

Do we have leave obligations to help a potential victim of domestic violence?

Q. One of our employees may be a victim of family violence. What are our legal obligations to provide leave for family violence victims under Texas and federal law?

A. This is an unfortunate situation that calls for patience and understanding, regardless of what the law provides.

Texas employers are under no obligation to provide leave, paid or otherwise, for employees who become victims of family or domestic violence. Still, Texas does offer some protection for family violence victims who cooperate with the criminal justice process.

Section 56.02(a)(1) of the Texas Code of Criminal Procedure gives crime victims the right to have a prosecutor notify the victim's employer "of the necessity of the victim's cooperation and testimony in a proceeding that may necessitate the absence of the victim from work for good cause."

Furthermore, Texas Labor Code section 52.051(a) prohibits employers from discharging, disciplining or penalizing an employee "in any manner" for complying with a valid subpoena. An employer that does so despite a valid court-issued subpoena can even be found in contempt by the court that issued it. So an employer must let a validly subpoenaed employee take time away from work to testify.

Victims of family or domestic violence may also be able to take leave under the federal FMLA to deal with their own resulting serious health issues or to care for family members with such issues.

For example, according to the U.S. Department of Labor's Wage and Hour Division an employee "may be able to take FMLA leave if he or she is hospitalized overnight or is receiving certain treatment for post-traumatic stress disorder that resulted from domestic violence," or to care for his or her child with PTSD resulting from domestic violence.

There is no requirement that this leave be paid. If the employee's health issues are so serious as to render the employee disabled, other concerns—such as disability policies and the ADA—may come into play.