



CLIENT ALERT

MASS. SJC GIVES BROAD READING TO DOMESTIC VIOLENCE AND ABUSE LEAVE ACT

On August 25, 2021, the Supreme Judicial Court held that an individual who has been hired but not yet started work is considered an “employee” under the Domestic Violence and Abuse Leave Act (“DVLA”). The Court also held that the Act’s protections are triggered by notice that an employee may need to take time off to deal with a Harassment Prevention Order, even if no specific leave has been requested.

The DVLA was enacted in 2014 to support victims of abuse and harassment by providing an entitlement to fifteen days of leave to deal with issues related to domestic abuse, and prohibiting an employer from taking adverse action against an employee who exercises that right.

In its decision, the Court reinstated the case of a nurse who alleged that, in contravention of the DVLA, the defendant terminated her employment after she disclosed that her abuser had violated the terms of a harassment prevention order, and that the plaintiff had reported the violation to the police. The employer first argued that the plaintiff was not an “employee” within the meaning of the DVLA as she never actually performed services for the employer. Because the statutory language of the DVLA did not resolve the question, the SJC turned to legislative history for guidance on the issue. In doing so, the Court noted that the DVLA is a “remedial statute, centered on protecting victims of abuse and harassment in many contexts.” The defendant’s limited reading of the DVLA, the SJC held, would be in contravention of the liberal construction of the remedial statute. Thus, an “employee” who has accepted employment, but has not yet begun work for the employer, is still protected by the DVLA. Likewise, the Court rejected the contention that the nurse had given insufficiently specific notice that she was requesting leave under the DVLA.

The Court’s broad reading of this statute may have implications for its interpretation of other laws providing employees with rights to leaves of absence or other workplace protections.

If you have any questions about this decision or the Domestic Violence and Abuse Leave Act, please contact a member of our employment law team: Paul Holtzman (pholtzman@kb-law.com), Jill Brenner Meixel (jmeixel@kb-law.com), Allison Lennon (alennon@kb-law.com), or Brian Richichi (brichichi@kb-law.com).