

## Final Regulations Issued on the Washington Domestic Violence Leave Act

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On July 6, 2010, the Washington Department of Labor & Industries (DLI) issued its final regulations on the 2008 Washington Domestic Violence Leave Act (DVLA). While these regulations track the requirements in the DVLA and do not impose additional obligations, they serve as a good opportunity for healthcare employers to review their policies and procedures for responding to leave requests under the DVLA.

The DVLA requires that all employers provide an employee with unpaid leave for certain purposes when the employee is the victim, or has a family member who is

a victim, of domestic violence, sexual assault, or stalking. The term "family member" includes a child, spouse, parent, parent-in-law, grandparent, or person with whom the employee is in a dating relationship.

An employee can take leave under the DVLA for only the following purposes, if they are related to incidents of domestic violence, sexual assault, or stalking: (1) seeking legal or police assistance, or preparing for or participating in a civil or criminal legal proceeding, to ensure the health and safety of the employee or the employee's family member; (2) seeking treat-

ment or participating in a family member's treatment for physical or mental injuries; (3) obtaining or assisting a family member to obtain services of a domestic violence shelter, rape crisis clinic, or other social services program; (4) obtaining or assisting a family member to obtain mental health counseling; and (5) participating in safety planning, relocation, or other safety-related actions.

In order to request leave, an employee must give notice of the request in accordance with the employer's policies or, in an emergency situation, no later than the close of business on the first day of leave. The employer has the right to require an employee to verify the reasons for leave by producing: (1) a police report; (2) a protective order or similar court order; (3) documentation from a victim's advocate, attorney, member of the clergy, or medical professional; or (4) the employee's written statement. Verification of family status can be made by a statement from the employee, a birth certificate, a court document, or similar documentation. An employee must produce the verification to his or her employer in "a timely manner." Other than providing requested verification, the employee is not required to provide any additional

information about the circumstances of the need for leave. The employer must keep the verification and all other related information confidential.

Although leave under the DVLA is unpaid, employees do have the right to utilize any available sick leave, compensatory time, vacation, or any other paid time off during DVLA leave. DVLA leave can be full time, intermittent, or on a reduced work schedule. The allowed duration of the leave is somewhat vague; the law states only that the time off must be "reasonable" under the circumstances. Besides this "reasonable" standard, there is no explicit maximum amount of time for DVLA leave. It is advisable for employers to tread carefully and to perhaps consult with an attorney before demanding that an employee end his or her leave and return to work.

Upon the conclusion of an employee's leave, the employer must restore the employee to his or her former position or an equivalent position. The DVLA is very clear that an employer may not discharge, threaten to discharge, demote, harass, or otherwise discriminate against an employee because of the employee's exercise of his or her rights under the DVLA.

In order to ensure compliance with the DVLA, employers should implement policies and procedures that contain the following guidelines: (1) a form for an employee's notice of a leave request; (2) the employer's administration of an employee's leave, including intermittent or reduced-schedule leave; (3) the employer's maintenance of the confidentiality of information that the employee provides to verify the purposes of the leave; (4) the

employer's continued provision of health benefits coverage for employees on leave; (5) and the employer's responsibility to restore the employee to his or her previous job or equivalent position. Additionally, all supervisors should receive training on how to proceed when an employee indicates that he or she has an issue of domestic violence for which the employee might need leave. Finally, employers that have not already done

so should make sure that they have revised their employee handbooks to include information on DVLA rights, and have posted the most recent DLI poster, which includes information on DVLA as well as other employee rights.

By creating and following these policies, employers can decrease their chances of incurring fines for DVLA violations, which are up to \$500 for the first infraction and up to \$1,000 for each subse-



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quent infraction committed within three years of a previous infraction. Based on these penalties, it certainly pays to be prepared!

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