

OFFICE OF THE GENERAL COUNSEL

Practice Group Advisory

February 26, 2014

Charles F. Robinson
General Counsel
Vice President for Legal Affairs

www.ucop.edu/general-counsel

SUMMARY

Effective January 1, 2014, the California legislature amended Labor Code sections 230 and 230.1 to extend existing prohibitions against discrimination toward employee victims of domestic violence or sexual assault to victims of stalking, as defined under California law. The amendments also require employers to provide reasonable accommodations to such victims.

If you have any questions regarding the effect of these new laws, or need assistance, please contact:

Allison Woodall
Deputy General Counsel
Labor, Employment & Benefits
Allison.Woodall@ucop.edu

Jennifer A. Chin
Senior Counsel
Labor & Employment
Jennifer.Chin@ucop.edu

This practice group advisory is issued by the Office of the General Counsel to provide updates regarding important legal and regulatory developments that affect the University. For additional information or assistance with a specific legal matter, please contact the Office of the General Counsel.

LABOR CODE AMENDMENTS EXTEND EXISTING DISCRIMINATION PROHIBITIONS TO STALKING VICTIMS AND IMPOSE NEW REASONABLE ACCOMMODATION REQUIREMENT

At the end of last year, Governor Brown signed into law Senate Bill (SB) 400, which expands existing employment discrimination provisions which protect employees who are victims of certain crimes. Prior to the amendment, Labor Code sections 230 and 230.1 protected known, or suspected, victims of domestic violence and sexual assault from being discharged, threatened with discharge, demoted, suspended, or otherwise discriminated or retaliated against by their employers. The law also required that such employees be provided a leave of absence from work to obtain a temporary restraining order, restraining order, or other court assistance to ensure the employee's own health, safety, or welfare, or that of the employee's child. Employees may also take leave for the following purposes: (1) to seek medical attention for injuries caused by domestic violence or sexual assault; (2) to obtain services from a domestic violence shelter, program, or rape crisis center as a result of domestic violence or sexual assault; (3) to obtain psychological counseling related to an experience of domestic violence or sexual assault; or (4) to participate in safety planning and take other actions to increase safety from future domestic violence, including temporary or permanent relocation.

SB 400 extends the above protections, and rights, to victims of stalking. The crime of stalking is defined in California Penal Code Section 646 as (1) willfully, maliciously, and repeatedly following, or willfully and maliciously harassing another person, and making a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family; or (2) engaging in a pattern of conduct with the intent to follow, alarm, or harass another individual.

The leave certification requirements have not changed; employees must give the employer reasonable advance notice of the intention to take time off, unless advance notice is not feasible. The employee may provide any of the following to certify the need for leave: (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, or other evidence from the court or prosecuting attorney that the employee has appeared in court; (3) documentation from a licensed medical professional, domestic violence counselor, licensed health care provider, or counselor that the employee was undergoing treatment for physical or mental injuries or abuse resulting in victimization from domestic violence, sexual assault or stalking.

The bill also now requires that once an employer becomes aware of an employee's status as a victim of domestic violence, sexual assault, or stalking, and the employee requests a reasonable accommodation to ensure his or her safety while at work, the employer must engage in a "timely, good faith, and interactive process" with the employee to determine effective reasonable accommodations. In determining whether the accommodation is reasonable, the employer must consider "exigent circumstances or danger facing the employee." Possible reasonable accommodations include, but are not limited to:

- (1) Transfer, reassignment, or modification of the employee's schedule;
- (2) Changing the employee's work telephone number and/or work location;

OFFICE OF THE GENERAL COUNSEL

Practice Group Advisory

January 28, 2014

These new provisions, which became effective January 1st, highlight the importance of responding effectively to the needs of victims of domestic violence, sexual assault, and stalking. The University is reviewing applicable policies to determine what revisions need to be made in light of the new law.

- (3) Installing a lock;
- (4) Assisting the employee with documenting the domestic violence, sexual assault, or stalking that occurs at the workplace;
- (5) Implementing new safety procedures;
- (6) Making adjustments to the job structure, workplace facility, or work requirement in response to the domestic violence, sexual assault, or stalking; and
- (7) Referring the employee to a victim assistance organization.

The new bill does not require an employer to provide an accommodation that would constitute an undue hardship to the employer's business operations. An employee requesting a reasonable accommodation may be asked to provide appropriate documentation to certify the need for accommodation.

These new provisions, which became effective January 1st, highlight the importance of responding effectively to the needs of victims of domestic violence, sexual assault, and stalking. The University is reviewing applicable policies to determine what revisions need to be made in light of the new law.