

HR/LR General Memo #2015-6
 Leave to Seek a Harassment Restraining Order or an
 Order for Protection (FORMER PERSL #1425)

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Authority Labor Relations

GENERAL GUIDANCE AND INFORMATION

This memo provides guidance to agencies on the state laws that require employers to allow employees reasonable time off from work to obtain or attempt to obtain a Harassment Restraining Order or an Order for Protection. It also provides guidance for permitting eligible employees to use sick leave for “safety leave” in order to seek a Harassment Restraining Order or an Order for Protection.

DEFINITIONS

Harassment Restraining Order (HRO): Court order requiring the offender to stop harassing the petitioner. The HRO may also require the harasser to cease all contact with the petitioner, including coming to the petitioner’s home, school, or the place where the petitioner works. Violating an HRO is a crime.

Order for Protection (OFP): A specific kind of restraining order for survivors of domestic abuse. An OFP is a court order requiring the offender to stay away from the OFP petitioner. It may direct the offender to: stop stalking the petitioner (through harassment, threats, or abuse); stay away from where the petitioner lives, goes to school, or works; leave the petitioner's household; or enter a counseling program. An OFP may also award temporary custody of children, child support, or use and possession of property. Violating an OFP is a crime.

Domestic Abuse: Includes the following conduct, if committed against a family or household member by a family or household member:

- a. physical harm, bodily injury, or assault;
- b. the infliction of fear of imminent physical harm, bodily injury, or assault; or
- c. terroristic threats (within the meaning of M.S. 609.713, subd. 1); criminal sexual conduct (within the meaning of M.S. sections 609.342, 609.343, 609.344, 609.345, or 609.3451); or interference with an emergency call (within the meaning of M.S. 609.78, subd. 2).

Family or Household Member: Includes spouses and former spouses, parents and children, persons related by blood, persons who are presently residing together or who have resided together in the past, persons who have a child in common regardless of whether they have been married or have lived together at any time, a man and woman if the woman is pregnant and the man is alleged to be the father, regardless of whether they have been married or have lived together at any time; and persons involved in a significant romantic or sexual relationship.

Harassment includes:

- a) A single incident of physical or sexual assault.
- b) Repeated incidents of intrusive or unwanted acts, words or gestures that have a substantial adverse effect or are intended to have a substantial, adverse effect on the safety, security or privacy of another, regardless of the relationship between the person being harassed and the alleged harasser.
- c) Targeted residential picketing, which includes the following when committed on more than one occasion:
 - 1) marching, standing, or patrolling by one or more persons directed solely at a particular residential building in a manner that adversely affects the safety, security, or privacy of an occupant of the building, or

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- 2) marching, standing, or patrolling by one or more persons which prevents an occupant of a residential building from gaining access to or exiting from the property on which the residential building is located.
- d) A pattern of attending public events after being notified that one's presence at the event is harassing to another.

FREQUENTLY ASKED QUESTIONS

1. What leave time does the law require an employer to allow for an employee to obtain or attempt to obtain an HRO or an OFP?

Minnesota law requires employers to grant an employee reasonable time off from work when an employee is seeking to obtain an HRO or an OFP. "Reasonable time off" means time that may be necessary to obtain or attempt to obtain an HRO or an OFP. Reasonableness must be determined on a case-by-case basis.

In addition, an employee may be eligible to use sick leave for "safety leave" for the purpose of obtaining or attempting to obtain an HRO or OFP pursuant to M.S. 181.9413. Under this provision, eligible employees may elect to use up to 160 hours of paid sick leave in any 12-month period for the purpose of providing or receiving assistance because of sexual assault (under M.S. 609.342-609.3453 or 609.352), domestic abuse (under M.S. 518B.01), or stalking (under 609.749).

2. How much notice is required for an employee to take time off to seek an HRO or an OFP?

Employees must give the Appointing Authority 48 hours' notice of the need for the leave except:

- in cases of imminent danger to the health or safety of the employee or the employee's child, or
- unless impracticable.

Employees and supervisors should contact their agency's Human Resources office if they have questions about whether one of these exceptions applies.

3. May the employer request proof when an employee is seeking this type of leave?

Yes. Upon request of a manager or supervisor, the employee shall provide verification that supports the employee's reason for being absent.

4. Is information related to the employee's request for leave to obtain an HRO or OFP confidential?

As a general matter, all information related to an employee's leave to pursue an HRO or an OFP should be kept confidential. However, there may be occasions when the existence of a court order prohibiting contact must be disclosed in order to ensure a safe workplace. For example, if the HRO or OFP prohibited a person subject to the HRO or OFP from entering the employee's workplace, relevant parties would need to be made aware of this prohibition so they could take appropriate action, if necessary. Please contact your Human Resources office prior to disclosing information about an HRO or OFP that may affect employees.

5. Can I discipline an employee for taking time off to seek an HRO or an OFP?

No. Minnesota law prohibits employers from retaliating against an employee who takes reasonable time off from work to obtain or attempt to obtain an HRO or OFP. The law also prohibits retaliation against an employee for legitimate requests or use of sick leave for "safety leave." However, if the leave was requested under false pretenses or if it can be proven that the time off was not used for the purpose it was intended, the conduct should be examined.

6. Is leave to seek an HRO or OFP paid or unpaid?

Eligible employees are entitled to use their sick leave for "safety leave." "Safety leave" is leave for the purpose of providing or receiving assistance because of sexual assault (under M.S. 609.342-609.3453 or 609.352), domestic abuse (under M.S. 518B.01), or stalking (under 609.749). Minnesota law allows eligible employees to use up to 160 hours of sick leave within any 12-month time period for "safety leave," which would include time off to obtain or attempt to obtain the protection of an HRO or an OFP.

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For employees who are not eligible to use sick leave for safety leave, or for HROs that are not related to domestic abuse, sexual assault or stalking, the employee's leave from work to obtain or attempt to obtain an HRO or OFP is unpaid. However, the employee may elect to draw from existing vacation or compensatory time banks, or adjust their work schedule (with supervisor approval.)

7. Who is eligible to use sick leave for “safety leave”?

For the purposes of sick leave for safety leave, an “eligible employee” is a person who is employed for at least 12 months preceding the request for leave, and who, during the 12-month period immediately preceding the leave, worked an average number of hours per week equal to ½ of the full-time equivalent position in the employee’s job classification. M.S. 181.940, subd. 2.

Sick leave for safety leave may be used for the eligible employee or for the employee’s child, adult child, spouse, sibling, parent, mother-in-law, father-in-law, grandchild, grandparent, or stepparent. “Child” includes a stepchild and a biological, adopted, and foster child, who is under 18 years of age, or under age 20 and still attending secondary school. “Grandchild” includes a step-grandchild, and a biological, adopted, and foster grandchild.

Contacts

Labor Relations

References

Court HRO and OFP Forms:

<http://www.mncourts.gov/default.aspx?page=513&category=91>

General Memo 2014-13, Time Off to Attend Criminal Court Proceedings

State of Minnesota Employee Assistance Program (EAP)