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HEADS UP!

CRIME VICTIMS, FAMILY MEMBERS HAVE BROAD NEW LEAVE RIGHTS

On January 1, 2014, three new laws took effect which further complicates California law as it pertains to when employers are required to grant employees time off from work.

Most significant are new leave requirements which protect victims of crime, or their close family members, from acts of discrimination or retaliation for taking time off work.

Specifically, employers are prohibited from discharging or discriminating against employees, including victims of crime, who take time off to appear in court as a witness. (Labor Code, section 230 (b)) Moreover, the victim (as well as his/her spouse, parent, child, sibling or guardian) of various specified criminal offenses is legally-entitled to take time off to appear in court in any proceeding in which the rights of the victim are involved. (Labor Code, section 230.5)

Labor Code sections 230 and 230.1, respectively, provide broad protections for employees who are victims of domestic violence, sexual assault or stalking. The term, "domestic violence" is defined very broadly, to include "abuse perpetrated against:"

1. A spouse or former spouse;
2. One regularly residing (or who formerly resided) in the household;
3. A person with whom the abuser is having, or formerly had, a dating relationship;
4. An individual with whom the abuser has had a child; or
5. A child of a party, among others.

A victim of domestic violence, assault or stalking is legally entitled to take time off from work to pursue a restraining order "to help ensure the health, safety or welfare of the victim or his/her child."

Employers are legally required to provide a “reasonable accommodation” in the workplace when so requested by a victim of such acts. This requires a timely, good-faith interactive process, and may include, for example, changing work telephone numbers or work stations, installing locks, changing work assignments or shifts, among other measures.

Victims of such acts are protected by law from discrimination or retaliation for taking time off from work in order to:

1. Seek medical attention for injuries caused by domestic violence, sexual assault or stalking;
2. Seek assistance from a domestic violence shelter, program or rape crisis center;
3. Obtain psychological counseling related to domestic violence;
4. Participate in safety planning or other action designed to prevent future acts of domestic violence, including temporary or permanent relocation.

Employee-victims, and their close family members, are protected by law if they take time off to attend judicial proceedings related to a crime. In other words, an employer must grant such leave not only to employees who are victims, but also to employees who are the close family members of crime victims, as well as the registered domestic partner of a victim and the child of a registered domestic partner of a victim. (Labor Code, section 230.2 (b) (3))

Employees taking such leave must be allowed to use any accrued vacation, personal leave or sick leave benefits. Alternatively, they may use unpaid time off.

Generally, employees or others requiring leave are required to provide advance notice, unless it is not feasible to do so, by virtue of emergency circumstances or otherwise. Alternatively, employees may provide notice after the fact, if advance notice was not feasible, if it is provided within a “reasonable” time. If notice is provided retroactively, employers may be required to rescind disciplinary action that was taken in the interim.

Some of the statutes referenced above impose greater responsibilities on employers of 25 or more employees. Those with 50 or more employees within a 75-mile radius are likely covered by the California Family Rights Act, which imposes additional legal obligations with regard to employee leave rights and protections.

The Bottom Line: If an employee requests leave under circumstances that suggest the request is related in any way to the commission of a crime, specifically including one related to domestic violence, the employer should take immediate action to:

1. Record in writing the specific circumstances of the request;
2. Tell the requesting party that the employer will consider the request, and promptly respond;
3. Carefully identify every statute that applies to the situation described;
4. Carefully identify every corresponding obligation imposed on the employer;
5. Where applicable, commence a timely, good-faith interactive process with the requesting party to identify a reasonable accommodation;
6. Respond in writing to the request and otherwise comply with all legal requirements.

Given predictable time constraints and the complexity of applicable law, employers are probably well-advised to grant the request, if in doubt, subject to modification after further consideration.

Because any employer could face such a request at any time, a careful review of what the employer can require, to verify the legitimacy of the leave request, should be done in advance. This is because there may not be sufficient time to accomplish this after a leave request has been initiated.