



## Labor & Employment Alert August 2014

### Governor Patrick Signs Domestic Violence Law

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On August 8, 2014, Governor Patrick signed “An Act Relative to Domestic Violence” (S. 2334) into law (the “Act”). Among other changes to the state’s domestic violence laws, the Act requires employers with fifty (50) or more employees to provide domestic violence leave in certain situations.

#### **When Does this Law go into Effect?**

The provision of the Act which creates domestic violence leave went into effect when it was signed by the Governor on August 8, 2014.

#### **To Whom Does this Law Apply?**

This law affects both public and private employers which employ 50 or more employees. “Employee” is defined under the Act as “individuals who perform services for and under the control and direction of the employer for wages or other remuneration.” Accordingly, any employee – whether full or part time – would appear to count toward the 50 employee threshold.

#### **What Does this Law Require?**

The law requires that an employer permit an employee to take up to 15 days of leave from work in any 12 month period if the employee or a family member of the employee is a victim of “abusive behavior,” and the employee is using leave from work to:

- Obtain medical attention, counseling, victim services or legal services;
- 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;
- Attend child custody proceedings; or
- Address other issues directly related to the abusive behavior against the employee or family member of employee.



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Abusive behavior includes domestic violence, stalking, sexual assault, and kidnapping.

“Domestic violence” is broadly defined as abuse against an employee or an employee’s family member by:

- A current or former spouse of the employee or employee’s family member.
- A person with whom the employee or employee’s family member shares a child in common.
- A person who is cohabitating with or has cohabited with the employee or employee’s family member.
- A person who is related by blood or marriage to the employee, or a person with whom the employee or employee’s family member has or had a dating or engagement relationship.

“Family member” is defined to include:

- persons who are married to one another,
- persons in a substantive dating or engagement relationship and who reside together,
- persons having a child together,
- parents, step-parents, children, step-children, siblings, grandparents, grandchildren, and
- persons in guardian relationships.

Employers are not permitted to retaliate against an employee for exercising his or her rights under the Act. An employee taking leave may not lose any benefit accrued prior to the taking of said leave and must be restored to the same or equivalent position upon return. An employer may not make any right under the Act contingent upon whether an employee maintains contact with the alleged abuser. This would appear to include scenarios in which the alleged victim and abuser work together.

The Attorney General will enforce the Act. The Act also provides employees a private right of action in court, and allows the recovery of triple damages, and attorneys’ fees, for violations.

### **Is the Leave Paid?**

The Act does not require the employer to provide paid leave. The Act requires an employee to exhaust all annual or vacation leave, personal leave and sick leave available to the employee prior to requesting or taking unpaid leave under this Act, unless the employer waives such requirement. Accordingly, the Act appears to require an employee to exhaust all paid time, including vacation, personal, and sick time, *prior* to requesting or taking leave under the Act.



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### **Must an Employee Provide Advance Notice of Leave?**

The employee is generally required to provide “appropriate” advance notice in accordance with the employer’s leave policies, except in cases of “imminent danger.” In cases of imminent danger, the employee is required to notify the employer of his/her absence within three (3) work days that the leave was taken or is being taken. An employer, however, is not permitted to take “negative action” against an employee for an unscheduled absence, if, within thirty (30) days from the unauthorized absence or last unauthorized absence in cases of consecutive absences, the employee provides any of the below-listed forms of documentation of the need for leave pursuant to the Act. Employers should note that this Act creates protections for certain no call/no show situations.

### **May an Employer Require Documentation of the Need for Leave?**

An employer is permitted to require documentation showing that the employee or employee’s family member is a victim of domestic violence and is taking leave consistent with the Act. An employee may satisfy this request by producing any of the following documents within a “reasonable” period of time from the request.

- Protective order, order of equitable relief or other documentation issued by a court;
- 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;
- A police report or statement of a victim or witness provided to the police;
- Documentation that the perpetrator of the abusive behavior has admitted to sufficient facts to be found guilty, or been convicted, or adjudicated a juvenile delinquent;
- Medical documentation of treatment as a result of the abusive behavior;
- A sworn statement, signed under the pains and penalties of perjury, provided by a counselor, social worker, health care worker, member of the clergy, shelter worker, legal advocate, or other similar professional;
- A sworn statement, signed under the pains and penalties of perjury, by the employee.

Employers who receive any of the above-listed documents are required to maintain said document in the employee’s employment record, but only so long as required for the employer to make a determination as to whether the employee is eligible for leave. All information related to



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an employee's leave is required to be kept confidential, unless consented to, in writing, by the employee or otherwise required by law.

### Notice of Rights

The Act requires covered employers to notify each employee of the rights and responsibilities created by the Act, "including those related to notification requirements and confidentiality." There is no prescribed form of notice and it is as yet unclear what level of notice would satisfy the statute. The Attorney General has not, to date, issued an advisory on the law or sample notice for use by employers.

### Next Steps for Employers

Covered employers are required to provide notice of the Act to its employees. Employers may wish to consider revising their policies and/or handbooks and train managers and supervisors on the new law. Employers are cautioned to carefully handle requests for leave under the new Act, recognizing the confidential and often sensitive nature of the information provided to them. Certain aspects of the Act remain unclear, including the notice provision. Contact Kier Wachterhauser, Sarah Catignani, or the attorney responsible for your account with questions.

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*If you have any questions about this issue, or are interested in discussing these proposed changes further, please contact Kier Wachterhauser or Sarah Catignani, or the attorney responsible for your account, or call (617) 479-5000.*

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