

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 55 Domestic Violence
SPONSOR(S): Jobs & Entrepreneurship Council, Porth and others
TIED BILLS: HB 63 **IDEN./SIM. BILLS:** CS/SB 188

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Business Regulation</u>	<u>8 Y, 0 N</u>	<u>Livingston</u>	<u>Liepshutz</u>
2) <u>Jobs & Entrepreneurship Council</u>	<u>14 Y, 0 N, As CS</u>	<u>Livingston</u>	<u>Thorn</u>
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

Any person who is either the victim of domestic violence or has reasonable cause to believe he or she is in imminent danger of becoming the victim of any act of domestic violence may file a sworn petition for an injunction for protection against domestic violence. Florida law currently prohibits dismissing from employment any person who testifies in a judicial proceeding in response to a subpoena but does not address other protections enumerated in the CS to victims of domestic violence.

The CS requires employers with 50 or more employees to allow employees who have been employed for at least 3 months to request or take up to three working days of leave with or without pay within a 12-month period if the employee is the victim of domestic violence and the leave is sought to:

- seek an injunction for protection against domestic violence;
- obtain medical care or mental health counseling;
- obtain services from a victim-services organization;
- make the employee's home secure or to seek new housing; or
- to 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 CS requires employees to provide advance notice of the leave (except in cases of imminent danger) and 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 CS authorizes employers to require documentation of the act of domestic violence, requires employers to keep information relating to the employee's leave confidential, and prohibits employers from taking any disciplinary action against the employee for exercising rights under the bill. The CS specifies that 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.

A tied bill, HB 63, has been filed to provide the public records exemption needed to keep confidential the information covered by this bill in public employee personnel files.

Fiscal.

According to the Department of Management Services, the proposed legislation will have an indeterminate cost related to rule development and the addition of a leave code in the PeopleFirst System. The addition of the leave code to the timesheets will require the department to submit a change order request and business requirements to Convergys, who will provide a cost estimate at that time.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government - This bill requires certain employers to grant leave to employees who are victims of domestic violence for certain reasons.

B. EFFECT OF PROPOSED CHANGES:

Present situation

Any person who is either the victim of domestic violence¹ or has reasonable cause to believe he or she is in imminent danger of becoming the victim of any act of domestic violence may file a sworn petition for an injunction for protection against domestic violence.² Florida law currently prohibits dismissing from employment any person who testifies in a judicial proceeding in response to a subpoena³ but does not address other protections enumerated in the bill to victims of domestic violence.

The federal Family and Medical Leave Act of 1993 (FMLA),⁴ 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 the FMLA, 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.⁵

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," but left to each agency the flexibility to address individual agency needs.⁶ 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.⁷

The Florida Department of Management Services has provided by rule 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 condition⁸ as

¹ "Domestic violence" is defined as any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member. s. 741.28, F.S.

² s. 741.30, F.S.

³ s. 92.57, F.S.

⁴ Public Law 103-3.

⁵ *Responding to Domestic Violence: Where Federal Employees Can Find Help*, U.S. Office of Personnel Management, <http://www.opm.gov/ehs/workplac/html/domestic.html>.

⁶ *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.

⁷ *Id.*, paragraph (5)(E), at 177.

⁸ 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. See 29 CFR 825.114, http://www.dol.gov/dol/allcfr/ESA/Title_29/Part_825/29CFR825.114.htm.

defined in the FMLA.⁹ 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.¹⁰ 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.¹¹

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

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

The personnel records of “public employees” are currently public record, unless specifically excluded from the requirements of Florida’s public records law, s. 119.01, F.S.

Effect of proposed changes

The bill defines the term “domestic violence” as domestic violence, as defined in s. 741.28(2). The bill also defines the terms “family or household member,” and “victim.” The bill references current statutory definitions of “employee” and “employer” in the Workers’ Compensation Law. The definition of employer, which is used for the Workers’ Compensation Law, includes both public and private employers.

The bill requires employers to allow employees to request or take up to three working days of leave with or without pay in any 3 month 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.

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.

⁹ 60L-34.0051, FAC.

¹⁰ *Id.*

¹¹ *Id.*

¹² CFOP 60-11 (July 1, 2001), subparagraph 1-7(b)(3), at 1-6.

A private employer is required to keep all information relating to the employee's leave under this section confidential. An agency must keep such information confidential and exempt from disclosure to the extent authorized by statute. 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 a civil suit for damages and 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. However, the employee may not claim wages or benefits for a period of leave granted without pay. Additionally, employees are not relieved from the obligation to mitigate damages.

C. SECTION DIRECTORY:

Section 1. Creates s. 741.313, F.S., defining the terms "domestic violence," "family or household member," and "victim"; referencing current statutory definitions of "employee" and "employer;" requiring certain employers to permit certain employees to take leave from work to undertake activities resulting from an act of domestic violence; specifying the activities for which employees may take leave; requiring the employee to notify the employer of the leave; providing exceptions; requiring that employers keep an employee's leave information confidential; prohibiting employers from taking certain actions against employees for exercising rights specified in the bill.

Section 2. Provides an effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

D. FISCAL COMMENTS:

According to the Department of Management Services, the proposed legislation will have some indeterminate costs related to rule development and the addition of a leave code in the PeopleFirst System. The addition of the leave code to the timesheets application will require the department to submit a change order request and business requirements to Convergys, who will provide a cost estimate at that time.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None noted.

B. RULE-MAKING AUTHORITY:

NA

C. DRAFTING ISSUES OR OTHER COMMENTS:

A tied bill, HB 63, has been filed to provide the public records exemption needed to keep confidential the information covered by this bill in public employee personnel files.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 29, 2007, the Jobs & Entrepreneurship Council adopted a Council Substitute and reported the CS out of Council by a unanimous vote. The CS conforms to the Senate bill by referencing current statutory definitions of employee and employer. It provides that private employers keep information relating to the employee's leave confidential and that public employers keep such information confidential and exempt to the extent authorized by statute.