

## CLIENT ALERT: Massachusetts Creates Right to Leave of Absence Related to Domestic Violence

On August 8, 2014, Governor Deval Patrick signed “An Act relative to domestic violence” (“the Act”) into law. Relevant to employers, the Act creates a new right to leave for employees related to incidents of domestic violence. The Act is effective immediately.

Under the Act, employers of 50 or more employees must provide up to 15 days of leave in any 12 month period for the employee, or a covered family member, for domestic violence. The leave is only applicable if the employee, or a family member of the employee, is a victim of abusive behavior. The employee must use the leave to address issues directly related to the abusive behavior, such as seeking or obtaining medical attention, counselling, victim services, or legal assistance; obtaining a protective order from a court; or meeting with a district attorney or other law enforcement official.

The Act does not require an employer to pay the employee for the leave of absence. Unless an employer determines otherwise, the employee seeking leave under the law must first exhaust all personal, sick, annual, and vacation leave.

An employee is required to provide the employer with advance notice of the decision to use the leave. The notice requirement does not apply when there is a threat of imminent danger to the health or safety of the employee or a member of the employee’s family. An employee who does not give notice must notify the employer within 3 workdays that the leave was being taken under the Act’s leave provisions. The notice may be provided by a person other than the employee.

An employer cannot condition the leave on the victim maintaining or ceasing contact with the alleged abuser. The leave cannot result in the loss of any employment benefit accrued prior to the date on which the leave was taken. An employee is entitled the restoration of his or her original job when he or she returns from leave. If the original job has been filled, the employee is entitled to an equivalent position.

An employer cannot take negative actions against the employee for unauthorized absences if, within 30 days of the last day of absence, the employee provides documentation described in the Act. The documents serve to prove the abusive behavior did in fact occur and, as such, are documents like a police report documenting the abusive behavior. An employer may require an employee to provide documentation evidencing that the employee, or the employee’s family member, has been a victim of abusive behavior even if the employee provides advance notice of the leave.

With limited exceptions, information related to the employee’s leave must be kept confidential by the employer.

An employer may not retaliate or discriminate in any manner against an employee for exercising his or her right to a leave of absence under the Act. The Attorney General is empowered to enforce the law. In addition, employees may bring a civil action seeking injunctive relief, lost wages and benefits,

and other damages. Importantly, because the civil enforcement scheme is part of the Massachusetts Wage Act, employers found to have violated the act will be subjected to mandatory triple damages and reasonable attorneys' fees.

The Act also provides that employers notify each employee of the rights and responsibilities provided by the Act's leave section. Employers are encouraged to update their handbooks or develop a policy surrounding this leave of absence.

Employers should consult with their MBJ attorney with questions about this or any other employment law matter.

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