

An Advisory from the Attorney General's Fair Labor Division
Concerning M.G.L. c. 149, s. 52E
Employment Leave for Victims and Family Members of Abuse

The Office of the Attorney General (AGO) issues the following Advisory regarding M.G.L. c. 149, section 52E, relative to *Employment Leave for Victims and Family Members of Abusive Behavior* (the "Law"), which was enacted as Section 10 of Chapter 260 of the Acts of 2014, entitled "An Act Relative to Domestic Violence" (the "Act"). This Advisory provides guidance with respect to the Attorney General Office's understanding of and enforcement of the Law. This Advisory is not a formal opinion. Opinions of the Attorney General are formal determinations rendered in specific circumstances not present here. See M.G.L. c. 12, §§ 3, 6, and 9. The Advisory is intended to provide guidance only and does not create any rights or remedies. See M.G.L. c. 12, §§ 3, 6, and 9.

I. Introduction

The Act was signed into law on August 8, 2014, and became effective immediately. It provides several criminal justice and service reforms in the area of domestic violence and creates new employment protections for an employee who is, or whose family member is, a victim of abusive behavior, including domestic violence, or have family members that are victims. The Law requires an employer to provide up to 15 days of paid or unpaid leave for a qualifying employee 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.

The AGO is responsible for enforcement and is authorized to seek injunctive relief or other equitable relief to enforce the Law.

II. Covered Individuals

This Law applies to public and private employers who employ 50 or more employees in Massachusetts. An employee is defined as an individual "who performs services for and under the control and direction of an employer for wages or other remuneration." A "family member" is defined in the statute as: (i) a parent, step-parent, child, step-child, sibling, grandparent or grandchild; (ii) a married spouse; (iii) persons in a substantive dating or engagement relationship and who reside together; (iv) persons having a child in common regardless of whether they have ever married or resided together; or (v) persons in a guardianship relationship.

III. Responsibility of Employers

A. Notification

Employers must notify each employee of his or her rights and responsibilities under the Law. There is no specified manner by which notification must take place, but examples may include: inclusion in a New Employee manual, an addendum to existing employee manuals, memos to employees, or letters or e-mails to employees. Posting notice may also be in a manner consistent with the requirements of G.L. c.151, §16 and in a conspicuous place.

B. Leave

An employer must permit an employee to take up to 15 days of paid or unpaid leave from work in any 12 month period if all the following criteria are met:

- (i) the employee, or a family member of the employee, is a victim of abusive behavior as defined in the Law;
- (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.

The employer has sole discretion to determine whether any leave taken under the Law is paid or unpaid.

C. Confidentiality of Documents

An employer can request that an employee provide documentation evidencing that the employee or employee's family member has been a victim of abusive behavior, and that the leave is or has been taken consistent with the Law. The types of documents an employee can provide are described in Section IV of this Advisory, below.

An employer is required to keep confidential all information related to the employee's leave under the Law. This information shall not be disclosed by the employer, 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;
- (iii) otherwise required by applicable federal or state law;
- (iv) required in the course of an investigation authorized by law enforcement; or
- (v) necessary to protect the safety of anyone employed at the workplace.

Any documentation provided to an employer under the Law 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.

IV. Responsibility of Employees

A. Notice

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

In cases of threat of imminent danger to the health or safety of an employee or the employee's family member, the employee is not required to provide advance notice of leave, but must notify the employer within 3 workdays that the leave was taken or is being taken under the Law. 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.

The employee or individual authorized to communicate to the employer that leave was taken or is being taken under this Law, may do so by telephone, in person, in writing or by any other reasonable means to communicate notice.

B. Required Documentation

An employer can request that an employee provide documentation evidencing that the employee or employee's family member has been a victim of abusive behavior and that the leave is taken under the Law. An employee must provide such documentation to the employer within a reasonable period after the employer requests documentation relative to the employee's absence. However, an employer cannot require the employee to show evidence of an arrest, conviction or other law enforcement documentation for such abusive behavior. An employee can satisfy the request for required documentation by providing any one 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.

V. Leave

A. Duration

An employer must permit an employee to take up to 15-days of paid or unpaid leave from work during any 12-month time period. However, the employee must first exhaust all annual or vacation leave, personal leave and sick leave already available to the employee prior to requesting or taking leave under the Law, unless the employer waives this requirement. The employer shall have sole discretion to determine whether any leave taken under the Law is paid or unpaid.

B. Employment Protections

An employer cannot discharge or in any other manner discriminate against an employee for exercising the employee's rights under the Law. Upon the employee's return from such leave, the employee is entitled to restoration to the employee's original job or to an equivalent position.

If an unscheduled absence occurs, an employer cannot 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 required under the Law.