

A LOCAL LAW amending the Laws of Westchester County to add a new Chapter 586 which will provide safe time leave for victims of domestic violence and human trafficking.

BE IT ENACTED by the County Board of the County of Westchester as follows:

Section 1. A new Chapter 586 is hereby added to the Laws of Westchester County to read as follows:

Chapter 586 – SAFE TIME LEAVE FOR VICTIMS OF DOMESTIC VIOLENCE AND HUMAN TRAFFICKING

Sec. 586.01. Short Title.

Sec. 586.02. Purpose.

Sec. 586.03. Definitions.

Sec. 586.04. Safe Time Leave for Victims of Domestic Violence and Human Trafficking.

Sec. 586.05. Procedures Relating to the Request to Use Safe Time Leave

Sec. 586.06. Exercise of Rights Protected; Retaliatory Personnel Actions Prohibited.

Sec. 586.07. Notice and Posting.

Sec. 586.08. Enforcement, Civil Action and Penalties.

Sec. 586.09. Confidentiality and Nondisclosure.

Sec. 586.10. Other Legal Requirements.

Sec. 586.11. Public Education and Outreach.

Sec. 586.12. Reverse Preemption.

Sec. 586.13. Severability.

Sec. 586.01. Short Title.

This Chapter shall be known as and may be cited as the “Safe Time Leave Law”

Sec. 586.02. Purpose.

The purpose of this legislation is to provide victims of domestic violence and human trafficking with safe time leave in order to attend criminal and civil court proceedings and/or to relocate to a safe location.

Sec. 586.03. Definitions.

For Purposes of this Chapter:

1. **“Calendar year” shall mean from January 1 to December 31 in any given year.**

2. “Domestic violence” shall mean a pattern of violent or abusive behavior used by one person to gain or maintain control over another. Abusive behavior includes, but is not limited to, family offense matters.
3. “Employee” shall mean any person employed for hire by an employer in any employment within Westchester County for more than 90 days in a calendar year who performs work on a full-time or part-time basis, including work performed in subsidized private sector and not-for-profit employment programs, but not including:
 - a. work performed as a participant in a work experience program established by a social services district;
 - b. work performed pursuant to work study programs under 42 U.S.C. section 2753;
 - c. work performed by employees compensated by or through qualified scholarships as defined in 26 U.S.C. section 117.
4. “Employer” shall mean any “employer” as defined in section 190(3) of New York State Labor Law, except that an employer includes Westchester County government for its employees that are not subject to a collective bargaining agreement.
5. “Family offense matter” shall mean acts or threats of disorderly conduct, harassment in the first degree, harassment in the second degree, aggravated harassment in the second degree, sexual misconduct, forcible touching, sexual abuse in the third degree, sexual abuse in the second degree as set forth in subdivision 1 of section 130.60 of the penal law, stalking in the first degree, stalking in the second degree, stalking in the third degree, stalking in the fourth degree, criminal mischief, menacing in the second degree, menacing in the third degree, reckless endangerment, strangulation in the first degree, strangulation in the second degree, criminal obstruction of breathing or blood circulation, assault in the second degree, assault in the third degree, an attempted assault, identity theft in the first degree, identity theft in the second degree, identity theft in the third degree, grand larceny in the fourth degree, grand larceny in the third degree or coercion in the second degree as set forth in subdivisions 1, 2 and 3 of section 135.60 of the penal law between spouses or former spouses, or between parent and child or between members of the same family or household.
6. “Human trafficking” involves the use of force, fraud, or coercion to obtain some type of labor or commercial sex act.
7. “Members of the same family or household” shall mean (i) persons related by consanguinity or affinity; (ii) persons legally married to or in a domestic partnership with one another; (iii) persons formerly married to or in a domestic partnership with one another regardless of whether they still reside in the same household; (iv) persons who have a child in common, regardless of whether such persons have been married or domestic partners or have lived together at any time; and (v) persons who are not related by consanguinity or affinity and who are or have been in an intimate relationship regardless of whether such persons have lived together at any time.

8. “Retaliatory personnel action” means denial of any right guaranteed under this Chapter or any threat, discharge, suspension, demotion, reduction of hours, reporting or threatening to report an employee’s suspected citizenship or immigration status, or the suspected citizenship or immigration status of a family member of the employee to a federal, state or local agency, or any other adverse action against an employee for the exercise of any right guaranteed herein including any sanctions against an employee who is the recipient of public benefits for rights guaranteed under this Chapter. Retaliation shall also include interference with or punishment for in any manner participating in or assisting an investigation, proceeding or hearing under this Chapter.
9. “Year”, other than “calendar year” means a regular and consecutive 12-month period as determined by the employer.

Sec. 586.04. Safe Time Leave for Victims of Domestic Violence and Human Trafficking.

1. Employees who are victims of domestic violence or victims of human trafficking are entitled to take up to 40 hours of paid leave, in any year or calendar year, which can be utilized in full days and/or increments in order to: attend/testify in criminal and/or civil court proceedings relating to domestic violence or human trafficking and/or to move to a safe location.

2. The safe time leave provided for in section 1 above, shall be in addition to sick leave provided for under Westchester County’s Earned Sick Leave Law.

Sec. 586.05. Procedures Relating to the Request to Use Safe Time Leave.

1. Safe time leave shall be provided upon the request of an employee. Such request may be made orally, in writing, by electronic means or by any other means acceptable to the employer. When possible, the request shall include the expected duration of the absence.

2. When the use of safe time leave is foreseeable, the employee shall make a good faith effort to provide notice to the employer in advance and, when possible, shall make a reasonable effort to schedule the use of safe time leave in a manner that does not unduly disrupt the operations of the employer.

3. An employer may not require, as a condition of an employee's use of safe time leave, that the employee find another employee to work during the time of the employee’s absence.

4. An employer may require the employee to provide reasonable documentation that the safe time leave has been used for a purpose covered by section 586.03(1) above. Documentation provided by the employee may include any one of the following:

- (1) a court appearance ticket or subpoena;
- (2) a copy of a police report;

- (3) and affidavit from an attorney involved in the court proceeding relating to the issue of domestic violence and/or human trafficking; or
(4) an affidavit from an authorized person from a reputable organization known to provide assistance to victims of domestic violence and victims of human trafficking (such as My Sisters' Place).

Sec. 586.06. Exercise of Rights Protected; Retaliatory Personnel Actions Prohibited.

1. It shall be unlawful for an employer or any other person to interfere with, restrain, or deny the exercise of, or the attempt to exercise, the right to use safe time leave.
2. It shall be unlawful for an employer to include safe time leave as an absence that may lead to or result in discipline, discharge, demotion, or suspension.
3. An employer shall not take retaliatory personnel action or discriminate against an employee because the employee has requested to use or has used safe time leave.
4. An employer shall not take retaliatory personnel action or discriminate against an employee that has filed a complaint regarding an employer's alleged violation of Safe Time Leave Law.
5. An employer shall not take retaliatory personnel action or discriminate against an employee that has informed another employee of his or her rights under the Safe Time Leave Law.
6. There shall be a rebuttable presumption of unlawful retaliatory personnel action whenever an employer takes adverse action against an employee within 90 days of the filing of a complaint regarding an employer's alleged violation of this Safe Time Leave Law.

Sec. 586.07. Notice and Posting.

1. At the commencement of employment or within 90 days of the effective date of this law, whichever is later, all employers shall give employees a copy of the Safe Time Leave Law and written notice of how the law applies to that employee.
2. Employers shall display a copy of the Safe Time Leave Law and a poster in English, Spanish and any other language deemed appropriate by the County of Westchester, in a conspicuous location accessible to the employee.
3. An employer who willfully violates the notice and posting requirements of this section shall be subject to a civil fine in an amount not to exceed \$500 for each separate offense.

Sec. 586.08. Enforcement, Civil Action and Penalties.

1. The Department of Weights and Measures – Consumer Protection (hereinafter referred to in this section as the “Department”) shall establish a process to receive complaints from a person alleged to have been aggrieved by an employer's non-compliance with this Chapter. Such complaint must be filed within one (1) year after the occurrence of the alleged violation. Once a

complaint is received, the Department shall investigate the complaint, and if the Department finds probable cause to support that a violation has occurred, it shall attempt to facilitate a resolution.

2. If there has been no resolution of the matter in accordance with subdivision 1 above, then the Department shall issue a summons to the employer in the form of an appearance ticket that shall give notice of alleged violation and set forth the time and place of the hearing on such complaints, which shall not be less than eight days following service of the summons. Such hearing shall be held before a hearing officer who shall hear testimony and examine exhibits as may be offered and received in evidence, but shall not be required to follow strict rules of evidence. The hearing officer shall have the power to:

- a. dismiss the complaint if not proven by a preponderance of the evidence;
- b. adjust the matter upon consent; or
- c. determine a violation has occurred and impose any of the following penalties and any other penalties as may be provided for in this chapter:

i. Require the employer to pay the employee three times the wages that should have been paid under this Chapter or two hundred fifty dollars, whichever is greater for each instance of safe time leave taken by an employee but unlawfully not compensated by the employer;

ii. Require the employer to pay the employee five hundred dollars for each instance of safe time leave requested by an employee but unlawfully denied by the employer and not taken by the employee or unlawfully conditioned upon searching for or finding another employee to work;

iii. Grant such additional relief, as it deems appropriate, including any actual damages suffered as the result of the employer's violation of the Safe Time Leave Law, reasonable attorney's fees, the cost of the administrative hearing, and other monetary or equitable relief as may be appropriate, without limitation, reinstatement to employment and back pay.

The determination of the hearing officer shall be served upon the parties. The aggrieved party may appeal said determination to a court of competent jurisdiction by the commencement of a proceeding within 30 days after service of said order upon the aggrieved party. If the court finds an unlawful violation has occurred, the court may impose the penalties set forth in this subdivision.

3. In lieu of the procedures set forth in subdivision 1 & 2 above, any person who claims to have been aggrieved by a violation of this Chapter may commence a civil action in the appropriate court of jurisdiction not later than one (1) year after the occurrence of an alleged violation. If the court finds an unlawful violation has occurred, the court may impose the penalties set forth in subdivision 2 above.

Sec. 586.09. Confidentiality and Nondisclosure.

1. Information about an employee or family member obtained solely for the purposes of utilizing safe time leave shall be treated as confidential and shall not be disclosed except with the written permission of the affected employee, unless such disclosure is otherwise required by law.

2. Any health or safety information possessed by an employer regarding an employee or

employee's family member must be maintained on a separate form and in a separate file from other personnel information.

Sec. 586.10. Other Legal Requirements.

This Chapter provides minimum requirements pertaining to safe time leave and shall not be construed to preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, or policy that provides for greater accrual or use by employees of safe time or that extends other protections to employees. In addition, nothing in this Chapter shall be construed to prevent, interfere or conflict with any rights of an employee under any other law, including but not limited to, the New York State Paid Family Leave Benefits Law.

Sec. 586.11. Public Education and Outreach.

The Westchester County Human Rights Commission shall develop and implement a multilingual outreach program to inform the public, including employees, and persons providing and/or receiving emergency assistance relating to domestic violence or human trafficking about the availability of safe time leave under this Chapter. This program shall include the distribution of notices and other written materials in English and Spanish and any language deemed appropriate by the Westchester County Human Rights Commission to elder care providers, domestic violence shelters, hospitals, community health centers, office of court administration and legal service providers in Westchester County.

Sec. 586.12. Reverse Preemption.

This local law shall be null and void on the day that Statewide or Federal legislation goes into effect, incorporating either the same or substantially similar provisions as are contained in this law, or in the event that a pertinent State or Federal administrative agency issues and promulgates regulations preempting such action by the County of Westchester. The County Board of Legislators may determine via resolution whether or not identical or substantially similar statewide legislation has been enacted for the purposes of triggering the provisions of this section.

Sec. 586.13. Severability.

If any provision of this Chapter or application thereof to any person or circumstance is judged invalid, the invalidity shall not affect other provisions or applications of the Chapter which can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are declared severable.

§2. This Local Law shall take effect 180 days after its adoption.