



# Leave Laws: Kansas

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A Q&A guide to state law on employee leave for private employers in Kansas. This Q&A addresses the legal requirements for leave from employment and explains the rights and obligations of employees and employers under state law. Federal, local or municipal law may impose additional or different requirements. Answers to questions can be compared across a number of jurisdictions (see *Leave Laws: State Q&A Tool*).

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## OVERVIEW OF STATE LEAVE LAW

1. What leave laws exist in your state (for example, mini-FMLA laws, disability leave, jury duty leave or domestic violence leave)? For each leave law please describe:

- Which employers are covered.
- Which employees are eligible to take the leave.
- The entity that administers the law.
- Whether the employee has a private right of action.

### Pregnancy Leave: Kan. Admin. Regs. § 21-32-6

#### Covered Employers

The pregnancy leave laws apply to all persons or entities who both:

- Conduct business in Kansas.
- Employ four or more employees.

(*Kan. Stat. § 44-1002(b) (2012)*.)

#### Eligible Employees

Eligible employees include women who:

- Are pregnant.
- Have a miscarriage.
- Have an abortion.
- Give birth to a child.

(*Kan. Admin. Regs. § 21-32-6 (2012)*.)

#### Administration

The Kansas Human Rights Commission (KHRC) administers the Kansas Acts Against Discrimination (KAAD), which include the pregnancy leave laws (*Kan. Stat. §§ 44-1003 to 44-1005 (2012)*).

#### Private Right of Action

A sex discrimination charge, which includes pregnancy discrimination, may be filed with the KHRC within six months of either:

- The alleged act of discrimination.
- The last alleged act of discrimination in continuing pattern or practice claims.

Filing a charge is an administrative prerequisite before filing a private civil suit for sex discrimination (*Kan. Stat. § 44-1005 (2012)*).

### Jury Duty Leave: Kan. Stat. §§ 43-173 and 60-514

#### Covered Employers

The statute does not define employer, so presumably all employers are covered regardless of their number of employees.

#### Eligible Employees

Eligible employees include all permanent employees who are called to jury duty in any court of Kansas (*Kan. Stat. § 43-173(a) (2012)*).

The statute does not define the term "permanent," but presumably temporary employees hired for reasonably short and defined periods of time would not be protected by the statute. An employee who works in Kansas but is called to jury duty in another state, such as his state of residence, is apparently not protected by the statute.

#### Administration

The statute does not identify an entity to administer this law.

#### Private Right of Action

The statute recognizes a private right of action (*Kan. Stat. § 43-173(d) (2012)*). Any claim for violation of this statute must be brought within one year from the date of discharge or threat of discharge (*Kan. Stat. § 60-514 (2012)*).

**Military Leave: Kan. Stat. §§ 48-517, 48-222 and 44-1125 to 44-1128**

Covered Employers

**Kansas Military Leave: Kan. Stat. § 48-517**

Section 48-517 applies to employers and an employer's successor in interest. However, the statute does not define employer, so presumably all employers and their successors in interest are covered regardless of their number of employees (*Kan. Stat. § 48-517 (2012)*).

**Kansas National Guard Leave: Kan. Stat. § 48-222**

Section 48-222 applies to employers. However, the statute does not define employer, so presumably all employers are covered regardless of their number of employees (*Kan. Stat. § 48-222 (2012)*).

**US Military Leave: Kan. Stat. §§ 44-1125 to 44-1128**

Sections 44-1125 to 44-1128 apply to persons regardless of size, which would include an employer of any size. (*Kan. Stat. §§ 44-1125 to 44-1128 (2012)*).

Eligible Employees

**Kansas Military Leave: Kan. Stat. § 48-517**

Eligible employees are those who are members of:

- The Kansas National Guard.
- The Kansas Air National Guard.
- The Kansas State Guard.
- Another Kansas military force.

(*Kan. Stat. § 48-517 (2012)*.)

Based on the statutory language, there is an argument that only non-temporary employees are entitled to leave (see *Question 6: Military Leave: Kansas Military Leave*). However, the language about temporary positions is included only in the portions of the statute that address reinstatement rights. Therefore, it is probably advisable to grant the leave to a temporary employee, although reinstatement rights could be denied.

**Kansas National Guard Leave: Kan. Stat. § 48-222**

Eligible employees are those who are members of the Kansas National Guard (*Kan. Stat. § 48-222 (2012)*).

**US Military Leave: Kan. Stat. §§ 44-1125 to 44-1128**

Eligible employees are those who are members of the military, which is defined as a member of either:

- The armed forces or national guard on active duty.
- An active reserve unit in the armed forces or national guard.

(*Kan. Stat. § 44-1125(a) (2012)*.)

Administration

**Kansas Military Leave: Kan. Stat. § 48-517**

A person claiming to be entitled to any right or benefit under Section 48-517 must file a complaint with the Kansas adjutant general, who is responsible for investigating the complaint and attempting to resolve it. If the adjutant general cannot successfully resolve it, he must notify the claimant of both:

- The results of the investigation.
- The claimant's right to pursue the matter by filing a complaint with the Kansas attorney general.

(*Kan. Stat. § 48-517(f) (2012)*.)

If a complaint is then filed with the attorney general, and if the attorney general is reasonably satisfied that the person is entitled to the relief or benefit sought, the attorney general may bring a lawsuit on behalf of the employee (*Kan. Stat. § 48-517(d) (2012)*).

**Kansas National Guard Leave: Kan. Stat. § 48-222**

Under Section 48-222, criminal sanctions can be imposed on an employer that violates the statute (see *Question 8: Military Leave*). The statute does not identify who imposes sanctions but it would presumably be administered by the prosecuting attorney for the county where the employee worked.

**US Military Leave: Kan. Stat. §§ 44-1125 to 44-1128**

Sections 44-1125 to 44-1128 do not identify an entity to administer the law.

Private Right of Action

**Kansas Military Leave: Kan. Stat. § 48-517**

Section 48-517 does not provide for a private right of action. Violations of the statute are handled first by the Kansas adjutant general and the Kansas attorney general (see *Administration*).

**Kansas National Guard Leave: Kan. Stat. § 48-222**

Section 48-222 presumably does not provide for a private right of action because it only imposes criminal sanctions. However, under Kansas common law, public policy exceptions to "at-will" employment may include a violation of an employee's rights under the statute. An employee can therefore arguably file suit alleging either:

- Violation of a right created by statute, with a three-year statute of limitations.
- Injury to rights not arising under contract, with a two-year statute of limitations.

(*Kan. Stat. §§ 60-512(2) and 60-513(4) (2012)*.)

**US Military Leave: Kan. Stat. §§ 44-1125 to 44-1128**

Sections 44-1125 to 44-1128 provide for a private cause of action that may be brought in the district court of the county:

- Where the alleged violation occurred.
- In which the alleged violator resides or transacts business.

(*Kan. Stat. § 44-1127 (2012)*.)



The statute includes no specific statute of limitations. However, it appears that a claim would have to be brought within three years after it arises as a claim for a violation of a right created by statute (*Kan. Stat. § 60-512(2) (2012)*).

### Voting Leave: Kan. Stat. § 25-418

#### Covered Employers

The statute includes no definition of "employer," so presumably all employers are covered regardless of their number of employees.

#### Eligible Employees

Any employee entitled to vote is covered (*Kan. Stat. § 25-418 (2012)*).

#### Administration

The statute does not identify an entity to administer the law.

#### Private Right of Action

The statute does not create a private right of action, but obstruction of voting privilege is a Class A misdemeanor (see *Question 8: Voting Leave*).

However, under Kansas common law, public policy exceptions to at-will employment include a violation of an employee's rights under the voting leave law. An employee can therefore file suit alleging either:

- Violation of a right created by statute, with a three-year statute of limitations.
- Injury to rights not arising on contract, with a two-year statute of limitations.

(*Kan. Stat. §§ 60-512(2) and 60-513(4) (2012)*.)

### Domestic Violence Leave: Kan. Stat. §§ 44-1131 to 44-1133

#### Covered Employers

The statute does not define employer, so presumably all employers are covered regardless of their number of employees.

#### Eligible Employees

Eligible employees are those who are a victim of either:

- Domestic violence (see *Kan. Stat. § 44-1131(a) (2012)*).
- Sexual assault (see *Kan. Stat. § 44-1131(b) (2012)*).

(*Kan. Stat. § 44-1132(a) (2012)*.)

#### Administration

The Kansas Secretary of Labor is responsible for enforcing the statute (*Kan. Stat. § 44-1133 (2012)*).

#### Private Right of Action

The statute does not create a private cause of action. However, under Kansas common law, public policy exceptions to "at-will" employment would include a violation of an employee's rights under the domestic violence leave law. An employee can therefore file suit alleging either:

- Violation of a right created by statute, with a three-year statute of limitations.
- Injury to rights not arising on contract, with a two-year statute of limitations.

(*Kan. Stat. §§ 60-512(2) and 60-513(4) (2012)*.)

### RULES REGARDING TAKING LEAVE

2. For each leave law, please describe:

- The circumstances under which an employee may take leave (for example, birth of a child).
- How much leave time is allowed to be taken by each employee each year?
- How is that leave time calculated?

### Pregnancy Leave: Kan. Admin. Regs. § 21-32-6

#### Valid Leave Reasons

Under the Kansas Acts Against Discrimination (KAAD), employers are prohibited from discriminating against an employee on the basis of sex in terms, conditions or privileges of employment (*Kan. Stat. § 44-1009(a)(1) (2012)*).

The KAAD, under its regulations, recognizes pregnancy discrimination as a form of sex discrimination (*Kan. Admin. Regs. § 21-32-6 (2012)*). The regulations require covered employers to both:

- Provide a leave of absence, for a reasonable period of time, for female employees due to childbearing.
- Consider as temporary disabilities for all job-related purposes disabilities which are caused or contributed to by:
  - pregnancy;
  - miscarriage;
  - abortion;
  - childbirth; or
  - recovery from any of the above.

(*Kan. Admin. Regs. § 21-32-6(b), (d) (2012)*.)

An employer, through its written and unwritten employment policies and practices, whether formal or informal, must apply the same terms and conditions to pregnancy and childbirth as it applies to other temporary disabilities, including, without limitation, on such matters as:

- Commencement and duration of leave.
- The availability of extensions.
- Reinstatement.

(*Kan. Admin. Regs. § 21-32-6(b) (2012)*.)

Where the termination of any employee who is temporarily disabled is caused by an employment policy under which insufficient or no leave is available, that termination is discriminatory if it both:

- Has a disparate impact on employees of one sex.
- Is not justified by business necessity.

(*Kan. Admin. Regs. § 21-32-6(c) (2012).*)

Kansas does not have a state version of the federal *Family and Medical Leave Act of 1993* (FMLA). Additionally, the KAAD and its regulations do not require leave following the recuperation period for either:

- Bonding with the newborn.
- Care for the newborn if the newborn becomes seriously ill, although, if applicable, the federal FMLA would require such leave.

### Leave Time for Each Employee

The KAAD regulations do not require that employees provide leave for any particular minimum or maximum leave duration. Instead, there are two general requirements:

- An employer must provide a leave of absence to a female employee for childbearing for a reasonable period of time.
- An employer must apply the same terms and conditions to leave due to disabilities caused or contributed to by pregnancy, miscarriage, abortion, childbirth and recovery therefrom as it applies to leaves for other temporary disabilities.

(*Kan. Admin. Regs. § 21-32-6(b), (d) (2012).*)

### Calculating Leave Time

The KAAD regulations do not set any precise leave time limits, nor has a court considered this aspect of the regulation. Nonetheless, six weeks of leave following natural childbirth, or eight weeks in the case of a C-section, is generally recognized as medically reasonable.

As a general rule, an employer should consider granting these amounts of leave as the employee's health care provider certifies as medically necessary, unless there is a strong argument that the total amount of leave time is both:

- Unreasonable.
- In excess of the amount allowed under the employer's leave policies that are applicable to temporary disabilities.

In addition, if the employee's condition rises to the level of a disability under the KAAD's disability discrimination provisions or under the federal *Americans with Disabilities Act of 1990* (ADA), an employer would likely need to undertake an accommodation analysis to determine if any additional leave time needed is reasonable and not an undue hardship (see *Practice Note, Disability Accommodation under the ADA*).

## Jury Duty Leave: Kan. Stat. §§ 43-173 and 60-514

### Valid Leave Reasons

Leave is allowed for jury service, or for attendance in connection with jury service, in any court of Kansas (*Kan. Stat. § 43-173(a) (2012)*).

### Leave Time for Each Employee

Employers must provide leave for all attendance in connection with jury service in any court of Kansas (*Kan. Stat. § 43-173(a) (2012)*).

### Calculating Leave Time

There is no provision for calculating jury duty leave time.

## Military Leave: Kan. Stat. §§ 48-517, 48-222 and 44-1125 to 44-1128

### Valid Leave Reasons

#### Kansas Military Leave: Kan. Stat. § 48-517

Employers must grant a leave of absence to an eligible employee (see *Question 1: Military Leave: Eligible Employees*) who is called or ordered to active military duty by the State of Kansas. While performing this military duty, the employee is deemed to be on a temporary leave of absence. (*Kan. Stat. § 48-517(a)-(b) (2012)*.)

#### Kansas National Guard Leave: Kan. Stat. § 48-222

Employers must grant a leave of absence to eligible employees (see *Question 1: Military Leave: Eligible Employees*) to perform annual muster and camp of instruction (*Kan. Stat. § 48-222 (2012)*). While performing this military duty, the employee should be treated as if on a temporary leave of absence.

#### US Military Leave: Kan. Stat. §§ 44-1125 to 44-1128

Under Sections 44-1125 to 44-1128, it is unlawful to either:

- Discriminate against an eligible employee (see *Question 1: Military Leave: Eligible Employees*) with respect to employment, or employment position or status, because of membership or service in the military.
- Discharge any eligible employee because of the member's performance of emergency military duty.

(*Kan. Stat. § 44-1126(a) (2012).*)

As a result, leaves for military service most likely must be granted. While performing this military duty, the employee should be treated as if on a temporary leave of absence.

### Leave Time for Each Employee

#### Kansas Military Leave: Kan. Stat. § 48-517

Eligible employees are entitled to leave for the period of military duty plus 72 hours after either:

- Release from duty.
- Recovery from disease or injury resulting from the military duty.

(*Kan. Stat. § 48-517(a) (2012).*)



The employee must report back to work at the end of the leave period (*Kan. Stat. § 48-517(a) (2012)*).

#### **Kansas National Guard Leave: Kan. Stat. § 48-222**

The statute does not impose a minimum or maximum amount of leave time. The employee has protection for the duration of the military leave.

#### **US Military Leave: Kan. Stat. §§ 44-1125 to 44-1128**

The statutes do not impose a minimum or maximum amount of leave time. The employee has protection for the duration of the military leave.

#### **Calculating Leave Time**

Kansas' military leave laws contain no provisions for calculating leave time.

#### **Voting Leave: Kan. Stat. § 25-418**

##### **Valid Leave Reasons**

Eligible employees (see *Question 1: Voting Leave: Eligible Employees*) are entitled to leave on the day of an election conducted by a county election officer in Kansas if the polls are open for less than two consecutive hours both:

- Before work begins.
- After work ends.

(*Kan. Stat. § 25-418 (2012)*.)

##### **Leave Time for Each Employee**

If the employee has a valid reason for leave (see *Valid Leave Reasons*) employers must provide sufficient time off such that the employee has two consecutive hours off from work between the opening and closing of the polls to vote. Employers can decide when to grant the time off, but the time off cannot include the employee's regular lunch period. (*Kan. Stat. § 25-418 (2012)*.)

##### **Calculating Leave Time**

Eligible employees are entitled to two consecutive hours off from work during the hours the polls are open, including the employee's usual non-working hours other than the employee's regular lunch period. For example, if the polls are open from 7:00 a.m. to 7:00 p.m.:

- An employee working an 8:00 a.m. to 5:00 p.m. shift (with a one-hour unpaid meal period from 12:00-1:00 p.m.) is not entitled to any leave time, because the employee has two consecutive hours of non-work time at the end of the day before the polls close to vote.
- An employee working an 8:30 a.m. to 5:30 p.m. shift (with a one-hour unpaid meal period from 12:30-1:30 p.m.) is entitled to 30 minutes of leave at the beginning or end of the shift to vote. The employer can decide when to grant the leave, but it cannot include the employee's regular lunch period.

#### **Domestic Violence Leave: Kan. Stat. §§ 44-1131 to 44-1133**

##### **Valid Leave Reasons**

An eligible employee (see *Question 1: Domestic Violence Leave: Eligible Employees*) must be granted time off from work to:

- Obtain or attempt to obtain any relief, including, but not limited to, a temporary restraining order, restraining order or other injunctive relief to help ensure the health, safety or welfare of:
  - the victim; or
  - the victim's children.
- Seek medical attention for injuries caused by domestic violence or sexual assault.
- Obtain services, as a result of domestic violence or sexual assault, from a:
  - domestic violence shelter;
  - domestic violence program; or
  - rape crisis center.
- Make court appearances in the aftermath of domestic violence or sexual assault.

(*Kan. Stat. § 44-1132(a) (2012)*.)

##### **Leave Time for Each Employee**

An employee is entitled to eight days off per calendar year for domestic violence leave. An employee may elect to use accrued paid leave or, if paid leave is unavailable, unpaid leave. Accrued paid time off benefits include:

- Vacation.
- Personal time off.
- Sick days, in some cases, if they would otherwise cover the absence.

(*Kan. Stat. § 44-1132(d) (2012)*.)

##### **Calculating Leave Time**

There are no provisions for calculating domestic violence leave time. The statute does not state how much time off an employee may take if some of the time off is paid through available paid time off benefits and some of it is unpaid. Two interpretations currently exist:

- The maximum amount of time off is eight days per calendar year, regardless of whether an employee uses paid time off benefits, takes it as unpaid leave or uses a combination of the two.
- The employee may elect to use paid time off for domestic violence leave, and in addition to that time off, the employee could still take another eight days of unpaid time off per calendar year. This interpretation is the most legally conservative and least risky one.



3. For each leave law, must the leave time run concurrently with other leave, and if so, which types of leave must it run concurrently with?

### Pregnancy Leave: Kan. Admin. Regs. § 21-32-6

This leave runs concurrently with federal FMLA leave, if applicable. If the FMLA is not applicable, the employee is still entitled to pregnancy leave under Kansas state law if the Kansas Acts Against Discrimination (KAAD) apply.

In addition, if the reason for the leave qualifies as a disability under the KAAD or the federal ADA, or if the federal Pregnancy Discrimination Act (PDA) would require such leave, leave under the KAAD's sex and pregnancy discrimination statutes and regulations would run concurrently with it.

### Jury Duty Leave: Kan. Stat. §§ 43-173 and 60-514

This leave does not run concurrently with any other leave laws.

### Military Leave: Kan. Stat. §§ 48-517, 48-222 and 44-1125 to 44-1128

These types of leave do not run concurrently with any other leave laws, unless the federal *Uniformed Services Employment and Reemployment Rights Act of 1994* (USERRA) applies. If USERRA applies, leave under the Kansas military leave laws would run concurrently with USERRA leave.

### Voting Leave: Kan. Stat. § 25-418

This leave does not run concurrently with any other leave laws.

### Domestic Violence Leave: Kan. Stat. §§ 44-1131 to 44-1133

This leave generally does not run concurrently with any other leave laws. However, leave under the Kansas domestic violence leave law would run concurrently with [which leave law?] if both:

- The reason for leave involves treatment or recovery for physical or psychological injuries caused by domestic violence or sexual assault.
- KAAD's disability discrimination provisions, the federal ADA or the federal FMLA applies.

However, if KAAD, the ADA or the FMLA do not apply, an employee is still entitled to domestic violence leave under Kansas law.

4. For each leave law, can leave be taken intermittently, and if so, what rules apply to intermittent leave under each law?

### Pregnancy Leave: Kan. Admin. Regs. § 21-32-6

The pregnancy leave regulation is silent on whether leave can be taken intermittently, but intermittent leave is arguably required for three reasons:

- A reasonable amount of leave is required, which could include continuous leave, intermittent leave or a combination of both.
- At least during pregnancy, there will likely be situations when leave is needed intermittently.
- If the employer provides intermittent leave for other temporary disabilities, the employer must grant intermittent leave for disabilities caused or contributed to by pregnancy, miscarriage, abortion, childbirth and recovery from these events.

### Jury Duty Leave: Kan. Stat. §§ 43-173 and 60-514

The jury duty leave law does not provide for intermittent leave, nor does it preclude it. However, an employer can arguably require the employee to work under certain circumstances that would effectively render the jury duty leave intermittent, such as:

- An employee is released early from jury duty on any particular day and there is sufficient time for the employee to report to work and then work a reasonable period of time.
- The employee is not scheduled for jury duty on his normal work day.

### Military Leave: Kan. Stat. §§ 48-517, 48-222 and 44-1125 to 44-1128

The military leave laws do not provide for intermittent leave, nor do they preclude it. As a practical matter, military leave is normally continuous in nature.

### Voting Leave: Kan. Stat. § 25-418

Voting leave may not be taken intermittently. It must be granted and taken in one block of time of up to two hours during an election day.

### Domestic Violence Leave: Kan. Stat. §§ 44-1131 to 44-1133

The domestic violence leave law does not specifically provide for intermittent leave, nor does it preclude it. However, in light of the various reasons for which this type of leave can be taken and because an employee may take up to eight days of such leave per calendar year, there is a very strong argument that an employee must be allowed to take it intermittently.

## EMPLOYEE OBLIGATIONS

5. For each leave law, must an employee seeking leave:
- Give notice to their employer? If so, how much and what kind of notice?
  - Provide medical or any other sort of certification?

### Pregnancy Leave: Kan. Admin. Regs. § 21-32-6

There are two general notice requirements:



- Since the employer must apply the same terms and conditions to pregnancy leave as it applies to leaves for other temporary disabilities, the employee must give notice of the need for leave as is required in the employer's written and unwritten policies and practices regarding leaves for temporary disabilities.
- After childbearing, including childbirth, miscarriage or abortion, the employee must notify the employer either orally or in writing that she intends to return to work within a reasonable period of time.

(*Kan. Admin. Regs. § 21-32-6(b), (d) (2012).*)

The regulations do not specifically provide for medical or other certification of the need for leave. However, since the employer must apply the same terms and conditions to pregnancy leave as it applies to leaves for other temporary disabilities, the employee must comply with certification requirements that the employer's written and unwritten policies and practices regarding leaves for temporary disabilities require.

### Jury Duty Leave: Kan. Stat. §§ 43-173 and 60-514

The jury duty leave law neither provides a notice or certification requirement, nor precludes an employer from requiring reasonable notice or certification.

### Military Leave: Kan. Stat. §§ 48-517, 48-222 and 44-1125 to 44-1128

Kansas Military Leave: Kan. Stat. § 48-517

The employee must give advance notice of the need for military duty leave to his employer (*Kan. Stat. § 48-517(a) (2012)*). However, the statute is silent on how much advance notice he must give.

In order to have reinstatement rights under the statute, the employee must demonstrate that he satisfactorily performed military duty and was released from duty under honorable conditions. This demonstration would normally be in the form of written proof, as the statute specifically states that the Kansas adjutant general is required to provide the employee with documentation of his completion of service under honorable conditions. (*Kan. Stat. § 48-517(a) (2012).*)

Kansas National Guard Leave: Kan. Stat. § 48-222

The statute neither includes a notice or certification requirement, nor precludes an employer from requiring reasonable notice or certification.

US Military Leave: Kan. Stat. §§ 44-1125 to 44-1128

The statutes neither include a notice or certification requirement, nor preclude an employer from requiring reasonable notice or certification.

### Voting Leave: Kan. Stat. § 25-418

The voting leave law neither includes a notice or certification requirement, nor precludes an employer from requiring reasonable notice or certification.

### Domestic Violence Leave: Kan. Stat. §§ 44-1131 to 44-1133

Employees must give reasonable advance notice if feasible to do so. If it is:

- Feasible to give advance notice, the employee must provide documentation supporting the leave within 48 hours after returning from leave.
- **Not** feasible to give advance notice, the employee must provide documentation supporting any unscheduled absence within 48 hours after the absence begins.

(*Kan. Stat. § 44-1132(b)(1)-(2) (2012).*)

Permitted types of documentation include, without limitation:

- A police report indicating that the employee was a victim of domestic violence or sexual assault.
- A court order protecting or separating the employee from the perpetrator or other evidence from the court or prosecuting attorney that the employee appeared in court.
- Documentation from a medical professional, victim advocate, health care provider or counselor that the employee was undergoing treatment for physical or mental injuries or abuse resulting from victimization from an act of domestic violence or sexual assault.

(*Kan. Stat. § 44-1132(b)(2) (2012).*)

6. For each leave law, what rights and benefits does the law grant to an employee taking leave under it (for example, pay, right to return to their same position or right to bonuses that would have otherwise been earned)?

### Pregnancy Leave: Kan. Admin. Regs. § 21-32-6

The pregnancy leave regulation does not require that leave be paid. However, the employer must apply the same terms and conditions to such leaves as it applies to leaves for other temporary disabilities, including, without limitation, on such matters as:

- Commencement and duration of leave.
- The availability of extensions.
- Accrual of seniority and other benefits and privileges.
- Reinstatement.
- Payment under any health plan, temporary disability insurance plan and sick leave plan.

(*Kan. Admin. Regs. § 21-32-6(b) (2012).*)

Consequently, the employer would be required to provide paid leave if it provides paid leave for leaves due to other temporary disabilities under its written and unwritten policies and practices.

Following childbearing (including childbirth, miscarriage or abortion), and on signifying her intent to return to work within a reasonable time, the employee must be reinstated, without loss of service, credits, seniority or other benefits, to either:

- Her original job.
- A position of like status and pay.

(*Kan. Admin. Regs. § 21-32-6(d) (2012).*)

### Jury Duty Leave: Kan. Stat. §§ 43-173 and 60-514

The statute does not require that leave be paid. However, the employer must apply any terms and conditions it has established by policy or practice with regard to jury duty leave or similar furloughs or absences (*Kan. Stat. § 43-173(c) (2012)*). Therefore, if the employer has established a policy or practice of paying an employee while on jury duty leave or of providing pay for similar furloughs or absences, the employer must follow its own policies and practices and provide paid jury duty leave.

Additionally, an employer is:

- Prohibited from discharging or threatening to discharge an employee because of jury service or attendance in connection with it.
- Required to reinstate the employee to the employee's same job without loss of seniority or benefits following jury service.

(*Kan. Stat. § 43-173(a), (c) (2012).*)

### Military Leave: Kan. Stat. §§ 48-517, 48-222 and 44-1125 to 44-1128

Kansas Military Leave: Kan. Stat. § 48-517

There is no specific requirement that the leave be paid. However, the employer must apply any terms and conditions it has established by rule or practice with regard to military leave or similar leaves (*Kan. Stat. § 48-517 (2012)*). Consequently, if the employer has established a policy or practice of paying an employee while on such military leave or providing pay for similar leaves, the employer would be required to follow its own policies or practices and provide paid military leave.

Subject to certain exceptions, an employer is required to reinstate the employee to either:

- The position, pay and benefits the employee would have attained had leave not been taken, without loss of seniority.
- A position of like seniority, status, and pay.

(*Kan. Stat. § 48-517(a), (b), (c) (2012).*)

However, an employer has no obligation to reinstate any employee if any of the following apply:

- The employee did not give advance notice to the employer of the military duty.

- The employee is released from military duty but not under honorable conditions.
- The prior position held by the employee was a temporary position, defined as one:
  - for a brief, nonrecurrent period; and
  - where there is no reasonable expectation that employment will continue indefinitely or for a significant period.
- The employer's circumstances have so changed as to make reemployment impossible or unreasonable.
- Reemployment of the employee would impose an undue hardship (see *Kan. Stat. § 48-517(g)(2) (2012)*).

(*Kan. Stat. § 48-517(a), (g) (2012).*)

If an employee sustains a disability during his military call to duty and is no longer qualified to perform the duties of the position to which he would otherwise be reinstated, the employer must reinstate the employee to another position both:

- For which he is qualified.
- That will provide like seniority, status and pay or the nearest approximation of it consistent with the circumstances of the case.

(*Kan. Stat. § 48-517(a) (2012).*)

The statute provides that, when two or more persons are entitled to be restored to the same position, the person who left the position first has reinstatement priority (*Kan. Stat. § 48-517(e) (2012)*).

The employer may not discharge an employee who has returned from military leave without cause for a period of one year following reinstatement (*Kan. Stat. § 48-517(b) (2012)*). The statute does not define the term "without cause."

Kansas National Guard Leave: Kan. Stat. § 48-222

The law does not specifically address whether leave is paid. An employer is prohibited from:

- Refusing to grant leave.
- Discharging an employee for taking national guard leave.
- Punishing the employee in any manner for being absent to perform national guard duty.

(*Kan. Stat. § 48-222 (2012).*)

By implication, therefore, the law requires that the employee generally must be reinstated to the same job held prior to leave without loss of seniority, pay or benefits. However, it is not clear whether the exceptions under Section 48-517 would apply.

US Military Leave: Kan. Stat. §§ 44-1125 to 44-1128

The law does not specifically address whether leave is paid. However, the employer is prohibited from discriminating against an employee with respect to employment, employment position and status because of membership or service in the military (*Kan. Stat. § 44-1126(a)(2) (2012)*).





By implication, therefore, the law requires that:

- Leave must be paid if the employer has established a policy or practice of paying an employee while on military leave or providing pay for similar leaves.
- An employee must be reinstated to at least the same job held prior to leave without loss of seniority, pay or benefits.

(*Kan. Stat. § 44-1126(a)(2), (4) (2012).*)

### Voting Leave: Kan. Stat. § 25-418

An employee who takes voting leave must receive regular pay while on voting leave, without any penalty or deductions to his salary or wage (*Kan. Stat. § 25-418 (2012)*). The statute does not specifically address reinstatement, but by implication the employee would also be entitled to return to the same job held prior to taking leave.

### Domestic Violence Leave: Kan. Stat. §§ 44-1131 to 44-1133

Employees may use any accrued paid leave or, if paid leave is unavailable, unpaid leave (*Kan. Stat. § 44-1132(d) (2012)*). Therefore, although the statute does not require that an employer provide paid leave, if an employee has paid time off benefits that could be used for this type of leave and elects to use it, the employer must allow the employee to do so. The statute is silent on whether an employer can require the employee to use available paid time off benefits before taking unpaid leave, but arguably the employer may do so.

An employer is prohibited from discharging or discriminating in any way against an employee who takes domestic violence leave (*Kan. Stat. § 44-1132(d) (2012)*). Therefore, although the statute does not specifically address reinstatement, an employee would generally be entitled to return to the same job held prior to taking leave.

To the extent allowed by law, the employer must maintain confidentiality of both:

- The identity of any employee who requests or takes domestic violence leave.
- Documentation supporting the need for or relating to the leave.

(*Kan. Stat. § 44-1132(c) (2012).*)

## EMPLOYER OBLIGATIONS

7. For each leave law, what obligations does an employer have to inform its employees of their rights to the leave?

### Pregnancy Leave: Kan. Admin. Regs. § 21-32-6

The regulation does not include a specific obligation for employers to inform their employees of their right to pregnancy leave. However, at the request of an employee, an employer must in writing or by posting a notice provide information on employment practices and policies:

- With regard to vacation pay, sick leave and any other benefits to which the employee is entitled.
- Which have a direct bearing on wages payable (which could include information about the types of leaves of absence available to the employee).

(*Kan. Stat. § 44-320(b) (2012).*)

In addition, the provisions of the Kansas Acts Against Discrimination (KAAD) must be posted in a conspicuous place by all employers, using a state-mandated poster. (*Kan. Stat. § 44-1012(2012)*). The poster references sex as a protected category, but does not specifically mention pregnancy.

### Jury Duty Leave: Kan. Stat. §§ 43-173 and 60-514

The statute does not specify any obligation for an employer to inform its employees of their right to leave. However, at the request of an employee, an employer must in writing or by posting a notice provide information on employment practices and policies:

- With regard to vacation pay, sick leave and any other benefits to which the employee is entitled.
- Which have a direct bearing on wages payable (which could include information about the types of leaves of absence available to the employee).

(*Kan. Stat. § 44-320(b) (2012).*)

### Military Leave: Kan. Stat. §§ 48-517, 48-222 and 44-1125 to 44-1128

None of the three statutes include any obligation for an employer to inform its employees of their right to leave. However, at the request of an employee, an employer must in writing or by posting a notice provide information on employment practices and policies:

- With regard to vacation pay, sick leave and any other benefits to which the employee is entitled.
- Which have a direct bearing on wages payable (which could include information about the types of leaves of absence available to the employee).

(*Kan. Stat. § 44-320(b) (2012).*)

### Voting Leave: Kan. Stat. § 25-418

The statute does not specify any obligation for an employer to inform its employees of their right to leave. However, at the request of an employee, an employer must in writing or by posting a notice provide information on employment practices and policies:

- With regard to vacation pay, sick leave and any other benefits to which the employee is entitled.
- Which have a direct bearing on wages payable (which could include information about the types of leaves of absence available to the employee).

(*Kan. Stat. § 44-320(b) (2012).*)

### Domestic Violence Leave: Kan. Stat. §§ 44-1131 to 44-1133

The statute does not specify any obligation for an employer to inform its employees of their right to leave. However, at the request of an employee, an employer must in writing or by posting a notice provide information on employment practices and policies:

- With regard to vacation pay, sick leave and any other benefits to which the employee is entitled.
- Which have a direct bearing on wages payable (which could include information about the types of leaves of absence available to the employee).

(*Kan. Stat. § 44-320(b) (2012).*)

8. For each leave law, what are possible consequences for employers who violate the law?

### Pregnancy Leave: Kan. Admin. Regs. § 21-32-6

The leave regulation does not provide specific consequences for violations. However, the Kansas Acts Against Discrimination (KAAD) and related regulations offer relief for violations including:

- Injunctive relief.
- Equitable relief, including hiring, reinstatement or upgrading of the employee.
- Back pay.
- Damages of up to \$2,000 for pain, suffering and humiliation.

(*Kan. Stat. § 44-1005(k) (2012) and Kan. Admin. Regs. § 21-45-21 (2012).*)

The KAAD and its regulations do not address whether attorneys' fees are recoverable. Punitive damages are not recoverable (*Woods v. Midwest Conveyor Co., 648 P.2d 234 (Kan. 1982)* and *Kansas Human Rights Comm'n v. Topeka Golf Ass'n, 856 P.2d 515 (Kan. Ct. App. 1993)*).

As a practical matter, most discrimination lawsuits filed in Kansas are filed under federal discrimination laws, rather than Kansas discrimination laws, because of:

- The Kansas cap on compensatory damages.
- The unavailability of punitive damages.
- The unsettled question on whether attorneys' fees are recoverable.

### Jury Duty Leave: Kan. Stat. §§ 43-173 and 60-514

Employees may bring a civil action against an employer in which they can obtain:

- Lost wages or other benefits.
- Actual damages.

- Reinstatement.
- An injunction against further violations.
- An order for other appropriate relief.
- Reasonable attorneys' fees, if the employee prevails.

(*Kan. Stat. § 43-173(b), (d) (2012).*)

Prevailing employers may be entitled to reasonable attorneys' fees if the court finds the action was frivolous or in bad faith (*Kan. Stat. § 43-173(d) (2012)*).

### Military Leave: Kan. Stat. §§ 48-517, 48-222 and 44-1125 to 44-1128

Kansas Military Leave: Kan. Stat. § 48-517

A court may order the following relief:

- Injunctive relief, such as an order to comply or cease and desist.
- Loss of wages and benefits suffered by the claimant.
- Liquidated damages to the claimant in an amount equal to claimant's loss of wages and benefits, if the employer is found to have willfully failed to comply with the statute.

(*Kan. Stat. § 48-517(d) (2012).*)

No fees or court costs can be assessed against the employer, because the attorney general would commence any such lawsuit (*Kan. Stat. § 48-517(d) (2012)*).

Kansas National Guard Leave: Kan. Stat. § 48-222

An employer's violation is a misdemeanor, punishable on conviction by a fine of between \$5 and \$50 for each offense (*Kan. Stat. § 48-222 (2012)*).

US Military Leave: Kan. Stat. §§ 44-1125 to 44-1128

Employees may bring a civil action against an employer in which they can obtain:

- Actual damages or \$500, whichever is greater, for each violation.
- Injunctive relief, such as an order to comply or cease and desist, a permanent or temporary injunction or restraining order.
- Other affirmative action as may be appropriate.

(*Kan. Stat. § 44-1127 (2012).*)

Additionally, court costs and reasonable attorneys' fees are awarded to the prevailing party (*Kan. Stat. § 44-1127 (2012)*).

### Voting Leave: Kan. Stat. § 25-418

Employers commit a class A misdemeanor when they engage in obstruction of voting privilege, which includes either:

- Intentionally obstructing an employee in his exercise of voting privilege.



- Imposing a penalty on an employee for exercising his voting privilege.

(*Kan. Stat. § 25-418 (2012).*)

A class A misdemeanor is punishable by either or both:

- Imprisonment for up to one year.
- A fine of up to \$2,500.

(*Kan. Stat. §§ 21-6602(a)(1), (b) and 21-6611(b)(1) (2012).*)

In addition, an employee may be able to recover allowable damages and such other relief as may be permitted under a cause of action for:

- Violation of a statutory right.
- Injury to rights not arising under contract.

(*Kan. Stat. §§ 60-512 and 60-513 (2012).*)

### Domestic Violence Leave: Kan. Stat. §§ 44-1131 to 44-1133

The statute does not provide consequences for violations. However, an employee may be able to recover allowable damages and other relief permitted under a cause of action for:

- Violation of a statutory right.
- Injury to rights not arising on contract.

(*Kan. Stat. §§ 60-512 and 60-513 (2012).*)

## RECORDKEEPING

9. What are the recordkeeping obligations for each type of leave?

### Pregnancy Leave: Kan. Admin. Regs. § 21-32-6

The regulation does not provide for any recordkeeping obligations.

### Jury Duty Leave: Kan. Stat. §§ 43-173 and 60-514

The statute does not provide for any recordkeeping obligations.

### Military Leave: Kan. Stat. §§ 48-517, 48-222 and 44-1125 to 44-1128

None of the three statutes provide for any recordkeeping obligations.

### Voting Leave: Kan. Stat. § 25-418

The statute does not provide for any recordkeeping obligations.

### Domestic Violence Leave: Kan. Stat. §§ 44-1131 to 44-1133

The statute does not provide for any recordkeeping obligations. However, to the extent allowed by law, the employer must maintain confidentiality of both:

- The identity of any employee who requests or takes domestic violence leave.

- Documentation supporting the need for or relating to the leave.

(*Kan. Stat. § 44-1132(c) (2012).*)

## OTHER LEAVE LAWS

10. Please describe other laws relating to leave that employers should consider in your state (for example, laws not requiring leave, but prohibiting discrimination in provision of certain types of leave).

### Workers' Compensation Laws: Kan. Stat. §§ 44-501 to 44-5,127

An employee may bring a cause of action based on termination for absences due to a work-related injury (*Coleman v. Safeway Stores, Inc.*, 752 P.2d 645, 652 (Kan. 1988); *Pilcher v. Board of County Comm'rs*, 787 P.2d 1204, 1211 (Kan. Ct. App. 1990)). This rule applies even if the work-related injury occurred at prior employment rather than at the employee's current employment (*Gonzalez-Centeno v. North Cent. Kansas Reg'l Juvenile Det. Facility*, 101 P.3d 1170 (Kan. 2004)).

Generally speaking under Kansas common law, employees injured at work are entitled to a leave of absence. There are only two recognized limitations on this general rule:

- An employee's inability to perform essential job functions.
- An employer's neutral maximum leave of absence policy.

#### Inability to Perform Essential Job Functions

An employee is no longer entitled to a leave of absence when an injured employee both:

- Reaches maximum medical improvement or is diagnosed with a permanent injury.
- Cannot perform the essential functions of his job.

Although the worker's compensation law does not prohibit discharge in these circumstances, the ADA and Kansas Acts Against Discrimination (KAAD) may require the employer to consider alternative positions for which the employee is qualified before discharging the employee (*Griffin v. Dodge City Coop. Exch.*, 927 P.2d 958, 965 (Kan. Ct. App. 1996)). Other cases that have addressed these issues include:

- *Gertsch v. Central Electropolishing Co.*, 26 P.3d 87 (Kan. Ct. App. 2001) (holding that an employer must have ample or adequate evidence that the employee cannot perform his former job before terminating employment).
- *Sanjuan v. IBP, Inc.*, 90 F. Supp. 2d 1208 (D. Kan. 2000) (holding that in the absence of permanent restrictions or other clear evidence, the employer must give the employee a sufficient period of time to recover before determining if the employee can or cannot perform the former job).

### Neutral Maximum Leave of Absence Policy

Courts have held that discharging an employee pursuant to a neutral maximum leave of absence policy is permissible and does not constitute workers' compensation retaliation. Cases that have addressed this issue include:

- *Barnard v. ADM Milling Co.*, 987 F. Supp. 1337, 1341 (D. Kan. 1997), *Rosas v. IBP, Inc.*, 869 F. Supp. 912 (D. Kan. 1994) and *Raymond v. Archer Daniels Midland Co.*, 762 F. Supp. 901 (D. Kan. 1991) (each holding a 12-month cap on leave lawful).
- *Rowland v. Val-Agri, Inc.*, 766 P.2d 819, 822 (Kan. Ct. App. 1988) (holding a six-month cap on leave lawful).

The maximum leave of absence policy must allow an injured employee a reasonable period of time to demonstrate whether he can return to work. Courts have not defined the minimum permissible time period, and have stated that it must be determined on a case-by-case basis. However, no cases have sanctioned less than a six-month period.

### Employment Discrimination Laws: Kan. Stat. §§ 44-1001 to 44-1014 and 44-1111 to 44-1121

The KAAD prohibits employers from discriminating against employees or potential employees on the basis of:

- Race.
- Color.
- Disability.
- Religion.
- Sex.
- National origin.
- Ancestry.
- Age (40 and over).

(*Kan. Stat. §§ 44-1009(a)(1) and 44-1113 (2012).*)

All persons or entities who conduct business in Kansas and have at least four employees are covered by the KAAD (*Kan. Stat. § 44-1002(b) (2012).*)

Prohibited conduct includes:

- Discriminating against an individual by failing or refusing to hire an individual.
- Discharging an individual.
- Limiting, segregating or classifying an employee or applicant in a manner that would adversely affect him.
- Discriminating against an individual regarding compensation or the terms, conditions or privileges of employment.

(*Kan. Stat. § 44-1009(a)(1)(2012).*)

These prohibitions would include discrimination in connection with leaves of absence. Although the KAAD includes a regulation specifically covering pregnancy leave for female employees, the KAAD could require leave in other situations. For example:

- Providing maternity leave to female employees to bond with a newborn without providing paternity leave to male employees to bond with a newborn would arguably be a violation of the KAAD's prohibition on sex discrimination.
- Providing medical leave to an employee who does **not** have a disability, as defined by KAAD, would arguably be discriminatory if an employer refuses to provide this leave or an equivalent leave to an employee with a disability.

*For the links to the documents referenced in this note, please visit our online version at <http://us.practicallaw.com/3-523-3173>.*

*For more information on leave laws, search for the following resources on our website.*

*Practice Notes:*

- *Disability Accommodation under the ADA* (<http://us.practicallaw.com/9-503-9007>)
- *Family and Medical Leave Act (FMLA) Basics* (<http://us.practicallaw.com/9-505-1339>)
- *Military Leave Law* (<http://us.practicallaw.com/7-504-4849>)
- *Pandemic Flu Preparation and Response* (<http://us.practicallaw.com/3-505-0385>)
- *Pregnancy and Parental Leave* (<http://us.practicallaw.com/7-505-0393>)
- *Workers' Compensation: Common Questions* (<http://us.practicallaw.com/0-504-9497>)

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