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Guest Commentary

Terry Kaufman: When you're called back to work, but the kids are still home

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Good news: Businesses are reopening and employees are returning to work. But with schools and daycare centers still closed, who will watch the kids?

Across the country, workers find themselves between a rock and a hard place. Do they go back to work, leaving children home unsupervised? Do they stay home, risking their jobs or their unemployment benefits? What should working parents do

without childcare?

Workers who can do their jobs from home should be able to continue doing that. Merely because the office is open doesn't mean employees are required to be there.

But what about jobs that can't be done from home? That's a more difficult call, Zambrano says. "If possible, the employer should try to make accommodations -- such as allowing the employee to work a later shift at a time someone is home to watch the children."

Workers who can't be accommodated should be kept on payroll, Zambrano says. "It could be considered wrongful termination to fire a worker who can't return because of childcare issues. California law says that an employer isn't allowed to terminate workers in violation of public policy, and public policy should call for the workforce to be maintained in this difficult time."

Laws enacted by Congress in response to the pandemic provide some compensation for workers without alternative childcare, says high-profile employment attorney Genie Harrison. "The Family Medical Leave Expansion Act protects you if you can't work or telework because you need to care for a child whose school or daycare has been closed or whose care provider is unavailable because of the virus."

Employees are entitled to 12 weeks of paid leave, the first 10 days of which may be unpaid. After that, employees on leave are entitled to at least two-thirds of their regular pay based on the number of hours they would otherwise work. After the leave ends, the employer must restore an employee to his or her prior position.

The expansion act, however, isn't available to employees who work for companies that employ more than 500 workers. For workplaces with fewer than 25 employees, an employer is not required to rehire a worker if his or her previous position no longer exists because of the pandemic, as long as the company makes reasonable efforts to restore the worker to an equivalent position.

What if a worker returns to work and leaves a child home? "California makes it a crime to willfully expose a child to the likelihood of physical harm, or to knowingly place a child in an unsafe situation," advises criminal defense attorney Lara Yeretsian.

"It would be hard to argue that the parent of a young child didn't know harm might occur if that child was left alone," she adds. "It becomes trickier if an older sibling is at home. How old must the sibling be? Is it reasonable to rely on an older child to watch a younger child?"

California law doesn't specify what age a child is considered old enough to be home alone or caring for other children. The National SAFEKIDS Campaign opposes leaving children under 12 home alone. And while a 12 year old may be mature

enough to care for younger children for a few hours, requiring a pre-teen or even younger teenager to take on childcare responsibility for eight-to-10 hours a day, five days a week, is probably asking too much.

“It’s really a Catch-22,” says Yeretsian. “Lawmakers need to provide protections so that parents aren’t forced to make an untenable choice.”

Zambrano wants legislators to fix this problem by expanding unemployment insurance as they did during the Great Recession -- when the state extended benefits for up to a year.

“This class of workers can’t return to work because of circumstances beyond their control,” Zambrano says. “Their failure to return isn’t insubordination; it’s a matter of public safety. No employer should want workers with young children home unsupervised.”

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