

Employment Decisions: COVID-19 Guidance

The Tennessee Department of Education (TDOE) stands ready to support all school districts during the COVID-19 pandemic. Because local school board policy and unique facts make dramatic differences in analyzing any situation, the TDOE advises each school district to consult with the local school board attorney for specific legal advice regarding employment matters during the COVID-19 pandemic.

The TDOE has received many questions regarding school district staffing decisions during school closures due to COVID-19. Although the TDOE has some regulatory authority over local school districts with regard to certain issues, it is a common misconception that the TDOE has supervisory or administrative control over all local school district operations.

Pursuant to T.C.A. § 49-2-203, a local board of education has the authority to "manage and control all public schools established or that may be established under its jurisdiction." Also, T.C.A. § 49-2-301, states specifically that, each local board of education is authorized to employ a director of schools." Local school district employees, including teachers, principals, and non-licensed employees are hired by the local director of schools. Therefore, only the director of schools and the local board of education, through local board policies, may address personnel matters such as staffing decisions during school closures.

The top priority for school districts during the COVID-19 pandemic is to continue serving their communities while keeping students, staff, and their families safe. To do this, the TDOE recommends that every school district work with their local board attorney to develop a school personnel plan for the school closure that includes procedures for both teachers and non-licensed employees.

The plan should address whether non-licensed employees are laid off, redeployed to perform other critical work during the school closure, or paid without being required to work.

The plan should also specify if teachers and other licensed employees are required to transition their work in the traditional classroom setting to work supporting continuity of instruction plans that provide students educational services in non-traditional ways, including through online platforms and other methods of distance learning. The plan for teachers should comply with T.C.A. § 49-5-716, which states:

A teacher, including a teacher on preapproved leave or other type of leave, shall not be charged with a day of leave for any day on which the teacher's school or the school district is closed due to natural disaster, inclement weather, serious outbreak of contagious illness, or other unexpected event.

The plan must also safeguard the rights of all employees provided in state and federal law, including the Americans with Disabilities Act (ADA) and the Family Medical Leave Act (FMLA). The United States Equal Employment Opportunity Commission (EEOC) has issued new guidance on the pandemic and the ADA found here: https://www.eeoc.gov/facts/pandemic_flu.html.

The following links provide helpful guidance from the U.S. Department of Labor:

- Preparing Workplaces for COVID-19 - <https://www.osha.gov/Publications/OSHA3990.pdf>
- COVID-19 or Other Public Health Emergencies and the FMLA - <https://www.dol.gov/agencies/whd/fmla/pandemic>

In addition, the plan must ensure adherence to the guidance of the Centers for Disease Control and Prevention (CDC), the Tennessee Department of Health, and other public health authorities on appropriate steps to take relating to the workplace during the COVID-19 pandemic. Here is a link to CDC guidance for employers and workplaces on COVID-19: <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/businesses-employers.html>