

# Publications

Labor and Employment Alert

## Massachusetts Enacts Domestic Violence Leave for Employees

August 12, 2014

On August 8, 2014, Governor Deval Patrick signed into law a bill relating to domestic violence. Among other provisions, the law creates a new category of job-protected leave for employees. Massachusetts employers with 50 or more employees are now required to permit employees to take up to 15 days of leave from work per year if they or their family members are victims of domestic violence or abuse. The law took effect immediately.

To qualify for domestic violence leave, either the employee or a covered family member must be the victim of abusive behavior. Abusive behavior includes any behavior constituting 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 person cohabitating with or has cohabitated with the victim, a relative, or a person with whom the employee or family member has or had a dating relationship. Covered family members include the employee's spouse, parent, step-parent, child, step-child, sibling, grandparent, and grandchild. 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 leave must be used to address issues directly related to the abusive behavior. These include seeking medical attention, counseling or victim services. Leave may also be taken to obtain legal assistance, to attend or appear in court proceedings, or to meet with a district attorney or law enforcement personnel. The employer has sole discretion to determine whether the leave is paid or unpaid. However, an employee must exhaust vacation time, sick days or personal days before taking leave under the law, unless the employer waives this requirement.

In most cases, employees seeking domestic violence leave must provide advanced notice of the leave and supporting documentation. However, where there is a threat of imminent danger to the health or safety of the employee or the covered family member, advanced notice is not required. Instead, the employee must notify the employer within three workdays that protected leave was taken or is being taken. Notice need not be provided by the employee, and instead it may be provided by a family member or a professional assisting the employee with addressing the abusive behavior.

Upon return from leave, the employee must be restored to the employee's original job or to an equivalent position. Further, the law prohibits an employer from taking any disciplinary action against the employee for an unscheduled absence, provided that the employee provides 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 by a

protective order or other documentation issued by a court, a police report or witness statement provided to the police, documents showing the perpetrator was convicted or admitted to facts sufficient to establish guilt of abusive behavior, medical documentation or a sworn statement from a counselor or other advocate. An employer cannot require the employee to produce evidence of an arrest or conviction. All information related to the employee's leave must be kept confidential, unless disclosure is expressly permitted under the statute.

The law prohibits employers from discharging or discriminating against employees for exercising their rights under the statute or interfering with employees' rights. The Massachusetts Attorney General is empowered to enforce the law. In addition, an employee may bring a civil action, seeking injunctive relief, lost wages and benefits and other damages. Because the civil enforcement scheme is part of the Massachusetts Wage Act, a prevailing employee is entitled to treble damages and attorneys' fees.

Covered employers are required to notify each employee of their rights under the law. To satisfy this requirement, employers may need to develop a written policy regarding domestic violence leave or amend their handbooks. In addition, they may need to train managers and human resources professionals regarding this new category of job-protected leave.

## Written by



[Robert A. Fisher](#)



[Rebecca Sivitz](#)

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