

SENATE No. 673

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act to establish employment leave and safety remedies to victims of domestic violence, stalking, and sexual assault..

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 149 of the General Laws, as appearing in the 2006 Official Edition,
2 is hereby amended by inserting the following section:-Section 52E. (1)(a) An employer shall
3 allow an employee to take up to fifteen days of leave from work in any twelve month period,
4 with or without pay, if the employee, or a family member of the employee, including persons in a
5 substantive dating or engagement relationship who reside together in the same household, is a
6 victim of domestic violence as defined in section 1 of chapter 151A, a victim of stalking as
7 defined in section 43 of chapter 265, or a victim of sexual assault. For the purposes of this
8 section, sexual assault shall include any one of the following: indecent assault and battery on a
9 child under 14 under section 13B of chapter 265, indecent assault and battery on a mentally
10 retarded person under the first paragraph of section 13F of chapter 265, indecent assault and
11 battery on a person who has attained the age of 14 under section 13H of chapter 265, rape under
12 section 22 of chapter 265; rape of a child under 16 with force under section 22A of chapter 265;
13 rape and abuse of a child under section 23 of chapter 265; assault with intent to commit rape
14 under section 24 of chapter 265; assault of a child under 16 with intent to commit rape under

15 section 24B of chapter 265; kidnapping a child under the age of 16 under section 26 of chapter
16 265; drugging persons for sexual intercourse under section 3 of chapter 272; unnatural and
17 lascivious acts with a child under 16 under section 35A of said chapter 272. This section shall
18 only apply if an employee is using the leave from work to address issues arising from the
19 domestic violence, stalking, or sexual assault in order to seek or obtain a court order of
20 protection, medical attention, counseling, victim services, legal assistance, secure housing, or to
21 appear in court as a witness, attend child custody proceedings, consult with a district attorney or
22 other law enforcement official, or other issues directly related to the domestic violence, stalking
23 or sexual assault. (b) The provisions of this section shall only apply to employers who employ
24 fifty or more employees. The employer shall notify all employees of their rights, including those
25 related to confidentiality, under this section. (2)(a) Except in cases of imminent danger to the
26 health or safety of the employee, an employee seeking leave from work pursuant to this section
27 shall provide his or her employer with the appropriate advance notice of such leave as may be
28 required by the employer's policy. When an unscheduled absence occurs, the employer may not
29 take any action against the employee if the employee, within a reasonable period after the
30 absence, provides certification under subsection (b). (b) The employer may require the
31 employee to provide certification to the employer that the employee or the employee's family
32 member is a victim of domestic violence, stalking, or sexual assault and that the leave is for one
33 of the purposes enumerated in subsection 1(a); provided that in no circumstances shall it be
34 necessary for the employee to show evidence of a conviction of the underlying offense. The
35 employee shall provide such certification to the employer within a reasonable period after the
36 employer requests certification. An employee may satisfy the certification requirement of this
37 section by providing one of the following for review by the employer: (1) a restraining order or

38 other documentation of equitable relief issued by a court of competent jurisdiction; (2) a police
39 record documenting the domestic violence, stalking or sexual assault; (3) documentation that the
40 perpetrator of the domestic violence has been convicted of 1 or more of the offenses enumerated
41 in chapter 265 where the victim was a family or household member; (4) medical documentation
42 of the domestic violence, stalking, or sexual assault; (5) a statement provided by a counselor,
43 social worker, health worker, member of the clergy, shelter worker, legal advocate or other
44 professional who has assisted the individual in addressing the effects of the domestic violence,
45 stalking or sexual assault on the individual or the individual's family; or (6) a sworn statement
46 from the individual attesting to the domestic violence, stalking or sexual assault. A listing of any
47 evidence provided to the employer may be maintained by the employer in the employee's
48 employment record. However, in no instance shall any other document or copies of documents
49 used to demonstrate eligibility for leave under this section remain in the possession of the
50 employer beyond the period needed for the employer to make an eligibility determination. (c) All
51 information related to the employee's leave pursuant to this section shall be kept confidential by
52 the employer, and shall not be disclosed, except to the extent that disclosure is: (i) Requested or
53 consented to, in writing, by the employee; (ii) Otherwise required by applicable federal or state
54 law. (d) An employee seeking leave pursuant to this section, prior to receiving such leave, shall
55 exhaust any and all annual or vacation leave, personal leave, and sick leave, if applicable, that
56 may be available to the employee, unless the employer waives this requirement. (3)(a) It shall be
57 unlawful for any employer to coerce, interfere with, restrain, or deny the exercise of or any
58 attempt to exercise any rights provided under this section. Provided further, that employers may
59 not make the leave contingent upon whether or not the victim maintains contact with the alleged
60 abuser.

61 (b) It shall be unlawful for any employer to discharge or in any other manner discriminate
62 against any individual for exercising his or her rights under this section. The taking of leave
63 under this section shall not result in the loss of any employment benefit accrued prior to the date
64 on which the leave commenced. Upon the employee's return from leave, the employee shall be
65 entitled to restoration to the employee's original job or to an equivalent position.

66 (4) Any person claiming to be aggrieved by a violation of this section may file a civil
67 action against the employer to enforce the provisions under this section. Such person may seek
68 appropriate relief, including but not limited to restoration to his original job or to an equivalent
69 position. In addition, such person may seek and be granted damages including all wages and
70 benefits that would have been due to the person, including reasonable attorney fees and costs.

71 SECTION 2. The Violence Prevention Program Director of the Commonwealth shall, in
72 consultation with Associated Industries of Massachusetts, Jane Doe, Inc, and Employers Against
73 Domestic Violence, share and develop model workplace safety policy, training curriculum and
74 workplace safety procedures and protocols for employers in order to increase awareness,
75 minimize workplace risks, and help employers properly respond to employees who disclose
76 domestic violence, stalking, and sexual assault in the workplace. Training delivery resources,
77 including a strategic training delivery plan will be developed by Jane Doe, Inc, and the
78 Commonwealth's Violence Prevention Program.