

SENATE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Ms. Creem

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act to establish employment leave and safety remedies to victims of domestic violence, stalking, and sexual assault.

PETITION OF:

NAME:

Ms. Creem

DISTRICT/ADDRESS:

First Middlesex and Norfolk

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. S02528 OF 2007-2008.]

The Commonwealth of Massachusetts

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In the Year Two Thousand and Nine
—————

AN ACT TO ESTABLISH EMPLOYMENT LEAVE AND SAFETY REMEDIES TO VICTIMS OF
DOMESTIC VIOLENCE, STALKING, AND SEXUAL ASSAULT.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority
of the same, as follows:*

1 **SECTION 1.**Chapter 149 of the General Laws, as appearing in the 2006 Official Edition, is
2 hereby amended by inserting the following section:-

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4 Section 52E. (1)(a) An employer shall allow an employee to take up to fifteen days of leave
5 from work in any twelve month period, with or without pay, if the employee, or a family member
6 of the employee, including persons in a substantive dating or engagement relationship who reside
7 together in the same household, is a victim of domestic violence as defined in section 1 of
8 chapter 151A, a victim of stalking as defined in section 43 of chapter 265, or a victim of sexual
9 assault. For the purposes of this section, sexual assault shall include any one of the following:
10 indecent assault and battery on a child under 14 under section 13B of chapter 265, indecent
11 assault and battery on a mentally retarded person under the first paragraph of section 13F of
12 chapter 265, indecent assault and battery on a person who has attained the age of 14 under
13 section 13H of chapter 265, rape under section 22 of chapter 265; rape of a child under 16 with
14 force under section 22A of chapter 265; rape and abuse of a child under section 23 of chapter
15 265; assault with intent to commit rape under section 24 of chapter 265; assault of a child under
16 16 with intent to commit rape under section 24B of chapter 265; kidnapping a child under the
17 age of 16 under section 26 of chapter 265; drugging persons for sexual intercourse under section
18 3 of chapter 272; unnatural and lascivious acts with a child under 16 under section 35A of said
19 chapter 272.

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21 This section shall only apply if an employee is using the leave from work to address issues
22 arising from the domestic violence, stalking, or sexual assault in order to seek or obtain a court

23 order of protection, medical attention, counseling, victim services, legal assistance, secure
24 housing, or to appear in court as a witness, attend child custody proceedings, consult with a
25 district attorney or other law enforcement official, or other issues directly related to the domestic
26 violence, stalking or sexual assault.

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28 (b) The provisions of this section shall only apply to employers who employ fifty or more
29 employees. The employer shall notify all employees of their rights, including those related to
30 confidentiality, under this section.

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32 (2)(a) Except in cases of imminent danger to the health or safety of the employee, an employee
33 seeking leave from work pursuant to this section shall provide his or her employer with the
34 appropriate advance notice of such leave as may be required by the employer's policy. When an
35 unscheduled absence occurs, the employer may not take any action against the employee if the
36 employee, within a reasonable period after the absence, provides certification under subsection
37 (b).

38
39 (b) The employer may require the employee to provide certification to the employer that the
40 employee or the employee's family member is a victim of domestic violence, stalking, or sexual
41 assault and that the leave is for one of the purposes enumerated in subsection 1(a); provided that
42 in no circumstances shall it be necessary for the employee to show evidence of a conviction of
43 the underlying offense. The employee shall provide such certification to the employer within a
44 reasonable period after the employer requests certification. An employee may satisfy the
45 certification requirement of this section by providing one of the following for review by the
46 employer:

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48 (1) a restraining order or other documentation of equitable relief issued by a court of competent
49 jurisdiction; (2) a police record documenting the domestic violence, stalking or sexual assault;
50 (3) documentation that the perpetrator of the domestic violence has been convicted of 1 or more
51 of the offenses enumerated in chapter 265 where the victim was a family or household member;
52 (4) medical documentation of the domestic violence, stalking, or sexual assault; (5) a statement
53 provided by a counselor, social worker, health worker, member of the clergy, shelter worker,
54 legal advocate or other professional who has assisted the individual in addressing the effects of
55 the domestic violence, stalking or sexual assault on the individual or the individual's family; or
56 (6) a sworn statement from the individual attesting to the domestic violence, stalking or sexual
57 assault.

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59 A listing of any evidence provided to the employer may be maintained by the employer in the
60 employee's employment record. However, in no instance shall any other document or copies of
61 documents used to demonstrate eligibility for leave under this section remain in the possession of
62 the employer beyond the period needed for the employer to make an eligibility determination.

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64 (c) All information related to the employee's leave pursuant to this section shall be kept
65 confidential by the employer, and shall not be disclosed, except to the extent that disclosure is:

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67 (i) Requested or consented to, in writing, by the employee;

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69 (ii) Otherwise required by applicable federal or state law.
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71 (d) An employee seeking leave pursuant to this section, prior to receiving such leave, shall
72 exhaust any and all annual or vacation leave, personal leave, and sick leave, if applicable, that
73 may be available to the employee, unless the employer waives this requirement.
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75 (3)(a) It shall be unlawful for any employer to coerce, interfere with, restrain, or deny the
76 exercise of or any attempt to exercise any rights provided under this section. Provided further,
77 that employers may not make the leave contingent upon whether or not the victim maintains
78 contact with the alleged abuser.

79 (b) It shall be unlawful for any employer to discharge or in any other manner discriminate
80 against any individual for exercising his or her rights under this section. The taking of leave
81 under this section shall not result in the loss of any employment benefit accrued prior to the date
82 on which the leave commenced. Upon the employee's return from leave, the employee shall be
83 entitled to restoration to the employee's original job or to an equivalent position.

84 (4) Any person claiming to be aggrieved by a violation of this section may file a civil action
85 against the employer to enforce the provisions under this section. Such person may seek
86 appropriate relief, including but not limited to restoration to his original job or to an equivalent
87 position. In addition, such person may seek and be granted damages including all wages and
88 benefits that would have been due to the person, including reasonable attorney fees and costs.
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90 **SECTION 2.** The Violence Prevention Program Director of the Commonwealth shall, in
91 consultation with Associated Industries of Massachusetts, Jane Doe, Inc, and Employers Against
92 Domestic Violence, share and develop model workplace safety policy, training curriculum and
93 workplace safety procedures and protocols for employers in order to increase awareness,
94 minimize workplace risks, and help employers properly respond to employees who disclose
95 domestic violence, stalking, and sexual assault in the workplace. Training delivery resources,
96 including a strategic training delivery plan will be developed by Jane Doe, Inc, and the
97 Commonwealth's Violence Prevention Program.