

Senate, No. 2382

[Senate, April 13, 2010 – Substituted by amendment by the Senate (Ways and Means) for Senate, No. 673.]

The Commonwealth of Massachusetts



IN THE YEAR OF TWO THOUSAND AND TEN

AN ACT TO ESTABLISH EMPLOYMENT LEAVE AND SAFETY REMEDIES TO VICTIMS OF DOMESTIC VIOLENCE, STALKING AND SEXUAL ASSAULT.

Be it enacted by the Senate and House of Representatives in General Court assembled,

And by the authority of the same, as follows:

1 **SECTION 1.** Chapter 149 of the General Laws, as appearing in the 2008 Official
2 Edition, is hereby amended by inserting after section 52D the following section:-

3 Section 52E. (1)(a) An employer shall permit an employee to take up to 15 days of
4 leave from work in any 12 month period, with or without pay, if:

5 (i) the employee, or a family member of the employee, including persons in a
6 substantive dating or engagement relationship who reside together in the same

7 household, is a victim of domestic violence as defined in section 1 of chapter 151A, or a
8 victim of stalking as defined in section 43 of chapter 265, or a victim of sexual assault
9 which shall include any violation of sections 13B, 13B½, 13B¾, 13F, 13H, 22, 22A,
10 22B, 22C, 23, 23A, 23B, 24, 24B of chapter 265, paragraph 4 of section 26 of chapter
11 265 and sections 3 and 35A of chapter 272; and

12 (ii) the employee is using the leave from work to: seek or obtain medical
13 attention, counseling, victim services or legal assistance, secure housing, obtain a
14 protective order from a court, appear in court or before a grand jury as a witness, meet
15 with a district attorney or other law enforcement official, attend child custody
16 proceedings, or address other issues directly related to the domestic violence, stalking or
17 sexual assault.

18 (b) This section shall not apply to employers who employ less than 50 employees.

19 (2)(a) Except in cases of imminent danger to the health or safety of an employee, an
20 employee seeking leave from work pursuant to this section shall provide his or her employer
21 with the appropriate advance notice of such leave as may be required by the employer's policy.
22 If an unscheduled absence occurs, the employer may not take any negative action against the
23 employee if the employee, within a reasonable period after the absence, provides any
24 certification as described in clauses (1) to (6), inclusive, of paragraph (b).

25 (b) An employer may require an employee to provide certification to the employer that
26 the employee or the employee's family member is a victim of the illegal conduct enumerated in
27 paragraph (a) of subsection (1) and that the purpose of the leave is any 1 of the purposes
28 enumerated in said paragraph (a); provided, however, that an employer shall not require an

29 employee to show evidence of a conviction for such illegal conduct. An employee shall provide
30 such certification to the employer within a reasonable period after the employer requests
31 certification. An employee shall have satisfied this certification requirement by providing any 1
32 of the following to an employer:

33 (1) a protective order or other documentation of equitable relief issued by a
34 court of competent jurisdiction;

35 (2) a police record documenting any of the alleged illegal behavior enumerated
36 in paragraph (a) of subsection (1);

37 (3) if the employee was a victim or is a family member of a victim of domestic
38 violence, documentation that the perpetrator of the domestic violence has been convicted
39 of 1 or more of any offense prohibited in chapter 265;

40 (4) medical documentation of treatment as a result of the illegal behavior
41 enumerated in paragraph (a) of subsection (1);

42 (5) a statement provided by a counselor, social worker, health care worker,
43 member of the clergy, shelter worker, legal advocate or other professional who has
44 assisted the individual in addressing the effects of the illegal behavior enumerated in
45 paragraph (a) of subsection (1) on the individual or a member of the individual's family;
46 or

47 (6) a sworn statement from the employee attesting to having been the victim of
48 any of the illegal behavior enumerated in paragraph (a) of subsection (1) or being a

49 family member of such victim. Any certification or other documentation provided to an
50 employer pursuant to this section may be maintained by the employer in the employee's
51 employment record but only for as long as required for the employer to make a
52 determination as to whether such employee is eligible for leave under this section.

53 (c) All information related to the employee's leave pursuant to this section shall be kept
54 confidential by the employer and shall not be disclosed, except to the extent that disclosure is:

55 (i) requested or consented to, in writing, by the employee; or

56 (ii) otherwise required by applicable federal or state law.

57 (d) An employee seeking leave pursuant to this section, prior to receiving such leave,
58 shall exhaust any and all annual or vacation leave, personal leave and sick leave, if applicable,
59 that may be available to the employee, unless the employer waives this requirement.

60 (3)(a) It shall be unlawful for any employer to coerce, interfere with, restrain or deny the
61 exercise of, or any attempt to exercise, any rights provided under this section or to make the
62 leave contingent upon whether or not the victim maintains contact with the alleged abuser.

63 (b) It shall be unlawful for any employer to discharge or in any other manner
64 discriminate against an individual for exercising his or her rights under this section. The taking
65 of leave under this section shall not result in the loss of any employment benefit accrued prior to
66 the date on which the leave commenced. Upon the employee's return from leave, the employee
67 shall be entitled to restoration to the employee's original job or to an equivalent position.

68 (4) Any person claiming to be aggrieved by a violation of this section may file a civil
69 action against the employer to enforce this section. Such person may seek appropriate relief

70 including, but not limited to, restoration to his original job or to an equivalent position and
71 damages, including all wages and benefits that would have been due to the person, including
72 reasonable attorney fees and costs.

73 (5) Employers with 50 or more employees shall notify all employees of their rights
74 under this section, including those related to confidentiality.