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NEW ILLINOIS LAW PROVIDES ADMINISTRATIVE LEAVE AND RETURN OF SICK DAYS TO VACCINATED EMPLOYEES FOR TIME MISSED DUE TO COVID-19

Last week, Governor Pritzker signed House Bill 1167 into law. Among other things, this law requires school districts, joint agreements, and charter schools to provide administrative leave days and return previously used sick days to vaccinated employees who previously missed, or will miss, work as a result of COVID-19. As described in further detail below, this law imposes obligations on educational employers which must be addressed over the next several weeks.

Return of Sick Days

HB 1167 requires educational employers to return sick days that were used by “fully vaccinated” employees during the 2021-2022 school year for the following reasons:

- The sick leave was taken because the employee was restricted from being on school district property because the teacher or employee:
 - Tested positive for COVID-19 with a PCR or equivalent test;
 - Had a probable COVID-19 diagnosis via an antigen diagnostic test (i.e., positive rapid test);
 - Was required to be excluded from school as a close contact to a confirmed COVID-19 case; or
 - Was required to be excluded from school because he or she had COVID-19 symptoms.
- The sick leave was taken to care for the employee’s child who was not able to attend elementary or secondary school because the child:
 - Tested positive for COVID-19 with a PCR or equivalent test;
 - Had a probable COVID-19 diagnosis via an antigen diagnostic test (i.e., positive rapid test);

- Was required to be excluded from school as a close contact to a confirmed COVID-19 case; or
- Was required to be excluded from school because he or she had COVID-19 symptoms.

Importantly, the return of sick days only applies to sick days that were taken during the 2021-2022 school year for one of the above-listed reasons. Similarly, only employees who were employed on or after April 5, 2022 and who meet HB 1167's definition of "fully vaccinated against COVID-19" are eligible for the return of sick days. To meet this definition, an employee must meet one of the following criteria on or before May 10, 2022^{[\[1\]](#)}:

- The employee has received his or her second dose in a 2-dose COVID-19 vaccine (e.g., Pfizer or Moderna); or
- The employee has received his or her single dose COVID-19 vaccine (e.g., Johnson & Johnson).

Consequently, an employee who meets one of these criteria, but



who was not vaccinated earlier this school year when he or she used sick days for reasons related to COVID-19, would still be entitled to the return of those sick days.

Additionally, please note that educational employers should make arrangements for the return of sick days to eligible employees on or before May 10, 2022.

Provision of Administrative Leave Days

HB 1167 also requires educational employers to provide paid administrative leave days to eligible employees. To be eligible for paid administrative leave days, an employee must have been employed on or after April 5, 2022 and must meet one of the criteria to satisfy the definition of “fully vaccinated against COVID-19.” In addition, educational employers must understand their obligations for providing administrative leave days both retroactively and going forward.

Retroactive Administrative Leave

Educational employers must retroactively provide paid administrative leave days to an eligible employee who missed work because he or she:

1. Tested positive for COVID-19 with a PCR or equivalent test;
2. Had a probable COVID-19 diagnosis via an antigen diagnostic test (i.e., positive rapid test);
3. Was required to be excluded from school as a close contact to a confirmed COVID-19 case; or
4. Was required to be excluded from school because he or she had COVID-19 symptoms.

Similarly, the employer must retroactively provide paid administrative leave days to an eligible employee who missed work to care for a child who was not able to attend elementary or secondary school because the child:

1. Tested positive for COVID-19 with a PCR or equivalent test;
2. Had a probable COVID-19 diagnosis via an antigen diagnostic test (i.e., positive rapid test);

3. Was required to be excluded from school as a close contact to a confirmed COVID-19 case; or
4. Was required to be excluded from school because he or she had COVID-19 symptoms.

Educational employers should make arrangements to provide eligible employees with retroactive paid administrative leave on or before May 10, 2022. As noted above, an employee who receives the required doses to become “fully vaccinated” by May 10, 2022 is entitled to the retroactive provision of administrative leave – regardless of whether the employee was vaccinated at the time of his or her absence.

Unlike the return of sick days, the retroactive provision of administrative leave days is not strictly tied to the 2021-2022 school year. For further information on how and when – or whether – administrative leave days should be applied retroactively, we recommend contacting your Petrarca, Gleason, Boyle & Izzo attorney.



Administrative Leave After HB1167's Passage

Educational employers are also obligated to provide eligible employees with paid administrative leave for absences relating to COVID-19 (i.e., same specific reasons to which retroactive leave applies) which occur after HB 1167 was signed into law. Please note, however, that eligible employees are only entitled to such leave “during any time when the Governor has declared a disaster due to a public health emergency pursuant to Section 7 of the Illinois Emergency Management Agency Act.” Governor Pritzker’s current Disaster Proclamation expires on May 1, 2022. If the Disaster Proclamation is renewed, educational employers’ obligation to provide paid administrative leave to eligible employees for COVID-related absences will continue. If the Disaster Proclamation expires, employees will be required to use sick days for such absences, unless and until a Disaster Proclamation is put back into place.

Please contact one of our attorneys with any questions that you have about this new law.

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[\[1\]](#) Please note that the definition of “fully vaccinated against COVID-19” could change in the future if, for example, the Illinois Department of Public Health adopts a definition which requires individuals to receive booster shots to be considered “fully vaccinated.” At this time, however, booster shots are not required to meet the definition of “fully vaccinated.”