



# New Leave Law In Effect In Florida

Insights

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Effective July 1, 2007, certain Florida employers will be required to offer leave to employees who are victims of domestic violence. The new law applies to employers who employ 50 or more employees.

## Details Of The Law

Employees can take up to 3 days of unpaid leave in any 12 month period if the employee, or a family or household member of the employee, is the victim of domestic violence. In order to be eligible, employees must have been employed with the employer for 3 or more months as of the date leave is needed. The statute does not mandate that the leave must be paid, so whether to provide paid or unpaid leave is left to the employer's discretion.

Leave may be taken if the employee is:

- Seeking an injunction for protection against domestic violence or an injunction for protection in cases of repeated dating or sexual violence;
- Obtaining medical care or mental health counseling, or both, for the employee or family or household member to address physical or psychological injuries resulting from the act of domestic violence;
- Obtaining services from a victim-services organization, including, but not limited to, a domestic violence shelter or program or a rape crisis center;
- Making the employee's home secure from the perpetrator of the domestic violence or seeking new, presumptively safer housing;
- Seeking legal assistance to address issues arising from the domestic violence and to attend and prepare for court-related proceedings arising from the domestic violence.

Employees must provide as much notice of the need for leave as possible, except when to do so would be impossible, for example, where danger to the employee, family or household member is imminent.

Just as with leave under the Family and Medical Leave Act, employers may, at their option, require employees taking domestic violence leave to exhaust other forms of paid leave, such as vacation, sick, or personal leave. Additionally, for employees who are FMLA eligible, some (but not all) situations under the Domestic Violence Leave may also qualify as FMLA leave, and both could run

concurrently.

Finally, you are permitted to request documentation from the employee substantiating the need for leave. All information relating to the employee's leave for domestic violence must be kept confidential.

### **Penalties For Violation**

Employers are prohibited from disciplining employees who attempt to exercise any rights under this law. The law provides that "aggrieved persons" may file suit in circuit court for alleged violations. Remedies are limited to back pay, benefits, and reinstatement. Employees may not claim wages or benefits for a period of leave granted without pay, and employees have a duty to mitigate their damages.

The law does not address whether attorney's fees may be awarded to employees who prevail in litigation against their employers. Other aspects of the new law are also unclear. For example, in determining whether the employer is "covered," the law does not address whether the employer must have at least 50 employees employed in the state of Florida or, alternatively, if the business is a covered employer if it has at least 50 employees nationwide, some of whom are in Florida.

### **Compliance**

Our office has prepared sample policies to comply with this law. If you would like help in drafting a policy compliant with the law for your business, or for more information about the law generally, or contact any attorney in one of our Florida offices:

Tampa: 813.769.7500

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