

Chapter 260 of the Acts of 2014
An Act Relative to Domestic Violence

SECTION 10. Chapter 149 of the General Laws is hereby amended by inserting after section 52D the following section:-

Section 52E. (a) For purposes of this section, the following words shall have the following meanings, unless the context clearly indicates otherwise:

“Abuse” - (i) attempting to cause or causing physical harm; (ii) placing another in fear of imminent serious physical harm; (iii) causing another to engage involuntarily in sexual relations by force, threat or duress or engaging or threatening to engage in sexual activity with a dependent child; (iv) engaging in mental abuse, which includes threats, intimidation or acts designed to induce terror; (v) depriving another of medical care, housing, food or other necessities of life; or (vi) restraining the liberty of another.

“Abusive behavior” - (i) any behavior constituting domestic violence, (ii) stalking in violation of section 43 of chapter 265, (iii) sexual assault, which shall include a violation of sections 13B, 13B½, 13B¾, 13F, 13H, 22, 22A, 22B, 22C, 23, 23A, 23B, 24, 24B, 26D, 50 or 51 of chapter 265 or sections 3 or 35A of chapter 272 and (iv) kidnapping in violation of the third paragraph of section 26 of chapter 265.

“Domestic violence” - abuse against an employee or the employee’s family member by: (i) a current or former spouse of the employee or the employee’s family member; (ii) a person with whom the employee or the employee’s family member shares a child in common; (iii) a person who is cohabitating with or has cohabitated with the employee or the employee’s family member; (iv) a person who is related by blood or marriage to the employee; or (v) a person with whom the employee or employee’s family member has or had a dating or engagement relationship.

“Employees” - individuals who perform services for and under the control and direction of an employer for wages or other remuneration.

“Family member” - (i) persons who are married to one another; (ii) persons in a substantive dating or engagement relationship and who reside together; (iii) persons having a child in common regardless of whether they have ever married or resided together; (iv) a parent, step-parent, child, step-child, sibling, grandparent or grandchild; or (v) persons in a guardianship relationship.

(b) An employer shall permit an employee to take up to 15 days of leave from work in any 12 month period if:

- (i) the employee, or a family member of the employee, is a victim of abusive behavior;
- (ii) the employee is using the leave from work to: seek or obtain medical attention, counseling, victim services or legal assistance; secure housing; obtain a protective order from a court; appear in court or before a grand jury; meet with a district attorney or other law enforcement official; or attend child custody proceedings or address other issues directly related to the abusive behavior against the employee or family member of the employee; and
- (iii) the employee is not the perpetrator of the abusive behavior against such employee's family member.

The employer shall have sole discretion to determine whether any leave taken under this section shall be paid or unpaid.

(c) This section shall apply to employers who employ 50 or more employees.

(d) Except in cases of imminent danger to the health or safety of an employee, an employee seeking leave from work under this section shall provide appropriate advance notice of the leave to the employer as required by the employer's leave policy.

If there is a threat of imminent danger to the health or safety of an employee or the employee's family member, the employee shall not be required to provide advanced notice of leave; provided, however, that the employee shall notify the employer within 3 workdays that the leave was taken or is being taken under this section. Such notification may be communicated to the employer by the employee, a family member of the employee or the employee's counselor, social worker, health care worker, member of the clergy, shelter worker, legal advocate or other professional who has assisted the employee in addressing the effects of the abusive behavior on the employee or the employee's family member.

If an unscheduled absence occurs, an employer shall not take any negative action against the employee if the employee, within 30 days from the unauthorized absence or within 30 days from the last unauthorized absence in the instance of consecutive days of unauthorized absences, provides any of the documentation described in paragraphs (1) to (7), inclusive, of subsection (e).

(e) An employer may require an employee to provide documentation evidencing that the employee or employee's family member has been a victim of abusive behavior and that the leave taken is consistent with the conditions of clauses (i) to (iii), inclusive, of subsection (b); provided, however, that an employer shall not require an employee to show evidence of an arrest, conviction or other law enforcement documentation for such abusive behavior. An employee shall provide such documentation to the employer within a reasonable period after the employer requests

documentation relative to the employee's absence. An employee shall satisfy this documentation requirement by providing any 1 of the following documents to the employer.

(1) A protective order, order of equitable relief or other documentation issued by a court of competent jurisdiction as a result of abusive behavior against the employee or employee's family member.

(2) A document under the letterhead of the court, provider or public agency which the employee attended for the purposes of acquiring assistance as it relates to the abusive behavior against the employee or the employee's family member.

(3) A police report or statement of a victim or witness provided to police, including a police incident report, documenting the abusive behavior complained of by the employee or the employee's family member.

(4) Documentation that the perpetrator of the abusive behavior against the employee or family member of the employee has: admitted to sufficient facts to support a finding of guilt of abusive behavior; or has been convicted of, or has been adjudicated a juvenile delinquent by reason of, any offense constituting abusive behavior and which is related to the abusive behavior that necessitated the leave under this section.

(5) Medical documentation of treatment as a result of the abusive behavior complained of by the employee or employee's family member.

(6) A sworn statement, signed under the penalties of perjury, provided by a counselor, social worker, health care worker, member of the clergy, shelter worker, legal advocate or other professional who has assisted the employee or the employee's family member in addressing the effects of the abusive behavior.

(7) A sworn statement, signed under the penalties of perjury, from the employee attesting that the employee has been the victim of abusive behavior or is the family member of a victim of abusive behavior. Any documentation provided to an employer under this section may be maintained by the employer in the employee's employment record but only for as long as required for the employer to make a determination as to whether the employee is eligible for leave under this section.

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

- (i) requested or consented to, in writing, by the employee;
- (ii) ordered to be released by a court of competent jurisdiction;
- (iii) otherwise required by applicable federal or state law;
- (iv) required in the course of an investigation authorized by law enforcement, including, but not limited to, an investigation by the attorney general;
- (v) necessary to protect the safety of the employee or others employed at the workplace.

(g) An employee seeking leave under this section shall exhaust all annual or vacation leave, personal leave and sick leave available to the employee, prior to requesting or taking leave under this section, unless the employer waives this requirement.

(h) No employer shall coerce, interfere with, restrain or deny the exercise of, or any attempt to exercise, any rights provided under this section or to make leave requested or taken hereunder contingent upon whether or not the victim maintains contact with the alleged abuser.

(i) No employer shall discharge or in any other manner discriminate against an employee for exercising the employee's rights under this section. The taking of leave under this section shall not result in the loss of any employment benefit accrued prior to the date on which the leave taken under this section commenced. Upon the employee's return from such leave, the employee shall be entitled to restoration to the employee's original job or to an equivalent position.

(j) The attorney general shall enforce this section and may seek injunctive relief or other equitable relief to enforce this section.

(k) Employers with 50 or more employees shall notify each employee of the rights and responsibilities provided by this section including those related to notification requirements and confidentiality.

(l) This section shall not be construed to exempt an employer from complying with chapter 258B, section 14B of chapter 268 or any other general or special law or to limit the rights of any employee under said chapter 258B, said section 14B of chapter 268 or any other general or special law.

(m) Any benefit received from this section shall not be considered relevant in any criminal or civil proceeding as it relates to the alleged abuse unless, after a hearing, a justice of the district, superior or probate court determines that such benefit is relevant to the allegations.