

PART VI. VICTIMS PROTECTIONS

Note

Part heading amended by L 2011, c 206, §3(1).

[A.] General Provisions

Note

Section 378-71 designated as Subpart A by L 2011, c 206, §3(2).

[\$378-71] Definitions. As used in this part:

"Child" means an individual who is a biological, adopted, or foster son or daughter; a stepchild; or a legal ward of an employee.

"Course of conduct" means acts over any period of time of repeatedly maintaining a visual or physical proximity to a person or conveying verbal or written threats, including threats conveyed through electronic communications or threats implied by conduct.

"Domestic abuse" means conduct defined in section 586-1.

"Domestic or sexual violence" means domestic abuse, sexual assault, or stalking.

"Electronic communications" includes communications via telephone, mobile phone, computer, e-mail, video recorder, fax machine, telex, or pager.

"Employee" means a person who performs services for hire for not fewer than six consecutive months for the employer from whom benefits are sought under this chapter.

"Health care provider" means a physician as defined under section 386-1.

"Sexual assault" means any conduct proscribed by chapter 707, part V.

"Stalking" means engaging in a course of conduct directed at a specifically targeted person that would cause a reasonable person to suffer substantial emotional distress or to fear bodily injury, sexual assault, or death to the person or to the person's spouse, parent, child, or any other person who regularly resides in the person's household, and where the conduct does cause the targeted person to have such distress or fear.

"Victim services organization" includes:

(1) A nonprofit, nongovernmental organization that provides assistance to victims of domestic or sexual violence or to advocates for such victims, including a rape crisis center;

(2) An organization operating a shelter or providing professional counseling services; or

(3) An organization providing assistance through the legal process. [L 2003, c 60, pt of §2]

[B.] Victims Leave

Note

Sections 378-72 to 378-74 designated as Subpart B by L 2011, c 206, §3(3).

[§378-72] Leave of absence for domestic or sexual violence. (a) An employer employing fifty or more employees shall allow an employee to take up to thirty days of unpaid victim leave from work per calendar year, or an employer employing not more than forty-nine employees shall allow an employee to take up to five days of unpaid leave from work per calendar year, if the employee or the employee's minor child is a victim of domestic or sexual violence; provided the leave is to either:

(1) Seek medical attention for the employee or employee's minor child to recover from physical or psychological injury or disability caused by domestic or sexual violence;

(2) Obtain services from a victim services organization;

(3) Obtain psychological or other counseling;

(4) Temporarily or permanently relocate; or

(5) Take legal action, including preparing for or participating in any civil or criminal legal proceeding related to or resulting from the domestic or sexual violence, or other actions to enhance the physical, psychological, or economic health or safety of the employee or the employee's minor child or to enhance the safety of those who associate with or work with the employee.

(b) An employee's absence from work that is due to or resulting from domestic abuse or sexual violence against the employee or the employee's minor child as provided in this section shall be considered by an employer to be a justification for leave for a reasonable period of time, not to exceed the total number of days allocable for each category of employer under subsection (a).

"Reasonable period of time" as used in this section means:

(1) Where due to physical or psychological injury to or disability to the employee or employee's minor child, the period of time determined to be necessary by the attending health care provider, considering the condition of the employee or employee's minor child, and the job requirements; and

(2) Where due to an employee's need to take legal or other actions, including preparing for or participating in any civil or criminal legal proceeding, obtaining services from a victim services organization, or permanently or temporarily relocating, the period of time necessary to complete the activity as determined by the employee's or employee's minor child's attorney or advocate, court, or personnel of the relevant victim services organization.

(c) Where an employee is a victim of domestic or sexual violence and seeks leave for medical attention to recover from physical or psychological injury or disability caused by domestic or sexual violence, the employer may request that the employee provide:

(1) A certificate from a health care provider estimating the number of leave days necessary and the estimated commencement and termination dates of leave required by the employee; and

(2) Prior to the employee's return, a medical certificate from the employee's attending health care provider attesting to the employee's condition and approving the employee's return to work.

(d) Where an employee has taken not more than five calendar days of leave for non-medical reasons, the employee shall provide certification to the employer in the form of a signed statement within a reasonable period after the employer's request, that the employee or the employee's minor child is a victim of domestic or sexual violence and the leave is for one of the purposes enumerated in subsection (a). If the leave exceeds five days per calendar year, then the certification shall be provided by one of the following methods:

(1) A signed written statement from an employee, agent, or volunteer of a victim services organization, from the employee's attorney or advocate, from a minor child's attorney or advocate, or a medical or other professional from whom the employee or the employee's minor child has sought assistance related to the domestic or sexual violence; or

(2) A police or court record related to the domestic or sexual violence.

(e) If certification is required, no leave shall be protected until a certification, as provided in this section, is provided to the employer.

(f) The employee shall provide the employer with reasonable notice of the employee's intention to take the leave, unless providing that notice is not practicable due to imminent danger to the employee or the employee's minor child.

(g) Nothing in this section shall be construed to prohibit an employer from requiring an employee on victim leave to report not less than once a week to the employer on the status of the employee and intention of the employee to return to work.

(h) Upon return from leave under this section, the employee shall return to the employee's original job or to a position of comparable status and pay, without loss of accumulated service credits and privileges, except that nothing in this subsection shall be construed to entitle any restored employee to the accrual of:

(1) Any seniority or employment benefits during any period of leave, unless the seniority or benefits would be provided to a similarly situated employee who was on leave due to a reason other than domestic or sexual violence; or

(2) Any right, benefit, or position of employment to which the employee would not have otherwise been entitled.

(i) All information provided to the employer under this section, including statements of the employee, or any other documentation, record, or corroborating evidence, and the fact that the employee or employee's minor child has been a victim of domestic or sexual violence or the employee has requested leave pursuant to this section, shall be maintained in the strictest confidence by the employer, and shall not be disclosed, except to the extent that disclosure is:

(1) Requested or consented to by the employee;

(2) Ordered by a court or administrative agency; or

(3) Otherwise required by applicable federal or state law.

(j) Any employee denied leave by an employer in wilful violation of this section may file a civil action against the employer to enforce this section and recover costs, including reasonable attorney's fees, incurred in the civil action. [L 2003, c 60, pt of §2]

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[§378-73] Relationship to other leaves. If an employee is entitled to take paid or unpaid leave pursuant to other federal, state, or county law, or pursuant to an employment agreement, a collective bargaining agreement, or an employment benefits program or plan, which may be used for the purposes listed under section 378-72(a), the employee shall exhaust such other paid and unpaid leave benefits before victim leave benefits under this chapter may be applied. The combination of such other paid or unpaid leave benefits that may be applied and victim leave benefits shall not exceed the maximum number of days specified under section 378-72(a). [L 2003, c 60, pt of §2]

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[\$378-74] Effect on employment and collective bargaining agreements; benefits. Nothing in this part shall be construed to supersede any provision of any employment agreement, collective bargaining agreement, or employment benefits program or plan that provides greater benefits or rights than those benefits or rights established under section 378-72. [L 2003, c 60, pt of §2]

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[C.] Reasonable Accommodations in the Workplace

[§378-81] Reasonable accommodations. [(a)] An employer shall make reasonable accommodations in the workplace for an employee who is a victim of domestic or sexual violence, including:

- (1) Changing the contact information, such as telephone numbers, fax numbers, or electronic-mail addresses, of the employee;
- (2) Screening the telephone calls of the employee;
- (3) Restructuring the job functions of the employee;
- (4) Changing the work location of the employee;
- (5) Installing locks and other security devices; and
- (6) Allowing the employee to work flexible hours;

provided that an employer shall not be required to make the reasonable accommodations if they cause undue hardship on the work operations of the employer.

(b) Prior to making the reasonable accommodations under this section, an employer may verify that an employee is a victim of domestic or sexual violence as provided in section 378-2(b).

(c) As used in this section, "undue hardship" means an action requiring significant difficulty or expense on the operation of an employer, when considered in light of the following factors:

- (1) The nature and cost of the reasonable accommodation needed under this section;
- (2) The overall financial resources of the employer; the number of employees of the employer; and the number, type, and placement of the work locations of an employer; and
- (3) The type of operation of the employer, including the composition, structure, and functions of the workforce of the employer, the geographic separateness of the victim's work location from the employer, and the administrative or fiscal relationship of the work location to the employer. [L 2011, c 206, pt of §3(4)]