



## Know the Law About Contracts Between Parents and Child Care Providers in California

Child care involves a business relationship between a parent and a child care provider. Each person expects certain things from the other, whether or not these expectations are written down in a contract. This publication is designed to introduce parents and providers to contract law and to the benefits of having a contract. This document focuses on contract law in California.<sup>1</sup>

### 1. What is a contract?

A contract is “an agreement to do or not to do a certain thing.”<sup>2</sup> Any child care provider may make such an agreement or contract and enforce it in court; this includes providers who are exempt from licensing requirements.

In California a contract between a family child care provider and a parent does not have to be in writing. However, a contract or “admission agreement” between a child care center and a parent must be in writing and must include specific terms such as description of services provided, cost of care, and notice that must be given for termination of services.<sup>3</sup>

### 2. What makes a contract legally binding?

Contracts do not have to be long or written in legal language to be legally binding. A contract for child care services mainly requires the provider and parent to (1) mutually consent to the contract’s terms and (2) exchange promises.<sup>4</sup>

*Mutual consent* shows a “meeting of the minds.” In other words, the parent and the provider must both understand all the terms that they agree to about the child care services.<sup>5</sup>

An *exchange of promises* means that both parties voluntarily promise to do and give up something for each other.<sup>6</sup> For example, the parent agrees to follow the provider’s rules and to pay for child care, and in exchange the provider agrees to care for the children and perform the services she has promised in the contract.

A gift or favor is not an exchange of promises. For example, if one day at pick-up time a parent spontaneously offers to repair a broken climbing structure, and ends up not doing the repair, she has not broken any contract. The promise to make the repair was a “gift” to the provider. No promise of payment was made and so there was no exchange. Therefore the promise was not an enforceable contract.

**3. How are written and oral contracts different?**

Written Contract	Oral Contract
Terms are written on paper, and both parties sign.	Terms are spoken, not written down.
If either side breaks a written contract, the other has <i>four</i> years from the date the contract is broken to sue. <sup>7</sup>	If either side breaks an oral contract, the other has <i>two</i> years from the date the contract is broken to sue. <sup>8</sup>
Writing the terms helps ensure that there was a "meeting of the minds," that both sides understand that a formal agreement is being made. A written contract can show a parent that the provider takes her work seriously. The writing also preserves the original terms, which may be forgotten over time.	Oral contracts are based on the memory both parties. Each party might remember differently what the agreement was. Oral agreements usually don't seem formal.
Written contracts allow parents and providers to keep records of their agreement. This is especially helpful if they disagree later about the contract's terms.	Oral contracts are not recorded when they are made. The terms of an oral contract can be written later but if parties disagree at that point, proving what the original agreement was can be difficult for either side.

**4. Are there advantages to having a written contract?**

A written contract says what the provider's and parent's responsibilities are while the child

is in the provider's program. Of course, even without a written contract, parents and providers have certain implied responsibilities (e.g., to pay for child care, to provide child care). The written contract can make these responsibilities very specific. Either party can sue the other for breaking the contract. To figure out what the parent and provider agreed to, a court will usually look only at the written contract rather than at any negotiations or agreements that occurred before the contract was written and signed.<sup>9</sup>

**5. What if one side signed the contract without reading it?**

People who sign written documents that seem to be contracts are treated as if they agreed to all the contract terms. A person cannot escape liability by claiming not to have read the contract or by not actually reading it.<sup>10</sup> Parents who cannot read well should have contracts read to or explained to them. Parents who do not speak English fluently should ask that contracts be translated into their native language.<sup>11</sup>

Anything unclear in a contract is interpreted against the person who wrote it.<sup>12</sup> Providers usually write the child care contract. So, where there is disagreement between the parent and provider over the meaning of an unclear term, the provider is likely to have a hard time getting a court to agree with her interpretation over the parent's interpretation. For example, the provider might write in her contract, "You must give me reasonable notice before you remove your child from my care." "Reasonable notice" is an unclear time frame – you may think reasonable notice means one month, but the parent may think it means two weeks. A court would likely rule in the parent's favor over this disagreement. If you mean something specific like, "one month," make sure those words are written in the contract.

## 6. Can people's conduct ever create or change a contract?

Not very often, but California law does sometimes recognize *implied* contracts. An implied contract is created by the parties' conduct, which will also determine what the contract's terms are.<sup>13</sup> In other words, a parent's or provider's conduct over a period of time may show a mutual agreement to change a contract. This is true even if the original contract was in writing and even if neither side agreed, either verbally or in writing, to change the original written contract. A parent or provider may change the contract's terms simply by her actions.

If there is an implied contract, a court might not enforce the terms of the original written contract. For example, a child care contract might require a fee for late pickup. However, if the provider never enforces that provision (e.g., if a parent is late for pick up multiple times but the provider never charges a late fee), a court might decide that the late fee provision is unenforceable. By allowing late pickups without a fee, the provider's conduct implied a change to the contract.

## 7. How does a child care provider create a contract?

A provider can draw up a contract on an individual basis with each parent at enrollment time or develop a standard contract to use with all parents. Many providers use a standard contract with some blank spaces for writing in any additional agreements based on a family's particular needs.

## 8. What does a child care contract usually cover?

A child care center *must* include certain terms in its written contract.<sup>14</sup> Here are some common examples of provisions in all child care contracts:

- *Enrollment and withdrawal:* Required

immunizations for enrollment, notice requirements for withdrawal;

- *Hours and fees:* When payment is due and in what form, hours of operation, penalties for late pick-ups;
- *Vacation and days off:* Days the program is closed, which holidays are paid holidays, notice requirements for parent vacations;
- *Food:* Whether meals are provided, requirements for special diets;
- *Clothing and supplies:* Whether diapers are provided, requirement to leave an extra change of clothing with the child;
- *Illness and medication:* Notification of parent if child is ill, requirement to have parent authorize all medication given to the child, policy not to care for ill children or rules for exclusion of ill children;
- *Miscellaneous:* Discipline, nap, toilet training policies.

## 9. Do parents have to follow a set of rules attached to the contract?

Yes. Rules that are attached and referred to in the contract (often using the language "incorporated by reference") are as legally binding as the contract itself. In California, all of the documents related to the same subject matter between the two parties, will be taken together to determine the meaning of the agreement.<sup>15</sup>

To let parents know how the child care program is run, providers often include a set of rules covering such things as schedules, discipline policies, and other requirements (e.g., requiring parents to provide a change of clothing). It is important that parents read both the contract and the attached rules before they sign the contract. Parents should sign only if they want to follow both the contract and the attached rules.

## 10. Do state laws affect child care contracts?

Yes. If a contract says something different from the law, the contract provision is unlawful.<sup>16</sup> Because many child care providers are licensed, licensing laws are particularly important. For example, licensing law states that providers may not use physical punishment, like spanking. So even if a contract says that a provider will spank children and the parent agrees and signs the contract, that provision would be unlawful and invalid. Licensing laws require providers to follow certain rules *even if* the contract says something different.

### **11. What should parents do before signing a child care contract?**

Child care resource and referral agencies usually have pamphlets and helpful advice about how to choose a provider. Community Care Licensing, the agency that oversees licensed child care providers, has information about providers, including information about past violations of licensing laws. Parents can ask questions about the contract and may choose to look for another provider if questions are not answered or if the parent and provider cannot agree on certain issues.

### **12. Can parents ask for changes in the contract or the rules before signing?**

Yes. Any contract and attached set of rules can be modified if both the provider and the parent agree on the changes. Any changes should be written, dated, and included as part of the contract.

### **13. Can the contract or the rules be changed after both parties sign?**

Yes. Parents and providers can mutually agree at any time to change the contract. Generally, if a parent and provider sign a written contract, any changes should also be in writing. However, California law does allow verbal modifications of written contract terms if the new oral agreement is either bargained for or is actually carried out.<sup>17</sup>

For example, a parent and provider might decide to change their contract to allow a later pickup time with a higher fee. This is a new bargain—both the parent and the provider are promising something new and receiving something new in return.

Or the parent and provider might decide to change the contract so that the pickup time is later, but the price remains the same. This would not be a new bargain, but once the provider allows the parent to pick up her child later and still pay the same price, the deal is considered “executed” or carried out.

Still, writing down any changes is the best practice because it ensures greater clarity and protection for both sides to a contract. A rule of thumb is to reread contracts once a year and, if things in the program have changed or the parents suggest changes, to revise the contract and rules. Such changes should be written, dated, and given to parents for their signatures.

### **14. Can child care providers use contracts to protect themselves against negligence or other claims?**

Probably not. Providers sometimes try to include waivers, releases, or other “exculpatory clauses” in their contracts to protect themselves against liability for any harm that comes to children in their care. California law bans contract provisions that exempt anyone from responsibility for her own negligence.<sup>18</sup> Because child care is an important public interest, courts in California have found such contract provisions to be invalid because they violate public policy.<sup>19</sup>

### **15. What if the parent or provider breaks the contract?**

If a parent or provider breaks an important rule of the program—legally referred to as “breaching” the contract—the other person may have grounds to sue or threaten to sue. In other words, the contract

could be the basis for a lawsuit in small claims court.<sup>20</sup>

If the provider fails to comply with the contract in a significant way, the parent is no longer legally obligated to comply with the contract either, and vice versa.<sup>21</sup> Practically speaking, though, if a parent wants a child to remain in the program, the parent will likely continue to honor his or her part of the contract if the provider's violation is fairly minor.

If one side does violate the contract, the other side may decide to sue in small claims court for money that is owed. This usually occurs when the parent has paid in advance or when the provider asks the child to leave care without giving enough notice. For example, if the contract requires the provider to give parents two weeks' notice before terminating a child from the program, the provider is in breach if she dismisses a child from care without giving two weeks' notice.<sup>22</sup> A parent who sues because of this breach may be entitled to stop paying the provider, to a refund of any advance payment, and possibly also to payment of any wages lost because the parent missed work while arranging replacement child care.<sup>23</sup>

## 16. What is Small Claims Court?

Small claims court is a local court where anyone can sue another person for a limited

amount of money. Although lawyers may not represent either side, parties may speak to a lawyer before their hearing. The hearing is before a judge or commissioner, who is sometimes a volunteer lawyer. It is a quick process and the decision can be made at the end of the hearing or within a few days.

In California, people can use small claims court if they have a dispute with a person, company, or government agency involving \$10,000 or less.<sup>24</sup> People sue for money (also known as "damages"). To determine the payment of a debt, like child care payments the parent may owe the provider, small claims court will take into account the amount of the missed payments and any associated fees.<sup>25</sup>

Small claims court tends to be informal. No one can make the kind of "objections" that lawyers make on television shows, and there are no juries. Cases move quickly, and hearings are often scheduled within weeks. Anyone (U.S. citizens and immigrants) who is at least 18 years old and mentally competent may file a claim in small claims court. The court has "small claims advisors" who can answer questions and explain the process. Please see [the Self-Help page at www.courts.ca.gov](http://www.courts.ca.gov) for more information.

**This document is intended to provide general information about the topic covered. It is believed to be current and accurate as of July 2014, but the law changes often. This document does not render legal or other professional advice. If you need legal advice, you should consult a competent attorney who can specifically advise you or represent you.**

### Useful Resources

A longstanding basic resource on this topic is: *Family Child Care Contracts & Policies: How to Be Businesslike in a Caring Profession*, by Tom Copeland, J.D., Red Leaf Press, 3d ed., St. Paul, Minnesota, 2006.

- Child care resource and referral agencies offer information and advice to both parents and providers. In California see <http://www.rnetwork.org/>.
- Several websites offer general legal information. While the information should not be regarded as legal advice, they can help you understand basic legal concepts. See, for example:
  - [Nolo Publications](#), which has publications on various legal issues, including [contracts](#). In addition to its website you can contact Nolo by phone at 800-728-3555 or at 950 Parker Street, Berkeley CA 94710-2524.
- The California judicial system provides helpful information about small claims court:
  - The [self-help center](#) provides many resources, including [information about small claims courts](#) and links to contact information for small claims advisors.

<sup>1</sup> Special rules apply to families receiving subsidies and to child care providers who are paid with subsidies. This publication is not designed for use when child care subsidies are involved.

<sup>2</sup> [Cal. Civ. Code § 1549](#).

<sup>3</sup> [Cal. Civ. Code § 1622](#) (contracts may be oral unless law requires otherwise); Cal. Code Regs., tit. 22, § 101219 (requiring written admission agreements in child care centers).

<sup>4</sup> [Cal. Civ. Code § 1550](#).

<sup>5</sup> [Cal. Civ. Code §§ 1565, 1580](#).

<sup>6</sup> [Cal. Civ. Code § 1605](#).

<sup>7</sup> [Cal. Code Civ. Proc. § 337](#).

<sup>8</sup> [Cal. Code Civ. Proc. § 339](#).

<sup>9</sup> [Cal. Civ. Code §§ 1625, 1640](#); [Cal. Code Civ. Proc. § 1856](#).

<sup>10</sup> See *California State Auto. Ass'n Inter-Insurance Bureau v. Barrett Garages, Inc.* 257 Cal.App.2d 71 (1967).

<sup>11</sup> [Cal. Civ. Code § 1654](#).

<sup>12</sup> [Cal. Civ. Code § 1654](#).

<sup>13</sup> [Cal. Civ. Code § 1621](#).

<sup>14</sup> Cal. Code Regs., tit. 22, § 101219.

<sup>15</sup> Cal. Civ. Code §§ 1641, 1642; 45 *Nevin v. Salk*, 45 Cal.App.3d 331, 374 (1975); *Meyers v. Housing Authority of Stanislaus County*, 241 Cal. App.2d, 721, 723 (1966)..

<sup>16</sup> [Cal. Civ. Code § 1667](#).

<sup>17</sup> [Cal. Civ. Code § 1698](#).

<sup>18</sup> [Cal. Civ. Code § 1668](#).

<sup>19</sup> For a good example of ineffective use of waivers, see *Gavin W. v. YMCA of Metro. Los Angeles*, 106 Cal.App.4th 662 (2003). The court in that case ruled that contracts for child care services are "affected with a public interest" because child care is indispensable and because demand greatly exceeds supply in California. The court went on to say that contract provisions freeing a child care provider from blame for negligence are invalid because they violate public policy.

<sup>20</sup> A breach of contract claim can be brought in any civil court. This document focuses on contract claims in small claims court.

<sup>21</sup> [Cal. Civ. Code § 1689\(b\)\(2\)](#).

<sup>22</sup> The parent will also be in breach if she removes her child without giving the provider two weeks' notice if the contract clearly requires the parent to give two weeks' notice

<sup>23</sup> [Cal. Civ. Code §§ 3300-1](#).

<sup>24</sup> [Cal. Code Civ. Proc. § 116.221](#).

<sup>25</sup> Cal. Code Civ. Proc. § 116.222.