



# Reset and Restart Planning: Labor and employment

Town Hall Meeting  
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## Guidance legal series

July 8: Health and safety

July 15: Education, including  
models of teaching and learning

July 22: Labor and employment

July 29: Miscellaneous

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**OSBA Legal Division's Blog:**  
[www.ohioschoolboards.org/blogs/legal-ledger](http://www.ohioschoolboards.org/blogs/legal-ledger)

**OSBA resource page:**  
<https://www.ohioschoolboards.org/restartededucation-ohio-resources>

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# PART THREE:

## *Labor and employment*

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# Two main documents




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# One main question

- Do any of these state or local documents, guidelines and re-start plans create any labor and employment issues for schools?
- They clearly do if they affect wages, hours, terms or conditions of employment.

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## Bargaining requirements

- Pursuant to R.C. 4117, an employer is **not** required to bargain on subjects reserved to the management and direction of the governmental unit **except as affect wages, hours, terms and conditions of employment, and the continuation, modification, or deletion of an existing provision of a collective bargaining agreement.** (Emphasis added.)

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## Bargaining requirements

- In *Lorain City School Dist. Bd. of Educ. v. State Emp. Relations Bd.*, 40 Ohio St.3d 257, 261, (1988), the Ohio Supreme Court held that if a public employer intends to implement a decision which “affects” wages, hours, terms and conditions of employment of a bargaining unit, then the employer must bargain on the issue (the “effects”). This is so even if the question is reserved for managerial discretion.

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## Bargaining requirements

- *In re SERB v. Youngstown City School Dist. Bd. of Ed.*, SERB 95-010 (6-30-95) modified *Lorain* and another previous SERB decision and remains the Board's current precedent. *Youngstown* sets forth a tripartite balancing test to determine whether a subject emanating from an enumerated managerial right - but also affecting wages, terms of conditions of employment - must be bargained or not.

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## Bargaining requirements

The tripartite balancing test requires looking at:

- The extent to which the subject is logically and reasonably related to wages, hours, terms and conditions of employment;
- The extent to which the employer's obligation to negotiate may significantly abridge its freedom to exercise those managerial prerogatives set forth in and anticipated by R.C. 4117.08(C);
- The extent to which the mediatory influence of collective bargaining and, when necessary, any impasse resolution mechanisms available to the parties are the appropriate means of resolving conflicts over the subject matter.

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# Impact bargaining

- Impact - or effects - bargaining is a type of bargaining which involves certain decisions that are within the management's right to make. This has impact on mandatory subjects of bargaining. While the underlying management decision does not have to be bargained, the consequences or effects it has on employees do have to be bargained.
- The employer must clearly communicate its decision.
- The employee association/union must identify the effects and demand bargaining.
- The employer must bargain in good faith.
- Agreements must be reduced to writing (usually an MOU).

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HEALTH AND  
SAFETY GUIDANCE FOR

## OHIO K-12 SCHOOLS



▶ Vigilantly Assess for Symptoms



▶ Wash and Sanitize Hands to Prevent Spread



▶ Thoroughly Clean and Sanitize School Environment to Limit Spread on Shared Surfaces



▶ Practice Social Distancing



▶ Implement Face Coverings Policy

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## What may need to be negotiated here?

Listed interventions:

- Daily temperature checks
- Physical or social distancing
- Face mask
- Eye protection
- Hand hygiene protocols

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## Bargainable?

- Employees showing symptoms/have a temperature above 100° F while at school must immediately be separated from other students, staff, or volunteers, given a face covering, and monitored by a staff member wearing appropriate personal protective equipment (PPE) and maintaining physical distance when possible. The space where the employee waits before going home should be separate from the nurse's office and other areas students are likely to visit.
- Areas of the building that were occupied by a person exhibiting symptoms should be thoroughly sanitized.
- School personnel must refer those displaying symptoms of COVID-19 to an appropriate health care professional or testing sites.
- Sick leave/absence policies should not penalize staff for staying home when symptomatic or in quarantine or isolation.

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## Bargainable?

- Employees who have suspected or confirmed COVID-19 cannot return to school until they meet CDC criteria for return to work/school, and districts should be prepared with appropriate plans for absences.
- Individuals who test positive for or are suspected to have COVID-19 must experience an improvement in symptoms and isolate for a period of time before returning to school.

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## Face masks

- All school staff and volunteers must wear face coverings unless it is unsafe to do so or where doing so would significantly interfere with the learning process.
- Schools must provide written justification to local health officials, upon request, explaining why a staff member is not required to wear a facial covering in the school.
- At minimum, facial coverings (masks) should be cloth/fabric, cover an individual's nose, mouth, and chin and be worn properly.
- Remember, generally requiring staff to wear masks may not be sufficient. You may need to specify exactly where, when and how, as well as any consequences for failing to properly wear a mask.

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# Face masks

- Exceptions to the face mask requirement include:
  - Facial coverings in the school setting are prohibited by law or regulation
  - Facial coverings are in violation of documented industry standards • Facial coverings are not advisable for health reasons
  - Facial coverings are in violation of the school's documented safety policies
  - Facial coverings are not required when the staff works alone in an assigned work area
  - There is a functional (practical) reason for a staff member or volunteer to not to wear a facial covering in the workplace.

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# Face shields

- Face shields that wrap around the face and extend below the chin can be considered as an alternative where cloth face coverings would hinder the learning process.
- Some situations where face shields would be useful include:
  - When interacting with students, such as those with disabilities, where communication could be impacted
  - When interacting with English-language learners or when teaching a foreign language.
  - Settings where cloth masks might present a safety hazard (i.e. science labs)
  - For individuals who have difficulty wearing a cloth face covering

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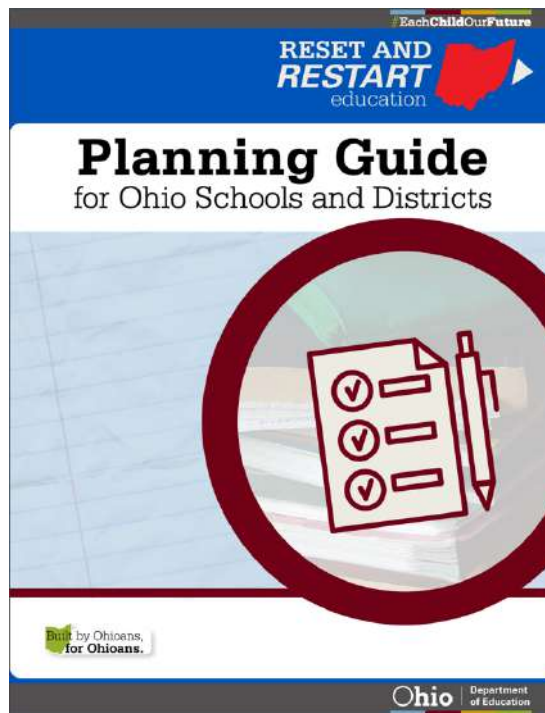


# Transportation

- “It is strongly recommended that school districts require students to wear masks while being transported on school buses.”
- School buses present many unique – and challenging – situations, some of which may affect the terms and conditions of employment for drivers and bus aides.

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## Three distinct sections

1. ODH's Health and Safety Guidelines for Schools to Reopen.
2. ODE's Return-to-School CONSIDERATIONS for Local Planning. This section includes considerations to help schools and their partners reopen in the most effective way in fall 2020.
3. ODE's Role CONSIDERATIONS for Associations, Educational Organizations (including Educational Service Centers) and Other State and Community Partners.

*We'll focus on #2 as we previously covered #1 and #3 has no practical labor and employment issues for school districts.*

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## Return-to-school CONSIDERATIONS

Guiding principals:

- **Caring** for students and adults—especially the most vulnerable
- **Prioritizing student learning**
- **Ensuring effective teaching**
- **Operating efficiently, effectively and responsibly**

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# Return-to-school CONSIDERATIONS

Other areas specifically mentioned:

- Building and classroom capacity
- Classroom and remote learning
- Extra- and Co-curricular activities
- Field trips
- Recess
- Professional development
- Collaboration
- Employee supports
- Transportation/busses
- Custodial, maintenance, food service and secretarial/clerical

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# Return-to-school CONSIDERATIONS


- While generally discussed in the Guide, many of these considerations have specific labor and employment implications.
- These “considerations” can impact the terms and conditions of employment as they are incorporated into schools’ restart plans.
- Restart plans need to be shared with employee unions and their concerns and suggestions should also be considered.
- Many districts may see demands for effects bargaining; others may face the same issues if negotiating a new contract.
- Labor-management cooperation during the COVID-19 outbreak remains very high in Ohio’s schools.
- **APPENDIX A: Joint Statement on Labor Management Relations and Collective Bargaining.**

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# Additional resources



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## CORONAVIRUS (COVID-19) RESOURCES

Information Center

- OSBA Journal magazine
- > Issues in the schoolhouse
- > OSBA podcast: Leading the Way
- > OSBA newsletters
- > News releases

[View](#) [Revisions](#)

**Reset and Restart Education in Ohio**

- Ohio Department of Education Reset and Restart Education: Planning Guide for Ohio Schools and Districts
- Ohio Department of Education Reset and Restart webpage
- Ohio Department of Health COVID-19 Health and Prevention Guidance for Ohio K-12 Schools

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# Thank you!



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