

Date of Hearing: April 17, 2024

ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT

Liz Ortega, Chair

AB 3106 (Schiavo) – As Amended April 1, 2024

**SUBJECT:** School employees: COVID-19 cases: protections

**SUMMARY:** Requires a school employer to ensure that COVID-19 cases are excluded from the workplace while continuing to pay an excluded employee their regular earnings until either their symptoms have improved, as specified, or the employer has complied with return-to-work requirements under the California Department of Public Health's (CDPH) revised isolation guidance. Specifically, **this bill**:

- 1) Defines employer to mean a school district, county office of education, or charter school.
- 2) Defines school employee to mean an employee of a school district, county office of education, or charter school employed in a position requiring certification qualifications or employed in a position not requiring certification qualifications.
- 3) Requires an employer to ensure that COVID-19 cases are excluded from the workplace until either of the following return-to-work requirements are met:
  - a) Consistent with the COVID-19 Isolation Guidance updated by the State Department of Public Health on January 9, 2024, for COVID-19 cases with COVID-19 symptoms, both of the following have occurred:
    - i) At least 24 hours have passed since a fever of 100.4 degrees Fahrenheit or higher has resolved without the use of fever-reducing medications.
    - ii) COVID-19 symptoms are mild and have improved.
  - b) If the State Department of Public Health revises its COVID-19 Isolation Guidance after January 9, 2024, the return-to-work requirements in the revised guidance have occurred.
- 4) Requires, for a school employee excluded from the workplace under 3) above, an employer to continue and maintain the employee's earnings, wages, seniority, and all other employee rights and benefits, including the employee's right to their former job status, as if the employee had not been excluded from the workplace. Both of the following apply to wages due under this paragraph:
  - a) Wages may be limited to the period in which the employee is excluded from the workplace pursuant to 3) above.
  - b) Wages are subject to existing wage payment obligations and shall be paid at the employee's regular rate of pay no later than the regular payday for any pay period in which the employee is excluded. Unpaid wages owed to an employee under this paragraph are subject to enforcement through procedures available in existing law. If an

employer determines that one of the exceptions in 5) or 6) below applies, the employer shall inform the employee of the denial and the applicable exception.

- 5) States that the wage obligations in 4) above do not apply where the employee received disability payments or was covered by workers' compensation and received temporary disability.
- 6) States that 4) above does not limit any other applicable law, employer policy, or collective bargaining agreement that provides for greater protection.
- 7) Requires, by February 3, 2025, the Occupational Safety and Health Standards Board (board) to adopt a standard that extends the protections of 3) above to any occupational infectious disease covered by any permanent infectious disease standard adopted to succeed "COVID-19 Prevention," Section 3205 of Title 8 of the California Code of Regulations, for school employees.
- 8) Requires the Division of Occupational Safety and Health (Cal/OSHA) to enforce this part by the issuance of a citation alleging a violation of this part and a notice of civil penalty in a manner consistent with existing citation procedures. Any person who receives a citation and penalty may appeal the citation and penalty to the appeals board in a manner consistent with existing appeal procedures.

#### **EXISTING STATE LAW:**

- 1) Establishes Cal/OSHA within the Department of Industrial Relations (DIR) to, among other things, propose, administer, and enforce occupational safety and health standards. Labor Code §6300 et seq.
- 2) Requires, under the California Occupational Safety and Health Act, an employer to:
  - a) Furnish employment and a place of employment that is safe and healthful for its employees.
  - b) Furnish and use safety devices and safeguards, and to adopt and use practices, means, methods, operations, and processes, which are reasonably adequate to render employment and the place of employment safe and healthful.
  - c) Do everything reasonably necessary to protect the life, safety, and health of employees. Lab. Code, § 6300 et seq.
- 3) Establishes the board within DIR, to promote, adopt, and maintain reasonable and enforceable standards that will ensure a safe and healthful workplace for workers. Labor Code, § 140 et seq.

#### **State Regulations**

- 1) Requires employers to immediately exclude from the workplace all COVID-19 cases and employees, as specified. The employer shall demonstrate it has met, among other things, the following requirements:

- a) COVID-19 cases who do not develop COVID-19 symptoms shall not return to work during the infectious period.
- b) COVID-19 cases who develop COVID-19 symptoms shall not return to work during the shorter of the following: the infectious period; or through 10 days after the onset of symptoms and at least 24 hours have passed since a fever of 100.4 degrees Fahrenheit or higher has resolved without the use of fever-reducing medication. CCR Title 8 Section 3205(c)(5)(A).

**FISCAL EFFECT:** Unknown

**COMMENTS:** On January 9, 2024, the California Department of Public Health updated its COVID-19 Isolation Guidance for those who test positive for the virus. In general, the guidance instructs those who have tested positive to stay home if they have symptoms until they have not had a fever for 24 hours without using fever reducing medication and other COVID-19 symptoms are mild and improving. Another key recommendation is to avoid contact with higher-risk individuals, such as the elderly or the immunocompromised, for ten days.

A number of studies have found a relatively strong link between school aged children and the transmission of COVID-19. One national transmission study that surveyed over 862,000 individuals found that children play a significant role in the spread of COVID-19 within households, heightened when school was in session.<sup>1</sup> In addition, outbreak data reported to local health departments in California from January 1, 2021 to May 1, 2023, found that elementary and secondary schools were the most common outbreak setting, even higher than residential or skilled nursing facilities.<sup>2</sup> School outbreaks during that time-frame constituted approximately 29 percent of all reported outbreaks.<sup>3</sup>

According to the author, “This legislation requires school employers to continue to offer exclusionary pay for those employees that have active symptoms of COVID.” In addition, “Underserved communities are the most vulnerable population when it comes to infectious diseases, in particular when kids bring home viruses and other infections home to their families. These families could be on limited incomes and health care resulting in detrimental effects on the family’s stability.”

**Arguments in Support**

The California Federation of Teachers, sponsor of the bill, states, “AB 3106 will guarantee that COVID-positive education workers required by law to stay home will be paid for that time. Given that the law requires them to stay home in such cases, the law should also guarantee that they’ll be fairly compensated for missing work, especially given the high likelihood that their COVID infection was contracted at work.

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<sup>1</sup> Yi-Ju Tseng, Karen L. Olson, Danielle Bloch, et al. “Smart Thermometer-based Participatory Surveillance to Discern the Role of Children in Household Viral Transmission During the COVID-19 Pandemic,” JAMA Open Network, June 1, 2023, p. 1.

<sup>2</sup> COVID-19 Outbreak Data, dated May 5, 2023, CDPH website. “Outbreak” for purposes of this data collection was defined as three or more cases of COVID-19 in a workplace within 14 days.

<sup>3</sup> *Ibid.*

Without this reform, COVID-positive workers will either lose earned sick leave—or pay, if no leave remains—and be forced to either risk their own financial or physical health, to say nothing of the risk to their students. Additionally, nothing protects these workers from retaliation or termination for taking this time off, should a dispute arise between the employer and the worker over when the forced isolation period has ended. This impossible choice forces many to downplay their symptoms, choose to not test, or simply work while sick to avoid financial harm. The outcomes of putting workers in this situation will be catastrophic for our education workers and our students.

Finally, policy similar to AB 3106 existed for years under the Cal/OSHA COVID standard as well as when Supplemental Paid Sick Leave was in effect; no evidence exists that these policies unduly harmed the economy while in effect. Rather, the reforms proposed will reintroduce science-based policy to this difficult issue and significantly reduce the risk of serious—if not fatal—infectious disease-related outcomes for students, education workers, and the public.”

### **Arguments in Opposition**

The County Health Executives Association of California and the Health Officers Association of California are opposed unless amended, and state, “While we acknowledge the importance of preventing the spread of infectious disease in the workplace and school settings, particularly in the context of the COVID-19 pandemic, we believe setting worker exclusion criteria in statute is not the most effective approach to achieving this goal. Setting worker exclusion criteria in statute overlooks the rapidly evolving nature of infectious disease management and the need for flexibility in response to emerging evidence and public health guidance. By enshrining specific exclusionary measures in law, we risk perpetuating outdated or ineffective strategies that may not align with the latest scientific understanding or best practices in infectious disease control.

Health officers and health department directors are committed to preventing the transmission of infectious diseases, including COVID-19. Although excluding infectious workers is a key part of preventing the spread of disease, specific exclusion criteria should not be set in statute, especially for a virus as rapidly evolving as SARS-CoV-2. These criteria should remain flexible and responsive to changing circumstances, and we believe the approach outlined in AB 3106 may inadvertently jeopardize the health and safety of school employees by potentially subjecting them to outdated guidance. If the bill mandates that school employers adhere to certain COVID-19 workplace exclusion criteria, we urge that it defer to CDPH guidance without codifying the specific criteria in statute.”

### **Prior Legislation**

AB 152 (Committee on Budget) Chapter 736, Statutes of 2022 extended the COVID-19 Supplemental Paid Sick Leave provisions to December 31, 2022.

SB 1114 (Committee on Budget and Fiscal Review) Chapter 4, Statutes of 2022 extended the COVID-19 Supplemental Paid Sick Leave provisions until September 30, 2022.

SB 95 (Skinner) Chapter 13, Statutes of 2021 reestablished and extended the COVID-19 Supplemental Paid Sick Leave provisions to September 30, 2021.

AB 1867 (Committee on Budget) Chapter 45, Statutes of 2020 established the COVID-19 Supplemental Paid Sick Leave and COVID-19 Food Sector Supplemental Paid Sick Leave, to, until December 31, 2020, provide 80 hours of supplemental paid sick leave, as specified.

**REGISTERED SUPPORT / OPPOSITION:****Support**

California Federation of Teachers (Sponsor)  
California Commission on The Status of Women and Girls  
California School Employees Association  
California Teachers Association

**Oppose Unless Amended**

County Health Executives Association of California  
Health Officers Association of California

**Analysis Prepared by:** Megan Lane / L. & E. /