

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2027 Session of
2021

INTRODUCED BY THOMAS, MIHALEK, PENNYCUICK, LABS, SCHROEDER,
HILL-EVANS, O'NEAL, KAIL, LEWIS DELROSSO, RYAN, MERCURI,
TOOHIL, MIZGORSKI AND JOZWIAK, OCTOBER 28, 2021

REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, OCTOBER 28, 2021

AN ACT

1 Providing for employment leave for victims of violence;
2 prohibiting certain acts by employers; prescribing penalties;
3 and providing for a private right of action.

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 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 "Attesting third party." A law enforcement official,
14 licensed health care professional, licensed social worker,
15 victim advocate or victim service provider.

16 "Domestic violence." Any of the following acts, if committed
17 by an immediate family member of the individual who is subject
18 to the act, former spouse of the individual, person who has

1 formerly lived with the individual as a spouse or current or
2 former sexual or intimate partner of the individual:

3 (1) A physical act that results in, or threatens to
4 result in, physical injury to the individual.

5 (2) Mental abuse, including stalking, threats to kidnap,
6 kill or otherwise harm people or property, threats to commit
7 suicide, repeated use of degrading or coercive language,
8 controlling access to food or sleep and controlling or
9 withholding access to economic and social resources.

10 (3) Sexual abuse.

11 (4) Sexual activity involving a dependent child.

12 (5) Being forced as the caretaker or relative of a
13 dependent child to engage in nonconsensual sexual acts or
14 activities.

15 (6) A threat of, or attempt at, physical or sexual
16 abuse.

17 (7) Neglect or deprivation of medical care.

18 "Eligible employee." An employee who is a victim or an
19 immediate family member of a victim.

20 "Employee." The term has the same meaning as the definition
21 of "employee" in section 3 of the act of January 17, 1968
22 (P.L.11, No.5), known as The Minimum Wage Act of 1968.

23 "Employer." As defined in section 3 of The Minimum Wage Act
24 of 1968.

25 "Immediate family member." Any of the following:

26 (1) A parent, child, sibling, grandparent, grandchild or
27 spouse of an employee whether by blood, adoption or marriage,
28 and regardless of the age of the family member or employee.

29 (2) A fiance or fiancée of the employee.

30 (3) A person to whom an employee is a legal guardian, to

1 whom an employee stands in loco parentis or to whom an
2 employee was a legal guardian or stood in loco parentis when
3 the person was a minor.

4 (4) A legal guardian of an employee, a person who stands
5 in loco parentis to an employee or a person who was a legal
6 guardian to an employee or who stood in loco parentis to an
7 employee when the employee was a minor.

8 (5) An individual who has an intimate or romantic
9 relationship with an employee and habitually resides in a
10 dwelling unit with the employee.

11 (6) An individual who is related to an employee by
12 blood, adoption or marriage and who habitually resides in a
13 dwelling unit with the employee.

14 (7) An individual who has an established and emotionally
15 significant relationship with the employee and either resides
16 in a dwelling unit with the employee or has previously
17 resided in a dwelling unit with the employee for a period of
18 not less than two years.

19 "Responsible party." An individual who commits, or is
20 alleged to have committed, an act of which an employee or
21 immediate family member of an employee is a victim.

22 "Sexual violence." As defined in 42 Pa.C.S. § 62A03
23 (relating to definitions).

24 "Stalking." Conduct in which an individual either:

25 (1) engages in a course of conduct or repeatedly commits
26 acts toward another individual, including following the other
27 individual without proper authority:

28 (i) under circumstances which demonstrate either an
29 intent to place the other individual in reasonable fear
30 of bodily injury or to cause substantial emotional

1 distress to the other individual; or

2 (ii) which as a result intentionally, knowingly or
3 recklessly places the other individual in reasonable fear
4 of bodily injury or causes substantial emotional distress
5 to the other individual; or

6 (2) engages in a course of conduct or repeatedly
7 communicates to another individual:

8 (i) under circumstances which demonstrate or
9 communicate either an intent to place the other
10 individual in reasonable fear of bodily injury or to
11 cause substantial emotional distress to the other
12 individual; or

13 (ii) which as a result intentionally, knowingly or
14 recklessly places the other individual in reasonable fear
15 of bodily injury or causes substantial emotional distress
16 to the other individual.

17 "Victim." Any of the following:

18 (1) An individual against whom an act of domestic
19 violence, sexual violence or stalking was committed or
20 attempted regardless of whether a responsible party was
21 arrested or adjudicated for the commission of the crime.

22 (2) An individual against whom a crime, as defined in
23 section 103 of the act of November 24, 1998 (P.L.882,
24 No.111), known as the Crime Victims Act, was committed or
25 attempted, if the crime or attempt directly resulted in the
26 individual's physical or mental injury or death, and
27 regardless of whether a responsible party was arrested or
28 adjudicated for the commission of the crime.

29 (3) An individual who is an intervenor as defined in
30 section 103 of the Crime Victims Act, in an act or crime

described in paragraph (1) or (2).

(4) An individual who was physically present at the scene of an act or crime described in paragraph (1) or (2) and witnessed the act or crime, and who as a direct result:

(i) suffers physical or mental injury; or

(ii) reasonably believes that the individual is under the threat of physical harm.

"Victim advocate." An individual, whether paid or serving as a volunteer, who provides services to victims under the auspices or supervision of a victim service provider or a court or a law enforcement or prosecution agency.

"Victim service provider." An agency or organization that provides services to victims. The term includes a rape crisis center, domestic violence shelter, faith-based organization or an agency or organization with a documented history of providing services to victims.

Section 3. Employment leave for victims.

(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 as a result of the act to which the eligible employee or immediate family member is a victim:

(i) Seek medical attention for the employee or employee's immediate family member to recover from physical or mental injury or disability related to the act of which the employee or immediate family member is a victim.

(ii) Obtain services from a victim service provider.

(iii) Obtain psychological or other counseling.

1 (iv) Seek relocation.

2 (v) Take legal action or attend legal proceedings,
3 including preparing for, participating in or attending a
4 civil or criminal legal proceeding related to or
5 resulting from the act of which the employee or
6 employee's immediate family member is a victim.

7 (vi) Take other actions necessary to protect the
8 victim's safety from further physical or mental injury
9 related to the act of which the employee or employee's
10 immediate family member is a victim.

11 (vii) Attend the funeral or alternative to a funeral
12 of a victim who is deceased as a result of a crime, make
13 arrangements necessitated by the death of a victim who is
14 deceased as a result of a crime or grieve the death of a
15 victim who is deceased as a result of a crime. An
16 employer is not required to permit an eligible employee
17 to take leave from work for the purposes provided under
18 this subparagraph for a period that exceeds 10 business
19 days as a result of any one act or crime.

20 (2) This act shall not be construed to create a right
21 for an eligible employee to take unpaid leave that exceeds
22 the unpaid leave time allowed under, nor is it in addition to
23 the unpaid leave time permitted by, the Family and Medical
24 Leave Act of 1993 (Public Law 103-3, 29 U.S.C. § 2601 et
25 seq.).

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

29 (b) Notice.--

30 (1) Except as provided in paragraph (2), an eligible

1 employee shall make an effort to provide the employer with
2 reasonable advance notice of the eligible employee's
3 intention to take leave under subsection (a).

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

7 (i) the physical or psychological safety of the
8 eligible employee or the eligible employee's immediate
9 family member;

10 (ii) the nature of the victimization;

11 (iii) the nature of the employee or employee's
12 immediate family member's injury as a result of the
13 victimization;

14 (iv) the scheduling of a legal proceeding; or

15 (v) the availability of counseling or victim
16 services.

17 (3) For an absence of more than three days, the employer
18 may require in writing that the employee, within a reasonable
19 period after the absence, provides certification under
20 subsection (c).

21 (c) Certification.--

22 (1) An employer may require an eligible employee to
23 provide certification to the employer that the eligible
24 employee or the eligible employee's immediate family member
25 is a victim.

26 (2) If the employer requests in writing that the
27 eligible employee provide certification, the eligible
28 employee shall provide the certification to the employer
29 within a reasonable period after the employer requests
30 certification.

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

4 (i) a copy of a valid court order that restrains the
5 responsible party from contact with the employee or
6 immediate family member of the employee;

7 (ii) medical or mental health records indicating
8 that the employee or immediate family member is a victim;

9 (iii) a police report documenting the act of which
10 the employee or immediate family member is a victim;

11 (iv) evidence that the responsible party has been
12 charged with or convicted of an act of which the employee
13 or immediate family member is a victim;

14 (v) a written certification signed by an attesting
15 third party that affirms that the employee or immediate
16 family member is a victim;

17 (vi) another form of documentation not otherwise
18 listed that reasonably verifies that the employee or
19 immediate family member is a victim and that is
20 acceptable to the employer; or

21 (vii) if the employee is a family member of a victim
22 who is deceased as a result of the victimization:

23 (A) a written verification of death, burial or
24 memorial services from a mortuary, funeral home,
25 burial society, crematorium, religious institution or
26 other government agency;

27 (B) a published obituary; or

28 (C) a death certificate.

29 (4) Furnishing evidence or providing a certification
30 under this subsection shall not waive any confidentiality or

1 privilege that may exist between the employee or victim and a
2 third party.

3 (d) Confidentiality.--All information provided to the
4 employer under subsection (b) or (c), including the fact that
5 the eligible employee has requested or obtained leave under this
6 section, shall be retained in the strictest confidence by the
7 employer, except to the extent that disclosure is:

8 (1) requested or consented to in writing by the eligible
9 employee; or

10 (2) otherwise required by applicable Federal or State
11 law in which case the employer shall provide the employee
12 notice prior to any authorized disclosure.

13 (e) Employment and benefits protection.--

14 (1) No employer may take retaliatory personnel action or
15 discriminate against an employee because:

16 (i) the employee has requested leave under
17 subsection (a);

18 (ii) the employee is an eligible employee who has
19 taken leave under subsection (a); or

20 (iii) the employee is an eligible employee who made
21 a complaint or filed an action to enforce the employee's
22 right to leave under subsection (a).

23 (2) An eligible employee who takes leave under
24 subsection (a) shall, on return from the leave, be entitled
25 to:

26 (i) restoration to the position held by the eligible
27 employee when leave commenced; or

28 (ii) restoration to an equivalent position with
29 equivalent employment benefits, pay and other terms and
30 conditions of employment.

1 (3) The taking of leave under subsection (a) shall not
2 result in the loss of any employment benefit accrued prior to
3 the date on which the leave commenced.

4 (4) Nothing in this subsection shall be construed to
5 entitle a restored eligible employee to:

6 (i) the accrual of any seniority or employment
7 benefit during a period of leave; or

8 (ii) a right, benefit or position other than a
9 right, benefit or position to which the restored employee
10 would have been entitled had the restored employee not
11 taken the leave.

12 (f) Health insurance coverage.--During a period that an
13 eligible employee takes leave under subsection (a), the employer
14 shall maintain coverage under a group health plan for the
15 duration of the leave at the same level and under the same
16 conditions that would have been provided if the eligible
17 employee's employment had not been interrupted by the leave.

18 Section 4. Existing leave usable for addressing survivor needs.

19 An eligible employee who is entitled to take paid or unpaid
20 leave, including family, medical, sick, annual, personal or
21 similar leave, from employment, under Federal, State or local
22 law, a collective bargaining agreement or an employment benefits
23 program or plan, may elect to substitute a period of that leave
24 for an equivalent period of leave provided under section 3.

25 Section 5. Prohibited acts by employers.

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

29 (b) Discrimination.--An employer may not discriminate
30 against an eligible employee for exercising the eligible

1 employee's rights under this act.

2 Section 6. Penalties.

3 (a) Fine.--An employer who violates this act shall be
4 subject to a fine of \$3,000 for each violation.

5 (b) Jurisdiction.--The Attorney General of the Commonwealth
6 shall have jurisdiction to investigate and bring a civil action
7 to enforce this act. The Attorney General may seek injunctive
8 relief and a fine pursuant to subsection (a).

9 Section 7. Private cause of action.

10 (a) General rule.--An eligible employee may maintain legal
11 action against the employer in a court of competent jurisdiction
12 in this Commonwealth to recover damages or equitable relief
13 under this act.

14 (b) Relief.--

15 (1) An employer that violates this act shall be liable
16 for:

17 (i) Damages equal to any wages, salary, employment
18 benefits or other compensation denied or lost to an
19 eligible employee by reason of a violation of this act.

20 (ii) Damages sustained by an eligible employee as a
21 direct result of the violation of this act.

22 (iii) Equitable relief as may be appropriate,
23 including reinstatement and promotion of an eligible
24 employee.

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

30 Section 8. Effective date.

1 This act shall take effect in 90 days.