

Practical Tips for Smart Businesses: Employees on Workers' Compensation Leave

Employers in California are in a constant quandary over what to do with employees out on extended leaves due to Workers' Compensation injuries. If an employee is fired while on a Workers' Compensation leave, the employer could face a claim for discrimination under Labor Code § 132a. However, holding a job open indefinitely can, in some circumstances, be viewed as an undue hardship. What about benefits – do employees on leave have to be provided with paid benefits indefinitely? The California Supreme Court recently approved one employer's approach: continue to provide time off and

keep an employee on the payroll but do not "terminate" while on an approved Workers' Compensation leave. See *Stephens v. County of Tulare* (May 2006). With regard to benefits (i.e., health care coverage), an employer need not continue to pay for employee sponsored health care coverage for an employee on an extended worker's compensation leave beyond certain time frames so long as the employer's healthcare policy meets specific ERISA standards.■