



October 9, 2003

GOVERNOR SIGNS NEW LEAVE OF ABSENCE LAW

New legislation signed into law by Governor Gray Davis on October 2, 2003 creates yet another protected leave that employers must allow their employees to take. The new law affects all employers regardless of size and goes into effect January 1, 2004.

Under the new law, an employee who is the victim of, or related to a victim of, certain felonies may take a protected leave of absence from work to attend judicial proceedings related to the crime regardless of whether the employee's attendance is required at the proceeding. In order to qualify for a protected leave, the employee or the employee's spouse, child, stepchild, brother, stepbrother, sister, stepsister, mother, stepmother, father, stepfather or registered domestic partner must have been the victim of a "violent felony" as defined in Penal Code Section 667.5, a "serious felony" as defined in Penal Code Section 1192.7 or a felony involving theft or embezzlement.

Employees must give their employer prior notice of the need to take leave to attend a judicial proceeding where feasible; however, if prior notice is not given, the employer cannot take any action against the employee for an unscheduled absence if the employee provides documentation evidencing the proceeding within a reasonable time after the absence. Additionally, employees may elect to use accrued vacation, sick leave, compensatory time off, or unpaid leave for the period of their absence.

The new law also prohibits employers from discharging or discriminating against any employee who takes a leave protected under the law and allows an affected employee to file an administrative complaint within one year of a violation of the law with the Division of Labor Standards Enforcement. The law may also be the basis for a wrongful termination in violation of public policy lawsuit in civil court, bringing with it increased defense costs and the potential for punitive damages.

Employers should carefully review and revise their leave of absence policies to comply with this new law.

For more information about this issue, please contact a member of the Labor and Employment Practice Group in one of our offices.

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