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CALIFORNIA'S MANDATORY SICK LEAVE

by Laura K. Sitar

The California Healthy Workplaces, Healthy Families Act of 2014 requires all California employers to provide the greater of three days or twenty-four hours of paid sick days annually to all eligible employees beginning July 1, 2015. A detailed description of the law with questions and answers is available on the California Department of Industrial Relations website at http://www.dir.ca.gov/dlse/Paid_Sick_Leave.htm

Eight months after California employees rolled out their new compliant sick leave or Paid Time Off (PTO) policies, one simple requirement of the act deserves special attention. The law prohibits retaliation against employees for exercising their right to use protected sick leave. Given the frequency retaliation claims are filed in California, it's important that employers evaluate their sick leave policies and procedures to avoid inadvertent retaliation.

Many employers who offer holiday pay have written policies that state holiday pay will not be granted if an employee calls in sick the day before or after a holiday. Presumably the intent is to discourage employees from calling in sick as a means of lengthening a holiday weekend. Unfortunately, it is likely such a provision would be seen as resulting in retaliation against the employee for using protected sick leave since using the sick leave results in loss of holiday pay. It's important to strike any similar language from written policies.

Employers often ask whether they can require a doctor's note as proof of an employee's need for sick leave, especially when there is reason to believe the employee is abusing the benefit. Imagine the frustration of the employer who suddenly faces a rash of "sick" employees on weekends when the sun is shining and the surf is up. Additionally, many employers require a doctor's note after three days of unexcused absence. While the law is silent on the subject of doctor's notes, the law states an employee must be able to take sick leave when a verbal or written request is communicated to the employer. Further, the California Labor Commissioner has taken the position that a doctor's note cannot be a required condition of using sick leave. The employee should not be forced to incur the expense of seeing a doctor to be allowed to use protected sick leave.

Finally, many employers grant more than the minimum required hours or days in their sick leave policy and others have rolled their sick leave into PTO plans. While the law only requires the greater of 3 days or 24 hours of **protected** sick leave in a year, all sick leave in an employer's sick leave policy becomes protected sick leave subject to the law's ban on retaliation. It has been suggested that all leave in a PTO plan which includes sick leave becomes **protected** sick leave and is subject to retaliation claims. Rolling sick leave into a PTO plan may have unintended consequences.

When reviewing and implementing a sick leave or PTO policy, it's important for an employer to continually ask, have I done anything to inadvertently retaliate against my employees for exercising their right to use protected sick leave?

About the Author:

A shareholder at Wroten & Associates, Laura Sitar defends medical malpractice, employment, and elder abuse cases. She litigates cases on behalf of doctors, dentists and long-term care facilities involving all types of employment actions including sexual harassment, wrongful termination, retaliation and wage and hour claims. She also provides employment related risk management services to help clients avoid litigation.

Ms. Sitar became an attorney after a 15-year career in corporate management where she directed the human resource function of a 2000 employee, \$100 million region. Since commencing a second career in law 10 years ago, she was a senior associate with a prestigious healthcare defense firm before joining Wroten & Associates, where she is a shareholder.

Ms. Sitar graduated cum laude from Tufts University, in Boston Massachusetts in 1979. She attended Western State University, College of Law, where she graduated summa cum laude and valedictorian of her class in 1998. While at Western State she clerked for Justice William Rylaarsdam on the California Court of Appeals and successfully argued a sexual harassment and retaliation claim before the Ninth Circuit Court of Appeals. She was a recipient of the 1998 Fellowship of the American Board of Trial Advocates. Ms. Sitar has been a member of the California State Bar since 1998 and is admitted to practice in the U.S. District Court for the Central District of California. To reach Laura K. Sitar directly email her at LSitar@wrotenlaw.com

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