FIRST REGULAR SESSION

SENATE BILL NO. 268

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATORS SCHUPP AND WALSH.

Read 1st time January 9, 2017, and ordered printed.

AN ACT

To amend chapter 285, RSMo, by adding thereto six new sections relating to unpaid leave for victims of certain crimes.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 285, RSMo, is amended by adding thereto six new sections, to be known as sections 285.625, 285.630, 285.635, 285.650, 285.665, and 285.670, to read as follows:

285.625. As used in sections 285.625 to 285.670, the following terms mean:

(1) "Director", the director of the department of labor and industrial relations;

(2) "Domestic violence", the same meaning as in section 455.010;

(3) "Employ", the act of employing or state of being employed, engaged, or hired to perform work or services of any kind or character within the state of Missouri;

(4) "Employee", any person performing work or service of any kind or character for hire within the state of Missouri;

(5) "Employer", the state or any agency of the state, political subdivision of the state, or any person that employs at least fifteen employees;

(6) "Employee benefit plan" or "plan", an employee welfare benefit plan or an employee pension benefit plan or a plan which is both an employee welfare benefit plan and an employee pension benefit plan;

(7) "Employment benefits", all benefits provided or made available to employees by an employer, including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, pensions, and profit-sharing, regardless of
whether such benefits are provided by a practice or written policy of
an employer or through an "employee benefit plan";

(8) "Family or household member", for employees with a family
or household member who is a victim of domestic violence, a sexual
assault as defined under section 455.010, or a victim of human
trafficking under section 566.209, means a spouse, parent, son,
daughter, other person 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;

(9) "Parent", the biological parent of an employee or an
individual who stood in loco parentis to an employee when the
employee was a son or daughter who is a victim of domestic violence,
a sexual assault as defined under section 455.010, or human trafficking
under section 566.209;

(10) "Person", an individual, partnership, association,
corporation, business trust, legal representative, or any organized
group of persons;

(11) "Public agency", means the government of the state or
political subdivision thereof, any agency of the state, or of a political
subdivision of the state, or any governmental agency;

(12) "Public assistance", includes cash, food stamps, medical
assistance, housing assistance, and other benefits provided on the basis
of income by a public agency or public employer;

(13) "Qualified individual", in the case of:

(a) An applicant or employee of an employer, an individual who,
but for being a victim of domestic violence or with a family or
household member who is a victim of domestic violence, can perform
the essential functions of the employment position that such individual
holds or desires; or

(b) An applicant for or recipient of public assistance from a
public agency, an individual who, but for being a victim of domestic
violence or with a family or household member who is a victim of
domestic violence, can satisfy the essential requirements of the
program providing the public assistance that the individual receives or
desires;

(14) "Reasonable accommodation", an adjustment to a job
structure, workplace facility, or work requirement, including 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. Any exigent circumstances or
danger facing the employee or his or her family or household member
shall be considered in determining whether the accommodation is
reasonable;

(15) "Reduced work schedule", a work schedule that reduces the
usual number of hours per workweek, or hours per workday, of an
employee;

(16) "Son or daughter", a biological, adopted, or foster child, a
stepchild, a legal ward, or a child of a person standing in loco parentis,
who is under eighteen years of age, or is eighteen years of age or older
and incapable of self-care because of a mental or physical disability
and is a victim of domestic violence, a sexual assault as defined under
section 455.010, or human trafficking under section 566.209;

(17) "Undue hardship", significant difficulty or expense, when
considered in light of the following factors:

(a) The nature and cost of the reasonable accommodation;

(b) The overall financial resources of the facility involved in the
provision of the reasonable accommodation, the number of persons
employed at such facility, the effect on expenses and resources, or the
impact otherwise of such accommodation on the operation of the
facility;

(c) The overall financial resources of the employer or public
agency, the overall size of the business of an employer or public agency
with respect to the number of employees of the employer or public
agency, and the number, type, and location of the facilities of an
employer or public agency; and

(d) The type of operation of the employer or public agency,
including the composition, structure, and functions of the workforce of
the employer or public agency, the distance of the facility from the
employer or public agency, and the administrative or fiscal relationship
of the facility to the employer or public agency;

(18) "Victim", an individual who has been subjected to domestic
violence;
(19) "Victim services organization", a nonprofit, nongovernmental
organization that provides assistance to victims of domestic violence
or to 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;

(20) "Work", any job, task, labor, services, or any other activity
for which compensation is provided, expected, or due.

285.630. 1. An employee who is a victim of domestic violence or
has a family or household member who is a victim of domestic violence
whose interests are not adverse to the employee as it relates to the
domestic violence may take unpaid leave from work to address such
violence by:

(1) Seeking medical attention for, or recovering from, physical
or psychological injuries caused by domestic violence to the employee
or the employee's family or household member;

(2) Obtaining services from a victim services organization for the
employee or the employee's family or household member;

(3) Obtaining psychological or other counseling for the employee
or the employee's family or household member;

(4) Participating 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
domestic violence or ensure economic security; or

(5) Seeking 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 violence.

2. Subject to subsection 5 of this section, an employee working
for an employer that employs at least fifty employees shall be entitled
to a total of two workweeks of leave under subsection 1 of this section
during any twelve-month period. An employee working for an employer
that employs at least fifteen but not more than forty-nine employees
shall be entitled to a total of one workweek of leave under subsection
1 of this section during any twelve-month period. The total number of
workweeks to which an employee is entitled shall not decrease during
the relevant twelve-month period. Sections 285.625 to 285.670 shall not
create a right for an employee to take unpaid leave that exceeds the
amount of unpaid leave time allowed under the federal Family and
Medical Leave Act of 1993 (29 U.S.C. 2601 et seq.).

3. Leave described in subsection 2 of this section may be taken
intermittently or on a reduced work schedule.

4. The employee shall provide the employer with at least forty-
eight hours' advance notice of the employee's intention to take leave
under subsection 1 of this section, unless providing such notice is not
practicable. When an unscheduled absence occurs, the employer may
not take any action against the employee if the employee, upon request
of the employer and within a reasonable period after the absence,
provides certification under subsection 5 of this section.

5. The employer may require the employee to provide
certification to the employer that the employee or the employee's
family or household member is a victim of domestic violence and that
the leave is for one of the purposes enumerated in subsection 1 of this
section. The employee shall provide such certification to the employer
within a reasonable period after the employer requests certification.

6. An employee may satisfy the certification requirement of
subsection 5 of this section by providing to the employer, a sworn
statement of the employee and the following:

   (1) Documentation from an employee, agent, or volunteer of a
       victim services organization, an attorney, a member of the clergy, or a
       medical or other professional from whom the employee or the
       employee's family or household member has sought assistance in
       addressing domestic violence and the effects of the violence;

   (2) A police or court record; or

   (3) Other corroborating evidence.

7. All information provided to the employer pursuant to
subsection 6 of this section including a statement of the employee or
any other documentation, record, or corroborating evidence, and the
fact that the employee has requested or obtained leave pursuant to this
section, shall be retained in the strictest confidence by the employer,
except to the extent that disclosure is requested or consented to in
writing by the employee or otherwise required by applicable federal or
state law.
8. Any employee who takes leave under this section shall be entitled, on return from such leave, to be restored by the employer to the position of employment held by the employee when the leave commenced or an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.

9. The taking of leave under this section shall not result in the loss of any employment benefit accrued prior to the date on which the leave commenced. Nothing in this section shall be construed to entitle any restored employee to the accrual of any seniority or employment benefits during any period of leave or 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. Nothing in this section shall be construed to prohibit an employer from requiring an employee on leave under this section to report periodically to the employer on the status and intention of the employee to return to work.

285.635. 1. During any period that an employee takes leave under section 285.630, the employer shall maintain coverage for the employee and any family or household member under any group health plan for the duration of such leave at the level and under the conditions coverage would have been provided if the employee had continued in employment continuously for the duration of such leave.

2. The employer may recover from the employee the premium that the employer paid for maintaining coverage for the employee and the employee's family or household member under such group health plan during any period of leave under this section if the employee fails to return from leave after the period of leave to which the employee is entitled has expired for a reason other than the continuation, recurrence, or onset of domestic violence, a sexual assault, or human trafficking that entitled the employee to leave under section 285.630; or other circumstances beyond the control of the employee.

3. An employer may require an employee who claims that the employee is unable to return to work because of a reason described in subsection 2 of this section to provide, within a reasonable period after making the claim, certification to the employer that the employee is unable to return to work because of that reason by providing the employer with:
(1) A sworn statement of the employee;
(2) Documentation from an employee, agent, or volunteer of a victim services organization, an attorney, a member of the clergy, or a medical or other professional from whom the employee has sought assistance in addressing domestic violence and the effects of that violence;
(3) A police or court record; or
(4) Other corroborating evidence.

4. All information provided to the employer pursuant to subsection 3 of this section including a statement of the employee or any other documentation, record, or corroborating evidence, and the fact that the employee is not returning to work because of a reason described in subsection 2 of this section shall be retained in the strictest confidence by the employer, except to the extent that disclosure is requested or consented to in writing by the employee; or otherwise required by applicable federal or state law.

285.650. 1. Employers and public agencies shall make reasonable accommodation, in a timely manner, to the known limitations resulting from circumstances relating to being a victim of domestic violence or a family or household member being a victim of domestic violence of an otherwise qualified individual:
   (1) Who is:
       (a) An employee of the employer; or
       (b) An applicant for or recipient of public assistance from a public agency; and
   (2) Who is:
       (a) A victim of domestic violence; or
       (b) With a family or household member who is a victim of domestic violence whose interests are not adverse to the individual in this subdivision as it relates to the domestic violence;

2. Subsection 1 of this section shall not apply if the employer or public agency can demonstrate that the accommodation would impose an undue hardship on the operation of the employer or public agency.

285.665. Every employer covered by sections 285.625 to 285.670 shall post and keep posted, in conspicuous places on the premises of the employer where notices to employees are customarily posted, a notice, to be prepared or approved by the director, summarizing the
requirements of sections 285.625 to 285.670. The director shall furnish copies of summaries and rules to employers upon request without charge.

285.670. 1. Nothing in sections 285.625 to 285.670 shall be construed to supersede any provision of any federal, state, or local law, collective bargaining agreement, or employment benefits program or plan that provides:

   (1) Greater leave benefits for victims of domestic violence than the rights established under sections 285.625 to 285.670; or
   (2) Leave benefits for a larger population of victims of domestic violence, as defined in such law, agreement, program, or plan, than the victims of domestic violence covered under sections 285.625 to 285.670.

2. The rights and remedies established for applicants and employees who are victims of domestic violence and applicants and employees with a family or household member who is a victim of domestic violence under sections 285.625 to 285.670 shall not be diminished by any federal, state, or local law, collective bargaining agreement, or employment benefits program or plan.