

Daily Journal

www.dailyjournal.com

FRIDAY, DECEMBER 18, 2015

COVER STORY

Working when school's canceled?

By Lois M. Kosch

On Tuesday, the Los Angeles Unified School District made the unprecedented decision to close over 1,000 schools, impacting some 640,000 students and their parents. It is likely that many of those parents suddenly had to call off work, perhaps leaving some employers in the lurch.

So does an employer have any recourse? Can it discipline, award a point under an excessive absenteeism policy, or count the absence against the employee in any way? The answer with respect to this incident is a possible "yes," even though School Board President Steve Zimmer asked employers to show "maximum flexibility" with employees who are parents and guardians. But all of that will change Jan. 1, 2016, when most employers in California will be required to provide unpaid, job-protected time off to parents and guardians when schools are shut down.

Unfortunately, with the phrases "terror threat," "active shooter," "shelter in place," and "lockdown" (concepts once virtually unheard of, much less expected by Americans) now becoming part of the daily news cycle, employers should expect more regular school closures as officials err on the side of safety when assessing threats. While this closure of L.A. Unified schools was unusual in terms of the number of schools and students impacted, school closures in California are becoming increasingly common. For instance, on Wednesday, Fullerton High School was closed over a perceived threat; earlier this month, on Dec. 3, a potential terrorist threat closed Vallejo Elementary School; on Nov. 12, all school sites within the King City Union School District were closed due to multiple threats, and high schools in San Diego and Manhattan Beach were put on lockdown last month based on threats posted on an anonymous social networking app known as Yik Yak. And that's just some of what's occurred in the past six weeks alone.

While California has for years required all employers to allow employees time off if they are required to appear at their child's school following a suspension (see Labor Code Section 230.7), the latest amendments represent an ongoing expansion of school-related reasons for protected time off. In light of recent events it is important that California employers with 25 or more employees understand that they must now allow employees time off to address school emergencies pursuant to Senate Bill 579, which takes effect on the first of the year. The amendments to the Family-School Partnership Act expand the reasons for which an employee may take job-protected leave under the Family School Partnership Act (Labor Code Section 230.8). Section 230.8 previously required employers with 25 or more employees to allow employees to use up to 40 hours of unpaid time (limited to eight hours in any calendar month) to participate in school- or childcare-related activities. The new law expands this provision to also allow employees to take job-protected time off to find, enroll or reenroll their children in a school or with a licensed child care provider.

More significantly in light of recent events, it also allows employees time off to address a "child care provider or school emergency." New subsection (e) would define this to mean a child cannot remain in a school or with a child care provider due to one of the following: (1) The school or child care provider has requested the child be picked up, or it has an attendance policy (excluding planned holidays) that prohibits the child from attending or requires the child be picked up; (2) behavioral or discipline problems; (3) closure or unexpected unavailability of the school or child care provider, excluding planned holidays; or (4) a natural disaster, including but not limited to, fire, earthquake or flood. While generally such leave time can be limited to eight hours per month,



Monica Almeida/The New York Times

Parents drop off children at Gardner Elementary School in the Hollywood area of Los Angeles, Dec. 16, the day after the LAUSD schools were closed due to a threat.

this cap does not apply to time needed to address a school emergency.

While Section 230.8 previously provided such job-protected leave to parents, guardians and grandparents, the revised law expands the definition of "parent" to include stepparents, foster parents or an employee who stands in loco parentis to a child.

Although the time off is unpaid, an employer may require the employee to utilize any available vacation, personal leave or compensatory time off to cover the school-related absence. The employee may also take the time off without pay with the permission of the employer. In addition, if requested by the employer, the employee must provide documentation reflecting the school-related activities that necessitated the absence.

As with most employee protection laws in California, Section 230.8 provides remedies to any employee who is discharged, demoted, or in any other manner discriminated against as a result of his or her exercise of this right to take time off. In particular, the employee may be entitled to reinstatement, and reimbursement for lost wages and work benefits. Any employer who "willfully refuses" to reinstate such an employee is subject to a civil penalty in an amount equal to three times the amount of the employee's lost wages and work benefits.

In light of these impending changes, employers should ensure that their leave policies are updated to include the expanded circumstances under which employees may take time off for school-related activities, and to include the expanded definition of "parent" applicable to school-related leave. In addition, it is important that managers and front line supervisors are aware that employees must be allowed time off to deal with school closures and that such time is job-protected and will not expose the employee to discipline, even where the employee calls off work at the last minute.

Lois M. Kosch is a partner with Wilson Turner Kosmo LLP.



LOIS M. KOSCH
Wilson Turner Kosmo