HR Guideline for California Employers

This HR Guideline contains some of the most frequently used employment and Human Resource laws at the time of publication and is intended to be a useful reference document. The laws and statutes' described in this Guideline may be modify or changed at any time without advance notice. For this reason, we urge employers to check with their labor council to obtain current information regarding the status of any specific matter.

Contents

EMPLOYMENT PRACTICES

New Employee Paperwork Guidelines

A California employer should always require all employment documents, including an employee offer letter of employment, and company policies to be signed before the new hire starts the first day of work. Employees should not be permitted to begin work or training until all forms are completed including providing proper identification. All items in bold are required for employment and payroll purposes.

- Offer Letter **-** When hiring a new employee, an employer should always present the job offer in writing, either in the form of an employment contract, or an offer of employment letter. The purpose is to clearly set forth the terms of the employment relationship, so the employee cannot later say the employer promised something other than what was placed in the offer of employment. In addition, depending on the nature of the company, or the business, additional contracts or agreements may be necessary to address a specific aspect of the employment relationship.
- **W-4** - Required so that the correct Federal Income Tax can be withhold from the new employees pay. The employee must indicate Single or Married and the total number of allowances they are claiming (box #5). This form must be signed. If an employee whishes to have a different amount withheld for State Income Tax the state withholding form (**DE4**) must be completed.
- **I-9 -** Required by the DHLS to prove that we are employing individuals who are eligible to work in the United States. Must be completed within 72 hours of employment. If appropriate documents are not produced within 72 hours, employee must be paid for hours/days worked and terminated. This form must be completed entirely. The employee completes the top section and the employer completes the lower section verifying identity.
- **DE34 New Hire Reporting -** All California employers must report all their new or rehired employees who work in California to the New Employee Registry within twenty (20) days of their start-of-work date. The start-of-work date is the first day services were performed for wages.
- Direct Deposit Form – If employees want their payroll directly deposited into their account(s) they must complete an authorization form and attach a voided check.

Required Notices

- **State Disability Insurance (SDI)** - Employer must provide the brochure "State Disability Insurance Provisions" (DE2515) to new employees within five working days of employment date. Also, the pamphlet must be given to any employee who becomes disabled due to pregnancy or is ill or injured from causes unrelated to work within ten days of the absence, provided that the employer has been notified of the cause of the absence. (U.I. Code §1089).
- **Workers' Compensation Insurance (WC)** - New Employee Notice: New employees, either at the time of hire or by the end of the first pay period must receive the pamphlet "Facts about Workers' Comp." (90-58882). (CA Labor Code §139.6)
- **Sexual Harassment -** Employers with one or more employees are required to distribute to their employees the Department of Fair Employment & Housing (DFEH) information sheet on sexual

harassment or equivalent information in a manner that ensures distribution to each employee. (CA Gov. Code §12950(b)).

- **Paid Family Leave (PDF)** – The Paid Family Leave law requires employers to provide the Paid Family Leave (DE 2511) brochure to new employees and employees who request leave to care for a seriously ill family member or bond with a new child. Employers are not required to provide the Paid Family Leave insurance claim forms to their employees.

  Paid family leave (PFL) is a state sponsored insurance program within the SDI program. It applies to all employees at companies of any size to provide them with partial wage replacement for up to six weeks in any 12 month period while they are absent from work to care for a seriously ill or injured family member or bonding with a minor child within one year of birth or placement of the child in connection with foster care or adoption. Like SDI, PFL does not create a right to a leave of absence or guarantee reinstatement rights other than those already mandated by law. An employee who is entitled to a leave of absence under the FMLA and the CFRA should take PFL concurrent with those leaves.

Employee File Maintenance

Individual employee files should be started from their date of hire and maintained vigilantly through separation of employment.

1. Personnel File
2. Medical/Benefits File
3. Payroll File
4. I-9 File
5. Other miscellaneous such as Workers Compensation files or OSHA logs

The following approach to your HR filing is recommended:

Main HR file: Include documentation that provides a roadmap for where the employee has been, and that can be used for making and justifying future employment related decisions (i.e. promotions, discipline, terminations) that are based upon performance rather than discriminatory reasons. Examples of what to include are**:**

- Employment application/resume
- New hire checklist
- Orientation checklist
- Employee personnel action change documentation (i.e. promotions, pay
- Raises and reasons for them, etc)
- Performance evaluations
- Formal discipline documentation/performance improvement plans
- Signed policy/handbook acknowledgements
- Employee training documentation
- Quarterly/annual attendance records
- Termination checklist

File confidential information or items not related to pay and performance elsewhere:

- **I-9 forms and supporting documentation** (this should have its own, separate filing system). All employee I-9's should be kept together in one binder. This will be the easiest way to provide the documentation should there ever be an audit.

- **Employee benefits enrollment documentation**. The Medical file will contain information that should NOT be kept in either the Personnel file or Payroll file.
- Informal notes on performance related conversations

Payroll Changes/Documentation - Direct deposit forms, for example, can be kept in a Payroll file. The Payroll file's purpose is to maintain specific items related directly to payroll processing and reporting. The files may be stored in or near the payroll department under lock and key.

Employee Right to Inspect Personal File

Companies are required to make and keep a variety of records about their employees. Although these records belong to the employer, employees have a right to see many of the documents in their personnel files. Depending on the type of document involved, employees, applicants, and ex-employees may be entitled to inspect and copy items in their personnel files.

Companies may remove certain documents before permitting an employee access to the file, including:

- letters of reference,
- records involving possible criminal offenses, and
- certain pre-hire and promotional ratings and reports.

Employers must make employees' personnel files available within a reasonable time after employees request access. Although employers may limit the amount of time employees have to examine their files, employers must give them sufficient time for a reasonable inspection.

While employers must allow employees to make notes while reviewing their file, employees may not alter the file in any way. So, employees may not take their file, take anything from or add anything to their file, or write on any document. If employees disagree with any statement in the file, they may not require their employers to change it.

Employees, applicants, and ex-employees may receive a copy of any employment-related document that they signed. Examples of signed documents include:

- employment applications and agreements,
- confidentiality agreements,
- authorizations, and
- performance appraisals.

Employers may have someone present to monitor the inspection to ensure that employees do not take, alter, or damage the files.

Employee Classification & Status

A specific classification should be assigned to each Employee for purposes of identifying eligibility for benefits, salary administration and overtime eligibility. Classifications are determined by the Employee's assigned work schedule and employment relationship. Employees must be correctly classified as Exempt or Non-Exempt.

Non-Exempt Status - Employees classified as non-exempt are generally paid on an hourly basis and occupy non-supervisory, clerical, or support positions. These Employees are eligible for applicable overtime pay and must be provided meal and rest periods.

Exempt Status – Exempt means a Employee is not subject to the Fair Labor Standards Act (FLSA) overtime provisions or the Industrial Welfare Commission (IWC) Wage Order sections pertaining to overtime, minimum wage, record keeping, uniforms and equipment, meal periods, and rest periods. Where the state and federal regulations conflict the more restrictive requirement, is the one California employers must follow. Job title or salary does not classify an employee as Exempt. The employees work must be relatively high-level work and exempt level employees must be paid at least $33,280 annually.

It is up to employers to determine whether to classify an employee as exempt or nonexempt under the Fair Labor Standards Act (FLSA).

Most employers believe that so long as an employee is paid a salary, they are exempt from the requirement to pay overtime wages. This is not correct. Income or salary alone does not determine exempt status, and salaried employees are not automatically exempted from overtime compensation. Job titles do not designate an employee as exempt or non-exempt.

To comply with the FLSA, employers need to regularly review their employee classifications. Generally, two requirements must be met to classify an employee as exempt:

1) They must earn a salary and
2) Hold a position with duties the U.S. Labor Department designates as appropriate for exempt positions.

Those positions generally fall into six categories: executive, administrative, learned professional, computer professional, creative professional and outside sales.

Use the Exempt vs. Non-Exempt checklist to be sure you are classifying employees correctly.

AUDIT: TEST YOUR COMPLIANCE

To be considered exempt from overtime, an employee must generally be paid on a salary basis and his job duties must meet the Labor Department's standards for one of the six exemption categories discussed below.

- **Executive Employee**

Answer the following questions to determine whether you've misclassified a worker as an exempt executive:		*Yes*	*No*	*Don't Know*
1.	Is the employee's primary duty managing the enterprise or a department or subdivision of the enterprise?	☐	☐	☐
2.	Does the employee customarily direct the work of two or more other employees or their equivalent?	☐	☐	☐
3.	Does the employee have the authority to hire or fire, and do his or her recommendations carry significant weight if unauthorized to make the final decision?	☐	☐	☐
4.	Is the employee paid the equivalent of at least $640 per week on a salary basis?	☐	☐	☐

If you answered "No" to any of these questions, you may have misclassified the worker as an exempt executive.

Note: If the employee is at least a 20 percent owner of the business and meets requirements #1 and #2 above, he need not meet the salary requirement in #4 or the authority requirement in #3.

- **Administrative Employee**

Answer the following to determine whether a worker is misclassified as an exempt administrative employee:		*Yes*	*No*	*Don't Know*
1.	Is the employee's primary duty performing office or non-manual work directly related to the management or general business operations of the employer or the employer's customers?	☐	☐	☐
2.	Does the employee exercise discretion and independent judgment with respect to matters of significance? That is, does he or she evaluate and compare possible courses of action and then make a decision or recommendation after considering the various possibilities?	☐	☐	☐
3.	Is the employee paid the equivalent of at least $640 per week on a salary basis?	☐	☐	☐

If you answered "No" to any of these questions, the employee may be misclassified as exempt administrative.

- **Learned Professional Employee**

Answer the following to determine whether a worker is misclassified as an exempt learned professional:		*Yes*	*No*	*Don't Know*
1.	Is the employee's primary duty to perform work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction?	☐	☐	☐
2.	Is the advanced knowledge obtained by completing an academic course of study resulting in a four-year college degree or leading to certification?	☐	☐	☐
3.	Is the employee paid the equivalent of at least $640 per week on a salary basis?	☐	☐	☐

If you answered "No" to any of these questions, the employee may be misclassified as an exempt learned professional.

***Exception:** Those who've completed the educational requirements for a law or medical degree need not meet the minimum salary requirement. Also, teachers need not be certified or meet the minimum salary requirement to qualify as learned professionals.*

- **Creative Professional Employee**

Answer the following to determine whether a worker is misclassified as an exempt creative professional:		*Yes*	*No*	*Don't Know*
1.	Is the employee's primary duty to perform work requiring invention, originality or talent in a recognized field of artistic endeavor such as music, writing, acting and the graphic arts?	☐	☐	☐
2.	Does the work require more than intelligence, diligence and accuracy (i.e., does it require "talent")?	☐	☐	☐
3.	Is the employee paid the equivalent of at least $640 per week on a salary basis?	☐	☐	☐

If you answered "No" to these questions, you may have misclassified a worker as an exempt creative professional.

- **Computer Professional**

Answer the following to determine whether a worker is misclassified as an exempt computer professional:		*Yes*	*No*	*Don't Know*
1.	Is the employee paid at least $6,587.50 per month on a salary or fee basis or, if paid hourly, at a rate of not less than $37.94 per hour?	☐	☐	☐
2.	Is the employee's primary duty:			
	Application of system analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications; or	☐	☐	☐
	Design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications; or	☐	☐	☐
	Design, testing, documentation, creation or modification of computer programs related to machine operating systems; or	☐	☐	☐
	A combination of the aforementioned duties requiring the same level of skills?	☐	☐	☐

If you answered "No" to #1 or were unable to answer "Yes" to any parts under #2, you may have misclassified the worker as an exempt computer professional.

- **Outside Sales Employee**

To determine whether a worker has been misclassified as an exempt outside sales employee, answer the following questions:		*Yes*	*No*	*Don't Know*
1.	Is the worker's primary duty making outside sales?	☐	☐	☐
2.	Does he regularly work away from the company's place of business?	☐	☐	☐
3.	Does the worker sell tangible or intangible items, such as goods, insurance, stocks, bonds or real estate, or obtain orders or contracts for services or the use of facilities?	☐	☐	☐

If you answered "No" to any of these questions, you may have misclassified the worker as an exempt outside sales employee.

Correct classification is very important as misclassification of exempt or non-exempt status may result in a combination of fines, penalties, or the payment of unpaid wages, as imposed by the Department of Labor (DOL). Willful violations may result in criminal prosecution and employers may be fined up to $10,000. Second convictions may result in imprisonment. Employers who willfully or repeatedly violate the minimum wage or overtime pay provisions of the FLSA also are subject to civil money penalties of up to $1,100 for each violation.

Work Schedules

Managers should advise their Employees of their individual schedules. Staffing needs and operational demands may necessitate variations in starting and ending times, as well as variations in the total hours that may be scheduled each day and week.

Ensure that you are very clear, during an interview and when you make a job offer, as to what the work schedule will be. If you must make scheduling changes due to business needs, do everything you can to accommodate Employees. If, however, schedules need to change based on real business reasons and Employees cannot work the new shift, you may discharge them based on the fact they cannot meet the new scheduling needs.

Timekeeping Tips

Timekeeping is a critical element of sound payroll practices that is commonly mishandled by employers, leading to potential liability. Employers who do not maintain complete and accurate records of the hours worked by their employees are unlikely to pay their employees properly, and can encounter great difficulty in defending themselves against claims filed by their employees.

In order to minimize their risk of liability and put themselves in the best position possible to defend against claims, employers should implement the following timekeeping practices:

- Record starting and stopping times, not just total hours of work- Non-exempt employees should record the times at which they begin work, begin any meal period(s), end their meal period(s), and conclude work for the day. Many employers expose themselves to liability by maintaining records which reflect only total hours worked each day, or by failing to maintain records that reflect the times at which meal periods began and ended. Records which reflect the exact same starting and ending times each day are often greeted with skepticism, since employees rarely, if ever, begin and end at precisely the same times each day.
- Insist that employees record their own time- In order to preclude employees from arguing that a manager has recorded their hours of work incorrectly, employers should insist that employees record their own hours of work each day.
- Insist that employees record their time on a daily basis- In some instances employees may become lazy and be tempted to record all of their work hours for a particular week or pay period on the last day. Employees generally are unable to remember the precise times at which they began and ended work each day throughout an entire payroll period. In order to maximize the accuracy of their records, employers should insist that employees record their work hours on a daily basis.

Timekeeping is a critical step in the payroll process that is often neglected by employers. By following the basic policies outlined above, employers can minimize their risk of liability for inadequate timekeeping.

Waiting Time or On Call Payment Requirements

Calculating the hours worked by non-exempt employees is generally a straightforward task, but complications may arise when employees spend time waiting for work or in "on call" status. Time devoted to these activities can constitute work time in some circumstances and should be counted as hours worked.

Waiting time

In some industries workflow may fluctuate substantially throughout the day, leaving employees with little or nothing to do at certain times and overwhelmed with work at others. During the slow periods of the day, employees may be idle while they wait for work flow to increase again.

In general, employers are required to pay non-exempt employees for all time during which the employee is on duty. If the employee is off duty, periods during which he is completely relieved of any obligation to the employer do not constitute hours worked if

a) they are long enough to enable the employee to use the time effectively for personal purposes, and

b) the employee is told in advance that he can leave the work site and will not have to return until a specified time.

Waiting time is likely to be considered hours worked when it is unpredictable and of short duration, such that the employee cannot effectively use the time for his or her own purposes. Examples of waiting time that would constitute hours worked include time spent by a courier waiting for an assignment, time spent by a fireman waiting for a call or an alarm, or time spent by an office worker waiting to resume work after an IT technician fixes his or her computer. In these situations, waiting is treated as an integral part of the employee's job and therefore constitutes time worked.

"On call" time

Closely related to waiting time is the concept of "on call" status. The nature of some jobs requires employees to be "on call," ready to respond to business or customer needs whenever they may arise. Some employees carry pagers or cellular telephones, for example, so that their supervisors can contact them and direct them to respond quickly to emergencies. This common scenario creates issues similar to those that arise with waiting time.

Time spent "on call" by non-exempt employees represents time worked, and is compensable, if the employee is

a) required to remain on the employer's premises, or

b) required to remain so close to the workplace that the employee cannot effectively use the time for personal purposes.

Time spent "on call" by employees who are required to be available to answer questions by phone, but are otherwise able to do as they please is unlikely to be regarded as time worked.

When a non-exempt employee is actually required to perform work while on call, special rules governing the calculation of hours worked may apply. If the employee was not otherwise regularly scheduled to work on the day in question, the employer's payment obligation varies depending on the number of hours worked:

- If the employee works more than half of his or her usually-scheduled day of work, the employer must pay the employee for all hours worked.
- If the employee works less than half of his or her usually-scheduled day of work, the employee is entitled to be paid half of the wages earned on a usual day, provided that the amount paid shall be equivalent to no less than two hours of pay and no more than four hours of pay. A full-time employee required to work for three hours while on call is thus entitled to payment for four hours.
- If an employee is required to report to work for the second time in a single day (regardless of whether the employee was regularly scheduled to work on that day or not) and works less than

two hours after reporting for the second time in the day, the company must pay the employee for a minimum of two hours of work.

Proper calculation of hours worked by non-exempt employees is a basic but important task for employers, and mistakes regarding waiting time and on-call time are common.

Administrative Pay Corrections

If there is an error in the amount an Employee is paid, the Employee should promptly bring the discrepancy to the attention of Management or the payroll department so that corrections can be made as quickly as possible. Do not wait until the next pay period to pay employees wages earned in the current pay period.

Deductions from Wages

An employer can lawfully withhold amounts from an employee's wages only:

(1) when required or empowered to do so by state or federal law, or
(2) when a deduction is expressly authorized in writing by the employee to cover insurance premiums, benefit plan contributions or other deductions not amounting to a repayment on the employee's wages.

Although a wage garnishment is a lawful deduction from wages under Labor Code section 224, an employer cannot discharge an employee because the employee's wages have been subjected to a garnishment for the payment of a judgment.

The ability of an employer to deduct amounts from an employee's wages due to a cash shortage, breakage, or loss of equipment is specifically regulated by the Industrial Welfare Commission Orders and limited by court decisions. Labor Code Section 224 clearly prohibits any deduction from an employee's wages which is not either authorized by the employee in writing or permitted by law.

Balloon payment on separation of employment to repay an employee's debt is an unlawful deduction even where the employee authorized such payment in writing. Employers may not deduct negative vacation, sick or PTO amounts from an employee's final check.

Business Expenses

An employee is entitled to be reimbursed by his or her employer for all expenses or losses incurred in the performance of the employee's work duties.

Employers should set internal deadlines and procedures for expense reimbursement. However, Employers may not withhold reimbursement to employees for missed deadline on reimbursement request or lack of receipt for expenses the employee incurred on behalf of the employer.

Overtime

You may require your Employees to work overtime as necessary; as much notice as possible should be provided when the need for overtime work arises. Managers should authorize all overtime work.

Employees are provided time-and-one-half the Employee's regular rate of pay for:

- All hours worked beyond eight in a single workday;
- All hours worked beyond forty straight-time hours in a "workweek"; and

- The first eight hours worked on the seventh consecutive day worked in a single workweek regardless of hours worked in the week.

Employees are paid double the Employee's regular rate of pay for:

- All hours worked beyond twelve in a single workday; and
- The hours worked beyond eight on the seventh consecutive day worked in a single workweek.

You do not have to pay Employees who voluntarily come in before their regular starting time or remain after their shift ends for such periods as long as they do not engage in any work. However, if the Employee is engaged in any work, the Employee must be paid, even if the time comprises overtime.

Rest Breaks

Non-exempt Employees must be provided rest breaks at the rate of not less than 10 consecutive minutes for each four hours (or major portion thereof) worked, occurring as near as possible to the middle of the work period.

You may not combine rest breaks or add them to meal breaks, even at the Employee's request. Nor may they be used to allow an Employee to come in 10 minutes late or leave 10 minutes early. You control rest breaks, thus, you must pay break time as time worked. You may require Employees to remain on the premises during the rest break.

Provide 10-minute rest breaks as follows for the work hours involved:

Hours of Work	Rest Breaks
0 - 3.5	0
3.5 - 6.0	1
6.0 - 10.0	2
10.0 - 14.0	3
14.0 - 18.0	4

Meal Breaks

Non-Exempt employees must be provided a meal break of at least one half-hour for every work period of more than five hours. However, if six hours of work will complete the day's work, the Employee may voluntarily choose not to take the meal break. Meal breaks may be unpaid only if:

- They are at least 30 minutes long;
- The Employee is relieved of all duty; and
- The Employee is free to leave the premises.

Meal breaks may be longer than a half-hour at your discretion. Provide a second meal break of no fewer than 30 minutes for all workdays on which an Employee works more than 10 hours.

Workers' Compensation /Accident Reporting

All full-time, part-time, and temporary Employees are covered under the Workers' Compensation Act for injuries and illnesses resulting from their employment. Coverage includes payment for health care costs and loss of earnings due to time lost from work.

The law requires the employer to file an Employer’s Report of Occupational Injury within five days after knowledge of an injury, accident, incident and illnesses.

Filing the Employer's report does not constitute an admission of liability. If you question a claim, state your reservations on a separate sheet to be submitted with the Employer's report. If you know of any previous injuries they too should be reported as it might impact the benefit.

Do not send Employees to their own physician. Employee must pre-designate a physician before an injury occurs and their physician must sign the pre-designation.

If an Employee refuses medical treatment, have them sign a Refusal of Medical Treatment form. Employees may change their mind about medical treatment but must go to an authorized workers compensation facility for their care.

Notify Centricity Solutions of any accidents or injuries so we may assist in the claim process and assist with OSHA 300 reporting.

Required Notices

- **Injured Worker Notice:** Injured workers are to be given the pamphlet "Facts for Injured Workers" (90-58882) within one working day of the employer receiving notice or knowledge of a workers' compensation injury that results in lost time beyond the date of injury or which results in medical treatment beyond the first aid. (CA Labor Code §139.6)
- **Workplace Crime Notice:** Requires every employer to give any employee who is a victim of a crime that occurred at the employee's place of employment a written notice that the employee is eligible for workers' compensation for injuries that are the result of a workplace crime. (CA Labor Code §3553)
- **Injury Report:** Employees must be given "First Report of Injury – Employee Claim Form" (DWC – 1) within one working day of the employer receiving notice or knowledge of workers' compensation injury that results in a loss of time beyond the date of injury or which results in medical treatment beyond first aid. (CA Labor Code §139.6)
- **Employer's Report of Injury DLSR Form 5020:** California law requires employers to report to the workers compensation carrier within five days of knowledge every occupational injury or illness which results in lost time beyond the date of the incident or requires medical treatment beyond first aid.
- **Personal Physician Choice:** Employers must advise all employees of their right to designate a personal physician for treatment in the event of a work injury or illness (this is a posting requirement). In addition, the employer must furnish the employee a form on which to make this request. (CA Labor Code §3552)

STANDARDS OF CONDUCT

Harassment

AB 1825 (California's sexual harassment training law) mandates sexual harassment training for California supervisors. The basic provisions of California's AB 1825 state that companies with 50 or more employees must provide two hours of training every two years. New hires and employee promoted to supervisory positions must be trained within six months of their assumption of a supervisory position, and thereafter, every two years.

Failure to comply opens the door to harassment lawsuits. Plaintiffs will argue that the failure to provide AB 1825-mandated sexual harassment training is evidence of an employer's failure to take all reasonable steps to prevent sexual harassment.

Harassment is a form of discrimination that is unlawful under State and federal statutes. Any manager who becomes aware of possible sexual or any other harassment must immediately begin an investigation or refer the incident to the proper individual to begin the investigation in a timely and confidential manner.

Harassment is any verbal, physical or visual conduct that tends to belittle or provoke, and includes jokes, gestures, and derogatory remarks. Federal, state and local laws prohibit harassment based on a certain individual’s personal characteristics including an individual’s race, color, sex, national origin, ancestry, religion, marital status, age, and physical or mental ability.

Sexual harassment is any unwelcome sexual advance, request for sexual favors, or other verbal or physical conduct of a sexual nature, including sexual jokes, sexual innuendoes, obscenities and the display of sexually suggestive photographs.

An investigation will include interviewing the complaining Employee, the alleged harasser, any witnesses to the conduct, and any other person who may be mentioned during the course of the investigation as possibly having relevant information. The resulting determination should be communicated to the complaining Employee and the alleged harasser, and if harassment is found, a prompt and effective remedy should be provided to the complaining Employee and disciplinary action taken against the harasser. Ensure that no further harassment occurs, and prevent retaliation against the complaining Employee or any other Employee who participated in the investigation.

GINA & Medical Requests

Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers from asking or obtaining genetic information about an employee, including almost any detail about their family's medical history. To avoid unintentional violations, all employers should take two steps:

- First, train your supervisors to avoid asking employees about their family medical history. If an employee volunteers facts (e.g., "My child is sick"), managers should not seek medical details or ask probing follow-up questions about the relative's (or the employee's) condition.
- Second, amend all forms that request health-related information to indicate that the provider is not to share any genetic information, including family medical history.

The reason for this second step (amending medical request forms) is to protect your organization in case you're given prohibited genetic information in response to a medical request. According to the proposed EEOC regulation §1635.8(b)(1), an improper disclosure of genetic information may be considered

"inadvertent" — and thus an employer would incur no liability — if it takes advantage of a "safe harbor" by including the following warning in health-related requests:

> "The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of employees or their family members. In order to comply with this law, we are asking that you not provide any genetic information when responding to this request for medical information. 'Genetic information,' as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services."

Off-Duty Conduct

You may not discriminate against Employees and job applicants on the basis of lawful conduct they engage in during non-working hours away from the employer's premises. However, should the outside activity of a Employee conflict with, detract from, or adversely affect the interest of the company, the Employee needs to be informed that the situation needs to be corrected or their future employment with the company could be affected.

Employers are restricted in inquiries into many areas of the private lives of both Employees and applicants, including some that have an impact upon the job. This includes Employees who take or have a second job and conduct that you feel to be morally in conflict with the business.

All Employees must be judged by the same performance standards and subjected to the company's scheduling demands, regardless of any existing outside work requirements. Outside employment or activities should not be considered an excuse for poor job performance, absenteeism, tardiness, leaving early, or refusal to work overtime. Such conduct can result in termination of employment.

Drug and Alcohol Use

Employees must not report for work in an impaired condition resulting from the use of alcohol or drugs; or consume alcohol or posses or consume drugs while on duty.

If an Employee smells of alcohol or appears to be under the influence, the Employee should be sent home immediately. However, do not allow an Employee who is impaired to drive home from work. An impaired employee should never be allowed to drive, to protect the employee and others and to avoid being held liable for any accidents that occur, the Employee should call someone to pick him/her up, take public transportation or call a cab to drive the Employee home.

Punctuality and Attendance

If you have an Employee that is frequently absent review the attendance policy with the Employee immediately if you see a pattern of absenteeism starting to develop. Let the Employee know exactly what disciplinary procedures will follow if the problem continues. Make written notes of the conversation, including date and time.

Be consistent. If you ignore chronic absenteeism for one Employee and discipline another, you are risking a discrimination suit. When Employees realize they may face discipline, they may be less likely to take unauthorized time off. Every time you warn, suspend or terminate an Employee for excessive absenteeism, you send a message to the entire company.

Termination

In California, employees are presumed to be "at will." At-will employees may be terminated for any reason, so long as it's not illegal. Generally, employees that work under an employment contract can only be terminated for reasons specified in the contract.

It is the responsibility of managers to be impartial, objective and fair in the treatment of Employees whose employment is terminated, with all due respect for the Employee's rights and privacy and with equal care in the protection of the company's legal and proprietary rights.

A few words of advice may be all that is needed to resolve Employee problems requiring corrective action. More serious problems may require multiple meetings, written warnings or involuntary termination. Progressive discipline policies are not recommended as it could negate the At-Will employment status. There should always be two company representatives present during a discipline or termination meetings.

To administer an oral warning, meet privately with the Employee, explain the issue and give the Employee an opportunity to explain. Be sure to take notes summarizing the meeting including the date and time. If there is little or no improvement, you may choose to provide an Employee a written warning. Good documentation is essential.

Occasionally, an Employee will be terminated for gross misconduct, which is behavior so serious that the progressive discipline action would be impractical. Employees who fail to report to work and do not call in to report their absence can be terminated immediately. Generally Employees are considered to have voluntarily resigned their position after not reporting for work for three consecutive workdays.

If an Employee is being terminated for cause, managers may suspend an Employee and send them home. A follow-up appointment should be made to complete the termination within two working days. Exempt employees must be paid during the suspension.

If the decision has been made to terminate an employee the discussion should not be a long and arduous process. A simple statement to the employee such as "The decision has been made to terminate your at-will employment" should suffice.

If you terminate a Employee, or lay him/her off with no specific return date, all wages and accrued paid time off earned are due and payable immediately. It is not acceptable to ask or require an Employee to wait until the next regular payday for his/her final wages.

You may not withhold a final paycheck. It is illegal to withhold a final paycheck to induce the former Employee to:

- Return cell phone, laptop computers, keys, or any other items belonging to the employer;
- Pay back money owed to the employer;
- Turn in expense reimbursement forms.

All wages and accrued vacation for an Employee who quits with more than 72 hours notice are due and payable on the last day of work. All wages and accrued vacation for an Employee who quits with fewer than 72 hours notice are due and payable not later than 72 hours after notice is given. Weekend and holidays are considered in the 72 hour deadline.

Required Notices

- Employees laid off, discharged or placed on a leave of absence must receive the pamphlet "**For Your Benefit -- California's Programs for the Unemployed**" (DE2320) by action's effective date. (U.I. Code §1089)

- A "**Change of Status Notice**" must be given to all employees whose employment status has changed including those who are laid off, discharged, placed on leave of absence, or changed to Independent Contractor status by the effective date of the action. (U.I. Code §1089)
- **Health Insurance Premium Payment Program (HIPP) Notice:** Employers with 20 or more employees that provide health insurance are required to give terminating workers a special notification about the state sponsored HIPP program. This notice is in addition to any COBRA Notices and applies to both private and public employers. (CA Labor Code §2807)
- **Insurance Privilege Rights:** All employers (public and private) shall provide to employees upon termination notification of all continuation, disability extension and conversion options under any employer sponsored coverage that the employee may be eligible for after termination. The written notification must be given to the employee within 15 days from termination of employment or termination from the plan, such as expiration of their COBRA coverage. (CA Labor Code §2808, Health & Safety Code 1373.6(g))

Reference Checks

Information should not be provided to individuals outside the company regarding current or former Employees. It is important to note that whenever you provide information and statements about another person, you are dealing with an area of the law that may have potential liabilities if you are incorrect and cause injury to the person on which you are giving the reference. Remember that you can be held personally liable for the information you give. For this reason, outside inquires regarding current or former Employees must be in writing and should be referred to one person within the company that can reply to the request.

TIME OFF BENEFITS / LEAVES

PTO/Vacation/Sick Leaves

There is no legal requirement in California that an employer provide its employees with either paid or unpaid vacation time. However, if an employer does have an established policy, practice, or agreement to provide paid vacation, then certain restrictions are placed on the employer as to how it fulfills its obligation to provide vacation pay.

Under California law, earned vacation time is considered wages, and vacation time is earned, or vests, as labor is performed. For example, if an employee is entitled to two weeks (10 work days) of vacation per year, after six months of work he or she will have earned five days of vacation. Vacation pay accrues as it is earned, and cannot be forfeited, even upon termination of employment, regardless of the reason for the termination.

An employer can place a reasonable cap on vacation benefits that prevents an employee from earning vacation over a certain amount of hours. Even the cap, however, may be held an illegal forfeiture if it is determined to be a pretext to avoid section 227.3 of the Labor Code. For example, if an employer refuses to permit employees to take vacation, the cap may not be allowed because the employee cannot comply with the cap. Or, the employer's cap may be so low that it is impossible for the employee to take sufficient vacation to stay below the cap.

DLSE has repeatedly found vacation policies which provide that all vacation must be taken in the year it is earned (or in a very limited period following the accrual period) are unfair and will not be enforced by the Division – meaning you cannot cap your accrual at or below the annual accrual rate. The DLSE has stated that employees must be allowed a "reasonable" amount of time to use the vacation before a cap is reached. Although the DLSE has yet to define "reasonable". A rule of thumb has been 1.5 or 2 times the annual accrual.

Upon termination of employment all earned and unused vacation must be paid to the employee at his or her final rate of pay.

There is also no legal requirement under California law for employers to provide paid sick leave (except in San Francisco). Sick leave does not need to rollover from year to year or be paid out at time of termination.

If an employer has a sick leave policy, the employer must permit an employee to use at least half of the accrued and available sick leave to attend to an illness of a child, parent, domestic partner, or spouse of the employee.

Floating Holiday Rules

Some companies provide "floating holidays" to employees. "Floating holidays" are paid days of time off that employees may take whenever they want. These special holidays, like other PTO, are treated like vacation days rather than regular holidays. This means that the rules regarding earning and forfeiting vacation days as described above applies to floating holidays.

If a company fails to pay terminated employees for earned but unused floating holidays, the company may be liable for waiting time penalties.

Bereavement

There is no requirement to provide paid bereavement to employees. Most companies provide three days of paid time off when the death of an immediate family member necessitates absence from work. Immediate family usually is defined as spouse/domestic partner, child, parent, brother or sister, grandparent, grandchild, mother-in-law or father-in-law including such persons in a step-relationship.

General Rule on Payment for Personal Leaves

Some companies provide employees with "personal leave." Personal leaves are usually offered to accommodate employees who need time off for reasons that are not addressed by other leave policies. Accordingly, companies are ordinarily free to establish the rules for employees on personal leave. But, whether companies are required to pay employees for personal leave depends on whether employees are non-exempt or are exempt employees.

Non-Exempt Employees

Employers are not required to pay non-exempt employees for personal leave, whether the leave is for an hour, a day, a week, or longer.

Basically, companies need only pay non-exempt employees for their work-time (hours worked). And, time off for personal leave is not considered work-time.

Exempt Employees

Employers must pay exempt employees (qualifying executive, administrative, and professional employees) while they're on personal leave if they take off less than a full workday. These employees may lose their exempt status if their salaries are docked for lost work-time.

However, employers need not pay exempt employees if a personal leave covers a full workday. And, although employers may not dock exempt employees' salaries for leave of less than a day, they may be able to subtract the time off from an employee's accrued paid time off.

Required Leaves

The following are additional leaves required by law. Some require that the time be paid while others do not.

Pregnancy Disability Leave (PDL)

An Employee who is pregnant may take up to four months of leave if she is disabled by her pregnancy. The four months of leave is allowed for each pregnancy, and is not an annual limit. The leave may be taken at any time, if in the opinion of the health care provider, she is disabled by pregnancy, childbirth, or related medical conditions. Once the Employee is no longer disabled, she is not entitled to PDL to simply be at home with her new baby (Note: this is where the family leave act can come into play).

You must place a woman returning from PDL in the same job she held before the leave or in a comparable position. A Employee who is unable to return to work after taking four months of PDL generally can be terminated, unless you have a policy granting longer leaves for other disabilities.

You must provide reasonable accommodation to pregnant Employees upon the advice of the Employee's health care provider. You must grant the request of a pregnant Employee to transfer to a less strenuous job, if such a job is available. In limited circumstances you may require the pregnant Employee to transfer to another job.

You can require employees use up to two weeks of accrued time off if they are eligible for SDI or PFL (paid family leave). The employee can always request to use paid time off in lieu of the disability. When the employee is no longer eligible for SDI or PFL (the leave is now unpaid) the employer can require the use of accrued time off.

Required Notices

- **Pregnancy Notice:** Employers with five or more employees must furnish a pregnant employee a written notice with respect to the employee's right to request a pregnancy disability leave or temporary transfer to a less strenuous or hazardous job if medically advisable (2 Cal. Code Regs. §7291.16). If the employer is covered by California Family Rights Act (CFRA – 50 or more employees) and 10% of the workforce speaks a language other than English, the notice must be translated into the language(s) spoken by such employees. (CA Code of Regulations (CCR), § 7279 (c))

Family & Medical Leave Act (FMLA) and/or the California Family Rights Act (CFRA)

Employers with 50 or more employees must provide employees with up to 12 weeks of unpaid, job-protected leave during any 12-month period under the Family & Medical Leave Act (FMLA) and/or the California Family Rights Act **(**CFRA). Cover employers are required to maintain any preexisting group health coverage during the leave. When the employee returns to work, the employer is required to reinstate the employee to the same or an equivalent job with equivalent benefits pay, and all other terms and conditions of employment.

Contact Centricity Solutions immediately should an employee request a leave under FMLA/CFRA.

FMLA/CFRA entitles Employees to take up to 12 weeks leave within a 12-month period for:

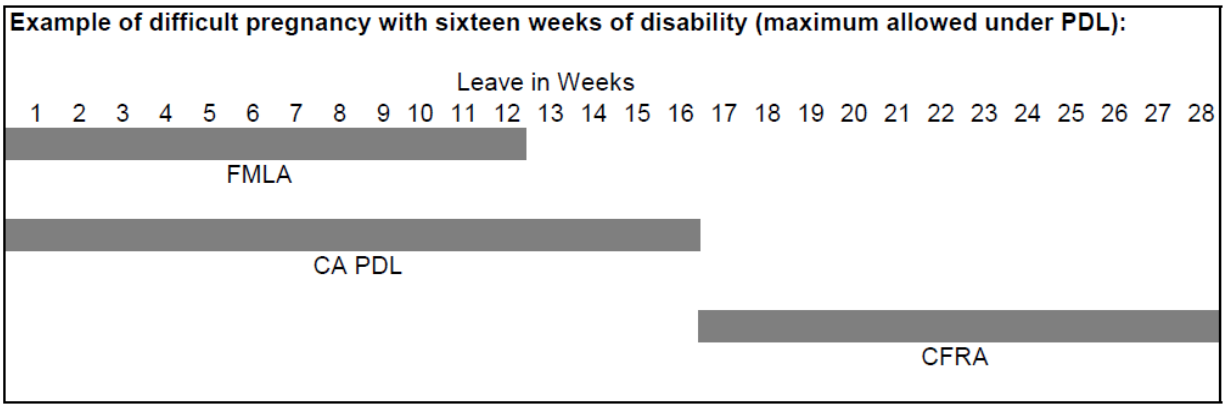
- The birth of the employee's child, or placement of a child with the employee for adoption or foster care (FMLA/CFRA);
- To care for the employee's spouse, child, or parent who has a serious health condition (FMLA/CFRA);
- To care for the employee's registered domestic partner (CFRA only);
- For a serious health condition that makes the employee unable to perform his or her job (FMLA/CFRA);
- For any "qualifying exigency" (defined by federal regulation) because the employee is the spouse, son, daughter, or parent of an individual on active military duty (or has been notified of an impending call or order to active duty) in the Armed Forces in support of a contingency operation (FMLA only); or
- An employee who is the spouse, son, daughter, parent, or next of kin of a covered service member shall be entitled to a total of 26 workweeks of leave during a 12-month period to care for the service member (FMLA only).

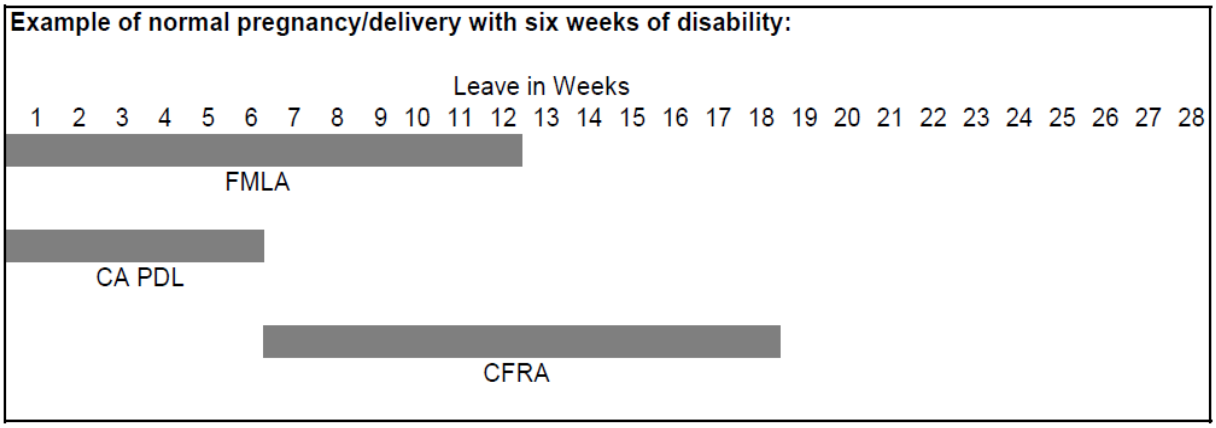
Employees are required to provide at least 30 days advance notice before family leave begins if the need for the leave is foreseeable (for example, expected birth of a child or planned medical treatment). The Employee must consult with you and make a reasonable effort to schedule any planned medical treatment to minimize disruption company operations (subject to the health care provider's approval).

If 30 days notice is not practicable, such as if it is unknown approximately when leave is required to begin, there is a change in circumstances, or a medical emergency, notice must be given as soon as

practicable. You may not deny an emergency or unforeseeable family leave on the basis that the Employee did not provide advance notice of the need for the leave.

Below is an example of how the leaves interact with each other:





Jury or Witness Duty Leave

An employer may not discharge or in any manner discriminate against an employee for taking time off to serve on a jury or as a witness. The employee, prior to taking the time off, must give reasonable notice to the employer that he or she is required to serve.

California law states; Exempt employees must be paid their full salary for any week they are on jury duty or serving as a witness, if they also perform any work for the employer. An employee who comes to work for two hours after court adjourns on Friday is entitled to a full week's salary, even if that is the only time worked the entire week. The employee must be "serving". Waiting at home to make the telephone call for service should not be a paid day off.

Non-exempt employees do not have to be paid wages while serving on jury duty or as a witness. Generally companies will pay 2 to 10 days for jury duty or witness duty. Jury duty notices should be submitted to the Employer**.**

Voting Leave

If an Employee does not have sufficient time outside of working hours to vote in a statewide election, he/she may, without loss of pay, take off up to two hours of working time to vote. Such time must be at

the beginning or end of the regular working shift, whichever allows the most free time for voting and the least time off from working. The Employee must notify the employer at least two working days in advance to arrange a voting time. Employees may serve as election officials on Election Day without being disciplined, but you are not required to pay them for such absences.

Domestic Violence and Sexual Assault Victim Leave

Per California Labor Code 230(c) You may not discriminate or retaliate against a Employee who is a victim of domestic violence or sexual assault and takes time off from work to help ensure his/her health, safety, or welfare, or that of his/her child.

In addition, you may not discharge or discriminate or retaliate against a Employee who is a victim of domestic violence or sexual assault and who takes time off to seek medical attention for injuries caused by domestic violence, obtain services from a domestic violence shelter, program, or rape crisis center as a result of domestic violence, or obtain psychological counseling related to an experience of domestic violence.

Crime Victims Leave

Per California Labor Code Sec. 230.2, you must allow an Employee to be absent from work in order to attend judicial proceedings related to a crime, if that Employee is a victim of a crime or an immediate family member or domestic partner of a victim.

Before the absence, the Employee must give the employer a copy of the notice of each scheduled proceeding that is provided to the victim by the agency responsible for providing notice. When advance notice is not feasible, or an unscheduled absence occurs, no action may be taken against the Employee if the Employee provides the employer with documentation evidencing the judicial proceeding within a reasonable time after the absence.

School Activities Leave

The Family-School Partnership Act (Labor Code Section 230.8) is a California law that allows parents, grandparents, and guardians to take time off from work to participate in their children's school or child care activities.

Employers with 25 or more employees working in the same location must allow the parent, guardian, or grandparent who has custody of a child enrolled in a California public or private school, kindergarten through grade twelve, or licensed child day care facility, to take up to 40 hours (unpaid) each year (up to eight hours in any calendar month) to participate in activities at their child's school or day care facility. Employees may use their accrued paid time off for the time taken, if they choose.

Suspension

California Labor Code Section 230.7, states that no discriminatory action will be taken against an employee who is the parent or guardian of a child facing suspension from school and is summoned to the school to discuss the matter. Employees must be allowed the time off**.** Employees may use their accrued paid time off for the time taken, if they choose.

Volunteer Civil Service Leave

You must provide leaves of absence for certain Employees required to perform emergency duty. You are not required to compensate the Employee during time off used to perform such duties. An Employee

denied leave under this law is entitled to reinstatement and reimbursement for lost wages and work benefits. Refusal to provide the leave as required by law is a misdemeanor. California Labor Code Sec. 230.3

Military Service Leave

You may not refuse to allow military leave, or refuse to re-employ an individual returning from military leave, simply because of the duration of the leave or any inconvenience it causes you.

Both federal and California law provide protection from discrimination for employees who leave their jobs to serve in the military.

Right to a Leave of Absence: Advance notice of a military leave of absence is not required if it is impossible or precluded by military necessity. To qualify for the right to leave and the right to reemployment, the employee must give advance written or verbal notice to his or her employer. The absence may not exceed five years combined from the same employer. The employee must submit an application for reemployment or otherwise report to work soon after his or her period of military service is done.

Reemployment Rights Partially Depend Upon Length of Absence: If the employee is out on military leave for less than 91 days, he or she should be placed in the same position he or she had before leaving. If the leave exceeds 90 days, the employee should be entitled to the same position as before, or be placed in a position of similar seniority, status and pay. Other rules apply for employees not qualified due to disability or when two or more employees are entitled to reemployment.

Paid Time Off and Pension Issues: Employees are entitled to use accrued vacation or paid time off benefits for time served, provided the accrual occurred before the leave, but employers may not require the use of these benefits for time served. Generally, an employer may not treat the leave as a break in service for purposes of the employee's participation in a pension plan. The time spent on leave is also considered time spent in service with the employer for purposes of accruing benefits (such as paid time off) and for the non-forfeitability of accrued benefits (such as health benefits or pensions).

Rights to Benefits and Seniority: Employees have the right to keep the seniority they earned up to the time they went on leave in addition to the level they would have earned had they continued work. Employees are also entitled to all benefits relating to their seniority, including the benefits associated with the level they would have achieved had they continued work.

Right to Continue Health Plan: Employers must allow employees the election to continue their health plan coverage subject to certain time constraints. The employee may elect to continue coverage for the lesser of the following two periods: 1) the 24-month period from the day leave begins; or 2) the day after the employee failed but was required to apply for reemployment. If the leave of absence was for less than 31 days, any health benefits must continue and the employee may not be required to pay a premium higher than the employee share, if any. If the leave was for 31 days or more, health benefits will continue but the employee may be required to pay up to the full premium.

Job Protection: Finally, under federal law, an employee may not be discharged for an entire year from the time he or she returns to work, except for cause and as long as he or she worked for the employer more than 180 days before reemployment. A job protection period of only 180 days is given to employees who worked more than 30 but less than 181 days before reemployment.

State Law and Private Employers: California law provides for a temporary leave of absence without pay for military training, drills, encampment, naval cruises, special exercises, etc., to all employees of private corporations, companies or firms who are members of the reserve corps of the U.S. armed forces, the National Guard, or the Naval Militia. This protection is given only if the ordered duty does not exceed 17 calendar days per year, including the time spent going to and returning from duty.

State Law and Public Employers: California law provides for a temporary leave of absence with up to 30 days of pay, for military training, drills, encampment, naval cruises, special exercises, etc., to all *public employees* who are ordered to military duty and who have been employed with the public agency (military service included) for at least one year from the day on which the leave begins. This protection is given only if the ordered duty does not exceed 180 calendar days, including time spent going to and returning from duty. Pay for a leave of absence may not exceed 30 days in any one fiscal year.

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 requires 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.

Paid Leave for Organ or Bone Marrow Donation

California Labor Code sections 1508 through 1512 requires Employers with 15 or more employees to provide paid leave for employees serving as organ or bone marrow donors.

An employee must have been employed for at least 90 days immediately preceding the commencement of leave. The law mandates up to 30 days of paid leave in any one-year period for employees donating an organ to another person. For employees serving as bone marrow donors, the law requires up to five days of paid leave in any one-year period.

In addition to paid leave, an employer shall maintain and pay for coverage under a group health plan during the employee's full leave. While paid leave must be provided, an employer can require that the employee first use up to five days of earned but unused sick leave or vacation for bone marrow donation. The employer can mandate an employee use up to two weeks of such accrued paid leave for organ donation. The leave does not run concurrently with leave under the federal Family and Medical Leave Act ("FMLA") or the California Family Rights Act ("CFRA").

The law prohibits any denial of this new leave, as well as any discrimination against any employee who exercises the right to take it. Upon expiration of leave, an employer must reinstate the employee to the same position held when leave began, or to a position with equivalent seniority status, employee benefits, pay, and other terms and conditions of employment.