

Special Leave for Employees Facing Situations of Domestic or Gender Violence and Similar Situations

On August 1, 2019, Law No. 83-2019 was enacted for employers to provide an unpaid leave of absence for public and private employees who face situations of domestic or gender-based violence; child abuse; sexual harassment in the workplace; sexual assault; or lewd or stalking acts. This leave is for a maximum of 15 working days per year that are neither cumulative nor transferable to the next calendar year and must be scheduled by agreement between the employer and the employee. The leave may be used to seek assistance to deal with and resolve risks to which employees or their family members are exposed; obtain a protective court order; seek legal assistance; find a safe living space; attend the hospital or medical appointments, and the like.

Request for Leave

Employees must apply for leave at least two days before the first absence. In case of imminent danger to their health or safety, they can notify the absence in no more than two business days after the first absence. The employee, a family member or professional, duly authorized by any reliable means of communication, can notify the absence.

The employee may also request a reasonable accommodation or flexible working conditions that would allow him or her to address the situation. Such accommodation will be agreed upon considering the employees' tasks and responsibilities and in accordance with the provisions of our legal system. The request for accommodation must be in writing and will only be denied when it is not reasonable and after all possible accommodation alternatives for the employee have been evaluated.

Eligibility Requirements

Employees eligible for this leave of absence are those who meet **all** the following requirements:

- Have suffered, or have a family member who has suffered, from domestic or gender-based violence, child abuse, sexual harassment in employment, sexual assault, lewd or stalking acts as grave offenses;
- The employee uses the leave to address the situations described above; **and**,
- The employee did not cause the situation.

Required Documentation

The employee must provide certain documentation within two working days after the last absence under this leave. This documentation must show the time (days and hours) spent to address any of the situations mentioned above. Documents may include, but are not limited to: protective order; a sworn statement; a document under the letterhead of the court, public or private agency who assisted the employee or family member; complaint or police report; medical treatment documentation; a certification by a social worker, health professional, religious leader, shelter manager, legal representative or other duly qualified professional who assisted the employee or family member with the domestic or gender-based violence.

Employer's Duties

- Grant leave to qualifying employees
- Keep all information and documentation confidential, with certain exceptions
- Reserve the employee's position and reinstate the employee once he has exhausted the days granted by the license
- Counsel all employees about their right to use this leave

Prohibitions and Penalties

Days used per this leave of absence cannot be considered to issue unfavorable employee evaluations, discriminate or take any adverse employment action. Employers who fail to comply with the law shall be subject to an administrative fine of \$250.00 up to a maximum of \$5,000.00 and may face claims for damages at various forums from the affected employee.

This document has been prepared for information purposes only and is not intended, and should not be relied upon, as legal advice. If you have any questions or wish to obtain more information related thereto, or about its possible effect(s) on policy or operational matters, please contact us at your convenience.

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