

HOUSE BILL NO. 842

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE MITTEN.

0762H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 285, RSMo, by adding thereto nine new sections relating to employment leave for victims of certain offenses.

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

Section A. Chapter 285, RSMo, is amended by adding thereto nine new sections, to be known as sections 285.625, 285.630, 285.635, 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 given to such term 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) "Employee benefit plan" or "plan", an employee welfare benefit plan, an employee pension benefit plan, or a plan that is both an employee welfare benefit plan and an employee pension benefit plan;**
- (6) "Employer", the state or any agency of the state, political subdivision of the state, or any person that employs at least fifteen employees;**
- (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**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16 whether such benefits are provided by a practice or written policy of an employer or
17 through an employee benefit plan;

18 (8) "Family or household member", the same meaning given to such term in section
19 455.010;

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

22 (10) "Public agency", the government of the state or political subdivision thereof,
23 any agency of the state or of a political subdivision of the state, or any governmental
24 agency;

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

28 (12) "Qualified individual", in the case of:

29 (a) An employee of an employer, an individual who, but for being a victim of
30 domestic violence or a sexual offense, can perform the essential functions of the
31 employment position that such individual holds or desires; or

32 (b) An applicant for or recipient of public assistance from a public agency, an
33 individual who, but for being a victim of domestic violence or a sexual offense, can satisfy
34 the essential requirements of the program providing the public assistance that the
35 individual receives or desires;

36 (13) "Reasonable accommodation", an adjustment to a job structure, workplace
37 facility, or work requirement, including a transfer, reassignment, modified schedule, leave,
38 a changed telephone number or seating assignment, installation of a lock, implementation
39 of a safety procedure, or assistance in documenting domestic violence or sexual offenses,
40 that occurs at the workplace or in work-related settings in response to actual or threatened
41 domestic violence or sexual offense. Any exigent circumstances or danger facing the
42 employee shall be considered in determining whether the accommodation is reasonable;

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

45 (15) "Sexual offense", any offense under chapter 566;

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

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

49 (b) The overall financial resources of the facility involved in the provision of the
50 reasonable accommodation, the number of persons employed at such facility, the effect on

51 expenses and resources, or the impact otherwise of such accommodation on the operation
52 of the facility;

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

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

61 (17) "Victim", an individual who has been subjected to domestic violence or a
62 sexual offense;

63 (18) "Victim services organization", a nonprofit, nongovernmental organization
64 that provides assistance to victims of domestic violence or sexual offenses or advocates for
65 such victims, including a rape crisis center, an organization carrying out a domestic
66 violence or sexual offense program, an organization operating a shelter or providing
67 counseling services, or a legal services organization or other organization providing
68 assistance through the legal process;

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

285.630. 1. An employee who is a victim of domestic violence or a sexual offense
2 may take unpaid leave from work to address such violence by:

3 (1) Seeking medical attention for, or recovering from, physical or psychological
4 injuries caused by domestic violence or sexual offense to the employee;

5 (2) Obtaining services from a victim services organization for the employee;

6 (3) Obtaining psychological or other counseling for the employee;

7 (4) Participating in safety planning, temporarily or permanently relocating, or
8 taking other actions to increase the safety of the employee from future domestic violence
9 or sexual offense or to ensure economic security; or

10 (5) Seeking legal assistance or remedies to ensure the health and safety of the
11 employee, including preparing for or participating in any civil or criminal legal proceeding
12 related to or derived from domestic violence or a sexual offense.

13 2. Subject to subsection 5 of this section, an employee working for an employer
14 shall be entitled to a total of one workweek of leave under subsection 1 of this section
15 during any twelve-month period. The total number of workweeks to which an employee
16 is entitled shall not decrease during the relevant twelve-month period. Sections 285.625

17 to 285.670 shall not create a right for an employee to take unpaid leave that exceeds the
18 amount of unpaid leave time allowed under the federal Family and Medical Leave Act of
19 1993 (29 U.S.C. Section 2601 et seq.).

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

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

28 5. The employer may require the employee to provide certification to the employer
29 that the employee is a victim of domestic violence or a sexual offense and that the leave is
30 for one of the purposes enumerated in subsection 1 of this section. The employee shall
31 provide such certification to the employer within a reasonable period after the employer
32 requests certification.

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

35 (1) Documentation from an employee, agent, or volunteer of a victim services
36 organization, an attorney, a member of the clergy, or a medical or other professional from
37 whom the employee has sought assistance in addressing domestic violence or a sexual
38 offense and the effects of the violence or a sexual offense;

39 (2) A police or court record; or

40 (3) Other corroborating evidence.

41 7. All information provided to the employer under subsection 6 of this section,
42 including a statement of the employee or any other documentation, record, or
43 corroborating evidence, and the fact that the employee has requested or obtained leave
44 under this section, shall be retained in the strictest confidence by the employer, except to
45 the extent that disclosure is requested or consented to in writing by the employee or
46 otherwise required by applicable federal or state law.

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

51 9. The taking of leave under this section shall not result in the loss of any
52 employment benefit accrued prior to the date on which the leave commenced. Nothing in

53 this section shall be construed to entitle any restored employee to the accrual of any
54 seniority or employment benefits during any period of leave or any right, benefit, or
55 position of employment other than any right, benefit, or position to which the employee
56 would have been entitled had the employee not taken the leave. Nothing in this section
57 shall be construed to prohibit an employer from requiring an employee on leave under this
58 section to report periodically to the employer on the status and intention of the employee
59 to return to work.

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

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

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

18 (1) A sworn statement of the employee;

19 (2) Documentation from an employee, agent, or volunteer of a victim services
20 organization, an attorney, a member of the clergy, or a medical or other professional from
21 whom the employee has sought assistance in addressing domestic violence or a sexual
22 offense and the effects of that violence or sexual offense;

23 (3) A police or court record; or

24 (4) Other corroborating evidence.

25 4. All information provided to the employer under subsection 3 of this section,
26 including a statement of the employee or any other documentation, record, or
27 corroborating evidence, and the fact that the employee is not returning to work because
28 of a reason described in subsection 2 of this section, shall be retained in the strictest

29 confidence by the employer, except to the extent that disclosure is requested or consented
30 to in writing by the employee or otherwise required by applicable federal or state law.

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

- 9 (1) The individual involved is a victim of domestic violence or a sexual offense;
- 10 (2) The individual involved attended, participated in, prepared for, or requested
11 leave to attend, participate in, or prepare for a criminal or civil court proceeding relating
12 to an incident of domestic violence or sexual offense of which the individual was a victim,
13 or requested or took leave for any other reason provided under section 285.630;
- 14 (3) The individual involved requested a reasonable accommodation in response to
15 actual or threatened domestic violence or sexual offense, regardless of whether the request
16 was granted; or
- 17 (4) The workplace is disrupted or threatened by the action of a person whom the
18 individual states has committed or threatened to commit domestic violence or a sexual
19 offense against the individual or the individual's family or household member.

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

- 4 (1) Who is:
 - 5 (a) An employee of the employer; or
 - 6 (b) An applicant for or recipient of public assistance from a public agency; and
- 7 (2) Who is a victim of domestic violence or a sexual offense.

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

285.655. The attorney general may investigate alleged or suspected violations of
2 sections 285.625 to 285.670 and shall have all powers provided by sections 407.040 to
3 407.090 in connection with any investigation of an alleged or suspected violation of sections
4 285.625 to 285.670 as if the unlawful acts enumerated in sections 285.625 to 285.670 are

5 unlawful acts under chapter 407. The attorney general may serve and enforce subpoenas
6 related to the enforcement of sections 285.625 to 285.670.

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

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

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

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

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

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

4 (1) Greater leave benefits for victims of domestic violence or sexual offenses than
5 the rights established under sections 285.625 to 285.670; or

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

9 2. The rights and remedies established under sections 285.625 to 285.670 for
10 employees who are victims of domestic violence or a sexual offense shall not be diminished
11 by any federal, state, or local law; collective bargaining agreement; or employment benefits
12 program or plan.

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