

Safe Leave: Key Considerations

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Based on the increasing number of women in North Carolina who have experienced at least one type of intimate partner or sexual violence, it is necessary to provide survivors and their family members time off from work to seek legal counsel, secure a restraining order, relocate to a safe place, or take other actions to secure their safety. Taking the necessary time to recover emotionally, physically, and financially from domestic violence, sexual assault, or stalking should not jeopardize a survivor's ability to remain in the workforce. This document was developed by A Better Balance, in consultation with MomsRising, the NC Coalition Against Domestic Violence, Prevent Child Abuse NC, and the NC Coalition Against Sexual Assault.

There are several key components to include in leave policies to ensure that employees have “safe days” available to care for themselves or a family member. This document addresses those key components, and provides model language that may be tailored to fit the needs of your locality.

If you have questions about this document or would like assistance developing language regarding safe leave, please contact A Better Balance at kdawson@abetterbalance.org

I. Key Definitions to Include

Throughout the U.S., 13 states, 16 cities, and 3 counties have passed paid sick leave laws that include paid safe leave.¹ While these laws vary in scope, all safe leave laws cover domestic violence victims and most cover victims of stalking and sexual assault. We recommend the following policy components for a broad safe leave policy:

A. Safe Leave

Most policies that provide safe leave include specific activities for which an employee may use leave in relation to domestic violence, sexual assault, or stalking (*e.g.* relocating, partaking in legal proceedings, etc.). The following language in (a)-(e) is adapted from Colorado's sick leave law,² and

¹ Specifically, Arizona, California, Colorado, Connecticut, Massachusetts, Oregon, Vermont, Washington State, Rhode Island, Maryland, Michigan, New Jersey, and New York; Philadelphia, PA; Seattle, WA; Tacoma, WA; Santa Monica, CA; Minneapolis, MN; Los Angeles, CA; San Diego, CA; Washington, D.C.; San Francisco, CA; Chicago, IL; Saint Paul, MN; New York City, NY; Duluth, MN; Austin, TX; San Antonio, TX; and Dallas, TX; Montgomery County, MD; Cook County, IL; and Westchester County, NY.

² Colo. Rev. Stat. Ann. § 8-13.3-404(1)(c).

similar language is used in Arizona,³ Washington, D.C.,⁴ and New Jersey.⁵ Subsection (f) is adapted from North Carolina's Executive Order regarding safe leave and state employees.

Safe leave means paid time off when the employee or the employee's family member is the victim of domestic violence, sexual assault, or stalking and the leave is taken to:

- a) seek medical attention for the employee or the employee's family member to recover from a mental or physical illness, injury, or health condition caused by the domestic violence, sexual assault, or stalking;
- b) obtain services from a victim services organization;
- c) obtain mental health or other counseling;
- d) seek relocation due to the domestic violence, sexual assault, or stalking;
- e) seek legal services, including preparation for or participation in a civil or criminal proceeding relating to or resulting from the domestic violence, sexual assault, or stalking; or
- f) take other steps necessary to protect or restore their physical, mental, emotional, and economic well-being or the well-being of an immediate family member recovering from domestic violence, sexual assault, or stalking.

B. Domestic Violence, Sexual Assault, Stalking

Safe leave policies that use the above recommended definition of "safe leave" will also need to define "domestic violence," "sexual assault," and "stalking." Typically, safe leave policies define these terms by citing to applicable state or local laws. Thus, localities in North Carolina, might define the aforementioned terms as follows:

i. Domestic Violence

Domestic violence means any act as defined in section 50B-1 of the North Carolina General Statutes.

ii. Sexual Assault

Sexual assault means any act as defined in section 14-27.21 through section 14-27.33 of the North Carolina General Statutes.

iii. Stalking

³ Ariz. Rev. Stat. § 23-373(A)(4).

⁴ D.C. Code § 32-531.02(b)(4).

⁵ N.J. Stat. Ann. § 34:11D-3(a)(3).

The following definition of “stalking” includes cyberstalking as defined in N.C. Gen. Stat. § 14-196.3.

Stalking means any act as defined in section 14-277.3A or section 14-196.3 of the North Carolina General Statutes.

C. Family Member

Leave policies should specifically cover as many family relationships as possible, including: spouses, domestic partners (whether or not formally recognized by a state or city), children, parents, parents of a spouse/domestic partner, grandchildren, grandparents, siblings, household members, and other close loved ones. We recommend the following specific definitions:

i. Spouse

Spouse means a person to whom the employee is legally married or who is recognized as a spouse, domestic partner, or other similar union under the laws of any state or jurisdiction.

ii. Domestic Partner

Some local governments have registries for domestic partners. These relationships should be included in a family definition and given the same workplace leave rights as spouses wherever possible. In addition to registered domestic partners, we urge coverage of couples—whether same-sex or different-sex—who are not married or in a registered partnership. **For language recommendations on covering unmarried, un-registered couples, please contact us.** There are many variations of an inclusive “domestic partner” definition. The following is an example of one such definition:⁶

Domestic partner means an adult in a committed relationship with another adult, including both same-sex and different-sex relationships.

Committed relationship means a relationship in which the employee, and the domestic partner of the employee, share responsibility for a significant measure of each other’s common welfare. This includes, but is not limited to, any relationship between individuals of the same or different sex that is granted legal recognition by a State, Political Subdivision, or by the District of Columbia as a marriage or analogous relationship (including, but not limited to, a civil union).

iii. Child

⁶ This model is adapted from language used by the federal government in its own regulations on federal workers’ right to annual/sick leave. 5 C.F.R. § 630.201(b).

“**Child**” should be defined to include biological, adopted, and foster children, stepchildren, legal wards, children of a domestic partner, children-in-law, and a child of a person who stands *in loco parentis*—as defined by the federal Family and Medical Leave Act (FMLA)—regardless of age. A person who stands *in loco parentis* to a child is someone who acts in the place of a parent or assumes the role of parent to a child, with the intent to act as a parent; a biological or legal connection to the child is not required. “**Children-in-law**” should include the spouse or domestic partner of the worker’s child. These same relationships should be recognized in a definition of parent.

iv. Household Members

The family definition should also include members of the employee’s household to cover close relationships without requiring a legal relationship. Household members are covered under the paid sick leave laws in Rhode Island,⁷ Minneapolis, MN,⁸ San Antonio, TX,⁹ and Seattle, WA.¹⁰ Additionally, pursuant to regulations, emergency sick leave under the federal Families First Coronavirus Response Act can be used to care for a household member.¹¹ Notably, Durham County’s leave policy (current as of July 2020) covers individuals living within the same household as the employee.

v. Close Loved Ones

In addition to listing the aforementioned family members, language should be included in the family definition to recognize loved ones with whom a worker may not share a biological or legal relationship. Research studies clearly show that family structures are changing in a dramatic fashion, busting the myth that two-parent, nuclear families are the norm. Instead, families today take many forms, including multi-generational families, multi-national families, blended step-families, LGBTQ families, and close loved ones who aren’t biologically or legally related to each other.

Drafting a policy that is inclusive of diverse family structures is particularly important for an effective safe leave policy, because victims of domestic violence, sexual assault, and stalking may turn to loved ones who are not biologically or legally related for help. Two commonly used models are the following:

1. *Caregiving Relationships*: Covering, in addition to the relationships listed above, “any person for whom the employee is responsible for providing or arranging health- or safety-related care.”

⁷ R.I. Gen. Laws § 28-57-3(9).

⁸ Minneapolis Code § 40.40.

⁹ San Antonio City Code, Ch. 15, Art. XI § 15-269.

¹⁰ Workers in Seattle can take safe leave when a household member is the victim of domestic violence, sexual assault, or stalking. Seattle Code § 14.16.030(A)(2)(d).

¹¹ See 29 C.F.R. § 826.20(a)(5).

Colorado¹² and Rhode Island¹³ use this caregiving language in their sick leave laws, and pursuant to regulations,¹⁴ the federal government has interpreted the Families First Coronavirus Response Act to cover similar caregiving relationships in the context of COVID-19 and quarantines.

2. *Other Close Loved Ones*: Covering, in addition to other specific family relationships, “any other individual related by blood or whose close association with the employee is the equivalent of a family relationship.”

Similar expansive language has been used by the federal government for the federal workforce in the context of funeral leave since 1969, voluntary leave since 1989, and sick and annual leave since 1994.¹⁵ Additionally, 10 state, city, and county paid sick time laws¹⁶ and 3 state paid family and medical leave laws¹⁷ cover close loved ones who are the equivalent of a family relationship.

II. Strategic Considerations

Safe leave protections around the country are commonly incorporated into—or implemented along with— sick leave for general health needs. However, safe leave protections can also be incorporated into other types of leave, such as annual and personal leave, general paid time off, etc. Advocates and policymakers should also weigh whether safe leave should be its own standalone policy. Such determinations should be made in light of any existing leave laws and policies, the amount of time they provide, related policies, and overall strategic considerations. When drafting and implementing a safe leave policy in your locality, we **strongly** recommend consulting with local domestic violence advocates and experts early on and throughout your process. Working closely with such advocates and

¹² Colo. Rev. Stat. Ann. § 8-13.3-402(6)(c).

¹³ R.I. Gen. Laws § 28-57-3(1), (9).

¹⁴ See 29 C.F.R. § 826.20(a)(5) (“Caring for an individual. For the purpose of paragraph (a)(1)(iv) of this section, ‘individual’ means an Employee’s immediate family member, a person who regularly resides in the Employee’s home, or a similar person with whom the Employee has a relationship that creates an expectation that the Employee would care for the person if he or she were quarantined or self-quarantined. For this purpose, ‘individual’ does not include persons with whom the Employee has no personal relationship.”).

¹⁵ The relevant language covers “any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.” Absence and Leave: Funeral Leave, 34 Fed. Reg. 13,655 (Aug. 26, 1969) (codified at 5 C.F.R. pt. 630) (first implemented during the Vietnam War, allowing federal workers to take funeral leave for the combat-related deaths of loved ones); Absence and Leave; Voluntary Leave Transfer Program, 54 Fed. Reg. 4749 (Jan. 31, 1989) (codified at 5 C.F.R. pt. 630); Absence and Leave; Sick Leave, 59 Fed. Reg. 62,266 (Dec. 2, 1994) (codified at 5 C.F.R. pt. 630).

¹⁶ Those jurisdictions include: Arizona (Ariz. Rev. Stat. § 23-371(H)(5)); New Jersey (N.J. Stat. Ann. § 34:11D-1); Los Angeles, CA (Los Angeles Code § 187.04(G)); Chicago, IL (Chicago Code § 1-24-010); Duluth, MN (Duluth City Code § 29E-2(h)(6)); St. Paul, MN (St. Paul Code § 233.02); New York City, NY (NYC Code § 20-912); Austin, TX (Austin Code § 4-19-1(E)); Dallas, TX (Dallas City Code § 20-2(7)); and Cook County, IL (Cook County Code § 42-2).

¹⁷ Connecticut (S.B. 1, 2019 Gen. Assemb. § 17(6) (Conn. 2019)); New Jersey (N.J. Stat. Ann. § 43:21-27(n)); and Oregon (Or. Rev. Stat. § 657B.010(18)(h)).

experts will help to ensure that your safe leave policy is effectively tailored for employees in your locality.

The following points are considerations that you should discuss with local domestic violence advocates and experts:

A. Notice Requirements

Many leave policies require that employees provide advance notice to a supervisor prior to the commencement of time away from work. However, given the nature of domestic violence, sexual assault, and stalking, it may not be feasible for employees that need to use safe leave to provide advance notice. Therefore, we recommend refraining from requiring advance notice from employees that need to take safe leave, and instead allowing such employees to request safe leave as soon as is practicable.¹⁸

Additionally, we recommend allowing employees to request safe leave by submitting requests orally, in writing, electronically, or using any other means that may be acceptable to the employee's supervisor, without having to provide details on the specific safe leave incident. A similarly flexible notice approach is used in Arizona,¹⁹ Colorado,²⁰ and Rhode Island.²¹

B. Documentation Requirements

In some instances, policies may require or suggest that employees provide documentation to prove that leave (such as family and medical leave) is being used for authorized purposes. However, in relation to safe leave, documentation requirements may serve as a barrier to employees in need. Thus, to ensure that employees can safely access safe leave without having to provide burdensome or invasive documentation, we recommend instituting the following documentation safeguards:

- Requesting documentation only after safe leave absences have continued for several, consecutive days (such as after three or four consecutive days; most state and local paid sick

¹⁸ For example, when the need for leave is not foreseeable, workers may provide notice to their employer as soon as is practicable. *See* Cook County Code § 42-3(c)(4); *see also* Md. Code Ann. Lab. & Empl. § 3-1305(b)(2); *see also* Montgomery County Code Chapter 27, Art. XIII § 27-79(b)(1); *see also* N.J. Stat. Ann. § 34:11D-3(b); *see also* Vt. Stat. Ann. tit. 21, § 483(h)(2).

¹⁹ Ariz. Rev. Stat. § 23-373(B).

²⁰ Colo. Rev. Stat. Ann. § 8-13.3-404(2).

²¹ R.I. Gen. Laws § 28-57-6(b).

leave laws do not require reasonable documentation until after three consecutive days, while Colorado's new paid sick and safe leave law uses four days).²²

- Allowing the employee to choose from providing several types of documentation.²³
- Protecting the employee's information by maintaining confidentiality.²⁴
- Allowing the employee to fulfill documentation requests upon returning to work.²⁵

An example of a flexible documentation requirement is as follows:

Employees using safe leave for absences of four or more consecutive work days may be required to furnish reasonable documentation supporting the absence. For purposes of Safe Leave, reasonable documentation includes the following, from which the employee may choose:

- a) a police report indicating that the employee or employee's family member was a victim of domestic violence, sexual assault, or stalking;
- b) a court document indicating that the employee or employee's family member is involved in legal action related to domestic violence, sexual assault, or stalking;
- c) a signed statement from an attorney, member of the clergy, victim and witness advocate, or a medical or other professional affirming that the employee or employee's family member is a victim of domestic violence, sexual assault, or stalking; or
- d) the employee's statement which need not be notarized or in any particular form, affirming that the employee or the employee's family member is a victim of domestic violence, sexual assault, or stalking and that the leave was taken for a Safe Leave purpose as listed in this policy.

Reasonable documentation need not include the nature or details of the domestic violence, sexual assault, or stalking. An employer, including an employee's supervisor or other employees delegated by the employer to receive or record such documentation, must keep this information confidential.

²² The following jurisdictions only require documentation after several days of absences: Arizona (Ariz. Rev. Stat. § 23-373(G)); Colorado (Colo. Rev. Stat. Ann. § 8-13.3-404(6)); Maryland (Md. Code Ann. Lab. & Empl. § 3-1305(g)(1)(i)); New Jersey (N.J. Stat. Ann. § 34:11D-3(b)); Rhode Island (R.I. Gen. Laws § 28-57-6(f)); Washington, D.C. (D.C. Code § 32-531.04(a)(1)); Cook County, IL (Cook County Code § 42-3(c)(5)); and Montgomery County, MD (Montgomery County Code Chapter 27, Art. XIII § 27-79(h)).

²³ For example, Arizona (Ariz. Rev. Stat. § 23-373(G)), New Jersey (N.J. Stat. Ann. § 34:11D-3(b)), Rhode Island (R.I. Gen. Laws § 28-57-6(f)(3)), Washington, D.C. (D.C. Code § 32-531.04(a)(2)), and Cook County, IL (Cook County Code § 42-3(c)(5)) all have sick leave laws that list several types of acceptable documentation for safe leave.

²⁴ For sick leave laws with exemplary confidentiality protections, see Arizona (Ariz. Rev. Stat. § 23-373(H), (I)), Colorado (Colo. Rev. Stat. Ann. § 8-13.3-412), New Jersey (N.J. Stat. Ann. § 34:11D-3(e)), and Washington, D.C. (D.C. Code § 32-531.04(b)(2)).

²⁵ Washington, D.C. takes this approach in its sick leave law. See D.C. Code § 32-531.04(a)(3).

In those instances where reasonable documentation is required, the employee must supply the documentation as soon as practicable after returning to work.

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