

[Second Reprint]

SENATE, No. 2177

STATE OF NEW JERSEY
215th LEGISLATURE

INTRODUCED SEPTEMBER 20, 2012

Sponsored by:

Senator FRED H. MADDEN, JR.

District 4 (Camden and Gloucester)

Senator JAMES BEACH

District 6 (Burlington and Camden)

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Senators Bateman and Ruiz

SYNOPSIS

Creates the "New Jersey Security and Financial Empowerment Act" to assist victims of domestic violence and sexual assault.

CURRENT VERSION OF TEXT

As amended by the Senate on October 25, 2012.



(Sponsorship Updated As Of: 11/30/2012)

1 AN ACT assisting victims of domestic or sexual violence and
2 supplementing Title 34 of the Revised Statutes.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. This act shall be known as the "New Jersey Security and
8 Financial Empowerment Act" or "NJ SAFE Act."

9
10 ²2. As used in this act:

11 "Employee" means a person who is employed for at least 12
12 months by an employer, with respect to whom benefits are sought
13 under this act, for not less than 1,000 base hours during the
14 immediately preceding 12-month period; and

15 "Employer" means a person or corporation, partnership,
16 individual proprietorship, joint venture, firm or company, or other
17 similar legal entity which engages the services of an employee and
18 employs 25 or more employees for each working day during each of
19 20 or more calendar workweeks in the then current or immediately
20 preceding calendar year. "Employer" includes the State, any
21 political subdivision thereof, and all public offices, agencies,
22 boards, or bodies.²

23
24 ²[2.] ³2. a. Any employee of an employer in ²[this] ²the State
25 ¹who was a victim of an incident of domestic violence as defined in
26 section 3 of P.L.1991, c.261 (C.2C:25-19) or a sexually violent
27 offense as defined in section 3 of P.L.1998, c.71 ²[(C.30:4-27.6)]
28 (C.30:4-27.26)², or whose child, parent, ²[or]² spouse¹ ², or civil
29 union partner² was a victim² ²[,]² shall be entitled to ¹unpaid¹ leave
30 of ²no more than² 20 days ¹[in any 12-month period as needed for
31 the purpose of engaging in any of the following activities as they
32 relate to an] ²[, which] in one 12-month period, to be used in the
33 12-month period next following any incident of domestic violence
34 or any sexually violent offense as provided in this section. For
35 purposes of this section, each incident of domestic violence or any
36 sexually violent offense shall constitute a separate offense for
37 which an employee is entitled to unpaid leave, provided that the
38 employee has not exhausted the allotted 20 days for the 12-month
39 period. The unpaid leave² may be taken intermittently in intervals
40 of no less than one day, ²[within one year of the¹] incident of
41 domestic violence ¹[as defined in section 3 of P.L.1991, c.261
42 (C.2C:25-19)]¹ or ¹[a]¹ sexually violent offense ¹[as defined in
43 section 3 of P.L.1998, c.71 (C.30:4-27.26) of which the employee

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SHH committee amendments adopted October 1, 2012.

²Senate floor amendments adopted October 25, 2012.

1 or the employee's family or household member was a victim¹,² as
 2 needed for the purpose of engaging in any of the following
 3 activities as they relate to the incident of domestic violence or
 4 sexually violent offense¹:

5 (1) seeking medical attention for, or recovering from, physical
 6 or psychological injuries caused by domestic or sexual violence to
 7 the employee or the employee's ¹**["family or household member]**
 8 child, parent, ²**[or]**² spouse^{1 2}, or civil union partner²;

9 (2) obtaining services from a victim services organization for
 10 the employee or the employee's ¹**["family or household member]**
 11 child, parent, ²**[or]**² spouse^{1 2}, or civil union partner² ;

12 (3) obtaining psychological or other counseling for the
 13 employee or the employee's ¹**["family or household member]** child,
 14 parent, ²**[or]**² spouse^{1 2}, or civil union partner²;

15 (4) participating in safety planning, temporarily or permanently
 16 relocating, or taking other actions to increase the safety of the
 17 employee or the employee's ¹**["family or household member]** child,
 18 parent, ²**[or]**² spouse^{1 2}, or civil union partner² from future
 19 domestic or sexual violence or to ensure economic security;

20 (5) seeking legal assistance or remedies to ensure the health and
 21 safety of the employee or the employee's ¹**["family or household**
 22 **member]** child, parent, ²**[or]**² spouse^{1 2}, or civil union partner²,
 23 including preparing for^{1,1} or participating in^{1,1} any civil or criminal
 24 legal proceeding related to or derived from domestic or sexual
 25 violence; or

26 (6) attending, participating in^{1,1} or preparing for a criminal or
 27 civil court proceeding relating to an incident of domestic or sexual
 28 violence of which the ¹**["individual, or the family or household**
 29 **member of the individual]** employee or the employee's child,
 30 parent, ²**[or]**² spouse^{1 2}, or civil partner² , was a victim.

31 ²**["Nothing contained in this act shall be construed to prohibit an]**
 32 An² employer ²**[from requiring]** shall not require² the employee to
 33 exhaust accrued paid leave provided by the employer, or leave
 34 provided pursuant to the "Family Leave Act," P.L.1989, c.261
 35 (C.34:11B-1 et seq.), and the federal "Family and Medical Leave
 36 Act of 1993," ²Pub.L.103-3² 29 U.S.C. 2601 et seq., before using
 37 leave provided pursuant to this section.

38 ²Leave granted under this act shall be in addition to, and shall
 39 not abridge or conflict with, any rights pursuant to the "Family
 40 Leave Act," P.L.1989, c.261 (C.34:11B-1 et seq.), the "Temporary
 41 Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et seq.), and
 42 the federal "Family and Medical Leave Act of 1993," Pub.L.103-3
 43 (29U.S.C. s.2601 et seq.).²

44 b. Prior to taking the leave provided for in this section, an
 45 employee shall, if the necessity for the leave is foreseeable, provide
 46 the employer with written notice of the need for the leave. The
 47 notice shall be provided to the employer as far in advance as is

1 reasonable and practical under the circumstances.

2 c. Nothing contained in this act shall be construed to prohibit
3 an employer from requiring that a period of leave provided pursuant
4 to this section be supported by the employee with documentation of
5 the domestic violence or sexually violent offense which is the basis
6 for the leave. If the employer requires the documentation, the
7 employee shall be regarded as having provided sufficient
8 documentation if the employee provides one or more of the
9 following:

10 (1) a domestic violence restraining order or other documentation
11 of equitable relief issued by a court of competent jurisdiction;

12 (2) a letter or other written documentation from the county or
13 municipal prosecutor documenting the domestic violence or
14 sexually violent offense;

15 (3) documentation of the conviction of a person for the domestic
16 violence or sexually violent offense;

17 (4) medical documentation of the domestic violence or sexually
18 violent offense;

19 (5) certification from a certified Domestic Violence Specialist or
20 the director of a designated domestic violence agency or Rape
21 Crisis Center, that the employee or employee's ²~~family or~~
22 ~~household member~~ child, parent, spouse, or civil union partner² is
23 a victim of domestic violence or a sexually violent offense; or

24 (6) other documentation or certification of the domestic violence
25 or sexually violent offense provided by a social worker, member of
26 the clergy, shelter worker^{1, 1} or other professional who has assisted
27 the employee or employee's ²~~family or household member~~ child,
28 parent, spouse, or civil union partner² in dealing with the domestic
29 violence or sexually violent offenses.

30 For the purposes of this subsection:

31 "Certified Domestic Violence Specialist" means a person who
32 has fulfilled the requirements of certification as a Domestic
33 Violence Specialist established by the New Jersey Association of
34 Domestic Violence Professionals; and "designated domestic
35 violence agency" means a county-wide organization with a primary
36 purpose to provide services to victims of domestic violence, and
37 which provides services that conform to the core domestic violence
38 services profile as defined by the Division of ¹~~Youth and Family~~
39 ~~Services~~ Child Protection and Permanency¹ in the Department of
40 ¹~~Human Services~~ Children and Families¹ and is under contract
41 with the division for the express purpose of providing ¹~~such~~ the¹
42 services.

43 "Rape Crisis Center" means an office, institution^{1, 1} or center
44 offering assistance to victims of sexual offenses through crisis
45 intervention, medical and legal information^{1, 1} and follow-up
46 counseling.

47 d. ²~~An employee shall be entitled, at the employee's option, to~~
48 take the leave provided for in this section intermittently or on a

1 reduced leave basis upon the approval of the employer.

2 e.]² An employer shall display conspicuous notice of its
3 employees' rights and obligations pursuant to the provisions of this
4 act, and use other appropriate means to keep its employees so
5 informed.

6 ²[f.] e.² No provision of this act shall be construed as requiring
7 or permitting an employer to reduce employment benefits provided
8 by the employer or required by a collective bargaining agreement
9 which are in excess of those required by this act. Nor shall any
10 provision of this act be construed to prohibit the negotiation and
11 provision through collective bargaining agreements of leave
12 policies or benefit programs which provide benefits in excess of
13 those required by this act. This provision shall apply irrespective of
14 the date that a collective bargaining agreement takes effect.

15 Nothing contained in this act shall be construed as permitting an
16 employer to ¹;

17 (1)¹ rescind or reduce any employment benefit accrued prior to
18 the date on which the leave taken pursuant to this act commenced¹;
19 or

20 (2) rescind or reduce any employment benefit, unless the
21 rescission or reduction of the benefit is based on changes that would
22 have occurred if an employee continued to work without taking the
23 leave provided pursuant to this section¹.

24 ²[g.] f.² All information provided to an employer pursuant to
25 subsection c. of this section, and any information regarding a leave
26 taken pursuant to this section and any failure of an employee to
27 return to work, shall be retained in the strictest confidentiality,
28 unless the disclosure is voluntarily authorized in writing by the
29 employee or is required by a federal or State law, rule¹,¹ or
30 regulation.

31 ²[¹h. As used in this act:

32 "employee" means a person who is employed for at least 12
33 months by an employer, with respect to whom benefits are sought
34 under this act, for not less than 1,000 base hours during the
35 immediately preceding 12-month period; and

36 "employer" means a person or corporation, partnership,
37 individual proprietorship, joint venture, firm or company, or other
38 similar legal entity, as defined in section 3 of P.L.1989, c.261
39 (C.34:11B-3), which engages the services of an employee and
40 employs 25 or more employees.¹²

41

42 ²[3.] 4.² An employer shall not discharge, harass or otherwise
43 discriminate or retaliate or threaten to discharge, harass or
44 otherwise discriminate or retaliate against an employee with respect
45 to the compensation, terms, conditions or privileges of employment
46 on the basis that the employee took or requested any leave to which
47 the employee was entitled pursuant to section ²[2] 3² of this act or
48 on the basis that the employee refused to authorize the release of

1 information deemed confidential pursuant to subsection ²[g.] f.² of
2 section ²[2] 3² of this act.

3

4 ²[4.] 5.² a. Upon a violation of any of the provisions of
5 section ²[2] 3² or section ²[3] 4² of this act, an employee or
6 former employee may institute a civil action in the Superior Court
7 for relief. All remedies available in common law tort actions shall
8 be available to a prevailing plaintiff. The court may also order any
9 or all of the following relief:

10 (1) an assessment of a civil fine of not less than \$1,000 and not
11 more than \$2,000 for the first violation of any of the provisions of
12 section ²[2] 3² or section ²[3] 4² of this act and not more than
13 \$5,000 for each subsequent violation;

14 (2) an injunction to restrain the continued violation of any of the
15 provisions of section ²[2] 3² or section ²[3] 4² of this act;

16 (3) reinstatement of the employee to the same position or to a
17 position equivalent to that which the employee held prior to
18 unlawful discharge or retaliatory action;

19 (4) reinstatement of full fringe benefits and seniority rights;

20 (5) Compensation for any lost wages, benefits and other
21 remuneration;

22 (6) payment of reasonable costs and attorney's fees.

23 b. ¹[an] An¹ action brought under this section shall be
24 commenced within one year of the date of the alleged violation.

25 c. ¹[any remedies provided for in this section shall be in
26 addition to any legal or equitable relief provided by any other
27 federal or State law, rule or regulation] A private cause of action
28 provided for in this section shall be the sole remedy for a violation
29 of this act.¹

30

31 ²[5.] 6.² This act shall take effect ¹[immediately] on the first
32 day of the third month next following the date of enactment¹.