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California's New Leave for Military Spouses and Other Time Off Laws

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On October 9, 2007, the Governor signed a bill allowing spouses of military personnel to take unpaid time off during the other spouse's leave from deployment.

California Military and Veterans Code section 395.10 was passed as "emergency legislation" and went into effect immediately. The stated intent of the new law is to "serve the families of those troops currently serving in military conflicts in Iraq and Afghanistan, and to assure that these families are able to spend time together during the qualified [spouse's] leave from deployment."

Overview of the New Military Leave Law

Section 395.10 requires public and private employers of 25 or more employees to allow any qualified employee to take up to 10 days of unpaid leave during a "qualified leave period." A "qualified leave period" is defined as the period during which the "spouse" (including a registered domestic partner as defined under California law) of the employee is on leave from deployment during a period of military conflict.

To be eligible for a leave, an employee must: (1) work an average of 20 or more hours per week; and (2) have a spouse in the United States Armed Forces, National Guard or Reserves who

is deployed during a period of "military conflict" to an area designated as a combat theater or combat zone by the president. "Military conflict" is defined as either a period of war declared by Congress, or a period of deployment for which a member of a reserve component is ordered to active duty. Independent contractors are not eligible for leave under section 395.10.

Under the new law, employees must give their employer notice of the need for time off within two business days of receiving official notice that the military spouse will be on leave from deployment. Employees must also provide written documentation "certifying" that the military spouse will be on leave from deployment during the leave period requested. The leave must be taken during the military spouse's leave from deployment, and not at any other time.

Taking time off under section 395.10 does not affect an employee's right to other leave or benefits to which the employee is otherwise entitled. Also, employers may not retaliate against an employee for requesting or taking leave under the new law.

Section 395.10, like most employment laws, has some ambiguity. For example, the law does not specify what kind of

documentation constitutes "certification." It also does not address whether the leave must be taken at a time of the employee's choosing, or if the employer can require the time be taken off when most convenient for the business.

Other California Time Off Laws

California employers probably are familiar with the federal Family and Medical Leave Act, the California Family Rights Act and the pregnancy disability leave law. But laws like section 395.10 may escape employers' attention, often because they are found in other unlikely places. For example, some leave laws have been memorialized in parts of the elections and education codes. These rules can become the basis for "surprise" employee disputes because they so infrequently apply. Portions of these often overlooked time off laws are briefly summarized below.

Military Leave: Military and Veterans Code section 394.5 provides that all employees who are members of the Reserves, National Guard or Naval Militia are entitled to an unpaid leave of absence for military training, drills, encampment, naval cruises, special exercises or similar activity. The specified leave period is 17 calendar days per year, including travel time to and

from such duty. Section 394 prohibits the discharge of any military person because he or she is required to perform military service. It also prohibits hindering or preventing a military person from performing any ordered service.

Leave for Drug and Alcohol

Treatment: Labor Code sections 1025 through 1027 require employers with 25 or more employees to provide time off for employees to participate in drug or alcohol rehabilitation programs. The leave is provided as a “reasonable accommodation” on a case-by-case basis; no particular amount of time off is specified. The leave is unpaid, but employees must be permitted to use any available sick leave. Employers must safeguard the employee’s privacy with respect to enrollment in any treatment program.

Leave for Literacy Assistance:

Labor Code section 1041 through 1044 require employers with 25 or more employees to provide unpaid time off for employees to participate in a literacy education program. The leave is provided as a “reasonable accommodation” on a case-by-case basis; no particular amount of time off is specified. Employers must safeguard the employee’s privacy with respect to enrollment in any literacy program. Employers may not terminate an employee based on a disclosure that the employee is illiterate.

Leave for Witness Duty and Jury

Duty: Labor Code section 230 requires all employers to provide employees time off for jury duty and witness duty. The amount of leave is provided on a case-by-case basis; no time limits are

specified. The leave is unpaid (unless otherwise required by law, such as when an exempt employee’s workweek is interrupted by jury or witness duty); however, employees must be allowed to use accrued vacation, personal time off and compensatory time off for this purpose. Employers may not terminate, discriminate or retaliate against employees who take such leave.

Time Off for Voting: Elections Code section 14000 requires all employers to provide up to two hours of unpaid leave for employees to vote. Unless otherwise mutually agreed, the time must be taken at the end or beginning of the work day, whichever allows the least amount of time off. Elections Code section 14001 requires that employers post notice of the right to take time off for this purpose.

Time Off for Suspension of a Child and School Events: Labor Code section 230.7 and Education Code section 48900.1 require all employers to provide unpaid time off for employees to address certain matters related to a child’s suspension from school. Although no specific amount of time off is specified in these statutes, Education Code section 48900.1 states that parental attendance for a “portion” of a school day may be required for any given suspension.

Labor Code section 230.8 similarly requires employers with 25 or more employees at the same location to allow employees to take unpaid leave of up to 40 hours per year (up to 8 hours a month) to participate in a child’s school activities. Employees may be required to use vacation,

personal leave or “compensatory time off” (which generally does not apply to private sector employees in California) for this purpose. Employers may not terminate, discriminate or retaliate against employees who take leave for school events or the suspension of a child.

“Kin Care” Leave: Labor Code sections 233 and 234 provide that all employers must allow employees to use up to one-half their annual sick leave allocation to care for a child, parent, spouse or registered domestic partner who is ill. All conditions and restrictions on use of sick leave by the employee apply equally to kin care leave. Employers may not terminate, discriminate or retaliate against employees who take kin care leave.

Leave for Domestic Violence and

Sexual Assault: Labor Code section 230 requires all employers to provide employees time off to obtain relief from domestic violence (such as seeking a restraining order or taking other measures to protect the health, safety or welfare of the victim or his or her child). The amount of leave is provided on a case-by-case basis; no time limits are specified. Labor Code section 230.1 similarly requires employers with 25 or more employees to provide employees time off to obtain counseling, medical services or services from a shelter or rape crisis center in connection with domestic violence or sexual assault. Employers may not terminate, discriminate or retaliate against employees who take leave under sections 230 or 230.1. Both leaves are unpaid; however, employees must be allowed to use accrued vacation, personal time

off and compensatory time off for this purpose.

Crime Victims Leave of Absence:

Labor Code section 230.2 requires all employers to provide employees time off to attend judicial proceedings for a crime against the employee or an “immediate family member” of the employee. The leave is unpaid; however, employees must be allowed to use accrued vacation, personal time off and compensatory time off for this purpose. Employers may not terminate, discriminate or retaliate against employees who take a crime victim leave of absence.

Leave for Emergency Duty

Personnel: Labor Code section 230.3 requires all employers to provide unpaid time off for employees to perform emergency duty as volunteer firefighters or reserve peace officers, or to perform emergency rescue work. No time limits are specified for this leave. Labor Code section 230.4 similarly requires employers with 50 or more employees to provide up to 14 unpaid days off per calendar year for employees to engage in fire or law enforcement training.

Employers may not terminate, discriminate or retaliate against employees who take leave under sections 230.3 or 230.4.

Conclusion

When administering these California leaves of absence, employers should keep a few tips in mind. First, many of the laws discussed in this article are used less frequently than the Family and Medical Leave Act/California Family Rights Act, and therefore often overlooked. While employers are not required to include policies covering these various leaves in their employee handbooks, they should ensure human resources personnel are fully apprised of the compliance obligations in the applicable laws to avoid related claims.

Also, employees may be covered by multiple statutes for the same set of circumstances. For example, an employee who takes a leave for injuries due to domestic violence may also be entitled to a leave of absence under the federal Family Medical Leave Act or the California Family Rights Act. When this occurs, employers must comply

with, and advise employees of, their rights under all applicable laws. Due to the complexity of these issues, it is always advisable to consult experienced counsel.

Finally, leave policies must be equally and consistently applied to all employees. Failing to do so could lead to significant liability for discrimination and related claims.

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