

WASB Legal and Legislative Video Update, November 18, 2020, 12 pm

WASB Government Relations staff will address the following:

- DPI submits 2021-23 budget requests for schools (see separate document).
- Covid-19 legislative package.
- PI 34 Emergency Rule.
- How might federal education policy change in the next administration.

WASB Staff Counsel will address the following topics:

- WASB election publications updated for 2021.
- Paid leave under the FFCRA.
- Expiration of Emergency Order #1 relating to requiring face coverings.
- Executive Order #94.
- Liability insurance and known risks.
- Employee off duty conduct.
- Concerted activities.

Here are a few notes and links relevant to those topics:

The WASB's school board elections publications have been updated for the 2021 election cycle

The WASB's *School District Election Schedule*, *Campaign Finance Supplement*, and *Guide for Candidates* pamphlet have all been updated for the 2021 spring election cycle and are now available on [the WASB website](#). In addition, paper copies of the *Election Schedule* and the *Guide for Candidates* pamphlet have been mailed to each member school district.

The following are among the first deadlines that come up in the 2021 election cycle:

- The Type A Notice of Election must be newspaper published by no later than November 24, 2020. (See [section 120.06\(6\)\(b\)](#) of the state statutes.) Supplemental notice of the seats that are up for election may be given by additional means. Provide a copy of the Type A notice to the relevant municipal and county clerks.
- In addition to all seats that are up for their regular three-year term, any school board seat in a common, union high school, or unified school district that is affected by a vacancy that occurs on or before November 24, 2020, must also be included on the 2021 spring election ballot for the unexpired portion of the term. An appointee selected by the school board serves in the seat until the duly elected successor takes office. (See [section 17.26\(1g\)\(a\)](#) of the state statutes.) *Note: This assumes that the vacancy did not occur early enough such that a successor was already elected at the 2020 spring election.*
- Any current school board member who wishes to decline his or her school board salary during the 2021 tax year must submit a written notice of refusal to accept the salary to the clerk and treasurer by no later than December 2, 2020. (See sections [120.07](#) and [120.45](#) of the state statutes.)

As noted in recent WASB webinars, in comparison to prior years, the Elections Commission was a bit delayed in posting an updated “Ballot Access Checklist” (the [ELIS-5 form](#)). However, the checklist has now been updated for the 2021 election, and it is posted on the [Commission’s website](#). Be sure that your district’s candidate packets include the updated 2021 checklist.

Family First Coronavirus Response Act (FFCRA)

Federal rules, including September 16, 2020 revisions:

<https://ecfr.federalregister.gov/current/title-29/subtitle-B/chapter-V/subchapter-C/part-826>

The U.S. Department of Labor’s “[Families First Coronavirus Response Act: Questions and Answers](#)”

1. What is the effective date of the Families First Coronavirus Response Act (FFCRA), which includes the Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act?

The FFCRA’s paid leave provisions are effective on April 1, 2020, and apply to leave taken between April 1, 2020, and December 31, 2020.

What options are available for employees who use up their Emergency Paid Sick Leave and are quarantined or otherwise require additional leave due to the pandemic?

What documentation is required for teleworking employees to take FFCRA leave to care for children whose school or place of childcare is closed due to the pandemic?

Families First Coronavirus Response Act: Questions and Answers

<https://www.dol.gov/agencies/whd/pandemic/ffcra-questions#16>

16. What documents do I need to give my employer to get paid sick leave or expanded family and medical leave? *[Updated to reflect the Department’s revised regulations which are effective as of the date of publication in the Federal Register.]*

When requesting paid sick leave or expanded family and medical leave, you must provide your employer either orally or in writing the following information as soon as practicable:

- Your name;
- The date(s) for which you request leave;
- The reason for leave; and
- A statement that you are unable to work because of the above reason.

If you request leave because you are subject to a quarantine or isolation order or to care for an individual subject to such an order, you should additionally provide the name of the government entity that issued the order. If you request leave to self-quarantine based on the advice of a health care provider or to care for an individual who is self-quarantining based on such advice, you should additionally provide the name of the health care provider who gave advice.

If you request leave to care for your child whose school or place of care is closed, or child care provider is unavailable, you must also provide:

- The name of your child;

- The name of the school, place of care, or child care provider that has closed or become unavailable; and
- A statement that no other suitable person is available to care for your child.

In addition to the above information, you must also provide to your employer written documentation in support of your paid sick leave as specified in applicable IRS forms, instructions, and information. Please also note that all existing certification requirements under the FMLA remain in effect if you are taking leave for one of the existing qualifying reasons under the FMLA. For example, if you are taking leave beyond the two weeks of emergency paid sick leave because your medical condition for COVID-19-related reasons rises to the level of a serious health condition, you must continue to [provide medical certifications](#) under the FMLA if required by your employer.

Executive and Emergency Orders by Governor Evers and DHS:

<https://evers.wi.gov/Pages/Home.aspx>:

On November 10, Governor Tony Evers signed Executive Order #94, advising Wisconsinites to stay home, urges precautions Wisconsinites should take to stay safe if they have to leave their home, and encourages businesses to take additional steps to protect workers, customers, and the surrounding community.

Please read [Executive Order 94](#).

On October 6, Governor Tony Evers directed Wisconsin Department of Health Services Secretary-designee Andrea Palm to issue Emergency Order 3, limiting public gatherings to no more than 25 percent of a room or building's total occupancy, with some exceptions. This directive is effective at 8 a.m. on Oct. 8, 2020 and will remain in effect until Nov. 6, 2020.

Please read [Emergency Order 3](#) and review the [frequently asked questions](#) page.

*On September 22, Governor Tony Evers issued Executive Order 90, declaring a public health emergency, and corresponding Emergency Order 1, regarding face coverings in certain situations for people over the age of 5. Face coverings are required to be worn **whenever you are indoors or in an enclosed space, other than a private residence, and other people are present in the same room or space.***

Please read [Executive Order 90](#), [Emergency Order 1](#), and [frequently asked questions](#).

Highlights from Executive Order #94:

- The order is a series of recommendations rather than enforceable orders.
- All individuals should stay at home as much as possible.
- All individuals should avoid gatherings of any size between individuals who are not members of the same household.
- Businesses are encouraged to facilitate remote work and other measures that limit the number of individuals in offices, facilities or store to the greatest extent possible.
- Travel is discouraged.
- No recommendations are made specific to K-12 schools.

The Wisconsin District III Court of Appeals blocked Emergency Order #3, ruling that the order was unenforceable following the Wisconsin Supreme Court decision holding that such orders must follow the rulemaking process.

<https://www.wicourts.gov/ca/opinion/DisplayDocument.pdf?content=pdf&seqNo=303207>

The Wisconsin Supreme Court refused to take up the appeal of the Court of Appeals decision without explanation.

Emergency Order 1 under Executive Order 90, requiring face coverings, expires November 21, 2020. The Wisconsin Supreme Court heard arguments on Monday November 16, 2020 relating to a challenge to the face covering order.

Liability insurance and known risks

WASB Insurance Plan resources relating to the pandemic:

<https://wasb.org/wasb-insurance-plan/insurance-library/library-property-casualty-risk-management/>

September 2020 Legal Comment on Liability Waivers and the COVID-19 Pandemic:

https://wasb.org/wp-content/uploads/2020/08/WASB_2020-09-september.pdf#page=32

Employee off duty conduct

What can employers do about employee off duty travel during break periods?

What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws

<https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>

A.10. May an employer ask an employee who is physically coming into the workplace whether they have family members who have COVID-19 or symptoms associated with COVID-19? (9/8/20; adapted from 3/27/20 Webinar Question 4)

No. The Genetic Information Nondiscrimination Act (GINA) prohibits employers from asking employees medical questions about family members. GINA, however, does not prohibit an employer from asking employees whether they have had contact with anyone diagnosed with COVID-19 or who may have symptoms associated with the disease. Moreover, from a public health perspective, only asking an employee about his contact with family members would unnecessarily limit the information obtained about an employee's potential exposure to COVID-19.

A.14. When an employee returns from travel during a pandemic, must an employer wait until the employee develops COVID-19 symptoms to ask questions about where the person has traveled? (9/8/20; adapted from Pandemic Preparedness Question 8)

No. Questions about where a person traveled would not be disability-related inquiries. If the CDC or state or local public health officials recommend that people who visit specified locations remain at home for a certain period of time, an employer may ask whether employees are returning from these locations, even if the travel was personal.

What can and should districts do about employees releasing information about absent student and staff to the public?

- The ADA limits sharing of information about employee medical conditions to other employees with a need to know that information.
- FERPA and the Wisconsin Pupil Records law limit sharing of information about pupil medical conditions.
- Schools should remind employees that information about employee and student medical information and absences is provided on a need to know basis and that such information must not be shared with the public.

Protected concerted activity

[Section 111.70\(2\) \(in part\):](#)

(2) Rights of municipal employees. Municipal employees have the right of self-organization, and the right to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and **to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection.** . .

June-July 2020 Legal Comment:

<https://wasb.org/c202006/>