

SENATE NO. 1057

AN ACT PROVIDING 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 2002 Official Edition is hereby
2 amended by inserting the following new Section:-
3 Section 52E. (1) (a) An employer shall allow an employee to take up to fifteen days of leave from
4 work in any twelve month period, with or without pay, if the employee, or a family member of such
5 employee, including persons in a substantive dating or engagement relationship who reside together
6 in the same household, is a victim of domestic violence as defined in section 1 of chapter 151A, a
7 victim of stalking as defined in section 43 of chapter 265, or a victim of sexual assault. For
8 purposes of this section, sexual assault shall include any one of the following: indecent assault and
9 battery on a child under 14 under section 13B of chapter 265, indecent assault and battery on a
10 mentally retarded person under the first paragraph of section 13F of chapter 265, indecent assault
11 and battery on a person who has attained the age of 14 under section 13H of chapter 265, rape under
12 section 22 of chapter 265; rape of a child under 16 with force under section 22A of chapter 265;
13 rape and abuse of a child under section 23 of chapter 265; assault with intent to commit rape under
14 section 24 of chapter 265; assault of a child under 16 with intent to commit rape under section 24B

15 of chapter 265; kidnapping a child under the age of 16 under section 26 of chapter 265; drugging
16 persons for sexual intercourse under section 3 of chapter 272; unnatural and lascivious acts with a
17 child under 16 under section 35A of said chapter 272.

18 This section shall only apply if such employee is using the leave from work to address
19 issues arising from the domestic violence, stalking, or sexual assault in order to seek or obtain a
20 court order of protection, medical attention, counseling, victim services, legal assistance, secure
21 housing, or to appear in court as a witness, attend child custody proceedings, consult with a district
22 attorney or other law enforcement official, or other issues directly related to the domestic violence,
23 stalking or sexual assault.

24 (b) The provisions of this section shall only apply to employers who employ fifty or
25 more employees. The employer shall notify all employees of their rights, including those related to
26 confidentiality, under this section.

27 (2)(a) Except in cases of imminent danger to the health or safety of the employee, an
28 employee seeking leave from work pursuant to this section shall provide his or her employer with
29 the appropriate advance notice of such leave as may be required by the employer's policy. When an
30 unscheduled absence occurs, the employer may not take any action against the employee if the
31 employee, within a reasonable period after the absence, provides certification under subsection
32 (2)(b).

33 (b) The employer may require the employee to provide certification to the employer that
34 the employee or the employee's family member is a victim of domestic violence, stalking or sexual
35 assault and that the leave is for one of the purposes enumerated in paragraph 1(a); provided that in
36 no circumstances shall it be necessary for the employee to show evidence of a conviction of the
37 underlying offense. The employee shall provide such certification to the employer within a

38 reasonable period after the employer requests certification. An employee may satisfy the
39 certification requirement of this section by providing one of the following for review by the
40 employer:

41 (1) a restraining order or other documentation of equitable relief issued by a court of
42 competent jurisdiction; (2) a police record documenting the domestic violence, stalking or sexual
43 assault; (3) documentation that the perpetrator of the domestic violence has been convicted of 1 or
44 more of the offenses enumerated in chapter 265 or chapter 272 where the victim was a family or
45 household member; (4) medical documentation of the domestic violence, stalking, or sexual assault;
46 (5) a statement provided by a counselor, social worker, health worker, member of the clergy, shelter
47 worker, legal advocate or other professional who has assisted the individual in addressing the
48 effects of the domestic violence, stalking or sexual assault on the individual or the individual's
49 family; or (6) a sworn statement from the individual attesting to the domestic violence, stalking or
50 sexual assault.

51 A listing of any evidence provided to the employer may be maintained by the employer in
52 the employee's employment record. However, in no instance shall any other document or copies of
53 documents used to demonstrate eligibility for leave under this section remain in the possession of
54 the employer beyond the period needed for the employer to make an eligibility determination.

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

57 (i) Requested or consented to, in writing, by the employee;

58 (iii) Otherwise required by applicable federal or state law.

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

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

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

71 (4) In addition to the leave provided for in this section, an employee who is a victim of
72 domestic violence may take up to 6 months of unpaid leave in the event that such employee seeks
73 emergency shelter placement. In such cases, the employee shall be entitled to receive applicable
74 benefits as a victim of domestic violence in accordance with chapter 151A and employers shall
75 make a good faith attempt to allow that employee to return to work to the original or equivalent
76 position.

77 (5) Any person claiming to be aggrieved by a violation of this section may file a civil action
78 against the employer to enforce this section. Such person may seek appropriate equitable relief,
79 including but not limited to restoration to his original job or to an equivalent position. In addition to
80 equitable relief, such person may seek and be granted damages including all wages and benefits that
81 would have been due to the person, including reasonable attorney fees and costs.

82 SECTION 2. Jane Doe, Inc, and Employers Against Domestic Violence shall work with the
83 Violence Prevention Program Director for the Commonwealth to share and develop a model
84 workplace safety policy, training curriculum and workplace safety procedures and protocols for
85 employers in order to increase awareness, minimize workplace risks, and help employers properly
86 respond to employees who disclose domestic violence, stalking, and sexual assault in the
87 workplace. Training delivery resources, including a strategic training delivery plan will be
88 developed by Jane Doe, Inc, and the Commonwealth's Violence Prevention Program of the Human
89 Resources Division in conjunction with the Executive Office of Public Safety.