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## Missouri Joins Other States in Providing Unpaid Leave for Domestic and Sexual Violence Victims

Haley Gassel\*

Domestic violence is immediately and closely associated with the home—but why is it not associated with the workplace? Conflicts or abuse in one's home environment can result in feelings of stress, anxiety, depression, etc., and therefore can negatively affect an employee's ability to perform their job. Numerous studies reflect this causal relationship of domestic violence negatively affecting the workplace environment.<sup>1</sup>

A study by Crime Victim's Litigation Quarterly found that ninety-six percent of workers experiencing domestic violence have problems or conflicts at their workplace.<sup>2</sup> Additionally, fifty-six percent of workers experiencing domestic violence were late to work as a result of the circumstances in their home environment.<sup>3</sup> Fifty-four percent of workers experiencing domestic violence had missed entire days of work.<sup>4</sup> Another study estimated that victims of intimate partner violence lose eight million days of paid work each year in the United States, which amounts to over thirty-two thousand full-time positions.<sup>5</sup>

As a result of increasing awareness and research, domestic violence law grew out of its traditional focuses in criminal and family law and has

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<sup>1</sup> Jennifer VanBuren Trachtenberg, Stephen A. Anderson, and Ronald M. Sabatelli, *Work-Home Conflict and Domestic Violence*, 24 J. OF FAM. VIOLENCE 471, 472 (2009).

<sup>2</sup> Michelle Gagnon, *Employer Liability for Workplace Violence*, 2 CRIME VICTIMS' LITIGATION QUARTERLY 4, 10–12 (1995).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Costs of Intimate Partner Violence Against Women in the United States*, NAT'L CTR. FOR INJ. PREVENTION AND CONTROL, DEP'T OF HEALTH & HUM. SERV. (2003), <https://www.cdc.gov/violenceprevention/pdf/IPVBook-a.pdf>.

become an emerging part of employment law.<sup>6</sup> Economic security is one of the most important factors in a domestic violence victim's ability to separate from the abusive partner or family member.<sup>7</sup> Promoting an individual's economic security benefits both the employee and the employer, as there is a shared interest in keeping them in their job and reducing the effect of domestic violence on the workplace.<sup>8</sup>

State policy can help mitigate these harmful effects of domestic violence at the workplace.<sup>9</sup> States legislatures can require employers to provide accommodations and leave for victims of domestic and sexual violence, providing those extra measures of economic security. Accordingly, today over thirty states have enacted laws providing domestic violence victims with protections in the workplace.<sup>10</sup> Missouri joined these states in 2021 by enacting its Victim Economic Safety and Security Act (VESSA)<sup>11</sup>. This article will specifically focus on Missouri's law.

### **Victim Economic Safety and Security Act (VESSA)**

VESSA applies to employees who are victims of domestic violence, sexual violence, or abuse, or whose family or household member is a victim of domestic or sexual violence.<sup>12</sup> The Act adopts the definition of domestic violence from Missouri Revised Statute § 455.010. That section defines domestic violence as, "abuse or stalking committed by a family or

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<sup>6</sup> Deborah A. Widiss, *Domestic Violence and the Workplace: The Explosion of State Legislation and the Need for a Comprehensive Strategy*, 35 FLA. ST. U. L. REV. 669, 670 (2008).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Chelsea Lettieri, Sandee Shulkin, and Judith Casey, *Domestic Violence and the Workplace: Supporting Workers Experiencing Domestic Violence*, SLOAN WORK AND FAMILY RESEARCH NETWORK AT BOSTON COLLEGE (2007).

<sup>10</sup> *Leave Laws by State and Municipality*, XPRT HR PRACTICAL COMPLIANCE, <https://www.xperthr.com/fifty-state-charts/leave-laws-by-state-and-municipality/20973/> (last visited Oct. 29, 2021, 11:18 AM).

<sup>11</sup> MO. REV. STAT. § 285 (2021).

<sup>12</sup> MO. REV. STAT. § 285.625 (2021).

household member.”<sup>13</sup> Abuse is defined as any acts, attempts, or threats against a person.<sup>14</sup> VESSA defines sexual violence as a sexual assault, defined in Missouri Revised Statute § 455.010<sup>15</sup>, and trafficking for the purposes of sexual exploitation, under Missouri Revised Statute § 556.209.<sup>16</sup>

An employee eligible under VESSA may take leave and/or request reasonable accommodations. Employees working for employers with at least fifty employees may take two workweeks of leave during any year.<sup>17</sup> Employees working for employers with twenty to forty-nine employees is entitled to one workweek of leave during any year.<sup>18</sup> This leave may be paid or unpaid; the statute does not require employers to pay for employees taking leave under this section.

Employees are required to provide their employers with at least forty-eight hours’ notice of the employee’s intention to take leave, unless impracticable.<sup>19</sup> The employer may also require certification from the employee that they or their family or household member is a victim of domestic or sexual violence.<sup>20</sup> This certification consists of a sworn statement by the employee as well as documentation proving the employee is eligible for the leave, such as a police or court record or a document from a medical or other professional.<sup>21</sup>

Taking leave under VESSA is available for several reasons. Missouri Revised Statute § 285.360 holds that an employee eligible under this law may take unpaid leave to address domestic or sexual violence by:

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<sup>13</sup> MO. REV. STAT. § 455.010 (2021).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> MO. REV. STAT. § 285.625 (2021).

<sup>17</sup> MO. REV. STAT. § 285.630 (2021).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

- (1) Seeking medical attention for, or recovering from, physical or psychological injuries caused by domestic or sexual violence to the employee or the employee's family or household member;
- (2) Obtaining services from a victim services organization for the employee or the employee's family or household member;
- (3) Obtaining psychological or other counseling for the employee or the employee's family or household member;
- (4) Participating in safety planning, temporarily or permanently relocating, or taking other actions to increase the safety of the employee or the employee's family or household member from future domestic or sexual violence or to ensure economic security; or
- (5) Seeking legal assistance or remedies to ensure the health and safety of the employee or the employee's family or household member, including preparing for or participating in any civil or criminal legal proceeding related to or derived from domestic or sexual violence.<sup>22</sup>

Additionally, VESSA holds that employers and public agencies must make reasonable safety accommodations “to the known limitations resulting from circumstances relating to being a victim of domestic or sexual violence or a family or household member being a victim...”<sup>23</sup> unless the accommodation poses an undue hardship resulting from significant difficulty or expense.<sup>24</sup> Reasonable safety accommodations include: adjustment to a job structure, workplace facility or work requirement; a transfer; reassignment; a modified work schedule; leave from work; etc.<sup>25</sup>

By October 27, 2021, employers in Missouri were required to notify

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<sup>22</sup> § 285.630.

<sup>23</sup> MO. REV. STAT. § 285.650 (2021).

<sup>24</sup> MO. REV. STAT. § 285.625 (2021).

<sup>25</sup> *Id.*

everyone employed by, or hired after, October 27, 2021, of their rights under this Act.<sup>26</sup> The Act also prohibits retaliation from employers. VESSA requires that any employee taking leave shall be restored to the position of employment held by the employee when their leave commenced.<sup>27</sup> In the alternative, they must be restored to an equivalent position with equivalent benefits, pay, and terms/conditions of employment.<sup>28</sup>

### **The Effects of Domestic Violence Employment Laws**

Creating workplace equality for victims of domestic and sexual violence will be a matter of trial and error amongst the various state employment laws. Illinois, for example, has recently expanded their Victims' Economic and Security Act to apply to crimes of violence, to allow employees to take leave for a broader group of family members, and to require employers to maintain strict confidentiality.<sup>29</sup> Kansas enacted a law in 2019 prohibiting employers from discharging, retaliating, or discriminating against employees who are domestic or sexual violence victims for taking time off from work to obtain relief, seek medical attention, and more.<sup>30</sup>

By enacting VESSA, Missouri is taking steps in a positive direction in providing workplace protections for victims of domestic and sexual violence. It will be interesting to see how much of an impact this law has on victims of domestic and sexual violence.

Edited by Alex Beezley

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<sup>26</sup> MO. REV. STAT. § 285.665 (2021).

<sup>27</sup> MO. REV. STAT. § 285.630 (2021).

<sup>28</sup> *Id.*

<sup>29</sup> 820 ILL. COMP. STAT. 180/10 (2020).

<sup>30</sup> KAN. STAT. ANN. § 44-1132 (2019).