

5954

2013-2014 Regular Sessions

I N S E N A T E

October 11, 2013

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

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 5. "EMPLOYEE" SHALL MEAN A PERSON WHO IS EMPLOYED FOR AT LEAST TWELVE
5 MONTHS FOR NOT LESS THAN ONE THOUSAND BASE HOURS DURING THE IMMEDIATELY
6 PROCEEDING TWELVE MONTH PERIOD.

7 6. "EMPLOYER" SHALL MEAN A PERSON OR CORPORATION, PARTNERSHIP, INDI-
8 VIDUAL PROPRIETORSHIP, JOINT VENTURE, FIRM OR COMPANY, OR OTHER SIMILAR
9 LEGAL ENTITY WHICH ENGAGES THE SERVICES OF AN EMPLOYEE AND EMPLOYS TWEN-
10 TY-FIVE OR MORE EMPLOYEES FOR EACH WORKING DAY DURING EACH OF TWENTY OR
11 MORE CALENDAR WORK WEEKS IN THE THEN CURRENT OR IMMEDIATELY PRECEDING
12 CALENDAR YEAR. "EMPLOYER" INCLUDES THE STATE, ANY POLITICAL SUBDIVISION
13 THEREOF, AND ALL PUBLIC OFFICES, AGENCIES, BOARDS OR BODIES.

14 S 696-A. ENTITLEMENT TO LEAVE. ANY EMPLOYEE OF AN EMPLOYER IN THE
15 STATE WHO IS A VICTIM OF DOMESTIC OR SEXUAL VIOLENCE SHALL BE ELIGIBLE
16 FOR TWENTY DAYS OF UNPAID LEAVE FROM THEIR EMPLOYMENT DURING ANY TWELVE
17 MONTH PERIOD IN ORDER TO ADDRESS DOMESTIC OR SEXUAL VIOLENCE OR ONGOING
18 EFFECTS OF SUCH DOMESTIC OR SEXUAL VIOLENCE, INCLUDING BUT NOT LIMITED
19 TO:

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

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

26 3. SEEKING LEGAL ASSISTANCE INCLUDING ATTENDING COURT PROCEEDINGS OR
27 MEETING OR COMMUNICATING WITH AN ATTORNEY OR A MEMBER OF LAW ENFORCE-
28 MENT; OR

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

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

35 S 696-B. LEAVE TAKEN INTERMITTENTLY OR ON REDUCED LEAVE SCHEDULE. THE
36 LEAVE PURSUANT TO SECTION SIX HUNDRED NINETY-SIX-A OF THIS ARTICLE MAY
37 BE TAKEN ON A REDUCED LEAVE SCHEDULE OR INTERMITTENTLY IF THE EMPLOYEE
38 AND EMPLOYER AGREE ON THE SCHEDULE. TAKING LEAVE ON A REDUCED LEAVE OR
39 INTERMITTENT SCHEDULE SHALL NOT RESULT IN A REDUCTION IN THE AMOUNT OF
40 TOTAL LEAVE A VICTIM OF DOMESTIC OR SEXUAL VIOLENCE IS ENTITLED TO IN
41 THE TWELVE MONTH PERIOD.

42 S 696-C. NOTICE OF INTENTION TO TAKE LEAVE. AN EMPLOYEE SHALL PROVIDE
43 AN EMPLOYER WITH REASONABLE NOTICE OF THE EMPLOYEE'S INTENTION TO TAKE
44 LEAVE PURSUANT TO SECTION SIX HUNDRED NINETY-SIX-A OF THIS ARTICLE
45 UNLESS PROVIDING SUCH NOTICE IS NOT PRACTICABLE. WHEN AN UNSCHEDULED
46 ABSENCE OCCURS, THE EMPLOYER MAY NOT TAKE ANY ACTION AGAINST THE EMPLOY-
47 EE IF THE EMPLOYEE, WITHIN A REASONABLE PERIOD OF TIME AFTER THE
48 ABSENCE, PROVIDES CERTIFICATION AS SET FORTH IN SECTION SIX HUNDRED
49 NINETY-SIX-D OF THIS ARTICLE.

50 S 696-D. CERTIFICATION. IN ORDER TO DETERMINE WHETHER THE EMPLOYEE IS
51 A VICTIM OF DOMESTIC OR SEXUAL VIOLENCE, THE EMPLOYER MAY REQUIRE THAT
52 THE REQUEST FOR LEAVE BE SUPPORTED BY ONE OF THE FOLLOWING:

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

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

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

S 696-E. CONFIDENTIALITY. ANY INFORMATION PROVIDED TO THE EMPLOYER, INCLUDING BUT NOT LIMITED TO INFORMATION UNDER SECTION SIX HUNDRED NINETEEN-SIX-D OF THIS ARTICLE, DESCRIBING THE DOMESTIC OR SEXUAL VIOLENCE IN THE EMPLOYEE'S LIFE AND THE REQUEST TO TAKE A LEAVE TO ADDRESS THE EFFECTS OF DOMESTIC OR SEXUAL VIOLENCE, SHALL BE KEPT CONFIDENTIAL BY THE EMPLOYER. DISCLOSURE SHALL ONLY BE ALLOWED IF THE EMPLOYEE, IN WRITING, CONSENTS TO OR REQUESTS DISCLOSURE.

S 696-F. RESTORATION TO POSITION. 1. ANY EMPLOYEE WHO TAKES LEAVE UNDER SECTION SIX HUNDRED NINETEEN-SIX-A OF THIS ARTICLE, SHALL BE ENTITLED TO RETURN FROM SUCH LEAVE AND BE RESTORED TO THE SAME POSITION HELD BY SUCH EMPLOYEE WHEN THE LEAVE BEGAN OR BE RESTORED TO AN EQUIVALENT POSITION WITH EQUIVALENT BENEFITS, PAY AND OTHER TERMS AND CONDITIONS OF EMPLOYMENT.

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

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

(B) THE EMPLOYER MAY RECOVER THE PREMIUM THAT THE EMPLOYER PAID FOR MAINTAINING COVERAGE UNDER A HEALTH BENEFITS PLAN FOR THE EMPLOYEE ENTITLED TO LEAVE UNDER SECTION SIX HUNDRED NINETEEN-SIX-A OF THIS ARTICLE, IF:

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

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

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

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

S 696-G. PROHIBITED ACTS. 1. INTERFERENCE WITH RIGHTS.

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

(B) EMPLOYER DISCRIMINATION. IT SHALL BE UNLAWFUL FOR ANY EMPLOYER TO DISCHARGE OR HARASS ANY INDIVIDUAL, OR OTHERWISE DISCRIMINATE AGAINST ANY INDIVIDUAL WITH RESPECT TO COMPENSATION, TERMS, CONDITIONS, OR PRIVILEGES OF EMPLOYMENT OF THE INDIVIDUAL (INCLUDING RETALIATION IN ANY FORM OR MANNER) BECAUSE THE INDIVIDUAL EXERCISED ANY RIGHT PROVIDED UNDER THIS ARTICLE OR OPPOSED ANY PRACTICE MADE UNLAWFUL BY THIS ARTICLE.

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

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

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

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

8 S 696-H. CIVIL ACTION. 1. BY EMPLOYEE. ANY PERSON DENIED LEAVE OR
9 BENEFITS DUE UNDER THIS ARTICLE OR AGGRIEVED BY AN ACTION MADE UNLAWFUL
10 BY THIS ARTICLE SHALL HAVE A CAUSE OF ACTION IN ANY COURT OF APPROPRIATE
11 JURISDICTION FOR DAMAGES, INCLUDING ANY WAGES, SALARY, EMPLOYMENT BENE-
12 FITS OR OTHER COMPENSATION DENIED OR LOST TO SUCH INDIVIDUAL BY REASONS
13 OF THE VIOLATION AND/OR ANY ACTUAL MONETARY LOSSES SUSTAINED BY THE
14 INDIVIDUAL AS A DIRECT RESULT OF THE VIOLATION, AS WELL AS INTEREST ON
15 SUCH AMOUNT CALCULATED AT THE PREVAILING RATE, AND SUCH EQUITABLE RELIEF
16 AS MAY BE APPROPRIATE, INCLUDING EMPLOYMENT, REINSTATEMENT, AND
17 PROMOTION, TOGETHER WITH COSTS AND SUCH REASONABLE ATTORNEYS' FEES AS
18 MAY BE ALLOWED BY THE COURT, AND IF THE VIOLATION WAS WILLFUL, AN ADDI-
19 TIONAL AMOUNT AS LIQUIDATED DAMAGES EQUAL TO TWENTY-FIVE PERCENT OF THE
20 TOTAL OF SUCH DAMAGES FOUND TO BE DUE.

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

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

31 S 696-I. SAVINGS CLAUSE. IF ANY PROVISION OF THIS ARTICLE OR THE
32 APPLICATION THEREOF TO ANY PERSON, EMPLOYER, OCCUPATION OR CIRCUMSTANCE
33 IS HELD INVALID, THE REMAINDER OF THE ARTICLE AND THE APPLICATION OF
34 SUCH PROVISION TO OTHER PERSONS, EMPLOYEES, OCCUPATIONS, OR CIRCUM-
35 STANCES SHALL NOT BE AFFECTED THEREBY.

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