

CLIENT NEWS BRIEF

Public Agency Employer Responses to COVID-19: Labor and Employment Implications

Background

With growing concerns over the spread of the novel coronavirus, COVID-19, public agency employers are taking proactive steps to limit exposure and further transmission. The California Department of Public Health (CDPH) along with the Centers for Disease Control and Prevention (CDC) have been providing regular updates and recommendations for employers, which should be closely monitored and followed.

The following is some general guidance from a labor and employment perspective as public agency employers take additional steps to maintain a safe work environment, including potentially closing facilities or limiting employee attendance at work.

Employee Leaves

Agency policies and collective bargaining agreements describe entitlement to and appropriate use of sick leave and other paid leaves. Employers may provide an additional period of paid or unpaid leave for employees who are medically quarantined. (See Ed. Code, §§ 44964, 45199 for school districts.) It is important to keep in mind that employees absent due to COVID-19 may qualify for industrial illness leave if they contracted the virus at work. Employees who pay into State Disability Insurance (SDI) may also qualify for disability insurance benefits while they are unable to work. If an employee is absent due to their own illness or to care for an ill family member they may be entitled to kin care leave and up to 12 workweeks of job protective leave under the Family and Medical Leave Act (FMLA) and the California Family Rights Act (CFRA). It will be important to examine every request for leave carefully to determine if it is a qualified leave, and what leave entitlements may be implicated by the leave request.

Ensuring a Safe Work Environment

As a reminder, employers are required to provide and maintain a safe work environment. Work safety may be addressed in policy and/or collective bargaining agreements. Employers should review such language to ensure they are complying with their policies and obligations. To the extent employees are required to do additional cleaning beyond what is within their regular job duties, such a change in work duties may be negotiable, may require out of class pay, and/or may result in overtime compensation, among other things. Employers should ensure that overtime is offered according to relevant collective bargaining agreement provisions.

March 2020
Number 12



Gabriela D. Flowers
Partner
Sacramento Office
gflowers@lozanosmith.com



Derek Ulmer
Associate
Sacramento Office
dulmer@lozanosmith.com



As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.

CLIENT NEWS BRIEF

March 2020
Number 12

Also, the California Division of Occupational Safety and Health has put out guidance for employers in responding to COVID-19: <https://www.dir.ca.gov/dosh/coronavirus/Health-Care-GeneralIndustry.html>, <https://www.osha.gov/SLTC/covid-19/>. It is critical that employers ensure that recommended safety measures, including stocking sufficient soap/hand sanitizer, are followed to maintain a safe work environment.

Active Employee Considerations

It is possible that some employees may refuse to perform duties within their job description that may be implicated by COVID-19. For example, some employees may refuse to provide health services that are part of their normal job duties. When an employee is at work, they are required to perform their job. However, it is also important to remember that antidiscrimination laws protect employees who are temporarily or permanently disabled or who are perceived as being disabled. Conversely, an employee's refusal to provide services could also constitute discrimination against those whom they serve, be it students or patients.

Some employees with compromised immune systems may receive medical directives temporarily limiting their work activities. The Americans with Disabilities Act (ADA), may require temporary work modification as a reasonable accommodation to the extent an employee is medically unable to perform certain tasks.

School Closure

For public agencies whose employees are represented by a collective bargaining unit, the decision to close a school or facility due to an epidemic is generally not negotiable. However, the impacts and effects of such closures are negotiable to the extent that decision impacts matters within the scope of representation, like work hours. In addition, whether employees will be paid during any work-site closure is negotiable.

It is recommended that employers notify their labor unions of any possible school or facility closures to help impacted employees prepare and respond to such changes. School closures may also require negotiating additional work days beyond the regular work year.

Payroll and business offices should be prepared for potential increases in unemployment insurance claims if facilities are closed or employee hours are reduced.

Availability of J-13A Waiver for ADA Loss

Public schools that experience loss of ADA due to the coronavirus should be aware of the availability of the J-13A waiver to minimize the fiscal impact of ADA loss due to emergency. Information on the J-13A waiver can be found at: <https://www.cde.ca.gov/fg/aa/pa/documents/j13a.pdf>

Availability of Waiver to Avoid Instructional Minute Penalties

Public schools districts, including basic aid districts, should also be aware of the availability to request a penalty waiver from the California Department of Education (CDE), in the event instructional minutes fall below Education Code minimums.

For more information on issues arising from the continued spread of COVID-19, please contact one of our [eight offices](#) located statewide. You can also subscribe to our [podcast](#), follow us on [Facebook](#), [Twitter](#) and [LinkedIn](#) or download our [mobile app](#).

As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.