

5610

2009-2010 Regular Sessions

I N S E N A T E

May 21, 2009

Introduced by Sen. ROBACH -- read twice and ordered printed, and when printed to be committed to the Committee on Labor

AN ACT to amend the labor law, in relation to the entitlement to unpaid leave of absence from employment for victims of domestic violence

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The labor law is amended by adding a new article 19-C to
2 read as follows:

3 ARTICLE 19-C
4 UNPAID LEAVE OF ABSENCE FOR
5 VICTIMS OF DOMESTIC OR SEXUAL VIOLENCE

6 SECTION 695. DEFINITIONS.

7 695-A. ENTITLEMENT TO LEAVE.

8 695-B. LEAVE TAKEN INTERMITTENTLY OR ON REDUCED LEAVE SCHEDULE.

9 695-C. NOTICE OF INTENTION TO TAKE LEAVE.

10 695-D. CERTIFICATION.

11 695-E. CONFIDENTIALITY.

12 695-F. RESTORATION TO POSITION.

13 695-G. PROHIBITED ACTS.

14 695-H. CIVIL ACTION.

15 695-I. SAVINGS CLAUSE.

16 S 695. DEFINITIONS. AS USED IN THIS ARTICLE:

17 1. "VICTIM OF DOMESTIC OR SEXUAL ABUSE" SHALL MEAN A VICTIM OF DOMESTIC
18 VIOLENCE, A SEX OFFENSE, OR STALKING.

19 2. "VICTIM OF DOMESTIC VIOLENCE" SHALL MEAN AN INDIVIDUAL WHO IS A
20 VICTIM OF AN ACT WHICH WOULD CONSTITUTE A FAMILY OFFENSE PURSUANT TO
21 SUBDIVISION ONE OF SECTION EIGHT HUNDRED TWELVE OF THE FAMILY COURT ACT.

22 3. "VICTIM OF A SEX OFFENSE" SHALL MEAN A VICTIM OF AN ACT OR ACTS
23 THAT WOULD CONSTITUTE A VIOLATION OF ARTICLE ONE HUNDRED THIRTY OF THE
24 PENAL LAW.

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 4. "VICTIM OF STALKING" SHALL MEAN A VICTIM OF AN ACT OR ACTS THAT
2 WOULD CONSTITUTE A VIOLATION OF SECTION 120.45, 120.50, 120.55 OR 120.60
3 OF THE PENAL LAW.

4 S 695-A. ENTITLEMENT TO LEAVE. ANY EMPLOYEE WHO IS A VICTIM OF DOMES-
5 TIC OR SEXUAL VIOLENCE SHALL BE ELIGIBLE FOR NINETY DAYS OF UNPAID LEAVE
6 FROM THEIR EMPLOYMENT DURING ANY TWELVE MONTH PERIOD IN ORDER TO ADDRESS
7 DOMESTIC OR SEXUAL VIOLENCE OR ONGOING EFFECTS OF SUCH DOMESTIC OR SEXU-
8 AL VIOLENCE, INCLUDING BUT NOT LIMITED TO:

9 1. SEEKING MEDICAL ATTENTION FOR, OR RECOVERING OR TAKING CARE OF THE
10 VICTIM'S CHILD WHILE THE CHILD RECOVERS FROM, ANY PHYSICAL OR PSYCHOLOG-
11 ICAL INJURIES CAUSED BY THE DOMESTIC OR SEXUAL VIOLENCE; OR

12 2. ATTENDING COUNSELING SESSIONS FOR THE VICTIM OF DOMESTIC OR SEXUAL
13 VIOLENCE OR FOR SUCH VICTIM'S CHILD IN ORDER TO DEAL WITH THE EFFECTS OF
14 THE DOMESTIC OR SEXUAL VIOLENCE; OR

15 3. SEEKING LEGAL ASSISTANCE INCLUDING ATTENDING COURT PROCEEDINGS OR
16 MEETING OR COMMUNICATING WITH AN ATTORNEY OR A MEMBER OF LAW ENFORCE-
17 MENT; OR

18 4. SEEKING SERVICES FOR THE VICTIM OF DOMESTIC OR SEXUAL VIOLENCE OR
19 FOR SUCH VICTIM'S CHILD FROM A RESIDENTIAL OR NON-RESIDENTIAL PROGRAM
20 FOR VICTIMS OF DOMESTIC OR SEXUAL VIOLENCE; OR

21 5. ENGAGING IN SAFETY PLANNING, INCLUDING ARRANGING TO RELOCATE AND
22 RELOCATING TO A TEMPORARY OR PERMANENT NEW RESIDENCE, IN ORDER TO
23 DECREASE THE RISK OF FUTURE DOMESTIC OR SEXUAL VIOLENCE.

24 S 695-B. LEAVE TAKEN INTERMITTENTLY OR ON REDUCED LEAVE SCHEDULE. THE
25 LEAVE PURSUANT TO SECTION SIX HUNDRED NINETY-FIVE-A OF THIS ARTICLE MAY
26 BE TAKEN ON A REDUCED LEAVE SCHEDULE OR INTERMITTENTLY IF THE EMPLOYEE
27 AND EMPLOYER AGREE ON THE SCHEDULE. TAKING LEAVE ON A REDUCED LEAVE OR
28 INTERMITTENT SCHEDULE SHALL NOT RESULT IN A REDUCTION IN THE AMOUNT OF
29 TOTAL LEAVE A VICTIM OF DOMESTIC OR SEXUAL VIOLENCE IS ENTITLED TO IN
30 THE TWELVE MONTH PERIOD.

31 S 695-C. NOTICE OF INTENTION TO TAKE LEAVE. AN EMPLOYEE SHALL PROVIDE
32 AN EMPLOYER WITH REASONABLE NOTICE OF THE EMPLOYEE'S INTENTION TO TAKE
33 LEAVE PURSUANT TO SECTION SIX HUNDRED NINETY-FIVE-A OF THIS ARTICLE
34 UNLESS PROVIDING SUCH NOTICE IS NOT PRACTICABLE. WHEN AN UNSCHEDULED
35 ABSENCE OCCURS, THE EMPLOYER MAY NOT TAKE ANY ACTION AGAINST THE EMPLOY-
36 EE IF THE EMPLOYEE, WITHIN A REASONABLE PERIOD OF TIME AFTER THE
37 ABSENCE, PROVIDES CERTIFICATION AS SET FORTH IN SECTION SIX HUNDRED
38 NINETY-FIVE-D OF THIS ARTICLE.

39 S 695-D. CERTIFICATION. IN ORDER TO DETERMINE WHETHER THE EMPLOYEE IS
40 A VICTIM OF DOMESTIC OR SEXUAL VIOLENCE, THE EMPLOYER MAY REQUIRE THAT
41 THE REQUEST FOR LEAVE BE SUPPORTED BY ONE OF THE FOLLOWING:

42 1. A SWORN STATEMENT SUBMITTED BY THE VICTIM OF DOMESTIC OR SEXUAL
43 VIOLENCE DESCRIBING SUCH VICTIM'S NEED FOR LEAVE TO ADDRESS THE ONGOING
44 EFFECTS OF DOMESTIC OR SEXUAL VIOLENCE; OR

45 2. ANY DOCUMENTATION OF THE DOMESTIC OR SEXUAL VIOLENCE, INCLUDING
46 POLICE REPORTS, COURT RECORDS, STATEMENTS FROM A SHELTER WORKER, LAW
47 ENFORCEMENT OFFICER, MEDICAL WORKER, COUNSELOR, CLERGY MEMBER, ATTORNEY
48 OR ANY OTHER PROFESSIONAL FROM WHOM THE EMPLOYEE HAS SOUGHT ASSISTANCE
49 TO ADDRESS THE DOMESTIC OR SEXUAL VIOLENCE AND ITS EFFECTS; OR

50 3. ANY OTHER CORROBORATING EVIDENCE INCLUDING PHYSICAL EVIDENCE,
51 PHOTOGRAPHS, OR STATEMENTS FROM OTHER INDIVIDUALS WHO ARE AWARE OF THE
52 DOMESTIC OR SEXUAL VIOLENCE AND ITS EFFECTS.

53 S 695-E. CONFIDENTIALITY. ANY INFORMATION PROVIDED TO THE EMPLOYER,
54 INCLUDING BUT NOT LIMITED TO INFORMATION UNDER SECTION SIX HUNDRED NINE-
55 TY-FIVE-D OF THIS ARTICLE, DESCRIBING THE DOMESTIC OR SEXUAL VIOLENCE IN
56 THE EMPLOYEE'S LIFE AND THE REQUEST TO TAKE A LEAVE TO ADDRESS THE

1 EFFECTS OF DOMESTIC OR SEXUAL VIOLENCE, SHALL BE KEPT CONFIDENTIAL BY
2 THE EMPLOYER. DISCLOSURE SHALL ONLY BE ALLOWED IF THE EMPLOYEE, IN
3 WRITING, CONSENTS TO OR REQUESTS DISCLOSURE.

4 S 695-F. RESTORATION TO POSITION. 1. ANY EMPLOYEE WHO TAKES LEAVE
5 UNDER SECTION SIX HUNDRED NINETY-FIVE-A OF THIS ARTICLE, SHALL BE ENTI-
6 TLED TO RETURN FROM SUCH LEAVE AND BE RESTORED TO THE SAME POSITION HELD
7 BY SUCH EMPLOYEE WHEN THE LEAVE BEGAN OR BE RESTORED TO AN EQUIVALENT
8 POSITION WITH EQUIVALENT BENEFITS, PAY AND OTHER TERMS AND CONDITIONS OF
9 EMPLOYMENT.

10 2. THE TAKING OF LEAVE UNDER SECTION SIX HUNDRED NINETY-FIVE-A OF THIS
11 ARTICLE SHALL NOT RESULT IN THE LOSS OF ANY EMPLOYMENT BENEFITS ACCRUED
12 PRIOR TO THE DATE ON WHICH THE LEAVE BEGAN.

13 3. (A) EXCEPT AS PROVIDED IN SUBDIVISION TWO OF THIS SECTION, ANY
14 EMPLOYEE WHO TAKES LEAVE UNDER SECTION SIX HUNDRED NINETY-FIVE-A OF THIS
15 ARTICLE SHALL BE ENTITLED TO CONTINUED COVERAGE UNDER ANY HEALTH CARE
16 BENEFITS PLAN PROVIDED BY SUCH PERSON'S EMPLOYER FOR THE DURATION OF THE
17 LEAVE.

18 (B) THE EMPLOYER MAY RECOVER THE PREMIUM THAT THE EMPLOYER PAID FOR
19 MAINTAINING COVERAGE UNDER A HEALTH BENEFITS PLAN FOR THE EMPLOYEE ENTI-
20 TLED TO LEAVE UNDER SECTION SIX HUNDRED NINETY-FIVE-A OF THIS ARTICLE,
21 IF:

22 (I) THE EMPLOYEE FAILS TO RETURN TO SUCH PERSON'S EMPLOYMENT ONCE THE
23 LEAVE HAS EXPIRED; AND

24 (II) THE EMPLOYEE FAILS TO RETURN TO WORK FOR A REASON OTHER THAN:

25 (A) THE CONTINUATION, RECURRENCE, OR ONSET OF DOMESTIC OR SEXUAL
26 VIOLENCE THAT ENTITLES THE EMPLOYEE TO LEAVE PURSUANT TO THIS SECTION;
27 OR

28 (B) OTHER CIRCUMSTANCES BEYOND THE CONTROL OF THE EMPLOYEE.

29 S 695-G. PROHIBITED ACTS. 1. INTERFERENCE WITH RIGHTS.

30 (A) EXERCISE OF RIGHTS. IT SHALL BE UNLAWFUL FOR ANY EMPLOYER TO
31 INTERFERE WITH, RESTRAIN, OR DENY THE EXERCISE OF OR THE ATTEMPT TO
32 EXERCISE ANY RIGHT PROVIDED UNDER THIS ARTICLE.

33 (B) EMPLOYER DISCRIMINATION. IT SHALL BE UNLAWFUL FOR ANY EMPLOYER TO
34 DISCHARGE OR HARASS ANY INDIVIDUAL, OR OTHERWISE DISCRIMINATE AGAINST
35 ANY INDIVIDUAL WITH RESPECT TO COMPENSATION, TERMS, CONDITIONS, OR PRIV-
36 ILEGES OF EMPLOYMENT OF THE INDIVIDUAL (INCLUDING RETALIATION IN ANY
37 FORM OR MANNER) BECAUSE THE INDIVIDUAL EXERCISED ANY RIGHT PROVIDED
38 UNDER THIS ARTICLE OR OPPOSED ANY PRACTICE MADE UNLAWFUL BY THIS ARTI-
39 CLE.

40 2. INTERFERENCE WITH PROCEEDINGS OR INQUIRIES. IT SHALL BE UNLAWFUL
41 FOR ANY PERSON TO DISCHARGE OR IN ANY OTHER MANNER DISCRIMINATE (AS
42 DESCRIBED IN PARAGRAPH (B) OF SUBDIVISION ONE OF THIS SECTION) AGAINST
43 ANY INDIVIDUAL BECAUSE SUCH INDIVIDUAL:

44 (A) HAS FILED ANY CHARGE, OR HAS INSTITUTED OR CAUSED TO BE INSTITUTED
45 ANY PROCEEDING, UNDER OR RELATED TO THIS ARTICLE;

46 (B) HAS GIVEN, OR IS ABOUT TO GIVE, ANY INFORMATION IN CONNECTION WITH
47 ANY INQUIRY OR PROCEEDING RELATING TO ANY RIGHT PROVIDED UNDER THIS
48 ARTICLE; OR

49 (C) HAS TESTIFIED, OR IS ABOUT TO TESTIFY, IN ANY INQUIRY OR PROCEED-
50 ING RELATING TO ANY RIGHT PROVIDED UNDER THIS ARTICLE.

51 S 695-H. CIVIL ACTION. 1. BY EMPLOYEE. ANY PERSON DENIED LEAVE OR
52 BENEFITS DUE UNDER THIS ARTICLE OR AGGRIEVED BY AN ACTION MADE UNLAWFUL
53 BY THIS ARTICLE SHALL HAVE A CAUSE OF ACTION IN ANY COURT OF APPROPRIATE
54 JURISDICTION FOR DAMAGES, INCLUDING ANY WAGES, SALARY, EMPLOYMENT BENE-
55 FITS OR OTHER COMPENSATION DENIED OR LOST TO SUCH INDIVIDUAL BY REASONS
56 OF THE VIOLATION AND/OR ANY ACTUAL MONETARY LOSSES SUSTAINED BY THE

1 INDIVIDUAL AS A DIRECT RESULT OF THE VIOLATION, AS WELL AS INTEREST ON
2 SUCH AMOUNT CALCULATED AT THE PREVAILING RATE, AND SUCH EQUITABLE RELIEF
3 AS MAY BE APPROPRIATE, INCLUDING EMPLOYMENT, REINSTATEMENT, AND
4 PROMOTION, TOGETHER WITH COSTS AND SUCH REASONABLE ATTORNEYS' FEES AS
5 MAY BE ALLOWED BY THE COURT, AND IF THE VIOLATION WAS WILLFUL, AN ADDI-
6 TIONAL AMOUNT AS LIQUIDATED DAMAGES EQUAL TO TWENTY-FIVE PERCENT OF THE
7 TOTAL OF SUCH DAMAGES FOUND TO BE DUE.

8 2. BY COMMISSIONER. ON BEHALF OF ANY EMPLOYEE DENIED LEAVE OR BENEFITS
9 DUE UNDER THIS ARTICLE OR AGGRIEVED BY AN ACTION MADE UNLAWFUL BY THIS
10 ARTICLE, THE INDUSTRIAL COMMISSIONER MAY BRING A LEGAL ACTION NECESSARY
11 TO COLLECT DAMAGES DUE TO THE VIOLATION, AND THE EMPLOYER SHALL BE
12 REQUIRED TO PAY SUCH DAMAGES AND IF SUCH VIOLATION WAS WILLFUL, AN ADDI-
13 TIONAL AMOUNT AS LIQUIDATED DAMAGES EQUAL TO TWENTY-FIVE PERCENT OF THE
14 TOTAL OF SUCH DAMAGES FOUND TO BE DUE.

15 3. LIMITATION OF TIME. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, AN
16 ACTION TO RECOVER UPON LIABILITY IMPOSED BY THIS ARTICLE MUST BE
17 COMMENCED WITHIN TWO YEARS.

18 S 695-I. SAVINGS CLAUSE. IF ANY PROVISION OF THIS ARTICLE OR THE
19 APPLICATION THEREOF TO ANY PERSON, EMPLOYER, OCCUPATION OR CIRCUMSTANCE
20 IS HELD INVALID, THE REMAINDER OF THE ARTICLE AND THE APPLICATION OF
21 SUCH PROVISION TO OTHER PERSONS, EMPLOYEES, OCCUPATIONS, OR CIRCUM-
22 STANCES SHALL NOT BE AFFECTED THEREBY.

23 S 2. This act shall take effect on the ninetieth day after it shall
24 have become a law.