

Employment Protections for Crime Victims under new California Law

By Mark S. Askanas

October 18, 2013

Legislation to prohibit employers from discharging, discriminating or retaliating against employees who are victims of certain offenses for taking time off from work to appear in any court proceeding in which their rights are in issue has been signed by California Governor Jerry Brown (D). Under the [new law](#), employees who are discharged or otherwise discriminated against because they have taken such time off may file a complaint with the state Division of Labor Standards Enforcement and are entitled to reinstatement and reimbursement for lost wages and benefits for violations. The law becomes effective on January 1, 2014.

Applicability

The legislation broadly defines "victim" to include "any person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act." A "victim" also includes the person's "spouse, parent, child, sibling, or guardian." The new law applies to victims of the following offenses (as they are defined in the state Vehicle Code or state Penal Code):

- vehicular manslaughter while intoxicated;
- felony child abuse likely to produce great bodily harm or a death;
- assault resulting in the death of a child under eight years of age;
- felony domestic violence;
- felony physical abuse of an elder or dependent adult;
- felony stalking;
- solicitation for murder;
- a serious felony;
- hit-and-run causing death or injury;
- felony driving under the influence causing injury; and
- sexual assault.

The law applies to any court proceeding where the victim's rights are in issue, including a delinquency proceeding involving a post-arrest release decision, plea, sentencing or post-conviction release decision.

Procedural Requirements

Employees requiring leave under the law must give their employers reasonable advance notice of the need to take time off, unless advance notice is not "feasible." If an unscheduled absence occurs, an employer may not take any adverse action against the employee if the employee provides a certification to the employer regarding the absence. A certification shall be deemed sufficient if it is one of the following:

- a police report indicating the employee was a victim of a specified offense;
- a court order protecting or separating the employee from the perpetrator or other evidence from the court or prosecutor that the employee appeared in court; or
- documentation from a health care provider, domestic violence or sexual assault victim's advocate, or other counsel showing that the employee was undergoing treatment related to being a victim of a specified offense.

An employee may use vacation, personal leave, or compensatory time off for leave permitted under the law.

Prohibited Conduct; Enforcement

Employers are prohibited from discharging, discriminating against, or retaliating against employees for taking time off for a permitted reason. Employees who are discharged or otherwise discriminated against in violation of the law are entitled to reinstatement and reimbursement for lost wages and benefits. An employee may file a complaint for any violation with the Division of Labor Standards Enforcement within one year from the date of the violation. Employers that fail to rehire, promote, or otherwise restore an

Meet the Author



[Mark S. Askanas](#)

Principal
San Francisco 415-394-9400
Email

Practices

Disability, Leave and Health Management
Workplace Training

employee to an appropriate position, as required by law, are guilty of a misdemeanor.

California employers should consider updating their policies to reflect the new law's requirements. Employers should consider training supervisors and managers on responding to requests for time off from employees who are crime victims. California employers should be especially sensitive to the law's broad definition of victim; an employee need not be the actual crime victim.

Employers should regularly review their policies and practices with employment counsel to ensure they effectively address specific organizational needs and comply with applicable law. For more information on this or other workplace developments, please contact the Jackson Lewis attorney with whom you regularly work.

©2013 Jackson Lewis P.C. This material is provided for informational purposes only. It is not intended to constitute legal advice nor does it create a client-lawyer relationship between Jackson Lewis and any recipient. Recipients should consult with counsel before taking any actions based on the information contained within this material. This material may be considered attorney advertising in some jurisdictions. Prior results do not guarantee a similar outcome.

Focused on labor and employment law since 1958, Jackson Lewis P.C.'s 950+ attorneys located in major cities nationwide consistently identify and respond to new ways workplace law intersects business. We help employers develop proactive strategies, strong policies and business-oriented solutions to cultivate high-functioning workforces that are engaged, stable and diverse, and share our clients' goals to emphasize inclusivity and respect for the contribution of every employee. For more information, visit <https://www.jacksonlewis.com>.

©2021 Jackson Lewis P.C. All rights reserved. Attorney Advertising. Prior results do not guarantee a similar outcome. No client-lawyer relationship has been established by the posting or viewing of information on this website.

*The National Operations Center serves as the firm's central administration hub and houses the firm's Facilities, Finance, Human Resources and Technology departments.