



Sample
Checklist
Inside

Schools Reopening? Avoid Potential Employment Law Liabilities.

Many Districts are making plans for, or are in the process of implementing, a full reopening of schools. While health and safety considerations are the priority, Districts must also consider employment law compliance. Districts' best defense against employment-related claims, after a COVID-caused closing, is to follow applicable federal, state, and local laws and guidance.

The Centers for Disease Control (CDC) and the Equal Employment Opportunity Commission (EEOC) have both issued guidance documents that will help Districts create safe, legally compliant workplaces. Two very important safety measures to protect your employees and your students are mandated face coverings and prescribed social distancing. A District's reopening plans should address face coverings and social distancing. State and local laws may make these measures mandatory.

Mandatory viral testing for COVID-19 and other health screenings of school staff are measures Districts may be considering. Some state and local authorities may require some screenings, such as daily temperature checks. The EEOC has stated that employers may require employees to take viral tests, and it has also approved certain employee health screenings during the pandemic. However, at this time, the CDC is not recommending universal health screenings of students and staff in K-12 schools. Please note that COVID-19 testing and all health screenings should be equally administered to all similarly situated employees to avoid discrimination claims.

Districts will also be challenged to properly manage employee exposures, illnesses, and COVID-related leave. The CDC has recently updated its guidelines regarding definitions of “close contact” and “quarantine.” It also recently expanded the list of “at-risk” conditions to include pregnancy. If a staff member is at-risk due to pregnancy or a condition that constitutes an ADA-disability, he or she may be legally entitled to an accommodation. Potential reasonable accommodations could include increased protective gear, temporary reassignment, or remote work. Employees are not entitled to accommodations of their choice, and Districts are not required to provide accommodations that would cause undue hardship. As always, Districts should apply accommodations consistently to similarly situated staff to avoid potential discrimination claims.

School districts are subject to the Families First Coronavirus Response Act (FFCRA), which generally requires employers to provide eligible employees with up to 80 hours of paid leave for reasons related to COVID-19. FFCRA is set to expire on December 31, 2020, and as of the time of this writing, it has not been extended. Districts should monitor whether FFCRA is renewed or extended. Further, certain states have enacted their own COVID-19 paid and unpaid leave laws. The District’s reopening plan must be consistent with any applicable FFCRA or similar requirements.

Districts may encounter some staff members who refuse to return to school buildings despite the Districts’ implemented health precautions and protocols. If a staff member is not entitled to accommodation under the ADA, but refuses to return to work because of a generalized fear about the virus, it may be permissible to take disciplinary action. Again, policies must be applied consistently to avoid discrimination claims. If a District wants to make an adverse employment action for refusal to return to work during the pandemic, counsel should be consulted before any action is taken.

Alleged “retaliation” claims by employees are another potential issue of which Districts should be cognizant. Staff who raise objectively reasonable safety concerns may be protected as “whistleblowers” under federal, state, or local whistleblower protection laws. To mitigate the risk of retaliation claims, investigate and document all complaints and implement change, if necessary. Again, confer with counsel before taking any adverse employment action against a potential whistleblower.

Though vaccines are just beginning to be distributed across the nation, the CDC and EEOC have not yet provided guidance on whether employers can legally mandate them for employees. Districts should also look to state and local health authorities for guidance. If a District is considering requiring staff to receive the vaccine, it should consider possible religious and medical exemptions for such a policy and ensure consistent application to decrease discrimination liability exposure.

Undeniably, schools have their work cut out for them to bring students, faculty and staff safely back to campus. Possible employment issues that arise from the reopening of schools need thoughtful consideration. To that end, SLRMA has prepared the following Self-Audit Checklist, “COVID-19 Issues: Avoiding Potential Employment Law Liabilities When Schools Reopen.” The checklist will assist in identifying the numerous employment issues a District may face upon reopening, and provide direction to minimize the associated risks. Please note that this checklist is not intended to constitute legal advice.

As your partner in risk management, SLRMA also wishes each of its Members success in the reopening of its schools as well as a happy and healthy New Year!

Recent Updates from the Newsroom Available on SLRMA.org

New Federal Guidance

Federal Appellate Court Rules a Black Male High School Student's Discrimination Suit Over Dyed Hair Can Proceed

Sewell v. Monroe City School Board, et. al.

September 2020

In this recent ruling, the United States Court of Appeals for the Fifth Circuit revived part of a public high school student's sex and race discrimination case. Sewell, a Black male student, was disciplined and allegedly verbally abused by a Black male dean for having dyed blond hair in violation of the school's dress code prohibiting "hair dyed outlandish colors." Other students also dyed their hair very bright colors, but only Sewell was disciplined. The Court found that Sewell's harassment claims were viable because the dean's alleged verbal abuse tied Sewell's hair to his race and sex. The Court also found that the superintendent knew of the harassment and did nothing about it. You can read the summary of the case and the Court's opinion at www.slrma.org.

How Districts Can Continue to Provide Services to Special Education Students During the Pandemic School Closures

September 2020

The Department of Education's Office of Special Education Programs (OSEP) recently issued a Q&A document offering guidance on implementing special education students' IEPs during the pandemic. OSEP recognized the challenges of providing a FAPE to students with disabilities, especially when schools are closed, but provided steps to assist Districts meet their obligations. Go to www.slrma.org to download OSEP's Q&A document.

Department of Education's Office of Civil Rights (OCR) Clarifies New Title IX Definitions

October 2020

After new Title IX regulations went into effect in August 2020, OCR received many questions about some key terms and newly revised definitions. In response, OCR issued a blog post to offer clarification. Go to www.slrma.org to read the OCR's full blog post. While on our website, check out our June 2020 Checklist entitled "Responding to Sexual Harassment Allegations: Revised Self-Audit Checklist and Best Practices for School Districts."

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2020 SLRMA Give-Away Win a Pivo Silver Starter Pack



Contest ends December 31. Drawings held in January 2021. Log in to www.SLRMA.org to try to increase your chance to win. One entry per district per month.

SLRMA UPDATE | December 2020

The Mission of the School Leaders Risk Management Association (SLRMA) is to assist public school districts (K-12) with supplemental risk management support. We help you accomplish your own mission of risk avoidance in a number of ways.

- We keep members informed of the current legal issues that will likely affect your school district through our work with the Federal Legislation Insurance Committee (FLIC).
- We provide pro-active, timely tools to help prevent unwanted and unwarranted school board legal liability claims.
- We give members access to special reports featured in our Newsroom. The topics are specific to the School Board Legal Liability school boards face today and will in the future.

Members are equipped with an array of self-audits and checklists to help ensure you are in compliance with the latest requirements and guidelines which govern school boards and school districts. We are a not-for-profit and are governed by a Board of Directors. The Board consists of current Executive Directors of State School Boards Associations.

AVOIDING POTENTIAL EMPLOYMENT LAW LIABILITIES WHEN SCHOOLS REOPEN

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| <p>Workplace Safety Measures -- General</p> |
| <p>School districts should identify the authorities relevant to their jurisdictions and ensure that their reopening plans are consistent with applicable standards. Where standards conflict, adopting the most employee-friendly applicable standard will reduce risk.</p> <ul style="list-style-type: none">◆ Incorporate into reopening plans relevant COVID-19 related laws and guidance from federal, state, and local authorities on matters such as employee health screenings, face coverings, social distancing, hygiene, and enhanced cleaning, disinfection, and ventilation.◆ Conduct a COVID-19 occupational hazard assessment. |
| <p>Face Coverings: Social Distancing</p> |
| <p>School districts should identify the authorities relevant to their jurisdictions and ensure that their reopening plans are consistent with applicable standards. Where standards conflict, adopting the most employee-friendly applicable standard will reduce risk.</p> <ul style="list-style-type: none">◆ Determine if and communicate whether all employees are required to wear masks (this is required in many jurisdictions). |
| <ul style="list-style-type: none">◆ Determine if masks will be provided for your employees (this may also be required, depending on the jurisdiction). |
| <p>Employee Health Screenings</p> |
| <ul style="list-style-type: none">◆ The CDC is not currently recommending that K-12 schools conduct universal health screenings of students and staff for COVID-19 symptoms, given the wide range of symptoms associated with COVID-19 and the fact that infected individuals may be pre-symptomatic or asymptomatic. One option that the CDC does recommend is encouraging staff members to self-screen before coming to work.◆ Health screenings should be administered to all similarly situated employees in order to avoid potential discrimination claims. For example, if you require health screening for employees in a particular job group, make sure all employees in that group are screened. |