

FIRST REGULAR SESSION

SENATE BILL NO. 54

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR NASHEED.

Pre-filed December 1, 2016, and ordered printed.

ADRIANE D. CROUSE, Secretary.

0696S.011

AN ACT

To amend chapter 285, RSMo, by adding thereto seven new sections relating to leave from employment.

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

Section A. Chapter 285, RSMo, is amended by adding thereto seven new sections, to be known as sections 285.400, 285.405, 285.410, 285.415, 285.417, 285.420, and 285.425, to read as follows:

285.400. 1. The provisions of sections 285.400 to 285.425 shall be known and may be cited as the "Missouri Family and Medical Leave Act".

2. As used in sections 285.400 to 285.425, the following terms shall mean:

(1) "Care", physical care, emotional support, visitation, assistance in treatment, transportation, arranging for a change in care, assistance with essential daily living matters, and personal attendant services;

(2) "Child", a biological, adopted, or foster son or daughter, a stepson or stepdaughter, a legal ward, a son or daughter of a domestic or civil union partner, or the person to whom the employee stands in loco parentis who is under nineteen years of age or nineteen years of age or older but incapable of self-care because of mental or physical disability;

(3) "Department", the department of labor and industrial relations;

(4) "Director", the director of the department of labor and industrial relations or his or her authorized representative;

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

21 **(6) "Employer", any person acting directly or indirectly in the**
22 **interest of an employer in relation to an employee, provided that such**
23 **person employs at least twelve employees;**

24 **(7) "Family and medical leave", any of the following:**

25 **(a) Leave to bond with a child within the first year of the child's**
26 **birth or placement in connection with foster care or adoption; or**

27 **(b) Leave to care for a family member who has a serious health**
28 **condition;**

29 **(c) Leave when the employee is unable to work due to the**
30 **employee's own serious health condition;**

31 **(d) Leave to participate in activities which are directly related**
32 **to the educational advancement of such employee's child, including but**
33 **not limited to attending parent-teacher conferences, interviewing for**
34 **a new school, responding to an emergency involving such employee's**
35 **child, or attending an athletic or other extracurricular activity event**
36 **in which such child is participating;**

37 **(8) "Family member", a spouse, parent, sibling, or child of the**
38 **employee;**

39 **(9) "Health care provider", any physician, hospital, health**
40 **maintenance organization, ambulatory surgical center, long-term care**
41 **facility including those licensed under chapter 198, dentist, registered**
42 **or licensed practical nurse, optometrist, podiatrist, pharmacist,**
43 **chiropractor, professional physical therapist, psychologist,**
44 **physician-in-training, and any other person or entity that provides**
45 **health care services under the authority of a license or certificate of**
46 **this state or any other state or foreign country;**

47 **(10) "Parent", a biological, foster, or adoptive parent, a**
48 **stepparent, or any other person who stood in loco parentis to the**
49 **employee when the employee was a child;**

50 **(11) "Serious health condition", an illness, injury, impairment, or**
51 **physical or mental condition that involves:**

52 **(a) Inpatient care in a hospital, hospice, or residential health**
53 **care facility;**

54 **(b) Continuing medical treatment; or**

55 **(c) Continuing supervision by a health care provider.**

56 **The term shall include medical attention, services, or counseling for**
57 **victims of stalking, domestic violence, sexual assault, as such terms are**

58 defined in section 455.010, or victims of trafficking for the purposes of
59 sexual exploitation as described in section 566.209;

60 (12) "Sibling", a person related to another person by blood,
61 adoption, or affinity through a common legal or biological parent;

62 (13) "Spouse", a partner to a lawful marriage.

285.405. 1. (1) Every employer shall provide family and medical
2 leave to each of its employees as provided in this section.

3 (2) Employees taking family and medical leave shall be
4 compensated at sixty-five percent of the hourly rate at which such
5 employee is paid in the normal course of employment or three hundred
6 dollars per week, whichever is greater.

7 2. (1) Every employee who has worked at least one thousand two
8 hundred and fifty hours within the previous three hundred sixty-five-
9 day period shall be entitled to six hundred forty hours of family and
10 medical leave.

11 (2) Nothing in this section shall prevent employees from accruing
12 or using leave under an employer's leave program in addition to leave
13 provided under this section.

14 3. An employee who is entitled to leave under the Family and
15 Medical Leave Act (FMLA) under 29 U.S.C. Section 2601 et. seq. shall
16 take Missouri family and medical leave concurrent with leave taken
17 under the FMLA.

18 4. During any period that an employee takes leave under sections
19 285.400 to 285.425, the employer shall maintain coverage for the
20 employee and any family or household member under any group health
21 plan for the duration of such leave at the level and under the
22 conditions coverage would have been provided if the employee had
23 continued in employment for the duration of such leave.

285.410. 1. An employee taking family and medical leave due to
2 the employee's own serious health condition or due to the employee
3 caring for a family member with a serious health condition shall
4 establish medical eligibility for each uninterrupted family and medical
5 leave period by filing the certificate of a health care provider that
6 establishes the serious health condition of the employee or the
7 employee's family member. For subsequent periods of uninterrupted
8 leave after the period covered by the initial certificate or any
9 preceding continued claim, a claimant shall file a continued claim for

10 leave supported by the certificate of a health care provider. The
11 certificate form shall be developed by the department.

12 2. In order to establish medical eligibility of the serious health
13 condition of the employee, the information provided in the certificate
14 shall be within the health care provider's knowledge and shall be based
15 on a physical examination and documented medical history of the
16 employee. The certificate shall contain all of the following:

17 (1) A diagnosis or, if no diagnosis has yet been obtained, a
18 detailed statement of symptoms;

19 (2) The date, if known, on which the condition commenced;

20 (3) The probable duration of the condition;

21 (4) A statement that the serious health condition leaves the
22 employee unable to work.

23 3. In order to establish medical eligibility of the serious health
24 condition of the family member that warrants the care of the employee,
25 the information provided in the certificate shall be within the health
26 care provider's knowledge and shall be based on a physical
27 examination and documented medical history of the family
28 member. The certificate shall contain all of the following:

29 (1) A diagnosis or, if no diagnosis has yet been obtained, a
30 detailed statement of symptoms;

31 (2) The date, if known, on which the condition commenced;

32 (3) The probable duration of the condition;

33 (4) An estimate of the amount of time that the health care
34 provider believes the employee needs to care for the family member;
35 and

36 (5) A statement that the serious health condition warrants the
37 participation of the employee to provide care for his or her family
38 member.

39 4. An employee claiming family and medical leave to bond with
40 a child during the first year after the birth or placement of the child in
41 connection with foster care or adoption shall establish eligibility
42 documentation as required by the department to evidence the birth,
43 adoption, or fostering of a child.

44 5. Any employee who obtains care and treatment outside the
45 state shall be supported by a certificate of a health care provider duly
46 licensed or certified by the state or foreign country in which the

47 claimant is receiving the care and treatment.

285.415. Any employer who fails to comply with the provisions of
2 sections 285.400 to 285.425 shall be liable to the employee affected for
3 the full amount of the wage rate and an additional equal amount as
4 liquidated damages, less any amount actually paid to the employee by
5 the employer and for costs and such reasonable attorney fees as may be
6 allowed by the court. The employee may bring any legal action
7 necessary to collect the claim. All actions brought under this section
8 shall be commenced within two years of the accrual of the cause of
9 action.

285.417. 1. It shall be unlawful for any employer to discharge or
2 in any other manner discriminate against an employee because the
3 employee has taken family and medical leave.

4 2. Any employer who violates the provisions of subsection 1 of
5 this section shall be liable to any employee employed by such employer
6 who is affected by the violation for such equitable relief as may be
7 appropriate including employment, reinstatement, or promotion and for
8 damages equal to the sum of:

9 (1) The amount of:

10 (a) Any wages, salary, employment benefits, or other
11 compensation denied or lost to such employee by reason of the
12 violation; or

13 (b) In a case in which wages, salary, employment benefits, or
14 other compensation have not been denied or lost to the employee, any
15 actual monetary losses sustained by the employee as a direct result of
16 the violation, such as the cost of providing care, up to a sum equal to
17 sixty calendar days of wages or salary for the employee;

18 (2) The interest on the amount described in subdivision (1) of
19 this subsection calculated at a rate of nine percent per annum; and

20 (3) An additional amount as liquidated damages equal to the sum
21 of the amount described in subdivision (1) of this subsection and the
22 interest described in subdivision (2) of this subsection, except that if an
23 employer who has violated subsection 1 of this section proves to the
24 satisfaction of the court that the act or omission which violated
25 subsection 1 of this section was in good faith and that the employer had
26 reasonable grounds for believing that the act or omission was not a
27 violation of subsection 1 of this section, such court may, in the

28 discretion of the court, reduce the amount of the liability to the amount
29 and interest determined under subdivisions (1) and (2) of this
30 subsection, respectively.

31 3. An action to recover the damages or equitable relief
32 prescribed in subsection 2 of this section may be maintained against
33 any employer in any court of competent jurisdiction by any individual
34 for and on behalf of the individual or the individual and other
35 individuals similarly situated.

36 4. The court in any action under this section shall, in addition to
37 any judgment awarded to the plaintiff, allow reasonable attorneys' fees,
38 expert witness fees, and other costs of the action to be paid by the
39 defendant.

40 5. The right provided by subsection 3 of this section to bring an
41 action by or on behalf of any individual shall terminate:

42 (1) On the filing of a complaint by the department in an action
43 under subsection 8 of this section in which restraint is sought of any
44 further delay in the payment of the amount described in subdivision (1)
45 of subsection 2 of this section to such individual by the employer
46 responsible under subsection 2 of this section for the payment; or

47 (2) On the filing of a complaint by the department in an action
48 under subsection 6 of this section in which a recovery is sought of the
49 damages described in subdivision (1) of subsection 2 of this section
50 owing to an individual by an employer liable under subsection 2 of this
51 section, unless the action is dismissed without prejudice on motion of
52 the department.

53 6. The department may bring an action in any court of competent
54 jurisdiction to recover the damages described in subsection 2 of this
55 section. Any sums recovered by the department shall be held in a
56 special deposit account and shall be paid, on order of the department,
57 directly to each individual affected.

58 7. An action may be brought under this section not later than
59 three years after the date of the last event constituting the alleged
60 violation for which the action is brought. An action brought by the
61 department under this section shall be considered to be commenced on
62 the date when the complaint is filed.

63 8. A circuit court shall have jurisdiction, for cause shown, in an
64 action brought by the department to restrain violations of subsection

65 1 of this section including the restraint of any withholding of payment
66 of wages, salary, employment benefits, or other compensation, plus
67 interest, found by the court to be due to an individual, or to award such
68 other equitable relief as may be appropriate including employment,
69 reinstatement, and promotion.

285.420. 1. The department shall develop and implement an
2 outreach program to ensure that individuals who may be eligible to
3 take family and medical leave under sections 285.400 to 285.425 are
4 made aware of such leave. Outreach information shall clearly explain
5 eligibility requirements notice and medical certification requirements,
6 nondiscrimination rights, confidentiality, and the relationship between
7 employment protection, leave from employment, wage replacement
8 benefits, and other laws, and employer policies.

9 2. Every employer shall post and keep posted, in conspicuous
10 places on the premises of the employer where notices to employees are
11 customarily posted, a notice, to be prepared or approved by the
12 director, summarizing the requirements of sections 285.400 to
13 285.425. The director of the department shall furnish copies of notices
14 and summaries of the Missouri family and medical leave program to
15 employers upon request without charge.

285.425. Any rule or portion of a rule, as that term is defined in
2 section 536.010 that is created under the authority delegated in this
3 section shall become effective only if it complies with and is subject to
4 all of the provisions of chapter 536, and, if applicable, section
5 536.028. This section and chapter 536 are nonseverable and if any of
6 the powers vested with the general assembly pursuant to chapter 536,
7 to review, to delay the effective date, or to disapprove and annul a rule
8 are subsequently held unconstitutional, then the grant of rulemaking
9 authority and any rule proposed or adopted after August 28, 2017, shall
10 be invalid and void.

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