

New California Law Protects Stalking Victims from Discrimination and Retaliation

By Mark S. Askanas

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Protection from discrimination and retaliation has been extended to employees who are victims of stalking under [an amendment](#) to the California Labor Code, Sections 230 and 230.1. The prior version of the law covered only victims of domestic violence and sexual assault. The amended law prohibits employers from discharging, discriminating against, or retaliating against employees who need to take time off from work to address issues related to domestic violence, sexual assault, and stalking. It also prohibits discrimination and retaliation based on the employee's status as a victim of domestic violence, sexual assault, or stalking and requires employers to provide certain accommodations for the safety of such victims. The law becomes effective on January 1, 2014.

Prohibitions against Discrimination and Retaliation

The law broadly prohibits employers from discriminating or retaliating against an employee because of the employee's status as a victim of domestic violence, sexual assault, or stalking if the victim provides notice to the employer, or the employer has actual knowledge, of that status or because the employee takes time off from work to appear in court or to obtain applicable legal relief.

The law also bans employers from discriminating or retaliating against an employee because the employee requires medical attention or psychological counseling related to domestic abuse, sexual assault, or stalking; services from a domestic violence shelter, program, or rape crisis center; or must participate in safety planning.

Reasonable Accommodation Requirements

The law includes a reasonable accommodation provision requiring employers to provide victims of domestic violence, sexual assault, or stalking with accommodations to enhance their safety in the workplace. Reasonable accommodations may include transfer, reassignment, modified schedule, changed work telephone, changed work station, installed lock, assistance in documenting domestic violence, sexual assault, or stalking that occurs in the workplace, and other safety procedures.

Employers must engage in an interactive process with an employee who requests a reasonable accommodation, including any subsequent requests. In determining whether an accommodation is reasonable, the employer must consider the current circumstances and dangers facing the employee. Employers need not implement any accommodation that would constitute an "undue hardship" on the employer's business, as defined in the California Fair Employment and Housing Act, Cal. Civ. Code § 12926. For purposes of this law, an undue hardship also includes any action that would violate an employer's duty to furnish and maintain a place of employment that is safe and healthful for all employees under the California Labor Code, Section 6400.

Employers may request certification (described below) for the need for a reasonable accommodation. Employees must notify their employer if a reasonable accommodation is no longer needed. Employers are prohibited from discriminating or retaliating against an employee for requesting a reasonable accommodation.

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." An employee may use vacation, personal leave, or compensatory time off for permitted leave.

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 will be deemed sufficient if it is one of the following:

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Practices

Litigation

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

Except as required by law or as necessary to protect the employee's safety, employers must maintain the confidentiality of any documents indicating that an employee is a victim of domestic violence, sexual assault, or stalking. The employer must give the employee notice before any authorized disclosure.

Enforcement

An employee may file a complaint for any violation of the law with the state Division of Labor Standards Enforcement within one year of the violation. The employee is entitled to reinstatement, lost wages and benefits, and other appropriate equitable relief for a violation. Employers that fail to rehire, promote, or otherwise restore an employee to an appropriate position, as required by law, are guilty of a misdemeanor.

California employers should consider updating their policies to reflect the law's amended requirements, including changes to nondiscrimination and reasonable accommodation policies. Employers also should consider training supervisors and managers regarding responding to requests for time off to allow employees who are victims of domestic violence, sexual assault, or stalking to participate in court proceedings or to obtain medical or other assistance. Supervisors and managers also should be trained to respond appropriately to requests for reasonable accommodations from employees who are victims of domestic violence, sexual assault, or stalking and to engage in the interactive process regarding such requests.

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.

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