

Questions from VASS Risk Management Workshop, June 30, 2020

1. Do you have specific guidance regarding employees over 65? **Employees over 65 or with underlying health conditions that put them at risk of adverse outcomes from COVID-19 should be advised that they may request accommodations under the Americans with Disabilities Act. The nature of the accommodations must be evaluated on an individualized basis, and must still enable the employee to do the essential functions of the job.**
2. What flexibility do we have in responding to a doctor's note saying the employee is better to stay/work from home? **You are entitled to have a specific reason stated for the opinion. There must be a medical diagnosis, not just a generalized statement.**
3. Is there any obligation to accommodate employees who have members of their household who have illnesses that put them at higher risk? **No – the ADA protects the employee, but not the employee's family members or persons residing in the household.**
4. What about staff who report mental health issues (anxiety, PTSD)- are they covered by ADA regs? **They may be. But generalized anxiety is not enough. It has to be a diagnosed mental health condition. PTSD would meet that criteria, but would already have to exist already since you cannot "post" trauma from an event that has not yet occurred. But some individuals may have severe anxiety syndromes. The issue then will be whether there is an accommodation that enables the employee to do the essential functions of the job from home.**
5. Is there a form that we can ask parents to state relieving us from liability if their students come to school for continuous face to face instruction? **No – because Virginia has compulsory attendance laws, students must attend school. If you must attend school, there would be no legal consideration for such a form. However, such release agreements might be appropriate for non-mandatory activities such as participation in athletics.**
6. Can school systems create a variance for transporting students in vans to day placement facilities? **We still need guidance from DOE regarding this question.**
7. What do we do if an employee does not want to come to work as he/she is a caretaker for elderly parents? **The employee may apply for long-term unpaid leave if your district has such a leave policy, or the employee may resign. There is no legal excuse not to report to work under these circumstances.**
8. Do you know of best practice training videos on COVID for personnel and students? **No, sorry.**
9. Some states offer immunity to care homes to help them keep operating. Understanding that a supermajority would be necessary in the GA spcl session for immediate implementation, any chance for K-12? **The Republicans are submitting a bill to Congress that would immunize schools nationally against negligence claims. That can also be done on a state-by-state basis. It**

is speculative whether any such legislation will pass. However, public schools in Virginia are covered by sovereign immunity, so there are already defenses available to those schools.

10. Do you expect a waiver/extension for school bus drivers to get yearly physicals because of the difficulty of getting appointments? **We are not aware of the need for such a waiver/extension at this time.**
11. Are there model, best practice age appropriate videos to train students and staff on COVID-19 health and mitigation procedures? Is there a specific list of recommended topics to cover? **As noted above, we are not aware of any such videos.**
12. What if we have an employee with a detailed doctor's note sharing the employee should work from home, but their job is not one that can be accomplished at home. **Reasonable accommodations are required to enable an employee with a medical condition to perform the essential functions of the job. But if the employee's requested accommodation will not enable her to perform her job at work, and it is essential that she be at work, then the only practical option is for her to take long-term unpaid leave, assuming the Board permits such leave.**
13. Should we send a staff letter detailing an employee's right to complete a Certification of Disability and Reasonable Accommodation or just deal with it on a case by case basis? **You are not required to provide such a letter, so it will probably be easier to just deal with such situations on a case-by-case basis.**
14. Clarification: CDC, VDH, VDOE, and our local health dept say 6' to the extent possible. Our SB chooses to go with 3' from AAP, does VaCorp still cover?
15. The draft regulations from DOLI mention "Increase physical distancing between employees and other persons, including customers to six feet". Will this restrict us to classrooms with 6 ft. social dist? **That DOLI regulation would apply to the employees, but not the students. Students may be closer than 6 feet from one another with appropriate conditions in place, but the teacher needs to be able to stay at a 6 feet distance from the students.**
16. Does FMLA and the Families First Coronavirus Response Act run concurrently? In other words, does FFCRA count against the 12-week FMLA entitlement? **They run concurrently. There is a maximum of 12 weeks of leave for eligible employees, regardless of the reason.**