



A Union of Professionals

COVID-19 Resources:

Frequently Asked Questions Regarding Workers' Rights During the COVID-19 Crisis

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This document has been prepared by the AFT Legal Department to assist AFT affiliate leaders and staff in answering members' questions. The information provided here is not intended to constitute legal advice; instead, all information, content and links contained herein are for general informational purposes only and are subject to changes, which are occurring daily. If AFT affiliate leaders or staff have additional or situation-specific questions, they should contact the AFT Legal Department staff directly or via Mariame Toure (mtoure@aft.org), and they will do their best to assist you as quickly as possible.

Health and safety

1. Occupational Safety and Health Administration standards vs. Centers for Disease Control and Prevention requirements. OSHA is more stringent. What do I do if the employer says we should follow CDC requirements?

OSHA has published a Guidance for Preparing Workplaces for COVID-19 (bit.ly/oshacovid) and the CDC has also published guidance (bit.ly/cdc-workplaces). Employers are under no legal obligation to follow CDC guidance, although the guidance may reference legal obligations an employer has. OSHA does not have a standard that directly addresses the spread of aerosol transmissible diseases such as COVID-19, and in an enforcement action, OSHA would rely upon the general duty clause. There are OSHA standards, discussed in more detail below, on personal protective

equipment and the use of hazardous chemicals that a private sector employer (and a public sector employer in 28 states) must follow.

If you have concerns about the health and safety of your workplace, you should approach your manager in accordance with the guidance above. You may also enjoy legal protections under your collective bargaining agreement (CBA), federal law, or state law if you are faced with some of the circumstances covered in more detail below.

2. If I have an underlying health issue, can I decline to be considered an "essential employee" or demand other reasonable accommodations? How does the Americans with Disabilities Act come into play here?

The Americans with Disabilities Act requires an employer to provide reasonable accommodations to employees with disabilities

Find these resources and more at www.aft.org/coronavirus

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so long as the accommodation does not place an undue hardship on the business. Some underlying health issues that place an individual at high risk during the pandemic may qualify as a disability necessitating reasonable accommodations by the employer. Some examples of reasonable accommodations include providing non-latex gloves to employees with latex allergies; providing additional protective gear such as a mask or respirator; permitting telework; and/or permitting the use of paid or unpaid leave.

3. I'm not in a high-risk group but someone else in my home is. Can I decline to work or be considered an essential employee out of concern that I might put that person at risk?

Employers would not be required to provide a reasonable accommodation for an employee because someone in the employee's home is in a high-risk group nor would an employee be legally protected from refusing work under the ADA because of concerns of putting someone in their home at risk. Depending on your collective bargaining agreement, any applicable state executive orders, and the flexibility of your employer, you may have the option of taking paid or unpaid leave in this situation.

4. My employer plans to start doing temperature checks or collecting other personal medical data on us. Do I have to comply? If my employer sends me home as a result of these checks, do I still get paid?

Although not normally permissible under the Americans with Disabilities Act, because COVID-19 has been declared a pandemic, the Equal Employment Opportunity Commission has said that an employer is permitted to require temperature checks or ask an employee about symptoms prior to the employee working ([bit.ly/CV-ADA](https://www.eeoc.gov/2020/04/01/ada-covid-19)). This information must be kept confidential by the employer under the ADA.

An employer can send an employee home if he or she exhibits COVID-19 symptoms. If an employee is scheduled to work but gets sent home, payment of wages would be dependent on whether the employee actually reported to work and worked any hours, any applicable collective bargaining agreement, whether the employee is hourly or on salary, and applicable state wage and hour laws.

In general, federal wage and hour laws only require employers to pay hourly employees for hours actually worked; if an employee was scheduled to work but did not work, the employee is not entitled to any pay. Salaried employees are required to be paid their full week's wages only if they worked some hours during the week the employer sent the employee home. Teachers and other professional employees are not covered by federal wage and hour laws. In this situation, you may also be able to take paid or unpaid leave.

5. If someone stays away from work because of symptoms or tests positive, what protocol should my workplace follow for notifying and assessing co-workers who may have been in contact? Do I have a right to know if people in my workplace are sick?

The CDC has issued guidance on workplace exposure and COVID-19 ([bit.ly/cdc-workplaces](https://www.cdc.gov/workplaces)), providing that "if an employee is confirmed to have COVID-19 infection, employers should inform fellow employees of their possible exposure to COVID-19 in the workplace but maintain confidentiality as required by the Americans with Disabilities Act. The fellow employees should then self-monitor for symptoms (i.e., fever, cough or shortness of breath) ([bit.ly/symptomscdc](https://www.cdc.gov/symptoms))."

Withholding labor

1. If I believe that my workplace is unsafe (because of a lack of personal protective equipment (PPE) or lack of social distancing or lack of training), may I refuse an assignment or refuse to go to work?

Where an employer is not providing a safe workplace, you should request that the employer do so (and ideally request it with your union and/or your co-workers). If the employer refuses to provide a safe workplace, you can petition or protest (social distance-style) with your co-workers to demand a safe workplace. You can also consider talking to the media about the conditions you are facing (see below for more info on talking to the media).

If the employer still refuses to provide a safe workplace after you and your co-workers request it, and you reasonably believe that you will contract COVID-19 without PPE, you are likely protected from retaliation from your employer if you refuse to come to work until the appropriate PPE has been provided. There are a few sources for this protection (in the private sector: the Occupational Safety and Health Act Regulation, 29 CFR 1977.12(b) (2); the National Labor Relations Act, Section 7; and the Labor Management Relations Act, Section 502; in the public sector, many employees are covered by state OSHA plans; others are protected by due process, state law, and/or collective bargaining agreements). However, licensed workers, like nurses, should be aware that refusing to work could put their license at risk.

2. If one classification of workers is told that they should stay home, why do I have to report?

While some designations of which workers are “essential” are governed by law or a collective bargaining agreement, many employers have simply made unilateral decisions about who needs to be working now and who does not. If you have a union, your union can bargain over the effects of these designations, including the wages, hours and working conditions you and your co-workers will be working under during the designated time that essential employees are supposed to report to work. If you don't, you can still take collective action with your co-workers to challenge designations you believe are wrong or designations you believe put you or your co-workers at risk. Employer retaliation in response to activity you take with your co-workers is prohibited in the private sector under the National Labor Relations Act. Protections vary in the public sector.

3. Can I be made to work for more than my regularly scheduled hours? Can I refuse to work overtime assignments?

If you are working under a collective bargaining agreement, there may be limits on how many hours you are required to work, and you may have certain rights to refuse overtime. Under the Fair Labor Standards Act, there are no limits but there is a requirement that certain workers get paid overtime. State and local laws may also provide some limits. For example, in California, an employer cannot discipline an employee for refusing to work on the seventh day in a workweek. Contact your local union if you believe your employer is violating your collective bargaining agreement or the law or if you believe that you are otherwise being forced to work too many hours. There may also be ways to build power in your workplace and your community to push back against excessive work hours or overtime.

4. My employer is talking about reopening really soon and I don't think it is safe yet, or there is still a shelter-in-place order where I live. Do I have to return to work?

The shelter-in-place orders vary widely across states and cities. If there is an order in place that requires your employer to remain closed, your employer should not be reopening. If your employer is not prohibited from opening, it may reopen and require you to return to work. Most shelter-in-place orders provide exceptions for attending work. If you feel unsafe, there are a variety of actions you can take—requesting proper protective gear, taking leave, or protesting with your co-workers.

Workload, working conditions, reassignment to tasks outside your job description

1. Can my employer assign me to tasks that are outside of my normal duties or job description? If so, what rights do I have to be trained, provided additional safety equipment, hazard pay, etc.?

Generally, employers are able to assign tasks that are outside of normal work duties. However, if you have a collective bargaining agreement, there may be limitations or a requirement that the employer bargain before doing so.

In terms of training on how to do any new tasks, an employer is required to do some health and safety training under the law, depending on what the task involves. Under OSHA (which covers workers in the private sector and those in state and local government

in 28 states (bit.ly/oshastateplans)), workers required to use personal protective equipment must be trained. This training includes when to use PPE; what PPE is necessary; how to properly don (put on), use, and doff (take off) PPE; how to properly dispose of or disinfect, inspect for damage, and maintain PPE; and the limitations of PPE. Applicable standards include the PPE (29 CFR 1910.132), Eye and Face Protection (29 CFR 1910.133), Hand Protection (29 CFR 1910.138) and Respiratory Protection (29 CFR 1910.134) standards.

Employers are also required under OSHA to train employees who work with hazardous chemicals (bit.ly/osha-hazsub). If the potential exists for exposure to human blood, certain body fluids, or other potentially infectious materials, workers must receive training required by the Bloodborne Pathogens (BBP) standard (29 CFR 1910.1030), including information about how to recognize tasks that may involve exposure and the methods, such as engineering controls, work practices and PPE, to reduce exposure.

Hazard pay (additional pay for performing hazardous duty) is generally not required by law. It may be provided as part of a collective bargaining agreement, or the employer may in some circumstances voluntarily decide to provide it as an incentive for workers to come to work. Workers around the country have been making demands for hazard pay and winning.

2. I'm a support staff person. Our work is not being allocated fairly. Some of us are being assigned more work/risky work, and some are not. What can I do?

If you have a collective bargaining agreement, it might provide some protections against this, and you might be able to file a grievance, so talk to your local union. If your CBA does not have specific provisions around the allocation of work or unfair treatment, or if

you don't have a CBA, you can organize with your co-workers to protest unfair treatment through a petition or a delegation (social distance-style) or possibly a strike with your co-workers (which is protected for private sector employees under the National Labor Relations Act; public sector employees should consult this resource (bit.ly/pubsectorcb-cepr) to see if strikes by public sector employees are lawful in their state).

3. In addition to suddenly working from home, I'm also home-schooling my kids and taking care of other family members. It is really hard to stick to a typical 9-5 work schedule. Do I have a right to flex my working hours?

Working from home while home-schooling kids and taking care of other family members is really difficult. If you have a union, the employer may be required to bargain with the union about providing accommodations in this kind of situation. If you don't have a union, and your employer refuses to voluntarily provide flexibility, you can potentially take leave under the Emergency Paid Family and Medical Leave Act to care for a child under age 18 if the child's school or place of care has closed or the child's child care provider is unavailable due to a coronavirus-related public health emergency declared by a federal, state or local authority. Unfortunately, the law excludes employers with more than 500 or under 50 employees, most federal government employees, and allows employers to exempt emergency responders and healthcare providers. You may also be able to take full-time or intermittent leave (unpaid) under the Family and Medical Leave Act (if you're caring for a sick family member for example).

4. Can my boss require me to have a camera or videoconferencing app open/pointed at my workspace during working hours while I'm working from home?

If you have a union, your employer will likely have to bargain about any changes to employee monitoring policies. However, if you don't have a union, an employer can implement new monitoring policies without your consent.

With respect to an employer's ability to video record you at home, public sector employees may have some rights under the U.S. Constitution against unreasonable search, but private sector employees do not.

Additionally, some states have very specific privacy protections for employees. For example, the law in Connecticut (bit.ly/workplaceprivacy-ct) prohibits an employer from operating any electronic surveillance device or system for the purpose of monitoring its employees in areas designed for the "employees' health or personal comfort or for the safeguarding of their possessions, such as restrooms, locker rooms or lounges." Connecticut law also requires that an employer must notify employees it intends to surveil (bit.ly/CTworkplaceprivacy31-48d). This area of law is very much still being developed as employers come up with more and more invasive types of surveillance and as that surveillance intrudes into people's physical and virtual personal space.

Local AFT affiliates can contact the AFT Legal Department with any specific workplace surveillance questions.

5. I'm required to teach/work online but I don't have (adequate) internet at home or access to other necessary tools. Is my employer required to provide access or reimburse me for additional cost?

If you have a union, the employer likely needs to bargain about this but if not, the employer can simply require you to purchase the equipment necessary to do the job from home. A few states, like California, Illinois, Iowa and New Hampshire provide that the employer

must reimburse you for those costs. But even if your employer does require you to purchase equipment and is not required by law to reimburse you, you can still organize with your co-workers to demand that the employer reimburse you.

6. I've been required to create a lot of online content as part of this shift to online teaching. What intellectual property rights do I have over that content? Can my school use my content in the future without my consent? Can my school require me to sign over my rights to this content as a condition of my employment?

Generally, absent any written agreement, materials created by K-12 teachers in the scope of their employment are deemed "works for hire" under the Copyright Act of 1976, and therefore the school owns them. However, it is possible that your employment contract or collective bargaining agreement provides copyright protections that would control and allow teachers to control their materials. Your union may also be able to bargain about this. Those teaching in higher education are likely to have policies or collective bargaining agreements that lay out the allocation of rights as between faculty and the university.

7. My employer wants me to do something else that feels inappropriate, unreasonable or unsafe. What are my options?

Generally, unions advise employees to "work now, grieve later," which means that you should follow your employer's instructions and then file a grievance/protest after. But if you feel that your employer's instructions would put you or your co-workers in danger, you should request the protections that you believe you need to work safely. If you make this request with your union or your co-workers you will have additional protection.

If the employer is not taking the necessary actions to provide a safe workplace, you can also do a petition or a delegation (social distance-style) or consider talking to the media (see below for more information on talking to the media).

If the employer still refuses to provide a safe workplace, you may be protected in refusing to do the task, depending on the status of your employer under the law. For example, most private sector employees have a right to strike under the National Labor Relations Act (but workers may be prohibited from striking by a no-strike clause), and some public sector employees have a right to strike under state law (bit.ly/pubsectorcb-cepr) (but also may be prohibited from striking by a no-strike clause). Most private sector employees and some public sector employees are protected by the Occupational Safety and Health Act. However, licensed workers, like nurses, should be aware that refusing to work even if protected by law could put their license at risk.

Access to leave, unemployment, etc.

1. My employer said I'm not eligible for unemployment insurance or I have applied and been denied. What can I do?

If you have been denied, you can apply again. And just because your employer has told you that you are not eligible does that mean that you are not eligible. Since the onset of the crisis, unemployment insurance rules, requirements and benefits have significantly changed at the federal and state levels. The Families First Coronavirus Response Act incentivizes states to waive the usual one-week waiting period for benefits without penalty; incentivizes states to ease eligibility requirements, such as work search requirements; and incentives states to extend

unemployment benefits for individuals for longer periods. Additional federal legislation, the Coronavirus Aid, Relief, and Economic Security (CARES) Act has further incentivized and funded more generous unemployment compensation and extended the maximum period that compensation can be collected for those impacted by the coronavirus. The CARES Act also created new emergency unemployment assistance programs for self-employed workers, including independent contractors, freelancers, workers seeking part-time work, and workers who do not have a long enough work history to qualify for state benefits. More details on these programs can be found here: bit.ly/unemployment-caresact.

Provided all other unemployment requirements are met under state law and regulations, a member should be eligible to receive unemployment benefits for actions by the employer or government such as mandatory quarantines or isolation, reduced hours or temporary closure of a workplace. State-specific information on unemployment insurance and how to apply can be found here: bit.ly/unemployment-by-state.

2. I'm a new employee and don't yet qualify for FMLA but I do need time off for taking care of myself/a sick family member. Am I eligible for FMLA in the current scenario, or do I qualify for leave under any other new legislation?

The recently enacted Families First Coronavirus Response Act provides emergency paid sick and family leave to many workers. The act went into effect April 1. Emergency paid sick leave must be made immediately available to employees, regardless of how long they have worked for the employer. However, there are several exceptions to the new law that AFT members should be aware of. While the new law covers employees of public agencies

such as K-12 schools and state colleges and universities, it exempts private employers with more than 500 employees, and empowers employers and the Department of Labor to potentially exempt certain healthcare providers and exempt businesses with fewer than 50 employees from the requirement that employees be given leave to care for children whose school or day care has closed because of the crisis. Therefore, many large nongovernmental hospitals and higher education institutions will be exempt, and some private employers may seek waivers in the future.

For members covered by the new law, the legislation provides full-time workers with emergency paid sick leave for two weeks—or 80 hours—of missed work that is related to COVID-19. Part-time employees are entitled to the typical number of hours that they work in a typical two-week period. Pay is broken down in two ways: at the employee's regular rate, to quarantine or seek a diagnosis or preventive care for the coronavirus; or at two-thirds the employee's regular rate to care for a family member quarantined or to care for a child whose school has closed or whose child care provider is unavailable due to the coronavirus.

3. My employer only allows people to stay home if they've tested positive, but I'm feeling ill and I haven't been able to get tested or am still waiting on the results. What should I do?

The CDC recommends that if you are having COVID-19 symptoms, you should not leave your house except to seek medical care. A covered employee under the Families First Coronavirus Response Act is entitled to take leave to seek a medical diagnosis while experiencing COVID-19 symptoms, among other coronavirus-related reasons.

Whistleblowers, retaliation, discipline

1. If I participate in a television or radio interview, will I jeopardize my employment?

If you participate in a television or radio interview off the clock and without the permission of your employer, you may be protected from retaliation from your employer.

Public sector workers may be protected against retaliation for speaking to the public about matters of public concern in their capacity as private citizens under the First Amendment. However, courts have significantly narrowed this protection so there is a risk that a court would not ultimately find in favor of a worker. It is also possible that public sector employees would be covered by whistleblower laws or other state laws.

Private sector workers may be protected by the National Labor Relations Act, which protects workers who act with their co-workers to improve their working conditions. Because of this, your protection under the NLRA is at its maximum when you're talking about your own working conditions (not enough pay, danger on the job, etc.). Unfortunately, if you are seen as criticizing your employer's product or services, you could lose the protection of the NLRA.

2. I reported my employer to a local, state or federal authority because it wasn't acting in a safe manner, and now I'm being disciplined or treated in unfavorable ways. What are my rights?

Many collective bargaining agreements prohibit discrimination and unfavorable treatment, and you can file a grievance about such treatment. In addition, many, but not all,

federal and state consumer protection and workplace health and safety laws protecting workers and the public have anti-retaliation provisions that prohibit an employer from retaliating against a worker who reports problems under the law. Some states also have whistleblower protection laws (**bit.ly/statewbprotection**) that could protect you in both the private and public sector. If you believe you are experiencing discrimination because you reported your employer to the authorities, contact your union or if you don't have one, contact a worker center or employment lawyer.

3. I and a number of colleagues voiced our concerns directly to our employer and/or refused to work in unsafe situations, and now I'm being punished. What are my rights?

Under most collective bargaining agreements, you cannot be punished without "just cause" and voicing your concerns about safety on the job is definitely not "just cause." There are also protections under the National Labor Relations Act (in the private sector) and the Occupational Safety and Health Act (in the private sector and some of the public sector) for workers who voice their concerns or refuse to work in unsafe working conditions. You may also have protections under state law. If you believe that you are being punished for voicing your concerns about an unsafe workplace, contact your union or if you don't have one, contact a worker center or employment lawyer.

4. Do I retain my Weingarten rights in a virtual investigatory meeting with the employer? Can my employer opt to record such meetings if it is using Zoom or other such videoconferencing tools to conduct the investigatory meeting?

You do retain your Weingarten rights in a virtual investigatory meeting with the

employer. Your union may want to bargain with the employer about how such meetings will be conducted and the ground rules for them. For example, how do you ensure that there can be a caucus using virtual technology? Is there certain technology that is necessary for this purpose? How is the employer ensuring the privacy of the participant? With respect to whether your employer can record those meetings, does your collective bargaining agreement speak to it? What was the employer's past practice? If you need assistance in dealing with an employer on these issues, your local union should contact the AFT Legal Department.

Evaluation, promotion, certification, tenure clocks, etc.

1. I am a teacher in training or I was supposed to be finishing up my required student teaching hours this semester. Will I be able to get my certification if schools are shut down for the rest of the school year?

Different programs are likely to deal with this issue in different ways. It is unlikely that a teacher-in-training program will be required by law to certify you if schools are shut down. However, students all over the country have been organizing to push their schools to accommodate them during the crisis by doing work remotely, granting credit for work conducted before the shutdown or issuing tuition refunds.

2. I was due for an evaluation to move off of probationary status or to be promoted, but that evaluation hasn't happened because of this crisis. What are my rights now? Is my promotion or end of probationary status on hold too?

Your collective bargaining agreement, or if you don't have one, the employer's policies will define your rights in this situation. If you do have a union, it may be able to bargain about accommodations due to the crisis if there is something crisis-related that is holding up your promotion or end to probationary status.

3. I'm concerned about how student evaluations will be used in this setting, where I've had to radically alter my teaching method under difficult circumstances (i.e., rapid move to online, turning field/lab classes into remote learning, etc.). Can I request my employer disregard this semester's or year's student evaluations?

Yes, many higher education unions are demanding changes to student evaluations as part of their demands to employers in response to the crisis (bit.ly/principles-highered-covid). This includes protections against the punitive use of evaluations (bit.ly/covid-UICUF).

4. Can I request a pause on my tenure clock or other time-bound evaluations or timely progress requirements?

Yes, many higher education unions are demanding pauses on tenure clocks as part of their engagement with their employers (bit.ly/principles-highered-covid). For guidelines on stopping the tenure clock, see the American Association of University Professors' "Statement of Principles on Family

Responsibilities and Academic Work.”
(bit.ly/aaupfam)

5. How will my merit pay be quantified if the system is being run remotely and student assessments/achievements are going to be done differently or not done at all?

For K-12 schools, this is a matter of state law and regulation. If evaluations are a bargainable subject in your state, you should also check with your local union and your collective bargaining agreement.

For higher education campuses, members should check with their local union.

Pay, benefits, retirement

1. I am close to retirement but I don't know if my time "counts" toward the retirement/pension system right now. How can I find out?

Check your retirement account through the system's online portal, if possible. Generally, retirement credit is counted every pay period in which the employee works and a retirement contribution by the employer (and, at times, the employee through their paycheck) is made. If your employer continues to contribute to the system, you are likely getting credit.

2. I am a long-term substitute or temporary employee. Will I be paid during the shutdown?

It depends. You should check your union contract and any new memorandums of understanding your union and the employer have agreed to in response to this crisis. Absent contractual protections, it is unlikely a temporary or long-term substitute employee will be paid if the individual is not assigned work during the crisis.

3. Can my employer make unilateral changes to my benefits during this time, or looking toward summer or fall if this crisis continues?

If you are working under a collective bargaining agreement, your employer should not be able to make unilateral changes to your benefits, including health and retirement benefits. However, certain emergency orders at the state or city level could permit such changes for public sector workers. And provisions under the National Labor Relations Act may permit private sector employers to make unilateral changes when there is "economic exigency."

(bit.ly/casesummaries-nlrb)

Other questions

1. My workplace has closed down for a much longer period than originally announce, and I still have personal items in my office/workspace. Do I have a right to access the work site to retrieve my items?

In a normal situation, you would be able to access your work site to retrieve your personal belongings or in the alternative to have them delivered to you. However, because of the COVID-19 crisis, many buildings have been shut down and travel in many places is only permitted for certain essential tasks. If you have items at work that are essential to your survival, you should inform your employer of that and ask that they accommodate your request. If the items are not essential, you should consider waiting until your work site reopens, or contacting your employer to see if there is any way you might be able to retrieve such items. If you have a union, it may be able to assist in working with the employer to help you retrieve your personal items.

2. I'm on leave or not working this semester, and my employer hasn't been sharing information with me about what is happening or what the plans are, which could impact me when I return to work. Do I have a right to insist on being included in the employer's information-sharing process?

The best way to be included in the employer's information-sharing process is to ask the employer. If the employer refuses, there may be a colleague who is willing to share the information with you. If you have a union, it is possible that there is a provision of your collective bargaining agreement that could be applicable here or that the union can otherwise prevail on the employer to include you in its updates. It is unlikely there are any state or federal laws that require your employer to share information with you if you are on leave.

3. What about members who have their pay spread out over the full year, including over the summer? If states don't cover salaries beyond a certain date, how will that impact those who have chosen this option?

This will be very circumstance-specific. Hopefully, states will not cut off salaries for education workers. But if they do, unions will likely be able to bargain the effects of any changes to salaries, and that would include accommodating people whose pay is spread over the full year.