

PSEA ALERT!

School Employment-Based COVID-19 Testing

Prepared by the PSEA Legal Division

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Introduction

This Alert addresses issues associated with school employment-based Covid-19 testing programs. As testing becomes more widely available, some school employers are considering mandatory testing programs for employees, known as “assurance testing,” to identify contagious individuals as soon as possible. For example, some school employers, in conjunction with their county departments of health, are considering use of the [BINAXNow Antigen Test](#), a self-administered anterior nostril swab test that provides results within fifteen minutes. Any positive test result will require a confirmatory molecular test, usually a [CUE](#) or [PCR](#) test.

School employers are permitted to require this type of testing, and the decision to implement such a program is not a mandatory subject of bargaining. However, there are certain concerns that may be addressed during impact bargaining. We have identified the following issues as a starting point for these conversations. Please note, however, that circumstances vary by local association and geographic area, and there is no one size fits all approach. Therefore, local leaders should consult closely with their PSEA Uniserv Representatives in order to discuss a school employer’s testing plan and potential issues to raise in impact bargaining.

Possible Impact Bargaining Issues Related to Assurance Testing

Confidentiality Issues

Confidentiality of test results should be ensured consistent with all laws, including the Americans with Disabilities Act, and EEOC and CDC guidelines. All test administrators and observers should be informed of and follow directives to maintain confidentiality. Information-sharing within the school entity should be limited and occur only as needed and as directed by any state or local departments of health.

Test Administration

Testing should be performed during work hours, and if not, employees should be compensated or receive compensatory time for any testing that occurs outside of regular work hours. Employees should be informed of testing schedules and the frequency of such testing.

Testing should be performed at a location that avoids any large-group gatherings and employees should not wait in groups for testing results.

Testing results may be available via an app or a text on a smart phone. Alternative notification options should be made available for employees without smart phones.

Usually a healthcare professional will need to be accessible while testing is occurring. Employers generally have a right to assign work duties. If a school nurse is assigned to oversee a testing program, consideration should be given to workload issues and how other nursing responsibilities will be completed. Those same workload considerations exist if bargaining unit members are directed to be involved in test administration (e.g., directing staff to testing locations, providing test kits, test instructions, or recording test results). In addition, such assignments should not conflict with any relevant collective bargaining agreement provisions and any employees who assist with an assurance testing program should be provided with appropriate training and PPE.

Positive Antigen Test Results

There should be specific protocols to follow if an employee tests positive. These protocols should be provided to all staff. For example, the employee, who should be isolated, should be directed to another location, preferably at the school or close by, for confirmation with a specified type of molecular test. If possible, this confirmatory test should provide results within a quick and reasonable time frame, such as within 24 hours.

Any concerns related to pay or the use of leave related to a false positive test should be addressed in impact bargaining. Any employee who tests positive in a confirmatory test is entitled to use sick leave during their recovery.

Costs

There should be no cost to any employees for antigen or confirmatory molecular tests.

Conclusion

Thus far, to the best of PSEA's knowledge, no school employer has implemented assurance testing. But with the increased availability of self-administered antigen tests that provide immediate results, school employers and regional health organizations will likely initiate collaborative efforts to provide COVID-19 testing programs in schools. If a school employer decides to implement a mandatory testing program, PSEA is prepared to assist locals in addressing any associated impact issues.