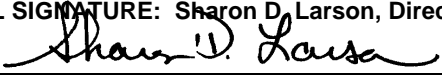




Department of Management Services
 Division of Human Resource Management

POLICY CLARIFICATION

STATUTORY/RULE REFERENCE NUMBER: <i>Section 741.313, Unlawful action against employees seeking protection, Florida Statutes (F.S.)</i>	TRACKING NUMBER: 2007-#005
SUBJECT: <i>Use of Leave for Victims of Domestic or Sexual Violence</i>	
APPROVAL SIGNATURE: Sharon D. Larson, Director 	DATE: August 30, 2007 Rev. July 25, 2008

Issue:

The following pertains to passage of Chapters 2007-107 (Committee Substitute for House Bill 55) and 2007-108 (House Bill 63), Laws of Florida, which create and amend s. 741.313, F.S., dealing with issues related to domestic violence and to passage of Chapter 2008-253 (House Bill 489), which amends s. 741.313, F.S., to also include issues related to sexual violence.

Definitions:

Domestic violence - As defined in s. 741.28(2), F.S., means any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member, or any crime the underlying factual basis of which has been found by a court to include an act of domestic violence.

Employee - As defined in s. 440.02(15), F.S., means any person who receives remuneration from an employer for the performance of any work or service while engaged in any employment under any appointment or contract for hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed, and includes, but is not limited to, aliens and minors. See statute for complete definition.

Employer - As defined in s. 440.02(16), F.S., means the state and all political subdivisions thereof, all public and quasi-public corporations therein, every person carrying on any employment, and the legal representative of a deceased person or the receiver or trustees of any person. "Employer" also includes employment agencies, employee leasing companies, and similar agents who provide employees to other persons.

Family or household member - As defined in s. 741.28(3), F.S., means spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit.

Sexual Violence – As defined in s. 784.046, F.S., means sexual battery, a lewd or lascivious act committed on or in the presence of a person under the age of 16, luring or enticing a child,

any forcible felony wherein a sexual act is committed or attempted, or any crime the underlying factual basis of which has been found by a court to include an act of sexual violence.

Victim – As defined in s. 741.313(1)(f), F.S., means an individual who has been subjected to domestic violence or sexual violence.

Background:

The 2008 Legislature passed House Bill 489 which amends s. 741.313, F.S. (created in 2007), to include leave rights for victims of sexual violence in addition to the rights already provided for victims of domestic violence. Section 741.313, F.S., as amended, now defines certain terms (see definitions section of this document); requires certain employers to permit certain employees to take leave from work to undertake activities resulting from an act of domestic violence or sexual violence; specifies the activities for which employees may take leave; requires the employee to notify the employer of the leave; providing exceptions; requires that employers keep an employee's leave information confidential; and prohibits employers from taking certain actions against employees for exercising rights specified in the statute.

This statute now stipulates the following: any person who is either the victim of domestic violence or sexual violence or has reasonable cause to believe he or she is in imminent danger of becoming the victim of any act of domestic violence or sexual violence may take up to three working days of leave in any 12 month period under certain conditions. (While Florida law previously prohibited dismissing from employment any person who testified in a judicial proceeding in response to a subpoena, it did not provide to victims of domestic violence or sexual violence the much broader protections contained in this legislation).

Employers with 50 or more employees are required to allow employees who have been employed for at least 3 months to use three working days of leave with or without pay within a 12-month period if the employee or a family or household member of the employee is the victim of domestic violence or sexual violence and the leave is sought to:

1. seek an injunction for protection against domestic violence or sexual violence;
2. obtain medical care or mental health counseling, or both, for the employee or a family or household member to address physical or psychological injuries resulting from the act of domestic violence or sexual violence;
3. obtain services from a victim-services organization;
4. make the employee's home secure or to seek new housing; or
5. seek legal assistance to address issues arising from the act of domestic violence or sexual violence and to attend and prepare for court-related proceedings arising from the act of domestic violence or sexual violence.

Employees are required to provide advance notice of the leave (except in cases of imminent danger) and use all available annual or vacation leave, personal leave, and sick leave prior to using the leave provided for in this statute (unless this requirement is waived by the employer).

Employers are authorized to require documentation of the act of domestic violence or sexual violence, required to keep information relating to the employee's leave confidential, and

prohibited from taking any disciplinary action against the employee for exercising rights provided for in s. 741.313, F.S. The remedy for damages to an employee aggrieved under the statute is limited to a civil suit for damages or equitable relief in the circuit court.

In addition, subsection 741.313(7), F.S., provides that personal identifying information contained in records documenting an act of domestic violence or sexual violence and submitted to an agency by an agency employee in order to obtain leave are exempt from public records, as defined in Chapter 119, F.S. Such information, if publicly available, could expose the victim of domestic violence or sexual violence to public humiliation and shame and could inhibit that victim from availing himself or herself of the relief provided under s. 741.313, F.S.

Written requests for leave submitted by an agency employee who is a victim of domestic violence or sexual violence and any agency time sheet that reflects such requests are also exempt from public records. If that information were publicly available, it could be used by the partner or former partner of the victim to determine the schedule and location of the employee who is the victim of domestic or sexual violence. The employee's request for leave is exempt from disclosure only temporarily and such record is available twelve months after the leave has been taken, thereby providing continued public oversight of public funds.

Question 1:

What is the State Personnel System policy regarding the granting of up to 3 work days of leave to employees for absences related to domestic violence or sexual violence?

Answer:

The State Personnel System will not require that an employee exhaust accrued leave prior to requesting up to three days of leave for issues relating to domestic violence or sexual violence. The employee may use accrued annual leave or, where appropriate, sick leave, in accordance with the provisions of Chapter 60L-34, Florida Administrative Code. Additionally, the employee may request use of any accrued regular or special compensatory leave to cover such absences. In cases where the employee has already exhausted accrued leave, then the employee shall be granted authorized leave without pay.

Question 2:

The legislation specifies 3 work days of leave in any 12 month period. Is the 12 month period based on a calendar year, a fiscal year or a rolling year?

Answer:

The legislation specifies that an employee may take up to 3 work days in any 12 month period. For the purposes of administering this leave and for consistency with State Personnel System policies related to the Family Medical Leave Act (FMLA), leave granted to employees dealing with domestic violence or sexual violence issues will be on a rolling 12 month period.

Question 3:

Does the legislation entitle an employee to 3 work days of leave in any 12 month period for dealing with issues relating to victims of domestic violence and an additional 3 work days of leave in any 12 month period for dealing with issues relating to victims of sexual violence for a total of 6 work days of leave in any 12 month period?

Answer:

No. The legislation requires an employer to grant 3 work days of leave in any 12 month period for employees dealing with domestic violence or sexual violence issues, regardless of whether the employee or their family or household member is a victim of both domestic violence and sexual violence. However, this does not preclude an employer from approving additional leave for victims of domestic violence or sexual violence in accordance with Chapter 60L-34, F.A.C.

Question 4:

Are the number of hours in the workday equal for all full-time employees (i.e. 8 hours = a single workday) or are the number of hours available to the employee based on the employee's flexible schedule?

Answer:

By definition, the workday of an employee on an approved flexible work schedule deviates from the standard eight hours. Therefore, for payroll administration purposes, the State Personnel System (in collaboration with the agencies and the Bureau of State Payrolls) adopted the policy that the total number of hours an employee is expected to work in a pay period (in order to receive full pay) is based on the flexible work schedule for which the employee is approved.

Therefore, the number of accrued leave hours that are to be charged in association with domestic violence or sexual violence will depend on the number of hours normally worked on the specific days that the employee takes the leave.

Consequently, employees on an approved flexible work schedule (for example, employees who work four 10 hour days) may use more than the standard 8 hour per day allotment. However, regardless of the number of hours in any approved flexible work schedule, the maximum number of days that an employee may use leave for matters relating to domestic violence or sexual violence shall not exceed 3 work days in a rolling 12 month period.

Question 5:

Since it may not be necessary for an employee to utilize a full day's absence in order to attend to matters related to domestic violence or sexual violence, may the employee use leave in increments of less than a full workday?

Answer:

Yes, provided the use of such leave does not exceed 3 work days in any rolling 12 month period. Employees on a flexible schedule would be granted leave based on the longest workday in their flexible schedule.

For example:

1. An employee working a standard 8 hour workday, five days per week would be granted a maximum of 24 hours of leave in order to attend to matters related to domestic violence or sexual violence.
2. An employee working four 9 hour days and one 4 hour day would be granted a maximum of 27 hours of leave in order to attend to matters related to domestic violence or sexual violence.
3. An employee working four 10 hour days would be granted a maximum of 30 hours of leave in order to attend to matters related to domestic violence or sexual violence.

Question 6:

The legislation allows that employers may request “sufficient documentation of the act of domestic violence or sexual violence”. What is considered sufficient documentation?

Answer:

It is recommended that agencies develop internal policies with regard as to what type of documentation is considered sufficient for the purposes of granting any type of leave for domestic or sexual violence. Examples of sufficient documentation include, but are not limited to, police reports, medical verification, court papers, subpoena, injunction for protection, etc.