

State of California

MEMORANDUM

TO: PERSONNEL MANAGEMENT LIAISONS DATE: December 3, 2002
REFERENCE CODE: 2002-078

THIS MEMORANDUM SHOULD BE DISTRIBUTED TO:

Employee Relations Officers
Personnel Officers

FROM: Department of Personnel Administration
Policy Development Office

SUBJECT: Time Off for Victims of Sexual Assault

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The purpose of this memo is to notify departments that Labor Code Sections 230 and 230.1, which provide leave benefits to victims of domestic violence, have been amended to extend the same benefits to victims of sexual assault. These changes are the result of Assembly Bill 2195 and become effective January 1, 2003.

Under the amended Labor Code, an employer may not discharge or in any manner discriminate or retaliate against an employee who is a victim of sexual assault for taking time off from work to appear in court to obtain a civil restraining order or other legal protection necessary to ensure his or her health and safety or that of his or her child.

Further, the Labor Code would prohibit employers with 25 or more employees from discharging or discriminating against an employee who is a victim of sexual assault who takes time off from work to seek medical attention for injuries, to obtain support services or psychological counseling, or to participate in safety planning or other actions such as relocation.

As a condition for taking time off, the employee shall give the employer reasonable advance notice of the employee's intention to take time off unless advance notice is not feasible.

When an unscheduled absence occurs, the employee must provide a certification to the employer. Acceptable certification includes a police report indicating the employee was a victim of sexual assault; a court order protecting the employee from the perpetrator of the sexual assault; other evidence that the employee appeared in court; or documentation from a medical professional, counselor, or advocate for victims of sexual assault stating that the employee was being treated for physical or mental injuries.

"Sexual assault" means any of the crimes set forth in Penal Code Sections 261, 261.5, 262, 265, 266, 266a, 266b, 266c, 266g, 266j, 267, 269, 273.4, 285, 286, 288, 288a, 288.5, 289, or 311.4.

The law does not require an employer to compensate an employee for the time taken off under these circumstances, but the employee may use vacation, personal leave, or other compensating time off that would otherwise be available to the employee.

An employee whose rights are violated under this section is entitled to lost wages and benefits and to reinstatement. An employer who willfully refuses to reinstate an employee under this section may be guilty of a misdemeanor. This law allows an employee to file a complaint with the Division of Labor Standards Enforcement of the Department of Industrial Relations.

Section 230.1 does not create a right for an employee to take unpaid leave that exceeds the unpaid leave time allowed under, or in addition to the unpaid leave time permitted by, the federal Family and Medical Leave Act of 1993.

The provisions of this bill apply to the State as an employer and to State employees. The entitlement of any employee under this law shall not be diminished by a collective bargaining agreement.

If you have any questions, please contact Nora Cheek at (916)324-0441.



Bob Painter, Chief
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