



MEMBER ALERT: **WORKERS' COMPENSATION COVERAGE FOR STUDENTS**

This Member Alert provides guidance as to when Member workers' compensation benefits (provided by NBSIA) may be available for student injuries. Discussion herein is based on guidance provided by the CDE's Work Experience Education Guide ("WEE Guide"); the governing provisions of the Education, Labor, and Administrative Codes; and Member questions regarding obligations to provide students with workers' compensation coverage when they are participating in Member-sponsored work experience programs ("WEPs"). While Members and NBSIA both seek to support these important programs, there are critical legal and risk management standards that must be applied to protect students and Member interests.

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 a 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. Relevant Work Experience Situations

As noted in the WEE Guide and related materials, WEPs often require direct review and approval (i.e., Board, CDE approval)¹, as well as onsite supervision or safety reviews by supervising staff members. These obligations are particularly important to risk considerations. Offsite activities, supervised by non-employees, raise significant concerns including:

- Industrial safety (machine safety)
- Personal safety (molestation/assaults), and
- Emotional harm (harassment or discrimination).

Specific program participation forms and WEE Guide-required onsite reviews and inspections must be carefully completed and signed by all concerned parties, to help avoid injuries and other risk exposures.

Also, in keeping with the guidance provided by the WEE Guide and the interpretative CDE regulations, only specific types of **off-campus** work experience/vocational education programs trigger students' rights to workers' compensation coverage under Sections 3368/51769, and then only once Members actually investigate and ensure the safety and propriety of the programs. They include:

¹ A Secondary District WEE Plan must be approved by the school board, and filed and approved by CDE.



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. There are three types of Work Experience Education Programs:

- a. **Career Technical Work Experience**, which involves the reinforcement/extension of classroom vocational learning with supervised **paid employment** in the occupation for which the students’ vocational course in school prepares them.
- b. **General Work Experience Education**, which involves instructional basic reading, writing, and computational skills, coupled with supervised **paid employment** in any occupational field and related classroom instruction.

Note for both a. and b.: To the extent the student is being paid for his/her services, the off-site employer is obligated to cover under its workers’ compensation coverage any injuries occurring at the workplace. NBSIA has not authorized its Members to waive this requirement.

- c. **Exploratory Work Experience Education**, which involves **unpaid** observation of a variety of working conditions, by students at least 12 years of age, to ascertain an interest and suitability for one or more occupations.

Note for c.: Members are responsible for providing workers’ compensation benefits.

2. **Cooperative Vocational Education**, defined as “formal, vocational classroom instruction” that is operated concurrently 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 implicated for injuries at off-campus classroom instructional programs (if any).² 5 CCR § 10100(a), Ed. Code § 52372.1(b)

3. **Community Classroom**, defined as unpaid on-the-job experience at a business, industrial or public agency off-campus site intended to develop technical competencies in a specific field necessary for entry-level employment. Community classroom programs are intended to be concurrent with formalized classroom instruction that enhance salable skills.

Community classroom students are covered by the Member’s workers’ comp because no wage or salary is involved. The program definition, however, takes job experience 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, or if no concurrent related formalized classroom instruction occurs. 5 CCR § 10080, Ed. Code § 52372.1(c).

² Under this concept, Workers’ Compensation coverage would seemingly be available only for off-site, unpaid “classroom” exposures, while paid work efforts thereafter are covered by the site sponsor.



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 workers' comp due to the limited-term hourly commitment permitted for the program and the absence of pay. Few "job shadowing" programs exist, because time commitments often fall below or above these time restrictions. Ed. Code 51769.

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 workers' comp 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 WC duty is borne by the private employer.

III. **Conclusion**

To protect students and minimize risk exposures, WEP programs should undergo full review and receive all necessary approvals. Members are advised to apply prudent risk management, including:

1. Undertaking the WEE Guide requirement for oversight at sponsor sites to ensure compliance with governing laws and regulations;
2. Working with NBSIA to ensure that program and participation forms and standards are complied with in order to avoid important loss exposures;
3. Conducting onsite reviews and meetings to help ensure that students are being placed into safe and appropriate physical surroundings; and
4. Ensuring that all volunteers for these programs understand the important elements of privacy, safety, and workplace standards that comport with the Members' BPs/ARs for appropriate conduct.