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AN EMPLOYER'S GUIDE TO EVALUATING RISK EXPOSURES WHEN OFFERING CHILD CARE SERVICES

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With various states and counties around the U.S. restricting in-person learning this fall, many parents face difficult decisions on balancing working and child care obligations during COVID-19. Employers, eager to retain their employees and maintain productivity, are being pushed to explore child care solutions for their workforce. However, the potential liability associated with offering these services to their employees can be significant. Employers must weigh these potential liabilities with the benefits gained by its workforce. Below is an overview of the risks and potential insurance ramifications to consider when evaluating the options of an employer administered child care program, contracting with a third party child care program, and allowing employees to bring their children to the worksite.

EMPLOYER-RUN CHILD CARE

+ Benefits

One of the main advantages of a self-administered child care program is that the employer has complete control of management/administrative decisions. This may include decisions around adjusting staffing ratios depending on employees' child care needs, the site or location of services, and the services offered. Having available child care services may also favor the employer as a valuable recruitment and retention tool.

⚠ Risks

Employer-run child care can be costly, difficult to administer, and a potential hotbed for liability.

- **Scope of Insurance.** The employer will be responsible for purchasing necessary insurance coverage, especially abuse and molestation coverage. This type of exposure may not be automatically covered under the organization's current general liability policy and may require the employer to purchase separate child care coverage.
- **Increased occupational injuries to caregivers.** Employers may see an increase in workers' compensation injuries - both physical and emotional - among day care staff.
- **Transportation.** Suppose the day care site is located offsite and transportation is offered to and from the office, or children will be taken offsite. In that case, the employer may need to obtain specific auto coverage.
- **Licensing and certification requirements.** Each state has strict licensing protocols to ensure children are in a safe, healthy, and nurturing environment. There may also be restrictions and differing

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requirements based on the age range of children receiving services, capacity limits, and how child care is defined.

- **Hiring and screenings of day care staff.** The employer will be responsible for recruiting qualified day care staff that possesses appropriate child care development knowledge and experience, background checks, and immunizations.



- **Staff training and competence.** Each state may specify official credentials or certifications required, i.e., specialized first aid and CPR training or a child development associate credential (CDA).
- **Premises conditions and center design.** The employer will be responsible for designing a care center that provides a safe environment indoors and outdoors. Including a fire safety and disaster plan.
- **Safety and security.** The employer will be responsible for monitoring, limiting, and tracking access to the day care center. I.e., visitors and parent pick up/drop off.

- **Confidentiality and release of information.** The employer will be responsible for developing policies and procedures to maintain privacy of the enrolled children's health records and restrict access to those records.
- **Infection control.** The employer will be responsible for establishing and continually updating appropriate infection control and bloodborne pathogen policies. CDC guidelines and local public health protocols should be followed to prevent the spread of bacteria and serious illness. I.e., proper disinfection of toys, toileting, sleeping area, handwashing, food safety, and especially COVID-19 guidelines.
- **Hazard protection.** The employer must take steps to minimize injuries from the playground, equipment/toys, and intentional injuries such as biting and hitting. Employers will also be responsible for developing injury reporting protocols for notifying parents/guardians and incidents that meet state reporting obligations.
- **Medication management.** The employer will be responsible for securing and maintaining appropriate emergency medications and written permission from parents to administer any child's medication.
- **Mats and sleeping equipment.** The employer must provide approved sleeping equipment that can be cleaned and sanitized.
- **Equipment checks.** The employer must maintain vigilance around recalled products such as playground equipment, cribs, bedding, changing tables, safety gates, etc.

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THIRD-PARTY RUN CHILD CARE

+ Benefits

Some employers are examining the option of renting space near their offices and hiring a day care company to run the facility. In this case, responsibility shifts from the employer to the contracted day care company to comply with regulatory guidelines, obtain licensing, hiring and firing, insurance requirements, and all management concerns. Having this service as an option for employees may favor the employer as a valuable recruitment and retention tool.

! Risks

Less control of the “business” but could still be tied to the third party’s decisions.

- **Implicit approval.** The relationship with the third party company could be construed or seen as “endorsing” the child care facility.
- **Increased liability.** Depending on contract language, the employer could still be held vicariously liable for any incidents that occur to an employee’s child.
- **Lack of control.** The employer may have less control of costs and staffing associated with the child care program.
- **Negligent hiring.** Claims could be brought by parents/guardians against the employer for negligent hiring, such as failure to vet the day care thoroughly.
- **Reduced containment of infection.** If the day care company serves other employers, employee’s children could spread infection amongst each other and the parents. Thus, disrupting the employer’s workforce and productivity.

ALLOWING EMPLOYEES TO BRING THEIR CHILDREN TO THE WORKSITE

+ Benefits

This is the least formal option, where the employer allows employees to bring their children to the worksite on a daily or regular basis. This option provides cost savings for the employer and employee, more flexibility for the employees, fewer absences, and potentially less turnover among new parents. Having this service as an option for employees may increase morale and act as a valuable recruitment and retention tool for the employer.

! Risks

Allowing children in the workplace increases liability, insurance ramifications, and disruptions to the workforce.

- **Not a child care facility.** Workplaces are set up to facilitate the employer’s business. They aren’t child care facilities and don’t have the protections of such. Everyday items around the office could lead to injuries, i.e., office equipment, bathrooms, breakrooms, gyms, stairwells, elevators, etc.
- **Open access and supervision.** A workplace will not have the same access controls and oversight (child-to-adult ratios, skilled caregivers, heightened background checks) as a child care facility.
- **Dedicated space.** Dedicating a specific area for children at the worksite may meet the criteria for designating it a child care center, thus requiring particular licensing and regulation.
- **Infection control practices.** One sick child could expose to the entire worksite, especially during COVID-19.

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- **Waivers.** Having employees sign a hold-harmless agreement or waiver of liability may not fully protect the employer from future injury claims.
- **Scope of Insurance.** The employer's current liability insurance carrier may view this increased exposure as unacceptable and restrict or cancel coverage. In addition, if the employer's current insurance carrier does allow for such exposures, the associated increase in exposures, and any resulting losses, will impact future premiums for years to come.
- **Cyber security.** The employer may need to increase network security or restrict Wi-Fi browsing to accommodate children.
- **Distraction.** On-site children can be a distraction to the parents and other workers, even breeding frustration amongst some employees.
- **Structure and Rules.** Employers who consider this option will still need to develop specific policies and procedures that provide structure around the

program. For example, expectations for parents/guardians, treatment of violations, ages of children that will be allowed in the office, whether it is a regular benefit or limited to emergencies, management of food and toileting, immunization requirements, company vehicle use, etc.

Before implementing any child care service, the organization must first understand their employees' current needs. Needs assessments can be conducted in many forms, such as surveys or interviews, and should aim to better understand the employees' families' existing situations and arrangements. Once those needs have been identified, employers will be better positioned to analyze the risks, benefits, and costs associated with each child care service type.

For more information on the risks and impacts to insurance coverage associated with these child care options, please reach out to an experienced broker. For consultation on licensure and additional legal issues, please contact an employment attorney.

References and Resources

1. Consumer Product Safety Commission (CPSC) hazards that should be addressed by owners and operators of child care programs: www.researchconnections.org/childcare/resources/1389/pdf, www.cpsc.gov/
2. CDC Guidance for Child Care Programs that Remain Open During COVID-19: www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/guidance-for-childcare.html
3. Washington State Department of Children, Youth & Families, Becoming a Licensed Child Care & Early Learning Provider: www.dcyf.wa.gov/services/early-learning-providers/licensed-provider
4. Oregon Department of Human Services, Information for Child Care Providers: www.oregon.gov/DHS/assistance/CHILD-CARE/Pages/providers.aspx#, <https://sharedsystems.dhsoha.state.or.us/DHSForms/Served/de7494d.pdf>
5. Alaska Department of Health and Social Services, Licensed Child Care Providers: <http://dhss.alaska.gov/dpa/Pages/ccare/licensed-providers.aspx>
6. School Decision-Making Tool for Parents, Caregivers, and Guardians: www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/decision-tool.html
7. American Academy of Pediatrics, Quality Checklist for Choosing Child Care: www.aap.org/en-us/advocacy-and-policy/aap-health-initiatives/healthy-child-care/Pages/Choosing-Child-Care.aspx
8. Parenting in the Workplace Institute based in Salt Lake City, offers employers resources and research on bringing kids to work: www.babiesatwork.org
9. Maven's COVID Child Care Decision Tool is an interactive framework that helps parents weigh the risks of sending their children out of the home to school or day care versus keeping them home for virtual learning: www.mavenclinic.com
10. Washington State Child Care Resources for employees and employers: childcare.org