

LEAVE FOR VICTIMS OF DOMESTIC VIOLENCE

July 18, 2007

Effective July 1, 2007, a new law went into effect in Florida that requires employers of fifty or more employees to provide a leave of absence to employees who are the victims of domestic violence. To our knowledge, the law is the only Florida statute mandating private sector employers to provide employees with leave.

Although the new law applies to employers who have fifty or more employees, the statute does not mandate that the fifty employees be located in Florida. Until there is a clarification through administrative rules or case law, employers with fifty or more employees should heed the statute's mandate, even if the number of employees actually located in Florida is less than fifty.

To be eligible for the leave, the employee must have been employed by the employer for three or more months. Again, the statute is somewhat unclear whether the employee must have been employed for three months at the time of the request for leave or at the time the leave commences. Until there is a clarification, employers may wish to provide the most favorable and broad interpretation of the statute to the requesting employee.

The statute requires the covered employer to permit an eligible employee to request and take up to three working days of leave in any twelve month period if the employee or a family or household member of the employee is a victim of domestic violence. The employee taking the leave must first exhaust all annual or vacation leave, personal leave, and sick leave which is available to the employee, unless the employer waives the requirement to exhaust other accrued leave. The three days' leave under the statute is either paid or unpaid, at the employer's discretion.

The statute permits the employee to take the three days' leave for specifically enumerated reasons:

- (1) seeking an injunction to protect against domestic or other violence;
- (2) obtaining medical care or mental health counseling for the employee or family or household member as a result of domestic violence;
- (3) obtaining services from a victim-services organization;
- (4) making the employee's home secure; and
- (5) seeking legal assistance in addressing issues arising from the act of domestic violence or to attend and prepare for a court-related proceeding arising from the act of domestic violence.

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The employee must provide the employer with appropriate advance notice, as required by the employer's policy, except in cases of imminent danger. The employer may also require that the employee requesting leave provide documentation establishing the act of domestic violence. Presumably, a police report, court hearing or trial notice, or subpoena would suffice. The employer, in turn, must keep all information relating to the employee's leave confidential.

Employers may not interfere with the employee's exercise of her or his rights under the statute. Similarly, employers may not discharge, demote, suspend, retaliate or otherwise discriminate against an employee for exercising her or his rights under the statute. An employee who believes her or his rights were violated may bring a civil suit for damages and equitable relief in state circuit court. The aggrieved employee may seek as damages all wages and benefits that would have been due to the employee but for the violation of the statute.

If they have not done so already, covered employers should draft and implement a policy governing leave under the new statute. Because of the similarity in many respects to the federal Family and Medical Leave Act, Florida employers may wish to review their FMLA leave policies when adopting a policy under the new statute to ensure consistency in their leave policies and practices.