

## Missouri's New Leave and Accommodation Law for Victims of Domestic or Sexual Abuse

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On August 28, 2021, Missouri joined a number of other states in extending unpaid leave and reasonable safety accommodations to employees who are victims of domestic violence or sexual abuse, or whose family or household members are victims of domestic violence or sexual abuse.

The new statute, the [Victims Economic Safety and Security Act](#) (VESSA), applies to all employers in Missouri with at least 20 employees, and it contains a number of provisions that Missouri employers may want to note, including an October 27, 2021, deadline to provide notice to employees of their rights under VESSA.

The highlights of the new law include the following provisions.

### Leave Requirements

The amount of unpaid leave available depends on the size of the employer, with larger employers providing greater leave.

| Number of Missouri employees | Workweeks of unpaid leave per 12-month period |
|------------------------------|---|
| 0–19                         | 0   |
| 20–49                        | 1   |
| 50 or more                   | 2   |

The statute permits leave to be taken all at once, as well as “intermittently or on a reduced work schedule.” The statute also provides that it “shall not create a right for an employee to take unpaid leave that exceeds the amount of unpaid leave time allowed for under the federal Family and Medical Leave Act.”

Notably, VESSA defines a “workweek” as an employee’s “standard workweek.” Therefore, the precise number of days to which an eligible employee is entitled will depend on the specific employee’s standard workweek.

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## Eligibility for Leave

An employee working for an employer with at least 20 employees in Missouri is eligible for leave under VESSA if (1) the employee is a victim of domestic violence or sexual abuse, or (2) one or more of the employee's family or household members are victims of domestic violence or sexual abuse.

VESSA defines "family or household member" broadly, and the definition includes "a spouse, parent, son, daughter, other person related by blood or by present or prior marriage, other person who shares a relationship through a son or daughter, and persons jointly residing in the same household."

## Qualifying Reasons for Leave

Eligible employees may take unpaid leave from work under VESSA to address domestic violence or sexual abuse by:

- (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.

## Notice and Documentation

Employees seeking leave under VESSA must provide their employers with at least 48 hours' advance notice of the intention to take leave, unless giving notice is not practicable.

VESSA permits employers to require employees to provide certification that (1) "the employee or the employee's family or household member is a victim of domestic or sexual violence," and (2) that the leave is for one of the qualifying reasons set forth above. The employee must provide the certification "within a reasonable period after the employer requests certification."

When advance notice of the absence is not possible, VESSA prohibits an employer from taking adverse action against an employee because of the absence if the employee provides a certification of eligibility and qualifying reason for leave "within a reasonable period" of time.

## Content of Certification and Recordkeeping

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Upon the employer's request for certification, an employee must provide certification that "the employee or the employee's family member is a victim of domestic or sexual violence, and that the leave is for one [of the qualifying reasons for leave under VESSA]." The statute provides that an employee may satisfy the certification requirement by providing a sworn statement of the employee, and the following:

- (1) Documentation from an employee, agent, or volunteer of a victim services organization, an attorney, a member of the clergy, or a medical or other professional from whom the employee or the employee's family or household member has sought assistance in addressing domestic violence or sexual violence and the effects of such violence;
- (2) A police or court record; or
- (3) Other corroborating evidence.

Employers are required to retain the employee's certification, "the fact that the employee has requested or obtained [VESSA] leave," and any other information that the employee provided to the employer related to the employee's request for or use of VESSA leave, "in the strictest confidence." VESSA prohibits employers from disclosing this information "except to the extent that disclosure is requested or consented to in writing by the employee or otherwise required by applicable federal or state law."

## **Maintenance of Benefits and Restoration Rights**

VESSA prohibits "the loss of any employment benefit accrued prior to the date on which the leave commenced" because of an employee's use of protected leave. Similar to the Family and Medical Leave Act (FMLA), the statute also requires a covered "employer ... to maintain coverage for the employee and any family or household member under any group health plan for the duration of [VESSA] leave at the level and under the conditions coverage would have been provided if the employee had continued in employment continuously for the duration of such leave."

In the event the employee does not return to work following VESSA leave, the statute permits the employer to recover the premium paid to maintain group health insurance coverage during the leave of absence. VESSA also expressly permits an employer to require an employee on leave to provide the employer with periodic updates on the employee's status and intention to return to work.

## **Reasonable Safety Accommodations**

VESSA requires Missouri employers with at least 20 employees to "make reasonable safety accommodations, in a timely manner, 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 of domestic or sexual violence."

Employers must make such accommodations unless they would impose an undue hardship on them. Moreover, the statute requires that the employer consider "[a]ny exigent circumstances or danger facing the employee or his or her family or household member ... in determining whether the accommodation is reasonable."

VESSA defines "reasonable safety accommodation" as "an adjustment to a job structure, workplace facility, or work requirement, including a transfer, reassignment, modified schedule, leave, a changed

telephone number or seating assignment, installation of a lock, implementation of a safety procedure, or assistance in documenting domestic violence that occurs at the workplace or in work-related settings, in response to actual or threatened domestic violence.”

An employer may require “an employee requesting a reasonable safety accommodation ... [to] provide the employer a written statement signed by the employee or an individual acting on the employee’s behalf, certifying that the reasonable safety accommodation is for a purpose authorized under [VESSA].”

## Key Takeaways

There are a number of steps Missouri employers may want to take to comply with VESSA.

First, VESSA requires covered employers to notify existing employees of their rights under the new law no later than October 27, 2021. Thereafter, newly hired employees must receive notice of VESSA rights when their employment begins.

Second, covered employers may want to seize the opportunity to revise their handbooks and policies to reflect compliance with Missouri’s new law. In addition, employers may want to consider whether they wish to provide more expansive leave to eligible employees than the floor set by VESSA. In a competitive labor market where attracting and retaining top talent is increasingly critical, an employer’s generous leave policies may differentiate the employer from its competitors.

Third, employers may want to proactively train their managers and human resources professionals on the new law, and identify fact patterns and scenarios that might trigger employer obligations under VESSA or other applicable laws.

Finally, though employers with fewer than 20 employees are not subject to VESSA, the enactment of the law provides such employers with an opportunity to refresh managers and human resources personnel on applicable leave policies and legal obligations relating to leaves of absence.

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