

AUGUST 28, 2017

Back to School Bulletin! Special State Leave Laws Can Apply for Parents

BY LISEANNE KELLY

And so the annual tradition unfolds: shopping for new gym shoes, labelling crayon boxes, and posting “first day” pictures on social media. Along with No. 2 pencils disappearing from the supplies closet, employers might also notice an increase in time-off requests from employees for school-related events. With all the excitement this time of year, employers should not forget that they might need to do some homework, too. In fact, certain states have statutes that authorize parents to take time off from work to attend school functions.

Approximately nine jurisdictions, from California to Massachusetts, require employers to grant employees unpaid time off to attend or participate in activities at their child’s school or day-care facility.¹ These laws vary widely. Parents in the Golden State, for example, are entitled to 40 hours of such leave per year, while North Carolinians may take only 4 hours annually. (Another California law requires employers to give workers unlimited time off to tend to school disciplinary matters.²) Meanwhile, Nevada grants up to 4 hours of leave per child, which is available if the child attends public school.

Eligibility for leave also differs by state. The Minnesota school activities leave law applies to employers with one or more employees in the state. The Nevada and Rhode Island laws, on the other hand, cover employers with 50 or more employees. Some states limit eligibility based on an employee’s length of service and/or average hours. For its part, Rhode Island restricts leave benefits to employees with 12 months of continuous service, working at least 30 hours per week. In Illinois, however, employees

¹ Colorado also had a school activities leave law, which expired in 2015. A bill (HB 17-1001) is currently under consideration in the Colorado legislature that would revive the prior statute. Meanwhile, at least three additional states—Louisiana, Oregon, and Tennessee—encourage but do not require employers to provide such leave time.

² See, e.g., Cal. Educ. Code § 48900.1; Cal. Lab. Code § 230.7.

are eligible if they have worked for the employer for at least 6 consecutive months and averaged at least half-time during those months.

School activities laws typically allow employees to attend parent-teacher conferences and events sponsored by the school, such as classroom activities. Some states specifically permit use of the leave time for addressing behavioral problems, finding or enrolling the child in school/daycare, or in the event of a child care provider or school emergency (California), observing student performances (D.C.), monitoring pre-K or special education programs (Minnesota), or volunteering during school hours (Nevada). In some locations, activities leave may be warranted only if the school-related event cannot be scheduled outside school or work hours.

School activities leaves are unpaid. Depending on the state law, employees may be obligated to use accrued vacation or other personal time during school-related absences, as in California³ and Massachusetts. Employees can elect to use paid time off in other jurisdictions, including D.C. and Rhode Island.

Most states with school activities laws permit employers to require notice and/or verification from employees taking leave. In North Carolina, for example, an employer may require an employee to request leave in writing at least 48 hours before it is needed. The employer may also require the employee to submit written verification from the school confirming that the employee attended or was otherwise involved in school programming at that time. In other states, such as Louisiana and Minnesota, certification from the school is not necessary but leave may be taken only with advance notice.

Relatedly, some laws instruct the employee to schedule the leave time so that it does not unduly disturb the employer's operations. And in a handful of jurisdictions, employers may decline leave requests in limited circumstances. In the District of Columbia, an employer may deny a request if granting the leave would disrupt business and make production or service "unusually difficult." The Illinois law is more specific and provides that employers need not grant leave if doing so would result in more than 5% of the workforce taking school leave at the same time.

Finally, employers should be aware that school activities statutes also may prohibit discrimination or retaliation against employees who have sought leave time. Under Nevada law, for example, it is illegal to terminate or threaten to terminate an employee who attends a school conference.

As the new school year begins, employers should familiarize themselves with applicable school activities laws in states where they operate. It is important to remember, too, that school activities leave is distinct from other types of leave that may apply in certain situations—including family and medical leave, leave under paid sick leave statutes, or kin care leave, which could apply to employees caring for sick children.⁴ Employers might want to consider reviewing the various leave requirements with human resources and other relevant personnel, particularly in jurisdictions where state and local laws impose requirements beyond those set by federal law.

³ Although an employer should exercise caution in forcing an employee to use personal time off if such time is also provided for paid sick leave compliance.

⁴ Generally speaking, kin care statutes allow employees to use sick leave—accrued under an employer's policy—to care for someone other than themselves, including their children. These state laws, where enacted, do not require employers to offer paid sick leave but enable employees to use any such paid time off in a caregiving capacity. The newly-enacted Georgia kin care statute, for example, permits eligible employees to use up to 5 days of earned sick leave per year to care for a "child, spouse, grandchild, grandparent, or parent or any dependents as shown in the employee's most recent tax return." Ga. Code Ann. § 34-1-10.