

City of Philadelphia



(Bill No. 080468-A)

AN ORDINANCE

Amending Section 9-1103 of The Philadelphia Code, entitled “Unlawful Employment Practices,” and enacting a new Chapter 9-3200, entitled “Entitlement To Leave Due To Domestic Or Sexual Violence,” to provide that certain employees may take unpaid leave from work to address domestic or sexual violence; all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Section 9-1103 of The Philadelphia Code is hereby amended to read as follows:

§ 9-1103. Unlawful Employment Practices.

(A) It shall be an unlawful employment practice:

* * *

(6) *For any employer, employment agency or labor organization to violate any provision of Chapter 9-3200 of The Philadelphia Code, entitled “Entitlement To Leave Due To Domestic Or Sexual Violence.”*

[(6)](7)

* * *

[(7)](8)

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SECTION 2. A new Chapter 9-3200 of The Philadelphia Code, entitled “Entitlement To Leave Due To Domestic Or Sexual Violence,” is hereby enacted, to read as follows:

CHAPTER 9-3200. ENTITLEMENT TO LEAVE DUE TO DOMESTIC OR SEXUAL VIOLENCE.

§9-3201. *Definitions.*

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(1) *"Domestic or sexual violence" means domestic violence, sexual assault, or stalking.*

(2) *"Domestic violence" means the acts enumerated in the definition of "abuse" in 23 Pa.C.S. §6102(a).*

(3) *"Family or household members" means spouses or persons who have been spouses, persons living as spouses or who lived as spouses, parents and children, other persons related by consanguinity or affinity, current or former sexual or intimate partners, persons who share biological parenthood or "Life Partners" as that term is defined in §9-1102(p) of the Philadelphia Code.*

(4) *"Reduced work schedule" means a work schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee.*

(5) *"Repeatedly" means on 2 or more occasions.*

(6) *"Sexual assault" means any conduct enumerated in 18 Pa.C.S. §§ 3121 (relating to rape), 4302 (relating to incest), 6312 (relating to sexual abuse of children), 6318 (relating to unlawful contact with minor), 6320 (relating to sexual exploitation of children), 3122.1 (relating to statutory sexual assault), 3123 (relating to involuntary deviate sexual intercourse), 3124.1 (relating to sexual assault), 3125 (relating to aggravated indecent assault) and 3126 (related to indecent assault).*

(7) *"Stalking" means any conduct enumerated in 18 Pa.C.S. § 2709.1.*

(8) *"Victim" or "survivor" means an individual who has been subjected to domestic or sexual violence.*

(9) *"Victim services organization" means 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, an organization carrying out a domestic violence program, an organization operating a shelter or providing counseling services, or a legal services organization or other organization providing assistance through the legal process.*

§9-3202. Leave requirement.

(1) *Basis. An employee who is a victim of domestic or sexual violence or has a family or household member who is a victim of domestic or sexual violence whose interests are not adverse to the employee as it relates to the domestic or sexual violence may take unpaid leave from work to address domestic or sexual violence by:*

(a) *seeking medical attention for, or recovering from, physical or psychological injuries caused by domestic or sexual violence to the employee or the employee's family or household member;*

(b) *obtaining services from a victim services organization for the employee or the employee's family or household member;*

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(c) obtaining psychological or other counseling for the employee or the employee's family or household member;

(d) participating in safety planning, temporarily or permanently relocating, or taking other actions to increase the safety of the employee or the employee's family or household member from future domestic or sexual violence or ensure economic security; or

(e) seeking legal assistance or remedies to ensure the health and safety of the employee or the employee's family or household member, including preparing for or participating in any civil or criminal legal proceeding related to or derived from domestic or sexual violence.

(2) Period. Subject to §9-3203, an employee shall be entitled to a total of:

(a) 8 workweeks of leave during any 12-month period from an employer who employs 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year; or

(b) 4 workweeks of leave during any 12-month period from an employer who employs less than 50 employees for each working day during each of 33 or more calendar workweeks in the current and preceding calendar year.

This Chapter does not create a right for an employee to take unpaid leave that exceeds the unpaid leave time allowed under, or is in addition to the unpaid leave time permitted by, the federal Family and Medical Leave Act of 1993 (29 U.S.C. 2601 et seq.). If an employee who is entitled to 8 weeks of unpaid leave under this Chapter has taken more than four weeks of unpaid FMLA leave within the past twelve months, that employee's entitlement to unpaid leave under this Chapter shall be reduced until the sum of the previously taken unpaid leave and the entitlement to leave under this Chapter does not exceed a total of twelve weeks of unpaid leave.

If an employee who is entitled to 4 weeks of unpaid leave under this Chapter has taken more than eight weeks of unpaid leave within the past twelve months, that employee's entitlement to unpaid leave under this Chapter shall be reduced until the sum of the previously taken unpaid leave and the entitlement to leave under this Chapter does not exceed a total of twelve weeks of unpaid leave.

(3) Schedule. Leave described in paragraph (1) may be taken intermittently or on a reduced work schedule.

§9-3203. Notice.

The employee shall provide the employer with at least 48 hours' advance notice of the employee's intention to take the leave, unless providing such notice is not practicable. When an unscheduled absence occurs, the employer may not take any action against the employee if the employee, within a reasonable period after the absence, provides certification under §9-3204.

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§9-3204. Certification.

(1) In general. The employer may require the employee to provide certification to the employer that:

(a) the employee or the employee's family or household member is a victim of domestic or sexual violence; and

(b) the leave is for one of the purposes enumerated in §9-3202(1).

The employee shall provide such certification to the employer within a reasonable period after the employer requests certification.

(2) Contents.

An employee may satisfy the certification requirement of paragraph (1) by providing to the employer a sworn statement of the employee along with at least one of the following described documents which corroborate the employee's certification:

(a) documentation from an employee, agent, or volunteer of a victim services organization, an attorney, a member of the clergy, or a medical or other professional from whom the employee or the employee's family or household member has sought assistance in addressing domestic or sexual violence or the effects of the violence; or

(b) a police or court record; or

(c) other corroborating evidence.

§9-3205. Confidentiality.

All information provided to the employer pursuant to the terms of this Chapter, including a statement of the employee or any other documentation, record, or corroborating evidence, and the fact that the employee has requested or obtained leave pursuant to this Chapter, shall be retained in the strictest confidence by the employer, except to the extent that disclosure is:

(1) requested or consented to in writing by the employee; or

(2) otherwise required by applicable federal, state or local law.

§9-3206. Employment and benefits.

(1) Restoration to position.

(a) In general. Any employee who takes leave under this Chapter for the intended purpose of the leave shall be entitled, on return from such leave:

(i) to be restored by the employer to the position of employment held by the employee when the leave commenced; or

(ii) to be restored to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.

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(b) Loss of benefits. The taking of leave under this Chapter shall not result in the loss of any employment benefit accrued prior to the date on which the leave commenced.

(c) Limitations. Nothing in this subsection shall be construed to entitle any restored employee to:

(i) the accrual of any seniority or employment benefits during any period of leave; or

(ii) any right, benefit, or position of employment other than any right, benefit, or position to which the employee would have been entitled had the employee not taken the leave.

(d) Construction. Nothing in this Chapter shall be construed to prohibit an employer from requiring an employee on leave under this Chapter to report periodically to the employer on the status and intention of the employee to return to work.

(2) Maintenance of health benefits.

(a) Coverage. Except as provided in subparagraph (b), during any period that an employee takes leave under this Chapter, the employer shall maintain coverage for the employee and any family or household member under any group health plan for the duration of such leave at the level and under the conditions coverage would have been provided if the employee had continued in employment continuously for the duration of such leave.

(b) Failure to return from leave. The employer may recover the premium that the employer paid for maintaining coverage for the employee and the employee's family or household member under such group health plan during any period of leave under this Chapter if:

(i) the employee fails to return from leave under this Chapter after the period of leave to which the employee is entitled has expired; and

(ii) the employee fails to return to work for a reason other than the continuation, recurrence, or onset of domestic or sexual violence that entitles the employee to leave pursuant to this Chapter.

(c) Certification.

(i) Issuance. An employer may require an employee who claims that the employee is unable to return to work because of a reason described in subparagraph (b)(ii) to provide, within a reasonable period after making the claim, certification to the employer that the employee is unable to return to work because of that reason.

(ii) Contents. An employee may satisfy the certification requirement of clause (i) by providing to the employer:

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(I) documentation from an employee, agent, or volunteer of a victim services organization, an attorney, a member of the clergy, or a medical or other professional from whom the employee has sought assistance in addressing domestic or sexual violence or the effects of that violence;

(II) a police or court record; or

(III) other corroborating evidence.

§9-3207. 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 Chapter.

(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:

(i) exercised any right provided under this Chapter; or

(ii) opposed any practice made unlawful by this Chapter.

(2) Interference with proceedings or inquiries. It shall be unlawful for any person to discharge or in any other manner discriminate (as described in subparagraph (b) of paragraph (1)) against any individual because such individual:

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

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

(c) has testified, or is about to testify, in any inquiry or proceeding relating to any right provided under this Chapter.

§9-3208. Existing leave usable for addressing domestic or sexual violence.

An employee who is entitled to take paid or unpaid leave (including family, medical, sick, annual, personal, or similar leave) from employment, pursuant to federal, state, or local law, a collective bargaining agreement, or an employment benefits program or plan, may elect to substitute any period of such leave for an equivalent period of leave provided under §9-3202. If an employee exercises his or her rights to substitute other categories of leave time under this Section, the amount of such substituted leave taken by said employee shall be subtracted from the leave time said employee is entitled to under §9-3202.

§9-3209. Notification

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Every employer in the City shall post and keep posted, in conspicuous places on the premises of the employer where notices to employees are customarily posted, a notice, to be prepared or approved by the Philadelphia Human Relations Commission, summarizing the requirements of this Chapter and information pertaining to the filing of a charge. The Philadelphia Human Relations Commission shall furnish copies of summaries and rules to employers upon request without charge and shall publish these documents on the City's official website.

§9-3210. Effect on other laws and employment benefits

(a) More protective laws, agreements, programs and plans

Nothing in this Chapter shall be construed to supersede any provision of any federal, state, or local law, collective bargaining agreement, or employment benefits program or plan that provides:

(1) greater leave benefits for victims of domestic or sexual violence than the rights established under this Chapter; or

(2) leave benefits for a larger population of victims of domestic or sexual violence (as defined in such law, agreement, program or plan) than the victims of domestic or sexual violence covered under this Chapter.

(b) Less protective laws, agreements, programs and plans

The rights established for employees who are victims of domestic or sexual violence and employees with a family or household member who is a victim of domestic or sexual violence under this Chapter shall not be diminished by any federal, state or local law, collective bargaining agreement or employment benefits program or plan.

SECTION 3. Effective Date. This Ordinance shall take effect sixty days after becoming law and the provisions of this Ordinance shall expire one year after this Ordinance takes effect.

Explanation:

[brackets] indicate matter deleted
Italics indicate new matter added

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CERTIFICATION: This is a true and correct copy of the original Bill, Passed by the City Council on October 23, 2008. The Bill was Signed by the Mayor on November 5, 2008.

A handwritten signature in black ink, reading "Patricia Rafferty". The signature is written in a cursive style with a large, stylized "P" and "R".

Patricia Rafferty
Chief Clerk of the City Council