they occur.

What is the rule on masks? Can I be required to wear one?

The short answer is yes. Governor Wolf announced that effective September 7, students, teachers and staff in K-12 public and private schools will be required to wear masks when indoors, regardless of vaccination status.

The order will not apply to student athletes while they're playing.

Even though Governor Wolf recently stated that he had no intention of implementing a statewide mask mandate for schools, he cited that his reversal is due to the increased number of COVID-19 cases in Pennsylvania and large numbers of students needing to be quarantined.

Are quarantines going to be required for educators who have been exposed to COVID-19? If so, are any special paid leave options available?

The PA Department of Health issued their updated health recommendations on July 31, 2021. The report remained mostly consistent with past quarantine suggestions if you have been in close contact (within 6 feet of someone for a cumulative total of 15 minutes or more over a 24-hour period) or with someone who has COVID-19, unless you have been fully vaccinated. A district may require that unvaccinated individuals who are close contacts to COVID-19 infected people return only after completion of 10 days minimum at home while continuing to monitor for symptoms up to 14 days and wear a mask.

- **Exception:** In the K–12 indoor classroom setting, the close contact definition excludes students who were within 3 to 6 feet of an infected student (laboratory-confirmed or a clinically compatible illness) if both the infected student and the exposed student(s) correctly and consistently wore well-fitting masks the entire time.

People who are fully vaccinated do not need to quarantine after contact with someone who had COVID-19 unless they have symptoms. However, fully vaccinated people should get tested 3-5 days after their exposure, even if they don't have symptoms and wear a mask indoors in public for 14 days following exposure or until their test result is negative.

There is no specific COVID-19 leave provided under either federal or state law. The Federal Program that required this leave ended on December 31, 2020. However, districts are at their discretion to adopt policies providing some type of additional local leave related to either a COVID-19-related quarantine or illness. Educators should check their local leave policies to see if their own district provides any type of COVID-19-specific leave

Can my district require that I be vaccinated for COVID-19?

Prior to the U.S. Dept. of Justice issuing an opinion on July 26, most legal experts agreed that employers cannot force you to take the COVID-19 vaccine, because it had not received full FDA approval. However, as of August 23, 2021, the Pfizer vaccine achieved full FDA approval, opening the door to vaccine mandates and less legal opposition. The Department of Justice concluded in their opinion that federal law doesn't prohibit public agencies and private businesses from requiring COVID-19 vaccines under the Food and Drug Administration's emergency use authorization.

While this will most likely be challenged in the courts, as of right now, under this federal ruling, schools will be able to require vaccination as a condition of employment.

It is generally understood that an employer can require an employee to be vaccinated if the employer can show there is a "legitimate business necessity"—in other words, a very good reason—for the employer to require vaccinations. It is certainly possible that a school district or charter school could determine that vaccination is a business necessity because close contact is hard to avoid in public schools.

If a district were to decide this was the case, however, there would still be exceptions to the vaccination requirement. If an employee can show they either have a sincerely held religious objection to vaccination or have a legitimate health concern (such as an allergy), the employee can likely be exempt from the vaccination requirement.

Can my district require me to tell them whether I have been vaccinated for COVID-19?

Generally, an employer can ask about vaccination status so long as there is a legitimate business reason for doing so. Vaccination affects the likelihood of becoming ill and missing work, so this would be a legitimate business reason.

In addition, there are two other caveats.

First, the district or anyone, like a nurse, acting on behalf of the district, would need to be very careful about asking any follow-up questions about why a person may not have gotten vaccinated, as that question could be a violation of the Americans with Disabilities Act, which protects employees from having to share information about their disability with their employers. This could be considered an inquiry into a disability, which could violate the law.

Second, vaccination status is personal health information. Although an employer can often require an employee to share personal health information with the employer, the employer should be careful not to share the information with anyone who does not have a legitimate reason to receive it. This is not much different than your Social Security number. Your district can certainly require you to provide it, but the number must be kept confidential—for instance, your principal would not have a legitimate reason to know it.

For those who do not wish to disclose their vaccination status, you could be treated as if you weren't and subject to any further unvaccinated mitigation measures imposed.

I have a compromised immune system. COVID-19 has not disappeared, and new, more communicable variants have appeared. I am worried about my health, especially in light of the lifted mask mandate and return to in-person instruction. Do I have any options?

If a staff member has a health condition that would make an illness such as COVID-19 particularly dangerous, such as a compromised respiratory system or diabetes, the district could be obligated to consider allowing remote work as a “reasonable” accommodation of a disability under the Americans with Disabilities Act (ADA). However, as students return to in-person instruction in 2021-22, it will be more difficult to argue that a remote assignment is reasonable.

The ADA is a very “reality-based” law. What is actually going on is very important as it relates to the ADA. One way this is highlighted is in whether a particular accommodation is reasonable or an undue burden. The ADA requires only that an employer provide “reasonable accommodations,” and an employer is not required to provide an accommodation if it would be an “undue burden.” Changing circumstances can make a once-reasonable accommodation no longer reasonable. By the same token, changing circumstances can make an accommodation an undue burden when it was not before. If that happens, an employer can determine that a remote assignment is not a reasonable accommodation—even if they agreed that it was last school year.

As school districts return to in-person instruction, they need more staff in buildings to meet the needs of additional on-site students. This means there are fewer remote positions available. The ADA is clear there must be a position available for it to be a reasonable accommodation and that for an accommodation to be reasonable, an employee must be able to perform all of the job’s essential functions. While students were learning remotely, there wasn’t a need to provide many things, such as in-person monitoring, that would normally be an essential function to many positions. But as students return to in-person learning, these essential functions also return, making it impossible for many employees to perform all the job’s essential functions while continuing to work remotely.

So, from both angles—whether a remote position continues to be “reasonable” and whether continuing it becomes an “undue burden”—districts are likely legally able to phase out remote assignments as they return to in-person instruction. It should be noted, as stated above, that the ADA looks at what is currently happening, so a district should be able to explain in black-and-white terms why a particular accommodation is no longer reasonable.

Can I be instructed when to attend school or work?

Yes, and those measures usually depend on whether you have been exposed to COVID-19 or are ill from the virus. For example, the district may establish mitigation strategies based on the Centers for Disease Control Guidance for COVID-19 Prevention in K-12 schools (i.e., social distancing, encouragement of outdoor classroom activities, hand washing, etc.).

The legal information provided in this publication is for general purposes only and is accurate as of the date of publication, August 13, 2021. It is not intended as a substitute for individual legal advice or the provision of legal services. Accessing this information does not create an attorney-client relationship.

Updates will be posted as need at www.keyta.org.