

Puerto Rico Enacts Leave for Victims of Domestic Violence, Sexual Harassment and Assault

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Employees in Puerto Rico may take up to 15 days of unpaid leave each calendar year to address situations related to domestic or gender-based violence, child abuse, sexual harassment in employment, sexual assault, lewd acts, or felony stalking under a new law. The new “Special Leave” is in addition to any other leave to which the employee might be entitled under law.

The victim need not file a police report to be entitled to take Special Leave. The perpetrator of the abusive conduct is not entitled to take leave under the new law.

Outgoing Puerto Rico Governor Ricardo Rosselló announced the new law, which went into effect immediately, on the day he broadcasted his controversial resignation.

Leave for Association with a Victim of Abuse

Employees may take Special Leave when the victims are their family members. Covered family members include:

- Children;
- Spouses;
- Partners united by an affective relationship;
- Parents; and
- Minors, persons of advanced age, or with disabilities over which the employee has custody or guardianship.

Use of Leave

Among other reasons, an employee may use Special Leave to:

- Seek advice and obtain a restraining order or court order;
- Seek and obtain legal assistance; and
- Seek and obtain safe housing or space in a shelter.

Leave time may be taken on a fractioned or intermittent basis.

The employee is not entitled to carryover unused leave from prior years.

Supporting Documentation

An employer may request supporting documentation detailing the time spent by the employee addressing the situation needing Special Leave. The employee must provide the documentation within a reasonable period, but no later than two business days after the employee’s last absence under the Special Leave. Employers may not require evidence of a conviction or arrest as a condition of use.

The law provides the following examples of documents an employee may submit:

1. A restraining order

2. Documentation under the letterhead of a court, agency, public or private service provider that assisted in an incident of abuse
3. A police report
4. Documentation evidencing the offender's conduct
5. Documentation of medical treatment received by the employee or family member as a result of the abuse
6. Certification by a therapist, certified counselor, religious leader, shelter director, attorney, or other qualified professional who assisted the employee or family member as a result of the abuse
7. A sworn statement provided by another employee who witnessed the abuse to the employee or family member
8. Any other document that credibly reflects that the employee was making arrangements for themselves or a family member victim of abuse

Reasonable Accommodation

Employees may request reasonable accommodation or flexible work conditions to address an abuse situation. Examples of accommodations include change of work location, modification of tasks assigned to the employee, change in working times, or others that allow the employee to obtain the necessary assistance to address the situation.

Any request must be in writing and may be denied only if it is "unreasonable" and only after evaluating all the possible accommodation for the employee.

Notification of Need for Special Leave

Generally, an employee must provide at least two business days' notice, unless the circumstances do not permit earlier notification. Notice may be provided by the employee, family, therapist, certified counselor, religious leader, shelter director, attorney, or other qualified professional who has assisted the employee or family member as a result of the abuse. Notice may be provided by fax, in person, by email, in writing, or any other reliable method of communication.

Job Protection

Employees have a right under the law to be restored to their employment when the Special Leave has been exhausted.

Failure to provide reinstatement entitles the employee to a claim for back pay and damages.

Confidentiality

Documents submitted or created in relation to the Special Leave must be kept confidential. However, the law provides an exception for responding to a subpoena or request from a government entity. Any documentation submitted by the employee must be filed in the employee's personnel file under seal.

Enforcement, Regulations

The Puerto Rico Department of Labor and the Office of Solicitor of Women have the authority to enforce the new law. They also are tasked with preparing regulations within 90 days.

Jackson Lewis attorneys are available to answer inquiries regarding this new law and assist employers in achieving compliance with its requirements.

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