Insights: Alerts

COVID-19: School Reopening Jujitsu For Employers

JULY 27, 2020 Written by Jon Neiditz and Ronald L. Raider

Please note: The below information may require updating, including additional clarification, as the COVID-19 pandemic continues to develop. Please monitor our main COVID-19 Task Force page and/or your email for updates.

A significant challenge for reopening the economy and returning to "normalcy" during the COVID-19 pandemic is addressing whether, when, and how schools and colleges will open this fall. As with the initial shelter-in-place orders and mask requirements, these issues are being addressed differently in each state. Most state governors are foregoing a "one-size-fits-all" approach by authorizing each school district to decide whether to reopen fully partially reopen, or only allow online curriculums. School districts in high infection areas, such as metro-Atlanta, Houston, Los Angeles, and San Francisco, have already announced that public schools will not initially reopen for in-class learning in the fall, and will instead begin the semester with online learning. In other locations, political considerations are driving in-person learning but parents may not accept that their children and families will be safe, or they may be concerned that state or federal immunity laws may make the schools unaccountable for safety. Even the strongest advocates for in-person learning acknowledge that there will be local "flare-ups" of the virus that will drive temporary learning from home. In response to this uncertainty, employers should develop plans that address a variety of requests from their employees who have to balance work and child-care obligations caused by remote learning.

Nationwide, the vast majority of states encourage employers to allow telework whenever possible. Many employees are already working from home and have been for months. In school districts where remote learning will occur full or part-time, encouraging workers to continue working from home makes sense. This Legal Alert provides a summary of key considerations in developing remote work plans to accommodate different in-school arrangements. Attached to this Legal Alert is a summary of what major school districts are now planning for the fall semester.

Continued uncertainty surrounding school re-openings raises several concerns for employers:

- Employers are likely to see additional requests from employees for leave and/or modified schedules based on the decisions made by schools in their areas. Both the Equal Employment Opportunity Commission and the Centers for Disease Control have encouraged employers to be flexible in affording employees' leave. Employers should create new policies or edit existing policies to address such requests consistently, and ensure that they are handled uniformly. For employees that cannot work remotely, employers may want to consider flexible scheduling policies to assist employees, including (but not limited to) flexible schedules, staggered start times, reduced hour schedules, and/or alternative schedules.
- Employers must remain vigilant to comply with their leave obligations under company policies, state requirements, and federal law. Specifically, employers with 500 or fewer employees must remain cognizant of their leave obligations under the Families' First Coronavirus Response Act ("FFCRA"), which became effective

April 1. The law created two paid leave entitlements for employees impacted by school closings. (We have written extensively about the FFCRA obligations here.) When considering requests for FFCRA leave, employers should account for any FFCRA leave that the employee may have used when schools closed in the spring. Further, FFCRA leave is currently only available until December 31, 2020. Employers must also be mindful of state or local leave laws; some states, cities, and municipalities, like North Carolina, New York, San Francisco, and Los Angeles, have additional requirements regarding providing employees with paid leave for a variety of COVID-19 related reasons.

- As they reopen, educational employers, such as schools, colleges and universities, should also remember their duties under the Americans with Disabilities Act ("ADA"). While employers' obligations to engage in the interactive process under the ADA is not eliminated by the pandemic, COVID-19 may have impacted whether an employee needs an accommodation and what accommodations are considered reasonable.
- Employers who allow their employees to return to telework to accommodate school closures should be cognizant that reimbursable business expenses for remote employees may be different from those for on-site employees. Employers must remain mindful of their obligations to reimburse reasonable work expenses where required by company policy and/or state law (especially in California and Illinois).

The above guidelines discuss issues employers should consider as schools make their determinations about in-person learning and employers should respond to any changes in their area based on trends in COVID-19 data. Employers should continue to monitor guidance from the CDC, OSHA, EEOC, DOL and other federal and/or state regulatory agencies regarding best practices for providing safe workplaces, honoring leave entitlements, and their obligations under various anti-discrimination laws. The status of the COVID-19 emergency is constantly evolving, so it is vital that employers adapt and modify their plan of action accordingly. Below we highlight some of the school reopening decisions impacting the geographic areas where Kilpatrick Townsend maintains physical offices.

School Reopening Decisions Surrounding the KTS Office Footprint

Last updated on July 24, 2020.

Alaska

- Anchorage: Schools will begin on August 20 and families may choose between in-person, virtual learning, and home school models for students.

California

**Note: The state's new rules require that a county must be off the state's monitoring list for COVID-19 cases for 14 days before its school sites may reopen. However, some schools in each area may receive a waiver to reopen.*

- Los Angeles: Schools will begin online learning on August 18 and students will not be returning to classes for in-person learning during the fall semester.
- San Diego: Schools will begin online learning on August 31 and students will not be returning to classes for in-person learning during the fall semester.
- San Francisco: Schools will begin online learning on August 17, but schools in the area may reopen gradually depending on the trends in COVID-19 infection rates.
- Walnut Creek (Contra Costa county): Schools will begin online learning on August 17. Schools will not be

permitted to offer in-person learning until Contra Costa county has been removed from the state's watch list for 14 consecutive days.

Colorado

- Denver: The Denver Public School district announced that schools will begin online learning for all students K-12 on August 24 for at least two weeks. However, if COVID-19 rates continue to rise in Colorado and there is another statewide Stay-at-Home order, then online learning will continue until further notice.

Georgia

- Atlanta: Atlanta Public Schools will begin online learning on August 24, and currently plans to maintain virtual/online learning for at least the first nine weeks of school. Fulton County Schools have announced that classes will begin on August 17 in "Universal Remote Learning" or online mode. Fulton County plans to return students to in-person learning in a phased approach based on COVID-19 numbers over a set period of time. DeKalb County Schools will begin classes with online learning on August 17 and the school district will determine whether students will return to in-person learning based on COVID-19 data. Cobb County Schools will begin on August 17 with online learning. Gwinnett County Public School students begin classes on August 12 with online learning.
- Augusta: Schools will begin on September 8 and families may decide whether to enroll students in online or in-person instruction by July 27.

North Carolina

- Charlotte: Schools will begin on August 17 and students will rotate between in-person and online learning for the first two weeks. Starting on August 31, all students will learn online until further notice.
- Raleigh: Schools will begin online learning on August 24 and then eventually transition to in-person learning on September 8.
- Winston-Salem: Schools will begin online learning on August 24. There is a possibility that schools transition to in-person learning after the first nine weeks of school, but if COVID-19 data shows a continued spread then schools will remain closed.

New York

- New York City: New York City public schools have not announced when the fall semester will begin and schools may not fully reopen in September. Instead, students will attend in-person classes two to three days a week and also have the option to learn online. Governor Andrew Cuomo has also announced that New York schools may open in regions with less than a 5% COVID-19 infection rate, but a school would have to shut down if it reaches a seven day infection rate of 9%. Governor Cuomo will make final decisions for individual school districts in early August.

Texas

- Dallas: The school district has not announced its start date. All public, private, and charter schools in Dallas

County will not reopen for in-person classes before Labor Day, but may start the school year before Tuesday, September 8 with online learning.

- Houston: All students will begin the school year with online learning on September 8, 2020. Online instruction for all students will continue for six weeks through Friday, October 16, 2020. On Monday, October 19, 2020, in-person instruction for all students will begin. However, this date is subject to change based on COVID-19 conditions across the City of Houston and recommendations from local, state, and federal health officials. Families may choose for their children to opt out of in-person instruction for the entire semester by September 4.

Washington

- Seattle: Schools will begin online learning on August 12 and continue this model until the risk of significant transmission of COVID-19 has decreased enough to resume in-person instruction.

Washington D.C.

- Washington D.C.: D.C. Public Schools will reopen on August 31 with a mix of in-person and online learning. Students will be expected to be in class two days per week and learn online three days per week. Specific plans will not be released until July 31.

Related People



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