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California Broadens Employment Discrimination Prohibitions to Include Victims of Domestic Violence and Stalking

By Brian E. Ewing
Los Angeles County

On October 11, 2013, Governor Jerry Brown signed a law extending greater employment protections to victims of domestic violence, sexual assault, and stalking. **Senate Bill 400** prohibits terminating, or otherwise discriminating or retaliating against, an employee because he or she is a victim of domestic violence, sexual assault, or stalking, if the employee has notified the employer of his or her status as a victim, or the employer has actual knowledge of the employee's status as a victim. The law also requires employers to provide reasonable accommodations to employees who notify their employers that they are victims, to ensure their safety at work.

The bill was prompted by a **story earlier this year** of a school teacher in San Diego whose employment was terminated because of the school's and parents' fears about her ex-husband. According to news reports, the ex-husband was abusive, and the teacher had warned the school principal about him. After the ex-husband was seen in the parking lot, the school was locked down, and the teacher and her four children who attended the school were all placed on indefinite leave. The school eventually terminated the teacher's employment.

Under SB 400, the school's actions would be unlawful. Employers can no longer terminate domestic violence victims, even if there is a real safety risk to the other staff or, in case of schools, the students. There may be other options, however.

The law also requires employers to provide reasonable accommodations to employees who have disclosed to the employer that they are victims of domestic violence, sexual assault, or stalking, and who request accommodations. There must be an "interactive process" between the employer and employee victim who requests accommodations. Accommodations could include, according to the law, "implementation of safety measures, including a transfer, reassignment, modified schedule, changed work telephone, changed work station, installed lock, assistance in documenting domestic violence, sexual assault, or stalking that occurs in the workplace, an implemented safety procedure, or another adjustment to a job structure, workplace facility, or work requirement in response to domestic violence, sexual assault, or stalking, or referral to a victim assistance organization." In determining whether accommodations are reasonable, the employer should consider the circumstances or dangers facing the employee. Employers are not required to provide accommodations that cause

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an undue hardship to business operations or accommodations that would violate their duty to provide a safe and healthful working environment under Cal-OSHA.

The employer may request certification of the employee's status as a victim. The certification may be a police report, a restraining order or similar court order, or documentation from a licensed medical professional, licensed health care provider, or counselor that states the employee is undergoing treatment resulting from domestic violence or sexual assault. The employer must treat this documentation, and any statements from the employee about his or her status as a victim, confidentially, and disclose only the documentation and statements as required by law and after notice to the employee of the disclosure.

SB 400 will undoubtedly lead to questions about what employers must do when employees request reasonable accommodations related to domestic violence situations. Please do not hesitate to contact any attorney in our **Los Angeles County** or **Ventura County** offices, or the Constangy attorney of your choice.

About Constangy, Brooks & Smith, LLP

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