

December 5, 2013

California Law Extends Workplace Discrimination Prohibition to Stalking Victims and Imposes New Reasonable Accommodation Requirement

By Jody Landry and Tiffany Cruz

California Governor Jerry Brown recently signed into law Senate Bill No. 400 (SB 400), which expands the state's current employment discrimination protections to victims of stalking. Effective January 1, 2014, SB 400 amends California Labor Code sections 230 and 230.1 to extend the prohibitions against discharging, discriminating against, or retaliating against employees who are known or suspected victims of domestic violence or sexual assault, to employees who are victims of stalking. SB 400 also adds a provision to Labor Code section 230 that requires employers to provide reasonable accommodations to victims of domestic violence, sexual assault, and stalking.

The Current Law Only Protects Victims of Domestic Violence and Sexual Assault

California Labor Code section 230 currently prohibits employers from threatening to discharge, discharging, discriminating against, or retaliating against employees who are victims of domestic violence or a sexual assault for taking time off from work to obtain any type of relief from the court (e.g., a restraining order against the employee's abuser) "to help ensure the health, safety or welfare of the [employee] or his or her child."¹ Likewise, California Labor Code section 230.1 currently prohibits employers with 25 or more employees from threatening to discharge, discharging, discriminating against, or retaliating against employees who are victims of domestic violence or sexual assault for taking time off from work to obtain non-legal services, such as medical, psychological, or social services related to the abuse.² Sections 230 and 230.1 also currently permit employees to file complaints for alleged violations of the law with the Division of Labor Standards Enforcement (DLSE).³

New Requirements for Employers

SB 400 extends the established anti-discrimination protections for taking time off from work to participate in activities related to abuse to employees who are stalking victims. The new law defines the term "stalking" as:⁴

- 1 Cal. Lab. Code § 203(c).
- 2 Cal. Lab. Code § 203.1(a).
- 3 Cal. Lab. Code §§ 203(f)(1), 203.1(d)(1).
- 4 See Cal. Lab. Code § 230(j)(3), S.B. No. 400, Ch. 759.

- “Any person who willfully, maliciously, and repeatedly follows or willfully and maliciously harasses another person and who makes 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”;⁵ or
- Any person “engaged in a pattern of conduct the intent of which was to follow, alarm, or harass the plaintiff.”⁶

The new law not only will protect the ability of employees who are victims of stalking to take time off, but also will prohibit employers from discharging, discriminating against, or retaliating against employees based on their “status as a victim of domestic violence, sexual assault, or stalking.”⁷ This new prohibition is triggered if either (1) “the victim provides notice to the employer of the status,” or (2) “the employer has actual knowledge of the status.”⁸

SB 400 also contains provisions that are similar to the reasonable accommodation requirements outlined in the Americans with Disabilities Act. After 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 at work, the employer must engage in a “timely, good faith, and interactive process with the employee to determine the effective reasonable accommodations.”⁹ The new law suggests that employers consider implementing the following “reasonable accommodations:”¹⁰

- Transfer, reassign, or modifying the employee’s schedule;
- Change the employee’s work telephone and/or work station;
- Install a lock;
- Assist the employee with documenting the domestic violence, sexual assault, or stalking that occurs at the workplace;
- Implement new safety procedures;
- Make adjustments to the job structure, workplace facility, or work requirement in response to the domestic violence, sexual assault, or stalking; and
- Refer the employee to a victim assistance organization.

SB 400 provides no guidance as to the non-exhaustive list of suggested reasonable accommodations for employees who are victims of domestic violence, sexual assault or stalking. Even worse, the suggested safety measures of a “lock” and “new safety procedures” will be subject to vastly different interpretations by employers. Due to the lack of clarification in the new law, and until the courts address the provisions of the new law, employers should identify the appropriate safety measures for covered employees on a case-by-case basis.

Finally, the new law permits an employee who is a victim of domestic violence, sexual assault, or stalking to file a complaint with the DLSE based on allegations that his or her employer violated any of the law’s provisions.

Next Steps for Employers

- Revise your anti-discrimination, harassment, and retaliation policy to include a provision that explicitly prohibits threatening to discharge, discharging, discriminating against, or retaliating against any employee who is a victim of domestic violence, sexual assault, or stalking, based on that status, or for taking time off from work to obtain legal or non-legal assistance or services to ensure the health, safety, or welfare of the employee and/or his or her child.
- Create (1) a policy outlining the internal protocols for employees who are victims of domestic violence, sexual assault, or stalking to request reasonable accommodations, and (2) a policy outlining your willingness to engage in a timely, good faith, interactive process

5 Cal. Penal Code § 646.9(a).

6 Cal. Civ. Code § 1708.7(a).

7 See Cal. Lab. Code § 230(e), S.B. No. 400, Ch. 759.

8 See Cal. Lab. Code § 230(e), S.B. No. 400, Ch. 759.

9 See Cal. Lab. Code §§ 230(f)(1), (3)-(4), S.B. No. 400, Ch. 759.

10 See Cal. Lab. Code § 230(f)(2), S.B. No. 400, Ch. 759.

to identify and implement reasonable accommodations to ensure the safety of employees who are victims of domestic violence, sexual assault, or stalking.

- Train your Human Resources personnel, managers, and supervisors on (1) the new employment protections for victims of stalking, and (2) the new obligation for managers and supervisors to engage in a timely, good faith, interactive process with employees who are victims of domestic violence, sexual assault, or stalking to identify reasonable accommodations for such employees.
- Before January 1, 2014, distribute the updated and new policies to all employees, train the employees on the policies, and obtain the employees' written acknowledgement of receipt of the policies.

[Jody Landry](#) is a Shareholder and [Tiffany Cruz](#) is an Associate in Littler Mendelson's San Diego office. If you would like further information, please contact your Littler attorney at 1.888.Littler or info@littler.com, Ms. Landry at jlandry@littler.com, or Ms. Cruz at tcruz@littler.com.