



What Does it Mean to Designate School Employees “Essential Workers?”

On August 18, the U.S. Department of Homeland Security’s Cybersecurity & Infrastructure Security Agency (CISA) issued [guidance](#) that designated teachers, as well as aides, paraprofessionals, IT specialists and most other school district support staff as “essential workers.” But what does that mean for school districts?

The CISA list is intended to help municipalities focus efforts to keep “essential” businesses running during the pandemic. The designation means that schools are important to the community and that measures should be taken to keep schools operational. Such measures could include local mask ordinances, using federal funding to purchase more sinks for handwashing, purchase electronics to assist with virtual education, or otherwise assist schools in creating a safer environment for students to learn and employees to work.

But what most districts are focusing on is the possibility of allowing school staff to return sooner from quarantine. According to [guidance from the Centers for Disease Control](#) (CDC), “critical infrastructure workers” may return early from quarantine if they are asymptomatic. This possibility is attractive to schools that are worried that they soon will not have enough staff to properly instruct students.

However, CISA does not have the legal authority to make law or govern school districts or health departments in Missouri. Its document is just a recommendation. The Missouri Department of Health and Senior Services has recently updated a the [Missouri School Reopening Guidance](#) and made it clear that the state will likewise not designate school employees as essential but will leave that up to the school districts and the local health departments. *See page 11.*

If your district is considering designating school employees as “essential,” MSBA encourages your district to consider the following:

1. **Consult the local health department(s) governing the school district.** The local health department has the legal authority to quarantine school employees or even close a school or the school district. Failure to follow an official quarantine order is a criminal offense. It does not matter whether your district designates teachers as essential if your local health department does not support the decision! Local health officials have the authority to use partial or limited quarantine orders in individual cases, but the district must work cooperatively with those officials to take advantage of these exceptions.
2. **Is the district willing and able to take additional precautions?** Even if the local health department agrees that school employees are “essential,” the district cannot simply bring these employees back just like normal. These employees may have the virus and the district has the responsibility to make sure additional precautions are taken to prevent further spread. The CDC recommends the following:

- **Pre-Screen:** Employers should measure the employee’s temperature and assess symptoms prior to them starting work. Ideally, temperature checks should happen before the individual enters the facility.
- **Regular Monitoring:** As long as the employee doesn’t have a fever or symptoms, they should self-monitor under the supervision of their employer’s occupational health program.
- **Wear a Mask:** The employee should wear a face mask at all times while in the workplace for 14 days after last exposure. Employers can issue facemasks or can approve employees’ supplied cloth face coverings in the event of shortages.
- **Social Distance:** The employee should maintain a six-foot distance from others when possible and practice social distancing as work duties permit in the workplace.
- **Disinfect and Clean Workspaces:** Clean and disinfect all areas such as offices, bathrooms, common areas, and shared electronic equipment routinely.

If the district is not able or willing to follow these precautions or it is not possible for a school employee to work while social distancing from others, the employee should not return.

3. **Consult district employees.** School staff are already worried about risks to their health, and returning early from a quarantine or working with co-workers who have returned early will not help. The district should emphasize the precautions that the district will take to make sure that returning employees will not infect others. Further, the district should consider whether it is willing to discipline an employee who refuses to return from quarantine.
4. **Consider legal liability.** Before making the decision, districts should consult with their attorney and insurance company. While school districts and employees have a lot of protection against lawsuits, it is not absolute. Districts still have an obligation to maintain a safe environment, and employees must follow all the rules. Further, the district may increase the chances of workers’ compensation claims if the district allows employees to return early from quarantine and other employees become ill.
5. **Consider the politics.** School employees may be listed as “essential” under the CISA guidance, but students are not. Some districts have had difficulty explaining to the parents why the teacher can return sooner than the students. Some districts have considered allowing students to return early too. However, doing so would seriously undermine the authority of the health department, and districts would need to take significant precautions to make sure these students did not infect others.

MSBA has partnered with the Missouri Hospital Association and the Department of Elementary and Secondary Education in the [Mask Up!](#) campaign. If you have questions about this or other COVID-related legal issues, please contact the MSBA Legal Department at (800) 221-6722.