

Sample Letter to Disability Management

Judy Rosen
UCSF Campus Disability Management Senior Officer

June 23, 2008

Dear, Judy

This letter is to hereby formally notify you as the UCSF Campus Disability Management officer that my medical provider (letter attached) has prescribed an immediate leave for me so that I can take time off from work to obtain or attempt to obtain relief to help ensure my health, safety, and welfare.

This leave is applicable under 'California Labor Code §§ 230, 230.1, (2002) - Workplace Protections' because of the specific protected class of employee who is a victim of domestic violence or a victim of sexual assault (medical provider and police documentation attached). Please notice that in this case, advance notice to my employer, UCSF, was not feasible. I look forward to returning to my job when my medical provider provides me with a release to return to work.

As an added and important note, I am hereby formally requesting continued medical and legal confidentiality under HIPAA, UC Privacy Policy and Practice, and under generally accepted and reasonably expected privacy. Given this formal privacy request, it would not be acceptable if any information other than the requested medical leave be transmitted to anyone outside of the, specific, UCSF Campus office of Disability Management without my express, written permission.

To hereby further clarify but not limiting or restricting to the following viewpoint and legal position: any information, which reaches any person other than an officer of the UCSF Campus Department of Disability Management, providing or insinuating anything more than the fact that my leave is of a medical necessity, will be considered as a direct legal violation of California Labor Code §§ 230, 230.1, (2002) - Workplace Protections, HIPAA, UC Privacy Policy and Practice, and generally accepted and reasonably expected, Civil protections of privacy.

The reason I am providing this and the above paragraphs is that previously, my UCSF campus direct supervisor contacted my treating physician and asked for certain medical information. UCSF employees who investigated this contact issued a report stating that there was no HIPAA violation because no protected Information was transmitted, because there was no intent to obtain protected information, and because UCSF Disability Management officer, Jerold Ulmer, stated that the supervisor was given permission to contact the treating physician from the disability management officer. In the current instance, California Labor Code adds additional privacy protection.

FirstName LastName

cc: Kevin Rooney, President
Nino Maida, Chief Steward
Local 7, UPTE-CWA 9119, AFL-CIO
attachments: documents from medical provider and police

Workplace Protections

230. (a) An employer may not discharge or in any manner discriminate against an employee for taking time off to serve as required by law on an inquest jury or trial jury, if the employee, prior to taking the time off, gives reasonable notice to the employer that he or she is required to serve.

(b) An employer may not discharge or in any manner discriminate or retaliate against an employee, including, but not limited to, an employee who is a victim of a crime, for taking time off to appear in court to comply with a subpoena or other court order as a witness in any judicial proceeding.

(c) An employer may not discharge or in any manner discriminate or retaliate against an employee who is a victim of domestic violence or a victim of sexual assault for taking time off from work to obtain or attempt to obtain any relief, including, but not limited to, a temporary restraining order, restraining order, or other injunctive relief, to help ensure the health, safety, or welfare of the victim or his or her child.

(d) (1) As a condition of taking time off for a purpose set forth in subdivision (c), the employee shall give the employer reasonable advance notice of the employee's intention to take time off, unless the advance notice is not feasible.

(2) When an unscheduled absence occurs, the employer shall not take any action against the employee if the employee, within a reasonable time after the absence, provides a certification to the employer. Certification shall be sufficient in the form of any of the following:

(A) A police report indicating that the employee was a victim of domestic violence or sexual assault.

(B) A court order protecting or separating the employee from the perpetrator of an act of domestic violence or sexual assault, or other evidence from the court or prosecuting attorney that the employee has appeared in court.

(C) Documentation from a medical professional, domestic violence advocate or advocate for victims of sexual assault, health care provider, or counselor that the employee was undergoing treatment for physical or mental injuries or abuse resulting in victimization from an act of domestic violence or sexual assault.

(3) To the extent allowed by law, the employer shall maintain the confidentiality of any employee requesting leave under subdivision (c).

(e) Any employee who is discharged, threatened with discharge, demoted, suspended, or in any

other manner discriminated or retaliated against in the terms and conditions of employment by his

or her employer because the employee has taken time off for a purpose set forth in subdivision (a),

(b), or (c) shall be entitled to reinstatement and reimbursement for lost wages and work benefits

caused by the acts of the employer. Any employer who willfully refuses to rehire, promote, or

otherwise restore an employee or former employee who has been determined to be eligible for

rehiring or promotion by a grievance procedure or hearing authorized by law is guilty of a misdemeanor.

(f) (1) Any employee who is discharged, threatened with discharge, demoted, suspended, or in any

other manner discriminated or retaliated against in the terms and conditions of employment by his

or her employer because the employee has exercised his or her rights

as set forth in subdivision (a), (b), or (c) may file a complaint with the Division of Labor Standards Enforcement of the Department of Industrial Relations pursuant to Section 98.7.

(2) Notwithstanding any time limitation in Section 98.7, an employee filing a complaint with the division based upon a violation of subdivision (c) shall have one year from the date of occurrence of the violation to file his or her complaint.

(g) An employee may use vacation, personal leave, or compensatory time off that is otherwise available to the employee under the applicable terms of employment, unless otherwise provided by a collective bargaining agreement, for time taken off for a purpose specified in subdivision (a), (b), or (c). The entitlement of any employee under this section shall not be diminished by any collective bargaining agreement term or condition.

(h) For purposes of this section:

(1) "Domestic violence" means any of the types of abuse set forth in Section 6211 of the Family Code, as amended.

(2) "Sexual assault" means any of the crimes set forth in Section 261, 261.5, 262, 265, 266, 266a, 266b, 266c, 266g, 266j, 267, 269, 273.4, 285, 286, 288, 288a, 288.5, 289, or 311.4 of the Penal Code, as amended.

230.1. (a) In addition to the requirements and prohibitions imposed on employees pursuant to Section 230, an employer with 25 or more employees may not discharge or in any manner discriminate or retaliate against an employee who is a victim of domestic violence or a victim of sexual assault for taking time off from work to attend to any of the following:

(1) To seek medical attention for injuries caused by domestic violence or sexual assault.

(2) To obtain services from a domestic violence shelter, program, or rape crisis center as a result of domestic violence or sexual assault.

(3) To obtain psychological counseling related to an experience of domestic violence or sexual assault.

(4) To participate in safety planning and take other actions to increase safety from future domestic violence or sexual assault, including temporary or permanent relocation.

(b) (1) As a condition of taking time off for a purpose set forth in subdivision (a), the employee

shall give the employer reasonable advance notice of the employee's intention to take time off,

unless the advance notice is not feasible.

(2) When an unscheduled absence occurs, the employer may not take any action against the employee if the employee, within a reasonable time after the absence, provides a certification to the employer. Certification shall be sufficient in the form of any of the following:

(A) A police report indicating that the employee was a victim of domestic violence or sexual assault.

(B) A court order protecting or separating the employee from the perpetrator of an act of domestic violence or sexual assault, or other evidence from the court or prosecuting attorney that the employee appeared in court.

(C) Documentation from a medical professional, domestic violence advocate or advocate for victims of sexual assault, health care provider, or counselor that the employee was undergoing treatment for physical or mental injuries or abuse resulting in victimization from an act of domestic violence or sexual assault.

(3) To the extent allowed by law, employers shall maintain the confidentiality of any employee requesting leave under subdivision (a).

(c) Any employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated or retaliated against in the terms and conditions of employment by his or her employer because the employee has taken time off for a purpose set forth in subdivision (a) is entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer. Any employer who willfully refuses to rehire, promote, or otherwise restore an employee or former employee who has been determined to be eligible for rehiring or promotion by a grievance procedure or hearing authorized by law is guilty of a misdemeanor.

(d) (1) Any employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated or retaliated against in the terms and conditions of employment by his or her employer because the employee has exercised his or her rights as set forth in subdivision (a) may file a complaint with the Division of Labor Standards Enforcement of the Department of Industrial Relations pursuant to Section 98.7.

(2) Notwithstanding any time limitation in Section 98.7, an employee filing a complaint with the division based upon a violation of subdivision (a) has one year from the date of occurrence of the violation to file his or her complaint.

(e) An employee may use vacation, personal leave, or compensatory time off that is otherwise available to the employee under the applicable terms of employment, unless otherwise provided by a collective bargaining agreement, for time taken off for a purpose specified in subdivision (a). The entitlement of any employee under this section may not be diminished by any collective bargaining agreement term or condition.

(f) This section does not create a right for an employee to take unpaid leave that exceeds the unpaid leave time allowed under, or is in addition to the unpaid leave time permitted by, the federal Family and Medical Leave Act of 1993 (29 U.S.C. Sec. 2601 et seq.).

(g) For purposes of this section:

(1) "Domestic violence" means any of the types of abuse set forth in Section 6211 of the Family Code, as amended.

(2) "Sexual assault" means any of the crimes set forth in Section 261, 261.5, 262, 265, 266, 266a, 266b, 266c, 266g, 266j, 267, 269, 273.4, 285, 286, 288, 288a, 288.5, 289, or 311.4 of the Penal Code, as amended.

Guy Zuzovsky
Manager
Employee and Labor Relations
3333 California, #305
San Francisco, CA 94143-1202

July 2, 2008

Re: Request For Information - California Labor Code

Dear Mr. Zuzovsky;

Please provide the following information:

- a.) Please describe the extent to which California Labor Code applies to UC HR/LR practices.
- b.) Please describe the extent to which 'California Labor Code §§ 230, 230.1, (2002) - Workplace Protections' applies to UC HR/LR practices?
- c.) Please describe the extent to which UC HR/LR practices meet or exceed 'California Labor Code §§ 230, 230.1, (2002) - Workplace Protections'. Please provide copy of these relevant UC HR/LR practices.

Reason for request:

UPTE has received a report that SFSU Campus HR/LR has informed the Department of Disability Management that UC is not required to follow the California Labor Code in general and the California Labor Code §§ 230, 230.1, (2002) - Workplace Protections, in specific.

UPTE requires these documents for current, active UPTE Representation which includes but is not limited to the topic of Disability Accommodations and Job Protections.

Please send or otherwise provide the requested information to UPTE, or arrange for pickup at the UCSF Parnassus Campus by an UPTE Representative. as soon as it becomes available, but not later than **July 24, 2008**, at 1498 Ninth Ave., San Francisco, CA 94122.

This is an official request for information. The information is required for currently active Representation and is necessary to manage labor relations. UPTE makes this request without prejudice to the Union's right to file subsequent information requests. Please provide the information as it becomes available. If UC denies any part of this request, or if the information is unavailable, please provide the remaining items by the above date, which the Union will accept without prejudice to its position that it is entitled to all documents and information called for in this request.

I can be reached at 415-753-8783 for further information. Thank you for your attention to this matter.

Nino Maida
Chief Steward

attachment: Proof Of Service (and faxed)