

14.000 POLICY PROHIBITING ABUSIVE BEHAVIOR AND PROVIDING LEAVE FOR VICTIMS AND FAMILY MEMBERS OF ABUSIVE BEHAVIOR

It is the policy of the Trial Court that all employees work in an environment free from all forms of abusive behavior, specifically including domestic violence, sexual assault, stalking, and kidnapping, as such behavior undermines the integrity of the workplace and possibly jeopardizes the personal safety of the employee and their colleagues. This policy comports with Massachusetts law providing leave from work when an employee or family member of an employee has been the victim of abusive behavior (G.L. c. 149, § 52E) (See also, Sec. 8.802M).

The policy also prohibits Trial Court employees from engaging in abusive behavior as defined in 14.100 (B) below, either on the job or off-duty, and describes some of the steps the Trial Court may take to address such behavior.

The Trial Court recognizes the seriousness of abusive behavior and the negative impact of this behavior on employees and the workplace and will provide updated information to employees in need of assistance on the employee intranet, Courtyard.

14.100 Definitions and Examples

These definitions are included in G.L. c.149, § 52E or are referenced therein:

- A. Abuse: (a) attempting to cause or causing physical harm; (b) placing another in fear of imminent serious physical harm; (c) 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; (d) engaging in mental abuse, which includes threats, intimidation or acts designed to induce terror; (e) depriving another of medical care, housing, food or other necessities of life; or (f) restraining the liberty of another.
- B. Abusive behavior: (a) any behavior constituting domestic violence; (b) stalking (G.L. c. 265, § 43); (c) sexual assault (G.L. c. 265¹ and c. 272, §§ 3 or 35A); and (d) kidnapping (G.L. c. 265, § 26).
- C. Domestic Violence: Abuse against an employee or the employee's family member by: (a) a current or former spouse of the employee or the employee's family member, (b) a person with whom the

¹ Specifically, and limited to, sections 13B, 13B ½, 13B ¾, 13F, 13H, 22, 22A, 22B, 22C, 23, 23A, 23B, 24, 24B, 26D, 50 or 51.

employee or the employee's family member shares a child in common, (c) a person who is cohabitating with or has cohabitated with the employee or the employee's family member, (d) a person who is related by blood or marriage to the employee, or (e) a person with whom the employee or employee's family member has or had a dating or engagement relationship.

- D. Family members: (a) persons who are married to one another; (b) persons in a substantive dating or engagement relationship and who reside together; (c) persons having a child in common regardless of whether they have ever married or lived together; (d) a parent, step-parent, child, step-child, sibling, grandparent or grandchild; or, (e) persons in a guardian relationship.
- E. Kidnapping: forcibly or secretly confining or imprisoning another person, without lawful authority, against their will, or forcibly carrying or sending such person out of this Commonwealth, or forcibly seizing and confining another person, who is in any way held to service against their will.
- F. Protective Order: any abuse prevention (restraining) order, harassment order, injunction, or other legally enforceable requirement, providing that an alleged perpetrator of abusive behavior must avoid contact with and/or stay away from an alleged victim of sexual assault, domestic violence, stalking, and/or kidnapping.
- G. Sexual assault: any action involving or causing another to engage in sexual relations by force, threat, or duress or as set out in certain sections of G.L. c. 265 or G.L. c. 272, §§ 3 or 35A.
- H. Stalking: any pattern or series of acts, conduct or threats causing or intended to cause alarm or fear as defined in G.L. c. 265, § 43. It may include following, monitoring, or other acts that place a person in reasonable fear for their safety or the safety of others.

14.200 Assistance Available to Employees Affected by Abusive Behavior

In the event that employees are experiencing domestic violence and/or abusive behavior, employees should be made aware of the following resources in addition to the leave options described in 14.300.

The Statewide SafeLink Program:

+1 (877) 785-2020
Or dial 711 in Massachusetts

Jane Doe, Inc.

+1 (617) 248-0922

Or https://janedoe.org/find_help

National Domestic Violence Hotline

+1 (800) 799-7233

Or <https://www.thehotline.org/help>

Employee Assistance Program
(Mass4You) 24/7 Line:

+1 (844) 263-1982

Additional resources and information are available on the Courtyard.

14.300 Leave of Absence for Employees Affected by Abusive Behavior

The Trial Court recognizes that victims of abusive behavior (domestic violence, sexual assault, stalking, or kidnapping) may require time off from work to deal with the impact of such abusive behavior, or to assist certain family members who are victims of abusive behavior. The Trial Court's view of sexual assault, domestic violence, dating violence, stalking, and kidnapping reflects, but is not limited to, the following considerations:

- The abuser and the victim of sexual assault, domestic violence, dating violence, stalking, and kidnapping can be any gender. Any person regardless of gender identity may be the victim of abusive behavior, and any person regardless of gender identity may be the abuser.
- The victim does not have to be the opposite sex or gender identity from the abuser. The gender and gender identity of both the victim and the abuser are not relevant to a determination of abuse.

Consistent with Section 8.802M of this Manual and applicable union contracts, an employee may use up to a maximum of 15 days of paid Abuse/Violence Leave per calendar year for qualifying purposes if the employee, or a family member, is a victim of abusive behavior. An employee who is alleged to be the perpetrator of abusive behavior is not eligible for this leave and may face disciplinary action under Section 16.000 of this Manual.

Employees may also be eligible for additional leave depending upon the specific circumstances. For example, an employee who was injured may be eligible to take accrued paid sick leave, FMLA leave, or unpaid medical leave. The Human Resources Department can answer questions about eligibility for all relevant types of leave.

14.400 Qualifying Purpose

Employees are entitled to Abuse/Violence Leave for any of the following qualifying purposes: (a) to seek or obtain medical attention, counseling, victim services, or legal assistance; (b) to secure housing; (c) to obtain a protective order from a court, appear in a court or before a grand jury, meet with a district attorney or other law enforcement official; (d) to attend child custody proceedings; or (e) to address any other issues directly related to the abusive behavior against the employee or family member of the employee.

14.500 Notice

Notice of the need for Abuse/Violence Leave must be given in advance to the employee's Department Head or to the Human Resources Department except in cases of imminent danger to the employee's health or safety, or in cases of a threat of imminent danger to the health or safety of the employee's family member. In that case, the notice must be provided within three (3) workdays that the leave was taken or is being taken under this Section.

14.600 Documentation to Support Request for Abuse/Violence Leave

An employee requesting Abuse/Violence Leave may be required to provide documentation to support the request to the Human Resources Department within a reasonable period of time. A Department Head or other manager who receives such documentation must forward it to the Human Resources Department. Consistent with G.L. c. 149, § 52E, documentation submitted to support a request will be kept confidential by the Trial Court to the extent the statute permits. When appropriate, such documentation may include any one of the following:

- A. 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 the employee's family member;
- B. 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 employee's family member;
- C. A police report or statement of a victim or witness provided to police, documenting the abusive behavior complained of by the employee or the employee's family member;
- D. Documentation that the alleged perpetrator of the abusive behavior

has admitted to sufficient facts to support a finding of guilt or has been convicted of, or has been adjudicated a juvenile delinquent by reason of the abusive behavior;

- E. Medical documentation of treatment as a result of the abusive behavior;
- F. 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; or
- G. 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.

14.700 Employees Who Have Obtained an Abuse Prevention (Restraining) Order or Harassment Prevention Order

An employee who has obtained an abuse prevention (restraining) order or a harassment prevention order is encouraged to notify their Department Head or manager or the Human Resources Department so that the Trial Court may assist in enforcing the Order in the workplace. The Trial Court's efforts may include notifying the Director of Security and the manager, or employer, if any, of the person against whom the Order is issued of the existence of the order. If the person against whom the restraining order was issued is a Trial Court employee, the Trial Court may reassign that person to a different location or take other appropriate action. The Trial Court will notify the local police department if a violation of a restraining order occurs at the workplace.

14.800 Action Against Employees Engaging in Abusive Behavior

The Trial Court will not tolerate employees who engage in abusive behavior. Acts of abusive behavior by Trial Court employees, regardless of where or when they occur (either on or off duty) will not be tolerated and may result in discipline, up to and including termination. Employees accused of abusive behavior are required to cooperate in an investigation of these alleged acts (see Section 16.100 of this Manual).

Under Section 20.200 of this Manual, and applicable union contracts, employees are required to notify their immediate manager if they are arrested, charged with a crime, or are the subject of an order under G.L. c. 209A, c. 258E, or a supported c. 51A order.

To facilitate an employee's compliance with a restraining order, the Trial Court may require the employee to accept a reassignment to a new position, location, function and/or shift.

14.900 Additional Guidance for Managers

Managers are integral to the implementation of this Policy, and must make themselves familiar with the procedures for obtaining leave for employees who report they are victims of abusive behavior or who require such leave because a family member has been the victim of abusive behavior. Managers have an obligation to take necessary action when informed that an employee has obtained a restraining order that extends to the workplace, both for the benefit of the employee and for the safety of other employees and the public in the workplace. These are complex issues, often coupled with an employee's concern for privacy. If the alleged perpetrator of the abusive behavior is a Trial Court employee, any action taken against such employee may implicate their rights under a collective bargaining agreement or disciplinary provisions of this Manual.

Managers should contact the Human Resources Department for assistance in responding to an employee's concerns, in securing necessary support for the safety of the employee and others in the workplace, in dealing with a situation involving an employee who is alleged to be a perpetrator of abusive behavior, and in ensuring that the employee is aware of the professional support afforded by the Trial Court's Employee Assistance Program and other experts in this area.

14.1000 Employment Protections

The Trial Court will not discipline or discriminate against an employee for exercising their rights under G.L. c. 149, § 52E. The taking of leave under this policy shall not result in the loss of any employment benefit accrued prior to the date on which the leave commenced. Upon return from leave, the employee is entitled to restoration to the employee's original job or to an equivalent position.

An employee who is a victim of domestic violence may opt to have their name and job data withheld from public records. Employees wishing to discuss this option or the leave described in this section should contact Jill Sampson, Assistant Chief Human Resources Officer at (617) 680-5485 or at jill.sampson@jud.state.ma.us.