



SCHOOL & COLLEGE LEGAL SERVICES OF CALIFORNIA

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LEGAL UPDATE

July 18, 2016

To: Superintendents, Member School Districts (K-12)

From: Frank Zotter, Jr. FZ
Senior Associate General Counsel

Subject: Legislative Changes to Employment in Child Day Care Facilities
Memo No. 21-2016

On October 11, 2015 Governor Brown signed Senate Bill 792, which adds Section 1596.7995 to the Health and Safety Code and applies to all child day care facilities that provide non-medical care and supervision of infant to school-age children in a group setting for less than 24 hours a day, such as: infant centers, preschools, extended day care facilities and school age child care centers. The statutory changes will go into effect beginning September 1, 2016.

Current law provides for the licensure and regulation of day care centers. Violation of those regulations constitutes a crime. This statute adds a requirement that all employees and volunteers of these facilities must be immunized against pertussis (also known as “whooping cough”) and measles, and they must receive an influenza vaccine every year between August 1 and December 1. However, unlike other licensing provisions, a violation of the immunization provisions will not constitute a crime.

Exemptions from this requirement are permitted if the person submits a written statement from a licensed physician either (1) declaring that a physical condition or other medical circumstance makes immunization unsafe, or (2) that the person has evidence of current immunity to those diseases. Exemptions to the influenza vaccine exist if the person submits a written declaration that they have declined the influenza vaccination, or if they were hired after December 1 of the previous year and before August 1—which only waives the requirement for the first year of employment or volunteering.

Hiring Teachers for Day Care Centers—TB Clearance

The conditions under which a person may be hired as a teacher in a day care center



have been amended to include evidence of current immunity or exemption from immunity as defined above (i.e., Health and Safety Code § 1596.7995). The employee also must provide evidence of a current tuberculosis clearance, which may be satisfied by a current certificate indicating freedom from infectious tuberculosis either through a mantoux (skin injection), x-ray, or a risk assessment (questionnaire) done by a health care provider (physician, physician assistant, or nurse practitioner) in compliance with Health and Safety Code § 121525. See Legal Update no. 38-2014 (issued December 11, 2014) for more information about the risk assessment and TB testing requirements.

Implications for the District

For districts that operate day care centers, documentation of the required immunization or exemptions from immunization must be kept in the person's personnel record or volunteer file. A volunteer is any nonemployee who provides care and supervision to the center's children.

If an otherwise qualified employee or volunteer requires additional time to obtain and provide immunization records, the district may grant that person a conditional employment or volunteer period for up to 30 days which will begin upon their submittal of a signed written statement attesting that he or she has been immunized as required.

Please contact our office with questions regarding this Legal Update or any other legal matter.

The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.

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