

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 24

Session of
2005

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JONES AND W. KELLER, JANUARY 25, 2005

REFERRED TO COMMITTEE ON LABOR RELATIONS, JANUARY 25, 2005

AN ACT

1 Requiring certain employers to provide employment leave for
2 victims of domestic violence; prohibiting certain acts; and
3 prescribing penalties.

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

6 Section 1. Short title.

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

9 Section 2. Definitions.

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

13 "Domestic violence." Any act or acts of abuse as defined in
14 23 Pa.C.S. § 6102 (relating to definitions).

15 "Eligible employee." An individual who:

16 (1) is a victim of domestic violence or is the parent of
17 a minor child who is a victim of domestic violence;

(2) has been employed for at least 12 months by the employer to whom a request for leave under this act is directed;

(3) has performed at least 1,250 hours of service during the previous 12 months of employment for said employer; and

(4) is employed at a worksite or within 75 miles of a worksite, in which the employer employs at least 50 employees.

"Employer." Any of the following:

(1) the Commonwealth or an agency or instrumentality of the Commonwealth;

(2) a political subdivision of the Commonwealth or an agency or instrumentality of a political subdivision;

(3) a person or entity that currently employs at least 50 persons each work day for 20 or more weeks in a calendar year; or

(4) a person or entity that employed at least 50 persons each work day for 20 or more weeks in the immediately preceding calendar year.

"Perpetrator." A person who has committed domestic violence against another person or persons.

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

Section 3. Domestic violence employee leave.

(a) Leave requirement.--

(1) An eligible employee may request and an employer shall permit an eligible employee to take unpaid leave from work for any of the following reasons:

(i) for the eligible employee to secure medical treatment to recover from injuries suffered as a result

1 of domestic violence;

2 (ii) for the eligible employee to attend to legal
3 proceedings relating to domestic violence involving the
4 eligible employee or the eligible employee's minor child;

5 (iii) for the eligible employee to relocate to a new
6 temporary or permanent residence for reasons related to
7 domestic violence;

8 (iv) for the eligible employee to obtain counseling
9 or advocacy services; or

10 (v) for the eligible employee to assist their minor
11 child who is a victim of domestic violence in any of the
12 actions in subparagraphs (i) through (iv).

13 (2) Except as provided in subsection (c), an eligible
14 employee shall be entitled to a total of 30 days of leave
15 during any 12-month period. This act shall not create a right
16 for an eligible employee to take unpaid leave that exceeds
17 the unpaid leave time allowed under, nor is it in addition to
18 the unpaid leave time permitted by, the Family and Medical
19 Leave Act of 1993 (Public Law 103-3, 29 U.S.C. 2601 et seq.).

20 (3) An eligible employee shall make a reasonable effort
21 to schedule matters described in paragraph (1) so as not to
22 unduly disrupt the operations of the employer.

23 (b) Notice.--

24 (1) Except as provided in paragraph (2), an eligible
25 employee shall provide the employer with at least five days'
26 advance notice of the eligible employee's intention to take
27 leave pursuant to subsection (a).

28 (2) An eligible employee shall provide notice to the
29 employer as soon as practicable if notice in accordance with
30 paragraph (1) is not possible due to any of the following:

- 1 (i) the safety of the eligible employee or the
2 eligible employee's minor child;
3 (ii) the scheduling of any legal proceeding; or
4 (iii) the availability of counseling or advocacy
5 services.

6 (3) When an unscheduled absence occurs, the employer may
7 not take any action against an eligible employee if the
8 eligible employee, within a reasonable period after the
9 absence, provides certification under subsection (c).

10 (c) Certification.--

11 (1) An employer may require an eligible employee to
12 provide certification to the employer that:

13 (i) the eligible employee or the eligible employee's
14 minor child is a victim of domestic violence; and

15 (ii) the leave is requested for one of the purposes
16 enumerated in subsection (a)(1).

17 (2) The eligible employee shall provide the
18 certification to the employer within a reasonable period
19 after the employer requests certification.

20 (3) An eligible employee may satisfy the certification
21 requirement of paragraph (1) by providing to the employer one
22 of the following:

23 (i) a police report indicating that the eligible
24 employee or the eligible employee's minor child was a
25 victim of domestic violence;

26 (ii) a court order protecting or separating the
27 eligible employee or the eligible employee's minor child
28 from the perpetrator;

29 (iii) a signed statement from a medical
30 professional, therapist, clergy member, counselor,

1 domestic violence counselor or domestic violence advocate
2 affirming that the eligible employee or the eligible
3 employee's minor child is undergoing counseling for
4 physical or mental injuries resulting from domestic
5 violence;

6 (iv) a signed statement from a victim and witness
7 advocate or other court personnel affirming that the
8 eligible employee or the eligible employee's minor child
9 is involved in legal proceedings relating to domestic
10 violence; or

11 (v) a signed statement from a police officer, victim
12 and witness advocate or other court personnel, medical
13 professional, therapist, clergy member, counselor,
14 domestic violence counselor or domestic violence advocate
15 affirming that the eligible employee or the eligible
16 employee's minor child has ongoing safety concerns that
17 warrant absence from work.

18 (d) Confidentiality.--All information provided to the
19 employer pursuant to subsection (b) or (c), including the fact
20 that the eligible employee has requested or obtained leave
21 pursuant to this section, shall be retained in the strictest
22 confidence by the employer, except to the extent that disclosure
23 is:

24 (1) requested or consented to in writing by the eligible
25 employee; or

26 (2) otherwise required by applicable Federal or State
27 law.

28 (e) Employment and benefits protection.--

29 (1) The following shall apply:

30 (i) An eligible employee who takes leave pursuant to

1 subsection (a) shall, on return from such leave, be
2 entitled to:

3 (A) restoration to the position held by the
4 eligible employee when leave commenced; or

5 (B) restoration to an equivalent position with
6 equivalent employment benefits, pay and other terms
7 and conditions of employment.

8 (ii) The taking of leave pursuant to subsection (a)
9 shall not result in the loss of any employment benefits
10 accrued prior to the date on which the leave commenced.

11 (iii) Nothing in this subsection shall be construed
12 to entitle any restored eligible employee to:

13 (A) the accrual of any seniority or employment
14 benefits during any period of leave; or

15 (B) any right, benefit or position or employment
16 other than any right, benefit or position to which
17 the restored employee would have been entitled to had
18 the restored employee not taken the leave.

19 (iv) Nothing in this section shall be construed to
20 prohibit an employer from requiring an eligible employee
21 on leave pursuant to subsection (a) to report
22 periodically to the employer on the status and intention
23 of the employee to return to work.

24 (2) The following shall apply:

25 (i) Except as provided in subparagraph (ii), during
26 any period that an eligible employee takes leave pursuant
27 to subsection (a), the employer shall maintain coverage
28 under a group health plan for the duration of the leave
29 at the same level and under the same conditions that
30 would have been provided if the eligible employee's

employment had not been interrupted by the leave.

(ii) The employer may recover the premium paid by that employer for maintaining coverage for an eligible employee from an eligible employee who does not return to work after the leave expires unless:

(A) the eligible employee is unable to return to work on account of having relocated to a new temporary or permanent place of residence for reasons relating to the security of the eligible employee or the eligible employee's minor child; or

(B) the eligible employee is unable to return to work because of continuing or recurring domestic violence or other circumstances beyond the control of the eligible employee.

Section 4. Existing leave usable for addressing domestic violence.

An eligible employee who is entitled to take paid or unpaid leave, including, family, medical, sick, annual, personal or similar leave, from employment, pursuant to Federal, State or local law, a collective bargaining agreement or an employment benefits program or plan, may elect to substitute any period of such leave for an equivalent period of leave provided under section 3 (relating to domestic violence employee leave).

Section 5. Prohibited acts.

(a) General rule.--An employer shall not interfere with, restrain or deny the exercise of or the attempted exercise of any right provided by this act.

(b) Discrimination.--An employer shall not discriminate against an eligible employee for exercising the eligible employee's rights under this act.

1 Section 6. Penalties.

2 (a) Fine.--An employer who violates the provisions of this
3 act shall be subject to a fine of \$500 for each violation.

4 (b) Jurisdiction.--The Attorney General of the Commonwealth
5 shall have jurisdiction to investigate and prosecute employers
6 for violations of this act.

7 Section 7. Private cause of action.

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

12 (b) Relief.--The following shall apply:

13 (1) An employer who violates the provisions of this act
14 shall be liable for damages equal to any wages, salary,
15 employment benefits or other compensation denied or lost to
16 an eligible employee by reason of a violation of this act.

17 (2) An employer who violates the provisions of this act
18 shall be liable for damages sustained by an eligible employee
19 as a direct result of the violation of this act.

20 (3) An employer who violates the provisions of this act
21 shall be liable for such equitable relief as may be
22 appropriate, including reinstatement and promotion.

23 (4) The court in an action under this subsection may, in
24 addition to any other award, order the employer to reimburse
25 the eligible employee for reasonable attorney and expert fees
26 and other costs incurred by the plaintiff in bringing the
27 action.

28 Section 8. Statute of limitations.

29 Any action brought under the provisions of this act shall be
30 commenced not later than one year following the date of the last

- 1 event constituting the alleged violation of this act.
- 2 Section 40. Effective date.
- 3 This act shall take effect in 90 days.