LBAEE
September 2022 News

Taking Time Off Work to Care for Kids & Grandkids

Happy Labor Day! As summer winds down, it's back to school time for those with kids or grandkids. The fall season typically brings lots of family activities, including starting a new school year, enrolling kids with a childcare provider, annual physicals, and attending school-related events like parent-teacher conferences. It's a lot to juggle. The good news is that state law provides some legal protections if you need to take time away from work to do stuff with your kids. Here's a brief look at a few of these laws.

Your Right to Attend to Child-Related Activities:

Did you know that under California law (Labor Code §230.8), you are entitled to take up to 40 hours off work each year to attend to your child's school activities? Under the law, a parent can request leave to (1) find, enroll, and re-enroll a child in school or with a licensed childcare provider, (2) address a childcare provider or school emergency, or (3) participate in school-sponsored or childcare-sponsored activities, such as a field trip, graduation, or holiday party. Stepparents, foster-parents, grandparents, and legal guardians are also allowed this kind of leave. To qualify, your employer must employ 25 or more people working at the same location, and you must have a child that is in grades K-12. You can only use up to 8 hours per month unless it's an emergency. An "emergency" is when your child can't stay at school because the school says he/she needs to be picked up, your child is having disciplinary/behavioral problems, or there's a school closure or natural disaster.

Under the law, you may use your existing paid leave or comp time or request unpaid leave. You must give reasonable notice to your employer of the planned absence before taking time off, or as soon as practicable in the case of an emergency. Your employer cannot retaliate against you or discriminate against you for using this kind of leave. This

is a great job protection benefit for working families in California! If you have questions or need help with child-related activities leave, contact your professional staff.

Your Right to Kin Care:

Most people know that you can use sick leave to take time off to recover from your own illness. But did you know that, under California's Kin Care law, you can use up to one half of your accrued annual sick leave to care for other family members as well? This includes your parent, parent-in-law, child, spouse, grandparent, grandchild, sibling, or registered domestic partner, if they are sick or if you need to attend to their diagnosis, care, preventative treatment, or treatment of an existing health condition.

A lot of people use sick leave to care for their elderly parents or siblings or to take care of their children or spouse when they are sick. The sick leave law also allows you to use sick leave if you are the victim of domestic violence. Your employer can require you to provide advanced notice where an absence is foreseeable, but your employer cannot retaliate against you for using sick leave for yourself or your family if you have accrued and available sick leave. If you are having trouble utilizing your paid sick leave, contact professional staff for help.

Federal Centers for Disease Control (CDC) & California Department of Public Health (CDPH) Announce New COVID Rules

Last month, the CDC adopted new guidelines for COVID-19, just in time for the start of the new school year. The last major change in CDC guidelines was in late December 2021, amid the Omicron surge. At that time, the CDC said that if people who are not up to date on their COVID-19 vaccinations come into close contact with a person who tests positive, they should stay at home for at least five days.

Now, the CDC says quarantining at home is not necessary, but it urges those people to wear a high-quality mask for 10 days and get tested after five days. The CDC continues to say that people who test positive should isolate from others for at least five days, regardless of whether they are vaccinated. The CDC says people can end isolation if they are fever-free for twenty-four hours without the use of medication and they either do not have symptoms or their symptoms are improving.

The CDC also says that people no longer need to stay at least six feet away from others. Also, schools do not have to perform routine daily testing, although that practice can be reinstated in certain situations during a surge in infections. Masks continue to be recommended only in areas where community transmission is deemed high, or if a person is considered at high risk of severe illness.

The guidance, according to the CDC, "acknowledges that the pandemic is not over, but also helps us move to a point where COVID-19 no longer severely disrupts our daily lives."

The Federal Food & Drug Administration (FDA) also updated its recommendations for how many times people should test if they are exposed to COVID-19. The FDA had previously advised taking two rapid antigen tests over two or three days to rule out infection. The FDA now recommends three tests over that period.

Also, in June, the CDPH updated its guidance – specifically how to define "close contact" and "infectious period." The updated definitions apply to employers subject to the Cal/OSHA COVID-19 Emergency Temporary Standard (ETS), which relies on these CDPH definitions to establish workplace health and safety obligations.

A "close-contact" is now defined as "someone sharing the same indoor airspace for a cumulative total of fifteen minutes or more over a twenty-four-hour period during an infected person's infectious period." The definition removes the prior requirement that the contact must be "within six feet." The new definition acknowledges that COVID-19 is an airborne disease rather than one spread by respiratory droplets. The new definition does not identify what it means to "share the same indoor airspace." Employers have discretion as to how to further define or implement that phrase in the workplace.

The revised definition and ETS requires employers to exclude "close contacts" who are symptomatic. The CDPH also recommends identifying "high-risk contacts," which is determined based on the individual's proximity to the COVID-19 case, the duration or intensity of the exposure, and any heightened risk of severe illness or death the individual might have from exposure.

"Infectious Period" now aligns with shortened isolation periods. For symptomatic infected persons, the period starts two days before the onset of symptoms and ends ten days after the onset of symptoms, assuming twenty-four hours have passed with no fever, without the use of fever-reducing medications, and symptoms have improved. For

asymptomatic infected persons, the period starts two days before the positive specimen collection date and lasts through day ten. In either case, the period may be shortened if the person tests negative on day five or later. This new definition should not result in major changes to how employers handle COVID-19 cases, workplace exclusion, or return to work, because that's what the Cal/OSHA ETS has already been requiring.

In addition to these changes, it's important to know that Senate Bill 114 – the state law that provides between forty and eighty hours of COVID-19 supplemental paid sick leave – expires on September 30, 2022. If you are subject to the new quarantine or isolation requirements, and have not used your SB 114 leave, you should do so before it expires. You might also be eligible to use SB 114 leave if you are caring for a child whose school or place of care is closed or otherwise unavailable for reasons related to COVID-19 on the premises. An employer cannot require an employee to use other paid or unpaid leave before using SB 114 leave. Contact your professional staff if you need assistance.

News Release - CPI Increases!

The U.S. Department of Labor, Bureau of Labor Statistics, publishes monthly consumer price index figures that look back over a rolling 12-month period to measure inflation.

8.5% - CPI for All Urban Consumers (CPI-U) Nationally

8.3% - CPI-U for the West Region

7.7% - CPI-U for the Los Angeles Area

6.8% - CPI-U for San Francisco Bay Area (from June)

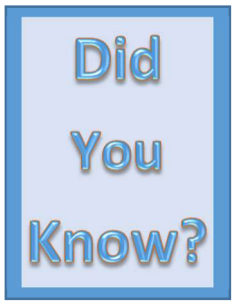
9.2% - CPI-U for the Riverside Area

7.3% - CPI-U for San Diego Area

Governor Newsom Signs New Budget

Creating Nation's First Tax Credit for Union Dues

California is one of only a handful of states where union dues are tax deductible for state income tax purposes. As part of the new California state budget that Governor Newsom signed on June 27, that tax break has now become even more valuable.



Called the "Workers Tax Fairness Credit," the budget turns the existing tax deduction into a tax credit capped at 33% of dues paid. Changing the deduction to a credit makes the tax break for union dues more generous and benefits those who don't itemize or have a tax liability. The California legislature still must decide what tax year this will begin taking effect.

Due to the Federal tax law changes that began starting in the 2018 tax year, less people benefited from itemizing their taxes, including many who own homes or live in high-tax states like California. Also, many lower-wage union workers were less likely to itemize, or pay a low tax rate, making the deduction benefit less valuable. The change from a deduction to a credit is designed to fix that.

A proposal in Congress would have enacted an above-the-line federal tax deduction for union dues that would have been available even to taxpayers who do not itemize, but it was not approved by the Senate.

Questions & Answers about Your Job

Each month we receive dozens of questions about your rights on the job. The following are some GENERAL answers. If you have a specific problem, talk to your professional staff.

Question: I was recently exposed to COVID at work. I'm asymptomatic and fully vaccinated. Management said that I must quarantine for at least five days, or forty hours. They are not letting me work remotely, which was something they let me do in 2020 the first time I got COVID. They are also telling me that I must use my own paid leave time to cover my absences. Can they do this? It seems punitive. Does it matter that I was exposed at work?

Answer: If you are asymptomatic and fully vaccinated, you should not have to quarantine if you are merely exposed and haven't tested positive. Under the old CDC rules, if you are fully vaccinated, you don't have to quarantine after close contact unless you have symptoms. Under the CDPH rules, you do not have to quarantine if you are vaccinated and asymptomatic, but you should self-monitor for fourteen days. Under both rules, you must isolate for at least five days if you test positive.

Under the new CDC rules, you still do not have to quarantine if you are fully vaccinated, asymptomatic, and haven't tested positive, but you must wear a high-quality mask for ten days and get tested after five days. The rules continue to require people who test positive to isolate for at least five days, regardless of vaccination status. The quarantine and isolation rules are not different based on whether the exposure occurred in the workplace, but if you contract COVID-19 at work, you may be eligible for workers' compensation benefits.

Employers are not required to provide telework if you are exposed or must isolate but under older pre-vaccine rules, which required more people to quarantine when exposed, it was more common for the employer to offer telework to asymptomatic employees where operationally feasible. The fact that telework was offered before does not require it to be offered now.

You should not be required to use your own sick time unless you've already exhausted your right to supplemental paid sick leave under SB 114, which expires at the end of September. Under that law, an employer cannot require an employee to use other paid or unpaid leave before using SB 114 leave. However, once your SB 114 leave is exhausted, you can be required to use your own sick leave to either quarantine or isolate due to COVID-19. Keep in mind, your employer must provide you with information about COVID related benefits if you are being excluded from work due to COVID-19.

Question: Management requested that we turn on and regularly update, refresh, and reset our Microsoft Teams status. There are times where I need to change my status to "do not disturb" or "away." When I do, Teams will show in Outlook that I am "offline." But, of course, I'm still working. Well, management is now saying it has become increasingly difficult to gauge staff's availability via Teams and they have said that if we are working, we must make sure that our status is current. They say if we change it, we need to make sure we change it back when we're done. This feels like big brother watching and an invasion of our privacy. It is even worse than directing

us to turn on our video during Teams meetings. Can they legally require that we turn on and update our Teams status?

Answer: The short answer is yes. Employers using technology to monitor worker availability and productivity is not illegal. In fact, employers expanded their use of digital surveillance during the pandemic, in part because of the increased need for telework. Some employers felt it necessary to track employees' productivity and activity when working from home, including by installing software that uses keystroke logging or webcam monitoring. Even if your employer is not using these more intrusive methods, know that everything you do on Outlook or Teams may be visible to your employer, particularly when using your employer's equipment.

A proposed California law, Assembly Bill 1651 titled "Workplace Technology Accountability Act," attempts to address these privacy concerns. The bill would cover state and local government entities. It would allow employers to continue to collect worker data for an allowable purpose, including allowing workers to accomplish an essential job function or assessing worker performance. But it would require the employer to notify workers before implementing or significantly expanding any electronic monitoring, along with an explanation of why that form of monitoring is necessary.

The bill would also prohibit employers from using facial recognition software, and from using electronic monitoring data when making employment decisions, such as hiring, firing, promotions, and discipline, unless the employer has independent information from its own assessment to corroborate the electronic monitoring data before making the decision.

Even if passed, management could still require you to regularly update or change your Microsoft Teams status. Software has now replaced many tools of the past, like timecards, white boards, and sign in sheets. But contact your employee organization when any new technology, policy, or practice is being implemented. They may have the right to bargain over the negotiable impact and may be able to push management for a more commonsense approach to monitoring workers, one that strikes a better balance toward worker privacy.

Question: According to our MOU, we have a premium which says, "the Supervisor on the day shift who acts in a lead capacity shall receive 7.5% while so assigned." Nowhere in the MOU or in our department or division manual does it designate duties of this "lead capacity" or designate how the lead is chosen. If there are multiple supervisors

assigned to this shift, and the premium is only given to one supervisor with no time limit, can this be grieved?

Answer: A grievance may be appropriate depending on the circumstances. For example, if a supervisor is assigned to lead capacity and is not given the premium pay, that supervisor could file a grievance for the lost premium pay.

The language you cited is ambiguous. It arguably retains management's right to assign the work in the first instance. So, someone who is *not* assigned to lead capacity probably would *not* have a grievance. However, this could be revisited during the next round of contract negotiations. For example, the employee organization could propose a method for how these duties are rotated, such as by seniority or a bidding system, to ensure everyone has a fair opportunity to perform the work and earn the premium pay. Absent a specific limitation, it's probably within the employer's sole discretion to assign.

The language also does not require any of the supervisors on the day shift to be assigned to lead in the first place, much less all of them. So, there is probably no grievance for only one supervisor being assigned, assuming the others are not also told to perform lead capacity work.

You're right that "lead capacity" seems ambiguous. Ordinarily, a lead worker or someone who acts in a lead capacity refers to a person responsible for directing the tasks of an employee or group of employees. Lead worker responsibilities may include assigning tasks, coaching, and responsibility for the outcome of tasks performed by a group of employees. The job description should further describe these lead duties. Typically, only one person is assigned a lead in a workgroup, and this language seems to contemplate that. Therefore, if someone is assigned this responsibility but is not given the additional pay, then yes, this could be grieved.

Question: Management sent out a notice that I must wear a mask while traveling. I don't see this in the COVID policy. Is this mandatory? Is this a change to a policy by telling us we must wear a mask? Can they require this?

Answer: Yes, an employer can require an employee to wear a face covering on work time and at work locations even if not required by CDPH or the Cal OSHA Emergency Temporary Standards. More protective policies can be put in place by an employer, and these requirements can fluctuate based on the level of community transmission of COVID-19. However, if this is a new policy, or a change to an existing policy, the employer may have to notify the employee organization and provide an opportunity to meet and confer prior to implementing the change.

If this is work-related travel, masks can be required. For example, if you are traveling in an agency-provided vehicle, then yes, the mask policy may apply.

Keep in mind that even when not required at work, masks have been required for public health in high-risk settings such as public transit and transportation hubs. Although this is changing, many airports continue to require masks. For instance, face masks are required under Los Angeles County Health Order for everyone more than two years old at the airport, even those who are fully vaccinated. Other counties in California similarly require masks at those airports. If you are concerned about the scope and application of the policy, or whether or how it might have changed, you might consider asking Human Resources or your professional staff for clarification.

Question: At a recent all-hands employee meeting, the City had mentioned that there is a study related to providing electric recharging for cars including here at City Hall. The study will be presented to City Council soon. Apparently, the study will be recommending that employees start paying for EV charging. It's been great having the "go-green" effort and the free EV charging has made a big difference in saving us money, particularly during the surge in gas prices. Can they make employees start paying for this? It seems like a good employee benefit is being snatched away from us. Is there anything we can do about this?

Answer: Yes, the City can begin requiring staff to pay for EV charging at City Hall. Short of convincing the City Council to continue to provide it to staff for free, your options are limited. Your employee organization can try to argue this benefit is a binding past practice. A past practice is an implicit agreement on a term or condition of employment that is not explicitly contained in the MOU.

There are several elements that must be met to establish a binding past practice. The practice – in this case, the ability to charge your car at work for free – must be clear and done consistently in the past. It must not be a special one-time benefit or meant at the time as an exception to a general rule. The City must know about the practice, and have either agreed to it, or allowed it to occur. And finally, the practice must be mutually accepted by both parties and not contrary to language found in the MOU.

The employer can still change the practice even if a binding past practice can be established, but it must provide the employee organization with notice and a reasonable opportunity to meet and confer prior to making the change.

It's not likely that you can establish a past practice here. The City will likely argue

that the prior free EV charging was offered as a special one-time benefit to encourage more people to switch to electric, and not as a permanent term or condition of employment. Also, as more people switch to electric, the City will likely argue that it retained discretion over the scope (*e.g.*, how many spaces) and if and how much to charge for it.

The employee organization can ask that management reduce any policy going forward to writing. This will help provide staff with more leverage if the City wants to make further changes in the future. Hopefully, the cost for charging is still cheaper than gas prices.