



Domestic Violence Leave Becomes Law in Massachusetts

Insights

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Massachusetts Governor Deval Patrick signed into law [An Act Relative to Domestic Violence](#) on August 8, 2014. This far-reaching law, which institutes reforms throughout the criminal justice system, mandates that all public and private employers with more than 50 employees must permit employees impacted by domestic violence to take up to 15 days of leave in any 12 month period. This leave may be paid or unpaid at the employer's discretion. Employers **are not** required to grant leave if the employee is the perpetrator of abusive behavior against a family member. Employers are specifically required to notify employees of their rights and responsibilities under the law.

An employee will be eligible for domestic violence leave if:

- the employee, or a family member of the employee, is a victim of abusive behavior and
- the employee is using the leave from work for purposes closely related to the abusive behavior, including obtaining medical attention or counseling, securing housing, attending court proceedings, and obtaining other victims' services.

The statute's definition of "abusive behavior" is broad, including both physical and mental abuse. Employers may require employees to exhaust all other available forms of leave, including vacation, sick time, and personal leave, prior to requesting or taking domestic violence leave.

Except where there is a threat of imminent danger, employees are required to provide "appropriate notice" of their need for leave. While the statute does not specifically define "appropriate notice," employers should use the same notice period required in their other leave policies. This notice may be communicated by either the employee or another person acting on the employee's behalf. If an unscheduled absence occurs, an employer may not take any negative action against the employee if the employee produces documentation within 30 days.

Employers can also require employees to produce documentation of their need for leave. All documentation provided to the employer must be kept confidential and cannot be disclosed except as provided by statute. Additionally, this documentation may only be retained for as long as is required for the employer to determine the employee's eligibility for leave.

Like the federal Family and Medical Leave Act, the statute includes anti-interference and anti-retaliation provisions which prohibit an employer from interfering with an employee's attempt to

exercise his or her rights or “discharg[ing] or in any other manner discriminat[ing]” against an employee for exercising his or her rights under this section. The statute specifically provides that the employer **may not** make the employee’s exercise of his or her rights contingent on whether the victim maintains contact with the alleged abuser. The statute also provides that upon the employee’s return from leave, the employee shall be entitled to restoration to the employee’s original job or to an equivalent position.

The statute will be enforced by the Massachusetts Attorney General who is entitled to seek either injunctive relief or other equitable relief. Employees who believe their rights under this act have been violated may also bring private actions using the same provision as other Massachusetts wage and hour violations.

This law does leave some unanswered questions, including whether intermittent leave will be available and whether this leave may run concurrently with other available leaves. It is not difficult to conceive of a situation in which an employee, injured by domestic violence, might simultaneously be eligible for both domestic violence leave and FMLA or other state or local leaves. Additionally, an employee who suffers impairment that substantially limits one or more major life activities as a result of domestic violence, including post-traumatic stress disorder and other mental illnesses, might require reasonable accommodation under the Americans with Disabilities Act.

Massachusetts employers with 50 or more employees should move quickly to notify employees of their rights and responsibilities under this law and update their policies to include domestic violence leave.

This Legal Alert provides information about a specific new state law. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.