

STATE OF NEW YORK

4850

2019-2020 Regular Sessions

IN SENATE

March 27, 2019

Introduced by Sens. PARKER, BAILEY, BRESLIN, HOYLMAN, KENNEDY, MONTGOMERY, SANDERS -- 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:

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

ARTICLE 19-D

UNPAID LEAVE OF ABSENCE FOR

VICTIMS OF DOMESTIC OR SEXUAL VIOLENCE

Section 696. Definitions.

696-a. Entitlement to leave.

696-b. Leave taken intermittently or on reduced leave schedule.

696-c. Notice of intention to take leave.

696-d. Certification.

696-e. Confidentiality.

696-f. Restoration to position.

696-g. Prohibited acts.

696-h. Civil action.

696-i. Savings clause.

§ 696. Definitions. As used in this article:

1. "Victim of domestic or sexual abuse" shall mean a victim of domestic violence, a sex offense, or stalking.

2. "Victim of domestic violence" shall mean an individual who is a victim of an act which would constitute a family offense pursuant to subdivision one of section eight hundred twelve of the family court act.

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

LBD10484-01-9

1 3. "Victim of a sex offense" shall mean a victim of an act or acts
2 that would constitute a violation of article one hundred thirty of the
3 penal law.

4 4. "Victim of stalking" shall mean a victim of an act or acts that
5 would constitute a violation of section 120.45, 120.50, 120.55 or 120.60
6 of the penal law.

7 5. "Employee" shall mean a person who is employed for at least twelve
8 months for not less than one thousand base hours during the immediately
9 preceding twelve month period.

10 6. "Employer" shall mean a person or corporation, partnership, indi-
11 vidual proprietorship, joint venture, firm or company, or other similar
12 legal entity which engages the services of an employee and employs twen-
13 ty-five or more employees for each working day during each of twenty or
14 more calendar work weeks in the then current or immediately preceding
15 calendar year. "Employer" includes the state, any political subdivision
16 thereof, and all public offices, agencies, boards or bodies.

17 § 696-a. Entitlement to leave. Any employee of an employer in the
18 state who is a victim of domestic or sexual violence shall be eligible
19 for twenty days of unpaid leave from their employment during any twelve
20 month period in order to address domestic or sexual violence or ongoing
21 effects of such domestic or sexual violence, including but not limited
22 to:

23 1. seeking medical attention for, or recovering or taking care of the
24 victim's child while the child recovers from, any physical or psycholog-
25 ical injuries caused by the domestic or sexual violence; or

26 2. attending counseling sessions for the victim of domestic or sexual
27 violence or for such victim's child in order to deal with the effects of
28 the domestic or sexual violence; or

29 3. seeking legal assistance including attending court proceedings or
30 meeting or communicating with an attorney or a member of law enforce-
31 ment; or

32 4. seeking services for the victim of domestic or sexual violence or
33 for such victim's child from a residential or non-residential program
34 for victims of domestic or sexual violence; or

35 5. engaging in safety planning, including arranging to relocate and
36 relocating to a temporary or permanent new residence, in order to
37 decrease the risk of future domestic or sexual violence.

38 § 696-b. Leave taken intermittently or on reduced leave schedule. The
39 leave pursuant to section six hundred ninety-six-a of this article may
40 be taken on a reduced leave schedule or intermittently if the employee
41 and employer agree on the schedule. Taking leave on a reduced leave or
42 intermittent schedule shall not result in a reduction in the amount of
43 total leave a victim of domestic or sexual violence is entitled to in
44 the twelve month period.

45 § 696-c. Notice of intention to take leave. An employee shall provide
46 an employer with reasonable notice of the employee's intention to take
47 leave pursuant to section six hundred ninety-six-a of this article
48 unless providing such notice is not practicable. When an unscheduled
49 absence occurs, the employer may not take any action against the employ-
50 ee if the employee, within a reasonable period of time after the
51 absence, provides certification as set forth in section six hundred
52 ninety-six-d of this article.

53 § 696-d. Certification. In order to determine whether the employee is
54 a victim of domestic or sexual violence, the employer may require that
55 the request for leave be supported by one of the following:

1 1. a sworn statement submitted by the victim of domestic or sexual
2 violence describing such victim's need for leave to address the ongoing
3 effects of domestic or sexual violence; or

4 2. any documentation of the domestic or sexual violence, including
5 police reports, court records, statements from a shelter worker, law
6 enforcement officer, medical worker, counselor, clergy member, attorney
7 or any other professional from whom the employee has sought assistance
8 to address the domestic or sexual violence and its effects; or

9 3. any other corroborating evidence including physical evidence,
10 photographs, or statements from other individuals who are aware of the
11 domestic or sexual violence and its effects.

12 § 696-e. Confidentiality. Any information provided to the employer,
13 including but not limited to information under section six hundred nine-
14 ty-six-d of this article, describing the domestic or sexual violence in
15 the employee's life and the request to take a leave to address the
16 effects of domestic or sexual violence, shall be kept confidential by
17 the employer. Disclosure shall only be allowed if the employee, in
18 writing, consents to or requests disclosure.

19 § 696-f. Restoration to position. 1. Any employee who takes leave
20 under section six hundred ninety-six-a of this article, shall be enti-
21 tled to return from such leave and be restored to the same position held
22 by such employee when the leave began or be restored to an equivalent
23 position with equivalent benefits, pay and other terms and conditions of
24 employment.

25 2. The taking of leave under section six hundred ninety-six-a of this
26 article shall not result in the loss of any employment benefits accrued
27 prior to the date on which the leave began.

28 3. (a) Except as provided in subdivision two of this section, any
29 employee who takes leave under section six hundred ninety-six-a of this
30 article shall be entitled to continued coverage under any health care
31 benefits plan provided by such person's employer for the duration of the
32 leave.

33 (b) The employer may recover the premium that the employer paid for
34 maintaining coverage under a health benefits plan for the employee enti-
35 tled to leave under section six hundred ninety-six-a of this article,
36 if:

37 (i) the employee fails to return to such person's employment once the
38 leave has expired; and

39 (ii) the employee fails to return to work for a reason other than:

40 (A) the continuation, recurrence, or onset of domestic or sexual
41 violence that entitles the employee to leave pursuant to this section;
42 or

43 (B) other circumstances beyond the control of the employee.

44 § 696-g. Prohibited acts. 1. Interference with rights.

45 (a) Exercise of rights. It shall be unlawful for any employer to
46 interfere with, restrain, or deny the exercise of or the attempt to
47 exercise any right provided under this article.

48 (b) Employer discrimination. It shall be unlawful for any employer to
49 discharge or harass any individual, or otherwise discriminate against
50 any individual with respect to compensation, terms, conditions, or priv-
51 ileges of employment of the individual (including retaliation in any
52 form or manner) because the individual exercised any right provided
53 under this article or opposed any practice made unlawful by this arti-
54 cle.

55 2. Interference with proceedings or inquiries. It shall be unlawful
56 for any person to discharge or in any other manner discriminate (as

1 described in paragraph (b) of subdivision one of this section) against
2 any individual because such individual:

3 (a) has filed any charge, or has instituted or caused to be instituted
4 any proceeding, under or related to this article;

5 (b) has given, or is about to give, any information in connection with
6 any inquiry or proceeding relating to any right provided under this
7 article; or

8 (c) has testified, or is about to testify, in any inquiry or proceed-
9 ing relating to any right provided under this article.

10 § 696-h. Civil action. 1. By employee. Any person denied leave or
11 benefits due under this article or aggrieved by an action made unlawful
12 by this article shall have a cause of action in any court of appropriate
13 jurisdiction for damages, including any wages, salary, employment bene-
14 fits or other compensation denied or lost to such individual by reasons
15 of the violation and/or any actual monetary losses sustained by the
16 individual as a direct result of the violation, as well as interest on
17 such amount calculated at the prevailing rate, and such equitable relief
18 as may be appropriate, including employment, reinstatement, and
19 promotion, together with costs and such reasonable attorneys' fees as
20 may be allowed by the court, and if the violation was willful, an addi-
21 tional amount as liquidated damages equal to twenty-five percent of the
22 total of such damages found to be due.

23 2. By commissioner. On behalf of any employee denied leave or benefits
24 due under this article or aggrieved by an action made unlawful by this
25 article, the industrial commissioner may bring a legal action necessary
26 to collect damages due to the violation, and the employer shall be
27 required to pay such damages and if such violation was willful, an addi-
28 tional amount as liquidated damages equal to twenty-five percent of the
29 total of such damages found to be due.

30 3. Limitation of time. Notwithstanding any other provision of law, an
31 action to recover upon liability imposed by this article must be
32 commenced within two years.

33 § 696-i. Savings clause. If any provision of this article or the
34 application thereof to any person, employer, occupation or circumstance
35 is held invalid, the remainder of the article and the application of
36 such provision to other persons, employees, occupations, or circum-
37 stances shall not be affected thereby.

38 § 2. This act shall take effect on the ninetieth day after it shall
39 have become a law.