

# New Massachusetts Law Requires Employers Provide Leave for Victims of Domestic Violence

By Samia M. Kirmani and Brian E. Lewis

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## Key points:

- *Up to 15 days of leave in 12-month period*
- *Enforced by Attorney General's Office*
- *Private right of action with mandatory triple damages*
- *Effective immediately*

A new Massachusetts law gives employees who are victims of domestic violence a right to job-protected leave from work.

Under the new law, signed by Governor Deval Patrick on August 8, 2014, and effective immediately, employers with at least 50 employees are required to provide Massachusetts employees with 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" (defined as domestic violence, criminal stalking, or sexual assault) and the employee is using the leave to address related issues.

An employee may take leave to seek or obtain medical attention, to obtain counseling, to obtain a protective order in court, to appear in court or before a grand jury, to meet with the district attorney or other law enforcement official about the abusive behavior, to attend child custody proceedings, or to otherwise address issues directly related to abusive behavior against the employee or the employee's family member, among other reasons.

The employer can determine whether the leave is paid or unpaid. An employee is required to exhaust available vacation, personal, and sick time before taking domestic violence leave, unless the employer waives this requirement.

Employees must provide appropriate advance notice of the need for leave, unless there is a threat of imminent danger. If there is such a threat, the employee may take the leave, provided the employee or the employee's representative (such as a family member or the employee's counselor, social worker, health care worker, a member of the clergy, shelter worker, or legal advocate) provides notice of the leave within three working days after the employee takes the leave. Further, if an unscheduled absence occurs in this manner, the law prohibits employers from taking any adverse employment action against the employee, provided the employee submits documentation supporting the need for leave within 30 days of the leave of absence.

Valid documentation that will support leave under this law includes a protective order issued by a court, a letter from the court or agency addressing the abusive behavior, a police report, medical documentation of treatment as a result of the abusive behavior, a sworn statement signed under pains and penalties of perjury provided by a counselor, social worker, health care worker, member of the clergy, shelter work, legal advocate or professional who has assisted the employee in addressing the abusive behavior, or a sworn statement signed under the penalties of perjury from the employee attesting that he or she had been the victim of abusive behavior, or that a family member has been a victim of abusive behavior

Further, the law states that any documentation provided to an employer supporting the leave may be maintained by the employer in the employee's employment record, but only for as long as required for the employer to make a determination as to whether the employee is eligible for leave under this law.

In addition, an employer must keep all information regarding the employee's leave under the new law confidential and an employer shall not disclose the information except if requested to or consented, in writing, by the employee or ordered to be released by a court or otherwise required by applicable state

## Meet the Authors



[Samia M. Kirmani](#)

Principal  
Boston 617-367-0025  
Email



[Brian E. Lewis](#)

Principal  
Boston 617-367-0025  
Email

or federal law.

Significantly, the law states that no employer shall coerce or interfere with any of the rights provided to employees under this law. In addition, an employer is prohibited from discharging or in any other manner discriminating against an employee for exercising his or her rights under this law. Moreover, taking leave protected under the law shall not result in the loss of any employment benefit incurred prior to the date upon which the leave commenced. In addition, upon the employee's return from such leave, the employee must be restored to his or her original job or an equivalent position.

Finally, covered employers must notify employees of their rights and responsibilities under the law. To satisfy this requirement, employers should consider developing a written policy regarding domestic violence leave. Employers also should consider distributing or posting a stand-alone notice of the right to the leave to all Massachusetts employees.

The Massachusetts Attorney General's Office is empowered to enforce the law. In addition, an employee who has been retaliated against for seeking leave, or otherwise exercising his or her rights under the law, is entitled to bring a civil action seeking injunctive relief, lost wages and benefits, and other damages against the employer. Significantly, under Massachusetts law, any employee who prevails on such a claim is entitled to mandatory triple damages and attorneys' fees.

At this time, it is unclear if the Attorney General's Office will issue regulations or enforcement guidance on the new leave law. Employers with operations in Massachusetts should review their policies and procedures to ensure compliance.

If you have questions about the new law's requirements or need compliance assistance, please contact the Jackson Lewis attorney with whom you regularly work.

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