



EARLY CARE & EDUCATION LAW UNIT

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LICENSE-EXEMPT CHILD CARE

License-exempt child care is child care that can operate legally without a license. While certain child care arrangements may qualify as license-exempt child care, there are policies and procedures that a license-exempt child care provider should follow in order to ensure the successful operation of his/her child care business and avoid potential legal problems. This handout is intended to provide basic information on the requirements of license-exempt child care in California and best practices that license-exempt child care providers should follow.

The following situations may qualify as license-exempt (please note that the below list does not include all types of license-exempt care)¹:

Care of Children by a Relative:

Persons who care for children who are related to them do not need a license to operate a child care. Relatives include the parents' spouses, or the child's adult siblings, aunts, uncles, grandparents, first cousins, and step-relatives. The child care provider may accept payment for providing care.

Child Care for One Other Family:

A family day care home providing child care for the children of only one family in addition to the provider's own children does not need a license to operate. The child care provider may accept payment for providing care.

Cooperative Arrangements:

Cooperative child care arrangements can be license-exempt when parents combine their efforts so that each parent, or set of parents, rotates as responsible care giver with respect to all children in the cooperative on an approximately equal time basis, no more than 12 children are receiving care in the same place at the same time, and no payment for the provision of care is involved.

¹ This list is not exhaustive. For a full list, please see the California Code of Regulations, Title 22, Division 12 § 101158, available at <http://www.dss.cahwnet.gov/ord/entres/getinfo/pdf/ccr.pdf>, Title 22, Division 12 § 102358, available at <http://www.dss.cahwnet.gov/ord/entres/getinfo/pdf/fccman.pdf>, and California Health and Safety Code §1596.792(a).

In a cooperative arrangement, all persons caring for the children must be a relative (e.g., parent, legal guardian, stepparent, grandparent, aunt, uncle, or adult sibling) of at least one child in the cooperative. The cooperative can accept in-kind contributions of snacks, games, toys and other appropriate materials or supplies for the children. Parents can pay the cooperative for outside activities, as long as the amount paid does not exceed the actual cost of the activity (e.g., a field trip, hiring a magician or special guest to come to the child care, etc.).

Although the cooperative does not have to create a schedule of which relative will be providing care on a particular day/week, doing so may help to show Community Care Licensing (“Licensing”) that the responsible relative care givers are in fact rotating to provide care.

Public Recreation Programs:

A public recreation program is a program that is operated by a public entity (i.e., state, city, county, special district, school district, community college district, chartered city, or chartered city and county) that has limits on its operating hours. There are three ways to be considered a license-exempt public recreation program²:

1. The program is only operated for **school-age children** (grades K-12) in the public school district where the program is located during hours other than normal school hours or when school is not normally in session. The program must operate for either: 1) fewer than 16 hours per week; or 2) a total of 12 weeks or less in a 12 month period.
2. If the program is provided to children **over the age of four years and nine months** and not yet enrolled in school, the prohibition on operating during normal school hours does not apply. However, the program must still be limited to either: 1) fewer than 16 hours per week; or 2) a total of 12 weeks or less in a 12 month period.
3. If the program is provided to children **under the age of four years and nine months**, it may have sessions of up to 12 hours per week for up to 12 weeks. Children can enroll in consecutive sessions throughout the year, but an individual child may not be enrolled in a combination of sessions that total more than 12 hours per week.

As long as the public recreation program meets the requirements of at least one of the above options, it is considered license-exempt.

Before- and After-School Programs Operated by Schools:

Public and private schools can offer license-exempt before- and/or after-school programs for school age students as long as the school/school district operates the program and employs qualified teachers. Please note that a third-party child care provider, such as an outside person or organization other than the school/school district, needs a license to operate a before or after

² Note that Girls & Boy’s Clubs, Girl Scouts, Boy Scouts and Campfire recreation programs are license-exempt by statute. Health & Safety Code § 1596.793. However, child care programs conducted by these organizations must have a license.

school child care program at a school, even if the students in the program are also students at the host school.

However, outside individuals or organizations operating before- and after-school programs at public or charter schools that were established pursuant to the After School Education and Safety Program may operate for up to 30 hours per week without a license or special permit.³

It is important to note that if Licensing does not consider your child care arrangement to be license-exempt and you are operating a child care program illegally without a license, you may be required to immediately suspend your program, and also may be subject to a \$200 per-day civil penalty and possibly fine or imprisonment.

BEST PRACTICES FOR LICENSE-EXEMPT CHILD CARE PROVIDERS

Draft a Contract Between the Provider and the Parent(s)

Contracts are valuable because they provide clear evidence of the obligations of each contracting party and provide key information regarding child care rules and policies. Broad contracts may help clarify future misunderstandings. For assistance in drafting child care provider contracts, you can contact the ECE Law Unit at Public Counsel.

Obtain Worker's Compensation for Your Employee(s)

If you employ anyone in your family child care business, California law requires that this employee be provided with worker's compensation coverage, even if he or she works only a few hours or occasionally. If you do not have worker's compensation coverage and an employee suffers a job-related injury or illness, you may be subject to possible fines or other penalties and will also be held personally responsible for the employee's medical expenses.

Buying coverage for anyone who has an ownership interest in the business (one who has the right to manage the business and sell the part of the business that he/she owns) is optional, but is *required* for all family members with no ownership interest that work in your child care business, including parents, children, siblings, nieces and nephews, etc. You may contact the State Compensation Insurance Fund at (877) 405-4545 or private workers' compensation insurance carriers to request an application and a quote. For more information, please read the ECE Law Unit's handout entitled "Workers' Compensation Insurance for Family Child Care Businesses."

Obtain an Employer Identification Number (EIN)

A child care provider may want to obtain an EIN if they do not wish to use their personal social security number. An EIN is a unique nine-digit number assigned by the Internal Revenue Service (IRS) to business entities operating in the United States for the purposes of identification. The IRS uses this number to identify taxpayers that are required to file various business tax returns. Individuals who are employers may choose to either obtain an EIN or use their Social Security

³ Education Code § 8484.3.

Number for the purpose of reporting taxes withheld on behalf of their employees. Child care providers may apply for an EIN via fax, mail, internet, or telephone. For more information, please visit the IRS website at <http://www.irs.gov/businesses/small/article/0,,id=97860,00.html>.

Understand and Follow the Requirements of Licensed Child Care Providers

It is good practice for license-exempt child care providers to understand and follow the regulations governing licensed child care providers including procedures for administering medication to children and other requirements. For example, a child care provider should administer medication to a child in accordance with the label directions. A provider should also obtain a written form of approval and instructions from the child's parents or legal guardians (instructions from the parents or legal guardians should not conflict with the label directions). Medications should be kept in a safe place that is inaccessible to children. Administration of medications to a child should be documented, and the child's parents or legal guardians should be informed daily when such medications have been given.

Also, while there are many legal protections that apply to licensed child care providers (e.g., protections for tenants operating a family child care home), license-exempt providers may be able to argue for some of these protections. For more information about legal protections that may apply to license-exempt child care providers, you should contact an attorney.

HOW MUCH ARE LICENSE-EXEMPT CHILD CARE PROVIDERS REQUIRED TO BE PAID?

How much payment a license-exempt child care provider receives depends on the kind of provider he or she is. When a license-exempt provider is running a business, he or she can charge what makes sense for his or her business. However, in a cooperative arrangement, no money can be exchanged for services. Where a license-exempt provider is an employee, state and federal law govern how much he or she is required to be paid.

License-Exempt Child Care as a Business

Where a license-exempt provider is taking care of children in his or her own home, or at a school, the provider is not considered an employee. Instead, the provider is running a business, and thus may determine what to charge his or her customers. The Regional Market Rate (RMR) is a rate that some child care providers use as a tool to determine what they should be charging for child care services. Child care providers can find information on maximum and average RMRs at this website: <http://www3.cde.ca.gov/rcsc>. Please remember that while the RMR provides guidance, it should not be used as the only source for determining what rates to charge for child care services.

Cooperative Arrangements

In a cooperative arrangement, no person may accept payment for child care services. If any person accepts payment, it may be determined that the cooperative child care is illegally operating without a license, and the cooperative may be subject to citation and fines by Licensing.

License-Exempt Child Care Employees

Where the provider is caring for the children in the children's own home, and where the provider does not live (i.e. a nanny caring for only one family's children), the provider is likely to be considered an employee of the child's parents.

State law requires that almost all employees in California, which includes license-exempt child care providers, be paid the minimum wage, which is currently \$9.00 per hour.⁴ Although individuals who are the parent, spouse, or child of the employer are exempt from this requirement under California Law,⁵ the Fair Labor Standards Act requires that employers pay all employees the federal minimum wage. Thus, technically a provider working for his or her parent, spouse or child must earn at least \$7.25 per hour.⁶

On the other hand, babysitters who provide child care on a casual basis are exempt from both federal and state minimum wage laws. To be casual, the employment must be irregular or intermittent, the babysitter must generally work fewer than 20 hours a week for all employers, and babysitting must not be his or her primary employment.⁷ Congress included this exemption in the Fair Labor Standards Act because babysitting services are often provided by persons for whom babysitting is not the babysitter's main source of livelihood.

California and federal law also have an exception for "learners," employees during their first 160 hours of employment working in occupations in which they have no previous similar or related experience. Learners, regardless of age, may be paid not less than 85% of the minimum wage rounded to the nearest nickel.

ARE LICENSE-EXEMPT CHILD CARE PROVIDERS REQUIRED TO REPORT SUSPECTED CHILD ABUSE OR DOMESTIC VIOLENCE?

Providers that care only for their relatives or for the children of one other family and providers that participate in cooperative child care arrangements are not legally required to report suspected child abuse. License-exempt child care providers are also not obligated to report suspected domestic violence against a parent.

However, providers can still report suspected child or domestic abuse even though they are not required to do so. If a license-exempt provider suspects that a child is a victim of abuse or neglect, he/she may contact the police or county sheriff, or the 24-hour Child Protective Services hotline. In L.A. County, call **(800) 540-4000**. For more information, please read the ECE Law Unit's handout entitled "Responding to Suspected Child Abuse or Domestic Violence in a Child Care Setting."

⁴ On January 1, 2016, the minimum wage will be raised to \$10.00 per hour.

⁵ General Minimum Wage Order, THE STATE OF CALIFORNIA, available at <http://www.dir.ca.gov/lwc/MW-2014.pdf>.

⁶ For more information on the federal minimum wage, see the Department of Labor's website: <http://www.dol.gov/whd/minwage/america.htm>.

⁷ <http://www.law.cornell.edu/cfr/text/29/552.104>.

CAN LICENSE-EXEMPT CHILD CARE PROVIDERS OBTAIN LIABILITY INSURANCE?

Most insurance carriers do not provide liability insurance for unlicensed (including license-exempt) child care programs because of the higher level of risk involved. Further, a homeowner's insurance policy does not cover liability for losses arising out of, or in connection with, the operation of a family day care home; a separate policy or endorsement is needed to cover the operation of a family child care home.

LICENSE-EXEMPT CHILD CARE PROVIDERS AND GOVERNMENT CHILD CARE SUBSIDIES

Government child care subsidies assist qualifying low-income parents with paying for child care. License-exempt child care providers may still provide care to children receiving CalWORKS and other government child care subsidies, but may have to meet special requirements. Unless a license-exempt provider qualifies for an exemption as a close relative, he or she may be required to register with TrustLine (California's registry for license-exempt child care providers) and complete a Health and Safety Self-Verification. However, license-exempt providers do not have to obtain fingerprints or criminal record checks for other people living in the home where the child care is being provided. Moreover, such providers may appeal a decision by TrustLine if TrustLine denies the provider's application for registration.

ADDITIONAL RESOURCES

If you have any questions regarding license-exempt child care programs, please contact Public Counsel's Early Care and Education Law Unit at (213) 385-2977, extension 300. Also, please refer to the ECE Law Unit's other handouts, which can be found by visiting our website at: http://www.publiccounsel.org/practice_areas/early_childhood_care_and_education.

If you are interested in learning more about becoming a licensed child care provider, please visit Community Care Licensing's website at: <http://www.cclcd.ca.gov/PG411.htm>.

This document was prepared by Public Counsel's Early Care & Education Law Unit in July 2014 and is meant to provide general information. This document is not all-inclusive and is not intended to provide any individual or entity with specific legal advice. Receiving this document does not create any lawyer-client relationship. For questions or comments, please call the ECE Law Unit Intake line at (213) 385-2977 ext. 300.

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