LEGAL UPDATES

PUBLISHED: SEPTEMBER 2, 2021

Missouri Enacts Law to Provide Unpaid Leave for Victims of Domestic or Sexual Violence

Service

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Effective on August 28, 2021, under Missouri's Victims Economic Safety and Security Act (VESSA), Missouri public entities and agencies and employers with at least 20 employees are required to provide up to two weeks of unpaid leave to employees who are victims of domestic or sexual violence or have a family or household member who is victim of domestic or sexual violence. By October 27, 2021, VESSA requires all covered employers to notify all individuals either employed by or hired after October 27, 2021 of their rights under VESSA. Such notices must either be prepared or approved by the Director of the Missouri Department of Labor and Industrial Relations.

Eligible employees, covered employers and limits on the length of leave required

Missouri employers with at least 20 or more employees must provide unpaid leave to employees who are either:

A victim of domestic or sexual violence; or

A family or household member of a victim of domestic or sexual violence whose interests are not adverse to the employee as it relates to the domestic or sexual violence.

Household members are defined as a spouse, parent, son, or daughter, persons related by blood or by present or prior marriage, other person who shares a relationship through a son or daughter, and persons jointly residing in the same household. The length of the required leave period provided by the employer depends on the number of the employer's employees, as follows:

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Employers with at least 20 but not more than 49 employees must provide a total of one workweek of leave during any 12-month period.

Employers with 50 or more employees must provide a total of two workweeks of unpaid leave during any 12-month period.

A workweek is defined as "an individual employee's standard workweek." Employees may take the leave either intermittently or on a reduced work schedule. A reduced work schedule is defined as a work schedule that reduces the usual number of hours per workweek, or hours per workday of an employee. The amount of unpaid leave available to the employee under VESSA cannot exceed the amount of unpaid leave time allowed under the federal Family and Medical Leave Act of 1993.

Reasons supporting a request for unpaid leave

The statute provides that eligible employees may take unpaid leave from work to address domestic or sexual violence to:

Seek medical attention or recover from physical or mental injuries caused by the violence to the employee or the employee's family or household member;

Obtain services from a victim services organization for the employee or the employee's family or household member;

Obtain psychological or other counseling for the employee or the employee's family or household member;

Participate in safety planning, temporarily or permanently relocating, or taking other actions to increase the safety of the employee or the employee's family or household member from future violence or to ensure economic security; or

Seek legal assistance or remedies to ensure the health and safety of the employee or the employee's family and household member, including either preparing for or participating in any legal proceeding related to the violence.

Notice and certification

The statute imposes the following notice and certification requirements on the employee:

Forty-eight hours of advance notice to the employer of the employee's intention to take leave for the reasons stated in VESSA, "unless providing such notice is not practicable." Employers are precluded

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from taking adverse action against an employee for an unscheduled absence if the employee, upon a request from the employer and within a reasonable period after the absence, provides a certification to the employer.

In the event of an unscheduled absence or upon a request for leave under VESSA, employers may require certification by the employee substantiating the reason for the unscheduled absence or a request for leave. Certification must be provided to the employer within a reasonable period after the employer requests certification.

An employee may satisfy the certification requirement with a sworn statement of the employee and 1) documentation from an employee, agent or volunteer of a victim services organization, attorney, member of the clergy or medical or other professional who provided assistance to the employee or the employee's family or household member, 2) a police or court record; or 3) other corroborating evidence.

All requests for leave and supporting documentation must be maintained with "the strictest confidence."

Requests for reasonable accommodation

Eligible employees under VESSA are entitled to reasonable safety accommodations from private employers and public agencies for "known limitations resulting from circumstances relating to being a victim of domestic or sexual violence or being a family or household member of a victim of domestic or sexual violence." Reasonable accommodations are defined to include:

An adjustment to a job structure, workplace facility, or work requirement such as a transfer, reassignment, modified schedule, leave, a changed telephone number or seating assignment, installation of a lock, implementation of a safety procedure, or assistance in documenting domestic violence that occurs at the workplace or in work-related settings in response to actual or threatened domestic violence.

Employers may request the employee to provide a written statement certifying the purpose of the reasonable safety accommodation signed by the employee or an individual acting on the employee's behalf. The obligation to provide a reasonable safety accommodation does not apply if the accommodation would pose an undue hardship on the employer or public agency. Undue hardship is defined similar to the definition under the Americans with Disabilities Act, requiring imposition of a

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"significant difficulty or expense" when considered in light of the nature and cost of the reasonable safety accommodation.

Non-discrimination and non-retaliation provisions

VESSA grants employees the right to take leave free from discrimination or retaliation as it relates to pay, position, benefits, and other terms and conditions of employment. The statute explicitly provides that provisions of other laws, collective bargaining agreements or employment benefits that provide greater leave benefits for eligible employees shall not be superseded by VESSA nor shall they diminish the rights and remedies provided under VESAA.

What this means to you

Update Policies. Employers should update their forms, policies, and employee handbooks to include a VESSA leave policy. In addition, all human resource professionals, supervisors, and the like should be trained on VESSA.

Notify Employees. Employers covered by VESSA must notify all employees and applicants hired by October 27, 2021 of their rights under VESSA.

Contact us

If you have questions about obligations under Missouri's newly enacted VESSA, contact Paul Pautler, Julianne Story, Michaeli Hennessy or your Husch Blackwell attorney.

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