Torrance Professionals & Supervisors Association

August 2019 News

Taking Time Off Work to Care for Kids & Grandkids

As summer winds down, it's back to school time for those with kids or grandkids. The fall season typically brings lots of family activities, including starting a new school year, enrolling kids with a childcare provider, annual physicals, and attending school-related events like parent-teacher conferences.

It's a lot to juggle. The good news is state law provides some legal protections if you need to take time away from work to do stuff with your kids. Here's a brief look at a few of these laws.

Your Right to Attend to Child-Related Activities:

Did you know that under California law, you are entitled to take up to 40 hours off work each year to attend to your child's school activities?

Under the law, a parent can request leave to (1) find, enroll, and re-enroll a child in school or with a licensed childcare provider, (2) address a childcare provider or school emergency, or (3) participate in school-sponsored or childcare-sponsored activities, such as a field trip, graduation, or holiday party. Stepparents, foster-parents, grandparents, and legal guardians are also allowed this kind of leave.

You can only use up to 8 hours per month, unless it's an emergency. An "emergency" is when your kid can't stay at school because the school says he/she needs to be picked up, your child is having disciplinary/behavioral problems, or there's a school closure or

natural disaster. To qualify, your employer must employ 25 or more people working at the same location, and you must have a child that is in grades K-12.

Under the law, you may use your existing paid leave or comp time or request unpaid leave. You must give reasonable notice to your employer of the planned absence before taking time off, or as soon as practicable in the case of an emergency. Your employer may NOT retaliate against you or discriminate against you for using this kind of leave.

This is a great job protection benefit for working families in California! If you have questions or need help with child-related activities leave, contact your professional staff.

Your Right to Kin Care:

Most people know that you can use sick leave to take time off to recover from your own illness. But did you know that, under California's Kin Care law, you can use up to one half of your accrued annual sick leave to care for other family members as well?

This includes your parent, child, spouse, grandparent, grandchild, sibling, or registered domestic partner, if they are sick or if you need to attend to their diagnosis, care, preventative treatment, or treatment of an existing health condition.

A lot of people use sick leave to care for their elderly parents or siblings or to take care of their children or spouse when they are sick. The sick leave law also allows you to use sick leave if you are the victim of domestic violence.

Your employer can require you to provide advanced notice where an absence is foreseeable, but your employer may NOT retaliate against you for using sick leave for yourself or your family if you have accrued and available sick leave.

If you are having trouble utilizing your paid sick leave, contact professional staff for help.

News Release - CPI Increases!

The U.S. Department of Labor, Bureau of Labor Statistics, publishes monthly consumer price index figures that look back over a rolling 12-month period to measure inflation.

1.6% - CPI for All Urban Consumers (CPI-U) Nationally

2.7% - CPI-U for the West Region

3.3% - CPI-U for the Los Angeles Area

2.9% - CPI-U for the Riverside Area (from May)

3.8% - CPI-U for San Diego Area (from May)

3.2% - CPI-U for San Francisco Bay Area

Workers' Compensation

What You Need to Know When Filing a Stress Claim

The California Workers' Compensation system treats psychiatric injuries (also referred to as stress claims) differently than physical injuries. Although this may seem unjust, there are valid reasons why the system treats these types of injuries differently.

Truth be told, it's mostly a legislative compromise between stress-claim "critics" on the one side, and workers' rights advocates on the other. The critics are mostly employer advocacy groups, big insurance companies, and third-party administrators. The advocates are mostly the workers' attorneys and some medical professionals.

Some critics believe psychological injuries are based more on "subjective" experience, such as thoughts and feelings, that they believe cannot be objectively tested or measured in the same way that physical injuries are evaluated via blood tests and X-rays. Critics also argue that it's not as easy to track the main cause of the injury. They have long argued that it is much too easy for a worker to find some work-related causation for stress. Critics believe the main cause of these stress claim injuries is one's "general life condition" and are skeptical that psychological conditions are caused primarily by work. They point to other non-work causes, such as marital problems, as the true culprit.

The legislative compromise is that certain criteria must be met to successfully file a stress claim in California's Workers' Compensation system, including the following:

- You must have a mental disorder that has been recognized by medical professionals and, as a result of that disorder, you must have required medical treatment or either missed work or were unable to perform certain work tasks.
- You must have worked for your employer for at least six months unless your disorder is the result of a specific and sudden event at work.
- In most cases, it must be proven that "actual events of employment" were the main cause of the injury (at least 51 percent responsible).

Keep in mind that, to prove your stress claim is primarily work-related, your private life is open for examination. Your employer's insurance company or Independent Medical Examiner will leave no stone unturned to prove the stress was caused by some factor other than by events at work. They *will* question you about your personal life.

Be aware that injuries from stress due to lawful and good faith personnel actions do not qualify for Workers' Compensation. In addition, your claim may be denied if you filed it after you were notified that you were being laid off or terminated.

Finally, it is important to note that benefits for psychiatric work-related injuries are usually more limited than those for physical injuries. Compensation for medical treatment and temporary disability (if you take time off work) will be available, but the award for permanent disability benefits may be more difficult to achieve. The rationale is that your psychological injury will diminish or stop once you leave a stressful work environment.

As part of the 2012 Workers' Compensation reforms, psychiatric injuries resulting from physical injuries may not qualify for compensation but could still qualify for medical treatment. It is vital to consult with an experienced, knowledgeable Workers' Compensation attorney to make sure you know your rights.

Questions & Answers about Your Job

Each month we receive dozens of questions about your rights on the job. The following are some GENERAL answers. If <u>you</u> have a specific problem, talk to your professional staff.

Question: An outside firm filed a public records act request regarding any records in the Agency's possession pertaining to the recent wildfires. The Agency is asking employees, including me, to sign an affidavit that says I read the request in its entirety, conducted a reasonable search to the best of my abilities for any and all responsive records within my Agency issued accounts and devices, including personal devices, if applicable. And then I must check a box saying that I've either compiled all files/records, including text messages, and provided them to the duly authorized custodian of records, or that after a thorough search I have determined that I have no responsive records. Can they do this? What can our Association do to protect us? I don't feel comfortable with this. Especially the personal phones and text messages parts.

Answer: The Agency should not be approaching individuals and requiring that they sign this type of affidavit as a condition of continued employment. The

Agency may ask you to do so voluntarily, but even then, they should talk to your Association first before approaching individual employees.

As part of those discussions, your Association may insist, for example, that members are informed that this is voluntary. Or the Association may propose specifics about how the Agency will approach individuals. It may even offer language revisions to the notice and acknowledgment form itself. This could include a clarification that the Agency is only requesting documents/photos obtained in the members' official duties as Agency employees, not in their personal activities off the job.

Putting aside the issue of the affidavit, the Agency could issue a direct order for all employees to provide documents and/or photos obtained through the employee's normal course of work duties. If that is the case, the Association does not have a role in the process, and it's best to comply with the work directive.

Question: I'm 63 and have 26 years in public service. I'm planning my exit and would like to retire in a few months. What am I supposed to do? What are the steps I need to take to prepare for retirement, including contacting CalPERS and arranging for pension and medical benefits? Who do I need to notify and by when? What is the protocol? This is all very new to me.

Answer: Congratulations on reaching the retirement milestone! It's exciting, but navigating the transition into retirement can also, understandably, bring some anxiety. The first step is to contact CalPERS and make sure you know your exact monthly retirement payment, so you can make sure you are ready to go. Sometimes issues come up with special compensations and exactly what must be included as pensionable income. You can also make sure you receive service credit for all years of service. Sometimes Agencies fail to report time spent as a "temporary" or "part-time" employee. If you did work in this capacity, you may be entitled to additional years, so make sure it is included.

Making an appointment at the CalPERS office is your best bet to get reliable and quick answers. There is usually a three-month delay between setting your retirement date and receiving your first monthly checks. It will be backdated to your actual retirement date, but if you want to make sure you don't have any gaps between your last paycheck and the first retirement check, you should try to submit the paperwork several months in advance.

For your medical benefits, you should contact your Human Resources Department. HR can be very helpful in laying out all the benefits you are due, including leave payouts. If you have any doubts, your Association and

professional staff can help verify everything is correct. Your Association fought hard for all these benefits, and you should make sure you get everything you've earned.

Question: One of our co-workers was given duties of a higher vacant classification. The employee is not serving in an acting status or receiving out of class pay. But our Manager just assigned the duties to this person and never offered it to the rest of us. There's four of us in the same job class and I feel we should all have an equal opportunity to perform the duties. My concern is that, otherwise, this is a way for Management to hand-pick a successor without going through recruitment. When it comes time to fill the position, they will do so through recruitment. But our co-worker will get the job and Management will say this person was better qualified. Well, they're better qualified because Management tapped them to train for the position and excluded everyone else! Shouldn't they leave the duties unstaffed until recruitment is completed? It seems like that's the only fair way to do it.

Answer: This is a common but tricky issue that comes up often. In most agencies, management has the right to assign employees to an acting or temporary assignment while recruitment for the vacancy is on-going. As you correctly point out, however, this can give a significant advantage to one person when it comes to recruitment. For this reason, it may be that the employee performing the work does not want to object, even though management should be providing him/her some type of acting pay or special assignment pay. Generally, the Association should not object and demand the acting pay on behalf of that employee if he/she does not want to push the issue.

But in your case, since it clearly puts other members at a substantial disadvantage in the recruitment, your Association may decide it's worth raising the issue with management. If this is the case, it is possible for your Association to negotiate some type of rotation for these assignments, so the experience is fairly distributed to as many members as possible. The Agency is not required to do so, but if they want to maintain the integrity of the recruitment process, including for the candidate who is ultimately selected, they may agree to a rotation. But your Association should talk to the person performing the work first, so everyone understands why the Association is intervening. It's also good to contact professional staff for help navigating as it presents some tricky and unique pitfalls.

Question: Management told me I had to go to "snake awareness training" for my job. We work in the field and it's not rare to encounter snakes. They want us trained as a preventative measure.

Seems reasonable enough. Well, the morning of the training I was given a document called a release of claims that said I waive my rights if I'm injured and cannot sue the Agency or the company that's conducting the training if I'm bitten by a snake. Can they do this? They're forcing me to go to the training and then requiring that I "voluntarily" surrender my legal rights. Are they allowed to ask me to do this, and can I refuse? What do you suggest?

Answer: The Agency may not make a waiver of rights a requirement in order to comply with mandatory training. We sometimes see these waivers for voluntary events, outside of work hours. Even those waivers can present problems but waiving legal rights for mandatory training is wrong. There is some question whether this waiver would even be enforceable, but you should not be put in that position in the first place. While it is clearly objectionable, we never want to put members in the position of having to refuse orders, as this could lead to allegations of insubordination. If approached, you can let management know you are not comfortable with the waiver. If you are ordered to comply, you should contact your Association and professional staff immediately to object on your behalf.

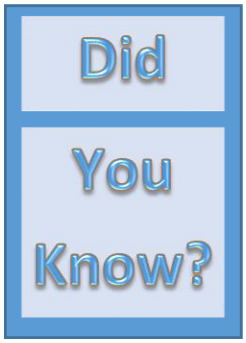
Question: I contacted the labor commissioner and they're telling me our Agency's standby pay policy is not lawful. We get 1 hour of standby pay for each 16 hours following the regular workday, and 3 hours of standby pay for each 24-hour period (Saturday, Sunday, and holidays). We must remain within 30-minutes travel time of the workstation. The Agency provides a cellphone. We must answer within 10 minutes and be at the worksite within 40 minutes. Because of the geographic size of our jurisdiction, it can take 30 minutes to get from one end of the coverage area to the other. Is this Standby program compliant? Do they have to pay us minimum wage while on-call? The labor commissioner's office said they believe the restrictions placed on the employees during on-call hours are so extensive that it's "hours worked" under the FLSA. They said the employee is "engaged to wait" not "waiting to be engaged." They said under California's definition of hours worked, the extent of control by the employer over the worker is the issue, and that if the control exercised by the employer is unreasonable, the on-call time is compensable.

Answer: This is a hot area of law at the moment. Most agencies have Standby Pay programs in place that pay less than the actual hourly rate for the hours that someone is on standby. The question rightly identified by the Labor Commissioner is whether the restrictions are so burdensome that the time spent on-call should be compensated at the full hourly rate of pay. That is a complicated question. There is no bright-line test

providing a definitive answer as to when a standby program crosses the line into being "hours worked." It really needs to be evaluated on a case-by-case basis. In your case, the size of your coverage area may be a determinative factor. In many agencies, the range is much shorter, and therefore the response time restriction is much less onerous.

In any event, having the Labor Commission weigh in on your exact language provides a strong basis to approach management in order to demand the full payment or lessen the restrictions. If the current program is not compliant with the law, then there is no need to wait until MOU negotiations begin. A good starting point is to get the Labor Commissioner's opinion on your policy reduced to writing. If you're not able to do that, your Association could address this during the next MOU negotiations and ask for more pay or less restrictions. Either way, be sure to contact professional staff for help.

Good news! The Paid Family Leave (PFL) Program, which is part of the State Disability Insurance (SDI) system, just got better. On June 27, 2019, Governor Gavin Newsom signed Senate Bill (SB) 83 into law. SB 83 extends the maximum duration of PFL benefits from six weeks to eight weeks beginning on July 1, 2020.



Under current law, the PFL Program provides wage replacement benefits to eligible workers who need time off work to care for a seriously ill child, spouse, parent, grandparent, grandchild, sibling or domestic partner. It also provides wage replacement benefits to eligible workers who need time off work to bond with a minor child within one year of the birth or placement of the child via foster care or adoption.

The Program is funded by employee payroll deductions. The current withholding rate for 2019 is 1% up to an annual taxable wage limit of $118,371 per employee. In other words, the maximum annual withholding per employee is $1,183.71. This is the total maximum withholding. It funds both the PFL Program and SDI Disability Insurance (DI) benefits.

DI benefits range from a minimum of $50 to a maximum of $1,252 per week and last up to 52 weeks of payments. You must wait 7 days before collecting DI benefits. Beginning January 1, 2018, Assembly Bill (AB) 908 increased the weekly DI and PFL benefit amount to approximately 60-70% of your wages (depending on income) and removed the 7-day waiting period for PFL. You can read more about it at https://www.edd.ca.gov/disability/

Under SB 83, by November 2019, Governor Newsom must also propose further benefit increases (both in terms of duration and amount) as well as job protections for individuals receiving PFL benefits. Public sector employees already receive job protection benefits for family leave through the California Kin Care Law (Labor Code § 233), which allows employees to use up to one-half of their annual sick leave accrual to care for family members. They are also protected under the California Family Rights Act (CFRA), part of the Fair Employment & Housing Act (FEHA), Gov't Code § 12945.2, which provides job protection for up to 12 weeks of unpaid leave to bond with a minor child within one year of the birth or placement of the child via foster care or adoption.

Under SB 83, Governor Newsom must also submit a proposal to increase PFL to a full six months by 2021-22 and put forth a plan to implement and fund expanded PFL benefits, including whether to increase the wage replacement rate to up to 90% for low-wage workers.