

HR Compliance Law Bulletin

Practical and Effective HR Management Advice

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Spotlight

Employer or babysitter? School closures prompt kids-at-work policies

by Maureen Minehan

In the spring, swine flu fears sparked sudden closures at more than 100 schools in at least eight states, sending parents scrambling for last-minute child care. Some parents stayed home, some found alternative care, and some brought their children with them to work.

Not everyone agreed with the latter choice. "This morning, one of our workers stated she had to work from home since her son's school was closed due to the swine flu, or she could just bring her son up to the office and work. Ummmm—please stay home," wrote one person on a national parenting Internet forum.

Later, the same person posted an update. "She actually brought the child into work ... the school told you to keep your children home this week—not to take them out everywhere—this isn't Spring Break Two. Your child is running around the office disturbing others trying to work."

Return to school ... and the flu

With both the school and the flu seasons about to start, such situations are likely to repeat themselves. By focusing on the issue now, employers can ensure that they have

appropriate policies in place should the need arise to use them.

"We're seeing an increase in employers really starting to think about having policies addressing kids at work. The majority are asking how do we restrict it," Eric Johnson, a partner at Walter & Haverfield LLP in Cleveland, Ohio, says.

Safety concerns

Johnson says that employers should think very carefully about potential safety problems. "One of the biggest issues with children in the workplace is personal injury. Workplaces are generally designed and regulated to be safe for adults. It can be something as simple as a stair rail or a toilet that's not safe for a child. Picture a five-year-old running up and down the stairs using a railing that's too high and then an injury results," he says.

"Workers' comp applies to adults in such cases, but it doesn't extend to their children. You risk the employee turning around and saying you knew everyone was bringing their kids in and you didn't take steps to make it safe," Johnson says.

Discrimination worries

Discrimination concerns are a second potential source of liability.

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“If you allow children on an ad hoc basis at some point you’re going to have someone from a protected demographic that you treat differently, even if it’s unintentional. You need to apply the same policy to all children or risk being accused of discrimination,” Johnson says.

Middle ground is acceptable

Audrey Mross, a partner at Munck Carter PC in Dallas, Texas, says that not every policy has to include an outright ban. “If the environment, including coworkers, are amenable to the occasional child at work, have a policy that explains the limitations which the parent will be responsible for enforcing, such as no roaming, noise, food/drink, off limits areas, and so on,” she says.

The important thing is to have and communicate a policy so that everyone in the workplace has the same expectation. “A policy puts everyone on fair notice,” Mross says.

Provide alternatives or information about them

Employers also can consider providing alternatives for emergency childcare. “At the same time they’re developing policies, some companies are also looking at ways to help employees fill the gap, including flextime, telecommuting, or expanding the use of paid time off,” Johnson says.

“Some employers go to the extent of offering and/or subsidizing childcare for their employees. Some take the middle ground and provide a list of services that can be tapped into. Some take the position that the parent should take the initiative to be prepared for these situations,” Mross says.

The bottom line

“The best course of action is to plan ahead and have a written pol-

icy so there are no surprises. Consider the work environment and whether it’s appropriate and safe for children. If the answer is ‘no’ to either one, the policy should state that children are not allowed in the workplace,” Mross says.

Maureen Minehan is a Washington, D.C.-based freelance business writer specializing in human-resource management.

Retaliation

Employer refuses to let worker rescind resignation; she claims it is because she filed a complaint

Citation: *Addis v. Department of Labor*, 2009 WL 2253462 (7th Cir. 2009)

The Seventh U.S. Circuit has jurisdiction over Illinois, Indiana, and Wisconsin.

In a case alleging that a nuclear power plant violated the Energy Reorganization Act (ERA) by not permitting an employee to rescind her resignation because she had filed safety complaints against the employer, the Seventh U.S. Circuit Court of Appeals has ruled that the administrative law judge’s (ALJ’s) decision to dismiss the employee’s claim should stand.

The facts

Heather Addis resigned from her job as the operations supervisor at the Dresden Nuclear Power Station, which was operated by Exelon Generation Company, after getting into an argument with her supervisor over file entries that she was supposed to keep as part of her job. Addis claimed that requiring her to make regular entries on the employ-

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