Senate Bill 400 – Anti-Discrimination and Safety Accommodations for Survivors of Domestic Violence, Sexual Assault, and Stalking

YOUR LEGAL RIGHTS

Survivors of domestic violence, sexual assault and stalking often experience discrimination at the workplace. Many workers are terminated or fear termination if their employer finds out that they are or have been victims of violence. Survivors may also worry about their safety while at work. California's Senate Bill 400, effective January 1, 2014, protects survivors of domestic violence, sexual assault and stalking against employment discrimination and also entitles survivors to reasonable accommodations to protect their safety at the workplace.

1. What is Senate Bill 400?

   SB 400 provides three important employment protections for survivors of domestic violence, sexual assault and stalking. The law:

   - prohibits discrimination against an employee based on his or her known status as a survivor of domestic violence, sexual assault or stalking;
   - gives employees who are survivors of domestic violence, sexual assault or stalking the right to a reasonable safety-related accommodation at the workplace; and
   - makes it unlawful for an employer to retaliate against a survivor who requests a reasonable safety accommodation.

2. What sorts of accommodations are available to survivors of domestic violence, sexual assault or stalking?

   Possible safety accommodations could include (but are not limited to) the following:

   - changing a telephone extension to prevent an abuser from contacting a survivor while at work;
   - removing an employee's contact information from the company website to protect his/her privacy against an abuser;
   - relocating a workstation;
   - modifying a schedule;
   - reassignment to a different shift;
   - allowing a survivor to transfer to a different location;
   - installing locks, surveillance cameras or other equipment to enhance the security of the workplace;
   - assisting a survivor in documenting violence that occurs in the workplace;
   - referring a survivor to a victim assistance organization.

   Because survivors have varying needs depending on their situation, there is no set list of possible accommodations. If you request a reasonable safety accommodation at work related to domestic violence, sexual assault or stalking, SB 400 requires your employer to talk with you about your needs, so that together you can determine what accommodation addresses your safety concerns and is also feasible for your employer.

   Employers are not required to provide an accommodation that would be unduly expensive or disruptive to the business, but if they deny your requested accommodation for that reason, they should consider and discuss alternative options with you.

3. What if you need a leave of absence from work for reasons related to domestic violence, sexual assault or stalking?

   Survivors of domestic violence and sexual assault already have the right to take a job-protected leave of absence to obtain court relief (such as a temporary restraining order) or to receive services related to the violence (such as counseling or safety planning). SB 400 extends these leave protections to survivors of stalking, too. For more information about leaves of absence to attend court or obtain services related to violence, see our fact sheet on Domestic Violence and Sexual Assault: Guaranteed Leave to Go to Court and Obtain Services.

   Under state and federal disability law, survivors also may obtain a leave of absence as a reasonable accommodation for a disability related to

the violence. For additional information on disability-related leaves of absence, see Domestic Violence, Sexual Assault and Stalking & Employment: An Introduction to State and Federal Disability Laws.

You may also be eligible for a leave of absence to attend to your own serious health condition or the serious health condition of a spouse, domestic partner, child, or parent. For information on leaves of absence for your own or a family member's serious health condition, see Domestic Violence, Sexual Assault and Stalking: Taking Leave for Your Own Health Condition and Domestic Violence, Sexual Assault and Stalking: Taking Leave to Care for a Family Member.

4.

What if you feel unsafe at work but are not sure what type of accommodation could increase your safety?

Victims' advocate organizations are available to talk with you about how you can increase your safety, both inside and outside the workplace. If you are not yet working with a victims' advocate, counselor or organization, you can find one in your area by contacting the National Domestic Violence Hotline at 800-799-SAFE (7233) or the National Sexual Assault Hotline at 800-656-HOPE (4673).

5.

Do you have to tell your employer about the domestic violence, sexual assault or stalking in order to get an accommodation? Can your employer ask for proof?

If you ask for a reasonable *safety-related* accommodation at work, you must disclose to your employer that you are a survivor of domestic violence, sexual assault or stalking. Your employer may then request a certification demonstrating that you are a survivor of violence, and can ask you to update that certification every six months. In response, you can provide any of the following documentation, which your employer *must keep confidential*:

- A letter from a domestic violence or sexual assault counselor or a health care provider verifying that you are a survivor of domestic violence, sexual assault or stalking;
- A police report indicating that you were a victim of domestic violence, sexual assault or stalking;
- A court order, such as a restraining order, related to the domestic violence, sexual assault or stalking.

However, if you ask for a reasonable accommodation for a *disability* resulting from the violence (such as post-traumatic stress disorder or a physical disability), you may be entitled to a reasonable accommodation under state or federal disability law. This type of request does not require disclosure of the violence, but may require medical documentation stating that you have a disability and need a related accommodation. For more information on these types of requests, see Domestic Violence, Sexual Assault and Stalking & Employment: An Introduction to State and Federal Disability Laws.

Finally, if you qualify for job-protected *leave for your own or a family member's serious health condition*, a request for this leave does not require disclosure of the violence, but may require certification from a health care provider verifying that you or your family member has a serious health condition. (However, you do not have to disclose the specific diagnosis.) For more information, see Domestic Violence, Sexual Assault and Stalking: Taking Leave for Your Own Health Condition and Domestic Violence, Sexual Assault and Stalking: Taking Leave to Care for a Family Member.

6.

Can you be fired for requesting a reasonable safety accommodation?

No. Employers are prohibited from firing, threatening to fire, demoting, suspending, retaliating or discriminating against an employee who is a survivor of domestic violence, sexual assault or stalking for requesting a reasonable safety-related accommodation.

7.

I am a victim of domestic violence, sexual assault or stalking, and my employer just fired me. Does this law protect me?

If your employer *knows* that you are a victim of domestic violence, sexual assault or stalking and terminates or discriminates against you *because* you are a victim, your employer's action is unlawful.

However, if your employer has no knowledge that you are a survivor of violence and terminates you for some other legitimate, non-discriminatory reason, that termination is not prohibited by SB 400.

8.

I am being stalked by someone who is calling me repeatedly at work. Can my employer punish or fire me for these calls?

If your employer knows you are a victim of stalking, it may not penalize or fire you for that reason. Further, if you tell your employer you are being stalked and ask for a reasonable, safety-related accommodation, such as changing your telephone extension, your employer cannot punish or terminate you either because you requested an accommodation or because you disclosed your status as a victim.

9.

What should you do if you are fired or denied a reasonable safety-related accommodation?

To enforce your rights under SB 400, you may file a complaint with the Labor Commissioner (the Division of Labor Standards Enforcement), which may order your employer to reinstate you to your job and reimburse you for lost wages and work benefits. Labor Commissioner offices are located throughout California. The number for the Labor Commissioner office nearest to you can be found at http://www.dir.ca.gov/dlse/DistrictOffices.htm. An employee has one year from the date of the denial of accommodation, termination or other form of discrimination to file a complaint with the Labor Commissioner.

10.

Where can you get answers to other questions regarding your employment rights as a survivor of domestic violence, sexual assault or stalking?

For more information about your workplace rights as a survivor of domestic violence, sexual assault or stalking, contact Project SURVIVE of the Legal Aid Society–Employment Law Center toll-free at (888) 864-8335 in California or (415) 864-8848 outside California. The Project can help you to understand what your rights are, how to exercise your rights, and what to do if your rights are violated.

For further information about your employment rights, contact Project SURVIVE.

Disclaimer

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.