



# Managing Staff Requests for Leaves of Absence (LOA's)

August 12 & 13, 2020

# Agenda

- Employee relations, media relations, and employee morale in the COVID era
- An overview of the environment - various state, federal, municipal guidelines and laws, and internal policies which may be implicated
- Process Considerations
- Discussion of the most frequently-asked questions on LOA's and pay
- A decision matrix to guide you as you handle the requests
- Tools to help guide and document your actions

# Employee Relations in the COVID Era

- Many employees are scared, have medical issues, or have family responsibilities, and may feel as though they have to decide between earning a living, and their safety or the safety of a child or family member.
- This is driving many unique LOA and accommodation requests
  - Can I have a school year off?; Can I teach from home?; Will you pay me if I must quarantine?, etc.
- The guidance coming from a variety of sources emphasizes talking to staff and trying to find ways to address these unique requests
- The challenge will be to effectively address the issues within the reality of our limited means/resources and our operational needs

# The Current Legal & Regulatory Environment..

... is complex. We have to consider a number of factors when dealing with employee leaves, accommodation requests, and pay. Those include:

- Federal laws/guidance – CDC guidelines, FMLA, ADA, ADEA, OSHA, discrimination laws, NLRA
- State laws and guidance – the governor’s guidance, MA DPH, MA sick time, Parental Leave Act
- Municipal guidelines
- RCAB and/or location policies and practices

# Process Considerations

There are several keys to handling these varied requests effectively as follows:

- Follow a standardized process
- Consider all requests – ask for more information to ensure understanding of the need
- Ask for the reason(s) in writing, or recap the reasons back to the employee after the conversation
- Document your decision, the specific terms of a leave or accommodation if granted, and their employment and benefit status – and give them a copy
- Ensure that you follow the same process and rules for everyone - do not treat older staff, or those who you think may be vulnerable, differently

# Process Considerations

- Consider whether any parish or school policies or precedents exist for additional leaves of absence with or without pay
- Consult with HR early for help with some of the more technical pieces – for example, an interactive ADA discussion
- In the case of teachers – are there any contract considerations that may impact your decisions or process?
- Consider designating one person at the school or parish to receive and manage all requests

# Process Considerations

- Consider setting a date for requests to be submitted by to help you manage the process and to staff adequately
- At a minimum, call HR before you terminate anyone who has requested a leave or an accommodation due to COVID
- Consult with the Legal department if you are a separately incorporated entity with less than 500 employees – other pay and leave requirements will likely apply under the FFCRA

# Select FAQ's

## **Are we required to provide paid leaves in accordance with the FFCRA?**

RCAB parishes and schools are not required to provide leaves under the FFCRA. Separately incorporated entities with less than 500 employees will likely be covered - please consult with the Legal department for more information.

## **Can employees refuse to return based on a belief that the work environment is unsafe?**

We do not have to accommodate staff who have a generalized fear of returning to work. However, a refusal to return to work could be protected if the employee believes that the workplace is unsafe and that he/she will be in imminent danger if they return.

You should first be sure that your school or parish operations are fully compliant with all state and federal safety guidelines. You should then inform the employee of overall compliance and the specific safety measures that have been put in place.

If an employee still chooses not to return, you should work with HR and Legal to determine possible next steps.

# Select FAQ's

## **Are we allowing teachers or staff to take a year-off if they request it? Do we need to guarantee them a job the following school year?**

The school should engage teachers or staff who request extended leaves of absence (LOA's) in a discussion to be sure they understand the reason(s) for the request. If that reason is based on a medical condition covered by the ADA, you can discuss whether the school might be able to provide a reasonable accommodation, including a LOA. This medical condition may also qualify the individual for a job-protected leave, up to 12-weeks under the FMLA.

It is important to note that accommodations in the form of a leave of absence are typically approved for relatively short periods of time (1-4 months) and then re-evaluated. Considering the pace of change in the conditions related to the Coronavirus, having the ability to re-evaluate the situation periodically may prove helpful.

If you determine that a shorter LOA is not adequate under the circumstances, you may decide to grant a longer (up to 1-year) leave request. This type of leave would typically be considered a personal leave and would not include a guarantee of employment in the future, although principals have discretion in these decisions. In addition, an employee on an extended personal leave will be considered inactive and will therefore need to make arrangements for benefits continuation (if applicable).

# Select FAQ's

## **Should leaders in our parishes and schools initiate conversations with older staff or others who we believe may be at higher risk?**

While it is acceptable to send a note to all staff inviting them to self-identify if they have concerns, you should not make assumptions about a person's risk based on their age or other physical or mental characteristics. Initiating conversations with certain individuals - even if intended to be in their best interests – would constitute different treatment and could be considered discriminatory.

## **Are we required to pay teachers or other staff who exhaust their sick time when they are out due to a quarantine or because of their own illness?**

Once teachers have exhausted all sick time or other paid-time due to them (vacation, STD, or personal for ex.), we are not obligated to continue to pay them. Having said that, especially in cases where they are in quarantine in accordance with state guidance, we should at least consider whether it might be possible to pay or supplement their paid time during the quarantine period. There is an additional safety consideration here as well, that is that staff who are not paid may choose not report an exposure in the future due to the lack of pay.

# Select FAQ's

## **Are we required to accommodate an employee who requests a leave of absence because they are living with a family member(s) who are high risk?**

An employee who lives with someone who falls into a vulnerable population is not protected under MA or federal laws. Nevertheless, you should discuss the situation with the employee and see if there is a way that you can reasonably accommodate them.

Importantly, if they are providing care to a family member, they may be due time off under the MA earned sick time law, or as a caregiver under the FMLA. Please contact HR if you need help with the process for an FMLA leave.

## **Does an employee have to present documentation if he/she indicates that they have been advised not to return to work?**

To ensure consistency and equity in our processes, we should ask staff to present documentation to justify a request for a leave or other accommodation. We should however be flexible, especially in cases where the need for the request is obvious or otherwise known, and to take into account that getting a doctor's note may be challenging at the present time.

# Staff COVID LOA Request Decision Matrix

Reason for Request	Documentation Recommended	Covered by ADA?	Interactive ADA Discussion	FMLA Implicated	MA Sick Time Implicated	Parish/School Policy Apply?	Required Action/Options (Mgr's. Discretion)
Own illness	Yes	Possibly	Possibly	Possibly (if eligible)	Yes	Yes/No?	Contact HR, offer reasonable accommodation, offer FMLA (if eligible)/not applicable
Spouse Illness	Yes	No	N/A	Possibly as primary caregiver (if eligible)	Yes	Yes/No?	Offer FMLA (if applicable)/not applicable
Elderly or Family Member (asymptomatic)	N/A	No	N/A	No	No	Yes/No?	No action necessary/not applicable
Fear of COVID Exposure (Mental health issue)	Yes	Possibly	Possibly	Possibly (if eligible)	Possibly	Yes/No?	Contact HR, interactive discussion (if applicable)/personal leave
Fear of COVID Exposure (Not a medical issue)	N/A	No	N/A	No	No	N/A	No action necessary/personal LOA
Lack of Childcare/ School is closed	Possibly	No	N/A	Possibly if first year of newly placed/adopted child	No	Yes/No?	Offer FMLA (if applicable)/personal LOA
Employee is high risk per CDC	Yes	Possibly	Possibly	Possibly (if eligible)	Possibly	Yes/No	Contact HR, offer reasonable accommodation, offer FMLA (if warranted)/personal leave
Spouse has COVID	Yes	No	N/A	Possibly as primary caregiver (if eligible)	Possibly	Yes/No?	Offer FMLA (if applicable)/not applicable

# Tools & Resources

- Parish/School Return to Work and Quarantine FAQ's
- Forms:
  - Request for LOA or Accommodation form
  - RCAB Medical Inquiry Form
  - Response to Request for LOA or Accommodation form
- Staff LOA Request Decision Matrix



Questions?