

Expert Analysis

What Calif. Employers Should Know About LA Teacher Strike

By **Ellen Bandel and Ryan Bykerk** January 18, 2019, 11:28 AM EST

The Los Angeles Unified School District, or LAUSD, teachers' strike is entering its fifth day. For now, the nation's second largest school district is using substitute teachers to keep classrooms open on a regular schedule for the hundreds of thousands of elementary, middle and high school students LAUSD serves, though as discussed below, certain programs for younger children have been suspended.



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The strike, which includes not only teachers but also other school staff such as nurses, librarians and counselors, raises serious questions for parents: Should they send their children to thinly staffed schools or keep them home? How long will the strike last? How long can the current arrangement continue? What can they do if they're scheduled to work but have a young child whose early education program is closed, or an older child with medical or special needs? It also raises questions for employers.



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If your business employs anyone with young and school-age children (or even grandchildren), you already may have started fielding questions from parents about time off to find care or supervision for them during the strike. What you may not have realized is that, depending on the size of your business, California's child-related activities leave law may enable some of your employees to take job-protected time off — up to 40 hours per year — to deal with school and child care-related issues.[1]

This article provides a brief overview of the obligations employers may have under this law to provide time off for parents and grandparents of young and school-age children or grandchildren.

Which employers are covered by California's child-related activities leave law?

The law applies to employers with 25 or more employees at the same work location. The

law does not distinguish between full-time, part-time or temporary employees for purposes of employer coverage.

Which employees are covered?

The statute applies to those commonly thought of as parents — natural parents, guardians, stepparents and foster parents — who have children “of the age to attend kindergarten or grades 1 to 12, inclusive, or a licensed child care provider.”

Employers might be surprised to learn that the statute also applies to grandparents or anyone acting in loco parentis (in place of a parent). The statute does not require that the child be living with the employee for the leave rights to apply.

What leave rights are available?

Among other things, the leave law gives qualifying employees protected leave (A) to enroll or re-enroll a child, or simply participate in activities with a school or licensed child care provider (planned absences); and (B) to address a child care provider or school emergency (emergency absences).

Employees are entitled to up to 40 hours per year of leave for any covered purpose.

For planned absences, employees are limited to eight hours in any calendar month, and they must provide “reasonable notice” to the employer. The statute does not define “reasonable notice.” For emergency absences, employees must provide “notice” to the employer. The statute does not define “notice.”

Does the strike trigger leave rights for employees with children in LAUSD?

It might. Qualifying employees might be entitled to time off for planned absences if, for example, they are prompted by the strike to move their children to a new school system or participate in school activities.

Additionally, the strike may entitle qualified employees to time off for emergency absences to the extent it is an “emergency” under the statute. An emergency occurs if an employee’s child cannot remain in school or with a child care provider for one of the following reasons:

- The school or child care provider requests that the child be picked up;
- The school or child care provider has an attendance policy (excluding planned holidays) that either (1) prohibits the child from attending school or child care or (2) requires the child to be picked up from school or child care;
- The child's behavioral or discipline problems;
- There is a closure or unexpected unavailability (excluding planned holidays) of the school or child care provider; or
- There is a natural disaster (such as fire, earthquake or flood).

In sum, if the strike results in a school or child care provider being closed or unexpectedly unavailable, time off for emergency absences may be available.

For some parents, no emergency exists, at least for now. Classes are still in session for elementary, middle and high school students, meaning that for the time being, no emergency absence time is available due to a school closure. Any request for time off under this law during the strike, but while classes are in session, would warrant further discussion with the employee as to the covered purpose for which time off is needed.

However, LAUSD's Early Education Centers, or EECs — which serve children ages 2 to 4 — are currently closed except for special-needs students. Additionally, California State Preschool Program, or CSPP, sites for children ages 3 and 4 are also closed. Employees with children enrolled in these programs are likely entitled to emergency absences, provided they provide notice to their employer.

What if I have too many employees requesting time off at once?

The law does not contain an undue hardship provision, so employers have little discretion to deny time-off requests that are accompanied by notice (for emergency absences) or reasonable notice (for planned absences).

There is, however, a provision that speaks to situations when more than one parent of a child is employed by the same employer at the same work site. In this case, if both parents request time off for the same planned absence, the parent who first gives notice is given priority, and the employer is not required to grant additional time off to the other parent at the same time.

Can I require documentation when an employee takes time off for a child's school or child care activity? What about documentation based on the strike?

In general, employers can require an employee provide documentation from the child's school or licensed child care provider, and can require that it indicate that the employee was engaged in a child-related activity at the particular date and time the activity took place. The law provides no further guidance about the type of documentation, and explicitly leaves it up to the school or licensed child care provider to provide documentation that they consider to be appropriate and reasonable.

In the context of the strike as it is currently affecting LAUSD students, it appears that an employer could request and obtain verification that the employee's child is in fact part of the EEC or CSPP programs that have been closed on the day(s) that the employee requested and took time off, but the statute does not permit anything further, such as verification that the employee was in fact using the time off to care for his/her child due to the closure and unavailability of alternate care arrangements.

Is this time off paid or unpaid?

Employers are under no obligation to pay employees for time off for school and child-related activities (with the caveat that exempt employees may be entitled to continue receiving their salary, depending on the duration of the absence). However, to the extent employees have available vacation, personal leave, paid time off or other compensatory time off, employers generally can mandate that these paid benefits be used during planned absences covered under law.

One exception to mandatory substitution of paid time-off benefits applies to employees who are provided with vacation at the same time each year (e.g., a one-week company-wide shutdown). In that case, an employee would not be entitled to substitute vacation unless the employer chooses to allow it.

What are the penalties for a violation?

An employee who is demoted, suspended, terminated (or threatened with termination) or discriminated against in any other way with respect to the terms and conditions of employment for taking time off to engage in child-related activities is entitled to reinstatement and reimbursement for lost wages and benefits.

Further, if following an administrative or legal proceeding it is determined that an employee eligible for rehire or promotion is not rehired or promoted, the employer will be subject to a civil penalty of three times the employee's lost wages and benefits.

Takeaways

As the strike continues, employers should be aware of the developments and corresponding impact that time-off requests may have on staffing within their workforce, particularly in the event of continued preschool closures and potential K-12 closures, and may wish to consult with counsel to ensure compliance with this and other leave laws.

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[1] Cal. Lab. Code § 230.8.