

## Leave for Domestic Violence, Sexual Assault or Stalking

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### PURPOSE

Effective April 1, 2008, under Washington State Law, employees who are victims or who are family members of victims of domestic violence, sexual assault or stalking may take a reasonable period of leave to receive medical treatment, attend legal proceedings, or address safety concerns. The Executive Policy "Domestic Violence in the Workplace", PER-18-5-2 (AEP) (September 10, 2006) also provides for leave as a means of providing assistance to an employee who is a victim of domestic violence. This Human Resources Bulletin provides guidance on how to administer the leave.

### DEFINITIONS

"Dating relationship" means a social relationship of a romantic nature. Factors that the court may consider in making this determination include: (a) The length of time the relationship has existed; (b) the nature of the relationship; and (c) the frequency of interaction between the parties.

"Domestic violence" means: (a) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members; (b) sexual assault of one family or household member by another; or (c) stalking of one family or household member by another family or household member.

"Employee" means an employee who is employed in the business of the employee's employer whether by way of manual labor or otherwise.

"Family member" means any individual whose relationship to employee can be classified as a child, spouse, parent, parent-in-law, grandparent, or person with whom the employee has dating relationship.

"Intermittent leave" means leave taken in separate blocks of time due to a single qualifying reason.

"Reasonable period of leave" *is not defined* (consult human resources professional).

"Reduced leave schedule" means a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee.

"Sexual assault" means one or more of the following:

- (a) Rape or rape of a child;
- (b) Assault with intent to commit rape or rape of a child;
- (c) Incest or indecent liberties;
- (d) Child molestation;
- (e) Sexual misconduct with a minor;
- (f) Custodial sexual misconduct;
- (g) Crimes with a sexual motivation; or
- (h) An attempt to commit any of the aforementioned offenses.

“Stalking” means that a person without lawful authority and under circumstances not amounting to a felony attempt of another crime:

- (a) He or she intentionally and repeatedly harasses or repeatedly follows another person; and
- (b) The person being harassed or followed is placed in fear that the stalker intends to injure the person, another person, or property of the person or of another person. The feeling of fear must be one that a reasonable person in the same situation would experience under all the circumstances; and
- (c) The stalker either:
  - (i) Intends to frighten, intimidate, or harass the person; or
  - (ii) Knows or reasonably should know that the person is afraid, intimidated, or harassed even if the stalker did not intend to place the person in fear or intimidate or harass the person.

## **PROCEDURES**

### ***Employee must give notice:***

An employee who needs leave due to domestic violence, sexual assault or stalking must provide advance notice consistent with the work unit’s usual leave request process. Where advance notice cannot be given because of an emergency or unforeseen circumstance, the employee must notify the employer before the end of the first day of leave.

### ***Manager/supervisor may grant leave to provide the employee assistance:***

In accordance with Executive Policy “Domestic Violence in the Workplace”, PER-18-5-2 (AEP) (September 10, 2006), if a manager or supervisor becomes aware that an employee is a victim of domestic violence, the manager may grant accrued or unpaid leave as one method of providing the employee assistance.

### ***Leave is paid or unpaid:***

The employee may elect to use sick leave, other paid time off, compensatory time, or unpaid leave time. The leave is in addition to rights provided by state and federal law. The leave would run consecutive to leave provided under the federal Family Medical Leave Act and the state Washington Family Leave Act but concurrent with the King County Family Medical Leave Ordinance.

### ***Reasons for leave:***

An employee may take such leave for a number of purposes including to:

- Obtain treatment for physical or mental injuries, or attend such treatment with a family member;
- Obtain mental health counseling;
- Obtain services from a domestic violence shelter, rape crisis center, or other social services program or assist a family member in obtaining such services;
- Obtain legal or law enforcement assistance to ensure the health and safety of the employee or family members, including time off to prepare for or participate in related legal proceedings; or
- Participate in creating a safety plan; temporarily or permanently relocate; or take other actions to increase the safety of the employee or employee’s family members from future domestic violence, sexual assault, or stalking.

***The verification may be requested:***

The county may require verification that the employee or family member is a victim of domestic violence, sexual assault, or stalking, and that the leave is being taken for one of the noted. However, they may not request the details or information that would compromise the safety of the employee or family member. Verification must be provided in a timely manner and, in the event that verification cannot be provided in advance because of an emergency or unforeseen circumstance, it may be provided within a reasonable time period during or after the leave. The verification may include:

- A police report indicating the employee or employee's family member was a victim of domestic violence, sexual assault, or stalking;
- A court order protecting or separating the employee or employee's family member from the perpetrator of the act of domestic violence, sexual assault, or stalking;
- Documentation that the employee or employee's family member is a victim of domestic violence, sexual assault, or stalking from a domestic violence advocate, attorney, member of the clergy or a medical or other professional; or
- An employee's own written statement that the employee or employee's family member is a victim of domestic violence, sexual assault, or stalking.

The county may require verification of the family relationship. The employee must provide the verification in a timely manner. What is timely will be based upon what is reasonable under the circumstances. The verification may include:

- a statement from the employee,
- a birth certificate,
- a court document, or
- other similar documentation.

***Benefits continue:***

While the employee is on leave, the employer must maintain health insurance for the employee. That is the case even if the employee chooses unpaid leave and is in an unpaid status for any period of time.

***Other rights:***

The county must keep the matter confidential, including the fact that the employee requested leave.

The county may not "discharge, threaten to discharge, demote, deny a promotion to, sanction, discipline, retaliate against, harass, or otherwise discriminate against an employee with respect to compensation, terms, conditions, or privileges of employment" because the employee took leave, filed a complaint that the employer violated the leave law, or assisted another employee in exercising rights under the new law.

After the leave period ends, generally, the county employee must be restored to the same position held by the employee when the leave commenced or to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment. Restoration does not apply if the employee was hired for a specific term or only to perform work on a discrete project, the employment term or project is over and the employer would not otherwise have continued to employ the employee.

***Employer sanctions for violations:***

Where the Washington State Department of Labor and Industries find violations of an employer's obligations under the law, it may assess administrative penalties of \$500 for the first infraction and \$1,000 for a subsequent infraction within three years of a previous infraction. It can also order that the employee be restored to his or her former or an equivalent position. The employee also has the right to file suit for violations of an employer's obligations under the law and may request as a remedy actual damages and attorney's fees.

**QUESTIONS/COMMENTS**

Refer all questions or comments via e-mail to Human Resources Division Operations.

In the event that any provision of this Human Resources Bulletin conflicts with an applicable provision of a collective bargaining agreement or binding past practices thereunder, the latter shall prevail.

The effect of the provisions of this Human Resources Bulletin confers no new privilege, right of appeal, for any King County employee, contract worker or volunteer. This Human Resources Bulletin does not constitute an express or implied contract. It provides general guidance that cannot form the basis of a private right of action.