

Date of Hearing: May 8, 2024

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Buffy Wicks, Chair

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

Policy Committee: Labor and Employment

Vote: 6 - 0

Urgency: No

State Mandated Local Program: Yes

Reimbursable: Yes

**SUMMARY:**

This bill requires a school employer to exclude an employee with a positive COVID-19 test from the workplace until certain return-to-work requirements are met.

Specifically, this bill:

- 1) Requires a school district, county office of education, or charter school to ensure a school employee testing positive for COVID-19 is excluded from the workplace until the employee meets the return-to-work requirements in the Department of Public Health's (CDPH's) COVID-19 Isolation Guidance.
- 2) Requires an employer to continue an excluded employee's earnings, wages, seniority, and all other rights and benefits, as if the employee was not excluded.
- 3) Requires, by February 3, 2025, the Occupational Safety and Health Standards Board (OSHSB) to adopt a standard for school employees that extends these protections to any occupational infectious disease covered by a permanent infectious disease standard adopted by OSHSB to replace the current regulation regarding COVID-19 prevention.
- 4) Requires the Division of Occupational Safety and Health (Cal/OSHA) to enforce a violation of these provisions by issuing a citation and notice of civil penalty.

**FISCAL EFFECT:**

- 1) Costs of an unknown amount, likely in the low hundreds of thousands of dollars, to OSHSB to adopt the specified standard for school employees, as well as costs of an unknown, but potentially significant, amount to Cal/OSHA to enforce the exclusion protection for school employees (Occupational Safety and Health Fund).
- 2) By requiring public school employers to establish an exclusion policy for an employee with COVID-19, this bill likely imposes a state-mandated local program with unknown, but potentially significant, costs to the state. To the extent the Commission on State Mandates determines the provisions of this bill create a new program or impose a higher level of service on local education agencies (LEAs), an LEA could claim General Fund (GF) reimbursement of those costs.

Additionally, likely ongoing Proposition 98 GF costs of an unknown, but definitely significant, amount to LEAs to provide continued pay or additional benefits (by not requiring

the use of existing leave) to an excluded employee, with the magnitude of such costs depending on the number of sick employees and the duration such employees cannot return to work. LEAs would also incur additional costs for substitute personnel or overtime pay for existing personnel to cover residual workload.

According to the Legislative Analyst's Office, the GF faces a structural deficit in the tens of billions of dollars over the next several fiscal years.

#### COMMENTS:

- 1) **Purpose.** According to the author, "This legislation requires school employers to continue to offer exclusionary pay for those employees that have active symptoms of COVID."
- 2) **Support and Opposition.** This bill is sponsored by the California Federation of Teachers, which argues, "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."

This bill is opposed by a coalition of school administrator organizations led by the Association of California School Administrators, arguing, "We support providing a work environment that protects the health of school employees and students but AB 3106 would unfortunately impose new burdens on Proposition 98 resources, codify out of date practices, and create a new category of unlimited paid sick leave for a single virus." This bill is also opposed by public health officer associations.

- 3) **Background.**

**COVID-19 Supplemental Sick Leave.** Prior to 2023, various iterations of state law generally provided an employee with an additional 40 hours of paid sick leave if the employee tested positive or had to care for a family member with COVID-19. However, since January 1, 2023, state law does not provide an employee with COVID-19 sick leave beyond general leave benefits required under other applicable laws, such as the five paid sick days allowed under the Healthy Workplaces, Healthy Families Act.

**CDPH's COVID-19 Isolation Guidance.** On January 9, 2024, CDPH updated its COVID-19 Isolation Guidance for individuals who test positive for the virus. Generally, the guidance instructs individuals who have tested positive to stay home if they have symptoms, until both of the following occur: (a) 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 and (b) symptoms are mild and have improved. This bill requires a school employer to exclude an employee who has tested positive for COVID-19 from the workplace, until the employee may return to work pursuant to current CDPH guidance, and requires the employee to continue to receive pay and benefits during such time period, effectively recreating a version of COVID-19 supplemental sick leave specifically for school employees. This bill also requires OSHSB to adopt a standard extending this de facto sick leave policy for school employees to apply to other infectious diseases.