**12 DEPARTMENT OF LABOR**

**170 BUREAU OF LABOR STANDARDS**

**Chapter 10: RULES GOVERNING EMPLOYMENT LEAVE FOR VICTIMS OF VIOLENCE**

**Summary**: The purpose of this chapter is to provide definitions and procedural guidance regarding required employment leave for victims of violence, assault, domestic violence, sexual assault, or stalking.

**Section I: Application**

 These rules apply to employers of employees who are victims of violence, assault, domestic violence, sexual assault, or stalking who may need leave from employment to prepare for and attend court proceedings, receive medical treatment, or obtain other necessary services to remedy a crisis caused by domestic violence, sexual assault, or stalking.

**Section II: Definitions**

 As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

 A. "Abuse" means:

 1. Attempting to cause or causing bodily injury or offensive physical contact, including sexual assault;

 2. Attempting to place or placing another in fear of bodily injury through any course of conduct, including, but not limited to, threatening, harassing or tormenting behavior;

 3. Compelling a person by force, threat of force or intimidation to engage in conduct from which the person has a right or privilege to abstain or to abstain from conduct in which the person has a right to engage;

 4. Knowingly restricting substantially the movements of another person without that person's consent or other lawful authority by:

 a. Removing that person from that person's residence, place of business or school;

 b. Moving that person a substantial distance from the vicinity where that person was found; or

 c. Confining that person for a substantial period either in the place where the restriction commences or in a place to which that person has been moved; or

 5. Communicating to a person a threat to commit, or to cause to be committed, a crime of violence dangerous to human life against the person to whom the communication is made or another, and the natural and probable consequence of the threat, whether or not that consequence in fact occurs, is to place the person to whom the threat is communicated, or the person against whom the threat is made, in reasonable fear that the crime will be committed.

 B. "Assault" means intentionally, knowingly, or recklessly causing bodily injury or offensive contact to another.

 C. "Bureau" means the Bureau of Labor Standards, within the Department of Labor, which is assigned responsibility for the regulation and enforcement of the law and rules for the Department.

 D. "Compulsion" means the use of physical force, a threat to use physical force or a combination thereof that makes a person unable to physically repel the actor or produces in that person a reasonable fear that death, serious bodily injury or kidnapping might be imminently inflicted upon that person or another human being. "Compulsion" as defined in this paragraph places no duty upon the victim to resist the actor.

 E. "Crisis" means an environment or situation where there is a clear and immediate threat to the victim's physical or mental health.

 F. "Director" means the Director of the Bureau or Director's designee(s).

 G. "Domestic Violence" means abuse or assault by a family or household member.

 H. "Employer" means the corporation or entity that controls the employee's work assignments, including managers and supervisors with direct control of the affected employee.

 I. "Family or Household Member" means spouses or former spouses, individuals presently or formerly living together as spouses, natural parents of the same child, adult household members related by consanguinity or affinity, and individuals presently or formerly living together and individuals who are or were sexual partners.

 J. "Medical Treatment" means care necessitated by domestic violence, sexual assault, or stalking provided or prescribed by a licensed or certified medical professional, including psychiatric assistance or counseling.

 K. "Sexual Assault" means the following when the victim submits under compulsion:

 1. Any act between two persons involving direct physical contact between the genitals of one and the mouth or anus of the other, or direct physical contact between the genitals of one and the genitals of the other;

 2. Any act between a person and an animal being used by another person which act involves direct physical contact between the genitals of one and the mouth or anus of the other, or direct physical contact between the genitals of one and the genitals of the other;

 3. Any act involving direct physical contact between the genitals or anus of one and an instrument or device manipulated by another person when that act is done for the purpose of arousing or gratifying sexual desire or for the purpose of causing bodily injury or offensive physical contact; or

 4. Any touching of the genitals or anus, directly or through clothing, other than as would constitute a sexual act, for the purpose of arousing or gratifying sexual desire or for the purpose of causing bodily injury or offensive physical contact.

 A sexual assault may have occurred without allegation or proof of penetration.

 L. "Stalking" means repeatedly following the victim or being at or in the vicinity of the victim's home, school, business or place of employment without reasonable cause.

 M. "Undue hardship" means significant difficulty or expense considering the following factors:

 1. The nature and cost of the action(s) requested or required to accommodate the victim;

 2. The overall financial resources of the employer and the effect of the action(s) requested or required on expenses and resources;

 3. The number of persons employed at the establishment and the effect of the requested or required action(s) on the staffing of the establishment;

 4. The safety and health of the employees, customers, and the public and the effect of the requested or required action(s) on meeting those safety and health requirements; and

 5. The assessment of undue hardship includes the fiscal, operational, and geographic relationship of other establishments owned or operated by the employer or by any parent corporation or entity of the employer.

**Section III: Employer Requirements**

 A. An employer must grant reasonable and necessary leave from work for an employee who is a victim of violence, assault, domestic violence, sexual assault or stalking to:

 1. Prepare for and attend court proceedings;

 2. Receive medical treatment;

 3. Obtain necessary services to remedy a crisis caused by domestic violence, sexual assault, or stalking.

 B. The leave may be without pay except that an employee who has earned leave time that would otherwise be applicable to the leave requested may use this earned leave at their option.

 C. An employer may seek a modification to or deny a request if:

 1. The employer would sustain undue hardship from the employee's absence;

 2. The request for leave is not communicated to the employer within a reasonable period of time under the circumstances; or

 3. The requested leave is impractical, unreasonable, or unnecessary based on the facts then made known to the employer.

 D. An employer may not sanction or deprive an employee of pay or benefits by reason of any action taken by such employee to invoke or assist in any manner the enforcement of this chapter.

**Section IV: Employee Requirements**

 A. An employee who is a victim of violence, assault, domestic violence, sexual assault, or stalking who needs leave to address as listed in Section III A. must:

 1. Communicate the request for leave as soon as possible after learning of the need; and

 2. Provide the employer in a timely manner with the information necessary for the employer to make an informed decision on the request.

**Section V. Complaint Process**

 A. Any aggrieved party who believes that they have been unreasonably denied leave under 26 MRSA Section 850 who contacts the Bureau will be provided a copy of these rules, a copy of 26 MRSA Section 850 and a complaint form.

 B. Based on a written complaint by the aggrieved party, the Bureau will investigate in accordance with the procedures used in investigation of wage complaints, including, but not limited to, accessing employer records. The investigation of any complaint may be conducted with the cooperation any other agencies the Bureau deems appropriate.

 C. Any communication with or information provided to the Department under this section will be considered confidential in accordance with MRSA 26 §3 and may not be divulged to any other person or agency except in so far as may be necessary for the enforcement of this chapter. Provided however that the Department may disclose such information:

 1. When the aggrieved party and the employer consent to its release;

 2. To any party involved in litigation under this chapter when the information is relevant to the claim;

 3. to other government agencies when the Director believes that the information will further the protection of the public or assist in the enforcement of local, state, and federal laws.

**Section VI: Penalties**

A. For denial of leave in violation of this section, a fine of up to $1,000 for each violation of this section may be assessed. A fine assessed under this paragraph must be paid to the Treasurer of State. Additionally, the employer shall pay liquidated damages to the affected individual in an amount equal to 3 times the amount of total assessed fines; and,

B. For termination in connection with an individual exercising a right granted by this section, the affected individual may elect to receive:

1. Liquidated damages pursuant to paragraph A; or,

2. Reemployment with the employer with back wages.

C. The aggrieved party must provide notice of the violation to the Bureau and the employer within six months of the occurrence to warrant the penalties above.

STATUTORY AUTHORITY: 26 MRSA §850

EFFECTIVE DATE:

 May 14, 2001

AMENDED:

 June 12, 2017 – Section VI, filing 2017-087