



Summary- of Rules Applicable to Employers regarding Philadelphia's Unpaid Leave Ordinance For Domestic and Sexual Violence

Effective January 5, 2009, the City of Philadelphia adopted a new ordinance called "Entitlement to Leave Due to Domestic or Sexual Violence." This summary provides guidance to employers on the requirements of the new ordinance. Employer questions may be posed to the Philadelphia Commission on Human Relations regarding compliance with the ordinance.

A. Under What Circumstances are Employees Entitled to Unpaid Leave?

As an employer, you have the obligation to provide leave to an employee who is a victim of domestic or sexual violence, or has a family or household member who is a victim of domestic or sexual violence, whose interests are not adverse to the employee as it pertains to the violence.

The employee may take leave to do *any* of the following: seek medical attention for physical or psychological injuries; obtain services from an organization that provides services to victims; obtain counseling or therapy; participate in safety planning to protect the victim, including possibly relocating to a safer location; or seek legal assistance related to the domestic or sexual violence.

Domestic and sexual violence are defined in the ordinance based upon the Pennsylvania statutory definitions for domestic abuse, stalking and sexual assault, among other offenses. By way of example, domestic violence would include: attempting to cause or causing bodily injury, rape or sexual assault; placing another person in fear of bodily injury; physically or sexually abusing minor children; and stalking. Sexual violence includes any forced or unwanted sexual activity, including rape, incest, child sexual assault, date and acquaintance rape, statutory rape, marital or partner rape or other sexual contact without consent.

B. What Amount of Leave is Required to be Provided by Employers?

The amount of leave required to be provided by employers varies depending upon the size of the employer's workforce and the amounts of other leave taken by the employee.

An employer, who has fifty (50) or more employees during each working day of twenty (20) or more calendar workweeks in the current or preceding calendar year, must provide eight (8) workweeks of leave during any twelve (12) month period.

An employer, who has less than fifty (50) employees for each working day during each of thirty-three (33) or more calendar workweeks in the current and preceding calendar year, must provide four (4) workweeks of leave during any twelve (12) month period.

This leave may be taken in a continuous block of time or taken intermittently.

The leave contemplated by the ordinance is not to exceed unpaid leave time permitted by the Family and Medical Leave Act ("FMLA"), so employees may only take a combined twelve (12) weeks of leave under the ordinance *and* FMLA leave in a twelve (12) month period, regardless of the reason for the FMLA leave.

An employee may use paid or unpaid leave benefits to which the employee is entitled under the employer's policy as a substitute for leave granted under the ordinance. When figuring leave time, the amount of such substituted leave shall be subtracted from the leave time an employee would be entitled to under the ordinance.

C. What Obligations Does the Employee Have Under the Ordinance?

An employee must provide at least forty-eight (48) hours notice to the employer that leave will be taken, unless such notice is not practicable. An employee's job protection under the ordinance is lost if the employee does not provide notice within a reasonable period.

If the employee has an unscheduled absence from work, the employer may not take any action against the employee if the employee provides a certification within a reasonable time after the absence as described below.

The ordinance states that the employer may require the employee to provide certification to the employer that the employee or the employee's family or household member is a victim of domestic or sexual violence and that the leave is for the purposes enunciated in Section A of this summary. The certification requirement may be met with a sworn statement by the employee along with at least one of the following documents: documentation from an employee, agent or volunteer of a victim services organization; an attorney, a member of the clergy, a medical or other professional from whom the victim sought assistance; a police or court record; or other corroborating evidence.

D. What Obligations Does An Employer Have to Maintain Confidentiality of Certain Information?

All information provided by the employee to the employer pursuant to the ordinance must be kept confidential, as well as the fact that leave is being taken, unless the employee requests or consents to disclosure of the information or it is otherwise required to be produced by applicable federal, state or local law.

E. What Happens When the Employee Wishes to Return to Work After a Leave?

On return from leave, an employee must be returned to his or her prior position held or an equivalent position, with equivalent benefits, pay and other terms and conditions of employment.

The employee shall maintain all benefits accrued prior to taking the leave.

An employee who has taken leave shall not be entitled to any seniority benefits allegedly accrued during the period of the leave.

An employer may require the employee to provide information periodically during the course of a leave as to when the employee intends to return to work.

F. What Happens to an Employee's Health Insurance Benefits During a Leave?

An employer must continue the health benefits of the employee and his or her family or household members during the course of a leave on the same terms as if the employee were not on leave. The employee must continue to pay his or her share of the cost.

If an employee fails to return from leave after it has expired for reasons other than recurring domestic or sexual violence, the employer may recover the amount of the applicable health insurance premium during the leave.

G. What Restrictions Exist Upon Employers Under the Ordinance?

Employers shall not interfere with or deny the attempts by employees to exercise their rights under the ordinance.

Employers shall not discharge, harass or otherwise discriminate against any individual who exercised any rights provided under the ordinance or who opposed any practice made unlawful by the ordinance.

Employers cannot discriminate against any individual who has filed a charge or participated in any way in an inquiry or proceeding relating to rights provided by the ordinance.

H. What Notices, if any, Must the Employer Post in the Workplace?

Every employer in the City of Philadelphia must post a notice summarize the requirements of the ordinance. The Philadelphia Commission on Human Relations has prepared a standard notice that will be available for employer usage. Alternatively, employers may create their own posters that must be approved by the Commission.

I. What Effects do Other Laws Have on the Leave Requirements?

Laws, collective bargaining agreements, or employment benefit plans that provide greater benefits and coverage than the ordinance will not be superseded by the ordinance.

Laws, collective bargaining agreements, or employment benefit plans that provide lesser benefits and coverage the ordinance will not diminish the rights afforded by the ordinance.

The ordinance granting this leave, Bill 090660-A, amended Bill 080468-A (approved November 5, 2008) removing the one-year provision and making the legislation permanent.

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