

Domestic Violence, Sexual Assault & Work: Job-Guaranteed time off to go to court and to obtain services

YOUR LEGAL RIGHTS

Domestic violence and sexual assault survivors often need to take time off from their jobs to go to court to testify against a batterer or perpetrator or to get a restraining order to protect themselves and their children. Under California Labor Code 230, which is part of the “Survivors of Domestic Violence Employment Leave Act,” survivors of domestic violence and sexual assault are entitled to job-guaranteed time off from work to testify in court as a witness or to ensure the health and safety of themselves and their children. Additionally, domestic violence and sexual assault survivors often need to take time off from their jobs to obtain assistance from a service provider and may need to go to a shelter to escape the violence. Under California Labor Code 230.1, which also is part of the “Survivors of Domestic Violence Employment Leave Act” employees who are survivors of domestic violence or sexual assault may take time off from work to obtain such services.

1. Who can take time off under this law?

California Labor Code Section 230 allows *all* California employees, including domestic violence and sexual assault survivors, to take time off work to serve on juries and to testify in court to comply with a subpoena or other court order. For example, when the district attorney is prosecuting a batterer, the domestic violence survivor can take leave from work to testify against the batterer.

This law also entitles employees who are domestic violence survivors to take leave from work to go to court to get a restraining order. However, employees must identify themselves as survivors of domestic violence to their employer in order to obtain the benefits of this part of the law.

Under California Labor Code Section 230.1, employees who identify themselves as domestic violence or sexual assault survivors and who work for employers with *25 or more* employees may be entitled to leave to obtain domestic violence or sexual assault services, as described below.

2. What types of court hearings can a domestic violence or sexual assault survivor take time off from work to attend?

Survivors may take time off from work to obtain assistance from court to ensure one’s own health, safety, or welfare, or that of one’s child. This assistance includes a temporary restraining order, restraining order, or other “injunctive” relief.

This law may cover many types of situations, including time off from work to attend child support, child custody, or divorce court hearings as long as the purpose of the hearing is to ensure the health, safety, or welfare of the domestic violence or sexual assault survivor or his or her child.

3. When can a domestic violence survivor obtain time off from work under this law?

An employee who is a survivor of domestic violence or sexual assault, and who works for an employer with *25 or more employees*, may be entitled to job-guaranteed leave from work for any of the following reasons:

- to seek medical attention for injuries caused by domestic violence or sexual assault;
- to obtain services from a domestic violence shelter, program, or rape crisis center as a result of domestic violence or sexual assault;
- to obtain psychological counseling relating to an experience of domestic violence or sexual assault; or to participate in safety planning or take other actions to enhance safety from future domestic violence or sexual assault, including temporary or permanent relocation

4. What notice must employees give to employers to take this job-guaranteed leave?

An employee must give his or her employer reasonable advance notice of the employee's intention to take time off, unless the advance notice is not possible. Therefore, it is best for the employee to tell the employer as soon as possible about the upcoming absence from work.

If the appointment is unscheduled, or the leave is taken to respond to an emergency or crisis, the employee may be required to provide the employer with written documentation of his or her status as a domestic violence or sexual assault survivor within a reasonable time after the absence from work. That written documentation (or "certification,") *which the employer must keep confidential*, can be any of the following:

- a police report indicating that the employee is a domestic violence or sexual assault survivor;
- a court order protecting or separating the employee from the batterer or perpetrator, or other documentation from the court or the prosecuting attorney that the employee has appeared in court; or
- documentation from a medical professional, domestic violence advocate, health care provider, or counselor that the employee was undergoing treatment for physical or mental injuries or abuse caused by domestic violence or sexual assault.

5. Can a domestic violence or sexual assault survivor get paid for this job-guaranteed leave?

Labor Code Sections 230 and 230.1 allow employees to use paid vacation, personal leave or compensatory time off for this leave.

6. Can a domestic violence or sexual assault survivor be fired or demoted for taking leave described under these laws?

No. Employers are prohibited from firing, threatening to fire, demoting, suspending, retaliating or discriminating against an employee who is a survivor of domestic violence or sexual assault for taking leave from work for the reasons described above.

7. What can a survivor of domestic violence or sexual assault do if he or she is fired or harassed for taking this leave?

Employees are entitled to get their jobs back and be paid for lost wages and work benefits caused by the illegal acts of their employer. An employer who refuses to rehire, promote, or otherwise restore an employee or former employee who is eligible for rehiring or promotion by a grievance procedure or a hearing also is guilty of a misdemeanor.

8. Where can a domestic violence or sexual assault survivor get help regarding his or her employment rights?

An employee who is fired, threatened with termination, demoted, suspended, or in any other way retaliated or discriminated against by his or her employer because he or she has exercised these rights may file a complaint with the Labor Commissioner at the Division of Labor Standards Enforcement. Labor Commissioner offices are located throughout California. The number for the Labor Commissioner office nearest to you can be found in the government pages in your telephone directory or on the Internet at www.dir.ca.gov/dlse. An employee has one year from the date of the termination, demotion, or other form of discrimination to file a complaint with the Labor Commissioner.

This fact sheet is intended to provide accurate, general information regarding legal rights relating to employment in California. Yet because laws and legal procedures are subject to frequent change and differing interpretations, the Legal Aid Society - Employment Law Center cannot ensure the information in this fact sheet is current nor be responsible for any use to which it is put. Do not rely on this information without consulting an attorney or the appropriate agency about your rights in your particular situation.

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For further information about your employment rights, call:

The SURVIVE Project

(888) 864-8335 Toll-free in California **(415) 593-0033** Outside California

The SURVIVE Project is a Project of the Legal Aid Society – Employment Law Center, a non-profit organization focusing on the employment-related legal rights of low-income workers and providing free legal information on a wide range of employment-related problems.

