

SECOND REGULAR SESSION

# SENATE BILL NO. 739

99TH GENERAL ASSEMBLY

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INTRODUCED BY SENATOR SCHUPP.

Pre-filed December 1, 2017, and ordered printed.

ADRIANE D. CROUSE, Secretary.

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## AN ACT

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

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*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

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, a sexual  
25 assault as defined under section 455.010, or a victim of human  
26 trafficking under section 566.209, means a spouse, parent, son,  
27 daughter, other person related by blood or by present or prior  
28 marriage, other person who shares a relationship through a son or  
29 daughter, and persons jointly residing in the same household;

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

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

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

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

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

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

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

56 (14) "Reasonable accommodation", an adjustment to a job  
57 structure, workplace facility, or work requirement, including a

58 transfer, reassignment, modified schedule, leave, a changed telephone  
59 number or seating assignment, installation of a lock, implementation  
60 of a safety procedure, or assistance in documenting domestic violence  
61 that occurs at the workplace or in work-related settings, in response to  
62 actual or threatened domestic violence. Any exigent circumstances or  
63 danger facing the employee or his or her family or household member  
64 shall be considered in determining whether the accommodation is  
65 reasonable;

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

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

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

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

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

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

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

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

95           **(19) "Victim services organization", a nonprofit, nongovernmental**  
96 **organization that provides assistance to victims of domestic violence**  
97 **or to advocates for such victims, including a rape crisis center, an**  
98 **organization carrying out a domestic violence program, an organization**  
99 **operating a shelter or providing counseling services, or a legal services**  
100 **organization or other organization providing assistance through the**  
101 **legal process;**

102           **(20) "Work", any job, task, labor, services, or any other activity**  
103 **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 two workweeks of leave under subsection 1 of this section**  
24 **during any twelve-month period. An employee working for an employer**  
25 **that employs at least fifteen but not more than forty-nine employees**  
26 **shall be entitled to a total of one workweek of leave under subsection**  
27 **1 of this section during any twelve-month period. The total number of**  
28 **workweeks to which an employee is entitled shall not decrease during**

29 the relevant twelve-month period. Sections 285.625 to 285.670 shall not  
30 create a right for an employee to take unpaid leave that exceeds the  
31 amount of unpaid leave time allowed under the federal Family and  
32 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 from the employee the premium  
8 that the employer paid for maintaining coverage for the employee and  
9 the employee's family or household member under such group health  
10 plan during any period of leave under this section if the employee fails  
11 to return from leave after the period of leave to which the employee is  
12 entitled has expired for a reason other than the continuation,  
13 recurrence, or onset of domestic violence, a sexual assault, or human  
14 trafficking that entitled the employee to leave under section 285.630, or  
15 other circumstances beyond the control of the employee.

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

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

28 (3) A police or court record; or

29 (4) Other corroborating evidence.

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

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 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.

285.665. 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. The director shall furnish  
6 copies of summaries and rules to employers upon request without  
7 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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