

MEMORANDUM

Agenda Item No. 4(C)


TO: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

DATE: October 16, 2024

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Ordinance relating to Miami-Dade County's Domestic Leave Policy; amending article VIII of chapter 11A of the Code; revising the Domestic Leave Ordinance for employees of Miami-Dade County and the Public Health Trust; delegating authority to the County Mayor to amend Implementing Order 7-43 and the County leave manual accordingly; making technical and conforming changes

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Eileen Higgins.



Geri Bonzon-Keenan
County Attorney

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MDC001



MEMORANDUM
(Revised)

TO: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

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Gen Bonzon-Keenan
County Attorney

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Please note any items checked.

- _____ **“3-Day Rule” for committees applicable if raised**
- _____ **6 weeks required between first reading and public hearing**
- _____ **4 weeks notification to municipal officials required prior to public hearing**
- _____ **Decreases revenues or increases expenditures without balancing budget**
- _____ **Budget required**
- _____ **Statement of fiscal impact required**
- _____ **Statement of social equity required**
- _____ **Ordinance creating a new board requires detailed County Mayor’s report for public hearing**
- _____ **No committee review**
- _____ **Applicable legislation requires more than a majority vote (i.e., 2/3’s present ____, 2/3 membership ____, 3/5’s ____, unanimous ____, majority plus one ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3) (h) or (4)(c) ____, CDMP 9 vote requirement per 2-116.1(4)(c) (2) ____)** to approve
- _____ **Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 4(C)
10-16-24

ORDINANCE NO. _____

ORDINANCE RELATING TO MIAMI-DADE COUNTY'S DOMESTIC LEAVE POLICY; AMENDING ARTICLE VIII OF CHAPTER 11A OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA; REVISING THE DOMESTIC LEAVE ORDINANCE FOR EMPLOYEES OF MIAMI-DADE COUNTY AND THE PUBLIC HEALTH TRUST; DELEGATING AUTHORITY TO THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO AMEND IMPLEMENTING ORDER 7-43 AND THE COUNTY LEAVE MANUAL ACCORDINGLY; MAKING TECHNICAL AND CONFORMING CHANGES; AND PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

WHEREAS, the National Coalition Against Domestic Violence ("NCADV") defines "domestic violence" as the willful intimidation, physical assault, battery, sexual assault, and/or other abusive behavior as part of a systemic pattern of power and control perpetrated by one intimate partner against another; and

WHEREAS, victims of domestic violence may experience physical violence, sexual violence, and threats, as well as economic and emotional/psychological abuse; and

WHEREAS, the NCADV reports that, on average, nearly twenty people per minute are physically abused by an intimate partner in the United States, which equates to more than ten million women and men annually; and

WHEREAS, according to the NCADV, one in four women and one in ten men experience sexual violence, physical violence, and/or stalking by an intimate partner during their lifetime, which often results in injuries, heightened safety concerns, post-traumatic stress disorder, or the use of victim services; and

WHEREAS, the impacts of domestic violence extend beyond the home to the victim’s place of work as well; and

WHEREAS, it is reported that the primary reason domestic violence survivors are unable to leave an abusive relationship is a lack of economic security to support themselves; and

WHEREAS, in a 2018 survey of people who had experienced domestic violence, the vast majority of whom were women, 73 percent said they remained in an abusive relationship due to their financial insecurity; and

WHEREAS, according to the nonprofit organization, Future’s Without Violence, “domestic violence survivors are often caught in between these two barriers; they need work to be able to leave an abusive relationship but the abuse they’re subjected to severely impacts their ability to work”; and

WHEREAS, it notes that “survivors need paid safe leave to maintain economic security, leave their abusive partners, and seek safety and healing for their families”; and

WHEREAS, it reports that nearly one in five workers does not have a single paid sick day at work, and three out of four do not have paid family leave through an employer for longer term needs; and

WHEREAS, this means that survivors are forced to choose between a paycheck and living free of violence and harassment; and

WHEREAS, a lack of paid safe leave can also harm businesses and the economy through reduced productivity and the costs of increased turnover; and

WHEREAS, as early as 1999, the Miami-Dade County Board of County Commissioners (“Board”) recognized that employers must be sensitive to the needs of employees experiencing domestic violence; and

WHEREAS, accordingly, the Board passed Ordinance No. 99-5, codified at Article VIII, Sections 11A-60 through 11A-69 of the Code of Miami-Dade County (“Code”) (“Domestic Leave Ordinance”), establishing an entitlement to domestic leave for eligible employees, as well as certain employment and benefits protections; and

WHEREAS, section 11A-66 of the Code requires the Miami-Dade County employee leave manual and the Public Health Trust employee leave manual include provisions consistent with Article VIII for domestic leave; and

WHEREAS, the Miami-Dade County Domestic Violence Oversight Board (“DVOB”) is the County advisory board charged with, among other things, advising this Board as to all issues that affect or relate to domestic violence; and

WHEREAS, on June 5, 2024, the DVOB unanimously passed a resolution urging this Board and the County Mayor to consider its recommendations and update the County’s Domestic Leave Ordinance, and Implementing Order 7-43, titled “Domestic Violence in the Workplace”; and

WHEREAS, the DVOB advised that “these decades-old policies and procedures should be reviewed and revisited and that they do not go far enough toward the goal of protecting and supporting victims of domestic/intimate partner violence at the workplace”; and

WHEREAS, for example, under the current Domestic Leave Ordinance, victims of domestic violence are forced to exhaust all of their paid vacation leave and/or personal leave prior to requesting domestic leave, and all of their days of domestic leave are unpaid; and

WHEREAS, since its passage in 1999, the scope and impact of the County’s Domestic Leave Ordinance with respect to private employers has been reduced by certain state statutes and

legislative action, including the adoption of section 218.077, Florida Statutes, and the recent passage of Florida House Bill 433 in 2024; and

WHEREAS, the County can still, however, provide greater domestic violence protections and benefits for employees of the County and the Public Health Trust; and

WHEREAS, this Board wishes to amend the Domestic Leave Ordinance for County employees and employees of the Public Health Trust in accordance with the recommendations of the DVOB and to enhance the protections for victims of domestic/intimate partner violence, and make necessary conforming changes to Implementing Order 7-43, Domestic Violence in the Workplace, and County and Public Health Trust employee leave manuals or policies,

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA:

Section 1. Article VIII. of chapter 11A of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:¹

ARTICLE VIII.-DOMESTIC LEAVE

Sec. 11A-60. - Definitions

As used in this article:

- (1) *Commission* shall mean the Miami-Dade County Commission on Human Rights.
- (2) *Director* shall mean the Director of Miami-Dade County Commission on Human Rights.
- (3) *Domestic violence* shall mean a pattern of coercive behavior used by one (1) person to control another such as but not limited to: physical, sexual, emotional and psychological violence and

¹ Words stricken through and/or [[double bracketed]] shall be deleted. Words underscored and/or >>double arrowed<< constitute the amendment proposed. Remaining provisions are now in effect and remain unchanged.

abuse; threats; intimidation; verbal economic control; and stalking; and as defined in Sections 741.28, 784.046 and 784.048 of Florida Statutes.

- (4) *Employee* shall mean a person who has been employed by the employer in Miami-Dade County for at least ninety (90) days and for at least three hundred and eight (308) hours of service with such employer during the previous ninety (90) days.
- (5) *Employer* shall mean a person defined in 11A-29 of this Chapter which has in the regular course of business fifty (50) or more employees working in Miami-Dade County for each working day during each of twenty (20) or more calendar work weeks in the current or preceding calendar year.
- (6) *Perpetrator* shall mean a person who engages in domestic or repeat violence against another person(s).
- (7) *Victim of domestic or repeat violence* shall mean a person who is subjected to domestic or repeat violence by a perpetrator.

Sec. 11A-61. - Entitlement to domestic leave.

- (1) Employees, as defined in this article, shall be entitled to a total of thirty (30) work days of unpaid domestic leave during any twelve (12) month period for one (1) or more of the following:
 - (a) To obtain and receive medical and/or dental assistance for a medical and/or dental problem resulting from domestic or repeat violence, including obtaining such services for the employee's dependent children;
 - (b) To obtain and receive legal assistance relating to domestic or repeat violence, including but not limited to criminal prosecution, a protective order, divorce, custody of children, and child support;
 - (c) To attend court appearances relating to domestic or repeat violence, including but not limited to criminal prosecution, protective order, divorce, custody of children and child support;
 - (d) To attend counseling or support services, including counseling or support services for dependent children;

(e) Any other arrangements necessary to provide for the safety and well-being of an employee subject to domestic or repeat violence.

(2) Domestic leave under this section may be taken by an employee intermittently or on a reduced leave schedule. However, if an employee requests intermittent leave or reduced leave that is foreseeable based on a planned schedule, the employer may require such employee to transfer temporarily to an available alternative position for which the employee is qualified and that has equivalent pay and benefits, and better accommodates recurring periods of leave.

(3) Domestic leave may be taken in addition to the family leave allowed under Article V of this Chapter.

(4) Prior to requesting domestic leave, an employee must exhaust all paid vacation leave and/or personal leave.

Sec. 11A-62. - Certification and confidentiality.

>>(1)<<[[~~(a)~~]] An employer may require that a request for leave under Section 11A-61 be supported by certification issued by an authorized person from a health care provider, attorney of record, counselor, law enforcement agency, clergy, domestic violence advocacy agency, domestic violence center, or domestic violence shelter. The certification shall be sufficient if it indicates that the employee is being subjected to domestic or repeat violence and needs time off to attend to one (1) of the matters described in 11A-61>>(1)<<(a) through (e).

>>(2)<<[[~~(b)~~]] To the extent allowed by law, employers shall maintain the confidentiality of any employee requesting domestic leave under this article.

Sec. 11A-63. - Employment and benefits protection.

(1) Any eligible employee who takes domestic leave, shall on return from leave, be entitled to:

(a) Restoration by the employer to the position of employment held by the employee when leave commenced; or

- (b) Restoration to an equivalent position with equivalent employment benefits, pay and other terms and conditions of employment.
- (2) The taking of leave shall not result in the loss of any employment benefits accrued prior to the date on which the leave commenced.
- (3) Nothing in this article shall be construed to entitle any restored employee to:
 - (a) The accrual of any seniority or employment benefits during any period of leave; or
 - (b) Any right, benefit, or position of employment other than any right, benefit or position to which the employee would have been entitled had the employee not taken the leave.
- (4) Nothing in this section shall be construed to prohibit any employer from requiring any employee on leave to report periodically to the employer on the status and intention of the employee to return to work.
- (5) During any period when the eligible employee takes leave, the employer shall maintain coverage under any group health plan for the duration of such leave at the level and under the conditions coverage that would have been provided if the employee had continued in employment continuously for the duration of such leave. However, the employer may recover the premium that the employer paid for maintaining coverage for the employee under such group health plan during any period of unpaid leave if:
 - (a) The employee fails to return from leave after the period of leave to which the employee is entitled has expired; and
 - (b) The employees fails to return to work for a reason other than continuance or recurrence of domestic or repeat violence or other circumstances beyond the control of the employee.

Sec. 11A-64. - Prohibited acts.

- (1) It shall be unlawful for any employer to interfere with, restrain, or deny the exercise of any right provided under this article.
- (2) It shall be unlawful for any employer to discharge or in any other manner discriminate against any individual for opposing any practice made unlawful under this section.

Sec. 11A-65. - Procedures for domestic leave complaint.

The procedures for a domestic leave complaint shall be the same as the procedures outlined in Section 11A-28.

Sec. 11A-66. - Domestic leave for County and Public Health Trust employees.

The Miami-Dade County employee leave manual and the Public Health Trust employee leave manual >>or policy<< shall include provisions consistent with the requirements of this article for domestic leave[[;-]] >>with the following distinctions which shall prevail over anything to the contrary in this Article that is outside of Section 11A-66:

- (1) Entitlement to domestic leave:
 - (a) If proper documentation, as set forth in Section 11A-62 is provided, Miami-Dade County and Public Health Trust employees shall be entitled to a total of five (5) work days of paid leave and fifteen (15) work days of unpaid domestic leave during any twelve (12) month period for the reasons set forth in Section 11A-61(1)(a) through (e).
 - (b) Miami-Dade County and Public Health Trust employees shall be entitled to the protections and benefits set forth in this Article:
 - a. regardless of their hours of service or time employed; and
 - b. do not have to exhaust all paid vacation leave and/or personal leave prior to requesting domestic leave in accordance with this Article.
- (2) Certification and confidentiality: Miami-Dade County and Public Health Trust employees who have not had time to obtain the documentation required by Section 11A-62 shall be allowed

up to two (2) additional days per twelve (12) month period of paid leave to obtain such certification.

- (3) Employment and benefits protection. Miami-Dade County and Public Health Trust employees shall be entitled to the benefits protections of Section 11A-63 except they should also, upon restoration to employment, be entitled to the accrual of any seniority or employment benefits during any period of leave.
- (4) Outreach to Employees and Mandatory Training. The County Mayor, or designee, and the Public Health Trust, shall provide instruction and training regarding this Article to all new employees hired after the effective date of this Ordinance as part of the initial employee orientation. The County Mayor, or designee, and the Public Health Trust, shall also periodically provide training regarding the benefits and protections of this Article to all employees.
- (5) Designated contact or liaison. The County Mayor, or designee, and the Public Health Trust, shall provide for a designated contact within the Human Resources department, or other department in the discretion of the County Mayor or Public Health Trust, who is trained to assist employee victims of domestic violence receive services, make referrals necessary to break the cycle of violence, and to serve as a liaison between the employee and the employee's supervisor/manager to arrange for leave or other benefits and protections of this Article.

Sec. 11A-67. - Clerk of the Court to report perpetrators.

- (1) Upon a final conviction for a domestic violence related crime, the Clerk of the Court shall forward a copy of such final conviction to the employer of record of the perpetrator.
- (2) For purposes of this section, "employer" shall mean any person, entity, corporation, partnership that employees any employee regardless of length of time or whether full or part-time.

Sec. 11A-68, 11A-69. - Reserved

Section 2. This Board delegates authority to the County Mayor or County Mayor's designee to make any proposed changes to Implementing Order 7-43 and the County Employee Leave Manual consistent with this ordinance, and subject to approval for form and legal sufficiency by the County Attorney's Office.

Section 3. This Board directs the County Mayor or County Mayor’s designee to implement the paid leave in this ordinance for non-bargaining employees and all other employees covered by collective bargaining agreements whose agreements provide for this benefit; and to negotiate the inclusion of the paid leave in this ordinance in the County’s collective bargaining agreements.

Section 4. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 5. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including any sunset provision, shall become and be made a part of the Code of Miami-Dade County, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word “ordinance” may be changed to “section,” “article,” or other appropriate word.

Section 6. This ordinance shall become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

PASSED AND ADOPTED:

Approved by County Attorney as
to form and legal sufficiency:

MAG for GBK

Prepared by:

LCK

Leigh C. Kobrinski
Marlon D. Moffett

Prime Sponsor: Commissioner Eileen Higgins