

# LEAVE FOR DOMESTIC VIOLENCE VICTIMS

## BEST PRACTICES FOR EMPLOYERS

There are many state leave laws requiring employers to allow time off when an employee or the employee's family member is a victim of domestic violence, sexual assault, stalking, or other similar crimes. These take the form of standalone "personal protection" leaves, a specific leave reason under a paid or unpaid family and medical leave law, and paid sick leave.

Given the variety of laws across states, what are you required to do when your employee asks for time off and indicates it is needed because the employee or a family member is a victim of one of these crimes? This checklist provides key steps an employer should take (and things to avoid) when responding to an employee request.



### BEST PRACTICES

### WHY THIS IS IMPORTANT

### CHECKLIST

#### STEP 1

#### Recognize the Situation

An employee who has experienced or is experiencing domestic violence may be afraid or embarrassed to share information with their employer.

If you notice behavior or physical injuries that cause you to suspect the employee or a family member is a victim, don't pry but do offer help. Remember, men can also be victims of domestic violence or stalking. Ask general questions or make general statements and let the employee volunteer information to the extent they are comfortable.

Be sure to train managers on how to handle this type of situation and on employee rights, as the employee's direct supervisor might be the first to spot a possible issue. Don't expect managers to handle the situation, but rather to alert Human Resources to the issue.

- Identify a few simple ways to support employees who may need assistance. Examples include:
  - "I see you are struggling with your assignments. Is there anything I can do to help?"
  - "Here is some information about our employee assistance program (EAP). The EAP offers a variety of resources to support employees."

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### STEP 2

#### Gather the Facts

This step is very important not only to determine your employee's needs, but to determine what legal obligations you have as an employer.

Depending on the state in which the employee resides, the employee may be entitled to leave for a variety of reasons related to domestic violence, sexual assault, or stalking — such as getting medical attention, attending counseling sessions, seeking legal assistance, attending court proceedings, communicating with an attorney, and/or relocating to a permanent or temporary residence.

In addition to leave, some states also set forth a duty to accommodate an employee who is impacted by domestic violence, sexual assault, or stalking — such as changing the employee's work phone number or physical work location, or allowing a flexible schedule for a period of time so that the employee can change the times of arrival and departure.

It is important for the employer to listen actively and carefully to what the employee needs and keep in mind that this can be a traumatic and extremely sensitive situation.

And remember, while the employer is entitled to information to support the requested leave, you should not ask for — nor should you want — too much information. If the employee needs time off for medical treatment, there is no need to ask what the exact injury is. Similarly, if the employee is taking a child to counseling, you do not need to know what issues the child is struggling with.

- Who is the victim — the employee or a family member?
- What are the specific reasons for the time off (e.g., attending court, taking a child for medical attention)?
- How much time off does the employee need? Will it be intermittent or continuous leave?
- Does the employee need a workplace accommodation, and if so, what is needed?
- Does the employee need help with safety and security while at work or going to or from work?
- Do we need to take additional workplace safety measures to protect not only the employee but other workers as well?

### STEP 3

#### Know the Laws

After gathering the facts, talk to your employment law attorney to determine your compliance obligations under local, state, and federal laws.

First, check federal law. Does the Family and Medical Leave Act (FMLA) apply?

Per the Department of Labor, "An eligible employee may take FMLA leave because of his or her own serious health condition or to care for a qualifying family member with a serious health condition that resulted from domestic violence. For example, an eligible employee may be able to take FMLA leave if hospitalized overnight or if receiving certain treatment for post-traumatic stress disorder that resulted from domestic violence." See the [U.S. Department of Labor's FMLA Frequently Asked Questions](#) for more information.

Second, look at state law requirements. These laws vary widely. Some states may permit unpaid, job-protected leave for a certain period of time, but increasingly more U.S. jurisdictions are also providing employees with paid time off through their family and medical leave legislation. This [state-by-state chart](#) outlines key portions of the state domestic violence leave laws and provides an overview of their requirements.

Third, check to see if any municipal or other local laws apply.

- Does the FMLA apply?
- Does the employee's work state have specific leave laws covering victims of domestic or sexual violence or stalking?
- Does a state or local law provide paid sick leave for the employee's needs? If so, what are the requirements of that specific law?
- Is the employee entitled to paid or unpaid leave?
- Does the organization have a policy that applies? If so, what does it provide to the employee?
- Is there a secure and confidential point of contact at the organization who can communicate and assist the employee during this difficult time?

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### STEP 4

#### Gather Documentation

Another important step is to ensure you request and collect from the employee the appropriate documentation permitted under applicable law in order to support any requested leave.

The type of documentation an employer may request and obtain to support this type of leave varies state to state and can be found in this [state leave laws chart](#).

If the employee has obtained a restraining order against the offender that will be effective while the employee is at work, you are entitled to obtain a copy, know the parameters (e.g., no closer to the employee than 500 feet), and get a photograph of the offender to make security or other appropriate personnel at your worksite aware.

Remember that such information is highly sensitive and confidential. Make sure you train your managers and Human Resources department appropriately to ensure that such information is maintained securely and confidentially.

- What supporting documentation is permitted under applicable federal and/or state law(s)?
- Is there a central and secure point of contact for the employee to submit confidential documentation?
- Are managers and supervisors trained to act in a sensitive and supportive manner during the information gathering process?

### STEP 5

#### Educate Employees

This step should be taken proactively at all times by the organization. All employers, throughout the employment relationship, should make sure they educate their employees on their rights under applicable state laws for this type of leave. Employers may utilize state-mandated notices and company policies and handbooks to aid this communication.

Once an employee needs leave for domestic violence, sexual assault, stalking, or other similar crimes, it will be a very emotional and difficult time. It is a good practice to personally provide employees with a written description of their rights under applicable laws. The employee will need time to take in the information and identify questions or concerns.

One idea is to reprint the notice and provide it to the employee during the leave process.

- Does the employee need to receive the required FMLA notices due to a serious health condition associated with domestic or sexual violence?
- Have all required federal, state, and local leave notices been provided to the employee? Does the employee need to be further advised in writing of leave rights specific to their individual circumstances?
- Did the employee receive a step-by-step guide of their rights and what leave and/or accommodation they may be entitled?
- Did the employee receive information on any additional applicable company policies that may apply to their situation?
- Does the employee have a list of resources such as a local domestic violence hotline, the organization's EAP, or any internal mental health counseling services?

### STEP 6

#### Check In with the Employee

This is important! As with all leaves, the work does not end once the leave is granted. In fact, for employees who need leave for reasons associated with domestic or sexual violence or stalking, it is important for the organization to demonstrate its support of the employee.

Friendly check-ins to ensure the employee is secure and safe are important and a mark of a good employer.

Make sure the check-in focuses on the employee's needs and well-being — not to remind them of work-related items.

- How is the employee doing?
- Does the employee feel safe?
- What additional support, resources, or accommodation is needed?