

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Judiciary Committee

BILL: CS/CS/SB 498

INTRODUCER: Judiciary Committee, Commerce and Consumer Services Committee, and Senator Aronberg

SUBJECT: Domestic Violence

DATE: April 21, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sanford</u>	<u>Whiddon</u>	<u>CF</u>	<u>Fav/2 amendments</u>
2.	<u>Gordon</u>	<u>Cooper</u>	<u>CM</u>	<u>Fav/CS</u>
3.	<u>Luczynski</u>	<u>Maclure</u>	<u>JU</u>	<u>Fav/CS</u>
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill requires employers to allow employees to request or take up to three working days of leave, with or without pay, within a 90-day period if the employee is the victim of domestic violence and the leave is sought to:

- Seek an injunction for protection against domestic violence or an injunction for protection in cases of repeat violence, dating violence, or sexual violence;
- 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;
- Obtain services from a victim-services organization, including, but not limited to, a domestic violence shelter, program, or a rape crisis center as a result of the act of domestic violence;
- Make the employee's home secure from the perpetrator of the domestic violence or to seek new housing to escape the perpetrator; or
- Seek legal assistance to address issues arising from the act of domestic violence and to attend and prepare for court-related proceedings arising from the act of domestic violence.

The bill also defines "employer" as the term is defined in s. 440.02(16)(a), F.S., of the Workers' Compensation Law, a definition which encompasses both public and private employers.

Application of the bill is limited to employers with 50 or more employees and to employees who have been employed by the employer for at least 12 months. The employee is required to provide

advance notice of the leave except in cases of imminent danger to the employee or the employee's family. The employer is authorized to require documentation of the act of domestic violence. The employee must use all available annual or vacation leave, personal leave, and sick leave available to the employee prior to using the leave provided for in this bill, unless this requirement is waived by the employer.

The employer is required to keep all information relating to the employee's leave under this section confidential. The employer is prohibited from taking any disciplinary action against the employee for exercising rights under this bill, but the employee is not granted any greater rights under the bill to continued employment or other benefits not available outside the provisions of the bill.

The remedy for damages to an employee aggrieved under the bill is limited to a civil suit for damages or equitable relief in the circuit court. The employee may claim as damages all wages and benefits that would have been due the person up to and including the date of judgment had the act violating this bill not occurred, but the employee is not relieved from the obligation to mitigate damages.

This bill creates section 741.313, Florida Statutes.

II. Present Situation:

Overview

Nationally, more than 1.5 million adults are victims of domestic violence each year, and more than 85 percent of the victims are women.¹ This same source estimates that U.S. employers lose between \$3 billion and \$13 billion each year as a result of domestic violence when lost productivity of victims and the cost of training replacement employees are taken into consideration.²

Six states (California, Colorado, Hawaii, Illinois, Maine, and North Carolina) have to date enacted legislation giving domestic violence victims specific job protections.³

After years of steady increases in domestic violence numbers, the total number of reported domestic violence offenses⁴ reported to law enforcement agencies in Florida declined slightly in 1998, and has continued the same slight decline through 2004, according to the Florida Department of Law Enforcement (FDLE).⁵

¹ Margaret Graham Tebo, *When Home Comes to Work*, ABA Journal, Sept. 2005, at 42 (citing statistics from Legal Momentum, an advocacy and research organization based in New York City).

² *Id.* at 44.

³ *Id.*

⁴ Domestic violence crimes include murder, manslaughter, forcible rape, forcible sodomy, forcible fondling, aggravated assault, aggravated stalking (1996-present), simple assault, simple stalking (1996-present), threat/intimidation, and arson (1992-1995). See Fla. Statistical Analysis Ctr., Fla. Dep't of Law Enforcement, *Crime in Florida, Florida uniform crime report: Total Domestic Violence, 1992 – 2004*, at http://www.fdle.state.fl.us/FSAC/Crime_Trends/domestic_violence/index.asp (last visited Apr. 11, 2006).

⁵ FDLE reports a total of 131,152 domestic violence crimes in 1995 and 119,772 in 2004. The rate of incidence has fallen from 926.9 to 683.8 per 100,000 of population during the same time period. Fla. Statistical Analysis Ctr., Fla. Dep't of Law

Domestic Violence: Employment Issues

The Federal Family and Medical Leave Act of 1993 (FMLA),⁶ while not specifically directed to domestic violence, requires employers to grant up to 12 weeks of unpaid leave during any 12-month period for specified family and medical needs. The U.S. Office of Personnel Management has suggested that this act, which affects any employer with more than 50 employees which is engaged in commerce or any activity affecting commerce, is available to employees who suffer from the effects of physical or emotional abuse, either of themselves or their children, which require medical attention.⁷

In 1996, the Governor and Cabinet of Florida developed a model policy on Domestic Violence in the Workplace. It was described as “a standard to which agencies may look for guidance and policy development,”⁸ but left to each agency the flexibility to address individual agency needs. The policy included a provision that directed that:

The agency shall grant leave with or without pay, adjust schedules or work assignments, as appropriate, for employees who are victims of domestic violence to include time off for medical and legal assistance, court appearances, counseling, relocation, or to make other necessary arrangements to provide for victim safety.⁹

The Florida Department of Management Services has provided by rule¹⁰ that executive agencies must approve parental or family medical leave to assist employees in meeting family needs, specifically allowing leave to be granted for up to six months for a family member’s serious health condition¹¹ as defined in the FMLA. Additionally, agencies are required to approve up to 30 days family leave for “non-medical family responsibilities,” which would appear to be broad enough to include domestic violence-related issues. If the employee is granted such leave, the employee may request to use accrued leave credits. If the employee does not so request, the agency may place the employee on leave without pay.

At least one executive agency, the Department of Children and Families (DCF), has in place an operating policy that addresses employees who are victims of domestic violence. In regard to the use of leave time, this policy provides:

Enforcement, *Crime in Florida, Florida uniform crime report: Total Domestic Violence, 1992 – 2004*, at http://www.fdle.state.fl.us/FSAC/Crime_Trends/domestic_violence/index.asp (last visited Apr. 11, 2006).

⁶ Family and Medical Leave Act of 1993, Pub. L. No. 103-3, 107 Stat. 6 (codified as amended at 29 U.S.C. §§ 2601-2654).

⁷ U.S. Office of Personnel Management, *Responding to Domestic Violence: Where Federal Employees Can Find Help*, http://www.opm.gov/employment_and_benefits/worklife/officialdocuments/handbooksguides/DomesticViolence_help/index.asp (last visited April 13, 2006).

⁸ *State of Florida Model Policy on Domestic Violence in the Workplace*, The Third Report of the Governor’s Task Force on Domestic and Sexual Violence (1997), p. 1.

⁹ *Id.*, paragraph (5)(E), at 177.

¹⁰ Fla. Admin. Code R. Rule 60L-34.0051 (2006).

¹¹ The FMLA defines a serious health condition as an illness, injury, impairment, or physical or mental condition that involves (1) inpatient care in a hospital, hospice, or residential medical care facility or (2) continuing treatment by a health care provider. Family and Medical Leave Act of 1993, Pub. L. No. 103-3, § 101(11), 107 Stat. 6 (codified as amended at 29 U.S.C. § 2611).

The department shall grant the use of accrued leave time or adjust an employee's work schedule or work assignment, as appropriate, for an employee who is a victim of domestic violence. This may include approved time off for medical and legal assistance, court appearances, counseling, relocation, or to make other necessary arrangements to provide for the victim's safety and the safety of any of the victim's children, if necessary.¹²

Policies have also been adopted at the county level to address these concerns. For example, the Miami-Dade County Code entitles domestic violence victims to up to 30 days of unpaid leave for medical or dental care, legal assistance, court appearances, counselor or supportive services, or any other arrangements needed because of domestic violence. The ordinance applies to leave to obtain orders of protection and for divorce, child custody, and child support hearings. The employee is required to exhaust all paid vacation and personal leave prior to taking leave under this provision. The employer may request certification from a health care provider, attorney of record, counselor, law enforcement agency, clergy, or domestic violence service provider that the employee is being subjected to domestic or repeat violence and is in need of time off for one of the permitted reasons.¹³ Miami-Dade County officials report that since the ordinance was enacted in 1999, six employees have availed themselves of its protection, for a total of 461.25 hours of unpaid leave.¹⁴

Florida law currently prohibits dismissing from employment any person who testifies in a judicial proceeding in response to a subpoena¹⁵ but provides none of the other protections enumerated in the bill to victims of domestic violence.

The Florida courts have considered at least three cases in which victims sought unemployment compensation after being dismissed from their jobs for excessive absenteeism related to domestic violence or after leaving their employment as a result of domestic violence concerns. While these three cases are not precisely on point, because they deal with unemployment compensation rather than entitlement to leave, they are illustrative of the lack of clarity in the case law regarding employees who are victims of domestic violence.

In *Wall v. Unemployment Appeals Commission*,¹⁶ the court held that the claimant's concerns for her personal safety provided good cause for leaving her employment, particularly due to robberies that occurred at the workplace while she was there. In *Gilbert v. Department of Corrections*,¹⁷ the court found that an employee whose excessive absenteeism was caused by domestic problems and by injuries received from her husband was not guilty of misconduct related to work and was thus eligible for unemployment compensation. Finally, in *Hall v. Florida Unemployment Appeals Commission*,¹⁸ the court decided that a claimant who resigned

¹² Fla. Dep't of Children & Families, CFOP No. 60-11, subpara. 1-7b.(3), at 1-6 (July 1, 2001), <http://www.dcf.state.fl.us/publications/policies/060-11c1.pdf> (last visited Apr. 11, 2006).

¹³ Miami-Dade, Fla., Code § 11A-61 (2005).

¹⁴ The Miami-Dade County Manager's Office reported that two employees used 16 hours each; two used between 50-100 hours each, and two used 100-200 hours each. One employee used the leave in 2001, two in 2002, one in 2003, and two in 2004.

¹⁵ Section 92.57, F.S.

¹⁶ 682 So. 2d 1187, 1189 (Fla. 4th DCA 1996).

¹⁷ 696 So. 2d 416, 418-19 (Fla. 1st DCA 1997).

¹⁸ 697 So. 2d 541, 543-44 (Fla. 1st DCA 1997).

her job and moved to another state, due to fear for her personal safety and to avoid a family member, was not entitled to compensation because she had voluntarily left her employment without good cause attributable to her employer.

The personnel records of public employees are currently public record, unless specifically excluded from the requirements of Florida's public records law, ch. 119, F.S.

III. Effect of Proposed Changes:

Right to Leave from Employment Related to Domestic Violence

The bill requires employers to allow employees to request or take up to three working days of leave with or without pay within a 90-day period if the employee is the victim of domestic violence and the leave is sought to:

- Seek an injunction for protection against domestic violence or an injunction for protection in cases of repeat violence, dating violence, or sexual violence;
- 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;
- Obtain services from a victim-services organization, including, but not limited to, a domestic violence shelter, program, or a rape crisis center as a result of the act of domestic violence;
- Make the employee's home secure from the perpetrator of the domestic violence or to seek new housing to escape the perpetrator; or
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Application of the bill is limited to employers with 50 or more employees and to employees who have been employed by the employer for at least 12 months. The employee is required to provide advance notice of the leave except in cases of imminent danger to the employee or the employee's family. The employer is authorized to require documentation of the act of domestic violence.

The bill defines employer as it is currently defined in s. 440.02(16)(a), F.S. That definition, which is used for the Workers' Compensation Law, includes both public and private employers.

The employee must use all available annual or vacation leave, personal leave, and sick leave available to the employee prior to using the leave provided for in this bill, unless this requirement is waived by the employer.

The employer is required to keep all information relating to the employee's leave under this section confidential. The employer is prohibited from taking any disciplinary action against the employee for exercising rights under this bill; but the employee is not granted any rights under the bill to continued employment or other benefits not available outside the provisions of the bill.

The remedy for damages to an employee aggrieved under the bill is limited to a civil suit for damages or equitable relief in the circuit court. The employee may claim as damages all wages and benefits that would have been due the person, up to and including the date of judgment, had the act violating this bill not occurred, but the employee is not relieved from the obligation to mitigate damages.

The bill provides for an effective date of July 1, 2006.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The bill requires private employers to keep confidential all information relating to an employee's leave granted under this bill. The bill also requires public employers, as encompassed by the term "agency" under s. 119.011, F.S., to keep such information confidential and exempt. However, the personnel records of a public employee is a public record unless specifically exempted from Florida's public records law. Accordingly, a companion bill, SB 1800, has been filed to provide the public records exemption needed to keep confidential the information covered by this bill in public employee personnel files.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Employers will be required to grant leave to employees, whether or not the employee has accrued sufficient paid leave to cover the absence, who are victims of domestic violence. An employer may not discharge an employee solely due to absences authorized under this bill.

C. Government Sector Impact:

Employers will be required to grant leave to employees, whether or not the employee has accrued sufficient paid leave to cover the absence, who are victims of domestic violence. However, since many state agencies may have already provided (in their personnel policies) for this leave as the result of the 1997 Model Policy, state agencies may be less affected than private employers.

There may be minimal costs of complying with the confidentiality and exemption requirements of this bill; however, these costs are indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
