



**WORKERS' COMPENSATION
COVERAGE FOR STUDENTS**

Questions have arisen regarding obligations owed to students while participating in Member-sponsored internships, occupational programs, and similar types of work experience programs (“WEPs”). School Districts and County Offices of Education throughout California have been inconsistent in their approach to these programs, including varying statements of position regarding the existence/non-existence of workers’ compensation coverage and/or the ability to require students to execute waivers and releases of potential rights under the governing Labor/Education Code provisions. The following considerations should therefore be considered when creating, evaluating or managing opportunities for students to further develop their occupational skills or enhance their curricular learning through practical WEPs.

I. The Statutes

Labor Code Section 3368 and Education Code Section 51769 are nearly identical. As relevant to the issues addressed in this Alert, Section 51769 (which is bit broader in scope) states:

[T]he school district, county superintendent of schools, or any school administered by the State Department of Education, **under whose supervision work experience education, cooperative vocational education, or community classrooms, as defined by regulations** adopted by the Superintendent of Public Instruction, **or a job shadowing experience**, as defined in subdivision (b), or student apprenticeship programs registered by the Division of Apprenticeship Standards of the Department of Industrial Relations for registered student apprentices, are provided, **shall be considered the employer** under Division 4 (commencing with Section 3200) of the Labor Code of persons receiving this training **unless the persons during the training are being paid a cash wage or salary by a private employer**, except in the case of registered student apprentices, when the school district, county superintendent of schools, or any school administered by the State Department of Education elects to provide workers' compensation insurance, or **unless the person or firm under whom the persons are receiving work experience or occupational training elects to provide workers' compensation insurance**. ...

II. Confirmed Workers' Compensation Situations

In seeking to evaluate the scope of duties under these statutes, former CDE Work Experience Education Administrator David Guido stated a view that, due to interpretative regulations issued by the Department of Education, only specific types of **off-campus** work experience/vocational education programs fall within the workers’ compensation provisions of Sections 3368 and 51769, with on-campus training (educational or otherwise) not falling within the statutes. In keeping with that view, and our own analysis, the following **off-campus** programs are intended and expected to be covered by workers’ compensation:

1. **Work Experience Education**, defined as a “statewide program designed to provide students with **workplace learning positions**” that are not tied to a particular career or course of study involving either a class credit/salary or class credit/no-salary situation. Workers’ compensation benefits are provided by the sponsoring Member unless the offsite private employer pays the student a wage or voluntarily agrees to extend its workers’ compensation coverage to the student. If the private business owner’s policy extends coverage to “volunteers,” that policy may provide the **primary** coverage.

2. **Cooperative Vocational Education**, defined as “concurrent, formal, vocational classroom instruction” with “regularly scheduled and paid on-the-job work experience.” Under this definition, the off-site employer will be obligated to cover any injuries occurring at the workplace during the time for which the student is providing services for pay. The Member’s coverage is effectively implicated only for injuries at off-campus classroom instructional programs (if any).¹
3. **Community Classroom**, defined as unpaid on-the-job experience at a business, industrial or public agency off-campus site intended develop competencies in a specific field necessary for entry-level employment. Community classroom exposures are covered by the Members’ W/C program because, by definition, no wage or salary is involved. However, the program definition (experience at a business for the purpose of learning specific entry-level employment skills) may take job experience programs out of this category if the skillsets provided are either greater than an “entry level position,” or insufficient to qualify for an entry-level position.
4. **Job Shadowing Experience**, defined as workplace visits for the purpose of career exploration of no less than three (3) hours and no more than 25 hours in one semester. These programs are covered by the Member’s W/C program due to the limited-term hourly commitment permitted for the program and the absence of pay. Few “job shadowing” programs may be covered, however, because time commitments often fall below or above these time restrictions.
5. **Registered Student Apprenticeship Program**, defined as registered apprentice programs falling within Labor Code Sections 3070 – 3097. Participants in these programs are covered under the Member’s W/C program, for both in-class and on-the-job injuries, unless: (a) the apprentice is being paid a wage or salary by a private employer, or (b) with respect to in-classroom exposures, the private employer also requires the apprentice to attend and participate in such classes. If either circumstance exists, the W/C duty is borne by the private employer.

For these types of WEPS, because they often require higher levels of review and approval (i.e., Board or Superintendent approval), a specific program participation form can be created that incorporates the provisions of the Student Participation Agreement, coupled with a clear outline of the objective work experience goals, standards, and expectations, along with a statement that workers’ compensation benefits exist (when actively participating in the program, as opposed to going/coming from the program, etc.).

III. **Other Situations**

Section 51769 is part of a broader series of statutes (*Sections 51760*, et seq.) regarding “work experience education,” including ROP classes (*Section 51760.5*) and part-time jobs (*Section 51764*). In addition, other categories of approved types of WEPs include:

- **Career Technical Work Experience** (reinforcement/extension of vocational learning through a combination of related classroom instruction and supervised, paid employment in the occupation for which student’s vocational course in school prepares them).
- **General Work Experience Education** (an instructional course to learn basic reading, writing and computational skills, coupled with a combination of a supervised paid employment in any occupational field and related classroom instruction).
- **Exploratory Work Experience Education** (nonpaid observation of a variety of working conditions to ascertain an interest and suitability for one or more occupations)

These WEPs (which are categorized and treated separately by CDE from the programs defined above) would not appear subject to Section 51769 and the requirement to provide workers’ compensation to students. These programs, which are more common with Members and students, would then be fully subject to waivers and release language found the standard Student Participation Form.

¹ This result appears inconsistent because the business sponsor is required to pay a wage (transferring the W/C exposure to it), leaving only “classroom” coverage for W/C purposes. Yet, assuming an injury can occur at an off-site classroom facility that would appear to be a location for which such benefits would/could be owed.

Contrary to this view, there are authorities – that have not conducted the type of analysis set forth above - suggesting that as long as the program involves “dangerous equipment” at any location, workers’ compensation coverage should be provided. In *Grant v. WCAB*, 62 Cal.Comp.Cases 1454 (1997), it was held that a student injured during an in-classroom instructional air frame mechanic class provided at LAUSD’s North Valley Occupational Center should be entitled to workers’ compensation benefits; the determination was based on the concept that if a student was around “dangerous equipment,” even in a “classroom setting,” workers’ compensation benefits should be owed. Later, in *LAUSD v. Grant*, 2005 WL 5747464 (C.D.Cal., 2005), the Court barred Mr. Grant from pursuing his civil liability claim against the District based on the workers’ compensation exclusive remedy doctrine, noting: “Section 3368 states that a school district is deemed the employer for state worker compensation purposes of those students enrolled in vocational education programs who are not sponsored or employed by a private employer.” The Department of Industrial Relations later issued an Administrative Agency Interpretive Opinion (Jan. 14, 2002) confirming “As stated in *Grant v. WCAB (1997) 62 Cal.Comp.Cases 1454*, the legislative intent in adopting Labor Code § 3368 was to provide compensation for students working with dangerous equipment in occupational training *when not on the payroll of another party*” [emphasis in original]

The limited arguments made/not made in these authorities, and the assumptions leading to those conclusions, were in keeping with CDE guidance or the actual language of the statute. There was no attempt to review the categorical definitions cited above, let alone situational considerations that could/should have led to contrary conclusions. Nevertheless, if a student is injured at an off-site or non-standard classroom, as a result of the use of dangerous machinery, there is a potential for workers’ compensation rules to apply. Thus, while standard release forms should be used, the matter should still be reported through the workers’ compensation reporting system, after which the existence/nonexistence of coverage will be decided.

IV. Conclusion

Given these circumstances, Members should seek to ensure that each of their WEPs, which should not be treated in a singular or unified manner given their different regulatory standards and legal requirements, should:

1. Provide for each WEP its own review and approval process, separate participation and program identification form (identifying how the program will operate within the constraints of the governing laws and regulations, the duties of the Members, the Student, the Parent, and the external party(ies)), the necessary approvals for the WEP (categorical and/or individualized student – i.e., Board/Superintendent for curricular or programmatic matters, site supervisor or program supervisor for individualized student programs, etc.).
2. Ensure that external participants review and provide confirmation and copies of their own liability and workers’ compensation coverages, with the student’s or program’s supervisor ensuring that the external party (a) has such coverage in place, (b) does not have an employee with whom the student will come into contact who has historic criminal convictions disqualifying the interaction, and (c) has a reasonably safe work environment based on at least a limited, but good faith, review of the facility and managing parties (such that the supervising certificated employee can state with some degree of personal knowledge that there are/were no site safety concerns).
3. Ensure that Participation and (if needed) self-transportation forms are signed by the Student and Parent, along with the individual Program participation forms (which should include the external participant as a signator regarding FEPA/Privacy, safe workplace, training/skill building agreements, etc.).
4. Ensure that in the case of personal injury (actual or potential) that the matter is reported back to the Member through the supervising certificated employee, with contact promptly made with parents. When in doubt as to whether an Incident Report (even for off-campus events) or a Workers’ Compensation Claim notice should be issued, err on the side of over reporting and documentation.