

CALIFORNIA EXPANDS SCOPE OF PROTECTED UNPAID LEAVE FOR CRIME VICTIMS

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PRACTICE AREAS

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California Governor Newsom signed Assembly Bill 2992 to expand existing protections for employees who are victims of crime or abuse. The bill, which becomes effective on January 1, 2021, amends Sections 230 and 230.1 of the Labor Code. Existing protections prohibit employers from discharging, discriminating, or retaliating against employees who are victims of domestic violence, sexual assault, or stalking for taking time off work to seek relief to help ensure the health, safety, or welfare of themselves or their children. AB 2992 adds to these existing protections.

In particular, AB 2992 protects employees for absences due to being a victim of a crime, or public offenses as outlined in Section 13951 of the Government Code, which caused a physical or mental injury, or a threat of physical injury, regardless of whether any person is arrested for, prosecuted for, or convicted of, committing the crime. A person is considered a “victim” under the new bill if they are a victim of stalking, domestic violence, or sexual assault; a victim of a crime that caused physical injury or that caused mental injury and a threat of physical injury; or a person whose immediate family member is deceased as the direct result of a crime. As used in the statute, “immediate family member” broadly includes “any other individual whose close association with the employee is the equivalent of a family relationship”.

Additionally, the bill revises the protected categories of time off work to more broadly include “taking time off work to seek medical attention for injuries caused by crime or abuse, to obtain services from prescribed entities as a result of crime or abuse, to obtain psychological counseling or mental health services related to an experience of crime or abuse, or to participate in safety planning and take other actions to increase safety from future crimes or abuse.”

The new law provides that employees should give advance notice of covered absences, unless advance notice is not feasible. However, regardless of whether advance notice is feasible, employers are prohibited from taking adverse action for an unscheduled employee absence if the employee is able to provide appropriate certification “within a reasonable time after the

absence”. AB 2992 explains that sufficient certification for an unscheduled absence includes: (1) a police report, (2) a court order protecting or separating the employee from the perpetrator, (3) documentation from a licensed medical professional or similar occupation, or (4) any other form of documentation that reasonably verifies the crime or abuse occurred.

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