

FIRST REGULAR SESSION

SENATE BILL NO. 367

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WALSH.

Read 1st time February 25, 2013, and ordered printed.

TERRY L. SPIELER, Secretary.

1717S.01I

AN ACT

To amend chapter 285, RSMo, by adding thereto ten new sections relating to domestic violence.

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

Section A. Chapter 285, RSMo, is amended by adding thereto ten new sections, to be known as sections 285.625, 285.630, 285.635, 285.640, 285.645, 285.650, 285.655, 285.660, 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

21 whether such benefits are provided by a practice or written policy of
22 an employer or through an "employee benefit plan";

23 (8) "Family or household member", for employees with a family
24 or household member who is a victim of domestic violence, means a
25 spouse, parent, son, daughter, other person related by blood or by
26 present or prior marriage, other person who shares a relationship
27 through a son or daughter, and persons jointly residing in the same
28 household;

29 (9) "Parent", the biological parent of an employee or an
30 individual who stood in loco parentis to an employee when the
31 employee was a son or daughter;

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

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

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

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

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

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

53 (14) "Reasonable accommodation", an adjustment to a job
54 structure, workplace facility, or work requirement, including a
55 transfer, reassignment, modified schedule, leave, a changed telephone
56 number or seating assignment, installation of a lock, implementation
57 of a safety procedure, or assistance in documenting domestic violence

58 that occurs at the workplace or in work-related settings, in response to
59 actual or threatened domestic violence. Any exigent circumstances or
60 danger facing the employee or his or her family or household member
61 shall be considered in determining whether the accommodation is
62 reasonable;

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

66 (16) "Son or daughter", a biological, adopted, or foster child, a
67 stepchild, a legal ward, or a child of a person standing in loco parentis,
68 who is under eighteen years of age, or is eighteen years of age or older
69 and incapable of self-care because of a mental or physical disability;

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

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

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

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

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

88 (18) "Victim", an individual who has been subjected to domestic
89 violence;

90 (19) "Victim services organization", means a nonprofit,
91 nongovernmental organization that provides assistance to victims of
92 domestic violence or to advocates for such victims, including a rape
93 crisis center, an organization carrying out a domestic violence
94 program, an organization operating a shelter or providing counseling

95 services, or a legal services organization or other organization
96 providing assistance through the legal process;

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

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

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

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

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

13 (4) Participating in safety planning, temporarily or permanently
14 relocating, or taking other actions to increase the safety of the
15 employee or the employee's family or household member from future
16 domestic violence or ensure economic security; or

17 (5) Seeking legal assistance or remedies to ensure the health and
18 safety of the employee or the employee's family or household member,
19 including preparing for or participating in any civil or criminal legal
20 proceeding related to or derived from domestic violence.

21 2. Subject to subsection 5 of this section, an employee working
22 for an employer that employs at least fifty employees shall be entitled
23 to a total of twelve workweeks of leave under subsection 1 of this
24 section during any twelve-month period. An employee working for an
25 employer that employs at least fifteen but not more than forty-nine
26 employees shall be entitled to a total of eight workweeks of leave under
27 subsection 1 of this section during any twelve-month period. The total
28 number of workweeks to which an employee is entitled shall not
29 decrease during the relevant twelve-month period. Sections 285.625 to
30 285.670 shall not create a right for an employee to take unpaid leave
31 that exceeds the amount of unpaid leave time allowed under the
32 federal Family and Medical Leave Act of 1993 (29 U.S.C. 2601 et seq.).

33 3. Leave described in subsection 2 of this section may be taken

34 intermittently or on a reduced work schedule.

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

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

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

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

56 (2) A police or court record; or

57 (3) Other corroborating evidence.

58 7. All information provided to the employer pursuant to
59 subsection 6 of this section including a statement of the employee or
60 any other documentation, record, or corroborating evidence, and the
61 fact that the employee has requested or obtained leave pursuant to this
62 section, shall be retained in the strictest confidence by the employer,
63 except to the extent that disclosure is requested or consented to in
64 writing by the employee or otherwise required by applicable federal or
65 state law.

66 8. Any employee who takes leave under this section shall be
67 entitled, on return from such leave, to be restored by the employer to
68 the position of employment held by the employee when the leave
69 commenced or an equivalent position with equivalent employment
70 benefits, pay, and other terms and conditions of employment.

71 **9. The taking of leave under this section shall not result in the**
72 **loss of any employment benefit accrued prior to the date on which the**
73 **leave commenced. Nothing in this section shall be construed to entitle**
74 **any restored employee to the accrual of any seniority or employment**
75 **benefits during any period of leave or any right, benefit, or position of**
76 **employment other than any right, benefit, or position to which the**
77 **employee would have been entitled had the employee not taken the**
78 **leave. Nothing in this section shall be construed to prohibit an**
79 **employer from requiring an employee on leave under this section to**
80 **report periodically to the employer on the status and intention of the**
81 **employee to return to work.**

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

7 **2. The employer may recover the premium that the employer**
8 **paid for maintaining coverage for the employee and the employee's**
9 **family or household member under such group health plan during any**
10 **period of leave under this section if the employee fails to return from**
11 **leave after the period of leave to which the employee is entitled has**
12 **expired for a reason other than the continuation, recurrence, or onset**
13 **of domestic violence that entitled the employee to leave under section**
14 **285.630; or other circumstances beyond the control of the employee.**

15 **3. An employer may require an employee who claims that the**
16 **employee is unable to return to work because of a reason described in**
17 **subsection 2 of this section to provide, within a reasonable period after**
18 **making the claim, certification to the employer that the employee is**
19 **unable to return to work because of that reason by providing the**
20 **employer with:**

21 **(1) A sworn statement of the employee;**

22 **(2) Documentation from an employee, agent, or volunteer of a**
23 **victim services organization, an attorney, a member of the clergy, or a**
24 **medical or other professional from whom the employee has sought**
25 **assistance in addressing domestic violence and the effects of that**
26 **violence;**

27 (3) A police or court record; or

28 (4) Other corroborating evidence.

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

 285.640. 1. It shall be unlawful for any employer to interfere
2 with, restrain, or deny the exercise of or the attempt to exercise any
3 right provided under sections 285.625 to 285.670.

4 2. It shall be unlawful for any employer to discharge or harass
5 any individual, or otherwise discriminate against any individual with
6 respect to compensation, terms, conditions, or privileges of employment
7 of the individual, including retaliation in any form or manner, because
8 the individual exercised any right provided under sections 285.625 to
9 285.670 or opposed any practice made unlawful by sections 285.625 to
10 285.670.

11 3. It shall be unlawful for any public agency to deny, reduce, or
12 terminate the benefits of, otherwise sanction, or harass any individual,
13 or otherwise discriminate against any individual with respect to the
14 amount, terms, or conditions of public assistance of the individual,
15 including retaliation in any form or manner, because the individual
16 exercised any right provided under sections 285.625 to 285.670 or
17 opposed any practice made unlawful by sections 285.625 to 285.670.

18 4. It shall be unlawful for any employer to discharge or in any
19 other manner discriminate, as provided in subsections 2 or 3 of this
20 section, against any individual because such individual has:

21 (1) Filed any charge, or has instituted or caused to be instituted
22 any proceeding under or related to sections 285.625 to 285.670;

23 (2) Given, or is about to give, any information in connection with
24 any inquiry or proceeding relating to any right provided under sections
25 285.625 to 285.670; or

26 (3) Testified, or is about to testify, in any inquiry or proceeding
27 relating to any right provided under sections 285.625 to 285.670.

285.645. An employer shall not fail to hire, refuse to hire,
2 discharge, constructively discharge, or harass any individual, otherwise
3 discriminate against any individual with respect to the compensation,
4 terms, conditions, or privileges of employment of the individual, or
5 retaliate against an individual in any form or manner, and a public
6 agency shall not deny, reduce, or terminate the benefits of, otherwise
7 sanction, or harass any individual, otherwise discriminate against any
8 individual with respect to the amount, terms, or conditions of public
9 assistance of the individual, or retaliate against an individual in any
10 form or manner, because:

11 (1) The individual involved is or is perceived to be a victim of
12 domestic violence;

13 (2) The individual involved attended, participated in, prepared
14 for, or requested leave to attend, participate in, or prepare for a
15 criminal or civil court proceeding relating to an incident of domestic
16 violence of which the individual or a family or household member of
17 the individual was a victim, or requested or took leave for any other
18 reason provided under section 285.630; or

19 (3) The individual involved requested a reasonable
20 accommodation in response to actual or threatened domestic violence,
21 regardless of whether the request was granted; or

22 (4) The workplace is disrupted or threatened by the action of a
23 person whom the individual states has committed or threatened to
24 commit domestic violence against the individual or the individual's
25 family or household member.

285.650. 1. Employers and public agencies shall make reasonable
2 accommodation, in a timely manner, to the known limitations resulting
3 from circumstances relating to being a victim of domestic violence or
4 a family or household member being a victim of domestic violence of an
5 otherwise qualified individual:

6 (1) Who is:

7 (a) An applicant or employee of the employer; or

8 (b) An applicant for or recipient of public assistance from a
9 public agency; and

10 (2) Who is:

11 (a) A victim of domestic violence; or

12 (b) With a family or household member who is a victim of

13 domestic violence whose interests are not adverse to the individual in
14 this subdivision as it relates to the domestic violence;

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

285.655. The attorney general may investigate alleged or
2 suspected violations of sections 285.625 to 285.670 and shall have all
3 powers provided by sections 407.040 to 407.090 in connection with any
4 investigation of an alleged or suspected violation of sections 285.625 to
5 285.670 as if the unlawful acts enumerated in sections 285.625 to 285.670
6 are unlawful acts proscribed by chapter 407. The attorney general may
7 serve and enforce subpoenas related to the enforcement of sections
8 285.625 to 285.670.

285.660. Damages awarded due to violations of sections 285.625
2 to 285.670 shall include:

3 (1) Damages equal to the amount of wages, salary, employment
4 benefits, public assistance, or other compensation denied or lost to
5 such individual by reason of the violation, and the interest on that
6 amount calculated at the prevailing rate;

7 (2) Such equitable relief as may be appropriate, including but
8 not limited to hiring, reinstatement, promotion, and reasonable
9 accommodations; and

10 (3) Reasonable attorney's fees, reasonable expert witness fees,
11 and other costs of the action to be paid by the respondent to a
12 prevailing employee.

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

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

5 (1) Greater leave benefits for victims of domestic violence than

6 the rights established under sections 285.625 to 285.670; or

7 (2) Leave benefits for a larger population of victims of domestic
8 violence, as defined in such law, agreement, program, or plan, than the
9 victims of domestic violence covered under sections 285.625 to 285.670.

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

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