

**MASSACHUSETTS EMPLOYEES ENTITLED TO “DOMESTIC VIOLENCE LEAVE”  
EFFECTIVE IMMEDIATELY**

**What You Need to Know**

**All Massachusetts employers with 50 or more employees must provide qualifying employees with 15 days of leave from work per 12-month period if the employee or a member of the employee’s family is or has been a victim of domestic violence. Employers who fail to comply with the law are subject to liability for lost wages, mandatory treble damages, attorney’s fees, and costs under the Massachusetts Wage Act.**

Governor Patrick signed “An Act relative to domestic violence” (“the Act”) into law on August 8, 2014. The law generally requires Massachusetts employers of 50 or more to provide all employees (full-time, part-time, temporary, seasonal, etc.) 15 days of leave per year if the employee or a family member of employee’s is or has been a victim of domestic violence. The law became effective immediately.

An employee qualifies to take leave under the Act if several conditions are met. First, the employee or a close family member must be a victim of “abusive behavior.” And second, the leave must be taken to address issues directly related to abusive behavior such as seeking medical or counseling services, securing housing, meeting with law enforcement officials, or attending court proceedings. Abusive behavior includes domestic violence, stalking, sexual assault, and kidnapping. The Act defines domestic violence as any “abuse” perpetrated against the victim by the victim’s spouse, co-parent, current or former co-habitant, relative by blood or marriage, or current or former significant other. Similarly, covered family members include a spouse, significant other with whom the employee resides, co-parent, parent, step-parent, child, step-child, sibling, grandparent, grandchild, or individual with whom the employee shares a guardianship relationship.

Employees generally must provide “appropriate advance notice” of their intent to take leave under the Act. The Act does not specify how much notice must be given or what constitutes sufficient notice. Qualifying employees also may take unscheduled absences if there is an “imminent danger” to the employee or a family member and notice of the reason for the unscheduled absence is communicated to the employer within 3 working days of the commencement of the leave. This notice may be communicated by a family member or professional assisting the employee with addressing the abusive behavior.

An employer may require that the employee produce documentation of the abusive behavior. Sufficient documentation includes a copy of a protective order or order for equitable

relief, a police report, a conviction, admission of guilt, or adjudication of delinquency, medical records, a sworn statement of a professional, or the employee's own sworn statement. In the case of an unscheduled absence, the employee must provide documentation within 30 days of the final day of the most recent unscheduled absence. In all other cases, the employer may insist on the production of supporting documentation within "a reasonable period of time." Any documentation the employee produces may be kept in the employee's file only so long as is necessary to determine the employee's eligibility for leave under the Act. This information must be kept confidential and only may be disclosed if the employee consents in writing, a court of competent jurisdiction orders its release, it is required in the course of an investigation authorized by law enforcement, or its release is necessary to protect the safety of the employee or others employed at the workplace.

Employers have complete discretion to determine whether employees taking leave under the Act will be paid during their absence. Additionally, the employer may require that employees exhaust all vacation, personal, and sick leave before the employee begins to use leave time under the Act.

The Act requires that covered employers notify all employees of employee rights and responsibilities under the Act, including information related to the notification requirements and the employer's obligation to keep any matter brought to its attention confidential. The Act does not provide any specific guidance on how employers should provide notice of employee rights and responsibilities. Employers should consider including the requisite information in an employee handbook issued to all employees, and should take care to notify all existing employees of their rights and responsibilities under the Act.

Penalties for an employer's non-compliance with the Act are severe. An employer may take no unfavorable action against any qualifying employee who takes leave under the Act, provided the employee complies with the notice and documentation provisions discussed above. The Act creates a private right of action that allows aggrieved employees to seek equitable or injunctive relief and/or compensation for lost wages and other incidental damages. Because the civil enforcement scheme falls under the Massachusetts Wage Act, employers also face liability for mandatory treble damages and attorneys' fees. Covered employers should keep in mind that the Act does not affect preexisting employee rights covered by other statutes, such as the right to testify as a witness or the right of a victim to attend a related legal proceeding without retaliation. The Attorney General also has jurisdiction to enforce the rights secured by the Act.

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