

Rights of Victims of Domestic Violence, Sexual Assault, and Stalking

I. California Labor Commissioner's Notice of Victims' Rights

- a. When a supervisor becomes aware that an employee may be a victim of domestic violence, sexual assault, or stalking, or when an employee requests information pertaining to being a victim of domestic violence, sexual assault or stalking, the supervisor must provide the employee with the California Labor Commissioner's Notice of Rights of Victims of Domestic Violence, Sexual Assault, and Stalking. The notice can be found here:
https://www.dir.ca.gov/dlse/Victims_of_Domestic_Violence_Leave_Notice.pdf

II. Time Off From Work Requests

- a. The Following Time Off From Work is Allowed for Victims of Domestic Violence, Sexual Assault, or Stalking:
 - i. To obtain or attempt to obtain any relief, including, but not limited to, a temporary restraining order, restraining order, or other injunctive relief, to help ensure the health, safety, or welfare of the victim or his or her child;
 - ii. To seek medical attention for injuries caused by domestic violence, sexual assault, or stalking;
 - iii. To obtain services from a domestic violence shelter, program, or rape crisis center as a result of domestic violence, sexual assault, or stalking;
 - iv. To obtain psychological counseling related to an experience of domestic violence, sexual assault, or stalking; or
 - v. To participate in safety planning and take other actions to increase safety from future domestic violence, sexual assault, or stalking, including temporary or permanent relocation.
- b. How an Employee Should Request Time Off From Work If He/She is a Victim of Domestic Violence, Sexual Assault, or Stalking
 - i. Employee must follow his/her unit's normal procedure for requesting time off from work, including submitting an Absence Request form (HBEX 244).
- c. When a Supervisor Can Request Certification From an Employee to Substantiate an Employee's Absence Related to the Employee Being a Victim of Domestic Violence, Sexual Assault, or Stalking
 - i. For scheduled absences, the employee must give his/her supervisor reasonable advance notice of the employee's intention to take time off unless advance notice is not feasible. Certification should not be requested for scheduled absences where advance notice is given and where the employee has made his/her supervisor aware that he/she is a victim of domestic violence, sexual assault or stalking.

- ii. For unscheduled absences, the employee may be asked to provide certification to his/her supervisor within a reasonable time after the unscheduled absence.
 - 1. If requested for an unscheduled absence, the following constitutes sufficient certification to substantiate a time off request related to an employee being a victim of domestic violence, sexual assault or stalking:
 - a. A police report indicating the employee was a victim of domestic violence, sexual assault, or stalking;
 - b. A court order protecting or separating the employee from the perpetrator of an act of domestic violence, sexual assault, or stalking, or other evidence from the court or prosecuting attorney that the employee has appeared in court; or
 - c. Documentation from a licensed medical professional, domestic violence counselor, sexual assault counselor, licensed health care provider, or counselor that the employee was undergoing treatment for physical or mental injuries or abuse resulting in victimization from an act of domestic violence, sexual assault or stalking.
- d. How Time Off Should be Charged
 - i. Covered California is not required to compensate an employee for time off from work related to the employee's status as a victim of domestic violence, sexual assault or stalking. However, eligible employees are allowed to use available leave credits or dock.
- e. Supervisors who have questions regarding time off requests should contact their assigned Performance Manager.

III. "Reasonable Accommodations" in the Workplace

- a. Covered California shall provide "reasonable accommodations" for an employee who is a victim of domestic violence, sexual assault or stalking who requests an accommodation for his/her safety while at work. "Reasonable accommodations" may include the implementation of safety measures, including a 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, an implemented safety procedure, or another adjustment to a job structure, workplace facility, or work requirement in response to domestic violence, sexual assault, or stalking, or referral to a victim assistance organization.
- b. Covered California is not required to provide a "reasonable accommodation" to an employee who has not disclosed his or her status as a victim of domestic violence, sexual assault or stalking.

- c. Upon becoming aware an employee is a victim of domestic violence, sexual assault or stalking, Covered California's Business Services Branch, Health and Safety Unit (HSU) must be notified immediately so that HSU may begin a timely, interactive process with the employee to explore potential effective "reasonable accommodations."
- d. An employee requesting a "reasonable accommodation," must provide HSU with the following documentation:
 - i. A written statement signed by the employee or an individual acting on the employee's behalf, certifying that the "reasonable accommodation" is for the purpose of providing a victim of domestic violence, sexual assault, or stalking an accommodation for the safety of the victim while at work; and
 - ii. Certification demonstrating the employee's status as a victim of domestic violence, sexual assault, or stalking. Certification is sufficient in the following forms: (1) a police report indicating the employee was a victim of domestic violence, sexual assault, or stalking; (2) a court order protecting or separating the employee from the perpetrator of an act of domestic violence, sexual assault or stalking, or other evidence from the court or prosecuting attorney that the employee appeared in court; or (3) documentation from a licensed medical professional, domestic violence counselor, sexual assault counselor, licensed health care provider, or counselor that the employee was undergoing treatment for physical or mental injuries or abuse resulting in victimization from an act of domestic violence sexual assault, or stalking.
 - 1. HSU may request recertification of an employee's status as a victim of domestic violence, sexual assault, or stalking every six months after the date of the previous certification.
- e. If circumstances change, the employee shall request a new accommodation from HSU. If an employee no longer needs an accommodation, the employee shall notify HSU that the accommodation is no longer needed.
- f. An employee who requests a "reasonable accommodation" related to a medical condition must be referred to Covered California's Equal Employment Office (EEO) to discuss reasonable accommodations. HSU is responsible for "reasonable accommodations" related to making the work facility safe for an employee who is a victim of domestic violence, sexual assault or stalking, while EEO is responsible for all other reasonable accommodations.

IV. Confidentiality

- a. Employees' information related to their status as a victim of domestic violence, sexual assault or stalking, time off requests, and "reasonable accommodation" requests will be kept as confidential as possible and will

not be disclosed except as required by law or as necessary to protect employees' safety in the workplace. Employees will be given notice before any unauthorized disclosure. Upon becoming aware an employee is a victim of domestic violence, sexual assault or stalking, the employee's supervisor must inform the employee of this confidentiality directive and must strictly follow it.

V. Notice of EEO

- a. If employees feel that they have been discriminated, harassed, or retaliated against for their status as a victim of domestic violence, sexual assault, or stalking, or for their request for time off, or for requesting a "reasonable accommodation" related to their status as a victim of domestic violence, sexual assault or stalking, they should report it to EEO. Upon becoming aware an employee is a victim of domestic violence, sexual assault or stalking, the employee's supervisor must inform his/her employee that they are not to be discriminated, harassed or retaliated against and to report any concerns to EEO.

VI. For additional information, please refer to Cal. Labor Code § 230, 230.1, and the applicable Memorandum of Understanding.