



**STATE OF HAWAII
DEPARTMENT OF HUMAN RESOURCES
DEVELOPMENT
POLICIES AND PROCEDURES**

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TITLE:

VICTIMS LEAVE

APPROVED:

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I. POLICY

When a State employee's absence from work is due to or resulting from domestic abuse or sexual violence against the employee or the employee's minor child, the affected employee may be granted up to thirty calendar days of unpaid victims leave per calendar year, provided the employee has exhausted all paid and unpaid leave benefits before requesting this leave.

II. RATIONALE

Domestic abuse and sexual violence are traumatic, life changing events. By providing Victims Leave, the State can support our employees who need to recover from and cope with the effects of such abuse/violence and participate in criminal and civil justice processes.

III. DEFINITIONS

"Child" means an individual who is a biological, adopted, or foster son or daughter; a stepchild; or a legal ward of an employee.

"Course of conduct" means acts over any period of time of repeatedly maintaining a visual or physical proximity to a person or conveying verbal or written threats, including threats conveyed through electronic communications or threats implied by conduct.

"Domestic abuse" means conduct defined in section 586-1, Hawai'i Revised Statutes.

"Domestic or sexual violence" means domestic abuse, sexual assault, or stalking.

"Electronic communications" includes communications via telephone, mobile phone, computer, e-mail, video recorder, fax machine, telex, or pager.

"Employee" means a person who performs services for hire for not fewer than six consecutive months for the employer from whom benefits are sought under this chapter.

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“Health care provider” means a physician as defined under Section 386-1, Hawai'i Revised Statutes.

“Reasonable period of time” means: (1) where due to physical or psychological injury to or disability to the employee or employee's minor child, the period of time determined to be necessary by the attending health care provider, considering the condition of the employee or employee's minor child, and the job requirements; and (2) where due to an employee's need to take legal or other actions, including preparing for or participating in any civil or criminal legal proceeding, obtaining services from a victim services organization, or permanently or temporarily relocating, the period of time necessary to complete the activity as determined by the employee's or employee's minor child's attorney or advocate, court, or personnel of the relevant victim services organization.

“Sexual assault” means any conduct proscribed by Chapter 707, Part V, Hawai'i Revised Statutes.

“Stalking” means engaging in a course of conduct directed at a specifically targeted person that would cause a reasonable person to suffer substantial emotional distress or to fear bodily injury, sexual assault, or death to the person or to the person's spouse, parent, child, or any other person who regularly resides in the person's household, and where the conduct does cause the targeted person to have such distress or fear.

“Victim services organization” includes: (1) a non-profit, nongovernmental organization that provides assistance to victims of domestic or sexual violence or to advocates for such victims, including a rape crisis center; (2) an organization operating a shelter or providing professional counseling services; or (3) an organization providing assistance through the legal process.

IV. SCOPE

This policy applies to all civil service and exempt employees in the executive branch under the jurisdiction of the Department of Human Resources Development.

V. GENERAL PROVISIONS

- A. Employees shall be allowed to take up to thirty days of unpaid victims leave from work per calendar year, if the employee or employee's minor child is a victim of domestic or sexual violence; provided no

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other paid or unpaid leave is available (see Section VI), and provided the leave is to:

1. Seek medical attention for the employee or employee's minor child to recover from physical or psychological injury or disability caused by domestic or sexual violence;
 2. Obtain services from a victim services organization;
 3. Obtain psychological or other counseling;
 4. Temporarily or permanently relocate; or
 5. Take legal action, including preparing for or participating in any civil or criminal legal proceeding related to or resulting from the domestic or sexual violence, or other actions to enhance the physical, psychological, or economic health or safety of the employee or the employee's minor child or to enhance the safety of those who associate with or work with the employee.
- B. An employee's absence from work that is due to or resulting from domestic abuse or sexual violence against the employee or the employee's minor child as provided in this procedure shall be considered by an employer to be a justification for leave for a reasonable period of time, not to exceed the total number of days allowed. (See subsection V.A. above)
- C. Where an employee is a victim of domestic or sexual violence and seeks leave for medical attention to recover from physical or psychological injury or disability caused by domestic or sexual violence, the employer may request that the employee provide:
1. A certificate from a health care provider estimating the number of leave days necessary and the estimated commencement and termination dates of leave required by the employee; and
 2. Prior to the employee's return, a medical certificate from the employee's attending health care provider attesting to the employee's condition and approving the employee's return to work.
- D. Where the employee has taken not more than five calendar days of leave for non-medical reasons, the employee shall provide

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certification to the employer in the form of a signed statement within a reasonable period after the employer's request, that the employee or the employee's minor child is a victim of domestic or sexual violence and the leave is for one of the purposes enumerated in subsection V. A. If the leave exceeds five days per calendar year, then the certification shall be provided by one of the following methods:

1. A signed written statement from an employee, agent, or volunteer of a victim services organization, from the employee's attorney or advocate, from a minor child's attorney or advocate, or a medical or other professional from whom the employee or the employee's minor child has sought assistance related to the domestic or sexual violence; or
 2. A police or court record related to the domestic or sexual violence.
- E. If certification is required, no leave shall be granted and protected until a certification, as provided in this procedure, is provided to the employer.
- F. The employee shall provide the employer with reasonable notice of the employee's intention to take the leave, unless providing that notice is not practicable due to imminent danger to the employee or the employee's minor child.
- G. Nothing in this procedure shall be construed to prohibit an employer from requiring an employee on victims leave to report not less than once a week to the employer on the status of the employee and intention of the employee to return to work.
- H. Upon return from leave under this procedure, the employee shall return to the employee's original job or to a position of comparable status and pay, without loss of accumulated service credits and privileges, except that nothing in this subsection shall be construed to entitle any restored employee to the accrual of:
1. Any seniority or employment benefits during any period of leave, unless the seniority or benefits would be provided to a similarly situated employee who was on leave due to a reason other than domestic or sexual violence; or

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2. Any right, benefit, or position of employment to which the employee would not have otherwise been entitled.
- I. All information provided to the employer under this procedure, including statements of the employee, or any other documentation, record, or corroborating evidence, and the fact that the employee or employee's minor child has been a victim of domestic or sexual violence or the employee has requested leave pursuant to this procedure, shall be maintained in the strictest confidence by the employer, and shall not be disclosed, except to the extent that disclosure is:
 1. Requested or consented to by the employee;
 2. Ordered by a court or administrative agency; or
 3. Otherwise required by applicable federal or state law.
- J. Any employee denied leave by an employer in willful violation of this procedure may file a civil action against the employer to enforce this procedure and recover costs, including reasonable attorney's fees, incurred in the civil action.

VI. RELATIONSHIP TO OTHER LEAVES

If an employee is entitled to take paid or unpaid leave pursuant to other federal, state, or county law, or pursuant to an employment agreement, a collective bargaining agreement, or an employment benefits program or plan, which may be used for the purposes listed under subsection V. A., the employee shall exhaust such other paid and unpaid leave benefits before victims leave benefits under this policy and procedure may be applied. The combination of such other paid or unpaid leave benefits that may be applied and victims leave benefits shall not exceed the maximum number of days specified under subsection V. A.

VII. PROCEDURE

- A. EMPLOYEE'S REQUEST FOR VICTIMS LEAVE
 1. Employees shall complete the: (1) Form G-1, *Application for Leave of Absence* and (2) Form G-1/VCL, *Application for Victims Leave*.

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2. The Form G-1, *Application for Leave of Absence* shall indicate whether the period of victims leave is all or any part of the period charged to vacation, sick, compensatory time off or leave without pay.

If the victims leave period is to be charged to vacation and/or sick leaves indicate "Victims Leave – Vacation" or "Victims Leave – Sick". If the leave period is to be charged to compensatory time off, indicate "Victims Leave – CTO".

If the victims leave period is to be charged to leave without pay (LWOP) indicate "Victims Leave – LWOP".

The signature of the employee and the department head or his/her representative shall constitute mutual agreement on the use of vacation and/or sick leaves, compensatory time off and leave without pay.

3. The Form G-1/VCL, *Application for Victims Leave* shall be completed by the employee and attached to the department's copy of Form G-1, *Application for Leave of Absence*. The required certifications or police/court records should be attached to the form.

Subsequent requests for the same reason do not require further certification, provided that the certification on file does not have an expiration date or certain end date.

4. A copy of Form G-1/VCL, *Application for Victims Leave* and any attachment(s) shall be filed separate and apart from the employee's official personnel folder.

To maintain confidentiality of information, all information on victims leave shall be maintained and stored in a secure manner in accordance with procedures established by each departmental custodian of records. Information should only be given to others on a need-to-know basis.

B. RECORDING THE VICTIMS LEAVE

To record victims leave on the State DHRD Form 7, *Attendance and Leave Record*, use the following leave codes, as applicable:

1. Enter "VCV" if the victims leave period is to be charged to vacation leave;

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2. Enter "VCS" if the leave period is to be charged to sick leave;
3. Enter "VCT" if the leave period is to be charged to compensatory time off; and
4. Enter "VCL" if the leave period is to be charged to leave without pay.

VIII. EFFECT ON EMPLOYMENT AND COLLECTIVE BARGAINING AGREEMENTS

Nothing in this part shall be construed to supersede any provision of any employment agreement, collective bargaining agreement, or employment benefits program or plan that provides greater benefits or rights than those benefits or rights established under subsection V. A.

IX. AUTHORITIES AND REFERENCES

Chapter 378, Part VI, Victims Leave, Hawai'i Revised Statutes.

X. ATTACHMENTS

Attachment: *Application for Victims Leave*, HRD Form G-1/VCL