



Newsletter January 2011

## **New Paid Leave Requirement for California Employers**

Effective January 1, 2011, California employees may now take paid time off from work for the purpose of organ and bone marrow donations.

[California SB 1304](#) requires California employers with 15 + employees to provide up to thirty (30) days of paid time off in a one-year period in order to donate an organ. An employee may also take up to five (5) days of paid time away to donate bone marrow. Employers may require a written medical certification certifying the need for the leave.

A leave of absence for an organ or bone marrow donation shall not constitute a break-in-service in employees seniority rights such as, salary adjustments, sick leave entitlements, vacation accrual, annual leave entitlements, or seniority. Also, the employer must maintain and pay for group health plan coverage for the duration of the leave.

An employer may require the employee to take up to five days of earned, accrued sick or vacation time for a bone marrow donation, and up to two (2) weeks of time for an organ donation, unless contrary to a collective bargaining agreement.

Time off for organ and bone marrow donations do not run concurrently with any federal FMLA or state CFRA leave. Employees must be returned to their original position at the conclusion of the leave.

## **Tips for effective workplace investigations**

There were several headlines this summer about employers that mismanaged

investigations of alleged employee misconduct, including one involving a high-profile technology company and another involving the U.S. Department of Agriculture. These stories underscore how critical it is for employers to handle workplace investigations properly. With that in mind, here are some workplace investigation best practices.

### ***How to do it right***

**Always investigate.** You should always investigate an allegation of workplace misconduct unless the allegations are very minor or the accused admits to the conduct right away. Also keep in mind that the obligation to investigate arises no matter how you learn about the misconduct, including informal complaints, anonymous tips, rumors, or any other means that brings the matter to your attention.

**Investigate promptly.** Begin your investigation as soon as possible, and attempt to complete it within a reasonable amount of time. Starting the investigation within a day or two and completing it within two weeks are good guidelines to follow. The danger of waiting too long is the age-old logic, "if the behavior was so awful, why did you wait to take action?"

**Choose the proper investigator.** The investigator should be experienced, neutral, and objective and shouldn't have a vested interest in the investigation's outcome. Thus, the alleged wrongdoer should have no supervisory authority over the investigator and no control over the investigation. Also, neither the complaining

employee nor the alleged wrongdoer should be a direct subordinate of the investigator. Finally, be sure the investigator acts impartially, has no preconceived notions about liability, and treats all parties and witnesses with respect.

**Investigate thoroughly.** Meet first with the complaining employee and get as much detail as possible. Then thoroughly interview the alleged wrongdoer and all witnesses identified by both sides, along with any other witnesses identified during the investigation. Obtain all relevant documentation from everyone involved. Take careful notes, and be sure to document only objective facts, not conclusions or opinions. Have interviewees sign written statements or sign off on your notes so there's no dispute over what they said. Don't hesitate to re-interview witnesses if new information comes up during the investigation.

**Maintain confidentiality.** Take all reasonable steps to maintain the confidentiality of the investigation, and disclose information only on a "need to know" basis. Advise the parties and witnesses to keep all information about the investigation confidential, and have them sign an agreement to that effect. However, never guarantee the confidentiality of the process to anyone because you never know what might happen down the road.

**Come to a conclusion.** After all the evidence is gathered, review all the relevant information, make any necessary credibility determinations (in the event of a "he said/she said" situation), and come to a conclusion on whether any improper conduct occurred. Explain your methods, conclusions, and recommendations for remedial action in a confidential report.

**Administer appropriate discipline.** If you conclude that improper conduct occurred, you must decide on the appropriate remedial action. The punishment will depend on the particular circumstances but may include counseling, training, warnings, suspensions, transfer, probation, or termination. Be sure that the punishment fits the crime, ends the improper conduct, and is consistent with previous discipline for similar conduct by other employees.

**Communicate with the injured party.** The employee who lodged the complaint needs to know that the company took appropriate action to stop or change the behavior, but he/she does not need to know all the details of the disciplinary action. In general, it is sufficient to close the loop with the employee by stating that, "the company has taken appropriate action to stop the unwanted behavior, please let us know if the behavior continues".

**Protect against retaliation.** Remind everyone involved that retaliation against any party or witness is prohibited, and follow up to ensure that both the improper conduct has stopped and no retaliation is taking place.

### ***Bottom line***

Keep in mind that these are general guidelines and the specific actions you should undertake in any given workplace investigation may vary depending on the circumstances. Call with questions.

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**These articles should not be construed as legal advice or as pertaining to specific situations. Consult with your legal counsel for further information.**

## Stay "In The Know" in 2011 –

### Educational Seminars

We have a variety of educational seminars planned for 2011. Some will be live from the office of our partner in Campbell. Others will be conducted using "Go To Meeting" web conferencing.

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### December Educational Session

#### OHR's Quarterly Harassment Prevention Training for Managers

As a service to your business we have a quarterly Harassment Prevention Training. Those sessions occur each quarter on the last Thursday of the month at 1:00 PM. Mark your calendars for March, June, September and December. We also do individual sessions for your offices, including Managers and Supervisors and non supervisory employees.

The next OHR Harassment Prevention Training for Managers session is scheduled for **Thursday, March 31<sup>st</sup> at 1:00 pm** in Campbell, CA. To register please RSVP for the live session at [Harassment Prevention Training](#)

### January Educational Session

#### Legal Update with Felicia Reid of Curiale Hirschfeld Kraemer LLP

Join us **Thursday, January 27<sup>th</sup> at 10:00 AM** for an informational Legal Update. RSVP [Legal Update Register](#) here by Monday, January 24th. This is a live presentation; a "Go To Meeting" via web conferencing application is also available.

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