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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 375      Session of  
2003

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FEBRUARY 24, 2003

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REFERRED TO COMMITTEE ON JUDICIARY, FEBRUARY 24, 2003

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AN ACT

1 Establishing the Victims of Domestic Violence Employment Leave  
2 Act.

3 The General Assembly of the Commonwealth of Pennsylvania  
4 hereby enacts as follows:

5 Section 1. Short title.

6 This act shall be known and may be cited as the Victims of  
7 Domestic Violence Employment Leave Act.

8 Section 2. Legislative findings.

9 The General Assembly finds and declares as follows:

10 (1) Domestic violence affects many persons without  
11 regard to age, race, educational level, socioeconomic status,  
12 religion or occupation.

13 (2) Domestic violence is a crime that has a devastating  
14 effect on families, communities and the workplace.

15 (3) Domestic violence impacts on productivity,  
16 effectiveness, absenteeism and employee turnover in the

1 workplace.

2 (4) The National Crime Survey estimates that 175,000  
3 days per year are missed from paid work due to domestic  
4 violence.

5 (5) The study also found that 56% of the victims were  
6 late for work at least five times a month, 28% of the victims  
7 had to leave work early at least five times a month and 54%  
8 missed at least three days a month, all due to domestic  
9 violence.

10 (6) Victims of domestic violence may be vulnerable at  
11 work when trying to end an abusive relationship because the  
12 workplace may be the only place where the perpetrator knows  
13 to contact the victim.

14 (7) Employers must be sensitive to the needs of  
15 employees who are experiencing domestic violence and be  
16 responsive to those needs through personnel leave and  
17 benefits policies.

18 (8) Employees who commit acts of domestic violence at or  
19 from the workplace should be disciplined in the same manner  
20 as employees who commit other acts of violence or harassment  
21 from the workplace.

### 22 Section 3. Definitions.

23 The following words and phrases when used in this act shall  
24 have the meanings given to them in this section unless the  
25 context clearly indicates otherwise:

26 "Domestic violence." The occurrence of one or more of the  
27 following acts between family or household members, sexual or  
28 intimate partners or persons who share biological parenthood:

29 (1) Attempting to cause or intentionally, knowingly or  
30 recklessly causing bodily injury, serious bodily injury,

1 rape, involuntary deviate sexual intercourse, sexual assault,  
2 statutory sexual assault, aggravated indecent assault,  
3 indecent assault or incest with or without a deadly weapon.

4 (2) Placing another in reasonable fear of imminent  
5 serious bodily injury.

6 (3) The infliction of false imprisonment as provided  
7 under 18 Pa.C.S. § 2903 (relating to false imprisonment).

8 (4) Physically or sexually abusing minor children,  
9 including such terms as defined in 23 Pa.C.S. Ch. 63  
10 (relating to child protective services).

11 (5) Knowingly engaging in a course of conduct or  
12 repeatedly committing acts toward another person, including  
13 following the person, without proper authority, under  
14 circumstances which place the person in reasonable fear of  
15 bodily injury. The definition of this paragraph applies only  
16 to proceedings commenced under this act and is inapplicable  
17 to any criminal prosecutions commenced under 18 Pa.C.S.  
18 (relating to crimes and offenses).

19 "Eligible employee." An individual who:

20 (1) has been employed for at least 12 months by the  
21 employer with respect to whom leave under this act is  
22 requested;

23 (2) has been employed for at least 1,250 hours of  
24 service with such employer during the previous 12-month  
25 period; and

26 (3) is employed at a worksite within 75 miles of which  
27 such employer employs at least 50 employees.

28 "Employer." Any of the following:

29 (1) The Commonwealth or an agency or instrumentality of  
30 the Commonwealth.

1           (2) A political subdivision or an agency or  
2           instrumentality of a political subdivision.

3           (3) A person that employs at least 50 employees for each  
4           working day during each of 20 or more calendar work weeks in  
5           the current or preceding calendar year.

6           "Perpetrator." A person who engages in domestic violence  
7           against another person or persons.

8           "Victim of domestic violence." A person who is subjected to  
9           domestic violence by a perpetrator.

10   Section 4. Leave requirement.

11       (a) Entitlement.--An eligible employee shall be entitled to  
12       a total of 30 days' leave during any 12-month period for one or  
13       more of the following:

14           (1) To secure medical treatment to recover from injuries  
15           suffered from an act of domestic violence.

16           (2) To attend to legal proceedings related to  
17           victimization by an act of domestic violence. Legal  
18           proceedings under this paragraph shall include matters  
19           arising under 23 Pa.C.S. Ch. 61 (relating to protection from  
20           abuse) and other related matters arising under 23 Pa.C.S.  
21           (relating to domestic relations).

22           (3) To relocate to a new temporary or permanent place of  
23           residence for reasons of personal safety and to participate  
24           in domestic violence counseling.

25       (b) Type of leave.--Except as provided in section 5, leave  
26       granted under this section may consist of unpaid leave.

27   Section 5. Relationship to paid leave.

28       (a) General rule.--If an employer provides paid leave for  
29       fewer than 30 days, the additional days to attain the 30 days of  
30       leave required under this act shall be provided either with or

1 without compensation.

2 (b) Other leave.--An eligible employee may elect or an  
3 employer may require the employee to substitute any accrued paid  
4 vacation leave, personal leave or family leave of the employee  
5 for all or any part of the 30-day leave period provided under  
6 this act.

7 Section 6. Requirement of notice.

8 (a) General rule.--

9 (1) Except as provided in paragraph (2), an eligible  
10 employee shall provide not less than ten business days'  
11 notice of the eligible employee's intention to take leave  
12 under the provisions of this act.

13 (2) If attending to a matter described in section 4  
14 requires leave to begin in less than ten business days, the  
15 employee shall provide such notice as is practicable.

16 (b) Reasonable effort by employee.--The employee shall make  
17 a reasonable effort to schedule matters described in section  
18 4(a) so as not to disrupt unduly the operations of the employer,  
19 subject to the approval of the health care provider of the  
20 employee or officials involved in pending legal matters.

21 Section 7. Certification.

22 (a) General rule.--An employer may require certification of  
23 a request for leave under the provisions of this act. The  
24 certification may be provided by law enforcement or legal  
25 records. The eligible employee shall provide, in a timely  
26 manner, a copy of the certification to the employer.

27 (b) Form.--Certification shall be in the form of one or more  
28 of the following:

29 (1) Police report indicating that the employee was a  
30 victim of domestic violence.

1           (2) A court order protecting or separating the employee  
2       from the perpetrator of an act of domestic violence against  
3       the employee.

4           (3) Documentation from a medical professional or  
5       counselor that the employee is undergoing treatment for  
6       physical or mental injuries resulting in victimization from  
7       an act of domestic violence.

8       (c) Confidentiality.--To the extent allowed by law,  
9       employers shall maintain the confidentiality of an employee  
10      requesting leave under this act.

11   Section 8. Employment and benefits protection.

12       (a) General rule.--An eligible employee who takes leave  
13      under this act shall on return from leave be entitled to:

14           (1) restoration by the employer to the position of  
15      employment held by the employee when leave commenced; or

16           (2) restoration to an equivalent position with  
17      equivalent employment benefits, pay and other terms and  
18      conditions of employment.

19       (b) Loss of benefits.--The taking of leave shall not result  
20      in the loss of any employment benefits accrued prior to the date  
21      on which the leave commenced.

22       (c) Restored employee.--Nothing in this act shall be  
23      construed to entitle a restored employee to:

24           (1) the accrual of any seniority or employment benefits  
25      during any period of leave; or

26           (2) any right, benefit or position of employment other  
27      than a right, benefit or position to which the employee would  
28      have been entitled had the employee not taken the leave.

29       (d) Status report.--Nothing in this section shall be  
30      construed to prohibit an employer from requiring an employee on

1 leave to report periodically to the employer on the status and  
2 intention of the employee to return to work.

3 (e) Maintain coverage.--During the period when the eligible  
4 employee takes leave, the employer shall maintain coverage under  
5 a group health plan for the duration of the leave at the same  
6 level and under the same conditions that would have been  
7 provided if the employee's employment had not been temporarily  
8 interrupted by the leave. However, the employer may recover the  
9 premium from an employee who does not return to work after the  
10 leave expires unless:

11 (1) The employee fails to return to work on account of  
12 having relocated to a new temporary or permanent place of  
13 residence for reasons of personal safety.

14 (2) The employee fails to return to work because of  
15 continuing or recurring domestic violence or other  
16 circumstances beyond the control of the employee.

#### 17 Section 9. Violations.

18 (a) General rule.--An employer may not interfere with,  
19 restrain or deny the exercise of or the attempt to exercise any  
20 right provided under this act.

21 (b) Discrimination.--An employer may not discharge or  
22 discriminate against an individual for exercising their rights  
23 under this act.

#### 24 Section 10. Penalties.

25 (a) Lost compensation.--An employer who violates the  
26 provisions of this act shall be liable for damages equal to any  
27 wages, salary, employment benefits or other compensation denied  
28 or lost to an eligible employee by reason of the violation.

29 (b) Monetary losses.--An employer who violates the  
30 provisions of this act shall be liable for damages sustained by

1 the employee as a direct result of the violation.

2 (c) Equitable relief.--An employer who violates the  
3 provisions of this act shall be liable for such equitable relief  
4 as may be appropriate, including employment reinstatement and  
5 promotion.

6 (d) Fine.--An employer who violates the provisions of this  
7 act shall be subject to a civil fine of \$500 for each  
8 infraction. The Attorney General shall enforce this subsection.

9 Section 11. Right of action.

10 (a) General rule.--Legal action to recover the damages or  
11 equitable relief under this act may be maintained against an  
12 employer in a court of competent jurisdiction in this  
13 Commonwealth by eligible employees.

14 (b) Fees.--The court in such an action may, in addition to  
15 any judgment awarded to the plaintiff, allow a reasonable  
16 attorney fee, reasonable expert witness fees and other costs of  
17 the action to be paid by the defendant.

18 Section 12. Statute of limitation.

19 An action may be brought under the provisions of this act not  
20 later than two years after the date of the last event  
21 constituting the alleged violation for which the action is  
22 brought.

23 Section 13. Effective date.

24 This act shall take effect in 90 days.