

Recently Enacted Massachusetts Domestic Violence Law Entitles Employees to a New Type of Leave

On August 8, 2014, Massachusetts Governor Deval Patrick signed into law “An Act Relative to Domestic Violence,” which became effective immediately. Under this law, all public and private employers with 50 or more employees must provide their employees with up to 15 days of leave in any 12-month period if the employee, or his or her family member, is a victim of domestic violence or abuse.

In order to qualify for domestic violence leave, an employee or covered family member (which includes the employee’s spouse, parent, step-parent, child, step-child, sibling, grandparent, or grandchild, among others) must be the victim of abusive behavior. Abusive behavior includes domestic violence, stalking, sexual assault or kidnapping. Domestic violence is defined under the statute as abuse by a current or former spouse, a person with whom the victim shares a child, a relative, or a person with whom the victim has or had a dating relationship. In the case of abuse of a family member, the employee is not entitled to leave if he or she is the alleged perpetrator.

The employee must use the leave to address issues directly related to the abusive behavior, such as obtaining legal assistance, attending or appearing in court proceedings, or seeking medical attention, counseling or other victim services. At the employer’s discretion, leave may be paid or unpaid. However, an employer may require its employees to exhaust all other forms of leave, including vacation time, sick days or personal days before taking domestic violence leave.

An employee seeking domestic violence leave under this statute must provide advance notice of the leave, except in cases where there is a threat of imminent danger. Notice need not be provided by the employee and instead may be provided by a family member or a professional assisting the employee with addressing the abusive behavior. The statute prohibits an employer from taking any disciplinary action against an employee for any unscheduled absence, provided that the employee provides the employer with supporting documentation within 30 days of the absence. Such documentation must demonstrate that the employee or a family member was the victim of abusive behavior and that the leave was related to that behavior. These requirements may be satisfied with documents such as a protective order, police report, witness statement provided to the police, medical documentation, or a sworn statement from a counselor or other advocate. All documentation provided to the employer

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related to the employee's leave must be kept confidential, unless disclosure is expressly permitted under the statute (as where disclosure is requested or consented to by the employee, ordered by a court, required in the course of an investigation, or necessary to protect the employee's safety). Upon the employee's return from leave, the employee must be restored to his or her original job, or to an equivalent position. In addition, like the Family and Medical Leave Act, this statute includes anti-interference and anti-retaliation provisions, which prohibit an employer from discharging or discriminating against any employee for exercising rights under this statute, or for interfering with an employee's rights.

The Attorney General is responsible for enforcing this law and may seek injunctive and other equitable relief against any employer that violates the law. Furthermore, an employee who believes his or her statutory rights have been violated may bring a private action seeking injunctive relief, lost wages and benefits, and other damages under the provision for pursuing private claims for Massachusetts wage and hour violations. Since the civil enforcement scheme is part of the Massachusetts Wage Act, a prevailing employee is entitled to treble damages and attorneys' fees.

Although the domestic violence leave law does not answer some questions, including whether intermittent leave is required, employers covered by this new law are required to notify their employees of their rights and responsibilities under the law. To satisfy this requirement, employers may need to update their policies to include domestic violence leave, amend their company handbook, and train managers and human resources professionals about this new category of job-protected leave. It is important to keep in mind that an employee injured by domestic violence may be eligible for leave or an accommodation under the Family and Medical Leave Act or the Americans with Disabilities Act.

In Connecticut, leave for victims of family violence is covered by Conn. Gen. Stat. 31-51ss, which covers employers with 3 or more employees. Under this statute, an employer must allow an employee who is a victim of family violence to take paid or unpaid leave during any 12-month period for purposes of seeking medical care or counseling, obtaining victim services, relocating, or participating in any associated civil or criminal proceeding. An employer may limit unpaid leave to 12 days a year. If an employee's need to take domestic violence leave is foreseeable, an employer may require advance notice, not to exceed 7 days. If an employee's need to take domestic violence leave is not foreseeable, an employer may require the employee to give notice as soon as practicable. Employees must also provide the employer with a signed written statement certifying the leave upon an employer's request. The employer may further request that the employee provide a police or court record related to the family violence. However, the employer shall maintain any written statement, and any police or court record as confidential. If an employer discharges, penalizes, or threatens an employee for taking domestic violence leave, the employee may bring a civil action for damages or an order requiring the employee's reinstatement. If the employee is successful, the employee may recover attorney's fees.

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