

Legislation Text

File #: 090660-A, **Version:** 2

Amending Bill No. 080468-A (approved November 5, 2008), entitled “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,” by making various technical amendments and by repealing the sunset provision.

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] *Violence*, *Sexual [Violence]Assault, or Stalking.*”

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

CHAPTER 9-3200. ENTITLEMENT TO LEAVE DUE TO DOMESTIC [OR] *VIOLENCE*, SEXUAL
[*VIOLENCE*]ASSAULT, OR STALKING.

§9-3201. Definitions.

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

[(2)](1) "Domestic violence" means [the acts enumerated in the definition of “abuse” in 23 Pa.C.S. §6102(a).] *the occurrence of one or more of the following acts between family or household members, sexual or intimate partners or persons who share biological parenthood:*

(a) Attempting to cause or intentionally, knowingly or recklessly causing bodily injury, serious bodily injury, rape, involuntary deviate sexual intercourse, sexual assault, statutory sexual assault, aggravated indecent assault, indecent assault or incest, with or without a deadly weapon.

(b) *Placing another in reasonable fear of imminent serious bodily injury.*

(c) *The infliction of false imprisonment pursuant to 18 Pa. C.S. § 2903 (relating to false imprisonment).*

(d) *Physically or sexually abusing minor children, including sexual abuse as defined at 23 Pa. C.S. § 6303.*

(e) *Stalking (as defined in § 9-3201(7)).*

(2) *“Employer” means an individual, co-partnership, association, corporation, governmental body or unit or agency, or any other entity, who or that employs one or more persons on a salary, wage, commission or other compensation basis.*

* * *

(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 (relat[ed]ing to indecent assault).*

(7) *“Stalking” means [any conduct enumerated in 18 Pa.C.S. § 2709.1.]either:*

(a) engaging in a course of conduct or repeatedly committing acts toward another person, including following the person without proper authority, under circumstances which demonstrate either an intent to place such other person in reasonable fear of bodily injury or to cause substantial emotional distress to such other person; or

(b) engaging in a course of conduct or repeatedly communicating to another person under circumstances which demonstrate or communicate either an intent to place such other person in reasonable fear of bodily injury or to cause substantial emotional distress to such other person.

(8) *“Victim” or “survivor” means an individual who has been subjected to domestic violence,[or] sexual [violence]assault, or stalking.*

(9) *“Victim services organization” means a nonprofit, nongovernmental organization that provides assistance to victims of domestic violence,[or] sexual [violence]assault, or stalking 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 violence,[or] sexual [violence]assault, or stalking or has a family or household member who is a victim of domestic violence,[or] sexual [violence]assault, or stalking whose interests are not adverse to the employee as it relates to the domestic violence,[or] sexual [violence]assault, or stalking may take unpaid leave from work to address domestic violence,[or] sexual*

[violence] *assault, or stalking* by:

(a) seeking medical attention for, or recovering from, physical or psychological injuries caused by domestic *violence*, [or] sexual [violence] *assault, or stalking* 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;

(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 *violence*, [or] sexual [violence] *assault, or stalking* 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 *violence*, [or] sexual [violence] *assault, or stalking*.

(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] *forty five (45) days* after [the absence] *the employer requests certification*, provides *such* certification under §9-3204.

§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 violence,[or] sexual [violence]assault, or stalking; 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] *forty five (45) days* 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 violence,[or] sexual [violence] assault, or stalking or the effects of the violence; or

(b) a police or court record; or

(c) other corroborating evidence.

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§9-3206. Employment and benefits.

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(2) Maintenance of health benefits.

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(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 violence,[or] sexual [violence]assault, or stalking 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] *forty five (45) days* 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:

(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 *violence*,[or] sexual [violence]*assault, or stalking* or the effects of that violence;

* * *

§9-3208. Existing leave usable for addressing domestic *violence*,[or] sexual [violence]*assault, or stalking*.

* * *

§9-3209. Notification

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 *and on the employer's public and internal websites, if such exist, in locations where employment related notices are customarily posted online*, a notice, to be prepared or approved by the [Philadelphia Human Relations Commission] *Philadelphia Commission on Human Relations*, summarizing the requirements of this Chapter and information pertaining to the filing of a charge. *The notice shall include the contact information of organizations which provide free assistance to victims of domestic violence, sexual assault or stalking, and shall encourage employees to seek assistance from such organizations in complying with the terms of this Chapter.* The [Philadelphia Human Relations Commission] *Philadelphia Commission on Human Relations* 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 *violence*,[or] sexual [violence]*assault, or stalking* than the rights established under this Chapter; or

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

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

The rights established for employees who are victims of domestic *violence*,[or] sexual [violence]*assault, or stalking* and employees with a family or household member who is a victim of domestic *violence*,[or] sexual [violence]*assault, or stalking* 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. Section 3 of Bill No. 080468-A (approved November 5, 2008) is hereby amended as follows (deletions in ~~striketrough~~):

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.~~