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# NEW LAW REFRAMES VICTIM-OF-VIOLENCE LEAVE IN CALIFORNIA: 8 KEY TAKEAWAYS FOR EMPLOYERS

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California Governor Gavin Newsom signed a bill into law yesterday that will reframe and expand existing workplace protections for employees who are victims of crime or abuse. The new law redefines who is entitled to protection, broadens the reasons requiring protected time off, and moves enforcement authority over to the state's Civil Rights Department. As a result, employers must pay careful attention to what's changing and what you must do to comply. We'll explain everything and give you eight key employer takeaways.

## Quick Background

California has long provided employee leave and accommodation protections for victims of certain crimes so that they may seek assistance related to their status as a victim. Currently, for example:

- **Labor Code section 230** prohibits employers from discharging or discriminating against an employee because of the employee's status as a victim of "crime or abuse" or for taking time off for certain purposes, including to appear in court to comply with a subpoena or other court order as a witness in any judicial proceeding. Section 230 also requires employers to provide reasonable accommodations

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for a victim of domestic violence, sexual assault, or stalking, who requests an accommodation for the safety of the victim while at work.

- **Labor Code section 230.1** builds on section 230 and imposes additional requirements and prohibitions on employers that have 25 or more employees.
- **Labor Code section 246.5** requires employers to provide paid sick days, upon an employee's request, for an employee who is a victim of domestic violence, sexual assault, or stalking and needs time off for the same purposes referenced above.

But once [AB 2499](#) takes effect on January 1, 2025, the first two provisions will be repealed and replaced, and sick leave will be amended. While much of the existing rules will carry over, the new law provides expanded protections to employees and changes how the non-sick leave provisions can be enforced. Read on for eight key employer takeaways.

## **1. Rules Moved from Labor Code to FEHA + A New Enforcement Entity**

AB 2499 removes the existing rules under the Labor Code and recasts them as unlawful employment practices within the Fair Employment and Housing Act (FEHA). As a result, the new rules will:

- **be enforceable by the Civil Rights Department (CRD)** (formerly known as the DFEH), which enforces the Fair Employment and Housing Act (FEHA) and provides a mechanism for employees to bring civil actions in court, rather than the Division of Labor Standards Enforcement (DLSE), which is primarily responsible for enforcing wage and hour laws; and
- **resemble the rules for other types of leave or accommodations** under FEHA, including the rules for protected family medical leave under the California Family Rights Act (CFRA).

## **2. The New Key Term is "Qualifying Act of Violence"**

Existing law requires employers to provide time off for victims of “crime or abuse,” in some parts and for victims of “domestic violence, sexual assault, or stalking” in others. In most places, AB 2499 replaces that terminology with “qualifying acts of violence” (QAV), which is defined as:

- domestic violence;
- sexual assault;
- stalking; or
- any act, conduct, or pattern of conduct that includes (i) bodily injury or death to another; (ii) brandishing, exhibiting, or drawing a firearm or other dangerous weapon; or (iii) a perceived or actual threat to use force against another to cause physical injury or death.

A QAV includes the above victim experiences regardless of whether anyone is arrested for, prosecuted for, or convicted of committing any crime.

### **3. Discrimination and Retaliation Prohibited**

Under the new law, employers of any size are prohibited from retaliating against or otherwise discriminating against employees who participate in the legal process. Specifically, employers cannot discharge or discriminate against an employee in any manner for any of the following:

- taking time off to serve as required by law on an inquest jury or trial jury, so long as the employee gives reasonable advance notice to the employer;
- taking time off to appear in court to comply with a subpoena or other court order as a witness in any judicial proceeding; or
- taking time off to obtain or attempt to obtain a restraining order or other injunctive relief, to help ensure the health, safety, or welfare of the employee

or their child where the employee is a victim of a QAV.

Employers are also prohibited from discriminating or retaliating against employees because of the employee's status or their family member's status as a victim of a QAV.

#### **4. Some Protections Extended to Any Employee Who Has a Family Member Who Is a Victim**

Under AB 2499, many protections under FEHA and paid sick leave apply not only to any employee who is a victim of a QAV but also to any employee *who has a family member who is a victim of a QAV*. "Family member" is defined to include:

- a **child, parent, grandparent, grandchild, sibling, spouse, or domestic partner** (as those terms are defined under the CFRA); or
- a **designated person**, who does not need to be a blood relative, so long as their association with the employee is the equivalent of a family relationship. An employee may identify a "designated person" at the time they request leave, but the employer may limit an employee to one designated person per 12-month period.

As a result, if you have 25 or more employees, you will need to comply with certain antidiscrimination, antiretaliation, reasonable accommodation, and paid sick leave requirements with respect to any employee who is – or has a family member who is – a victim of a QAV.

#### **5. Protected Time Off Required for Additional Purposes**

If you have 25 or more employees, you will be prohibited from discharging or discriminating against an employee who is (or who has a family member who is) a victim of a QAV for taking time off from work for any of the following purposes related to that QAV:

- **obtaining or attempting to obtain relief**, such as a restraining order or other injunctive relief;
- **seeking or obtaining medical attention** for or to recover from injuries;
- **seeking or obtaining services from a domestic violence shelter** or similar victim services organization;
- **seeking or obtaining psychological counseling** or other mental health services;
- **participating in safety planning**;
- **relocating or engaging in the process of securing a new residence**, including temporary or permanent housing or enrolling children in a new school;
- **providing care to a family member** who is recovering from injuries;
- **seeking or obtaining civil or criminal legal services**;
- **preparing for, participating in, or attending any civil, administrative, or criminal legal proceeding**; or
- **seeking, obtaining, or providing childcare or care to a care-dependent adult** if necessary to ensure the safety of the child or dependent adult.

While some of these purposes are included under existing law, many were added by AB 2499.

## **6. Employer May Limit Total Leave Time Taken**

AB 2499 permits employers to limit the total leave time taken. The amount of protected leave an employee is entitled to depends on whether the victim is the employee or the employee's family member. If the victim of the QAV is:

- **the employee**, you may limit the total leave time taken to **12 weeks**.

- **not the employee (but the employee's family member)**, you generally may limit leave time taken to assist in relocation purposes to **5 days** and the total leave taken to **10 days** – **except that you may not limit the total leave time taken to fewer than 12 weeks if the victim is deceased as result of the QAV.**

This leave runs concurrently with any leave under the CFRA and the federal Family Medical Leave Act (FMLA) and does not provide an employee with a right to leave that exceeds that provided under the FMLA.

## **7. Employers Still May Require Certification from Employees Seeking Leave or Accommodation**

AB 2499 leaves most of the existing reasonable accommodation requirements unchanged. While the new law will require you to provide reasonable accommodations to any employee who is (or who has a family member who is) a victim of a QAV, these rules will otherwise remain largely the same. For example, under AB 2499:

- **a reasonable accommodation could include the implementation of safety measures**, such as a transfer, reassignment, modified schedule, changed work telephone, permission to carry telephone at work, changed work station, installed lock, assistance in documenting a QAV that occurs in the workplace, or a referral to a victim assistance organization;
- you must engage in the **interactive process** to identify a reasonable accommodation;
- you are not required to provide an accommodation that would constitute an **undue hardship**;
- you are not required to provide a reasonable accommodation to an employee who has **not disclosed their or their family member's status as a victim of a QAV** (this differs from disability accommodation rules, where an employer may be

required to engage in the interactive process for a perceived disability); and

- you may require an employee seeking leave or accommodation under these protections to provide **certification of the employee's or their family member's status as a victim of a QAV** (such certification could include a police report, a court order, documentation from a licensed medical professional, domestic violence counsel, victim advocate, or similar, as well as any other form of documentation reasonably verifying that the QAV occurred, including a written statement signed by the employee).

## 8. There Is a New Notice Requirement

The CRD will be publishing a form notice regarding employees' protections under AB 2499 no later than **July 1, 2025**. Once the CRD publishes that notice, you must provide employees notice of their rights under this law. While you are not required to use the form notice published by the CRD, you must at least provide a notice that is substantially similar in content and clarity.

## Conclusion

While California law already provides paid sick leave entitlement and other protections for victims of domestic violence, sexual assault, and stalking, you will need to update your policies to reflect the nuances of these new protections. If you have any questions regarding how to position yourself and your organization to comply with these requirements, please consult your Fisher Phillips attorney, the author of this Insight, or any attorney in our California offices. We will continue to monitor events and provide updates as warranted, so make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information directly to your inbox.