

FIRST REGULAR SESSION

SENATE BILL NO. 178

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHUPP.

Pre-filed December 12, 2018, and ordered printed.

ADRIANE D. CROUSE, Secretary.

0118S.01I

AN ACT

To amend chapter 285, RSMo, by adding thereto six new sections relating to leave from employment 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 that 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 or sexual violence, 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 who is a victim of domestic or sexual
32 violence;

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

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

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

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

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

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

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

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

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

67 (16) "Sexual violence", a sexual assault, as defined in section
68 455.010, and trafficking for the purposes of sexual exploitation as
69 described in section 566.209;

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

75 (18) "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 (19) "Victim of domestic or sexual violence", an individual who
94 has been subjected to domestic violence or sexual violence;

95 **(20) "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 **(21) "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 or sexual
2 **violence or has a family or household member who is a victim of**
3 **domestic or sexual violence whose interests are not adverse to the**
4 **employee as it relates to the domestic violence may take unpaid leave**
5 **from work to address such violence by:**

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

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

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

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

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

23 **2. Subject to subsection 5 of this section, an employee working**
24 **for an employer that employs at least fifty employees shall be entitled**
25 **to a total of two workweeks of leave under subsection 1 of this section**
26 **during any twelve-month period. An employee working for an employer**
27 **that employs at least fifteen but not more than forty-nine employees**
28 **shall be entitled to a total of one workweek of leave under subsection**

29 1 of this section during any twelve-month period. The total number of
30 workweeks to which an employee is entitled shall not decrease during
31 the relevant twelve-month period. Sections 285.625 to 285.670 shall not
32 create a right for an employee to take unpaid leave that exceeds the
33 amount of unpaid leave time allowed under the federal Family and
34 Medical Leave Act of 1993 (29 U.S.C. 2601 et seq.).

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

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

44 5. The employer may require the employee to provide
45 certification to the employer that the employee or the employee's
46 family or household member is a victim of domestic or sexual violence
47 and that the leave is for one of the purposes enumerated in subsection
48 1 of this section. The employee shall provide such certification to the
49 employer within a reasonable period after the employer requests
50 certification.

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

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

60 (2) A police or court record; or

61 (3) Other corroborating evidence.

62 7. All information provided to the employer pursuant to
63 subsection 6 of this section including a statement of the employee or
64 any other documentation, record, or corroborating evidence, and the
65 fact that the employee has requested or obtained leave pursuant to this

66 section, shall be retained in the strictest confidence by the employer,
67 except to the extent that disclosure is requested or consented to in
68 writing by the employee or otherwise required by applicable federal or
69 state law.

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

75 9. The taking of leave under this section shall not result in the
76 loss of any employment benefit accrued prior to the date on which the
77 leave commenced. Nothing in this section shall be construed to entitle
78 any restored employee to the accrual of any seniority or employment
79 benefits during any period of leave or any right, benefit, or position of
80 employment other than any right, benefit, or position to which the
81 employee would have been entitled had the employee not taken the
82 leave. Nothing in this section shall be construed to prohibit an
83 employer from requiring an employee on leave under this section to
84 report periodically to the employer on the status and intention of the
85 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 or sexual violence, a sexual
14 assault, or human trafficking that entitled the employee to leave under
15 section 285.630, or other circumstances beyond the control of the
16 employee.

17 3. An employer may require an employee who claims that the

18 employee is unable to return to work because of a reason described in
19 subsection 2 of this section to provide, within a reasonable period after
20 making the claim, certification to the employer that the employee is
21 unable to return to work because of that reason by providing the
22 employer with:

23 (1) A sworn statement of the employee;

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

29 (3) A police or court record; or

30 (4) Other corroborating evidence.

31 4. All information provided to the employer pursuant to
32 subsection 3 of this section including a statement of the employee or
33 any other documentation, record, or corroborating evidence, and the
34 fact that the employee is not returning to work because of a reason
35 described in subsection 2 of this section shall be retained in the
36 strictest confidence by the employer, except to the extent that
37 disclosure is requested or consented to in writing by the employee, or
38 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 or sexual
4 violence or a family or household member being a victim of domestic
5 or sexual violence of an 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 or sexual violence; or

12 (b) With a family or household member who is a victim of
13 domestic or sexual violence whose interests are not adverse to the
14 individual in 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 subject to 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 or sexual
6 violence than the rights established under sections 285.625 to 285.670;
7 or

8 (2) Leave benefits for a larger population of victims of domestic
9 or sexual violence, as defined in such law, agreement, program, or plan,
10 than the victims of domestic or sexual violence covered under sections
11 285.625 to 285.670.

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

Copy ✓