

Back to School: What School Reopening Plans Mean for Employers

Written By **Emily G. Massey** (egmassey@wardandsmith.com)

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According to North Carolina Governor Roy Cooper, the most important reopening during the COVID-19 pandemic is our state's schools.

However, "schools will look a lot different this year." While the decision to allow limited reopening of school buildings greatly affects the nearly 1.5 million public school students in North Carolina, those students have teachers and parents whose employment also is impacted directly.

On July 14, 2020, the North Carolina Governor's Office and Department of Health and Human Services (NCDHHS) announced that public schools could choose to return to in-person learning at reduced capacity (supplemented by remote learning), known as Plan B, or choose to institute 100% remote learning. This announcement answered the question that's been weighing on the minds of parents and educators since students left the classroom in March: would students be allowed to go back to school (physically) at all in 2020-2021. But the Governor did not address the other elephants lurking in the room. First, what do working parents do when their students are home remote learning? Second, if school districts and charter schools choose to return to some in-person instruction, what are their obligations as employers? In other words, how does the Governor's school reopening plan affect employers—both school employers and employers who employ parents with school-aged children? Here is a starting point.

Key Points from North Carolina's School Reopening Plan ('Plan B')

For context, here are the highlights from North Carolina's School Reopening Plan, also referred to as Plan B.

In-person instruction is permitted so long as schools take the following precautions:

- Fewer children in the building at one time (50% capacity or less) to ensure 6-foot social distancing can be maintained while stationary in classrooms, cafeterias, and break rooms;
- Six-foot social distancing markers and verbal reminders in school buildings, classrooms, and buses;
- Cloth face coverings must be worn by every teacher, staff member, and student (of all ages) when within 6-feet of another person;
- Daily symptom screenings (including temperature checks) for anyone entering the school;
- Immediately isolating symptomatic individuals to a designated area in the school prior to sending home;
- Requiring students, employees and staff who have symptoms, have tested positive for COVID-19, or recently had close contact with a person with COVID-19 to stay home;

- Scheduling and monitoring frequent handwashing for all employees and students;
- Frequent cleaning and disinfecting of school buildings, buses, equipment, and high-touch areas;
- Creating a plan for how to address students, teachers, and staff who self-identify as high risk for severe illness due to COVID-19; and
- Implement remote or other learning options for students whose families decide the student needs to remain at home.

This is a pared-down summary of an extensive list of requirements and recommendations, which can be found here.

New Territory for School Employers

While the end of the 2019-20 school year was uniquely challenging, school employers did not have to address the issues related to employees returning to their buildings. For school districts and charter schools choosing to operate under Plan B, employees will be required to be physically present at school at some point in the coming weeks.

School administrators must decide how to address myriad concerns from teachers and staff who may be scared to return to school. School employers are not required to provide leave (paid or unpaid) or otherwise hold a job open for employees who refuse to come to work for fear of contracting COVID-19. School employers should be prepared to explain what measures the school is taking to protect faculty and staff in addition to protecting students (as required by the state). Regardless of these measures, school employers pursuing Plan B should expect some employees to feel hesitant about returning, and thus should have contingency recruiting and retention plans in place.

Other employee circumstances give rise to additional considerations:

- ***Employees who self-identify as high-risk of becoming seriously ill if they contract COVID-19*** . The Governor's Office recommends that schools allow high-risk employees to minimize face-to-face contact and maintain a distance of 6 feet from others by modifying job responsibilities or permitting remote work. This is a recommendation, not a requirement. Upon receipt of a request for an accommodation, however, the school is required to engage in an interactive discussion to determine whether a disability exists and whether there is a reasonable accommodation that would allow the employee to do his or her job. For more information, review the EEOC's robust guidance addressing the intersection between the Americans with Disabilities Act ("ADA") and COVID-19.
- ***Employees who need to care for a child or ill family member*** . Depending on the size of the school or district, school employees may be eligible for partially-paid leave under the Families First Coronavirus Response Act ("FFCRA"), if their usual childcare is not available and no other responsible adult is available to care for their child. FFCRA leave also may be available for an employee to care for a family member suffering from COVID-19. The U.S. Department of Labor published extensive FAQs to assist employers in determining when an employee may be eligible for such leave. Employers also should revisit their leave policies in anticipation of teachers and staff using leave in these circumstances.
- ***Employees who become exposed to or contract COVID-19*** . Schools are required to develop a plan for employees who exhibit symptoms, are diagnosed with, or otherwise are exposed to COVID-19. These employees also may be eligible for paid leave under the FFCRA, if applicable. Schools also should plan how to adapt to potential staffing shortages. Schools need to be recruiting part-time employees or otherwise have a list of qualified candidates who may be able to fill in gaps while teachers and staff are out.

New Considerations for Employers of Parents

Non-educational employers have been tackling the above-described challenges for more than four months. Yet now employers need to prepare for parent-employees to have more permanent childcare-related challenges.

Under North Carolina's current return to school plan, school districts or charter schools can choose Plan C—100% remote learning—if it is best for their school and community. Plus, at any time, the Governor and NCDHHS could change their directive from Plan B to Plan C due to increasing public health concerns. Regardless, Plan B mandates that public school students will not be at school full-time.

This means parents of school-aged children no longer can see the light at the end of the tunnel. Some working parents feel ill-equipped to provide appropriate supervision and assistance for another school year of remote learning in addition to doing their paying-jobs. Many are wondering how much longer they can put in full workdays without sacrificing their child's education, job performance, and sanity. And if their child's school is providing an in-person option under Plan B, parents are struggling with the potential health risks of sending their children to school and how to handle managing remote learning every other week while the student is home. For others whose children attend school in a district that has elected to follow Plan C, they are wrestling with the prospect of managing their children and work under a 100% remote option.

The school reopening announcements created some new considerations for employers with parent-employees:

- **Proactive communication.** Employees with school-aged children made temporary adjustments during the spring school shutdown, and perhaps made some short-lived arrangements for the summer, but now they must make more permanent decisions about balancing children at home with job responsibilities. Now that school districts are finalizing their reopening plans, employers should proactively engage with their employees to anticipate what scheduling or job duty changes need to be made. Teleworking does not work for everyone, but there may be other adjustments the employer and employee can make on a longer-term basis. Although all plans are subject to change, it is critical to have these conversations now instead of when school starts.
- **Leave policies and obligations.** Some employees may have already exhausted their available FFCRA leave, while others may have only used their accrued PTO or vacation. Employers need to revisit their leave policies to understand what leave their employees may request now that school plans are being finalized. Plus, employees have until December 31, 2020, to take FFCRA leave, so these requests may increase and employers should brush up on their obligations and ensure that they have processes in place to facilitate and grant these leave requests when made.
- **Retention.** In conjunction with the 2020-21 school reopening announcements, some employees may consider resignation. To help retain employees, employers should consider adding benefits to support employees during these uncertain times. For example, employers could add to PTO banks or provide a stipend to subsidize childcare (whether a babysitter or tutor). Even if the financial amount is not large, the gesture could go a long way in showing employees that you're in this together.
- **Mental health.** If an employer does not currently have an Employee Assistance Program (EAP), this is the time to add the benefit for employees. Between stay-at-home orders, childcare issues, and health concerns, employees are facing elevated stresses outside of job responsibilities. Employers should encourage their employees to seek help, and an EAP is a great place to start.
- **Labor turnover.** Although unemployment rates remain high, we may start to see more individuals seeking employment at the end of the month when federal unemployment benefits end. Unless Congress takes action, the additional \$600 in federal unemployment benefits ends on July 25, 2020.

This means there may be more individuals in the job market, and perhaps more individuals who have had the time to make childcare arrangements so that they can go back to work. Employers should consider increasing recruiting efforts to seek employees who may be able to fill gaps for employees on leave or seeking part-time status.

Balancing operational needs with employee needs will become even more challenging during the 2020-21 school year. Whether a school that is reopening or a business that is trying to stay afloat, employers must make flexible plans and take unconventional steps to get through these unprecedented times.

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