

Employment Leave to Address an Abusive Situation

M.G.L. c. 149, §52E.

Employees are entitled to 15 days of leave under the new domestic violence law.

The employers' and employees' rights and responsibilities under the law are as follows:

If you are an **employer who employs 50 or more people in Massachusetts**, it is your responsibility to:

Provide up to 15 days of paid or unpaid leave during any 12-month period to a qualifying employee. The law allows an employer to require that all employees must exhaust all available leave (sick, personal, vacation, etc.) before the employee may take advantage of this leave. The employer may also determine whether this leave is to be paid or unpaid.

An employee qualifies where:

- The employee receives wages or any other remuneration;
- The employee is or has a family member who is a victim of abusive behavior;
- The employee is using the leave from work for a qualifying purpose; and
- The employee is not the perpetrator of the abusive behavior against the employee's family member.

Not take any negative action against an employee for taking an unscheduled absence if the employee, within 30 days from the unauthorized absence, or within 30 days from the last unauthorized absence in the instance of consecutive days of unauthorized absences, provides qualifying documentation.

Notify each employee of the employee's rights and responsibilities, including those related to the employee's responsibility to notify the employer when taking leave and the employer's responsibility to keep information related to such leave confidential.

Note: An employer may not require an employee to show evidence of an arrest, conviction, or other law enforcement documentation for such abusive behavior.

Keep confidential all information related to the employee's leave, except to the extent disclosure is:

- Requested or consented to, in writing, by the employee
- Ordered to be released by a court of competent jurisdiction
- Otherwise required by applicable state or federal law
- Required in the course of an investigation authorized by the attorney general, or
- Necessary to protect the safety of the employee or others employed at the workplace.

An employer may maintain any documentation provided by the employee in the employee's employment record, *but only for as long as required for the employer to make a determination whether the employee is eligible for leave under this section.*

Not coerce, interfere with, restrain or deny the exercise of, or any attempt to exercise the rights provided, or make leave requested or taken under the DVLA, contingent upon whether or not the victim maintains contact with the alleged abuser.

Not discharge or in any other manner discriminate against an employee for exercising the employee's rights under the DVLA.

Give to the employee all benefits accrued prior to the date on which leave taken under the DVLA commenced and upon the employee's return to work, restore the employee to the employee's original job or to an equivalent position.

Comply with all other general or special laws, including but not limited to G.L. c. 258B (concerning victims' rights) and G.L. c. 268, sec. 14B (concerning protection of victims' or witnesses' who appear in court).

The AGO recommends that employers also include information concerning whether DVLA leave is paid or unpaid and the extent to which the employee must exhaust available sick, vacation, personal, or other leave before the 15-day DVLA leave is afforded.

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If you are an **employee** of a covered entity, it is your responsibility to:

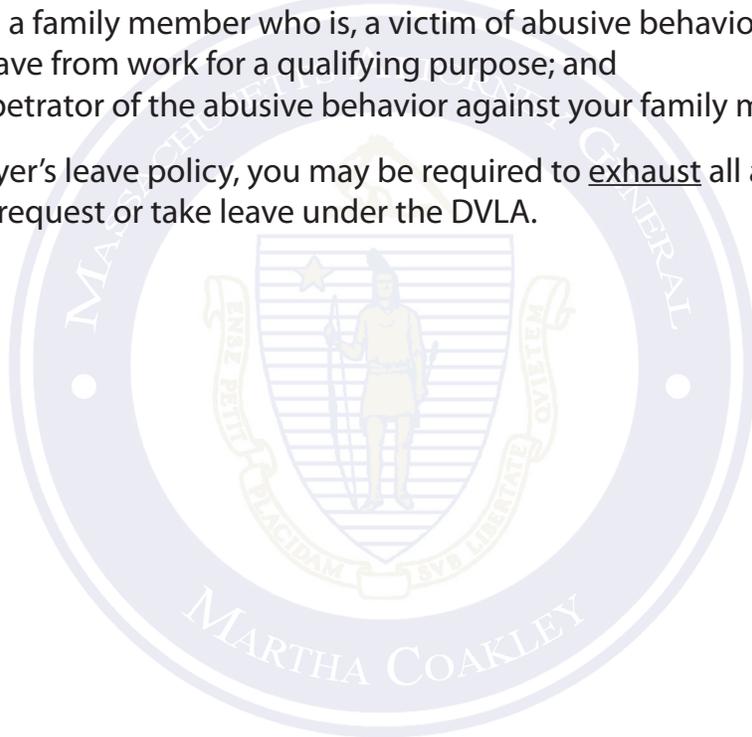
Provide advance notice to your employer in accordance with the employer's leave policy that you are requesting or you are taking leave under the DVLA, except that:

- in cases of imminent danger to your health or safety, or in cases of a threat of imminent danger to the health or safety of yourself or your family member, you must provide notice within 3 workdays that the leave was taken or being taken under the DVLA. This notice may be given to the employer by you, your family member, your counselor, social worker, health care worker, member of the clergy, shelter worker, legal advocate, or other professional who has assisted you in addressing the effects of the abusive behavior.

If required by your employer, you must provide documentation within a reasonable time evidencing that:

- You are, or you have a family member who is, a victim of abusive behavior;
- You are using the leave from work for a qualifying purpose; and
- You are not the perpetrator of the abusive behavior against your family member.

If required by your employer's leave policy, you may be required to exhaust all available vacation, sick, and personal time before you request or take leave under the DVLA.



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For purposes of this type of leave, **both employers and employees** should be aware that:

Abusive behavior is:

- Domestic violence
- Stalking
- Sexual assault
- Kidnapping

Family member is:

- Parent, step-parent, child, step-child, sibling, grandparent, or grandchild
- Married spouse
- Persons in a substantive dating or engagement relationship and who reside together
- Persons having a child in common regardless of whether they have ever married or resided together
- Persons in a guardian relationship.

A qualifying purpose is:

- To seek or obtain medical attention, counseling, victim services or legal assistance;
- To secure housing;
- To obtain a protective order from a court, appear in court or before a grand jury, meet with a district attorney or other law enforcement official;
- To attend child custody proceedings; or
- To address any other issues directly related to the abusive behavior against the employee or family member of the employee.

A qualifying document is any of the following:

- A protective order, order of equitable relief or other documentation issued by a court of competent jurisdiction as a result of abusive behavior against you or your family member.
- A document under the letterhead of the court, provider or public agency which you attended for the purposes of acquiring assistance as it relates to the abusive behavior against you or your family member.
- A police report or statement of a victim or witness provided to police, including a police incident report, documenting the abusive behavior complained of by you or your family member.
- Documentation that the perpetrator of the abusive behavior against you or your family member has: admitted to sufficient facts to support a finding of guilt of abusive behavior; or has been convicted of, or has been adjudicated a juvenile delinquent by reason of, any offense constituting abusive behavior and which is related to the abusive behavior that necessitated the leave under this section.
- Medical documentation of treatment as a result of the abusive behavior complained of by you or your family member.
- A sworn statement, signed under the penalties of perjury, provided by a counselor, social worker, health care worker, member of the clergy, shelter worker, legal advocate or other professional who has assisted you or your family member in addressing the effects of the abusive behavior.
- A sworn statement signed by you under the penalties of perjury attesting that you have been or a family member has been the victim of abusive behavior.