

# Seminars

## DIVERSITY AND THE BOTTOM LINE

### Managing The Tension Between Billable Hours And Workplace Inclusiveness Requirements



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There are many distractions to employee productivity which command legal protection under federal and state time off laws. Law firms face struggles when trying to juggle the demands of maintaining firm profitability and high billable hour requirements, while affording employees time off during the workday to attend to a wide array of outside interests. These laws provide an ever expanding list of requirements mandating flexibility when managing when, how much, and sometimes even where we can expect our employees to work.

These laws variously require law firms to “accommodate” a long list of outside interests and concerns, while outlawing management’s “interference” with these protections, discrimination and retaliation against those who take advantage of the rights these laws afford. Since so many of these rules are counterintuitive, the key action management should take to avoid costly legal claims is training the firm’s people managers (including partners, senior associates and staff managers) on the requirements of these laws.

The coverage of the federal Family Medical Leave Act (“FMLA”) is expanding. The FMLA provides that eligible employees may take up to twelve (12) weeks off per year (all at once or in small chunks of time totaling 480 hours) for their own serious health condition, a serious health condition of a family member, and/or when a new child is born or placed in the home via adoption or foster care. This not only includes the expectant mother’s prenatal doctor visits and time off for any pregnancy associated health matters, but also includes time off by adoptive parents to attend to legal proceedings relative to the adoption or foster care placement, and more exotic events like accompanying the birth mother to prenatal doctor visits in an adoption scenario or perhaps visits to the sperm bank to arrange for artificial insemination. Thus, when the state’s pregnancy disability rules are combined with the family leave “bonding” leave requirements, a new mom is entitled to take up to seven consecutive months off with job protection. From a risk management perspective, the key is recognizing precisely when a time off request falls

under these laws, when you can decline the request and how much time the employee must be given.

The stakes were raised considerably last year when the United States Equal Employment Opportunity Commission announced new federal enforcement guidelines focusing on the legal protections afforded to employees who are simultaneously acting as caregivers for aging parents and young children. Dubbed the “sandwich generation”, these employees often experience extraordinary demands on their time that must be respected whenever the activity falls under the umbrella of protection of federal and state law. For example, the family leave law allows time off to care for an aging parent or ill child, and includes time off whenever the medical care provider dubs it necessary for the psychological well being of the parent or child. This could include such things as taking mom to the doctor, leaving work early to fix dinner for dad or accompanying a child with a serious disease to a prescribed medical regimen.

There are also new military leave provisions under California and Federal law for military employees and their families. A new California law now allows an employee to take up to 10 days of unpaid time off to spend time with a spouse who is on leave from deployment. New federal provisions regarding military leave permit the next of kin of a “service member” up to 26 weeks of job protected time off from work to care for the injured service member. These rules also permit employees with family members on active duty to take up to 12 weeks off from work per year to care for the ill service member.

There are specific State and Federal time off provisions that apply to injured workers, whether on disability or workers’ compensation leave. State law makes it a crime to discriminate against an employee who suffers a work related injury and mandates protected time off for the injured employee’s recuperation.

In addition, federal and state laws prohibiting job bias against those with a physical or mental disability impose numerous accommodation requirements. The American With Disabilities Act and its California counterpart not only protect employees and job applicants with a disability, but also those with a history of a disability and those that may be erroneously regarded as disabled. These laws also protect employees with a close personal or family relationship with a disabled person, such as a single mom applying for a job who is the sole caregiver of her son with cystic fibrosis. In this case, the firm would be at risk if it denied the applicant the job (or if already employed, a favorable assignment) simply out of fear that the appli-

cant's likely time off needs will interfere with her ability to meet the firm's billable hour requirements.

There are numerous time off laws which weigh heavily on the issues of a so-called work/life balance. These laws authorize employees to miss work for an array of non-work related matters. Firms must accommodate these needs or risk expensive legal claims for not honoring these rights. For example, an employee on an important time sensitive assignment gets injured on the weekend in a hang gliding accident. Laid up for weeks in the hospital, the employee likely enjoys time off protection under several statutes even though the absence could cause substantial inconvenience to the firm and require the firm to absorb the expense of bringing another lawyer up to speed on the case. So too, is the case where an employee is the victim of domestic violence, needs time off to enter into a drug/alcohol rehabilitation program, takes time off to attend to a child's school activities or teacher conferences, takes time off to attend to civic responsibilities such as voting, serving on a jury, testifying as a witness or attending to National Guard or volunteer firefighter duties.

As if the above topics are not enough for employers to remember, there are a myriad of other employee issues that law firms may confront and are expected to accommodate, including religious observances, ethnic wardrobes, employees undergoing gender reas-

ignment, employees who have tattoos and other body piercings, just to name a few.

There are many practical considerations involved in the required accommodation of these work/life balance issues. Among them, the EEOC position on telecommuting and part-time work and the potential for other alternative work arrangements. ■

***About the Author:** RICHARD S. ROSENBERG is a founding partner in the Universal City employer side employment law boutique firm of Ballard, Rosenberg, Golper & Savitt, LLP. He is a graduate of the College of Industrial and Labor Relations at Cornell University and the University of Santa Clara Law School. Mr. Rosenberg has spent his entire career (30+ years) providing advice and counsel to management (exclusively) on the entire spectrum of labor relations and employment law matters.*

*Mr. Rosenberg was recognized as a Southern California Super Lawyer by Los Angeles Magazine and the Journal of Law and Politics for 2007. Mr. Rosenberg has received this recognition each year since the award was created in 2004. In addition, Mr. Rosenberg was named among the Best Lawyers in America by that publication. In 2007, Mr. Rosenberg was named by the San Fernando Valley Business Journal as one of the top 25 attorneys in the San Fernando Valley.*

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