

SENATE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Steven A. Tolman

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 protect social workers from work related injuries.

PETITION OF:

NAME:

Steven A. Tolman

DISTRICT/ADDRESS:

Second Suffolk and Middlesex

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. S01103 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT TO PROTECT SOCIAL WORKERS FROM WORK RELATED INJURIES.

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

18
19 This section shall only apply if an employee is using the leave from work to address issues arising from
20 the domestic violence, stalking, or sexual assault in order to seek or obtain a court order of protection,
21 medical attention, counseling, victim services, legal assistance, secure housing, or to appear in court as a

22 witness, attend child custody proceedings, consult with a district attorney or other law enforcement
23 official, or other issues directly related to the domestic violence, stalking or sexual assault.

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

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

34

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

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

52

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

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

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

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63 (ii) Otherwise required by applicable federal or state law.

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65 (d) An employee seeking leave pursuant to this section, prior to receiving such leave, shall exhaust any
66 and all annual or vacation leave, personal leave, and sick leave, if applicable, that may be available to
67 the employee, unless the employer waives this requirement.

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69 (3)(a) It shall be unlawful for any employer to coerce, interfere with, restrain, or deny the exercise of or
70 any attempt to exercise any rights provided under this section. Provided further, that employers may
71 not make the leave contingent upon whether or not the victim maintains contact with the alleged
72 abuser.

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

78 (4) Any person claiming to be aggrieved by a violation of this section may file a civil action against the
79 employer to enforce the provisions under this section. Such person may seek appropriate relief,
80 including but not limited to restoration to his original job or to an equivalent position. In addition, such
81 person may seek and be granted damages including all wages and benefits that would have been due to
82 the person, including reasonable attorney fees and costs.

83

84 **SECTION 2.** The Violence Prevention Program Director of the Commonwealth shall, in consultation with
85 Associated Industries of Massachusetts, Jane Doe, Inc, and Employers Against Domestic Violence, share
86 and develop model workplace safety policy, training curriculum and workplace safety procedures and
87 protocols for employers in order to increase awareness, minimize workplace risks, and help employers
88 properly respond to employees who disclose domestic violence, stalking, and sexual assault in the
89 workplace. Training delivery resources, including a strategic training delivery plan will be developed by
90 Jane Doe, Inc, and the Commonwealth's Violence Prevention Program.