

# Should a victim of domestic violence be entitled to a leave of absence from work?

Elisa Reiter and Daniel Pollack | August 29, 2023



Employees who are victims of domestic violence may have the right to take time off from work, depending on the state in which they work. If the employee's state has domestic violence leave laws, the specifics of those laws will vary. For example, Washington state provides victims of domestic violence, sexual assault, or stalking the opportunity to take time off from work for legal or law enforcement assistance, medical and psychological help, assistance from social service programs, safety

planning, and relocating. California allows employees who work for companies with 25 or more workers to take time off from work to get medical attention for injuries caused by crime or abuse, receive services from a domestic violence shelter, program, or rape crisis center, or participate in safety planning or other actions to increase safety from future domestic violence.

How many people are impacted by domestic violence in America?

Domestic violence is a serious issue in the United States, with millions of people experiencing it each year. According to the National Coalition Against Domestic Violence, in 2022, 1 in 3 women and 1 in 10 men 18 years of age or older experienced domestic violence. The Centers for Disease Control and Prevention (CDC) reports that about 41% of women and 26% of men experienced contact sexual violence, physical violence, or stalking by an intimate partner, and reported an intimate partner violence-related impact during their lifetime.

While domestic violence affects both men and women, women are more likely to be victims. From 1994 to 2010, approximately 4 in 5 victims of intimate partner violence were female. Women ages 18 to 24 and 25 to 34 generally experience the highest rates of intimate partner violence.

Employees who are victims of domestic violence need to grasp the importance of understanding their rights and protections under both state and federal law. Employers should also be aware of their obligations to provide leave and reasonable accommodations to employees who are victims of domestic violence.

Massachusetts recently enacted a new law providing leave for victims of family violence. Its comprehensive statute addresses:

- How to define domestic violence against an employee, or against the employee’s family member;
- How to define employees, but reserves the applicability of the statute to employers who employ 50 or more employees;
- The definition of who would constitute a family member in the context of the statute, including:

persons who are married to one another; 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; a parent, step-parent, child, step-child, sibling, grandparent or grandchild; or persons in a guardianship relationship;

Provides for a leave of up to 15 days in a 12-month period with documentation that an employee or that a family member of an employee, has been the victim of domestic abuse; and the employee provides proof to the employer that the leave is being used for the purposes of medical treatment, to engage in counseling, to obtain legal assistance, to secure new living arrangements and safety planning, or to seek a protective order or some other type of legal protection, or to appear in court or before a grand jury, or to participate in child custody cases or in some other way to address the behavior of the abuser; provided, however:

- The employee did not perpetrate domestic abuse; and
- The employee provides proper notice of at least three workdays’ notice.
- The notice to the employer can be provided by the employee, or by a family member of the employee, or by the employee’s “counselor,

social worker, health care worker, member of the clergy, shelter worker, legal advocate or other professional who has assisted the employee in addressing the effects of the abusive behavior on the employee or the employee's family member."

The Massachusetts statute prohibits an employer from taking any adverse actions against the employee provided that the employee provides documentation evidencing any of the actions that the statute allows leave for, provided that documentation is given to the employer within 30 days of an otherwise unauthorized absence from work.

What doesn't the Massachusetts statute require? There is no requirement for the employee to provide documentation of "an arrest, conviction or other law enforcement documentation for such abusive behavior."

While proof of an arrest is not required, proof may be provided through a document written on the letterhead of a court or by the "provider or public agency which the employee attended for the purposes of acquiring assistance as it relates to the abusive behavior against the employee or the employee's family member."

Proof may also be provided via 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 the employee or the employee's family member." Such documentation must show that the alleged perpetrator "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 ...”

Proof to justify a domestic violence leave may also be gleaned via medical documentation or via a sworn statement, signed under penalty of perjury, provided by a professional who assisted the employee or the employee’s family member in regard to domestic abuse, and/or via a sworn statement signed by the employee, setting out the particulars of the domestic violence suffered by the employee or by the employee’s family member.

Information pertaining to a leave necessitated by an act of domestic violence is to be kept confidential by the employer, unless:

- the documentation is requested by, or written release of the information is consented to by employee, or
- a court of competent jurisdiction orders the release of the information, or
- the information is otherwise mandated by federal or state law, or
- is required due to law enforcement investigation, including any investigation by the office of the attorney general, or
- release of the information is necessary to protect other employees.

There is a myriad of other implications here, including the potential impact on family law matters, elder law cases, and other civil and criminal cases. If the employee’s state does not have domestic violence leave laws, there may still be federal laws that provide some protection. Pertinent federal laws include:

**Family and Medical Leave Act (FMLA):** FMLA leave may be available to address certain health-related issues resulting from domestic violence. 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 instance, where applicable, an employee who is eligible to take time off under FMLA may be able to take a FMLA related leave from work if that employee has received treatment for more than one day (i.e., being checked in and receiving services overnight), may be eligible for time off under FMLA, or if certain treatment is sought, such as for post-traumatic stress disorder following the domestic abuse.

**Americans with Disabilities Act (ADA):** The ADA may provide some protection for employees who are victims of domestic violence. For example, an employee who suffers from depression or anxiety as a result of domestic violence may be considered disabled under the ADA and entitled to reasonable accommodations.

Florida law requires that employers provide their employees up to three days of leave in a 12-month period if the employee or a family or household member is a victim of domestic or sexual violence. The law applies if an employee uses the leave from work to:

- Seek an injunction for protection against domestic violence or an injunction for protection in cases of repeat violence, dating violence, or sexual violence;
- Obtain medical care or mental health counseling, or both, for the employee or a family or household member to address physical or

psychological injuries resulting from the act of domestic violence or sexual violence;

- Obtain services from a victim services organization, including, but not limited to, a domestic violence shelter or program or a rape crisis center as a result of the act of domestic violence or sexual violence;
- Make the employee's home secure from the perpetrator of the domestic violence or sexual violence or to seek new housing to escape the perpetrator; or
- Seek legal assistance in addressing issues arising from the act of domestic violence or sexual violence or to attend and prepare for court-related proceedings arising from the act of domestic violence or sexual violence.

The importance of the Florida criteria? Many states have enacted, or are contemplating, similar relief for victims of domestic violence.

In "The Body Keeps the Score: Brain, Mind, and Body," Bessel van der Kolk writes that "child abuse, molestation, and domestic violence all are inflicted by people who are supposed to love you. That knocks out the most important protection against violence." Domestic violence often occurs within the context of a relationship where love and trust are expected, making it particularly devastating for the victim. Bessel van der Kolk also opines that: "After trauma the world becomes sharply divided between those who know and those who don't. People who have not shared the traumatic experience cannot be trusted, because they can't understand it. Sadly, this often includes spouses, children, and co-workers."

Domestic violence is a traumatic experience that can affect the victim's ability to work, causing a decline in performance. If a state has a paid sick leave law, the victim may be able to use sick leave to handle issues stemming from the domestic violence. Many states have laws that protect employees who must take time off for legal matters relating to a criminal case in which they are a victim or witness. The victim may take reasonable time off to seek help if they or their family member is a victim of domestic violence, sexual assault, or stalking. The time off can be taken as a single block of time, on an intermittent basis, or on a reduced schedule. Victims, families, employers, and attorneys: Know these rights!

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