

2509

2013-2014 Regular Sessions

I N S E N A T E

January 18, 2013

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-D to  
2 read as follows:

3 ARTICLE 19-D

4 UNPAID LEAVE OF ABSENCE FOR  
5 VICTIMS OF DOMESTIC OR SEXUAL VIOLENCE

6 SECTION 696. DEFINITIONS.

7 696-A. ENTITLEMENT TO LEAVE.

8 696-B. LEAVE TAKEN INTERMITTENTLY OR ON REDUCED LEAVE SCHEDULE.

9 696-C. NOTICE OF INTENTION TO TAKE LEAVE.

10 696-D. CERTIFICATION.

11 696-E. CONFIDENTIALITY.

12 696-F. RESTORATION TO POSITION.

13 696-G. PROHIBITED ACTS.

14 696-H. CIVIL ACTION.

15 696-I. SAVINGS CLAUSE.

16 S 696. 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 696-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 696-B. LEAVE TAKEN INTERMITTENTLY OR ON REDUCED LEAVE SCHEDULE. THE  
25 LEAVE PURSUANT TO SECTION SIX HUNDRED NINETY-SIX-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 696-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-SIX-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-SIX-D OF THIS ARTICLE.

39 S 696-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 696-E. CONFIDENTIALITY. ANY INFORMATION PROVIDED TO THE EMPLOYER,  
54 INCLUDING BUT NOT LIMITED TO INFORMATION UNDER SECTION SIX HUNDRED NINE-  
55 TY-SIX-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 696-F. RESTORATION TO POSITION. 1. ANY EMPLOYEE WHO TAKES LEAVE  
5 UNDER SECTION SIX HUNDRED NINETY-SIX-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-SIX-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-SIX-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-SIX-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 696-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 696-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 696-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.