

February 23, 2022

RESCIND BOARD REPORTS 19-0123-PO1 AND 17-1206-PO5
VICTIMS ECONOMIC SECURITY AND SAFETY ACT (VESSA) LEAVE POLICY
AND ADOPT A NEW VICTIMS' ECONOMIC SECURITY AND SAFETY ACT (VESSA)
LEAVE AND ACCOMMODATIONS POLICY

THE CHIEF EXECUTIVE OFFICER RECOMMENDS:

That the Board of Education of the City of Chicago ("Board") rescind Board Reports 19-0123-PO1 and 17-1206-PO5 Victims Economic Security and Safety Act (VESSA) Leave Policy and adopt a new Victims' Economic Security and Safety Act Leave and Accommodations Policy. The policy was posted for public comment from December 21, 2021 to January 21, 2022.

PURPOSE: To establish eligibility criteria and terms and conditions for Victims Economic Security and Safety Act ("VESSA") leaves and reasonable accommodations for all employees of the Board of Education. This policy provides procedures for when Board of Education employees who are the victims of domestic, sexual, or gender violence or any other crime of violence, or who have a family or household member who is a victim of domestic, sexual, or gender violence, or any other crime of violence may need to take time off or receive reasonable accommodations.

POLICY TEXT:

I. Overview

An eligible employee who is a victim of domestic, sexual, or gender violence, or any other crime of violence or who has a family or household member who is a victim of domestic, sexual, or gender violence, or any other crime of violence is entitled to up to twelve (12) weeks total unpaid leave during any rolling twelve (12) month period and other reasonable accommodations needed to address issues arising from domestic, sexual, or gender violence, or any other crime of violence in accordance with this policy. All Board employees are eligible to take VESSA leave and receive reasonable accommodations. Board employees are entitled, on return from the VESSA leave, to be restored to the position held when the VESSA leave commenced or to an equivalent position with equal pay, benefits, and other conditions of employment. The Board will not interfere with an employee's exercise of VESSA rights, nor discriminate against employees for being or being perceived to be a victim of domestic, sexual, or gender violence, or any other crime of violence seeking VESSA leave or reasonable accommodations, or opposing any practices made unlawful through VESSA. The Board will protect the confidentiality of information provided as part of a VESSA leave.

II. Definitions

- A. Domestic, sexual, or gender violence means domestic violence, sexual assault, gender violence, or stalking.
- B. Domestic violence means physical abuse, harassment, intimidation of a dependent, interference with personal liberty, or willful deprivation as defined in 750 ILCS 60/103.
- C. Crime of violence means any conduct proscribed by Article 9, 11, 12, 26.5, 29D, and 33A of the Criminal Code of 2012 or a similar provision of the Criminal Code of 1961, in addition to conduct proscribed by Articles of the Criminal Code of 2012 referenced in other definitions of this policy.
- D. Family or household member means a spouse or party to a civil union, parent, child, grandparent, grandchild, sibling, or any other person related by blood or by present or prior marriage or civil

union, other people who share a relationship through a child, or any other individual whose close association with the employee is the equivalent of a family relationship as determined by the employee, and persons jointly residing in the same household.

- E. Gender violence means (a) one or more acts of violence or aggression satisfying the elements of any criminal offense under Illinois laws that are committed, at least in part, on the basis of a person's actual or perceived sex or gender, regardless of whether the acts resulted in criminal charges, prosecution, or conviction; (b) a physical intrusion or physical invasion of a sexual nature under coercive conditions satisfying the elements of any criminal offense under Illinois laws, regardless of whether the intrusion or invasion resulted in criminal charges, prosecution, or conviction; or (c) a threat of an act described in (a) or (b) causing a realistic apprehension that the originator of the threat will commit the act.
- F. Sexual Assault or sexual violence means any conduct proscribed by (i) Article 11 of the Criminal Code of 2012 except Sections 11-35 and 11-45; (ii) Section 12-13, 12-14, 12-14.1, 12-15, and 12-16 of the Criminal Code of 2012; or (iii) a similar provision of the Criminal Code of 1961.
- G. Stalking means any conduct proscribed by the Criminal Code of 1961 or the Criminal Code of 2012 in Sections 12-7.3, 12-7.4, and 12-7.5.
- H. Victim Services Organization means a nonprofit, nongovernmental organization that provides assistance to victims of domestic, sexual, or gender violence, or any other crime of violence, or advocates for such victims, including a rape crisis center, an organization carrying out a domestic violence program, an organization operating a shelter or providing counseling services, or a legal services organization or other organization providing assistance through the legal process

III. **Leave Entitlement**

- A. All employees of the Board are eligible to take VESSA leave beginning on the first day of employment. Employees may take VESSA leave from work if the employee or employee's family or household member is experiencing an incident of domestic, sexual, or gender violence, or any other crime of violence, or to address domestic, sexual, or gender violence, or any other crime of violence for one or more of the following reasons:
 - 1. To seek medical attention for or recover from physical or psychological injuries caused by domestic, sexual, or gender violence, or any other crime of violence to the employee or employee's family or household member;
 - 2. To obtain services from a victim services organization for the employee or the employee's family or household member;
 - 3. To obtain psychological or other counseling for the employee or the employee's family or household member;
 - 4. To participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or the employee's family or household member from future domestic, sexual, or gender violence, or any other crime of violence, or to ensure economic security; or
 - 5. To seek legal assistance or remedies to ensure the health and safety of the employee or the employee's family or household member, including preparing for or participating in any civil or criminal legal proceeding related to or derived from domestic, sexual, or gender violence, or any other crime of violence.
- B. An employee can take up to twelve (12) weeks in a rolling twelve (12) month period of job-protected unpaid leave if the employee or a member of the employee's family or household is a victim of domestic violence, sexual violence, gender violence, stalking or sexual assault and

leave is needed for one or more of the purposes stated above. The rolling 12 month period begins from the start date of the leave request. The leave can be taken consecutively as a continuous block of time, intermittently, or on a reduced work schedule, depending on the employee's needs.

- C. An employee on VESSA Leave is expected to reasonably communicate with their supervisor and the Talent Office regarding the employee's leave status and intention to return to work.
- D. During VESSA leave, the Board must maintain the employee's benefits as if the employee is working. An employee is required to continue paying the employee's portion of insurance benefit premiums if the employee wishes to continue coverage during the VESSA leave.
- E. While on an unpaid portion of the leave pursuant to VESSA, an employee will not accrue additional vacation or sick time. With the exception of FMLA, employees are not required but may elect to substitute any period of paid or unpaid leave (including STD, sick, vacation, personal business, or similar leave) to which they are entitled to an equivalent period of VESSA leave. In the event of a substitution, the paid or unpaid leave will run concurrently with VESSA leave.
- F. During VESSA leave, an employee will continue to accumulate seniority in accordance with an applicable collective bargaining agreement Rules.
- G. If the employee is eligible for and the reason for the leave also qualifies for FMLA, the leaves will run concurrently.

IV. Notification for Leave

An employee must provide notification to the Talent Office at least 48 hours in advance of the employee's intention to take leave unless providing advance notice is not practicable. If an employee cannot provide advance notice, the employee must notify the Talent Office within a reasonable period after the absence. In general, "reasonable time" means within 48 hours after the first day the employee is absent from work as a result of domestic or sexual violence to the employee or a family/household member unless not practicable due to emergency or other unusual circumstances. Once the Talent Office is notified that an employee needs a VESSA leave, the leave will be approved, if such leave appears to qualify for VESSA leave. If an employee is requesting VESSA leave that will last longer than or take place more than three weeks after the first absence, the VESSA leave will be conditionally approved until the employee provides the required documentation during the required timeframe outlined below in Section B.

V. Certification for Leave

- A. The employee must provide certification that the employee or the employee's family or household member is a victim of domestic, sexual, or gender violence, or any other crime of violence and that the leave is for one of the purposes listed in Section III.A. To provide certification, the employee must either (1) complete a VESSA Leave Sworn Certification Form or (2) provide a sworn document that includes the employee's name; the reason for the leave; the dates, days of the week, or hours the employee expects to be out; and whether the employee elects to take unpaid time off or apply any available vacation, personal business day, or sick time for the duration of the leave. When practicable, employees should provide this certification within three weeks of notifying the Talent Office of the need for a VESSA leave. In addition, an employee must submit one of the following forms of documentation to the Talent Office upon obtaining such documents, if the employee has possession of such documentation:

1. documentation from a victim services organization, attorney, member of the clergy, health care provider, or other professionals from whom assistance has been sought to address domestic, sexual, or gender violence, or any other crime of violence and the effects of the violence;
2. a police report;
3. a court record; or
4. other corroborating evidence.

The employee may choose which document to submit and the Board will not request or require more than one document to be submitted during the same 12-month period leave is requested or taken if the reason for leave is related to the same incident or incidents of violence or the same perpetrator or perpetrators of the violence.

- B. Failure to provide a completed VESSA Leave Sworn Certification Form or a sworn document that includes the basic leave information described above within a reasonable time of notifying the Talent Office of the need for a VESSA leave and failure to provide the required supporting documentation upon obtaining such documents may result in a denial of the leave and/or disciplinary action. In general, reasonable time to provide supporting documentation verifying the need for a VESSA leave means either: (1) within 48 hours of obtaining such documentation; or (2) no later than three weeks after the first day the employee is absent from work as a result of domestic, sexual, or gender violence, or any other crime of violence to the employee or a family/household member unless not practicable due to emergency or other unusual circumstances.
- C. A school, network office, or department who acquires knowledge that an employee's absence may be for a VESSA-qualifying reason, must immediately notify the Talent Office, Absence and Disability Unit. The leave tentatively may be designated as VESSA leave pending the employee's completion of a VESSA Leave Sworn Certification Form or a sworn document with the basic leave information described above in 6(b), and additional supporting documents.
- D. All information provided by an employee to the Board pursuant to this policy, including all information delineated in Section III above, and the fact that the employee has requested or obtained an accommodation pursuant to this policy will be retained in the strictest confidence by the Board, except to the extent disclosure is requested or consented to in writing by the employee or otherwise required by applicable federal or State law.

VI. Return from Leave

- A. Following a return from a VESSA leave, the employee will be reinstated to their former position or an equivalent position with the same pay, benefits, and conditions of employment.
- B. If an employee does not return to work when the VESSA leave expires, employment may be terminated effective on the first scheduled workday that is missed following the expiration of the VESSA leave, unless the employee has been approved for an additional leave of absence as a reasonable accommodation or uses other leave available to the employee at that time.

VII. Reasonable Accommodation

- A. Within the provisions of VESSA, reasonable accommodation will be made for an employee with known limitations resulting from circumstances relating to being a victim of domestic, sexual, or gender violence, or any other crime of violence, or a family or household member being a victim of domestic, sexual, or gender violence, or any other crime of violence unless the accommodation

would impose an undue hardship on operations. Reasonable accommodation may include an adjustment to job structure, workplace facility, or work requirement.

- B. An employee seeking a reasonable accommodation pursuant to VESSA must use the interactive process by first submitting a written request to the Chicago Public Schools Talent/ADA Office using the VESSA Accommodation Form. The employee requesting the accommodation has an affirmative obligation to engage in an interactive process with the ADA Office to identify an appropriate accommodation. The ADA Office must make a determination on any request for reasonable accommodation in a timely fashion and in compliance with VESSA.
- C. The Chief Executive Officer or the Chief Talent Officer are authorized to approve reasonable accommodations requested under this policy. Any exigent circumstances or danger facing the employee or their family or household member must be considered by the Chief Executive Officer or the Chief Talent Officer in determining whether the accommodation is reasonable.

VIII. Non-Interference and Non-Discrimination

The Board must not interfere with, restrain, or deny an employee's exercise of or the attempt to exercise any rights under VESSA. The Board must not fail to hire, refuse to hire, discharge, constructively discharge, or harass any employee with respect to the compensation, terms, conditions, or privileges of employment, or retaliate against an employee in any form or manner because:

- A. The employee:
 - 1. Is or is perceived to be a victim of domestic, sexual, or gender violence, or any other crime of violence;
 - 2. Attended, participated in, prepared for, or requested leave to attend, participate in, or prepare for a criminal or civil court proceeding relating to an incident of domestic, sexual, or gender violence, or any other crime of violence of which the employee or a family or household member of the employee was a victim or requested or took leave under this policy;
 - 3. Requested an adjustment to a job structure, workplace facility, or work requirement, including a transfer, reassignment, or modified schedule, leave, a changed telephone number or seating assignment, installation of a lock, or implementation of a safety procedure in response to actual or threatened domestic, sexual, or gender violence, or any other crime of violence, regardless of whether the request was granted;
 - 4. Is a victim of domestic, sexual, or gender violence, or any other crime of violence such that the Board sought a workplace protection restraining order pursuant to the Workplace Violence Prevention Act, 820 ILCS 275/21; or
 - 5. Opposed any practice made unlawful by VESSA; or
 - 6. The workplace is disrupted or threatened by the action of a person whom the employee states has committed or threatened to commit domestic, sexual, or gender violence, or any other crime of violence against the employee or the employee's family or household member.

Legal References: 820 ILCS 180/1 et seq. 820 ILCS 275/21

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