



# BARGAINING ADVISORY

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## Coronavirus 2019 (COVID-19) / Community Colleges

### Background

An outbreak of a respiratory illness caused by a new coronavirus (COVID-19) has been identified, originating in Wuhan, China. Some patients contracting the virus have had only mild symptoms, while others have suffered more severely, with over 4,500 fatalities attributed to the outbreak so far. Districts and local associations should be prepared as the virus spreads and impacts our colleges and communities.

The Centers for Disease Control and Prevention (CDC) reports that, “Health officials are currently taking steps to prevent the introduction and spread of COVID-19 into US communities. Schools can play an important role in this effort by preparing to take steps to prevent the spread of COVID-19 among their students, faculty and staff, should local health officials identify such a need. School plans should be designed to minimize disruption to teaching and learning and protect students, faculty and staff from social stigma and discrimination. Plans can build on everyday practices (e.g., encouraging hand hygiene, monitoring absenteeism, communicating routinely) that include strategies for before, during, and after a possible outbreak.” As discussed below, we urge chapter leaders to meet with district administrators to develop and/or expand existing plans to limit exposure and reduce spread to students, faculty, and staff.

Districts will be working with local health departments to share resources and develop plans as exposure to the virus becomes more widespread. Likewise, it is important that association and district leaders discuss the many issues impacting students, faculty, staff, and colleges as the spread of COVID-19 is likely to accelerate. As explained below, it is important that chapters review their collective bargaining agreements and engage in discussions, consultation, and/or bargaining with district administration over this situation.

### Frequently Asked Questions

*What should college employees do to help prevent the spread of coronavirus?*

The CDC has issued guidance regarding prevention of coronavirus, including tips like washing your hands with soap thoroughly and frequently, not touching your mouth, nose or face, and regularly disinfecting frequently touched surfaces. The CDC’s guidance can be found at [www.cdc.gov/coronavirus/2019-ncov/about/prevention-treatment.html](http://www.cdc.gov/coronavirus/2019-ncov/about/prevention-treatment.html).

More information from the CDC, including information about how coronavirus spreads and what to do if you are sick, can be found at [www.cdc.gov/coronavirus/2019-ncov/about/index.html](http://www.cdc.gov/coronavirus/2019-ncov/about/index.html).



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## *What happens to the district's funding if a college temporarily closes to contain the spread of the virus?*

The district should not lose funding in this situation. Title 5 of the California Code of Regulations contains a hold harmless provision specifying that in the event a college is closed due to an epidemic or emergency order by a federal, state, city, or county official, the district is credited for the full-time equivalent student (FTES) funding the district would have received if not for the epidemic or emergency order. The regulation further specifies that a district unable to operate a full college year due to an epidemic or emergency order by a federal, state, city, or county official is to receive "the same apportionment from the State School Fund as it would have received" if it had operated for a full school year of 175 days (5 CCR § 58146).

## *Will schools that are closed have to make up the days at the end of the year?*

Districts will have to monitor class-meeting cancellations to determine if the related class hours for course sections fall below the minimum to properly award a unit of credit as provided by Title 5, Section 55002.5 of the regulations. If that occurs, a district will have to make up lost instruction to meet at least that minimum level. Section 55002.5 includes both inside class and outside-of-class hours in the total hours of student work required to earn a unit of credit. Accordingly, if districts anticipate substantial loss of in-class instruction time, they should work with the local association to create out-of-class alternatives to ensure total hours of student work remains at the level required by Section 55002.5 (see also Bargaining Advice, below).

## *Are districts obligated to pay faculty at colleges that are closed?*

Nothing in the Education Code excuses districts from their contractual obligations to pay faculty and staff in the event a college is closed due to an epidemic or emergency order. The fact that Title 5 protects the district's funding makes it difficult for districts to argue that they cannot comply with contractual commitments due to the college closure. For these reasons, the past practice in California has been to pay college faculty and staff even when colleges are shut down due to an emergency.

It is important to understand, however, that the legal basis for this obligation is the commitment the district made in the collective bargaining agreement, which the district cannot modify without bargaining. You should therefore review your agreement closely to see if it contains any provisions that address the obligation of the district to pay faculty and staff in the event colleges are closed due to an epidemic. If you believe your agreement has language that excuses the district from paying faculty and staff in such situations, and/or your district indicates that it will not pay faculty and staff at colleges that are shut down, contact your CTA primary contact staff person immediately.

## *What are my legal rights to take a leave of absence if I get coronavirus?*

The same sick leave provisions apply to illness from coronavirus as apply to other illnesses. In addition to leave provided for in your collective bargaining agreement, the Education Code guarantees full-time faculty who are employed five days a week a minimum of ten (10) paid days of leave due to illness for a school year of service (Educ. Code Sec. 87781). A prorated amount of leave is due to part-time faculty. Classified employees employed five days a week for a full fiscal year are



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entitled to twelve (12) days of paid leave due to illness (Educ. Code Sec. 88191). A prorated amount is due to classified employees working less than five days a week who are employed for less than a full fiscal year.

Employees who have exhausted all available and accumulated sick leave and continue to be absent for up to five months due to illness are eligible for differential pay leave (Educ. Code Sec. 87780 or 87786 for faculty employees and Sec. 88196 for classified employees).

Additional unpaid leave may be available under the federal Family and Medical Leave Act (FMLA) and California Family Rights Act (CFRA). Article 23 of the CTA Contract Reference Manual, found at [www.CTASearch.org](http://www.CTASearch.org), has additional information regarding these provisions.

Finally, the Education Code specifically gives districts discretion to grant paid leave to faculty due to an epidemic. This is in addition to the leave the district already provides, and includes not only leave due to illness, but also due to quarantine (Educ. Code Sec. 87765). Similarly, districts have discretion to grant additional leaves of absence, including with pay, to classified employees for purposes including illness and quarantine (Educ. Code Sec. 88199).

*Can a district force someone off work if s/he is suspected of being infected but is not officially quarantined by any health agency?*

As stated above, in addition to other leaves a district provides, Education Code Sections 87765 and 88199 give districts discretion to grant paid leave to certificated and classified staff due to an epidemic – both for illness and quarantine. Therefore, if a district wishes to compel someone to take leave due to suspected illness or exposure, chapters should insist that such leave be paid under Section 87765 or 88199 and not be deducted from the employee's accumulated leave time.

*What if my contract requires a doctor's note after a certain length of absence?*

Part of the CDC's advice is that those exposed to the virus self-quarantine and not see a doctor unless their condition worsens, requiring medical care. The association should work with the district to allow flexibility so that unit members who are ill, or are caring for ill family members, do not have to leave their homes to acquire or present such notes and potentially infect others.

*What else can districts and associations do to prepare for the possible spread of the virus?*

The Education Code requires the chancellor's office to consult with the Office of Emergency Services to develop an emergency preparedness plan (Educ. Code Sec. 71095). To respond to the current coronavirus, the CDE is urging districts to review their plans and follow their existing protocols for responding to a flu pandemic. You should review your district's plan as well and make sure it covers all the basic elements of a flu pandemic response.

For information on emergency planning for instructional interruptions, please review the Chancellor's Office memo: [www.cccco.edu/About-Us/Chancellors-Office/Divisions/Communications-and-](http://www.cccco.edu/About-Us/Chancellors-Office/Divisions/Communications-and-)



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[Marketing/Novel-Coronavirus](https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/CDPH%20Higher%20Education%20Guidance_ADA%20Compliant_FINAL.pdf) and [www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/CDPH%20Higher%20Education%20Guidance\\_ADA%20Compliant\\_FINAL.pdf](https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/CDPH%20Higher%20Education%20Guidance_ADA%20Compliant_FINAL.pdf)

If your district does not yet have an emergency preparedness plan, or the plan does not address critical issues for the association, you should demand to be included in the development of an adequate plan.

*What are other issues chapters should consider in determining if a district plan is adequate?*

- Does the plan address how the district will deal with an unusual number of absences of both students and staff? If the district does not have adequate employee resources, is there a plan to obtain additional help?
- Does the plan establish procedures to be followed in the event the district office is closed, such as procedures for paying employees if the staff who process payroll are absent or the payroll office is shut down?
- Does the plan address the status of college employees as “disaster service workers” and specify whether faculty are to be assigned any other activities if their college is closed? Under California Gov. Code Sec. 3100 et. seq., all public employees are declared to be “disaster service workers” subject to such disaster services activities as may be assigned by their supervisors or by law.
- Does the plan establish a communication system with employees to inform them of the status of the situation?
- Has the district made sure that all faculty and staff are aware of the plan and understand how it is to be implemented?

## **Bargaining Advice**

The safety of students, faculty and staff should be the primary focus when reviewing your current collective bargaining agreement. The CTA Contract Reference Manual, found at [www.CTASearch.org](http://www.CTASearch.org), has helpful language, particularly in Articles 21.9.4 (Hours) and 22.1.6 (School Safety). The following is the language found in both sections:

“In the event of an emergency closure of District facilities, including but not limited to natural disaster, quarantine, or government order, unit members shall receive their daily rate of pay and benefits. If make-up days are required by law, the District shall negotiate said days with the Association.”

To help mitigate the impact of any college closure, review and consider the information regarding district requests for fiscal credit due to lost attendance and instructional time during an emergency. Title 5 CCR Sec. 58146 effectively holds college districts harmless from the loss of revenue that may



A JOINT ADVISORY FROM THE CTA LEGAL DEPARTMENT  
AND CENTER FOR ORGANIZING AND BARGAINING (C4OB)

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result from reduced FTES or instructional time in emergencies. Districts may submit an Attendance Request Due to Emergency Conditions (Form CCFS-313) to the Chancellor's Office.

Finally, instead of completely shutting down, districts may wish to provide alternative, non-classroom-based learning opportunities, such as through distance education technologies. If this is the case, the association should demand to bargain the effects of that decision.

## **Additional Resources**

Centers for Disease Control and Prevention

[www.cdc.gov/coronavirus/2019-ncov/index.html](http://www.cdc.gov/coronavirus/2019-ncov/index.html)

California Department of Public Health

[www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/nCOV2019.aspx](http://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/nCOV2019.aspx)

California Department of Public Health – Higher Education Guidance on COVID-19

[www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/CDPH%20Higher%20Education%20Guidance ADA%20Compliant FINAL.pdf](http://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/CDPH%20Higher%20Education%20Guidance%20ADA%20Compliant%20FINAL.pdf)

California Department of Education (Crisis Response)

[www.cde.ca.gov/ls/ss/cp/crisisresp.asp](http://www.cde.ca.gov/ls/ss/cp/crisisresp.asp)

This Advisory will be updated as additional information becomes available. In the meantime, questions should be directed to your local CTA Primary Contact Staff.