

Management Alert



Massachusetts Employers Must Post Notice: Domestic Violence Victims Entitled To Leave

By Beth Gobeille Foley and Daniel B. Klein

Governor Deval Patrick has signed into law An Act Relative to Domestic Violence (the “ARDV”), which took effect on August 8, 2014. The ARDV provides up to 15 days of unpaid leave per rolling 12-month period to victims of domestic violence, sexual assault, kidnapping, and/or stalking, and certain family members, for purposes directly related to the abuse. Such purposes may include seeking legal or medical services, counseling, or victim’s services. The ARDV applies to all employers with 50 or more employees, although it remains unclear whether those employees need to be within the Commonwealth or nationwide. Covered employers must notify employees of their rights under the ARDV.

An employee may take ARDV leave for his or her own abuse, or due to the abuse of a covered family member, including his or her spouse, child, parent, grandparent, grandchild, or sibling. Perpetrators of abuse are not entitled to ARDV leave. It is unclear whether ARDV protections will apply in situations where two parties to a domestic relationship harm each other.

Before taking ARDV leave, an employee must exhaust all of his or her accrued paid time off, including but not limited to sick time, vacation days, and personal time. Employees must provide advance notice of their need for leave whenever possible, but this requirement does not apply if the employee or a covered family member faces imminent danger to his or her health or safety. In the event that an employee does not provide advance notice based on a risk of imminent danger, he or she must notify the employer within three business days that the time off was related to domestic violence. If the employee cannot notify the employer, a family member may do so on his or her behalf. The ARDV also permits certain counselors, clergy, and helping professionals to provide such notification.

The ARDV permits employers to require documentation supporting an employee’s claim to ARDV leave. Such documentation can consist of a protective order or other court document, police report, police witness statement, documents reflecting the perpetrator’s conviction or admission of guilt, medical documents, and/or a victim advocate’s or other helping professional’s sworn statement. In lieu of the documents listed above, an employee may also submit his or her own sworn statement signed under the pains and penalties of perjury.

Employees taking ARDV leave need not be paid for their time off. They are, however, entitled to return to the same or a substantially equivalent position once their leave has ended. Employers may not terminate or reduce employment benefits based on the use of ARDV leave, and the ARDV also includes an anti-retaliation provision. Importantly, an employer cannot discipline someone for unauthorized absences if the employee provides documentation supporting the need for ARDV leave within 30 days of the last date absent. All information related to an employee’s ARDV leave must be kept confidential.

The Attorney General will enforce the ARDV, and can seek injunctive and equitable relief against violators. Employees may also bring private enforcement actions. Because the ARDV falls within the Massachusetts Wage Act, prevailing ARDV plaintiffs may be entitled to mandatory treble damages and attorney’s fees.

Because the ARDV requires employers to notify employees of their rights under the Act, covered employers are best advised to develop and distribute written ARDV policies, or to post a notice of the ARDV in a prominent workplace location.

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Seyfarth Shaw LLP Management Alert | August 20, 2014

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