Human Resources Best Practices – COVID-19

Disclaimer – The following is not legal advice and is not intended to act as legal advice when navigating employee situations. It is a compilation of best practices, possible situations to consider when planning, and public resources. To help support districts and agencies, LACOE has consolidated these resources.

1. Each district or agency should work closely with their independent legal counsel and governing board and Department of Public Health in order to determine its actions on a case-by-case basis.

2. Each district should abide by directives of local, state, and federal health and education authorities, and discuss options with public health officials and legal counsel prior to taking action.

3. Review collective bargaining agreement and board policy language for guidance in emergency situations. Some contracts will suspend parts of collective bargaining agreements in the event of emergencies.

4. Review emergency action plan for guidance.

5. Meet proactively and often with union/association leadership. We encourage each district to work closely with their respective unions; this matter requires collective action and collaboration.

6. Keep labor leadership informed of the current situation and possible changes in district operations. Communicate district plans for various possible situations.

7. Seek guidance from legal counsel and/or other Human Resources district leaders in specific situations. Every situation is different and requires analysis on a case by case basis.

8. Employers and employees should not prejudice other employees because of fear of this new virus. Do not assume that someone of a particular ethnic background is more likely to have the Coronavirus.
9. Follow federal, state and local laws, as well as any agency policies and/or collective bargaining agreements provisions covering family and medical leave entitlements and confidentiality requirements.

10. Review all applicable guidance from the Occupational Safety and Health Administration (“OSHA”), CDC and WHO on an ongoing basis. Although OSHA has not announced specific standards covering the Coronavirus, it has issued a notice indicating that employers should be aware of general standards to which they may be subject under OSHA.

11. Avoid asking employees questions about any known or suspected medical condition or medical history. In 2009, the Equal Employment Opportunity Commission (“EEOC”) released a notice titled “Pandemic Preparedness in the Workplace and the Americans with Disabilities Act,” which provides guidance. The Notice is available at: https://www.eeoc.gov/facts/pandemic_flu.html

12. Communicate the proactive measures that you are taking to provide a safe workplace.

13. Establish objective criteria by which employees will be evaluated when decisions are being made as to whether they should be sent home from work or remain home. Such criteria can include observable symptoms, travel to other affected countries as identified by the CDC, and/or known or suspected contact with affected individuals.

It is advisable to be prepared for the following scenarios regarding employee work expectations and pay status arrangements:

- Employee requests to not work in an effort to prevent potential exposure
- Employee requests to work remotely
- Employee requests to not work due to potential exposure
- Assessing employee ability to work in pandemic
- Sending employees home with visible symptoms of unknown origin
- Quarantines mandated by Public Health
- Site closures
- Employee safety
- Social Distancing

Website Resources:
- March 9, 2020, Liebert Cassidy Whitmore (LCW) How School Districts and Community College Districts Should Respond to Employees Exposure to COVID-19
- March 7, 2020 California Department of Public Health (CDPH) California Releases Updated Guidance for Schools, Colleges, & Large Public Events to Prepare & Protect Californians from COVID-19
- March 7, 2020 California Department of Education and Department of Public Health (CDPH) School Guidance on Novel Coronavirus or COVID-19
- March 6, 2020 Liebert Cassidy Whitmore (LCW)
How Public Employers Should Respond to Employees’ Exposure To COVID-19
March 5, 2020 Atkinson, Andelson, Loya, Ruud, & Romo (AALRR)
This alert is intended to provide information regarding the recent outbreak of “coronavirus disease 2019 (COVID-19), & to highlight potential legal implications for school & community college district employers (“school employers”)
March 2, 2020 Los Angeles County Department of Public Health
Novel Coronavirus (COVID-19) Guidance for School Administrators (ECE, K-12)
February 5, 2020 Liebert Cassidy Whitmore (LCW)_ Responding to the Coronavirus
February 16, 2020 Centers for Disease Control & Prevention (CDC)
Interim Guidance for Administrators of U.S. Childcare Programs & K-12 Schools
October 9, 2009 U.S. Equal Employment Opportunity Commission (EEOC)
Pandemic Preparation in the Workplace & the Americans with Disabilities Act
California Labor & Workforce Development Agency COVID-19
U.S. Department of Labor Occupational Safety & Health Administration COVID-19
California Employment Development Department COVID-19

Legal Authorities

- **Health & Safety Code Section 120230**: No instructor, teacher, pupil, or child who resides where any contagious, infectious, or communicable disease exists or has recently existed, that is subject to strict isolation or quarantine of contacts, shall be permitted by any superintendent, principal, or teacher of any college, seminary, or public or private school to attend the college, seminary, or school, except by the written permission of the health officer.

- **CA Education Code Section 48213**: If a pupil is excluded from attendance pursuant to Section 120230 of the Health & Safety Code or Section 49451 of this code, or if a principal or his or her designee determines that the continued presence of the child would constitute a clear and present danger to the life, safety, or health of a pupil or school personnel, the governing board is not required to send prior notice of the exclusion to the parent or guardian of the pupil. The governing board shall send a notice of the exclusion as soon as is reasonably possible after the exclusion.

- **CA Education Code Section 49451**: A parent or guardian having control or charge of any child enrolled in the public schools may file annually with the principal of the school in which he is enrolled a statement in writing, signed by the parent or guardian, stating that he will not consent to a physical examination of his child. Thereupon the child shall be exempt from any physical examination, but whenever there is a good reason to believe that the child is suffering from a recognized contagious or infectious disease, he shall be sent home & shall not be permitted to return until the school authorities are satisfied that any contagious or infectious disease does not exist.

- **CA Education Code Section 48213**: If a pupil is excluded from attendance pursuant to Section 120230 of the Health & Safety Code or Section 49451 of this code, or if a principal or his or her designee determines that the continued presence of the child would constitute a clear & present danger to the life, safety, or health of a pupil or school personnel, the governing board is not
required to send prior notice of the exclusion to the parent or guardian of the pupil. The governing board shall send a notice of the exclusion as soon as is reasonably possible after the exclusion.

- **CA Education Code Section 44964:** The governing board of any school district may provide for the leave of absence from duty & may grant compensation during the leave of absence to any employee of the district who is employed in a position **requiring certification qualifications** & who is compelled to absent himself from his duties because of accident or illness, whether or not the cause of absence arises out of & in the course of the employment of the employee, or because of quarantine which results from his contact with other persons having a contagious disease while performing his duties, or because of temporary inability to perform the services required of him because of illness, accident, or quarantine.

- **CA Education Code Section 45199:** Governing boards of school districts may grant leaves of absence to persons employed in positions **not requiring certification qualifications**, & at their discretion may pay compensation at such rate as the board prescribes, during the absence, to any such employee whose absence is caused by accident or illness, whether or not the absence arises out of or in the course of the employment of the employee, or because of quarantine which results from his contact with other persons having a contagious disease while performing his duties.

- **Other Legal Codes relevant to excluding staff from work:** Government Code Section 12940 (a)(2); 42 U.S.C. Section 12113(b); 42 U.S.C. Section 12111(e)(3) & (8); 29 CFR Sections 1630.2(r) & 1630.15(b)(2)

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